

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

(In the name of Allah, the Beneficent, the Merciful)

Divorce in Islam

by

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DIVORCE IN ISLAM

MARRIAGE AND DIVORCE

Though marriage, according to Islam, is only a civil contract, yet the rights and responsibilities consequent upon it are of such importance to the welfare of humanity that a high degree of sanctity is attached to it. But in spite of the sacredness of the character of the marriage-tie, Islam recognizes the necessity, in exceptional circumstances, of keeping the way open for its dissolution. With the exception, perhaps, of the Hindu law, the necessity of divorce has been recognized by all people. The right of divorce according to the Jewish law, belongs to the husband who can exercise it at his will. The Christian law recognizes the right of divorce only when there is faithlessness on the part of either of the parties, but the divorced parties are precluded from marrying again. According to Hindu law marriage once performed can never be dissolved. Islam effected several reforms in divorce. It restricted the husband's right to divorce while recognizing the wife's right to it.

DIVORCE IS PERMITTED UNDER EXCEPTIONAL CIRCUMSTANCES

The Arabic word for divorce is *taláq* which carries the literal significance of freeing or the undoing of a knot (Rághib). In the terminology of the jurists, the *taláq* is called a *khul'* (meaning literally the putting off or taking off of a thing), when it is claimed by the

wife. Both from the Holy Qur-án and the Hadith it is right that, though divorce was permitted, yet the divorce appears could be exercised only under exceptional circumstances. The Holy Prophet is reported to have said : " Never did Allah allow anything more hateful to Him than divorce." (Abú Dáwúd 13 : 3). According to a report of Ibn 'Umar, he said : " With Allah the most detestable of all things permitted is divorce " (Ibid). The Holy Qur-án also approves of the Holy Prophet insisting that Zaid should not divorce his wife, notwithstanding a dissension of a sufficiently long standing. The incident is thus spoken of: " And when thou didst say to him to whom Allah had shown favour and to whom thou hadst shown a favour, keep thy wife (*i.e.*, do not divorce her) and be careful of thy duty to Allah " (33 : 37). Refraining from divorce is spoken of here as *taqwa* or righteousness. Elsewhere divorce is thus discouraged : " If you hate them (*i.e.*, your wives), it may be that you dislike a thing while Allah has placed abundant good in it " (4 : 19). Remedies are also suggested to avoid divorce so long as possible : " And if you fear a breach between the two (*i.e.*, the husband and the wife), then appoint a judge from his people and a judge from her people ; if they both desire agreement, Allah will effect harmony between them " (4 : 35). It was due to such teachings of the Holy Qur-án that the Holy Prophet declared divorce to be the most hateful of all things permitted. And it is due to this that in spite of the facility with which it may be

effected, divorce takes place only rarely among the Muslims, compared with the large number of divorces in Christian countries. The mentality of the Muslim is to face the difficulties of the married life along with its comforts, and to avoid the disruption of the family relations as long as possible, turning to divorce only as a last resort.

PRINCIPLE OF DIVORCE

From what has been said above, it is clear that not only must there be a good cause for divorce, but that all means to effect reconciliation must have been exhausted before resort is had to this extreme measure. The impression that a Muslim husband may put away his wife at his mere caprice, is a grave distortion of the Islamic institution of divorce. But though the Holy Qur-án refers to several causes when divorce may become necessary, it does not enumerate all of them, nor does it strictly limit them to specified cases. In fact, if the different nations of Europe and America, who profess the same religion, are at the same level of civilization and the same stage of advancement, and have an affinity of feeling on most social and moral questions, cannot agree as to the proper causes of divorce, how could a universal religion like Islam, which was meant for all ages and all countries, for people in the lowest grade of civilization as well as those at the top, limit those causes which must vary with changing conditions of humanity and society ?

The principle of divorce spoken of in the Holy Qur-án and which in fact includes to a greater or less extent all causes, is the decision no longer to live together as husband and wife. In fact, marriage itself is nothing but an agreement to live together as husband and wife, and when either of the parties finds him or herself unable to agree to such a life, divorce must follow. It is not, of course, meant that every disagreement between them would lead to divorce ; it is only the disagreement to live any more as husband and wife. In the Holy Qur-án such disagreement is called *shiqáq* (from *shaqq* meaning breaking into two). But not even the *shiqáq* entitles either party to a divorce, unless all possibilities of agreement have been exhausted. The principle of divorce is, therefore, thus described in the Holy Qur-án : "And if you fear a breach (*shiqáq*) between the two (*i.e.*, the husband and the wife), then appoint a judge from his people and a judge from her people ; if they both desire agreement, Allah will effect harmony between them : surely Allah is Knowing, Aware" (4 : 35) And further on it is added : " And if they separate, Allah will render them both free from want out of His amplexness, and Allah is Ample-giving, Wise " (4 : 130).

This verse gives us not only the principle of divorce, which is *shiqáq* or a disagreement to live together as husband and wife, but also the process to be adopted when a rupture of marital relations is feared. The two sexes are here placed on a level of

perfect equality. A "breach between the two" would imply that either the husband or the wife wants to break off the marriage agreement, and hence either may claim a divorce when the parties can no longer pull on in agreement. In the process to be adopted, both husband and wife are to be represented on a status of equality; a judge has to be appointed from his people and another from her people. The two are told to try to remove the differences and reconcile the parties to each other. If agreement cannot be brought about, a divorce will follow.

It will be seen that the principle advanced here in the matter of divorce is an all-inclusive one. All causes of divorce are subject to the condition that one of the parties cannot pull on with the other. For instance, the husband is impotent, or one of the parties has a disease which makes him or her unfit for sexual relations. In such cases justice would demand a divorce, but only when the party entitled to it, wants it. If both are willing to live in marital agreement, in spite of the defects in one of them, no power on earth can effect a divorce; but if the aggrieved party finds that she or he is unable to live in marital agreement with the other, it would be a case of *shiqáq* or breach of the marriage agreement. Similarly, if the husband is imprisoned for life, or for a long period, or if he is absent and no news can be had of him, or if he is maimed for life and is unable to provide maintenance for his wife, it will be a case of *shiqáq* if the wife wants a divorce, but if she does

not, the marriage will remain. In case the husband is aggrieved in a similar manner, he has the option of taking another wife.

The *shiqáq* or breach of the marriage agreement may also arise from the conduct of either party ; for instance, if either of them misconducts himself or herself, or either of them is consistently cruel to the other, or, as may sometimes happen, there is incompatibility of temperament to such an extent that they cannot live together in marital agreement. The *shiqáq* in these cases is more express, but still it will depend upon the parties whether they can pull on or not. Divorce must always follow when one of the parties finds it impossible to continue the marriage agreement and is compelled to break it off. At first sight it may look like giving too much latitude to the parties to allow them to end the marriage contract thus, even if there is no reason except incompatibility of temperament, but this much is certain that if there is such disagreement that the husband and the wife cannot pull together, it is better for themselves, for their offspring and for society in general that they should be separated than that they should be compelled to live together. No home is worth the name where instead of peace there is wrangling ; and marriage is meaningless if there is no spark of love left between the husband and the wife. It is an error to suppose that such latitude tends to destroy the stability of marriage, because marriage is entered into as a permanent and sacred relation based on love

between a man and a woman, and divorce is only a remedy when marriage fails to fulfil its object.

WIFE'S RIGHT OF DIVORCE

It will have been seen that the Holy Qur-án places the two parties on a perfect level of equality in the matter of divorce. Hadith makes it clearer still. The Holy Prophet is related to have married a woman called Umaima or Ibnat al-Jaun, and when he went into her, she said that she sought refuge in God from him, that is to say, wanted a divorce; and he granted her a divorce, and sent her off with some presents (Bukhárí 68 : 3). Another case is that of Thabit ibn Qais whose wife is reported to have come to the Holy Prophet and said : " O Messenger of Allah ! I do not find fault in Thabit ibn Qais regarding his morals or faith but I cannot pull on with him." The Holy Prophet said : " Wilt thou return to him his orchard (which he had settled upon her as a dowry)?" On receiving a reply in the affirmative, the Holy Prophet sent for Thabit and ordered him to take back his orchard and divorce his wife (Ibid. 68 : 11). These two examples are sufficient to show that the wife had the right to claim divorce on those very grounds on which the husband could divorce his wife.

The right of the wife to claim a divorce is not only recognized by the Holy Qur-án and Hadith but also in Fiqh. The technical term for the wife's right to divorce by returning her dowry is called *Khul'*, and

it is based on the hadith already quoted, and the following verse of the Holy Qur-án : “ Divorce may be pronounced twice ; then keep them in good fellowship or let them go with kindness ; and it is not lawful for you to take any part of what you have given them unless both fear that they cannot keep within the limits of Allah ; then if you fear that they cannot keep within the limits of Allah, there is no blame on them for what she gives up to become free thereby”. (2 : 229) By keeping “within the limits of Allah ” here is clearly meant the fulfilment of the object of marriage or performance of the duties imposed by conjugal relationship. The dowry is thus a check on the party who wants the divorce ; if the husband wants to divorce the wife, the wife shall have the dowry ; if the wife wants the divorce, the husband is entitled to the dowry. But it is the judges spoken of in v. 4 : 35, and referred to here in the words “ if you fear that they cannot keep within the limits of Allah,” that shall decide whether the husband or the wife is responsible for the breach and which of them is entitled to the dowry.

The wife is also entitled to a divorce if the husband is missing, or *mafqud al-khabar*, which means that he has disappeared and cannot be communicated with, because though there is no *shiqáq* in this case, yet the husband is unable to fulfil his marital obligations. There is no definite statement in the Holy Qur-án, or Hadith to show how long the wife should wait in such a case. The Hanafi law on this point is

very unreasonable, requiring the wife to wait for 120 or 100 years, according to the opinions of Imam Abu Hanifa and Abu Yusuf respectively (Hidaya I, pp. 598, 599). The Sháfi'i law required seven years' waiting, while according to Imám Málik she would wait for four years (Hidáya I, p. 597). The view of Imam Ahmad ibn Hanbal and the Shí'a view agree with Málik. This a more reasonable view. Bukhári has a chapter on the *mafqud* (Bukhári 68 : 21), in which there is no hadith of the Holy Prophet relating to the subject proper, but the view of Ibn al-Musayyab is quoted, according to which when a person becomes *mafqud* in the course of fighting, his wife shall wait for a year ; and a report is added relating to Ibn Mas'ud who searched for the husband of a maid servant of his one year and then treated him as *mafqud*, and this was not the case of a man lost in fighting. Under present conditions when communication is so easy, one year would be a sufficient period of waiting for the *mafqud*.

HUSBAND'S RIGHT OF PRONOUNCEMENT OF DIVORCE

Though the Holy Qur-án speaks of the divorce being pronounced by the husband, yet a limitation is placed upon the exercise of this right. The following procedure is laid down in clear words : "And if you fear a breach between the two, then appoint a judge from his people and a judge from her people ; if they desire agreement, Allah will effect harmony between

them ” (4 : 35). “ And if they separate, Allah will render them both free from want out of His ample-ness ” (4 : 130). It will be seen that in all disputes between the husband and the wife, which it is feared will lead to a breach, two judges are to be appointed from the respective people of the two parties. These judges are required first to try to reconcile the parties to each other, failing which divorce is to be effected. Therefore, though it is the husband who pronounces the divorce, he is as much bound by the decision of the judges as is the wife. This shows that the husband cannot repudiate the marriage at will. The case must first be referred to two judges and their decision is binding. The Caliph ‘Ali is reported to have told a husband, who thought he had the sole right to divorce, that he would have to abide by the judgment of the judges appointed under this verse (Al-Tafsír by Razi III, p. 320). The Holy Prophet is reported to have interfered and disallowed a divorce pronounced by a husband, restoring the marital relations (Bukhári. 68 : 1, 2). It was no doubt a matter of procedure, but it shows that the authority constituted by law has the right to interfere in matters of divorce. The only question is as to the procedure to be adopted when the Muslims are living under non-Muslim rule. In such a case, if no *Qádzí* has been appointed by the authorities, the appointment of the judges shall be in the hands of the Muslim community, and it may exercise that right in any way it likes. Failing even such arrangements, the parties may come

to an agreement between themselves. If, therefore, a Muslim government or the Muslim community makes any rules laying down the procedure of divorce and placing such limitations upon the husband in matters of divorce as are not inconsistent with the principles laid down by the Holy Qur-án, it would be quite Islamic.

DIVORCE DURING MENSTRUATION

The menstrual discharge is looked upon as pollution in many religions, and the woman who has her courses on is segregated, as among the Hindus and the Jews. In the Holy Qur-án, the subject of menstruation is dealt with as a preliminary to that of divorce, and sexual intercourse is prohibited when the courses are on, as it is said to be "harmful" (2:222). It is owing to this temporary cessation of the amorous relations between the husband and the wife, that divorce is prohibited during the period when the menstrual discharge is on. It was brought to the notice of the Holy Prophet that Ibn 'Umar had divorced his wife while she was menstruating. The divorce was declared to be illegal by the Holy Prophet, and Ibn 'Umar was asked to take back his wife (Bukhári 68 : 1). Thus divorce is only permitted in the state of *tuhr* (when the woman is clear from the menstrual discharge), there being the further condition that the husband and the wife should not have copulated during the *tuhr*. Evidently this is meant as a sort of check upon the freedom of divorce.

THE 'IDDA OR WAITING PERIOD

The final breaking off of marital relations is discouraged in many other ways and every chance is afforded to the parties to maintain the conjugal tie, even after differences have arisen leading to divorce. Every divorce must be followed by a period of waiting called the '*idda*': "O Prophet! when you divorce women, divorce them for their '*idda* (prescribed or waiting, time)" (65: 1). The '*idda* is about three months: "And the divorced women should keep themselves in waiting for three courses (*Qurú'*) (2: 228). A *qar'* (pl. *Qurú'*) is the entering from the state of *tuhr* (cleanness) into the state of menstruation. In normal cases it is about four weeks, but there are variations in the case of different women who do not menstruate as well as those whose courses have stopped, the '*idda* is three months (65: 4), and in the case of pregnant women, the waiting period is till delivery (*Ibid*). The '*idda* among other purposes serves the purpose of affording the parties a chance of reconciliation. Though they are divorced, yet they still live in the same house, the husband being plainly told not to expel the wife from the house in which she has been living unless she is guilty of misconduct, and a similar advice is given to the wife not to leave the house (65: 1) This injunction clearly aims at restoring amicable relations between the parties and minimizing chances of the accentuation of differences. If there is any love in the union, its pangs would assert themselves during the period of waiting and bring about a reconciliation.

DIVORCE IS REVOCABLE

In fact, reconciliation is recommended in plain words when, speaking of the *'idda*, the Holy Qur-án says : " And their husbands have a better right to take them back in the meanwhile if they wish for reconciliation" (2 : 228). Every divorce is thus experimental temporary separation during its initial stages, and by making the parties live together, every chance is afforded to them to re-establish conjugal relations. Even after the period of waiting has passed away, the two parties are allowed, even encouraged, to remarry : "And when you have divorced women and they have ended their term of waiting, do not prevent them from marrying their husbands, when they agree among themselves in a lawful manner ; with this is admonished whosoever among you believes in Allah and the last day, this is more profitable and purer for you : and Allah knows while you do not know " (2 : 232). Remarriage of the divorced parties is thus encouraged and recommended as being more profitable and purer for the parties. The condition is also laid down that such a revocable divorce, allowing reunion of the parties, can be pronounced twice : "Divorce may be pronounced twice : then keep them in good fellowship or let them go with kindness " (2 : 229). Thus the revocable divorce, the *taláq raj'í*, in the terminology of the jurists, can be pronounced twice.

IRREVOCABLE DIVORCE

After the first divorce, the parties have the right to reassert their conjugal relation within the period of waiting and to remarry after the waiting period is over. A similar right is given to them after a second divorce, but not after a third. Before Islam, however, while the wife had no right of divorce, the husband had an unchecked licence to divorce the wife and to reassert his conjugal right during *'idda* as many times as he pleased (Al-Tafsir II, P. 372). Thus women were looked upon as mere chattel which could be discarded and taken at will. This had demoralized the whole institution of marriage. Islam not only gave the wife a right of divorce, but also checked the husband's licence to divorce as often as he liked, by declaring that revocable divorce could be given only twice: "Divorce may be pronounced twice : then keep them in good fellowship or let them go with kindness" (The Holy Qur-án 2 : 229). It was thus laid down that, after the second revocation or remarriage, the parties must make their choice either to live together as husband and wife for ever, or to separate for ever, never thinking of reunion. Hence if even the second experiment failed and the parties were separated by a divorce for the third time, this was an irrevocable divorce, or *taláq bá'in*, in the terminology of the jurists.

PRONOUNCEMENT OF DIVORCE IN THREE FORMS

The jurists have recognized divorce in three forms. A man would sometimes pronounce divorce thrice on one and the same occasion, and this would be understood as meaning that divorce had been given thrice. This is called *taláq bid'í* (or an innovation in divorce after the Holy Prophet's time). Or a man would divorce his wife for the first time in one *tuhr* following on with a second divorce in the second *tuhr* and with a third divorce in the third, thus divorcing thrice in one *'idda* or one period of waiting. This method of *taláq* is called *taláq hasan* (a good way of divorcing) in the terminology of the jurists. The name *taláq ahsan* (or the best method of divorcing) is given to the form in which *taláq* is pronounced in a *tuhr* only once, and this is followed by the period of waiting (Hidáya I, P. 333). This last method is the only method recognized by the Holy Qur-án. It is plainly laid down : "O Prophet ! when you divorce women divorce them for their prescribed time (*'idda*), and calculate the number of the days prescribed, and be careful of your duty to Allah, your Lord " (65 :1). The divorce is thus to be pronounced only once, and when it has been pronounced, the *'idda*, or waiting period, follows, and during this time the parties have a right to revocation of the divorce. All other forms of divorce are against the Holy Qur-án and the Sunna of the Prophet.

SUBTERFUGES TO MAKE THE REVOCABLE
DIVORCE IRREVOCABLE

Thus the Holy Qur-án recognizes *taláq* only in one form, the *taláq al-sunna*, or the *taláq ahsan* of the Hanafi jurists. There is no mention at all of the other two forms, either in the Holy Qur-án or in Hadith. These two forms are, in fact, only subterfuges to make the revocable divorce an irrevocable one. The tendency to resort to these subterfuges is noticeable even in the life time of the Holy Prophet. The pronouncing of three divorces without an interval, seems to have been a remnant of pre-Islamic days. The Holy Prophet is reported to have shown indignation when it was brought to his notice that a certain person had pronounced three divorces together (*Sunan* 27: 6), and a divorce thus pronounced was annulled by him (*Musnad* I, P. 265). Another report shows that until the time of 'Umar, people used to pronounce three divorces together, but that they counted as a single divorce (*Ibid* I, P. 314). 'Umar, in order to restrain people from such an un-Islamic proceeding, ordered three divorces given at one time to be reckoned as three separate acts of divorce, taking place at intervals, but this order had the opposite effect to that intended. It became a general practice to pronounce divorce three times on one occasion, and this was supposed to have the effect of three separate acts of divorce, thus making a revocable divorce irrevocable. This is really a negation of

the very principle underlying the institution of divorce in Islam. It is true that divorce is allowed, but as it disturbs the normal family relations, it is looked upon with disfavour and is permitted only in extreme cases when the carrying on of marital obligations by the husband or the wife becomes impossible. But even after this extreme step has been taken, not only are the parties still free to resume conjugal relations within the waiting period, and to remarry after that period has expired, but they are actually encouraged to do so. The two forms of divorce called *bid'i* and *hasan*, take away the freedom to reunite which the Holy Qur-án has conferred upon the two parties, and they are therefore against the teachings of the Holy Qur-án and must be discarded. The revocable divorce of the Holy Qur-án cannot be made irrevocable as by this change, a deathblow is dealt to the beneficial spirit underlying the institution of divorce in Islam. Hence, whether divorce is pronounced once or thrice or a hundred times, it is only a single divorce, and it is revocable during the waiting period.

EFFECT OF IRREVOCABLE DIVORCE

It is clear from what has been stated that irrevocable divorce is the very rarest of things that can happen among Muslims, and it can only occur if the two un-Quranic forms of divorce to make revocable divorces irrevocable, are brought in. When a man and a woman have found by two experiments that

they cannot live together as husband and wife, it is absurd on their part to think of remarriage again. Hence the Holy Qur-án lays down that they shall not remarry after the second failure of the union, except in one case : " So if he divorces her (for the third time), she shall not be lawful to him afterwards until she marries another husband ; then if he (the second husband) divorces her, there is no blame on them both if they return to each other (by marriage) if they think that they can keep within the limits of Allah " (2 : 230). Thus the one case in which marriage with the first husband is allowed, after being divorced for the third time, is that in which a marriage has been contracted with a second husband and that too has proved a failure. If there be such a rare case, the parties to the marriage have probably learned a lesson through another marital union to the effect that they should behave better towards each other. An irrevocable divorce, being in itself a rarity according to the teachings of the Holy Qur-án, a case like the one spoken of, in the verse quoted above, would be a still greater rarity, but still if such a case should arise, the parties are allowed to remarry even after an irrevocable divorce.

TAHLIL OR HALALA

Tahlil or *halála* which means legalizing or making a thing lawful, was a pre-Islamic practice. When the wife was divorced irrevocably, by thrice pro-

nouncing the divorce formula, and the husband wanted to take her back again, she had first to marry a third person on condition that he should divorce her after having sexual connection with her. This was called *halála*. It is a mistake to confound the *halála* with the marriage spoken of in the verse quoted under the previous heading, since *halála* was a kind of punishment for the woman who had to undergo the disgrace of sexual connection amounting practically to adultery, while the marriage spoken of in the previous paragraph is a perpetual marital tie, and the divorce in that case may not follow at all ; in fact, in the normal course of things it would not follow at all. It is for this reason that the Holy Prophet cursed those who resorted to this practice, his words being : "The curse of Allah be on the man who commits *halála* and the man for whom the *halála* is committed" (*Tirmidhi* 9 : 25). The Caliph 'Umar is reported to have said that if there were brought to him two men who took part in the practice of *halála* he would treat them as adulterous people. The three divorces, as allowed in the Holy Qur-án, of which the third is irrevocable, were of very rare occurrence, as such divorces naturally occurred at long intervals. The case of Rukána is mentioned in the reports ; he first divorced his wife in the time of the Holy Prophet, then remarried her and divorced her a second time in the reign of 'Umar, and finally in the caliphate of 'Uthman (*Zad-al-Ma'ád* II, p. 258).

PROCEDURE OF DIVORCE

Divorce may be given orally, or in writing, but it must take place in the presence of witnesses : "So when they have reached their prescribed time, then retain them with kindness or separate them with kindness, and call to witness two men of justice from among you, and give upright testimony for Allah" (The Holy Qur-án 65 : 2). Whatever the actual words used, they must expressly convey the intention that the marriage tie is being dissolved. As to whether a divorce would be effective under certain circumstances, there are differences among the various schools of jurists. Evidently intention is as necessary a factor in the dissolution of marriage as in the marriage itself, but while some recognize that divorce is ineffective if given under compulsion or influence, or in a state of intoxication, or in anger or jest, or by mistake or inadvertence, others hold it to be ineffective in some of these cases and effective in others. The Hanafi law recognizes that divorce is effective whether the words be uttered in sport or jest or in a state of drunkenness and whether a person utters them willingly or under compulsion, but Imam Shafi'í takes the opposite view (*Hidáya* I, p. 337). Evidently the Hanafi views are against the spirit of the teachings of the Holy Qur-án which declares divorce to be a very serious matter, and lays down special procedure to be gone through before it is resorted to.

ILA'

Ilá' and *zihár* were two practices of the pre-Islamic days by which the wife was kept in a state of suspense, sometimes for the whole of her life. *Ilá'* which means literally swearing, signifies technically the taking of an oath that one shall not go into one's wife. In the pre-Islamic days the Arabs used to take such oaths frequently, and as the period of suspension was not limited, the wife had sometimes to pass her whole life in bondage, having neither the position of a wife, nor that of a divorced woman free to marry elsewhere. The Holy Qur-án reformed this state of things by commanding that if the husband did not reassert conjugal relations within four months, the wife should be divorced: "In the case of those who swear that they will not go in to their wives, the waiting period is four months; then if they go back, Allah is surely Forgiving, Merciful. And if they resolve on a divorce, then Allah is surely Hearing, Knowing" (2 : 226, 227).

ZIHAR

The word *zihár* is derived from *zahar* meaning *back*. An Arab in the days of ignorance would say to his wife, *anti 'alayya ka-zahri ummi*, i.e., 'thou art to me as the back of my mother.' This was technically called *zihár*. No sooner were these words pronounced, than the relation between husband and wife ended as by a divorce, but the woman was not at liberty to leave the husband's house, and

remained as a deserted wife. One of the Muslims, Aus ibn Sámit treated his wife Khaula in a similar manner. The wronged woman came to the Holy Prophet and complained of her husband's ill-treatment. The Holy Prophet told her that he was unable to interfere. She went back disappointed and it was then that he received the following revelation : "Allah indeed knows the plea of her who pleads with thee about her husband and complains to Allah, and Allah knows the contentions of both of you ; surely Allah is Hearing, Seeing. As for those of you who put away their wives by likening them to the backs of their mothers, they are not their mothers ; their mothers are no others than those who gave them birth, and most surely they utter a hateful word and a falsehood" (The Holy Qur-án 58 : 1, 2). The man who resorted to this practice was ordered to free a slave ; or if he could not find one, then to fast for two successive months, and if unable to do that, to feed sixty poor people (*Ibid* 58 : 3, 4).

The word *li'án* is derived from *la'na* meaning curse. *Li'án* and *mulá'ana* signify literally *mutual cursing*. Technically, however, the two words indicate that particular form of bringing about separation between the husband and the wife in which the husband accuses the wife of adultery but has no evidence to support the accusation, while she denies it. The Holy Qur-án makes adultery a severely punishable crime, since it aims at the destruction of

the whole social fabric. At the same time it makes an accusation of adultery an equally serious crime, punishable like adultery if strong evidence of adultery be not forthcoming. This is to stop the tongue of slander, which is generally very busy, and does not spare even the most innocent persons. One man has no concern with another's private affairs, but if a man has strong reasons to believe that his own wife is adulterous, the case is quite different. The *li'an* is suggested, in this case, as the means of bringing about separation between husband and wife, for whether the accusation is right or wrong, it is in the interests of both to get separated. The following verses deal with this subject: "And as for those who accuse their wives and have no witnesses except themselves, the evidence of one of these should be taken four times, bearing Allah to witness that he is of the truthful ones. And the fifth time that the curse of Allah be on him if he is one of the liars. And it shall avert the punishment from her if she testify four times, calling Allah to witness, that he is one of the liars. And the fifth time that the wrath of Allah be on her if he is one of the truthful" (The Holy Quran 24: 6—9). After the parties have thus borne witness, they are separated for ever. It will be noticed that there is no mutual cursing in this case; only each of the parties, while bearing witness of his or her own truthfulness, calls for the curse or wrath of God on himself or herself if he or she speaks a lie.

CHARITABLE VIEW OF DIVORCE

Divorce is looked upon as a necessity in marital relations, under the varying human conditions, irrespective of moral turpitude on the part of husband or wife. The Holy Qur-án takes the most charitable view of the necessity for divorce, and therefore recommends as much kindness towards women in the case of divorce, as in that of marriage. Again and again stress is laid on this point : "Divorce may be pronounced twice ; then keep them in good fellowship or let them go with kindness (*ihsán*)" (2 : 229) ; "And when you divorce women and they reach their prescribed time, then either retain them in good fellowship or set them free with liberality" (2 : 231) ; "So when they have reached their prescribed limit, then retain them with kindness or separate them with kindness" (65 : 2). Thus woman is to be treated with equal kindness and generosity, whether she is a sharer in a man's weal or woe as wife or one from whom he has been compelled to part company. Marital differences, like other differences, may be as often honest as not, but the Holy Qur-án recommends that the most charitable view of them should be taken.