Marriage in Islam: A Civil Contract or a Sacrosanct?

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Introduction

One of the most oft-repeated remarks made in the context of Muslim Family Law cases, by many judges as well as lawyers, is that 'marriage is a civil contract'. This is said so without realizing its true consequences and whether it is the position of marriage in Islamic law or not. It is true that textbooks are cited as authorities in courts although they can never be binding. This may be true in theory but not so in practice, at least in the South Asian Sub-continent where some textbooks have been followed blindly over the ages and the earlier decisions, whether right or wrong, are followed as binding precedents. The earlier English translations of books on Islamic law such as N.E. Bailie's *Digest of Moohummadan Law*¹ (Bailie's spelling) which is the English translation of *Fatāwā-i Aīlamgiri*; W.H. McNaughten's *Principles and Precedents of Muhammadan Law*,² V. Fitzgerald's *Muhammadan Law: An Abridgement*,³ and Hamilton's translation of *Hidayah* have been the oft-quoted books by the courts.* Of all the books the most cited book on Islamic law, especially Muslim Family law, in India and Pakistan, is probably Sir Dinshaw Faridunjji Mulla's *Principles of Mahomedan Law*.⁴ Mulla's *Principles* has been raised to a status higher than a textbook. It seems to be quoted and relied upon by lawyers and judges as if it is a 'statute of Islamic law', and not a 'collection of principles; which include some distorted principles of Islamic law as laid down by Anglo-Indian judges of the Crown until his time'. Mulla defines marriage "to be a contract which has for its object the procreation and the legalizing of children".⁵ After this definition Mulla asserts that "Marriage according to the Mahomedan (his spelling) law is not a sacrament but a civil contract".⁶ He attributes this description of marriage to *Abdul Kadir v. Salima* (1886) 8 All 149 (FB). Extracts of this case are available in Asaf A.A. Fayzee's classic book, *Cases in the Muhammadan Law of India, Pakistan and Bangladesh*.⁷ We shall thoroughly analyze this decision because it has created some misconceptions about marriage. In this case a Hanafi husband brought a suit for restitution of conjugal rights. The wife argued that this was not maintainable as the *mahr* (dower) was not paid. The husband deposited the dower amount in the court but the wife also pleaded cruelty and asked for divorce. The court found both the allegations to be false and held that the wife had not demanded the payment of her unpaid dower and the husband was entitled to restitution. If this case were to be brought before a Pakistani court today, the decision would be different because of the various laws protecting women and the sound decisions given by our Superior Courts in earlier cases. The judgment in *Abdul Kadir v. Salima* was given by Justice Mahmood son of Sir Syed Ahmad Khan,⁸ the first Indian Judge of the Allahabad High Court. He was one of only two Indians who got a scholarship to study in England. The second was Sir Syed Ameer Ali who later became a member of the Privy Council and had written numerous books on Islamic history.

¹These early *fiqh* books are actually *fatawa* collections. They are not codified laws and are in fact interpretations and opinions of learned *faqīhs*. The tendency to use them for gaining a favourable interpretation is quite old. One such case was Akbar's action on *Hidayah's* report on Maliki *fiqh*'s acceptance of *mut'a* marriages which was used to legalize his nearly 16 marriages. For details see Ansar Zahid, "Mughul Marriages: A politico-legal study", *Historicus*, No. 2, 1986 – Ed.
and Islamic law. In this judgment Justice Syed Mahmood has passed remarks on the nature of Islamic marriage; the husband's liability to pay dower; and matrimonial rights of husband and wife.

The *obiter dictum* of this case has acquired so great a reputation, that it carries the legal sanctity of *ratio decidenendi*. The case is one on the restitution of conjugal rights, yet Justice Mahmood has also commented on the nature of the Muslim marriage. He observed that a *suit for restitution of conjugal rights* is a *suit of a civil nature*, and that the Mussulman husband may institute a *suit in the Civil Courts of India* for a declaration of his right to the possession of his wife [italics supplied].

He said:

Marriage among the Muhammadans is not a sacrament, but purely a civil contract; and though it is solemnised generally with recitation of certain verses from the Koran, yet the Muhammadan law does not positively prescribe any service peculiar to the occasion. That it is a civil contract is manifest from the various ways and circumstances in which marriages are contracted or presumed to have been contracted. And though a civil contract, it is not positively prescribed to be reduced to writing, but the validity and operation of the whole are made to depend upon the declaration or proposal of the one, and the acceptance or consent of the other of the contracting parties, or of their natural and legal guardians before competent and sufficient witnesses; as also upon the restrictions imposed, and certain of the conditions required to be abided by according to the peculiarity of the case.

As he stated himself he had adopted this position since he delivered his famous Tagore Law Lectures in 1873. He then, relied on Bailie's Digest and observed that "Marriage is a contract which has for its design or object the right of enjoyment and the procreation of children. But it was also instituted for the solace of life, and is one of the prime or original necessities of man".

But is this the definition of marriage or its aim and purpose? In his book *Principles of Mahomedan Law*, Mulla considers this to be the definition of marriage, because Section 250 of his book is titled: 'Definition of marriage', in which he reproduces Justice Mahmood's remarks, who himself relies on Bailie's translation of *Fatāwā-i ‘Alamgīrī* discussed above. Surprisingly Mulla does not mention the second sentence in the above quote, which further explains the aims and purposes of Muslim marriage. Mulla thus seems to have ignored the context in which Justice Mahmood has made his observations. Justice Mahmood only seems to state where the suit (for restoration of conjugal rights) lay and what was the aim and purpose of a Muslim marriage. He is not providing a definition of Muslim marriage. Since Justice Mahmood approves of Bailie's view that marriage is also for the solace of life, he is highlighting another aspect of marriage, that is, its social aspect.

Sir Dinshaw Faridunji Mulla, a prolific Parsi lawyer, first published his book in 1906. He saw ten editions of it till 1933. The 11th edition of the book was subsequently edited by Sir George Rankin in 1938 while the 12th edition was edited by Sir Sajba Rangnekar in 1944. Sir Sultan Ahmed edited the 13th, 14th, and 15th editions in 1950, 1955, and 1961 respectively. The former Chief Justice of India, Muhammad Hidayatullah, has edited the last four editions of the book i.e., 16th – 19th editions. The last edition was published in 1990 and has been reprinted thirteen times till 2005. The 19th edition has the names of Muhammad Hidayatullah and his son, Arshad Hidayatullah, as editors. The preface to the sixteenth edition tells the reader of any changes introduced into the book. That edition was basically revised by Mr. Shankardass for Hidayatullah and not by Hidayatullah himself as the later acknowledges this in the preface.

In the very short preface to the last edition the editors reject the idea of Tahir Mahmood, that the wrong transliteration of the legal work in the book needs correction, by saying that “it will savour of pedantry”.

Mulla had arbitrarily codified British-Indian precedents in the area of Muslim Family law, as understood and interpreted by the prejudiced British-Indian judges, and presents a much-distorted version of most of the principles of Muslim Family law. According to Professor Syed Tahir Mahmood (the leading authority on Muslim Family law in India), Mulla had never even read the most elementary of the original treatises on Islamic law, nor did he ever claim to have done so. For later British-Indian judges it was very convenient to rely on Mulla's handy book in their decisions. Courts in India had gone to the extent that some of them have even applied Maxwell's principles of interpretation of statutes to ascertain the meaning of
certain provisions in Mulla's book. These decisions were relied upon by later courts (precedent) and today Pakistani and Indian judges quote either Mulla directly or indirectly. His definition of marriage has influenced many scholars who believe that 'marriage is a civil contract'.

To know Mulla's knowledge of Islamic law, it suffices to quote him again on the subject of marriage. He asserts that "No Mahomedan marriage, either among Sunnis or Shias, is permanent in the sense in which a Christian or a Parsi marriage is, for the husband may divorce the wife at any time he likes".

This statement is wrong in its description of Islamic law as well as the Parsi and the Christian laws. It is, therefore, possible to judge from this comment the depth of his knowledge about the subject he was writing on. Let us quote him again on the difference of religion in marriage. He says that "A marriage, however, (of a Mahomedan man) with an idolatress or a fire-worshiper, is not void (bāṭil), but merely irregular (fasid)". According to the Qur'ān such a marriage is void (bāṭil: illegal, void).

Sanctity of Marriage in Islam

Let us consider the position of marriage in Islamic law. The Qur'ān describes marriage as a sacred covenant (mithaq-i ghalizah). Allah says: "And how could ye take it when ye have gone in unto each other and they have taken from you a solemn covenant?"

This covenant is the bond of marriage with the pure intention and lasting love and affection, which is solemnly attested to with the name of Allah before witnesses. The Qur'ān describes that through marriage Allah creates between the married couple the deepest love (mawaddah). Allah says: "And among His signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and a mercy (mawaddah wa rahmah), between your (hearts): Verily in this are Signs for those who reflect".

Allah has created the deepest love and solace among the married men and women for each other. The word 'li taskunū lailahā' (dwell in tranquility with them) connotes companionship and mutual love, which is distinct from mere sexual pleasure. Thus a wife in Islam is not a handmaiden, but a lifelong companion of her husband, his consort. Her function is to be, by her words, acts, or by her mere presence, a source of comfort and solace to him. She remains the chief consoling, soothing element of his life. And a relation of affection, harmony, and mutual happiness and goodwill ought to exist between husband and wife. Solace and mercy between the two ought to be the truer and deeper motives of marriage than mere sexual harmony. The Qur'ān also mentions that by marriage the man and the wife pass into each other's protection. Mawlana Abdul Majid Daryabadi comments on this verse (they are a garment for you and you are a garment for them) and says:

The metaphor is of exquisite beauty, expressive of close intimacy, identity of interests, mutual comfort and confidence, mutual upholding of each other's reputation and credit, mutual respect of one another's secrets, mutual affection, and mutual consolation in misfortune. The whole character of the one becomes an open book to the other. The wedded pair ceases to belong to themselves; they now belong to each other, sharing each other's joys, sorrows, glories and shames.

The Holy Qur'ān describes married men and women to have entered the 'protective fortress' of marriage. The Arabic term hīsān originally signifies a fortress, and muḥṣanāt means, in the first instance, only 'women who are fortified or fenced in by husbands because of the marriage'. Al-muḥṣanāt, in the context, signifies married women, or women having husbands. The word strongly suggests the idea of chastity and purity.

The Prophet (ﷺ) has described marriage as his Sunnah and said that "whoever did not follow my Sunnah so he is not my follower". For Muslims Sunnah of the Prophet (ﷺ) means something different than a clause of the Contract Act, 1872. Because whenever the Holy Qur'ān asks Muslims to obey Allah it also asks them to obey his Messenger (ﷺ). The point to be noted is that marriage for the Muslims is a religious duty, rather than a contract for material gains. Moreover, Muslim jurists are unanimous that every Muslim who has the physical, mental and financial ability must get married and that marriage is mandatory for such a Muslim. They also declared that since restraint from illicit sexual relations is mandatory, therefore, marriage becomes mandatory because 'whatever is indispensable to fulfil an imperative obligation
is itself obligatory'. Also in Islamic law priority is given to preserving the universal interest over particular interests. According to Imam Ahmad financial capability is not necessary for the purpose of marriage.31

The Prophet (ﷺ) has given a stern warning to those Muslim youth who have the capabilities to marry but don't marry by telling one of his unmarried Companion to “get married because now you belong to the brotherhood of devils (Satanas)”. If marriage was only ‘a civil contract’, the Prophet (ﷺ) would not have emphasized on it to this extent. In addition to this there are a number of Traditions regarding marriage. The Prophet (ﷺ) said: "He who marries completes half of his religion; it now rests with him to complete the other half by leading a virtuous life in constant fear of God"**. "There are three persons whom the Almighty Himself has undertaken to help – first, he who seeks to buy his freedom; second, he who marries with a view to secure his chastity; and third, he who fights in the cause of God"**. The Prophet (ﷺ) has equalled marriage to jihad (fighting in the path of Allah for its defence).

Moreover, marriage in Islam should be understood in terms of maqāsid al-Shari‘ah (the objectives of Shari‘ah). One of the fundamental objectives of Islamic law is the protection of progeny. It is promoted through the maintenance of healthy family life and the institution of marriage, while penalties are provided for those who would corrupt it and destroy its values. This is why pre-marital sexual relations are punished. This along with other objectives (that is the preservation of religion, life, intellect, and wealth), are the five purposes that are designated as daruriyat (necessities) and are the primary purposes of Islamic law.32 Thus in God’s scheme marriage occupies a sacred place for continuation of humanity. It should not be equated with just ‘a civil contract’. It is very unfortunate that some of the Muslim jurists, while explaining nikāh, seem to be putting much emphasis on ‘legalizing sex and fulfillment of the natural lust and urge’ and do not notice other purposes of it: such as the protection of progeny; continuation of human race; mercy and solace for each other; it being an act of devotion (‘ibadah). All this signifies that a Muslim marriage is something far more than a ‘civil contract’.

According to Syed Ameer Ali, marriage is “for the

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31 Bayhaqi, al-Sunan al-Kubra, Dar al-fikr.
33 Tahir Mahmood describes it as, "A solemn pact between a man and a woman soliciting each other's life-companionship which in law takes the form of a contract ('aqd')."34 Pearl and Menski have given a similar definition when they say that, "A Muslim marriage is in essence a solemn contract between a man and a woman".35 They dismiss the idea that it is a civil contract. Nasir considers it as a civil contract, but of a unique nature. He argues that since it is regulated by Sharī'ah it has a character of sanctity.36 Abdur Rahim believes that "Muslim jurists appear to regard the institution of marriage as partaking both of the nature of 'ibādat or devotional acts and, mu'amalat or dealings with people. It is founded on contract for which consent of both parties is essential".37 The definition of Tahir Mahmood seems to be the best of all the above.

Various definitions of marriage given in many Arab statutes are provided by Nasir.38 The Syrian, Iraqi and Jordanian Codes give an almost identical definition: "Marriage is a contract between a man and a woman who is lawfully eligible to be his wife with the objective of joint life and procreation."39

Judicial Interpretation of the Concept of Marriage

Mulla's definition of marriage in Islam became a holy and unchallenged judicial dictum. However, his definition is flawed. From the above it is crystal clear, that the idea of ‘marriage as a civil contract’, has not been understood in its true context and that ‘the procreation and legalizing of children’ cannot be a definition of marriage.40 A Muslim marriage continues beyond the period of procreation of children and no one can question its validity. Examples of some old and new cases, in which judges have relied on Mulla either directly or indirectly, are given below.

In Muhammad Amin v. Amina Bibi, Addison J. described marriage as a ‘civil contract’.41 In Rafaqat Masih v. Maqsood Bibi, Mrs. Fakhar-un-Nisa Khokhar J., while trying to compare marriage in Islam, with marriage in Christianity stated that "It is a settled proposition of law that marriage under the Christian Marriage Act 1872 is a sacrament unlike Muslim marriages which are purely civil contracts between the spouses".42

The same judge, in Muhammad Aslam v. Mst. Suraya has once again described marriage in Islamic law as a
'civil contract'. In Mohyuddin v. Mst. Firdous Jan, Mehboob Ali Khan and Mrs Khalida Rashid J.J., described (obiter) that a marriage according to Muslim law is a 'civil contract' ... In Abdul Sattar v. Mst. Kalsoom, the Karachi High Court mentioned that under Islamic law, marriage is a 'civil contract'.

Justice Mahmood's dictum that 'marriage is a civil contract' has been (wrongly) used as an argument to support the view that a Muslim girl is free to marry anyone she likes, and that the consent of her guardian is not necessary for the validity of her nikah. But to say that since 'marriage is a civil contract', therefore, a Muslim girl is free to contract her own marriage is a sign of immaturity. In Abdul Waheed v. Asma Jehangir the "no consent required" camp argued that since marriage in Islam is a civil contract, which can be freely entered into by a single, adult Muslim woman, Saima's marriage with her husband was valid and her father's consent was not necessary (to validate it). Justice Ihsan-ul-Haq, in his minority judgment, poured a scornful attack on this idea, stating that the British colonial rulers (rather than the Anglo-Indian judges) had misunderstood the whole idea of Muslim marriages. He said:

The marriage was treated as sale purchase with dower its consideration. The background seems to be that in the sub-continent in early days of British Rule there was no Codified Law dealing with the Muslim marriages. The result was that suits for restitution of conjugal rights were treated as suits for specific performance and the theory of civil contract developed; as against that Hindu marriages were governed by their personal law and there was no such rule. The decisions were given in utter disregard of the position of Nikah in Islam and the purpose of dower was completely misunderstood.

Justice Ihsan has not given enough thought to what was meant by the phrase and what its historical background was. His superfluous comments in his speech, brought him a bit of condemnation from the Supreme Court when it decided the same case on appeal. He could have criticized the concept, (of marriage as a civil contract) but on possibly other grounds. Or he could have brushed this argument, aside this argument, as being irrelevant. There is no doubt that a Muslim girl has the legal right to marry a man of her own choice with or without the consent of her guardian. She can resort to the second option if she thinks that her parents are not sincere to her, and this is a settled law according to Imam Abu Hanifah, which he preached long before suit of Abdul Kadir v. Salima was decided and not because he considered marriage as a 'purely civil contract'. The opinion of Abu Hanifah does not need the support of Justice Mahmood or D.F. Mulla. The argument is totally out of context and irrelevant.

There are some exceptions in which judges in the South Asian Sub-continent did not follow Mulla blindly, and tried to state the true position of marriage in Islam. In Anis Begam v. Mohammad Istefa, Sir Shah Sulaiman C.J. observed that, "Marriage [in Islam] is not regarded as a mere civil contract, but a religious sacrament". Justice Murtaza Fazal Ali of the Indian Supreme Court has also described marriage as a 'sacrosanct contract'. While still in India, the Madhya Pradesh High Court has emphasized the religious sanctity of marriage among the Muslims of India. Justice Khurshid Khan of the Supreme Court of Azad Jammu and Kashmir has described marriage in Islamic law, as a 'sacrosanct contract'. His observation is worth quoting in full. He opines at page 82 that, "It is important to note that marriage under Muhammadan Law is a sacrosanct contract and not purely a religious ceremony". In Shahida Parveen v. Samiullah Malik, Justice Mian Saqib Nisar dispelled the idea that marriage is only a civil contract. The brief facts of the case are that the wife filed a suit for the dissolution of marriage on the basis of khula' before the consummation of marriage. In her written plaint she alleged that her husband was a professional dancer. The respondent claimed rupees 2.4 million as damages for defamation, and rupees 0.8 million as special damages for his expenses on the marriage. The trial court, awarded him rupees 0.2 million as special damages. The High Court, awarded damages for defamation but refused to award anything as special damages. Speaking for the Division Bench, Justice Mian Saqib Nisar, ruled at page 1222, that:

Although the marriage bond between the two Muslims is in the nature of a civil contract, but it shall be a grave misconception to equate it with the ordinary contracts of sale purchase, the property transactions
or for those to provide personal services etc., entered into between the parties under the Contract Laws. Rather such a contract has its genesis in the social norms of the Muslim society and is structured upon the commands of Allah Almighty and the Sunnah of the Holy Prophet (ﷺ). This contract is blended with the human emotions and the sentiments, such as the love, affection, likes, dislikes, tolerance, aversions, and the equation/compatibility of two personalities and the minds.

Justice Nisar disagreed to attribute the idea of a breach of contract when a marriage is over because one of the parties did not submit him/herself to the other. He distinguished between a marriage and an ordinary contract under the Contract Act, 1872 and said:

Therefore, as there is no concept of any breach of marriage contract, obviously the provisions of Sections 73 and 74 of the Contract Act, 1872, or the General Laws in this behalf, shall not be attracted; with further consequences that any expenses incurred by either party in connection with the marriage ceremonies, or the gifts exchanged by the bride and the bridegroom or given to them by the relatives of the either side including the Salamis, cannot be recovered through the process of law.*

The Court, however, exempted dower, dowry etc., from the above and observed that these can be recovered through the process of law.64 However, there are many other examples, in which this wrong notion of Muslim Family law, has become the so-called ‘settled proposition of law’ and is considered not only as a precedent but possibly a ‘sacred one’ too. Mulla’s definition should not be given persuasive weight let alone be considered binding.

Islamic Law or Muhammadan Law?

Another distorted, yet unnoticed, terminology coined by the Anglo-Indian judges is the name given to Islamic law. The word ‘Muhammadan’ was first used for Muslims by the British East India Company (1600-1857). The Regulations of 1793 modified the law applicable to Muslims and Hindus. Previously, the Qur’an and the Shaster were applicable to Muslims, and Hindus, respectively. In 1793, the laws applicable to both the communities were ‘Mohammedan Law’ for the Muslims and ‘Hindu Law’ for the Hindus. The term ‘Islamic law’, had thus become ‘Mohammedan Law’. The Company’s Courts administered these laws from the very beginning with the help of muttis, maulawis and pundits as the English judges were not conversant with the Islamic law or Hindu law. The Company’s justice system was pathetic, and could be termed as ‘traders’ justice’, as the officials were basically traders and never trained in law. Sir William Macnaughten used the same term when he published his Dissertations on Mohammedan Law, in 1825. As mentioned above, Neil B.E. Baillie, named his translation of selected chapters of Fatawa-i ‘Almagiri and Shara’i Islam as A Digest of Moohumudan Law published in 1865.65 When Mulla published his book in 1906 he named it as Principles of Mahomedan Law. This strange term and its variants, Mahomedan (the Judicial Committee of the Privy Council and most Indian High Courts), Mahommedan (Ameer Ali), Anglo-Muhammadan (Wilson), Mohammedan (Nicholson), Muslim (Tyabji, Mahmood and Rashid) and Mussalman (various Indian Acts), are all incorrect. Asaf Fyzee (another Parsi prolific author) used the term ‘Muhammadan Law’ when he published his ‘Outlines of Muhammadan Law’ and its companion volume, ‘Cases in the Muhammadan Law of India and Pakistan’ in 1964 and 1965 respectively. Although he does not like this term, he defended its use nevertheless. He stated:

[T] he religion taught by the Prophet (ﷺ) was Islam, not Muhammadanism; and the people who believe in it are Muslims, not Muhammadans ... By Muhammadan law, therefore, is meant that portion of the Islamic Civil Law which is applied in India to Muslims as a personal law.66

Hidayatullah C.J., who edited the last four editions of Mulla’s book, agrees that the name of the book Mahomeda Law is not correct. He states:

The name of the book “Mahomeda Law” has been retained but I may say that this expression was coined by the English. Islamic law was not
Mahomed's law. The expressions 'Mahomedan' and 'Mahomedanism' are not correct and, in a sense, are even objectionable. The expressions are Islamic Law and Muslim Law. The Pakistan courts have shown preference for these two expressions and writers on the subject prefer one or the other of the two latter expressions.\textsuperscript{57}

Tahir Mahmood, argues that "the term, howsoever it may be spelt, is now considered a misnomer and stands abandoned, where this expression was born, do not use it any more".\textsuperscript{58} It is high time to get the use of this ugly term corrected in Pakistan too.

Notes and References

2. Calcutta, 1825.
5. Ibid., p. 223.
6. Ibid.
7. Asaf A. A. Fyze, Cases in the Muhammadan Law of India, Pakistan and Bangladesh, ed., Tahir Mahmood, Oxford University Press, New Delhi, 2005, pp. 87–104. It should be noted that when the first edition of the book was published in 1965 there was no Bangladesh which was included in the title by Professor Tahir Mahmood in 2005 when he revised it. See ibid., pp. viii-ix.
8. It was a full bench decision.
9. At page 610.
10. At page 291.
11. See Fyze, Cases, p. 91.
12. See supra, p. 4.
13. See the original text in his Cases, p. 92.
14. At page 223.
16. Ibid., p. v.
17. Tahir Mahmood, Personal Laws in Crisis, Metropolitan Book Co., Delhi, 1984, p. 54.
18. In S.K. Nasirul Hawe v. Zohora Khatoon Bibi, AIR Cal. 248 the High Court of Calcutta gave its interpretation to section 362 of Mulla's book. This is very strange because Mulla's book is not a legislative enactment.
19. For example see Alamgir Sirajuddin, Sharia Law and Society, Asiatic Society of Bangladesh, 1999, reprinted Oxford University, Press, Karachi, 2001, p. 195. Tahir Mahmood argues that since for the British lawyers and judges trained in common law there shall be an "object" for every "contract", they invented one for the Islamic "contract" of marriage – procreation and legalizing of children. This seems to be an overstatement as discussed above Mulla has taken it from the Salima case in which Justice Mahmood has referred to Bailie. But only one sentence is taken while the whole is not. Since Mulla had codified judicial decisions of Indian courts, what he wrote, was practised since 1770s – from the time of the Supreme Courts in the three Presidency Towns of Bombay, Calcutta and Madras.
27. See Daryabadi, Tafsir, v. 1, p. 119.
28. Qur'ān IV:24, 25 use the words 'Muhāṣṣan' meaning fortified; entrenched or immune. 'muḥṣasāt' meaning women of unblemished reputation; chaste; well-protected; sheltered and uhsina meaning to make a woman inaccessible; to be chaste, pure woman; to remain chaste; be of unblemished reputation. See Hans Wehr, A Dictionary of Modern Written Arabic, J. Milton Cowan, ed., Otto Harrassowitz, Wiesbaden, 1974, reprinted librairie du Liban, 1980, p. 183.
40. Tahir Mahmud argues that marriage in Islam is contractual in the formative stage. Once it is solemnized, it becomes a relationship of sacred partnership between the husband and the wife. This is what the Qur'an describes as a 'sacred covenant' and a 'protective fortress'. See his *Personal Laws*, p. 65.
41. AIR 1931, Lahore.
42. 2003 YLR 400.
44. 1996 CLC 272.
45. PLD 2006 Karachi 272.
47. At page 329.
53. PLJ 2006 Lahore 1215.
54. At page 1222.
55. See f.n. 1 above.
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