



Fiqh of Marriage: Class Twenty-Five

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

The Hadith:

وَعَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ : { أَسْلَمَتْ امْرَأَةٌ ,
فَتَزَوَّجَتْ , فَجَاءَ زَوْجُهَا , فَقَالَ : يَا رَسُولَ اللَّهِ ! إِنِّي كُنْتُ أَسْلَمْتُ ,
وَعَلِمْتُ بِإِسْلَامِي , فَانْتَزَعَهَا رَسُولُ اللَّهِ (مِنْ زَوْجِهَا الْآخِرِ , وَرَدَّهَا إِلَى
زَوْجِهَا الْأَوَّلِ } رَوَاهُ أَحْمَدُ , وَأَبُو دَاوُدَ , وَابْنُ مَاجَةَ . وَصَحَّحَهُ ابْنُ
حِبَّانَ , وَالْحَاكِمُ

Narrated Ibn Abbas: A woman had accepted Islam and then remarried, so her previous husband came and said: “O Messenger of Allah, I had accepted Islam and she knew I had done so.” So the Messenger of Allah took her away from her second husband and returned her to her first one.
[Reported by Ahmed, Abu Dawud, and Ibn Majah]

The Explanation:

This Hadith is the real world application of the verse of Allah, “Wa la tumsikoo bi Isamil kawafir”, “Do not hold on to the marriage contract with the Disbelievers.”

A woman came, and she was Muslim, and her husband remained as he was before, so the Messenger of Allah alayhi as salam separated between her and her husband in accordance with the verse “wa la tumsikoo bi isaamil kawafir.”

Because she accepted Islam first, and her husband did not come to her during her waiting period, as it is said, so she could stay with him in accordance with their first marriage, so she married someone else.

So her husband came to the Messenger alayhi as salam, after she had gotten married, and he said, “She remarried under the pretext that she was Muslim and I was not, but the reality is that I accepted Islam at the same time she did. However, she made Hijra before me.”

Thus, there is not reason for them to separated. This is because they came out of Shirk into Islam together. No one preceded the other.

What did the Messenger of Allah do? He took her away from the second husband, because she remarried while still in marriage contract with the first husband.

So the Prophet alayhi as salam separated them, and returned her to the first husband with their original contract, since there was no need to separate between them in the first place.

The Hadith:

وَعَنْ زَيْدِ بْنِ كَعْبِ بْنِ عُجْرَةَ , عَنْ أَبِيهِ قَالَ : { تَزَوَّجَ رَسُولُ اللَّهِ
(الْعَالِيَةَ مِنْ بَنِي غِفَارٍ , فَلَمَّا دَخَلَتْ عَلَيْهِ وَوَضَعَتْ ثِيَابَهَا , رَأَى بِكَشْحِهَا
بَيَاضًا فَقَالَ : " الْبَسِي ثِيَابِكَ , وَالْحَقِّي بِأَهْلِكَ " , وَأَمَرَ لَهَا بِالصِّدَاقِ {
رَوَاهُ الْحَاكِمُ , وَفِي إِسْنَادِهِ جَمِيلٌ بْنُ زَيْدٍ وَهُوَ مَجْهُولٌ , وَاخْتَلَفَ عَلَيْهِ
فِي شَيْخِهِ إِخْتِلَافًا كَثِيرًا

Narrated Zaid bin Ka'b bin Ujra on his father's authority: Allah's Messenger alayhi as salam married Al 'Aaliyaa of Banu Ghifar. When she had entered in his presence and removed her clothes, he saw whiteness (of leprosy) around her waist area. And the Prophet alayhi as salam said, "Put on your clothes and return to your family." He ordered her dowry to be given to her.

[Reported by al Hakim]

The Explanation:

The Author has done well by narrating this hadith in the Chapter of Nikah and he closes this section with this hadith that speaks about the presence of defects in the Wife.

And the Fuqahaa, may Allah have mercy on them, expanded on this subjected and included the defects found in the husband, such as impotence.

If the necessary things for marriage have been concluded, and there has been proposal and agreement, and the two parties have been alone together; then if a defect is found in one of the two spouses, what is the Ruling?

This hadith, and next narrations from Umar, are all regarding addressing the issue of defects and faults in one of the two spouses.

We begin with the hadith of 'Aaliyah, from the tribe of Ghifaar, she entered the Prophet's house on their wedding night, and he entered the room and sat on the bedding. Then, when she uncovered her clothes from her skin, the whiteness of leprosy became apparent in the area around her navel, and in some narrations on her breast.

The Prophet alayhi salam said, "Put your clothes back on and return to your family."

And he commanded that she be given her dowry.

Here, we have the issue of the husband, if he finds a deficiency in his wife, and he cancels the marriage.

But this narration does not convey all angles of the cancellation of marriage.

Because if there was no consummation of marriage, then the wife does not have right to the dowry.

But the Prophet alayhi as salam gave her her dowry, and then he said, "Go to your family."

And these words, "Go to your family," are considered by the Fuqaha to be metaphorical, Kinaayaa, to mean divorce.

And the words "Go to your family" could be simply for some sickness she has, and the approach of childbirth, or to visit on of her parents.

But in common culture, "Go to your family," is metonymy meaning Divorce.

But before we go to the words of Umar: Aliyaah is not the first woman that the Prophet returned for leprosy on her skin. Ibn Kathir mentions while enumerating the marriages of the Prophet alayhi as salam: 'Aamrata bint Yazid from the tribe of Ghifaar also.

And that the Prophet alayi salam entered upon her and uncovered her clothing he found leprosy. He said to her, "Put your clothing back on and go to your family." And he gave her the dowry.

And the Ulema say this white color on the skin is a type of leprosy. Leprosy is a disease, may Allah give us and you good health, that afflicts the skin. It causes it to become white.

Some people might confuse the word Baraass (leprosy) with the word Bahaq (vitiligo) which is of two types, black and white, and in medical terminology, acute and general, which affects the pigmentation of the skin.

This latter disease is communicated through heredity.

However, here is leprosy.

The hadith about 'Aaliyah, and the narration about 'Amraah, who were both from the tribe of Ghifar, do not clearly indicate that a marriage contract is abrogated due to defects found in the spouse.

For this reason, the Author brings the narration of Umar who says:

The Narration:

عُمَرَ بْنِ الْخَطَّابِ (قَالَ : { أَيُّمَا رَجُلٍ تَزَوَّجَ امْرَأَةً , فَدَخَلَ بِهَا , فَوَجَدَهَا
بِرُصَاءَ , أَوْ مَجْنُونَةً , أَوْ مَجْدُومَةً , فَلَهَا الصَّدَاقُ بِمَسِيَسِهِ إِيَّاهَا , وَهُوَ لَهُ
عَلَى مَنْ غَرَّهُ مِنْهَا } أَخْرَجَهُ سَعِيدُ بْنُ مَنْصُورٍ , وَمَالِكٌ

Umar bin al Khattab said, “If any man marries a woman and after sleeping with her finds that she is affected with leprosy or insane, she gets her dowry for having intercourse with her, and it is returned to him from the one who deceived him with her.”

The Explanation:

He has to right to cancel the marriage, and she has the right to the dowry because he touched her, but the husband is entitled to pursue the one who deceived him, such as the guardian, who knew about the deficiency, then in this case he must return the dowry to the husband.

And if the guardian did not know that, then he can request that the wife herself return the money.

When we consider the marriages of ‘Aamrah, and ‘Aaliyaa, we have the general concept about the marriages of the Prophet alayhi as salam, which requires a separate study, in order to respond to those who question the reason for the various marriages of the Prophet alayhi as salam. But this is not the place.

But what the Ulema state is that the Prophet alayhi as salam, according to the majority, married 15 women, and some say 18, and he consummated the marriage with 13 of them.

And he had 11 wives in marriage at one time, and when he passed away, alayhi as salam, he had 9 wives.

They were well known: Aisha, Saudah, Umm Salamah, Um Habibah, Maimoona, Jawairiya, Zainab bint Jahsh, Zainab bint Harith, Safiyyah, all of these wives performed the last Hajj with the Prophet alayhi as salam, and he passed away leaving them behind.

And Ibn Kathir mentioned that there were perhaps 12 women whom were alone with him, but he did not consummate the marriage.

And he mentioned that there were women that he proposed to but he did not see them, that there are approximately 7 women.

Each of them, in these various categories, have special circumstances and reasons around them.

Then, the Ulema said what is the ruling regarding his wives after the Prophet alayhi as salam passed away?

The scholars state: They are the mothers of the believers. And they are haram from all of the Muslims.

Some of the Ulema say, their Iddah end when they pass away in this world.

As for the women who the Prophet alayhi as salam proposed to, but did not see, or stay alone with, they can remarry afterwards. Since there was no relationship between them.

But as for the women who the Prophet was alone with, but did not touch, such as the woman who he married, but she was in her hayd, so he sent her back until she became pure, and during this time his son Ibrahim passed away.

She said, "If he was really a Prophet, his son would not have died." The Prophet alayhi as salam said, "Go to your family." Or he divorced her and left.

And another, he said to her when he entered upon her, "Give yourself to me."

She said, "Do royalty give themselves to the poor." So he said, "Go to your family."

And another who when he wanted to extended his hands towards her as is in the Sunnah: "If one of you get married or purchase a ride, place your hand on her forehead and say: Oh Allah I ask you for the good of her, and the good she was created upon."

So when he extended his hand towards her forehead, she said, "Audho billah mink" "I seek refuge in Allah from you." He said, "You have sought refuge in the 'adheem."

And it is said that when she was being prepared to be send to the Prophet alayhi as salam, one of the wives of the Prophet played a trick on her, and I do not want to mention which one, but she is well know, and said:

"Do you not feel shy to marry the man who killed your father."

So when the Prophet approached her, she said, "I seek refuge in Allah from you."

The Prophet alayhi as salam said, "You have sought refuge in the mighty one, go to your family."

So her family came to the Prophet alayhi as salam and said, "O Messenger of Allah, she is young naive, and she was tricked. Please take her back.

The Prophet alayhi as salam refused to take her back.

This women, who were alone with him, but he did not touch them, but gave them their dowry, but he told them to go back to their family. Can they get remarried?

The First opinion is that they cannot, since they were alone with the Prophet alayhi asalam and removed their clothes. So this Khalwa is like touching.

And the proof of this is that he gave them their dowries.

But some Ulema say, there is no harm in them getting remarried, but it is better not to.

So 'Aaliyya is not the only woman who was sent back do to the leprosy on her skin.End of Class 25