

# MATRIMONIAL CONTRACTS AND THE RIGHTS OF WOMEN IN ISLAM - A SAUDI ARABIA CASE STUDY

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## **Abstract**

*Marriage is regarded both as a social agreement and a legal contract in Islam. Unlike the optional Western prenuptial agreement, the matrimonial contract is a compulsory component of an Islamic marriage. In Saudi Arabia the matrimonial contract is used to ensure certain rights and privileges for the woman after marriage. Women who desire a non-traditional type of marriage (to have a job, not to be responsible for certain house chores presumed to be their obligation), stipulate such clauses in the matrimonial contract.*

**Key words:** *marriage, Islam, matrimonial contract, women rights, mahr, Saudi Arabia*

Marriage is regarded both as a social agreement and a legal contract in Islam. Unlike the optional Western prenuptial agreement, the matrimonial contract is a compulsory component of an Islamic marriage. In modern times the matrimonial contract is signed in front of an Islamic judge called imam or in front of an elder member of the community who is familiar with the Islamic laws. Signing the contract is usually a private matter attended by the groom's and the bride's families. The contract is called nikah.

## *Matrimonial Contracts' Conditions in Islam[1]*

The contract uses specific terminology for each of its elements which helps to identify the exact stage corresponding to any given situation.[2]

Signing the contract is a condition for the marriage according to Islam laws and certain requirements must be met for such a contract to be acknowledged:

1. Consent. Both the groom and the bride must consent verbally and in writing to the marriage. This implies a formal marriage proposal (ijab) and acceptance of the proposal (qabul). The bride is usually represented for the contract's negotiations by a wali – a male guardian representing her interests. The bride has to express the will to contract

the marriage. The consent can't be given by minors, mentally disabled, people unable to understand and consent to a legal contract.

2. Mahr. This word is often translated as dowry, but the appropriate translation would be bridal gift. The bride has the right to receive a gift from the groom that legally becomes her property, as a security measure for the marriage. The gift is paid directly to the bride and remains her property even in case of divorce. [3]. Mahr can come in the shape of money, jewels, properties or any other valuable good.

3. Witnesses. Two adult witnesses are required to check the matrimonial contract. After the contract is signed, the couple is legally married and can enjoy all rights and obligations of the marriage. Nevertheless, the majority of the Muslim couples won't formally share a house until after the public celebration of the marriage (walimah). Given the tradition, celebration of the marriage can last hours, days, weeks or even months.

#### *Matrimonial contracts in Saudi Arabia*

In Saudi Arabia matrimonial contracts are used to ensure certain rights and privileges for the woman after marriage.

Saudis assume that men will have the final word regarding the arrangements for living conditions after marriage, except the situation when the bride or her family stipulate something else in the matrimonial contract. Women who desire a non-traditional type of marriage (to have a job, not to be responsible for certain house chores presumed to be their obligation), stipulate such clauses in the matrimonial contract.

Since bringing a case in a court room and ask a stranger to settle the issue is regarded as shameful, the misunderstandings concerning women rights after marriage are cleared within the family by the male relatives of the woman who negotiate with her husband. The matrimonial contract itself is drafted by the negotiating men and not by the woman herself.

In Saudi Arabia the debates on women rights start by turning for guidance towards the rights given to them by the Islamic law. Thus, if a woman wants to become a doctor or a teacher she can achieve this goal by using the argument that during Mohamed age women could work outdoors and Islamic law allows this stipulation to be included in the matrimonial contract.

Saudi women became an important part of the workforce in Saudi Arabia and have jobs within the medical, education or business fields. If they work for the state that is a

major employer for a significant number of Saudi women (mainly in medical and education fields), their income is equal to men's holding similar jobs. Thus, a working woman's income represents an important amount in a household. However, within "a household with two incomes", as the American sociologists qualify it, the woman is not expected to bring her contribution to the household expenses, these being man's responsibility. Many Saudi men believe it is a shame to accept money from their wives or their daughters for any type of expense regarded as man's duty. This attitude concerning women's income seems to last for several generations in spite of the massive changes for women's access to money in the form of income.

This idea starts from the beginning of the life as a couple when the man is responsible for paying at least one, or both of the marriage celebrations (the milka and the dokhla). The expenses can be massive: two spaces are rented (one for the women and the other one for men), there is a rich menu, photographers are hired, etc. The groom must buy two expensive sets of jewelry for the bride, he is also responsible for mahr – a gift in the form of a huge amount of money or properties. He is also responsible for ensuring the living conditions for the couple and the marriage can't take place until the apartment or the house are not fully furnished and ready to be inhabited.

From a social perspective, the mahr paid by the groom before marriage, along other expenses, prove his or his father's financial ability and the will to maintain the new household. The mahr is also a key element of the matrimonial contract meant to protect women before marriage. Saudi women interviewed by Lisa Wynn [4] claim that the purpose of the mahr is to help the brides begin a married woman's life as a financially independent being, regardless of her employment status.

Since money belong only to the woman she is financially independent from both her family and her husband.

Saudis also claim that the mahr protects women against divorce since huge amounts of money invested by the husband in the marriage prevent him from using divorce as an easy solution to get out of a troubled marriage. According to the Islam laws (Sharia Law) interpreted in Saudi Arabia, the man can divorce the woman by simply verbalizing it, while the woman in a similar position must bring the case in front of a judge

and prove that her husband failed to fulfill his marital duties. The man knows that in case of a divorce, he gives up all money invested in the marriage.

The case of Nejwa [5], a Saudi woman is a prime example. She was engaged to a cousin while still attending high-school, but the marriage was postponed for four years because her mother insisted she graduated before changing her marital status.

Her family was extremely traditional and the two were barely allowed to talk to each other and they never met. They were technically married given the matrimonial contract had been signed and the mahr agreed upon even if not paid yet. The groom got tired of waiting and one night he complained about the situation to his friends who advised him to get a divorce. He regretted his decision the next day. A judge from the city heard about his story from one of the witnesses and summoned him to the court house asking him to draft a new matrimonial contract and specify a new mahr even if the amount was no different from the previous one. The judge advised him to take divorce seriously in the future.

### ***Conclusions***

Even if Saudi society follows more and more often the pattern of romantic love for marriage, extended family still has an important role in mediation of the woman's requirements, especially in the first years of marriage.

In 2018 Saudi Arabia abolished the article "The house of obedience" [6] of the matrimonial law that gave the right to the husbands to oblige the wife to return home against her will. Abolishment of the article considers woman's dignity and mutual consent that should be the fundament of the life as a couple.

According to a report published by Saudi Gazette [7] The General Authority of Statistics (GaStat) pointed out that 10,3 % of the women past the ideal age for marriage were not married in 2017. The report GaStat reveals that 230.512 women out of 2.2 million aged over 32 were not married in 2017. The ideal age for marriage in Saudi Arabia is between 15 and 32.

The report shows that 2,83% of the women got married when they were 32. 33% of the total unmarried women are aged 15-32. 58,8% out of the same age group are married, 5,6% are widows and 2,5% are divorced.

The smallest percent of unmarried women aged 15-32 is in Baha. The highest percentage of unmarried women is in Quassim, 35,48%.

The average age of men who get married for the first time is 25, while 20 is the age for women. The report states that 46% of the women get married for the first time before they turn 20. The study shows that a 32 years old Saudi woman has limited chances to get married.

According to the Minister of Justice, around 700.000 Saudi women are married to foreign citizens, which is 10% of the total married women in the kingdom. There is no figure for the Saudi men married to foreign citizens [8]. However, Tawfiq Al Swaylem, the head of Awasir, the Charitable Society for the Welfare of Saudi Families Abroad, said that marriages with foreign women became a usual practice in the last 20 years.

Saudi citizens must meet certain conditions to marry foreign citizens. A Saudi man must be 40-65 years old and a Saudi woman 30-50 years old.

A Saudi man must earn at least 3000 riyals monthly and must have a proper house or an apartment for his marriage to be approved and the woman he wants to marry must be at least 25 and the difference of age between them should not be more than 15 years.

Saudi women must sign an affidavit stating that the marriage to a foreign citizen won't grant Saudi citizenship to her future husband or their children.

Roughly a third of the 32 million people of the kingdom are foreigners working mainly in construction or services.

## References

- [1]<https://www.thoughtco.com/the-islamic-marriage-contract-2004429>;
- [2]Flavia Ghencea, "Autorizarea administrativă. Teorie. Practică. Jurisprudență", Universul Juridic Publishing House, Bucharest, 2013, p.14;
- [3]Elisa Giunchi, Muslim Family Law in Western Courts, Routledge, New York, 2014,p.84;
- [4]Wynn, L.L., "Marriage Contracts and Women's Rights in Saudi Arabia: Mahr, Shurut, and Knowledge Distribution." The Islamic Marriage Contract, Asifa Quraishi and Frank Vogel, eds. Cambridge: Harvard University Press., 2008, p.67;
- [5]Wynn LL, op.cit., p. 11;
- [6]<https://english.alarabiya.net/en/News/2018/02/22/Saudi-Arabia-amends-marriage-law-in-favor-of-women.html>;
- [7]<http://saudigazette.com.sa/article/514924/SAUDI-ARABIA/Marriage>;
- [8]<https://gulfnews.com/news/gulf/saudi-arabia/new-conditions-for-saudi-marriages-with-foreigners-1.2189750>.