



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**



### **Megha Middha**

*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*learning.*

*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **CONCEPT OF CONSENT IN MUSLIM MARRIAGE.**

AUTHORED BY - PRADICTA SHREY

3rd Year Law Student, BBA LLB

Symbiosis Law School, Nagpur

2021-26

## **ABBREVIATION:**

**i.e** - that is

**BY-** written by

**MM-** Muslim Marriage

## **INTRODUCTION:**

Marriage is a concept of the union of two parties usually opposite genders, solemnized together legally and socially, usually by law, rules customs, traditions, and beliefs of whichever culture, religion, or regime they belong to.

Talking about the Concept of Muslim marriage, then MM has been defined as a civil contract for the purpose of legalizing sexual intercourse and the procreation of children.

Going by the definition of marriage as per Muslim law, marriage is a contract, so for a valid contract to be there, one of the essential conditions is valid consent or voluntary consent, i.e consent without any coercion, fraud, misrepresentation, and any external force.

So here also a marriage to be legally solemnized under Muslim law, consent is an essential condition to consider.

In this research paper, we will look at the necessity of consent in a Muslim marriage, the importance of it in considering the marriage to be legal, and the remedies available if one is deprived of valid consent.

## **LITERATURE REVIEW:**

### **BOOKS:**

#### **1. *“THE FIQH OF MARRIAGE IN THE LIGHT OF QURAN AND SUNNAH”***

***BY - Dr. SAALIH IBN GHANIM AL- SADLAAN***

The book is written by a professor at the College of Shareeah at Riyadh, Saudi Arabia. This book is written in accordance with Fiqh or the concept or philosophy behind Islamic law, which is founded on the Prophet's traditions and the Koran's teachings, in relating it with marriage, in light of the Quran and Sunnah.

This book contains the discussion on the position of the dower, the minimum and maximum amount of the dower, and the circumstances in which the woman is entitled to all, half or none of her dower are among the subjects he covers that are covered in classic works of fiqh. The book also covers Islamic sexual etiquette and the rights of the husband and wife.

The book also focuses on the essentials required for marriage to be solemnized validly under Muslim law. The process for announcing the marriage, its meaning, its process to solemnize, the essentials, and the provisions required for it is contained in the book. The book also focuses on the rights and duties prescribed in Islamic law for the parties in the marriage agreement, after the marriage, and to be provided while entering into the marriage agreement. (al- Sadlaan #)

### **ARTICLES:**

#### **1. *“NIKAH- A CONTRACT OF MARRIAGE”***

***BY- HARSH NAYAK***

In this article the author has described marriage as a contract under Muslim law and the Muslim community. As per this article, the word marriage is termed “Nikah” in Muslim law, which is an Arabic word and it means a contract or a civil agreement under law. Marriage is the intended outcome of this contract, and it is intended to specify the rights and responsibilities of the two sexes. Respect for each other's rights and obligations is due between the parties with an interest in this agreement as well as between the parties and any children born from this union.

This article emphasizes the Islamic marriage contract, which is a binding legal union of bride and groom. A contract that enables a man and a woman to cohabit and provide for one another within the parameters of the obligations and rights set forth for them. According to Mahomedan law, marriage is a civil contract, not a sacrament.

As per this article, The fundamental elements of any contract are proposal and acceptance, and this is also true of the Muslim marriage contract. This marriage shall be consummated at one meeting, in the presence of two witnesses. Both consents must be freely given, with no outside pressure.

Muslim weddings are governed by a civil contract, in contrast to Hindu weddings, where being married is a ceremony. Marriage is necessary to legitimize a child. The marriage establishes distinct rights and obligations for both partners in accordance with the norms that have been agreed upon.

According to Muslim law, marriage is just a civil contract, as we can easily deduce based on the legal perspective. It satisfies all requirements for contractual acceptability, free consent, and consideration. (Nayak #)

## **2. “FORMS OF MARRIAGE”**

**BY-PRIYANSHU GUPTA**

In this article the author has discussed various forms of marriage, present in our community and society. As per, Islam views marriage as a social compact. The bride and groom, along with their respective families, come to an agreement whereby the groom's family agrees to give the bride and her family money in exchange for her consent to get married.

As per this article, Shahih marriage or a valid marriage is a term used for legitimate marriage, following Muslim law. The one, that has been established in accordance with essential conditions.

And a marriage that is illegal from the outset is termed a Batil Marriage or void marriage. The parties are not given any civil rights or obligations under it. Such marriages are mainly those which are done by violating the essential conditions required for a valid marriage. Such marriages include even those marriages which are products of coercion or without the voluntary consent of

any party.

Hence, through this article, the author has explained the importance of valid and voluntary consent in a Muslim marriage. (Gupta #)

### **3. “SOME ASPECTS OF MUSLIM MARRIAGE IN INDIAN SUB-CONTINENT: A REVIEW”**

**BY- Mohd. NURUL HAQ.**

In this article, the author has discussed the various aspects of Muslim marriage. As per the article, Marriage under Muslim law has extremely clear legal implications. Therefore, it is imperative that the legal features of marriage be well understood in order to appreciate a proper notion of it.

This article discussed various legal features of Muslim marriage while also attempting to determine how much legislation and judicial rulings have impacted these legal aspects of Muslim marriage.

The article has termed Muslim marriage as a contract and also illustrated the importance and requirement for registration of the same. Every marriage is typically attended by some types of customary rites, even if it is not required by law that any specific ceremony be performed. The contract is concluded by the offer and acceptance in front of witnesses.

And since the marriage has been described in the form of offer and acceptance, so the valid consent of both the parties is required as under the Indian Contract act, an agreement or a contract is valid only when, both the offer and acceptance of the agreement are done with the free consent.

And in order to make this contract of marriage recognizable in the eyes of law, it is necessary to register the same by appointing vakils.

The article has shown the importance of registration of such marriage by mentioning that, Complicated issues about the legality and presence of nikah between specific parties frequently come up in civil and criminal courts, hence marriage registration must be made mandatory.

In order to recognize the valid consent and clarity over the consent of both the parties to be in

cohabitation or the social union of marriage under Muslim, giving the marriage legal recognition is necessary that is done through registration.

Hence registration also clarifies and ensures the valid consent of both the parties. (Haq #)

#### ***4. "MARRIAGE AGREEMENTS UNDER MUSLIM LAW- A WEAPON IN THE HANDS OF MUSLIM WOMEN"***

***BY- NANDA CHIRANJEEVI RAO***

The article has mentioned that the nature of Muslim marriage is that of contractual form. And since, it is a contractual form of marriage, the individuals involved are free to agree to a number of terms and conditions prior to or during the marriage, by entering into an agreement.

But the condition is that the agreement should be legal and that to follow all the norms and essentials provided in the Muslim law.

Looking into the provisions available in the Muslim law, one of the essential is valid consent. That is the consent of both the parties free and voluntarily, and without any coercion, fraud or misrepresentation.

Emphasizing Muslim women's rights in marriage, the article is describing that the provisions that are termed to be necessary for the agreement as per the Muslim law, those provisions not only provide them protection from uncertainty in marital life but also from forceful marriage or marriage against their will.

This article also describes the legal conditions of the agreement for marriage and if any term or condition is illegal or not as per any of the parties of the marriage, then they can step out of the marriage by denying giving their consent.

The article mainly enlightens the fact that how women are protected and are provided various rights by Muslim law.

The consent of a woman plays a vital role even when a Muslim man is going for second marriage or bigamy, as per the Muslim law, for a man to enter into second marriage or bigamy, legally or as per Muslim provision, the consent of the first wife to be taken is necessary.

Hence consent is a vital role in the marriage agreement in Muslim law. (RAO #)

## ***5. “SEXUAL CONSENT, MARRIAGE, AND CONCUBINES IN ISLAM”***

***BY- ABU AMINA ELIAS***

The article focuses on marriage in Muslim law as a form for making sexual relationships valid. As per the article, Islam places a high value on morality when it comes to consent in valid marriages and other legal sexual relationships. After all, according to the Quran, a marriage should be founded on love and mercy, and a healthy sexual connection includes both partners enjoying themselves. In Islam, sexual violence of any kind or forceful sexual relationship has never been legal and never will be. And since marriage is the way to legally enter into a sexual relationship, having a marriage without valid consent is termed to be illegal in Muslim laws.

However, modern developed secular liberal cultures have converted the idea of "consent" into not merely a moral necessity but also the main legal requirement that makes sex legitimate.

In Islam, sex is considered valid only in two cases marriage and concubinage.

And due to the abolition of slavery, concubinage is no more valid. The discussion of consent as a matter of law is less relevant to Muslims who adhere to Islamic teachings. By confining sex to marriage, Muslims are secure from the legal and moral anarchy that the sexual revolution has unleashed.

Additionally, because "consent" is a rather contemporary legal issue, the early Muslims did not directly address it. (Elias #)

### **CASE LAW:**

#### ***1. “AMINA v. HASSN KOYA (2003) 6 SCC 93”***

In this case, the husband went for divorce on the ground that the wife delivered a child after 4 months of marriage, meaning here by that she was 5 months pregnant at the time of marriage, and that he was aware of this fact. The husband went for divorce after 4 and a half years.

The court here raised the point of the form of marriage in Muslim law.

The court in the fourth para of its judgment mentioned that marriage in Muslim law is of Contract form, where two parties enter into the agreement by giving their consent.

The court said that it, is impossible for a 5 months pregnant woman to curtail her pregnancy, and since the husband has entered into the marriage agreement it means, he had given his consent, even after knowing that the wife is pregnant. Moreover, the consent was not given under any external force, so it was valid and hence the marriage is valid.

## ***2. AHMAD-UN-NISE BEGUM VS. ALI AKBAR SHAH (1942) 199 IC 531***

In this case the court regarding a Muslim marriage said that, when the consent to the marriage has not been obtained, consummation against the will not validate the marriage. Herby the court referred that for a marriage to be validated under Muslim marriage consent should be taken, referring the consent as essential in a Muslim marriage.

## ***3. SAYAD MOHIUDDIN V. KHATIJABI (1939) 41 BOMLR 1020:***

In this case, a Muslim girl was forced into an arranged marriage by her father. When the same was contested in court, the judge ruled that the marriage was not lawful because it was performed against the girl's will and consent.

### **STATEMENT OF PROBLEMS:**

- In Islam, even after mentioning essential requirements for a valid marriage having consent as one of them, there isn't a foreground application of it.
- The foundation of a flourishing Muslim society is marriage. A peaceful and contented household offers significant advantages to all of its residents in terms of personal fulfillment, health, longevity, and social life is a result of a healthy marital relationship, but due to the lack of valid consent in the marriage agreement, marriage in Muslim law lacks its basic autonomy in way of achieving its goal.
- Due to the lack of valid consent in marriage, couples of all ages are showing a trend of diminishing marital happiness.

- Marriage in Islam is in form of an agreement between the two parties, but there are incidents when parties in this agreement do have the external force to give their consent, which violates the provisions for the marriage of Muslim law and is also invalid.

### **HYPOTHESIS:**

Most specialists concur that effective communication, hard work, commitment, and continual evaluation of our expectations are necessary for a happy and fulfilling marriage. Talking about effective communication, in Islam, since the marriage is in agreement form so it appears that effective communication is also necessary for determining the conditions and essentials of agreement.

This effective communication is a way to determine the valid consent in the marriage agreement in Islam law.

When it comes to the form of marriage in Islamic law, then it is mainly a contract of marriage in which the two parties come, after giving their consent and the essentials of the contract should be in accordance with the provisions of Muslim law. If we will look at this contract from the legal perspective, or under The Indian Contract Act 1872, the consent given by both parties should be free of any type of coercion, misrepresentation, fraud, or any external force for the contract to be valid and hence the marriage to be legally valid and in accordance to the Muslim law.

It appears that consent is one of the essential ingredients provided in the provisions of the Muslim law for a valid marriage.

### **OBJECTIVES:**

- To examine the form of marriage present in Muslim law.
- To determine the essentials for a valid marriage in Muslim law.
- To explain the importance of consent and its relevance to the validity of marriage in Muslim law.

## **RESEARCH METHODOLOGY:**

The researcher's chosen research methodology is the Doctrinal approach.

As part of the research, the researcher would examine the Indian Constitution, Provisions of Muslim law, statutes, case law, articles, essays, reports, and books.

## **CHAPTERISATION:**

- The first Chapter is the abbreviation dealing with abbreviation forms used in the research paper.
- The second chapter consist of a literature review in which various forms of reading materials and literature are summarised and reviewed.
- The third chapter is a statement of problems in which the problems that will be addressed in the research are mentioned.
- The fourth chapter is the hypothesis that describes the notion that we have our understanding of the topic before the research.
- The fifth chapter is objectives that tell about the point that we would focus in the research paper.
- The sixth chapter talks about the research method used in writing this research paper.

### Works Cited

1. al- Sadlaan, Dr. Saalih ibn Ghanim. *The Fiqh Of Marriage In The Light Of Quran And Sunnah*. Second ed.
2. Nayak, Harsh. "Nikah- A Contract Of Marriage." *Jus Corpus Law Journal*, 24 August 2021. *Manupatra*, <https://articles-manupatra-com.eu1.proxy.openathens.net/>. Accessed 23 August 2022
3. Gupta, Priyanshu. "Forms Of Marriage." *INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION*, vol. 3, no. 2, 2020. *Manupatra*, <https://articles-manupatra-com.eu1.proxy.openathens.net/pdf>. Accessed 23 August 2022.
4. Haq, Mohd. Nurul. "Some Aspects Of Muslim Marriage In Indian sub-continent: A Review." *SCC Online. SCC*. Accessed 25 August 2022.

5. RAO, NANDA CHIRANJEEVI. "Marriage Agreements under Muslim Law- A Weapon in the Hands Of Muslim Women." *SCC*, 2013. *SCC ONLINE*. Accessed 27 AUGUST 2022.
6. Elias, Abu Amina. "Sexual Content, Marriage, And Concubines In Islam." *SCC ONLINE*. Accessed 02 September 2022

## **ABSTRACT**

Marriage is a way to bring two parties, usually two of opposite genders, together to solemnize their soul in order to have a family together. Marriage is a partnership typically between a man and a woman and is recognized legally and socially. Laws, traditions, practices, beliefs, and attitudes that define the partners' responsibilities and confer status to their children govern it.

Speaking from legal perspective marriage is a term used to determine the bonding of two parties, a man and woman, liable to each other and engaged to each other in order to jointly live together.

Marriage is mainly governed by the traditions, cultures, and laws of religion or the community to which the parties belong too. The ceremonies and rituals that happen in, the process of solemnizing marriage are different in different regimes and religions.

Various laws, such as Hindu law, Muslim law, Parsi law, etc. have their own various ways and essentials for a marriage to be called valid under their enforcement.

Marriage in different personal laws is of different forms, each having different names, different rituals, different ceremonies, different essentials, and different degrees of prohibited relationship for marriage.

But what is common in all religions is that the parties in the marriage should be Major, legally able to enter into a marital relationship, and should be entering into a marital relationship with their own consent.

In this research paper, we will focus on Muslim Marriage, considering their rituals and essentials, targeting the importance of consent in it. We will try to figure out, how consent plays an essential role in Muslim marriage with the purview of Muslim marriage form and its notion of being similar

to that of a Civil Contract.

We will try to figure out the relevance of consent described in the religious texts of the Muslim community, society's perspective on the importance of consent, and the history of Islam law governing the concern over the concept of consent.

### **MARRIAGE DEFINED IN MUSLIM LAW:**

Muslim law holds that a man's marriage to his wife is a multifaceted reality that encompasses both the sacred and the secular. The preservation of the human race, the settling of disputes, the promotion of love, affection, and connection between husband and wife, as well as their joint support in meeting their needs, are the objectives of a Muslim marriage. Instead of focusing solely on gratifying sexual lust and reproduction, it also emphasizes the promotion and protection of chastity.

In Islamic law, marriage is termed “Nikah” and is considered a social and legally binding agreement between two people. Marriage is encouraged and considered to be an act of Islam.

Islam defines marriage as a matrimonial relationship and an institution that legalizes sexual activity between a male and female with the goal of conceiving children, fostering love, providing support to one another, and building families, which are seen as fundamental social units.

Looking at the auspicious book of Islam, marriage is highly encouraged and prioritized conduct according to the Quran. This scripture, which particularly mentions the trait of being righteous, encourages marriage to everyone who is single. This refers to having the ability required to carry out the duties of marriage in addition to having the proper attitude and mindset. This scripture explains that having money should not be viewed as a source of worry or as a barrier to getting married. Some families forbid their children from seeking marriage until they reach a certain financial level, and in some situations, a suitor may be rejected on the grounds of wealth. Wealth is more transient than a partner's character, though.

Marriage or Nikah, according to Muslim law, is defined to be a contract that has for its object the procreation and legalization of Children. Thus, Muslim marriage is a contract and its object is (a) procreation and (b) legalizing 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 against foulness and unchastity.” (PROF #)

Marriage is not subject to any formalities or religious rites. Since marriage in Islam is a contract, it must meet the standard requirements for a valid contract. Therefore, the necessary conditions for a lawful marriage are the ability to contract the union, the proposal, and acceptance of the union, valid consent, and the absence of any obstacles to the union.

### **NATURE OF MUSLIM MARRIAGE:**

According to Islamic law, marriage has the same legal status as a civil contract. Both parties enter into it of their own free will. When it is formed, it also resembles a contract because there is an offer and acceptance between the parties, granting husbands and wives the same rights.

Some jurists are of opinion that a marriage under Muslim law is purely a civil Contract while others say that it is a religious sacrament.

The argument that Muslim Marriage is a civil contract and not a sacrament is based on the fact that marriage under Muslim law has similar characteristics to a contract.

The contract requires an offer and acceptance on the part of parties similarly, Muslim marriage requires Ijab and Qubool.

Going by the holy texts and provisions of Muslim laws, forced marriage is prohibited in Islam.

### **WHAT IS CONSENT:**

When someone voluntarily accepts another person's request or wish, it is called consent. Although it is a popular term, there may be more precise definitions for it in professions including legal, healthcare, science, and intimate interactions. Consent can be given in various ways, including implicitly, explicitly, knowingly, and unanimously.

In any social interaction between people, consent is acknowledged by Islamic law as a vital component. In a wide range of financial and non-financial activities, including as business dealings, marriage contracts, the punishment of criminal criminals, and even for individuals

seeking medical care, the significance of mutual consent between parties is viewed as predominant. Therefore, the necessity of mutual consent is essential in any transaction; otherwise, the agreement will be deemed void and of no legal force and effect.

### **WHAT IS FORCED MARRIAGE:**

When the permission of the bride, groom, or both have been secured by physical or emotional abuse, the marriage is deemed to have been forced. Arranged marriages are distinct from forced unions. In an arranged marriage, both the bride and the groom give their approval to wed the partner that their families have suggested; in a forced marriage, approval is not present.

People who compel someone to be married frequently defend their actions by saying that they are doing so to protect the person and uphold cultural or religious traditions. Every major religion prohibits forced marriage, hence it cannot be supported on religious grounds.

Whatever the reasoning, forced marriage is a form of abuse and violates generally accepted standards of human rights.

### **CONSENT AS AN ESSENTIAL OF MUSLIM MARRIAGE:**

The Islamic position for forced marriage is also in the support of valid consent. Islamic law does not support forced marriage.

In Islam, forced marriage is forbidden. The bride and the husband must both agree to the marriage. Any marriage that is forced is regarded as *batil*, or void, and requires the woman's consent, which must be secured.

As marriage under Muslim law is similar to a Civil Contract, so are their essentials. Just like a valid contract to be enforced valid consent is necessary, and so is the requirement in a Muslim marriage.

Consent is essential to the validity of a marriage since marriage is a contract; when there is an absent of consent, the contract is unenforceable. To this purpose, a Prophetic hadith mandates that women, virgin or not, must be consulted and given the go-ahead prior to marriage.

The consent plays an important role as it determines whether the parties are willing or having the interest to enter into a marital relationship with each other or not.

Consent also signifies the no-doubt bonding between the two parties and hence, builds up the basic pavement for a valid marriage.

In Muslim, a marriage cannot proceed without the consent of the intended spouse. She must provide her consent before her father or guardian can proceed on her behalf in any marriage contract, regardless of if she is a virgin or has been married before. The bride's assent is unquestionably required when a marriage is conducted by the government registrar or another authority. If someone is representing her, the government official will request him to present two witnesses who can attest that she has given him permission to represent her in the marriage.

It's a common misconception that a parent can marry his daughter to anybody he wants without getting her permission because he serves as her guardian during the marriage. On the contrary, she keeps her honor by doing this. In Islam, families play a key role in the process of establishing families through marriage. But actually one can't marry someone against her or his consent.

For classical Muslim jurists, as well as for the majority of cultures in the pre-modern era, marriage was not primarily about people's freedom of choice in life mates, but this freedom of choice was acknowledged to some extent. Instead, it concerned families' choice of compatible partners. To that aim, an essential component of the marital laws that the early jurists developed is a form of guardianship (wilaya). There are two different kinds of guardians (wali, sang. ), but both must be adult male Muslims who are free and in good mental health. First, it is believed that a father (and possibly, in some situations, a paternal grandfather) has the authority to coerce marriages, known as "jabr" or "ijbar". Second, in some circumstances, another guardian is needed if the child doesn't have a father, for the validity of the marriage but he may not force his charge to marry.

All four Sunni schools acknowledge a father's authority to arrange legally binding unions for both his sons and daughters while they are still minors (up to the age of nine or onset of menstruation for girls and puberty, up to age fifteen at the latest, for boys).

Though least so in the Hanafi school of legal philosophy, the regulations for males and females

after age differ. All legal experts concur that once a man is no longer a minor, he can enter into a marriage on his own behalf without the need for a guardian. Only the Hanafi school acknowledges that a woman can do the same, but unlike a man, her marriage is subject to challenge by her guardian if it doesn't meet certain requirements (the groom must be her social equal (kuf') and she must stipulate at least the full dower appropriate to a woman of her family status and personal characteristics).

According to the majority of Hanbali jurists, a girl over the age of nine is no longer subject to her father's right of compulsion but needs a guardian to consummate the marriage on her behalf. Even after her first marriage, this remains the situation. The Maliki and Shafi'i schools of law, as well as a small number of Hanbalis, support the most distinct division between men and women. According to these jurists, a parent can force his daughter to be married against her will as long as she stays virginal (bikr).

However, a grown virgin cannot be married off by anybody other than her father without the approval of the virgin, according to judges from all four schools. According to the majority opinion of the jurists, regardless of which guardian contracts the marriage, she must give her agreement for any subsequent marriage after she is no longer regarded as a virgin. However, a guardian must enter into any marriage on her behalf according to the Malikis and Shafi'is as well as the Hanbalis. Only the Hanafis believe that an adult woman is capable of signing a marriage contract on her own in a legal sense.

In contemporary Muslim countries, the subject of permission to marriage has come up frequently. Many jurisdictions have made an effort to address these problems by establishing minimum marriage ages that are later than the established start dates for maturity. Some countries with a history of requiring adult virgin women to be married off against their will now have laws that require all adult women's permission, regardless of whether they have been married or not. Additionally, fewer children are getting married, and fewer women and girls are getting married against their will to unsuitable partners thanks to shifting societal mores and demographic realities.

Free consent from both parties is required for a marriage to be legal. If the consent was obtained through coercion, fraud, or factual error, it is deemed invalid, and the marriage is deemed null

and void. Marriage is illegal if it is conducted without the parties' free permission, the court ruled in the case of Mohiuddin v. Khatijabibi.

A Forced marriage or a marriage against the will or without consent is usually observed happening with a girl. Most of the time it is seen in a society that they usually can digest a boy marrying with his own choice for once, but the consent or choice of a girl doesn't matter much to them. A similar situation can be seen in the Muslim community too.

Another myth is that women aren't allowed to propose to a man and hence cannot express their consent for any man openly. It is regarded as culturally impolite by many Muslims. But that runs directly counter to the truth. A woman's marriage proposal is not regarded as an act of indecency in Islam. Culture provided humans with this concept. The separation of the deen from cultural beliefs needs to be improved. Women were always given freedom in Islam to marry the person of their choice and with their consent. A very great example to verify this sentence is the life of the Holy Prophet, The Prophet was employed by Khuwaylid bint Khadija. She proposed marriage to the Prophet Muhammad after being moved by his sincerity and honesty. Their marriage was consummated after the Holy Prophet agreed to the proposition.

So in reality, Islam gives great value to the consent of women or any person for marriage.

It is evident that Islam forbids forced marriages from the Holy Prophet's life and the examples of his teachings. The Quran forbids, however, the forced marriage of women. This Quranic verse bans forced marriage among Muslims, "O you who have believed, it is not lawful for you to inherit women by compulsion."

In Islam, it is forbidden to coerce females into marriages, according to a hadith attributed to the Holy Prophet. In addition to being mentioned in Saheeh al-Bukhari 6968, the hadith was written as Saheeh Muslim in 1419. A woman cannot be married to anybody until her consent is obtained, according to the Holy Prophet, whether she is a virgin, divorced, or a widow. That Islam forbids forced marriages is demonstrated by this.

Even the life of the holy Prophet of Islam depicts a great example that how much value free consent has for marriage in Muslims.

Without the child's consent, parents cannot just marry their children off. In addition to setting an example from the Holy Prophet's life, parents should ascertain whether their child has given their approval to the marriage. Ali once offered the Holy Prophet a request to wed his daughter Fatima. He declined the offer and merely remarked, "In Sha Allah" (if God wills). The Prophet Muhammad then spoke with his daughter Fatima about her idea and sought her approval. The Prophet then accepted Ali's proposition after she had already done so. This demonstrates how crucial it is to get a child's perspective on marriage.

It is obvious that under Islam, getting married with your consent and desire is completely acceptable. In Islam, you have the option to approve of a marriage, regardless of gender. Islam forbids parents from pressuring their children into marriage. so you can be married to the person only if you want or with your consent.

Families may arrange an engagement for their children, but Islamic law stipulates that the bride, groom, and bride's guardian (wali) must all grant their legal assent before the union can be consummated. Most academics agree that it is forbidden to get married without the bride's permission or under duress.

Additionally, there are hadiths (traditions based on accounts of the words and deeds of the Prophet Muhammad) that show that forced marriage was prohibited:

According to Abdullah ibn Abbas, the Prophet heard from a virgin that her father had married her against her will and gave her the opportunity to make her own decisions.

Khansa Bint Khidam stated, "My father married me to his nephew, and I did not enjoy this match, so I complained to the Messenger of Allah, that is, to the Prophet. I should accept the plans your father has made, he added. I said that I didn't want to accept the plans my father had made.

Then this marriage is invalid, you may wed whomever you like, he said. I stated that although I have accepted the arrangements made by my father, I nevertheless wanted women to be aware that fathers have no business meddling in their daughters' personal concerns, such as forcing them into marriage.

These statements are proof that the Islam religion has always given priority to the consent of

parties entering the marriage

## **LEGAL PERSPECTIVE OVER THE CONSENT AS AN ESSENTIAL OF MUSLIM MARRIAGE:**

Along with the Islam religion, the court also recognizes consent as of a great value for a marriage to be legally valid.

The partners must freely consent for a marriage to be legal. The consent is rendered illegal as well as the wedding is deemed null if it was gained through coercion, fraud, or factual error.

Similar circumstances occurred in *Sayad Mohiuddin vs. Khati Jabi* (1939) 41 BOM LR 1020, where a major girl's father forced her into an arranged marriage. When the same was contested in court, the judge ruled that a marriage that was performed without the girl's knowledge and permission was invalid.

As a result, the court underlined the necessity of the parties' free will and consent for a marriage to be considered lawful under the law.

The court doesn't only stand against a marriage done forcefully but also deceives those marriages where the consent of the parties has been obtained fraudulently.

This can be seen by the case law of *Abdul Latif v. Niyaz Ahmad* where the court held that a marriage brought in about by a fraudulent misrepresentation is invalid unless ratified.

In the case of *Ahmad- un - Nose Begum vs. Ali Akbar Shah*, the court held that when the consent of marriage has not been obtained, Consummation against the will of the women will not validate the marriage.

Hence, it's clear that along with the religious texts and laws of Islam, the Indian jurisdiction also gives a great importance to the free consent of the parties, for making a marriage valid under Muslim law and Indian Jurisdiction.

## **CONCLUSION**

After completing the research and overviewing the data available, it is seen that, the marriage form available in the Muslim community is mainly a Contract or an agreement form. Islam views marriage as a social compact. The bride and groom, along with their respective families, come to an agreement whereby the groom's family agrees to give the bride and her family a certain sum of money in exchange for her consent to marry.

Islam views marriage as a partnership between two individuals and an institution that legalises sex between a man and a woman in order to reproduce offspring, advance adoration, share support, and reap other benefits. Families are viewed as the primary social unit and are revered as such.

So in a Muslim marriage, Consent is essential to the validity of a marriage since it is a contract, and a contract is void without it.

Muslim law defines a valid marriage as one which has been constituted in compliance with the prerequisite requirements and Essentials.

Along with others, Consent is also a key requirement in Muslim law to declare a marriage to be valid.

Eminence importance is given to the acceptance by women for marriage. Islam recognizes the right of women to approve of marriage. In actuality, a woman's consent is required for the marriage to be legal.

Even the incidents from the life of Holly Prophet and his teachings guide, how a woman is free to get out of the marriage if, it is imposed on her forcibly, and she has all the rights with her to come out of such marriage.

## **CHAPTERISATION:**

- The first chapter in the research paper is “ABSTRACT” which focuses on the introduction of the basics of the research paper and the approach of the researcher to meet various issues mentioned.

- The second chapter “MARRIAGE DEFINED IN MUSLIM LAW” describes the understanding of marriage as defined under Muslim law.
- The third chapter “NATURE OF MUSLIM MARRIAGE” informs about the form of marriage followed in Islamic religion.
- The fourth chapter “WHAT IS CONSENT” describes the word Consent over which the topic of a research paper is based.
- The fifth chapter “WHAT IS FORCED MARRIAGE” looks upon the marriage against the will of the parties.
- The sixth chapter “CONSENT AS AN ESSENTIAL OF MUSLIM MARRIAGE” refers to the importance of consent in Islamic law and also focuses on how various religious text and the Prophet’s life focuses on the importance of consent and will of the parties while entering the marriage.
- The seventh chapter “LEGAL PERSPECTIVE OVER THE CONSENT AS AN ESSENTIAL OF MUSLIM MARRIAGE” talks about the various cases and decisions taken by the court focusing the role of consent in Muslim marriages.
- The eighth chapter “CONCLUSION” concludes the other chapters and the concept that the researcher tried to discuss in the whole Research paper.

