

Laws of Muslim Marriage from the concept of the Holy Qur'an

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Abstract— Marriage is one of the most important aspects of Human life. Here in this write-up various aspects of Muslim marriage. The laws relating to marriage should known by the Muslims as an indicator to live a moral and legal life. However the knowledge of laws has a vast impact on the civilized life of Muslim. This research is designed to grasp the proper information of laws related to Muslim marriage. This research are conducted in order to determine the legal and beyond aspect of Muslim marriage with its effects. The research is expected to benefit our next generation so that they will be able to gather knowledge regarding marriage to live their life with the light of Quran and laws of the land. Now-a-days as a bad impact of globalization “same sex marriage” trend has started again in the world which indicated “transgresses the limits” of nature in the eye of Islam. Now it is the high time to create awareness among the generations with the knowledge of personal laws as well as laws of Bangladesh relating to marriage which help all of us to achieve the welfare and as a whole of the world.

Index Terms— Muslim Marriage, Marriage Laws

I. INTRODUCTION

Marriage is a matrimonial relation between two persons of the opposite sex and gives legalization of procreation of child. It creates such a bonding which treats a unique union and is one of the oldest institutions of human civilization. Considerable attention has been paid by all system of law to the principles, rules and regulations to the contract of marriage. Thus marriage is a legally and socially sanctioned union between two persons of the opposite sex for procreation and legalization of child.

According to M.U.S. Jung, “Marriage though essentially a contract is also devotional act, its objects are the right of enjoyment, procreation of children and the regulation of society life in the interest of society.”^[1]

II. AIMS AND OBJECTIVES OF THE STUDY

The Law is closely related to human life. It goes without saying that no excuse will not be granted on behalf of one that he did not know the law of sovereign. So, we should know the laws which closely related to our life. The laws related to marriage should known by us as marriage is an important aspect of life. Marriage of a Muslim is governed by his Personal laws as well as laws of Sovereign. My researcher objectives are here to point out all the questions proper solutions relating Muslim marriage through laws.

III. METHODOLOGY

All information of this article have been collected from Al-Quran, existing Laws of Bangladesh ,articles, journals, books and so on. It is basically a library research paper. Even through Muslim marriage is a very personal and social life concern not only of Muslims of Bangladesh but also the whole world. The aim of this research is to stimulate the individuals as well as the collective groups who desire to live their life in the light of laws. In this paper young and new generation can grip the legal and real concept of Muslim marriage. Marriage is regarded as the union of two souls for love and two bodies for procreation and legalizing of children.^[2] Marriage has been defined as a social, noble and sacred contract that has been referred to in the Holy Qur'an as *Mishaqan Ghaliza*, solemn covenant.^[3] In Islamic Jurisprudence, it means union or aqd.^[4] The Arabic word for marriage is *Nikah*. In Bengal, a first marriage is commonly called *shadi* which properly means joy or festivity. A second marriage is usually called *Nikah*. The word *Nikah* thus used is supposed to imply an inferior kind of marriage which is altogether misnomer.^[5] Justice Mahmood said, “Marriage among Muhammadans is not a sacrament, but purely a civil contract.”^[6] Islamic Jurist Ameer Ali said that Marriage is an institution ordained for the protection of society, and in order that human beings may guard themselves from foulness and unchastity.^[7] *Nikah* in its primitive sense means carnal conjunction. Some have said that it signifies conjunction generally. In the language of the law it implies a particular contract used for the purpose of legalizing generation.^[8] The Holy Qur'an states, “And among His signs is this, that He created for you wives from among yourselves, that you may find repose in them, and he has put between you affection and mercy. Verily, in that are indeed signs for a people who reflect.”^[9] However, the Laws, the jurists and the Holy Qur'an summarized Muslim marriage as a legal relation between male and female with a view to establishing a peaceful society. This relationship is giving the husband rights upon wife and same to the wife upon husband. It considers as the basis of social life and beginning of family life. Islam considers marriage to be a very sacred act and a step towards a better, purer and happier life as well as it finally connects the couple to the earth and the heaven.

IV. THE OBJECTIVES OF MARRIAGE AS STATED IN THE QUR'AN

- The objects are multifarious but to the key points are:-
1. It helps multiply the population. Allah declares in the Noble Qur'an:

“O mankind! Be dutiful to your Lord who created you from a single person (Adam), and from him (Adam) He created his

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wife [Hawwa (Eve)], and from them both He created many men and women;”^[10]

2. One of the aims of marriage is to protect chastity and moral excellence. The Qur'an states:

“Also (forbidden are) women already married, except those (slaves) whom your right hand posses. Thus has Allah ordained for you. all others are lawful, provided you seek (them in marriage) with *Mahr* (bridal-money given by the husband to his wife at the time of marriage) from your property, desiring chastity, not committing illegal sexual intercourse, so with those with whom you have enjoyed sexual relations, give them their *Mahr* as prescribed; but if after *Mahr* is prescribed, you agree mutually (to give more), there is no sin on you. Surely, Allah is Ever All-Knowing, All-Wise.”^[11]

Islam strictly denounces pre-marital sexual enjoyment. So, our generation need to be aware not to involve pre-marital or without marital sexual enjoyment.

3. The objective of marriage is that it gives not only sexual pleasure, but also sustain mutual peace, love and affection which may be attained by mutual co-operation and understanding.

V. REQUISITES OF A VALID MARRIAGE

Marriage may be constituted without ceremonial; there are no specific rites; no officiates; no irksome formalities. Nevertheless, following conditions are necessary^[12]

- 1) Offer on the part of one party to the marriage.
[Note: - The "Contracting Parties" would not be within the prohibited degrees to marriage.]
- 2) Acceptance by the other party.
[Note: - The offer and acceptance may be made by the parties, if both are competent. In case of legal incompetency, like minority or unsoundness of mind, the guardians may validly enter into a contract of marriage on behalf of their wards. (*Ibid*)]
- 3) Presence of two witnesses where the parties are Hanafies, no witness are required if parties are Shias.
- 4) The words with which the marriage is contracted must be clear and unambiguous.
- 5) The proposal and acceptance must be expressed in one and the same meeting.
- 6) Dower is also a significant part of a valid marriage.

Thus the essential conditions of a valid marriage may be summarised as follows: "Ijab (offer), qubul (acceptance), balig (adult age or puberty), rashid (sound mind not majnum or non-compos mentis) parties-i.e. groom and bride or when minor their guardians, presence of witness (in Hanafi Law, not Shia Law) and same meeting (that is at one session). Thus completion of this contract of marriage which commence with proposal and ends with the consent.

VI. A PROHIBITED DEGREES TO MARRIAGES (ASBAB-UT-TAHRIM)

The most important requisites of a valid marriage relating to "Contracting Parties". The "Contracting Parties" would not be within the prohibited degrees to marriage. In a clear words if Contracting Parties of a marriage within the prohibited degree to marriage, such marriage turn into illegal or void. There are various causes of prohibition, i.e.-consanguinity

(blood relationship), affinity, fosterage, unlawful conjunction (of wives) slavery, paganism, difference of religion etc.

Some prohibitions, according to the Holy Qur'an and the Sunnah, are of perpetual nature which is based on the ground of consanguinity, affinity, fosterage; while others are of temporary nature interdicted by certain relationships or conditions which are susceptible of termination and these prohibitions exist so long as the relationship or condition exists.^[13]

Tyabji gives the nine grounds on which Muslims are prohibited from intermarrying with each other:

i) **Prohibition due to Consanguinity of Blood Relationship (*Tahrim-un-nasab*):** A Muslim is prohibited to marry---

- a) His own ascendants or descendants;
- b) His father's and mother's descendants; and
- c) The sisters or brothers of any ascendant.

ii) **Prohibition on account of affinity (*Tahrim-al-Mushahirat*):** It is unlawful for a Muslim

- a) Ascendants or descendants of his wife; and
- b) The wife have any ascendants or descendant.

iii) **Prohibition on account of Fosterage (*Riza*):** A child is called the "foster-child" of the woman who not being the child's mother, has nursed the child whilst it was under two years of age. The woman was called "foster-mother."

Muslim Law prohibits marriage within certain limits of fosterage. A man may not marry, for instance, marry his foster-mother or his foster-sister.

iv) **Prohibition on account of Unlawful Conjunction:** It may be because of two reasons:

- a) Number, or
- b) Relationship between co-wives.

a) number: Muslim male may marry any number of wives not exceeding four; but a Muslim woman can marry only one husband at the same time or

b) Relationship between co-wives: A man is forbidden to have two wives at the same time, so related with each other by consanguinity, affinity or fosterage, which they could not have lawfully intermarried with each other if they had been of different sexes. For instance, it is unlawful to marry two sisters at the same time or to marry the sister of the wife during the wife's life time.

v) **Prohibition during Iddat Period:** A widow, a divorced woman or a woman who is pregnant by illicit intercourse is prohibited from remarrying or marrying during the period of iddat.

vi) **Prohibition by Reason of Divorce:** It is not lawful for a man to marry a free woman whom he has repudiated thrice, nor a slave whom he has repudiated twice, till another man has married her legally and the marriage has been effectively consummated with her and subsequently he has repudiated her or has died and thereafter her *Iddat* has expired. The Noble Qur'an [2:230].

vii) **Prohibition on account of Difference of Religion:** Under Hanafi law, a man may marry a Muslim woman or a *kitabiya*, but a Muslim woman cannot marry any one except a Muslim.

viii) **Prohibition on account of supervening illegality:** If one of the parties to a marriage becomes a fire-worshipper, or an idolator or the husband becomes a Christian, then the

marriage becomes invalid by what is known as supervenient prohibition.

ix) Prohibition on account of Pilgrimage: A man who has gone to perform *Haj* (pilgrimage) and has entered the sacred enclave of Kaba after putting on the pilgrim's dress (*ahram*), may not enter into a contract of marriage. These are the prohibited degrees to Muslim marriage which are essential for determining the legality of marriage.

VII. DOWER (*MAHR*)

Dower or marriage portion is originated in Arabic word *Mahr*. It is one of the ingredients of *Nikah* or marriage. In pre-Islamic period the term *mahr* was used to signify gifts (*sadaka*) given to the parents of the wife but *sadaq* was a gift to the wife herself. The *sadaq* or dower which was paid in case of regular form of marriage was approved by Islam. The Holy Qur'an says "And give women their dowers freely."^[14] Abdur Rahim (on the basis of *Hedaya*): It is either a sum of money or other form of property to which the wife becomes entitled by marriage....It is an obligation imposed by law on the husband as a mark of respect for the wife..."^[15] Some jurists treat *mahr* as a consideration of the obligation imposed upon the husband as a check on the capricious exercise of his almost unlimited power to divorce and some jurists treat *mahr* as a mark of respect towards the wife.

A. The nature of Dower (*Mahr*)

Mahmood,J., in Abdul kadir V. Salima,^[16] gives the best description of the nature of dower. He observes: "Dower, under the Muhammadan law, is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage, and even where no dower is expressly fixed or mention at the marriage ceremony, the law confers the right of dower upon the wife as a necessary effect of marriage. To use the language of the *Hedaya*, the payment of dower is enjoyed by the law merely as a *token of respect* for its object (the women), wherefore the mention of it is not absolutely essential to the validity of a marriage; and, for the same reason, a marriage is also valid, although a man were to engage in the contract on the special condition that there should be no dower."^[17]

B. Kinds of Dower (*Mahr*)

Islamic Jurists divide dower (*Mahr*) into two kinds:-

- i) Specified dower (*Al mahrul Musamma*), and
- ii) Unspecified or proper dower (*Al-mahrul Mishal*).

i) Specified dower (*Al mahrul Musamma*): An amount settled by the parties at the time of the marriage or after, is called specified dower. If the bridegroom is minor, his father may settle the amount of dower. The specified dower has been further divided into: - a) Prompt and b) Deferred.

Prompt dower is payable on demand and deferred dower is payable on the dissolution of marriage by death or divorce. The prompt portion of the dower may be realized by the wife at any time before or after consummation, but the defer dower could not be so demanded.^[18]

ii) Unspecified or proper dower (*Al-mahrul Mishal*): When the amount of dower not settled by the parties at the time of the marriage or after, is called unspecified dower.

C. Determination the amount of Dower

Determination of Dower is one of the most important requirements of a valid marriage. The Dower given by husband is a *Qur'anic* duty towards wife as well as it is a right of wife. According to Al Qur'an:

"Made lawful to you this day are *At-Tayyibat* [all kinds of *Hala l*(lawful) foods, which Allah has made lawful(meat of slaughtered eatable animals, milk products ,fats ,vegetables and fruits).The food (slaughtered cattle, eatable animals) of the people of the scripture (Jews and Christians) is lawful to you and yours is lawful to them. (Lawful to you in marriage] the chaste women from the believers and the chaste women from those who are given scripture (Jews and Christians) before your time when you have given their due *Mahr* (bridal-money given by the husband to his wife at the time of marriage), desiring chastity (i.e. taking them in legal wedlock), not committing illegal sexual intercourse, not taking them as girl friend, And whosoever disbelieves in faith [i.e. in the oneness of Allah and in all the articles of faith i. e. His (Allah's) Angels, His Holy Books, His Messengers, the day of Resurrection and *Al -Quadar* (Divine Preordinances)], then fruitless is his work; and in the Hereafter he will be among the losers."^[19]

"And give to the women (whom you marry) their *Mahr* (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart: but if they of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm(as Allah has made it lawful)." ^[20]

D. When the amount of Dower is not fixed

In such cases where dower has not been settled at the time of marriage or after, it would be fixed with reference to the social position of the wife's family and her own personal qualifications. Help would be taken by taking into account the amounts of dower fixed in case of wife's sister, paternal aunts, etc., and according to the *Hedaya*, the wife's age, beauty, intellect and virtue will also be considered. Such dower is called *mahr -ul misl* or proper dower.

E. Amounts of Dower and Conditions of payment

The right of getting the amounts of dower of a Muslim woman governed by the conditions mentioned below:
If the marriage is consummated, and is dissolved by death in the case of regular marriage

- a) whole of the specified dower, or
- b) Proper dower if unspecified,

If the marriage is consummated, and is dissolved by death in the case of irregular marriage

- c) Specified or proper dower, whichever is less.

If the marriage is not consummated, and is dissolved by the act of party in the case of regular marriage.

- i) When divorce by the husband-

- a) Half of the specified dower, or
- b) A present of three articles, if unspecified

- ii) When divorce by the wife: No dower.

If the marriage is not consummated, and is dissolved by the act of party (the husband and the wife) in the case of irregular marriage no dower.

VIII. CLASSIFICATION OF MARRIAGE

Marriage may be classified into three classes:

- i) Valid (*Sahih*)
- ii) Void (*Batil*) and
- iii) Irregular (*Fasid*)

i) Valid (*sahih*) Marriage: A valid marriage is one which conforms in all respects with the legal requirements and there should be no prohibition affecting the parties.

When, all the legal conditions are fulfilled, the marriage is called 'sahih' or 'correct' and in which no prohibitions affect the parties. Prohibition may be either permanent or temporary. If they are permanent, the marriage is void, and if temporary it is irregular.

ii) Void (*Batil*) Marriage: A marriage which has no legal results is turned as void. A marriage forbidden by the rules of blood relationship, affinity or fosterage is void. Similarly, a marriage with the wife of another, without observing the strict rules set for this occasion, is void.

Does Islam approve marriage between same sex?

Marriage between the same sex is strictly prohibited in Islam though about 21(Twenty one) countries of the world give approval of same sex marriage by passing Law.

The Holy Qur'an declares,

And (remember) Lut (Lot), when He said to his people: "Do you commit the worst sin such as none preceding you has committed in the 'Alamin (mankind and jinn)??"^[21]

"Verily, you practise your lusts on men instead of women. Nay, but you are a people transgressing beyond bounds (by committing great sins)"^[22]

And we rained down on them a rain (of stones). Then see what was the end of the *Mujrimun* (criminals', polytheists and sinners).^[23]

Marriage between two persons of same sex indicated "transgresses the limits" of nature by Islam. Therefore, it needs not to say that Islam completely disapproved the marriage between two persons of the same sex.

iii) Irregular (*Fasid*) Marriage:

An Irregular or *Fasid* Marriage is one which is not unlawful in itself but is unlawful " for something else" as where the obstacle to inter marriage is temporary or relative or when the irregularity arise out of a defect in procedure of making the marriage contract, such as absence of witness. Thus the following marriages are considered irregular:

- a) A marriage contracted without required number of witness;
- b) A marriage with women during her Iddat period;
- c) A marriage with women without the consent of her guardian when such consent is considered necessary;
- d) A marriage prohibited on account of difference of religion;
- e) A marriage with women who is pregnant, when the pregnancy was not caused by adultery or fornication;
- f) A marriage with a fifth wife.

IX. LEGAL EFFECTS MARRIAGE

Baillie gives a description of the legal effects of marriage but the systematic treatment of this point By Fyzee has been adopted here for convenience

A. Legal effects of a valid marriage

There are the legal effects flowing from a valid marriage:

- i) Sexual intercourse becomes lawful and the children born of the union are legitimate;
- ii) The wife becomes entitle to dower;
- iii) The wife becomes entitle to maintenance;
- iv) The Husband becomes entitle to reasonable restrain the wife's movements;
- v) Mutual rights of inheritance are established;
- vi) The prohibition regarding marriage due to the rules of affinity comes into operation;
- vii) The wife is not entitled to remarry after the death of her husband or after the dissolution of her marriage, without observing iddat;
- viii) Where there is an agreement between the parties entered into either at the time of marriage or subsequent to it, its stipulations will be enforced, in so far as they are consistent with the provisions or the policy of the law; and
- ix) The offspring born of a valid marriage are legitimate and as such they can inherit from both their parents;

Certain ante and/or post-nuptial conditions may be appended to a marriage contract. These conditions must be legal, reasonable and not contrary to the spirit of Islamic law. The parties could modify or rescind these conditions at any time they like; it is because marriage is mainly a civil contract. In cases where illegal and unreasonable condition is attached with a marriage contract, the condition alone and not the marriage itself will be treated as invalid.

B. Legal effects of a void marriage

A void marriage is not a marriage at all. It does not create any civil rights or obligations between the parties. The children born of such a union are illegitimate and there is no legal process by which such a union can be made legal. The woman gets no right to dower. If either party dies during the period of this union, the other acquires no right of inheritance.

C. Legal effects of an irregular marriage

An irregular marriage may be terminated by either party, either before or after consummation, by words showing an intention to separate, as where either party says "I have relinquished you."

An irregular marriage has no legal effect before consummation. If consummation has taken place-

- i) The wife is entitled to dower, proper or specified, whichever is less;
- ii) She is bound to observe the *iddat*;
- iii) But an irregular marriage, though consummated, does not create mutual rights of inheritance between husband and wife.
- iv) The children born of the union are legitimate.

D. Muta (temporary) Marriage

Being a temporary agreement a fixed period is the indicator of *Muta* marriage. "It is lawful among Shias" ,says Wilson "to enter into a contract of (so called) marriage for a limited period,which may be for a term of year, a month, a day,or even part of a day."^[24]

The marriage dissolves of itself, on the expiration of the term of marriage.If no time limite is expressed, the marriage is presumed to be permanent.The amount of dower must be in the contract of *Muta* marriage otherwise the agreement is void.

Fyzee says that the old Arabian custom of Muta was justified as being useful in times of war and travels. But the Prophet prohibited it and later on Caliph Umar suppressed it ruthlessly.^[25]

E. Guardianship in Marriage

Tyabji defines ‘guardian’ as follows^[26].

“A guardian for marriage is a person authorised by law to make a valid contract for effecting the marriage of a minor or person of unsound mind.”

In Abdul Ahad V. Shah Begum,^[27] The Jammu and Kashmir High Court held that during minority of a girl only the rightful Guardians (*Wali Jayaz*) who is either father or grandfather(that is father's father) could give (the girl) in marriage. On attaining puberty if she denies and repudiates the marriage, she is within her rights to do it. Marriage of a minors are prohibited under the Child Marriage Restraint Act-1929 which makes its an offence to solemnize the marriage of a male under the age of 21 years and a female under the age of 18 years. So, therefore, validly of marriage of a minor would be tested a fresh but punishable.

X. OPTION OF PUBERTY (KHYAR-UL-BULUGH)

When a minor is married by his guardian, other than the father or paternal grandfather, such a marriage can be repudiated by the minor on attaining the age of puberty. Such an option vesting in a minor is called the “option of puberty.”

XI. CONCLUSION:

It is a sacred duty of every man to know the laws which applicable for him. Here in this paper discussed those laws which related to Muslim marriage through which we be benefited specially young and new generations in the light of proper information. The object of this article is given proper information regarding Muslim marriage which helps in many manners to up hold the dignity of a Muslim.

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