

FIQH
ISLAMIC JURISPRUDENCE

Nikaah
(Zawaaj)

Purpose

- ⊕ *An act of piety (religious equality)*
- ⊕ *Ebadah*
- ⊕ *Approach to inter-family alliance and group solidarity*
- ⊕ *Sexual and emotional gratification*
- ⊕ *Legitimate procreation -social necessity*

Purpose

- ⊕ Sound health-gratifying mind-excessive sexual deprivation produces personality maladjustments 4:1, 30:20
- ⊕ Tension reduction
- ⊕ Social placement

✦ O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed Allah is ever, over you, an Observer. (4:1)

يٰۤاَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا
وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۗ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ ۗ وَالْأَرْحَامَ إِنَّ
اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ۝١

✦ And of His signs is that He created you from dust; then, suddenly you were human beings dispersing [throughout the earth]. (30:20)

وَمِنْ ءَايَاتِهِ ۗ أَنْ خَلَقَكُمْ مِنْ تُرَابٍ ثُمَّ إِذَا أَنْتُمْ بَشَرٌ
تَنْتَشِرُونَ ۝٢٠

Purpose

- ⊕ Its not a secular contract or a religious sacrament- implies indissolubility of marital bond
- ⊕ Officiation by a priest
- ⊕ Benediction of the wedding ceremony
- ⊕ Removes the taboo of sexual intercourse
- ⊕ Imposing a lifelong taboo of either by the third party

Purpose

- ⊕ Bound together by a Supreme Being
- ⊕ Not Inescapable penalty
- ⊕ Not a necessary evil restricted to minimum
- ⊕ Not indissoluble and conditional polygyny
- ⊕ Secular and sacred not explicit in Islam

Purpose

- ✦ The Quran commands marriage to the spouseless and the pious even they maybe poor or slaves 24:32 .

وَأَنْكِحُوا الْأَيْمَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا
فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ ﴿٣٢﴾

“And marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and Knowing.”

⊕ On the other hand whatever dowry a man gives his prospective wife belongs to her exclusively and whatever she may have acquired before or after marriage is hers alone.

Purpose

- ⊕ The prophet is reported to have said that 'a woman is ordinarily sought as a wife for her wealth, for her beauty, for her nobility in her stock or for her religiosity but blessed and fortunate is he who chooses his mate on piety and integrity.'

Conditions

- ⊕ 1. Direct and unequivocal proposal
- ⊕ Follow by corresponding acceptance and must be explicit and oral if they are present. Otherwise written. Words must be derived from or intimately related to the root word 'marriage'

Conditions

- ⊕ 2. 2 competent witnesses to ensure right of progeny/legitimacy
- ⊕ 3. Dowry
- ⊕ 4. Publicise- feasts/songs
- ⊕ 5. Wali- legal representative

Temporary prohibition

- ⊕ Married Women free from all marital bonds
- ⊕ IDDAH-Pregnancy/Divorced
- ⊕ Two sisters together
- ⊕ The fifth-for men

Prohibited categories

⊕ Blood

⊕ Fosterage

⊕ Affinal relationship

Blood

- ⊕ Mother -grand mothers- fathers' and mothers'
- ⊕ Step-mother
- ⊕ Daughters
- ⊕ Sisters-consanguine/uterine
- ⊕ Father's sister-including grand
- ⊕ Mother's sister-including grand

Blood

- ⊕ Brother's daughters
- ⊕ Sister's daughters

Fosterage

- ⊕ Foster mother
- ⊕ Foster mother's sister
- ⊕ Foster sister
- ⊕ Her Daughter
- ⊕ Foster mother's husband's sisters
- ⊕ Foster sister's daughter
- ⊕ Foster brother's daughters

Affinal

- ⊕ Wife's mother
- ⊕ Step daughter-born of her and consummated marriage
- ⊕ Son's wife-not adopted sons
- ⊕ No two related females

NB

- ⊕ Believer or ahlul kitab
- ⊕ Free from adultery/fornication
- ⊕ If he is already married she must not be related to her (as in the forbidden category) Free woman of sound mind and age must consent

For men-perpetual impediment

- ⊕ Decent- blood
- ⊕ Relationship by marriage- affinal
- ⊕ Fosterage
- ⊕ Zina and lian

Temporary impediment

- ⊕ Of number
- ⊕ Of combination
- ⊕ Of bondage
- ⊕ Of disbelief
- ⊕ Of ihram
- ⊕ Of iddah (waiting period)

Temporary impediment

- ⊕ Of illness
- ⊕ Of existing marriage
- ⊕ Pronouncing the divorce thrice for the divorcing person

Hukm (Ruling)

Wajib - it is imperative on an individual who has got the means (ability) to marry, has sexual desire and fears that he would sin if he is not married. Abstinence may lead him astray. Protecting oneself and chastity from what is haram is wajib.

Mustahab - a pious person who has got the ability to marry but feels safe from committing sins (no monasticism in Islam). They anticipate no irresistible temptation. Tabattul is prohibited in Islam.

Haram - lack potency. Such condition would defeat the purpose and deprive female of moral protection and the fulfillment they merit. (disliked-one who has no strong desire for women. One who is involved in intense studies or the obedience of Allah).

Hukm (Ruling) cont.

Haram - one who does not have the ability to marry (sexual and spending) but feels the absence of it. He is unable to provide the wajibaat of marriage. In the like manner he should not deceive her by claiming false lineage, wealth or profession. The same is for women. Those with leprosy, sexual diseases or otherwise should make it known. It is the same principle in sales (faults would be make known). If he/she finds out after marriage he is entitled to get back his Mahr (bride-price). Malik says:

- a) if he enters her she is entitled to all,
- b) only half.

Mubah-Allowed - absence of the above reasons and prohibition.

Aqd zawaaj (contract)

Conditions for the validity of the Aqd:

Ijaab and Qabul (sighah)

- a) Specify the zawjaan (male and female)
- b) The combination/union of ijaab and qabul
- c) Qabul not contradicting ijaab except for what is better e.g. £200 instead of £100
- d) Hearing it from both parties
- e) Both parties must understand the basics
- f) Other than Arabic is acceptable
- g) Dumb person by signs
- h) Absent person by messenger and witness.

1. Shuhud (2 witnesses)
2. Mahr (dowry)
3. Wali (representative)

N.B. Maliki - 5 - wali, mahr, bridegroom, bride not in iddah or ihram and sighah.

Shafi - 5 - bridegroom, bride, wali, two witnesses and sighah.
Hanafi emphasised sighah must be in a gathering.

Khutbah is mustahab.

Du'a

Conditions of sighthah

1. Words of agreement (ijaab and qabul) must be in the past tense. Future tense not acceptable, like in a month's time
2. The Aqd must be materialised
3. The Aqd is dependent on the conditions stipulated
4. Marriage for a specified period is not acceptable

Dowry-marriage endowment

- ⊕ Ujuruhunn-farida 4:24 "Wed them by the permission of their folk and give unto them their portions in kindness"

❁ وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابَ اللَّهِ عَلَيْكُمْ وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسْفِحِينَ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِي مَا تَرَضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

- ⊕ Saduqatihinn. Nihlah 4:4 "and give unto the women (whom you marry) gift of their marriage portions"- indicates wajib

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي النِّسَاءِ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِثْلِي
وَتِلْكَ وَرَبْعٌ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَذْنَىٰ
أَلَّا تَعُولُوا ﴿٣﴾

- ⊕ Mahr not in the Quran but in the sunnah
- ⊕ Can be specified/ mahr musamma /unspecified - deferred/ muwajjal- prompt/muajjal-divided or wholesome

Significance of Mahr?

- ⊕ 1. Symbolic of the groom's cognizance of his economic responsibilities and readiness to discharge all such responsibilities
- ⊕ 2. Symbolic assurance that the bride's economic rights and security are maintained

Sadaq-Dowry -marriage gift

- ⊕ 3. Symbolic dissociation from any designs of economic exploitations
- ⊕ 4. Tangible symbol of love and seriousness (instinctive cultural need)
- ⊕ 5. Token that bride desires to enter into union (accessibility from both parties)

Not

- ⊕ Its not about being a gift
- ⊕ Paying a price
- ⊕ Definitive economic security-Abu Talha
`proposed to a woman- a man of your
stature is not to be rejected but you are a
non-believer and I am a muslim. It's
unlawful to marry you. If you embrace
islam, that will be my dowry and no more
will I ask of you.'
- ⊕ Not accessibility for men only

Not

- ⊕ Not an obstacle to dissolution for frivolous reasons
- ⊕ Not deterrent to polygyny
- ⊕ Not commercialization of marriage
- ⊕ Not contribution towards marriage expenses

Minimum and maximum

- ⊕ Freedom to a maid and marry her is dowry- "The prophet manumitted Safiyyah and deemed her emancipation to be her dowry"

Nominal as an Iron ring/pair of sandals- 4:20- a woman was married for a pair of sandals-Tirmizi- are you content? Yes

وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ
قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بِهْتَانًا وَإِثْمًا
مُبِينًا ٢٠

But if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin?

Maximum

- ⊕ "BY Sahl ibn Sa'd al- Sa'idi a woman came to the prophet..a man..got anything..garment..uncover..iron ring..memorize surah.."
- ⊕ Teaching some qur'anic verses- Bukhari vol.7

⊕ One Qintaar - hundredweight of
gold/silver- dalil it belongs to the bride -
4:20 qur'an

وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ
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مُبِينًا ٢٠

Minimum and maximum

- ⊕ Malik-1/4 dinar of gold/3 measured dirhams of silver or what is equivalent to 3 dirhams (measure only) maybe what is equal to them in gold/silver
- ⊕ Abu haneefa- 10 dirhams/5 dirhams/40 dirhams
- ⊕ Is it compensation or an act of worship? Hadith. Bukhari pg 22 bidaya

Entitlement

- ⊕ 4:20 ` And if you wish to exchange one wife for another and you have given unto one of them a sum of money (however great) take nothing from it.' WAJIB on consummation or death
- ⊕ Consummation means copulation or seclusion?

Drawing of curtains

- ✦ 2:237 `If you have divorced them before you have touched them and you have appointed unto them a portion, then pay half of what you have appointed.'

وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً
فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوا الَّذِي بِيَدِهِ عُقْدَةٌ
النِّكَاحِ وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَىٰ وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ
اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

- ✦ Malik, shafi and dawud said that only

Seclusion?

- ⊕ Abu haneefa full mahr is due if there is seclusion unless he is in a state of ihram/ill or fasting or she is menstruating
- ⊕ Ibn abi Layla- full dowry
- ⊕ If she says its intercourse in his residence it is unless being a visitor

Seclusion?

- ⊕ If she was a virgin she may be examined.
- ⊕ Issue of oath-plaitiff and accept statement of defendandant -shafi
- ⊕ Malik to the plaitiff

Forgo

- ⊕ "Unless they (women) agree to forgo (gift) it or he agrees to forgo it in whose hand is the marriage tie"
- ⊕ Guardian its forgo
- ⊕ Bridegroom its gift

Tafwid

- ⊕ "it is no sin on you if you divorce women while you have not touch them nor appointed for them a portion."
- ⊕ Differs on
 - ⊕ When the woman demands fixation of dower
 - ⊕ When the husband dies before fixing sadaq and prior to consummation

Sadaq mithal

- ⊕ Abu haneefa said she is not entitled to anything
- ⊕ Malik said she got 3 options
- ⊕ Divorce without fixation
- ⊕ Fix the amount demanded by the woman
- ⊕ Fix sadaq mithal

Provision

⊕ "provide for them, the rich according to his means and the straitened according to his means, a fair provision" no liability for him

If husband dies

- ⊕ Malik and Awza'I - she is not entitled to sadaq
- ⊕ Abu hanefa said sadaq mithal she is entitled to and to inheritance
- ⊕ Same for Ahmad and Dawud
- ⊕ Both opinions from Shafi

Fasid dowers

- ⊕ khamr/khinzir/unripe fruit/stray camel
- ⊕ She must have mahr al-mithl-pg 32

Wali -wilayatul nikaah

⊕ Definition

- ⊕ The legal authority invested in a person who is fully qualified and competent to safeguard the interests and rights of another who is incapable of doing so independently.
- ⊕ It's the father/nearest male relative over minors/insane/inexperienced who needs protection/guardianship

Types

- ⊕ Guardianship for marriage
- ⊕ Guardianship of property
- ⊕ Guardianship of person-
orphans/insane/ minors

Qualities

- ⊕ Stipulated by law
- ⊕ Free
- ⊕ Muslim
- ⊕ Sound mind
- ⊕ Full age
- ⊕ Good character-piety

What may contribute?

- ⊕ Womanhood as such
- ⊕ Women authorised
- ⊕ Immaturity and minority
- ⊕ Approved state of mind
- ⊕ Maidenness
- ⊕ Nobility

Guardianship is a duty (advisory) not a right (coercive) of the wali

- ⊕ Protection of moral and material interest of the woman-mesalliance
- ⊕ Act independently but with careful guidance from her guardian
- ⊕ Act freely without supervision
- ⊕ Deliberate negligence/abuse is haram
- ⊕ If he acts against her interest/wishes she can annul the contract if not to her expectation via the legal authority.

Minors /child marriage

- ⊕ Means betrothal/ formal agreement and deferring the consummation
- ⊕ Reasons: a desire to draw families together and facilitate social integration
- ⊕ Low sex ratio
- ⊕ Racial plurality of Islamic society
- ⊕ Sexual purity and virginity

Ancient law

- ⊕ Abyssinia -in the 6th century prescribed forcible intermarriage between Christians and baptized Jews
- ⊕ No boy/girl to remain married after 13
- ⊕ Speedy amalgamation of communities

Ancient law

- ⊕ Second half of 17 century
- ⊕ The bridegroom was frequently not more than 10 years old and the bride was younger still.
- ⊕ Roman law stipulated a man can marry at the age of 14 and a woman at the age of 12
- ⊕ Adopted by the church/parts of USA

Minors

- ⊕ Marriage at these respective ages
`were valid without consent of the
parents until 1753...`
- ⊕ Invalid without the consent of
guardian
- ⊕ Wali have qualifying characteristics
- ⊕ Option at maturity/can revoke it

Freedom vs compulsion

- ⊕ Arranged marriage does not ignore the wishes and consent of the principal parties. Nor does it exclude the parents.
- ⊕ Influence of parental authority is always there -big or small

Right or duty?

- ⊕ All schools of law agree that if a girl is inclined to sexual misbehaviour the wali can force her into marriage
- ⊕ Underage/maiden/social status-Some say its invalid if its not in her interest
- ⊕ Minors are permitted but when they become mature they decide- consummation does not occur

Ijbar

- ⊕ Maliki mazhab permits ijbar to protect the girl from marrying someone who is not suitable
- ⊕ All in her best interest

Consent

- ⊕ Some scholars say consent is commendable
- ⊕ But the majority of companions say consent is necessary for the validity
- ⊕ Some say its invalid if the father knew before its not to the status she can revoke it

Consent

- ⊕ The prophet asked his daughters to consent
- ⊕ Widow and divorcee have their own choice
- ⊕ No coercive authority in Islam
- ⊕ Based on religious equality- maybe hypogamy but not hypergamy for females

Consent

- ⊕ "Are you happy with yourself with a pair of shoes?" She said 'yes' the prophet then permitted her to marry.
- ⊕ Both parties must give free consent
- ⊕ "The widow and the divorced woman should not be married until an order is ordained and the virgin shall not be married until her consent is obtained"

Consent

- ⊕ "A man gives his daughter in marriage and she dislikes it, the marriage shall be repudiated." Bukhari
- ⊕ A maiden girl came to the prophet and said that her father married her against her wishes so the prophet gave her the right to repudiate the marriage.

Consent

- ⊕ "The orphan should be asked herself"
- ⊕ "Do not marry the orphan except with her permission"
- ⊕ "The father seeks the permission of the virgin girl"
- ⊕ The widow

✦ Quran 2:232

وَإِذَا طَلَقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ
أَزْوَاجَهُنَّ إِذَا تَرَاضُوا بَيْنَهُم بِالْمَعْرُوفِ ۗ ذَٰلِكَ يُوعَظُ بِهِ مَنْ كَانَ مِنْكُمْ
يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۗ ذَٰلِكُمْ أَزْكَى لَكُمْ وَأَطْهَرُ ۗ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ
لَا تَعْلَمُونَ

And when you divorce women and they have fulfilled their term, do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis. That is instructed to whoever of you believes in Allah and the Last Day. That is better for you and purer, and Allah knows and you know not.

Consent

- ⊕ Khansan bint khidaam' her father married her while she was a widow and she disliked it so she went to the prophet who repudiated the marriage'
- Bukhari

Religious equality-not Hypogamy

- ⊕ Contributing factors could be
- ⊕ Not patrilineal/patriarchal
- ⊕ Fornication/adultery
- ⊕ That's why women are not allowed to marry the non-muslims

Terms to understand

⊕ Polygamy

⊕ Polyandry

⊕ Polygyny

⊕ Hypergamy

⊕ Hypogamy

⊕ Endogamy

⊕ Exogamy -homogamy-heterogamy

MARRIAGE

1. Mut'ah - was allowed in the early phase (jahilyyah transition) of Islam - in battles and journeys
2. Intention to divorce
3. Tahlil - marrying someone as an excuse to get back to one's original spouse (2:200) - And when you have completed your rites, remember Allah like your [previous] remembrance of your fathers or with [much] greater remembrance. And among the people is he who says, "Our Lord, give us in this world," and he will have in the Hereafter no share.

فَإِذَا قَضَيْتُمْ مَنَاسِكَكُمْ فَاذْكُرُوا اللَّهَ كَذِكْرِكُمْ
ءَابَاءَكُمْ أَوْ أَشَدَّ ذِكْرًا فَمِنَ النَّاسِ مَن يَقُولُ
رَبَّنَا آتِنَا فِي الدُّنْيَا وَمَا لَهُ فِي الْآخِرَةِ مِن خَلْقٍ ﴿٢٠٠﴾

4. Sighar- 'lifting of a dog while it's passing excreater' -picking up a woman without paying dowry. Symbolic Economic security for the bride. Not as an advantage for the wali or others.



Conditions (shurut) for the validity of the marriage

These are the conditions if fulfilled the marriage contract exists legally:

1. Lawful category to marry (permanent haram and temporary)- blood relations, marriage relations and foster relations.
2. Witnesses
3. Wali - there is no nikaah without a wali and two witnesses.

Witnesses

Hukm of witness

The jumhur is that no marriage exists without proofs (witness). Prostitutes are those that marry themselves without witnesses. Witnesses must be part of a marriage and is allowed to be in different forms. If witnesses are asked to keep it quiet it's still valid. It's important to maintain the nasab. Some scholars say that it's valid without witnesses. Maliki says eylaan is sufficient, if not its invalid. Hanafi and Shafi disliked if its not publicised. (eylaan), There is no clear evidence to say one must have witnesses (Quran).

Witnesses cont.

Conditions of witness

- The witness must be sane, mature, and hearing the words of the two parties with the intention of marriage. Just - according to the Shafi. Not according to the Hanafi.

Women witness

- According to the Shafi and Hanbali there must be two male witnesses. 1 male and 2 females are not acceptable
- Free
- Muslim

Conditions at the point of Aqd

1. a) adult

b) free

c) sane

d) mature (age as customary)

2. Has freedom to exercise right. If one party has the right to nullify the bit its not necessary

Choosing a wife

- ⊕ The prophet is reported to have said that 'a woman is ordinarily sought as a wife for her wealth, for her beauty, for her nobility in her stock or for her religiosity but blessed and fortunate is he who chooses his mate on piety and integrity.'

Choosing a husband

The wali should take care in choosing a husband for his wutawalliyah. He must consider his religion, character, nobility and his ability to live in goodness. He may interject and refuse if the suitor is of bad character. Shafi and Maliki say it is essential.

Proposal to women

1. Proposal is not allowed to those women in the prohibited category (permanent/temporary).
2. Not on someone else's khitbah.
3. In the state of iddah
 - a) Talaq rajee and talaq ba'in- its haram to allow clear expression of proposal because it becomes an obstacle to the process of reconciliation. For ba'tin it is an obstacle to a new aqd. It is a transgression for a third person to intervene during reconciliation. According to some ulamaa it is permissible.
 - b) Death of the husband-ta'reed is permissible not tasreeh.

Permissibility to look at a proposal (quote text.pg 24)

The majority of the scholars say that the face and the hand (kaff) are only permissible. Dawood says the whole body. Awzaee says mawaadiullahm. Hadith of Umar.

When a suiter does not appreciate what he sees he should keep quiet. Umar encourages not to marry your daughters to ugly men. Pg.25

Pg 126 2 suiters hadith

Changing one's mind

Changing one's mind does not incur any recrimination because the contract is not yet established but it could be a hypocritical trait. Hadith. Pg.27

The wahib should not ask for what he has given unconditionally. Unless he has given the hibah to be compensated. If not, the mawhub becomes the owner and is entitled to use. If it's the mahr he can take it back. Hadith pg 27.

Categories of women haram for marriage

Blood relation (Permanent) - mother, stepmother, grandmother, daughters (however low), sister (full/consanguine/uterine), father's sisters, mother's sisters, brother's daughters, sister's daughters.

Foster relation (pg 157) shariah hadith foster mother, foster mother's sisters, foster sister, wife's mother, step mother, son's wife. Curse of milk bank.

Temporary - 2 sisters, married woman, not in iddah, fifth, may imply proposal (pg 126)

Marriage of a woman with a man who marries her maternal/paternal aunt (pg 157)

Divorce in bible

- ⊕ 'Whatsoever God has put together, let no man put asunder' Mathew 19:6 Mark 10:9
- ⊕ It has been said' whosoever shall put away his wife, let him give her a writing of divorcement; but I say unto you. That whosoever shall put away his wife saving for the cause of fornication

Divorce in bible

⊕ 'Caused her to commit adultery against herself. And whosoever shall marry her that is divorced committeth adultery.' Matthew 5:31-32

⊕ 'And he saith unto them whosoever shall put away his wife and marry another committeth adultery against her.'

Divorce

⊕ And if a woman shall put away her husband and be married to another, she committeth adultery.' Mark 10;11-12

Divorce

- ⊕ "The most detestable of all lawful things is divorce"
- ⊕ Any woman that asks divorce of her husband without a valid reason the smell of Jannah would be haram for her.
- ⊕ 'Marry and do not divorce; the throne of the beneficent Lord shakes due to divorce'

Last resort

- ✦ When it becomes humanly impossible to continue is to separate amicably rather to drag on indefinitely
- ✦ Arbitrator from each side. 4;35 - And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ، وَحَكَمًا

مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقُ اللَّهُ بَيْنَهُمَا إِنْ اللَّهُ كَانَ عَلِيمًا

- ⊕ Allah provides. 4:130 - But if they separate [by divorce], Allah will enrich each [of them] from His abundance. And ever is Allah Encompassing and Wise.

وَإِنْ يَنْفَرَا يَغْنِ اللَّهُ كُلًّا مِنْ سَعَتِهِ ۗ وَكَانَ اللَّهُ وَاسِعًا

حَكِيمًا ١٣٠

- ⊕ 4:129 - And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging. And if you amend [your affairs] and fear Allah - then indeed, Allah is ever Forgiving and Merciful.

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا

تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ ۗ وَإِنْ تُصْلِحُوا

وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا ١٢٩

Shiqaq

- ⊕ Emanates from one's misconduct
- ⊕ Consistently cruelty
- ⊕ If he is long absent-unable to provide and wife wants divorce
- ⊕ Either is apostalized
- ⊕ Unless husband accepts during iddah

To be Valid

- ⊕ Sane/aaqil
- ⊕ Not minor/baligh
- ⊕ Own discretion/mukhtar

Valid

- ⊕ Divorce can be given orally /writing
- ⊕ In the presence of 2 witnesses/just
- ⊕ Must convey intention
- ⊕ Hanafi school-its valid even if its in sport/jest/drunkeness/willingly/compulsion
- ⊕ Imam shafi its not effective

Kullu talaq jaiz illa talaq maglob ala aqlihi

- ⊕ Without intention or choice- duress
- ⊕ Not valid-
malik/shafi/hambal/abdulaah ibn
abbas but valid according to abu
haneefa
- ⊕ Not if intoxicated
- ⊕ In anger
- ⊕ mistake

Not valid

- ⊕ No divorce before marriage
- ⊕ Triple divorce at the same time
- ⊕ Or during haid
- ⊕ Of nifaas
- ⊕ During Pregnancy is binding except hanafi

Ahsan talaq

- ⊕ Pronounce once
- ⊕ Period of purity
- ⊕ Abstain from intercourse for 3 months/iddah- abdullah ibn umar divorced his wife during her menses
- ⊕ 'let he take her back and retain her until she becomes pure again have her courses and then becomes pure.

Talaq bid ah

- ⊕ Triple divorce at once is talaq bid ah
- ⊕ Umar used to whip the husband who pronounced divorce thrice at one and the same time.
- ⊕ 'I divorce you'
- ⊕ 'I divorce you'
- ⊕ 'I divorce you'

Ahsan talaq

- ⊕ Then if he thinks its prudent then he can divocre her when she is clean and not to approach. This is the period iddah Allah has ordained.'
- ⊕ During this period he retains marital rights/talaq rajah
- ⊕ He must provide lodging separately and maintain her

Quran 65:1

- ✦ 'Oh prophet when you divorce women, divorce them at their appointed time and compute the term exactly and fear Allah, your Lord. Oblige them not to go out of their apartment nor allow them to

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ

وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا

يُخْرِجَنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبِينَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ

يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ

ذَلِكَ أَمْرًا ۝

Quran 65:6/2:232

⊕ House the divorced as you house yourselves, according to your means and distress them not be reducing them to straits. And if they are pregnant then bear charges for them till they are delivered. And they suckle your children then pay them the remuneration, consult among yourselves and act generously.'

65: 6 - Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth. And if they breastfeed for you, then give them their payment and confer among yourselves in the acceptable way; but if you are in discord, then there may breastfeed for the father another woman.

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْدِكُمْ وَلَا تُضَارِرُوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ

وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ

لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمِرُوا بِهِنَّ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمْ فَاسْتَزِضِعْ

لَهُنَّ أُخْرَى ٦

2:232 - And when you divorce women and they have fulfilled their term, do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis. That is instructed to whoever of you believes in Allah and the Last Day. That is better for you and purer, and Allah knows and you know not.

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ
أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ۚ ذَٰلِكَ يُوعَظُ بِهِ مَن كَانَ مِنْكُمْ
يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ ذَٰلِكُمْ أَزْكَ لَكُمْ وَأَطْهَرُ ۗ وَاللَّهُ يَعْلَمُ وَأَنتُمْ
لَا تَعْلَمُونَ



Right to return

- ⊕.' He losses right of recantation at expiry term. Nikah to re-unite
- ⊕ Permissible upto the time of completing her bath-hanafi/ali/abu bakr/ibn abbas/abu moosa alash ari/abdullah ibn masood
- ⊕ Completion of discharge-Of the maliki and shafi/aisha/abdullah ibn umar/zaid ibn thabit

Reconciliate

- ⊕ 'I take you back'
- ⊕ Resume sexual relationship
- ⊕ Kissing
- ⊕ Malik you must get her permission for
SI

Triple divorce

- ⊕ If triple divorce occurred
- ⊕ Not lawful again for him
- ⊕ She must remarry
- ⊕ Consummate the marriage
- ⊕ If divorced can remarry after iddah is completed
- ⊕ A divorce is only permissible twice..2;226-230

2:226

For those who swear not to have sexual relations with their wives is a waiting time of four months, but if they return [to normal relations] - then indeed, Allah is Forgiving and Merciful.

لِّلَّذِينَ يُؤَلُّونَ مِن نِّسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِن فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ

رَحِيمٌ
٢٢٦

2:227 - And if they decide on divorce - then indeed, Allah is Hearing and Knowing.

وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ ﴿٢٢٧﴾

2:228 - Divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this [period] if they want reconciliation. And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise.

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ
يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنَنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ
وَبِعَوْلِهِنَّ أَحَقُّ بِرَبِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ
بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ ﴿٢٢٨﴾

2:229 - Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah . But if you fear that they will not keep [within] the limits of Allah , then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah , so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers.

الطَّلُقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَحِلُّ
لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا
حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ
بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ

2:230 - And if he has divorced her [for the third time], then she is not lawful to him afterward until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah . These are the limits of Allah , which He makes clear to a people who know.

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ، فَإِنْ طَلَّقَهَا فَلَا
جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ، وَتِلْكَ حُدُودُ اللَّهِ
يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ ﴿٢٣٠﴾

Talaq ba in

- ⊕ Three pronouncement of divorce before consummation. No possible return
- ⊕ Baynunah sughrah-decreases conjugal rights- in case of death no inheritance
- ⊕ Baynunah kubra- cannot remarry unless she marries some else-bona fide consummation and divorce-no tahlil

Types of divorce

⊕ Khul

⊕ Zihar

⊕ Lia3n

⊕ Ilaa

⊕ Halalah

Zihar

- ⊕ Khaulah bint tha labah wife of aus, son of samit
- ⊕ She loved him
- ⊕ Had little children
- ⊕ No financial support
- ⊕ Plea to prophet/disappointed/ and prayer to Allah

Quran 58:1-4

- ✦ Kaffarah
- ✦ Free a slave
- ✦ Fast 2 consecutive months
- ✦ Feed 60 poor people

58:1 - Certainly has Allah heard the speech of the one who argues with you, [O Muhammad], concerning her husband and directs her complaint to Allah . And Allah hears your dialogue; indeed, Allah is Hearing and Seeing.

قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَى اللَّهِ وَاللَّهُ

يَسْمَعُ تَحَاوُرَكُمَا إِنَّ اللَّهَ سَمِيعٌ بَصِيرٌ ﴿١﴾

58:2 - Those who pronounce thihar among you [to separate] from their wives - they are not [consequently] their mothers. Their mothers are none but those who gave birth to them. And indeed, they are saying an objectionable statement and a falsehood. But indeed, Allah is Pardoning and Forgiving.

الَّذِينَ يُظَاهِرُونَ مِنْكُم مِّن نِّسَائِهِمْ مَّا هُنَّ أُمَّهَاتُهُمْ إِنِ أُمَّهَاتُهُمْ
إِلَّا اللَّاتِي وَلَدْنَهُمْ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا مِّنَ الْقَوْلِ وَزُورًا وَإِنَّ
اللَّهَ لَعَفُوفٌ غَفُورٌ ﴿٢﴾

58:3 - And those who pronounce thihar from their wives and then [wish to] go back on what they said - then [there must be] the freeing of a slave before they touch one another. That is what you are admonished thereby; and Allah is Acquainted with what you do.

وَالَّذِينَ يُظَاهِرُونَ مِنْ نِّسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِّن قَبْلِ
أَنْ يَتَمَاسَا ذَٰلِكُمْ تُوَعُّظُونَ بِهِ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ ﴿٣﴾

58:4 - And he who does not find [a slave] - then a fast for two months consecutively before they touch one another; and he who is unable - then the feeding of sixty poor persons. That is for you to believe [completely] in Allah and His Messenger; and those are the limits [set by] Allah . And for the disbelievers is a painful punishment.

فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَاسَّ فَمَنْ لَمْ
يَسْتَطِعْ فَإِطْعَامُ سِتِّينَ مِسْكِينًا ذَلِكَ لِتُؤْمِنُوا بِاللَّهِ وَرَسُولِهِ
وَتِلْكَ حُدُودُ اللَّهِ وَلِلْكَافِرِينَ عَذَابٌ أَلِيمٌ ﴿٤﴾

ilaa

- ⊕ State of suspense
- ⊕ By taking an oath that one will not have sexual relationship with his wife
- ⊕ Whole life in bondage
- ⊕ Not the status of a wife
- ⊕ Nor free to re-marry

Quran 2:226-227

- ⊕ If not resume conjugal rights he must divorce her - 4 months

2:226 - For those who swear not to have sexual relations with
للَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ
رَحِيمٌ giving

2:227 - وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ
And if you decide to divorce, then indeed, Allah is
Hearing and Knowing.

Quran 24:6-9

⊕ Li an-mutual impercation

24:6

And those who accuse their wives [of adultery] and have no witnesses except themselves - then the witness of one of them

فَإِنْ لَمْ يَكُنْ لَهُمَا شَاهِدَانِ فَتَلَا بِاللَّهِ يَمِينًا ۚ وَإِنْ كَانَ لَمَنِ يَسْتَدِينُ يُعْطِيهِ مِنْهُ حَتَّىٰ يَسْتَدِينُ ۚ وَإِنْ كَانَ لَمَنِ يَسْتَدِينُ يُعْطِيهِ مِنْهُ حَتَّىٰ يَسْتَدِينُ ۚ وَإِنْ كَانَ لَمَنِ يَسْتَدِينُ يُعْطِيهِ مِنْهُ حَتَّىٰ يَسْتَدِينُ ۚ *indeed, he*
وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ فَشَهَدَةُ أَحَدِهِمْ أَرْبَعٌ

شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ﴿٦﴾

24:7 - And the fifth [oath will be] that the curse of Allah be upon him if he should be among the liars.

وَالْخَمْسَةَ أَنْ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ ﴿٧﴾

24:8 - But it will prevent punishment from her if she gives four testimonies [swearing] by Allah that indeed, he is of the liars.

وَيَدْرُؤُا عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ وَلِمِنَ الْكَاذِبِينَ ﴿٨﴾

24:9 - And the fifth [oath will be] that the wrath of Allah be upon her if he was of the truthful.

وَالْخَمْسَةَ أَنْ غَضِبَ اللَّهُ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ ﴿٩﴾

lian

- ⊕ Al waladu lilfiraash - 'The child belongs to one whose bed it is born'
- ⊕ Qadhf- accusing of adultery- 4 witnesses
- ⊕ Lian- husband accusing that he has seen the act

lian

- ⊕ Swear by Allah 4 times that pregnancy was not from him and invoking the curse of Allah-la' nah on himself
- ⊕ If she confessed hadd is given for zina if the husband hesitated qadhf punishment is given
- ⊕ Refused to imprison until he takes oath- abu hanafi

lian

- ⊕ Or wife confesses or husband withdraws accusation
- ⊕ Malik, shafi and hanbali stipulates hadd if he refused to take oath-80 lashes
- ⊕ If she refused hadd punishment
- ⊕ Abu haneefa says detain her until she takes oath

lian

- ⊕ Husband has 2 alternatives
- ⊕ Withdraw or proceed
- ⊕ If both do lian no divorce is to be pronounced- malik and hanbal
- ⊕ Abu haneefa says pronounce
- ⊕ Shafi says completes by the husband
- ⊕ Irreversible except abu haneefa-*lied-hadd-remarry*

Khull

- ✦ 2:229 - Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah . But if you fear that

الطَّلُقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَحِلُّ
لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا
حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ
بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ

- ⊕ Releasing or removing the dress from their body
- ⊕ Maliki-attalaq bil iwad- 'a divorce by giving something in return'
- ⊕ Hanafi-end of the marital relationship with consent uttering the word khul or similar

- ⊕ Shafi'i- it something given return seeking separation pronouncing the word khul
- ⊕ It can be achieved by mutual agreement, qadi, payment by the wife that does not exceed the mahr
- ⊕ She may return the whole mahr

Khul

- ⊕ Or agreement
- ⊕ Or arrangement- for nursing babies/suckling/keeping the child
- ⊕ If its true the qadi dissovle the marriage-tafriq

If cruelty she can go to the qadi 4:128

وَإِنْ أَمْرًا خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا
أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ
وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ

خَيْرًا ١٢٨

Cruelty

- ⊕ Thabit bn qais
- ⊕ Habitual ill-treatment of the wife
- ⊕ Non-fulfillment of the terms of the marriage contract
- ⊕ Insanity
- ⊕ Incurable incompetency
- ⊕ Quitting the conjugal domicile

Cruelty

- ⊕ Without making provision for the wife
- ⊕ Any other similar causes which in the opinion of the qadi justifies a divorce
- ⊕ Muba ra'ah-khul before consummation- malik
- ⊕ Sulh-part payment
- ⊕ Fidyah-over payment

Iddah -waiting period

- ⊕ Period of waiting from re-marriage
- ⊕ Three months-menstrual cycle
- ⊕ Suspension of conjugal relationship
- ⊕ Rethink/reconsider
- ⊕ Reconcile
- ⊕ pregnancy

Iddah -waiting period

- ⊕ Women who menstruate-three cycles
- ⊕ Women who passed the age of menstruation- three lunar months
- ⊕ Pregnant women- until delivery
- ⊕ Women whose husband dies-4 months+10 days
- ⊕ No iddah if marriage not consummated

Types

- ⊕ Pregnant until delivery-subay'ah daughter of al Harith who gave birth after few days of her husband death.. 'you are lawful for marriage and you may get married'
- ⊕ Ibn abbas she must fulfill two duties

Purpose

- ⊕ Temporary separation
- ⊕ Suspension of conjugal relationship
- ⊕ Ascertain pregnancy
- ⊕ No confusion on paternity

Qur'an 2:228

- ✦ Divorced women shall wait for three for three monthly periods. Nor is it lawful for them to hide what is in their

وَالْمُطَلَّقاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ
يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنَنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ
وَيَعُولُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ
بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ

65:4

- ✦ "Such of your women that have passed the age of monthly courses, for them the prescribed period, if you have doubts is three months, for those who have no courses(it's the same). For those who carry life(in heir wombs) their period is until delivery and for those who fear Allah, He will make their path easy."

وَالَّتِي يَلْسَنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ أَرَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ
أَشْهُرٍ وَالَّتِي لَمْ يَحِضْ وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ
وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا ۚ

33:49

✦ "Oh you who believe when you marry believing women and then divorce them before you have touched them, no period of iddah have you to

يَأْتِيهَا الَّذِينَ ءَامَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ

أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَتَّعُوهُنَّ

وَسَرَّحُوهُنَّ سَرَاحًا جَمِيلًا ﴿٤٩﴾

Conduct in iddah

- ⊕ Hanafi-not lawful for her to go out in the day or night(talaq rajah) not in ba'in. But widow can except must sleep at home. RATIONALE-maintenance
- ⊕ Hanbali- she can go out-jabir, his aunt divorced 3 times and she went out to cut fruits of date-palm

Hadith

- ⊕ 'Ukhruji fakhuzi nakhlaki la allaki an tu saddiqi minhu aw taf ali khairan'
- ⊕ Not permitted to remarry during this time
- ⊕ Not wear ornaments, coloured, showy dress, make-up
- ⊕ Abu Hanafi-entitled to maintenance and lodging-talaq rajah

Different opinions

- ⊕ In which case she needs to be in matrimonial home
- ⊕ Malik, and shafi-lodging only unless she is pregnant in which case, maintenance as well
- ⊕ Hanbal-neither maintenance nor lodging

65:1

- ⊕ Rights of maintenance "O Prophet, when you do divorce women, divorce them at their prescribed periods, and count accurately their prescribed periods: and fear Allah your Lord: and turn them not out of their house, nor shall they

يَأْتِيهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ

وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا

يُخْرِجَنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ

يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهُ يَحْدِثُ بَعْدَ

ذَلِكَ أَمْرًا



- ⊕ ^{65:2} Lewdness. Those are the limits set by Allah." Thus when they fulfill their term appointed' iddah' either take them back on equitable terms or part with them on equitable terms; and take for witnesses two persons among you, endowed with justice, and establish the evidence as before Allah.- She lives in matrimonial house

فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ
وَأَشْهِدُوا ذَوَىٰ عَدْلٍ مِّنكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَٰلِكُمْ
يُوعِظُ بِهِ مَن كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَن يَتَّقِ اللَّهَ يَجْعَلْ
لَهُ مَخْرَجًا ۚ

2:234

- ✦ If any of you die and live widows behind, they shall wait concerning themselves four months and ten days: when they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner. And God is well acquainted with what you do”.

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ
أَشْهُرٍ وَعَشْرًا فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِي مَا فَعَلْنَ فِي
أَنْفُسِهِنَّ بِالْمَعْرُوفِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ



2:235

✦ " There is no blame on you if you make an offer of betrothal or hold in your hearts. God knows that you cherish them in

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ

فِي أَنْفُسِكُمْ عِلْمَ اللَّهِ أَنْكُمْ سَتَذَكَّرُونَ هُنَّ وَلَكِنْ لَا تُؤَاغِدُوهُنَّ

that

سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا وَلَا تَعْرِمُوا عُقْدَةَ النِّكَاحِ

حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ، وَأَعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ

فَأَحْذَرُوهُ وَأَعْلَمُوا أَنَّ اللَّهَ غَفُورٌ حَلِيمٌ



- ⊕ God knoweth what is in your hearts and take heed of him and know that God is oft-forgiving most. Forbearing"
- ⊕ Widow -umar,uthman, abdullah ibn umar and 4 imams- stay in husband house
- ⊕ Aisha, ibn abbas, ali others- wherever she likes

Khitbah during iddah

- ⊕ Definite contract of remarriage is haram during iddah and widow
- ⊕ To avoid impinging her judgement
- ⊕ Offer that open for future consideration, maybe of her interest is permissible

Weaning (rada)

- ⊕ To safeguard the interest of the child
- ⊕ The responsibility of both parents if they are together
- ⊕ If divorced make reasonable and equitable arrangement
- ⊕ 2 years
- ⊕ Wet-nurse

Weaning

- ⊕ 2 years/wet-nurse/artificial feeding
- ⊕ The mothers shall give suckle to their off-spring for two whole years if the fathers desire to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden greater than it can bear. No mother shall be...

...treated unfairly on account of her child nor father on account of his child. An heir shall be chargeable in the same way. If they both decide on weaning by mutual consent and after due consultation there is no blame on them. If you decide on a foster mother for your off-spring

Weaning

- ✦ There is no blame on you provided you pay (the mother) what you offered on equitable terms. But fear Allah and know that Allah sees well what you do'
- ✦ The period maybe extended on special circumstances' the carrying of (the child) to his weaning is a period of thirty months'46:15 - And We have enjoined upon man, to his parents, good treatment. His mother carried him with hardship and gave birth to him with hardship, and his aestation and weaning [period] is thirty months. [He grows] [the age of] forty ye teful for Your favor my parents and to work d make righteous f to You, and indeed, I ar

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ إِحْسَانًا حَمَلَتْهُ أُمُّهُ كُرْهًا وَوَضَعَتْهُ كُرْهًا
وَحَمَلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا حَتَّىٰ إِذَا بَلَغَ أَشُدَّهُ وَبَلَغَ أَرْبَعِينَ سَنَةً
قَالَ رَبِّ أَوْزِعْنِي أَنْ أَشْكُرَ نِعْمَتَكَ الَّتِي أَنْعَمْتَ عَلَيَّ وَعَلَىٰ وَالِدَيَّ
وَأَنْ أَعْمَلَ صَالِحًا تَرْضَاهُ وَأَصْلِحْ لِي فِي ذُرِّيَّتِي إِنِّي تُبِّتُ إِلَيْكَ
وَأَيُّ مِنَ الْمُسْلِمِينَ

Weaning

- ⊕ 1. Period of suckling is 2 years
- ⊕ 2. Financial responsibility is the father. Food and clothing for both wife and child.
- ⊕ 3. It should be done by mutual agreement by the father and mother
- ⊕ If he dies the heirs take responsibility

Weaning

- ❖ 6. If mother cannot give suckle a foster mother can mutually agree but she receives maintenance.
- ❖ 7. Every muslim must know that Allah sees them.
- ❖ 31:14 - And We have enjoined upon man [care] for his parents. His mother carried him, [increasing her] in weakness upon weakness, and his weaning is in two years. Be grateful to Me and to your parents: to Me is the [final] destination.

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ حَمَلَتْهُ أُمُّهُ وَهْنًا عَلَى وَهْنٍ وَفِصَالُهُ



فِي عَامَيْنِ أَنْ اشْكُرْ لِي وَلِوَالِدَيْكَ إِلَى الْمَصِيرِ

Nafaqah

- ⊕ Fathers- daughters until they are married and sons until the age of puberty
- ⊕ Every muslim maintain his parents/grandparents/maternal/paternal if can afford it
- ⊕ Even poor relatives

Hanafi school

- ⊕ Every one in the prohibited categories is entitled to maintenance if he is a child or poor/blind/female even adult.

No entitled

- ⊕ 1. if she packs and moves out without permission and religious reason
- ⊕ 2. travelled without permission
- ⊕ 3. puts on ihram for hajj without permission
- ⊕ 4. refused conjugal relationship
- ⊕ 5. imprison after committing a crime

Not entitled

- ⊕ 6. if he dies and she is a widow.
Inheritance supercedes
- ⊕ Maliki and shafi say if the husband fail to provide for 2 years the wife is entitled to dissolution
- ⊕ Hanafi school said its not enough grounds for divorce

Work

- ⊕ If income is low both may work
- ⊕ 1. He has the right to object to her job if it expose her to harm, seduction, humiliation
- ⊕ 2. Has right to terminate when deems necessary
- ⊕ 3. She has right to discontinue when she pleases

Work

- ⊕ 4. any gain from work realised by the wife is for the family and not her personal property.
- ⊕ 5. when she is not employed her foremost duty is the home-bringing up children and comfortable habitat

Maintenance during divorce

⊕ Let the women in iddah live the same style as you live, according to your means. Trouble them not that you make things difficult for them. And if pregnant then spend your sustenance on them until they deliver. And if they suckle your child give them recompense and take mutual...

Maintenance

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْدِكُمْ وَلَا تُضَارِرُوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ
وَإِنْ كُنَّ أُولَاتٍ حَمَلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ
لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمِرُوا بِبَنَاتِكُمُ الْمُعْرِوفِ وَإِنْ تَعَاَسَرْتُم فَسُدِّضُوا
لَهُنَّ أُخْرَىٰ ۖ

لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ ۗ وَمَنْ قَدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ
اللَّهُ لَا يَكْلِفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا ۗ

and the
according

in any

Maintenance during weaning

⊕ For the mother and child—"Let the women in iddah the same style as you live, according to your means. Trouble them not ... And if you are pregnant then spend your sustenance on them until they deliver. And if they suckle your child give them recompense and take mutual Counsel together according to what is just and reasonable.65;6

65:6

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ
وَإِنْ كُنَّ أُولَاتٍ حَمَلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمَلَهُنَّ فَإِنْ أَرْضَعْنَ
لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمُّوا بِبَيْنِكُمْ بِالْمَعْرُوفِ وَإِنْ تَعَاَسَرْتُم فَسُدِّضِعْ
لَهُنَّ أُخْرَى ٦