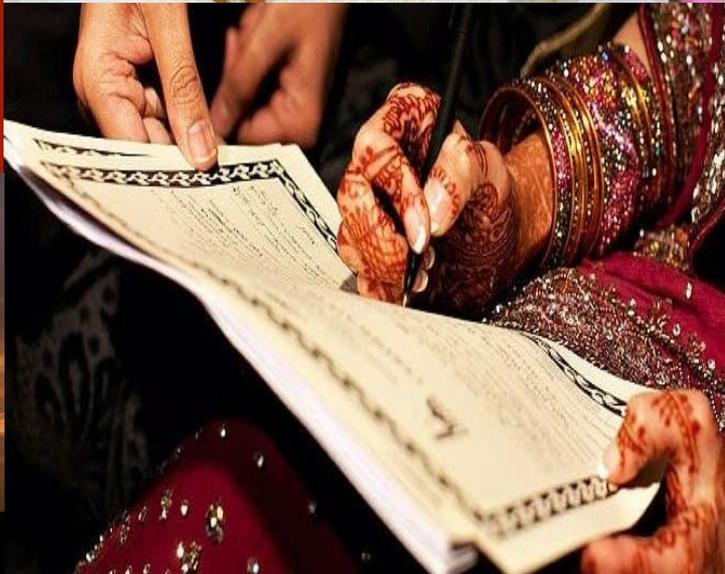


MODULE 7 FAMILY LAW



Module 7: Family Law

- 7.1 Marriage
- 7.2 Conflict and Divorce
- 7.3 Rights of Parents
- 7.4 Rights of Children
- 7.5 Family ties



BIRR AL-WALIDAYN – FILIAL PIETY

The Five Objectives of the Shariah

1. Preservation of the Religion
2. Preservation of Life
3. Preservation of Intellect
4. Preservation of Wealth
5. Preservation of Family

BIRR AL-WALIDAYN – FILIAL PIETY

- ‘The pleasure of Allah is in the pleasure of the parents, and the anger of Allah is in the anger of the parents.’ (Tirmidhi)
- Birr al-Walidayn is fard ‘ayn according to the Quran, the Sunna, and Conesus.

‘Your Lord decreed that you worship none others besides Him and that you be excellent [ihsan] toward your parents.’ (17:23)

‘Should I not tell you of the worst of the major sins? Associating partners with Allah and *‘uquq al-walidayn.*’ (Bukhari)

TYPES OF BIRR AL-WALIDAYN

Speech

Heart

Body

Wealth



BIRR IN SPEECH

[A] Speak softly

- ‘Do not say “*uff*” to them.’
(17:23)
- ‘And speak to parents in an honorable way.’ (17:23)



BIRR IN SPEECH

[B] One can give nasiha to his or her parents, but it must be with humility.

“The child should enjoin righteousness and forbid evil with his parents and should also ‘lower the wing of humility’ with them.” –Imam Malik

Imam al-Ghazali states that with parents, this is only in two ways:

- 1] He teaches them the matter if they were unaware of the ruling.
- 2] He does so gently.

A child has no right to use harsh words or curse his parents when trying to correct them. Imam al-Hasan al-Basri was asked about how a child should correct his parents. He said, **‘He should admonish them gently as long as they do not get angry. If they become angry, he should be silent so as to avoid the prohibition of going against them.’**

BIRR IN SPEECH

[C] One does not raise their voice

[D] One does not call them by their first name (makruh)

[E] Praying for mercy. This is an obligation based on the verse, ‘And say, “**O my Lord, have mercy on them as they have raised me when I was young.**”’ (17:24) Scholars state that making this du’a once in a lifetime fulfils this obligation if it was done with the intention of fulfilling the obligation.

Some scholars said that it is not far-fetched to say that it is required five times a day, because Allah says ‘**And thank Me and thank your parents.**’ (31:14) Since the parents are mentioned after the name of Allah and to properly thank Allah one must pray five times a day, then to properly thank one’s parents one should pray for them five times a day.

BIRR IN SPEECH

ANSWERING THEIR CALL WHILE IN PRAYER

When a father calls a child while the child is praying *nafila*, he should quicken it. When a mother calls a child while the child is praying *nafila*, the child answers her with a *tasbih* and quickens his prayer.

BIRR WITH THE BODY

Obey them in all that they order you to do as long as there is no prohibition or danger. **“There is no obedience to the creation in disobedience to the Creator. Obedience is only in that which is ma’ruf.”** (Bukhari)

- Imam al-Turtushi stated: ‘It is incumbent upon the child to obey if the parents would be hurt if the order is not followed.’
- The Prophet (Allah bless him and give him peace) said, ‘There is to be no harm or reciprocating harm.’ (Ibn Majah)

A child would not be required to obey an order that is harmful. For example, if a child cannot find a source of income locally to take care of himself and his family and he needs to travel to find work, he does not have to obey his parents if they tell him to forgo the travel, because that would be a type of harm to the child. (This would not apply to travel to earn beyond one’s needs.)

BIRR WITH THE BODY

- If parents order a child to do something doubtful, the child listens because the majority position is that avoiding ‘doubtful matters’ is recommended, while obeying parents is obligatory.
- If parents order one to perform an act of worship, it is incumbent.
- If parents order one to do something makruh or to leave a non-obligatory Sunna, one must listen. If they order one to leave something recommended, then scholars differ and say it’s either recommended to obey them or obligatory.
- Some opined that the parent’s order raises the status of the action—mubah becomes mandub, and mandub becomes obligatory (Qurtubi)
- But one does not have to obey parents if they ask them to leave the emphasized sunnas, or if they ask him to leave the Sunna consistently. This is because once in a while for a need is fine, but a command to leave them consistently is a type of change to the Shariah.

BIRR WITH WEALTH

If parents have no source of income, it is obligatory on the children to support them. They must be supported with enough to keep them at a status they are worth of ('urf).

BIRR WITH THE HEART

Ihsan toward parents includes the heart. At the end of the command for Ihsan it states: ‘...**your Lord is Well-aware of what is in your hearts.**’ (17:25) This means Allah is observing the Birr in our hearts as well. If one does the outward but has hatred and contempt in their heart, they have not fulfilled their duty.

CONFLICTING ORDERS

- The majority position of scholars is that if there are two conflicting orders, precedence is given to the mother.
- A man went to Imam Malik and said, 'My father is in Sudan and he has written a letter and told me to come where he is, but my mother is preventing me. Imam Malik said, 'Do not disobey your mother, and obey your father.'

Imam Malik did not put the right of one parent over the other. By giving this answer, he was forcing the questioner to figure out a way to please both parents. Imam Muhammad Mawlud said, 'This means that the son is to try his best to seek the pleasure of his mother when he travels to see his father, even if it means taking her with him so he can obey the father and not disobey her.'

All things considered, the mother has more right to birr than the father.

CONFLICTING ORDERS

- If the father orders the son to forgo marriage to a specific person, he is required to obey the order.
- If the father asks the son to divorce his wife, the son is not required to obey. If parents don't have the right to cause harm by preventing a son from earning a livelihood, how can they have the right to break up his family.
- This ruling only applies to the son. As for daughters, no one, not even the parents, have the right to ask her to seek a divorce from her husband.

BIRR AFTER DEATH

- This is through du'a for them and fulfilling any promises made to them.
- Excellence includes visiting their graves (particularly on Fridays) and giving charity on their behalf.
- Keeping family ties—visiting their kin and old friends.

‘UQUQ–DISRESPECT

- ‘Uquq is disrespect of parents, differing with them in a way that would cause anger. If the differing does not cause anger, it would be a minor sin.
- Any anger? Imam Muhammad Mawlud says, **‘This is anger that is defined by the custom and not due to bad character or deficient intellect, as there are many people who are not satisfied by anything.’** This means if a child does something that would normally cause a reasonable parent to become angry, it would be ‘uquq.

'UQUQ OF THE LIMBS

- 1] Hands—hitting, throwing hands up in the air in disgust, clenching fists.
- 2] Feet—leaving them helpless
- 3] Ears—listening to backbiting against one's parents and not speaking out.
- 4] Eyes—a hateful glare or glance towards one's parents.
- 5] Heart—hating
- 6] Tongue—harsh words, cursing, etc.

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FACILITATING BIRR AL-WALIDAYN

Fulfilling the rights of parents is sometimes difficult. Reciprocating is impossible. Due to these reasons, the scholars counsel parents to ‘facilitate’ birr al-walidayn and understand that it is part of doing birr towards one’s children.

Isma’il Haqqi: ‘It is incumbent that the parents not cause the child to perform ‘uquq by dealing harshly with him. Rather, they should aid in him doing birr. Some of the people of knowledge have said, “I have a son who, for thirty years, I have not given an order out of fear that he will disobey me and therefore deserve the punishment of Allah.”’

FACILITATING BIRR AL-WALIDAYN

- Teach them what Birr al-Walidayn entails. They have a right to be taught the obligations of Allah upon them.
- Assist them in birr and taqwa (Quran 5:2)
- Forgo your own rights at times
- Find the right length of the rope (Sayyiduna Mu'awiya)
- Train them well and help them develop as adults, and then **TREAT THEM AS ADULTS!**
- Pray for them.