

10. Wife's Property?

Friday, 20 July 2007

Last Updated Tuesday, 31 July 2007

The three religions share an unshakeable belief in the importance of marriage and family life. They also agree on the leadership of the husband over the family. Nevertheless, blatant differences do exist among the three religions with respect to the limits of this leadership. The Judaeo-Christian tradition, unlike Islam, virtually extends the headship of the husband into ownership of his wife.

The Jewish tradition regarding the husband's role towards his wife stems from the conception that he owns her as he owns his slave [19]. This conception has been the reason behind the double standard in the laws of adultery and behind the husband's ability to annul his wife's vows. This conception has also been responsible for denying the wife any control over her property or her earnings. As soon as a Jewish woman got married, she completely lost any control over her property and earnings to her husband. Jewish Rabbis asserted the husband's right to his wife's property as a corollary of his possession of her: "Since one has come into the possession of the woman does it not follow that he should come into the possession of her property too?", and "Since he has acquired the woman should he not acquire also her property?" [20] Thus, marriage caused the richest woman to become practically penniless. The Talmud describes the financial situation of a wife as follows:

"How can a woman have anything; whatever is hers belongs to her husband? What is his is his and what is hers is also his..... Her earnings and what she may find in the streets are also his. The household articles, even the crumbs of bread on the table, are his. Should she invite a guest to her house and feed him, she would be stealing from her husband..." (San. 71a, Git. 62a)

The fact of the matter is that the property of a Jewish female was meant to attract suitors. A Jewish family would assign their daughter a share of her father's estate to be used as a dowry in case of marriage. It was this dowry that made Jewish daughters an unwelcome burden to their fathers. The father had to raise his daughter for years and then prepare for her marriage by providing a large dowry. Thus, a girl in a Jewish family was a liability and no asset [21]. This liability explains why the birth of a daughter was not celebrated with joy in the old Jewish society (see the "Shameful Daughters?" section). The dowry was the wedding gift presented to the groom under terms of tenancy. The husband would act as the practical owner of the dowry but he could not sell it. The bride would lose any control over the dowry at the moment of marriage. Moreover, she was expected to work after marriage and all her earnings had to go to her husband in return for her maintenance which was his obligation. She could regain her property only in two cases: divorce or her husband's death. Should she die first, he would inherit her property. In the case of the husband's death, the wife could regain her pre-marital property but she was not entitled to inherit any share in her deceased husband's own property. It has to be added that the groom also had to present a marriage gift to his bride, yet again he was the practical owner of this gift as long as they were married [22].

Christianity, until recently, has followed the same Jewish tradition. Both religious and civil authorities in the Christian Roman Empire (after Constantine) required a property agreement as a condition for recognizing the marriage. Families offered their daughters increasing dowries and, as a result, men tended to marry earlier while families postponed their daughters' marriages until later than had been customary [23]. Under Canon law, a wife was entitled to restitution of her dowry if the marriage was annulled unless she was guilty of adultery. In this case, she forfeited her right to the dowry which remained in her husband's hands [24]. Under Canon and civil law a married woman in Christian Europe and America had lost her property rights until late nineteenth and early twentieth centuries. For example, women's rights under English law were compiled and published in 1632. These 'rights' included: "That which the husband hath is his own.

That which the wife hath is the husband's." [25] The wife not only lost her property upon marriage, she lost her personality as well. No act of her was of legal value. Her husband could repudiate any sale or gift made by her as being of no binding legal value. The person with whom she had any contract was held as a criminal for participating in a fraud. Moreover, she could not sue or be sued in her own name, nor could she sue her own husband [26]. A married woman was practically treated as an infant in the eyes of the law. The wife simply belonged to her husband and therefore she lost her property, her legal personality, and her family name [27]. Islam, since the seventh century C.E., has granted married women the independent personality which the Judaeo-Christian West had deprived them until very recently. In Islam, the bride and her family are under no obligation whatsoever to present a gift to the groom. The girl in a Muslim family is no liability. A woman is so dignified by Islam that she does not need to present gifts in order to attract potential husbands. It is the groom who must present the bride with a marriage gift. This gift is considered her property and neither the groom nor the bride's family have any share in or control over it. In some Muslim societies today, a marriage gift of a hundred thousand dollars in diamonds is not unusual [28]. The bride retains her marriage gifts even if she is later divorced. The husband is not allowed any share in his wife's property except what she offers him with her free consent [29]. The Qur'an has stated its position on this issue quite clearly:

"And give the women (on marriage) their dower as a free gift; but if they, Of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer" (Qur'an 4:4)

The wife's property and earnings are under her full control and for her use alone since her, and the children's, maintenance is her husband's responsibility [30]. No matter how rich the wife might be, she is not obliged to act as a co-provider for the family unless she herself voluntarily chooses to do so. Spouses do inherit from one another. Moreover, a married woman in Islam retains her independent legal personality and her family name [31]. An American judge once commented on the rights of Muslim women saying: "A Muslim girl may marry ten times, but her individuality is not absorbed by that of her various husbands. She is a solar planet with a name and legal personality of her own." [32]

19. Louis M. Epstein, *The Jewish Marriage Contract* (New York: Arno Press, 1973) p. 149.

20. Swidler, *op. cit.*, p. 142.

21. Epstein, *op. cit.*, pp. 164-165.

22. *Ibid.*, pp. 112-113. See also Priesand, *op. cit.*, p. 15.

23. James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987) p. 88.

24. *Ibid.*, p. 480.

25. R. Thompson, *Women in Stuart England and America* (London: Routledge & Kegan Paul, 1974) p. 162.

26. Mary Murray, *The Law of the Father* (London: Routledge, 1995) p. 67.

27. Gage, op. cit., p. 143.

28. For example, see Jeffrey Lang, *Struggling to Surrender*, (Beltsville, MD: Amana Publications, 1994) p. 167.

29. Elsayyed Sabiq, *Fiqh al Sunnah* (Cairo: Darul Fatah lile'lam Al-Arabi, 11th edition, 1994), vol. 2, pp. 218-229.

30. Abdel-Haleem Abu Shuqqa, *Tahreer al Mar'aa fi Asr al Risala* (Kuwait: Dar al Qalam, 1990) pp. 109-112.

31. Leila Badawi, "Islam", in Jean Holm and John Bowker, ed., *Women in Religion* (London: Pinter Publishers, 1994) p. 102.

32. Amir H. Siddiqi, *Studies in Islamic History* (Karachi: Jamiyatul Falah Publications, 3rd edition, 1967) p. 138.