

Marriage in Islam

Islam belongs to the monotheistic Abrahamic tradition which includes Christianity and Judaism. Islam embraces not only ethical commands and spiritual teachings but also prescribes a specific code of behaviour for daily living. In personal and social lives, Muslims are required to adhere to a moral code of behaviour prescribed by the Quran, the foundational text for the community (*ummah*). Muslims believe that the revelations that came to Prophet Muhammad in the form of divine inspiration over twenty-two years are contained in the Quran. The regulations of the Quran defined rights and obligations for men and women with respect to participation in public affairs as well as all aspects of their private lives including marriage and divorce; the regulations assumed a degree of choice for all parties.

The Quran, which literally means 'reading' or 'recitation, provided an ideology for the community by modifying or replacing the existing tribal customs. Some of the most fundamental reforms brought about by the Quran improved the status of women and strengthened the family, the basic unit of society. The Quran emphasized the relationship between the husband and wife and children, consequently transferring tribal allegiance to the family unit. All aspects of public and private lives of the Muslims are governed by the *sharia*, the Arabic word for Islamic law.

Development of Islamic law (*sharia*, *shari'a*, or *shariah*)

Prophet Muhammad was both the recipient of Divine revelation and its promoter, guiding the community in all matters. When he died, the majority of the community believed he had not appointed a successor. They referred to the Quran, to the Prophet's exemplary life (*sunna*) and to his sayings (*hadith*) to seek solutions to the matters that arose. They came to be known as the Sunnis. A small group affirmed that the Prophet had designated his cousin and son-in-law, Ali as his successor, or *Imam*, and that this leadership was to continue thereafter by heredity through Ali and his wife Fatima, the Prophet's daughter. They came to be known as the *shi'at* 'Ali or the 'party' of 'Ali, commonly known as the

Shia. The term *Imam* is generally used to refer to a religious leader, but the Shia restrict the term to spiritual leaders descended from Ali and Fatima.

The geographical expansion of Islam necessitated the rendering of legal opinions by jurists beginning in the eighth century. According to the Sunnis, there are five sources of Islamic law, namely the Quran, the *sunna*, the *hadith*, analogical reasoning (*qiyas*), the unanimous agreement of the jurists of a particular age (*ijma*),¹ and independent reasoning (*ijtihad*). The jurists' interpretations of the revelation and the words and actions of the Prophet resulted in the development of several separate legal schools designated by names of prominent jurists. Today there remain four major schools for the Sunnis: Maliki, Hanifa, Hanbali, and Shafi.

For the Shias, the main sources of *sharia* are the Qur'an, the *hadith*, and the authority of the *Imam*. The Shia adhere to the Jafiri school of law, named after the fifth Shia *Imam* Jafar as-Sadiq. This school of law is centred around the doctrine of *Imamat*, which is based on the belief that mankind needs a divinely inspired guide in all spiritual and temporal matters. The Shia maintain that the Alid *Imams* (descendants of Ali) have an understanding of the exoteric and esoteric meanings of the message of Islam. The Twelver Shia, who are so-called because of their belief that their twelfth *Imam* had withdrawn from the world and will reappear physically at the end of time to restore true justice, are guided by trained scholars called *mujtahids*. The Shia Nizari Ismailis² are guided by a living hereditary Imam, whose presence is considered necessary to interpret the message of Islam in changing times.³

¹ John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982) 3-8

² A number of distinct Muslim communities around the world recognized Imam Ismail (who lived in the 8th century) as their spiritual leader or Imam of his time. These communities have, at various times, been described as Ismailis. The other major Ismaili community, the Mustealian Ismailis, follow the line of Imams from Imam Ismail, but their line stopped in the 12th century. The Nizari Ismailis, on the other hand, follow the line of Imam Ismail to the present day. His Highness the Aga Khan is the 49th hereditary Imam of the Nizari Ismailis, tracing his lineage back from Imam Ismail in the 8th century and, through him, to the first Shia Imam, Ali.

³ The Institute of Ismaili Studies http://www.iis.ac.uk/view_article.asp?ContentID=101024

Before the nineteenth century, there did not exist a codified system of law. The opinions of the learned scholars served as the basis for decision-making by the judges. With the decline of the Muslim empire and the beginning of colonization, codified law began to replace scholarly opinions. There is a wide variation in the culturally diverse Muslim countries regarding the interpretation and implementation of Islamic law.

Marriage

In Islam, marriage and family life are encouraged. Family life hence assumes the necessity for and regulation of marriage. In Islam, marriage is a social contract between the spouses in which their rights and obligations are detailed. Marriage is to be accompanied by the signing of a legally binding contract, with the husband specifying the amount of settlement to be made to the wife in the event of divorce. The Quran commanded that the wife and not her father or male relative should receive the dower thus establishing the woman as an equal partner in the contract rather than an object for sale (4:3). In pre-Islamic Arabia, the wife's father or close male relative received the dower.

The Quran speaks of the relationship between the spouses as one of love and mutuality:

“They are your garments,
And ye are their garments.”
(2:187)

Just as one's garments are close to the body, the spouses are to be intimately close to each other, providing mutual support and protection. Regarding marriage itself, S.H. Nasr explains that “one cannot understand its status in Islam without first comprehending the significance of sexuality for Muslims. In classical western Christian theology, sexuality itself is associated with original sin and accepted only as a means of procreation. To practice it in the context of the religion therefore requires that it be sanctified through the sacrament of marriage. In Islam, as in Judaism, sexuality itself is a sacred blessing. Therefore, there is no need of a sacrament, in the Christian sense, to sanctify it. Rather,

marriage in Islam is a contract drawn to legitimize the sexual act within marriage and to protect the rights of both partners. In Islam, as in Christianity and Judaism, sexual activity outside of marriage is not allowed and is considered a sin in the eyes of God.”⁴

Polygamy

The Quran curtailed the pre-Islamic practice of unlimited polygamy and restricted the number of wives a man could marry to four, provided he treated them equally. It states:

“marry of the women, who seem
good to you, two or three or four;
and if ye fear that ye cannot do
justice (to so many) then
one (only).”

Marcia Hermasen explains that “some Muslims feel that polygamy was only allowed as a sociohistoric necessity and that the Quranic injunction is tantamount to a discouragement of multiple marriages. In practice, the command for equal treatment of the wives has been left up to a man’s conscience.”⁵

Nasr also states that “polygamy is permitted only under certain conditions, including consent of all parties concerned and just behavior toward the wives, but all sexual promiscuity is strictly forbidden” and that the practice of polygamy, “which is the exception rather than the rule is usually dictated by economic and social factors. When practiced according to Islamic teachings, polygamy is not legalized promiscuity, as some Westerners claim, but a way of seeing that men bear economic and social responsibility for all their mates and offsprings.”⁶ Most scholars agree that the Quran favoured monogamy when it instructed the man to treat all his wives equally. Some Muslim countries have restricted the practice of polygamy while others have banned it.

⁴ Seyyed Hossein Nasr, The Heart of Islam, 1st ed. (New York: HarperCollins Publishers Inc., 2002)

⁵ Marcia K. Hermansen, “Women, Men and Gender in Islam,” The Muslim Almanac ed. Azim A. Nanji (Detroit: Gale Research Inc. 1996)

⁶ Seyyed Hossein Nasr, Islam: Religion, History, and Civilization 1st ed. (New York: HarperCollins Publishers Inc., 2003)

Divorce

The Quran allowed for divorce after reasonable attempts for reconciliation had been made, Equality is specified in the Quran:

“And women shall have rights similar to the rights against them, according to what is equitable.” (2:228)

In pre-Islamic Arabia, the wife did not have any rights to divorce the husband. The Quran granted the wife some judicial rights, within the social context of the time, to end undesirable unions. However, the strong influence of local social customs succeeded in limiting those rights to very narrow grounds. Divorced persons, widows, and widowers were also encouraged to remarry. There are no verses in the Quran to support the unequivocal license to divorce that males possess today.

Keci Ali explains that the most common form of divorce is “*talaq*,” which literally means “release.” *Talaq* is a unilateral repudiation of the wife by the husband, and does not require the wife’s consent. She must observe a waiting period of approximately three months to be sure that she is not pregnant; then she is free to remarry. A repudiated wife retains the dower she received at marriage or, if it was divided into a prompt and deferred portion, the deferred portion becomes immediately due at divorce.”⁷

Alternatively, in “*khul*, divorce for compensation, a wife returns her dower or pays some other sum to her husband in order to obtain a divorce. Traditional jurisprudence considers his consent essential though it is not mentioned in the Quran or in many of the prophetic traditions that refer to it.”⁸ The wife must again observe the three-month waiting period before she remarries.

⁷ Brandeis University www.brandeis.edu/projects/fse/Pages/divorve.html

⁸ Ibid.

Ali adds that “in addition to unilateral repudiation and divorce for compensation, both of which are mentioned in the Quran, jurisprudence allows for judicial divorce when the wife has cause. Acceptable grounds for divorce vary widely among the legal schools.”⁹

Traditional jurisprudence allows women to initiate the divorce. Keci Ali explains that “these include conditional or delegated divorce, where the wife includes a condition in her marriage contract that allows her the right to divorce on her own initiative under certain specific circumstances, or states that she will be automatically divorced if a particular event occurs (such as the husband taking another wife).”¹⁰ The enforceability of these clauses in traditional jurisprudence as well as in contemporary legal systems varies widely.

Furthermore, Ali states that “there is disagreement among Muslims about the degree to which such modified contracts address the legal disadvantages Muslim women face during marriage and in case of divorce. When husbands and wives agree that they wish to enforce traditional rules, such as dower obligations, the marriage contract is a vital tool. But for those who object to the overall framework of differentiated rights and duties, or to particular male prerogatives, modifications to marriage contracts cannot successfully resolve the problem.”¹¹

Inheritance

The Quran brought about a shift from the tribal customary practice of inheritance through male descent by granting inheritance rights to the husband and wife and close relatives who did not previously have these rights of succession. The Quran prohibited the Arab custom whereby a son could inherit his stepmother as part of his father’s legacy and then convert the wife’s property and gifts into his own. The Quran also expressed concern for orphans, needy children, and the disadvantaged within the family and society, for whom particular care was to be exercised and special funds were to be set aside for their use.

⁹ Ibid

¹⁰ Ibid

¹¹ Brandeis University www.brandeis.edu/projects/fse/Pages/marriagecontracts.html

In Islam, there does not exist an institutionalized method of pronouncing on dogma. Islamic law is interpreted differently in different times by the culturally diverse Muslim societies. Muslims are, therefore, religiously observant in different ways. Just as there exists diversity and pluralism in Christianity, Islam comprises diverse interpretations with respect to ritual and belief. Many believe that the literal understanding of the message of the Quran can establish a righteous order for all times. Others, including the Shia Nizari Ismailis, for whom the principle of the faith is further guided by the *Imam* of the time, the principle of the Quran transcends the literal interpretation, and enables progressive responses to the challenges of the current times.

Today, although most Muslim countries have embraced the secular civil and penal code to govern legal matters, family law continues to be governed by the *sharia*. Regardless of the school of interpretation for *sharia* practices, marriage in Islam is a bond between two individuals based on love and mutual respect. It is a social contract rather than a religious binding, allowing the parties to equitably dissolve undesirable situations. The love of one spouse for the other is considered to be an earthly reflection of the love of the soul for God.

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