

ANKARA ÜNİVERSİTESİ

LÂHİYAT FAKÜLTESİ DERGİSİ

ANKARA ÜNİVERSİTESİ İLÂHİYAT FAKÜLTESİ
TARAFINDAN YILDA BİR ÇIKARILIR

Cilt : XXI



Yayın Komisyonu:

Prof. Dr. Necati ÖNER (*Dekan*)

Prof. Dr. Hüseyin YURDAYDIN

Prof. Dr. İbrahim A. ÇUBUKÇU

Prof. Dr. Talât KOÇYİĞİT

Doç. Dr. Gültekin ORANSAY

Doç. Dr. Esat COŞAN

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RIGHTS OF WOMAN IN ISLAM

Prof.Dr. İbrahim A.ÇUBUKÇU

Tr. by. Dr. M. DAĞ

Woman had almost no rights in the eyes of the Arabs before Islam. Boys had a higher place than girls in society. Babies, if they were female, were buried alive in some cases. Girls were not consulted about the man they were to marry.

Man paid no attention to woman's chastity and health. A woman could marry not less than ten men, and the child born would belong to whomever she would indicate as its father. Man would willingly accept the child upon the woman's word. Moreover man permitted his wife to have intercourse with another man so as to get better descendants.

In the time of Ignorance (Jahiliyyah) the custom to exchange wives were widespread in some places of Arabia. Free women did not commit adultery publicly, but often practised it secretly. Beside this, there was also the practice of marriage for a certain time, which was called *Mut'a*. This type of marriage was allowed in the early years of Islam, but was abolished later by certain schools of law. However the Shi'a, on the basis of the Koranic verse Nisâ': 24, continued to practise it until recently. In the time of Ignorance the elder son could marry his stepmother. Islam, on the other hand, gave a considerable amount of freedom to woman. It laid emphasis on her consent in respect of marriage. It also protected woman's chastity, and abolished all practices of the time of Ignorance regarding marriage. It was generally agreed by the Muslim scholars of law that a girl who reached the age of adolescence could not be forced to marry a man she did not want. The great jurist of Islam, *Abû Hanîfah*, held that a woman could marry herself without her parent's consent if she found a husband equal to her status. Only those who has not yet reached the age of adolescence and power of distinction would be married by their guardian. Even then she had the right to re-

vise her position in reaching adolescence. Despite this, some Muslim scholars militated against the marriage of small girls. According to *Ibn Shubrumah*, girls who have not reached adolescence could never be married. The Family Rights Decree of 1917 approved the marriage of boys at the minimum age of 12 and girls at the minimum age of 9. This Decree prohibited marriage by force. The aim of marriage in Islam is not only to become wife and husband, but also to derive happiness from married life, to raise good children, and to protect chastity. It is for this reason that God, the Most High, says in the Koran: "One of God's signs is that He created for you spouses, so that you might repose in them, and He has set between you love and mercy"¹.

Marriage should be announced publicly, and for the marriage ceremony to be valid two male witnesses or one male and two female witnesses are required.

Marriage is one of the sunnahs of the prophet. For he says, "marriage is my sunnah (practice), whoever turns away from this is not one of us". In another tradition he states that marriage should be made easy.

In Islam there is no specific time to perform the marriage ceremony. The view that marriage ceremony could not be held between the two religious feasts has no basis; the Prophet married Â'ishah between these two feasts. Marriage ceremony is not approved, only when Jum'a prayer is being performed². Marriage contract performed during this period of time is considered sound, yet abominable converging on prohibition.

It is not right to make marriage difficult and to raise marriage expenses more than the male side could bear. In Islam there is no such thing as marriage by purchase. Only a specified sum of money is paid as a marriage endowment (mahr), which is only to protect the woman. The value of mahr is not less than 10 dirham. Mahr may be given to the bride in goods or in money equivalent to the above sum. Mahr is not a condition for a sound marriage, but only necessary. The Prophet says on this question that the best of mahr is the easiest one. Even though

1 Rûm: 21.

2 "O believers, when proclamation is made for prayer on the Day of Congregation, hasten to God's remembrance and leave trafficking aside". Jum'a: 9.

the father of the bride took a certain sum of money from the bridegroom, he cannot keep it for himself. He must spend it only for the need of the married.

Man is allowed to marry not more than four wives, but with the condition that he should not in any way cause injustice between them. If he fears he would not be equitable, he is allowed to take one wife only.³ Apart from the Koranic verse, there are also traditions of the Prophet on the subject: "If a man has two wives and values one more than the other, he would be raised on the Day of Judgement as deformed on one side". "Whoever pities my community, God will pity him too". Jurists, on the basis of this tradition, propound the view that the man who does not marry another woman not to offend his first wife will get a divinely reward.

In Islam man is the head of the family. He, on certain matters, was held superior to woman. But man cannot torture his wife, take her property against her wish, and offend her wrongfully by abuses.

Right of divorce is given to man in Islam. But woman, during the marriage act, may demand right of divorce for herself. Even though she laid down no such condition on marriage, she can still have the right of divorce in such cases as torture by her husband, and go to court for that matter.

According to Imâm Muhammad, in such cases as sexual incapacity and madness on the part of husband, woman may demand divorce. Imâm Muhammad cites leprosy and itch as the other cases where woman has the right to divorce.

Man cannot divorce his wife for no reason. If his wife committed an offence or paid no respect for him, he must try to change her ways by good advice. If she does not change and insists on her behaviour, he must resort to keeping away from her. If this still had no use, he must take a harsher attitude towards her, divorce being the last resort.

The news of divorce never pleased the Prophet. On this subject he has the following traditions: "The most uncomely thing for God is divorce". "May God curse upon those who practise polygamy for their

3 Nisâ: 3

sensual enjoyment". "Get married, but do not have divorce, for the heaven trembles from it".⁴

The number of the verses which protect woman from divorce are many. Here are some examples: "If your wives obey you, do not try to find a pretext to offend them".⁵ "Do not oppress them by torments".⁶ "Be in good terms with your wives, or let them free in goodness. Do not keep them just to torment. Then you will infringe the limits of God, and do injustice to them".⁷

In Islamic law it is the sole obligation of man to provide her wife. Woman's sustenance and clothing is the duty of man. The Prophet has the saying that it is the right of your wives over you to get sustenance and clothing. In another tradition he says, "O believers, begin with the members of your family whose sustenance is an obligation upon you. Only after then help others".

Woman has every right of disposal over her property. Husband cannot make use of his wife's property without her permission. He only uses her property and money upon her willingness or permission. The following is the word of God on the subject: "Give the woman her marriage endowment generously. If they are pleased to offer you any of it, consume it with wholesome appetite".⁸

Islam put no barrier against woman's working in many fields. There are, on the contrary, many commands which favours woman's working. The following are the verses from the Koran: "A man shall have to his account only what he has laboured, and his labouring shall surely be seen and he shall be rewarded for it in full".⁹ "Disperse over the earth and seek your portions from God's favour".¹⁰

Traditions in this regard are as follows: "What a man gets lawfully is his own earnings and the outcome of fair sale". "Certain sins are cleared away only by work for sustenance". "He whose two days are alike is surely deceived". "God loves him who is skilled in his work and craft",

4 See, Osman Keskinoglu, *Fıkıh Tarihi ve İslâm Hukuku*, Ankara 1969, p.244.

5 Nisâ: 34.

6 Talâq: 6.

7 Baqara: 231.

8 Nisâ: 4.

9 Najm: 39-41.

10 Jum'a: 10.

Apart from such commands and advices, we know about many prominent women who has rendered important social services. Women helped soldiers who participated in wars. We also see that some women in the time of the Prophet took part in the acts of political and religious settlements. We know that Â'ishah, wife of the Prophet, practised independent Judgement on many juridical matters. Among other women who settled questions with their independent decision are Fâtimah, Abû Bakr's daughter Asmâ' and Umm al-Dardâ.

The second caliph Umar is known to have put Shifâ in charge of controlling the market.

In Islam women may choose a profession in official circles. They may be teachers, lawyers and muftîs. They are not allowed to be Imâm only. It has the permission of some scholars that certain qualified women can be jurists and even head of the State. But the majority deprived women of these rights. Moreover it is known that women also had a saying in political matters.

Islam advises good treatment of women within the bounds of the family. It is said in the Koran that women should be treated well and kindly¹¹. In another verse it is pointed out that men and women have mutual rights over one another, except that the former have a degree over the latter¹².

We find many traditions related from the Prophet which advises men to treat their wives mildly and kindly: "Woman is like a crooked rib; when you try to straighten it, you break it; if you accept her as she were, and treat her justly, you get benefit from her. Try to get into the habit of treating them kindly. Let no believer get angry against a female believer. If one of her dispositions is disliked, the other might be pleasant". "The best of you is him who treat his wife kindly. I am the best of you who showed goodness to women". "The perfect believer is the one who has the best moral qualities; and the best of you is the one who is good to his wife' .

It is, of course, necessary for women to show respect for their husbands. In this regard the words of God are as follows: "Good women are those who bows wholeheartedly and protects what God comman-

11 Nisâ: 19.

12 Baqara: 228.

ded her when her husband were absent"¹³. On this subject we find the following traditions: "if a woman performs five daily prayers, fasts a month in a year, protects her chastity and obeys her husband, let her enter Paradise from whatever gate she likes". "If a woman dies leaving her husband pleased with her, that woman goes to Paradise".

The aim of marriage in Islam is to provide happiness, to protect chastity and to secure faithfulness. This point is emphasised in the verse Rûm: 21. The lack of agreement in family life effects children badly. Against this the Prophet says: "make a good turn to your chil as your parents had already done to you; he has rights upon you".

Parents should treat their children equally. In this regard the Prophet says, "make sure that the presents you give your children should be equal". "No better gift than good upbringing is given to a child by his father".

In so far as Islam is concerned, male children should not be considered superior to females. This is clearly shown in the following tradition: "He who does not bury his daughter alive, think of her lowly and prefer his sons to her, God puts him in His Paradise".

It is a meritorious action in Islam to seek knowledge and to provide a good education for children. The first verse sent down to the Prophet begins with the word, "recite"¹⁴. Besides, the verse, "Could those who know be deemed equal to those who are ignorant?" indicates the superiority of those who seek knowledge.¹⁵

The Prophet states that it is enjoined upon both men and women to seek knowledge. The Prophet himself taught men and women on certain days. Shifâ who already knew reading and writing is asked by the Prophet to teach these to his wife, Hafsa.

From the above account we may safely conclude that the status of women in Islam improved highly in their favour¹⁶. It is not right to look at women with contempt, as some people do. It is in fact necessary to value women as they deserve. Islam saved women from the worse conditions of the Jahiliyyah and gave them a respectable place in society.

13 Nisâ: 34.

14 A'lâq: 1.

15 Zumar: 9.

16 Ord. Prof. Sabri Şakir Ansay, Hukuk Tarihinde İslâm Hukuku, Ankara 1958, pp. 65-