

Court Marriage and its Impact on Pakistani Society



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Abstract: *This Research paper will explore the adverse effects of court marriage in Pakistan. The right to marry is a fundamental right all over the world. However, in Pakistan, it is considered a crime when it is violated by a significant and sane couple who wants to marry or take a step to marry without the consent of his/her legal guardian/wali. However, it is considered a regular practice in the whole world. This pious activity becomes a crime/offense against societal norms, customs, and traditions. Society does not allow a major person to use his legal right, which is given by his/her religious & and legal system. The guardians infringe his/her legal right by inducing their own choices liking or disliking according to their social standards. A few practical and legal complications were faced by their loss of self-respect, murder on behalf of self-defense, and generation-to-generation family disputes. The qualitative research has been applied of the following article.*

Keywords: Fundamental rights, consent of wali/guardian, judicial system, religious perspective, violation of legal right, opinion of the Jurist

Introduction

Marriage is a social contract between a man and a woman. When they tie up through Nikkah (without their family consent) to perform their Nikkah in the presence of two people then they are called husband and wife officially. Basically this procedure is perform in the office of advocate in the premises of the court so we can say this is wakeel marriage not court marriage. And after this procedure the statement is record in front of magistrate for the security of both the proper term for this is "a marriage without a guardian". If the procedure of Nikkah is completed by the family it is considered valid in the eye of society as well as in the eye of religion but when it is decided by the couple the whole situation is different from the ground realities and in the meantime the stereo typist considered it as sin. The validity of Nikkah is challenged based on religious grounds whether it is valid or invalid. With the consent and without the

consent of Wali and her guardian. According to the religious perspective, the essentials of (Islamic marriage) are Nikkah (Uthman, 2023) is ejab and qabool. A Nikkah is a contract between two persons in Islam. It is expected that the bride and groom would both freely consent to getting married. A legally binding contract that spells out the obligations of the bride and groom is seen as essential to an Islamic marriage that is recognized by the faith. This contract may be written or verbal (Khan, Iqbal, & Ahmad, 2022).

The Concept of the Court Marriage in Pakistan

Marriage is a legally recognized and socially accepted relationship, often between a man and a woman that is governed by laws, norms, conventions, beliefs, and attitudes that outline the partners' obligations and grant status to their kids (Franck, M. J. 2007).

A man and a woman enter into a formal union without the consent of their guardian known as a court marriage in Pakistan. To be able to get married, the couple must have all the required paperwork and court clearance. A common practice in Pakistan judge's record the statements of both in the court and the Nikkah procedure perform in the office of advocate or any other place in the presence of two people (Mallat, C., & Connors, 1990). In Pakistan, the judicial marriage process is quite straightforward. The hopeful pair must meet the following conditions: According to Islam, puberty coincides with the age of marriage. Additionally, under the law, a person must be 18 years old to get married.

Condition of marriage according to Islam: Unless both partners declare their agreement openly and in front of witnesses, their agreement to live as husband and wife does not constitute a marriage. The announcement of the news by the parties to a gathering, ideally in a public setting, is, therefore, a fundamental component of Islamic marriage (Usman, M., Kanwel, S., Khan, M. I., & Khan, 2021).

(a) The parties must be of legal age to wed. (b) Ijab (proposal) and qabool (acceptance). (c) Free agreement between the parties. (d) A consideration (mehr). (e) No legal obstacles. (f) Enough witnesses, which differs between Shia and Sunni.

Concept of wali for Nikkah: The Arabic word wali, which has variously been rendered as master, authority, custodian, or protector, is most frequently used by Muslims to denote an Islamic saint, also known by the more literal term "*friend of God*." The bride's legal guardian, or wali (Mohd, A., Ibrahim, B., & Abdul Razak, S. 2015), is in charge of looking after her throughout the time leading up to marriage. He should make sure the potential groom is a dependable and trustworthy individual who will uphold his role and responsibility towards the bride after marriage (Hussain, Khan, & Chandio, 2023).

Role of wali in Islam: Before being married, Wali was the bride's legal guardian. Who bears full accountability for her life? The bride's agent

is Wali. According to the majority of Muslim scholars, the bride's wali mujabir, or male guardian, must also give his assent for the Nikkah (marriage) of an adult woman to be legally binding.

A Wali, according to sharia is a muttaqi who completely complies with Allah's commands. A wali's qualities include complete faith (iman), ongoing good acts, and worship. Any Muslim, male or female, who practices these virtues, hopes to become a wali.

What distinguishes a Nikkah from a court marriage?: The Nikkah is a step that is performed in the presence of family according to custom of society while court marriage is a process that is not feel good in society, and involves legal formalities. The Nikkah as prescribed by sharia is the first and most important stage in the court marriage process.

(a) Marriage via court takes a long time, but Nikkah is completed swiftly. (b) In comparison to court marriage, Nikkah offers less legal protection. (c) Unlike court marriage, where you must appear in court, Nikkah does not need you to do

Reasons for Court Marriage in Pakistan

Pakistan's constitution grants the freedom to pick the partner you want to be married to. Helps young people in this way so that their aspirations might be satisfied via marriage. In Pakistan, judicial weddings are also becoming more common for other reasons, such as late marriages, co-education, and the role of media. A rise in education more interaction between people of different sexes, etc. The modernization of education has altered Pakistan's way of life. Still, judicial marriage is a controversial topic in our conservative society. Additionally, parents treat their kids more like a piece of property than a living being. In addition, as judicial marriages become more popular, there are also increased cases of honor murders.

Role of co-education: Co-education promotes equality and respect between opposite-gender students, but unrestricted interaction can lead to misunderstandings and unethical situations. It is not a good system in the Islamic States of the

world. This system was created by non-Muslim governments. The notion of the Hijab does not exist, but in religion Islam, a clear order of Hijab (parda) is revealed in surah Noor of the Holy Quran (Saki, N., & Babaa Ahmadi Milani, Z. 2023).

قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ، ذَلِكَ أَزْكَى لَهُمْ

“Say to the believing men that: they should cast down their glances and guard their private parts (by being chaste). This is better for them.” (24:30).

قُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ

“Say to the believing women that: they should cast down their glances and guard their private parts (by being chaste)...” (24:31).

Meetings, discussions, relationships, and other non-Islamic responsibilities between males and females (Muslim na-mahram) are forbidden in Islam. According to a well-known Hadith, *"When a Na- mahram man and woman stand-alone, the third one is evil (Ebleese) among them (Man, 2015)".* In co-educational institutions, particularly universities, a big number of male and female students sit in pairs and waste their valuable time teasing one another. Sexual intercourse between men and women is prohibited in Islam, resulting in social problems (court marriage) and a lack of education in the Muslim community. Both sexes do not pursue the same jobs in Islamic civilization. Co-education does not save money, but demerits are more important.

Role of media: social media has changed people's perceptions of business and technology, and our younger generation is at the forefront of this shift. However, in recent years, it has been noticed that negative effects. Excessive social media usage has resulted in poor academic performance, family time, and mental instability. Youth being taken away from their culture, greater vulnerability to sexting, and mental instability as a result of cyberbullying. Social media can lead to negative psychological consequences for youth. Looking at the local Pakistani media, Pakistan has transitioned from dramas in which non-mahram performers were

forbidden from touching one another to dramas in which actors openly engage to express their craft and reflect the reality of wedded life. These dramas have sought to undermine Islamic values and principles, program viewers' viewpoints, attitudes, lifestyles, fashions, aspirations, and behavior, and use Western liberal ideas as the basis for our approach to a relationship. Male and female performers have become media celebrities, copying the Western paparazzi and participating in relationships outside of marriage in which they express their ostensible 'love' for one another. The past's distinct borders and boundaries, informed by our faith, have been changed in the name of modernism, freedom, and art.

Late Marriage: Late marriage is another cause of creating problems in society. Parents delay their children marriage due to financial issues and some other problems like mismatch relation. In this situation our young generation performs bad activities and done court marriage without the consent of their guardian.

Weak relation of parents with their children: Weak relation of parents with their children is one another cause of create problems in the society due to weak relationship our young generation not share their personal issues with their parents. In this situation young people perform their own will and create relation with wrong people especially girls chose wrong person for marriage. In the last our custom, society and our religion does not accept this relationship.

Validity of Court Marriage from the perspective of different Schools of Thoughts) opinion of the Jurist)

Women are not allowed to marry other women or themselves, according to Sharia law. When she gets married (Nikkah), she has to have a guardian (Wali) there to watch over her. Our four schools of thought each hold a unique perspective on the topic of court marriage in Islam (Mateen, 2016).

According to Ahnaf, court marriages are both permitted and lawful in Islam. They permit the females to wed without a wali. The other three schools disagree and claim that when a girl

marries without the wali's permission, the marriage is illegal and invalid.

Arguments from the schools of Maliki, Shafi'i, and Hanbali: There cannot be a marriage without a guardian, according to Imam Malik r.a. It is a prerequisite for the marriage's legality. The same view is held by Imam Shafi. They rely on the hadith "*la nikah ila biwali*" (There is no Nikkah without wali) to support their position. Therefore, according to the aforementioned hadith, a woman is not permitted to perform her marriage or another person's marriage (Nikkah), and if she does, it will be void (Ibn Rushd, 1996).

Many of the companions, including Abu Huraira, Ayesha r.a.a Hasan bin Salih, Abu Youssef, and others, concur on this (Al-Mughni of Ibn Qudama Al-Maqdissi - Ibn Qudamah, 2023). Furthermore, "*la nikah ila biwali*" hadith has been deemed to be a Sahih hadith by Imam Ahmad and Yahya r.a.

The Ahnaf School's evidence: Regarding this school's reputation, people say. The hadith "*la nikah ila biwali*" is narrated in Kitab an-Nikkah by Jami Tirmidhi. According to Abu Musa (RA), Allah's Messenger (ﷺ) declared that marriage is not committed without the agreement of the guardian. Now that we are attempting to analyze this hadith, we will see that there is debate on whether or not this hadith is Shih (Ashi`at Al-Lama`at Tarjamah Farsi Mishkat Sharif, 2023).

Does 'la nikah ila biwali' apply to men or women?

When we examine the language used in this hadith. Whether or not this rule just applies to females gives us a broad meaning. This statement contradicts Imam Shafi's viewpoint because he did not specifically address it. Another hadith, also known as supporting evidence, is related to Ayesha (R.A). It states that Allah's Messenger (SAWW) stated, any lady who marries without her guardian's permission has a null marriage. Her union is invalid. Her union is invalid. If they live together, she becomes the dower because the guy enjoyed her. And if she always disagrees with one another, the one without a wali is in

charge. Like the preceding hadith, this one is likewise da'eef and problematic. We accept this hadith as authentic for the sake of discussion (Sharh Ma'ani Al-Athar by Imam Tahawi, 2023).

The second thing to keep in mind is that if a man cohabitates with a woman, she will receive a dower. Dower, however, is something that the wife receives. If, as the Shafi claims, the Nikkah was invalid. The situation then involves Zina, and Zina cannot be made lawful by receiving a dower. It follows that her marriage is not null and invalid. Instead, Nikkah did occur, but due to a few legalities, their marriage was unorthodox.

Evidence from Holly Quran: Now there are some Quranic verses, and these hadith also contradict them such as;

Do not prevent them from marrying their husbands – [Qur'an 2:232]

لا تمنعواهن من الزواج من أزواجهن

This passage supports the Hanafi position. It declares that women have the right to Nikkah and that the wali has no authority to meddle in a woman's affairs.

However, those who disagree with Hanafi claim that this passage supports their position as well. It is understood that the wali has control over anything when the Qur'an bans it.

However, the aforementioned passage refers to ethical and social pressure rather than wali because it was exposed at that time.

Ahnaf perspective on court marriage in Islam: It can be said in light of the debate above. The Ahnaf School of Law recognizes court marriage in Islam since it allows marriage without a wali. Ahnaf adds that this is also true. Even if a court marriage or a marriage without a wali is legal, the gender of the couple will still be taken into account on the Day of Judgment.

Impact of Court Marriage in Pakistan

Marriage is a legal right of both man and a woman in the eye of Law as well as religion but marriage without the consent of wali (court marriage) is not acceptable in the social and cultural system of Pakistan. After a court

marriage couple faces some critical problems, especially with females in her family like finances. Couples lose their dignity in society. After court marriage, some critical problems occur like family disputes. And sometimes its results show in the form of divorce. After the divorce society does not accepts not family like this type of woman and then she sacrifices not fulfill her basic needs and last option she avails in this type of situation she goes to the darulaman.

Consequences of Court Marriage after divorce: Court marriages can have a variety of repercussions on society, both favorable and harmful. It is crucial to highlight that the impact of court weddings varies based on a society's cultural, social, and legal setting (Dnes, & Rowthorn, 2002). If the situation is good it's very easy. Court marriage is a legal, solemnized union without caste, creed, or religion, and can be recorded by the marriage commissioner. Court marriages are legally recognized as legitimate unions with equal rights and obligations. The same legal processes that are required of any other married pair must be followed if a Consequences of Court marriage results in divorce. If there are children or major assets involved, the divorce process may be difficult. And after the divorce female faces many difficulties one major financial problem not able to fulfill her basic needs and the family does not support her after the divorce the last option is to go to Darul Aman for the sake of her life.

RECOMMENDATIONS

Religious education is necessary to overcome the court marriage in Pakistan

Religion may provide solace and guidance relating to the immoral behaviors of society. It can also create a sense of belonging and a link of person with religious tradition. The religious prospective our academic must include the religious education and practices as a compulsory subjects at the time of the issuance of degree. Without the clearance of this subject no degree should be provided.

Wali must create friendly family environment to overcome court marriage in Pakistan

To foster a welcoming family atmosphere, Wali should encourage open communication, active listening, and empathy among family members. This will help resolve issues related to judicial weddings in Pakistan and other family matters, fostering trust and understanding among family members. Encourage diverse views and tolerance in society by teaching dispute resolution skills, encouraging productive discourse, and organizing frequent family gatherings. Consider professional mediation or counseling for issues causing friction, such as court marriage. A therapist can help resolve difficult family relationships by facilitating dialogues, establishing clear boundaries, avoiding misunderstandings, and encouraging empathy. Wali's patience, respect, and understanding can serve as a positive example. Family members are more likely to emulate certain traits when they see them in action. Spend quality time together, engage in bonding activities, and address any issues, fostering a welcoming atmosphere.

It needs to cover the generation gap to enhance the Value of the opinion of the new generation.

Encouraging understanding, open communication, and respect across different age groups is crucial for bridging the generation gap. Strategies include active listening, mutual respect, and facilitating information transfer. Older people should value their experiences and expertise, while younger generations should contribute fresh insights and innovative ideas. This fosters trust and understanding among generations. Mentorship programs in businesses or communities can foster cross-generational collaboration, breaking down preconceptions and promoting diverse viewpoints. Educational initiatives can promote intergenerational understanding and dispel myths. Digital literacy and technology training can bridge the digital gap, fostering a sense of community among older and younger generations. To bridge the age gap, encourage empathy, material literacy, community activities, respectful disagreement, and policy advocacy across generations. Encourage understanding and respect for each generation's concerns, while teaching critical media assessment. Plan community events to

break down boundaries and form friendships. Recognize different perspectives and encourage policy advocacy, involving younger and older generations to promote inclusivity and peace.

CONCLUSION

To conclude we can say that in our society we overcome the court marriage to permute the religious education, create family friendly environment, to enhance the value of the opinion of the new generation. And Balancing Opinions of New Generation with Wali's Wisdom. In Pakistan, court weddings are frequently the consequence of societal pressure or a desire for non-traditional rituals. To address this, Pakistan should encourage tolerance for interfaith and intercultural weddings, examine and amend current marriage laws to make them more inclusive, and educate the public about people's rights to select their partners through public awareness campaigns. Counseling services may assist families and couples in resisting marriage, mediating conflicts, and promoting conflict resolution methods. Forced court marriages can be discouraged through legal protection and shelters. Ensuring religious tolerance and understanding can help to guarantee that love and respect coexist among people of various faiths, hence ensuring a safe marital environment. Encouragement of education and empowerment, particularly for women, can aid in the reduction of court marriages. Personal and cultural variables, however, continue to have an impact on the situation. It is critical to respect people's choice to pick their relationships.

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