

Importance and Objectives of Marriage in Islam: An Analysis of Pakistani *Nikah Namah* in the Light of the Provisions of the Qur'ān and the Sunnah

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Abstract

This article presents a critical study of the provisions of Pakistani Nikāḥ Nāmāh in the light of the teachings of the Qur'an and the Sunnah. It explores that lack of female education and existing cultural and male dominant phenomena forced the female of Pakistan to sacrifice her fundamental and Shar'i rights being a daughter, sister and most critically as a wife. Contrary to the provisions of the Qur'an and the Sunnah which empowered women and mostly have been legalized by way of legislation, Pakistani woman is still unaware regarding her marital rights and thus unable to utilize them. Moreover, biased interpretation of the Qur'ānic verses and the prophetic Sunnah regarding marital status and rights of the women have forced most of the women to prefer to suffer in silence rather than raising their voice against any kind of domestic or social violence. In this context, this article first analysis concept of marriage and its objectives in the light of Sharī'ah Provisions and then evaluates provisions of Pakistani Nikāḥ Nāmāh from the Perspective of the Qur'ān and the Sunnah. At the end some recommendations have been given to reform existing Nikāḥ Nāmāh to secure the matrimonial rights of Pakistani female.

Introduction

Islam being a complete code of life approaches life and its problem in their totality. It has no belief for partial reforms and compromise solution. It has made a man/woman conscious of his/her unique position in this universe as the best creature of Allah's creation. Islam emphasizes that every human being, man/woman must have true and universal relationship with Allah and His creation. The reason is that the society cannot yield best result unless the man/woman has a firm commitment to God and toward this entire creation. Islam makes the Muslim Ummah bound to fulfill its covenant with Allah by establishing the Islamic order and by practicing the teachings of Sharī'ah in every field of life and thus, establish a model Islamic society on the earth. To establish a just society, Islam introduced historic radical changes to upgrade the contemporary status of women because prior to Islam, women was just considered as an object only and was treated by men in disgraced manners. Moreover, In Arab, daughters were being buried alive at the moment of their birth. When news of birth of any female brought to any of them, he felt sorrow and grief. He tried to hide himself from the people because of such bad news. The Qur'an has expressed it in these wordings:” And when the girl-child who was buried alive, ask: For what sin she was killed?” In those dark days, Islam placed the question of women among the first human problems and resolved with extreme courage, firmness and certainty. Islam lifted women from the lowest condition to the highest level of social hierarchy and gave her entire capacity to be equal to men. By saying that women are the sisters of men, Islam acknowledged her full capacity in the exercise of rights whether social or economical. Islam's primary focus is on the individual and his action

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in this world. To protect and stabilize the individual, Islam has established a complete social development.

Concept of Marriage/*Nikah* and its Objectives in the Light of Shari'ah Provisions

Throughout the world family is considered a unit of a society and tended to form around marriage. In Western Family System, marriage is considered a legally sanctioned relationship, usually involving economic cooperation as well as sexual activity and childbearing that people expect to be lasting. In a western society marriage is generally based upon the idea of romantic love and affective individualism where couples are expected to develop mutual affection based on personal attraction and compatibility.

In the family system of Islam, marriage or *nikāh* has been practicing since the time of Ādam (pbuh) and it has been declared by the Holy prophet (pbuh) as a Sunnah of all the prophets. The word *Nikāh* is used corresponding to the term matrimony or marriage. The marriage or *Nikāh* in Islamic legal system is defined as contract between two individual where wife and husband both give their consent to be confined towards each other for the purpose of sexual relations and procreation of a generation. Thus, Islam ties a strong relationship between two individuals by way of marriage and made it a source of re-production. The Qur'an mentions this blessing of God by saying: "And Allah has made for you mates of your nature, and made for you out of them, sons and daughters and grand children and provided for you sustenance of the best." For this Islam demands to practice many moral and ethical values, we have a clear provisions of Qur'an and *Sunnah* which indicate that parents are under heavy duties while bringing up their children. So, this newly married couple base a family by creating new generation.

In Islamic law, marriage is considered as a type of civil contract the prime component of which is free consent of both parties (man and woman). The Holy prophet once said: "For lovers the best thing is *Nikāh*." It leads that *Nikāh* will not be valid if it is based on the element of coercion or force without the consent of either male or female. The contract of marriage in Islamic family system demands that the each party must dedicate his/her love, loyalty and faithfulness to the spouse and to train children in the light of the Islamic norms to enable them to explore this universe. In this way, relations between husband and wife are characterized by reciprocal rights and duties. Further, the Qur'ānic verses clearly described that wife and husband both are like a dress (*Libās*) for each other the function of which is to cover and to protect the secrets of body. It is stated in the Qur'an: "هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ"

(They are your dress and you are theirs').

According to their natural capacities and demands, Islam has separated the limitations of their duties. Originally, wife is responsible only to please her husband and to bring up her children. Islam declares her free from all economical responsibilities and protects her rights by way of maintenance, mehr/dower and inheritance. The liability of maintenance is incumbent on man to assume him a guardian and a caretaker of his family. It is stated in the Qur'an:

الرجال قوا مون على النساء بما فضل الله بعضهم على بعض و بما انفقوا من اموا لهم

This sacred text means that men are the guardian or maintainers of women because God has given the one more strength than the other and because they maintain them from their means. Husband is responsible not only to maintain her but to fulfill demands of a happy family life with all his resources and to think how to earn and to spend on his family.

Objectives and Purposes of *Nikāh* in Islam

The marriage or family system of the west has certain objectives that are different from the objectives of *Nikah* in Islam in many aspects. The first object is personal attraction to last already existing love and affection between the two individuals. The couple however, has

expectation of love and intention from each other on equal basis. Another purpose of marriage is to provide a respectable social status to illegitimate children, if there is. As we know that in a western society mutual sexual relationship is not prohibited and usually individuals think about marriage after many years of their relationship. In many cases a couple decides to get marry after delivery of an illegitimate child. Evidences show that the ratio of extra-marital birth is greater than legal one. The third important purpose of marriage is economic cooperation of couple on equal basis. Both husband and wife are equally responsible to run their household responsibilities and to spend to maintain their family. The less importance is given to produce children and to increase human population. However, Functionalists believe that marriage is vital in producing the next generation because it regulates and legitimizes sexual activity. It allows procreation and the socialization of children into the culture, attitude and beliefs of their society, providing emotional as well as economical support and security, where in they act as an economic unit to meet the basic needs of its members.

So far as concerned, the objectives of *Nikāh* in Islam they are unique in the sense that all the objectives and all rights and duties of the couple have been prescribed by way of divine legislation i.e. Qur'ān and Sunnah and thus spouse cannot refute his/her fundamental duties and responsibilities and cannot expect extra demands from other. To set up a stable and strong family in a society, Islam emphasizes on love, affection, tolerance and cooperation of couples. The objectives of marriage in Islamic law can be studied as:

Safety from the Devil

The first and primary purpose of *Nikāh* in Islam is that it is a source to save the character, moral fiber, purity and chaste of couple. It is a way to control sexual enthusiasm. The prophet said: “If a man marries, half of his religion is saved”.

It is stated in the Qur'ān: تلك حدود الله فلا تعتدوها

This verse warns the couple that these are the limits ordained by Allah Almighty, so do not transgress them (2:229). Once the Prophet said: O! People do *Nikah* if you have capability to do because it is a source to secure eyes and chaste. But who has no capability to get marry he should keep fast/Şawm because fasting is shelter against sin”.

Love & Affection

The second purpose of marriage is to get pleasure and satisfaction from each other and to enhance love and affection between the couple. The Qur'ān declares this relationship a source of peace and love. It is stated in the Qur'ān:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ

بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ﴿٧١﴾

This verse means that among His (God's) signs is this that He created for you mates from among yourselves that you may dwell in tranquility with them and He has put love and mercy between you. Verily in that are signs for those who ponder. In this context once the prophet (pbuh) said: “Three things are dear to me among your worldly matters—scent, woman and prayer, the later is the doll of my eyes. So marriage is necessary for peace of mind.” It leads that re-production is not sole purpose of marriage rather love and affection provide base to create new generation and to achieve the ultimate goal that is to establish a just and peaceful human world order.

Fertility

The third purpose of marriage is fertility, to increase the number of human being. This is the object of God proved through creation of man and woman. This is the object to preserve dynasty and the earth which cannot exist without man. The prophet (pbuh) proved it by saying: 'Marry and keep dynasty.' Another Hadith is that the prophet said; 'If a man cohabit

his wife, the reward of producing a child is written for him—such a child who becomes martyr fighting in the way of God.’

Contribution of Wife towards the duties of Husband

The fourth purpose is the performance of divine service by wife, who lessens the duties of husband. She gives leisure to her husband by performing household duties and satisfies his sexual passion. The prophet (pbuh) said: ‘Let one of you have a grateful heart, a remembering tongue and a chaste wife helping him for the next world.’

Formation of Society

The last purpose of marriage is establishment of a family and then a society on the earth. A man works hard and earns money to spend for his family. The prophet said: ‘God loves the poor man having a big family and refraining from begging.’

Section Two:

An Analysis of Pakistani Nikah Namah from the Perspective of the Qur’an and the Sunnah

Family law means legal rules which govern formation of marriage, its dissolution, rights, obligations and capacities of spouses, relationship between parents and children, marital property, child custody or guardianship and inheritance. The objective of family law is to distribute rights and duties between husband and wife, parents and children and among other family members such as sister, brother and so on.

Talking about the history of codification of the family laws, it is a recent development almost in all the legal systems of the western world and before this the family matters were considered as non-state laws and were consisted of tribal and customary rules and administered by tribal chief and religious officials. It was during the 20th century when family laws were considered as a part of legal studies and many of the countries tried to codify family laws to promote sex equality and rights of individuals. Most European and North American countries reformed their family laws in the mid- to late-twentieth century to eliminate religious and traditional influence and to promote women’s participation in the labour force.

Although the Qur’an and the Sunnah consisted of broader and general principles regarding each issue of the life and provided a codified divine document in the form of the Qur’anic verses and prophetic Sunnah yet many of the Muslim countries adopted narrow and traditional juristic opinions to solve the family issues of the contemporary people particularly, in British colonies where male dominated societies were existed and multiple legal systems were being operated such as statutory, customary, and religious laws of different nations. However, codification of family laws started in the Asian countries during the late 20th century.

Codification of Muslim Family Laws in Pakistan

In Pakistan family issues regarding marriage, divorce and other family matters remained uncodified and were dealt in traditional manners since 1961. An issue of polygamy caused to force the contemporary government of Pakistan to codify family laws when Prime Minister of Pakistan Muhammad Ali Bogra remarried against the wishes of his first wife (who was an APWA activist). As a result, a movement was started to codify family laws pertaining to nikah, divorce child custody and remarriage etc and a Commission on Marriage and Family Laws headed by Justice Abdur Rashid was established to secure the rights of the women. In 1955, the Commission prepared a Report and adopted liberal rule of interpretation and thus opposed by some traditional religious sects. Muslim Family Laws Ordinance, 1961 regulates rights of husband and wife regarding marriage, divorce and polygamy. Sub-section 5 of Section 5 of the Ordinance, 1961 deals with the registration of marriage and form of *Nikah*

Namah and describes that each Union Council may preserve the register consisted of forms of *Nikah Namah* and manners in which the marriage will be registered.

The concept of written document or registration is found in the Qur'ān. It is stated in the Qur'ān:

وَلَا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ

It means that don't be lazy /sluggish to write-down your agreements micro or macro along with their time limitation because it is just and fair before Allah Almighty. Although during the early period of Islam, the contract of marriage was not written down yet it had to be held in an authentic way and announcement of marriage was declared a necessary condition for the validity of a marriage contract. The Qur'ān and Sunnah declared presence of two witnesses and gathering necessary on the occasion. In this way, announcement of marriage is a compulsory element of *Nikāh*. Moreover, during the lifetime of the Prophet people came to the prophet expressed their intention to send messages of *Nikāh* or informed him regarding engagement and the Holy Prophet had to order to call people on the ceremony and then had to solemnize/ *khuṭbah* ceremony. This was in fact registration of the marriage which later endorsed in writing. A *hadith* is being reported that the Holy Prophet (pbuh) once said: "Pronounce *Nikāh* and for that the best place is mosque." In Pakistan the issue of registration remained controversial and despite of the clear provision (Section 5 of the Muslim Family Law Ordinance, 1961), Pakistani judiciary has had to set aside the condition of the registration of *nikah* in a number of cases to secure those couple who could not register their marriage due to this and that. For instance, in a case (1988), the Sind High Court decreed that since an unregistered *nikah* was acceptable under *Shari'at*, the accused couple were not living in sin. Subsequently the Federal *Shari'at* Court, accepting the Sind High Court verdict, ruled against Section 5 of the Ordinance.

An Analysis of the Columns of *Nikāh Nāmah*

Columns: 1-6

Column 1 deals with the name of Ward, Union Council, Tehsils/Thana and district in which the marriage took place. Columns 2-6 deal with the personal information of bridegroom (Dulhā) and bride (Dulhan) etc. It includes their parentage, name, age and status such as regarding the bride whether she is a maiden, divorcee or widow. In case of divorcee or widow then detail of her children is also required. But **there is no provision regarding the education and professional skill** of the parties.

Column 7-12

Columns 7-12 of *Nikāh Nāmah* deal with the issue of appointment of **Attorney/Vakīl** on behalf of the bride and bridegroom and the wording of the article is "whether any **Attorney/Vakīl** has been appointed by them? If so, then the names and description of the witnesses to the appointment of **Vakīl** is also required."

The wording of the column reveals that the appointment of an attorney is optional not compulsory. In this way, *Nikāh Nāmah* deals only with mature parties (who got puberty and have discretion) and immature or minors are not subject to *Nikāh Nāmah*. It is however, an ambiguous column and does not make it clear whether the **Vakīl** is **Walī**/guardian or not? Further, it is not clear that in case of immature parties what is the role of **Vakīl**? Whether he performs the role of **Walī**/guardian in such a case? Column, 11 requires witnesses to the marriage which shows that they should be other than witnesses to the attorney. This column however, needs some clarification. The Shar'ī validity of this column is that it is based on *Ḥanafī Madhhab* and allows a mature person male or female to marry without the permission and consent of his/her **Walī**. According to **Ḥanafī Madhhab** a guardian even if he is father cannot compel his daughter/virgin or otherwise to marry or a person whom he/she dislikes or disagrees. The question of **Walī** arises only in case of immature (Nā bāligh) ward. However, the traditional Muslim jurists have different opinions regarding the status and role of **Walī**

regarding the selection of a suitable person to marry. Unlike *Jamhūr al-'Ulamā*, Imam Abū Ḥanūfah and Imam Abū Yūsuf opined that a female/virgin who reached puberty and got discretion does not require permission of Walī regarding her marriage and can get marry without the consent of here *Walī*/ guardian or attorney if she selects a person equal to her status/*Kufw*. The only condition imposed by Ḥanafī *madhhab* for the validity of marriage in such a case is that the person selected by woman must be equal in status and living standard of female or he must fulfill the requirements of *Kufw*. In case of inequality the *Walī* will have right to file a case for cancelation of marriage. The logic behind this verdict is that when a woman gets puberty and discretion she becomes eligible to enter into a contract and marriage is also a contract. Moreover, there are number of *ahādīth* which have been produced in favour of this opinion. It is evident that during the life time of the prophet many cases regarding the authority of *Walī* were held in favour of the girl and against the decision of *Walī*/Father. For example, once a case of a girl Khansah bint Khaddām brought before the prophet that her marriage was decided by her father with a man whom she disliked. The Holy Prophet (pbuh) declared the decision of the father null and void and decided the case in favour of the girl. Likewise in another *hadīth* it is reported from Abū Hurayrah that the Holy prophet (pbuh) declared: “Do not marry a virgin unless you confirm her consent.” Column 12 requires mentioning of date on which the marriage was contracted.

Column: 13-16

Column, 13-16 deal with the issue of **Dower** for which the wife is entitled to receive from the husband in consideration of the marriage. It is an obligation of husband to pay dower but it is not conditional for the validity of marriage. The concept of dower has its origin in the divine revelation. It is stated in the Qur'ān:

” وَأَتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا . .

(And pay dower/Ṣadaqah to women. . .)

Dower is a necessary component of the contract of marriage and a woman can deny to entrust herself to husband until the payment of dower. There however, is no hard and fast rule regarding the fixation of dower. The quantity of dower is dependent upon the financial capacity, standard of living of both parties, and means of earning and social condition of society. Likewise, it has different forms and it may be money, a property moveable or immovable, service and benefit etc. It is stated in the Qur'ān:

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمْ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا
 لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدَرَهُهُ وَعَلَى الْمُقْتَرِ قَدَرَهُهُ
 مَتَّعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ ﴿٢٣٦﴾

This verse means that the wealthy according to his means and strained according to his means.

In another text God declares:

وَإِنْ أَرَدْتُمْ أَنْ تَبْدُلُوا زَوْجَكُمْ مَكَانَ زَوْجِكُمْ وَعَاقِبْتُمْ إِحْدَهُنَّ
 قِنطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونََهُ بِهَتَّانَا وَإِنَّمَا
 مُبَيَّنًا ﴿٢٣٧﴾

This verse means that if you intend to replace a wife by another wife and you have given any one of them a *qinṭār* (Treasure or great amount as mehr) of gold take not the least bit of it back.” On the basis of this text Hadrat Umar was forbidden by a woman when he intended to fix upper limit of mehr due to increase demands of women. This is the reason that the Muslim

jurists are unanimously agreed upon non-fixation of upper limit of dower. They however, differed regarding the minimum limit of dower. Imam Malik set out a quarter dinar of gold or three dirham of silver (Equal to Nisab of theft) while Abu Hanifah set ten dirham as minimum limit of dower. The wording of the column 13 is about specification of the amount of dower? Article 14 is about the types of dower. It asks about what amount of dower is prompt (*Mu'ajjal*) and what portion is deferred (*Ghayr Mu'ajjal*)? Prompt dower is payable at the conclusion of marriage contract and declared as *Muqaddam* while deferred dower is payable at the termination of marriage and called as *Mu'akhkhar* and serves as bona fide protection in case of divorce. The language of article 15 means whether some part of the amount of dower has been paid at the time of marriage and if so, how much? Article 16 says: "Whether any property has been given in lieu of the whole or any portion of the dower? Column 16 states: "If so, specify and identify the market value of the property and other description is as agreed to between the parties?"

Column: 17

This column demands to specify **special condition or privilege** if any?

Column: 18

This column deals with the issue of **delegated divorce**. The wording of column 18 is whether husband has delegated his **right** of divorce to his wife and if so, under what conditions? It can be limited with time or unlimited. In this case, the husband authorizes her wife to divorce herself on his behalf but it does not curtail the fundamental right of husband to divorce her wife. The issue of delegated divorced was not raised during the lifetime of the prophet rather it has its origin in the understanding and interpretation of the verse of the Qur'an relating to the wives of the prophet. It is stated in the Holy Qur'an:

يَا أَيُّهَا النَّبِيُّ قُلْ لِأَزْوَاجِكَ إِن كُنْتُنَّ تُرِدْنَ الْحَيَاةَ الدُّنْيَا
وَزِينَتَهَا فَتَعَالَيْنَ أُمَتِّعْكُنَّ وَأُسْرِحْكِنَّ سَرَاحًا جَمِيلًا ﴿٢٨﴾

This verse declares: "O prophet! Say to your wives, If you wish the life of the world and its adornment, then come, I provide you wealth and leave you in a well manner" The companions differed over the interpretation of the wording of the text. Some of them took the verse as a general rule and interpreted the relevant wording in the meaning of delegation and declared that this verse authorizes a husband to delegate his authority of divorce to his wife. The other group including Hadrat Umar declared the text as specific dealing with the issue of the wives of the prophet and interpreted the wording of the text in the meaning of "takhyir/choice between the life of the world, its adornment and companionship of the prophet. Among the traditional Muslim jurists Jamhur al-Ulama declared delegated divorce as permissible made it a general rule while Zahiriyah opposed it. Likewise the Muslim jurists differed regarding the affects/hukm of the delegated divorce. Some of them declare it as *Talaq Raj'i* or revocable while others considered it as Bain or irrevocable.

Column: 19

This column deals with the **right of husband regarding divorce** and asks whether any condition has been imposed upon the husband to exercise his right of divorce? On this issue the Muslim jurists have different opinions. It is stated in the Qur'an:

وَالْمُطَلَّاتُ مَتَّعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ ﴿٢٤١﴾

This text means that divorcee should be given gift/Mata' according to the customs of a society.

Column: 20

This column deals some special **documents drawn** up at the time of marriage regarding dower, **maintenance** and demands to mention briefly the contents of the document. Like dower the maintenance of wife is an obligation upon husband who cannot deny maintenance of his wife. The validity of this obligation is found in the Qur'ān and Sunnah. It is stated in the Qur'ān:

و علي المود له رزقهن و كسوتهن“ .

The fixation of maintenance will be done in the light of the circumstances of both parties and is dependent upon the living standard of female and includes all living needs of the wife. Further, if husband can afford she can demand a servant to serve along with other fundamental needs. In this case this will be the duty of husband to arrange for servant.

Column: 21-22

These columns deal with the issue of **polygamy** or second marriage and the status of the bridegroom (Dulhā) whether he has any **existing wife** and if so, whether has secured the permission of the Arbitrary Council under the Muslim Family Laws Ordinance, 1961, to contract another marriage? It also deals with the status of bridegroom whether he is divorced or widower and if so, how many children he has from his ex/late wife/wives? Column 22 requires mentioning of the specification of the permission of the Arbitration Council.

The Shari' validity of this column is a matter of contention between traditional and modern liberal Muslim jurists. The verses of the Qur'an regarding polygamy areas:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً

The verse of the Qur'ān means as: “And if you fear that you shall not be able to deal justly with the orphan girls then marry women of your choice, twodealr three or four; but if you fear that you shall not be able to del justly (with them) then only one or (slaves) that your right hand possesses. That is near to prevent you from injustice.”

Another verse declares:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمِيلِ فَتَدْرُوهَا كَالْمُعَلَّقَةِ وَإِنْ تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا .

“You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them, so as to leave the other hanging.”

This verse further makes it clear that to do just among the co-wives is beyond the capacity of men even if they have utmost desire.

Unlike traditional Muslim jurists who interpreted the verse related to the permission of co-wives as a general rule and applied to all the women and allowed men to marry up to four wives without any condition, the modern scholars such as 'Abduh, Rashid Rida and Fazlur Rahman etc., declare the above text as specific related to only orphan girls and widows and under specific circumstances. The traditional jurists took the permission of polygamy issued under specific circumstances as a general rule and applied to all women under all circumstances and declared polygamy permissible for a husband whereas the demand to do justice was considered to be mere recommendation, far of any binding effect by ignoring the fact that the Lawgiver Himself (Allah Almighty) declared justice among co-wives impossible and beyond the capacity of a husband. By doing so the traditional Muslim jurists turned the issue of polygamy right on its head, taking a specific verse to be binding and the general principle to be a recommendation. In this way they overruled and neglected the core principle of interpretation that in deducing general principles of different orders from the Qur'an, the most general becomes the most basic and the most deserving of implementation, while the specific rulings will be subsumed under them.

In the same manners another contemporary Muslim jurist Muhammad 'Abduh rejected the traditional literal interpretation of this text and re-constructed it on the basis of rational reasoning by emphasizing on the later part of the verse “but if you fear that you shall not be

able to del justly (with them) then only one”, and argued that in history and in current period, no one except the Prophet, could treat two or more wives with complete equality and justice; moreover under modern social and economic conditions a man is unable to treat them equally and justly hence, it is reasonable and rational to consider that the latter part of the verse which emphasized on equal treatment among the four wives supersedes the earlier part to permit a man to marry more than one wife without any proved genuine condition or in an exceptional case, such as incapability of existing wife to perform conjugal rights. To fulfill the prerequisite of polygamy (equality and justice) is impossible for a husband and it is therefore polygamy is prohibited absolutely.

Column: 23-26

This column deals with the detail of the person with whom marriage was solemnized (Nikāḥ Khawān) and date of registration of marriage, fee, signature of the bridegroom, his *Vakīl*, witnesses and signature of the bride, her *Vakīl*, witness and lastly, a seal of the Nikāḥ Registrar etc.

Recommendations and Suggestions

In the light of this analysis, this article suggests some recommendations such as:

- **In columns 2-6** the provision regarding the educational and professional skills of the parties to the contract of marriage should be added. The person who has no job or any other means of earning should be prevented from marriage. The detail of the husband property and type of profession should be mentioned and dower amount of dower should be fixed in the light of the detail provided by husband at the time of marriage contract. It was the Sunnah of the prophet and whenever a person came to him for purpose of his marriage, the Holy prophet inquired into all his detail especially regarding his financial condition and means of living and thus decided the case accordingly. In case of a female having children from ex-husband means of their living should be described in the Nikāḥ Nāmāh. Moreover, to produce medical fitness certificate should be declared compulsory for parties and in case of chronic diseases such as HIV and AIDs, the concerned person should be declared prevented from marriage.
- Wording of **columns 7-12** should be made clear and unambiguous. **Additional** wording should be added regarding the status of *Wali* and his authority whether he is performing his role as *Wali Mujbir* or *Ghayr Mujbir*?
- In column **17**, **17-A** should be added which may describe whether it is an exchange marriage (*Wattah Sattah*) and if so, what guarantee that dissolution of marriage of one couple may not affect the other? Further, **17-B** should be added which may ensure that in case of divorce, the liability of husband regarding maintenance will be continued till second marriage of the ex-wife.
- **An additional column** regarding *Kufw* should be added because the Holy prophet (pbuh) emphasized on this element especially in favour of female and the Muslim jurists agreed upon this issue. This will protect the right of both female and *Walī* and will reduce the risk of breakdown as in many cases the marriage cannot continue due to mismatch and inequality between the living standard and educational and professional skills of the parties.
- To **protect working woman**, an additional column should be added to make it clear that husband may not force her to leave job or to give him her salary. Many of working women are forced either to leave job or to give whole salary to the husband and this is one of the many causes behind the rapid increase in ratio of divorce and separation cases in Pakistan.

- In column 19, column 19-A should be added and divorce out of court should be declared prohibited. It will protect wife and provide to husband sufficient time to think and to exercise his right without any solid reason.
- In column **21, 21-C should be added** the wording of which may be “In case of existing wife and children what are the means of their maintenance? This provision should be mentioned along with other detail.
- In column **22, 22-A** should be added and second marriage should be made conditional under specific circumstances and in case of dire necessity such as where existing wife cannot produce children or unable to perform conjugal rights due to sickness.
- It should be clearly mentioned in *Nikah Namah* that any wrong information regarding the status of parties, living standard, property and means of earning of husband will be punishable by law.
- Parents and Female should read the wording of *Nikah Namah* carefully before their marriage and should not leave any column unfilled.
- Muslim Family laws should be made part of education at graduate level to provide correct knowledge of Sharī'ah regarding matrimonial rights of female.

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