

“Reforms in the Laws of Islamic Marriage”

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1. INTRODUCTION

BEFORE advent of Islam, the Muslim women were treated as properties and not as human beings. Their position was very bad in those days. They were not given human standards. The only object of marriage was enjoyment of sex and procreation of children. Their status in the society was so dishonoured that they lived like slaves. Females were denied to have right of inheritance in the property of an Arab after his death. Their consent for marriage was unimportant. Unlimited polygamy was prevailed. By treating the birth of daughters as a misfortune, their fathers used to bury alive their daughters as soon as they were born. Islam improved the status of women. Females were given due social position and they were regarded as honourable member of the society.

2. POSITION BEFORE ADVENT OF ISLAM

In the Pre-Islamic society, the position of women was very bad .Before Islam, a women was not a free agent in contracting marriage. It was the right of her father, brother, cousin or any other male guardian to give her marriage, whether she was young or old, virgin or widow. There was even a practice of marring women by force. There was also a custom of inheriting a deceased man’s widows by his heirs, who used to divide them among themselves like good.¹

¹ Fyzee-“Arabs” in Encyclopedia Britannica, Vol.II,(13th edn.)at p.284;cf:Shed Khalid Rashid-Muslim Law,5th Edn.2009,p.4, Eastern Book Company, Lucknow

The birth of a daughter was regarded as mishap because of the degraded status of women. Thus many fathers used to bury their daughters alive as soon as they were born.² Arabs who followed the Magian religion could marry their own daughters and sisters.³

3. POSITION AFTER ADVENT OF ISLAM

Islamic law is the holy law based on Islam, the religion propounded by the Prophet Mohammed⁴. He preached the religion of Islam. Though his preaching's, the Prophet laid down new principles of life and eliminated the existing evil customs from the society. After advent of Islam, the females were given due social position and they were regarded as dignified members of the society.

The relevant Ayat in the Quran is 'If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or four; but if you fear that you shall not be able to deal justly (with them), then only one or (captive) that your right hands possess that will be more suitable, to prevent you from doing injustice'.⁵

4. MEANING OF MARRIAGE

The literal meaning of the "Marriage" is wedlock or the mutual relation of husband and wife or the organization whereby a man and a woman are joined in a special kind of social and length relationship for the purpose of making a family.⁶ The term "Nikah" has been used for marriage under Mohammedan law which means "to tie up together".

5. OBJECT OF MARRIAGE

The main object of marriage is the safeguarding of human race. It is through marriage that the paternity of a child is recognized.⁷

² Syed Khalid Rashid-Muslim Law, 5th edn. 2009, p.5, Eastern Book Company, Lucknow.

³ Abdur Rahim- Muhammadan Jurisprudence, p.10; cf: Dr. R.K. Sinha-The Muslim Law, 5th Edn. 2003, p.10, Central Law Agency, Allahabad.

⁴ Dr. R.K. Sinha- The Muslim Law, 5th Edn. 2003, p.38, Central Law Agency, Allahabad.

⁵ Quran, Sura IV, Ayat 3; The Holy Quran, Translated by Abdullah Yusuf Ali, Ayman Publications, New-Delhi.

⁶ Dr. Nishi Purohit- The principles of Muhammedan Law, 2nd Edn. 1998, p.105, orient Publishing- Company, Allahabad.

⁷ Idib

6. DEFINITION OF MARRIAGE

In Muhammadan Law, marriage is a contract for the legalization of intercourse and the procreation of children. Ameer Ali cites an ancient text defining its object as follows; “Marriage is an institution ordained for the protection of society and in order that human beings may guard themselves from foulness and unchastity”.⁸ Among Muslims, there is a tradition “Nikah is my Sunnat and one who dislikes my Sunnat is not mine”.

Quranic injunctions regarding marriage are; “And do not marry such women who your father married except what was done in the past. Surely that is shameful, hateful and evil way”.⁹

7. KINDS OF MARRIAGE

In Pre-Islamic Arabia, just before advent of Islam, 4 kinds

Of marriages were prevalent.¹⁰

- a. *First form of marriage*, The girl was sold by the father or her guardian to her husband;
- b. *Second form of marriage*, A man would say to his wife to have intercourse with some other man (generally a famous man) and then remain away from her society till a child was conceived. After pregnancy became apparent, she would return to her husband. This probably originated from desire to secure a noble-blood.
- c. *Third form of marriage*, the girl would invite several men (not more than ten) to have intercourse with her. After a child was born, she would call all the men and name any one to be the father of her child. The man named by her, could not deny paternity of that child.
- d. *In the fourth form*, the woman (prostitute) would fix a flag on her tent so as to indicate an invitation to all men to come and have intercourse with her. If a child was born to such woman, the men who visited her would be assembly and the father of that child was decided on the basis of child’s features or profile by a physiognomies.

⁸ AmeerAli, students 7th Edn.97. This definition is based on the Quran and Traditions;cf: Asaf A.A. Fyzee- Outlines of Muhamadan Law, 4th Edn. 1999, p.90, Oxford University Press, New Delhi.

⁹ The Holy Quran-Suraiv, Ayat 22;By Dr. a.Majeed A. Aulokh with Urdu Translation of IMAAM-E-AHL-E-SUNNAT Maulana Muhammad Ahmad Raza Khan Bareilvi-Qaadri, Farid Book Depot(Pvt.)Ltd. New Delhi

¹⁰ Abdur Rahim-Mohammedan Jurisprudence, p.7; cf: Dr. R.K. Sinha- The Muslim law, 5th Edn. 2003, p.38, Central Law Agency, Allahabad.

Islam reformed these old marriage in a sweeping and far-reaching away. Prophet Mohammed abrogated those various forms of marriage except the one in which, a dower was paid and the man asked the parents of the woman for her hand.

At present, there are 2 kinds of marriages:

- i. Permanent marriage (Nikah) and
- ii. Temporary (Muta) marriage

A normal Muslim marriage recognized by Sunnis and Shias is a regular permanent union. The stability of marriage is broken only when the marriage is dissolved by the husband on using his power of pronouncing 'Talaq'. But since no term is fixed in normal Nikah, the Muslim marriage is a permanent marriage. When the marriage is restricted in its duration for a certain fixed period and for certain amount to be given to the woman by the man, it is called temporary or Muta marriage.

8. CONCEPT OF MUSLIM MARRIAGE

The Arabic word Nikah means "the union of sexes", and in law, this means "marriage". The term "Nikah" has been used for marriage under Muslim law. "Nikah" literally means "to tie up together". It implies a particular contract for the purpose of legalizing generation. Nikah in its primitive sense means carnal conjunction. Nikah amongst Muslims has been considered as most pious act.

In "Radd-ul-Mukhtar", it has been mentioned as "there is no act of devotion that has remained prescribed for us, since the time of Adam, upon him be peace, up to this moment, and which is to be continued in paradise except Nikah (or marriage) and Imaan (or faith).¹¹

9. LEGAL ASPECT

Legally speaking, a Muslim marriage is considered as a contract because the elements which constitute marriage and the manner in which it is completed, is almost similar to that of a civil contract. The contractual nature of a Muslim marriage has been explained on the basis of the following facts:

- i. Like a civil contact, the terms of marriage-contract within legal limits maybe settled by the parties themselves;

¹¹ Radd-ul-Mukhtar, Vol.2 at p.280 (Hizri); cf:Dr. Mohammad Nazmi- Mohammadan Law, 2nd Edn. 2008, p. 32, Central Law Publications, Allahabad.

- ii. Like contract, the parties to the marriage also must be competent;
- iii. Like contract, the marriage is not complete without offer, acceptance and free consent of the parties or of their guardian;
- iv. Just as there are rules for regulating the rights and duties of the parties upon the breach of a contract, there are also provisions for respective rights and duties of husband and wife on divorce or dissolution of marriage.¹²

Thus, the composition of Muslim marriage is similar to that of a civil contract. Every person who is a Muslim and who satisfies the above stated requirements, has a right to marry and such marriage will be valid or sahih marriage. From a valid marriage, the rights and duties of the husband and wife in the shape of legal effects or consequences flow.

10. THE LEGAL EFFECTS OF A VALID MARIAGE

a. Mutual Rights and Obligations:

- i. The parties become entitled to inherit from each other.
- ii. Prohibited degrees of relationships are created between the parties.¹³
- iii. Sexual intercourse and the procreation of children are legalized.¹⁴
- iv. All conditions (whether made before or at the time of or after the marriage) would be binding on the parties provided that they are not opposed to any law for the time being in force or to public policy of Mohammedan law.¹⁵

b. Rights of the husband and duties of the wife:

- i. She is bound to observe strict conjugal fidelity.
- ii. She is bound to obey all his legal commands.
- iii. She is bound to allow her husband, conjugal union with her, with due regard to her own health, decency and place. The husband has the right to enjoy all the benefits of marital life.
- iv. She is bound to reside in his house and to observe “Purdah” if necessary.¹⁶

¹² Dr. R.K. Sinha- The Muslim Law, 5th Edn. 2003, p.41, Central Law Agency, Allahabad.

¹³ Baillie, I, 13; cited in B.R. Verma- Islamic Law, 6th Edn. 1986, p.107, Law Publishers (India) Private- Limited.

¹⁴ Baillie ,I,4, 16, 54; Baille, II, 88; ibid.

¹⁵ B.R. Verma- Islamic Law, 6th Edn 1986, p. 107, Law Publishers (India) Private Limited.

¹⁶ Aqil Ahmad- Mohammedan Law, 21st Edn. 2004, p. 131, Central Law Agency, Allahabad.

11. CONCLUSION

After advent of Islam' Prophet Mohammad improved the position of women. Prophet introduced a definite form of marriage (Nikah) which is not only a matrimonial contract but also a social institution giving dignified independent status to married women. Islam improved the position of women .Prophet Mohammad brought a complete change in the position of women. Prophet Mohammad prohibited limitless polygamy and permitted a limited polygamy of four wives at a time on a condition of treating all wives equally. Islam laid down many conditions for marriage, divorce, maintenance, dower, guardianship, inheritance etc. but still they are suffering from injustice being done to them in various aspects especially in the matters of marriage, dissolution of marriage and maintenance. Now it is for the parliament to do justice to them by making laws so that they are equally protected on par with other religious women.

The Muslim women in order to safeguard their interests and to protect themselves and to lead a happy life, the best solution for the problem is to enter into Pre-Marriage Agreements with their husbands for Delegation of the power of pronouncing Talaq to them, for preventing their husbands from contracting another marriage, and for payment of Maintenance after dissolution of marriage.