

علمی و تحقیقی مجلہ فقہ اسلامی ﴿۸۶﴾ ذوالحجہ ۱۴۲۲ھ ☆ فروری ۲۰۰۲ء

4. If he asks the permission of a non-virgin, her consent in words is essential.

If her virginity was removed by jumping, or menstruation, or an injury, then her is that of the virgin.

If it was removed by fornication, then the same according to Abu Hanifah.

5. The marriage of a minor male or female is valid if the wali marries them off, whether the minor girl is a virgin or not.

6. If [two minors] were married off by the father or grandfaather, then they do not have a choice after reaching maturity. But, if other than the father or grandfather married them off, then each of them has the choice when they reach adulthood : if he wishes, he may continue in the marriage, and if he wishes he may annul it.

7. If a woman marries and keeps her mahr lower [than her peers] then the wali has the right to object to that, according to Abu Hanifah, until [the husband] makes up the mahr of her peers or separates from her.

8. If a father marries off his minor daughter and keeps her mahr lower [than her peers], or [marries off] his minor son and exceeds in the mahr of his wife, that is valid for them. But that is not permissible for other than the father and grandfather.

9. It is valid for a paternal uncle's son to marry the daughter of his paternal uncle to himself.

If the woman gives permission to a man to marry her to himself in the presence of two witnesses, [the contract] is valid.

#### 5.0 MAHR (MARRIAGE PAYMENT TO THE BRIDE)

##### 5.1 Specification

1. The marriage is valid if a mahr was named in it, and it is valid [even] if no mahr was named in it.

If a man marries off his daughter [to a man] on condition that the man marry off his sister, or daughter, such that one of the contracts is in exchange for the other, then both contracts are valid, but each of [the women] is entitled to the mahr of her peers. (Contd.....)

☆ میں نے امام محمد سے بڑھ کر کوئی صحیح نہیں دیکھا (امام محمد بن اور یس شافعی) ☆

#### 4.0 THE WALI

##### 4.1 Precedence for Wilayah

###### 1. The wali is a paternal male relative.

If there exist for an insane woman both her father and her son, then the wali in her marriage is her son according to

Abu Hanifah and Abu Yusuf. Muhammad said : [it is] her father.

2. A slave, minor, insane person, or unbeliever, have no wilayah over a Muslim woman.

3. Abu Hanifah said : it is valid for non-male relatives to marry of the women [if males are not available].

4. If the immediate wali is disjointedly absent, then it is valid for someone beneath him [in precedence] to marry [the women off].

A disjointed absence is that he be in a city where the caravans reach only once a year.

##### 4.2 Compatibility

1. Compatibility in marriage is taken into consideration. So, if a woman marries an incompatible [man], the wali has the right to separate them.

2. Compatibility is considered in:

lineage

religion

wealth, which is that he be in possession of the mahr and maintenance.

profession.

##### 4.3 Authority of the Wali

1. According to Abu Hanifah, the marriage of a free, adult, sane woman is contracted with her consent, even if there no wali

performs the contract for her, whether she is virgin or not. Abu Yusuf and Muhammad said : it is not contracted without a wali.

2. It is not permissible for the wali to coerce an adult virgin to marry [someone].

3. If he asks for her permission, and she remains silent, or giggles, that is [indicative of] her permission. But, if she refuses, he may not marry her off.

If the husband says, 'The marriage [proposal] reached you, and you remained silent,' but she says, 'No, I refused it,' then the word is hers, and there is no oath due on her. There is no extraction of oath in marriage according to Abu Hanifah. [But] Abu Yusuf and Muhammad said : oaths are extracted in it.

☆☆☆ میں نے امام شافعی سے زیادہ کسی کو عقل والا نہیں پایا ( ابو عبید ) ☆☆☆

### 3.2 Prohibition by Marriage Ties

1. The daughter of his wife with whom he has consummated, whether she is under his guardianship or the guardianship of someone else
2. His father's or grandfathers' wife
3. His son's or grandson's wife
4. Whoever commits fornication with a woman, her mother and daughter become unlawful to him.
5. [A thrice-divorced ex-wife unless she has since consummated another marriage.]

### 3.3 Prohibition by Suckling

1. His foster-mother
2. His foster sister

### 3.4 Prohibition of Combination

1. He may not combine two sisters in marriage, nor as slave-girls for intercourse  
If a man divorced his wife with an irrevocable divorce, it is not permissible for him to marry her sister until [his wife's] waiting period is over.
2. He may not combine a woman with her paternal or maternal aunt, nor with her [niece:] sister's daughter or brother's daughter.
3. He may not combine two women [who are such that], if one of them were a man, it would not be permissible for her to marry the other.
4. There is no objection to combining a woman with a daughter a husband she had previously.
5. A free man may marry four - free women or slave-girls, and he may not marry more than that. If a free man divorces one of the four with an irrevocable divorce, it is not permissible for him to marry a [new] fourth [wife] until the waiting-period of [the other] is completed.

### 3.5 Prohibition by Religion

1. It is permissible [but disliked for a Muslim man] to marry women of the People of the Book, but it is not permissible to marry Zoroastrian women, nor idolatrous women.
2. It is permissible to marry Sabeen women if they believe in a prophet and affirm a scripture, but if they worship the planets, and have no scripture, then it is not permissible to marry them.

فضل العالم علی العابد کفضل القمر علی سائر الکواکب (سنن ابوداؤد و ترمذی)

## The Marriage In Islam

Translated from Mukhtasar Al Quduri

1. Marriage is contracted by proposal and acceptance, in two statements, -both of them expressing the past tense, or - one of them expressing the past and the other the future, such as one saying, 'Marry [your daughter] to me,' and the other saying, 'I have married [her] to you.'

If a man marries a woman off without her permission, or [marries off] a man without his permission, [the marriage is contingent on their acceptance].

2. Marriage is contracted by the words of marriage, wedding, transfer of possession, gift, or charity.

### 2. WITNESSES

1. The marriage of Muslims is not contracted without the presence of two free, adult, sane, Muslim [male] witnesses, or one man and to women, [whether they be] morally upright or non-upright, or [even] inflicted with the prescribed punishment for slander.

If a Muslim married a dhimmi woman with the witnessing of two dhimmi men, it is valid according to Abu Hanifah and Abu Yusuf. Muhammad said : It is not valid.

### 3. PROHIBITED PERSONS

#### 3.1 Prohibition by Kinship

It is not lawful for a man to marry:

1. His mother, nor his maternal or paternal grandmothers,
2. His daughter, nor his granddaughters, and lower
3. His sister
4. His [niece] : his sister's daughter or his brother's daughter
5. His paternal aunt
6. His maternal aunt
7. His wife's mother, whether he has consummated with her daughter or not

ایک عابد پر عالم کی فضیلت ایسی ہے جیسے کہ چاند کی فضیلت دوسرے تمام ستاروں پر (سنن ابوداؤد و ترمذی)