

Sharīʿah

Islamic Law

by
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revised and expanded by
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THE PERMANENT PROHIBITIONS

The permanently prohibited degrees are contained in Sūrat an-Nisā'.

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا
 حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ
 وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمُ مِنَ الرِّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي
 حُجُورِكُمْ مِنْ نِسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ
 أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

Do not marry any women your fathers married – except for what may have already taken place. That is an indecent act, a loathsome thing and an evil path. Harām for you are: your mothers and your daughters and your sisters, your maternal aunts and your paternal aunts, your brothers' daughters and your sisters' daughters, your foster mothers who have suckled you, your foster sisters by suckling, your wives' mothers, your stepdaughters who are under your protection: the daughters of your wives whom you have had sexual relations with (though if you have not had sexual relations with them there is nothing blameworthy for you in it then), the wives of your sons whom you have fathered, and marrying two sisters at the same time – except for what may have already taken place. Allah is Ever-Forgiving, Most Merciful. (Sūrat an-Nisā' 4: 22-24)

From the above verses it is clear that a Muslim must not marry the following:

1. His mother.
2. His stepmother(s). In the *Jāhiliyyah* period a stepson or brother inherited his father's widow(s). Similar practices continue in Yorubaland in Nigeria, where, in some cases, the eldest son inherits the youngest wife of his father.
3. His grandmother(s). Grandmothers include fathers' and mothers' mothers however remote.
4. His daughter(s). Daughters include granddaughters i.e. sons' or daughters' daughters however remote.

5. His sister(s), including full or consanguine and uterine sisters.
6. His fathers' sister(s), including the grandfathers' sister(s).
7. His mothers' sister(s), including the grandmothers' sister(s).
8. His brothers' daughter(s).
9. His foster mother.
10. His foster mother's sister(s).
11. His sisters' daughter(s).
12. His foster sister(s).
13. His wife's mother.
14. His stepdaughter(s) born to his wife with whom he has consummated his relationship. If the marriage was not consummated there is no prohibition.
15. His sons' wives: this will not include wives of persons whom one treats as adopted.

TEMPORARY PROHIBITIONS

Temporary prohibitions are those which can be removed by a change of circumstances. They are as follows:

1. A man must not marry two sisters in marriage at one and the same time. The temporary prohibition here is removed as soon as his wife dies and he may take her sister in marriage. This provision also applies to his wife's aunt as well as niece.
2. A man must not marry a married woman. However, the impediment is removed immediately on the dissolution of her marriage either by the death of her former husband or divorce followed by completion of the period of *'iddah*, i.e. the waiting period that widows undergo on the death of their husbands of four months and ten days, or in the case of divorced women, a period of three menstrual cycles.
3. A man must not have more than four wives at a time. However, the impediment is removed as soon as one of the wives dies or is divorced.

4. A man must not marry a woman during her *‘iddah*. However, the impediment is removed as soon as the period of *‘iddah* expires.

In the Qur’ān, Allah, exalted is He, says:

وَلَكِنْ لَا تَوَاعِدُوهُمْ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا وَلَا تَعْزِمُوا عَقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجْلَهُ

But do not make secret arrangements with them, rather only speak with correctness and courtesy. Do not finally decide on the marriage contract until the prescribed period has come to its end. (Sūrat al-Baqarah 2: 235)

This means that a man must not make a specific proposal to a woman in *‘iddah*. However, one can send implied words like the following to a woman whose husband dies or who has been irrevocably or finally divorced: “I wish to find a woman of good character.”

However, if a woman is within the *‘iddah* of a divorce in which the husband’s taking her back (*raj‘ah*) is still possible, a man should not send her even implied words for she is still considered as the legal wife of the ex-husband. By doing so, one could become instrumental in breaking up a family in which there are still chances of reconciliation.

THE CASE OF TWO SUITORS FOR THE SAME WOMAN

The Prophet ﷺ disapproved of two suitors vying with one another for marriage to the same woman. This is so because such a situation is likely to create enmity between two Muslim brothers. The Prophet ﷺ is narrated to have said:

لَا يَحِلُّ لِامْرَأَةٍ مُسْلِمَةٍ أَنْ يَخْطُبَ عَلَى خُطْبَةِ أَخِيهِ حَتَّى يَتْرَكَ وَلَا يَبِيعَ عَلَى بَيْعِ أَخِيهِ حَتَّى يَتْرَكَ

It is not lawful for a Muslim to propose marriage on top of his brother’s proposal until he withdraws [the proposal] nor to offer for sale on top of his brother’s offer to sell until he withdraws [the offer]. (Aḥmad narrated it in the *Musnad* from ‘Uqbah ibn ‘Āmir)

However, the father's right of compulsion stands at a different level. If he finds that his daughter is going to marry a man who is of bad character or a man who is not in a position to take on a family he may stop his daughter from going ahead with the proposal.¹⁷

Some people regard this as only a moral obligation whereas others view it as a moral as well as legal obligation. However, to reduce the efficacy of the above tradition to the level where the second suitor would not be compelled to opt out of his proposal would be tantamount to paying less attention to the Qur'ānic injunction:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا

Whatever the Messenger gives you, you should accept and whatever He forbids you, you should forgo. (Sūrat al-Ḥashr 59: 7)

The only person given the power to make proposals on top of the proposal of a suitor is the father, who has been vested with the power of compulsion where he foresees some detrimental effects resulting from the marriage.

Imam Abū Ḥanīfah, Imām ash-Shāfi'ī and Imām Mālik held the view that it is a wrong action to make a proposal on top of the proposal of a brother, but that if the second suitor is successful it will suffice that he seek the forgiveness of the first suitor and seek the forgiveness of Allah.¹⁸ However, the Zāhirīs consider such a marriage void. I submit that the former view appears more rational and sound in comparison to the latter which may create more problems than it seeks to solve.