

Hanbali Fiqh: Book of Marriage

Explanatory Notes on *Akhsar al-Mukhtasaraat* Based on Lectures of
Sh. Muhammad Gamal Aly

By Rameez Abid
Dhu'l-Hijjah 25, 1442 AH | August 4, 2021

Table of Contents

Rules on Engagement and Looking	2
Marriage Contract (Nikaah)	4
Types of Women Forbidden in Marriage	7
Conditions Placed in the Marriage Contract By the Spouses	9
Hidden Defects Discovered in the Spouse After Marriage	10
Dowry	12
Wedding Feast (Waleemah)	14
Relationship With the Spouse	15
Rulings Related to Multiple Wives	16
Disobedient Wife (Nushooz)	17
Request for Annulment By the Wife (Khul')	18

- I. Def of *nikaah* (marriage): a **contract** to make sexual intimacy **permissible** between a man and his wife
- II. **Ruling** on marriage is **based** on **individual circumstances**:
 - A. **Recommended** to marry
 1. One who has sexual desire and does **not** fear falling into fornication
 - B. **Obligatory** to marry
 1. One who has strong sexual desire and **fears** falling into fornication
 - C. **Permissible** to marry
 1. One who does **not** have sexual desire
 - a) Ex: an impotent
 - D. **Disliked** to marry
 1. One who **knows** that he is **not** going to be able to fulfill the wife's rights either financially or sexually
 - E. **Prohibited** to marry
 1. These includes situations such as:
 - a) A man who already has four wives which is the maximum limit
 - b) A woman who is already married to someone else
 - c) A Jewish or Christian woman living in a land that is at war with Muslims and she is joined with them against Muslims
- III. **Recommendations** on the **type** of woman to marry
 - A. To marry only **one woman**
 1. Because it becomes more **difficult** to fulfill rights of multiple women and there is a **higher risk** of being unjust
 - B. To marry a woman from a **noble family**
 1. Noble here means those known for righteousness, knowledge, generosity, etc.
 - C. To marry a woman who is **religious**
 - D. To marry a woman who is **not related** (i.e. cousin)
 1. If someone **did**, then it is **neither** considered **disliked** nor **prohibited**
 2. Because if they do **not** get along and divorce, it may cause **hostility** between the families resulting in cutting each other off
 - E. To marry a **virgin**
 - F. To marry a woman who is **fertile** (i.e. able to produce many children)
 1. This is determined by **looking** at other **female members** of her family that are married. If they have many children, then we can **assume** that she **too** will likely be able to have many children

Rules on Engagement and Looking

- I. The one who wants to be **engaged** to a woman, then he may **look** at her provided the following conditions:
 - A. He is either **certain** or thinks **most likely** that he will be **accepted**
 1. If there is **little hope** of acceptance, then he is **not** permitted to look at her
 - B. He may look at whatever **frequently** appears from her
 1. Ex: hands, face, neck, and feet

2. He can do this in **secret** as well
 - a) Ex: when they both happen to be in a marketplace, he may look at her from a distance
 - C. It should **not** be in **seclusion**
 1. It is **not** permitted for them to meet in isolation
 - D. He is **safe** from **desire**
 1. If he does **not** feel safe from it, then he is **not** permitted to look at her because it could lead him to do something forbidden
- II. If it is a *mahram*¹ or a slave-girl
- A. He is **permitted** to look at the following from her:
 1. Whatever frequently appears from her
 - a) Ex: face, neck, hands, and feet
 2. Head
 3. Shin
 - B. Scholars **differ** whether the **slave-girl** here is in reference to the one **offered for sale** or not
 1. It is **not** in reference to one's **own** slave girl
- III. Engagement in the following three instances is **forbidden** in general:
- A. **Direct offer** of engagement to someone who is **still** in her *'iddah*² (waiting period)
 1. After an **irrevocable** divorce: **prohibited**
 - a) **Irrevocable divorce** is when the divorce is **final** and the husband can **no longer** take her back during her *'iddah*
 2. After a **revocable** divorce: **prohibited**
 - a) A **revocable divorce** is the **first** or **second** divorce given by the husband in which he can take the wife back **during** her *'iddah* **without** having to perform a new marriage contract
 3. A wife separated from her husband through *khul'*: **allowed**
 - a) *Khul'* is when the wife returns the dowry back to the husband for the purpose of divorce. The **previous husband** in this case is **allowed** to send **direct offer** of engagement during her *'iddah*
 - (1) Details of *khul'* will be discussed later below in a separate chapter *insha'Allah*
 - B. **Indirect** offer of engagement to someone who is still in her *'iddah*
 1. After an **irrevocable** divorce: **allowed**
 - a) However, her **previous husband** will **not** be allowed if he divorced her thrice but others can
 2. After a **revocable** divorce: **prohibited**
 - C. Sending an **offer of engagement** to a woman who has already **accepted** someone else's proposal
 1. However, if the the engagement offer has **not** yet been **accepted**, then others are **permitted** to send their own as well

¹ These are those close blood-relatives that are forbidden for him to marry (daughter, sister, mother, aunt, etc.).

² Amount of time designated for a woman after a divorce or after becoming a widow before she is permitted to marry again.

Marriage Contract (*Nikaah*)

- I. It is **recommended** that a marriage contract be done:
 - A. In the **evening** after the 'Asr prayer on **Friday**
 1. Because this is a blessed time when supplications are accepted
 - B. After the well-known **sermon of Ibn Mas'ud** is recited
- II. Pillars³ of the marriage contract
 - A. The husband is **free** of any **hindrances** that may **invalidate** the marriage contract
 1. Ex: if he is already married to four women
 - B. The wife is **free** of any **hindrances** that may **invalidate** the marriage contract
 1. Ex: she is already married, she is in her *'iddah* period after a divorce, etc.
 - C. **Offer** of marriage from the woman's **guardian** (*wali*)
 1. He can use a number of **expressions** to indicate this, such as, *'I marry off so and so to you', 'I give in marriage to you so and so'*
 - a) If he is **ignorant** of such expressions in **Arabic** and **cannot** say them, then he can use **any** words in **any** language which indicate the **same** meanings
 - D. **Acceptance** of the offer from the **husband**
 1. He can use a number of **expressions** to indicate this, such as, *'I accept', 'I am pleased', 'I get married to her', 'I accept this marriage', 'I am pleased with this marriage'*
 - a) If he is **ignorant** of such expressions in **Arabic** and **cannot** say them, then he can use **any** words in **any** language which indicate the **same** meanings
- III. Conditions for the **validity** of the marriage contract are **four**:
 - A. Specific **identification** of the two spouses
 1. The **exact** two people getting married must be **specified** in the contract
 - a) Ex: it would be **invalid** for a father to say, "I marry one of my daughters to you," without specifying a particular one
 2. It is **permitted** to specify them in **any** way as long as it **clarifies** the **identity** of the particular individuals **involved** in the contract
 - a) Ex: it would be **permitted** for a father to say, "I marry my oldest daughter to you," because we can tell which one he is talking about
 - B. **Both** individuals are **pleased** with the marriage contract
 1. In **general**, the two potential spouses must **agree** to the marriage contract for it to be valid
 2. There are **exceptional cases** where their agreement is **not** required for the contract to be valid according to the **official position** of the school (*mu'tamad*). There is a **second opinion** in the school which says their agreement **must** be required regardless. According to the **official position**, this can **only** be done by the **father** or his **executor**⁴. This is because it is **assumed** that both of these individuals have the **best interest** in mind for the following:

³ If any of these pillars (*arkan*) are missing, then the marriage contract is considered void.

⁴ This is the man the father gives in his will the specific authority to get his son/daughter married after his death.

- a) A small boy
 - (1) **Below** the age of *tamyeez*, which is seven
 - (2) If a **master** owns a small slave boy **below** the age of seven, he can marry him off as well **without** his agreement because it is **assumed** he is doing whatever is **best** for his slave
 - b) A man who has **reached** the age of **puberty** but is **foolish**
 - (1) Meaning he **lacks** mental competence
 - (a) Ex: a childish mind
 - (2) This means if the man has **reached puberty** and is **not** foolish, then he **cannot** be married off by the father or his executor without his agreement
 - c) A **girl** who is **insane**
 - (1) Regardless of whether she has reached the age of puberty or not
 - d) **Non-virgin** girl **under** the age of nine years old
 - (1) Regardless of whether she had intercourse due to *zina* (fornication) or marriage, a common practice in the past
 - e) A **virgin** girl **regardless** of her age
 - (1) A **master** can also marry off a **virgin slave-girl** without her agreement because it is **assumed** that he is doing whatever is **best** for his slave
3. No **other** type of guardian (*wali*) is allowed to do this, instead, the others **must** have the potential spouses' agreement. If the father **dies** and assigns **nobody** in his will as the executor, then agreement **must** be sought and **nobody** else is allowed to get the above persons married without their agreement
- a) For a little girl **below** nine years of age, these **other** types of guardians **must** wait until she **reaches** nine years of age and then seek her **agreement**
 - (1) A **virgin** girl nine or older
 - (a) Her **silence** is evidence of her agreement
 - (2) A **non-virgin** girl nine or older must **verbally** agree
- C. The **guardian** (*wali*) of the wife who acts on **behalf** of her in the marriage contract
1. **Conditions** for the **guardian** to be considered **valid**
 - a) Pubescent and sane (*takleef*)
 - b) Male
 - c) Free
 - (1) A slave **cannot** act as a guardian for anyone
 - d) Competent (*rushd*)
 - (1) He should be able to **determine** whether the potential husband is a good match for the woman or not
 - e) He should be of the **same religion** as that of the girl
 - (1) A non-Muslim father of a Muslim girl **cannot** be her guardian in the marriage contract and vice versa
 - f) He is **upright** even if it just **appears** that way

- (1) Meaning he keeps away from **major sins** and does **not** persist in **minor sins** even if he just behaves that way in **public**. This is because we as a society **judge** by the **apparent** and leave the **private** to Allah
- (2) **Exceptions**: the following **two** can be guardians **even** if they are **not** upright in public
- (a) **Ruler** or the one in authority in the land
- (i) He **becomes** the guardian of any woman who does **not** have a guardian due to some **need**
- (a) Ex: she is a convert, there is no qualifying guardian in the family, etc.
- (b) **Master** of a slave-girl
- (i) He is by **default** her guardian because he **owns** her, therefore, he can act on his slave-girl's behalf in the marriage contract
2. The **sequence** of the guardians in order is as follows. If the first is **not** available, then we move on to the **next** one in the **order** indicated below:
- Father
 - Father's executor
 - Paternal grandfather and then his father and so on up the line
 - Son and then his son and so on down line
 - Full brother
 - Paternal brother
 - Full brother's son
 - Paternal brother's son
 - Full uncle
 - Paternal uncle
 - Son of full uncle
 - Son of paternal uncle
3. Who would be the guardian of the **freed** slave girl that wants to marry but has **no** male relatives? The **sequence** of her guardians would be as follows:
- One who freed the slave girl (i.e. her former master)
 - Father of the master who freed her
 - Grandfather of the master who freed her
 - Son of the master who freed her
 - Brother of the master who freed her
4. The **ruler** is the **last** resort when someone does **not** have any available guardians
5. The guardianship of a **free** woman is **transferred** to the **further** relatives, based on the sequence above, if the closer ones fall into one of the following **three** categories. She does this by first making a formal **complaint** to the judge against the guardian:
- The guardian **refuses** or **prevents** the marriage for an illegitimate reason
 - The guardian is **not** qualified

- (1) Ex: he is mentally incompetent
- c) The guardian is **traveling** over a long distance, thus, he is **not** available
 - (1) Today if we can get in touch with him over the phone or some other means, then this does **not** apply. Instead, the guardian will appoint a **representative**
- 6. If a girl who is **still** a **slave** wants to get married and her master is **not** available, then we go **straight** to the **ruler** because **only** her **master** can be her guardian
- D. **Two witnesses** that **fulfill** the following **criteria**:
 - 1. Male
 - 2. Sane and pubescent
 - 3. Upright even if **only** apparent
 - a) Meaning they **avoid** major sins and do **not** persist in minor ones even if it only **appears** that way to the public
 - (1) We judge based on the apparent and **not** hidden
 - 4. Ability to hear (i.e. they are not deaf)
 - 5. Ability to speak (i.e. they are not mute)
- IV. **Suitability** between the spouses is also a **condition** for the **binding** of the contract. Without it, the contract is **valid** but **not** binding **until** this condition is met
 - A. Suitability means he should be a **good** match and **suitable** for her
 - B. It is **prohibited** to get a woman married **without** her permission if the husband is **not** suitable for her
 - C. A woman or her guardian can **annul** the marriage contract if she/he does **not** find him suitable for her
 - 1. If the woman and her guardian **accept** him despite a **difference** in suitability, then the contract becomes **binding**
 - 2. There is a **difference** of opinion whether the suitability agreement is necessary from **all** of the guardians in the sequence or **just** the closest one
 - D. Suitability here is in reference to **five** things and the objective is to keep the woman **safe** from harm:
 - 1. Religious practice
 - a) Ex: she is practicing while he is not
 - 2. Profession
 - a) Ex: she is part of a family with high paying jobs and he is not
 - 3. Financial
 - a) Ex: she is from a wealthy family and he is not
 - 4. Free or slave
 - a) Ex: he is a slave and she is not
 - 5. Lineage
 - a) Ex: she is from a nobler lineage than him

Types of Women Forbidden in Marriage

- I. The following are **always** forbidden no matter what due to close lineage:

- A. Mother, grandmother (maternal and paternal), great grandmother (maternal and paternal) and so on up the line
 - B. Daughter, granddaughter and her female descendents
 - 1. Regardless of whether the granddaughter(s) are through the son or daughter
 - C. Sister regardless of whether she is full or half
 - D. Niece through a sibling and her female descendents
 - 1. Regardless of whether the niece is through a half or full sibling
 - E. Parents' sister (i.e. aunt)
 - 1. Includes the following as well:
 - a) Parents' uncles and aunts
- II. Those related through **breastfeeding** are **always** forbidden as well
- A. The **same** rules apply as that for the first category above, which means it includes the following:
 - 1. The woman who **breastfed**
 - a) She **becomes** like a **mother**
 - 2. The female(s) who **drank** the milk of one's **wife**
 - a) They become like his **daughters**
 - 3. The female(s) who **drank** the milk of the **same** woman and their female descendents
 - a) They become like **sisters** and their female descendents become like **nieces**
 - 4. The female **descendents** of the **males(s)** who **drank** the milk of the **same** woman
 - a) They become like **brothers** and their female descendents become like **nieces**
 - 5. The female(s) who **drank** from the **same** milk as one's **mother**
 - a) They become like **aunts**
 - 6. The female(s) who **drank** from the **same** milk as one's father
 - a) They become like **aunts**
 - B. Breastfeeding woman's **biological children** are also considered siblings, thus, forbidden
- III. The following are **permanently** forbidden due to the **marriage contract** even if the marriage was **not** consummated:
- A. **Wives** of the following individuals and wives of their **male ascendants** (father, grandfather, great grandfather, etc.) and **male descendents** (son, grandson, great grandson, etc.):
 - 1. Father
 - 2. Son
 - B. The wife's **mother** and her **female ascendants** (grandmother, great grandmother, and so on up the line)
- IV. The following are **permanently** forbidden **only** if the marriage was **consummated**
- A. **Wife's daughter(s)** and their **female descendents**
- V. The following are only **temporarily** forbidden:

- A. **Sister-in-law** until the **waiting period** for his current wife has **ended** if he **divorces** her or the current one **dies**
 - 1. Waiting period terms:
 - a) **Pregnancy**: until delivery
 - b) **Divorce**: three menstrual cycles
 - B. **Fornicator** until she **repents** and her **waiting period** has **ended**
 - 1. **Waiting period**: three menstrual cycles
 - C. **Former wife** whom he divorced **thrice** until she **consummates** marriage with **another** man and happens to be divorced or widowed from him
 - D. A Muslim woman to a **non-Muslim man** until he **converts**
 - E. A non-Muslim woman until she **converts**
 - 1. **Exception**: a **free** woman from the **people of the book**
 - a) She should be **following** her religion and **not** be just by name
 - b) She should be a **virgin**
 - F. An **enslaved** Muslim woman
 - 1. **Exception** with two conditions:
 - a) If a **bachelor** is **fearful** due to **need** of falling into fornication or is in need of someone to serve him
 - b) Bachelor **cannot** afford to marry a free woman or buy a slave
 - G. A **female master** to her **male slave**
 - 1. Because there is a **contradiction** of **authority** between **two** types of contracts:
 - a) She has **authority** over him because he's her slave
 - b) He has **authority** over her because he's her husband
 - H. A **master** to his **female slave**
 - 1. Because the contract of **slavery** is **stronger** than the marriage contract, therefore, he **cannot** join it with a **weaker** one
 - a) However, he can **free** her and then marry her
 - 2. He also **cannot** marry his son's female slave
 - I. A **woman** to her **son's male slave**
- VI. Whoever is **prohibited** due to the marriage contract **cannot** be had **intercourse** with even if **enslaved**
- A. Ex: husband owns his wife's sister as a slave. In this case, he **cannot** have intercourse with the latter even though she is a slave
 - B. **Exception**: Jewish or Christian female slave
 - 1. Ex: husband owns his wife's Christian sister as a slave

Conditions Placed in the Marriage Contract By the Spouses

- I. **Valid** conditions
 - A. Generally anything that is **permitted** in Islamic law
 - 1. Ex: the wife asks her dowry to be of a high amount
 - a) If he **agreed** and then did **not** fulfill it, then she has the **option** to either **cancel** the marriage contract or **continue** it
- II. **Invalid** conditions

- A. Anything that **contradicts** Islamic law
 - B. The following conditions will **invalidate** the marriage contract **itself** if they are put into the contract
 - 1. When there is **no dowry** and each agrees to **exchange** the other's sister/daughter
 - a) Ex: "I marry you with my daughter without a dowry with the condition that you marry me with your daughter without a dowry"
 - 2. He marries her with the condition to **divorce** her so she can **go back** to her **previous** husband who **divorced** her **thrice**
 - 3. When the spouses **agree** to marry each other for a **particular** period of time (i.e. temporary marriage)
 - 4. To put in a condition related to **future** without saying *insha'Allah*
 - a) Ex: "I marry you to my daughter when the month of Ramadan comes"
 - C. The following conditions are **invalid** but do **not** invalidate the marriage contract itself
 - 1. He puts in the condition that he will **not** give her any dowry
 - 2. He puts in the condition that he will **not** spend on her
 - 3. Conditions related to how long he will **stay** with each wife
 - a) Ex: "I'll marry you provided you agree to stay with me more than your other wife"
- III. If he/she put in a condition that the potential spouse **not** have a particular **flaw** in her/him and he/she **discovers** it **after** he/she marries her/him, then he/she has a **choice** to whether **continue** the marriage contract or **cancel** it
- A. Ex: "I agree to marry her provided she is at least 5'5" tall"
 - 1. After marrying her, he finds out that she is actually 5'1" tall. In this case, he has a **choice** whether to **continue** the marriage contract or **cancel** it
 - B. If he decides to **cancel**, he will **regain** the **dowry** from her provided he has **not** consummated the marriage
 - C. There are **two** types of flaws:
 - 1. Those which do **not** require to be **placed** in the contract beforehand and will give spouse the right to **cancel** the marriage contract if **discovered** after marriage
 - a) These will be discussed in more detail later *insha'Allah*
 - 2. Those which will **only** cancel the contract if one of the spouses actually **places** it as a **condition** in the marriage contract and discovers after marriage that it was violated
 - a) Ex: the height example mentioned previously

Hidden Defects Discovered in the Spouse After Marriage

- I. This section deals with those type of defects which give the spouse a **right** to **cancel** the marriage contract if discovered **after** marriage
 - A. They are generally related to defects which **prevent** sexual intercourse or **enjoyment** of it in **some** way
- II. Defects are of **three** types:
 - A. Those **exclusive** to **males**

1. Ex: impotent, absence of the penis, etc.
 - B. Those **exclusive to females**
 1. Ex: internal blocking of the vagina, the private part is attached together from outside blocking entry, etc.
 - C. Those that can be in **both** males or females
 1. Ex: insanity, leprosy, etc.
- III. It is **permissible** for the spouse to **cancel** the marriage contract for **any** of the above **even** if those defects occurred **after** sexual intercourse
- A. **Exception:** blindness, deafness, cutting of the hand or foot **unless** these were explicitly put down as a **condition** in the marriage contract. This is because these are **types** of defects that do **not** give the right to the spouse of **cancelling** the contract
 1. Ex: a husband finds that the woman he married is actually **blind**. In this case, he does **not** have the right to **cancel** the marriage contract unless he **specifically** put down in the marriage contract that the wife should **not** be blind
- IV. If a man is found to be **possibly** impotent but we are **not** certain, then the **ruler** should **delay** it for a **year** from the **time** the issue is raised to him. If in that year there was **no** intercourse that took place, then the contract can be **cancelled**
- A. Today, due to modern medicine, we can determine **without** waiting a year whether someone is impotent or not. In the past, some men had this problem in a **particular season** and it would **resolve** itself in a different season, thus, the Muslim jurists would request to wait a year (i.e. all season) to see if he was truly impotent or not
 1. If it is a type of impotence that can be **treated** through modern medicine, then the wife does **not** have the right to cancel the contract because it **can** be treated
- V. The spouse does **not** need to request cancellation **immediately** after finding out, rather, he/she can **delay** it. However, if the spouse shows **signs of acceptance** after finding out, then the option to cancel the marriage contract would **drop**
- A. **Exception:** if the husband is **impotent**, then the **only** way the option would be dropped from the wife is if she **explicitly** says it with a clear **statement** that she accepts him and we **cannot** base it **solely** on signs
- VI. Only the **ruler** has the right to **cancel** the marriage contract
- A. The ruler here implies the **judge** and it is done to assure that the **rights** of people are **not** violated
 - B. The spouse will **present** his/her case to him
- VII. If the **cancellation** of the marriage contract is done:
- A. **Before intercourse:** there is **no** dowry given to her
 - B. **After intercourse:** she has the right to **receive** her full dowry
 1. However, the one who **deceived** the husband by getting him married to her would **owe** him **compensation** for the dowry
 - a) Meaning if the one who set up the marriage **hid** the **defect** from the groom which led to the cancellation of the marriage contract
- VIII. If the **disbelievers** accept a **particular type** of **marriage** that would be considered **invalid** in our religion, we would **accept** it if they actually **believe** in its **validity**
- A. Ex: a Christian man married to two Christian sisters simultaneously

- B. This is provided if they do **not** raise the issue to the Muslim government to **give** them a ruling on it. If they do, then the Muslim government **must** give them the ruling of Islam
 - 1. If they do **not**, then it is **not** the responsibility or obligation of the Muslim government to investigate their marriages to determine whether they abide by Islamic law or not
- C. If one of the spouses **converts** to Islam, then he/she would be asked to correct it if it is **not** in line with Islamic law
 - 1. Ex: a man married to two sisters would be asked to divorce one
- D. If **both** husband and wife **convert** to Islam, then we would **recognize** their marriage and they do **not** need to do a new marriage contract as long as the woman is **permitted** for him
 - 1. Ex: a Christian man marries his Christian wife while she is in her waiting period after the death of her first husband (i.e. less than 4 months and 10 days). If they both **convert** to Islam **while** that waiting period has **not** ended, then the marriage will **not** be recognized because they got married **during** a time period in which it is **not** allowed for the woman to get married
 - a) However, if they got married during the waiting period and then a long amount of time had passed that the waiting period has **ended** and then they convert, then we will **recognize** the marriage and they will **not** need to get a new marriage contract done

Dowry

- I. It is **obligatory** on the husband to give it to the wife as **part** of a **valid** marriage contract
- II. The following are **recommended** regarding the dowry:
 - A. To specifically **mention** it in the marriage contract
 - 1. If it is **not**, the marriage contract is **still** valid
 - B. To make the amount **light**
 - 1. Meaning it should **not** be expensive
- III. In general, anything that has **valid value** or can be done with a **fee** can be **given** as dowry
 - A. It does **not** need to be cash only
 - B. It can be a **service** as well because it has value
 - 1. Ex: building a house for her, fixing her computer, planting her farm, etc.
- IV. If he did **not** specify the dowry in the **marriage contract** or it is of an **invalid** type, then he **must** give her the **same** amount of dowry based on what is **customarily** given to a woman **like her**
 - A. However, the marriage is **still** considered **valid**
- V. It is **valid** to marry a woman with the **condition** to give her \$1000 **and** her **father** \$1000. It will be **considered** a **complete dowry** of \$2000
 - A. If he divorced her **before** intercourse, then he can receive half of it (i.e. \$1000) returned back to him from **her** portion
 - 1. The father **cannot** be requested to return his portion

- B. If the **condition** was that it be given to **other** than the father in addition to the wife, then **all** of it belongs to the **wife** because this type of **exception** in the dowry is **only** for the father and **nobody** else
- VI. It is **valid** to **delay** giving the dowry and a specific time does **not** need to be mentioned in the marriage contract
- A. If an exact time was **not** specified in the contract, then it will become **due** at **separation** (death, divorce, etc.)
- VII. Wife becomes the **owner** of the dowry as **soon** as the marriage contract is **completed** and she is **guaranteed** the **full dowry** if they have intercourse
- A. This is only if the **exact** dowry was **specified** in the contract, therefore, it is **known**
- VIII. It is **valid** for the guardian to **delegate** the **exact** dowry to others **without** specifying it in the marriage contract
- A. Ex: "I agree to marry her to you with whatever dowry so and so wants"
- IX. If one of the spouses **dies** before intercourse and the dowry has **not** yet been **specified**, the other will **still** inherit from him/her
- A. As for the dowry, if it is the husband that dies, she will be **given** a **similar** dowry as a lady in her **own** family (mother, aunt, sister, etc.)
- X. If he **divorces** her **before** intercourse and the dowry has **not** yet been **specified**, then he must give her **something** for enjoyment like a gift
- A. It is based on the circumstances of the husband
1. Meaning it is based on what is affordable and easy for him
- XI. One who has intercourse with a woman **mistakenly** thinking to be his wife or **forces** a woman to fornicate with him, then he **must** give her a dowry **similar** to what is customarily given to a woman like her
- XII. Wife has the right to sexually **refuse** herself to her husband **until** she **gets** the dowry he **agreed** to give **immediately**
- A. But **not** in following cases:
1. She worked **something out** with him **before** the dowry's **delivery**
 - a) Ex: she was **suppose** to get it immediately but she **agreed** with him to **delay** the **delivery** of it
 2. She **voluntarily** had intercourse with him
- XIII. If it became **difficult** for him to **pay** the dowry even though he **agreed** to it, then she has the **option** to whether **cancel** the marriage contract or **not** through the **ruler**
- XIV. She is **entitled** to the **full dowry** in the following situations:
- A. He dies
1. Even if they did **not** have intercourse
- B. He is killed
1. Even if they did **not** have intercourse
- C. Sexual intercourse even if anal
- D. When there is **khulwah** between them. The word *khulwah* **implies** the following:
1. When they are **alone** and there is no **third** person with them
 - a) If there is a **child** that is **below** the age of **tamyeez (i.e 7)** with them, then it is **still** considered *khulwah*
 2. The husband is the type that **can** have intercourse

- a) Meaning he is **not** impotent, has a sexual organ, and is **old enough** which is usually the age of 10 or higher
 - 3. Husband **knows** that he is **alone** with her
 - 4. Wife does **not** prevent him from having **intercourse** with her while they are **alone**
 - E. If a **divorce** takes place **during** a **sickness** that leads to one of their **deaths** even if they did **not** have intercourse
 - F. He **touched** at her **private part** with **desire**
 - G. He **looked** at her **private part** with **desire**
 - H. He **kissed** her
- XV. If the separation is from the **husband's** side **before** intercourse, she is entitled **only** to **half** of the **agreed** dowry
- A. Ex: he divorces her before consummating the marriage
- XVI. If the separation is from the **wife's** side **before** intercourse, she will **drop** her right to **half** of the agreed dowry
- A. Meaning she will get **nothing** from the dowry
 - B. Ex: she **cancel**s the marriage contract before intercourse due to him not fulfilling one of the conditions

Wedding Feast (Waleemah)

- I. It is **recommended** for the **groom** to throw a wedding feast even if it is done with just **one sheep** or less
- II. It is **obligatory** on those **invited** to attend the wedding feast
 - A. Conditions:
 - 1. Ruling applies only to the **first** invitation
 - a) Some weddings do a *waleemah* for multiple days. In such a case, you would **only** be **required** to go to the **first day** and **not** the remaining
 - 2. You do **not** have a **valid** excuse to miss it
 - 3. There is nothing **forbidden** present at the *waleemah*
- III. In general, it is **recommended** to go to any **permissible invitation** when invited
 - A. Meaning **even** if it is **not** a wedding feast in particular
- IV. It is **disliked** to attend someone's invitation whose wealth **partly** comes from **prohibited** sources
 - A. It is also **disliked** regarding such a person:
 - 1. To eat from his food
 - 2. To deal with him
 - 3. To accept his gifts
- V. It is **recommended** to **eat** when the the person is **present** at the invited event
 - A. It is **permissible** to **begin** eating at the event provided:
 - 1. There is clear **permission** from the host
 - 2. **Context** clearly suggests it
 - a) Ex: food is placed on the table
- VI. If the **invited** is **fasting**

- A. **Obligatory fast**: he should **still** go and make **supplication** for the hosts but **not** eat
- B. **Voluntary fast**: it is **recommended** to **break** the fast and **eat** in order to not hurt the feelings of the **host(s)**
- VII. It is **recommended** to **publicly announce** the marriage
- VIII. It is **recommended** to beat the **permitted duff** (tambourine) in the **following** situations for **women** only: wedding feast (*waleemah*), circumcision of a child, arrival of someone absent, birth of a child, and other happy occasions like it
 - A. For occasions **other** than these, it is **permitted** but **not** recommended
 - B. The permitted *duff* is the type that does **not** have any gongs/cymbals on it
 - C. It is **disliked** for men to beat the *duff*
 - D. Every **other** type of musical instrument is **forbidden** regardless of whether it is a happy or sad occasion

Relationship With the Spouse

- I. The following is a **duty** on **both** of the spouses:
 - A. To **behave** with each other in a **good** manner
 - B. To **not** delay whatever is **obligatory** on him/her
 - 1. Ex: the husband should not delay spending on his wife
 - C. To **not** show **bad** attitude when fulfilling each other's **obligations**
 - 1. Ex: when a husband is spending on his wife, he should not do so with a hateful, grumpy, or bored attitude. Rather, he should do it with good manners
- II. It is **obligatory** for a **free woman** that is **considered** sexually ready that **after** the marriage contract is **completed**, she is **sent** to her **husband's house**:
 - A. If she is **neither** a free woman **nor** considered like those sexually ready, then it is **not** obligatory to send her to his house
 - 1. Ex: if she is too young, in a state of curable sickness, in a state of *ihraam* for *umrah/hajj*, or is on her menses, then she is not obligated to be sent to his house
 - B. When exactly is she obligated to be sent after the marriage contract?
 - 1. As soon as her husband **requests** for her to move in
 - C. However, if the **wife** placed **conditions** in the marriage contract, such as, that she will **remain** in her parent's house even after marriage, then it is **not** obligatory on her to move in with him
 - 1. In this case, he will have to go to her house whenever he wants to be with her
- III. If one of the spouses **requests a delay** in the wife's **moving** to the husband's house, then it can be delayed **2-3 days**
 - A. However, if the delay is requested because of **household equipment**, then it is **not** required to be granted because this is **not** a valid excuse and is the **responsibility** of the **husband**
 - 1. Ex: A wife requests delay in moving in because the furniture in the house is not yet ready, in which case, it would not be regarded as a valid excuse, therefore, the husband can deny the request
 - 2. Such things should be based on **mutual cooperation** between the spouses and at times the custom will play a part as well

- IV. If the **wife** is a **slave** of **another**, then she is **sent** to the husband's house **only** at **night**
 - A. Because slaves used to be **busy** serving their masters in the **morning**
- V. A husband can sexually **enjoy** his wife **any** time provided:
 - A. It does **not** cause her any **harm**
 - B. She is **not** busy with doing something **obligatory** on her (*salah*, obligatory fast, etc.)
- VI. If the **wife** is a **free woman**, then the husband can have her **travel** with him as long as she did **not** place a **condition** in the marriage contract that she will **remain** in her country, in which case, he **cannot** make her travel with him
- VII. The **husband** can **force** his wife to do the following:
 - A. Take a **bath** after her **menstruation** ends
 - B. Take a **bath** due to her being in a state of **major impurity** (*janabah*)
 - C. **Wash off** any **impurities** on her body
 - D. To **remove** whatever of her hair or its like (smell, etc.) which **prevent** him from **enjoying** her
 - 1. Meaning if there are some **aspects** of her **adornment** which he **dislikes**, then he can force her to **remove** or **change** them
 - 2. Ex: the wife has some nose hair sticking out which disgust him so he can force her to remove them
- VIII. Following are **obligatory** on the **husband**
 - A. To **not** pass **four months** without being **intimate** with his wife if he is **able**
 - B. To stay **overnight** at least **once** every **four nights** if she **requests** that from him
 - 1. This is because if he had **four** free women as wives, then the **max** he can do between them **fairly** is **one night** for each wife
 - 2. If the **wife** is a **slave** of **another**, then at least **once** a **week**
 - a) This is because if he had **three** free women as wives and **one** slave as a wife, then the **max** he can do **fairly** between them are **two nights** for each **free woman** and **one night** for the wife that is a **slave of another**
- IX. If the husband travels **over** half a year and the wife **requests** the authority for his **arrival**, then the **ruler** will **demand** him to **return**
 - A. If the husband refuses **without** a **valid excuse**, then the wife **can** request **separation**
 - B. If the husband refuses **with** a **valid excuse**, then she **cannot** request **separation**
 - C. If the authority **cannot** find him because there is no news of his **whereabouts**, then the marriage contract **cannot** be **cancelled** due to that **immediately**
 - 1. After a certain **period** of **time**, the wife can **request** separation from a **judge**
 - a) If he returned **before** she was **married** again, then he **can** get her back **without** a new marriage contract
 - b) If he returned **after** she got **married** to **another**, then he has the **right** to ask for the **return** of the **dowry** that he gave her but **cannot** request her **back** as a wife

Rulings Related to Multiple Wives

- I. It is **forbidden** to keep multiple wives **living** together in the **same house** unless they themselves **agree** to it

- II. The husband has the **right** to prevent his wife from **leaving** the house as long as she is **living** with him
 - A. This does **not** mean that he can prevent her from going out **unjustly** whenever he wants. If the husband is of **sane** mind and **just**, then he has the **right** to do so
 - B. She can leave the house **without** his permission due to **need**
- III. He is **obligated** to behave **equally** between his co-wives if he is **mukallaf** (sane and pubescent)
 - A. Ex: If he has two wives, then he must spend the same amount of nights between them
 - B. If the husband is **not mukallaf**, then he is **not** required to behave equally between them
 - C. There is **no requirement** to be **equal** in intercourse, clothing, spending, etc. as long as he has done the **obligatory**
 - 1. This is because it is **difficult** to do equality in such cases due to **differing circumstances**. For example, a wife who has kids may require more spending than one who does not. Similarly, a husband may naturally desire one wife more sexually than another
 - 2. However, it is **recommended** to be **equal** in such things as well but **not** obligatory
 - D. When distributing **time** equally between the co-wives, he would be **required** to divide the **nights** equally between them because he may **work** in the morning
 - 1. If the husband's **job** is during the **night**, then he would be **required** to divide the **daytime** equally between the co-wives
 - E. A wife who is a **slavegirl** is given **half** the nights of a wife who is **free**
 - 1. Ex: a man is married to two wives. One is a free woman while the other is a slavegirl. In order to be fair in this case, he spends at least two nights with the free wife and one night with the slavegirl wife
 - 2. If a slave is **partially** free and **partially** owned, then he calculates based on it
 - a) Ex: if the wife is 50% free and 50% owned, then she gets three nights and the free wife will get four nights because the former is $\frac{3}{4}$ equal to the free woman
- IV. If the wife **refuses** to **spend** the **night** with him, **travel** with him, or travels on her own due to **need**, then she **drops** the right of being treated **equally** and **spending** from him
- V. If a **new wife** is a **virgin**, then he stays with her **seven nights** and then **resumes** equal distribution times between multiple co-wives
- VI. If the **new wife** is **not** a virgin, then he stays with her for **three nights** and then **resumes** equal distribution times between multiple co-wives

Disobedient Wife (*Nushooz*)

- I. *Nushooz* is **forbidden** for the wife
 - A. *Nushooz* is when she behaves **outside** her normal behavioral pattern and **refuses** to obey the husband in things which are **obligatory** on her
- II. If *nushooz* begins to **appear** from the wife, then the husband has the **option** to take the **three** steps below in **progressive** order. He **cannot** go to the next step without first **completing** the **previous** one:

- A. He **reminds** her of her duties and obligations
- B. If she **still** persists in her behavior, then he **abandons** her in the bed as long as he **wants** or stops **speaking** to her for **three days** only
 - 1. For the **former**, he can do this by either **not** sleeping with her in the **same place** or **turn** his **back** to her in the bed
 - 2. It is **not** allowed to stop speaking to her for **over** three days
- C. If she **still** persists in her behavior, then he is allowed to resort to **gentle hitting**
 - 1. He may also do so if she **stops** doing the **obligations of Allah** (*salah*, fasting Ramadan, etc.)
 - 2. It should **not** exceed more than **10 strikes**
 - 3. It should **not** cause bruises, breaking of bones, bleeding, etc.
 - 4. It is **better** not to hit and avoid it altogether

Request for Annulment By the Wife (Khul')

- I. Def: this is when the **wife** wants to **end** the marriage by giving **something** in return to the husband as compensation. It is a type of **cancellation** of the marriage contract through the **request** of the **wife**
 - A. Hanbalis consider *khul'* something **different** than divorce
 - 1. Annulment (*Khul'*)
 - a) Wife **gives** something in return to the husband as **compensation**
 - (1) Usually the dowry
 - b) It is **permanent** and they **cannot** get back together **except** through a new marriage contract
 - c) It is done at the request of the wife
 - d) It is **not** considered divorce
 - 2. Divorce (*Talaq*)
 - a) Wife gives **nothing** in return
 - b) It is **not** permanent and they can get back together again **without** a new marriage contract **within** a certain amount of time
 - c) It is given by the husband
 - d) It is considered divorce
- II. It is **permitted** for her to do this in the following situations:
 - A. He has a **bad relationship** with her
 - 1. Ex: he treats her badly
 - B. She **hates** him
 - 1. Ex: she doesn't like him or can't stand him
 - C. He is too **old**
 - D. He is **not** very practicing
 - 1. Ex: he drinks alcohol or does not pray five times a day
- III. It is **disliked** for her to do so if things between them are **fine** and **good**
- IV. If the **husband** uses the words *khul'*, *faskh*, or **requests** the dowry back, then it will be considered **cancellation** of the marriage contract (i.e. annulment) and **not** divorce

- A. However, if he uses the word **divorce**, intends it or its meaning, then it would be considered a divorce **requiring** a new contract
 - 1. Ex: The couple agree that the wife will give him \$10,000 in exchange for a divorce. The husband takes the \$10,000 and then says, “You are divorced”
 - 2. The **effect** of such a type of **divorce** would be **immediate** and there is **no** waiting period involved in which he can take her back because he **took** the compensation
 - a) If they were to get **remarried** again with a **new** marriage contract, the husband will have **two** divorces left
- V. *Khul'* is **not** valid without the wife giving **something** to the husband in **return**
 - A. Otherwise, it will be considered **invalid**
- VI. It is **disliked** for the **wife** to give him **more** than the dowry
 - A. What about if the dowry was something that **no longer** exists? (ex: horse)
 - 1. Then she can give him something **similar** in return
- VII. The **payment** in exchange for the *khul'* can be made by the **wife** or **anyone else** allowed to dispose of his/her own wealth
 - A. In general, **anyone** who is considered **sane, pubescent, and mature** is **allowed** to do with his/her wealth as he/she pleases
 - B. Ex: Fatimah wants to get *khul'* from her husband in exchange for returning the \$10,000 dowry he gave her after marriage. Fatimah’s friend Zaynab pays the amount on her behalf from her own money. This is **valid**
 - 1. It would also work if Fatimah was **not** sane, therefore, she could not give something in exchange for *khul'* from her own wealth and someone else paid it on her behalf from their own wealth
- VIII. It is **valid** for the wife to **offer** things which are **unknown** or temporarily **absent** in exchange for *khul'*
 - A. **Unknown** ex: she requests *khul'* in exchange for whatever amount is in her bank account
 - B. **Absent** ex: she requests *khul'* in exchange for whatever profits her investments make in the coming year
- IX. The following are **not** allowed for *khul'*
 - A. The *khul'* **payment** should **not** be something **forbidden**
 - 1. Ex: she cannot offer him a bottle of expensive wine in exchange for the *khul'*
 - B. It should **not** be something **tricky** just for the **purpose** of **not** counting it as a **divorce**
 - 1. Ex: Husband says to his wife, “When Ramadan comes, you will be divorced!” Then he feels regret so they agree to do *khul'* **before** Ramadan and then get **remarried** after Ramadan so that the divorce he gave would **not** count. This will make the *khul'* **invalid**
- X. If the husband says, “**whenever you give me such and such**” or “**if you give me such and such**” then you are **divorced**, then she will be **divorced** as soon as he **receives** the item from her even if she **delays** it
 - A. It will **end** the marriage **immediately** and would **require** a **new marriage contract** if they wanted to get back together
 - B. If he gives a **specific timeline** and she **passes** it, then she will **not** be divorced

1. Ex: "If you give me such and such **within** three days, then you will be divorced", however, she gives it to him **after** three days. In this case, she will **not** be divorced
- XI. If the **wife** says to the husband, "**give me *khul'* with x amount of money**" and he **accepts**, then it will be **considered *khul'* immediately** and they would need to get a **new marriage contract** if they wanted to get back together
- A. She would be considered in **debt** if she did **not** give it immediately
- XII. **Request** for *khul'* will **not** be accepted from the **wife** in the following cases:
- A. She is married to a **small boy** who has **not** reached the age of **puberty** or to someone who is **not** sane
 1. Because he is **not** considered *mukallaf* and his **guardian** also **cannot** do so on his behalf. She must either **wait** until he **grows up** or she **can** go to a **judge** to get a divorce
 - B. The **guardian** of a young girl **under** the age of puberty **requests *khul'*** on her behalf in **exchange** for giving **something** from **her** wealth
 1. However, if he **offered** something in **exchange** from his **own** wealth, then it is possible
- XIII. If the husband attaches a particular **description** as a **condition** to the **divorce**, then the divorce **will occur** whenever that condition becomes **true** regardless of whether that description becomes **actualized** during the **period** when they can get **remarried** under a **new** marriage contract or **after** they get a new marriage contract
- A. **Ex 1:** A husband says to his wife, "If you enter such and such store, then you are divorced." Then she requests *khul'* from him which he accepts. After the *khul'*, she enters that store. Then they reconcile and get married again with a new marriage contract. Her entrance into that store during that period will be **counted** as a divorce even in this new marriage contract
 - B. **Ex 2:** A husband says to his wife, "If you enter such and such store, then you are divorced." Then she requests *khul'* from him which he accepts. Then they reconcile and get married again with a new contract. Then she enters that store. This will be **counted** as a divorce even though he made that condition in the **previous** marriage contract
 - C. The **same ruling** applies for **freeing a slave**
 1. Ex: a master says to his slave, "If you go for 'Umrah, then you are free." Then he sells that slave to someone else. After a while, he buys him back. Then the slave goes for 'Umrah. In this case, the slave will become **free** even though the master made that condition during a **previous** ownership