

**Question:**

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Assalaamu Alaikum

**MARRIAGE Part I** - Some rules and laws for the Muslim man and woman.

Please advise  
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**Answer:**

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Assalamu Aleikum

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**Importance of Marriage in Islam**

Allah has created men and women as company for one another, and so that they can procreate and live in peace and tranquillity according to the commandments of Allah and the directions of His Messenger. The Qur'an says:

And among His signs is this, that He created for you mates from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your hearts. Undoubtedly in these are signs for those who reflect. (30:21)

And Allah has made for you your mates of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best. (16:72)

These verses of the Noble Qur'an clearly show that in contrast to other religions like Christianity, Buddhism, Judaism etc. which consider celibacy or monasticism as a great virtue and a means of salvation, Islam considers marriage as one of the most virtuous and approved institutions. The Messenger of Allah (peace be upon him) declared, "*There is no monasticism in Islam.*" He further ordained,

"O you young men! Whoever is able to marry should marry, for that will help him to lower his gaze and guard his modesty." (Al-Bukhari)

Modesty was regarded as a great virtue by the Prophet. He said, "Modesty is part of faith." (Al-Bukhari)

The importance of the institution or marriage receives its greatest emphasis from the following hadith of the Prophet,

"Marriage is my sunna. Whosoever keeps away from it is not from me."

With these Qur'anic injunctions and the guidance from the Prophet (peace be upon him) in mind, we shall examine the institution of marriage in the Shari'ah.

The word *zawaj* is used in the Qur'an to signify a pair or a mate. But in common parlance it stands for marriage. Since the family is the nucleus of Islamic society, and marriage is the only way to bring families into existence, the Prophet (peace be upon him) insisted upon his followers entering into marriage. The Shari'ah prescribes rules to regulate the functioning of the family so that both spouses can live together in love, security, and tranquillity. Marriage in Islam has aspects of both 'ibadah (worship) of Allah and mu'amalah (transactions between human beings).

In its 'ibadah aspect, **marriage is an act pleasing to Allah** because it is in accordance with his commandments that husband and wife love each other and help each other to make efforts to continue the human race and rear and nurse their children to become true servants of Allah.

In its mu'amalah aspect, marriage being a lawful response to the basic biological instinct to have sexual intercourse and to procreate children, the Shari'ah has prescribed detailed rules for translating this response into a living human institution reinforced by a whole framework of legally enforceable rights and duties, not only of the spouses, but also of their offspring.

These aspects are beautifully explained in a tradition of the Prophet. It is narrated by Anas that the Messenger of Allah (peace be upon him) said,

"When a man marries, he has fulfilled half of his religion, so let him fear Allah regarding the remaining half."

The Prophet considered marriage for a Muslim as half of his religion because it shields him from promiscuity, adultery, fornication, homosexuality etc., which ultimately lead to many other evils like slander, quarreling, homicide, loss of property and disintegration of the family. According to the Prophet (peace be upon him) the remaining half of the faith can be saved by taqwa.

### **Conditions of Marriage**

Careful consideration of the Qur'anic injunctions and the traditions of the Prophet (peace be upon him) clearly show that marriage is compulsory (*wajib*) for a man who has the means to easily pay the mahr (dowry) and to support a wife and children, and is healthy, and fears that if does not marry, he may be tempted to commit fornication (*zina*). It is also compulsory for a woman who has no other means of maintaining herself and who fears that her sexual urge may push her into fornication. But even for a person who has a strong will to control his sexual desire, who has no wish to have children, and who feels that marriage will keep him away from his devotion to Allah, it is commendable (*mandub*).

However, according to the Maliki school, under certain conditions it is obligatory (*fard*) for a Muslim to marry even if he is not in a position to earn his living:

If he fears that by not marrying he will commit fornication (*zina*).

If he is unable to fast to control his passions or his fasting does not help him to refrain from *zina*.

Even if he is unable to find a slave girl or a destitute girl to marry.

However some jurists suggest that if a man cannot procure a lawful livelihood, he must not marry because if he marries without any hope of getting lawful bread, he may commit theft, and in order to avoid one evil (his passions) he may become the victim of another (theft).

The Hanafi school considers marriage as obligatory (*fard*) for a man:

If he is sure that he will commit *zina* if he does not marry.

If he cannot fast to control his passions or even if he can fast, his fast does not help him to control his passion.

If he cannot get a slave-girl to marry.

If he is able to pay the dowry (*mahr*) and to earn a lawful livelihood.

Marriage is forbidden (haram) to a man, according to the Hanafi school, if he does not possess the means to maintain his wife and children or if he suffers from an illness, serious enough to affect his wife and progeny.

It is not desirable (makruh) for a man who possesses no sexual desire at all or who has no love for children or who is sure to be slackened in his religious obligations as a result of marriage.

In a beautiful tradition the Prophet (peace be upon him) has given the most important point that should weigh with every Muslim in selecting his bride:

"Whoever marries a woman solely for her power and position, Allah will only increase him in humiliation. Whoever marries a woman solely for her wealth, Allah will only increase him in poverty. Whoever marries a woman because of her beauty, Allah will only increase him in ugliness. But whoever marries a woman in order that he may restrain his eyes, observe cautiousness, and treat his relations kindly, Allah puts a blessing in her for him and in him for her."

In order that problems should not arise after marriage the Prophet (peace be upon him) recommended that, in the selection of his bride, a man should see her before betrothal lest blindness of choice or an error of judgment should defeat the very purpose of marriage. But this "seeing" is not to be taken as a substitute for the "courtship" of the West. The man should not gaze passionately at his bride-to-be, but only have a critical look at her face and hands to acquaint himself with her personality and beauty. However, if a man so desires, he may appoint a woman to go and interview the proposed bride, so that she may fully describe the type of girl she is.

Since believing men and women are referred to in the Qur'an, a woman also has the right to look at her potential husband.

The special permission for men and women to see each other with a view to matrimony does not contravene the code of conduct for believing men and women to lower their gaze and be modest which is laid down in the Holy Qur'an.

### **Ijbar: A Safety Valve**

The consent of both the man and the woman is an essential element of marriage, and the Qur'an gives women a substantial role in choosing their own life partners. It lays down:

Do not prevent them from marrying their husbands when they agree between themselves in a lawful manner. (2: 232)

However, Imam Malik, one of the four great Imams of the Sunni schools of Islamic jurisprudence, gives a slightly restrictive interpretation to this verse and makes the choice of partner by a Muslim girl subject to the over-ruling power or ijbar of her father or guardian in the interests of the girl herself.

It may sometimes happen that in her immaturity or over-zealousness, a girl may want to marry a man about whom she has distorted information or who does not possess good character or who lacks proper means of livelihood. In such a case, it is better, or rather incumbent upon the girl's father or guardian, that, in the wider interests of the girl, he restrains her from marrying such a worthless man and finds a suitable person to be her husband. Generally speaking, such marriages arranged by fathers and guardians work better than a marriage brought about through western courtship.

The case of Abu Juham bin Hudhaifah and Mu'awiyah ibn Abu Sufyan is relevant here. They proposed marriage to Fatimah bint Ghaith. The Prophet (peace be upon him) advised Fatimah not to marry either of them on the grounds that Mu'awiyah was then a pauper and Abu Juham was cruel and harsh. So she married Usamah.

## **The Free Consent of the Parties**

The Qur'an (4:21) refers to marriage as a *mithaq*, i.e. a solemn covenant or agreement between husband and wife, and enjoins that it be put down in writing. Since no agreement can be reached between the parties unless they give their consent to it, marriage can be contracted only with the free consent of the two parties. The Prophet (peace be upon him) said,

"The widow and the divorced woman shall not be married until their order is obtained, and the virgin shall not be married until her consent is obtained." (AlBukhari)

This aspect is greatly emphasized by Imam Bukhari. He, in fact, gave one of the chapters in his Sahih the significant title:

"When a man gives his daughter in marriage and she dislikes it, the marriage shall be annulled." Once a virgin girl came to the Prophet (peace be upon him) and said that her father had married her to a man against her wishes. The Prophet gave her the right to repudiate the marriage. (Abu Dawud).

Divorced women are also given freedom to contract a second marriage. The Holy Qur'an says,

And when you divorce women, and they have come to the end of their waiting period, hinder them not from marrying other men if they have agreed with each other in a fair manner. (2: 232)

With regard to widows, the Qur'an says,

And if any of you die and leave behind wives, they bequeath thereby to their widows (the right to) one year's maintenance without their being obliged to leave (their husband's home), but if they leave (the residence) of their own accord, there is no blame on you for what they do with themselves in a lawful manner. (2:234)

Thus widows are also at liberty to re-marry, even within the period mentioned above; and if they do so they must forgo their claim to traditional maintenance during the remainder of the year. However, it must be remembered that the power of *ijbar* given to the father or the guardian by the Maliki school over their selection of life-partner obtains in all the situations considered above, namely, whether the daughter or the ward is a virgin or divorcee or widow.

## **Prohibited Marriage Partners**

Under the Shari'ah, marriages between men and women standing in a certain relationship to one another are prohibited. These prohibited degrees are either of a permanent nature or a temporary. The permanently prohibited degrees of marriage are laid down in the Holy Qur'an :

And marry not those women whom your fathers married, except what has already happened (of that nature) in the past. Lo! it was ever lewdness and abomination, and an evil way. Forbidden unto you are your mothers and your daughters, and your sisters and your father's sisters and your mother's sisters, and your brother's daughters and your sister's daughters, and your foster-mothers and your foster-sisters, and your mothers-in-law and your step-daughters who are under your mother-in-law and your step-daughters who are under your protection (born) of your women unto whom you have gone into -- but if you have not gone into them, then it is no sin for you (to marry their daughters) -- and the wives of your sons from your own loins, and that you should have two sisters together, except what has already happened (of that nature) in the past. Allah is ever-Forgiving, Merciful. (4:22 - 24)

From the above verses, it is clear that a Muslim must never marry the following:

1. His mother
2. His step-mother (this practice continues in Yoruba land in Nigeria, where in some cases the eldest son inherits the youngest wife of his father)
3. His grandmother (including father's and mother's mothers and all preceding mothers e.g. great grandmothers )
4. His daughter (including granddaughters and beyond )
5. His sister (whether full, consanguine or uterine)
6. His father's sisters (including paternal grandfather's sisters)
7. His mother's sisters (including maternal grandmother's sisters)
8. His brother's daughters
9. His foster mother
10. His foster mother's sister
11. His sister's daughter
12. His foster sister
13. His wife's mother
14. His step-daughter (i.e. a daughter by a former husband of a woman he has married if the marriage has been consummated. However, if such a marriage was not consummated, there is no prohibition)
15. His real son's wife

A great wisdom lies behind these prohibitions on the grounds of consanguinity, affinity, and fosterage. No social cohesion can exist if people do not keep these prohibitions in their minds while contracting marriages.

Temporary prohibitions are those which arise only on account of certain special circumstances in which the parties are placed. If the circumstances change, the prohibition also disappears. They are as follows:

1. A man must not have two sisters as wives at the same time nor can he marry a girl and her aunt at the same time.
2. A man must not marry a woman who is already married. However this impediment is removed immediately if the marriage is dissolved either by the death of her former husband, or by divorce followed by completion of the period of 'iddah (retreat).
3. A man must not have more than four wives at one time. This impediment is, of course, removed as soon as one of the wives dies or is divorced.
4. A man must not marry a woman during her 'iddah.

Regarding this last prohibition, the Qur'an expects Muslims to act with the utmost propriety and righteousness. It lays down:

...but do not make a secret contract with them except in honourable terms, nor resolve on the tie of marriage till the term prescribed is fulfilled. (2:235)

This means that a man must not make a specific proposal of marriage to a woman during the time of her 'iddah after the death of her husband or an irrevocable divorce. However, he can send a message saying, for instance, "I wish to find a woman of good character". But if a woman is in the 'iddah of a divorce which is revocable where *raja'* (return) is possible, a man must not send her even an implied invitation to marry him, because she is still considered as the lawful wife of the first husband. In fact, this restriction is most beneficial because it prevents a man from becoming an instrument of breaking up a family where there are still chances of reconciliation between the wife and husband even though they are moving away from each other.

### **Two Suitors Seeking to Marry the Same Girl**

The Prophet (peace be upon him) disapproved of two persons competing with one another to secure marriage with the same girl. This is because such a situation is likely to develop bitter enmity between two Muslim brothers.

The Prophet said,

"A believer is a brother of a believer. Hence it is not lawful for him to bargain upon the bargain of a brother, nor propose for (the hand of a girl) after the marriage proposal of his brother, until the latter (voluntarily) withdraws the proposal."

Imam Abu Hanifa, Imam Shafi'i, and Imam Malik, all hold the view that it is a sin to put a proposal of marriage against the proposal of another Muslim brother. However, if a marriage is contracted in this wrongful way it will be sufficient if the second suitor who was successful seeks the forgiveness of the first suitor and of Allah. But Imam Dhahiri considers such a marriage void. It is respectfully submitted that the former view is more rational and sound.