

## The Rising Trend of Court Marriage (Current Status in Perception of Islamic Teachings)

Dr. Naseem Akhter\*

Dr. Arshad Munir\*

### Abstract

Marriage is a social and spiritual commitment, moral safeguard and religious duty for a spouse. It is a fact that marriage is an Islamic way to protect a Muslim from evil and sinful acts. Actually, this is a religious obligation, whose completion is necessary for the partner with happiness, like all other responsibilities are essential to accomplish in Islam. Marriage plays a very significant role in the life of mankind, by which two families get closer and new relations produce. A court marriage is a legal way to solemnize a relation of spouse, it is known as a registered marriage. This marriage takes place across different countries as per the marriage laws and legal procedures of that country. Selecting of a court marriage, it is a rising trend in Pakistani youth. According to society, court marriage is not appreciated, but Islam allows to choose a life partner at own choice. Normally, it is a last option for a spouse, when all the doors are closed for two lovers, then they choose the court or register marriage. Pakistani law also prohibits the force marriage and other kinds of all illegal marriages, and permits to choose a man and a woman his/her life partner. All the matters about the rising trend of court marriage in our society are discussed from Islamic perspective in this draft.

**Keywords:** Islam, Court Marriage, Pakistani Laws, Spouse

### 1. Introduction

“The Arabic word *Nikah* “marriage” literally means carnal conjunction of the union of the sexes and in law this term means marriage”. (1) According to Muslim law, “Nikah is a contract for the purpose of legalizing sexual intercourse and procreation of children”. (2) Another place the meaning of *nikah* is taken, like that “marriage is a legal process by which the sexual intercourse, procreation and legitimating of children between man and woman

---

\*Shaheed Benazir Women University, Peshawar

\* Chairman, Dept. of Islamic Studies, University of Gujrat, Gujrat.

is perfectly lawful and valid". (3) Marriage is an Islamic procedure to make safe the Muslims from offenses and evil acts. It plays a very vital role in the life of mankind, because it is a way for increasing the race of human beings. Matrimony is a sensitive and serious issue and a lifetime contract, therefore, Islam bestows the right of selection of a life partner to a man and a woman and considers essential the consent of a bride and a groom for their marriage, hence they could spend their lives with pleasure and happiness. Allah (SWT) says in the Holy Quran: "**And marry the unmarried among you and the righteous among your male slaves and female slaves**". (4)

The Holy Prophet (ﷺ) gave advice the youth: "O' class of youth, who of you have potential (to carry the burden) of marriage, he should marry". (5)

However, the acceptance and satisfaction are obligatory for the marriage contract. Therefore, the guardian or parents should discuss the matter of marriage with their children before engaging in this contract. When the decision of marriage will be taken by heart from the side of spouse, then the life will be easy, joyful and trouble less. And if the decision will be taken on the basis of compulsion, as a result of the difference of nature, the breaches will certainly be produced in this relationship and this will be finished very easily. Pakistan is an Islamic country, therefore, it is mentioned in law of marriage, that the forced marriage will not be appreciated and the consent of bride and groom will be essential for engaging in marriage tie. This draft is consisted on some sections, as; section one explains introduction, section two describes literature review, sections three and four throw light on research methodology and analysis of the problem, and the last section five, explicates conclusion.

## 2. Literature Review

Marriage is a social and a beautiful contract between a spouse. That plays very significance role in society. This is a very hot topic of contemporary society and Pakistan. Therefore, many books have been written on marriage and its all conditions. As well as, a number of research articles have also been presented on this important issue. Mulana Minhajuddin Meenai explains all the steps of marriage in very beautiful way in his book " Islamic Jurisprudence". This is show that he has a lot of knowledge about

marriage. He has described the contract of matrimony through Quranic verses and hadiths, which make more easy to this theme for reader and researcher. His way of explanation is very soft, due to which, a reader has interest in read from start to end. (6) Doctor Irfan Khalid Dahlon has described the all process of marriage with sensitive issues. This is a quality of writer that he explained every matter with primary sources, due to which, approach became easy to primary data of a research and a reader. He threw light on each issue through hadiths. That makes the collected material more easy for reader. (7) Another research scholar D.F. Mulla has explicated marriage (*Nikah*) with essentials and formal requirements in his book "Islamic Law". The language of this book is very easy and simple. That's why, a reader can understand easily every matter of matrimony through this book and can increase his knowledge. This book is a big collection of knowledgeable material. (8) Muhammad Subhi Bin Hasan Hallaq has written a book from the name of "Fiqh according to Quran and Sunnah", on marriage (*Nikah*). This book is a good collection of Quranic verses and hadiths. He focused an easy language for readers and every matter is explained in beautiful way. (9) Another book is "The Hidayah (Commentary on the Islamic Laws)", it is a comprehensive book regarding matrimony (*Nikah*) and its conditions. (10) The existing literature brings more significant information regarding marriage and its all requirements, such as magazine, research articles, books and newspapers. But, to the best of author's knowledge, no considerable study is available on the rising trend of court marriage in contemporary society, So, this study is going to fulfill this scholarly and literary need and gap. It is hoped that the present study will provide a practicable plan of said theme from perspective of Islamic teachings.

### **3. Research Methodology**

The current study bases descriptive research by gathering data through different books, research articles, journals, magazines, research dissertations, newspapers, different reports, conferences and seminars. The primary and secondary both style of references are used in this draft to clear the aim of this research and to make easy all the points of this draft.

#### 4. Analysis of the Problem

Here are the analysis of the information related to the rising trend of court marriage and its current status from Islamic perception:

##### 4.1. Current Status of Court Marriage:

Mankind is the best creation of Allah (SWT), Allah (SWT) has bestowed a high status to human beings than other creatures. This world and all the things, which we can see around us, these are made for them. Therefore, this is a nature of human being, that he cannot live alone in this world. He likes to live together with other people in society, because he has a social nature. As human being he has to face, dissimilar situation, as, educational, social, financial and especially matrimonial problems in society. This draft is, about the court marriage, therefore we will talk concerning the matrimony, which will be better to keep up the interest of researcher and reader. Many ways of marriages are practiced in Pakistani society i.e. exchanged marriage, forced marriage, eloped marriage and court marriage etc. If we analyze the different ways of matrimony regarding above mentioned conditions. This fact comes before us, that a woman has right to enter into a marriage contract without a wali in Pakistan, as it is stated in the law "consent of wali is not required and in the view of a Muslim juris, female can enter a valid *Nikah*/Marriage by her own free will". (11) According to Islam and Pakistani culture, father or other close relatives are considered accountable in deciding the marriage of both man and woman. The parents have reputable status, consequently, they have right to take decision for their children's bright and save future. But the permission of a groom and a bride are considered obligatory, in Islamic teachings, before the engaging in a matrimony tie, sometimes a couple takes wrong decision, forced by feelings, about their marriage. This is not a solution of a problem. This is right, that Islam allows to choose a life partner, but it's not mean that a man or a woman take wrong decision, as eloped marriage and court marriage. Parents are a precious gift by Allah (SWT), they are the heaven and hell for their children. If someone disobeys of his/her parents, so he/she will deserve for fire of hell and if he/she will obey to his/her parents then he/she will earn heaven. Therefore everyone should take care the wishes of the parents and should not be discredited

the parents in society, in which, we are living. This is a reason, if someone shows his/ her interest in anyone then he/she tells about his/her liking for someone other, our society takes it, as a disgrace and dislike action. When a couple gets married without the consent of parents /elders or does not adopt the traditional ways, it is called court marriage or register marriage. In this situation, the family closes the doors of the house for a couple of court marriage, because this act is for shocking and shameful for parents or guardian. In this circumstances, a couple has to face a number of crises from the start and even social exclusion. The court marriage, is also known as a registered marriage and it is a lawful way to make official a relationship. It takes place across different countries as per the marriage laws and legal procedures of that country. Choosing for a court marriage is a growing trend among the Pakistani community, especially in urban areas. (12)It is usually considered a last choice for a couple, when they assume that their parents will not support for marrying their plans. Then some people take a decision of court marriage as an opportunity. Several people, which cannot afford the expenses for marriage ceremony, they prefer such marriage for themselves. However, this practice is also considered as a wrong way to engage in wedding contract and society considers such action as an unethical and disreputable step. There are some reasons behind such marriage to adopt the wrong way of marriage. As, Love and affection are a main reason to adopt such marriages, positive and encouraging picture of such actions by the media, cell phone is also a big reason to motivate, forcing the children to abide by the customs and traditions, unawareness about Islamic teachings, awareness about the rights (implemented family laws of Pakistan) , dreams of high expectations from each other, not taking care of the liking/disliking of the couple and poorness and feeling of deprivation results such type of steps. Our new generation has become bold and they are taking decision on their own. It is true, that Islam gives importance to the wish of a man and a woman regarding the selection of his or her life partner, but it's not mean, that he/she ignored the decision of his/her parents or elders. We are living in a Muslim country, where all the fundamental rights have been given to a man and a woman. We should use our rights in a right way. If someone has a wish regarding his/her life partner, then he/she must disclose his/her wish regarding selection or rejection for a life partner. Whereas it's not mean, that we ignored

our parents, elders and society. We should respect our parents and elders' decisions, because parents always think good for their children. All those decisions, which are made under emotions, can never retain for long. Emotional decisions destroy the life of two persons. Islam bestows a respectable status of parents, because they have a lot of love for their offspring. They never think wrong for their children. Therefore, we should obey our parents' decision like an obedience children. It is a fact, that we are in 21 century, and have made our lives very busy, due to which, we are not paying attention to our children and are not teaching manners and moral ethics for a good life. Because we ignored the teachings of Islam, due to which, we are going downfall with the passing of time. New generation is our wealth, and in coming time, they will look after their country. This is a sad full situation for us, that we are losing our this wealth, because of our greed of modernity and the ignorance of the teachings of Islam. We should spend our lives according to Islamic teachings and should aware our offspring from Islamic teachings. Hence we can safe our society from the rising trend of court marriage. If we see, this curse has destroyed our young generations. In short, this is a duty of the parents that they should aware their children from Islamic teachings and should clear the concept of right and wrong decision in their offspring's mind, and should pay attention on their children's wishes, likewise, the children should conscious from the rights of parents over them, should aware the customs and traditions of their society and they should control their disreputable and disgraceful emotions.

#### **4.2. Marriage and Days of Ignorance:**

When we see back into history, there were many sins and evils in days of ignorance. Such as, the erroneous concept of matrimony, the status of woman was no more than asset for a man, she was sold and bought and was treated like a slave or a property. Her life was considered disgraceful. The immorality were common in the Arab society, due to which the pagan Arab society was being increasingly sinking in the swamp.

“Hadrat Ayesha (رضى الله تعالى عنها) elucidated this matter in the Hadith reported by Al-Bukhaari on the authority of 'Urwah IbnAZ-Zubayr (رضى الله تعالى عنه), Hadrat Ayesha (رضى الله تعالى عنها)

narrated him that there were four types of matrimonies in the days of dark time which are followed:

Type No.1. This is matched to the Islamic way of marriage (Nikah), which is present today, in all Muslim countries. A man explained his expression for marring in front the father of a woman, and he asked the hand of a woman from her parents or her father, or her brother, her guardian, after the acceptance of the message of marriage, the Mehr (dowry) was settled and the matrimony was held.

Type No.2. In this kind of wedding, a husband said to his wife, after she menses (the bath of period), to go a stranger person, and to have the sexual relation with him. The husband kept himself away from his wife and had not sexual intercourse with her until she conceived from the other man with whom she had sexual intercourse. When she got pregnancy, then she came back to her husband and he (husband) started sexual relation with her, if he wished. The reason of this function was, to birth an intelligent and beautiful baby. This marriage was called as Al-Istibdaa'.

Type No.3. In this sort of matrimony, a group which became consist of ten men, were assembled and enter in the house of a woman, and all of them, had sexual intercourse with her at once. If she became pregnant and brought a child in this world, then she passed some days after the birth and then she called all of them and none of them could not refuse for coming, and when they all gathered in front her, she said to them, "You (all) know what you have done, and now I have given birth to a child. So, it is your child O so-and-so!" she attributed her child, whom she liked, and he could not deny from the acceptance of that baby.

Type No. 4. The fourth kind of marriage was, that many people entered in a house of a woman and she did not refuse to come anyone. Such women were prostitutes, they (prostitutes) used to fix banners at their houses, as a sign [that they are prostitutes], and he who wished, to have sexual intercourse with them, he was allowed to go into their house. If any one of them conceived pregnancy and gave birth a child, then all those men were gathered and was called a Qaa'if (a person, who had skills to recognize of resembling in a child to his father) and the resemblance was observed in a child with those men, who came to a prostitute. After the recognition of resemblance, the child was attributed to a specific man and he was called a father of that unborn baby. That man could not be refused all that". (13)

Even though the whole atmosphere was not favorable for women in the pre Islamic era, but somewhere we can see many cases, in which the girl had been consulted to choose the groom even in that period. The history tells us some facts of the day of dark time, that when “Haris bin 'Awf solicited a father for his consent to get married one of his three daughters, the two senior ones rejected to wed him, but the “Buhaysa” the youngest daughter agreed to accept 'Awf as a husband”. (14) Likewise, “there is a proof of consent and consultation in the story of a famous poetess Al-Khansa regarding her marriage. Her father consulted her regarding her wedding to Durayd bin al-Simmah. Similarly, when Abu Sufiyan and Suhayl ibne Amr sent a proposal for marrying Hind Binte Utba, her father gave her the right to choose her husband, so she preferred Abu Sufiyan and she married him”. (15)

#### 4.3. Marriage and Islamic Teachings:

The Holy Prophet (ﷺ) exterminated all the sort of matrimonies, which were morally wrong and observed in Pre-Islamic Arab except the kind of marriage, which is present today and accomplishes all the pillars and conditions of Islamic marriage. A Muslim woman needs a guardian (*wali*) to engage in marriage contract on her behalf. The *wali* is usually the father. The traditional Muslim jurisprudence involves in a marriage of a *wali* for a *bikr*(*unmarried*),if she had not reached maturity.(16) As a protective measure for her who may be swept by their emotions. However, Hanafis articulate that women are equally able to engage in their own marriage contract without the need of a guardian (*Wali*). (17) In Pakistan, the woman has the right to enter into a marriage contract without a wali as stated in the law “consent of wali is not required and a Muslim female can enter a valid Nikah/Marriage by her own free will”.(18)

Islam dislikes pressuring in any aspect of life, even in the matter of wedding. Islam allows the right to willingness of man and woman to select or choose his/ her life partner and, therefore, disallows the forced marriage. A Muslim woman has the right of acceptance and refusal of the proposal of matrimony, even against her parents’ will. (19)**The Holy Quran says:**“O you who have believed, it is not lawful for you to inherit women by compulsion”.(20)

The Holy Prophet Mohammad (ﷺ) said, “The widow and the divorced woman shall not be married until her order is obtained, and the virgin girl shall not be married until her permission is obtained”.(21) Likewise, “Hadrat Muhammad (ﷺ), prohibits forcing a virgin in marriage without her permission, whether it be her father or someone else. Moreover, Hadrat Ayesha (رضى الله تعالى عنها) articulated that she asked the Prophet (ﷺ) “In the case of a young girl whose parents marry her, should her permission be sought or not?” He replied, “Yes, she must give her permission” She then said, “But a virgin will be shy, O Allah's Messenger”. He answered: “Her silence is [considered as] her permission”. (22) And “Hadrat Abu Hurayrah (رضى الله تعالى عنه) states: “that the Prophet (ﷺ) said: “No previously-married woman should be married off without being consulted, and no virgin should be married off without asking her permission”. They said: “O Messenger of Allah, what is her permission?” He said: “If she remains silent”. (23) In the same way “Abdullah Ibn Abbas (رضى الله تعالى عنه) narrates that the Holy Prophet (ﷺ) said that if a woman wants to marry and is already a divorcee or a widow, her right of free consent and free choice is superior then the right of her guardian. If she has not previously been married and this is her first marriage, even then her parents or other guardians cannot enforce their choice on her. They are not allowed to force her to marry any one against her free choice and free consent”. (24) More it is defined in the words of “Hadrat Abu Hurayrah (رضى الله تعالى عنه), as, he narrates:

“The Prophet (ﷺ) said: An orphan virgin girl should be consulted about herself; if she says nothing that indicates her permission, but if she refuses, the authority of the guardian cannot be exercised against her will”. (25) Further; Abdullah Ibn Abbas (رضى الله تعالى عنه) states: “A virgin came to the Prophet (ﷺ) and mentioned that her father had married her against her will, so the Prophet (ﷺ) allowed her to exercise her choice”(26)

“Khansa Bint-e-Hizam Al Ansariyah (رضى الله تعالى عنها) states that her father married her off to someone forcefully whom she did not like. She took her case to the Holy Prophet (ﷺ) and upon listening to her; the Holy Prophet (ﷺ) rejected the marriage and declared the marriage as void”.(27) Once a young woman came to Bibi Ayesha (رضى الله تعالى عنها) and told that her

father wedded her with his nephew while she disliked that nephew. Hadrat Ayesha (رضى الله تعالى عنها) asked her that she should wait for the Holy Prophet (صلى الله عليه وسلم). When Hadrat Muhammad (صلى الله عليه وسلم) came, she told him about her case. The Holy Prophet (صلى الله عليه وسلم) allowed her to make a decision of the fate of her matrimony. The girl then replied that she upheld the decision of her father, but she only wanted to say that fathers have fewer powers in marrying their daughters". (28) This is explained from the above Quranic verse and the sayings of our Holy Prophet (صلى الله عليه وسلم) that the permission is necessary of divorcee, widow and virgin (unmarried) for the marriage contract in Islam. Even the father or guardians cannot force her against her wish. In short, we can find many sayings and directions of the Holy Prophet (صلى الله عليه وسلم) on the subject matter. Given the importance of the need, Imam Bukhari has specified many chapters for the discussed subject i.e. "Force Marriage is not permitted", "when a daughter is wedded without her permission than her wedding is null and void" and "Father etc. cannot wed his daughter (virgin or not) except with her approval". All these traditions elaborate that Islam has never snatched the freedom of will from women rather consent is regarded mandatory". (29)

## 5. Conclusion:

Today, we are facing many problem regarding marriage, it is true, all the problems have been created by human beings. We have ignored and forgotten the Islamic knowledge and involved ourselves in worldly things, due to which, we have also ignored our offspring and their wishes and needs. If we will spend our lives according to Islam and will adopt the Islam teachings, so we will able to get pleasure and happiness. Everyone has free choice to choose the life partner in Islam, with whom he/she can live gladly according to the rules of Islam. But it's not mean, that he/she flee from his/her house and get court marriage. The best way is it, that he/she should tell his/her wish to selecting for a life partner and the parents should take care the wish their children. Because the forcible decision cannot become perpetual. This is not a tie, rather, it is a contract of two souls and bodies. If they will accept this bond with heart and mind, so the life of spending will be easy, and if the decision will take on the base of forced marriage, then the life will be difficult and the breaches will start to weak their

relation. Therefore, the consent of a couple is considered essential for marital bond. Pakistan is an Islamic country, consequently in laws of Pakistan, the freedom has been given to a man and a woman, to select or choose his/her life partner and he/she can get marry without the consent of a *wali*. It will be a valid marriage/*Nikah*.

### REFERENCES & NOTES

1. Dennis Roberts, Islam, A concise introduction, Harper & Row, 1982, p. 143.
2. Ashrafi, Talat Ara, Muslim women in changing perspective, Commonwealth Publishers, 1992, P. 51.
3. D.F Mulla, Islamic Law, Umar Khurram Printers, Lahore, p. 21.
4. Al-Quran, 81:24:32.
5. Al-Bukhari, Muhammad bin Ismail Al-Bukhari, *Saheeh Bukhari*, Qadeemi Kutub Khana, Karachi 1961, vol:2, p.758.
6. Mulana Minhajuddin Meenai, Islamic Jurisprudence, Islamic Publications, Lahore, 1995, pp: 281-304.
7. Doctor Irfan Khalid Dahlon, The role of companions of the Holy Prophet (PBUH) in the formation of Islamic law, Al Faisal, Lahore, 2016, pp: 422-427.
8. D.F. Mulla, Islamic Law, Umer Khurram Printers, Lahore, Pp: 21-33.
9. Muhammad Subhi Bin Hasan Hallaq, Fiqh according to Quran and Sunnah, Darussalam, Vol-2, 2008, pp: 107-140.
10. Sheikh Burhanuddin Abi Al Hasan Ali Marghinani, Darul Ishaat, Karachi, Vol-1, 2005, pp: 51-77.
11. Plato, Timaeus , Leob Classical Library, 1929. (Trans.) R. G. Bury. Heinemann, London, 1929 p: 91.
12. Paratham ,Court Marriage, 2011. retrieved from <http://www.marriage.co.in/court-marriage.html> on 17-12-2016
13. Chapter: Whoever said, "A marriage is not valid except through the Wali." No: 5127
14. Levy, Reubenq, The Social Structure of Islam, Cambridge University Press, Cambridge, 1957, p:93
15. Al-Hufi, Ahmad: Al-mir'ah fil-Shir al-Jahilliya, Dare Nahdat Misr, Cairo, nd, p:184

16. Dr. Naseem Akhter, Islam, Forced Marriages and Pakistani Culture: (An Analytical Overview), Al-Basirah, Volume-5, Issue-2, December 2016, pp: 29-41.
17. Dr. Naseem Akhter, Islam, Forced Marriages and Pakistani Culture: (An Analytical Overview), Al-Basirah, Volume-5, Issue-2, December 2016, pp: 29-41.
18. Dr. Naseem Akhter, Islam, Forced Marriages and Pakistani Culture: (An Analytical Overview), Al-Basirah, Volume-5, Issue-2, December 2016, pp: 29-41.
19. Dr. Naseem Akhter, Islam, Forced Marriages and Pakistani Culture: (An Analytical Overview), Al-Basirah, Volume-5, Issue-2, December 2016, pp: 29-41.
20. Al-Quran, 4:19.
21. Chapter: The father or the guardian cannot give a virgin or matron in marriage without her consent, No:5136.
22. Chapter: Seeking Consent of Al-Thayyibin Marriage In Words and of a virgin in (Meaningful) silence, No: 3306.
23. Al- Muslim, Sahih Muslim, The Book of Marriage (Kitab Al-Nikah), Book 008, Number 3303 and Al-Bukhaari, 4843.
24. Chapter: Seeking Consent of Al-Thayyibin Marriage in Words and of a virgin in (Meaningful) silence, No: 3308.
25. Abu Dawud, Sunan Abu-Dawud, Marriage (Kitab Al-Nikah), Book 11, Number 2088.
26. Translation of Sunan Abu-Dawud, Marriage (Kitab Al-Nikah), Book 11, Number 2091.
27. Imam Bukhari, Muhammad bin Ismail, Aljame al-Sahee, Dare Taoq un Nija, Beirut, 1422 H, Vol: 07, p: 17.
28. Al-Nassai, Ahmad bin Shoaib. *Sunan Nassai, Kitab ul Talaq, Baab ma jaa fil khule*. Lahore: Makataba Rahmania, 2004, Vol: 2, p. 77.
29. Niaz Muhammad, Kalsoom Bibi, Women's Consent in Marriage: A Critical Study in Islamic Perspective, paper published in Peshawar Islamicus, July-December 2012, University of Peshawar, Pakistan, pp: 45-56.