

# THE RIGHT TO MARRY IN ISLAM: SCRUTINIZING CUSTOMS OF MARRIAGES IN THE PASHTUN BELT OF PAKISTAN

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## Abstract

*Marriage is one of the Islamic personal practices which the Prophet (pbuh) encouraged within the Muslim Ummah (community) especially for those who could afford it. An eminent relationship has been observed between Islam and the custom of the Pakhtun people living in Pakistan. In Pakhtuns, apart from Islamic injunctions, the Pakhtunwali (Pakhtun Code of Life) serves as a pillar of society. It tends to bring social harmony and integrity through the socio-cultural, economic, religious and political aspects of Pakhtuns. The current study focuses on different customs of Pakhtun which have been misconceived with regard to Islamic injunctions and which are the prevalent laws of the Pakhtun and of course the regulator of Pakhtunwali. The research particularly emphasizes customs of marriage which are barriers to marriages in contemporary Pakhtun Muslim society. The paper juxtaposes the Pakhtun customary practices relating to marriage with Islamic injunctions. In order to do so, different types of respondents in the area of Peshawar Pakistan were interviewed. In the end, the paper recommends that Prophetic traditions should be introduced in marriages in the Pakhtun area of Pakistan.*

**Key words:** Pakhtunwali, Pakhtun, Islam, Marriage, Customs, Human Rights

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## Introduction

Marriage and the family institution occupy a very pivotal position in the Islamic legal system.<sup>1</sup> This can be judged from the fact that Muslim jurists consider the protection of the family institution among the five fundamental objectives of *Shari'ah*.<sup>2</sup> The *Qur'an* describes marriage as *mithaqanghaliza* (a sanctified contract). The phrase *mithaqanghaliza* implies that marriage is a sacred and sanctified contract, which is higher in status than ordinary civil contracts. Marriage in Islam is essentially a righteous act and an act of devotion ('*ibadah*').<sup>3</sup> Islam is the religion that has simplified everything including the contract and practice of marriage for all the believers. In this regard, the Allah has revealed the Holy *Qur'an*, through his noble Prophet Muhammad (PBUH), which contains all the does and don'ts about human life. The Prophet (pbuh) has explained the revelations. With regard to marriage, the Prophet (pbuh) was reported to have said:

“O young men, whoever among you can afford it, let him get married, for it is more effective in lowering the gaze and guarding one's chastity. And whoever cannot afford it should fast, for it will be a shield for him.”<sup>4</sup>

The above saying shows that the institution of marriage can only be practiced by those who have the ability and means to do so. This comprises the ability to maintain a spouse, thereby providing her food, clothing and shelter.

*Pakhtuns* are true Islamic believers who embraced Islam as a whole.<sup>5</sup> The social structure and ideological formation of *Pakhtuns* are almost completely dominated by Islam throughout the course of social and religious life. *Pukhtuns* strictly abide by Islamic law (*Shari'ah*) along with their own code of life known as *Pakhtunwali*.<sup>6</sup> *Pakhtunwali* and

Islam are identical in many ways. However, *Pakhtunwali* is embedded in a long historical context and traditions that have been in practice among Afghan tribes living in Afghanistan, *Khyber Pakhtunkhawa* (former NWFP) and Baluchistan.<sup>7</sup> But there are customs of marriages in *Pakhtuns* society, which should be analyzed according to Islam, *inter alia*, *Jahaiz*<sup>8</sup>, *Naindara*<sup>9</sup>, *Akhtar shawqadar*<sup>10</sup>, *Janj*<sup>11</sup>, *Pakha Azada*<sup>12</sup>, and *Kwezhdan*<sup>13</sup>. This paper examines the practice of these customs of the *Pakhtun* belt of Pakistan and elaborates the traditions administered at the time of the Prophet (pbuh). These customs of *Pakhtuns* have been scrutinized to assess whether they are privileges or barriers for the new generation in contemporary Muslim society.

### **Objectives of the study**

The present research work is based on the following objectives

1. To study Islamic customs of marriages as practiced during in the time of the Prophet (pbuh) and his companions.
2. To explain the customs of *Pakhtun* society in conducting marriages.
3. To compare the practice of marriage in Islam and the customs in *Pakhtun* society in order to decide which customs are acceptable or non-acceptable.
4. To look into whether the customs of the *Pakhtuns* regarding marriage are privileges for the younger generation.

### **Research Methods and Theoretical Framework**

The collected data has been analyzed qualitatively and discussion of both religion and *Pakhtunwali* in respect to women's rights delegation has been made. The research study has been approached through an integrative perspective on religion. A doctrinal method of research was used while preparing this paper. Interviews of different inhabitants of

*pakhtun* were conducted by the authors and were analyzed according to the functional aspects of the religion with respect to the *Pakhtun* community. Most of the *Pakhtun* customs have essentially been taken from the *Qur'an* and *Ahadith* (Sayings of the Prophet) in respect of women's rights. Society requires social solidarity to a certain degree, value consensus, harmony and integration between its component parts. The role of religion is thus dominant in most relationships between human beings and this applies in the case of the selected community under study e.g. *Pakhtun* society. But there are some customs which is regard to marriage stop the poor from marrying such as in *Pakhtun* society. Islamic customs concerning marriage are compared with *Pakhtun* customs in order to encourage the elimination of bad practices in conducting marriages in the *Pakhtun* belt and open the door for the poor youngsters to get married in simple way.

### **Concept of Marriage in Islam**

In Islam, marriage is a legal and mutual contract between a man and a woman, with a view to be husband and wife and build upon the spirit of love, affection, cooperation, harmony and tolerance, resulting in each party feeling at ease with the one, and consequently finding tranquility, contentment and comfort in the company of the same. The *Qur'an* has described this relationship between man and woman, which brings love, harmony, trust and compassion, in the most moving and eloquent terms,

“And among His Signs is this, that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your [hearts].”<sup>14</sup>

In yet another verse, the Quran says,

“And marry those among you who are single and those who are fit among your male slaves and your female slaves; if they are needy, Allah will make them free from want out of His grace; and Allah is Ample giving, knowing.”<sup>15</sup>

Marriage is the way and custom of the Prophet (pbuh). There is a *Hadith* of the Prophet (pbuh) that says:

“When a man enters into matrimonial contract, he has indeed made his religion half perfect. Then let him fear for the remaining half.”<sup>16</sup>

The social order of every society revolves around several instincts, and out of those, the two are powerful with a lot of influence on the society. They are: the natural appetite or hunger and the sexual desire. The former signals the need for the preservation of the individual whereas the later deals with the preservation of descent, especially the lineage of humankind. For this reason, almost every society in this world has made certain rules in order to secure itself. The Islamic Shari‘ah has developed a unique system for the preservation of its subjects, its values, the society and humankind at large.<sup>17</sup> There are certain objectives behind the introduction of *nikah* for the attainment of which Allah; the Almighty has commanded man to lead his life under a system. A study of the *Qur’an* and *hadiths* of the Prophet (PBUH) shows that the significant objectives of marriage are *inter alia* protection of human moral, establishment of Islamic society and love among the spouses.<sup>18</sup>

Marriage, therefore, is the strongest of bonds, in which Allah unites two Muslim partners. They come together based on love, understanding, co-operation and mutual advice. Their union lay the foundation of a Muslim family. A family in which children live grow up, and they develop good character and behaviour taught by Islam. The

Muslim family is the strongest component of a Muslim society because its members are productive and constructive, helping and encouraging one another to be good and righteous, and competing with one another in good works. The righteous woman is the pillar, cornerstone and foundation of the Muslim family. She is seen as the greatest joy in a man's life, as the Prophet (pbuh) said:

“This world is just temporary conveniences, and the best comfort in this world is a righteous woman”.<sup>19</sup>

Allah has given men freedom and urges us to

“Marry the women of your choice”<sup>20</sup>

Likewise, woman is given the right to select a man of their choice:

"A girl came to the Prophet (pbuh) and informed him that her father had married her to her cousin against her wishes, whereupon the Prophet (pbuh) allowed her to exercise her choice. She then said, 'I am reconciled to what my father did but I wanted to make it known to women that fathers have no say in this matter.'"<sup>21</sup>

Islam has given simple guideline and a simple way to get married; there is no barrier to stop Muslim men and women from marriage. It is clearly stated in the *Qur'an*:

“And marry those among you who are single (i.e. a man who has no wife and the woman who has no husband) and (also marry) the *Salihun* (Pious, fit and capable ones) of your (male) slaves and maid-servants (female slaves). If they be poor, Allah will enrich them out of His Bounty. And Allah is All-Sufficient for His creature's needs, All-knowing (about the state of the people)”<sup>22</sup>

Abu Bakar (r.a) has explained the above verse. He says that people should obey Allah in His command of *Nikah*, because as reward of the marriage, Allah will provide you more wealth as He has already promised.<sup>23</sup> Ismail Ibn Kathir in his commentary '*Tafsir Ibn Kathir*' elaborates the above verse saying

“And marry those among you who are single (i-e. A man who has no wife and the woman who has no husband)” involves a command from Allah to marry.<sup>24</sup> A group of scholars adopted the opinion that it is an obligatory matter. It is recorded that Ibn Mas‘ud said “seek the richness through marriage”.

It is also recorded from the *hadith* of Prophet (pbuh) that “there are three men whom it is a right upon Allah to help:(i) the one who gets married seeking chastity; (ii) a slave who tries to emancipate himself by paying to his master and (iii) the one who fights for the sake of Allah (Ismail Ibn Kathir, 2007: 1454).<sup>25</sup>

The Prophet (pbuh) urges the youth to get married,

“O young people! Whoever among you can marry, should marry, because it helps him lower his gaze and guard his modesty, and whoever is not able to marry, should fast, as fasting diminishes his sexual power.”<sup>26</sup>

There is no criteria for giving out dower (*mahar*), but if you had given the latter a *Qintar* (of gold i.e. a great amount) for dower (*mahar*) take not the least bit of it back.<sup>27</sup>

The Prophet (pbuh) gives options to provide something according to the financial capacity of a man:

"A woman came to the Prophet (pbuh) and presented herself to him (for marriage). He declined her offer of marriage.' Then a man said, 'O Allah's Apostle! Marry her to me. The

Prophet asked him, 'What have you got?' He said, 'I have got nothing.' The Prophet said, 'Give her something, even an iron ring.' He said, 'I have got nothing.' The Prophet asked (him), how much of the Quran do you know (by heart)? He said, 'So much and so much.' The Prophet said, 'I have married her to you for what you know of the *Qur'an*'<sup>28</sup>

Marriage is a major step in one's life. It is a matter of great responsibility that should by no means, be taken lightly. However, it should not be expensive to the extent that if one does not have enough cash, he fails to get married. Quite simply, a marriage in Islam is solemnized by a contract (*nikah*) and a *walimah* (marriage feast). The *nikah* constitutes a proposal from one party (*ijab*) and acceptance from another (*qubol*) in the presence of witnesses. The *walimah* is simply a dinner to celebrate the marriage, as marriage is, a joyous occasion. The *nikah* can be held at the local *masjid* or at home, while the *walimah* can be one's apartment, backyard, the *masjid*, a park, a restaurant, a community centre, or any other place. It is observed that in rituals and customs we tend to waste enormous amounts of money and time on things that simply are not needed.<sup>29</sup> Anas (r.a) describes one of the *walimah* hosted by the Prophet (pbuh)

“The Prophet stayed for three days at a place between Khaibar and Medina, and there he consummated his marriage with Safiyya bint Huyay (r.a). I invited the Muslims to a banquet which included neither meat nor bread. The Prophet (pbuh) ordered for the leather dining sheets to be spread, and then dates, dried yogurt and butter were provided over it, and that was the *Walimah* (banquet) of the Prophet (pbuh)”<sup>30</sup>

In another report, Anas (r.a) says that the Prophet (pbuh)



“Gave a wedding banquet with Hais (a sort of sweet dish made from butter, cheese and dates).”<sup>31</sup>

There is nothing wrong with having an elaborate ceremony in a fancy banquet hall and full-course meal prepared by a caterer, provided one can afford it. But the fact of the matter is that neither of these are essential elements or requirements for a valid marriage Islam forbade conditions whereby a society could fall into difficulty and in this spirit one should avoid taking loans so that it is wasted for weddings.

The Prophet (pbuh) is reported to have said:

“The marriage which is most greatly blessed is the one which is the lightest in burden [expense]. However, if people are well catered for, without extravagance and show, there is no problem with that either”<sup>32</sup>

The Quran enjoins:

“But waste not by excess: for Allah loves not the wasters”<sup>33</sup>

It can be difficult to swim against the tide of fancy and extravagant marriages, but surely, it's worth swimming against the tides that go against Allah's commands and the example set by the Prophet (pbuh). It is stated in the *Qur'an*,

“Follow me and My Messenger if you love me, Allah will love you too”. Why are we so reluctant to follow what the Prophet commanded rather blindly follow pathetic traditions in our wedding ceremonies? The acts of *Jahliya* (ignorance), shamelessness and the acts which lead to *fitnah* (discord) can never make a marriage successful and blessed. In this regard, we should not follow customs or desires or society but should follow the golden path shown by Allah and His prophet (pbuh).<sup>34</sup>

### **Abridgment of Pakhtun Custom**

*Pakhtunwali* is defined as “the way of life of the *Pakhtuns*,” and it is said to be the identity and communal way of people belong to the

*Pakhtun* belt. It includes the unwritten but defined centuries old static rules and customs.<sup>35</sup> *Pakhtunwali* includes the central concept of *nang* (ego), which signifies honour, as well as other various sub-components including *namus* (honour) and *tura* (sword)<sup>36</sup> In this research discussion on *Pakhtun* customs and the way they conduct their marriages is studied. There are different stages and a long procedure from marriage proposal to the *rukhsati* (final marriage) in *Pakhtun* culture. The customs of *Pakhtuns* are very different from other societies. The marriage customs of *Pakhtuns* plays an immense role in strengthening ties between families, but at same time creates financial obligations for the families.

Different customs are practiced in the *Pakhtun* area of Pakistan, which have great impacts on society and family life. The purpose of the customs is to give happiness and provide a solid base to relation between the families. However, at the same time, these customs are obstacles to youngsters who wish to marry their beloved. There are six aspects involved in the customs of marriage in *Pakhtuns*. They are: *Kwezhdan* (betrothal), *Jahaiz* (dower), *Naindara* (to share money), *Akhtar shawqadar* (sharing of gifts in specific months and festivals), *Janj* (Wedding procession) and *Pakha Azada* (free visitation). The first step is *Kwezdan* (betrothal) which is the common practice of parents who wish to get their sons married to pretty and virtuous girls of respectable families. But in the tribal areas what is more significant is to attach more importance to the strength of the arms and the family influence than her beauty. The practice is that the future bridegroom is consulted while selecting a girl while consent of the girl is not considered even in educated families.<sup>37</sup> The second stage is *Jahaiz* (dower) which is a transfer of parental property at the marriage of a daughter.<sup>38</sup> This is where the girl is gifted with household goods for her usage in her new home. Some would

even give cows and sheep. The girl's parents also provide their daughter with a trousseau made up of clothes, shoes and handbags. This is partly to make the transition of moving home easier. The girl is expected to adorn herself in fancy clothes at least up to a year after the wedding.<sup>39</sup> Thirdly *Nandara* (to share money). This is a situation where friends and relatives of the bridegroom contribute money to lighten his financial burden. It is some sort of financial assistance repayable to the donors on a similar occasion. A proper record of the subscription is maintained and the names of the subscribers are entered into a notebook for future reference.<sup>40</sup> Fourthly, *Akhtar Shawqader* (occasion to transfer gifts during festivals) is a custom practiced after the engagement and before the final marriage ceremony of bride. Special kinds of gifts are sent to the girl which include clothes, shoes and sweets in special months of the year.<sup>41</sup> Fifthly *Janj* (Wedding procession); on the day of marriage the bridal procession is named *janj*. The participants of the procession wear their best clothes, and the ceremony starts at noon with musicians leading the procession.<sup>42</sup> Sixthly, *Pakha Azada* (visitation), which means visits between the families of the engaged. This custom starts a few days after betrothal. The prospective bridegroom's parents pay a visit to the girl's house and present her with a gold ring or suit of silk clothes.<sup>43</sup>

### **Evaluation of Marriage Customs in Islam and *Pakhtun* Society**

Islam is a complete code of life that provides guidance for every aspect of life. The social system in Islam is geared towards the preservation of the human race and the protection of the society. Islam recognizes the importance of the family, and it has established rules with the aim of protecting it. The family is built through the legal contract of marriage between a man and a woman.<sup>44</sup> Islam recommends an easy way

to get married and to found a family. Islam does not allow customs that might detract from the happiness of the newlyweds.

Basic derivatives of Islamic custom are shown in the *Sunnah* of the Prophet (pbuh). As discussed earlier various *ahadith* show that there is no custom barrier in Islam. The Prophet (pbuh) urges the youth to get married and advises them that if they can afford marriage then it should not be delayed, but if someone does not have sufficient resources, he should keep fast.<sup>45</sup> On one occasion, a person came to the Prophet (pbuh) and said that he did not have any money. The Prophet (pbuh) advised him to get married. When he got married, his financial position remained the same, he came again to the Prophet, and the Prophet advised him to marry another woman and he did it. This shows that the financial position of a man cannot stop him from getting married. Even as we discussed earlier, there is no limit for *mahar* (dower). In the *Qur'an* it is elaborated:

“But if you had given the latter a *Qintar* (of gold i.e. a great amount) for *mahar*, take not the least bit of it back.”<sup>46</sup>

The Prophet (pbuh) gave the option of giving something for the privilege of getting married according to the man's financial position. As mentioned earlier, a woman came to the Prophet (PBUH), and presented herself to him (for marriage). Another companion of the Prophet offered her marriage, while he did not have anything to give as *mahar* (dower).<sup>47</sup> The Prophet (pbuh) gave her hand in marriage to him.

In *Pakhtun* society, the customs are different and the *mahar* and other requirements of marriage are many. These requirements have made marriages quite difficult. The custom of *jahaiz* (dower) in *Pakhtun* society is very different from Islamic customs. It is stated in the *Qur'an* that Allah does not put a human under a burden of something if they cannot afford. *Jahaiz* is the good tradition for the honour of *Pakhtuns* girls but it should

not be a burden on the families. The money spent extravagantly may be diverted to so many better uses. After all, the amount of money spent on the ceremony has no positive effect on the life of the couple.

Abu Hanifa (an eminent Islamic jurist) even not allows dissolution of marriage contract on the ground of not providing maintenance. He argues that if the husband is poor, then he should not be blamed for that. He quotes a verse of *Qur'an* in which Allah says:

“Let him who has ample means spend in accordance with amplitude; and let him whose means of subsistence are scanty spend in accordance with what God has given him: Allah does not burden any human being with more than He has given him{and it may be well that} Allah grant after hardship}”.<sup>48</sup>

This verse illustrates that the Qazi (Judge) even not dissolve a marriage contract if the husband is unable to pay maintenance. In the book *Majma'al-Anhar* it is stated that the judge should not order separation between wife and husband if the husband is poor.<sup>49</sup> This proves that poverty is not a barrier in conducting or continuation of marriage.

The life of our Prophet (pbuh) is a guideline for all Muslims. The Prophet (pbuh) conducted the marriage of His beloved daughter Fatima (r.a) without following any custom. Even the bridegroom Ali (r.a)] was not present at the time of marriage.<sup>50</sup> Islam allows the husband to pay dower on occasion of marriage or postpone it to a mutually agreed date. This shows that in Islam there are no customs, which restricts a poor man from getting married. Marriage is an occasion for celebration, but wastage of enormous amounts on a celebration should be discouraged.

The customs of the *Pakhtuns* are a bit different from Islamic law. In Islam, there is no concept inter alia *khwaidan*, *akhtar shawqadar*, *Khpa Azada* and *Nandara*, which put undue financial burden on both families. The custom of *kawaidan* is a typical of *Pakhtun* custom while marriage. In Islam simply *Nikah* is prerequisite for conducting of marriage. It is worth mentioning in *Pakhtun* society, a lot of money is spent in marriages starting with *kwagdan* (engagement) and ending months after the *Rukhsati* (final bride). It causes suffering to the life of the married couple, as in the case Gul Rashad<sup>51</sup> (Interviewed by author: Pakistan, 19th August, 2015). Many of our families gather money first and after that they start searching for a girl for their son. *Pakhtuns* practice expensive marriage customs that are not according to Islamic ones.<sup>52</sup> Moreover, these customs are not according to the sunnah of Prophet (pbuh) either. In fact, wasting Allah's bounties is something Allah has warned us against:

“But waste not by excess: for Allah loves not the wasters.”<sup>53</sup>

In a nutshell, from the evolution of Prophetic and *Pakhtuns* customs, subsequent illustration has been conducted. *Pakhtun* are an old race which accepted Islam whole heartedly. They are following *Pakhtunwali* (*Pakhtun* social organization), which is similar to Islam. However, sometimes it deviates from the path of Shariah. Islam provides right of marriage to every male and female in a dignified and simple way. In *Pakhtunwali*, on the other hand, this practice is being made complicated.

## **Conclusion**

Islam encourages Muslims to marry and recommends marriage as an article of faith. The purpose of a dower or *mahar* is to safeguard the woman. It has no limit. Nevertheless, it does not mean that if a male is not able to pay it, he will not marry. The *sunnah* of the prophet has clarified

that it is better to pay dower, but at the same time the Prophet (pbuh) also urged that if someone did not have the ability to pay, this would not deprive him from a marriage contract. So *mahar* should not be t an obstacle on the path to marriage. The *Sunnah* of the Prophet (pbuh) is universal and it should be followed everywhere in the world. *Pakhtun* as a race are Muslims, with their own peculiar customs. These customs sometimes deviate from Islam. There customs like *Kwazhdan*, *Naindara*, *Akhtar shawqadar*, *Janj* and *Pakha Azada* are practiced for the prosperity and honour of partners. But at the same time these customs create problems for the couples too. Although, these customs have no relation with religion and the burden of expenditure is on both of the families. This has reduced the number of marriages. It is therefore recommended these should be brought in conformity with the spirit of Islam.

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- <sup>8</sup> A jahaiz is a transfer of parental property at the marriage of a daughter
- <sup>9</sup> At the time of Nikah, friends and relatives of the bridegroom give money to the bridegroom.
- <sup>10</sup> Before marriage the bridegroom presents different cloths to the wife's home.
- <sup>11</sup> The bridal procession is called janj. On the day of marriage, the village of the bridegroom wears a happy look.
- <sup>12</sup> Pakha Azada or pkhay Artha means free visits between the fiancée and fiancé's families. These calls upon each other are a few days after the betrothal.
- <sup>13</sup> Kvezhdan is common in *Pakhtun* society, where the parents cherish a desire to get their sons married to pretty and virtuous girl of a respectable family.
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<sup>47</sup> Mahar or dower is a sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties, or by operation of law. See syed Khalid Rashid, *Muslim law*, (Luknow: eastern book company, 1996), p.82.

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<sup>49</sup> Damad Afandi.

<sup>50</sup> Muhammad Ashraf Ali Tanvi, *Huquq-u-Zawjain* (Multan: Idara Talefat Ashrafiya, 1913).

<sup>51</sup> Gul Rashad belongs to Peshawar (KPK). He was affected by this *Pakhtun* culture. He was interviewed by the author and he criticized then *Pakhtun* customs and he even sold his cattle for his bridegroom.

<sup>52</sup> Usman Habib, interviewed by Author: Pakistan, 19<sup>th</sup> August, 2015

<sup>53</sup> Al Qur'an 6:141