

The Prohibited Degrees of Female Relations (al-Muharramat)

One of the conditions of a valid marriage contract is that the woman be free from all legal obstacles, which means that she be competent to contract marriage. The restrictions are of two kinds: the prohibition due to consanguinity and those due to other causal factors. The first include seven categories which permanently prohibit marriage. Of the second, ten categories prohibit marriage permanently and others only temporarily.

Consanguinity (al-nasab)

The schools concur that the female relatives with whom marriage is prohibited are of seven kinds:

1. Mother, which includes paternal and maternal grandmothers.
2. Daughters, which includes granddaughters how low so ever.
3. Sisters, both full and half.
4. Paternal aunts, which includes fathers' and grandfathers' paternal aunts.
5. Maternal aunts, which includes fathers' and grandfathers' maternal aunts.
6. Brother's daughters how low so ever.
7. Sister's daughters how low so ever.

The above prohibition has, its origin in the following verse of the Qur'an:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ

Forbidden to you are your mothers and your daughters und your sisters and your paternal aunts and your maternal aunts and brother's daughters and sister's daughters... (4:23)

These were the prohibited degrees of relations as a result of consanguinity. Those which are the result of causal factors (*al-sabab*) are as follows:

Al- Musaharah (Affinity)

Affinity is the relationship between a man and a woman which forbids marriage between them; it includes the following:

1. The schools agree that the father's wife is forbidden for the son and the grandson how low so ever by the sole conclusion of the marriage contract irrespective of the establishment of sexual contact. The origin of this concurrence is this verse of the Qur'an:

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ

And marry not women whom your fathers married... (4:22)

2. The schools concur that the son's wife is forbidden for the father and grandfather, how high so ever, merely by the conclusion of the contract. This view is based on the following verse of the Qur'an:

وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ

...And the wives of your sons who are of your own loins... (4:23)

3. The schools concur that the wife's mother and her grandmother how high so ever, is forbidden on the mere conclusion of the contract, though sexual contact may not have been established as per this verse of the Qur'an:

وَأُمَّهَاتُ نِسَائِكُمْ

... And the mothers of your wives... (4:23)

4. The schools agree that marriage with the wife's daughter is not forbidden merely on the conclusion of the contract, and they consider it permissible for a man, if he divorces that wife before sexual intercourse, or before looking at her or touching her with a sexual intent, to marry her daughter on the authority of this verse of the Qur'an:

وَرَبَائِبُكُمُ اللَّائِي فِي حُجُورِكُمْ مِّنْ نِّسَائِكُمُ اللَّائِي دَخَلْتُمْ بِهِنَّ

... And your step-daughters who are in your guardianship, (born) of your wives to whom you have gone in... (4:23)

The condition *فِي حُجُورِكُمْ* explains the general situation. The schools concur that the daughter is forbidden when a person marries her mother and establishes sexual contact with her. But the schools differ as regards the daughter being forbidden when the marriage has been concluded and sexual contact has not been established but when he has looked at her or touched her with a sexual intent.

The Imamiyyah, the Shafii and the Hanbali schools are of the view that the daughter would be forbidden only on sexual intercourse and looking and touching with or without sexual intent does not have any effect. The Hanafi and the Maliki school consider both, looking and touching with sexual intent, as sufficient causes for prohibition and are like sexual intercourse in all aspects. (Bidayat al-mujtahid vol. 2; *al-Fiqh 'ala al-madhahib al-'arba'ah*, vol. 4, the chapter on marriage)

There is a consensus among the schools that the establishment of sexual contact due to a mistake or a false impression is like marriage itself in establishing affinity and creating its related prohibition. The meaning of 'sexual contact due to mistake' is occurrence of sexual contact between a man and a woman under the false impression that they are lawfully wedded followed by the discovery that they are strangers and that the contact was a result of a mistake of fact. As a consequence of this latter knowledge, the two will separate immediately and the woman will observe an obligatory period of *'iddah*¹ and a reasonable *mahr* will become *wajib* on the man. Affinity would be established as a result, but the two will not inherit each other and the woman will not have the privilege of alimony (*nafaqah*).

II. Consanguinity Between Wives

The schools concur that combining two sisters in marriage at the same time is forbidden according to this verse of the Qur'an:

وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ

...And that you should have two sisters together... (4:23)

The four schools agree that a man cannot combine in marriage neither a woman and her paternal aunt nor a woman and her maternal aunt because they have a general rule that it is not permissible to marry two women of whom if one were to be a male it would be haram for him to marry the other. Therefore, if we suppose the paternal aunt a male, she would become a paternal uncle and it is not permissible for an uncle to marry his niece and if we suppose the niece a male, she would become a nephew and it is not permissible for a nephew to marry his aunt. The same rule applies to a maternal aunt and her sister's

daughter.

The Khawarij considered as permissible combining as wives the aunt and her niece, irrespective of whether the aunt has granted permission for marrying her niece or not.

Among the Imamiyyah legists there is a divergence of opinion. Some of them concur with the view of the other four schools, but most of them are of the opinion that if the niece is the first to be married. It is permissible for him to marry her paternal or maternal aunt even if the niece does not grant permission for this marriage. But if the paternal or the maternal aunt has been first married, the marriage with her niece is permissible only by her permission. The proponents of the above view have based their argument on the following verse of the Qur'an:

وَأَحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ

...And lawful to you are (all women) besides those... (4:24)

In this verse, after mentioning those women with whom marriage is forbidden, the rest have been permitted, and this permission extends to combining the aunt and the niece together in marriage, and had it been *Haram* the Qur'an would have explicitly mentioned it as it expressly mentions the prohibition regarding combining two sisters in marriage. As regards the general rule which supposes one of the two women to be a male, it is *istihsan*, which is considered unreliable by the Imamiyyah. Apart from this, Abu Hanifah has considered it permissible for a man to marry a woman and her father's wife despite of the fact that if any of these two were supposed a male, his marriage with the other would not be permissible. Obviously, it is not permissible for a man to marry his daughter or step-daughter, in the same way as it is not permissible for him to marry his mother or his father's wife. (*Kitab ikhtilaf Abi Hanifah: Ibn Abi Layla, the chapter on marriage*)

III Fornication (al-Zina)

It comprises the following issues:

1. The Shafi'i and the Maliki schools consider a man's marrying his daughter born of fornication as permissible and so also marrying his sister, his son's daughter, his daughter's daughter, his brother's daughter, and his sister's daughter, because she is legally a stranger to him and because the law of inheritance does not apply between them, nor the law of maintenance. (al-Mughni. vol. 6, the chapter on marriage)

The Hanafi, the Imamiyah and the Hanbali schools regard marriage with a daughter by fornication as haram (prohibited) as one with a lawful daughter, because. they say, the daughter by fornication is born of his seed and is therefore considered his daughter in the literal sense and by the society in general.

Her legal disability to inherit does not negate the fact of her being his daughter: it only negates such legal effects as inheritance and maintenance.

2. The Imamiyyah have observed: He who commits fornication with a woman or establishes sexual contact with her by mistake, while that woman is either married or is observing the *'iddah* period as a result of a revocable divorce, she would become *haram* for him permanently, i.e. it is forbidden for him to marry her even if she separates from her husband as a result of an irrevocable divorce or death. But if he establishes sexual contact with a woman while she is unmarried or is undergoing the *'iddah* period as a result of the death of her husband or as a result of an irrevocable divorce, she would not be forbidden for him.

According to the four schools, fornication or adultery is no obstacle to marriage between the two, regardless of whether the woman is married or unmarried.

3. According to the Hanafi and the Hanbali schools fornication and adultery establish affinity. Therefore, he who establishes illegitimate sexual contact with a woman, the mother and daughter of that woman will become *haram* for him, and that woman will be *haram* for his father and his son. These schools do not make any difference between the establishments of such illegitimate contact before marriage or after it. Therefore, when a person establishes sexual contact with his wife's mother or a son with his father's wife, the wife will become *haram* for her lawful husband permanently; rather, according to the Hanafi book *Multaqa al-'anhur* (volume 1, the chapter on marriage): "If a person intends to wake up his wife for intercourse and his hand reaches her daughter and he caresses her with sexual emotion while she, thinking it to be her mother, entertains it, her mother will become *haram* for him permanently. The same will apply to a woman who intends to wake up her husband and (mistakenly) caresses his son from another wife."

The Shafi'i school is of the opinion that fornication does not establish affinity in the light of this tradition:

الحرام لا يحرم الحلال

A *haram* does not illegitimate a *halal*.

The Malikis have two views on this question.

One of them favors the Shafi'i view, the other, the Hanafi view. The Imamiyyah consider fornication as capable of creating the prohibition pertaining to affinity. Thus, he who fornicates with a woman, makes her *haram* for his father and his son. But as regards adultery after marriage, they observe that it does not illegitimate the lawful conjugal ties. Thus he who commits adultery with his wife's mother or his wife's daughter, his marriage with her stays as it is. The same applies to a father who commits adultery with his son's wife or a son with his father's wife; in both the cases the wife would not be considered *haram* for her lawful husband.

IV. Number of Wives

The legal schools concur that it is permissible for a man to have four wives at a time², but not a fifth as per the verse:

فَأَنْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ

... Then marry such women as seem good to you, two and three and four... (4:3)

When any one of those wives is released from the bonds of marriage, either due to her death or divorce, it becomes permissible for him to marry another. The Imamiyyah and the Shafi'i schools say: When a man gives one of his wives a revocable divorce, it is not permissible for him to marry another till the expiry of the *'iddah* period. But if it be an irrevocable divorce it is permissible for him to do so. Also, it is permissible that he marry his irrevocably divorced wife's sister during his wife's *'iddah* because an irrevocable divorce prohibits marriage and breaks the marital bond.

According to the other schools, it is not permissible for him to marry a fifth wife or the sister of his divorced wife until the expiry of the *'iddah* period irrespective of whether the divorce is a revocable or an irrevocable one.

V. Li'an

When a man accuses his wife of adultery or denies the paternity of her child, and she denies the charge and he has no proof to offer, it is permissible for him to pronounce the *lian* against her. The method of taking the oath of condemnation is that, first the man swears by Allah four times that he is indeed speaking the truth in accusing her, and the fifth time that the curse of Allah fall on him should he be lying. Then the woman will swear four times by Allah that he is lying, and the fifth time that the wrath of Allah be on her if he be speaking the truth.

If the man refuses to pronounce the *lian*, he is punished with the *hadd* (for *qadhf*); but if he takes the oath of *li'an* and the woman refuses to pronounce the *lian*, she is liable to the *badd* for adultery. If both of them pronounce *lian* against each other, none is liable to *hadd* and the two will separate and the child whose paternity he had denied would not be given to him.

The source of the above discussion is these verses of the *Surat al-Nur*:

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ ۖ إِنَّهُ لَمِنَ الصَّادِقِينَ

وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ

وَيَدْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ ۖ إِنَّهُ لَمِنَ الْكَاذِبِينَ

وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ

If a man accuses his wife but has no witnesses except himself, he shall swear four times by Allah that his charge is true, calling down upon himself the curse of Allah if he is lying. But if his wife swears four times by Allah that his charge is false and calls down His curse upon herself if it be true, she shall receive no punishment. (24:6-9)

There is consensus among the school that it is *wajib* for the two to separate after the *lian*. But they differ as to whether such a wife is permanently *haram* for her husband so as to make it impermissible for him to remarry her later, even if he denies his own charge, or if she is *haram* only temporarily so as to permit him to marry her after withdrawing his own accusation.

The Shafi'i, the Imamiyyah, the Hanbali and the Mailiki schools forbid her permanently for him even if he denies his own accusation. The Hanafi school considers separation due to the *lian* like divorce; it would not make her *Haram* permanently because the prohibition arises from the *lian* and is removed on the withdrawal of his accusation. (*al-Mughni*, vol. 7; al-Sha'rani, *al-Mizan*, the chapter on *mula'ana*)

VI. Number of Divorces

The schools concur that if a man divorces his wife for the third time having resumed conjugal relations twice earlier, she will become *haram* for him and will not become *halal* for him again unless she marries another husband. This requires that she observe the *'iddah* after her third divorce and after the completion of this period consummate a permanent marriage with another man. Then if she separates from the second husband, due to his death or as a result of divorce, and completes the *'iddah*, it becomes permissible for the first to remarry again. After this, if he again repeats the same sequence and divorces her three times, she becomes *haram* for him until she consummates marriage with another man. Similarly, she becomes *haram* for him after every third divorce and becomes *halal* by marrying another, even if she be divorced a hundred times. Accordingly, every third divorce is considered a temporary not a permanent obstacle to marriage.

But the Imamiyyah observe: If a woman is divorced nine times in the *talaq al-'iddah* form she becomes *haram* permanently. By *talaq al-'iddah* they mean that the husband first divorces his wife, then resumes conjugal and sexual relations: then he divorces her again during another period when she is not having menses, then again resumes conjugal and sexual relations; then divorces her in yet another period when she is free from menses. Now she will not be *halal* for him until she consummates a permanent marriage with another man. Now, if this first husband marries her again after her separating from that second husband and divorces her three times in the *talaq al-'iddah* form, she becomes *halal* again by

consummating marriage with another. If he then marries her (for the third time) and divorces her in the *talaq al-'iddah* form, the divorces completed, she will become *haram* for him permanently. But when the divorce is not a *talaq al-'iddah*, such as when he returns to her and then divorces her without establishing sexual relations or marries her by another fresh contract after her completing the *'iddah*, she will not become *haram* for him even if she is divorced a hundred times.

VII. Difference of Religion

The schools agree that it is not permissible for a male Muslim nor for a female Muslim to marry those who do not neither a revealed nor a quasi-revealed scripture, or those who worship idols, fire or the sun, the stars and other forms, or non-believers who do not believe in Allah. The four schools concur that marriage is not permissible with those who a quasi-scripture, such as the Zoroastrians. By 'quasi-scripture' is meant a scripture which is said to have originally existed, as in the case of the Zoroastrians, but was changed, causing it to be lifted from them.

According to the four schools, it is permissible for a Muslim man to marry a woman belonging to the Ahl al-Kitab, which implies Christians and Jews. But it is not permissible for a Muslim woman to marry a man belonging to the Ahl al-Kitab. The Imamiyyah scholars agree with the other four schools that a Muslim woman cannot marry a man belonging to the Ahl al-Kitab, but differ among themselves regarding the marriage of a Muslim man with a female belonging to the Ahl al-Kitab. Some of them hold that intermarriage, either permanent or temporary, is not permissible. They base their argument on these verses of the Qur'an:

وَلَا تُمْسِكُوا بِعِصَمِ الْكَوَافِرِ

...And hold not to the ties of marriage of unbelieving women... (60: 10)

وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَنَّ

... And do not marry the idolatresses until they believe... (2:221)

Here they interpret shirk as kufr and not having faith in Islam. According to the Qur'an the Ahl al-Kitab are not *mushrikun*, as this verse shows:

لَمْ يَكُنِ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَالْمُشْرِكِينَ مُنْفَكِينَ حَتَّى تَأْتِيَهُمُ الْبَيِّنَةُ

The unbelievers among the People of the Book and the pagans did not break off (from the rest of their communities) until the proof came unto them. (98: 1)

Others are of the opinion that such a marriage, both temporary and permanent, is permissible, and as a proof they quote the following verse of the Qur'an:

وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ

...And the chaste from among the believing women and the chaste from among those who have been given the Book before you (are lawful to you)... (5:5)

This verse, according to them, explicitly permits marriage with women of the Ahl al-Kitab. The third group, seeking to reconcile the texts in favor and against such intermarriage, only permits temporary not permanent marriage. They take those texts which forbid such marriage to imply permanent marriage, and those which permit it are taken to imply temporary marriage. On the whole most of the contemporary Imamiyyah scholars consider permanent marriage with a woman belonging to the Ahl al-Kitab as permissible and the Imami Shari'ah courts in Lebanon marry a Muslim male to a female belonging to the Ahl al-Kitab. They register such a marriage with all the legal effects proceeding therefrom.

All schools, except the Maliki, recognize the marriages of all non-Muslims as valid if performed according to their tenets. The Muslims confer upon such a marriage all the legal effects of a valid marriage without differentiating between the Ahl al-Kitab and others—even if they permit marriage within prohibitive limits of consanguinity. The Malikis consider such a marriage as invalid because, they explain, it would be invalid if performed by a Muslim. Therefore, the same is true of non-Muslims. This stance of the Malikis is not reasonable, because it makes non-Muslims scared of Islam and leads to anarchy and disruption of the social order. Apart from this, the Imamiyyah have recorded these traditions which confirm their stance:

...من دان بدين قوم لزمته أحكامهم

For one who follows the religion of a community, its rules would be binding upon him...

وألزموهم بما ألزموا به أنفسهم

And require them to follow that which they consider binding upon themselves. (al-Jawahir, chapter on divorce)

Litigation Between the Ahl al-Kitab

In the Imamiyyah work, *al-Jawahir* (chapter on *jihad*), there is a useful discussion which is relevant here. Its summary is as follows:

If two non-Muslims litigate before a Muslim judge, should he give his judgment according to the laws of their religion or according to the Islamic law? The answer is: If the litigants are *dhimmis*, the judge has discretion to either judge according to the Islamic law or to dismiss the case without any hearing. The following verse of the Qur'an gives this discretion:

فَأَحْكُم بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ ۚ وَإِنْ تُعْرِضْ عَنْهُمْ فَلَنْ يَضُرُّوكَ شَيْئًا ۚ وَإِنْ حَكَمْتَ فَأَحْكُم بَيْنَهُم بِالْقِسْطِ

...Judge between them or turn aside from them, and if you turn aside from them, they shall not harm you in any way; and if you judge, judge between them with fairness... (5:42)

It was asked of al-'Imam al-Sadiq ('a) regarding two men of the Ahi al-Kitab between whom there is a dispute and they take the case before their own judge and when this judge judges between them, the one against whom the judgment was given refuses to comply and asks that the issue be settled before the Muslim judge. The Imam ('a) replied, "The judgment shall be according to the law of Islam."

If the litigants are those who are at war with the Islamic State (*harbi*), the judge is not obliged to settle their dispute and to protect some of them against others, as he is in the case of *dhimmis*.

If one of the litigants is a *dhimmi* or a *harbi* and the other a Muslim, the judge is obliged to accept the suit and to judge between them according to the Islamic law, in accordance with the Divine command:

وَأَنْ أَحْكُم بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ

Pronounce judgement between them in accordance with Allah's revelations and do not be led by their desires. Take heed lest they should turn you away from a part of that which Allah has revealed to you... (5:49)

Moreover, if a *dhimmi* woman sues her husband, the judgment will be given according to the Islamic law.

The above discussion makes it clear that Muslims should recognize as valid all those transactions of non-Muslims which are in conformity with their religion, as long as they do not refer it to Muslims for a decision. But if they seek a decision from Muslims, it is *wajib* for them to decide, at all times, according to the Islamic law. As is understandable from the verses of the Qur'an and the traditions, it is also *wajib* to judge between them in accordance with the norms of justice and fairness.

VIII. Fosterage (al-Ridi')

All the schools concur regarding the veracity of the tradition:

يحرم من الرضاع ما يحرم من النسب

(That which becomes *haram* due to consanguinity becomes *haram* due to fosterage). According to this tradition fosterage includes the same limits of relationship prohibitive to marriage as consanguinity. Thus any woman who as a result of breast-feeding becomes a foster-mother or a foster daughter or a sister or an aunt (both maternal and paternal) or a niece, marriage with her is *haram* according to all the schools. But the schools differ regarding the number of breast-feedings which cause the prohibition and the conditions applicable to the foster-mother and the foster-child.

1. The Imamiyyah say: It is necessary that the woman's milk be the result of lawful sexual relations, and if it secretes without marriage or as a result of a pregnancy due to adultery, the prohibition does not come into effect. It is not necessary that the woman remain conjugally bound to the person who is the cause of her turning lactiferous. Even if he divorces her or dies while she is pregnant or lactiferous, the prohibition comes into effect if she breast-feeds a child, even though she marries another and has intercourse with him.

The Hanafi, the Shafi'i and the Maliki schools are of the opinion that there is no difference between the woman being a virgin or a widow and between her being married or unmarried as long as she has milk with which she feeds the child. According to the Hanbali school the legal effects of fosterage will not follow unless the milk is the result of a pregnancy, and they do not set a condition that the pregnancy be due to lawful intercourse (Muhammad Muhyi al-Din 'Abd al-Hamid in *al-'Ahwal al-shakhsiyyah*).

2. The Imamiyyah consider it necessary that the child should have sucked milk from the breast, so if it is dropped in his mouth or he drinks it in a manner other than direct sucking, the prohibitive relationship would not be established. The other four schools consider it sufficient that the milk reach the child's stomach, whatever the manner (*Bidayat al-mujtahid ; Hashiyat al-Bajuri, "Bab al-rida"*). According to *al-Fiqh 'ala al-madhahib al-'arba'ah*, the Hanbalis consider it sufficient that the milk reach the child's stomach, even if through his nose.

3. According to the Imamiyyah, the prohibitive relationship is not realized unless the child is suckled one day and one night in a manner that his exclusive diet during this period be the milk of that woman without any other food, or is breast-fed fully fifteen times uninterrupted by breast-feeding by another woman. In the book *al-Masalik* the giving of food has been considered effect-less. The reason given for the above-mentioned quantity is that it leads to the growth of flesh and hardens the bones.

The Shafi'i and the Hanbali schools regard five breast-feedings as the minimum necessary. The Hanafi and the Maliki schools consider that the prohibitive relationship is established simply by being breast-fed irrespective of the quantity fed. be it more or less or even a drop. (*al-Fiqh 'ala al-madhahib al-'arba'ah*)

4. The Imamiyyah, the Shafi'i, the Maliki and the Hanbali schools have mentioned the period of breast feeding to be up to two years of the age of the child. The Hanafi school considers it to be two and a half years.

5. According to the Hanafi, the Maliki, and the Hanbali schools, it is not necessary that the foster-mother

be alive at the time of feeding. Therefore, if she dies and the child crawls up to her and sucks from her breast, it is sufficient to establish the prohibitive relationship. But the Malikis have gone further and observed that even if there is a doubt as to that which the child has sucked, whether it is milk or not, the prohibitive relationship would be established. (*al-Fiqh 'ala al-madhahib al-'arbaah*)

The Imamiyyah and the Shafi'i schools consider it necessary that the woman be alive at the time of breast-feeding and if she dies before completion of the minimum feedings, the prohibitive relationship would not be established.

The schools concur that the *sahib al-laban*, i.e. the husband of that woman, will become the foster-father of the breast-fed child, and between the two all those things which are *haram* between fathers and sons will be *haram*. His mother will become a grandmother for the breast-fed child, and his sister the child's aunt in the same manner as the woman who breast-feeds the child becomes his mother and her mother his grandmother and her sister his aunt.

IX. Al-'Iddah

There is consensus among the schools that marriage with a woman undergoing *'iddah* is not permissible and she is like a married woman in all aspects, irrespective of whether she is undergoing *'iddah* due to the death of her husband or as a result of divorce, revocable or irrevocable, in accordance with the following verses of the Qur'an:

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

And the divorced women should keep themselves in waiting for three menstrual courses... (2:228)

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذُرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا

And (as for) those of you who die and leave wives behind, they (the wives) should keep themselves in waiting for four months and ten days... (2:234)

The meaning of *al-tarabbus* is to be patient and to wait.

The schools differ regarding one who marries a woman during her *'iddah*, as to whether she will become *haram* for him. According to the Maliki School she becomes *haram* for him permanently if intercourse takes place, otherwise not. According to the Hanafi and the Shafi'i schools the two should separate, there being no impediment to remarriage on completion of the *'iddah*. (*Bidayat al-mujtahid*)

It is mentioned in the seventh part of al-Mughni, a book of the Hanbali s (chapter on *'iddah*): "If a person

consummates marriage with a woman during her *'iddah* and both know it and know that marriage is *haram* during *'iddah*, both of them would be considered fornicators and liable to punishment." In the sixth part of the same book (chapter on marriage) it is stated: "If a woman fornicates, marriage with her will not be *halal* for one who knows it unless these two conditions are fulfilled: completion of the *'iddah* and penitence for fornicating... If these two conditions are fulfilled, there is no obstacle to her marriage with the fornicator or someone else." This shows that according to the Hanbalis, marriage during *'iddah* does not result in permanent prohibition to marriage.

According to the Imamiyyah, marriage with a woman during *'iddah*, after a revocable or an irrevocable divorce, is not permissible, and if one marries her with the knowledge of the *'iddah* and the related prohibition, the contract is void and she would become *haram* for him permanently, irrespective of sexual contact. But if he has no knowledge of the *'iddah* and of such marriage being *haram*, she would not become *haram* permanently unless he has had intercourse with her. If he has not had intercourse, only the contract would become void, and he may marry her after the completion of the *'iddah* (al-Masalik, vol. 2, chapter on divorce).

X. Al-'Ihram

The Imamiyyah, the Shafi'i, the Maliki and the Hanbali schools say: A *muhrim* for Hajj or 'Umrah, man or woman, cannot marry nor conclude marriage on behalf of another acting as a guardian or an agent. The marriage, if performed, is void in accordance with the tradition:

لا ينكح المحرم ولا ينكح ولا يخطب

A muhrim may not propose, nor marry, nor conclude marriage for another.

The Hanafi school considers *ihram* as no hindrance to marriage. The Imamiyyah hold that if a marriage is performed without the knowledge of the prohibition during the state of *ihram*, it will make the woman temporarily *haram*. When they are relieved of *ihram*—or he, when the woman had not been in the state of *ihram* at all—it is permissible for him to marry her. But if concluded with the knowledge of the prohibition, the two should separate. and she would become permanently *haram* to him. The other schools hold that she would become *haram* only temporarily. (al-'Allamah al-Hilli in al-Tadhkirah, vol. 1, chapter on Hajj; Bidayat al-mujtahid, chapter on marriage).

¹ 'Iddah is a period of waiting prescribed by the Shari'ah to be observed by a woman on divorce or the death of her husband. The 'iddah for divorce is three months (three menstrual cycles): for death, four months and ten days. (Tr.)

² It is strange that al-Shaykh Abu Zuhrah, in al-'Ahwal al-shakhsiyyah, page 83, ascribes it to some Shi'ahs that they consider it valid to have nine wives at a time on the basis that mathna, thulath, and ruba' (in the Qur'anic verse about the permissible number of wives) i.e. two, three and four, adds up to a total of nine! Firstly, there is no source for this statement. Al-'Allamah al-Hilli, in al-Tadhkirah, says, "This view is attributed to some Zaydiyyah, but they categorically deny it, and I have not seen anyone expressing this view."

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