

Marriage

Marriage connects a man and woman to share a life together and establish a family. It is a means for society to regulate relations between the genders and a mechanism by which the relation of children to the community can be determined. Marriage creates a family, which is a social unit to build a strong society.

The Status of Marriage

It is against Islam to purposely remain unmarried without any excuse. A person should get married as soon as they are ready, in terms of maturity, financial ability, etc. If someone is unable to marry, for whatever reason, they should fast to protect themselves and control their desires.

What to Look for in a Spouse

A Muslim should seek to marry someone that is suitable for them. The first, and most important, thing to look for is piety and religiosity. After that, lineage [i.e. family status], financial stability, beauty, and other culturally dependent factors should also be taken into consideration.

The Marriage Contract

The marriage contract requires a proposal for marriage and an acceptance, in unequivocal words, according to local custom. For example, the man may say “marry me” and the woman may respond “I have married you”. However, she should not respond with “I will marry you”, because that could be interpreted as a future intent rather than a confirmation.

Two adult, sane Muslim male witnesses are required to witness the proposal and acceptance. In place of one male, two females may be substituted. The witnesses do not need to be upright Muslims to serve their role, because they are merely listening to the contract rather than articulating it [as one would do in a court of law]. If a man is marrying a woman who is a Jew or Christian, at peace with the Muslims, then the witnesses may be Jews or Christians.

Both a man and a woman must consent to the marriage. If the woman is a virgin and she shows her consent through shyness by remaining quiet, giggling, or crying, that is taken to be a sign of her approval. However, if she says no, then it is a sign of her refusal. A previously married woman must articulate her answer, and no one can agree on her behalf without her permission. However, she may appoint someone to agree on her behalf.

Whoever stipulates an invalid condition, such as: “if you marry my daughter then you must give me a thousand dollars” or “I will marry her but will not give her any dowry”, then the marriage is valid but the condition is null and void.

The Guardian and Suitability

This guardian of a woman plays a major role in ensuring that a woman is making the right decision concerning her marriage. This guardian is her nearest sane and mature Muslim male blood relative according to the following order: father, brother, grandfather, paternal uncle, paternal cousin, etc. If there are no male relatives, a mother, sister, or aunt may take the place as guardian. If there are no blood relatives at all who qualify to be her guardian, then the Muslim leader will represent her.

The guardian should not object to someone who is suitable for her, according to cultural norms. If the spouse is unsuitable in terms of religiosity, wealth, lineage, or beauty, then he must take the case to a Muslim judge. If the judge agrees that the match is unsuitable, then the marriage may be invalidated.

Dowry

Dowry is a necessary ingredient to the marriage and serves as a gift from the husband to the bride for accepting the proposal. The minimum amount of dowry is something that is considered to be of value, according to custom, and there is no maximum. If the husband decides not to give the dowry immediately, it acts like a debt that must be paid someday. The dowry does not need to be announced as part of the marriage contract.

When the marriage is consummated¹, or if the husband dies before that, the entire amount of dowry is due. However, if she is divorced before consummation, then half the dowry is due. If it has already been paid, then half of it must be returned.

If no dowry was specified, or if an agreement was made that she receives nothing, she is still entitled to the customary dowry that women of her status receive.² Furthermore, if the dowry is initially set [or modified through increase or decrease] after the marriage, she is entitled to it.

Invalid Marriages

Marrying someone for a specified time is invalid, such as saying, "I propose to marry you for one year."

Marrying someone with the intention to divorce them, so that they can remarry their former husband.

Whom You Cannot Marry

Eternally prohibited

Due to blood relationship:

1. Parent – or any grandparent
2. Child – or any grandchild
3. Sibling
4. Uncle & Aunt – or uncles/aunts of your parents
5. Sibling's child [i.e. nieces and nephews]

Due to family relationship:

6. Stepparent [spouse of actual parent] – or step-grandparent
7. Parent-in-law [spouse's parent] – and all grandparents
8. Step-child – from a spouse whom you have consummated marriage with
9. Child-in-law [child's spouse] – and grandchildren

Due to foster relationship:

¹ Or if the couple had been together alone such that nothing prevented them, such as a physical or purification related impairment, from intercourse.

² All factors, such as her religiosity, beauty, lineage, wealth, intellect, property, etc. are taken into consideration.

10. Foster relationships are like blood and family relationships, so the foster mother [who breastfed you] or a foster sibling are prohibited.³

Temporarily Prohibited

1. Two women at the same time who, if one of them was a man, they would not be allowed to marry each other.⁴ For example, being married to two sisters, to a woman and her aunt, or to a woman and her niece at the same time.
2. A woman who is already married or a man who already has four wives
3. The parent or child of someone you had an intimate relationship outside of marriage with.
4. A woman must marry a Muslim but a man may marry a Jew or Christian who believes in a prophet and a book, even though their beliefs are corrupted.⁵

³ Conditions of foster relationship: any amount of suckling during the period of breastfeeding. The two exceptions are that it is allowed to marry the parent of the foster sibling or the sibling of the foster-child. Likewise, this applies when milk is stored and given to a child.

⁴ It is also permissible to marry a woman and her daughter from a previous marriage.

⁵ This is because the man is the head of the household, so the rights of both Muslim and non-Muslim will be respected. As for Jews and Christians, there is nothing in their beliefs that guarantee the rights of Muslims.

Engagement

It is recommended for two people to look at each other before they get married, but the gaze must not be lustful.

Engagement is merely a verbal agreement between two parties that they intend to get married. It prevents others from proposing to those people, because it is not allowed for them to do so. Otherwise, there are no other privileges that accrue from the agreement.

Wedding Banquet

It is recommended to invite people to a wedding banquet to announce that the wedding has taken place. Any type of food may be served. When someone is invited they must respond unless they have a good excuse such as having another appointment at the same time, the existence of prohibited things occurring there, or protesting against the fact that only wealthy people were invited.

Intercourse

Once the couple is married, they may be intimate. Intercourse is allowed in any way as long as it is through the front and not during menstruation. Contraception is allowed when there is a reason. It should not be used out of fear of poverty or without the consent of the wife, since she has the right to children.

Divorce

Marriage is a civil contract with rights and responsibilities. When it is felt that these responsibilities are difficult to fulfill, the contract may be terminated through a special procedure.

Divorce may fall into one of the following categories:

- Recommended: This is when someone neglects fulfilling the rights of Allah.
- Allowed: This is when someone neglects fulfilling the rights of the spouse.
- Disliked: This is to divorce someone for no good reason.
- Prohibited: This is to pronounce divorce during the wrong time, such as during a wife's menstrual period.

How to Divorce

In order for a divorce to be valid, it must be done by a mature male who is sane and in a state of consciousness.

The correct way of divorce is to pronounce one statement of divorce after the wife's menstrual period has ended¹ but before he has intercourse with her, and then to wait until she completes three menstrual periods. This is the best method of divorce because it gives the husband sufficient time to reflect on whether or not this marriage should continue. Also, because sexual relations are permissible outside of the menstrual period, the possibility of intimacy will help alleviate tensions and the man will be tempted to take his wife back and resume the relationship.

¹ If the marriage had not been consummated or if the wife doesn't have a period, then the divorce can be at any time of the month because the unconsummated marriage has not tasted intimacy yet so the desire is there, and the non-period may have intimacy at any time and will not delay the waiting period.

However, if he divorces her during her menstrual period, it counts, but is sinful. Therefore, it is recommended that he take her back, and decide what to do after waiting for her period to end.²

There are three types of divorce:

- Revocable: this is when one divorce is pronounced and the husband has the right to revoke it and take her back during her waiting period.
- Irrevocable: this is when the time period for waiting expires and the man has not revoked the divorce. The couple may get remarried again if they both consent, with a new marriage contract.
- Final: this is when a woman has been divorced three times, in three separate periods of purity. The divorce is now irrevocable and the relationship is finished, such that the couple may never remarry again until she marries another man, consummated the marriage, and that marriage ends.³ This is because she needs to move on with her life and try another man before continuing with the previous spouse.

If a man pronounces more than one divorce in one statement or in one period of purity, it is a sin on him and it will only count as one divorce.⁴

A man may delegate the option to his wife whether or not she is divorced. If he adds a statement like “whenever you want”, then it applies at any time. He may also give authority to another person, and it will count when that person pronounces a divorce.

Retraction of Divorce

A man may retract a divorce before the couple is separated without the permission of the wife. During a revocable divorce, she is treated like a normal wife with the right to maintenance and living in the house, but there will be no intimacy. In order to retract, he may speak it by saying “I have taken you back” or kiss her or do anything indicating touching with desire. It is recommended to have two witnesses for the retraction. A woman waiting for the retraction of divorce who wants to remain married should make herself up and try to be nice to her husband, so he retracts.

Remarriage

If the time elapsed for the waiting period but it was not the third divorce, the man may marry her with a new contract and dowry. After the third divorce, there is no retraction and no remarrying until she weds and consummates with another. It is unlawful to marry someone in order to let them marry their previous husband, but if it happened it would count.

Expressions of Divorce

Divorce will be enacted through the following statements, whether or not they were said in a state of seriousness or jest⁵:

² This is one opinion reported by Abu Hanifah. Another, more famous one, is that he must wait until another full menstrual cycle passes before being allowed to divorce her a second time.

³ It is prohibited to marry someone with the intention of being able to remarry your previous husband.

⁴ This is opposite to the opinion of ‘Umar ibn al-Khaṭṭāb which was intended to prevent husbands from harming their wives through superfluous statements of divorce that did not actually count. Many modern scholars now believe that allowing that type of divorce to count causes more harm to families by breaking them up, and we should return to the original way that these multiple divorces only counted as one.

⁵ Like a contract you make. You cannot sign a document with a company and then say, “Ha, Ha. I was just kidding.”

- Explicit: "You are divorced", "You are a divorced woman"
- Conditional: "You will be divorced if you visit that bar"
- Implicit: "Go back to your family" or "I don't want you anymore" or "We are finished" or "You are now single". Since the statement is not explicit, it will only count if the man had the intention to divorce, and he must admit to this.

The Waiting Period

When a man divorces his wife with a final or revocable divorce, or a separation [by a judge] was issued, her waiting period is three full¹ menstrual cycles. If she does not menstruate, then it is three months. If she is pregnant, then it is after she gives birth or loses the child. She should not move to another house during this period.

If a man dies, then his wife's waiting period is four months and ten days. If she is pregnant, then it is after giving birth or losing the child. Her period is actually a mourning period and she must refrain from wearing perfume, adornment, makeup, jewelry, unless there is a valid reason. The woman in her mourning period must not be proposed to for marriage, but it is fine to make an allusive reference to the idea of a marriage proposal, such as "I want to marry and I hope I can find a righteous woman." She may leave the house, but must sleep in her own house and not elsewhere. If a woman finds out later that she was in her waiting period because she wasn't aware of her being divorced or that her husband died, she will count the days that passed.

The waiting period of a woman who is in an adulterous relationship begins either when they separate or they resolve to stop having intercourse. A divorce which takes place before consummating the marriage does not require any waiting period.

Wife Demanding Release [Khul']

A woman has a right to remove the marriage contract by returning part or all of her dowry. This must be done for a legitimate reason otherwise it is a major sin. The husband is not allowed to keep the wife in marriage in order to harm her, so if she has legitimate grounds, he must let her go. If the discord is from the husband's side, it is disliked for him to take anything from her, and if it is from her side, it is disliked for him to take more than what he gave her in dowry.

Swearing Off the Wife [Īlā']

This is when a man says to his wife: "I swear by Allah I will not come near you [have intercourse]". If it lasts less than four months, he can expiate the vow by breaking it. However, when four months end, he must choose between breaking his vow [by actually engaging in the act] or divorce [as a punishment for him harming his wife. If he refuses to take a decision, then one final divorce takes place, but he may remarry her with a new marriage contract.

Injurious Comparison [Zihār]

When a man says to his wife: "You are to me like my mother's back", or any words similar to that, intending that he cannot be intimate with her, then he may not be intimate with her until he expiates, and he must do so. This was an Arab custom designed to psychologically harm the wife while remaining married to her.

The expiation is: freeing a slave, fasting two months consecutively², feeding sixty poor people; and it must be done in order unless unable to; this must be done before intimacy with wife.

¹ In case her husband divorced her during her period, that period will not count as one of the three.

² On days which it is neither required nor prohibited to fast. If he breaks one without a valid excuse, he must restart again.

Dowry rights after separation

- After consummation: she gets full dowry
- After he dies but before consummation: she gets full dowry
- If they are alone in private: she gets full dowry
- Divorced before consummation: she gets half

Maintenance

Maintenance is a requirement for the wife and minor children from her husband as long as she decides to remain in the house, and that is according to his financial status. It including, housing, clothing, food, etc. If she leaves the house, she has no right to maintenance. During a divorced wife's waiting period, she is entitled to maintenance. A woman has the right to live in a separate house where no other family members live, if she chooses. The husband may prevent her parents or other family members from visiting her in her home, but he may not prevent her from meeting them or speaking to them elsewhere at any time. If a man cannot provide adequate maintenance for his wife, she may take a loan on his behalf, and he is liable to pay it. If a man is absent, or does not spend on his wife, but has wealth, the judge apportions maintenance for the wife and children from his wealth. If she does not receive maintenance over a period of time, she cannot claim what is past unless a decree was previously issued by a judge or the husband had agreed to give her a certain amount.

Pregnant women get maintenance until baby is delivered – before consummation she gets maintenance

It is also required for a man to take care of his parents and grandparents when they are poor, whether they are Muslim or not. It is also required to take care of your blood relatives [which are prohibited in marriage] when they are poor and: are minors, women, chronically ill, or mentally disabled. The extent of care is proportionate to the ratio of inheritance shares.

Child Custody

The mother generally has more right to the custody of the child upon separation, then the maternal grandmother, then paternal grandmother, then sisters, then maternal aunt, then paternal aunt. They must not be married [except the grandmother], otherwise they lose their right.

When either spouse is a Muslim, the children will be raised on Islam. If one spouse is from the People of the Book and the other a disbeliever, the child will be from the People of the Book.