



FACULTY OF JURIDICAL SCIENCES

COURSE:

Semester

SUBJECT:

SUBJECT CODE:

NAME OF FACULTY:

Lecture-1



Classification of Marriage

Valid (sahih)

When all the legal requirements are fulfilled and there are no prohibitions affecting the parties, then the marriage is correct or 'sahih'. The prohibitions can be permanent as well as temporary, in case of permanent prohibitions: the marriage will be void and if the prohibitions are temporary then the marriage is irregular.

Effects of a valid marriage

- The cohabitation between the husband and the wife becomes lawful.
- The children born out of a valid marriage are legitimate and they have right to inherit their parent's properties.
- Mutual rights of inheritance between husband and wife are established. That is to say, after the death of the husband, the wife is entitled to inherit the husband's properties and after the wife's death, husband may also inherit her properties.
- Prohibited relationship for purposes of marriage is created between the husband and wife and each of them is prohibited to marry the relations of the other within prohibited degrees.
- The wife's right to claim dower is fully established just after the completion of marriage.
- The marriage gives to the wife also the right of maintenance from her husband with immediate effect.
- After the dissolution of the marriage, the widow or the divorced wife is under an obligation to observe the Iddat, during which she cannot remarry.

Void (Batil)

The marriage being void ab initio creates no rights or obligations and the children born out of such marriage are illegitimate. A marriage forbidden by the rules of blood relationship, affinity or fosterage is void. Similarly, a marriage with the wife of another or a divorced wife during iddah period is also void.

Irregular (Fasid)

Due to lack of some formality, or the existence of an impediment which can be rectified, a marriage becomes irregular. However, this irregularity is not permanent in nature and can be removed. Thus, the marriage itself is not unlawful. It can be made valid once the prohibitions are rectified. Marriage in such circumstances or with following prohibitions are called 'Fasid'.

1. A marriage contracted without required number of witnesses;
2. A marriage with women during her Iddat period;
3. A marriage with women without the consent of her guardian when such consent is considered necessary;
4. A marriage prohibited on account of difference of religion;
5. A marriage with a woman who is pregnant, when the pregnancy was not caused by adultery or fornication;
6. A marriage with a fifth wife.

Muta or Nikah mut'ah

The term literally means "pleasure marriage". Muta marriage is a temporary agreement for a limited time period, upon which both the parties agreed. There is no prescribed minimum or maximum time limit, it can be for a day, a month or year(s). The marriage dissolves itself after the expiration of the decided period, however if no such time limit was expressed or written, the marriage will be presumed permanent. This type of marriage is seen as prostitution by the Sunni Muslims and thus, is not approved by Sunnis.

However, it is considered legitimate by the Twelver Shia sect, which is predominant in Iran and constitutes 90% of India's Shia population. In Iran, the word mut'ah is only from time to time utilized and this practice is called 'sigah'. The rules for sigah are fixed for eg- the contract for temporary marriage can be attracted for one hour to 99 years; it can't be for an indeterminate period. This provision distinguishes mut'a from nikah or lasting marriage, which has no time limit. However, just like in nikah, in sigah too, the bride must get some monetary benefit.

No witnesses are required for mut'ah. And just like in any other contract, the woman being a party can lay down conditions for her sexual union throughout this time limit, this can also include her daily maintenance. Her temporary husband must respect these conditions. The marriage automatically dissolves at the end of the stated period. No matter how short the duration was, the woman has to practice abstinence lasting up to two menstrual cycles.

Interesting part is that, the temporary husband and wife can renew the contract but the husband must regardless of this pay the amount to the bride. Husband has a unilateral right to revoke the marriage-mark of his superior position in the relationship. But the woman can refuse to be intimate with him or even leave him, but in such case, she must return back the amount she received from him.

India is a country that has partially approved live-in relationships; However, it will still be quite difficult for the Supreme Court to constitutionally invalidate this form of marriage. In modern day era, where feminists all across the globe see this arrangement equivalent to prostitution. There are many advocates of Nikah mut'ah who believe that being a contract, this arrangement is superior to the live-in relationships.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.			
2.			
3.			
4.			
5.			

Answers: 1-(),2-(), 3-(),4-(),5-()