

Marriage Patterns of Muslim's with Special reference to *Mehr* as Women's Property

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ABSTRACT: *Marriage is regarded all over the world as a social institution, whether considered as a sacrament or as a contract. Marriage, apart from giving rise to certain mutual rights and obligations, confers the status of husband and wife on the parties, and of legitimacy of their children. Marriage is more than simply a legalised sexual union between a man and a woman; it is socially acknowledged and approved relationship. In India, people generally believe that marriage is not between two individuals, but it is between two families in terms of bonds that it creates between them. The paper focuses on the marriage patterns of Muslim's with special reference to mehr as women's property.*

KEYWORDS: *Nikah or marriage, Mehr, Women's Property right and Customs.*

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, concubine age 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 exercised 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 (Shaikat 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 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. In fact, Kapadia (1966) reports that "towards the end of his life [the Prophet's] he went so far as practically to forbid its exercise by the men without the intervention of arbiters of judge" (Kapadia 1963:203). Conversely, however, the Prophet's own marriages, reportedly to seven or eight women, his *Sunnahs* supporting the *Purdah* (seclusion) of women, mild physical beating of the women, and divorce as a privilege of the husband may not have done much to boost the status and power of women during his time and in subsequent years (Das 1991:30).

Marriage is looked upon by the Muslims as *sunnath* and it is regarded as an important obligation which must be fulfilled. They say without marriage he/she would not reach *jannath* (heaven), however pious he or she may be, for not having performed the important obligation as Muslim. Only physically and mentally handicapped persons who cannot carry on the day-to-day activities remain unmarried (Khan 1994: 77).

In Islamic law, there are three necessary aspects to understand the institution of marriage, namely, **1) Legal aspect, 2) Social aspect and 3) Religious aspect.**

Legal aspect:- Juristically, marriage is a contract and not a sacrament. It has three characteristics : (1) there can be no marriage without consent; (2) as in a contract, provision is made for its breach, to wit, the various kinds of dissolution by act of parties or by operation of law; (3) the terms of a marriage contract are within legal limits capable of being altered to suit individual cases.

Social aspect:- In its social aspect, the important factors must be remembered: (1) Islamic law gives to the woman a definitely high social status after marriage. (2) Restrictions are placed upon the unlimited polygamy of pre-Islamic times, and a controlled polygamy is allowed.

Religious aspect:- While considering the social and legal aspects, the aspect of religion is often neglected or misunderstood. First, let us consider the Koranic injunctions regarding marriage. Marriage is recognized in Islam as the basis of society. It is a contract, but it is also a sacred covenant. Temporary marriage is forbidden.

Marriage as an institution leads to the uplift of man and is a means for the continuance of the human race. Spouses are strictly enjoined to honour and love each other. Secondly, the traditions of the Prophet follow the same lines. The Prophet was determined to raise the status of woman. He asked people to see their brides before marrying them and taught that nobility of character is best reason for marrying a woman (Fyzee 2005).

Definition of Marriage According to Muhammadan Law:- In Muhammadan law marriage has a very definite legal meaning. It is a contract for the legalization of intercourse and the procreation of children. Ameer Ali cites an ancient text defining its objects as follows: 'Marriage is an institution ordained for the protection of society, and in order that human beings may guard themselves from foulness and unchastity'. According to Abdur Rahim, "The Muhammadan jurists regard the institution of marriage as partaking both of the nature of ibadat or devotional acts and muamlat or dealings among men".

Thus from the religious angle, Muslim marriage is an ibadat(devotional act). The Prophet is reported to have said that marriage is essential for every physically fit Muslim who could afford it. Moreover the following traditions may also be considered;

"He who marries completes half his religion; it now rests with him to complete the other half by leading a virtuous life in constant fear of God".

"There is no mockery in Islam".

"There are three persons whom the Almighty Himself has under taken to help-first, he who seeks to buy his freedom; second, he who marries with a view to secure his chastity; and third, he who fights in the cause of God".

Now, if marriage is nothing but a civil contract, then keeping in view the above traditions we could say: He who enters into a civil contract completes half of his religion; the Almighty Himself has undertaken to help the person who enters into a civil contract; civil contract is equal to jehad; it is obligatory on every physically fit Muslim to enter into a civil contract; and so on. All these inferences are patent absurdities, and are untenable. Which means Muslim marriage is something more than a civil contract (Bhartiya 1996).

Among the Muslims, nikah (marriage) is- as the Holy quran describes -a misaq-e-ghaliz (solemn pact) between a man and a woman soliciting each other's life companionship, which in law takes the form of contract. Among the Muslims of India marriage is an established social practice. It is known among them as Shadi, Uroosi, Biyah and Khana-abadi, and they do regard it as a solemn occasion in life. As generally understood by the Muslims of India, marriage is a life – companionship – subject of course to the law of divorce - between a man and woman; not a marital union for any fixed tenure to terminate on the lapse of the tenure (Mahmood 2002).

Thus in law, marriage is a civil contract, in religion it is not a sacrament performance, but in social custom it is imbibed with some religious traits. Muslims in India hail from a highly religious oriented ethnic stock and therefore naturally they embedded some religious traits into the ceremonies of marriage. Since the source of Muslim law is the Quran, in one sense the law of nuptial contract is also 'a religious law', as the Muslims like to emphasize in reference to their 'personal law'. One of the reasons for this insistence may be to insulate the marriage law from 'interference' by civil authority of the state (Bhartiya 1996).

I. CLASSIFICATION OF MARRIAGE

A marriage, according to Muhammadan law, may be either, (1) **Valid**(Sahih), (2) **Void**(batil), and (3) **Irregular**(fasid).

Valid Marriage (Sahih):- A marriage which conforms in all respects with the law is termed sahih, i.e, 'correct', in regard to legal requirements. For a marriage to be valid it is necessary that there should be no prohibition affecting the parties. Now, prohibitions may be either perpetual or temporary. If the prohibition is perpetual, the marriage is void; if temporary, the marriage is irregular (Fyzee 2005).

The legal effects of a Valid Marriage are –

- 1) The parties to the marriage acquire the status of husband and wife, thereby, sexual intercourse between the two becomes legal.
- 2) The mutual rights of inheritance are conferred on the parties.
- 3) The wife acquires the right of maintenance, dower and lodgement.
- 4) The marriage imposes an obligation on the wife to be faithful and obedient to her husband and admit him to sexual intercourse.
- 5) On the dissolution of marriage, either due to divorce, or death, the husband cannot marry the wife's sister.
- 6) The marriage subjects the wife to the husband's power of restraining her movement, that is to say, the husband can prohibit her from going out and appearing in public. But this power of the husband is subject to the contract to the contrary.

- 7) It confers on the husband the power of reasonable chastisement and correction when she is disobedient or rebellious.
- 8) It confers the status of legitimacy on the children.
- 9) In addition to these, other rights and obligations may also arise as agreed upon the marriage contract.

Under Muslim Law, the wife's sect or school does not undergo a change on marriage. Nor does a marriage confers any right or power on each other's property (Diwan 2007;51).

Void Marriage (Batil) – A basic condition for the validity of marriage in Muslim law is that the parties must not be maharim-i.e; within the prohibited degree of marriage. A marriage in violation of the rule of prohibited degrees in marriage shall be void (Batil) under all the schools of Muslim law (Mahmood 2002).

A marriage forbidden by the rules of blood relationship affinity on fosterage is void. A void marriage is an unlawful connexion which produces no mutual rights and obligations between the parties. e.g, there is no right of dower, unless there has been consummation. The death of one of them does not entitle the other to inherit from the deceased. The illegality of such unions commences from the date when the contracts are entered into and the marriage is considered as totally non-existing in fact as well as in law (Fyzee 2005).

Fasid Marriage (Irregular) – A marriage that is not wholly lawful- i.e., which has been contracted in violation of some legal requirements- but is not regarded as void is Irregular in the Hanafi law. A marriage contracted without the presence of witnesses is Irregular.

A marriage to a woman undergoing iddat, as also one in violation of the rule of 'Unlawful Conjunction', are also generally regarded as Irregular. Consummation of an Irregular marriage gives rise to nearly all the effects of a lawful marriage except the mutual right to inheritance between the spouses (Mahmood 2002:110).

The following marriages have been considered Irregular:-

- 1) A marriage without witnesses;
- 2) A marriage with a woman undergoing 'idda';
- 3) A marriage prohibited by reason of difference of religion;
- 4) A marriage with two sisters, or contrary to the rules of unlawful conjunction;
- 5) A marriage with a fifth wife.

The IthnaAshari and Fatimid Schools of law do not recognize the distinction between void and irregular marriages. A marriage is according to those systems, either valid or void; hence the above mentioned unions would be treated as void marriages (Fyzee 2005).

II. KINDS OF MARRIAGES

Muslim law does not insist upon any particular form of marriage. If there is a proposal from one side, and its acceptance on the other, a valid marriage will come into existence, provided that the other conditions of marriage are fulfilled. There is only one form of marriage called nikah. The Muslim marriage is a permanent marriage, but, no term is fixed in a normal nikah.

However, the IthnaAshari law recognizes, as it is commonly, though incorrectly, called, temporary marriage, known by the term of Mutamarriage. It would be proper to call muta marriage as "term marriage". No other sect of Muslim recognizes muta marriage. It should be noticed that even in a muta marriage, there is nikah. Just like the Sunnis, the Shias also recognize the regular permanent marriage (Diwan, 2007:48).

Muta Marriage–The word Mutaliterally means 'enjoyment, use'. It is a marriage for a fixed period for a certain reward paid to the woman. It may be for a day, a month, a year or a term of years. The fact of the matter is that a muta marriage is a survival of a pre-Islamic Arab custom whereby the Arab women used to entertain men in their own tents. The essentials of such a union are four- the form, the subject, the period, and the dower.

As regards the form, there must be proper contract: declaration and acceptance are necessary. As regards the 'subject', a man may contract a muta with a Muslim, Christian, Jewish or a Fire-worshipping woman, but not with the followers of any other religion. Relations prohibited by affinity are also unlawful in temporary marriage. A man may contract muta with any number of women.

A muta terminates by the efflux of time or by death. On the expiry of the term, no divorce is needed. During the period, the husband has no right to divorce the wife, but the husband may make a 'gift of the term' and thereby terminate the contract, without the wife's consent. The mehr is a necessary condition of such a union. If it is not specified, the agreement is void. Where the marriage is consummated, the wife is entitled to the whole amount; if not, to half the mehr. In case the wife leaves the husband before the expiry of the term, the husband is entitled to deduct a proportionate part of the mehr (Fyzee 2005).

A wife in a muta marriage is not entitled to maintenance. But if in the contract of marriage, it is specifically stipulated, the wife will be entitled to maintenance during the whole term, even if the husband chooses not to cohabit with her. In the absence of such a stipulation, the court has power to grant her

maintenance under Section 125 of the Code of Criminal Procedure. When the marriage is consummated, the wife is required to undergo idda of three course; if there is no consummation of marriage, no idda is required. Hence where two persons have married under mutaform for a fixed period and they continue as husband and wife till death of husband, the inference was that the marriage has been extended from time to time. The children conceived during the extended term are legitimate (Desai 1981).

Polygamy:-In general, according to strict interpretation of the Quran, Islam allows only one wife to a Muslim male. But under certain exceptional conditions, men are allowed to marry more than one woman but a maximum of four. In the Pre-Islamic Arabia, unlimited polygamy and brazen oppression of women prevailed to such an extent that the introduction of limited polygamy by the Prophet was itself then an achievement of a high order, a definite step towards the amelioration of the harsh lot of woman and a definite advancement in the then prevailing juristic thought.

History shows that the permission to marry more than one wife was given at a time when the Muslims were engaged in fighting a long series of wars with the unbelievers of Mecca. Men who supported their families economically had to take the field against the enemy and many of them lost their lives leaving behind widows and orphans. These widows and orphans had to be cared for and someone had to look after their economic needs. If they had been left to themselves, they would have perished and the Muslim community would have become so weak that it could be easily conquered by the enemies of Islam. It was under these conditions that the permission was given to marry more than one wife up to the number of four, so that the widows and orphans might be able to find a home and a shelter (Ajijola 1999).

In Islam, monogamy is a general rule while polygamy is only an exception.

The Koran commands;

“Marry such women as seem good to you, two, three or four; but if you fear that you cannot do justice (between them) then marry only one,- this is better so that you may not deviate from the right path” (Koran IV:4)

“And if it is not in your power to do justice between wives, even though you may covet it; but keep yourself not aloof from one with total aversion, nor leave her like one in suspense” (Koran V:4)

A necessary condition for Muslims, who perform polygamy is that men should do Justice to all their wives. Otherwise they were not allowed to marry. Hence, it was said that if you fear that you cannot do justice between yours wives, you should marry only one. If a person has an insufficient income he should not be allowed to marry more than one woman, because he will not be able to provide for the economic needs of two wives and their children. A man with weak health may not be allowed to marry more than one woman, and in all cases the condition should be laid down that a man, before performing or proposing a second marriage, must satisfy the authorities that he has sufficient income and is reasonably healthy to be able to fulfil his responsibilities towards his wife and that his conduct in the past has been such that he may be expected to keep on good terms with his family, in case he marries two or more women (Ajijola 1999).

In India, very few Muslims practise polygamy. The social consciousness has been brought to such a level of awareness that no one propagates polygamy openly, but there are still some who advocate limited polygamy, though they call it limited bigamy. But these advocates of controlled bigamy do not admit that in similar situations in which they favour plurality of wives, women too, should have the right to have plurality of husbands. Under the Dissolution of Muslim Marriage Act, 1939, a wife can sue her husband for divorce on the ground that her husband, who has a second wife, is not treating her equitably (Diwan 2007;46).

Marriage Procedure among Muslims

Compared with the marriage rites of all other Indian communities nikah is a very simple and brief ceremony but customs and rituals observed by Muslims at the time of marriage are adoption of the custom and ritual observed generally with in the region. In India Muslims familial life exhibit a peculiar synthesis of Islamic and Hindu traditions. Marriage procedure among Muslims are as discussed below:-

Mate selection

There are various patterns operating in the Muslim community in the sphere of selecting the mate. First, among these is one where the mate selection is done by the parents, without obtaining the consent of their children, who are directly involved in it. This may be termed as “traditional pattern” of mate selection. The second form of mate selection is one in which the marital partner is selected by the parents in consultation with the person who is going to get married. The third one in which person himself takes the initiative and makes marital choice with parental approval. These two (second and third) patterns may be called ‘mixed pattern’. Fourth form of mate selection may be considered as one where individual makes marital choice without parental approval (Jain 1986: 75-76).

III. STRUCTURE OF PREFERENCES:

Circle of kins: When a man starts looking for a partner for himself, his first choice is from among his father's brother's daughters, or his father's sister's daughters, or his mother's brother's daughters, or his mother's sister's daughters. If he cannot find an eligible partner within this circle of cousins, his choice is next extended to his second cousins. He can marry either his father's cousin brother's daughter, or his father's cousin sister's daughter or his mother's cousin sister's daughter. If he still cannot find a partner, he will next bring more distant relatives into the orbit of eligible marriage partners.

Circle of Khandan: Besides the circle of kins or relatives, there is the circle of families bearing the same or similar surnames. These families, usually referred to as khandans, are favoured as in- laws above khandans bearing other names. It seems that the principal bases of khandan rank are wealth and Islamic education and possession of these elements elevate some khandans above the others. Originally, landholding used to be the principal criterion for arranging marriages outside the circle of kins.

Circle of Villages: Aside from the kins and the khandan, the village constitutes the third circle of marriage. People do not usually like to leave their village and go to another village in their search for eligible partners. Only when no eligible match can be found in one's own village would one decide to look for a match in a village with which marriage ties already exist (Ahmad 1976: 58-63).

Patrilateral parallel cousin marriage, i.e. the marriage of a man to the daughter of his father's brother, or to a kins woman referred to by the same term as the genealogical father's brother's daughter (FBD). The explanations of FBD marriage range from those who see it as psychologically motivated, through those who see it as functional in attaining various practical goals, to those who 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 concerned with a phenomenon which came to be 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 1989:1-6).

FBD marriage is recognised by the actors themselves as a meaningful category of marriage is abundantly attested by the widely prevailing notion that it is the ideal or best form of marriage or that it is at least a good or desirable marriage; in brief, it is attested by the preference for this type of marriage widely expressed by the actors themselves all over the Middle East and the adjoining areas of Muslim Africa and Asia (Ibid: 15).

When marriage preferences are graded, or when a first genealogical patrilateral cousin is a more preferable spouse than a more distant cousin or a woman of the same lineage, it would probably be more accurate to talk of two different preferences rather than one: one for lineage endogamy and one for the patrilateral parallel cousin. Even if an FBD is preferred because she is a lineage member, this does not make the preference for the former simply for the latter (Ibid: 20).

The occurrence of marriages with cross cousins, matrilateral parallel cousins and other kin can be reconciled with the lineage endogamy theory only when it is assumed that marriages with cousins other than patrilateral parallel ones are not preferred any more than the marriages among strangers. The assumption underlies, for example, Rosenfeld's analysis of the marriage pattern of Moslems and Christians in an Arab village in Isreal. He categorises marriages as parallel cousin marriages, clan marriages (which include classificatory parallel cousin marriages), intra-village marriages and inter-village or stranger marriages.

According to him they are preferred in this order (1957: 35-42), and his statistical analysis clearly indicates that such preference is to a remarkable extent enacted in behavioural practice (Ibid: 21).

Among the Muslims rarely marriage takes place between the members of very highly and very low caste groups, in such marriages, wealth, income, occupation, education etc. are generally taken into consideration (Ali, 1992: 220). Love matches disturb the hierarchical order and threaten the traditions that permit parents to exact obedience from their children for life. Worse, they may create a situation in which the marital tie becomes stronger than that between a man and his natal family (Haris 2006: 131).

The Muslims are an endogamous group and they practise endogamy strictly. The selection of his spouse is actually done in much narrower range. It is indeed narrowed down to such an extent that when we speak of the group as being endogamous, what is actually implied is that there are many small endogamous units within the endogamous framework of the entire group. Further, the preferences for spouse belonging to each one of these units are systematically structured. Since marriages are arranged by parents among the Muslims and they take place according to customary rules, it is necessary to understand the structure of endogamous units within the group and the basis upon which they are founded. Ideally speaking, all Muslims are marriageable to one another.

However, among the Muslims of Gulwar in Karnataka, Khan (1994) saw tendency of the so called 'Patelan' to intermarry amongst themselves and to maintain a tightly knit endogamous nature of their circle of so called Patel biraderis. The Patels clearly express that they marry only amongst themselves. They constitute some lineages (biraderis) in Gulwar. For them, all Muslims who are not Patels are thought to be inferior and are called a 'Mulia' or 'Mullani'. In Gulwar, Mullanis are constituted by patrilineal lines of not more than three generations depth. For such of those descent groups who are categorised under the rubric of Mullani, the Patels say that their ancestry (khandan) are inferior to them. Khandan is a quality inherent in the blood and hence they say Mullani is different from us and we are different from them. They think low of Mullani and refer to them as belonging to low birth (Khan 1994: 82). In fact there are many communities among Muslims in India who follow caste endogamy. This is shown by various field studies carried out among different Muslim groups.

When the preference is stated "marry a closed relative", the cross cousins (MBD and FZD) may simply be one sub type of the more generally phrased reference. If one cannot find an eligible mate within the circle of cross-cousin, his choice is next extended to his second cousin. If he still cannot find a partner, he will bring more distant relatives into the orbit of eligible marriage partners. Because marriage within the circle of related people, i.e., kin, is the most favoured form of marriage. It is significant to note that the most important social groups for any division in the village are his immediate circle of kinsmen who act together and who regard themselves as rishedar. 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. It is close and frequent kin marriages which help to produce such cohesive groups. Therefore, there is significant merging of affinal kin with the kin of the common blood. Kinship among Muslims thus implies very strongly the necessity of marriage. Kinship among Muslims demands co-operation and dependability. When these exist, closer kinship can be further reinforced by well-arranged marriages and when they do not exist, such kinship as existed is denied and forgotten (Khan 1994: 99-100).

Engagement:- The groom's family sends a proposal to the bride's family. The bride's consent to the engagement is absolutely necessary. The groom's mother, sisters and a few close female relatives go to the bride's home laden with gifts for her. The groom does not attend this ceremony. To fix a date for the wedding, older members of both families get together shortly after the engagement and an auspicious date is decided upon with mutual consent.

Sangeet, Mehndi and Friendship:- Previously sangeet was not found among Muslim marriages, now it becomes a part of marriage and is organized in both houses along with Mehndi. Mehndi is organised for four days before the marriage in groom's home and for three days in bride's home. From the first day of mehndi, the friends knot the gana on the wrist of the bride and groom in their respective homes as a symbol of friendship.

Wedding Day:-

Uptan:- As the nikah is held on day time, so in the morning the uptan (a paste made from sandalwood, turmeric and rose water) is used for the bathing of bride and groom in their respective homes and after ritual bath the groom's and bride's mama (maternal uncle) pick him/her from the chowki (wooden piece made for sitting) and give him/her shagun.

Sehrabandhi:- The sehra is a short veil of either golden thread, strings of pearls or just flowers, which is tied to his turban by the elder member of the family.

Barrat:- When the groom leaves with his baraatis, for the bride's home his sisters give dal to mare for eating and get shagun from the groom. Previously only male members were allowed but now females are also allowed. Live bands playing popular music also accompany him.

Milni:- The 'baraat' arrives at the venue and is greeted by the bride's family members. The male relatives of the bride greet their counterparts in the groom's family especially father, paternal uncle and maternal uncle. In the same way female relatives greet their female relatives especially mother, maternal aunt and paternal aunt.

Nikah:- Whatever the Muslim legal theory might say, in India a Muslim marriage takes place ceremonially. A nikah itself-which in law might mean only a direct or indirect exchange of proposal and acceptance between the parties-is regarded here as a 'ceremony' to be duly 'performed'. Yet it is seen as a religious requirement and has evidentiary significance (Mahmood 2002).

According to Mahomedan law, it is absolutely necessary that the man or someone on his behalf and the woman or someone on her behalf should agree to the marriage at one meeting and the agreement should be witnessed by two adult witnesses. As women are in Purdah in this part of the country it is customary to send a relation to send a relation of the woman to her inside the house accompanied by two witnesses. The relation asks the girl within the hearing of the witnesses whether she authorizes him to agree to the marriage on her behalf for the mehrmoney offered by the husband. He explains to her the detail of the mehrproposed. When the girl says 'yes' or signifies her consent by some other method, the three persons come out. The future husband and those three persons are then placed before the Mullah. The Mullah asks the boy whether he offers to marry the girl on payment of the specifiedmehr. He says 'yes'. Then the relation, who had gone outside, tells the Mullah that he is the agent of the girl. The Mullah asks him whether he agrees to the marriage on payment of the specifiedmehr. The relation says 'yes'. The witnesses are present there so that if the Mullah has any doubt he should question them as to whether the relation is a duly authorized agent of the girl. Directly both sides have said 'yes' the Mullah reads the scriptures and the marriage is complete (Fyzee 2005).

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 (Shaukat 1987: 87).

Under Muslim law, the marriage contract is not required to be reduced to writing, an oral marriage is perfectly valid. In India however preparation of a nikahnama is a common practice. The qazis usually maintain registers of marriage in which they record all the necessary details of every marriage that they are invited to. The record of each marriage so prepared is signed by the parties, their guardians, representatives, witnesses and the qazi himself. Copies of the entries are issued by the qazi to both the parties. This is called the nikahnama(Mahmood 2002).

Bidaai:-This is considered to be the most emotional ritual, when the bride leaves her parent's home and makes her way to her husband's. Family and friends, who also shower her with blessings, give her a tearful farewell.

Welcome of bride in the groom's home:-The bride is welcomed by her mother-in-law. The bride is not allowed to touch the feet of elders. The relatives hug her and give her shagun that may be either in the form of money or gift.

Valima:-While the nikah may be as intimate a ceremony as the family desires, for the valima it is essential that as many guests are invited as can be afforded by the families. The groom's parents host the event and the venue may be rather their home or the banquet hall.

Mehr (Dower)

In the Pre-Islamic Arabia, the two forms of marriage prevailed. In the beena form, the wife, on marriage, did not accompany her husband to his home, but continued to remain in her own home, where the husband visited her. In this form, it was customary to give, on marriage, a gift to the wife. This gift was known as Sadaq and the wife was Sadaqi. In the other form, known as baal marriage, the wife, after marriage accompanied her husband to the matrimonial home set by him, and the husband in consideration of wife's

leaving her parents' home paid some amount to her parents. This amount was known as mehr, and was, therefore likened to bride price. The baal form of marriage is a kin to Hindu asura marriage (Sinha 2010:66).

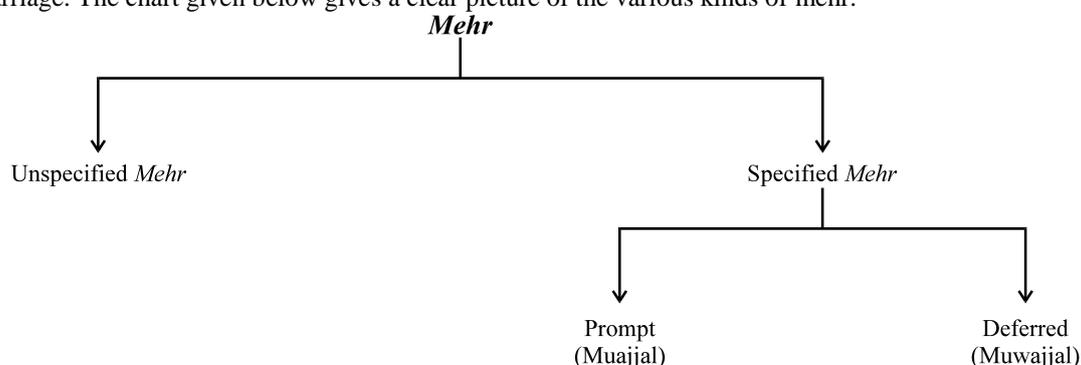
When Islam spread in Arabia, the Prophet reformed the law of marriage combining 'sadaqand mehr', the Prophet redeemed the marriage from the bride-purchase notion. Sadaq-mehr became a sort of marriage settlement, where the amount was not paid to the Wali (guardian in marriage) but to the bride herself. Mehr is something in the nature of a nuptial gift which a Muslim undertakes to make to the wife. It is inherent in the Muslim concept of marriage. In this sense, mehr is an integral part of Muslim marriage. The Muslim jurists also used it as a sort of deterrent to the husband's absolute power of pronouncing divorce on his wife (Diwan 2007:67).

Concept of Mehr :-

The Islamic concept of mehr is that it is that money or property which a husband must pay to the wife to acknowledge her dignity as his wife. Mehr is neither a consideration (bride-price) in the marriage-contract nor a gift to the wife to allow intercourse with her. Hedaya provides that, "the payment of mehr is enjoined by the law, merely as a token of respect for its object (the woman), wherefore the mention of it is not absolutely essential to the validity of a marriage, and for the same reason, a marriage is also valid although the man were to engage in the contract on the special condition that there should be no mehr". In other words, under Muslim law, there cannot be any marriage without mehr. In a marriage, the husband must pay 'something' to the wife as a mark of respect towards her whether this liability has been expressly referred to at the time of marriage or not. If there is an agreement between husband and wife that wife would not claim her mehr, the agreement is void and the wife's right to mehr exists despite such an agreement (Sinha 2010:67).

Classification of Mehr:-

The basis of the classification of mehr under Muslim law is: (a) whether it has been fixed by parties or is fixed by operation of law, and (b) whether the mehr may be claimed by wife any time or only upon the dissolution of marriage. If the mehr has not been specified by the parties at the time of marriage, it is called Unspecified or proper mehr. Proper mehr is fixed by the Court of law. But generally the amount is specified by the parties themselves at the time of marriage contract. Such mehrs therefore, called Specified mehr. If the mehr is specified, it may either be Prompt or Deferred or partly Prompt and partly Deferred. A Prompt mehr may be demanded by the wife any time after the marriage. Deferred mehr can be demanded by her upon the dissolution of marriage. The chart given below gives a clear picture of the various kinds of mehr.



Source: Sinha 2010:68.

Amount of Mehr

Any sum of money or a property of any valuation may be settled as Specified mehr. There is no maximum limit for it. A common practice among the Muslims is to fix an excessive amount as Specified mehr to prevent the husband from pronouncing Talaq upon which he has to pay the mehr. An excessive amount of mehr operates as an indirect control over the husband's unrestricted right of divorce. The minimum amount of the Specified mehr under Sunni law is 10 Dirhams. According to Shia law, there is no such minimum (Diwan, 2007). A dirham (Persian, diram, a word derived from the Greek) is the name of a silver coin 2.97 grams in weight and is usually valued at 3-4 anas or 20-25 paise. In India, it has been held that the value of ten dirhams is something between Rs 3 and 4.

Change in the amount of mehr

Any time after the marriage, the husband and wife may lawfully enter into a contract for the enhancement of the amount of dower specified at the time of marriage. That is to say, the Specified mehr once fixed at the time of marriage, may be increased subsequently and the wife is entitled to claim this additional or

increased amount from her husband. But husband cannot reduce the amount subsequently. However, the wife can herself reduce or remit her claim to the whole or a part of the Specified mehr. This is called remission of mehr. A voluntary remission of mehr by the wife is valid and the husband, in such a case, would not be bound to pay the remitted part of the mehr.

Remission of mehr

Just after the completion of a marriage the right to mehr is immediately vested in the wife. After getting this right she may or may not enforce it against her husband. She may relinquish or remit her right to mehr in favour of her husband. She may do so either out of natural love or to gain affection from her husband. This act is termed as remission of mehr by the wife. The wife may remit the whole or only a part of her specified mehr. After a lawful remission, the husband is under no legal obligation to pay the remitted part of mehr to the wife. It may be noted that if before the marriage a woman agrees that after marriage she would not demand any mehr or she would not exercise her right to mehr, the agreement is void because mehr is inseparable from a Muslim-marriage. But, after the marriage, 'the right to mehr' comes in her hands and becomes her own property. She is then free to deal with this property as she likes. Therefore, she may surrender or make a gift of the whole or a part of the mehr in favour of her husband. However, remission of mehr by the wife must be lawful. Remission of mehr is lawful if the following conditions are fulfilled:

IV. CONDITIONS FOR VALID REMISSION

- (1) The wife must be adult and sane at the time of remission of mehr, A minor wife cannot remit her mehr. As remission of mehr by the wife is like a gift by wife to the husband (Hibe-e-Mehr).
- (2) The remission of mehr by the wife must be made with free consent. It must be made voluntary, without any undue influence or threats in her mind. If the wife has relinquished her right to mehr under coercion, threats, undue influence or in an abnormal state of mind, her consent is not free and the remission is void. Such a remission is not binding upon the wife. Where a widow remitted her mehr while the dead body of her husband was still lying, it was held by the court that remission was not valid because she was in great mental distress at that time and her consent was not free.
- (3) When the wife remits her claim of mehr, it is regarded as a release of the mehr in favour of her husband. Remission of mehr is 'release' because it is relinquishment of a right to property. Under the law, such release is not valid unless it is in writing. Remission of mehr, therefore, must be in writing.

Absolute or Conditional Remission

The remission of mehr may either be absolute or conditional. The remission is conditional if the wife abandons her right to mehr in lieu of something being done. Thus, a wife may relinquish her claim of mehr subject to a condition that the husband would pay to her Rs.100 per month as special allowance up to a fixed period.

After the death of the husband, the widow's right to mehr is exercisable against the legal heirs of husband. A widow can remit her claim of mehr also against such legal heirs either absolutely or conditionally (Sinha 2010:73-74).

Thus, it is concluded that mehr is an important aspect of Muslim marriages and without mehr, Muslim marriages cannot be solemnized and with the passage of time the amount of mehr has increased and has become a symbol of status. The important custom in Muslim marriage is mehr, without mehr a Muslim marriage cannot be solemnized. Usually the prompt mehr is given at the time of marriage in the form of jewellery and cash is put as deferred mehr. Mostly the deferred mehrs connected with dissolution of marriage and can also be demanded by wife at any time. Mehr is for the wife's use and may be disposed off as she wishes. One of the ways in which women can empower themselves is through the Islamic right of reasonable mehr, without fear of social consequences. It is also viewed as a way to restrict divorce and polygamy.

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