



Fiqh of Marriage: Class Fifteen

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

The Hadith:

وَعَنْ نَافِعٍ , عَنْ ابْنِ عُمَرَ قَالَ : { نَهَى رَسُولُ اللَّهِ عَنِ الشُّغَارِ ; وَالشُّغَارُ :

أَنْ يُزَوِّجَ الرَّجُلُ ابْنَتَهُ عَلَى أَنْ يُزَوِّجَهُ الْآخَرُ ابْنَتَهُ , وَلَيْسَ بَيْنَهُمَا صَدَاقٌ {

مُتَّفَقٌ عَلَيْهِ .

Narrated Nafi' from Ibn 'Umar: Allah's Messenger prohibited Shighar; which means that a man gives his daughter to him in marriage on condition that the other gives his daughter to him in marriage [in exchange] without any dowry being paid by either. [Agreed upon, and they both agree that the explanation of the meaning of Shighar is the saying of Nafi'.]

The Explanation:

The chain of this hadith is known as al-Silsilah ad dhahbiyyah, or the golden chain of narration, Malik narrating from Nafi', from Ibn 'Umar. This is due to its shortness and the reliability of its narrators.

The Prophet prohibited al-Shighar, the scholars of Islamic Law state that when the Prophet prohibits a thing, it causes it to be cancelled out and invalid, and makes it haram, as long as there are no other texts that may indicate that this prohibition was more of an indication of karaaha (dislike).

So Nikaah ash-Shighar as a concept is agreed upon by all the scholars of the Ummah, including the four madhahab, and others, to be forbidden.

But the question we have is, what is the wisdom and the real reason behind this prohibition?

Let us first reflect on what the Nikaah ash-Shighar is. The narration explains it: "That a man weds his daughter to another, on the condition that the other weds him his daughter."

This explanation of Nikaah Shighar is part of this narration, which explains that it is exchanging daughters, without having any Mahr for either of them.

Who is explaining this meaning? It appears that it is part of the Prophetic hadith, but is it in reality, or is it an explanation by one of the narrators, called hadith “mudraj”.

Some experts in hadith stated that this was the speech of Malik, other said it was from the Tabi’ Nafi’, and others said, from the Sahabi Ibn Umar, and some said from the Messenger of Allah.

Knowing who said this speech helps us to use this explanation in search of the wisdom behind the prohibition.

The explanation says, “He marries his daughter to another **on condition that...**”

Some said the wisdom behind the prohibition is that the validity of a marriage contract cannot be based upon a specific condition.

It has to be firm, “I have wed you.” “I have accepted.”

These are serious words, that are binding, even if they are said in joke.

Others said, it is prohibited since it makes permissible in marriage without the due mahr being given.

But, in response to this, what if each party names some Mahr, “I marry you my daughter with the mahr of 1000 on the condition that you marry me your daughter with the mahr of 1000.”

The marriage would still be invalid.

But there is more than reason behind the prohibition, one that both the daughters will be denied their right to the Mahr, and the Mahr is the right of a woman, and here her father has taken away this right, as has the other father.

And there is the use of the relations with one’s daughter as mahr for another’s daughter, and this is not something that can be exchanged as a mahr.

So, the reasons are: 1.) That marriage contract is not valid if it is based on a conditions, rather it has to be firm.

For example, if a person said, “If my daughter come back from her travels, she is your wife.” And the man said, “I accept.”

Or if he says, “If my daughter recovers from her illness, she is wedded to you.” And he says, “I accept.”

In this case, all agree that the marriage is not valid. But some of the Malikiyya say, if the time frame is very short, and she agrees, and all agree, than it is still valid.

2.) It denies a woman her due right to mahr.

3.) It is using relations with one's daughter as a form of Mahr.

In summary, all four madhahab agree on the prohibition of Nikaah Shighar.

There is another reason, on a sociological level, why Nikaah Shighar is forbidden.

Let's say Zaid has wed his daughter to 'Amr, and Amr' weds his daughter to Zaid.

Let's say that if they get along with another, than this is good, alhamdulillah.

But if Zaid does not get along with his wife, and he divorces her, she will go back to the home of her father. But who will be in her home?

The daughter of her ex-husband. And she will not like this, and try to take revenge on her.

So Shighar, is invalid according to Shariah, and according to logic.

But if the a man marries the daughter of another person, without any conditions or semblance of Shighar, and then later on, the father of that woman marries the daughter of the first, is this permissible?

Most scholars allowed it, since there is no condition being placed in the marriage contract, but other forbade it because logically speaking it could still lead to social problems, should one of the daughters become divorced and seek revenge on her ex-husbands daughter.

The Hadith:

وَعَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - { أَنَّ جَارِيَةً بَكَرًا أَتَتْ النَّبِيَّ
(فَذَكَرَتْ: أَنَّ أَبَاهَا زَوَّجَهَا وَهِيَ كَارِهَةٌ , فَخَيَّرَهَا النَّبِيُّ) { رَوَاهُ أَحْمَدُ ,
وَأَبُو دَاوُدَ , وَابْنُ مَاجَةَ , وَأُعْلَى بِالرِّسَالِ

Narrated Ibn 'Abbas: A virgin girl came to the Prophet and mentioned that her father had married her against her will, so Allah's Messenger allowed her to exercise her choice. [Reported by Ahmed and Tirmidhi graded it has Hasan]

The explanation:

This hadith is related to the hadith regarding seeking permission from a virgin girl, and agreement of a previously married woman.

A girl came to the Prophet and said that her father wed her against her will, so the Prophet gave her the choice, either to carry out the contract initiated by her father, or to have it annulled.

Here, there a number of other cases when a woman is given the choice between keeping the marriage contract with her husband, or having in annulled.

Another case is when the two spouses are not compatible, like the case of Bariraa, the slave woman who was freed by 'Aisha. Her husband remained a slave, and from her story, we know that her husband loved her very much. He used to follow her in the streets, "O Barira, O Barira, keep our marriage the way it was." But Barira did not even look at him.

News of this reached the Prophet, so the Prophet said to her, "Your husband, have some concern for him." She said, with Adab and respect, "Are you speaking on his behalf, or commanding me?"

He said, "No, I am just interceding for him." He did not force his opinion on her. She said, "I have no need for him."

As if she was saying, “I do not accept your intercession, and follow my choice.”

So she was given the choice, and she chose to separate.

Likewise here, the girl was given the choice, since a virgin girl must assent to her marriage.

If her guardian marries her without her permission, what happens as a result?

The majority of scholars state that the guardian is divided between two categories, the father and the father’s father, and then the rest of the male relatives.

And we spoke about the order of right in guardianship. The majority say the first right belongs to the father, while Malik says it belongs to the son.

After the father and the sons, comes the grandfather (on the father’s side), and then the full brothers, then the half brothers, then the nephews, then the uncles, then the cousins.

If anyone other than the father weds a girl without her permission, she is given the choice whether to keep the contract or not.

But what about the father? If he weds his young daughter or young son do they have the choice to keep the contract at the time of puberty?

The majority of scholars say that the father only, can wed the young son or daughter, and that they do not have the choice at the time of puberty.

Why is this only for the father and no one else? Since the father has more love and kindness for his children, and more careful to fulfill their interests. And they gave as evidence the marriage of Aisha, who had her contract at seven, and the marriage was consummated at 9 years. She did not mention being given the choice.

But in the hadith at hand, we find that the woman was given the choice although it was her father who wed her. Why? Since she was already mature when married, above the age of puberty, and we know this from the context of the hadith which states (‘ala kurhiin, against her will.) Only a mature woman would display this dislike.

And in some narrations, the hadith states, “My father married me to his nephew to raise his status.” This nephew was not compatible for her, but her father married her to him in order to raise his social standing. So the Prophet gave her the choice.

And in this narration, she said, “I accept what my father has done, but I wanted women to know that men have no way over them, (in forcing them to marry).”

End of Class 15

Question about the madhahab:

Two extremes

Merging Madhab results in many differences, ‘new madhab’, or fifth Madhab.

Follow madhahab, but not say, “I do not want to listen to any scholar of any other madhab.”

Question about news:

Islam must be taken from its sources, Quran and Sunnah and Ulema, not actions of people.

Islamic, must come from these sources.

Muslims are bound by their covenants and treaties.