

Tafseer Al-Baqarah (2: 236-237)

From the Book, Introduction to the Tafseer of the Quran,
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Khalil Abu Al-Rashtah:

﴿لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمْ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ 236 وَإِنْ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَوَضَعْنَ عَلَيْهِنَّ يَدَهُنَّ فَطُفُّهُنَّ مَا فَتَرْتُمُوهُنَّ إِلَّا أَنْ يَغْفُوَ الْكُفْرُ 237﴾

“There is no blame if you divorce women before the marriage is consummated or the dowry is settled. But give them a ‘suitable’ compensation—the rich according to his means and the poor according to his. A reasonable compensation is an obligation on the good-doers. And if you divorce them before consummating the marriage but after deciding on a dowry, pay half of the dowry, unless the wife graciously waives it or the husband graciously pays in full. Graciousness is closer to righteousness. And do not forget kindness among yourselves. Surely Allah is All-Seeing of what you do.”[TMQ Surah Al-Baqarah 2:236-237]

Allah (swt) makes clear for us in these two verses what follows:

1) There is no blame on men if they divorce their wives before consummating the marriage with them and before a dowry is specified for them. Instead, in this case, the men must give them some reasonable provision to soothe for them the loneliness of divorce without specifying the amount, but it depends on what he can bare, rich or poor.

This reasonable provision is obligatory upon the man. Ibn Jarir reported:

He said that when the verse ﴿مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ﴾ “A reasonable compensation is an obligation on the good-doers.” a man said: If I carry out good, then I have done so. But if I do not want to, I will not do so. Allah (swt) then revealed, ﴿وَلِلْمُطَلَّاقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ﴾ “Reasonable provisions must be made for divorced women—a duty on those mindful of Allah.” [TMQ Surah Al-Baqarah 2:241] And like that, the man learnt that reasonable provision is obligatory.

The Musi’, i.e., the rich one, provides what is suitable for him and the Muqtir, the poor one, provides what is suitable for him. However, it is not necessary in any case to have money more than half of the dowry for her likes, because the subsequent verse makes half of the promised dowry a right for the divorced woman, for whom the marriage was not consummated, if he had promised her a specific dowry.

As for why Allah (swt) said ﴿لَا جُنَاحَ عَلَيْكُمْ﴾ “there is no blame on you” i.e., there is no liability for the dowry on you, and why He (swt) did not say that there is no sin on you, that is from two aspects:

The first: There is no sin in divorce in general as long as it is in accordance with the rules of Shariah, whether the man had consummated the marriage with her or another.

The second: The legislative evidences necessitated the dowry for the one who had her marriage consummated when the dowry was not specified. In such a case,

she will receive a dowry similar to it, as stated in the hadith of Rasul Allah (saw): بالنسبة **“For the woman whose dowry hasn’t been specified, and has had relations, The Prophet (saw) made for her a dowry similar to it.”**

And He (swt) made for the divorcee whose marriage wasn’t consummated, and whose dowry was specified for her to have half of the specified dowry.

As for the divorcee whose marriage wasn’t consummated, and whose dowry was not specified, Islam has not made for her half a dowry. Instead, she takes the reasonable provisions according to the man’s capability but this isn’t called a dowry. This is why He (swt) said ﴿لَا جُنَاحَ عَلَيْكُمْ إِن طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً﴾ **“There is no blame if you divorce women before the marriage is consummated or the dowry is settled.”** i.e., no liability for a dowry.

﴿مَا لَمْ تَمْسُوهُنَّ﴾ **“before the marriage is consummated,”** meaning, had sexual relations.

﴿أَوْ تَفْرِضُوا لَهُنَّ﴾ **“Or the dowry is settled.”** meaning, a dowry is specified. “Or” means ‘and’, i.e.’ ﴿لَا جُنَاحَ وَمَتَّوهُنَّ﴾ **“There is no blame”** and **“give them a reasonable provision.”** They are both conditional to the occurrence of two things: “Not consummating” and “Not naming a dowry,” and one cannot prefer one of the two.

2) Then Allah (swt) explains in the second verse that the divorced woman who has not consummated the marriage has half of the specified dowry, if she has a specified dowry, unless she pardons and gives up half of her specified dowry, or the husband may pardon and pay her the entire specified dowry and not the half of the specified dowry as obligated upon him.

Then Allah (swt) makes clear that the pardon carried out by either one of the married partners is closer to righteousness, and in pardon is a great reward and the support of righteousness is with the doer and in the doer. Indeed, pardon is rewardable with the indication, ﴿أَقْرَبُ لِلتَّقْوَى﴾ **“closer to righteousness”** that it is praised by Allah (swt) upon the one who pardons. However, it doesn’t mean that the one the who doesn’t is sinful, so it only indicates reward, especially as Allah (swt) mentions after that, ﴿وَلَا تَسْأُوا الْفَضْلَ بَيْنَكُمْ﴾ **“And do not forget kindness among yourselves,”** i.e., He (swt) encourages them to do good to one another with pardon.

Then Allah (swt) completes the verse by reminding them that Allah (swt) sees all what they do and recompenses every person for their actions, ﴿إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ﴾ **“Surely Allah is All-Seeing of what you do.”**

﴿إِلَّا أَنْ يَغْفُونَ﴾ **“unless the wife graciously waives it,”** meaning, the divorcee waives half of her specified dowry and doesn’t take it.

﴿أَوْ يَغْفُوَ الَّذِي بِيَدِهِ عَقْدَةُ النِّكَاحِ﴾ **“or the husband graciously pays in full.”** meaning, the husband graciously pays the dowry in full to those he has divorced.

And we opine that ﴿بِيَدِهِ عَقْدَةُ النِّكَاحِ﴾ **“the one in whose hand is the marriage contract”** is the husband, and the guardian (wali) isn’t the case here, for the following reasons:

a) Allah (swt) mentioned first ﴿فَنَصَفَ مَا فَرَضْتُمْ﴾ **“then [give] half of what you specified”** i.e., to the divorced woman who the marriage wasn’t consummated with,

and her dowry was specified. So she is **entitled to half the named dowry**. Then **Allah (swt) says**, ﴿إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عَقْدُ النِّكَاحِ﴾ **“unless they forego the right or the one in whose hand is the marriage contract foregoes it.”** This means that there are two parties, and for both of them is the right of waiving in the matter of the dowry. As for the first party, they have been defined as the divorced women ﴿إِلَّا أَنْ يَعْفُونَ﴾ **“unless they forego the right.”** And the second party is the one in whose hand is the marriage contract, and that is the husband because he is the only one remaining after the divorced woman who possesses the right of waiving the dowry. The meaning is that she takes half of the dowry, unless she waives it kindly, which she then leaves for the man, or the man forgoes it and gives the entire amount to the divorcee.

b) Allah (swt) has made clear in other verses the two parties of the marriage contract which both can carry out. Allah says, ﴿وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ﴾ **“And give the women [upon marriage] their [bridal] gifts (dowry) graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease.”** [TMQ Surah An-Nisaa 4:4] As for the wife, she can waive her bridal gifts (dowry).

And Allah (swt) says, ﴿وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِنَّمَا مُبِينٌ﴾ **“If you desire to replace a wife with another and you have given the former ‘even’ a stack of gold ‘as a dowry’, do not take any of it back. Would you ‘still’ take it unjustly and very sinfully?”** [TMQ Surah An-Nisaa 4:20]. The payment of the dowry has been ascribed to the husband and for him not to take anything of that if he wanted to divorce her. Meaning, the disposal of the dowry has been ascribed to the husband and the wife, and like that, the right of overlooking is only for them and nobody else.

c) Allah says ﴿وَإِنْ تَعَفُّوا أَقْرَبُ لِلتَّقْوَى﴾ **“Graciousness is closer to righteousness,”** it means that the pardon is from the owner of the right and not from the one who does not have this right. Thus, if the guardian (wali) pardons and the wife refuses, there is no value for his pardon, since the dowry is her property and not his, and therefore it is not closer to righteousness (Taqwa).

Abu Hanifah chose this opinion in his school of thought that the one in whose hand is the contract of marriage is the husband. Imam Shafi also took this opinion.

﴿وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ﴾ **“And do not forget kindness among yourselves”** meaning, don't forget to do good unto one another.