



## Fiqh of Marriage: Class Nine

الحمد لله و الصلاة و السلام على رسول الله و بعد:

And to complete what we spoke about last time, pictures are permissible in searching for a wife, if its source is reliable. However, nowadays, many of the pictures are not an accurate representation of reality.

Also, there are some women who are matchmakers, and they have an expertise in visiting women finding a match for them. In fact, sometimes a mother who wants to help her son get married but she does not know anyone, she speaks to such a matchmaker. She says, “I have a son who is this and this quality, and he is searching for such and such qualities.”

However, the one who takes matchmaking as a profession will often fabricate and change the facts in order to make a match, so one must be careful to make use of such so-called ‘matchmakers’. Their goal is to profit from marriage, and if there is a way they should not be allowed into the houses to see the women there.

But, sending a reliable relative, such as a sister, or aunt, to see the potential spouse, then there will be no cheating involved, and he can trust her.

However, the professional matchmakers, their goal is to make money, and they want to make two heads come together at any cost, and Allah knows best.

### The Hadith:

وَعَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ : قَالَ رَسُولُ اللَّهِ ( ﷺ ) { لَا يَخْطُبُ  
بَعْضُكُمْ عَلَى خِطْبَةِ أَخِيهِ , حَتَّى يَتْرُكَ الْخَاطِبُ قَبْلَهُ , أَوْ يَأْذَنَ لَهُ الْخَاطِبُ }  
مُتَّفَقٌ عَلَيْهِ , وَاللَّفْظُ لِلْبُخَارِيِّ

832. Narrated Ibn Umar: Allah’s Messenger said, “No one of you should ask a woman in marriage when his brother has done so already, until the one who has proposed to her before him gives her up, or gives him permission.” [Agreed upon, and the wording is al-Bukhari’s]

### The Explanation:

The Author, may Allah have mercy on him, now brings to light the subject of making the proposal, after speaking about the subject of looking for the one who desires marriage.

And this is the natural order of things, since if he sees from the wife what he desires in marriage, he comes forward to make the proposal. So these two subjects are connected in this natural order.

The Prophet says, “No one should ask” this is an absolute prohibition “a woman in marriage, when his brother has already done so.” Notice that the Prophet makes clear that the relationship of the first suitor to the second is one of brotherhood. And if he is your brother, than one must be considerate of the rights of brotherhood.

And it is well known that the brotherhood in deen has more priority than even fraternal brotherhood if religions are different.

So what is meant by “asking a woman in marriage” is coming forward and requesting her hand in marriage from her wali, and the one who has guardianship over her in marriage. If a suitor comes forward and proposes to a woman, then it is not allowed for anyone else who knows about this proposal to also come forward and propose to the same woman.

Since the first preceded him and has more right, but, when does this prohibition take effect?

Imam Malik says: It is forbidden for one to make a proposal over the proposal of another if the first suitor had come to an understanding and agreement about the marriage, and they both inclined towards each other. Also, it should have reached the stage of negotiation over the mahr and preparation of the house, and so on.

In this case, it is forbidden for anyone else to come forward to propose.

But if it was a simple request, or offer, and there was no settled agreement, and her family said, “We will make Istikhara to Allah...” and until now, there was not inclination or desire for the suitor, then Imam Malik says: There is nothing wrong with another person coming forward to propose.

This is because preventing a proposal of a suitor simply because another person had come forward to propose leads to hardship and difficulty amongst the people. Let us suppose that the family did not give a response for a long time to the first suitor, or suppose that he proposes, but in the end decides that he does not want the marriage and leaves her. In this case we will have prevented from her other suitors. And this other suitor may have been more honest and eager than the first.

For this reason, preventing proposals simply because someone else had come forward to propose, according to Imam Malik, would cause much difficulty and prevent women from getting married.

However, the Jumhoor of Ulema say that the second suitor should be prevented, whether the first proposal has been settled or not. It is not permissible for a person to come forward to propose to a woman who has been proposed to before.

And some of them say, unless the first suitor was not compatible in deen, for example if he was a faasiq, and not upright in his religion. So in this case, he may come forward and perhaps he will save her from that evil person, if he himself is compatible with her in terms of religion and worldly affairs.

And preserving the right of marriage to the first suitor is, in fact, preservation of the social order and bonding in society. And it is a cure for some weak minded individuals, who, if a suitable suitor comes forward, and he is compatible in terms of religion, but say in the 50<sup>th</sup> percentile in terms of worldly standing. Then another comes forward, who is in the 75<sup>th</sup> percentile in terms of worldly standing. This is a type of deception, and the guardian may thus reject the first proposal, even though he was inclined towards him at first.

What has caused him to do this? The second proposal. If the second had not come forward, things would have been left to follow their natural course, and the proposal would have been completed, and then the marriage would have taken place.

Thus, proposing over the proposal of your brother is a violation of his rights, and could lead to the corruption of relations, the loss of rights, thus, it is not permitted.

The Jumhoor said that it is forbidden altogether, and the Jumhoor said, only if the family inclined towards and settled on the first proposal in all the negotiations, and the only thing left are some final agreements.

So this should not happen.

This is a general picture of the matter. However, what are the consequences if one violates this prohibition. Say, for example, someone proposes to a woman, and the family inclines towards the proposal, or they do not settle it, and then another comes along and proposes to the same woman.

Then, they find in the second some additional features and qualities that are better than what they found in the first. So they reject the first proposal, and accept the proposal of the second.

What is the ruling in this case?

Here, the scholars, may Allah have mercy on them, differed in their perspectives.

Some of them said, the Prophet said, “Laa,” “No one of you should...” and this is a Nahee (prohibition) and implies that the outcome of violating this prohibition is cancellation. This is because there is no other evidence that would indicate that this command was for dislike (karaheeyah) and not prohibition (hurmah).

So some Ulema say if he proposed over the proposal of his brother, and then preceded him in completing the marriage contract, then in this case the marriage contract is annulled.

It does not matter whether they consummated the marriage or not.

This is because they have violated the right of another, and we should not acknowledge the correctness of one who has violated the rights of another.

And those who state this ruling hold that it does not matter if they consummated the marriage or not.

However, other scholars hold that this prohibition is for dislike (karaheeyah), since it is a violation of noble character and manners, and harming the rights of brotherhood.

However, if the marriage contract took place, it has its honor and sacredness, and it must be implemented.

And there are other Ulema who state that if a person proposed over the proposal of his brother, and then went forward with the contract, if we are able to reach him before the consummation of the marriage, we annul the marriage contract.

However, if they have already consummated the marriage, we leave the contract as is. This is because before the consummation, there are no rights of others that need to be considered. However, after the consummation, we must consider the rights of third parties, such as children, etc.

This latter position is what is held by Imam Malik. He said, if we are reach the second suitor before he consummates the marriage, we annul the contract. But if he has already consummated the marriage, we leave the contract, although we must acknowledge that this is Makrooh, because of the Nahee of the Prophet.

Thus, the subject of this hadith is the prohibition of violating the rights of others in making a proposal for marriage.

And as a result of this violation: he is not allowed to propose over his brother, but he does and marries her. What is the result?

Some state, we annul the marriage contract and prevent him from consummating it.

These are some of the results of violating the prohibition of the Prophet mentioned in the hadith.

And as we mentioned, the exception to this rule is if the first one to propose was incompatible with the bride in terms of religion, then in this case, there is no harm in another person coming forward and proposing to her if he is more compatible with her in terms of religion.

This is a brief summation of what the Ulema have stated regarding this hadith.

I believe that the one who is familiar with everyday life will agree that proposing over the proposal of one's brother leads to enmity between the first and second suitors. This is because the first suitor will believe that the second suitor who came forward is taking what belongs to him, and if the second has more wealth or passing qualities, the first will think: what have I done wrong? Wealth and position come and go.

And if this worldly things are used to violate the rights of others, this will leave enmity and ill-feelings between the suitors, and the families, you reject our son, for what, some money of so-and-so? Or a car? And this would lead to enmity.

And for this reason, as Ibn Masud says, it is not possible to find any prohibition except that in it is benefit for servants of Allah. Every prohibition is to prevent harms.

And it is not possible to find a command except that it is the fulfillment of some benefit for servants of Allah.

Thus, we find that Shariah stands in the middle between Jalb al Masaalih, and Darr al Mafaasid (Attracting Benefits and Repelling Harms.)

And Allah knows best.

End of Class Nine.