



Since
March 2002

An International,
Registered & Referred
Monthly Journal :

Law

Research Link - 144, Vol - XV (1), March - 2016, Page No. 141-143

ISSN - 0973-1628 ■ RNI - MPHIN-2002-7041 ■ Impact Factor - 2015 - 2.782

Nikaah as a “Civil Contract” in Muslims

Marriage is a religious duty of every Muslim and it is considered to be a moral safeguard and a social need. The Prophet has also said "Marriage is my tradition whosoever keeps away there from is not from amongst me." On another occasion Holy Prophet Muhammad said: "The best people of my nation (Ummat) are those who get married and have chosen their wives, and the worst people of my nation are those who have kept away from marriage and are passing their lives as bachelors." Imam Ali exhorts, "Marry, because marriage is the tradition of Holy Prophet Muhammad." Holy Prophet Muhammad also said, "Whosoever likes to follow my tradition, then he should know that marriage is from my tradition."

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Concept of “NIKAAH” in Muslims :

There are several passages and verses in The Holy Qur'an regarding marriage and family that encourage Muslims to be married, if possible. The Prophet Muhammad (SAW) has even said that when a Muslim marries, he has fulfilled half of the religious devotion and duties and then he should take care of other half by being God-minded and aware of his obligations.⁽¹⁾ Marriage is considered a religious duty in Islam and is enjoined upon all believers who can afford it. It provides a moral safeguard and legal means to develop relationship with the opposite sex and to extend the family. Islam, unlike other religions is a strong advocate of marriage. There is no place for celibacy like, for example the Roman Catholic priests and nuns. The prophet (pbuh) has said "there is no celibacy in Islam.

Marriage is a religious duty and is consequently a moral safeguard as well as a social necessity. Islam does not equal celibacy with high "taqwa" / "Iman". The prophet has also said, "Marriage is my tradition who so ever keeps away there from is not from amongst me".

Marriage acts as an outlet for sexual needs and regulate it so one does not become a slave to his/ her desires.

It is a social necessity because through marriage, families are established and the family is the fundamental unit of our society. Furthermore, marriage is the only legitimate or halal way to indulge in intimacy between a man and a woman.

Islam takes a middle of the road position to sexual relations , it neither condemns it like certain religions, nor does it allow it freely.

Historical Background :

In pre-Islamic Arabia, it seems, there were several types of marriage, ranging probably from the patrilineal and including the so-called "marriage of temporary enjoyment."

The most respectable form, however, was a patrilineal marriage in which the groom paid a dower for, or to, his bride.

This has developed no doubt, out of the widespread custom of paying bride-wealth to the tribe or the family of the bride for the loss of her reproductive capacity and as a stabilization both of the union and of the relation between two families; but it would seem that even before the the advent of Islam the dower had come to be regarded in Arabia as properly belonging to the bride herself. In any case this is a characteristic of the Islamic law of marriage, however much it is still disregarded in practice in some quarters. Muslim jurists often in fact employ the simile of sale, and regard the dower as consideration for marital rights—a consideration that constitutes an essential element in every Muslim marriage. Nor is this dower repayable on divorce, in Islamic law, once the marriage has been consummated, even where the wife is primarily at fault, except by her own voluntary agreement.

Hanafis, on the other hand, consider that an adult woman may contract herself in marriage provided she chooses a husband who is her "equal" in respect of family, trade, religion, and so forth; that only minors may be given in marriage without their consent; and that even minors have an option of repudiating such a marriage when they reach majority I all cases in which the guardian who acted for them was other than father or grandfather. [2] The other

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Sunni schools exclude marriage by compulsion by any except the father or father's father (or, in the case of the Malikis, the father or father or his executor); but they extend such compulsion, in respect of virgins daughters, far beyond majority.

In addition, a man is prohibited from being married, at one and the same time, to two women who would be debarred, were one of them a male, from marrying each other.

Nature of Nikaah :

The Muslim marriage is known by the Arabic word "Nikaah" Which means civil contract. Mulla writes, "Marriage according to Mohammedan law is not a sacrament but a civil contract. In the Muslim social system, marriage as an institution is governed basically by "Shariat", the personal law. It is a contract because it can be broken at any time. The right to break the marriage contract remains with the husband. So Muslim marriage is not a religious sacrament like the Hindu marriage. Prophet Mohammad also stressed that married life is preferable to unmarried life. Both the main sects within Islam called "Sunnis" and "Shias" consider marriage almost obligatory.

According to Ronal Wilson, "Muslim marriage is a contract for the purpose of legalizing sexual; intercourse and the procreation of children. According to fyzee the main aim of the Muslim marriage is to protect the society from foulness and un-chastity. It is both solemn and sacred above physical terms. It is not only a contract between two persons committing themselves to each other but it is a contract to which God Almighty is made the first Witness. It is made with every intention of making it permanent to the eternal success. Muslim marriage is a civil contract, it must fulfil certain essential conditions in order to be valid.

Object of Nikaah :

According to M.A. Quareshi "the main object of marriage is the promotion of day to day family life and the legalization of children". Thus satisfaction of sex desire, mutual love, procreation and legitimization of children are the main aims of the Muslim marriage. Marriage is a Religious Duty Also. On the basis of the above statement it should not be concluded that the Muslim marriage does not have any religious significance. Marriage in the Muslim society is a religious duty also.

It is devotion and an act of "ibadat". It is believed that a person who does comply with it is rewarded in the next world, and he who does not, commits a sin.

Conditions of Nikaah :

(1) Marriage Proposal and its Acceptance - Ijab and Qubul : As marriage is a civil contract in Islam, a proposal for the marriage and the acceptance of the proposal are essential. The bridegroom makes a proposal to the bride just before the wedding ceremony in the presence of two witnesses and a "mauvli" or kazi [Muslim priest].

The proposal is called 'ijab' and its acceptance is called 'Qubul'. These two words must be uttered clearly before

the assembled persons by the bride and the bridegroom or by their agents of sound mind. It is necessary that both the proposal and its acceptance must take place at the same meeting to make it a "sahi nikaah" [or "regular marriage"].

(2) Capacity of a Person to Contract Marriage :

This is the second condition of marriage according to which only adult persons of sound mind can enter into a marriage contract. Child marriages and marriages of people of unsound mind are not recognised. However, the marriage of a minor could be contracted by his or her guardians.

(3) Observance of the Doctrine of Equality : It is a matter of tradition among the Muslims to have marriage among equals. Though there is no legal prohibition to contract marriage with a person of low status, such marriages are looked down upon. The run-away marriages called 'kifa'⁽²⁾ are not recognised. Marrying idolators and slaves is also not approved.

(4) Preference System in the Male Selection : There is traditional insistence on the preferential system in mate selection. For example, a person is expected to give preferences to his cousins and of the cousins, first preference to parallel cousins [chachera cousins or father's brother's daughter] and next to the 'cross cousins' [mamera cousins or mother's brother's daughter].

(5) Marriage should be Free from Legal Complications : Muslim marriage can be called "sahih nikaah" only if it is not against 'shariat'.

Types of Muslim Marriage :

There are three kinds of marriage according to the Muslim law.

(i) Valid, (ii) Void & (iii) Irregular.

(i) Valid :

A marriage is considered valid provided if it fulfils the conditions and formalities as prescribed under the Muslim law. A valid marriage confers on the wife the right to dower, maintenance and inheritance of property. The children get legitimacy and the spouse gets the status of wife or husband in a valid marriage.

(ii) Void Marriage :

A void marriage is one which is basically un-lawful. If the marriage performed violates the prescribe prohibitions and norms namely affinity, fosterage, consanguinity etc., it is declared void. A void marriage does not confer any rights or obligations on the parties. The children of the union are declared illegitimate.

(iii) Irregular Marriage :

A marriage becomes irregular whose basis is sound but such marriage is un lawful due to the non-observation of some formalities. If this formality is fulfilled after marriage it becomes regular for example the marriage with a fifth woman can be regularized by divorcing one of the former four wives.

The following are some of the examples of irregular marriage :

(1) Marriage without witness.

(2) Marriage with a woman undergoing iddat.

(3) A Muslim marrying a woman who is an idol worshiper.

(4) A marriage with two sisters at a time.

(5) A marriage with the fifth woman.

An irregular marriage can be dissolved by either party by merely expressing the intention to do so. Further an irregular marriage has no legal consequence whatsoever, if it is not already consummated.

An irregular marriage on its consummation has however the following consequences :

(1) The wife gets the right to receive dower.

(2) She comes under the obligation of observing iddat.

(3) It does not create mutual rights of inheritance.

(4) The children born of such marriage are treated legitimate and are entitled to inherit property from both the parents.

According to shia law, there is no such marriage as an irregular marriage. It recognizes only two categories of marriages namely the void and the valid. As such all marriages which are regarded irregular by sunni law are void under shia law. But the marriage contracted in the absence of witness, which is irregular by the standard of sunni law is a valid marriage under shia law.

Muta Marriage - A Separate Concept :

The word "Muta" means temporary. The muta marriage is a temporary marriage, approved only among the shia muslims. The sunnites do not regard it as a marriage. They admit only a permanent marriage called "Nikaah". Muta marriage is contracted on two conditions. The first is that the period of cohabitation should be mutually agreed upon and specified ranging from one day to several years and the marriage expires at the expiry of the period specified.

The second is that, the quantity of the dower or meher, to be paid by the husband should be settled and specified of the two conditions the first one is more important and its non fulfillment renders a Muta marriage invalid. Both men and women are permitted to enter into such contracts.

But females are required to contract Muta marriage only with Muslim males while Muslim men are free to contract muta marriage with a Muslim, a Jew or a Christian girl but not any other religion. The wife is entitled to receive the said dower or meher immediately either just after the marriage is performed or after the terms is over.

Succession Right to property and maintenance or rights of mutual inheritance is guaranteed only in Nikaah marriage. Such rights do not arise in a Muta marriage unless it is explicitly expressed in the agreement. However children born of such marriage are entitled to inherit property from both the parents.

Conclusion :

Marriage is a religious duty of every Muslim and it is considered to be a moral safeguard and a social need. The Prophet has also said "Marriage is my tradition whosoever keeps away there from is not from amongst me." On another

occasion Holy Prophet Muhammad said: "The best people of my nation (Ummat) are those who get married and have chosen their wives, and the worst people of my nation are those who have kept away from marriage and are passing their lives as bachelors." Imam Ali exhorts, "Marry, because marriage is the tradition of Holy Prophet Muhammad." Holy Prophet Muhammad also said, "Whosoever likes to follow my tradition, then he should know that marriage is from my tradition."

Holy Quran says : And marry those among you who are single and those who are fit among your male slaves and your female slaves; if they are needy, Allah will make them free from want out of His grace; and Allah is Ample-giving, Knowing. (Surah Nur 24:32). The above ayat begins with the words *Wa Ankehoo* The imperative form of the word 'nikaah' implies that either it is obligatory or highly recommended. According to scholars, though marriage is a highly recommended act, it becomes obligatory when there is a chance of falling into sin. Holy Prophet Muhammad says, "No house has been built in Islam more beloved in the sight of Allah than through marriage." Unlike Hindu where the marriage is a sacrament, marriages in Muslims have a nature of civil contract. Marriage is necessary for the legitimization of a child. When the marriage is done in accordance to the prescribed norms it creates various rights and obligations on both the parties.

References :

(1) Hammudah Abdalati : "Islam in Focus", page 114.

(2) *Girls running away with boys and marrying them on their own choice. Among the sunnites, social inferiority on the part of bridegroom could be a ground for cancellation of marriage but not among the Shias.*

(3) *Valid Marriage.*

