

The Alleviation of Harm Caused to Women through the Practice of *Ilaa* and *Dhihaar*

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Introduction

All praise belongs to Allah; we praise Him and seek His assistance and forgiveness; we seek refuge in Allah from the evil within ourselves and from our evil deeds. Whomever Allah guides, there is no one to misguide him; and whomever Allah misguides, there is no one to guide him. I bear witness that none is worthy of worship except Allah alone, without any partners, and I bear witness that Muhammad is His servant and messenger.

"O you who believe! Fear Allah as He should be feared and do not die except as Muslims." (3:102)

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

"O you who believe! Fear Allah and say the right word. He will bless your works for you and forgive you your sins; and whoever obeys Allah and His Messenger will surely attain a mighty success." (33:70-1)

Indeed, Islam has greatly honoured women, secured all their rights and put an end to all forms of harm in their marital life to which they were subjected in the pre-Islamic era, especially as to the types of pagan divorce known as *ilaa'* and *dhihaar*. An example of this is the case of the woman who came to the Prophet (peace be upon him) to plead with him concerning her husband who had ended their age-old relationship through the pagan practice of *dhihaar*, as the Qur'an states, **"Allah has indeed heard [and accepted] the statement of the woman who pleads with you concerning her husband and carries her complaint [in prayer] to Allah; and Allah always hears the arguments between both of you, for Allah hears and sees [all things]."** (58:1)

Another example of harm to which women were subjected was that if a man asked his wife to do something and she refused, he would make a vow not to have sexual intercourse with her for a long period of time, as Allah the Almighty says, **"For those who take an oath of abstinence from their wives, a waiting [period] of four months is ordained; if then they return, Allah is Oft-Forgiving, Most Merciful."** (2:226)

Islam commands its adherents to watch their language in order to avoid falling into the trap of such abominable practices. This command without doubt reflects one of the numerous aspects of the magnificence of this estimable religion of ours, which has honoured women and secured their rights in full. In fact, many verses of the Qur'an were revealed to this effect to give sanctity to such rights. The Prophet (peace be upon him) said in this regard, "The servant speaks words that he does not understand its repercussions but he sinks down in Hell-Fire farther than the distance between the east and the west [as a result of saying them]."²

Commenting on this *hadeeth*, Imam An-Nawawee writes, "This *hadeeth* urges [Muslims] to watch their tongue; so whoever wants to say something must think about what he wants to say before actually saying it; if whatever he wants to say appears to be beneficial, he may say it; otherwise, he must refrain [from saying it]."³

In fact, a Muslim must follow this procedure when dealing with his wife and family. A look at Muslims' present state of affairs will reveal that some Muslims utter certain words without being aware of the legal rulings concerning them. It is for this reason that I have endeavoured to write on this subject, delineating the various aspects of beauty in our religion in maintaining women's highly esteemed position. I have adopted the standard methodology in discussing general issues related to the pagan practices of *ilaa'* and *dhihaar*, highlighting points of disagreement among scholars in this regard, stating the different opinions expressed by the four well-known Islamic schools of thought, and taking into account the chronological order in which these opinions were expressed. I have, to the best of my ability, also furnished textual evidence from the Qur'an and the *Sunnah* and Muslim scholars' unanimous agreement in this regard, stating the views regarded by scholars as the most correct and the reason behind considering them as such. I have also provided all the references for the Qur'anic verses and Prophetic reports mentioned in the course of the paper.

² Reported by Muslim (4/2290) on the authority of Abu Hurairah.

³ *Sharh An-Nawawee*, 18/117.

The paper consists of the following parts:

1. Linguistic and technical definition of *ilaa'* and *dhihaar*, the rulings pertaining to them and the textual evidence from the Qur'an and the *Sunnah*.
2. The wordings of *ilaa'* and *dhihaar*
3. The necessity of expiation and its types
4. Conditions relating to *ilaa'* and *dhihaar*

Notwithstanding the huge efforts I made in writing the present brief paper, I do admit that defects characterise human nature and that human beings are not without faults and mistakes; therefore, I pray to Allah to forgive our sins and overlook our faults, for perfection is the attribute of Almighty Allah alone, and may Allah's peace and blessings be upon our Prophet Muhammad.

I. Definition of *Ilaa'* and *Dhihaar*

Dhihaar

Linguistically, the word *dhihaar* is derived from the word *dhahr*, which means 'back', following the pre-Islamic statement, "You are to me as my mother's back", which men commonly expressed in the pre-Islamic era, or *jaahiliyyah* with a view to divorcing their wives. During the time of *jaahiliyyah*, if a man wanted to confine his wife he would resort to the practice of *dhihaar*, and so she remained confined, neither considered married to him, nor divorced. This, in fact, was a form of serious harm which women generally suffered. When Islam came, it abolished this pagan practice, declared it forbidden and considered the words uttered to pronounce such form of divorce as manifestly evil and untrue, as Almighty Allah says, **"And in fact they use words [both] iniquitous and false." (58:2)**

Technically, *dhihaar* refers to a man's saying to his wife, "You are to me as my mother's back". Such a pre-Islamic sinful pronouncement would make marital intercourse between husband and wife forbidden, and Islam provided for special atonement for the man who committed such a sin to make in order to resume his marital intercourse with his wife.

Al-Maawardee said, "Separation in *jaahiliyyah* was effected through three things: divorce, *dhihaar* and *ilaa'*. Allah the Almighty altered the [ruling on] *ilaa'* and *dhihaar* in which case women were divorced in the pre-Islamic era [in a degrading manner] to the ruling He prescribed [for these practices] in the Islamic Law. The ruling on divorce, however, remained the same."⁴

There are different interpretations for using the word *dhahr*, or 'back' in the statement, "You are to me as my mother's back". One interpretation argues that what was meant by this was "You are to me as my mother's abdomen", which means, "You are to me as having sexual intercourse with my mother", thus making the relationship between husband and wife forbidden. Another interpretation contends that having sexual intercourse with one's wife with her back upwards was considered forbidden before the advent of Islam, so much so that people in Madeenah strongly believed that if a man had intercourse with his wife's face downwards the yet unborn child would be cross-eyed. Hence, by using the word *dhahr* they meant to say that the wife became forbidden to the husband even more. In any case, this old pagan custom of *dhihaar* was held by pagan custom to imply a divorce and freed the husband from any responsibility for conjugal duties.

The use of the preposition *min* (literally 'from') after the verb form of the word *dhihaar* in the verse indicates that when men in those days made the *dhihaar* pronouncement, they avoided their wives in the same way they avoided divorced women [even though they were not considered divorced] and had an aversion to them..."⁵

Textual evidence clearly stating that this form of divorce is strictly forbidden comes from the following verse: **"Allah has indeed heard [and accepted] the statement of the woman who pleads with you concerning her husband and carries her complaint [in prayer] to Allah; and Allah always hears the arguments between both of you, for Allah hears and sees [all things]. Those among you who divorce their wives by *dhihaar* [calling them mothers]—they cannot be their mothers;**

⁴ *Al-Haawee Al-Kabeer*, 10/337; *Al-Mughnee*, 11/56; and *Kishaaf al-Qinaa'*, 5/425.

⁵ Ibn Al-Atheer's *Jaami' al-Usool*, 7/643 and 664; and *An-Nihaayah*, 3/165.

their mothers are only those who gave them birth. And in fact they use words [both] iniquitous and false." (58:1-2)

Qur'an exegetes expressed different opinions as to who the woman mentioned here was. The names of four women were suggested, namely Khawlah bint Tha'labah, Khawlah bint Khuwwailid, Khawlah bint As-Saamit and Khawlah bint Ad-Dulaij. However, the most authentic opinion is the one stating that the woman who pleaded with the Prophet (peace be upon him) was Khawlah bint Tha'labah whose husband was Aws ibn As-Saamit, both of whom were from Madeenah. In fact, Aws ibn As-Saamit was the first man to make the sinful *dhihaar* pronouncement in Islam.⁶

Khawlah bint Tha'labah pleaded with the Prophet (peace be upon him) against her husband saying, "I complain to Allah about my strained circumstances. I have little children whom, if I keep with him they will be lost, and if I keep with me they will go hungry." She continued praying, looking heavenwards, "O Allah, I plead with you; O Allah, send down to Your Prophet something that will bring about my relief." Commenting on this incident, A'ishah (may Allah be pleased with her), said, "Glory be to Him Whose Hearing encompasses all kinds of sounds. The woman was disputing with the Messenger of Allah (peace be upon him) while I was in the corner of the room, hearing some of what she said but not some others that were totally unclear, when Allah revealed [the verses '**Allah has indeed heard [and accepted] the statement of the woman who pleads with you...**'"].⁷

Textual evidence from the *Sunnah* comes from the report by Imam Ahmad and Abu Dawood on the authority of Khawlah bint Tha'labah who said, "[It was] about Aws ibn As-Saamit and me that Allah the Almighty revealed the opening verses of *Surat Al-Mujaadilah*. My husband divorced me by *dhihaar*, and so I went to the Prophet (peace be upon him) to plead my case with him, but he disputed with me saying, 'Fear Allah; for he is your cousin.' I had not left him until the Qur'anic verses were revealed. The Prophet (peace be upon him) said, 'He must free a slave [to expiate the sin].' She said, 'He does not have the means to do so.' He then said, 'Let him fast two successive months.' She replied,

⁶ See *Zaad al-Masser*, 7/181.

⁷ *Tafseer Al-Baghawee*, 4/304.

'But he is an old man and hence cannot fast.' He said, 'Then he has to feed sixty poor people.' She said, 'He is indigent and does not have the means to do so.' Then he said, 'I will help him with one *'irq* of dates [for the purpose].' She said, 'I will also help him with another one.' He then said, 'Go back, feed sixty poor people on his behalf and go back to your cousin.'⁸

Another report by Ibn dawood goes, "He (i.e. the Prophet – peace be upon him) said, 'One *'irq* equals thirty *saa*'.⁹ Abu Dawood commented on the latter report, saying, "This report is more authentic than the one reported on the authority of Yahyaa ibn Adam."¹⁰

It has also been narrated that Omar ibn Al-Khattab (may Allah be pleased with him) went once out with some people and happened to pass by an old woman with whom he engaged in a long conversation. A man in his company said to him, "Leader of the faithful, you kept people waiting because of this old woman?" Omar replied, "Woe unto you! She is a woman whose plea Allah heard and answered from above the seven heavens! She is Khawlah bint Tha'labah about whom Allah revealed [the verses] **'Allah has indeed heard [and accepted] the statement of the woman who pleads with you...'**. By Allah, I wish I would stand [talking to her] until nightfall, leaving her only for the prayers and then come back to her."¹¹

It has also been reported that Salamah ibn Sakhr al-Bayaadhee said, "Ramadan came along and I divorced my wife for fear of having sexual intercourse with her. However, when I saw her one night [during this month], I had intercourse with her. When I went to the Prophet (peace be upon him) and [told him about this incident] he said, 'Free a slave.' I said, 'I can't find any except myself.' He said, 'Fast two successive months.' I said, 'I did what I did because of fasting.' He said, 'Feed sixty people.' I said, 'What the One who sent you with the truth, we spent our night without any food at all.'" He then said, "I went back to my people

⁸ *Al-Musnad*, 6/410 and *Sunan Abu Dawood*, 2/266, *hadeeth* no. 2214.

⁹ *Saa* is a measure that equals approximately three kgs. (Translator's note)

¹⁰ *Sunan Abu Dawood*, 2/267; *hadeeth* no. 2215.

¹¹ See *Utdul-Ghaabah*, 5/93 and Ibn Abdul-Barr's *Al-Istee'aab*, 4/283.

and I said to them, 'I found with you only adversity and poor advice, but I found with Allah's Messenger (peace be upon him) ease and blessings. He commanded that your charity be given to me. And they did.' At-Tirmidhee said, "[This *hadeeth*] is *hasan* (good). Muhammad, [one of the authorities in the chain of the *hadeeth*,] said, 'Sulaimaan ibn Yasaar did not hear anything from me from Salamah ibn Sakhr.' He said that his name is said to be Salamah ibn Sakhr [in one report] and Salmaan ibn Sakhr [in another]."¹²

Another report reads, "Salamaan ibn Sakhr, who was from the tribe of Banu Bayaadhah, divorced his wife by pronouncing *dhihaar* until Ramadan ended; however, after half of Ramadan had gone by, he had intercourse with her one night. So he went to the Prophet (peace be upon him) ..." and mentioned the rest of the *hadeeth*.¹³

Ilaa'

Linguistically, *ilaa'* means 'vow', 'oath', 'abstention' or 'loss incurred as a result of doing something'. In the context of using it with one's wife, it means 'vowing not to approach her'. In brief, it refers to taking a general oath in an act of obedience or disobedience with or without reference to one's wife.

Technically, *ilaa'* refers to the case where a man, who is capable of sexual intercourse (potent), swears by Allah or any of His Attributes not to have sexual intercourse with his wife for a period of time exceeding four months. *Ilaa'* has a number of rulings in Islamic jurisprudence and hence cannot be termed as such without such rulings.¹⁴ *Ilaa'* rests on the condition that abstention from intercourse is observed.¹⁵

¹² *Sunan At-Tirmidhee*, 5/79. Al-Haakim said, in *Al-Mustadrak*, "This *hadeeth* is authentic and meets the conditions stipulated by Muslim for the authentic *hadeeth* even though he did not mention it in his *Saheeh*." See *Kitaab At-Talaaq*, 2/203.

¹³ *Sunan At-Tirmidhee*, 2/335, *hadeeth* no. 1215. Al-Haakim said, "This is a good chain of transmitters (*isnaad*) and meets the conditions stipulated by Al-Bukharee and Muslim for the authentic *hadeeth* even though they did not mention it in their books." See also *Al-Mustadrak 'alas-Saheehain*, 2/204.

¹⁴ See *An-Nihaayah*, 1/62 and *Jaami' al-Usool*, 1/353.

¹⁵ See *Fath al-Baaree*, 9/427.

Textual evidence from the Qur'an regarding the ruling on *ilaa'* is Allah's statement, **"For those who take an oath for abstention from their wives, a waiting [period] of four months is ordained; if then they return, Allah is Oft-Forgiving, Most Merciful. And if they decide upon divorce, then surely Allah is All-Hearing, All-Knowing."** (2:226-227)

Ibn Abbas (may Allah be pleased with him) said, "It was common practice amongst people in *jaahiliyyah* that if a man asked his wife for something and she refused to respond to him, he would take an oath not to approach her for one, two or [even] three years. In this way, he would leave her as neither a widow nor a married woman. When Islam came, it limited the waiting period to four months." Sa'eed ibn Al-Musayyib said, "*ilaa'* was the [method used] by people in *jaahiliyyah* to cause women harm. If a man did not want a woman [anymore] or did not want anyone else to marry her [if he divorced her], he would take an oath never to approach her again; so Allah the Almighty prescribed the period of time He knows [is better]."¹⁶

Abdur-Rahmaan ibn Sa'dee (may Allah have mercy on him) said, "This is [an example of] oaths relating to wives regarding a specific matter, namely a man taking an oath not to have sexual intercourse with her either permanently or for a limited period of time. If a man vows not to have sexual intercourse with his wife for less than four months, the oath he has taken is just like any other oath: if he breaks his oaths, he must atone for doing so; and if he keeps it, there is no blame on him. There is no way for his wife to reproach him. If, however, he swears not to have marital intercourse with her ever again or for a period exceeding four months, a period from his oath is to be fixed if his wife demands it because it is her right to do so. Once the period is completed, he is ordered to have marital intercourse with her; if he does, there is no blame on him and all he needs to do is expiate for the unfulfilled oath; if, however, he refuses, he will be forced to divorce her. Nevertheless, returning to her is best loved by Allah who is Most Merciful; for He has ordained the expiation of their oaths [when their vows prevent them from doing something good or acting rightly or making peace between

¹⁶ *Tafseer ibn al-Jawzee*, 1/256.

people], and has not made such vows binding [when it comes to avoiding sinful acts]; He is also Most Merciful because He has paved the way for them [through the prescription of such expiation] to return to their wives and feel compassion for them. This verse is used as evidence that *ilaa*' relates to the wife and that marital intercourse must be effected [at least] once in four months."¹⁷

Muslim jurists' difference of opinion regarding the Arabic word '*fay*' in the same verse, translated in the verse as 'return', is mainly due to their disagreement on the definition of the word *ilaa*'. Some have defined it as 'abstaining from intercourse', contending that they cannot return to them without having marital intercourse. Those who maintain that *ilaa*' means vowing not to talk to her or to enrage her or maltreat her, or something similar to this, marital intercourse is not a condition for returning to her but rather not to do what he vowed he would do; and if he does not intend to cause her harm, then it does not constitute *ilaa*'. Another group of jurists argue that *ilaa*' is effected only in a fit of anger; if, however, he takes an oath not to have marital intercourse with her fearing, for instance, for the child she is breastfeeding to be affected in anyway as a result of intercourse, it does not constitute *ilaa*'. "¹⁸

However, if he intends to cause his wife harm through it, then it is considered forbidden and is similar to the practice of people in *jaahiliyyah* who would vow not to have marital intercourse with their wives for one, two or three years for the sole purpose of causing them harm. When Islam came, and these verses were revealed to abolish this pagan practice, it prescribed a fixed period, namely the four-month period the Qur'an mentions. Ibn Al-Mundhir said, "[Scholars] are agreed that *fai*' means intercourse unless the husband has a good excuse for not being able to have it."¹⁹

Textual evidence from the *Sunnah* regarding *ilaa*' is the *hadeeth* narrated on the authority of Umm Salamah and Anas ibn Malik (may Allah be pleased with them both) who said, "The Prophet (peace be upon him) vowed to keep away from his wives for a period of one

¹⁷ *Tafseer ibn Sa'dee*, 1/280-281.

¹⁸ See *Tafseer al-Qurtubee*, 2/425 and *Fath al-Baaree*, p. 426.

¹⁹ See Ibn Al-Mundhir's *Al-Ijmaa'*, p. 46.

month.²⁰ When Omar asked him, 'Have you divorced your wives?' He replied, 'No, but I have taken an oath not to go to them for a month.'²¹

Scholars are not agreed as the reason behind the Prophet's keeping away from his wives. One view states that the Prophet (peace be upon him) was given a gift while he was with A'ishah, and he asked her to send his other wives' shares to them. She did, but when she sent Zainab bint Jahsh's share to her, the latter declined it. He increased her share and she still declined it; so he got upset and kept away from them for a month, saying, "I will not come to you for a [whole] month."

Another view maintains that he slaughtered a sacrificial animal and divided it among his wives. When he sent Zainab [bint Jahsh's] share to her, she declined it. He increased her share three times and she still declined it. Yet another view contends that he drank some honey when he was with Saudah in her own room, (another narration mentions Zainab). When he went to see A'ishah she said to him, "I can smell an unpleasant smell." When he went to see Hafsa, she also said the same thing. Another view claims that some of his wives asked him to increase spending on them; another one asserts that Hafsa made one of his secrets known. There is also a difference of opinion regarding this secret. Some said his keeping away from Mariyah, while others asserted that he informed Hafsa that the caliphate after him would be for Abu Bakr and Omar.

The most authentic view is that all these reasons led him to keep away from them. This is in keeping with his uniquely sublime morals, kind-heartedness and distinctively boundless forgiveness. This is supported by the fact that the oath he took was general and included all of all his wives.²²

Abdullah ibn Omar (may Allah be pleased with him) used to say about *ilaa'* which Allah defined [in the Qur'an], "If the period of *ilaa'* expires, then the husband has either to retain his wife in a handsome manner or to divorce her as Allah has commanded." Another narration

²⁰ Reported by Al-Bukharee, *Book of Fasting*, 1/299.

²¹ Reported by Al-Bukharee, *Book of Wedlock*, 6/153.

²² See *Zaad al-Maseer fee 'Ilm at-Tafseer*, 8/303 and *Fth al-Baaree*, 9/289.

states that he added, "When the period of four months has expired, the husband must be put in prison so that he should divorce his wife, but the divorce does not occur unless the husband himself declares it. This has been narrated by Othman, Ali, Abud-Dardaa', A'ishah and twelve other companions of the Prophet (peace be upon him)." ²³

Ibn Hajar said, "This is the interpretation of the verse by [Abdullah] ibn Omar; and the Prophet's companions' interpretations in such matters have the weight of *hadeeth marfoo'*"²⁴ [concerning certain matters only] according to Al-Bukharee and Muslim."²⁵

In conclusion, it is clear that women suffer a great deal of harm as a result of both practices of *dhihaar* and *ilaa'*. However, *dhihaar* is even more forbidden than *ilaa'* in that *dhihaar* does not have a specific period of time, whereas *ilaa'* ends with four months.

II. Expressions used in pronouncing *Dhihaar* and *Ilaa'*

Expressions used in pronouncing *dhihaar*

There are two types of expressions that are used in pronouncing *dhihaar*: explicit and implicit.

The explicit expression is one that carries only the meaning of *dhihaar* and does not require the intention. There is a unanimous agreement among scholars that if a man says to his wife, "You are to me as the back of my mother" has in fact made the sinful pronouncement of *dhihaar*. The expression as it stands cannot mean anything but *dhihaar* because it is obviously explicit.²⁶

Ibn Al-Mundhir said, "[Scholars] are agreed that the expression "You are to me as the back of my mother" explicitly implies *dhihaar* when a man says it to his wife. He can also be [guilty of the sin] of pronouncing

²³ Reported by Al-Bukharee, *Book of Divorce*, 6/173.

²⁴ A *hadeeth* whose *isnaad* goes back to the Prophet (peace be upon him) though it might be broken somewhere. [Translator's Note]

²⁵ See *Fath al-Baaree*, 9/338.

²⁶ See *Fath al-Qadeer*, 4/249, *Al-Istidh-kaar*, 5/52, *Al-Haawee al-Kabeer*, 10/428, and *Al-Mughnee*, 11/57.

dhihaar if he likens his wife to any part of his mother's body, or a body part of his wife to a body part of his mother."²⁷

The implicit expression is made indirectly with a legal intent and can carry the meaning of *dhihaar*, in which case it cannot be considered *dhihaar* without the intention. An example of this is the expression: "You are like my mother" or "You are my mother" without the preposition *ka* (as, like) used in comparative constructions in Arabic. If he intends to say that she is to him as his mother's back, meaning she is forbidden to him—then this is statement undoubtedly constitutes *dhihaar*. If, however, he intends the expression as a form of honour or respect, then it does not constitute *dhihaar*.²⁸

Scholars are however in disagreement about the ruling on the expression in which a man likens his wife to one of his other close relatives whom he can never marry, such as his paternal and maternal aunt and sister as well as any other woman he is not allowed to marry through either family relationship, relationship by marriage or breastfeeding. There are two different opinions in this regard:

The first opinion is that of the majority of scholars who maintain that this also constitutes *dhihaar*, for there is no difference between the mother and the other individuals he is not allowed to marry (*mahaarim*; singular: *mahram*), as evidenced by Allah's statement, **"And in fact they use words [both] iniquitous and false." (58:2)** This is not limited to the mother. Attaching the ruling to the mother does not in fact negate it if others mentioned in her stead are also forbidden for him to marry. This prohibition is immutable and if someone violates it by allowing it he becomes a disbeliever.

The second opinion holds that the pronouncement of *dhihaar* cannot be effected if the expression does not use the words 'mother' or 'grandmother', for the grandmother is also a mother and hence has the same status as that of the mother. Therefore, the word 'mother' used in

²⁷ Ibn Al-Mundhir's *Al-Ijmaa'*, p. 47; see also *Al-Ifsaah*, 2/163.

²⁸ *Haashiyat ibn 'Aabideen*, 4/470, *Bida'iyat al-Mujtahid*, 2/104, *Al-Wasset*, 6/31, *Al-Haawee*, p. 430, *kishhaf al-Qinaa'*, 5/427, and *Al-Ishraaf 'alaa Masaa'il al-Khilaaf*, 2/678.

the verse also includes the grandmother. This is the view of the Shaafi'ee school of thought.

The correct opinion, however, is that expressed by the majority of scholars, namely, that the mother is as forbidden to get married to as to any other close female relatives.²⁹

If, however, a man likens his wife to someone else who does not constitute an object of pleasure for him such as 'the back of his father', the pronouncement does not explicitly constitute *dhihaar* even though the 'back of his father' is also considered forbidden. The expression here is implicit and depends on the intention. If he intends to pronounce *dhihaar*, then it is definitely as such; if, however, he does not intend it, it is by no means *dhihaar*. The difference between them can be explained in two ways:

- The 'mother's back' is an object of pleasure and so it is used in the expression to pronounce *dhihaar*, whereas the 'father's back' is not an object of pleasure and thus its use in the expression does not constitute *dhihaar*.
- The mother can be subjected to divorce whereas the father is not; *dhihaar* applies in the first case but not in the second.³⁰

A question arises here. What if the husband likens a part of his wife's body such as the stomach, the hand or the head, to the mother's back? Three opinions have been advanced in response to this question. The first opinion, which is that of the overwhelming majority of scholars, states it does indeed constitute *dhihaar*; the second, which is one of the views expressed by the Hanbali school of thought, maintains that it does not constitute *dhihaar*. The third opinion contends that likening her to a body part that it is forbidden to look at constitutes *dhihaar*; otherwise, it does not. This is the view of the Hanafi school of thought.³¹

The most acceptable view, however, is that expressed by the majority of scholars, as there is no difference between the different body

²⁹ See *Al-Istidhkaar*, 5/57, *Al-Ishraaf 'alaa Masaa'il al-Khilaaf*, 2/676, *Fath al-Qadeer*, 4/250, *Al-Haawee*, 10/432, *Al-Waseet*, 6/32, *Sharh as-Sunnah*, 9/244, *Al-Mughnee*, 11/57-8 and *Hilyat al-'Ulamaa'*, 2/955-6.

³⁰ See *Al-Haawee*, 10/433 and *Al-Mughnee*, 11/59.

³¹ See *Fath al-Qadeer*, 4/250, *Al-Ishraaf 'alaa Masaa'il al-Khilaaf*, 2/768, *Al-Haawee*, 10/428 and *Al-Mughnee*, 11/64.

parts because one object of marriage is [lawful] pleasure. Allah knows best.

Expressions used in pronouncing *ilaa'*

The well-known formula of pronouncing *ilaa'* is to swear by Allah or any of His Attributes not to have marital intercourse with one's wife for a period exceeding four months. Scholars are generally agreed that swearing in this manner constitutes *Ilaa'*, and every oath which entails a ruling or incurs a certain harm for breaking it constitutes *ilaa'* because it is a vow which entails a ruling or incurs harm. Ibn Al-Mundhir said, "[Scholars] are agreed that any vow that leads to making marital intercourse forbidden constitutes *ilaa'*."³²

There are two views here. The first view, that of the majority of scholars, contends that the pronouncement of *ilaa'* can be effected by any vow which serves the purpose; therefore, if a man takes an oath to divorce her, free a slave, make a solemn vow to do a certain good deed, fast, perform pilgrimage, give in charity or do similar things, the *ilaa'* pronouncement is without doubt effected.

The second view, expressed by one of the views of the Hanbali and Shaafi'ee schools of thought, holds that taking an oath can only take place by swearing by Allah or any of His Attributes and nothing else. They advance the following evidence in support of their view:

1. The Qur'anic verses in which the ruling of *ilaa'* is expressed in the Qur'an comes after the verses delineating the rulings on oaths, namely **"And do not make Allah's [Name] an excuse in your oaths against doing good, acting rightly or making peace between people; and Allah is All-Hearing, All-Knowing."** (2:224) **"Allah will not call you to account for that which is unintentional in your oaths, but He will call you into account for that for which your hearts have earned; and Allah is Oft-Forgiving, Most Forbearing."** (2:225) **"For those who take an oath of abstention from their wives, a waiting [period] of four months is ordained; if then they return,**

³² *Al-Ijmaa'*, p. 46, no. 432; *Al-Ishraaf*, 2/762; and Ibn Qudaamah's *Ash-Sharh al-Kabeer*, 23/147.

Allah is Oft-Forgiving, Most Merciful." (2:226) This proves that *ilaa'* can only be effected by swearing by Allah or any of His Attributes.

2. Vowing or taking an oath customarily and legally implies swearing by Allah or any of His Attributes.
3. Allah's statement **"...if then they return, Allah is Oft-Forgiving, Most Merciful" (2:226)** is general in terms of forgiveness of sins and is taken to mean the legal act of swearing by Allah and not swearing to divorce or to free a slave.

The following is the evidence that the overwhelming majority of scholars cite to back up their view:

1. Allah's statement **"For those who take an oath of abstention from their wives..." (2:226)** is general, and thus includes swearing by Allah or other than Him.
2. Swearing to divorce, free a slave, fast or any similar act is used by analogy with swearing by Allah, for the purpose of swearing is to abstain from marital intercourse and hence cause the wife harm.

The correct opinion is that expressed by the majority of scholars for the following reasons:

1. The verse is general.
2. The narration by Ibn Abbas (may Allah be pleased with him) who said, "Any oath that leads to abstention from marital intercourse is *ilaa'*."³³
3. Because the oath taken has prevented marital intercourse, it does constitute *ilaa'* and hence serves the same purpose as swearing by Allah.
4. Because making the act of divorce and freeing a slave dependent upon having intercourse with the wife constitutes an oath in itself.³⁴

Expressions used in pronouncing *ilaa'* can also be explicit and implicit. Some of the explicit expressions, according to the Hanafi schools of thought, is a man's saying to his wife, "By Allah, I will not have intercourse with you", or something similar that is bound to make the oath binding. Some of the implicit expressions, which definitely require the intention according to them, include, among other things, "I

³³ Reported by Al-Baihaquee in *As-Sunan al-Kubraa*, 7/381.

³⁴ *Al-Mughnee*, 11/6 and *Ash-Sharh al-Kabeer*, 22/148.

will not approach you", "I will not come near you" and "I will not go to you".³⁵

All the expressions that are used in pronouncing *ilaa'*, according to the Shaafi'ee school of thought, can be divided into five parts:

1. Expressions that are entirely explicit, such as one's saying, "I will not insert my penis into your vagina".
2. Expressions that are outwardly explicit but inwardly implicit, such as the use of the Arabic word *wat'* in the expression, which can mean both 'sexual intercourse' and 'treading on someone', as it may imply the implicit meaning.
3. Expressions that are implicit both outwardly and inwardly, such as one's saying, "I swear by Allah I will not approach you or come near you", the Arabic word used being *iqtaraba*, which is generally taken to mean intercourse as well as other things. This being the case, a man making such an expression has not committed the sin of *ilaa'* without the intention and will.
4. Expressions that are controversial; these concern three words, namely *baada'a*, *baashara*, and *massa*, which all imply sexual intercourse as well as other meanings. There are two opinions in this regard:
 - The first opinion states that the expression is explicit outwardly but implicit inwardly; this is the old opinion of the Shaafi'ites.
 - The second opinion states that it is implicit both outwardly and inwardly. This is their new opinion.
5. Expressions that are neither explicit nor implicit, such as ones' saying, '*laa awhashtuki*' (I will not leave you), '*laa ahzantuki*' (I will not make you upset) and '*laa at'amtuki*' (I will not feed you). Such and similar expressions do not constitute *ilaa'* at all.³⁶

As for the followers of the Hanbali school of thought, the expressions that are used in the pronouncement of *ilaa'* fall into three categories:

³⁵ See *Fath al-Qadeer*, 4/189, *haashiyat Radd al-Mukhtaar*, 3/434-5 and *Ash-Sharh as-Sagheer*, 2/621.

³⁶ *Al-Haa'wee al-Kabeer*, 10/345.

1. Expressions that are explicit both outwardly and inwardly, such as one's saying, "I swear by Allah not to insert my penis into your vagina". Such expressions carry only the meaning of *ilaa'* and nothing else.
2. Expressions that are explicit outwardly but require the intention. These expressions are ten in total, but the most common of which contain the words *jimaa'* and *wat'*, which both stand for sexual intercourse.
3. Expressions which do not constitute *ilaa'* upon making them without the intentions, such as the Arabic statement, '*Wallaahi laa yajma'u ra'see wa ra'saki shai'un*' (Literally, By Allah, nothing will bring my head and yours together), which can imply intercourse or otherwise, depending on the intention. Therefore, if the intention behind this expression is sexual intercourse and the person who has made it has admitted it, it does constitute *ilaa'*; otherwise, it does not, because such expressions are not commonly used to mean intercourse anyway; furthermore, there is no textual evidence stating that such expressions are used for the purpose.³⁷

The above discussion has proved that *ilaa'* can be effected by taking an oath, whereas *dhihaar* does not require an oath. Abstention from sexual intercourse with one's wife certainly causes her great harm; however, in the case of *ilaa'* an oath is necessary, while in the case of *dhihaar* it is not. This is the difference between the two practices.

III. The Necessity of Expiation and its Types

A. Rulings concerning expiation in the case of *dhihaar*

The Arabic word *kaffaarah*, translated here as expiation, is derived from the verb *kafara* which means 'to cover. The *kaffaarah* is used in this sense as though it "covers" sins and it is called as such because it 'covers' the sin and blots it out. *Kaffaarah*, or expiation, is of different types, including that for breaking one's oath, that for killing someone illegally but not deliberately (manslaughter) and that for the making the sinful

³⁷ See *Al-Mughnee*, 11/26 and *Ash-Sharh al-Kabeer*, 23/142.

pronouncement of *dhihaar*.³⁸ Atoning for the sin of pronouncing *dhihaar* can be realised in the following order: Freeing a slave; if this cannot be afforded, then fasting two successive months; and if one is unable to do so, then feeding sixty poor people, as the Qur'an clearly states.

All four major jurists (Ahmad, Abu Haneefah, Ash-Shaafi'ee and Maalik) are agreed that a person who has made the sinful pronouncement of *dhihaar* is not allowed to have sexual intercourse with his wife without expiating such a sin in the order mentioned above. They are also agreed that expiation varies depending on the words used and not on the number of wives. If someone takes an oath concerning a number of things at the same time, then only one *kaffaarah* is required; If he takes an oath concerning each wife of his individually, then one *kaffaarah* for each one of them is required. If he takes the oath repeatedly in the same meeting, only one *kaffaarah* is required; but if does so in different meetings, then one *kaffaarah* for each meeting is required.³⁹

Textual evidence concerning expiation comes from the following verses: **"And those who pronounce the word *dhihaar* to their wives then wish to go back on the words they uttered [the penalty for it] is the freeing of a slave before they touch each other. This is what you are admonished with, and Allah is Well-Aware of what you do. But those who do not find [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 poor people. This is so that you may [truly] believe in Allah and His Messenger. And these are the limits [prescribed] by Allah; and for the disbelievers is a painful punishment."** (58:3-4)

As for the *Sunnah*, textual evidence has already been furnished regarding the incident of Khawlah bint Tha'labah and her husband as well as that of Salamah bint sakhr Al-bayaadee.⁴⁰

First form of expiation: Freeing a slave

³⁸ See Ibn Qutaibah's *Ghareeb al-Hadeeth*, 1/212; *Jaami' al-Usool*, 7/593; *As-Sihaah*, 2/808; *Al-Misbaah*, 2/535; and *Al-Lisaan*, 5/148.

³⁹ See Aas-Sarkhasee's *Al-Mabsoot*, 6/225, Ibn Abdul-Barr's *Al-Kaafee*, 2/606; Ash-Ahaafi'e's *Al-Umm*, 5/285; and Ibn Muflih's *Al-Firoo'*, 5/494.

⁴⁰ See footnotes 8 and 12.

The slave to be freed can be either a male or a female, young or old; and the person who is able to free a slave cannot expiate his sin without freeing a slave, and nothing else would suffice to serve the purpose.

However, scholars are not agreed as to whether the slave should be a believer or not. The Hanafites maintain that the slave to be freed does not necessarily have to be a believer to expiate the sin of *dhihaar*, because the word used in the verse, namely "[the penalty for it] is the freeing of a slave" is general and thus has to be taken to mean any slave, just as taking an oath is taken to have a general meaning without any restrictions whatsoever.⁴¹ The majority of scholars, however, hold that belief⁴² is a condition and they advance the following evidence:

1. It is to be used by analogy with the expiation concerning the sin of killing someone illegally but not deliberately (manslaughter), in which case the slave to be freed has to be a believer, as Allah says, **"And whoever kills a believer by mistake shall free a believing slave."** (4:92) Concerning the atonement for the sin of *dhihaar*, the verse is general; and so the general sense in this verse should be to have the same specific sense in the verse about the expiation of the sin of killing someone by mistake.
2. Mu'aawiyah ibn al-Hakam said, "I had a female slave girl, and I went to the Prophet (peace be upon him) once and said to him, 'I need to expiate [a sin] by freeing a slave; shall I free her?' Allah's Messenger (peace be upon him) said to the slave girl, 'Where is Allah?' She replied, 'He is over the heavens.' He then asked her, 'Who am I?' She replied, '[You are] Allah's Messenger.' Then he said, 'Set her free, for she is a believer.'"⁴³ In this narration Mu'aawiyah did not ask the Prophet (peace be upon him) about the kind of expiation or the sin he had committed.

Scholars also showed some difference concerning defects of the slave to be freed. There are three opinions in this regard:

1. The majority of scholars contend that the slave has to be free from highly visible harmful defects, such as blindness or to be with

⁴¹ See *Fath al-Qadeer*, 4/258 and *Haashiyat ibn 'Aabideen*, 3/473.

⁴² See *Al-Kaafee*, 2/606, *Al-Umm*, 5/280, *Rawdhat at-Taalibeen*, 8/281, *Al-Mubdi'*, 8/52, *Kishaaf al-Qinaa'*, 5/379, and *Al-Mughnee*, 11/81.

⁴³ Reported by Muslim in *The Book of Mosques*, 1/382; Maalik in *Al-Muwatta'*, 2/776; and Ahmad in *Al-Musnad*, 5/447.

amputated hands or feet. The slave to be considered for emancipating is therefore the one with perfect limbs and other body organs and bound to yield benefits.

2. The Hanafites maintain that the defects such as an amputated hand or foot should not prevent one from freeing the slave; it would suffice even if the hand or foot are cut off from opposite sides.
3. Those who take the literal sense of words argue that a slave is a slave and hence any slave can be freed, with or without defects, given the general sense of the verse.⁴⁴

The correct view, I believe, is that expressed by the majority of scholars, as evidenced by Allah's statement, "**And seek not that which is bad to spend out of it.**" (2:267) Abu Dharr (may Allah be pleased with him) said, "I asked the Prophet (peace be upon him), 'What is the best deed?' he replied, 'To believe in Allah and to fight in His way.' I then asked, 'Which is the best slave to emancipate?' He replied, 'That which is of the highest price and most liked by his master.'..."⁴⁵

Therefore, the best kind of slave to set free is the one that is perfect, without any defects. Ibn Al-Mundhir said, "[Scholars] are agreed that it would not suffice if [the slave to be freed] is blind, disabled, with amputated hands or feet or if any of his hands or feet has been permanently injured or damaged."⁴⁶

Second form of expiation: Fasting

There is a unanimous agreement among scholars that fasting is to be done consecutively, one day after the other without any interruptions. If, however, one happens to break the fast during the month by having sexual intercourse, eating or drinking without a valid excuse, then he has to resume fasting. Succession here means that he should not break the fast at all and must not observe any other fast except that for expiating the sin of *dhihaar*. It is recommended, according to the Hanafites, that the days to be fasted must not be those of Ramadan, the

⁴⁴ See *fath al-Qadeer*, 4/260; *Al-Umm*, 5/282; *Hilyat al-'Ulamaa'*, 2/962; and *Sharh az-Zarkashee*, 5/492.

⁴⁵ Reported by Al-Bukharee, 3/117 and Muslim, 1/89.

⁴⁶ See *Al-Ijmaa'*, p. 47.

day of *Eed al-Adhaa* (Festival of Sacrifice) or the days of *tashreeq* (i.e. 11th, 12th and 13th *Dhul-Hijjah*) so that succession in fasting these days is realised. If he happens to break his fast during it for a valid reason, he can resume from where he left off; and if he breaks it without a valid reason, he has to start fasting anew. A person who is not able to do so due to old age, senility or a certain disease, for instance, he can move to the next form of expiation.⁴⁷

Third form of expiation: Feeding

The majority of scholars maintain that the number of poor people to be fed is sixty; therefore, the food must not be given to one single person, but to sixty different people.

The Hanafites hold that it would suffice if one feeds one poor person for sixty days; if, however, he gives this person the whole supply of food that would last for sixty days, this act will not be valid. Giving each days' worth of food to the poor is required, as evidenced by the verse "**He should feed sixty poor people**". Therefore, one is permissible to give to poor person what he give to sixty people but for sixty days.

The majority of scholars contend that no fewer than sixty poor people are to be fed because the Prophet (peace be upon him) commanded Aws ibn As-Samit and Salamah ibn Sakhr to feed sixty poor people, and thus feeding one single person contravenes the instruction expressed by the verse. It is quite clear from the verse that the number of the poor people to be fed must be sixty, and this is the number [the verse states] to be fed.⁴⁸

The amount of food to be given to the poor has also generated three different opinions:

⁴⁷ See *Al-Mabsoot*, 6/225; *Fath al-Qadeer*, 4/269; *Al-Istidhkaar*, 5/62; *Al-Kaafee*, 2/607; *Ash-Sharh as-Sagheer*, 2/650; Ibn Al-Mundhir's *Al-Ijmaa'*, p. 47; *Al-Umm*, 5/283; *Al-Muhadh-dhab*, 2/149; *Al-Mughnee*, 11/88; and *Ash-Sharh allKabeer*, 23/326.

⁴⁸ See *Fath al-Qadeer*, 4/269; *Bidaayat al-Mujtahid*, 2/112; *Al-Muhadh-dhab*, 2/150; *Rawdhat at-Taalibeen*, 8/308; *Al-Mughnee*, 11/92 *Sharh az-zarkashee*, 5/500; and *Kishaaf al-Qinaa'*, 5/386.

The Hanafites argue that the amount of food to be given to the poor person is half a *saa'*⁴⁹ of wheat; otherwise, one *saa'* of corn, dates or something similar to this effect would do; and this applies to all kinds of expiation.

The Shaafi'ites and Hanbalites maintain that the amount is one *mudd*⁵⁰ of wheat or two *mudds* of other than wheat.

The Maalikis hold that each poor person should be given two *mudds* of the staple diets in the country where he lives, be it wheat or otherwise, as there is no difference whatsoever in this regard.

As far as the manner of feeding in matters of expiation is concerned, the Hanafites hold that the manner of feeding consist of two things, namely the poor person to be fed must be given possession of the food and that the food must be lawful. They also say that it is permissible to count two meals a day as one day's feeding, like lunch and dinner and that the value of the food can be given in cash instead. The majority of jurists, however, contend that each poor person is to be given possession of the portion allowed for expiation, and that giving the value of the food in cash would by no means suffice, in keeping with the Qur'anic text regarding feeding.⁵¹

The act that a man who has made the sinful pronouncement of *dhihaar* is not allowed to do before atoning for his sin is sexual intercourse, whether the form of expiation to be observed is freeing a slave or fasting. The reason for this is that Allah the Almighty used the words "**before they touch each other**" regarding the first form of expiation, namely freeing a slave as well as the second form of expiation, namely fasting. This is the view of the overwhelming majority of scholars. As for the third form of expiation, namely feeding sixty poor

⁴⁹ *Saa'* is a measure that equals four *mudds*, approximately three kgs. (Translator's note)

⁵⁰ *Mudd* is a measure of two thirds of a kilogram (approx.); it may be a bit more or less than this. (Translator's Note)

⁵¹ See *Fath al-Qadeer*, 4/268; *Al-Ishraaf*, 2/776; *Al-Haawee*, 10/515; and *Al-Insaaf*, 23/353.

people, the majority of scholars contend that sexual intercourse is also forbidden; some scholars, however, argue that it is not forbidden because Allah has not mentioned the words **"before they touch each other"** in the course of talking about the expiation in the form of feeding but mentioned these words regarding the other forms of expiation, namely freeing a slave and fasting.⁵²

The majority of scholars also hold that such a person is not allowed to engage in acts that are likely to lead to sexual pleasure, such as kissing and fondling, stating that such acts are forbidden as they are bound to lead to a forbidden act, namely sexual intercourse. They quoted Abdullah ibn Abbas's statement, "Do not approach her until you do what you are commanded to do" (another narration states: "Keep away [from her] until you expiate [the sin]")⁵³ to back up their view. They also quote Allah's statement **"before they touch each other"** in evidence, as it includes sexual intercourse and all the acts that are likely to lead to it.

The Shaafi'ites maintain that it is only sexual intercourse that is forbidden, and that it is permissible for the person who made the pronouncement of *dhihaar* to kiss and fondle his wife for sexual pleasure before he atones for his sin. They also quote Allah's statement **"before they touch each other"** in evidence, saying that 'touching each other' implies only intercourse. They also advance the case of the permissibility of effecting sexual pleasure with the menstruating wife except in her private parts by analogy with this case.⁵⁴

The correct opinion, however, is that of the majority of scholars, namely, that sexual intercourse and all acts used for sexual pleasure are strictly forbidden. The use of the menstruating woman by analogy is not valid because there is textual evidence from the *Sunnah* that permits seeking sexual pleasure with one's menstruating wife, but there is no authentic evidence which permits doing so in the case of *dhihaar*. Besides, Islam makes sexual intercourse with one's menstruating wife forbidden due the blood that flows out of her body each month, which Allah describes in the Qur'an as 'a harmful thing' (2:222) and thus

⁵² See *Bidaayat al-Mujtahid*, 2/136 and Ibn Hubairah's *Al-Ifsaah*, 2/166.

⁵³ Reported by Abu Dawood, *Book of Divorce*, 2/268 and At-Tirmidhee, *Book of Divorce*, 2/335.

⁵⁴ See *Mukhtasar al-Muzanee*, p. 204 and *Al-Haawee*, 10/542.

prohibits the believers from having intercourse; in the case of *dhihaar*, however, intercourse is made forbidden because a man makes it forbidden for himself.⁵⁵ Allah knows best.

B. Rulings concerning expiation in the case of *ilaa'*

The type of *kaffaarah* (expiation) in the case of *ilaa'* is similar to that of breaking one's oath, which can thus be performed by choosing from three things: (1) freeing a slave, (2) feeding ten poor people or (3) clothing them. If one cannot afford any of these, then he must fast three days. These degrees of expiation are detailed below:

1. **Feeding ten people:** The evidence for this comes from the verse "Allah will not call you to account for what is unintentional in your oaths, but He will call you to account for your deliberate oaths; for its (i.e. a deliberate oath) expiation, feed ten poor persons, on a scale of the average of that which you feed your own families, or clothe them or free a slave; but whoever cannot afford that, then he should fast for three days." (5:89)
2. **Clothing them:** There is a difference of opinion in this regard. Some maintain that it only one piece of cloth, some say two and yet some others say three. Some other scholars hold that whatever clothes would suffice to cover one's *awrah* in the prayer would do.
3. **Freeing a slave:** This includes the difference mentioned earlier between the majority of scholars and the Hanafites regarding whether or not a slave must be a believer.⁵⁶

The aforementioned verse states that if [someone] makes something which is lawful for him forbidden, such as food, drink and intercourse [by way of taking an oath], it does not necessarily become forbidden. If however, he breaks his oath, he has to perform expiation for doing so; this does not apply to taking an oath not to have intercourse with one's wife, in which case the expiation for *dhihaar* is required. The verse also

⁵⁵ See *Haashiyat Ibn 'Aabideen*, 2/792; *Al-Mughnee*, 11/67; and *Kishaaf al-Qinaa'*, 5/431.

⁵⁶ For a lengthy discussion of this point, refer to what been said at the beginning of this section under "A. Rulings concerning expiation in the case of *ilaa'*"

indicates that a person must not avoid things which Allah has made lawful for him; rather, he should use such lawful things to help him worship his Lord better.⁵⁷

Therefore, one can choose from any of these three degrees of expiations; if, however, one cannot afford any of them, then he can move to the fourth degree of expiation, namely fasting for three days. Nonetheless, scholars are in disagreement about the succession of days. Two opinions have been advanced here:

1. The Hanafites maintain that succession must be observed, quoting in evidence Ibn Mas'ood's version of reciting the verse by adding the word 'consecutive', thus: **"then he should fast for three consecutive days"**. They also hold this view by analogy with fasting in expiating the sin of *dhihaar*. This view is also adopted by the Shaafi'ites in one of their two views and by the Hanbalites in one of their two views as well.
2. The second view of both the Hanbalites and the Shaafi'ites is that succession is not necessary because the verse is general and because succession can only be necessary if there is textual evidence to support it.⁵⁸

When would the expiation for *dhihaar* be due?

Scholars are all agreed that the word '*awd*' (translated here as 'go back') in the verse **"And those who pronounce the word *dhihaar* to their wives then wish to go back on the words they uttered..." (58:3)** is a precondition for the expiation for *dhihaar*, and that if the one guilty of the sin of pronouncing *dhihaar* does not 'go back', then he does not have to expiate the sin of *dhihaar* or even that of breaking one's oath. This is the most correct view on this issue.

However, they are in disagreement as to the meaning of the word '*awd*' in the verse. Some argue that it means only abstention; some contend it means the intention to have sexual intercourse; and yet some others say it means pronouncing the word *dhihaar* repeatedly.

The correct view in this regard is that the word '*awd*' means intercourse; and so if one wishes to have intercourse, one has to expiate

⁵⁷ *Tafseer ibn Sa'dee*, 2/336.

⁵⁸ See Al-Qurtubee's *Al-Jaami' li Ahkaam al-Qur'aan*, 6/283 and *Zaad al-Maseer*, 2/415.

the sin of *dhihaar* first. The verse, therefore, makes it necessary that expiation has to be performed after intending to 'go back' but before having intercourse, for having intercourse before performing expiation is strictly forbidden. Because by the pronouncement of *dhihaar* intercourse has been made forbidden, expiation has to be made before having intercourse to make intercourse permissible again, like in all forms of oaths. Also, because it is an oath that requires refraining from intercourse, its expiation has to be preceded by the intention to 'go back'.⁵⁹ Allah knows best.

When is the expiation for 'ilaa' due?

All scholars without exception are agreed that the word *fay'* (translated here as 'return') in the verse **"if then they return, Allah is Oft-Forgiving, Most Merciful" (2:226)** means sexual intercourse. Ibn Al-Mundhir said, "[Scholars] are agreed that the [Arabic] word *fay'* means intercourse unless one has a valid excuse not to have it. This is the view of Ibn Abbas, Ali ibn Abee Talib, Abdullah ibn Mas'ood and many others. The literal meaning of *fay'* is 'return'; so if one 'returns', one has to expiate one's sin. Expiation here is similar to that for breaking one's oath. This is the view of the overwhelming majority of scholars."⁶⁰ Ash-Shaafi'ee, however, maintains that there is no need for expiation. This is also the view of Al-Hasan.

The majority of scholars advance the following in evidence to support their view:

1. The verse delineating the ruling on *ilaa'* is general and thus includes *ilaa'* and other things. Therefore, if a person takes an oath not to have intercourse with his wife and wants to return to her, he has to expiate for this sin because he has broken his oath.
2. Abu Hurairah narrated that the Prophet (peace be upon him) said, "Whoever takes an oath to do something and then realises that there

⁵⁹ *Al-Mabsoot*, 6/224, *Al-Badaa'i'*, 3/236, Ibn Hazm's *Al-Muhallaa*, 9/104, Al-Qurtubee's *Al-Jaami' li Ahkaam al-Qur'an*, 17/605, *Al-Umm*, 5/279, and *Al-Mughnee*, 11/74.

⁶⁰ See *Al-Ijmaa'*, p. 46; *Al-Mughnee*, 11/38; and *Ash-Sharh al-Kabeer*, 23/206.

is something else better than it, let him expiate the sin [for breaking the oath] and do whichever is better."⁶¹

3. Swearing by Allah is more solemn than swearing to divorce or free a slave, and thus it is more appropriate to consider the case under study as breaking an oath, hence the necessity of expiation.

Those who hold the other view, namely the Shaafi'ites, put forth the following to support their view:

1. Allah has prescribed two rulings, namely *fay'* (returning) and divorce, and thus we should not add a third ruling to them, namely that of expiation.
2. Allah forgives those who 'return' by saying, "**if then they return, Allah is Oft-Forgiving, Most Merciful**", and hence whatever He forgives does not require expiation.
3. One has a choice between *fay'* (returning) and divorce, and thus one is not required to expiate for divorcing, nor is one required to expiate for 'returning'.

The correct opinion is that expressed by the majority of scholars, for *ilaa'* is considered as a form of taking an oath, and forgiveness mentioned in the verse relates to sins but does not exempt one from expiation. Allah knows best.

A question arises here. Is there any sort of overlapping between *ilaa'* and *dhihaar*? To illustrate the point, if a man has made the pronouncement of *dhihaar* and refuses to expiate while he is able to do so, can he be given a chance of a four-month period, as in the case of *dhihaar*? Three opinions have been advanced in this regard:

1. The majority of scholars are of the opinion that there is no overlapping whatsoever between *ilaa'* and *dhihaar*, and that each one of them has its own independent ruling.
2. Some scholars hold that they do overlap whether or not the person guilty of making the pronouncement of *dhihaar* intends to do harm to his wife, and hence he should be given a chance of a four-month period.
3. Some other scholars maintain that there is a difference between them depending on the person's intention. Therefore, if his intention is to

⁶¹ Reported by Imam Maalik in *Al-Muwatta'*, 2/478 and Muslim in *The Book of Oaths*, 3/1272, no. 1650.

do harm to his wife, he has to be given a chance of a four-month period, in which case, *ilaa'* and *dhihaar* overlap; if, however, he does not intend to do harm to her, there is no overlapping whatsoever between them.

The correct opinion in this regard is that of the majority of scholars.⁶² Allah knows best.

It has become crystal clear that *kaffaarah* (expiation) is mandatory in both cases; however, it is more solemn in the case of *dhihaar* because intercourse is considered forbidden before expiation for the sin of *dhihaar* is made. In the case of *ilaa'*, intercourse is not forbidden before expiation is made so as not to cause the woman any harm. Thus refraining from sexual intercourse is the rule in both cases; but it is forbidden before expiating the sin of *dhihaar* and is permissible before expiating the sin of *ilaa'*.

IV. Conditions Relating to *Ilaa'* and *Dhihaar*

A. Conditions for *dhihaar*

Scholars are all agreed that *dhihaar* becomes effective when a man pronounces it to a woman he is married to, whether she is Muslim or from the People of the Book (i.e. Christian or Jew), and whether she is young or old. They are, however, in disagreement regarding female slaves. The majority of scholars are of the opinion that it does not become effective, while the Maalikites maintain that a female slave is just like a free woman and therefore expiation is required but it is half that of the free woman, because the rule in matters of expiation requires that female slaves observe half the expiation to be observed by free women.

The Maalikites adhere to the general proofs that do not distinguish between a free woman and a female slave, stating that because a female slave is also a wife that can also be divorced, pronouncing the word

⁶² *Badaa'i' As-Sanaa'i'*, 3/173; *Bidaayat a-Mujtahid*, 2/1000; *Al-Muhadh-dhab*, 2/109; and *Al-Mughnee*, 11/38.

dhihaar to her also holds. The majority of scholars, on the other hand, adhere to the verse [mentioned above] and argue that the meaning [of the word women] in the verse refers to woman one is married to, namely free women, and female slaves are not used in the sense of wives.⁶³

What would the ruling be if a man pronounces *dhihaar* to a woman other than his wife, by saying, for instance, "Any woman I marry, or if I marry so-and so, she will be to me as my mother's back"? There is a difference of opinion here, and two opinions have been advanced:

1. The first opinion, that of the majority of scholars, states that *dhihaar* does not become effective in this case because she is not his wife, for Almighty Allah says, "**Those among you who divorce their wives by *dhihaar*...**" (58:2) The word *nisaa'ihim* in the verse means 'their wives'. The woman in question is not a wife.
2. The second opinion, that of the Hanafites as well as one of the views of the Hanbalites, considers it a case of *dhihaar* if he marries her, by analogy with divorce and given the general meaning contained in the verse which does not distinguish between pronouncing *dhihaar* before or after marriage and because the person who pronounces it has, as the Qur'an states, uttered words that are "**iniquitous and false**". (58:2) In support of this, they quote the following report by *imam* Maalik: "A man said that if he ever married a certain woman, she would be to him as his mother's back (*dhihaar*). Omar ibn Al-Khattab (may Allah be pleased with him) told him that if he ever married her, he would not have intercourse with her until he expiated the sin of *dhihaar*." Because such statement of *dhihaar* bears the status of an oath, whenever marriage is concluded, expiation is required of him.⁶⁴

What would the ruling be if a woman pronounces *dhihaar* to her husband by saying to him, "You are to me as my father's back"?

Almost all four jurists (Abu Haneefah, Ahmad, Ash-Shaafi'ee and Maalik) are agreed that this pronouncement does not constitute *dhihaar*

⁶³ See *Fath al-Qadeer*, 4/255; *Al-Ishraaf*, 2/767; *Bidaayat al-Mujtahid*, 2/107; *Al-Haawee*, 10/426; *Mughnee al-Muhtaj*, 3/354; and *Al-Mughnee*, 11/57, 67.

⁶⁴ *Al-Muwatta'*, Book of Divorce, 2/559; *Al-Istidhkaar*, 5/52; *Al-Ishraaf*, 2/770; *Al-Umm*, 5/277; *Rawdhat at-Taalibeen*, 8/265; *Sharh az-Zarkashee*, 5/488; and *Al-Mughnee*, 11/75.

because it is just like divorce, a right which belongs to the man exclusively. Furthermore, Allah addresses men in the verse thus: "**those who pronounce the word *dhihaar* to their wives.**" (58:3) Ibn Al-Mundhir said, "If a woman makes the pronouncement of *dhihaar* to her husband, [such a pronouncement] does not mean anything."⁶⁵

Imam Ahmad was reported to have expressed two different views concerning expiation. One opinion states she has to make expiation, that for breaking one's oath. Ahmad said, 'Ataa' has rightly considered this to be similar to the case of someone who has made something forbidden for him, such as food or something similar to that, because this does not constitute *dhihaar* in any way. Mere utterance of words that are "**iniquitous and false**" does not require the expiation needed for the sin of *dhihaar*..."⁶⁶

Imam Ahmad's other opinion states that she has to perform the expiation for *dhihaar*. The evidence furnished here is that A'ishah bint Talhah⁶⁷ said, "If I get married to Al-Mus'ab ibn Az-Zubair, he will be to me as my father's back." When he asked for her hand and she consented to getting married to him, she asked scholars in Madeenah about her case and they advised her to perform expiation for *dhihaar*.⁶⁸

Another question arises here: Whose pronouncement of *dhihaar* can be deemed effective?" Scholars are agreed that such pronouncement can only be made by an adult, sane Muslim, free or otherwise, but they are in disagreement regarding the pronouncement of *dhihaar* by a *dhimmee*⁶⁹. There are two different opinions here. The Hanafites and Maalikites

⁶⁵ *Al-Ifsaah*, 2/166.

⁶⁶ See *Ash-Sharh al-Kabeer*, 23/2, 254.

⁶⁷ She is the niece of A'ishah bint Abu Bakr As-Siddeeq, Mother of the believers. She was one of the most beautiful women in her time and died in Madeenah in 110 AH. See *Tabaqaat Ibn Sa'd*, 8/467; *Al-Bidaayah wan-Nihaayah*, 9/302; and *Siyyar A'laam an-Nubalaa'*, 4/369.

⁶⁸ Reported by Abdur-Razzaq in his *Musannaf*, *Book of Divorce*, 6/444. See also *Al-Istidhkaar*, 5/95.

⁶⁹ *Ahl al-Dimmah* (or *Dhimmees*) are the non-Muslim subjects of an Islamic state who have been guaranteed protection of their rights- life, property and practice of their religion, etc. [Translator's Note]

contend that *dhihaar* cannot be pronounced by a *dhimmee*. The Shaafi'ites and Hanbalites maintain that it can be pronounced by a *dhimmee*.⁷⁰

Those who adopt the first opinion quote the verse "**those who pronounce the word *dhihaar* to their wives.**" (58:3) in evidence, stating that disbelievers and *dhimmes* are not addressed in this verse, as they are not Muslim like us. They also quote the verse "**But those who do not find [the money for freeing a slave] must fast for two successive months before they both touch each other**" (58:4) as another evidence, stating that fasting cannot be accepted from a non-Muslim. They also argue that expiation for *dhihaar* is an act of worship and thus requires the intention; and a non-Muslim does not need such intention. His marriage is invalid and hence cannot make the pronouncement of *dhihaar*.

Those who adopt the second opinion resort to the analogy of divorce, saying that just as he can pronounce divorce, he can also pronounce *dhihaar*.

The correct opinion is that a *dhimmee*'s pronouncement of *dhihaar* cannot be effective as there is a difference between divorce and expiation; in fact, expiation is an act of worship which cleanses a Muslim of sins, and this does not apply to a non-Muslim. Therefore, a non-Muslim does not need to make expiation, which is a good deed that brings its doer closer to Allah. Allah knows best.

If a drunken person pronounces *dhihaar*, does this pronouncement become effective? The correct view is that it does in the same way divorce becomes effective if he pronounces it in such a state of drunkenness. He is to blame for doing so and thus has no excuse whatsoever.

Similarly, the pronouncement of *dhihaar* by a minor who has not reached the age of puberty yet cannot be effective because he is not a *mukallaf* (morally responsible) yet, and the duty to observe Islamic obligations is conditional on moral responsibility, or *takleef*. The Prophet (peace be upon him) said in this connection, "The pen [of decree] has been lifted from three people: from a sleeping person until he wakes up,

⁷⁰ See *Haashiyat Ibn 'Aabideen*, 3/466; *Fath al-Qadeer*, 4/257; *Al-Ishraaf*, 2/767; *Al-Umm*, 5/276; *Al-Faroo'*, 5/91; Ibn Al-Mundhir's *Al-Ijmaa'*, p. 47; and Ibn Hubairah's *Al-Ifsaah*, 2/162.

from a child until he reaches maturity and from an insane person until he regains his sanity."⁷¹

What about the pronouncement of *dhihaar* by someone who has been forced to do so? Scholars have expressed two different opinions in this regard:

1. The majority of scholars are of the opinion that *dhihaar* cannot be effective by analogy with someone who has pronounced divorce under duress. The Prophet (peace be upon him) said in this connection, "Indeed, Allah forgives my *ummah* for their [unintentional] errors, forgetfulness and that which they do under duress."⁷² Another narration by A'ishah reads, "There is no divorce or expiation under duress."⁷³
2. The Hanafites are of the opinion that *dhihaar* pronounced by someone under duress becomes effective in the same way that his pronouncement of divorces under such circumstances is effective, for the simple reason that he is morally responsible (*mukallaf*).

The correct opinion in this regard is that the pronouncement of *dhihaar* under duress does not become effective, as the *hadeeth* mentioned in this connection is general. Al-Qurtubee said, "When Allah the Almighty allows [someone to] express [words of] disbelief under duress—while this concerns a fundamental of religion—and still does not punish [him for such a grave sin], scholars have used this example as an analogy to prove that any act under Islamic law that has been done

⁷¹ Reported by Ahmad in *Al-Musnad*, 6/101; Abu Dawood, *Book of Punishments*, 4/139; and At-Tirmidhee, *Book of Punishments*, 2/438, no. 1446.

⁷² Reported by Ibn Maajah, *Book of Divorce*, 1/659, nos. 2043 and 2045 and Al-Haakim in *Al-Mustadrak*, 2/198. Al-Haakim said, "This *hadeeth* meets the conditions stipulated by Al-Bukharee and Muslim for the authentic (*saheeh*) *hadeeth* even though they have not mentioned it in their *Saheeh* Books.

⁷³ Reported by Ahmad in *Al-Musnad*, 6/276 and Al-Haakim in *Al-Mustadrak*, 2/198. Al-Haakim said, "This *hadeeth* meets the conditions stipulated by Muslim for the authentic (*saheeh*) *hadeeth* even though he has not mentioned it in his *Saheeh* Book.

under duress is not to be considered, and hence no ruling whatsoever is required thereof."⁷⁴ Allah knows best.

What would the ruling be of a man has more than one wife and has pronounced *dhihaar* to them all with one single word? An example of this is his statement, "You are to me (or all my wives are) to me as my mother's back." This is without doubt a pronouncement of *dhihaar*. All Muslim jurists are agreed on this, but are in disagreement regarding the number of times expiation is to be performed.

1. The majority of scholars are of the opinion that performing expiation once is required of him. This is the view of Omar ibn Al-Khattab and Ali ibn Abee Talib (may Allah be pleased with them), as has been reported by Al-Baihaquee in *As-Sunan al-Kubraa*.⁷⁵ None of the Prophet's companions is known to have disagreed with them in this regard. This is considered to be the consensus (*ijmaa'*) of the Prophet's companions. They also argue that the verse delineating the ruling on *dhihaar* is general and that this can also be used by analogy with swearing by Allah. Therefore, performing expiation once is sufficient and it does indeed serve to atone for the sin.
2. The Hanafites and Shaafi'ites maintain in their new view that expiation is required of him concerning each and every one of his wives, but in the old view they argue that performing expiation once would be sufficient. According to the Shaafi'ites, the new view is more correct because expiation and 'returning' are required of him concerning every one of his wives, and hence he has to perform expiation concerning every one of them.⁷⁶

The correct opinion is that expressed by the majority of scholars given the abovementioned report from Omar ibn Al-Khattab and Ali ibn Abee Talib whose opinions were not opposed by anyone. Allah knows best.

B. Conditions for *ilaa'*

⁷⁴ *Al-Jaami' li Ahkaam al-Qur'aan*, 10/181-182.

⁷⁵ *Book of Dhihaar*, 7/383 and Abdur-Razzaaq's *Al-Musannaf, Book of Divorce*, 6/438.

⁷⁶ See *Fath al-Qadeer*, 4/256; *Badaa'i' as-Sanaa'i'*, 3/234; *Al-shraaf*, 2/771; *Bidaayat al-Mujtahid*, 2/112; *Mughthasar al-Muzanee*, p. 202; *Al-Muhadh-dhab*, 3/358; *Al-Mughnee*, 11/78; and *Sharh az-Zarkashee*, 5/490.

The conditions for *ilaa'* is that the husband should be morally responsible (*mukallaf*) and his marriage to his wife has been consummated. It can be pronounced to any Muslim or *dhimmee* woman, free or a slave, young or mentally deficient, as evidenced by the generality in the verse: **"For those who take an oath of abstention from their wives, a waiting [period] of four months is ordained."** (2:226) The husband's pronouncement of *ilaa'* is deemed effective if he is morally responsible (*mukallaf*), of full age, and in full possession of his mental faculties and potent. As for a non-Muslim, jurists have put forth two different opinions:

1. The first opinion, that of the majority of scholars, states that a non-Muslim's pronouncement of *ilaa'* is effective.
2. The second opinion, that of the Maalikites, states that it can in no way be effective because he is not generally required to perform expiation if he breaks an oath upon embracing Islam, as evidenced by the verse: **"say to those who disbelieve, if they desist [from disbelief], their past will be forgiven them."** (8:38) They also quote the *hadeeth* in which the Prophet (peace be upon him) said, "Islam annuls all that comes before it." Another narration reads, "Islam destroys that which is before it."⁷⁷ Those who adopt this opinion argue that because the good deeds a non-Muslim does will not be accepted or help bring him closer to Allah, it follows that his pronouncement of *ilaa'* does not become effective, just like the case of an insane person who is not in full possession of his mental faculties. Other reasons, they go on to argue, is that marriage contracts concluded by non-Muslims are deemed invalid; non-Muslims are not required to expiate the sin of breaking the oath (*kaffaarat al-yameen*), nor are they entitled to Allah's forgiveness and mercy, as the verse states, **"if then they return, Allah is Oft-Forgiving, Most Merciful."** (2:226)

With regard to this verse, which the Maalikites quote in support of their opinion, the majority of scholars contend that the verse is general

⁷⁷ Reported by Ahmad in *Al-Musnad*, 4/198-199; Muslim, *Book of Faith*, 1/112; and Al-Baihaquee in *As-Sunan al-Kubraa*, *Book of Biographies*, 9/98.

and includes Muslims and non-Muslims alike. They also argue that the person whose pronouncement of divorce is deemed valid and effective, his pronouncement of *ilaa'* is also valid and effective; and that he whose oath is taken to be valid and effective, his pronouncement of *ilaa'* is also deemed valid and effective.⁷⁸

Is freedom a condition for *ilaa'*?

With regard to this question, scholars have advanced three different opinions:

1. There is no difference whatsoever between a slave and a free person; and the waiting period set for them is four months, whether the woman is free or a slave. This is the view of the Shaafi'ites and Hanbalites.⁷⁹
2. The waiting period for a slave is half that of a free person; and it is two months whether the woman is free or a slave. This is the opinion of the Maalikites.⁸⁰
3. That which is significant in matters relating to *ilaa'* relates in the first place to the wife. Therefore, if the wife is a free woman, the waiting period should be four months whether the husband is free himself or a slave; and if the wife is a female slave, the waiting period should be two months whether the husband is a freeman or a slave. This is the opinion of the Hanafites.⁸¹

Those who hold the first view provide the following as evidence:

- a. The generality of the verse **"For those who take an oath for abstention from their wives, a waiting [period] of four months is ordained."** (2:226) This verse addresses all husbands without exception, without distinguishing between freemen and slaves, and the period set for them is the same whether the wife is a free woman or a slave.
- b. Allah has prescribed the four-month period to protect women against the harm to which they are subjected in the case of *Ilaa'*, and He does not draw a distinction between freedom and slavery when

⁷⁸ See *Al-Mughnee*, 11/25 and *Ash-Sharh al-Kabeer*, 23/183.

⁷⁹ See *Al-Umm*, 5/271; *Mukhtasar al-Muzanee*, p. 199; *Al-Haawee*, 10/383; Ibn Qudaamah's *Al-Mughni'*, p. 249; and *Ash-Sharh al-Kabeer*, 23/187.

⁸⁰ See *Al-Ishraaf*, 2/762, no. 1394; *Al-Istidhkaar*, 5/51; and *Al-Qurtubee's Al-Jaami' li Ahkaam al-Qur'aan*, 3/107.

⁸¹ See *Fath al-Qadeer*, 4/205; and *Hashiyyat ibn 'Abideen*, 3/424.

He fixes this period of time, just like in the case of a husband's impotence.

- c. It is an oath in which case there is no distinction whatsoever between a freeman and a slave. If a slave takes an oath to do something and then breaks his oath, he has to perform expiation, as in all forms of oaths when they are broken.
- d. By analogy with *dhihaar*, *ilaa'* can become effective whether pronounced by a freeman or a slave, for the *raison d'être* here is to render sexual intercourse unlawful through the use of an expression which stood as a divorce before the advent of Islam.⁸²

Those who adopt the second view use divorce and the punishments Allah has prescribed for crimes (*hudood*) as an analogy. They argue that a slave is entitled to divorce only twice, but in matters of punishments he gets half the punishment that a freeman gets.⁸³

The Hanafites, who adopt the third view, used '*iddah*'⁸⁴ by analogy. Matters, according to them depend on the woman herself. Thus, the '*iddah*' after divorce for a free woman lasts for three menstrual periods, whereas that for a female slave lasts for only two menstrual periods.

The opinion expressed by the majority of scholars is the correct opinion; namely, there is no distinction whatsoever between a freeman and a slave in this matter. The verse stated above is general, and the address in the Qur'an as to such matters as prayer and fasting, for instance, is to all. Thus, there is no difference between them in this regard.

Another condition for *ilaa'* is the observance of the waiting period, namely four months, as the verse clearly states; and this period begins from the moment the oath is taken.

⁸² See *Al-Haawee*, 10/383-384.

⁸³ See *Al-Istidhkaar*, 5/51.

⁸⁴ '*Iddah*' denotes the waiting period that a woman is required to observe as a consequence of the nullification of her marriage with her husband or because of the husband's death, during which she cannot contract a new marriage after the dissolution of the previous one. For details, see the Qur'an, *Surat Al-Baqarah* (2:228-235), and *Surat At-Talaq* (65:4-7) [Translator's Note].

Another question arises here. Does the woman become divorced with the expiry of the four-month waiting period? Scholars have expressed two different opinions in this regard.

1. The majority of scholars argue that the expiry of the fixed period does not result in a divorce; rather, after the expiry of this period, the man who has pronounced *ilaa'* is to be put in prison; either he returns to his wife or divorces her.⁸⁵
2. The Hanafites maintain that divorce is effected as soon as the four-month waiting period is over. This is also the view of Abdullah ibn Abbas and Abdullah ibn Mas'ood (may Allah be pleased with them).⁸⁶

Those who adopt the first opinion have furnished the following evidence:

- a) Allah the Almighty has given the man who has pronounced *ilaa'* a choice, namely: **"For those who take an oath for abstention from their wives, a waiting [period] of four months is ordained; if then they return, Allah is Oft-Forgiving, Most Merciful. And if they decide upon divorce, then surely Allah is All-Hearing, All-Knowing."** (2:226-227) If the divorce is effected with the expiry of the prescribed period, the man will have no right to choose between returning to his wife or divorcing her, as the verse states. Rather, the man guilty of the sin of *'ilaa* has to be put in prison, and his wife is to be given the choice of leaving him or requesting him to resume marriage with her. The husband in this case also has the choice of either returning to her or divorcing her.⁸⁷
- b) Allah the Almighty says, **"If then they return, Allah is Oft-Forgiving, Most Merciful. (2:226)** 'Returning' can only be realised after the expiry of the prescribed period; therefore, if divorce occurs upon the expiry of this period, there is no chance for him to return to her.
- c) Allah the Almighty says, **"And if they decide upon divorce, then surely Allah is All-Hearing, All-Knowing."** (2:226-227) According to Islamic law, the decision to dissolve marriage rests with the

⁸⁵ See *Al-Umm*, 5/271; *Al-Haawee*, 10/386; *Al-Istidhkaar*, 5/40 and *Bida'ay al-Mujtahid*, 2/118.

⁸⁶ See *Fath al-Qadeer*, 4/190; and *Haashiyat ibn 'Aabideen*, 3/424.

⁸⁷ See *Al-Haawee*, 10/386.

husband. Therefore, if divorce is effected upon the expiry of this period, there will be no chance to decide upon divorce.

- d) The Arabic letter *fa* which begins the statement "**And if they decide upon divorce**", translated here as 'and', denotes 'succession and following'. Therefore, if divorce occurs with the expiry of the prescribed period, such a divorce will be of no use. If the period expires and then divorce takes place, divorce become delayed, but this not practical because 'returning' comes after four months.⁸⁸
- e) There are numerous reports from the senior companions of the Prophet (peace be upon him), such as Omar ibn Al-Khattab, Othman ibn Affan, Ali ibn Abee Talib, A'ishah and Abdullah ibn Omar, stating that divorce does not take place upon the expiry of the prescribed period. Salman ibn Yasar said, "I was in company with more than ten of the Prophet's companions, and every one of them would put the man who was guilty of pronouncing *ilaa'* in prison [until he returns to her or divorces her]."⁸⁹ Abdullah ibn Omar (may Allah be pleased with him) used to say about *ilaa'* which Allah defined [in the Qur'an], "If the period of *ilaa'* expires, then the husband has either to retain his wife in a handsome manner or to divorce her as Allah has commanded." Another narration states that he added, "When the period of four months has expired, the husband should be put in prison so that he should divorce his wife, but the divorce does not occur unless the husband himself declares it. This has been narrated by Othman, Ali, Abud-Dardaa', A'ishah and twelve other companions of the Prophet (peace be upon him)."⁹⁰ Those who adopt the second opinion have furnished the following evidence:

- a) One reading of Ibn Mas'ood of the verse "**if then they return, Allah is Oft-Forgiving, Most Merciful**" (2:226) includes the word *feehinna*,

⁸⁸ See *Al-Istidhhaar*, 5/43 and *Ash-Sharh al-Kabeer*, 23/19.

⁸⁹ See *Al-Muwatta'*, p. 73, no. 1174; Al-Baihaquee's *As-Sunan al-Kubraa*, 7/376. The *hadeeth* was also reported by Ibn Abee Shaibah in *The Book of Divorce*, 4/98 and Abdurraz-Zaaq in *Al-Musannaf*, 6458, no. 11661. See also *Al-Istidhkaar*, 5/38

⁹⁰ See *Saheeh Al-Bukharee*, *Book of Divorce*, 6/174 and 176.

which means 'during' and not after the expiry of the four-month period.

- b) Waiting until the four-month period comes to end and increasing it does the wife a great deal of harm, for she cannot endure as much as the husband can.
- c) The four-month period to be observed in '*ilaa*' can be used by analogy with the case of divorce and the '*iddah*' that the woman observes after divorce. After divorce this '*iddah*' lasts for three menstrual periods, after which time the divorce becomes irrevocable (*baa'in*); likewise, the '*iddah*' comes to an end with the expiry of the three-month period. By the same token, '*ilaa*' should end with the expiry of the four-month period.

The correct opinion is that expressed by the majority of scholars due to the numerous reports from the early generations of Muslims, and the reading by Ibn Mas'ood of the verse mentioned above is without doubt odd. The importance of fixing a four-month period is quite clear: People in the pre-Islamic era (*jaahiliyyah*) used to take an oath to avoid sexual intercourse with their wives for one or two years or even more. With the advent of Islam, such abominable practice was abolished and a four-month period for the husband was prescribed. It has been also been argued that it is this period of time that a wife cannot no longer endure being apart with her husband. It has been narrated that Omar ibn Al-Khattab (may Allah be pleased with him) was patrolling Madeenah one night when he heard a woman reciting words of poetry in which she lamenting the long absence of her husband who had left for a military expedition. Omar then asked women about the maximum period of time a woman could wait for her husband for reunion with him. They replied, "Two months; but in the third month, patience is decreased, and in the fourth month it is completely exhausted." He then wrote a letter to the army leaders commanding them not to keep any man on the front line away from his wife for more than four months.⁹¹

The last question: Does a woman who is divorced as a result of '*ilaa*' have to observe the prescribed three-month waiting period ('*iddah*)?

⁹¹ Reported by Sa'eed ibn Mansoor in *As-Sunan*, 2/174 and Al-Baihaquee in *The Book of Biographies*, 9/29. See also *Al-Mughnee*, 10/240; *Tafseer ibn Katheer*, 1/269; *Al-Jaami' li Ahkaam al-Qur'aan*, 3/108; and *Ash-Sharh al-Kabeer*, 23/155.

Well, religious texts have not made an exception to the rule of divorced women's observance of the *'iddah* at all, and the Qur'an links *'iddah* with divorce, as the Qur'an says, **"And divorced women shall wait [as regards their marriage] for three menstrual periods."** (2:228)

Concluding remarks

All praise is due to Allah and may Allah's peace and blessings be upon our Prophet Muhammad, upon his pure family and all his noble companions.

In conclusion, I would like to summarise the main points of the paper as follows:

Some of the points that *ilaa'* and *dhihaar* have in common are:

1. They both do a great deal of harm to women
2. Expiation (*kaffaarrah*) is required in both of them
3. Abstention from marital intercourse is the same object in both of them
4. They both constitute some of the pagan practices of the pre-Islamic period (*jaahiliyyah*)
5. Islam came to abolish such evil practices, which it declared forbidden, in order to honour woman

They differ in the following:

1. The practice of *dhihaar* is more evil and thus more forbidden than that of *ilaa'*.
2. Expiation in the case of *dhihaar* is more severe than in that of *ilaa'*
3. An oath is expressly taken in the case of pronouncing *ilaa'* but not in that of pronouncing *dhihaar*.
4. Marital intercourse is strictly forbidden before performing the expiation for *dhihaar* but permissible before the expiation for *ilaa'*.
5. *Ilaa'* has a fixed period which expires by the end of four months, whereas *dhihaar* does not have a fixed period of time.

Finally, do these practices overlap in any way? The correct view is that expressed by the majority of jurists who are of the opinion that they do not overlap at all. Allah knows best. All praise is due to Almighty Allah, Whom I pray to guide us to the right course, to forgive me any errors and lapses in the writing of this paper, to grant us beneficial knowledge and assist us in doing righteous deeds; and may Allah's peace and blessings be upon Prophet Muhammad, his pure family and noble companions.