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Part One: Proposal and Engagement

I begin my discussion about the proposed forty articles from the very point they themselves begin. Those proposals for the Civil Law start in the subject of proposal and engagement.

The fact is that the articles relating to proposal and engagement laid down in the Civil Law are not straight Islamic Laws. In other words, the specific text and command from Islam itself about most of them is not cited. Whatever the Civil Law has cited in support of these Articles is all based upon precepts that are deduced from general Islamic beliefs. So we do not consider ourselves obliged to defend the Civil Law, and we shall not enter into a discussion of the individual ideas of the proposer. For the proposer has perpetrated some great mistakes, and is even unable to perceive the correct meaning of some simple articles.

However, there are two points here which cannot be waived aside.

Does a man's proposal of marriage insult a woman?

The writer of the proposal says:

Our legislator did not lose sight of the reactionary and inhuman attitude in these few simple selections of the law (relating to proposal and engagement) whereby man as such as the principal figure and woman the secondary. In pursuance of this conception, Article 1034, the opening article of the section on marriage and divorce has been drawn up in the following way: 'Article 1034. One can propose marriage to any woman who is free of impediments to marriage'. It is evident that although the Article does not contain any order nor assign any obligation, marriage has nevertheless been brought up for consideration as the 'taking of a wife' by man. He is treated as a customer or buyer while the woman is represented as some sort of merchandise. In social laws, expressions like this create a very bad and distasteful psychological effect: the above mini definitions in the laws of marriage especially have an effect upon the relations between men and women, and give man the position of master and owner and woman the status of something owned or of a slave.

After such subtle psychological observations, the said proposer puts forward the draft of an article to do with asking the hand of a woman in marriage. His aim is that the proposal should not be on the initiative of one side only, so that the phrase “taking a woman in marriage”, and always consider it the duty of a man to ask the hand of a woman in marriage, we will be lowering the status of women and treating her as a purchasable article.

It is a man's instinct to make the approach and ask, and a woman's, instinct to be a source of attraction and act with self-restraint:

Incidentally, this very error is one of the most serious ones. It is at the root of the proposal for the annulment of dower (mahr) and maintenance of the wife (nafaqah), so we shall fully discuss it with the subject of mahr and nafaqah in its proper place.

From time immemorial man has approached woman with his proposal and has requested conjugality from her. This has been the greatest of factors in safe-guarding the prestige and honor of women. Nature has created man a means of approach, love and solicitation and woman a source of attraction and being loved. Nature has imbued woman with the disposition of a flower and made man the nightingale, woman the lamp and man the moth. This is one of the wise schemes and plans of creation. Man is instinctively disposed to seek and ask, and woman is instinctively disposed to display herself. The tenderness of her body thus finds its compensation in comparison with the strength of man.

It is contrary to the respect and honor of a woman to run after a man and woo him, while for a man it is manly that he should approach and solicit a woman for this purpose even if he gets a reply in the negative. In that case he will ask one woman after another until he meets a woman who gives him her consent.

While for a woman, who aspires to be the object of affection, the beloved, the adored one, to submit to the heart of a man who will govern her existence, it is repugnant for her to invite a man to be her spouse, and, if it happens that her request is turned down, to go in search of another man.

William James, the well-known American philosopher, is of the opinion that the delicate self-control of women is not instinctive but rather that the daughters of Eve, in their long history, have learnt that their honor and prestige do not lie in going after a man and in making themselves commonplace, but in keeping themselves aloof beyond the reach of man; women have learnt this lesson over the long span of history, and they have passed this knowledge on to their daughters.

This is not the case with human being only. Other animals also behave like this. It is always the function of the male to present himself impatiently and earnestly before the female. The function entrusted to the female is to display her attractions, to invite attention with due self-control and restraint, and thus

capture the heart of the rougher sex and accept the male by the tender consent of his heart, and thus render him willingly to carry out her commands.

Man seeks union with woman, not to enslave her:

It is strange that it should be questioned why the Civil Law uses a language suggestive of the meaning that man is the one who asks the woman. Firstly, the question is mistakenly directed against the Civil Law. It is in fact to do with the law of creation. Secondly, a thing desired does not become your property, nor do you become its owner: students and scholars are desirous of knowledge, a pupil desires a teacher, apprentices of crafts desire skillful craftsman. It is proper that, in the case of the desire of scholars and craftsman, we call those who seek them their owners? Man is desirous of union with woman, not in need of making her his slave. Can one really considerate an insult to the female sex when Hafiz our sweet-tongued poet, composed these lines:

*Shiraz is the home of ruby lips and the mine of beauty;
I am a penniless jeweler, and it makes me anxious.
It is a town full of beckoning glances and beauty in all directions;
But I have nothing, otherwise I avoid be the buyer of all.*

Hafiz is sorry that he has nothing to shower over the beauties to attract them to him. Is this derogatory to the position of women, or is it an expression of admiration and recognition of the greatest honor and of their value in hearts that are alive and sensitive? The poet in spite of all manliness and virility, pays homage, and gives vent to feelings of admiration before the charms and beauties of women and admits to have fallen in love with them, while they are heedless and take no notice of him.

It is the height of her excellence that she can attract man to her wherever he is, and whatever state he is in.

Now it can be seen how far the best of her distinctions, her honor and respect is blemished in the name of women's rights.

This is what we meant when we remarked that 'these people, designing to improve her eyebrows have actually deprived the poor woman of her eyesight.'

The custom of asking the hand of woman in marriage is a very safe and wise way of safeguarding the honour and prestige of a woman:

As we have mentioned, in the law of creation man is created as a source of solicitation and approach, and is the suitor, while woman is source of what attracts and responds. This is the best guarantee of her

prestige and respect and the counteraction to her physical weakness as against the physical strength of man. This is the best security in the maintenance of balance and proportion in their life together. One is the natural advantage that has been given to woman and the other is the natural obligation which man is bound to fulfill.

Laws made by man, or, in other words, the legal precautions he employs, should safeguard this advantage for women and this obligation on man. Laws based on the equality of man and woman as far as the duty and civility of proposing are concerned act against the woman and respect for her and her honor; equality is outwardly in the interest of man, and works, in fact, against both of them

These are the reasons that the draft of the Article put forward by the writer of the forty proposals to make woman share in the duty of proposing does not have any value and is injurious for the whole human race.

Errors by the writer of the forty articles in the Civil Law:]

The second point that must be mentioned in collection with this chapter is that Mr. Mahdavi, the writer of the forty proposals¹ writes: According to Article 1037, if either of the persons engaged in marriage turns down the marriage undertaking without any Sound reason, the gifts that the opposite side, their parents or any third person, have presented in anticipation of the consummation of the marriage, should be returned. In case the original articles no longer exist their value must be returned, unless the gifts, through no fault of the party concerned, have perished.

“According to the provisions of the above-mentioned article, neither does engagement in the view of our legislature carries, like a marriage vow, any legal obligation, nor does it guarantee performance of the marriage, or bind the parties to any sort of commitment. Its only effect is that the party violating the undertaking who, as expressed by the writer of the above law, ‘without any sound reason’ turns down the marriage settlement, should return the original or the cost of the gifts that they received from the other side. Now the fact is that usually at the time of the engagement the two parties do not give each other things for the purposes of the marriage, but undergo considerably heavy outlay for the engagement itself.

As you see Mr. Mahdavi’s objection to this article of the law is that “engagement” is not considered to carry legal obligation and be a guarantee of performance. The only result of engagement that has been acknowledged is that the party violating the engagement should return the gifts or their value to the party that presented them, whereas the main expenses which the individual must sustain in an engagement are other expenses, for example the expenses of the engagement celebrations, inviting guests and things connected with this.

I would add that another objection can also be made against this Article, and that is that the Article mentions that if ‘without any reasonable cause’ either of the parties breaks up the marriage agreement,

the defaulting side should return the original articles it received as gifts from the other side or their cost. Whereas, as a rule, if one party turns down the marriage agreement 'on reasonable grounds' also, they should, on, being asked by the other side, at least return the original articles presented as gifts by the other side.

As a matter of fact, none of these objections are relevant. Article No. 1036 of the Civil Law contains the following: 'If anyone of the engaged persons breaks up the intended marriage 'without reasonable grounds' and in case the other side, or the parents or other persons, were deceived into believing that the marriage would take place and incurred expenses, the side which turned down the marriage agreement must defray the expenses incurred by the other side, but such damages are restricted to the expenses that are customary

This Article of Law has provided for all those eventualities that Mr. Mahdavi thought the law did not anticipate. It is in this Article that the condition of 'without reasonable grounds' is stipulated. According to this Article, the defaulting party is responsible not only for the expenses of the other party but also for the expenses of the parents and others.

This Article, because the stress is on the word "deceived", and this is suggestive of the basic intention of the Article, is commonly known as the rule of "deception."

Besides that, in the Civil Law incitement is acknowledged to be a binding liability of the person who incites an act, and Article No. 332, which concerns incitement, can be implemented to secure the defaulting parties in such cases.

So, the Civil Law not only did not overlook the losses sustained in connection with engagement (which according to the writer of the proposals are realized because of the engagement itself), but it has incorporated it in two Articles.

Article No 1037 of the Civil Law states: —

"In case of the intended marriage being broken up, the gifts which either side had given or the parents of the persons engaged had presented in anticipation of marriage may be demanded back by each side. If the original things do not exist, that side will be entitled to the value of the gifts which can normally be preserved, excepting the gifts that have perished through no fault of the other side"

This Article concerns the gifts that both sides present to each other. As you notice, there is no condition in the Article to the effect that either of the parties should without reasonable grounds have broken up the intended marriage. The addition of the condition 'without any reasonable grounds', is an irrelevant presumption of Mr. Mahdavi's.

It is strange how a person who is incapable of comprehending the meaning of a few simple articles of the Civil Law (in spite of the fact that for years his occupation had been the study of these Articles, and

that, as a specialist in the knowledge of these laws, he had been a burden on the budget of the country), can cherish the wish to change the revealed law which involves thousands of considerations and fine points.

It has also not been mentioned that up to five years ago, when Mr. Mahdavi was busy with the compilation of the book *Payman-e-muqaddas ya Mithaq-e izdivaj* (The Sacrament or the Pact of Marriage), he had been reading the above sentence “without reasonable ground” as “without any reason or motivation”. In his, book he put in an extensive chapter wherein he wrote, ‘How on earth is it possible for something to take place without any reason or motivation?’ But eventually it was disclosed to him that for years he had been misreading that Article of the Law and erroneously taking it to mean what it did not and he then admitted that the real reading was “without reasonable grounds”.

¹. Manuchihriyan, Banu Mahr angiz – Intiqad bar gavanin-e asasi va madani-e Iran.

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