

Fiqh of Marriage

This course is based on the course [Family Law I] offered by the American Open University [<http://www.open-university.edu>]. I have taken liberties, added some sections and omitted some sections. I highly recommend this course for any who would like to officially register and take the course for credit. The course material is written by Jamal Zarabozo and is excellent.

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Chapter [1]

Introduction to the Fiqh of Marriage

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In this Chapter:

	The relationship between the spouses in the Qur'an
	The importance of marriage
	The importance of studying the fiqh of marriage
	The importance of having a pious spouse
	The importance of beginning and continuing a marriage in the best way according to the Shari'ah

Marriage in the Qur'an

There are a number of verses in the Qur'an which relate to marriage directly or indirectly. These verses can give us a basic understanding of what Allah intended for us in the area of marriage.

Women and Men are Brother and Sister

The Prophet (sas) said: "An-nisaa'u shaqaa'iqu ar-rijaal." "Women are the full siblings of men."

We Come from the Same Common Ancestor

All women and men are descended from the same original human being. This blood connection is related to the rights and obligations between men and women. Please refer to the opening of Sura An-Nisaa:

[O, People beware of your Lord who created you from a single soul and created therefrom it mate and brought about from those two many men and women. And beware of Allah by whom you ask one another and the wombs. Allah is surely watching you].

Affection between the Spouses is one of Allah's Signs

The affection which Allah has created in the hearts of the two spouses is one of His great signs for the people of understanding. Such people can look at this aspect of Allah's creation and be reminded of the greatness of Allah's work and power and the magnificent mercy Allah has placed in His creation. Please refer to Sura Ar-Rum: 21.

[And among His signs are that He created for you from your selves mates that you may attain calm unto them and He placed between you affection and compassion. Surely in that are signs for a people who reflect].

[He is the one who created you from a single soul and made from it its mate that he may attain calm unto her]. Al-A'raaf: 189

According to this, the relationship between husband and wife should be one of affection, compassion and mutual understanding. If husband and wife do not find this in their marriage, then they need to look to their Islam and the completeness of their uboodiyah (slavery and complete worship) to Allah Most High. By each of them focussing on the completeness of their Islam and carefully maintaining their obligations toward the other [instead of focussing on the faults of the other and attempting to use Islam as a stick with which to beat them down] the affection, compassion and great calm or peace of home life will insha Allah be found.

Allah Specifically Orders Men to be Kind to their Wives

Since the most common marital flaw from the man's side is cruelty, lack of kindness or lack of compassion, Allah and His Prophet [salla Allah aliahi wa sallam] have stressed on the man the need for kindness and good treatment. Allah said:

[And interact with your wives in a good manner for if you feel dislike for them, it may well be that you dislike something in which Allah places much good]. An-Nisaa: 19

On this same subject, the Prophet [salla Allah aliahi wa sallam] said: [Khairukum khairukum li'ahlihi wa ana khairukum li'ahliy]. [The best off you is the best of you toward his family (i.e., wife) and I am the best of you toward my family]. At-Tirmidhi & others [sahih]

Allah Reminds Women to be Obedient to their Husbands

The Islamic household is arranged in the same way as the Muslim Ummah as a whole. There is an Amir who is in charge and has final authority as well as final responsibility over the household just as the Khalifa has over the Ummah as a whole.

The Khalifa is required to consult with the people of knowledge before taking important decisions. After this consultation, he is not bound by their opinions however. Rather, he is commanded to take what he sees as the best and most correct decision, even though it may not be the favored opinion among those with whom he consulted. The khalifa is under no obligation to consult those of no knowledge or expertise in the Shari'a and/or the issue at hand.

Likewise the Muslim husband, His wife is his fellow adult in the household. He is encouraged to consult with her in decisions in which she may have some constructive input to offer. Like the khalifa, he is not bound by any of her opinions and is required to always strive to take the Islamically correct course of action. Young children are not part of the "shuraa" of the father, particularly in issues of upbringing and discipline. Mother and father must work together on these issues with final authority and decision-making always belonging to the father. It is easy to find examples of families suffering great discord when the correct relationship between husband and wife is not maintained or when one of them puts the children above the other. It then becomes a question of who is raising whom?

The Muslim father has been ordered by Allah to do everything in his power to protect his wife and children from the fire. This is his responsibility and his authority - even if it goes against their opinions. Allah said:

[O you who believe, guard yourselves and your family members from a fire whose fuel is people and stones. Over it are ferocious and powerful angels. They do not disobey and of Allah's orders and do whatever they are told]. At-Tahreem: 6

Since the main temptation for the woman in marriage is disobedience and disrespect toward her husband, Islam stresses on her to control this aspect of her personality just as it stresses on the man to avoid cruelty and lack of compassion. Allah said:

[Men are in authority over women with that with which Allah as preferred some of you over others and with that which they spend of their wealth. So the righteous [women] are the obedient [women] those who guard in absence that which Allah has guarded. As for those from whom you detect rebelliousness, reproach them, separate from them in sleeping and strike them. If they obey you, do not desire a way at them. Surely, Allah is the High, the Great]. An-Nisaa': 24

Of course, this obedience is only in that which is not disobedience to Allah [Most High] as is clear from the statement of the Prophet [salla Allah aliahi wa sallam]:

[Laa taa'ata li makhlooqin fiy ma'siyati khaaliq]. [There can be no obedience to a created being in disobedience to the Creator].

In a sahih hadith, the Prophet [salla Allah aliahi wa sallam] mentions that one of the signs of Qiyama is [when a husband is obedient to his wife].

Marriage is the Sunnah of the Prophets

It was the way of the prophets of Allah Most High to marry and have children. 'Isa was a notable exception whose life was quite short and who never did either of these things. He never taught celibacy and is not to be taken as an example in this regard. Allah said: [We have sent messengers before you and made for them wives and descendants]. Ar-Ra'd: 38

Marriage Must Begin and Continue in the Proper Manner

The previous evidences illustrate the make-up of the correct Islamic marriage. It is one in which there is affection and compassion between the spouses. It is one in which both spouses love Allah more than all else. It is one in which the husband is kind and generous toward his wife and in which the wife is obedient and respectful toward her husband. They should each find repose and peace in each other's company. Why then is our actual reality so far from this ideal in so many cases?

Obviously, the first place we should look is to our selves and our actions. Secondly, experience has shown that marriages which start off incorrectly and in disobedience are usually doomed to failure. For example, many Muslims look for a spouse as the disbelievers do: looking for who is attractive to them and talking at length with them in order to "get to know them". Certainly, a Muslim should try to know about the person they intend to marry, but meeting and talking in person or on the phone is not the proper way to go about it. This will usually lead to finding a marriage partner based on their attractiveness. The Prophet [salla Allah aliahi wa sallam] has informed us that anyone who selects a mate based on anything other than their piety is doomed to failure:

[A woman is sought in marriage for four things: her beauty, her wealth, her social status and her family ties. Attain victory with the one piety, may your hands be in the dust!]

The meaning of [may your hands be in the dust] is may you be afflicted [e.g., with poverty] if you fail to heed what I am saying to you.

Good Intention

Marriage is one of the most important social relationships in society. If it goes sour, there is little hope for the overall society - especially the next generation. Note the following supplication from the lips of those who have repented and do good deeds:

[And those who say: Our Lord! Grant us from our wives and our descendents coolness of the eyes and make us an example for the people of piety]. Al-Furqaan: 74

Marriage is an Act of Worship and [Half One's Religion]

The importance of Marriage in Islam can be seen in the following hadith:

[Man tazawwaja faqad istakmala nisfa al-imaan falyattiqi Allaha fiy an-nisf al-baaqiy]. [Whoever marries has completed half of his faith. So let him beware of Allah regarding the other half].

This is, of course, when a person marries for the correct reasons and in the correct manner. Many scholars have commented that marriage is preferable to concentrating on extra acts of worship.

Chapter [2]

Marriage: Goals, Purpose and Definition

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In this Chapter:

• The definition of marriage
• The important goals of marriage itself
• The ruling regarding marriage - whether obligatory, recommended, etc.

The Definition of Marriage (Nikah)

The original meaning of the work nikah is the physical relationship between man and woman. It is also used secondarily to refer to the contract of marriage which makes that relationship lawful. Which of the two meanings is intended can be determined by the context in which it is used.

As for the definition of marriage in fiqh, the simple definition would go something like this:

[A contract that results in the two parties physically enjoying each other in the manner allowed by the Shari'ah].

Since this only focuses on one aspect of the marriage contract, Muhammad Abu Zahrah [a modern scholar] defines it like this:

[A contract that results in the man and woman living with each other and supporting each other within the limits of what has been laid down for them in terms of rights and obligations].

Ibn Uthaimen takes an even more comprehensive view of the institution of marriage in his definition of it as:

[It is a mutual contract between a man and a woman whose goal is for each to enjoy the other, become a pious family and a sound society].

The Purpose and Goals of Marriage

Like anything a Muslim does, marriage should only be undertaken after gaining an understanding of all that Allah has prescribed in terms of rights and obligations as well as gaining an understanding of the wisdom behind this institution. Nearly all peoples and all societies practice marriage in some form, just as they practice business (buying and selling). Umar ibn Al-Khattab used to expel people from the marketplace in Madina who were not knowledgeable of the fiqh of buying and selling. Likewise, a Muslim should not engage in something as important as marriage without having understanding of the purpose of marriage in Islam as well as a comprehensive understanding of the rights and obligations which it brings about.

One of the principles of Islamic Jurisprudence says that: [The default state of all things is lawfulness until some evidence shows otherwise]. Based on this, if new foods are discovered, they are considered lawful, unless there is some specific reason or attribute which would make it forbidden for example if it causes intoxication. Relations between men and women do not follow this general principle and in fact are opposite to it. The principle is that: [Relations between men and women are forbidden until some evidence shows otherwise].

Procreation [Children]

One of the most important purposes of marriage is to continue and increase the population of the Muslims. Clearly, this goal could be achieved without marriage, but when actions are undertaken in disobedience to Allah, they do not receive the blessing of Allah and the whole society is corrupted. The Prophet [salla Allah aliahi wa sallam] said:

[Ankihoo fa inniy mukaathirun bikum al umam yaum al-Qiyamah] [Marry, for I will outnumber the other nations by you on Qiyamah]. [Ibn Majah – Sahih]

It should be stressed that the goal is not simply to produce any child that will live in the next generation. It is to produce righteous children who will be obedient to Allah and who will be a source of reward for their parents after they die. The Prophet [salla Allah aliahi wa sallam] will NOT be boasting before the other nations on the day of Qiyamah with children of Muslim parents who left the path of Islam. Thus it is the responsibility of Muslim parents to seek the means of giving their children the training and education they need not just to grow, but to succeed as Muslims worshipping and obeying Allah. This obligation may include migration [hijrah], establishing of Muslim communities and schools and other obligations. As the scholars have said in another principle of fiqh:

[Maa laa yutimmu al-wajibu illa bihi fa huwa wajib]. [That without which an obligation cannot be fulfilled is itself obligatory].

Pleasure

Islam is the religion of the fitrah - the religion which is consistent with the natural instincts and needs of mankind. It is not like the man-made (of modified) religions which set unnatural constraints on people whether self-inflicted prohibition of marriage [nuns and monks, etc.], prohibition of divorce or monogamy. Men are inclined toward women and women are inclined toward men. Marriage is the institution which fulfills this desire and channels it in ways pleasing to Allah Most High. Allah mentions this attraction:

[Zuyyina li an-naasi hubbu ash-shahawaati min an-nisaa'i wa al-baneen].

[The love of the desires for women, sons,... has been made attractive to people]. Aal-'Imraan: 14

The Messenger of Allah himself made clear that the attraction between the sexes is something natural and not something to be denied or suppressed - only channelled in the ways pleasing to Allah Most High, saying:

[Hubbiba ilayya min dunyaakum an-nisaa'u wa at-teebu wa ju'ilat qurratu 'ainiy fiy as-salat]. [Women and perfume have been made beloved to me of this world of yours and my peace of mind is in the prayer]. [Ahmad & others - sahih].

The desire of men and women for each other is an urge which needs to be fulfilled. If it is left unfulfilled, it will be a source of discord and disruption in society. For this reason, the Prophet [salla Allah aliahi wa sallam] ordered all men who are capable of meeting the responsibilities of marriage to do it:

[Man kana minkum dhaa tawlin, falyatazawwaj fa innahu aghadhdh lilbasari wa ahsanu lilfarji wa man laa fa as-saumu lahu wijaa]. [Whichever of you is capable should marry for it will aid him in lowering his gaze and guarding his body (from sin). As for the one who is not capable, fasting is his protection]. [An-Nasaa'i - sahih].

The Ruling Concerning Marriage

Different Rulings for Different Cases

What is the status of marriage in the Shari'a? Is it obligatory or merely allowed? Some of the Hanafi scholars have broken this question down into different cases:

1. If a person feels certain that he will commit something forbidden if he does not marry and he has the financial ability to marry, then marriage is in his case fard [the highest level of the obligatory in Hanafi terminology].

2. If a person has the ability to marry and treat his wife properly and fears [strong probability] that he will engage in unlawful acts if he doesn't, then marriage in his case is wajib [obligatory].
3. If a person does not have the financial or physical means to marry or feels certain that he will not treat his wife properly then marriage in his case is haram [forbidden].
4. If a person has the means to marry, but feels strongly that he will not treat his wife properly, marriage in his case is makrooh [disliked].
5. If a person has the means to marry and has no fear of mistreating his wife or of committing the unlawful if he doesn't marry, then marriage in his case is mustahabb [preferred].

This last opinion is widely regarded as the [default] (al-asl) ruling in this question i.e., marriage, generally speaking is the preferred but not obligatory way and only becomes obligatory, forbidden, etc. in the exceptional cases.

Since the man is normally the one who goes looking for a spouse and proposes to her family, etc., these discussions normally focus on him. Every point in the above discussion, however, applies to women equally as it does to men.

The Dhaahiri [Literalist] Opinion

In the Literalist school of thought, marriage is considered fardh 'ain - an absolute and individual obligation. Among the evidence they cite are the following verse from the Qur'an and hadith of the Prophet [salla Allah aliahi wa sallam]:

[Wa ankihoo al-ayaamaa minkum wa as-saliheena min 'ibaadikum wa imaa'ikum in yakunoo fuqara'a yughnihimu Allahu min fadhlihi wa Allahu wasi'un 'aleem (22) Wa lyasta'fif illadhina laa yajiduna nikahan hatta yughnihumu Alahu min fadhlihi].

[And marry off the single among you and among the righteous of your male and female slaves. If they are poor then Allah will supply their needs from His generosity. And Allah is expansive, knowing. (22) And let those who do not find marriage hold back until Allah grants them of His generosity]. An-Noor: 32-33

The following hadith of the Prophet [salla Allah aliahi wa sallam] seems to be a blanket [order] to all those with the capability to get married:

[Yaa ma'shara ash-shabaab man istataa'a minkum al-ba'a falyatazawwaj]. [O young men, whoever among you has the ability, let him marry]. [Bukhari & Muslim].

Conclusion Concerning the Ruling of Marriage

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The opinion that marriage is - overall - preferred [mustahabb] seems to be the strongest opinion. Ibn Uthaimen further points out that if a person desires to be married, it becomes even more important. He said: [Marriage in the case of desire for such is preferred over superogatory acts of worship, due to the many good results and praiseworthy effects it has].

Also, it is clear that there is a collective obligation [fard kifayah] on the Ummah as a whole to promote, defend and facilitate the institution of marriage. If marriage suffers from neglect or, for example, unreasonably high dowries which force people to postpone marriage too long, it is a collective obligation on the Ummah to come to its aid and to ensure that as many people as possible live within the context of a marriage. Also, if the Muslims come to have too many single women because of the abandonment of polygamy, it becomes a collective obligation on the Muslims to address and correct this situation. This is all clearly based on the command of Allah in the verse previously cited which starts out: [And marry off the single among you...]

Review Questions

1. True or False: Marriage is the sunnah of the Messengers of Allah and everyone must get married.
2. What is the ruling of marriage according to the Literalist school of thought? What is their evidence?
3. Give a Shari'ah definition of marriage.
4. What are some of the main goals and purposes of marriage in Islam?
5. Under what circumstances could marriage be considered forbidden for a specific individual?
6. Under what circumstances could marriage be considered obligatory for a specific individual?

Chapter [3]

Who is One Allowed to Marry?

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In this Chapter:

	Which women a man may or may not marry both on a temporary and a permanent basis
	Marriage between a Muslim man and a Christian and Jewish woman
	How does adultery affect the permissibility of marriage?
	A Muslim woman may only marry a Muslim man (legal trickery not allowed)
	Proposing to a woman who has been proposed to

Who is one Allowed to Marry

Allah mentioned most of the categories of women involved in this question in the following verses:

[And do not marry women whom your fathers married except what has already passed. It was indeed obscene, hateful and an evil way. (22) Forbidden to you in marriage are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's sisters, your sister's daughters, your wet nurse, your 'sisters' by nursing, your wives mothers, your step daughters under your guardianship born of your wives with whom you have consummated - if you did not consummate then there is no sin upon you, the wives of your blood sons, two sisters at the same time, except for that which has already passed. Verily, Allah is Forgiving, Merciful. (23) And those already married except those whom your right hand possesses (through capture), Allah's ordinance upon you. And allowed for you are all besides these if you seek them with your property seeking chastity not fornication... (24)] *An-Nisaa: 22-24*

Those Who Are Forbidden Forever

This category includes those one is forbidden to marry due to relationship of blood as well as some who are forbidden due to marital relations.

Those Forbidden Due to Blood Relations

1. Descendants due to a relationship with a woman no matter how far [a man's daughter, granddaughter, etc.]
2. Ascendants of women no matter how far [mother, maternal and paternal grandmother, etc.]
3. Descendants from his parents no matter how far [sisters, half sisters, sisters children, etc.]

4. Siblings of male and female ascendants no matter how far [paternal and maternal aunts, great aunts, etc.]

The student may notice that of these, the grandmother was not explicitly mentioned in the verse. This is because frequently in Arabic and in Qur'an [as in some of the verses on inheritance], the term "mother" includes the grandmother and ascending.

Those Permanently Forbidden Because of Marital Relations

1. Wives of ascendants no matter how far [father's wife, grandfather's wife, etc.]. Consummation is not required, the mere completion of the marriage contract makes this marriage forbidden forever.
2. Wives of descendants no matter how far. Again, the mere marriage contract is what is considered here with or without consummation.
3. Ascendants of wives [such as the mother-in-law] whether consummated or not.
4. Descendants of wives [step-daughters and their children] only if the man consummated the marriage with the wife in question. The phrase [under your guardianship] is mentioned here only to portray the usual case and not as a condition. The ruling holds whether the step-daughter was ever under his care or not. This is the opinion of the majority of scholars.

Those Permanently Forbidden Due to Breast Feeding

The verse actually mentions "mothers" and "sisters" by breast feeding. From these two, the other can be derived based on the hadith of the Prophet [salla Allah aliahi wa sallam]:

[Yahrumu min ar-radhaa'a maa yahrumu min an-nasab]. [Breast feeding make forbidden what is forbidden through blood relations]. *Muslim*

In another hadith, the Prophet [salla Allah aliahi wa sallam] was asked to marry the daughter of his uncle Hamza and he said:

[She is not permissible for me. She is the daughter of my brother through breastfeeding. And breastfeeding forbids what is forbidden through blood relations]. *Bukhari & Muslim with different wording.*

Another time, the brother of a woman who had breastfed Aisha came to visit her. She refused to let him in until she asked the Prophet [salla Allah aliahi wa sallam] about it and he said:

[Idhiniy lahu fa innahu 'ammuka]. [Give him permission for he is our uncle]. *Bukhari & Muslim*

Minimum Requirement in Breast Feeding

There is a wide variety of opinion on how many "sessions" of breastfeeding create the prohibition including one, five, ten, seven and three. One common opinion which you may hear is that the child must have nursed on three separate occasions. This is based on the hadith:

[Laa tuharrimu al-massatu wa al-massataan] [The prohibition is not established by one suck or two].

The strongest opinion is that of Malik, Abu Hanifa, Ali ibn Abi Talib, Abdullah ibn Umar, Abdullah ibn Abbas and others that a single session is sufficient. This is the strongest opinion because it is the apparent meaning of *ridhaa'a* in the verses and the hadith and because the above hadith could easily refer to "sucks" and not "sessions" so in other words if the baby merely sucks once or twice it doesn't count unless the baby completes the "session", drinking to satisfaction.

Women included in this Category

1. His female ascendants through nursing. This includes the woman who nursed him and her mother, etc. The husband of the wet-nurse is considered the "cause" of the milk involved. So, for example, if a girl is nursed by a woman, that woman's husband becomes forbidden to her just as her own blood father is.
2. Descendants through nursing. The man who is the "cause" of the milk is forbidden from marrying the one his wife nursed or their children, etc.
3. Descendants of "parents" through nursing, i.e., "sisters". One cannot marry any of the children (either by blood or nursing) of the wet-nurse or her husband.
4. Siblings of ascendants by nursing i.e., brothers and sisters of the wet nurse or her husband. This does not include their children ("cousins" by nursing).

Note the following important point as stated by Ibn Uthaimen: [The relatives of the child that is nursed, except for his/her children, has no relation to the breastfeeding mother [or her husband] and there is no effect on them from that nursing. So it is allowed for a boy's blood brother to marry his brother's wet nurse or her daughters. However, the children of the child who was nursed will become like the children of the wet nurse and her husband in the same way that their father (the one originally nursed) was a "child" (by nursing) to those two].

Those Forbidden for Temporary Reasons

The second category of women a man is forbidden to marry are those forbidden for temporary reasons. If the reason ceases to exist, marriage between them becomes lawful. They include the following:

1. While being married to a woman, a man cannot marry her sister or any of her aunts. The first was mentioned in the verses previously mentioned and the second is mentioned in the following hadith: [*Inna an-nabiyya nahaa an yajma'a baina al-mar'ati wa 'ammatihaa wa baina al-mar'ati wa khaalatihaa*]. [The Prophet [salla Allah aliahi wa sallam] prohibited joining (in marriage at the same time) a woman and her paternal aunt or a woman and her maternal aunt]. *Bukhari & Muslim*
2. If a person divorces his wife three times, it is not allowed for him to marry her again unless and until she marries someone else [not as a trick to get back to him], consummates that marriage and that marriage is subsequently legally ended.
3. Any woman if a man already has four wives.
4. Marrying a slave girl when one is already married to a free woman.
5. Marrying a woman who is already married or who is in *'idda*. A woman in *'idda* due either to death or divorce is not allowed to marry until it is finished.
6. A woman upon whom a man has made *li'aan* unless he confesses that he lied. *Al-li'aan* is where the husband accuses the wife of adultery but cannot bring witnesses so he swears that it occurred and the two are separated after the wife swears that she is innocent. He can never marry her again unless he confesses that he was lying.
7. A woman who is neither Muslim, Jewish or Christian.

Miscellaneous Questions about Whom One May Marry

Do Illegal Relations Rule Out Marriage?

Suppose a man and a woman are living illegally as boyfriend and girlfriend and then decide that they would like to be Islamically married. Is it possible for them to be married now, or has what they have already done made marriage between them impermissible? According to reports in *Sunan Ad-Daraqutni*, two different opinions existed among the Companions. One of them said that the two of them should never be allowed to marry while another said that the first act was a sin but the second act was lawful.

Perhaps this is a case where the situation is different in different cases and in different times and one in which the ruler or imam should judge based on that. For example, suppose this practice becomes widespread among the Muslims as it is among most of the disbelievers today: living with someone in sin in order to "get to know them" before getting married. In such a case, the imam should perhaps forbid their marriage altogether in order to combat this wicked practice. On the other hand, suppose ignorance becomes so great [for example, among people who recently entered Islam] that people do this without really being aware of the seriousness of the issue. In such a case, the imam would probably want to allow the marriages until the people can be better educated.

One thing that is clear in this issue which is not being practiced in the masjid in this country [where this issue comes up almost every day] is that the two actions must be kept entirely separate.

It is very important in Islamic law to distinguish between a child born of fornication and one born of marriage. For that reason and at minimum, a couple who have engaged in illicit relations should be ordered to make *istibraa'*. This means that they must separate and have no contact with one another for one full month until it can be established that she is not pregnant. Also, they should be asked to make *tauba* (repentance) from what they have done as a requirement before they are married Islamically. This is to avoid the prohibition (according to one of two interpretations) found in Surat *An-Noor*, verse 3 (coming).

Marrying a Woman While She is On Her Period

Although a man is not allowed to divorce his wife during this period, there is nothing wrong with marrying her during this time. However, they should not consummate the marriage until she has become clean.

Is it Allowed to Marry a Fornicatress?

There is a difference of opinion among the scholars over whether or not it is allowed to marry a woman whom one knows to be a fornicatress. The majority of scholars do not take this to the level of prohibition while other scholars hold that it is *haram*. Most of this difference revolves around the understanding of the following verse:

[Az-zaaniy laa yankihu illa zaaniyatan au mushrikatan wa az-zaaniyatu laa yankihuhaa illa zaanin au mushrikun wa hurrima dhalika 'alaa al-mu'mineen]. [The fornicator "weds" none but a fornicatress or an associationist and the fornicatress is "wed" by none but a fornicator or an associationist and that has been forbidden to the believers]. *An-Noor: 3*

The difference revolves around some basic questions about this verse:

1. Is this verse a statement of prohibition, a statement simply condemning that act while not prohibiting it or a statement of fact?
2. Is the meaning of the word "*nakaha*" here the marriage contract, the actual physical relation or both?
3. Based on the previous point, is the prohibition mentioned in the last portion of the verse about the act of fornication itself or about marriages between such people?

Clearly, the safest position with regard to this verse is to understand the work "*nakaha*" with both of its meanings: i.e., the marriage contract and the physical act between man and woman. Understood in this way, the verse is clearly a strong warning to the believers against undertaking a marriage relation with an unchaste woman who has not repented or a man in a similar condition. Clearly, if they repent then this verse does not even apply to them since repentance wipes out what came before. Let's see what a couple of scholars of *tafsir* had to say about the above verse:

[The condition of most fornicators is that they do not desire marriage except with a fornicator like themselves. The intention here is: sternly warning the believers against marrying fornicators after they have just been sternly warned about staying away from fornication and adultery (in the previous verse). This is the opinion best supported by the evidence. [and that has been forbidden to the believers]. i.e., the marrying of fornicators or associationists - because of the intensity of resembling the people of corruption and opening the door to accusation and because of the possibility of having a child which is not his. Thus, it is not lawful for the chaste Muslim man to knowingly marry an unchaste woman nor for a chaste Muslim woman to knowingly marry an unchaste Muslim man]. *Zubdatu At-Tafsir min Fath Al-Qadeer, p. 457*

"This is a clear statement of the lowliness of fornication and that it drags down the reputation of its doer as well as one who pairs with them or intermingles with them in a way that no other sin can. So Allah informed us that the fornicator is not desired in marriage except by a fornicatress - whose condition is similar to his - or one who associates partners with Allah who does not believe in the resurrection nor reward and punishment and who does not abide by Allah's laws. And likewise the fornicatress: none marries her but a fornicator or an associationist. [and that has been forbidden to the believers]. i.e., it has been forbidden to the believers to marry a fornicator or a fornicatress.

And the meaning of the verse is: Anyone who seeks to marry another who fits the description of "fornicator" and who has not repented from that is of necessity either (1) one who does not abide by the laws of Allah - and that is nothing but an "associationist" or (2) one who does abide by the laws of Allah but who engaged in this type of marriage in spite of his knowledge of their fornication. This marriage is itself fornication and the one marrying is a fornicator and one seeking obscenity. If he (or she) truly believed in Allah, he would not engage in such a marriage. This is explicit evidence of the prohibition of marriage to a fornicatress until she repents and likewise of the prohibition of marriage to a fornicator until he repents because the pairing and closeness of a husband to his wife or of a wife to her husband is the closest of all bonds." *Tafsir As-Saadi, p. 510*

Nevertheless, the majority of the scholars of fiqh state that this verse is showing such marriage acts to be blameworthy but not prohibited. They also base this position on the following hadith:

[A man came to the Messenger of Allah [salla Allah aliahi wa sallam] and said: I have a wife who is most beloved to me but she does not repel the hand of the toucher. He [salla Allah aliahi wa sallam] said: 'Divorce her.' The man replied: But I cannot do without her. He [salla Allah aliahi wa sallam] said: 'Then enjoy her]."

This is a weak argument for several reasons. First, there is doubt about the validity of the hadith. Iman Ahmad considered it weak although some other scholars considered it authentic. Second, the words do not clearly indicate adultery. They could just well (or even more clearly) be taken to mean that she has a "flirtatious" demeanor around men and does not maintain the proper etiquette of a Muslim woman. In fact, it is highly unlikely that the man intended adultery since that would not be lawful for him to state such a thing and the Prophet [salla Allah aliahi wa sallam] would have only three choices in such a situation: (1) demand of him four witnesses, (2) tell him that he must make *li'aan*, or (3) beat him eighty lashes.

Obviously, if it is not allowed to marry an unchaste Muslim woman until she repents according to the stronger opinion, this must be even more so the case with respect to an unchaste non-Muslim woman. Since a non-Muslim has to capability of *tauba* - since belief is a requirement of *tauba* and all other acts of worship and she is not a believer - it is highly doubtful that the stigma of fornication/adultery can ever be removed. In the next section insha Allah, we will cover in detail the rulings regarding marriages to "the people of the book" [Christians and Jews].

Is it Allowed to Marry Christian or Jewish Women?

This question has always generated varying opinions among the scholars of Islam and especially in our times when Islam has become so weak in the earth and great numbers of Muslims are living under non-Islamic states and in non-Islamic societies. The essential verses of Qur'an which relate to this question are:

[Wa la tankihu al-mushrikaati hatta yu'minna]. [And do not marry associationist women until they believe]. *Al-Baqarah: 221*

[Al-yauma uhillu lakum at-tayyibaatu wa ta'aamu alladhina ootoo al-kitaaba hillun lakum wa ta'aamukum hillun lahum wa al-muhsinaatu min al-mu'minaati wa al-muhsanaati min alladhina ootoo al-kitabi min qablikum idhaa aataitumhunna ujoorahunna muhsineena ghaira musaafiheena wa la muttakhidhee akhdanin. Wa man yakfur bi al-imaani faqad habita 'amaluhu wa huwa fiy al-aakhirati min al-khaasireen]. [Today all good things have been made lawful for you and the food of the People of the Book is lawful for you and your food is lawful for them and the chaste women among the believing women and the chaste women among those who were given the book before you when you give them their due as protectors (of their honor), not (engaged) in promiscuity or having a lover. And whoever rejects faith has nullified his actions and is, in the hereafter, among those in loss]. *Al-Maidah: 5*

[the food of the People of the Book] The reference here is to their meat which they have sacrificed. It is lawful for Muslim to eat, unlike the meat of all other disbelievers.

[your food is lawful for them] There is nothing wrong with providing them from our food.

[chaste women among the believing women]: Free and chaste Muslim women. Further evidence that, as stated earlier, a Muslim may not marry an unchaste Muslim woman who has not repented and changed her ways. Also, a Muslim man may not marry an enslaved Muslim woman except with two conditions: his inability to do otherwise and his immediate fear of falling into sin if he does not.

[chaste women among those who were given the book before] i.e., the Christians and the Jews. This is a *takhsees* (qualification) of the verse from Sura Al-Baqarah. A Muslim is permitted to marry the free and chaste among the People of the Book. As for the corrupt women - who do not restrain themselves from *zina* in its two forms mentioned later (promiscuity or having a lover) - it is not allowed to marry them whether they are Muslim or from the People of the Book.

[give them their due] i.e., We have made your marriage to them lawful when you have given them their dowry. By using the word "dues" or "wages" (*ujoor*) there is an indication that this dowry should be fair, meaning the "going rate" (*mahr al-mithl*). So, if one intends not to turn over the dowry to her, then she is not *halal* to him.

[as protectors (of their honor)] i.e., that you, O husbands, will be the protectors of your wives from dishonor by protecting yourselves from sin.

[not (engaged) in promiscuity or having a lover] *Zina* in the *jahiliya* was of two types: those who promiscuously went with all and sundry and those who engaged in long-term but illicit relationships with a partner. Here Allah informs us of no distinction between the two and both are opposite to chastity and protecting of honor and that one of the requirements of marriage is that the husband be free of *zina*.

Al-Baqarah Abrogates Al-Ma'idah or Al-Ma'idah Qualifies Al-Baqarah?

There is a weak opinion that the verse in *Al-Baqarah* which prohibits marriage to all associationists (which includes the Christians and the Jews) abrogates the above verse from *Al-Ma'idah* which allows Muslim men to marry Christian and Jewish women. It is well known that *Al-Baqarah* was one of the earliest surahs to be communicated in Madinah while *Al-Ma'idah* was one of the last. Thus, it must be concluded - as the vast majority of scholars agree - that the verse in *Al-Ma'idah* which give the permission constitutes a qualification or modification (*tadhsees*) of the general prohibition found in *Al-Baqarah*.

Who are the People of the Book?

Another rejected opinion held by some scholars says that A Muslim man may only marry a Christian or Jewish woman descended from those who were Christians or Jews before their books were distorted or before their religions were superceded by Islam. Ibn Hajr, the author of *Fath Al-Bari* (the most famous commentary on *Sahih Al-Bukhari*) responded to this while commenting on the hadith about a letter sent by the Prophet [salla Allah aliahi wa sallam] to the Roman emperor which contained the verse: [O People of the Book, come to a statement that is fair and just between us...] *Aal-'Imraan: 64*

Ibn Hajr writes:[Everyone who follows the religion of the People of the Book takes on the same ruling as them with respect to marriage and slaughtering. This is based on the fact that Hercules and his people were not from the tribes of Israel but were from the people who entered in Christianity after it had already been distorted. He (i.e., the Prophet (sas)) said to him and his people, "O, People of the Book." This indicates that they have the same ruling as the People of the Book, in opposition to those who say that it is just meant for the people from the tribes of Israel or it refers to those who are known to have embraced Judaism or Christianity before those religions were distorted. And Allah knows best].

In General, It is Permitted.

Clearly, the correct understanding here is that the permission in *Al-Ma'idah* modifies or particularizes the general prohibition in *Al-Baqarah*. That is, associationists generally are not allowed to be married but an exception has been made for Jewish and Christian women although, without a doubt, Jews and Christians have been described as associationists in the Qur'an. Ibn Al-Mundhir wrote: "It is not recorded from any of the early scholars that such is impermissible."

But Some Seem to Have Prohibited It

Abdullah Ibn Umar was asked about a man marrying a Christian woman and he said: "Allah has forbidden the polytheistic women for the believers and I do not know of any associating of partners which is greater than for a woman to say the Jesus or any of Allah's slaves is her Lord." Also, it is well known that his father Umar ibn Al-Khattab was opposed to such marriages but would not state that they were forbidden. It seems that we must understand the son's statement in this context - or he would be in clear contradiction of the Qur'an. Umar ordered a number of people to divorce their non-Muslim wives. They all did so except for Hudhaifa. Hudhaifa asked Umar if he could state that such a marriage was forbidden and Umar refrained from making such a statement. From this we must conclude that those who opposed it did so without believing it to be forbidden.

Strongest Opinion: It is Allowed but not Preferred

Jabir ibn Abdullah was asked about such marriages and he said: [We married them during the time of the conquest of Kufah along with Saad ibn Abi Waqqas but we could hardly find any Muslim women there. When we returned, we divorced them].

There is no question that such marriages can lead to a great deal of harm for the Muslim and that this situation is more serious today with the weakness of most Muslim men in their knowledge and practice. Furthermore, as Shaikh Ibn Baz pointed out, "nowadays men are listening to and obeying their wives more and more. Hence, such a marriage could be dangerous for his own religion as well as for the religion of the children."

Conditions for Marrying Such Non-Muslim Women

Even those who allow (and disapprove of) these marriages lay down some conditions for its permissibility.

1. She must be chaste (*'afeefah*). This condition alone would eliminate the vast majority of such marriages which take place in this country. Note that since a non-Muslim woman cannot possibly make *taubah* (repentance) since it is an act of worship and no act of worship is accepted without the prerequisite of belief which she is lacking, the attribute of "fornicatress" once applicable cannot be lifted unless she becomes Muslim regardless of how long she has left the practice itself.

2. She must not be from *Ahl Al-Harb* (those peoples who are at war with the Muslims). It is reported that Ibn Abbas stated: [It is not allowed to marry the women of the People of the Book if they are from the people fighting Islam]. While it can be debated whether the United States is at this time "*Ahlu Al-Harb*" or not since their opposition to Islam is clear, but there is no actual ongoing war at this time, it is clearly disadvantageous for a Muslim man to marry a non-Muslim woman in this context. If anything should go wrong, his property and his innocent children will almost surely be seriously violated due to the injustice and bias of the courts in this regard.

Review Questions

1. Marrying one's granddaughter is not expressly forbidden in the verse from *An-Nisaa*. Where is the proof that it is forbidden?
2. If a woman's mother breastfed three brothers, is it permissible for her to marry their other brother who was not breastfed by her mother?
3. Discuss the difference of opinion regarding marrying Christian or Jewish women.
4. What is the ruling regarding marrying a person who is a known fornicator?
5. True or false: If a fornicator has repented from the act, it is still not allowed to marry him/her.
6. What is the difference in ruling between marrying the step-mother or the daughter-in-law when a person has married a woman and divorced her without consummation.
7. Is it allowed to marry the daughter-in-law who has not been under one's care? Why?
8. True or false: It is forbidden to marry a woman while she is on her menses.
9. Mention with examples the different categories of women whom one is never allowed to marry.

Chapter [4]

Qualities to Look for in a Spouse

The importance of specific qualities in a spouse and that some of those qualities are much more important than others.

The importance of seeing a prospective spouse and the limits of that.

Specific rulings regarding such issues as being alone with one's "fiancee", touching and private communications between them.

Importance of the Topic

Making sure that Muslims are well-matched to their spouses is one of the most important and potentially difficult functions in Muslim society. The individual seeking marriage must have his/her priorities straight and be clear on what characteristics are most important to be sought in a spouse in order to have a successful marriage. There are many characteristics that are important in a husband or a wife but some are much more important than others. Overemphasizing the wrong qualities can lead to disaster down the road just as being neglectful of certain considerations can do likewise. When we come to understand the goals and priorities of marriage in Islam, we may be guided to the Islamic methodology of seeking marriage in Islam and stop blindly following the disbelievers in their ignorant notions of the importance of "getting to know each other" and other such concepts which in reality contribute nothing to and more often sabotage a successful marriage.

The Prophet (sas) taught us in many hadith about the various characteristics which one looks for in a spouse and their relative importance and which ones determine success insha Allah and Allah's blessing on a marriage. Among those hadith:

"Inna al-mar'ata tunkahu lideeniha wa maaliha wa jamaaliha fa 'alaika bi dhaati ad-deeni taribat yadaaka." "A woman is married for her *deen*, her wealth or her beauty. You must go for the one with *deen*, may your hands be in the dust! (if you fail to heed)" *Muslim*

"Takhayyaroo li nutafikum fankihoo al-akfaa'u wa ankihoo ilaihim." "Choose carefully for your seed. Marry those who are equivalent (or "qualified") and give to them in marriage." *Ibn Majah and others and it is sahih.*

In the following sections, we will discuss insha Allah, some of the most important characteristics that can be found in the Qur'an and the sunnah when it come to choosing a good spouse.

Religion

In the previous hadith, the Prophet (sas) mentioned various characteristics that people, by their nature and custom, look for in a spouse. He did not advocate any of them, but merely stated them as facts of human nature except for the issue of "*deen*", i.e., a prospective spouses piety and practice of Islam - their fulfilling of the *wajib* and their avoidance of the *haraam*. About this characteristic, the Prophet (sas) said "*alaikum bi dhaati ad-deen*" or "it is upon you to seek the one of piety". This is an order and quite different from the general statement at the beginning of the hadith which says "a woman IS MARRIED for..." and separates the issue of *deen* from the other mundane issues and puts it in a category by itself. Also, when the Prophet (sas) says at the end of the hadith "may your hands be in the dust", invoking this negative outcome on those who disregard his order, it can only refer to the order to seek the spouse with piety, since that is the only order in the hadith.

We must be careful not to be superficial in this issue. The mere wearing of *hijab* or keeping a beard and praying in the masjid, while obvious requirements of piety, do not by themselves guarantee it. There are many people who at first glance appear to be abiding by Islam, but upon closer inspection have a twisted understanding of Islam and their practice in reality may leave much to be desired. Umar once told someone who had testified to the goodness of a person by the fact that he had seen him in the masjid that he does not know him as long as he has not had dealings with him that involved money, had lived with him or travelled with him.

The characteristic of piety applies to the groom just as much as to the bride. The guardian of the woman should make this his first and top priority just as the man looking for a wife should make it his. The Prophet (sas) said:

"Idhaa ataakum man tardhauna deenahu wa khuluqahu fa zawwijooahu. Illaa taf'aloo takun fitnatun fiy al-ardhi wa fasaadun kabeerun." "If someone with whose piety and character you are satisfied with comes to you, marry to him. If you do not do so, there will be trials in the earth and a great deal of evil." *At-Tirmidhi and others and it is hassan.*

Character and Behavior

In the previous hadith addressed to those in charge of the marital affairs of Muslim women and girls, the Prophet (sas) commanded them to facilitate their marriage when they are satisfied with two issues: the faith of the suitor and his character.

Character is of extreme importance in Islam and goes hand in hand with faith and piety. The Prophet (sas) has even described it as the purpose of his mission to mankind as we can see from the following hadith:

"Innama bu'ithtu li utammima saliha al-akhlaaqi." "I have only been sent to complete good character." *Al-Hakim and others (sahih)*

"*Anaa za'eemun bibaitin fiy a'laa al-jannati liman hassana khuluqahu.*" "I am a guarantor of a house in the highest part of Paradise for one who makes his character good." *Abu Daud and it is hassan.*

"*Al-Birru husnu al-khuluqi.*" "Righteousness is good character." *Muslim*

"*Akmalu al-mu'mineen imaanah ahsanuhum khuluqan.*" "The believers with the most complete *iman* are those with the best character." *Abu Daud and it is sahih.*

In An-Noor verse 26, Allah establishes the relation of this issue to marriage:

{*Al-khabithaatu lil-khabitheena wa al-khabithoona lil-khabithaati wa at-tayyibaatu lil-tayyibeena wa at-tayyiboona lil-tayyibaati.*} {Bad women are for bad men and bad men are for bad women. And good women are for good men and good men are for good women.} *An-Noor:26*

The word *khabith* translated as "good" above means filthy, unclean and despicable. It is a very strong word. The word *tayyib* translated as good, connotes clean and pure as well as good.

One of the important issues of character in the spouses is the quality of *wudd*. This means kindness and lovingness and compassion. The Prophet (sas) said:

"*Tazawwajoo al-wadood al-walood fa inniy mukaathirun bikum al-umama yaum al-qiyama.*" "Marry the loving/friendly, the child-bearing for I shall outstrip the other nations with your numbers on Qiyama." *Ahmad, Abu Daud and others and it is sahih.*

Therefore, the prospective spouses must ask and find out about the other person's behavior and manners. As a sign also, one may look at the other person's family's manners and behavior and many times (but not always) the behavior of people of the same family are similar. In other words, some characteristics tend to run in some families whether they be good or bad characters such as anger, politeness, stinginess, generosity, lying, truthfulness and so forth.

Child-Bearing

As we say in the previous hadith, the Prophet (sas) recommended men to marry those women who are child-bearing. This characteristic is related to some of the goals and purposes of marriage that were mentioned earlier such as procreating the Muslim Ummah, raising a pious family as a cornerstone of society and so forth.

The scholars mention that a man can look at a woman's female relatives to get an idea whether she is apt to get pregnant easily and often or not. This attribute should also apply to the man. For example a man who say before Islam had a vasectomy would not be an appropriate husband for a Muslim girl getting married for the first time.

Virginity

There are many hadith which recommend a man marry a virgin woman such as the following:

"Tazawwajoo al-abkaara fa innahunna a'dhabu afwaahan wa antaqu arhaaman wa ardhaa bil-yaseeri." "Marry virgins for they have sweeter mouths, more productive wombs and are more pleased with less." *At-Tabaraani and it is hassan*

Other narrations indicate that she is more likely to be pleased by a man and less likely to be devious and deceiving. Once, when Jaabir married an older and previously married woman, the Prophet (sas) said to him:

"Halaal bikran tulaai'buhaa wa tulaai'ibuka." "Why not a virgin? You could have played with her and she with you."

The scholars have stressed that this good attribute applies to the husband just as it applies to the wife. One of them wrote: "Similarly, it is preferred for a person not to marry his daughter except to a virgin man if she has never been married before." Umar ibn Al-Khattab once heard about a woman who was married to an elderly man and he said: "O people, fear Allah and marry a man to a woman who is similar to him and marry a woman to a man who is similar to her."

Beauty

This characteristic has a certain role to play since one of the purposes of marriage is to keep both spouses from sins. The best way to do this is to have a strong attraction between the spouses. Although this is something which surely grows over time, initial impressions can in some cases become an obstacle to a successful marriage. The Prophet (sas) separated Qais ibn Shamaas from his wife in the famous case of Khul'a and her stated reason was that he was exceedingly displeasing to her. There are many hadith which urge the prospective spouse to get a look at the other before undertaking the marriage. Once a companion told him (sas) that he was going to get married. The Prophet (sas) asked if he had seen her. When the man said no, he (sas) said: *"Idh-hab fandhur ilaihaa fa innahu ahraa an yu'dama bainakum."* "Go and look at her for it is more likely to engender love between the two of you." *Ahmad and others and it is sahih.*

Umar ibn Al-Khattab once said: "Do not force your young girls to marry an ugly man, for they also love what you love." Ibn Abideen (a famous faqeeh from last century) said: "The woman should choose a man who is religious, of good character, generous and of ample wealth. She should not marry an evildoer. A person should not marry his young daughter to an old man and an ugly man but he should marry her to one similar."

Beauty has its role, but remember that it is way down on the priority list under piety, character and *deen*. When a person puts beauty above all else, the results can be disastrous. This is one of the big reasons that young people seeking to get married must be helped by more mature family members in making their choice.

Looking at a Prospective Spouse

As we have seen, the Prophet (sas) encouraged men considering marriage to a particular woman to get a look at her. He (sas) said in another hadith:

"Idhaa khataba ahadukum al-mar'ata fa'in istataa'a an yandhura minha ilaa ma yad'oohu ilaa nikaahihaa falyaf'al." "If one of you proposes to a woman and if he is able to look at of her that which motivates him to marry her, let him do so." *Abu Daud & others (hassan)*

Note that this hadith does not abrogate the limits of what a woman may expose to non-mahaarim. She must continue to be well covered except for her face and hands in front of all of them and the prospective husband, even if he has proposed, is no exception to this. Even such a one is still only permitted to see what anyone else is permitted to see. The difference is that he is allowed to take a good look - if it were not for the proposal of marriage, both would be required to avert their eyes after the first glance. As the Prophet (sas) said to Ali about the look at a non-mahram woman: "The first is for you, the second is against you."

Also, it is clear that the purpose of this look is very specific: to help one determine whether or not they would like to marry that person. Once that has been determined and the decision has been made, it is no longer permissible for them to look at each other. If a man and a woman decide that they want to marry each other, this does not make it allowed for them to continue to see each other. Just the opposite, since the decision has been made there is no longer any need for them to see each other and they are no longer allowed to do so. This is because until the moment the offer and acceptance of the marriage have been pronounced, there is no relationship of any kind between them and all of the laws regarding strange men and women still apply to them.

There are a number of important points which pertain to this issue:

1. Some scholars say that this look is sunnah (i.e., recommended) while others say that it is simply permissible. The hadith would seem to favor the first point of view.
2. It can only be done if the person actually intends marriage to the person AND there is a real possibility of it taking place. Otherwise, such a look remains forbidden.
3. It cannot take place in private. In other words, it is not allowed for a man and a woman who are not married - even if they are "engaged" - to be alone together.
4. The look can occur more than once - if and only if the objective has not been accomplished.

5. There are several opinions about how much of the woman is lawful to be seen in this context as follows:

He can see what anyone else can see i.e., he can look at her when she is dressed in the proper outdoor dress of a Muslim woman. This is the mainstream opinion, the safest one and the one which agrees with all of the evidence.

One opinion among the Hanbali school of thought which says that he can see her in normal indoor (around only her family) dress which would include the exposing of her neck, arms, lower legs, etc.

One bizarre and off-the-wall opinion from the Dhahiri (literalist) school of thought which says that he may view her entire body. Although they have linguistic arguments to extract this from the hadith, this practice is completely unfounded since it contradicts many verses of Qur'an and other hadith and is not supported by any known practice of the Companions or the first few generations.

7. The scholars recommend that this look take place when one has intended a proposal but the actual proposal has occurred. Although the apparent of the hadith seems to indicate otherwise, this is regarded as better in order to avoid hurting the woman's feelings if the man changes his mind after seeing her.
8. The majority of scholars say that her foreknowledge or permission is not needed - especially since he is merely seeing her in public and in a way that anyone else can see her. The Maliki school of thought says that it is disliked to look at her when she is unaware since evil men may use this as an excuse to look at women all the time and when told to stop would say "We are thinking of proposing to one of them."

Women Looking at a Prospective Husband

The woman also has a right to look at her prospective husband. Many scholars have stated that "The women like the same things we like." Some have even said that it is MORE important for the woman to see the man. This is because the man holds the right of instant and unconditional divorce in case he is displeased with his wife. It is not so easy for the woman to get out of a marriage and so she must have priority in this issue.

Being Alone With (Khalwa) a Prospective Spouse and Other Questions

Can a Man be Alone with His "Fiancee"?

Again, no matter what words, promises, commitments, etc. have passed between the parties, until the marriage contract has been transacted and a man and woman are actually married, there is no relationship at all between them and they are to each other as any other strange man and woman.

The Prophet (sas) has forbidden for a man and a woman to be alone together. This ruling applies to a "fiancee" just as much as it applies to any other unrelated man and woman. One of the hadith which make this clear is:

"Laa yakhluwanna rajulun bi imra'atin illa ma'a dhiy mahram." "A man cannot be alone with a woman except along with a male relative [of hers]." *Bukhari & Muslim*

Touching

Obviously, since those "engaged" to be married have no legal relationship beyond any other strange man and woman, obviously any form of touching between them is not allowed. The Prophet (sas) said:

"La'an yut'ana fiy ra'si ahadikum bi makheetin min hadeed khairun lahu min an yamassa imra'atan laa tahillu lahu." "For one of you to be stabbed in the head with an iron needle is better for him than to touch a woman who is not permissible to him." *At-Tabarani (sahih)*

Phone Calls

All the scholars have pointed out that it is not proper or acceptable for "fiancees" to be alone together or to have numerous encounters for the purpose of "getting to know each other". In fact, this is a horrible innovation that has spread among the Muslims. It must always be remembered that until they are married, they are like any other unrelated men and women to each other and their actions must reflect that fact.

Obviously, it is not allowed to be alone with, have telephone conversations or internet "chats" with unrelated men or women in order to "get to know each other". Those intending marriage but as yet unmarried are in the exact same position. Such disobedience in the very course of seeking an act of obedience (marriage) very much in need of Allah's blessing can have serious and long lasting effects in the destruction of the marital relationship after that. This is clearly the result of the similar "experiment" going in western societies over the last decades: the more they "open" these kind of issues the more disastrous their marriages become. Recently, the success rate of marriages in the U.S. dropped below 50%. This in spite of complete freedom of the couple to "get to know each other" in EVERY way and for as long as they wish before marriage. Muslims - most of whom are heading down this same road - need to wake up and take heed. The Prophet (sas) said:

"La tattabi'unna sunan alladhina min qablikum shibran bi shibrin wa dhiraan bi dhiraan hatta lau dakhaloo juhra dhubbin ladakhaltumoohu."

"You will follow the ways of those who came before you foot by foot and yard by yard and even if they go down a lizard's hole, you will follow them."

Difference Between "Engagement" and Delaying Consummation

In many Muslim countries, people transact the marriage contract, but agree not to actually begin the marriage until after a certain period of time. There is nothing wrong with this custom with two conditions:

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1. The time period is not excessively long.
2. All parties understand that the two are legally married, their agreement to delay being together is not binding and there is nothing wrong if they change their mind and decide to be together before the appointed time.

This is quite different from the imported custom of "engagement". The only parallel to this western custom which many Muslims have adopted is what is called "*khitba*" which is the time between the beginning of discussions and the acceptance or rejection of the offer. In short, this has no legal validity of any kind and does not change anything about the relationship between the man and woman. Extending this to very long periods of time or worse, violating the Shari'a during that time in the ways we have discussed is a horrendous innovation (*bid'a*) which has spread among the Muslims.

Recommended Steps

The following are important steps not only for those interested in getting married but also for any others involved in the process of facilitating a marriage. The entire process, in order to be successful with Allah's blessing, should be proper and consistent with the teachings of the Qur'an and the Sunnah. All other endeavors will lead to misery and discord.

1. Both spouses should seek to get married purely for Allah's pleasure and in order to fulfill the purpose of marriage in Islam.
2. Both must put full trust in Allah that if they do everything properly and in accordance to the *Shari'a* that Allah will bless them with a good spouse and that any other approaches are falsehood and will not lead to Allah's blessing and success in marriage.
3. They should make *du'a* to Allah for a pious spouse who will aid them in their Islam and worship.
4. They should be very patient. The process of marriage may take a long time especially in areas where Muslims are a small minority.
5. If a person has Muslim parents, they should seek their help in finding a spouse. If not, they should seek help from married Muslim men and women.
6. When a person is found, they should seek advice from various parties familiar with the person.
7. They should see the prospective spouse and perhaps speak with them (not alone).
8. One should ask relevant questions and make clear the Islamic foundation of the marriage.
9. Both should pray *istakhaara* to seek Allah's counsel.
10. Before the marriage contract, all dealings should be with the *wali*, and no attempt should be made to strike up a relationship with the future spouse before the marriage.

11. They should avoid all of the innovations surrounding marriage which are so widespread among the Muslims.

Review Questions

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1. True or false: According to the scholars, the quality of being a virgin is only important in the case of the woman.
2. True or false: Wealth should never be a consideration when thinking about marrying a man.
3. True or false: According to the majority of the scholars, a person may only look at a woman's face and hands when considering proposing to her.
4. True or false: Once a man has proposed marriage to a woman, it is permissible for them to be alone together, go out on chaperoned dates and other similar acts.

Chapter [5]

The Marriage Contract

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Goals of this Chapter

Definition of some important *fiqh* terms including *arkaan*, *shuroot*, *sahih*, *baatil* and *faasid*.

The different conditions and/or prerequisites needed for a marriage contract to be considered valid, enforceable and binding.

In particular, the importance of the guardian (*wali*), witnesses (*shuhood*) and the dowry (*mahr*).

General concepts concerning conditions or stipulations in any type of contract and the ruling regarding adding such stipulations into a marriage contract in particular.

The ramifications and effect on the contract when certain conditions are not properly met.

Introduction

Marriage in Islam is a contract. Thus, as in any contract in Islam, there are elements which are considered essential to its existence, called *arkaan*, the possibility of stipulations of different kinds, legal effects of the contract, etc. Each of these should be understood properly in order to ensure that the marriage has been performed in the proper manner and the rightful effects of the marriage are granted to each of the participating partners.

Definition of *Rukn* and *Shart*

Rukn (plural: *arkaan*) can be translated as "pillar" and is an essential part of the legal reality of something. Without it, that legal reality does not exist.

Shart (plural: *shuroot*) can be translated as "prerequisite" or "condition" is a requirement for the legal reality/validity of something but 1) is external to it and/or 2) does not completely void the legal reality if not found.

Az-Zuhaili writes:

"According to the Hanafis, a *rukun* is something upon which the existence of something else is dependent, however it is also part of that thing which is dependent on it. A *shart* for them is a prerequisite upon which the existence of something else depends but it does not form a part of that other thing.

For the majority (of the scholars), a *rukn* is the thing upon which something and its existence rests, it cannot be in reality without it or it is something which is a must. Their famous expression is "It is a thing by which the *shari'a* reality of a thing will not exist except with it." That is the case regardless of whether it be an actual part of the thing or something separate from it. A *shart* for them is something upon which another thing is dependent but which does not form part of it." (Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami wa Adillatuhu* (Berut: Dar Al-Fikr, 1985) vol. 7 p. 36)

The following example will demonstrate the different between the Hanafi approach and that of the rest of the schools of thought. The actual existence of the girl that is to be wed is something external to the process of the marriage contract. Therefore, since it is external, the Hanafis would not call it a *rukn* although, obviously, no marriage would actually take place without her existence. This makes it a *shart* in their terminology. In the other schools of thought, the fact that no marriage can occur without the existence of the girl getting married is sufficient to call her existence a *rukn* of the marriage contract even though her existence is external to the actual contract process itself.

The *Arkaan* of a Marriage Contract

All the scholars agree that "offer and acceptance" (*Al-Ijaab wa al-qubool*) is among the *arkaan* of a marriage. There is a difference of opinion concerning the other *arkaan* as discussed below:

The Arkaan of a Marriage According to the Hanafis

Offer and acceptance are the only *arkaan* of the marriage contract in Hanafi fiqh due to their definition of *rukn* as explained above. Furthermore, in Hanafi fiqh, the offer/acceptance can begin from either party.

The Arkaan of a Marriage According to the Jamhooir (Majority of Scholars)

1. Offer and acceptance are among the *arkaan*. For most of these scholars, the offer must be from the woman's side and the acceptance from the man.
2. The two parties to the contract: the prospective husband and the guardian of the woman.

Some also count the following among the *arkaan*, although the majority of these scholars count them among the *shuroot*:

- The presence of witnesses.
- Dowry.

The Wording of the Contract

There are a variety of opinions as to exactly which phrases are valid in the transaction of the marriage contract. Of all these opinions, it seems clear that the best of them is that any wording that makes the intent of the contract clear to all involved should be considered a valid marriage, while the best format would be that actually used by the Prophet (sas) and his companions. Also, it is considered best if the contract is executed in spoken form. However, due to need or necessity, it may be done through writing or signing.

Among the different possible phraseology, the very clear terms such as "I marry you" as accepted by all. Anything which indicates a temporary nature of the contract is forbidden. In others there is some difference of opinion such as "I present to you", "I give to you", "I sell to you", etc.

The Hanafi and Maliki Approach

This opinion says that any term which is clear by itself or by the context and in this way implies marriage would be considered valid if the witnesses and the parties understand it as such. This supported by the following segment of along verse in which Allah mentions all of the categories of women which are halal for the Prophet (sas):

{...*Wa imra'atan in wahabat nafsahaa lin Nabi in araada an-nabiy an yastankihahaa khaalistan laka min duni al-mu'mineen...*}
 {...and a woman who gives herself to the Prophet if the Prophet wishes to marry her - exclusively for you and not the [rest of the] believers...} *Al-Ahzaab:50*

It is also reported that the Prophet (sas) himself used the following expression in performing a marriage:

"Qad mallaktukahaa bima ma'aka min al-qur'an." "I have put her in your possession for the Qur'an which you possess." *Al-Bukhari*

The Hanbali and Shafi'iy Approach

This opinion says that the marriage is not proper unless it uses forms of the following words which are found in the Qur'an and hadith: *nikah* or *zawaaj*. Their response to the above evidence is that since the verse clearly applied to something given specifically to the Prophet (sas) it is not applicable here and that the actual words of the hadith are from the narrator who may not have transmitted it exactly. Bottom line: Marriage is a contract and, like any other contract if the intention and goal of the contract is clear to all parties, there need not be any additional restrictions on the actual words used. On the other hand, due to the seriousness of this contract, there is no hardship in sticking to the original words used most commonly by the Prophet (sas) and his companions.

Does it Have to be in Arabic?

According to the majority of the scholars, it is not necessary for the marriage contract to be transacted in Arabic, even for those who have the ability to speak Arabic. Those in the Hanbali school who required the use of forms of the words *nikah* or *zawaaj* also required that the contract be transacted in Arabic for this reason.

The Different Types of *Shuroot* (Conditions or Prerequisites)

At this point, we need to learn the definition of some general terms in Islamic *fiqh* which come up in many subject areas, including the one at hand.

Sahih (Sound). A contract which fulfills all of the *arkaan* and the *shuroot* and has full effect in the law.

Baatil (Void). A contract that has failed to fulfill specific *arkaan* or vital *shuroot*. A contract which is *baatil* is the opposite of one which is *sahih* and has no legal effect at all. If a marriage contract is found to be void, even if it is only discovered after consummation, the legal condition will be as if it never happened at all. The lineage of the father will not be established and there is no waiting period (*'iddah*) upon the woman. An example of this would be if a man married a woman who was married to someone else at the time.

Faasid (Defective). This is a contract which fails to fulfill some of the *shuroot*, but not the *arkaan*. For non-Hanafis, *faasid* and *baatil* have the same meaning. In Hanafi *fiqh*, a marriage which was *faasid* has some legal ramifications, especially if it was consummated.

With respect to marriage, there are four different kinds of conditions which must be met:

1. Conditions Required for Initiating the Contract (*shuroot al-in'iqaad*). These are the conditions that must be present with respect to the *arkaan* or fundamentals of the marriage contract.
2. Conditions Required for the Soundness of the Contract (*shuroot as-sihha*). These are conditions which must be fulfilled in order for the marriage to have its proper legal effect. If these conditions are not met, the contract is "defective" (*faasid*), according to Hanafi *fiqh*, "void" (*baatil*) according to the others.
3. Conditions Required for the Execution of the Contract (*shuroot an-nifaadh*). These are conditions which must be met for the marriage to have actual practical effect. If these conditions are not met, then the marriage is "suspended" (*mauqoof*) according to Hanafi and Maliki *fiqh*. For example, a minor girl until she reaches puberty.
4. Conditions Required for Making the Marriage Binding (*shuroot al-luzoom*). If these conditions are not met, then the marriage is non-binding meaning that either of the two parties or others may have the right to annul the marriage. If they accept the marriage with such shortcomings, it becomes binding.

First: Shuroot Required for Initiating the Contract

In this category, there are conditions concerning the two who are getting married as well as the form in which the contract takes place.

Concerning the Two Getting Married

The two people must meet the qualification of legal competence, i.e, they must be adult and sane. If they are not, the marriage will be invalid.

Secondly, the woman cannot be from those categories of women that are forbidden for a man to marry. For example, suppose a man married a woman and later discovered that they had been breastfed by the same woman. In this case, it is as if the marriage never took place because those two were not qualified or allowed to marry each other and the marriage becomes null and void.

Concerning the Contract

There is near complete agreement on the following conditions relating to the transaction of the marriage contract:

1. The offer and acceptance must be done in one sitting. In general, this means that the response must be immediate. Exactly what is considered a "sitting" depends on custom and related factors.
2. The acceptance must correspond to what is being offered. If the guardian says: "I marry you to Khadijah", a response of "I accept Fatimah as my wife" would not constitute a valid contract. An exception to this is if the *wali* mentions a specific dowry amount and the groom responds with a higher amount. It is regarded that there is no reason for dispute since it is assumed that a higher dowry will be acceptable.
3. The *wali* cannot rescind the offer. Unlike transactions of selling, neither party can say "I have changed my mind" once they have uttered the offer/acceptance. It is immediately binding. In a sale, they both continue to have the option to change their mind until the "sitting" is over and they part.
4. The marriage must be effective immediately. If the *wali* says "I will marry her to you after one month", there is not marriage and the two remain unmarried.

Note that the custom of saying "I accept" three times common in some Muslim cultures has no legal significance. Once the first "I accept" has been uttered, everything after that is meaningless - whether positive or negative.

Adding Stipulations to the Marriage Contract

This is where one party states a stipulation binding on the other party for specific reasons or goals. The offer/acceptance are tied to this stipulation by mention. There is a difference of opinion among the scholars concerning the validity of conditions of this nature.

Conditions of contracts are two types: 1) those imposed directly by the *shari'a* and 2) those drawn up by one or more of the parties. When any contract is entered into, the first type of conditions are covered automatically even if they are not stated in the contract.

Understood Conditions Based on what is Customary

It is a general principle in *fiqh* that customs can take the status of law. It becomes understood that people are going to behave in a certain fashion. Since that is understood, one party has the right to ask it of the other even if it is not stated in the contract. In the area of marriage, there are some stipulations that are known by custom. These do not have to be mentioned in the contract to be considered binding. However, there are some strict conditions that must be met before a customary act is considered something equivalent to a legal stipulation. These conditions are as follows:

1. The customary practice cannot contravene or contradict anything expressly laid down by the *shari'a*. For example, it is custom in some parts of the world for the woman to pay dowry to the man. In other parts, it is customary to prepare two or three times amount of food that the guests could possibly eat at the *walima* (wedding feast). Neither party has the right to demand of the other the fulfillment of such customs.
2. The customary act must be common, well-known and universal and not something practiced only by some portions of the population.
3. The custom must have been in existence and known before the marriage contract took place.

Other conditions Laid Down by the Two Parties

Any condition which contradicts, compromises or nullifies the main goals and purposes of the marriage contract itself are rejected and, even if stated, are of no legal consequence. For example conditions which state that the woman receives no dowry or that he does not have to support her or that they will not consummate the marriage are all null and void and of no effect whatsoever.

Such conditions must be stipulated and agreed upon at or before the time of the offer/acceptance. Even those scholars who accept such stipulations do not accept them if they are made after the offer/acceptance.

Sound and Acceptable Stipulations

There are two types of sound and acceptable stipulations:

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1. Those embodied in the contract even if they are not stated. This includes conditions known from the *shari'a* as well as those known from custom as discussed previously. The Prophet (sas) said: "*Ahaqqu maa aulaitum min ash-shurooti maa istahlaltum bihi al-furooj.*" "The conditions which you have the most duty to fulfill are those by which you have made marital relations lawful." *Bukhari & Muslim*. Many scholars understand this hadith to be referring to these kinds of conditions only, that is, those that are covered by the *shari'a* in the first place. This is the view of the *shafi'i* school. They do not allow any additional stipulations to be added to the marriage contract.
2. Those conditions not covered by the essential nature of the contract but which are agreed upon by the contracting parties. These are those stipulations that do not contradict the general goals of the contract, do not bring harm to anyone and which apply to things which are permissible and within the right of the person to agree - that is something that does not go against the *shari'a*. They are laid out in the beginning to avoid any conflict or hardship in the future.

In General, Muslims Must Fulfill Their Agreements

Generally speaking, Muslims must comply with any agreements that they make. Allah said about the believers:

{...*Wa al-moofoona fi 'ahdihim idhaa 'aahadoo...*} {...And those who fulfill their pacts when they make one...} *Al-Baqara:177*

{*Yaa ayyuhaa alladhina aamanoo aufoo bi al-'uqood...*} {O you who believe fulfill your contracts...} *Al-Ma'idah:1*

The Prophet (sas) said: "*Al-muslimoona 'alaa shurootihim.*" "Muslims are bound by their stipulations." *Abu Daud & Al-Hakim (sahih)*

During the time of Umar ibn Al-Khattab, a man married a woman upon the condition that he would not move her from his house. The time came when he wanted to move her. They took their dispute to Umar and he said: "She has the right to her stipulation." The man said, "In that case, they will certainly end the marriage." He said, "The rights are broken off due to the stipulations." This was the view of many of the Companions, Followers and scholars including Saad ibn Abi Waqqas, Mu'awiyah, Amr ibn Al-Aas, Shuraih, Umar ibn Abdul Aziz, Tawoos, Al-Awzaa'i and Ishaq.

There is another opinion which says that external stipulations - those not covered by the nature of the contract itself - carry no weight and need not be met. This was the opinion of Abu Hanifa, Ash-Shafi'i, Malik, Az-Zuhri, Qatada, Al-Laith, Ath-Thauri, Ibn Al-Mundhir and has been narrated from Ali.

The Proofs of Those Who Say that Such Stipulations are Neither Binding nor Valid

"*Kullu shartin laisa fiy kitaabi Allahi fahuwa baatil wa in kaana mi'atu shartin.*" "Every stipulation which is not in the book of Allah is void even if it be one hundred stipulations." *Muslim & Bukhari*

They also cite the following extension to the hadith mentioned earlier about stipulations:

"*Al-Muslimoon 'alaa shurootihim illa shartin ahalla haraaman au harrama halaalan.*" "Muslims are bound by their stipulations except for a stipulation which makes the unlawful lawful or makes the lawful unlawful."

However, this version of the hadith with the added sentence is weak and cannot be used as evidence. As for the hadith mentioned earlier that "The conditions which you have the most duty to fulfill are those by which you have made marital relations lawful.", they claim that this only applies to the conditions which are essential parts of the nature of the contract itself.

Response to Those Arguments

The scholars who permit such stipulations in the marriage contract have responded to the above. As for the hadith "Every stipulations which is not in the book of Allah...", they say that for a woman's *wali* to make some conditions to her advantage is something permissible and does not go against the Book of Allah.

Actually, such conditions do not violate the Book of Allah and do not make anything forbidden permissible, etc. They simply give the woman the right to annul the marriage if the condition is not satisfied.

Also, there remains no real meaning to the hadith "The conditions which you have the most duty to fulfill..." if one says that it only applies to conditions that are already in force due to the nature of the contract anyway.

The Crux of this Difference of Opinion

This discussion boils down to the understanding of two seemingly contradictory hadith:

"Every stipulation which is not in the book of Allah is void even if it be one hundred stipulations." *Muslim & Bukhari*

"The conditions which you have the most duty to fulfill are those by which you have made marital relations lawful." *Bukhari & Muslim*

It seems clear from the second hadith along with the fatwa of Umar mentioned earlier that there is some room for adding stipulations to a marriage contract. It also seems clear from the first hadith that there are limits on what can be stipulated. Specifically, any stipulations which go against the basic goals and principles of the marriage contract and not allowed and, if stated, are null and void. Thus, the only remaining problem is understanding exactly how this principle applies in practical situations.

For those scholars who don't accept such external stipulations at all, they have no effect, are not binding, and don't affect the validity of the underlying contract. For those who accept them, they give the woman the option to annul the marriage upon her request if the condition is violated. We only mention the woman because the man can divorce at any time with or without a particular cause and so has no need of such an option. Notice that even in the fatwa of Umar, he didn't require the man to fulfill the condition, rather he allowed that she could end the marriage if she so demanded.

Conditions for Which there is Agreement that they are Invalid

Even those who accept these stipulations all agree that certain conditions are not allowed. Among them are the following:

1. *Nikaah Ash-Shighaar*. This is where the two dowries are stolen and "exchanged". For example a man marries his son to another's daughter in "exchange" for the other marrying his daughter to the first one's son. Neither woman receives their dowry.
2. *Nikaah Al-Mut'a*. Any kind of marriage with a stipulated time limit.
3. *Nikaah At-Tahleel*. A woman who has been divorced three times and wishes to return to her first husband marries a man on the condition that he divorce her. If this is discovered or if this is her intention, the first husband still does not become lawful for her in spite of this marriage.

Second: Conditions for the Soundness of a Marriage Contract

There are ten conditions (*shuroot*) in this category. Some are agreed upon by virtually all the scholars while others are the subject of some disagreement.

1. The woman is permissible to the man. i.e., that she is not one of those forbidden to him by relation, nursing or other existing and conflicting marriage. Some would consider this one of the *arkan* (pillars) or one of the conditions for initiating the contract. In any case, this condition must definitely be met.
2. The offer and acceptance is of a permanent nature and not temporary. All forms of temporary marriage are forbidden in Islam. If anything stated in the offer and acceptance indicates a temporary nature, the marriage is not valid.
3. Two non-discredited witnesses. There is some difference of opinion on this issue, but in the final analysis, the hadith is clear.

4. Ibn Taimia mentioned four existing opinions on this issue:

(1) The marriage must be announced and made public, regardless of whether the contract was actually witnessed or not. This was the opinion of Malik as well as the scholars of hadith, the Dhaahiris and one opinion reported from Ahmad.

(2) It is obligatory to have witnesses, regardless of whether the marriage contract is made public or not. This was the view of Abu Hanifah, Ash-Shafi'iy and another opinion reported from Ahmad. (3) Both witnesses and a public announcement are necessary. This is a third narration from Ahmad.

(4) Either one of the two is necessary. This is a fourth narration from Ahmad. Ibn Taimia himself felt that the second opinion (only witnesses required) is weak. He claimed that there was no authentic source for same and that it was not widely known among the Muslims. Instead, what is required is the public pronouncement letting the people know that the parties got married. He says that if a marriage takes place without witnesses or public announcement it is definitely invalid, if it takes place with witnesses but no announcement it is questionable and if it takes place with both it is definitely valid.

The portion of Ibn Taimia's opinion which finds the witnesses NOT a requirement must be rejected, because the hadith on this subject has been found to be sahih: "*Laa nikaaha illa bi waliyin wa shaahidaiy 'adlin*" "No marriage except with a guardian and two non-discredited witnesses." So the bottom line here is that BOTH the witnesses AND the public announcement are required. In fact, regarding public announcement, the Maliki school says that if the other parties ask the witnesses to keep it silent that the marriage is not valid and the two are to be separated - PERMANENTLY! The Hanbali school holds that such a marriage is not invalid although it is disliked to do so. The witnesses must be two adult and sane Muslim men whose testimony has not been previously discredited.

5. Both parties to the contract and the bride have willingly accepted the marriage.

The Hanafis say that this is not a condition, but their position is unacceptable and rejected because of ample evidence from the Qur'an and the Sunnah to the contrary. In the *jahiliya*, Arabs used to "inherit" (i.e., forcibly marry) their brothers wives if they died. Allah forbid this saying: {*Yaa ayyuhaa alladhina aamanoo, laa yahillu lakum an tarithoo an-nisaa'a karhan...*} {O, you who believe, it is not lawful for you to inherit women against their will...} *An-Nisaa:19*

There are also two sound and very clear hadith on this matter: "*Laa tunkahu al-ayyimu hatta tusta'mara wa laa tunkahu al-bikru hatta tusta'dhana qaaloo yaa rasoolu Allahi kaifa idhinihaa? Qaala: an taskut.*" "A previously married woman cannot be married until her order is sought and a virgin cannot be married until her premission is sought. They said: How does she give permission? He (sas) said: If she keeps quiet." *Bukhari & Muslim* "*An ibn Abbasin anna jaariyatan bikran atat an-nabiyya (sas) fa dhakaratu lahu anna abaaha zawwajaha wa hiya kaariyatun fa khayyarahaa an-nabiyyu (sas)*"

"From Ibn Abbas that a virgin girl came to the Prophet (sas) and mentioned that her father had married her against her will and so the Prophet (sas) gave her the choice." *Abu Daud & others (sahih)*

Many early scholars allowed this in only one case: a father or grandfather marrying a girl below the age of puberty without her consent. According to them, she has no right to refuse the marriage upon becoming mature. This position is clearly unacceptable and rejected based on the above verse and ahadith.

6. The bride and groom are specifically identified and known.
7. Neither of the two contracting parties are in a state of *ihraam*.
8. The marriage must be with a dowry (*mahr*). It does not have to be exactly specified nor does it have to change hands, but it has to be there. More is coming on this subject later.
9. The parties and witnesses are not bound to keep it quiet. It is not allowed to make attempts to keep a marriage a secret. The universal custom of the Arabs before Islam was to have marriages very publicly where all around became aware of its existence. Islam confirmed this practice and it is the only acceptable way of marrying. As we have seen, the Maliki school takes this so seriously that they separate the two parties permanently. Some other scholars said that it was a wrong practice, but didn't necessarily invalidate the marriage.
10. No party is on his/her deathbed. The "parties" intended here are the bride and the groom. This is because of possible injury to the heirs because of another person becoming entitled to inheritance.
11. The presence of the guardian or representative (*wali*) of the woman. The *wali* is a Muslim man charged with marrying the one under his charge to a man who will be good for her. There is no disagreement that the first *wali* is her natural father if he is Muslim and that the last in line is the ruler. Between those two, there is some disagreement about the order but agreement that they come from the girl's fathers relatives - no one from her mother's side enters into the picture. The order, according to many is: father, paternal grandfather, son, grandson, full brother, paternal half-brother, paternal uncle. The *wali* is an absolute requirement for a marriage, and any marriage done without him is null and void according to the following hadith: "*Laa nikaaha illa bi waliyyin wa as-sultaanu waliyyu man laa waliyya lahaa.*" "No marriage except with a guardian and the ruler is the guardian of she who has no guardian." *Abu Daud & others (sahih)*

"*Ayyumaa imra'atin nakahat bi ghairi idhni waliyyihaa fa nikaahuhaa baatilun fa nikaahuhaa baatilun fa nikaahuhaa baatilun.*" "If any woman marries without the permission of her guardian, then her marriage is void, then her marriage is void, then her marriage is void." *Abu Daud & others (sahih)* It is the job of the *wali* to marry her to the best possible husband. He must not be guided by his desires nor by her desires. If the person is acceptable in both his religion and his character and appropriate to her in some other way discussed by the scholars, then he must facilitate the marriage and not refuse it for his own desires or biases. If the conditions are not right, then he must refuse the marriage, even if both the woman under his charge and the man desire it. This is a grave trust and he must do his best to fulfill it properly and not bring harm to the woman and/or to society. Allah said: {*Yaa ayyuhaa alladhina amanoo laa takhunoo Allaha wa ar-rasoola wa takhunoo amaanaatikum wa antum ta'lamoona.*} {O, you who believe, do not commit treachery against Allah and against the Prophet (sas) nor betray your trusts though you know.} *Al-Anfaal:27*

What about the case where the *wali* refuses someone on a non-Islamic basis? As was stated earlier, it is the job of the *wali* to act in the best interest of the woman according to the standards established by Islam. If a qualified person asks to marry the woman and he turns him down, then he is not doing his job. In such a case, the woman can complain to the judge or ruler and have her *wali* "fired" (removed). The scholars then differ as to who becomes her new *wali*, the next male relative in line or the ruler. The *wali* must be the same religion as the woman. A non-Muslim father cannot be the *wali* for his Muslim daughter.

A Rejected Opinion of the Hanafi School

In the Hanafi school of thought there is an opinion that the *wali* is not a requirement for the validity of the marriage. They even claim to have an argument from Aisha, the one who narrated the hadith: "*Laa nikaaha illa bi waliyyin wa as-sultaanu waliyyu man laa waliyya lahaa.*" "No marriage except with a guardian and the ruler is the guardian of she who has no guardian." *Abu Daud & others (sahih)*

They say that: "Aisha married the daughter of her brother, Hafsa bint Abdul Rahman while Abdul Rahman was gone to Sham. When Abdul Rahman returned he was upset but he did not wish to undo what Aisha had done so he left his daughter with her groom, Al-Mundhir ibn Az-Zuhair."

Other scholars responded to their argument: It seem from other narrations of the same incident that Aisha simply set up the arrangement but did not actually perform the marriage. Also, it was Aisha herself who said that "Women cannot perform marriages." In this way, she did not contradict what she herself narrated from the Prophet (sas).

Being Serious is NOT a Condition for the Soundness of a Marriage Contract

Note that marriage is not a laughing matter and is very serious. Therefore, the mere words make the marriage happen and intention is not required. Also, as we have seen, there is no *khiyaar al-majlis* (a choice to back out until the sitting is concluded and the parties part ways) in marriage as there is in sales and other contracts. The Prophet (sas) said: "*Thalaathun jidduhunna jiddun wa hazluhunna jiddun: an-nikaahu wa at-talaaqu wa ar-ruj'atu.*" "Three things which when serious are serious and when vain are serious: marriage, divorce and returning (to one's wife after a divorce)." *Ahmad & others (sahih).*

Third: Conditions for the Execution of a Marriage Contract

1. The bride and groom must be legally capable for such a marriage, i.e., sane, conscious, past the age of puberty, etc. The contract can take place earlier than this, but the execution must wait until the time that they can actually enter into the marriage relationship.

2. The *wali* who performed the marriage was not a more distant *wali* while a closer one was alive and reachable. For example, if the woman's uncle married her to someone, the marriage would not be valid unless and until the woman's father's consent was verified. In such a case, the contract could be executed.

Fourth: Conditions for the Marriage Contract to be Binding

If these conditions are met, neither party has the right to annul the marriage.

1. If the marriage of an underage or insane person is done by other than the father or the grandfather, then the father or grandfather has the right to annul it.
2. That the husband is socially compatible and qualified for the woman.
3. That the dowry is at least equivalent to those similar to her.
4. That there is no defect in either spouse. Included in this category would be the case where the woman was said to be a virgin but is then discovered to be otherwise or where either spouse is not physically capable of marital relations.

If, after being married, any of these conditions are not met, both parties (bride and groom) would have the right to annul the marriage. The matter would be taken to a judge or one in authority. However, this is a right or an option. Once the parties accept the marriage with the deficiency it contains, they will after that be bound to such a marriage.

Effects of the Various Conditions on the Marriage Contract

Based on which conditions above are or are not fulfilled, the ruling concerning the validity and legal effect of the marriage contract differs among different schools of *fiqh*. In the *hanafi* school, a contract may fall into one of five categories: sound and binding, sound and non-binding, suspended, defective and void. For most of the other scholars, the marriage contract will fall into one of three categories: sound and binding, sound and non-binding or void.

The following table describes the effect of failure to meet certain conditions on the legal effect or conclusion concerning the contract itself:

Effects on the Marriage Contract of Failing to Meet Conditions

Contract fails to meet the <i>arkaan</i> (pillars)	Contract fails to meet the conditions for its Initiation	Contract fails to meet the conditions for its Soundness	Contract fails to meet the conditions for its Execution	Contract fails to meet binding conditions.	Contract meets all necessary conditions
<i>The contract is null and void. This is actually a moot point since in reality there WAS no contract if essential components are missing.</i>	<i>The contract is completely void.</i>	<i>Hanafi school: the contract is "defective" and hence has some legal effect.</i>	<i>In Hanafi and Maliki fiqh, such a contract is considered "suspended" or on hold until such conditions are met.</i>	<i>The contract is sound but non-binding. The affected party has the right to annul the contract.</i>	<i>Contract is sound and binding.</i>
		<i>Others: The contract is null and void.</i>			

Civil Marriages in Countries Which Do Not Apply the *Shari'a*

In the light of what has been discussed, a very important question arises for Muslims living in lands where the *Shari'a* is not the law of the land. For Muslims to marry in such situations under the "auspices" of such governments will often involve serious flaws in both the execution and the legal effects of the non-Islamic marriage contract. For example:

1. No proper *wali*. Many such secular laws may not require the woman to have a *wali* at all or the one appointed may not be the rightful one in the *Shari'a*.
2. The secular law may not require two witnesses,
3. Witnesses may be required but not qualified such as non-Muslim witnesses.
4. The marriage establishes various property rights, inheritance rights etc. both during and after the marriage for which Allah sent no authority. (Avoiding the harm of such issues while living in a non-Islamic society is a much larger issue and involves many things besides marriage.)
5. The civil marriage may cause additional marriages by the husband to be a crime punishable by a prison sentence.

Because of these and other issues, a secular marriage contract is not sufficient for two Muslims to be considered married Islamically. In fact, they should be avoided if possible. In any case, it is the Islamic marriage with its prerequisites and conditions which makes the two married before Allah. Whether or not a civil marriage should also be undertaken is a case of weighing the harms and benefits involved.

Regarding these "marriages", the following important points should be noted:

1. If such a marriage was entered into by non-Muslims who later became Muslim, they are considered married and there is not need whatsoever to have another marriage contract.
2. If they were Muslim but married in a secular manner out of extreme ignorance, it would be best for them to redo the marriage. However, the first marriage could be considered valid and any children resulting from it would be both of their children Islamically.
3. If two Muslims marry in such a manner knowingly, for example to circumvent the objections of her *wali*, then the marriage is null and void and they are committing fornication.

Review Questions

1. What would be the ruling for the following case: A man and a woman are married for ten years and then discover that they were breastfed by the same woman.
2. What is the ruling concerning a marriage contract in which the woman did not have a *wali*? What was the Prophet's (sas) statement about such a marriage (2 hadith).
3. Discuss the different opinions concerning whether or not it is allowed to add stipulations to the marriage contract. For those who allow them, what exactly is their effect and which conditions are allowed? Which are not allowed?
4. Give definitions for the following important *fiqh* terms: *ruk'n*, *shart*, *sahih*, *faasid* and *baatil*.
5. Is it necessary to have witnesses for a marriage contract? What are some of the different opinions on this matter and what is the conclusive evidence from the sunnah?
6. What be the ruling on the following case: A man claims that the marriage contract he just made is not valid because he was only joking when he did it?

Chapter [6]

The *Mahr* (Dowry)

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Goals of this Chapter

To understand the concept of the *mahr*, its obligatory nature and its relationship to the marriage contract itself.

To understand the discussion concerning the minimum and maximum amounts for the dowry.

To understand when the woman is entitled to all of her dowry, half of it or none of it.

Introduction

The *mahr* (dowry) is something that is paid by the man to his wife. It is paid to the wife and to her only as an honor and a respect given to her and to show that he has a serious desire to marry her and is not simply entering into the marriage contract without any sense of responsibility and obligation or effort on his part.

It has been referred to by many names in the texts and the books of fiqh:

Term	Root Meaning
<i>An-Nihla</i>	Gift
<i>Al-Fareedha</i>	Prescribed amount or obligation
<i>Al-Hibaa'</i>	Gift or present
<i>Al-Ajr</i>	Payment or compensation
<i>Al-'Uqr</i>	Indemnity

<i>Al-'Alaa'iq</i>	Precious things, provision
<i>As-Sadaqa</i>	Sincere gift or charity
<i>At-Tawl</i>	Ability
<i>An-Nikah</i>	Marriage

One of the more common names for it is *Al-Sadaaq* which comes from the word *sidq* meaning honesty or sincerity. As-San'aani (Book: *Subul As-Salaam*) explains its significance: "It indicates the sincerity of the husband's desire for his wife. In the religious laws before us the dowry used to go to the guardians."

Proof that the *Mahr* is Obligatory

Allah says in the Qur'an: *{Wa aatoo an-nisaa'a saduqaatihinna nihlatan...}* {And give the women their dowries with a good heart...} *An-Nisaa:4*

This verse is addressed to either the husbands or the guardians. It is addressed to the husbands because it is their responsibility to pay the dowry. It could also be addressed to the guardians, not because they have to pay the dowry, but because in pre-Islamic *jahiliya* (and in much of today's "post-Islamic" *jahiliya*), they used to take the dowry of the women and not give it to them. This verse shows that the dowry must be given to the women and not kept by the guardians. The following verses also show the obligatory nature of paying the dowry to the women:

{...Fa ma istamta'tum bihi minhunn fa aatoohunna ujoorahunna fareedha...} {...So for that pleasure which you have enjoyed from them, give them their prescribed compensation..} *An-Nisaa:24*

{...Wa uhillu lakum ma waraa'a dhalikum an tabtaghoo bi amwaalikum...} {...All others have been made lawful for you provided you seek (them in marriage) with your property...} *An-Nisaa:24*

Regarding one of the Companions who was poor and wished to marry, the Prophet (sas) said to him: "*Iltamis wa lau khaatiman min hadeed...*" "Search for something, even if it is just a ring made from iron." *Bukhari & Muslim*

Is the Dowry a Part of the Marriage Contract?

The above has established that the dowry is obligatory. Now the question arises as to whether or not it (i.e., its specification and agreement on its amount) is one of the *arkaan* or the *shuroot* of the marriage contract. In other words, is it valid to have a marriage contract in which the dowry is not stated? Apparently, the dowry is the right of the wife but does not form part of the marriage contract itself. This is based on the following clear verse in the Qur'an in which divorce is mentioned in a case where no dowry was agreed upon. Obviously, there can be no divorce if there was no marriage in the first place.

{*La junaha 'alaikum in tallaqtum an-nisaa'a ma lam tamassoohunna au tafrihdoo lahunna fareedha wa matti'oohunna 'alaa al-moosi'i qadarohu wa 'alaa al-muqtiri qadaruhu mataa'an bi al-ma'roofi haqqan 'alaa al-muhsineen.*} {There is no sin upon you if you divorce women before touching them or assigning for them a dowry. And give them provision - upon the wealthy what is appropriate and upon he of limited resources what is appropriate - a provision based on the best (the "known"), an obligation upon the doers of good.} *Al-Baqarah:236*

This does not mean that it is recommended or preferable not to mention the dowry at the time of the marriage contract. Ibn Taimia, for example, mentions that the amount of the *mahr* should be mentioned at the time of the marriage in order to eliminate the chance for dispute later. This part of his argument should be extremely clear and obvious to all. His opinion was that the dowry is a *shart* or *rukn* of the marriage, in agreement with the Maliki School, as stated earlier. That seems to be the weaker of the opinions, however. In short, there are three distinct cases:

1. A case where the parties agree not to pay any dowry. This is not permissible and the contract is either valid with the man being forced to pay an appropriate dowry, or it is completely invalid (the Maliki opinion).
2. A case where the dowry is mentioned and agreed upon at the time of the marriage contract. This is clearly the best approach and is agreed upon by all as the most complete and perfect form. The main benefit of this approach is that it greatly reduces the possibility of dispute in the future.
3. A case where no dowry is mentioned or agreed upon at the time of the contract. This contract is sound and valid and the woman is entitled to the dowry that they agree upon later. If they don't specifically agree on a dowry, then she is entitled to "*mahr al-mithl*" which means: "the dowry which is given to women similar to her."

The Maximum and Minimum Amount of the Dowry

There are no authentic hadith or reports explicitly stating a minimum or maximum amount of dowry. All hadith which explicitly state such things are weak narrations. However, some scholars have relied on implicit conclusions from specific reports to determine an answer to the question of there being a minimum or maximum.

There is no maximum limit for the dowry. Allah described the dowry in the Qur'an with the following words: {*Wa in aradtum istibdaala zaujin makaana zaujin wa aataitum ihdaahunna qintaaran falaa ta'kudhoo minhu shai'an. A ta'kudhoonaha*

buhtaanan wa ithman mubeenan?} {And if you wish to replace a wife with another and you have given one of them a heap of gold, do not take anything from it. Would you take it as a fraud and a clear sin?} *An-Nisaa: 20*

The word *qintaar* means a very large amount of gold and if it is permissible to give such as *mahr*, this shows that there is no maximum limit to the amount one may give as *mahr*.

The Story of Umar Intending to Limit Dowries

The famous and widely heard story about Umar ibn Al-Khattab attempting to prohibit large dowries from the *minbar* and being corrected by one of the women Companions with the above verse is a weak hadith which has no validity. What is authentic is that Umar advised people not to be excessive in dowries, but not that he prohibited people from agreeing among themselves on dowries of any amount.

The Minimum Amount of the Dowry

There are five distinct opinions concerning the minimum amount required for something to be considered acceptable as a dowry.

The First Opinion

The minimum dowry is ten *dirham* (somewhere around ten dollars or the price of a goat today). This is based on the hadith:

"La mahra aqallu min 'asharati dirham." "There is no *mahr* less than ten dirhams."

While Ibn Hajr found this hadith to be "hassan", most other scholars of hadith judged it as weak. Also, it is in contradiction to the hadith cited earlier about the iron ring - which would not have been worth that amount.

The Second Opinion

According to the Malikis, the minimum required for a dowry is three *dirhams*. It must be something legal according to the *shari'a* which can be handed over to the wife. Its argument, also, is that in their school, this is the minimum amount for which the thief gets the punishment of cutting. They also cite the verse: *{Wa man lam yastiti' minkum taulan an yankiha al-muhsanaati al-mu'minaati fa min ma malakat aymanukum min fatayaatikum al-mu'minaat...}* {And whoever of you does not have the means to wed free believing women, so from the believing women that your right hands possess...} *An-Nisaa:25*

Their argument is that *at-taul* means wealth and one who does not have three dirhams is not considered as possessing any wealth. However, there are other interpretations about what the word means in this verse.

The Third Opinion

This opinion states that anything that can be called "wealth" (*maal*) and is accepted by the parties is permissible as the dowry. In essence, this opinion states that there is no minimum for the dowry. This is the opinion of the Shafi'is, Hanbalis, Dhahiris, Ibn Wahb of the Malikis, Al-Hassan Al-Basri and others. It is supported by the verse: {*...Wa uhillalukum ma waraa'a dhalikum an tabtaghoo bi amwalikum...*} {*...All others have been made lawful for you provided you seek (them in marriage) with your property...*} *An-Nisaa: 24*

The Fourth Opinion

Anything which can be called *shai'an* (a "thing") is acceptable as dowry. This is the opinion of Ibn Hazm and is based on the first part of the hadith about the ring of iron where the Prophet (sas) said:

"Iltamis shai'an. Qaala ma ajidu shai'an. Qaala: "Iltamis wa lau khaatiman min hadeed..." "Search for something." He said: I have nothing. He [salla Allah aliahi wa sallam] said: "Search for something, even if it is just a ring made from iron." *Bukhari & Muslim*

The Fifth Opinion

Anything which has value, regardless of whether it be something material or something non-material, is acceptable as dowry. According to Ibn Al-Qayyim, this is the strongest opinion. In fact, it seems to be the only opinion which takes into consideration all of the different hadith related to the subject. For example, Umm Sulaim accepted Abu Talha's embracing of Islam as her *mahr*. On another occasion, the Prophet [salla Allah aliahi wa sallam] accepted as dowry what a person knew of the Qur'an saying:

"Idh-hab faqad mallaktukahaa bima ma'aka min al-qur'an" "Go, for I have put her under your charge with what you have of the Qur'an." *Bukhari & Muslim*

In other words, his *mahr* was to teach the woman what he knew of the Qur'an.

Chapter [7]

Public Announcement, Wedding Feast (*Waleemah*), Etiquettes of Coming Together

Goals of this Chapter

- Hadith shows that public announcement is obligatory (though many scholars didn't say this).
- The importance, ruling and timing of the *waleemah*.
- The importance of attending the *waleemah*
- How to begin married life in a way that is pleasing to Allah and according to the Shari'a

Public Announcement of the Wedding

The majority of the scholars say that the public announcement of the wedding is *mustahabb* (preferred, but less than obligatory), but authentic hadith prove that it is obligatory. It is never permissible to follow the opinions of scholars and imams once an authentic and clear hadith is found to the contrary. All of the four imams and other scholars forbid us to do this with their opinions. Az-Zuhri says that the announcement is obligatory and states that if two people get married secretly with two witnesses and ask them to keep it secret, they should be separated immediately and the woman must wait an *'iddah* and receive her dowry. As we saw earlier, Imam Malik's opinion on this situation was that they be separated and never again allowed to marry. A likely reason for the opinion of many scholars being that announcement was less than obligatory is:

1. They were either unaware of the hadith which make this clear or unaware of their authenticity.
2. Secret marriages were not practiced in the early days, so the announcement had the appearance of being mere custom, not something specifically endorsed by the shari'a

There are a number of hadith on this topic and all of them are *hassan*. *Hassan* is a rating somewhat less strong than *sahih*. It is the opinion of *ahlus-sunnah wa al-jama'a* (the mainstream of Muslims) that all hadith which are *hassan* or *sahih* are binding upon Muslims both for rulings and beliefs unless they are contradicted by a stronger form of evidence. In fact, the classification of *hassan* branched off from *sahih* - in the early days of hadith science hadith were either *sahih* (sound) or *dha'eef* (unsound). Later, *hassan* was added as a sub-category within the sound hadith. The following hadith on the subject at hand are all *hassan*:

"*Asheedoo an-nikaaha wa a'llinoohu*" "Make the marriage well-known and announce it."

"*Faslu ma baina al-halal wa al-haram dharbu ad-daffi wa as-sautu fiy an-nikahi.*" "That which separates the *halal* from the *haram* is the beating of the *duff* (drum) and voices at the wedding."

As you can see, these hadith are unambiguous and show clearly that Az-Zuhri's opinion is the correct one - that public announcement of a marriage is obligatory and an essential part of the marriage (since it separates the *halal* from the *haram*).

As for the percussion and singing, this is something which Islam has allowed on certain occasions, namely the two *'eids* and at wedding feasts. There are various hadith which show this in the following excerpt from Albani's *Adaab az-Zafaaf* (The Etiquettes of Marriage):

"SINGING AND BEATING OF THE DUFF (BANGLELESS TAMBOURINE)

It is allowed for the husband to give the women permission at his wedding to announce the wedding with beating on the *duff* and with allowed singing only. Allowed singing is that which does not contain descriptions of physical beauty or mention of any kind of sin. There are various hadith about this:

FIRST: On the authority of Ar-Rubai' bint Mu'awwadh, who said: "The Prophet (sas) entered my house after my wedding night, and sat on my mat as close as you are now sitting to me (the address here is to the one who narrated the hadith from her). Then, some servant girls of ours began beating on the duff and singing about our ancestors who were killed at the battle of Badr. Then one of them said: "And among us is a prophet who knows what tomorrow will bring." The Prophet (sas) said to her: "Leave this and go back to what you were saying before it."

SECOND: On the authority of Aisha, that she took a woman to her husband, a man among the Ansaar. The Prophet (sas) said to her: "O Aisha did you not have any singing (lit: frivolity) with your procession? Verily the Ansaar love such things." In another version of this hadith, the Prophet (sas) is reported to have said: "Did you send a servant girl along with her to beat the duff and sing?" ...

On the authority of Aamir ibn Saad Al-Bajliyy, who said: I entered upon Qardha ibn Kaab and Abu Masood and (he mentioned one other person whose name I can't remember), and saw servant girls beating on the duff and singing. I said: "Are you all in silent acceptance of this and you are among the companions of the Messenger of Allah?!" They said: "Verily, he gave us permission for this at wedding celebrations, and for crying over the dead as long as it is not wailing."

It should be noted that none of this give permission for live bands, mixing between men and women, videos, and other evils which are practiced today. All of these practices should be stopped and a wedding involving such practices should not be attended.

The *Waleemah*

The *waleemah* is the "wedding feast". The husband is required to sponsor this feast after the marriage contract, the sunnah being three days after husband and wife have been together. There are many hadith about this important practice, among them:

"Innahu laa budda lil-'ursi min waleemah." "A wedding must have a feast."

The above was spoken to Ali (ra) when he sought Fatimah, the Prophet's (sas) daughter in marriage. The Prophet (sas) said to Abdur-Rahman ibn 'Auf in the form of an order:

"Awlim wa lau bi shaah." "Give a *waleemah*, even if it is just with one sheep."

As for three days, it was mentioned as the Prophet's practice when he married Safiya:

On the authority of Anas, may Allah be pleased with him, who said: "The Prophet (sas) entered upon his wife and sent me to invite some men for food."

Also on the authority of Anas that he said: "The Prophet (sas) married Safiya, and her freedom was her dowry. He gave the banquet after three days." (*from Adaab Az-Zafaaf*)

Although many scholars view the *waleemah* as a highly stressed *sunnah*, the above hadith and others favor the interpretation that it is obligatory. In any case, it clearly should not be taken lightly or neglected without strong reasons.

How Much?

The Prophet's (sas) order to Abdur-Rahman ibn 'Auf to give a feast "even if only with one sheep" would seem to set a minimum for the *waleemah*. However, it is permissible for the *waleemah* to be simple and not include meat according to the following hadith:

"The Prophet (sas) stayed between Khaibar and Al-Madinah for three days during which he had entered with his wife Safiya. Then I invited the Muslims to his wedding banquet. There was neither meat nor bread at his banquet. Rather, leather eating mats were brought out and on them was placed dates, dried milk, and clarified butter. The people ate their fill."

Serving meat is clearly preferable, however, since it was the consistent sunnah of the Prophet (sas) and the Companions and based on the Prophet's order to Abdur-Rahman. The fact that the Prophet (sas) was on an expedition in the above narration may also have been a factor bringing into question the general applicability of the hadith.

Clearly, the *waleemah* should not involve excess or wastefulness which are forbidden at all times. This has become an almost universal custom in most Muslim countries and is an evil practice which should be stopped. Making more food than can possibly be consumed and wasting what remains is a form of *tabdheer* (wasting or destroying wealth), about which Allah said:

{*Wa aatiy dha al-qurbaa haqqahu wa al-miskeena wa ibn as-sabeeli wa laa tubadh-dhir tabdheeran (26) Inna al-mubadh-dhireena kaanoo ikhwaana ash-shayaateeni wa kaana ash-shaitaanu li rabbihi kafooran.*} {And give the relative his right and the needy and the traveller and do not waste wealth needlessly. (26) Verily, those who waste wealth are the brothers of the devils and the devil is in rebellion against his Lord.} *Al-Israa:26-27*

Who to Invite?

When giving the *waleemah*, you should invite family, friends and neighbors. It is also commendable to give some of the food in *sadaqa* in gratitude to Allah for the blessing of the marriage. It is very important NOT to invite only the wealthy or people of influence and ignore the poor. Rather, focus should be directed to inviting the best Muslims one knows regardless of their "social" standing. The Prophet (sas) said: "*Sharru at-ta'aami al-waleemah yud'aa lahaa al-aghniyaa'u wa yutraku al-fuqaraa wa man taraka ad-da'wata faqad 'asaa Allaha wa Rasoolahu.*" "The most evil food is that of the *waleemah*. The rich are invited to it but the poor are left out. And whoever ignores the invitation has disobeyed Allah and His Messenger" *Bukhari*

It is clear from the above that if one is invited to a *waleemah* and there is not disobedience being practiced than it is obligatory to respond to that invitation without valid excuse. This is also found explicitly in the following hadith: "*Idhaa du'iya ahadukum ilaa al-waleemah talya'tihaa.*" "When one of you is invited to a *waleemah*, he should go." *Bukhari & Muslim*

What if You are Fasting?

If you are fasting an obligatory fast, you should still attend the invitation but abstain from eating and make du'a for the host. The Prophet (sas) said to a man who remained away because he was fasting:

"*Idhaa du'iya ahadukum ilaa ta'aamin tal yujeeba fa in kaana muftiran fal yat'am wa in kaana saa'iman fal yusalli.*" "When one of you is invited to a meal, let him respond. If he was not fasting, let him eat. If fasting, let him supplicate (for the host)." *Muslim*

If you are fasting a voluntary fast, you have your choice. You can break your fast and participate (especially if your host wishes that) or you may continue fasting and pray for your host. If you break a voluntary fast, there is no need to make it up.

Acceptable Excuses for Not Attending

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1. Anything which allows one not to attend prayer in the masjid such as illness, great distance, etc.
2. You should not attend a *waleemah* where evil practices are committed such as mixing of the sexes, music, alcohol, etc. Only if you have the ability to stop such evil may you attend for that purpose.
3. If the invitation is for which only the rich are invited to the exclusion of the poor. This is because the Prophet (sas) described this as the "most evil food".
4. According to Ibn Taimia, a person should not accept the invitation of another person who does not pray.

Greetings to the Groom

The guests should make *du'a* for the groom and his bride and ask Allah to bless them. The Prophet (sas) used to say to the groom: "*Baaraka Allahu laka wa baaraka 'alaika wa jama'a bainakumaa fiy al-khairi.*" "May Allah bless you, bestow blessings upon you and join you two together in all that is good." *Abu-Daud & others and it is sahih.*

Chapter [8]

Effect of a Sound Marriage: Rights of the Husband and Wife

56

In This Chapter:

- The importance of meeting the spouse's rights in a marriage.
- The rights of the wife over the husband.
- The rights of the husband over the wife.

Introduction

The first thing that every married Muslim must realize is that one's spouse is first and foremost another Muslim. He/she is one's brother and sister in Islam. Therefore, at minimum all rights that fall upon a Muslim due to the general brotherhood of Islam are also due to one's spouse. It is a sad situation for a Muslim brother or sister to respect their Muslim brothers and sisters outside of the house but for the situation in the house to degenerate into less even than that minimum standard of respect and kindness inside the household. Therefore the first step is for every Muslim to open some of the books about respect, manners (adab) and courtesy towards other Muslims and to realize that all of those principles apply to their partner in their house. The Prophet (sas) stressed this when he said:

"Laa yu'minu ahadukum hatta yuhibbu li akheehi ma yuhibbu li nafsih." "No one of you has believed until he loves for his brother what he loves for himself." *Bukhari & Muslim*

Clearly, husband and wife have even greater rights and obligations toward each other due to the great and important contract which has been transacted between them and on which basis they live together. In the Qur'an, Allah states that if a husband wishes to divorce one wife and marry another that he may not take back any of the dowry which was given no matter how large it was. Then, Allah says:

{Wa kaifa ta'khudhoonahu wa qad afdhaa ba'dhukum ilaa ba'dhin wa adhadhna minkum meethaaqan ghaleedhan.} {How could you take it once you have entered onto one another and they (the women) have taken from you and awesome covenant.} *An-Nisaa:21*

Because of this "awesome covenant", rights and obligations between husband and wife should not be looked at coldly or legalistically. Spouses should strive to make other happy and take into consideration the needs, abilities and weaknesses of the other. Since in most cases, neither spouse is completely fulfilling their obligations, they should both realize and acknowledge their own shortcomings.

The Prophet (sas) in particular advised the husbands to treat their wives in the best way - perhaps due to their greater authority in the household and their greater strength. This is clear in the following hadith:

"Khairukum khairukum li ahlihi wa anaa khairukum li ahliy." "The best of you is the best of you to their family and I am the best of you to my family."

"Istawsoo bi an-nisaa'i khairan fa innahunna khuliqa min dhila'in wa inna a'waja shai'in fiy adh-dhila'i a'laahu fa in dhahabta tuqeemuhu kasartahu wa in taraktahu lam yazal a'waja fastawsoo bi an-nisaa'i khairan." "I entreat you to treat women well for they have been created from a rib and the most crooked part of a rib is the upper part. If you insist on straightening it, you will break it. If you leave it, it will remain crooked. So, I entreat you to treat women well." *Bukhari*

Actually, both spouses usually fail to some extent in fulfilling their obligations. Therefore, before criticizing the other or being harsh with the other due to some shortcoming, each one should look first to themselves and realize what wrong they may be doing.

Common Rights Between the Two

There are some rights which each of the two spouses has over the other. These include:

1. The right to enjoy each other.
2. The right to inherit from each other.
3. The right of confirmation of the lineage of their children.

Rights of the Wife/Obligations of the Husband

Allah said in the Qur'an:

{Wa lahunna mithlu alladhiy 'alaihinna bi al-ma'roofi} {And for them (women) similar to what is upon them according to what is right.} *Al-Baqarah:228*

Commenting on this verse, Ibn Katheer wrote that the spouses have similar rights upon one another and each must do his or her best to fulfill the other's rights. In the Farewell Pilgrimage, the Prophet (sas), stated:

"...wa ittaqoo Allaha fiy an-nisaa'i. Fa innakum akhadhtumhunna bi amaani Allahi wa istahlaltum furoojahunna bi kalimati Allahi wa lakum 'alaihinna alla yooti'na furushakum ahadan takrahoonahu fa in fa'alna dhalika fadhriboohunna dharban ghaira

mubarrihin wa lahunna 'alaikum rizquhunna wa kiswatumhunna bi al-ma'roofi." "...And beware of Allah concerning women. You have taken them as a trust from Allah and have made their bodies lawful to you by the word of Allah. You have the right upon them that they no allow anyone in your house that you dislike. If they do that, you may hit them in a way which does no harm. They have a right over you for sustenance and clothing according to what is right." *Muslim*

The rights of the wife over the husband which we will discuss in this chapter are as follows:

1. The dowry
2. Support
3. Kind and proper treatment
4. Marital relations
5. Not to be beaten
6. Privacy
7. Justice between multiple wives
8. To be taught her religion
9. Defense of her honor

The rights of the husband over the wife which we will discuss are:

1. Being head of the household
2. To be obeyed in all that is not disobedience to Allah
3. Marital relations
4. That she not allow anyone in the house of whom he disapproves
5. That she not leave the house without his permission
6. That she cook for him and keep his house (two opinions)
7. To be thanked for his efforts
8. That she now fast a voluntary fast without his permission

Rights of the Wife Over the Husband

Dowry (Mahr)

This right of the wife has been discussed in some detail. Allah said in the Qur'an:

{*Wa aatoo an-nisaa'a saduqaatihinna nihlatan. Fa in tibna lakum 'an shai'in minhu nafsana fa kuloohu hane'an maree'an.*}
 {And give women their dowries as a gift. Then, if they are pleased to give some of it to you, consume it with good health and enjoyment.} *An-Nisaa:4*

The payment of the dowry to the wife is an obligation and a debt upon the husband until he pays it and there is no escaping it unless the wife freely and willingly gives up her right to it. In the past, and in many cases today, the father tries to take the *mahr* away from his daughter. In the *jahiliya*, this was justified by saying that the father was merely recouping all the expenses he put forth for his daughter who is now a member of another family and benefits them.

Nowadays, it occurs often in this country that the husband tries to take back the dowry (if it is even paid in the first place) or make use of it in forms of spending which were obligatory upon HIM in the first place. This is a lowly practice and is completely forbidden unless she explicitly allows it without any coercion or pressure. Otherwise, it is HER property and she may dispose of it (or not) as she alone sees fit.

Support (Nafaqah)

Allah says: {...*Wa 'alaa al-mauloodi lahu rizquhunna wa kiswatuhunna bi al-ma'roofi laa tukallafu nafsun illa wus'ahaa...*}
 {...And upon the father is the mother's sustenance and her clothing according to what is reasonable. No person shall have a burden on him greater than he can bear...} *Al-Baqara:233*

Her support is one of the most important rights of the wife over her husband. Ibn Katheer commented that the above verse implies that he must provide for her without extravagance nor the opposite, according to his ability and the standards set by his society at his time. When the Prophet (sas) was asked by a man, "What is the right of our wives upon us?", he (sas) answered: "*An yut'imahaa idha ta'ima wa an yaksoohaa idhaa iktasaa wa laa yadhribi al-wajhi wa laa yuqabbih wa laa yahjur illa fiy al-baiti.*" "That he should feed her whenever he eats and cloth her whenever he clothes himself, that he not hit her face, that he not call her ugly and that he not boycott her except within the house." *Ibn Majah*

A woman is even allowed to take from her husband's property without his knowledge if he falls below this basic level of supporting her. In a hadith recorded in Muslim and Bukhari, the Prophet (sas) told Hind bint Utbah, after she complained that her husband, Abu Sufyan, was stingy and was not maintaining her and she asked if she could take from his property without his knowledge: "*Khudhiy maa yakfeeka wa waladaki bi al-ma'roofi*" "Take what is sufficient for you and your child according to what is customary." *Muslim & Bukhari*

Support of one's wife is one of the most important obligations of the husband. It is one of the distinguishing aspects of "husbandhood". Allah said in the Qur'an: *{Ar-rijaalu qawwaamoona 'alaa an-nisaa'i bimaa fadh-dhala Allahu ba'dhahum 'alaa*

ba'dhin wa bimaa anfaqoo min amwaalihim...} {Men are in charge of women because of what Allah has given to some more than others and because they support them from their property.} *An-Nisaa:34*

If a husband does not support his wife, she has no obligation to fulfill her obligations to him. If a woman goes to a judge and shows that her husband will not support her, the judge may immediately separate them according to numerous scholars.

The verse makes clear that the man being "in charge" goes back to the two causes mentioned. This means two things:

- 1) both men and women need to be aware of this right and this obligation and that the woman is under no obligation to stay in the marriage if she is not supported - regardless of his wealth and hers and
- 2) Muslim society must be organized in such a way that Muslim men are able to get the means to support a wife.

This second point is critical. If society reaches a state where women are more able to earn a living than men, this will undermine the "in charge" status of many men in their households. It will in fact undermine the Islamic household altogether. This is what is happening in virtually every Muslim land today with U.N. and other organizations giving primary attention to helping women to be economically viable and independent even when a large percentage of the men still cannot find the means to support a family. (It is the same destruction they inflicted on families in the U.S. in the 50's 60's with the welfare system.) The corrupting influence this will have on society as a whole cannot even begin to be described.

Women are absolutely ALLOWED in Islam to pursue business ventures (the Prophet's first wife Khadija was a major business woman in Makka), employment and other means of earning money. They are, in fact, needed in various sectors such as women doctors and women teachers. However, facilitating the ability of men to earn a living and support a family is the FIRST priority in an Islamic society. All economic planning and social/economic programs must be in line with this principal.

Kind and Proper Treatment

Allah says: {*...Wa 'aashiroohunna bi al-ma'roofi fa in karihtumoohunna ta 'asaa an takrahoo shai'an wa yaj'ala Allahu feehi khairan katheeran.*} {*...And consort with your wives in a goodly manner for, if you dislike them, it may well be that you dislike something which Allah makes a source of abundant good.*} *An-Nisaa:19*

Commenting on this verse, Ibn Katheer wrote:

"That is, have kind speech for them, deal with them with kind deeds and in a beautiful manner to the best of your ability. In the way that you love that from them, behave in that way towards them. As Allah has said, "They have rights similar to those upon them according to what is right" (*Al-Baqarah:228*). The Messenger of Allah (sas) said: "The best of you is the best of you

to his wives and I am the best of you to my wife." It was from his behavior that he would treat them in a beautiful fashion, with a smiling face. He would sport with his wives, be gentle with them and spend generously upon them. He would laugh with his wives and he even raced Aisha... Every night, he would gather his wives together in the house of the one with whom he (sas) was going to spend the night and eat dinner with them on occasion... After he prayed the night prayer, he would enter his house and talk to his wife a little bit before sleeping, making them comforted thereby. And Allah has said: {You have in the Messenger of Allah the best example.}"

Part of the problem is Muslims buying into the fantasy world being propagated in television, movies and other media. The hadith about the rib makes it clear that it is rare to find a "perfect wife" and in the same manner, no woman should expect to find the "perfect husband". If one is living in some fantasy world, they are apt to be greatly disappointed with real life.

Physical Relations

In Sahih Ibn Hibban, the following was narrated: "The wife of 'Uthman ibn Madh'oon complained to the Messenger of Allah (sas) that her husband had no need for women. During the days he would fast and at night he would pray. The Prophet (sas) asked him: "Am I not the best example for you to follow?" He answered: "Certainly, may my father and mother be sacrificed for you." The Prophet (sas) then told him: "As for you, you pray during the night and you fast during the day. Certainly, your wife has a right upon you and your body has a right upon you so pray and sleep and fast and break your fast."

There are several similar incidents narrated where Companions of the Prophet (sas) gave similar decisions in similar situations. In one story which took place in the presence of Umar, the Companion who was judging told the husband that since Allah had given him the right to four wives and he had only one that he could practice his praying and fasting three out of four nights, but that at least one in four had to be reserved for his wife.

Not to be Beaten

It is the right of the Muslim wife that she is not to be struck except in the case of *nushooz* (rebellion against the husband's authority). Even in that case, the husband is only allowed to "strike" her, but in a way which does no harm, similar to the proper disciplining of a child. It is never lawful for him to strike her face or cause her any bruise or injury. Allah says in the Qur'an: {...*Wa allaatiy takhaafoona nushoozahunna fa'idhoohunna wahjuroohunna fiy al-madhaaji'i wadhriboohunna fa in ata'nakum falaa tabghoo 'alaihinna sabeelan inna Allaha kaana 'aliyyan kabeeran.*} {...And (as for) those (women) from whom you anticipate rebellion, admonish them, avoid them in the sleeping place and hit them. If they obey you, do not desire and further way to (harm) them. Surely, Allah is Knowing, Great.} *An-Nisaa:34*

It is incomprehensible how so many translators have translated the word "*wadhriboohunna*" in the above verse as "beat them" or, even more laughable: "beat them [lightly]". This is wrong, wrong, wrong. It is an abomination which has caused much

misunderstanding and opened the door to the enemies of Islam. The word in Arabic means to "strike" or "hit". It includes everything from a tap with a tooth-stick to what in English we call beating. If it is stated that so-and-so "hit" so-and-so without further description, it would be assumed to be a single blow and it could be of any magnitude.

When the Prophet (sas) took a tiny stick and tapped one of the Muslims on the stomach to straighten the ranks in preparation for war, he "hit" him with this meaning. Contrast this to the English phrase: "beat them". The meaning is totally different. If you took a shoe lace and hit someone on the hand with it, you could properly say *dharabtahu* in Arabic but in English you could never say that you had "beaten" that person. Please get this straight and correct anyone you hear distorting the meaning of this verse in this way.

The verse mentions admonition, boycotting and hitting in the case of *nushooz*. This refers to a rebellion against the husband's authority within the marriage which amounts to a breach of the marriage contract on her part. Ibn Taimia said about this:

"Nushooz in the verse: {...And (as for) those (women) from whom you anticipate rebellion (nushooz)...} means that she is recalcitrant to her husband and she is estranged to him inasmuch as she does not obey him when he calls her to bed, or she leaves the house without his permission and other similar things in which she is required to obey him."

Many scholars have stated that the three steps must be taken sequentially, i.e, admonition then separation in sleeping and finally hitting, making hitting a last resort only in extreme situations. Thus the vast majority of what men do to their wives in spontaneous fits of rage often over trivial issues is absolutely *haraam* and not sanctioned by Islam in any way. An-Nawawi said about his:

"At the first indication of disobedience to marital authority, a wife should be exhorted by her husband without his immediately breaking off relations with her. When she manifests her disobedience by an act which, although isolated, leaves no doubt to her intentions, he should repeat his exhortations and confine her to the house but without striking her... Only when there are repeated acts of disobedience may a husband strike his wife."

As we said, this can NEVER be a "beating". A husband is never allowed to strike his wife in any way which causes injury or leaves any kind of mark. The Prophet (sas) said:

"Fattaqoo Allaha fiy an-nisaa'i fa innakum akhadhtumoohunna bi amaani Allahi wa istahlaltum furoojahunna bi kalimati Allahi wa lakum 'alaihinna an laa yooti'na furushakum ahadan takrahoonahu fa in fa'alna dhaalika fadhriboohunna dharban ghaira mubarrihin wa lahunna 'alaikum rizquhunna wa kiswatuhanna bi al-ma'roofi." "So beware of Allah regarding women for you have taken them as a trust from Allah and you have made their bodies lawful with the word of Allah. You have the right over

them that they should not allow anyone on your furnishings who you dislike. If they do that, hit them in a way which causes no injury. And, they have the right over you to provision and clothing according to custom." *Bukhari & Muslim*

Privacy

It is actually the right of both spouses that the other not discuss their private moments with anyone else. Note the following sahih hadith:

"Is there any man among you who goes to his wife, closes the door behind them, covers themselves and conceal themselves by Allah's concealing?" They said: "Yes." He then said: "Then he sits after that [with others] and says, 'I did this and that.'" They were silent. He then turned to the women and said: "Do any of you talk about such things?" They, too, were silent. Then a young girl stood up on her toes so the Prophet (sas) could see her and hear her and she said: "O Messenger of Allah they [the men] certainly talk about that and they [the women] also talk about it." He (sas) said: "Do you know what they are like? They are like a female devil who met a male devil in the street and they satisfied their desires with the people looking on." *Abu Daud (sahih)*

Justice

If a man has more than one wife, he is required to do justice between them in terms of physical things (housing, clothing, food, etc.) and nights spent with each. Allah said: {*Wa lan tastatee'oo an ta'diloo baina an-nisaa'i wa lau harastum. Fa laa tameeloo kulla al-maili fa tadharuhaa ka al-mu'allaqati. Wa in tuslihoo wa tattaqoo ta inna Allaha kaana ghafooran raheeman.*} {And you will not be able to effect justice between the women no matter how hard you try. So do not incline [toward some] completely such that you leave [another] as if suspended. And if you reform and fear Allah, surely Allah is ever Forgiving, Merciful.} *An-Nisaa:129*

The Prophet (sas) indicated that there are forms of justice which are required just as there are forms of justice which are beyond human ability. Those which are required are money, housing, clothing and the like as well as nights spent with her. Those beyond human ability are feelings of the heart and things like that. He (sas) said: "*Allahumma hadhaa qismiy feemaa amliku falaa talumniy feemaa tamliku wa laa amliku.*" "O Allah, this is my division in what I control, so do not blame me regarding that which You control and I do not." *Abu Daud (some graded it weak, others graded it hassan).*

Also, the Prophet (sas) warned of the dangers of not fulfilling justice where it is required between wives, saying: "*Man kana lahu imra'taan fa maala ilaa ihdaahumaa jaa'a yauma al-qiyamati wa shiqquhu maa'ilun.*" "Whoever has two wives and favors one of them will be resurrected on Qiyama with one of his sides hanging down." *Abu Daud (sahih)*

To Be Taught Her Religion

The Prophet (sas): "*Kullukum raa'in wa kullukum mas'oolun 'an ra'iyatihi. Al-imaamu raa'in wa mas'oolun 'an ra'iyatihi wa ar-rajulu raa'in tiy ahlihi wa huwa mas'oolun 'an ra'iyatihi.*" "All of you are shepherds and all of you will be asked about your wards. The ruler is a shepherd and shall be asked about his wards. The man is a shepherd of his family and will be asked about his ward." *Bukhari*

Knowledge in Islam is of two types: 1) that which is obligatory upon each and every Muslim and 2) that which must be learned by some among the Ummah. Of the first type, it is obligatory for every Muslim woman to know her beliefs, how to pray, how to fast, as well as issues particular to woman such as how to purify herself from her monthly course, etc. She must also know her obligations toward parents, her husband (and his obligations toward him), her children, her neighbors, etc. as well as her rights over each of those.

It is the obligation of the husband to make sure that she acquires all the knowledge which it is obligatory for her to acquire. If this means that he has to spend money on books or tapes, then he must do so. The scholars have emphasized the importance of this right of women to the extent that many of them have given her permission to leave the house to attend a lecture at the masjid even without her husband's permission.

It is well-known that the Prophet (sas) said that seeking knowledge is incumbent upon every Muslim male and female. Allah said in the Qur'an: *{Yaa ayyuhaa alladhina aamanoo qoo anfusakum wa ahleekum naaran waqooduhaa an-naasu wa al-hijaaratu 'alaihaa malaa'ikatun ghilaadhun shidaadun la ya'soona Allaha maa amarahum wa yaf'aloona ma yu'maroona.}* {O you who believe guard yourselves and your family members from a fire whose fuel is people and stones. Over it are tough and fearsome angels. They do not disobey Allah in any order they carry out that which they are ordered to do.} *At-Tahreem:6*

Part of the meaning of this verse is that the husband/father (the "shepherd" of the household) must take all necessary means to ensure that all those under his guardianship (wives and children) have the opportunity and the means to acquire all the knowledge they need to worship Allah and live their lives as Allah has prescribed that we live our lives. If he has fulfilled that, then he has fulfilled his obligation and will not be asked about the sins of his wife and children. If he fails to fulfill this, then he himself will be asked about their sins and their going astray based on HIS shortcomings in not fulfilling his obligations in this regard.

In another version of the hadith about the "shepherds", the Prophet (sas) continues: "*...hattaa yus'ala ar-rajulu 'an ahli baitihi: a aqama feehim shar'a Allahi am adhaa'a?*" "...until the man will be asked about the people in his household: did he establish among them the law of Allah or did he allow it to become lost?"

To Defend Her Honor

A man should be "jealous" with regard to his wife's honor and standing. He should defend her whenever she is slandered or spoken ill of behind her back. Actually, this is a right of every Muslim in general but a right of the spouse specifically. He should also be jealous in not allowing other men to look at his wife or speak with her in a manner which is not appropriate. The Prophet (sas) mentioned in a sahih hadith that "Three will never enter paradise... ad-dayyooth." *Ad-dayyooth* (sometimes translated "henpecked") is the weak husband who has no jealousy toward his wife and other men.

"Jealousy" in this sense means fervor for the boundaries of Allah and anger when they are transgressed. The Prophet (sas) said:

"Inna Allaha yughaaru wa inna al-mu'mina yughaaru wa ghairatu Allahi an ya'tiya al-mu'minu maa harrama 'alaihi." "Verily, Allah has jealousy and the believer has jealousy. Allah's jealousy is due to a believer committing that which He has forbidden him." *Muslim*

This does not mean, however, that a Muslim should go overboard on this point suspecting his wife at every turn and trying to spy on her. This becomes *Adh-dhann* (suspicion) which the Prophet (sas) warned us about in the following hadith in Bukhari and Muslim:

"Iyyaakum wa adh-dhanna fa inna adh-dhanna akdhabu al-hadith." "Stay away from suspicion for suspicion is the most lying of speech."

Rights of the Husband Over the Wife

In this section, we will discuss the following rights of the husband over the wife or obligations of the wife toward her husband:

1. Being head of the household
2. To be obeyed
3. Physical relations
4. Control over who enters the house
5. Wife leaves the house only with his permission
6. Housework and being served by his wife (two opinions)
7. To be shown gratitude for his efforts
8. She does not fast (voluntary) except with his permission

Being the Head of the Household

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When one thinks of the rights of the husband, this is probably one of the first things which comes to mind. However, a serious question must be asked: Is this a right of the husband or another right of the wife? Allah said: *{Ar-rijaalu qawwaamoona 'alaa an-nisaa'i bimaa fadh-dhala Allahu ba'dhahum 'alaa ba'dhin wa bimaa anfaqoo min amwaalihim. Fa as-saalihaatu qaanitaatun haafidhaatun lil ghaibi bimaa hafidha Allahu...}* {Men are in charge of women by that with which Allah has preferred some of them over others and by that which they spend from their property. So the pious women are obedient protecting in absence that which Allah has protected...} *An-Nisaa:34*

The verse seems to present a great right of the husband over the wife. Upon deeper thought, it is clear that this verse actually points to a right of the wife and an obligation of the husband. The word for "in charge of" in Arabic indicates also support, protection and responsibility on the part of the husband for his wife. This does not just mean that he is the "boss" or the dictator in the house and whatever he says goes. Rather, it means that he has a heavy obligation to lead his family. Remember the hadith from the previous section, where in one version of the hadith about the "shepherds", the Prophet (sas) continues: *"...hattaa yus'ala ar-rajulu 'an ahli baitihi: a aqaama feehim shar'a Allahi am adhaa'a?"* "...until the man will be asked about the people in his household: did he establish among them the law of Allah or did he allow it to become lost?"

Like any kind of leader or ruler, he will be held accountable before Allah Most High: did he make the decision that is most befitting for his family in this life and the hereafter or did he simply follow his desires? Did he do what was just and right or simply do what he liked to do?

In Allah's infinite wisdom, he did not leave the basic foundation of Islamic society - the family - without organization, leadership and guidance. It is clearly upon the husband's shoulders and is his responsibility. It is upon him to fulfill that responsibility in the correct manner.

Likewise, Muslim women must learn to accept this situation and this ruling of Allah Most High. They should resist becoming like the disbelieving women, particularly in the "West", who are trying to take over as head of the household or think that it should be shared equally between the two spouses. The rapid degeneration and disappearance of the institution of marriage since the spreading of this corrupt belief is the clearest proof of all that it is not only against Allah's order and His plan for us, but also against human nature and completely out of touch with reality and unworkable. I believe that the latest figures are that over HALF of the children in the U.S. are being raised in single-parent homes!

Women who follow the kuffar and their own desires in being jealous of the man's role and trying to claim some or all of it for themselves should think about the hadith of the Prophet (sas): *"La'ana rasoolu Allahi (sas) ar-rajulata min an-nisaa'i."* "Allah's Messenger (sas) cursed manly women."

Again, like all rights and obligations in Islam (in marriage and other areas), it is important that BOTH parties understand them and exert their best efforts to apply them in the way that is pleasing to Allah Most High.

To Be Obeyed

As we saw in the verse from An-Nisaa quoted previously, it is the right of the husband that his wife obey him. This obedience, however, does not include anything which is disobedience to Allah. The Prophet (sas) said:

"Laa taa'ata fiy ma'siyatin. Innamaa at-taa'atu fiy al-ma'roofi." "No obedience in what is sinful. Obedience is only in what is right." *Muslim & Bukhari*

Two things are now clear: 1) a woman is obligated to obey her husband, and 2) no Muslim may obey anyone in what is disobedience to Allah. Additionally, one strong opinion limits the required obedience of the wife to those duties being described in this chapter. In other words, the husband should not seek to control every detail of her life, even in things which have no direct impact on his rights as her husband.

What happens if there is a conflict between obeying one's husband and obeying one's parents? Scholars have taken two opinions on this matter. One that obedience to the husband always takes precedence over obedience to parents. Others have taken the position that obedience to one's parents takes precedence since Allah has described being undutiful to one's parents as one of the greatest sins after associating partners with Allah.

First of all, it is clear that the obligation of every Muslim toward their parents is very great just as the obligation of a Muslim wife to respect and obey her husband is very great. Parents should be aware that they have entered their daughter into a contract which requires her to obey her husband. Likewise, husbands should be aware of the fact that their wives have a great obligation toward their parents. When these two come into conflict, someone is probably not acting properly.

When the two do come into conflict, it seems clear that the strongest opinion is that the rights of the husband take precedence over the rights of her parents, as in the following hadith from Aisha: *"I asked the Prophet (sas): Who has the greatest right over a woman? He (sas) said: Her husband. I said: And who has the greatest right over a man? He (sas) said: His mother."* (*Al-Haakim - taken from Fiqh As-Sunnah*)

Physical Relations

It is the obligation of the wife to respond whenever her husband calls her to come to bed unless there is a strong reason why she cannot. Again, like in the issue of leadership, this is the way which Allah has given us to live which is best for us - since nothing we do or do not do cannot in any way harm or benefit Allah Most High. Thus, when women resist this and insist on

being the ones who call the shots in this regard or that it is somehow 50/50, it is only the two of them who will suffer. It will lead to frustration, marital discord and the husband's desire to seek fulfillment of his needs elsewhere. If he ends up turning to the *haram*, then a very great harm indeed has been inflicted upon society. This point is clear from many hadith, among them: "*Idhaa ar-rajulu da'aa zaujatahu li haajatihii tal ta'tihi wa in kaanat 'alaa at-tannoor.*" Whenever a man calls his wife for his desire, let her come to him even if she is occupied at the oven." *At-Tirmidhi (sahih)*

Thus, a wife must be responsive to her husband even if that involves the wasting of some wealth (by burning the bread). Because the social consequences of this breaking down are so serious, so the danger to a woman who fails to respect it is very serious. The Prophet (sas) said:

"Idhaa da'aa ar-rajulu imra'tahu ilaa firaashihi fa abat an tajeepa la'anathaa al-malaa'ikatu hatta tusbiha." "Whenever a man calls his wife to bed and she refuses to come, the angels curse her until morning." *Al-Bukhari*

Even extra acts of prayer and fasting must be curtailed if that interferes with a man's desire for his wife's company.

Control Over Who Enters the House

It is established from many hadith that the wife is not to allow anyone inside if she knows that her husband does not like for that person to be in the house (male or female). This is the second right of the husband over the wife, as the Prophet (sas) mentioned in the hadith: "*...Wa laa ta'dhana fiy baitihii illa bi idhnihi...*" "...And that she should not admit anyone to his house except with his permission..." *Muslim & Bukhari*

The permission referred to here does not have to be explicit for every individual. If the wife knows or has good reason to believe that her husband would not object to a particular individual, then she may allow them into the house.

That She Not Leave the House Without His Permission

The best place for a Muslim woman is in her house. When Allah addressed the wives of the Prophet (sas) and ordered them (and, by extension, all of the Muslim women) to remain primarily in their homes, he associated the desire of women to be "out" and to display themselves with the *jahiliya* (the age of foolishness): *{Wa qurna fiy buyootikunna wa laa tabarrujna tabarruji al-jahiliya al-oolaa wa aqimna as-salaata wa aateena az-zakaata wa ati'na Allaha wa rasoolahu...}* {And stay in your homes and do not display yourselves like the ways of the time of ignorance. And establish the prayer, pay the zakat and obey Allah and His Messenger...} *Al-Ahzaab:33*

The scholars of *tafseer* state that, although the verse is explicitly directed at the wives of the Prophet (sas), the general principle applies to all Muslim women and wives in particular - that they should not leave the house except for a legitimate

purpose such as going to the masjid, seeking knowledge, shopping for household needs, etc. and that if they are married, they may not do that except with their husband's permission. This is a point of very wide agreement among the scholars, although there doesn't seem to be any clear and sound hadith which states it. Although the following hadith VERY strongly indicates that this is the case: "*Idhaa ista'dhanat imra'atu ahadikum ilaa al-masjid falaa yamna'haa.*" "If the wife of any of you seeks permission to go to the masjid, he may not prevent her." *Muslim & Bukhari*

As with any right which a person may possess, this right should be used in the right fashion and not be misused such that it leads to harm and distress. The Prophet (sas) said: "No inflicting of harm and no reciprocating of harm." A contemporary author, Faihaan Al-Mutairi said about this:

"If a man disallows his wife from leaving the house, out of fear and honor for her, then he must not let her feel that she is a prisoner in the house and that she was only created to serve him and serve the children. Instead, he must choose a day out of the week, or less or more, according to the need and ability, to walk with his wife and children in a place that is free of temptations so that they may become happy in their hearts and out of fear of boredom. The one who studies Shari'a finds this aspect to be very clear, that is, the aspect of one sporting with his wife and trying to make her happy. The Messenger of Allah (sas) went out with his wife, the Mother of the Believers, Aisha and raced with her. It is confirmed that Aisha said: "The Prophet (sas) raced with me and I beat him. After a while when I became heavier, he raced me and beat me and said: This one is for that one."

So those Muslims who expect their wives to stay in the house 24 hrs. per day and 7 days per week are not truly following the sunnah. Rather, they have invented an innovation which will only serve to drive women and children away from Islam.

Housework

The rights which have been stated so far are non-controversial and agreed upon among the scholars. The duty of the wife to take care of housework such as cooking, cleaning and generally serving her husband in the house is an issue about which there are different opinions. Definitely, this is and has always been the custom of the Muslims, all the way back to the Prophet (sas) and his Companions. It is part of the *ihsaan* (good treatment) which should be exchanged between husband and wife. That is not quite the same, however, as saying that it is the husband's right. If that is the case, then she would be committing a sin if she failed to fulfill it.

Clearly, the safe way is the way of all of the female Companions of the Prophet (sas) who used to serve their husbands in this regard. If they had servants to help them, fine. If not, they used to handle the housework, cooking and cleaning. The Prophet (sas) himself, our best example in this regard, used to help his wives with these chores.

There are many scholars on both sides of this issue as to the obligatoriness of these services. The strongest argument that they are is the following hadith of Husain ibn Muhsin that the Prophet (sas) asked his aunt if she was married. When she answered in the affirmative, he said:

"How are you with respect to him?" She answered: 'I do not fail in obeying him save in those things that I am incapable of doing.' The Prophet (sas) told her: "Look to how you are with respect to him for he is your paradise and your hell-fire." *Ahmad & others (acceptable according to Al-Albaani).*

Al-Albaani states that this hadith is proof that a woman must serve her husband according to her ability, the first of such obligations is the bringing up of the children.

To Be Thanked for His Actions

Gratitude is one of the most important characteristics of a believer. A Muslim is grateful both to Allah for His infinite mercies and also to people who do well by him/her. The Prophet (sas) said:

"Inna ashkaru an-naasi lillahi tabaaraka wa ta'aala ashkaruhum lin-naasi." "The most grateful people to Allah Blessed and High are the most thankful of them to others." *Ahmad*

"Laa yashkuru Allaha man laa yashkuru an-naasi." "Those who do not thank people do not thank Allah." *Abu Daud & others*

Although it is an obligation of the husband to look after his wife, this does not mean that she should not be thankful to him for his kindness and his efforts in looking after her welfare and happiness. This is something fundamental which should exist between husband and wife. Each of them should acknowledge the efforts of the other, show them gratitude and repay them in kindness. Allah said:

{Hal jazaa'u al-ihsaani illa al-ihsaanu} {Is the reward for good deeds extended anything other than good deeds (returned)}
Ar-Rahman:60

It would seem from various hadith that it is specifically necessary for the wife to remind herself of this principle. Perhaps since a large part of the husband's contribution to the household takes place as working outside of the home, she may tend to overlook it. This seems to be a common characteristic of women as can be seen in the following hadith of the Prophet (sas) after his night journey to see heaven, hell and Jerusalem:

"...wa ra'aitu akthara ahlihaa an-nisaa'a. Qaaloo lima yaa rasoola Allahi. Qaala: Bi kufrihinna. Qeela: Yakfurna billahi? Qaala: Yakfurna al-'asheera wa yakfurna al-ihsaana lau ahsanta ilaa ihdaahunna ad-dahra thumma ra'at minka shai'an qaalat maa ra'aita minka khairan qattu." "...and I saw most of its inhabitants (i.e., hell-fire) women. They said: Why, O Messenger of Allah? He said: Because of their *kufur*. It was said: Their *kufur* toward Allah? He (sas) said: Their *kufur* toward their mate and they commit *kufur* (ingratitude) of good deeds extended even if you extend good deeds to one of them forever but then she sees something from who (which she dislikes) she says: I have never seen any good from you." *Muslim & Bukhari*

In another hadith, the Prophet (sas) warns wives in a similar manner: *Laa yandhuru Allahu ilaa imra'atin laa tashkuru li zawjihaa wa hiya laa tastaghniy 'anhu* "Allah does not look at a woman who does not thank her husband while she cannot do without him." *Al-Hakim (acceptable per Sh. Al-Albani)*

She Does Not Fast (Voluntary) Without His Permission

The Prophet (sas) said: "*Laa yahillu lilmar'ati an tasooma wa zawjuhaa shaahidan illa bi idhnihi.*" "It is not lawful for a woman to fast while her husband is resident except with his permission." *Muslim & Bukhari*

Conclusion: The Importance of Fulfilling the Husband's Rights

The Prophet (sas) gave an all-encompassing advice to Muslim women in the following hadith: "*Idhaa salat al-mar'atu khamsahaa wa saamat shahrahaa wa hasunat farjahaa wa ataa'at zawjahaa qeela lahaa udkhuliy al-jannata min ayyi abwaabi al-jannati shi'ti.*" "When any woman prays her five, fasts her month, guards her body and obeys her husband it is said to her: Enter paradise from whichever of its doors you wish." *Ibn Hibban (sahih per Al-Albani)*

Chapter [9]

Nushooz (Marital Discord)

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In This Chapter:

- The definition of *nushooz*
- The different cases of *nushooz* coming from either the wife or the husband.
- What Islam prescribes to seek a solution in each type of *nushooz*.
- The role of the arbitrators in cases of marital discord.

Allah Most High blessed this *ummah* with the most comprehensive and perfect law ever given to mankind - the *shari'a*. This law did not fail to give us solutions to one of the most common everyday problems of human life: problems between husband and wife. Even if both the husband and wife are pious, practicing Muslims in a general sense, marriage presents additional tests which many do not pass as well as they should. They may then begin failing to fulfill their obligations within the marriage and failing to treat one another as they should according to Islam. When this happens, Allah's *shari'a* has laid down certain processes that the spouses (and possibly others helping them) should go through to try to rectify the situation. Unlike some ignorant "religions" concocted by men, Islam also recognizes that there may situations where resolution is not possible and termination of the marriage is preferable - through divorce or other means.

When one of the spouses is refractory, it is called *nushooz* on the part of that spouse, whether husband or wife. For the rest of this chapter, we will discuss the nature of *nushooz* and some of the steps which should be taken when it arises.

The Meaning of Nushooz

The meaning of *nushooz* in the language is "rising up".

An-nushooz can be on the part of the wife, the husband or both can claim it to be from the other. Here are some of the definitions which the scholars have given to it:

"Each spouse transgresses and is hostile against the other."

"It is a hatred by one of the spouses for the other or by each of them for the other."

"Each one of the spouses differing from the other."

"*An-Nushooz* is each of the spouses having hatred for the other and treating each other in an improper manner."

Looking at all of these definitions, one sees that they are very close in meaning and indicate that *an-nushooz* can come from either spouse due to disobedience, hatred, contrariness, diffidence, harshness, aggression, etc.

An-Nushooz on the Part of the Wife

Here are some definitions from the scholars of *nushooz* when it is committed by the wife:

"It is the woman leaving the house of her husband without his permission and keeping her husband from her without due right."

"It is the woman departing from the obligatory obedience to her husband, her preventing him from her in the bed, her leaving the house without his permission to a place that she knows he would not permit her to go, her leaving the rights of Allah upon her, such as performing the purification of *ghusl* or fasting Ramadhan, and her locking the door on her husband, keeping him out."

"It is the wife disobeying her husband elevating herself above what Allah has obliged upon her and her raising herself above fulfilling her obligatory duties."

"It is the wife's disobedience of her husband concerning those acts of obedience that are obligatory upon her from the rights of marriage."

"It is where the wife raises herself above her husband and she is diffident towards him in the sense that she does not obey him when he calls her to his bed or she leaves the house without his permission and so forth. It is when she withholds from him his right to her obedience."

From all the different definitions, we see that *nushooz* on the part of the wife revolves around any of four characteristics:

1. She does not beautify herself for her husband when he desires that from her.
2. She disobeys her husband with respect to coming to his bed and she refuses to respond to his calls.
3. She leaves the house without his permission or without any legal right to do so.
4. She does not perform her obligatory religious duties, such as failure to perform some prayers, fasting Ramadhan, covering her *'awra*, or any other obligatory act of Islam.

Nushooz on the Part of the Husband

The jurists have defined *nushooz* when it is from the husband as follows:

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"It is where the husband hates his wife and brings about harm to her."

"The husband transgresses against his wife and harms her by boycotting her, hitting her in ways not called for by the law, irritating her, abusing her, reviling her, such as cursing and insulting her, etc."

"For the husband to transgress her by hitting her or harming her or having very bad behavior towards her."

"It is for him to harm her by beating her or making life difficult for her or keeping her from getting her rights fulfilled such as proper division between co-wives, support, etc."

So, *nushooz* when it is committed by the husband, revolves around the following point:

1. The husband wrongfully elevating and raising himself arrogantly above his wife and above the obligations which Allah has place upon him with regard to her.
2. He transgresses against her by beating her, harming her, reviling her, abusing her and not treating her properly.
3. He fails to fulfill his mandatory obligations toward her such as support, etc.
4. He becomes diffident toward her and unconcerned for her by boycotting her in talk or in the bed, refusing to speak to her, etc.

Types of Cases of Nushooz

There are three different cases of *nushooz*, as Allah has made clear in His Book.

The first case is where the *nushooz* is committed by the wife. This case and its resolution have been mentioned in the Qur'an in the verse discussed previously: {*...Wa allaatiy takhaafoona nushoozahunna fa'idhoohunna wahjuroohunna fiy al-madhaaji'i wadhriboohunna fa in ata'nakum falaa tabghoo 'alaihinna sabeelan inna Allaha kaana 'aliyyan kabeeran.*} {*...And (as for) those (women) from whom you anticipate rebellion, admonish them, avoid them in the sleeping place and hit them. If they obey you, do not desire and further way to (harm) them. Surely, Allah is Knowing, Great.*} *An-Nisaa:34*

The second case is *nushooz* on the part of the husband. This has also been mentioned in the Qur'an: {*Wa in imra'atun khaafat min ba'lihaa nushoozan au i'raadhan falaa junaaha 'alaihima an yuslihaa bainahumaa sulhan wa as-sulhu khairun wa uhdhirat al-anfusu ash-shuhha wa in tuhsinoo wa tattaqoo fa inna Allaha kaana bimaa ta'maloona khabeeran.*} {*And if a woman fears*

nushooz from her husband or that he may turn away, there is no sin upon the two of them to make terms of agreement between them and agreement is better. Stinginess has been made present in all souls but if you extend good deeds and beware of Allah, verily Allah is fully knowledgeable of all that you do.} *An-Nisaa:128*

The third case is where *nushooz* (mainly in the sense of 'dislike' and 'turning away') is committed by both the husband and wife. This is mentioned in the following verse:

{*Wa in khiftum shiqaaqa bainahumaa fab'athoo hakamaan min ahlihi wa hakaman min ahlihaa in yureedaa ishlaahan yuwaffiq Allahu bainahumaa. Inna Allaha kaana 'aleeman khabeeran.*} {And if you fear a separation between the two of them, appoint an arbitrator from his family and an arbitrator from her family. If they desire reconciliation, Allah will bring them into agreement. Verily Allah is Knowing, Knowledgeable.} *An-Nisaa:35*

The Remedy for *Nushooz* When it is From the Wife

When a wife is in a state of *nushooz*, the husband can address it with the following three steps:

1. Admonition and guidance.
2. Boycotting
3. Striking her

What follows is a detailed discussion of each of these three steps.

The First Step: Verbal Admonition and Guidance

The first thing a husband should do when his wife commits *nushooz* or the steps that lead to it is to attempt to warn her verbally, using Qur'an and Sunnah to remind her of her duties toward Allah and toward her husband. Allah said:

{*Wa allaatiy takhaafoona nushoozahunna fa'idhoohunna...*} {As to those women from whom you see ill-conduct, admonish them...} *An-Nisaa:34*

Admonition is a cure that is gentle and mild. Its goal is to replace estrangement and rebellion with love, compassion and togetherness in obedience to Allah Most High. All of the scholars early and late have agreed that this admonition is only as long as it is in agreement with the Shari'a. Otherwise, the husband has no such right according to the principle: "There is no obedience to the created if it involves disobedience to the Creator." (sahih hadith). Here are some of the scholars' definitions of this admonition (*mau'idha*):

"Advising and reminding one of the outcome of ones actions."

"Reminding humans in a way that softens their hearts by reminding them of the rewards or punishments."

"The husband makes her fear Allah Most High. He reminds her of what Allah has obligated upon her concerning his rights and obedience. She is to be told the results of her sin and disobedience and how she then forfeits her rights of maintenance and clothing. And she is to be told of how that permits him to strike her and boycott her."

From the sunnah, it is narrated that the Prophet (sas) said: "If you fear *nushooz* on their part, then advise them, boycott them in their beds and strike them in a way which is not injurious..." *Musnad Ahmad*

The Companions, the Followers and all who came after them to this day agree that this admonition is legally sanctioned when a wife commits *nushooz*. No one has ever rejected that and it is a point of consensus.

The Second Step: Boycotting and Avoidance

Sometimes verbal admonition by have no effect on ending her state of estrangement and disobedience. In fact, it may increase her obstinance due to some emotion that has overtaken her, a defiant reaction or perhaps she has been deceived by position, wealth or beauty to consider herself better than her husband. The husband may be partly to blame for this if he allowed his own emotions to interfere with admonishing his wife in the best way. In any case, the next step in trying to end her recalcitrance is boycotting her and avoiding her "in the bed".

Linguistically, this "boycotting" (*al-hajr*) is defined as "avoiding, cutting off and not having contact with the one who is being boycotted." Allah recommends this using the additional phrase: "in sleeping places" (*fiy al-madhaaji*). This could mean either avoiding her entirely and sleeping somewhere else or it could mean sleeping in the same bed but keeping away from her and not speaking, etc.

The Qur'an, the Sunnah, consensus of the scholars and sound reason indicate its permissibility and it being one of the means of disciplining the estranged wife when verbal admonition brings about no positive result. Allah said: {...*Wahjurohunna fiy al-madhaaji'*...} {...And avoid them in sleeping places...} *An-Nisaa:34*

Imam Ahmad records in his *Musnad* that the Prophet (sas) separated from his wives for a month. (Although this was NOT for reasons of *nushooz*, it nonetheless shows the permissibility of the act.) The jurists have agreed that it is permissible if it leads to the woman correcting her ways and returning to proper guidance. It is a method which is effective with a woman who loves her husband.

The verse in Sura An-Nisaa is ambiguous as to whether it means to avoid the bed and the bedroom entirely and sleep somewhere else or whether it means to avoid them IN the bed. That latter method is preferable because it avoids making the existence of the problem known to children and other family members and because there is a more positive atmosphere for actual reconciliation.

The boycotting may include boycotting her in speech, but that should not last more than three days according to the hadith in Sahih Muslim: "It is not permissible for a Muslim to boycott his fellow Muslim for more than three nights."

As for boycotting her in the bed, this can continue for as long as he believes it may still lead to her stopping her acts of *nushooz* but in no case exceeding four months. This is the strongest opinion among the statements of the scholars. It is based on the time limit which Allah placed on *al-eelaa'* - where a man takes an oath to cut off relations with his wife. In the *jahiliya*, there was no limit on this, so a spiteful man could leave his wife "hanging", having no relations with him but not divorced for as long as he wished. Allah limited this to four months, saying:

{*Lil alladhini yu'loona min nisaa'ihim tarabbusu arba'ati ash-hurin fa in faa'oo fa inna Allaha samee'un 'aleemun.*} {And for those who cuts off relations with his wife is a waiting period of four months. Then, if he returns, surely Allah is Hearing, Knowing.} *Al-Baqarah:226*

The wife who does not mend her ways after four months of boycotting is not and will not mend her ways. She is deserving of divorce and there is not need to continue this "suspended" situation any further. This is because her continual estrangement and non-cooperation even though she knows full well that it will end in divorce shows clearly that she has no willingness to respond to the action which is taking place and return to a proper Islamic marriage. At the very least, it can be said that she will not be able to live with that husband in a pleasant and proper manner.

The Third Step: Striking Her

In some cases the solution to the problem may require some harshness and toughness. This is because there are some people who cannot be set straight when they go wrong by good behavior and soft advice alone. Kindness and softness just make such people more arrogant and ignorant. Some such people, if met with toughness, respond by cooling down and ending their defiance. Generally speaking, it is not recommended for a husband to ever strike his wife and it is narrated that the Prophet (sas) said about those who do so that "they are not the best of you".

However, in some cases resorting to harshness including striking may be a beneficial cure which in fact returns the partners back together in love and compassion. In these cases, it can be a positive cure and a spiritual discipline. It is not meant for revenge or punishment. Whoever does it in such a manner is committing a sin and transgressing against his wife. Instead, it

is meant to restore what has become improper and bring the disruption to an end. Although it is a bitter medicine, in many cases it may be less harmful to all involved than the destruction of the foundation of the family.

The Remedy When *Nushooz* is By the Husband

Islam has provided remedies for cases when *nushooz* is from the husband in ways consistent with both her feelings and sensitivities as a woman and their respective roles, rights and obligations as husband and wife. She can look for the reasons for his behavior and admonish him with Islam in an attempt to make things right between them. However, Islam has not given her the right to address this problem by boycotting him or beating him as has been given to the husband. This is because her nature is different from that of the man and because she does not have the same kind of power and authority in the marriage as he has.

She should use some or all of the following steps:

1. Try to discover the reason for his estrangement and/or bad behavior.
2. Admonish her husband and remind him of his responsibility in front of Allah towards his wife such as good behavior and kind treatment.
3. Try to please her husband in order to make things right. This can be just by showing kindness and concern and can also include compromising some of her own rights for the sake of harmony.

{Wa in imra'tun khaafat min ba'lihaa nushoozan au i'raadhan fa laa junaaha 'alaihima an yuslihaa bainahumaa sulhan wa as-sulhu khairun...} {And if a woman fears cruelty or desertion on her husband's part there is no sin upon the two of them if they make terms of agreement and agreement is better...} *An-Nisaa:128*

If it becomes clear to her that the signs of *nushooz* are confirmed and he is turning away from her out of dislike for her and wishing to be away from her, then there is no sin upon either of them if the "work out terms of peace". This means that she may give up some of her due rights in order to stay in the marriage. For example, she may give up some of her rights to support, housing or equality of nights with other wives in order to remain under his protection and in the marriage. Or, she may give up some or all of her dowry in exchange for his divorcing her.

Ibn Abbas said: "Saudah feared that the Prophet (sas) was going to divorce her so she said to him, "O Messenger of Allah, do not divorce me but keep me and make my day for Aisha." The Prophet (sas) did so and the verse was revealed concerning that. *Bukhari*

'Umar said: "Whatever points they agree upon are permissible." *Al-Baihaqi*

The General Remedy: Appointing of Arbitrators

"Arbitration" (*At-tahkeem*) means to judge or decide a matter. *Al-hakam* (mentioned in the verse) is the one who has the right to make a ruling and decision for the two in dispute. The meaning of appointing arbitrators in this case is:

"The two disputing spouses appoint two men from their respective families to bring about accord between them and to settle their dispute."

The Ruling Concerning Such Arbitration

The scholars have agreed that two arbitrators should be appointed if dissension occurs between the two spouses and it is not clear which of the two (if either) is committing *nushooz* or if both of them are wherein the husband refuses to keep his wife in a proper manner or to set her free in a good way and/or the wife refuses to fulfill her rights that Allah has imposed upon her toward her husband.

The jurists also agree that one of the arbitrators should be from the husband's family and the other from the wife's family if possible. If that is not possible, other people may be appointed depending on what is in the best interest of those concerned. They also agree that when in agreement are to execute what they see as the best opinion in bringing accord between the spouses. However, if they disagree, then their opinions are not to be executed.

The Evidence

If the two spouses are not able to come to some kind of agreement between themselves and separation seems to be looming, it is permissible for those in authority, a ruler or judge to appoint two men as arbitrators to see how they can bring about a reconciliation. This step is proven by the Qur'an, the Sunnah, consensus and sound reason. Allah said (verse cited earlier): {*Wa in khiftum shiqaaqa bainahumaa fab'athoo hakamaan min ahlihi wa hakaman min ahlihaa in yureedaa ishlaahan yuwaffiq Allahu bainahumaa. Inna Allaha kaana 'aleeman khabeeran.*} {And if you fear a separation between the two of them, appoint an arbitrator from his family and an arbitrator from her family. If they desire reconciliation, Allah will bring them into agreement. Verily Allah is Knowing, Knowledgeable.} *An-Nisaa:35*

From the Sunnah, there is a report recorded by Ash-Shaafi'iy in his book *Al-Umm* from Ubaidah As-Salmaani who said: "A man and woman came to Ali ibn Abi Talib and each of them had a group of people with them. Ali ordered them to appoint a male arbitrator from his family and one from her family. Then he said to the arbitrators: 'Do you know what your responsibilities are? If you find that you can bring them back together, then do so. If you find that they should be separated, then do so.' The woman said, 'I am pleased with the Book of Allah concerning what is upon me and what is for me.' The man said, 'As for separation, I will not accept that.' Ali told him, 'You are lying, by Allah, until you accept the same things she has accepted.'"

Qualifications of the Arbitrators

The two arbitrators must meet the following conditions:

1. Muslim
2. Adult
3. Mentally competent
4. Male
5. Free
6. Mature following right guidance
7. People of insight and understanding
8. Just and righteous
9. They must have knowledge concerning matters of reuniting and separating spouses in the Shari'a and what they have been commissioned for.
10. Trustworthy
11. Their intention must be solely to please Allah
12. Pious having fear of Allah
13. It is recommended that they be from the relatives of the spouses

The Role of the Arbitrators

The two arbitrators have a very important role to play, a noble purpose and a great responsibility. They will frequently become the target of enmity from one or both of the spouses and they should be willing to face that for Allah's sake. To attempt to bring about reconciliation and harmony where there is misunderstanding, oppression and/or strife is one of the best good deeds. Allah said: *{Laa khaira fiy katheerain min najwaahum illa man amara bi sadaqatin au ma'roofin au islaahin baina an-naasi wa man yaf'alu dhaalika ibtighaa'a mardhaata Allahi fa saufa nu'teehi ajran 'adheeman.}* {There is no good in most of their secret talks except for one who orders charity, good deeds or reconciliation between people. And whoever does that seeking Allah's pleasure we shall give him a great reward.} *An-Nisaa:114*

It is a must upon the two arbitrators that they spare no effort in trying to bring about reconciliation and harmony between the spouses. Failing that, they also have the authority to separate the spouses according to the strongest opinion among the scholars. In a case where there seems to be no hope of bringing the two back together in a harmonious marriage, then the only solution may be to free the spouses from one another by separation. Otherwise, the situation may just get worse and bring about even greater harm. Allah ordered the husband to: *{At-talaaqu marrataini fa imsaakun bi ma'roofin au tasreehun bi ihsaanin...}* {Divorce is two times then retaining on reasonable terms or releasing with kindness...} *Al-Baqarah:229*

{*Wa in yatafarraqaa yughni Allahu kullan min sa'atihi wa kaana Allahu waasi'an hakeeman...*} {And if they separate, Allah will fulfill their needs from His generosity and Allah is Generous, Wise...} *An-Nisaa:130*

The Different Types of Separation

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Terminating the marriage contract is done through one of three ways: 1) dissolution of the contract by the ruler or judge, 2) *khula'* and 3) divorce. If reconciliation cannot be achieved, then the arbitrators may separate the two through *khula'* where the woman returns part or all of her dowry if the woman cannot abide by the marriage and the man is unwilling to divorce her unilaterally. If they determine that the problem is from both sides and the differences are irreconcilable they can institute a divorce - according to many of the scholars - even if the couple or one of them did not request the divorce.

Do the Arbitrators Have the Authority to Separate?

Discussion of the Issue

There is a difference of opinion among the scholars concerning whether or not the arbitrators have the right to separate the couple and bring an end to the marriage. This difference revolves around the following points:

1. One opinion states that the arbitrators are simply acting as agents for the spouses and they cannot go beyond what they have been commissioned to do without first getting such permission from those who assigned them. Their role is only to attempt to reconcile, not separate.
2. Another opinion is that the arbitrators have been appointed by the judge or ruler to solve the problem between the spouses. They are, therefore, like judge. The judge may decide according to whatever is in the best interest and if separation is the best solution, then so be it.

The strongest of these opinions is that the arbitrators are like judges and DO have the authority to separate between the spouses with or without their consent. Ibn Al-Qayyim said about this:

"It is the most amazing thing to say that they are simply agents and not arbitrators or judges. Allah has given them the position of arbitrators or judges. This role has been given to other than the spouses. If they were both simply agents or trustees (*wakeel*) working on behalf of the spouses, the verse would read, "And appoint a trustee from his family and a trustee from her family." Furthermore, if they were to be simply agents or trustees, they would not need to be from the respective families. In addition, the judgement has been put in their hands. Allah said, "If they both wish for peace, Allah will cause a reconciliation" however, agents or trustees have no independent will of their own, they only fulfill what their superior has desired. Moreover, the agent (*wakeel*) is never called a judge or arbitrator (*hakam*) in the language of the Qur'an, the

language of the law or in common speech. Finally, the arbitrator has the authority to decide a matter and that decision must be implemented. However, neither is true for a *wakeel*..."

Some of the scholars state that if the ruler or his deputy appoints two arbitrators then they have no role except to study which of the two parties is in the wrong, to advise them and to attempt to bring about reconciliation. If no reconciliation is reached, then the matter is taken up to the ruler or his deputy. This leaves this issue open to three possible opinions:

1. The arbitrators are simply agents or trustees working on behalf of the spouses. This is because the right of divorce is in the hands of the husband only and a settlement other than divorce can only come about when the wife accepts it.
2. The arbitrators are acting in the role of the ruler or his deputy. The ruler may bring about divorce if the harms of the marriage are made evident to him.
3. They are witnesses only.

The strongest opinion is that the arbitrators are like judges and not simply agents or trustees. They have the authority to separate the couple in the same way that they have the authority to make them come back together.

Review Questions

1. Define *nushooz*.
2. Describe the process to be followed when *nushooz* comes from the wife. Mention the evidence from the Qur'an and Sunnah for this process.
3. Describe the process to follow when *nushooz* is from the husband.
4. Describe the role of the arbitrators and the authority which they possess.
5. Describe how (and if) many of these principles can be implemented in our current situation.

Chapter [10]

Dissolution of Marriage in the Shari'a

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In This Chapter:

- The need and permissibility of terminating marriages in Islam.
- The different ways in which a marriage may be terminated in Islam.
- The ruling concerning divorce or dissolution and when it is permissible, disliked, etc.
- *Talaaq* (divorce) and the proper manner in which it is to be done.
- *Khul'a* and rulings relating to it.
- The concept of minor and major separation after divorce.
- Different opinions regarding the requirement for witnesses to divorce and/or taking one's wife back.

Why Should Marriages be Terminated?

In order for the institution of marriage to fulfill its goals as described earlier, divorce must be allowed in certain situations. Those religions and/or societies which deviated from this point and imposed the fiction of "til death do us part" in all cases have been responsible for untold human misery and sin. This law is not suited to human nature and Islam does not force us to apply laws which are extreme - neither celibacy, permanent marriage without the possibility of divorce, nor promiscuity and mayhem (the most popular one in our time).

Islam gives us two important social goals in this regard:

1. The "eradication" of single people of marriageable age as much as possible by facilitating marriages, and
2. Setting up a social environment where all relations between men and women outside of marriage can be completely eliminated.

About the first point, Allah said: *{Wa ankihoo al-ayaamaa minkum wa as-saaliheena min 'ibaadikum wa imaa'ikum in yagoonoo fuquraa'a yughneehim Allahu min fadhlihi wa Allahu waasi'un 'aleem.}* {Marry the single among you and the pious among your male slaves and your female slaves. If they are poor, Allah will free them from need from His bounty and Allah is Generous, Knowing.} *An-Noor:32*

The second point is clear from the fact that Islam prescribed 100 lashes or stoning by death for men or women who commit fornication/adultery. Allah warns us in several places to "stay far away from" this act. Also, the Prophet (sas) said in a hadith:

"The most fearsome trial from which I fear from you is the trial of women." (If he (sas) had been speaking to women, this would have been: "the trial of men").

Obviously, part of facilitating these objectives is not to imprison spouses in a marriage which is not satisfying mentally or physically. Some of them will surely cave under the pressure and seek other outlets for their needs, destroying the moral fiber of society. In such cases, termination of the marriage becomes preferable.

Also, one of the most important goals of marriage is to raise a new generation of Muslims who will carry the message and practice of Islam forward. The family is the first source of guidance and happiness. If they are brought up in a situation where they can easily see the displeasure and unhappiness of their parents - and especially if Shaitaan finds a way to connect this in their minds to Islam in some way - the problems in that family may be passed on to the children corrupting their behavior and possibly even their Islam.

Divorce and the various other means which Islam provides to terminate a marriage are provided to men and women in Islam in order to further the attainment of these goals - either within an existing marriage or by removing it. Divorce should not be "ugly". When it becomes necessary, it should be done with consideration, dignity and kindness. Allah said: *{Fa idhaa balaghna ajalahunna fa amsiqoohunna fi ma'roofin au faariqoohunna bi ma'roofin...}* {Then, when they reach the term appointed, either take them back in a good manner or separate from them in a good manner...} *At-Talaaq:2*

The Means by Which a Marriage May be Terminated

There are a variety of ways in which a marriage becomes terminated in Islamic law either automatically or on the initiative of the husband, the wife or a judge. It is true that the "power" of divorce is in the hands of the husband and not the wife, but this does not mean by any stretch of the imagination that the woman has no ability whatsoever to put an end to the marriage if she is mistreated, unsatisfied or unhappy. Men who convince their wives that they have absolutely no recourse unless they decide to divorce them have deviated in their Islam, misled and oppressed.

The means of terminating a marriage in Islamic law is a very important topic and one about which many Muslims are ignorant or misinformed. Because of this ignorance, many are forced to live miserable lives because they don't realize the options which are available to them. This is true for both Muslim men and Muslim women. The following outline shows the various ways in which a marriage may be terminated:

- I. By the husband
 - A. Divorce
 - B. *Al-Eelaa* (an oath not to have relations with her)
 - C. *Adh-Dhihaar* (an oath that she has been unfaithful)
- II. By the wife

- A. Option of puberty
- B. By empowerment
- III. By mutual consent
 - A. *Al-Khul'a* ("ransom")
 - B. Arbitration
- IV. By a judge
 - A. At the insistence of the husband
 1. The wife has a defect
 2. The wife has a serious character deficit making them "unequal" or inappropriate for each other
 3. *Al-li'aan* where the husband swears an oath four times that she committed adultery
 - B. At the insistence of the wife
 1. The husband has a defect
 2. The husband has a serious character flaw making them "unequal"
 3. Husband is missing and presumed dead
 4. Husband is not supporting her
 5. Husband mis-treats her
 6. Husband fails to perform marital obligations
 7. Husband commits inequality between multiple wives
 - C. On his own initiative
 1. Marriage contract has a fatal flaw
 2. Husband refuses to comply with a judge's order to divorce.

Dissolution at the Hands of the Husband

The husband can unilaterally bring an end to the marriage by one of four means: 1) divorce, 2) turning away from her for four months, 3) making a statement which makes her unlawful to him, and 4) swearing an oath that she committed adultery.

Al-Eelaa (Ceasing Relations)

This is where the husband takes an oath not to approach his wife. This is what is referred to in the following verse: *{Lilladheena yu'loona min nisaa'ihim tarabbusu arba'ati ash-hurin fa in faa'oo fa inna Allaha ghafoorun raheem.}* {For those who swear to cease relations with their wives is a waiting period of four months. Then, if they resume relations, verily Allah is Forgiving, Merciful.} *Al-Baqarah:226*

In the *jahiliya* (pre-Islamic days), there was no time limit on this oath and this practice. A cruel man could leave his wife hanging for her entire life neither treating her as a wife nor divorcing her. In Islam, a four month limit has been put on such an oath. Within this limit, Allah forgives this behavior. After four months, the husband must either resume relations with his wife

or end the marriage. If he does nothing after four months and continues to boycott her bed, then the marriage is over. Some scholars were of the opinion that it doesn't end automatically and she must raise the issue to a judge.

This is not considered a proper way to end an Islamic marriage. In general, if the husband does not break his oath and return to his wife within the four month period, he will have brought an end to the marriage and would have committed a wrong in the process. Some scholars equated this to three divorces and said that those two may never marry again unless she is married to someone else, that marriage is consummated and later terminated. Others equated it to a single divorce meaning that they can remarry after it.

Adh-Dhihaar (Obscene Oath Which Prohibits)

Adh-Dhihaar is another practice which dates back to the times of pre-Islamic ignorance. It where the husband makes a statement like: "You are to me like my mother's back." This implies that the woman becomes forever forbidden. It is referred to in the Qur'an: *{Alladhina yudhaahiroona min nisaa'ihim maa hunna ummahaatihim in ummahaatihim illa allaati waladnahum wa innahum layaqooloona munkaran min al-qauli a zoora.}* {As for those who makes their wives unlawful to them by *dhihaar*, those are not their mothers. Their mothers are none others than those who gave birth to them. They surely utter a reprehensible statement and a lie.} *Al-Mujaadilah:2*

Clearly, this is a forbidden act, since Allah described it as "a reprehensible statement and a lie". If a man commits this, he may not approach his wife until he makes an expiation for the statement he has made. His expiation is to free a believing slave, fast two consecutive months or feed sixty poor people in that order according to his ability.

Dissolution by the Wife

In certain unusual situations, the wife has the means to dissolve the marriage unilaterally. The first of these is called the "option of puberty". This is where the girl is married before puberty. When she reaches puberty, she has the right to accept or reject the marriage.

The second means is "empowerment" where the husband gives the wife the right to pronounce divorce on his behalf. Thus, in some sense it is a divorce by the husband (with the pre-specified "power of attorney" from him), actually initiated by the wife.

This is something with no direct evidence for it from the Qur'an and the Sunnah and appears to be something never practiced by the Companions and the early generations. Nonetheless, there seems to be a valid legal logic that if the man has this authority, then he should have the authority to delegate it to her. However, if this practice becomes widespread or if men find they cannot get married without offering it, then the ruler should ban it because it is a fundamental contradiction of the *Shari'a*. If Allah intended for women to have the power of unilateral divorce, He (Most High) would have given it to them.

Dissolution by Mutual Consent

The husband and wife may agree on an end to the marriage or on a divorce. This is done by what is known as *khul'a*, which will be discussed later, or by arbitration, as discussed earlier.