

CONFLICT RESOLUTION FOCUS ON MARITAL DISPUTE & DIVORCES

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THE WORLD
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- The family unit is the building block of a stable society, and the health or distress of a marriage has direct impact not only on the couple, but also their children, parents, extended family, and community at large.
 - During the last few decades, marriage has become increasingly fragile, leading to higher rates of divorce
 - In one of the Shia communities, one of our muballigheen reported 10 cases of talaq in two years, in comparison to just two new marriages.
 - In our own Khoja Jamaats, divorce rates are far higher than before.



Reasons for this new reality include:

- unrealistic expectations,
- materialistic and individualistic mind-sets,
- influence of western media in what they portray marriage to be and their notion of true love and romance,
- the ease of women deciding to dissolve a marriage in light of financial independence,
- lack of education on relationship skills and shortcomings of premarital informal advice from parents and elders.
- Failure to adjust to in-laws in an extended family
- Other causes.



However, researchers in the USA and other Western countries have found that marital success and failure is highly predictable (eg. J Gottman claims to be able to predict a divorce-prone marriage by watching a couple's interaction in a counselling session)

AND that most marriages can be helped with the right intervention at the right time.

They have identified the factors that greatly increase the odds of divorce.

These can be either:

1. **Static factors** such as differences in **religion** or personality styles,

For those who do not share a religion, marriage tends to be less happy;

when partners marry without being clear about their religious views (or about the other person's religious views),

or if those views change over time, it can increase the risk of divorce.

2. **Dynamic factors** such as communication, conflict and commitment.



- Various strategies have therefore been developed in western academia to help couples build strong and happy marriages.

A lot of research - which can be supported by Quranic verses - has been done into topics such as:

- communication,
- commitment,
- acceptance,
- friendship,
- Forgiveness
- and spiritual intimacy.

The researchers at the University of Denver consequently developed a program called **The Prevention and Relationship Enhancement Program (PREP)** to teach couples skills which would enhance and strengthen their marriages. This course needs to be reviewed to ensure it conforms to Islamic values.



- On the other hand, in many cases when a marriage is deteriorated beyond reconciliation, and the husband abuses his right to divorce and refuses to give talaq, and the wife doesn't have the authority to divorce herself on his behalf, it leaves many women in very difficult positions in trying to raise their case for divorce to the religious authorities, which is a long procedure.
- This has led many such women to lose faith in religion, or to turn to some who do not follow the mainstream teachings of the Maraji' regarding divorce rulings.
- Furthermore, both parties are also forced to resort to civil courts to resolve many issues including child custody, maintenance, joint businesses, etc., which may not rule based on Islamic laws, and whatever acquired based on its judgement will not be legitimate Islamically, rather it will be deemed usurpation (ghasb) as it is by adjudication to a non-Shar'i authorities.



Islamic Education Department, in collaboration with WF Executive councillors: Marzia bai Hassan and Muhammad

Hasan Bhai Akbar propose the following three step solution:

1. Marriage education workshops (Pre and post)

(Some will need to be mandatory. Allah SWT requires elders to ensure youth are protected)

(O you who believe, protect yourselves and your families from a fire whose fuel is people and rocks - 66:6)

2. A universal/global marriage contract template

3. Alternate Dispute Resolution



1. Mandatory marriage education workshops

Content:

- Relationship skills, Awareness (expectations, common problems, solutions), Virtues (such as commitment). This course is better as it is built on teaching practical skills, as opposed to the traditional information-based model.

Method of instruction:

- presenting information, showing examples for interactive discussion, role-playing, and facilitating interaction between newly weds and those married for a long time.

When?

- Premarital courses can include themes like what to look for in a spouse, the right age to get married, etc.
- However, **regarding the marital skills**, couples during engagement are blinded by love / wedding planning. Therefore, **the best time is after marriage by 6 months - 2 yrs + during different stages of life**, eg. after becoming parents.
- So there should be a combination of pre and post marriage courses.



Challenges:

•The existing program lacks the input of Islamic teachings, and is a secular curriculum, which does not incorporate the role of religion and spirituality. As a result, Christian and Jewish versions have been developed, although there is only one **inadequate** version from an Islamic perspective from Gottman institute.

Plan of action:

- 1.To develop the current **Prevention and Relationship Enhancement Program (PREP)** to reflect the Islamic perspective and criteria *after a thorough study and review. (The Quran guides to that which is most upright - 17:9)*
- 2.To build a global capacity of trainers.
3. To start conducting mandatory pre-and post-marriage courses.



- After reviewing the marriage templates of Toronto Jamaat, AFTAB and Wessex Jamaat, we at the Islamic Education found differences between the templates, whereby some restricted the cases in which a wife could use her authorization to be divorced on behalf of the husband.
- It also found that the authorization in these contracts was unspecific, which according to our Grand Marja' Agha Sistani (h) meant that she could only use it once, but the husband could still take her back during the 'idda of talaq, thereby revoking the divorce, even without her approval.
- Therefore, IE suggests the adoption of the following conditions, and will create a template to reflect them. The template can also be adjusted to local laws and needs, whilst preserving these conditions:



Firstly:

The husband gives his wife the irrevocable authority (*wikalat*) to divorce herself or appoint a representative to divorce her on behalf of himself, thru any form of talaq it may be (whether *raj'i* or *baa'in*, *khul'i* or *mubaaraat*), **AND for as many times as she needs – i.e. once, twice, or thrice** – which she can only exercise after obtaining written consent of the **Resident Alim of the** Jamaat in the city/town where the couple have been resident or where the marriage has been solemnised, **after** having exhausted all possible attempts for agreement for relief or elimination of the causes and effects of the circumstances concerned, after which consent for talaq can be granted by the concerned Jamaat and / or Jamaat's Conciliatory Board without further reference to the Husband; **or after** giving the wakíl of the marja' or the marja' reason to believe the occurrence of any one of the following eleven cases to be mentioned.



Secondly

In case of talaq *khul'i* or *mubaaraat*, the husband **also** gives her the authority for her to **accept on his behalf, whatever amount** of the mahr that **she offers as 'badhl'** (a giving in exchange for release), in return for her / her wakil reciting a *khul'i* or *mubaraat* divorce on behalf of the husband.

These two authorizations are given in the following eleven cases which have been proposed based on reports of the prevalent reasonable grounds of divorce in world-wide KSIJ communities:



2. A unified marriage contract

- 1) If the Husband at his own behest divorces the Wife in a civil court and does not give her Shar'i Talaq (divorce) as required under the Sharia Laws, **or** if the Wife obtains a divorce in a secular court, but the Husband does not give the Wife a religious divorce.
- 2) If the Husband is able but unwilling for four months and/or willing but unable for six months to consummate the marriage.
- 3) If the Husband is proved to have become insane, incurably impotent (whereby from the time she raises this to the resident Alim, or Marja' or wakil of the Marja', an entire lunar year has passed, during which he has sought treatment and he is still totally impotent) or has contracted an incurable contagious disease, like (but not limited) to HIV/AIDS and/or leprosy, such that her life becomes endangered..



2. A unified marriage contract

- 4) If there is medical evidence to prove that the Husband is addicted to illegal drugs and/or intoxicants (unless required as prescribed medication), to an extent that the Wife finds it unbearable to continue the marital relationship.
- 5) If the Husband disappears or abandons the Wife or does not provide for shelter and maintenance to the Wife and children (if any) for **three / six (?)** months continuously. (*The wife by default also has the right to reparations for all money that belongs to her or should be paid to her rightfully, with both being withheld by the husband*).
- 6) If there is independent evidence that the Husband subjects the Wife to ill-treatment, or mental or physical domestic abuse to an extent that the Wife finds it unbearable to continue the marital relationship.



2. A unified marriage contract

7) If the Husband demands and/or compels the Wife to perform sin/s.

8) If the Husband abandons the Shia Ithna Asheri Faith of Islam.

(by changing his sect, or religion, or renouncing one of the articles of Shia Ithna Asheri faith, *e.g. by denying the Imamat of the 12th Holy Imam (aj), or rejecting the authority of the certified Marja' as being a Representative of the Ma'sum Imam (aj), whilst clearly knowing that rejecting the instructions of the Imam - such as a certified Marja' being his representative - is tantamount to rejecting the Imam himself*)

9) If the Husband **is imprisoned / is going to be imprisoned (?)** for a continuous period of four years or more.

10) If the Husband marries another woman in a permanent marriage without the permission of the Wife named in this Marriage Contract.



11) If the husband develops homosexual tendencies to an extent that the wife finds it unbearable to continue the marital relationship



Additional conditions pertaining to the dissolution of marriage

In case of divorce being recited on behalf of the husband, by the power of attorney by wife or her appointed representative, during the grace period of ‘idda, the husband shall not revoke the divorce and take her back (irja’) without her permission and knowledge.



2. A unified marriage contract

Division of net family property upon divorce

(To show appreciation for contribution to husband's life and homemaking during the marriage, which is just as important if not more than her having another career)

Western civil courts divide the net family properties in half, however, it is considered Islamically as usurpation. However, by including it in the marriage contract, it becomes legitimate for the wife:

- If the Husband and Wife divorce without any fault of the latter, then the Husband agrees to give his Wife half of the “net family property” as **is defined by predetermined formulas**, that he acquired during the marriage period, excluding property that the Husband acquired by gift or inheritance from a third person after the date of the marriage.
- An option also exists for her to receive either $\frac{1}{4}$, $\frac{1}{3}$, or $\frac{1}{2}$ for other parts of the world.



Disclaimer:

In situations other than the above, where the Wife deems it necessary to seek a divorce, guidance must be sought through the Jamaat and/or the Resident Aalim from a designated Wakil of the Marja who has been authorized by a Marja' Taqlid to deal with such matters.

(In cases where the respective Jamaat(s) has ceased to exist, the nearest Jamaat shall be considered as the contact Jamaat. Also, when a case is related to a relative of any of the jamaat's conciliatory board members, they **shall not be involved in any of the above official reconciliatory, arbitration or other related procedures, due to conflict of interest. Reconciliation on a family level by family members is recommended, but this is before the stage of it being brought to the dispute council following a dead-end).**



In the unfortunate situation where a marriage is unsolvable, especially for those marriages in which the wife does not have the authority to have herself divorced on behalf of the husband, it is suggested for the Alternate Dispute Resolution Mechanism of Pirhai Jamaat [to be considered as a model](#).

This allows for resolution regarding the following issues:

1. Dissolution of Marriage
2. Past Maintenance, Haq Mehr and maintenance during the Iddah Period.
3. Custody of the Child namely _____



4. Maintenance of the Child
5. Exchange of Articles of both Parties
6. Pending Cases/ Proceedings
7. Business Transactions between Mr _____ and Mr _____



Insights:

- The dispute resolution council is a separate body whereby in each case there are 2 male, 2 female and 1 reserve councillor.
- This council doesn't deal with admin matters, rather the admin / family matters team receives the request for mediation, which is forwarded to the above council.
- The council gives two separate appointments to each of the two parties to hear them out. If any of the two parties is in the wrong, they are told privately in the third meeting.
- The fourth meeting is a joint meeting with both parties for reconciliation, in matters of marriage for example.



- When reconciliation is not possible, the case moves to separation and talaq.
- This body as mentioned, is an alternate dispute resolution body for dealing with business disputes, which are a result of divorce of the couple.
- Councillors run for the positions, and after vetting and election go through training.
- There has been immense success in solving marriage and business disputes in an organized way - in the Pirhai Jamaat, after this system was adopted.



Where the husband refuses to amicably divorce the wife, and the arbitration committee decides for the wife to be divorced, upon fulfilment of the criteria IE will pronounce an Islamic divorce of Talaq al-Haakim al-Shar'i by authorization from the Marja' (h).



1. Councillors are requested to deliberate over and give feedback for the following:
 - Pre and post Marital Education courses.
 - The proposed conditions in the marriage contract. (Draft contract will be circulated by **December 2022** for consultation with all regions and ulama, **and adoption expected by following EXCO**)
 - The alternate dispute resolution procedure and committee structure (Draft suggestion to be circulated by **December 2022**, with adoption expected by coming **EXCO**)



2. Task force of scholars and councillors to be formed for reviewing the current material and developing Islamically conformant courses. (In this EXCO)
3. Courses material to be already reviewed and ready by (September 2023)
4. Instructors training to start by (October 2023)



Please find on the related landing page the following documents for reference:

1. Article on Marriage Education (by Marzia bai Hassan)
2. Toronto Jamaat marriage contract.
3. Wessex Jamaat marriage contract.
4. AFTAB marriage contract.
5. Al-Furqan magazine article on optional marriage conditions, by Sayyed Muhammad Rizvi.
6. IE conflict management white paper in pdf.
7. Istiftaa to office of His Eminence Agha Sistani (h)
8. Pirhai Jamaat Alternate Dispute Resolution form (provided by Muhammad Hasan Bhai Akbar)

