



Draft Marriage Contract

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THE
WORLD
FEDERATION

OF KHOJA SHIA ITHNA-ASHERI MUSLIM COMMUNITIES

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DRAFT MARRIAGE CONTRACT

An Agreement in the making of a Marriage

In the name of Allah, the Beneficent, the Merciful
O Allah, send Your blessings upon Muhammad and his progeny.

"And among His signs is that He created mates for you from among yourselves so that you may find tranquillity in them; and He placed between you love and compassion. In these are signs for people who reflect." (The Qur'an 30:21)

This agreement made on the _____ day of _____ in the year _____ CE;
corresponding to the _____ day of _____ in the year _____ AH;
Between _____ (the 'Bride') and
_____ (the 'Bridegroom'), all as specified outlined below.

I. BRIDE

Full Name: _____
Father's Name: _____
Mother's Name: _____
Date and Place of Birth: _____
Marital Status: _____ never married / divorced / widowed
Address _____

Nationality _____

II. BRIDEGROOM

Full Name: _____
Father's Name: _____
Mother's Name: _____
Date and Place of Birth: _____
Marital Status: _____ never married / divorced / widowed / married
Address _____

Nationality _____



Bride's wakil (aaqid – representative) whom she hereby authorizes to perform the aqd:

—

Groom's wakil (aaqid – representative) whom he hereby authorizes to perform the aqd:

—

The Bride and the Bridegroom enter into this agreement to provide for circumstances relating to their marriage contract; and both have read and agreed to the following stipulations by executing the relevant section(s).

III. MAHR

The Bridegroom agrees to give the following marital gift (mahr) to the Bride:

Signature of the Bride:

Date:

Signature of the Bridegroom:

Date:

IV. CERTIFICATION OF NIKAH

This is to certify that the marriage of the Bride and the Bridegroom named above was solemnized in accordance with the Shi'a Ithna-Asheri (Ja'fari) laws of Islam on

the _____ day of the month of _____ in the year

_____ CE;

the _____ day of the month of _____ in the year

_____ AH;



Marriage 2006

Signature of the Wakil (aaqid – representative) of the Bride:

Witnessed by:

Name:

Signature:

Date:

Signature of the Wakil (aaqid – representative) of the Bridegroom:

Witnessed by:

Name:

Signature:

Date:

V. REGISTRATION OF MARRIAGE

City and country where marriage is being performed:

Number of Marriage License issued by the city:

Date Licence issued:

Name and Registration Number of the person solemnizing the marriage:



Signature of the Bride: _____

Date: _____

Witness of the Bride's Signature

Name: _____

Signature: _____

Address: _____

Date: _____

Signature of the Bridegroom: _____

Date: _____

Witness of the Bridegroom's
Signature

Name: _____

Signature: _____

Address: _____

Date: _____

PREAMBLE

The Marriage Contract is an agreement between the husband and the wife for the formalisation and for the termination of Marriage. The agreement is an attempt to reinforce the underlying significance of the sanctity of marriage by highlighting the roles and duties of both parties, through the couple assuring themselves that the document can be relied upon in times of misunderstanding and through reducing external interferences.

The contract is designed not to complicate an already deteriorating situation in life but to facilitate efficient and swift operation of provision made by sharia. Hence the two most important conditions which normally tend to conflict with the sharia are:-

- The right of a wife to the Islamic (Shar'i) divorce
- The equitable and Islamic (Shar'i) disbursement of assets



CONCEPT OF MARRIAGE

Marriage is a provision by Divinity to unite a man and a woman for purposes of procreation and satisfaction of our innate desires. It makes permissible what would be prohibited in other circumstances and maintains the nobility of descendants. It is an institution in which two personalities, attitudes, mindsets and souls decide to live together and face all challenges of life in a manner that is pleasant to the Almighty, giving continuity to the species of Believing Human Beings – a fact the Holy Prophet (SAW) will be proud of on the day of Judgement. His followers created a chain of believers who worshipped Allah Almighty.

CONCEPT OF DIVORCE

Ideally, a man and a woman, willing to adapt to each other's likes and dislikes, preferences, attitudes, etc. should be capable of living together until death do them part. However, in the real world it is not so. Cognisant of the diversity in peoples' nature, Divinity has provided a break clause for such a partnership and labelled it DIVORCE. This break clause, however, cannot be exercised easily and it remains the single permissible thing that the Almighty detests most.

There are many conditions within a divorce, but separation and a break up of marriage frequently ends up in acrimony and hatred. It is this that the Almighty detests.

It is with this need to bring about all divorces to an amicable end that the following conditions are laid down.

DISCLAIMER

This marriage contract construction is a sample form, created for the purpose of being presented to the community at the World Federation Triennial Conference in Dubai in September 2006. All parties are advised to make the requisite changes in order to comply with local legal regulations within the Islamic framework. The World Federation, its affiliates and all those who assisted in the preparation of this contract are not liable for any defects therein. This has been provided as a service to the Khoja Shia Ithna Asheri community, and does not in any shape or form constitute legal advice.



MUTUALLY AGREED STIPULATIONS WITHIN THE ISLAMIC SHARIA

“When a man marries a woman, he should say:
‘I abide by the covenant of God to retain her in fairness or let her go in kindness.’

Imam Ja’afar as-Sadiq (a.s)

Please initial the stipulations which you are in agreement with:

Stipulation		Bride	Bride Groom
1.	The husband gives an irrevocable authorization to the wife to appoint someone as his representative (Wakil) for divorcing her after seeking approval of the resident alim, or her father, or her brother in the following cases:		
	a) If the husband ill-treats and or physically abuses his wife to such an extent that it becomes extremely difficult for the wife to continue the marital relationship		
	b) If the husband abandons the wife such as she becomes a suspended woman neither married nor free to marry for more than six months continuously.		
	c) If the husband divorces his wife in the civil court but refuses to give her the religious divorce.		
	d) If the husband is addicted to drugs and other intoxicants.		
	e) If the husband obstructs the wife in the fulfilment of her religious obligations (wajibats).		

2.	Distribution of assets		
	a) Everything possessed by either spouses before marriage (Nikah) shall remain their personal properties.		
	b) All gifts endowed by the Bridegroom and his family shall be returned to the husband and all gifts endowed by the bride and her family shall be returned to the bride. ¹		
	OR		
	c) All the gifts and presents exchanged in between them and their respective members at the time of their engagement, at the time of their marriage and thereafter shall be the absolute properties of the recipients and shall not be subject to any claim or recall by either of the parties in the event of the termination of the marriage		
	d) An amicable solution will have to be mutually agreed upon for all gifts endowed		

¹ If option (b) is selected, a list of all gifts included under this provision must be appended to this contact.



	by non family.		
	e) Only assets acquired / used jointly during the tenure of marriage shall be divided equally.		

		Bride	Bride Groom
3.	Both parties agree upon that in the event of the termination of marriage, the pronouncement of Talaq shall be made in accordance with the Shia Ithna-Asheri faith of Islam.		
4.	In case of dispute, the two parties shall appoint one or more arbitrators whose decision will be respected .		
5.	The Bride and the Bridegroom also agree to the following stipulations:		

CONCLUSION

This contract has been drafted in the hope that it will facilitate an honourable and amicable divorce in the spirit intended by Divinity. His pleasure is the ultimate call. (Verse 237) '.....and forgiving is closer to piety and do not forget the good times between you'.

IN WITNESS WHEREOF, the Parties hereof known as the Bride and the Bridegroom have on their own will and accord, without any duress whatsoever, agreed without any reservation whatsoever, to the terms and conditions contained in this 'marriage contract' and have attested their initials and signatures in the presence of witnesses prior to the solemnization of their marriage.

Signature of Bride:

Date:

Witness of Bride's Signature:

Name:

Signature:

Address:

Date:

Signature of Bridegroom:

Date:



Witness of Bridegroom's Signature:

Name:

Signature:

Address:

Date:

Distribution of Assets (note 1, Clause 2b above)

Gifts endowed by the Bridegroom and his family which shall be returned to the husband:

Gifts endowed by the bride and her family which shall be returned to the bride:



PROPOSAL AND ENGAGEMENT – A FEW POINTERS BY SAYYID MUHAMMAD RIZVI

Introduction

The marriage season of the year has dawned upon us and so I thought it appropriate to remind those who are planning engagement and marriage of a few pointers.

“Engagement”

Engagement is the time between acceptance of the marriage proposal (khitba) and the marriage ceremony ('aqd). Once the proposal is accepted, the man and the woman are known as “engaged to be married” or simply “engaged”. Engagement has no recognition in Islamic laws. It is simply an agreement to marry but it is not a binding agreement, it can be broken off with or without a reason.

Who Proposes?

Traditionally in all cultures, it is the man who proposes to the woman; and it is done either directly by the man himself or on his behalf by his family. In the West, even now the man is expected to get down on his one-knee to propose to the woman he wants to marry. In words of 'Allama Murtaza Mutahhari, “From time immemorial man has approached woman with his proposal... Nature has imbued woman with the disposition of a flower and made the man the nightingale, woman the lamp and man the moth.”
“This is not the case with human beings only. Other animals also behave like this. It is always the function of the male to present himself impatiently and earnestly before the female...” (The Rights of Women in Islam, p. 15-16)

Even the Qur'ān asks the men to seek women for marriage. (See 4:3) And so, in the proposal, it is the man who initiates and the woman who accepts. In the actual marriage ceremony, however, it is the woman who initiates the marriage and the man who accepts it.

When & To Whom?

Other than the mahram ladies whom he cannot marry, a man may propose marriage to any single woman. (For list of the mahram ladies, see the Qur'an 4:23-24.)

However, in the following four cases, proposal is not appropriate. (Remember that the contemporary mujtahids have not expressed their opinions on three of the four cases; but scholars of the early centuries of the ghaybat have expressed their opinions.)



1. A divorcee who is in her three months' waiting period ('iddah) of the revocable divorce (talaq, a divorce initiated by the husband.)
It is forbidden (harām) to propose to her directly or indirectly before the expiry of her 'iddah. The divorced couple, in this case, may decide to revoke their divorce during the grace period.
2. A divorcee who is in her three months' waiting period ('iddah) of the irrevocable divorce (khula', a divorce initiated by the wife.)
It is forbidden (harām) to propose to her directly but one is allowed to propose to her indirectly.
3. A widow who is in her four months' waiting period ('iddah) after her husband's death.
It is forbidden (harām) to propose to her directly but he is allowed to propose to her indirectly. (See the Qur'an 2:235)
4. An engaged woman: Is it permissible for man to propose a lady who is already engaged? Among the past scholars, there are two views on this issue: from makruh (irreprehensible) to harām (forbidden). However, if a woman who has just received a proposal but has not yet responded to it positively, it is permissible to propose her. In this case, if a man proposes to an engaged woman and eventually marries her, then according to those who consider that proposal to be haram, although the act of proposing is sinful but the actual marriage between the two would still be valid.

Engagement Ceremony

There is no such thing as an engagement ceremony in Islam. "Engagement" is just a nonbinding agreement to marry. However, Muslims have adopted certain traditions from other cultures or made their own customs. Technically, if traditions don't violate the shari'ah laws, then there is no problem. For example, among the Shi'as of north India, the man's family go with an "Imam zāmin" to the girl's family and tie it on her arm as a well-wish gesture for the girl – this is done by the women of the man's family.

These days, many Muslim cultures have adopted the Western tradition of giving or exchanging engagement rings. Apparently, this was first done by Maximilian I, the Holy Roman Emperor, in 1477 when he gave a diamond ring to Mary of Burgundy. However, there is a problem in this tradition: since the engagement does not make the man and the woman mahram to one another, they cannot touch one another even for giving the engagement ring, they still have to observe the rules of hijab. The only solution is to recite the temporary nikah for the purpose of becoming mahram only. For more details, see my Marriage & Morals in Islam.



Problems & Conflicts

These days the so-called “engagement ceremony” is becoming more like a mini marriage ceremony! I am not saying that don’t do your engagement ceremony – if you do it within the bounds of shari’ah, then there is no problem, BUT don’t over do it! Don’t rob the actual marriage of its mystique! Even the tradition of giving gifts –the man’s family gives to the engaged woman– is overdone in some cultures. I am told that at every occasion on our religious calendar, the boy’s family is expected to send clothes and jewellery to the girl. This is okay; but it becomes a big problem when the engagement is broken off.

1. If the engagement is broken off by one party, then the other cannot claim for damages for breaking the agreement since it was of a nonbinding nature. One cannot claim for damages for ‘loss of reputation’ or ‘depression’ or ‘air fare for our trips to visit you,’ or ‘the deposit paid for the hall rental’ and etc. Remember you cannot unwind your life; unpleasant things happen and you have to move on and carry on with your life.
2. Of course, both parties have the right to ask back for the gifts given to one another:
 - (a) If the gifts were of perishable nature (e.g., sweets), then there is no basis for asking it back or its value.
 - (b) If the gifts were non-perishable (e.g., cash or jewellery), then there is two possibilities:
 - i. If it still exists, then it should be given back.
 - ii. If it perished or doesn’t exist any more, then:
 1. if it perished out of negligence, then pay its value.
 2. if it perished without anyone’s fault, then there is nothing.

So keeping the engagement relationship simple helps in dealing with potential problems later on. But if you still want to indulge in extravagance during the engagement period, then those who give should be prepared to forget everything in case the engagement is broken off and those who receive should be prepared to consider the gifts as ‘trust’ and be prepared to give them back.

3. However, according to Islamic laws, the gifts given to a person related to you by blood cannot be asked back. (Blood relationship means biological relationship as opposed to relationship through marriage.) So, for example, if the engagement is between cousins and then it is broken off, the parties cannot ask back for the gifts that they had given to one another.



OPTIONAL CONDITIONS IN AN ISLAMIC MARRIAGE CONTRACT

BY SAYYID MUHAMMAD RIZVI

Marriage: A Legal Contract

Since marriage is a binding contract ('aqd) in the Islamic laws (the shari'a), it depends on three essential conditions:

1. the proposal from the bride;
2. and the acceptance from the groom;
3. and the mahr.

Mahr means the consideration that the groom agrees to give to the bride. (See 4:4) It is the right of the bride and it is for her to specify or fix the mahr. The groom may either accept it or negotiate with her until they reach to an agreement. Mahr is not a price being paid for the lady; it does not mean buying a wife. It is a symbolic gesture of man's true love for the woman whom he intends to marry. It doesn't have to be monetary or material; it can even be a service (e.g., teaching the Qur'an or provided for higher education or paying for the hajj, the pilgrimage to Mecca, etc). Moreover, the mahr can be immediate or deferred or partly immediate and partly deferred as agreed by both parties. Besides the three conditions mentioned above, there are no more essential conditions attached to the Islamic marriage contract.

Optional Conditions

However, like any other contract ('aqd), there is room for optional conditions in the marriage contract as well. The concept of optional conditions is not an innovation or "a revolutionary concept;" it has existed in the shari'a laws from the earliest days. Of course, its application in marriage contract has gained popularity in modern times. Shi'i scholars of the early days of ghaybat, like Shaykh at-Tusi (d. 460 AH) in his *an-Nihāyah*, *al-Khilāf* and *al-Mabsut*, as well as of the later days, like Sayyid Muhsin al-Hakim (d. 1969) in *Minhājū 's-Sālihiyn*, have discussed the concept of "shart dhimn al-'aqd – a condition attached to the contract." Even the marriage contracts of India and Pakistan had provision for "sā'ir shurut—other conditions" which, nonetheless, was left blank by most couples.

By looking at the problems facing Muslims of our time, the contemporary mujtahidin have started highlighting the issue of optional conditions in the marriage contract. In the Islamic Republic of Iran, for example, marriage certificate comes in a booklet form with optional conditions printed within it for the bride and the groom to sign on the dotted lines after each condition if they wish to include it in their marriage contract.



Why Optional Conditions?

The imams of the Islamic centres, the Muslim counselors and social workers have observed that some men abuse the rights given to them in marriage relationship. In order to prevent such situations and equip women with mechanism within the parameters of shari'a laws, we have started recommending to potential brides and grooms to add a few conditions to their marriage contract. Both parties can put whatever conditions they agree upon except a condition which goes against the shari'a laws. The conditions that we recommend are mostly related to the right of divorce and division of property at the time of divorce.

1st Example: The Right of Divorce

Although marriage is sacred in Islam, it is also dissolvable. Divorce is allowed but as the last solution. However, the right of divorce has been given to the husband. If a situation arises where the wife does not want to continue with the abusive relationship and the husband does not agree to give divorce, then the woman is stuck in that marriage. The Qur'ān is very clear that "either retain your wife in goodness or release them with kindness." There is no third option where a woman is just left "suspended, neither married nor divorced." Imam Ja'far as-Sādiq (a.s.) said, "When a man intends to marry a woman, he should say, 'I pledge by the covenant that Allāh has taken to retain [my wife] in goodness or to release [her] with kindness.'" However, there are certain men who do exactly the opposite— they leave their wives suspended. How does the Muslim community deal with such situations? There are a variety of pressures which could be brought to bear upon the husband to divorce his wife:

- (1) family;
- (2) extended family;
- (3) community elders.

As a last resort, the woman could approach (4) the mujtahid (a Shi'a jurist) or his representative to intervene; and if he is convinced that the husband is being unjust, then he has the power to serve a notice to the husband and ask for his consent to divorce the wife. If the husband refuses, then the mujtahid can dissolve the marriage and pronounce the divorce even without the husband's consent. In Canada, however, not all families have the extended family support to put such pressure; nor do we have a mechanism as a community (e.g., excommunication) to censure the man who is treating his wife unjustly. The only option is to approach the mujtahid; but that process, like any other judicial process, takes its own due time. In order to make things easy and fast in solving such marital problems where an abusive husband is refusing to give divorce, we encourage the couples, at the time of marriage, to add certain optional conditions to the marriage contract as seen below:

The husband gives an irrevocable authorization to the wife to appoint someone as his representative (w a k i l) for divorcing her, after seeking



approval of the resident 'ālim* or her father* or her brother,* in the following cases:

1. if the husband marries another woman without permission of the wife named in this marriage contract;
2. if the husband ill treats and or physically abuses the wife to such an extent that it becomes extremely difficult for the wife to continue the marital relationship;
3. if the husband abandons the wife and does not provide for her for more than six months continuously;
4. if the husband divorces his wife in the civil court but refuses to give her the religious divorce.

* These are various options in order to prevent emotions from clouding the decision-making process on this serious matter of life.

The first condition might seem to be against the shari'a law which allows polygamy; but it is not so. The condition does not prevent the husband from marrying a second wife; it gives a right of divorce to the first wife if she wants to disengage herself from this triangle relationship. By putting these conditions as part of the religious marriage contract, it becomes easier for women to get divorce when they are faced with such situations.

2nd Example: Property Distribution:

From the shari'a point of view, at the time of divorce, the wife is entitled to:

1. Mahr, if not already paid.
2. Her own property or belongings which she brought with herself at the time of marriage or whatever she acquired by way of earning or gifts or inheritance, etc. In case of divorce, this leaves many women, especially the housewives, without any financial support. Unfortunately, the secular society as well as the Muslim community does not recognize the contributions of the "housewife." Women's liberation movement has degraded the status of the mother and the housewife as opposed to a "career woman." Her hard work in managing the household, and rearing of healthy and good children who grow up to be productive citizens is not adequately recognized or appreciated even by her peers in the women's liberation movement. The evolution of her title from "housewife" to "homemaker" has not yet elevated the status of the wife who chooses to stay at home, especially after the birth of her child. From the Islamic point of view, a wife is not legally required to do the household chores and take care of her own children; it is the husband's duty to provide for his wife and children. However, on a moral level, the wife is expected to help the husband in managing the household and taking care of the children. This difference on the legal and moral levels is so that a husband shouldn't think of his wife as a slave or a servant; he should appreciate the contribution of his wife in his life. That is the true partnership in marriage. It is in this background that we propose the following condition in the marriage contract which provides for some financial compensation for the wife if the husband initiates the divorce. If the husband initiates the divorce, then the husband will give to his wife one-fourth (or one-third or half*) of all the possessions that he



acquired during the marriage period. In case of dispute about the cause for divorce, the Shi'a Ithnā-'ashari religious authority (the resident 'ālim or the marriage committee or the arbitration board) will determine whether the divorce was initiated by the husband or the wife.

* One-fourth or one-third or half are various options that both parties can agree upon.

Such a condition will hopefully discourage some brides from asking for exorbitant amount in the deferred mahr as a financial security. Let the mahr be a true consideration from the groom to the bride, and not a financial security certificate for after divorce. Muslims, women and men alike, must realize that getting anything from one's spouse in form of spousal support or alimony through civil courts will not make it legitimate from the religious point of view. It will be considered ghasbi, usurpation. Such spousal support or alimony can become religiously legitimate only if the issue of division of property was included in the Islamic marriage contract. It must be clarified that the issue of child support is different from the spousal support issue: a father is still responsible for providing for the child even when the mother has the custody.

Other Remarks on Optional Conditions:

Although we do not encourage intra-faith marriage (i.e., marriage of a Shi'a Ithna-'Ashari to a Muslim from other sect), if a Shi'a Ithna-'Ashari lady decides to go through such a marriage, then, it is essential to get the right of divorce "if she or her children will not be allowed to practice the Shi'a rituals and rites."

Question: Are these optional conditions only valid if they are added to the 'aqd at the time of marriage or can a couple write up such an agreement even after the marriage? Would such an agreement be valid from religious perspective?

Answer: Yes, any couple who agree on such or other conditions—as long as those conditions do not contravene the shari'a— can write such an agreement and that will be as valid as a contract signed at the time of the marriage.

A final note: The issue of optional conditions can be very sensitive—more so since it is not common in our communities— therefore, it is absolutely important to discuss and study the issue much before the actual marriage and not at the time of marriage ceremony.