

إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامَ

*The Religion before God is Islam (Submission to His Will)*

**NISAB AHLE KHIDMAT-E-SHARIA**

(Syllabus for Observers of Islamic Law)

**PART - VI**

Comprising of Necessary Rules

**Nikah, Talaq, Khula.**

**Syllabus (Nisab) for Naib Qazat**

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
 الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَالصَّلَاةُ وَالسَّلَامُ عَلَى سَيِّدِ الْمُرْسَلِينَ سَيِّدِنَا وَمَوْلَانَا مُحَمَّدٍ وَ  
 عَلَى آلِهِ وَأَصْحَابِهِ وَأَزْوَاجِهِ وَذُرِّيَّاتِهِ وَأَهْلِ بَيْتِهِ أَجْمَعِينَ .

(RULES OF MARRIAGE)

1. Definition of Marriage (Nikah):- Marriage in its common parlance means carnal conjunction in the language of Muslim Jurisprudence. Marriage is the name of particular wedding through which a male becomes entitled to derive benefits from a woman.
2. Characteristics of marriage:- The change in circumstances change the characteristics of marriage are as follows:-
  - i Stressed Tradition (Sunnat-e-Muakkadah):- When the desire for sex is normal that means it is neither excessive nor less.
  - ii Obligatory:- If the desire for sex is excessive for example if not married there is apprehension of indulgence in illicit intercourse or fornication.
  - iii Compulsory:- If the desire for sex is predominant for example if not married indulgence and temptation is sure. (In the above three conditions the rights of women,<sup>(1)</sup> dower, maintenance etc. to be fulfilled according to the capacity.
  - iv Disapproved to the point of forbidden:- (مكروه تحريمي) when there is fear of<sup>(2)</sup> oppression on the life of a woman.
  - v Forbidden:- when it is sure that the wife be oppressed.
3. The essentials of marriage:- The essentials of marriage is only offer and acceptance<sup>(3)</sup>.

Explanation:- Offer and acceptance is that dialogue and agreement which is undertaken to tie a man and a <sup>(4)</sup>woman in a lawful wedlock. Whoever speaks first (whether man or woman) it is called offer and

1. For example good behaviour.
2. Abrogation of rights.
3. This combination of offer and acceptance is called nikah.
4. Whether the dialogue and agreement is between the man and woman or through a guardian or a lawyer.

after which the agreement by other is called acceptance<sup>(1)</sup>.

Necessaries of offer and acceptance:- The offer and acceptance to be valid the following acts are necessary.

I. Offer and acceptance by both or by one of the two is expressed in past tense (from which it could be understood that the nikah is completed).

Example:- Example of past tense used by both the parties:-

I One of the two marrying says, "I have married you" the other says, "I have accepted".

Example of past tense used by one of the two.

i. One says, "I have married you," the other says, "I accept" (in this example the offer is in the past tense.)

ii. One says, "I am going to marry you", the other says, "I have accepted it" (in this context the acceptance is in past tense).

II. The offer and acceptance is to be made by words and if it is through<sup>(2)</sup> action it is not correct.

i. For example a person tells a woman, "I have performed my Nikah with you and it is your dower." The woman did not say anything with her tongue but took the dower.

ii. A woman tells a man, "I have performed my nikah with you on so much dower". The man did not say anything with his tongue and paid the dower.

In both the cases the acceptance is not expressed with the tongue therefore it is not correct.

Clause:- Writing will also count as a word provided the writer is not

1. a. For example man tells a woman "I have performed nikah with you". The woman replies that she has accepted it. (The talk of man is offer and the words of woman are acceptance.)

b. The woman tells a man that she has given her in his wifhood. The man replies that he has accepted her as his wife ( in this case the words of the woman is offer and the reply of the man is acceptance.)

2. The offer and acceptance through gesture is called a dealing (تعاطى). Nikah is not performed by dealing (تعاطى)

present but<sup>(1)</sup> absent i.e. a person wrote to a woman that I have performed nikah with you, the woman keeping two persons as witnesses says,<sup>(2)</sup> "A letter has come to me from a person as such I have given myself in his nikah". This offer and acceptance is correct and the nikah will be complete. When the writer is present the letter will not count as words but it will be counted as action. The offer and acceptance in such a way will not be complete. However when a person is dumb the offer and acceptance through words is not necessary but if it is done through a gesture it will be complete provided his<sup>(3)</sup> gesture is understood.

III. After expressing complete text of the offer the text of acceptance is to be expressed. If a male declares to a female that on payment of Rs.100/- as dower I perform nikah with you. The female before uttering anything about the amount of Rs.100/- expressed that I have accepted it. In this case the acceptance is not correct. Because, the text of offer is not yet complete the acceptance is expressed.

Warning:- The text of offer and acceptance will be treated as complete when the person making offer does not want to add anything that would change the meaning of the text initially declared. For example in the above case if there was no mention of Rs.100/- as dower, the dower<sup>(4)</sup> prevalent in the family of the woman would have become obligatory whether it is Rs.100/- or more. But this text has changed the meaning. Now the dower as Rs.100/- will become obligatory.

IV. The offer and acceptance is to be done in<sup>(5)</sup> one sitting. If the sitting is changed for example both the persons under marriage were sitting at one place. One has made the offer and the other before acceptance got up or engaged himself in any other work which amounts to change of sitting in such case the acceptance will not be correct. Where a fresh offer and acceptance is required.

1. On the basis of a letter of the person not present nikah will be complete but not on the basis of a letter of a person who is present.
2. (Warning):- If the writing contains past tense it is compulsory to be read before the witnesses alongwith acceptance. If it contains a command only acceptance will be enough to be read out.
3. That means the people know when this man accepts something he makes this gesture if rejects this gesture.
4. The definition of prevailing dower (follows).
5. If in another sitting the letter is read out and acceptance is made then it will be correct.

(Clause):-If one of the marrying persons is not present but sent it in writing, the sitting in which this writing was read out the acceptance is compulsory in the same sitting. If the writing is read out in one sitting and the acceptance is made in the other<sup>(1)</sup> sitting it will not be correct.

(Clause):-In one sitting the offer and acceptance is to be consecutive not necessary to be immediate one. If there is some gap in offer and acceptance it is correct, provided this gap is not utilized for any other work defeating the very purpose of the sitting.

(Clause):-If the marrying partners make offer and acceptance in the state of movement (whether on foot or on a conveyance) there will be no nikah because in such state the sitting can not be one. If boarded on a ship and it is in movement the offer and acceptance will be correct.

V. The acceptance may not be contrary to the offer. If a male tells a woman, "I will marry you for a dower of Rs.125/-". The female says, "I have agreed with this nikah," but this dower is not accepted. In these circumstances the nikah will not take place because the acceptance contravenes the offer. However if the acceptance is by the female and the dower is less than the dower agreed to by the male (e.g. the male says, "I marry you for a dower of Rs.1,000/-", the female says, "I am ready to marry you for a dower of Rs.500/-"), or the acceptance is on behalf of the male and the amount of dower is agreed by him is more than the dower mentioned by the woman (e.g. the female says, "I will marry you for a dower of Rs.500/-". The male says, "I will marry you for a dower of Rs.1,000/-"), in both the above cases the acceptance cannot be treated as contrary to the offer and nikah will be complete.

1. The meaning of one sitting is that no other activity is allowed between offer and acceptance that amounts to abstention from acceptance even if the abstention is not purposely done such as getting up from sitting, to start talking with others, eating something (provided it is more than one morsal), to drink something (when it was not in the hand before), or laid down, to engage in saying prayers (namaz), walking and moving and any other activity of like nature if taken place between offer and acceptance, it cannot be treated as one sitting. After these activities if the acceptance is made it will not be treated as correct.



VI. Offer and acceptance is not to be postponed or kept in hanging. If a male says, "I agree to marry you the next day", or he says, "on the happening of a certain incident, I will marry you", the nikah will not be correct.

VII. The persons marrying each other have to listen their talks or hear those words which stand for it such as in writing. Hence if one partner does not listen the words or writings of another partner but gives consent it will not be correct.

VIII. The partners are fixed and identified. The male identity is established because he will be present in the gathering<sup>(1)</sup> however the woman with whom nikah is arranged is to be identified either by way of personal appearance or by way of calling the name and her father's name before the witnesses. If a woman has two names the name which is often used will be enough. If there is a mistake in name or in the name of her father (and the woman is not present in the gathering)<sup>(2)</sup> there will be no nikah.

(Clause):-If the bride without her presence or not called by her name in the sitting and only identified by the bridegroom and witnesses then her presence or calling her by name is not necessary. For example a person has only one daughter and tells the other, "I have given my daughter in your nikah." The other says, "I have accepted." The nikah will be complete. Provided the bridegroom and the other witnesses are aware that (the bride with whom he is marrying) is the only daughter of that person.

(Clause):- If a person has two daughters, one married and another unmarried and that person says to another, "I have given my daughter to you in marriage", the nikah of the unmarried girl will take place provided the bride groom (with whom the nikah is undertaken) and the witnesses know that the said person has two daughters one of which is already married.

1. If not present in the ceremony he may also be identified as the female is identified.
2. If present in the nikah ceremony the nikah will be complete (even if there was mistake in calling her name as the name is not at all used whereas she was pointed out only..e.g. it is to be told (1) I have married you (2) I have made tazveej with you .

(Warning) If the equivalent words of nikah and tazveej are used the niakh will be complete e.g. (1) the male said, "I made her my 'wife'", and "I became your 'husband'", (2) the female said, "I accepted you as my husband, and I am your 'wife'".

(Clause):- If by mistake, at the time of nikah the name of another girl is uttered by tongue the nikah will be held with the indicated girl only (for example a person has two daughters by name Sayeeda and Hameeda, and both are unmarried. The man arranged nikah of his elder daughter Sayeeda, with a person but at the time of nikah he uttered the name of his younger daughter Hameeda and there was offer and acceptance also this nikah will be completed with Hameeda only.

IX. In offer and acceptance the words nikah and 'tazveej' are to be used (which are the clear terms of marriage) are such words<sup>(1)</sup> which are carved out to accord a person full authority over anything provided there is intention of nikah by the seeker or a step towards nikah. The witnesses have also understood the meaning thereof (such as gift<sup>(2)</sup>, charity<sup>(3)</sup>, ownership<sup>(4)</sup>, sale<sup>(5)</sup> and purchase, etc.)

Warning:- The words monopoly, will, hire, mortgage, deposit, etc., do not complete a nikah because with these words the exclusive ownership of an individual is not proved.

Miscellaneous Rules of Offer and Acceptance:-

The important rules pertaining to offer and acceptance are mentioned below:-

i. If any one in nikah, does not make a mention of the woman as a whole but refers her body only, nikah will become complete. Provided for nikah the entire body is referred or a part of the body which counts as a complete soul (such as head, neck, etc.) If the reference is not about the full body but half of the body or made a reference towards such a part which is not considered as a full body (for example hand, leg, etc.) in such case the nikah will not take place<sup>(6)</sup>.

1. these words are called metaphors

2. e.g. the female said, "I have gifted myself to you."

3. e.g. the female said, "I have given my life to you in charity".

4. e.g. the female said, "I have made you my owner".

5. e.g. the female said, "I have sold out my life to you".

6. Because by the words head and neck used as a phrase means the entire body. whereas the words hand and legs etc., do not mean the entire body. Therefore if there is a reference of head and neck in the nikah, the nikah will become complete. If there is a reference to legs and hands in the nikah it will not be complete.

- ii. If a male and a female together declare that both of them are bridegroom and bride (wife and husband) their intention at that time is to perform nikah and this declaration is made before the witnesses it will stand<sup>(1)</sup> for offer and acceptance. If the intention is not to perform nikah, only to give information that their nikah is already taken place. Whereas nikah was not actually performed such declaration will not stand for offer and acceptance.
- iii. The declaration of offer and acceptance is not necessary to be by heart. If a person by force and coercion or as a joke uttered the words of offer and acceptance the nikah will be complete.
- iv. The offer and acceptance need not be expressed in Arabic language it can be expressed in any other language.
- v. It is not a condition that one should fully understand the meaning of offer and acceptance. It is enough to understand that by uttering these words the nikah will become complete.
- vi. If the words of offer and acceptance wrongly pronounced (for example instead of nikah the word 'nighah' and for qubool it is expressed 'khabool' etc.) by a person who is not aware of the correct pronunciation or such words have become common, the nikah will become complete otherwise not.
- vii. In the following cases the offer and acceptance can be made by only one person on behalf of the bride and bridegroom (in such circumstances only offer will stand, for offer and acceptance):-
  - i. When a person is the guardian of both (father of the bridegroom and uncle of the bride).
  - ii. When only one person is the attorney of both.
  - iii. When only one person is a guardian of one side and attorney for the other.
  - iv. When only one person is a bridegroom and the attorney for the bride<sup>(2)</sup>.

1. And the nikha will be proved by it.

2. For example a person marries the daughter of his paternal uncle.



Warning:- The details of each condition are given below:-

First Condition:-(Relationship)

Lineage	There are seven women prohibited for marriage out of the lineage. Mother, daughter, sister, paternal aunt, maternal aunt, brother's daughter and sister's daughter.
Mother	Mother till the last ascendants (through the father or mother), grand mother, great grand mother. All of them are called ascendants.
Daughter	Daughter includes all the females who are related to the bride groom till the last i.e. daughter, grand daughter, great grand daughter, daughter's daughter till the last descendants, (through son or daughter).
Sister	Sister includes real sister, step sister and uterine sister till the last descendants, whose relation ends with the father or mother of the bridegroom. 1. (Real):- Those children who are from their parents. 2. (Step):- Father's children who are not from his mother. 3. (Uterine):- The children of the mother who are not from his father

Fathers' Sister:- Means the paternal aunt who is sister of that man towards whom lineage of the bridegroom ends. (real, step, uterine). Whether she is a sister of the father, paternal grand father, paternal great grand father, sister of maternal grand father, maternal great grand father. All these women are called children of the ancestors of the parents.

Warning:-The children of paternal aunt are not in the prohibited degree<sup>(1)</sup>.

Mother's sister:- Mother's sister is that woman with whom the relation of the bridegroom ends. (full, step, foster or uterine) Whether it is mother's sister or mother's mother or great grand mother's sister. Similarly maternal aunt of the father or grand father or great grand father's aunts all are included in the ascendants and descendants of the parents.

Warning:- The children of mother's sister are not prohibited for marriage (nikah with them is lawful)<sup>(2)</sup>

1. Similarly the children of paternal uncle are not prohibited.

2. Similarly the children of maternal uncle are also not in the prohibited degree.

Brother's daughter:-Whether she is real brother's daughter, step brother's daughter or uterine brother's daughter and all their children are also included in this category. They are called the children of the children of the parents.

Sisters' daughter:- Includes real sister, step sister and uterine sister's daughter.They are called the children of the children of the parents.

Warning:-

- i All these relations are found either under the lawful wedlock or out of wedlock are prohibited. However the step sister and step paternal aunt born out of illicit intercourse are not prohibited.
- ii The daughter of the step mother who is born through another husband means 'rabeeba' of the father is not prohibited.(nikah is lawful with her).
- iii Except the above women nikah is lawful with all the women of ascendants and descendants marriage with them is lawful.

Second Condition (affinity):-

- 1 Relationship found by marriage.(مصاهرت)
- 2 The prohibition by affinity<sup>(1)</sup> takes place after lawful<sup>(2)</sup> wedlock. Further due to co-habitation (whether lawful or unlawful) similarly certain acts committed amounting<sup>(3)</sup> to fornication provided the woman<sup>(4)</sup> with whom sexual relations are formed or the acts committed amounting to fornication when she is matured<sup>(5)</sup> (sexual intercourse with a minor<sup>(6)</sup> girl or a dead body will not create prohibition of affinity)

1. The prohibition of a woman of inlaws is based on 3 aspects:-

- (1) By lawful Nikah (2) By sexual intercourse (3) By the acts amounting to fornication  
In the last 2 aspects the woman is capable of lust and alive.

2.An invalid marriage (nikah) does not establish the prohibition of a woman of inlaws. (Invalid nikah means a person marrying without witnesses)

3. The details of the acts amounting to fornication will come later.,

4. The male is also capable of sexual intercourse .

5 The capacity to sexual enjoyment starts with the age of 9 years.

6. A person who marries a minor girl who has not started menarche or sexual lust cohibits with her and later divorces her. After observing the probationary period (edit) she is married to another person and gives birth to a female child. The former can marry this girl.

3 The following women from inlaws family are also prohibited.

- i. The ascendants<sup>(1)</sup> of a woman with whom lawful<sup>(2)</sup> marriage is performed eventhough there was no carnal relation<sup>(3)</sup> or consumation of marriage<sup>(4)</sup>.
- ii. The ancestors of a woman with whom illegal carnal relations are formed.
- iii. The descendants of a woman<sup>(5)</sup> with whom there was lawful marriage and carnal relation formed.

Warning:-The children<sup>(6)</sup> of a woman, with whom lawful marriage is performed but there was no consumation of marriage, are not prohibited.

- iv. The descendants of a woman with whom there was illicit carnal connection.
- v. The women with whom there was a lawful marriage by our father, grand father, mohter's father and mother's great grand father, etc., eventhough there was no consumation of marriage.
- vi. The women with whom there was illicit sexual connection by our father, grand father, mother's father and mother's grand father.
- vii. Those women with whom there was lawful marriage by our sons, grand sons, daughter's, sons, etc. but there was no consumation of marriage with them.
- viii. Those women with whom there was illicit sexual intercourse by our sons, grand sons, daughter's sons, etc.

Warning:- (1) The women of the inlaws who are prohibited are so much but the other women are not prohibited for marriage.

(2) The step daughter of the son is not prohibited.

1. Mother, mother's mother and father's mother etc.

2. The ascendants and descendants of a woman with whom the nikah was declared invalid are not prohibited.

3. Cohabitation is a condition to make the descendants of a woman prohibited but to prohibit her ascendants only nikah is enough.

4. Consumation of marriage means union of the spouses of nikah in such a way that there is no hurdle in their carnal relation.

5. That means daughter, daughter's daughter, son's daughter, etc.

6. Step daughter of a man means 'rabeeba'.

The details of certain acts amounting to fornication:-

To see the secret<sup>(1)</sup> parts of a woman, to touch<sup>(2)</sup> her body, to kiss her or to embrace<sup>(3)</sup> her all these acts amount to fornication when the following conditions are fulfilled:-

- i. These acts are committed with lust<sup>(4)</sup>.
- ii. Both the male and female are major or adolescent and lascivious.
- iii. Later on there is no seminal discharge<sup>(5)</sup> by male.  
Warning:- (i) While touching or embracing the body there is no cloth in between them which can prevent the sense of body heat of each other..  
 (ii) Looking means to see the secret parts of the body directly and not its reflection in the mirror or water.
- iv. Acts which amount to fornication will also establish the relation of affinity such as (by marriage and fornication the ascendants and descendants of man and woman are prohibited for each other similarly by these acts also they will become prohibited for each other.)
- V. Whether the acts amounting to fornication are committed either purposely, mistakenly, deceitfully or helplessly or in madness or in intoxicated condition are governed by the same order for example :-
  - i. A person wanted to awake his wife for sexual intercourse but his hand extended upto her daughter<sup>(6)</sup>, the wife will be prohibited<sup>(7)</sup> for him.

1. The Secretparts means its inner parts
2. Touching of any part of the body. Warning:- hairs of the head are not loosely hanging but they are knitted on the head also included in the body.
3. Similarly a woman looking the male organ or touching his body or kissing him or hugging him amounts to fornication,
4. Whether both of them are having lust or one of them only. Warning:- the lust found at the time of looking the secret parts or at the time of touching the body is important. If it was not found at that time but arose thereafter is not important.
5. After touching and seeing them there was no seminal discharge. The relation of affinity will not be found.
6. Provided the girl is sexually matured.
7. Because she became his mother in law the nikah with her will not be dissolved. As a result she cannot marry another person. Her maintenance will be on him. He cannot have sexual intercourse with her when he does it he becomes a sinner. (Eventhough no punishment is awarded). In such circumstances it is better to divorce her because by formation of the relation of affinity the marriage is not dissolved except divorce. However the prohibition of lineage created by this act the nikah will be void.



- ii. A person in darkness embraces a strange woman taking her as his wife then the ascendants and descendants of that woman will become prohibited for him. (he cannot marry them)
- iii. If a man has kissed wife's mother in an inebriated condition, his wife become prohibited for him

Clause:- If a person as a joke or as a vague reference says<sup>(1)</sup> that he had sexual intercourse with his mother-in-law it will also amount to creation of affinity relations. (his wife will be forbidden for him.)

Third Condition:-

Fosterage (رضاعت) :-

- 1 Within a particular period<sup>(2)</sup> feeding of a child on the breast of a woman is called fosterage.
- 2 By fosterage relation is formed between the child and the woman like real mother. The woman feeding the child will become the child's foster mother and her husband, due to whom her breast became wet, will become foster father. Their children (whether real or foster<sup>(3)</sup>) will become the foster brothers and foster sisters of the child. The mother and father of these foster parents etc. will become the child's foster mother's father, mother's mother, grand father, grand mother<sup>(4)</sup>, etc. But it is to be kept in mind that the foster mother and all her relatives<sup>(5)</sup> will become the relatives of the child. But the child who is fed will become a relative by himself, his children and his wife<sup>(6)</sup>. The ascendants<sup>(7)</sup> and descendants<sup>(8)</sup> of the child's parents will not form any relation with this woman. In the following verse this relation is described in brief.

از جانب شیرده همه خویش شو      وز جانب شیرخواره زوجان و فرود

(The woman and all her relatives become the relatives of the child who suck her milk. Whereas the child who suck the milk, his wife and his children alone will become relatives of that woman.)

1. Later if he admits that he was wrong in his utterance which is not acceptable.
2. The period of fosterage will be defined later on.
3. Those who have suck the milk of a woman they are all foster brothers and sisters whether they have suck the milk with the child or earlier to him or later.
4. Whether they are the offsprings or joined the fosterage
5. The foster woman herself her husband whose milk it is and ascendants and descendants of both and the children of their ascendants.
6. The husband of a woman who suck the milk.
7. Father and mother and their parents (mother's father and mother's mother father's father, fther's mother etc.).
8. The children of the parents (brothers and sisters,) and the children of the parents of the parents (uncle, aunt, maternal aunt, maternal uncle etc.,).

<sup>3</sup> By sucking the milk prohibition of marriage will be proved. As proved by lineage. That means certain persons with whom relation is formed by fosterage are barred from marriage. Similarly the fosterage relations also bars the marriage such as with the foster mother, foster mother's mother, grand mother etc. (till the last end of the chain), foster sister, foster sister's daughter, foster brother's daughter, (till the last end of the chain), foster paternal and maternal aunt etc. The persons with whom fosterage relation is not formed the marriage with them is not barred.(i.e. the real father of the foster child and his foster mother or his real sister and foster brother) even if the relation is formed but the persons of this lineage with whom marriage is allowed, then nikah will also be valid with them. (such as foster paternal uncle, the children of the paternal aunt,and the children of the maternal aunt and the children of maternal uncle.

<sup>4</sup> The relations of the inlaws should also keep in mind that the relations formed by the persons due to fosterage are also prohibited. e.g. the fosterage ascendants of the wife or the fosterage ascendants and descendants of the wife.

Clause:-By consuming the milk of the wife fosterage relation is not formed but the husband will be committing sin when he has consumed it without any need.

Clause:-A person has two wives Sayeeda and Hameeda. Hameeda is less than two years old. If Hameeda consumes the milk of Sayeeda both will be forbidden<sup>(1)</sup> to that person.

Clause:-A person married a woman who was issueless, but her breast is filled with milk and it is consumed by a girl with whom a prohibited degree is formed. That means the woman became her foster mother whereas her husband will not be a foster father<sup>(2)</sup>. He cannot marry this girl as she becomes his step daughter (Rabeebah). He can get this girl married to his son (who is born to his other wife).

1.Because both became mother and daughter and they cannot be under the same wedlock

2.Similarly due to illicit intercourse the breast of a woman becomes wet and she feeds her milk, it will give rise to the fosterage relations with her only. the man will not become a foster father

Clause:-A person divorced his wife whose breast is full of milk. The woman on completing the probationary period, married another person and fed a child with this milk. This milk belongs to the first husband unless and until her breast becomes dry and given birth to any other child through this second husband (in this case the child will be the foster son of the first husband and step son of the second husband.)

Warning:-(1)If a child sucks the breast of many women all of them will become his foster mothers eventhough all were not equal in providing the milk.

Warning:-(2)The children of the foster woman who are shown as prohibited for her foster child means her entire children. Whether this child and every soul of her children suck her breast simultaneously or with intervals of several years.

Exception:-Eventhough the causes of prohibition and legality arising out of the fosterage are explained above but for further details some exceptional cases arising out of the fosterage are detailed below which are permitted<sup>(1)</sup> despite of lineage relations.

1	Mother of sister and brother.	i.The foster mother of the real sister and brother. ii.The real mother of the foster sister and brother. iii.The foster mother of the foster brother and sister.
2	Sister of the son and daughter.	i. Foster sister of the real son and daughter. ii. The real sister of the foster son and daughter. iii. Foster sister of foster son and daughter.
3	The paternal Aunt of the son and daughter.	i. The foster paternal aunt of the real son and daughter. ii. The real paternal aunt of the foster son and daughter. iii.The foster paternal aunt of the foster son and daughter

1.Besides them the other women of fosterage relations are lawful the details of which and their examples are not mentioned for fear of length.

4	Paternal aunt of the brother and sister.	<ul style="list-style-type: none"> <li>i. The foster paternal aunt of the real brother and sister.</li> <li>ii. The real paternal aunt of the foster brother and sister.</li> <li>iii. The foster paternal aunt of the foster brother and sister.</li> </ul>
5	Maternal aunt of the sister and brother.	<ul style="list-style-type: none"> <li>i. The foster maternal aunt of the real brother and sister.</li> <li>ii. The real maternal aunt of the foster brother and sister.</li> <li>iii. The foster maternal aunt of the foster brother and sister.</li> </ul>
6	The niece (brother's daughter) of the brother and sister	<ul style="list-style-type: none"> <li>i. The foster niece (brother's daughter) of the real brother and sister.</li> <li>ii. The real niece (brother's daughter) of the foster brother and sister.</li> <li>iii. The foster niece (brother's daughter) of the foster sister and brother.</li> </ul>
7	Sister's daughter of brother and sister.	<ul style="list-style-type: none"> <li>i. The foster niece (sister's daughter) of the real sister and brother.</li> <li>ii. The real niece (sister's daughter) of the foster sister and brother.</li> <li>iii. The foster niece (sister's daughter) of the foster brother and sister.</li> </ul>
8	Mother of the grand children.	<ul style="list-style-type: none"> <li>i. The foster mother of real grand children.</li> <li>ii. The real mother of foster grand children.</li> <li>iii. The foster mother of foster grand children.</li> </ul>
9	Maternal Grand mother of the son and daughter	<ul style="list-style-type: none"> <li>i. The foster mother's mother of the real son and daughter.</li> <li>ii. The real mother's mother of the foster son and daughter.</li> <li>iii. The foster mother's mother of the foster son and daughter.</li> </ul>

Conditions of prohibited degrees due to fosterage:-

Due to sucking of breast some relations are prohibited on the following grounds:-

1. The age of the child sucking breast should not be more than two years<sup>(1)</sup> After crossing two years fosterage relations will not be formed<sup>(2)</sup>.
2. The milk is swallowed even it be a drop. If the child after sucking the breast emitted the milk without swallowing a drop the fosterage relation is not formed.

Warning:- If the milk is immediately emitted after it is swallowed the relation will be formed.

3. The milk reached the stomach through the mouth or nose. Simply applying the milk in the ear or injecting it through a pump or any other device fosterage relation is not formed.
4. The milk belongs to a woman (whether young, old, alive or dead)<sup>(3)</sup> if it belongs to a male breast no relation is formed by sucking it.

Warning:-By taking the milk of a cow, buffalo, goat<sup>(4)</sup>, etc. the fosterage is not formed.

5. The foster woman must be of nine<sup>(5)</sup> or more (this milk is either due to delivery of a child or not provided it is not turned pale).
6. If the milk is mixed with any medicine or water and it is in predominant part otherwise the fosterage will not be formed.
7. The milk is not used by mixing with other eatables. If it is used by mixing with the food the foster relation is not formed eventhough it is in predominant portion or not.
8. The milk is consumed in its original form<sup>(6)</sup>. If it is kept separately and converted into curd the fosterage relation will not be formed when the curd is given to the child

1. The age of the child must be 2 years or less during sucking of breast.
2. When the period of sucking is over it is not proper to continue it because the milk is a potential part of life. To gain profit from a person more than its potentiality is legally prohibited. Milk is the exclusive right of the children for a specific period which is fixed by muslim law.
3. After sucking the breast of a dead woman relation of fosterage is formed.
4. If the milk of a cow, goat, etc. is consumed by any boy or girl within the period of fosterage no relation will be formed between them.
5. If the woman less than 9 years of age gave a suck the prohibition is not formed.
6. Whether it is fed by breast or by squeezed out milk from the breast.

Fourth Condition (addition or combining):- Addition or combining means marrying more than one woman. There are two kinds of it:-

1. Prohibited combining of two women.
2. Combining of strangers. (wives)

1. Prohibited combining of two women:- The explanation of the first condition is combining of two sisters in marriage is prohibited<sup>(1)</sup>. In a valid marriage marrying two real sisters is prohibited. Further combination of two women who are related in such a way that if one is treated as a male the other will be prohibited for him. e.g. paternal aunt and brother's daughter. If the paternal aunt is treated as a male he can not marry his brother's daughter (niece) as it is void. If the brother's daughter is treated as male he cannot marry his paternal aunt as it is prohibited. So also joining maternal aunt and her sister's daughter<sup>(2)</sup> in the marriage is also prohibited. Marrying both of them at the same time or one is already in the marriage and now he married the other. Marriage during the period of purity of a divorced wife will also amount to gathering for example he divorced one and married the other when the period of purity of the divorced wife is not completed which will also be treated as gathering and prohibited. If the marriage took place with both of them at the same time marriage with both of them will become void. If the marriage with one of them was made some time back and thereafter the other marriage. Marriage with the former woman is valid and the marriage with the latter will be void. But if he had sexual intercourse with the latter one unless the period of purity of the latter woman is not over he cannot have sexual relations with the former, even though the marriage with her is still continued.

The details of the second category is that marrying more than the permitted number of women is void.

Warning:- Muslim law has permitted a free muslim male to marry four women at a time and a slave male can marry two women (whether at a time or at different times.)

1. If the nikah is void it is not forbidden e.g. the nikah with one woman is invalidated then marrying her sister will be correct. Because when nikah is void the carnal connection is not permitted.

2. Whether they are all real or foster or they are real step and uterine.

If a man marries more than four women at a time the marriage with all of them will become void. If he has already married some women and now marries other women whose number exceeds four the marriage with the later woman will become void.

If there were four women in the wedlock of a man and one of them was divorced unless and until her period of purity is not complete he can't marry a fifth woman.

Fifth Condition (possession):- A woman who is the owner of a slave marriage with him is prohibited. Similarly marriage with the slave girl is also not correct<sup>(1)</sup> by her owner as a matter of fact it will not be a marriage.

Sixth Condition (Marriage with a slave woman in addition to lawful wife):- In the existence of a free woman under wedlock marriage with a slave woman is unlawful. Further it is unlawful to marry both of them at a time.

(Warning):- The slave man and woman do not include servants or draught effected children whereas they are the captives of war. Since these cases are extinguished the details thereof are not given here.

Seventh Condition (Infidelity):- It is unlawful to marry an infidel, (idolator and a zoroastrian)<sup>(2)</sup> (Fire worshiper) woman. Similarly with an apostate woman also marriage is unlawful.

Warning:- Apostate is a person who has been converted or forsaken Islam after it was adopted. (God Save).

Clause:- The marriage of a muslim woman with other than a muslim is not correct. A muslim can marry a girl from out the people of books<sup>(3)</sup> provided she is not an idolater.

Warning:- The people of books are those who follow the divine books<sup>(4)</sup> and the followers of any messenger of Allah<sup>(5)</sup> even though those books and the teachings thereof are cancelled now such as Judaism and Christianity

1. Not valid means marriage with them is a waste because the rules of marriage, dower, divorce, etc are not applicable because he can enjoy carnal relations with her even without marriage.
2. If they embrace Islam then the marriage with them will be lawful.
3. But it is better not to perform marriage until fully satisfied.
4. For example Psalms of David, Taurah and Bible, etc.
5. Even though they have been turned to polytheism due to their beliefs.

(Clause):-Eventhough there are many sects among the muslims but there is no difference in the main belief<sup>(1)</sup>. Hence if there is marriage in between them it is valid provided they do not negate the compulsory provisions of Islam that means they do not reject the perceptions of Islam, otherwise they will not at all be treated as muslims even if they declare that they are muslims and marriage with them will be void.

(Warning):- The faith and belief of certain sects which is not crossed the limits of monotheism the marriage performed with them will be valid based on the fundamentals of Islam. But Ahle Sunnat val Jama'at should not give their daughters in marriage to other sects because there is apprehension that the wife may accept the religion of her husband since the woman is subordinate to her husband.

Eighth Condition (Three time divorced before dissoluton):- When a person divorced his wife pronouncing three divorces (whether at a time or at different times) the wife is no more in his wedlock and now this woman is prohibited for him. However if that woman after completing her period of purity (edit) marries another person and underwent sexual intercourse with him, thereafter that man divorces her willingly<sup>(2)</sup> and she completes the probationary period of her purity (edit) she becomes permissible for marriage by her first husband (in fiqh parlance it is called Halalah).

Ninth Condition (Married woman or a woman under probation):- A woman who is in lawful wedlock or a woman undergoing probationary period (edit)<sup>(3)</sup> marriage with her will be prohibited.

(Warning):-During the probationay period the woman may be a pregnant one that means marriage with a pregnant woman is prohibited till her delivery.

(Clause):- With a woman under pregnancy as a result of illicit intercourse marriage with her is lawful but before delivering the child intercourse with her is not permitted. Yes, if the fornicator marries her then sexual intercourse is permissible for him with her.

1. The unwavering faith in Almighty Allah and the last Messanger.
2. Or died or the woman obtained separation (Khula)
3. It is the purification period (edit) of divorce or of husband's death



(Warning):- The details of prohibited degrees for marriage are over. The woman with whom marriage is prohibited are indicated. But for the sake of further clarification a sketch is shown here. In this sketch the women with whom marriage is prohibited are shown separately.

**TABLE OF PROHIBITED WOMEN**

Mother	Maternal grand Mother,maternal great grand mother, etc. (till the last degree)	Paternal grand mother(Paternal great grand mother) (till the last degree)	Daughter
Daughters' daughter (great grand daughter) (till the last degree)	Sons' daughter (great grand daughter) (till the last degree)	Sister (real, step and uterine)	Fahter's sister (real,step and uterine)
Paternal Aunt of the father (till the last degree)	Paternal Aunt of the mother (till the last degree)	Maternal Aunt (real, step,and uterine)	Mother's aunt (till the last degree)
Father's maternal aunt (till the last degree)	Brother's daughter (real, step and uterine) (till the last degree)	Sister's daughter (real, step and uterine) (till the last degree)	Mother in law
Maternal grand Mother in Law  (till the last degree)	Paternal grand mother in law (till the last degree)	Rabeebah means daughter of the wife from first husband. (till the last degree)	Daughter's daughter of wife who is from first husband (till the last degree)

Grand daughter of wife with whom the marriage is consumated (till the last degree)	Daughter-in-law	wife of the daughter's son (till the last degree)	Wife of the paternal grand son (till the last degree)
Fahter's wife (Step mothr)	Paternal grand father's wife (paternal step grand mother) (till the last degree)	Maternal grand father's wife (step maternal grand mother) (till the last degree)	Foster mother.
Foster maternal grand mother (till the last degree)	Foster paternal grand mother (till the last degree)	Foster daughter	Foster daughter's daughter (till the last degree)
Foster son's daughter (till the last degree)	Foster Sister	Foster paternal aunt	Foster mother's paternal aunt. (till the last degree)
Foster father's paternal aunt	Foster maternal aunt	Foster mother's maternal aunt (till the last degree)	Foster father's maternal aunt (till the last degree)
Foster brother's daughter (till the last degree)	Foster sister's daughter (till the last degree)	Foster mother-in-law	Foster maternal grand mther-in-law (till the last degree)
Foster paternal grand mother-in-law (till the last degree)	The foster daughter of full wife	Wife's foster daughter's daughter (till the last degree)	Wife's foster son's daughter from the son (till the last degree)
Foster daughter in law	Foster daughter's daughter in law (till the last degree)	Foster son's daughter in law (till the last degree)	Wife of the foster father

Foster paternal grand father's wife (till the last degree)	Foster maternal grand father's wife (till the last degree)	Mother of the adultress	Maternal grand mother of the adultress (till the last degree)
Paternal grand mother of the adultress (till the last degree)	Daughter of the adultress	Daughter's daughter of the adultress (till the last degree)	Son's daughter of the adultress (till the last degree)
Son's adultress	Adultress of the daughter's son (till the last degree)	Adultress of the son's son (till the last degree)	Father's adultress
Adultress of paternal grand father (till the last degree)	Adultress of the maternal grand father (till the last degree)	The foster mother of the adultress	Foster maternal grand mother of the adultress (till the last degree)
Foster paternal grand mother of the adultress (till the last degree)	Foster daughter of the adultress (till the last degree)	The foster daughter's daughter of the adultress (till the last degree)	Foster son's daughter of the adultress (till the last degree)
The adultress of the foster son	The adultress of the foster daughter's son (till the last degree)	The adultress of the foster son's son (till the last degree)	The adultress of foster father
The adultress of the foster paternal grand father	The adultress of the foster maternal grand father	In addition to the wife her sister, paternal aunt or maternal aunt	In addition to four wives a fifth wife.
Slave for a woman owner	Slave girl in addition to wife	Polytheist woman (Zorastrian etc.)	Apostate woman
Three time divorced woman before dissolution	other's wife	divorced woman under probation	Pregnant married woman

(Warning):- The reference made regarding fornication during explaining the prohibited degrees for marriage is only to highlight the indecent effect created by adultery as against marriage. Nevertheless fornication is a forbidden, shameful and sinful act. There is a grave curse for it in the Quran and it is laid down that the muslim should refrain from adultery **وَلَا تَقْرُبُوا الزَّوْجَىٰ أَنَّهُ، كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا**

(Translation):- Do not come near to adultery for it is a shameful deed and an evil, opening the road to other evils.

Explanation of Second Condition:- (Persons marrying or their guardians are sane major and free.)

- 1 If the persons performing marriage by their own must be major, sane and free. If the guardians perform their marriage they must be<sup>(1)</sup> major sane and free.
- 2 The persons marrying each other must be sane which means they know the rights and liabilities of the marriage.
- 3 The signs of a major boy are wet dreams, seminal discharge or by his sexual intercourse a woman becomes pregnant.
- 4 The signs of a major girl are nocturnal pollution, menses and pregnancy.
- 5 The above signs may sometimes appear in a 12 years old boy and in a 9 years old girl.
- 6 If any of the above signs are not found out whereas on completion of 15 years age of both the boys and girls will be treated as the age of majority.
- 7 A free person means he is not in any bondage (slave male or female)

Clause:-Sound mind is the pre condition for marriage. Being major and free is the condition for consumation of marriage. If an insane or a minor boy, who does not know the purpose of marriage and performs his marriage by himself the marriage will never take place. If a slave or a minor boy who knows the purpose of marriage perform their own marriage by themselves the marriage will take place but its enforcement will depend upon the permission of their guardian. If the guardian permits it will be put into effect otherwise not.

1. . So that the marriage by itself be correct and effective..

Explanation of the third condition:-

(For insane, minor and slave male permission of their guardian.)

- 1 'Aulia' is the plural of wali. Literaly 'wali' means friend and in the terminology of muslim jurisprudence the wali is the relative who is sane, major and can become a successor to whom the Shariat empowers to arrange for the marriage (of the boy and girl).
- 2 A sinner can be a wali provided he abandones and hates the forbidden things.
- 3 Insane and minor boy cannot be guardian eventhough they are relatives.
- 4 Any unbeliever cannot be a guardian of a muslim even if he is a relative.
- 5 A person<sup>(1)</sup> in whose favour a will is given cannot be a guardian for the marriage even if he has been empowered to arrange the marriage.
- 6 A slave cannot be a guardian of a free person

Kinds of Guardianship:-

The two (2) kinds of guardianship

1. The commandable or accepted guardianship
2. Guardian by force

Explanation:-If the woman is sane, major and free, whether virgin<sup>(2)</sup> or divorced<sup>(3)</sup> she is free in her marriage affairs. She may or may not marry or may marry with any male, whether the guardian is aware or not, and whether the guardian is happy or not, the marriage will take place, eventhough the guardian is her son or father. Hence on a major woman the guardian has no right to influence. But if she marries a person other than her equal status for a dower less than the prevailing one in the family the guardian will have a right to object and he can get the marriage dissolved through a court of law. If the

1. Wasi means a person to whom a testament is given and who may be a custodian of minor's property. whether he is related to minor or not.
2. Bakirah means virgin who has not entered into sexual intercourse, either lawful or doubtful, eventhough, due to some ailment, wound, injury by jumping, the memberance is damaged.(Warning) Seperated before the consumation of marriage she is also rightly treated as a virgin.
- 3.'Saiyibah' is that woman who is married and undergone sexual intercourse

woman has married a person of equal status on a customary dower the guardian can neither object nor get the marriage annulled. However to save from the difference of opinion among the Islamic Jurists and to save from the blame of immodesty the presence of the guardian is better.

For the women who are insane, or minor or a slave girl the presence of the guardian is indispensable. That means without the permission and presence of the guardian or the owner such woman cannot be got married.

The grounds for guardianship:- There are four (4) grounds to prove the guardianship as shown below in seriatum:-

1. Relationship (قربانیت)
2. Ownership (ملک)
3. Emancipation or liberation (اعتنان)
4. Muslim King (امامت)

Explanation:- Guardianship of the person by way of blood relation or consanguinity. The guardianship of the owner relating to slave male and female. The guardianship of a person emancipated or liberated. The guardianship in relation to the unclaimed children lies with the muslim king or a muslim judge (qazi).

The details of Guardians:- The guardian of a free man is preferably his blood relative. The blood relative is the male person who does not claim any relation through a woman. It has four (4) categories:-

- i. The descendants (son, grand son etc.)
- ii. The ascendants (father, grand father etc.)
- iii. The descendants of his father (brother etc.)
- iv. The descendants of the grand father (paternal uncle, etc.)<sup>(1)</sup>

If there are many persons among the blood relation (i.e. all the four blood relatives are present) the preferential is one who is to be successor i.e. son. If there are no male persons from the blood relations the mother will be the guardian, the grand mother, then daughter and grand daughter. Similarly in the absence of the near relatives, the far ones as detailed below:-

1. The successor - the preferential successor are our male descendant. Thereafter our ancestors, then the descendants of the father, then the descendants of the grand father, then those who are nearer are preferred e.g. among the son and grand son, the son is preferred, or among father and grand father the father is preferred.

**The list of guardians for 'marriage' in serial order:-**

1. Blood relations - the preferential one:-
  - a. Out of the descendants, a son<sup>(1)</sup>, if he is not present, grand son and then great grand son till the last degree.
  - b. Out of the ascendants, father, grand father then great grand father till the last degree.
  - c. The descendants of the father i.e. brother, first real then step brother, then the son of the real brother, then the son of the step brother, then their children till the last degree.
  - d. The descendants of the grand father, means paternal uncle, first real then step, then the son of the real paternal unclce, then the son of the step paternal uncle, then their children till the last degree. The paternal uncle of the father, then his children, then the paternal unclce of the grand father, then their children serialwise till the last degree. Then
2. Mother.
3. Paternal grand mother, then maternal mother's mother. then
4. Daughter, son's daughter, son's grand daughter, daughter's daughter, then daughter's grand daughter till the last degree. then
5. Maternal grand father. then
6. First real sister, step sister, uterine sister, the children of all the three till the last degree.(it includes male and female equally in serial order), then
7. Remaining uterine relations<sup>(2)</sup> with preference:-
  - i. Paternal aunt then
  - ii. Maternal uncle then
  - iii. Maternal aunt then
  - iv. Daughters of the paternal uncle then
  - v. The children of the paternal aunt then
  - vi. The children of the maternal uncle then
  - vii. The children of the maternal aunt then
  - viii. Guardian by way of co-operation<sup>(3)</sup> then
  - ix. Muslim Ruler then
  - x. Muslim judge (qazi) then
  - xi. The Deputy of the Muslim judge.

1. If a woman is insane her son will be first guardian for her marriage.(كفيل)

2. Uterine relation (ذوي الارحام) is a relation formed through a woman.

3. The guardian by co-operation means a person who says to another if I die you will be my successor and if you die I will be your successor etc. In such case both will be the successor of each other to be guardian by way of co-operation.

Warning:- In the presence of the guardians of the first category the guardians of second category have no authority to supervise the marriage. Similarly in the presence of the second category the third category has no powers so on and so forth. However if the guardians of the first category have no objection then the next one can supervise.

Warning:- If there is no guardian of a woman the marriage will be correct and lawful whether it is within her equal status or not.

The powers and rules of the guardian:-

1. The guardian<sup>(1)</sup> has authority to get the marriage of a minor boy and girl by force. Father and grand father have so much powers that they can perform the marriage either with an open loss<sup>(2)</sup> or with any one out of the equal status. The marriage will be by all means correct (the children will have no right to get the marriage revoked after attaining majority). However if the father and grand father are sinners and indiscreet and their indescency is open and while intoxicated got the marriage done with a mischievous or debauched one will not be correct<sup>(3)</sup>.

Further except father or grand father any other guardian gets the marriage of a girl with a person outside the family will not be correct<sup>(4)</sup>. Similarly if the marriage is performed with an open loss it will also not be correct<sup>(5)</sup>. Whether it is the marriage of a boy or a girl they are entitled to get such marriage revoked after attaining majority.

2. The guardian has no powers except to perform the marriage of his ward whether the girl is a virgin or not, whether the father or grand father or any other relative is a guardian. However it is permissible for the boy and girl to entrust their marriage affair to their<sup>(6)</sup> guardian.

1. Provided the guardian is not known as an open sinner, careless and notorious.

2. For example there is apparent loss in favour of the boy of agreeing to abnormal dower and in favour of the girl agreeing upon a less dower.

3. For example got her nikah with a poor person who is not in a position to pay the dower or maintenance or practicing unclean profession such as shoemaker or scavenger.

4. If it is performed with a man of equal status it will be correct.

5. If it is not performed with an apparent loss it will be correct.

6. In fact it is a kind of counselling and not guardianship.



3. If the guardian has arranged the marriage of a major girl without her knowledge and permission it will depend upon the permission of the girl. If the girl permits and agrees the marriage will be lawful otherwise it will be null and void<sup>(1)</sup>
  4. Insane or mentally deranged, though they are major the guardian is competent to perform the nikah with force. Similarly the owner is competent to perform the nikah of a major slave and a slave girl with force.
  5. Eventhough the guardians have no power to perform the marriage of a major girl with force but if the major girl performs her marriage with a man of unequal status without the permission of the guardians then the blood related<sup>(2)</sup> male guardian can (even if they are not of the prohibited degree) get the marriage cancelled through a muslim judge provided the woman has not developed pregnancy.
  6. If a major girl without the knowledge and permission of her guardian got her marriage on a dower incomparable to the customary dower in such case the guardian will have the right to raise objection and he will be competent to get the dower completed or on incompleteness get the marriage cancelled through a muslim judge.
  7. If there are many guardians of a woman and all are equal in status then the consent of one will be treated as the consent of all. If all are not equal in status but one who is near and the other is farther then the consent of a distant relative can not overrule the right of objection by the near relative.
  8. When the nearer guardian is present the distant guardian performs the marriage such marriage is depend upon the permission of the nearer guardian. If the nearer guardian agrees to it the marriage will be correct otherwise it is void.
  9. In the absence of nearer guardian who is on a journey of a long distance<sup>(3)</sup> and waiting for him till he returns is difficult<sup>(4)</sup> the distant guardian can perform the marriage. After the marriage is complete the nearer guardian after return cannot get the marriage cancelled.
1. The same order prevails for marriage of a major boy when it is performed without his permission.
  2. From son to grand father's (uncle) sons and grand son as already explained.
  3. The limit of long journey according to some jurists will be for three days and nights.
  4. No waiting means in the absence of a nearer guardian when a woman is already engaged with a boy of equal status and the people of other side are not ready to wait for arrival of nearer guardian and there is possibility of getting a similar match.

- 10.If the nearer guardian rejects the performance of the marriage(nikah) the distant guardian will have the right to complete the marriage.
- 11.The silence of the guardian will not amount to his consent<sup>(1)</sup>. When the period of silence is so long that the woman has delivered a child the silence will be treated as consent and the right to object is forfeited.
- 12.If the marriage of a woman was arranged with a person called 'X' by a guardian and the other guardian performed it with 'Y' and if both the guardians are equal in status the former marriage will be correct and the next void. If it was not found as to which marriage was performed earlier and which one later the both the marriages will be treated as void or if these two guardians are not of equal status the marriage performed by the nearer guardian will be correct and the one performed by the distant guardian will be treated as void.
- 13.The son of paternal uncle has a right to marry with his uncle's daughter but the girl on attaining puberty has a right still to get her marriage cancelled.
- 14.Any guardian, for his personal gain, cannot stop any girl from arranging her marriage with a man of equal status on a customary dower. If he creates any hurdle in the marriage a muslim judge (qazi) has authority to arrange such marriage.
- 15.The muslim judge (qazi) has no powers to marry a minor girl when he himself is a guardian of this girl or to get the marriage of that girl arranged with one of his relatives whose witness is not admissible in his favour.

Consent of a major woman:-

1. In the marriage of a major woman her consent is the precondition.
2. On receiving a notice of marriage the silence maintained by a virgin or kept laughing<sup>(2)</sup> or weeping<sup>(3)</sup> will be treated as her consent provided this marriage is arranged by her father or grand father e.g.
  1. On hearing the news of marriage if the guardian is kept quiet it will not amount to his consent for marriage. But by accepting the dower or making arrangements for dowery or on accepting the gifts the consent of the bridegroom consent will be proved.
  2. Laughing without fun.
  3. Weeping without noice.

any major and virgin lady by way of modesty and shame may not perform her marriage by herself<sup>(1)</sup> whereas her father or grand father<sup>(2)</sup> without settlement of dower<sup>(3)</sup> marry her to a particular person and afterwards informed her or before this marriage seeking her permission, in all such cases the maintenance of silence by the girl<sup>(4)</sup>, or weeping or laughing (in fact doing something as common which does not amount to negation) will be treated as consent and the marriage will be perfect.

3. If the marriage of a major virgin is arranged not by her father or grand father but by any stranger, or in the presence of her father her brother has performed it, it will be compulsory that she has to express her willingness in clear terms by her tongue. Keeping herself silent or smiling or weeping will not amount to acceptance. Further in the marriage which is executed by a stranger or a distant relative it is compulsory that the name of the bridegroom is also sounded to her with the details of dower<sup>(5)</sup>. However her own father or grand father has sent the stranger or the distant relative to inform her and seek her willingness in such case her silence will be treated as willingness<sup>(6)</sup>.
4. If the woman is major divorced one her silence or laughing or weeping is not sufficient to count as her willingness whereas she has to express her willingness by tongue<sup>(7)</sup> whether the marriage is arranged by her father or any other guardian.

1. As a common practice.
2. Without expressing the name.
3. Without indicating the dower even.
4. There is no need that the woman should express her willingness by her tongue. Those who force her and get her willingness by tongue doing no good.
5. In the marriage arranged by father and grand father of a woman there is no need to tell the name and the details of the dower.
6. In fact the father or the grand father by themselves or by sending a messenger give the notice or seek her willingness. Then the silence maintained by her at that time will amount to consent. On the contrary information by a stranger or a distant guardian seeking her willingness, on which the silence maintained by her will not be taken as her consent whereas her express willingness by the tongue is compulsory.
7. Some people have declared that the willingness by tongue and clear permission is not compulsory and wrote that it is based on the custom.. Whereas there is custom that the divorced women gives clear permission and without clear permission the marriage will not be correct. Where there is no such custom and there are no adverse signs such binding is not necessary.

5. On hearing the news of her marriage if she rejects once it is treated as rejected forever.
6. If the guardians for marriage are more and they seek the permission of the major girl and at that moment her silence will not be treated as consent. If the guardians have performed the marriage, each one, separately and seek her permission then that marriage will be correct for which she has expressed her willingness by tongue or by action. If she has expressed her willingness on more than one marriages then all will become void.

Rules regarding insane and minors to marriage:-

1. The insane and minors will have no powers to get their marriage done by themselves.
2. If an insane and minor without the presence and permission of his guardian performs his own marriage or through any third person it will depend upon the ratification of the guardian to allow it or to reject it.
3. Where there is no guardian or a muslim ruler the minors perform their own marriage by themselves it will not be void but it will be kept hanging till the attainment of their majority and permission.

Option on attaining full manhood:-

1. The rights acquired on attaining full manhood is called (Khiyar-e-bloogh) or right of option on pubescence.
2. The minor boys and girls, on attaining full manhood have the right to ratify<sup>(1)</sup> the marriage provided the marriage is executed by any guardian other than father or grand father<sup>(2)</sup>.
3. The right is available at that time when they felt themselves pubescent or they did not know about their marriage before (after puberty) but when they got the news of marriage.
4. Immediately after the pubescence or receiving the news of marriage it is neither rejected nor ratified<sup>(3)</sup> then the option will become void.

1. Eventhough the couple had entered into cohabitation.
2. With the permission of the guardian the minor has himself performed the marriage.
3. Despite of having control over the speech to express.

5. In this connection ignorance of the right of option is not an excuse<sup>(1)</sup>, that means a novice in pubescence kept silent<sup>(2)</sup> for not knowing this option the silence will deprive the right.
6. The silence of a divorced woman will not take away her right but when she expressed her willingness or rejection by her tongue or commits an act which will amount to willingness<sup>(3)</sup> the right of option will be nullified.
7. The right as given to a woman is also given to a man but the right of male is not nullified unless he has expressed his willingness or rejection.
8. If one is not happy with the marriage there are two conditions to get it nullified - one is on attaining full manhood he expresses his displeasure with marriage, secondly to get it cancelled through a muslim judge<sup>(4)</sup>.
9. When the marriage is arranged by the father and grand father their children have no right to nullify it eventhough it involves an apparent loss provided<sup>(5)</sup> (father and grand father) are not openly sinners, careless and notorious.
10. If the marriage of a major person is performed by his guardian when that person was in delirium but after gaining consciousness he can get that marriage cancelled but he cannot nullify the marriage executed by his father, grand father or his son.

Attorney:-

1. An attorney means one who acquires powers to act on behalf of a person who has permitted him to do so. The person who has given this power is called a client.
  2. Appointment of an attorney is lawful for marriage even if at the time of his appointment there were no witnesses.
1. The same problem explained above that means a minor after attaining puberty has a right to uphold or reject the marriage already took place. If the right to uphold or reject the marriage is not utilised his right will be void.
  2. Or kept silent for some time.
  3. Demand the dower, or maintenance or laughed.
  4. First immediately after attaining puberty express his unwillingness then he may file a suit before the muslim judge to cancel this marriage.
  5. For example not with an equal status or on less dower.

3. As the parties to marriage have right to appoint attorney similarly the guardian can also appoint an attorney.

4. If a man or a woman appoints an attorney for his/her marriage with any one as he wished when this attorney performs his/her marriage with any one it will be correct provided there is no deficiency in the dower as declared by his client. If there is any violation the marriage will not be correct.

A stranger (Fuzooli):-

1. Fuzooli is a person who is neither a party to the marriage nor a guardian of the persons marrying or an attorney, or a messenger but normally arranges the marriage between the parties.

2. If a fuzooli performs the marriage of a person and informs him later that he has performed his marriage and if that person agrees to it the marriage will be correct otherwise it will be null and void.

3. The attorney has power to cancel the marriage before seeking permission but the fuzooli has no such powers.

Warning:- At some places it was found that when the paternal uncle or cousins of a girl are available the mother executes the marriage of her girl. As a matter of fact the uncle or the cousin etc. are the guardians from the direct lineage. Unless and until one of them is present the right of guardianship does not reach the mother. If the mother of the girl executes the marriage with a person and the guardian of direct lineage (whether he is very far) of the same girl with another, the marriage performed by the mother as a guardian will not prevail and performed by the guardian of direct lineage will be operative. Hence the rank of the mother is after the guardian of a direct lineage which must be kept in mind.

Warning:- The chapter on guardianship is over. In this connection it is necessary to mention about the fake guardianship which is explained in two clauses:-

1. Some people treat the draught effected or famine struck boys and

girls as their property and perform their marriage in their childhood under their guardianship is a mistake. Such boys and girls are not their property. Whereas they are free and boundless servants. Their owners are not their real guardians but dummy or fake guardians and have no right to perform their marriage during their minority.

2. Some people who are issueless adopt the children of their relatives or of others. They bring them up and call them as adopted. They are given the name as favoured or grace or adopted children. Such children are married in their childhood by these adoptive fathers under their guardianship. In such cases if the adoptive father is already has blood relation with the child the marriage will be lawful. If the guardian is not of the blood relation he is not a real guardian but claims the relations due to adoption and favour, the marriage will not be correct. Because he is not a real guardian in this regard but only an assumed guardian who has no authority to arrange for the minors' marriage.

**Explanation of fourth condition:**-(A woman has to seek willingness of the guardian if she wants to marry a man not of equal status (whether she is a minor or a major).

1. The muslim jurisprudence gives much emphasis that unmatched, and inappropriate marriages are not to take place. The marriage of a woman with a man who is of lower status than the woman does not take place. If a woman of her own accord, without the consent of her guardian, performs marriage with a man of low status or it may take place by mistake or by deceit there is insult of the guardian. Therefore to avoid the feeling of shame and insult of the guardian it is held that the man is of equal status. If there is marriage with a man not of equal status the guardian is empowered to approach a muslim judge to get such marriage nullified.
2. Guardians here means the bloodly related guardians of lineag<sup>(1)</sup> even if they are not in the prohibited degrees.
3. Status (kafu) means freedom, muslim, honest, wealthy and in profession equal to woman or better than her.

1. From son to the son's and grand son's of the grand father and the paternal uncle.

**Equal status in rank and category for marriage:-** Equal status is important among the Arabs. There is no importance of rank and status among the non-Arabs (Ajami). The Non-Arabs diversified in lineage and parantage may not be called unequal in status except the lineage. For marriage purposes except certain filial appellations all are equal.

In Arabia all Qureshi are equal<sup>(1)</sup>. Non Qureshi are not equal in status with the Qureshi. However non-queshi<sup>(2)</sup> are equal in status for each other. Non-Arabs cannot claim equal status with the Arab origins. There is one exception that if non-arab is an Islamic scholar he can marry an arab woman even qureshi provided she is illiterate.

(Clause) Filial appellations is important but not of the mother. If the father is an Arab origin and the mother is non-arab the children will be called Arab origin.

**Hurriat mean Freedom:-** If a man or his father is a slave or he was a slave and freed later on he cannot be equal in status with a free woman by origin.

**Islam:-** Here islam means a person who has not embraced islam or converted to islam recently. A converted muslim is one who by himself embraced islam or his father embraced islam. If one is a muslim by generation that means islam is embraced by his father and grand father, that man will be treated as a muslim by generation.

A recently converted muslim cannot be equal in status to a muslim by generation. The muslim who has recently embraced islam by himself cannot be equal to a muslim whose father was also a muslim. After two generations they will be treated as equal eventhough one of the two is a muslim with a lesser degree of generation.

The question of status does not arise in those areas where the proselytism is not a shame.

1.Arab means those who are Arab origin where they live in another country for generations.

2.Ajami means non-arabs who are not of arab origin eventhough they reside in Arabia.



Honesty:- This means piety - A man who is a sinner he cannot be equal to such a woman, who is pious and her father is also pious. If a woman is pious by herself but her father is not a pious person or her father is pious but she is not so. A sinner<sup>(1)</sup> male can be her (Kafu) equal.

Wealth:- Here wealth means the capacity to pay the dower and maintenance. If the entire dower is prompt one or a part thereof is prompt one he is capable enough to pay it. The capacity to pay one month's maintenance will be enough provided that person is not a professioner and if he is a professioner and gets sufficient remuneration to meet his daily expenditure then it is enough to treat him as able to pay that much. His entire expenditure for full month is not demanded. A person holding so much wealth will be treated as a 'kafu' of any woman eventhough she may be the richest one.

Profession:- Equality in profession means the same profession is practiced by another. Eventhough there are different professions, certain profession are treated as unclean such as, barbar, washerman, scavenger, etc. Some professions are treated as honourable such as agriculturists, trader etc. However equality of preofession will be considered where there is discremination among the professions. In those places where two different professions are treated as equal the person practicing these professions will be treated as equal in status, if they are not treated as equal at some places, there they cannot be treated as equal in status.

Warning:-To be a kafu (equal in status) these are only six factors in which one must be equal. Besides these there are no other conditions for equality in status. Neither in wisdom, nor in age, nor in beauty nor free from any defects.

Clause:- If a person is not wealthy<sup>(2)</sup> by himself but his parents are rich and they provide him with that means for his sustenance he will be regarded as rich and it will have no impact on his status.

1.The sinner is as open sinner or secret.

Warning:-Sinner (fasiq) is one who commits grave sins.

2.Absence of wealth here means one is not able to pay the dower and the maintenance that means one must have capacity to pay the maintenance.

Clause:- The status of a male is taken into consideration because the male should be the kafu of a female. If the woman is not a kafu of a male no problem.

Clause:-The status is considered only at the beginning of the marriage. If a man was of some status at the time of marriage but he lost it subsequently e.g. he was rich before but became a pauper the marriage will not be void.

Clause:- Equality in status (kafa'at) is the right of the guardians and not of a woman because of the equality in status the guardian will have the right to object i.e. if a woman has married a man whose status was not found out at the time of marriage but it is known after marriage that he was not an equal in status the guardians have the right to get this marriage nullified and not the woman provided the marriage was performed without the consent of the guardians. If the marriage was with the consent of the guardians they will have no right to get it nullified.

If the woman or her guardians have performed her marriage under the assumption that the man was her kafu or the man informed the woman and her guardians that he is their kafu believing this the marriage was performed. After the marriage it is proved that he was not a kafu now it is open for the woman and her guardians to nullify the marriage.

Clause:-Marriage cannot be nullified after the woman developed pregnancy or delivered a child.

**Explanation of Fifth Condition:-** Two witnesses are compulsory.

1. Marriage without witnesses is not correct.
2. To witness a marriage the following conditions are to be fulfilled.
  1. There are two witnesses, if there is only one witness it is not correct.
  2. Both the witnesses are male or one male and two female. The witness of females will not be sufficient even though they are four.
  3. Both the witnesses must be free, the witness of a slave male and slave female is not sufficient.

4. Both witnesses are sane. The witness of an insane, befogged or unconcious is not correct.
- 5 Both the witnesses are major, the witness of minor children, even sensible, is not sufficient.
6. Both the witnesses are muslims (whether they are pious or sinners)<sup>(1)</sup> the witness of the unbelievers is not correct. However if the woman is unbeliever but a woman of book (such as Jew and Christian) wants to marry a muslim the unbelievers of her religion can be witnesses in her marriage.
7. Both the witnesses are capable enough to adduce evidence. If a person makes two recording angles (kiranman kaatibeen) as witness the marriage will not be correct. Similarly Allah and His Messenger is made as witnesses<sup>(2)</sup> the marriage will not be lawful.
8. Both the witnesses are necessary to listen the offer and acceptance. If one listens first and the other thereafter the marriage will not be correct. If the witnesses have not listened both offer and acceptance whereas they listened only offer or only acceptance the marriage will not be correct even then.
- Clause:- If the witnesses are deaf there will be no marriage however if the marrying persons are also dumb and they make offer and acceptance by gestures and the deaf witness understands their gestures the marriage will be lawful.
- Clause:- Stammering and dumb witnesses are accepted provided there is no defect in their hearing.
9. Both the witnesses after hearing the words of offer and acceptances understand that marriage is being performed eventhough they cannot make out the meaning thereof, i.e. there is offer and acceptance in Arabic and the witnesses are not blessed with the Arabic language.
10. The wedding persons are introduced to the witnesses. If they recognize them with their names showing the names will be enough otherwise their father and grand father's names may be indicated to the witnesses so that they can be well acquainted with them.

1. Those who are flogged on allegations of fornication or adulterer.
2. To do like this is a sin.

Warning:- 1. It is not necessary that the witnesses are having eyesight.

(The witness of the blind is admissible)

2. It is also not a condition that the witnesses and the wedding persons are not relatives whereas the witness of the nearer relative<sup>(1)</sup> of the wedding persons is also allowed by law.

Clause:- If a person appoints his own attorney and that attorney completes the offer and acceptance but the bridegroom is present in the marriage ceremony personally then the client will be taken as bridegroom and the attorney will be considered as witness. Hence apart from the attorney only one male or two females will be enough the marriage will be complete. Similarly the marriage of a major girl in her presence is executed by her guardian with only one witness in such case the girl will be treated as bride and the guardian will be counted as one of the witnesses and the marriage will be complete.<sup>(2)</sup>

Explanation of the Sixth Condition:-

(The marriage is not subjected to a fixed period)

1. To bind the marriage for a lessor or more period or an unknown period while fixing the dower and using the word Mut'ah but there are no witnesses it will be called mut'ah. If the dower is not fixed but the words (tazweej) taking a wife in marriage are used and the witnesses are available it will be called "Muvaqqat" (for a period).
2. "Mut'ah" and 'Muvaqqat' both are void.
  - i. If a person says to a woman, "I perform Mut'ah for a dower of Rs.100/- with you for one month, or for 10 years or till a particular person is alive". or
  - ii. If a person says to a woman before the witnesses "I perform marriage with you for one month, or 10 years or till a particular person is alive" both are void.
  - iii. Mut'ah is forbidden

Warning:- The conditions of marriage are over. The fundamentals are already explained. Now after the fundamentals of marriage the problems of dower (including the rules of marriage) are detailed which are compulsory for marriage.

1. For example the sons of the persons marrying each other.

2. If the girl is not present in the gathering the marriage cannot be performed.

**5. Rules for Dower:-**

1. (i) Dower is a particular amount or kind<sup>(1)</sup> that should be paid in consideration of marriage to a woman for her carnal use. In fact dower is a condition for marriage and its benefits, which is embezzled on a male<sup>(2)</sup>. As a result the consideration and compensation for this benefit is called dower. (ii) For marriage dower is compulsory but it is not so necessary<sup>(3)</sup> to be declared at the time of marriage. Whether it is declared or not declared the nikah will be complete. In case it is not declared the normal dower will become compulsory. If one makes a vow, "I will not pay the dower or, "I will perform the marriage without dower" even then he has to pay the dower and the vow will be void<sup>(4)</sup>.

2. Primarily there are two categories of dower

(1) Declared dower (2) Resembling dower

The details of each dower are given below in seriatum:-

i. Declared dower (مهر مسمی) It is a dower which is fixed at the time of marriage.

ii. Resembling dower (مهر مثل) It is dower prevalent among the women belonging to the family of bride's father<sup>(5)</sup> who are resembling her in the following matters, age, beauty, wealth, town, period, brain, piety, tolerance, manners, politeness, virginity or married one, bearing children or not. The husband should be equal in the above attributes.

**Warning:-** (1) If the dower of the women of their father's family is not known or those women do not resemble in the above attributes the dower of any stranger woman who resembles in these attributes will be considered and the same dower will be fixed provided those women resemble them not only in the above attributes but also equal in the lineage.

1. Or the material which is counted as wealth.

2. Mehr is also like other debts to which the husband is liable for payment even though much importance is not given to mehr and it is postponed till talaq or death. As a matter of fact it should be paid as early as possible so that the husband is got rid of this debt and can save himself from the claim in the hereafter.

3. Because the 'mehr' is not necessary as an essence of marriage but for the continuity and safety of the wedlock.

4. The mehr is a legal right and it cannot be wiped off by human denial.

5. The sisters, paternal aunts, the daughters of paternal uncle and paternal aunts.

(2)The dower of the mother of the bride is not taken into consideration, however if the mother is one of the same family members such as the daughter of paternal uncle of the father then it can be taken as resumbling dower.

3. Mehr Muajjal (Prompt Dower):-The dower which is promptly paid or immediately paid on demand.

4. Mehr Muwajjal (Deferred Dower):- It is not paid promptly but deferred till a particular period. If the period is not indicated it may, by usage, be deferred till death or divorce.

There are two conditions essential in Dower:-

1.The dower must be minimum Ten Dirham (21 grams 264 miligrams silver) or any article of the same value.

2. The dower is to be in cash or kind.

Explanation:-

i. It is not at all necessary that the dower is to be paid only in the shape of dirham whereas it can also be in kind equal to the value of ten dirham or more. For example gold, silver, horse, land, farmhouse, buffaloes, etc. However the articles which are not counted as wealth in muslim law such as wine, swine, carrion etc. cannot be a dower.

ii.The benefits derived by way of remuneration in lieu of services will be treated as wealth and it can be given in dower i.e. the services of a servant, horse riding, house rent, etc . except personel services of the husband to his wife<sup>(1)</sup>.

iii.Legally the dower cannot be less than ten dirham even if a man fixes less than ten dirham as dower he will have to pay ten dirham.

iv.There is no maximum limit for dower as one can fix the dower as much as he can, but fixation of dower more than his capacity is abominable.

Warning:- While fixing the dower the husband is compulsorily to be careful about his capacity. (However necessity or exigency may be) there it is quite imprudent and indiscreet to fix the dower beyond ones capacity because it may compulsorily result into non-payment. Non payment will not only be accountable in the hereafter but also in this life and even a burden on the successors.

1.There is insult of the husband.

In the following chart a list of dower of the holy wives and daughters of the holy messenger of Allah is given as a guide for the muslim boys to follow this ideal and good example from the life of the holy messenger so as to enable themselves to expect the bounties of Allah.

Ummul Momineen Hazrat Khadijat-ul-Kubraa (R.A.)	12 1/2 oqia <sup>(1)</sup> gold (1063 grams 21 miligram silver)
Ummul Momineen Hazrat Saudah (R.A.)	400 dirham <sup>(2)</sup> (850 grams 57 miligram silver)
Ummul Momineen Hazrat Aaishah (R.A.)	400 dirham (850 grams 57 miligram silver)
Ummul Momineen Hazrat Hafsa (R.A.)	400 dirham (850 grams 57 miligram silver)
Ummul Momineen Hazrat Zainab (R.A.)	400 dirham (850 grams 57 miligram silver)
Ummul Moamineen Hazrat Umme Salmah (R.A.)	400 dirham (850 grams 57 miligram silver)
Ummul Momineen Hazrat Zainab (R.A.)	400 dirham (850 grams 57 miligram silver)
Ummul Momineen Hazrat Juvairiah (R.A.)	400 dirham (850 grams 57 miligram silver)
Ummul Momineen Hazrat Umme Habeebah (R.A.)	400 dinar <sup>(3)</sup> (1215 grams 10 miligram gold)
Ummul Momineen Hazrat Safiyyah (R.A.)	
Ummul Momineen Hazrat Maimoonah (R.A.)	400 dirham <sup>(4)</sup> (850 grams 57 miligram silver)
The daughter of the Holy Messenger Syedatunnisa Hazrat Fatimah (R.A.)	400 Misqal Silver <sup>(5)</sup>

1. One voqia is equal to 40 dirham weight.
2. Dirham is equal to 70 barleys in weight is equal to 17 1/2 rathi or two masha 1 1/2 rathi.
3. Dinar is a gold coin one dinar is equal to 100 barleys that means equal to 25 ratties in weight
4. Out of eleven (11) wives two (2) have already expired in His life time. The remaining nine (9) were alive even after Him. The gathering of these nine (9) wives was the espaciality of Rasoolullah Sallallahu Alahi wa Sallam.
5. The weight of one misqal is also 100 barleys which is 25 ratties 1215 grams 10 miligram silver.

## 6. The method of Marriage (nikah):-

1. Compulsory that the marriage celebration is devoid of un-islamic rituals<sup>(1)</sup>.
2. It is desirable to perform the marriage inside a mosque.
3. It is desirable that the marriage celebrations are open in which the holy ones and the virtuous one are also present.
4. It is compulsory that in the marriage celebration the bridegroom<sup>(2)</sup> and the guardian or attorney of the bride, if the bride is a minor or major, her guardian (and the guardian of the major girl is also to be present as an attorney. Where there is no guardian any other person may act as an attorney).
5. Before the marriage, if felt necessary or as a matter of expediency get the parties of the marriage to repent for their past sins and pray for remissions of sins. Ask them to recite the faith in brief (iman-e-mujmal), faith in detail (iman-e-mufassal) and kalimat. Due to ignorance people utter certain derogatory words which amounts to desecration of the Islam and dis-belief and there will be no repentance as such the revival of Islam is desired so that the marriage will become sacred and honourable.
6. After the completion of formalities of marriage the guardian or the attorney of the bride, a major, approaches her<sup>(3)</sup> alongwith the witnesses and tell her, "I am being the attorney performing your marriage with so and so son of so and so on a prompt/deffered dower of Rs. so and so." These words are also audible to the witnesses and get assured that she is the same woman to be wedded to whom the words are presented. At this moment if the bride is a major and virgin and the person seeking her permission is her father or grand father, the maintenance of silence by her will amount to her consent.

1. The marriage is a sacred ceremony of the muslims and it is celebrated in pursuit of an Islamic ordeal. In such circumstances it must be clear and devoid of unlawful and activities contrary to faith.

2. If the bride is a minor her guardian is to be present.

Warning:- Eventhough the person making offer and acceptance is bridegroom yet in this book Aaqid means bride groom and Aaqida means bride.

3. If the bride (Aaqida) is a minor there is no need to approach her because the guardian is fully authorised to perform her marriage.



(Weeping or laughing without voice is calculated as permission). If the woman is a divorced one and the person seeking her permission is other than her father or grand father in such circumstances the silence (of the bride) will not be sufficient. Whereas she should say clearly by tongue, "I agree" or "I permit".

7. After the permission the sermon (Khutba) of nikah<sup>(1)</sup> is recited loudly. If possible the guardian of the bride should deliver the sermon<sup>(2)</sup>, If not possible any virtuous person or qazi can deliver it.
8. The nikah sermon being delivered must contain glorification of almighty Allah, praises in favour of the messenger of Almighty Allah Hazrat Mohammad Mustafa Sallallahu Alahi Wa Sallam. It must also include the relevant verses of the Holy Quran, stress on fear of Allah, His rebukes, and admonitions, and the importance of marriage and the responsibilities created by marriage as the marriage is a contract and it will be a pledge and assurances undertaken by this contract.
9. Better to recite this sermon (khutba) of marriage as mentioned in the traditions.

1. Recital of marriage sermon (khutba) is as delivered by the Holy Prophet and to listen it with silence as it is obligatory on the audience.

2. Huzoor Sallallahu Alaihi wa Sallam had delivered the sermon (khutba) of Fatima Zahra (R.A.) by himself.

KHUTBA NIKA

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
 الْحَمْدُ لِلَّهِ نَحْمَدُهُ وَنَسْتَعِينُهُ وَنَسْتَغْفِرُهُ وَنَعُوذُ بِاللَّهِ مِنْ شُرُورِ  
 أَنْفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا مَنْ يَهْدِهِ اللَّهُ فَلَا مُضِلَّ لَهُ وَمَنْ يَضِلَّهُ  
 فَلَا هَادِيَ لَهُ وَأَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ وَأَشْهَدُ  
 أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ ( أَرْسَلَهُ بِالْحَقِّ بَشِيرًا وَنَذِيرًا بَيْنَ يَدَيْ  
 السَّاعَةِ . مَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ ، فَقَدْ رَشِدَ وَمَنْ يَعْصِهِمَا فَإِنَّهُ لَا  
 يَضُرُّ إِلَّا نَفْسَهُ ، وَلَا يَضُرُّ اللَّهَ شَيْئًا . وَنَسْأَلُ اللَّهَ أَنْ يُجْعَلَ لَنَا مِنْ  
 يُطِيعُهُ ، وَيُطِيعُ رَسُولَهُ ، وَيَتَّبِعُ رِضْوَانَهُ ، وَيَجْتَنِبُ سَخَطَهُ ، فَإِنَّمَا نَحْنُ  
 بِهِ وَ لَهُ ) . يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَ  
 خَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَ اتَّقُوا اللَّهَ الَّذِي  
 تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا . يَا أَيُّهَا الَّذِينَ آمَنُوا  
 اتَّقُوا اللَّهَ حَقَّ تَقَاتِهِ وَلَا تَمُوتُنَّ إِلَّا وَأَنْتُمْ مُسْلِمُونَ . يَا أَيُّهَا الَّذِينَ  
 آمَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ  
 لَكُمْ ذُنُوبَكُمْ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ فَقَدْ فَازَ فَوْزًا عَظِيمًا .

With this sermon (Khutba) the following Ahadees and Droode sharf is included.

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : ” النَّكَاحُ مِنْ سُنَّتِي فَمَنْ رَغِبَ عَنْ سُنَّتِي  
 فَلَيْسَ مِنِّي “ وَقَالَ : ” تَزَوَّجُوا الْوَدُودَ الْوَلُودَ فَإِنِّي أَبَاهِي بِكُمْ الْأُمَّم “ .  
 وَقَالَ ” الدُّنْيَا كُلُّهَا مَتَاعٌ وَخَيْرُ مَتَاعِ الدُّنْيَا الْمَرْأَةُ الصَّالِحَةُ “ . اللَّهُمَّ صَلِّ عَلَى  
 سَيِّدِنَا مُحَمَّدٍ النَّبِيِّ الْأُمِّيِّ وَعَلَى آلِهِ وَأَصْحَابِهِ وَأَزْوَاجِهِ وَذُرِّيَّاتِهِ وَأَهْلِ بَيْتِهِ  
 وَسَلِّمْ تَسْلِيمًا كَثِيرًا كَثِيرًا .

1. The part of sermon (khutba) enclosed in bracket has also been proved by certain references

یا یہ خطبہ پڑھے:- OR this sermon is recited

الْحَمْدُ لِلَّهِ الْمَحْمُودِ بِنِعْمَتِهِ ، الْمَعْبُودِ بِقُدْرَتِهِ ، الْمَطَاعِ بِسُلْطَانِهِ ،  
الْمَرْهُوبِ مِنْ عَذَابِهِ وَ سَطْوَتِهِ ، النَّافِدِ أَمْرَهُ ، فِي سَمَائِهِ وَ أَرْضِهِ ، الَّذِي  
خَلَقَ الْخَلْقَ بِقُدْرَتِهِ ، وَ أَمَرَهُمْ بِأَحْكَامِهِ ، وَ أَعَزَّهُمْ بِدِينِهِ ، وَ أَكْرَمَهُمْ بِنَبِيِّهِ  
مُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَ سَلَّمَ . إِنَّ اللَّهَ تَعَالَى تَبَارَكَ اسْمُهُ ، وَ تَعَالَتْ  
عَظَمَتُهُ ، جَعَلَ الْمُصَاهِرَةَ سَبَبًا لِأَحِقِّهَا وَ أَمْرًا مُفْتَرَضًا أَوْشَحَّ بِهِ الْأَرْحَامَ وَ  
أَلْزَمَ الْأَنَامَ . فَقَالَ عَزَّ مِنْ قَائِلِهِ ” وَ هُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ  
نَسَبًا وَ صِهْرًا وَ كَانَ رَبُّكَ قَدِيرًا “ فَأَمَرَ اللَّهُ تَعَالَى بِجُرْحِي إِلَى قَضَائِهِ وَ  
قَضَائِهِ ، يَجْرِي إِلَى قَدْرِهِ ، وَ لِكُلِّ قَضَاءٍ قَدْرٌ وَ لِكُلِّ قَدْرٍ أَجَلٌ وَ لِكُلِّ أَجَلٍ  
كِتَابٌ يَمْحُو اللَّهُ مَا يَشَاءُ وَ يَثْبُتُ وَ عِنْدَهُ أُمُّ الْكِتَابِ .

This sermon is also approved through Ahadees. The following Ahadees and Durood-e-shareef is added to this sermon.

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَ سَلَّمَ : ” النَّيْكَاحُ مِنْ سُنَّتِي فَمَنْ رَغِبَ عَنْ  
سُنَّتِي فَلَيْسَ مِنِّي “ وَ قَالَ : ” تَزَوَّجُوا الْوَدُودَ الْوَدُودَ ، فَإِنِّي أَبَاهِي بِكُمْ الْأُمَّمَ “  
وَ قَالَ ” الدُّنْيَا كُلُّهَا مَتَاعٌ وَ خَيْرُ مَتَاعِ الدُّنْيَا الْمَرْأَةُ الصَّالِحَةُ “ . اللَّهُمَّ صَلِّ  
عَلَى سَيِّدِنَا مُحَمَّدٍ النَّبِيِّ الْأُمِّيِّ وَ عَلَى آلِهِ وَ أَصْحَابِهِ وَ أَزْوَاجِهِ وَ ذُرِّيَّاتِهِ وَ  
أَهْلِ بَيْتِهِ وَ سَلِّمْ تَسْلِيمًا كَثِيرًا كَثِيرًا .

**The method of offer and acceptance:-**

When the sermon (Khutba) is delivered the guardian or attorney of the bridegroom and the bride execute the offer and acceptance in front of the witnesses. If they cannot perform it, the person recording the marriage proceedings will get that executed by the bridegroom. The following verdict is to be got uttered by them.

**Words of Offer**

(The guardian or attorney of the bride tells the bridegroom)

"I am by virtue of being a guardian or attorney, on the evidence of ..... s/o ..... got your marriage completed with Miss ..... d/o ..... on a dower (prompt or deferred)."

**Words of acceptance**

(The bridegroom in turn say)

"I have accepted it",

The utterance of the above words once will be enough but it is necessary that it is instantaneously uttered and acceptance both the witnesses listen to it simultaneously. After the offer and acceptance the 'Dua' is to be recited for the welfare and prosperity of the bride and bridegroom.

**Dua**

بَارَكَ اللَّهُ لَكَ وَبَارَكَ اللَّهُ عَلَيْكَ وَجَمَعَ بَيْنُكُمَا فِي خَيْرٍ . جَمَعَ اللَّهُ  
شَمْلُكُمَا وَاسْعَدَ جَدُّكُمَا وَبَارَكَ عَلَيْكُمَا وَأَخْرَجَ مِنْكُمَا كَثِيرًا طَيِّبًا .  
اللَّهُمَّ أَلْفَ بَيْنَهُمَا كَمَا أَلْفَتْ بَيْنَ سَيِّدِنَا آدَمَ وَسَيِّدَتِنَا حَوَاءَ عَلَى نَبِينَا  
وَعَلَيْهِمَا الصَّلَاةُ وَالسَّلَامُ . اللَّهُمَّ أَلْفَ بَيْنَهُمَا كَمَا أَلْفَتْ بَيْنَ سَيِّدِنَا  
إِبْرَاهِيمَ وَسَيِّدَتِنَا سَارَةَ وَسَيِّدَتِنَا هَاجِرَةَ عَلَى نَبِينَا وَعَلَيْهِمَا الصَّلَاةُ  
وَالسَّلَامُ . اللَّهُمَّ أَلْفَ بَيْنَهُمَا كَمَا أَلْفَتْ بَيْنَ سَيِّدِنَا يُوسُفَ وَسَيِّدَتِنَا زُلَيْخَا  
عَلَى نَبِينَا وَعَلَيْهِمَا الصَّلَاةُ وَالسَّلَامُ اللَّهُمَّ أَلْفَ بَيْنَهُمَا كَمَا أَلْفَتْ بَيْنَ

سَيِّدِنَا مُوسَىٰ وَ سَيِّدَتِنَا صَفُورَاءَ عَلَيَّ نَبِيَّنَا وَعَلَيْهِمَا الصَّلَاةُ وَالسَّلَامُ  
 اَللّٰهُمَّ اَلْفَ بَيْنَهُمَا كَمَا اَلْفَتْ بَيْنَ سَيِّدِنَا سُلَيْمَانَ وَ سَيِّدَتِنَا بَلْقَيْسَ عَلَيَّ  
 نَبِيَّنَا وَعَلَيْهِمَا الصَّلَاةُ وَالسَّلَامُ، اَللّٰهُمَّ اَلْفَ بَيْنَهُمَا كَمَا اَلْفَتْ بَيْنَ سَيِّدِنَا  
 وَمَوْلَانَا مُحَمَّدٍ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَ سَيِّدَتِنَا خَدِيْجَةَ الْكُبْرَىٰ وَ سَيِّدَتِنَا  
 عَائِشَةَ الصِّدِيْقَةَ رَضِيَ اللهُ تَعَالَىٰ عَنْهُمَا . اَللّٰهُمَّ اَلْفَ بَيْنَهُمَا كَمَا اَلْفَتْ  
 بَيْنَ سَيِّدِنَا عَلِيٍّ الْمُرْتَضَىٰ وَ سَيِّدَتِنَا فَاطِمَةَ الزَّهْرَاءَ رَضِيَ اللهُ تَعَالَىٰ  
 عَنْهُمَا آمِيْنَ يَا رَبُّ الْعَالَمِيْنَ . اَللّٰهُمَّ بَارِكْ لِلْحَاضِرِيْنَ وَ لِاَهْلِ هَذَا  
 الْمَجْلِسِ كُلِّهِمْ اَجْمَعِيْنَ . سُبْحَانَ رَبِّكَ رَبِّ الْعِزَّةِ عَمَّا يَصِفُوْنَ وَ سَلَامٌ  
 عَلَيَّ الْمُرْسَلِيْنَ وَ الْحَمْدُ لِلّٰهِ رَبِّ الْعَالَمِيْنَ .

After the marriage (nikah) is completed the dates are thrown or distributed<sup>(1)</sup> as it is desirable. For purpose of making announcement beating of 'daf' (a small tambourine) is also lawful provided there is no ringing of bells.

Further it is desirable (mustahab) to greet the wedded couple and their guardians. The pair may be greeted with these words

بَارَكَ اللهُ لَكَ وَ بَارَكَ اللهُ عَلَيْكَ وَ جَمَعَ بَيْنَكُمَا فِيْ خَيْرٍ

that means the Almighty Allah may make this marriage (nikah) auspicious and to grant you both a happy and prosperous life.

After the marriage is consummated<sup>(2)</sup> the bridegroom may offer Walima dinner according to his capacity.

*Rules of Nikah Are over details of divorce are mentioned now*

1. Provided no harm is caused to any one otherwise they are distributed.

2. Zafaf means the night of the union of bride and bridegroom.

## -:Divorce (Talaq) and its Rules:-

### Preface

Be it known that the nikah manifests the declared relations between wife and husband. Due to which each party is bound under a legal tie and also acquire certain rights. The benefits arising out of this relation and the causes of this relation are not only hailed but it also grants stability to it in shariat which is unexemplified.

The declaration of attributes of nikah by Huzoor Sallallahu Alahi Wa Sallam and putting it into practice by himself, the advise tendered for gracefully living, the condemnation for the severance of marriage (nikah) that means divorce as is evident from various traditions of the Holy Prophet becomes clear that how much respect is given to this union in Islam.

In fact if this relation is not granted stability and it was not considered seriously, certainly the benefits and its fancies expected from marriage (nikah)- would not have been achieved.

**To lead a successful domestic life marriage (nikah) is the basic and fundamental device.** If it is not granted stability then snapping of the ties of marriage (nikah), divorce (talaq) will become rampant. When the people daringly do it, it will not only nourish sexuality, create great havoc in the achievement of the goal of life. The civilisation and the way of living will have been in a mess.

The wedlock<sup>(1)</sup> is treated by the wife and husband as an eternal partnership thereby leading a life where each one generates the security and safety for themselves. There is always a joint venture having full confidence and faith on each other. Where this relation becomes temporary and instable there will neither be such love and affection, nor any trust on each other. The life requirement will never become common for them. In such circumstances the protection of rights will also impair.

There is a hadith, "the woman who demands separation (talaq) from her husband she will be deprived of the fragrance of the heavens."

1. That means management of domestic affairs.

In another hadith it is said **إِنَّ أَبْغَضَ الْمُبَاحَاتِ عِنْدَ اللَّهِ الطَّلَاقُ**  
translation (out of all the permitted things the most unpleasent thing is talaq)

To deter the menace of talaq Hazrat Sarkar-e-Do-Alam Sallallahu Alahi Wa Sallam has also declared **لَعَنَ اللَّهُ الدَّوَّاقِينَ وَالدَّوَّاقَاتِ** that means those males are cursed by Allah Almighty who relish with different women and on those women who relish with different males. Where such conditions prevail talaq will no doubt become excessive. This will destroy the trust on each other, the way of living and the moores and milieu will be in chaos.

To be brief the main aim of the shariat Islamia (muslim jurisprudence) is to strengthen the relation of the wife and husband created by nikah.

However the Shariat Islamia (Muslim jurisprudence) has not also made this relation so hard that it cannot be broken. Similar to the permanancy and privilage the severence of relations and breaking of wedlock in case of emergency and disturabance is also made easy. This is the exhaulted and perfect form of the Islamic law that it does not touch the extremes but adopts via media policy in its injunctions.

If the marriage (nikah) would have been so strict that it could not be dissolved then people might have put into great difficulties sometimes. The increase in the number of talaq would have lost its merits and advantages. Similarly by abolition of talaq the wife and husband would have been deprived of the merits and advantages available to them.

There will often be misunderstandings between the wife and husband and it cannot be resolved. In such circumstances had there been no talaq, the wife and husband would have been living seperately while engaged in abrogating the rights of each other, or they would have been living together as oppressed and oppressor. As a result their lives would have been precarious.

Hence the shariat has given permission for talaq under extraordinary circumstances. Moreover during eritical times it is regarded as obligatory as explained in the following context.

**Rules of Talaq**

Definition of Talaq:-1.Literaly talaq means removal of bondage and in fiqh (Muslim jurisprudence) to dispell the wedlock of marriage.

Power to pronounce divorce (talaq):-

2.The husband<sup>(1)</sup> is empowered to pronounce talaq. The wife has no such power.

Explanation:- By marriage certain obligations are laid on the wife and husband and the responsibilities created by way of oral offer and acceptance the same can also be applied in dissolving the marriage. The difference between marriage and talaq is that the marriage is performed with the consent of the parties<sup>(2)</sup> but its contravention or dissolution is kept with the husband only. (the willingness and unwillingness of the wife is not necessary<sup>(3)</sup>)

3. The kinds of talaq based on the circumstances are as follows:-

- i. Forbidden:-If the talaq is 'bid'ee'<sup>(4)</sup>(contrary to the approved tradition of the prophet.
- ii. Abominable:- If it is un-called for or with an intention to harm.
- iii.Acceptable:- (Mubah) where it is for the reasons not related to the religion.
- iv.Desireable:- (mustahab) if it is pronounced on the religious grounds (for example if she harms his relatives or she does not observe prayers.<sup>(5)</sup>)
- v.Obligatory:- when it is given due to fear of life or property<sup>(6)</sup> or the rights of the wife are not being protected<sup>(7)</sup> or the parents have under the muslim law ordered to give talaq<sup>(8)</sup>.

1.The guardians have no power to give divorce (talaq).

2.For marriage the presence of witnesses was necessary but for divorce (talaq) not necessary

3.If the husband wants to dissolve the marriage and pronounces talaq it will dissolve whether it is accepted by the wife or not.

4. To pronounce talaq to a woman when she is undergoing her monthly course.

Warning:-The definition of talaq bid'ee will follow.

5.To forsake the farz (religious duties) is like forsaking the salat.

Warning:- If the woman does not refrain from bad habits and hope that she will be set right by talaq in such case one talaq 'raj'ee' will be desirable.

6.If a woman wants divorce (talaq) and in case it is ignored there is danger of her being robbed or killed by her relatives.

7.For example the husband is unable to fulfil her legal rights or the husband is impotent or castrated.

8.Once Hazrat Omar (R.A.) said his son (hazrat Abdullah Bin Omar) to divorce his wife but he did not divorce her. This news reached Huzoor Sallallahu Alaihi Wa Sallam who reodered him to divorce her because Allah Almighty becomes happy if one keeps his father happy and Allah become unhappy if he keeps his father unhappy..



4. Requirements of talaq:- To pronounce the fixed words is the pre-requisite of talaq.

5. Conditions of talaq:- The following are the conditions of talaq:-

- i. The woman is under the wedlock:-. If a man pronounces talq to any married woman other than his wedded wife or his divorced wife within her probationary period will not be correct<sup>(1)</sup>
- ii. The husband should be major:-Talaq by a minor husband will not operate .
- iii. The husband is a sane person:-.Talaq by an insane or mad will not operate. Similarly if the talaq is pronounced in the sleep will not operate.

Warning:- Talaq pronounced during inebriated condition will be operative.

iv. To understand. the meaning of the words of Divorce (talaq):-

That means to understand the version that amounts to divorce (talaq). If it is not known there is no divorce (talaq)<sup>(2)</sup>.

Warning:-

1. Besides the above there is no condition to make the divorce (talaq) correct even if a person says:-

- (a) Due to duress or influence by someone uttered the word talaq or
- (b) The word talaq is uttered without intention or
- (c) Pronounced talaq due to illiteracy or lack of knowledge or
- (d) Pronounced talaq as a joke or ridicule or fun or
- (e) Pronounced talaq in intimidation,<sup>(3)</sup> or
- (f) Pronounced talaq during inebriated condition.

In all such circumstances talaq is operative.

(2) For divorce (talaq) witness is not necessary (if there are witnesses better).

1. The woman to whom an irrevocable divorce (طالِقٌ بَائِنٌ); is given.

2. It is where the divorce (talaq) is not pronounced in clear terms.

3. However if a person is so enraged in anger that his senses are lost and he is reeling under delirious condition started talking irrelevant not understanding his own words, in such delirium divorce (talaq) pronounced by him is not reliable.

- (3) The presence of woman at the time of talaq is not a condition. (talaq will operate if it is pronounced in the absence of woman).
- (4) To pronounce talaq language is not a bar. In whatever language it is pronounced it will operate.
- (5) It is not necessary that the words of talaq are expressed with the tongue but it can be given in writing also.

Explanation:-

1. Through the writing what is communicated in the shape of a talaq will have effect even without intention. But the writing which does not amount to talaq, the talaq will take effect when this writing is drawn with an intention to give divorce (the person drawing the letter is present or not makes no difference).
2. A person under duress or under undue influence drawn the letter of divorce but did not express the word talaq with his tongue the talaq will not be effective.
3. Talaq by a dumb person will become lawful by his gesture. If he knows writing it will be better to give divorce in writing.

Warning No.2:-To make the talaq effective it is necessary that it has to be pointed towards the woman to whom the talaq is meant otherwise this talaq will not be operative. For example while addressing the wife one says "I have given you talaq," or by using her name says, "talaq to Hameeda", or says, "talaq to my wife".

Clause:-As the nikah is valid through the attorney the talaq will also be valid through the attorney.

6. Kinds of Talaq:-

Firstly there are two kinds of talaq by virtue of its implicity.

1. Sunni 2. Bid'ee

There are two kinds of talaq by virtue of its effect.

1. Revocable (2) Irrevocable

The definition of each is given below:-

(A) Talaq-e-sunni is that talaq which is pronounced according to the

approved form under the traditions of the Holy Prophet.

It is also called talaq-e-masnoonah (masnoon does not mean that one will get the reward from Allah but it means when the talaq becomes inevitable it has to be pronounced by adopting this method of talaq.) As for as talaq is concerned it depends upon the intention as the intention to be good and bad will count in pronouncement of talaq. If the intention is good the talaq will be good, and if it is with the bad intention talaq will also be dirty one.

The talaq-e-sunni is also of two kinds:-

a. Talaq-e-Ahsan (b) Talaq-e-Hasan

a. Talaq-e-Ahsan is the approved form of all the jurists. The method of this talaq is as follows:-

The husband has to give one revocable talaq during her purity<sup>(1)</sup> and there was no carnal intercourse<sup>(2)</sup> with her during that period. He should not pronounce the second talaq and leave her to the observation of her edit (that means he should not give second talaq)

b. Talaq-e-Hasan It is a mode of talaq about which there is difference or opinion among the jurists having this been the traditional way as explained in the following.

i. To pronounce one revocable talaq to an unconsumated wife irrespective of her being in purity or under mensuration.

ii. To pronounce three talaq to a consumated wife seperately<sup>(3)</sup>

(seperate, seperate) during three purities when there was no carnal relations with her.

Warning:- To the woman who does not suffer mensuration<sup>(4)</sup> talaq is given seperate seperate in three months.

B. Talaq Bid'ee:- Which signifies a noval, unauthorised, heterodox mode of divorce for example:-

1. Tohar is that period during which the woman will be purified after the monthly course. It is cleanliness and purity.

2. When the pregenancy is known and she is divorced during this period of purity, when sexual intercourse has also been taken place, it will also be called a talaq-e- ahsan.

3. That means one divorce (talaq) in every interval of purity.

4. Whether due to minority or old age or due to pregnancy.

- a. To divorce a woman with whom the marriage is consumated<sup>(1)</sup>.
- b. During purity a woman is divorced after carnal intercourse with her.
- c. To give irrevocable talaq.
- d. To give multiple divorce in one purity (tohar).

**Warning:-** The person giving divorce of bid'ee is a sinner. It is obligatory on him if he has given talaq raj'ee (revocable divorce), to admit his wife before the expiry of her iddet period. If he has given talaq baa'in khafeefah or talaq-e-raj'ee, after the expiry of iddit it has become talaq-e-baa'in (irrevocable divorce). In such case revival of marriage (nikah) is to be done.

**C. Revocable divorce (talaq-e-raj'ee)<sup>(2)</sup>:-** It is that divorce (talaq) where the husband has power<sup>(3)</sup> to take back his wife within the period of iddit that means without renewal of marriage the wedlock is restored but after the expiry of iddit period the revocable divorce will become irrevocable (talaq-e-baa'in). In such case revival of marriage is compulsory.

**D. Irrevocable divorce (talaq-e-baa'in):-**It is that type of divorce where the husband has no right<sup>(4)</sup> to restore the wedlock which is of two kinds.

- i. Minor (khafeefah):- It is that divorce which is pronounced once or twice. In such divorce within the iddit and after the expiry of iddit, the wife and husband both can perform fresh marriage. (This divorce and the raj'ee (revocable) divorce has the same effect).
- ii. Major or bad (ghaleezah or mughallazah) is that talaq which is pronounced three times<sup>(5)</sup>. This talaq is not revocable before the wife marries another person after completion of her iddit period and cohabits with him<sup>(6)</sup>. If that person gives divorce to her and the iddit period is also over (thereafter this woman is legal for the first husband. She is called Halalah).

1. During the menses the woman is some times loses sexual attraction. Therefore divorcing her during that time is prohibited. Because most probably the intention to divorce may be changed and the divorce is avoided. Similarly the talaq-e-bid'ee is also by all means condemned as abhorrent so as to deter the practice of divorce.

2 There is one thing that to pronounce one or two talaq but the second talaq is pronounced within the iddit period without using the word talaq 'baa'in' or any any other kind of divorce..

3. Because by pronouncing this divorce the wedlock is not dissolved at once.

4. The wedlock will be severed by that divorce.

5. Whether divorce is pronounced at a time or with intervals.

6. Or the woman has been seperated or the husband is died.

7. The words of divorce (talaq) are of two kinds

(1) clear (2) metaphor.

1. Clear are those words which are specified for divorce and cannot be used for other meaning such as, "I have given you divorce". or "divorce is on you," or "you are a divorced," etc.
2. Metaphors are those words which are used for other purposes other than divorce. The meaning of divorce are not clear from these words. e.g. "I have relinquished you", "I am separated from you", "you are free now", " you may go any where you like", "I have no connection with you", etc<sup>(1)</sup>.

8. Clear terms of talaq:-

1. The divorce becomes effective with the clear terms of talaq even without intention.
2. The clear terms are "Divorced you," or "Divorce on you," etc. By these words one talaq revocable (raj'ee) with her is complete. Eventhough the person divorcing the wife intends to pronounce more than one or intends for irrevocable talaq or there was no intention.
3. If the words of irrevocable (baa'in) divorce or any of its indications are mentioned such as, "given you irrevocable divorce", or "given worst divorce", or "given harsh divorce", etc. in all such cases it will be irrevocable divorce. If the intention is made for three times divorce it would be three<sup>(2)</sup> otherwise one divorce irrevocable (baa'in).
4. If one has repeated the words of divorce like this, "given you divorce, given you divorce" or "divorce on you," divorce on you," in such cases the number of times these words are uttered so many divorce will be effective.
5. If the words of divorce are not correctly pronounced or twisted even then the divorce will be effective e.g. tallak, tallakh, tallagh, etc.

1 These words are uttered to show the unhappiness or dislike and they also stand for divorce.

2.This order is specially stands for the last one when there is mention of the category of divorce.

9. Divorce to the wife before Cohibitation:-

1. Wife without cohabitation is that woman with whom marriage is performed but there was no consummation of marriage.

Explanation:-Consummation of marriage means union of the wife and husband in such a way that there nothing bars them from sexual intercourse (if there is any hurdle or otherwise it will not be free union only symbolic union).

The obstructions to a carnal relation are as follows:-

- (a) Sensitive obstruction such as a disease (due to which the intercourse is impossible or harmful) or one of the parties is a quite minor or any third person is present<sup>(1)</sup> (even a blind or slept) or there is suspicion of any one entering or it is a place of prayers.
- (b) Religious obstacles such as fasting in ramazan or special dress for Haj (Ihraam).
- (c) Obstacles of nature such as menstruation.

Warning:- The impotency of husband or castration will not be an obstacle for union.

2. Only one time divorce will amount to irrevocable divorce to a wife with whom there was no consummation of marriage.

3. The wife with whom there was no consummation of marriage and she is divorced three times the first divorce will be enough as irrevocable divorce (talaq) and she will become a divorced woman. The second and third divorce will not effect her.

10.(i) Rules regarding divorce by implication (talaq kinaayah):- Divorce will not be effective by implication unless there is intention. If there is likelihood it will become effective by a court direction. That means the judge of the court will issue direction on the basis of the intention about its effect.

Likelihood means the intention of giving divorce.

There are three positions of giving divorce.

1.If this third person is insane boy or an unconscious person this will not be treated as hurdle.

2.(The result after the non implimation of three divorce) will be the same man can remarry that woman. If the three divorce implimented he cannot remarry that woman without Halala.

- a. Normal condition where there is no dispute between the wife and husband.
- b. In anger when there is quarrel between wife and husband or the husband is furious.
- c. Discussions are continued about giving divorce to the wife with her or with any other person.

The words of implication are also three kinds.

- a. 'Radd' means the words may be either repudiate (a divorce demanded by wife) or implicit the intention of divorce such as 'get out'<sup>(1)</sup>، 'نکل جا'، 'go away'، 'چلی جا'، 'get up'، 'اٹھ'
- b. 'Sabb' means the words which either indicate the rage and abuse or likelihood to divorce e.g."you are disengaged"<sup>(2)</sup> (تو خالی ہے) "you are cut off" (تو بری ہے) "you are under irrevocable divorce" (تو بانہ ہے)
- c. Neither 'radd' nor 'sabb':- These words are neither for repudiation (demand of divorce) nor they stand for abuse whereas they stand for answer such as "sit in iddat", (عدت میں بیٹھ) "seek the purification of your womb", (اپنا رحم صاف کر)، "you are single", (تو اکیلی ہے)، etc.

Hence in the pleasant condition without intention divorce will not take place (whatever words are used) and about intention the affidavit of the husband is reliable. During the rage or anger the words of abuse of the above two categories will depend upon the intention. If there was intention divorce will operate otherwise not. But the words shown in (c) divorce will take effect (by order) even without intention.

During the conference arranged for divorce the words shown in (a) will purely depend upon the intention. But the words shown in (b) and (c) will not be linked to intention and the divorce will take effect without intention.

Warning:- For easy understanding and detailed explanation all the three categories of divorce and all the three metaphors ((kinaayah) are shown in the following table:-

- 1.'Get out' also means divorce (talaq) and it will also mean that the man does not want to divorce her therefore ordered her to get out from here.
- 2.If the word 'khali' is meant that she is void of virtues it will not amount to abuse and it is meant "to get rid of the marriage", the answer will be divorce.

	Radd	Sabb	Neither Radd nor Sabb
	Get out, Go away, Get up etc.	You are disengaged. You are cut off. You are divorced.	Sit in iddat. Purify your womb. You are single.
When willingness	The intention is compulsory	Intention is compulsory	Intention is compulsory
In Rage/ anger	The intention is compulsory	Intention is compulsory	Intention is not compulsory
Conference of divorce	Intention is compulsory	Intention is not compulsory	Intention is not compulsory

10(2)."Sit in Iddat", "seek the purification of your womb", "you are single" (without husband) by these metaphors one revocable divorce will be effective. Beside these the other words of metaphor will amount to irrevocable divorce such as, "you are disengaged", "you are prohibited", "you are separated", "you are free", "I have relinquished you", "I am separate from you", "you are free now", "hide yourself", "get out", "go away", "go out". "seek another husband", etc.

Warning:-"You are prohibited".This word, nowadays, taken as clear term.

(3)If a person says to his wife, "I have made you free", and intends to divorce, the divorce is effective.

Warning:- (a) If the word divorce is divided into bits e.g. "gave half divorce", "gave one fourth divorce", these words will amount to one divorce which will be effective. The analysis of the word divorce will have certain faces, which will change with the change of the verdict giving effect to two divorce and sometimes three divorce.

(b)The limit of divorce as fixed by muslim jurisprudence is three only. If any person has pronounced four or five divorce even then three talaq will be valid.



## 11. Claiming back a divorced wife (Raj'at):-

1. Raj'at in its primitive sense means restitution. A man may return to a wife repudiated by one or two divorce reversible.
2. Raj'at is permitted under revocable divorce. After the expiry of iddat or after pronouncement of irrevocable divorce (talaq) there will not be raj'at. Whereas in 'talaq-e-baa'in khafifa' revival of nikah and halala of a woman is compulsory<sup>(1)</sup> in 'talaq-e-baa'in mughalleza.
3. In raj'at the consent of the wife is not necessary<sup>(2)</sup>. Similarly witnesses are also not necessary<sup>(3)</sup>. However the wife is informed and two witnesses are taken that is called raj'at-e-sunni (tradition of the holy prophet). If the wife is not informed and the witnesses are not available this raj'at will be raj'at-e-bid'ee (against the sunnat).
4. Raj'at verbal and by deeds both correct.

Verbal (qauli):- The husband himself should tell the wife, "I take you back in the wedlock", or "I retain you" or "I do not leave you" etc. or he tells another person, "I have taken back and abated divorce", or "shun from it", etc.

By Deed (Fi'ali):- Entered into carnal relations or performed such deeds which are equivalent to it.

5. By raj'at the woman will be under the wedlock and revival of marriage is not necessary.

12. Eilaa:- (1) To take a vow not to go to the wife (no intercourse) for four months or more is called Eilaa<sup>(4)</sup>.

2. The rule of Eilaa is that, if the husband has taken a vow not to go near his wife for four months and within four month he had intercourse with her he has to pay expiation. If he is continued in his vow and had no carnal relations with his wife for a period of four months an irrevocable divorce takes place.

1. That means she has married another man after the expiry of iddat and undergone sexual intercourse. Then that man divorced her and the period of iddat is over.

2. Even if the woman is not happy the husband can return to the wife.

3. The return can be made without the witnesses.

4. For example telling the wife, "By \God I will not come near you for four months." (I will not cohabit with you).

Warning:- The penalty is to free a slave or to feed bellyfull to ten (10) poor twice or to provide clothes to ten (10) poor. If not possible keep fast continuously for three days<sup>(1)</sup>.

3. A vow not to have sexual relation with the wife for less than four months there is no eilaa. However if he had intercourse with his wife within the period for which a vow is made expiation will be compulsory for break of the vow. If there is no intercourse the vow will be complete but no divorce takes place.

13. Seperation(Khula):-

1. Khula means to draw off or to dig up marriage, by taking some compensation from the wife<sup>(2)</sup>.

Explanation:-Whenever enmity takes place between husband and wife and they both see reason to end the marriage the woman need not scruple to release herself from the power of her husband, by offering such a compensation or may induce him to liberate her. For this the method is that the wife says to her husband, "The dower payable to me by you in lieu thereof or this money available, liberate me." The husband says, "I have liberated you", one irrevocable divorce will be operated and the compensation offered by the wife will be compulsory to be paid.

If the woman is the cause of the enmity it is right for the husband to liberate the woman by accepting the compensation. (taking more than the dower is abominable). If the excesses are on behalf of the husband due to which the wife after foregoing her dower or on return of dower (etc.) is forced to take khula, such khula is a sin and acceptance of compensation is prohibited to the point of forbidden or it is completely forbidden (haram). Moreover the request by the wife for khula without reason is also forbidden.

1. During those day when there is no prohibition to keep fast.

2. Provided that the compensation may be the dower. That means the stock in trade which is permissible for payment of dower .

2. The rules of khula are same for divorce (talaq) (i.e. the woman is in the lawful wedlock, the husband being sane and major) whereas the woman initiates the case for khula.
3. Irrevocable divorce (talaq-e-baa'in) is affective by khula.
4. After khula the husband cannot resume his wife unless there is revival of marriage.
5. After khula iddat is compulsory for the woman and the maintenance during iddat period will be the husband's responsibility. If the husband has already denied, "I will not give the maintenance", then it will not be obligatory.
6. The father of a minor girl is empowered to obtain khula for her, but the compensation will not be obligatory and irrevocable divorce (talaq-e-baa'in) will operate.
7. The father of a minor boy is not competent for Khula,
8. By threat or terrifying the woman forced her to take khula the divorce will be affective but she is not under obligation to pay, and the dower will not drop from the husband.

14. Orders for comparison (Zihaar):-

1. The word zihar signifies a man comparing<sup>(1)</sup> his wife<sup>(2)</sup> to any of his female<sup>(3)</sup> relatives within the prohibited degree as rendering marriage with them invariably be unlawful (e.g. mother, sister daughter etc.)
2. If a man says to his wife, "you are to me like the back of my mother, sister or daughter", from this the zihar is established.
3. If a man says to his wife, 'you are to me like my mother', by saying this his intention was respect, honour, dignity or esteem for her or there is no intention of zihar it will not be established. If there is intention of zihar it will be established, or the intention was to divorce her one irrevocable divorce will become affective.
4. The rule for zihar is (eventhough the woman will be under wedlock but) unless expiation is paid carnal relation with her or any act ancillary to it will be prohibited. When expiation is paid the wife and husband will come to the normal wedlock. (there is no need for revival of marriage).

1. The entire body or a basic part of the wife (which amounts to the entire body).
2. Or that part of the body to look at that part is prohibited.
3. If no comparison is made but says, 'you are my mother', Zihar will not take place.

5. The expiation for zihar is same as required for the violation of fasting i.e. to free one slave<sup>(1)</sup>, if not possible observe continued<sup>(2)</sup> fasting for two months<sup>(3)</sup>, if not capable to do so, feed 60 poor bellyfull twice a day or feed a poor twice a day for two months.

6. Before expiation if anyone had carnal relation with his wife or any act amounting to carnal relation in such case he should repent for his sins and request for remission of sins<sup>(4)</sup> from Almighty Allah.

**15. Sworn Allegation of Adultery (Orders of Li'aan):-**

1. A man accusing his wife of whoredom without the help of four witnesses and he is helpless to produce four witnesses the shariat signifies testimonies confirmed by oath on the part of husband and wife. The husband first take oath before a qazi (Muslim Judge) and utter four times, "I make Allah as witness and say that the allegations of whoredom made by me against my wife are true." Afterwords for the fifth time he should say, "If I am false Allah will curse me." Thereafter the wife has to say for four times, "In the presence of Allah I say that the allegations made by him are false", Afterwords for the fifth time she will tell, "If he is right in his allegations Allah will curse me." When both of them took oath the qazi (muslim judge) will separate them. By this separation one irrevocable divorce will become affective.

2. The husband is empowered to get separated by himself by delivering a divorce before qazi (muslim judge).

3. The swearing of oaths and the resulted separation will be only when the spouses are sane and major bound under a lawful wedlock at the time of li'aan (allegation) whose witness is acceptable by the qazi (muslim judge) but not barred by law eventhough deaf and blind.

1. Now it is defunct.

2. If during this period one undergoes sexual intercourse with that woman he should start fasting afresh.

3. Neither during Ramazan month nor during the prohibited days.

4. Because second expiation will not be obligatory however one should refrain from sexual intercourse.

**16. Period of purification (Orders of iddat):-**

1. Means the term of probation undergone by a woman as a consequence of the dissolution of marriage or death of the husband so as to shed the effect of previous contact. Iddat is called a term by the completion of which a new marriage is rendered lawful. This will also be a kind of protection of the progeny.
2. Iddat is compulsory for a woman for the following three reasons:-  
(1) Divorce (2) Dissolution of marriage (3) Demise of husband
3. Iddat due to divorce (whether the divorce is irrevocable or revocable or in noble manner - two times or in harsh manner - three times) for a woman after carnal connection three terms of her course<sup>(1)</sup> when she is undergoing mensuration otherwise three months are fixed. If the woman is pregnant the period of iddat is upto delivery of the child.  
For a woman with whom there was no carnal connection or consummation of marriage there is no iddat<sup>(2)</sup>.
4. Iddat for dissolution of marriage is the same as in the case of divorce.
5. Iddat due to demise of husband is four months ten days (whether the wife has undergone carnal connection or not, under mensuration or not, minor or major, believer or a woman of book). If the woman is pregnant till delivery of child<sup>(3)</sup>.
6. The widow is not allowed to go out of her husband's house till the completion of iddat.
7. Iddat is not compulsory for fornication.
8. Iddat starts with the divorce or demise of the husband and ends on the expiry of the term even though the woman is ignorant of it.
9. If divorce is pronounced after sexual intercourse during the iddat, the period of iddat starts afresh from there.
10. Marriage unlawful (for example after marrying a woman it was found that her previous husband is still alive or it is found that both of them (husband and wife) have a common fosterage mother. In such case if the male had carnal relations with the woman<sup>(4)</sup> the iddat is obligatory. (They should get separated immediately and then the woman is to rush for iddat), if there was no sexual relations iddat is not obligatory.

1. If the divorce is pronounced during the mensuration this mensuration will not be counted.
2. Immediately after divorce marriage with another person is lawful.
3. At the time of demise of the husband the woman has undergone delivery she will be immediately eligible for another marriage, even though cohabitation is prohibited due to puerperium (confinement period).
4. It does not include the consummation of marriage.

11. After an irrevocable divorce, when she was in good health, and during her iddat period her husband dies the iddat for divorce is compulsory.

12. After revocable divorce the husband dies within the iddat period the iddat of death is compulsory.

13. In case of the death of wife the husband need not undergo iddat<sup>(1)</sup>.

17. **Rules for Hizanat (Care of minor children):-**

1. The care or nursing of minor child is called hizanat. Hizanat is different from guardianship. In guardianship the father and his family is preferred. In hizanat mother and her family is preferred.

2. The conditions for hizanat

(a) the nurse is free, major and honest.

(b) the nurse is perfect in nursing of the minor child.

(c) the nurse is not in the marriage of a stranger.

Explanation:-

i. The stranger is one who has no relation with the child in the prohibited category.

ii. A female sinner, a female debaucher, a female thief, a female midwife, a female treacherous<sup>(2)</sup>, a female vagabond, etc. has no right to be a nurse.

iii. The male nurse will also have the same restrictions except the third.

3. The right to nurse lies with real mother even though she has separated from her husband. However if the mother is turned apostate she has no right to nurse the child unless she embraces Islam again.

4. The period of Hizanat:- The care of the child is for 7 years and for the girl upto attaining puberty that means upto 9 years. If the mother or maternal grand mother eligible for hizanat then they will have right till the girl attains majority.

5. The persons who are eligible for hizanat in order of priority are as follows:-

1. The husband can marry wife's sister immediately after wife's death. Even though it is the same day of demise.

2. Ghair Mamoonah means a wonderer. is one who goes out of the house everytime while leaving the minor in a precarious condition.

**Order of priority in Hizanath (care of the minor)**

Mother first, if she dies or surrenders her rights<sup>(1)</sup>, the mother's mother even if she is in distance (e.g. maternal grand mother of the mother, or grand mother of the grand mother)<sup>(2)</sup> Then paternal grand mother or paternal grand mother's grand mother, however distant she may be (i.e. father's paternal grand mother or grand father's paternal grand mother). Then sister (first real then uterine then step) then sister's daughter (first real and then uterine.) Then maternal aunt (first real, uterine then step) then step sister's daughter then niece, then paternal aunt (first real then uterine then step) then maternal aunt of the mother (first real, then uterine and then step) then maternal aunt of the father (first real, then uterine and then step). The paternal aunt of the mother (first real, then uterine and then step). The paternal aunt of the father (first real, then uterine and then step). After this among the male relations in which minor's father is preferable, then grand father, then brother (first real then step). Then nephew (first real, then step) then paternal uncle (first real then step) then paternal cousin brother (first real then step) then uterine relatives.

6. The woman who is competent for hizanath (care of the child) if she marries any of the uterine relations of the minor e.g. paternal uncle etc., the right to hizanath will not be lost.

**18. RULES FOR MAINTENANCE (Nafaqah):-**

- i. (In muslim jurisprudence), food, clothes and residential house comes under maintenance (nafaqah). Hence the maintenance pertains to wife with whom there was a legal wedlock.
- ii. The maintenance of the wife is compulsory on the husband (whether he is poor or rich, consummated or unconsummated wife, muslim or a woman of book), even though the husband is poor or a destitute.
- iii. If the wife is a minor only (not fit for cohabitation or mutual love) the maintenance is not compulsory.

1. If marries a stranger.

2. If the mother's mother expired or her right is lost.

- iv. The maintenance depends upon the economic conditions of the parties (if both are wealthy a rich maintenance, if poor ordinary one. If one is rich and the other is poor, moderate subsistence). Further the residence provided to her shall not be troublesome.
- v. If the wife resides with her parents as permitted by her husband or in order to get the prompt dower refuses to carnal connection in such case her right to maintenance will not be lost.
- vi. During the purgatory period (Iddat) followed by divorce the maintenance is compulsory provided the wife resides in the husband's house (whether it is revocable divorce or irrevocable)
- vii. Cancellation of marriage or in case of death the maintenance is not obligatory during the purgatory period (iddat).
- viii. An apostate wife, a wife under unlawful wedlock. A wife in unlawful wedlock undergoing purgatory period. 'Nashiza'<sup>(1)</sup>, the wife who is with her husband during nights only or in day time. The woman who proceeds on Haj Pilgrimage with other relatives of prohibited degree other than her husband. A woman made captive forcibly by others or put in the jail. The ailing wife who has not reported to her husband. In all these cases maintenance is not obligatory on their husbands.

Miscellaneous Rules:-

- i. The husband is in incognito that means he has left and neither returned nor traceable in such case the wife has to wait for her husband when he reaches 90 years of age from the date of his birth or his contemporaries are dead and then the judge has ordered for separation and the wife after completion of probationary period required in the case of death of her husband can marry another man. But according to Imam Malik after 4 years period of his untraceableness has been over the judge can order separation. The wife after undergoing probationary period of husband's death can marry another man. Nowadays based on the necessity and the unbearable conditions of the wife, a Hanafi judge can also pass orders of separation according to the Maliki Sect.
1. Nasheeza is that woman who without husband's permission or without sharai reason goes out of the husband's house.



- ii. If a person becomes apostate (relinquised Islam), God save, the marriage is revoked.
- iii. Either the wife or husband or both of them have uttered any word amounting to infidelity it is compulsory for them to repent and to revive their islam (revive the nikah with the ex wife or husband on a less dower)
- iv. If an infidel has accepted islam alongwith his wife then already existing wedlock will continue which was performed during the pre-islamic period, eventhough it was not conceded in muslim law (e.g. without witnesses or without the probationary period). If they are in the prohibited degree sepration is compulsory.
- v. An agreement to offer a girl for marriage or engagement ceremony (rasm-e-mangni) before marriage has no legal sanctity for marriage.
- vi. A muslim male is permitted to marry four women, he is also ordered that if he provides (food clothing and good behavior etc.). If he fears that he will not justify with them, only one will be enough for him.

وَأَخِرُ دَعْوَانَا أَنْ الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَ صَلَّى اللَّهُ تَعَالَى وَ سَلَّمَ عَلَى خَيْرِ خَلْقِهِ سَيِّدِنَا  
مُحَمَّدٍ وَ آلِهِ وَ صَحْبِهِ أَجْمَعِينَ .

*End of Part VI*

found.