



# **Table of Contents**

Course objectives3	
The Fiqh of Marriage4	
Introduction to marriage5	
The rulings of marriage7	
Choosing the right spouse8	
Choosing a wife8	
Choosing a husband11	
Making the proposal12	
Looking at the prospective bride15	
Conditions that must be met before making a proposal16	
Components of a Marriage contract	
1. Bride and Groom	
2. Statement of offer and acceptance23	
Conditions in the contract of marriage24	
3. The <i>Walī</i> 28	
4. Witnesses	
5. The <i>Mahr</i>	
Recommendations during and after the nikāḥ34	
Intimacy36	
The Fiqh of Divorce37	
Definitions and Legality of divorce	
The nature of divorce41	
The ruling of divorce44	
Pillars of divorce45	
1. The one who performs the divorce45	
2. The divorced woman47	
<i>Bid<sup>c</sup>ah</i> divorce48	
Are <i>bid<sup>c</sup>ah</i> divorces binding?49	
3. The Words of divorce50	
Types of divorce52	
The ciddah53	
Khula <sup>c</sup> 58	
Rights of custody61	
Glossary64	
Appendices65	
The various different types of <i>ciddah</i> 65	
10 Ways to Avoid Marrying the Wrong Person!67	
Win His Heart: A Psychological Approach for Women73	
How to Score BIG with Women: A Psychological and Islamic approach	
for Men80	





# **Course objectives**

- 1. Learn all about the *fiqh* of marriage.
- 2. Learn in detail the rulings of divorce and its intricacies.
- 3. Learn all about the *'iddah* and its rulings.
- 4. Clarify a number of misunderstandings regarding marriage and divorce laws in Islam.
- 5. Have a good idea about the rulings regarding some of the most important modern issues that plague our society in the matters of marriage and divorce.
- 6. Appreciate the comprehensive nature of our Sharī<sup>c</sup>ah.







# The Figh of Marriage





# **Introduction to marriage**

Linguistic definition	النكاح: الوطء وتي ل التازي ج Nikāḥ linguistically means 'sexual intercourse' and also 'marriage contract'.
Legal definition	عى دفييد حل المنتماعك من العلين في الأخر في الوجه
	المصروع
	A contract entailing permissibility of mutual physical
	enjoyment.

#### The wisdom behind marriage

- 1. It fulfils the physical desire that is in the very nature of men and women. This physical desire is natural and the fulfilment of it is considered a human and fundamental need by the Sharī<sup>c</sup>ah.
- 2. It is the means to preserve mankind.
- 3. It fulfils the need of human beings for comfort and mercy from each other.
- 4. It ensures that every child in each generation has the opportunity to be brought up by a mother and a father.
- 5. It fulfils the desire of the *ummah* to increase in number.
- 6. Increase of *īmān*.





# **Permissibility of Marriage**

Qur'an	﴿ فَٱنكِحُواْ مَا طَابَ لَكُم مِّنَ ٱلنِّسَآءِ مَثَنَىٰ وَثُلَثَ وَرُبَعَ ۖ ﴾ So marry women of your choice: two, three or four. (Sūrat al-Nisā°, 4:3)
Sunnah	يا مثار الشاب من المتاطاع فالهم الهاء قليت زوج فاله أغضالهمار، وأحمال الفارج، ومن المحين طع الهماه أغضالهمار، وأحمال المحادث وجاء المحادث المحادث والمحادث المحادث ال
Ijmā <sup>c</sup>	$Ijm\bar{a}^c$ is reported by Imām Ibn Qudāmah (پرځ مه الله) in his $Kit\bar{a}b$ $al\text{-}Mughn\bar{\iota}$ (6/446).





# The rulings of marriage

According to the vast majority of the scholars of Islam and of the four *madhhabs*, may Allah have mercy on them all, the basic ruling regarding marriage is that it is recommended. Shaykh al-Islām Ibn Taymiyyah (عدى عنه said: 'To turn away from having a family and children is not from that which Allah and His Messenger (ﷺ) loves, nor is it from the religion of the Prophets. Allah says:

And we sent Messengers from before you and gave them wives and offspring's.'  $[(S\bar{u}rat\ al-Ra^cd, 3:38)]$ 

(Ibn Taymiyyah, *Al-Ikhtiyārāt al-fiqhiyyah*, p. 200)

However, frequently, the scholars also mention the ruling of marriage depending on the situation of an individual. These rulings can be any of the 5 rulings of  $ahk\bar{a}m - w\bar{a}jib$ ,  $har\bar{a}m$ ,  $mand\bar{u}b$ ,  $makr\bar{u}h$  and  $mub\bar{a}h$ .

#### The various aḥkām with regards to marriage:

Obligatory (wājib)	According to most of the scholars, marriage becomes obligatory when a person fears $zin\bar{a}$ for himself or herself. (Al-Mughnī, 6/446)
Recommended (mandūb)	Marriage is recommended for a person who has the means.  This is the basic rule according to majority of the scholars.
Disliked (makrūh)	<ul> <li>Marriage is disliked if the man or woman <u>fears</u> that he/she:</li> <li>Cannot physically satisfy the partner.</li> <li>Cannot fulfil their obligations to the partner.</li> </ul>
Prohibited (ḥarām)	<ul> <li>Marriage is prohibited upon either or both the man and woman if:</li> <li>He/ she, with certainty, cannot physically satisfy the partner, unless the partner accepts it.</li> <li>He/she, with certainty, cannot fulfil certain marital obligations to the partner.</li> <li>There is a legal reason preventing them from the marriage.</li> </ul>



# The A-Z of J

# Choosing the right spouse

The Prophet (ﷺ) said:

'Choose carefully for your progeny and marry the suitable and give in marriage to them.' (Ibn Mājah (1/633) and others; *ḥasan* according to al-Albānī)

#### **Choosing a wife**

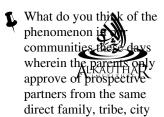
The Sharī<sup>c</sup>ah advises a man to search for a woman who:

is righteous	The Sharī <sup>c</sup> ah advises the man to seek the woman who possesses
	higher levels of righteousness
	The Prophet (囊) said:
	سن الله و المراة ل بع الله المل الم الله والمحل الماء والمون وا
	فاخربذات للهن تبديداك
	A woman is married for four reasons: her wealth, her
	lineage, her beauty and her religion. So choose the one with religion, may your hands be rubbed in dust! (Reported by al-Bukhārī, no. 5090 and Muslim, 1466)
is beautiful	This is understood from the recommendation of the Sharī <sup>c</sup> ah to
(attractive to	look at the prospective bride before getting married. ( $Ihy\bar{a}^{\circ}$
him)	<sup>c</sup> Ulūm al-Dīn, 2/35).
	Ibn Ḥajr (عرج مه الله) says: 'We understand from the (above) hadīth, a recommendation to marry beautiful women except in the case wherein there is a beautiful woman that is not a righteous woman vs. a righteous woman that is not beautiful. Indeed, if they are similar in religion, then the beautiful one is more worthy of marriage!' ( $Fath \ al-B\bar{a}r\bar{\imath}$ , 9/134).





is a virgin	This is because a virgin is more attached to the husband, easier to please, kinder in her approach and purer for her husband. ( <i>Fatḥ al-Bārī</i> , 9/123)  However, in the following situations, it may be better to marry someone who has been married previously:  a. If she possesses righteousness.  b. Being in need of an older woman, such as when Jābir (�) married an older woman to look after his sisters. (Al-Bukhārī)  c. She does not have anyone to look after her.
is fertile	This is known by surveying the women in her family and seeing how many children they have or one being known to be from a group that is generally very fertile. (Al-Mughnī, 6/566)  קופעל בין לייני בין לייני בין לייני שלייני של
is of good lineage	This is recommended in Islam from the <code>hadīth</code> of the four reasons why a woman is married for ( <code>Kashshāf al-Qana³</code> , 3/4). So, it is recommended to marry a woman possessing good lineage; however, if she does not practise the religion well, then the one that does practise the religion well but does not have a good lineage is given precedence. ( <code>Fath al-Bārī</code> , 9/135)





is good with	The Prophet (紫) said:
children and	خير رنس آءِ رائبن لببل س آل حرنس آءقري ح: أجن اه في ي ولده
sensible and	فىيىصغره، وأرعاه فيى زوج طى ذائىيده
careful with	The best of women to ever ride a camel [i.e. an expression
money and	meaning - the best of all women] are the women of
wealth	Quraysh: she is most protecting and caring for her children
	in their childhood and the most protective over the wealth
	of her husband. (Al-Bukhārī, 9/125)

**Note:** The Shāfi<sup>c</sup>ī and Ḥanbalī *madhhabs*, may Allah have mercy on all the scholars of Islam, recommend the marrying of women distant in relation or not related as opposed to someone closely related. There is no authentic Ḥadīth for evidence on this matter other than logical reasoning of scholars. The stronger opinion is that this is a matter that needs to be judged individually.





## **Choosing a husband**

The Sharī<sup>c</sup>ah has laid down certain guidelines in this matter:

- The groom should be upright in religion and character as the Prophet (ﷺ) said:

If there comes to you the one pleasing to you in his religion and character then marry to him, if you don't there will be a manifest trial on earth and great corruption. (al-Tirmidhī, 1085)

Cuitaria immantant ta vara	1 40 10
Criteria important to you	1 to 10



# **Making the proposal**

Linguistic definition	للخطبة: طي ركار جل إمر أمَّل أواج The term 'khiṭbah' in Arabic refers to a man seeking a woman for marriage
Legal definition	التماس ل خاط ر النائف اح من جهة للمخطوبة A man offering a proposal of marriage to a woman or her family.

How much negative information can a person mention about the other person?

#### Important matters regarding the proposal

- It is recommended to seek advice during the proposal period based on the *ḥadīth* of Fāṭimah bint Qays who asked regarding Mu°āwiyyah b. Abī Sufyān and Abī Jahm who had both proposed to her. The Prophet told her: 'As for Abū Jahm, then his stick does not leave his shoulders and as for Mu°āwiyyah, then he is stingy and does not give money. Rather, marry Usāmah b. Zayd.' (Abī Dāwūd, 6/379–80)
- Imām al-Nawawī said: 'And from them is the consultation during the process of marriage of a person. It is imperative that the one who is consulted not conceal the prospective person's real state. Rather he should mention that which is negative in him with the intention of giving sincere advice.' (*Dalīl al-Faliḥīn* quoting from Imām al-Nawawī, 6/21)
- It is recommended to made <code>istikhārah</code>, just as it is reported that Zaynab (

  made <code>istikhārah</code> before marrying Rasūl Allah (

  () (Sharḥ Ṣaḥāḥ Muslim, 9/227–28)

  Then the following verse came down, at which time the Prophet (

  e) entered upon her without seeking permission:

When Zayd had fulfilled his need from her, we married her to you. (Sūrat al-Aḥzāb, 33:7)



Imām al-Nawawī (الله على said: 'In this (narration of Zaynab's (الله على الله نعاه) istikhārah) is a recommendation to make the istikhārah for anyone who has any matter concerning him, whether the goodness in the matter is clear or not. It may be that she made istikhārah due to her fear that she may fall into some shortcoming in serving him (ﷺ).' (Sharh Ṣaḥāḥ Muslim, 9/228)

# The A-Z of / We Continue of the Figh of Marriage and Divorce

#### The manner of istikhārah is as outlined in the Sunnah:

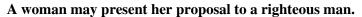
To pray two  $rak^cah$  prayer (according to a narration – from other than the obligatory prayers) then to make the following  $du^c\bar{a}^s$ :

لل هم راي منت خير العبلى مك، ومنتق در العبق در العبق در العبق در العبق در العبق من عرب الله هم إن التن الله هم إن التن الله هم إن التن التعلق م ف الله التن الله هم إن التن التعلق من الله هم إن التن التعلق من الله هم إن التن التعلق من الله هم إن التن الله الله و الله هف الله و مناسي و عاجل أمري و آلجي هن ين الله و مناسي و عاجل أمري و آلجي هف الله و مناسي و عاجل أمري و آلجي هف الله و مناسي و عاجل أمري و آلجي هف الله و مناسي و عاجل أمري و آلجي هف الله و مناسي و عاجل أمري و آلجي هف الله و مناسي عن الله و مناسي و عاجل أمري و آلجي هف الله و الله و

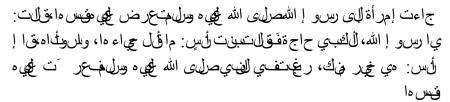
O Allah, I seek Your help in finding the best course of action (in this matter) by invoking Your knowledge; I ask You to empower me, and I beseech Your favour. You alone have the absolute power, while I have no power. You alone know it all, while I do not. You are the One who knows the hidden mysteries. O Allah, if You know this thing (I am embarking on) [here mention your case] is good for me in my religion, worldly life, and my ultimate destiny, then facilitate it for me, and then bless me in my action. If, on the other hand, You know this thing is detrimental for me in my religion, worldly life, and ultimate destiny, turn it away from me, and turn me away from it, and decree what is good for me, wherever it may be, and make me content with it. (Based on the *hadīth* reported by Al-Bukhārī, Abū Dāwūd, al-Nasā°ī and others.)

Is it a condition to see a dream indicating to you the way forward?





A *hadīth* reported by Anas (🍇) states:



A woman came to the Messenger of Allah (ﷺ) presenting herself to him and said: O Messenger of Allah, do you have any need that I can fulfil [T: in marriage]? So the daughter of Anas said: How lowly is her sense of shame! O how demeaning! Anas replied: She is better than you. She desired to marry the Prophet (ﷺ) and presented herself to him. (Al-Bukhārī, see *Fath al-Bārī*, 9/173 and Ibn Mājah, 1/645)

Ibn Ḥajr (الله عنه عنه said: 'In these two reports is an indication as to the permissibility of the woman presenting herself to a man and making a clear proposal to marry him. There is no shame or reproach for her in this. It also shows that the one who had the woman present herself to him may either agree or disagree; however, it is recommended for him to not verbally disagree in front of her. To remain silent is enough of an indication for the woman to understand his response and better mannered than to respond verbally in the negative.' (Fatḥ al-Bārī, 9/175)

Or she could also approach by informing the family of the groom or informing her own family of her interest in him. This is the manner that Khadījah (الله عنه عنه المعاونة) took when proposing to Rasūl Allah (ﷺ).



This is different to the story of another woman who 'gifted' herself to the Prophet (ﷺ) and the Prophet didn't want to marry her. This second report is also in al-Bukhārī, after this report.





#### Looking at the prospective bride

It is recommended for the man to look at the woman and for the woman to look at the man based on the advice of Rasūl Allah (ﷺ) to Mughīrah b. Shu°bah (ﷺ) since it creates interest and is stronger in establishing love and desire between the two. The man can look for a woman with features that he desires and vice versa.

Ibn al-Jawzī (ﷺ) said: 'It is recommended for the one who wants to give his daughter in marriage, to search for a young man who is handsome and manly and not marry her off to an unsightly weakling!' (*Kashshāf al-Qana*°, 3/5)

- It is permissible that the man sees from the woman what is apparent from her, preferably with her knowledge. It is also permissible to look at her without her knowledge, however he should never be alone with her.
- A woman can also see what she wants from the man according to the norms, even though the face may be the most important consideration.

Important questions to ask a potential spounse:
1.
2.
3.
4.
5.
6.

