

Practice of Elopements in Pakistan: An Analytical Study of Runaway Marriages in Contemporary Islamic Law

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ABSTRACT

In Islamic law, marriage is a bond conducted between the genders after certain considerations. The purpose of marriage is to join the two persons and their families for the betterment of the family and society. In Pakistan, the majority of the marriages for women is conducted upon the approval of the parents and deemed acceptable for the ward. Contrary to that, elopements are rising in Pakistani society. In case of elopements, usually the girl leaves her house at night with her beloved and conduct their marriage contract without the approval of her parents. Islamic law encourages Muslims to publicise the marriage and for that purpose it is the tradition of the Prophet (s.a.w) to arrange a marriage feast. The runaway marriages are conducted secretly and thus their legality is questioned. This article is divided into three parts; the first section discusses the issue of elopement according to classical Islamic scholars, the second part elaborates on the role of Muslim parents in the practice of elopement, while the last part examines the legal status of runaway marriages in Pakistan and other Islamic countries. The research suggests that elopements should be discouraged because they disrupt the family structure and isolate the couples from the society.

Keywords: Elopement, guardian, *ĤurfĤ* marriage, *SirrĤ* marriage, Pakistani law

1.1 Introduction

Marriage is a civil contract which is solemnized between parties based on special considerations. Although it is solely conducted between the two genders, there are religious and social requirements for the marriage. A Marriage plays a vital role in joining two families. Sometime, the consent of the daughter is not considered by the guardian and she run away with her love interest. This irregular marriage conducted between the male and female without the approval

of their guardian is called elopement. The practice of elopement is observed as a result of arranged marriage or disobedience to parents' dislike of a favoured suiter. Some religious questions arise on the legality of elopement. The marriage as a contract is fulfilled but the essence of the marriage is missing. This is mainly because of the confusion arising between the shariah perspective of marriage and social components for the wedlock. The requirements of marriage are discussed here to know the components of a perfect marriage. The role of parents is elaborated to enlighten the dependency of the ward and their responsibilities on each other. Subsequently, the legal status of elopement in Pakistan is discussed and the laws of other Islamic countries are also highlighted to know its legal status in other jurisdictions.

1.2 Runaway Marriages in Islamic Law

Islam is a religion that emphasizes upon the Muslims to bind themselves in a marriage bond. Marriage is encouraged as it has a great role in human life in joining two families.¹ At the same time Islam also discourages marriages which are not properly legalized by law and society. Elopement is a kind of marriage which is not appreciated by Islamic law. In Islamic law elopement could be put in two categories of irregular marriages i.e. (i) *UrfÊ* (irregular, suspended) marriages and (ii) *sirÊ* (secret) marriages. The reason is that both are linked with elopement in certain characteristics, such as registration and legal aspects. Islamic scholars are of different opinions on the legality of *urfÊ* and *sirÊ* marriages.² However, according to MaîmÊd ShaltÊt, the '*urfî* marriage is permissible in Islam while the *SirÊ* marriage is forbidden.³

Urfî marriage is a kind of wedlock in which all the requirements of the marriage are fulfilled but fails to be registered officially.⁴ In the case of '*urfî* marriage, the neighbours and family members are informed and it is consummated in front of witnesses, friends and family members.⁵ In countries like Egypt, '*urfÊ* marriage is defined differently; according to them, the '*urfÊ* marriage is conducted by religious cleric without the approval of the bride's guardian.⁶ The '*urfÊ* marriage is considered a tragedy for the wife because if the husband leaves her without uttering divorce, she would not be lawfully liable to seek her divorce.⁷ Subsequently, the Islamic jurists consider it completed on the approval of *walÊ*. The ShafÊ, Maliki and Hanafi jurists are of the opinion that the marriage of a woman without her *walÊ* is void. They give their view based on the Hadith in which the Prophet (s.a.w) said, "The marriage of a woman who marries without the consent of her guardians is void. (He said these words) three times".⁸ The Hanafis do not consider the consent of a *walÊ* for a woman a mere condition. Despite on the diverse opinions among the Islamic jurists, according to the majority the '*urfÊ* marriage is void while the Hanafis consider it a valid contract.⁹ Although irregular marriages are missing some conditions, upon the completion of those requirements the marriages are rendered as valid.¹⁰

SirrÊ marriage is a kind of marriage, which is conducted in the absence of witnesses, family members and the general public.¹¹ In some cases it is solemnized in front of witnesses, but they are requested to hide the contract from the public.¹² Islamic jurists declare the *sirri* marriage as going against Islam and are of the view that the partners should be separated. However, the punishment of *zina* cannot be enforced on the parties. They give reason that when a doubt comes into a matter of enforcement of *ġad*, the *ġad* punishment would be waived.¹³ In certain situations, a void bond will be treated as irregular due to *shubah* (doubt).¹⁴ Sheikh Abu Muhammad affirms the view of the four schools of thoughts and consider the *sirrÊ* marriage void even if it is performed in front of witnesses. He sanctions his view from the practice of the companions of the Prophet (s.a.w) where Abu Bakar (r.a) nullified the marriage.¹⁵ He says, "Marriage in secret is not allowed until it is publicized and witnessed".¹⁶ A case of solemnization of marriage in the presence of one witness was presented before Umar (r.a), who said, "This is *sirrÊ* marriage and I disallow it, if such marriage occurs the penalty is stoning to death".¹⁷ MahmĒd ShĒltut comments on the subject of *sirri* marriage whereby the purpose of marriage is to provide comfort and satisfaction by the parties to each other. The spouses have to live together in an environment of peace and love but in the case of *sirrÊ* marriage, this purpose could not be fulfilled.¹⁸

In sum these two kinds of marriages have the same footing in which the parties have eloped. On the subject of legality, the *NurfÊ* marriages is recognized officially, the woman is somehow safe and can claim her rights officially. On the other hand, the *sirrÊ* marriage is void because it violates the purpose of a marriage contract and the wife would in danger, if she legally wants to claim her right.

1.3 Elopement and Obedience to Parents: Can they go hand in hand?

In Islamic law, the family is the combination of two parties i.e. children and parents, who have mutual responsibilities on each other. Islam has instructed its believers to obey and give respect to parents. The children's obedience of parents is endorsed by the Holy *Qur'an* and the sunnah of the Prophet (s.a.w). There are different verses of *Qur'an* in which Allah says:

"And (remember) when we took a convenient from the children of Israel, (saying) Worship none but Allah (alone) and be dutiful and good to parents, and to kindred, and to orphans and (the poor), and speak good to people....."¹⁹

Ibn *KathĒr* elaborates that Allah has commanded the children of Israel on their responsibility. First of all, Allah has mentioned His rights which will prevail among all human rights, Allah states firstly the right of parents.²⁰ It means that right of parents prevails upon other human rights. He further writes that Allah

usually mention the rights of parents along with His rights.²¹ The same precedent is found in other verses in which Allah says, “And your Lord has decreed that you worship none but Him. And that you be dutiful to your parents”.²² Subsequently, in Surah *An-Nisah* it is also stated, “worship Allah and join none with Him (in worship); and do good to parents...”²³

In another verse Allah says:

“Give thanks to Me and to your parents. Unto Me is the final destination”²⁴

Sayyid Qutab in his commentary writes that the bond between parents and their children is of love and care and it comes second after the bond made between Allah and his creatures.²⁵ He further writes that children are bound to obey their parents, but the offspring are not compelled to obey if they forbid them from the worship of Allah.²⁶

The obedience of parents by their children is also found in the saying of the Prophet (s.a.w). It is narrated from Ibn *Mas'ud* that, “I said, ‘O Messenger of Allah! What is the best deed?’ He said, ‘Performing the prayer on time.’ I said, ‘then what?’ He said, ‘Being kind to one’s parents.’ I said, ‘then what?’ He said, ‘Jihad in the cause of Allah.”²⁷ The words of the hadith explain that after performing obligations to Allah, the next duty of Muslims is to obey and give respect to parents.

In Pakistani society, parents usually decide on matters of marriage for their children. The practice of choosing the partner by parents is successful and the partners of the marriage get dignity and honour from society. It is the result of good training of the guardians that the couple accepts their choice.²⁸ Islam declares the *wali* as a protector and advisor for the woman in consummating her marriage.²⁹ At the same time, there are also cases observed in which the children disobey their parents and conduct their marriages without the latter’s consent. Moreover, incidents of retaliation are also observed in which the lovers elope in the night and secretly marry.³⁰ If we examine the new trends of runaway marriages in Pakistan through Islamic Law, there are many questions on their legality. At the same time, the obedience to parents which is circumvented in the practice of elopement is also a question mark for the couple.

1.4 Elopement and the Marriage Feast

Marriage is the means for developing relations among families and social groups. To insight collaboration among relatives and families, a ceremony of feast is recommended by Islam.³¹ Depending upon the financial condition of the husband, the ceremony is encouraged accordingly. This tradition is observed from the saying of the Prophet (s.a.w). Anas bin Malik narrates that the Prophet (saw) saw traces of yellow perfume on Abdur-Rahmaan bin 'Awf, and he asked

him "What is this?" He said: O Messenger of Allah (saw) I married a woman for the weight of a Nawah (Stone) of gold. He said: "May Allah bless you. Give a feast even if is only with one sheep."³² He narrates another hadith that "the Prophet (s.a.w) offered Sawiq and dates as a wedding feast for Safiyyah."³³ All Muslim scholars consider the marriage feast as a sunnah of the Prophet (s.a.w). But some shafĒs consider the marriage feast as a compulsory part of a marriage. They justify their statement from the saying of the Prophet (s.a.w) in which he ordered Abdurahman bin Awaf to organise a marriage feast.³⁴

Ibn 'Ali Khurashi writes that "it is commendable to give a wedding feast, a day after the home-bringing of the bride".³⁵ Another purpose of arranging the marriage feast is to announce the *nikah* of partners to the public. Aishah narrates that the Prophet (saw) said: "Announce this marriage and beat the sieve for it".³⁶ Ibn QudĒma comments that it is required to announce the *nikah* to the society and the using of drum for announcement is permissible.³⁷ The sayings of the Prophet (s.a.w) clarify that the *nikah* should be announced publicly and secret marriage is not appreciable. J. Ihsan-ul-Haq commented in the case of *Saima Waheed*³⁸ that it is a universally accepted principle that the marriage should be made known to the public. The *nikah* ceremony and marriage feast are the means through which people know about the wedding. In the case of elopement practices in Pakistan, the parties appear in court and solemnize their marriage in front of *nikah khwan* (marriage registrar).³⁹ The contract of marriage in an elopement is conducted without performing the wedding feast which is contrary to the sunnah of the Prophet (s.a.w).

1.5 Meeting of Genders before a Marriage Contract

Islam orders its believers to lower their gaze and prohibits men from looking at non-*maġram* women. The purpose of this order is to purify people's souls and safeguard their reputation. There are many verses of the *Qur'an* in which Allah orders the Muslims to protect themselves from socialising among genders. Allah says in the *Qur'an*:

"And when you ask (his wives) for anything you want, ask them from behind a screen".⁴⁰

Ibn KathĒr comments that it is forbidden for them to enter others' home. If a person needs anything from another house, he can consult the female while she is behind the screen.⁴¹ From this, it is clear that a man cannot see a woman from the front.

In the same manner, Allah says, "Come not near *Al-FawĒhish* (immoral sins) whether committed openly or secretly".⁴² In another verse Allah says, "And come not near to unlawful sex. Verily, it is a *FĒhishah* (immoral sin) and an evil way".⁴³ Syyed QĒlab writes in his commentary that it is proven throughout

history that when communities allowed immorality to spread, their decline could be seen. The example of Western countries which have permitted immorality is in front of all the inhabitants of the world and their societies are going downwards.⁴⁴

However, regarding the *purdah* (curtain), Allah says in the *Qur'an* that:

“O Prophet! Tell your wives and your daughters and the women of the believers to draw their *JalÉbib* over their bodies. That will be better that they should be known so as not to be annoyed.”⁴⁵

In the explanation of this verse, ‘Ali bin Talhah reported that Ibn Abbas (r.a) said that “Allah commanded the believing women, when they went out of their houses for some need, to cover their face from above their heads with the *Jilbab*, leaving only one eye showing”.⁴⁶

“O wives of the Prophet! You are not like any other women. If you fear Allah, then do not be not soft in speech [to men], lest he in whose heart is a disease should covet but speak with appropriate speech”.⁴⁷

The verse illustrates that women should not speak in a soft manner. They should be firm in their words and would not address the non-*Mahram* men in the same manner that they address their husbands.⁴⁸

Islam is the religion which takes care of one's likes and dislikes. For that reason, it is recommended by Islam for a man to see the woman whom he propose to marry.⁴⁹ The hadith narrated from Abu Hurairah justifies the statement. He says that “he was with the Prophet (s.a.w) when a man came and told him that he had married a woman of the *AnsÉr*. The Prophet (s.a.w) said to him, ‘Have you seen her?’ He said, ‘No.’ He said, ‘Go and look at her, for there is something in the eyes of the *AnsÉr*.”⁵⁰ In another occasion “Mughirah bin Shubah wanted to marry a woman. The Prophet (s.a.w) said to him: “Go and look at her, for that is more likely to create love between you.”⁵¹ From the mentioned sayings of the Prophet (s.a.w), it is allowed for the man to see her fiancée. All the Muslim jurists are of the opinion that a man can see his proposed future wife, but they differ in the limits of seeing her body.

According to *ShafÉ's*, a person can see the face and hands of his proposed wife before his marriage. He can see her even without her knowing it and even several times, but he is not allowed to see anything more of his future wife (except her face and hands).⁵² They further argue that the Islamic law prohibits a male adult to look upon the shameful parts of an adult woman and the proposed girl is still forbidden for him.⁵³ Malikis also are of the same opinion that the male can see his fiancée's face and hands.⁵⁴ They interpret from the verse of *Qur'an* in which

Allah says: "... and not to show off their adornment except only that which is apparent..."⁵⁵ They say that only the face and hands are apparent and allowed to be seen by the proposed husband. Hanafis are of a different view and only permit the proposed husband to see her future wife's face, hands and feet,⁵⁶ while the Hanbalis only permit the male to see his future's wife face. They consider the apparent among the body which is permissible to be seen is the face.⁵⁷ From the above statements, it is clear that the majority of Muslim jurists opine that a man is allowed to look at his fiancée's face and hands, because the face shows the true nature of the face and the hands indicate the slimness of the body.

Subsequently, the meeting between future partners should be arranged in the presence of their guardians. In Islam, the individuals that are permissible to be married to each other (without wedlock) are not allowed to meet in *khalwah* (isolation).⁵⁸ It is forbidden as seen in the saying of the Prophet (s.a.w) that is narrated by Abdullah ibn Amr ibn al-'As, "Whenever a man is alone with a woman the Devil makes a third"⁵⁹ The situation of the elopement is different because in that case the male and female contact each other and arrange the plan to run away when their guardians do not agree with their marriage. In the practice of elopement, the suitor gives the permission of seeing the future wife to such an extent that the young man and woman, under the pretext of betrothal or engagement, run away or make interaction with her without being accompanied by a *mahram* of hers.⁶⁰

1.6 Legislation of Pakistan on Elopement

In Pakistan, the solemnisation of marriage is regulated in the Muslim Family Law Ordinance 1961 (MFLO). The MFLO is mainly concerned with the procedural part of the marriage. Thus, the authority of the substantive aspects is vested in the hands of the courts.⁶¹ It is found that Pakistani law is silent on the legality of elopement although there are cases found on the issue of elopement.

In case of *Shaukat Ali*⁶², a girl run away with her beloved and married secretly. The family of the girl filed a case of abduction against the boy. From the statement of the girl, it was cleared that she married the boy in her freewill. The court dismissed the case of abduction against the husband and pronounced that the wedlock is lawful. In the case of *Muhammad*⁶³, the girl was given in a marriage contract against her will. She run away with her lover and started living in his house. The guardians of the girl filled a petition against the boy that he had adducted their girl. The girl was produced before the court and she informed the court that her family wanted to give her hand in marriage to a person of ill repute and she was unwilling to marry him. The court decided in her favour and dismissed the abduction charges against the boy. Subsequently, in the case of *Muhammad Khan*⁶⁴, the girl run away with the boy of her interest and married

him against the will of her parents. The parents sued her husband, but the court pronounced the marriage as legal.

In addition, in the case of *Nazakat Ali*⁶⁵, the girl eloped and married her love interest. The family found the girl and filed a case of kidnapping against her husband. After examination of the facts, the court ordered to be handed over the girl to her husband. The same decision was found in the case of *Muhammad Shahbaz Ahmad*⁶⁶. However, in the issue of consent of guardian in a marriage contract, J. Ihsan-ul-Haq Chaudry in the case of *Seema Waheed*⁶⁷, remarked that a marriage without the approval of a *walÊ* is invalid. However, J. Malik Muhammad Qayyum and J. Khalil-ur-Rahman opposed his stance and declared the marriage without the consent of a guardian valid.⁶⁸ The marriage contract conducted without the guardian consent was also recognized as permissible in the case of *Khurshid Akhtar*⁶⁹ and *Lubna*⁷⁰.

In a nutshell, from the precedents of Pakistani Court it is evident that the elopements conducted without the consent of guardian are presumed legal. Although a debate occurred in Pakistan on the issue of legality, the decision was taken on behalf of constitutional ground. The main reason observed in elopement was that in Pakistani society, women are not consulted prior to conducting their marriages and as a result, incidents of runaway marriages take place.⁷¹ It is the fundamental right of a woman that she should be consulted before conducting her marriage.

1.7 Marriage Legislation in Other Muslim Countries

Family laws vary in Muslim countries due to being follower of different school of thoughts. On the issue of elopement, some Muslim countries have recognised the approval of guardianship as compulsory before conducting a marriage. While in others, the guardianship is required if the female is minor and insane.⁷² In Malaysia, the Islamic Family Law (Federal Territories) Act 1984 states that “a marriage shall not be recognised and shall not be registered unless both parties to the marriage have consented, and either the *walÊ* of the woman is consented or shariah judge has granted his consent as *walÊ* Raja whenever there is no *walÊ nasab* available to act or if the *walÊ* cannot be found or where the *walÊ* refuses his consent without sufficient reason”.⁷³ From the wording of the act it is not clear whether the law is talking about the consent for a marriage of a *thayyib* or the virgin woman. Another confusion arises regarding the specific guardian whether the act mentioned *walÊ* as bride’s father or her grandfather or any other *walÊ nasab*.⁷⁴

The law in the state of Kelantan (Malaysia) clarifies the shafÊ’s school of thoughts, which provides that “a woman who is to be married should first give permission to her *walÊ*, her consent being *wÊjib* if she is not a virgin or if she is virgin whose *walÊ* is not *mujbir*, but her consent being only *sunat* if she is a

virgin whose *walÊ* is *mujbir* i.e her father or paternal grandfather”.⁷⁵ The legislation in Malaysia bonds the woman to conduct the marriage after the approval of the *walÊ*.

The family code of Algeria provides that “marriage of a woman shall be contracted by her marriage guardian, who may be her father or one of her near relatives. The *Qadi* is the marriage guardian of a person who has no father or near relative”.⁷⁶ The Libyan law states that “it is not be lawful for the guardian to compel the ward in respect of marriage. So, where a marriage has been contracted with the consent of the guardian it shall be valid, but where either the guardian or the ward contracts without the consent of the other, its validity will depend on the consent of the other”.⁷⁷ The Libyan law recognises the consent of both the female and the guardian as compulsory on each other. The family law of Sudan has also endorsed the consent of the woman and her guardian as essential for the marriage contract. The law provides that “the marriage of a girl which is not contracted by the legal guardian either personally or through delegated authority shall be ineffective”.⁷⁸ Similarly, the personal law of Somalia also gives importance to the consent of the *walÊ*. Somalian family code mentions that “a girl of sixteen but below eighteen years of age can marry with her guardian’s consent”.⁷⁹ From the discussed legislations of different Muslim countries on elopements it is found that they are invalid.

1.8 CONCLUSION

The Islamic concept of marriage consists of some sociological requirements which could not be found in the elopements. After examining the elopements, according to the majority schools of thoughts, the legal requirement for a woman in conducting her marriage is the consent of guardian. The marriage would be invalid without the approval of *walÊ*. In case of elopements, the partners conduct the marriage without their parents’ consent. Allah has commanded in the Holy *Qur’an* that Muslims should obey their parents but in runaway marriages the children disobey the teaching of Islam and conduct their marriage on their own will. In Islam it is necessary for the marriage to be publicized and because of that reason Hazrat Umar (r.a) declared the secret marriage invalid. The Prophet (s.a.w) encouraged a marriage feast even with one sheep. In the case of elopements, the marriage is not pronounced publicly, and the banquet is also not arranged. Although the precedent of Pakistani courts legalized the contract of elopements, other Muslim countries do not allow the women to solemnize their marriage without the consent of guardians. In sum, it is recommended that the elopements should be discouraged, and parents and children should also be educated on their rights and duties upon each other.

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- ⁶⁶ Muhammad Shahbaz Ahmad V. Sher Muhammad (CLC 1987 Lahore 1496)
- ⁶⁷ Abdul Waheed V. Asma Jehangir (PLD 1997 Lahore 302)
- ⁶⁸ Ibid.
- ⁶⁹ Khurshid Akhtar V. Station House Officer (PLD 1997 Lahore 389)
- ⁷⁰ Lubna V. Government of Punjab (PLD 1997 Lahore 186)¹
- ⁷¹ Naeem Akhtar, Force Marriages in Pakistan,.....p.37
- ⁷² Muhammad Tahir Mansoori,66.
- ⁷³ Islamic Family Law (Federal Territories) 1984, Section 13.
- ⁷⁴ Nik Noriani Nik Badli Shah, *Marriage and Divorce under Islamic Law*, (Selangor: International Law Book Service, 1998), p.15.
- ⁷⁵ Kelantan Islamic Family Law Enactment 1983, section 2(e). see also Nik Noraini Nik Badli Shah,...p.15.
- ⁷⁶ The Family Code 1984, Art. 11
- ⁷⁷ Law on Women's Rights in Marriage and Divorce 1972, Art.2
- ⁷⁸ Law on Marriage-Guardianship 1960, [*Manshur* 54 of 1960], art.1.
- ⁷⁹ The Family Code 1975, art.16.