



The Marriage Contract From Perspective Of Compatibility: A Research Overview Of Islamic And Social Thoughts

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Abstract

This research paper associates with and important issue i.e. compatibility before exercising the marriage contract. Compatibility means similarity between a male and female in several grounds before entertaining the marriage. This compatibility is regarded in Religious bond, Professional nature, Ethical values and caste etc. These qualities are either natural or otherwise acquired. The philosophy behind this concept is to make the marriage bond more reliable and everlasting. As it is evident from the common practice that ignoring the compatibility, the contract one way or the other has finally dissolved. That is why the Islamic Jurists have identified the varieties of grounds concerning the compatibility. Compatibility between the male and female is regarded for the purpose to strengthen the marriage bond only. It does not refer to superiority and discrimination on the base of tribe, cast or wealth. Because the religion of Islam never supports such trends. In Islamic point of view all men are created equal. The preference of one over the other is only due to acquired qualities and righteousness, as this is described in Surah Al-Hujrat Chapter No 49 Verse No 13 of the Holy Quran. This research paper aims to identify the real picture of compatibility and the virtues behind this phenomenon. The original sources are the Holy Quran, the sayings of the Holy Prophet S.A.W, whereas the provisional sources are the opinions of known Islamic scholars. The methodology adopted therein is qualitative and descriptive.

Key Words: compatibility, marriage bond, Islamic Jurists

Introduction

Compatibility known as Kafa'at in Islamic literature is a known concept among the scholars of Islam. Kafa'at is in Arabic term which means the equality in view of natural or acquired qualities. The religion Islam has two dimensions, one is the theoretical and the other is social. In theoretical point of view there is no difference among the believers. They all have equal rights and are similar in front of law. They all will be provided right to live and honor on equal basis. Their properties, life, grace and opinion shall be protected. No force shall be exercised which humiliate these basics rights.

This is the base of theoretical concept of Islam. The Holy Quran called on the people with the name of **يَا أَيُّهَا النَّاسُ** "O people" or **يَا أَيُّهَا الَّذِينَ آمَنُوا** "O you believer." Which implies the fact that the other sub-units that are tribes, casts, nations are of the secondary value. Similarly in Hadith the Holy Prophet S.A.W has practically presented the example of equality among the people though they belong to any class. These differences in shape of tribe or cast are only for introduction. The second dimension of Islam is social. As Islam is a social religion that interlink the religion and social life. It focuses on social life and commands its followers to be social in dealing. As society is developed and established from a family, therefore the Islamic teachings give due consideration to this basic unit. Up to the end it is tried to safeguard the family system from destruction. It does not let the divorce to be occurred and that is why considered it an action mostly disliked. Make the marital life comfortable and everlasting. Islam believes in understanding and joyful environment between the spouses. Now, the question arises here that how these aims can be achieved? To attain this purpose, the qualities between the male and female are compared ¹before marriage, which in other terms known as compatibility.

Kafa'at (Compatibility)

As described above, Kafa'at or compatibility in Nikkah is consideration of some specific God gifted are acquired potentials for stabilizing the bond. The following are the opinions of Islamic jurists studying which shall make it clear that what is the legal status of computability? Some of the Islamic Scholars such as Imam Ibne Hazm(died in 1064 A.D) and Imam Karkhi(died in 951 A.D) are of the opinions that it cannot be taken as a condition for validity of Nikah absolutely.

Their proofs are given below:

1. In the Holy Quran, Allah Almighty says:

إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ¹

"Who among you is pious is most respectable to Allah al-mighty."

2. On another occasion this point of view is explained as:

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ²

"All the Muslims are brothers to each other."

In this verse it is evident that being brothers nobody has preference over other. Similarly Allah says:

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ³

“So, you take in marriage those women whom you like and who are permissible for you.”

This verse also refers to the marriage devoid of any condition of cast or tribe. In the Sunnah of the Holy Prophet S.A.W there are numerous proofs which support this outlook. For example:

1. The Prophet S.A.W managed for the marriage of Hazrat Zainab Bint Jahash with Hazrat Zaid Bin Harisa (The slave of the Holy Prophet S.A.W). According to this narration, A woman belonged to superior family set up was married to a slave.⁴

2. The Holy Prophet S.A.W says:

All the Muslims are equal with respect to blood (Existence).

This Hadith also identifies the fact that there should be no preference or sense of superiority over others on any God gifted property.

3. On the occasion of The Last Hajj at Makkah, the Holy Prophets (S.A.W) delivered a speech which encompasses the overall rights of human beings. In real sense, this address is the composite chapter of human rights.

In this address, he called on the whole humanity and said:

“Oh people, Allah has finished the ignorance of ignorant period and had purified you from the frier that you had on tribal status. All the people are of two categories, the righteous and the wrong doers. Those who are pious deserve honor and respect, whereas the wicked one’s have no scope in the sight of Allah. All the men are created through Hazrat Adam (A.S) and Hazrat Adam (A.S) had come into existence from clay⁵.”

The proofs mentioned above, show that there is definite equality among the people. Before to describe the opinions of the majority scholars, it is suitable to clear the actual status of compatibility.

About the actual status of compatibility there are two viewpoints.

1. Non Validity of Nikhah

It means that Nikah is valid only in time the compatibility is considered.

2. Conditional Validity

According to this point of view, the actual status of Nikah is not affected if the compatibility was ignored. However, this marriage contract can be challenged afterwards. It means that such Nikah is referred to the permission of the guardians from both sides of male and female. In times of their disagreement the marriage can be approved or otherwise dissolved through legal procedure. The majority scholars support the second view point. So, if the husband is not competent to the position of wife then the guardians of female side can ask for dissolution of marriage.

Arguments by the Majority Scholars

1. It is narrated on the authority of the Ibne Abbas R.A. that a virgin came to the Holy Prophet S.A.W and said that her father had proposed her to someone dislike to her. The Holy Prophet gave her the authority to dissolve the Nikah⁶.
2. In another Hadith it is narrated that the Muslims should not delay the three things. The Prayers when its time comes in, the Funerals when it occurs and the virgin when there comes a chance of her marriage at a suitable place⁷.
3. Syeda Barira, a female slave of Hazrat Aisha (R.A) when got freedom denied to maintain her previous relation of marriage with Hazrat Mughees (R.A).

This narration also expresses that the female Hazrat Barira (R.A) did not considered Hazrat Mughees (R.A) competent to herself⁸.

While answering the arguments presented by the other Jurists, the majority scholars that: It is no doubt a fact that real and true dignity is only through acquired qualities. The person who is more pious is more honorable and his honor depends on his sincere relation with Allah. But beside this the individual characteristics and personal qualities are also bestowed by Allah.

All the people are equal with respect to life and existence but also differ in means and ways of life. This difference in living is a natural phenomenon which is necessary to continue the world system. It is explained on an occasion of the Holy Quran as:

نَحْنُ قَسَمْنَا بَيْنَهُمْ مَعِيشَتَهُمْ فِي الْحَيَاةِ الدُّنْيَا وَرَفَعْنَا بَعْضَهُمْ فَوْقَ بَعْضٍ دَرَجَاتٍ⁹

“We have allocated among them their livelihood in the worldly life, and have raised some of them over others in ranks.”

In addition to that the Allah describes in chapter No 16verse No 71 as follows:

وَاللَّهُ فَضَّلَ بَعْضَكُمْ عَلَى بَعْضٍ فِي الرِّزْقِ¹⁰

“Allah Almighty has given his gifts of sustenance more freely on some of you than on others.” It means that this difference in natural.

4. In chapter No. 2 Verse no 247 it is mentioned that in time of the Prophet Samuel (a.s) the Israel were suffered in sever land ships of internal and external grievances. The Palestine was attacked by the external forces that it was turned a slaughter for Israelites. In this situation they asked the Prophet of time who was in the old age that a person should be nominated who shall help them come out of those harsh situations. The Prophet (A.S) told that the person named as Tālūt had been appointed by Allah as yours leader. This is explained in the Holy Quran as:

وَقَالَ لَهُمْ نَبِيُّهُمْ إِنَّ اللَّهَ قَدْ بَعَثَ لَكُمْ طَالُوتَ مَلِكًا قَالُوا أَنَّى يَكُونُ لَهُ الْمُلْكُ عَلَيْنَا وَنَحْنُ أَحَقُّ بِالْمُلْكِ مِنْهُ وَلَمْ يُؤْتَ سَعَةً مِنَ الْمَالِ قَالَ إِنَّ اللَّهَ اصْطَفَاهُ عَلَيْكُمْ وَزَادَهُ بَسْطَةً فِي الْعِلْمِ وَالْجِسْمِ¹¹

“Their Prophet told them that Allah had appointed Tālūt as king over you. They said (in reply) how such person exercise authority could over them as they were better fitted than him to exercise authority. That person is not gifted with wealth in abundance. The Prophet

(A.S) said Allah has chosen him above you and has gifted him abundantly with knowledge and bodily powers.”

From these verses it is clear that difference in qualities and potentials is natural phenomenon by which a person can become superior to others.

Following the above discussion now we mentioned the opinions of Islamic Jurists (Scholars) regarding the credibility of compatibility. First of all the opinion of Hanafi school of thought is presented.

Hanafi School of Thought

According to this School of Thought the grounds for compatibility are Honesty, Lineage, Freedom (Not to be Slave) Richness and Profession.

Shafi School of Thoughts

This School of Thought is of the opinions that Freedom, Lineage, Honesty and Fairness, Professional set up and free from physical defects (That can become a cause of dissolution) are the grounds to be considered in compatibility.

Hanbali School of Thought

Their opinion is as of the Hanafi scholars. However the one prominent scholar Hafiz Ibne Qayyam though related to Hanbali School of Thought has a various viewpoint. According to him, the actual characteristics in compatibility is only the piety and honesty. The Muslim with Non-Muslim and the wrong doer with righteous can never be competent to each other. No preference is regarded due to profession, cast or tribe. This is the real picture shown in the basic sources of Islam that are Quran and Sunnah. There is no prohibition on marriage of a slave with a woman of high status. Similarly the women of Quresh can marry with a Non Quresh male. The poor man can give his hand in marriage to a wealthy women¹².

Maliki School of Thought

According to Imam Malik, the compatibility is related to only two things, the honesty and the protection from the defects that cause the dissolution of marriage. After going through the opinions of Jurists the fact reveals that there exists a scene of diversity and relying upon that it becomes easy to argue that the matter of compatibility is simply an Ijtihadi matter. Based upon that Islamic scholars have presented their thoughtful approach in the matter. The axel of their approach are “Urf” custom and Saddul Zarai (Prohibition of something in the sense not to become a source of a more harmful action). The two sources that are Urf and SaddulZarai are the secondary sources of Islamic Sharia. In Urf we see that it is the custom adopted by the majority Muslims in a period which will never should against the theme of Sharia. As the Prophet S.A.W has mentioned in a Hadith that my Ummah cannot gather on an action that is against the spirit of Shaira¹³.

In Urf the easiness of people is considered because the Sharia has been sent to facilitate the people not to put them in difficulties. The Holy Quran describes this as:

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ¹⁴

“Allah intends the every facility for you. He does not want to put you in difficulties.”

Besides, the Islamic Jurists have made these conditions as compulsory in order to remove the agents that are responsible for breaking the bond of marriage. These principles are considered in anticipation so that to reduce the chances of divorce or cancellation of marriage. In the following lines the grounds and characteristics adopted by the Jurists are discussed one by one in detail.

Righteousness

In the matter of compatibility, the righteousness is the foremost factor ever considered and encouraged in all the basic sources of Islamic Sharia. The Holy Prophet S.A.W refers this quality as the outstanding among all the adopted and acquired qualities. The Holy Prophet S.A.W says:

A women is taken in marriage for four reasons. Her wealth, her beauty, her family back ground and her righteousness, you should prefer to the quality of righteousness, o' falling in distress¹⁵.

If this quality is ignored in time of marriage the life after marriage can become miserable and full of tensions. Such life has ended with a dreadful end of divorce. Falling in the grip of ill reputation one has become degraded in social life which is never liked and supported by sensible families.

Parentage

Sometimes, the Non-competency in caste and tribe cause the breaking of marriage bond. Therefore, the similarity in caste is somehow considered. It is experienced that similarity in family set up has made the relationship durable. But it should not be taken as a token of superiority or preference as the majority of people do so. This sort of thinking is no doubt against the main teaching of Islam. In Islam, there is no preference on the base of caste or tribe. The Holy Prophet S.A.W even though bestowed of high ranking in every level said that:

أَنَا سَيِّدُ وُلْدِ آدَمَ ، وَلَا فَخْرَ¹⁶

“I am the pioneer of all the sons of Hazrat Adam (A.S) but I do not get proud of it.”

In real sense all the human beings are equal with respect to other creation. The extreme sort of thinking as is determined is not the positive interpretation of Islamic teachings. This sort of thinking is seemed to be wrong for a number of reasons.

Freedom

The freedom is not a factor to prevent the validity of marriage and the Nikah of a slave is valid with a free women. But sometime this difference cause a barrier to marriage. When the

slave girl Bareera (R.A) tied in marriage bond with Hazrat Mughees (R.A) rejected to maintain her previous relationship with her husband.

Wealth

Though wealth is not a sign of superiority however its importance cannot be ignored at all. So considerable amount that will be helpful to provide the basic needs of a wife is necessary at time of Nikah. Because Non provision of maintenance can be a cause of dissolution.

1. The equality in lineage is not the real goal this is only a source to strengthen the relationship. The people are either unaware of this fact or they do not care about it.
2. This kind of inflexible attitude strengthen the sense of superiority which can cause distance between families. An unnatural and unbalanced gap of ups and downs arises which sabotages the Islamic social system.
3. Following this there seems self-imposed ban on adults exercising their legal rights.
4. Another major disadvantage is that, the relationship is not accepted from outside and does not come chance from inside the family and consequently, the majority of females suffer to wait for the entire life. In this way women are emotionally exploited.
5. From Medical point of view it is also unfavorable.

Profession

Similarity in profession is also considered a factor in compatibility. Profession is an acquired skill that can be changed in view of time and requirement. Many professions lost their utility as the emerging situations were not compatible with them. Similarly new works and profession were introduced to meet the current needs. So in real sense profession is some one's interest and capability or his satisfaction of meeting needs.

Profession is not the name of a caste or a nation. Though it can be an identity of some specific class. The profession are as old as the human history. We see that Hazrat Adam (A.S) was familiarized with the names of all things he had to associate with. All these names were actually His needs to survive in this world. For example, Food, Cloth Shelter and protection were the requirements which Hazrat Adam endeavored to complet here. In other words, Hazrat Adam was the first man who introduced the professions and taught them to his next generation. In the Holy Quran Allah Almighty says:

O' messenger you use the lawful things to eat and do the good¹⁷.

The Holy Prophet S.A.W says that the best of all the livelihood a person has ever earn is his hand's provision. In light of this discussion it becomes clear that the superiority on the base of some certain professions is not matching with the Islamic teachings.

Conclusion

The above discussion reveals the fact that the compatibility has been a controversial issue among the Jurists of Islam. Secondly it is considered only to maintain the marriage bond on strong grounds. Those who have inflexible attitude in compatibility face problems. The

righteousness is the foremost factor in compatibility but if the other grounds were also considered then it will be more favorable. The grounds of the majority scholars regarding the compatibility are righteousness, family bond, wealth, free from physical defect and Profession etc.

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