



THE LEGISLATED
DIVORCE

Shaykh Badee'ud-Deen as-Sindhee

The Legislated
Divorce

The Noble Scholar, the *Muhaddith*, Shaykh
Badee'ud-Deen Shaah as-Sindhee (d.1417H)

Translation by Abu Hafsah Kashiff Khan



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A Concise Biography of al-'Allaamah, Shaykh Aboo Muhammad Badee'ud- Deen ar-Raashidee as-Sindee

He is the 'Allaamah, the *Muhaddith*, the Shaykh, Aboo Muhammad Badee'ud-Deen Shaah Ibnush-Shaykh Sayyid Ihsaanullaah Shaah Ibn Rashdullaah Shaah Ibn Rasheedud-Deen Ibn Muhammad Yaa Seen Ibn Muhammad Shaah ar-Raashidee al-Husaynee. He was born on the 10th of July, 1925CE in the area known as the Goth of Fadlullaah Shaah that is located near the Sa'eedabaad area in the district of Hyderabad.

The Shaykh received his early education at the hands of his father in the Daarur-Rashaad school that was established by his grandfather Shaykh Rashdullaah Shaah, by studying numerous Arabic and Persian books. He was able to learn from numerous different scholars from amongst whom were:

- Shaykh Thanaa'ullaah Amritsaaree (ﷺ)
- Shaykh Aboo Muhammad Bahwalpooree al-Makkee (ﷺ)
- Shaykh Aboo Sa'eed Sharafud-Deen ad Dehlawee (ﷺ)
- Shaykh Aboo Ishaq Nayk Muhammad (ﷺ)
- Shaykh Muhammad Madanee (ﷺ)
- Shaykh Muhammad Ismaa'eel Ibn 'Abdul-Khaaliq al-Afghaaneer (ﷺ)
- Shaykh Walee Muhammad Ibn Muhammad 'Aamir (ﷺ)

The Shaykh had a tremendous memory and memorized the *Qur'aan* in a period of three months in the year 1948, and he memorized Sooratun-Noor while traveling upon camel back. The Shaykh studied numerous works, from amongst them are:

- *Arba'eenun-Nawawee*
- *Bulooghul-Maraam*

- *Al-Mishkaat*
- *Kutubus-Sittah*
- The *Muwatta'* of Imaam Maalik
- *Al-Hidaayah*

The Shaykh began teaching and giving *da'wah* in Sindh and established the Muhammadiyyah School in New Sa'eedabaad. Here, he taught *Saheehul-Bukhaaree* and *Tafseer Ibn Katheer*. He also taught these books in the Sacred Mosque of Makkah. Also, in Makkah he taught at *Daarul-Hadeeth*. At the request of Shaykh 'Abdullaah Ibn Humayd, he also taught at the institute of learning inside the Sacred Moqsue. The Shaykh also taught for a period of two years at the Islaamic University of al-Madeenah. It was here that Imaam 'Abdul-'Azeez Ibn Baaz (d.1420H) and Imaam Muhammad Naasirud-Deen al-Albaanee (d.1420H) praised the Shaykh. The Shaykh also traveled to numerous other countries such as Kuwait, the United Kingdom and the United States.

An example of the Shaykh's diligence in the field of *da'wah* can be found in his Urdu book, *Tanqeed Sadeed 'alal-Ijtihad wat-Taqleed*. The Shaykh was challenged to a debate upon the issue of *taqleed* (blind following of a *madhhab*). After accepting the challenge, the Shaykh began to prepare for the debate, but his opponent declined to debate him and instead, sent him a small treatise entitled, *al-Ijtihad wat-Taqleed*, and requested him to write a response to it. The Shaykh did indeed respond in the form of book that is greater than three hundred pages in length, but his opponent declined to accept it, and stated that he sent him a published book, and the Shaykh must respond in the form of a published book. Despite lacking financial backing, the Shaykh printed the book with the aid of friends and it is available in the Urdu language.

His published books include:

In the Arabic language:

- *Sharh Kitaabut-Tawheed* of Ibn Khuzaymah (d.311H)
- *Tafseerul-Qur'aanil Kareem al-Musammaa bil-Intinbaatil-'Ajeeb fee Ithbaatit-Tawheed min Jaami' Aayaatil-Kitaabin-Najeeb*
- *Wasoolul-Ilhaam li Usoolil-Islaam*
- *Munjidil-Mustajeez li Riwaayatis-Sunnah wal-Kitaabil-'Azeez*
- *Juz' Mandhoom fee Asmaa'il-Mudalliseen*
- *Jalaa'ul-'Aynayn bi Tahqeeq Riwaayaail-Bukhaaree fee Juz' Raf'ul-Yadayn*
- *al-Qawhul-Lateef fil-Ihtijaaj bil-Hadeethid-Da'ef*
- *Sareehul-Muhmad fee Wasl Ta'leeqaat Muwatta' Imaam Muhammad*
- *al-Ijaabah Ma'al-Isaabah fee Tarteeb Ahaadeethil-Bayhaqee 'alaa Masaneedis-Sahaabah*
- *at-Taweebil-Hadeeth Taareekhul-Khateeb*
- *Shuyookhul-Imaamil-Bayhaqee*

In the Urdu language:

- *Tawheedul-Khaalis*
- *Ittibaa'us-Sunnah*
- *Tanqeedus-Sadeed bir-Risaalah Ijtihad wat-Taqleed*
- *Nishaatul-'Abd bi Jahr Rabanaa wa lakal-Hamd*
- *Taareekh Ahlul-Hadeeth*

In the Sindhee language:

- *al-Waseeq fee Jawaabil-Watheeq*
- *at-Tanqeedul-Madhboot fee Tasweed Tahreeril-Maboot*
- *Tawheedur-Rabbaanee Ya'nee Sachee Musalamaanee* (parts one and two)
- *at-Tafseelul-Jaleel fee Ibaalit-Ta'weelil-'Aleel*
- *Tameezut-Tayyib minal-Khabeeth bi Jawaab Tuhfatil-Hadeeth*

The Shaykh had many students from numerous countries, the most notable of whom are:

- Shaykh Muqbil Ibn Haadee al-Waadi'ee al-Yamane (d.1422H)
- Shaykh Rabee' Ibn Haadee al-Madkhalee
- Shaykh 'Umar Ibn Muhammad Ibn 'Abdullaah Ibn Subayyal
- Shaykh 'Abdul-Qaadir Ibn Habeebullaah as-Sindhee
- Shaykh Hamdee 'Abdul-Majeed as-Salafee al-'Iraaqee

The Shaykh died in Karachi on the 8th of January, 1996CE. He lectured at the Raashidiyyah University and complained of a headache at night. He requested a doctor but died before the doctor could arrive. He was buried in Sa'eedabaad.





Text of the Treatise

All praise belongs to the Lord of the worlds, the good ending is for the believers and enmity is only for the disbelievers, and may peace and blessings be upon the leader of the Messengers and upon all his family and followers.

To proceed:

Divorce is a Disliked Action with Allaah:

The foundational principles of Islaam are based upon justice and rectification, and upon this basis, Islaam has permitted divorce in cases of helplessness. The meaning of this is, if there remains no chance of accommodation between a husband and his wife, then they may release each other through divorce, despite the fact that this action is disliked by Allaah as it has come in the *hadeeth* which is narrated by 'Abdullaah Ibn 'Umar that the Messenger of Allaah (ﷺ) said, "With Allaah, the most disliked thing from the permissible things is divorce."¹

Imaam al-Haakim (d.405H) said that this *hadeeth* is *saheeh* and in *Talkhees*, al-Haafidh adh-Dhahabee (d.748H) considered it to be upon the conditions of Muslim. It is apparent from this dislike that divorce is a last resort, and that reconciliation should be sought to the utmost extent before it is given.²

¹ Refer to *al-Mustadrak* (2/196) of al-Haakim.

² **Translator's Note:** Imaam Naasirud-Deen al-Albaanee says in *Irwaa'ul-Ghaleel* after grading the *hadeeth* as *da'eef*, "As for al-Haakim, then he said, 'An authentic chain of narration.' And adh-Dhahabee added to it saying, 'I say: It is upon the conditions of Muslim.' This is what they have said and there is much difference of opinion regarding Muhammad Ibn 'Uthmaan Ibn Abee Shaybah; he is mentioned by adh-Dhahabee in *al-Meezaan* and in other than it. And here it would suffice you to know that adh-Dhahabee himself declared him to be *da'eef*; he said that 'Abdullaah Ibn Ahmad declared him to be a liar and Saalih Jazrah declared him to be →

It is Prohibited to Give Multiple Divorces at One Time:

This is why the *Sharee'ah* has prohibited giving multiple divorces at the same time. In *Sunanun-Nisaa'ee* it is narrated upon Mahmood Ibn Labeed that he said: The Messenger of Allaah was informed about a person who had divorced his wife three times at once. He (ﷺ) got up in anger and said, "Is the Book of Allaah played with whilst I am amongst you?" So a man stood up and said, "O Messenger of Allaah (ﷺ)! Should I not kill him?"¹

It is mentioned in the famous book of *Hanafee fiqh*, *Hidaayah* that giving three divorces in one sitting is an innovation, and that such a person is a sinner.² And Imaam Aboo Bakr Jasaas writes after bringing some *aathaar* from the Companions regarding this matter in *Ahkaamul-Qur'aan*, "A warning against giving three divorces at once is established upon these Companions, and disagreement is not narrated from any Companion, so there is *ijmaa'* (consensus)."³

Divorce according to the Sunnah:

The *Sharee'ah* states that the divorce should be given in such a manner that the second divorce occurs at least one month after the first divorce. Accordingly, Imaam an-Nisaa'ee (d.303H) has a chapter called *Talaaqus-Sunnah* (divorce according to the *Sunnah*) in his *Sunan*⁴ and he has brought these *ahaadeeth* in it.

reliable.' I say: How does the likes of him (i.e. Imaam adh-Dhahabee) authenticate his *hadeeth*. Also, he has disagreed with Aboo Daawood of *Sunan Abee Daawood*. In my opinion, adh-Dhahabee did not give consideration to this difference of opinion, for if he had given it consideration he would not have authenticated the *hadeeth*. And Allaah knows best." Refer to *Irwaa'ul-Ghaleel* (no. 2040) (6/106-108) of al-Albaanee.

¹ Related by an-Nisaa'ee (2/81).

² Refer to *al-Hidaayah* (2/355), in the chapter, '*Talaaqus-Sunnah*'.

³ Refer to *Ahkaamul-Qur'aan* (1/383).

⁴ Refer to *Sunanun-Nisaa'ee* (2/80).

It is narrated upon 'Abdullaah (Ibn Mas'ood) that he said, "Divorce according to the *Sunnah* is a divorce that is given while she is in the state of purity without having slept (with her), so after her menstrual cycle is completed and she is purified, he divorces her again, and when she has another menstrual cycle and is purified, he divorces her again and she enters the '*iddah*.'" And al-A'mash said that he asked Ibraaheem (an-Nakha'ee) (d.95H) about this matter and he replied in the same manner.

And al-'Allaamah Aboo Bakr Jasaas ar-Raazee says, "Our companions have said that the best manner of giving divorce is when it is given after she is purified from the menstruation and without sleeping with her, and then he waits until her '*iddah*' has ended. And if he wishes to give three (divorces) then each divorce should be given after each (menstrual) purification without sleeping with her, and this is the opinion of Sufyaan ath-Thawree (d.167H). And Imaam Aboo Haneefah (d.150H) said that it has reached him upon Ibraaheem an-Nakha'ee that the companions liked that (one) should not give more than one divorce at one time and the three divorces should be given separately upon each purification."

From the *Fitrah* (natural disposition) is that Three Divorces given at Once is Considered a Single Divorce:

This is the conclusion that is in agreement with the correct intellect and human disposition since a gap of three months is provided so that both the husband and the wife remorsefully get together again and attempt to make a new start. And when it is proven that (the act of giving) three divorces at one time is an innovation and a sin, rather it is playing with and mocking the Book of Allaah, then how can such divorces occur, and allowing its occurrence means to permit something that is forbidden!?

Three Divorces given at Once is a Single Divorce, and the Explanation of '*Marrataani*':

And it has come in the Noble *Qur'aan*,

﴿الطَّلُقُ مَرَّتَانٍ فَاِمْسَاكٌ بِمَعْرُوفٍ اَوْ تَسْرِيحٌ بِاِحْسَانٍ﴾

“The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness.”

[Sooratul-Baqarah 2:229]

This *aayah* also elaborates that only one divorce can be given at one time; not two, nor three; because ‘*marrataani*’ is applied ‘*marratan ba’da marrah*’, (i.e. one after the other). Such as in,

﴿سَنُعَذِّبُهُم مَّرَّتَيْنِ﴾

“We shall punish them twice.” [Sooratut-Tawbah 9:101]

The meaning of which is crystal clear; that between both the punishments there will be a break, otherwise (punishments) at one time will be a single punishment and not two. Similarly, the meaning of ‘*marrataani*’ is that between the two divorces there should be a break. And in the same manner there should be a break before the third divorce as it becomes clear from the *hadeeth* of the Prophet (ﷺ).

The *Hanafee* Scholar, Aboo Bakr Jasaas Raazee said, “This *aayah* necessitates that the two divorces occur separately, because if someone gives two divorces at once, then it would not be correct for him to say that he gave the divorce twice. Likewise, if someone gives another person two *dirhams* at one time, then it cannot be said that he gave a *dirham* two times unless both were given separately.”¹

The likeness of this is mentioned in *at-Tafseerul-Bahril-Muheet*² and *at-Tafseerul-Kashshaaf* by az-Zamakhsharee³ and *at-Tafseerul-Mazharee* by

¹ Refer to *Ahkaamul-Qur’aan* (1/389).

² Refer to *Tafseerul-Bahril-Muheet* (2/191-192).

³ Refer to *Tafseer Kashshaaf* (1/283).

Qaadee Thanaa'ullaah Paanipatee,¹ at-Tafseeraatul-Ahmadiyyah by Mulla Jaywan Hanafee² and other than them. So it is proven that two or three divorces given at once will be considered a single divorce.

Imaam Nidhaamud-Deen Qamee Nishapooree says, "Then from these people are those who say that if she (i.e. the wife) is divorced two or three times at once, then it is considered only one divorce and this is what is logical, and this is what many Scholars of *Ahlul-Bayt* were upon. Indeed, a prohibition is a proof that the prohibited affair contains in it overwhelming harm. And stating that this (i.e. multiple divorces at once) can take place is an attempt to bring about this harm."³

Explanation:

This is because if three divorces at once are to be considered as three, then reconsideration is not possible, even if both parties are remorseful and like each other. Due to which, there is a danger of separation in society. Whereas, after one divorce, both parties get a chance to rethink and reunite once again. Similarly, they also get a chance to reconcile after the second divorce. Through this, they have the opportunity to benefit; and they can attempt to stay away from the *fitnah* (trial, tribulation) of separation and division in society; and reconciliation is better in (all) cases;

﴿وَالصُّلْحُ خَيْرٌ﴾

“... and making peace is better.”

[Sooratu-Nisaa' 4:128]

Readers! The people towards whom Imaam Qamee has pointed are the Companions whose names are: 'Umar, 'Uthmaan, 'Alee, Ibn Mas'ood,

¹ Refer to *Tafseerul-Mazharee* (1/300).

² Refer to *Tafseeraatul-Ahmadiyyah* (p. 143-144).

³ Refer to *Tafseer Gharaa'ibil-Qur'aan wa Raghaa'ibil-Furqaan* (2/266).

Ibn 'Abbaas, Ibn 'Umar, 'Imraan Ibn Husayn, Aboo Moosaa al-Ash'aree, Abud-Dardaa' and Hudhayfah (رضي الله عنه). This means that from them are those who consider multiple divorces at a single time to be a single divorce. This is also the conclusion in the *hadeeth* of the Prophet (ﷺ).

The Ahaadeeth Concerning Multiple Divorces at once being a Single Divorce:

The First Hadeeth: From Ibn 'Abbaas (رضي الله عنه), "(The pronouncement of three divorces (at once) during the lifetime of the Prophet (ﷺ) and that of Aboo Bakr and two years of the caliphate of 'Umar was (treated) as one. So 'Umar Ibnul-Khattaab (رضي الله عنه) said, 'Verily, the people have begun to hasten in a matter in which they are required to observe patience. So what if we impose this upon them?' And he imposed it upon them."¹

Authenticity of the Hadeeth:

The fact that this *hadeeth* is reported in *Saheeh Muslim* is sufficient regarding its authenticity. Also in the introduction of *Fathul-Baaree*² by Ibn Hajr (d.852H), it is mentioned, "Indeed, the two Shaykhs depended upon the trustworthy and just (narrators) in the verification of their *ahaadeeth* who had minimal mistakes."

And al-'Allaamah 'Abdul-Hayy al-Lakhnawee al-Hanafee (d.1304H) says in *Zafarul-Eemaanee*³, "Meaning, the *Saheehayn* (*Bukhaaree* and *Muslim*) are the most authentic books after the *Qur'aan* and all the Scholars of *hadeeth* are in agreement regarding this through out the east and the west; that there is nothing that equals these two books."

So there is no doubt in this *hadeeth*.

¹ Related by Muslim (1/477).

² Refer to *Fathul-Baaree* (1/10) of Ibn Hajr.

³ Refer to *Zafarul-Eemaanee* (p. 58).

And Imaam al-Haakim (d.405H) brings this *hadeeth* with another chain¹ and says, “This *hadeeth* is *saheeh* upon the conditions of al-Bukhaaree (d.256H) and Muslim (d.261H).” And al-Haafidh adh-Dhahabee (d.748H) has agreed with al-Haakim in declaring it *saheeh* and did not criticize it.

In addition to this, al-'Allaamah, al-Muhaddith Shamsul-Haqq al-'Adheemaabaadee (d.1349H) says in *at-Ta'leequl-Mughnee 'alaa Sunanid-Daaraqutnee*², “It is established that this book is *saheeh*. Its narrators are *huffaadh* (precise memorizers).” This *hadeeth* is clear in this matter, that in the lifetime of the Messenger of Allaah (ﷺ) three divorces given at once were considered a single divorce.

After the decision of the Messenger (ﷺ), no one has any authority.

﴿ وَمَا كَانَ لِمُؤْمِنٍ وَلَا لِمُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ ۗ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُبِينًا ﴾

“It is not for a believer, man or woman, when Allaah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allaah and His Messenger, he has indeed strayed in a plain error.” [Sooratul-Ahzaab 33:36]

And since the *Sharee'ah* was completed within the lifetime of the Messenger of Allaah (ﷺ) and the good news of,

¹ Refer to *al-Mustadrak* (1/196) of al-Haakim.

² Refer to *at-Ta'leequl-Mughnee* (p. 446), published in India.

﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ﴾

“This day, I have perfected your Religion for you.”

[Sooratul-Maa'idah 5:3]

...had been received and after his death the continuation of revelation has stopped, so there is no one who can change his decision,

﴿وَلَا مَبْدَلَ لِكَلِمَاتِ اللَّهِ﴾

“...and none can alter the Words (Decisions) of Allaah.” [Sooratul-An'aam 6:34]

﴿لَا تَبْدِيلَ لِكَلِمَاتِ اللَّهِ﴾

“No change can there be in the Words of Allaah.”

[Soorah Yoonus 10:64]

Similarly, during the caliphate of as-Siddeeq (رضي الله عنه), the ruling remained the same. At this time, there were innumerable Companions and *taabi'een*, and the decision was agreed upon.

The Punitive Ruling of 'Umar:

For two years during the caliphate of al-Faarooq (رضي الله عنه) the same ruling applied. Then, 'Umar allowed three divorces at once to be counted as three (separate divorces) due to one social reason: because people had started to take undue advantage of this convenience and were quick in giving divorces, so the Leader of the Believers established three divorces at the same time as three separate divorces. And he explains himself, “The people have become hasty regarding this affair.” Since, people started to become hasty in a matter in which the *Sharee'ah* had given them relief, and the people did not respect this blessing from Allaah, the

Leader of the Believers, 'Umar, being a leader who ruled by the *Sharee'ah*, to halt the growth of this *fitnah* (trial, tribulation), he punitively issued this verdict, such that people would refrain from this evil action.

This *hadeeth* is reported in *Muslim* with three (different) chains and in the third (chain), are these words, "...people began to pronounce divorce frequently, so he allowed them to do so."¹

Admission of the *Hanafee* Scholars:

Some of the *Hanafee* Scholars themselves admit that the Leader of the Believers 'Umar's ruling was punitive and administrative. Accordingly, al-'Allaamah Qaahistaanee writes in *Jaami'ur-Ramoox*, "Know that in the time of the Messenger (ﷺ) until the initial period of the caliphate of the Leader of the Believers, 'Umar, if someone pronounced three divorces at the same time, that would take effect as a single divorce. Then due to the people frequently giving divorces, politically and punitively three (divorces at the same time) were established (as three)."

'Umar (رضي الله عنه) Returning from his Ruling:

Rather, the Leader of the Believers, 'Umar himself finally returned from this ruling. Accordingly, al-Haafidh Aboo Bakr al-Ismaa'eelee (d.371H) brings in *Kitaab Musnad 'Umar*, "'Umar said, 'I do not feel greater regret over anything more than these three; that I would have not made

¹ **Translator's Note:** The complete *hadeeth* is, "Abus-Sahbaa' said to Ibn 'Abbaas, "Enlighten us with your information whether the three divorces (pronounced at once) were not treated as one during the lifetime of the Messenger of Allaah (ﷺ) and Aboo Bakr (رضي الله عنه)." He said, "It was in fact so, but when during the caliphate of 'Umar, people began to pronounce divorce frequently, he allowed them to do so (to treat pronouncements of three divorces in a single breath as one)." Related by *Muslim* (no. 3493).

divorce *haraam* (unlawful),¹ that I would not have married off the slave girls, and that I would not have ordered the killing of wailing women.”²

Readers! Divorce in its nature is a permissible action, even if people were excessively pronouncing divorces, due to which an enormous *fitnah* (trial, tribulation) had started and 'Umar took this step for their admonition. So he himself showed humbleness in this matter. Divorce is a permissible action, and if it became a means to mischief, he still did not have a right to forbid (people from) something that Allaah had permitted. 'Umar was so fearful in entering into legislated matters, even if in it encompasses many beneficial matters, he would humble himself upon taking these steps. So if the one who issued the ruling is humble and remorseful of it, then how can it be taken as a proof and made into a *madhhab* that is in opposition to the command extracted from the *ahaadeeth*?

Other Administrative and Punitive Rulings of 'Umar (ﷺ):

Similarly, there were other rulings made by 'Umar that were issued only administratively. For example,

1. Burning down the dwellings of those who consumed alcohol.³
2. When people would not refrain from drinking alcohol, the slashes were increased from forty to eighty, and some were exiled.
3. Burning of the home of the governor of al-Koofah, Sa'd (ﷺ) because he was hidden from the populace.

There are many other initiatives that he took. Regarding divorce, he took a step upon which he showed regret and that is a clear proof that the step was not in accordance with the *Sharee'ah* and he (started to) consider it wrong. So the ruling that was present in the time of

¹ **Translator's Note:** This means that he allowed the three divorces at one sitting as three divorces.

² Refer to *Ighaathatul-Lahfaan* (1/351) of Ibnul-Qayyim.

³ Refer to *Kitaabul-Amwaal* by Abee 'Ubayd al-Qaasim Ibn Sallaam (p. 102).

Messenger of Allaah (ﷺ) is a blessing and a means of guidance for the Muslims.

The Second Hadeeth: It is reported upon Ibn 'Abbaas (رضي الله عنه) that he said, "Rukaanah Ibn 'Abdi Yazeed, who were the brothers of Banee Muttalib, divorced his wife three times in one sitting, and he became greatly remorseful about it. So the Messenger of Allaah (ﷺ) asked how he divorced her. So Rukaanah replied that he divorced his wife three times. So the Messenger said, 'In one sitting?' So Rukaanah replied, 'Yes.' So he (ﷺ) said, 'So this is one divorce. If you wish you can return.' So Rukaanah took her back. So Ibn Abbaas's¹ conclusion was that divorces should be (pronounced) separately upon each purification."

Authenticity of the Hadeeth:

1. Imaam Ahmad (d.241H) and Imaam at-Tirmidhee (d.274H) say that this *hadeeth* is *saheeh*.²
2. al-Haafidh Aboo 'Abdillaah al-Maqdisee brings it in his book, *Mukhtaaraat*. And this book is more authentic (i.e. stronger) than Imaam al-Haakim's *Mustadrak*.
3. And Imaam Ibn Ishaaq considers this *hadeeth* to be *saheeh*, and that is why this is considered suitable (as a *fatwaa* (verdict)).
4. And al-Haafidh Ibn Hajr (d.852H) writes in *Fathul-Baaree*³, "It is collected by Imaam Ahmad and Imaam Aboo Ya'laa (d.458H) and they graded it to be *saheeh*." Then, after refuting the objections against this *hadeeth*, he writes, "The aforementioned *hadeeth* of Ibn Ishaaq is made stronger through the *hadeeth* of Imaam Muslim."
5. Similarly, Imaam ash-Shawkaanee (d.1250H) has authenticated it in *Naylul-Awtaar*.⁴

¹ Related by Ahmad in *al-Musnad* (1/265).

² Refer to *I'laamul-Mawaqqi'een* (4/350) of Ibn Qayyim, published in Egypt.

³ Refer to *Fathul-Baaree* (9/362) of Ibn Hajr.

⁴ Refer to *Nawlul-Awtaar* (6/246) of ash-Shawkaanee.

Refutation against the Objections to (the Hadeeth of) Muhammad Ibn Ishaq:

The objection raised up against this *hadeeth* is that it has Muhammad Ibn Ishaq as a narrator, who is not *thiqah* (trustworthy). However, this objection is incorrect. The greatest of the *muhadditheen* have declared him to be trustworthy and Imaam Aboo Zur'ah ad-Dimashqee (d.264H) states, "The most knowledgeable of the Scholars have agreed upon accepting his (i.e. Ibn Ishaq) narrations." And Ibnul-Barqee says, "I have not seen the Scholars of *hadeeth* differ regarding his trustworthiness."¹

Muhammad Ibn Ishaq's Trustworthiness According to the Hanafee Scholars:

The *Hanafee* Scholars themselves have enthusiastically declared him trustworthy.

1. Accordingly, Ibn Hamaam writes in *Fathul-Qadeer Sharh Hidaayah*,² "As for Muhammad Ibn Ishaq, then he is undoubtedly trustworthy with us and with the *muhadditheen muhaqqiqeen* (Scholars of *hadeeth*, researchers)."

2. And 'Allaamah 'Aynee says in '*Umdatul-Qaaree Sharh Saheehil-Bukharee*,³ "Ibn Ishaq is from the elder reliable narrators according to the majority."⁴

The narration in this chapter is completely clear, and it is the decision of the Messenger of Allaah (ﷺ) that the pronouncement of the three divorces in one sitting is actually a single divorce, then he gave him (i.e.

¹ Refer to *at-Tahdheeb* (9/47-49).

² Refer to *Fathul-Qadeer* (1/301).

³ Refer to '*Umdatul-Qaari*' (7/270).

⁴ **Translator's Note:** These two points are only some of the *Hanafee* Scholars that the Shaykh has brought.

Rukaanah) the authority to return (to his wife). So those people who say that three divorces have occurred and he could not take his wife back are upon error. Is there any opinion worthy of any attention after the verdict of the Messenger has been declared? Impossible! And this *hadeeth* also has the benefit that Rukaanah took his wife back and established his household again.

Haafidh Ibn Hajr says after bringing this *hadeeth* in *Fathul-Baaree*,¹ “This *hadeeth* is clear in this matter and there is no room for interpretation in it.”

And both the previous *ahaadeeth* were declared *saheeh* by Ibnul-Qayyim (d.751H) in *Ighaathatul-Lahfaan*.²

The Third Hadeeth: It has been reported in the *Musannaf* of Abdur-Razzaaq (d.211H)³ upon the authority of Ibn Jurayj that he said: I was informed by some of the tribe of Bane Raafi' upon 'Ikrimah that Ibn 'Abbaas said, “A man divorced his wife three times in the time of the Messenger of Allaah (ﷺ). He (i.e. the Messenger) ordered him to take his wife (back). He said, “I have divorced her thrice.” He replied, “I know,” and recited the *ayah*,

﴿ يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ ﴾

“O Prophet! When you divorce women, divorce them at their 'iddah (prescribed periods).” [Sooratut-Talaaq 65:1]

(Ibn Abbaas says): so he took his wife back.”

¹ Refer to *Fathul-Baaree* (9/362) of Ibn Hajr.

² Refer to *Ighaathatul-Lahfaan* (1/302) of Ibnul-Qayyim.

³ Refer to the *Musannaf* (6/391) of 'Abdur-Razzaaq.

Authenticity of the Hadeeth:

One of the narrators in this narration, Ba'eed Bane Raafi' is apparently unknown, but Ibn Hajr says in *Tahdheeb*¹ and *Taqreeb*² that it is possible that he is Fadl Ibn 'Abdullaah Ibn Abee Raafi' al-Madane, and he is the well-known one who is mentioned by Ibn Hibbaan (d.354H) in *Kitaabuth-Thiqaat*,³ and adh-Dhahabee said regarding him in *al-Kaashif*,⁴ "He is trustworthy," and it is in *Taqreebut-Tahdheeb*,⁵ "(His narrations are) accepted."

So this *hadeeth* is sufficient as a witness and support, and it is also in Aboo Dawood.⁶

And the *ayah*,

﴿ يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ ﴾

"O Prophet! When you divorce women, divorce them at their 'iddah (prescribed periods)." [Sooratut-Talaaq 65:1]

It is in the beginning of *Sooratut-Talaaq*. Through this, it becomes clear that the divorce should occur during the 'iddah, meaning in each (menstrual) cycle separately, as it has come in the aforementioned *hadeeth*, and the saying of Ibn 'Abbaas. This person was made to (take his wife) back by the Messenger (ﷺ). So it is proven that three divorces in one sitting are considered a single divorce, and this is the second verse of the *Qur'aan* used in this chapter.

¹ Refer to *at-Tahdheeb* (12/387).

² Refer to *at-Taqreeb* (p. 650), with the commentary of Ameer 'Alee Hanafee.

³ Refer to *Kitaabuth-Thiqaat* (5/295), published by al-Qalamee.

⁴ Refer to *al-Kaashif* (2/382).

⁵ Refer to *Taqreebut-Tahdheeb* (p. 416).

⁶ Related by Aboo Daawood (p. 498).

Fourth Hadeeth: Abul-Jawzaa‘ asked Ibn ‘Abbaas, “Did you know that three divorces (in one sitting) were considered a single divorce in the time of the Messenger of Allaah (ﷺ) and in the time of Aboo Bakr (رضي الله عنه) and in the time of ‘Umar (رضي الله عنه)?” So he replied, “Yes”¹

Authenticity of the Hadeeth:

This narration is reported in the *Mustadrak* of Imaam al-Haakim and it is said to be *saheeh*, even though in its chain is the narrator, ‘Abdullaah Ibn Mu‘ammal al-Makkee. Regarding him, it is mentioned in *Taqreebut-Tahdheeb*, “Weak in *hadeeth*”, but these types of narrations can be utilized as a witness and support while the real basis is upon the preceded authentic *ahaadeeth*.²

The Fifth Hadeeth: “Ibn ‘Abbaas said, “When you pronounce three divorces at once, then only one divorce will occur.”³

Condition of the Hadeeth:

According to Ibnul-Qayyim, its chain falls within the conditions of al-Bukhaaree.⁴

Even though this *hadeeth* is *mawqoof* linguistically, since it is a statement of a Companion, its ruling is *marfoo’*, because it does not contain any trace of *ijtihad* (analytical deduction), rather this explicit decision [of a Companion] depends upon the explicit decision of the Prophet (ﷺ).

And if it is just declared *mawqoof*, even then the aforementioned *ahaadeeth* that are *marfoo’* can be strengthened through it, because it is

¹ Related by ad-Daaraqutnee in his *Sunan* (2/56).

² **Translator’s Note:** Imaam Naasirud-Deen al-Albaanee declares this *hadeeth* to be *saheeh* in his checking of Aboo Daawood.

³ Related by Aboo Daawood (1/299).

⁴ Refer to ‘*Awnul-Ma’bood* (2/227).

the same narrator, Ibn 'Abbaas (رضي الله عنه), who is its narrator and source, and the *fatwaa* is in accordance (to what has preceded).

Firstly, we can see the strength and authenticity of these *ahaadeeth*, and secondly, it also becomes clear that there is no room for interpretation in them; rather they contain a clear and explicit ruling that three divorces (pronounced) in one sitting will be considered a single divorce. And this ruling is legislative, and it is not abrogated, because of the famous principle, "The narrator knows best what he is narrating."

The Reality of the Hanafee Claim of *Ijmaa'* (Consensus):

The *fatwaa* of Ibn 'Abbaas (رضي الله عنه) falsifies the claim of those people who say that three divorces pronounced in one sitting will be considered as three (divorces), and that there is consensus upon it; because Ibn 'Abbaas (رضي الله عنه) died in 68H, meaning he lived for more than twenty years after the death of the fourth Caliph, 'Alee (رضي الله عنه), as he died in 40H¹, so the ruling that was established in the time of 'Umar (رضي الله عنه); even though it was administrative and not *shar'ee* (legislative), as it has preceded; even at that time there was no *ijmaa'* amongst the Companions, as Ibn 'Abbaas's opposition was present and apart from him there were many other Companions who did not agree.

It is stated in *Fathul-Baaree*,² "The likeness of that is mentioned upon 'Alee, Ibn Mas'ood, 'Abdur-Rahmaan Ibn 'Awf, and az-Zubayr (رضي الله عنه)." Meaning, the same opinion is known from these four Companions. So the claim of consensus is false, rather its opposite has been established, that three divorces in one sitting is only a single divorce, as has been mentioned before, and as is known in the first *hadeeth* and this was the ruling that was enforced in the time of Aboo Bakr (رضي الله عنه), and the decision of establishing of three was of some, and before it there was agreement upon (only) one.

¹ Refer to *al-Isaabah*(2/326) and (2/503) of Ibn Hajr.

² Refer to *Fathul-Baaree* (9/363) of Ibn Hajr.

'Allaamah Ibnul-Qayyim says, "As for the sayings of the Companions, then it is sufficient that this was the decision of Aboo Bakr as-Siddeeq (ﷺ) and with him were all the Companions and no one differed with him, nor is any other statement known from anyone. Rather, some Scholars say that this is an older consensus and the differing occurred after that. Meaning, in the time of the third caliph and this has remained until now."¹

Then the Haafidh (Ibnul-Qayyim) continues to mention the difference of opinions by stating that Imaam Aboo Daawood (d.275H) and his companions adopted that the three divorces in this manner is a single divorce, and similarly many Scholars have adopted this view. Similarly, Imaam at-Tahaawee (d.321H) in *Ikhtilaaful-'Ulamaa'* and *Tahdheebul-Aathaar* and Aboo Bakr ar-Raazee in *Ahkaamul-Qur'aan*, and Imaam Ibnul-Mundhir, Imaam Ibn Jareer (d.310H) and Imaam Muhammad Ibn Nasr al-Marwazee (d.294H) have mentioned a difference of opinion.

Then he (Ibnul-Qayyim) continues, "'Allaamah Marwazee has related it in the book *Kitaabul-Mu'allim* and he has related it upon Muhammad Ibn Muqaatil who is from the close associates of Aboo Haneefah (d.150H) in the third generation, so this is one of two opinions in the *madhhab* of Imaam Aboo Haneefah. And at-Tilmisaanee has quoted a statement from the *madhhab* of Imaam Maalik (d.179H) in *Sharhut-Tafree'*, rather he has quoted a narration from Imaam Maalik. So this is one of the opinions in the *madhhab* of both the Imaams. Shaykhul-Islam Ibn Taymiyyah (d.728H) has mentioned it upon some of the companions of Imaam Ahmad (d.241H), he also has adopted this and has also quoted from the associates of Imaam Ahmad, so it is the same saying in the *Hanbalee madhhab*."

And it has come in *Fathul-Baaree*², "And Ghanawee has quoted the same ruling from the famous Scholars of Qurtubah, Muhammad Ibn Taaqee Ibn Mukhlad and Muhammad Ibn 'Abdus-Salaam al-Khushanee and other

¹ Refer to *Ighaathatul-Lahfaan* (1/307) of Ibnul-Qayyim.

² Refer to *Fathul-Baaree* (9/363) of Ibn Hajr.

than them, and from the *taabi'een* he has also quoted from the students of Ibn 'Abbaas (رضي الله عنه), 'Ataa' Ibn Abee Rabaah, Taawoos and 'Umar Ibn Deenaar."

So the claim that there is consensus on three divorces (pronounced) in one sitting to be three divorces has been proven wrong, rather it as an affair in which there is difference of opinion.

Ruling Regarding Difference of Opinion:

And in the cases of difference the ruling is,

﴿ فَإِن تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِن كُنتُمْ تُؤْمِنُونَ
بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا ﴾

“So if you differ in anything amongst yourselves, refer it to Allaah and His Messenger, if you believe in Allaah and in the Last Day. That is better and more suitable for final determination.” [Sooratu-Nisaa' 4:59]

And al-Haafidh Ibn Katheer (d.774H) writes regarding this verse, “There is proof in this verse that the one who does not judge by the *Qur'aan* and the *Sunnah* in matters of dispute and does not return to them, then he is not from the believers in Allaah and the Last day.”¹

During the First Two Divorces, One can Return During the 'Iddah:

It was established from the verses and the *ahaadeeth* mentioned above and it has become clear that three divorces pronounced at once will be considered a single divorce and the divorce is a 'returnable divorce' and within the *'iddah*, a husband can take back his wife. Allaah has said,

¹ Refer to the *Tafseer* (1/518) of Ibn Katheer.

﴿ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا ﴾

“And their husbands have the better right to take them back in that period, if they wish for reconciliation.” [Sooratul-Baqarah 2:228]

And the duration of the 'iddah is explained in the beginning of this *ayah*,

﴿ وَالْمُطَلَّقاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ ﴾

“And divorced women shall wait (as regards their marriage) for three menstrual periods...” [Sooratul-Baqarah 2:228]

And what is meant by *quroo* is a menstrual cycle and purification from it, in any case 'iddah will be three months, and in this time period, one can take the wife back.

Renewed Marriage after the passing of 'Iddah of the First or Second Divorce:

However, if the 'iddah has passed and they (i.e. the husband and the wife) reconcile after that, and they want to live together with goodness and virtue, then they can remarry and live together. Accordingly, Allaah has said,

﴿ وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ

أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُم بِالْعُرْفِ ۗ ﴾

“And when you have divorced women and they have fulfilled the term of their prescribed period, do not prevent them from marrying their (former) husbands, if they mutually agree on reasonable basis.” [Sooratul-Baqarah 2:232]

And this ruling is for the maximum of two divorces.

The Ruling of Returning After the Third Divorce:

After the third divorce (one) cannot return since it has become a permanent divorce. The only possibility of the woman returning is that she marries someone else after the 'iddah, and he incidentally dies or divorces her due to some reason and that also becomes a permanent divorce and he cannot take her back and then after duration of the 'iddah, she can marry her former husband. Allaah has said,

﴿الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ﴾

“The divorce is twice, after that, either you retain her upon reasonable terms or release her with kindness.”

[Sooratul-Baqarah 2:229]

And it has come in a *hadeeth* that a man asked the Messenger of Allaah (ﷺ) that Allaah has mentioned in the *Qur'aan* that the divorce is twice, so where has He mentioned a third one? So he replied that the part of the *aayah* “or release her with kindness,” is the third divorce.¹ There is also a *hadeeth mawsool* in *Sunanud-Daaraqutnee*.² And al-'Allaamah Ibnut-Turkmaanee al-Hanafee declares it to be *saheeh* from Imaam Ibnul-Qattaan (d.198H).

And the ruling after the third divorce is,

¹ Refer to the *Tafseer* (1/273) of Ibn Katheer.

² Refer to the *Sunan* (p. 426) of ad-Daaraqutnee, printed in India.

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

“And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin on both of them that they reunite, provided they feel that they can keep the limits ordained by Allaah. These are the limits of Allaah, which He makes plain for the people who have knowledge.” [Sooratul-Baqarah 2:230]

The Legislated Position of the Contemporary *Halaalah*:

However, to marry the wife with the intention to divorce her after that (such that the woman may become permissible for the first husband) and to make it a condition, which has become known as '*halaalah*', then this is forbidden and a cursed action. Accordingly, there is a narration from Ibn Mas'ood (رضي الله عنه), “The Messenger of Allaah (ﷺ) has cursed the one who does *halaalah* and the one who gets it done.”¹

After bringing this *hadeeth*, Imaam al-Tirmidhee (d.274H) - (رضي الله عنه) - says, “This *hadeeth* is *hasan* and has been narrated upon the Messenger (ﷺ) from more than one way. Also, the people of knowledge from amongst the Companions acted according to it; for example, 'Umar (رضي الله عنه) and 'Uthmaan (رضي الله عنه), 'Abdullaah Ibn 'Umar (رضي الله عنه), and other than them. This is the saying of the *fuqahaa'* from amongst the *taabi'een* such as Sufyaan ath-Thawree (d.167H) and 'Abdullaah Ibnul-Mubaarak (d.181H) and ash-Shaafi'ee (d.204H) and Ahmad Ibn Hanbal (d.241H) and Ishaq Ibn

¹ Related by at-Tirmidhee (1/133).

Raahawayh (d.238H) and Wakee' Ibnul-Jarraah (d.197H) and I heard al-Jaarood mention that the justification of the people of rhetoric is worthy of being thrown away."

Similarly, Ibnul-Qattaan (d.198H) said that this *hadeeth* is *saheeh*, and Ibn Daqeeq al-'Eed (d.701H) said it is upon the conditions of al-Bukhaaree.¹

And Imaam at-Tirmidhee (d.274H) also brought in this chapter *ahaadeeth* from Jaabir Ibn 'Abdullaah (ﷺ) and 'Alee Ibn Abee Taalib (ﷺ).

Furthermore, in *Musnad Imaam Ahmad* there is a narration upon Aboo Hurayrah (ﷺ), and all of its narrators are trustworthy and Imaam al-Bukhaaree said it is *hasan*.

And in *Ibn Maajah* are the *ahaadeeth* of Ibn 'Abbaas (ﷺ) and 'Uqbah Ibn 'Aamir.²

And in *Mu'jamus-Sahaabah* there is the *hadeeth* of 'Umar al-Laythee.³ Its chain is a little weak, but it can be used as a witness and support.

The Ahaadeeth Regarding Halaalah being cursed are Mutawaatir:

And due to many chains of narration, al-'Allaamah 'Abdul-'Azeez al-Ghamaree said that it is *mutawaatir*.⁴

So, an action that is so evil that both, the one who commits it and the one who facilitates it, have been cursed by the Messenger of Allaah (ﷺ), then it cannot be permissible in any way.

¹ Refer to *at-Talkheesul-Habeer* (3/170).

² Refer to *Ighaathatul-Lahfaan* (1/277-288).

³ Refer to *at-Talkheesul-Habeer* (1/171).

⁴ Refer to *Itihaaf Dhawil-Fadaa'ilil Mushtahirah* (p. 110).

'Allaamah Ameer Yamaanee writes under the *hadeeth* of Ibn Mas'ood in *Subulus-Salaam*,¹ "This *hadeeth* is a proof of the forbiddance of *halaalah*, because nothing is cursed except that it is a forbidden action, and its forbiddance is a proof upon the falsity of this type of agreement."

The Position of the Companions Regarding *Halaalah*:

Rather, 'Abdullaah Ibn 'Umar (ؓ) says, "We used to consider this (*halaalah*) to be fornication in the time of the Messenger of Allaah (ﷺ)."²

And when Ibn 'Umar (ؓ) said, "We"; this is a proof upon the consensus of the Companions.

And the Leader of the Believers, 'Umar al-Farooq (ؓ) used to give the punishment of stoning to the one who committed *halaalah* and the one who facilitated it.³

And the Messenger of Allaah (ﷺ) has said that the one who commits *halaalah* is a loaned (male) goat.⁴

And al-'Allaamah Qaasim Ibn Qatlubghaa al-Hanafee said regarding this *hadeeth*,⁵ "Ibn Maajah has narrated it and its narrators are trustworthy."

The Ruling of Shaah Waliyyullaah Regarding *Halaalah*:

Shaah Waliyyullaah (d.1176H) says, "And the Messenger of Allaah (ﷺ) has cursed the person who commits *halaalah* and the one who facilitates it. I say: He prohibited from it because those people marry only with the intention of *halaalah*, and they do not intend to assist each other in living

¹ Refer to *Subulus-Salaam* (3/126).

² Refer to *al-Mustadrak* (2/199) of al-Haakim.

³ Refer to the *Musannaf* (4/294) of Ibn Abee Shaybah.

⁴ Refer to *al-Mustadrak* (2/199) of al-Haakim.

⁵ Refer to *Takhreejul-Ahaadeethil-Bardawee* (p. 17).

together, and through it the purpose of marriage is not (achieved), and further, there is shamelessness and immodesty in it.”¹

Halaalah is a result of cursed actions and shamelessness. 'Allaamah Ibn Qayyim (رحمته) has discussed it in detail in *I'laamul-Muwaqqi'een*² and he has proven that the marriage of *halaalah* is worse than *mut'ah* (temporary marriage).

May Allaah keep the Muslims in safety. *Aameen*.

This is the last of what we have to say, and all praise is due to the Lord of the universe.



¹ Refer to *Hujjatullaahil-Baalighah* (4/139), published in Egypt.

² Refer to *I'laamul-Muwaqqi'een* (3/54-61) of Ibnul-Qayyim.



Appendix: Rights of Divorced Parents upon the Children¹

The great Scholar of Islaam, Aboo Daawood as-Sijistaanee (d.275H), in his *Sunan*, in the 'Chapter of the one who has the most right to the children,' in the book of divorce, brings the following *hadeeth*:

From 'Abdullaah Ibn 'Amr (رضي الله عنه): A woman came to the Messenger of Allaah (ﷺ) and said, "O Messenger of Allaah! Indeed, my son grew in my stomach and was nursed upon my breasts and was sheltered in my home. His father divorced me and now he wants to take him from me." So the Messenger of Allaah (ﷺ) said to her, "You have more right to him as long as you do not re-marry."²



So the great Scholar of *hadeeth*, Shamsul-Haqq al-'Adheemaabaadee (d.1349H) - رحمه الله - says in his explanation of this narration in his book, '*Awnul-Ma'bood*,

"This *hadeeth* is a proof that the mother has more right to the children than the father as long as nothing comes to prevent it, like her marrying someone else due to the specification of the Messenger of Allaah (ﷺ) to the rights of custody by his statement, 'as long as you do not re-marry.' And this is the statement of Imaam Maalik (d.179H), the *Shaafi'iyyah* and the *Hanafiyyah*. And Ibnul-Mundhir has mentioned that there is consensus of the Scholars upon that..."³

¹ The section was prepared by Abul-Hasan Maalik al-Akhdar.

² **Hasan:** Related by Aboo Daawood (no. 2273). This *hadeeth* has been graded *hasan* by the great Scholar of *hadeeth*, Shaykh Muhammad Naasirud-Deen al-Albaanee in his books, *Saheeh Sunan Abee Daawood* (2/32), *Silsilatus-Saheehah* (1/2/709) and *Irwa'ul-Ghaleel* (no. 2187).





³ Refer to '*Awnul-Ma'bood* (6/298) of al-'Adheemaabaadee.

Ibnul-Qayyim al-Jawziyyah (d.751H) -  - says in his explanation of this *hadeeth*, “And there is no other *hadeeth* besides this one from the Prophet  about the loss of the rights of guardianship by marriage, and it is the opinion of the four Imaams and other than them.”¹

He says later in the same book, “And this *hadeeth* establishes that if two spouses separate and have children between them; then the mother has more right to them than the father as long as as the mother does not do that which will prevent her taking precedence.”

In the statement of Ibnul-Qayyim here, ‘as long as the mother does not do that which will prevent her taking precedence,’ that which is intended here is her marrying someone else.

There is also another *hadeeth* that comes in this issue that is also collected by Imaam Aboo Daawood in the same chapter:

From Aboo Maymoonah Salmaa, a freed slave from the people of al-Madeenah, who said: While I was sitting with Aboo Hurayrah , a woman from Persia, whose husband had divorced her, came to him with a child that they were both claiming. So she said to him in Persian, “O Aboo Hurayrah! My husband wants to take my son.” So Aboo Hurayrah said to her, “Draw lots for him.” So her husband came and said, “Who challenges me about my child?” So Aboo Hurayrah said, “Indeed, I do not say this, except that I was sitting with the Messenger of Allaah  and I heard a woman come to him and say, “O Messenger of Allaah! My husband wants to take my child, but he draws water for me from the well of Aboo 'Inaabah and he helps me.” So the Messenger of Allaah  said, “Draw lots for him.” So her husband said, “Who challenges me about my child?” So the Prophet  said [to the child], “This is your father and this is your mother, so take the hand of whichever one of them you desire to go with.” So he chose the hand of his mother and she went off with him.”

¹ Refer to *Zaadul-Ma'aad* of Ibnul-Qayyim.

Shamsul-Haqq al-'Adheemaabaadee (ﷺ) says in his explanation of this narration, "As-Sindhee (ﷺ) says, "Draw lots for him," meaning, for the child. He says in *an-Nayl*: In this is a proof that drawing lots is a legislated means when deciding between two affairs, and that is permissible to refer to it just as it is permissible to refer to the choice of the child, and it is said that the choice of the child takes precedence over it, but there is not found in the *hadeeth* of Aboo Hurayrah (رضي الله عنه) any evidence for this. Rather, perhaps it points to the opposite, because the Prophet (ﷺ) commanded them firstly to draw lots and when they did not do that, he left the choice to the child, and it is said that the choice of the child takes precedence because of the agreement of the wordings of the different *ahaadeeth*, and the fact that the Rightly-Guided Caliphs worked by this.

"So take the hand of whichever one of them you desire to go with."

Al-Khattaabee (d.388H) said in *al-Ma'aalim*, "This is for the child who can reason and is no longer in need of nursing, if so, then he chooses between the two parents. The Scholars have differed regarding this. Ash-Shaafi'ee (d.204H) says, "If he turns seven of eight years of age, he chooses." This is what Ishaq (d.238H) said. Ahmad said, "He chooses when he has grown." They people of *ra'yee* (opinion) and Sufyaan ath-Thawree (d.167H) say, "The mother has more right to the child until he can eat by himself and dress himself, and with the girl until she has her menses, then the father has more right." Maalik said, "The mother has more right to the girls until they can marry, even after having their menses. And as for the boys, he has more right to them until they reach the age of puberty." Al-Khattaabee said, "It is likely that those who leave off the choice [of the child] and go to the father having more right as long as the child is no longer in need of nursing, go to that because the mother is the one who does the nursing of the child and she is more caring in that. And when the child passes the age of nursing, then he is in need of the father and sustenance and the father is a better protector for him than the mother." End of quote from *'Awnul-Ma'bood*.



Glossary

A

Aayah: (pl. *aayaat*) "sign," a verse of the *Qur'aan*.

Aahaad: a narration which is narrated through one chain only.

Ahaadeeth: see *hadeeth*.

'Alayhis-salaam: "May Allaah (ﷺ) protect and preserve him." It is said after the name of a Prophet of Allaah or after the name of an Angel.

Ansaar: "helpers;" the Muslims of al-Madeenah who supported the Muslims who migrated from Makkah.

'Arsh: Throne of Allaah (ﷻ).

'Asr: the afternoon Prayer.

Awliyaa': see *Walee*.

B

Bid'ah: Heresy (any innovatory practice).

Buraaq: An animal bigger than a donkey and smaller than a horse on which the Prophet (ﷺ) went for the *Mi'raaj*.

D

Daa'ee: one engaged in *da'wah*, caller.

Da'aef: "weak," unauthentic narration.

Da'wah: invitation, call to Allaah (ﷻ).

Deen: a completed way of life prescribed by Allaah (ﷻ).

Dhikr: (pl. *adhkaar*) remembrance of Allaah (ﷻ) with the heart, sayings of the tongue and actions of our limbs.

E

Eemaan: faith, to affirm all that was revealed to the Prophet.

F

Faahish: one who talks evil.

Fard Kifaayah: collective obligation – if fulfilled by a part of the community then the rest are not obligated.

Fatwaa: (pl. *fataawaa*) religious verdicts.

Faqeeh: A scholar who can give religious verdicts.

Fiqh: Islaamic jurisprudence, understanding.

Fitnah: (pl. *fitan*) Trials, persecution, conflicts and strifes among the Muslims.

Fitrah: the natural disposition that one is born upon.

G

Ghuloo: going to an extreme.

Ghusl: A ceremonial bath necessary for the one who is in a state of *Janaabah*.

H

Hadeeth: (pl. *ahaadeeh*) the saying, actions and approvals accurately narrated from the Prophet (ﷺ).

Halaal: lawful.

Haneef: pure Islaamic Monotheism (worshiping Allaah alone and nothing else).

Haraam: unlawful and forbidden.

Hasan: fine, good; a term used for an authentic *hadeeth*, which does not reach the level of *Saheeh*.

Harj: killing.

Al-Harooriyyah: a special unorthodox religious sect that branched off from the *Khawaarij*.

Hijrah: migration from the land of *shirk* to the land of Islaam.

Hukm: a judgment of legal decision (especially of Allaah).

I

'Ibaadah: worship, worship of Allaah.

Ihsaan: worshipping Allaah as though you see Him. However, since you cannot see Him, then know that He sees you.

Ijmaa': consensus, a unified opinion of scholars regarding a certain issue.

Ijtihad: exertion of effort; the process of arriving at a reasoned decision by a scholar on an issue.

Imaam: leaders; leaders in Prayer, knowledge in *fiqh*, leader of a state.

Isnaad: the chain of narrators linking the collector of the saying to the person quoted.

Istikhaarah: a Prayer consisting of two units (*rak'ah*) asking Allaah for guidance.

Istiwa: ascending; the ascending of Allaah above the Throne (in the manner that befits His Majesty).

J

Janaabah: state of a person after having sexual intercourse or sexual discharge.

Janaazah: (pl. *janaa'iz*): Funeral.

Jihad: striving, struggling, fighting to make the Word of Allaah supreme.

Jumu'ah: Friday.

Jinn: invisible creation, created by Allaah from smokeless fire.

Junub: a person who is in the state of *janaabah*.

K

Ka'bah: a square stone building in *al-Masjidul-Haram* (the great mosque in Makkah which Muslims go to for pilgrimage and which all Muslims direct their face in Prayer).

Al-Kabaa'ir: the major sins.

Khaarijee: (pl. *Khawaarij*): those who declared that a Muslim becomes a disbeliever due to committing a major sin alone.

Khaleefah: (pl. *khulafaa'*): the head of the Islaamic government to whom the oath of allegiance is given.

Khilaafah: an Islaamic state.

Khutbah: (person *khateeb*), religious talk (sermon).

Kufr: (person *kaafir*) act of disbelieve in the Religion of Islaam.

M

Madhhab: position or opinion of a scholar; school of Islaamic Jurisprudence.

Makrooh: not approved of, undesirable from the point of view of Religion, although not punishable.

Manhaj: way; method; methodology.

Marfoo': raised; a narration attributed to the Prophet (ﷺ).

Masjid: mosque.

Mawbiqaat: great destructive sins.

Mudallis: one who practises *tadlees*.

Muhaajir: (pl. *muhaajiroon*, *muhaajireen*) one who migrated from the land of the disbelievers to the land of the Muslims for the sake of Allaah.

Muhaddith: scholar of the science of *hadeeth*.

Muftee: one who gives *fataawaa*.

Mujaahid: (pl. *mujahidoon*): a Muslim warrior in *Jihaad*.

Mujtahid: one who is qualified to pass judgment using *ijtihad*.

Munkar: "rejected;" a narration which is un-authentic itself and contradicts and authentic narrations.

Muqallid: one who practices *taqleed*.

Mushrik: (pl. *mushrikoon*) polythesists, pagans and disbelievers in the oneness of Allaah (ﷻ) and His Messenger (ﷺ).

Mustahabb: recommended; an action if left not punishable and if done it is rewardable.

Muttaqoon: those who are pious.

Mutawaatir: a *hadeeth* which is narrated by a very large number of reporters, such that it cannot be supported that they all agreed upon a lie.

Muwahhid: (pl. *muwahhidoon*) one who unifies all of his worship and directs it to Allaah alone.

Mawdoo': fabricated; spurious; invented (narration).

Mawqoof: stopped; a narration from a companion (not going back to the Prophet (ﷺ)).

Mawsool: "connected;" a continuous *isnaad* (can be narrated back to the Prophet (ﷺ)).

N

Naafilah: (pl. *nawaafil*) Optional practice of worship.

Niyah: intention from the heart.

Nusuk: a sacrifice.

Q

Qadar: Divine pre-ordainment; that which Allaah has ordained for his creation.

Qiblah: the direction the Muslims face during prayer.

Qiyaas: analogical deduction of Islaamic laws. New laws are deduced from old laws based upon similarity between their causes.

Qunoot: "devotion;" a special supplication while standing in the Prayer.

Quraysh: one of the greatest tribes in Arabia in the pre-Islaamic period of Ignorance. The Prophet (ﷺ) belonged to this tribe.

R

Raafidee: the correct title for the extreme *Shee'ah*. Those who bear malice and grudges against the noble Companions to the extent that they declare them to be apostates. They also hold that the *Qur'aan* which the Muslims have is neither complete nor preserved from corruption.

Ramadaan: the ninth month of Islaamic calander, in which Muslims observe fasting.

S

Sahaabah: (pl. *sahaabah*) Muslims who met the Prophet (ﷺ) believing in him and died believing in him.

Saheeh: authentic, the highest rank of classification of authentic *ahaadeeth*.

Salaf/Salafus-Saaliheen: pious predecessors; the Muslims of the first three generations: the companions, the successors and their successors.

Salafee: one who ascribes oneself to the *salaf* and follows their way.

Seerah: the life story of the Prophet (ﷺ).

Sharee'ah: the divine code of law of Islaam.

Shawwaal: the month after *Ramadaan*.

Shaytaan: Satan

Shee'ah: (see *Raafidee*) a collective name for various sects claiming love for *Ahlul-Bayt*.

Shirk: associating partners with Allaah directly or indirectly; compromising any aspects of *Tawheed*.

Soorah: a chapter of the *Qur'aan*

Sunnah: "example, practice;" the way of life of the Prophet (ﷺ), consisting of his words, actions and silent approvals. The *Sunnah* is contained in various *ahaadeeth*.

T

Taabi'ee: (pl. *taabi'een*) the generation after the Companions of the Prophet (ﷺ).

Tafseer: explanation of the *Qur'aan*.

Taaghoot: anything worshiped other than the real God (Allaah) (i.e. false deities).

Tahajjud: voluntary, recommended Prayer between the compulsory prayers of *'Ishaa'* and *Fajr*.

Takhreej: to reference a *hadeeth* to its sources and analyze its *isnaads*.

Taqleed: blind following; to follow someone's opinion (*madhhab*) without evidence.

Taqwaa: acting in obedience to Allaah, hoping for His mercy upon light from Him and *taqwaa* is leaving acts of disobedience, out of fear of Him, upon light from Him.

Tarjamah: notes about a reporter of *hadeeth*.

Tawwaaf: the circumambulation of the *ka'bah*.

Tawheed: Islaamic Monotheism. The Oneness of Allaah. Believing and acting upon His Lordship, His rights of Worship and Names and Attributes.

U

Uhud: A well known mountain in al-Madeenah. One of the greatest battles in Islaamic history came at its foot. This is called *Ghazwah Uhud*.

'Ulamaa': (singular: *'aalim*) scholars.

Umm: mother of, used as an identification.

Ummah: "nation", the Muslims as a whole.

'Umrah: a visit to Makkah during which one performs the *tawwaaf* around the *Ka'bah* and the *Sa'ee* between *as-Safaa* and *al-Marwah*. It is called the lesser *Hajj*.

Usool: the fundamentals.

W

Wahyee: the revelation or inspiration of Allaah to His Prophets.

Wahdatul-Wujood: the belief that everything in existence is intact Allaah. This deviant belief is held by many *Soofees*.

Wakeel: disposer of affairs.

Witr: "odd;" the last Prayer at the night, which consists of odd number of *raka'aat* (units).

Waleemah: the wedding feast.

Waseelah: the means of approach or achieving His closeness to Allaah by getting His favours.

Wudoo': an ablution (ritual washing) that is performed before Prayer and other kinds of worship.

Y

Yaqeen: perfect absolute faith.

Yathrib: one of the names of al-Madeenah.

Z

Zakaat: charity that is obligatory on everyone who has wealth over and above a certain limit over which a year has passed (2.5% of saved weath).

Zakaatul-Fitr: an obligatory charity by the Muslims to be given to the poor before the Prayer of *'Eedul-Fitr*.

Zamzam: the sacred water inside the *haram* (the grand mosque) at Makkah.

Zanaadiqah: an athiest.

OUR CALL TO THE UMMAH¹

[1]: We believe in Allaah and His Names and Attributes, as they were mentioned in the Book of Allaah and in the *Sunnah* of the Messenger of Allaah (ﷺ), without *tahreef* (distortion), nor *ta'weel* (figurative interpretation), nor *tamtheel* (making a likeness), nor *tashbeeh* (resemblance), nor *ta'teel* (denial).

[2]: We love the Companions (رضي الله عنهم) of the Messenger of Allaah (ﷺ), and we hate those who speak against them. We believe that to speak ill of them is to speak ill of the Religion, because they are the ones who conveyed it to us. And we love the Family of the Prophet (ﷺ) with love that is permitted by the *Sharee'ah*. 'Imraan Ibn Husayn (رضي الله عنه) said, "O people! Learn the knowledge of the Religion from us, if you do not do so, then you will certainly be misguided."²

[3]: We love the People of *Hadeeth* and all of the *Salaf* of the *Ummah* from *Ahlus-Sunnah*. Imaam Shaatibee (d.790H) - رحمه الله - said, "The *Salafus-Saalih*, the Companions, the *taabi'een* and their successors knew the *Qur'aan*, its sciences and its meanings the best."³

[4]: We despise *'ilmul-kalaam* (knowledge of theological rhetoric), and we view it to be from amongst the greatest reasons for the division in the *Ummah*.


[5]: We do not accept anything from the books of *fiqh* (jurisprudence), nor from the books of *tafseer* (explanation of the *Qur'aan*), nor from the ancient stories, nor from the *Seerah* (biography) of the Prophet (ﷺ), except that which has been confirmed from Allaah or from His Messenger (ﷺ). We do not mean that we have rejected them, nor do we claim that we are

¹ This explanation of our call has been summarized from *Tarjumah Abee 'Abdur-Rahmaan Muqbil Ibn Haadee al-Waadi'ee* (p. 135-142) of Muqbil Ibn Haadee with minor additions from other sources.

² Refer to *al-Kifaayah* (p. 15) of al-Khateeb al-Baghdaadee.

³ Refer to *al-Muwaafiqaat* (2/79) of ash-Shaatibee.

not in need of them. Rather, we benefit from the discoveries of our Scholars and the jurists and other than them. However, we do not accept a ruling, except with an authentic proof.

[6]: We do not write in our books, nor do we cover in our lessons, nor do we give sermons with anything except the *Qur'aan*, or the authentic and authoritative *hadeeth*. And we detest what emanates from many books and admonishers in terms of false stories and weak and fabricated *ahaadeeth*. 'Abdullaah Ibnul-Mubaarak (d.181H) -  - said, "The authentic *ahaadeeth* are sufficient and the weak *ahaadeeth* are not needed."¹

[7]: We do not perform *takfeer* upon any Muslim due to any sin, except *Shirk* with Allaah, or the abandonment of Prayer, or apostasy. We seek refuge in Allaah from that.

[8]: We believe that the *Qur'aan* is the Speech of Allaah, it is not created.

[9]: We hold that our 'obligation is to co-operate with the group that traverses the methodology of the Book and the *Sunnah*, and what the *Salaf* of the *Ummah* were upon; in terms of calling to Allaah the Glorified, and being sincere in worship of Him, and warning from *Shirk*, innovations, and disobedience, and to advise all of the groups that oppose this.'² 'So co-operating upon righteousness and piety (*taqwaa*) and mutual advising necessitates warning against evil and not co-operating with the wicked.'³

[10]: We do not deem it correct to revolt against the Muslim rulers as long as they are Muslims, nor do we feel that revolutions bring about reconciliation. Rather, they corrupt the community.

¹ Refer to *al-Jaami' li-Akhlaaqir-Raawee* (2/159) of as-Suyootee.

² From a *fatwaa* by the Committee of Major Scholars dated: 11/16/1417, (no. 18870). It was signed by al-'Allaamah 'Abdul-'Azeez Ibn Baaz, Shaykh 'Abdul-'Azeez Ibn 'Abdullaah aalush-Shaykh, Shaykh 'Abdullaah Ibn 'Abdur-Rahmaan al-Ghudayyaan, Shaykh Bakr Ibn 'Abdullaah Aboo Zayd, and Shaykh Saalih Ibn Fawzaan al-Fawzaan.

³ From the words of Shaykh Ibn Baaz in *al-Furqaan* magazine (issue no. 14, p. 15).

[11]: We hold that this multiplicity of present day parties is a reason for the division of the Muslims and their weakness. So therefore we set about 'freeing the minds from the fetters of blind-following and the darkness of sectarianism and party spirit.'¹

[12]: We restrict our understanding of the Book of Allaah and of the *Sunnah* of the Messenger of Allaah (ﷺ) to the understanding of the *Salaf* of the *Ummah* from the Scholars of *hadeeth*, not the blind-followers of their individuals. Rather, we take the truth from wherever it comes. And we know that there are those who claim *Salafiyyah*, yet *Salafiyyah* is free from them, since they bring to the society what Allaah has prohibited. We believe in 'cultivating the young generation upon this Islaam, purified from all that we have mentioned, giving to them a correct Islamic education from the start - without any influence from the disbelieving western education.'²

[13]: We believe that politics is a part of the Religion, and those who try to separate the Religion from politics are only attempting to destroy the Religion and to spread chaos.

[14]: We believe there will be no honour or victory for the Muslims until they return to the Book of Allaah and to the *Sunnah* of the Messenger of Allaah (ﷺ).

[15]: We oppose those who divide the Religion into trivialities and important issues. And we know that this is a destructive *da'wah*.

[16]: We oppose those who put down the knowledge of the *Sunnah*, and say that this is not the time for it. Likewise, we oppose those who put down acting upon the *Sunnah* of the Messenger of Allaah (ﷺ).

[17]: Our *da'wah* and our '*aqeedah* is more beloved to us than our own selves, our wealth and our offspring. So we are not prepared to part with it

¹ From *Fiqhul-Waaqi'* (p. 49) of al-Albaanee.

² From *Fiqhul-Waaqi'* (p. 51) of al-Albaanee.

for gold, nor silver. We say this so that no one may have hope in buying out our *da'wah*, nor should he think that it is possible for him to purchase it from us for *deenaar* or *dirham*.

[18]: We love the present day Scholars of the *Sunnah* and hope to benefit from them and regret the passing away of many of them. Imaam Maalik said (d.179H) - ﷺ, "The knowledge of *hadeeth* is your flesh and blood and you will be asked concerning it on the Day of Judgement, so look who you are taking it from."¹

[19]: We do not accept a *fatwaa* except from the Book of Allaah and the *Sunnah* of the Messenger of Allaah (ﷺ).

These are glimpses into our '*aqeedah* and our *da'wah*. So if one has any objection to this, then we are prepared to accept advice if it is truthful, and to refute it if it is erroneous, and to avoid it if it is stubborn rejection. And Allaah knows best.

¹ Refer to *al-Muhaddithul-Faasil* (p. 416) and *al-Kifaayah* (p. 21) of al-Khateeb.