

EXCHANGE MARRIAGES IN PAKISTAN: SOCIAL AND ISLAMIC VIEWPOINTS

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Abstract

The paper aims at developing an understanding of prevalent customary form of marriages in many parts of the world including Muslim societies such as Pakistan. This form of marital union is prevalent in South Asian countries and underdeveloped parts of the world with certain notions attached. These are discussed in the light of various sociological factors and Islamic context. It is being observed that the practice is mostly found in the countries where women are underprivileged and provisions of law do not support females in general; lack of implementation is another issue, particularly in case of marital discord. Consent of the partners is often not ensured and decisions are usually in the hands of elders of the family. Victimization, estrangement, insecurity and suffering of children are some of the negative implications of these marriages. This social practice contradicts with the spirit of Islam where consent of the partners is a mandatory aspect. Islamic teachings discourage such marital unions and guide that there should not be any compulsion imposed on the couple to be married; will of the partners is an essential condition. Dowry and dower should not be conditional factor to be associated with sustenance and dissolution of marriage. Therefore, it is concluded that people are more concerned about the societal factors rather than religious guidelines regarding this phenomenon.

Keyword: Exchange marriages, Social context, Islamic explanation, Cultural practices

INTRODUCTION

Marriage has been a fundamental social institution of any society which provides the basis of family formation and stability of society. Every society has certain structural aspects, traditional norms, religious and legal provisions through which institution of marriage is defined and protected. In early history of mankind, there had been three prominent forms of mate-selection: first one used was marriage by capture, second one as marriage by fight and last one is marriage by exchange.¹ The exchange marriages have been prevalent in many parts of the World including Asia, Africa, Aboriginal Australia and Latin America.² Bride exchange is another term which means the same, whereas in local parts of rural Punjab in Pakistan it is termed as “watta-satta”, literal meaning of this term is “give-take”.³ There are also other terms which represent this form of marriage such as ‘*Shighār*’ and ‘barter-marriage’. Exchange marriages are usually practiced where women are considered lesser species and ill-treated, particularly in most of the backward areas where such other egregious practices are common and unobjectionable.⁴ In many traditional societies, formal legal rights of women are relatively weak and divorce is often stigmatized, therefore power shifts in favour of men; this further has implications for the type of marriage one contracts. In the following section, various societal factors pertinent to exchange marriages will be discussed. Later part of the paper will shed light on Islamic perspective with reference to these types of marital unions.

SOCIOLOGICAL EXPLANATION OF EXCHANGE MARRIAGES

Marriage arrangement of a pair (daughter and son) with another similar pair comprising of both the genders has been prevalent for centuries around the world.⁵ Another definition of exchange marriage is “a tribal

1 Urlin, Ethel. Lucy. “A short history of marriages”. Detroit, MI: Singing Tree Press. (1969)

2 Levi-Strauss, C. “The elementary structures of kinship”. Boston, MA: Beacon Press. (1969)

3 Jacoby, H. G., & Mansuri, G. “WattaSatta: Bride exchange and women’s welfare in rural Pakistan”. Washington, DC: The World Bank. (2008).

4 Ibid.

5 T.N. Madan “Structural Implications of Marriage in North India: Wife-givers and Wife-takers among the Pandits of Kashmir”, *Contributions to Indian Sociology*, Vol. 9, No.2 (July 1975), 217-43.

custom in Pakistan of exchanging brides between families; both families must have a daughter and a son and be willing to betroth them to the daughter and son of other family. In order for a family to marry a son to a daughter of another family, it must have a daughter to marry off in return to the same family.”⁶ These marriages usually take place among cousins, close relatives, within same caste and ethnicity in Pakistan.⁷ Within close relatives and castes the marriages are considered to strengthen family ties.⁸ Various studies have discussed the positive and negative implications of this form of marriages. Some of these studies suggest that women in exchange marriages face less domestic abuse, marital estrangement and depression; this occurs primarily due to mutual threat of reciprocal behaviour.⁹ It is advocated by the researchers that exchange marriage is an alliance intended for welfare, socio-cultural interests and kinship ties.¹⁰ It is found in a study that one-third of rural marriages are exchange ones which they believe provide them a sense of security and welfare.¹¹ Cultural projection of exchange marriages is quite positive as it seems to protect the rights of women and offer them a secure position in a certain kinship group and also in society at large; the conformity of women with the cultural norms makes them feel integrated in the social system.¹² In a traditional society like Pakistan, major decisions are

6 Rehan, N., and K. Qayyum. "Customary Marriages in Rural Pakistan." *The Medical journal of Malaysia* 72, no. 3 (2017): 175-178. p.3

7 Zaman, Muḥammad. "Socio-cultural security, emotions and exchange marriages in an agrarian community." *South Asia Research* 28, no. 3 (2008): 285-298.

8 Farooq, Ayesha, Ashraf Khan Kayani, and Khalil Aḥmad. "Marriage and family structures in the rural Punjab A shift from conservative to contemporary patterns." *International Journal of Sociology and Social Policy*, 35, no. 5-6 (2015): 306-324.

9 Jacoby, H. G., & Mansuri, G. *Watta Satta: Bride exchange and women's welfare in rural Pakistan*. Washington, DC: The World Bank. 2008.

10 Bearman, P. *Generalized exchange*. *American Journal of Sociology*, 102, (1997): 1383-1415.

11 Hussain, Y. Writing diaspora: South Asian women, culture and ethnicity. *Contemporary Sociology*, 35, (2005): 504-505.

12 Zaman, Muhammad, Muhammad Zakria Zakar, Abida Sharif, Imran Sabir, Rubeena Zakar, and Muhammad Arif. "Exchange Marriage System, Traditional Gender Roles and Obscured Transformation in a Community Of Pakistan: Interplay of Structure Agency and Social Change." *International Journal of Sociology of the Family* (2013): 25-47.

taken by elders of family and will of parents matter more than of their children (to be married). In traditional cultures, where destiny is decided by parents and elders of the family, children seldom deny it as it is a matter of honour for the entire family or clan.¹³ However, young people do aspire to search for compatible partners on the basis of education and lifestyle.

In some societies such as Turkey, bride price and bride exchange are form of marital arrangements that maintain kinship structure and preserve the harmonious relationship of the group; bride exchange in particular, involves destiny of four people in which consent of women hardly matters and fate of all four are interdependent.¹⁴ Some of the researchers stress the positives of exchange marriages, whereas there are various others highlighting negative implications of such marital unions; these include child marriages/engagements, forced marriages, caste and consanguineous marriages, domestic abuse and crimes in the name of honour. The exchange could be decided from childhood stage or even earlier (before birth), such promises are usually made to exchange females between the two families.¹⁵ Any dispute or difference which might take place between the partners would likely to bring similar consequences for the other couple in the exchange set; positive and negative actions of the couple are usually reciprocated both socially and materially in Pakistan.¹⁶ One of the detrimental consequences of exchange marriages is that children born in these families remain vulnerable to victimization of mutual conflicts of their parents.¹⁷ Parents often taunt and victimize the children in exchange

13 Jacoby, Hanan G., and Ghazala Mansuri. "Watta Satta: Bride exchange and women's welfare in rural Pakistan." *American Economic Review* 100, no. 4 (2010): 1804-25.

14 Isik-Yilmaz, Berfin, and Yigit Iltas. "Bride Price and Bride Exchange in Turkey." *Women's Rts. L. Rep.* 37 (2015): 180.

15 Zaman, Muḥammad. "Impact of exchange marriage on children in Pakistan: Social security or insecurity?" *Qualitative Report* 18, no. 24 (2013).

16 Zaman, Muḥammad, and Monika Wohlrab-Sahr. "Obstructed individualization and social anomie." In *Individualisierungen*, pp. 155-175. VS Verlag für Sozialwissenschaften, 2010.

17 Zaman, Muḥammad. "Impact of exchange marriage on children in Pakistan: Social security or insecurity?" *Qualitative Report* 18, no. 24 (2013).

marriages, this way they become victim of revenge and rolling stone. In case of separation child custody becomes a serious issue as well.

Exchange marriages are often among the close relatives; women usually experience various forms of abuse; however they rarely respond to such violations as she lacks economic independence and social support.¹⁸ Moreover, in third world countries like Pakistan, poverty is often associated with cultural practices such as *watta-satta* which means exchanging bride for bride.¹⁹ Dowry, a custom of giving material goods (gold, electronics, furniture, utensils) given to bride by her parents, might also be a consideration while taking such vital decisions. Type of marriage contract, to an extent reflect bargaining conditions.²⁰ Moreover, the study suggest that spouse abuse is also commonly reported in these types of marriages; chance of delinquency, poverty, broken homes, social insecurity among the implications. These could be outcomes of lack of will and true implementation of existing provisions in law.²¹ Moreover, there is no specific legislation on exchange marriage in Pakistan. An extensive study of rural Pakistan by Jacoby and Mansuri analyzed data of more than 3000 households in rural Pakistan and found that 36 % of the marital unions comprise of exchange marriages, shown in the following figure.²²

18 Bhutta, Roomana Naz, Imtiaz Ahmad Warich, ArslanIjaz Bhutta, Nouman Ijaz Bhutta, and Muhammad Ali. "Dynamics of Watta Satta Marriages in Rural Areas of Southern Punjab Pakistan." *Open Journal of Social Sciences* 3, no. 12 (2015): 166.

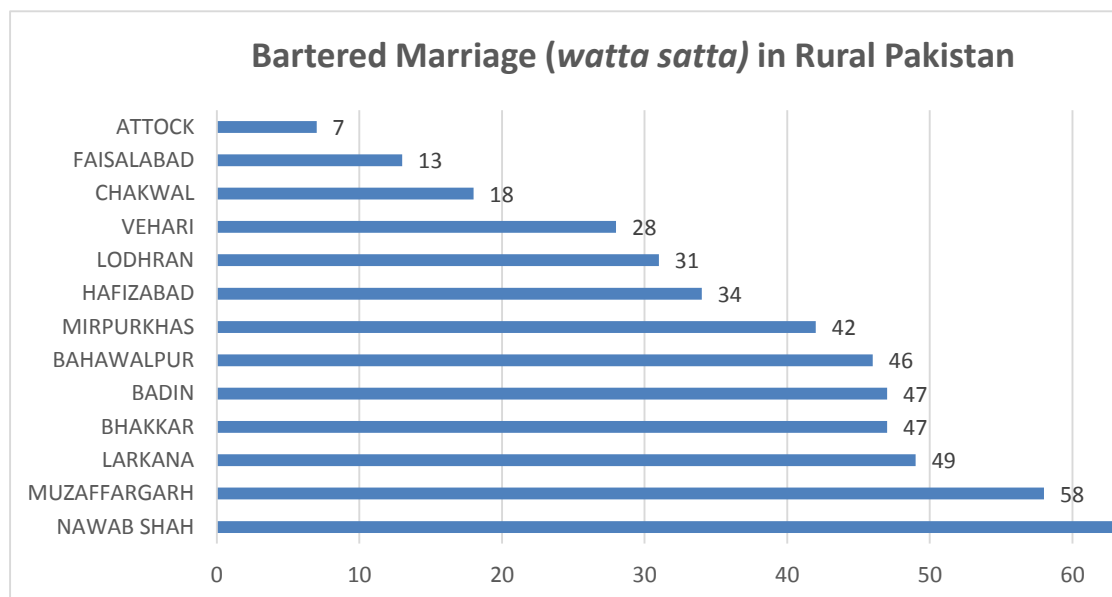
19 Nasrullah, Muazzam, Rubeena Zakar, Muhammad Zakria Zakar, Safdar Abbas, Rabia Safdar, Mahwish Shaukat, and Alexander Krämer. "Knowledge and attitude towards child marriage practice among women married as children-a qualitative study in urban slums of Lahore, Pakistan." *BMC Public Health* 14, no. 1 (2014): 1148.

20 Zhang, Junsen, and William Chan. "Dowry and Wife's Welfare: A Theoretical and Empirical Analysis." *Journal of Political Economy* 107, no. 4 (1999): 786-808.

21 Zaman, Muhammad. "Exchange Marriage System and Muslim Family Laws in Pakistan." *Pakistan Journal of History and Culture* 33, no. 1 (2012): 1-12.

22 Haider, Murtaza. "Bartered in Marriage: The Bride Exchange in Rural Pakistan." *Dawn*. September 07, 2011.

Figure: Percentages of Bartered Marriages in Rural Pakistan



Shari‘at defines Muslim family laws in Pakistan and institutions such as family and marriage are protected by the constitution of the country. Provisions in law including *ijmā* ‘-consensus of opinion among the religious/Islamic scholars, *ijtihad*-independent interpretation of the experts in the light of both Qur’ān and Sunnah, and *taqlid*-adherence to the legal principles are among the *fundamental guidelines for Muslim family laws in Pakistan*.²³ Marriage is defined as a civil contract between the two partners (husband and wife) in which mutual consent is a prerequisite condition.²⁴ It is *important* to understand as often these marriages lack consent of all four individuals involved. It has been found that there are gaps in constitutional provisions (freedom of choice) and legislation (family as guardian);

23 N. J. Coulson, “Reform of Family Law in Pakistan”, *Studia Islamica*, Vol. 7 (1957), 135-55. See also, Salman Akram Raja, “Islamisation of Laws in Pakistan, *South Asian Journal*, Vol. 2 (2003).”

24 Justice M. I. Chaudhry, “Family and Youth Issues-Pakistan Perspective” Belfast, Northern Ireland: XVII World Congress of The International Association of Youth and Family Judges and Magistrates held on 27 August to 1 September 2006.

therefore, this indicates a continuance of customary practices such as *watta-satta*.²⁵

Sociological Perspectives and Exchange Marriages

Researchers have discussed this phenomenon in the light of various sociological perspectives. For instance, if we consider structuralist approach then social issues or phenomenon are built in the system and conflict are integral part of it; actors are usually passive members of society, therefore unable to cause any change in the system.²⁶ In this context, mainly influence is of general structural norms and traditions which carry a powerful role in the social practices, therefore these are hard to break. On the other hand, individualistic perspective stresses the proactive role of individual actors who have potential to bring about change in social conditions.²⁷ Most of the structuralists and social exchange proponents explain exchange marriages mainly in terms of socio-economic interests, and some sort of formation of political alliance.²⁸ Women are often exchanged just like commodities where debt is settled in a way between the two parties.²⁹ Some anthropologists have taken reductionist stance, kinship is accounted for financial constraints, religion by kinship, politics of ecology etc..³⁰ There are differences between economic and social exchange that could provide further insight into marital relationships; the fundamental difference between the two is that obligations are specified in economic exchange whereas non-specified in social

25 Zaman, Muḥammad. "Socio-cultural security, emotions and exchange marriages in an agrarian community." *South Asia Research* 28, no. 3 (2008): 285-298.

26 Bourdieu, Pierre. *Practical reason: On the theory of action*. Stanford University Press, 1998.

27 Bearman, Peter. (1997). Generalized exchange. *American Journal of Sociology*, 102(5), 1383-1425.

28 Zaman, Muḥammad. "Exchange Marriages in a Community of Pakistan: Adequate Social Exchange." *The Family Journal* 22, no. 1 (2014): 69-77.

29 Strathern, Marilyn. "Marriage exchanges: a Melanesian comment." *Annual Review of Anthropology* 13, no. 1 (1984): 41-73.

30 Singer, Alice. "Marriage payments and the exchange of people." *Man* 8, no. 1 (1973): 80-92.

exchange.³¹ Furthermore, the former one relies on the legal system whereas the latter one is based on trust; exchange marriage seems to be combination of both. In the following section, we will discuss various religious (Islamic) provisions pertinent to this form of marriage pattern.

ISLAMIC TEACHINGS AND EXCHANGE MARRIAGE

As defined earlier exchange marriage is a form of arranged marriage involving a reciprocal exchange of spouses between the two families and is called *shighār* in Arabic language. In Arabia, *shighār* was the practice of exchanging brides between two families, where the girl and dowry of one family is exchanged for a girl and dowry from another family. Edward William Lane in his "An Arabic-English Lexicon" wrote: *shighār* signifies two men's going forth into the field from two armies, and when one of them has almost overcome his fellow, two men's coming to aid one of them, where upon the other cries out *lā shighār lā shighār* or two men acting wrongfully, or injuriously, towards another man, and the acting with enmity or hostility. *Shāgherun* means a dog raising one of his hind legs, and making water or whether making water or not and *shaghghāratun* is used for a she-camel that raises her legs to strike.³²

In *ḥadīth* and *fiqh* literature, *shighār* denotes such marriages where one bride and her dowry are exchanged for another bride and her dowry. If a man gives his daughter or sister in marriage on the condition that the other man would give him his daughter or sister in marriage under the condition that no male in both couples would be entitled to the payment of dower (*mahr*). Such marriages can be categorized into the following:

- a. When the two males exchange their daughters or their sisters in marriage without paying dower money.
- b. When both guardians (*walīs*) stipulate that each gives the woman to the other in marriage but there is no exemption of dower.

31 Nakonezny, Paul A., and Wayne H. Denton. "Marital relationships: A social exchange theory perspective." *The American Journal of Family Therapy* 36, no. 5 (2008): 402-412.

32 Lane, Edward William, *An Arabic-English Lexicon* (William and Norgate, 1872) Book 1, Part 4, p.1566

In *ḥadīth* literature, *shighār* has been referred to in context of exchange marriage. Some references are quoted in the following pages.

According to a *ḥadīth* communicated by Imām Muslim, Jābir b. ‘Abdullah (God be pleased with him) was heard saying:

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الشَّيْغَارِ.³³

“Allāh's Messenger (upon whom be peace and greeting) prohibited *Shighār*.”

Ibn Mājah quotes that Abū Hurairah (God be pleased with him) has also related similar words:

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الشَّيْغَارِ.³⁴

“The Messenger of Allāh (upon whom be peace and greeting) forbade *Shighār*.”

The same text of *ḥadīth* has been transmitted by Ibn Abī Shaibah in “*Al-Muṣannaḥ*”³⁵ and Abū Muḥammad ‘Abd Allāh b. ‘Abd al-Raḥmān Ad-Darimī in “*Sunan Darimī*”.³⁶

Ibn ‘Umar (God be pleased with him) has narrated the following *ḥadīth* that has been recorded by Imām Tirmidhī with a little difference of the text.

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الشَّيْغَارِ.³⁷

"The Prophet (upon whom be peace and greeting) prohibited *Shighār*."

33 Ṣaḥīḥ Muslim, Kitāb al-Nikah, Chapter: Prohibition and invalidity of *Shighār* Marriage, ḥadīth 1417

34 Sunan Ibn Mājah, The Chapters on Marriages, ḥadīth 1884

35 Ibn Abī Shaybah, ‘Abdullah b. Muḥammad, *Al-Muṣannaḥ* (Beirut: Dar al-Fikr) vol.4, p.354

36 Ad-Darimī, Abū Muḥammad ‘Abdullah b. ‘Abd al-Raḥmān, *Sunan Darimī* (Beirut: Dar al-Kitāb al-‘Arabī, 1407AH) vol.2, p.183

37 Jami’ At-Tirmidhī, The Book on Marriage, Chapter 30 (What has been related about the Prohibition of *Shighār* Marriage), ḥadīth 1118

Imām Mālik in his *Muwatṭāʾ*³⁸, Abū Hātim Muḥammad b. Ḥibbān in *Ṣaḥīḥ Ibn Ḥibbān*³⁹, Imām Baihaqī in *Al-Sunan al-Kubrā*⁴⁰ and Imām Aḥmad b. Hanbal in *Musnad Aḥmad bin Hanbal*.⁴¹

In some *Aḥādīth*, narrators have elucidated the word “*al-Shighār*” after telling it as a forbidden act by the Holy Prophet (upon whom be peace and greeting).

Imām Bukhārī has transmitted the following Prophetic tradition on the authority of Ibn ‘Umar (Allāh be pleased with him):

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الشَّيْغَارِ، وَالشَّيْغَارُ أَنْ يُزَوَّجَ الرَّجُلُ ابْنَتَهُ عَلَى أَنْ يُزَوَّجَهُ الْآخَرُ ابْنَتَهُ، لَيْسَ بَيْنَهُمَا صَدَاقٌ.⁴²

“Allāh's Messenger (Upon whom be peace and greeting) forbade *Ash-Shighār*, which means that somebody marries his daughter to somebody else, and the latter marries his daughter to the former without paying *Mahr*.”

It is narrated that Abū Hurairah (God be pleased with him) said:

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الشَّيْغَارِ . قَالَ غَبِيَةُ اللَّهِ وَالشَّيْغَارُ كَانَ الرَّجُلُ يُزَوِّجُ ابْنَتَهُ عَلَى أَنْ يُزَوَّجَهُ أُخْتُهُ.⁴³

"The Messenger of Allāh forbade *Ash-Shighār*." (One of the narrators) 'Ubaidullah said: '*Ash-Shighār* means when a man gives his daughter in marriage on condition that (the other man) gives him his sister in marriage’."

Imām Nasāʾī has narrated from Ibn ‘Umar (God be pleased with him):

38 *Muwatṭāʾ* Imām Mālik (Damascus: Dar al-Qalam, 1991) vol.2, p.444

39 *Ṣaḥīḥ Ibn Ḥibbān*, Chapter: *Ash-Shighār* (Beirut: Mo’assasat al-Risalah, 1993) vol.9, p.146

40 Baihaqī, Abū Bakr Aḥmad b. Husayn, *Al-Sunan al-Kubrā* (Hyderabad (India): Majlis Da’irat al-Ma’arif al-Nizamiya, 1344AH) vol.7, p.199

41 *Musnad Aḥmad bin Hanbal*. Aḥmad Mahmud Shakir (Cairo: Dar al-ḥadīth, 1995) vol.4, p.363

42 *Ṣaḥīḥ al-Bukhārī*, *Kitāb al-Nikah*, Chapter *Ash-Shighār* (Exchange of daughters or sisters in marriage without paying *Mahr*), ḥadīth 5112

43 *Sunan Nasāʾī*, *Kitāb al-Nikah*, Chapter 61 (Explanation of *Ash-Shighār*), ḥadīth 3338

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الشَّيْغَارِ وَالشَّيْغَارِ أَنْ يُزَوَّجَ الرَّجُلُ الرَّجُلَ ابْنَتَهُ عَلَى أَنْ يُزَوَّجَهُ ابْنَتَهُ وَلَيْسَ بَيْنَهُمَا صَدَاقٌ.⁴⁴

The Messenger of Allāh (upon whom be peace and greeting) forbade *Ash-Shighār*. *Ash-Shighār* means when a man marries his daughter to another man, on the condition that that man marries his daughter to him, and no dowry is exchanged between them.

Ibn ‘Umar (Allāh be pleased with them) is reported to have said:

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الشَّيْغَارِ . وَالشَّيْغَارِ أَنْ يُزَوَّجَ الرَّجُلَ ابْنَتَهُ عَلَى أَنْ يُزَوَّجَهُ ابْنَتَهُ وَلَيْسَ بَيْنَهُمَا صَدَاقٌ.⁴⁵

“Allāh's Messenger (upon whom be peace and greeting) prohibited *Shighār* which means that a man gives his daughter in marriage on the condition that the other gives his daughter to him in marriage without any dower being paid by either.”

Imām Mālik narrated on the authority of Abdullah ibn ‘Umar (God be pleased with him):

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الشَّيْغَارِ وَالشَّيْغَارِ أَنْ يُزَوَّجَ الرَّجُلَ ابْنَتَهُ عَلَى أَنْ يُزَوَّجَهُ الْآخَرُ ابْنَتَهُ لَيْسَ بَيْنَهُمَا صَدَاقٌ⁴⁶

“The Messenger of Allāh, may Allāh bless him and grant him peace, forbade *shighār*, which meant one man giving his daughter in marriage to another man on the condition that the other gave his daughter to him in marriage without either of them paying the bride-price.”

In the following ḥadīth, *shighār* is happened when one person exchanges his daughter with another's sister. Abū Huraira (Allāh be pleased with him) has reported:

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الشَّيْغَارِ وَالشَّيْغَارِ أَنْ يَقُولَ الرَّجُلُ لِلرَّجُلِ زَوِّجْنِي ابْنَتَكَ أَوْ أُخْتَكَ عَلَى أَنْ أُزَوِّجَكَ ابْنَتِي أَوْ أُخْتِي . وَلَيْسَ بَيْنَهُمَا صَدَاقٌ⁴⁷

44 Sunan an-Nasā'ī, Kitāb al-Nikah (The Book of Marriage), Chapter 61 (Explanation of Ash-Shighār), ḥadīth 3337

45 Ṣaḥīḥ Muslim, Kitāb al-Nikah (The Book of Marriage), Chapter 7 (Prohibition and invalidity of Shighār Marriage), ḥadīth 1415

46 Muwaṭṭā' Mālik, Kitāb al-Nikah, ḥadīth 1118

47 Ṣaḥīḥ Muslim, Kitāb al-Nikah (The Book of Marriage), Chapter. Prohibition and Invalidity of Shighār Marriage, ḥadīth 1416 a

“Allāh’s Messenger (upon whom be peace and greeting) prohibited *Shighār*. Ibn Numair added: *Shighār* means that a person should say to the other person: Give me the hand of your daughter in marriage and I will (in return) marry my daughter to you; or marry your sister to me, and I will marry my sister to you.”

In some *Aḥadīth*, both cases are told in single tradition as is narrated in the following Prophetic tradition.

Imām Abū Dawūd related on the authority of Ibn ‘Umar (God be pleased with him) who said:

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الشَّيْعَارِ. زَادَ مُسَدَّدٌ فِي حَدِيثِهِ قُلْتُ لِنَافِعٍ مَا الشَّيْعَارُ قَالَ يَنْكِحُ ابْنَةَ الرَّجُلِ وَيُنْكِحُهُ ابْنَتُهُ بَغَيْرِ صَدَاقٍ وَيَنْكِحُ أُخْتَ الرَّجُلِ وَيُنْكِحُهَا أُخْتُهُ بَغَيْرِ صَدَاقٍ.⁴⁸

“The Apostle of Allāh (Upon whom be peace and greeting) prohibited *shighār* marriage. Musaddad added in his version “I said to Nāfi’ “What is *shighār*?” (It means that) a man marries the daughter of another man and gives his own daughter to him in marriage without fixing dower; and a man marries the sister of another man and gives him his sister in marriage without fixing dower.

Nāfi’ (God be pleased to him) narrated to me that ‘Abdullah (God be pleased to him) said:

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الشَّيْعَارِ. قُلْتُ لِنَافِعٍ مَا الشَّيْعَارُ قَالَ يَنْكِحُ ابْنَةَ الرَّجُلِ وَيُنْكِحُهُ ابْنَتُهُ بَغَيْرِ صَدَاقٍ، وَيَنْكِحُ أُخْتَ الرَّجُلِ وَيُنْكِحُهَا أُخْتُهُ بَغَيْرِ صَدَاقٍ. وَقَالَ بَعْضُ النَّاسِ إِنْ اخْتَلَا حَتَّى تَرَوْجَ عَلَى الشَّيْعَارِ، فَهُوَ جَائِزٌ، وَالشَّرْطُ بَاطِلٌ.⁴⁹

Allāh’s Messenger (Upon whom be peace and greeting) forbade the *Shighār*. I asked Nāfi’, “What is the *Shighār*?” He said, “It is to marry the daughter of a man and marry one’s daughter to that man (at the same time) without *Mahr* (in both cases); or to marry the sister of a man and marry one’s own sister to that man without *Mahr*.” Some people said, “If one, by a trick, marries on the basis of *Shighār*, the marriage is valid but its condition is illegal.”

48 Sunan Abī Dawud, *Kitab al-Nikah* (Book of Marriage), Chapter 12 (Regarding *Shighār* Marriages, ḥadīth 2074

49 Ṣaḥīḥ al-Bukhārī, *Kitab al-Hiyal* (The Book on Tricks), *Bab Hilatfi’l-Nikah* (Chapter: Tricks in Marriages), ḥadīth 6960

Imām Ibn Mājah has transmitted on the authority of Ibn ‘Umar (God be pleased with him) who said:

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الشَّيْغَارِ وَالشَّيْغَارُ أَنْ يَقُولَ الرَّجُلُ لِلرَّجُلِ زَوِّجْنِي ابْنَتَكَ أَوْ أُخْتَكَ عَلَى أَنْ أَرْوِّجَكَ ابْنَتِي أَوْ أُخْتِي . وَلَيْسَ بَيْنَهُمَا صَدَاقٌ .⁵⁰

“The Messenger of Allāh forbade *Shighār*. *Shighār* is when a man says to another man: 'Marry your daughter or sister to me, on condition that I will marry my daughter or sister to you,' and they do not give any dower (i.e. neither of them give other the dower).”

The Messenger of Allāh (Upon whom be peace and greeting) has clearly told such marriage was not in accordance with Islamic injunction. Imām Ibn Mājah has narrated from Anas bin Mālik that the Messenger of Allāh (upon whom be peace and greeting) is reported to have said:

" لَا شَيْغَارَ فِي الْإِسْلَامِ .⁵¹

“There is no *Shighār* in Islam.”

There are also such traditions wherein *shighār* is mentioned along with other forbidden acts. Imām Nasā’ī has transmitted on the authority of Anas (God be pleased with him) who said:

" لَا جَلْبَ وَلَا جَنْبَ وَلَا شَيْغَارَ فِي الْإِسْلَامِ " .⁵² قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

"The Messenger of Allāh said: 'There is no 'bringing', no 'avoidance' and no *Shighār* in Islam, and whoever robs, he is not one of us.'"

It was narrated from ‘Imrān bin Husain (God be pleased with him) in Sunan An-Nasā’ī that the Messenger of Allāh (Upon whom be peace and greeting) said:

" لَا جَلْبَ وَلَا جَنْبَ وَلَا شَيْغَارَ فِي الْإِسْلَامِ وَمَنْ انْتَهَبَ نُهْبَةً فَلَيْسَ مِنَّا " .⁵³

"There is no 'bringing', no 'avoidance' and no *Shighār* in Islam, and whoever robs is not one of us."

In a tradition it is told that the Umayyad Caliph Mu‘āwīyah ordered the dissolution of such marriage. Imām Abū Dawūd has transmitted the

50 Sunan Ibn Mājah, Book 9, The Chapters on Marriage, ḥadīth 1957

51 Sunan Ibn Mājah, The Chapters on Marriages, ḥadīth 1885

52 Sunan Nasā’ī, Kitāb al-Nikah (The Book of Marriage,) Chapter 60 (Ash-Shighār), ḥadīth 3336

53 Sunan An-Nasā’ī, The Book of Horses, Races and Shooting, Chapter Jalab (Bringing), ḥadīth 3590

following *ḥadīth* to which ‘Abdur Raḥmān ibn Hurmuz al-A'raj is reported to have said:

أَنْكَحَ عَبْدَ الرَّحْمَنِ بْنُ الْحَكَمِ ابْنَتَهُ وَأَنْكَحَهُ عَبْدُ الرَّحْمَنِ ابْنَتَهُ وَكَانَا جَعَلَا صَدَاقًا فَكَتَبَ مُعَاوِيَةُ إِلَى مَرْوَانَ بِأَمْرِهِ بِالتَّفْرِيقِ بَيْنَهُمَا وَقَالَ فِي كِتَابِهِ هَذَا الشِّعَارُ الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ.⁵⁴

Al-‘Abbas ibn ‘Abdullah ibn al-‘Abbās married his daughter to ‘Abdur Raḥmān ibn al-Hakam, and Abdur Raḥmān married his daughter to him. And they made this (exchange) their dower. Mu‘āwīyah wrote to Marwān commanding him to separate them. He wrote in his letter: This is the *shighār* which the Messenger of Allāh (upon whom be peace and greeting) has forbidden.

Such marriages are prohibited by the Prophet of Islam (upon whom be peace and greeting) as these are contracted without stipulation of *mahr*. Some issues related to exchange marriage are being discussed in the following section.

Marriage without Mahr

In exchange marriage two couples are married but both males are exempted from paying dower-money. It is necessary to decide whether its payment is mandatory in a marriage contract.

According to Sir Abdur Rahim *Mahr* or dower is either a sum of money or other forms of property to which the wife becomes entitled by marriage. It is not consideration proceeding from the husband for the contract of marriage, but is an obligation imposed by the law on the husband as a mark of respect for the wife as is evident from the fact that the non-specification of dower at the time of marriage does not affect the validity of the marriage. She or her guardian may stipulate at the time of marriage for any sum however large as dower. If no sum has been specified, she is entitled to her proper dower (*mahr al-mithl*), that is the dower which is customarily fixed for the females of her family.⁵⁵

54 Sunan Abī Dawud, Kitab al-Nikah (Book of Marriage), Chapter 681 (Regarding Shighār Marriages) ḥadīth 2075

55 Abdur Rahim, The Principles of Muḥammadan Jurisprudence (London: Luzac & Co. / Madras: S.P.C.K. Depository, 1911) p.334

The holy Qur’ān has not used word *mahr* anywhere but two words used in the Islamic scripture are *sadaqatun* or *ujurun*. According to Edward William Lane, the former means ‘the *mahr* of a woman i.e, dowry; nuptial gift; or gift that is given to ,or for a bride’⁵⁶ and the latter is plural of *ajrun* meaning ‘ a dowry, or nuptial gift; a gift that is given to, or for, a bride’.⁵⁷

The Quranic commandment about dower(*mahr*) is articulated in the following verses:

وَأَتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا⁵⁸

“And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer.

وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْنَهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ⁵⁹

“....nor should you treat them with harshness, that you take away any part of the dower ye have given to them-----except they have been guilty of open lewdness...”

وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِنَّمَا مُبَيَّنٌ⁶⁰

“But if you decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower, take not the least bit of it back: would you take back it by slander and manifest wrong?”

وَكَيفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا⁶¹

“And how could ye take it back when ye have gone in unto each other, and they have taken from you a solemn covenant?”

56 Lane, Edward William, An ArAbīc English Lexicon (London:Williams & Norgate,1863)vol.4,p1668

57 Ibid, Book 1, p.24

58 Al-Nisa’4:4/ Abdullah Yusuf Ali, The Holy Qur’ān: Text, Translation and Commentary (Lahore:Sh. Muḥammad Ashraf,1983)p.179

59 Al-Nisa’ 4:19/For translation consult: Abdullah Yusuf Ali, The Holy Qur’ān: Text, Translation and Commentary,184-5

60 Al-Nisa’ 4:20/Abdullah Yusuf Ali, The Holy Qur’ān: Text, Translation and Commentary, p.185

61 Al-Nisa’ 4:21/ Abdullah Yusuf Ali, The Holy Qur’ān:Text, Translation and Commentary,p.185

وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا⁶²

“It is not lawful for you (men), to take back any part of your gifts (from your wives).”

From the verses quoted above we conclude that a bride is entitled to the payment of dower by her husband that can fully or partially be remitted only by her. A husband is not allowed to take it back on dissolution of marriage if he is going to finish the marriage contract through *talaq* and if dissolution of marriage is by wife through *khula*, then she has to surrender what she received as dower.

The Qur’ān has not specified the amount of dower. It is actually the right of the bride to demand dower as much as she wants. The amount to be fixed as dower depends on the agreement between the two parties (husband and wife). The aim of the payment of dower was to strengthen the financial position of the wife. Neither in the Qur’ān nor in ḥadīth a ceiling on mahr has been fixed. According to Mohammad Mazheruddin Siddiqi, no marriage can be regarded as legally valid, according to Islam, for which dower has not been stipulated. If the amount of dower is not fixed, the wife is entitled to proper dower (*mahr-i mithl*), even if the marriage was contracted on the express condition that she should not claim any dower. In determining what is proper dower, regard is to be had to the amount of dower settled upon other female member of her father’s family such as her father’s sisters.⁶³

In *Al-Hidāyah fī Sharh Bidāyat al-Mubtadī*, Burhān al-Dīn al-Marghīnānī (d.593AH/1197) writes that the payment of dower is enjoined by the law, merely as a token of respect for its object(the man), wherefore mention of it is not absolutely essential to the validity of a marriage:---- and, for the same reason, a marriage is also valid, although the man were to engage in the contract on the special condition that there should be no dower: but this is contrary to the doctrine of Mālik.⁶⁴

62 Al-Baqarah 2:229/ Abdullah Yusuf Ali, The Holy Qur’ān:Text, Translation and Commentary,p.90

63 Mohammad Mazheruddin Siddiqi,Women in Islam(Lahore:Institute of Islamic Culture,1996)p.54

64 Charles Hamilton(tr.), The Hedaya or Guide:A commentary on the Mussalman Laws (Lahore:Premier Book House,1963)p.44

Prof. Rafi Ullah Shehab, a former Professor of Arabic at Government College Lahore (now GC University, Lahore), has discussed the issue of dowry given by the bride's parents/family and dower money paid by the bridegroom in the following way:

Due to influence of Hindu culture, the responsibility of the dowry has been shifted to the parents of the bride, while the payment of *Mahr* before the solemnization of marriage had been reduced to a mere formality and it is seldom paid even after marriage.”⁶⁵

‘Allāmah Ghulām Rasūl Sa‘īdī, a commentator on Ṣaḥīḥ Bukhārī and Muslim, has pondered over the issue of exchange marriage and his opinion is derived from the sources of jurisprudence of the four schools (*Madhāhib*) and concluded:

There is consensus among scholars on the issue that exchange marriage (*Nikah ash-Shighār*) is forbidden but there is difference of opinions among them whether this forbidding would be tantamount to make it void (*bāṭil*) or not. According to Imām Shafe‘ī and Imām Aḥmad b. Hanbal such marriage is void (*bāṭil*). According to one tradition from Imām Mālik, such marriage would be annulled (*faskh*) before consummation but would not be ending of a marriage after consummation. Another tradition tells such marriage would be annulled in either case. According to Imām Abū Hanifah, the marriage would be valid (Ṣaḥīḥ) but the payment of *mahr mithl* becomes mandatory. Imām Aḥmad has similar opinion according to another tradition.⁶⁶

‘Allāmah Badr al-Dīn ‘Aīnī (d.855AH) writes in ‘Umdat al-Qārī that Hanafites consider such marriage as valid but the payment of Proper dower (*mehr mithl*) would become mandatory.⁶⁷

‘Allāmah Ibn Hammām (d.861 AH) observes in Fath al-Qadir that *Nikāh al-Shighār* is forbidden according to ḥadīth and it means that the Messenger of Allāh (upon whom be peace and greeting) has forbidden

65 Rafi Ullah Shehab, Prof., Rights of Women in Islamic Shariah (Lahore: Indus Publishing House, 1986) pp. 58-9

66 Ghulam Rasul Sa‘īdī, Allamah, Sharh Ṣaḥīḥ Muslim (Lahore: Farid Book Stall, 2001) vol. 3, p. 819

67 Badr al-din ‘Aini ‘Umdat al-Qari (Egypt: Idarat al-Taba’ah al-Muniriyyah, 1348AH) vol. 20, p. 108

marriage without dower and considering a vulva as dower, and we consider it a void (*bāṭil*) marriage. This is not dower according to Sharī‘ah. So, it is such nikāh where such thing is fixed as dower which does not possess such quality.⁶⁸

Marriage contract without consent:

Exchange marriage may or may not be without the consent of all contracting parties. In Pakistan, one or more persons involved in such bonds are not willing but are silent only due to family and social pressure. In any nikāh, consent of both male and female is a pre-requisite.

It has been ordained in the Holy Qur’ān:

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ⁶⁹

These Quranic words has been rendered as “marry women of your choice”⁷⁰ by Abdullah Yusuf Ali whereas Marmaduke Pickthall has translated them as “marry of the women, who seem good to you”.⁷¹

One of the most essential factors of a happy marriage is the right of free choice by either party. The Holy Prophet (upon whom be peace and greeting) insisted on a number of occasions that a person wishing to marry a woman should have a look at her before consenting to marriage.

There are some *Aḥadīth* which throw light on the issue of complete liberty of choice to women. Imām Nasā’ī has related that ‘Ā’ishah (God be pleased with her) narrated:

فَجَاءَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَأَخْبَرْتُهُ فَأَرْسَلَنِي إِلَى أَبِيهَا فَدَعَاهُ فَجَعَلَ الْأَمْرَ إِلَيْهَا فَقَالَتْ يَا رَسُولَ اللَّهِ قَدْ أَجَزْتُ مَا صَنَعَ أَبِي وَلَكِنْ أَرَدْتُ أَنْ أَعْلَمَ الْإِنْسَاءَ مِنَ الْأَمْرِ شَيْءٌ⁷²

"A girl came to her and said: 'My father married me to his brother's son so that he might raise his own status thereby, and I was unwilling.' She said: 'Sit here until the Prophet comes.' Then the Messenger of Allāh came, and I told him (what she had said). He sent word to her father, calling him, and he left the matter up to her. She said: 'O Messenger of Allāh, I accept

68 Ibn Hammam, Kamal al-Din, Fath al-Qadir (Sukkar: Maktabah al-Nuriyah, n.d.) vol.2, p.222

69 Al-Nisa’ 4:3

70 Abdullah Yusuf Ali, The Holy Qur’ān: Text, Translation & Commentary, p.179

71 Marmaduke Pickthall, The Meaning of the Glorious Qur’ān, available at: islam101.com/quran/QTP/QTP004.htm

72 Sunan An-Nasā’ī, Kitāb al-Nikah, Chapter 36 (Father Marrying Off A Virgin When She is Unwilling) ḥadīth 3269

what my father did, but I wanted to know whether women have any say in the matter."

According to Ibn Rushd, permission in marriage is of two types. It takes place for men and deflowered women by means of words and for consulted virgin women through their silence, that is, their consent; rejection, however, is by words. There is no dispute about this, as a whole except what is narrated from the followers of al-Shafi'i that permission of the virgin is by words, when the permission of the virgin is by words, when the person giving her away in marriage (her guardian) is other than the father or the grandfather. The majority inclined towards permission through silence because of what is established from the Prophet (God's peace and blessings be upon him) that "the deflowered woman has a greater right over herself than her guardian (*wali*), but the virgin is to be asked about herself and her silence is her permission."⁷³

Money is not the sole form of *mahr*. Any type of property the value of which can be measured in monetary terms, and is not prohibited by Islam, may be used for *mahr*. Except for provisions referred to by the Hanafites and Mālikites, no minimum or maximum amount for a specified *mahr* is fixed. The Hanafites fix the minimum amount at 10 dirham and Mālikites set it at 3 Dirham.⁷⁴

Depriving Daughters of Inheritance

In some landowner families, exchange marriage is exercised to avoid distribution of inheritance among daughters. In such marriage system, both families deprive their females from share in inheritance. In this way feudal system is being intact.

According to the teachings of Islam, shares of heirs are determined and nobody can be given more or less than the fixed share. The Holy Qur'ān has underlined:

73 Nyazee, Imran Ahsan Khan(tr.), The Distinguished Jurist's Primer, English Translation of Badayat al-Mujtahid waNihayat al-Muqtasid by Ibn Rushd(Garnet Publisher,...) vol.2,p.4

74Al-Zuhayli,Dr.Wahbah,Al-Fiqh al-Islamiwa-Adillatuh(Damascus:Dar al-Fikr,1989)vol.7,pp.268-72

لِلرَّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ
مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا⁷⁵

“From what is left by parents and those nearest related there is share for men and a share for women, whether the property be small or large, ----
--a determinate share.”

It is true that the share of males and females is not same. The Qur’ān has articulated the following principle:

لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ⁷⁶

“To the male, a portion equal to that of two female”

Role of Guardian in *Shighār*:

In exchange marriage, the guardian (*walī*) prefers his own interest to the interest of the one whom he is responsible for. Instead of helping her to choose a better partner, he is looking at his own interest especially where he is living without wife---either his wife is dead or he has divorced her. In such circumstances, his guardianship should be taken away from him. If there is conflict of interest of a female and her *walī* and she approaches a court in a Muslim state, then the guardianship (*walayah*) should be withdrawn from him but there is difference of opinions among jurists over the issue. The following Prophetic traditions elucidate the issue.

According to a tradition narrated by Ibn Mājah, when ‘Uthmān bin Ma’zūn died, he left behind a daughter. Ibn ‘Umar said: “My maternal uncle Qudamah, who was her paternal uncle, married me to her, but he did not consult her. That was after her father had died. She did not like this marriage, and the girl wanted to marry Mughīrah bin Shu’bah, so she married him.”⁷⁷

Imām Bukhārī has narrated from Khansa’ bint Khidhām that her father married her off when she had been previously married, and she was unwilling. She went to the Messenger of Allāh (upon whom be peace and greeting) and he annulled the marriage.⁷⁸

Imām Ibn Mājah has narrated on the authority of Ibn ‘Abbās that a virgin girl came to the Prophet (upon whom be peace and greeting) and told

75 Al-Nisa’ 4:7/Abdullah Yusuf Ali, The Holy Qur’ān: Text, Translation & Commentary, p.180

76 Al-Nisa’ 4:11/Abdullah Yusuf Ali, The Holy Qur’ān: Text, Translation & Commentary, p.181

77 Sunan Ibn Mājah, The Chapters on Marriage, ḥadīth 1878

78 Sunan an-Nasā’ī, The Book of Marriage, Chapter 35, ḥadīth 3268

him that her father arranged a marriage that she did not like, and the Prophet gave her the choice.⁷⁹

These *Aḥādīth* clearly indicate that the guardian or *walī* has no authority to marry an adult woman against her will.

CONCLUSION

Findings derived from the analysis of consulted sociological researches and Islamic guidelines, suggest that exchange marriages are mostly discouraged from both sociological and religious viewpoints. *Watta-satta* or *Shigar* is a traditional practice which is commonly found in underdeveloped societies where status of women is undermined and she remains deprived of her basic rights. In such societies, usually sisters and daughter are exchanged as brides between the two families. Moreover, there is hardly any legal provision which protects and supports women in case of marital discord in any of the two unions. Wife abuse, child victimization, feelings of insecurity and estrangement are among the negative implications of these marriages. Islamic guidelines also highlight dower and dowry among the associated consideration or conditions. Consent of all the partners and mutual will is also emphasized by Islamic teachings. Therefore, exchange marriages are customary practices that have more socio-economic and political aspects attached to it rather than religious prescriptions.

79 Sunan Ibn Mājah, The Chapters on Marriage, ḥadīth 1875