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## The Divine Covenant: Nikah in Islam and the Codification of Family Laws in Pakistan

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### ABSTRACT

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This research article delves into Nikah's profound significance in Islam, emphasizing its close connection to divine law as revealed in the Quran and Sunnah. Nikah is a spiritual covenant between couples that promotes affection, understanding, and cooperation and serves as the foundation for stable families. It is more than just a legal document. The author also discusses the goals and objectives of marriage from a socio-religious standpoint. The Muslim Family Laws Ordinance of 1961 is a critical piece of legislation in Pakistan's Muslim family law system, striving to safeguard people's rights and equality among men and women by Islamic principles. However, there are practical barriers to its implementation, such as incoherent rulings from the courts. This article emphasizes the continuing need for the legal system and society to defend justice and equity within the institution of Nikah to foster family well-being and uphold Islamic family values.



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## 1. Introduction

All over the world, the family is viewed as a basic unit of society, frequently centered on the institution of marriage. Marriage is viewed as a legally binding partnership in Western nations, involving economic participation, intimate intimacy, and a promise of long-term commitment. Western marriages are often centered on the concept of romantic love and individuals developing a strong emotional connection based on personal attractiveness and compatibility (Razi, 2013). Marriage, or “Nikah,” has been practiced in the context of Islamic family systems since the time of Adam (peace be upon him) and has been approved as a Sunnah (tradition) of all the prophets by the Holy Prophet Muhammad (peace be upon him).

Nikah means “union,” which translates to “unifying.” In general terms, it refers to “marriage” (Parashar, 2021). Nikah, in the Qur’an, has been defined as “hisn” (Al-Qura’n, Surah al-Nisa, 4: 28). That is a fortress, referring to the social, physical, and moral protection it offers the married couple. A husband and wife enter into an agreement known as nikah, whereby they commit to an eternal relationship to have sexual relations and have children. Islam underscores the importance of marriage as a means of establishing a strong bond between two individuals and as a source of procreation.

According to the Quran, “Allah has made for you mates of your nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you the best sustenance.” In this context, Islam places a high value on instilling moral and ethical values in children, as explicit provisions in the Quran and Sunnah (the Prophet's practices and teachings) emphasize parents' responsibilities in raising their children. As a result, when a newlywed couple enters into this sacred union, they are laying the groundwork for a family by helping to create a new generation (Dad et al., 2021).

Marriage is viewed as a type of civil contract in Islamic law, with its key element having the voluntary and willing consent of both parties, the man and the woman. The Prophet Muhammad once said, “For lovers, the best thing is Nikah (marriage).” This emphasizes the importance of a valid Nikah that relies on the sincere and uncoerced consensus of both the man and the woman (Riaz, 2013).

In the Islamic family system, the marriage contract carries specific expectations. Both parties must commit to their spouse's love, loyalty, and faithfulness, as well as raise their children according to Islamic principles and support their exploration of the world. This means that a husband and wife's relationship is defined by an equal sharing of rights and duties (Yunus et al., 2020).

Furthermore, Quranic verses use the metaphor of husband and wife as garments (libas) for each other, indicating their roles in covering and protecting each other's physical and emotional aspects. According to the Quran, “They are your dress, and you are theirs.” Based on their natural capacities and needs, Islam recognizes distinct responsibilities for husbands and wives. The wife's primary responsibilities are to please her husband and to care for her children. She is exempt from financial obligations, and her rights are protected by provisions such as maintenance, mehr (dower), and inheritance.

The husband bears the burden of maintenance because he is the family's guardian and caretaker. The Quran confirms this by stating that men are the keepers of women, owing to physical differences and the responsibility they bear to provide for their wives. Thus, the husband is responsible not only for

financially supporting his wife but also for maintaining a harmonious family life by earning and spending on the family's well-being (Meraj, 2018).

## **2. Nikah: A Religious Command**

The Prophet declared Nikah as his Sunnah. As a result, Nikah is not an obligatory Sunnah (muwakkadah) in certain circumstances. Nikah is obligatory (wajib) for him if he is afraid of committing adultery despite his ability to provide maintenance and pay dower to a woman (Parashar, 2021). If he does not marry, he will be performing a sin. When one is afraid of exceeding Allah Almighty's (hudood Allah) limits in marriage, Nikah becomes abominable (makruh). According to the companions of the Holy Prophet (PBUH), Nikah is preferred over supererogatory rituals such as nafli prayers.

As explained by Bassiouni and Badr (2001), "Islamic law further states that all 'ibaadat' (worships) and 'mu'amalat' (worldly affairs) are comprised within the union of marriage. In its constitution, it is a civil agreement that requires the free agreement of all parties; additionally, the partnership between the contracting groups is not decided as a pure civil agreement but is set up by its religious implication, to obtain it.

## **3. Goals and Objectives of Nikah in Islam**

In Islam, the objectives of marriage are distinctive because all the purposes, rights, and responsibilities of the couple are ordained through divine legislation, specifically the Quran and Sunnah (the teachings and practices of the Prophet). According to the Qur'an, a husband and wife's relationship is reciprocal in terms of their rights and obligations. This implies that they both have the same status in society, have the same needs and wants, and share equal responsibility for raising their children and maintaining their marriage (Razi et al., 2021).

This implies that couples are expected to fulfill their basic duties and responsibilities as specified in the aforementioned sources, and they are forbidden to place additional demands on each other.

Islam emphasizes the importance of love, affection, tolerance, and cooperation between spouses in creating a strong and stable family within society. The author goes into detail about the goals of marriage under Islamic law:

### **3.1. Safety from the Devil**

In Islam, the fundamental goal of Nikah is to preserve a couple's moral fiber, purity, chasteness, and character. It's a method of reining in sexual arousal. "If a man marries, half of his religion is saved," the prophet declared. The Qur'an cautions the couple not to go beyond these boundaries because they are set by Allah Ta'ala (2:229). The Prophet once exclaimed, "O! Nikah is practiced by those who can do so as a means of maintaining chastity and security." However, as fasting serves as a shield against sin, those who are incapable of getting married should maintain their fast.

### **3.2. Creation of Family System in Marriage**

The fundamental, fundamental, and primary unit of social organization is the family. The well-being, security, and social assistance of humanity therefore depend on proper structure and functioning, which

can only be achieved by the institution of marriage. When two people get married, their families are brought together for peace, security, and the overall development of their identities (Meraj, 2018). Islam thus acknowledges marriage as a necessary step toward development, harmony, and the establishment of a Muslim community. Without a man and a woman joining together, it is impossible to conceive of an acceptable family. Dr. Tanzil-ur-Rehman defined marriage doctrine as follows: “Wedding (Nikah) is a religious legal arrangement that regularizes the marital relationship between men and women, determines the lineage of their children and determines between them civil rights and responsibilities” (Haque & Hussain, 2021).

### **3.3. Love & Affection**

Enhancing love and affection between the couple and deriving pleasure and satisfaction from one another is the third goal of marriage. This relationship is a source of love and peace, according to the Qur'an. According to a verse in the Qur'an, one of God's signs is that He chose partners for you from among yourselves so that you could live in harmony with them and that He has placed compassion and love between you. There are, indeed, indications for contemplators in that. The prophet (pbuh) once remarked in this regard: “Among your worldly concerns, three things are dear to me: scent, woman, and prayer, the latter being the doll of my eyes.” As a result, marriage is necessary for mental peace. It shows that having children is not the only reason to marry; love and affection lay the groundwork for starting a family and accomplishing the greater objective of establishing a just and peaceful global order.

### **3.4. Fertility**

Procreation, or the increase in human population, is the fourth reason for getting married. God demonstrated this purpose by creating man and woman. This is the goal to protect the earth, which cannot exist without humans, and the dynasty. It was demonstrated by the prophet (pbuh) who said, “Marry and keep dynasty.” In another Hadith, the prophet states that “the reward of producing a child—such a child who becomes martyr fighting in God's way—is written for him if a man cohabits with his wife.”

### **3.5. Wife's part in her husband's life**

The fifth purpose is for the wife to perform divine service, which relieves the husband of his duties. She entertains her husband by performing housework and satisfying his sexual desire. The prophet (peace be upon him) said: “Let one of you have a grateful heart, a remembering tongue, and a chaste wife helping him for the next world.”

### **3.6. Development of a Society**

The establishment of a family and subsequently a community on earth is the ultimate purpose of marriage. A hardworking man puts money aside for his family. The word of the prophet was, “God loves the poor man having a big family and refraining from begging.”

## **4. Divorce (Talaq)**

As defined by Ahmad (2003), “Talaq (divorce) is the breaking of the nuptial tie, with express or implied words, by the husband personally or through an agent or delegate, effectively instantaneously or consequentially.”

Divorce had existed before Islam, but the emergence of Islam resulted in substantial enhancements in the divorce procedure, particularly for women. Women's assets are not divided in Islamic divorce; anything they get or earn before and during the marriage continues to be their exclusive property if the marriage ends. This protects women from possible male exploitation of their assets or money through marriage. In contrast, in the event of a divorce, the man's assets are divided in accordance with the conditions outlined in the marriage contract. If a woman needs it, she has the right to maintenance and financial support from her ex-husband (Bani, & Pate, 2015).

Talaq (divorce) is the act of terminating a marriage contract through express or implied language or in some other way, such as Talaq Al-Qadi.

A divorce is an unconstitutional act committed by a husband under Muslim rule, and he may divorce his wife at his leisure, with or without her permission. There is no requirement for special expressions in divorce; it is suitable if it refers to an explicit desire to dissolve an association, and subsequently, the legality of the divorce does not require writing (Mehrajuddin, 1985)

When a divorce occurs either before or after the dowry is established or before the marriage is consummated, special provisions apply. Islam also instituted the “Iddah,” or three-month waiting period, for women. Women are not permitted to get married again for three months. The main goals of this waiting period are to ascertain whether the woman was pregnant before getting married again, to guarantee that the father of the child is correctly identified, and to preserve the veracity of the child's genealogy. Husbands and wives are allowed to try reconciliation during the waiting period, but it is made clear that men should not pursue reconciliation to hurt or abuse their wives (Ahmad, 2003).

## **5. Codification of Muslim Family Laws**

The development of family law codification is a relatively new phenomenon in Western legal systems. Before this, non-state regulations governed family matters, relying on tribal and customary norms that were mostly monitored by chiefs of tribes and religious authorities (Giunchi, 2014). It wasn't until the twentieth century that family laws were subjected to formal legal scrutiny, with many countries attempting to codify family laws to foster gender equality and individual rights (Sonbol, 2009).

The majority of European and North American countries saw major modifications to their family laws in the mid- to late-twentieth century. These modifications intended to lessen the power of religious and traditional norms and promote greater female labor force participation. Despite providing comprehensive and general principles addressing various aspects of life, the Quran and Sunnah offered a divine codified framework through Quranic verses and prophetic Sunnah. Many Muslim nations, however, frequently adopted restrictive and conventional legal frameworks to deal with modern family issues, particularly in regions where male-dominated societies predominated, such as British colonies. These areas were governed by multiple legal systems, which included statutory, customary, and religious laws from various cultural backgrounds (Welchman, 2007). However, the process of codifying family laws in Asian countries only gained traction in the latter half of the twentieth century.

## **6. History of Muslim Family Laws in Pakistan**

Until 1961, family matters such as marriage, divorce, and related issues in Pakistan were uncodified. Following a controversy over polygamy sparked by Prime Minister Muhammad Ali Bogra's remarriage against the wishes of his first wife, an APWA activist, the government took action to codify family laws. To address this, a movement to codify family laws began, with the establishment of the Commission on Marriage and Family Laws, led by Justice Abdur Rashid, to protect women's rights. The commission's report in 1955 adopted a liberal interpretation, but it was met with disagreement from conventional religious groups (Esposito, 1977).

The “Muslim Family Laws Ordinance” was enacted in 1961 to regulate the legal privileges and duties of husbands and wives in Pakistan regarding marriage, divorce, and polygamy. The 1961 Ordinance, Section 5, Sub-section 5 deals with marriage registration and the format of the Nikah Namah (marriage certificate). It states that each Union Council is responsible for keeping a register of Nikah Namah forms and marriage registration procedures (Ahmad, 1993). The concept of written documentation and registration is supported by the Quran, which advocates the recording of agreements, whether small or large, as well as their established terms, as it is considered just and fair before Allah Almighty.

While marriage contracts were not typically written in the early days of Islam, they were required to be executed in a trustworthy and genuine manner, and public disclosure of a marriage was considered an essential requirement for the contract's validity. The need for the presence of two witnesses and the assembling of necessary individuals was emphasized in the Quran and Sunnah (teachings and practices of the Prophet). As a result, the public announcing of the marriage is a required component of Nikah.

Moreover, during the Prophet's lifetime, people would approach him to express their intention to send Nikah messages or to inform him about engagements. In response, the Holy Prophet would frequently gather people for the marriage ceremony and perform the Nikah with a formal sermon (khubah). Indeed, marriage registration began with spoken testimonials and eventually occurred in writing. The Holy Prophet (peace be upon him) is said to have said, “Pronounce Nikah and the best place for that is the mosque.”

Marriage registration has been a source of contention in Pakistan. Regardless of the clear provision stated in “Section 5” of the “Muslim Family Law Ordinance” of 1961, the Pakistani judiciary has relaxed the requirement for marriage registration in several instances to accommodate couples who had difficulty registering their marriages (Ali, 2002).

In a 1988 case, for example, the Sindh High Court decided that the accused couple did not live in sin because an undocumented nikah was permissible under Islamic law (Shari'at). Following that, the Federal Shari'at Court, by the Sindh High Court's decision, challenged “Section 5” of the Ordinance (Haider, 2002)

## **7. Conclusion**

The institution of Nikah in Islam is deeply rooted in divine laws, governed by the Quran and Sunnah, which provide an extensive structure for married couples' objectives, rights, and responsibilities. This

sacred bond is a spiritual contract established to foster affection, empathy, compassion, and cooperation between spouses, not just a legal contract. It lays the groundwork for society's formation of stable and harmonious families. There has been a dynamic journey toward codification and implementation in the context of Pakistan's Muslim family law. The Muslim Family Laws Ordinance of 1961 was a watershed moment in this regard. It was established to protect individuals' rights and promote gender equality by Islamic law's principles and values. However, progress and challenges have been encountered in the practical application of these laws.

While Pakistan's legal framework has attempted to tackle issues such as marriage registration, polygamy, and divorce to ensure equal treatment of men and women, real-world implementation of these laws has occasionally come across opposition and exceptions within the legal system. Certain cases, for example, have resulted in judicial decisions that appear to deviate from the letter and spirit of the Muslim Family Laws Ordinance. Given these complexities, the legal system and society as a whole must continue to strive to uphold the values of justice and equity stipulated in the sacred institution of Nikah within the legal structure of Islamic law. This necessitates ongoing dialogue and adaptation to address contemporary challenges and promote family well-being while maintaining the core principles inherent in Islamic family law.

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