



Fiqh of Marriage: Class Twenty-Four

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

وَعَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ : { رَدَّ النَّبِيُّ (ابْنَتَهُ زَيْنَبَ عَلَى

أَبِي الْعَاصِ بْنِ الرَّبِيعِ , بَعْدَ سِتِّ سِنِينَ بِالنِّكَاحِ الْأَوَّلِ , وَلَمْ يُحْدِثْ نِكَاحًا

{ رَوَاهُ أَحْمَدُ وَعَنْ عَمْرِو بْنِ شُعَيْبٍ , عَنْ أَبِيهِ , عَنْ جَدِّهِ { أَنَّ النَّبِيَّ

(رَدَّ ابْنَتَهُ زَيْنَبَ عَلَى أَبِي الْعَاصِ بِنِكَاحٍ جَدِيدٍ {

Narrated Ibn Abbas: The Prophet alayhi as salam returned his daughter Zainab to Abul 'Aas bin ar Rabi' based upon the first marriage, after six years [of separation], and he did not perform a new marriage. [Reported by Ahmed]

And in a narration by 'Amr bin Shuaib: The Prophet returned his daughter Zainab to [her husband] Abu al 'Aas by a new marriage contract.

The Explanation:

Pay attention, my brothers, because I have not found any issue of study with more difference of opinion amongst the early and later generations than this chapter, perhaps. And some found these differences irreconcilable and gave up speaking on the issue altogether.

For example, Imam Malik has a chapter on marriage to mushrikaat, and he does not mention this hadith. And Imam Malik leaving it out, while it is so famous, is I believe because of the great difference of opinion over it.

And to speak about the marriage of Zainab daughter of the Prophet alayhi as salam with Abu al 'Aas requires some background information which is:

What happens when one of two spouses precedes the other in accepting Islam?

Ibn Abdul Barr and others mention, such as Ibnul Qayyim, and Nayl al Awtar, and Fath al Bari that:

The basis that all agree on is if there are two Mushrikeen and one of them accepts Islam before the other, and this happens before the wedding night and consummation of marriage: The marriage contract is over.

But the question is what happens if one accepts Islam before the other, but the marriage has already been consummated?

The Ulema agree in general that if this happens, the woman enters her waiting period, and if the other spouse accepts Islam during this time before the end of the waiting period, their contract remains valid.

But if one of them delays, until after the waiting period has elapsed, then they must be separated.

This is the same whether the first to accept Islam was the husband, or the first was the wife.

The Ulema say this is the basic rule of thumb regarding when one of the spouses accepts Islam before the other.

And this is a reply to those who say that as soon as one of the spouses accepts Islam, the marriage contract is nullified immediately. And this is completely rejected.

The Ulema mention that Abu Sufyan accepted Islam when the Muslims liberated Makkah, and he saw their fires lit around the city. He went out to the liberating

army and Abbas brought him to the Prophet alayhi asalam, and he accepted Islam. And his wife Hind remained on her Shirk. When he went back to her and told her he became Muslim, she grabbed his beard and said, "Kill this misguided shaikh!"

Then after a few days, she accepted Islam, and they remained together on their original marriage contract.

And the daughter of Mughira ibn Shu'bah, who was married to Safwan bin Umayya , she accepted Islam the day of liberation of Makkah, and he fled from Islam.

She followed him, and got a promise of safety from the Prophet alayhi asalam, and they agreed that he will be offered Islam, and if he rejected he would be given two months to flee to wherever he would like.

When he came to the Messenger of Allah, alayhi as salam, and he called out: "O Muhammad, I received your messenger and offer of safety. He said that if I came to you, you would explain Islam to me, and if I did not accept you would give me two months to travel far away."

The Prophet alayhi as salam said, "Come down from your mount."

He said, "I shall not come down until you explain Islam to me."

The Prophet said, "Come down O Aba Wahab (Safwan), and if you are not pleased, I will give you safety for *four* months."

He came down, and the Messenger went to Hunayan, and Safwan followed him, while remaining on his original religion.

So Safwan remained with the Prophet alayhi asalam during the battle of Hunayan, and then went with him to Ta'if, then he came back from Ta'if and Hunayan, and he accepted Islam.

After this, the Prophet alayhi as salam returned his wife to him, and he did not separate between them.

Imam Malik narrated that this period between his Islam and his wife's Islam was approximately one month.

So we see from this that accepting Islam in and of itself does not abrogate the marriage contract, but there is a period of waiting, which the ulema state is the 'iddah of the woman.

And Imam Malik narrates, like Bukhari, about Ikrimah bin Abi Jahl. He fled to Yemen, and his wife obtained a pact of safety for him. She caught up with him near the ocean, or while he was getting on a ship near the port of Jeddah.

He heard someone say on the ship, everyone be sincere to Allah. There is a storm coming. The storm became strong, and the man said, "Do not ask by Laat and Uzza, for none can save us except Allah."

Ikrimah said, if none can save us except Allah on the ocean, then likewise on land. By Allah, if Allah saves us from this storm, I will go to Muhammad and place my right hand in his, and I will find him generous.

In a narration, his wife came to him and said, the Messenger has granted you safety.

When they came to the Messenger of Allah alayhi salam, Ikrimah gave allegiance to the Prophet alayhi as salam and he was granted safety and he was allowed to stay with his wife.

See how much time passed, from the time Ikrimah left Makkah, went to the ocean, and then his wife caught up with him, and brought him back to the Prophet alayhi as salam and she was Muslim and he was Mushrik, and the Prophet alayhi as salam did not separate between them.

The scholars say the reason in both of these cases that the Prophet alayhi as salam did not separate between the two is because the husband accepted Islam before the 'Iddah (waiting period of the wife) expired.

And this is a foundational rule amongst the scholars.

But if we come to the story of Zainab, daughter of the Prophet alayhi as salam, and we have these two ahadith in front of us, which differ, one affirming a new contract and one negating it.

We know that Zainab accepted Islam along with her sisters as soon as the Prophet alayhi as salam received his mission.

But Ibn ul Qayyim mentions that the time between Zainab's Islam and Abul 'Aas was more than 18 years.

Since she accepted Islam 13 years before hijra, and he accepted Islam at Hdaybiyya which is 6 years after Hijra, but he accepted Islam before Hdaybiyya by a small amount.

And those who said that the distance between their Islam is six years is incorrect, because that is from the time of Hijra to his Islam.

Abul Aas fought against the Muslims in Badr.

Zainab was Muslim, and he remained with Zainab in Makkah, until he came out for Badr and was captured as a prisoner of the Muslims.

It was 15 years after her Islam, and he was on his people's religion.

Zainab sent a pendant to ransom al 'Aas that was given to her by Khadija, her mother. And 'Aas was the nephew of Khadija.

Zainab was married to her cousin.

She felt bad for her cousin and sent this necklace, and when the Prophet alayhi as salam saw it, he cried. He said, if you want, take back her necklace and what is with it, and he let al 'Aas go.

So Zainab, after becoming Muslim, remained in the house of al-'Aas .

When al-'Aas was given his freedom, he said send Zainab to me. And he sent someone with al-'Aas to bring Zainab back.

She came to the Prophet alayhi asalam and the Prophet did not mention anything about her marriage.

Until 'Aas came a second time to Madina do business.

And he was captured again along with the rest of his caravan.

He managed to escape and visit Zainab one night, without the Prophet knowing. In the morning, the Prophet found out, and he said I did know about it.

Then he said to her, "Do not let him come near." So they were still tied in marriage but the marriage was put on hold.

Al-Aas returned to Makkah, and gave all the merchants what he owed them. Then he said, "I bear witness that La illaha illa Allah, Muhmmadur rasoolullah."

They said, why did not you say that when you were in Madina as a prisoner?

He said, I did not want you to think I became Muslim to usurp your wealth.

Now I have returned to you what I owe, and I am announcing my Islam.

This was in the year of Hdaybiyya. And this was after the verse of Surah Mumtahina was revealed regarding the believing women who migrate to the Prophet alayhi asalam (If you know they are believers then do not return them the Kuffar, the women are not permissible for them, and they are not permissible for the women.)

When this Surah was revealed, it clarified what was mentioned in the treaty of Hdaybiyya about returning the Muslims migrants back to the Kuffar, that it does not include women.

When this verse was revealed, the Prophet alayhi as salam asked Zainab to begin her iddah (waiting period after dissolution of marriage).

After this, Abu al Aas returned to Madina before the Iddah was over.

This is a brief overview of the story.

Ibn Abdul Barr says that if we understand the story this way, we have no issues and we can understand why they came together after so many years.

But when we come to the views of the Ulema regarding the hadith of Zainab and her husband, there are two positions.

One which agrees with the narration of Amr bin Shuaib, which says that the Prophet performed a new contract between them, and in this case there is no room for discourse. We do not even consider the view that perhaps she was pregnant and her waiting period was prolonged, there is no need for this.

We also have a view that differentiates between the wife accepting Islam first or the husband. If the husband accepts Islam first, he can keep the wife as long as she accepts Islam during her waiting period.

And if the wife accepts first, as Ibn Qayyim said, then if the husband accepts Islam during the waiting period, they remain together. But even if the husband accepts Islam after the waiting period is over, then in this case the wife is given the choice. She is free to remarry after the waiting period is over, or she can voluntarily wait for him, after the waiting period, and if he comes to Islam, she can still return to him.

And Ibn al-Qayyim's view is strengthened what was that when Zainab came to Madina, Umar proposed to her. She said, Abul Aas, as you know his status, and good companionship, and his relation to her. And he was well known for his bravery, generosity, nobility, lineage, family, etc. So she said, "If you would only wait for him."

This makes it clear that waiting for the husband to accept Islam was from her right. She waited, whether her Iddah finished or not.

Ibn Abdul Barr hold another view in his book at-Tamheed which states that as for the hadith of Ibn Abbas that says there was not new marriage contract: it is mansookh and not acted upon. And that the hadith of 'Amr which states they reunited with a new contract is what is more correct, since it is in accordance with the basis of marriage.

However the best answer to this hadith as was mentioned by Ibn Shihaab is:

Either the Prophet alayhi as salam allowed Zainab to rejoin Abul Aas before the rulings of Iddah (waiting period) were revealed.

Or that the verses prohibiting marriage to Mushriks came down in Madina and Abdul Aas accepted Islam before Zainab's waiting period was over, so the

general rule with Mushrik spouse accepting Islam is that they can reunite during this period.

Or we can apply the hadith of 'Amr bin Shuaib and agree that there was a new marriage contract.

And with either of these solutions we are able to understand the hadith and remove the difficulties surrounding them.

And Allah knows best.

End of Class 24