MUSLIM LAW

MARRIAGE

Definition -- 'Nikah' is a contract for the purpose of legalizing co-habitation and the procreation of children. -- *Wilson*

Nature – According to Mahmood, J. in *Abdul Kadir vs Salima,* Muslim marriage is a civil contract, which is completed by proposal and acceptance. The rights and liabilities arises immediately and simultaneously, and do not depend upon any condition precedent.

Sabrunnisha vs Sabdu Shekh (Cal. HC) Mitra, J. – Marriage is a contract akin to contract of sale. The wife is property and the dower is price.

But, according to Dr. Jung, marriage being substantially a contract is a sacrament. It is *sunnat muwaquida*.

Essential conditions

1) **Proposal and acceptance (Izab and Kabool)** >> Proposal by one party and acceptance by the other.

2) Single sitting >> proposal and acceptance must be in a single sitting.

3) Competent parties >> sound mind + attained the age of 15 years.

4) Presence of witness –

- Sunni >> 2 male or 1 male + 2 female (sound mind + major)
- Shia >> witness not necessary at the time of marriage.

5) There should be no impediment (relative or absolute) between the parties to marriage.

6) Free consent + free will.

Absolute impediment >> Marriage void >> following conditions:

1. Marriage by male in blood, marriage or foster relation.
2. Marriage by woman in lifetime of her husband.

Relative impediment >> Marriage irregular >> following conditions:

1. Marriage with 5th wife.
2. Marriage with a woman undergoing iddat.
3. Difference in religion –

- Sunni >> marriage by a Sunni male with Muslim, Christian, Jewish woman is valid (Sahih).
- Marriage with fire worshiper/ idol worshiper is irregular (Fassid).
- Shia >> marriage with non-Muslim is void (Batil).
- Shia male can contract Muta marriage with non-Muslim Kitabiya (Christian, Jewish).

4. Absence of required witnesses.

5. Unlawful conjugation – A man may not have at the same time two wives who are so related to each other by consanguinity, affinity or fosterage, that if either had been a male, they could not have lawfully inter-married. E.g., two sisters, aunt and her niece.

IDDAT

The period during which a Muslim woman lives in seclusion and does not re-marry after dissolution of marriage.

Object – to determine the pregnancy.

Incidents

Divorce >> 3 menstrual cycle or 3 lunar month

Divorce + Pregnancy >> whichever is longer

Death of husband >> 4 months 10 days

Death + pregnancy >> whichever is longer

Divorce + death >> fresh period

No consummation of marriage >> No iddat except death of husband

Irregular marriage >> if no consumation – no iddat

        if consummation – 3 menstrual cycle or 3 lunar month

Mutta marriage >> expiry of period – 2 months

      >> death of husband – 4 months 10 days

Marriage during iddat >> Shia – Batil

         >> Sunni – Fasid

Legal consequences of iddat

1. Right of maintenance

2. Second marriage

3. Right to deferred dower

RESTITUTION OF CONJUGAL RIGHTS

Where either party to the marriage, without lawful ground, withdrawn from the society of the other or neglected to perform the marital obligations, the suffering party may bring a suit for restitution of conjugal rights.

The suit is presented in the lowest civil court.

Reasonable causes (defences)

1. Cruelty by defendant

2. Denial of the factum of marriage

3. Khayal-ul-bulug (option of puberty) – repudiation of marriage

4. Non-payment of prompt dower

    - no consummation >> full defence
    - if consummation >> conditional decree in favour of husband

5. Husband guilty of apostasy (conversion)

6. Lian

7. Zihar

8. Breach of condition of marriage

9. Impotency

MUTTA MARRIAGE

'Mutta' means enjoyment.

Marriage by a **Shia Muslim** for a certain period and certain dower.

Sunni >> invalid.

General Principles

1. No restriction of four wives.

2. All other ingredients of marriage are available.

3. Male can marry non-Muslim Kitabiya woman.

    female >> cannot marry non-Muslim.

Essential Requirements

1. Dower is certain – c.f. contract is void

2. duration must be certain – if not then presumption of marriage