

Islamic Laws Regarding Marriage

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Islam recognizes value of sex and advocates marriage. Islam does not believe in celibacy. The Prophet of Islam has said,

"Marriage is my Sunnah (that is a recommended action of the Prophet) and whoever does not follow my Sunnah is not my true follower" (*Ibn Haiah, Babun Nikah*).

Allah has commanded the Muslims to marry:

"And marry those among you who are single.... "(24: 33).

In Islam, marriage is essentially a contract. However, the distinction between sacred and secular was never explicit in Islam. Any action or transaction in Islam has religious implications. It is not quite accurate, therefore, to designate marriage in Islam simply as a secular contract. The appropriate designation of marriage could be a 'Divine Institution'.

For a valid marriage, the following conditions must be satisfied:

- There must be a clear proposal.
- There must be a clear acceptance.
- There must be at least two competent witnesses. This is necessary to exclude illicit sex and to safeguard legitimacy of progeny. It is recommended that marriage should be widely publicized.
- There must be a marriage gift, little or more, by the bridegroom to the bride.

Dowry or marriage gift by bridegroom to the bride is a symbolic expression of the groom's cognizance of the economic responsibilities of marriage and of his readiness to assume all such responsibilities subsequent to marriage. Dowry is not any price paid either to wife or family of the wife. The general principle is that dowry should be estimated according to the circumstances with emphasis on moderation. The Prophet (p.b.u.h.) is reported to have said that the most blessed marriage is that which is least costly and most easy.

It is permissible for a Muslim man to see the woman to whom he intends to propose marriage before taking further steps so that he can enter into the marriage with full knowledge. This has been permitted in Islam to avoid future misunderstanding. The Prophet (p.b.u.h.) has said:

"When one of you asks for woman in marriage, if he is able to look at what will induce him to marry her; he should do so" (narrated in the book of tradition of *Abu Daud*).

However; it is not permitted in Islam for a man to be alone with a woman in the name of selection of spouse.

It is the girl's right to make a decision concerning her marriage and her father or guardian has no right to over-ride her objections or ignore her wishes. The Prophet (peace be upon him) has said:

"A woman who has been previously married has more right concerning her person than her guardian and a virgin's consent must be asked about herself, her consent being her silence" (narrated in the books of tradition of *Bukhari and Muslim*).

It is permanently prohibited for a Muslim to marry a woman of the following categories:

1. father's wife, whether divorced or widowed,
2. the mother including grand mothers,
3. the daughter including grand daughters,
4. the sisters including half and step sisters,
5. the paternal aunt, whether real, half or step sister of the aunt,
6. the maternal aunt, whether real, half or step sister of father;
7. the brother's daughter and
8. the sister's daughter.

These restrictions have been imposed by Allah in His wisdom to increase trust among close relations by prohibiting incestuous relations, increase love and affection among close relations, expand family ties beyond close circle etc.

In Islam marriage is also prohibited with foster mother who has suckled him during the period of weaning and with foster sisters, foster aunt and foster nieces.

Islam has also prohibited marriage with mother in law, the step daughter; the daughter in law. Islam has also forbidden to have two sisters as co-wives.

It is also prohibited to marry a woman who is a *Mushrik*, that is who worships idols or associates other deities with Allah. Allah says in His book, the Quran:

"And do not marry *Mushrik* women until they believe" (2:221).

It is however lawful for Muslim men to marry chaste women (that is women of virtue and character) from among the Jews and the Christians. Allah says in His book:

"(And lawful to you in marriage) are chaste women from those who were given the scripture before you" (5 : 5).

"It is not permissible for Muslim women to marry non-Muslim men" (2 : 221 and 60:10).

Allah has been more kind to the woman and has not put on her extra stress and probable difficulties in living with a husband of another faith.

Islam has allowed man to marry more than one (not exceeding four) women but has put serious restrictions on this. It requires his ability to maintain more than one wife, equality among the wives etc. It is for this reason that very few Muslim men marry more than one woman. Islam has allowed this to man to curb illicit sex. Illicit sex is a very degenerating thing for humanity and leads to debasement of women through prostitution. Islam has totally rejected prostitution.

Islamic law regarding marriage is easy, practical, rational and in keeping with human nature. Humanity can only benefit by following these regulations in true spirit.

Islamic Laws Regarding Divorce

Islam allows divorce if circumstances warrant or necessitate it. Islam has permitted divorce reluctantly, neither liking nor recommending it. The Prophet of Islam has said:

"Among lawful things, divorce is most disliked by Allah" (narrated in the book of tradition of *Abu Daud*).

Islam has not made it necessary that the grounds of divorce should be publicized. It, however; does not mean that Islam views divorce lightly. In fact, publicity of grounds may not be of any positive consequence. The grounds may not be pronounced but genuine. On the other hand, the grounds may be stated and may in reality be false. Islam does not also want washing dirty linen of private affairs in public or in the court except in exceptional circumstances. It is for this

reason that court comes in as a last resort in the Islamic scheme of separation of husband and wife.

The Quran states as regards grounds of divorce in very general terms:

"And if you fear that the two (i.e husband and wife) may not be able to keep the limits ordered by Allah, there is no blame on either of them if she redeems herself (from the marriage tie) "

(2 : 229).

The general ground of divorce in the Quran, therefore, is hopeless failure of one or both parties to discharge their marital duties and to consort with each other in kindness, peace and compassion.

The jurists have developed some indices which may be accepted as grounds of divorce in case the divorce matter goes to the court. Long absence of husband without any information, long imprisonment, refusal to provide for wife, impotence etc. are some of the grounds on which wife can ask for divorce. Either party may take steps to divorce in case of chronic disease, insanity, deceptive misrepresentation during marriage contract, desertion etc.

A Muslim male is allowed three chances, that is to say, three pronouncements or acts of divorce on three different occasions provided that each divorce is pronounced during the time when the wife is in the period of purity (that is not in her menstrual time). A husband may divorce his wife once and let the *Iddat* (the period of waiting after divorce) pass. During the waiting period the two have the option of being reconciled. If however the waiting period passes without reconciliation, they stand fully divorced.

If after the first divorce the husband is reconciled with his wife but the hostility and conflict begins all over again, he may divorce her a second time in the same manner as stated above. In this case also he can return to her during the *Iddat* (or waiting period). If however, after second reconciliation, he divorces the wife the third time, he can not take back the wife during the *Iddat*. She is totally prohibited for him. The lady, thereafter can marry any person she likes according to her choice. (Ref: The Lawful and the prohibited in Islam by Dr. Yusuf Al Qaradawi).

The wife can divorce her husband if this condition is stipulated in the marriage contract. This kind of divorce is called 'Delegated Divorce' (*Talaq Taffiz*). Marriage can also be dissolved through mutual consent. This is called *Khula* in the technical language of Islamic law. Marriage can also be dissolved by judicial process through the court on complaint of the wife on the grounds explained before.

One of the consequences of the divorce is the commencement of waiting period for the wife. This usually lasts three months. If there is a pregnancy, it lasts as long as pregnancy lasts. The waiting period is basically a term of probation during which reconciliation can be attempted. It is also required to establish whether the wife has conceived. It also allows time for planning the future.

Maintenance of wife during the waiting period is on husband. The wife can not be expelled from her place of residence and he can not in any way harass her. These will constitute moral as well as criminal offence.

In case of divorce, the young children remain in the custody of their divorced mother. However, the father has to provide the cost of maintenance of young children though they remain under the custody of mother. (Ref : The Family Structure in Islam by Dr. Hammudah Abdul Ati).

Islamic law of divorce is based on practical considerations. The process of separation is basically a matter of husband and wife. However; when conflict arises, attempts should be made for reconciliation. It has not made judicial process obligatory in divorce for reasons explained earlier. The intervention of court has nowhere reduced the number of divorce. Judicial process in Islam is the last resort in so far as divorce is concerned.

Islamic law on divorce if followed in true spirit will enhance the dignity of man and woman, reduce conflict and ensure justice.

Islamic Laws Regarding Rights & Obligations of Husband & Wife

Islam has put great stress on the relationship of husband and wife. It has clearly laid down the respective rights and obligations to avoid confusion and complication in this regard.

The basis of husband-wife relationship is love and compassion. In this regard the Quran states:

"And among His signs is this that He has created mates from among yourselves, that you may live in comfort with them, and he has put love and compassion among you (husband and wife). Surely in that are signs for those who think" (30 : 21).

The role of husband normatively revolves round the principle that it is his solemn duty to Allah to treat his wife with kindness, honour and patience, to keep her honourably or free her from marital bond honourably, and to cause her no harm or grief (Qur'an, 2 : 229-32 and 4 :19). The wife's position has been explained in the Qur'an by saying that : -

"Women have similar rights over men as men have over women" (2 : 228).

The husband in Islamic law is under obligation to maintain her wife. Maintenance includes the wife's right to lodging, clothing, nourishing, care and well being. The wife has a right to enjoy all these things according to her status and according to capacity of her husband.

The wife, however; loses her right of maintenance, according to the unanimous opinion of the Muslim jurists, in case of *Nushuz*, that is her hatred or defiance of husband or her attraction to another person.

In case of husband's recalcitrance to maintain wife, the law enforcement agencies are required to enforce maintenance. The majority of Muslim jurists also allow the wife the right to seek divorce in such a case. If she wishes so, the court must comply with her request and grant her the divorce.

The wife has also the right to receive dower from the husband at the time or in consequence of marriage. The dower is a gift of husband to his wife. This symbolises an assurance of economic security from the husband towards wife. The amount can be big or small depending on mutual agreement and economic condition of the two parties. This is, however; no price of sexual enjoyment. This can not be so because sexual enjoyment is not a one-sided affair. (Ref: *The Family Structure in Islam*, Chapter 3, by Hammudah Abdul Ati, American Trust Publications).

The main obligation of the wife as a partner in a marital relationship is to contribute to the success and blissfulness of the marriage as much as possible. She should be attentive to the comfort and well being of her mate. The Quran mentions good wife as "comfort of eyes" (25 : 74).

The husband has been stated by scholars as the head of the family in Islamic family system (infact, Qur'an itself has declared him Qayyim, which stands for manager, unit head, provider and protector). It is the duty of all family members to obey him in lawful matters. However; Islam has enjoined on all Muslims to manage their affairs (which includes family affairs) by mutual consultation. However; in case of disagreement, the head of the family should be obeyed.

Husband alone has the right of sexual intimacy with wife. The wife must not allow any other person to have access to that which is exclusively the husband's right. Wife has similar right in this regard.

Islam has given the correct principles and instructions regarding rights and obligations of husband and principles, if obeyed in true spirit, would ensure and social life instructions wife. These principles, if obeyed in true spirit, would ensure better family and social life.

Islamic Laws Regarding Social Relations

Islam gives great importance on social relations. The peace and stability of society depends on good social relations amongst the members of society. As such Islam has laid down detail instructions so that social relations are properly maintained and not disrupted by wrong practices. The importance of social relations will be clear from the following saying of the Prophet Muhammad (peace be upon him):

"Do not be envious of each other, nor backbite nor hate one another, but become brothers in the service of Allah" (reported in *Bukhari*, the book of tradition of the Prophet).

Islam has, therefore, made it unlawful for a Muslim to cut relations with fellow Muslims. The Prophet of Islam has said:

"One who cuts relations will not enter paradise." (reported by *Bukhari*).

The Prophet of Islam has also said, "It is not permissible for a Muslim to keep apart from his brother

for more than three days. If three days pass, he should meet him and greet him, and if he replies to it, they will both have shared in the reward, while if he does not reply, he will bear his sin while the Muslim (who offered him the greeting) will have been freed from the sin of keeping apart" (reported by *Abu Daud*, a book of tradition of the Prophet).

Islam has also emphasised the need for immediate settlement of social disputes so that peace in general prevails in the society.

Allah says in His book, the Quran:

"Verily, the believers are brothers. Then; set matters right between your brothers and be conscious of Allah in order that you may obtain mercy" (49 : 10).

The Prophet of Islam has said, "Should I not inform you of something more excellent in degree than fasting, charity and prayer?" On receiving the reply, 'Certainly', he said, "It is putting things right between people, for to incite people to dispute is like a razor" (reported by *al-Tirmidhi* and others).

Social peace is disrupted because of greed and consequent effort to grab property of others. Islam has prohibited all illegal methods of acquiring property. Allah says in His book:

"O you who believe! do not consume your property among yourselves wrongfully, but let there be trade by mutual consent" (4 : 29).

For the same reason, Islam has declared life as sacred and has prohibited killing of any person except in accordance with the provisions of law. Allah says in His book,

"If anyone kills a person for any reason other than for (the killing of) a person or for sowing corruption in the land, it will be as if he had killed the whole of mankind" (5 : 35).

The Prophet of Islam has said in this connection:

"A believer remains within the scope of his religion as long as he does not kill anyone unlawfully" (reported by *Al-Bukhari*).

It is for this purpose that Islam has declared the honour of people as sacred. None is allowed in Islamic law to spoil the sanctity of any person's honour. The Prophet of Islam has said, "Your lives, your honour; and your - property are as sacred to each other as the sacredness of this day (of Arafat) this month (of *Zilhajj*) this city (of Makka, where there is Kaba)". (reported by *Muslim*, a book of tradition of the Prophet).

For healthy social relations, Islam has prohibited spreading of rumour. This means passing on to others what one person hears from another person in such a manner that will cause dissension among people or increase bitterness among them. The Qur'an said in this regard,

"And do not obey any despicable man, ready with oaths, a slanderer, going among the people with calumnies" (68:10-11).

The Prophet of Islam has said:

"The one who spreads rumour which he has overheard will not enter the Heaven" (reported by *al-Bukhari*, and *Muslim*).

Islam has also prohibited unnecessary suspicion. The Qur'an said in this regard:

"O you who believe! avoid (indulging in) much suspicion; truly some suspicion are sins" (49 : 1 2).

The Prophet of Islam has said in this regard:

"Avoid suspicion, for airing suspicion is the most lying form of speech" (reported by *al-Bukhari* and others).

For good social relations Islam has also prohibited mocking at other people, slandering others, violation of privacy of other people, backbiting, calling people by bad nicknames. If the above principles are followed properly in any society the social relations will surely attain high standards of decency and ensure better social peace.