

UNIVERSAL
LIBRARY

OU_148982

UNIVERSAL
LIBRARY

Name of Allah, the Beneficent, the Merciful.

DIVORCE

BY

IA SH M. H. KIDWAI OF GADIA



PUBLISHED BY

THE "MUSLIM BOOK SOCIETY

AZEEZ MANZIL LAHORE. (PUNJAB).

OSMAN'A UNIVERSITY LIBRARY

Call No. 1731/K46D Accession No. 9289

Author Kidwai. H.E

Title Divorce

This book should be returned on or before the date
last marked below.

DIVORCE.

Divorce is a corollary to the marriage laws. Perhaps it is a special institution for man. Nature has not gifted animals or birds with such sensitiveness that would prompt them to change their spouse as to human beings. Perhaps monogamous couples in birds and animals have been gifted with such unbroken instinctive fidelity to each other, such remarkable harmony in temperaments, that no change is necessary. Human beings have sometimes to pay the penalty of being reasonable and of possessing a free will. Even if men and women take the greatest care they can in selecting their partners, differences between them afterwards are quite possible. Nor can infidelity be the only reason for the couple having an unpleasant time between themselves. It is not very rare that tastes and temperaments of a husband and wife differ so radically ~~as to~~ upset all the social happiness. Sa'adi has very pertinently said :—

“A bad woman in the house of a good man makes it a hell for him in this world.”

Woman suffers in the same way if tied to a husband she dislikes, although she has been gifted with a greater self-suffering and self-abnegation. To her a home is dearer than it is to man. Her love for her children is also naturally great. She has greater sentiments of affection generally, and greater attachment to her husband in particular. She is superior to man in these respects.

She would submit to any inconvenience and trouble rather than leave her children, her husband, and her home. It was because of this feminine character that no legislator except Muhamimad, whose solicitude for woman's rights was greater than that of any other man, thought it necessary to take into consideration any such case as that of a woman who would like to divorce her husband. Almost all religions except Hinduism have allowed man to divorce his wife. But no religion except Islam has allowed a woman to get a divorce from her husband. Divorce by husbands of their wives was allowed by the Greeks, the Romans, the Israelites and the Christians.

In Islam there have been certain jurists who have given their verdict that divorce is altogether unlawful to Muslims. But this view has not been accepted. The *Radd-ul-Mukhtar* contradicts the arguments against the invalidity of divorce, but adds: "Divorce is really forbidden, but only on certain conditions it becomes *mubah* (permissible), and therefore certain jurists hold that it is not allowed at all."

On the other hand, so great is the regard of Islam for woman that *Durr-ul-mukhtar* gives certain conditions of man's weaknesses or physical defects in which, it says, "Divorce is necessary to safeguard the rights and privileges of women."

One point, however, is quite certain—that there was nothing more detestable to the Great Legislator himself than divorce. Many are his sayings on the subject, as:—

Abhazul halal ilulah ul-talaq.

1. "The most hateful of lawful things in the sight of God is divorce" (Mishkat).

2. "The curse of God rests on him who repudiates his wife capriciously."

3. "God has created nothing on the face of the earth worse than divorce" (Abu Daood).

4. "Marry women and do not divorce them capriciously because God does not like lustful men or women" (Mishkat).

5. "Divorce shakes the throne of God" (Kamil).

6. Nothing pleaseth God more than the emancipation of slaves, and nothing displeaseth Him more than divorce" (Aldarqutni).

And so forth.

Every Muslim knows that *Talaq* (divorce) was extremely disliked by the Prophet. Being an inspired and universal Prophet, sent for all mankind in every age and country, Muhammad had to legislate as regards divorce, but personally he disliked it immensely, and made no secret of it. The result of this dislike has been very beneficial for Muslim society. Of 70,000,000 Muslims in India, not one in a hundred thousand takes recourse to divorce. The same is the case in Afghanistan and Turkey, though the Arabs in Hedjaz and Egypt do sometimes misuse the restricted permission of divorce. In Muslim countries divorce is considered to be very contemptible socially. Any man who takes recourse to divorce loses all respect.

The main difference between the divorce laws of Christianity and Islam lies in this, that while Christianity recognizes only one condition of divorce—i.e. infidelity—and makes divorce a matter of public proceedings,

Islam lays down no hard-and-fast conditions for divorce and makes it a strictly private affair.

Al-Ghazzali writes ;—

“ The greatest care should be taken to avoid divorce, for, though divorce is permitted, yet God disapproves of it, because the very utterance of the word ‘divorce’ causes a woman pain and how can it be right to pain any one? When divorce is absolutely necessary, the formula for it should not be repeated thrice all at once, but on three different occasions* A woman should be divorced kindly, not through anger and contempt, and not without a reason. After divorce a man should give his former wife a present, and not tell others that she has been divorced for such and such a fault. Of a certain man who was instituting divorce proceedings against his wife it is related that people asked him, ‘Why are you divorcing her?’ He answered, I do not reveal my wife’s secrets.’ When he had actually divorced her, he was asked again, and said, ‘She is a stranger to me now; I have nothing to do with her private affairs.’ ”

That Islam, while laying down restrictions in the way of divorce and discouraging it very strongly and persistently, did not lay down any hard-and-fast conditions was simply because, unlike other religions—including Christianity—it was not meant for any one people or one country alone, but for the world at large and for every age and race, and for every stage in society. Christ said : “I was not sent but unto the lost sheep of Israel” (Matt. xv. 24). So his divorce law—and that is the only

* The formula for divorce has to be repeated thrice to make it complete.

law he has laid down as regards women—was confined to the Jewes, and was meant to improve the degraded and lustful condition to which they had fallen when Christ came.

If it had been possible, Christ would have abolished the very institution of marriage and made all his followers “eunuchs for the kingdom of God.”

While altering the then prevailing Mosaic law, and restricting divorce only to the cases of infidelity of the wife, Christ said :—

“Moses for your hardness of heart suffered you to put away your wives : but from the beginning it hath not been so. And I say unto you, Whosoever shall put away his wife, except for fornication, and shall marry another, committeth adultery : and he that marrieth her when she is put away committeth adultery. The disciples say unto him, If the case of the man is so with his wife, it is not expedient to marry. But he said unto them, all men cannot receive this saying, but they to whom it is given. For there are eunuchs, which were so born from their mother’s womb : and there are eunuchs, which were made eunuchs by men : and there are eunuchs, which made themselves eunuchs for the kingdom of heaven’s sake. He that is able to receive it, let him receive it” (Matt. xix. 8—12).

Muhammad had to meet all the circumstances—not of infidelity alone—when a happy home-life becomes impossible.

Christian legislators had to depart from even that one law which Christ laid down, because that law could not be made universal, and it was not fit to meet every

circumstance or condition of society and civilization. In Christian Russia—which is more Christian than any other Christian country—there are now allowed thirty-five reasons for giving divorce. In America divorce has become a plaything. In England itself an agitation has been raised to make divorce possible under other conditions, and not to restrict it to infidelity alone.

The tendency of the civilized world is to adopt the Muslim principle of divorce, i.e. to make it permissible on conditions other than infidelity also. And this is as it should be. In England, where the law as regards divorce is extraordinarily strict, in spite of the findings of a Commission to make it more easily obtainable, there are thousands and thousands of such couples whose life is an unbearable misery; there are hundreds of thousands who have been condemned to live a bachelor's life separately from each other. A woman, separated from her husband, even her children taken away from her, without a decent home or a friend, must feel a divorce far better than the life she is condemned to live after her separation from her husband. A man, also, cannot like at all the burden he has to bear in the upkeep of his separated wife and the extra charges he has to incur for his own house-keeping. Man and woman both find the life they have to live when separated from each other, yet unable to divorce, very hard; but to woman it is hardest. If she commits adultery simply to escape from that life she should be excused. If it be only for her sake divorce should be allowed in such cases as make separation a necessity.

Why the English law of divorce should be more

Christian, than that of other Christian countries is a mystery.

Sir Arthur Conan Doyle wrote to *The Times* of September 3, 1917, thus :—

SIR,—Lord Halifax appeals to the Christian tradition in order to prevent the proposed reform of our divorce laws. He must bear in mind, however, that all Christian nations, including our fellow-subjects in Scotland, are more liberal than ourselves in dealing with this subject. It seems difficult to sustain the contention that these communities are less Christian than ourselves, or that Lord Halifax and those who follow him are the sole representatives of true Christian traditions. Those who associate Christianity with the relief of innocent suffering will take a very different view.

Lady Muir Mackenzie wrote in the *Evening Standard* of Tuesday, October 2, 1917, as follows :—

Is it right to press for social reforms such as a change in our divorce laws while the country is at war? Surely, for it is never too soon to right a wrong, and our English divorce laws reflect little credit on us as a nation.

They are, to begin with, distinctly unjust to the poor man and to every woman, whether she be rich or poor. It has been stated by inaccurate people that a poor man can nowadays "obtain the benefit of the Divorce Court at a cost of little more than the family Sunday joint." Such statements should be confined to "the poor London man." The poor Birmingham, Manchester, Liverpool, or Newcastle man is for ever debarred from obtaining a divorce. It is well to remember that the Majority Re-

port of the Royal Commission on Divorce, whose findings are ignored by our Government, recommended that, "divorce cases be heard locally," so that people living outside the London area might be placed on an equal footing in the matter of relief. But so far nothing has been done in this direction.

We heard much about the soldier's "unmarried wife" when the war first broke out. The Government very properly recognized that she had a right to a separation subsistence allowance for herself and her children. If our divorce laws were not so inhuman, there would not be so many unmarried wives. It is calculated that about seven thousand separation orders are granted every year, and this means that the "separated" man and woman may never legally remarry. The ecclesiastics who forbid real divorce are in reality encouraging "irregular unions and restricting the birth-rate of legitimate children." Many separated couples come of a class who would make desirable parents, but being self-respecting even when they contract quasi-marriages, they are reluctant to bring into being ~~children~~ children branded with illegitimacy. Thus the existing separation system tends to sterilize four persons.

We actually have in the British Isles very excellent divorce laws. I refer to Scotland. Yet if we reformers in England and Wales decided to petition Parliament to follow the example of Scotland, we should be told by the Church of England and Bishops that we were suggesting an immoral action. . . .

The members of the Women's Co-operative Guild make the reform of the English divorce laws a part of

their propaganda. They were told in 1915 that if they did not give up advocating this reform, £400 a year coming to them from certain ecclesiastical sources would be withdrawn. This fine body of women refused to be thus coerced, and made up this missing sum themselves.

Why do we consent at this late period of our history to have our lives darkened by mediæval conceptions and ecclesiastical mysticism? Why are we content to see the rich man obtain what is denied to the poor man? Some of our Colonial possessions have broken away from the foolish tradition of the Motherland, and made sensible marriage laws and divorce laws for themselves. We are ceasing in this respect to be a pattern for the rest of the world to follow. When Japan decided to become modern, her wise men considered the law systems prevailing in various countries, but decided that as far as the divorce laws went, the English system was antiquated and impossible, and adopted laws prevailing in certain other European countries.

In Holland, for instance, where the people are far from being flighty, an excellent divorce system prevails. It is interesting to note that fewer divorce cases are recorded since common-sense facilities have been given to the Dutch.

Countries where divorce is permitted and where no distinction between the sexes is made include Austria (for Protestants), Denmark, France, the German Empire, Hungary (for Protestants, Greeks, and Jews), Norway, Sweden, Switzerland, Rumania, and Russia. The rule is the same in Natal, the Cape Provinces, New Zealand, and New South Wales. The last two are subject

to certain provisions as to domicile. In the United States the sexes are on an equality as regards grounds of divorce.

It does seem an anomaly for England alone to penalize her women in the matter of laws concerning divorce. . . .

Let a woman break the moral law but once, and her husband can readily obtain a divorce. On the other hand, a husband may openly do wrong time after time, and a woman will find it impossible to obtain any dissolution of her marriage, except, of course, in Scotland.

Mrs. Webbe, one of the Committee of the London Diocesan Rescue and Prevention Association, gave interesting evidence before the Royal Commission. She considered that the equalization of the divorce law would prove a strong deterrent to immorality. She stated :—

“ I find it hard to express strongly enough my feelings with regard to the iniquities of the moral standard between the sexes. What determined me to do the work I am now doing was when, as a young married woman, I found a man could live an ~~openly~~ scandalous life ; the innocent wife's only remedy was a separation. If the woman made the proverbial slip, all rights of motherhood would be taken from her by the husband getting a divorce. People seem to forget, when they talk of the wise wife ignoring her husband's unfaithfulness, that there is another woman in the case. This woman I have had too often to help.”

Habitual drunkenness, desertion, and cruelty ought to be reasons for granting divorce, if only for the sake of the children.

Sir Arthur Conan Doyle expresses this opinion about the present divorce laws, and the need for reform :—

“The law which at present binds a decent man or woman to an habitual drunkard, which chains a man or woman to a lunatic or a criminal for life, is a wicked law. It is an abuse of the elementary right of every human being to lead a life which shall be tolerable. This proposition must be so evident to every normal mind that if it were not for theological obscurantism, it would not fail to gain general acceptance.”

Mr. Max Pemberton has written on the question as follows :—

“Britain has suffered from a declining birth-rate since the year 1907 ; and the terrible losses of the war must tell heavily upon the numerical and the physical strength of the population of the future.

“These are startling truths, and men of common sense naturally ask what we are going to do about them.

“We are told that there are more than a million people in this country who are separated from wives or husbands. Many of them have established households of which convention does not approve. Some of them, perhaps, could obtain divorce in the law courts of the country had they the money to go there. . . .

“That we should encounter the opposition of the Church was to be expected. . . . But has the Church herself been consistent in the matter? I seem to have heard frequently in history of dispensations and dissolutions of marriage for reasons which do not appear more valid than those by which we are now confronted. Lack of consummation, physical disability, sometimes politi-

cal clamour have divorced those who were told that God had joined them together ; and surely we are entitled to ask that a similar latitude be accorded to those whom Destiny has put asunder ?

“ I would ask the opponents of marriage reform what alternative they propose to the misery of those million separated people ?

If those people who are agitating for reform in the divorce laws of England had taken the trouble of studying throughly the Muslim laws of divorce and marriage, they would have urged their adoption in England.

While studying the divorce laws of Islam, which we shall quote from the Qur-án, the following points should always be kept in view :—

(1) Islam claims to be universal, and does not permit any human alteration in its Quranic laws, so it was impossible for it to be rigid or to lay down any strict conditions.

(2) Islam strongly and successfully discourages divorce on any condition, and because it succeeds in creating a very high religious spirit in its followers it controls all their actions.

(3) Divorce laws must be examined in consonance with the marriage laws and laws regarding the custody of children, etc.

The object of marriage as given by the Qur-án is this :—

An khalafa lakum min anfusikum azwajan-litaskunna elaiha wa ja'ala bainakum moyadatam-wa-rahmatam.

“ That He created mates for you from yourselves, that you may find quiet of mind in them, and He put

between you love and compassion ' (All-Qur-án, chap. xx. v. 21)

There is no doubt that marriage plays a very important part in the well-being and happiness of human society. Upon it depends the propagation of the human species. Divorce, then cannot but be unpleasant to the human society. But in certain circumstances divorce becomes a social blessing and saves many homes from misery and unhappiness. When marriage becomes a burden upon the social happiness of a man or woman, divorce should no doubt be taken recourse to.

Under Islam marriage is a contract; divorce is the dissolution of that contract.

Islam has not laid down any elaborate formalities for consecrating a marriage. Mutual consent, some prenuptial settlement (*mahr*), and two witnesses are quite sufficient to unite a man and a woman in a marriage tie. For the dissolution of marriage also no formalities have been set up by Islam. The system of public divorce in which the dirty linen is washed in the court, giving details of the most private part of one's life, is most reprehensible. Islam does not tolerate it. In Islam, when the dissolution of the marriage tie proceeds from the husband it is called *Talaq*, which can be given very privately. When divorce takes place at the instance of the wife, or by mutual agreement, it is called *Khula* or *Mubarat*, and a *Hakim-i'sharaá* has to enforce it.

Islam does not put down any special conditions for the dissolution of the marriage contract, and thus allows each contract of marriage to be dissolved under its own conditions. It is open to every man and woman who

care to enter into a contract of marriage to lay down their own conditions for the dissolution of marriage.

The Qur-án affords sufficient protection for woman even if she fails to protect herself by saying to man :—

“ And if you wish to have (one) wife in the place of another and you have given one of them a heap of gold, then take not from it anything; would you take it by slandering (her) and doing her manifest wrong ?

“ And how can you take it when one of you has already gone in to the other and they have made with you a firm covenant ?” (Al-nisa, sec. 3, vv. 20—21, Muhammad Ali's edition, p. 206).

These verses show what a great regard Islam had for the interests of women.

The Qur-án allows the pre-nuptial settlement to be without any limit by the use of the word “ *qintar*,” and then commands that in the case of the dissolution of marriage by the husband nothing of it should be taken back by him and all that he owes to the wife should be paid.

Thus the power for divorce is given in a way in the hands of woman. While getting married she can see to it that the settlement upon her, which would be payable at her demand or in case of divorce, is high enough to keep the divorce in her hands.

A substantial *mahr* at the marriage settlement will always be a good legal check upon any rashness on the part of the husband in case of divorce, even if he is not Muslim enough to respect the commands of the Qur-án and the Prophet. In the case of woman herself demand-

ing a divorce (*khulu*), she has to remit the *mahr*, if not otherwise arranged.

The Quranic verses as regards divorce from "Al-Baqara," sec. 29, translated by Maulvi Muhammad Ali in pp. 105, 106, 107, 108, of his edition of the Qur-án are as follows. The notes given by him as regards the Islamic law of divorce are also worthy of consideration, but for want of space we cannot quote them here.

"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. These are the limits of Allah, so do not exceed them, and whoever exceeds the limits of Allah, these it is that are the unjust.

"So if he divorces her she shall not be lawful to him afterwards until she marries another husband; then if he 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; and these are the limits of Allah which He makes clear for a people who know."

"And when you divorce women and they reach their prescribed time, then either retain them in good fellowship or set them free with liberality, and do not retain them for injury, so that you exceed the limits, and whoever does this, he indeed is unjust to his own soul; and do not take Allah's communications for a mockery, and

remember the favour of Allah upon you and that which He has revealed to you of the Book and the Wisdom, admonishing you thereby ; and be careful of your duty to Allah, and know that Allah is the Knower of all things."

And again from At-Talaq (sec. 1, vv. 1, 2, 6, 7) :—

"O Prophet! when you divorce women, divorce them for their prescribed time, and calculate the number of the days prescribed, and be careful of your duty to Allah, your Lord. Do not drive them out of their houses, nor should they themselves go forth, unless they commit an open indecency ; and these are the limits of Allah, and whoever goes beyond the limits of Allah, he indeed does injustice to his own soul. You do not know that Allah may after that bring about reunion.

"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. With that is admonished he who believes in Allah and the latter day ; and whoever is careful of his duty to Allah, He will make for him an outlet. . . .

"Lodge them where you lodge according to your means, and do not injure them in order that you may straiten them ; and if they are pregnant, spend on them until they lay down their burden ; then if they suckle for you, give them their recompense, and enjoin one another among you to do good ; and if you disagree, another woman shall suckle for him.

"Let him who has abundance spend out of his abundance, and whoever has his means of subsistence straitened

ned to him, let him spend out of that which Allah has given him ; Allah does not lay on any soul a burden except to the extent for which He has granted the capacity ; Allah brings about ease after difficulty."

Because the law of *Talaq* (divorce) was deliberately left in a flexible condition to suit not only all countries and all ages but also individual cases, a good deal of diversity and divergence appears in the interpretation of the Quranic verses or the precedents laid down in the lifetime of the Holy Prophet between different Muslim jurists as to the particular form in which a divorce should take place. The majority of the Muslim world, which is *Sunni*, follows the juristic interpretation of Imam Abu Hanifa, and is called HANAFI. But all the Muslim jurists, of whatever school of thought, whether Hanafis or Shafais or Shiahs, agree on the main point that *Talaq* should never be taken recourse to except under very exceptional circumstances, and in the absence of serious reasons no Mussulman can justify a divorce in the eyes of either religion or law.

The Qur-án itself has ~~had~~ great stress upon reconciliation. It has appealed to the trust a true Muslim should always have in the mercy of God, even in cases where a kind of hatred might have arisen between a husband and his wife and there might apparently be a necessity for divorce.

In Al-Nisa (chap. iv. sec. 3, v. 19) it clearly says —
*Va a'askeru hunna bilma'roof. Far in kurehtumu-
 hunna fa'asa un takrahu shai'an-ru yajalallahu fihe khai-
 ran kasira.*

“ And treat them (women) kindly ; then if you hate

them, it may be that you dislike a thing while Allah has placed abundant good in it."

The Qur-án has not encouraged at all any rash divorce. It has prescribed three stages for divorce, and ordered the husband and wife to remain in the same house till after two stages, so that a reconciliation may be effected before the third and irrevocable stage is reached. Particular attention has been paid to the cases when the woman may be in the family way as regards her maintenance, etc.

The law of TALAQ has been given thus by the Rt. Hon. Syed Amir Ali in the "Personal Law of the Muhammadans."

TALAQ.

Two kinds of *talaq* are recognized by the Sunnis, viz. (1) the *talaq-i-sunnat* and (2) the *talaq-i-bidat* or *talaq-i-badai*. The *talaq-i-sunnat* is the divorce which is effected in accordance with the rules laid down in the traditions (the *sunnat*) handed down from Muhammad. It is, in fact, the mode or procedure of *talaq* which seems to have been approved of by him, and is consequently regarded as the regular or proper and orthodox form of divorce.

The *talaq-i-bidat*, as its name signifies, is the heretical or irregular mode of divorce, which was introduced in the second century of the Muhammadan era. It was then that the Ommiade* tyrants, finding the checks imposed by Muhammad on the facility of repudiation galling, looked about for some escape from the strictness of

* This assertion is historically incorrect and religiously biased—M. H. K.

the law, and found in the pliability of the jurists a loop-hole.

The Shiah and the Malikis do not recognize the validity of the *talaq-i-bidat*, whilst the Hanafis and the Shafais agree in holding that a divorce is effective, if pronounced in the *bidat* form, 'though in its commission the man incurs a sin.'

The *talaq-i-sunnat* is either *ahsan* or *hasan*—very proper or simply proper. In the *talaq-i-sunnat* pronounced in the *ahsan* form, the husband is required to submit to the following conditions, viz. (1) he must pronounce the formula of divorce *once, in a single sentence*; (2) he must do so when the woman is in a state of purity (*tahr*), and there is no bar to connubial intercourse; and (3) he must abstain from the exercise of conjugal rights, after pronouncing the formula, for the space of three months. This latter clause is intended to demonstrate that the resolve, on the husband's part, to separate from the wife is not a passing whim, but is the result of a settled determination; on the lapse of the term of three months, or three *tahrs*, the separation takes effect as an irreversible divorce.

In the *hasan* form, the husband is required to pronounce the formula three times, in succession, at the interval of a month, during the *tahr* of the wife. When the last formula is pronounced the *talaq* or divorce becomes irreversible. These two forms alone, as stated before, are recognized by the Shiah.

In the *talaq-i-badat*, the husband may pronounce the three formulæ at one time whether the wife is in a state

of *tahr* or not. The separation then takes effect definitively after the woman has fulfilled her *iddat*.

Both schools allow recantation; that is, a husband who has suddenly and under inexplicable circumstances pronounced the formula against his wife, may recant any time before the term of three months has expired. When the power of recantation is lost, the separation or *talaq* becomes *bain*; whilst it continues, the *talaq* is simply *rajai* or reversible.

When a definitive and complete separation (*talaq-i-bain*) has taken place, the parties so separated cannot remarry without the formality of the woman marrying another man and being divorced from him.

Sautayra and Sédillot agree with the Muhammadan jurists in thinking that this rule was framed with the object of restraining the frequency of divorce in Arabia. Sédillot speaks of the condition as 'a very wise one,' as it rendered separation more rare, by imposing a check on its frequent practice among the Hebrews and the heathen Arabs of the Peninsula. Sautayra says that the check was intended to ~~control~~ a jealous, sensitive, but half-cultured race, by appealing to their sense of honour.

In England there have been many cases where a husband desired to put up even with a wife whom he found to be unfaithful to him. So in any extraordinary circumstances a Muslim marries his once divorced wife after she has been divorced by her second husband, it should not be considered very strange or low. However, the Prophet has most strongly rebuked and censured both *mohallil* and *mohallallah* (Mishkat).

As to the *talaq-i-bidat*, there is no doubt that no

Muslim worthy of his faith or with any honour would take recourse to it. Even among the Hanafi jurists there is a difference of views as to the validity of this form of divorce.

In *Muntaqi-ul-Elkhbar* a tradition from Muslim has been quoted to the effect that three immediate Talaqs are not valid, and if three immediate Talaqs are given they will be taken to be only one rajâe (reversible).

Nawab Siddique Hasan Khan, quoting the authority of *Eghasatual lehfun vo 'Eilunnul moquain*, says:—

Va qud ekhtalefu ahlul ilme fi irsalussutasi dafatan vahidatan hal taga'u salusun vo vahidatan fuqat fazahaba elall avali aljamhuru va zahaba ilussani man 'ulohum va hoval haqqo.

And there is a difference between the learned on this point whether the three Talaqs given immediately are to be taken as three or only one. The majority say that they should be taken as three, but the truth is with the minority (Hasanul usva, p. 16).

Ibn Abbas also supports the above view i.e. three immediate Talaqs should be taken as one reversible (Abu Daood).

The case of Ovamar, recorded in Bokhari, which was a case of extreme provocation, most reluctantly decided by the Prophet after the proceedings of La'an as a valid divorce, is cited as a precedent for the validity of the *Talaq-i-bidat*. Technically and juristically it is so, and in very extreme cases, as was the case of Ovamar, who caught his wife committing adultery, it should not be considered to be improper. In America the unwritten law allows murder in such cases. Divorce is surely bet-

ter than murder. However, no Muslim who has any respect for the Prophet will indulge in the Immediate Divorce when he knows how the Prophet disliked it and how it is against the spirit of Islam and the Qur-án. The Qur-án has repeatedly said not to exceed or disregard the limits laid down by it.

Dur-ul-Mukhtar, on the authority of *Nasai*, says that when the Prophet came to know that a certain person had given three Talaqs at one time, he stood up in anger and said ; *Aila'ab ba kitabullah izza rajalla wa ana baina azharkum*. "In my life the Book of the Holy and Mighty God (the Qur-án) is being treated so lightly." *Bokhari* accepts the tradition.

Ibn Omar also relates that the Prophet was asked, 'What if I give three Talaqs at one time?' The Prophet replied : "Thou wilt disobey God and thy wife will be separated from thee." Even *Talaq-i-bidat* is better than making adultery the condition precedent for a divorce and thus encouraging adultery. Shaikh Abdul Haq Mohaddis supports the view of Imam Abu Hanifa that the Immediate Divorce is *Kufr*.

The divorce can be given in writing or by word of mouth. In every case the wife divorced should be apprised of it.

The permission for *Khula* is deduced from ver 229 of chapter ii (Al-Nisa). There are precedents for it, one of which is as follows :—

The wife of Sabit, son of Qais, came to the Holy Prophet and said : "O Prophet of God, I do not find any fault in Sabit, son of Qais, in his manners or in his religion ; but I do not like to be faithless in my faith, that is,

I would not play the hypocrite." The Prophet said : " Wilt thou restore to Sabit the garden he gave thee ?" She said : " Yes." The Prophet of God then said to Sabit : " Take back the garden and divorce her at once " (Mishkat).

Certain other customs of the old Arab society as regards divorce, like *Zihar* and *Ila*, were rectified and reformed by the Qur-án with a view to bring the marriage relationship on a more serious and sacred basis.

For those people who have a deep religious spirit in them, the laws as laid down by the Qur-án and the precedents and traditions laid down by the Prophet are enough guarantee that the law of divorce will not be abused.

For those people who can only be controlled by a strict and rigorous secular law it will be well for Muslim women to see to the following points when entering into the marriage contract :—

1. A marriage deed should be drawn with the signatures of at least two male witnesses.

2. The pre-nuptial settlement (*mahr*) should be substantial, particularly that part of it which is payable on demand, so as to be a financial check on divorce.

3. Some condition to this effect be introduced into the contract—that there will be no divorce unless by mutual consent.

4. A polygamous marriage will not be permissible.

If the spirit of the Muslim marriage and divorce laws is fully respected, it can be safely asserted that there is no system in the world which can be more beneficial

to society and more contributory to individual happiness than those Muslim laws.

We have said before and repeat it that Muhammad stands in no need of apologies and that Islamic laws, as they really are, can never be surpassed by any other laws under any civilization. Generally the Muslim home and family life is much happier and more peaceful than Christian home-life. As compared to Muslim family-life, the European system of living is more crude and uncivilized.

