

Fear Allah through Whom you Demand your Mutual Rights

MARRIAGE & DIVORCE SERIES



Examples of both meanings

1st - to form a contract (of marriage)

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ

“And marry not women whom your fathers married”^[an-Nisā:22]

2nd - sexual intercourse

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ

“And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married^[1] another husband”^[al-Baqarah:230]

Benefit فائدة

❖ If the word nikāḥ is applied to an unmarried woman, it takes the meaning of ‘marriage’

e.g. “نكح بنت فلان” - “he married the daughter of so and so”

❖ If it is used with a married woman, the meaning is ‘intercourse’

e.g. “نكح زوجته” - “he had intercourse with his wife”

(شريعاً) Legislative Meaning

“To form a contract of marriage with a woman with the intent to take pleasure in her, to have children and for other marital benefits.”

[Ibn ‘Uthaymīn - Sharh Al-Mumtā’]

The 5 rulings apply to nikāh

It can be:

- 1 - Sunnah (recommended)
- 2 - Wājib (obligatory)
- 3 - Mubāh (allowed)
- 4 - Makrūh (detested)
- 5 - Harām (forbidden)

When is it Mubāḥ (allowed)?

- ❖ For the one who has no desire but is financially able and well-off

- ❖ To acquire:
 - marital benefits
 - help the woman protect her private parts
 - provide for her

When is it Makrūh (detested)?

- ❖ For the one who is poor and has no desire

- ❖ Due to him having no need and carrying heavy burdens.

When is it Harām (forbidden)

- ❖ Upon he who if he was to marry again, it is feared he would not be just.
- ❖ In the lands of war, due to him putting his wife and family in potential harms way.

The Ruling on looking at the Proposed

- ❖ It is Sunnah & recommended to look at the one being proposed for marriage

The Ruling on looking at the Proposed

- ❖ If possible, look at her in the presence of her guardian (walī).
- ❖ If that is not possible, can hide himself and see her in a place she makes her self appear in her regular appearance.

What is he allowed to see of her?

- ❖ Can look at her face, neck, hands, feet etc.
- ❖ That which her mahārim can see of her

The Conditions of the Nikāḥ

- ❖ Specifying the bride & groom (تعيين الزوجين)
- ❖ Consent & pleasure of both (رضاهما)
- ❖ Guardian (ولي)
- ❖ 2 Witnesses (ولي)

Conditions of the Guardian

- ❖ Male ذكر
- ❖ Adult بالغ
- ❖ Free man (not a slave) حر
- ❖ Same religion اتفاق الدين
- ❖ Sound minded (can choose one who is good for her in her religion) رشده / عاقل
- ❖ Sound in his religion and character العدالة

Women Eternally Forbidden to Marry:

Due to:

- ❖ Respect الاحترام
- ❖ Lineage النسب
- ❖ Breastfeeding الرضاع
- ❖ Marriage المصاهرة
- ❖ Cursing اللعان

Women Forbidden Due to Respect الاحترام :

- ❖ The wives of the Messenger of Allah صلى الله عليه وسلم

وَمَا كَانَ لَكُمْ أَنْ تُؤْذُوا رَسُولَ اللَّهِ وَلَا أَنْ تُنكِحُوا أَزْوَاجَهُ مِنْ بَعْدِهِ أَبَدًا
الأخواب: ٥٣

- ❖ This was in the lifetime of the Sahābah

Women Forbidden Due to Lineage النسب :

- ❖ Mother
- ❖ Grandmother
- ❖ Daughter
- ❖ Granddaughter
- ❖ Sister including half sister
- ❖ Niece
- ❖ Paternal & maternal aunt

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ
وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمْ الْأَتْمِيَّاتُ أَرْضَعْتَكُمْ وَأَخَوَاتُكُمْ مِنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ
وَرَبَائِبُكُمْ الْأَتْمِيَّاتُ فِي حُجُورِكُمْ مِمَّنْ نَسَأْتِكُمْ الْأَتْمِيَّاتُ دَخَلْتُمْ بِهِنَّ فَمَنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ
فَلَا جُنَاحَ عَلَيْكُمْ وَحَالَاتُكُمْ وَالَّذِينَ أَلْبَسْتُمْ مِنَ الْأَصْلَابِكُمْ
وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your foster mother who gave you suck, your foster milk suckling sisters, your wives' mothers, your step daughters under your guardianship, born of your wives to whom you have gone in - but there is no sin on you if you have not gone in them (to marry their daughters), - the wives of your sons who (spring) from your own loins, and two sisters in wedlock at the same time, except for what has already passed; verily, Allah is Oft-Forgiving, Most Merciful

[An-Nisa:23]

Women Forbidden Due to Breastfeeding الرضاع:

يَحْرُمُ مِنَ الرُّضَاعِ مَا يَحْرُمُ مِنَ النَّسَبِ

“Forbidden due to breastfeeding is that which is forbidden due to lineage.” [al-Bukhārī & Muslim]

- ❖ Breastfeeding makes forbidden for marriage those who are forbidden due to lineage:

.....

.....

.....

Women Forbidden Due to the Oath of Condemnation اللعان :

- ❖ The one whom her husband accuses of adultery, which she denies and he is not able to prove. If she requests the prescribed punishment to be applied to him, he can avoid it through the oath of condemnation (اللعان).
- ❖ After the li'ān - she is eternally forbidden for him to marry

Women Forbidden Due to Marriage المصاهرة :

- ❖ Father's wife (stepmother)
- ❖ Daughter-in-law
- ❖ Mother-in-law
- ❖ Stepdaughter *

Every woman Eternally forbidden to marry for a man - he is a Mahram to her

- ❖ Mother
- ❖ Daughter
- ❖ Grandmother
- ❖ Granddaughter
- ❖ Sister including half sister
- ❖ Niece
- ❖ Paternal & maternal aunt
- ❖ Father's wife (stepmother)
- ❖ Daughter-in-law
- ❖ Mother-in-law
- ❖ Stepdaughter*

Women Temporarily Forbidden to Marry

- ❖ Wife's sister (sister-in-law)
- ❖ Sister-in-law's daughters
- ❖ Wife's paternal and maternal aunts
- ❖ Woman in her waiting period from another man*
- ❖ Divorcee from her 3rd divorce until another man has intercourse with her
- ❖ Muhrimah (in the state of ihrām)

Women Temporarily Forbidden to Marry (Continued)

- ❖ Fornicator until she repents
- ❖ Disbeliever - but Jewish & Christian woman allowed
- ❖ Female master (for the slave)
- ❖ Hermaphrodite

The Walimah

Its Ruling:	Sunnah
When:	Time of contract or after Or when consummating the marriage or after, depending on tradition
With:	What is traditionally served and what a person is able to afford

The Invitation to the Walimah

Its Ruling:	Wājib with conditions
Conditions:	<ul style="list-style-type: none"> - Inviter is Muslim - He is not someone who should be boycotted. - It is the first invitation - It is a personal invitation - There is no evil taking place - There is no harm that comes about when responding to the invite

Living with Women in Goodness/Kindness

Its Ruling: Wājib

- Connected Matters :**
- “Goodness” is what has been defined in the legislation & tradition
 - They can take pleasure in each other so long as it isn't haram/doesn't harm/preoccupy from an obligation

Living with Women in Goodness/Kindness

- Connected Matters :**
- He should be just with his time if he has more than one wife
 - She is not able to perform optional acts of worship / work without the husbands permission.
 - He can prevent her from leaving the house if there is harm in that for him and her

Types of Separation

- Divorce - طلاق** - Possessed by the husband
- Separation - خلع** - Instigated by the wife and agreed to by the husband
- Annulment - فسخ** - Usually by the decision of the judge unless the reason is clear.

Comparison Between the Types of Separation

Annulment - فسخ	Separation - خلع	Divorce - طلاق
- Usually decided by judge	- Instigated by wife	- In hands of husband
- Can't take her back in 'iddah	- Can't take her back in 'iddah	- 2 types- Revocable: can take back in 'iddah Irrevocable: can't take her back
- Correct while menstruating/ or had intercourse	- Correct while menstruating/ or had intercourse	- Sunni & Bid'i
- Before consummation: woman takes nothing of dowry After: she takes all unless fault in her	- Wife returns dowry	- Before consummation: woman takes half of dowry After: she takes all
- Doesn't count from number of divorces husband owns	- Doesn't count from number of divorces husband owns	- Counts from number of divorces husband owns
- Has a waiting period	- Has a waiting period	- Has a waiting period

Separation - خلع

فَإِنْ خِفْتُمْ أَلَّا يَمْلِكَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ

“Then if you fear that they would not be able to keep the limits ordained by Allah, there is no sin on either of them if she gives back (the dowry/or part of it) for her khul’(divorce/separation).”

[al-Baqarah:229]

Ibn ‘Abbās narrated: The wife of Thābit bin Qays came to the Prophet ﷺ and said: “O Allah’s Messenger! I do not blame Thābit for any defect in his character or religion, but I hate disbelief* in Islam.”

The Prophet ﷺ said: “Will you give back his garden (dowry he gave as mahr)?” She said: “Yes.” Then the Prophet ﷺ said to Thābit “O Thābit!

Accept your garden and divorce her.

[al-Bukhārī, 5276]

Separation - خلع

Reasons due to which the wife can request the khul’:

- Not fulfilling his religious obligations
- She feels she will not keep the limits of Allah
- Bad character
- Bad dealings with her

Divorce - الطلاق

The 5 rulings apply to divorce

It can be:

- 1 - Mubāḥ (allowed)
- 2 - Mustahab (recommended)
- 3 - Wājib (obligatory)
- 4 - Makrūh (detested)
- 5 - Harām (forbidden)

When is it allowed (mubāḥ)?

- ❖ For a need - when he is not able to be patient with his wife

When is it recommended (mustahab)?

- ❖ When there is some harm in remaining together

When is it obligatory (wājib)?

- ❖ In the case of īlaa (swearing not to have relations for longer than 4 months)

When is it disliked (makrūh)?

- ❖ When there is no need to divorce her and all is sound

When is it forbidden (harām)?

- ❖ In the case of talāq bid'ī

Categories of Divorce

- ❖ Writing / Signal / Speech كتابة/إشارة/كلام
- ❖ Either Minor / Major بينونة صغرى/كبرى
- ❖ Either Sunni / Bid'ī سني أو بدعي
- ❖ Immediate / Conditional منجز / معلق

Its Wording

- ❖ Clear/Direct

أنت طالق - أنت مطلقة - قد طلقتك، - هي مطلقة مني - طلقته

أنت مسرحة - سرحتك - سرحت امرأتي

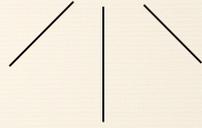
فارقته - هذا فراق بيني وبينها - قد فرقت ما بيني وبينها
- فارقيني

Talāq Sunni / Bid'ī

سني أو بدعي

Sunni

Bid'ī



The Waiting Period; Its Wisdom

- Determine if she's pregnant
- Protect lineage
- Magnify the contract of marriage
- Prolong the opportunity of revoking the divorce
- Make manifest the effects of losing one's husband and being cautious concerning his right

The Waiting Period is Obligatory

Upon every woman separated from her husband due to separation after marriage* or separation due to being widowed.

* By divorce, khul' or annulment of the nikāḥ al-bātil not the nikāḥ al-fāsid

**Women Who
Must Observe a
Waiting Period**

Due to Separation
after Marriage

**Women Who
Must Observe a
Waiting Period**

Due to Separation
after Being
Widowed

From the Rulings of the Waiting Period

- The **widow** and **divorcee** from the **revocable** divorce must not leave the **husband's house** unless for need and necessity
- The **divorcee** from the **irrevocable** divorce, from **khul'** or **annulment** must not leave the house (**other than husband's house**) unless for need and necessity.

From the Rulings of the Waiting Period

- If she is a divorcee from the **revocable** divorce, she is still provided for throughout the 'iddah
- If she is a divorcee from the **irrevocable** divorce, or **khul'** or **annulment**, she is **not** provided for unless she is pregnant
- The pregnant woman is provided until she gives birth

From the Rulings of the Waiting Period

- Avoid beautifying herself with * :
 - make-up
 - wearing clothes of beautification
 - wearing jewellery
 - wearing perfume

- * - Obligatory for the widow
- Allowed for the divorcee from the irrevocable divorce
- Divorcee from the revocable divorce can beautify herself
