

## Rights of the Bride, the Bridegroom & the Guardians in *Nikāh*♦

When a marriage gets solemnized, four parties are basically involved: The bride, the bridegroom and their respective guardians. Consequently, the question of their nascent rights on the occasion of marriage arises, especially when there is difference of opinion between any guardian and his ward regarding accepting some one in the marriage. Therefore, the Shariah makes these mutual rights explicit for one and all. However, due to certain seeming ambiguities of the present time, the Eleventh Seminar of Islamic Fiqh Academy redefined them particularly in the context of Indian society. The seminarians resolved as follows.

- 1.1 As per the tenets of the Islamic Shariah, the 'Guardianship' in *Nikāh* (marriage) means to have an authority of getting someone's *Nikāh* conducted. It has two facets: Authoritative guardianship and voluntary guardianship. The former does not depend upon the consent of marrying a girl or a boy whereas the latter does so.
- 1.2 According to Shariah, the *Wali* (Guardian) ought to bear the following qualities: Mental soundness, maturity of age, independent status, having right in inheritances, and should be a Muslim. The order of guardians would be similar to that of the paternal relationships in inheritance.
- 1.3 Every person who is mentally sound and has attained puberty, irrespective of being male or female reserves the right to conduct his/her own *Nikāh* himself/herself. On the contrary, one who has not attained puberty or mentally unsound, the right to get his *Nikāh* conducted goes to his guardians. In this regard, there is absolutely no difference between a male and female.
- 1.4 A sane adult girl holds the right to enter into her *Nikāh* without the consent of her guardian. Albeit, it would be preferable if the *Nikāh* is performed with the mutual consent of the girl and her Guardian.
- 1.5 If a sane adult girl does not care about the family parity and the desired standard of *Mehr* (dower) in *Nikāh*, then her guardians shall have the right to get her separated through a *Qāzi* (judge).
- 1.6 The *Nikāh* of a girl, married off by her father or grandfather before she had attained puberty, stands valid indubitably. However, in case she does not like

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it because her father or grandfather did it for self gains or in a reckless manner or indeligently or her guardian is a known *fāsiq* (a Muslim who does not perform his religious duties and cares a damn about them), then she has the right to get herself separated through a *Qāzi* (judge).

- 1.7 The *Nikāh* conducted by guardians other than the father or grandfather would also be duly valid. Nevertheless, if the girl is unsatisfied with it, she may separate herself through a *Qāzi* (judge) once she attains puberty.
- 1.8 A virgin girl must exercise her right to puberty at the time she attains that age provided she is aware of her *Nikāh* before attaining puberty besides having the knowledge of Shariah. In circumstances other than these, she shall hold this right until she comes to know of her *Nikāh*.
- 1.9 A consummated (deflowered) girl shall enjoy this right (right to puberty) until she expresses her consent, either in clear words or with gestures. Moreover, she would continue to enjoy this right until she comes to know of this issues of her *Nikāh*. In case there are more than one guardians having equal status, the *Nikāh* performed by anyone of them shall hold good.
- 1.10 If in the presence of a guardian relatively closer, a distant guardian conducts the *Nikāh* of a minor boy or a girl, the validity of the *Nikāh* shall depend out rightly upon the permission of the closer guardian. Nonetheless, if it is not feasible to know the opinion of the closer guardian for the time being and there exists a fear of losing the apt family parity, then the *Nikāh* conducted by the distant guardian would be perfectly valid.