

PRONOUNCEMENT OF TALAQ IN MUSLIM FAMILY LAWS ORDINANCE 1961.

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In August 1955, the Government of Pakistan appointed a commission consisting of seven persons entrusted with the task of surveying the existing laws governing marriage, divorce, maintenance and other family matters among Muslims and report as to what modifications are required in them. The Commission on Marriage and Family Laws was also asked to report on the proper registration of marriages and divorces, the right to divorce exercisable by either partner through a court or by other judicial means, maintenance and the establishment of special courts to deal with cases affecting women's rights. The commission issued a questionnaire for seeking the opinion of the scholars. The commission submitted its report to the Government of Pakistan which was published in the gazette of Pakistan dated June 20, 1956.¹

On 2nd March 1961, the President of Pakistan issued an Ordinance, to give effect to certain recommendations of the Commission on Marriage and Family Laws which is called "Muslim Family Laws Ordinance 1961."² This Ordinance introduced procedure of Talaq to which Muslim scholars have some objections. Before we discuss procedure

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In the name of Allah, the Gracious, the Merciful.

Abu Dharr states that the Messenger of Allah said, "There are three persons with whom the Day of Judgment, Allah will not speak, nor look at, nor purify them of their sins and for them there will be a painful doom." Abu Dharr asked the Messenger of Allah, "Who are these unfortunate, vitueless persons?." The Prophet said, "He who lets his under garment trail: he who reminds others of his favours: and he who sells his goods under false oaths."

14. Walker's Mammals of the world, Baltimore & London, 1963, vol. II, p. 861.

NOTE:

It will not out of place to mention that the word Hut oceans also in Verses Nos. 61 & 63 of Sunah al-kalf (xviii) where it does not mean ordinary cooked or boiled fish but a very small mammalian e.g. Dolphin of thesome generic family as the sperm whale which on escape would mysteriously dive into the water by making a sort of tunnel.

Selected Bibliography & Notes:

1. Mazamin-i-Tafsir-u-Quran, Lahore, Part vi, Ph: 224-227, 1348 A.H. According to Sir Syed. 1348 A.H. According to bin Syed, the fish (Anber Whale) caught Yunus in his mouth and then released him.
2. Mafhumul Ouran, Adara-i-Talu-i-Islam, Lahore Vol III, p. 1047. According to Parvez, the big fish (Sperm Whale) caught Hazrat Yunus in its mouth and after much struggle he escaped it.
3. Inside India, Halde Edib, London, 1937, p. 102.
4. A Book of Whales, Beddard, London, 1900, p. 201
5. Richard Ellis, The Book of Whals, New York, 1980, p.102
6. The Natural History of Sperm Whales, London, 1839, p. 35, 50, 278.
7. The Sperm Whale, Berzim, Washington D. C., 1972, pp. 266, 205, 207-208, 269. Victor and Scheffer,
8. A Year of The Whale, London, 1970 p.557.
9. The Princeton Theological Review, 1927 Vol xxv.
10. Sohib Bukhari, Kitab-ul-Maghazi, relating to the compaign of seif-al Bahor.
11. Sahih Muslim The tradition under chapter "Permissibility to eat the dead animals of the sea etc.
Muslim Muhammad bin, al-Jami' al-sahib, Bukhari,
Muhammad bin Ismail, al-Jami' al-sahibs
12. Tafsir-ul-Mazhari, vol. xxi, p. 59-600.
13. Frank-t-Buller, The crimse of The Cochalot, London 1898, pp. 62-63,100,220.

cannot help praying in all humility to the Omniscient Allah, to expand our knowledge as even the Porphet Muhammad (P.B.U.H.) was taught to pray.

قل رب زدني علما

taken place. Not unoften it is the revelations made in sacred books that have provided food for thought to scientific researches and led to consequent discoveries. But sometimes great discoveries and inventions are known to have come about miraculously just by His Grace and Omnipotence.

11. It must all the same be borne in mind that there are limits to human intelligence and knowledge and that some wonders and miracle may be supernatural the hows and whys of which are beyond human comprehension unless and until the Omniscient Allah in His Grace grants their knowledge to whomsoever He wills and when and to whatever extent He wills. It is noteworthy that even prophets may not be vouchsafed knowledge of all miracles and extra-ordinary occurrences which by themselves they are not competent to work and which are wrought only by the Almighty Allah as and when He so wills. In olden days miracles were believed to be credentials of a Prophet, but the series of Prophets having come to a close with Muhammad (P.B.U.H.), the question of the grant of such credentials now no longer arises. All the same, Allah has not ceased to work miracles and wonders which occur at various places, under different sets of circumstances to remind mankind of His Providence and Omnipotence.

12. As for Marine mammals like the sperm whale, we can assert that though quite a good deal has been learnt about this mysterious mammal, much still remains to be investigated on scientific lines. Despite all the knowledge at our disposal we

experienced whalers, he would not have subjected the Biblical account to such scathing criticism provided that the Bible had not specifically stated that the occurrence lasted as long as three days and three nights.

It should be borne in mind that knowledge of Science is progressive and dynamic but no scientist howsoever great can be audacious enough to assert at any given time that he knows all that is there to be known or that scientific knowledge is complete at any one time. One has to share humbly the views expressed by Sir Isaac Newton when he said: "I don't know what I may seem to the world, but as to myself, I seem to have been only like a boy playing on the sea shore, and diverting myself in now and then finding a smoother pebble or prettier shell than ordinary, whilst the great ocean of truth lay all undiscovered before me". Earlier, similar views had been expressed by Hakim Bu Ali Sina (Avicenna).

Human endeavours and perseverance are ever expanding the frontiers of knowledge and are unravelling the mysteries of nature and explaining the miracles wrought by Allah in His mysterious ways. There is no denying the fact that what was propounded as a theory or law by an outstanding scientist of an earlier age after his scientific experiments and observations was modified and even upset by subsequent experiments and observations by his eminent successors. It is thus that the evolution and development of scientific knowledge which is the precious heritage of mankind has

of the Biblical narration. The Quranic version, on the other hand, is generally consistent with the phenomenon of nature and is in accordance with the observations of experienced whalers and scientists where encounters between a whale and a human being are involved. The exegetes of the Quran have hazarded various guesses as to the duration of Hazrat Yunus's stay in the stomach of the sperm whale. They have stated it to have been 3 days, 7 days or even 40 days but we would agree with Ibn-i-Abbas, Abu Malik, Ibn-i-Jurajj and Ikramah according to whom the duress of the Prophet lasted only a part of a day which is most reasonable to allow of his ejection and escape alive. On the other hand the Biblical account appears to be far from possible and against the laws of nature though Prof. Wilson tried to prove in his article entitled "The Sign of The Prophet Jonah And Its Modern Confirmation" already cited in the preceding para 8 that it was possible for a man (Jonah) to have come out alive from the belly of the "BIG FISH" after a stay therein of three days and three nights otherwise Jesus Christ would not have affirmed it. An article about Bartley was published in the Urdu Digest of February, 1962, which was unfortunately quoted by Maulana Maududi at page 308 of Vol. IV of his Tafhmul Quran. It was replete with factual errors and could not carry conviction.

10. On the strength of what we have stated above, we are firmly of the view that if Thomas Huxley had been aware of the peculiar characteristics and natural tendencies with which God has endowed the sperm whale as explained by us on the authority of observations of eminent scientists and

aboard. When the whalers cut open the stomach of the giant, they were aghast to find their missing comrade who was unconscious but alive. Bartley was given a sea-water bath and some treatment after which he recovered consciousness and made a statement to the Captain relating his awful experience. Bartley is reported to have recovered fully except that the skin of the exposed parts of his body had been bleached and he seemed to have recurrent nightmares of his terrible experience.

Although some scientists have doubted authenticity of the story, Prof. Wilson asserted that there was nothing incredible about it. The Prof. also related another incident of this nature in his article referred to above.

9. Unlike the Bible, the Quran has made no mention of the period for which Hazrat Yunus remained in the gullet or the first compartment of the multichambered stomach of the whale, from which he was ejected alive by the sperm. It can be reasonably surmised that he did not pass into the 2nd or the 3rd compartment of the stomach where due to presence of gastric juices, the prolonged process of digestion commences.

We are, therefore, afraid that it would not be feasible for him to have been in the belly of the "BIG FISH" for as long as three days and three nights as mentioned in the Bible and then to have been ejected alive and hence the severe criticism of scientist like Thomas. H. Huxley which tantamounted to prove non-feasibility and hence incredibility

the meat left over with them which was eaten also by the Prophet Muhammad (P.B.U.H.). An idea of the size of this giant of a marine mammal can be formed when it is borne in mind that at the instance of Abu Ubaidah, a tall ghazi riding on a full grown camel comfortably crossed under its rib(s) fixed on the ground.

8. A valid question that arises is: has any human being ever undergone experience like Hazrat Yunus? In his article entitled *The Sign Of Prophet Jonah And Its Modern Confirmation* published in vol. 25 of 1927 of the *Princeton Theological Review* 33, Prof. A. Wilson of Oxford described the experience of a British sailor named James Bartely who was reported to have been swallowed by a huge sperm whale and lived to tell his tale which had first been publicised in the French journal "Journal Des Debats" of 14th March, 1898, according to which the whaling vessel "The Star of the East" was in the vicinity of Falkland near Argentine when the lookout spotted a large sperm. Two long boats were launched in order to hunt down the whale and eventually the harpooners managed to hit the giant. The injured whale then furiously charged at the offending boat and crushed it into two pieces, hurling the occupants including Bartley into the sea. Excepting Bartley, the other men were soon picked up by their comrades, but Bartley was swallowed up by the sperm whale. A short time after this the sperm was killed and brought alongside the ship and the crew busied themselves with axes and spades, removing the blubber. They worked into the night and the next morning they hoisted the carcass

Ninevah and Tarsus. Naturally in the overwhelming circumstances, the penitent prophet spontaneously prayed to the Almighty Allah to help him out of the ordeal which he believed to have resulted from his own sins of omission and commission.

The All-merciful Allah answered the fervent prayer of His penitent prophet. The flood subsided suddenly and the sperm whale was seized with panic and under its own stupendous weight, its chest gave way and its lungs began to collapse with resultant death throes. It was at this juncture that the sperm whale naturally ejected Hazrat Yunus on the sandy beach and he survived the terrible experience through the miracle wrought by the Al-mighty Allah. The concurrence of all these events is, of course, providential and miraculous and is anything but a normal natural phenomenon.

7. It is pertinent to add that famous books of traditions of the Prophet, Sahih Bukhari and Sahih Muslim report traditions to the effect that a huge hillock of a giant sperm whale named Anber was found stranded on the shore of the Red Sea in the 8th year of the Hijra by 300 ghazies led by Abu Ubaidah during the Seif-ul-Bihar campaign. This happened at the time when the ghazies were on the verge of starvation after having run short of their rations when they had been living on boiled leaves of trees. They fed upon its meat for 18 days or more and massaged their emaciated bodies with its fat oil with the result that they grew healthy and robust. On return to Madina they took with them some of

again. It may not be out of place also to mention that according to Clarke the spermacetti stored in a sac in the huge head of a sperm whale absorbs nitrogen.

In short, it may be asserted that Hazrat Yunus could inhale enough oxygen in the gullet and anterior stomach of the sperm whale which swims about with its mouth wide open. He would not be drowned there because as already explained above, little or no water can enter the gullet or the first part of the stomach of a sperm whale. Moreover, the temperature, there would not be too high for survival. According to Wilson it would be $104^{\circ}.67$ f. While according to Scheffer it would be about 91° f. Human beings are known to have survived even higher temperatures in the Great African Desert during adventurous explorations there.

6. One would imagine that when Hazrat Yunus was thrown overboard the ship which had been caught in a sudden and unprecedented storm, there happened to swim about in the turbulent waters a sperm whale with its huge jaws open as is its usual natural habit and it swallowed Hazrat Yunus whole. Crash floods or bores or unprecedented high tides or waves are not an infrequent occurrence in the watery areas where Hazrat Yunus is likely to have been involved in the terrible experience. The whale must have beached when the flood receded and Hazrat Yunus must have been regurgitated by the sperm. The exact place where all this happened has not been mentioned either in the Bible or the Quran. It is likely to have taken place in a river or lake or gulf or bay or sea between

with simultaneous expulsion of water from the oral cavity. In short, little or no water can enter the lungs or stomach of the sperm whale when it swims about at the surface or under water with its mouth open. Moreover, according to Scheffer whales are seldom thirsty and as such they need drink little or no water like other animals.

(f) There are a few more habits and characteristics of the sperm whale which we would also like to describe here. In his article: "Exploring the Live of Whales". Dr. Scheffer wrote; "The mammalian deep-diving record is held by a sperm whale. Its tragic remains were found twisted in a sub-marine cable off South America at a depth of 3720 ft. Tracking of sperm whales with sound detectors indicates that they may dive to twice that depth". Clarke, the world authority on sperm whales, estimated that a sperm could dive to a depth of about 10,000 ft. The longest known time of a deep or prolonged dive by a sperm is about 20 hours.

One would wonder how a breathing giant could survive such a deep and long dive. Jonah's whale would, however, have been in comparatively shallow waters and as such its dive would not have been so deep and prolonged.

A perusal of pages 212-215 of vol. 21 of the 1978 edition of the World Book Encyclopedia would show that the muscles of a sperm whale store much more oxygen than those of other mammals. After a dive the whale must take several breaths to re-charge the tissues with oxygen before diving

beached at river banks or sea shores in various parts of the world. Berzin has given a long list of the places at which sperms have been found stranded singly or in schools. It may be stated in particular that such beachings are reported to have occurred inter alia also near Alexandria, Palestine, Gibraltar, Portugal, Spain, Italy, Corsica, the Amirates in the Arabian Sea, Persian Gulf, the Red Sea, the Gulf of Aden and the adjoining waters which incidentally proves the appearance of sperms in areas where Jonah is likely to have undergone the miraculous experience. It may be added that sperm whales are found in oceans, seas, gulfs, rivers, and even lakes.

(e) We would like to add a few more observations made by experienced scientists about the functions of the respiratory system and the tongue of the sperm whale. The respiratory system of the sperm is peculiar. It has only one blowhole. "After submersion" in water either during swimming or diving, "all communication between the epicranial passages and the lungs ceases, since the opening of the bony nasal passages and of the palato-pharyngeal sphincter are closed, and air cannot travel from the sacs into the lungs and back". Moreover, the peculiar structure of the laryngeal tube, the pharyngeal passage, the bony nasal passages etc. protects "the air passages from the entry of water. For further details in this respect, perusal of pages 111 and 115-116 of Berzin's book on sperm whales will be useful. This is explained also at P. 861 of Vol. No. II of Walkers 'Mammals of the World'. As for the functions of the tongue, they include orientation of the captured prey into the pharynx

ejects the unchewed and undigested food from its huge gullet or from the first chamber of its specialised stomach. In this connection reference is invited to P. 62-63 of *The Cruise Of The Cachalot* by Bullen. Also as mentioned by Richard Ellis, on the whaling bring. Daisy, Robert Cushman Murphy (1933) saw a dying sperm whale "belching up squids barrellful after barrellful of the tantacled creatures." Berzin has recorded at P. 205 of the 'Sperm Whale': "Clarke (1955) thinks that although very large mollusks are rarely found in sperm whale stomachs, they are swallowed more frequently than assumed, but during its death throes the whale regurgitates them: Clarke confirmed this with two personal observations. Whalers in the Far East have also reported on similar observations".

Sperm whales are reported to have swallowed various foreign items also besides food items e.g. high rubber boot, toys, tubes and jars of cosmetics, big hunks of wood and stones etc. (Berzin P. 207). As reported by the same author at P. 208, Nemoto and Nasu (1963) found stones in the first compartment of the stomach, and also servaral in the 2nd compartment. According to V.S & A.S. Yablokov, the sperm whale rids itself of stones only by belching or regurgitation. At P. 66 of *Whales* (1900), Beddard also stated 'whales when captured usually allow some undigested even unlacerated food perfectly whole and intact to escape the mouth'. Prof. Gaskin also made similar observations.

(d) Another important point that needs must be specially mentioned is that sperm whales have been observed to have

Sperms are known to have cut into large pieces with their jaws not only giant squids but even boats. At pages 99-100 Bullen recorded that once he found afloat a huge semitransparent piece of a squid about 8f x 6f x 6f which had been earlier swallowed by a sperm whale but had been ejected on the eve of its death.

(b) It has been observed by experienced whalers and scientists that the sperm whale swims about with its huge jaws open and 'the lower jaw hung down' while all that comes its way goes down into its gullet and then into the first chamber of its complex multi-chambered stomach and that its food undergoes slow and prolonged digestion in the 2nd and 3rd chambers. "When the whale is inclined to feed", observes Dr. Beale at P. 35" he descends to a certain depth below the surface of the ocean, and there remains in as quite a state as possible, opening his mouth until the lower jaw hangs down perpendicularly , , , , Tho roof of his mouth, the tongue, and especially the teeth being of a bright glistening white colour must present a remarkable appearance, which seems to be the incitement by which his preys are attracted, and when sufficient in number are within the mouth he rapidly closes his jaws and swallows the contents", Other scientists like Prof. Slijper and Prof. Gaskin have confirmed this observation relating to similar stratagem resorted to by the sperm whale.

(c) Another characteristic or natural habit of the sperm whale that has been observed by various authorities is that when chased and harpooned and dying, a sperm whale usually

whale may on the other hand be as long as 100 ft., with a weight going upto 150 tons, but it cannot swallow or vomit out anything of the size of a man because of the existence of baleen in its throat which acts as a sieve which cannot allow anything to get through its narrow gullet or throat. Beale indicated at page 27 of his book that the depth of the body of a 80-84 ft. long sperm may be 12-14 ft. and its circumference may go up to 36 ft. while the depth and breadth of its head may respectively be 8-9 ft. and 5-6 ft. We would also refer to the lecture entitled "The Psychology of Animals Swallowed Alive " delivered at the Royal College of Surgeons by its President Sir John Bland Sutton on 5th June, 1905 in which he interalia said that the open mouth of a sperm whale measures, 20 ft in length, 15 ft in height, and 9 ft in width and it can accommodate 20 men like Yunus standing together side by side.

It has a large lower jaw which alone is fitted with widely spaced teeth that erupt some time after weaning or maturity when the animal is between 28-31 ft. long. No teeth appear in the upper jaw. "Neither the teeth now the lower jaw" states Berzin at P. 266 of his book entitled 'Sperm Whales' "need to participate in obtaining food and in the digestive process" It swallows whole various other sea animals e.g. seals, sharks etc. Richard Ellis reports that Clarke found (1955) in the stomach of a 47 ft. bull sperm whale, a squid measuring 34.5 ft. and weighing 400 lbs. which had no tooth marks. In 1956 he recovered from the belly of a sperm whale a basking shark that was 8.2 ft. long.

Besides the scholars of the Quran referred to in paragraph 3 above, there are some modern educated young men, who have no faith in the story of Jonah (Hazrat Yunus) as will be clear from a perusal of P. 102 of Halde Edib's Inside India where a young Turk is stated to have said, "I cannot call myself a Muslim any longer, because I cannot explain how Jonah lived in the whale's stomach."

5. The marine leviathan involved in the miracle was a sperm (Anber) whale which combines special physical features and natural habits and characteristics that admirably qualify it for our choice. Among whales, the sperm whale is the only whale which has a throat or gullet large enough to swallow a man whole and thereafter can under special circumstances vomit him out. "Naturally," says Beddard at P. 201 of his Book of Whales, "the Cachalot (i.e. the sperm whale) has been identified with the whale of Jonah. We describe below the main features and special characteristics and natural habits and tendencies of the sperm whale:

(a) The sperm whale is a mammoth of a marine mammal which would ordinarily grow to a length of 60 to 70 feet though some scientists and experienced whalers have reported having seen much larger sperm whales. For instance, Ashley (1926) mentioned a 90 foot specimen taken by the bark Desdemona (in the late seventies). Dr. Beale (1899) said that a full-grown male may be about 84 ft. while Bullen (1899) wrote of a sperm hunted by the ship 'Cachalot' which was 70 ft. long. A sperm whale may weigh upto 90-100 tons. A blue