

In Muslim legal tradition and contemporary Muslim family laws, marriage is considered a contract (*‘aqd*).

While the Qur’an and Prophetic practice outline ethical and spiritual elements of marriage, in legal tradition marriage operates as a contract that establishes a set of default rights and duties for spouses. Because marriage is considered a contract and not a sacrament, conditions (also called ‘stipulations’) beyond the mandatory elements of marriage can be mutually agreed upon by the parties and outlined in the written or oral contract. This idea is consistent with Muslim tradition, international human rights standards, and many national laws.

The process of discussing, negotiating, and agreeing upon such conditions can support more just, equal, and harmonious marriages.

Just as family laws differ considerably throughout Muslim contexts, marriage contracts are structured and used differently. Contracts can be written or oral. They can outline only mandatory elements of marriage (such as offer, acceptance, and dower), or can be very detailed. In some countries, standard marriage contracts include minimum conditions upon which a spouse can get a divorce or can provide space for the couple to add mutually agreed upon conditions. Elsewhere, laws allow adding conditions in the contract but do not provide space for this. Conditions may not be part of a codified law in some places but courts will recognize them. The permissibility of conditions remains unknown or contested in other contexts, especially those in which marriage contracts are not widely used.

Despite the many benefits, couples often do not add conditions to their contracts. Couples may not be aware this can be part of the marriage process, is consistent with Islamic principles, or is beneficial. Marriage registrars may not know about or may choose not to inform the couples and their families about the possibility of including conditions. There may be procedural complexities. Couples – and particularly women – may be deterred by cultural, societal, and community perceptions.

Discussing and agreeing upon conditions in marriage contracts is good for the couple, the marriage itself, future children, and both families. The process of adding conditions can reduce or prevent conflict within marital relationships, strengthen marriages, and support families and societies.



CONDITIONS IN MARRIAGE CONTRACTS

The Qur'an and *Sunnah* describe marriage as a solemn covenant built on ethics such as love (*mawaddah*), compassion (*rahmah*), and beauty and goodness (*ihsan*). Legally, however, Muslim tradition considers marriage to be a contract (*'aqd*) between two parties who, as with any contract, enter it freely.

The classical *fiqh*-based marriage contract has certain **mandatory elements**, including offer (*ijab*); acceptance (*qubul*); the gift of dower (*mahr* or *sadaq*) from husband to wife, which can be monetary, goods, or in kind based on the agreement of the spouses; names of the parties and a declaration of their free and full consent; a *wali* for one or both parties for some *fiqh* schools; suitability in some schools; and witnesses.

The parties can also insert **additional terms and conditions** that they mutually agree upon. All *fiqh* schools agree that conditions cannot be included if they go against the purpose of marriage or take away legal rights that either of the parties already

holds. To have legal effect, the contract must list the consequences if the condition is breached. For instance, the condition may state that in case of breach, the aggrieved party has the right to divorce and/or to receive compensation.

These mutually agreed conditions focus on articulating additional rights or obligations for one or both spouses or renegotiating rights and obligations. They do not take away existing rights. While some countries provide space for such conditions to be included in a written and registered marriage contract, in some contexts the spouses need to draw up their own written contract or an additional agreement. **For enforcement purposes, it is useful for conditions to be written down and not just declared orally.**

From the earliest days of Islam to recent times, intending spouses in many different contexts agreed to insert conditions in marriage contracts and authorities routinely upheld these conditions.

Conditions, which can be very general or quite specific, can cover topics like:

Amount and characteristics of mahr



Values that govern the marriage



Decision making



Choice of domicile



Whether the marriage can become polygynous



Mobility, including leaving the home and travel



Division of household finances or responsibilities



Relationships with family and friends



Conflict resolution mechanisms



Right to continue education, work, choose a career or workplace



Decision-making and responsibility around future children or children from previous marriages



Access to divorce, including delegating a right of divorce to the wife



Financial provisions, including division of assets after divorce or death



WHY IT MATTERS: THE IMPACT ON COUPLES AND FAMILIES

Using conditions in marriage contracts can benefit spouses, their future children, their families, their communities, and societies in general.

The process of discussing and agreeing on such conditions can create a sense of trust, intimacy, partnership, and stability in a new couple.

It allows intending spouses to establish their expectations and requirements about what they want and need from each other, how they will live together as a couple, and how they will resolve potential issues that arise in the course of their marriage.



Conditions can improve women's lives.

Under the classical *fiqh* model of marriage, husbands are expected to protect and provide, and wives must obey in return. This can affect wives' sexual and reproductive health and rights, mobility, education, career, family, and community. Conditions can safeguard women's rights within and outside the home.

Considering a variety of marital issues before the marriage can reduce the potential for discord between spouses and between families.

This can help communities and societies by decreasing rates of separation and divorce.



Conditions can clarify the rights of both parties, any future children, and both families.

Stipulating conditions can ensure that spouses and families are familiar with the marriage terms from the beginning.

In cases of conflict, conditions can protect both spouses financially and simplify the conflict resolution processes.

This can save time, resources, and emotional energy for all family members by preventing extended, costly, and painful divorce proceedings.



Conditions can equalize power within a marriage.

The classical *fiqh* model of marriage gives husbands a unilateral right to divorce their wives whenever they choose (*talaq*). In contrast, wives have limited grounds for initiating divorce that may require extensive evidence, take years in court, or force her to give up financial rights or stability. Conditions can shift these power differentials and allow spouses to live together as more equitable partners.

Some international human rights obligations related to marriage contracts:

- **Universal Declaration of Human Rights article 16(1):** 'Men and women ... are entitled to equal rights as to marriage, during marriage and at its dissolution.'
- **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) article 16(1):** 'States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and ... shall ensure ...: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; ... (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.'
- **Human Rights Committee (Convention on Civil and Political Rights) General Comment 19, para. 8:** 'During marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets. ...'

WHY CONDITIONS CAN BE NEGOTIATED IN MUSLIM MARRIAGE CONTRACTS

Conditions in marriage contracts are consistent with Muslim textual, historical and legal traditions. They are not new, innovative, or modern, and were not introduced by colonial powers or imported from 'Western' cultures.

1 The Qur'an and *Sunnah* provide ethical support for building strong unions based on respect and trust, respecting contracts, and fulfilling contractual obligations.

- The Qur'an and the Prophet's example emphasize that marriage is a *mithaq ghaliz* (solemn covenant) that should be governed by *'adl* (justice), *ihsan* (beauty and goodness), *mawaddah* (love), and *rahmah* (mercy). Discussing and agreeing on spousal needs before the marriage helps establish this ethical foundation.
- The Qur'an supports the creation of contracts and emphasizes the ethics of fulfilling obligations in multiple verses.

- *Verse 5:1: 'O believers! Honour your obligations.'*
- *Verse 17:34: 'Honour your pledges: you will be questioned about your pledges.'*
- *Verse 16:91: 'Fulfil any pledge you make in God's name and do not break oaths after you have sworn them, for you have made God your surety: God knows everything you do.'*

- Various hadiths put forward the idea that conditions are acceptable in Islamic contracts and must be fulfilled by those who agree to them. As in any contract, the parties to a marriage must freely consent to terms on which they mutually agree.

In one hadith narrative that took place in Medina, 'Abd al-Rahman ibn Ghunaym narrated that a married couple went to 'Umar (the second Caliph), and the wife stated that her husband had agreed at the time of their marriage to let her remain in her paternal home but now wanted to take her out of it. 'Umar ruled in her favour.

(Tirmidhi, Kitab al-Nikah, Vol. 1, p. 347)

2 Contemporary Muslim family laws in multiple contexts allow couples to add conditions to marriage contracts.

- Using the principle of selection (*takhayyur*), countries that follow other schools of law have adopted the Hanbali position in their family codes in the name of public interest (*maslahah*). The 1917 Ottoman Family Rights Law, which was influential in drafting many contemporary family laws, allowed for conditions to be made in marriage contracts. Current family laws throughout the Middle East and North Africa, South Asia, and Southeast Asia include provisions allowing stipulations.

3 The main Sunni and Shia *fiqh* schools hold different positions regarding conditions in marriage contracts, but all schools allow conditions in some form if they do not contravene the spirit and purpose of marriage.

- The Hanbali school is considered the most permissive of the Sunni schools; others allow wives to obtain divorce if their husbands breach a condition. Importantly, *fiqh* positions in practice serve as flexible models rather than rigid requirements. For instance, in Ottoman Egypt qadis from all Sunni schools accepted conditions, even if the position of their own school was more restrictive.

4 Conditions have been added to marriage contracts across Muslim contexts since early Islamic times. Historical evidence shows that this was common practice and that Muslim qadis and courts generally upheld the conditions.

- Sukayna bint Hussein, the great-granddaughter of the Prophet Muhammad and granddaughter of Ali and Fatima, included conditions in her marriage contract, including that her husband remain monogamous while married to her.
- Written marriage contracts in Egypt as early as the 9th century CE included conditions such as 'good treatment', polygamy, sexual relations with a slave or concubine, and a wife's ability to leave the marriage. In Ottoman Egypt (16th to 18th centuries CE), marriage contracts contained conditions about travel, maintenance, living arrangements, or polygamy. If a husband breached a condition the wife could be granted a divorce. Qadis from all four Sunni schools of law respected these stipulations and registered contracts that contained stipulations.
- Notary manuals (used to draw up marriage contracts) and fatwa compilations from 10th to 16th century CE Andalusia show that conditions were written into marriage contracts and discussed in fatwas in the Maliki context. Husbands promised conditions related to polygamy, being present, good treatment, household location, visiting family and friends, with wives being able to dissolve the marriage if he breached a condition.
- Written contracts and stipulations have been used in South Asia since Mughal times, with stipulations like the delegated right of divorce (*talaq-i-tafwid*) outlined in the *Fatawa 'Alamgiri*, a 17th-century CE compilation of Islamic teachings primarily from the Hanafi school that formed the basis of law throughout the Mughal Empire.

WHERE AND HOW CONDITIONS ARE USED IN MARRIAGE CONTRACTS

Algeria, Morocco, and Tunisia:

Personal status codes explicitly allow either spouse to add conditions in their marriage contract provided these conditions do not contradict the inherent nature of marriage. Algerian and Moroccan codes give examples of what may be included. They also allow spouses to prepare separate property agreements detailing their financial rights and how assets acquired during marriage should be managed and distributed.

Bangladesh and Pakistan:



A standardized marriage contract (known as *nikahnama*) has a space for spouses to specify special conditions and separate spaces to indicate whether the husband has delegated the power of divorce to the wife (*talaq-i-tafwid*), whether the husband's right of divorce is curtailed, and whether spouses have drawn up separate agreements regarding financial issues. Punjab province in Pakistan requires answers in each of these spaces and is training marriage registrars to properly fill out the contract and about penalties for misconduct.

Egypt:

Both spouses may specify any condition in their marriage contract. A section of the Egyptian standard marriage contract is left empty for this purpose. Conditions that may be specified in the contract relate to a wife's delegated right of divorce, polygamy, financial provisions for the wife upon divorce or the husband's death, the wife's ability to work or continue her education, the mother's rights over her children.

Iran:



Standard marriage contracts include: (1) the wife can claim half the wealth acquired by the husband in the case of a divorce that is not initiated or caused by her; (2) the wife has a right of divorce if she establishes evidence of one of several conditions, including failure to

provide maintenance, maltreatment, disease, insanity, imprisonment, addiction, desertion, disappearance, and polygamy. Additional conditions may be entered if they are not contrary to the principles of marriage. Both spouses must sign their names under each condition for it to be valid.

Jordan:



The 2019 Personal Status Law permits spouses to specify conditions in the marriage contract if they are beneficial to either spouse and serve their legitimate interests, not contrary to the purposes of marriage, and do not prejudice the rights of others.

Other countries in the MENA region, including Bahrain, Iraq, Lebanon, Palestine, Qatar, Syria, United Arab Emirates, and Yemen:

The husband is allowed to delegate his right to divorce (*talaq al-tafwid* or *'esma*) and/or the parties can agree upon conditions in the marriage contract which, if breached, can be grounds for a divorce. Examples relate to monogamy, maintenance, good treatment, mobility, rights to pursue education or choose a field and place of employment.

Muslim-minority contexts:



Islamic scholars have produced model marriage contracts that include specific conditions and the possibility of adding more. These include an 'Islamic Marriage Contract' drafted by the Council of Shia Muslim Scholars in North America; a United Kingdom 'Muslim Marriage Contract' endorsed by multiple Islamic groups; a 'Marriage Contract Toolkit' published by the Canadian Council of Muslim Women; and chapters in a book called *Tying the Knot* on Muslim marriage in the United States that suggest how couples can discuss, draft, and decide on conditions in marriage contracts.

HOW TO ENSURE EQUALITY AND JUSTICE

Despite extensive support within Muslim legal tradition, history, and contemporary Muslim laws, and despite the many benefits, only a small percentage of couples insert conditions in their marriage contracts.

There are multiple reasons for this, including:

- Lack of information about possibilities and benefits of using conditions;
- Misinterpretations or confusion over permissibility;

- Restricted ability, time, or space to discuss conditions;
- No mechanisms to negotiate conditions, in some cases because there is no written contract;
- Discouragement from families, communities, and societal norms;
- Marriage registrars not knowing about, seeing the need, or taking the time to inform families about the possibility; and
- No clear enforcement mechanisms.

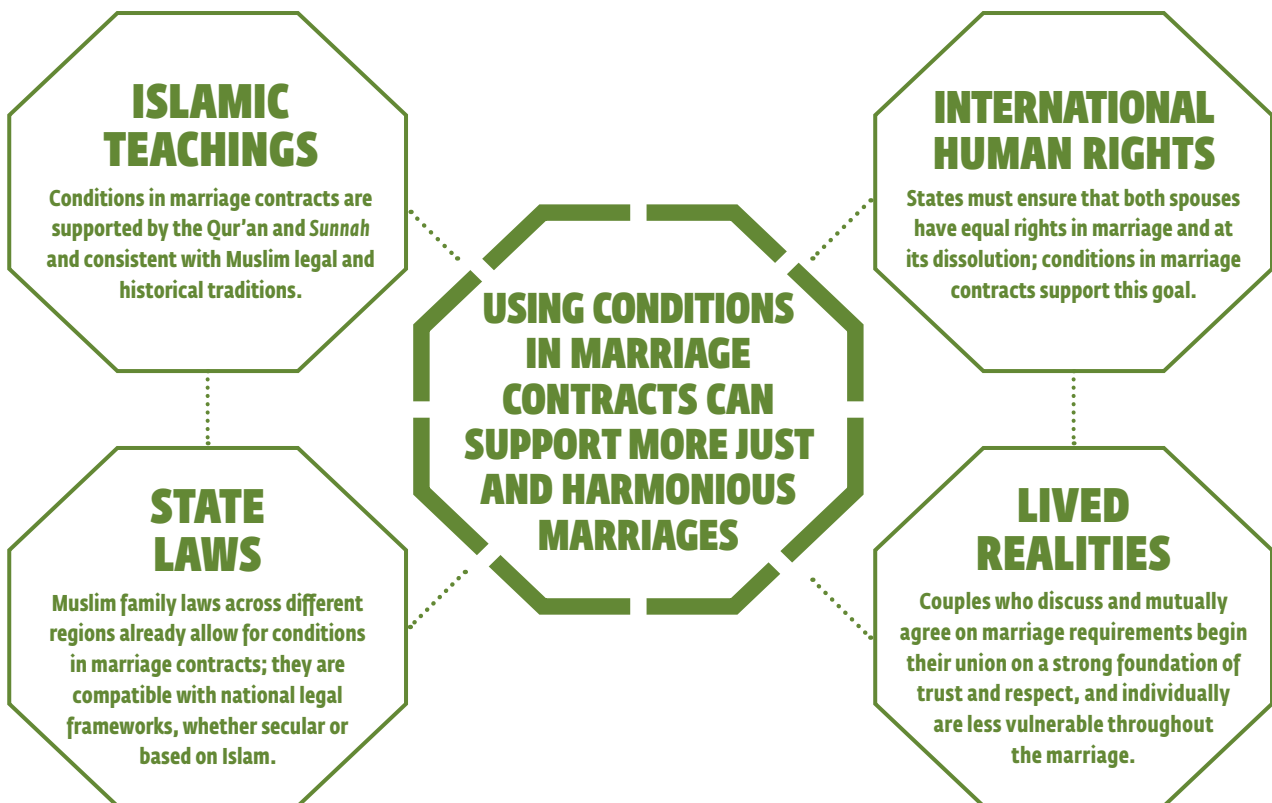
Recommendations

States, local governments, community leaders, religious scholars and leaders, civil society, legal professionals, educators, and other relevant actors should work together to:

- Train marriage registrars about their responsibility to inform couples and ensure marriage contracts are used to their full advantage;

- Encourage the use of written marriage contracts and registration of marriages;
- Promote the possibility of adding conditions to marriage contracts; and
- Educate couples, families, and communities about the permissibility and benefits of agreeing on conditions for couples, their future children, their families, and societies.

Conditions can help create marriages that are governed by *'adl* (justice), *karamah* (dignity), *ihsan* (beauty and goodness), *mawaddah* (love), and *rahmah* (mercy).



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