

Tafseer Al-Baqarah (2: 228-230)

From the Book, Introduction to the Tafseer of the Quran,

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﴿وَالْمُطَلَّاقَاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ (228) الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمُ 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 الظَّالِمُونَ (229) فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ (230)﴾

“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.(228). 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.(229). 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.(230)”

After Allah (swt) has clarified some of the rulings related to marriage and cohabitation between the spouses in the previous verses, He (swt) clarifies in these verses the rulings related to divorce (Talaq):

1- Allah (swt) clarifies that women who menstruate from amongst free women who had sexual intercourse with their husbands, if they are given Talaq, then their waiting period (Iddah) without having another marriage is three menstrual periods. And it is prohibited upon them to hide the reality of their menstruation or their child bearing for any reason as the waiting period depends on their truthfulness of what they mention about their wombs. This is in terms of whether they menstruate or bear a child as interpreted by Ibn Umar (ral).

Then their husbands have the right to take their wives back during the waiting period of revocable Talaq (Talaq Ar-raj'a'e) i.e., for one or two times as mentioned in the following verse.

Allah (swt) urges the husbands, when they take back their wives, to intend goodwill and benevolence in the marital life, with good cohabitation, and not to cause harassment for a wife, as her husband may neither want to live with her nor does he want to leave her.

At the end of the verse, Allah (swt) clarifies the obligation of a woman to perform what Allah (swt) obliges her in terms of her rights towards her husband. He (swt) also clarifies the obligation of a man to perform what Allah (swt) obliges him in terms of his rights towards his

wife. Thus both men and women are equally requested to perform the Shariah rulings related to them. At the same time, Allah (swt) clarifies that men have a degree (of advantage) over women, which Allah (swt) has clarified that in surah Nisa, ﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ﴾ **“Men are in charge of women”** [TMQ Surah An-Nisa’a 4:34] i.e. protection and guardianship, which is the responsibility about the house, the right of permission for it, the right of spending on family and other rulings related to men with the exclusion of women in that subject.

Allah (swt) knows the best of what is good for his creations, as well as what rulings are appropriate for men and women. Allah (swt) is All-Mighty and All-Dominant, who is capable of punishing all those who violate the Shariah rulings, whether it is a man or woman. And Allah (swt) is All-wise, Who knows well the consequences of things, what suits them and what is appropriate for them.

﴿وَالْمُطَلَّاتُ﴾ **“And the divorced women”**: the word (ال) ‘the’ here is ‘Al ul Ahdiyya,’ referring to the particular excluding all else, which is about the particular divorced women who are free, having sexual relations with their husbands before divorce and who menstruate. Thus women who are other than this classification will have waiting periods other than this, i.e. other than three menstrual periods, as Allah (swt) says, ﴿وَالَّذِي يَسْنُ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالَّذِي لَمْ يَحْضَنْ وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ﴾ **“And those who no longer expect menstruation among your women - if you doubt, then their period is three months, and [also for] those who have not menstruated. And for those who are pregnant, their term is until they give birth. And whoever fears Allah - He will make for him of his matter ease.”** [TMQ 65:4]. Similarly, the waiting period for a wife who has lost her husband is four months and ten days, as Allah (swt) says, ﴿يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا﴾ **“And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days]”** [TMQ 2:234]. Similarly, the waiting period for a slave girl is the duration of two menses as the duration is half that of a free woman, as she has half the due. Darul Qutni and others reported from Aisha (ra) who said: the Prophet (saw) said, طلاق الأمة تطليقتان وعدتها حيضتان **“The divorce of a slave-woman consists in saying it twice, and her ‘iddah period is two menses.”** [Al-Tirmidhi: 1102, Abu Dawud: 1872]. Similarly, the woman who does not have sexual relationship with her husband will have no waiting period as Allah (swt) says, ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَعَهُنَّ وَسَرَخُوهُنَّ سَرَاحًا جَمِيلًا﴾ **“O You who have believed, when you marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count concerning them. So provide for them and give them a gracious release”**. [TMQ 33:49]

We have said that the word (ال) ‘the’ in the verse ﴿وَالْمُطَلَّاتُ﴾ **“And the divorced women”** is *Al- ul-Ahdiyya* i.e. for the particular divorced women. They are those who are free, who had sexual relation with their husbands, and who menstruate. We have said that as a preponderance (ترجيح) due to the nature of the verse being general, whilst it is made exceptional, as comes in other verses and hadith, for the women who are not free, who had no sexual relationships with their husbands, non-menstruating women from amongst the young and old and the child bearing women. This is because the most appropriate for the particularization (Khas) of generality is that the rest (i.e. the generality) should be more after it is particularized. And exceptional things should not be many and it is clear here from what we have outweighed for the ‘ال’ (*Al- ul Ahdiyya*), as it is general and then it is particularized (in other verses and hadiths).

The preponderance of saying ‘ال’ as ‘*Al- ul Ahdiyya*’ instead of ‘*Al- ul Istighraq*’ i.e. ‘Al’ to include everything, or as general, ‘Al-ul A’am,’ is due to the mentioning of ﴿يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ أَشْهُرٍ﴾ **“Waiting period of three menses”**. Thus it refers to the particular women who menstruate.

﴿يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ﴾ **“Remain in waiting for three menses”** they wait for three menses i.e. their *iddah* period is three menses.

What does قُرُوء ‘menses’ mean? Linguistically it means ‘menstruation’ or ‘purification’ i.e. purification after menstruation. The preponderance here is that it means ‘menstruation’ due to the following reasons:

A- It is reported that Fatima bint Abu Hubaish said: ‘O Messenger of Allah, I get persistent menses, i.e. bleeding, without purifying, shall I give up prayers?’. The Prophet (saw) said, «لا، دعي الصلاة أيام أقرائك» **“No leave the prayers (only) on the days of your menses (أيام أقرائك)”** [Ahmad: 24500, al-Darami: Chapter ‘Tahara’ No. 182 where the statement is, «اجتنبى الصلاة أيام حيضك، اجلسي أيام أقرائك» **“Avoid prayer during your days of menstruation, and sit during your menses days.”** This indicates that the word ‘القرء’ means menstruation and ‘أيام أقرائك’ means ‘the days of your menses.’

B- Aisha (ra) narrated that the Prophet (saw) said, «طلاق الأمة تطليقتان وعدتها حيضتان» **“The divorce of a slave-woman consists in saying it twice, and her 'idda period is two menses (حيضتان).”** In contrast, ‘idda period for a free woman is ثلاثة قروء meaning ‘three menstruations’ i.e. the word قروء and حيض are synonymously used. And it is the half of the Iddah period of free women, half of the three menses, i.e. two menstruation periods. Thus the word القرء means ‘الحيض’ menstruation. It is said that one of the narrators of this hadith ‘Mudhahir bin Aslem’ knows only this hadith, by which some consider him as ‘unknown’. Nevertheless, Ibn Hibban authenticates him and Al-Hakim says, ‘Mudhahir is a scholar from the people of Basra. And none of our classical scholars mentioned defects in him.’ Thus the hadith is hasan.

As for the saying of Allah ﴿إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ﴾ **“When you [Muslims] divorce women, divorce them at [the commencement of] their waiting period...”** [TMQ 65:1], and the saying ﴿لِعَدَّتِهِنَّ﴾ **‘At their waiting period’** i.e. at the commencement of the waiting period. Whereby Talaq, according to the Shariah, is what comes after the purification from the menses i.e. the commencement of the waiting period is the purification (after the menses). Accordingly, the word القرء refers to the purification as reported by the two Sheikhs, Imam Bukhari and Muslim, from Ibn Umar (ra) who narrates that he divorced his wife while she was menstruating. ‘Umar (His father) mentioned the matter to the Messenger of Allah (saw). The Messenger of Allah (saw) became angry and said, «مره فليراجعها ثم ليمسكها حتى تطهر قبل» **“Command him, he must take her back and keep her back till she is purified, then has another menstrual period and is purified. Then if he desires he may divorce her during the period of purity before he has intercourse with her. This is the waiting period commanded by Allah, the Exalted, to divorce the women on the waiting period”** [Al-Tirmidhi: 4850, 4916, Muslim: 2675, 2676]

This statement, i.e. in the above hadith, is dependent on the meaning of اللام in the saying, يُطَلِّقُ لَهَا النِّسَاءَ **“to divorce the woman on the waiting period.”** The word ‘laam’ اللام in this condition has shared meanings. It may refer to the beginning of the time, as in the saying I كتبت لغرة كذا ‘I wrote at the onset of so and so’ whereby the action occurs i.e. with the entrance of the time. It may come after the passage of time like the saying I كتبت لليلة خلت من كذا ‘I wrote to him at night, until the time passes on to so and so’ i.e. the action is completed after the passage of time. It may come before the passage of time like the saying I كتبت لليلة بقيت من كذا ‘I wrote to him at night until the time remains so and so’ i.e. the action is completed before the passage of time. So the Qareena (Indication) is what clarifies the intended meaning from these shared meanings.

Here in the verse the word لِعَدَّتِهِنَّ **“at their waiting period”** is before the beginning of their Iddah period, due to the indication of occurrence of Talaq. Thus the saying of the hadith, قَبْلَكَ **“This is the waiting period commanded by Allah, the Exalted, for the divorce of women.”** [Muslim] i.e. divorcing the women before their Iddah (waiting period). Accordingly, there is no contradiction in the expression of القرء to mean the word الحيض, i.e. menstruation without getting purified, as mentioned in the previous two hadiths and

the hadith reported by the two Sheikhs about the subject of Ibn Umar (ra), regarding the meaning of the word **الحيض** as **القرء**. Thus, Iddah starts with the menstruation and when the Messenger of Allah (saw) came to know about Ibn Umar, divorcing his wife during her menstruation, he (saw) commanded him to take her back until she menstruates and then she gets purified and then to divorce her in a purified state, that precedes the beginning of the Iddah of the following menstruation. Thus, Talaq, according to the Shariah, is pronounced in a state of purity without having intercourse with her, before the beginning of the waiting period of the following menstruation. Then two menstrual periods are counted after that such that there are three menstruations, thereby the waiting period (iddah) of a free menstruating woman, who had intercourse with her husband, ends.

It should not be said that the verse, **﴿يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ﴾** “**remain in waiting for three periods**” has the number in the feminine case (ثلاثة) to denote the masculine case of (قرء), so how can the word's masculine plural form (قُرُوء) be meant as (حيضات) which is a plural form (حيضة), thereby the counting number (for حيضات) to be in a masculine form (ثلاث)? Gender of the counting number is opposite to that of counted thing. It should not be said because the counting number is permitted to be in a feminine form if the counted thing is masculine regardless of its meaning like we say (له ثلاث من البط ذكور) “He has three male ducks”. Here the counting number is masculine based on the femininity of the counted thing (البط) (ducks), as a plural of the word بطة which is feminine). Thus the word (قُرُوء) ‘menses’ is the plural of the word ‘قرء’ which is a masculine word and thus it is permissible to use feminine for the counting number. Accordingly, it is permitted to deal with the counting number in terms of the word of the counted thing or the meaning of the counted thing. As for the word of the counted thing, we have mentioned it above. As for the meaning of the counted thing, Allah (swt) says, **﴿وَقَطَّعْنَاهُمْ اثْنَتَيْ عَشْرَةَ أَسَبَاطًا أُمَمًا﴾** “**And We divided them into twelve descendant tribes [as distinct] nations.**” [TMQ Surah Al-Araaf 7:160]. Here, the counting number (اثْنَتَيْ عَشْرَةَ/ twelve) is in feminine which agrees to the counted thing (descendant tribes) in terms of its meaning i.e. the counted thing is not taken in the sense of its word (سبط أسباط), which is in a masculine form. Instead, it is taken in the sense of its meaning, which means ‘groups’ ((فرقة / it is in a feminine form).

Thus we say that preponderance for the meaning of the word (القرء) is menstruation (الحيض), as the hadith of the Prophet (saw) to Fatima bin Abi Hubaish is very clear in the subject, **«دعي الصلاة أيام أقرانك»** “**Leave the prayers during the days of your menses**”. And it is also because of the hadith of the Aisha (ra) about the waiting period of a slave woman which clearly says (حيضتان) “**Two menses.**” Also this is due to the letter ‘lam’ (اللام) in the saying of Allah **﴿لِعِدَّتِهِنَّ﴾** “at their Iddah period” [TMQ Surah at-Tahrim 65:1] and in the Hadith reported by the two sheikhs **يطلق لها النساء** “**to divorce the women on the (commencement of) waiting period.**” Which means before the commencement of their Iddah period, as we have clarified it above. This combined evidence outweighs the meaning of (القرء) to menstruation. Thus, the waiting period is three consecutive menstrual periods.

﴿وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ﴾ “**And their husbands have more right to take them back in this [period].**” **﴿بُعُولَتُهُنَّ﴾** “**Their husbands**” i.e. their husbands, (بُعُولَتُ) which is a plural of the word (بعل / spouse) like the word (عم / وعمومة meaning paternal uncle).

﴿أَحَقُّ﴾ “**Have the most right,**” here it comes with the meaning of entitlement or right (حقيق) that is expressed in a superlative form.

﴿بِرَدِّهِنَّ﴾ “**To take them back**” i.e. to take them back if the talaq is revocable talaq as comes in the following verse.

﴿فِي ذَلِكَ﴾ “**In that (period)**” i.e. the waiting period - iddah period.

And the meaning is that: their husbands have the right of taking them back during the Iddah period and it is for the revocable Talaq.

﴿إِنْ أَرَادُوا إِصْلَاحًا﴾ **"If they want reconciliation"**. It is an exhortation to the husbands for their intentions to have good reconciliation and co-habitation when they take back their wives during the Iddah period.

This should not be understood as a condition i.e. taking them back is not dependent on the reconciling intention of the husbands. Instead, if a husband takes her back, taking back is valid regardless of his intention. In the Hadith of Ibn Umar, when Ibn Umar (ra) divorced his wife during the menstrual period, the Messenger of Allah (saw) ordered Umar (ra) to convey his son that he must take her back, and after she becomes purified, followed by the menstruation and after her becoming purified, he can either take her back, if he wishes, or he can divorce her. Here it is clear here that taking back is not for the sake of marital cohabitation i.e. not for the sake of reconciliation, despite taking back being valid.

However, as for the husband who takes his wife back for the sake of harming her, such that her Iddah period will not end in order for her to get released from him, when the husband only wants to hold her back in his possession for the sake of harming her and not for the sake of marital cohabitation, it is a sin as Allah (swt) says, ﴿وَإِذَا طَلَقْتُمُ النِّسَاءَ فَلَهُنَّ أَجَلُهُنَّ فَأَمْسِكُوهُنَّ أَجَلَهُنَّ وَلَا تُمْسِكُوهُنَّ ضَرَارًا لِتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوًا﴾ **"And when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them]. And whoever does that has certainly wronged himself."** [TMQ Surah Al-Baqarah 2:231]. It is a decisive forbidding i.e. haram to hold the wife back for the sake of harming her.

2- Allah (swt) clarifies in the second verse that the pronouncing of Talaq possessed by man and taking back his wife during the waiting period is two times (تطليقتان).

﴿الطَّلَاقُ مَرَّتَانٍ﴾ **"Divorce is twice."** Here the word 'divorce/ Talaq' is mentioned with the meaning of تطليق 'Giving divorce,' like the words السلام 'Peace' and التسليم 'saying salam'. If he divorces her for the first time, he can take her back during the Iddah period and there is no condition to have the consent of his wife. However, if she remains without being taken back, until her Iddah period passes, then she becomes foreign to her previous husband. It is not permissible for him to marry her except by a new contract, with a new *mahr* i.e. her consent is a condition like any other marriage contract. Such a situation is named in Fiqh as '*Al-Buyunath As-sughra*' 'Minor breakup.'

It is similar when the husband divorces her for the second time, the man does not possess other than these two revocable talaq in Islam.

Tirmidhi reported from Urwa from Aisha (ra) as a Marfu' hadith, in which Aisha (ra) said, "The people were such that a man would divorce his wife when he wanted to divorce her, and she remained his wife when he wanted to take her back, while she was in her Iddah, and he could divorce a hundred times, or even more, such that a man could say to his wife, 'By Allah! I will neither divorce you irrevocably, nor give you residence ever!' She would say, 'And how is that?' He would say, 'I will divorce you, and whenever your Iddah is just about to end I will take you back. So a woman went to Aishah to inform her about that, and Aishah was silent until the Prophet came. So she told him and the Prophet was silent, until the Qur'an was revealed, ﴿الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ﴾ **"Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment."** So the maximum limit of revocable talaq for a man is two". [Al-Tirmidhi: 1113]

If a wife is with her husband and two divorces have passed from her husband and if he takes her back two times, then his right of revocable Talaq will end. Consequently, he will have one of the following two options.

﴿فَأِمْسَاكَ بِمَعْرُوفٍ﴾ **"Then, either keep [her] in an acceptable manner"** i.e. either he has to continue the marriage with good companionship, good intimacy and obedience to Allah and His Messenger, with regard to rights and obligations of the spouses.

Or ﴿أَوْ تَسْرِحَ بِإِحْسَانٍ﴾ “release [her] with good treatment” i.e. he has to divorce her third time as explained in the third verse saying, ﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ﴾ “And if he has divorced her [for the third time], then she is not lawful to him afterward” [TMQ 2:230].

The mention of the word ﴿بِإِحْسَانٍ﴾ (“with good treatment”) has an indication that he must not harm her in Talaq, nor should he eat her rights by choking her in Talaq, as clarified by the upcoming verse, ﴿وَلَا تُمْسِكُوهُمْ ضِرَارًا لِيُتَعَذَّلُوا﴾ “do not hold them back, with the intention of harming them.” [TMQ Surah al-Baqarah 2:231]

As for why we said this, it is the saying ﴿فَأَمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِحَ بِإِحْسَانٍ﴾ “either keep [her] in an acceptable manner or release [her] with good treatment.” It is after the exhaustion of the right of the two talaqs i.e. it is to the existing wife under the protection of her husband after the two talaqs have passed, and we did not say it for the taking back after the first and second Talaq, because in the first two talaqs, the husband may keep her in an acceptable manner, or he may not revoke her, until the waiting period passes, such that there will be a release with good treatment, so the woman becomes the possession of herself.

The reason is that the Messenger of Allah (saw) was asked about this verse and he (saw) said, third talaq is a release with a good treatment. Accordingly, the meaning becomes what we have said; if the two talaqs pass upon a wife, who is under the protection of her husband, then her husband must either continue with her in an acceptable manner, by having good companionship and cohabitation, or he should divorce her for the third time and release her with a good treatment.

Ibn Mardawiya reported from Anas bin Malik who said: A man came to the Prophet (saw) and said, ‘Oh Messenger of Allah! Allah mentioned Talaq two times, so where is the third one?’ The prophet (saw) replied, «إمساك بمعروف أو تسريح بإحسان» “either keep [her] in an acceptable manner or release [her] with good treatment.” In another narration of Ibn Abi Hatim from Abu Razin al-Asadi: It was asked: Where is the third one? The Messenger of Allah (saw) replied, التسريح بإحسان “Release [her] with good treatment.” [Al-Durr Al-Manthur: 2/664, Tafsir Ibn Kathir: 1/273, Al-Muhadhd: 2/78]

After that Allah (swt) clarifies that it is not permissible for the husbands to take anything which they gave to their wives as a mahr, in return for divorcing their wives. Instead, if a husband wants to divorce his wife, let him divorce her with a good treatment, without causing harm to her by taking anything he gave to her. Allah (swt) says, ﴿وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ﴾ “And it is not lawful for you to take anything of what you have given them.” [TMQ Surah Al-Baqarah 2:229]

However, Allah (swt) made an exception for one situation in which a man can take (wealth) from his wife and such a situation is called Khul’. It is the situation in which the wife hates her husband and is reluctant to live with him under marital life. The reason for this situation is from the wife and not from the husband. In such situation, it is permissible for the wife to give compensation (fidya) for her separation (khul’) from her husband, by giving the husband the amount of *mahr* without any increase. Thereby, she can get Khul’ from her husband with the permission of the Imam (Khalifah) or his delegates, who will nullify her marriage contract with her husband. It becomes clear from the state of Khul’ that the husband will not possess the right of taking her back after that. Instead, he can marry her again by having a new marriage contract and new *mahr*.

As for why we have said that the reason for Khul’ is from the wife, this is because it is in the Quran and Sunnah. As for what is in the Quran, it says Talaq is in the hands of a man and if he hates his wife or if he does not want to be in a companionship with her, he can divorce her. And Allah (swt) has prohibited him to harm his wife by exempting some of her rights until he divorces her. Instead, if he wishes, he can retain her in a good manner or release her in a good manner, without harming her, by taking back some of what he gave to her. Allah (swt) says, ﴿وَإِذَا طَلَقْتُمُ النِّسَاءَ فَلْيَبْلُغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا﴾

﴿لَتَعْتَدُوا﴾ **“And when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them].”** [TMQ Surah Al-Baqarah 2:231] i.e. if you, men, do not want them to be your wives and if you want to divorce them, then divorce them in a good manner, without pretending to hold them back, whilst you do not want them, for the sake of transgressing against their rights, whereby you eat their rights, until the woman absolves some of her rights for you to divorce her.

Thus if the cause is from the man, whilst he does not want her, let him divorce her, without taking anything from her. We will explain this verse after a while insha Allah.

Since Talaq is in the hands of man, and if he doesn't want to divorce his wife in a good manner, consequently there will be Khul' from his wife i.e. compensation of a woman to her husband. This is in a situation when she doesn't want her husband, whilst her husband wants her.

As for what comes in the Sunnah, to indicate that the cause for Khul' is from the wife, it is that the cause (sabab) for the revelation of this verse is a woman who did not want her husband.

Ibn Majah reported with a good chain from Ibn Abbas, **أَنَّ جَمِيلَةَ بِنْتُ سَلُولَ، أَتَتْ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ وَاللَّهِ مَا أَعْتَبْتُ عَلَى ثَابِتٍ فِي دِينٍ وَلَا خُلُقٍ . وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ لَا أُطِيقُهُ بَعْضًا . فَقَالَ لَهَا النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ «أَتَرَدِّينَ عَلَيْهِ حَدِيثَهُ» قَالَتْ نَعَمْ فَأَمَرَهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَأْخُذَ مِنْهَا حَدِيثَهُ وَلَا يَرْدَادَ** **Jamilah bint Salul came to the Prophet (saw) and said: "By Allah, I do not find any fault with Thabit regarding his religion nor his behavior, but I hate disbelief after becoming Muslim and I cannot stand him."** The Prophet (saw) told her, **“Will you give him back his garden?”** She said: **“Yes.”** So the Messenger of Allah (saw) told him to take back his garden from her and no more than that.” [Ibn Majah]

Ibn Jareer reported from Ibn Abbas (ra), **إن أول خلع كان في الإسلام في أخت عبد الله بن أبي امرأة ثابت بن قيس، أتت رسول الله فقالت: يا رسول الله لا يجمع رأسي ورأسه شيء أبداً، إني رفعت جانب الخباء فرأيت أنه قد أقبل في جماعة فإذا هو أشدهم سواداً وأقصرهم قامه وأقبحهم وجهاً. فقال زوجها: يا رسول الله إني أعطيتها أفضل مالي حديقة لي، فإن ردت عليّ حديقتي. The first woman to get Khul' in Islam is the sister of Abdullah bin Ubay, the wife of Thabith bin Qays. She came to the Messenger of Allah (saw) and said, ‘Oh Messenger of Allah! My head and his head will never be the same (i.e. I am not fit for him). When I came out of the tent, I saw him coming along with a group and I found him as the darkest, shortest and ugliest man of the group. So her husband said: ‘O Messenger of Allah! I gave her a garden which is the best of my wealth. Will she return my garden to me?’ So the Messenger of Allah (saw) asked the woman: “What do you say?” She replied: “Yes, if you wish, I can increase more.” The narrator (Ibn Abbas) said: ‘The Messenger of Allah (saw) separated them’ ” [Ahmad: 3/4, 15513, al-Durr al-Manthur: 2/617, Tafsir al-Tabari: 2/461]. A similar hadith is reported by Imam Ahmed from Abdullah bin Amr and from Sahl bin Abu Husma.**

Thus, if a woman does not want her husband because she hates him and because she cannot live with him, whilst her husband wants her, the husband must accept the *mahr*, which he has given her previously, returned by his wife for the woman to get Khul' from him.

It may be asked: Allah (swt) says, ﴿إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ﴾ **“Unless both fear that they will not be able to keep [within] the limits of Allah.”** Why does Allah (swt) attribute fear to both of them for not establishing the limits of Shariah in both of their marital life and why doesn't He (swt) attribute it to the wife alone, since the previous saying of Allah is about Khul' and taking her wealth by the husband? The answer is: the anger of a wife against her husband, her aversion away from him and her disobedience of him will affect the husband. Consequently, both of them should fear for the non-establishment of the limits of Allah. And the saying of Allah (swt): ﴿إِلَّا أَنْ يَخَافَا﴾ **“Unless both of them fear”** i.e. ‘unless both of them anticipate’ so the meaning is, ‘Unless the wife hates her husband, and she does not want him. As a result both may anticipate that they cannot establish the limits of Allah in their

marital life.’ Thus there is no contradiction between the sayings of Allah, ﴿إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ﴾ “**unless both fear that they will not be able to keep [within] the limits of Allah**” and between the wife’s non-willingness to live with her husband.

Despite this permission of the seeking of Khul’ by the wife from her husband, when there is a reason she hates her husband and turns away from him, it depends on the fear of the spouses that they will not be able to establish the limits of Allah in their marital life.

Nevertheless, it is prohibited for a woman to seek Khul’ from her husband, without having a reason, as a fear along with her husband that they will not establish the limits of Allah (swt), as Allah (swt) says: ﴿إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ﴾ “**unless both fear that they will not be able to keep [within] the limits of Allah.**” This is clarified by the hadith of the Messenger of Allah (saw), «المختلعات المنتزعات هن المنافقات» “**The women who withdraw themselves from their husbands and the women who seek ‘khul’ are hypocrites.**” [An-Nasa’i: 3407, Al-Durr al-Manthur: 2/676, Tafsir al-Tabari: 2/467]. The hadith is reported by Uqba bin Aamir Al-Juhni. In another narration from Thawban, the Mawla of the Messenger of Allah (saw) from the Messenger of Allah (saw) who said, «المختلعات هن المنافقات» “**The women who seek Khul’ are hypocrites.**” [Al-Tirmidhi: 1107, Tafsir al-Tabari: 2/467]. That is, those who seek Khul’ from their husbands without having any reason, without anticipating, along with their husbands, the non-establishment of the limits of Allah in their marital life. This is derived by combining the evidence for the permissibility of seeking Khul’ in a state we have mentioned above and the evidence for the prohibition of seeking Khul’ by the wife from her husband, as mentioned in the last two hadiths.

As for why we have said: Khul’ is permissible (mubah) for her and him in such a situation; this is because Khul’ is not an obligation. Allah (swt) says, ﴿فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ﴾ “**then there is no blame upon either of them concerning that by which she compensates herself (for the Khul’)**” That is, it is permissible for both of them. If she compensates and returns back the *mahr*, there is no sin upon her. Similarly, if the husband accepts the ‘*mahr*’ and leaves her on her own way, there is no sin upon him.

And the last thing is: As long as a husband performs his rights upon her husband, even if she behaves illicitly without obeying him, without having a desire to live with him, in such situation, Allah (swt) obliges the husband as, ﴿فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ﴾ “**[first] advise them; [then if they persist], forsake them in bed; and [finally], strike them**” [TMQ Surah an-Nisaa’ 4:34]. He is not obliged more than these such as divorcing her or breaking up with her (يخالعها).

As for why we have said: it is not correct for the husband to take more than what he gave her wife as a *mahr*. This is because the Messenger of Allah (saw) said in a hadith of Ibn Abbas reported by Ibn Majah, «فَأَمَرَهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يَأْخُذَ مِنْهَا حَقِيقَتَهُ وَلَا يَزِدَّادَ» “**He (saw) commanded him to take the garden and no more than that**” [Ibn Majah]. In a hadith of Abu Zubair reported by Dar Al-Qutni, نعم، أتردين عليه حديقته التي أعطاك؟ قالت: نعم، وزيادة. فقال النبي أما الزيادة فلا “So the Messenger of Allah (saw) asked the wife of Thabith bin Qais, “**will you return his garden he gave to you?**”. She replied: “Yes, if you wish, I can increase more”. The Prophet (saw) said: “**(Only the garden and) not more than that.**” [Ibn Majah: 2046, al-Durr al-Manthur: 2/672]. All these indicate that he can take back his ‘*mahr*’ which he paid without increasing more than that.

It should not be said that the verse, ﴿فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ﴾ “**then there is no blame upon either of them concerning that by which she ransoms (compensates) herself**” gives the meaning of generality from the word مَا, in (فِيمَا) to mean whatever she gives as fidya and so; consequently, it is permissible for him to take more than that of the *Mahr* he gave her. It should not be said because although the word comes with generality, it is particularized by the hadiths we have mentioned; accordingly, it is not appropriate to take more than the *Mahr* which he gave to her.

As for the Khul', that is completed with the permission of Imam (Khalifah) or the one delegated by him such as judge or its equivalent, this is because Allah (swt) says, **﴿إِلَّا أَنْ يَخَافَا﴾** **“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.”** i.e. unless the spouses anticipate that they could not establish the limits of Allah in their marital life and that they could not execute the Shariah rulings related to their marital life.

Nevertheless, Allah (swt) did not link the permissibility of Khul' with the fear of the spouses about the non-establishment of the limits of Allah (swt). Instead, He (swt) made it as another condition, which is, “if you, referring to all of you other than spouses, fear that they, the spouses, cannot establish the limits of Allah, then there is no sin upon them, the spouses.” i.e. Allah (swt) made Khul' dependent on the conviction of another party about the validity of the anticipation of the spouses of their non-establishment of the limits of Allah. It is clear from the change of address of the verse from the pattern of duality, referring to the spouses, to the plural, referring to all of you. This indicates that the other party is other than the two spouses.

One who possesses the authority to end the marital life other than the husband is the Imam, Khalifah, or his delegates such as the judge. This is supported by the incidents of Khul' reported during the time of the Messenger of Allah (saw) and we have mentioned some of them previously. The incidents were raised to the Messenger of Allah (saw) to get clarifications, whilst the Messenger of Allah (saw) was a messenger and a ruler at the same time.

Accordingly, if a woman who does not want her husband because she hates him, whilst if both she and her husband are afraid in such a situation that both could not establish the limits of Allah i.e. fearing that they could not obey Allah and His Messenger in their marital life, in such case, the first condition is achieved, **﴿إِلَّا أَنْ يَخَافَا﴾** **“unless both fear that they will not be able to keep [within] the limits of Allah.”** After that, the woman who wants Khul' from her husband raises the matter to the ruler or the judge and then the ruler or the judge studies the matter **﴿فَإِنْ خِفْتُمْ﴾** **“But if you (other than the spouses) fear that they will not keep [within] the limits of Allah.”** At that time, the ruler or the judge offers her to return the *Mahr* which was given by her husband. Then she gets Khul' from her husband.

Incidents were reported from the righteous Khalifahs who used styles available to them, with the conviction that the spouses could not establish the limits of Allah, after the wives requested Khul' from their husbands.

Ibn Jareer narrated that a disobedient woman was brought to Umar (ra) and he ordered to lock her up inside the house, with a lot of dung. He then called her and asked her, 'How did you find it?' She replied, 'I have never found comfort, since I have been with my husband, except this night when you locked me up (inside the dung house).' So Umar (ra) told her husband, 'Give her Khul', even if it is for earrings."

Khul' is the annulment of marriage and not a divorce. The reasons are as follows:

a. The saying of Allah (swt), **﴿الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمُ أَنْ تَأْخُذُوا مِمَّا﴾** **“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.”** In this verse, it has: two talaqs which is then followed by the Khul'. However, in the following verse, Allah (swt) says,

﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ﴾ **“And if he has divorced her [for the third time], then she is not lawful to him afterward”** i.e. if he divorces her for the third time, then she is not lawful for him afterward until she is married to another husband.

This means that Khul’ is not a divorce; otherwise, the talaq mentioned in the following verse, ﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَخْرُجَ زَوْجًا غَيْرَهُ﴾ **“And if he has divorced her, then she is not lawful to him afterward,”** would have been a fourth Talaq, as Khul’ mentioned in the previous verse would be considered as third Talaq, which is not like that.

b- Abu Dawud reported from Amra bint Abdur Rahman bin Sa’ad bin Zurara who narrated that Habiba bint Sahl, the Ansari woman, informed her that, “She had been the wife of Thabit ibn Qays ibn Shammās. The Messenger of Allah (saw) went out for the dawn prayer, and found Habiba bint Sahl at his door in the darkness. The Messenger of Allah (saw) asked her, «مَنْ هَذِهِ» **“Who is this?”** She said, “I am Habiba bint Sahl, Messenger of Allah.” He (saw) said: «مَا شَأْنُكَ» **“What do you want?”** She said, “That Thabit ibn Qays and I separate.” When her husband, Thabit ibn Qays came, the Messenger of Allah (saw) told him, «هَذِهِ حَبِيبَةُ بِنْتِ سَهْلٍ وَذَكَرْتَ مَا شَاءَ اللَّهُ أَنْ تَذْكُرَ» **“This is Habiba bint Sahl. She mentioned what Allah willed that she mention.”** Habiba said, “Messenger of Allah, all that he has given me is with me!” The Messenger of Allah (saw) told Thabit ibn Qays, «خُذْ مِنْهَا» **“Take it from her,”** and he took it from her, and she stayed in the house of her family.” [End Quote] The hadith is reported by Nasa’i and Imam Malik with the same sentences, except some words, without any change in the meaning.

Similarly, Nasa’i reported from Muhammed bin Abdur Rahman that: “Ar-Rubayy’ bint Mu’awwidh bin ‘Afra’ narrated that Thabit bin Qais bin Shammās hit his wife and broke her arm. Her name was Jamilah bint ‘Abdullah bin Ubayy. Her brother came to the Messenger of Allah (saw) to complain about him and the Messenger of Allah sent for Thabit and said, «خُذْ» **“Take what she owes you and let her go.”** He said: “Yes.” And the Messenger of Allah (saw) ordered her to wait for one menstrual cycle and then go to her family.” [End Quote]

It is clear from these hadiths that the Prophet (saw) did not mention Talaq. Instead, he mentioned separation, in his saying, «خَلَّ سَبِيلَهَا» **“Let her go”** and «تَلْحَقْ بِأَهْلِهَا» **“she goes to her family.”**

As for what is narrated by Ibn Abbas (ra) in his hadith reported by Bukhari and Nasa’i: that the Messenger of Allah (saw) told Thabit: «اقْبَلِ الْحَدِيقَةَ وَطَلِّقْهَا تَطْلِيقَةً» **“accept the garden and make one declaration of divorce.”** [Al-Bukhari: 4867, An-Nasa’i: 3409]. This is about the wife of Thabit. The narration of Ibn Abbas (ra) is outweighed (مرجوحة). This is because the reports of Nasa’i, Abu Dawud and Malik in his Muwatta are the reports about the wife of Thabit bin Qays from the statements of the woman herself. Those narrations have the words such as, «وَحَلَّ سَبِيلَهَا» **“Leave her on her own path,”** «تَلْحَقْ بِأَهْلِهَا» **“to go to her family”** and «وَجَلَسَتْ فِي أَهْلِهَا» **“she stayed in the house of her family.”** Those narrations do not have a word like «وَطَلَّقَهَا تَطْلِيقَةً» **“divorce her once.”** The narrations reported by the subject of the narration outweighs the narrations reported by others which is a well-known principle (qaa’idah) in the subject of preponderance (tarjeeh) in Usul. Thus Khul’ is not a divorce.

c- The Messenger of Allah (saw) commanded the woman who got Khul’ to wait for one menstrual period and not three menstrual periods. This means it is not a divorce.

The hadith reported by Nasa’i which we have mentioned previously comes in this regard. Similarly, Tirmidhi reported the narration from Ibn Abbas (ra) that the wife of Thabit bin Qais got Khul’ from her husband and so the Prophet (saw) ordered her, «أَنْ تَعِدَ بِحَيْضَةٍ» **“Make Iddah for one menstrual period”** [Al-Tirmidhi: 1106, 1105, An-Nasa’i: 3441, Abu Dawud: 1902, Ibn Majah: 2048]. This means Khul’ is not a divorce; otherwise, the Iddah period would have been for three menstrual periods. Khul’ is not a divorce. Instead it is an annulment. So, it is not appropriate for a husband to take her back after the Khul’ whether during the Iddah period or during other times. He can re-marry her by having a new contract and *Mahr* with her consent, in adherence to the Shariah rulings related to that.

Allah (swt) concludes the verse by saying that it is the limits of Allah (swt). So one must stop within the limits and adhere to it without crossing it. Whoever disobeys Allah (swt) and violates His Limits, he is those amongst the wrong-doers who deserve painful punishment. Allah (swt) says, ﴿تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ﴾ **“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.”**

3- Allah (swt) clarifies in this noble verse that: one who divorces his wife for the third time, i.e. exceeds the permitted limit for him as Allah (swt) says ﴿الطَّلَاقُ مَرَّتَانِ﴾ **“Divorce is twice.”** In that case, his wife has attained Baynunah Kubra from him. This means it is not allowed for him to take her back during her *Iddah*. It is also not allowed for him to re-marry her with a new contract and *Mahr*. Instead, it is prohibited for him until she marries another man and then the new husband divorces her after consummation. If the new husband divorces her, then it is permissible for the first person, the previous husband, to propose to her for marriage and marry her with a new contract and *Mahr* like any other foreign woman.

Here, the question arises, does the Baynunah Kubra occur through three separate divorces in succession, or does it occur through the three divorces all at once, in a single instance?

This is the subject which many fuqaha differ over and the differences prolonged. Upon scrutinizing the matter, I say with the favor of Allah,

There is no difference between the declarations of Talaq thrice in separate instances or all at once. The ruling of Baynunah Kubra arises from the declaration of Talaq with the pronouncement of three sentences at once or one after another, followed by another. The evidence for this is as follows:

Allah (swt) says: ﴿الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ﴾ **“Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment”** until He (swt) says: ﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ﴾ **“And if he has divorced her [for the third time], then she is not lawful to him afterward.”** The aspect of inference is that Allah (swt) says, ﴿مَرَّتَانِ﴾ **“two times”** i.e. the two talaqs without restriction over being combined or separate. Similarly, the saying ﴿فَإِنْ طَلَّقَهَا﴾ **“And if he has divorced her”** means the third Talaq. And the verb is in the affirmative, which is absolute without having any restriction i.e. “If he has divorced her for the third time.”, it can be combined with the first two talaqs or be separated from them.

Thus the verse gives the meaning of Baynunah Kubra with the pronouncement of the third Talaq, regardless of whether it is pronounced in combination or in separation.

It should not be said that the restriction in the verse comes for the number of times to be in a separated manner, giving rise to Baynunah Kubra, so that if it is pronounced in combination as a single speech, it does not result in Baynunah Kubra and so it is considered as single pronouncement of Talaq, as mentioned in some of the Hadiths of the Messenger of Allah (saw).

It should not be said so, because all of those Hadiths are weak and do not elevate to the level of Hasan or Sahih, except the two Hadiths narrated by Ibn Abbas (ra). Those two hadiths are neither suitable for the restriction, nor should they be applied upon, as we will explain now with the permission of Allah (saw). The two hadiths are:

First: Hadith of Muhammed bin Ishaq in which he says: Dawud bin Husain narrated to me from Ikram from Ibn Abbas (ra): “Abu Rukana divorced his wife with three pronouncements, in one sitting. Then, he was grieved about her and Allah's Messenger (saw) told him: ﴿فإنها واحدة﴾ **“They (the three pronouncements) are reckoned as a single (utterance of divorce).”** The hadith is reported by Ahmed in his musnad [Ahmed: 1/265].

Second: The Hadith of Tawus in which Abu Suhuba' told Ibn Abbas (ra): "Do you know that three (divorces at once) were treated as one during the lifetime of Allah's Apostle (saw), and that of Abu Bakr (ra) and were treated as thrice during the Khilafah of Umar (ra)? Ibn Abbas (ra) said: "Yes." [Muslim: 1472]

No other sahih or hasan hadiths were reported except from Ibn Abbas (ra) which stipulated that the pronouncement of Talaq combined in three times is considered as a single pronouncement. Nevertheless, such consideration is outweighed. This is because the fatwas of Ibn Abbas, that are sahih and affirmed from him, consider that the pronouncement of Talaq thrice in a single instance, causes the pronouncement to be thrice. It thereby results in Baynunah Kubra. I will mention some of those fatwas in the following:

1. Abdullah bin Kathir from Mujahid who said: I was with Ibn Abbas (ra) and a man came to him and said that he has divorced his wife thrice, all at once. Mujahid said: Ibn Abbas (ra) remained silent until I thought he was repelling it. And then he said: (يَنْطَلِقُ أَحَدُكُمْ فَيَرْكَبُ الْحُمُوقَةَ) "You have committed a foolish act." Then he (Ibn Abbas) said: "O Ibn Abbas!! O Ibn Abbas!!..." Indeed Allah (swt) says: ﴿وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا﴾ **"And whoever fears Allah - He will make for him a way out"** [TMQ Surah at-Talaq 65:2]. Since you have not feared Allah, I could not find a way out for you. You have disobeyed your Lord and thus your wife separated from you (بانت منك امرأتك). And Allah (swt) says: ﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ﴾ **"O Prophet, when you [Muslims] divorce women, divorce them at [the commencement of] their waiting period"** i.e. at their Iddah period" (end Quote). i.e. Ibn Abbas (ra) considered that the pronouncements of Talaq thrice altogether will occur and result in Baynunah Kubrah.

2. A similar fatwa is reported by Hamid Al-A'raj and others from Mujahid from Ibn Abbas (ra).

3. Fatwa reported by Shu'bah from Amr bin Marra, Ayyub and Ibn Juraih altogether from Ikrimah from Khalid from Sa'ed bin Zubair from Ibn Abbas (ra).

4. Fatwa reported by Ibn Juraih from Abdul Hamid bin Raafi from Ata' from Ibn Abbas (ra).

5. Fatwa reported by Al-A'mash from Malik bin Haris from Ibn Abbas (ra).

6. Fatwa reported by Ibn Juraih from Amr bin Dinar from Ibn Abbas (ra).

All of them said that Ibn Abbas (ra) considered that the declaration of Talaq thrice altogether makes talaq thrice. Ibn Abbas (ra) said, بانك منك امرأتك "your wife separated from you" [Abu Dawood: 1197].

Since all these fatwas are well-known and valid from Ibn Abbas (ra) about the occurrence of Talaq as in Baynunah Kubra, with the pronouncement of the word thrice, all the reported hadiths from Ibn Abbas (ra) that considers the pronouncement of Talaq thrice, all at once, as a single pronouncement, will be outweighed. This is because actions of the Companions (ra) of the Prophet (saw) outweigh their narrations and thus the narrations from Ibn Abbas (ra) are outweighed. The most preponderant matter in the subject indicated by the noble verse pertaining to the pronouncement of Talaq three times separately or in combination is that both will cause the occurrence of Baynunah Kubra. Many Fuqahas and 'Ulema acted upon this and agreed that pronouncing Talaq thrice causes the occurrence thrice.

Bukhari reports in his Sahih under the Chapter named 'To divorce one's wife thrice,' due to the saying of Allah (الطَّلَاقُ مَرَّتَانٍ) **"Divorce is twice,"** where he reported the hadith of Li'an, rulings related to the spouses cursing each other for the husband claiming his wife to have committed adultery: Sahl bin Sa'd (ra) narrates the story of the two (husband and wife) who invoked curses (Li'an) regarding one another whereby Sahl said: "When after they (both the husband and wife) finished invoking curses regarding one another, the husband declared Talaq thrice before Allah's Messenger (saw) commanded him to do so. Ibn Sihab (the

narrator) says: this was the tradition of the predecessors.” [Al-Bukhari: Divorce Chapter 4: no. 5259]

Bayhaqi commented on the hadith of Tawus narrated from Ibn Abbas (ra) that it was reported in Muslim, but not in Bukhari. Bayhaqi says: ‘I think Bukhari leaves this hadith without reporting it because of its contradiction to all the other narrations (i.e. Fatwas) of Ibn Abbas (ra)’ [Al-Bayhaqi: 7/336], and then Bayhaqi narrates the narrations from Ibn Abbas which we have mentioned previously.

In summary, pronouncing Talaq thrice, both in combination or separately, causes the occurrence of Baynunah Kubra. Nevertheless, there is a difference between the pronouncement of Talaq thrice in combination and the pronouncement of Talaq thrice separately, which is: the pronouncement of talaq thrice in a single instance is prohibited decisively i.e. it is haram. Nevertheless, Talaq occurs with the pronouncements of Talaq thrice in a single instance. One who divorces it in this manner is sinful, as it is evidenced by the hadith of the Messenger of Allah (saw) narrated by Mahmud bin Lubaid: أَخْبَرَنَا رَسُولُ اللَّهِ عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ ثَلَاثَ تَطْلِيقَاتٍ جَمِيعًا، فَقَامَ غَضِبَانٌ ثُمَّ قَالَ: «أَيْلَعِبُ بَكْتَابِ اللَّهِ وَأَنَا بَيْنَ أَظْهَرِكُمْ؟!» حَتَّى قَامَ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ لَا أَقْتُلُهُ! **“When Allah's Messenger (saw) was informed about a man who had divorced his wife with all three pronouncements (without any interval between them), he stood up in anger and said, ‘Is Allah's Book being played with while I am among you?’ As a result a man got up and said, ‘O Allah's Messenger, shall I kill him?’”** [Nasa'i: 3401].

It is worth noting that those who say that the three divorces with single pronouncement counted as one, they only have uncertain inference. Their saying is outweighed, whilst the consideration that pronouncements of Talaq thrice causes the occurrence of Baynunah Kubra is a preponderant opinion.

﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَتَّخِجَ زَوْجًا غَيْرَهُ﴾ **“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.”** This is the interpretation for the saying of Allah (swt) in the previous verse ﴿أَوْ تَسْرِحَ بِإِحْسَانٍ﴾ **“or release [her] with good treatment.”** Its meaning is as what we have explained previously i.e. divorcing her for the third time.

﴿حَتَّى تَتَّخِجَ زَوْجًا غَيْرَهُ﴾ **“Until [after] she marries a husband other than him”** i.e. until she marries someone other than him, followed by his consummation with her i.e. occurrence of consummation with a valid contract.

As for the contract, it is understood from the saying ﴿زَوْجًا﴾ **“(another) husband.”** As for the consummation, it is understood from the saying ﴿تَتَّخِجَ﴾ **“she marries”**.

It can be asked that the word (النكاح) nikah comes to mean both ‘the intercourse’ and ‘the contract,’ so here in this verse, why is it restricted to mean ‘intercourse’ i.e. consummation? If it is asked such, there are many hadiths of the Messenger of Allah (saw) that come in this regard, clarifying that what is intended by the verse is the consummation under the valid marriage. If the valid marriage occurs without consummation, when the latter husband divorces her, then she is not permissible for the first husband to contract a marriage without the consummation, with the latter husband before pronouncing Talaq.

Bukhari and Muslim reported from A'isha (ra): “the wife of Rifa'a al-Qurazi came to Allah's Messenger (saw) and said, “I was married to Rifa'a but he divorced me, making my divorce irrevocable. Afterwards I married 'Abd ar-Rahman b. az-Zubair, but all he possesses is like the fringe of a garment.” The Prophet (saw) smiled and asked her: «أَتُرِيدِينَ أَنْ تَرْجِعِي إِلَيَّ» **“Do you want to return to Rifaa? No, you cannot not until ‘Abd ar-Rahman and you have experienced the sweetness of honey (i.e. intercourse) with one another.”** [Al-Bukhari: 2445, 4856, Muslim: 2587]

Ahmed and Nasa'i reported from Ibn Jareer who narrates from Ibn Farr who said, «سُئِلَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الرَّجُلِ يُطَلِّقُ امْرَأَتَهُ ثَلَاثًا فَيَتَزَوَّجُهَا آخَرَ فَيُطَلِّقُ الْبَابَ وَيَرْخَى السِّتْرَ ثُمَّ يُطَلِّقُهَا قَبْلَ أَنْ يَدْخُلَ بِهَا هَلْ تَحِلُّ لِلْأَوَّلِ قَالَ لَا حَتَّى يَذُوقَ الْعُسَيْلَةَ» **“The Prophet (saw) was asked about a man who divorced**

his wife three times and then she was married to another man. Then the second man closed the door and covered the veil. Then he divorced her before consummating with her. The Prophet (saw) was asked whether she is permissible to the first man. The Prophet (saw) said: “Until she tastes the sweetness of honey (i.e. intercourse) (with the second man)” [An-Nasa’i: 3361, Ibn Majah: 1923, Al-Muwatta’: 975, Ahmad: 2/25, Tafsir al-Tabari: 2/477]

What is intended by the word honey is the pleasure of intercourse i.e. there must be an intercourse as it is reported by Imam Ahmed and Nasa’i from Aisha (ra) that the Messenger of Allah (saw) said, «أَلَا إِنَّ الْعَسِيلَةَ الْجَمَاعَ» **“Indeed, What is intended by the honey is intercourse.”** [Ahmed: 6/62].

Thus, if a wife is divorced three times, then she is not permissible for that husband unless she marries another person and he has intercourse with her. If the new husband divorces her, then it is permissible for the first husband to propose marriage to her with a new contract and *Mahr* along with consent and choice, if both of them think that they can continue their marital life with good companionship and cohabitation.

﴿فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ﴾ **“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”** i.e. It is permissible for both to return to each other again, if both anticipate to establish the marital life in a way Allah has limited and legislated it.

﴿إِنْ ظَنَّا أَنْ يُقِيمَا﴾ **“if both of them think that they can establish”** i.e. if both of them anticipate because the word (أَنْ) is a verbal noun المصدريّة to denote the meaning ‘for the anticipation.’

Then Allah (swt) concludes the verse by clarifying that these rulings are the limits of Allah, which one must adhere to the limits without crossing the limits. Allah (swt) has specified the people of knowledge because they are those who understand and benefit from such clarification. ﴿وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ﴾ **“These are the limits of Allah, which He makes clear to a people who know.”**