



## MODULE 7 FAMILY LAW



# Module 7: So Far

- Meaning of nikah (marriage) according to Shariah.
- The ruling on nikah.
- The manners of proposal and seeking.
- Suitability
- The pre-requisites and pillars of marriage
- Contractual details



# LEARNING OBJECTIVES

- The Mahr
- Rights and Responsibilities



# WHAT NOW?

Khalid was told about Layla. He was interested in marriage, so he went to Abu Layla and spoke about his interest. The parents of both Khalid and Layla spoke and arranged for the two to meet. They got to know one another in a halal way, and after both made istikhara, they agreed to set a date for marriage in the future. The hall was rented, and the catering service has been hired...





# WHAT NOW?

Khalid and Layla's family came together with friends and relatives. Layla's father was there, and two witnesses. Khalid proposed and Layla accepted, and Khalid gave her \$\_\_\_\_\_ in Mahr...

...what should he give her?



# THE MAHR

The Mahr/Sadaq is ‘wealth that the wife deserves from her husband when entering into a marriage contract with him...’

وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً ۚ

‘Give women their due dowries gracefully...’ (4:4)

وَأَجَلَ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ

‘Lawful to you are all beyond these—as long as you seek them with your wealth in a legal marriage...’ (4:24)



# WHAT'S THE MAHR FOR?

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً ۚ

*‘Give those you have consummated marriage with their due compensations.’ (4:24)*

Imam al-Qurtubi: “The term ‘consummated’ means sexual enjoyment; ‘compensation’ means dowries, as it is compensation for the right of sexual enjoyment...”



# MAHR MISCELANIA

- The Mahr is wajib. It is not allowed for the bride to opt out of receiving a mahr.
- The basis for the Mahr is what the two parties agree to
- There is nothing in the Shariah which puts a ceiling on what a woman may ask for as a Mahr. There is consensus on this point.
- The bare minimum of Mahr is differed over. Some say it is a quarter of a dinar or three pure silver dirhams or whatever item is equal in value.
- The current value of gold is \$57 per gram, making the minimum mahr about \$115 dollars.
- It is recommended to be moderate with the Mahr. The mahr of the Prophet (Allah bless him and give him peace) was around 500 dirhams (approx: \$1000)





# RIGHTS AND RESPONSIBILITIES

- The marriage contract is an exchange, a transaction.
- This transaction comes with rights and responsibilities
- There is a minimum threshold for rights and responsibilities to know, but ideally we should go beyond the minimum.
- Marriage conflicts are seldom fixed by a bare-minimum 'I'll give you your rights and you'll give me mine.'



# RIGHTS AND RESPONSIBILITIES

RIGHTS SHARED BETWEEN HUSBAND AND WIFE:

- 1] Sexual access
- 2] Mutual respect and good treatment
- 3] Receiving inheritance share when the spouse dies
- 4] Keeping peace and respect with both sets of in-laws
- 5] Raising their children



# RIGHTS AND RESPONSIBILITIES

Marriage legalises sexual intimacy between spouses in every time and manner that are not prohibited. The only prohibited things are:

- Anal sex
- Sex during menstruation or post-natal bleeding
- Sex while the wife is fasting
- Sex while in ihram or i'tikaf



# RIGHTS AND RESPONSIBILITIES

- Sexual access at any time outside of the prohibited times and circumstances is a right of the husband.
- Sexual access is also the right of the wife. If a wife complains to a Qadi about the husband not giving her conjugal rights, it is said that the husband must, at a minimum, have intercourse once every four days.





# RIGHTS OF THE HUSBAND

- The sexual availability of his wife.
- Her attention and good treatment.
- Her loyalty and honesty in the home.
- Her obedience in everything that is lawful and good.
- Managing and maintaining the home.
- Getting his permission before leaving the home.
- Her protecting his wealth and belongings in his absence.
- Her preserving his chastity and honor in his absence.
- Not admitting people into the house without his permission.



# RIGHTS OF THE HUSBAND

1] The sexual availability of his wife.

*‘When a man calls his wife to his bed and she refuses, and he goes to sleep angry with her, the angels curse her until morning.’*



# RIGHTS OF THE HUSBAND

- 2] Her attention and good treatment.
- 3] Her loyalty and honesty in the home.
- 4] Her obedience in everything that is lawful and good.

*‘And they (women) have rights similar (to those of their husbands) over them in what is ma’ruf, but men have a degree over them.’ (2:228)*

al-Jassas said: ‘Allah tells us in this verse that each of spouse has rights over the other, and that the husband has one particular right over his wife which she does not have over him.’



# QIWAMA

*'Men are **Qawwamun** over women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard.'* (4:34)

The scholars of tafsir are unanimous that this Qiwama is linked to:

Leadership

Authority

Guidance and instruction

Defense and protection

Provisioning and supporting materially





# QIWAMA

This Qiwama is linked to two things:

1] *The fadl that Allah has given men over women*—essential qualities inherent in health masculinity (power, capacity, labor), and differences in legal rulings (tasked with greater and lesser forms of political authority, jihad, calling the azan, leading the prayer, khutbas, witnessing in matters of prescribed punishments, retributions, bearing burden of paying blood money, guardianship, divorce, lineage, etc.)

2] *Provisioning*—scholars understood from the verse that when a man is unable to maintain his wife financially he is no longer Qawwam over her, and when he is no longer Qawwam over her she has the right to have the marriage contract annulled because it no longer serves the purpose for which marriage was legislated.



# RIGHTS OF THE HUSBAND

- Getting his permission before leaving the home.
- Her protecting his wealth and belongings in his absence.
- Her preserving his chastity and honor in his absence–Hafizat.
- Not admitting people into the house without his permission.



# IS HOUSEWORK A WIFE'S DUTY?

- The foundation is ihsan and ma'ruf. Fiqh details describing the minimum are not taken as the general rule for daily married life. (Two can play that game).
- Scholars differ about the question of whether it is obligatory for a wife to do housework.
- It is generally recommended for her to do such things as a part of custom.
- Some Imams hold that it is obligatory for her to do what is customary and according to her situation.



# IS HOUSEWORK A WIFE'S DUTY?

- If the wife refuses to do any cooking or housework and just sit at home, the husband can also give the bare minimum and both will be miserable.
- Housework and chores will differ among women of different classes and places—what the urban wife does is not like what the country wife does.
- The wife is not obliged to work for the husband for free. If she works with him she is entitled to compensation.





# THE WIFE'S RIGHTS

1] Mahr

2] Provision

- Food—customary, time and place specific, means of preparing (cookware, fuel)
- Clothing—summer and winter; replacements; bedding, footwear
- Shelter—size and quality based on what's customary for wife; she can stipulate to not live with in-laws



# THE WIFE'S RIGHTS

- 4] Kind treatment
- 5] Equitable division of time and provisions in the event of her having co-wives
- 6] Not subjecting her to harm (verbal or physical, etc.)
- 7] Not interfering with or taking from her personal wealth

