

MISUSE OF WORDS AND ITS IMPLEMENTATION IN ISLAMIC LAW: A CASE STUDY OF ZIHAR

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ABSTRACT. *If husband says to his wife, "you are banned/prohibited to me, akin to my mother or sister, and or you are comparable to my mother or sister". If the intention of the husband by these words was not meant to divorce his wife, then this act is termed as Zihar in Islam, otherwise divorce. He would now be bound to expiate before having sex with his wife. Either of husband or wife can observe Zihar. Condition of Zihar is differnt for a woman than a man. She is bound to Zihar before marriage. However, a man is restricted to it after marriage. Such statement can be elaborated in the following way. If a woman compares, someone analogue to her brother or father and or, ask him to be her brother or father, and get married later on with him. In such situation she will have to pay atonement. In the same way if a man becomes committed to Zihar after marriage, he would be bound to pay atonement. Islam fixes the value of expiation equally by the offender either a male or a female. Islam commences society to Zihar to stop or restrict this offensive act. This article is an approach to comprehend the impact of words in the relationship of marriage in Islam.*

Keywords: Islam, Marriage, Zihar, Prohibited, Atonement

1. Introduction. A comprehension that signifies Zihar's meaning, is as follows: comparing wife to mother's back, or coupling from back to back, or husband saying to his wife that you are akin to my mother's back. [1]

Definition: If a man (husband) compares his wife's some parts to any of such woman who is proscribed perpetually to him such as mother, sister, daughter and aunt etc., this is termed as Zihar.

A statement declares by a man to his woman, "your back to me is as good as my mother's back", forbids her (declares Haram) to him until atonement is paid. [2]

Some women are permanently illicit for a man. These women include mother, sister, daughter and some others. It is permissible to look at such women in general but it's offensive to look at some parts of their body, back and abdomen etc., for example. It is vital to understand that comparing one's wife with such prohibited women and or with any of such parts of the body of such illicit women is defined as Zihar in terms of Shari'ah. [3]

2. Zihar in the Period of Ignorance: When in the period of Ignorance, a person said to his wife you are comparable to back of my mother, to say these words, he made haram (prohibited) sex upon himself with his wife. And she was always become forbidden for her husband. It was considered Zihar.

The customs of old Arab involved use of such words to permanently cease all marital relations with their wives. This was considered worse than divorce. Although there had been chances to restore back the relation in divorce, yet Zihar was meant to last the relation permanently. Such a statement had been used to dissolve the husband and wife relation entirely. The family was exclusively devastated in easy and very simple way, in such circumstances.[4]

The Arab society was unbalanced and disordered in pre-Islamic times. People were spending their lives according to unstable laws. The darkness of ignorance shaded the society with rules of low standard, regulations and unvalued system of life. Women were considered lowest creature and were not bestowed respect. When Islam rose in Arab society, it made differentiation between right and wrong. Zihar was then highlighted, consequently, and its edges were drawn before people in the way that, if man (husband) says such words, "you are akin to my mother (or names other illicit women) to me", intention and implementation of words are important and considerable. One talaqul ba'in takes place, if husband utters these words to get separated from his wife. You are my wife and I am not splitting my Nikah with you, but I forbid you upon me not to keep conjugal relation with you, if husband says to his wife. You can spend your life at home as usual and can use and eat everything. Zihar declares and expiation is mandatory, in such case.[5]

Allah says in Surah Al-Mujadilah: "If any men among you divorce their wives by Zihar (calling them mothers), they cannot be their mothers: None can be their mothers except those who gave them birth. And in fact they use words (both) iniquitous and false: but truly Allah is one that blots out (sins), and forgives (again and again)".[6]

"And those who make unlawful to them (their wives) (by Zihar) and wish to free themselves from what they uttered, (the penalty) in that case (is) the freeing of a slave before they touch each other. That is an admonition to you (so that you may not return to such an ill thing). And Allah is fully aware of what you do. And he who finds not (the money for freeing a slave) must fast two successive months before they both touch each other. And for him who is unable to do so, he should feed sixty of miskeen (poor). That is in order that you may have perfect faith in Allah and His Messenger. These are the limits set by Allah. And for disbelievers, there is a painful torment".[7]

The Expiation for Zihar: Such custom of using few words had been exercised by old Arabs in the pre-Islamic era to separate their women permanently and was considered an un-ending split-up between husband and wife than divorce, because divorce retains chances to return to women. This was an unjust and tremendously inequitable conduct against their women. Those few words were considered sufficient to devastate the marriage entirely without leaving any tool of reconciliation.

Nikah does not dissolve between couple (husband and wife), according to Zihar, but the conjugal rights expel which require expiation to normalise the relation, Islam teaches. He can neither kiss his woman and nor can touch her with fascination of youth and or, fondle her etc. without expiation. They can however live normally with conjugal rights without renewal of Nikah, after atonement. Atonement embraces freeing one slave or fasting for two consecutive months or feeding sixty needy/poor people (masakeen).

Man who resembles his woman to any of such woman who is eternally prohibited to him for marriage or Nikah i.e., mother, sister, daughter, aunt etc., same margins of rules are applicable to him. It interdicts him to make conjugal relation with her without expiation and if he denies, he commits himself to a big sin, and Allah is the greatest merciful if he repent to Allah.[8]

"Ahmad recorded that Khuwaylah bint Tha'labah said, "By Allah! Allah sent down the beginning of Surat Al-Mujadilah in connection with me and `Aws bin As-Samit. He was my husband and had grown old and difficult. One day, he came to me and I argued with him about something and he said, out of anger, `You are like my mother's back to me. "He went out and sat with some of his people. Then he came back and wanted to have sexual intercourse with me. I said, `No, by the One in Whose Hand is the soul of Khuwaylah! You will not have your way with me after you said what you said, until Allah and His Messenger issue judgment about our case." He wanted to have his way regardless of my choice and I pushed him away from me; he was an old man.' I next went to one of my neighbors and borrowed a garment from her and went to the Messenger of Allah. I told him what happened and kept complaining to him of the ill treatment. I received from `Aws. He

said, (O Khuwaylah! Your cousin is an old man, so have Taqwa of Allah regarding him.) By Allah! Before I departed, parts of the Qur'an were revealed about me. Allah's Messenger felt the hardship upon receiving the revelation as he usually did and then became relieved. He said to me, (O Khuwaylah! Allah has revealed something about you and your spouse.) He recited to me, (Indeed Allah has heard the statement of her that disputes with you concerning her husband, and complains to Allah. And Allah hears the argument between you both. Verily, Allah is All-Hearer, All-Seer.), until, (And for disbelievers, there is a painful torment.) He then said to me, (Command him to free a slave.) I said, 'O Allah's Messenger! He does not have any to free.' He said, (Let him fast for two consecutive months.) I said, 'By Allah! He is an old man and cannot fast.' He said, (Let him feed sixty poor people a Wasq of dates.) I said, 'O Allah's Messenger! By Allah, he does not have any of that.' He said, (We will help him with a basket of dates.) I said, 'And I, O Allah's Messenger! I will help him with another.' He said, You have done a righteously good thing. So go and give away the dates on his behalf and take care of your cousin.) I did that". [9]

Another hadith is stated "which is reported on the authority of Salamah Ibn Sakhr that he said: "Ibn Al-Ala' Al-Bayadhi said: "I was a man who was more given than others to sexual intercourse with women. When the month of Ramadhan came, I feared lest I should have intercourse with my wife, and this evil should remain with me till the morning. So I made my wife like my mother's back to me till the end of Ramadhan. But one night when she was waiting upon me, something of her was revealed. Suddenly I jumped upon her. When the morning came I went to my people and informed them about this matter.

I said: "Go along with me to the Messenger of Allah".

They said: "No, by Allah". So I went to the Prophet and informed him of the matter. He said:

"Have you really committed it, Salamah?"

I said: "I committed it twice, oh, Messenger of Allah. I am content with the Commandment of Allah, the Exalted; so take a decision about me according to what Allah has shown you". He said:

"Free a slave".

I said: "By Him Who sent you with the truth, I do not possess a neck other than this..." and I struck the surface of my neck. He said:

"Then fast two consecutive months".

I said: "Whatever I suffered is due to fasting". He said:

"Feed sixty poor people with a Wasq of dates".

I said: "By Him Who sent you with the truth, we passed the night hungry; there was no food in our house". He said:

"Then go to the collector of sadaqah of Banu Zuraiq; he must give it to you. Then feed sixty poor people with a wasq of dates; and you and your family eat the remaining dates".

Then I came back to my people, and said (to them): "I found with you poverty and bad opinion; and I found with the Prophet (saw) prosperity and good opinion. He has commanded me to give alms to you". [10]

"It is reported on the authority of Abdullah Ibn Abbas (ra) that: "A man made Zihar of his wife and then he slept with her before he had performed any expiation for it. Then he went to the prophet and told him about it. The prophet said: "What made you do that"? He said: "Oh, Messenger of Allah! I saw the whiteness of her ankles in the moonlight and I could not prevent myself from having sex with her". Upon hearing this, the Messenger of Allah laughed and ordered him not to approach her (having sex with her) until he made atonement". [11]

"Malik narrated: that he asked Ibn Shihab about the fasting of a free man. Malik said: The fasting of a slave (in the above case) is two months".

"And Al Hasan bin Al-Hurr said: The saying of a free man or a slave towards a free lady or a slave lady is the same" you are unlawful for me.

"Ikrima said: If someone declares the saying towards his slave girl, it has no significance, for it is only valid when involving actual wives". [12]

3. Conclusion. Study of the Holy Quran and Hadith declares that there is no other mean to atone except three above described ways of expiation to return to the conjugal rights, in case of Zihar. There is no other opening to reconcile if someone is unable to sustain the margins. He would have been waiting until he gets competent to expiate. However helping such person is possible to feed sixty people to reconcile with conjugal rights to his woman. In the same way returning to his wife with conjugal rights without abiding to expiation, makes him sinner and he would be punished with painful torment until he repent to Allah who is the most merciful and expiate.

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