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Marriage (Part I of II)

* The relation between man and woman becomes lawful by contracting marriage. There are two kinds of marriages:

(i) Permanent marriage

(ii) Fixed-time marriage

In a permanent marriage, the period of matrimony is not fixed, and it isforever. The woman with whom such a marriage is concluded is called da'ima (i.e. a permanent wife).

In a fixed time marriage (Mut'ah), the period of matrimony is fixed, for example, matrimonial relation is contracted with a woman for an hour, or a day, or a month, or a year, or more. However, the period fixed for the marriage should not exceed the span of normal lives of the spouses, because in that case, the marriage will be treated as a permanent one. This sort of fixed time marriage is called Mut'ah or Sigha.

Marriage Formula

Issue 2372: * Whether marriage is permanent or temporary, the formal formula must be pronounced; mere tacit approval and consent, or written agreement, is not sufficient. And the formula (Sigha) of the marriage contract is pronounced either by the man and the woman themselves, or by a person who is appointed by them as their representatives to recite it on their behalf.

Issue 2373: The representative should not necessarily be a male. A woman can also become a representative to pronounce the marriage formula.

Issue 2374: * As long as the woman and the man are not certain that their representative has pronounced the formula, they cannot look at each other as Mahram (like husband and wife), and a mere probable suspicion that the representative might have pronounced the formula is not sufficient. And if the representative says that he has pronounced the formula, but his assertion does not satisfy the parties concerned, it will not be deemed sufficient.

Issue 2375: If a woman appoints a person as her representative so that he may, for example, contract her marriage with a man for ten days, but does not specify the day from which the period of ten days would commence, the representative can contract her marriage with that man for ten days from any day he likes. However, if the representative knows that the woman intends a particular hour or day, he should pronounce the formula according to her intention.

Issue 2376: One person can act as the representative of both sides for reciting the formula of permanent or temporary marriage. It is also permissible that a man may himself become the representative of a woman and contract permanent or temporary marriage with her. However, the recommended precaution is that two separate persons should represent each side, for the formula of marriage contract.

The Method of Pronouncing the Marriage Formula

Issue 2377: * If a woman and a man themselves want to recite the formula of permanent marriage, the woman should first say: Zawwajtuka nafsi 'alas sidaqil ma'lum (i.e. I have made myself your wife on the agreed mahr), and then the man should immediately respond thus: Qabiltut tazwij (i.e. I accept the marriage). In this way, the marriage contract will be in order. And if a woman and a man appoint other person to act as their representatives for pronouncing the formula of marriage, and if, for example, the name of the man is Ahmad and that of the woman is Fatimah, the representative of the woman should first say: Zawwajtuka muwakkilaka Ahmad muwakkilati Fatimah 'alas sidaqil ma'lum (i.e. I have given to your client Ahmad in marriage my client Fatimah on the agreed mahr) and thereafter the representative of the man should immediately respond thus: Qabiltut tazwijali Muwakkili Ahmad 'alas sidaqil ma'lum (that is, I accepted this matrimonial alliance for my client Ahmad on the agreed Mahr). Now the marriage contract is in order. And, on the basis of recommended precaution, it is necessary that the words uttered by the man should conform with those uttered by the woman; for example, if the woman says: Zawwajituka ..... (i.e. I have made myself your wife) the man should also say: Qabituttazwija .....(i.e. I accept the matrimonial alliance) and not Qabitun Nikaha.

Issue 2378: * It is permissible for a man and a woman to recite the formula of the temporary marriage (Mut'ah), after having agreed on the period of marriage and the amount of Mahr. Hence, if the woman says: Zawwajtuka nafsi fil muddatil ma'lumati 'alal mahril ma'lum (i.e. I have made myself your wife for an agreed period and agreed Mahr), and then the man immediately responds thus: Qabiltu (i.e. I have accepted), the marriage will be in order. And the marriage will also be in order if they appoint other persons to act as their representatives. First, the representative of the woman should say to the representative of the man thus: Matta'tu muwakkilati muwakkilaka fil muddatil ma'lumati 'alal mahril ma'lum (i.e. I have given my client to your client in marriage for the agreed period and the agreed Mahr), and then the representative of the man should immediately respond thus: Qabiltut tazwija li muwakkili hakaza (i.e. I accepted this matrimonial alliance for my client this way).

Conditions of Pronouncing Nikah

Issue 2379: * There are certain conditions for the Nikah recited for marriage. They are as follows:

(i) On the basis of precaution, the formula (Nikah) of marriage contract should be pronounced in correct Arabic. And if the man and the woman cannot pronounce the formula in correct Arabic, they can pronounce the Nikah in any other language, and it is not necessary to appoint any representatives. But the words used in translation must convey strictly the meaning of “Zawwajtu” and “Qabiltu”.

(ii) The man and the woman or their representatives, who recite the Nikah, should have the intention of Insha' (i.e. reciting it in a creative sense, making it effective immediately). In other words, if the man and the woman themselves pronounce the formula, the intention of the woman by saying: Zawwajtuka nafsi' should be that she effectively makes herself the wife of the man; and by saying: “Qablitut tazwija” the man effectively accepts her as his wife. And if the representatives of the man and the woman pronounce the Nikah, their intention by saying: 'Zawwajtu' and 'Qablitu' should be that the man and the woman who have appointed them as their representatives, have effectively become husband and wife.

(iii) The person who pronounces the Nikah (whether he pronounces it for himself or has been engaged by some other person as his representative) should be sane, and as a precaution, he should be baligh also.

(iv) If the Nikah is pronounced by the representatives or the guardians of the man and the woman, they should identify the man and the woman by uttering their names or making intelligible signs towards them. Hence, if a person has more than one daughters, and he says to a man: Zawwajtuka Ihda Banati (i.e. I have given away one of my daughters to you as your wife) and the man says: Qabiltu (i.e. I have accepted) the marriage contract is void, because the daughter has not been identified.

(v) The woman and the man should be willing to enter into a matrimonial alliance. If, however, the woman ostensibly displays hesitation while giving her consent, but it is known that in her heart, she is agreeable to the marriage, the marriage is in order.

Issue 2380: If, while reciting the Nikah, even one word is pronounced incorrectly, as a result of which its meaning is changed, the marriage contract would be void.

Issue 2381: * If a person pronouncing Nikah comprehends its general meaning, and has a clear intention of effecting that meaning, the Nikah will be valid. It is not necessary for him to know the exact meaning of each word, or to know the laws of Arabic grammar.

Issue 2382: If Nikah of a woman is pronounced to a man without her consent, but later both man and woman endorse the Nikah, the marriage is in order.

Issue 2383: If the woman and the man, or any one of them, is coerced into matrimony, and they give

consent after the Nikah has been pronounced, the marriage is in order, although it is better that the Nikah be repeated.

Issue 2384: * The father and the paternal grandfather can contract a marriage on behalf of his minor son or daughter, or on behalf of an insane son or daughter, if they are baligh. And after the children have become baligh or the insane has become sane, he can endorse or abrogate it, if the contracted marriage involves any moral lapse or scandal. And if the marriage contract does not involve any moral lapse or scandal, but the na-baligh son or daughter calls off the marriage, then as an obligatory precaution, a Talaq or a renewed Nikah, whatever the case may be, must be recited.

Issue 2385: * If a girl has reached the age of bulugh and is virgin and mature (i.e. she can decide what is in her own interest) wishes to marry, she should, obtain permission from her father or paternal grandfather, although she may be looking after her own affairs. It is not, however, necessary for her to obtain permission from her mother or brother.

Issue 2386: * In the following situations, it will not be necessary for a woman to seek the permission of her father or paternal grandfather, before getting married:

(i) If she is not a virgin.

(ii) If she is a virgin, but her father or paternal grandfather refuse to grant permission to her for marrying a man who is compatible to her in the eyes of Shariah, as well as custom.

(iii) If the father and the grandfather are not in any way willing to participate in the marriage.

(iv) If they are not in a capacity to give their consent, like in the case of mental illness etc.

(v) If it is not possible to obtain their permission because of their absence, or such other reasons, and the woman is eager to get married urgently.

Issue 2387: * If the father or the paternal grandfather contracts marriage on behalf of his na-baligh son, the boy, upon attaining bulugh, should pay maintenance of his wife. In fact, he should start paying her maintenance before becoming baligh, when he is able to consummate the marriage. And the wife should not be too young to have any sexual relation with the husband. And in the situation other than these, there is a strong indication that she is entitled to maintenance from the husband, therefore a compromise should be carried out as a precaution.

Issue 2388: * If the father or the paternal grandfather contracts a marriage on behalf of his na-baligh son, they should pay the Mahr if the boy does not own any means, or if either of them undertakes to pay the Mahr himself. In other situations, the father or the paternal grandfather can pay Mahr from the boy's wealth, but it should not exceed the proper usual Mahr customarily given in similar cases. But if the circumstances demand that higher Mahr be paid, they can pay it from the boy's wealth, and not otherwise, unless the boy approves it after having become baligh.

Occasions When Husband or Wife Can Nullify Nikah

Issue 2389: * If the husband comes to know after Nikah that his wife had, at the time of Nikah, any one of the following six deficiencies, he can annul the marriage:

(i) Insanity, even if it is intermittent.

(ii) Leprosy

(iii) Leucoderma

(iv) Blindness

(v) Being crippled, even if it is not to the extent of immobility.

(vi) Presence of flesh or a bone in the woman's uterus, which may or may not obstruct sexual intercourse or pregnancy. And if the husband finds that the wife at the time of Nikah, suffered from 'Ifdha' – meaning that her urinary and menstrual tract have been one, or her menstrual passage and rectum have been one, he cannot annul the marriage. As an obligatory precaution, he will have to pronounce talaq if he wants to dissolve the marriage.

Issue 2390: * A woman can annul the Nikah in the following cases, without obtaining divorce:

(i) If she comes to know that her husband has no male organ.

(ii) If she finds that his penis has been cut off before or after the sexual intercourse.

(iii) If he suffers from a disease which disables him from sexual intercourse, even if that disease was contracted after the Nikah, or before or after the sexual intercourse.

Issue 2390: * In the following situations, if a wife refuses to continue with the matrimony and wishes to dissolve the marriage, then as a matter of precaution, the husband or his guardian will solemnise the divorce:

(i) If she comes to know after the Nikah, that the husband was insane at the time of Nikah; or if he becomes insane after the Nikah, before or after consummation of the marriage.

(ii) If she finds out that at the time of Nikah, the husband had been castrated.

(iii) If she learns that he suffered at the time of Nikah from leprosy or leucoderma.

Note: And if the husband is incapable of sexual intercourse, and she wishes to annul the marriage, it will be necessary for her to approach the Mujtahid or his representative, who may allow the husband a period of one year, and if it is found that he was not able to have sexual intercourse with her or with any

other woman, the wife can annul the marriage.

Issue 2391: * If the wife annuls the marriage because of the husband's inability to have sexual intercourse, the husband should give her half of her Mahr. But, if the man or the wife annuls the marriage because of one of the other deficiencies enumerated above, and if the marriage has not been consummated, he will not be liable for anything. But if the marriage was consummated, he should pay her full Mahr. If the husband annuls the marriage due to the deficiencies mentioned in rule 2389, he will not be liable for anything if he has not had sexual intercourse with her. But if he has had sexual relation with her, then he has to pay full Mahr.

Women With Whom Matrimony is Haraam

Issue 2393: Matrimonial relation is haraam with women who are one's Mahram, for instance, mother, sister, daughter, paternal aunt, maternal aunt, niece (one's brother's or sister's daughter) and mother-in-law.

Issue 2394: If a man marries a woman, then her mother, her maternal grandmother, her paternal grandmother and all the women as the line ascends are his Mahram, even if he may not have had sexual intercourse with the wife.

Issue 2395: If a person marries a woman, and has sexual intercourse with her, the daughters and grand-daughters (daughters of sons, or of daughters) of the wife and their descendants, as the line goes low, become his Mahram, irrespective of whether they existed at the time of his marriage, or were born later.

Issue 2396: If a man marries a woman, but does not have sexual intercourse with her, the obligatory precaution is that as long as their marriage lasts, he should not marry her daughter.

Issue 2397: The paternal and maternal aunt of a man, and the paternal and maternal aunt of his father, and the paternal and maternal aunt of his paternal grandfather, and the paternal and maternal aunt of his mother, and the paternal and maternal aunt of his maternal grandmother, as the line ascends, are all his Mahram.

Issue 2398: The husband's father and grandfather, however high, are the wife's Mahram. Similarly the husband's sons and the grandsons (son of his sons or of daughters), however low, are her Mahram, regardless of whether they existed at the time of her marriage or were born afterwards.

Issue 2399: If a man marries a woman (whether the marriage be permanent or temporary) he cannot marry her sister, as long as she is his wife.

Issue 2400: If a person gives a revocable divorce to his wife, in the manner which will be explained under the rules relating to 'Divorce', he cannot marry her sister during the Iddah. But if it is an irrevocable

divorce, he can marry her sister. And if it is the Iddah of temporary marriage, the obligatory precaution is that one should not marry his wife's sister during that period.

Issue 2401: A man cannot marry the niece (brother's or sister's daughter) of his wife without her permission. But if he marries his nieces without his wife's permission, and she later consents to the marriage, it will be in order.

Issue 2402: * If the wife learns that her husband has married her niece (brother's daughter or sister's daughter) and keeps quiet, and if she later consents to that marriage, it will be in order. If she does not consent later, the marriage will be void.

Issue 2403: * If before marrying his maternal or paternal aunt's daughter, a person commits incest (sexual intercourse) with her mother, he cannot marry that girl on the basis of precaution.

Issue 2404: * If a person marries his paternal or maternal aunt's daughter, and after having consummated the marriage, commits incest with her mother, this act will not become the cause of their separation. And the same rule applies if he commits incest with her mother after the Nikah, but before having consummated the marriage with her, although the recommended precaution is that in this circumstance he should separate from her by giving her divorce.

Issue 2405: * If a person commits fornication with a woman other than his paternal or maternal aunt, the recommended precaution is that he should not marry her daughter. In fact, if he marries a woman, and commits fornication with her mother before having sexual intercourse with her, the recommended precaution is that he should separate from her, but if he has sexual intercourse with her, and thereafter commits fornication with her mother, it is not necessary for him to get separated from her.

Issue 2406: * A Muslim woman cannot marry a non-Muslim, and a male Muslim also cannot marry a non-Muslim woman who are not Ahlul Kitab. However, there is no harm in contracting temporary marriage with Jewish and Christians women, but the obligatory precaution is that a Muslim should not take them in permanent marriage. There are certain sects like Khawarij, Ghulat and Nawasib who claim to be Muslims, but are classified as non-Muslims. Muslim men and women cannot contract permanent or temporary marriage with them.

Issue 2407: If a person commits fornication with a woman who is in the Iddah of her revocable divorce, as a precaution that woman becomes haraam for him. And if he commits fornication with a woman who is in the Iddah of temporary marriage, or of irrevocable divorce, or in the Iddah of death, he can marry her afterwards, although the recommended precaution is that he should not marry her.

The meaning of revocable divorce and irrevocable divorce, and Iddah of temporary marriage, and Iddah of death, will be explained under the rules relating to 'Divorce'.

Issue 2408: * If a person commits fornication with an unmarried woman and who is not in Iddah, as a

precaution, he cannot marry her till he has sought forgiveness from Allah, and repented. But if another person wishes to marry her before she has repented, there is no objection. If a woman is known as a lewd person, it will not be permissible to marry her till she has genuinely repented, and similarly, it is not permissible to marry a man known for his lustful character, till he has genuinely repented. If a man wishes to marry a woman of loose character, he should, as a precaution, wait till she becomes Clean (tahir/pak) from her menses, irrespective of whether he had committed fornication with her, or anyone else had done so.

Issue 2409: If a person contracts Nikah with a woman who is in the Iddah of another man, and if the man and the woman both know, or any one of them knows that the Iddah of the woman has not yet come to an end, and if they also know that marrying a woman during her Iddah is haraam, that woman will become haraam for the man forever, even if after the Nikah the man may not have had sexual intercourse with her.

Issue 2410: If a person contracts Nikah with a woman who is in the Iddah of another man, and has sexual intercourse with her, she becomes haraam for him forever even if he did not know that she was in her Iddah, or did not know that it is haraam to marry a woman during her Iddah.

Issue 2411: * If a person marries a woman knowing that she has a husband, he should get separated from her, and should also not marry her at any time afterwards. And the same rule will apply, as a precaution, if he did not know that the woman was already married, and had sexual intercourse with her after Nikah.

Issue 2412: If a married woman commits adultery, she on the basis of precaution, becomes haraam permanently for the adulterer, but does not become haraam for her husband. And if she does not repent, and persists in her action (i.e. continues to commit adultery), it will be better that her husband divorces her, though he should pay her Mahr.

Issue 2413: In the case of the woman who has been divorced, or a woman who contracted a temporary marriage and her husband forgoes the remaining period of marriage, or if the period of her temporary marriage ends, if she marries after some time, and then doubts whether at the time of her second marriage, the Iddah of her first husband had ended or not, she should ignore her doubt.

Issue 2414: * If a baligh person commits sodomy with a boy , the mother, sister and daughter of the boy become haraam for him. And the same law applies when the person on whom sodomy is committed is an adult male, or when the person committing sodomy is na-baligh. But if one suspects or doubts whether penetration occurred or not, then the said woman would not become haraam.

Issue 2415: * If a person marries the mother or sister of a boy, and commits sodomy with the boy after the marriage, as a precaution, they will become haraam for him.

Issue 2416: If a person who is in the state of Ehram (which is one of the acts to be performed during

Hajj) marries a woman, the Nikah is void, and if he knew that it was haraam for him to marry in the state of Ehram, he cannot marry that woman again.

Issue 2417: * If a woman who is in the state of Ehram marries a man who is not in the state of Ehram, her Nikah is void. And if she knew that it was haraam to marry in the state of Ehram, as an obligatory precaution, she should not marry that man thereafter.

Issue 2418: * If a man does not perform Tawafun Nisa (which is one of the acts to be performed during Hajj and Umrah Mufradah) his wife and other women become haraam for him. Also, if a woman does not perform Tawafun Nisa, her husband and other men become haraam for her. But, if they (man or woman) perform Tawafun Nisa later, they become halal.

Issue 2419: * If a person contracts Nikah with a non-baligh girl, it is haraam to have sexual intercourse before she has completed her nine years. But if he commits sexual intercourse with her, she will not be haraam for him when she becomes baligh, even if she may have suffered Ifza (which has been described in rule 2389), though as a precaution, he should divorce her.

Issue 2420: A woman who is divorced three times, becomes haraam for her husband. But, if she marries another man, subject to the conditions which will be mentioned under the rules pertaining to 'divorce', her first husband can marry her again after her second husband dies, or divorces her, and she completes the period of Iddah.

Rules Regarding Permanent Marriage

Issue 2421: * For a woman with whom permanent marriage is contracted, it is haraam to go out of the house without the permission of her husband, though her leaving may not violate the rights of the husband. Also she should submit herself to his sexual desires, and should not prevent him from having sexual intercourse with her, without justifiable excuse. And as long as she does not fail in her duties, it is obligatory on the husband to provide for her food, clothes and housing. And if he does not provide the same, regardless of whether he is able to provide them or not, he remains indebted to the wife.

Issue 2422: * If the wife does not fulfil her matrimonial duties towards her husband, she will not be entitled for the food, clothes or housing, even if she continues to live with him. But if she refuses to obey occasionally, the common verdict is that even then she cannot claim any entitlement from her husband. But this verdict is a matter of Ishkal. In any case, there is no doubt that she does not forfeit her Mahr.

Issue 2423: Man has no right to compel his wife to render household services.

Issue 2424: * The travelling expenses incurred by the wife must be borne by the husband, if they exceed her expenses at home, and if she had travelled with the husband's permission. But the fares for travel by car or by air etc. and other expenses, which are necessary for a journey, will be borne by the wife, except when the husband is himself inclined to take her along with him on a journey, in which case

he will bear her expenses also.

Issue 2425: * If the husband who is responsible for the wife's maintenance, does not provide her the same, she can draw her expenses from his property without his permission. And if this is not possible, and she is obliged to earn her livelihood, and she cannot take her case to the Mujtahid, who would compel him (even by threatening him with imprisonment) to pay the maintenance, it will not be obligatory upon her to obey her husband while she is engaged in earning her livelihood.

Issue 2426: * If a man, for example, has two wives and spends one night with one of them, it is obligatory on him to spend anyone of four nights with the other as well; in situation other than this, it is not obligatory on a man to stay with his wife. Of course, it is necessary that he should not totally forsake living with the wife. And as a precaution, a man should spend one night out of every four with his permanent wife.

Issue 2427: * It is not permissible for the husband to abandon sexual intercourse with his youthful, permanent wife for more than 4 months, except when sexual intercourse is harmful to him, or involves unusually more effort, or when the wife herself agrees to avoid it, or if a prior stipulation to that effect was made at the time of Nikah by the husband. And in this rule, there is no difference between the situations when the husband is present, or on a journey, or whether she is a wife by permanent or temporary marriage.

Issue 2428: If Mahr is not fixed in a permanent marriage, the marriage is in order. And in such case, if the husband has sexual intercourse with the wife, he should pay her proper Mahr which would be in accordance with the Mahr usually paid to women of her category. As regards temporary marriage, however, if Mahr is not fixed the marriage is void.

Issue 2429: If at the time of Nikah for permanent marriage, no time is fixed for paying Mahr, the wife can prevent her husband from having sexual intercourse with her before receiving Mahr, irrespective of whether the husband is or is not able to pay it. But if she once agrees to have sexual intercourse before taking Mahr, and her husband has sexual intercourse with her, then she cannot prevent him afterwards from having sexual intercourse without a justifiable excuse.

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