Kinship and Marriage among the Muslims

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ABSTRACT: *In every community kinship is considered to be a vehicle for understanding the internal mechanism of social structure. The system of kinship is itself a 'sub-structure' or an internal structure within the social structure. Kinship relations are streamlined through 'cultural mechanism' which give expression to multidimensional social institutions. They are patterned through culturally defined sets of customs dictated by religion and are inherent in language. Patrilineal descent forms the backbone of the Muslim kinship system. It is patrilineal descent around which hinge the functions of families and households as well as rules and regulations regarding marriage. A measure of continuity is provided by patrilineal descent which determines succession and inheritance. This paper attempts to trace the kinship and marriage among the Muslims.*

KEYWORDS: *Kinship, Structure, Patrilineal, Marriage, Customs.*

Kinship is an important organising principle in human societies. In the cross-cultural perspective, it varies in its range and significance. Impressed by its pivotal position in many simple societies which were the subject of rigorous and penetrating synchronic studies, anthropologists have tended to grant an unusual degree of autonomy to kinship. Its applicability needs to be examined carefully in the context of India. The country's many religious communities, castes, and tribes in different cultural regions present an extraordinary variety (Dube, 1974; 01).

Broadly the treatment of kinship included such features as clan-- especially their mythical origins, totemic associations, and their role in exogamy; other units based on putative kinship; family or household; marriage regulations; customary kinship behaviour; and a list of kinship terms. Exotic customs were particularly recorded (Ibid: 04).

Adrian C. Mayer's *caste and kinship in central India (1960),* studies kinship in reference to the internal structure of sub-caste or endogamous caste groups. The author emphasizes as fundamental, the distinction between caste and subcaste on the basis of internal and external relations. Thus, "caste" may be viewed essentially in terms of inter-caste relations within the village, but "subcaste" has to be understood in terms of kin ties spread over a region. The constitution, organisation, and functioning of kinship unites is sought to be grasped through native categories, with the help of villagers own notions and interactional analysis (Ibid: 34).
The kinship system is to be seen as a collection of inter-personal relationships. Social relationships between different kinds of kin involve distinct patterns of social behaviour, of rights and obligations, and of expectations, beliefs and values (Humphrey, 1998; 148).
A three level model of social reality proposed for heuristic purposes by Needham (1972). This model was developed in the course of studies into prescriptive systems of kinship and marriage. Briefly, it discriminates the following analytically separable levels of data:

(1) **The statistical-behavioural,** which comprises the aggregate consequences of the behaviour of individual members of the society or group in question. In the particular case of kinship, this level is exemplified by demographic, marital, residential and other observed patterns.

(2) **The jural**, comprising the normative, legal, moral, religious and analytical statements of the society's members. Needham likens such phenomena to what Leach (1964: 285) has called the 'as-if' descriptions contained in indigenous social theory. The common characteristic of jural data is that they refer to ideals held by the studied people themselves and made explicit by them, though not always verbally or in the form which the ethnographer would himself choose. For example, statements of marriage preference belong to this level.

(3) **The categorical**, made up of modes of classification and systems of nomenclature. Kin terminology is perhaps the archetypical example of data at this level. Categorically data may perhaps be said to differ from jural phenomena by being implicit. That is, they are taken for granted by the members of society and do not seem to them to require the kinds of explanation, justification and idealisation commonly associated with jural statements (Parkin and Stone, 2004; 188)

Before the advent of Islam in Arabia, loose unions, promiscuity, polygamy and the uninhibited law of divorce were the order of the day with males, and marriage by purchase, concubinage with slave women were common practices. Women were inherited against their will by the heirs, had no right of *Mehr* (nuptial gift) since the father regarded the daughter as his personal property, while the guardian exercise unlimited right over minor girl and could take them for himself without price or could, if he wished, sell her to another. The wish of the woman concerned had no place in marriage. Rather, it was the father, brother or male guardian who could force her into any union. The status of legitimacy of the children depended upon the form and type of marriage entered into. Female infanticide was frequently practised, and since in old Arabian law women had no rights of inheritance, they received no part in the father's estate (Shaukat, 1987; 60).

Prior to Islam, marriage was strictly a contract. This is referred to by Kapadia (1966) as a *beena* marriage where a woman was free to choose her husband. But soon *beena* was replaced by *baal* marriage signifying the dominion of the husband over the wife and in time featuring polygyny, female infanticide, and divorce as a privilege of a man (Kapadia, 1966:198-202). As a Prophet appeared on the scene during the prevalence of the *baal* marriage, he attempted to make marriage a sacrament while retaining its contractual features. Consequently, he discouraged men from divorcing their wives at their whim (Das, 1991:30).

Religious endogamy is quite strictly practiced. The very low incidence of inter-faith marriages reflects this belief and practice. In this area, requirements and expectations are slightly different for the sexes. There is another dimension of inter- faith marriage in Pakistan, namely, between the *Sunnites* and *Shiites,* the followers of the two major sects in Islam. Systematic information on the incidence of intermarriage between them is not available. However, followers from both these sects indicate a strong preference for intra-sect marriage although actual inter-sect marriages are not at all uncommon (Ibid: 49).

The practice of preferential cousin marriages has been recorded as a characteristic feature of Muslims, though Hindu groups too are found to practice certain forms of preferential cousin marriages in some parts of the country. The evidence does not support the contention that preferential cousin marriage is either practised universally among Muslim communities in India or that this preference is always adhered to while arranging marriages. Khatana observes that, though different types of cousin marriages do occasionally occur among the Gujjar Bakarwals and are accorded the status of legitimate unions, they are generally disapproved of socially. Others too note that the endogamous unit traditionally tends to be so large as to rule out the possibility of such marriages. On the other hand, Aggarwal finds that the Meos are clearly opposed to such marriages, which they consider incestuous, and attempts by fundamentalist groups to encourage such unions on the ground that they are sanctified by religion have so far proved abortive. Like preferential cousin marriages, the practices of polygamy and divorce too are closely associated with Muslims in India, though, again both of them are fairly wide spread among other religious communities (Ahmad, Imtiaz, 1976; Introduction).

Several social anthropological and sociological studies focussing on Muslim social life have suggested that Muslim familial life exhibits a peculiar synthesis of Islam and Hindu traditions (Hashim, 1970), that the kinship terminology of the Muslims is comparable to that of the Hindus (Vreede-de-Steurs, 1968) and that the marriage customs of the Muslims are often characterized by a curious mixture of Hindu and Muslim rituals (Uddin, 1972). A study of a group of convert Muslims shows that Islam, which is essentially patrilineal in orientation, co-exists along with a matrilineal kinship system (Ibid: 02).

The Gujjar Bakarwal ideal holds that the marriage of an individual should be arrange by his parents or by his senior relatives in case his or her parents are not alive. The Gujjar Bakarwals avoid marrying the children of the same mother, foster brothers and sisters and sister's and brother's children. Furthermore, they also try to avoid marrying their patrilineal descendents. Some informants said that in the past marriage within the boys patrilineal *gotra* was avoided and some persons even now avoid marrying their sons into their own and their wives' *gotras*. However, such restrictions are no longer strictly adhered to and marriages within one's *gotra* as well as in one's mother's *gotra* are quite common. The Gujjar Bakarwals recognise marriage with both parallel and cross cousins to be legitimate. However, instances of such marriages are extremely rare. While such marriages are accorded the status of regular marriages whenever they were occur, they are not considered desirable by the Gujjar Bakarwals as a whole. Ideally, the Gujjar Bakarwals prefer that the first marriage of their children should take place within their community. Thus, as far as possible, they try to arrange the marriage of their children within the community (Ahmad, 1976: 93-94).

Kinship Groups: There are three principal kinship groups among the Gujjar Bakarwals

1) **The household** (*Dera*) - The *dera* (household) is the basic unit among the Gujjar Bakarwals. They count their numbers and describe their grazing and kafila groups in terms of *deras*. A *dera* usually comes into existence when a person establishes an independent household, which happens ordinarily after his marriage (Ibid: 104).

2) **The lineage** – In the state of Jammu and Kashmir the pastures are not allotted to individual families *(Deras)* or to their heads. On the contrary, they are deemed to be the property of kinship groups whose ancestors had first establish control over them and used them traditionally. These kinship groups are called *dada-potre* and their rights over pastures and migration routes are traditionally recognized both by the community as a whole as well as the forest department and the revenue authorities. The *dada- potre* is a group of patrilineally related kinsmen tracing their ancestry to a common ancestor. The size of this group is extremely variable and may comprise as many as 250 or more persons. The generation depth of a *dada- potre* unit extends into several generations and includes person's siblings, cousins and distant relatives in addition to uncles. (Ibid: 107-108)

3) **The Clan**- The entire Gujjar Bakarwal community is divided into a number of clans (*gotras).* Unlike the *dada potre* unit which is based on actual patrilineal descent, the clan is based on a fiction of common descent. The presence of *gotras* among Gujjar Bakarwals seems to owe itself to their Hindu ancestry. The gotra name is usually used by the Gujjar Bakarwals as a suffix to their names. Old Gujjar Bakarwals say that inter-marriages among members of the same *gotra* were avoided in the past, but this does not seem to be true now a days and cases of inter marriage among clan members are not unknown (Ibid: 112). A few prominent *gotras* are Khatana, Hakla, Bajjar, Chechi, Rathore, Chauhan, Bhatti, Rana, Thekria, Bhadana, Gorsi, Bagri, Kasana, Bajran, Kohli, Khari and others. The main function of gotras is to regulate marriages, as the Gujjars maintain *gotra* exogamy, like Hindus. The Gujjars have an established system of *jirga* (Panchayat) which decides the disputes among its members (Warikoo, 2002).

The age at marriage seems to be related to the socio-economic status of the family. Using place of residence as indicators of the socioeconomic status (Ibid: 52). Monogamy which is practised by majority of couples today. The changing economic situation, as well as changing legal forms and traditions, is promoting an increased incidence of monogamy (Ibid: 83).

Even prior to such considerations are the stipulations that a union should not violate two rules which operate in all marriages. First, there is a rule of exogamy which prohibits marriage within the patrilineal descent group *biraderi that* is between any two persons thought to have a common patrilineal ancestor. In practice, this is determined by the biraderi name. If two persons have the same *biraderi* name, then it is assumed that they have common ancestor. Second, there is the rule that a husband must be older than his wife, which carries the implications that husband's status must be higher than the wife's (Khan, 1994: 81).

Muslims select girls from the vicinity of their village for marriage. In the same manner the girls are married mostly to men from nearby villages. Regarding marriage distance, preference is given first to the members of the same relational network, same village, same area and then to distant ones (Ibid: 86).

Patrilateral parallel cousin marriage, i.e. the marriage of a man to the daughter of his father's brother, or to a kins women referred to by the same term as the genealogical father's brother's daughter (FBD).The explanations of FBD marriage range from those which see it as psychologically motivated, through those which see it as functional in attaining various practical goals, to those which see it as instrumental or the reproduction of the social structure of which it is itself a part.

Since the mid-1950s there have appeared a number of studies concern with a phenomenon which became known as 'preferential patrilateral parallel cousin (or FBD) marriage' (Barth 1954: 164; Ayoub 1959: 266; Murphy and Kasdan 1967: 2). As a first step in defining this phenomenon precisely, it is apposite to ask what are its discriminating features, and how can one recognise a 'preferential patrilateral parallel cousin marriage' as such? This is a question to which the corpus of writing devoted to its analysis and explanation does not give a very good answer. There are usually three kinds of data which are taken as manifestation of the preferential FBD marriage:

1) The actor's statements to the effect that such a marriage is a particularly good one or a better one than other marriages, or that it is particularly desirable.

2) The existence in the given culture of the rule which stipulates that a man has a right to marry his FBD and that no other man can marry her unless her FBS chooses not to exercise his right or expresses his consent to her marriage to another man.

3)   A pattern of contracted marriages such that the number of men who actually marry their patrilateral parallel cousin is significantly higher than it would be if their marriages were random, and which thus indicates that the asserted preference is actually enacted in behavioural practice (Holy, Ladislav, 1989;1-6).

Because marriage within the circle of related people, i. e the most favoured form of marriage. It is significant to note that the most important social groups for an individual in the village are his immediate circle of kinsmen who act together and who regard themselves as *rishtedar*. Kin groups are formed around the expectations of mutual assistance and support. Such circles of relatives play a significant role as effective social groups beyond family and *biraderi* (Das, 1991: 99).

Marriage is said to be legally established when a declaration is made by one of the contracting parties, and accepted by the other. Thus the pillars of marriage are *Ijab* and *Qubul*, or declaration and acceptance, in the language of the law. The first speech from whichever side it proceeds is *Ijab* (declaration), and the other *Qubul* (acceptance). "Declaration, in the language of law, signifies the proposal made by one of the contracting parties, and 'consent', the acceptance of declaration of the other". The Shias and Sunnis agree on this condition but the Sunnis insist that the declaration and acceptance should take place at the meeting and that "the acceptance should not be discrepant from the declaration" (Ali, 1987: 82-83).

It is interesting to note that under Sunni Law "Marriage contracted in jest (hazl) or under duress *(ikrah)* is valid and binding". The Shias are not agreeable with them on this issue. The Fatimid Shias clearly declare that: "A man's marriage is void if it is contracted when he is drunk, or if the declaration is made in jest or by deception, without witness or wali. (Ibid: 85). It is further a condition that the witnesses shall hear the words of both the contracting parties together. Hence, it cannot be contracted in the presence of two sleepers who have not heard the words of both the contracting parties, nor of two persons so deaf that they cannot hear; but the objection does not extend to a person who is dumb or tongue tied if he can hear (Ibid: 87).

The custom of giving dowry – a practice which has never been sanctioned by Islam- is greatly on the increase among the Muslims of India and Pakistan. As this custom is not prevalent among the Muslims of other countries, it seems quite clear that it has been borrowed by Indian and Pakistani Muslims from other Hindus of the sub-continent. The latter, in accordance with their ancient law, did not give their daughters any share in the family property, but on the occasion of their marriage- as a measure of compensation- they gave them dowries, part of which took the form of household goods. In imitating this Hindu customs in India, Muslims are denying their daughters their rightful share in the family property to which they entitled under Islamic law. The practice of "compensating" for this by giving them wedding presents and labelling these *jahej* or "Dowry" (*jahej* is Urdu) is, in reality, a deliberate evasion of the Islamic law of inheritance.

There is body of opinion among certain Muslims which has it that *jahez* is the *sunnah* (way) of the Prophet, because he himself gave his daughter, Fatimah, a " dowry" on the occasion of her marriage to 'Ali ibn Abi Talib.

Fatimah's Dowry
As a justification for giving dowry, in the modern sense of the word, this proposition is clearly unacceptable, for, according to early records, the "dowry" which the Prophet gave to Fatimah consisted of only the barest of household necessities. According to 'Ali ibn Abi Talib, the Prophet Muhammad prepared for Fatimah a sheet , a leather bag for carrying water, and a pillow filled by *idkar (*grass).

Asma , the daughter of 'Umyas', relates that when Fatimah left for 'Ali's house it was quite unfurnished except for flooring of sand, a pillow of date palm bark, a pot of water and a drinking vessel. Even the sheet which Fatimah was given had to be divided in two so that one half could be spread for sleeping on and the other half could be worn (Khan,2004: 212).

The amount of the *mehr* is recorded in the marriage contract called the *Nikah Nama*, and although it is usually stated in terms of cash (in rupees), it may include jewellery and/ or immovable property. There is no uniform pattern of behaviour in this area and there are variations in it along various dimensions. For example, the amount of *mehr* varies, the mode of payment varies, the subjective motives and meaning vary, and so on. The amount of *mehr* varies, also, according to the socio-economic and community status of the family, the larger the amount of *mehr* demanded, or granted (Das, 1991:55).

In some parts of the country (Iran), *shirbaha* must be paid to the bride's parents. This might be compared to the bride price found in other parts of the world. Although, literally, this means payment for that milk which the girl has taken from her mother, it, in fact, means compensation for expenses the parents have suffered in raising the girl and preparing her for marriage. It is also considered a counterbalance to the dowry which the girl's parents must provide. *Shirbaha* has never been more than a custom, therefore, it was never formalised into a law. Today in seldom occurs, and when it is found, it is usually in rural areas (Ibid: 81).

Registration could be greatly facilitated if a standard *Nikah-Nama* is prescribed and accepted by all the sections at large. Pointing to the diversity of the Nikah contracts in our country, photocopies of *Nikah- Namas* of the Hanafis, Ithna Ashar, Fatimid Shias, Imamia Khojas and Cuthci Memons, Sunni Khojas are herewith produced (Ali, 1987:107).

Another factor contributing to the publicity of the marriage is the *Valimah* (marriage feast) thrown at the husband's house when the bride is initially taken there. The Prophet's emphasis on the *Valimah* feast is well known for the same purpose (Ali, 1987: 89).

Conclusion: Kinship and Marriage is very important aspect of Muslim life. Muslim like Hindus are patrilineal and patriarchal in nature. Most of the marriages are according to the religion. Muslim practice monogamy though few cases of polygamy are also noticed. Marriage within the relationship is preferred kind of marriage. Though with time few changes are coming in the kinship and marriage pattern of Muslims.

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