

Towards the  
**Bliss of Marriage**  
Part 2

**A collection of  
articles and Fatwas  
on Marital Issues**

Mufti Siraj Desai





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## **INTRODUCTION**

This book is the culmination of over 30 years of researching and answering Islamic questions and answers on marital issues, dealing with numerous marital disputes as well as articles by Mufti Siraj Desai on a range of marital issues.

Mufti Siraj completed his Aalim course at Jalalabad Darul Uloom, India as well as the Iftaa course under Moulana Maseehullah Khan Sahib rahimahullah. Mufti Siraj is the principal of Darul Uloom Abu Bakr in Port Elizabeth, South Africa and serves on several Islamic boards and organizations. These include, among others, the Eastern Cape and South African National Muslim Prison Board, Eastern Cape Ta'leemi Board, South African Board of Muftis, Board of Muftis of the South African National Halaal Association and adviser on Shariah-compliant banking.

Mufti Siraj is also the author of several books, treatises and articles on a range of Islamic subjects and is the editor of the Al Farouq Newsletter.

He has vast experience in answering Fatwas via mail, telephone, personal interaction, email, SMS (setting up the first mobile text message Q&A line in South Africa), fax, on several Muslim radio stations, from his website and through correspondence with other Muftis.

This is the second book in the series and covers some of the articles and questions answered by Mufti Siraj as well as articles.

May Allah Ta'ala accept this work.

## **RULES OF THE IDDAT**

In view of the gross neglect of the Islamic injunction of Iddah that we observe today, we deem it imperative that our sisters be made aware of the importance of Iddah, and its rules and regulations. It is for this reason that this treatise has been prepared. We pray to Allah to instill into our hearts the importance and significance of all His Injunctions, and may Allah accept this humble effort from us.

### **Definition**

Iddat (also pronounced IDDAH) is a period of waiting that Islam has imposed upon a woman who has been divorced or whose husband has died, after which a new marriage is permissible.

### **Origination**

Iddat is established from The Holy Quran and the Hadith of Rasoolullah (sallallahu alaihi wasallam). We cite the relevant verses in this regard: In Surah Baqarah Almighty Allah states:

“And those women who are divorced, should keep themselves in waiting for three periods.”

This verse establishes the iddat for a woman who is divorced, such iddat being a period of three haidh according to the hanafi mazh-hab. In another verse in Surah Baqarah, Allah Ta’ala says:

“And those among you who expire and leave behind wives, they (the wives) shall keep themselves in waiting for four months and ten days.”

This verse clearly explains the iddat of the widow. In Surah Talaq, Almighty Allah states:

“And those women among you who despair of menstruation (i.e. having reached the age of menopause), if you are in doubt then their iddat shall be three months, as well as those women who do not have menstruation. And the pregnant

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women, their period of waiting is that they deliver their babies.”

The above verse defines two forms of iddat: a) the divorcee who does not experience haidh or menstruation, either due to old age or some other medical imbalance, shall pass an iddat of three Islamic months; b) the wife who was divorced while expecting a child will have to wait for the delivery of the baby before her iddat expires.

More laws and durations of iddat in detail shall appear further on.

### **THE PURPOSE OF THE IDDAT**

There are several reasons why the iddat has been ordained. As regards the iddat that is calculated according to the cycle of menstruation, the purpose is, firstly, to establish the state of the womb, i.e. to ascertain whether there has been conception prior to divorce or not. When menstruation has been fixed as the basis for iddat, it will be a mere formality to establish this, for when the blood of haidh flows it is a sure sign that the womb is empty of a fetus. However, one period of menses is insufficient to provide definite evidence of the 'emptiness' of the womb, so the Shariah prescribes the elapse of another period for added confirmation. After this second haidh it will be conclusively proven that the womb is indeed free of pregnancy. Now that the womb has been certified as free of burden, the third haidh or menstruation period is merely a mark of respect for the bond of nikah and to prolong the termination of the nikah thus increasing the chances of reconciliation. The result of all this is an iddat consisting of three haidh periods. As for those ladies who do not experience haidh for reasons already outlined, the straightforward three-month iddat prescribed for them will serve the same purpose as expounded above, beyond any shadow of doubt. Furthermore, the three-month iddat is to differentiate be-

tween the iddat of the free woman and the woman in bondage, whose iddat the Shariah has set at two months, or two menstruation periods.

Secondly, a hadith of Rasoolullah (sallallahu alaihi wasallam) provides us with a very strong reason for observation of a period of waiting called iddat. This hadith states:

“Whoever believes in Allah and the Last Day should not allow his water (semen) to inseminate the plantation (womb) of another.” (Abu Dawood, Tirmizhi)

The “womb of another” spoken of here means the womb of the divorcee which was probably inseminated by her former husband. We say probably because such an issue is not clear until the iddat has in fact passed thus proving the existence or non-existence of a fetus. If the latter then it is clear that in reality the womb was not inseminated. Hence the only meaning one can deduce from this hadith is that Rasoolullah (sallallahu alaihi wasallam) is prohibiting marriage during iddat, for marriage is obviously a prelude to intercourse. If there was no waiting period before the next marriage, the possibility was very great that the new husband would have intercourse with the wife while she may be expecting the baby of her former husband. This has been described by the hadith as “inseminating the crops of another”, i.e. depositing semen into a womb that has already been impregnated by another. This one teaching of Rasoolullah (sallallahu alaihi wasallam) shows the wisdom and knowledge Allah had granted him, for indeed this practice has not only religious complications but is even detrimental for health reasons.

**NOTE:** The primary and chief reason for observation of iddat is the injunction to do so by The Glorious Quran. This is the underlying juristical cause for iddat, not the reasons cited above. These reasons are not given by Almighty Allah, but were merely expounded by the Ulema from the verses of The

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Glorious Quran. Hence, even if it is possible to determine the state of the womb through scientific instruments or medical procedures, the iddat will still be waajib. Since the Quran itself never mentioned any reason, the iddat will be based plainly on the categoric command of The Holy Quran. The argument that nowadays doctors are able to ascertain pregnancy through their sophisticated machinery thus negating the need for a three month period of waiting, will not be entertained since the injunction of iddat by The Quran is unconditional (i.e., not underlined by any reason or motive). This is purely a ritual command for which no reasons have been stated in The Quran. So even if it is ascertained through any other medium that the womb is free of fetus, observation of the iddat as commanded in The Quran will still be compulsory.

For this reason, should the husband and wife (whom had definitely consummated their marriage some time ago) both be secure in the knowledge that prior to talaq there was no conception because sexual intercourse had not taken place, it will still be waajib for her to observe iddat after divorce had taken place. There is, however, one occasion where the Shariah has not prescribed any iddat, and that is the wife who is divorced before consummation of the marriage, ( O you who believe! when you marry believing women and then divorce them before you have touched them, then no period of Iddah have you to count in respect of them. Verse 49, Surah Ahzab) In this particular case the Shariah has considered the non-consummation of the marriage as sufficient proof to negate any conception, although here too, such reasons for the iddat are not stated.

Another purpose the iddat serves is to prolong the termination of the nikah, thus increasing the chances of reconciliation. Whereas, had the Shariah ruled a marriage as over after just one or two periods, the chances of both parties reuniting would have been drastically reduced.

### **THE DIFFERENT TYPES OF IDDAT**

Basically there are two types of iddat, viz:

- 1) Iddat-e-wafaat - iddat upon the death of the husband
- 2) Iddat after Talaaq such as raj'ee, baa-in, magallazah or after certain forms of separation, all of which had occurred after consummation of the marriage.

Divorce or separation before consummation of a marriage

This occurs when immediately after marriage, before consummation, or before galwat saheeha (i.e., such privacy between and husband and wife where there exists no impediment from sexual intercourse), the husband divorces his newly wedded bride. In this case there is no iddat since there exists no possibility of her being pregnant. This ruling has been taken from verse 49 of Surah Ahzaab quoted above. However if the husband acknowledges that at some stage he did indulge in sex with his bride, it will be necessary for her to observe the iddat, because now consummation has been established through their own confession.

### **IDDAT E WAFAT - UPON THE DEATH OF THE HUSBAND**

The iddat of wafaat or death commences from the date of death of the husband. Hence, if the wife only learns of his death a few days later, she is still obliged to calculate her iddat period from the day he died, not from the day she learnt of his death. It should be remembered that in the iddat-e-wafaat consummation of marriage is not a necessity. So even if the husband passes away immediately after marriage, before coming together with his wife, she still has to observe the iddat-e-wafaat. In this case the iddat has been imposed as a period of mourning and grief, not to determine any state of the womb.

### **Duration of this iddat**

The iddat-e-wafaat is four months and ten days. If she is pregnant then her iddat expires as soon as she delivers her child. (See details of a pregnant woman's iddat under a separate heading further on.) It should however be noted here that delivery of the baby will only be considered as termination of the iddat if the wife was already pregnant at the time of her husband's demise. If this was not the case, and the pregnancy only became apparent after the husband's death then she will have to observe iddat of three months, which is the iddat of a woman who does not menstruate. This is because during pregnancy a woman does not have her menses. Her iddat will, therefore, be three months.

### **IDDAT AFTER TALAAQ OR SEPARATION**

The iddat of Talaaq begins immediately upon the Talaaq being issued by the husband, whether the wife knows of it or not. If Talaaq is written out then too, iddat will commence the moment the husband writes the divorce, not when the wife receives the note. However, if in a letter addressed to the wife, the husband states the following: "The moment you receive this letter you are divorced" or any sentence conveying a similar meaning then iddat will only begin when the wife receives the letter, for that is when Talaaq occurs in this particular case. To ensure easy and correct calculation of the iddat period for the wife it is preferable to make a note of the date in a written Talaaq.

### **Duration of this iddat**

There are three different durations prescribed by The Shariah for this type of iddat, and each period applies to different types of women. These are as follows:

- a) For a woman who menstruates
- b) For a woman who does not have monthly menses.

c) For a woman who is pregnant

### **IDDAT FOR A MENSTRUATING WOMAN**

For a woman who experiences her monthly menses the iddat is three separate haidh or menstruation periods. If a woman was divorced during haidh then too the iddat begins immediately. However, in this case the duration of three haidh will only be calculated from the following haidh. This means she will have to wait for the current haidh to end, pass one tuhar (clean period), and thereafter start counting three separate haidh periods. The haidh during which Talaaq was issued is not counted.

**Note:** It is haraam for the husband to divorce his wife during her menstruation, although, in spite of this being haraam, such a divorce is still valid and counted.

The iddat of a woman who has a fixed monthly period under ten days, will only expire after she has had a complete bath, or after the complete time of one salah elapses upon the end of the third haidh. Before then she will still be regarded as being in iddat. However, if during the third haidh blood flows for full ten days then this will signal the termination of her iddat. In this case the iddat expires immediately upon the completion of the ten-day period. Here the expiry of iddat does not depend on the lapsing of a complete salah time, nor upon her having a bath. If the blood continued for more than ten days then she will revert to her fixed monthly flow. This means that she disregards all the extra days during which she bled and her iddat would then have terminated after her fixed period, after the passing of a complete salah time, or after taking a bath.

### **An example to illustrate the above rules:**

A woman experiences a fixed monthly haidh flow of five days. She was divorced and began her iddat of three haidh.

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Upon the end of the five days during her third haidh her iddat will only expire once she had taken a bath or one full salah time elapses. If however, during the third haidh she suddenly started to bleed for longer than the normal five days (which was her fixed period every month), and the bleeding continued for up to ten days then the entire ten days will be considered haidh. In this case her iddat ends at the end of the tenth day. The expiry of iddat in this case is not dependent upon her having a bath or the passing of one complete salah time. If the blood-flow exceeded ten days then she reverts to her normal monthly flow which was five days. Her iddat would therefore be long over since her haidh period was only five days.

### **IDDAT OF A WOMAN WHO DOES NOT MENSTRUATE**

The duration of iddat for such a woman is three months. This applies to a woman who has had her menopause, which according to the ruling of the Ulema occurs at the age of fifty-five years. Similarly, if a woman has undergone an hysterectomy as a result of which she does not experience haidh any more, or due to medication she does not menstruate, the iddat for her will also be three months.

### **IDDAT OF WOMAN WITH IRREGULAR BLOOD-FLOW**

Sometimes due to irregularity in her cycle a woman does not have menses for several months. For such a woman who experiences prolonged tuhr or clean periods the Ulema have ruled that her iddat will last for one full year. After the passing of one year she will be considered out of her iddat and may remarry if she so wishes. In such an iddat if her haidh resumes at any stage during the year, she will revert to the iddat of three haidh. This could sometimes mean an extended iddat period, especially if her menses resumed towards the end of the year. Should the woman who has

stopped menstruating once again experience resumption of her menses, the iddat will revert to three haidh, i.e. the iddat for a menstruating woman.

**NOTE:** Another form of irregular flow is the inconsistency some women experience in their cycles, even well before the menopause. For instance, a woman has a flow for perhaps three days, after which it stops, then continues for another three days. Then after twelve or thirteen days there appear some spots or a few drops, and again for the next few days there is no further discharge. This causes considerable difficulty in not one but several areas of the woman's Deeni life. If such a lady has to observe iddat, it will be necessary to contact the Ulema and provide them in writing with her entire menstrual history so that they may formulate an answer. Due to the intricacies and variances of such a situation it will be very confusing to enlist the laws here which may apply to such a woman. Therefore, rather contact the local Ulema when the need arises to get a specific answer on one specific situation. Furthermore, woman should remember that it is wajib for them to keep track of the changes in their flow as well as the fixed cycle. Failing to do so is sinful and a careless attitude towards Deen.

### **THE IDDAT OF A PREGNANT WOMAN**

For one who is pregnant the iddat lasts till she delivers her baby, no matter how long it takes. The iddat of a pregnant woman will expire immediately she delivers the child, which in this particular case means the birth of the entire child. As long as the whole baby has not yet totally emerged from the mother, the iddat is not over. The expiry of iddat is not dependent upon her taking a bath for purification from nifaas (afterbirth impurity), even if the nifaas lasts for only a few seconds after birth. Nor is it necessary to wait for the expiry

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of the nifaas period. If the baby is born a few minutes after divorce then too, her iddat will expire and she may marry again. This iddat therefore has no specific duration. It all depends on the length of the pregnancy. The moment the wife completes her term of pregnancy, the iddat ends.

If the wife gives birth to a child that is partially formed, or a still-born, such a birth is enough to terminate the iddat. If she suffers a miscarriage before four months of pregnancy (120 days) the iddat will not be over. This is because according to the Shariah the fetus which is less than four months is not considered a baby. She must now sit out the iddat of either three haidh if she menstruates, or three months if she is not a menstruating woman.

If the wife is bearing more than one child (twins, triplets, etc.) then the iddat only expires upon the birth of the last child. All laws of iddat that apply to a normal birth or a natural miscarriage will apply to abortions. So, an abortion performed within four months would not terminate the iddat, while an abortion after four months would bring an end to the iddat.

**NOTE:** It is haraam to have an abortion after four months of pregnancy, since according to the hadeeth shareef the rooh is instilled into the fetus after this period. Within four months this will be permissible if the woman has a valid reason, such as ill-health or rape, for example. Once the rooh has entered the fetus it is now considered to be a human being, hence there can be no justification for taking the life of this human, which is what abortion represents. Rasoolullah sallallahu alaihi wasallam termed this Al wa'dul khafiy, i.e. lesser degree infanticide.

### **CALCULATION OF AN IDDAH PERIOD**

Besides a complete term of pregnancy and three haidh peri-

ods, the iddat is sometimes calculated according to months and sometimes according to days. A menstruating woman undergoes three haidh periods before her iddat can expire, while the pregnant wife has to deliver her child in order to complete her iddat.

The iddat for a woman who does not experience monthly menstruation has been given as three Islamic months. If the beginning of this iddat coincides with the start of an Islamic month then it will only expire when the new moon for the fourth month has been sighted. Similarly, in the iddat-e-wafaat if death occurred at the beginning of a lunar month then four months and ten days will be calculated accordingly. That means that the iddat will expire on the tenth day of month number five. For example, the husband died on the first of Muharram, so her iddat ends on 10 Jumaadal Ula. However, If the iddat had to be commenced somewhere in the middle of a lunar month then the iddat will be calculated in days. So in this case a three-month iddat will actually be 90 days (3 x 30, with each month being regarded as thirty days). For example, if her iddat had to begin on 10 Rabiul Owwal, then she would count 90 days from that date onwards, irrespective of whether the subsequent months have 29 or 30 days.

The same applies to iddat after death. If the husband died on 20 Muharram, for example, the duration of the iddat will be regarded as 130 days in total (4 x 30 + 10). There is now no need to consider how many days the following months have. Also note that the iddat will end at the exact time of day that it began. For instance, if the husband died at ten o'clock during the day, the iddat will also end at ten o'clock on the 130th day if it was calculated in days. If the iddat went according to months then it would end at ten o'clock on the tenth day of the fifth month. If Talaq was issued at 8.00 a.m. then for a non-menstruating woman the iddat will end at 8.00 a.m. on the 90th day, or on the first day of the fourth

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month where the iddat had to be calculated according to months. In all cases the count begins from the next day, i.e. the day after death or Talaq, In other words, the first day of iddat is not counted to ensure a complete iddat period. Otherwise, by including the first day in our calculations the iddat will end one day prematurely. For example, if death occurred at ten in the morning, the first day of iddat ends at ten the following morning, the second day at 10 a.m. the following morning, and so forth. Day number one will actually be counted from the following morning. In this case the iddat will end also at ten. In short, the iddat always ends at the same time of day that it began. It is, therefore, important to make a note of the exact time of death or divorce. However, in matters pertaining to iddat it is preferable to play safe. If the wife is not sure as to the exact time her iddat will end, rather wait a few more hours or even days before considering the iddat as over.

# A girl that becomes baalig at the age of fifteen and has not experienced proper haidh (that means she may have had one or two days flow, not the full three days), will also have to observe iddat in months if she was divorced. Such a girl who has become baalig through any way besides haidh, also has to wait one year from date of divorce, after which she will observe an iddat of three months.

# A woman who reaches the age of 30 years and has yet not had a proper haidh (i.e three full days of flow), must also observe an iddat of three months.

# A woman who has reached the menopause age which the Ulema have set down as fifty five, must as least have had a cessation of haidh for six months, and only then will it be declared that she has reached the age of menopause.

# The woman who at a young age suddenly has a cessation of haidh, will only begin to calculate her iddat in months when the cessation of haidh lasts for at least one full year.

## **RESTRICTIONS PERTAINING TO THE IDDAT**

Here we mention certain prohibitions upon the wife which come into force during the iddat.

### **1. LEAVING THE CONFINES OF THE HOME**

The confines of the home in this context include the front and backyard.

a) A woman who has been divorced is not allowed to leave the confines of her home during the iddat for whatever reason, be it to visit friends or relatives or to attend the funeral of even her parents. If however, there is some danger to life or limb and leaving the home becomes necessary then she is allowed to leave but must return as soon as the danger is over. Similarly, if a spiteful husband evicts her from the house then too, she is allowed to go and spend her iddat elsewhere, preferably at her parents home. In this case the husband is guilty of a major sin, since he is flouting a law of The Holy Quran. Allah has commanded the husbands in Surah Talaq: "Do not evict them (from the home) nor should they emerge (on their own)."

b) A woman who has lost her husband is allowed to emerge from the home to earn a living if there is no one to support her, in which case she may go out during the day but must be back by sunset. However, if she does have an income or there is someone to support her then even the widow is not allowed to leave the home. Besides earning a living when there are no other means of income, the widow is not allowed to go anywhere else during the iddat, as stated in (a) above. Furthermore, if she can operate her business or earn her livelihood from within the confines of the home then also she is not allowed to emerge.

c) The woman in iddat may go into the front or backyard of the home. She may not proceed beyond this area.

d) Hajj is not fardh upon a woman who is in iddat even

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though she may have a substantial amount of funds. Hence she is not allowed to go for Hajj or Umrah.

### **IMPORTANT NOTE**

It must be remembered well that to emerge from the home during iddat for no valid reason is indeed a severe crime in Islam. The same prohibition and reprimand for this violation appear in the hadith for a woman (married or spinster) who leaves the confines of her home for no Shar'ee reason. Allah commands in the first verse of Surah Talaq: "Do not evict them from their homes, nor should they leave on their own accord, except if they bring forth an open act of lewdness." In the tafseer of this verse Hazrat Abdullah bin Umar (radhiyallahu anhu) comments: "Her leaving the home prior to the expiry of iddat is an act of open lewdness." This is similar to the hadith of Rasoolullah (sallallahu alaihi wasalam) which states that a woman who applies perfume and goes out into public is like an adulteress. We can therefore see how serious a matter this is. Today our ladies have abandoned these important and compulsory teachings of Islam. No wonder that they are having such a great difficulty in following the Shariah. In this era, a woman is divorced today, and tomorrow she is once more out on the street. Since they have become so used to being outside the home, it is asking too much of them to remain indoors for three months, a period which for some seems a lifetime!

### **THE WORKING WOMAN AND IDDAT**

Some women work, hence they do not observe iddat for fear of losing their jobs. Has material gain become so crucial to us that we are prepared to sacrifice the Law of Allah? Surely we need to think and ponder carefully over the state of our Deeni affairs. Where Allah discusses the laws of iddat, it is significant that He emphasis the qualities of taqwa and

tawakkul. He says: "And whosoever will adopt taqwa, Allah will open up a way for him and will grant him sustenance from avenues which he himself will not perceive. And whoever will have trust in Allah, Allah will suffice for him." (Surah Talaq) In another verse Almighty Allah specifically assures the couple who are divorced: "And if the two separate, Allah will enrich each one of them from His Bounty." Our sisters should therefore realise that they too are required to inculcate taqwa and trust in Allah. These are injunctions of Shariah, so at which stage of our lives will we practice on these teachings? Surely these teachings apply to us as it does to the rest of the Ummat. There must be some time in our lives where a small sacrifice is made solely and sincerely for the sake of Allah. In return, the rewards for such sacrifices are immense. Allah has Himself promised to provide income to the divorcee.

Another aspect of emergence during iddat which must be considered, is the interaction of the practice of hidaad and observance of iddat. This practice, which is outlined in detail later on, entails the abandonment of beauty and jewellery. This too is wajib during iddat. But if a woman emerges from the home during iddat, she is forced to neglect the practice of hidaad for she will most certainly adorn herself and apply cosmetics, which is haraam during iddat. Hence, coming out of the home during iddat leads to other haraam acts being committed. This is another reason why a woman must not leave her home during iddat. For the working woman we must stress that during iddat the husband has to provide for his divorced wife, as he would for her during their nikah. If he fails to do so then in cases of dire need, the women may leave the home to earn a living. However, she must return to the house before sunset.

There is also the great danger that through her emergence from the home in iddat a woman is exposing herself to the glances and advances of menfolk. Allah forbid, this can lead

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to zinaa (adultery), for it becomes known that this is a divorcee (and experience has shown that such people are more prone to elicit affairs than those who have yet to taste married life). If not zinaa, then there is the possibility of marriage that may arise during iddat, which is also a haraam act. A nikah performed during the iddat of a woman is not valid, and the couple that marry in this way are living in sin. So a host of evils are created just through the neglect of a basic Shar'ee injunction, the command to remain indoors for the duration of the iddat. Several cases have been brought to our attention, of women entering into marriage while the iddat is still in progress. Only Allah knows whether these marriages were repeated again (to legalise it) after the iddat ended.

### **2. THE PRACTICE OF HIDAAD**

a) Hidaad means: to avoid beauty and adornment. A woman in iddat is not allowed to do the following:

She is not allowed to apply perfume, to wear jewellery and ornaments, to apply surma or cajel to the eyes, to wear flowers, to wear attractive clothing, to apply henna (mehndi), to apply cosmetics, to apply oil to the head, to comb the hair, or to resort to any other form of adornment women normally do to make themselves attractive.

All the above are haraam during the iddat for a widow or a woman who has been given three Talaaq or one baa-in Talaaq. (Baa-in talaaq is a type of divorce that breaks the nikah with immediate effect and the couple can only reconcile by making a new nikah.) Except for a woman who has been given Talaaq Raj'ee, this practice of hidaad is wajib upon every other woman in iddat. (Raj'ee talaaq means a divorce after which the couple can still reconcile and come back to each other without making a new nikau.)

b) Combing the hair will be allowed if it is done out of necessity, such as to avoid knots and tangles in the hair, but

not for attraction and appeal. (Also see note 'further down)

c) The purpose of hidaad is to dispel any intentions men may have of marriage, since it is haraam to marry while in iddat. So when a woman adorns and beautifies herself, she is inviting the attentions of men, especially now that she is without a husband. Such is the strict ruling of the Shariah about marriage during iddat that Allah has forbidden all such activities that may directly or indirectly lead to marriage while the divorcee or widow is still in her iddat. So much so, that the Quran has even forbidden a proposal of marriage in iddat, as well as any negotiations about nikah with the woman. These are all indications of how serious a crime it is to contract a nikah with a woman who is in iddat.

d) A woman who has been given Raj'ee Talaaq, i.e. the husband has the right to take her back without a new nikah in the iddat, does not need to avoid beauty and adornment since the Shariah encourages reconciliation. Perhaps through her adornment and beautification, the husband will be persuaded to take her back. In this type of Talaaq the nikah is still intact, so this divorcee is not bound by the practice of Hidaad.

e) Besides the above type of divorcee, all other women as well as those who have lost their husbands, must compulsorily observe hidaad.

f) She is allowed to use medication, and to bath and clean herself. If oil or surma has to be used for medicinal purposes then this is allowed provided she uses oil which has no fragrance and applies the surma at night and wipes it off in the morning. Similarly if the need arises to comb the hair (such as in the case of lice) then this too is permissible. In short, these prohibitions become lawful if there is a pressing need, such as illness for example. Otherwise, these activities will not be permissible.

g) Upon the death of any other close relative (besides hus-

## TOWARDS THE BLISS OF MARRIAGE PART 2

band), it is permissible, with the husband's permission only, to observe the practice of hidaad as an act of mourning. But this will be done for only three days and it is haraam to observe this practice for longer than three days. And if the husband forbids the wife then it will not be permissible at all.

### **THE IDDAT OF A WOMAN WHO IS AWAY FROM HOME**

**NOTE:** The home of the wife will mean any house owned or rented by the husband, in which they were residing at the time of death of divorce.

#### **Upon Death or divorce:**

1) If a woman is divorced or her husband dies while she is visiting someone, she should return immediately to begin the iddat in her home.

If she is on a journey then the following laws will apply:

2) If the Talaaq or death occurs at such a stage of the journey that between her present location and her home town the distance is less than the forty eight miles (which is the Shar'ee qualification for a Musaafir), while between her and her destination (towards which they were heading) there is a distance of over forty eight miles then it is incumbent upon her to return home immediately on learning of the Talaaq/death.

3) If there is a distance of more than forty eight miles between her location on the journey and her home town, while towards her destination the distance is less than forty eight miles, she should continue with her journey to spend iddat at her destination if possible (as will be explained later). The above laws indicate that at all times she must not begin a travel distance of forty-eight miles. Hence, she will always opt for the distance which is less than forty-eight miles, be it towards her home or in the direction of the destination which they were heading when death of talaaq occurred.

4) If she finds herself at such a stage of the journey that either direction she goes, the distance is greater than forty eight miles, be it towards her intended destination or towards home then she has the choice of continuing or returning home, with the latter option being more preferable since this is in keeping with the original Shar'ee ruling that she should spend her iddat in the home where she always lived with her husband.

5) In the above case if the woman happens to be in a city or any area where she can live comfortably for the duration of the iddat period then it is compulsory upon her to remain there if she has no mehram to accompany her back home. This is the unanimous ruling of all the Hanafi Jurists. However, according to Imam Abu Hanifa she is allowed to stay there even if she has a mehram, while the other Ulema maintain that in such a case she must go back home.

In the event that she decides to return home, if she comes across a place where she can live comfortably and safely, she should spend the iddat there on the basis of the above difference regarding a mehram. Living comfortable in this context means that she is safe, has no fear and finds the necessities of life in order to subsist, while being able to remain confined to her dwellings.

6) A common situation that arises is when the husband dies while his wife is on Hajj in Makka Mukarrama. Let us determine the Shar'ee ruling on the basis of what was mentioned above. It is obvious that returning home means she has to initiate a journey that will render her a Musaafir, which is what she is not allowed to do. Furthermore, it is clearly possible for her to stay where she is without any difficulty at all, since she has already prepared herself for a lengthy stay in the Holy City of Makka. And according to Imam Abu Hanifa even if she does have a mehram with her, she can continue living where she is. So, in such a case it will be lawful for the bereaved widow to spend her iddat in Makka

## TOWARDS THE BLISS OF MARRIAGE PART 2

until her family and mahram decide to return.

7) The next question is: Can she perform her Hajj while in iddat? We explained earlier that one of the conditions for Hajj being fardh in the case of a woman is that she must not be in iddat. However if she does perform the Hajj in this state it will be valid (i.e. the Hajj will be discharged), but doing so is sinful. It therefore means that if she has to spend iddat in Makka, Hajj will not be fardh upon her, and accordingly, it will not be permissible for her to do the Hajj since this entails violation of her iddat restrictions.

8) When it is time for the return journey home from Makka, the wife in iddat will leave along with her mehram and other family relatives (in view of her travel arrangements, it will not be possible for her to stay any longer), and spend the rest of her iddat at home, In such a case, because of the above facts, she will be allowed to travel home, even though the journey back home is obviously more than 48 miles, but iddat resumes as soon as she reaches home.

May Allah grant our sisters the ability to practice on these laws when the need arises. Aameen 🌸

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## CHAPTER 2 MARITAL ISSUES

### 2.1 Using Make-up in Iddat (waiting period)

*Q: Is a Shaafi'ee female allowed to wear make-up etc if she is in iddah after three talaaq (divorces)?*

A: It is sunnat for a Shafi'ee lady not to use cosmetics and adornment during her iddat of three talaaq. However, it is permissible do so and if she does use makeup and cosmetics, she will not be sinful. On the other hand, a woman who has lost her husband is prohibited from beautifying herself during the iddat. For her it is compulsory to abstain from all forms of adornment. (*Haashiyatul Jumal*)

### 2.2 Leaving Home During Iddat When Life is in Danger

*Q: Can a woman leave her home at time of her iddat if her life is in danger?*

A: If a woman observing iddat is in real danger of losing life or limb, or she suffers from acute fear when alone, then she may leave her home and stay in a safer place. (*Fataawa Hindiyyah V1 P535, Aljauharatun Nayyirah V4 P310*)

### 2.3 Iddat and Talaaq

*Q: If a woman was given one talaaq and then sits in iddat, do the other two talaaq fall automatically? If the iddat finishes, have the other two talaaq fallen?*

## MARRIAGE FATWAS

A: In the aforementioned cases the remaining two talaq do not fall automatically. The husband has to issue these talaq in order for them to take effect. Once the iddat is over after having given one talaq, the couple may remarry if they both agree.

### **2.4 Divorce and Community of Property**

*Q: My wife and I are divorced according to Shar'ee rites. However, at the start we had registered our marriage in community of property. Now, based on this law, my wife is demanding half a share of the house where she stayed before the divorce. Is this permissible in Islam, and am I obliged according to Shariah law to give her a half share of the house?*

A: To register a marriage in community of property is un-Islamic and incorrect, since this leads to the abandonment and neglect of several Islamic injunctions, not the least being correct distribution of property. We always advise married couples who resorted to this un-Islamic practice to annul such registration or change it to the ante nuptial contract. Even though you were married in community of property, since this is not recognized and accepted by Shariah, it will be haraam (forbidden) for your wife to claim and/or accept any money in lieu of so-called joint ownership of property. This is a western law which militates against Islamic teaching, hence haraam. When a legal claim or western law conflicts with The Law of Shariah, the former must be rejected in

its entirety. According to Shariah your wife has no valid claim to any share of the property.

## 2.5 Drugs and Divorce

*Q: My husband has been using drugs and has been unfaithful. We have a 6 month old son together whom he adores. I feel torn between what's best for me and what's best for my child. If I get one divorce to see what my life can be like without him, can I remarry my husband without remarrying someone else first?*

A. Think carefully before making any decision. If he gives you one Talaq then either he can take you back as his wife during the Iddat period without performing Nikah again, or if after the issuing of one Talaq the Iddat period expires, Nikah will have to be performed again without the need for you to marry someone else. Remember that if you decide on this, let him issue only one Talaq. If two Talaqs are given, you can still reconcile during the Iddat without a new Nikah and after the Iddat with a new Nikah but without having to marry someone else. But if three Talaqs are given then no reconciliation is possible unless you marry another man.

## 2.6 Start of the Iddat 1

*Q: From which day will the iddat start: 1) day of first talaq, 2) day of talaq baa'in?*

A: Iddat will always commence from the first talaq, regard-

less of whether the husband issues one or more talaq thereafter, and regardless of whether the first talaq was raj'ee or baa-in.

## **2.7 Annulment of Marriage**

*Q: A Nikah (marriage) was performed between a boy and girl in different countries. A condition attached to the nikah was that the boy will move to the girl's country and will take up an Imamate post there. After the Nikah was done the boy refuses to fulfill this condition. On top of that he says he will never ever give talaq to the girl. The girl does not want to stay in the nikah, as the condition was not fulfilled. Is the nikah annulled, or does the girl have to get a divorce? The two are living in their respective countries, while the boy refuses to come over to her or to release her from nikah. Please advise.*

A: This nikah is not automatically annulled, though it was wrong of the boy not to abide by the conditions, especially when this has caused much inconvenience to people. He should have made it clear before the nikah that he would not be able to come across to the girl's country. He has to give her talaq, especially since the marriage was not consummated. Only then will the nikah be over. The girl is acting within her rights to demand that he come over to her country, since she retains the right over herself until the dowry has been paid or the marriage consummated. If he refuses to give talaq after a while, then the local Ulema should be approached to do a proper annulment (faskh). They will have

valid grounds for this.

### **2.8 Remarrying and Number of Divorces**

*Q: A man divorced his wife once and then separated from her. After three years the couple remarried, but in the interim this woman had been married to another person and got divorced from him. When she comes back to the first husband, does he have two talaaq left or are the three talaaq reinstated?*

*A: In this case the first husband has two talaaq left. The interim marriage had no effect on the number of talaaq.*

### **2.9 Leaving Home in the Iddat**

*Q: Can a woman who is in iddah of talaaq leave the home for any reason?*

*A: Whilst observing the iddah after talaaq, a woman may not go out of the confines of her home except in cases of emergency. Emergency refers to life and death situations. The husband is supposed to support his wife during her iddah, hence there is no need for her to leave the home. However, a woman who is observing the iddah of wafaat (demise of her husband) may leave the home between sunrise and sunset.*

### **2.10 Start of Iddat 2**

*Q: If a man gave his wife talaaq, does she have to start iddat immediately?*

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A: The iddah of a woman starts immediately after talaq has been uttered by the husband.

### 2.11 Types of Divorce

*Q: What are the types of talaq (divorce)?*

A: There are three types of Talaq:

1) **Talaq Ahsan:** This is when a man gives his wife Talaq while she is clean (not menstruating) and has not had intercourse with her since the last period. He then stays apart from her until her Iddah is completed (three consecutive periods). This is the best type of Talaq because it allows the man to take back his wife before the Iddah period is over. If the Iddah period expires and thereafter he wishes to have her back, a new Nikah must be performed.

2) **Talaq Hasan (Sunni):** In this type of Talaq a man gives three Talaqs, one in each of three consecutive clean periods (when she is not menstruating) and during which he has not had intercourse with her. If he wishes to take her back, he may do so after the first or second Talaq, but not after the third Talaq has been issued.

3) **Talaq Bid'ee:** This is when a man issues three Talaqs in one sentence or three Talaqs within one clean period. Although it is sinful to issue Talaq in this manner, nevertheless the Talaqs will be valid and she will no more be his wife.

It will also be regarded as Talaq Bid'ee if a man has inter-

course with his wife and then issues Talaq within the same non-menstruating period; or he issues Talaq during a menstruating period.

### **2.12 Divorce in Pregnancy**

*Q: What are the rules regarding talaq (divorce) while the wife is pregnant?*

A: There is no difference with regard to Talaq issued to a pregnant or non pregnant wife. The difference is in the period of Iddat. The Iddat of a pregnant wife who has been issued Talaq will end at the birth of the baby. (*Al Hindiyyah V1 P528*)

### **2.13 Divorce by SMS**

*Q: Does talaq (divorce) by sms (mobile texting) take place?*

A: If the husband confirms the sms of Talaq, the Talaq will take place.

Allah Ta'aala knows best.

### **2.14 Lady Issuing Divorce**

*Q: Can a woman issue a divorce? What am I entitled to as a wife?*

A. A woman cannot issue a divorce. Issuing a divorce is the prerogative of the husband. If the wife has valid grounds,

## MARRIAGE FATWAS

she can ask the husband to divorce her. Valid grounds for a divorce or annulment are physical and mental abuse, withholding of expenses, deserting the marital home, refusing to fulfil the wife's conjugal rights. If any of these reasons are found and the husband still refuses to issue divorce, the wife may apply to the local Ulama body for a Faskh or annulment. The Ulama or Learned People will follow a strict procedure and after having ascertained that there are indeed Islamic grounds for annulment, they would proceed to annul the marriage by issuing a decree of Faskh.

### **2.15 Father's Visitation Rights**

*Q: Your advice is required as to the rights of a father after talaq in terms of access to his minor children. The ex-wife requested talaq and was granted to her. Since then she has refused access of the two minor children (girls aged 5 and 2 years) citing the father's alleged adultery as the reason. There was no adultery and no concrete proof to substantiate her accusations. She has allowed only 1 visit in September since the talaq took place in August. She has allowed some telephonic contact but for 3 weeks now even that is denied. The man has since re-married. What can he do in order to be reconciled with his children? The Ulama do not want to approach her on this matter.*

**A:** Though the wife has the right to custody of boys up to 7 years of age and girls up to 9 years of age, but she has no right to deprive the father of visitation and access. One telephonic conversation in three weeks is not acceptable.

The father, if he is supporting the children on a regular and fair basis, enjoys the right to see his kids at any time with prior arrangement (barring very late hours at night or very early in the morning).

Since you state that the even the local Ulama do not want to speak to her, you have an option of going to court to seek visitation rights. But I would suggest that before going to such a drastic level, explore further avenues in this regard.

For example, write a letter to your ex-wife telling her that if she is not going to concede visitation, then you will be forced to go to court for your rights. Suggest to her that if she does not want a court battle, she should submit to the ruling of the local Ulama. Maybe this might jolt her into acceding to your request.

## **2.16 Calculating Maintenance**

*Q: How is maintenance calculated for one child?*

A: The father has to pay the following expenses related to his children:

Food; necessary clothing and bedding according to the different seasons; medicine and treatment; madresa and school fees subject to his choice of madresa and school.

Since the above expenses vary from place to place, as well as time to time. The Shariah has not fixed a specific. It is left to the discretion of the parents.

### **2.17 Divorce in Anger**

*Q: I have been married for 10 years and my husband and I have been having many problems and one of them being another woman in our relationship. Due to the many problems we seperated and were living apart for over a year. I have been asking him for a divorce but he has refused. Then one day I went to visit his mother and found him there with another girl and I got very angry and asked him for talaq and he gave it to me. He said it three times in front of my father in law and sister in law. I took it as being a valid talaq. But he refuses to acknowledge it and says he said it under anger. Does the talaq still stands.*

A. Talaq given in anger is valid and binding. (*Raddul Muhtaar V10 P489*) In your case, three Talaqs have taken place and reconciliation is not possible without the process of Halaalah, which means you marrying another man after your Iddat, getting divorced from him, completing that Iddat of the second husband's divorce and then coming back to the first husband. But this cannot be planned and orchestrated. It should happen naturally.

### **2.18 Divorce by Email**

*Q: Is a talaq (divorce) sent via email valid?*

A: A talaq that is sent via email needs to be ratified or verified by the husband because anyone can send an email from another person's computer or cell-phone without the knowledge of the owner. Therefore, the wife or her representative

has to contact the husband directly to confirm whether he had sent the email containing the talaaq and whether had intended such a talaaq. Once he confirms it then the talaaq will be regarded as valid.

### **2.19 Divorce and Reconciling**

*Q: I would like to know if my wife gets a divorce: what happens to the reconcile phrase does it fall away or can I go back within the 3 months iddah period?*

A: The reconcile phase, which is the Iddat of three menstruation cycles, does not fall away. You may take her back within that period by verbally stating that you have taken your wife back or by an act of intimacy with her. If the Iddat has expired then you must make Nikah to her again if the two of you wish to make up. This applies if one or two clear and direct Talaqs were issued.

However, if you had given her a Talaq Baa'in, then you can only reconcile by making a new Nikah in the Iddat or afterwards. If three Talaqs were given then there is no option of reconciling at all.

### **2.20 Three Talaqs and Halaala**

*Q: Why is it in Islam a couple may not reconcile after 3 talaqs (divorces), and why are they only allowed to reconcile after halaala (wife marries someone else, consummates the marriage and is then divorced or husband dies)?*

## MARRIAGE FATWAS

A: Islam created talaq to break a marriage. This was necessary because when a couple is incompatible then the need is to separate them, otherwise living together will be miserable. The separation comes through divorce as a necessity. The question then arose as to how many divorces should be implemented. Allah Ta'ala in his infinite Wisdom, ordained three divorces. This is simply to give the couple three chances of reconciliation. Had there been only one or two talaq, then we could argue that our couples are not given enough chance to patch up their marriages. People make mistakes and utter divorce; so they need some chance to reconcile to undo their indiscretions. So Allah Ta'ala gave us three chances, which is very fair to both parties. Had there been more than three talaq, then marriage would become a mockery, because husbands would give talaq and revoke, give and revoke, and the wife's life would become a misery.

Now once we've settled on three talaq, the question arises: Why can't they reconcile after three? The answer is that if a couple could reconcile after three talaq, we would be faced with the same difficulty just mentioned. A man would divorce his wife three times, then reconcile. After six months, they have a fight, he divorces her three times. Then they reconcile again, and the process is repeated. The result of this fiasco would be reducing nikah to a mockery. Nikah would no longer remain sacred. The couple would no longer fear talaq or divorce. But by creating a cut-off point of three talaq, and then prohibiting reconciliation thereafter, Allah has sounded a warning to both husband and wife: "Don't play around with divorce"! This serves as a great deterrent.

However, Allah also knew that couples married to each other for long, don't forget each other in a hurry, and would definitely like to reconcile. While not allowing reconciliation after three for the above reason, there had to be another method of reconciliation, and that was the halaala. Since the halaala is a tedious process and one that a woman would not like to get involved in quickly, it serves as the perfect buffer between two marriages.

**Reasons for halaala:**

1. After living with another man, sometimes the wife appreciates her former husband.
2. In halaala the second husband must divorce her before she can come back to the first. Assuming the halaala comes about naturally, as is ordained by Shariah, the woman who is divorced for a second time might find it easier to go back to the first husband than to any other man.
3. There is a logical reason: When a woman married, she had the respite of three talaq. When that ended, it will take another marriage to bring back that respite of three talaq. In others words, it is only a nikah that can bring back three talaq; obviously that nikah cannot be the nikah of the same husband, for we explained earlier that this would destroy the deterrent factor in halaala and would reduce nikah to a mockery. So it has to be nikah to someone else. And that someone else is the second (or third husband).

### **2.21 Joke and Divorce**

*Q: One day at work, I said jokingly to a friend "I am divorced". I did not have the intention to divorce at the time and I didn't mention my wife's name. Does what I say constitute divorce? I made ruju over the phone anyway by telling my wife "If what I said constituted divorce, I take you back". My first question is did what I say constitute divorce and if so was the ruju over the phone valid?*

A: The joke you made is not divorce or talaq. A man cannot be 'divorced' , for he is the one who issues the divorce. If a divorce is issued, it is the wife who is described as being 'divorced'. So the statement you made is meaningless and is not counted as a talaq.

### **2.22 Wife Contributing to House Expenses**

*Q: In a marriage the wife also works. Is the husband entitled to the money that she earns? Since she is earning is she obliged to contribute towards the upkeep of the house?*

A: It is the husband's duty to support his wife. Allah Ta'ala says in the Holy Quran: And upon the father is their sustenance and clothing in an affordable manner" (Surah Baqara) It is thus compulsory upon the husband to provided domestic expenses for his wife and children, even if the wife has her own earnings. The husband has no right over the wife's money. Whatever she earns is hers to keep. She is not obliged to contribute towards household expenses, but if she does so, then she is doing her husband a favour. So the hus-

band cannot expect that the wife must hand over her salary or earnings to him. What she works for is hers entirely. It is totally unjust of the husband to demand money from his wife. In fact, it is a disgrace, because the man has to do the providing.

For the benefit of readers, we mention a few expenses that the wife has to pay from her own pocket and may not demand these expenses from her husband:

- a) Her personal cell phone account;
- b) Petrol expenses for the car that she uses for her own work, not for the husband's work or work related to the household.
- c) Unnecessary and extra clothing and shoes, such as outfits purchased to attend a wedding or some special occasion. Such clothing is for the wife's account.
- d) Items that she uses in her work, such as computer, sewing machine, etc.
- e) Unnecessary accounts that the wife has opened.

The above are a few examples of expenses that must be borne by the wife herself; the husband is not under obligation to foot the bill for these expenses. However if the husband agrees to do so, it will be an act of kindness for which the wife has to be extremely grateful.

### **2.23 Wife Wanting Divorce**

*Q: There is a lot of acrimony and fighting in the marriage. The wife wants talaq. Is this valid?*

A: Every marriage will have its fair share of fighting and dispute. That is not enough grounds for the wife to seek talaq. The wife should not be so petty or impatient, that she just looks for every small excuse to ask for a talaq. Talaq is a serious matter and should only be pursued when all avenues of reconciliation have been exhausted. We also appeal to marriage counsellors not to quickly push the wife into a divorce, or to even entertain the idea unless extensive efforts to re-unite the parties have been made.

Q: If a man has two wives, can he force them or ask that they both stay together in one house, do things together, travel together etc.? If one wife refuses, is she being disobedient?

A: The husband has got no right to force two wives to live together or to do things together as mentioned in the question. In fact, it is not even advisable to make such a request to the wives. Each wife is entitled to her privacy and separate rights. If the wife refuses to do this, she is fully within her rights and is not being disobedient.

### **2.24 Wife Issuing Divorce**

*Q: In Islam can a woman divorce the husband or is there*

*any way she can issue talaaq?*

A: In our beautiful Shariah a woman has not been granted the right to talaaq. This right has been vested with the husband only. However, the husband can delegate this right to the wife; that is, he can give his wife the right and the freedom to divorce herself. In that case the wife can pronounce talaaq on herself and be free from the marriage. But even in this case, she is not divorcing her husband; instead she is divorcing her own self from the husband.

### **2.25 Wife Filing for Divorce**

*Q: A woman has filed for a divorce in court. If the court grants her the divorce, will it be valid according to Shariah?*

A: Such a divorce is not valid and that woman is still married to her husband. Until he does not utter the talaaq, they are still husband and wife.

### **2.26 Separation and Automatic Divorce**

*Q: We hear that if a couple are separated for four months, then automatically talaaq falls. Is this correct?*

A: This is not correct. A couple can be separated for years, talaaq will not occur until divorce is issued by the husband. Please inform people that this common concept is totally wrong.

## 2.27 Husband Leaving Islam

*Q: A man became a Muslim and married a Muslim lady. After a while, he turned away from Islam and went back to his old religion. What is the state of the Nikah? Are they still married or must the husband issue a talaq?*

A: When a husband becomes murtadd (Allah forbid), then the Nikah breaks with immediate effect. Now there is no need for talaq or divorce. The woman will automatically be released from the Nikah when her iddat expires. Her iddat will commence from the day the couple separated, after the husband had reneged from Islam. If the couple were already separated when the husband become murtadd, then her iddat will commence from the date the husband's leaving Islam). ❁



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