



Fiqh of Marriage: Class Twenty-Three

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

Chapter: Equality in Marriage and the Right of Choice

We left off last time with the story of Barira, which has a number of rulings that can be derived from it.

And another lesson we learn is regarding once, when the Prophet alayhi asalam requested a meal, they brought him some bread, vinegar, and salt for him to eat.

He said, “Why do you bring me bread, vinegar, and salt to eat, and I see a pot of meat cooking on the fire?”

They said, “That food is not befitting for you, O Messenger of Allah.”

He said, “Why?”

They said, “It is meat that was given in Sadaqa to Barira.”

The Prophet alayhi as salam said, “It is no problem. It is Sadaqa for her, but a gift for us.”

The Prophet alayhi as salam accepted gifts, but not Sadaqa.

The Hadith:

وَعَنْ الضَّحَّاكِ بْنِ فَيْرُوزَ الدَّيْلَمِيِّ ، عَنْ أَبِيهِ قَالَ : { قُلْتُ : يَا رَسُولَ اللَّهِ
! إِنِّي أَسَلَمْتُ وَتَحْتِي أُخْتَانِ ، فَقَالَ رَسُولُ اللَّهِ (" طَلِّقْ أَيْتَهُمَا شِئْتَ {
رَوَاهُ أَحْمَدُ

Narrated ad-Dahhak, on the authority of his father: I said, "O Messenger of Allah, I have accepted Islam and I am married to two sisters."

Allah's Messenger said, "Divorce whichever of them you wish."
[Reported by Ahmad]

The Explanation

The Author brings this hadith and similar ahadith in the Chapter of Choosing in Marriage, and the Ulema agree that if two Mushrik people were married, and they chose to accept Islam, their marriage would remain valid.

In another narration similar to this hadith, the Prophet alayhi as salam said to the man who had been married to two wives, "Choose whichever one of the two you desire."

Here, the scholars ask regarding the marriage of this man to the two sisters: Did he marry the first sister, then after a while the second. Or did the marriage take place at the same time with a single contract?

The reason they ask is that if he married one sister, then later the second, the earlier marriage is the one that is valid, and second marriage would normally be invalid, since it is not permissible to join two sisters in marriage at the same time.

But the Prophet alayhi salam did not ask about it, since the Ulema agree that non-Muslims who accept Islam are not asked about how they performed their marriage. Was there a wali? Were their witnesses? Was there Mahr that was alcohol, or swine, no Mahr, not witnesses? None of these things are asked about.

This is because they made the contract in accordance to what they believed to be correct. So Islam accepts them as they are. But if their marriage was built upon something that is incorrect, then Islam corrects this mistake.

So like this example, if a person was married to two sisters. Whatever Islam forbids altogether in the beginning of marriage, it does not permit that even if it took place in the days of Jahiliyyah.

If a person entered Islam and he had 8, or 10 wives. We say also here that Islam does not approve of such marriages. He must chose four.

Likewise a person if he entered Islam and he was married to a woman and her aunt. We look if Islam would permit this, and since it does not, this marriage is invalid.

And here in this hadith, this man entered Islam and had two sisters who were wives, so Islam enters and commands him to separate from one of his wives.

The Hadith:

وَعَنْ سَالِمٍ , عَنْ أَبِيهِ , { أَنَّ غَيْلَانَ بْنَ سَلَمَةَ أَسْلَمَ وَلَهُ عَشْرُ نِسْوَةٍ ,
فَأَسْلَمْنَ مَعَهُ , فَأَمَرَهُ النَّبِيُّ (أَنْ يَتَخَيَّرَ مِنْهُنَّ أَرْبَعًا } رَوَاهُ أَحْمَدُ ,
وَالْتِّرْمِذِيُّ , وَصَحَّحَهُ ابْنُ حِبَّانَ

Narrated Saalim on the authority of his father: Ghailan bin Salama accepted Islam and he had ten wives who accepted Islam along with him. So the Prophet alayhi as salam commanded him to "Choose four of them."

[Reported by Ahmad and Tirmidhi]

The Explanation:

This hadith is regarding the story of Ghailan, who was married to ten women at the time he accepted Islam.

And there are those who claim that marrying more than one wife was invented by Islam, and that it is based on following lusts and desires, and marrying more than one wife so on and so on...

This hadith is proof that this existed long before Islam, and here is Ghailan, who did not suffice with one wife, or four or five, he had ten wives whom he lived with together in the days of Jahiliyyah.

He continued in his days of Jahiliyyah, until he accepted Islam, and his wives accepted Islam as well. Why is it important that they accepted Islam as well?

Since if one of the two spouses becomes Muslim while the other is Mushrik, the woman will wait her normal waiting period, and once it expires they are separated, unless the other spouse also becomes Muslim.

But here they wives also accepted Islam along with Ghailan. So the Prophet alayhi as salam said, "Chose from them four."

So the initial contract was valid, but due to this extraneous condition that he had more than four, he had to chose only four. Those four that he chose, they marriage contracts are valid and correct.

The four is what Islam allows, and he must part with the rest. The Prophet alayhi as salam did not ask about which ones he married first, and or last, etc. Rather he looks and choses four.

And those four, are they related or siblings through breastfeeding, etc. If so, this is not permissible and must be corrected.

And in another narrated, there was a Sahabi who entered Islam and he was married to five women. The Prophet alayhi as salam said, "Chose four and let one go."

So the Sahabi said, "I looked at them and one of them was old, over 60 years old, and so I decided to separate from her."

So the choice belongs to the man, he looks at who he is married to, and chooses the number to the extent that Islam allows.

And from them, he must make sure that marriage to them is permissible, i.e. they are not sisters a woman and her aunt etc.

And this is what is meant by choosing in marriage if one was married in a way that is impermissible in Islam before they become Muslim, whether that marriage would have initially been invalid, or do to an extraneous condition (such as there being more than four wives.)

And Allah knows best.

End of Class 23