

Requirements of an Islamic Marriage Contract

12 minute read

Know dear reader that Allah (s.w.t) has created things in pairs. Those pairs must get together in certain ways in order for reproduction to occur. The way for reproduction to occur amongst humans – males and females, is through marriage, known in Arabic as *nikaah*. Islam urges Muslims to marry, and prohibits pre-marital relationships. Allah Most High says in the Qur'an:

“Marry the unmarried among you...” (24:32)

Also, Allah's Messenger (s.a.w) in the hadith found in Bukhari and Muslim, commanded young people to marry, and advised those of them who could not afford it to fast as a means of controlling their sexual desire. From an Islamic perspective, marriage is not viewed merely as a means of satisfying natural desires and passions. Its goals are much deeper than just obtaining legal sex. Allah (s.w.t) points out one of the main objectives behind marriage by saying:

“And among His signs is this, that He created for you mates from among yourselves that you might live with tranquility with them, and He has put love and mercy between your hearts (hearts)...” (Surat Ar-Room)

Therefore, the phenomenon of bachelorship or celibacy are UN-Islamic practices that result in devastation, effecting the Muslim community, and posing a threat to the Islamic world. What devastation? What threat on the Islamic world? The answers to these questions are found in the non-Muslim communities. Every day we hear and observe with our very eyes the perverted and sinful ways of the *Kuffar* (disbelievers). These ways which they find acceptable in their societies have ultimately led to many types of diseases such as A.I.D.S, syphilis and the like, as a result of their choice to follow the unnatural way of abstaining from marriage.

The marriage contract is the formal bond that turns two individuals from strangers to husband and wife. It is the most important contract that most people execute throughout their lives. Since the marriage contract has

such great significance, the deen of Islam imposes a number of guidelines that it must fulfill. Many Muslims who are engaged in pre-marital relationships hold back from having the contract executed due to their ignorance about its elements. So they continue to live a sinful lifestyle due to cultural influences which lead them thinking the process is too demanding. Before delving into the basic elements of marriage, it worth mentioning here that marriage is a serious matter and should be dealt with seriously. It is not allowed for a man to marry and then claim he did not really mean it, or that he was joking. The Messenger of Allah (s.a.w) said:

“There are three matters in which it is not permissible to joke: marriage, divorce, and emancipation (of slaves).” (At-Tirmidhi)

The Islamic marriage contract has conditions, requirements, pillars and optional elements. A contract must fulfill the following conditions and pillars in order to be valid.

Eligibility of Bride and Groom

The first of these conditions is that both the bride and groom must fulfill certain requirements. The groom must be a chaste Muslim having attained the age of puberty. He must not be related to the bride by any of the permanently prohibiting blood, milk, or marital relationships such as his sisters, paternal and maternal aunts, daughters, grand daughters and others. He must not be prohibited from marrying the bride for any of the temporary reasons stipulated in the Qur’an and Sunnah. So if a man has four wives, all other women become temporarily prohibited from him. Another example of a temporary reason is that as long as a man is married to a particular woman, all of her sisters become temporarily prohibited for him; that is he may not marry any of them unless he divorces their sister. Others include: women married to other men, simultaneously marrying aunts and their nieces, adulteresses and prostitutes that have not sincerely repented, including others in which the Islamic shari ‘a may have listed. The requirements a bride must fulfill is that she must be a chaste Muslim, Christian or Jew. She must not be married to another man, and must not be related to the groom by any of the permanently prohibiting blood, milk, or marital relationships in addition

to not being prohibited from marrying the groom for any of the temporary reasons as stated above.

Bride's Permission

The next required element of the marriage contract is the bride's permission. Without her permission, the contract is either null and void, or may be invalidated by the Islamic authorities at the bride's request. The minimum required permission may be done by either voicing her approval or through a passive expression such remaining silent when asked about a potential husband and simply nodding her head, or making any other motion to indicate that she does not object to the marriage. The Prophet (s.a.w) said:

"A deflowered unmarried woman (i.e. widow or divorcee) may not be married without her instructions; and a virgin may not be married without her permission, and her silence indicates her consent." (Bukhari & Muslim)

The Woman's *Wali*

The next requirement of for a valid contract is the approval of the woman's guardian known as the *wali*. The Messenger of Allah (s.a.w) said:

"A marriage (contract) is not valid without a *wali*." (Abu Dawud, At-Tirmidhi and others)

Normally, a woman's *wali* is her father. If, for any reason, her father is unable to be her *wali*, her *wali* would then be her next closest blood relation: the grandfather, uncle, brother, son and so on. It is not permissible for a woman to take another woman as her *wali*. The Prophet (s.a.w) said:

"A woman may not give another woman in marriage, nor may a woman give herself (independently) in marriage." (Ibn Majah, Al-Bayhaqi and others)

If the bride does not have a Muslim blood-relative as a *wali*, the Islamic authority, represented by the ruler or judge, would appoint a *wali* for her. In non-Muslim communities the local imam is the one to be appointed as the *wali* of a woman who has no *wali*. The Messenger of Allah (s.a.w) said:

“A marriage (contract) is not valid without a *wali*. And the authority is the *wali* of the one who does not have a *wali*.”
(Ahmad & Abu Dawud)

The presence of the *wali* or a representative he has appointed is an integral element of the contract or else the contract is deemed invalid. The Prophet (s.a.w) said:

“Whichever woman marries without her *wali*'s permission, her marriage is void, her marriage is void, her marriage is void. If he (i.e. the husband) performs intercourse with her, the *mahr* (dowry) becomes her right because he had access to her private parts. And if they dispute, the ruler would then be the *wali* of the one who does not have a *wali*.” (Ahmad & Abu Dawud)

The witnesses

Another condition for the validity of a marriage contract is the presence of at least two trustworthy Muslim male witnesses. The Messenger of Allah (s.a.w) said:

“A marriage is not valid without a *wali* and two trustworthy witnesses.” (Ahmad, Ibn Hibbaan, and others)

The Mahr (Dowry)

The next element of the marriage contract is a mandatory marriage gift given by the husband to his wife. In Arabic, this gift is called *mahr* or *sadaaq*. Allah Most High said:

“And give the women their dowry as a free gift.” (4:4)

He also made a commandment regarding by saying:

“And give them their compensation as an obligation.” (4:24)

The *mahr* is the sole right of the wife and no one may take any of it without her permission – not even her parents. The dowry can be in the form of money, jewelry, clothing, or other material things. It can also be a non-

material gift. The Islamic sharia has not specified any amount, but it should be in accordance with the husband's financial ability and with what is reasonable for the bride in her social status. It is normally determined by agreement between the husband and the bride or her *wali*.

A woman came to the Prophet (s.a.w) and offered herself to him. He declined, so a man who was present with him said: "O Messenger of Allah! Marry her to me." The Prophet asked him: "Do you have anything to give her?" He said: "No!" The Prophet (s.a.w) said: "Give her at least an iron ring." But he still could not afford it. The Prophet (s.a.w) then asked him: "Do you memorise any portion of the Qur'an?" He replied: "I have memorised such and such chapters." The Prophet (s.a.w) then said: "...I marry her to you for the portion of the Qur'an that you have memorised."

This means that he is expected to teach her some of what he has memorised, and treat her kindly based on this memorisation. All of that would be much more beneficial to the bride than lots of material gift. Know that the best of dowry is that which is light and easiest upon the husband. This is actually a sign of blessing for the bride as the Messenger of Allah (s.a.w) said:

"Verily, a sign of blessing for a woman is that her engagement, dowry, and giving birth, are all made easy." (Ahmad, Al-Haakim, and others)

Umar ibn al-Khataab (r.a) once gave a sermon in which he said:

"Do not be excessive in regard to the women's dowries."

It is recommended to give the bride her dowry immediately after executing the marriage contract. Yet, it is a very common practice to divide the *mahr* into two portions, an advanced and postponed portion. Postponement of the *mahr* is, in general, an innovated inconvenience that departs from the normal practice found in the Sunnah. It defeats the very purpose, which is to be a gift prior to having any intimacy with the bride.

Conditions

At the time of carrying out the marriage contract, the two parties may wish to set conditions whose violation would invalidate the contract. This is acceptable as long as the conditions do not violate any Islamic principles. Prophet Muhammad (s.a.w) said:

“Every condition not according to the book of Allah is void, even if it be a hundred conditions.” (Bukhari & Muslim)

An example of a condition may be that a woman stipulates that she remain in a particular homeland during their marriage. The conditions are normally set by the wife’s side, because the husband can terminate the marriage by uttering the divorce.

Carrying out the Contract

It is recommended for the person conducting the marriage ceremony to start with *Khutbat-ul Haajah* that was reported by Ibn Masoud and Jabir in at-Tabaraani and Bukhari in At-Taareekh. The main and actual pillars of the contract are the offering and acceptance known as *Ijaab* and *qabool*. They signify the mutual agreement and acceptance between the two parties to join in this marriage bond. The *Ijaab* and *qabool* must be stated in clear, well defined words, in one and the same sitting, and in the presence of the witnesses. The person conducting the ceremony may help the two parties say offering and accepting words. Documenting the marriage contract is not a requirement for the contract’s validity. However, it is important to document it for future reference and to preserve the rights of the husband and wife. Once the marriage contract is executed, all rights and responsibilities for the two parties become immediately due.

We ask Allah to bless us with beneficial knowledge and cure us from the ailment of ignorance and blind following, and Allah knows best!