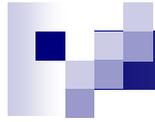


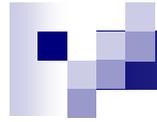
Consanguinity, Affinity and Milk-kinship

Islamic Perspectives to Consanguineous Marriage



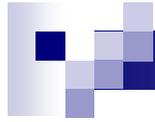
Foundation of Islamic law

- Qur'ān
 - Prophetic practice – sayings, deeds and approval
 - Scholarly consensus
 - Analogy
-
- Impediment is based on certain degrees of consanguinity, affinity and milk-kinship



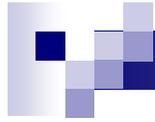
Prohibited degrees

“And marry not women whom your fathers married except what is past; it was shameful and odious; an abominable custom indeed. Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, the daughters of brothers, the daughters of sisters, your [foster] mothers who suckled you, your [foster] sisters through suckling, the mothers of your wives, your step daughters under your guardianship, born of your wives to whom you have consummated, though if you have not consummated there is no sin on you (to marry their daughters), - the wives of your sons who (spring) from your own loins, and that you join two sisters in wedlock at the same time, except for what has already passed, Verily, Allāh is Oft-Forgiving, Most Merciful. Also (forbidden are) women already married, except those (captives and slaves) whom your right hands possess. Thus has Allāh ordained for you. ...” [4:22-24]



7 groups of consanguines

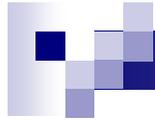
1. Mother and her female lineal ascendants of all degrees
2. Daughter and her lineal descendants of all degrees
3. Sisters - collateral consanguines of 1st degree
4. Paternal aunts - collateral consanguines of 2nd degree mixed with the first
5. Maternal aunts - collateral consanguines of 2nd degree mixed with the first
6. Nieces (brother's daughters) - collateral consanguines of 2nd degree mixed with the first
7. Nieces (sister's daughters) - collateral consanguines of 2nd degree mixed with the first



Impediment of milk-kinship

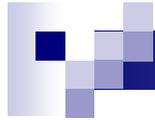
8. Foster mothers through suckling
9. Foster sisters through suckling
- The Verse mentions only two categories of milk-kinship subject to marital impediment. However, impediment extends to all (but two) equivalent impediments based on consanguinity and affinity
- Primarily based upon the following and other similar prophetic sayings

It is reported from Ibn ‘Abbās, he said: The Prophet said regarding the daughter of Ḥamzah: “She [Umāmah] is not permitted for me. That which is forbidden of blood ties is forbidden from milk-kinship. She is the daughter of my milk-brother [Ḥamzah].” [Bukhārī]



Impediment of affinity - muṣāharah

10. Mother-in-law – lineal affinity in the 1st degree [and her female lineal ascendants by consensus]
11. Step-daughter in a consummated marriage – lineal affinity in the 1st degree [and her female lineal descendants by consensus]
12. Daughter-in-law – lineal affinity in the 1st degree [and wives of lineal descendants by consensus]
13. Father's wife – lineal affinity in the 1st degree [and wives of lineal paternal ascendants by consensus]
- **Other impediments**
14. Two sisters concurrently [or any two women that if any of the two was to be considered male marriage would be forbidden between them, such as a mother and daughter and niece and aunt]
15. Women currently married



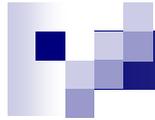
Permitted relationships

And except these all others has been made lawful for you ...
[4:24]

- Permission includes first cousins and consanguines more remote.
- Permission to marry first cousins is also mentioned expressly in the following verse:

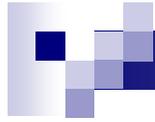
“O Prophet! We have made lawful to you your wives to whom you have paid their dowers; and those whom your right hand possesses out of the prisoners of war whom Allāh has assigned to you; and daughters of your paternal uncles and the daughters of your paternal aunts, and daughters of your maternal uncles and daughters of your maternal aunts, who migrated (from Makkah) with thee; ...” [33:50]

- Permission extends to Muslims in general by scholarly consensus



Examples of consanguine unions

- Prophet pbuh and Zaynab b. Jaḥsh who was the daughter of his paternal aunt Umeymah b. ‘Abd al-Muṭṭalib. [first cousin]
- Fāṭimah, the daughter of the Prophet pubh and ‘Alī b. Abū Ṭālib who was the first cousin of the Prophet pbuh. [first cousin once removed]
- Zaynab, daughter of the Prophet pbuh with Abū al-‘Āṣ who was the son of her maternal aunt. [first cousin]



Reported ḥadīth and athar

- Ibn Ḥajar al-‘Asqalānī has discussed marriage with near kinship in al-Talkhīṣ al-Ḥabīr after recording the following ḥadīth:

« لَا تَنْكِحُوا الْقَرَابَةَ الْقَرِيبَةَ فَإِنَّ الْوَلَدَ يُخْلَقُ ضَاوِيًّا ».

“Do not marry your near kinship for the offspring will be created weak.”

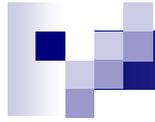
- Al-Rāfi‘ī al-Kabīr & al-Qādī al-Ḥusain have followed Imām al-Ḥaramayn [al-Juwaynī] in recording this ḥadīth
- Ibn al-Ṣalāh states: “I have not found any reliable basis for this ḥadīth.”
- In the ‘Gharīb al-Ḥadīth’ of Ibn Quteybah the following is mentioned:

جاء في الحديث: « أُغْرِبُوا لَا تَضُؤُوا »

It has appeared in ḥadīth: “Marry from afar; you will not weaken.”

- Ibn Yūnus has recorded the following from Imām al-Shāfi‘ī in Tārīkh al-Ghurabā’:
أَيُّمَا أَهْلَ بَيْتٍ لَمْ تَخْرُجْ نَسَاؤُهُمْ إِلَى رِجَالٍ غَيْرِهِمْ كَانَ فِي أَوْلَادِهِمْ حُمُقٌ.

“Whichever household the women of whom do not go out to men beside them they experience silliness/foolishness in their children.”

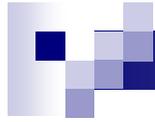


- In 'Gharīb al-Ḥadīth' Ibrāhīm al-Ḥarbī has recorded that 'Umar said to the kin of al-Sā'ib:

قَدْ أَضُؤْتُمْ فَانكِحُوا فِي النَّوَابِغِ.

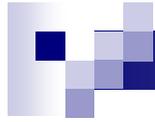
“You have become weak so marry from the vixens [meaning outside of your close of kin].”

- Al-Shawkānī states in al-Fawā'id al-Majmū'ah: “*Do not marry your near kinship for the offspring will be created weak.*” i.e., skinny. He [al-Feyrozābādī] said in al-Mukhtaṣar [Mukhtaṣar al-Majd]: It is not *marfū'* - elevated.



- Whilst discussing the desirable attributes of a prospective wife al-Ghazālī states:

“The eighth is that she should not be from amongst the near kin as that reduces the passion. He [Prophet] pbuh said: **“Do not marry your near kinship for the offspring will be created weak.”** i.e., skinny. And that is due to the influence it has in weakening the passion as passion is aroused from the strength of feeling generated through sight and touch, and feeling is heightened by what is strange and new. As for that which is familiar and upon which the sight has continuously remained, so that decreases the feeling from being felt fully and being effected thereby, and passion is not aroused therefrom.”



- Al-‘Irāqī has commented as follows on the ḥadīth cited by al-Ghazālī:

The ḥadīth “*Do not marry your near kinship for the offspring will be created weak.*” Ibn Ṣalāḥ has said: “I have not found any reliable basis for this ḥadīth.” I say: “It is actually known from the saying of ‘Umar that he said to the kin of al-Sā’ib:

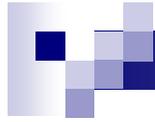
قَدْ أَضْوَيْتُمْ فَأَنْكِحُوا فِي النَّوَابِغِ.

“You have become weak so marry from the vixens.”

Ibrāhīm al-Ḥarbī has recorded this in Gharīb al-Ḥadīth and has said: the meaning of this is marry outside of your close kin. It is said:

اغْرُبُوا لَا تُضْوَُوا

“Marry from afar you will not weaken.”

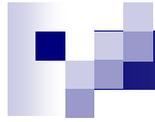


- Al-Suyūṭī has recorded the following statement of ‘Umar in Jāmi‘ al-Aḥādīth from Abū Muleykah:

يا بنى السائب! إنكم قد أضويتم فأنكحوا فى النّزّاع.

“O kin of al-Sā’ib! Indeed you have become weak so marry from strange women.”

- **Thus, it can safely be concluded that there is no reliable report attributable to the Prophet pbuh wherein, despite legal validity, he has clearly and specifically dissuaded his followers from marrying near kin. Rather, this is more correctly attributable to the second Caliph ‘Umar**



Shāfi‘ī School

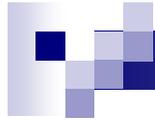
- Dominant school in the Arabian peninsula, Indonesia, Malaysia, Egypt, Somalia, Eritrea, Yemen and Southern India.
- Most prominent in advocating marriage from beyond near kin.
- Imām Shāfi‘ī himself is reported to have stated :

When a person marries from his kinship then silliness will dominate his children.”

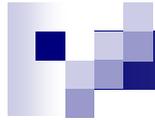
- Al-Nawawī states:

“It is an established position in the science of anthropology that of the reasons for the extinction/gradual disappearance of a species/race is its confinement to one family/kinsfolk as that terminates with the deterioration of the offspring and the weakening of the progeny .”

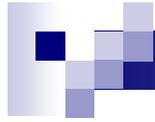
- Shāfi‘ī jurisprudential texts generally conclude that it is desirable to marry a woman who is not of near kin but rather of either far kin or a total stranger altogether with the former being more preferable to the latter.



- It is generally accepted that there is no reliable basis for the statement attributed to the Prophet pbuh:
“Do not marry your near kinship for the offspring will be created weak.”
- Al-Subkī argues that this rule should not stand on account of the absence of proof.
- Opponents within the school also argue that the Prophet pbuh gave the hand of his daughter Fāṭimah to ‘Alī who is of near kin
- Qualification of ‘near’ is actually mentioned by al-Nawawī [d. 676 AH] in Rawḍah al-Ṭālibīn, whereas the authors of Baḥr al-Math-hab [d. 502 AH] and al-Bayān have recorded that Imām al-Shāfi‘ī simply stated that it is preferable not to marry from his family [and this includes both near and far kin]

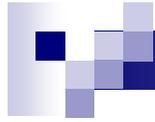


- Al-Zanjānī explains the rationale to Imām al-Shāfiʿī's statement as follows:
“of the purposes of marriage is to bring together tribes with a view to fostering mutual assistance and support and to join forces.”
- Widening of social ties is not furthered by marriage to near kin, therefore Imām al-Shāfiʿī's statement is taken to refer specifically to near kin.
- Marriage of the Prophet pbuh with Zaynab b. Jaḥsh was to establish a rule of law
- Marriage of Fāṭimah, the daughter of the Prophet pbuh and ʿAlī b. Abū Ṭālib, the first cousin of the Prophet pbuh, is between consanguines that are to some extent remote to each other
- If the marrying off of the Prophet's pbuh daughter Zaynab to the son of her maternal aunt Abū al-ʿĀṣ is conceded to be after prophethood, then it was a solitary case – *wāqiʿatu ḥālin fiʿliyyah* – possibly founded on achieving an interest and thus cannot be used as proof.



Ḥanbalī School

- Generally followed in Saudi Arabia and parts of Yemen and Egypt
- Also encourages marriage from beyond near kin.
 - The progeny of a strange woman is contended to be of more noble birth even if the women of patrilateral kin are described as being more patient.
 - To avoid producing weak progeny.
 - In the event of divorce, the ties of kinship, which we are required to maintain, will be affected more severely.
 - The weakening of passion and a resultant weak offspring



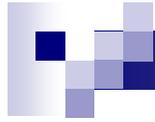
Ḥanafī School

- The Ḥanafī School is concentrated in Pakistan, India, Turkey, the Balkans, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, Afghanistan, China and Parts of Egypt
- Appears to be mute on the issue of the preferability or otherwise of marrying close kin despite detailed listing of desirable attributes in a prospective wife.
- Al-Ḥaṣkafī states in al-Durr al-Mukhtār:

“She should be less than him in age, noble descent, respect and wealth and higher than him in manners, etiquette, piety and beauty”

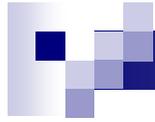
- Ibn ‘Ābidīn states in Radd al-Muḥtār:

[Supplement] [Ibn Nujeym] has added in al-Baḥr al-Rā’iq: And he should choose the easiest of women in betrothal and provision/maintenance. And marriage to a virgin is better due to the ḥadīth: “You should take virgins [for marriage] for they are more sweet mouthed, more pure in wombs, and more content with a little”. And he should not marry one who is tall and emaciated/weak, nor of short stature and repulsive/deformed, and nor one who is excessive, nor one who is ill mannered, nor one who is of child, nor of advancing age due to the ḥadīth: “black, oft-child bearing is better than beautiful, barren.” He should not marry a concubine if he has the capacity to marry a free woman nor a fornicator. A woman should choose a husband who is religious, of good character, generous and wealthy. She should not marry a sinful man. And he should not marry off his youthful daughter to an old man nor an ugly man. He should marry her with a comparable match and if a comparable match seeks her hand in marriage he should not delay her. A comparable match is every pious Muslim.



Mālikī School

- The Mālikī School is concentrated in North and West Africa and in the Arab states of the Persian Gulf
- Also appears to be mute on the issue of the preferability or otherwise of marrying close kin
- Desirable attributes given are:
 - Virginitv
 - Prophet pbuh asked Jābir mGbpwh why he had not married a virgin
 - Prophet pbuh advised marriage with virgins
 - Will not compare and develop disdain
 - Oft-bearing
 - Pious
 - Should not be married [solely] for her beauty and wealth



Conclusion

- Marital impediment does not include first cousins
- No reliable report attributable to the Prophet pbuh advising against marriage with near kin
- More correctly attributable to the 2nd Caliph ‘Umar
- Shāfi‘ī School is most prominent in advising against marriage to near kin which extends up to 1st cousins not 1st cousins once removed
- Ḥanbalī School also encourages marriage from beyond near kin
- Ḥanafī and Mālikī schools do not [appear to] make any mention of marriage to near kin