



MODULE 7 FAMILY LAW



Module 7: Family Law

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THE BETROTHAL PROCESS

‘Proposal,’ the ‘Proposing,’ the ‘Proposed to’

Because of the multiple objectives of Islam that are fulfilled through marriage (protection, foundation for civilization, strong family), it is important that both spouses have certain qualities that will hopefully ensure their stability and happiness.

Once compatibility is determined and the man wants to seek marriage, he* should propose.

*It is allowed for a woman to propose as well.



RECOMMENDATIONS

It is recommended to make the proposal **secret** (among the family), and not public, to guard against envious people or those who want to prevent it.

- The proposal should ideally BEGIN with approaching the father/guardian. Or:
 - Ask her, with modesty and adab, if she is engaged married (or get another woman to do so).
 - Tell her if she accepts, you will go and talk to her father
- If you know that her parent's culture frowns on this approach, go to the father directly.



RECOMMENDATIONS

- It is recommended to propose on a Friday after 'Asr.
- It is highly recommended for the man to look at his prospective bride before marriage. (In modern times, this is usually through photographs or a school or work setting. Outside of these, it should be with the girl's knowledge, or with her guardian's knowledge, while reasonably certain she will say yes.)
- This looking is limited to the face and hands [no uncovered hair pictures!]. Looking at the face: beauty. Looking at the hands: general body shape.
- It is **not permitted** in this process for him to spend time alone with her (*khalwa*) with the claim of 'getting to know her.' She is still unmarried to him at this time.



RECOMMENDATIONS

When looking for a spouse, it is recommended that the highest priority be the potential spouse's **religious commitment**. The Prophet (Allah bless him and give him peace) said '**If there comes to you with an offer of marriage one with whose religious commitment and character you are pleased, then marry her to him. If you do not do so, there will be mischief on earth and widespread corruption.**' (Tirmidhi)



RECOMMENDATIONS

The Prophet (Allah bless him and give him peace) said, **‘A woman is married for four things: her wealth, her lineage, her beauty and her religious commitment. Seek the one who is religiously-committed, may your hands be rubbed with dust (i.e., may you prosper).’**



RECOMMENDATIONS

- It is recommended for both parties to perform the Istikhara prayer (multiple times if needed)
- It is recommended for both sides to seek the counsel of virtuous people in the community who know the families to advise them on suitability. In this circumstance, backbiting is permitted.



RECOMMENDATIONS

- It is recommended for the man to marry a virgin (due to the hadith of Jabir).
- It is the right of either to want to only marry a virgin. If one of them had indiscretions (zina) in the past and the other says they only want to marry a virgin, they cannot be forced to 'confess'; however, they should discreetly disqualify themselves and end the process if they are not a virgin.



COMMUNICATION

Once the two have determined suitability and have decided to pursue marriage, communication should be limited to the families, or only concerning the practical matters of wedding arrangements, etc.



WHAT THE HUSBAND SHOULD HAVE

1] ***Rushd* (mental capacity)**—one who is mature and sane and knows how to handle money. The opposite is a safih, or dolt, who has no concept of costs and spends frivolously.

2] **Compatibility.** The husband should marry someone who is compatible in qualities that the Shariah takes into consideration, either equal to the would-be wife in those qualities, or higher than her.



COMPATIBILITY (*KAFA'A*)

The purpose of marriage is to have a stable household in which to build a family. This requires tranquility, love, and respect. Hypergamy is a biological fact (hukm 'adi).

Hypergamy is a fundamental, innate female drive, to seek men who are “better than they are.” Hypergamy influences how women select mates as well how attraction and power dynamics fluctuate in long term relationships.

Female hypergamy is a woman's tendency, or desire, to marry the *best possible man that she can find*.



COMPATIBILITY (*Kafa'a*)

Compatibility (Kafa'a) is the framework by which the guardian/father ensures the best possible spouse for his daughter.

In modern society, the marker of social status is largely financial—a man's money and resources signal higher status, resulting in attraction from women (not to say other factors are considered important). But in many societies, there are other markers of social status besides wealth.



COMPATIBILITY (*KAFA'A*)

In the Maliki school, compatibility is primarily considered in Deen.

Quran: *'Indeed, the noblest of you in the sight of Allah is the most God-fearing.'*

Hadith: said 'If there comes to you with an offer of marriage one with whose religious commitment and character you are pleased, then marry her to him.'



WHAT IS COMPATIBILITY IN DEEN?

- The husband is religious and not a *fasiq* (who openly commits major sins)
- This doesn't mean the husband is more pious.
- If the husband is a *fasiq*, he lacks the most basic compatibility for marriage.
- It is not fitting for the father/guardian or girl to be satisfied with a *fasiq* for marriage.



OTHER FORMS OF COMPATIBILITY

All four schools agree on compatibility in Deen.

The Hanafis and others include compatibility in:

- Lineage (shared cultural norms—not racism!)
- Profession (social-standing)
- Wealth (a socio-economic bracket similar to or higher than what she was born into and accustomed with)

Compatibility is with respect to the female, not the male. A male may marry someone from a lower socioeconomic class or someone in the same class.



GENERAL POINTS ON COMPATIBILITY

- No one may force a woman to ‘marry down,’ including her guardian.
- If a girl and her father/guardian are pleased to marry a man of a lower socioeconomic status (non-*kufu*), it is permitted.
- If a girl wants to marry a man of a lower socioeconomic status (non-*kufu*) and her father/guardian refuses, it is not permitted for her to marry him.

