

The Wisdom Behind Marriage

Marriage is a sound setting leading to strong ties among families, reciprocal love, chastity and protection from forbidden acts.

Marriage is the best means to bring about children and increase the population while preserving proper lineage.

Marriage is from among the best means to satisfy the sexual urges and fulfill such needs while keeping such acts safe from disease.

Marriage satisfies the natural desire for fatherhood and motherhood which grows with the presence of children.

Marriage also leads to tranquillity, solace, modesty and chastity for the husband and wife.

Lexical and Legal Definition of Marriage

Lexically, the word *nikaah* (نكاح) means sexual intercourse or combining between two items and it is also commonly used to refer to the contract. One says, “*Nakaha* such and such a woman,” if one is determined to marry her and fulfill the contract. If a person says, “*Nakaha* his wife,” this means that he had sexual intercourse with her.

Legally, *nikaah* refers to the contract that has the explicit or clear mention of marriage and that brings about the right to enjoy one another, be spouses to each other and be companions for one another.

Topic One:

Conditions for Marriage and Its Legal Status

The Legal Status of Marriage

Marriage is a recommended act (sunnah) for anyone who has sexual desires but does not fear that he would actually go out and commit illegal sexual intercourse. Marriage becomes obligatory upon the one who has such a fear. It is permissible for one who does not have such desires, such as the impotent or aged. It is forbidden in *daar al-harb* [the lands at war with Islam] except in the case of necessity.

Its Verbal Form

Marriage is concluded by any word that clearly indicates it; that is, it can be in any language. For example, if one were to say, "I marry to you [so and so]," or, "I wed to you," and the other says, "I accept this marriage," or, "I marry her," or, "I am pleased by that," it would be an acceptable marriage contract. It is recommended to be in Arabic. Whoever does not know Arabic may state the offer and acceptance in his own language.

The Essential Components of a Marriage Contract

There are two essential components:

(1) The offer: This is the wording coming from the guardian or the one representing the guardian. It should be stated with proper forms of the word *nikaah* or *tazweej* for those who know Arabic. These words should be used because they are words in the Quran. For example, Allah says,

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ

“Marry women (*ankihoo*) of your choice” (*al-Nisaa* 3).

(2) The acceptance: This is the wording coming from the groom or his representative. It is by words such as, “I accept (*qabalt*) this marriage,” or, “I am pleased with this marriage,” or, simply, “I accept.” The offer must come before the acceptance, unless the circumstances already point to it.

The Conditions for a Marriage Contract

In order for the marriage contract to be valid, the following four conditions must be met:

(1) The bride and the groom must be specified.

(2) Both the bride and the groom must be pleased by the marriage [that is, they are acceptable to one another]. It is not permissible to force either of them into marriage with the other. The permission of both the virgin and the non-virgin woman is sought. The permission of the virgin is her silence while the non-virgin states her approval. That is not required with respect to the insane or imbeciles.

(3) The guardian is also a condition. The guardian must be a free, adult, sane, rightly-guided, righteous Muslim who is of the same religion as the woman for whom he is a guardian. The father of the woman has the most right to be the guardian. Second would come his executor for marriage. Then comes her paternal grandfathers, no matter how far “up,” such as great grandfather and so on. Next comes her sons, no matter how far “down,” such as great grandson. Then comes her full brother, then her half brother through her father, then their sons, then her paternal uncles, then their sons, then her closest male relative from her father’s side and then the ruler.

(4) Having witnesses is the fourth condition. A marriage is not valid without the presence of two, just, legally capable male witnesses.

Topic Two:

What is Recommended and What is Forbidden with Regards to Marriage

It is recommended for a man to marry just one wife if he fears that he would not be just among more than one wife. He should choose a wife who is religious, not related to him, virgin, child-bearing and beautiful.

It is recommended for a man who wants to propose to a woman to take a look at her, what is other than her *aurah* (parts she must keep covered) and what would attract him to marry her, without being in private with her, so that the matter will be free of suspicion. The woman should also look at the one who is proposing to her.

If it is not possible for the man to see her, he may send a trustworthy woman to look at her and then describe her to him.

It is forbidden for a man to propose to a woman if another brother has already proposed to her [and his proposal was accepted], unless the other man gives up on that proposal.

It is forbidden to make an explicit statement of proposal to a woman who is fulfilling her mourning period and for the woman who is fulfilling her waiting period after her third divorce.¹ One, however, may make an indirect reference, such as, "I am desirous of marriage," and so forth.

It is permissible for the one who divorced a woman by an irrevocable divorce, but less than three times, to make her a direct or indirect proposal even while she is in her waiting period.

¹ When a man and woman are married to each other, they are allowed to divorce each other three times. After the third divorce, though, they cannot remarry until the woman marries another man, consummates her marriage with him and that marriage comes to an end.—JZ

It is forbidden to make either an explicit or indirect proposal to a divorced woman who is still going through her waiting period.

It is recommended to make the marriage contract in the late afternoon on Fridays, as that contains a time in which the supplications are responded to. It is also recommended to perform the contract in the mosque if that is feasible.

Chapter Two: Rulings Particular for Muslim Women

This chapter shall contain an introduction and a discussion of a number of issues.

Introduction

Since the address of the Lawgiver is addressed to those who are legally capable, such legislation is divided into three categories:

- (1) That which is specifically for men.
- (2) That which is specifically for women.
- (3) That which is commonly directed to both men and women.

I would like to mention some of the most important fiqh rulings that are specifically related to women. Most of the fiqh rulings which are directed to both men and women have been discussed earlier.

Issues Specifically Related to Women

The First Issue: Wiping Over a Wig

It is permissible to wear a wig if there is some strong need to do so. If a woman needs to wear a wig, she does not

wipe over it while making ablution for prayer. This is because it does not take on the same ruling or meaning as the headscarf. The woman must wipe directly over her head or over the hair which Allah has created.

The Second Issue: Fingernail or Toenail Polish

Some women apply fingernail or toenail polish and this completely covers the nail, preventing water from reaching to the skin or nail itself. This is not allowed. It can only be put on when one is in a state of purity and must be removed when one has to make a new ablution.¹

The Third Issue: Menstruation

Menstruation refers to the blood that flows from the woman's vagina under normal, healthy circumstances which is not due to giving birth or deflowering. Many scholars are of the opinion that it may begin by the age of nine. If a girl sees blood before that age, it is not considered the menses but bleeding due to a disease or illness. It may continue until the end of a person's life. It usually stops by the time a woman reaches the age of fifty.

The blood that flows from the woman is of six color varieties: black, red, yellowish, dingy, greenish or muddy. [All of these will be considered her menses if they flow during her regular monthly cycle.]

The shortest time for an entire menses is one day and night. Its median is five days. The longest period is fifteen days. Normally, it is six or seven days.

¹ What the author means here is that while the woman is obliged to pray, she cannot use make ablution while such nail polish is on because it prevents the water from reaching the parts that must be washed during the ablution.—JZ

The shortest time period for the time of purity between menses is usually thirteen days. It may actually be less or more than that.

While the woman is on her menses, it is forbidden for her to pray, fast, enter the mosque, recite the Quran from a copy of the Quran, circumambulate the Kaaba or have sexual intercourse. Menses are a sign that the woman has reached the age of puberty.

The Fourth Issue: Post-Partum Bleeding

Post-partum bleeding is the blood that flows from the woman's vagina after giving birth or when the greater portion of a child comes out, even if it is aborted but most of its physical being has become apparent.

This bleeding is usually for forty days. There is no specific minimum time period for it. If a woman gives birth to twins, the period of post-partum bleeding begins with the birth of the first child, not the second.

The same things that are forbidden for a menstruating woman are also forbidden for a woman with post-partum bleeding, such as prayer, fasting and so forth.

The Fifth Issue: *al-Istahaadhah* (Abnormal Prolonged Flow of Blood)

Al-Istahaadhah (الاستحاضة) refers to a flow of blood from the vagina that is not during the time of the menses or post-partum bleeding. It also includes any blood that flows beyond the maximum period of the menses or post-partum bleeding as well as what flows for less than the minimum time of the menses. It also includes any blood that flows before the age of puberty, which is nine years of age.

have praiseworthy meanings to them and without any musical accompaniment to them.

The Tenth Issue: Related to Death and Funerals

It is permissible for a woman to wash her young child or her husband [after their death]. It is also permissible for her to perform the funeral prayer, just like men. However, it is not permissible for her to follow the funeral procession and escort it to the burial site. It is also not allowed for her to visit the gravesites. She is forbidden to wail, lament, slap her cheeks, tear her clothing or to rip her hair out. All of those deeds are from the practices of the days of Ignorance and constitute great sins. It is not allowed for a woman to mourn for anyone other than her husband for more than three days. With respect to her husband, she mourns for four months and ten days. During that time, she must stay in the house of her husband and refrain from any types of adornment or perfume. However, there is no specific clothing that she wears for mourning.

The Eleventh Issue: Jewelry

A woman is free to wear what Allah has permitted her of gold and silver jewelry, according to what is customary and acceptable. She must avoid extravagance and arrogance. She does not have to pay zakat on her gold or silver jewelry as long as she wears it regularly or on special occasions.

The Twelfth Issue: Women Giving Charity

It is permissible for a woman to give in charity from her husband's wealth without his permission as long as it is something customary and she knows that he would be pleased with it. She may give the zakaat on her wealth to him if he is

from the recipients of zakaat. If her husband is stingy and does not spend on his family what is obligatory upon him, then she, without his permission, may take a fair amount from his wealth for herself and her children.

The Thirteenth Issue: Breaking the Fast

A pregnant or breastfeeding woman may break her fast if she fears any harm for herself alone or for both herself and her child. In those cases, she simply has to make up those days later without any kind of penalty or “ransom”. But if the pregnant woman fears not for herself but only for her child, then she must make up the day later as well as fulfill the penalty. As for the breastfeeding woman, if the child accepts another woman’s breast and the mother has the ability to pay that woman, then she should hire that woman to breastfeed her child and she does not break her fast. The ruling concerning the hired breastfeeding woman is the same as the ruling for the mother concerning the above [matters of fearing only for herself or for both herself and the child].

It is not permissible for a woman to perform a voluntary fast without the permission of her husband if he is present.

The Fourteenth Issue: Performing the Pilgrimage

The husband is not allowed to prevent his wife from performing her obligatory pilgrimage. If she asks him for permission, he must permit her and help her by facilitating the performance of the pilgrimage that Allah has made obligatory upon her. As for a voluntary pilgrimage, he may prevent her from doing such if it causes any kind of hardship for himself or her children.

The Fifteenth Issue: Clothing During the Pilgrimage

A woman can wear her customary clothing during the pilgrimage but she must refrain from the following: (1) clothing that is perfumed, (2) gloves, (3) face veil and (4) clothing dyed with saffron.

The Sixteenth Issue: Pilgrimage During Menses and Post-Partum Bleeding

Women on their menses or with post-partum bleeding perform the *ghusl*, enter the inviolable state and perform all of the rites of the pilgrimage except for circumambulating the House. They do not circumambulate the House until they become pure from their state.

The Seventeenth Issue: The *Talbiyyah*

The pilgrims should chant the *talbiyyah*.¹ The men should raise their voices while the women say it quietly. Furthermore, women do not follow the practice of trotting during the circumambulation or the *sa'ee*. They also do not raise their voices while supplicating, nor do they crowd in to get to the black stone or other locations.

The Eighteenth Issue: Cutting the Hair as a Rite of Pilgrimage

Cutting or shaving the hair is one of the rites of the pilgrimage and the umrah. For the woman, cutting the hair

¹ This is the saying of, "*Labaika-llabumma labaik labaika laa shareeka laka labaik. Inna-l-hamda wa-nimata laka wa-l-mulk. Laa sbareeka lak* (O Allah, here I am at your service. You have no partner. Here I am at your service. Verily, all the praise and the grace belong to You, and the Dominion [as well]. You have no partner)."

takes the place of shaving the hair, since it is not allowed for a woman to shave her hair. The manner in which a woman cuts her hair for this rite is to cut off a fingertip's worth from every braid or she gathers her hair together, if it is not in braids, and cuts off that amount from it.

The Nineteenth Issue: The Farewell Circumambulation

It is preferred for the women to perform the circumambulation of returning from Mina early on the Day of Sacrifice if they fear that their menses are coming. Aishah would tell the women to perform that circumambulation early on the Day of Sacrifice out of fear that they may experience their menses. If a woman is menstruating, she does not have to perform the farewell circumambulation if she had already performed the circumambulation after returning from Mina and if her departure time is while she is on her menses.

The Twentieth Issue: Marrying Non-Muslims

It is not allowed for a Muslim woman to marry a non-Muslim, regardless of whether he be a polytheist—socialist, Hindu or other—or from the People of the Book. This is because the man has the right of heading the household over his wife and she must obey him. This is the meaning of such authority. It is not proper for a disbeliever or polytheist to have any kind of authority or rule over any one who bears witness that there is none worthy of worship except Allah and that Muhammad (peace be upon him) is the Messenger of Allah.

The Twenty-First Issue: Custody

Custody refers to taking care of a small male or female child or an incompetent person. The mother has the right to have custody over the male or female child. She is forced to do so if she refuses. After her, in this right, comes her mother, then the mother's mother and then her mother and so on, and then comes the father and then his mother, then the grandfather, then his mother, then the full sister, then the half-sister through the mother, then the half-sister through the father, then the mother's sisters, then the father's sisters, then the father's sisters of her mother, then the father's maternal aunts, then the mother's father's maternal aunts, then her nieces from her sisters, then her cousins from her mother's side, then her cousins from her father's side and so forth. It continues in this manner until, if there are no more such relatives, the ruler takes charge of the child.

The father must pay the wages of the one who has the custody. In order to qualify for such custody, the person must be adult, sane, able to bring up the child, trustworthy, of good character, Muslim and not married. If the mother gets remarried, she loses her right to custody. If a boy reaches the age of seven, he is free to choose which parent he wishes to stay with. After the age of seven, the father has more right to his daughter until he gives her over to her husband.

The Twenty-Second Issue: Covering the Face

The scholars of the four schools of fiqh, even those among them who say that the face and hands are not part of the *aurah*, are in agreement that it is obligatory upon the woman to cover all of her body in the presence of non-related men—those who say that such is not part of the *aurah* say that during immoral times, times of little piety and times in which men

look often at women, like what is occurring today, women are required to cover their faces and hands.

This is what I have been able to compile and collect in this short span of time. I ask the Lord and Guardian, the Exalted, the Powerful to make this work beneficial. Allah is behind every intention and He is the guide to the straight path.

This was completed at the beginning at Dhu-l-Hijjah, 1413 A.H.