

It is a social need because through marriage, families are established and the families are the fundamental entity of our society. Furthermore marriage is the only legitimate or halal way to indulge in intimacy between a man and woman. Islamic marriage although permits polygamy but it completely prohibits polyandry. Polygamy though permitted was guarded by several conditions by Prophet (PBUH).

Marriage:-Pre Islamic Position

Before the birth of Islam there were several traditions in Arab. These traditions were having several unethical processes like:-

- (i) Buying of girl from parents by paying a sum of money.
- (ii) Temporary marriages.
- (iii) Marriage with two real sisters simultaneously.
- (iv) Freeness of giving up and again accepting women

These unethical traditions of the society needed to be abolished; Islam did it and brought a drastic change in the concept of marriage.

Marriage Defined

It is quiet relevant to know whether the Muslim marriage is a sacrament like the Hindu marriage, for this let us get acquainted with some of the definitions of Muslim marriage.

- (a) Hedaya 1: - Marriage is a legal process by which the several process and procreation and legitimation of children between man and women is perfectly lawful and valid.
- (b) Bailies Digest 2:- A Nikah in Arabic means Union of the series and carries a civil contract for the purposes of legalizing sexual intercourse and legitimate procreation of children.
- (c) Ameer Ali 3:- Marriage is an organization for the protection of the society. This is made to protect the society from foulness and unchestity.
- (d) Abdur Rahim 4:- The Mahomedan priests regard the institution of marriage as par taking both the nature of Ibadat or devotional arts and Muamlat or dealings among men.
- (e) Mahmood J. 5:- Marriage according to the Mahomedan law is not a sacrament but a civil contract.
- (f) Under Section 2 of Muslim Women (Protection of Rights on Divorce) Act, 1986 Marriage or Nikah among Muslims is a 'Solemn Pact' or 'Mithaq-e-ghalid' between a man & a woman ,soliciting each others life companionship, which in law takes the form of a contract or aqd.

It's a matter of query still existing whether Muslim marriage is only a civil contract or an Ibadat & Muamlat. While unleashing the various definitions it's quite a big problem to say which one is the most appropriate, in my opinion although the essentials of a contract is fulfilled yet marriage can never be said to be a contract because marriage always creates a bondage between the emotions and

thinking of two person.

J Sarsah Sulaiman⁶ has said In Islam , marriage is not only a civil contract but also a sacrament.

Muslim marriage can also be differentiated from a civil contract on the basis of following points:-

- (a) It cannot be done on the basis of future happenings unlike the contingent contracts.
- (b) Unlike the civil contract it cannot be done for a fixed period of time. (Muta Marriage being an exception.)

Purpose of Marriage

The word Zawj is used in the Quran to mean a pair or a mate. The general purpose of marriage is that the sexes can provide company to one another, procreate legitimate children & live in peace & tranquility to the commandments of Allah. Marriage serves as a mean to emotional & sexual gratification and as a mean of tension reduction.

Marriage compulsory or not?

According to Imams Abu Hanifa, Ahmad ibn Hanbal & Malik ibn Anas, marriage in Islam is recommendatory, however in certain individuals it becomes Wajib or obligatory. Imam Shafi considers it to Nafl or Mubah (preferable). The general opinion is that if a person , male or female fears that if he/she does not marry they will commit fornication, then marriage becomes Wajib. However, one should not marry if he does not possess the means to maintain a wife and future family or if he has no sex drive or if dislikes children, or if he feels marriage will seriously affect his religious obligations.

Prophet said:-

When a man marries he has fulfilled half of his religion, so let him fear Allah regarding the remaining half.

This very wording of Prophet marks the importance of marriage, thus it could be well concluded that marriage in Islam is must.

Capacity for Marriage

The general essentials for marriage under Islam are as follows:-

- (i) Every Mahomedan of sound mind and having attained puberty can marry. Where there is no proof or evidence of puberty the age of puberty is fifteen years.
- (ii) A minor and insane (lunatic) who have not attained puberty can be validly contracted in marriage by their respective guardians.
- (iii) Consent of party is must. A marriage of a Mahomedan who is of sound mind and has attained puberty, is void, if there is no consent.

Essentials of Marriage

The essentials of a valid marriage are as follows:-

- (i) There should be a proposal made by or on behalf of one of the parties to the marriage, and an

acceptance of the proposal by or on behalf of the other party.

(ii) The proposal and acceptance must both be expressed at once meeting.

(iii) The parties must be competent.

(iv) There must be two male or one male & two female witnesses, who must be sane and adult Mahomedan present & hearing during the marriage proposal and acceptance. (Not needed in Shia Law)

(v) Neither writing nor any religious ceremony is needed.

Essentials Explored

(i) A Muslim marriage requires proposal 'Ijab' from one party and acceptance 'Qubul' from the other side. This must be done in one sitting.

(ii) The acceptance must be corresponding to what is being offered.

(iii) The marriage must be effectively immediate. If the Wali says I will marry her to you after two months, there is no marriage.

(iv) The two parties must be legally competent; i.e. they must be sane and adult.

(v) The women must not be from the forbidden class.

(vi) The consent given must be free consent,. It must not be an outcome of compulsion, duess, coercion or undue influence.

Kinds of Marriage

Under Muslim generally two types of marriage is recognized

(i) Regular Marriage (essentials discussed earlier)

(ii) Muta marriage

Muta Marriage:

Muta marriage is a temporary marriage. Muta marriage is recognized in Shia only. Sunni law doesn't recognize it. (Baillie, 18). A Shia of the male sex may contract a Muta marriage with a woman professing the Mahomedan, Christian or Jewish religion, or even with a woman who is a fire worshipper but not with any woman following any other religion. But a Shia woman cannot contract a Muta marriage with a non muslim.

The essentials of Muta marriage are:-

(1) The period of cohabitation should be fixed.

(2) Dower should be fixed.

(3) If dower specified, term not specified, it could amount to permanent or regular marriage.

(4) If term fixed dower not specified, it amounts to void marriage.

Aspects of Marriage

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

(i) Valid or Sahih Marriage:

Under the Muslim law, a valid marriage is that which has been constituted in accordance with the essential conditioned prescribed earlier. It confers upon the wife; the right of dower, maintenance and residence, imposes on her obligation to be faithful and obedient to her husband, admit sexual intercourse with him & observe Iddat.

(ii) Irregular or Fasid Marriage:

Those marriages which are outcome of failures on part of parties in non fulfillment of prerequisites but then also are marriages; to be terminated by one of the party is termed to be Irregular marriages. They are outcome of-

- (a) A marriage without witness (Not under Shia Law)
- (b) Marriage with fifth wife.
- (c) Marriage with a women undergoing Iddat.
- (d) Marriage with a fire-worshipper.
- (e) Marriage outcome of bar of unlawful conjunction.

An irregular marriage has no legal effect before consummation but when consummated give rise to several rights & obligations.

(iii) Void or Batil Marriage:

A marriage which is unlawful from it's beginning. It does not create any civil rights or obligations between the parties. The offspring of a void marriage is illegitimate. They are outcome of-

- (a) Marriage through forced consent.
- (b) Plurality of husband.
- (c) Marriage prohibited on the ground of consanguinity.
- (d) Marriage prohibited on the ground of affinity.
- (e) Marriage prohibited on the ground of fosterage.

Effect of Marriage (Sahih)

The lawful obligations which arise after marriage are as follows-

- (i) Mutual intercourse legalized and the children so born are legitimate.
- (ii) The wife gets power to get 'Mahr'
- (iii) The wife entitles to get maintenance.
- (iv) The husband gets right to guide and prohibit the wife's movement(for valid reasons only)

(v) Right of succession develops.

(vi) Prohibition of marriage due to affinity.

(vii) Women bound to complete Iddat period & not to marry during Iddat period; after divorce or death of husband.

The obligations and rights set between the two parties during and after the marriage are to be enforced till legality. On the basis of a marriage husband and wife do not get the right on one another's property.

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.

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.

Foot Notes

1- Hedaya P. 25

2- Bailie P. 4

3- Ameer Ali, Mahomedan Law, Students 7th Ed., 97

4- Abdur Rahim, 327

5- Abdul Kadir V Salima, (1886) 8 Allahabad, 144 at p 154

6- Anees Begum Vs. Mohammad Istafa (1933) 55 All 743