



A Study On Conduction Of Wedlock, Divorce, And Trade Of Speech-Impaired

Dr. Shahid Amin Lecturer in Islamic & Religious Department, Hazara University Mansehra, shahidaminn@live.com

Fazli Hadi Assistant Professor in Islamiyat, Government Post Graduate College Swabi.

Aftab Ahmad PhD Scholar, Department of Islamic Studies, University of Malakand.

Malik Kamran Ali Arabic Teacher, GMS Kanger payeen Abbottabad, Elementary and Secondary Education Department, KP, Pakistan.

Asad Ullah Assistant Professor of Islamiyat, Government Post Graduate Charsada.

Muhammad Abdul Haq Lecturer in University of Malakand Deptt Islamic studies and religious affairs.

ABSTRACT:

Dumb means “lacking the power of speech”. Any person who has lost the ability to speak can be called dumb, mute, or speech impaired. The inability to speak can be permanent or temporary. A speech-impaired person is a human, like the rest of us, but he lacks speaking power. There are some matters in Islam and Sharia which require speaking skills. In these matters, Wedlock, Divorce, and Trading matters are on the top, which is also essential for the mute like other human beings. If we stop such a person from these matters, his life will become unbearable. Islam is a religion of equality and justice and gives rights to every human. In case an individual is incapable to talk, it does not mean that he shouldn't be able to handle his daily life dealings. Islam allows him to tend to his life matters like Wedlock, Divorce, and Trade smoothly. In this article, it is stated that the signs and gestures with hands and eyes of a speech-impaired person are alternatives to speaking. It is proved by the arguments of Sharia and the teachings of Islam and that his matters are dealt with proper ways of Shari'ah.

Key Words: Dumb, Shari'ah, Speaking, Wedlock, Divorce, Trading.

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Introduction

Allah Almighty created the universe and all of its creatures, and the best of them was named "man" The Holy Prophet, the last of the messengers, was sent for the welfare of all humanity (Al-Saba:28).

The teachings that the prophets have brought for human beings are called religion and sharia, which is a complete code of life (Al-Ma'idah:3). Few people in society suffer from few physical ailments and cannot engage in social activities like typical individuals. Among them are individuals who have misplaced the capacity to speak (speech-impaired).

Islam also provides complete guidance and command to speech impaired in all matters, allowing them to become valuable members of society. These issues include marriage, divorce, and trade.

Objectives:

The following are the objectives of this research article:

- A Research Review of Sharia teaching regarding dumb (speech-impaired) daily life dealings.
- Proved that "The Gesture of Dumb (speech-impaired) is applicable in Wedlock, Divorce, and Trade."

Literature Review

- Several books of Islamic Jurisprudence discuss the Chapters of Wedlock, Divorce, and Trading, but do not discuss dumb rights of these matters in a single Chapter.
- Muhammad Ilyas Attar Qadri has published a booklet in the Urdu language "Goongy Behron ky bary my sawal wa jawab". In this booklet, the author discusses five questions about Dumb as well as his wedlock matter, but cannot discuss dumb Divorce and Trading matters.
- Tariq baloch Sehraei writes a Naval "Goongay Ka Khawab" in Urdu literature. He discusses in this Naval, the dreams and wishes of Dumb but does not highlight the mentioned matters.
- Waheed, K. (2007). The effects of hearing impairment on child's personality: Special world.
- Qurat-u l-Ain, & Yaqub, S. (2011). The impact of hearing impairment on the social behavior of hearing siblings: Unpublished Master's Thesis: Department of Special Education; The University of Management and Technology, Lahore.

All these books discuss the disabilities of a person, especially dumbness in Islamic law but do not discuss Dumb's rights to Wedlock, Divorce, and Trade in the light of Islamic Jurisprudence and law.

In Arabic, the term "اخرس" refers to a person who can not communicate. Literal meaning is muteness. It can refer to someone who has lost their capacity to speak or has natural speech impairment (Ibn-e-Manzoor, 1414 H).

The legal status of disorders/abnormalities (عوارض):

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Abnormalities “عوارض” is the plural of عارضٌ which means: everything that is to come to the fore, while the other meaning is to forbid.

According to the Shari'ah term عوارض (abnormality) are those matters which affect the change of Shari'ah rules obliged person, or there is a non-observance of Shari'ah rules. This is called "عوارض (abnormalities) " because it prohibits or diminishes the relevant rules regarding eligibility, obligation, and payment.

Some of these عوارض (abnormalities) are those which deprive the obligee of eligibility and obligation. He is no longer eligible for fulfillment and obligation of the Shari'ah rule, for example, he has deceased. While in other cases, the obligee does not have the ability have the ability to perform, such as the state of nausea, unconsciousness, etc. And there are some عوارض due to which the original ability to perform the obligation remains in the obligee, but it requires a change in some rules, like during menstruation, postpartum, travel, disease etc (Al-Bazdav, 1997 AD).

Ikhra (dumbness) is also associated with عوارض (abnormalities) to some extent because it is also a tragedy that befalls some human beings. Speech is a human trait that distinguishes, man from other creatures. Thus, muteness in man is a condition upon a man by Allah. This condition is related to Heavenly Disorders (عوارض سماويه) as a human has no control over the situation. Like other diseases in the human body, this condition is also brought upon by Allah on the man. Some changes occur in the rules and regulations of Shariah in such a situation.

The legal status of a Gesture

All the Shari'ah rulings of Akhras (dumb) have a lot to do with sign language. Akhras (dumb) cannot express his concerns with his tongue as he is disabled in this matter. He uses signs or writing to describe his thoughts, sentiments, implications, emotions, and perceptions:

”الإنسان الأخرس داخل في هذا الوصف ، لأنه وإن عجز عن تعريف غيره ما في قلبه بطريق اللسان، فإنه يمكنه ذلك بطريق الإشارة وبطريقة الكتابة وغيرهما .“ (Al-Razi)

Therefore, there is a need to have Sharia proof as to whether a person unable to speak can express his concerns or thoughts by gestures for Shari'ah matters just like he does for other general affairs or not. If so, to what extent he can do it, and in what matters can he do it.

"رَمَزَ" literally means to gesticulate with lips but it is also used for gestures of eyebrows, eyes and hands. Oral action, on the whole, speaks louder than words (Raza, 1990 AD).

A Gesture in the light of Holy Qur'an

Holy Qur'an narrates a tale about Hazrat Maryam in the Holy Qur'an regarding gesticulating (AS). When Hazrat Isa (AS) was born, Allah Almighty directed Maryam (AS) to carry her infant to her people. When people accuse her of adultery, she should not speak to them and tell them that she has fasted for the sake of Most Gracious, for which she cannot speak. When Hazrat Maryam AS reached the people, they made the accusations she was afraid. Instead of talking and arguing, she pointed toward Hazrat Isa. فَأَشَارَتْ إِلَيْهِ. (Surah Maryum 19:29)

It shows that a gesture is effective for expression in the Shari'ah rules.

A Gesture in the light of Hadith

Several hadiths demonstrate the Shari'ah principles about gestures.

(In the last days of his life) the Prophet (peace and blessings of Allaah be upon him) gestured to Abu Bakr to go ahead to lead the prayers:

وَمَا النَّبِيُّ بِيَدِهِ إِلَى أَبِي بَكْرٍ أَنْ يَتَقَدَّمَ (Al-Bukhari)

The Messenger of Allah (May peace be upon him) and his companions were in Ehram during Hajj. Abu Qatada was not in Ehraam at the time, so he went hunting. Companions of the Prophet (peace and blessings of Allaah be upon him) asked him about eating meat.

Prophet (peace and blessings of Allaah be upon him) asked:

”قَالَ مِنْكُمْ أَحَدٌ أَمَرَهُ أَنْ يَحْمَلَ عَلَيْهَا، أَوْ أَشَارَ إِلَيْهَا؟ قَالُوا: لَا، قَالَ: فَكُلُوا مَا بَقِيَ مِنْ لَحْمِهَا“ . (Sahih Ul Bukhari)

“Did any of you cause this hunting or point to it? The companions said: No. He said: Eat it until there is no meat left.”

Jurisprudence's point of view on Gesture:

The majority of jurists say that the meaning of a gesture

Is in place of speech and will be applicable in all cases. The Hanafis differ from them in some cases, based on which other jurists accuse the Hanafis of denying the apparent traditions in the matter of gestures. Further stated that Imam Bukhari's translation of the chapter “Al-Ishaarah fi Al-Talaq wa Al-Amur” on the issue of gestures in Kitab-e-Talaq is also aimed at the Hanafis (Ibn-e-Hajar Asqalani, 1379 H).

But the fact is that according to the Hanafis, just a gesture is not effective, although a gesture by which the matter is well understood, is effective and is called meaning ful gesture

. اشاره مفهمه

Secondly, the gesture should be from someone linguistically handicapped or in a state of inability to speak as indicated by the Hadiths mentioned above. The third is that the evidence from the gesture of understanding is supposedly (قياسا) invalid but admirably (استحسانا) permissible.

”وقال أبوحنيفة وأصحابه: أن كانت إشارته تعرف في طلاقه ونكاحه وبيعه فهو جائز عليه وإن كان يشك فيه فهو باطل. وقال: ليس ذلك بقياس إنما هو الاستحسان، والقياس في هذا كله باطل لأنه لا يتكلم ولا تعقل إشارته.“ (Islami)

Dumb's gestures in family matters such as marriage and divorce.

An essential condition in Nikah is an offer (إيجاب) and acceptance (قبول). Specific terms are used for this, and the meaning and connotation Offer (إيجاب) and Acceptance (قبول) are derived from these words. For example: Absolute word marriage (نكاح), gift (هبه), charity (صدقه), ownership (تمليك), etc (Al-Marghinani).

The jurists of Islamic jurisprudence write about the words of Nikah (نكاح) that these words should be explicit and not allegory. That is why there are no allegorical phrases used in Nikah. In general, it is not acceptable to interpret acceptance words with gestures.

Therefore, a person is capable of speech has to say the words of acceptance explicitly. However, because a mute individual is unable to speak, his reason is valid, and his Nikah is done using gestures. Similarly, if the speech-impaired person is able to write and bring the words of acceptance into the writing, then it is also valid (Aala Ud Din, 1419 H).

The written material, on the other hand, has more credibility because they are better at pointing out the meaning (Al-Zuhaili).

Dump (speech-impaired) and Divorce:

The word طلاق " literally means: to untie, release, set free, to release a prisoner from bondage (Al-Raghib Al-Asfahani, 1412 H). In terms of Shariah, divorce is something that frees a woman from the nikah by the use of the appropriate word. رَفْعُ الْقَيْدِ الثَّابِتِ شَرْعًا بِالتَّكَاحِ (Ibn-Un-Nojaim).

Like nikah, in talaq the words hold importance. Talaq occurs from every word which means the meaning of talaq, whether the word talaq is explicit or conceivable. Based on this, there are two major types of divorces.

Explicit Divorce: It is a divorce that is declared explicitly, such as the words أَنْتَ طَالِقٌ وَمُطَلَّاقَةٌ, which are unique to divorce and only used for divorce. In this sort of divorce, there is no requirement for intent (Al-Hidaya Sharh Ul Bidaya).

Divorce allegory:

It is given in words or situations that have a reference to divorce instead of explicit words. In this type of divorce, the intention and the situation will be taken into account.

The jurists of the Islamic jurisdiction say that since divorce is also related to dispositions and contracts (تصرفات اور عقود), it is for this reason that divorce of a dump (speech-impaired) will take place with gestures. اشارہ مفہمہ.

However, the Shawfa'is and Hanbalis go on to explain that if divorce is accompanied by a gesture that is understood by everybody, then this gesture is the form of explicit divorce.

(Wazarat Ul Awqaf Wa Shawon al-Islamiato, 1427 H).

If a dump (speech-impaired) divorces with a gesture that is understandable by some, but not by others, then the person's intention (نیت) will be taken into account. It will be regarded as a divorce if the intention (نیت) is to divorce; otherwise, it will not.

Forms of divorce in relation to writing-

When a dump (speech-impaired) writes the word "divorce" and he intends to divorce with these words, it is considered a divorce.

When he writes something and his intention is not to divorce but to express the grief or something without an intention (نیت) to divorce, then divorce isn't considered. And if there is no intention of anything but just writing something, then there are both the reasons for its occurrence and non-occurrence (Hadi, 2006 AD). If a dumb writes something that isn't clear whether it means divorce or not, the divorce will not consider

Based on this rule, Imam Malik, Imam Shafi'i, and Hanafis agree that if a speech-impaired person writes divorce with his hand, then this divorce will be considered a divorce. According to Imam Abu Hanifa, the gesture and writing of a mute person are as effective as the eloquence of speech. When it comes to divorce, the divorce of a person capable of speech can also occur with a gesture (Zeenat Ul Aarais).

Imam Ahmad holds the same opinion. according to Imam Ahmad The only distinction is that if a person who can speak divorces with a gesture, his gesture will be refused. If the gesture is intended to divorce, according to Imam Shafi, the divorce will occur.

Dumb (speech-impaired) and Trade:

In Arabic Bi'i (sale) is derived from the word " اضرار " which applies to both buying and selling (Al-Zubaidi), which means mutual exchange of wealth by mutual consent is called sale. " مُبَادَلَةُ الْمَالِ بِالْمَالِ بِالْإِضْرَافِ " (Al-Bahr Ur Raiq Sharah Kanz Ud Daqaiq; Al-Hidaya Sharh Ul Bidaya; Al-Fiqh Ul islami Wa Adillatoho; Al-Mosoat Ul Fiqhiat Ul Kowaitiyyatu).

Like marriage in the sale, there is a condition of offer (ايجاب) and acceptance (قبول) between the parties. In the same way, after acceptance, there is a condition for handing over the money to the seller and the buyer.

It is necessary to speak to complete the sale. For this reason, according to some scholars, a person who is unable to communicate is unable to participate in sales, and, the sale is not enforced. However, the majority of researchers believe that a silent person can participate in such an exchange if he utilizes gestures or expresses his view in writing, which can serve as a substitute for speech. If the gesture is not meaningful and the speech-impaired person does not know how to read and write, then the contract of, the sale is not valid (Al-Fiqh Ul islami Wa Adillatoho).

Conclusions:

Islam is a religion of equality and justice and gives every person his rights. Dumb is a person who is similar to us, but lacks the ability to utter the words. On the other side, there are some matters in Islam and Sharia which belongs to speaking. In these matters, Wedlock, Divorce, and Trading matters are on the top, which is also essential for the Dumb like other human beings. So if we stop a dumb person from these matters, his life will become difficult for him. Therefore, Islam gives him some opportunities to deal with his life. In Sharia, the points and signals of dumb with hands, eyes, etc are alternatives of speaking and applicable but in a proper way of Sharia.

Bibliography:

Al-Mosoat Ul Fiqhiat Ul Kowaitiyyatu 1427.H, Kowait

Al-Mufradat Fi Ghareeb-el-Quran 1412.H, Bairoot Dar Ul Ilam Al-Dar-U-Shamia, Damishq

Al-Bahr Ur Raiq Sharah Kanz Ud Daqaiq Dar Ul Kitab Al-Islami

Al-Bahr Ur Raiq Sharah Kanz Ud Daqaiq

Al-Fiqh Ul islami Wa Adillatoho Damishq. Dar Ul Fikar

Al-Fiqh Ul islami Wa Adillatoho

Al-Fiqh Ul islami Wa Adillatoho

Al-Hidaya Sharah Al-BidayaAlmaktabat Ul Islamia.

Al-Hidaya Sharh Ul Bidaya

Al-Hidaya Sharh Ul Bidaya

Al-Insaf Fi Maarifat Al-Rajih Min Khilaf1419 HBairoot,LabnanDar ihya Ut Toras Al-Arabi

Al-Mosoat Ul Fiqhiat Ul Kowaitiyyatu

Fath Ul Bari Sharah Sahih Ul Bukhari1379.H, Bairoot, Dar Ul Maarifat

Kashf Ul Asrar a'an Usool-e-Bazdav1997 AD, Bairoot, labnan,Dar Ul Kotob Ul Ilmia

Lisan Ul Arab1414 H.Bairoot, Labnan Dar Sadir

Mafateeh Ul Ghaib Bairoot,Dar Ihya Utorras Al-Arabi

Majallah Majma Ul Fiqha IslamiJiddah, Saudi.Al-Mu'atamar Ul Islami

Sahih Ul BukhariBook: No (72), Chapter No (23) Taleeqan.

Sahih Ul BukhariBook No (32) Chapter No (5), Hadees No: 1824.

Surah Maryum 19:29

Tafseer Al-Manar1990 ADAI Haiat Ul Misriat Ul Aama Lilkitab

Taj Ul Uroos Min Jawahir Al-QamoosBairoot.Dar Ul Hidaya

Zeenat Ul Aarais

Zeenat Ul Aarais2006 ADMaktabat-U-Mishkat Al-Waraq