

Muslim Law
Type of Muslim
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Mohammad Parvej
Institute of law
Jiwaji University

Classification of marriages under Muslim

Marriage, in Mohammedan culture, has always been considered as a social necessity. There are several kinds of marriage under Islamic law.

Marriage in Islam is considered to be a social contract. The husband and the wife and their respective families enter into an agreement whereby the husband's family pays an amount of money called the (*mehr*) to the girl and her family and in return, the girl agrees to marry the boy. Therefore, this is a social arrangement which is called *nikah* in Islam.

Classification of Marriage under Muslim Law

There are two sects of Muslims all over the world divided by their beliefs and traditions, viz. Sunni Muslims and Shia Muslims. Marriages in both the sects are conducted in different ways with different traditions and customs and because of which there are several forms of marriage under Islamic law.

Moreover, as aforementioned, Islamic marriages are social contracts and legally binding upon the parties. Hence, since this is a contract, it is classified accordingly.

The classification of marriages under Muslim laws are:

1. *Sahih Nikah* (Valid Marriage)
2. *Batil Nikah* (Void Marriage)
3. *Fasid Nikah* (Irregular Marriage)
4. *Muta Marriage*

***Sahih Nikah* (Valid Marriage)**

The term *sahih* is an Urdu term for the word 'correct' or 'valid' and as already explained, *nikah* means marriage. When all the essential conditions of a Muslim marriage are duly fulfilled, it is called a *sahih nikah* or valid marriage.

It means if two Muslim persons (one being the man and other a woman) enter into an agreement by way of offer and acceptance and the groom has paid the *mehr* for the marriage to the bride, it is a valid marriage. There are certain social and legal implications of a valid marriage which can be enlisted hereunder as follows:

- The spouses become legally married owing to which they can legally consummate their marriage.
- Due to the marriage, the parties acquire the rights of inheritance over the properties which can be inherited.
- Although, the Muslim law does not allow maintenance to the wife in case of a divorce because it is believed that the dower paid at the time of marriage is sufficient for her well-being. Nevertheless, the Supreme Court has made it clear that after a valid marriage, the wife has a right to alimony and maintenance for her and the children.
- The right to maintenance is an independent right beside the right to receive the promised dower.
- The spouses have to be loyal and faithful to each other. However, a Muslim man is allowed to commit polygamy, so it is only the wife who needs to be loyal to the man after the marriage.
- The Quran allows a man to reprimand or chastise his wife by reasonable means if the wife is disobedient or disloyal towards him.
- The kids, if any, who are born due to the consummation of a *sahih* marriage are considered to be legitimate children.
- In case of the wife being a widow or being divorced by her husband, she is obliged under the Muslim law to perform the ritual of *Iddat* under which the wife cannot remarry any other person before a period of 90 days from the date of death of the husband expires. This is to ensure that the woman was not pregnant at the time of the husband's death.

Batil Nikah (Void Marriage)

According to the Indian Contract Act, 1872, an agreement which is not legally enforceable is a void agreement. Similarly, an agreement between a prospective bride and a groom which does not meet all the essential conditions of a Muslim marriage is a void agreement and any marriage that takes place in furtherance of a void agreement is called a void marriage or *Batil nikah*.

In **Munshi v. Mst. Alam Bibi**, the court observed that when there is a permanent or perpetual prohibition from marriage due to non-adherence of a condition, it is void marriage.

When one or more of the pre-requisites to a valid marriage mentioned above are not fulfilled by the spouses before marriage, the marriage is void and not binding. The following are certain situations in which a Muslim marriage is void.

1. When a marriage takes place between persons who are absolutely incapable.
2. When a person marries to the wife of another man when the marriage of the lady was subsisting.
3. Marrying more than four wives. In such a case, the fifth marriage and so on becomes void.
4. Marriage with a Non-Muslim.
5. In **Tanjela Bibi v. Bajrul Sheikh**, the court held that a marriage with a woman who is pregnant from before the marriage is void.

The above-mentioned list is mere examples and not an exhaustive list of void marriages. The essential social and legal implications of void marriage are:

- The marriage is void-ab-initio, i.e. void from the very first day of the marriage even if the marriage is consummated.
- A void marriage does entitle the parties to any legal right or bestow any legal duties upon them.
- If the marriage turns out to be void, the right to receive maintenance after divorce is lost.
- The kids, if any, born from the consummation of a void marriage are considered illegitimate and have not right of succession or inheritance.
- The spouses do not require to obtain a decree of divorce in case of void marriages. They can simply part without any legal formalities.

Fasid Nikah (Irregular Marriage)

In **Ata Mohammed. v. Saiqul Bibi**, it was observed that when a marriage is temporarily prohibited and not certainly restricted it is merely irregular or *fasid* and not void. An irregular marriage has several aspects involved and various points of view.

Irregular marriages exist only in case of Sunni Muslims whereas an irregular marriage, under Shia law, is void marriage. When a marriage is conducted by violating certain or partial conditions of a valid marriage, it is called an irregular marriage. The best instance of an irregular marriage is the marriage between a Muslim and a Christian or a Jew.

In general, an irregular marriage is voidable marriage and not void-ab-initio. If the irregularity can be removed from an irregular marriage, the marriage becomes valid when it is removed. So, if a Muslim man of Sunni sect marries a Jewish woman but gets her converted to Islam, the marriage is valid. The social and legal

implications of an irregular marriage depend upon the question of whether the marriage was consummated or not. These implications are:

- Unless the marriage is consummated, the wife has no right to receive dower from the husband in the case, he divorces her.
- The wife is not bound to follow the rule of iddat, i.e. prohibition from remarriage within 3 months of divorce if the marriage is not consummated.
- The wife has no right to claim maintenance from the husband during the iddat period of three months.
- If the irregular marriage is consummated and results in the birth of children, the children will be considered legitimate and shall have all rights of inheritance of properties.

Muta Marriage

Muta marriage is the fourth kind of marriage that occurs only in Shia Muslims and not Sunni sect of Muslims. To understand this marriage, it is essential to know the background of this marriage. Most of the Arabian countries such as Abu Dhabi, Dubai, etc. have Shia sect of Muslims. The people usually called the *Sheikhs* were involved in the business of oil-producing, refining and exporting. Due to business agreements, they were required to travel far places and stay there for several days or even months. During this period, the *Sheikhs* required to fulfil their sexual needs and desires but, however, Islam does not allow cohabitation with any woman other than a person's own wife.

Therefore, the *Sheikhs* used to marry the women for a temporary period till they were in that town and at the time of leaving, they get divorced and the dower was paid as the consideration for marrying. This concept of marriage was recognized in Muslim personal law by the Shia sect and is called Muta marriage.

Muta marriage is a temporary marriage between a Shia Muslim man and a woman of Islam, Jew or Christian religion for a fixed period of time and in return of the payment of a fixed amount of dower at the time of divorce. The time period and the dower must be informed and accepted by the bride as well. This marriage is not followed in Sunni Muslims which consider marriage to be a permanent union and not a temporary affair.