

THE IMPACT OF UNLAWFUL CONJUNCTION ON THE VALIDITY OF A MUSLIM MARRIAGE

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ABSTRACT

The discussion in this article pertains to the bar of unlawful conjunction in a Muslim marriage. Some modern authors, in their books of Muhammedan law, have declared such marriage as irregular (Fasid). The issue being of great interest and grave concern needed to be clarified because majority of the Muslim jurists considered the marriage within the prohibited degrees of relationship as illegal (Batil). So the conflict of opinions in such a serious and sentimental issue, naturally affect the feelings and opinion of general public. The study in hand is an endeavour to present the actual legal position, of such marriages, according to the material that is available in the majority of Islamic Law books. This discussion is based upon the principles of Sunni (Hanafi) law of marriages. Shia schools of law do not recognize the distinction between void and irregular marriages.

NIKAH AND ITS SIGNIFICANCE

According to modern jurists a marriage contract under Islamic law is purely of civil nature, but traditionally Islam does not consider it a simple contract between two persons, who commits themselves to each other but it is an agreement to which God Almighty is made the first witness. It is made with every intention of making it permanent to the eternal success. The Prophet (SAW) has said that when a Muslim marries he has fulfilled half of the religious devotion and duties and then he shall take care of other half by being God-minded and aware of his obligations¹

Marriage is considered, in Islam, as a religious duty and is enjoined upon all believers who can afford it. The Prophet (SAW) is reported to have said that marriage is obligatory on a person whose passion cannot otherwise be restrained from the commission of wrongs or from hankering after what has been prohibited and who can provide the dower and maintenance of a wife. On the same

page, another tradition from the Holy Prophet is quoted in which He is reported to have said, "Nikah is my Sunnah and one who dislikes my Sunnah, is not mine."²

Nikah is an Arabic term it comprises many different forms of sex relationship but Islamic law has given it a very definite legal meaning. Sharia has restricted its meaning to the legalisation of sexual intercourse between two opposite sexes and the procreation of children.³

The marriage contract under Islamic law can be treated as a civil contract, in a sense that the requirements which are essential for the constitution of a valid marriage, are the same to much extent, which are required for the validity of an ordinary civil contract and secondly the Muslim marriage is not a sacrament like Hindu marriage, which leads to a life long union of spouses.⁴ Even after the death of either spouse, the Hindu marriage remains intact. No doubt perpetuity is the essence of Muslim marriage contract but there are also provisions for its termination. These are the only similarities that modern jurists have termed the Muslim marriage as a civil contract. Otherwise Islamic nikah is not merely a civil contract but a religious obligation. The Prophet (SAW) is reported to have said that it is an act of Ibadat or piety for it preserves mankind free from pollution.⁵

³ Fyzee. A.A "Outlines of Muhammadan Law" Oxford University Press, Delhi 1974:90

⁴ Werner F. Menski: "Solemnisation of Hindu Marriage: The Law and Reality" 1983: 1

⁵ S.Ameer Ali: "Mahommedan Law" 7th ed Vol 2, 1979: 241

¹ Hammudah Abdalati: "Islam in focus" ND:114

² B.M.Dayal Eng Tr: "The Durr-ul-Mukhtar" ND: 3