

## Marriage

A woman becomes lawful for a man by contracting marriage. There are two kinds of marriages: (i) Permanent marriage and (ii) Fixed time marriage. In a permanent marriage the period of companionship is not fixed and it is for ever. The woman with whom such a marriage is concluded is called *daima* (i.e. a permanent wife). In a fixed time marriage (*Mut'ah*) the period of companionship is fixed, for example, when matrimonial alliance is concluded with a woman for an hour, or a day, or a month, or a year, or more. However, the period fixed for the marriage should not exceed the ordinary lives of the spouses, because in that case the marriage will be treated to be a permanent one. This sort of fixed time marriage is called *mut'ah* or *sigha*.

### Marriage Formula

**2372.** Whether marriage is permanent or fixed time, simply the consent of man and woman is not sufficient for its completion, but it is also necessary that the formula (*Sigha*) of the marriage contract be recited. The formula of marriage contract is pronounced either by the man and the woman themselves or by a person who is nominated by them as their representative to recite it on their behalf.

**2373.** The representative should not necessarily be a man. A woman can also become a representative from the other side to pronounce the marriage formula.

**2374.** So long as the woman and the man are not convinced that their representative has pronounced the formula, they cannot look at each other as *mahram* (like husband and wife) and mere thinking that the representative has pronounced the formula is not sufficient. However, if the representative says that he has pronounced the formula it is enough.

**2375.** If a woman appoints a person her representative so that he may, for example, contract her marriage with a man for ten days but does not specify the day from which the period of ten days should commence the representative can contract her marriage with that man for ten days commencing from any day he likes. However, if their representative knows that the woman intends a particular hour or day he should pronounce the formula according to her intention.

**2376.** One person can act as the representative of the two persons for reciting the formula of permanent or fixed time marriage and it is also permissible that a man may himself become the representative of a woman and contract permanent or fixed time marriage with her. However, the recommended precaution is that two persons should recite the formula of marriage contract.

## The Method Of Pronouncing The Marriage Formula

**2377.** If a woman and a man themselves want to recite the formula of permanent marriage, the woman should say first: *Zawajtuka nafsi alas sidiqil malum* (i.e. I have made myself your wife on the dowry (Mehr) which has already been fixed and then the man should immediately respond thus: *Qabiltut tazwij* (i.e. I accept the alliance). In this way the marriage contract will be in order.

In case a woman and a man appoint other persons to act as their representatives for pronouncing the formula of marriage and if, for example, the name of the man is Ahmad and that of the woman is Farida the representative of the woman should first say: *Zawajtuka muwakilaka Ahmad muwakilati Farida alas sidiqil malum* (i.e. I have given to your client Ahmad in marriage my client Farida on the dowry, which has already been fixed) and thereafter the representative of the man should immediately respond thus: *Qabiltut tazwija li Muwakili Ahmad alaS sidiqil malum* (that is, I accepted this matrimonial alliance for my client Ahmad on the dowry which has already been fixed).

Now the marriage contract is in order. And, on the basis of obligatory precaution, it is necessary that the words uttered by the man should accord with those uttered by the woman, for example, if the woman says: *Zawwajtuka. . .* (i.e. I have made myself your wife) the man should also say: *Qabiltut tazwija. . .* (i.e. I accept the matrimonial alliance).

**2378.** It is permissible for a man and a woman to recite the formula of the fixed time marriage (Mut'ah) after settling the period of marriage and the amount of dowry. Hence, if the "man says: *Zawwajtuka nafsi fil muddatil malumati alal mahril malum* (i.e. I have made myself your wife for the period against the dowry which have already been fixed) and then the man immediately responds thus: *Qabiltu* (i.e. I have accepted), the marriage will be in order.

And the marriage will also be in order if they appoint other persons to act as their representatives. In the first instance the representative of the woman should say to the representative of the man thus: *Matta'tu muwakkilati muwakkilaka fil muddatil malumati alal mahril malum* (i.e. I have given my client to your client in fixed time marriage for the period and against the dowry which have already been fixed), and then the representative of the man should immediately respond thus: *Qabiltut tazwija li muwakkili hakaza* (i.e. I accepted this matrimonial alliance for my client).

## Conditions Of Marriage

**2379.** There are certain conditions for the conclusion of marriage. The same are as mentioned below:

(i) On the basis of precaution the formula of marriage contract should be pronounced in correct Arabic. And if the man and the woman cannot pronounce the formula in correct Arabic they should, if possible, engage, on the basis of obligatory precaution, some one as their representative who can pronounce the formula in correct Arabic. And if this is not possible they can themselves pronounce it in a language other than Arabic, but they must use words which contain the concept of 'Zawwajtu' and 'Qablitu'.

(ii) The man and the woman or their representatives who recite the formula should have the intention of insha (i.e. the object of reciting the formula should be to make the man and the woman as husband and wife respectively). In other words if the man and the woman themselves pronounce the formula the intention of the woman by saying: 'Zawwajtuka nafsi' should be that she makes herself the wife of the man and by saying: 'Qabilitut tazwija' the man accepts her as his wife. And if the representatives of the man and the woman pronounce the formula their intention by saying: 'Zawwajtu' and 'Qablitu' should be that the man and the woman who have appointed them as their representatives should become husband and wife.

(iii) On the basis of precaution the person who pronounces the formula (whether he pronounces it for himself or has been engaged by some other person as his representative) should be adult and sane.

(iv) If the formula is pronounced by the representatives or guardians of the man and the woman they should specify the man and the woman by uttering their names or making signs towards them. Hence, if a person has more than one daughters and he says to a man: Zawwajtuka lhda Banati (i.e. I have made one of my daughters your wife) and the man says: Qabiltu (i.e. I have accepted) the marriage contract is void, because the daughter has not been specified.

(v) The woman and the man should be willing to enter into a matrimonial alliance. In case, however, the woman apparently displays dislike while according permission, but it is known that in her heart of hearts she is willing to the marriage, the marriage is in order.

**2380.** If, while reciting the formula, even one word is pronounced wrongly as a consequence or which its meaning is changed, the marriage contract would be void.

**2381.** If a person does not know Arabic grammar but can read correctly and knows the meanings of each word of the marriage formula and by pronouncing each word he intends what it means, he can pronounce the marriage formula.

**2382.** If a woman is married to man without her consent but they endorse the marriage later, the marriage is in order.

**2383.** If the woman and the man or any one of them is coerced into marrying and they accord permission after the marriage formula has been pronounced, the marriage is in order and it is better that the marriage formula should be repeated.

**2388.** In case a girl who has reached the age of puberty is, virgin and mature (i.e. she can distinguish between what is good or bad for her) wishes to marry, she should, on the basis of obligatory precaution, obtain permission in this behalf from her father or paternal grandfather. It is not, however, necessary for her to obtain such permission from her mother or brother.

## **Defects Which Nullify Marriage**

**2389.** If the husband comes to know, after marriage, that his wife has any one of the following seven defects, he can annul the marriage: (i) Insanity (ii) Leprosy (iii) Leucoderma (iv) Blindness (v) Being a cripple, hence, if a woman is apparently paralysed, it amounts to being a cripple. (vi) Afza i.e. the woman's urinary and menstrual opening or her menstrual opening and rectum become one. (vii) Presence of flesh or a bone in the woman's vagina, which obstructs sexual intercourse.

**2390.** A woman can annul the marriage in the following cases without obtaining a divorce:

- (i) If she comes to know that her husband had been insane before marriage.
- (ii) If the man becomes insane after marriage whether before or after sexual intercourse.
- (iii) If he has no male organ.
- (iv) If his male organ is cut off after marriage, but before sexual intercourse.
- (v) If he is suffering from impotence (incapable of having sexual intercourse) even though he may have contracted that disease after marriage and before sexual union. However, if the husband is incapable of sexual intercourse it is necessary for the woman to approach the religious Head or his representative, who may allow him a grace period of one year, and in case he is not capable even then to have sexual intercourse with that or some other woman, the woman can annul the marriage. And if the male organ of the husband is cut off after sexual intercourse and the woman annuls the marriage, the annulment is ineffective although the recommended precaution is that the husband should divorce her.

**2391.** If a woman comes to know after marriage that the testicles of her husband have been removed and if this fact was concealed from her, she can annul the marriage and even if it was not concealed from her, precaution is that she can annul the marriage.

**2392.** If the woman annuls the marriage on account of the husband being incapable of sexual intercourse the husband should give her half of her dowry (Mehr). However, if the man or the woman annuls the marriage on account of one of the other defects mentioned above and the man has not had

sexual intercourse with the woman nothing is payable by him. In case, however, he has had sexual intercourse with her, he should pay her full dowry.

## Women with Whom Matrimony Is Unlawful or Unlawful

### Matrimony

**2393.** Matrimonial alliance is unlawful with women who are one's mehram, for instance, mother, sister, daughter, paternal aunt, maternal aunt, niece (one's brother's or sister's daughter) and mother-in-law.

**2394.** If a man marries a woman, then her mother, maternal grandmother, paternal grandmother and all the women as the line goes up are his mehram, even though he may not have had sexual intercourse with his wife.

**2395.** If a person marries a woman and has sexual intercourse with her, the daughters and granddaughters (daughters of sons, or of daughters) of the woman and their descendants, as the line goes down, become his mehram and it is immaterial whether they existed at the time of his marriage or were born later.

**2396.** If a man marries a woman, but does not have sexual intercourse with her, the obligatory precaution is that so long as their marriage lasts he should not marry her daughter.

**2391.** The paternal and maternal aunt of a man and the paternal and maternal aunt of his father and the paternal and maternal aunt of his paternal grandfather and the paternal and maternal aunt of his mother and the paternal and maternal aunt of his maternal grandmother as the line goes up, are all his mehram.

**2398.** The husband's father and grandfather as the line goes up are her mehram. Similarly the husband's sons and the grand sons (via. sons of one's sons or of daughters) as the line may go downwards are her mehram and it is immaterial whether they existed at the time of her marriage or were born afterwards.

**2399.** If a man marries a woman (whether the marriage be permanent marriage or fixed time marriage) he cannot marry her sister, so long as their marriage lasts.

**2400.** If a person gives a revocable divorce to his wife in the manner which will be narrated under the orders relating to 'Divorce' he cannot marry her sister during the iddah of irrevocable divorce and as regards the iddah of fixed time marriage the obligatory precaution is that one should not marry his wife's sister during that period.

**2401.** A man cannot marry the niece (brother's or sister's daughter) of his wife without her permission. There is, however, no harm in his marrying her niece without her permission, provided that she grants such permission later.

**2402.** If the wife learns that her husband has married her niece (brother's daughter or sister's daughter)

and keeps quiet and if she does not agree to this marriage later their marriage is void.

**2403.** If before marrying his maternal aunt's daughter a person commits incest (sexual intercourse) with her mother he cannot marry that girl and on the basis of obligatory precaution the same order applies to one's paternal aunt's daughter.

**2404.** If a person marries his paternal aunt's daughter or maternal aunt's daughter and after having sexual intercourse with her commits incest with her mother this thing does not become the cause of their separation. And the same order applies if he commits incest with her mother before having sexual intercourse with her although the recommended precaution is that in these circumstances he should separate from her aunt's daughter by giving her divorce.

**2405.** If a person commits adultery with a woman other than his paternal or maternal aunt, it is better that he should not marry her daughter. Rather, if he marries a woman and commits adultery with her mother before having sexual intercourse with her it is better that he should separate from her, but if he has sexual intercourse with her and thereafter commits adultery with her mother, it is, of course, not necessary for him to get separated from her (aunt's daughter).

**2406.** A Muslim woman cannot marry an infidel and a male Muslim cannot also marry a non Muslim woman except the (People of the Scriptures i.e. Ahle Kitab). However, there is no harm in contracting fixed time marriage with women like Jews and Christians and the recommended precaution is that one should not take them in permanent marriage. There are certain sects like Khawarij, Ghulat and Nawasib who claim to be Muslims, but are considered to be infidels. Muslim men and women cannot, therefore, contract permanent or fixed time marriage with them.

**2407.** If a person commits adultery with a woman, who is in the iddah of her revocable divorce, that woman becomes unlawful for him on the basis of precaution. And if he commits adultery with a woman who is in the iddah of fixed time marriage or irrevocable marriage or in the iddah of death he can marry her afterwards, although the recommended precaution is that he should not marry her.

The meanings of revocable divorce and irrevocable divorce and iddah of fixed time marriage and iddah of death will be explained under the orders relating to 'Divorce'.

**2408.** If a person commits adultery with a woman who does not have a husband and is not in the iddah he can marry her later. However, the obligatory precaution is that he should wait till the woman has her menstrual discharge and should marry her thereafter. And if another person wants to marry that woman this precaution is recommended

**2409.** If a person marries a woman who is in the iddah of another man and if the man and woman know or any one of them knows, that the iddah of the woman has not yet come to an end, and if they know that marrying a woman during her Iddah is unlawful, that woman becomes unlawful for the man for ever, even though after the marriage the man might not have had sexual intercourse with her.

**2410.** If a person marries a woman, who is in the iddah of another man and has sexual intercourse with her, she becomes unlawful for him for ever although he might not have been aware of her being in iddah or might not have been aware that it is not lawful to marry a woman during her iddah.

**2411.** If a person marries a woman knowing that she is already married and that it is unlawful to marry a married woman, he should get separated from her and should not also marry her afterwards. And the same order applies if he does not know that the woman is already married but has had sexual intercourse with her after marriage.

**2412.** If a married woman commits adultery she on the basis of precaution becomes unlawful permanently for the adulterer but does not become unlawful for her husband. And if she does not repent and persists in her action (i.e. continues to commit adultery) it is better that her husband should divorce her, but he should also pay her dowry

**2413.** A woman who has been divorced or a woman who contracted a fixed time marriage and her husband has excused her period of marriage or the period of her marriage has come to an end marries after some time, and then doubts whether or not at the time of second marriage the iddah of her first husband had come to an end, she should ignore her doubt.

**2414.** If a person commits sodomy with a boy and he (the person committing sodomy) is adult, the mother, sister and daughter of the boy become unlawful for him. However, if he suspects that the male organ entered the anus of the boy or doubts whether or not it entered the anus, the said women do not become unlawful for him.

**2415.** If a person marries the mother or sister of a boy and commits sodomy with the boy after the marriage, they do not become unlawful for him, except when the marriage terminates on account of divorce etc. and the person committing sodomy wishes to marry them again. In that event the obligatory precaution is that he should not marry them.

**2416.** If a person who is in the state of ehram (which is one of the acts to be performed in connection with Hajj) marries a woman their marriage is void, and in case he knew that it is unlawful for him to marry in the state of ehram he cannot marry that woman again.

**2417.** If a woman who is in the state of ehram marries a man who is not in the state of ehram, her marriage is unlawful. And if she knew that it is unlawful to marry in the state of ehram it is obligatory on her not to marry that man thereafter.

**2418.** If a man does not perform Tawaf un Nisa (which is one of the acts to be performed in connection with Hajj) his wife and all other women become unlawful for him. Moreover, if a woman does not perform Tawaf un Nisa her husband and all other men become unlawful for her. However, if they (man or woman) perform Tawaf un Nisa later they (i.e. women for men and men for women) become lawful for them.

**2419.** It is unlawful to have sexual intercourse with a girl who has not attained the age of puberty. However, if a man marries a minor girl and has sexual intercourse with her before she completes nine years of her age, what is more apparent is that sexual intercourse with the girl is not unlawful when she attains the age of puberty although he may be suffering from afza (the meaning of afza is been narrated in Article 2389). However, it is better that the man divorces her.

**2420.** A woman who is divorced thrice becomes unlawful for her husband. However, if she marries another man subject to the conditions which will be told under the orders pertaining to 'divorce' her first husband can marry her again after her second husband dies or divorces her and she completes the period of Iddah.

## **Orders Regarding Permanent Marriage**

**2421.** For the woman with whom permanent marriage is contracted precaution lies in this that she should not go out of the house even for petty matters without the permission of her husband though her going out may not infringe the rights of the husband. Moreover, she should surrender herself to him for whatever enjoyment he desires and should not prevent him from sexual intercourse without legal excuse. And so long as she does not go out of the house without excuse, it is obligatory on the husband to provide her food, dress and residence. And in case he does not provide the same, whether he is able to provide them or not, he is indebted to the woman.

**2422.** If the woman does not obey her husband in the matters mentioned in the foregoing Article she is not entitled to share his bed and is sinful and according to a well-known statement she is not entitled even to food, dress and residence. But it is difficult that this order should be effective so long as the woman stays with her husband. Nevertheless, there is no doubt about the fact that her dowry remains secure and does not lapse.

**2423.** Man is not entitled to compel his wife to render household services.

**2424.** A husband is not responsible to bear the expenses of the journey of his wife if they exceed her expenses while she stays at home. However, if the husband himself is inclined to take his wife with him on a journey, he should bear the expenses of her journey.

**2425.** If the husband of a woman is responsible for her expenses and he does not provide her the same, she can take her expenses out of his property without his permission. And in case this is not possible and she is obliged to earn her livelihood, it is not obligatory on her to obey her husband while she earns her livelihood.

**2426.** If a man has two wives and spends one night with one of them it is obligatory on him to spend anyone of four nights with the other as well; except this condition it is not obligatory on a man to stay with his wife. However, it is necessary that he should not totally forsake living with the other woman. And

it is better that out of every four nights a man should spend one night with his permanent wife.

**2427.** It is not permissible for a man to abandon sexual intercourse with his young permanent wife for more than 4 months.

**2428.** If dower is not specified in a permanent marriage the marriage is in order. And if the husband has sexual intercourse with the woman he should pay her dower in accordance with the dower of other woman like her. As regards fixed time marriage, however, if dower is not fixed the marriage is void.

**2424.** If at the time of pronouncing marriage formula for permanent marriage no time is fixed for giving dower, the woman can prevent her husband from having sexual intercourse with her before taking dower, and it is immaterial whether the husband is or is not in a position to pay it. In case, however, she agrees to sexual intercourse before taking dower, and her husband has sexual intercourse with her, she cannot prevent him afterwards from having sexual intercourse without a legal excuse.

## **Mut'ah (Fixed Time Marriage)**

**2430.** Contracting a fixed time marriage with a woman is in order, though it may not be even for the sake of enjoyment.

**2431.** The obligatory precaution is that a husband should not refrain from having sexual intercourse for more than four months with a woman with whom he has contracted fixed time marriage.

**2432.** If a woman with whom fixed time marriage is contracted makes it a condition of the marriage that her husband will not have sexual intercourse with her, the marriage as well as the condition imposed by her, are in order and the husband can enjoy her in other ways only. However, if she agrees to sexual intercourse later, the husband may have sexual intercourse with her.

**2433.** A woman with whom fixed time marriage is contracted is not entitled to subsistence even though she may have become pregnant.

**2434.** A woman with whom fixed time marriage is contracted is not entitled to share the bed of her husband, and does not inherit from him, and the husband, too, does not inherit from her. However, if they have laid down a condition regarding inheriting, the one, who has laid down such a condition inherits from the other.

**2435.** Even if a woman with whom fixed time marriage is contracted does not know that she is not entitled to means of subsistence and sexual intercourse, her marriage is in order, and for this lack of knowledge she has no right on her husband.

**2436.** In case a woman, with whom fixed time marriage is contracted, goes out of the house without the permission of her husband, and the right of the husband is infringed, it is unlawful for her to go out, and,

on the basis of precaution, even though the right of the husband is not infringed, she should not go out of the house without his permission.

**2437.** If a woman makes a man her representative so that he may contract a fixed time marriage with her for a fixed period and against a specified amount of dower and that man contracts a permanent marriage with her, or contracts a fixed time marriage with her without specifying the time or amount of dower, the marriage will be lawful if the woman permits it on becoming aware of the position, but otherwise it is invalid.

**2438.** In order to become mehram <sup>1</sup> a father or a paternal grand father can contract the marriage of his minor girl with another person for an hour or more, but it is necessary that the marriage should be beneficial for the girl. However, if they marry a minor boy with a woman for the sake of becoming mehram when the boy is not at all capable of any enjoyment it is difficult that such a marriage may be valid.

**2439.** If the father or the paternal grandfather of a boy who is at another place, and it is not known whether he is alive or dead, marry him with a woman for the sake of becoming mehram and the period of matrimony is sufficient for enjoying the woman with whom marriage has been contracted the object of becoming mehram will apparently be achieved. And if it transpires later that the boy was not alive when the marriage was contracted, the marriage is void and the persons who apparently became mehram as a consequence of the marriage, are non-mehrams.

**2440.** If a person excuses the woman the period of her fixed time marriage and if he has had sexual intercourse with her, he should give her all the things which he agreed to give her. And if he has not had sexual intercourse with her, it is obligatory on him to give her half the amount of dower and the recommended precaution is that he should give her full amount of dower.

**2441.** If a man contracted a fixed time marriage with a woman and the period of her iddah has not ended yet, he can contract a permanent marriage with her or can contract fixed time marriage with her once again.

**2442.** It is unlawful for man to look at the body or hair of the non mehram women <sup>2</sup>, whether or not it is with the intention of pleasure. It is also unlawful to look at the faces and hands of such women with the intention of pleasure and the obligatory precaution is that one should not look at their faces or hands even without such an intention. And according to precaution it is unlawful for a woman to look at the body of a non mahram, except his face, hands, head, neck, and feet. Apparently a woman's looking at these parts without the intention of pleasure is lawful, though it is better to avoid it.

**2443.** If a person looks without the intention of enjoyment at the faces, hands and those parts of the infidel women's bodies, which they do not habitually conceal, there is no harm in his doing so, provided that he is not afraid of being involved in something unlawful.

**2444.** Woman should conceal her body and hair from a man who is non mehram and it is better that she should conceal herself even from a boy who may not have reached the age of puberty but is intelligent enough to distinguish between good and evil.

**2445.** It is unlawful to look at the private parts of another person and even at the private parts of a discerning child who can distinguish between good and evil even though it may be from behind a glass or in a mirror or in limpid water etc. However, wife and her husband and slave girl and her master can look at the entire body of each other.

**2446.** If a man and a woman who are mehram of each other do not have the intention or enjoyment they can see the entire body of each other excepting the private parts.

**2447.** A man should not look at the body of another man with the intention of enjoyment, and a woman's looking at the body of another woman with the intention of enjoyment is unlawful.

**2448.** A man should not take the photograph of a non-mehram woman and if he knows a non mehram woman, he should not, on the basis of precaution look at her photograph.

**2449.** If a woman wants to give an enema to another woman or to a man other than her husband or to purify her/his private parts with water she should cover her hand with such a thing that her hand does not reach the private parts of the other woman or man. And the same order applies if a man wants to give an enema to another man or a woman other than his wife or to purify his/her private parts with water.

**2450.** If a man is obliged to look at a non-mehram woman or to touch her body in connection with her medical treatment there is no harm in it. However, if he can treat her by looking at her, he should not touch her body, and if he can treat her by touching her body, he should not look at her.

**2451.** If a person is obliged to look at the private parts of a person for his/her medical treatment he should, on the basis of obligatory precaution place a minor opposite him/her and look into it. However, if there is no alternative but to look at his/her private parts there is no harm in it.

## **Miscellaneous Problems Concerning Marriage**

**2452.** If a person gets involved in unlawful acts owing to his not having a wife, it is obligatory for him to marry.

**2453.** If the husband makes it a condition of marriage that the woman should be a virgin and it transpires after marriage that she is not a virgin and has lost her virginity owing to sexual intercourse with a man he (the husband) cannot, on the basis of precaution, repudiate the marriage. However, he can take the difference between the dower prescribed for a woman who is a virgin and one who is not a virgin.

**2454.** It is unlawful that a man and a woman who are not mehrams of each other should gather at a secluded place where there is no other person and none can also arrive, in case there is a possibility of evil. However, there is no harm in their being together at a place where someone else can also come or a discerning child is present or there is no possibility of evil.

**2455.** If the man specifies the dower of the woman at the time of marriage and intends not to give it, the marriage is in order, but he should give her dower.

**2456.** A Muslim who denies Allah or the Holy Prophet or the Day of Resurrection, or belongs to the sects mentioned in Article 2406, or repudiates the essential orders of religion i.e. the orders which the Muslims consider to be a part of the holy religion of Islam such as prayers and fasting being obligatory knowing that they are essential orders of religion, becomes an apostate and the orders which will be narrated later apply to him.

**2457.** If a woman becomes apostate after marriage as mentioned in the foregoing Article, her marriage becomes void, and if her husband has not had sexual intercourse with her she is not required to observe any iddah. And the position is the same if she is a menopause (Ya'isa)<sup>3</sup> and apostatizes after sexual intercourse but if she is not a menopause she should observe iddah in the manner which will be mentioned in the orders relating to 'divorce'. And what is well known is that if she becomes a Muslim during her iddah her marriage remains intact. However, it is difficult that this order should be valid and precaution cannot, of course, be abandoned. The meaning of Yaisa have been mentioned in Article **441**.

**2458.** If a man born in the house of a Muslim apostatizes his wife becomes unlawful for him and she should observe iddah of death in the manner which will be mentioned in the orders relating to 'divorce'.

**2459.** If a man born of non-Muslim parents embraces Islam and then apostatizes after marriage his marriage becomes void. And in case he has not had sexual intercourse with his wife or if she is menopause she need not observe iddah. But if he apostatizes after having sexual intercourse with his wife or she happens to be of the age of women who have menstrual discharge, she should observe iddah equal to the iddah of divorce which will be mentioned under the orders relating to divorce. And what is well known is that if her husband becomes a Muslim before the completion of her iddah their marriage remains intact. However, it is difficult that this order, too, should be valid and precaution cannot, of course, be abandoned.

**2460.** If the woman imposes a condition at the time of marriage that her husband will not take her out of a city and the man also accepts this condition he should not take her out of that city against her will.

**2461.** If a woman has a daughter from her former husband, her second husband can marry that girl to his son, who is not from this wife. Moreover, if a person marries his son to a girl, he himself can marry the mother of that girl.

**2462.** If a woman becomes pregnant as a result of adultery and if that woman or the man who committed

adultery with her or both of them are Muslims it is not permissible for the woman to have an abortion.

**2463.** If a man commits adultery with a woman and if after performing Istibra' , in the manner explained in Article 2408, he marries her and a child is born to them and they do not know whether the child is the outcome of legitimate sperm or illegitimate sperm the child is legitimate.

**2464.** If a man does not know that a woman is in her iddah and marries her and if the woman, too, does not know (that she is in her iddah) and a child is born to them the child is legitimate and is legally the child of both of them. However, if the woman was aware that she was in her iddah and during iddah marriage is not permissible, the child is legally the child of the father and in either case their marriage is void and they are unlawful for each other.

**2465.** If a woman says that she is menopause her word should not be accepted, but if she says that she does not have a husband her word is acceptable.

**2466.** If a man marries a woman after her saying that she does not have a husband, and if some one says later that she has husband and if it is not proved legally that she has a husband the word of that person (who says that she has a husband) should not be accepted.

**2467.** Until a son or a daughter completes two years of his/her age his/her father cannot separate him/her from his/her mother. And it is better that a daughter should not be separated from her mother till she is seven years of age.

**2468.** It is recommended to expedite the marriage of a girl when she attains the age of puberty. Imam Ja'far Sadiq (P) is reported to have said that one of the fortunate things for a man is that his daughter does not have menstrual discharge in his house.

**2469.** If a woman compromises with her husband that she would not demand her dower if he does not marry another woman, it is obligatory that the wife should not take her dower and the husband, too, should not marry another woman.

**2470.** If a person, who has come into the world as a consequence of adultery, marries, and a child is born to him that child is legitimate.

**2471.** If a man has sexual intercourse with his wife at the time of fast in the month of Ramazan, or when she is in the state of menses he commits a sin, but if a child is born to them, it is legitimate.

**2472.** If a woman, who is sure that her husband has died while journeying, marries another man after completing the iddah of death, (the period of which will be told in the orders relating to divorce) and later her first husband returns from journey, she should separate herself from her second husband and she is lawful for her first husband. However, if the second husband has had sexual intercourse with her, she should observe iddah and the second husband should give her dower equal to that of the women similar to her, but she is not entitled to subsistence during Iddah

## Orders Regarding Suckling A Child

**2473.** If a woman suckles a child with the conditions which will be told in Article 2483 that child becomes mehram of a number of persons as shown below:

- (i) The woman herself (i.e. the woman who suckles it) and she is called Rizai mother (foster mother).
- (ii) The husband of the woman who is the owner of the milk; he is called Rizai father (foster father).
- (iii) Father and mother of that woman, and all in their upward line although they may be foster father and foster mother.
- (iv) The children to whom that woman has given birth or those who are born later.
- (v) The children of the children of that woman including all going in the downward line whether they are born through her children other children have suckled them.
- (vi) The sister and brother of that woman even though they may be Rizai i.e. may have become her foster sister and brother because of sucking milk.
- (vii) Paternal uncle and paternal aunt of that woman even though they may be Rizai.
- (viii) Maternal uncle and maternal aunt of that woman even though they may be Rizai.
- (ix) The descendants of the husband of that woman whose husband is the owner of the milk, how much so ever down they may go, although they may be hit foster children
- (x) Father and mother of that husband who is the owner of the milk how much so ever above they may go in the line.
- (xi) Sister and brother of the husband who is the owner of the milk although they may be his foster sister and brother.
- (xii) Paternal uncle and paternal aunt and maternal uncle and maternal aunt of the husband who is the owner of the milk how much so ever above they may go in the line although they are his foster uncles and aunts.

There are some other persons also (details regarding whom will be given in the following Articles) who become mehram on account of sucking milk.

**2474.** If a woman suckles a child with the condition which will be mentioned in Article 2483 the father of the child cannot marry the girls whom that woman has given birth but it is permissible for him to marry her foster daughters although the recommended precaution is that he should not marry them. Moreover, he cannot also marry the daughters of the husband who is the owner of the milk although they may be

his foster daughters. And in both the cases if any one of them is his wife at present his marriage becomes void.

**2475.** If a woman suckles a child with the conditions mentioned in Article 2483 the husband of that woman who is the owner of the milk does not become mehram of the sisters of that child, but the recommended precaution is that he should not marry them. Furthermore, the relatives of the husband do not become mehram of the sister and brother of that child.

**2476.** If a woman suckles a child she does not become mehram of the brother of that child. Moreover, the relatives of that woman do not become mehram of the brother and sister of the child suckled by her.

**2477.** If a person marries a woman, who has suckled a girl fully and has sexual intercourse with her, he cannot marry that girl.

**2478.** If a person marries a girl, he cannot marry the woman who has suckled that girl fully.

**2479.** A man cannot marry a girl who has been suckled fully by his mother or paternal grandmother. Moreover, if the wife of the father of a man i.e. his stepmother suckles a girl out of the milk of his father, he cannot marry that girl. And if a person marries a suckling girl and thereafter his mother or his paternal grandmother or the wife of his father i.e. stepmother suckles that girl the marriage becomes void.

**2480.** A man cannot marry a girl who has been suckled fully by his sister or by his brother's wife. And the position is the same if that girl is suckled by that man's niece (sister's daughter or brother's daughter) or the granddaughter of his sister or the granddaughter of his brother.

**2481.** If a woman suckles the child of her daughter i.e. her granddaughter or grandson the daughter becomes unlawful for her husband, and the same order applies if she suckles the child of the husband of her daughter from another wife. In case, however, a woman suckles the child of her son the wife of her son who is the mother of the suckling child does not become unlawful for her husband.

**2482.** If the wife of the father of a girl i.e. stepmother suckles the child of the husband of that girl with the milk of that girl's father the girl becomes unlawful for her husband, whether the child is the offspring of that very girl or of some other woman.

## **Conditions In Which To Suckle A Child Becomes The Cause Of Being Mehram**

**2483.** The following are the eight conditions under which suckling a child becomes the cause of being mehram:

(i) The child sucks the milk of a woman who is alive. It is of no consequence if milk is meted from the breast of a woman who is dead.

(ii) The milk of the woman is not the result of an unlawful act. Hence, if the milk of an illegitimate child is given to another child the latter will not become the mehram of anyone.

(iii) The child sucks milk from the breast of the woman. Hence if milk is poured into its mouth it is of no consequence.

(iv) The milk is pure and unadulterated.

(v) The milk belongs to one husband only. Hence, if a woman, who is still in a position to suckle a child, is divorced and marries another man and becomes pregnant and the milk of the first husband still remains in her body till she is delivered of the child and she feeds another child eight times with the milk of her first husband before giving birth to her own child and feeds the same child seven times with the milk of her second husband that other child will not become the mehram of anyone.

(vi) The child does not vomit the milk on account of illness. And if the child vomits the milk, the obligatory precaution is that the persons who are to become his mehram on account of suckling of milk, should not marry him and should not look at him as a mehram.

(vii) Fulfilling all the legal conditions the child sucks milk fifteen times or as will be explained in the following Article sucks his fill during one day and one night or is allowed to suck so much milk that people say that because of that suckling his bones have become strong and flesh has appeared on his body. And in case the child is allowed to suck milk even ten times and during these ten times there is no gap even to give it food, the obligatory precaution is that the persons who are to become his mehrams on account of the suckling of milk should not marry him and should not look at him as a mehram.

(viii) The child does not complete two years of his age, and, if he is suckled after he has completed two years of his age, he does not become the mehram of anyone. And even if, for example, he sucks milk (eight times before completing his two years of his age and sucks it seven times after completing his two years he does not, even then, become the mehram of anyone. In case, however, more than two years have passed since a woman gave birth to her child and she is still in a position to suckle a child and does suckle a child that child will become the mehram of those who have been mentioned above.

**2484.** In order to become mehram by sucking milk it is necessary that the child does not take any food during one day and night and does not also suck the milk of any other woman. However, if he takes so little food that people do not say that he has taken food in between, there is no harm in it. Moreover, he should suck the milk of one woman fifteen times and during these fifteen times he should not suck the milk of any other woman and should suck milk every time without a gap. However, if while sucking milk he takes fresh breath of air or waits a little so that it is treated to be one suck from the time he takes the breast in his mouth till the time he has sucked his fill there is no harm in it.

**2485.** If a woman suckles a child with the milk of her husband and then marries another man and suckles another child with the milk of her second husband those two children do not become mehram of

each other, although it is better that they do not marry each other.

**2486.** If a woman suckles a number of children with the milk of one husband all of them become mehram of one another as well as of the husband and of the woman who suckled them.

**2487.** If a man has many wives and every one of them suckles a child in accordance with the conditions mentioned above all those children become mehram of one another as well as of that man and of all those women.

**2488.** If a man has two wives each one of them can suckle a child, and if, for example, one of them gives milk to a child eight times and the other gives him milk seven times the child does not become the mehram of any one of them.

**2489.** If a woman gives full milk to a boy and a girl out of the milk of one husband the sisters and brothers of that girl do not become mehram of the sisters and brothers of that boy.

**2490.** A man cannot marry without the permission of his wife those women who become her nieces (sister's daughter or brother's daughter) owing to the sucking of milk. Furthermore, if a person commits sodomy with a boy he cannot marry his foster daughter, sister, mother or paternal grandmother i.e. those women who have become his daughter, sister, mother and paternal grandmother by means of sucking milk.

**2491.** A woman who suckles the brother of a person does not become his mehram, although the recommended precaution is that he should not marry her.

**2492.** A man cannot marry two sisters although they may be foster (i.e. may have become sisters of each other by means of sucking milk). In case, therefore, he marries two women and understands later that they are sisters and in case their marriages took place at one and the same time he has the option to adopt any one of them. In case, however, the marriages did not take place at one time the first marriage is valid whereas the second is void.

**2493.** If a woman suckles the following persons with her husband's milk her husband does not become unlawful for her although it is better to observe precaution.

(i) Her own brother and sister.

(ii) Her paternal uncle and paternal aunt and paternal uncle and maternal aunt.

(iii) The descendants of her paternal uncle and her maternal uncle.

(iv) Her nephew (brother's son)

(v) Brother or sister of her husband.

(vi) Her nephew (sister's son) or the nephew (sister's son) of her husband.

(vii) Paternal uncle and paternal aunt and maternal uncle and maternal aunt of her husband.

(viii) Granddaughter (daughter's daughter) and grandson

(daughter's son) of another wife of her husband.

**2494.** If a woman suckles the paternal aunt's daughter or maternal aunt's daughter of a man she (the woman who suckles) does not become mehram of that man. However, the recommended precaution is that he should refrain from marrying that woman.

**2495.** If a man has two wives and one of them suckles the paternal uncle's son of the other the wife, whose paternal uncle's son is suckled, does not become unlawful for her husband.

## **Ways And Manners Of Nursing A Child**

**2496.** The child's mother is the best woman to suckle a child. It is better that she does not claim recompense from her husband for suckling the child, although it is a good thing that he should reward her for that. However, if the mother demands more recompense as compared with a wet nurse, her husband can entrust his child to the wet nurse.

**2497.** It is recommended that the wet nurse, whose services are obtained for a child, should be Twelver Shi'ah, chaste and good looking, and it is abominable that she is not a Twelver Shi'ah or is ugly, ill humored or illegitimate. It is also abominable to entrust the child to a wet nurse who has given birth to an illegitimate child.

## **Miscellaneous Problems Regarding Nursing A Child**

**2498.** It is recommended that a woman is prevented from suckling any and every child, because it is possible that it may be forgotten as to which of them she has suckled and later the two persons who are mehram of each other may contract marriage.

**2499.** It is recommended that those who become relatives of one another by means of sucking milk should respect one another. However, they do not inherit from one another and do not enjoy the rights which relatives enjoy over one another.

**2500.** It is recommended that if possible a child should be suckled for full two years

**2501.** If the right of the husband is not infringed upon giving milk a woman may suckle the child of another person without the permission of her husband. However, it is not permissible that she should suckle a child owing to whose suckling she becomes unlawful for her husband. For example, if her husband has married a suckling girl she should not suckle that girl, because if she suckles that girl she

herself becomes her husband's mother-in-law and thus becomes unlawful for him.

**2502.** If a person desires that his sister-in-law (his brother's wife) should become his mehram he should contract a fixed time marriage with a suckling girl, for example, for two days and during those two days the wife of his brother should suckle that girl mentioned in Article **2483**.

**2503.** If a man says before marrying a woman that on account of sucking milk that woman is unlawful for him for example, if he says: "I have sucked the milk of that woman's mother" and it is possible to verify it, he cannot marry that woman. And if he says this after marriage and the woman also accepts his word, the marriage is void. Hence if the man has not had sexual intercourse with her or has had sexual intercourse but at the time of sexual intercourse the woman knew that she was unlawful for him she is not entitled to any dower. And if she learns after sexual intercourse that she was unlawful for the man the husband should pay her dower according to the usual dower of other women like her.

**2504.** If a woman says before marriage that she is unlawful for a man on account of sucking milk and if it is possible to verify this thing she cannot marry that man. And if she says this after marriage it is like the man saying after marriage that the woman is unlawful for him and the order in this regard has been given in the previous Article **2505**. Suckling a child which becomes the cause of being mehram can be proved by the following two things:

(i) Giving information in this behalf by a group of persons whose word is believable.

(ii) Two just men, or one man and two women or four women who are just testify this fact. It is, however, necessary that they should also mention the conditions of suckling the child. For example, they may say. "We have seen such and such child for twenty four hours sucking milk from the breast of such and such woman and during this time he has not eaten anything else." And similarly they should also narrate in detail the conditions which have been mentioned in Article **2483**.

**2506.** If it is doubted whether or not a child has sucked the quantity of milk which becomes the cause of becoming mehram or it is thought that he has sucked that quantity of milk the child does not become the mehram of anyone but it is better to observe precaution.

1. With whom marriage contract becomes unlawful and is treated to be one of the relatives of the family.

2. Those with whom marriage can be contracted.

3. Final cessation of the menses at the age of about 50.

---

**Source URL:**

<https://www.al-islam.org/islamic-laws-ayatullah-abul-qasim-al-khui-sayyid-abu-al-qasim-al-khoei/marriage#comment-0>