**Marriage**

**Definition :**

Marriage, also called matrimony or wedlock, is a legally accepted relationship between man and woman in which they live as husband and wife, that is regulated by laws, rules, customs, beliefs and attitudes and based on mutual respect and consent, that establishes rights and obligations between them and accords status to their offspring.

**OBJECTIVES OF MARRIAGE**

As a meaningful institution, marriage has the following purposes:

1- Marriage is a healthy environment in which the family maintains its cohesiveness and reciprocal love and affection which may be attained by mutual co-operation and understanding. It also helps maintain chastity and guards one from committing the prohibited.

2- Marriage is the best means of reproduction and multiplication, and preserving the family lineage. The procreational objective has four aspects: to fulfill the will of God; to seek the love of the Prophet Muhammad (Peace and blessing of Allah be upon him); to benefit from the prayer of the child; and to profit from its intercession on behalf of its parents.

3- Marriage is the best means of fulfilling sexual needs free from related diseases. Failure to fulfill this urge is likely to lead either to deviation or to maladjustment. Deviation is dishonourable and is strictly forbidden in Islam.

4- Marriage fulfills the parental and maternal senses in man through having children.

5- Social Importance

Finally, by adding responsibilities upon the individual, marriage enhances his status in society and gives him an opportunity for training in bearing the hardships of life. Living with a spouse, a person of different inclinations and background, trains one in accommodating oneself to new experiences; each party helps the other in the exercise of the virtues of patience and forbearance. The responsibility of rearing children and the need to earn for their living are added meritorious aspect arising from marriage.

**Elements of Marriage Contract**

Marriage is necessarily a civil contract; it has gained the same status as other contracts. However, it is not only a civil contract but also a sacred covenant (mithaq), which is having the sanctity of Shariah and pleasure of God.

As in any contract in Islam, there are elements which are considered essential to its existence, called arkaan, the possibility of stipulation of different kinds of conditions, and legal effects of the contract, etc.

There are different views of Muslim jurists on the essential elements of marriage contract. According to Imam Shafi’i, marriage contract contains four essential requisites; offer and acceptance, contracting parties i.e. husband and wife, two witnesses and presence of guardian. Imam Malik added another element, dower, for valid marriage contract. According to him, guardian, dower, contracting parties and offer and acceptance are essential for valid marriage.

Moreover, Hanafi Jurists just acknowledge one main element that is offer and acceptance.

**Marriage: Elements and Conditions**

**1) Offer and Acceptance:**

Offer on the part of one party to the marriage and acceptance by the other party.

**Notes:**

a- The offer and acceptance may be made by the parties (husband and wife) or their guardians. In case of legal incompetency, like minority or unsoundness of mind, the guardians may validly enter into a contract of marriage on behalf of their wards.

b- Marriage contract may be consummated by any verbal consent, such as when the guardian says: "I give you her in marriage", and the proposing person responds by saying: ''I agree", or "I accept this marriage".

c- It is commended that the words with which the marriage is contracted must be clear, unambiguous, and said in Arabic. But if one of the concerned parties does not speak Arabic, he may express himself in his own language.

d- The proposal and acceptance must be expressed in one and the same meeting.

e- The consent of the two spouses. None of them should be forced to give his/her consent. Both the virgin and the non-virgin, must first give their permission before giving them in marriage. The virgin's permission is her silence when asked, while the non-virgin's permission is her verbal consent. The insane and the intellectually incompetent may be made to marry without their consent.

**2) The presence of a guardian**:

The guardian must be a male, free, adult, and trustworthy. The woman's father is the one who has the right of giving her in marriage, or her grandfather, or her son, then her brother, or his son, or her uncle, or his son, or the closest of kinship to her from the ta,seeb group, or the governor.

If the first guardian refrained, or if he is not fit, or he is absent or unavailable, the next of kin guardian may represent him. If the guardian gives in marriage a pious woman to an impious, the marriage would be valid. If the woman or her guardians object to this marriage, the nikah would be canceled, for shame would be on them all.

**3) The witnesses:** No marriage would be valid without two male witnesses. Prophet Muhammad (pbuh) said, “There is no marriage except with a wallee and trustworthy witnesses. ” (Sahih- Bayhaqee) Also, “There is no marriage except with a wallee and two witnesses. ” (Sahih Al-Jaami’).

**4) Dower**: is also a significant part of a valid marriage. The dower must be paid by the groom directly to the bride. The wife may not be deprived of it.

**The Prohibited women (Mahaarim)**

Allah mentions most of the categories of women in the following verses: “And do not marry those [women] whom your fathers married, except what has already occurred. Indeed, it was an immorality and hateful [to Allah] and was evil as a way. Prohibited to you [for 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 [milk] mothers who nursed you, your sisters through nursing, your wives’ mothers, and your step daughters under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful. And [also prohibited to you are all] married women except those your right hands possess [i.e., slaves or war-captives who had polytheistic husbands]. [This is] the decree of Allah upon you. And lawful to you are [all others] beyond these, [provided] that you seek them [in marriage] with [gifts from] your property, desiring chastity, not unlawful sexual intercourse..." [Quran 4:22-24]

Some prohibitions, according to the Holy Qur’an and the Sunnah, are of perpetual nature which is based on the ground of consanguinity, affinity, fosterage; while others are of temporary nature interdicted by certain relationships or conditions which are susceptible of termination and these prohibitions exist so long as the relationship or condition exists.

**Those who are Permanently Forbidden in Marriage**

This category includes those whom one is forbidden to marry due to a blood relationship as well as those who are forbidden due to fosterage or marital relations:

**Those Permanently Forbidden due to Blood Relations**

1. Descendants due to a relationship with a woman, regardless of how far (a man's daughter, granddaughter, etc.).
2. Ascendants of women, regardless of how far (mother, maternal and paternal grandmother, etc.).
3. Descendants from a man's parents, regardless of how far (sisters, half-sisters, sister's children, etc.)
4. Siblings of male and female ascendants, regardless of how far (paternal and maternal aunts, great aunts, etc.).

One may notice that of these, the grandmother was not explicitly mentioned in the verse. This is because frequently in Arabic and in the Quran (as in some of the verses on inheritance), the term 'mother' includes the grandmother and all her ascendants.

**Those Permanently Forbidden due to Marital Relations**

1. Wives of ascendants, regardless of how far (the father's wife, grandfather's wife, etc.). Consummation is not a condition; the mere completion of the marriage contract makes this marriage forbidden forever.
2. Wives of descendants, regardless of how far. Again, the mere marriage contract is what is considered here with or without consummation.
3. Ascendants of wives (such as the mother-in-law), regardless of whether the marriage was consummated or not.
4. Descendants of wives (step-daughters and their children) only if the man consummated the marriage with the wife in question. The phrase (which means) '…Under your guardianship…' was mentioned here only to portray the usual case and not as a condition. The ruling holds whether the step-daughter was ever under his care or not. This is the opinion of the majority of scholars.

**Those Permanently Forbidden due to Breast Feeding**

The verse actually mentions 'mothers' and 'sisters' by breast feeding. From these two, others can be derived based on the Hadeeth (narration) of the Prophet (may Allah exalt his mention): (Breast feeding makes forbidden what is forbidden through blood relations.) [Muslim]

The Prophet (pbuh) was asked to marry the daughter of his uncle Hamzah, may Allah be pleased with him, but his response was to say: (She is not permissible for me. She is the daughter of my brother through breastfeeding. And breastfeeding forbids what is forbidden through blood relations.) [Al-Bukhari & Muslim]

The brother of a woman who had breastfed 'Aa'ishah, may Allah be pleased with her, came to visit her. She refused to let him in until she asked the Prophet (pbuh) if it was permissible to do so, and he said: (Give him permission, for he is our uncle.) [Al-Bukhari & Muslim]

**The Minimum Requirement for Breast Feeding**

There is a wide variety of opinions on how many 'sessions' of breastfeeding create the prohibition including one, three, five, seven and ten sessions. A common opinion is that the child must have nursed on three separate occasions; this is based on the Hadeeth: (The prohibition is not established by one suck or two.)

The strongest opinion is that of Imaams Maalik and Abu Haneefah and 'Ali bin Abu Taalib, 'Abdullaah bin 'Umar, and 'Abdullaah bin 'Abbaas, may Allah be pleased with them, and others, which is that a single session is sufficient. This is the strongest opinion because it is consistent with the apparent meaning of the word Ridhaa'ah (breastfeeding) in the above-mentioned verses as well as the related Hadeeths; also, the above Hadeeth could be easily taken to refer to 'sucks' and not 'sessions.' So, in other words, if the baby merely sucks once or twice, it does not count unless the baby completes the 'session', drinking to satisfaction.

**Women Included in this Category**

1. One's female ascendants through nursing. This includes the woman who nursed him and her mother, etc. The husband of the wet nurse is considered the 'cause' of the milk involved. So, for example, if a girl is nursed by a woman, that woman's husband becomes forbidden to her just as her own biological father is.
2. Descendants through nursing. The man who is the 'cause' of the milk is forbidden from marrying the one his wife nursed or their children, etc.
3. Descendants of 'parents' through nursing, (i.e., the 'sisters'). One cannot marry any of the children (either by blood or nursing) of the wet nurse or her husband.
4. Siblings of ascendants by nursing (i.e., brothers and sisters of the wet nurse or her husband). This does not include their children ('cousins' by nursing).

Note the following important point as stated by Shaykh Ibn 'Uthaymeen: "The relatives of the child that is nursed, except for his/her children, have no relation to the breastfeeding mother [or her husband] and there is no effect on them from that nursing. So, it is allowed for a boy's blood brother to marry his brother's wet nurse or her daughters. However, the children of the child who was nursed will become like the children of the wet nurse and her husband in the same way that their father (the one originally nursed) was a 'child' (by nursing) to those two."

**Those Forbidden for Temporary Reasons**

The second category of women a man is forbidden to marry consists of those forbidden for temporary reasons. If the reason ceases to exist, marriage between them becomes lawful. They include the following:

1. While being married to a woman, a man cannot marry her sister or any of her aunts (paternal or maternal). The first was mentioned in the verses previously mentioned and the second is mentioned in the following Hadeeth:
(The Prophet (pbuh) prohibited joining (in marriage at the same time) a woman and her paternal aunt or a woman and her maternal aunt.) [Al-Bukhari & Muslim]
2. If a person divorces his wife three times, it is not allowed for him to marry her again until and unless she marries someone else (but not as a trick in order to marry him again), consummates that marriage and that marriage is subsequently legally ended.
3. Any woman if a man already has four wives.
4. Marrying a slave girl when one is already married to a free woman.
5. Marrying a woman who is already married or who is in 'Iddah (waiting period). A woman in 'Iddah due either to her husband's death or divorce is not allowed to marry until it is finished.
6. A woman upon whom a man has made Li'aan, unless he confesses to having made it up. Al-Li'aan in Arabic is when the husband accuses the wife of adultery but cannot bring witnesses, so he swears that it occurred and the two are separated after the wife swears that she is innocent. He can never marry her again unless he confesses that he was lying about it.
7. A woman who is neither Muslim nor Jewish nor Christian.