

# Marriage

## 1. DEFINITION

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

## 2. OBJECTIVES OF MARRIAGE

As a meaningful institution, marriage has the following purposes:

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

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

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

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

5- Social Importance

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

### **3. ELEMENTS OF MARRIAGE CONTRACT**

#### **3.1. Introduction:**

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

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

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

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

#### **3.2. Marriage: Elements and Conditions**

##### **1) Offer and Acceptance:**

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

**Notes:**

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

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

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

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

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

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

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

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

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

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