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Nikah under Muslim Law

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Marriage is a sacred bond either it comes under the Hindu religion or any other religion present on the earth. Marriage is one of the most essential corridors of life. One of the basic social institutions is marriage. It is regarded as the foundation of a society. Along with birth and death, marriage is too considered the most important happening in life. In India, marriage is not just between two individuals it's between two families. Marriage among the Hindus is considered 'divine in nature. It is a religious Bond and not a contractual Union. Marriage is allowed for all, there is no prohibition. It is still in debate, that whether Hindu Marriage is ceremonial. Consequently, in most Hindu marriages religious ceremony is followed. The marriage contains certain basic contractual provisions, but it is not entirely contractual. In addition, the Hindu Marriage Act, 1955. Regards it as more of a sacrament. Hindu Marriage is a "sacred and eternal union of two bodies." Hence it is more of a sacrament. It is more of a sacrament as Hindu Marriage is a "holy and eternal union of two bodies". So we can say that Hindu marriage is ceremonial in nature. Muslim marriage is generally considered to be contractual in nature but it has some sacramental as well. The Arabic term "Nikah" means "the Union of Sexes". According to Black's Law Dictionary "Marriage, as distinguished from the agreement to marry and from the act of becoming married. is the civil status of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex."

Keywords: *marriage, nikah, sacrament, ceremonial.*

INTRODUCTION

Origin of Islam was there in Arabic countries. In the pre-Islamic Arabian society, “all customary laws were in favor of the males and the females were treated as properties and not as human beings”. For them, the meaning of marriage was just the enjoyment of sex and the procreation of children. So, a regular sense of marriage for them was rare at that time. And, when there is no marriage institution, then in such a situation the sexual unions from such marriages will be put under adultery or prostitution or polyandry. In the pre-Islamic period, ‘marriage means different forms of sexual relations between man and woman and that relation was too on certain terms and conditions’. There was no certainty seen in the nuptial status of the wife and her condition was just like a Slave at that period. Women were considered as father's property before marriage and after marriage, she was considered as husband's property. There was no status of wife at that period. Before Islam, several kinds of marriage were recognized but they were almost different forms of prostitution.

So, when the Islamic period came, due social status was provided to women and considered dignified members of society. And Prophet Mohammad abrogated the other various forms of marriage. Prophet Mohammad recognized that man will give a dower to a woman and ask for the marriage from her parents. This concept of dower was recognized by the Prophet because this dower is the symbol of respect toward the wife from the husband and the most essential was the consent of the woman for marriage and consent to free consent. Basically, a definite marriage in Islam is termed as ‘Nikah’- “it is not just a matrimonial contract but it is a social institution which is providing a dignified status in the society for married women”.

In Arabs, Nikah is a wider term and this wider term comprises different forms of sexual relationships. But in Muslim Law, this Nikah has a very definite legal meaning. This Nikah is considered a Sacrament just like Hindu Marriage. Marriage under Muslim law is a sacrament or a civil contract is a great topic of debate many Muslim believers and jurists have put forward their views. Let’s have a look at the definitions and views given by them.

NIKAH

Hedaya gave the description that “marriage is a legal process by which several processes and procreation and legitimacy of children between man and woman is perfectly lawful and void”. Bailies Digest “Nikah,” which translates to “Union of the series” in Arabic, is a civil contract that permits sexual relations and the proper conception of children. This marriage “is an institution for the safety of society,” claims Ameer Ali. This means that people can protect themselves against impurity and unchastity. The institution of marriage is recognised by two different legal standards under Islamic law, according to Muhammadan jurist Abdur Rahim. It is “Ibadat- devotional act” also and “Mualmat dealing among man” also. Rudiments of the contract are fulfilled here. But marriage can’t be said a contract because it creates the bondage between emotions and thinking of two persons. Justice Suleiman, according to him, under Islam marriage is not just a civil contract but also a ‘sacrament’. Numerous other Islamic religionists and Jurists have defined ‘NIKAH’ in their own ways and we have also discussed some of the definitions. So, among all the above definitions, “Abdur Rahim’s” description is balanced because he has mentioned two important points; ‘Ibadat’ and ‘Mualmat’, which consist of Muslim conception.

By establishing rights and obligations between the parties themselves, the Nikah is a contract that has the legal goal of regulating sexual interaction, childbirth, and social life in the interest of society. And through the coupling of these parties, offspring are produced. The legal component of Muslim marriage is this. Marriage in Islam also has social and theological aspects in addition to these. According to Ashabah, “marriage is a contract underlying an endless relationship grounded on mutual consent on the part of a man and woman”. In the case of *Shoharat Singh vs Jafri Begum*¹, the Privy Council said that marriage (nikah) under Muslim law is a religious ceremony. Also, the Prophet Mohammad said, “Marriage is my Sunnah and those who do not follow this way of life are not my followers. And there is no monkery in Islam”.

¹ *Shoharat Singh v Jafri Begum* (1915) 17 BOMLR 13

In the case of *Abdul Kadir vs Salima*, Justice Mahmood said, “marriage amongst Muhammadans isn’t a sacrament, but purely a civil contract”. Justice Mahmood described that Muslim Marriage was dependent upon the declaration or proposal of the one and also the consent or the acceptance of the opposite contracting parties. According to Justice Mahmood, a Muslim marriage requires both the approval of the other contracting parties and a proclamation or proposal from the first party.

Muslim Marriage: its nature Divergent viewpoints exist regarding the characteristics of Muslim marriage. Muslim marriage is viewed as a religious sacrament by certain jurists, while others believe it to be only a legal transaction. It cannot be said that Justice Mahmood's concept of marriage included anything else than a civil compact. According to him, the Dower in a Muslim marriage shouldn't be overly confused with a civil contract. In some ways, it is comparable to a contract requiring a proposal and acceptance, or Ijab and Qubool, from each side in a Muslim marriage. So it reads in the contract. Additionally, there cannot be a marriage without the free permission of both parties, and this consent cannot be obtained through deceit, compulsion, or undue influence. Muslim marriage is somewhat analogous to the civil contract in the same way. Though the sacramental nature of marriage is considered an orthodox view it is also supported by the Judiciary. In *Anis Begum vs Mohammad Istafa*², is a leading case on the point where C. J Sir Shah Suleiman has tried to put a more balanced view of Muslim marriage by holding both civil contract and the religious sacrament. Taking the religious aspect into account Muslim marriage is a devotional act Ibadat. To some extent, marriage resembles the civil contract. But it is not merely a contract. Unlike a civil contract, it cannot be a contingent or future event. It also cannot be for a limited time (Muta Marriage is an exception). Unlike a civil contract, the analogy of lien cannot be applied to the marriage contract.

The legal component of a Muslim marriage is that it is not regarded as a sacrament but rather as a simple civil transaction. The Nikah is a social tradition that grants women in society a clear and dignified place, and it signifies that Muslim marriage is more than just a legal arrangement. The religious side is that every Muslim is commanded by the Quran, which is a collection of

² *Mt. Anis Begum And Ors. v Malik Muhammad Istafa Wali Khan* AIR 1933, All 634

God's commandments, to wed a suitable lady of his choosing. Therefore, it is every Muslim's religious obligation to enter into a marriage that abides by Islamic law. A person disobeys the commands of God if they remain single without a good reason.

According to Islam, marriage is a *Sunnat muwakkidah*. This means that it is an act of such a nature that if a person does it, he commits a sin. Taking religious benefit into account, Muslim marriage is an Ibadat- devotional act. "He, who marries, completes half of his religion it now rests with him to complete the other half by leading a Virtuous life in constant fear of God. There is no monkery in Islam. Moreover, Marriage is also the tradition (Sunnat) of the Prophet. This means that it is an act of such nature, that if a person does it, he gets religious benefits, and if he abstains from doing it, then he commits sin. As per *Dr. Jung* " Marriage, though essentially a contract is also a devotional act, its objects are right of enjoyment and procreation of children and regulation of social life in the interest of society".

In the ultimate analysis, it can be said, Marriage in Islam is neither purely a civil contract nor a sacrament. It is devoid of none but the blending of two. It is generally considered to be contractual in nature but it has some sacramental aspects as well. In form or appearance, it is contractual but in assent, its nature is undoubtedly socio-religious. The object of Marriage: Universal purposes of marriage in all religions are a perpetuation of the human race or family and attainment of chastity, continence, mutual love, affection, and peace. Continence, here means if a person is refraining from anything, then one should respect and not force him or her to do that work.

According to Abdur Rahim, the Muslim law has obtained the Institution of marriage, sanctioning sexual relationships between two members of the opposite sex, and this is done with a view to the preservation of the human species; preservation of the human race, and this marriage. Restraining the debauchery for the men and encouragement of chastity, apart from this, it promotes love. It is said to be a union between husband and wife that union helps in earning a livelihood. The object of Nikah under Muslim law is the legalization of sexual intercourse for enjoyment, procreation, and legitimation of children for the purpose of

(i). Preservation of the human race;

(ii). Systematization of domestic and social life.

ESSENTIALS OF NIKAH

1. Competency or capacity of parties,
2. Free Consent,
3. Formalities and ceremonies of marriage are duly completed.

These marriages are known for simplicity. There are certain social functions and ceremonial rights performed at the time of marriage. And these ceremonial rights are legally necessary, this is not compulsory. The only essential formality for this marriage is Offer and Acceptance in the same sitting. Offer (Ijab), signifies the willingness of a person to contract a marriage with another. This is a type of declaration and this is done from the side of the boy; by the boy or his guardians. Now, this Offer (Ijab) has been done, and now there it will be accepted (Qubool-Naama) either by a girl or by her guardians. Parties involved here are major, then they can do it themselves but if there are minor or lunatic, then it can be done by their guardians. The words with which marriage is contracted must be clear and unambiguous. No specific words are prescribed for an offer and acceptance. But the words they are using must have clear intentions of parties for marriage.

Ijab (Offer) and Qubool (Acceptance) should not be uncertain and doubtful and this should be expressed and accepted at once and in the same meeting. And along this, whatever the legal requirements for this are needed, they simultaneously performed. Offer and Acceptance, if they get isolated then marriage contracted will not be performed. Offer and Acceptance are reciprocal to each other. The acceptance should be only for offer. Acceptance that must be exactly for the proposal nothing else. If acceptance becomes conditional with modification, then it will be considered as no acceptance. Offer and Acceptance should be done with two competent witnesses. If a marriage is there without a witness then it will be valid under Shia Law. But under the Hanifi Law, marriage without a witness or incompetent witness, then this marriage will be irregular (fasid) and it can be regularized by consummation. In Islam, marriage is a social institution. Contract of marriage much not be against the interest of society. Law prohibits marriage between certain persons and contracted under certain

circumstances. There are two kinds of prohibitions absolute prohibition and relative prohibition.

PRESUMPTION OF MARRIAGE

The presumption of marriage is the assumption of marital status based on external factors.

It appears in three situations:

1. When a long-term, ongoing relationship of cohabitation is established between the parties as husband and wife and there is no legal obstacle to their union.
2. The moment a man accepts a woman as his wife.
3. When the man recognizes a child as his legal child. The male and the child's mother are then assumed to have a legal marriage.

Prolong cohabitation - when they are married for a long time ago worthy testimony conduct becomes incompatible with the marital relationship. Then there be no such presumption arises. If this is giving presumption then it would be a valid marriage inference. Naturally cohabitation between man and wife without any obstacle to a valid marriage between two persons. If a woman is a prostitute then no presumption will arise. She is claiming that she is their wife so they have to establish that the marriage is valid and solemnized properly. If she is a prostitute before marriage due to circumstances leading to the presumption of marriage. Then the burden of proof shifts to the person who is affirming the illegality.

Capacity to marriage - a person who has the capacity to contract Nikah is who is of sound mind, who is not with the prohibited degree of relationship with the party he or she contracts to marry, who has attained the age of puberty, if lunatic or minor; legally by their guardian. In Muslims, the Age of Majority = Age of Puberty (15 years).

*The Indian Majority Act, 1875*³ does not apply to Muslims in the field of marriage, dower and divorce. This act is applicable in gift, waqf, will, and guardianship. Puberty is an age at which that person is supposed to acquire sexual competency. In Mohammedan law, girls become major when these two events have happened- i.) Either completion of her 15th year or, ii.)

³ Indian Majority Act, 1875

Either attainment of puberty at an earlier period. Competency for the consummation. This is the age at which parties can give their consent for marriage. *The Child Marriage Restraint Act, 1929*⁴ has a penal provision and punitive but does not declare the marriage of minors void. The effect of this enactment on minor marriage including Muslim marriage is if the marriage is "child marriage" and within the meaning of this act. So, that marriage will not be void and perfectly valid but the person-: contracted to do that marriage, directed that marriage, conducted that married, and performed that marriage; all will be punished as it is a cognizable offence. So section 12 of this act, 'child marriage injunction' from the court before such marriage and if someone violates this injunction also be punishable.

Thus, it is possible to state that every Muslim who is of sound mind and has reached puberty (i.e., major) is capable of entering into a marriage contract. The age of majority in Muslim law is defined as the time that a person reaches puberty. In the absence of proof, puberty is assumed to begin at the age of 15 years. Minors who have not reached puberty and lunatics (persons of unsound mind) may be legally married by their guardians. A marriage that a minor enters into on his own is void. Therefore, in accordance with Islamic law, both parties to a marriage must be able to get married or be married. Muslims are exempt from the marriage, dower, and divorce provisions of the Indian Majority Act of 1875. Despite being penal and punitive, the provisions of the Child Marriage Restraint Act of 1929 do not invalidate marriages between minors.

The consent of major is necessary for a valid marriage, and marriage brought about without his/her consent is void [*Gulam Bibi v Mohammad Shafi (AIR 1940)*]⁵. Further, when consent to marriage has been obtained by force or fraud, the marriage is invalid unless it is ratified. Where consent to the marriage has not been obtained, consummation (sexual intercourse) against the will of the woman will not validate the marriage.

Prohibition is of two types: Absolute prohibition and Relative Prohibition.

Absolute prohibition is further divided into two parts: i) Prohibited degrees of relationship [it is further in three parts-

⁴ Child Marriage Restraint Act, 1929

⁵ *Gulam Bibi v Mohammad Shafi (1940)*

- a). Consanguinity
- b). Affinity
- c). Fosterage],
- ii) Polyandry

Relative Prohibition is further divided: Unlawful conjunction, marrying a fifth wife, Absence of proper witnesses, Differences of religion, and Marriage during Iddat. Then comes Miscellaneous Prohibitions, which are: Marriage during the pilgrimage, Rule of Equality (Al-Kafat), Re-marriage between a divorced couple, and Polyandry.

Procedure at a Muslim Marriage: The procedure at marriage as per the Muslim personal law is: The girl asked, within the hearing of witnesses, whether she agrees to the marriage, for the dower offered by the husband (details about the dower given). When a girl says 'yes' or signifies her consent by some other method, then Mulla asks her husband whether he offers to marry. He says 'yes'. Then relation to the girl (acting as an agent) is asked by Mulla whether he agrees. He says 'yes'. Witnesses are present so that if there is any doubt the Mulla can question them as to whether the relation of the girl is a duly authorized agent.

The doctrine of Valid Retirement: In Muslim law, the consummation of marriage cures deficiencies of the formalities. When the husband and wife are alone together under circumstances that present no legal, moral or physical impediment to marital intercourse, they are said to be in "valid retirement". A valid retirement (Khilwat-us-Sabiha) raises a presumption of the consummation of marriage. A valid retirement in Sunni law has the same legal effect as actual Consummation as regards dower, the establishment of paternity, observance of Iddat, maintenance, and, the bar of marriage with the wife's sister. But it has not the same effect 45 actual consummation as regards the bar of marriage with the wife's daughter, or the bar of re-marriage between divorcees.

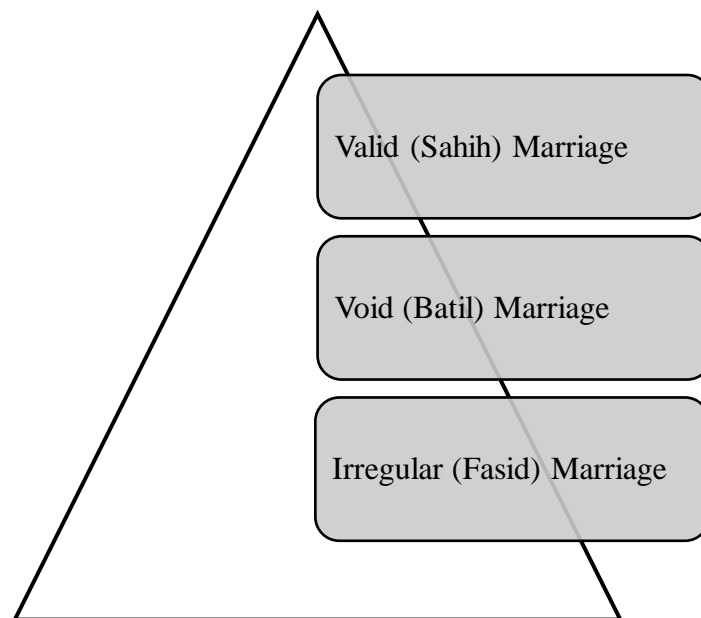
Proof/ Presumption of Marriage: The question of Muslim marriage is a question of fact that may be proved by direct evidence (calling witnesses present at the time, producing nikah-name signed by the parties) or by indirect evidence raising a presumption of marriage. Under Muslim law, like Hindu law, prolonged and continuous cohabitation raises a presumption of

(valid) marriage. However, it must be proved that the man the woman as his wife and recognized her as such with the intention and knowledge of giving her the status of a wife [Roshanbai v Suleman, 49 Bom. LR 328]⁶. Also, there has been conducted on his part amounting to the acknowledgment of the legitimacy of the child born after cohabitation. It may be noted that as a mere concubine, a woman has no status in Muslim law.

Registration of Marriage: Under Muslim law, like Hindu law, there is no Union law for the registration of Muslim marriages, some State statutes provide for the registration of marriage and divorce.

CLASSIFICATION OF MARRIAGE

Marriage is of three types:



- **Valid (sahih) Marriage:** the marriage which is neither irregular nor void; and that fulfills all the legal requirements of marriage then that marriage is termed as Valid Marriage. There should be a proposal by one party and acceptance by the other party, parties must be competent, which means they should be of sound mind, major, and capable to give consent. And if minor or lunatic then the consent will be considered of

⁶ *Roshanbai v Suleman Haji Ahmed Umar* (1944) 46 BOMLR 328

the guardian. Consent must be free, offers & acceptances should be given in one meeting and that to be in front of two witnesses and those two witnesses should be minor and of sound mind.

Note: under Shia Law, witnesses are not necessary. But under Sunni Law, witnesses are necessary. And there should be no impediment in the marriage. This means there shouldn't be absolute prohibition (consanguinity, affinity, fosterage & polyandry) and relative (directory) prohibition. There must be some legal effect of such marriages. So here, we have 9 legal effects for a valid marriage. They are:

1. Sexual intercourse becomes lawful, which means union children born are legitimate
 2. Wife is entitled to her dower
 3. Wife is entitled to her maintenance
 4. Husband is also entitled to restrain the wife's movement in a reasonable manner.
 5. Mutual rights of inheritance are established
 6. Prohibitions regarding marriage in accordance with the rule of affinity come into operation.
 7. If the husband dies or has given divorce then the wife can't remarry without observing iddat. That means after the death or divorce given by the husband, the wife has to observe iddat period after that only she can remarry.
 8. If there is an agreement between the parties during the marriage, then after that subsequently, it will be enforced and that will be enforceable in accordance with the policy of the law.
 9. Women if got married and after marriage, she does not change their status then, she remains subject to their own premarital status neither husband nor wife acquires any interest in the property.
- **Void (batil) Marriage:** it is an unlawful marriage; it does not create any mutual right or obligation between the parties. If any marriage is happening in this it is somewhere

suffering incapacity which is absolute which connects to absolute prohibitions (consanguinity, affinity, or fosterage) then it is void. If a man is marrying the wife of another man then also it is void, if a man is marrying a divorced wife of another, then it is void until and unless strict rules are not followed. This means until and unless the iddat period is not observed by the divorced wife the marriage with the divorced wife is void. Under Shia law marriages that are void are-

1. Marriage in violation of absolute incapacity.
2. Marriage with another wife whose marriage is still in subsistence.
3. If re-marrying once own divorced wife, it is void until and unless it should be after following the hectic rule.
4. Marriage is prohibited by reasonable unlawful conjunction.
5. Marrying the fifth wife.
6. Marriage during the pilgrimage.
7. Marriage with any non-Muslim.
8. Marriage with a woman who is undergoing iddat.

Legal effects of Void Marriage: there are no legal effects for void marriage

1. It doesn't matter whether consummation has been done or not.
2. No rights or obligations are there for void marriage.
3. Rights of wife- wife is not entitled to maintenance and she is not even entitled to live with his husband. But if the marriage is consummated then she is entitled to dower.
4. Parties cannot inherit from one another.
5. Their offspring (children) will be illegitimate.
6. Parties can separate from each other at any time without divorce and they can contract another marriage lawfully.

Irregular (fasid) Marriage: these types of marriages are always in Sunni law; these are not valid in Shia Law. Irregular marriages are incomplete if there is any illegality then it can be removed and after the removal of that illegality, marriage is perfectly valid. Relative prohibitions are also irregular because relative prohibitions are temporary and are removed afterward. When marriage gets irregular-

- Marriage against lawful conjunction.
- if there is a 5th wife or incompetence of the witness.
- one who is not Muslim or is kitabiya.
- if doing marriage with a woman undergoing Iddat.
- marrying two sisters at a time.

Legal effects of an Irregular Marriage:

1. If there is cohabitation during irregular marriage then it is lawful.
2. Children will be legitimate and these children have the right to inherit the property of their parents.
3. Husband and wife have no mutual write of inheritance if there is an irregular wife. If the husband died, then the wife is not entitled to his property.
4. If the marriage is irregular, and if that marriage is not consummated, then the wife will not be entitled to a dower. But if marriage is consummated then the wife will get either the specified dower or proper dower; among these two the one which is less she will get. If marriage is not consummated then, the wife is not needed to observe iddat period. But if marriage is consummated then, the wife observing the period will be only three months course and here, it is immaterial whether marriage is dissolved to divorce or death of the husband. If the husband died then, the widow will follow/observe the iddat period of 3 months, not 4 months 10 days.
5. Irregular marriage is not a perfect Union of husband and wife. It is an unholy union.

In such marriages, the Kazi or the Court separates these two peoples and makes the marriage dissolve. If the marriage is irregular, the parties terminate the marriage. They can do it anytime-either before or after consummation.

MUTA MARRIAGE

"Muta" literally meaning is enjoyment. It means marriage for pleasure. This Muta is a temporary Union of males and females for a specified duration. And this duration is on payment of some consideration. For this temporary duration of the marriage, women are given a reward and this duration is can be for one day or a month or a year or terms of a year. If we go in the flashback to earlier days, people of Arabs, they have to live away from their homes; from their families for a very long time and the reason for this was either they were at war or trade journey. So in order to fulfill their sexual needs and prostitutes may not develop in society and for the legitimacy of the children from this, this temporary marriage was recognized and this was also permitted by Prophet Mohammad for some time.

Muta Marriage concept was fairly common in Arabia before and at the time of Prophet Mohammed. He recognized this and children born from this were considered legitimate children. Later, this concept was used in a much-exploited way, and Prophet Mohammed, prohibited it completely. All schools, schools of Sunni sect & Shia sect prohibit this marriage. Except for Ithna Asharia, it is the only school that recognized this Marriage. Though it is not recognized in Sunni Law. Ottoman Empire once was there on the world map but today it has been abolished (Khalifa Omr). Ithna Asharia doesn't consider the first 3 Khalifa. This marriage is void in Sunni Law as it is for a limited period and is also prohibited by Prophet Mohammad. But it is valid in Shai Law. And this is not so common in India that much, Lucknow classes of women do not recognize this type of marriage. But Iran and Iraq, are legalizing prostitution by performing Muta Marriage. *Fyzee 5th edition, 2008*; Customs of Arab is prohibited by all schools, Zaidi too. It is only and only permitted by Ithna Asharia, Shai Authorities.

Essentials of Muta Marriage: it follows the rules of Ithna Asharia law. There are four Essentials to this -

- The form

- The subject
- The period or term
- The dower

And these four essentials fall under the Ithna Asharia School.

1. The Form: There must be a proper contract between Parties which includes- declaration and acceptance, necessarily. It is necessary that both the parties to the marriage should have attained the age of puberty, of sound mind, and have free consent. No existence of a degree of prohibition of the relationship between the parties.

2. The Subject: Shia male contract Muta Marriage with- Muslim, or Christian, or Jews, or a Fire worshipping woman. But not with the follower of any other religion, not Hindu this is void. Shia males can marry in any number of marriages (no such restriction of 4 wives in such marriage). But Shia females can contract only with Muslim males, not with non-Muslim.

3. The Period: The period for Muta Marriage will be clearly specified. And this is the very thin line difference between Muta Marriage and Nikah. That, if there is a specified term then, it's Muta Marriage, and if no specific term then, it's Nikah. If someone does Muta Marriage and does not specify the term then it will be considered Nikah. If the husband-wife are living in Muta Marriage and the time period decided by then has expired and but also they continued to live together or till the death of the husband, continued to live together, and in that scenario, the presumption will be made that the marriage has been extended.

4. The Dower (Maher): It is a consideration or some price, and this should be properly specified at the time of contract of marriage. So, when term and dower are fixed, then the contract of Muta Marriage is valid. If in case, the term is fixed, but the dower is not fixed, so the concept of Muta Marriage is void. But, if the dower is specified and the term is not fixed, Muta Marriage will become void, and this marriage will operate as permanent marriage.

Muta Marriage has some legal incidents. The primary occurrences of the Muta Marriage are as follows:

- No mutual rights of inheritance were created between the spouses, but children were regarded as legitimate and capable of inheriting from both parents. Thus, a Muta

marriage is distinct from prostitution and is not an alliance of convenience or for sexual pleasure.

- Wife has no maintenance rights (unless specified). However, she is qualified for maintenance under the Cr.P.C. as a wife.
- The wife is only entitled to half of the dower if the marriage is not legally consummated. If consummated, full dower follows.
- If the marriage has been consummated, the wife must complete three courses of Iddat at the end of the marriage's term.
- The husband has the option to forego having children, i.e.
- Unless it is extended, a marriage ends automatically when the term expires. Although a husband (and wife) cannot get a divorce, he might end the marriage sooner by giving a "gift of the term" (Hiba-i-Muddat). The wife would then be entitled to a full dower. If the woman decides to end the Muta marriage before the term has ended, the husband has the authority to withhold the appropriate portion of the dower for the remaining time.
- The Muta marriage is extended for the entire time of cohabitation if there is proof of the term for which it was fixed and cohabitation continues after that term. Furthermore, the infants born during the prolonged period must be legitimate.

A wife is not entitled to maintenance under Shia Law because according to *Shar-i-at Islam* -the name of the woman does not appear in the contract of marriage of Muta Marriage so she can't claim maintenance. But if she wants to claim she can in *Section 125 of Cr.P.C.*⁷ Muta Marriage has no minimum time, and no limits on the wives are there. They can have unlimited wives. In Muta Marriage, if a husband dies then, the wife has to observe 4 months 10 days Iddat and if she is pregnant, so it will extend till the time of delivery of the child. If there is the termination of Muta Marriage other than death, then in such a scenario, the wife had not to observe Iddat. Also, if she is not menstruating for up to 45 days and not consummated so no observance of Iddat.

⁷ 'Section 125 Cr.P.C: Right to maintenance section 125 CRPC'

<<https://www.legalservicesindia.com/article/1906/Right-To-Maintenance-Section-125-crpc.html>>
accessed 19 June 2022

DIFFERENCES BETWEEN SUNNI & SHIA LAW (MARRIAGES)

This is a fine difference between the Sunni sect and the Shia set.

- In Sunni law, a marriage contracted in the absence of witnesses is irregular, whereas, in Shia law, the presence of witnesses is not necessary.
- In Sunni law, a male can validly marry a kitabia (i.e. a Jewes or Christian), while the marriage with an idolatress or fire-worshipper is irregular. A female cannot marry a non-Muslim, whether kitabia or non-kitabia. But in Shia law, no Muslim, whether male or female, can marry a non-Muslim.
- In Sunni law marriage with the wife's aunt or wife's niece is irregular. But in Shia law, a male can marry his wife's aunt, he can even marry his wife's niece, but only with the wife's permission.
- In Sunni law, marriage may be valid, void, or irregular marriage. And in Shia law, may be valid or void. Irregular marriages, under Sunni law, are void or valid under Shia law.
- In Sunni law, marriage cannot be restricted in its duration. But in Shia law, a male can contact a temporary manage, called Muta Marriage.
- In Sunni law, regarding guardianship in marriage, the list of guardians includes the father, paternal grandfather, mother, brother, etc., and the Government. On the other hand, in Shia law, the only guardians recognized are the father and the paternal grandfather, how high soever.
- In Sunni law, the Hanafis hold that equality between the two parties is a necessary condition in marriage, a runaway marriage called a kifa'a (viz. a girl marrying a servant) is liable to be set aside. But in Shia law, there is such necessary condition in a marriage.

Dower

Dower or Maher is a peculiar Muslim law concept: "It is a sum of money/other property promised by the husband to be paid or delivered to the wife in the consideration of the marriage, and even where no dower is expressly fixed or mentioned at the marriage

ceremony, the law confers the right of dower upon the wife" (Justice Mahmood). However, non-specification of dower does not render a Muslim marriage void. A Muslim marriage is a civil contract, and a dower is a necessary result of it. However, the word 'consideration' is not used here in the same sense in which it is used in the Indian Contract Act. It may be noted that a dower is in the nature of a 'nuptial gift or a sort of 'marriage settlement' for the wife. It is an obligation imposed upon the husband as a mark of respect for the wife. It is not a bride price or a form of dowry. Also, it is incorrect to say that it is an amount payable to the wife on divorce⁸. A Muslim wife's entitlement to dower is priceless. Most likely, it also serves as a disincentive to Muslim husbands' absolute right to divorce their wives. It can be decided upon before, during, or after the marriage; if not agreed upon by the parties, it is implied in every marriage and is typically decided upon by the courts. If the son is a minor on the day of the contract, the father may make a dower agreement after the marriage. A parent's dower agreement made on behalf of a juvenile son is enforceable under Hanafi law, and the father is not held personally liable for the Maher.

No school of Muslim law establishes a maximum sum for a dower, and Muslim couples are free to set whatever amount for a dower, even if it is clearly above the husband's financial capabilities. The minimum is set at 10 dirhams by Hanafis and 3 dirhams by Malikis. No minimal dower has been established under Shia law. The dower is typically fixed in terms of money, although it can also be any kind of property (mal). Although a Maher-Nama (dower-deed) is typically carried out, no writing is necessary.

Iddat

A woman must follow the "iddat" period in Islam when her spouse passes away or after a divorce, during which she is forbidden from marrying another man. Its goal is to make sure that the male parent of any children born after or following the dissolution of a nikah (marriage) is known. Iddat length changes depending on a variety of factors. Unless she is pregnant, in which case her "iddat" lasts until she gives birth, unless the marriage was not

⁸ Shashank Shekhar, 'Case Analysis: Mohammed Ahmed Khan v Shah Bano Begum (1985)' (*Jus Corpus*, 27 January 2022) <<https://www.juscorpus.com/case-analysis-mohammed-ahmed-khan-v-shah-bano-begum-1985/>> accessed 19 June 2022

consummated, in which case there is no 'iddat, or unless she does not menstruate, in which case "the scholars say that she should observe an 'iddat of a full year, nine months for pregnancy and three months for 'iddat," the "iddat" of a woman who has been divorced by her husband.

Whether or not the marriage was consummated, the 'iddat for a woman whose husband has passed away is four lunar months and ten days after the death of their husband. The time frame, which is four months and ten days after the loss of a spouse, is determined by how many menstrual cycles a woman has. According to Islamic scholars, this instruction strikes a compromise between the widow's right to mourn her husband's passing and her need to be shielded from criticism for being remarried too soon. Given that a normal pregnancy lasts four and a half months, this is also done to determine whether or not a woman is pregnant. Unless the wives themselves leave the house or take some other similar action, husbands should draught a will in their wives' favour to provide for maintenance.