

Al-Kafa'ah (Equality)

The meaning of "*al-Kafa'ah*", according to those who consider it as consequential in marriage, is that the man be an 'equal' of the woman in certain things. Moreover, they require *kafa'ah* of men only, because it is not something dis-approvable for a man to marry a woman lower in status as against a woman doing the same.

The Hanafi, the Shafi'i and the Hanbali schools concur in requiring *kafa'ah* in religion (Islam), freedom¹ (i.e. in his not being a slave), profession and lineage. These schools differ regarding *kafa'ah* in prosperity and wealth. The Hanafi and the Hanbali schools recognize it, while the Shafi'i school does not.

The Imamiyyah and the Maliki schools do not accept the notion of *kafa'ah* except in religion, in accordance with the following tradition:

إذا جاءكم من ترضون دينه وخلقه فزوجوه إلا تفعلوه تكن فتنة في الأرض وفساد كبير

When someone, whose faith and conduct is acceptable to you, comes to you with a proposal, then marry him. If you don't, it will result in corruption upon the earth and great discord.

In any case, the condition of *kafa'ah* in marriage does not harmonize with the following verse of the Qur'an:

إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ

...Surely the most honorable amongst you in God 's sight is the most pious amongst you...

(49: 13)

The condition of *kafa'ah* contradicts a basic principle of Islam which says:

لا فضل لعربي على عجمي إلا بالتقوى

There is no superiority for an Arab over a non-Arab except on the basis of taqwa (piety).

Also, it is opposed to the practice (sunnah) of the Prophet (s), who ordered Fatimah bint Qays to marry Zayd ibn Usamah and ordered Banu Bayadah to marry Abu Hind, who was a cupper. That is why we see a group of eminent scholars, such as Sufyan al-Thawri, al-Hasan al-Basri, 'al-Karkhi among the Hanafis and Abu Bakr al-Jassas and the followers of these two among the scholars of Iraq' (Ibn 'Abidin, vol. 2, chapter on marriage) disregarding *kafa'ah* as a condition in marriage.

1. By including freedom' as one of the conditions of al-kafa'ah, the Hanafi school contradicts one of its own fundamental principles. This school allows the death penalty of a freeman for murdering a slave and that of a slave for murdering a freeman, whereas the other schools, including the Imamiyyah, have said: A freeman may not be killed for killing a slave, but a slave will be killed for killing a freeman. Apart from this, the Hanafis do not consider it necessary that a guardian, in a contract of marriage, be a freeman, and this is contrary to the opinion of some other schools.

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