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DIVORCE
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DIVORCE

DIVORCE, legal termination of marriage. In the following series of articles only those communities are taken into consideration which are either Iranian or are focused in Persia. For this reason Jewish and Christian practices have not been included.

i. IN THE ACHAEMENID PERIOD

There is hardly any available information on divorce in Persia itself during the Achaemenid period; there is evidence only for certain of the western satrapies of the Achaemenid empire. It can be presumed that in the polygamous families of ancient Persia divorce was practiced only on rare occasions and that, in all probability, only the husband had the right to divorce his wife; perhaps in such an instance a mere declaration was sufficient to dissolve a marriage.

A number of marriage contracts with divorce clauses have been preserved from Babylonia. From these documents it can be determined that, if a divorce was initiated by the husband, he had to pay a predetermined sum, usually 6 minas (ca. three kg) of silver, and the divorced wife would be free to go wherever she wished. In all divorce clauses it was anticipated that the reason for dissolving the marriage would be the husband's desire to marry another woman (Roth, pp. 188 ff.). In a few marriage contracts it was specified that the husband could marry another woman if his first wife proved unable to bear children (Cardascia, p. 84). It was also possible for a husband to divorce his wife because of her extramarital sexual activity, although in one series of marriage contracts it was stipulated that adultery would result in the death penalty for the wife (for references, see Roth, pp. 197 ff.). In the ancient Near East a man's extramarital sexual activity was not considered an offense against his wife (Roth, p. 186 n. 1). From Achaemenid Babylonia there is no documentary evidence that a wife was entitled to divorce her husband.

According to Hebrew law, a husband had the right to divorce his wife upon the delivery of a "note of divorce," which permitted her to remarry (Deuteronomy 24:1-2), but what constituted grounds for divorce was not specified. There is no statement in the Pentateuch that a wife could divorce her husband (Driver and Miles, pp. 290 ff.). In contrast to the situation in some other communities, however, Jewish families at Elephantine in Egypt were monogamous, and husbands did not have the right to take second wives while still married. Three Aramaic marriage contracts have been preserved from Elephantine; they contain provisions for divorce on the initiative of either the husband or the wife. It is thus clear that spouses had equal rights in this respect, in contrast to the provisions of most ancient law (Bresciani, p. 158; Seidl, pp.79-80). This equality probably reflected specific conditions in Egypt,where women seem to have enjoyed a more privileged position (Yaron, p. 53). The initiating party had to announce the divorce before an assembly of witnesses and to pay a specified sum to the partner. If the initiating party was the wife the sum was 7.5 shekels of silver plus the return of her *mohar* (bride price); upon payment she was free go wherever she wished. If the initiator was the husband he had to pay divorce money (in one instance 200 shekels of silver) and to return the dowry (Porten and Yardeni, pp. 30 ff., 62 ff., 78 ff.). If a wife had committed adultery, her husband could divorce her, but she was not subject to additional punishment; this arrangement was in sharp contrast to that under biblical and most other ancient codes of law, in which such faithlessness was considered a criminal offense and punished severely (Muffs,

pp. 51-62; Volterra; Yaron, pp. 53-64).

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ii. IN THE PARTHIAN AND SASANIAN PERIODS

In pre-Islamic Zoroastrian canon and civil law the dissolution of marriage (Parth. *abihirzan—cf. Arm. apaharzan “divorce” [Hübschmann, Armenische Grammatik, p. 104, no. 43], Younger Av. *(apa-) harəzana-* “leaving” [*AirWb.*, col. 1794], OPers. *ava-hard-* “to abandon” [Kent, *Old Persian*, p. 214]; Mid. Pers. *hilišn* “abandonment”; *abēzārīh* “repudiation,” cf. Arm. *apizar* “separated, free” [*EIr.*, II, p. 460]; *hištārīh*) was by law; it could be affected either by mutual consent or if the wife was barren or guilty of a deadly (*marg-arzān* “deserving death”) sin/offence. The Riwāyat ī Ēmēd ī Ašawahištān (chap. 7) gives a thorough account of the cases that entitle the husband to divorce his legitimate (*pādixšāyīhā*) wife without her consent. It states: “The repudiation

(*abēzārīh*) of a legitimate wife by the legitimate husband is only allowed by their mutual consent, unless the woman is found guilty of a proven sin (*wināhkārīh ī ēwarīhā*)...such as whoring, sorcery, failure to fulfill the obligatory duties (*ān-iš frēzwānīg kardan*), refusing to submit herself unto the husband, failure to observe the monthly period of confinement (i.e., retiring and keeping aloof when in menses), sleeping with her husband when in menses, concealing the menstruation (*daštān*), submitting herself to another man, or committing any other deadly sin or any sin that may harm the body or the soul. If the man divorces his wife for some other offence or against her will, the divorce (*hištārīh*) is not valid and he becomes guilty of a sin to the degree of one *tanāpuhl* (a deadly sin), whereas the (innocent) woman remains his legal wife." However, on the death of the husband the property held by the wife passes to the family of the husband, unless on her entering into marriage there has been settled some other agreement or arrangement (*pašn ud ēstišn*) as regards her private property (*wāspuhragān*). At all event she is entitled to food, maintenance, and bed-clothes (*xuft-paymōxt*, a 9th-century term) in conformity with her social station (*čand pāyag passazagīhā abayišnīg*), beyond which she has no other title to the estate left by the deceased husband. If her alimony is in excess of her needs, it should not be taken away from her; but if the husband has left less than her needs, it should be made up from the husband's estate. And if he has given away his estate as alms, so much of it should be retrieved as is necessary for her maintenance. In the case of a *čakar* wife, she should be regarded as exempt from any obligation to the *čakar* husband; therefore, there is no need for any statement in respect to her repudiation, as she is divorced (*abēzār*) from him by her own status (*xwad aziš abēzār*; Shaki, 1983, pp. 46-47).

The antiquity of the law of divorce is attested to by Justin's report (41.3) that in the Parthian period the low-class women could not remarry in the lifetime of their husbands; that is, as in Sasanian practice they could not seek the dissolution of marriage. In contrast to the legal limitations imposed upon the commoners, the noblewomen could easily divorce their husbands. This class privilege, judging by the tenacity of legal and social institutions, must have continued in Sasanian times. Similarly, the Parthian husband could divorce his wife only if she were barren or guilty of sorcery, adultery, or concealing her menstruation.

The *Mādayān ī hazār dādestān* and the 9th-century Pahlavi legal texts have generally passed over the case of woman's barrenness. The Persian *Ṣad dar-e*

naṯr (chap. 92), however, in agreement with the Parthian tradition, mentions it in conjunction with adultery, sorcery, and concealing of menstruation as justifications for divorce. But according to the late *Persian Rivāyat of Dārāb Hormazyār* (I, p. 189) a man may divorce his barren wife if he does not conclude a second marriage. And the *Dēnkard* (ed. Madan, pt. 2, p. 749) refers to the maintenance of a barren woman or wife (*zan ī starwan*) and that of a pregnant wife, which, by implication, asserts her title to a "separate maintenance." Because sleeping with a barren woman (*zan ī anāpus*) as a case of "wasting semen" (*šusr/toxm wanīnīdan*, pp. 490, 807) is considered a grave sin (*tanāpuhl*), the judicial separation is the obvious alternative to divorce. Of interest is the evidence of Ṭaʿālebī giving adultery, sorcery, and apostasy as reasons for divorce (*Ḡorar*, p. 260).

The guardianship (*sālārīh*) over the wife being an indispensable condition for the legality of marriage, its dissolution is equally essential to the validity of divorce. If the guardianship is not renounced together with (the marriage contract), divorce will not take effect (*ka-š sālārīh abāg be nē hilēd hilišn be nē bawēd*; *Mādayān*, pt. 1, p. 87). That is why in the certificate of divorce first the guardianship is terminated and then divorce considered (*ān-iz pad hilišn-nāmag naxust sālārīh hanjāmēnd ud pas hilišn nigerīdan*, p. 87). In case the wife is divorced and given in marriage and guardianship to another person who rejects to assume her guardianship, then according to some jurists the divorce is not effective, as the jurist Wahrām has maintained: "marriage cannot be contracted apart from guardianship" (pp. 4-5).

The significant element of guardianship in matrimonial relations offers the husband a wide scope to manipulate the wife. The transferring of guardianship to the wife and giving freedom over her own person results in a partial divorce or legal separation that makes it possible for the husband to set his wife to various undertakings. Thus the *Mādayān ī hazār dādestān* (pt. 1, pp. 3-4) states: "If a person divorces his wife in such a way that makes the woman her own guardian and gives freedom over her own person (*pad xwēš tan sālār ud pādixšāy kunēd*—the technical formula for legal separation), and does not place her under the guardianship of another person, and that woman in the lifetime of that husband marries and gives birth to children, those offspring belong to that man who divorced her in that manner." In this way a man without male issue can make his wife to undertake a *čakarīhā* marriage in his own favor (pt. 1, p. 3), or to appoint her to assume a *stūrīh* marriage (pt. 1, p. 49), in order to provide a deceased co-religionist with a male progeny.

In case the wife is divorced by her consent, she does not receive the property that the husband has given her (pt. 1, p. 4), nor can she retrieve the earnings (*windišn*) that she has transferred to the husband on her own accord (pt. 2, p. 2). The jurists were divided on a woman's title to a property which she claims, against the husband, to have been promised her in case of divorce (pt. 1, p. 95). According to some jurists, on divorce the wife is only entitled to that which she has brought with her in connection with marriage, such as her dower (*pēšīgān/passāzagān*?) and private property (*wāspuhragān*), but her earnings during matrimony remain with the husband. It is stressed that this orthodox traditional practice (*kardag*) is retained unchanged in the modified civil code (*u-š kardag aōn abāg ku gaštag be bawēd*, ms. *šawēd*, by copyist's error; pt. 1, p. 4; Shaki, 1974, p. 329). If a man divorces his wife and marries her to his under-age child, who dies in infancy, the *stūrīh* of that man does not devolve upon that woman (pt. 1, p. 4). A bodily mature maiden of nine years given in marriage with the consent of her guardian, on reaching her prime, at fifteen years of age, is not entitled to renounce the wedlock; should she abandon her husband, she would become *marg-arzān* ("deserving death"; *The Pahlavi Rivāyat of Āturfarnbag*, chap. 14); but a youth under age married to a mature woman, on coming of age may dissolve the arranged match only if he had not acted according to the contract (chap. 15).

The only case in which the husband may divorce his innocent legitimate wife against her will is when he offers her in marriage to a co-religionist who is in want of wife and children because of poverty (*niruzdīh*; *Mādayān*, pt. 1, p. 101; Bartholomae, I, pp. 29-30, 36-37), an injunction that echoes the *Vidēvdād*, chap. 4.44. This is interpreted by the *Dēnkard* (ed. Madan, pt. 2, p. 715) as making a charitable gift to the amount of one human being (*dāsr ī wīr-masāy*).

On remarrying his divorced wife, the promises made by the husband during the former term of cohabitation may not be binding on him (*Mādayān*, pt. 1, pp. 104-05), but if the husband makes an agreement on an allocation of property with his wife, who is his partner, and then divorces her, that promise remains binding on him (p. 4).

A divorced wife given in marriage to someone reverts to her former husband if she is found to suffer from an injury (*rēš*, p. 105).

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(MANSOUR SHAKI)

iii. DIVORCE IN THE SHIʿITE LAW

The term t*Âalāq* was employed in pre-Islamic times and in the Qurʾān to refer to the separation of a married couple. In the Islamic law, *ṭalāq* means to sever the bond of marriage and is the exclusive right of the husband; the terms *k̲olʿ* and *mobārāt* are used to refer to two forms of *ṭalāq* with compensation given to the husband. In the following the views of the Jaʿfarī (Twelver Shiʿite) school are explained, with brief mention of the most important points on which the Sunnite schools diverge from it.

The pillars of divorce. Four pillars (*rokn*) are recognized: the formula (*ṣīḡa*), the divorcer (*moṭalleq*), the divorcée (*moṭallaq*), and the witness (*šāhed*). The Malikite and Shafiʿite schools also mention four pillars but replace witnesses with intention (*qaṣd*). The Hanafite and Hanbalite schools recognize only the first as a pillar and discuss the rest under headings such as conditions (*šorūṭ*; Jazīrī, IV, pp. 280-90).

1. The formula. The word *ṭāleq* must be used in the formula, and the woman must be designated clearly by name or pronoun (e.g., *ante ṭāleq* "You are divorced"). If the husband is mute, gestures can replace the formula. According to the Sunnite schools, the use of the word *ṭāleq* is not mandatory; divorce can take place through other words or metaphorical expressions. The Sunnites maintain that the formula can be expressed in writing, but Shiʿite authorities differ on this point; those who allow it stipulate that the husband must be absent and two witnesses present with him. No conditions may be attached to the formula (Jazīrī, IV, p. 281; Zayn-al-Dīn ʿĀmelī, VI, pp. 12-16).

2. The divorcing man has to fulfill four conditions: He must have reached puberty (*bolūḡ*), be compos mentis, act on his own free will (*eḵtīār*), and have the intention (*qaṣd*) to divorce. A divorce by a husband who has not reached puberty is invalid, even if permitted by his guardian. The Hanbalite school, however, maintains that such divorce is valid if the meaning and consequence of the divorce is understood by the husband. Insanity or temporary loss of rationality (*ʿaql*) invalidates the pronouncement of the formula. The Sunnite schools maintain that if the loss of rationality is caused by alcohol or drugs and the man knew that these things would cause its loss, the formula is valid; otherwise it is invalid. If a man is coerced (*ekrāh*) into divorcing his wife, the divorce is invalid (in all schools except the Hanafite). Since the right to divorce belongs to the husband, he can give his wife the power of attorney (*wakāla*) to divorce herself or some other wife. In pronouncing the formula, the husband must have the intention of divorcing his wife; a divorce formula pronounced in jest or by mistake is invalid (Zayn-al-Dīn ʿĀmelī, V, pp. 17-21; Jazīrī, IV, p. 281-82).

3. The divorcée. a. The woman must be a wife through a legitimate, permanent marriage. A wife by temporary marriage (*motʿa*) and one who has not been married in accordance with the *šarīʿa* are not dealt with as objects of divorce. b. If the marriage has been consummated and the wife is not pregnant while her husband lives with her, she must be in a state of purity from menstruation or the confinement of childbirth. Divorce at the time of menstruation or

confinement is prohibited. If the marriage has not been consummated, or the woman is pregnant, or the husband is absent from her, divorce is permissible. Opinions differ as to how long the husband should have been absent (one month, three months), but all agree that he must have no knowledge of his wife's situation. c. The husband cannot have had coitus with his wife in the *ṭohr* ("period of purity" the time between two menstrual periods) during which he wants to divorce her, unless she does not menstruate for some reason, has reached menopause, or is pregnant. d. If the marriage has not been consummated, the wife is entitled to one-half of the dower (*mahr*); otherwise she is entitled to the whole dower (Zayn-al-Dīn ʿĀmelī, V, p. 351; VI, pp. 24-29).

4. The witnesses. Two male witnesses must be present at the time of pronouncing the formula. The witnesses are neither a pillar nor a condition of divorce in the Sunnite schools (Ḥellī, II, p. 57; Jazīrī, IV, pp. 280-96).

Categories of divorce. Divorce is divided into two categories of traditional (*sonnī*) and non-traditional (*bedʿī*). Though prohibited, non-traditional divorce is valid in the Sunni schools; it is invalid in the Jaʿfarī law. Nontraditional divorce includes the following: a. A formula that is pronounced after the marriage has been consummated while the wife is menstruating or in confinement and not pregnant and while her husband is present. b. A formula pronounced when the wife is in a state of purity but her husband has had coitus with her during her present *ṭohr*. c. Three formulae pronounced at once. The four Sunnite schools hold that it is permissible for a man to divorce his wife by pronouncing the formula three times at once or simply by mentioning the number three; thus if he says, "You are divorced with three divorces," the divorce is complete. The Jaʿfarī school maintains that only a single formula can be pronounced at a time; hence this particular formula is counted as one pronuncement; another view holds that this formula is totally invalid (Zayn-al-Dīn ʿĀmelī, VI, pp. 17, 30-32; Jazīrī, IV, p. 341).

Traditional divorce observes the conditions set down for the woman in the third pillar of divorce; in addition, one formula is pronounced in each of three *ṭohr*s. Many *ʿolamāʾ* hold that it is permissible to pronounce more than one formula if the wife is pregnant; opinions differ as to whether divorce is valid if the man pronounces the formula, returns (*rejʿa*) to his wife but does not have coitus, divorces her again and returns, and then does the same for a third time, such that all three pronouncements are issued within a single *ṭohr*. The more prevalent opinion holds that the divorce is valid; others hold that each

pronouncement of the formula must occur in a different *ṭohr* (Zayn-al-Dīn ʿĀmelī, VI, pp. 40-44).

Traditional divorce can be divided into two kinds (or, according to some authorities, three): a. Irrevocable (*bāʾen*), in which case the husband cannot return to his wife after pronouncing the formula of divorce if the marriage has not been consummated, the wife has not reached puberty or has reached menopause, the divorce takes the form known as *ḵolʿ* or *mobārāt* (see below), or the formula has been pronounced for the third time. b. Revocable (*rejʿī*), which allows the husband to return to his wife during her waiting period (*ʿedda*, see below) without her consent (Qurʾān 2:228); he actualizes the return by a verbal expression such as "I am returning to you" or by some action that is permitted only between married couples, such as kissing or embracing. In the latter case, he must have the intention to return, while in the former case, pronouncing the words establishes the return. Return nullifies the effect of having pronounced the formula and reestablishes a full marital bond. Coitus is not a condition for the return. c. *Ṭalāq ʿedda*, in which coitus takes place during the return, is considered a third kind of traditional divorce by some Shiʿites, while others make it a second form of revocable divorce (Zayn-al-Dīn ʿĀmelī, VI, pp. 35-37).

A man can pronounce the divorce formula and then return to his wife twice (Qurʾān 2:229). If he wants to remarry a woman whom he has divorced irrevocably, he has to do so with a new marriage contract. If the irrevocable divorce has taken place through three declarations of the formula, she has to marry someone else (known as *moḥallel*) according to a legitimate permanent marriage contract; she has to consummate the marriage and then be divorced by the second husband and observe the waiting period (Qurʾān 2:230). In cases of irrevocable divorce where three formulae have not been pronounced, the *moḥallel* is not necessary. If the woman who has been divorced with three formulae remarries her first husband and then he divorces her irrevocably twice more for a total of nine formulae, she becomes unlawful to him forever (Ḥellī, II, pp. 57-58).

Ḵolʿ and *mobārāt*. *Ḵolʿ* (to remove) is used in the sense of removing a garment in accordance with the Qurʾān (2:187): "They [women] are a garment (*lebās*) for you, and you are a garment for them." *Mobārāt* means to declare one another free. The two terms refer to two forms of irrevocable divorce in which the woman asks her husband to divorce her in exchange for compensation. The difference between the two is that in *ḵolʿ* the woman dislikes (*ekrāh*) her

husband, while in *mobārāt* the feeling is mutual. In the former case, it is permissible for the amount of the compensation to exceed the amount of the dower, while in the latter this is not permissible. In Jaʿfarī and Hanafite law, *mobārāt* is discussed separately from *ḵolʿ*, but in the other Sunnite schools no distinction is drawn. In the Hanafite school, the husband receives no compensation for *mobārāt*; rather, the two parties drop their claims on each other. The pillars of *ḵolʿ* and *mobārāt* are the same as for ordinary divorce. In general, anything of value that can be given as dower can also be given as compensation. However, these two forms of divorce are not one-sided like normal divorce, since the wife must fulfill the conditions for a transaction. If the husband is not capable of divorce (e.g., he has not yet reached puberty), he cannot divorce his wife, even if she requests *ḵolʿ* or *mobārāt*. The jurists enter into detailed discussions concerning the validity of *ḵolʿ* when a person other than the wife or guardian offers to pay compensation; according to most authorities, this is not permitted (Zayn-al-Dīn ʿĀmelī, VI, pp. 87-94; Hamilton, p. 116).

The formula for *ḵolʿ* is pronounced by the man, employing the word *ḵolʿ* (or its derivatives), while any formula can be used for *mobārāt* with the condition that it be followed by the formula for divorce. Although *ḵolʿ* and *mobārāt* are irrevocable, if the wife reclaims the compensation during her waiting period, the husband must return it and the divorce turns into a revocable divorce; he can return to her, though he is not obliged to do so (Ḥellī, II, pp. 69-73).

The waiting period (*ʿedda*). This is the period in which the woman waits after divorce in order to be sure that she is not pregnant (Qurʾān 2:228), or it is the period during which the woman must refrain from remarrying after the death of her husband (2:234). There is no waiting period if the marriage was not consummated, the wife has not reached puberty, or she has reached menopause; otherwise she must wait three *qor*ʾs. The Jaʿfarite, Malekite, and Shafeʿite schools take *qor*ʾ to mean *ṭohr*. The Hanafites and Hanbalites understand it to mean menstrual period. If the wife is of a menstruating age but does not menstruate for some reason, the waiting period is three months. The waiting period of a pregnant woman lasts until she gives birth or miscarries the child (Zayn-al-Dīn ʿĀmelī, VI, pp. 57-72; Jazīrī, IV, pp. 540-48).

During the waiting period of revocable divorce, the husband is obliged to support his wife in the same manner as he did before the divorce. During this period it is prohibited to expel the wife from the house in which the divorce takes place (Qurʾān 65:1). In case the divorce takes place in a house less

suitable for living than the house in which the woman normally resides, she has the right to demand a better house from the man. During this period, the woman cannot leave the house except for necessities. During the waiting period for irrevocable divorce, the woman is not supported by the man unless she is pregnant, in which case he is obliged to support her until she gives birth (Qurʾān 65:6).

Besides the above-mentioned cases, there are also religious (*šarʿī*) divorces issued by a judge in various circumstances, and annulment (*fasḵ*). Grounds for annulment include physical or mental causes that make the continuation of marriage relationships difficult or impossible, such as insanity, emasculation, and impotence for men and insanity, leprosy, a blocked vagina, and blindness for women. A spouse with grounds for annulment refers to a religious judge, who issues a formal statement. If the husband makes an oath not to have coitus with his wife (*īlāʾ*; Qurʾān 2:226), or says to his wife "You are to me as my mother's back" (*ẓehār*; Qurʾān 58:2), or accuses his wife of infidelity or denies her parenthood of a child (*leʿān*), either divorce or annulment takes place, unless he breaks his oath and pays expiation (*kaffāra*) for breaking it, or he repents of the accusation and receives the punishment of eighty lashes for false accusation (Ḥellī, II, pp. 74-91; Zayn-al-Dīn ʿĀmelī, VI, pp. 117-218; Murata, pp. 33-37).

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(SACHIKO MURATA)

iv. DIVORCE IN MODERN PERSIA

Twelver Shiʿite laws of marriage and divorce, legitimacy, and custody of children (see iii above) were incorporated in the Civil code (Qānūn-e madanī) that was enacted and revised in the 1930s. The registration of marriages and divorces in the state registries (Dafāter-e rasmī-e ṭabt-e ezdewāj wa ṭalāq) became compulsory by the Marriage Act of 1931 (Article 1041). The important statute of reform pertaining to women and the family affairs, including divorce, was the Family protection law (Qānūn-e ḥemāyat-e ḵānevāda) of 1346 Š./1967. This law contained 23 articles and, though it did not concentrate exclusively on divorce, its most significant reforms pertained to the curtailment of men's unilateral prerogatives regarding divorce and polygamy. According to Article 8, the husband could not divorce his wife without first applying to the court for a certificate of non-reconciliation. The court in turn was required to do all that was within its jurisdiction to bring about a reconciliation between the two parties. If the court failed in its efforts for reconciliation, then it would issue a certificate of non-reconciliation. Without such a certificate the divorce registration offices could not lawfully revoke the marriage. The law was enforced despite opposition from the conservative elements, particularly the religious leaders and the *bāzārī*s (Abrahamian, pp.450-73).

The law was abolished after the establishment of the Islamic Republic in 1979. However, a modified verion of its provisions on divorce was adopted on 1 Mehr 1358 Š./23 September 1979 by the law of Special civil court (Dādgāh-e

madanī-e ḵāṣṣ); the courts were established in November. Only after the judge has been unsuccessful in bringing about a reconciliation would the court schedule to hear the case and make a decision concerning the divorce. It has been claimed that some 65 percent of cases brought to the court are reconciled. However, this law allows those couples who have mutually consented to divorce to go to an Office of marriage and divorce registration (Dartar-e rasmī-e ezdewāj o ṭalāq) and register their divorce before two witnesses. It is the number of these divorces, cases not brought to the court, that have been increasing (Faʿālīyat, p. 2).

Offices of marriage and divorce registration are required by law to send a monthly report to the Bureau of the civil registration of the Ministry of interior (Sāzmān-e ṯabt-e aḥwāl-e kešvar) and to the Statistical bureua of the ministry of justice (Edāra-ye āmār-e qażāʾī). In the last two decades these data have been published in statistical yearbooks (*Sāl-nāma-ye āmārī-e kešvar*). Table 33 shows the trend in divorce rate since 1954.

Three different patterns are recognized: 1. the period before the 1967 Family protection law with a relatively high divorce rate; 2. the period of declining divorce rate between 1967-77; and 3. a period of rising divorce rate in the 1980s. The declining trend in the second period could be due to the Family protection law, which was a significant obstacle toward unilateral, easy divorce. The tedious legal proceedings required excessive time and caused embarrassment. Furthermore, the requirement to produce evidence to justify a divorce tended to change the inclinations of husbands. Both the numerical level and divorce rate have been rising in Persia since 1981. The main reason for this trend has been the ease of obtaining a divorce without going to court. But there have been other contributing factors as well. Right after the 1978-79 Revolution there was strong encouragement for marriage and having children. Many young men and women, mostly ill-prepared to assume family responsibilities, rushed into marriage and soon began their own families. But economic hardships in the following years (increasing unemployment, rising costs of living, and black market prices as the war with Iraq continued) made daily life more conducive to divorce. Furthermore, there has been an increasing number of remarriages of war widows, some into polygamous marriages. Such marriages may have been more vulnerable to divorce. In 1976, there were 11 men with more than one wife per thousand married men. This ratio rose to 24 per 1000 in 1986 (Aghajanian, 1990).

The eight years of war with Iraq disrupted the social and economic structure

of the Persian society and disturbed the daily life of families and individuals, especially refugee families from southern and southwestern areas. These families lost their homes, jobs, and for years lived in temporary camps Adjustment to this new life also contributed to family quarrels and breakups (Aghajanian, 1990, pp. 97-107). Currently the divorce rate in Persia is about 88 per 1000 marriages. In an effort to reduce the rate of divorce, a law was enacted in 1994 to improve the legal status of women in a divorce situation. Under this law, if the pecial civil court determines that a man is divorcing his wife without any acceptable reason, the wife receives half of the communal property (Yazdī).

No national study has been done on the differentials in family instability in modern Persia. Based on local and provincial studies (Aghajanian, 1986) some tentative conclusion can be made about the situation in the 1970s. Age at the first marriage seems to be a major difference between women who got divorced and those who did not. Women with higher age at first marriage had a higher probability of getting divorce. More than 50 percent of family breakups occured prior to the family formation. Lacking children evidently made the decision regarding divorces easier. As in modern industrial society, the employment of wife is associated with higher probability of divorce in Persia.

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(AKBAR AGHAJANIAN)

v. DIVORCE AMONG MODERN ZOROASTRIANS

The approach to divorce in the Zoroastrian community seems to have changed considerably in the period following the Arab conquest. The early 9th-century *Rivāyat of Āturfarnbag and Farnbag-Srōš* mentioned divorce in the case of a man whose wife is "bad" and "insubordinate" (*aburd-framān*) and who sleeps with non-Iranians whilst her husband is away from home (chap. 29). In such a case the legitimate (*pādixšāy*) marriage is dissoluble, provided the wife consented. But the husband may choose to keep his wife with the intention to improve her, because by "doing so he reinforces the truth and goodness of the true faith in this world" (Hjerrild, p. 69). This attitude to divorce is reinforced in the later *Riwāyat ī Ēmēd ī Ašawahištān*, where the husband is only allowed to divorce his legitimatewife with her consent, unless her misdemeanors have been discovered (see DIVORCE II). Zoroastrian divorce laws, however, were "subject to alteration and modification that reflect different exigencies at different times" (Hjerrild, p. 71).

In the later *Rivāyats of Hormazyār Frāmarz*, the matter of divorce is again raised, following a detailed discussion regarding the age of marriage, the negotiating of marriage contracts, the five kinds of marriage, the marriage

ceremony and the division of the patrimony. The only instance of a lay person (*behdīn*) being allowed to take another wife is if the first wife could not bear children, but he is not allowed to divorce her; nor is male impotence a ground for divorce (*Rivāyats*, p. 204). These *Rivāyats* also state that if the adulteress is repentant, then she is still to be regarded as the wife, if the authority in the land is not in the hands of Zoroastrians. If the Zoroastrians are in power, and a man catches his wife in adultery, or he hears of it from a collaborative source, then she is to be put to death (p. 204). These *Rivāyats* seem to recognize that the only Zoroastrian grounds for divorce in a time of Muslim rule were apostasy and adultery. The woman was allowed to remarry with her husband's consent.

In the modern period in both Persia and India, the attitude towards divorce remains one of reluctance. Although marriage is not regarded as a sacrament, but rather as a contract, the sanctity of married life is held in much importance and any violation of it is still frowned upon by many. Some would attribute the low rate of divorce to the predominance of arranged marriages and the belief that such a marriage is an eternal bond. Until recently, it was common for young widowed women never to remarry. Fischer (1978, p. 213) maintains that divorce is a 20th-century innovation amongst Zoroastrians in Persia, and reports that today Zoroastrians are under a uniform legal code, the *Āyīn-nāma-ye Zartoštīān*, which was adopted by the community around 1935, and which approximates Muslim codes. This followed the introduction of a law in Persia in 1933, which permitted minority religious groups to have personal law cases adjudicated according to their own customs (Fischer, 1973, p. 196).

The Persian Zoroastrian community has an established Council of *mobed*s, one of whose functions is to preside over and decide upon divorce cases in the Zoroastrian community. Couples seeking divorce must first file a suit with the Family protection court (Dādgāh-e ḥemāyat-e ḵānevāda), which then refers it to the Council. The verdict of the Council is then communicated to the court which passes the final decree, including decisions regarding alimony, the custody, education and maintenance of children (Irani, p. 26). The divorce then has to be registered at the Bureau of statistics and registration of status (Edāra-ye āmār wa ṯabt-e aḥwāl).

When the more educated Persians began to accept divorce more readily, a problem arose for divorced Zoroastrian women, who often received little or no financial support from their ex-husbands. They were expected to live on

their *mahrīya*s (bridal money payable on demand, especially in the case of divorce) despite the fact that the formal *mahr*, as specified in the *Rivāyats*, is no longer contracted. The emphasis in a modern divorce is on the groom paying the bride at a rate fixable according to half the male portion of patrimony (similar to the inheritance), rather than according to the actual ratio of the value contributed by her family (Fischer, 1978, p. 201) maintains that the pattern of marriage exchanges is similar for Muslims, Zoroastrians, and Jews, and apparently stems from quite ancient times in Mesopotamia).

With the influence of the British legislative system on Indian social structures, the Parsis had to contend with the introduction of legislation on marriage and divorce from the mid-19th century onwards. There have been several Parsi Marriage and Divorce Acts since the mid-19th century, the most recent being that of 1936, which was amended by the Parsi Marriage and Divorce (amendment) Act of 1988. The first Parsi Marriage and Divorce Act was passed in 1865 and resulted from a legal suit ten years earlier filed by a Parsi woman for maintenance and restoration of conjugal rights, which had been ruled out of the jurisdiction of the Supreme Court on its ecclesiastical side (Fischer, 1973, p. 91). This and other such demands on the British legal system operating in India led to the formation of a commission of inquiry and the Acts of 1865.

Following the 1936 Act and its amendment in 1988, no Parsi is able to contract any marriage under this Act, or any other Law in the lifetime of his or her spouse, whether a Parsi or not, except after lawful divorce or the declaration of the marriage as null and void or dissolved. The copy of the decree for divorce, nullity or dissolution is sent to the local Registrar General of Births, Deaths and Marriages. Since 1865, special Parsi Chief Matrimonial Courts, consisting of Parsi delegates, have been designated in Calcutta, Madras, Bombay, and some other towns to hear suits under the Act (Karaka, II, Appendix B, pp. 303 f.).

At present, the grounds for divorce by any married person include: wilful refusal to consummate the marriage within a year after its solemnization; mental disorder at the time of the marriage which still continues (provided the plaintiff was unaware of it at the time of the marriage) or for at least two years immediately preceding the suit; the defendant's pregnancy by a third party at the time of marriage provided no marital intercourse has taken place since the plaintiff learned about it; commiting adultery, bigamy, or rape after marriage; cruelty toward the spouse; affecting the spouse with veneral disease; the husband forcing his wife into prostitution; if the defendant has completed one

year or more of at least a seven-year jail sentence; desertion for at least two years; if the plaintiff has been awarded separate maintenance by the magistrate and the two have not had marital intercourse for at least two years; and apostasy.

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(JENNY ROSE)

vi. AMONG BABIS AND BAHAIS

The law of divorce given by the Bāb in the Persian *Bayān* (*wāḥed* 6, chap. 12) discourages divorce and makes it permissible only under pressing circumstances (*eżṭerār*). Even then, it is necessary to wait for one whole year, called the Year of patience or waiting (Sāl-e tarabbos). If during that time affection returns between the couple then the divorce is annulled. At the end of that time, however, the divorce is final. If subsequently the couple wish to remarry, they may do so provided that nineteen days have passed.

Bahāʾ-Allāh also commends marriage and discourages divorce (*Divorce*, p. 5). In the *Ketāb-e aqdas* (par. 67-70) Bahāʾ-Allāh confirms the Bāb’s provision

concerning a year's period of waiting before divorce can be effected. He provides for remarriage to the same person and abrogates the law of triple divorce in Islam. He defines desertion and provides for remarriage in such cases. If estrangement occurs between the husband and wife during a journey, the husband is responsible for ensuring the safe return of his wife to their home and for providing her with expenses for a year. In cases of proven infidelity, no maintenance is payable.

Most of the writings of ʿAbd-al-Bahāʾ and Shoghi Effendi on this subject are taken up with strong condemnations of divorce. In their role of authorized interpreters of the Bahai teachings, however, they amplified Bahāʾ-Allāh's laws by stating that the woman had an equal right to initiate the divorce; by clarifying that during the year of patience, the couple are not to live together; and by establishing that the husband is normally responsible for the wife's maintenance during the year of patience.

The procedure for divorce is carried out in the Bahai community under the supervision of the Bahai local Spiritual Assembly (Pers. Maḥfel-e rūḥānī; in some areas of the world, the procedure is still supervised by a committee of the National Spiritual Assembly). It is this institution's duty to establish that antipathy and aversion exists between the two parties. This is the only recognized grounds for separation. A date may then be set for the year of patience, which is the period of waiting that the couple must undergo before the divorce can be effected. They must live separately for one year and no sexual intercourse may occur. During the year of patience, attempts are made under the supervision of the local Spiritual Assembly to effect a reconciliation and neither party should seek a new partner during this time. The Assembly should try to establish an agreement between the couple regarding the financial arrangements and access to the children for this year. The norm is for the husband to support his wife and children during this year unless there is mutual agreement to a different arrangement (e.g., if the woman has been the main provider of income for the household). The husband normally remains responsible for his children's upkeep both during the year of patience and after the divorce. If there is a reconciliation during this year, then the procedure for divorce is abandoned.

If no reconciliation has been effected by the end of the year, then the Assembly may pronounce the divorce final and will attempt to obtain mutual agreement between the couple in matters of finance and access to the children. The couple must also obtain the civil divorce of the country in which

they live and abide by any financial and access decisions made by the civil court. The Bahai divorce is not considered complete until the civil divorce has also been granted. Remarriage to the same or a different partner may occur anytime thereafter.

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(MUJAN MOMEN)