CHAPTER-5

MARRIAGE
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Islamic social system has been built upon the principle of high standard of human values, piety, purity and dignity. The relationships between men and women are regulated by these principles that have been incorporated in the institution of marriage. The Qur’an is very specific in this regard. Qur’an prohibits free sexual relations by saying that “and come not near to the unlawful sexual intercourse”.

By prohibiting free sexual relations it closed ways to sexual deviations. To fulfil the biological needs as well as to keep the world system in order, it was necessary to open a way through which the process of reproduction can be regulated. This process is known as Nikah (marriage). Unlike other religions who consider marriage as an inevitable sin Islam has laid clear procedures for it and has encouraged its followers to practice it openly.

For bringing the sexual urge of human beings at a balanced level, Islam prohibits free sexual relations and encourages sex through marriage and declares it as a Thawab (good deed) for Muslims. “You should marry, for that will help him lower his gaze and guard his modesty. Those who are unable to marry should keep fast”. (Prophet Muhammad(PBUH))

The aim of the institution of marriage is to close all the ways of sexual anarchy in society and to limit the sexual relation within the
boundary of family. So individuals can serve the civilization and society with all their conserved energies.4

5.1 Importance of Marriage

The importance of this institution can be known by analyzing its functions. As above mentioned marriage is the institution to regulate sexual life. By regulating sexual life marriage forms family which is the most powerful basic institution upon which civilizations grow. The family provides peace, stability and forms a group. By this institution new generations get good socialization.

But in a society where people do not give importance to marriage, where gender relations do not have any aim except sexual relation, family can not there, and it can not carryout it's functions. With the absence of marriage, people do not feel responsible towards their children, parents and ultimately towards the whole society.

Without the institution of family, formed through marriage, it’s hard to upbringing the children. It is a high moral work, which requires sacrifice of desire, wealth and health in which one has to overcome many difficulties. But those who indulge in satisfying only biological needs do not feel obliged for their social duties.5

Islamic texts stress a lot on marriage highlighting the importance of this institution. Qur’an stresses at many places about it:
➢ "Then marry women of your choice".6
➢ "Wed them with the permission of their own folk".7

Many of the verses and the Sayings of Prophet™ to this effect have been quoted before. This level of encouragement shows the level of importance that Islam has given to the institution of marriage.

5.2 Mate Selection

Mate selection is the first and basic task for marriage. Islam has some guidance here as well. Like other issues, Islam provides a balanced way regarding this matter. Islam accepted the fact that, both the partners should be well informed about each other. Guardians do play a role in match making and men are allowed to see their fiancées before any commitment. Islam also has given arbitration to women about their marriages. A guardian cannot marry her ward off against her will. Prophet's saying shows: "Narrated Khams’a bint-e-Khidam that her father gave her in marriage when she was a matron and she disliked that marriage. So she went to Allah's Messenger and he declared that marriage invalid".8

The permission to see the fiancé is only for men, as they enjoy an upper status in Islamic social system. Prophet™ advised "When any one of you proposes to a lady for marriage and you want to see something that is attractive in her, then do it".9 In another Hadith Prophet™ says: “When
Allah makes someone feel for a woman to marry, then there is no restriction that he sees her”.10

Prophet[^PH] explained the cause when, one of the companions of Prophet[^PH], Mughira bin Shaba desired to propose a lady, Prophet[^PH] said: “See her because it is expected that the relation of love between you will be more reliable by it”.11

Bukhari has noted that once a woman presented herself to Prophet[^PH] for marriage. At that time Prophet[^PH] had looked her from top to bottom carefully.12

It is not necessary to inform a woman to see her. According to the Prophet[^PH], “When any one of you proposes a woman for marriage then there is no restriction in seeing her. But his seeing must be for marriage purpose, and it is not necessary that woman knows about it”.13

A fiancé can be seen in a hidden way. A companion of the Prophet[^PH] reports “I proposed a lady for marriage then I used to see her without her knowledge, that attracted me to marry her and finally I married her”.14 But beyond seeing every thing is prohibited unlike in advanced and so called westernized societies where almost everything is permissible.15

A man, if satisfied about the match, can propose either to woman herself or to her guardian. When a man proposes to a woman others should not propose, until a final decision is taken by the parties involved.16

A woman can propose to a man as well. According to a Hadith, “Narrated Haisham's father, Khula Bint-e- Haikam was one of those ladies
who presented herself to the Prophet for marriage. Aisha said that, doesn’t a lady feel ashamed for presenting herself to a man?"

5.3 Guardianship

After mate selection the important question is regarding guardianship. Islam recognizes the position of both partners in regard to their marriage. But it also realises that generally till that age partners do not have as much experience for a healthy decision. So the responsibility extends to the guardians of both the partners.

Where Qur’an talks about marriage, it addresses the guardians. Qur’an says, “And marry those among you who are single.”

The verse indicates that it is the legal and moral responsibility of the guardians to take care of the marriages of those who are under their guardianship. The importance of guardianship is much in marriage. Prophet says, “No marriage without guardians.” In other place Prophet says: “Any woman, who has married without the permission of her guardian, her marriage is invalid.” It is clear from these sayings that without the concern of a guardian marriage will not be complete.

Islam categorises the guardianship in that of a male and a female, and of a female between virgin and matron (widow, divorced). In case of a male the interference of the guardian is moral. Male has full authority in his marriage. No one can arrange his marriage without his acceptance. The
real effect of guardianship is expressed in the case of a girl, which is not only moral but legal. A saying of Prophet[^2] differentiated between virgin and matron in which he said, “Narrated Abu Hurairah, that Prophet[^2] said, a matron should not be given in marriage except after consulting her and a virgin should not be given in marriage except after her permission. The people asked, O Allah's Messenger how can we know her permission? He said, her silence”.[^22] In other saying Prophet[^2] says: “A matron has more rights in her matters than her guardian, and virgins will be asked for permission, and their permission is silence”.[^23]

It is obvious that a matron is given more right in selection of her husband than a virgin girl. But it does not negate the authority or interference of a guardian. In the case of matron it is the responsibility of the guardian to take clear expression from her but in the case of a virgin her silence is enough for permission.[^24]

As mentioned above the guardianship in the case of a boy is more moral than legal. In a Hadith Prophet[^2] has directly addressed the youth about their marriages. He said “O young men whoever is able to marry among you should marry”.[^25]

The guardians have been empowered to exercise control at their female wards. There are various categories of guardians as per Islamic jurists. Accordingly the most appropriate guardian for the marriage of an independent woman is her father then her grandfather and so on, then her brother, the step brother in the same order, then her brothers’ son and so
on, then her paternal uncle and his son and so on, and then the uncle of her father. The conclusion of the series is that those who have more share in her property after her death, have more right to the guardianship of that girl.\textsuperscript{26}

The legal right of guardianship is all in the hands of men. Women do not have any right to interfere in it. But a saying of Prophet^PBH\ shows that consulting with their mothers is appreciable "Do mutual consultation with women about their daughters".\textsuperscript{27}

\textbf{5.4 Mahar (Bride Price)}

Mahar is an Arabic word. It means gift, fixed with mutual consent, for the woman, who is being married, either paid immediately or latter.\textsuperscript{28} Mahar is a free gift to a woman from her husband. Qur’an says: "And give to the women their Mahar with a good heart".\textsuperscript{29}

Mahar is an indispensable part of marriage, without Mahar the validity of marriage will be questioned. Wherever Qur’an talks about marriage it talks about Mahar as complementary to it. It says:

\begin{itemize}
  \item "All others are lawful provided you seek with Mahar from your property desiring chastity".\textsuperscript{30}
  \item "So with those, of whom you have enjoyed sexual relations, give them their Mahar as prescribed".\textsuperscript{31}
  \item "And give them their Mahar according to what is reasonable".\textsuperscript{32}
\end{itemize}
“And there will be no sin on you to marry them if you have paid their Mahar to them”.\(^{33}\)

“O Prophet verily we have made lawful to you, your wives to whom you have paid their Mahar”.\(^{34}\)

The essentiality of Mahar can be realized by the fact that, Prophet\(^{PBH}\) was given permission from Allah to marry without Mahar with those Muslim women who presented themselves to Prophet\(^{PBH}\) and Prophet\(^{PBH}\) wished to accept them. The words in Qur’an in this regard are “and a believing woman if she offers herself to the Prophet\(^{PBH}\) and the Prophet\(^{PBH}\) wishes to marry her-a privilege for you not for the rest of the believers”.\(^{35}\)

On the basis of this permission Prophet\(^{PBH}\) married with Maimoona in 7\(^{th}\) Hijri. But he did not like the special privilege and gave her the Mahar even though she did not ask for it.\(^{36}\)

Maudoodi writes that the last words of the verse indicate that no Muslim is allowed to marry, even with those women who offer themselves for marriage without Mahar.\(^{37}\)

Paying Mahar is obligatory to the bride, whether she is a Muslim or a woman from the People of Scriptures (Ahl-e-Kitab). Wherever Qur’an has granted permission for marriage with the women who are from those who have been given books it has added about Mahar. Qur’an says: “(lawful to you in marriage) are chaste women from the believers and chaste women from those who were given the scripture before your time, when you have given their due Mahar”.\(^{38}\)
Mahar is the right of wife that is why exchange marriages without Mahar are prohibited. Exchange marriage refers to a marriage where Guardians agree to marry each other’s female wards with their male wards in exchange without Mahar.

In a Hadith “Narrated Ibn-e-Umer, Allah’s Messenger forbade Ash-Shighar, which means that some body marries his daughter to some body else and the latter marries his daughter to the former without paying Mahar”.39

Paying Mahar is essential either immediately at the time of marriage or after some time if the wife agrees. ProphetPBH says: “Whoever married a woman by Mahar with the intention that he will not pay, he is adulterer, and whoever borrowed with the intention that he will not repay, is a thief”.40

As for the amount of Mahar is concerned, no amount was fixed by ProphetPBH. Although the analysis of different sayings of ProphetPBH shows that the amount should not be as much as to be a burden, and could not be paid. ProphetPBH says: “give away women in marriage to men and do not exceed in Mahar”.41

Hazrat Umer says: “Do not exceed in fixation of Mahar, if it is some thing admissible in this world, and something for piety in the life after death, then the ProphetPBH was a better adapter to it than you, but the Mahar of Prophet's wives and his daughters were not more than twelve Oqia”.(a currency of that time)42 In another saying, “Narrated Anas bin Maalik that
AburRahman bin Auf came to Prophet\textsuperscript{PBH}: Since he was bearing some yellow spots so he told that he has married an Ansari woman. Prophet\textsuperscript{PBH} asked, how much did you fix the Mahar for her? Abdur Rahman replied gold equal to date stone”.\textsuperscript{43}

Here are some sayings that indicate the importance of Mahar and deny the importance of amount. “Narrated Sahal bin Saad As-Saidi while I was sitting among the people in the company of Allah's Messenger a woman stood up and said, O Allah's Messenger she has given herself in marriage to you, please give your opinion about her. The Prophet\textsuperscript{PBH} did not give her any reply. She again stood up and said. O Allah's Messenger she has given herself to you, so please give your opinion about her. The Prophet\textsuperscript{PBH} did not give her any reply. She again stood up for the third time and said, she has given herself in marriage to you, so give your opinion about her. So a man stood up and said, O Allah's Messenger! Marry her to me. The Prophet\textsuperscript{PBH} asked him “Have you got any thing? He said no. The Prophet\textsuperscript{PBH} said “Go and search for something even if it were an Iron ring. The man went and searched and returned saying, I could not find anything, not even an iron ring. Then the Prophet\textsuperscript{PBH} said, “Do you know something of the Qur’an?” He replied “I know (by heart) such and such Surah”. The Prophet\textsuperscript{PBH} said; go I have married her to you for what you know of the Qur’an”.\textsuperscript{44}

The conclusion that can be drawn from these sayings is that the Mahar is the right of a bride, and without any special cause it should not be
as minimum as it may seem a kind of usurpation in her right and it should not be as much as that its payment becomes burdensome. Qur’an conveys this message in a Verse “the rich according to his means and poor according to his means a gift of reasonable amount”.

The amount fixed for Mahar at the time of marriage can be increased or decreased by the mutual understanding of husband and wife. And this can be done at any time after marriage. It is very clearly said in Qur’an “but if after a Mahar is prescribed you agree mutually there is no sin on you”.

Nowadays Mahar is considered a kind of check upon divorce and it is thought that Mahar should be so high that no Muslim (married) even dares to think about divorce. But sometimes it creates problems. In a married life if at some time both parties find it difficult to coexist, they must part. But this approach makes it problematic. A husband may find it difficult to pay the Mahar and hence might not be able to release his wife through divorce.

5.5 Publicity of Marriage

In Islam marriage is a social contract, because it is breakable. So like all other contracts, it must be publicised. Qur’an says clearly “And there is no sin on you if you make a Girl 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”.

A Hadith also indicates about publicity of marriage “make public this marriage and perform it in the mosques and beat drums for it”.

On one such occasion, girls sang with the beating of drums in the presence of Prophet. Bukhari has noted “Narrated Ar-Rabi the daughter of Muavia bin Afra, at the consummation of my marriage the Prophet came and sat on my bed as far from me you are sitting now and our little girls started beating the tambourines and reciting elegiac verses mourning my father. One of them said “among us is a Prophet who knows what will happen tomorrow” on that the Prophet said “leave this and keep on saying the verses which you had been saying before”.

Imam Muatta has also noted a Hadith that shows the importance of publicity. “Narrated Abu Zubair that a person was presented before Umer, in whose marriage only one man and one woman were present as witness, Umer said, “this marriage is secret, I do not permit it, and if I were aware about it before, I could have stoned him to death”.

Beside these verses and sayings the system of organizing a marriage ceremony is in such a way that shows a high level of publicity. Such as the tradition of sermon, essentiality of witnesses and the importance of marriage feast (Dawat-e-Walima).

Delivering marriage sermon is the tradition of Prophet. At the occasion of marriage, people gather around and a person delivers sermon.
Dr. Galwash writes in his book “I give below, in extense, the nuptial sermon, universally preached on the occasion of marriage in imitation of the Holy Prophet**PBH**”:

“O ye believers fear Allah as He deserves to be feared, and die not without having become true Moslem. O men, fear your lord who hath created you of one progenitor and of the same species created He, his wife, and from these twain hath spread abroad so many men and women. And fear ye Allah in whose name ye ask mutual favours and reverence the wombs that bore you. Verily, Allah is watching over you. O believers fear Allah and speak with well-guided speech, that Allah may bless your doings for you and forgive you your sins. And who obeyeth Allah and His apostle, with great bliss he surely shall be blest”.51

The second thing is essentiality of witness which contributes in publicizing marriage. Qur’an clearly says: “O you who believe! When you contract a debt for a fixed period, write it down.....And get two witnesses out of your own men. And if there are not two men then a man and two women such as you agree for witnesses”.52

The verse has a general nature and talks about witness in any kind of contract. It also includes marriage. A Hadith of Muatta, noted earlier but worthy to be repeated, clearly indicates “Narrated Abu Zubair that a person was presented before Umer in who’s marriage only one man and one woman were present as witness. Umer said this marriage is secret, I do not
permit it, and if I were aware about it before, I could have stoned him to death ".53

In another verse Qur’an talks about witness upon divorce “then when they are about to fulfil their term appointed, either take them back in a good manner. And take for witness two just persons from among you and establish the witness for Allah”.54

While explaining the verse Ibn-e-Jarir (a well known commentator of Qur’an) referred to Ibne Abbas and said, according to this verse you have to get witnesses upon divorce and upon reconciliation as well.55

Hazrat Imran bin Hussain is asked about a man who divorced her wife and latter reconciliated, but he did not establish witness neither on divorce nor on reconciliation. He replied you did your divorce and reconciliation both as against the tradition of Prophet. Establish witness on both divorce and reconciliation, and do not do it again.56

With these verses and saying it is obvious that the establishment of witness is also an essential element of marriage.

The third thing that also contributes in the publicity of marriage is marriage feast. It is a feast given by groom or his guardian after marriage. Prophet did it himself and asked others to do so. Bukhari has noted that “Narrated Anas, Allah's Messenger manumitted Safiya and then married her and her Mahar was her manumission and he gave a wedding banquet with Hais (a sort of sweet dish made from butter, cheese and dates)”.57
In another Hadith Prophet^{PBH} asked Abdur Rahman bin Auf to do so, "Narrated Anas when Abdur Rahman bin Auf married an Ansari woman, Prophet^{PBH} asked him to give a banquet even if with a sheep". Another saying noted by Sahih Muslim shows the same meaning "Narrated Anas bin Maalik that Prophet^{PBH} saw yellow spots upon Abdr Rahman bin Auf, and asked what is this? He replied, I married with a woman giving a Mahar of Gold equal to date stone. Prophet^{PBH} said Allah will bring good fortune. Give banquet even if with a sheep".59

If some body refuses an invitation he indeed disobeys Allah and his Messenger. "Narrated Abu Hurraira, the worst feast is that of a wedding banquet where only the rich are invited while poor are denied. And who refuses an invitation (to a banquet) disobeys Allah and his Messenger".60

5.6 To Whom Marriages are prohibited

Each society has some checks and balances that prevent some relations to marry each other. Islam gives a list of those relatives to whom marriages are prohibited. The list includes some relatives from the lineage side and others are from in-law's home. Qur'an says: "Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your brother's daughters, your sisters' daughters, your foster mother who gave you suck, your foster milk suckling sisters, your wives' mothers, your stepdaughters under your guardianship, born of your wives to whom you
have gone in but there is no sin on you if you have not gone in them (to marry their daughters) the wives of your sons who (spring) from your own lines, and two sisters in wedlock at the same time except for what has already passed; verily Allah is oft-Forgiving, Most Merciful. Also (forbidden) women already married, except those (captives and slaves) whom your right hands posses. Thus has Allah ordained for you. All others are lawful provided you seek (them in marriage) with Mahar (bridal money given by husband to his wife at the time of marriage) from your property desiring chastity, not committing illegal sexual intercourse”.

Here ‘mother’ includes, stepmother, grandmother from father as well as from mother side, grandmothers of the parents and the complete chain of both lines. In the same way ‘daughter’ includes, granddaughters from the side of son as well as from daughter side with their complete chain, without any difference between real and stepdaughters. Sister also includes stepsisters either from father or from mother side. Paternal aunt and maternal aunt include the paternal aunt and maternal aunt of the parents. Nephew from, brother as well as from sister side include their below links.

The conclusion of all explanation is that the relations which have been declared as Haram (unlawful), the complete line of that relation will be in the same order. All the relations are Haram from the lineage side except four, that Qur’an describes, “O Prophet\textsuperscript{PB} verily we have made lawful to your wives to whom you have paid their Mahra, and those whom your right hand possesses whom Allah has given to you and the daughters
of your paternal uncle and the daughters of your paternal aunts and the
daughters of your maternal uncle and the daughters of your maternal aunts who migrated with you"\(^62\)

The wife of son excludes itself from the wife of adopted son. This law is only for real son. Qur’an says: “so when Zaid had accomplished his desire from her, we gave her to you in marriage, so that there may be no difficulty to the believers in respect of the wives of their adopted sons when the latter have no desire to keep them”.\(^63\)

Keeping two sisters as wives at the same time is prohibited. The same law is applicable if the two sisters are slaves. No one can have sexual relations with both at the same time.\(^64\)

Among the nearer relatives of husband and wife, all are allowed for marriage except four. These are wives of fathers and wives of sons, mothers of wives and their daughters. The complete chains of these relations, either in upper side or lower side are prohibited. It is prohibited for a man to marry with her wives’ mother and her grandmothers and so on. In the same way man is prohibited to marry with his wives’ daughter, i.e. his stepdaughter and his granddaughter and so on. Like step daughter the daughter of stepson is also prohibited.\(^65\)

A man is also prohibited to marry with a woman who is already married. Qur’an says: “Also (forbidden are) women already married”.\(^66\)

Prophet’s saying provides some more explanation. Such as “Narrated Jabir, Allah’s Apostle forbade that a woman should not be married to a man
along with her paternal aunt or maternal aunt". Abu Hurairah narrated that, Allah's Messenger said "A woman and her paternal aunt should not be married to the same man and similarly a woman and her maternal aunt should not be married to the same man together".

Here the paternal aunt includes the sister of grandfather with the complete line and maternal aunt also includes the sister of grandmother from mother side and so on.

About the suckling relations, Qur'an has talked only about mother and sister, but Prophet\textsuperscript{PBH} has explained it. The boundaries are larger than it appears to be. Prophet\textsuperscript{PBH} says: "yes for foster suckling relations make all those things unlawful which are unlawful through corresponding birth relations".

On the basis of above Hadith, it has been declared that the relation between suckling mother and suckling son will go further in their offspring.

Another dimension of the topic, which is most worthy to mention here, is that according to Islam the first criteria of marriage is that the parties to it should not be idolatress or idolater. Since the aim of marriage is to cultivate love, affection and spiritual harmony among the married, if a person marries with someone other than a Muslim, their thought, culture habit might differ and clash and ultimately the desired goal of marriage will not be achieved. Qur'an says: "and do not marry idolatresses till they believe and indeed a slave woman who believes is better than a free
idolatress even though she pleases you. And give not in marriage to idolaters till they believe and verily, a believing slave is better than a free idolater even though he pleases you.”72

Qur’an allows marriage with those women who are Ahl-e-Kitab (people who were given Holy Scriptures). Qur’an says: “Made lawful to you this day are At-Tayyibat (all kind of lawful foods). The food of the people of the scripture is lawful to you and yours’ is lawful to them. Lawful to you in marriage are chaste women from the believers and chaste women from those who were given the scriptures before your time”.73

Although, the permission was given that a Muslim man can marry among the people of scriptures, because the cultural foundations of those people up to some extent are similar to Islam. But a Muslim woman cannot marry with the men of scriptures.

Marriage of a Muslim man with a woman of scripture is not appreciable rather it is discouraged. Ka’ab bin Maalik showed his desire to marry with a woman from those who were given scriptures. Prophet⁹⁷ negated him.74

Hazrat Ali and Hazrat Umer both declared this marriage as not desirable in Islam. Ali cited the verse of Qur’an “O you will not find any people who believe in Allah and the last day, making friendship with those who oppose Allah and His Messenger”.75
5.7 **Kafaet (Equality)**

Marriage is a good unifying positive contract between men and women. If both the partners of the contract are almost alike in their feelings, thoughts and habits, then the contract will be more stable. Otherwise it may lead to a divorce.

Islam has given much importance to the equality of status to both the partners coming into the marital contract. For this equality jurists of Islam have used the term ‘Kafaet’.

The things that have been the subject of discourse among jurists of Islam to measure the similarity or equality are piety, family and race, occupation, wealth, physical disability, similarity of status in terms of slave and free man, priority in adopting Islam and Wajahat (knowledge of religion with practice).

5.7.1 **Piety:** Piety has key importance in establishing marital relations. Prophet[^PBUH] directing towards it said, “When a marriage is offered to you from a person whose religious and moral conditions are satisfactory, then accept it, otherwise disturbances will occur upon earth”.\(^{76}\)

In another saying, narrated by Abu Hurraira, Prophet[^PBUH] said, “a woman is married by four things, her wealth, her race, her beauty, her religiosity and you should prefer religiosity “.\(^{77}\)

5.7.2 **Family and Race:** Imam Abu Hanifa, Imam Shafai and Imam Ahmad have propagated for social equality in marriage. They have quoted
Prophet to prove their point which follows. “Allah selected Kanana among the offspring of Ismaiel, and Quraish among the offspring of Kanana and Banu Hashim among Quraish and He selected me among Banu Hashim”.78

The above Hadith shows that race and family has been given importance in Islam that is why Prophet talked about this. In another Hadith, narrated by Hazrat Ali, Prophet said, “three things should not be delayed, the prayer, the death prayer when it is nearer to you, the marriage of unmarried girl when it is offered from similar people”.79

In another Hadith narrated by Hazrat Aisha, Prophet said “select good relations for your offspring and marry them with similar people”.80 Hazrat Umer says that, “I will not allow any women who belongs to upper race, to marry a man who belongs to a lower race”.81

Waliullah, a writer about Islam, has written with the reference of Al-Mabsoot that, it is difficult to maintain a healthy marital relationship in the absence of equal partners, because the feeling of racial superiority is an immodest thing. No woman would like to live with a man of lower race. Indeed it affects the very aim of marriage, the required atmosphere of love, affection and attachment will remain an illusion.82

5.7.3 Occupation: - Among the jurists, some are against the similarity in occupation and say that it is not important to measure similarity in occupation for marriage. But others are in favour of it. Imam Ahmad and Mohammad say that occupation will also be considered, and a person from
low occupation (known in society) can not be equal to a person from high occupation.  

5.7.4 Wealth: - It is also an aspect of similarity among jurists of Islam. The saying of Prophet[^P]^ provides a base to their argument. “Fatima bint Qais went to Prophet[^P] and asked that Ma’avia bin Suffyan and Abu Jaham have proposed me for marriage, what is your suggestion? Prophet[^P] replied Abu Jaham tortures the women and Ma’avia is a poor man; marry with Osama”.

This Hadith shows that Prophet[^P] prohibited her marriage with Ma’avia due to his poverty. In another Hadith, while explaining the importance of wealth Prophet[^P] said that “the nobility of people is wealth”.

Abu Hanifa and Imam Mohammad say that, economic status of both, men and women, should be almost same for their marriage.

5.7.5 Physical Ability: - If there is any kind of defect in a man, but he did not expose that to the woman or to her guardian before marriage. Then, in both the cases woman will have right to move into court and to demand for the dissolution of marriage. So for the establishment of marriage this aspect is also necessary to be considered.

5.7.6 Free or Slave: - No slave can be equal to a free man (who is free by birth) whether he is still a slave or is freed from slavery. In the same way no free man whose father is slave can be equal to a free woman whose father is also free.
5.7.7 Priority in Adopting Islam: - It is also a well known aspect in which equality of status matters. Hanafi and Shafai jurists say that a converted Muslim can not be equal to that who is Muslim by birth. The converted Muslim will be considered equal to all other Muslims only after the passing of two generations in Islam.89

5.7.8 Wajahat (Personality):- Ahnaf jurists give more importance to Hasab in measuring similarity of status for marriage. The importance is as much that a person with Hasab can be equal to a man of superior race. But if the person having superior race is of bad character the person having Hasab will be higher than him in status.90

But what is Hasab. Many explanations have been derived by jurists. Some say it is morality and cite this Hadith “nobility is high morality”.91 Some says that, it is religiousness by citing the evidence in which ProphetPBUH says, “it is said his nobility is his religiousness”92 But the jurists observe that it is knowledge and religiousness. Imam Abu Yusuf says that “if a man embraces Islam or if he becomes free and he competes with the people of superior race by acquiring knowledge and good deeds, he can be considered similar and can marry with the women of superior race”.93 Hereby it is meant to say that the achieved status is more recognized than the ascribed status.

Without indulging in the deep discussion of jurists, the logical conclusion for our purpose is that, Islam intends to create love and affection not only among couples but also between their families. If this
goal remains unachieved, the inclination of Islam turns towards the
dissolution of marriage. Islam stressed upon similarity of status because,
the chance of love and attraction is more among similar people.94

5.8 POLYGAMY

Besides monogamy Islam also permits polygyny but prohibits
polyandry. Qur’an says: “then marry women of your choice, two three or
four”.95 Islam allows it with certain instructions. Polygyny was in practice
among several groups and communities of the entire world. Now it is
considered a mean of exploitation of women.

Islamists say that polygyny is a need of man. They believe that
sexual desire is a natural desire, and among some males this desire is
higher than others and they find it difficult to control, with the result single
wife is not enough for them. They come out with another reason that
women with the passage of time goes through certain biological changes
like menstruation, pregnancy and lactation etc. due to these biological
dANGES the physical condition of women gets effected and she loses her
sexual appetite sooner than a male. So the second marriage becomes a need
for men.96 They also say that in some situations polygyny is fruitful for
women. They advocate that it is a natural desire to have offspring. If a wife
is unable to reproduce due some physical or biological disabilities or due to
some chronic illness, two conditions arise;
- He keeps another wife with her first wife or
- He divorces the first and marries to another one.

Rarely a woman will prefer the second choice.\textsuperscript{97}

Polygyny is also a social need. Normally the sex ratio remains almost equal in all the groups and nations. But at times of war sex ratio gets disturbed due to the young male casualties in war. Many women are widowed. Then what will happen to those women? Should they be left in their precarious situation? The polygyny offers a chance to such women to settle their lives and as a result it helps in checking the corrupt practices in society. It is also favourable for those societies where the number of males is comparatively less.

Some people are of the opinion that why does Islam prohibit polyandry? There are several reasons. The most notable is that, if a woman has several husbands, it becomes difficult to trace the biological father. A huge amount of unsolved questions, related to inheritance and responsibility, will arise.\textsuperscript{98}

5.8.1 **Legal Bindings:** - In spite of these social and individual justifications, Islam allows polygyny with strict rules that do not allow a man to use it unnecessarily. Islam allows such practice in a situation of crisis. Before the advent of Islam a man used to keep many wives, but in Islam, a man is not allowed to keep more than four wives at a time. Islam recognizes it as a social and individual need, but in no circumstances it allows to keep more than four wives at a time.\textsuperscript{99}
It must be noted here that polygyny is not appreciated in Islam. It is only permitted to tackle the situations arising out of some crisis. In such marriages, Islam puts greater emphasis upon the responsibilities of men towards their wives. This type of marriage is never encouraged in Islam for the purpose of physical pleasure.

5.8.2 Conditions of Polygyny: - A man must be in a position to bear the responsibility of maintenance of all the wives. Secondly he must be able to have sexual relations with all the wives. Allama Ibn-e-Arabi observes that if a man has sufficient wealth and physically able, he can have four wives. But if his wealth and physical health is not sound, in such a situation he should keep only those, he can bear.

If a man is wealthy and physically able, even then there is condition to do justice among wives. Qur’an cautions that if you fear to do justice then do not go for another wife. It says: “if you fear that you shall not be able to deal justly then only one or that your right hands posses”.

Prophet[^102] stressed a lot on justice among wives. Prophet[^103] says: “if a man has two wives and he does not deal among them justly, at the day of judgement, he will come with parts of his body leaned”.

So, it is necessary for a man to deal justly among all wives about feasible matters. But in the matters which are beyond his control he is not responsible. To be equally inclined to all his wives is beyond his capability. “Aisha reported that the Messenger of Allah used to have turns among his wives and does justice. He used to say: O Allah this is my
division in what I can control. So do not blame me in what Thou do control and I can not”.

It does not mean that a man should incline himself completely towards one wife in the name of love by taking the shield of capability, and deprive the other wife. Qur’an says: “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”. Like wives, children of the wives have been given equal rights, and they can not be discriminated on any ground.

5.9 Mut’a Marriage

Mut’a marriage is a temporary marriage. It was permitted in the early age of Islam. This marriage is arranged for a particular period of time and with the completion of the time marriage ends.

The analysis of sayings of Prophet shows that the permission of this marriage was almost during journey. This permission was withdrawn firstly in seventh Hijri at the time of Khaiber. Prophet clearly prohibited it. “Narrated Ali, I said to Ibn-e-Abbas during the battle of Khaiber Prophet forbade Al-Mut’a and the eating of donkeys’ meat”.

During 8th Hijri, at the time of Awtas it was again permitted for three days. Lastly in the same year at the time of conquest of Macca, permission was given, but before retiring from Macca, this marriage was
Hazrat Sabra Jhani narrated that Prophet\textsuperscript{PBH} said “O people! I had given you the permission of Mut’a, but now Allah has prohibited it till the day of judgement. If any one of you has such wives, release them and do not take any thing back whatever you have given them”.\textsuperscript{112}

In another narration, “Apostle of Allah forbade Mut’a and said, listen, this is prohibited to you from today till the day of judgement, and whoever has given something to such kind of women, do not take back”.\textsuperscript{113} Another place Sabra Jahni narrated that “indeed Apostle of Allah forbade it (Mut’a) at the time of Hajjatul-Wida”.\textsuperscript{114} Many other sayings of Prophet\textsuperscript{PBH} leave the same impression about Mut’a, that it was a temporary permission before the completion of social laws. But latter this marriage was forbidden forever. Abu Hurraira narrated that the Prophet\textsuperscript{PBH} has said “the rules of divorce, inheritance and Iddah (waiting period) destroyed Mut’a”.\textsuperscript{115} Abdullah bin Masood has also propagated the same thing “verses of divorce, Iddah (waiting period) and inheritance have cancelled Mut’a”.\textsuperscript{116}

Shia Muslims believe that, this temporary marriage is still allowed. The base of their belief is a narration of Hazrat Ibn Abbas. But in fact, he was also against this temporary marriage.\textsuperscript{117}

The narration of Hazrat Jabir bin Yazeed clearly shows that Ibn-e-Abbas had changed his view about Mut’a. Mohd bin Ka’b narrated with the reference of Abdullah bin Abbas. He says: “Mut’a was allowed in the early age of Islam. Men used to come to new places, about which they were
ignorant. They used to marry there with women, who can manage their tasks and can look after their wealth till the time they desire to stay there. But when the verse “except your wives and those your right hands posses” is revealed Abdullah bin Abbas said, now all others are Haram (unlawful) except these two”.

The above preachings show that Islam prohibits all kind of temporary marriages. It encourages people to obtain stability through marriage.
5.10 References

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