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MUSLIM LAW

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MUSLIM MARRIAGE: ESSENTIAL CONDITIONS AND PROHIBITIONS

Like other religions in India, Islam is also a strong advocate of marriage. It is said that there is no celibacy in Muslim marriage. Marriage in India is a social necessity through which families are formed. In addition, families are fundamental institutions in our society. Also, in Islam, the only way to engage in intimacy between a woman and a man is through marriage. Also, in Muslim marriages, a person can practice polygamy. But Islam bans polygamy. There are several conditions that were preserved by the Prophet Muhammad Sahab for polygamy.

Muslim law in India means "that part of Islamic civil law that applies as an individual law to Muslims". It contains injunctions of the Quran and has been further supplemented and modified by the state legislations and modern judicial precedents of the High Courts and the Supreme Court of India and the Privy Council also.

Marriage / 'Nikah' is a permanent relationship based on mutual consent.

Essential Requirements of Marriage

- In a Muslim marriage essential a proposal (ijab) for acceptance (qubool) from another at a single meeting. Moreover there can be no marriage without free consent and such consent should not be obtained by means of coercion, fraud or undue influence.

- Also, a minor person who has not attained puberty and cannot give consent by self than, the marriage can be considered valid with the permission of their guardians. (But on attaining the age of puberty, he can declare his marriage void.)
- The parties to a Muslim marriage may enter into any ante-nuptial or postnuptial agreement which is enforceable by law provided it is reasonable and not opposed to the policy of Islam.
- The terms of a marriage contract may also be altered within legal limits to suit individual cases.

Solomonisation of marriage requires the observance of certain forms and formulas.

They are called the essentials of a valid marriage. If any of these requirements is not fulfilled the marriage becomes either void or irregular, as the case may be.

The essential requiremnts are as follows:

- a. Proposal and Acceptance
- b. Competent parties
- c. No legal Disability

Marriage is formed by Izb-o-Qubool, by declaration and acceptance. In marriage, one party has to make an offer (Izb) to the other party. Marriage is completed only when the other party has accepted (qubool) the offer.

According to Muslim law, it is absolutely necessary that a man or a person on his behalf and a woman or a person on his behalf agree to the marriage in a meeting and must be observed by two adult witnesses.

The words proposing and accepting should be spoken in the presence of each other or in the presence of their agents (Guardian or other), who are called wakil.

The second condition for a valid marriage is that izar and qubool must be completed in one meeting. The proposal made in one meeting and the acceptance in another meeting does not constitute a valid marriage.

There should be reciprocity between izar and qubool. Acceptance (qubool) should not be conditional. Under Sunni law, the offer(izar) and acceptance must be made in the presence of two men or one man and two female witnesses, who are sensible, adult and Muslim. Under Shia law, witnesses are not necessary at the time of marriage. They are required at the time of dissolution of marriage.

The parties contracting marriage must be acting under their free will and consent.

Competent parties & legal disabilities

The Parties must be competent to marry. Muslim who is of sound mind and who has attained puberty may enter into a marriage. The parties must be able to understand the nature of their act.

LEGAL DISABILITY

Means the existence of certain circumstances under which marriage is not permitted. These prohibitions have been classified into four classes:-

Absolute incapacity or prohibition relative incapacity or prohibition prohibitive inability

Directory incapacity

ABSOLUTE INCAPACITY OR PROHIBITION:

arises from: Consanguinity Affinity

Fosterage

Consanguinity means blood relationship and bars a man from marrying:

His mother or grandmother how highsoever,

His daughter or grand-daughter how lowsoever,

His sister whether full, consanguine or uterine,

His niece or great niece how lowsoever,

His aunt (fathers sister, mothers sister) or great aunt, how highsoever, whether paternal or maternal A marriage with a woman prohibited by reason of consanguinity is void. Issues from such marriage are illegitimate.

Affinity prohibits a man from marrying:

His wife's mother or grand-mother how highsoever

His wife's daughter or grand-daughter how lowsoever

Wife of his father or paternal grand-father how highsoever

Wife of his son or son's son or daughter's son how lowsoever

A marriage with a woman prohibited by reason of affinity is void.

Fostering means that when a woman other than her mother has weaned less than two years of age, the woman becomes the child's foster mother. For example, a man cannot marry his foster mother or his daughter or his foster sister.

EXCEPTIONS

Under the Sunni law, there are a few exceptions to the general rule of prohibition on the ground of fosterage and a valid marriage may be contracted with:

Sister's foster mother, or

Foster's sisters mother, or

sons sister, or

Foster brother's sister.

“The Shia jurists place fosterage and consanguinity on the same footing and refuse to recognize the exception permitted by the Sunnis. The above mentioned prohibitions on account of 'consanguinity', 'affinity' or 'Fosterage' are absolute and the marriages contracted in contravention of these rules are void.”

RELATIVE INCAPACITY OR PROHIBITION:

Springs from cases which render the marriage invalid only so long as the cause which creates the bar exist. The moment it is removed, the incapacity ends and the marriage become valid and binding. The following are the cases: Unlawful conjunction, Polygamy, or marrying a fifth wife. Absence of proper witnesses Differences of religion Woman undergoing IDDAT

“Unlawful conjunction: means contemporaneously marrying two women so related to each other by consanguinity, affinity or fosterage, which they could not have lawfully intermarried with each other if they had been of different sexes. Thus a Muslim cannot marry two sisters, or an aunt and her niece.”

Under Shia law, a Muslim can marry his wife's aunt, but he cannot marry his wife's niece without her permission. Marriage prohibited due to unlawful combination is void under Shia law.

Polygamy or marrying a fifth wife: means a plurality of wives, that is, marrying a fifth wife. It is illegal for Mohammedan to have more than four wives. Prophet stated that, you can marry with four women but in some conditions, if you have justice between these four wives or if you give rights equally between these four. otherwise you should do marry only one.

In India no Muslim marrying under or getting his marriage registered under The Special Marriage Act, 1954, can marry a second wife during the lifetime of his spouse.

In Shia Law, a marriage contracted by the spouses themselves or their guardians in private are held valid. Presence of witnesses is not necessary.

Differences of religion: A Sunni male can marry a Muslim female (Of any sect) or a Kitabia. Marriage with the Kitabia, i.e. a woman who believes in a revealed religion possessing a Divine Book viz Islam, Christianity and Judaism is valid under the Sunni Law. But he cannot marry an idolatress or a fire-worshiper. A marriage, however with a idolatress or a fire

worshiper is merely irregular in Sunni Law, but void in Shia Law. A Muslim woman cannot marry any man who is not a Muslim, whether he is Kitabia (i.e. man believing in a revealed religion possessing a divine book) or not . According to Mulla, a marriage between a Muslim woman and Non-Muslim male is irregular.

Under Shia law, any Muslim, whether male or female, cannot nikah (marry) a non-Muslim.

Any Muslim and a non-Muslim can marriage under The Special Marriage Act, 1954.

Woman undergoing Iddat

Iddah or *Iddat* is the period a woman must observe after the death of her husband or after a divorce, during which she may not marry another man.

Under Sunni law, If a person marriage to a woman undergoing Iddat is irregular and not void.

But under Shia law, marriage with a woman undergoing Iddat is void.

3. PROHIBITIVE INCAPACITY:

It arises in the following cases:

Polyandry

A Muslim woman marrying a non-Muslim

Polyandry: means the fact of having more than one husband. Polyandry is forbidden in the Muslim system and a married woman cannot marry second time so long as the first marriage subsists.

Muslim woman marrying with Non -Muslim man: A marriage of a Muslim female with a non-Muslim male, whether he be a Christian, or a Jew or an idolator or a Fire-Worshiper is irregular under Sunni Law and void under Shia Law.

4. DIRECTORY INCAPACITY:

This may arise from:

- a. Marrying a woman 'enceinte': It is unlawful to marry a woman who is already pregnant by her former husband.
- b. Prohibition of divorce: When the marriage is dissolved by the pronouncements of divorce three times, re-union is prohibited except after the lawful marriage of the woman with another man and then its being dissolved after consummation.
- c. Marriage during pilgrimage: Under Shia Law, Marriage during pilgrimage is void.
- d. Marriage with a sick man: Marriage with a sick man suffering from disease which is likely to be fatal is invalid. If however, he recovers and the marriage is consummated, it is valid.