

IN THE NAME OF ALLAH MOST GRACIOUS MOST MERCIFUL

Marriage and Divorce in Islam: A Brief Exposition

The Islamic position on marriage generally is based upon the fact that Allah created men and women so that they can provide company to one another, love one another, procreate and live in peace and tranquillity to the commandments of Allah and the injunctions of His Messenger (s.a.w). We thus read in the Qur'an:

“And among His signs is this, that He created for you mates from among yourselves, that you may dwell (with them) in tranquillity, and He has put love and mercy between your hearts. Undoubtedly in there are signs for those who reflect.” (Qur'an 30:21)

The Qur'an also states:

“And Allah made for you mates of your own nature and made for you, out of them sons, and daughters and grand children, and provided for you sustenance of the best.” (Qur'an 16:72).

Apart from the word of Allah, there are many citations of the Holy Prophet Muhammad (s.a.w) which further elucidate the Islamic position on marriage. The Prophet (s.a.w) has said:

“This is no monkhood (monasticism) in Islam.”

This shows that celibacy has never been considered in itself a virtuous act in Islam. Thus the following Prophets advice to all young people:

“O young men, whoever among you is able to marry, let them do so, for that would help them lower their gaze and guard their chastity.” (Bukhari)

Modesty and chastity are integral parts of the Faith in Islam and the need for marriage has been emphasised by the Prophet (s.a.w) in order for the Muslim to complete his/her faith.

“Marriage is part of my tradition and whosoever desires against it, is not one with me.” (This is an authentic Hadith).

In Islam the family forms the nucleus of society and the only legitimate way to bring about such an institution is through marriage. All intimate relations outside marriage (as well as homosexual relations) are categorically condemned and prohibited: (*Qur'an 7:84 and 17:22*). Marriage in Islam (as every other legitimate activity of a Muslim) is considered an act of worship.

This is why we find abound in the Quran and Sunna (practice) of the Prophet (s.a.w) the most elaborate rules concerning family live; husband – wife – child relationship. The rights and responsibilities of each of the three are clearly spelt out. We shall come back to this later.

However, it may be worth mentioning here that Islam consolidated its original concept of the family by defining the roles of man and woman in such a manner that each is generally expected to behave in accordance with his or her biological merits. The man is therefore, is

charged with what may be referred to as *instrumental functions*: maintenance, protection, dealing with matters outside the home generally and leadership in the family. The woman, on the other hand is entrusted with caring for and rearing children, organising the home, and creating the loving atmosphere inside her matrimonial home. The wife under Islamic law is therefore, not to be pushed to work to gain money under normal circumstances. The law guarantees her reasonable income and comfort even if she is unmarried. The Shari'ah does not however, prohibit women from working gainfully outside the home provided that the general etiquettes of modesty are maintained and it is with the consent of the husband. She also has the full right to keep her own property and make her own investments without the husband's permission. Her primary role in the family however, as his, must never be neglected or compromised.

Marriage in Islam may thus be broadly summarised as follows:

- 1) a means of emotional and sexual gratification
- 2) a mechanism of tension reduction
- 3) a means of legitimate procreation
- 4) a social placement
- 5) an approach to inter – family alliance and group solidarity
- 6) an act of piety (*Taqwa*)
- 7) it is a form of worship (*Ibaadah*) of Allah and obedience to His Messenger (s.a.w). (*Shari'ah – The Islamic Law, A. R. Doi*)

CHOICE OF PARTNER IN MARRIAGE

The Prophet (s.a.w) has recommended that the intending couple must within the limits of modesty and chastity know (at least take a look at) each other before any agreement is concluded to come together in marriage. (*Haashiyat Ad-Dasuqi. Vol. 2, page 215*) In Islam however, the culture of courtship (such as dating in Western Societies) does not exist. The Prophet's (s.a.w) advice for men looking for a wife is as follows:

“A woman may be married for four reasons: her wealth, her beauty, her social status (lineage) or her religiosity (righteousness); then marry the pious religious woman and you shall be happy”

To women and their guardians, he said;

“If a suitor comes to you whose character and practice of the religion satisfies you, marry them; if you don't there could be serious trouble and suffering in the land”

FREE CONSENT OF THE PARTIES

Marriage is referred to in the Qur'an as a “*meethaaq ghaleezh*” which means, a **solemn covenant** between the husband and wife. This means, among other things, that it must be contracted in a lawful manner, with the express agreement of both parties and reduced to writing.

There have however, been some Muslim scholars over the ages who have argued in favour of the legitimacy of the father (and none else) of a young maiden to give her in marriage without her consent. This however, under close examination crashes headlong with the pronouncements and practice of the Prophet (s.a.w) as recorded in the most authentic sources. In the *Sahih of Bukhari* for example, we find a Hadith which states:

The Holy Prophet (s.a.w) said:

“The previously married woman shall not be re-married until she herself gives the go ahead, neither shall the virgin girl be married off until her consent is obtained”.

Another Hadith in *Abu Dawood; 12:25* states:

“A virgin girl came to the Holy Prophet and complained that her father had married her off without her consent and the messenger immediately gave her the right repudiate the marriage”.

PROHIBITIONS IN MARRIAGE

In the Holy Qur’an (4:22 – 24) the following categories of relations are given as prohibited in marriage to all men:

- 1) the mother,
- 2) the step mother,
- 3) the grandmothers: paternal or maternal
- 4) daughters and granddaughters
- 5) sisters: full or half
- 6) the aunts: both paternal and maternal
- 7) brothers’ daughters
- 8) the foster mother
- 9) the foster mother’s sisters
- 10) sisters’ daughters
- 11) the foster sister
- 12) the wife’s mother
- 13) the step – daughter (once the marriage with her mother is consummated)
- 14) the son’s wife

In addition to the above, it is also prohibited for a man to marry two sisters at the same time or a woman and her aunt at the same time. A woman cannot marry two men at the same time nor can a man marry more than four women at a time. No woman can likewise be married during her “*iddah*” (i.e. waiting period after divorce or in mourning).

It has throughout the ages been the consensus of Muslim Scholars and Jurists based on the Qur’an and Sunna that Muslims living in non – Muslim societies with the consent of the competent authorities in those societies must as a matter of duty respect the laws of these new places of settlement. Muslims therefore, out of respect for Norwegian law must refrain from polygamy in this country.

It must be mentioned however, that Islamic polygamy (usually exploited by unscrupulous men) is given in the Qur'an as a solution to certain social dilemmas and under strictly controlled circumstances. The norm has always been monogamy. (*Quran: 4:3*).

It may be added here that a Muslim man is also permitted should the need arise to marry women from the *Ahl-al-Kitaab* (i.e. Jews and Christians) but never polytheist or atheist women. (*Qur'an: 5:5 and 2:221*).

On the other hand, a Muslim woman is under no circumstances permitted to marry a non – Muslim *Ahl-al-Kitaab*, polytheist or atheist. (*Qur'an: 60:10*)

THE MARRIAGE CONTRACT

Under Islamic jurisprudence five main requirements are generally stated for any marriage contract to be considered valid. These requirements however, are emphasised differently under the different schools of thought. They are:

- 1) the Marriage Guardian – usually a male relative who gives the bride off in marriage
- 2) The “*Mahr*” (dower) – the agreed amount in cash or kind given by the groom to the bride as a marriage gift
- 3) The bridegroom himself – must be legally competent to marry
- 4) The bride – must also be legally uninhibited
- 5) The “*seegha: eejaab and qabool*” i.e. Express proposal and acceptance of marriage. In addition a “*Khutba*” (sermon) is given at the time of contracting the marriage in which the person conducting the service, among other things, informs and gives advice to the new couple as to their mutual rights and responsibilities in Islam.

It may be added that marriage by proxy is allowed in Islam for as long as the consent of both parties are obtained and they are competently represented. This practice however, is normally not accepted under Norwegian law and is therefore better avoided.

DIVORCE IN ISLAM

The Prophet Muhammad (s.a.w) has said:

“Of all things lawful, divorce is the most hateful to Allah” (Abu Dawood 13:3) and “Marry and don not divorce; for indeed the very Throne of the Merciful Lord shakes whenever a divorce is pronounced.” (Kasf-al-Khafa, vol. 2: 302)

The Qur'an however, states:

“O Prophet! When you do divorce women, divorce them at their prescribed periods and count (accurately) their prescribed periods: And fear Allah your Lord: And turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness; those are limits set by Allah: and any who transgresses the limits of Allah, does verily wrong his (own) soul: You know not if perchance Allah will bring about some new situation. Thus when they fulfil their term appointed, either take them back on equitable terms or part with them on equitable terms: And take for witness two persons

from among you endued with justice and establish the evidence (as) before Allah. Such is the admonition given to him who believes in Allah and the last Day.”
(Qur'an: 65:1-2)

We learn from the above as well as other instances in Qur'an and Hadith that Shari'ah permits divorce only under definite conditions. A Muslim may divorce his wife only in three distinct and separate periods within which they might endeavour to become reconciled; but should all attempts at reconciliation fail, then after the third period the separation becomes final. Divorce may also be given orally, or in writing, but it must take place in the presence of witnesses. The authority however, to pronounce divorce is usually under the Shari'ah vested in the husband and this may be exercised in two ways:

- 1) Approved orthodox (*Sunna*) repudiation or
- 2) Reprehensible heretical (*bid'i*) repudiation: this is to pronounce three divorces in one.

The Sunna divorce however, has certain conditions:

- 1) That it should not be pronounced during menstruation or post – natal bleeding
- 2) That it is pronounced during a period of cleanliness between two menstruations during which no cohabitation has taken place.

Moreover, the words used for divorce must expressly convey the intention that the marriage is being dissolved. For the divorce so pronounced to be valid it must be done by one who is sane of mind and sober, adult and discreet. The couple of course should have been legally married prior to the pronouncement of divorce.

DIVORCE AT THE INSTANCE OF THE WIFE: AL-KHUL'

In the same way as the Shari'ah gives the husband the right to divorce his wife (as stated above), so does the wife also have the right to ask for divorce if sufficient grounds exist for this.

It is narrated in the *Sunnan of Al-Baihaqi*:

“A woman came to the Prophet (s.a.w) and said: “I hate my husband and would like to divorce him”. The Prophet asked: “Would you return the orchard that he gave you as dower?” She replied: “Yes, even more than that.” The Prophet (s.a.w) said: “You need not return more than that.” (Sunnan al – Baihaqi vol. 7, p313)

Al – Khul' therefore, is divorce initiated by the wife and achieved through agreement with the husband or through the order of the (*Qadhi*) Judge, on payment by the wife of an amount that does not exceed what was given to her as dower (*Mahr*). *Al-Khul'* is an irrevocable dissolution of marriage – it cannot be reversed.

It may be worth mentioning here that in the case of a man who is abusive and brutal, the wife need not forfeit her dower to obtain divorce. She can file a complaint with the “*Qadhi*” (Judge) who with sufficient proof will order the husband to divorce her. Should he fail to do so the *Qadhi* himself will dissolve the marriage and the said husband will then have to pay any outstanding amounts of the “*Mahr*”, (dowry).

The *Qadhi* will usually grant divorce for any of the undermentioned reasons:

- 1) habitual – ill – treatment of the wife
- 2) failure to fulfil terms of marriage contract
- 3) insanity
- 4) incurable impotence
- 5) long absence from home without making enough provision for the wife
- 6) any other reasons justifiable in the sight of the *Qadhi*.