

Concept of Marriage and Divorce in Pre-Islam Era

Marriage as we know it today was just one form of marriage recognized by Arabs; there were other forms as well, all agreed upon by custom. If an individual engaged in one of the accepted forms, no one else had the legal right to reproach him. I use the word legal, but the forms of marriage were not set down in writing in a constitution or charter of laws; rather, like most other laws that were collectively agreed upon by Arabs, custom alone dictated the actions of society's members.

'Aishah ct, related to us four forms of marriage that were practiced by Arabs during the days of ignorance:

"Marriage, during the days of ignorance (pre-Islamic days), was upon four forms; one of those forms is the marriage that people engage in today, which involves a man going to another man and proposing to have his dependent (ward, charge) or daughter's hand in marriage; he would then give her dowry to her, and marry her. Another form of marriage involved a man saying to his wife just after she became purified from menstruation, "Send for such and such man, and ask him to have intercourse (so that he can get you pregnant)." The husband would stay away from her and categorically avoid touching her, until it became clear whether she got pregnant from the other man whom she asked to have sex with her. When the issue of her pregnancy became clear (i.e., at the time of her next period), her husband would, if he so desired, have (sexual) relations with her. He would only do that (i.e., he would only have another man have sex with his wife) out of a desire to have a child of noble descent. This form of marriage is (called) the Marriage of *Istibdaa'*. In another form of marriage, a group of men, fewer than ten in number, would enter upon a woman, and each one of them would have her (i.e., would have sex with her). After she became pregnant, gave birth, and a number of nights passed after she gave birth, she would summon the men to come to her. None of the men could refuse, and so all of them would gather by her side. She would say to them, "You indeed know what you did, and I have given birth. And, so he is your son, O so-and-so," and she would mention the name of the man whom she loved (to have as her child's father). Her child would be ascribed to that man, and he could not refuse (to be the father). As for the fourth form of marriage, many people would enter upon a woman (and engage in sexual intercourse with her), and she would not refuse anyone who came to her. They were the fallen women who would install banners over their doors; whoever wanted them, would enter upon them (and have sex with them). If one such woman became pregnant and then delivered a child, they (i.e., the men who had sex with her) would be gathered for her, and *Kaafahs* (people who were recognized for their expertise in being able to discern relatives through physical attributes) would be sent for them. Then, the *Kaafaahs* would ascribe the child to the one they thought (was the father); the child would then be ascribed to him, and would be called his son. And he wouldn't refuse [to accept him as his son (such were the rules of the game that everyone followed according to custom). Then when Muhammad was sent with the truth, he destroyed the marriage of ignorance (i.e., the latter three of the four forms), and kept legislated the marriage that people engage in today."

Saheeh-Bukhaaree, "The Book of Marriage"; chapter, "Those Who Say: Without (the Involvement of) a Guardian (in the Marriage Agreement). There is no Marriage."
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Some scholars mentioned forms of marriage that 'Aishah didn't mention; one was the taking of boyfriends and girlfriends, which was in fact fornication and not marriage. Allah mentioned this practice in the following Verse:

"Nor taking boyfriends." (Qur'an 4: 25)

Then there was the *Mut'ah* marriage, which remained lawful during the early days of Islam, but was eventually prohibited. *Mut'ah* marriage is a temporary marriage that ends after a predetermined period of time elapses - one month, two months, one year, whatever is agreed upon by the two contracting parties. Another form of marriage involved a trade: During the pre Islamic days of ignorance, one man would say to another, "Give up your wife to me, and I will give up my wife to you, and I will give you more." And yet another form of false marriage was called *Nikaah Ash-Shigaar*: By way of formal agreement, one man would marry his daughter off to another man, on the condition that that man married his daughter off to him; and in this transaction, no dowry would be given to either of the two daughters.

During the pre-Islamic days of ignorance, Arabs considered it lawful for a man to be married to two sisters at the same time; they also deemed it lawful for a man to have as many wives as he wanted. Countless Arab men of course took advantage of the situation, so that some men had ten or more wives. With the advent of Islam, any man who embraced Islam had to divorce any additional wife so that he was left with four wives; and even the remaining four he kept only if he knew that he was able to spend on them and treat them with justice. If he feared that he wouldn't be able to do justice between two wives or more, he would remain content with one wife. Prior to Islam, men would certainly not treat their wives with justice; rather the opposite took place: they would treat

them harshly and usurp all of their rights. Islam then came and did justice to women; they gained rights that they never could have previously dreamt of, and their husbands were instructed to treat them well and with kindness.

A man was always allowed to take back his wife, no matter how many times he had previously divorced her.

The concept of divorce was recognized among Arabs, but men were given an unlimited amount of freedom in terms of being able to take back their wives after first divorcing them. A man could divorce his wife and then take her back; he could divorce her again and then take her back again; and he could continue this process endlessly, always having the right to take back his wife. In the early days of Islam, this practice was sanctioned, but then was finally limited in scope with the revelation of the following Verse:

"The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back (from your wives) any of your Mahr (bridal-money given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (e.g., to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back (the Mahr or a part of it) for her Al-Kuhl' (divorce). These are the limits ordained by Allah, so do not transgress them. And whoever transgresses the limits ordained by Allah, then such are the Zalimoon (wrong-doers, etc.)." (Qur'an 2: 229)

Still giving a man, the opportunity to make amends with his wife after divorce and to take back a hastily spoken word (i.e., "I divorce you"), Islam limited the number of times a man could

divorce his wife and yet still take her back.

In Islam, after a man divorces his wife for the first time, he has a period during which he can take her back. If he does take her back and then divorces her for a second time, he has another period during which he can take her back. But if he takes her back for a second time and then divorces her for a third time, the divorce is final, and he may not take her back. The only way he can get back together with her is if she marries another man and then divorces him; and even still, he may not orchestrate a false marriage between her and another man in order to get her back. Her marrying another man and then divorcing him must occur naturally, without advanced planning. Allah said:

"And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin on both of them that they reunite, provided they feel that they can keep the limits ordained by Allah. These are the Limits of Allah, which He makes plain for the people who have knowledge." (Qur'an 2: 230)

In regard to divorce, Islam also forbade a practice known as *Zihaar*, which involves a man saying to his wife, "You are like the back of my mother (which means that, as with one's mother, one will certainly not have sex with his wife, so it is a kind of vow)." Describing *Zihaar* as "an ill-word and a lie," Allah gives a man who says the words of *Zihaar* a way out of his predicament through the legislation of atonement. Allah said:

"Those among you who make their wives unlawful (Az-Zihaar) to them by saying to them "You are like my mother's back." They cannot be their mothers. None can be their mothers except those who gave them birth. And verily, they utter an ill word and a lie. And verily, Allah is Oft-Pardoning, Oft-Forgiving. And those who make unlawful to them (their wives) (by Az-Zihaar) and wish to free themselves from what they uttered, (the penalty) in that case (is) the freeing of a slave before they touch each other. That is an admonition to you (so that you may not return to such an ill thing). And Allah is All-Aware of what you do. And he who finds not (the money for freeing a slave) must fast two successive months before they both touch each other. And for him who is unable to do so, he should feed sixty of the Miskin (poor). That is in order that you may have perfect faith in Allah and His Messenger. These are the limits set by Allah. And for disbelievers, there is a painful torment." (Qur'an 58: 2-4)

Extracted from the Noble Life of the Prophet PBUH by Dr Ali Muhammad As-Sallabi, a graduate of Madinah University who went on to do a PhD.