

Marriage in Islam

النِّزَاحُ فِي ظِلِّ الْوَسْطَانِ

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*By Sheikh
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الزواج في ظل الإسلام

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أَوْ تَصْوِيرِهِ، أَوْ بَنِّهِ، بِأَيِّ طَرِيقَةٍ كَانَتْ، أَوْ تَغْيِيرِ هَيْئَتِهِ، طَلَبُ الْإِذْنِ الْكِتَابِيِّ الْمُسَبِّقِ
مِنْ كَاتِبِهِ، وَذَلِكَ بِمُرَاسَلَةِ الْعُنْوَانِ أَدْنَاهُ. وَيُسْتَثْنَى مِنْ ذَلِكَ التَّصْوِيرُ الشَّخْصِيُّ السَّلَا
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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the Name of Allah,
The Ever-Merciful,
The Bestower of Mercy



The Sermon of Need

All praise is to Allah, we praise Him, seek His aid, and ask His forgiveness. We seek refuge in Allah from the evils of ourselves, and from the bad consequences of our deeds. Whoever Allah guides there is none to take astray, and whoever Allah takes astray there is none to guide. I testify that there is no *'ilāh* except Allah alone without any associates, and I testify that Muḥammad is His slave-servant and messenger.

﴿O' mankind! fear your Lord Who has created you from a single person, created, out of it, its mate, and from them twain scattered countless men and women;— Fear Allah, through Whom you demand your mutual [rights] and be heedful of the wombs: for Allah ever watches over you ﴿﴾ Surat 'An-Nisā' (#4) V.1.

﴿O' you who believe! fear Allah as He should be feared, and die not except in a state of Islam ﴿﴾ Surat 'Āle-Imrān (#3) V.102.

﴿O' you who believe! fear Allah, and make your utterance straightforward ﴿﴾ That He make your conduct whole and sound, and forgive you your sins: He that obeys Allah and his Messenger, has attained a great victory ﴿﴾ Surat 'Al-Aḥzāb (#33)

Table of Contents

Introduction	1
Chapter 1 Marriage, A Bounty From Allah	5
Chapter 2 The Ruling On Marriage In Islam	11
Chapter 3 The Wisdom Behind Marriage And Its Goals	17
Chapter 4 How To Choose A Partner In Marriage	27
Nature and Origin	29
Religion	31
Love	33
Money and Wealth	37
Moral Conduct	41
Beauty	44
Virginity	46
Honor and Noble Descent	50
Chapter 5 Al-Khutbah, To Be Engaged For Marriage ...	54
Chapter 6 Conditions That Validate Marriage Contracts	63
Acceptance	64
Having A Wali	67

Presence of Witnesses	68
Al-Mahr (Dowry)	69
Being Mu'hsan (Honorable)	71
Marrying one's equal	72
Wording of the Contract	76
Chapter 7 Marriage Contracts' Negators	77
Marrying Certain Groups of Related Women	78
Nika'h Ash-Shaghar	80
Nika'h At-Ta'hilil	82
Nika'h Al-Mut'ah	84
Chapter 8 Effects Of Marriage Contracts	88
Commonly-Shared Effects	89
Effects of the Marriage Contract on the Husband	96
Effects of the Marriage Contract on the Wife	100
Chapter 9 Safeguards that Ensure A Stable Family	
Life	105
Satisfying the Natural Way that Allah Created	106
Appointing Arbitrators to Solve Family Disputes ...	107
Chapter 10 How To Resolve Marital Disputes	112
Chapter 11 What Annuls Marriage Contracts	117
Death	118
Divorce	121
Al-Khul'	150
Invalid Marriage Contracts	156
Al-Li'aan	160

Introduction

All thanks be to Allah, Whom we thank and seek for His help and forgiveness. We seek refuge in Allah from the evil in ourselves and from the burden of our evil deeds. Whomsoever Allah guides, will never be misled, and whomsoever He misguides, will never find guidance. I testify that there is none worthy of worship except Allah, and that Mohammad is His slave and Messenger.

Allah said, what translated means, *﴿O, you who believe! Fear Allah as He should be feared, and die not except in a state of Islam.﴾* [3:102].

﴿يا أيها الذين آمنوا اتقوا الله حق تقاته ولا تموتن إلا وأنتم مسلمون﴾
(آل عمران/ ١٠٣).

﴿O Mankind! Be dutiful to your Lord, Who created you from a single person (Adam), and from him (Adam) He created his wife (Eve), and from them both He created many men and women, and fear Allah through Whom you demand your mutual (rights), and (do not cut the relations) of the wombs (kinship)! Surely, Allah is Ever an All-Watcher over you.﴾
[4:1],

﴿يا أيها الناس اتقوا ربكم الذي خلقكم من نفس واحدة وخلق منها زوجها وبث منهما رجالا كثيرا ونساءً واتقوا الله الذي تساءلون به والأرحام إن الله كان عليكم رقيباً﴾ (النساء/ ١).

and, ﴿O you who believe! Keep your duty to Allah and fear Him, and speak (always) the Truth. He will direct you to righteous good deeds and will forgive you your sins. And whosoever obeys Allah and His Messenger, he has indeed achieved a great achievement.﴾ [33:70-71].

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ وَمَنْ يُطِمْ اللَّهَ وَرَسُولَهُ فَقَدْ فَازَ فَوْزًا عَظِيمًا﴾
(الأحزاب/٧٠-٧١).

It is by the Grace of Allah that He enabled me to offer solutions for many marital problems and family disputes that some of my friends, brothers and colleagues have faced.

Through these experiences, I have come to know what lays in the core of many of these family disputes. Ignorance in the set of Shari'ah's rules and regulations which govern marriage contracts and married life, is where a great deal of these problems arise from. When one acquires knowledge in these aspects and in the way they should be implemented, married life will be strengthened and its unity enhanced and solidified.

Also, I have come to realize through these experiences that many family disputes fall under three categories. The first and second: Being ignorant in the psychological complexity and the chemistry of both the male and female. When a man who is ignorant in such aspects marries a woman, he will be dealing with the unknown. Also, the same will be for the woman who is ignorant in such aspects as regards men. The

third type of family disputes results from being ignorant in the set of codes of conduct between spouses that is the basis on which family relations must be built. Such ignorance leads to that which still amazes me, seeing a man who is kind and generous with all people, except his wife, and a woman who is wise and patient with all people, except her husband!

These are some of the reasons behind family disputes, and this, among other reasons, is why I sought to present this research to my brothers and sisters, hoping that married couples will find in it what they need in order for them to live a happy, tranquil and stable married life. I also hope that those who are not married yet will find some benefit in this book so that they will be able to establish their own happy family life.

In this book, which I intended for the common-folk and not the scholars or specialists, I tried my best to explain in plain terms the conditions and effects of marriage contracts. I present this book to my brothers and sisters, seeking to help them establish righteous families, so that they will be able to preserve this holy contract and strong covenant, marriage, which Allah described in His Book as, **﴿And they have taken from you a firm and strong covenant.﴾** [4:21]. Also, it is my hope that Muslims will be able to preserve the institution of marriage, which has become one of the few preserved strongholds of Islamic Law and Shari'ah. If this institution is lost and destroyed, then the last part of Islamic Law and Shari'ah will have been lost and destroyed in our society, as well.

Furthermore, knowledge in marriage contracts, preserving their requirements and implementing Allah's Guidance which He sent down, are a means of preserving our society from the vice and moral decay that has engulfed the East and the West. This occurred after they, among other things, abandoned preserving marriage, leading to the destruction of family life and, as a consequence, the destruction of morality and good conduct.

I ask Allah to make this book beneficial for all those who read and study it and that He makes Paradise our reward with Him, ﴿**“Our Lord! Bestow on us from our wives and our offspring who will be the comfort of our eyes, and make us leaders for the Muttaqun (the pious and righteous persons).”**﴾ [25:74], and all thanks and praises are for Allah in the beginning and the end.

Abdur-Rahman Abdul-Khaliq

Chapter 1

Marriage, A Bounty From Allah

Allah, the Exalted and Ever-High, reminds mankind in His Book, the Quran, of His Favor on them, that He created them, males and females, from a single person, Adam. This Favor is stressed as a reminder of the unity in human origin, for men and women are not a separate creation. Allah did not create men and women from different origins. He did not create women from a substance other than clay, or from clay but independently from men. If this had happened, a state of alienation between men and women would have occurred as a result of their being created independently from each other. Rather, Eve was created from Adam's rib, as was mentioned in a correct Hadith, and this means that women and men share the bond of a common origin. This is why both men and women feel strong connection and attraction, and just as like matter is similar and is strongly linked to its own kind, so too are men and women.

Furthermore, Allah's Mercy made human reproduction an act that reinforces this strong bonding and which brings pleasure between spouses, so as to realize the Prophet's saying, "*Women are men's halves!*", (in that they all descended from Adam and from Eve, who was created from Adam's rib). This Hadith explains the reason behind the complete bonding, attraction and (sexual) pleasure felt by spouses; women and men are two faces of one coin.

Creating men and women from the same origin is a sign of Allah's Greatness, *It is He who has created you from a single person (Adam), and has given you a place of residing*

(on the earth or in your mothers' wombs) *and a place of storage* (in the earth [in your graves] or in your fathers' loins). *Indeed, We have explained in detail Our revelations* (this Quran) *for people who understand.* ﴿ [6:98].

﴿هو الذي أنشأكم من نفس واحدة فمستقر ومستودع قد فصلنا الآيات لقوم يفتقرون﴾ (الأنعام/٩٨).

Indeed, Allah ordered men and women to take this unity in origin into consideration when dealing with each other, ﴿O mankind! Be dutiful to your Lord, Who created you from a single person (Adam), and from him (Adam) He created his wife (Eve), and from them both He created many men and women, and fear Allah through Whom you demand your mutual (rights), and (do not cut the relations of) the wombs (kinship). Surely, Allah is Ever an All-Watcher over you.﴾ [4:1].

Also, Allah ordered us to remember His Bounty in that He created us in this manner and that He created this natural attraction which both women and men feel towards each other, along with creating feelings of love and mercy between spouses, ﴿And among His signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy. Verily, in that are indeed Signs for a people who reflect.﴾ [30:21].

﴿ومن آياته أن خلق لكم من أنفسكم أزواجا لتسكنوا إليها وجعل بينكم مودة ورحمة إن في ذلك لآيات لقوم يتفكرون﴾ (الروم/٣٧).

Therefore, Muslims must realize this complexity and take the following points into consideration when studying the relationship between men and women:

First: Men and women are siblings of the same origin and are not separate creations. Both were created from Adam. Adam's wife was also a part of him. Indeed, all men and women on the face of the earth carry a part of both the men and women from among their ancestors. The woman's share in reproduction is the hardest because Allah made her womb the residence of the fetus, where the fetus passes through many stages of development, until the time of giving birth. Also, men carry the financial responsibility of providing for both their own and their family's living expenses. Both sexes have responsibilities and obligations and each must fulfill their responsibilities and obligations. This is how life and civilization survive; males work hard to provide a living and females are made able to fulfill the duty of carrying the seed of life in their wombs until this seed joins the living.

Second: Creating males and females from the same origin is a sign of Allah's Greatness and Unlimited Power. Allah, the Exalted, told us in many Ayat (verses) of the Quran to think about creation, *﴿So let man see from what he is created! He is created from a fluid drop poured forth. Proceeding from between the Sulb and the Tara'ib.﴾* [86:5-7].
﴿فَلْيَنْظُرِ الْإِنْسَانُ مِمَّ خُلِقَ . خُلِقَ مِنْ مَاءٍ دَافِقٍ . يَخْرُجُ مِنْ بَيْنِ الصُّلْبِ وَالتَّرَائِبِ﴾
(الطارق/ ٥-٧)

“Sulb” in Arabic means the spinal column and “Tara’ib” means the rib cage. Al-Farraa’ said concerning this Ayah, “What it means is that Allah created you, O mankind, from bodies and spines of both males and females.” This is why and how bonds of love and mercy between husbands and wives and fathers, mothers and children are made complete and bountiful. Therefore, whoever among creation dares to create differences and divisions between males and females, both of whom were meant by Allah to preserve the human kind, will have created divisions between parts of the same body. Whoever starts a war between the two sexes of the human race, will be seeking the destruction of mankind and will be implementing discredited communist and immoral systems. Whoever accepts that both sexes have different responsibilities and duties to carry out, will have agreed with the way that Allah created people which, when satisfied, will lead to true harmony and peace between men and women. Allah said, what translated means, *﴿And Allah has given you wives of your own kind, and has given you, from your wives, sons and grandsons, and has bestowed for you good provision. Do they then believe in false deities and deny the favor of Allah (by not worshipping Him Alone).﴾* [16:72].

﴿والله جعل لكم من أنفسكم أزواجا وجعل لكم من أزواجكم بنين وحفدة ورزقكم من الطيبات أفبالباطل يؤمنون وبنعمة الله هم يكفرون﴾
(النحل/٧٢).

From the above stated facts, we understand that the wife is but a part of her husband and that children and grandchildren are a result of the marriage joining between

males and females. True love between spouses, between parents and their children and between grandparents and their offspring leads to tranquillity and happiness. Grandparents feel satisfaction and great joy when their grandchildren are around them, and this satisfaction brings them more pleasure and happiness than the tastiest of foods or the best of permissible drinks. All these feelings and happiness can only be felt under the shadow of legal marriage. Those who are not joined by marriage can never feel the kind of pure and honorable love that marriage creates. Sinful relationships can never create feelings of true love, family relation or honorable ancestry because all what they provide is satisfying animal desires and sinful joys. Allah did not create mankind to live in such dishonor, or did He?



Chapter 2

The Ruling On Marriage In Islam

Allah decreed and ordained the institution of marriage to preserve mankind and to ensure their continuous inhabiting of the earth, ﴿And (remember) when your Lord said to the angels, “Verily, I am going to place a Khalifah on the earth.”﴾ [2:30].

﴿وإذ قال ربك للملائكة إني جاعل في الأرض خليفة﴾ (البقرة/٣٠).
“Khalifah” here means humans who are inhabiting earth through their offspring and future generations. What supports this meaning, is that which Allah said afterwards, ﴿They (the angels) said, “Will You place therein those who will make mischief therein and shed blood -- While we glorify You with praises and thanks.”﴾ [2:30]

﴿قالوا أتجعل فيها من يفسد فيها ويسفك الدماء ونحن نسبح بحمدك ونقدس لك﴾ (البقرة/٣٠).
and, ﴿And it is He Who has made you Khala’if (generations coming after generations) on the earth.﴾ [6:165].

﴿وهو الذي جعلكم خلائف في الأرض﴾ (الأنعام/١٦٥).
Mankind cannot preserve this Khilafah on earth unless they are continuously reproducing. Yet, Allah does not want continuous reproduction, *except* through honorable means. This can only be a reality through legal marriage as ordained by Allah.

Islam is the religion of Fitrah (purity). It is the religion that Allah wants to inhabit and rule the earth. This is why Islam prohibits celibacy and encourages marriage for those who can afford it, facts that are supported by the following Hadiths:

1 -- Saa'd ibn Abi Waqqas said, "*The Messenger of Allah refused to accept Uthman ibn Math'oon's reverting to celibacy. Otherwise, we all would have had vasectomy.*" [Al-Bukhari]. Celibacy is practiced in the pretexts of abandoning marriage for the sake of the religion, bringing one closer to Allah and abandoning what marriage entails of sexual pleasure and worldly affairs. Although this act is practiced in the name of Allah and for His Pleasure, it is still rejected in Islam. The next Hadith further proves that celibacy defies the guidance and light of Islam.

2 -- Anas ibn Malik said that one of three companions of the Prophet said to the other two, "I will not marry women." Another one said, "I will perform continuous prayer (at night) and will not sleep." The third one said, "I will fast and will not break my fast (meaning he will always fast during the days)." That which they said reached the Prophet, and he said, "*What is the matter with some people who said such and such. However, I fast and break my fast, I pray and sleep, and I marry women. Whoever abandons my Sunnah is not of me.*" [Al-Bukhari & Muslim]. This Hadith clearly states that Islam has nothing to do with celibacy.

There are many Hadiths that encourage marriage and assert that this institution helps one obey Allah and achieve His Pleasure. Among these Hadiths are:

1 -- Ibn Mas'ud reported that the Messenger of Allah said, what translated means, "*O the youth! Whoever can*

afford marriage, let him marry, for it (marriage) helps restrain the eyes (from looking at all things impermissible) and will preserve the honor. Whoever cannot (afford marriage), let him fast, for it will be a means of protection (against dishonorable conduct).” [Al-Bukhari & Muslim]. This Hadith proves that marriage helps preserve the honor and prevents fornication and adultery. These meanings were also mentioned in the following Hadith, “The eye commits adultery by looking. The hand commits adultery by committing injustice. The ear commits adultery by eavesdropping. The sexual organ either materializes all of the above (through impermissible sexual intercourse) or does not.” [Ahmad]. Preserving the soul from all these evils mentioned in this Hadith, is among the most righteous acts that will bring one closer to his Lord, the Exalted and Ever-High. Abandoning marriage and, consequently, sexual pleasures, will, as evident, lead to destructive results on both men and women. This is what the Quran calls “‘Anat,” ﴿This is for him among you who is afraid of ‘Anat.﴾ [4:25],

﴿ذلك لمن خشى العنت منكم﴾ (النساء/٣٥).

which means to punish the physical body by abandoning sexual activity.

2 -- The Prophet mentioned marriage among the acts that will bring the slave closer to Allah, increase his good deeds and decrease his bad deeds. He said, what translated means, “*And when one of you has sexual intercourse (with the wife), it will be considered a charity.*” They said, “*O Messenger of Allah! Will the one of us satisfy his desire and*

also gain a reward?" He said, *"Do you think that if he satisfies it through Haram (meaning through adultery), will he carry the weight (of this sin)? Likewise, if he satisfies it through Halal (sexual intercourse with the wife), he will gain a reward."* [Muslim]. This Hadith is plain and clear in affirming that marriage is not an act that may distract one away from obeying Allah. On the contrary, it is a permissible act that is also an act of worship that one performs to come closer to Allah.

3 -- The Prophet said, what translated means, *"A Dinar (a currency) that you spend on your family, a Dinar that you spend on a poor person and a Dinar that you spend in the sake of Allah. The one that carries the most reward is the one that you spend on your family."* [Muslim].

This Hadith emphasizes the importance of spending on the family and makes this act one of the most preferred deeds in the Sight of Allah. Certainly, the reward of this good deed can only be gained if one seeks only Allah's Pleasure in all this, for the Prophet said to Saa'd ibn Abi Waqqas, *"Know that no charity that you give, whether small or large, seeking Allah's Face, but you will be rewarded for it, even the bite (of food) that you put in your wife's mouth."* [Al-Bukhari & Muslim].

Some scholars, such as ibn Hazm, Ahmad and others maintained that marriage is obligatory because of these Hadiths. They also stated that those who can afford marriage

but do not marry, will be committing a sin. However, we say that if one is not interested in marriage and can preserve his honor while indulging in Jihad, charity or Da'wah (calling to Allah), we hope that he will not be committing a sin by abandoning marriage.



Chapter 3

The Wisdom Behind Marriage And Its Goals

Why do we marry? What is the wisdom behind marriage? These are two important questions that every young male and female should ask themselves. There are four reasons or goals behind marriage that each person must consider before marrying.

1 -- Reproduction: Allah made the preservation of mankind, which is a goal that the Creator wants fulfilled, tied to marriage. He said, what translated means, *﴿Who made everything He has created good, and He began the creation of man from clay. Then He made his offspring from semen of no value fluid (sexual discharge).﴾* [32:7-8].

﴿الذي أحسن كل شيء خلقه وبدأ خلق الإنسان من طين . ثم جعل نسله من سلاله من ماء مهين﴾ (السجدة/ ٧-٨) .

This is why Allah made any act that hinders reproduction among the most destructive of all acts, *﴿And of mankind there is he whose speech may please you (O Mohammad), in this worldly life, and he calls Allah to witness as to that which is in his heart, yet he is the most quarrelsome of opponents. And when he turns away (from you, O Mohammad), his effort in the land is to make mischief therein and to destroy the crops and the cattle (or the offspring), and Allah likes not the mischief.﴾* [2:204-205].

﴿ومن الناس من يعجبك قوله في الحياة الدنيا ويشهد الله على ما في قلبه وهو ألد الخصام . وإذا تولى سعى في الأرض ليفسد فيها ويهلك الحرث والنسل والله لا يحب الفساد﴾ (البقرة/ ٢٠٤-٢٠٥) .

The type of offspring that is qualified to righteously inhabit the earth is the offspring that is a result of marriage and

not adultery. Adultery produces offspring that will cause hatred and dishonor to spread in the society, as such children, who are born out of wedlock, usually face tremendous difficulties, both psychological and emotional. These children do not usually enjoy the love and affection that other children enjoy through normal family relations.

If marriage is conducted according to Allah's Law, it will be the most viable and the safest way to preserve mankind. Allah ordered Muslims to aspire to conceive children when they have sexual intercourse with their wives, *﴿It is made lawful for you to have sexual relationships with your wives on the nights of the fasts. They are "Libas" (body cover or screen) for you and you are the same for them. Allah knows that you used to deceive yourselves, so He turned to you (accepted your repentance) and forgave you. So now have sexual relations with them and seek that which Allah has ordained for you.﴾* [2:187].

﴿أجل لكم ليلة الصيام الرفث إلى نسائكم من لباس لكم وأنتم لباس لهن - علم الله أنكم كنتم تختانون أنفسكم فتاب عليكم وعفا عنكم فالآن باشرهن وابتغوا ما كتب الله لكم﴾ (البقرة/ 187).

"Seeking what Allah has ordained," means seeking to have children. Also, the Prophet said in a Hadith narrated by ibn Abbas, *"If any of you, when he desires to sleep with his wife, says, 'In the name of Allah. O Allah! Protect us from Satan and erect a barrier between Satan and what you are going to give us (our offspring),' and if a child is born as a result, Satan will never be able to harm him (the child, whether male or female)."* [Al-Bukhari & Muslim].

2 -- Satisfying sexual needs and the need for tranquillity and harmony: Marriage provides both the husband and the wife with a type of pleasure that is unsurpassed in this life; it satisfies their sexual needs and brings about the pleasure and safety of having a mate. Allah said, what translated means, **﴿And among His Signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy. Verily, in that there are indeed Signs for a people who reflect.﴾** [30:21]. Finding repose in the wife entails both the physical and emotional aspects and is one of the most beautiful feelings that Allah created for mankind to enjoy. Such feelings are at their peak when one satisfies them in the way that pleases Allah. Also, these feelings come natural because of the unity in the origin of creation and the natural feeling of attraction to the opposite sex that Allah created in both men and women. Pursuing such feelings and pleasure is desirable in Islam, as Allah said, what translated means, **﴿So when Zaid had accomplished his Watar (desire from her) (then divorced her), We gave her to you (O Mohammad) in marriage.﴾** [33:37].

﴿فلما قضى زيد منها وطرا زوجناكما﴾ (الأحزاب/٣٧).

This Ayah is with regards to Zainab, and “Watar” means man’s need of women. We should note here that to enjoy having a wife does not contradict or hinder one from being a slave of Allah. The Prophet, who was the best of worshippers of all times, said, **“I was made to like Tiib (eastern perfumes) and women from your life. And my comfort was made in the prayer.”** [Ahmad & An-Nasai]. His liking Tiib and women, in marriage, did not hinder him from being the Messenger of the

Lord of the Worlds and the best of worshippers who fear Allah. This is why Allah revealed the following Ayah to His Messenger, ﴿O Prophet! Verily, We have made lawful to you your wives to whom you have paid their Mahr (bridal money given by the husband to his wife at the time of their marriage), and those whom your right hand possess (out of the prisoners of war, etc.) whom Allah has given to you, and the daughters of your “Amm” (paternal uncles) and the daughters of your “Ammah” (paternal aunts) and the daughters of your “Khal” (maternal uncles) and the daughters of your “Khalah” (maternal aunts) who migrated (from Makkah) with you, and a believing woman if she offers herself to the Prophet, and the Prophet wishes to marry her; a privilege for you only, not for (the rest) of the believers.﴾ [33:50].

﴿يا أيها النبي إنا أحلنا لك أزواجك الاتی آتیت أجورهن وما ملکت یمینک مما آتاء الله علیک وبنات عمک وبنات عماتک وبنات خالک وبنات خالاتک الاتی هاجرن معک، وامرأة مؤمنة إن وهبت نفسها للنبي إن أراد النبي أن یتنکحها خالصة لك من المؤمنین﴾ (الأحزاب/٥٠).

In this Ayah, Allah made clear that His Prophet has the choice to marry any of these mentioned degrees of relatives or any other Muslim woman whom he wants to marry. However, sometimes, and for a specific legislative purpose, the Messenger was told to marry a certain woman, such as Zainab, ﴿So when Zaid had accomplished his desire from her, We gave her to you in marriage.﴾. In this particular case, Allah ordered His Prophet to marry Zainab, but in other times, He gave His Messenger the choice from what Allah has permitted for him, ﴿There is no blame for the Prophet in which Allah has made legal for him. That has been Allah’s way with those

who have passed away (of the Prophets) of old. And the Command of Allah is a decree determined. ﴿ [33:38].

﴿ ما كان على النبي من حرج فيما فرض الله له ، سنة الله في الذين خلوا من قبل وكان أمر الله قدرا مقدورا ﴾ (الأحزاب/ ٣٨) .

In short, we assert that the pleasures and joys that are felt in legal marriage are among the best and sweetest feelings that Allah has created and permitted for His slaves in this life. Satisfying the need for such pleasures, in accordance with Allah's Law, is but a means that leads to Allah's Pleasure and His Reward.

3 -- To be complete as a human being: The third reason behind marriage is that it aids men and women in reaching completeness in being human. However, this can only be accomplished in a marriage that is built on fairness, where the wife and husband both have and then fulfill their own share of responsibilities and rights. These responsibilities and rights must be respected according to the boundaries set by Allah: justice, righteousness and mercy. If marriage is built around selfishness, injustice, seeking one's rights while refraining from fulfilling his or her obligations and indulging in fake wars between the two sexes, then such marriages cannot help the individuals be whole and complete.

Spouses feel satisfaction, happiness and comfort if their needs, whether physical or emotional, are fulfilled. This fulfillment leads to true love and affection, making it one of the primary goals of the marriage bond. It is when both the

husband and the wife share feelings of attraction, mercy and love that they both can benefit the most from the fulfillment of their needs. This does not resemble relationships where the primary concern is satisfying the lower sexual need, yet never leading to true love and affection. This is why feelings of those who commit adultery or fornication are nothing compared to feelings of spouses joined in marriage. Adultery and fornication are relationships built on the primary goal of satisfying sexual desires that, when satisfied, will be the end of the relationship. In such cases, true love, affection and even respect never exist. On the contrary, dishonor and disgust are the feelings of a man towards the woman who agrees to be a sexual object to satisfy his animal desires. Also, the woman will have these same feelings towards the man who uses her beauty as an object to satisfy his desires. This is why people in illicit relationships are always bound to feel confusion, depression, dishonor and unfulfilled. To the contrary, spouses are usually satisfied and feel safety, affection, harmony and respect for each other, along with satisfying their physical needs. Marriage is the birthplace of love, mercy, honor and respect.

In short, the feelings of spouses joined in marriage are complete and the feelings of those who live in sin are destroyed. This is why Islam calls marriage, "building," because it builds families and their offspring. Those who understand these facts and are righteous with regards to marriage and human relations, are the furthest from psychological complexes and depression. Those who live in

and for sin, are most likely to fall into depression and psychological complexes. A righteous society is a society where marriage is the atom that the society is built around. The society where sin is the source of human relations, is the society where depression and vice flourish.

When both the husband and the wife have different responsibilities, and fulfill them, the husband will be able to bring happiness to his wife and raise his children righteously. Also, the wife can achieve completeness when she has her own responsibilities that she is obliged to fulfill and will also feel satisfaction when she has an important role to play in marriage. This is why some polls show that women reach their physiological, physical and mental prime after their third child. When a woman gives birth to her third child in a happy marriage, where each fulfills his or her obligations and seeks moderation in pursuit of his or her rights, then this is when she will feel complete and fulfilled. This matter helps explain why those women who do not marry feel miserable and depressed and tend to be self-destructive. Such women are prevented from benefiting from the bounties of marriage and having children. Islam seeks to avoid such destructive effects on the society by ordering Muslims to marry their daughters and divorcees. Allah said, what translated means, **﴿And marry those among you who are single** (a man who has no wife and a woman who has no husband) **and** (also marry) **the “Salihun”** (pious, fit and capable ones) **of your** (male) **slaves and maid servants** (female slaves). **If they be poor, Allah will enrich them out of His Bounty.** ﴿ [24:32].

﴿وانكحوا الأيامى منكم والصالحين من عبادكم وإمائكم إن يكونوا فقراء يغنم الله من فضله﴾ (النور/٣٣).

The order in this Ayah is directed at all Muslims, especially those in authority. Indeed, a society that has many unmarried women is a society where all kinds of social ills flourish. In short, the woman who is prevented from marriage and having children is the woman who experiences depression and is psychologically unfulfilled. Sometimes this occurs because of the society itself. It is not our intention to research the reasons behind such social ills, but only to discuss the effects of such ills on the society. In summary, we believe that both men and women can only reach fulfillment and completeness under the flag of legal marriage.

4 -- To help build the society and inhabit the earth: Our existence in this life obliges us to live in societies, which are like buildings that were erected by using numerous building blocks comprised of many raw materials. The individual is the raw material that the society needs the most to survive. Also, a fact of life is that both men and women cannot live in isolation from each other because each needs the other sex as two halves of the same seed need each other. Furthermore, a healthy society can only be built if its building blocks are comprised of healthy raw materials. We believe that men and women are the raw materials and that families are the building blocks which comprise the building of the society. When families are built around husbands and wives, who are the most important raw materials, and all obligations are fulfilled, then a healthy society will be built. This is why marriage contracts are

similar to building contracts, in that, marriage is a contract that requires each signatory to respect its terms and specifications so that the building of the family is made strong and complete.

In summary, these are four goals of marriage that one should always consider and look for: Having children, satisfying permissible pleasure, reaching human completeness and starting and building a new life.



Chapter 4

How To Choose A Partner In Marriage

We mentioned before that there are four goals or reasons behind marriage that must be considered with care: Having children, satisfying sexual needs in a lawful manner, reaching human completeness and building a meaningful family life. However, achieving all four of these goals may not be possible for everyone. For one, having children depends on fertility which is not controlled by humans. Some people are born barren, ﴿*And He renders barren whom He will.*﴾ [42:50].

﴿ويجعل من يشاء عقيماً﴾ (الشورى/٥٠).

In addition, some of these goals may not be attainable because of the mistakes committed by some people, such as poor decisions in choosing the partner for marriage, immoral behavior or ignorance in the true nature and role of marriage itself. We will now present several aspects and points that will help one decide on whom to choose as a marriage partner.

The first aspect that a person who seeks marriage must know is the essence of choosing a partner. This includes the characteristics of candidates for marriage that must be considered before deciding to marry. Therefore, what are the reasons and characteristics that make a man or a woman choose a certain mate? We will mention some of these characteristics and explain their importance in married life.

First: Nature and Origin

If one studies a segment of people from different areas and regions of the world, he will find tremendous diversity in height, color of skin, physical characteristics, etc. There are no two persons on the face of the earth who are totally identical in every way and indeed, no two finger prints are identical.

This apparent diversity, although seeming to be substantial, is considered minor compared to the numerous differences that exist between the psychological and behavioral patterns of human beings. The best description of these differences is the Hadith by the Prophet that states, "***People are like rare metals, such as gold and silver. The best of them before Islam are the best of them after Islam, provided that they gain sound comprehension*** (of various aspects of Islam)." [Muslim]. This Hadith contains several significant points, among them is that those who have noble and honorable behavior before Islam are capable of adhering to the code of conduct that Islam requires of its following. The Hadith also states that people are like rare metals, some are pure and others are totally or partially impure, like imitation silver or gold which are not as precious as pure silver or gold. We must emphasize that there is a world of difference between fame on the one hand and noble descent and honorable conduct on the other hand. Some people or tribes may be famous, but are neither noble nor honorable. We are emphasizing noble descent that is noble and honorable altogether. Discovering who is honorable is the job of professionals who, just like

jewelers as regards gold and silver, are capable of finding purity or impurity in people. What makes this task sometimes easier, is the fact that some people are known to possess certain honorable characteristics and adhere to a certain moral code. Yet, such reputations may be found to be false in some cases. There may be a tribe or a family who are known to be courageous and generous, or cowardly and misers. Others may be known to fall under their wives' control, or that they oppress or dominate their wives. Some tribes or families may be known to be honorable in their behavior, while others are known to indulge in immoral acts, or at least condone immorality, although, as we stated, this rule works for the majority of cases and is not true of all individuals. It is important to know that individuals vary in terms of honor and morality. In short, one must inquire into the ancestry of marriage candidates, but should also remember that a courageous man may belong to a family of cowards, and an honorable woman may belong to a dishonorable family, as we have explained. In addition, one must always investigate the family that certain candidates for marriage belong to, but certainly not according to racially divided biases. Muslims must avoid observing the practice of some tribes or families who proudly boast that they are honorable and noble and then refuse intermarriages with other tribes or families, even though the others may be more honorable than they are!

Therefore, both the man and the woman must look for specific human qualities in each other. An example to this is when Abu Tal'ha wanted to marry a Muslim woman, Umm

Saleem, before he became Muslim. She said to him, "Oh Abu Tal'ha! A man like you can never be rejected. Yet, you are a disbelieving man and I am a Muslim woman and you are not permitted for me (for marriage). Therefore, if you choose to become Muslim, then this will be my dowry." This knowledgeable woman said, "A man like you can never be rejected." This means that she acknowledged that he possessed all those good qualities and characteristics that a woman seeks in a man. Yet, what prevented her from marrying him was that he was a disbeliever. In short, one must always regard the human qualities in a marriage candidate.

Second: Religion

Religion is the Law sent down by the Lord, giving mankind a perfect code of conduct that helps them perfect their behavior and thoughts. This Law leads humanity to justice and happiness. Such a Law can produce miracles if met by the right kind of individual. However, if this Law was met by an impure person, its effect will vary according to the degree of impurity this person possesses.

The true nature of adherence to the religion is more a matter of the heart than the limbs. This is because religion is a conviction felt by the heart, while actions are only a sign of what the heart feels and believes. To further support this meaning we say that not everyone who grows a beard, shortens his mustache and stands in line for prayer is a true believer.

These are acts of the limbs that may or may not be different from what is in the heart. They may be acts of hypocrisy that by no means testify to the true beliefs which are hidden in the heart. Another example is Al-‘Hijab (Muslim women’s dress according to Islamic Law). Al-‘Hijab is a sign that testifies to the existence of honor and the appearance of firm adherence to Islamic Law. However, it is not necessarily a sign of what the heart truly believes. Again, this may be an act of hypocrisy. What we are emphasizing is that one must seek those who are good in the religion for marriage and that a sign of this is when one adheres to the Laws of Islam. However, one should not consider these outwardly signs alone as the ultimate indicator of one’s excellence in the religion. This is because we do not want some Muslims, male or female, to be deceived by outward appearances and consider them to be more than signs of true beliefs. There are other factors that one must consider to discover excellence in the religion of a candidate for marriage.

Umar ibn Al-Khattab used to examine a man’s financial dealings with others as a sign of his adherence to the religion. He once asked a man, “Do you know such and such man?” The man answered, “Yes.” Umar said, “Have you dealt with him with the Dinar and Dirham (in money matters)?” He said, “No.” Umar said, “Then you do not know him!” One can discover true believers through the way they conduct their lives and deal with others, along with some of the apparent signs that we mentioned before. One of the most significant signs of excellence in the religion is how one conducts his financial

affairs. Allah created the love of money in mankind. Therefore, when a Muslim disregards his love for money and observes Allah's Laws and other people's rights in money matters, then this action indicates that true religious beliefs exist in his heart. Therefore, when searching for a marriage partner, one must have a comprehensive view of the way a candidate conducts himself or herself outwardly and in various dealings with others.

Third: Love

Many consider love before marriage a primary factor in deciding whom to marry. Some even make love as a primary ingredient in a successful marriage. They even go further by claiming that marriages that are not based on love first, will not be successful. However, this idea originates from people who are full of ignorance in the true essence of relations between males and females and is only based on following desires.

What people mean by "love" varies considerably from person to person. Feelings of love may be felt towards parents, the opposite sex, or for certain types of clothing and foods. This love means that the heart leans towards such persons or items. However, this word "love" is often and mistakenly used to describe sexual relations, especially between people who are not united by marriage. This only serves to distort the true meaning of the word. Sinful sexual relations must only be called what they truly are, "fornication" or "adultery." We

must not use honorable words like “love” to describe sinful relations, for this practice will distort the true meanings of such honorable words and will destroy religion and morality. For this reason, we insist on using the word “love” only in its proper context.

Those who need to “love” their partner in relations before marriage, are condemning their marriage to failure. This failure happens because such relations before marriage destroy the basis of true love between married couples that is built around faith and loyalty. Faith and loyalty can only coexist through refraining from immoral behavior and sinful relations, both before and after marriage.

In a healthy marriage, the wife feels satisfaction knowing that she is only for her husband. Likewise, the husband feels satisfaction knowing that he is the only man in his wife’s life. Even today, the majority of men feel hurt when their wives say words of praise as regards other men or express interest in some of their characteristics.

When a man is totally familiar with the woman whom he loves and seeks to marry, and likewise the woman, marriage loses its most important aspect, that is, the feeling of pleasure and nervousness when confronting the unknown after marriage. Indeed, Islam obliges men to look at the women whom they seek to marry and validates marriage contracts only after the woman agrees to this marriage. Yet, this satisfaction felt by the future husband when he sees his fiancée and her agreement

to marry him, are only parts of the first step. The true reality of marriage and married life will still be eagerly anticipated. Those who desire intimacy before marriage with their future wives lose such pleasant feelings and the element of surprise felt after marriage.

In summary, one must understand the true meaning of love, according to both language and religion. Homes must be built on the true meaning of this word as we have explained. There is no objection if a man feels that he would like to marry a woman because he heard of her and her good conduct and morality. Also, a woman can accept marriage to a man whom she heard has good manners and conduct. However, we must not allow a pre-marital relationship to develop between men and women if we want to establish marriages that are built on what truly counts in married life. As we said before, such sinful pre-marital relations are the tools that destroy marriage and all that which it is supposed to accomplish. Indeed, true love between men and women cannot be realized before marriage. Only after marriage can both spouses share feelings of satisfaction, faith and loyalty to each other.

We should state here that although legal marriage contracts automatically allow the husband to enjoy his wife, Islam encourages this only after announcing the marriage. This will ensure that the rights of both spouses are protected after consummating the marriage, as will be further explained later on in this book, Allah Willing.

Before marriage, what is called “love” sometimes means the natural attraction between the sexes. What should intensify these feelings of attraction is that both future spouses promise the other faith, love and sharing the responsibilities of life. However, these promises are but dreams that may end by the true reality as their married life continues. Sooner or later, these feelings may start to cool off and expose the realistic vision of married life, unlike that which they both dreamed of before marriage. If the spouses do not understand the true meaning of married life, they will suffer a shock afterwards. Indeed, many husbands experience shock and disillusionment with the realities of married life. They cannot understand the change in their wives’ feelings and behavior towards them. Spouses may then start to ask themselves if this truly is the man or woman whom they knew before marriage. This is because they built their life on dreams and not on reality. Depending on dreams alone is an act of stupidity!

Modern societies have accepted intermingling between the sexes and condoned sinful relationships. The price that such societies have had to pay is that people have abandoned marriage and that divorce rates are reaching astronomical proportions. A poll, conducted between both sexes at some universities, found that more than 90% of male students do not ever think of marrying their female colleagues. This is the result of intermingling and the sinful “freedom” that some societies approve and even encourage. Intermingling has led to losing the element of surprise that a man feels when he experiences the intimacy of his marriage companion after

marriage. Now that both males and females “know” each other, marriage does not have any appeal to people anymore. Some consider the pleasure that a man feels because he is the first man in his wife’s life as barbaric, old fashioned and possessive. However, this feeling is deeply entrenched in the hearts of men because it is the way Allah created them. Furthermore, men still deeply feel that their women should be theirs alone.

Fourth: Money and Wealth

Among the characteristics that people will always regard, is the wealth of the future husband, because being self-sufficient is the determining factor of financial success and stability. Scholars said concerning the Hadith, “*O young people! Whoever can afford it, let him marry.*” [Al-Bukhari & Muslim] that, “afford it”, means to sustain the expenses of establishing a family and providing for a wife. Islam makes the husband’s ability to sustain a family a condition that will ensure the continuity of the marriage contract.

Today, most people make material possessions their primary goal; the more one owns things the better! They do not desire what is enough to sustain a family, but much more. This happened after materialism took control of present day life. Nowadays, money opens the door wide to enjoy unimaginable joys and comforts and to acquire material goods and the latest models of furniture and machines. Only *true*

Muslims ask rich men who seek marriage how they acquired their wealth, whether through permissible or impermissible means. Therefore, every Muslim woman who truly hopes to lead a happy married life must inquire about the source of her future husband's wealth, because the honest man is the one who is most capable of building a home and a family that lives in happiness. On the contrary, dishonest men who collect their money from impermissible means will treat their wives the same way they treat their possessions. Their wives will become a purchased commodity. Such commodities lose value with time. There will always be new brands that such men will want to acquire.

In the societies that existed before Islam, working hard to acquire wealth was considered a way to elevate one to a higher social status. This is because those who are lazy and dependent on others for sustenance cannot be compared to those who are hard workers.

Today, however, government jobs have spoiled the true nature of the human being. These government jobs and positions, many of which depend on hypocrisy and connections, have socially elevated people who deserve to be where they truly belong, that is, the lower segment of society. Furthermore, government positions have degraded people who deserve to be elevated. It is a fact of life today to see people occupying positions they do not deserve. In fact, we rarely see people occupy their correct and deserved positions in society today.

Appreciating a man according to the honest hard work he does to earn his living has been rendered obsolete in today's world. This is the age of acquiring wealth in whatever means possible, permissible or impermissible. It is a bounty from Allah that we can still distinguish between honest, morally motivated persons and those who are dishonest and morally corrupt.

As for women, they are not required to possess wealth, as is the case with men, in order for them to be accepted for marriage. This is especially the case in societies where men can easily earn their living. However, in poor societies, women have to work to help meet the needs of their families. This, indeed, is one of the major calamities and means of destruction that were exported to Muslim societies from the West. Such working women have several difficult jobs; the hardship of pregnancy, the rearing of the children, taking care of the house and they also carry the burden of working to help support their families. What is amazing, indeed, is that those feminists who are most enthusiastic about women leaving their homes for the workplace, are not mothers who lead happy and stable family lives! On the contrary, they are those who lead unsuccessful or miserable married lives or those who have missed the chance for marriage. True mothers, and those who lead successful married lives, all declare that it is not fair for women to carry the responsibility ordained on them by God and still have to go out of their homes to work. In addition, many men who support and argue for women to share the workplace with them, only seek to satisfy their diseased hearts

and sinful desires. These people do not seek what is good for women or their society at large.

The real problem is that modern societies, which are supposedly advanced, have forced women to work and leave their homes, which are their natural environment and domain. If one seeks marriage in such societies, he will be faced with the reality that his salary cannot cover all the expenses of married life and starting a family. Young people, therefore, are faced with hard choices, either stay single for many years, live beyond their means and moral code, or marry a working woman.

Those who marry working women are subjecting their happiness and married life to instability. The woman who spends from her own salary on her house and family will find it difficult not to remind her husband that she too pays for their needs. Generous women, who will not remind their husbands that they are supporting the family too, are a rarity today. We advise those who accept their wives' financial help to make sure that such help is extended with a pure heart and that this does not become a means of humiliation for them later on. I personally came to know tens of cases of failed marriages. What laid at the core of these failed marriages was that the men were married to working women. In such marriages, many problems usually and frequently arise due to the fact that a working woman will cause herself and her family tremendous anxiety as she will be tired after a workday full of hardship and

other problems. How can happy families exist under these circumstances?

As for those women who inherit their wealth, this wealth will be the main attraction for men who are seeking easily-earned fortunes. The Prophet informed us that wealth is one reason why some men want to marry, "*A woman is married for four reasons ...*", and he mentioned money as one of these four reasons. However, wealth should not be the main reason for marrying a woman unless she is decent and generous. Decent and generous women will spend on their families without constantly reminding their husbands of their generosity. This can only occur if men marry wealthy women for their good character and not only for their wealth. I feel that marrying a woman only for her wealth will render the marriage contract invalid and is close to being an act of fraud. This is why a rich woman needs to make sure that the man who wants to marry her is not after her wealth only.

Fifth: Moral Conduct

We stated that before one gets married, he or she must search for certain qualities in the candidates for marriage. Some of these qualities are ordained by Allah and humans cannot attain them on their own. The Messenger of Allah said to Abdul-Khair, "*You have two qualities that Allah and His Messenger like: forbearance and patience.*" Abdul-Khair said, "*O Messenger of Allah, these two qualities were created*

in me or I acquired them?" The Prophet said, "***Rather, they were created in you.***" [Muslim]. This Hadith means that this companion was made to be forbearing and patient before he became Muslim. Such qualities (such as patience and forbearance, for example) that one should consider in a marriage partner, are innate in that person.

Also, we now know that one should search for a religious person for marriage and we have explained what we mean by religious, that is, the true nature of religion and not the apparent aspect only. Religion can prevent spouses from falling into injustice and misery and it is the cause of happiness and correct guidance for the family.

If these two qualities, good nature and true following of the religion, are combined in one man or woman, they will create a special blend of human. Being good by nature and firm adherence to the religion will bear a special kind of fruit full of goodness, purity, decency, sanity, truthfulness, loyalty and sincerity, joined by feelings of appreciation and the desire to help others. All these qualities are greatly needed in order for any marriage to be successful. On the other hand, being misguided, unstable, unfaithful, untruthful, arrogant or unappreciative can only serve to destroy any marriage, after filling it with misery and depression. We will be able to discover the true nature of a man or woman by searching for these good qualities or by discovering bad character. Good character usually leads to good conduct and steadfast following of the religion. Ill behavior, on the other hand, is not

fruitful and is the result of bad character and false following of the religion. This is why Allah said, what translated means, ﴿*The adulterer marries not but an adulteress or a Mushrikah* (a disbeliever) *and none marries her except an adulterer or Mushrik* (a disbeliever).﴾ [24:3].

﴿الزاني لا ينكح إلا زانية أو مشركة والزانية لا ينكحها إلا زان أو مشرك﴾
(النور/٣).

This Ayah means that a dishonorable woman can only be sought for marriage by her like among men, or a disbelieving man. Also, a man who is known to be dishonorable can only be sought for marriage by his like among women, or a disbelieving woman. This general concept is found in the following Ayah, ﴿*Bad statements are for bad people* (or bad women for bad men) *and bad people for bad statements* (or bad men for bad women). *Good statements are for good people* (or good women for good men) *and good people for good statements* (or good men for good women).﴾ [24:26].

﴿الطيبات للطيبين والخبيثون للخبيثات والطيبات للطيبين والطيبون للطيبات﴾ (النور/٣٦).

This Ayah means husbands and wives when it says “good men, good woman, bad men and bad women.” Being good or bad is judged by one’s behavior and conduct, which are a result of one’s true nature and the degree to which he or she follows the religion.

Sixth: Beauty

Beauty is sought by both men and women in candidates for marriage. The outer appearance has a tremendous effect on the longevity of married life and the attraction felt between the spouses. Although mankind, as a whole, were created in the best of shapes, yet, there are tremendous differences between human beings in terms of beauty.

Although most people agree on the general aspects of beauty, they still differ on its details. This is why the Messenger of Allah said, what translated means, "***When one of you seeks a woman for marriage, let him look at what attracts him to marry her, if he can.***" [Abu Dawood, Al-Bayhaqi & Al-Hakim]. The Prophet left the final decision on what attracts one to marry to the discretion of the individual. The Messenger of Allah emphasized the aspect of beauty, or, at least, that a woman looks acceptable in the eyes of the one who wants to marry her. Al-Mughirah ibn Shu'bah asked a woman from among Al-Ansar (people of Madinah) for marriage. The Prophet said to him, "***Have you looked at her?***" He said, "***No.***" He said, "***Then go and look at her because this will help your time together to be lengthened.***" [Ahmad]. This and the previous Hadith contain the Prophet's order and, therefore, looking at the woman whom one seeks for marriage is an obligation. It is not an act of defiance in the religion or a bad conduct to refuse to marry a woman because she is not attractive enough for the man who is looking for a wife. The

Messenger of Allah turned his face away from a woman who offered herself to him for marriage because she was not beautiful. Then, a companion said to the Prophet, "If you have no desire for her, then marry her to me," and the Prophet married her to him on the condition that he teaches her some chapters of the Quran. Also, it is not against Islam or good conduct if a man sees a beautiful woman and feels that he wants to marry her. The best of humans, Prophet Mohammad, saw Juwayriyyah bint Al-'Harith among the women who were captured during a battle and wanted to marry her because she was beautiful. This union was a great blessing for Juwayriyyah's people.

In general, what a man seeks in a woman is what a woman seeks in a man. However, it is the woman's beauty that is sought after the most. But, women also like to marry someone who is handsome and attractive to them. It is not bad manners for a woman to refuse marriage to a man who is not handsome enough for her, even if he is a man of good conduct and character. The Messenger of Allah divorced the wife of Qays ibn Shammas from him because she disliked his unattractive appearance. Also, it is not unseemly for a woman to seek to marry someone who is attractive in her eye, as long as he is a good Muslim.

We have explained this concept in detail to refute the doubt that some have that the religion does not govern this aspect of marriage and life. Some think that such matters are a result of today's materialism and the desire for the joys of this

life. This type of understanding is wrong and demonstrates an ignorance in Islamic rules. The goal that Islam seeks by its rules that govern marriage (with regards to beauty, honorable descent, etc.), is to lengthen married life and fill it with happiness and satisfaction.

We must give the matter of beauty its due right, however. Beauty is only one aspect that a man or a woman should consider in candidates for marriage. One must also search for other aspects that constitute a good spouse. The religion emphasizes beauty, although one has no control over it, because Allah's Mercy has given us the choice to decide to marry whom we see attractive in our eyes. Yet, we must know that beauty is only one element, among several, that constitute a successful marriage. Islam rejects that one should only consider this aspect and disregard other aspects and qualities that constitute a good husband or wife. The environment and social surroundings people live in and the degree to which one follows the rules of the religion are also important. This is why we must give the matter of beauty its due consideration and status as being only one aspect, among others, that should be taken into account as regards marriage.

Seventh: Virginity

Being a virgin, which *usually* means that one was never married before, is a trait that is preferred by both men and women when getting married. The Messenger of Allah

encouraged men to marry virgins, saying to Jabir when he found out that he did not marry a virgin, "***Could not it be a virgin who plays with you and you play with her.***" [Al-Bukhari & Muslim]. This Hadith explains the reason behind encouraging men to marry virgins. A virgin will have energy and youth and will be intimately attracted to the first man in her life.

If a woman loses her virginity in marriage, then the result will be a life full of love and mercy. However, if she loses it to fornication, then feelings of misery and guilt will accompany her for the rest of her life and she will be subjected to humiliation and disrespect if she marries the man whom she committed fornication with, or if she marries other men. Allah ordained a unique indicator of honor for women, that is their being virgin.

Nowadays, new materialistic philosophies along with radical theories about human psychology, especially by Sigmund Freud, have arisen. They all conspired to portray sexual activity as being natural, just like eating and drinking, not bound to the restricting rules of religion, morality and traditions. They claim that sex is a natural instinct that the entire world revolves around and this is why they call for the removal of all restrictions on sex, the reason behind life itself, according to their claim! Freud, in particular, invented and publicized these ideas. In the present time, the entire psychological structure of the advanced world has been built around Freudism and, as a result, a sexual revolution has

engulfed many parts of the world today. Yet, although this sexual revolution is widespread, most communities, including those in the so called “Advanced World”, still despise it as sin. This is because the nature that Allah created in human beings still refuses sin. We Muslims, still largely uncorrupted by this sexual revolution, are called by Islam to keep our honor, to praise honor and sincerity and to refuse and despise sin.

Virginity is a matter of importance, unless other considerations outweigh it. The Messenger of Allah approved of Jabir marrying a woman who was not virgin (meaning she married before) when Jabir said, “My father (Abdullah) was killed in (the battle of) U‘hud and left behind nine daughters. I did not want to add one more to them just like them (meaning inexperienced). This is why I wanted to marry a Thayyib (woman who married before) so she can take care of them and brush their hair.”

Virgins are preferred by men who seek women who need caretakers. Indeed, virgins fall under this category, in that they need caretakers, which is the way Allah created them. As for men, being virgin has the opposite effect. Such men, although youthful and full of life, are usually stubborn and hard to please. On the other hand, men who have been married before are more compromising and amiable. Yet, with the passage of time, they also become harder and harder to please.

Again, we must regard virginity for its true worth. Virginity is preferred by many of those who seek marriage,

both men and women. The woman must know that her having a happy married life is tied to her protecting the virginity that Allah ordained on her. When a woman loses her virginity before getting married, she will have certainly lost a precious treasure. When women seek virgin men, they have to seek one who is capable of being a caretaker. One reason why marriages between people of the same age often fail, is that both spouses will be stubborn and hard to please. By her created nature, a woman is most satisfied by a man with whom she can find love, affection, care, leadership and manhood. These are the ingredients to a successful marriage.

Those who marry Thayyib (woman who married before) should not depend on wishful thinking that they can change their wives' habits, as is usually the case with virgins, or that their wives will be shy to have intercourse (an attitude of virgin women that is pleasing to many men). They must think about other benefits that they can gain from such a marriage. Also, women are encouraged not to marry men of their age unless they are ready to relinquish some of their own understanding for their husbands, even if a woman thinks that she is right. Also, men who marry older women must know what is possible or impossible to gain from their marriage. Sometimes, some women marry older men as an act of mercy and seeking Allah's Pleasure (by taking care of these older men). Also, there are some men who marry older women or women who have children, for the sake of Allah and to help these women take care of their children and save them from loneliness. In short, we affirm that marriage is not only for

material gain. It is a wide path that leads to righteous, good deeds and the pleasure and reward of Allah, the All-Mighty. What is important to know is that when one knows his goals and needs and does not insist on reaching for the impossible, then he or she will live and let others live an easy and pleasant life. However, if one insists on reaching for the impossible, then he or she will certainly fail in the end.

Eighth: Honor and Noble Descent

A correct Hadith attests that noble descent is one of the reasons behind some marriages. A woman (or man) can be considered of a noble descent when she (or he) has a high social status and position, which is not always synonymous with wealth. Arabs used to highly regard some people and tribes who were not rich but had great qualities of generosity, good conduct, etc. Hatim At-Taii was a leader of his tribe because of his good conduct and unsurpassed generosity, yet he was not rich. Banu Hashim (the tribe of the Prophet) were also leaders of Quraysh (the grand tribe in Makkah), but they were not even among the richest in Makkah. These considerations are not considered important in modern day societies. Nowadays, money and positions have become synonymous with nobility, while good conduct no longer means honor. However, there are still some tribes and societies that are striving to preserve their good qualities and firmly establish their tribal ties to their honorable ancestors. We explained before the role of wealth in a happy marriage.

There are some types of traditions, some of which are not opposed by Islam, that are still valid in some societies. But some tribes have lost their good name and honor because they indulge in prostitution and sin to sustain their livelihood. Refraining from marrying from such dishonorable tribes and communities, such as gypsies, was and still is a requirement of Islam. Gypsies live on money collected by stealing and prostitution and this is why Islam discourages marrying from such people. Today's media tries its best to eradicate good standards and honorable traditions (in the pretext that they want to preserve various cultures and traditions, some of which are opposed to the established rules of the religion) to perfect their ploy to destroy religion and morality.

Islam states that the origin of all mankind is one, from Adam, and that Arabs and non-Arabs are offspring of the same father. What distinguishes one from the other is the fear of Allah that they have in their hearts. Islam encourages people to compete in areas of good conduct and honor and to abandon dishonor. Honorable descent greatly helps in this regard.

We must give noble descent and honor their due weight according to Islam. Honor is a matter of good conduct, firm following of the religion and good nature, but not a matter of position or wealth. Fame that is built around anything other than these good qualities, is false.

A woman of honor and noble descent will have to abide by the rules of the religion and treat her husband in an

honorable manner and preserve his role as the head of the family. Otherwise, the result will be a troubled marriage that is full of conflict. An arrogant woman cannot sustain a happy marriage. Also, a woman who is married to a weak man will never find true happiness in her marriage. The most miserable among men is the one whose wife is arrogant with him and he is pleased with this situation. Also, miserable is the weak man who is married to a wife who is domineering and arrogant with him. Naturally, an honorable man is certainly preferred by any woman. But, honor can only be complete with good conduct and firm following of the religion. Otherwise, if the man is arrogant and not good in the religion, he will humiliate his wife and treat her with arrogance and intolerance.

Muslims vary in the manner with which they treat their spouses either honorably or dishonorably. When Zainab bint Hujjah married Usama ibn Zaid, she did not treat him in the best manner in an attempt to force him to divorce her. This is because she thought he was less noble than she was, although he was a virgin and she was not. Consequently, consideration should be taken in matters of nobility and the social position of a woman and the man who seeks to marry her, along with other considerations, as we stated. We cannot assume that one is evil because he refuses a righteous woman who is rich, but looks ugly to him. The same is true of a woman who refuses to marry a poor, ugly man although he seems to be righteous, good mannered and of noble descent.

Furthermore, people vary in the degree with which they accept people of lower social standing and in the degree with which they implement the Islamic code of conduct. They also vary in strength and in the tradition that they were raised to follow. Religion is meant to correct all these conditions and different personalities. However, it is up to the individual to allow Islam to solve his problems and weaknesses. This is why people vary in the degree with which the religion is able to solve their problems, because they vary in the way they rely on and implement the rules of the religion with regards to the problems they face.

In short, men and women are encouraged to thoroughly consider and apply the characteristics we have presented. Our brothers and sisters should use these standards to decide whether to accept or refuse marriage to someone.



Chapter 5

Al-Khutbah, To Be Engaged For Marriage

Al-Khutbah, that is to ask the family of a woman to marry her and her family's acceptance of this engagement, is the door to marriage. It is an initial contract that will eventually lead to the marriage contract itself. The following steps of the Shari'ah must be taken with regards to Al-Khutbah:

1 -- To see the future wife before Al-Khutbah: The following Hadiths confirm this obligation:

a -- Al-Mughirah ibn Shu'bah performed Al-Khutbah with a woman. The Prophet said to him, "***Go and look at her because this will help your time together to be lengthened.***" [Ahmad].

b -- Abu Hurayrah asked a woman for marriage and the Prophet said to him, "***Go see her because the eyes of Al-Ansar (people of Madinah) have a special characteristic.***" [Ahmad & An-Nasai].

The Sunnah does not set a limit as to what one can see of the woman he intends to perform Al-Khutbah with. The most a woman can show to a stranger are her face and hands. Is this the limit as to what one can see of his future wife? Some scholars of Fiqh (Islamic Jurisprudence) hardened their stance and said that one can only see the face and hands of the woman he intends to marry. Others said that one can see almost anything he desires. However, we think that the truth lies in the middle. This can be understood from the Hadith of

the Prophet, ***“If one performs Al-Khutbah with a woman and is able to see what encourages him to go forward with marriage, let him do just that.”*** [Ahmad, Abu Dawood, Ash-Shafi’i, Abdur-Razzaqh & Al-Hakim]. The chain of narrators for this Hadith contains an unreliable narrator. However, if the Hadith is held to be authentic, then it will be evidence that one can see more than the face and hands of the woman he intends to marry. Also, there are some authentic narrations by As-Salaf (the righteous ancestors) that they saw more than the face and hands.

2 -- Private audience with women is not acceptable: Private audience with strange women, whom one can theoretically marry, is impermissible even with a woman a man intends to marry. There are many Hadiths that affirm this rule, including the Hadith by Jabir that Ahmad related, ***“Whoever believes in Allah and the Last Day, let him not have a private audience with a woman without her Ma’hram (a man whom she can never marry, such as her brother, father, etc.) present with her, otherwise, Satan will be the third party present.”*** Furthermore, Al-Bukhari & Ahmad related that Uqbah ibn ‘Amer said that the Messenger of Allah said, ***“Do not have an audience with women (in private).”*** A man from among Al-Ansar said, ***“O Messenger of Allah, what about the in-law?”*** The Messenger said, ***“The in-law is death.”*** Also, ibn Abbas said that the Messenger of Allah said, ***“It is impermissible for a woman who believes in Allah and the Last Day to travel for one day and one night without a Ma’hram with her.”*** [Al-Bukhari & Muslim].

These Hadiths testify that private audiences with a woman whom one can marry is impermissible even for him who seeks marriage, except in the presence of the woman's Ma'hram.

3 -- To seek engagement to a woman who is currently engaged in a Khutbah is impermissible: A family can entertain more than one candidate for Al-Khutbah that leads to marriage. However, if the woman agrees to the engagement to any one of them, then Islam strictly prohibits others from coming forward for Khutbah, because this will lead to enmity between Muslims. The Prophet said, what translated means, "***A man must not perform Khutbah (with a woman) in spite of a Khutbah by his (believing) brother (to her) until he (the first man) marries or leaves (her).***" [Al-Bukhari] and, "***A man must not perform Khutbah in spite of another man's Khutbah until he (the first man) breaks the Khutbah before him or permits him (to propose to the woman).***" [Ahmad & An-Nasai].

What is the ruling if this happens? Some scholars of Fiqh said that if marriage occurs with the later man, then this marriage is null and void and that the woman should be returned to the first man. Others disagreed and said that the marriage contract to the second man is valid but that he has committed a sin that should bring about punishment in this life and in the Hereafter.

Al-Khutbah is a type of permissible contracts that, if severed, will not raise specific rights for the parties involved.

If another Khutbah occurs in spite of the first Khutbah and marriage is conducted with the second man, then this contract is considered valid. However, the second man will be indulging in injustice and, therefore, must sever his own Khutbah. Otherwise he, and the ones who helped him from among the woman's family, will be punished in this life and the Last Life. Also, if this contract was forced on the woman, then this will be an added injustice committed by the second man.

4 -- It is impermissible to perform Al-Khutbah while the woman is in her Iddah (time spent before a divorced woman or widow can remarry): There are certain times during which a man cannot ask a woman for marriage, among them:

a -- During the Iddah of a divorced woman: A divorced woman is not allowed to remarry until the start of her third Tuhr (that is, the period of time between each two menses), counting from the time of divorce. During this Iddah, other men are not allowed to ask her for Khutbah to be married. It is after the third Tuhr has started that other men can ask her for marriage, because until then, a divorced woman is still tied to her ex-husband. Also, if a woman has been divorced by the same husband at three separate occasions, then, as universally agreed by scholars, she must also wait for her Iddah to finish before entertaining Khutbah by another man. This is the rule, although in this case, her ex-husband cannot remarry her unless she marries another man and then happens to divorce him; then

she can remarry her first husband (after her Iddah to the second husband is finished).

b -- Iddah of the death of the husband: When a woman's husband dies, she must wait for four months and ten days or until she gives birth, whichever comes first, before she can accept Khutbah offered by a man who wants to marry her. However, one can hint during this Iddah that he seeks to marry this woman after her Iddah is finished, such as if one says, "I am looking for a good woman to marry (and meaning this particular woman who is awaiting the end of her Iddah)." Such words are only hints and not a direct Khutbah for marriage. Allah said, what translated means, *﴿And there is no sin for you if you make a hint of betrothal or conceal it in yourself, Allah knows that you will remember them, but do not make a promise of contract with them in secret except that you speak an honorable saying according to Islamic Law (you say to her, "If one finds a wife like you, he will be happy"). And do not consummate the marriage until the term prescribed is fulfilled. And know that Allah knows what is in your minds, so fear Him. And know that Allah is Oft-Forgiving, Most Forbearing.﴾* [2:235].

﴿ولا جناح عليكم فيما عرضتم به من خطبة النساء، أو أكننتم في أنفسكم علم الله أنكم ستذكرونهن، ولكن لا تواعدوهن سرا إلا أن تقولوا قولا معروفا، ولا تعزموا عقدة النكاح حتى يبلغ الكتاب أجله واعلموا أن الله يعلم ما في أنفسكم فاحذروه واعلموا أن الله غفور رحيم﴾ (البقرة/٣٣٥).

Some Bid'ahs (Innovations) of Today With Regards to Al-Khutbah

We now know that, in Islam, Al-Khutbah is an agreement for marriage. It permits only one look at the woman by the man who intends to marry her. Looking at her after Al-Khutbah or having private audience with her is impermissible. When Al-Khutbah is severed, no special rights will arise as a consequence. Al-Khutbah does not need witnesses to be conducted, although it is preferable. Al-Khutbah opens the door for marriage later. Only marriage contracts establish special rights and obligations between spouses.

Al-Khutbah or engagement according to un-Islamic traditions, permits the man to look and associate freely with his fiancée. According to this tradition, all is accepted except sexual intercourse (which is tolerated in some societies of today!). Sometimes, even priests attend such engagement parties. Some Muslims have started to imitate such traditions practiced by the disbelievers, by exchanging engagement rings, paying a dowry which they call "Shabkah" and serving toasts after Al-Khutbah is conducted. After the engagement party, the fiancée becomes like a husband because he can meet his fiancée in private and even travel with her. Other people do not even disapprove that the fiancée is enjoying his future wife in every way except sexual intercourse. This practice leads to many problems if the engagement is broken, for disputes will then arise because both parties will have exchanged gifts and rings and each will ask for the return of his or her gifts.

Adding to this is what the fiancée spends while still engaged, a period that sometimes extends to years and entails numerous private meetings and picture-taking. These pictures may also become a means of harm or embarrassment for the woman after she breaks the engagement.

We advise our Muslim brothers not to indulge in such Bid'ahs that were spread in the Muslim world by the hands of those who imitate the Christians. In Islam, the man cannot enjoy his fiancée in any form, except after their marriage contract is signed and announced. Also, it is not permissible for engaged people to meet secretly or see what one cannot see of his or her future spouse. Furthermore, we affirm that exchanging engagement rings is un-Islamic, even if many Muslims approve of such practice. For an act to be popular and widespread, does not mean that Islam allows it. We also affirm that if a man spends any money on his fiancée, then he should not take back any of it. The Messenger of Allah said, what translated means, "***Those who go back on their gifts are like the dog when it vomits and then eats its vomit!***" [Al-Bukhari]. Therefore, if one gives gifts to the woman whom he intends to marry, then he cannot ask to have his gifts back after Al-Khutbah is broken. However, if the woman is the one who severs Al-Khutbah, then she must return her fiancée's gifts, unless he agrees for her to keep them. Indeed, it is an obligation on the woman to return what her fiancée spends on her if she severs Al-Khutbah, just as she is obliged to give him back his dowry if she seeks to divorce him.

We now know that unlike marriage contracts, Al-Khutbah does not establish any special rights for the man or the woman because it is only an agreement for marriage. When Al-Khutbah is broken, no consequences will arise because marriage did not exist.



Chapter 6

Conditions That Validate Marriage Contracts

Marriage is a contract that obliges each signatory to fulfill certain obligations and also confirms certain rights for each party to the contract. Just like other contracts, such as business contracts, marriage contracts must include certain conditions that must be met in order for them to be valid. Allah said, what translated means, ﴿O you who believe! Fulfill (your) contracts.﴾ [5:1].

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ﴾ (المائدة/١)

Conditions of any contract are the terms that validate it. If any of the conditions of a contract, such as agreement by both signatories as we will come to know, is non-existent, then the contract will become invalid. Conditions of valid marriage contracts include the following:

1 -- Acceptance by both parties to the marriage: Marriage contracts are built on acceptance by both the husband and the wife because it is their life that they are going to share together. As for the man, there is no disagreement by the scholars that forcing him to marry whom he does not want to marry invalidates the contract. As for the woman, our example must be the Hadith by the Prophet, as narrated by ibn Abbas, “*Ath-Thayyib* (a woman who married before) **has the right to herself** (to marry) **than her Wali** (agent, such as her father). *Al-Bikr* (a virgin) **must be asked for her permission** (for marriage) **and her permission is her silence.**” [Muslim & Ahmad]. Another narration for this Hadith by Abu Hurayrah states, “*Neither Al-Ayyim* (a woman who married before) **can be married without her acceptance nor Al-Bikr without her**

permission.” They said, “*O Messenger of Allah, what constitutes her (Al-Bikr’s) permission?*” He said, “*Her silence.*” [Al-Bukhari & Muslim]. Also, ‘Aaishah asked, “*O Messenger of Allah, must women be asked for their permission for marriage?*” He said, “*Yes.*” She said, “*Al-Bikr is asked for her permission but she gets shy.*” He said, “*Her silence is her permission.*” [Al-Bukhari & Muslim].

These Hadiths prove that women, whether Thayyib or Bikr, cannot be forced in marriage. The only difference is in the response that a Thayyib gives because she will not be as shy as one who is Bikr. This is why the Prophet required explicit acceptance by Ath-Thayyib. As for Al-Bikr, her shyness may prevent her from answering with words, therefore, her silence is a sign of her acceptance.

Some scholars disputed with regards to Al-Bikr, saying that the Messenger of Allah married ‘Aaishah when she was six years old. However, this opinion is invalid because the Prophet’s marriage to ‘Aaishah was an exclusive privilege that Allah permitted His Prophet, just like allowing him to have more than four wives at the same time, marrying women without the need for a Wali or witnesses and, *﴿And a believing woman if she offers herself to the Prophet, and the Prophet wishes to marry her; a privilege for you only, not for the (rest of) the believers.﴾* [33:50].

*﴿وامرأة مؤمنة إن وهبت نفسها للنبي إن أراد النبي أن يستنكحها خالصة
لكم من دون المؤمنين﴾ (الأحزاب/ ٥٠).*

Some scholars said that Al-Bikr can be forced to marry a man whom she does not want because the Prophet differentiated between Ath-Thayyib and Al-Bikr, since he ordered that Ath-Thayyib must give explicit acceptance and that Al-Bikr can only be asked for her permission. However, this is a major error because the Hadith only states that Ath-Thayyib responds *differently* than the way Al-Bikr responds. What further proves that this saying is an error, is the Hadith narrated by ibn Abbas and related by Ahmad, Abu Dawood, ibn Majah and Ad-Daraqhutni, in that, a virgin woman came to the Prophet and said that her father forced her to marry and the Prophet gave her the choice to stay married or be granted a divorce.

Also, ibn Umar said, "Uthman ibn Math'oon died and left behind a daughter from his wife Khawlah bint Hakim ibn Umayyah ibn Harithah. He, before his death, instructed his brother, Qudamah ibn Math'oon, to take the responsibility of marrying her. And they both, (Uthman and Qudamah), are my uncles. I asked Qudamah to marry the daughter of Uthman ibn Math'oon and he married her to me. However, Al-Mughirah ibn Shu'bah came to her mother and mentioned money to her, and she wanted him to marry her daughter. The daughter also wanted what her mother wanted. They both refused Abdullah ibn Umar. This affair of theirs was mentioned to the Messenger of Allah. Qudamah ibn Math'oon said, 'O Messenger of Allah! My niece, he (her father) made me her agent and I married her to the son of her aunt. I found one who is best for her in terms of righteousness and who is also her equal. However, she is a

woman and she only wanted what pleases her mother.’ The Messenger of Allah then said, ‘*She is an orphan and cannot be married without her permission.*’ Then, by Allah, she was taken away from me after I married her and she was then married to Al-Mughirah ibn Shu’bah.” [Ahmad & Ad-Daraqhutni].

These Hadiths that we have mentioned prove that it is impermissible to force a virgin to marry, especially the orphan whom Allah said with regards to her, *﴿And if you fear that you shall not be able to deal justly with the orphan-girls, then marry other women of your choice, two or three, or four.﴾* [4:3].

﴿وإن خفتن أن لا تفسطوا في اليتامى فأنكحوا ما طاب لكم من النساء مثنى وثلاث ورباع﴾ (النساء/ ٣).

This Ayah means that if you seek to marry an orphan, but fear that you may not award her a fair dowry and treat her justly, then leave her and marry someone else instead. This Ayah ensures that orphan girls are given their due rights and that they are allowed to marry whom they want, not whom their guardians want.

2 -- Having a Wali, an agent for the woman, such as her father, brother, etc.: Women are not allowed to be their own agents in marriage because this is against their nature and a way that leads to sin and adultery and this is why the Shari’ah requires a Wali. One cannot be a Wali unless he is the nearest of kin among the living.

The Prophet said, what translated means, “*Any woman who marries without the permission of her Wali, then her marriage is invalid, her marriage is invalid, her marriage is invalid. If he sleeps with her, then she gets the dowry that allowed him to have sexual intercourse with her. If (several Walis) disputed among themselves (as to whom should be the Wali), then those in authority (such as the ruler or the judge) are a Wali for whom has no Wali.*” [Ahmad & At-Tirmithi].

Ibn Al-Munthir said that no one among the community of the companions disagreed that Al-Wali is a condition in valid marriage contracts. Only Abu Hanifah, from among scholars of Fiqh, did not consider Al-Wali a condition for marriage. However, the previous Hadiths refute this position. Imam Malik, on the other hand, considered Al-Wali a condition in marriage contracts for women who enjoy fame or reputation and not for common woman. This position is not sanctioned by evidence, either. Indeed, the common woman may need the Wali more than the famous or noble woman to prevent adultery or vice on the part of the intended spouse.

3 -- The presence of two witnesses: The presence of two truthful witnesses is a condition of marriage. There are several Hadiths regarding this matter, although the authenticity of all of them is disputed. Furthermore, requiring witnesses to validate marriage contracts is the view of many companions such as ibn Abbas, Ali and Umar, and the majority of scholars, such as ibn Al-Musayyib, Al-Awzaa’i, Ash-Shi’bi, Ahmad, Ash-Shafi’i and Abu Hanifah. The presence of witnesses on

marriage contracts protects the rights of both the husband and the wife. On the other hand, not requiring witnesses on marriage contracts causes numerous problems including disputes, altering the terms of the contract and the loss of rights for both or either of the husband and the wife. This is why the presence of witnesses on marriage contracts has become a matter well-known and undisputed in Islam.

4 -- Al-Mahr (the dowry, which is a gift or money given to the future wife): Islam requires the husband to pay Al-Mahr to his future wife. We are not going to discuss the full wisdom behind obligating the dowry, which is a condition that validate marriage contracts. What we can say in short, however, is that Al-Mahr is a gift from the man to his future wife. It is her money thereafter, but she can give her husband part or all of it, if she so desires. Allah said, what translated means, *﴿And give to the women (whom you marry) their Mahr with a good heart, but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allah has made it lawful).﴾* [4:4].
﴿وَأْتُوا النِّسَاءَ صِدْقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا﴾ (النساء/ ٤).

This Ayah includes all rules of Al-Mahr: Al-Mahr is a gift and it is obligatory, as is apparent from the wording of the Ayah and the meaning of some Hadiths. Also, Al-Mahr is the property of the wife, but she can remit part or all of it back to the husband who can enjoy it without fear of punishment from Allah, as long as his wife remitted it willingly.

Treating Al-Mahr this way is better than treating it as a purchasing price for the woman. Marriage is not buying and selling. It is a holy contract that benefits all and provides an atmosphere of mercy, attraction, love and the reproduction of mankind. Buying and selling is a transaction that, sometimes, cause division, cheating and disputes. Marriage contracts are nothing like business transactions and this is why we emphasize that Al-Mahr is a gift that is given to the loved ones, an attitude rarely felt or practiced in business transactions.

Since Al-Mahr is a gift, Islam did not fix its amount. The Messenger of Allah married a man to a woman for a Mahr of teaching her a few chapters from the Quran because this man could not afford a suitable Mahr. The Prophet even told him, "**Look for one (a Mahr), even if it was an iron ring!**" [Al-Bukhari & Muslim]. However, the man could not find even that. Then, the Prophet married the woman to this man on the condition that he teaches her a few chapters from the Quran.

Although Islam does not set fixed limits for Al-Mahr, it still encourages moderation in the Mahr and discourages extravagant Mahrs, which may lead to evil ends.

These days, many people have transgressed their limits with regards to Al-Mahr. Al-Mahr is now looked at as a means of amassing wealth and is treated as a business transaction. This is why Mahrs have become out of reach for so many young men. We will discuss this problem in detail later on in this book, Allah willing. What is important to point out here is

that Al-Mahr is a condition in valid marriage contracts. It is the woman's right. Her father or husband are not allowed to take part or all of it without her explicit permission and consent. Al-Mahr is a gift, and the best of Mahrs are the ones that are the least expensive.

5 -- Being Mu'hsan (honorable): Allah ordered Muslims not to marry dishonorable women, *﴿The adulterer marries not but an adulteress or a Mushrikah (disbeliever) and none marries her except an adulterer or Mushrik. Such a thing is forbidden to the believers.﴾*[24:3]

﴿الزاني لا ينكح إلا زانية أو مشركة والزانية لا ينكحها إلا زان أو مشرك وحرم ذلك على المؤمنين﴾ (النور/٣).

The following Hadith further explains this point. Abu Dawood, An-Nasai and At-Tirmithi related that Marthad ibn Abi Marthad Al-Ghanwi was freeing Muslim captives in Makkah and transporting them to Madinah. In Makkah, there was a prostitute called "Anaqh" and who was Marthad's friend before he embraced Islam. He said, "I came to the Prophet, saying, 'O Messenger of Allah! Can I marry Anaqh?'" He (Marthad) then said, "He did not answer me. Then, this Ayah was revealed, *﴿And none marries her except an adulterer or Mushrik﴾*. The Prophet called me, recited it for me and then said, '*Do not marry her.*'"

Allah permitted Muslim men to marry chaste women from among the People of the Scripture, the Jews and Christians, *﴿Made lawful for you this day are At-Tayyibat (all*

what is lawful). *The food of the People of the Scripture is lawful to you and yours is lawful to them.* (Lawful to you in marriage) *are Al-Mu'hsanat* (chaste women) *from the believers and Al-Mu'hsanat from those who were given the Scripture* (Jews and Christians) *before your time.* ﴿5:5﴾.

﴿اليوم أحل لكم الطيبات وطعام الذين أوتوا الكتاب حل لكم وطعامكم حل لهم والمحصنات من المؤمنات والمحصنات من الذين أوتوا الكتاب من قبلكم﴾ (المائدة/5).

This Ayah states that marriage should be conducted with honorable and chaste women from among Muslims or the People of the Scripture. A chaste woman is called "Mu'hsanah," because there is an erected barrier between her and fornication and adultery.

These Ayat and the Hadith mean that Muslims, whether men or women, are not allowed to seek marriage to un-chaste and dishonorable women or men.

6 -- Marrying one's equal: In the Shari'ah, equality between the spouses is a condition that validates their marriage contract. However, there are some aspects that the Shari'ah disregarded with regards to equality. So what do we mean by "equality", then?

Among the aspects that Islam made a condition for valid marriages and considered a matter of equality, is religion, which is the first priority that mankind is weighed against. Disbelieving in Allah, thus, is a barrier that does not permit marriage by Muslims. Allah said, what translated means,

﴿And do not marry Al-Mushrikat (idolaters, etc.) till they believe (worship Allah alone). And indeed a slave-woman who believes is better than a (free) Mushrikah even though she impresses you. And give not (your daughters) in marriage to Al-Mushrikeen till they believe and verily, a believing slave is better than a (free) Mushrik even though he impresses you. Those (Al-Mushrikeen) invite you to the Fire, but Allah invites (you) to Paradise and Forgiveness by His leave.﴾ [2:221].

﴿ولا تنكحوا المشركات حتى يؤمنن ولأمة مؤمنة خير من مشركة ولو أعجبتكم، ولا تنكحوا المشركين حتى يؤمنوا ولعبد مؤمن خير من مشرك ولو أعجبكم، أولئك يدعون إلى النار والله يدعوا إلى الجنة والمغفرة بإذنه﴾ (البقرة/٢٣١).

Allah excluded Jewish and Christian women from this rule, however, and Muslim men can marry them, ﴿Made lawful for you this day are At-Tayyibat. The food of the People of the Scripture is lawful to you and yours is lawful to them. (Lawful to you in marriage) are Al-Mu'hsanat from the believers and Al-Mu'hsanat from those who were given the Scripture before your time.﴾ [5:5]. This Ayah, which was revealed after the first Ayah above, [2:221], excluded Jewish and Christian women from this rule, but such women must be Mu'hsanah (chaste), however. The wisdom behind this exclusion is that Jewish and Christian women may be encouraged to become Muslims. This reason alone helped convert the nations that were living in Ash-Shaam (Syria, Lebanon, Jordan and Palestine) and Egypt to Islam. Many Arab Muslims married from among the women of these nations

and their children were brought up as Muslims. In this book, however, we will not explain this rule in detail. What is important to know is that the rule that permits marrying from among Jewish and Christian women is valid until the Day of Judgment. Yet, one must address other concerns if he wishes to marry from among the People of the Scriptures, especially the religion of his children. Children may take up the religion of their mother if the father is weak in his religion or if he lives in non-Muslim societies.

This rule with regards to equality means that, for example, the male slave only marries a woman slave and the free man marries a free woman. Yet, Allah excluded from this case a free Muslim man marrying a Muslim woman who is a slave, because the man fears Al-‘Anat (hardship or sexual deprivation) for himself as a result of not being able to marry a free woman. Allah said, what translated means, *﴿And whoever of you have not the means wherewith to wed from believing women, they may wed believing girls from among those (captives) whom your right hands possess, and Allah has full knowledge about your faith. You are one from another. So wed them with the permission of their own folk (Wali, master) and give them their Mahr according to what is reasonable, they (captive girls) should be chaste, not adulterous, nor taking boyfriends.﴾* [4:25],

﴿ومن لم يستطع منكم طولا أن ينكح المحصنات المؤمنات فما ملكت أيمانكم من فتياتكم المؤمنات والله أعلم بإيمانكم، بعضكم من بعض فانكحوهن بإذن أولهن وأتوهن أجورهن بالمعروف محصنات غير مسافحات ولا متخذات أخدان﴾ (النساء/٣٥).

until He said at the end of this Ayah, *﴿This is for him among you who is afraid of 'Anat, but it is better for you that you practice self-restraint.﴾* [4:25].

﴿ذلك لمن خشى العنت منكم وأن تصبروا خير لكم﴾ (النساء/٢٥).

Therefore, this Ayah stresses that the poor Muslim man who is not a slave can marry a Muslim woman who is a slave because he is unable to marry a free Muslim woman. This rule helps ease the burden of 'Anat for those who cannot afford marrying free women. However, Allah disliked this for such men and advised them to be patient, because, in this case, the wife will be owned by her husband and, as a consequence, her children will become slaves as well, since the children become slaves just like their slave mother.

Marrying slave women from among the Jews, Christians and Majoos (fire worshippers) is not allowed, however. This is why Imam Ahmad said, "He is just like his name," about Abu Thawr (Thawr means "bull"), when he was told that Abu Thawr allows such marriages.

Marrying one's equal does not entail color, race, wealth, tribe or social status. All these are not considerations in valid marriage contracts. We explained before how Muslim men and women should choose the right spouse and detailed the characteristics of good candidates for marriage. These considerations only help both men and women choose their equals, so as to establish a happy and successful marriage.

7 -- Wording of the Marriage Contract: Some scholars require that certain wordings be used to express acceptance to the marriage by both the husband and the wife. To validate the marriage contract, the husband must ask the woman's Wali to give him his client for marriage. The woman must inform her Wali that she agrees to such marriage. Any collection of words that lead to this end will make the marriage contract valid. Some scholars say that Arabic is a condition in valid marriage contracts and, therefore, marriage ceremonies must be conducted in Arabic. We believe that this saying is erroneous. Marriage contracts are a type of contracts that can be established in any language. Also, marriage is a contract that depends on acceptance by both signatories and they can choose the language that most suits their need. As we stated before, we affirm that marriage contracts become valid when both parties express unequivocal acceptance to the terms of the contract using any language that fulfills their need.



Chapter 7

Marriage Contracts' Negators

We explained before the conditions that validate marriage contracts. We will now explain the situations when marriage contracts are invalidated, starting with stating the difference between a condition and a negator. A condition must be present in order for any contract to be valid and accepted. A negator is a matter that, if it exists, it will invalidate the contract. In order for a contract to be valid, all of its conditions must be met and all negators must be absent. These negators are explained as follows:

I – Marrying Certain Groups of Related Women

Allah, the Exalted, prohibited marrying certain groups of women. The categories of these prohibitions fall under: Blood relations, those related by marriage and those related by being suckled by the same woman. As for blood relations, one can never marry his mother, sisters, daughters, aunts or nieces. Marriage relations disallow one to marry his wife's mother or daughter, his step mother or daughter-in-law. It must be noted here that although one is prohibited from marrying his wife's daughter after their marriage is consummated, yet, if he divorces his wife before the marriage is consummated, he can still marry her daughter. These are five groups of blood relations and four from among marriage related women whom one can never marry.

As for the third type, all children who were suckled by the same woman are considered related by blood. Therefore, the five groups of women whom one cannot marry from among blood relations also apply to this type of relative. The Messenger of Allah said, what translated means, “*Suckling prohibits what blood relation prohibits.*” [As-Silsilah As-Sahihah]. A man suckled by a woman can never marry her sister or mother, because they are considered his aunt and grandmother. Also, her daughters are considered his sisters and, therefore, he is prohibited from marrying any of them.

The Wisdom Behind this Prohibition

There is a great wisdom behind prohibiting marrying these groups of related women. Marriage contracts establish special rights and obligations between spouses. These rights and obligations are in direct conflict with the rights obliged by blood relations, such as the case with one’s mother, sisters and other relations we mentioned. One cannot marry his own mother, for example, because her rights on him will be in direct conflict with his rights on her as his wife. The same can be said about the sister; how can one satisfy her rights on him as his sister and his own rights on her as her husband in case he married her? There must be a group of women whom one will have to have a special kind of respect and appreciation. Furthermore, family relations must be full of love and appreciation and free from feelings of lust and conflict of interests, as is the case between married couples. What if one

marries his sister and then marriage disputes led to divorce, how are they going to feel about each other afterwards? Can one disown his own sister in this case or sever the blood relation between them? No, indeed.

The same is the case with other types of relations, such as the mother-in-law, daughter-in-law, step mother and the wife's daughter. Such prohibition seeks to preserve the rights of the father, son, wife and husband. One cannot marry a woman, consummate the marriage and then divorce her to marry her daughter. Also, one cannot marry the daughter of a woman who suckled him while he was an infant. Not marrying these groups of women leads to a stable society full of harmony and honor. This is the best environment where new generations can be reared and where they can feel the pleasure of having parents and relatives. Such a society is the one that the West has discarded in its feverish pursuit of wealth and joy, and this is why they now live in misery and darkness.

2 – Nika'h Ash-Shaghar

Nika'h (which means marriage) Ash-Shaghar occurs when a man marries his daughter or sister to another man on the condition that the other man marries him his daughter or sister. Many authentic Hadiths prohibit this kind of marriage contracts. Imam Muslim related a Hadith by ibn Abbas that states, "*There is no Shaghar in Islam.*" Also, Muslim and

Ahmad reported that Abu Hurayrah said, “*The Messenger of Allah prohibited Ash-Shaghar.*”

This type of marriages is invalid and must be annulled whether a dowry was given or not. Ahmad and Abu Dawood related that Al-Abbas ibn Abdullah ibn Abbas married his daughter to Abdur-Rahman ibn Hurmuz Al-Aa’raj and Abdur-Rahman married his daughter to Al-Abbas. Mu’awiyah ibn Abi Sufyan, the Caliph then, wrote to Marwan ibn Al-Hakam, his deputy in Madinah, ordering him to annul these marriages, saying, “This is Ash-Shaghar that the Messenger of Allah prohibited.”

There is an authentic Hadith narrated by ibn Umar in which the Messenger of Allah prohibited As-Shaghar, but at the end of this Hadith, Nafii’ (one of the Tabi’in, the second generation of Islam) said that Ash-Shaghar is when a man marries his daughter to a man on the condition that the other man marries his daughter to him *without a Mahr*. However, this description (without a Mahr) of Ash-Shaghar is Nafii’s opinion and not a part of the Hadith itself.

The wisdom behind prohibiting this type of marriages is that both women will be subjected to the same kind of treatment that either one of them is receiving from her husband. If one of them is humiliated, for example, the other one will also be humiliated in revenge, and if one is divorced, the other one will also be divorced. This type of marriages will cause hardship and injustice, especially if the marriage was

conducted without a Mahr. Islam seeks to make marriage contracts holy and not bound to fall victim to disputes and injustice that will create an atmosphere of instability for the couple and their children.

3 – Nika’h At-Ta’hlil

Nika’h At-Ta’hlil is a type of marriage contracts that some of the ignorant, wealthy men sometimes fall into. One of them would divorce his wife at three separate occasions. Since Islam prohibits him from remarrying his ex-wife for the fourth time, he goes to some so-called “scholars” to seek a solution for his problem. These false scholars advise him that he cannot remarry his ex-wife until after she marries another man and gets a divorce afterwards, so she can remarry her first husband. This is why these people revert to Nika’h At-Ta’hlil, when one hires a man to marry his ex-wife for only one or few nights, consummate the marriage and then divorce her so her ex-husband can remarry her. This is one of the worst types of adultery and sin. The Messenger of Allah cursed those who indulge in such acts. Ibn Mas’ud said, “*The Messenger of Allah cursed Al-Mu’hallil (the hired “goat”) and Al-Mu’hallala Lah.*” [Ahmad & At-Tirmithi]. Al-Mu’hallala Lah is the one who hires another man to marry his thrice-divorced ex-wife briefly and then divorce her so he can remarry her.

When the Messenger curses someone, it will be for a major sin that this person committed. Cursing means to be

thrown out of Allah's Mercy. The woman who was divorced three times by her husband, cannot remarry him except after she marries another man and then happens to divorce him, as Allah said, what translated means, *﴿The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness.﴾* [2:229].

﴿الطلاق مرتان فإمساك بمعروف أو تسريح بإحسان﴾ (البقرة/٢٢٩).
 Afterwards, Allah continued, *﴿And if he has divorced her (for the third time), then she is not lawful unto him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin for both of them that they reunite, provided they feel that they can keep the limits ordained by Allah. These are the limits of Allah, which He makes plain for the people who have knowledge.﴾* [2:230].

﴿فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره، فإن طلقها فلا جناح عليهما أن يتراجعا إن ظنا أن يقيما حدود الله، وتلك حدود الله يبينها لقوم يعلمون﴾ (البقرة/٢٣٠).

This matter will be further explained in the chapter that details the rules of divorce in Islam. What is important to point out here is that Nika'h At-Ta'hilil is performed by the ignorant and the sinful ones and is firmly rejected by the religion. This type of marriages contradicts the least Islamic rules which preserve honor and self-respect. This is why the Messenger of Allah cursed those who perform it.

4 – Nika’h Al-Mut’ah

The fourth type of invalid marriages is Nika’h Al-Mut’ah, which entails specifying a fixed expiration date for the marriage. Marriage in Islam is meant to be permanent, unless irreconcilable marital problems can only be solved by divorce, for example. If the husband and wife agree on a date of expiration for the marriage in advance, then this agreement will annul the marriage contract altogether. Only very few scholars of Islam accepted such marriage contracts.

This type of marriages was popular before Islam. The Messenger of Allah initially permitted it during some travels. Later on, he prohibited it during the battle of Khaybar on the seventh year of Hijrah (his migration to Madinah). Then, the Prophet allowed it for a few days when he victoriously entered Makkah. However, the companions did not depart from Makkah but after the Messenger of Allah had prohibited Nika’h Al-Mut’ah until the Day of Judgment. The following proofs support this fact:

1 -- Ibn Mas’ud said, *“We used to go for battle with the Messenger of Allah without women (meaning their wives). We said, ‘Can we get castrated?’ He prohibited that for us. Afterwards, he permitted us to marry a woman for a dress (as dowry) for a fixed time.”* [Al-Bukhari & Muslim].

2 -- Ali ibn Abi Talib said that the Messenger of Allah prohibited Nika’h Al-Mut’ah and eating the meat of

domesticated donkeys during the battle of Khaybar. This Hadith, narrated by Al-Bukhari and Muslim, is sound proof that the Messenger of Allah prohibited Nika'h Al-Mut'ah during the battle of Khaybar in the seventh year of Hijrah.

3 -- Subrah ibn Maa'bad Al-Juhani said that he accompanied the Messenger of Allah when he victoriously entered Makkah. Subrah said, "*We stayed in it (Makkah) for fifteen days. He allowed us the Mut'ah with women,*" until he said, "*I did not depart (from Makkah) but after the Messenger of Allah had prohibited it.*" [Muslim & Ahmad]. In another narration, he said that he was with the Prophet when he said, "*O People! I permitted you to perform Mut'ah with women. Abandon them (divorce them), and ~~And~~ it is not lawful for you (men) to take back any of your Mahr (from your wives) which you have given them.*" [2:229]." This Hadith is proof enough that this type of marriages is prohibited until the Day of Judgment.

Some of the companions did not hear of this last prohibition and this is why they, mistakenly and unintentionally, allowed it at the time of Umar ibn Al-Khattab. Then, Umar stood up in the Masjid and said, "The Messenger of Allah allowed Nika'h Al-Mut'ah for us three times (on three occasions). Afterwards, he prohibited it. By Allah, I will not be told about any married man who performs it, but I will stone him (to death for committing adultery)." [Ibn Majah]. Also, ibn Jarir narrated that Umar ibn Al-Khattab stood up and gave a speech to Muslims when he became a Caliph, saying, "The

Messenger of Allah allowed Nika'h Al-Mut'ah for us three times and then he prohibited it. By Allah, I will not know of anyone who reverts to Al-Mut'ah, while married, but I will stone him (to death), unless he produces four witnesses that the Messenger of Allah allowed it after he prohibited it. Also, I will not find any (single) man among Muslims who reverts to Al-Mut'ah, but I will flog him a hundred times, unless he produces four witnesses that the Messenger of Allah allowed it after he prohibited it.”

This speech by Umar ibn Al-Khattab in the presence of the companions is proof enough that Nika'h Al-Mut'ah is prohibited. Also, we note that no one among the companions refuted this speech by Umar. Those scholars who issued decrees that Al-Mut'ah is allowed did not know that the Messenger of Allah prohibited it in Makkah until the Day of Judgment.

The Wisdom Behind Prohibiting Nika'h Al-Mut'ah

The wisdom behind Islam prohibiting Nika'h Al-Mut'ah is tremendous. This type of marriages destroys the honor of both the man and woman because it establishes marriage between them for the soul purpose of satisfying sexual desires. Islam meant marriage to be a means of establishing stability and the continuation of mankind. Islam first allowed Al-Mut'ah because of the utter poverty and hardship that Muslims faced in the beginning of Islam. It was

a measure that was used in times of emergency, just as one is allowed to eat the meat of animals that were not slaughtered according to Islamic Law, to save himself from death by starvation. Afterwards, Allah bestowed His Bounties on Muslims and the practice of Al-Mut'ah was no longer needed. Also, Islam allowed Al-Mut'ah at first because it was a custom of the Arabs, just like drinking alcohol. Islam gradually prohibited Nika'h Al-Mut'ah just as it did in the case with drinking alcohol. At the end of the revelation, Islam reached its perfect form, especially with regards to male-female relations. It established the institution of marriage as a permanent settlement for both the wife and husband. This institution establishes a wide range of rights and obligations and is the perfect means to ensure the continued existence of mankind on earth.



Chapter 8

Effects of Marriage Contracts

First: Commonly-Shared Effects

1 – Satisfying Sexual Needs and the Need for Stability

The first effect established by a marriage contract is that it legally allows both spouses to satisfy their needs, sexual and otherwise, and the need to lead a stable, productive life under the same roof. This is a right and also an obligation that is mutually shared between both the husband and the wife.

Islam always legislates that which brings about a happy and stable married life, where both the husband and the wife can completely and legally enjoy each other. There are many Ayat in the Quran that oblige men to treat their wives fairly. Islam even encourages men to remain married to their wives even if they dislike some of their manners, *﴿And live with them honorably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good.﴾* [4:19].

﴿وعاشروهن بالمعروف فإن كرهتموهن فعسى أن تكرهوا شيئا ويجعل الله فيه خيرا كثيرا﴾ (النساء/١٩).

Also, the Prophet ordered Muslims to treat their wives honorably and emphasized this rule, saying, *“The best one among you is the best one with his family, and I am the best one among you with his family.”* [At-Tirmithi & Ibn Majah], *“Treat your women in the best manner. The woman was created from a bent rib. The part of the rib that is most bent is its top. If you seek to straighten it up, you will break it. If you*

leave it, it will stay bent. Therefore, treat your women fairly.” [Al-Bukhari & Muslim] and, “*Let not a believing man hate a believing woman (wife). If he dislikes some of her manners, he will (surely) like others.*” [Muslim & Ahmad]. Indeed, the Messenger of Allah was the best example of the best way of treating a wife. Islam also encouraged women in many Ayat of the Quran to use their best conduct when with their husbands, one of these Ayat being, *“Therefore, the righteous women are Qhanitat, and guard in the husbands’ absence what Allah orders them to guard (their chastity).”* [4:34].

﴿فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ﴾ (النساء/٣٤).

“Qhanitat” means they are devoutly obedient to their husbands. All these orders are with regards to the way and manner one should treat his or her spouse.

As for sexual and emotional aspects, Islamic legislation is the most perfect way to satisfy sexual and psychological needs. Husbands are allowed to enjoy their wives in any permissible way. Allah said, what translated means, *“Your wives are a tilth for you, so go to your tilth (have sexual relations with your wives in any manner as long as it is in the vagina and not in the anus), when or how you will, and send (good deeds, or ask Allah to bestow upon you pious offspring) before you for your own selves. And fear Allah, and know that you are to meet Him (in the Hereafter), and give good tidings to the believers (O Mohammad).”* [2:223].

﴿نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَأَتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ وَقَدِّمُوا لِنَفْسِكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّكُمْ مُلَاقُوهُ وَبَشِّرِ الْمُؤْمِنِينَ﴾ (البقرة/٢٢٣).

However, Allah prohibited sexual intercourse while the wife is in her monthly period, because this will be harmful for both the wife and the husband, *﴿They ask you concerning menstruation. Say, "That it is an Atha (a harmful thing for a husband in sexual intercourse), therefore, keep away from women during menses.﴾* [2:222].

﴿ويسألونك عن المحيض قل هو أذى فاعتزلوا النساء في المحيض﴾
(البقرة/٢٢٢).

It is allowed for a man to enjoy anything other than sexual intercourse with his wife during her menses, but Islam strictly forbids sodomizing the wife, a law that shows the honor and purity of all orders of Islam.

Islam considers sexual intercourse with the wife as a means to gain good deeds. The Messenger of Allah said to his companions, *"There is a Sadaqah (charity) for the one of you if he has sexual intercourse (with the wife)."* They said, *"O Messenger of Allah! Will any of us satisfy his desire and still get a reward?"* He said, *"Do you think that if he satisfies (his desire) with impermissible means, will he be committing a sin?"* They said, *"Yes."* He said, *"Likewise, if he satisfies it with permissible means, he will gain a reward."* [Muslim] and, *"If the one of you, when he seeks to sleep with his wife, says, 'In the Name of Allah. O Allah! Save us from Satan and save our offspring from Satan,' and if (Allah) decreed that an offspring will be the result (of that night), then Satan will never harm that offspring."* [Ahmad & At-Tirmithi].

The Messenger of Allah prohibited a married man or woman to tell others about what happens during sexual intercourse with his or her spouse. This only serves to perfect the manners of conduct and preserve the honor of Muslims. The Prophet said, what translated means, "*Among those who have the lowest grade with Allah on the Day of Judgment, is a man who sleeps with his wife and then talks about her secret.*" [Muslim & Ahmad]. In another Hadith, the Prophet likened this behavior to the behavior of a devil who meets a female devil and sleeps with her in the street while people are watching.

All these manners and codes of conduct solidify and complete the rules of Islam which are meant to preserve the honor of Muslims, and we are only explaining the first effect of marriage contracts on both the husband and the wife!

We should point out here that there are no authentic Hadiths that prohibit the husband or the wife from looking at any part of his or her spouse. Also, there are no authentic Hadiths that prohibit the husband or the wife from taking off all their clothes during sexual activities or otherwise. Islam only prohibits that which is dishonorable and permits that which is a true cause for happiness and permissible pleasure, while surrounding all this with the order for both spouses to treat each other in the best possible manner.

2 - Inheritance

When the marriage contract is valid and then afterwards one of the spouses dies, then the living spouse has a right to the inheritance of the dead spouse. This rule is an obligation that Allah revealed in His Book. Allah gave the deceased husband one half of the inheritance of his deceased wife if she left no offspring. If the dead wife had children from her husband or from other marriages, then her husband inherits a fourth of her estate.

Also, Allah ordained that if a woman's husband dies, she gets a fourth of his estate, as long as he did not have any children with her or from other marriages, in which case, she gets an eighth of the inheritance. If her husband had more than one wife and had children with either or all of them, then all of his wives share an eighth of the inheritance. These rules are clearly explained in the following Ayah, *﴿In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts.﴾* [4:12].

﴿ولكم نصف ما ترك أزواجكم إن لم يكن لهن ولد ، فإن كان لهن ولد فلکم الربع مما تركن من بعد وصية يوصين بها أو دين ، ولهن الربع مما تركتم إن لم يكن لكم ولد ، فإن كان لكم ولد فلهن الثمن مما تركتم من بعد وصية توصون بها أو دين﴾ (النساء/ ١٢) .

In case of the death of the husband or the wife, the right to the inheritance is automatically awarded to the surviving spouse as long as the marriage contract is valid and even if the marriage was not consummated.

3 – Blood Relation

Blood relation between a man and his offspring is established through a valid marriage contract. There are two conditions that apply to this rule:

First: That the child was conceived after consummating the marriage contract. The least time it takes a woman to deliver a normal baby is six months after marriage, as the majority of scholars of Islam have ruled. This rule was formed from combining all evidences that are mentioned in the Quran and Sunnah with regards to births. The Messenger of Allah said, what translated means, “*The one of you is created in his mother’s womb in the shape of a Nutfah* (mixed drops of the male and female sexual discharge) *for forty days. Then, he will be in the shape of ‘Alaqah* (a piece of thick coagulated blood) *for the same amount of time* (another forty days). *Then, he will be in the shape of a Mudhghah* (a little lump of flesh) *for the same amount of time* (another forty days, for a total of four months). *Afterwards, the angel is sent to him* (the fetus) *and will blow life unto him* (by the order of Allah).” [Al-Bukhari & Muslim]. This Hadith proves that human life starts after the fourth month. As for the physical aspect of creation, life

begins after conception. It is apparent that if a fetus is prematurely born before the sixth month, then the odds that it will live are minimal. These days, medical tests can determine the age of the fetus while in utero. Thus, blood relations can be firmly established early on in the pregnancy.

Second: Consummating the marriage is the second condition in establishing blood relations, according to the majority of scholars. Only Abu Hanifah did not consider this a condition to establish blood relations. This is why in his school of thought, it is permissible for a man who resides in the east to be compelled to give his name to a child whom his wife carries and gives birth to, although he married this woman while she was residing in the west and never met her after signing the marriage contract! It is clear that this opinion is not acceptable and is erroneous, although the one who issued it wanted to protect the rights of the child in this case. However, we cannot protect the right of the child and his mother in this case while causing injustice to the father who will be forced to accept a child whom he knows for sure is not his! Also, we must protect the rights of the Muslim society at large by exposing illegitimacy and differentiating children who are a result of illicit relationships and those who are a result of honorable marital relations.

The scholars who required a private audience between the spouses after marriage state that it is enough for the man to meet his wife in private at any time after the marriage contract.

In any case, this is not a measurable matter and it depends on different situations. What is important to know is that the marriage contract assures the woman that her children are called her husband's and compels the husband to accept his child by his wife with whom he consummated his marriage.

We now know that marriage contracts establish a set of rights, obligations and relations that no other contract on the face of the earth establishes. Marriage contracts allow spouses to enjoy each other in all permissible manners, sexual and otherwise. They also establish ties of blood relation and inheritance. This is why we ought to make sure that they are what Allah called, "Mithaqh Ghalith, (a firm and strong covenant)" by ensuring that marital affairs are treated with utmost care. Furthermore, all conditions that validate marriage contracts must be met and all negators must be avoided, as Allah ordered for Muslims. We firmly believe that destroying the marriage institution means the destruction of human civilization. It will also lower mankind to the grade of animals, satisfying their every desire without establishing a special identity or name for each individual.

Second: Effects of the Marriage Contract on the Husband

As we said before, marriage contracts are a unique type of contracts that will establish a world of its own of rights, obligations and responsibilities covering such aspects as

monetary, psychological and moral, many of which overlap. No one will always be able to pinpoint where the rights of either the wife or the husband start or end in all matters. Those who think they can do this are dreaming. Who can always define the required amount that the husband has to spend on his wife? If this is the case with material matters, then how would it be with private matters that only the spouses know? When we say that the marriage contract establishes a wide range of rights and obligations, we are only talking in general terms. We do not mean that these rights and obligations are defined and the same in all cases and different situations.

This is why Islam instructs the spouses to treat each other in an excellent and exalted manner, as much as possible. This means that both the husband and the wife must excel in the way they treat and deal with each other and avoid a rigid implementation of the set codes of rights and obligations. Excellence in the way spouses deal with each other opens the door wide for an array of good conduct and behavior, such as loyalty, generosity and selflessness. The more the husband is generous and tolerant with his wife, the more his wife will be appreciative of him. Likewise, the more the wife is selfless and tolerant of her husband, the more her husband is going to love and appreciate her. Such are the couple who will benefit the most from the bounties of marriage. If the opposite behavior is true of either or both the wife and the husband, then a miserable life and an unsuccessful marriage will be the result.

In light of these facts, we should look at the rights and obligations that marriage establishes in the following manner:

First: We cannot always clearly define where the rights of the wife or the husband begin or end. Islam provides us with general guidelines with regards to this matter.

Second: It is impossible for a marriage to be built around each party saying, "This is mine and this is yours." Rather, it must be built around, "How can I benefit my spouse the most and how can my spouse benefit me within reason." This is what we call "excellence in the way one treats his or her spouse." We can now speak in general terms about the effects of the marriage contract on the husband:

1 - Household Expenses

This means that the husband must provide for his household expenses and the needs of his wife, from the time the marriage contract is signed until they depart from each other for any reason. This is called "An-Nafaqah." An-Nafaqah entails all what the wife needs of clothing, dwelling, food and so forth. The wife, whether rich or poor, is not obliged to provide any of these necessities for her husband. Furthermore, going out to work to earn a living is not an obligation on the wife. This is why An-Nafaqah must be considered according to the circumstances that surround a particular household. Allah said, what translated means, *﴿Let*

the rich man spend according to his means, and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him. ﴿[65:7].

﴿يَبْنِفِقُ ذُو سَعَةِ مِّن سَعَتِهِ وَمَن قَدَرَ عَلَيْهِ رِزْقُهُ فليَبْنِفِقْ مِمَّا أَنَاءَهُ اللهُ لَا يَكْفُلُ اللهُ نَفْسًا إِلَّا مَا أَنَاءَا﴾ (الطَّلَاق/٧).

2 – Excellent Treatment of the Wife

This, too, is a general rule that cannot always be defined. The way a husband treats his wife varies according to different situations and is a matter of conduct that cannot be strictly defined or enforced by law. We cannot issue a decree by law that the wife and husband must always smile at each other. This is a matter of conduct that no law can force on the spouses towards each other. Allah's order to treat each other with kindness entails a wide range of manners and codes of conduct. This means that, for example, the husband is not allowed to curse or humiliate his wife and should deal with her with tolerance, justice, kindness and love.

3 – The Husband is Responsible for his Household

The husband is responsible for his household and has the final authority in the affairs of his family. Some people may consider this to be a right, but we prefer to treat it as an obligation. The man is responsible for his wife because Allah

obliged him to take care of her, as the Messenger of Allah said, what translated means, “*And the man is responsible for his household and will be asked about his responsibility.*” [Al-Bukhari].

Being responsible does not mean being a tyrant, or that the husband’s opinion is always correct. Rather, it means that he should lead his family in the best manner, and should also listen to his wife’s advice. The husband must always seek the good of his family and stand as a strong barrier in the face of all that which constitutes a defiance of Allah’s Law.

These are the most important responsibilities that the husband must satisfy and fulfill. One can never fully satisfy these requirements and obligations unless he is righteous himself.

Third: Effects of the Marriage Contract on the Wife

We can summarize the obligations that the wife must fulfill towards her husband as follows:

I – Obedience

Since Allah holds the husband responsible for the affairs of his household, an obligation that he will be asked about by Allah on the Day of Judgment, then, it is the

husband's right to have his family obey him. We can neither imagine nor approve of a situation where the husband is responsible for his family and viable for punishment for shortcomings, yet, he is not obeyed in his house by his wife and children. This is why Allah impelled the wife to obey her husband and made this obedience a tool of vital necessity that ensures the success and stability of married life. It is also the way Allah created men and women, and those who dispute this fact will only do so out of arrogance and ignorance. Therefore, since marriage contracts compel the man to be responsible for his family's needs and stability, then, the least the man is entitled to, is to be obeyed in his house by his family.

Obedience does not mean that the man should be a tyrant and unrepentant for his mistakes. Rather, it means to be obeyed within the boundaries that Allah ordered and permitted, for no one is allowed to obey creation in the disobedience of the Creator. Also, obedience means to stand firm where one should stand firm. It does not mean to insist on mistakes or require total obedience in all matters. Obedience entails numerous details that are entailed in the general guidelines that Allah provided, and all these guidelines fall within and subordinate to the obedience to Allah.

Serving her husband and fulfilling his sexual needs, are among the ways a wife can obey her husband. Many Hadiths oblige the wife to fulfill her husband's sexual needs when he so desires, such as, *"If a man calls his wife to his bed and she refuses, and he sleeps while angry with her, the angels will*

curse her until the morning.” [Al-Bukhari & Muslim]. This is a stern warning by the Prophet to every woman that she must not refuse to fulfill and satisfy her husband’s sexual needs. The Prophet only curses those who either refrain from performing an obligation, or fall into a prohibition.

2 – Serving the Husband

Serving the husband is among the responsibilities of the wife and among the rights that the husband has on his wife. Again, there is no set limits in Islam as to the extent a wife has to go to satisfy this requirement. There are those who have committed a grave mistake by saying that the wife has to only come to her husband’s bed when he wants her while ignoring the other aspects of serving the husband that are required from the wife. Such people misunderstand the Islamic marriage contract. The best among the companions, including Fatimah, the daughter of the Prophet, used to serve their husbands, sometimes facing hardship in the process. Never did the Messenger say that the wife does not have to serve her husband. On the contrary, he ordered the wife to obey her husband and ordered the husband to treat his wife with kindness. Also, it is the nature of the woman to like to serve her husband. Satisfying this female trait brings about a happy married life. Indeed, the wives who obey their husbands, within the boundaries of Islam, are the ones who are the most happy in their marriages. The most miserable marriages are found where the wives are disobedient and intolerant of their

husbands' needs. This is because they abandon this natural tendency that Allah created in them and required from them through the marriage contract.

It is important to point out that the wife is not obliged to serve her husband's family. However, if she does so, she will find that her marriage will be even more stable and happy.

3 – Al-Qhunut

“Al-Qhunut” is a word that has many uses in the Arabic language. It usually means that the wife is solely for her husband in all manners physical and emotional, filling her heart and time with her husband and only her husband.

Marriage contracts transfer the authority over the woman from her parents to her husband, making the wife's obedience to her husband supersede her obedience to her parents. Therefore, the wife must try to satisfy her husband before anyone else. The wife is in a situation similar to that of a captive, in that, she must restrict her obedience and service to her husband. This is the natural way that Allah created and impelled women towards their husbands. Also, this is why Allah compelled the husband to treat his wife with kindness, as the Prophet said, what translated means, “*Fear Allah with regards to women because they are captives with you.*” [At-Tirmithi & An-Nasai].

A Muslim wife should realize that the marriage contract requires this voluntary, yet sweet captivity. The wife who satisfies the terms of this “captivity” is the perfect wife, indeed. There is no doubt that if both the husband and the wife strive to fulfill their obligations and are reasonable when seeking their rights, they will both live a happy and stable family life.



Chapter 9

Safeguards That Ensure A Stable Family Life

First: Satisfying the Natural Way that Allah Created in Mankind

Allah, the Most Merciful, has decreed that the happiness and stability of family life be tied to fulfilling the set of rights and responsibilities that He ordained. If the husband acts like a man and fulfills his obligations, if the wife acts like a woman and fulfills her obligations, and if the children fulfill their obligations, then the result will be a stable and happy family life. However, this stability will be shaken if any member of the family fails to fulfill his responsibilities and obligations. If the wife, for example, refuses to have children because she only desires her comfort and pleasure, then she will suffer physically and emotionally. But if she wants to have children, despite the hardships of pregnancy and childbirth, she will certainly be happy in her marriage. The woman's feeling of happiness is at its peak as a mother and by the need that her child shows for her. Even when she has to stay up late to attend to her sick child, she will still feel accomplished and needed. Although bearing children is certainly difficult and hard, Allah made this hardship a cause for great happiness and satisfaction. The wife can only reach such ends through her submission to what Allah has ordained on her. Therefore, the woman's happiness comes as a result of obeying her husband and fulfilling his needs. Also, the perfect marriage is achieved when an appreciative and honorable wife lives with an appreciative and honorable husband. The day the wife looks at her husband as her equal or believes that her

opinions are always above his, is the day when her misery starts.

We must all know that our happiness comes as a result of fulfilling what Allah obliged on us, men and women. The man who leads a happy family is the man who seeks to fulfill what Allah has obliged on him and who reasonably seeks his rights. Likewise, the woman who leads a happy family life is the woman who fulfills the obligations of marriage that Allah has ordained on her and who reasonably seeks the rights that Allah has given her. Any shortcomings in this regard will sow the seeds of destruction for the stability and happiness of the family as a whole.

Second: Appointing Arbitrators to Solve Family Disputes

The wife and husband may reach a point when they alone can no longer solve their differences and disputes. In such cases, Allah ordered the wife and husband to appoint arbitrators from each side of their family to try and resolve these differences. Allah said, what translated means, *﴿If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Aquainted with all things.﴾* [4:35].

﴿وإن خفتن شقاق بينهما فابعثوا حكما من أهله وحكما من أهلها إن يريدوا إصلاحا يوفق الله بينهما إن الله كان عليما خبيرا﴾ (النساء/ ٣٥).

The individual may face a situation where he needs help from others to try and solve his marital problems. This may even occur to those who are gifted with wisdom and are able to help others solve their problems, yet they cannot alone solve their own marital problems. This is why it is a requirement, especially for women, to seek other people for help. It is beneficial for a wife to ask her father, brother or uncle to try to help solve her marital disputes, because such relatives are more able to understand the wife's position and, thus, are more successful in solving such problems and disputes. Therefore, in case of irreconcilable marital disputes, both the husband and the wife must seek arbitrators from their family members to help them solve their disputes.

There is another rational for choosing arbitrators from among family members, that is, to keep family secrets within the family. It is very dangerous for the wife and husband to revert to courts as the first step on the way to solving their problems. Marriage is a very private affair and should not be made public. Publicizing family secrets in courts, in the presence of judges and witnesses, will serve to deepen the dispute. Even if the dispute is resolved, family secrets will have become a matter of public discussion and strangers will publicly talk about matters that were supposed to be family secrets. It is the Mercy of Allah that He ordained appointing family arbitrators to try and solve marital disputes. This order

from Allah is directed to the community at large and not only to the wife and husband, because the stability of marriages is a concern for the entire society and not only for individual families. Muslims are just like the one body, if any part of it falls sick, the entire body will respond with panic and fever. Indeed, since family disputes are among the worst disputes, they must then be taken seriously so that they are properly resolved. This is why the wife and husband must seek arbitration for their disputes when they are unable to solve their problems on their own. This will ensure that Muslim families enjoy stability and happiness.

In summary, we affirm that the following conditions must be met in order for any marriage to be successful and trouble-free:

1 -- The marriage contract must be conducted in the manner that Allah decreed: With full acceptance by both spouses, in the presence of witnesses and a Wali, with an agreed upon Mahr and by satisfying the condition of Islamic equality between the husband and wife.

2 -- All negators of marriage contracts must be fully and strictly avoided. Also, all invalid contracts must be fully abandoned.

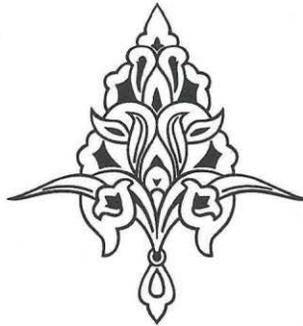
3 -- Marriage contracts must not include conditions that are not accepted by the religion, such as giving the wife the right to divorce her husband, because such conditions will

annul the contract itself. However, if reasonable conditions that are accepted by Islamic Law are set, then they must be fulfilled and satisfied. The Messenger of Allah said, what translated means, “*The conditions that must be met the most, are the conditions that permitted you the right to sexual intercourse* (in marriage contracts).” [Al-Bukhari].

4 -- Both the husband and wife must fulfill their obligations and reasonably seek their rights. Each spouse must know that if they transgress against the other, they will be destroying a natural system provided and created by Allah. Allah is the One Who created everything and, thus, is the only One Who has the right to legislate for His creation and Who deserves the preservation of His natural system that He created, ﴿*Surely, His is the Creation and the Commandment.*﴾ [7:54]. Those who defy Allah’s naturally-created way that He ordained, are the same as those who defy His orders. Both are the miserable ones.

5 -- Men and women must know and appreciate the nature that Allah created in them. When one knows his own self, he will be able to solve its problems. However, if one does not understand his own self, how then can he solve its problems? How can one reach happiness for himself, when he does not know what truly brings happiness to him? Also, men should try to understand woman and woman should try to understand men. This will ensure that both sexes will be able to treat each other according to the boundaries set by Islam.

6 -- The husband and wife must appoint arbitrators from among their own families to try and solve marital disputes that they are unable to solve on their own. This method will ensure the continuation of a stable and happy family life.



Chapter 10

How To Resolve Marital Disputes

When the husband and wife live together for a long period of time, it is hard to imagine that no disputes or marital problems will arise. We have to accept that marital disputes are a fact of life. However, this neither means that we should surrender to these disputes and let them consume us nor that we should ignore them, because disputes cause tension and may dissipate the happiness in married life. On the other Hand, we cannot dwell on marital disputes and treat them as a disaster. We should always try to solve these disputes, knowing that there is a medicine for every illness. We must keep trying without becoming annoyed or reaching a state of hopelessness, so as to save marriages and ensure stable, happy family life.

Following is an advice that, if followed by the husband and wife, will ensure that they will be able to easily resolve their disputes and live happily with each other:

1 -- If one seeks to issue a judgment concerning a dispute, let him imagine himself in the other side's shoes, trying to understand his position and the limitations of his capability. This is how one knows how to choose a reasonable position of his own.

2 -- Men must understand that women, all women, have, by their nature that Allah created, a certain type of unexplainable attitude and behavior. No woman can be perfect in all aspects. This is why the Prophet said, what translated means, "*The woman was created from a bent rib. The part*

that is the most bent in the rib is its top. If you seek to straighten it, you will break it. If you seek to enjoy them (women), you will enjoy them while bent." [Al-Bukhari & Muslim]. Accepting women for what and how they are helps men tremendously, by allowing them to be lenient with women in matters that are not crucial. Men should not and must not expect and require perfect behavior from women at all times. Following this advice ensures the quick disappearance of many minor marital disputes.

3 -- There are many men who marry women who are better, wiser and more patient than they are. This does not mean that the general rules as regards male-female relations do not apply anymore or that such women must take the responsibility for their husbands. As we said before, this path will only lead to the destruction of the way Allah created both men and women and will fill married life with misery. The best way for a woman to resolve her disputes with such a husband is to advise him and seek outside help. Allah said, what translated means, *And if a woman fears cruelty or desertion on her husband's part, there is no sin for them both if they make terms of peace between themselves; and making peace is better.* ﴿[4:128].

﴿وإن امرأة خافت من بعلها نشوزاً أو إيعاضاً فلا جناح عليهما أن يتصالحا بينهما صلحاً والصلح خير﴾ (النساء/١٢٨).

Women are, by no means, allowed to treat their husbands arrogantly, abandon their beds or discipline them if they have a dispute. If this occurs, then it will be a tool of destruction for the family.

4 -- The man was given the responsibility to lead his family. This responsibility requires him to be a good example himself so as to have the moral authority to responsibly lead his family. As we stated before, responsibility does not mean tyranny. Rather, it means leadership, teaching, kindness and mercy. It also means giving every measure its due consideration. When men misuse this responsibility, the result will be undesirable and sometimes destructive.

5 -- Using permissible means to solve marital disputes. There are four different means that a husband can apply to solve marital disputes with his wife:

a) Advice: Advice consists of soft words that are meant to touch the heart, especially if coupled with good timing. It is not desirable for men to be continuously advising. This will cause hardship and even more disputes, for too much advice will produce just the opposite effect.

b) Abandoning the bed: The husband is allowed to abandon his wife's bed in case the first measure fails to produce the desired results.

c) Light beating: When the previous measures fail, then light beating is used to restrain the woman who has become stubborn and rebellious. However, we must note here that the best of men do not revert to beating their wives. Some women complained to the Prophet because their husbands beat them regularly. He said, "*Some women came to Mohammad's*

wives complaining about their husbands (that they beat them), *they* (these husbands) *are not among your best.*” Also, we must know that severe beating is *impermissible*, and that there are many Hadiths that prohibit smacking the face. .

d) To appoint arbitrators from among the husband’s and the wife’s families: This is the last measure that should be used when a man is incapable of solving his disputes with his wife. Appointing arbitrators from their families will be helpful, because family members are the best suited to resolve marital disputes.

Allah mentioned all these four measures, when He said, what translated means, *As to those women on whose part you see ill conduct, admonish them* (first), (next), *refuse to share their beds*, (and last), *beat them* (lightly, if it is useful), *but if they return to obedience, seek not against them means* (of annoyance). *Surely, Allah is Ever Most High, Most Great. If you fear a breach between them twain* (the man and his wife), *appoint* (two) *arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Aquainted with all things.* ﴿[4:34-35].

﴿واللاتي تخافون نشوزهن فخطوهن وأجزوهن في المضاجع واضربوهن فإن أطعنكم فلا تبغوا عليهن سبيلا إن الله كان عليا كبيرا . وإن خفتن شقاق بينهما فابعثوا حكما من أهله وحكما من أهلها إن يريدوا إصلاحا يوفق الله بينهما إن الله كان عليما خبيرا﴾ (النساء/ ٣٤-٣٥).

Chapter 11

What Annuls Marriage Contracts

There are seven instances and cases that nullify a marriage
 Li'aan, Ath-Thihar, annulment and converting from Islam. Each of these cases has its own rules and consequences. We will explain some of these cases and their rules in detail, Allah willing.

First: Death

Death is a fact of life that will touch every human being, whether young or old, rich or poor. No one can escape or delay death. It separates spouses, but does not completely end marriage. Spouses who are righteous and die, will be spouses again in Paradise, as Allah said in the Quran that the angels said, ﴿*Our Lord! Make them enter the Everlasting Gardens (Paradise) which You have promised them, and to the righteous among their fathers, their wives, and their offspring! Verily, You are the All-Mighty, the All-Wise.*﴾ [40:8].

﴿ربنا وأدخلهم جنات عدن التي وعدتهم ومن صلح من آبائهم وأزواجهم وذرياتهم إنك أنت العزيز الحكيم﴾ (غافر/٨).

And, ﴿*And those who believe and whose offspring follow them in faith, to them shall We join their offspring, and We shall not decrease the reward of their deeds in anything. Every person is a pledge for that which he has earned.*﴾ [52:21].

﴿والذين آمنوا واتبعتهم ذريتهم بإيمان ألحقنا بهم ذريتهم وما ألتناهم من عملهم من شيء كل امرئ بما كسب رهين﴾ (الطور/٣١).

This is one of the reasons why marriage contracts are considered holy and a strong covenant.

Effects of Death on Spouses

The death of the husband or the wife affects the surviving spouse in several ways:

1 -- Inheritance: Islam obliges a share for the surviving spouse in the inheritance of his or her deceased spouse. The husband inherits a half of his wife's estate if she does not leave behind any children, and gets a fourth if she leaves behind children. The wife gets a fourth of her husband's wealth if he does not leave behind any children, and gets an eighth if her husband is survived by children.

2 -- Iddah of death: Upon and after the death of her husband, Islamic Law obliges the wife to remain in her husband's house for four months and ten days. During this time, she is not allowed to remarry, get engaged, beautify herself or leave the house without necessity. This is called "the Iddah of death." Allah said, what translated means, *And those of you who die and leave wives behind them, they shall wait (as regard their marriage) for four months and ten days, then when they have fulfilled their term, there is no sin for you if they dispose of themselves in a just and honorable manner (they can remarry). And Allah is Well-Aquainted with what you do.* ﴿[2:234].

﴿والذين يتوفون منكم ويذرون أزواجا يتربصن بأنفسهن أربعة أشهر وعشرا فإذا بلغن أجلهن فلا جناح عليكم فيما فعلن في أنفسهن بالمعروف والله بما تعملون خبير﴾ (البقرة/٢٣٤).

The wisdom behind this Iddah is to make sure that the woman is not pregnant. It is also an act of grief and loyalty on the part of the woman towards her deceased husband

As for the husband, there is no prescribed Iddah if his wife dies. Also, there are no specific ways he can show grief for his loss and he can remarry immediately after his wife's death. However, one should always take other people's feelings into consideration, especially his deceased wife's family. This is among the attitudes and conducts that Islam encourages in general.

3 -- To cherish the memories of the dead spouse: Spouses uncover each others' secrets and experience intimacy to each other. Death does not mean that one has the right to expose any of these secrets or intimate moments. On the contrary, Islam obliges men and women to keep and not expose these secrets. Indeed, the righteous husband is the one who cherishes the memory of his wife after her death. The Messenger of Allah set the perfect example in this regard. 'Aaishah said, "*I was never more jealous with a woman than I was with Khadeejah* (The Prophet's deceased wife), *because the Messenger of Allah used to always remember and praise her.*" [Al-Bukhari]. Also, Imam Muslim related that whenever the Messenger of Allah slaughtered a sheep, he would order that a part of it be given to Khadeejah's female friends. This is

how he remembered Khadeejah after her death, setting the best example for him who seeks the best behavior and conduct.

Second: Divorce

There is no doubt that divorce is an act of destruction for a family. Divorce may take place in the beginning of married life or after the building of the family is completed by having children. It is wrong to think that Islam opens the door wide for divorce and allows people to marry and divorce whenever they wish. Also, it is wrong to seek to ban divorce or restrict it more than what Islam allows. The best way is the middle and just way that Islam legislates.

We said before that divorce is an act of destruction for a family. Islam organizes this last resort and transfers the elements that built this destroyed family to a more appropriate and suitable environment.

Divorce is voluntary when reconciliation is rendered impossible. After years of marriage, the husband and the wife will discover each other's hidden secrets and attitudes. This is because marriage is a companionship that entails the uncovering of the most hidden secrets that do not appear on the surface. Whenever harmony exists in a marriage, happiness follows it. However, when disputes start to appear, the distance that separates the spouses starts to grow further. Since reaching perfect harmony between the spouses is not possible,

Islam encourages Muslims to keep the marriage intact, even where the least harmony exists. The Prophet said, what translated means, ***“Let not a believing man hate a believing woman (wife). If he dislikes some of her manners, he will surely like others.”*** [Muslim & Ahmad]. Also, Allah said, what translated means, ***﴿And live with them honorably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good.﴾*** [4:19].

﴿وعاشروهن بالمعروف فإن كرهتموهن فعسى أن تكرهوا شيئا ويجعل الله فيه خيرا كثيرا﴾ (النساء/١٩)

Also, to protect her marriage and keep it intact and avoid Allah’s anger, it is impermissible for a woman to abandon her husband’s bed even for one night. The Prophet said, what translated means, ***“No wife lets her husband sleep while he is angry with her, but the One Who is Above the sky will be angry with her.”*** [At-Tirmithi] and, ***“Any woman whose husband calls her to bed and she refuses, will be cursed by the angels until the morning.”*** [Muslim]. Likewise, Allah does not accept that a man mistreats his wife or abandons his obligations towards her, so as to protect and preserve their marriage.

Although Islam tries to preserve marriage as much as possible, marital disputes may reach the point of no return. Then, marriage may become a distasteful blend of hatred and tension and both spouses may start to ignore their obligations towards each other. In this case, continuing this marriage may lead to Allah’s anger even though it is meant to please Him.

This is why we affirm that no person should think that just by marrying, the husband and wife will have become joined in perfect harmony. Some Christians treat marriage as an eternal bond and disallow divorce and, as a consequence, have caused themselves great hardships and misery. Today, the Christians have not slightly opened the door to divorce, rather, they broke it wide open, causing themselves even greater hardships and misery.

In short, we affirm that divorce is a human need that is necessary sometimes because of the way Allah created mankind. Divorce, when necessary, is a tool for social reform and can occur to couples who thought that they are suitable for each other, only to discover later on that they cannot continue their married life together.

What are divorce procedures? Does the husband alone have the right to divorce his wife? When is it allowed for the husband to divorce his wife? Can the wife seek divorce whenever she wishes? The answers to these questions are as follows:

Many women have a distorted image about divorce which they acquire by listening to those who do not have adequate knowledge in Islam, or by witnessing some unjust men who mistreat their wives. When we study the procedures and codes of conduct that Islam legislates for divorce, we will be able to see the difference between this distorted image and how divorces are supposed to be conducted. Following are

some of these rules and codes of conduct that Islam legislates for divorce procedures:

1 – When Can Divorce be Conducted

Some people think that a man can divorce his wife at any time. This is a mistake, and such a mistake is not allowed of a person who believes in Allah and His Messenger. In Islam, one cannot divorce his wife except after she finishes her menses after which he refrains from having sexual intercourse with her. Whoever divorces his wife while she is still in her menses, will have his divorce nullified. Ibn Umar said that he divorced his wife when she was in her menses. Umar, his father, mentioned this to the Messenger of Allah who became angry and said, *“Let him take her back until she finishes her period and then start another period and then finishes this period. Afterwards, if he still wants to divorce her, let him divorce her before he touches her.”* [Al-Bukhari]. This is the Iddah of divorce that Allah ordained, and this Hadith clearly states that divorces that do not follow these rules are nullified, as ibn Taimiyah, ibn Al-Qayyim and ibn Hazm, among other scholars, have attested. Also, Allah said, what translated means, *﴿O Prophet! When you divorce women, divorce them at their Iddah (prescribed periods).﴾* [65:1]

﴿يا أيها النبي إذا طلقتم النساء فطلقوهن لحدتهن﴾ (الطلاق/1).
and, *﴿Either you retain her on reasonable terms or release her with kindness.﴾* [2:229].

﴿فإمساك بمعروف أو تسريح بإحسان﴾ (البقرة/٢٣٩).

Releasing her means to divorce her, and this can never be carried out with kindness except by following Allah's orders with regards to divorce.

2 - Where Does a Divorced Woman Stay During Iddah

Many people mistakenly think that a divorced woman must or is allowed to leave her husband's house and spend the time of Iddah in another house. This is a serious mistake and constitutes an ignorance in the religion. No husband has the right to make his divorced wife leave his house except after her Iddah for divorce is finished. Also, no divorced woman is allowed to voluntarily leave her husband's house but after her Iddah for divorce is finished. All this is mentioned in the following Ayah, *﴿O Prophet, when you divorce your women, divorce them at their Iddah, and count (accurately) their Iddah (periods). And fear Allah your Lord (O Muslims), and turn not them out of their (husbands') homes, nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse. And those are the set limits of Allah. And whosoever transgresses the set limits of Allah, then indeed he has wronged himself. You (the one who divorces his wife) know not, it may be that Allah will afterward bring some new thing to pass (to take her back if that was the first or second divorce).﴾* [65:1].

﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ، لَا تَخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِغَافِلَةٍ مَبِينَةٍ،

وتلك حدود الله ومن يتعد حدود الله فقد ظلم نفسه ، لا تدري لعن الله
يحدث بعد ذلك أمراً ﴿الطلاق/١﴾ .

﴿And turn them not out of their homes﴾ means not to force them to leave their homes but after they finish their Iddah for divorce. Then, Allah said afterwards, ﴿Then when they are about to fulfill their term appointed, either take them back in a good manner or leave them in a good manner.﴾ [65:2].

﴿فإذا بلغن أجلهن فأمسكوهن بمعروف أو فارقوهن بمعروف﴾ (الطلاق/٢) .
The appointed term here means the Iddah for divorce. Also, a divorced woman has no right to leave her husband's house, ﴿Nor shall they (themselves) leave﴾, but except after she finishes the Iddah for divorce, during which the husband can take her back.

In summary, one cannot divorce his wife during her menses. After she finishes the menses and then he refrains from having sexual intercourse with her, or if she is pregnant, then he can divorce her. The husband can neither force his newly-divorced wife out of his house, nor can the wife voluntarily leave the house until after the Iddah for divorce is finished.

Divorcing the Wife Thrice at the Same Time

Men are not allowed to divorce their wives thrice at the same time. The evidences to this rule are as follows:

First: Allah said, what translated means, *﴿The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness.﴾* [2:229].

﴿الطلاق مرتان فإمساك بمعروف أو تسريح بإحسان﴾ (البقرة/٢٣٩).

The divorce cannot be “twice” unless it occurs one after the other, each time the woman must finish her term for Iddah. This is why Allah said afterwards, *﴿And then if he has divorced her (the third time), then she is not lawful unto him until she has married another husband.﴾* [2:230].

﴿فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره﴾ (البقرة/٢٣٠).

The third divorce disallows the husband from remarrying his divorced wife except after she marries another man, happens to divorce him and then finishes her Iddah for divorce. This Ayah is proof that each divorce carries its own obligations and rights, such as Iddah and staying in the husband’s house. To further prove this, we mention the Ayah, *﴿Either you retain her on reasonable terms or release her with kindness﴾*. This Ayah means that every divorce carries a term of Iddah with it, during which the husband can retain his wife or release her after the end of her Iddah. When Allah said, *﴿The divorce is twice﴾*, He clarified His rule with regards to divorce. Following this rule is an obligation upon those who believe in Allah and the Last Day and seek to escape Allah’s punishment. This is why Allah said afterwards, *﴿These are the limits ordained by Allah, so do not transgress them. And whoever transgresses the limits ordained by Allah, then such are the Thalimun (wrongdoers, etc.).﴾* [2 :229]

﴿تلك حدود الله فلا تعتدوها ومن يتعد حدود الله فأولئك هم الظالمون﴾ (البقرة/٢٣٩).

and, ﴿And those are the limits set by Allah. And whosoever transgresses the set limits of Allah, then indeed he has wronged himself.﴾ [65:1].

﴿وتلك حدود الله ومن يتعد حدود الله فقد ظلم نفسه﴾ (الطلاق/1).

These evidences prove that those who pronounce divorce thrice at the same time are transgressing against Allah's set limits. Muslims are obliged to follow the laws and rules of divorce that Allah ordained and which preserve the rights of women to be divorced in a proper manner.

Second: The husband can divorce his wife by saying, "You are divorced," or by using any collection of words that lead to this end. When the Iddah for divorce finishes, his wife will be a strange woman to him and she will have the final say if she wants to return to him or not. This means that the excessiveness from some men who divorce their wives thrice in the same audience is really not needed. Some men say to their wives, "You are divorced thrice, a thousand times or as many as the stars in the sky!" All this is transgression and overstepping one's limits. This manner also leads to bitter feelings and hatred between those who lived together as husband and wife for a period of time. Indeed, it is an act of stupidity to divorce the wife more than once in the same audience and whoever does this needs to be punished by beating or jail. When divorce is unavoidable, one must conduct it in the best possible manner, as the Ayah states, ﴿Or release her with kindness﴾. Those who divorce their wives thrice at the same time do not release their wives with

kindness. On the contrary, they cause bitter feelings and scars that could be avoided if one follows Allah's rules and releases his wife in the best possible manner.

Third: Divorce, when carried out in a manner accepted by Islam, carries with it the rights of the wife to stay in her house and be provided for during Iddah. After the third divorce, the husband does not have to support his wife and she must leave his house. Those who divorce their wives thrice at the same time annul all these rights and refrain from fulfilling their obligations towards their divorced wives. They lose the chance to cool off, rethink their actions and, possibly, return their wives during the first or second Iddah. They also shatter the safety of their families, leaving hatred and bitter feelings on the side of the wife. Such men commit the following mistakes:

1 -- They transgress against the set of rules that Allah ordained for conducting divorce and play games with the Book of Allah and the Sunnah of His Messenger.

2 -- This manner causes bitter feelings and humiliation for the wife while destroying all good memories of their married life together.

3 -- Such men unjustly destroy the chance for their divorced wives to preserve their rights that Allah gave them, such as staying in their houses and being provided for during Iddah.

4 -- They commit an act of stupidity in a contract that can be ended by simply saying, "You are divorced" to the wife. Then, why transgress and say, "You are divorced a thousand times," unless one is just plain stupid and arrogant?

Divorce According to Shari'ah

The correct way of conducting divorce according to Islamic law, is to divorce the wife during the period of time after she finishes her menses (which is a period of time called "Tuhr"), during which the husband does not have sexual intercourse with her. A period of Iddah, which is a total of three Tuhrs, must then pass, during which the husband has the right to take back his wife. However, when Iddah finishes, the divorce becomes final and the woman becomes free of the obligations of marriage. If the husband seeks to remarry her, a new contract with a new Mahr must be conducted. The husband can repeat the divorce two times in each marriage contract, provided that he takes back his wife each time during Iddah. The third divorce permanently severs the bonds of marriage and the husband cannot remarry his ex-wife except after she marries another man and then happens to divorce him.

What if an ignorant man divorces his wife thrice at the same time, is the divorce valid in this case? If the man divorces his wife thrice at the same time, does this count as divorcing her once or thrice? Or is this kind of divorce invalid because of the way it was carried out? This last question can

be easily answered by saying that the opinion it carries is in opposition to the position taken by Ahlu As-Sunnah Wa Al-Jama'ah (those who follow the Quran and the Sunnah the way the companions understood them) and, therefore, we will now discuss the first two questions and the opinions they carry.

1 -- Divorcing the wife thrice at the same time is considered as three separate divorces, as the four Imams, some of the companions, At-Tabi'in (the second generation of Islam) and many among our righteous ancestors have stated. They said that even though this type of divorce is innovated, the husband can still be held responsible for it. They said that if a man divorces his wife thrice at the same time, his wife cannot remarry him except after marrying and then divorcing another man, provided that she does not marry this other man for Ta'hliil, as we mentioned before.

They used as evidence the action taken by Umar ibn Al-Khattab who considered this type of divorce as if one divorces his wife three consecutive and separate times. Umar said, "I see that people insist on a matter that was made easy for them. What if we hold them responsible for it." And that he did. Therefore, Umar permanently separated a wife and a husband who divorced her thrice at the same time.

2 -- Divorcing the wife thrice at the same time is considered as one divorce only. This opinion, which is in agreement with the Quran and Sunnah, was reported by a number of scholars among the companions, including Az-

Zubayr ibn Al-‘Awwam, Abdur-Rahman ibn ‘Awf, Ali ibn Abi Talib and ibn Mas’ud. Many from among the Tabi’in (second generation of Islam) also agreed with this opinion. Other scholars who approved of it too include Tawoos and Mohammad ibn Is‘haqh. Imam ibn Taimiyah approved of this opinion, saying, “Allah does not allow anyone to divorce thrice at the same time. Indeed, He does not allow one who consummated his marriage to divorce his wife permanently (thrice at the same time).” He also said, “We do not know of anyone at the time of the Prophet who divorced his wife thrice at the same time and that the Prophet considered this three (separate) divorces. There are no correct narrations leading to the Prophet with regards to this subject; only false Hadiths were reported and they were considered weak or false by the entire community of the scholars of Hadith. What was correctly narrated is the Hadith that Sahih Muslim carried, among other books of Hadith, that ibn Abbas said, ‘At the time of the Messenger of Allah, Abu Bakr and the beginning of the reign of Umar, divorcing thrice at the same time was considered one divorce only. Then Umar said, ‘People hurry to perform a matter (divorce) that was meant to be taken with patience. What if we held them responsible for it.’ And that he did.’ Also, Imam Muslim, among others, related that Abu As-Sah-baa’ said to ibn Abbas, ‘Do you not know that divorcing thrice (at the same time) was considered one at the time of the Messenger of Allah, then during the reign of Abu Bakr and then three years at the time of Umar?’ Ibn Abbas said, ‘Yes.’”

Ibn Taimiyah continued, “Imam Ahmad reported that ibn Abbas said that Rukanah ibn Abd Zaid, a cousin of the offspring of Abdul-Muttalib, divorced his wife thrice at the same audience. Afterwards, he was very saddened by what he did. The Messenger of Allah asked him, ‘*How did you divorce her?*’ Rukanah said, ‘*I divorced her thrice.*’ The Prophet said, ‘*At the same time?*’ He said, ‘*Yes.*’ The Prophet said, ‘*This is only one (divorce). Therefore, take her back if you wish.*’ He (ibn Abbas) then said, ‘*And he took her back.*’”

After Imam ibn Taimiyah mentioned this evidence, he said, “The Book and the Sunnah do not contain what obliges whoever divorced thrice at the same time to be responsible for all three divorces without being able to take back his wife. On the contrary, the Book and the Sunnah hold the man, who divorces his wife according to the way that Allah and His Messenger permitted, responsible for one divorce at a time only.”

Ibn Taimiyah gave several reasons behind the action taken by Umar. He said that Umar’s action falls under the category of enforcing more severe punishment for some actions, such as flogging whoever drinks alcohol eighty times instead of forty and then shaving his head. This serves as a stern warning to people not to commit such sins. However, we affirm that it is better to always go back to the Sunnah with regards to divorce, especially since Umar’s action did not produce the desired results. Also, many people reverted to Nika’h At-Ta’hlil, which is invalid, to escape from the

consequences of not conducting divorce the way Allah and His Messenger permitted (by being held responsible for divorcing their wives more than once at the same time).

We affirm that according to the Book, the Sunnah and many of the scholars of old and new, if one divorces his wife thrice at the same time, he is considered to have divorced her only once. What is amazing is that some people said that ibn Taimiyah became Kafir because he issued this Fatwa, which, they claimed, defies the agreement of the four Imams. This is ignorance and utter misguidance because agreement on a matter by all the four Imams is not a consensus of the entire Muslim nation on this matter.

When Can A Husband Take Back his Divorced Wife

We previously stated that a valid divorce can be conducted when a man does not sleep with his wife after she finishes her menses and then he declares divorce once. We also stated that one is not allowed to pronounce more than one divorce at the same time, and if he does so, he will be committing a sin. Only one divorce can be carried out at a time. Now we will discuss how and when a husband can take back his wife after he divorces her in a permissible manner. We will also explain the rules of Iddah.

1 -- A husband is allowed to divorce his wife even if the marriage was not consummated, in which case, there is no Iddah and the woman can marry any man she wishes immediately. If the same man who divorced her wants her back, he must go through the process of a new marriage contract and a new Mahr. Allah said, what translated means, **﴿O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no Iddah have you to count in respect of them. So give them a present, and set them free (divorce them) in a handsome manner.﴾** [33:49].

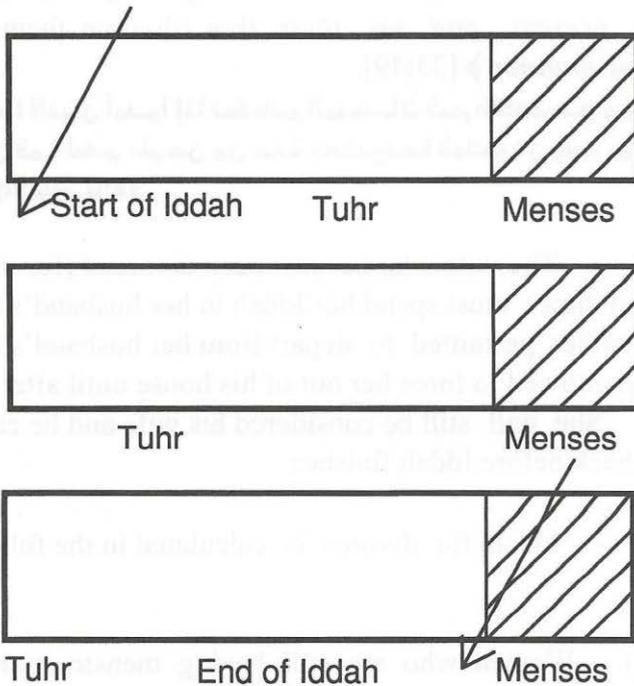
﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتَهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَعَهُنَّ وَسِرْحُونٍ سِرَاحًا جَمِيلًا﴾ (الأحزاب/٤٩).

2 -- The wife who has just been divorced (for the first or second time) must spend her Iddah in her husband's house. She is neither permitted to depart from her husband's house, nor is he allowed to force her out of his house until after Iddah finishes. She will still be considered his wife and he can still take her back before Iddah finishes.

3 -- Iddah for divorce is calculated in the following manner:

a) Women who are still having menstruation, and whom their husbands divorce them while in a state of Tuhr (the period of time between each two menses), during which they refrain from sexual intercourse with them, will have to wait for

a total of three Tuhrs for Iddah. Iddah finishes at the end of the third Tuhr. Therefore, Iddah starts at a time of Tuhr, during which no sexual intercourse takes place, is carried through the next period, then a second Tuhr, another period and then the third Tuhr. If this third Tuhr expires before the husband takes back his wife, and then the next period starts, then the divorce will be final and the wife will be free of the obligations of marriage.



b) Women who do not menstruate, for old or young age, will have to wait for three lunar months before their Iddah finishes.

c) If the divorced woman is pregnant, then her Iddah finishes when she gives birth, whether that period was greater or lesser than three lunar months.

All these rules were mentioned by Allah in the following Ayah, *﴿And those of your women as have passed the age of monthly courses, for them the Iddah, if you have doubts (about their periods), is three months, and for those who have no courses (they are still immature), (their Iddah is three months likewise, except in the case of death). And for those who are pregnant, their Iddah is until they deliver (their burdens) and whosoever fears Allah, He will make his matter easy for him.﴾* [65:4].

﴿واللّٰئِي يئسَن مِنَ المَحِيضِ مِنْ نِسَائِكُمْ إِن أَرْتبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَاللّٰئِي لَمْ يَحْضُنْ ، وَأَوْلَاتِ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللّٰهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا﴾ (الطَّلَاق / ٤) .

4 -- At the time of divorce, two qualified and just witnesses must be present. Also, if a man takes back his wife during Iddah, he must do so in the presence of two qualified and just witnesses. Allah said, what translated means, *﴿Then when they are about to fulfill their term appointed, either take them back in a good manner or part with them in a good manner. And take for witness two just persons among you (Muslims). And establish the witness for Allah. That will be*

admonition given to him who believes in Allah and the Last Day. And whosoever fears Allah and keeps his duty to Him, He will make a way for him to get out (from every difficulty). ﴿[65:2].

﴿فَإِذَا بَلَغَ أَجْلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهَدُوا ذَوِي عَدْلٍ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَلِكَ يُوَعِّظُ بِهِ مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ
الْآخِرِ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا﴾ (الطلاق / ٣).

The presence of witnesses is better for those who seek their affairs to be orderly and duly organized. However, one can still inform the witnesses afterwards if they were not present at the time that divorce, or taking back the wife during Iddah, are taking place.

5 -- Taking back the wife is conducted by the husband by saying or doing what means that he wants her back. He could say, "I am taking you back," or use any other collection of words that leads to the same meaning. Sexual intercourse is the biggest sign that a man has taken back his divorced wife. Also, if a man embraces his wife or kisses her, out of desire for her during Iddah which, as we stated, the wife spends in the husband's house, then he is considered to have taken her back.

6 -- If a man divorces his wife for the third time, he cannot remarry her. In this case, the wife will have to spend her Iddah in other than the husband's house and cannot remarry another man except after her Iddah finishes. During the Iddah that comes after the third divorce, the husband does not have to provide her with housing or living expenses and he is not allowed to take her back.

Effects of Divorce on the Husband and Wife

There are several effects, rights and obligations that will result from divorce. They are as follows:

1 -- Housing and living expenses during Iddah: These are rights that the wife has on her husband because she is still considered his wife and he still can take her back any time he wants before the end of Iddah. The wife has to stay in her husband's house and he has to provide her with living expenses until the Iddah finishes. When the Iddah finishes, he is no longer obliged to provide her with housing or expenses anymore.

2 -- Giving the wife a gift after divorce: Allah obliged husbands to give their wives a reasonable gift when the divorce is final. The wisdom behind this obligation is apparent, that is, to compensate the wife for her emotional grief and to ease tensions. By giving this gift, the man also shows that divorce was the only solution left for two spouses who thought that they are suitable for each other, but could not continue to live together in marriage anymore.

This gift that Allah ordered on men for their divorced wives is a law that teaches us how to be kind and merciful with each other. It teaches us that when we are together, we treat each other with kindness, justice and mercy. It also teaches us that when we part, we part in a manner full of kindness, justice and mercy. Allah said, with regards to the gift after divorce,

﴿There is no sin for you, if you divorce women while yet you have not touched them (sexual relation) nor appointed unto them their Mahr. But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means, a gift of reasonable amount is a duty on the doers of good.﴾ [2:236].

﴿لا جناح عليكم إذا طلقتم النساء ما لم تمسوهن أو تفرضوا لهن فريضة ومتعوهن على الموسع قدره وعلى المقتر قدره متاعا بالمعروف حقا على المحسنين﴾ (البقرة/٢٣٦).

This Ayah permits men to divorce their wives even before the marriage is consummated. It also orders them to give their divorced wives a reasonable gift to ease the tensions that were raised because of the divorce. As for the divorced woman whose marriage was not consummated and whose Mahr was not yet specified, she gets half of the Mahr that is normally given to her equals. She also gets the gift that comes after the divorce. As for the divorced woman whose marriage was not consummated but a Mahr was specified, she gets half of that Mahr, ﴿And if you divorce them before you have touched them, and you have appointed unto them the Mahr, then pay half of that (Mahr).﴾ [2:237].

﴿وإن طلقتموهن من قبل أن تمسوهن وقد فرضتم لهن فريضة فنصف ما فرضتم﴾ (البقرة/٢٣٧).

All these rules are contained in the general meaning of the Ayah, ﴿And for divorced women, maintenance (should be provided) on reasonable (scale). This is a duty on Al-Muttaqin (the pious).﴾ [2:241].

﴿وللمطلقات متاع بالمعروف حقا على المتقين﴾ (البقرة/٢٤١).

We now know that this gift for divorce is an obligation ordained by Allah for divorced women on their husbands who divorced them. What remains is to ask, "How many Muslim men today honor this obligation?" There are many misguided men who mistreat their wives, humiliate them and then force them out of their homes without any regard for their obligations. They, then, boast that they are "men", and that Allah said, **﴿Men are the protectors and maintainers of women.﴾** [4:34].

Thus, they make this Ayah mean, "Men are tyrants over women!"

3 -- It is an established rule of the religion that husbands must deliver all the rights that Allah ordained on them for their divorced wives. Men have to surrender to their divorced wives all their rights, Mahr, housing and living expenses during Iddah, as well as their gifts after the divorce, as Allah ordered. The husband has no right to hold or take back any of these rights from his divorced wife. Although this better attitude is in the nature of most men, Islam specifies these rules to remind all that this is an obligation of the Shari'ah too. Allah said, what translated means, **﴿But if you intend to replace a wife by another and you have given one of them a Qhintar (of gold, a great amount) as Mahr, take not the least bit back; Would you take it wrongfully without a right and (with) a manifest sin? And how could you take it (back) while you have gone unto each other, and they have taken from you a firm and strong covenant?﴾** [4:20-21].

﴿وإن أردتم استبدال زوج مكان زوج وآتيتهم إحداهن قنطارا فلا تأخذوا منه شيئا ، أتأخذونه بهتانا وإثما مبينا ، وكيف تأخذونه وقد أفضى بعضكم إلى بعض وأخذن منكم ميثاقا غليظا﴾ (النساء/٣٠-٣١) .

This Ayah contains many beneficial rules and is full of wisdom, but we will not explain all these rules in this book. What is important to note here is that husbands do not have the right to hold or take back any of the rights that Allah obliged on them for their divorced wives, even if one stays married to his wife for only one hour.

Nowadays, courts are utilized in the pursuit of men who do not preserve their divorced wives' rights, and women suffer great hardships trying to retrieve at least some of their rights. Yet, we neither say that men are the only ones who can be unjust and that women cannot be unjust, nor do we say that the man is the only one who has to be generous and giving while the woman is not required to be generous and giving, as well.

Custody

Who has the right to gain custody of the children after divorce? There are several points that explain the rules of Islam with regards to custody and they are as follows:

1 -- If the wife is pregnant at the time of divorce, then the husband must provide for her expenses until she gives birth. When she gives birth, she can choose between retaining the child or giving it to its father. If she retains custody of the

child, the father must provide for their expenses, according to his capability. Suckling usually takes two years, as Allah said what translated means, *﴿The mothers shall give suck to their children for two whole years, (that is) for those (parents) who desire to complete the term of suckling, but the father of the child shall bear the cost of the mother's food and clothing on reasonable basis. No person shall have a burden laid on him greater than he can bear. No mother shall be treated unfairly on account of her child, nor father on account of his child. And on the (father's) heir is incumbent the like of that (which was incumbent on the father). If they both decide on weaning, by mutual consent, and after due consolation, there is no sin for them. And if you decide on foster suckling-mother for your children, there is no sin for you, provided you pay (the mother) what you agreed (to give her) on reasonable basis. And fear Allah and know that Allah is All-Seer of what you do.﴾* [2:233].

﴿والوالدات يرضعن أولادهن حولين كاملين لمن أراد أن يتم الرضاعة وعلى المولود له رزقهن وكسوتهن بالمعروف لا تكلف نفس إلا وسعها ، لا تضار والدة بولدها ولا مولود له بولده ، وعلى الوارث مثل ذلك ، فإن أرادا فصلا عن تراض منهما وتشاور فلا جناح عليهما ، وإن أردتم أن تسترضعوا أولادكم فلا جناح عليكم إذا سلمتم ما آتيتكم بالمعروف واتقوا الله واعلموا أن الله بما تعملون بصير﴾ (البقرة/ ٢٣٣) .

In this Ayah, Allah obliged the husband to provide financial support to his divorced wife who is suckling their child. If they desire, they can hire a woman to suckle the child and the husband has to provide for such expenses. The husband has no right to force his wife to suckle their child.

However, the mother has to suckle her child if the father cannot find any other woman to do the job. Also, the father has no right to forcibly take the child from his mother, preventing her from caring for her own child. This is why Allah said, *﴿No mother shall be treated unfairly on account of her child, nor father on account of his child.﴾*

2 -- When the child is two years old and is no longer suckled by his mother, then comes the time to discuss the rules of custody. Islam legislates that which is the most beneficial and merciful for both men and women. The woman has the sole right to retain custody, as long as she does not remarry. A woman said, "O Messenger of Allah! My stomach was as a pot, my lap as a refuge and my breast as a source of drink for this son of mine. His father said that he will take him from me." The Messenger of Allah said to her, "***You have the right to keep him as long as you do not remarry.***" [Ahmad, Al-Bayhaqi & Al-Hakim].

3 -- When the children reach the age when they can choose for themselves whom they want to stay with, either their father or their mother, Islam gives them this right. There is a Hadith that specifies that the Messenger of Allah gave a boy the choice between staying with his mother or his father. This Hadith was narrated by Ahmad, ibn Majah and At-Tirmithi.

In another narration, a woman came to the Prophet, saying, "O Messenger of Allah! My husband wants to take my

son from me after he became able to bring me water from the well of Abi Inabah; and he (her son) is also of benefit to me.” The Messenger of Allah said, “***Hold a lottery for him.***” The man said, “Who has more right to my son than I?” The Messenger of Allah said to the boy, “***This is your father and this is your mother, take the hand of anyone of them you want.***” The boy took his mother’s hand and she walked away with him.

These two Hadiths provide us with the rule with regards to child custody. As stated before, the mother has the sole right to the physical custody of her child while she is suckling him. Afterwards, when the children reach an age that they can decide for themselves whom they want to stay with, Islam gives them the right to choose. Islam considers the rights and needs of mothers first because, by their created nature, they have more mercy and show more concern for their children than fathers. Islam also takes into consideration the rights and needs of the children by giving them the right to choose whom they want to stay with, provided that they are capable of making such decisions.

4 -- We did not mention the sayings of some scholars with regard to custody rights because they are based on personal opinions and do not have proof from the Quran or Sunnah to support them. Among these discredited opinions, is that the mother has sole right to the custody of her female child until she gets married and that the boy’s custody ends at the age of puberty.

Women and Divorce

We previously stated that divorce is usually initiated by the husband. We also explained the rules of valid divorce. Now, what about the wife? Does Islam give her the chance to show her good nature and conduct when her husband divorces her? Is the wife allowed to cause any harm to the man who divorced her?

Islam encourages the wife to excel in her treatment of the man who divorced her, just as the husband must behave well towards his divorced wife. Also, just as Allah prohibited the husband from causing any harm to his former wife, He prohibited the wife from causing any harm to her former husband. These rules are as follows, beginning with the way a wife can excel in her treatment of the man who divorced her:

1 -- If a man divorces his wife before the marriage is consummated, then he is obliged by Allah to give her half of the Mahr that they agreed to in the marriage contract. This is a gift that is meant to ease tensions and to compensate the wife for her loss. In such cases, giving half the Mahr as a gift is the most just compensation that is fair to both the husband and the wife. However, Allah calls upon women to give away this right, if they choose to do so. A wife may say to herself, "Why should I take this money from a man who only married me briefly and did not live with me?" Also, Allah calls upon the husband to volunteer the other half of the Mahr to show his kindness and good intention. Allah said, what translated

means, *﴿And if you divorce them before you have touched them, and you have appointed unto them the Mahr, then pay half of that (Mahr), unless they (the women) agree to forego it, or he (the husband), in whose hands is the marriage tie, agrees to forego and give her the full appointed Mahr. And to forego and give (her the full Mahr) is nearer to At-Taqwa (piety, righteousness). And do not forget liberality between yourselves.﴾* [2:237].

﴿وإن طلقتموهن من قبل أن تمسوهن وقد فرضتم لهن فريضة فنصف ما فرضتم إلا أن يعفون أو يعفو الذي بيده عقدة النكاح وأن تعفوا أقرب للتقوى ولا تنسوا الفضل بينكم﴾ (البقرة/٢٣٧).

This kind of just legislation can only be produced by Allah, the Exalted, the One Who knows all matters public or secret.

2 -- Allah obliges the husband to pay his wife a Mahr, whether substantial or small. The Mahr is a condition for the marriage contract to be valid. Yet, the wife can give up some or all of this Mahr as a gift for her husband. Allah said, what translated means, *﴿And give to the women (whom you marry) their Mahr with a good heart, but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allah has made it lawful).﴾* [4:4]. This is a part of the excellent behavior that Allah encourages women to have. Also, a wife may give up her Mahr in return for divorce. As for the husband, he is not allowed to take back the Mahr if he is the one who wants to divorce her, *﴿But if you intend to replace a wife by another and you have given one of them a Qhintar (of gold, a great amount) as Mahr, take not the least bit of it back; Would you take it wrongfully without*

a right and (with) a manifest sin? ﴿ [4:20]. There is no reason why both men and women should not treat each other with tolerance, kindness and generosity, especially if the other party is going to be saved from harm and gain benefit.

If she wants and if she does not fear Allah, a wife can easily revert to injustice towards the husband who divorced her, by one of the following means:

1 -- She can immediately, although unjustly and illegally, depart from her husband's house as soon as he divorces her verbally.

2 -- Some women may unjustly demand more than what the man can afford in terms of financial support and life expenses. Allah said, what translated means, ***﴿Let the rich man spend according to his means, and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him.﴾*** [65:7].

3 -- Some women may refuse to nurse their children from their former husbands, as an act of revenge and intentional harm. Sometimes, a baby only accepts to be nursed by its mother. In this case, the father will experience hardship and emotional stress with his child, only because his ex-wife wants to avenge his divorcing her. Also, a woman may be forced to do this by her family. This is why Allah said, ***﴿No***

mother shall be treated unfairly on account of her child, nor father on account of his child. ﴿[2:233].

4 -- Sometimes, fathers are prevented from seeing their children by their ex-wives, and, regrettably, these days this has become a common practice. Some women even try their best to sow seeds of hatred in their children's hearts for their fathers. It is also a common practice these days that some men will prevent their ex-wives from attending or seeing their children. All these are evil acts and bad manners that Islam prohibits and forbids for Muslim men and women.

5 -- Some women will refuse to go back to their husbands either before or after Iddah finishes. It is better for a wife to go back to the husband whom she lived with and whom she knows, than to start a new experience with another husband whom she does not really know. This is why Allah encourages the family of the divorced woman to return her to the husband who divorced her if he wants her back, even after divorce becomes final, in which case a new marriage contract must be conducted. Allah said, what translated means, ***﴿And when you have divorced women and they have fulfilled the terms of their prescribed period, do not prevent them from marrying their (former) husbands, if they mutually agree on reasonable basis. This (instruction) is an admonition for him amongst you who believes in Allah and the Last Day. That is more virtuous and purer for you, and Allah knows and you know not.﴾ [2:232].***

﴿وإذا طلقتم النساء فبلغن أجلهن فلا تعظوهن أن يئكمن أزواجهن إذا تراضوا بينهم بالمعروف ذلك يوعظ به من كان منكم يؤمن بالله واليوم الآخر ذلكم أذكى لكم وأطهر والله يعلم وأنتم لا تعلمون﴾ (البقرة/٢٣٣).

We do not know of any other religion that is so perfect in the way it protects the rights and feelings of its following.

Third: Al-Khul'

We talked about divorce and death and the rights and obligations that will arise from each case. We explained with some detail the rules of valid divorce and stated that the man has the right to divorce his wife and that he must adhere by the rules and obligations that will arise from divorce. Now, a question may arise, "Does Islam give the woman the right to seek to end her marriage (seek Khul')?" The answer to this question is "yes," but there are certain rules and restrictions that must first be applied:

1 -- If the wife seeks to end her marriage to her husband, that is, if she seeks Khul', she must provide a valid reason for such a requites. Al-Bukhari and An-Nasai reported that ibn Abbas said, "The wife of Thabit ibn Qays ibn Shmmas came to the Messenger of Allah and said, 'O Messenger of Allah! I do not accuse him (meaning Thabit, her husband) of bad conduct or being bad in the religion. However, I hate acts of disbelief after (I accepted) Islam (meaning she hates to mistreat him).' He said, '*Will you return his garden to him* (the Mahr that he gave her)?' She said, 'Yes.' The Messenger

of Allah then said to Thabit, ‘*Take the garden and divorce her once.*’” This is proof that the wife can seek divorce from her husband, who is good both in his conduct and in the religion, because she hates him for some valid reason.

2 -- In the case of Khul’, the husband can take back all the Mahr that he gave his wife, as is evident by the Prophet asking Thabit’s wife if she would return his garden to him. Also, Allah said, what translated means, *﴿And it is not lawful for you (men) to take back any of your Mahr (from your wives) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin for either of them if she gives back (the Mahr or part of it) for her Khul’ (divorce). These are the limits ordained by Allah, so do not transgress them. And whoever transgresses the limits ordained by Allah, then such are the unjust (or the wrongdoers, etc.).﴾* [2:229].

﴿ولا يحل لكم أن تأخذوا مما أتيتموهن شيئاً إلا أن يخافا ألا يقيما حدود الله فإن خفتما أن لا يقيما حدود الله فلا جناح عليهما فيما افتدت به ، تلك حدود الله فلا تعتدوها ومن يتعد حدود الله فأولئك هم الظالمون﴾ (البقرة/ ٢٣٩).

﴿There is no sin for either of them if she gives back (the Mahr or part of it)﴾, means that if the woman seeks divorce, she is allowed to do so on the condition that she gives back the Mahr. In such cases, the husband will be compelled to accept this offer, if the reason his wife gives is that she will not be able to treat him the way Allah ordained. Indeed, her inability to

preserve the rights of her husband allows her to seek a way out of this marriage.

3 -- What the wife pays back to her husband in return for her release from marriage bonds and obligations must not exceed the Mahr itself. Ad-Daraqhutni reported that Abu Az-Zubayr narrated that the Messenger of Allah said to the wife of Qays, "***Are you willing to give him back his garden that he gave you*** (as a Mahr)?" She said, "Yes, and more." He said, "***As for the increase, no. But his garden only?***" She said, "Yes." Some scholars, yet, said that the husband is allowed to take more than the Mahr from his wife in return for divorce. They used the following Ayah as evidence, ﴿***There is no sin for either of them if she gives back*** (the Mahr or part of it).﴾ [2:229]. However, this understanding is incorrect for two reasons: First: The Prophet said, "***As for the increase, no.***" Second: This is an unjust ruling for the wife who does not want to continue to be married to her husband whom she is unable to fulfill his obligations and rights on her. What provides justice for her is to only give back what he gave her as a Mahr with which their married life together started. Why should the man ask for more than this and treat his wife as if she is committing a crime when she seeks Al-Khul' from him?

4 -- Will the husband be compelled to divorce his wife if she seeks Al-Khul'? If the wife can no longer fulfill the rights of her husband on her because she hates him, then her husband will be forced to grant her a divorce, whether he likes her or is only refusing to divorce her to punish her. The

Messenger of Allah did not even hear Qays's side of the story. He said to him, "***Take the garden and divorce her once.***" This is proof that the husband is forced to divorce his wife in such cases. Also, this proof is why we do not agree with the opinion of many scholars of Fiqh that, in such cases, the wife is forced to stay with her husband. These Fiqh scholars treat married life as if it is just a matter of providing for food and life expenses for the wife. There are more important aspects of married life, such as the harmony that should be present to ensure a successful marriage. Also, the wife may discover that her husband turned out not to be the man whom she thought he is, as is the case with the wife of Qays. One day, she saw her husband coming back with some of his friends and noticed that he was the shortest and the ugliest among them. She disliked him for this and the Messenger of Allah granted her divorce for this reason. This is why we stated that the opinion taken by some scholars of Fiqh, that the wife is forced to stay with her husband whom she hates, is incorrect because marriage is much more than providing for the wife's life needs. It is an act of transgression if a woman is forced to live with a man whom she dislikes, because marriage is a contract that is built on mutual agreement and cannot be built on force. A man who seeks the help of the police to bring back his wife by force (as is the case in some Muslim counties) is unjust in my judgment. Again, this is why we say that such opinion expressed by some scholars of Fiqh is invalid and incorrect; it is not derived from the Quran or Sunnah. Indeed, Allah gave the husband the right to advise his wife if she commits mistakes, or to desert her bed for a while and then even strike her mildly, as a means of

discipline. This is different from forcing her to stay in a marriage that she hates. The later is revenge, and there is a big difference between revenge and discipline.

The rules of Al-Khul' that we approvingly stated are also the opinion of scholars of Fiqh who correctly derive their rulings depending on the Quran and Sunnah and not on tradition. Imam Ash-Shawkani said, after mentioning the Hadiths that we have mentioned, that the disappearance of harmony in marriage is reason enough to grant the wife a divorce if she seeks it. He also stated that the order of the Prophet to Qays to take back his garden and divorce his wife, was an obligation and that there is no proof to the contrary. He also refuted the opinion that if the wife said that she hates her husband or that marital problems cause her to ask for divorce, that the man must also feel the same if the divorce is to be granted. Ash-Shawkani said, "The Prophet did not ask Thabit if he hated her (his wife) too when she said that she hated him."

We believe that there is no doubt that the opinion Ash-Shawkani took provides justice for the wife. Allah gave the wife the right to be justly dealt with, *﴿And they (women) have rights (over their husbands as regards living expenses, etc.) similar (to those of their husbands) over them (as regards obedience and respect, etc.) to what is reasonable, but men have a degree (of responsibility) over them.﴾* [2:228].

﴿ولهن مثل الذي عليهن بالمعروف وللرجال عليهن درجة﴾ (البقرة/٢٢٨).

In short, the man has the right to divorce his wife, and also the wife has the right to seek divorce from her husband if she fears that she will not be able to preserve his rights on her.

Imam ibn Al-Qayyim said, "Some people, isolated from the mainstream (by choosing invalid opinions), defied the texts of the Quran and Sunnah when they disallowed Al-Khul'. This Ayah proves that the Muslim leader and others (such as the scholars), are allowed to conduct Khul'. Some, from among the four Imams, said that this can be done only with the leader's permission, but the majority (of scholars) disapproved their opinion."

5 -- When completed, Al-Khul' is considered a final divorce and the husband has no right to take back his wife during her Iddah. However, he can later remarry her with a new marriage contract and a new Mahr, if she agrees.

6 -- The woman who seeks and gets Al-Khul' has to observe the Iddah of one period only, not three as in normal divorces. Ar-Rubayy' bint Mu'awwith said, "The Messenger of Allah ordered a woman who sought (and was granted) Al-Khul' from her husband to wait for one period and then leave to her family's." [An-Nasaii].

Fourth: Invalid Marriage Contracts

We explained two ways used to end marriage: through divorce issued by the husband, or through Al-Khul'. There is a third instance that ends married life, that is, annulling marriage contracts because of the discovery of negators that invalidate them. This invalidation is not initiated by the wife or the husband. It is initiated because the marriage contract itself contains a negator that invalidates it, whether this negator was apparent at the time of signing or discovered afterwards. Also, marriage contracts may be invalidated if the wife, the husband or both discover certain disabilities in the spouse that adversely affect their married life.

First: Marriage Contracts Null Themselves

1 -- Marriage contracts are automatically annulled when the spouses discover that they are not allowed to marry each other because they were suckled by the same woman. Allah will not punish them for such a mistake, but will punish them for continuing their marriage afterwards, if they do so. After this marriage is annulled, the husband has no right to take back any gifts that he gave to the wife whom he had to divorce after discovering that they are forbidden for each other. But, his children will carry his name in such cases.

2 -- Discovering that the marriage contract was invalid at the time of signing, because it was based on an

impermissible type of marriages, such as Nika'h At-Ta'hilil or Nika'h Al-Mut'ah. We previously explained each of these types of marriages in detail. When the spouses in these cases discover that their marriage contract was impermissible, they are allowed to continue their marriage with a new permissible contract.

3 -- When a woman is married by her Wali, her father or whomever can be a Wali for her, while she was still too young to consent, then, this marriage contract is invalid even if the wife agreed at the time of the contract. We stated before that mutual agreement is essential in valid marriage contracts. Therefore, this woman has the right to ask for annulment of her marriage after she becomes an adult. Before a woman becomes an adult, her agreement to marriage is not accepted except after she agrees to fulfill the terms of the marriage contract when she becomes an adult. Also, when an adult woman is forced to marry someone whom she does not want, she has the right to either annul or, if she later on wishes, stay this marriage contract.

These three types of annulled marriage contracts are all similar, because the contract in each one of them is invalid itself. Since they were conducted while ignorant in their invalidity, they must be annulled and married life ended. When permissible, such marriages can be reestablished if the spouses wish, provided that mutual agreement exists.

Second: Discovering a Hidden Disability

The second type of annulled marriage contracts is when either or both of the spouses discover a disability that was not mentioned at the time of the signing of their marriage contract.

Scholars of Fiqh differed amongst themselves as to what constitutes a disability that adversely affects married life. Among the disabilities universally agreed upon are: Insanity, contagious diseases and when the man is found not “male” or when the woman is found not “female.” Differences appear on other physical disabilities, such as when the mouth or the genitals produce especially bad odor. Such matters need to be studied carefully to analyze their true effect on married life, on a case by case basis.

Third: Conditions that Arise Later On and Annul the Marriage Contract

There are instances and conditions that may arise later on in marriage and which can invalidate the contract itself. These instances are:

1 -- Ar-Riddah: Ar-Riddah occurs when the husband or the wife convert to any religion other than Islam, or when they become disbelievers through committing an act of Kufr or embracing a misguided belief that nullifies their Islam. In such cases, marriage contracts are automatically annulled. Allah

said, what translated means, ﴿Hold not the disbelieving women as wives.﴾ [60:10].

﴿ولا تمسكوا بعصم الكوافر﴾ (الممتحنة/١٠).

We have explained the conditions under which a Muslim becomes a disbeliever in our Book, “**The Clear Distinction Between Iman and Kufr.**”

2 -- Financial Bankruptcy: This occurs when the husband becomes financially incapable of supporting his wife. However, it is better for the wife to be patient in the face of such difficulty and to help her husband if she can, just as the husband is ordered to be patient and tolerant with his wife in times of her difficulties. Marriage in Islam is built on mercy, kindness and leniency. It is not a business transaction any way we look at it. Yet, if financial difficulties render the husband unable to support his wife, then the wife has the right to ask for annulment of the marriage contract. It is an act of injustice to force a woman to live with a husband who cannot support her. One cannot be forced to be generous and giving. Being generous is an inner drive and does not come by exerting force.

3 -- When the husband accuses his wife of adultery: We will explain this matter in detail in the next and final section.

Fifth: Al-Li'aan

There are cases where the husband accuses his wife of adultery. This is called "Al-Li'aan." In such cases, one must follow certain steps that Islam legislated to resolve this matter:

First: Marriage contracts in Islam oblige the wife to preserve her and her husband's honor. It is the husband who spends from his time and money to support his wife and he is the one who rears and supports his offspring that his wife gives birth to in his house. These children will share with him his wealth and food. If the wife is to introduce an illegal offspring in her husband's house, then she will be committing one of the major sins that will cause destructive results both in married life and in the society at large. How would the husband feel towards this strange offspring that has been introduced in his family? How is he going to treat these children? Indeed, Islam strictly obliges the wife to preserve her honor and keep intimacy for her husband, and her husband alone.

Second: Islam firmly deals with accusations of adultery. Those who accuse others of adultery must either produce four eyewitnesses to the act or they will be flogged eighty times. Afterwards, their testimony in other matters will never be accepted and they will be called "Al-Fasiqun (rebellious, liars)." Allah said, what translated means, *﴿And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are Al-Fasiqun.﴾* [24:4].

﴿والذين يرمون المحصنات ثم لم يأتوا بأربعة شهداء فاجلدوهم ثمانين جلدة ولا تقبلوا لهم شهادة أبدا وأولئك هم الفاسقون﴾ (النور/٤).

However, if the husband discovers that his wife has committed adultery, then how can he produce four eyewitnesses to the act? How can he be patient and accept that his wife committed adultery while he is unable to announce this fact? Islam allows such husbands to announce the accusation that their wives had committed adultery, and these husbands will not be subject to flogging if they did not produce four witnesses to the act. This is what Islam calls “Al-Li’aan.”

Third: If the husband accuses his wife with adultery but could not produce four witnesses, the wife will be summoned by a judge and reminded of Allah. She will have to either admit her guilt, in such case Allah’s punishment for committing adultery, stoning until death, will be her punishment. Or, she will deny and refute the husband’s charges.

Forth: If the husband could not produce four witnesses, then his claim that his wife has committed adultery will not be tolerated unless he swears four times by Allah that he is speaking the truth. He will swear a fifth time that Allah’s curses will be on him if he was lying. His wife, as we stated, will have to either confirm or deny her husband’s charges. In case she denies her husband’s accusation, the wife will have to swear by Allah four times that he is falsely accusing her with adultery. And the fifth time, she swears by Allah that His

Anger will be on her if he was speaking the truth. The following Ayah summarizes the rules of Al-Li'aan, ﴿As for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (testifies four times) by Allah that he is one of those who speak the truth. And the fifth (testimony) (should be) the invoking of the curses of Allah on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allah, that he (her husband) is telling a lie. And the fifth (testimony) should be that the wrath of Allah be upon her if he (her husband) speaks the truth.﴾ [24:6-9].

﴿والذين يرمون أزواجهم ولم يكن لهم شهود، إلا أنفسهم فشهادة أحدهم أربع شهادات بالله أنه لمن الصادقين، والخامسة أن لعنة الله عليه إن كان من الكاذبين. ويدراً عنها العذاب أن تشهد أربع شهادات بالله أنه لمن الكاذبين، والخامسة أن غضب الله عليها إن كان من الصادقين﴾ (النور/٦-٩).

Fifth: When the affairs of any marriage reach this point, then either the husband or the wife is falsely accusing or denying a grave sin. Islam does not require Muslims to reach for secrets of the hearts or use force to find out who is truthful and who is lying. After Al-Li'aan, married life becomes impossible. This is why Islam annuls this marriage forever. They can never remarry, even with a new contract. One of them is lying and concealing the truth in this matter of grave consequences. The other spouse does not deserve to ever be tied again in marriage to such a person.

Sixth: The husband cannot take back any gifts or Mahr that he gave his wife. If he is lying, then he neither has the right nor deserves to take back his gifts or Mahr. If she is lying, then this money was used up in the married life that they spent together. Al-Bukhari and Muslim reported that ibn Umar narrated that the Messenger of Allah said to the spouses who conducted Al-Li'aan, ***“Your reckoning is with Allah! One of you is lying. You (the husband) have no reckoning on her (meaning he cannot cause her to be punished for adultery).”*** The husband said, “O Messenger of Allah! My money.” He said, ***“You no longer have money. If you have said the truth, this (money) is in return for what was allowed to you of enjoying her. If you have lied, then this (money) is even farther from your reach!”***

Seventh: The woman who endures Al-Li'aan with her husband does not have the rights of housing or life expenses from her husband. If she gives birth, then the child carries her name and not her husband's. Ibn Abbas said that the Prophet conducted Al-Li'aan between Hilal ibn Umayyah and his wife. Afterwards, he annulled their marriage and ruled that her child carry her name. He also ruled that her son is not called “illegitimate,” and that whoever calls him this, or calls his mother an adulterer, will have to face the prescribed punishment for this accusation.

In summary, the rules of Al-Li'aan that we have mentioned show the magnificence of Islam in its legislation. Islam seeks to preserve the rights of both men and women and

fairly distributes responsibility between them. Humanity did not reach the low point that we are all experiencing and witnessing today until after it discarded such rules and just legislation produced from Islam. And the last of our speech is “all thanks be to Allah, the Lord of the worlds.”



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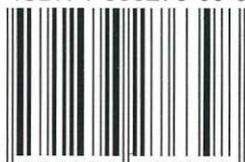
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