121358 - Is the innovated divorce included in the hadith “Every innovation is misguidance”?

the question

It was narrated that Jabir ibn `Abdillah (may Allah be pleased with him) said: The Messenger (blessings and peace of Allah be upon him) said: “Every innovation is misguidance, and every misguidance leads to the fire.” Narrated by Muslim. And the Messenger (blessings and peace of Allah be upon him) said: “Whoever does an action that is not part of this matter of ours, it will be rejected.” Narrated by Muslim. I hope that you can explain the connection between these two hadiths and the innovated divorce concerning which there is consensus that it is prohibited, but there is a difference of opinion as to whether it counts as a divorce or not.

Detailed answer

Praise be to Allah.

Firstly:

These two hadiths have been explained previously in the answer to question no. 118225.

Secondly

The jurists divide divorce (talaq) – with regard to the ruling on whether permissible or disallowed – into two categories:

1.

Permissible divorce which is in accordance with Islamic teachings; it is called Sunnah divorce (at-talaq as-sunni) because it is in accordance with Islamic teachings.

2.

Disallowed divorce which is contrary to Islamic teachings; it is called innovated divorce (at-talaq al-bid`i) because it goes against what Allah, may He be Exalted, has prescribed with regard to divorce. The term innovated here means that it goes against what Allah has ordained with regard to divorce, which is that divorce should occur at a time when the `iddah may begin, and it should not go beyond the limits set by Islamic teachings. Because this divorce is contrary to what is prescribed, and because it has an element of introducing something new into the religion – because divorce is undoing a bond that was formed as prescribed in Islamic teachings, so the undoing of this bond must also be done as prescribed in with Islamic teachings – the divorce that is contrary to Islamic teachings is called an innovated divorce, and the jurists use the two hadiths quoted above as proof that it is not allowed.

Ibn Qudamah (may Allah have mercy on him) said:

As for what is not allowed, it is: divorce at the time of menses, or during a period of purity in which the husband has had intercourse with his wife.

All the scholars of all regions and all eras are agreed that it is prohibited, and it is called an innovated divorce because the one who issues this divorce has done it in a manner contrary to what is prescribed in the Sunnah, and he has ignored the command of Allah, may He be Exalted, and His Messenger. Allah, may He be Exalted, says:

{then divorce them at a time when their prescribed waiting period can properly start}[At-Talaq 65:1].

And the Prophet (blessings and peace of Allah be upon him) said: “If he wishes, he may divorce her before he touches her. That is the time when their prescribed waiting period can properly start, at which Allah ordained divorcing women.” End quote.

So the innovated divorce is of two types:

It is either innovated with regard to timing, which is when the divorce is issued at the time of menses or during a period of purity in which the husband has had intercourse with his wife;

or it is innovated in terms of numbers, which is divorcing a woman with whom the marriage has been consummated or not, issuing more than one divorce at a time.

It says in *Al-Mawsu`ah al-Fiqhiyyah* (29/33):

The jurists divided divorce – in terms of whether it is in accordance with Islamic teachings or not – into that which is sunni and that which is bid`i.

What they mean by sunni is that it is in accordance with the Sunnah in the way in which it is done.

What they mean by bid`i is that it is contrary to the Sunnah in the way it is done.

They do not mean by the word sunni that it is Sunnah, because of the texts quoted above which discourage divorce and say that it is the most hateful to Allah, may He be Exalted, of what is permitted.

But the jurists differed with regard to some scenarios of divorce and whether they are sunni or bid`i, and they agreed regarding some other scenarios. … The majority of jurists divide divorce – in terms of whether it is in accordance with Islamic teachings – into sunni and bid`i, but they do not mention different categories of Sunnah divorce; rather in their view it is one category, apart from the view of the Hanafis.

However, some of the Shafa`is divide divorce into sunni, bid`i and that which is neither. This categorization is the correct one in their view, and that which is neither sunni nor bid`i is what the Hanafis excluded from the bid`i category, as referred to above….

However:

What defines what is sunni or bid`i is what we learn from the Quran and sunnah:

In the Quran, Allah, may He be Exalted, says: {O Prophet [and believers], when any of you want to divorce women, then divorce them at a time when their prescribed waiting period can properly start} [at-Talaq 65:1]. Ibn Mas`ud (may Allah be pleased with him) explained that as meaning that a husband should divorce his wife during a period of purity in which he has not had intercourse

with her. Something similar was also narrated from Ibn `Abbas (may Allah be pleased with him).

In the Sunnah, Ibn `Umar (may Allah be pleased with him) narrated that he divorced his wife when she was menstruating. `Umar asked the Messenger of Allah (blessings and peace of Allah be upon him) about that, and the Messenger of Allah (blessings and peace of Allah be upon him) said: “Instruct him to take her back, then let him leave her alone until she becomes pure, then she menstruates, then she becomes pure again. Then if he wishes he may keep her after that, and if he wishes he may divorce her before he touches her. That is the time when their prescribed waiting period can properly start, at which Allah ordained divorcing women.

And it was narrated that `Abdullah ibn Mas`ud (may Allah be pleased with him) said: The sunni divorce is one talaq when the woman is in a state of purity during which her husband has not had intercourse with her. When she has menstruated and become pure, he may divorce her again, then when she has menstruated and become pure, he may divorce her another time. Then she should observe `iddah for one menstrual cycle.

The difference between the sunni divorce and the bid`i divorce is that the sunni divorce leaves no room for regret, and it reduces the length of the `iddah for the woman, so that she will be less harmed by divorce.

End quote.

See also answers to questions no. 106328, 72417 and 110488.

And Allah knows best.