Divorce in Islam

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Professor Alṭāf Aḥmad A’ẓmī, the author of the booklet in hand, hails from A’ẓamgarh, a famous district of the Eastern U.P. (India). He received his primary and secondary education from Madrasa-tul-Iṣlāḥ (Sarā’imīr, A’ẓamgarh), a renowned centre of Islamic learning. Thereafter, he graduated in Unānī medicine from Ajmal Khān Ṭibbiyyah College, ‘Alīgarh Muslim University, ‘Alīgarh in 1969. After completing his medical education he started practicing as Unānī Physician at Jaunpūr (U.P).

In 1984 he was invited by Hakim ‘Abdul Hamid, the Founder of Jāmi’a Hamdard (Hamdard University), New Delhi, to join the Department of History of Medicine and Science, the Institute of History of Medicine and Medical Research (IHMMR), New Delhi as the Senior Research Officer. In 1989 when Jāmi’a Hamdard came into existence, he became Reader and Head of the department, and subsequently, Professor. He also served as the Dean, Faculty of Islamic Studies and Social Sciences. Moreover, he had been the Editor of ‘Studies of History of Medicine and Science’, International Journal, Jāmi’a Hamdard. It is to be mentioned here that his research work on the history of Unānī medicine in India was recognized as equivalent to Ph. D by Jāmi’a Hamdard in 1991.

Translator’s Note
After retirement in 2004, he was invited by Calicut University, Malappuram (India) as the Visiting Professor to enrich the Chair of Islamic Studies and Research, and he did the job satisfactorily.

Professor Aʾẓmī who is well-versed in several languages like Arabic, Persian, English and Urdu, has authored more than twenty books in different branches of learning, e.g. the history of Unānī medicine, Urdu language & literature and the Islamic Studies. He has particularly contributed a great deal to Islamic Studies.

Some of his famous works in Islamic Studies are as such: 1-Mīzān-ul-Qurʾān (Commentary of the Qurʾān), 2-Sūrah Fātiḥah-eik Taḥqīqī Mutālaʿah (First Chapter of the Qurʾān, An Objective Study), 3-Tauḥīd kā Qurʾānī Taṣawwur (Qurʾānic Concept of Monotheism), 4-Tajallīyyāt-i-Ḥaq (Evidences of God’s Existence), 5-Imān-o-ʿAmal kā Qurʾānī Taṣawwur (Qurʾānic Concept of Belief and Practices), 6-Islāmī ʿĪbādāt, eik Taḥqīqī Mṭālaʿah (Basic Worship in Islam, An Objective Study), 7-Haqīqat-i-Ḥajj (Reality of Hajj), 8-Hindustānī Muslimānūn kā Zawāl (Downfall of Indian Muslims), 9-Waḥda-tul-Wuǧūd eik Ghair Islāmī Naẓīyyah (Waḥda-tul-Wuǧūd, An Un-Islamic Ideology), 10-Islāmī Ri’yāsāt (Islamic State), 11-Islām aur Jumhūrīyyat (Islam and Democracy), 12-Islāmī Shariʿāt, Eik ʿImālī Taʿāruf (Islamic Shariʿah; A Brief Introduction), 13-Islām kā Taṣawwur-i-Ṣulḥ-o-Jung (Islamic Concept of Reconciliation and War) and 13-Taṣawwuf kyā hai? (What is Sufism?). All of these works are in Urdu.

Professor Aʾẓmī’s research methodology is objective, relevant and critically analytical. He always refers to the
Qur’ān first, then to the Ḥadīth and other primary sources of Islam. He is so much devoted to the truth and facts that he does not hesitate even to criticise great scholars of the world both Muslims and non-Muslims.

Professor A’ẓmī’s work ‘Divorce in Islam’ is a glaring example of his courage and straightforward approach. He has boldly differed with the view-points of many contemporary Islamic scholars in regard to the true concept of divorce in Islam. Though it is a concise work, Professor A’ẓmī has discussed all relevant aspects of divorce in the light of the Holy Qur’ān, the Ḥadīth, the incidences of divorce occurred during the Islamic periods and the books written by great Muslim scholars. It appears from the study of this booklet that Prof. A’ẓmī is quite aware of the incidences {of divorce} occurred in many parts of the world, so he did not even miss to mention what happened with a Moroccan Muslim lady in Germany.

After brief introduction, the author has discussed the subject under the following headings; Status of Marriage, Protection of Marriage, Stages before the Divorce, Real Law of Divorce, Distinctive Features of Islamic Law of Divorce, Meaning of ‘طلاق مرتان’, Triple Divorce (تطليقات ثلاثة), Correct Method of Divorce, A Great Misunderstanding and Return towards the Sunnah.

Today, triple talāq has become a burning issue; everyone seems bent upon giving his opinion on this subject in spite of having little knowledge about Islam. This appalling situation happened only due to the apathy of Muslim scholars who seem to have inclined not to resolve the issue
in the light of the Qur’ān, the relevant Ḥadīths and the incidences of divorce happened during the periods of the Prophet Muḥammad and his companions. Professor A’ẓmī has sincerely endeavoured to resolve this contentious issue in the right perspective, on the basis of the Qur’ānic injunctions and authentic Ḥadīths pertaining to divorce.

Keeping in mind the usefulness of this treatise, I translated it into English so that both the Muslims and non-Muslims would learn the real law of divorce in Islam which has been misinterpreted by some expositors of Islam. I hope this booklet would help remove all misunderstandings about triple divorce and everyone would appreciate the Islamic law of divorce which is not only a rational method of divorcing but it also surpasses all laws of divorce whether they be religious or non-religious.

Lastly, I would express my gratefulness to the author who revised the translation and made necessary changes wherever needed.

May Allah guide the Muslim community to follow the Qur’ān and Sunnah so that they may get success in this world and the lifeafter.

Dr. Aurang Zeb A’ẓmī
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Introduction:

Islamic law of divorce possesses a clear distinction in comparison to the worldly laws and also the laws of divorce in other religions. The reason is obvious that Islamic law of divorce is based on divine revelation which is complete in every respect and unchangeable despite the passage of time. Needles to say that Allah’s Knowledge is all embracing and transcends the time and space.

On the other hand, the worldly laws made by the eminent experts of law, cannot claim to be free from deficiencies and shortcomings because the human mind attains perfection after passing through some evolutionary processes. However, this perfection is timely, not for the ages. This is the reason that a law which deemed to be perfect at a particular period becomes faulty within a short span of time.

The reason of excellence which the 'Islamic law of divorce' has over other religious laws especially Jew and Christian laws, is that though these laws were revealed by Allah to their prophets but later they were altered by their religious leaders. But the 'Islamic law of divorce' is guarded against such alterations as pronounced by Allah:  

\[\text{وَإِنَّا لَهُۥ لَهْوُفِظُونَ} \]

(And We will assuredly guard it)”  

\(^{1}\text{Al-Ḥijr: 09}\)
But, let it be beared in mind that here we mean by 'Islamic law of divorce' that has been described in the Holy Qur’ān, not the law which is prevalent nowadays in the Muslim society. This customary law does not have any preference at all over other religious laws of divorce. What to say about the preference, it now has become a subject of ridicule. The opponents of Islam often make mockery of it and ask the Muslims that what kind of Divine law is this which has empowered the man that whenever he wishes, he can nullify the bond of marriage having uttered simply the word of divorce three times verbally or in written form, without a least care that this hurried act will jeopardize the life of his wife and their children.

But they do not know that this is not the 'Islamic law of divorce' and it cannot be; because the real Islamic law is based on complete justice as has been discussed in the forthcoming pages. But before proceeding further, some important points which have central position in the Islamic law of divorce are mentioned here because many Muslims are not aware of them.
**Status of Marriage:**

Marriage in Islam has extraordinary position; it has been called as a 'strong covenant'. Allah says:  

وَأَخْذَلَّ مَنْ طَبَّقَهُ عَلَيْهِ مَهْنَىَّةَ (… and they (married women) have taken from you a firm and strong covenant).  

It appears from this verse that the marriage is a 'social contract' between man and woman. Islam has extremely emphasized upon fulfilling the covenant whether it is between two persons or two nations or between Allah Himself and His servants. Hence, at several places in the Qur’ān, the Muslims have been directed to fulfill their agreement and not to break it. For instance, Allah says at one place:

وَأَفْرَأَيْنَى بِٱلْعَهْدِ إِنَّ ٱلْعَهْدَ كَهُنَّه مِهَٰسَۡۡۖ (… and (you) fulfill covenant. Verily, the covenant will be questioned about.)

One of the characteristics of the pious Muslims mentioned in the Qur’ān is fulfillment of the covenant. Allah says:

وَأَلَّذِينَ هُمْ لَا أَنْتِشِهِمْ وَرَعُونَ (… and those who are faithfully true to their trust and covenant.)

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1 Al-Nisāʾ: 21  
2 Al-Isrāʾ: 34  
3 Al-Muʾminūn: 08
At another place He says:

"(... why not, whosoever fulfills his pledge and fears much; then verily, Allah loves those who are the pious.)"

It is to be noted here that even if an agreement has taken place between the Muslims and non-Muslims, they (Muslims) have been directed to safeguard it, not to break it unjustly. Allah says:

"(How can there be a covenant with Allah and with His messenger for the polytheists except those with whom you made a covenant near the sacred Mosque? So long as they are true to you, stand you true to them. Verily, Allah loves the pious.)"

One of the reasons due to which the Jews got the wrath of Allah, was their open violation of the covenants as has been mentioned in several verses of the Qur’an, at one place Allah says:

"(It is not that every time they make a covenant, some party among them throw it aside?)"

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1 Ali ‘Imrân: 27
2 Al-Taubah: 07
3 Al-Baqarah: 100
Protection of Marriage:

It seems very clear from the above verses of the Qur'ān that Islam gives immense importance to the agreement and dislikes break of the covenant. Marriage, as stated above, is a kind of contract which is made between the couples with their mutual consent and will. The purpose of this contract is to build a family and to lead the married life happily. As we see that sometimes social agreements are broken due to some reasons, the marriage agreement may also be broken in the same way. But breaking of marriage agreement because of its consequences, is more dangerous than the break of social contracts like trade agreement. That’s why Shari’ah has advised the believers to take utmost care and caution in this regard. So all necessary precautionary measures have been described in order to safeguard the marriage and to avoid differences and conflicts between the couples. We briefly mention here those precautionary measures:

a) Islam has advised its followers both men and women that they should consider thoughtfully and investigate all related issues thoroughly before getting married. Even if the man feels necessary to have a look at his proposed wife, Shari’ah permits him to do so under a
The same permission has been given to the legal guardian of the girl and he has been advised not to get the girl married without her consent. And if any girl is married before attaining puberty, *Shari'ah* permits her to abrogate the marriage after reaching the puberty. It became evident that marriage is prohibited in Islam without consent of the man and woman.

However, the above mentioned Islamic principles of marriage are looked down by the contemporary Muslim society. It is very much disliked if that man dares to see his proposed wife before the marriage. In the same way, taking permission from the girl, is also regarded disgraceful. That is the reason that marriages are being held without the consents of the couples. Such un-Islamic ritual is commonly found among those Muslims who are uneducated or have conservative thinking.

There are numerous evidences that such marriages

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1 The chapter made by Imām Muslim with reference to the tradition narrated by Abū Hurairah is as follows: ندب النظر إلى وجه المرأة وكفيفاً لمن يريد زوجها.

Two incidences deserve to be mentioned in this connection. It is mentioned that Mughirah bin Shaibah went to the parents of the girl to see her but they disliked it. When the girl was informed about it, she said, “If the Prophet has permitted it, there is no problem.”

The other narration is related to Muḥammad bin Muslimah; he wanted to marry an woman but he could not see her so far. One day she went to the garden, he saw her somehow. The people asked him why he did so despite being a companion of the Prophet. He replied quoting the Prophet's saying that, “See the woman before marrying her.”

Both the events have been mentioned in Sunan ibn Mājah. (See the Chapter of Marriage) The imāms of the four schools of Islamic jurisprudence have consensus over that seeing face, hands and legs of the woman before marrying her is allowed as per the tradition”. (See: al-Mīzān al-Kubrā by al-Sha’rānī, 2/108)
prove to be useless rather harmful for the couples and sometimes are culminated into the divorce. If the Muslims follow the above-mentioned Islamic rules, it would be easy to safeguard the marriage.

b) Neither a man nor an woman can claim that he/she has all merits and does not have any demerit. Hence the golden rule of marital life is that the couples do overlook one another’s demerits and always take into account only the merits. And thus the dream of a successful marital life may come true.

It is a well known fact that man and woman not only differ in their psyche and nature rather contrary to each other. It is a surpassing attribute of Allah that He has not only created unity between the two opposites e.g. male and female but has also made the existence of the both an inevitable social need for each other. So none of them can live a happy and peaceful life overlooking his/her opposite. And this unity of two contraries has been presented in the Qur’ān as a strong evidence for the existence of Allah (al-Rūm: 21).

However, an element of difference is found naturally in this unity. So it is necessary for both of them that they always keep an eye on this natural difference and not allow it go beyond a limit. The man should think repeatedly that if his wife has any demerit, she may have merit also and even her demerit may be beneficial for him. To this meaningful aspect of the marital life the Qur’ān has drawn attention of the men in the following words:
And live with them honourably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good.)

c) There are various reasons for divorce. One is non-payment of maintenance to the wife by the husband or his cruel treatment to her. The other reason is tongue-biting and disobedience of the wife. So the Qur’ān has exhorted the men that they should live with their wives nicely (al-Nisā’: 19), overlooking their faults instead of quarreling with each other, and always prefer compromise and reconciliation. Allah says:

"If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good.)

... and if a woman fears cruelty or desertion on her husband’s part, there is no sin on them both if they make terms of peace better. And human inner-selves are swayed by greed. But if you do good and keep away from evil, verily, Allah is Ever Well-Acquainted with what you do.)

Similarly, the women have been directed that they must obey their husbands. So the Qur’ān has called only those women pious who obey their husbands and

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1 Al-Nisā’: 19
2 Al-Nisā’: 128
protect their chastity.¹ These days, many educated women think that Islam has lowered down their status by ordering them to obey their husbands. But Islam has really enhanced it. It is to be noted here that the family system in a way is like an institution, and like other social institutions it is also to be governed by an administrator and he should be obeyed. The Qur'ān has conferred this position to the man but it doesn’t mean that he is a dictator. As an administrator of the family it is his duty that he does behave well with his wife and safeguard her rights without any excuse. And in turn it is the duty of the wife that she must obey him. If anyone of them neglects his/her duty, the existence and stability of marital life will be jeopardized. For holding the family together the couple should concentrate on fulfilling their respective duties. The divorce generally occurs when anyone of the couples neglect the prescribed duty.

¹ Al-Nisāʾ: 34
Stages before the Divorce:

Due to unawareness of the Muslims about the right method of divorce and misguidance by their religious scholars it is a common practice that the divorce is given instantly without giving due consideration to its consequences. It is, of course, an open violation of the law of divorce in Islam. Such type of divorce really does not occur and if it happens in a real Islamic country, the culprit will be given severe punishment. Therefore, the Muslims have been directed that if they want to divorce their wives, they can do so only when the following reformative measures failed:

The learned men know that the sentiments and feelings of the women are very delicate; they are like a mirror which is broken into pieces with a light hitting. That is the reason that they (women) become furious with their husbands over silly matters and sometimes their resentment turns into disobedience. In the view of this natural weakness of the women, the men have been advised that if they disobey them, in turn they should not take any hasty decision rather they should keep patience. The wisdom of the men lies in that they treat them graciously and repeatedly make them understand the grave consequences of their non-cooperative attitude. In spite of this sincere effort, if they don’t give up their disobedience
then they (men) do separate them from their bed. And if this admonition also does not work and they do not abandon the path of rebellion, the light physical punishment may be unwillingly given to them.\(^1\)

Many women and also men are of the view that Islam has extremely humiliated the women by ordering men to punish them physically. It is their misunderstanding. They look at the punishment but not its specific reason, that’s why they did not understand its relevance.\(^2\) The Qur’ān has suggested this punishment in order to avoid divorce. It shows how much the divorce is disliked in Islam. It allowed that the disobedient woman be slightly punished rather than divorcing her so that her own future and the future of her children may not be spoiled due to her silly behavior.

Apart from this, the physical punishment has been suggested in case when the previous two measures (admonition and separation from the bed) have failed; Failure of these measures indicates clearly that she possesses the negative instinct in abundance. The

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\(^1\) Al-Nisāʾ: 33

\(^2\) One Moroccan Muslim lady pleaded in a court of Germany that she wants divorce from her Moroccan husband because he beats her. The lady Judge, Christa Datz-Winter, rejected her plea and wrote in her decree that the Qur’ān permits to beat the women. Hearing this punishment, German politicians, experts of the law and even Muslim leaders objected strongly against this decision and said that the Judge was bound to give the decree in this case according to the statute of Germany instead of a religious order of the 7th century which was given under the specific circumstance of that period. The contemporary modern Muslim thinkers have rejected this old order. [See: The Times of India, Times International, 24/03/2007]
separation of bed is a harsh punishment for a normal woman; if any woman bears this punishment and does not refrain from disobedience, it is meant that she is endowed with a rebellious nature. But, even then, Islam does not allow the man to divorce this defiant woman but suggests unwillingly to punish her as a remedial step.

If physical punishment proves to be ineffective and the woman continues to disobey her husband then every just person will suggest that she must be divorced. But it is the excellence of Islamic law that it still does not take a harsh step and orders to appoint a jury consisting of two persons from both the families for trying to bring a reconciliation between the couples. It is the promise of Allah that if they sincerely wish to come to terms, He will unite them.¹

However, if this last corrective effort also failed to resolve the marital conflict then the divorce can be given as per the direction of the Qur’ān and Sunnah (it will be mentioned later), not according to the custom that is commonly practiced today in the Muslim society, it is totally un-Islamic.

¹ Al-Nisāʾ: 35
Real Law of Divorce:

In al-Baqarah, the second chapter of the Qur'ān, different aspects of the Islamic law of divorce have been mentioned. Allah says:

فَاتْحِمُوهُنَّ عِنْدَ الَّذِينَ أَقْضَهُمُ الْعِدُوَّ فَإِنَّ مَنْ أَقَامَهَا حُدُوٍۢاً فَهُمُ الظَّٰلِمُونَ (229)

وَإِذَٰلِكَ زَوَّجُوهُنَّ إِذَا طَلَّبُوهُنَّ إِلَّٓٓا أَنْ يُؤْمِنُوا بِٱللَّهِ وَأَعْلَمُوا ۖ ذَٰلِكَ أَزۡكِيَٰهُمۡ دَرِيَّةً (232)

(The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back any of your bridal-money.

1 Al-Baqarah: 229-232
which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah. Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back (her bridal-money) for her (divorce). These are the limits ordained by Allah, so do not transgress them. And whoever transgresses the limits ordained by Allah, then such are the wrong-doers. And if he has divorced her, then she is not lawful to him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin on both of them that they reunite, provided they feel that they can keep the limits ordained by Allah. These are the limits of Allah, which He makes plain for the people who have knowledge. And when you have divorced women and they are about to fulfill the term of their prescribed period, either take them back on reasonable basis or set them free on reasonable basis. But do not take them back to hurt them, and to treat them unjustly and whoever does that, then he has wronged himself. And treat not the verses of Allah as a jest, but remember Allah’s favours on you and that which He has sent down to you of the Book and the wisdom whereby He instructs you. And fear Allah, and know that Allah is All-Knower of everything. And when you have divorced women and they have fulfilled the term of their prescribed period, do not prevent them from marrying their husbands, if they mutually agree on reasonable basis. This is an admonition for him among you who believes in Allah and the Last Day. That is more virtuous and purer for you. Allah knows and you know not.)
In the above verses the following commandments regarding divorce have been described and believers have been directed to abide by them so that their family life might be saved from disruption:

1. ‘Raja’ī1 divorce’ is twice in the whole married life wherein the husband is authorized to take his wife back within the prescribed period or to send her back to her parents’ house with full honour and respect.

2. In case of not taking her back he is not permitted to take back whatever he has gifted to his wife except that she has committed adultery.

3. Sometimes it happens that the husband wants to divorce his wife but he doesn’t do so only because he would have to give up what he has gifted to his wife. Now it is obvious that under these circumstances he cannot live with his wife in a civilized way and most probably he will misbehave with her to take his gifts back. In this situation the woman has been advised to give a reasonable sum to her husband to get rid of him. It is called ‘Khula’2 in the term of Islamic jurisprudence.

4. If the husband has given raja’ī divorce twice, then now if he divorces third time (فإن طلّقها --), he will forfeit the right of taking back his wife and she will be separated permanently.

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1 Raj’at in Islamic jurisprudence means to take the wife back during prescribed period. Raja’ī is adjective.
2 If a married woman seeks the divorce from the man (husband) through the Qāḍī (Jurist), it is called ‘Khula’ in the term of Islamic jurisprudence.
5. If the woman has married to another man [after the third divorce] but later this man also divorced her, then if the first husband wishes to remarry her, he can do so with her consent provided that both decide firmly to safeguard the regulation ordained by Allah, they would not quarrel with each other again and would take care about each other’s rights.

6. When the women have completed their prescribed period and it is decided not to take them back, they must be leaved with good manner. To take them back in order to tease, is a great sin; it would amount to a mockery of the divine law.

7. In case of ‘raja’i divorce’ if the husband wants to take his wife back and she agreed, then the members of her family should not oppose the reunion. They don’t know that the raj’at is far better than the separation.
Distinctive Features of Islamic Law of Divorce:

If we ponder upon the aforesaid Islamic law of divorce, it would certainly appear that it is a unique law. Some of its distinctive features are mentioned below:

1. The first distinctive feature of the ‘Islamic law of divorce’ is that there is a waiting period. It means that the divorce will occur only after passing of the prescribed period.\(^1\) This respite is not found in any law other than ‘Islamic law of divorce’.

2. The second distinctive feature is that the man’s right of divorce which was unlimited in the ancient Arabian society and it was a cruelty to the women, was reduced to three times. Now, he is permitted to take the wife back up to two divorces but after the third divorce he will forego this right.

3. The third distinctive feature is that like the man the woman also has a right to seek divorce through the process of *khula*.\(^2\)

4. The fourth distinctive feature is that if the husband does not take his wife back within the prescribed period but later he wished to take her back and she

\(^1\) Al-Baqarah: 288
\(^2\) Al-Baqarah: 229
agreed, he may take her back by remarrying her. In this regard the family of the woman has been advised not to prevent her to go back to her former husband. It shows that Islam prefers the ‘rajat’ rather than the divorce.\(^1\) Woe to those Islamic clerics who prohibit the couples from rejoining only because the short-tempered husband has uttered the word ‘Ṭalāq’ thrice.

5. The fifth distinctive feature is that the husband is not permitted to throw out the wife from his house in case of the *raja’i* divorce except when she has committed adultery. This distinctive feature has been mentioned in the Qur’ān in these words:

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\text{“ثُمَّ أَيِّهَا النَّاسُ إِذَا طَلَّقْتُمُ السَّمَاءَ فَطُلِّقْتُنَّ لَعْدَتَنَا وَأَحْصُوْنا الْعَدَّةَ وَأَنْفَغْوَا اللَّهُ رَبّنَا لَا تُنْفِقُونَ مِنْ بَيْنِنَا وَلَا يُعْفُنُونَ إِلَّا أَنْ يَأْتِنَّ بِفَاحَشَةٍ مُّبِينَةٍ وَيَتَلَّكَ حُدُوَّ اللَّهِ وَمَنْ يَتَّبِعَ حُدُوَّ اللَّهِ فَقَدْ ظَلَّلَ نَفْسَهُ وَمَنْ يَتَّبِعَ نَفْسَهُ فَلَيْنَيْمُ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهُ يَلَّتَ إِلَّا ذَلِكَ أَمْرًا.”} \(^2\)

(O Prophet! When you divorce women, divorce them at their prescribed periods and count their prescribed periods. And fear Allah your Lord. And turn them not out of their homes nor shall they leave, except in case they are guilty of some open illegal sexual intercourse. And those are the set limits of Allah, whosoever transgresses the set limits of Allah, then indeed he has wronged himself. You know not it may be that Allah will afterward bring some new thing to pass.)

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\(^1\) Al-Baqarah: 232

\(^2\) Al-Ṭalāq: 1
Meaning of ‘الطلاق مرتان’ :

The first and important commandment among the above mentioned regulations of the divorce with reference to the chapter ‘al-Baqarah’ is that the divorce is twice (الطلاق مرتان). But what does twice divorce mean? The Islamic scholars of different schools of thoughts have differed in determining its meaning and it will be dealt with later. Here we describe the meaning which we have understood from words and context of the aforementioned verse.

Let’s know first that this verse is not related to the method of divorce as several Muslim scholars and jurists have understood rather it is related to the limited number of divorce (We will discuss further this matter in the forthcoming pages). “الطلاق مرتان” means that a man can give divorce in the condition of ‘tuhr’ only two times in his whole married life and he is authorized to take back his wife within the prescribed period. Thereafter, if he gives the divorce third time (فإن طلقتها)، he will be deprived of his right to take her back and she will be separated from him forever.

Several scholars and commentators of the Qur’ān have described the same meaning of this verse. For instance, ‘Allāmah Muḥammad Sulaimān ‘Abdullāh al-Asqar says:

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1 Cleanliness from menstrual period
"الطلاق مرتان، أي الطلاق الذي تثبت فيه الراجعة للأزواج هو مرتان، أي الطلقة الأولى والثانية. إذا لا رجعة بعد الثلاثة."¹

"الطلاق مرتان" means that the divorce in which a man can take his wife back is twice, first and second, and there is no possibility of taking back after the third divorce.)

Among the Indian Muslim scholars Sheikh-ul-Hind, Maulānā Ashraf ‘Alī Thānawī and Maulānā Abul A’alā al-Maudūdī have supported this meaning. Maulānā Shabbīr Ahmad ‘Uthmānī writes on the margin of ‘Muwaddih-i-Furqān’, the Urdu translation by Sheikh-ul-Hind:

“It was a common rule before the advent of Islam that the men would divorce their wives as much as they wished and would take them back before the end of the prescribed period. They would do the same onwards to oppress the women. This verse was revealed to tell the men that the ‘raja’ī divorce’ is only twice. So up to one or two divorce the man is permitted to take his wife back as per the rule of divorce in a decent way. Now, there is no ‘raj’at’ after the end of the prescribed period but if both agree, they can remarry. If he divorces her third time then remarriage will not be allowed except when the other man married her and have had intercourse with her”.²

Maulānā Maudūdī has explicitly explained the above verse. He says:

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¹ Zubdah al-Tafsīr, P. 36 (footnote, no. 229)
² Muwaddih-i-Furqān, al-Baqarah: 229, footnote, no. 5
“It was a ritual in the pre-Islamic period that a man was entitled to divorce his wife innumerably. As and when a husband got displeased with his wife he would divorce her and then would take her back and would do the same repeatedly. Under this circumstance, neither she was supposed to be his wife nor was free to marry anyone else. The above said verse was revealed to root out this oppression against woman. According to this verse a man can divorce his wife {with raj’at} only twice in his whole life. And the man who had divorced his wife twice and had taken her back, if he would divorce her onward third time in his life, she will be separated from him forever”.

To me the above meaning of the verse is more appropriate because it is supported by the context, the time of revelation and some events related to the divorce. The Īlā’ has been mentioned before the verse under discussion. Qatādah says that ‘Īlā’ was a method of divorce in pre-Islamic period. Sa‘īd bin Musayyib says that ‘Īlā’ was a sort of oppression by the people of pre-Islamic period; if someone did not love his wife and also he did not want her to get married to anyone else, he took oath not to come close to her. Thus he left her as if she was neither a divorcee nor a married woman. Such type of divorce was also prevalent in the early period of Islam. Hence, Islam fixed a period for it which was four months. The husband was ordered to take her back within this period, otherwise, he will have to divorce her. This divorce was

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1 Tafhīm-ul-Qur’ān, 1/footnote, no. 250
2 Tafsīr-i-Maẓharī, 1/291
declared as the *raja'ī* divorce. The tradition mentioned by Dārquṭnī with reference to Iḥāq contains saying of the 2nd Caliph ‘Umar that when four months have passed, it will be one divorce and she will have to complete her waiting period like a divorcee.

Like ‘Īlāʾ there was another bad practice among the Arabs that they would divorce their wives time and again and would take them back accordingly. ‘Urwah bin Zubair narrates that people in the early period of Islam would divorce their wives innumerably. Someone would divorce his wife and would take her back when the period was about to be completed and he again would divorce her and take her back. They would do it only to hurt their wives. Then this verse was revealed ‘الطلاق مرتان.’

The meaning of the verse ‘الطلاق مرتان’ becomes more manifest from the events of divorce that happened during the life of the Prophet Muḥammad (PBUH). The divorce by Rukānah, a famous companion of the Prophet, has been mentioned in different collections of the ‘Ḥadīth’; it appears from it that he divorced his wife first time during the period of the Prophet and the second time during the reign of the caliph ‘Umar, and he divorced her third time during the rule of the third caliph ‘Uthmān and left her forever.

It is amazing as to how several Muslim scholars including the jurists and traditionalists, in spite of above said

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1 Ibid, 1/300
2 Ibid, P. 303 (narrated by Abū Dāwūd)
narrations and historical evidences, understood "الطلاق مرّتان" as the method of divorce while it limits the number of divorce as mentioned above. Thus they wrongly interpreted that the divorce should be given in the two separate meetings or ṭuhrs. Maulānā Muftī Muḥammad Shafi’ writes:

“By the word of ‘مرّتان’ has been pointed out that the divorce should not be given in one time but in two separate times, i. e. Tuhr. The sentence "الطلاق طلاقان" would have been suffice to divorce but the word ‘مرّتان’ points out the order and gap and it means that two divorces must be given separately. For instance, if someone gives two rupees to a person at once, it would not amount to giving him twice. So divorcing twice as mentioned in the Qurʾān means that two divorces should be given in separate ṭuhrs”.¹

Qāḍī Thanāʾullāh of Pānīpat writes in this regard:

“Giving divorce twice at once is disliked because the word ‘مرّتان’ means separation and points out the number. And the particle ‘alif lam’ in the word "الطلاق" is for sort (jins) so the conjecture demands that two divorces at once should not be considered correct. And when two divorces are not correct then three divorces at once would be preferably incorrect because three is more than two in counting”.²

¹ Maʿārif-ul-Qurʾān, 1/136
² Tafsīr-i-Maẓhari, 1/300
Maulānā Amīn Aḥsan Iṣlāhī is also of the same view. He writes under the heading ‘The Correct Way of Divorce’ while explaining the meaning of “الطلاق مرتان”:

“Now the correct method of divorce has been described. Since the whole social life is based on the pure relation of marriage, so if it reaches to the breaking point owing to any unavoidable circumstance, he should not break this sacred relation immediately. But as the divorcee is ordered to wait till three menstruations; similarly the person who is going to give divorce is advised to divorce her twice separately in two ṭuhrs and in the third ṭuhr he either take her back if he wishes or leave her if he has decided not to take her back”.¹

But let it be clear that the sentence “الطلاق مرتان”, as has been stated earlier, is not related to the method of divorce but to limiting the numbers of divorce. Hence interpretations given by Mualānā Iṣlāhī and other Muslim scholars proved wrong.

¹ Tadabbur-i-Qur’ān, 1/534
Triple Divorce (تطلیقات ثلاثة):

These days several disgusting customs and traditions have entered the Muslim community under the garb of Islam and that have been accepted. The custom of ‘ḥalālah’\(^1\) is one of them. Unfortunately, this ugly custom has been approved by a section of the Muslim jurists.

They say that if a man gives triple divorce in one sitting, it will be happened as a bāʾin (final) divorce and the woman will become unlawful for him unless she gets married to someone else and he (second husband) after having sexual contact divorces her then she will be lawful for her ex-husband. This is the famous viewpoint of Hanafite fiqh and is followed in the Indian sub-continent for a long time. According to the view of the traditionalists triple divorce in one ṭuhr or one sitting will be considered as one divorce and the husband will have the right to take her back during the prescribed period. The same opinion is of Imāmiyyah. And the same is correct to the author because it is in accordance with the ruling of the Qurʾān.

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\(^1\) ‘Ḥalālah’ is meant that the divorcee gets married to a man and he as conspired, gives divorce without sharing bed with her. It is obviously a conspiracy and against the intent of the Qurʾān. That’s why the Prophet had cursed upon the person who carries out the custom of ‘ḥalālah’ and also who seeks ‘ḥalālah’.
Triple divorce in one sitting is incorrect for several reasons; first and very important reason is that there is no time-gap while it is mandatory as the word ‘مرّتان’ indicates. It signifies the occurrence of an act twice with a time-gap. There are several evidences of that in the Qur'ân. For instance, Allah says:

(We decreed for the Children of Israel in the Scripture: indeed you would do mischief in the land twice.)

It is a historical fact that the Jews had rebelled first in 587 B.C and second time in 70 A.C and there was a long gap of time between these two events.

Moreover, triple divorce in one sitting is completely against the real intention of the Qur'ân. It negates the possibility of raj'at while the Qur'ân wishes to keep the door opened. It prefers unity rather than disunity. It is interested in maintaining the marital relations instead of severing them. This excellence lies in that it is the law of Allah, Benevolence and Merciful.

As has been described earlier that triple divorce is related to three different times in marital life, some companions of the Prophet during his lifetime and the reigns of the rightly-guided caliphs had mistakenly collected together these three divorces. They thought that they have the right to give three divorces separately on different occasions or give them in one sitting. It is obvious that

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1 Al-Isrā': 4
their interpretation was against the intent of the Qur’ān. It is narrated that the Prophet (PBUH) was informed about a man who had divorced his wife thrice in one sitting; he stood up angrily saying that the Book of Allah is being mocked while I am still alive among you. Hearing this, a person stood and asked the Prophet: why should I not kill the culprit (آلا أفتنه). ¹

Despite the anger of the Prophet several companions continued to divorce their wives thrice at once and sometimes more than thrice in anger and when their anger subsided, they expressed anguish and regret. Thereafter this kind of divorce became a common practice and it is still prevalent in the Muslim society.

It appears from the narrations reached us that the Prophet had dealt differently with such cases; if he came to know that somebody has divorced his wife in anger without any intention to leave her, he declared it as *raja’i* divorce and ordered him to take her back. But when he was convinced that relations between the couples were strained severely, he got them separated.

The examples of both the decisions are found in the books of traditions. The best and strongest example of the first divorce was the divorce by Rukānah. This divorce has been recorded by Tirmidhī, Ibn Mājah and Dārmī in different ways. Imām Dā’ūd has used the word ‘البتة’ which was commonly used by the Arabs’ meaning triple divorce but not definitely. That’s why the Prophet (PBUH) pronounced

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¹ Sunan Nasā’ī, 2/981
the divorce by Rukānah as ‘raja’ī divorce’. Imām Ibn Taimiyah has opined in this regard that the Ḥadīth narrated by Abū Dā’ūd contains some unpopular narrators whom Imām Bukhārī and other muḥaddiths have declared as unreliable ones. That is why he held the narration by Imām Ibn Ḥanbal in his ‘Musnad’ stronger and preferred it. That narration is as follows:

“It is narrated by Ibn ‘Abbās that Rukānah had given his wife triple divorces in one sitting but later he felt pain and regretted. The Prophet (PBUH) asked him as to how he divorced? He replied, “Triple divorce” then the Prophet asked, “in one sitting? he replied, “Yes”. Hence the Prophet (PBUH) said, “It is not but one divorce, you can take her back if you wish”. So Rukānah took her back.” ¹

The example of other decree is that ‘Uwaimir ‘Ajlānī pronounced lī‘ān against his wife in the presence of the Prophet and then said, “O, the Messenger of Allah! I would be liar if I kept her with me’. And then without waiting the decision of the Prophet he gave her triple divorces”. ²

Abū Dhar after narrating this incidence with reference to Sahl bin Sa’d remarked:

“What the Messenger of Allah enforced it and whatever happened in the presence of the Messenger of Allah became a Sunnah. Sa’d said that he was with the Messenger of Allah at that time. So afterwards it was

¹ Musnad Ahmad, 1/265
² Ṣaḥīḥ Muslim, 1/289
made a Sunnah for those who pronounced li’ān that they be separated forever”.¹

Difference between the above said two incidences of divorce is very clear. The severity of the last mentioned incidence seems from that ‘Uwaimir pronounced li’ān against his wife in presence of the Messenger of Allah and then he divorced her. It seems very clear from this attitude that he was so much unhappy with his wife that he was not prepared to keep her with him at any cost, so the Prophet separated them but he dealt differently with Rukānah. He came to believe after seeing his worry and grief that he gave triple divorce under sever anger; he did not intend to leave her forever so he (the Prophet) permitted him to take his wife back.

From the above mentioned two incidences of divorce this jurisprudential principle emerged that the decree should not be issued on the basis of apparent aspect of the event but deep study and analysis of those conditions and situations is very much necessary under which the divorce occurred.

If we keep in sight this jurisprudential principle then the significance of that narration will be manifest, in which it has been stated that triple divorce in one sitting was considered only one divorce during the periods of the Prophet and the caliph Abū Bakr and also in the first two years of the second caliph ‘Umar. Thereafter, Ḥaḍrat ‘Umar observed that the people have started to be hasty

¹ Sunan Abū Dāwūd, P. 306
in this regard (while it was a respite for them) so he enforced the triple divorce in one sitting as the final divorce (bāʾin).¹

Here a question arises that when the verdict was delivered about triple divorce on the basis of the intention of the divorcee during the periods of the Prophet and the first caliph then why today the intention of divorcee should not be ascertained? If the husband claims on oath that he did not intend to leave his wife by triple divorce, he did so in anger, it should be taken as rajaʿī divorce because the real spirit and aim of the Islamic law of divorce lies in that the couples must be permitted to be united if they wish so.

As far as the decision of the caliph ‘Umar is concerned it was a timely decree taken under the situations and needs of that period, and the ruler has the right to do so. That is why none of the companions of the Prophet differed from his decree. Imām Taḥāwī writes:

“There were those companions of the Prophet who were aware of the prevalent practice during the Prophetic period but none declined nor refuted this decision”²

Those narrations which declare triple divorce as ‘bāʾin’ (separation forever) are of that period. The decision of Ḥaḍrat ‘Umar, which was indeed a punitive decree as many Muslim scholars have stated, does not have the status of real Islamic law of divorce. The present situation demands that we should follow the decree issued by the

¹ Ṣaḥīḥ Muslim, 1/477
² Sharḥ Maʿānī al-ʿĀthār, 2/29
Prophet during his life time so that thousands of Muslim families can be saved from destruction. Let’s not forget that the Muslims have had the political power during the reigns of the Prophet and the rightly-guided caliphs, and apart from that the divorcees were easily got remarried in that society. Those divorcees who had no guardians they were looked after by the government itself. Since now-a-days these things are non-existent so the timely decree of Ḥadrat ‘Umar should not be cited in support of triple divorce; it shows short-sightedness of the contender. Every decree should be studied in the light of circumstantial evidences.
Correct Method of Divorce:

The correct method of divorce taught by Islam is that the man should divorce his wife once in ṭuhr without having sex with her and after passing the prescribed period the divorce would occur accordingly. Before ending the prescribed period the man has the right to take her back. Even after passing the prescribed period, he can remarry her provided she is ready to come back to her husband.

It is narrated by Abū Dāʾūd that if a man decides after due consideration to divorce his wife then he should divorce her one time. If he does not want to take her back, he should leave her in suspension till the prescribed period ended. It’s because the divorce is the most hated among the lawful things in the sight of Allah (أبغض الحلال إلى الله الطلاق).¹

Many of educated or semi-educated Muslims think that divorce does not occur until the word of divorce is uttered thrice. This misunderstanding must be removed. When the separation happens by uttering the word ‘divorce’ once then its repetition is useless, it does not alter any way the course of divorce. The word ‘divorce’ is generally repeated to determine the divorce and sometimes the husband utters it repeatedly in anger. For example, he says that I have divorced you hundred times”. This act, which deserves to be

¹ Tafsīr-i-Maẓharī, 1/303
condemned, does not affect the occurrence of divorce; it will be one *raja’ī* divorce. If he commits this mistake time and again he is liable to be punished. It is narrated that every person who divorced his wife thrice in one sitting, was brought to Ḥaḍrat ʿUmar and he whipped him.

As it is mandatory that the divorce should be given once in *tuhr* and the prescribed period must be remembered, it is also necessary that in case of not taking the woman back, she should be released in the presence of two trustworthy witnesses as described in the Qurʾān. Allah says:

وَفَهَارِقُوهُنَّ بِمَهْوَرٍ فَهُمْ يَمْسِكُوهُنَّ بِمَهْوَرٍ فَهُمْ يَقُولُونَ أَطْعِمُوهُمْ وَأَقِيمُواَ الْعَهْدَةَ

(Then when they are about to attain their term appointed, either take them back in a good manner or part with them in a good manner. And take as witness two just persons from among you. And establish the testimony.)

But ironically, the Muslims have completely overlooked this law of *Sharīʿah* and even their ʿUlama (religious scholars) also have set it aside.

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1 Al-Ṭalāq: 2
A Great Misunderstanding:

It is generally acknowledged that triple divorce in one sitting or ‘tuhr’ is against the Sunnah, but the divorce in three separate sittings or ‘tuhrs’ is not against the Shari’ah. It is not correct. This method of divorce, i.e. to divorce in three separate sittings or ‘tuhrs’, is also against the Shari’ah, difference is of degrees only. The aforesaid one is called bid’ah1 divorce but the second one has been excluded from the category of bid’ah because there is a chance for the man to rethink over his decision and he can take his wife back. Maulānā Muḥammad Shafī’ writes:

“That is why Imām Mālik and several other jurists have not allowed triple divorce as a lawful one. They have called it as bid’ah divorce while other jurists have permitted triple divorce with the condition that they be given in three separate tuhrs. In their term this kind of divorce is also called the Sunnah but none means by this definition that this method of divorce is based on Sunnah and is liked by the Shari’ah. It has been called the Sunnah in the sense that it is out of the category of the bid’ah”.2 But in fact this way of divorce is also against the Sunnah as mentioned above.

1 Unlawful and unacceptable innovation in the religion.
2 Ma’ārif al-Qur’ān, 1/559
Return towards the Sunnah:

If anyone divorces against the Sunnah i.e. gives divorce thrice in one sitting, he must be admonished and having declared this divorce void, he must be compelled to return to the Sunnah.

It’s quite amazing that most of the religious scholars and jurists concede that triple divorce given in one sitting is bid’ah while some others consider it unlawful; however, they insist that it happens. Maulānā Muftī Muḥammad Shafī’ writes:

“Though the Prophet (PBUH) has disliked the triple divorce in one sitting, as mentioned in the above-said narrations and that is why Muslim ummah in general have considered it a bad practice whereas some others have declared it unlawful; however if someone did so its effect would be like a lawful divorce, i.e. triple divorce will happen and the husband will forfeit his right to take his wife back. Now, he cannot remarry her”.

It’s a very strange reasoning. How a practice which is undesirable and also against the teachings of the Qurān and Sunnah can be admissible? Those ‘Ulama who have claimed the consensus over this matter is subjected to

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1 Ibid, P. 563
debate.\textsuperscript{1} We know well that several great scholars and jurists in the past held this view\textsuperscript{2} but it does not make a difference. They were human being and they could commit mistakes. ‘Allāmah Ibn Ḥazm and Imām Ibn Taimiyah both a revered Islamic scholar and also great Muḥaddiths, were of the view that triple divorce (in one sitting) is only one divorce. And preceding them Tāūs and ‘Ikrimah had the same opinion.\textsuperscript{3} These two great jurists not only considered triple divorce as a raja’ī divorce but they also opined that this kind of divorce is against the Sunnah and therefore, anyone who commits this mistake he must be returned to the Sunnah. The same opinion was of Ibn Isḥāq.\textsuperscript{4}

This opinion is endorsed by the incidence of divorce given by ‘Abdullāh bin ‘Umar. He divorced his wife during the menstrual cycle so Ḥaḍrat ‘Umar, reported the matter to the Prophet (PBUH). The Prophet, hearing it, became angry and said, “He must take his wife back till the present

\begin{footnotes}
\item[1] ‘Allāmah Zarqānī has written in \textit{Sharḥ-i-Mu’āttā} that most of the jurists are of the view that triple divorce in one sitting happens and Ibn ‘Abd al-Barr has claimed the consensus (\textit{Ijmā’}) upon it (\textit{Sharḥ-Mu’āttā}, 3/167). But the consensus in its strict course never happened. So simply absence of difference among the jurists is not actually the consensus as Imām Shāfī’i has mentioned in ‘Kitāb al-Umm’ and one can differ from it (See: al-Ahkām by Āmidī, 1/260). Moreover, the consensus is time-bound and it therefore will lose the authenticity after the passage of the time.
\item[2] Imām Nawawi has written that Imām Mālik, Imām Shāfī’i and Imām Abū Ḥanīfah were of the opinion that triple divorce in one sitting occurs. See: \textit{Sharḥ Muslim}, 1/478
\item[3] Ibid
\item[4] Tafsīr-i-Maẓharī, 2/301
\end{footnotes}
menstrual cycle ended then again the menstrual cycle occurred and it also came to an end. And afterward if he intends to divorce her, he can do it during *tuhr* without touching her sexually. This is the prescribed period (‘*iddat*) in which Allah has ordered to divorce the woman”.\(^1\)

Most probably many religious scholars and jurists did not ponder upon this aspect of law and if they did so it was overlooked for some reasons that the main objective of legislation is to do justice to the members of the society, i.e. no one should oppress the other. That is why the Qur’ān has used the phrase ‘حدود الله’. It means that the law ordains a limit, its violation will inflict on the members of the society. Similarly, every law requires to be enforced in totality. The respect of law and its total observance are deemed necessary even in the worldly governments and its violation is liable to the punishment. Then how it was conceived about the Islamic law that its full following is not necessary and its violation will not be punishable.

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\(^1\) Agreed upon
Conclusion:

If we consider sincerely in the light of the aforesaid discussion, it will be admitted that the practice of triple divorce is a great injustice rather a cruelty to the women and their children. It is surprising that in spite of observing bitter consequences of triple divorce in one sitting, it has been accepted as a right method of divorce. Instead of punishing those Muslims who violate the law of divorce in Islam and compelling them to return to the Shari’ah, they are permitted in the garb of triple divorce in one sitting to make a mockery of the Shari’ah and also to cause irreparable damage to lives of the women and their children.

If you ask any jurist that if a person offered the Maghrib’s prayer with two rak’ats instead of three, then his prayer will be accepted to be offered or not? He will surely reply in negative and will call him a sinner. He will never say that his prayer was offered though it was a bid’at prayer and the doer was sinner. Similarly if a wealthy Muslim does not pay his Zakāh in accordance with the Niṣāb¹ every Muftī will issue the decree that his Zakāh was not paid because he did not comply with the regulation of Zakāh. In case there is an Islamic government, he will be whipped and will be compelled to pay Zakāh accordingly.

¹ A fixed amount of wealth on which Islamic tax (Zakāh) is obligatory.
But these Jurists and religious scholars deal differently with regard to violation of the Islamic law of divorce. They do not admonish the person who gives triple divorce in one sitting that his divorce did not happen because it was given illegally; he must give divorce according to the Shari’ah if he really wishes to sever his relation with his wife; on the contrary he is told that his divorce happened though he committed a sin. What a wonderful decree!

Under the present circumstances when the Muslims are faced with various political and economic problems and suffer from the moral degradation, triple divorce in one sitting (which is prevalent today) should be declared a *raja‘ī* divorce. At the same time, the Muslims should be directed not to give triple divorce in one sitting because it is the worst violation of the divine order. Instead they should divorce their wives once in *ṭuhr* without having intercourse with them and the prescribed period (*‘iddat*) should be remembered. And if they want to take their wives back they can do so within the prescribed period, otherwise, they have to leave them nicely in the presence of two reliable witnesses as ordered in the Qur‘ān (al-Ṭalāq: 2-3). Any method of divorce other than this, is *bid‘ah* and a misguidance.
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