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# **ANALYSIS OF ESSENTIALS OF MARRIAGE** **UNDER MUSLIM LAW**

AUTHORED BY - DEEKSHA UPADHYAY

## **INTRODUCTION**

Islamic Law is defined in India as "personal laws of Muslim applied by the portion of Islamic civil law". Muslim marriage law is very different from that of any other personal law. Marriage is also known as nikah. The history of nikah was very much men dominating. In pre-Islamic Arabia, sexual relations between a male and a female based on various terms was known as NIKAH. Women were treated as property, they didn't have any inheritance right and were always dependent upon men. Prophet Muhammad was the person who changed this practice and position of women. He brought equality among men and women in matter of performing legal powers and functions. The real meaning of nikah is sexual relationship between a Muslim man and woman. But now it is used to refer to the contract that makes relationship lawful.

Marriage under Muslim law is in simple words a contract. The creation and legalization of children is the primary goal of this treaty. "Marriage is an institution ordained for the preservation of society, and in order that human beings may shield themselves from foulness and unchastity," Ameer Ali quotes an ancient scripture as saying.

A marriage does not require any formality or religious ceremony. Marriage under Islam is a contract, hence all of the customary prerequisites for a legal contract must be met. Thus, under Muslim law, the main requirements for a lawful marriage are the competence to contract marriage, the proposal and acceptance of the marriage, and the lack of any barrier to the marriage. At the time of the marriage, three witnesses must be present. Marriage is categorized into three forms under Islamic law: sahih marriage, which means legitimate marriage, batil marriage, which means void marriage, and fasid marriage, which indicates irregular marriage.

1. capacity for marriage
2. offer and acceptance
3. free consent and will
4. No legal disability

5. A consideration
6. witnesses

The aim or objective of marriage in muslims are - procreation of child, union between parties and promotion of love. Many muslim philosophers says that marriage is nothing but a religious duty. for fulfillment for his/her desire and procreation of children marriage is very necessary. the husband has the responsibility to provide maintenance to his wife and children. The wife is entitled to Dower or Mahr, a sum of money or other property from the husband as a mark of respect for the wife.

## Literature review-

### A. ARTICLE REVIEW

#### 1. Marriage Agreements Under Muslim Law - A Weapon in the Hands of Muslim Women

In this article the writer has highlighted how muslim marriage which is a contractual marriage helps and empowers women. marriage agreement work as a weapon for muslim women. the agreement should be valid and not illegal, the writer has stated several points which explains in what cases an agreement can become <sup>1</sup>void. the muslim matrimonial conditions helps women in many uncertain situation of marital life, like the power to get divorce is only with the men unless it is delegated to women which can be done by agreements, wife can make a condition that the husband will not marry to other woman, wife can get protection during the married life and after the dissolution also for example through agreements she can get maintenance after dissolution of marriage etc.

According to the author the future of women is in hands of matrimonial agreement as now the women can make changes in the marriage according to her and can lead a happy life during or after the marriage.

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<sup>1</sup> [https://www.jstor.org/stable/26452761?searchText=muslim+marriages+women&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dmuslim%2Bmarriages%2Bwomen&ab\\_segments=0%2Fbasic\\_search\\_gsv2%2Fcontrol&refreqid=fastly-default%3A30140054d75053ff821213200cca85a3#metadata\\_info\\_tab\\_contentshttps://www-sconline-com.eu1.proxy.openathens.net/Members/SearchResult.aspx](https://www.jstor.org/stable/26452761?searchText=muslim+marriages+women&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dmuslim%2Bmarriages%2Bwomen&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3A30140054d75053ff821213200cca85a3#metadata_info_tab_contentshttps://www-sconline-com.eu1.proxy.openathens.net/Members/SearchResult.aspx)

## **2. Cousin Marriage Is Not Choice: Muslim Marriage and Underdevelopment**

In this article the author tells us about the under developments and loopholes in muslim marriage law. just like other articles relating to muslim marriage law this article also states the topic of inequality amongst men and women. it is stated that men have free will and choice of marriage but it is just opposite for the muslim women. this paper is talking about 3 points. To begin, it contends that, notwithstanding men's freedom to marry, traditional Muslim family law generates a consent structure that equates to parental consent. As a result, the regime favours the elderly over the younger generations. The second argument is about cousin marriages.it tells the reason that why cousin marriages are common in muslim law. third point is that this marriage system practised by muslims can affect the economic growth.

So all these things are discussed in a detailed manner in this article and at the end it concludes that all these points result in deprivation of women's fundamental rights.

## **3. Some Legal Aspects of Muslim Marriage in Indian Sub-Continent-A<sup>2</sup>Review**

In this article legal aspects of muslim law is discussed. The author is at first differentiating between nikah and muslim law marriage as nikah means a sexual<sup>3</sup> relationship between man and woman whereas muslim law marriage has a very definite legal meaning. the article deals with the legal aspects of legal muslim marriage and how far it has been affected by judiciary and legislation decisions. The article is divided in four parts comprising of- Firstly legal competency which tells that puberty and sound mind are two main and basic aspects of competency of marriage. Second part deals with registration. the validity of marriage does not depend upon registration but non registration of marriage will create doubt in future. third part is about consummation of marriage, in this part the author has talked about several laws related to age limits and child marriages. last but not least fourth part talks about presumption of marriage.

<sup>2</sup> <https://www-sconline-com.eu1.proxy.openathens.net/Members/SearchResult.aspx>

<sup>3</sup> <https://www.jstor.org/action/doBasicSearch?Query=muslim+law+in+south+asia>

many times it happens that a question arises over the validity of the marriage and in absence of direct proof some presumptions are made. at the end the author has concluded by briefly discussing about all the acts and provisions which the author have talked about like family ordinance act, guardians and wards act etc.

#### **4. Muslim Family Law in South Asia: the Right to Avoid an Arranged Marriage Contracted During Minority**

The presence of a guardian is very important in case of marriage with a minor. For the guardian's negotiated and contracted matrimonial union to be legally solemnised, neither the minor's assent nor presence is required. this article talks about this situation and the rights to avoid the marriage done during minority of either husband or wife or both, it also talks about who all can be guardians and who are not eligible to be a guardian. the author also talks about the difference between hanafi and shia muslims in case of minor marriages. in *Hanafi* law a marriage guardian other than the father or the paternal grandfather may contract the minor in a marriage which is valid and binding until the minor after attaining the age of majority decides to come out of the marriage and in case of shia muslims only father and paternal grandfather can be a guardian and other than them on one else can be. judicial interpretation of 1939 provision in pakistan and india is also mentioned by the author. The indian courts strictly dealt with it and hence muslim marriage law in india is lot more stricter and opposing of the ones in pakistan.

#### **B. BOOK REVIEW**

##### **The Essentials of Islamic Marriage By**

##### **Sheikh Muhammed Rif'at 'Uthman-**

This book talks about the essential ingredients of a marriage discussed in detail with the help of different case laws it also includes marriage proposal, it tells when to make the proposal, how to make proposal and what is unlawful proposal. the idea of offer and acceptance is explained Additionally, it outlines the foundations of marriage and the obligations that a couple has to one another. Sheikh Muhammed Rif'at 'Uthman, who also wrote other novels, is the author. He is well recognised among Muslims for being a Sharia law expert instructor. According to this book, marriage is the union of men and women.

It revitalises the soul and fosters mutual intimacy between the pair through companionship. he explained the essence and essentials of marriage, also different types of marriages are also mentioned in this book. the author concluded his book by giving an idea about what a happy marriage is like and how to maintain a proper happy and perfect marital life.

### **C. REPORTS-**

#### **Rashida Khatoon vs S.K. Islam, AIR 2005**

In this case, a man promised a lady to marry her. The lady believed him and had sexual intercourse, after sometimes a the lady gave birth to a child. the lady asked the court to give her the status of wife. the lady claimed that he promised her to marry and she accepted it so there was an offer as well as acceptance. the question rose before the courth that whether a mere promise will amount to marriage in muslim law

The odisha high court stated that -In order for a marriage to be valid, it must first be proposed by one of the parties or on their behalf, and then accepted by the other party or on their behalf in front of two men or one man and two women witnesses, both of whom must be responsible, mature Muslims. A marriage cannot be legally constituted by a proposal made at one meet up and an acceptance made at another meet up; both must be made at the same gathering. Writing or participating in a religious ritual are not necessary. The court held that since there was absence of offer or acceptance to marry but only a mere assurance that he will marry her in coming future and hence Simply living together under such a guarantee will not confer married status on the lady.

#### **Abdul Ahad vs Shah Begum**

The case talks about a minor girl married to a major man by the consent of her wali.<sup>4</sup>

The facts of the case is that a minor girl of age 14 years was given into a marriage with a major man.at initial time of marriage the man used to live in the girl's house and later he decided to take his wife back to his house. the parents of the girl refused to send her and filed a suit for restitution of conjugal rights against the husband.

The high court of jammu and kashmir held that - when the marriage was solemnized the girl was a minor and her consent was not valid instead the consent was giver by her wali who was

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<sup>4</sup> <https://theindianlaw.in/essentials-conditions-of-muslim-marriages/>

not competent enough to send her in marriage as he was not a guardian and it was not quite clear that he has the guardianship to give minor girl to marriage.

### **STATEMENT OF PROBLEMS-**

1. unequal position of women as compared to men, every muslim men has many priviledges over women like in the matter of marriage contracts, divorce,inheritence etc
2. Mahr which means dower. It is not practically possible for a wife to demand her dower and maintain cordial relations with her husband for a long period of time.
3. Muslim law believes that when a person reaches the age of his or her puberty that person is eligible for marriage but it is not necessary that they will attain maturity at that age.

### **HYPOTHESIS**

1. The essential condition of free will and consent is not exercised as strictly as it should be.
2. Muslim men and women both should have equal rights and powers
3. The consent of guardians of the bride is not necessary as the girl should have their own right to decide and choose and is not supposed to be backed up by someone else's consent.
4. In future the status of women in matter of muslim marriages will enhance.

### **OBJECTIVES**

1. To get a glimpse of history of nikah
2. To understand the essentials of marriage under muslim law
3. To understand the types of marriages under muslim law
4. To get more knowledge about contractual marriage
5. To observe the changes happened in muslim marriage laws.

### **RESEARCH METHODOLOGY**

The Method Used For The Research By The Researcher Is Doctrinal.

The researcher utilized existing data or facts in the study and examined them to generate a

critical assessment of the sources. In order to understand a wide variety of problems, the researcher includes a detailed analysis and evaluation of the data that is already available. By evaluating the facts or information already available with the use of books, articles, journals, and blogs. The research is largely concerned with testing hypotheses as well as defining and interpreting the topic.

## **TENTATIVE CHAPTERISATION**

This research paper contains 6 chapters which details about this topic more specifically

The first chapter is the history of NIKAH.

This chapter tells us about the origin of muslim marriage laws and how it has evolved over time.

The second chapter is the types of marriage in muslim marriage law

This chapter talks about different types and forms of muslim marriages.

The Third chapter is the essentials of marriage

This chapter mainly talks about what are the essentials of marriage in muslim law in detail.

The fourth chapter is rights and duties of spouses

This chapter briefly discuss the duties of married muslim man and woman

The fifth chapter is drawbacks of essentials of marriage under muslim law

This chapter deals with some drawbacks which are there in the essentials of marriage

The sixth chapter is suggestions and conclusions.

This chapter at last suggests the perspective of the researcher on this topic and concludes the purpose of doing this research

## **ABSTRACT-**

In the past years nikah was a purely male dominated practice which changed over years and years. and now nikah is defined as- The original meaning of the term "nikah" was the physical union of a man and a woman. It is also used in a secondary context to relate to the marriage contract which guarantees the legitimacy of the partnership. Marriage is a relation which has

a highly honoured place in Islamic ethical and legal system. Islam defines marriage as asrehmat (sympathy), sukun (peace of mind) and muaddat (love). According to Islamic law, marriage is a civil contract that must have the voluntary assent of both parties in order to be fulfilled. Marriage under muslim law is a contractual marriage in which both the parties has to abide by certain essential ingredients of muslim marriage which includes mainly offer and acceptance, competency, prohibition of several disabilities, dower etc.

There are many characteristics of Marriage under muslim law, it is a very strict as well as lenient structure, in simple words there are certain provisions which need to be strictly followed and there are some basic practices which are usually followed in other religions but not in muslim law like having 4 wives at the same time. the essentials of muslim marriage is very same to that of civil contract thats why it is often called as civil contract. the main objectives of muslim marriage are to legalize sexual relationship and procreation of child.

In this research, the researcher aims to study the essentials of marriage in detail along with giving emphasize on different types of marriage in muslim laws, it also talks about what is nikah and the origin of nikah, it briefly discusses about the duty, rights and responsibilities of bride and groom, it highlights drawbacks of essentials of marriage under muslim law.

## **CHAPTER-1**

### **NIKAH**

#### **HISTORY-**

Before the seventh century, women were not treated as equally as men. they were married against their will and were treated as an object. but all this practise changed when prophet muhammad came and by ther quaran which he revealed in study of islam. As per him force marriage was no more permitted, both husband and wife had to give their consent in order to enter into a marital tie. This was a very huge change in the islamic tradition. and through this phase the real interpretation of nikah was introduced to the world.

In order to ensure that the bride is not forced and she has given her consent for the marriage, the system of witness was adopted. If the ceremony is segregated, the wali, or male guardian, is still responsible for making sure that the bride accepts the marriage before they proceed with the marriage contract. During nikah, at least two male witnesses are required to be present to observe the ceremony.

The bride price, or the mahr, was traditionally provided to the father during the Nikah in exchange for his daughter's hand in marriage. As a result of a change in custom, the gift is now handed to the bride directly to ensure her future security in the marriage.

#### WHAT IS NIKAH?

A religious ceremony done by the islamic law for the union of a muslim man and woman is known as nikah. this ceremony is very important among muslims as it holds a very prestigious place among many families even if they are more tilted towards the western culture.

Bringing newly wedded couples before allah is the main objective of nikah. during the ceremony, the couples will stand in front of the ceremony leader who is known as imam, and they have to say "i accept" three times in order to show the acceptance to the witnesses and people present at the ceremony. after this, they have to give their signature in the marriage contract and then they are officially announced as bride and groom.

At the time of nikah, two men witnesses will ensure that both husband and wife has given their consent. The marriage is not possible without the free and express approval of the parties. also both parties have to agree for the mahr (a gift of money or anything to the bride.). now a days, rings are used as mahr but it can be anything that the wife wants keeping in mind the income and affordability of her husband. during nikah, the bride and groom also have to give a brief sermon and read from the holy quran.

#### NIKAH AND MARRIAGE-<sup>5</sup>

There is a difference between marriage and nikah. Many people get confused between these two terms. Nikah is the religious ceremony that unites a male and female, both the man and lady are announced to be officially wedded couple at the end of nikah ceremony.

The partnership which the islamic couples enter is marriage but nikah makes it official. after the nikah ceremony, it is hard for either of the party to seek divorce as it becomes very complicated under muslim law. the legal contract that man and woman enters into by giving their consent for marriage is nikah.

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<sup>5</sup> <https://www.lawyersclubindia.com/articles/marriage-under-muslim-law-13977.asp>

## Chapter -2

### Muslim marriage- civil contract or sacrament

Marriage under muslim law is treated as both- a religious duty and a civil contract by muslim jurists. many anglo- muhammdan authors have defined it as a civil contract maybe because of characteristics of muslim or by the influence of modern conception of marriage maybe because of characteristics of muslim marriage. as per them the precess of marriage is purely civil contact and not a sacrament as contract gets completed by offer and acceptance and the same happens in muslim marriage. so they were interpreting muslim marriage as civil law on the basis of similarity between the two. for example- a marriage involves an offer (ijab) from a side and an acceptance (qubul) from the other. Marriage also needs a free consent and sound mind from both parties. Within the bounds of the law, the conditions of marriage can also be modified to suit particular circumstances. Additionally, it may be ended by the<sup>6</sup>

declaration of talaq. Although some passages from the Quran are typically recited to mark the occasion, the Muhammadan law does not expressly mandate any special services.

Another view is that marriage is a religious sacrament too. this point of view is supported by judiciary as well. according to religious aspects islamic marriage is an ibaddat (devotional act). the prophet said that- "O gathering of youngsters, anyone among you is able to have should marry because it is a restraint on the appearance, and he who is not able let him hold fast."

Justice mahmood has stated- "*Although it is typically solemnised with the reading of a few verses from the Quran, marriage is not a sacrament among Muslims; rather, it is only a legal contract, and according to Muhammedan law, there is no ceremony that is specifically prescribed for the occasion.*" as per him muslim marriage is dependent upon offer and acceptance by parties. in the above mentioned statement he has clearly stated that muslim marriage is purely a civil contract. he supported his statement by mentioning that the dower in islamic marriage can be considered as consideration which is a very important essential of a civil contract.

"We feel that we are not wrong if we remark that there is an unfounded general perception that a Muslim marriage is only a legal transaction pure and simple and has no religious value or

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<sup>6</sup> <https://aishwaryasandeep.com/2021/08/19/muslim-marriage-sacrament-or-a-civil-contract/>

social importance linked to it," it was said in the case of **Amina v. Koye**.

The sacramental aspect of marriage is supported by the judiciary even if it is frequently seen as an orthodox concept. In the landmark case of **Anis Begum v. Mohammad Istafa**, Chief Justice Sir Shah Sulaiman attempted to present a more unbiased view of Muslim marriage by defining it as both a civil contract and a religious sacrament.

As per Dr.Jung:

*“Marriage, while basically a contract, is also a devotional act with the goals of regulating social life in the interest of society and granting spouses the right to enjoy each other's company and have children.”*

The last point is that marriage in Islam is frequently referred to as neither entirely a civil contract nor a sacrament. Nothing but the merging of the two can be found there.

### **Chapter- 3**

#### **TYPES OF MARRIAGES**

The marriage contract's conclusion determines whether a marriage is lawful or invalid. A contract can be made orally or in writing; it is not necessary that the contract should be in writing only. The following are the various forms of marriages:

Temporary marriage (Muta marriage)

While all other Islamic sects forbid this kind of union, the Ithna Ashari of the Shia sect engage in what is known as a "pleasure marriage." Ithna male is allowed to have as many wives as he wants, provided as they are all Muslims, Jews, or fire worshipers; however, Ithna female is limited to only marrying Muslims. All of the marriage's conditions must be disclosed when the contract is signed; any condition added later is invalid.

Features of muta marriage

- Contract must be present
- Offer and acceptance must be there between bride and groom
- Dower should be decided at the time of contract
- Time period of nikah must be specified, hours/days/weeks/months/years, if time period is not given then the marriage will be considered as permanent.

- There shouldn't be any reciprocal inheritance between the parties.
- Unless and until stated in a contract, the woman is not liable for maintenance.
- The woman is entitled to half of the dower if the marriage is not consummated, and the full dower if it is.
- The woman must observe Idda/Iddat in the event of marriage consummation.
- The man has the right to decline procreation even without the wife's consent.
- Offspring are considered to be legitimate children since they are entitled to inherit the assets of both parents.
- If not prolonged, a Muta marriage terminates when the duration of the union specified in the contract expires.

### Permanent marriages

The different types of marriages under this are-

#### (I) Sahih (valid) marriage

A nikah between two people that satisfies all legal requirements is referred to as a Sahih (valid) marriage. Both the Shia and Sunni sects approve of this kind of union.

#### Features of Sahih (valid) marriage

- At the celebrations, the status of the husband and wife is noted.
- Between both parties, there is a mutual right to inheritance.
- If a marriage is broken for whatever reason—death, divorce, etc.—then the husband is forbidden - marriage with wife's sister.
- It grants children born outside of this marriage a status of legitimacy.
- The marriage contract may include any terms and obligations in addition to those listed above, provided they do not conflict with Islamic law or with any other public policy.

#### (II) Batil (void) marriage

It is still referred to as a Batil (void) nikah when there is a violation of either absolute or relative obstacles during the performance of the marriage. Although both parties have completed the required steps for marriage, it is still referred to as a marriage. Due to the partners' complete incapacity to marry one another and the absence of any legal conditions outlined in Muslim law that could render their marriage valid, this sort of marriage is void. Both Sunni and Shia

sects approve of this kind of union.

#### Features of Batil (void) marriage

- It is not treated as a marriage because no legal rights and duties result from it.
- The parties do not affirm their position as husband and wife.
- This type of marriage results in illegitimate children.
- Without committing the crimes of polygamy and bigamy, both couples are able to get married again.

#### Fasid (irregular) marriage

Fasid (irregular) marriage is defined as a marriage that is performed in contravention of a relative impediment. Although the marriage is not valid and not void, it can be made valid by removing the relative hindrance (irregularity). Both the Shia and Sunni sects approve of this kind of union, with the exception of the Itna Asari school of the former.

- It remains in effect until and unless it is terminated by law.
- Both the wife and the kids are liable for maintenance.
- When the marriage is confirmed, it becomes legal.
- The marriage may be dissolved at any time by either the husband or the woman.
- In the event of a husband's death or a divorce, the wife must observe Idda/Iddat.
- Children born outside of marriage are totally legitimate and entitled to inherit.
- There is no right to joint inheritance between a husband and wife.

## CHAPTER-4

### ESSENTIALS OF MARRIAGE

#### 1. Offer and Acceptance-

In islamic marriage, proposal is called as ijab and acceptance is called as qubul. an offer is made by one party and accepted by the other party. The offer and acceptance as an essential covers some other aspects also. first of all, it is necessary for the offer and acceptance to be done at the same time. if an offer is made at another time and the acceptance is done at some other time it is not treated as valid. the acceptance should be reciprocated to the offer.

As discussed above, witnesses are very important. under sunni law two male or one male and two female witnesses are required. If witnesses are not present then the marriage will become

irregular. In shia law witness is not required during marriage but at the time of divorce.

Both the husband and the wife must have free will and consent. and it should be free from any deception, fear, or improper influence. The nikah will not be regarded as legal unless and until the boy or girl's legal guardian gives their approval if they have not reached puberty. the consent can be either-IMPLIED or expressed. if at the time of giving consent any of the party is merely smiling, laughing or is silent then it will be considered as IMPLIED consent. The girl's consent must be given freely in order for the marriage to be legal, and the father's consent does not serve as a replacement for the girl's consent. In *Sayad Mohiuddin v. Khatijabai*, the court ruled that the marriage of a Shafei girl who had reached puberty and was married by her father against her will was invalid.

## 2. Competent parties-

It is necessary for both parties to be able to comprehend the purpose of marriage and to be capable of entering into a contract. Simply put, they should be capable of entering into matrimony. A Muslim who has attained puberty and is of sound mind may do so. The wife and husband must both be able to comprehend the nature of their conduct. Except in the instance when it is contracted when the mad person was normal for a while, a marriage that a lunatic enters into is null and void. However, if the guardians of the mad person enter into the marriage, it is lawful.

Puberty is another important element to know the competency of the parties. The Indian majority act does not apply to the Indian muslims. the age after which a person can get in a sexual relationship or is capable of performing sexual intercourse and giving birth to child is puberty. muslim law considers puberty and majority as same.it presumes that the age of majority of any person is 15 but the hedaya law opposes this and lays down that the age of majority for boys is 12 and for girls it is 9.in case of shia muslims, the age of puberty of female begins with menstruation.in the case of **Sadiq Ali Khan vs Jai Kishori**, the privy council held that the age of majority for girls in shia law is 9 years.

\*it should be noted that until it is approved after the age of majority, marriages of minors without a Guardian's consent are void. When a boy or girl reaches puberty, they are free to marry whoever they choose, and the Guardian has no authority to intervene. According to Sunni law, the father, paternal grandfather, if any, the brother, and other male relatives listed

in the chart of residuaries, the maternal uncle, mother or aunt, and the other maternal relations without the prohibited degrees, and lastly, the state have the right to contract to give a minor in marriage.

### **Dower**

It is also known as 'mahr'. this is the money or any other property gives as a consideration to the marriage by the groom to the bride .for the purpose of financial security during and after the marital tie,it is given. In case of Nasra Begum v. Rizwan ali, AllahAbad High court decided that before cohabitation the mahr should be given. And if bride is a minor, her parents or guardians have the choice to refuse to send her to husband until full payment of mahr, and she can be brought back as well if shes living with her husband.

#### 3. No legal disability-

Under some circumstances marriage is not permitted; it is known as legal disability.

These circumstances are called prohibition which have been classified into 4 classes-

- Absolute prohibition
- Relative prohibition
- Prohibitory prohibition
- Directory prohibition

**Absolute prohibition-** it comprises consanguinity, affinity and fosterage.

1.Consanguinity- it is also known as qurabat. Every blood relationships are included under this-

- a. his mother or grandmother
- b. His sister- full blood, consanguine or uterine
- c. His daughter or granddaughter<sup>7</sup>
- d. His aunt and great aunt
- e. His niece or great niece

A marriage prohibited because of the above mentioned blood relations of the person is void and any issue arising from it are illegitimate.

2 Affinity- it is also known as mushaarat. Prohibited relationships of a man under this are-

- a. His wife's daughter or granddaughter

<sup>7</sup> <https://theindianlaw.in/essentials-conditions-of-muslim-marriages/> <https://blog.ipleaders.in/essentials-of-valid-marriage-under-muslim-law/#Free From Legal Disability>

- b. His wife's mother or grand mother
- c. Wife of his son or son's son or daughter's son
- d. Wife of his father or paterna; grandfather

A lady who is barred from marriage because of affinities cannot be married. Only if the marriage to the wife was completed is it forbidden to get married to the wife's daughter or granddaughter.

### **Relative incapacity-**

Relative incapacity only arises from situations when the marriage is declared unlawful or irregular while the underlying cause is still present. Once it is gone, the marriage loses its validity and becomes legally binding. As a result, it is distinct from the situation of extreme incapacity, in which the nikah is void ab initio and never can be made lawful. the following are the relative incapacity-

1. Unlawful conjunction-it includes the cases when a man marries two women who are related to each other by blood or consanguinity or affinity. hence he cant marry two sisters or niece and her aunt. This restriction is in place to prevent confusion with kinship or a dual connection. However, this restriction may be lifted if he divorces his first wife or after her passing. According to Shia law, a Muslim may wed his wife's aunt but not her niece without her consent. Under Shia Law, a marriage that is forbidden due to an illegal union is void; yet, under Sunni Law, it is deemed irregular and void.
2. Absence of proper witness-It is necessary for both parties to be able to comprehend the purpose of marriage and to be capable of entering into a contract. Simply put, they should be capable of entering into matrimony. A Muslim who has attained puberty and is of sound mind may do so. The wife and husband must both be able to comprehend the nature of their conduct. Except in the instance when it is contracted when the mad person was normal for a while, a marriage that a lunatic enters into is null and void. However, if the guardians of the mad person enter into the marriage, it is lawful.
3. marrying a fifth wife or polygamy- it is illegal to bring fifth wife in the marital tie that consists of 4 wives for mohammedans. for sunnis it is considered as irregular marriage but this irregularity can be removed if the husband gives divorce to one of his four wives. however, marriage with fifth wife is completely void under shia law.
4. Different religion- a sunni boy can marry muslim girl or a kitabia only.

5. Women undergoing iddat- under shia law the marriage between a male and a female who is undergoing iddat is void but in sunni law it is irregular and not void.

### **Prohibitory incapacity-**

It happens due to following reasons-

1. Polyandry- A lady who has more than one husband is said to be polyandrous. As long as the first man is still living or the marriage is still in effect, it is against Islamic law for women to get married a second time. A Muslim lady will be held responsible and charged under Section 494 of the IPC if she marries again.
2. Muslim woman if marries a non muslim man even though he is a christian or a jew, the marriage is void under shia law and irregular under sunni law.

### **Directory incapacity-**

1. Marrying a pregnant woman- it is illegal to marry a woman who is carrying the child of former husband in her womb.
2. Prohibition of divorce-Re-union is not permitted once a marriage is dissolved by three decrees of divorce, unless the woman is lawfully wed to another man and the union is dissolved after consummation.
3. Marriage during pilgrimage- Shia law declares marriages contracted while on pilgrimage invalid. Marriage occurring on a pilgrimage to Mecca within the holy city was viewed as unlawful by the Shafeis, Malikis, and Hanabalīs. However, the Hannafīs regarded such unions as legal.
4. Marriage with a sick man- if a man is suffering from serious disease then the marriage is invalid but if he gains recovery and the marriage is consummated then it is valid.

## **Chapter - 5**

### **Rights and obligations of spouses**

In Islam, both men and women have rights over one another when they engage into a marriage contract, with the husband typically acting as the family's protector and financial backer. For both partners, there are two components to this guardianship:

One interpretation is that the husband must shoulder the financial responsibility of providing for the shelter, food, clothes and other requirements of his spouse or spouses and any children they may bear. In exchange, the wife has a responsibility to protect her partner's money and

possessions. She is free to hold property and assets on her own, and the husband has no claim to them until she grants him permission to do so, therefore if the woman is affluent on her own, she is not obligated to surrender it to the husband or children..In the mahr, which the husband gives to the wife for her sole use and which is included in his financial responsibilities, there is a premarital agreement about the financial expectations from the husband.

According to a number of observers, a husband's dominance over his wife is contingent, and the wife's obedience is equally constrained.

Women are also reminded that getting a divorce is not stigmatized if the husband is not carrying out his obligations. Reiterated in the Quran, justice for women involves emotional support. Men are also reminded that women cannot be denied their mahr or bridal gifts until they are found guilty of sexual immorality. Some husbands will put pressure on their wives and demand the return of what they gave her in situations where the arrangement was to defer the payment of the mahr in order to agree to the breakup of the marriage. The husband does not have the right to take his wife's possessions in exchange for her freedom from him if he has been abusive or careless with his duties. Even though the Quran commands: "Go before the court and submit to binding arbitration," most couples regrettably choose not to do so.

### **Conclusion-**

Muslim personal law describe marriages as being more like a legal contract than a sacrament. Muslim scholars regard a marriage governed by Mohammedan law to be essential because they see it as a relationship created to fulfil each other's needs.in todays time not only muslims of asia but muslim all over the world follow this culture inspite of living in western culture. Most of the muslims who live in western world still respect and abide by the rules and regulations of it. The essentials of marriage are mostly similar to that of a civil contract so many scholars believe it to be purely a civil contract but other scholars think it as a sacrament as the prophet said that one who will not get married are not his followers. So this argument came to end by stating that it is both a civil contract and a sacrament.

The essentials of muslim marriage has many drawbacks as stated in the paper. the status of women has increased alot but it is still not equal to that of men. the codification of muslim laws, polygamy etc theses all issues make the muslim marriage laws somehow unreliable, but one should never forget the main essentials of marriage. If a person follows the essentials of

marriage and always follows his marital duties then he can lead to a happy life. This is the reason why people living in different parts of the world still believe in islamic marriage laws and follow it with good faith.

For the betterment of muslim women in future and for removing the remaining aspects of muslim marriage which often gets criticed, the judiciary and legislative authority should continue making changes in the laws and customary practices for the good.

