

### Open Access

**Al-Irfan**(Research Journal of Islamic Studies)

**Published by:** Faculty of Islamic Studies & Shariah **Minhaj University Lahore** 

ISSN: 2518-9794 (Print), 2788-4066 (Online)

Volume 08, Issue 16, July-December 2023,

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#### Selection Of Spouse With Free And Full consent, A Comparison Between Islam And UDHR Article 16

(A Comparative Study)

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#### **ABSTRACT**

This research aims to explore and compare the principles of spouse selection in Islam and the Universal Declaration of Human Rights (UDHR) article 16, shedding light on their significance in marriage. While both Islam and the UDHR recognize the importance of marriage for individuals and families, variations in standards regarding the selection of spouses exist

The study delves into UDHR article 16, elucidating its stance on spouse selection, and contrasts it's with Islamic perspectives. Islam grants individuals the freedom to choose their life partners with free and full consent, guided by parental advice and wisdom. In contrast, the UDHR endorses the autonomy of individuals, allowing them to choose spouses without limitation of based on race, color, religion or nationality.

The article discuss the clash arising from the differences in criteria within the UDHR, particularly concerning spouse selection. With the significant Muslim population globally, the United Nations Human Rights departments acknowledges the practice of Islam as the second-largest religion, emphasizing the need to consider diverse religious beliefs within the framework of the International Human Rights charter.

This research assist Muslim communities in recognizing, reassessing, and proposing modification to specific aspects of the UDHR, particularly those related to spouse selection criteria in Marriage. It emphasizes the importance of UN Human Rights Department reconsidering theses points within the context of different religions, regional beliefs and cultural values.

#### Keywords:

Selection of Spouse, Selection of Spouse with free and full consent, Islamic Point of view about Selection of Spouse, United Nation Universal Declaration of Human Right (UDHR) specific Article 16 opinion about Selection of Spouse, comparison between Islamic and UDHR understanding about Selection of Spouse.

#### **Introduction:**

The article topic "Selection of Spouse with Free and Full Consent," undertaking a comparative analysis between the principles of Islam and the United Nations Human Rights Charter, specifically focusing on UDHR Article 16. This comparative study aims to unravel the shared values and divergent implementations regarding the essential human right to choose a life partner freely.

In the contemporary era, where diverse cultural and religious perspectives coexist, the selection of a spouse holds immense significance. The article delves into the foundational beliefs and practices surrounding this aspect in Islam, emphasizing the guidance provided by Islamic law in conjunction with familial input (1)

Simultaneously, the study navigates the principles articulated in UDHR Article 16, which champions the autonomy of individuals in choosing their life partners, without discrimination based on religious beliefs, race, color, or nationality. This comparative exploration sheds light on the clash and convergence of these perspectives, creating a space for reflection and understanding between religious doctrines and international human rights.

As the world grapples with cultural pluralism and the quest for universal human rights, this article serves as a valuable resource for scholars, researchers, and policymakers seeking insights into the delicate balance between individual freedoms and cultural sensitivities in matters of marriage and human relationships.

## Overview about Mankind Creation & Its Purpose of Life According to Islamic Law

In the present era, the global Muslim population has surged to approximately 1.8 Billion individuals, constituting a substantial demographic. These individuals share a common belief in the oneness of Allah, recognize Hazrat Muhammad (Peace be Upon Him) as the final prophet and hold the Holy Quran as the authentic scripture. Islam as a faith, espouses a positive attitude towards the creation of humanity positively (2)

Islam maintains that the creating of Human beings, initiated with Hazrat Adam (Peace be upon him) and Hazrat Hawwa (Blessing on her), represents a unique and profound experience within the entire universe, guided by the will of Almighty Allah. The birth of a human beings is viewed as a perfect and pure occurrence, considered a divine blessing rather than a source of displeasure. It signifies an awareness of the divine will, urging mankind to align with its origin. According to Islamic philosophy, human birth is imbued with specific purpose beyond mere transient existence. In essence, it

(1) World Conference on Human Rights, The Vienna Declaration, June 1993, UNO, NY, 1995

<sup>(2)</sup> Dr. Muhammad Tahir-Ul-Qadri "Islamic concept of Human Nature, (Lahore Publication: Minhaj-Ul-Quran, May 1999), 1/6

emphasizes a meaningful and practical relationship between humanity and Almighty Allah, both in this world and the world to come.

In Islamic philosophy "Alfitrah" الخلقت (creation (1) الفطرت (mean "creation (1) الفطرت:" but this creation is not about genetic point of view which reduce its human parameters. Further a well know Muslim scholars, Imam Raghib Asfahani explain that which mentioned in Past books, "Nature is creation and origination of things vested with apparent capacity to perform any act (2)".

The issue of human rights has been a prominent and contentious topic in recent times, views from both Islamic and western perspectives. Typically, discussions on human rights tend to focus on the rights used in daily routines rather than delving into the intricate details applicable to individuals and heads of family. The concept of rights has evolved over time for all creations, including human beings, from the beginning of humankind to modern era. When comparing Islam with other religions, Islam stands out as more comprehensive, presenting itself not merely as religion but as complete code of conduct for both the present and the future, Islam guides its followers to adhere to its principles entirely, emphasizing education as a starting point. This education encompasses knowledge about Almighty Allah, self-awareness and understanding human behavior within society (3).

Islam, meaning peace, signifies that embracing Islam leads to entering a state of peace and working towards the peace of others in the broader way. Islam played a transformative role, shifting the world from ignorance to the light of peace and harmony. It altered the mindset of the once ignorant and harsh people of Makkah into peaceful and loving community. Islam Introduce the concept of respecting women in various roles, as mother, sister, daughter, wife, mother-in-law, aunt etc. Islam brought a remarkable transformation in Arab society, moving from burying alive infant daughter to point where the Holy Prophet Hazrat Muhammad (Peace be upon him) expressed deep love for his daughter Hazrat Fatima (Allah Bless her), considering her as cherished part of himself. The Prophet attitude towards his mother further demonstrated a profound shift in societal norms, as he prioritized responding to his mother's call even while engaged in prayer. This marked a complete and positive transformation in Arab society.

Similarly, the final Holy book of Almighty Allah, the Quran Majeed, elucidates the rights applicable to all of creating, a guide that humans encounter throughout their lives. In the last address of the Holy Prophet in Makkah, at the site of Arafat, a comprehensive charter of Human Rights was outlined. One notable point emphasized by the Prophet to

<sup>(1)</sup> Dr. Muhammad Tahir-Ul-Qadri, Islamic concept of Human Nature, 1/382

<sup>(2)</sup> Dr. Muhammad Tahir-Ul-Qadri, Islamic concept of Human Nature, 1/7

<sup>(3 )</sup> Shaheen Sardar Ali , "Gender and Human Rights in Islam and International Law" ( Netherland, Kluwer Law International, Jan 2000)Page 170, 1/1

his beloved companions was the imperative to be vigilant and conscientious regarding the rights of woman and salves.

#### **Selection of Spouses & Islamic law**

In Islam, both men and women are granted full authority to choose their life partners. This decision transcends the temporal confines of a single day, week, month, year, or even a decade; rather, it pertains to the entirety of one's life. This choice encompasses not only the individuals involved but establishes connection between two families (1).

Considering this perspective, Islam offers a thoughtful choice to both men and women in selecting their life partners, aiming to prevent potential conflicts in the future. Simultaneously, Islam provides guidance regarding full age, physical maturity, and mental maturity for entering into marital life. On the other hand, Islam also provides guidelines for the selection of spouses, taking into account four crucial factors: beauty, family status, wealth, and, most importantly, the practice of Islam by the individuals involved or way (2) of involvement.

The practical example set by Prophet Hazrat Muhammad (Peace be upon him) provides clear guidelines, how to give individuals, opportunities to exercise their strong will and make choices for their life partners. In this context, once a person has made the final decision about marriage and wishes to communicate this intention to someone, they can do so with a specific purpose in mind. Islam encourages its followers not to approach this matter blindly, as it can lead to various issues in their future lives. The idea is expressed through the wisdom that "Every single child that comes into this world follows the path set by the Creator."

Therefore, every child is born with a pure nature, implying that each baby has an inherent understanding of Almighty Allah's guidance. This concept suggests that every baby is supposed to think and act honestly, regardless of whether they are born into a believer's or non-believer's home. The crucial point to consider is the innate configuration bestowed by the Creator upon all newborn children, guiding them onto the right path. This concept of nature is beyond human influence; it directly belongs to Almighty Allah and is instilled in newborns through a divine force.

Hazrat Abu Hurairah (Blessing be upon him) narrated a saying of Holy Prophet Hazrat Muhammad (Peace be upon him), shedding light on the divine power of nature that accompanies every newborn baby. This narration serves as a means to clarify our minds and hearts about the inherent, divine nature present in every new life.

(2)Molana Muhammad Ali Janbaz "Ahkam-e-Nikah" (Lahore, Maktaba Qadusia Lahore, 2005),1/34

<sup>(1)</sup> Layall-Religious system of the world - P. 114

The Holy Prophet Hazrat Muhammad (Peace be upon him) is a guider of universe in different way according to their mind and heart capacity to reach on the message of Almighty Allah.

This means that, as narrated by Holy Prophet Hazrat Muhammad (Peace be upon him), he stated: "No child is born into this world except following the true nature. Then, it is up to his parents to make him a Jew, a Christian, or a Magian. Just as a beast is born with all its limbs intact, do you see one born maimed and mutilated."

The above mentioned quote of Holy Prophet Hazrat Muhammad (Peace be upon him) emphasizes that the nature of mankind is created on the true path, and no one has the authority to alter it. Islam introduces the concept of equality in mankind, further elaborated with the sub-idea of the positive creation of human beings.

#### Selection of Spouses & Islamic law

In( Islam, both men and women have full authority to choose their life partners because it is not merely a matter of one day, one week, one month, one year, ten years, etc. Rather, it is a matter of a whole lifetime, not only for the individuals involved but also for the solid relationship between two families (2).

Considering this perspective, Islam provides explicit and comprehensive approval for dual spouses to avoid any potential conflicts. At the same time, Islam also elucidates the importance of full age, physical maturity, and mental maturity for entering into a lifelong commitment. On the other hand, Islam offers guidelines for the selection of spouses, taking into account crucial factors such as beauty, family status, and wealth. However, the most important criterion remains the practical adherence to Islam by the follower or following Islam in practical way (3).

The actions of Prophet Hazrat Muhammad (Peace be upon him) also provide a clear guideline on how to allow both males and females, full opportunities to choose their life companions. In this context, when an individual finalizes their decision about marriage and intends to convey a marriage proposal to someone, they should already have this inner decision in mind. Now, he or she can observe that particular person in a specific environment because they want to make the final decision before the marriage or Nikah

(1) Bukhari, Sahih, Oppression, "Robbing away somebody's property publicly" 43/654

<sup>(2)</sup> Khusro Iqbal ,Critical Study of Islamic and Western Perceptions with Reference to Women Rights,Karachi University 2015,Page 54-64 http://prr.hec.gov.pk/jspui/handle/123456789/9850

<sup>(3)</sup> Molana Muhammad Ali Janbaz "Ahkam-e-Nikah" (Lahore, Maktaba Qadusia Lahore, 2005), 1/34

takes place. Islam discourages its followers from approaching this matter blindly, as such an approach may lead to numerous problems in their future lives.

#### **Pre- Marriage Meeting With Spouse**

Meeting with someone with specific purpose, this practice is necessary because someone enter in your heart through your eyes than later one it's become part of your soul as well. This explain in one of Hadiths which is mentioned.

The simple detail of above wording of Prophet that approval of women is required to go ahead to female marriage. One of another Hadith is also an example of this case whether boy or girl can look spouse before finalizing their marriage or Nikah

The above two hadiths lead us to proper guideline how important is that spouse can have short meeting to observe each other before finalizing their marriage or Nikah with specific person, these short meeting between spouse varies according to different culture but make sure nothing happened across shira law (2). In the Tafseer of this hadith it's also mentioned that parents of he or she also need to understand if he or she will to observe upcoming spouse with great and serious attention, Parents need to follow order of Islam which come through Sunnah as well.

One of the above-mentioned Hadiths guide us that if someone finalized in his mind to do Nikah with that particular men or women than with this attention he or she can visit person according to Islamic law because this law come from the actions of Prophet which surly benefits for whole mankind. The meeting or observing point should be proper and not against any Islamic law, this show Islam attention for his follower to protect their upcoming issues.

This is how Islam provide privilege to spouse to think, act and finalize their decision with full free will with the help of Almighty Allah because Almighty only know every open and close ideas of every human being.

#### Women Consent for Their Marriage & Islam:

The interpretation of above wording of Prophet that willingness of both widow and unmarried girl is essential to proceed her marriage, actions guide his follower how to deal

<sup>(1)</sup> Muslim ,Sahih ,Book of Marriage, It is recommended for the one who wants to marry a woman to look at her face and hands before proposing marriage to her, 8/3315

<sup>(2)</sup> Molana Muhammad Ali Janbaz "Ahkam-e-Nikah", 1/38

<sup>(3)</sup> Bukhari, Sahih, Book of Coercion "Marriage under coercion is invalid" 85/79

with women consent about their marriage and provide rights to women about their choices regarding marriage or Nikah. This is the way how Islam deal with women with full authority and respect. One of another Hadiths is also strengthening this view that Islam give complete chance to woman as well to choose their life partner to live peaceful life. The words of Hadiths are mentioned below Molana Muhammad Ali Janbaz "Ahkam-e-Nikah" 1/38

The translation of above Hadiths in English is like Narrated Abu Huraira: The Prophet ( said, "A mature woman should not be given in marriage except after refer to her; and a un-married girl should not be given in marriage till her permission." The people asked, how can we know her approval?" He said, "Her quietness (directs her consent). With strong reference of this Hadiths of Sahih al -Bukhari provide full strength women to use their power and choose their spouse according to their mentality to avoid confusion in upcoming life.

#### **UDHR ARTICLE 16 DETAIL ACCORDING TO UN**

#### **Article 16:**

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Normally most of the articles of UDHR started with words of everyone, All, No one etc, without difference of gender, male or female but article 16 started with "Men and Women" mean that this article is describing a point which related to both gender about marriage right (2)

Earlier it seems that this article considers to limiting heterosexual marriage but now it considers that this marriage act is for both type of marriage whether a man marry with woman or Man marry with Man or Woman marry with Woman, it seems. In recent time UN Human rights departments urging different states to consider same sex marriage as legal, means that State need to protect all types of marriages whether it's between, man

<sup>(1)</sup> Bukhari, Sahih, Book of Marriage "The father or the guardian cannot give a virgin or matron in marriage without her consent" 62/67

<sup>(2)</sup> D. Scott, Human Rights, Philadelphia: Open University Press Buckingham, p. 2. (1993).

and woman, Man and Man or between Girl and Girl. After this most of the countries started modification marriage act according to UN standard (1).

Article 16 is about marriage right of Human being. It is stated that every adult both man or woman have the right to get marriage and start new family if they want. Same manner Man and woman have same right of divorce. One more point is added in this regard that it is duty of state to protect family as well.

In addition, the people who not supporting marriage or marriage life will impact their civilized status in their society so after this, south African court reject the definition of marriage that it is civilized contract between only man and woman, means that this contract may be between same sex as well.

It is mentioned in other report from Pakistan that we human should have a legal forum that have both international and domestic impact (2).

This article was also the response of Nazi Law which say Inter-Racial marriage is prohibited so this article allows every man and woman of full age to get marriage and complete their family without any limitation of race, Nationality or religion. This article also allows both man and woman equal right before, after even closing of marriage contract (3).

This article is about the marriage agreement between two personalities which normally mean man and women but now also consider person to person, woman to woman and many other options like transgender girl to transgender boy etc and now it come addition with marriage with himself or herself.

This marriage is between two different person or personalities mean mainly agreement between two people like man and woman and person to person, woman to woman and many other options like transgender girl to transgender boy etc mean these two people look after each other and society will help them to live peaceful and calm life to avoid any conflict (4).

In second part of the article mentioned that ""marriage shall be entered into only with the free and full consent of the intending spouses." Here it includes the word "Full age" of first part of article because free and full consent also depend on full age as well because these aspects are interlinked with each other but unluckily under age marriage is big issue which world is facing, in recent time around one Million girls married under age of eighteen every month.

Related to above discussion one supportive issue is mentioned that "Forced Marriage", means that in different part of the world girls married with man with high

<sup>(1)</sup> http://www.archives.gov/exhibits/charters/declaration\_tran script.html, Page (5-33)

<sup>(2)</sup> M.G.Chitkara. Human Rights in Pakistan, New Delhi: APH Publishing cooperation, (1997).

<sup>(3)</sup> H.W.Folwer, Oxford Dictionary, Oxford University Press, 1990

<sup>(4)</sup> OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, Universal Declaration of Human Rights at

difference of age with paying bride price as mentioned in description south Sudan where a father of sixteen year old girl put auction ,sixteen year old girl available for marriage using social media plate form of Facebook and get highest price which upraise the other people to put bride on social media for marriage etc, although Facebook face lot of pressure about this auction (1).

A recent decision from International criminal court against specific army that a forced marriage is crime which is positive sign in this So, it's necessary to achieve acceptable result for human being that injustice or war attack against any poor or developing countries may cause increase crime against humanity.

According to report of 2018 mentioned by committee who protecting woman rights in Kyrgyz Republic that government is failed to implement those laws who protect woman rights regarding marriage to sop force marriage ,sexual violence which damage woman right according to this article that every woman should have her free and full consent to get marriage .This also mentioned in the report that government of Kyrgyz Republic not show satisfaction to fulfill their domestic norm to misplaced bride" means that bride kidnapping is going to be their continuous domestic tradition and government is not in this position to change it forcefully (2).

One of another topics under article 16 is that having family right mean that having family is the right of every man and woman who got married. Its mean that make family is basic right of individual and maintains its family which mean that after getting married it's the conscious decision of both man and woman to having family, further need to add the right to plan and control of birth and reproduction of upcoming child even now add a right" to in-vitro fertilization which mean that test tube baby where man and woman sperm mutually added in laboratory and put in woman ovary to proceed to child birth .

In 2012 Navi Pillay ex UN Human right chief discussed that sexual violence and rejection of contraception are the normal issue which used against woman which damaging women personalities internally and externally badly, Further UN Human right chief focus on that it's needs to be add in the basic rights of the woman that they must have enough power to protect their bodies and it will be the first step to gain equality between men and women because without providing these basic rights to women UN cannot achiever target to provide equal right to women even in developed countries ,further she explained that even in personal issue such as it's should be the right of the women when ,how and with whom she want sex, in next step she also mentioned that it should be the right of the women when ,how and with home she select to have family meaning having children's come under women domain. Only Women have the power to when, how and whom she wants sex relationship and having babies.

(2) 30 Articles on 30 Articles - Article 16, (New York, UN,25 November 2018) Press Release

<sup>(1)</sup> https://www.webtrees.net/index.php/en, retrived on: 15-03-2016

In short, it's the right of every men and women of adult age to have marriage with opposite or equal sex or sex of her or him choice without considering race, any nation, any religion to complete their families with their own willing with complete authority of women to how, when and whom they want sex relation and whom they want to having babies for growing next generation (1).

In addition, both man and woman have equal right to having before marriage, having marriage and even they have equal right to close this chapter of marriage.

Further both men and women have the same right to choose their life partner with free and full choice, mean that it's right of a man to choose his life partner with his full free choice without any influence of family or domestic norms. In the same way woman have the same right to choose her life partner with full of her choice without considering any influence.

Family is the basic unit of the family to it's the duty of society and state to support family and put effort to take necessary action to protect family and its member.

# ISLAMIC CONCEPT REGARDING SELECTION OF SPOUSE & UDHR ARTICLE 16 STATEMENT

In Islam both men and women have full authority to choose their life partner because it's not a matter of one day; it's actually a matter of whole life not only for only man and woman but a strong relationship between two families as well.

Islam provide free and full consent of Intending Spouses to avoid any upcoming conflict, same time Islam also explain about full age, physical maturity and mental maturity for life. On the other side Islam also provide guideline for selection of spouses considering important four points like beauty, family status, wealth but most important is Islam follower in practical way (2).

The Sunnah of Holy Prophet Hazrat Muhammad (Peace be upon him) also provide clear guideline how to give full chances to both men and women to select their life partner. In this context when he or she finalized decision about marriage and want to send message to someone with purpose of marriage, having this inner decision in his or her mind now she or he can see that particular person with specific atmosphere because she or he want to take final decision before marriage or Nikah. Islam don't want his follower to play blindly in this regard which may cause lot of problems in his or her upcoming life

UDHR is cleared about selection of Spouse, now even UDHR appreciating same sex, Tran's gender marriage as well. UDHR provide equal right to both man and woman or wife and Husband to choose their life partner with their free and full consent. It's not

<sup>(1)</sup> Levine, Andrew, Human Rights & Freedom, The Philosophy of Human Rights, ed S. Rosenbaum, Aldwych Press, London, p. 142. Retrived on: 15-03-2016

<sup>(2)</sup> Cranston M. Human Rights Today, London, 1964, P.09

allowed anyone to interfere their free and full consent right to choose their life partner with any discrimination of race, color, religion, nationality, gender etc.

According to mentioned points below stated that every state under United Nation take necessary action with complete preparation that there is no difference between men and women regarding opposite sex specially about marriage and family "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women (1).

Women should have free and full authority to select spouse with her will, the same right freely to choose a spouse and to enter into marriage only with their free and full consent.

#### **Conclusion:**

In conclusion, the article highlights the fundamental similarities in the concept of selecting a spouse with free and full consent between Islamic community and the Universal Declaration of Human Rights. The divergence lies in the implementation of this concept, presenting a unique opportunity for current and future researcher to bridge the gap between religious perspectives and International human rights.

The varying styles of implementation of the same concept stem from differences in religious faith, regional integrity, collective values and United Nation Human Rights standards. The Islamic perspective on the selection of a spouse support the idea of free and full consent for both the gender ,emphasizing collaboration with parents and elders.

Conversely, UDHR Article 16 encourage individuals to choose life partners with complete autonomy ,irrespective of religious laws ,race ,color or nationality ,allowing for marriages with same genders and even transgender.

This clash of attitudes posed a test for both Islam and the UN Human Rights Division to reconcile and take necessary actions to protect all religious and cultural sensitivities while upholding the principles of universal human rights.

A possible resolution could involve mutual recognition and respect for each other perspectives, fostering cooperation to safeguard religious views, ethical considerations and regional norms. This collaborative effort can contribute to the promotion of peace and harmony through international human rights.

#### **Suggestion:**

Suggestions for consideration include a reevaluation of specific aspects of the UDHR, especially concerning spouse selection criteria. Recognizing the diverse cultural and religious values worldwide, the United Nations Human Rights Department may benefit from revisiting and refining certain elements of Article 16.

<sup>(1)</sup> Hans Kelsen, The Law of United Nations, London, 1950, P.29

Additionally fostering dialogue between Islamic scholars and human rights advocates could contribute to more comprehensive and inclusive understanding of spouse selection rights.

Ultimately, the aim to promote mutual respect, understanding and cooperation among different cultural and religious communities, acknowledging that various perspectives on human rights can coexist within the global framework.

