FOSTERAGE AS A GROUND OF MARITAL PROHIBITION IN ISLAM AND THE STATUS OF HUMAN MILK BANKS

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One of the permanent grounds of marital prohibition in Islamic law is a milk relationship, which is established by virtue of breast-feeding an infant by a wet-nurse. Advancing technology in Western societies means that human milk can be obtained through Human Milk Banks. Consequently, the question arises: what would be the position of such a procedure if it is going to find its way into Muslim societies? Does it not strike at the very root of the Islamic prohibition of marriage between foster-sisters and foster-brothers; and how do we identify just who is barred from entering into a marital relationship with whom?

Contemporary Muslim jurists have addressed this issue. A brief examination of such views is necessary to find a correct answer to such questions.

MEANING AND CONCEPT OF MILK RELATIONSHIP (FOSTERAGE) IN ISLAMIC LAW

Fosterage is technically known as \textit{Rada‘a} in Shari‘a, and it is a process whereby a baby is breast-fed by a wet-nurse, and as a consequence there emerges a relationship between the infant and the foster-mother whereby some degree of marital prohibition similar to that of consanguinity would be established between the two.

Among those whose marriage would be unlawful for a person who is suckled by a wet-nurse would be the following:

(1) Foster-mother;
(2) Mother of the foster-mother;
(3) Mother of the husband of the foster-mother (foster-father);
(4) Sister of the foster-mother;
(5) Sister of the foster-father;
(6) Daughters of the foster-mother and her son’s daughters (grand-daughters);
(7) Foster-mothers’ sisters, whether real ones or her step sisters.

Furthermore, if two babies belonging to different persons are suckled by a wet-nurse they are called foster-brothers and foster-sisters and their marriage would be unlawful.

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1 The word \textit{Rada‘a} is derived from the root word \textit{Rade‘a}, which means suckling, such as saying that a mother is suckling her baby. See Ibn Manzur, “\textit{Lisan Al-Arab}”, vol. 9, pd, p. 489; Muhammad Ibn Abi Bakr Ar-Razi, “\textit{Mukhtar us-Sihah}”, 1988, p. 103.
The aforesaid prohibition is by virtue of the Qu’ran and the prophetic traditions, from among which I refer to the following:

(1) The Qu’ran directly prohibits the marriage of foster-mothers and that of foster-sisters.4

(2) It is narrated by Aishah that the prophet (PBUH) upon the approval of entry of Hafsa’s uncle by reason of fosterage said: “Fosterage makes unlawful what consanguinity makes unlawful”.5

(3) Aishah narrated that the prophet (PBUH) said that it was permissible for me to allow Aflah who was my foster-uncle to enter the house of the prophet (PBUH).6

(4) Sayyidina Ali narrates that the prophet (PBUH) said that I suggested to the prophet (PBUH) that he marry the daughter of Hamzah. The prophet (PBUH) refused and said that she was the daughter of his foster-brother, and therefore it would be unlawful for him.7

(5) Um Habiba narrates that I proposed to the prophet (PBUH) that he marry the daughter of Abu Salama, thereupon the prophet (PBUH) in refusing my proposal said that her father is my foster-mother and she is my niece.8

Therefore, fosterage is a ground which bars the marriage of those who are related through such a relationship similar to that of a consanguinity relationship.

For fosterage to become a ground for marital prohibition, it must fulfill certain conditions; a brief account of which follows:

(1) The majority of jurists are of the opinion that the milk must be from female human beings.9

(2) The milk must get into the baby’s stomach, whether by way of suckling or drinking from cup or a bottle.10

(3) Breast-feeding can be through suckling by way of nostril.11

(4) It must not be mixed with other substances. However, if it is mixed with other substances, the rule of preponderance would be applicable,12 i.e., if the quantity of human milk is greater than the other substance(s), fosterage would be established.

(5) The suckling must take place during the first two years of the infant’s life. This is an unanimous opinion held by a majority of Muslim justists.13

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4 Al-Quran (4:23).
6 Sahih Bukhari, id., p. 27; Sahih Muslim, id., p. 237.
7 Sahih Muslim, id., p. 237; Sahih Al-Bukhari, id., p. 25, narrated by Ibn Abas.
10 W. Al-Zuhaili, id., p. 706; S. Sabiq, op. cit., p. 68.
11 W. Al-Zuhaili, ibid.
12 This is upheld by the majority of Muslim jurists, see W. Al-Zuhaili, id., p. 707; A Samarqandi, op. cit., p. 236.