

The Marriage Suspended on A Condition, And Marriage with The Condition of Choice a Comparative Jurisprudential Study

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Abstract

Research objectives: This research aims to address a type of conditions in the marriage contract, which is the marriage suspended on a condition and the marriage with the condition of choice, and the extent to which this contract is affected by the conditions, considering that the offer and acceptance are the most important pillars of the marriage contract, as they may be issued with both or one of them suspended, so does the marriage contract accept the suspension and the condition of choice, and to know the ruling, the thing suspended upon when contracting must be known in terms of existence and nonexistence through the doctrines of jurists and scholars in the research issues and mentioning and discussing their evidence. The study highlighted the extent of the breadth of Islamic jurisprudence, the greatness of Sharia, and its flexibility while preserving its objectives and principles. Study methodology: by referring to the original sources of each of the four schools of thought in each issue and by referring to the linguistic and jurisprudential dictionary, documenting the Qur'anic verses and the noble prophetic hadiths. The origin of the definition of the figures mentioned in the research is other than the Messenger of God; may God bless him and grant him peace. Results: The marriage contract is the most important and reliable of the contracts. Islamic law has paid attention to it. There is agreement between the conditional clause and the condition associated with the contract, as both are additional to the original contract and they are future matters that are likely to occur. They differ in that the conditional clause has no effect on the effects and provisions of the contract, unlike the condition associated with a contract. The basic principle of the marriage contract is that it does not accept suspension on a condition that is not fulfilled or on a condition of choice. Originality of the research: The scientific value of the research appears during the statement of the conditional marriage with issues that clarify the difference between the suspended condition and the condition of marriage in a single narrative, as the researcher did not find a comprehensive book on the subject of the suspended condition and the condition of choice in marriage, but rather found it scattered in the old books of jurisprudence, and it is one of the new developments.

Keywords: Condition, Suspended Marriage, Condition of Choice

INTRODUCTION

Allah Almighty created man in the best form and created him with instincts and needs, sent messengers and prophets, peace and blessings be upon them, and sent down to them laws that regulate these instincts to achieve the wisdom that Allah wanted in the human soul, including the instinct of the species and survival caused by marriage. This study aims to address a type of condition in the marriage contract, which is marriage suspended on a condition and marriage with the condition of choice, and the extent to which this contract is affected by the conditions, with the clarification of the issues related to the research and the doctrines of jurists and scholars, mentioning their evidence, discussing them, and stating the prevailing opinion.

The problem with this research is that there is a great difference between jurists regarding the impact of conditions on the validity of the marriage contract in Islamic jurisprudence. This difference leads to differences in the practical application of Sharia laws related to marriage, which may cause confusion and difficulties for individuals and societies when dealing with conditional marriage contracts. Despite the importance of conditions in determining the obligations and rights between spouses, the lack of complete clarity in the provisions related to conditions, whether valid or invalid, puts many marriage contracts in the grip of legal and Sharia doubts. Therefore, this research seeks to explore this problem in depth by analyzing different jurisprudential opinions and clarifying the impact of conditions on the validity of the marriage contract, which contributes to providing clear practical and Sharia solutions to this complex issue by relying on an analytical inductive study of different jurisprudential opinions on the concept of "condition" in Islamic jurisprudence, specifically in marriage contracts, and analyzing Sharia texts and jurisprudential evidence to provide a

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comprehensive and clear interpretation of this issue. To achieve comprehensive awareness among all segments of society on the subject of conditions in the marriage contract and its role in preserving the rights of the husband and wife, maintaining their dignity, and protecting the family from problems by dealing with the subject of conditions in the marriage contract objectively and balanced, within the limits of Sharia, and on the basis of the principle of moderation without exaggeration, and developing the religious incentive between the spouses to adhere to God's law.

The First Theme: Defining The Condition

Definition Of Condition in Language

Condition in language: It is the obligation of something and its commitment in a sale and the like. Its plural is conditions and stipulations. In the proverb, the condition gives its owner the right to oblige the one stipulated by it, whether it is for him or against him

It means that the condition clarifies and establishes the truth and avoids ambiguity.

The condition is the Hour indication

Verily, Then do they await except that the Hour should come upon them unexpectedly? But already there have come [some of] its indications. Then what good to them, when it has come, will be their remembrance?

The Condition Definition in Terminology

As for the condition in the terminology of the fundamentalists:

The fundamentalists defined the condition with definitions including:-

(It is a name for what the ruling is added to as an existence with it, not as an obligation by it)

The condition means that its absence necessitates absence. Its existence does not necessitate existence. No absence in itself. It does not include anything appropriate in itself but in something else.

The condition is what was a complementary description of its condition in what that condition required, or in what the ruling required in it

It is clear from this definition that the condition is not part of the essence of the condition, nor is it included in it, as it combines the condition of the cause and the condition of the ruling. The condition of the cause, such as owning the minimum amount, is a cause for zakat, and completing the year is a condition for the cause—owning the minimum amount—so that zakat is obligatory. As for the condition of the ruling, it is: adultery is a cause for a ruling, which is stoning, and its condition is the married man, a man who is shielded against adultery by virtue of marriage.

A condition is that which, if not present, would compromise the wisdom of the cause, and that which, if not present, would include a wisdom that would imply the opposite of the ruling of the cause, while the wisdom of the cause remains. .

Thus, it includes the condition of the cause and the condition of the ruling as well.

Whoever examines what the scholars of Principles of Islamic jurisprudence have mentioned in their definition of the condition will find that they are close in meaning despite the difference in the words. They agree that its absence necessitates absence, and its presence does not necessitate presence. It is not included in the essence of the thing, and that it includes the condition of the cause and the condition of the ruling.

The Selected Definition

The selected definition: It is the definition of Imam Al-Qarafi. -May God have mercy on him - as he said: - The condition means that its absence necessitates absence. Its existence does not necessitate existence. No absence in itself. It does not include anything appropriate in itself, but in something else).

Explanation Of the Definition and Specifying Its Restrictions

(Its absence necessitates absence): The first restriction is a precaution against the impediment, as nothing is necessitated by its absence.

(Its existence does not necessitate existence): The second restriction is a precaution against the cause, as its existence necessitates existence.

(No absence in itself): The third restriction is a precaution against comparing its existence to the existence of the cause, so existence is necessitated, but not in itself, but for the sake of the cause, or the existence of the fluid, so absence is necessitated for the sake of the fluid, not for the sake of the condition itself.

(It does not include anything appropriate in itself): The fourth restriction is a precaution, as its absence necessitates absence, and its presence does not necessitate existence or absence, except that it includes part of the appropriate.

It is noted from the aforementioned restrictions that they made the definition prohibitive to the inclusion of non-conditional individuals in it, and it is comprehensive in that it includes all conditional individuals, therefore the researcher believes that it is the chosen definition - and God Almighty knows best. Conditions in general are complements to the commands that are conditional on them in the view of the Lawgiver, such as completing the attribute for the described, such that their absence would compromise the legal objectives of the rulings.

The Second Theme: The Marriage Suspended on A Condition, And Marriage with The Condition of Choice

Contracts in Islamic law are diverse, and the subject of the study is the marriage suspended on a condition, and marriage with the condition of choice.

Islamic law has distinguished the marriage contract from other contracts and has given it characteristics and preserved them with care and measures that differ from other contracts. If the offer and acceptance are the most important pillars of contracts, including the marriage contract, yet the offer or acceptance may be issued conditional on a condition for both of them or one of them with one of the tools of the condition. Does this marriage contract accept being conditional on a condition and the condition of choice?

To answer this question, we must have an idea of the meaning of conditional marriage, which means: It is what links the realization of the offer and acceptance, or one of them, to the realization of something else. For example, a man might say to another, "I marry you to my daughter if my brother is satisfied," and the other might say, "I accept." Or a man might say to a woman, "Marry yourself to me," and she might say, "I marry myself to you if my father is satisfied" .

To know the ruling on this marriage and the opinion of the imams and jurists regarding it, it is necessary to know what is contingent upon it at the time of contracting, in terms of its existence or nonexistence.

This theme includes three issues:

The First Issue Is Suspending Marriage On An Unfulfilled Condition.

This Occurs In Two Cases

The first case: The condition is based on the risk of existence, meaning that it may occur in the future or may not occur, as there is something that we do not know about its existence or non-existence, such as: "I will marry you to my daughter if Zaid comes, or if I pass the exam." We do not know about that, as Zaid may come or may not come, and likewise you may pass the exam or may not.

There is something that is judged to exist based on the majority, but it may not exist by the command and will of God, such as his saying on a summer night: I will marry you to my daughter if the sun rises. The sun rising in the summer is more likely than its non-existence, but its non-existence is possible due to a matter decreed by God Almighty.

The second case: That the condition is not fulfilled, by making it dependent on an impossible matter, such as saying: I will marry you to my daughter if we put a camel through the eye of a needle , Since it is impossible for a camel to go through the eye of a needle, this is not possible. The scholars have agreed that the marriage contract is not valid if it is added to a future event. Since the formula in the marriage contract does not allow for anything other than completion for the marriage to be valid, and this is one of the conditions of the offer and acceptance in establishing the contract in the correct manner, therefore the addition is not allowed for the valid contract and thus affects it. They also agreed that marriage is invalid if it is conditional on a condition that is not fulfilled and does not exist at the time of the contract.

Due to the precision and seriousness of marriage, its formula must be complete, and thus it cannot be suspended on a future condition, such as a sale .They proved the invalidity of suspending marriage on a condition or adding it to the future by saying:

First: Marriage is a contract of exchange, and therefore it does not accept suspension. Rather, the basic principle is that its effects are based on it immediately upon its creation, and suspension contradicts the essence and reality of the contract. This is - as previously mentioned - in the difference between a suspended contract and a contract linked to a condition - since a suspended contract is not concluded except by the realization of what it is suspended on, and therefore its effects are not based on it, but rather they are delayed until the realization of what is suspended on it.

Second: Commenting on an unverified matter puts the contract at risk, and thus this marriage may exist or may not exist, and the marriage contract is too noble to have this characteristic of fluctuating between existence and nonexistence.

Third: What is confirmed and agreed upon is that more caution should be taken in marriage contracts than in other contracts in order to preserve the udder. As for Imam Ibn Hazm Al-Zahiri, no marriage is valid on the basis of a condition at all..

If this is what the jurists say about suspending marriage on a condition that is not fulfilled or possible to exist and be fulfilled - that it is not valid - then it is even more valid about what is suspended on an impossible condition. They said that a marriage suspended on an impossible condition is invalid, since both conditions - the impossible and the possible - are not present at the time of the creation of the contract. It is completely clear that whoever suspends the marriage of his female ward on an impossible condition only intended by that its conclusion to be invalid, as this condition does not exist. This is what is indicated by the words of God Almighty (Indeed, those who deny Our verses and are arrogant toward them - the gates of heaven will not be opened for them, nor will they enter Paradise until a camel passes through the eye of a needle. And thus do We recompense the criminals).

God Almighty has informed us that these arrogant, lying infidels will not enter Paradise under any circumstances, and that is why He linked it to the impossible. .

He said (so that the camel does not go through the eye of a needle)

But if the marriage contract is made conditional on the will - the will of God Almighty - by saying, “I will marry you, God willing, my daughter,” the condition is not valid, whether he intended the condition or spoke in general terms. But if he intended to seek blessings or that everything happens by the will, decree, and desire of God Almighty, then the contract is valid.

The second issue: Suspending marriage on a condition that is fulfilled

The condition is considered fulfilled if it is a reality that exists at the time of the creation of the contract or an actual fact that is fulfilled when the formula is issued or is fulfilled in the contract session or is past and fulfilled

Example of the first: The guardian of the suitor says, “I marry you to my daughter if you are a Muslim” and he is truly a Muslim

Example of the second: He says, “I marry you to my daughter if you stand now” and he stands

Example of the third: He says, "I marry you to my daughter if her brother agrees" and her brother enters and says, "I agree"

Example of the fourth: He says, "I marry you to my daughter" if her waiting period from her previous husband has ended.

All of the above-mentioned images are considered a condition when it is fulfilled, so the suspension is formal. This shows the difference between these images and what was mentioned in the previous issue, the condition that is not fulfilled, such as the rising of the sun and the coming of the month of Ramadan... as there is some danger in it, and this condition is absent at the time of the contract, and its existence is awaited. As for the suspension with a condition that is fulfilled at the time of the contract, it is present and its existence is not awaited. This is for the jurists - regarding the fulfilled condition that is present - two schools of thought.

The first school of thought - the majority of jurists from the Hanafi, Maliki, and Hanbali schools of thought, and a narration from the Shafi'i, said that the contract is valid if it is conditional on a matter that is realized in the contract session, and they considered that a formal condition, as well as the conditional on a past that has occurred, because one of the conditions of the condition is that it is only related to the future

Examples of this mentioned by jurists include the following:

As if a man proposes to a girl for his son, and her father says, "I married her to so-and-so before you," but he (the suitor's father) calls him a liar and says, "If I did not marry her to so-and-so, then I married her to your son," and he accepts, then he learns that he lied, the marriage contract is concluded because it is conditional on something existing. Similarly, the guardian says, "I have married my daughter to you if you are her guardian," or "I have married my daughter to you if you wish," and the suitor says, "I wish and I accept," and he accepts, then it is valid.

Their guidance on the validity of the contract if it is suspended on a certain thing, that the suspension on the existing certain thing is an accomplishment, and looking into that for the meaning, not for its verbal form, and it is not a suspension in reality, but rather an affirmation and strengthening of the type.

The second school of thought: The majority of the Shafi'i school of thought and a statement in the Hanafi school of thought considered the conditional marriage to be absolutely invalid, regardless of whether it is conditional on something possible, impossible, or certain. Therefore, if he wishes to issue the offer and acceptance, or one of them, in any conditional form, it shall be invalidated merely by the condition, even if it is a condition that has been fulfilled.

They mentioned examples of this: If the guardian said to someone who was given the good news of a girl, "If the news is true, then I will marry her to you," the proponents of this opinion said: "The marriage is not valid even if she is a real female." Or if the guardian said to someone who had four wives under him: "If one of them dies, then I will marry you to my daughter," then the marriage is invalidated because the wording is corrupted by the condition.

Their guidance on this is that the inclusion of a comment on the formula spoils it, and the corruption of the formula spoils the contract, even if the comment is formal, due to the existence of its image.

The majority of scholars have said that a marriage conditional on a fulfilled condition is the most correct, based on looking at and understanding the meaning intended by the word in the case of a conditional on a fulfilled condition. Just as a conditional on a fulfilled condition means affirmation and certainty of what it was conditional on, it is an indication of the strength of cohesion and certainty of what is actually present. So whoever proposes to a girl named Suad, and her guardian addresses him at the time of the contract, saying, "I have married you to my daughter Suad," and he responds, "I accept her marriage if she is Suad," then this marriage is valid in this case because the condition is fulfilled and actually occurred, and this conditional condition is nothing more than a formality, and this formality devoid of content does not affect the formula of the marriage contract, and God knows best.

The Third Issue: The Condition of Choice In The Marriage Contract

The majority of jurists agreed that the condition of choice in the marriage contract is an invalid condition, but they differed as to whether this invalidity leads to the nullification of the contract or not. They also differed as to whether the condition of choice in the dowry is also the same. Then, based on that, their different statements were based on the right of each of the man and the woman to annul the marriage contract if this marriage included a condition of a specific characteristic in one of the spouses.

To clarify the position of the schools of jurisprudence, it is necessary to clarify the image of the condition of choice for you in marriage first, which is that the man marries the woman on the condition that he has the choice in marrying her for a day or less or more, or on the condition that he has the choice and he did not mention this, it ends with her and God willing he will permit the marriage and if he wishes he will reject it, or he said that I have the choice, meaning whoever has the choice, if he wishes he will permit the marriage and if he wishes he will reject it.

Hanafi School: The Hanafis believe that a marriage contract that includes a condition of choice is valid, but the choice is invalid.

They did not differentiate between the condition of choice in the contract or in the dowry, so in their view it is an invalid condition, and they provided evidence for that.

The Prophet (ﷺ) said: There are three things which, whether undertaken seriously or in jest, are treated as serious: Marriage, divorce and taking back a wife (after a divorce which is not final)

The evidence is that joking and stipulating the choice are the same because the joker intends to directly engage in the cause and is never satisfied with its ruling, While the one who stipulates the choice is not satisfied with the ruling at a specific time, he is more deserving of that. They also said that it is a contract that does not allow for annulment after its completion, and at the same time the choice of stipulation is not accepted. Therefore, stipulating the choice does not prevent its completion, such as divorce and emancipation with money. Stipulating the choice does not prevent the establishment of the original cause, but rather nullifies the consent to its obligation, as in the case of a sale. It is necessary for the validity of the marriage to be binding, so stipulating the choice in it is an invalid condition, and the marriage is not invalidated by invalid conditions. The validity and binding of the marriage do not depend on the complete consent, since the complete consent is after seeing - as in a sale - and the lack of seeing does not prevent the validity and binding of the marriage, and the choice of seeing is not proven in it, unlike adding it to a time, which prevents the establishment of the cause at the time.

As for stipulating a specific characteristic in one of the spouses, the Hanafi view is that the choice is not established if one of them finds the other in a manner other than what he stipulated, so he does not have the choice to annul the marriage, so the contract is valid and the condition is invalid. Rather, the choice is for the woman according to its conditions if she finds her husband to be castrated, impotent, or eunuch.

The choice that is proven to her is the right to demand that he keep her in a good manner and that he fulfill her right to intercourse. If he is unable to do that, then he must release her with kindness, and release is divorce. The author of Al-Mabsoot said: (If he married her on the condition that she be a virgin, young and beautiful, and he finds her to be a widow, old and ugly, with a crooked side, a lost mind and flowing saliva, then he does not have the right to choose, and his consent to this condition is absent.)

Imam Muhammad included madness, leprosy, and vitiligo with the previous defects - impotence, castration, and leprosy - in the woman's right to demand that she be kept in good faith or released in a kind manner.

Maliki School: The Malikis held that there is no choice in marriage, and if the choice occurs in marriage, the marriage is annulled unless he has consummated the marriage with her. However, if he has consummated the marriage with her, it is not annulled and she is entitled to the dowry that was specified for her.

The choice is not permissible in marriage from the beginning, unlike the sale, because the rule of the choice is to make up for the lost interest at the time of the contract, and marriage only occurs after examination, and the

principle in contracts is binding, and because it leads to the reduction of the women who are in seclusion and the daughters of notables between acceptance and rejection, and therefore the law has made it obligatory for them to receive half the dowry before consummation to compensate for the rejection.

They also said that the basic principle in contracts is that there is no choice except what is stated in the text, and whoever states that the choice is established in marriage must provide evidence, and that stipulating it in a sale spoils it, so marriage is more deserving of validity, while a sale is more deserving of validity because the choice is a covenant in it. As for marriage, it is based on generosity, which is a waiver by each of the two parties of one or more of its conditions, so what is not tolerated in anything else is tolerated in it, and if they die before the choice is established, they do not inherit from each other.

The Malikis did not differentiate between the condition of choice in marriage and the condition of choice in the dowry. As for the condition of a specific characteristic in one of the spouses, the Malikis held that there is no choice in anything other than defects - insanity, leprosy, vitiligo, and mending.

Except with a condition, then he must act upon it and he has the right to reject it, even if it is based on the guardian's description of her, such as saying that she has healthy eyes and long hair and no defect in her, and she is found to be otherwise, then he has the right to reject it because his description of her is considered a condition. Likewise, if he stipulated virginity and found her to be a widow, then he has the right to reject.

Shafi'i School: The Shafi'is differentiated between the condition of choice in marriage and the condition of choice in dowry. They said that the condition of choice in marriage is invalid, and therefore the contract is invalid whether the choice is for the woman without the man, or for both of them together, or one of them stipulated it for someone else. The marriage is invalid in all of this. If he did not consummate the marriage with her, it is annulled. If he had intercourse with her, she is entitled to a dowry similar to that of her equal to what he had intercourse with her, and there is no marriage between them.

They argued that it is invalid on the basis that it is a type of temporary marriage, since the stipulation of the choice is in the sense of timing, as the ruling on the contract is delayed until after the expiry of the period, and this makes the marriage additional, and adding it to a time in the future is not valid. Timing in marriage prevents its validity, and because marriage is based on necessity and permanence, stipulating something that contradicts its requirements prevents its validity, and because it is a contract of exchange in which the choice of the condition is not proven, it is invalidated by the condition of the choice like exchange.

B- The Condition of Choice In The Dowry

As for the condition of the choice in the dowry, there are two opinions regarding the invalidity of the marriage as a result of it.

The first opinion - that it is invalidated and attributed to the old due to the corruption of the condition and its effect on the corruption of the compensation. Whoever says this is saying that the marriage is corrupt in all corrupt conditions and corrupt compensations. Just as the cause of the corruption is one of the two compensations and the choice in one of the two compensations leads to the second, so it is as if the condition of the choice in the married woman

The second opinion is that the marriage is valid and the dowry is invalid, because the invalidity of the dowry does not detract from the validity of the marriage. This is what Imam Al-Shafi'i mentioned in the book *Al-Umm*.

This is the most correct view. If the marriage is invalid, there is no dowry. If he has intercourse with her, he must pay the dowry of someone like her. If the marriage is valid, there are two opinions regarding the validity of the specified amount.

The first opinion: It is valid because the dowry is an independent contract and the purpose of it is money, so it is not invalidated by the condition of choice like a sale. The second statement: It is invalidated and the dowry of the like is required because the dowry does not produce compensation, but rather it has the meaning of a gift, so the choice is not appropriate for it, and the woman did not accept the specified amount except by the

condition of choice, so the dowry of the like is required, and this is the most correct, and God Almighty knows best. As for stipulating a specific characteristic in one of the spouses, there are two statements in the Shafi'i school of thought. If these qualities are absent or the opposite is true

The first opinion: The validity of the marriage because the choice in the condition does not necessitate the invalidity of the sale while it is affected by the invalid conditions, so the marriage is more appropriate. This is what the author of *Mughni al-Muhtaj* preferred in his saying (And if he married a woman and stipulated in the contract regarding the husband or wife lineage or freedom or something else such as virginity or youth and he did not fulfill the conditions, then the most apparent is the validity of the marriage).

The second opinion - that the contract is invalid because the required quality is intended, like the eye, and the difference in the eye invalidates the contract, so does the difference in the quality, and because the woman did not agree to marry the man with this quality, so if it is lost, the contract is not valid, as if she gave permission to marry a man with a quality, so she married someone who is not of that quality. The researcher believes that this opinion is the most correct for what was mentioned, and because the appearance of other than the required qualities leads to the absence of trust, intimacy and desire, which negatively affects marital and family life, and God knows best.

Hanbali School: The Hanbalis hold that the condition of choice in marriage is invalid because it contradicts the requirements of the contract. As for the contract, there are two narrations.

The first narration is correct and is the doctrine chosen by Sheikh Taqi al-Din Ibn Taymiyyah.

The second narration: It is not valid, and it is what he presented in *Al-Mughni*. Thus, it invalidates the contract from its origin, because marriage can only be binding, and this necessitates its permissibility, and because in that, the marriage is suspended on a condition, and it is not permissible to suspend it on a condition.

It was narrated on the authority of Imam Ahmad that the contract and the condition are permissible , based on the saying of the Prophet, may God bless him and grant him peace: "Muslims are bound by their conditions."

As for the condition of the choice in the dowry, there are those who did not differentiate between the condition of the choice in marriage and the condition of the choice in the dowry, and they said that the condition of the choice in the dowry is like the condition of the choice in marriage, so it does not invalidate the marriage because the marriage is separate from the mention of the dowry. Even if the dowry was forbidden or corrupt, the marriage would not be corrupted, because it would not be corrupted by the condition of the choice in it or not, and in that it contradicts the sale, because if one of the two exchanges in it is corrupted, the other is corrupted. It is the most likely opinion in the school of thought. As for the dowry, they said that it has three aspects

The first aspect: The dowry is valid and the choice condition is invalidated, just as the condition in marriage is invalidated and the marriage is valid.

The second aspect: The dowry is valid and the choice is established in it because the dowry contract is a separate contract that is subject to prices, so the choice is established in it like sales.

The third aspect: The dowry is invalidated because she did not offer it, so it was not binding on her, just as he did not agree to anything

As for stipulating a specific characteristic in one of the spouses, the Hanbalis said that if the condition of the characteristic regarding him shows the opposite of that - deficiency or non-existence - then the other party has the right to choose. Because it is a condition and an intended description, so it became contrary to it.

This is what is stated (If a man marries a woman on the grounds that she is a Muslim and she spends the night as a woman of the People of the Book, or he marries her thinking she is a Muslim and she is not known to have committed disbelief and she spends the night as a disbeliever (of the People of the Book), then he has the choice to annul the marriage because he stipulated an intended characteristic and she spent the night as otherwise, so it is similar to if he stipulated that she be free and she spent the night as a slave, and vice versa, that he stipulated that she was a disbeliever (of the People of the Book) and she spent the night as a Muslim, he has no choice because that is an increase in her goodness. And if he stipulated that she be a virgin and she

spent the night as a woman of the People of the Book, then he has the choice , or he stipulated that she be white or tall, or he stipulated that there be no defects that do not annul the marriage, such as blindness, muteness, deafness, paralysis, and the like, such as lameness and one-eyedness, and the wife spent the night as otherwise, that is, contrary to what he stipulated, then he has the choice , according to the text, because he stipulated an intended characteristic and she spent the night as otherwise)

Summary: It is clear from the above that the Hanafis and Hanbalis said that the marriage is valid and the condition of choice is invalid. As for the Malikis and Shafi'is, they said that the marriage is invalid as a result of the invalidity of the condition of choice. As for the condition of a description in one of the spouses, the majority of the Malikis, Hanbalis and Shafi'is in one opinion said that whoever does not meet the description that is required for the marriage to be annulled. The Hanafis and Shafi'is in one opinion went to the fact that the marriage is valid and the right to annul is not proven.

Due to the importance of the marriage contract, it requires setting clear, specific controls that clarify what is allowed to be annulled and what is not allowed, and is not proven, and is not left to personal moods, interests, desires, and whims. Therefore, what the Shafi'is mentioned regarding the condition of the choice is correct, as well as what proves the annulment due to the defects established in the school. Thus, the Shafi'i school is distinguished in this issue by moderation, neither excess nor deficiency.

This is what appears from the statement of Imam Al-Shafi'i, may God have mercy on him: "If a man marries a woman on the basis that she is beautiful, young, well-off, and a virgin, and then finds that she is old, ugly, destitute, divorced, or blind, or has some harm, and the harm is not other than the four that we mentioned as choice s, then he has no choice , and he who stipulated this has wronged himself, whether it is a free woman or a slave woman if they are married. Marriage is not like a sale, so there is no choice in marriage due to a defect specific to the woman in her body, and we do not have an choice in marriage except for four: that there is a bone in her vagina that prevents intercourse with her under any circumstances, or that she is a leper, or a woman with leprosy, or a madwoman..."

Recommendations

Comprehensive awareness for all segments of society on the subject of conditions in the marriage contract, and its role in preserving the rights of the husband and wife, preserving their dignity, and protecting the family from problems.

The decisive factor in everything related to the Muslim's actions in matters of marriage should be the Sharia ruling, and through scholars and researchers from the specialists to clarify the Sharia.

Dealing with the subject of conditions in the marriage contract objectively and balanced, within the limits of Sharia, and based on the principle of moderation without exaggeration, and developing the religious incentive between the spouses to adhere to the Sharia of Allah.

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