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## MARRIAGE(Nikah)

Nikah is a contract for the legalisation of intercourse and the procreation of children'. Ameer Ali defines marriage as institution ordained for the protection of society, and in order that human beings may guard themselves from foulness and unchastity'.

In *Abdul Khadir Vs Salima*, the court held that the marriage is not a sacrament but purely a civil contract.

The marriages are remarkable for their extreme simplicity.

### Formalities:

Declaration or offer on the one side.

Acceptance by the other.

Presence of witnesses.

The words must indicate with reasonable certainty that a marriage has been contracted.

The proposal and acceptance **must be in one meeting.**

Valid Nikah

**Capacity** : Every Muslim of sound mind who has attained majority can enter into a contract of marriage. The majority is obtained at puberty. This is fixed at 12 for a boy and 9 for a girl. On behalf of the minors marriage consent may be given by the guardians.

If the Muslim is married during his minority with the consent of the guardian, the minor has a right to repudiate such marriage on attaining majority, This is called the *Option of Puberty*.

In the case of a girl married during her minority, she can get the marriage dissolved if she can prove that

(a) she was married during her minority with the consent given by father or guardian.

(b) that the marriage took place before she attained the age of 15 and

(c) that the marriage has **not been consummated.**

A boy who is married during his minority may also exercise his option of puberty.

In 1929, the Child Marriage Restraint Act was made, and according to it the minimum age is fixed at 21 to the boy and 18 to the girl.

.(ii) Disabilities:

**Number:** A Muslim can take any number of wife & subject to a maximum of 4, But a Muslim women can marry only one husband. If a Muslim marries the 5th wife, such a marriage is irregular.

Persons belonging to different Muslim sects may inter-marry. Each spouse retains the status of marriage, that is, the school is retained. The Hanafi Muslim may marry a Kithabiyya. But a Muslim woman cannot marry except a Muslim. Kithabiyya means persons belonging to any *divine book*, that is, it refers to

Christians (Bible), Jews or a fire-worshipper.

**Relationship** : Blood relationship is the third restriction. A Muslim is prohibited from marrying persons who are connected by blood. Ex. : His mother, his daughter, his sister, his niece, his aunts etc. If this rule is violated the marriage becomes void. The other restriction is prohibition on grounds of affinity. A man is prohibited from marrying certain persons who are relations by affinity example ascendants or descendants of his wife. If this rule is violated the marriage is void,

**Fosterage**: A Muslim should not marry his foster mother, or her daughter or his foster sister; the marriage becomes void.

**Unlawful conjunctions**: The Muslim is prohibited from taking two wives at the same time who are related by blood, affinity or fosterage. That is, a man cannot marry two sisters at the same time.

*Idda or Iddat* (meaning: Numeration): When a marriage is dissolved by "death or divorce the wife is prohibited from marrying for certain specified time. This period is called Idda. The object of Idda is to ascertain whether the wife is pregnant or not.. In fact, every system of personal law has prescribed such a period of 'waiting'. It is a continence imposed on the ground of getting her secluded and making her abstain from luxuries.

After consummation of marriage if the marriage is dissolved by divorce the duration of Idda is three courses (months) or, if the woman is pregnant, till delivery. But if the marriage is dissolved by death of the husband, the period of Idda is 4 months and 10 days or if the woman is pregnant; until delivery,

If the marriage is not consummated Idda is to be observed in case of death but not in case of divorce. A marriage with a woman under Idda is prohibited .Exception : Marriage with divorced husband.

## Consequences of Valid Marriage :

1. The spouses get the status as husband and wife; The children are legitimate and get a right in the property.
2. Wife gets the right to Mehar when marriage is completed.
3. Wife gets the right to maintenance.
4. Wife should follow "Iddat."
5. Wife and husband may retain the sect even after marriage.
6. Wife or husband cannot after divorce marry certain relations.

## Classification of Marriage

Marriages are classified into valid, void and irregular marriages.

### 1. *Valid Marriage: (Sahih)*

If all the legal conditions are fulfilled there is a valid marriage.

### 2 *Void Marriage: (Batil)*

This is not a marriage at all. Violation of rules of blood relationship, affinity or fosterage results in making the marriage void.

The children are not legitimate and there is no process to legalise such a union, The marriage with the wife of another is also void.

The void marriage is an unlawful connection which produces no mutual rights and obligations between the parties. Hence no question of dower unless there has been consummation. **If one dies the other cannot inherit the property. The marriage is void *ab-initio*.**

### ***.3.Irregular Marriage : (Fasid)***

If the prohibitions of the marriage which are perpetual are violated the marriage becomes void. But if a temporary prohibition is violated it becomes irregular.

The marriage without witnesses. Or

(a) the marriage with a woman under Idda.

(b) The marriage prohibited on the ground of religion, i.e., non-kitabiyyah.

(c) Marriage with 5th wife

(d) The marriage with two sisters etc.

## Muta Marriage (Temporary Marriage)

Muta literally means 'enjoyment or use'. Hence, Muta marriage is a marriage for pleasure. It is a marriage for a fixed period, for a certain-

award paid to the woman. This was prevalent even during the time of Prophet, but, now, all schools of law, except the Ashari Shite, have made this unlawful.

This type of marriage was justified as it was useful in times of war or on travel. It was condemned later by Omar Khalif. In India this is not common. It is in Persia and Arabia.

### *Essentials*

According to Ahari Shite Law a Muta is a marriage, for a fixed period i.e., it may be for a day, a month, a year or number of years. The essentials can be understood under the following :

1. The form.

2. The subject

3. The period

4. The dower

1. *The Form*: There must be a proper contract. Therefore, offer and acceptance are necessary.



2. *The Subject:* A man (Muslim) might contract Muta with a Muslim, Christian, Jewish or a fire worshipping woman but not with the follower of any other religion. Relations prohibited by affinity cannot contract in Muta marriage. A man may contract Muta with any number of women. In *Jafri Bibi's* case the Privy Council declared that where a co-habitation commenced with a Muta and there was no evidence as to the term, the presumption was that the Muta continued during the entire period of co-habitation.

3. *The Period:* The period may be for one day, one month, one year or for a number of years. A Muta terminates by efflux of time or by death. On the expiry of the term he may make a gift and terminate the contract (with or without wife's consent).

4. *Mehar (Dower) :* Is a necessary condition of Muta. If it is not specified the agreement is void. If the marriage is consummated she is entitled to the entire amount, if not, only to half the mehar. In case the wife leaves the husband before the period, he is entitled to deduct proportionately.

5. **Consequences:** The children born out of Muta marriage are legitimate and are entitled to inherit. A Muta wife is not entitled to maintenance because the word wife does not, in reality, take a Muta wife. The

remedy is S. 125 Cr. P.C. Iddat is for two courses.

No inheritance. No question of divorce arises.