

WF
MARRIAGE CONTRACT
&
CONFLICT
RESOLUTION PAPER

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Preamble

With more than 120 jamaats globally and 6 regions, Alhamdulillah, our communities host many marriages throughout the year thru nikahs conducted in our centres and imambargahs.

However, during the last few decades, marriage has become increasingly fragile, leading to higher rates of divorce.

In one of the smaller Shia communities with not more than 100 households, one of our muballighin reported 10 cases of divorce in two years, in comparison to just two new marriages. Among the reasons for this new reality are unrealistic expectations, materialistic and individualistic mindsets, lack of education on relationship skills, and shortcomings of premarital informal advice from parents and elders.

Fortunately, to address the increasing level of marital problems, the field of 'Family / Marital Education' is now thriving with rich literature and courses relevant to the different stages of marriage and family life.

On another token, when a marriage has deteriorated beyond reconciliation, unfortunately, amongst the factors that exacerbate the situation is when the Husband abuses his right and refuses to give the Islamic talaq to the Wife. As a result, today, many women in our community have been left in difficult positions.

Furthermore, in the event of divorce, in many cases, both parties resort to civil courts to resolve key issues, including child custody, maintenance, joint businesses, etc.

To address this issue, Islamic Education Department proposes a comprehensive 3-step strategy to address the aforementioned issues:

1. Implementation of two unified marriage contracts, with slight variations, suitable for both Western and non-Western regions, respectively.
2. Creating a comprehensive marriage education program.
3. Creating a global team of ADR specialists, to solve community disputes, including domestic.

With step 1 of the strategy now complete, and work on steps 2 and 3 on going, this paper presents two templates of marriage contracts and progress updates on steps 2 and 3.

Islamic Education Department presents these two contract marriage contract templates to the Executive Council being held in Karachi on the 31st December 2023 – 1st January 2024, and recommends its adoption.

Last but not least, we would like to thank esteemed scholars, counsellors and representatives of the six regional federations for having engaged with the IE team during the course of preparing this paper.

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December 2023

Islamic Education's Proposal in Summary:

01. UNIFIED MARRIAGE CONTRACTS

02. THE COVENANT OF MARITAL LIFE

03. ALTERNATE DISPUTE RESOLUTION TEAM

1. Two templates of '**Unified Marriage Contracts**', suitable for both Western and non-Western regions, respectively.

These two contract templates give the Wife the necessary power of attorney to divorce herself in certain situations without having to seek talaq al-hakim.

2. '**The Covenant of Marital Life**' - Marriage education workshops.

This comprises a series of courses to create a global capacity of trainers, and marriage counsellors. The trainers will in turn offer the relevant courses to grassroots of the community. These include such courses as 'How to choose a suitable spouse', 'Marital Skills', 'Becoming a New Parent', etc.

Work is ongoing in developing the relevant course content. Training workshops will be announced to the regions subsequently. As an example of work in progress, among the courses for marriage counsellors is 'Final advice to anyone seeking divorce', whose booklet was launched in June 2023 London ExCo.

3. **Alternate Dispute Resolution Team**

A trained body of mediators, and arbitrators to deal with disputes arising in marriages. This trained body will also be able to solve business related and other disputes between community members. Due to the technical nature of this initiative, work is ongoing to review the content of these courses and the practical application of this process within the framework of The WF, and its member federations and Jamaats.

Step 1 - Unified Marriage Contracts

Upon reviewing the marriage contract templates of many jamaats and organizations, including AFTAB, Toronto Jamaat, Wessex Jamaat, Imam Husain Islamic Centre in Sydney, and others, the Islamic Education Department found several variations and differences.

Following further deliberations and consulting with the Office of His Eminence, Agha Sistani (h), in addition to Alims and Alimas of the community and regional counsellors, the Islamic Education Department has prepared the following two contract templates, for Western and non-Western regions, respectively, which have adopted the key features of the aforementioned contracts, and added to them further articles as per the needs of community members on the ground today.

The two templates differ based on the needs of the regional federations and their member jamaats.

They also address a key issue regarding complying with the law of the land, which our fiqh permits, with respect to rights “huquq”, such as the father’s right to child custody of the child after the completion of two years – whether son or daughter, according to the fatwa of His Eminence Agha Sistani (h)¹ - which can be waived Islamically, in order to comply with the law of the land.

Please note that jamaats can add their own ‘definitions’, further ‘terms and conditions’, ‘disclaimers’, and other pertinent sections to the main contracts, on the condition that no part of the contract that already exists is to be removed.

The Islamic Education Team recommends these two contract templates be adopted in the December 2023 ExCO in Pakistan, for immediate implementation in all Khoja Shia Ithna Asheri Muslim Centres worldwide.

¹ <https://shorturl.at/wIU28>

Proposed Marital Contract Template for Western Regions

Logo

Islamic Marriage Contract

Logo

In the name of Allāh, the Beneficent, the Merciful.

O Allāh, send His blessings upon Muhammad & his progeny.

“And among His signs is that He created spouses for you from among yourselves so that you may find tranquility in them; and He placed between you love & compassion. In these signs 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 the _____ in the year _____ AH between the “Groom” and “Bride” outlined below.

I. BRIDEGROOM

Full Name: _____
Father's Name: _____
Mother's Name: _____
Date of Birth: _____
Place of Birth: _____
Marital Status: never married /divorcé / widower
Address: _____

Tel: (____) ____ - _____

Groom's *wakīl* ('*āqid*) whom he hereby authorizes to perform the '*aqd*:

II. BRIDE

Full Name: _____
Father's Name: _____
Mother's Name: _____
Date of Birth: _____
Place of Birth: _____
Marital Status: never married /divorcee / widow
Address: _____

Tel: (____) ____ - _____

Bride's *wakīl* ('*āqid*) whom she hereby authorizes to perform the '*aqd*:

The Groom and the Bride enter into this agreement to provide for circumstances relating to their marriage; and both have read and agreed to the following conditions by way of signing each term or part.

III. MAHR/DOWRY

The Groom agrees to give the following marriage consideration (*mahr/dowry*) to the Bride:

Signature of the Groom

Signature of the Bride

IV. THE CONTRACT

RECITAL

The above-named Groom and Bride (hereinafter referred to as “the Husband” and “the Wife” respectively) DECLARE that this Marriage Contract is drawn and the provisions herein are agreed to on their free will and accord, respectively, at the time of the solemnisation of the marriage.

MANDATORY CONDITIONS PERTAINING TO THIS MARRIAGE CONTRACT

This marriage contract is based on the following conditions:

1. The Husband and Wife, whose signatures are affixed herein, and professing the Shia Ithna Asheri Faith of Islam, OR, one of whom professes the Shia Ithna Asheri Faith of Islam, have agreed to take each other in marriage on our own free will and in accordance with the Laws of the Shia Ithna-asheri faith of Islam, and upon mutual love and compassion.
2. The Husband and the Wife hereby agree to comply with the jurisdiction of the prevailing laws of the country of their residence that pertain to marriage, which includes marital disputes, divorce, etc.¹, as far as it is permissible Islamically according to the rulings of any of the religious authorities (Maraji') of the Ja'fari Shia Islamic school of jurisprudence, who is recognized as a qualified religious authority for following in practical laws of Islam (Marja' Taqlid) by the scholarly experts of Ja'fari Shia Islamic Jurisprudence (Ahl al-Khibra) of the Hawza Seminary in Najaf or Qom.

For example, if the law awards custody rights to the Wife after separation from the Husband, irrespective of the child's age, the Husband agrees to cede his Islamic right to custody, as long as it does not contravene the child's welfare. This agreement applies to all other marital laws, including the division of net marital property, according to what the civil courts rule. However, this excludes actions that cannot be approved Islamically, such as divorcing without the specific Islamic legal phraseology or divorcing without the presence of two male 'adil witnesses. Besides the civil divorce, both parties will have to seek their Islamic divorce from a 'Recognized Religious Scholar'².

3. The Husband and the Wife hereby agree that in case of any family disputes during their marriage, that cannot be solved mutually, or through the guidance of wise well-wishers, they will seek assistance from either a qualified Islamically-practicing marriage therapist or the marriage reconciliation committee of the local jamaat.
4. The Husband and the Wife hereby agree that the exchange of gifts between them, as well as the gifts given to them individually by their respective parents, friends and relatives during the periods of engagement for marriage and matrimonial life shall always be and remain their respective individual properties and they shall not be subject to recall at any time, even in the event of dissolution of marriage.
5. The Husband hereby delegates to the Wife irrevocable power of attorney (wikala ghayr qabila li-l-'azl) to be used multiple times if needed, to appoint a Shia Ithna Asheri Muslim scholar to divorce her on behalf of the Husband, such as the Resident Alim of the Local Jamaat, through any type of divorce applicable,

5.1. in the following 12 scenarios:

5.1.1. If due to his refusal or inability, the Husband does not provide the Wife her necessary maintenance (nafaqa) for three consecutive months or such other period less than three months that would cause her unbearable financial distress.

5.1.2. If the Husband consistently mistreats the Wife to an extent that living with him becomes unbearable for her, or if he forces her to consistently perform acts which are impermissible in Islam

5.1.3. If the Husband contracts a chronic illness that makes it exceedingly difficult for the Wife to continue the marital life, including (but not limited to) certain psychological disorders like severe depression confirmed medically or any other incurable contagious diseases (for e.g., HIV), such that her life becomes endangered.

5.1.4. If the Husband is sentenced to prison for a period of three years or more and there is no expectation of his release beforehand.

5.1.5. If the Husband becomes addicted to drugs, alcohol, gambling, or engages in other immoral Islamically-forbidden acts and refuses treatment, or the treatment is ineffective, and life becomes unbearably difficult for the Wife.

5.1.6. If the Husband abandons the Wife and leaves the marital home for a continuous period of four months without a valid excuse.

5.1.7. If it is discovered that the Husband is sterile and incapable of having children, even with the aid of medical procedures, with the fertility specialist deeming the case untreatable; or if he refuses to have children despite the Wife's desire for it, and three years have passed since the start of the marriage.

5.1.8. If the Husband is unable to fulfill the customary intimate needs of the Wife, thereby causing her unbearable difficulty (haraj baligh).

5.1.9. If the Husband takes another permanent Wife without the permission of the first Wife and refuses to separate from her.

5.1.10. If the Husband disappears with no trace, despite thorough investigation, and four months have elapsed.

5.1.11. If the Husband abandons the Shia Ithna Asheri denomination of Islam³, or if he joins a group/cult with beliefs and practices considered by the majority of mainstream scholars as being deviant, or forces the Wife to become deviant, or their children.⁴

5.1.12. If the Husband divorces her officially according to civil law and refuses to give her a divorce according to the Ja'fari Shia Islamic laws; or if the Wife unilaterally obtains a divorce in a civil court, but the Husband does not give her a divorce according to the Ja'fari Shia Islamic laws.

5.2. This power of attorney is valid for use as many times as applicable, and as many times as the Wife wants, through either of the following two ways:

5.2.1. Khul' or mubaraat divorce, where their conditions are met.⁵ In this case, the Wife or the person whom the Wife appoints, will act as an agent on behalf of the Husband, for both:

5.2.1.1. accepting on his behalf a reasonable compensation offered by the Wife -(decided by the scholar / marriage reconciliatory committee dealing with the case, not exceeding the dowry paid by the Husband to the Wife)⁶ - in return for her to be divorced, multiple times if she needs, and

5.2.1.2. divorcing her in return for the compensation that she offers as defined in point '5.2.1.2', multiple times if she needs.

5.2.2. Regular divorce (talaq) without compensation, if the conditions for khul' or mubaraat divorce are not met. In this context, the Wife or her appointee will act as an agent on behalf of the Husband in divorcing the Wife without compensation. This divorce can occur revocably (raj'i) or irrevocably (ba'in), depending on the circumstances.

If the divorce is revocable and the Husband takes her back as his Wife⁷ against her will, during the waiting period ('idda), the Wife or her appointee will act as an agent on behalf of the Husband for re-divorcing her, if she so wishes.

If during the second waiting period after the second divorce, the Husband takes her back as his Wife against her will yet again, the Wife or her appointee will act as an agent on behalf of the Husband for the third divorce if she so wishes, which will then be irrevocable. The now divorced Wife would then become unlawful for him to remarry, except after fulfilling certain conditions.⁸

5.3. The Wife's or her appointee's irrevocable powers of attorney as defined in 5.2.1.1, and 5.2.1.2, under the aforementioned circumstances, are subject to the following conditions:

5.3.1. The Wife must first lodge her complaint to the marriage reconciliation committee⁹ / a qualified religious scholar and prove her claim by confirming one of the mentioned cases, even if it is through the testimony of some relatives or others who interact with the couple.

5.3.2. Four months have passed since the case is referred to the marriage reconciliation committee / qualified religious scholar, though a solution agreeable to both the Husband and the Wife is not reached; or that the Husband does not respond to the marriage reconciliation committee / religious scholar's request to address the situation from which the Wife complains, such as refusing to provide for the Wife financially or treat her kindly, and four months have passed since the case was referred by the Wife to the marriage reconciliation committee / religious scholar for resolving.¹⁰

6. The Wife hereby delegates to the Husband irrevocable power of attorney to appoint the person dealing with the case, such as the religious scholar/marriage reconciliation committee representative, to act as an agent on behalf of the Wife, in absolving the Husband of any outstanding unpaid financial responsibilities towards the Wife as required from a husband according to Islam, such as dowry (mahr), financial maintenance (nafaqa), etc.

This is valid if the person dealing with the case, such as the religious scholar / marriage reconciliation committee representative, confirms the Husband's necessity to divorce the Wife for one of the following reasons:

- 6.1. The Wife's poor companionship to a degree that is difficult for the Husband to tolerate; or her failure to fulfil his marital rights, including allowing him to have intimate relations with her to an agreed extent; or if she leaves the marital home without his permission, or brings home unpermitted non-mahrams.
- 6.2. It is revealed that the Wife had a chronic illness before marriage, which makes it very difficult for the Husband to continue marital life with her. This includes but is not limited to certain chronic mental illnesses such as severe depression (with a medical diagnosis) or sexually transmitted diseases, etc.
- 6.3. The Wife abandons the marital home without a valid excuse for a period of four months.
- 6.4. The Wife refuses to have children despite the Husband's desire, three years after the start of the marriage.
- 6.5. The Wife regularly consumes drugs or alcohol, or engages in immoral acts forbidden in Islam.
- 6.6. The Wife deliberately and repeatedly harms their children or either of the Husband's parents if they live with them.
- 6.7. The Wife refuses to wear hijab, unjustifiably (with no valid shar'i excuse) either due to being stubbornly sinful or misguided as a result of following an unqualified person who may allow the unveiling of hijab.

Signature of Groom

Signature of Bride

V. OTHER OPTIONAL CONDITIONS

Signature of the Husband

Signature of the Wife

VI. MISCELLANEOUS CONTRACTUAL TERMS

1. This agreement constitutes the entire agreement between the Husband and the Wife, and cancels and supersedes any prior understandings and agreements between them. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express or implied, between the Bride and the Groom other than expressly set forth in this Agreement.
2. This Agreement shall endure for the duration of the marriage of the Bride and the Groom.
3. If any provisions of this Agreement is found to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions of the Agreement shall continue in full force and effect.
4. This Agreement shall be governed by and construed in accordance with the laws of the Province/ State of _____ and applicable laws of _____, and in accordance with _____'s Family Law Act.
5. No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by either Husband or Wife, shall be binding unless executed in writing by both Husband and Wife to be bound thereby.

Signature of Husband for items 1 to 5.

Signature of Wife for items 1 to 5.

VII. CERTIFICATION

This is to certify that the marriage of the Groom / Husband and the Bride / Wife named above was solemnized in accordance with the Ja'fari Shia Islamic laws on:

The _____ day of the month of _____ in the year _____ CE

The _____ day of the month of _____ in the year _____ AH

Wakíl ('Aqid) of the Husband

Witness

Wakíl ('Aqid) of the Wife

Witness

VIII. DEFINITIONS

1. "Agreement" means this Marriage Contract.
2. "Aqd" means the religious marriage vows that are performed in accordance with Ja'fari Shia Islamic laws.
3. "Mahr", although also used to denote 'dowry', means the monetary consideration or financial payment that the Groom must give to the Bride.
4. "Marja" is highest religious authority, followed by members of the "Shia Ithna Asheri Muslim Communities".
5. "Husband" is the Groom set above.
6. "Wife" is the Bride set out above.
7. "Resident Alim of (name of centre)" is the religious authority of the "(Add name of Centre)" Jamaat of "(Add name of City)". They should address the case based on the rulings of anyone of the religious authorities (Maraji) of the Ja'fari Shia Islamic school of jurisprudence, who is recognized as a qualified religious authority for following in practical laws of Islam (Marja' Taqlid) by the scholarly experts of Ja'fari Shia Islamic jurisprudence (Ahl al-Khibra) of the Hawza Seminary in Najaf or Qom.
8. "Resident Alim", without mention of a specific Islamic Centre, is any Shia Ithna Asheri Muslim scholar serving as the main religious scholar at a Shia Ithna Asheri Muslim Community Centre. They should address the case based on the rulings of anyone of the religious authorities (Maraji) of the Ja'fari Shia Islamic school of jurisprudence, who is recognized as a qualified religious authority for following in practical laws of Islam (Marja' Taqlid) by the scholarly experts of Ja'fari Shia Islamic jurisprudence (Ahl al-Khibra) of the Hawza Seminary in Najaf or Qom.
9. "Alim", "Scholar", "Religious Scholar", "Recognised Religious Scholar" is any qualified Shia Ithna Asheri Muslim religious scholar, who follows the rulings of anyone of the religious authorities (Maraji) of the Ja'fari Shia Islamic school of jurisprudence, who is recognized as a qualified religious authority for following in practical laws of Islam (Marja' Taqlid) by the scholarly experts of Ja'fari Shia Islamic Jurisprudence (Ahl al-Khibra) of the Hawza Seminary in Najaf or Qom.
10. "Jamaat" is any Khoja Shia Ithna Asheri Muslim community centre.
11. "The World Federation of KSIMC" is The World Federation of Khoja Shia Ithna Asheri Muslim Communities.
12. "Regional Federation" is the regional body, which is a member of The World Federation of KSIMC. There are 6 Regional Federations: "North American Shia Ithna-Asheri Muslim Communities Organization (NASIMCO)", India Federation - Council of All KSI Jamaats, The Council of European Jamaats (CoEJ), Africa Federation (AFED), The Federation of Khoja Shia Isna Asheri Jamaats of Pakistan (Pakistan Federation), Federation of Australasian Communities Inc (FAC). Each of these Regional Federations comprises of various "Jamaats".
13. "Shia Ithna-Asheri" is the particular sect of the Islamic religion to which both the Bride and the Groom belong.
14. "Ja'fari Shia Islamic laws" are the sect of religious laws that underlie the Shia Ithna-Asheri faith.
15. "(Add name of Centre)" Jamaat of "(Add name of City)" is a well-known Shia Organization of _____ Area.
16. "Wakíl ("āqid)" means the representative of the Bride or the Groom for purpose of performing the religious marriage vows ('aqd).

Endnotes

1 If the Husband and the Wife are from different countries, then the laws of the country of their habitual residence will apply. If they get married in one country and then move to live in another, then the laws of the new country of residence will apply. If the Husband and the Wife are habitually residing in one country, and either of them moves to another country and files for divorce there, the laws of that new country will apply. In all of the aforementioned scenarios, the laws of the relevant country will apply, as far as it is permissible Islamically according to the rulings of any of the recognized religious authorities (Maraji') of the Ja'fari Shia Islamic school of jurisprudence

2 Refer to the definitions section for the criteria.

3 This applies if he was a Shia Ithna Asheri Muslim at the time of the marriage, and would happen by him changing his sect, or renouncing one of the primary foundations of Shia Ithna Asheri faith (dharurat al-madh-hab), e.g. by denying the Imamate of the 12th Holy Imam (aj), or rejecting the authority of, or the need of referring to the certified Marja' as being a Representative of the infallible 12th Imam (aj) according to Shia Ithna Asheri Muslim belief, 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).

If a Shia Ithna Asheri Muslim were to reject certain furu' al-din (practical laws of Islam) such as khums or hijab due to being distant from an Islamic atmosphere or because of becoming confused with sporadic doubts against religion, without the intention of belying the Holy Prophet (saw) or rejecting his narrations, they are considered a deviant.

However, if he changes his religion, by leaving Islam or knowingly rejecting one of its dharuraat (i.e. primary foundations, such as the Quran being a divine book – in a manner in which he knowingly and intentionally belies the Holy Prophet (saw) regarding these,) the marriage will automatically become dissolved without needing a divorce.

- a. In these circumstances, the Wife must first speak to the resident Alim or a knowledgeable religious scholar to assist and guide the Husband. If this is unsuccessful, the Wife should present the case to the marriage reconciliatory committee for further redress, including separation and divorce, if she so wishes.
- b. Such as – in the case for a khul' divorce for instance - the Wife's intense dislike of the Husband to the extent that she threatens to withhold his marital rights. Reasons for the Wife's intense dislike can be:
 - c. His unappealing appearance, bad manners, addiction, poverty or other personal characteristics.
 - d. His not upholding the recommended rights of a Wife such as increasing her maintenance allowance, or doing actions which are against her taste, such as marrying a second Wife.
 - e. His not respecting some of the Wife's obligatory rights, such as providing her maintenance, or sharing the bed with her.In these three cases, should the Wife offer something of monetary value for the Husband to divorce her through a khul' divorce, it will be valid.
- f. His harming, harassing, cursing and swearing at, and beating the Wife.
Khul' divorce in this last scenario is invalid, and the Husband will not be the legitimate owner of the money the Wife has offered. Rather, a normal divorce is required in this scenario.
<https://www.sistani.org/persian/book/26578/6282/>- Tawdhiih al-Masa'il al-Jami' v.4, mas'ala number 551.

4 In these circumstances, the Wife must first speak to the resident Alim or a knowledgeable religious scholar to assist and guide the Husband. If this is unsuccessful, the Wife should present the case to the marriage reconciliatory committee for further redress, including separation and divorce, if she so wishes.

5 Such as – in the case for a khul' divorce for instance - the Wife's intense dislike of the Husband to the extent that she threatens to withhold his marital rights. Reasons for the Wife's intense dislike can be:

- a. His unappealing appearance, bad manners, addiction, poverty or other personal characteristics.
- b. His not upholding the recommended rights of a Wife such as increasing her maintenance allowance, or doing actions which are against her taste, such as marrying a second Wife.

His not respecting some of the Wife's obligatory rights, such as providing her maintenance, or sharing the bed with her.

In these three cases, should the Wife offer something of monetary value for the Husband to divorce her through a khul' divorce, it will be valid.

- c. His harming, harassing, cursing and swearing at, and beating the Wife.

Khul' divorce in this last scenario is invalid, and the Husband will not be the legitimate owner of the money the Wife has offered. Rather, a normal divorce is required in this scenario.

6 As a recommendation, the mustahab dowry is that of Sayyida Fatima al-Zahra (a), i.e. 500 shar'i dirhams, which is equivalent to 1250 grams of pure silver.

<https://www.sistani.org/arabic/qa/0685/>

7 'Al-Raj'a fi al-talaq' means for the Husband to Islamically take the Wife back during her 'idda waiting period of a revocable divorce (talaq raj'i), thereby annulling it. Taking the Wife back Islamically happens through one of two methods:

- ▶ Verbally, by saying so, using whatever words that indicate that, such as I take you back, you are my Wife again etc., in any language.
- ▶ Practically, through an action by which he intends taking her back, such as, bringing her back to their home with the intention of taking her back as his Wife, if she had initially left during the waiting period. If the Husband were to have intimate relations with her, during this period, she would be considered as taken back, whether he intended to take her back by doing so or not.

<https://www.sistani.org/arabic/book/16/888/> - Ruling 531, Minhaj al-Salihin, v.3.

8 <https://fiqh.world-federation.org/ruling/2545/>- Islamic Laws, Ruling 2545.

9 In cases where the respective Jamaat has ceased to exist, the nearest Jamaat shall be considered as the contact Jamaat. If either the Husband or the Wife are related to a member of the jamaat's reconciliatory board, that member shall not be involved in any of the above official reconciliation, arbitration or other related procedures due to conflict of interest. Reconciliation on a family level by family members is recommended, but this should be at a prior stage, before the case is brought before the dispute council, following a dead-end at the family level. Of course, involvement of any wise family members of either the Husband or the Wife to help facilitate any of the procedures of the marriage reconciliatory body are also welcome, as long as it does not negatively impact the aforementioned body's work.

10 If two months pass after either the Husband or the Wife refer their case to the local Jamaat's marriage reconciliatory body for a solution, but no satisfactory action is taken by the aforementioned body, the Husband or the Wife may escalate the case to the regional federation for a solution, at which point, the Islamic Education Department (islamiceducation@world-federation.org) should also be made aware of the case by the Husband / the Wife. If after four months since the case was originally referred to the local Jamaat's marriage reconciliatory body, and no solution agreeable to both the Husband and the Wife is reached, neither at the local Jamaat level, nor the regional federational level, the Husband or the Wife should escalate the case to the Islamic Education Department of the World Federation for redress. If the local Jamaat is an Associate member of The World Federation of KSIMC, meaning it is not under a regional federation, then if two months pass after either the Husband or the Wife refer their case to the local Associate Jamaat's marriage reconciliatory body for a solution, but no satisfactory action is taken, the Husband or the Wife may escalate the case directly to the Islamic Education Department of The World Federation of KSIMC for redress.

DISCLAIMER: The following form of marriage is only a sample form. It is advisable that the parties make the requisite changes to the form to ensure that it meets their various needs within the Islamic framework. For this reason, as well as to ensure the legality hereof, it is strongly recommended that each party to a marriage that makes use of this form seek independent legal advice.

The World Federation of KSIMC, (add name of regional federation), (add name of local Islamic centre - Jamaat) and 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 Muslim community and does not constitute legal advice. No claims, promises or guarantees about the accuracy, completeness, or legality hereof is made. As legal advice must be tailored to the specific circumstances of each case, and given that laws are constantly changing, nothing provided herein should be used as a substitute for the advice of competent counsel.

Proposed Marital Contract Template for Non-Western Regions

Logo

Islamic Marriage Contract

Logo

In the name of Allāh, the Beneficent, the Merciful.

O Allāh, send His blessings upon Muhammad & his progeny.

“And among His signs is that He created spouses for you from among yourselves so that you may find tranquility in them; and He placed between you love & compassion. In these signs 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 the _____ in the year _____ AH between the “Groom” and “Bride” outlined below.

I. BRIDEGROOM

Full Name: _____
Father’s Name: _____
Mother’s Name: _____
Date of Birth: _____
Place of Birth: _____
Marital Status: never married /divorcé / widower
Address: _____

Tel: (____) ____ - _____

Groom’s *wakīl* (*‘āqid*) whom he hereby authorizes to perform the *‘aqd*:

II. BRIDE

Full Name: _____
Father’s Name: _____
Mother’s Name: _____
Date of Birth: _____
Place of Birth: _____
Marital Status: never married /divorcee / widow
Address: _____

Tel: (____) ____ - _____

Bride’s *wakīl* (*‘āqid*) whom she hereby authorizes to perform the *‘aqd*:

The Groom and the Bride enter into this agreement to provide for circumstances relating to their marriage; and both have read and agreed to the following conditions by way of signing each term or part.

III. MAHR/DOWRY

The Groom agrees to give the following marriage consideration (*mahr/dowry*) to the Bride:

Signature of the Groom

Signature of the Bride

IV. THE CONTRACT

RECITAL

The above-named Groom and Bride (hereinafter referred to as “the Husband” and “the Wife” respectively) DECLARE that this Marriage Contract is drawn and the provisions herein are agreed to on their free will and accord, respectively, at the time of the solemnisation of the marriage.

MANDATORY CONDITIONS PERTAINING TO THIS MARRIAGE CONTRACT

This marriage contract is based on the following conditions:

1. The Husband and Wife, whose signatures are affixed herein, and professing the Shia Ithna Asheri Faith of Islam, OR, one of whom professes the Shia Ithna Asheri Faith of Islam, have agreed to take each other in marriage on our own free will and in accordance with the Laws of the Shia Ithna-asheri faith of Islam, and upon mutual love and compassion.
2. The Husband and the Wife hereby agree that in case of any marital dispute, they will first refer their case to the local jamaat marriage reconciliation committee for a solution, even if it is related to dissolution of the marriage, and its particulars, such as, but not limited to:
 - ▶ child custody,
 - ▶ division of any finances and properties,
 - ▶ mandatory alimony,
 - ▶ child support, etc.

However, if a solution agreeable to both the Husband and the Wife is not reached within four months of raising their case with the local jamaat marriage reconciliation committee, then the parties involved may seek legal redress within the legal jurisdiction of the country of residence.

3. The Husband and the Wife hereby agree to comply with the jurisdiction of the prevailing laws of the country of their residence that pertain to marriage, which includes marital disputes, divorce, etc.¹; and in case of marital disputes and divorce, if a solution agreeable to both the Husband and the Wife regarding the particulars of the dispute or divorce is not reached within four months of raising their case with the local jamaat marriage reconciliation committee, then both parties agree to comply with the prevailing laws of the land of their residence, as far as it is permissible Islamically, according to the rulings of any of the recognized religious authorities (Maraji') of the Ja'fari Shia Islamic school of jurisprudence, who is recognized as a qualified religious authority for following in practical laws of Islam (Marja' Taqlid) by the scholarly experts of Ja'fari Shia Islamic jurisprudence (Ahl al-Khibra) of the Hawza Seminary in Najaf or Qom.

For example, if the law awards custody rights to the Wife after separation from the Husband, irrespective of the child's age, the Husband agrees to cede his Islamic right to custody, as long as it does not contravene the child's welfare. This agreement applies to all other marital laws, including the division of net marital property, according to what the civil courts rule.

However, this excludes actions that cannot be approved Islamically, such as divorcing without the specific Islamic legal phraseology or divorcing without the presence of two male 'adil witnesses. Besides the civil divorce, both parties will have to seek their Islamic divorce from the 'Recognized Religious Scholar'.²

4. The Husband and the Wife hereby agree that in case of any family disputes during their marriage, that cannot be solved mutually, or through the guidance of wise well-wishers, they will seek assistance from either a qualified Islamically-practicing marriage therapist or the marriage reconciliation committee of the local Jamaat.
5. The Husband and the Wife hereby agree that the exchange of gifts between them, as well as the gifts given to them individually by their respective parents, friends and relatives during the periods of engagement for marriage and matrimonial life shall always be and remain their respective individual properties and they shall not be subject to recall at any time, even in the event of dissolution of marriage.
6. The Husband hereby delegates to the Wife irrevocable power of attorney (wikala ghayr qabila li-l-'azl) to be used multiple times if needed, to appoint a Shia Ithna Asheri Muslim scholar to divorce her on behalf of the Husband, such as the Resident Alim of the Local Jamaat, through any type of divorce applicable,
 - 6.1. in the following 12 scenarios:
 - 6.1.1. If due to his refusal or inability, the Husband does not provide the Wife her necessary maintenance (nafaqa) for three consecutive months or such other period less than three months that would cause her unbearable financial distress.
 - 6.1.2. If the Husband consistently mistreats the Wife to an extent that living with him becomes unbearable for her, or if he forces her to consistently perform acts which are impermissible in Islam.

6.1.3. If the Husband contracts a chronic illness that makes it exceedingly difficult for the Wife to continue the marital life, including (but not limited to) certain psychological disorders like severe depression confirmed medically or any other incurable contagious diseases (for e.g., HIV), such that her life becomes endangered.

6.1.4. If the Husband is sentenced to prison for a period of three years or more and there is no expectation of his release beforehand.

6.1.5. If the Husband becomes addicted to drugs, alcohol, gambling, or engages in other immoral Islamically-forbidden acts and refuses treatment, or the treatment is ineffective, and life becomes unbearably difficult for the Wife.

6.1.6. If the Husband abandons the Wife and leaves the marital home for a continuous period of four months without a valid excuse.

6.1.7. If it is discovered that the Husband is sterile and incapable of having children, even with the aid of medical procedures, with the fertility specialist deeming the case untreatable; or if he refuses to have children despite the Wife's desire for it, and three years have passed since the start of the marriage.

6.1.8. If the Husband is unable to fulfill the customary intimate needs of the Wife, thereby causing her unbearable difficulty (haraj baligh).

6.1.9. If the Husband takes another permanent Wife without the permission of the first Wife and refuses to separate from her.

6.1.10. If the Husband disappears with no trace, despite thorough investigation, and four months have elapsed.

6.1.11. If the Husband abandons the Shia Ithna Asheri denomination of Islam³, or if he joins a group/cult with beliefs and practices considered by the majority of mainstream scholars as being deviant, or forces the Wife to become deviant, or their children.⁴

6.1.12. If the Husband divorces her officially according to civil law and refuses to give her a divorce according to Ja'fari Shia Islamic laws; or if the Wife unilaterally obtains a divorce in a civil court, but the Husband does not give her a divorce according to Ja'fari Shia Islamic laws.

6.2. This power of attorney is valid for use as many times as applicable, and as many times as the Wife wants, through either of the following two ways:

6.2.1. Khul' or mubaraat divorce, where their conditions are met.⁵ In this case, the Wife or the person whom the Wife appoints, will act as an agent on behalf of the Husband, for both:

6.2.1.1. accepting on his behalf a reasonable compensation offered by the Wife - (the amount would be decided by the scholar / marriage reconciliatory committee dealing with the case, not exceeding the dowry paid by the Husband to the Wife)⁶ - in return for her to be divorced, multiple times if she needs, and

6.2.1.2. divorcing her in return for the compensation that she offers as defined in point '6.2.1.1', multiple times if she needs.

6.2.2. Regular divorce (talaq) without compensation, if the conditions for khul' or mubaraat divorce are not met. In this context, the Wife or the person she appoints will act as an agent on behalf of the Husband in divorcing the Wife without compensation. This divorce can occur revocably (raj'i) or irrevocably (ba'in), depending on the circumstances.

If the divorce is revocable and the Husband takes her back as his Wife⁷ against her will, during the waiting period ('idda), the Wife or her appointee will act as an agent on behalf of the Husband for re-divorcing her, if she so wishes.

If during the second waiting period after the second divorce, the Husband takes her back as his Wife against her will yet again, the Wife or her appointee will act as an agent on behalf of the Husband for the third divorce if she so wishes, which will then be irrevocable. The now divorced Wife would then become unlawful for him to remarry, except after fulfilling certain conditions.⁸

6.3. The Wife's or her appointee's irrevocable powers of attorney as defined in 6.2.1.1, and 6.2.1.2, under the aforementioned circumstances, are subject to the following conditions:

6.3.1. The Wife must first lodge her complaint to the marriage reconciliation committee⁹ / a qualified

religious scholar and prove her claim by confirming one of the mentioned cases, even if it is through the testimony of some relatives or others who interact with the couple.

6.3.2. Four months have passed since the case is referred to the marriage reconciliation committee / qualified religious scholar, though a solution agreeable to both the Husband and the Wife is not reached; or that the Husband does not respond to the marriage reconciliation committee / religious scholar's request to address the situation from which the Wife complains, such as refusing to provide for the Wife financially or treat her kindly, and four months have passed since the case was referred by the Wife to the marriage reconciliation committee / religious scholar for resolving.¹⁰

7. The Wife hereby delegates to the Husband irrevocable power of attorney to appoint the person dealing with the case, such as the religious scholar/marriage reconciliation committee representative, to act as an agent on behalf of the Wife, in absolving the Husband of any outstanding unpaid financial responsibilities towards the Wife as required from a husband according to Islam, such as dowry (mahr), financial maintenance (nafaqa), etc.

This is valid if the person dealing with the case, such as the religious scholar / marriage reconciliation committee representative, confirms the Husband's necessity to divorce the Wife for one of the following reasons:

- 7.1. The Wife's poor companionship to a degree that is difficult for the Husband to tolerate; or her failure to fulfil his marital rights, including allowing him to have intimate relations with her to an agreed extent; or if she leaves the marital home without his permission, or brings home unpermitted non-mahrams.
- 7.2. It is revealed that the Wife had a chronic illness before marriage, which makes it very difficult for the Husband to continue marital life with her. This includes but is not limited to certain chronic mental illnesses such as severe depression (with a medical diagnosis) or sexually transmitted diseases, etc.
- 7.3. The Wife abandons the marital home without a valid excuse for a period of four months.
- 7.4. The Wife refuses to have children despite the Husband's desire, three years after the start of the marriage.
- 7.5. The Wife regularly consumes drugs or alcohol, or engages in immoral acts forbidden in Islam.
- 7.6. The Wife deliberately and repeatedly harms their children or either of the Husband's parents if they live with them.
- 7.7. The Wife refuses to wear hijab, unjustifiably (with no valid shar'i excuse) either due to being stubbornly sinful or misguided as a result of following an unqualified person who may allow the unveiling of hijab.

Signature of the Husband

Signature of the Wife

V. OTHER OPTIONAL CONDITIONS

Signature of the Husband

Signature of the Wife

VI. MISCELLANEOUS CONTRACTUAL TERMS

1. This agreement constitutes the entire agreement between the Husband and the Wife, and cancels and supersedes any prior understandings and agreements between them. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express or implied, between the Husband and the Wife other than expressly set forth in this Agreement.

2. This Agreement shall endure for the duration of the marriage of the Husband and the Wife.
3. If any provisions of this Agreement is found to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions of the Agreement shall continue in full force and effect.
4. This Agreement shall be governed by and construed in accordance with the laws of the Province / State of _____ and applicable laws of _____, and in accordance with _____'s Family Law Act.
5. No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by either Husband or Wife, shall be binding unless executed in writing by both Husband and Wife to be bound thereby.

Signature of the Husband for items 1 to 5.

Signature of the Wife for items 1 to 5.

VII. CERTIFICATION

This is to certify that the marriage of the Groom / Husband and the Bride / Wife named above was solemnized in accordance with the Shia Ja'fari Islamic laws on:

The _____ day of the month of _____ in the year _____ CE

The _____ day of the month of _____ in the year _____ AH

Wakíl ('Aqid) of the Husband

Witness

Wakíl ('Aqid) of the Wife

Witness

VIII. DEFINITIONS

1. "Agreement" means this Marriage Contract.
2. "Aqd" means the religious marriage vows that are performed in accordance with Ja'fari Shia Islamic laws.
3. "Mahr", although also used to denote 'dowry', means the monetary consideration or financial payment that the Groom must give to the Bride.
4. "Marja" is highest religious authority, followed by members of the "Shia Ithna Asheri Muslim Communities".
5. "Husband" is the Groom set above.
6. "Wife" is the Bride set out above.
7. "Resident Alim of (name of centre)" is the religious authority of the "(Add name of Centre)" Jamaat of "(Add name of City)". They should address the case based on the rulings of anyone of the religious authorities (Maraji') of the Ja'fari Shia Islamic school of jurisprudence, who is recognized as a qualified religious authority for following in practical laws of Islam (Marja' Taqlid) by the scholarly experts of Ja'fari Shia Islamic jurisprudence (Ahl al-Khibra) of the Hawza Seminary in Najaf or Qom.
8. "Resident Alim", without mention of a specific Islamic Centre, is any Shia Ithna Asheri Muslim scholar serving as the main religious scholar at a Shia Ithna Asheri Muslim Community Centre. They should address the case based on the rulings of anyone of the religious authorities (Maraji') of the Ja'fari Shia Islamic school of jurisprudence, who is recognized as a qualified religious authority for following in practical laws of Islam (Marja' Taqlid) by the scholarly experts of Ja'fari Shia Islamic jurisprudence (Ahl al-Khibra) of the Hawza Seminary in Najaf or Qom.
9. "Alim", "Scholar", "Religious Scholar", "Recognised Religious Scholar" is any qualified Shia Ithna Asheri Muslim religious scholar, who follows the rulings of anyone of the religious authorities (Maraji') of the Ja'fari Shia Islamic school of jurisprudence, who is recognized as a qualified religious authority for following in practical laws of Islam (Marja' Taqlid) by the scholarly experts of Ja'fari Shia Islamic Jurisprudence (Ahl al-Khibra) of the Hawza Seminary in Najaf or Qom.
10. "Jamaat" is any Khoja Shia Ithna Asheri Muslim community centre.
11. "The World Federation of KSIMC" is The World Federation of Khoja Shia Ithna Asheri Muslim Communities.

12. "Regional Federation" is the regional body, which is a member of The World Federation of KSIMC. There are 6 Regional Federations: "North American Shia Ithna-Asheri Muslim Communities Organization (NASIMCO)", India Federation - Council of All KSI Jamaats, The Council of European Jamaats (CoEJ), Africa Federation (AFED), The Federation of Khoja Shia Isna Asheri Jamaats of Pakistan (Pakistan Federation), Federation of Australasian Communities Inc (FAC). Each of these Regional Federations comprises of various "Jamaats".
13. "Shia Ithna-Asheri" is the particular sect of the Islamic religion to which both the Bride and the Groom belong.
14. "Ja'fari Shia Islamic laws" are the sect of religious laws that underlie the Shia Ithna-Asheri faith.
15. "(Add name of Centre)" Jamaat of "(Add name of City)" is a well-known Shia Organization of _____ Area.
16. "Wakíl ("äqid)" means the representative of the Bride or the Groom for purpose of performing the religious marriage vows ('aqd).

DISCLAIMER: The following form of marriage is only a sample form. It is advisable that the parties make the requisite changes to the form to ensure that it meets their various needs within the Islamic framework. For this reason, as well as to ensure the legality hereof, it is strongly recommended that each party to a marriage that makes use of this form seek independent legal advice.

Endnotes

- 1 If the Husband and the Wife are from different countries, then the laws of the country of their habitual residence will apply. If they get married in one country and then move to live in another, then the laws of the new country of residence will apply. If the Husband and the Wife are habitually residing in one country, and either of them moves to another country and files for divorce there, the laws of that new country will apply. In all of the aforementioned scenarios, the laws of the relevant country will apply, as far as it is permissible Islamically according to the rulings of any of the recognized religious authorities (Maraji') of the Ja'fari Shia Islamic school of jurisprudence. The laws referred to herein are the laws of marriage, including marital disputes, separation and divorce.
- 2 Refer to the definitions section for the criteria.
- 3 This applies if he was a Shia Ithna Asheri Muslim at the time of the marriage, and would happen by him changing his sect, or renouncing one of the primary foundations of Shia Ithna Asheri faith (dharurat al-madh-hab), e.g. by denying the Imam of the 12th Holy Imam (aj), or rejecting the authority of, or the need of referring to the certified Marja' as being a Representative of the the infallible 12th Imam (aj) according to Shia Ithna Asheri Muslim belief, 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).
If a Shia Ithna Asheri Muslim were to reject certain furu' al-din (practical laws of Islam) such as khums or hijab due to being distant from an Islamic atmosphere or because of becoming confused with sporadic doubts against religion, without the intention of belying the Holy Prophet (saw) or rejecting his narrations, they are considered a deviant.
However, if he changes his religion, by leaving Islam or knowingly rejecting one of its dharuraat (i.e. primary foundations, such as the Quran being a divine book – in a manner in which he knowingly and intentionally belies the Holy Prophet (saw) regarding these,) the marriage will automatically become dissolved without needing a divorce.
- 4 In these circumstances, the Wife must first speak to the resident Alim or a knowledgeable religious scholar to assist and guide the Husband. If this is unsuccessful, the Wife should present the case to the marriage
- 5 Such as – in the case for a khul' divorce for instance - the Wife's intense dislike of the Husband to the extent that she threatens to withhold his marital rights Reasons for the Wife's intense dislike can be:
 - a. His unappealing appearance, bad manners, addiction, poverty or other personal characteristics.
 - b. His not upholding the recommended rights of a Wife such as increasing her maintenance allowance, or doing actions which are against her taste, such as marrying a second Wife.
 - c. His not respecting some of the Wife's obligatory rights, such as providing her maintenance, or sharing the bed with her.
In these three cases, should the Wife offer something of monetary value for the Husband to divorce her through a khul' divorce, it will be valid.
 - d. His harming, harassing, cursing and swearing at, and beating the Wife.

Khul' divorce in this last scenario is invalid, and the Husband will not be the legitimate owner of the money the Wife has offered. Rather, a normal divorce is required in this scenario.

<https://www.sistani.org/persian/book/26578/6282/>- Tawdhiih al-Masa'il al-Jami' v.4, mas'ala number 551.

- 6 As a recommendation, the mustahab dowry is that of Sayyida Fatima al-Zahra (a), i.e. 500 shar'i dirhams, which is equivalent to 1250 grams of pure silver.
<https://www.sistani.org/arabic/qa/0685/>

7 'Al-Raj'a fi al-talaq' means for the Husband to Islamically take the Wife back during her 'idda waiting period of a revocable divorce (talaq raj'i), thereby annulling it. Taking the Wife back Islamically happens through one of two methods:

- ▶ Verbally, by saying so, using whatever words that indicate that, such as I take you back, you are my Wife again etc., in any language.
- ▶ Practically, through an action by which he intends taking her back, such as, bringing her back to their home with the intention of taking her back as his Wife, if she had initially left during the waiting period. If the Husband were to have intimate relations with her, during this period, she would be considered as taken back, whether he intended to take her back by doing so or not.
<https://www.sistani.org/arabic/book/16/888/> - Ruling 531, Minhaj al-Salihin, v.3.

8 <https://fiqh.world-federation.org/ruling/2545/>- Islamic Laws, Ruling 2545.

9 In cases where the respective Jamaat has ceased to exist, the nearest Jamaat shall be considered as the contact Jamaat. If either the Husband or the Wife are related to a member of the jamaat's reconciliatory board, that member shall not be involved in any of the above official reconciliation, arbitration or other related procedures due to conflict of interest. Reconciliation on a family level by family members is recommended, but this should be at a prior stage, before the case is brought before the dispute council, following a dead-end at the family level. Of course, involvement of any wise family members of either the Husband or the Wife to help facilitate any of the procedures of the marriage reconciliatory body are also welcome, as long as it does not negatively impact the aforementioned body's work.

10 If two months pass after either the Husband or the Wife refer their case to the local Jamaat's marriage reconciliatory body for a solution, but no satisfactory action is taken by the aforementioned body, the Husband or the Wife may escalate the case to the regional federation for a solution, at which point, the Islamic Education Department (islamiceducation@world-federation.org) should also be made aware of the case by the Husband / the Wife. If after four months since the case was originally referred to the local Jamaat's marriage reconciliatory body, and no solution agreeable to both the Husband and the Wife is reached, neither at the local Jamaat level, nor the regional federational level, the Husband or the Wife should escalate the case to the Islamic Education Department of the World Federation for redress. If the local Jamaat is an Associate member of The World Federation of KSIMC, meaning it is not under a regional federation, then if two months pass after either the Husband or the Wife refer their case to the local Associate Jamaat's marriage reconciliatory body for a solution, but no satisfactory action is taken, the Husband or the Wife may escalate the case directly to the Islamic Education Department of The World Federation of KSIMC for redress.

The World Federation of KSIMC, (add name of regional federation), (add name of local Islamic centre - Jamaat) and 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 Muslim community and does not constitute legal advice. No claims, promises or guarantees about the accuracy, completeness, or legality hereof is made. As legal advice must be tailored to the specific circumstances of each case, and given that laws are constantly changing, nothing provided herein should be used as a substitute for the advice of competent counsel.

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