

How Family Life and Motherhood was Protected under the Islamic Law of the Ottoman Khilafah

"[...] *The family is the most important institution demonstrating whether a society is civilized or not, or to which extent it is civilized.*" (Prof. Dr. Saffet Köse, *Genetiğiyle Oynanmış Kavramlar ve Aile Medeniyetinin Sonu*, p. 64)

Marriage is both a physical need and the basic foundation for spiritual development. Marriage contributes to the upbringing of good (khayr) generations by providing legitimate measures and purposes in order to put the carnal desires into an ideal format. With regards to that issue, Allah (swt) suggests us to pray in the following way: ﴿رَبَّنَا هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا...﴾ **"...Our Lord, grant us from among our wives and offspring comfort to our eyes and make us an example for the righteous."** [Al-Furqan 74]

Thus marriage in Islam (nikah) carries also the aspect of worship in it. So much that Rasulallah (saw) said «النِّكَاحُ مِنْ سُنَّتِي فَمَنْ لَمْ يَعْمَلْ بِسُنَّتِي فَلَيْسَ مِنِّي» **"Marriage is part of my sunnah, and whoever does not follow my sunnah has nothing to do with me."** [Bukhari, Muslim, Nesai, Darimi) Some books of Islamic Jurisprudence (Fiqh) even placed the chapter about marriage immediately after the chapter about the four Ibadat (salah, zakah, fasting, hajj) and before the chapter about *muamelat* (transactions). Thus, they emphasized that marriage has both the aspect of worship and the aspect of a legal procedure.

One of man's greatest weaknesses is lust. As such, it is of vital importance to take lust under control through the means of a special tool of discipline. Today, however, the free sexuality promoted by modern, liberal, capitalist life-styles leads to the destruction of the human nature as well as moral collapse. Chastity cannot be protected without marriage. This prevents the establishment of the family institution and thus the functioning of healthy families, whereas we see that all the styles and meanings used in the Qur'an aim at directing the societies view on the relations between men and women towards the purpose of marriage and not the sexual relation, whereby the pleasure element is fulfilled but restricted to the framework of marriage alone. At the same time, Qur'an and Sunnah have also defined the roles, duties and responsibilities within marriage. In case where these cannot be fulfilled, they have permitted divorce and the starting of new marriages. They also settled responsibilities occurring from the ending of a marriage in a way that ensures peace and confidence in society. While emphasizing the necessity of marriage for the continuation of the human race, they also determined a distinguished status for the woman, as the one who gives birth to the human, and gave importance to the protection of motherhood.

And that is why the Islamic state, its courts, its judges, society and individuals gave utmost importance to the protection of the family and the bedrock of civilisation throughout history. In this regard, Darina Martykánová from the Autonomous University of Madrid pointed out the following: *"Marriage represented a social institution which was universally considered as fundamental to the family, the community, and to mankind in general. [...] Marriage was seen as extremely important for maintaining and reproducing the social order. Research on marriage patterns indicates that there existed strong social pressure on single people to get married, and even the divorced or widowed were expected to remarry [...] People who remained celibate, both men and women, were seen as a potential threat to the social and moral order.*

The people - men and women, Muslim and non-Muslim - gave great importance to this eminent Islamic institution, and they regarded it as their duty to rightly fulfil their

responsibilities and duties within it. Thus, in order to be sure that they did everything correctly, without sinning, or in order to demand the protection of their rights, they frequently made use of the state's courts. PH. D. Fariba Zarinebaf-Shahr, head of the institute of Middle Eastern and Islamic history in the University of Chicago states: *"Despite distance and great hazards, women came from as far as Egypt to petition, showing that the myth of 'royal justice' was widespread and strong enough, to convince many, even those from the farthest corners of the Empire, to undertake a laborious journey to Istanbul to present their grievances in person."*

The marrying couple's offer and acceptance in the presence of two witnesses is sufficient for Islamic wedding. However, conducting marriages by a third person since the time of Rasulallah (saw) became a tradition. Moreover, it became institutionalised in this way, which indicates how serious Muslims took this duty. Hadith sources prove that Rasulallah (saw) conducted the marriage of one of the Ansar and also held a Khutbah. Thus the Khulafa-u Rashidoon maintained this tradition. Furthermore, Khalifah Ali (ra) commissioned his principal assistant with performing marriage ceremonies, as he himself was too busy with other duties. Other records show that marriages were recorded since the time of the four Khulafa-u Rashideen. Eventually Khalifah Omar (ra) established special councils to carry out census and to record the names of the people. Also during the following Islamic states – Umayyads, Seljuks, Memluks - it was not possible for a couple to live under one roof without making the marriage public, despite there is no special style for carrying out marriage ceremonies. It is known that marriages were conducted by the Qadi or required the permission of the Quadi. This custom was maintained by the Uthmani Khilafah too. The purpose here was to ease the evidence of the marriage and to ensure its publicity. The "permissions for marriage" (Izinname) issued during the Uthmani period comprised that the marriage was conducted in the presence of witnesses, with the consent of both of the parties, through indicating the amount of dowry (Mahr) and the permission of the legal guardian (veli). Thus it was ensured that marriage was not only conducted according the principles of the Hanefi School, but also according other Islamic schools. (Ekrem Buğra Ekinçi, Marriage with Izinname in Ottoman Law)

A court record from Istanbul in July 1618 CE reads as follows: *"Kubad son of Salim demands the registration of his daughter Reshidiye's marriage to Ali bin Isa's son Bedevi, as well as her dowry of 2,000 Akçe to be given immediately (Mahr muajjal) and 200 Akçe delayed (Mahr muakhar)."*

Another example is from court records of Alexandria in 1550 CE states: *"40 silver nisfs were paid to the bride Farhana who declared she had received half, the other half determined as a delayed dowry."*

In addition, Dhimmis (non-Muslim citizens), in particular Jews and Catholics, for whom divorce was difficult or impossible, preferred to set up marriage contracts according the laws of Islam.

A record from Istanbul in 1618 CE shows that, *"Seltan, daughter of Abraham, of Jewish religion, conducted her marriage to Sabatay, also a Jew, at court and received fifty thousand Akçe for dowry."*

Another example from Istanbul in 1676 CE states: *"It is recorded that the marriage of Armenian woman Gül daughter of Samadis and Kızıl son of Kirkor was conducted according to Shariah principles and for six thousand Akçe dowry, which were payed immediately."*

The recording of marriages had not only the purpose of making the marriage public. It also served to easily solve potential disputes occurring during the marriage. Considering that the institution of marriage enjoyed such protection, it was all too natural that especially

women, Muslim and non-Muslim, easily and frequently applied to courts in order to ensure their rights in case of divorce, maintenance, child custody, violence or any other issue regarding marriage.

In the 17th century Solomon Schweigger, a Catholic priest who travelled through Turkey and translated the Qur'an for the first time into a modern European language, stated the following in his notes: *"The Turks govern the world and their wives govern them. In no other country women do enjoy themselves as much."*

In fact, like Solomon Schweigger, countless other male and female travellers made similar observations in the Muslim lands. This is actually not surprising. Because Islam has specified in detail and in the best way the terms of a family life that will lead the human to peace and felicity, while it granted the woman a value that no other community across the world has given to her until today. Additionally, Islam showcased the most perfect model of a peaceful family nest in the person of Rasulallah (saw). Allah (swt) prescribed the view and the behaviour that a Muslim should display towards his parents in the Quran al-Kareem as follows:

﴿وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ إِحْسَانًا حَمَلَتْهُ أُمُّهُ كُرْهًا وَوَضَعَتْهُ كُرْهًا وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا حَتَّىٰ إِذَا بَلَغَ أَشُدَّهُ وَبَلَغَ أَرْبَعِينَ سَنَةً قَالَ رَبِّ أَوْزِعْنِي أَنْ أَشْكُرَ نِعْمَتَكَ الَّتِي أَنْعَمْتَ عَلَيَّ وَعَلَىٰ وَالِدَيَّ وَأَنْ أَعْمَلَ صَالِحًا تَرْضَاهُ وَأَصْلِحْ لِي فِي ذُرِّيَّتِي إِنِّي تُبْتُ إِلَيْكَ وَإِنِّي مِنَ الْمُسْلِمِينَ﴾

"And We have enjoined upon man, to his parents, good treatment. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] is thirty months. [He grows] until, when he reaches maturity and reaches [the age of] forty years, he says, "My Lord, enable me to be grateful for Your favor which You have bestowed upon me and upon my parents and to work righteousness of which You will approve and make righteous for me my offspring. Indeed, I have repented to You, and indeed, I am of the Muslims." [Al-Ahqaf 15]

Rasulallah (saw) described this view towards the mother with these words: عَنْ أَبِيهِ، طَلَحَةَ عَنْ مُعَاوِيَةَ بْنِ جَاهِمَةَ السُّلَمِيِّ، أَنَّ جَاهِمَةَ، جَاءَ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُولَ اللَّهِ أَرَدْتُ أَنْ أَعْرُزَ وَقَدْ جِئْتُ أَسْتَشِيرُكَ. It was narrated from Mu'awiyah bin Jahimah As-Sulami, that Jahimah came to the Prophet (ﷺ) and said: "O Messenger of Allah! I want to go out and fight (in Jihad) and I have come to ask your advice." He said: **"Do you have a mother?"** He said: "Yes." He said: **"Then stay with her, for Paradise is beneath her feet."** (An-Nasai, Jihad, 12)

This hadith means that gaining the paradise is possible through winning the heart of the mother and treating her well, because the mother's sacrifice, the nurturing and first education she gives to the child shape the child's future personality. Thus, the well-being of the children and consequently of the entire society depends on the mother.

Here comes the essence: A state, that has the goal to rule by what Allah has revealed as a "source of life" for mankind, inarguably will and did use its authority in particular to uphold these values. That is why those Western travellers who visited the lands of the Khilafah during the reign of the Khilafah were baffled by the peace and well-being of the society. Julia Pardoe, an English poet, writer, historian and traveller, who visited Istanbul in the 19th century, expressed her observations about the Ottoman family in her Book "City of the Sultan" as follows:

"A central feature of Ottoman family culture was the reverence displayed by children toward their parents. Special love and adoration was reserved for the mother of the family. Husbands and wives could advise and reprimand, but the mother was "an oracle"; she was

"consulted, confided in, listened to with respect and deference, honored to her latest hour, and remembered with affection and regret beyond the grave."

She also described the respect and affection, which is the source of peace and love within the family as follows:

"Among both rich and poor, children were taught to show the utmost respect for parents. [...] Often, the children kissed the hem of their mother's gown and their father's robe. This sensitivity and politeness, remarked upon by numerous Western observers, continued in the relationship between a student and his teacher when he entered school. Pupils regarded their teachers as superior beings, almost as second fathers, who deserved unwavering respect and obedience. Though highly cultured and extremely polite, from the humblest to the most powerful, men and women maintained a strong sense of dignity. (Julia Pardoe)

Another important personality, who was regarded as an "Ottoman aristocrat", was the late author Münevver Ayaşlı Hanımefendi (1906-1999). Born into an Ottoman family, she describes her own experience as follows: *"I don't believe that the beauty, purity and sincerity of Ottoman family life have existed anywhere else. Tho Ottoman Islamic life was life at the pinnacle of beauty. [...] If you ask me what Ottoman life was, I would answer that it was a beautiful, flower-embellished poem."*

Edmondo de Amicus, an Italian traveller who visited the lands of the Khilafah in the 19th century expresses one of his impressions as follows: *"The Turk is kind and just toward his family. He is generally more respectful of marriage and family ties than are Europeans..."* or La Baronne Durand de Fontmagne said: *"Men behave like a very polite friend to their wives. Their respect toward their mothers is infinite."*

However and without doubt, holding the family and the woman, especially the mother, in high esteem, putting her on a pedestal is not a life-style that can be maintained by individual struggle alone. On the contrary, there is a need for the power of a state, which ensures that these values are taught, implemented and protected. Hence, the strict adherence to Islam, and the honoring and practicing of Islamic cultural values, traditions and customs throughout the Khilafah gave the success and importance to the family. Additionally, the support and protection of family values by Ottoman institutions like the neighborhood administrative system, guilds, courts, religious organizations and government all played a vital role in ensuring the harmony of the family unit within the state and that the rights of men, women and children alike within marriage and family life were guaranteed, such that Prof. Gaston Jezz, a Swiss family-law professor described the Muslim family under the Khilafah as *"the strongest family hearth in the world."*

So this is the unique Aqeedah of the Muslim. It sheds light on every aspect of life and organizes every sphere of life that fits best to the nature of the human in the most efficient and most successful way. This Aqeedah shapes every element of the society. It not only shapes the individuals of a society and the ideas and emotions which make up the relations between them, rather, it orders the implementation of the systems that emerge from its own upon the individuals in order to ensure the healthy functioning of these relationships. Today, not only the Muslims, but the whole mankind, and every kind of relation between human beings are in urgent need of the re-enlightenment through the ideas and systems of the Islamic Aqeedah.

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