

Fiqh of Nikah

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In the Name of Allah the Most Beneficent, the Most Merciful

(1) Definition of Fiqh

Fiqh linguistically means 'deep understanding'. In Islamic terminology Fiqh means the study of physical rulings along with the detailed evidences.

(2) Basic Fiqh terminologies

Before discussing Nikah, let us understand some basic Fiqh terminologies. In the study of Fiqh, all our physical actions are classified under five broad heading (1) Fard, (2) Mustahab, (3) Mubah, (4) Makruh & (5) Haram.

Shurooth

Shurooth is a precondition of an act, without doing this the act will not be valid.

Fard (Obligatory)

Fard is an act which if we do it we will be rewarded & if we don't do it we will be punished. Fard is divided into two Fard Ayn / Fard Kifayah based on its obligation on the Muslims. It is also divided into Rukun / Waajib based on the actions done during an act of worship.

Fard Ayn

An act is called as Fard Ayn if it is an obligation on each and every Muslim, if anyone does not do it, he is sinful. Example: Five daily prayers.

Fard Kifayah

An act is called as Fard Kifayah if it is an obligation on the community and not on each and every Muslim. In this case if a group of people in a community do it, the sin on the whole community is lifted. But if no one in the community does it, then all are sinful. Example: Funeral prayer.

Rukun

A rukun is an integral of an act which if not done intentionally or unintentionally will nullify the act of worship.

Waajib

Waajib is an integral of the act which if not done unintentionally could be compensated by doing something else, but if not done intentionally will nullify the act of worship.

Mustahab (Encouraged/sunan)

Mustahab is an act which if we do it we will be rewarded & if we don't do it we will not be punished.

Mubah (Permissible)

Mubah is an act which if we do it or not we will neither be rewarded nor be punished.

Makruh (Discouraged)

Makruh is an act which if we don't do it we will be rewarded & if we do it we will not be punished.

Haram (Prohibited)

Haram is an act which if we don't do it we will be rewarded & if we do it we will be punished.

Fiqh of Nikah

(1) Definition of Nikah

The original meaning of the word nikah is the physical relationship between a man and a woman. It is also used to refer to the contract of marriage which makes that relationship lawful. Which of the two meanings is intended can be determined by the context in which it is used.

(2) Status of Nikah

Depending upon the situation of the individual nikah may be fard, mustahab, mubah, makruh or haram. Each category is discussed in detail below:

People for whom Nikah is Fard (Obligatory)

Nikah is Fard for a person who fears of falling into zina & has the ability to support a wife.

Narrated Abdullah (RA) : We were with the Prophet while we were young and had no wealth whatever. So Allah's Apostle said, "O young people! Whoever among you can marry, should marry, because it helps him lower his gaze and guard his modesty (i.e. his private parts from committing illegal sexual intercourse etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual power." (Sahih Bukhari: Book of Nikah: Hadith no.4734)

People for whom Nikah is Mustahab (Encouraged)

Nikah is Mustahab for a person who does not have the fear of falling into zina and has the ability to support a wife & treat his wife justly.

Narrated Anas bin Malik: A group of three men came to the houses of the wives of the Prophet asking how the Prophet worshipped (Allah), and when they were informed about that, they considered their worship insufficient and said, "Where are we from the Prophet as his past and future sins have been forgiven." Then one of them said, "I will offer the prayer throughout the night forever." The other said, "I will fast throughout the year and will not break my fast." The third said, "I will keep away from the women and will not marry forever." Allah's Apostle came to them and said, "Are you the same people

who said so-and-so? By Allah, I am more submissive to Allah and more afraid of Him than you; yet I fast and break my fast, I do sleep and I also marry women. So he who does not follow my tradition in religion, is not from me (not one of my followers)." (Sahih Bukhari: Book of Nikah: Hadith no.4731)

The third person in the hadith said that he will not marry women thinking that it is more virtuous from a religious perspective. The prophet (pbuh) stated this as haram, i.e. remaining unmarried for the sake of religion is haram. But in general if a person does not marry for other reasons it is allowed for him to do so. So based on this hadith it is clear that marriage is a sunnah.

People for whom Nikah is Mubah (permissible)

Nikah is Mubah for a person who is already married and wants to marry a second wife and he has the ability to support & treat the wives justly.

People for whom Nikah is Makruh (discouraged)

Nikah is Makruh for a person who does not have the fear of falling into zina and has the ability to support a wife but strongly believes that he will not treat his wife justly. This is because dealing justly with the wife is a command in the Quran as stated in the following verse:

"Marry women of your choice, two, three, or four, but if you fear that you shall not be able to deal justly (with them), then only one" (Surah Nisa 4: 3).

People for whom Nikah is Haram (prohibited)

Nikah is Haram for a person who does not have the fear of falling into zina, does not have the ability to support a wife and strongly believes that he will not treat his wife justly.

As a general category "marriage is definitely mutahab i.e sunnah" according to the correct opinion of the scholars of Islam.

(3) Purpose of Nikah

1. To guard our modesty

Men are inclined toward women and women are inclined toward men. Marriage is the institution which fulfills this desire and channels it in ways pleasing to Almighty Allah.

Narrated Ayesha (RA): The Messenger of Allah (pbuh) said' Marriage is part of my sunnah and whoever doesnot follow my sunnah has nothing to do with me. Get married, for I will boast of your great numbers before the nations. Whoever has the means, let him get married and whoever does not, then he should fast, for it will diminish his desire' (Sunan Ibn Majah: Book of Marriage: Hadith No. 1846)

2. Peaceful living

One of the intentions of marriage as per Islam is to allow men and women to have a peaceful existence as Allah says in the following verse that men & women find comfort and peace in their marriages.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ
بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ۚ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

And among His signs are that He created for you from your selves mates that you may attain calm unto them and He placed between you affection and compassion. Surely in that are signs for a people who reflect. (Surah Rum 30 : 2).

هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ
إِلَيْهَا

He is the one who created you from a single soul and made from it its mate that he may attain calm unto her. (Surah Araaf 7: 189)

3. Perfecting worship

Marriage helps a man & a woman to perfect their way of worship by supporting each other in avoiding haram and enjoining halal. This is the reason the prophet (pbuh) said that marriage completes half the deen.

The prophet (pbuh) said: "Marriage completes half the deen, so let him beware of Allah regarding the other half" (Sahih Hadith: Hakim & Tabarani Al aswat)

4. Procreation (Children)

Narrated Ayesha (RA): The Messenger of Allah (pbuh) said' Marriage is part of my sunnah and whoever does not follow my sunnah has nothing to do with me. Get married, for I will boast of your great numbers before the nations. Whoever has the means, let him get married and whoever does not, then he should fast, for it will diminish his desire' (Sunan Ibn Majah: Book of Marriage: Hadith No. 1846)

One of the most important purposes of marriage is to continue and increase the population to enable the human race to be in existence. Without marriages the process of procreating will slowly diminish and the human race will become extinct in a few centuries.

5. To establish a strong society

A strong society is the outcome of healthy marriages. If the institution of marriage is abandoned then the whole society will become corrupted and nothing but immorality will be widely prevalent (as we can see in many western countries today). In order to establish a morally and ethically strong society marriages are mandatory.

(4) Whom a man is not allowed to marry

And do not marry women whom your fathers married except what has already passed. It was indeed obscene, hateful and an evil way. (Surah Nisa 4: 22)

Forbidden to you in marriage are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your wet nurse, your 'sisters' by nursing, your wives mothers, your step daughters under your guardianship born of your wives with whom you have consummated - if you did not consummate then there is no sin upon you, the wives of your blood sons, two sisters at the same time, except for that which has already passed. Verily, Allah is Forgiving, Merciful. (Surah Nisa 4: 23)

And those already married except those whom your right hand possesses (through capture). Allah's ordinance upon you. (Surah Nisa:4: 24)

Following category of women are permanently prohibited for a man

Blood relatives

1. Mother
2. Sister
3. Daughter
4. Mother's sister
5. Father's sister
6. Brother's daughter
7. Sister's daughter

(Note: The prohibition also applies to all ascendants & descendants of the above category)

In law relatives

1. Father's wives
2. Son's wives

3. Wife's mother
4. Wives daughter

(Note: 1, 2 & 3 are prohibited upon marriage contract even if the consummation has not taken place. No.4 is prohibited only if consummation has taken place)

Relatives by Fostership

Fostership is established by at least five stomach full of sucklings in first 2 years of birth of the child. Any sucking which is less than five and which takes place more than 2 years will not establish fostership.

Aisha (RA) reported that it had been revealed in the Holy Qur'an that ten clear sucklings make the marriage unlawful, then it was abrogated (and substituted) by five sucklings and Allah's Prophet (pbuh) died and it was before that time (found) in the Holy Qur'an (and recited by the Muslims). (Sahih Muslim: Book of Marriage: Hadith No. 3421)

Narrated Abdullah bin Zubair: The prophet (pbuh) said 'There is no breastfeeding except that fills the stomach' (Sunan Ibn Majah: Book of Marriage: Hadith No. 1946)

If the foster ship is established then all that is prohibited in blood relationship is also prohibited in foster relationship. This is based on the following hadith of the prophet (pbuh):

Narrated Ayesha (the wife of the Prophet) that while Allah's Apostle was with her, she heard a voice of a man asking permission to enter the house of Hafsa. 'Aisha added: I said, "O Allah's Apostle! This man is asking permission to enter your house." The Prophet said, "I think he is so-and-so," naming the foster-uncle of Hafsa. 'Aisha said, "If so-and-so," naming her foster uncle, "were living, could he enter upon me?" The Prophet said, "Yes, for Foster suckling relations make all those things unlawful which are unlawful through corresponding birth (blood) relations." (Sahih Bukhari: Book of Marriage: Hadith No. 4766)

(Note: A Foster father is the one who caused the breast milk to appear.)

Following category of women are temporarily prohibited for a man

1. Women with sister

A Muslim man is not allowed to be married to a women and her sister at the same time. If his wife dies, then he is allowed to marry her sister. Thus the wife's sister is temporarily prohibited for a man.

Forbidden to you in marriage are... two sisters at the same time. (Surah Nisa 4:23)

Abu Hurayrah (RA): Neither must a younger sister be married to the man who is married to her elder sister nor an elder sister to one who is married to her younger sister. (Sunan At Tirmidhi: Book of Marriage: 1129)

2. Women with Paternal / Maternal Aunt

A Muslim man is not allowed to be married to a woman and her aunt at the same time. If his wife dies, then he is allowed to marry her aunt. Thus the wife's aunt is temporarily prohibited for a man.

Narrated Abu Hurairah (RA): The Prophet (pbuh) forbade that a woman should be married to a man along with her paternal aunt or with her maternal aunt (at the same time). Az-Zuhri (the sub-narrator) said: There is a similar order for the paternal aunt of the father of one's wife, for Urwa told me that Aisha said, "What is unlawful because of blood relations is also unlawful because of the corresponding foster suckling relations." (Sahih Bukhari: Book of Marriage: Hadith No. 4776)

3. Women with her niece

A Muslim man is not allowed to be married to a woman and her niece at the same time. If his wife dies, then he is allowed to marry her niece. Thus the wife's niece is temporarily prohibited for a man.

Abu Hurayrah (RA) reported that Allah's Messenger forbade that a woman should be married to the same man who had married her paternal aunt, or a paternal aunt to a man who had married her brother's daughter; or a woman to the same man who had married her maternal aunt, or a maternal aunt to a man who had married her sister's daughter. Neither must a younger sister be married to the man who is married to her elder sister nor an elder sister to one who is married to her younger sister. (Sunan At Tirmidhi: Book of Marriage: Hadith No. 1129)

4. Kaafir women (except people of the book)

A Muslim man is not allowed to marry kaafir women until she accepts Islam. The only exception is the women from the people of the book (Jews & Christians).

Today all good things have been made lawful for you and the food of the People of the Book is lawful for you and your food is lawful for them and the chaste women among the believing women and the chaste women among those who were given the book before you when you give them their due as protectors (of their honor), not (engaged) in promiscuity or having a lover. And whoever rejects faith has nullified his actions and is, in the hereafter, among those in loss. (Surah Maidah 5:5)

Who are the people of the book?

All those who follow the book are people of the book, it is not necessary that they have to be descendants of Bani Israel.

Difference of opinion in marrying women from people of book

Some scholars quote the following verse to prove that it is prohibited to marry Jews & Christians:

And do not marry polytheistic women until they believe. (Surah Baqarah 2:221)

They say that the above verse abrogates the surah Maidah verse 5, hence Muslim men are not allowed to marry Jew or Christian women. This opinion is wrong since Surah Maidah was revealed after Surah

Baqarah, hence there is no possibility of abrogation. But Surah Maidah verse 5 is a qualification of Baqarah verse 21 i.e. Muslim men are not allowed to marry Mushriks in general with an exception of Jews & Christians.

5. Adulterous women

The fornicator weds none but a fornicatress or an associationist and the fornicatress is wed by none but a fornicator or an associationist and that has been forbidden to the believers. (Surah Noor 24:3)

According to the correct opinion of the scholars the above verse does not imply prohibition but it only condemns the fornicators. It is not allowed to marry an unchaste woman until she repents according to the stronger opinion.

6. Marrying a fifth wife

A man cannot marry a fifth wife if he already has four who are alive and their marriage contract is in force. If one of his four wives die, then he can take another wife.

7. In Ehram (hajj or umrah)

A man cannot marry while he is in a state of Ehram until he comes out of it.

Nubaih b. Wahb reported that 'Umar b. Ubaidullah intended to marry Talha b. 'Umar with the daughter of Shaiba b. Jubair; so he sent a messenger to Aban b. Uthman to attend the marriage, and he was at that time the Amir of Hajj. Aban said: I heard 'Uthman b. 'Affan say that Allah's Messenger (pbuh) had stated: A Muhrim must neither marry himself, nor arrange the marriage of another one, nor should he make the proposal of marriage. (Sahih Muslim: Book of Marriage: Hadith No. 3278)

8. Married woman

A man cannot marry a woman who is already married unless she is divorced or loses her husband.

9. Women in idhah

A man cannot marry a women who is in iddah till the time she completes her iddah (waiting) period.

And there is no sin on you if you make a hint of betrothal or conceal it in yourself, Allah knows that you will remember them, but do not make a promise of contract with them in secret except that you speak an honourable saying according to the Islamic law. And do not consummate the marriage until the term prescribed is fulfilled. And know that Allah knows what is in your minds, so fear Him. And know that Allah is Oft-Forgiving, Most Forbearing (Surah Baqarah 2: 235)

10. A woman under li'aan

A man is prohibited from marrying a woman who is accused for adultery under lian by her husband unless the husband confesses that he lied. Lian is as per the following verse of the Quran:

“And as for those who accuse their own wives [of adultery], but have no witnesses except themselves, let each of these [accusers] call Allah four times to witness that he is indeed telling the truth, and the fifth time, that Allah’s curse be upon him if he is telling a lie. But [as for the wife, all] chastisement shall be averted from her by her calling Allah four times to witness that he is indeed telling a lie, and the fifth [time], that Allah’s curse be upon her if he is telling the truth.” (Surah Noor 6:9)

11. Remarrying a wife who is divorced 3 times

A man is not allowed to remarry his wife after 3 divorces unless & until she marries another man and has intercourse with him and the new husband divorces her or dies.

And if he has divorced her [for the third time], then she is not lawful to him afterward until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah . These are the limits of Allah , which He makes clear to a people who know.(Surah Baqarah 2: 230)

12. Marrying a slave woman, when one is already married to free women

One is prohibited from marrying a slave woman if he is already married to a free woman. This is a temporary prohibition because if the slave woman becomes free then the man can marry her.

(5) Qualities preferred to look for in a spouse

A man or a woman is allowed to look for the following qualities in their future spouse. Among the following qualities the prophet (pbuh) laid a greater importance on ‘religion’.

1. Religion
2. Beauty
3. Status
4. Wealth
5. Child bearing
6. Loving
7. Virginity

Evidences for the above:

Narrated Abu Hurairah(RA): The Prophet said, "A woman is married for four things, i.e., her wealth, her family status, her beauty and her religion. So you should marry the religious woman (otherwise) you will be a losers. (Sahih Bukhari: Book of Marriage: Hadith No. 4657)

Narrated Ma'qil ibn Yasar(RA): A man came to the Prophet (pbuh) and said: I have found a woman of rank and beauty, but she does not give birth to children. Should I marry her? He said: No. He came again to him, but he prohibited him. He came to him third time, and he (the Prophet) said: Marry women who are loving and very prolific, for I shall outnumber the peoples by you. (Sunan An Nasai: Book of Marriage: Hadith No. 3229)

Narrated Jabir bin Abdullah(RA): I was accompanying the Prophet on a journey and was riding a slow camel that was lagging behind the others. The Prophet passed by me and asked, "Who is this?" I replied, "Jabir bin 'Abdullah." He asked, "What is the matter, (why are you late)?" I replied, "I am riding a slow camel." He asked, "Do you have a stick?" I replied in the affirmative. He said, "Give it to me." When I gave it to him, he beat the camel and rebuked it. Then that camel surpassed the others thenceforth. The Prophet said, "Sell it to me." I replied, "It is (a gift) for you, O Allah's Apostle." He said, "Sell it to me. I have bought it for four Dinars (gold pieces) and you can keep on riding it till Medina." When we approached Medina, I started going (towards my house). The Prophet said, "Where are you going?" I said, "I have married a widow." He said, "Why have you not married a virgin to fondle with each other?" I said, "My father died and left daughters, so I decided to marry a widow (an experienced woman) (to look after them)." He said, "Well done." When we reached Medina, Allah's Apostle said, "O Bilal, pay him (the price of the camel) and give him extra money." Bilal gave me four Dinars and one Qirat extra. (A sub-narrator said): Jabir added, "The extra Qirat of Allah's Apostle never parted from me." The Qirat was always in Jabir bin 'Abdullah's purse." (Sahih Bukhari: Book of Representation, Business by proxy: Hadith No. 2166)

(6) Proposal upon proposal

It was narrated from Ibn Umar that the Messenger of Allah (pbuh) said: None of you should propose marriage to a woman when someone else has already proposed to her, unless he married (another woman) or gives him permission' (Sunan An Nasai: Book of Marriage: Hadith No. 3243)

Based on the above hadith the scholars have derived the following rulings:

1. If a man is interested in a girl but did not propose then another man can propose
2. If a man has proposed and if the girl has rejected the proposal then another can propose
3. If a Christian /Jew has proposed to a Christian/Jew – in this case there is a difference of opinion whether a Muslim man can propose or not. The correct opinion seems that he can!
4. If a Muslim man has already proposed to a girl then another cannot propose to the same girl until he takes permission from the former
5. If a man has proposed to a girl and she did not say yes or no for a long time then there is a difference of opinion whether another man can propose or not. The correct opinion seems that he can!

(7) Man / woman looking at each other before nikah proposal

Mughirah ibn Shu'bah (RA) said that he proposed to a woman. So, the Prophet (pbuh) said to him, "Look at her. That would strengthen your love for one another". (Sunan At Tirmidhi: Book of Marriage: Hadith No. 1089)

Extent of looking at a future spouse

Based on the above hadith it is clear that it is sunnah to look at the future spouse, but there is a difference of opinion as to the extent to which a man can look at a woman. Following are the four different opinions:

1. He can look at the whole body
2. He can look at face & hair
3. He can look at Face & hands
4. He can look at whatever she shows to her Mahram

Correct opinion: Looking at whatever she shows to her maharam.

The following hadith stands as a proof for this opinion:

From Jaabir ibn Abdullah(RA) : "The Messenger of Allah (pbuh) said: 'If one of you proposes marriage to a woman, if he can look at her to see that which will encourage him to go ahead and marry her, then let him do so.' I proposed marriage to a young woman, and I used to hide where I could see her, until I saw that which encouraged me to go ahead and marry her, so I did so." According to another report he said, 'a young woman of Bani Salamah. I used to hide from her, until I saw that which encouraged me to go ahead and marry her, so I did so.'" (Sunan Abu Dawood: Book of Nikah: Hadith No.2082)

(8) Shurooths of Nikah

1. Specify the two spouses

The name & the relationship of the spouses have to be clearly specified.

2. No sharaih prohibition in relationship between the spouses

The two spouses should be in the marriageable category as per the Islamic shariah i.e they should not be relatives falling under the category of prohibition such as blood relationship, nursing relationship or in law relationship.

3. Wali should be present

Narrated Ayesha (RA) : The prophet (pbuh) said 'There is no marriage except with a guardian and the ruler is the guardian of the one who doesnot have a guardian' (Sunan Ibn Majah: Book of Marriage: Hadith No. 1880)

Narrated Ayesha (RA) : If any woman marries without the permission of her guardian, then her marriage is void, then her marriage is void, then her marriage is void. (Sunan Ibn Majah: Book of Marriage: Hadith No. 1879)

Requirement of wali for marriage of virgins

There is unanimous consensus of the scholars that Wali should be present for the marriage of a virgin girl and without wali the marriage is invalid.

Requirement of wali for marriage of widows / divorcees

With regard to widow / divorcee there is a difference of opinion among the scholars regarding the requirement of wali. Some say wali is not required & some say wali is required.

Proof of scholars who say wali is not required for widows / divorcees

And when you divorce women and they have fulfilled their term, do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis. That is instructed to whoever of you believes in Allah and the Last Day. That is better for you and purer, and Allah knows and you know not. (Surah Baqarah 2:232)

These scholars say 'since Allah is saying that women have the right to decide & the wali should not prevent her it implies wali is not required for the marriage of widow / divorcee'.

Proof of scholars who say wali is required for widows / divorcees

Narrated Ayesha (RA): The prophet (pbuh) said 'There is no marriage except with a guardian and the ruler is the guardian of the one who does not have a guardian' (Sunan Ibn Majah: Book of Marriage: Hadith No. 1880)

These scholars say that the above hadith is generic and it applies to virgins, widows and divorcees. Further they refute the first opinion saying that in Baqara 232 Allah is addressing the wali & he is not addressing the woman. Hence wali is required for the marriage but he cannot say prevent the women from marrying if she wishes to marry.

Correct opinion: Wali is required for the marriage of virgins, widows & divorcees.

Who can be a wali?

1. Father
2. Grand father
3. Son
4. Brother
5. Brother's Son

6. Father's brother (uncle)
7. Father's brother's son (and so on as per inheritance)
8. Nearest Jamath
9. Muslim leader

Requirements of a wali

1. Sane Adult Male
2. Freeman
3. Same religion as the girl
4. Adil (trustworthy)
5. Rushd (proper decision maker)

4. Approval of both spouses

No approval required for Pre puberty nikah of a boy

There is no need for any consent from the boy with regard to pre-puberty marriages. His wali can decide and carryout the marriage contract, but when the boy reaches the age of puberty he has the liberty to either accept or annul the marriage contract.

No approval required for Pre puberty nikah of a girl

There is no need for any consent from the girl with regard to pre-puberty marriages. Her wali can decide and carryout the marriage contract, but when the girl reaches the age of puberty she has the liberty to either accept or annul the marriage contract. Example: Marriage of Ayesha (RA) with the prophet (pbuh).

A'isha (RA) reported: Allah's Messenger (pbuh) married me when i was six years old, and I was admitted to his house at the age of nine. (Sahih Muslim: Book of Nikah: Hadith No. 3307)

Approval required for Virgin girl after puberty

According to the correct opinion of the scholars the virgin girl's consent has to be taken & the wali cannot force her. They base their opinion on the following hadith:

It was narrated from, Ibn Abbas that the Messenger of Allah said: "A widow has more right (to decide) concerning herself than her guardian and a virgin should be consulted." It was said: "O Messenger of Allah 'a virgin may be too shy to speak'. He said 'Her consent is her silence' (Sunan Ibn Majah : Book of Marriage: Hadith No.1870)

Approval required for a widow or divorced women

Consent has to be taken from the divorced women & if she says 'yes' for a marriage proposal, the wali is not authorized to say 'No', he has to carry out the marriage contract.

And when you divorce women and they have fulfilled their term, do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis. That is instructed to whoever of you believes in Allah and the Last Day. That is better for you and purer, and Allah knows and you know not. (Surah Baqarah 2:232)

5. Two witness

And when they have [nearly] fulfilled their term, either retain them according to acceptable terms or part with them according to acceptable terms. And bring to witness two just men from among you and establish the testimony for [the acceptance of] Allah. That is instructed to whoever should believe in Allah and the Last day. And whoever fears Allah - He will make for him a way out. (Surah Talaq 65: 2)

6. Kafa'a (Equality of Bride & groom)

Some scholars have stated this as a shurooth, but the correct opinion is that it is not a shurooth but it can be taken into consideration before finalizing the marriage. Both parties can look for equality in the following:

1. Religion
2. Freedom
3. Profession
4. Wealth
5. Nasab (nasab)

(9) Arkaans of Nikah

1. Proposal

The proposal comes from the wali of the girl

2. Acceptance

The acceptance is from the groom

The proposal can also come from the groom and the wali can accept the proposal. Both proposal & acceptance can be in any language and can be of any words which are clear and understandable in the culture. The offer and acceptance must be done in one sitting. In general, this means that the response must be immediate. Exactly what is considered a "sitting" depends on custom and related factors.

Both the parties cannot cancel the marriage once the two arkaans are met as the marriage becomes effective immediately.

Note: If the wali says "I will marry her to you after one month", there is not marriage and the two remain unmarried.

Note: The custom of saying "I accept" three times common in some Muslim cultures has no legal significance. Once the first "I accept" has been uttered, everything after that is meaningless - whether positive or negative.

(10) Sunans (Mustahabs) of Nikah

1. Specifying the Maher

And give the women their dowries with a good heart (Surah Nisa 4:4)

Maher is embedded in an Islamic marriage but it is not mandatory to specify the maher during the marriage. It is only sunnah to specify the mehar during the time of marriage contract.

2. Having the affordable maher

The prophet (pbuh) said: "The best of mahrs is the most affordable." Narrated by al-Haakim and al-Bayhaqi, classed as saheeh by al-Albaani in Saheeh al-Jaami', 3279.

خير ال صداق أي سره

3. Affordable expense in marriage

The Prophet (pbuh) said: "The best of marriage is that which is most affordable." Narrated by Ibn Hibbaan, classed as saheeh by al-Albaani in Saheeh al-Jaami', 3300.

خير ال زكاح أي سره

4. Publicizing the marriage

Narrated Ayesha(RA): The prophet (pbuh) said 'Publicize these marriages' (Sunan At Tirmidhi: Book of marriage: Hadith no. 1089)

5. Having Entertainment programs

Narrated Muhammad bin Hatib(RA): The prophet (pbuh) said ' what differentiates between halal & haram is the daff and the raising the voices (singing) at the time of marriage' (Sunan Ibn Majah: Book of Marriage: 1896)

6. Giving Waleema

Narrated Anas (RA): The Prophet (pbuh) seeing a yellow mark (of perfume) on the clothes of Abdur Rahman bin Auf, said, 'What about you?' Abdur Rahman replied, 'I have married a woman with a Mahr of gold equal to a date stone.' The Prophet (pbuh) said, 'May Allah bestow His Blessing on you (in your marriage). Give a wedding banquet, (Walima) even with one sheep.'(Sahih Bukhari: Book of Invocations: Hadith no.6386)

7. Giving a Nikah sermon

Sayyidina Abdullah (RA) said : Allah's Messenger (pbuh) taught us the tashahhud for the salah and the tashahhud for some need. The tashahhud in salah is: All adorations of the tongue are for Allah, as also those of the body and wealth or good things. Peace be on you, O Prophet, and Allah's mercy and His blessings. Peace be on us and on all righteous slaves of Allah. I bear witness that there is no God but Allah and I bear witness that Muhammad is His slave and His Messenger.

And, the tashahhud in case of need, like marriage, is: All praise belongs to Allah. We ask Him for help and seek His forgiveness. And we seek refuge in Allah from the evils of our ourselves, and (from) our wicked deeds. He whom Allah guides, none can send astray, and he whom He leaves to stray, there is no guide for him. And I testify that there is no God but Allah, and I testify that Muhammad is His slave and His Messenger". Then three verses of the Qur'an 3: 102, 4: 1 & 33: 70-71 are recited. (Sunan At Tirmidhi: Book of Marriage: Hadith No. 1107)

8. Time for the groom to stay with the bride

If a man is married to more than one woman then he should stay with his new wife for three continuous days if she is a divorcee / widow and for seven days if she is a virgin. After this period he has to go to other wives in turns.

Narrated Anas(RA): The prophet (pbuh) said ' Three days for a previously married woman and seven days for a virgin' (Sunan Ibn Majah: Book of Marriage: Hadith No. 1916)

9. Responding to walima banquet

Narrated Ibn Umar(RA): The prophet (pbuh) said 'If any one of you is invited to a wedding feast, let him accept' (Sunan Ibn Majah: Book of Marriage: Hadith No. 1914)

10. Congratulating the bride & groom

It was narrated from Abu Hurairah (RA) that the Prophet (pbuh) used to say , when offering congratulations on the occasion of marriage. "Barak Allahu lakum, wabarak alaikum, wa jama bainakuma fi khair (May Allah bless you and bestow blessings upon you, and bring you together in harmony) (Sunan Ibn Majah: Book of Marriage: Hadith No. 1905)

11. Giving Gifts to the couples

It was narrated from Jad bin Abi Uthman, that Anas bin Malik said: "The Messenger of Allah (pbh) got married and consummated the marriage with his wife." He said: "My mother Umm Sulaim made some Hais, and I brought it to the Messenger of Allah and said: 'My mother sends you greetings of Salim, and says to you: This is a little from us.' He said: 'Put it down.' Then he said: 'go and call so-and-so, and so-and-so, and whoever you meet,' and he named some men. So I called those whom he named, and those whom I met." I said to said to Anas : "How many were they?" He said: "About three hundred. Then the Messenger of Allah said: 'Let them sit around the dish of food in groups of ten. one after the the other, and let each person eat from what is closest to him.' They ate until they were full, then one group went out and another group came in. He said to me: 'O Anas, clear it away.' So I cleared it away, and I do not know whether there was more when I cleared it away, or when I put it down." (Sunan An Nasai:Book of Marriage: Hadith No. 3389)

(11) Mubahs of Nikah

Marriage is not an act of worship but it is a worldly affair, hence everything which is permissible in Islam in general is also permissible in marriage except what is explicitly mentioned as prohibited.

(12) Makroohs of Nikah

In general, whatever is makruh outside nikah automatically becomes makruh in nikah also, such as over spending, showing off, inviting only the rich, etc.,

(13) Nullifiers of Nikah

If the shurooth & Arkaans are met then the nikah is considered valid. Details how a valid marriage gets annulled automatically or deliberately refer to 'Fiqh of Divorce'

(13) Conditions of marriage contract

Utbah bin Amir narrated(RA): The prophet (pbuh) said ' The conditions that are most deserving of fulfilment , are those by means of which the private parts become allowed to you' (Sunan An Nasai: Book of marriage: Hadith No. 3283)

Conditions of contracts are three types:

(1) Conditions imposed directly by the shariah

The conditions imposed by shariah are deemed to be included in the contract whether it is mentioned in the contract or not. For example: Maher, whether it is mentioned in the contract or not, every contract automatically included Maher.

(2) Conditions imposed by local custom & culture

All conditions which are imposed by the local culture & customs which donot contradict the shariah are deemed to be automatically included in the contract, whether it is mentioned or not. For example: If it is

the local custom to provide a separate house for the wife, it automatically becomes obligatory on the husband to provide his wife with separate house whether it is mentioned in the contract or not.

(3) Other Conditions stipulated by both parties

(a) Conditions which nullify the contract

If any of the following conditions are put in the contract then the contract itself will be invalid and it is as though the nikah did not take place as per Shariah.

- (1) Two parties marrying each other's girl in the family stating a condition that there will not be any Maher. For example a man marries his sister in "exchange" for the other marrying his sister to him. Neither woman receives their dowry. This is called Nikah Ash-Shighaar.
- (2) Two parties marrying on a condition that they will separate after a stipulated time limit. This is called Nikah Al-Mut'a
- (3) Two parties marrying on a condition to divorce the women after marriage in order to make her halal for her former husband who has divorced her 3 times. This is called Nikah At Tahleel.

(b) Conditions which become invalid but do not nullify the contract

Any condition which asks either of the party to do something haram or prohibits either of the party not to do something which is fard or mustahab will be invalid i.e the condition will become invalid but the marriage contract will be valid.

(c) Conditions which are valid & the contract also will be valid

Any condition which comes under the category of 'worldly mubah' can be put in the marriage contract either of the parties can allow or prevent each other with regards to mubah. For example: The girl may demand a car, or put a condition that she will not cook, etc.,

(15) Maher (Dowry)

And give the women their dowries with a good heart...(Surah Nisaa 4:4)

The maher (dowry) is something that is paid by the man to his wife. It is paid to the wife and to her only as an honor and a respect given to her and to show that he has a serious desire to marry her and is not simply entering into the marriage contract without any sense of responsibility and obligation or effort on his part.

Maher is not the shurooth or arkaan of a marriage but it is deemed to be included in the contract whether it is mentioned or not. This is based on the below verse of the Quran:

There is no sin upon you if you divorce women before touching them or assigning for them a dowry. And give them provision - upon the wealthy what is appropriate and upon he of limited resources what is

appropriate - a provision based on the best (the "known"), an obligation upon the doers of good. (Surah Baqarah 2 :236)

The Maximum amount of Maher

There are no authentic hadith or verse of Quran explicitly stating a maximum amount of dowry. Hence there is no upper limit or maximum limit for dowry. The following verse stands as evidence to this:

And if you wish to replace a wife with another and you have given one of them a heap of gold, do not take anything from it. `Would you take it as a fraud and a clear sin? (Surah Nisaa 4:20)

The Minimum amount of Maher

There is no authentic hadith or verse of Quran explicitly stating a minimum amount of dowry. It is agreed by the scholars that anything which has a value can be given as a dowry, even if it is an iron ring or even some verse of the Quran. Following hadith is evidence to this:

Sahl Bin Sad narrated: A lady came to the Prophet and declared that she had decided to offer herself to Allah and His Apostle. The Prophet said, "I am not in need of women." A man said (to the Prophet) "Please marry her to me." The Prophet said (to him), "Give her a garment." The man said, "I cannot afford it." The Prophet said, "Give her anything, even if it were an iron ring." The man apologized again. The Prophet then asked him, "What do you know by heart of the Qur'an?" He replied, "I know such-and-such portion of the Qur'an (by heart)." The Prophet said, "Then I marry her to you for that much of the Qur'an which you know by heart." (Sahih Bukhari: Book of Virtues of Quran: Hadith No. 4695)

When is the Maher due?

Scenarios when the full Maher (100%) is due

The Maher becomes 100% due for the woman in one of these three scenarios (1) if sexual intercourse has occurred or (2) if the husband dies or (3) if the woman dies.

There is a difference of opinion when the intercourse has not happened and the man & women did something less than intercourse. In this case correct opinion seems that if both of them were in 'seclusion' for a period of time in which the intercourse was possible, then the 100% Maher becomes due.

Further, if the man dies then his family should pay the Maher and if the woman dies her inheritor should receive the Maher.

Scenario when only half Maher (50%) is due

The Maher becomes 50% due if the intercourse has not happened and the marriage is annulled due to a fault in the man.

Scenario when no Maher (0%) is due

The Maher becomes 0% due i.e. no Maher is due if the intercourse has not happened & the marriage is annulled due to a fault from the woman's side

(16) Nikah of Non-Muslims

As per Islamic shariah the marriage of non-Muslims is also considered valid. The following verse of the Quran stands as an evidence to it:

وَأَمْرَأَتُهُ حَمَّالَةَ الْحَطَبِ

And his (Abu Lahab's) wife [as well] - the carrier of firewood. (Surah Masad 111:4)

Since Allah is calling Abu Lahab's wife as his wife, it is understood that even the nikah of non-Muslims are valid in the sight of the Islam.

Following rulings can be derived from the above verse:

- (1) If a Pagan husband & wife accept Islam together then there is no need for a new Nikah, their previous Nikah will be valid
- (2) If a Pagan husband becomes a Muslim but wife did not, the marriage contract becomes void. The man can marry any other Muslim / Jew/ Christian woman
- (3) If a Pagan wife becomes Muslim but husband did not, the marriage is suspended. In this case the women should observe iddah and after 3 months she can marry another man (if her husband did not accept Islam). If the husband accepts Islam in any point of time (after 3 months) & if the women is still single then they can live together & their old marriage will be valid
- (4) If Jew / Christian husband & wife accept Islam together then there is no need for a new Nikah, their previous Nikah will be valid
- (5) If a Jew / Christian husband accepts Islam & wife does not then they can continue to live together without any new marriage contract.
- (6) If a Jew/Christian wife accepts Islam but the husband does not, in this case the marriage is suspended. In this case the women should observe iddah and after 3 months she can marry another man (if her husband did not accept Islam). If the husband accepts Islam in any point of time (after 3 months) & if the women is still single then they can live together & their old marriage will be valid

(17) Summary

This article with regard to the Fiqh of Nikah is for the beginners. Whoever is reading this is requested to gain more knowledge & read more evidences with respect to Nikah from Fiqh books.

May Allah accept our efforts and help us to implement what we have learnt and grant us good in this world and the hereafter. Ameen!

‘All truth in this article is from Allah & all mistakes are of mine only’

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