Essentials of a valid Muslim Marriage

Essentials of a Valid (Sahih) Marriage –

- A Muslim marriage (Nikah) to be valid, the following conditions are to be satisfied:
- Civil Contract : A Muslim marriage is purely a civil contract. As in the case of a contract, there are two parties. One party makes a proposal(Ijab) and the same is accepted by the other at one meeting.

1. **<u>Proposal (Ijab) and Acceptance (Qabool)</u>** – The proposal is made by the by the bridegroom. The proposal is called ‘Ijab’. The proposal consists the amount of dower. The bride sits behind the curtain (pardah) with the relatives accumulated for this purpose.

   The Ijab and Qabool must be done at one meeting. The Ijab at one time, and Qabool at another time, make the marriage void.

2. **Consent :** The consent of both the parties must be with free will, not under undue influence, misrepresentation or coercion. Consent may be express or implied. Marriage under compulsion is not valid under Sunni and Shia Schools. But it is valid under Hanafi Sub School.

3. **Sufficient Witnesses :**

According to the Shias, witnesses are not necessary. But, according to the Sunnis, two male witnesses or one male and two female who are sane and adults

4. **Capacity of Parties :** The parties to the marriage must be competent to marry. In Muslim Law, a person, who is sane (sound mind) and has attained puberty is competent to marry. The person, who has not attained puberty is a minor. The age of puberty for both a boy and girl is 15years.Under Shia Law, in the case of males, puberty is presumed to be attained at the age of 15years but in case of females it is 9years.

- **Doctrine of Puberty or Option of Puberty (Khyar-ul-bulugh)** :

  In Muslim Law, a person, who is sane and has attained the age of puberty is competent to marry. The age of puberty is the age at which a person becomes capable of performing sexual intercourse and procreation of children. In Muslim Law, a person, who has not attained the age of puberty is a minor. The age of puberty for both a boy and girl is 15years.

- When a minor has been contracted in marriage by the father or paternal grandfather, such marriage cannot be repudiated unless such father or grandfather acted fraudulently or negligently.
- All the restrictions with regard to the option of puberty have been abolished by the Dissolution of Muslim Marriage Act, 1939. According to Sec. 2 of the Act, a Muslim wife is entitled to the dissolution of her marriage if she proves that the marriage has not been consummated or the marriage took place before she attained the age of 15years or she has repudiated the marriage before attaining the age of 18years.
- Mere repudiation does not render dissolution of the marriage. The dissolution must be confirmed by a competent court.

5. No Legal Disability:

Legal disability means the existence of certain circumstances under which marriage is not permitted. These prohibitions have been classified into four classes as follows:

1. Absolute incapacity
2. Relative incapacity
3. Prohibitory incapacity
4. Directory incapacity

1. Absolute Incapacity to marry arises from-

(a) Consanguinity (b) Affinity (c) fosterage

(i) Consanguinity : It means ‘blood relationship” A marriage between the following relations is prohibited and void – a) Mother and Son b) Grandmother (how high so ever) ; and c) Brother and Sister;

(d) Uncle and Niece (e) Nephew and Aunt

(ii) Affinity : It means “relationship by marriage”. A man should not marry his (a) Wife’s mother or grandmother how high so ever; (b) Wife’s daughter or grand daughter how low so ever; (c) Wife of father or paternal ancestor; (d) Wife of son or son’s son or daughter’s son how low so ever.

(III) Fosterage (Riza)

When a child under the age of 2 years has been suckled by a woman other than its own mother, the woman becomes the foster-mother of the child. But there are few exceptions under Sunni Law where a valid marriage may be contracted with:

1. sister’s foster mother
2. Foster sister’s mother
3. Foster son’s sister
4. Foster brother’s sister

2. Relative Incapacity:

The following are the cases of relative incapacity:

(a) Unlawful conjunction
(b) Polygamy or marrying a fifth wife
(c) Absence of Proper witnesses
(d) Differences of religion
(e) Woman undergoing iddat.