

Woman and Her Social Independence

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Freedom in determining one's future

A young girl came before the holy Prophet perplexed and anxious and exclaimed:

"O Messenger of Allah. . . From the hand of this father..."

"But what has your father done to you" the Prophet asked.

"He has a nephew" she replied "and he has given me in marriage to him before consulting me in the matter".

"Now that he has done it " said the Prophet "you should not oppose it. Agree to it and be your cousin's wife."

"O Messenger of Allah! I do not like my cousin. How can I be the wife of a man whom I do not like."

"If you do not like him that is an end to the matter. You have full authority. Go and make the choice of man whom you would like to marry."

"By chance" the girl finally admitted "I very much like my cousin and do not like any other person but because my father did this thing without asking my consent I have purposely come to put questions on this matter and to get your replies and hear this decision from you and so inform all women that henceforth fathers have no right to take a decision on their own and give their daughter in marriage to anyone they like."

The great fuqaha' (Islamic law-scholars) like Shahid ath-thani [1] in Masalik and the writer of Jawahiru'l-Kalam [2] have narrated this hadith through non-Shi'ah chains of transmission. In pre-Islamic days the Arabs as well as non-Arabs considered fathers to have full authority over their daughters their sisters and in certain cases even over their mothers and in the choice of husbands for them they did not believe that these women should make their own decisions and having a choice in the matter.

It was the sole authority and function of the father or brother or if there was no father or brother of their uncle to give them in marriage to whomever they liked.

This right was practiced to such an extent that fathers assumed for themselves this right in respect of a girl still unborn and when she had been born and brought up the man to whom she .had been married had the right to take the girl away for himself

Marrying a woman before she is born:

One day during the last pilgrimage which the Prophet performed when he was on a horseback with a whip in his hand a man come across him and said he had a complaint to make. The Prophet asked what the complaint was.

"Many years ago" he said "during the jahiliyyah (the pre-Islamic period) I and Tariq ibn Marqa' had taken part in a battle. During the skirmish Tariq was badly in need of a spear and he cried: 'Is there any person who can spare me his spear and accept remuneration for it?' I stepped forward and asked what remuneration he would give.

He said 'I give my word that the first daughter born to me shall be brought up for you.' I accepted the offer and handed over my spear to him. The matter was thus closed and many years elapsed. At last I recollected the pledge and discovered that a daughter had been born to Tariq and that she was of age and that he had her in his house. I went to him reminded him of the events and demanded the settlement of the debt. But Tariq went back on his pledge and broke his word of honour and wanted to start asking for mahr (dower). Now I have come to you to know whether right is with me or with him.

"What is the age of the girl?" The Prophet inquired.

"She is grown up and white hairs have appeared in her head."

"According to what you ask me neither you nor Tariq is in the right. Go back and look after your own affairs and leave the poor girl to look after herself."

The man was astonished to hear this. For a moment he was absorbed in wondering what sort of a judgement it was. Was the father not in full authority regarding his daughter? If he should pay the dower to the father of the girl and if he were willingly voluntarily to hand over the girl to him was that also wrong?

The Prophet seeing him astonished and perplexed understood his state of mind and said: "You should be sure that in the way that I have pointed out neither you nor your friend Tariq will be sinners

Exchange of daughters

'Shighar' marriage was another manifestation of the absolute authority of fathers in respect of their daughters.

Shighar marriage meant the exchange of daughters. If two persons had two unmarried grownup daughters they used to exchange them so that the dower of one daughter would account for the dower of the other girl. Thus the daughter of one man was to go over to the father of the other daughter and vice versa. Islam annulled this custom also.

The Holy Prophet gave az-Zahra his daughter full freedom in choosing a husband: The Holy Prophet himself gave away several daughters in marriage. He never deprived them of

their right to choose their husbands on the occasion when 'Ali ibn Abi Talib (a.s.) presented himself to the Holy Prophet to ask for the hand of Zahra (a.s.) the Holy Prophet said 'Several persons have come to me to ask the hand of az-Zahra (a.s.) but by the displeasure of her countenance she has refused them. Now I shall inform her of your request.'

The Holy Prophet went to his daughter and put the matter before her az- Zahra did not turn her face away in disapproval this time and by keeping silent and undisturbed expressed her consent. The Holy Prophet came away from az-Zahra reciting the takbir (Allahu Akbar Allah is

Great). The Islamic movement in favour of women was entirely independence: Islam did the greatest service to the female sex and not only by depriving fathers of their absolute authority. It gave complete freedom; it gave individuality an independence of thought and opinion and formally acknowledged their natural rights. However the steps that Islam took in connection with the rights of women are without doubt basically different in two ways from what is going on in the west and among those who imitate the west.

Firstly in the area of the psychologies of man and woman Islam has accomplished a miracle.

We shall discuss this matter in future articles and shall give clear examples. The second difference is that despite the fact that Islam acquainted woman with her human rights gave her individuality freedom and independence it never induced her to revolt and mutiny against or be cynical towards the male sex.

The Islamic women's movement was a "white" movement untinged with black red blue or purple.[3] Daughters' respect for their fathers and wives' respect for their husbands was not done away with. The foundations of family life were not wrecked. It did not make women despise having husbands being mothers and bringing up children.

Islam did not provide the means for social gatherings where bachelors and women-chasers go to hunt out their victims free of cost. Islam did not allow wives to leave the sides of their husbands and daughters the benevolent protection of their father and mothers to be handed over to men of title and wealthy persons.

It did nothing to cause one of weeping and wailing to rise to the heavens crying 'Oh woe the sacred law of the family has been shattered reliance on the father has disappeared; in the midst of all this generation what can we do?' What can we do when there is so much infanticide and abortion? When there are forty illegitimate births in every hundred? Illegitimate children with unknown fathers whose mothers since they did not give birth to them in the loving home of a father have no strong feelings towards them and them over to a social organization and then never inquire further about them.

In our country we are in need of a women's movement but we need a pure Islamic movement

and not a dark and gloomy European Movement.

We are in need of a woman's movement in which young lustful men are prevented from taking part; a movement which should truly spring from the great teachings of Islam and not something in which in the name of amending the Civil Law the certain laws of Islam are made the victim of fancies and capricious desires; a movement which should be based upon a deep rational investigation so that it may make clear for all societies who take upon themselves the name of Islam to what extent they are putting into practice the teachings of Islam.

If with the help of Allah we succeed in continuing this series of articles when we have come to an end of all the topics necessary to the discussion itself we shall start writing on the subject of an Islamic women's movement then see that they can establish a movement which will be new acceptable to the whole world and reasonable and which will have for its fountain-head its own independent philosophy of fourteen centuries without having in extent a begging hand .towards the western world

Permission of fathers:

The question under consideration on the authority of fathers over daughters is whether the permission of the father is needed in the marriage of girl who marries for the first time. According to Islam there are certain things that are certain. Both the son and the daughter as far as economics is concerned are independent. The property of a son and a daughter should be put at their disposal if they have reached puberty are in full possession of mind and are in addition mature that is when from a social point of view they have that degree of mental maturity which allows them to personally safeguard their property. The father mother husband brother or anybody else has no right to supervise or interfere.

There is another matter which is considered completely certain in connection with marriage. Sons when they have reached puberty and are fully in possession of mind and mature are free to make their own choice and no-one has a right to interfere. But in case of daughters there is a slight difference. If a daughter was once married and is at present a widow nobody has a right to interfere in her affairs and she is like a son. But if she is virgin and is going to enter into a marriage contract with a man for the first time what is the situation?

In so far as the father does not have absolute authority over her and cannot give her in marriage to anybody he likes without the daughter's desire and consent there is no dispute. We saw that the Prophet in reply to the girl whose father had married her without her knowledge and without her consent clearly ordained that in case she did not wish she might marry someone else. There is a difference of opinions among the fuqaha' (Islamic law scholars) on the point whether an un married girl has no right to marry without obtaining the

approval of her father or whether the approval of the father is in no way a requisite for a legal marriage.

However there is another thing which is also undisputed and quite certain that if the father refrains from giving his approval for no reasonable cause his right is forfeited and there is unanimity among all the fuqaha' of Islam that the daughter then has complete freedom in choosing her husband.

As mentioned before there is difference of opinion as to whether the approval of the father is a necessary condition in the marriage of a daughter and probably the majority of fuqaha' especially the fuqaha' of recent times are of the opinion that the approval of father is not a necessary condition. However there is a group of fuqaha' who consider it a necessary condition. Our Civil Law has followed that section of the fuqaha' who base their precepts on the precondition and adopt the safer side.

Because the subject is not something undisputed in Islam we shall not discuss it. But from the social point of view we consider it necessary to deal with. Moreover my own opinion is that the Civil Law has taken up the right course of action.

A man is a slave of his passions and a woman is a captive of her lovingness: The philosophy behind the fact that a virgin girl must not or at least should not marry a man without the agreement of her father is not because a girl is considered to be deficient in some respect or is counted as inferior to a man as regards social maturity. If it were so what could be the difference between a widow and a virgin by which a widow aged sixteen year is not in need of the agreement of her father while a virgin aged eighteen years is according to this opinion?

Furthermore if in the view of Islam women were considered incapable of managing their own affairs why should Islam acknowledge the freedom of a grown up woman past puberty to manage her own economic affairs and accept transactions involving say hundreds of millions under- taken independently of the agreement of her father brother or husband? There is some other philosophy behind this matter apart from the aspect of the reasons of fiqh (Islamic law). One cannot afford to ignore this philosophy and for that those who drew up the civil Law deserve a tribute.

This matter has no connection with any deficiency or lack of intellectual or mental development. It is related to an aspect of male and female psychology. It relates specifically to the predatory side of man's character on the one hand and to woman's trust in the loyalty and sincerity of man.

Man is a slave of his basic urges and woman is a captive of her love. What cause man to

stumble and lose his footing is his basic motivational urge? According to psychologists woman has more patience and endurance in the control of her passions. However that which imbalances woman and enslaves her is the sweet voice of affection sincerity fidelity and love from man. It is here that she is trusting.

A woman as long as she is a virgin and has not come into direct touch with man very readily believes in the soft whisperings of his affections.

I do not know whether my readers read the views of Professor Reek (?) the American psychologist in issue No.90 of Zan-e ruz magazine under the title "The world is not the same for men and women" or not. He says that the best sentence a man can say to a woman is: "my dear: I love you" and he also says "It is happiness for a woman; I mean to win the heart of a man and maintain it for her whole life."

The Prophet (s.a.w.a.) the divine psychologist clearly stated this truth fourteen centuries ago

He said "A woman will never let go from her hearts the words of a man to her: 'I love you ' " Predatory males always make use of this sensibility of women. The trap of "My dear: I am dying from love of you" is the traps for hunting down girls who have no experience of man. Recently the story of a woman Afsar by name who attempted to commit suicide and a man named Jawad who deceived her received much publicity and their case reached the law courts. This man employed the above-mentioned formula to deceive Afsar and Afsar according to Zan-e ruz magazine said:

Though I did not speak with him my heart wanted to look at him every day and every hour." "I did not fall in love with him but with an affection that cried out I had a psychological need for him. All women are like this; before they fall in love they have an affection for the lover. For all girls and women after they find a lover love comes into existence. I was exception to this rule."

What we see here is a woman who was a widow and had had experience. Woe befall inexperienced girls!

That is why it is necessary for a girl who is "inexperienced" with men to have the agreement of her father who knows the sentiments of men better and who with a few qualifications wishes good and happiness for his daughter.

The law has not in any way humiliated women in this matter. Rather it has extended the hand of protection over them. It would not be wholly illogical if sons were to protest as to why the law did not make it binding upon them also to get the agreement of their fathers or mothers and complain about daughters being at an advantage in having to get the agreement of their fathers.

I wonder how people who are daily confronted by the stories of Buyuk Zohreh Adil and Nasrin who see and hear them can advise their daughters to rebel against their guardians and not take any notice of them.

Such actions in my opinion are a sort of contemporary conspiracy between the persons who claim sympathy with women and those who hunt and chase women. The former prepare the prey make the arrows ready and then beat the victims towards the latter.

The author of the forty proposals writes in issue No.88 of Zan-e ruz magazine: "Article 1043 is contrary to and deficient in comparison with every legal article in respect of puberty and mental maturity. It is also contrary to the fundamental of freedom for human beings and the charter of the United Nations".

It seems that the writer's conception is that the purport of the above-mentioned Article is that fathers have the authority to marry their daughters according to their own free will to anybody they like or that they have the right to prevent the marriage of their daughters without any reasonable cause.

What is the harm and how is it consistent with fundamental freedom for human beings if the choice of marriage is in the hands of the girls and if we consider the agreement of fathers a condition of the marriage being properly concluded all this with the condition that fathers have no malicious intention and are not particularly tactless in withholding their approval? It is a precautionary step and a vigilance which the law has provided to safeguard the rights of women who have had no experience of men and arises from a sort of misgiving about man's good nature. Our author writes:

"Our law-giver considers a girl of thirteen years capable of marriage who she is mentally mature enough to understand the meaning of being a wife or having a husband a creature without the competence to buy or sell a few kilos of vegetables and expects her to make the choice of someone as her partner for her whole life. However our law does not allow a girl of twenty-five or forty who has an education and has passed through university and has reached a high standard of learning to marry of her own accord without the permission and approval of her common illiterate father or paternal grand father.

Firstly where exactly is it that the law can be taken advantage so that a girl of thirteen can marry without the permission of her father and a girl aged twenty-five or forty who has passed through university cannot do so? Secondly the condition of having the father's permission is within certain limits and originates in fatherly affection and an understanding of the feelings of men towards women; and in case any father withholds his approval for no good reason he

forfeits his right.

Thirdly I cannot imagine that a judge has yet been found who claimed that according to the Civil Law rational and intellectual maturity is no condition in marriage and that a thirteen year-old girl who according to the writer does not understand the meaning of marriage and the

choice of a husband may marry. The Civil Law in Article 211 states:

“for the parties to the contract to be considered competent they must be of age of sound mind and mentally mature”. Although in the above article there occurs the phrase ‘the parties to the contract’ and the section concerning marriage is not the section concerning contracts because this matter is mentioned under a general rubric (contracts transactions and obligations) beginning from Article 181 the experts in the Civil law have take it to mean ‘general competence’ for the conclusion of all agreements.

In all old marriage contracts the name of the man was preceded by the expression ‘adult mentally sound and mature’ and the name of the woman was likewise preceded by the same words in their feminine form. How could it have been possible for the composers of the Civil

Law to have ignored this salient point.

The composers of the Civil Law did not imagine that the process of intellectual decline had reached to such a point that in spite of the fact that they indicated most clearly the matter of ‘general competence’ they should once again have to especially mention these conditions in the chapter marriage.

One of the commentators on the Civil Law Dr. Sayyid ‘Ali Shaygan considers that there is a contradiction between article 1064 which says “the one who concludes a contract must be of adult age of sound mind and must have intention” which he thinks concerns a couple to be married and explains their competence for marriage but does not mention their mental maturity and article 211 which mentions general competence. He then proceeds to his commentary. Now article 1064 concerns the person who concludes the contract and such a person is not required to be of mature mind”.

What can be complained about in this connection is the behavior of the Iranian people and not the Civil Law of the land nor the law of Islam. Amongst our men most fathers still consider themselves to have absolute authority just like the fathers of the jahliyyah (the pre-Islamic period). They imagine that girl’s expressing herself in the matter of the choice of her husband her partner for life and the father of her future children is an act of immodesty and against decorum. They pay no attention to the intellectual maturity of their daughters and admitted prerequisite according to Islamic commandments. There are very many marriages concluded before the girls become of mature mind and in the view of Islamic law these are null and void.

Those who solemnize marriages do not inquire into and do not request full information regarding the intellectual maturity of the girls and they consider the attainment of puberty by a girl as a sufficient requirement although we know of many stories of great 'ulama' concerning their examination of the intellectual and mental maturity of girls. Some of the ulama have required the religious maturity of the girl as a condition. They would only solemnize the marriage of those girls who could explain with reasoning the basic principles of Islam. Unfortunately most guardians and solemnizers of marriages do not observe these considerations.

People like the author of the forty proposals do not like to criticize the conduct of those persons who break the law. They prefer to put all the blame on the Civil Law and undermine the faith of people in the Civil Law which is rooted in the Islamic laws.

There is one objection which in my view can be made against the Civil law in respect of Article 1042.

This Article reads:

"After completing her fifteenth year a girl may still not marry without the permission of her guardian until she has completed eighteen years"

According to this Article a girl between fifteen and eighteen years of age although she may be a widow cannot marry without the permission of her guardian. However neither according to the Shi'ite jurisprudence nor on the basis of reason should a woman who fulfils the conditions of puberty and mental maturity and who has once before been married need to get the approval of her guardian.

Notes:

[1] Zaynu'd-Din ibn Ali ibn Ahmad al Amili famous as ash-Shahid ath-Thani (the Second Martyr) (911 /1505 – 966/1559). He was killed by emissaries of the Ottoman Sultan of the time who had been sent to summon him to the ottoman court in Istanbul. His Masalik is a commentary on ash Sharayi'u'l-Islam' compendium of rulings in jurisprudence by the 7th /13th century jurisconsult Jafar ibn al Hasan ibn Yahya al-Hilli better known as Abu'l Qasim al-Mohaqqiq al-Hilli.

[2] Muhammad Hasan an-Najafi (1192/1778 – 1266/1850) one of the greatest jurisconsults of the last two centuries Jawahiru'l Kalam is a vast commentary (6 large quarto vols) on the same Sharayi' by al-Mohaqqiq al-Hilli as is Masalik

[3] In other words the movement was a pure movement based on the fundamental nature of woman and not allied to some particular man-made ideology

