

**CONDITIONS IN MUSLIM MARRIAGE: A
COMPARATIVE ANALYSIS BETWEEN BANGLADESH AND
MOROCCO**



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LETTER OF APPROVAL

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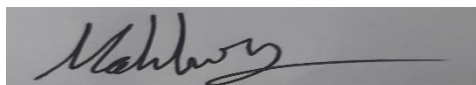
Subject: “Conditions in Muslim marriage: a comparative analysis between Bangladesh and Morocco”

Dear Sir,

It’s a great pleasure for me to submit Conditions in Muslim marriage: a comparative analysis between Bangladesh and Morocco. While preparing this research Monograph Paper I have attempted my dimension best to keep up the required Standard. I trust that this research monograph will satisfy your desire.

I hereby do solemnly declare that the work presented in dissertation has been carried out by me and has not been previously submitted to any other institution. The work I have presented does not breach any copyright.

I, along these lines, supplicate and Hope that you would be sufficiently benevolent to this exploration paper for advancement.



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At the very beginning, I would like to thank Almighty Allah for his blessings, without which it was impossible to complete the work

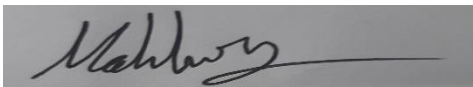
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DECLARATION

I hereby declare that the research paper entitled “*Conditions in Muslim Marriage: A Comparative Analysis between Bangladesh and Morocco*” has been done by by Muhammad Mahfuz Uddin (Id No: 213-38-009) in partial fulfillment of the requirement for the degree of LLM program from Daffodil International University. This research monograph has been carried out successfully under my supervision.

A handwritten signature in black ink, appearing to be 'Dr. Kudrat-E-Khuda (Babu)', written over a horizontal line.

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LIST OF ABBREVIATION

PBUH	Peace Be Upon Him
MFLO	The Muslim Family Laws Ordinance
MPSC	Moroccan Personal Status Code
SFM	Muslim Family Status
BD	Bangladesh

TABLE OF CONTENTS

CONTENTS	Pages
Title Page	<i>i</i>
Latter of approval	<i>ii</i>
Acknowledgment	<i>iii</i>
Declaration	<i>iv</i>
List of Abbreviations	<i>v</i>
Table of Content	<i>vi-vii</i>
CHAPTER I PRELIMINARY CHAPTER	<i>01-06</i>
1.1 Background of the Study	<i>1-2</i>
1.2 Literature Review	<i>2-4</i>
1.3 Research Question	<i>4</i>
1.4 Research Objectives	<i>5</i>
1.5 Scope of the Study	<i>5</i>
1.6 Limitation of the Study	<i>6</i>
1.7 Importance of the Study	<i>6</i>
1.8 Research Methodology	<i>6</i>
1.9 Structure of the Study	<i>7</i>
CHAPTER II CONCEPTUAL FRAMEWORK OF THE STUDY	<i>08-11</i>
2.1 Concept of Conditions under Islamic Law	<i>8-9</i>
2.2 Conditions in a Marriage Contract that Reinforce the Normal Incidents of Marriage	<i>9</i>
2.3 Conditions in a Marriage Contract that Vary the Normal Incidents of Marriage	<i>9-10</i>
2.4 Based on Legal Validity, Conditions may be Three Types Valid Condition Void Condition Invalidating Condition	<i>10-11</i>
2.5 Chapter Summary	<i>11</i>
CHAPTER III CONDITIONS IN MARRIAGE UNDER SHARIA LAW	<i>12-14</i>
3.1 Conditions in a Marriage Contract under the Holy Quran and Hadith	<i>12-13</i>
3.2 Different Opinions of Imams about Conditions in the Marriage Contract	<i>13-14</i>
3.3 Chapter Summary	<i>14</i>

CHAPTER IV MARRIAGE CONDITIONS: COMPARISON BETWEEN BANGLADESH AND MOROCCO	<i>15-18</i>
4.1 Condition in a Marriage Contract in Bangladesh with the Reflection of Sharia and Statutory Law	<i>15-16</i>
4.2 Condition in a Marriage Contract in Morocco with the Reflection of Sharia and Statutory Law	<i>16-18</i>
4.3 Chapter Summary	<i>18</i>
CHAPTER V CONCLUDING REMARKS	<i>19-23</i>
5.1 Findings	<i>19-20</i>
5.2 Recommendations	<i>20-22</i>
5.3 Conclusion	<i>22-23</i>
Bibliography	<i>24-30</i>

CONDITION IN MUSLIM MARRIAGE: A COMPARATIVE ANALYSIS BETWEEN BANGLADESH AND MOROCCO

CHAPTER ONE PRELIMINARY CHAPTER

1.1 Background:

Marriage contract woman rights and opportunities, are provided by both our sharia and statutory law.¹ But this right of a woman is often violated by the husband dominated societies. There is no doubt that marriage under Islamic law has a religious influence. It is a contract. Because it deals with normal contractual formalities: offer and acceptance by the efficient person, that is why it is treated as a civil contract. The marriage contract should be researched to determine and clarify the rights of the woman. It is their right to give the wife the power of divorce, this is generally accepted as permissible by all madhabs. But our societies are silent about this matter. However, the requirement must be inserted according to the sharia law. That is mean all requirement is not allowed under sharia law. For example, like a husband will not take a second wife, this rule is invalid in Hanafi schools. But the Hanbali schools give consent to insert such type of matter in a marriage contract.² Other important requirements should be highlighted which are essential for the present world as a husband will not interdict his wife's work or a husband will permit his wife to complete her study. Whether sharia has given open scope for the requirement in marriage contracts but Bangladesh has no whole specific statutory law on the ground of requirement in marriage contracts except kabinnama. I audited the present scenario of Bangladeshi women and also the government's insensibility about such rights. The case of conditions in the marriage contract in Morocco has played an effective role in the rights of the woman.

Concerning conditions, in a marriage contract, Morocco made statutory provisions concerning the „property regime“ for example The Moroccan Family Code (Moudawana), 2004 the new family code enact in Morocco. Regarding a property rule,³ Moroccan law may be a good example for making a statutory provision for purposes of requirement in marriage contracts in Muslim countries.⁴ I am perfectly interested in the requirement in a marriage contract for the reclamation of rights of the women

¹ E.H.Dr. Muhammad,(2015), Muslim family law, a requirement in a marriage contract (1st ed. London College of Legal Studies).URL: https://www.researchgate.net/publication/345323246_Muslim_Family_Law_Sharia_and_Modern_World.

² M.Amira,(2015), CSHR, Islamic Law and Gender Equality- Could There be a Common Ground?: A study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt. URL: <http://opac.cshr.cmb.ac.lk:8080/jspui/handle/123456789/1734>.

³ The Moroccan Family Code (Mudawana), 2004, Article 49, URL: <https://learningpartnership.org/sites/default/files/resources/pdfs/Morocco%20Family%20Code%20%28Moudawan%29%202004%20English.pdf>

⁴ Women living under Muslim law,(2006), Knowing our rights women family laws and customs in the Muslim world, (3rd ed. London)URL: <https://www.oursplatform.org/wp-content/uploads/WLUML-Knowing-Our-Rights-Women-Family-Laws-and-Customs-in-the-Muslim-World.pdf>.

condition in a marriage contract, for constructing equal rights for men and women. That is why I directed this research on the comparative analysis of conditions in a marriage contract between Bangladesh and Morocco under sharia law.

1.2 Literature Review:

The issues that must be included in the marriage contract are to protect the rights of women in the marriage field. Especially women will take advantage of using conditions in such type of matter in a marriage contract. But such facilities are absent in Bangladesh due to a lack of awareness among people and a lack of crystal clear statutory provisions regarding marriage contracts. My work has addressed these affairs giving by the illustration of Moroccan Family Law from a comparative perspective.

A more widespread description regarding the condition in a marriage and marriage contract can be found in Muslim Family law (2015), a book by Professor Dr. Muhammad Ekramul Haque, in his book, the Professor represents the current scenario regarding the requirement in a marriage contract under sharia and various statutory laws of the Muslim modern world. Dr. Muhammad Ekramul narrated that Muslim marriage is a civil contract. And this agreement created an opportunity to combine the needs and conditions of women in a marriage contract.⁵

Various studies have shown that condition in a marriage contract is not a familiar topic in Bangladesh. But the standard marriage contract form (kabinnama) opened the scope for placing some conditions. Columns 17, 18, 19, and 20 are specially ground for the placing of condition.⁶ The real scenario of the people of Bangladesh is that they are not sensible of the scope of requirement in a marriage contract.

Many scholars have recognized that Morocco's taken new family code in 2004 was addressed as a massive step forward for women's rights and as a model for Muslim countries. Morocco's new family code, ordinarily known as the Moudawana, introduced a limit of measures that promote women's equality in marriage,⁷ divorces, and another perspective of family life. The important material of Moroccan law is property administration. On that material, a woman or a man has the right to the place of condition in a marriage contract is advised by the public notaries.

⁵ E.H.Dr. Muhammad,(2005) *Muslim family law: Sharia and Modern World* (1st edn. London College of Legal Studies).URL:

https://www.researchgate.net/publication/345323246_Muslim_Family_Law_Sharia_and_Modern_World

⁶https://imam-us.org/wp-content/uploads/2017/02/2017_Marriage_Contract_E.pdf.

⁷The Moroccan Family Code (Mudawana), 2004, Article 49, URL:
<https://learningpartnership.org/sites/default/files/resources/pdfs/Morocco%20Family%20Code%20%28Moudawan%29%202004%20English.pdf>

Recent research has been completed by Professor Shahnaz Huda (2001). She narrated in her article about the right to divorce of the women by the condition of placing a condition in her marriage contract with the willingness of the husband that will be valid. But the fieldwork gave, in most of the cases in Bangladesh the woman fails to put in the condition in the marriage contract for their lack of exact knowledge regarding the condition in a marriage contract.⁸

Quran and Hadith also incited our condition in marriage Abdullah (b. Mas'ud) reported: We were on a campaign with Allah's Messenger (sm) and we had no women with us. We said: Should we not have ourselves vitality? He (the Holy Prophet) prohibited us to do so He then granted us give consent that we should contract temporary marriage for a certain period giving her a garment, and 'Abdullah then recited this verse: 'Those who believe do not make unlawful the good things which Allah has made lawful for you, and do not transgress. Allah does not like transgressors" (Al-Qur'an, 5: 87).⁹

Muhammad Munir narrated, in his article, that the idea of the requirement in marriage came to light in the eye of the society in Pakistan from the case of Muhammad Zaman v Irshad Begum. He contributed to the idea of a condition in a marriage contract in Pakistan.

The marriage agreement also establishes further rights and duties for each partner. Aside from the basic necessity of “mutual good treatment,” which is not legally explained, these rights and duties are separated by gender. They are also interdependent: a failure by one partner to fulfill a specific duty may endanger his or her demand for a particular right.¹⁰

Kamrul Hossain discussed in his article, that the problem of not equal women in the Bangladeshi system is more social than legal.¹¹

⁸H. Shahnaz,(28 Oct0b0r,2021). Protection of Women in the Marriage Contract. URL: <https://www.biliabd.org/wp-content/uploads/2021/08/Shahnaz-Huda-1.pdf>.

⁹Al-Qur'an, v. 87, “Those who believe do not make unlawful the good things which Allah has made lawful for you and do not transgress. Allah does not like transgressors”

¹⁰ W. Lynn,(2007).Women and Muslim family laws in Arab states: A comparative overview of textual development and advocacy, URL: <https://library.oapen.org/bitstream/handle/20.500.12657/35191/1/340144.pdf>.

¹¹ H.Kamrul,(november2003). Journal of international women studies, marriage related laws for Muslim women in Bangladesh. URL: <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1524&context=jiws>.

Nannu Mian comes to an end in his article, Bangladesh there is no similar law relating to Marriage Registration. The marriage registration form is the only place where women implant or protect their rights. Truly to enact such a law for both partners friendly settling their bridal problems.¹²

Norhoneydayatie Abdul Manap in their joint article (2013) defines the term requirement in a marriage agreement under Islamic law and Common law and argued the contract of marriage. They said that the marriage contract is a means of creating obligation but it is created out of legal obligation.¹³

Many writers acknowledged all schools of law give consent to a wife to condition. In this regard Raihana Abdullah (2008) said, a wifee has the power to require any conditions in her marriage agreement. For example, the condition regarding polygamy, the condition regarding work, etc.¹⁴

Sameena Nazir and Leigh Tomppert said Women are accepted to ask for specific rights to be required in the marriage contract, for Example, the right to work and study after marriage.¹⁵

1.3 Research Questions:

- **What is the basic difference between Bangladesh and morocco's requirements for marriage under sharia law?**
 1. What is the opportunity in case of a condition in marriage contracts in the modern world?
 2. What is the best exercising a Muslim country in case of conditions in marriage?
 3. Does any difference between Bangladesh and Morocco in case of a condition in the marriage agreement on the ground of statutory law?

¹²M.Nannu,(July,2013).Modernizing Marriage Registration in Bangladesh.URL: https://www.researchgate.net/publication/272409369_MODERNIZING_MARRIAGE_REGISTRATION_LAW_IN_BANGLADESH.

¹³A.M.Norhonydaya ,(2014). Journal of the Asian social Science,Contract from Islamic and Malaysian Legal Perspective. URL: <https://www.ccsenet.org/journal/index.php/ass/article/view/33049>.

¹⁴A.Raihanah, (2008).Inserting stipulation of polygamy in a marriage contract Muslim countries.URL: <http://digilib.uin-suka.ac.id/761/1/INSERTING%20STIPULATION%20PERTAINING.pdf>.

¹⁵K.AL-M.Shatha,(21 july,2005).Women's Rights in the Middle East and North Africa (1st ed, Freedom House, USA) Pp. 313, 318. URL: <https://www.amazon.com/Womens-Rights-Middle-North-Africa/dp/0742549917>.

1.4 Research Objectives:

- The objectives of the research are mainly r things: These are here-
 1. To analyze the comparison between Bangladesh and Morocco in marriage conditions under the Sharia law with different counsels of Imams.
 2. To determine the eventful scope for the condition in the modern world.
 3. To review the modern statutory law relating to marriage conditions in Bangladesh and Morocco.
 4. To suggest some applicable recommendations to better protect the interests of women in mentioning the best-referencing country in the world in case of marriage.

1.5 Scope of the Study:

The vantage of the research has been drawn within unstable issues

□ Inclusion

The research work is primarily derived from a comparative analysis between Bangladesh and morocco regarding the requirement in a marriage contract to establish and promote the equal rights of the woman in the marriage field mentioning the example of Moroccan women's status in a marriage contract under the light of sharia and some specific Muslim countries family law regarding marriage requirement. Here requirement meant the only condition regarding the requirement in a marriage contract under the specific arrangement of the said Muslim countries.

□ Exclusion

In this research, the condition intends to include only marriage conditions between Bangladesh and Morocco other areas will be counted as an area of inhibition.

1.6 Limitation of the Study:

There is a lack of dedicated literature on Bangladesh and Morocco's stipulations in marriage under sharia law as a comparative point of view. In this article, we did not include enough amount of research articles published on the conditions in marriage because it's not a very widely discussed topic. There are very few journals, articles, and opinions as per the Imams available.

The study doesn't contain sufficient primary data for the conditions in marriage except for the ways that have been mentioned In the Holy Quran and Hadith. Moreover, different laws are dedicated to this particular point of view of state countries. The study was written during the peak time covid-19 in Bangladesh.

1.7 Importance of the Study:

Conditions during the marriage are likely very important for women because in most cases the husband is considered to be the superior power to a wife. If the wife wants to secure herself from being exploited or dominant by the existing system of male-dominated law in Bangladesh the wife can do so by including the conditions in her contract of marriage. By doing so she can make sure that the husband will permit her to engage in any kind of legal profession otherwise the husband can exercise he is the power to prevent her from doing so. Any other necessary things that are prepared for the wife can be e inserted under the area of law and sharia. By the study of this paper, the wife will be able to alert for her right which is given to her by sharia and the law of countries. A person who is a practitioner of law gathers a clear knowledge about conditions in marriages. Students of law will be more benefited on the ground of conditions regarding marriage under Sharia and the law of the country.

1.8 Research Methodology:

To prepare this paper qualitative approach and comparative approach research methods are used. The qualitative paper Combines several primary and secondary sources like the Holy Quran and Hadith, Books regarding National laws, articles, journals, case studies, and Law Reports on conditions in a marriage contract. To perform this research work number of study materials and reports have been used. Moreover, an analysis of the relevant issues, documents, and laws of foreign countries regarding the same especially Morocco was considered. Along with these other Muslim countries law in the same regard was taken under consideration.

1.9 Structure of the Study:

This research is titled “Conditions in Marriage: A Comparative Analysis Between Morocco and Bangladesh” in which we discussed the comparison between the two countries' conditions in a marriage contract. The study is a combination of 6 chapters the first chapter has been preliminary. This chapter contains the background of the study, questionnaire for research, the objective of the research, scope of the research, limitation of the research, importance of the research methodology, structure of the research, and Bibliography

The second chapter has been a bit descriptive. The conceptual framework of the study is the main concept of requirements existing different types of conditions regarding the contract of marriage. Moreover, it focused on the effect of a valid void and invalidating condition in a marriage contract which can be appeared for reasons of challenges in the existing legal framework.

The third chapter contains information on the core description regarding conditions in a marriage contract under Sharia law. This chapter discusses the basic concept regarding conditions in a marriage contract which has been stated in the Holy Quran and Hadith and was discussed by different Imams.

The fourth chapter states a comparison between Bangladesh and Morocco in the matter of conditions of a marriage contract. in this chapter, a presentation of the present scenario of both countries regarding conditions offer marriage contract is presented.

The fifth chapter has made a comparative analysis of the Recording practice of conditions of a marriage contract in countries like Turkey, Lebanon, Morocco, Tunisia, Bahrain, Jordan Syria UAE Qatar, and Kuwait.

And the last chapter finally tells us the findings recommendations and conclusion of the research paper.

CHAPTER TOW

CONCEPTUAL FRAMEWORK OF THE STUDY

2.1 Concept of the condition under Islamic Law:

Dedicated law is a fundamental source of a Muslim marriage condition. Both countries practice Sharia law regarding marriage the local State Law Doesn't create any dispute with the law which was stated in the Holy Quran. Rather both countries created a suitable platform where personal family law can be applied. If a dispute arises in a Muslim family, it is Taken care of with the help of Sharia law in Bangladesh. As The meaning of Quranic verses is not easy to understand for the local people scholars interpret them in a very easy and understandable language. To be specific we can say that Sharia law came to society to interpret Islamic law by some jurists. They translated the law of the Quran and Hadith into easy language. Though all matters Are not dealt with the help of Sharia law, most of the matters of Muslim personal law are conducted by Sharia law.

Laws made by State are flexible. It changes according to the need of society and can be versatile in its place, but the Sharia law is fixed. Different countries may interpret it in the local language or according to its need but the basic fundamental order from The Almighty Allah is unchangeable. Conditions in a marriage contract are the result of the interpretation of the Sharia law by The Scholars of Islam. The matter of conditions in a marriage contract may be classical or ancient but the outcome of it is a basis of a unique law.

Condition is a matter of contract enlisted in the time of making the contract Which is some rights according to the Sharia law domestic law and most importantly Quranic law to preserve the rights of a wife for her welfare and safety. According to the R.Khushi dictionary, the term Stipulation (share) in Muslim is obliged to something.¹⁶

¹⁶ R.Khushi,(11 september 2019).Ipleaders blog, Laws related to Muslim Marriage : know more about it.

URL: <https://blog.ipleaders.in/marriage-under-muslim-law/>.

Under the book of Wasit, the condition is an arrangement of a condition above other tools such as whether or when.¹⁷

Islamic scholar Abdul Karim Jaidan said a condition is an essential mark or sign of an intimation¹⁸.

Hashem Kamali has defined the term condition. He said condition is an evident and actual symptom whose absence necessities the absence of the hokum but whose availability does not automatically bring about these objects. For instance, Divorce requires a valid marriage contract, but that does not mean that a valid marriage must lead to divorce¹⁹.

Muslim scholars define the term condition in marriage as an extra order about such a lawful act. Which exists and depends on the existence of the requirement and which non-existence is also due to the non-existence of the requirement.²⁰

2.2 Condition in a Marriage Contract that Reinforces the Normal Incidents of Marriage:

There may be some conditions that do not make any changes in the sharia or existing domestic laws regarding marriage, rather such conditions reinforce or set out the parameters of inserting those requirements. For need more purification requirements regarding the time of giving of dower or maintenance. The stated requirement does not create a problem in the marriage under sharia or domestic law which is why there are no legal bindings on making or placing the above requirement on marriage. The status of such requirement is valid under Sharia law and domestic law.²¹

2.3 Condition in a Marriage Contract that Varies the Normal Incidents of Marriage:

There may be some conditions that make changes in the sharia or present domestic laws regarding marriage, such conditions will not powerful under sharia or domestic law. For

¹⁷ M. Saif. M. Tahir;(july12,2021),The Indian law, Essentials Conditions Of Muslim Marriages.URL: <https://theindianlaw.in/essentials-conditions-of-muslim-marriages/>.

¹⁸Abul Karim Jordan says, “condition is an essential mark or signs an indication”

¹⁹Hashem Kamali says, “ condition is an evident constant attribute whose absence necessities the absence of the hokum”

²⁰ A.M. Norhonydaya ,(2014). Journal of the Asian Social Science. Requirement in Contract from Islamic and Malaysian LegalPerspective.URL:<https://www.ccsenet.org/journal/index.php/ass/article/view/33049>

²¹ E. H. DR. Muhammad,(2015). *Muslim family law: Sharia and Modern Law* (1st ed. London College of Legal Studies) Pp. 116-118. URL: <http://opac.ewubd.edu/cgi-bin/koha/opac-search.pl?q=an:%2218757%22>

more clarification, the condition regarding the non-payment of dower or maintenance. One of the major things is the payment of dowry is a common and major event in marriage. If anyone places the requirement in marriage contracts that the dower is not chargeable such condition is treated as a requirement that varied the normal event of marriage. The matters mentioned affect marriage under sharia or domestic law, so there is no scope to insert or impose the above matters on marriage. Such conditions have no status and are void under sharia and domestic law.

2.4 Based on Legal Validity, Conditions/Stipulations may be Three Types:

1. Valid condition
2. Void condition
3. Invalidating condition

Valid condition:

Legitimate conditions are those conditions that are reinforced by shariah project policies and domestic law. For example, giving the wife the power to divorce, fixing the date of dowry, and determining the amount of maintenance to be given to the wife.²² There is no dispute that a valid condition is binding on both the husband and wife and no impediment to the enforcement of the valid condition is acceptable.²³

Void condition:

Invalid or illegal terms are those that cannot be used or enforced following sharia law, such terms are considered to be a violation of sharia law. For example, breach the condition and don't pay for dower or maintenance. If any person mentions in the prenuptial agreement at the time of marriage that all conditions which are prohibited under sharia law will be considered null and void. In the matter of a void condition that the marriage will exist but the

²² E. H. Dr. Muhammad,(2015). Muslim family law: Sharia and Modern Law (1st edition. London College of Legal Studies) Pp. 117 URL: <http://opac.ewubd.edu/cgi-bin/koha/opac-search.pl?q=an:%2218757%22>

²³ [Article 40(3) of the Kuwaiti Family Law of 1984]

URL:<https://core.ac.uk/download/pdf/2792993.pdf>

the condition will be void.²⁴ Article 47 of the Moroccan Family Code (Moudawana) 2004 highlighted:

„All condition is binding except the requirement that contradicts the terms and objectives of the marriage contract and legal rules; these conditions are void while the contract remains valid“

Invalidating condition:

Void conditions are those terms that, if used contrary to sharia law, will not be enforceable. Such conditions are void ab initio, meaning that they are unspoken or unnecessary by themselves and such stipulations will invalidate the binding marriage contract. For example, a condition is added during the time of the marriage. It can be two days, one month, one year, or another form of the time of the marriage. Such condition shall be void and the marriage shall be annulled by such requirement²⁵ and such condition shall be considered as an illegal requirement under the sharia law. Sudanese law provided that condition a particular „time limit“ will invalidate the marriage.²⁶

2.5 Chapter Summary:

Chapter II concentrated on the conceptual framework of the study by the explanation of divine and classical law. After that, an exchange of views has been made about the concept of term requirement. After that various conditions were announced and it was accepted by the entire Muslim world. The above kinds of conditions are more important for the brides, Kazi, marriage registrar, social worker, married woman, and husband for learning and collecting knowledge about the requirement in a marriage contract. This chapter deals with valid, invalid, and invalid aspects of marriage. If certain conditions are not contrary to the marriage contract, it will be a valid condition. On the other hand, if the required condition prevents the consummation of the marriage, it is considered a void condition, and invalid conditions are those that cannot be enforced by sharia law. This type of requirement will make the whole contract void.

²⁴Article 40(2) of the Kuwaiti Family Laws 1984 says: (If it is accompanied by a condition that does not conflict with its basis, but conflicts with its requirements, or is forbidden in law, then the stipulation is void;/Article 47 of the Mudawana 2004 ULR: <https://core.ac.uk/download/pdf/2792993.pdf>

²⁵E. H. Dr. Muhammad,(2015), Muslim family law: Sharia and Modern Law (1st ed. London College of Legal Studies) Pp. 118 URL: <http://opac.ewubd.edu/cgi-bin/koha/opac-search.pl?q=an:%2218757%22>

²⁶ Article 40(1) of the Kuwaiti Family Laws1984 says: (if the contract is marriage is accompanied by a stipulation that contradicts its basis, the contract is voided/Article 42(2) of the Sudanese family law of 1991) URL: <https://core.ac.uk/download/pdf/2792993.pdf>

CHAPTER THREE

CONDITION IN MARRIAGE CONTRACT UNDER SHARIA LAW

3.1 Condition in a Marriage Contract under the Holy Quran and

Hadith:

Contracting and conditions in marriage under sharia law is a legitimate practice for the Muslim ummah. Islam gives a wife requirement of some rights in a marriage contract, but the measure of such rights is determined by the Islamic jurists under the Holy Quran and Hadith. They set the measure. Condition aimed for the settled down equal rights for wife and husband. We know that condition is maintaining assessment for the women but these rights should insert compatibly with the approaches of the Holy Quran and Hadith.²⁷

The Holy Quran says, “O You who believe to abide by your contracts”.²⁸ Abu Bakar al-Jassas al- Razi (d. 370 A.H.) quoted the ability of „ Abdullah ibn Abbas“, Mujahid ibn Jurayj, Abu Ubaydah, and others interpret that the Quranic word Uqud in the said above verse means promises and contracts that mean condition in the current condition, including those condition put forward the time of marriage. He demonstrates that any condition that a person promises to fulfill in the future is binding. Said speech is the basis of the law of agreement, thereby calling the policy of both freedom of contract and pacta sunt servanda. Another Quranic verse, that is cited to clench this view is: “And fulfill every engagement, for it will be enquired into (on the day of the Reckoning)” (27:34).²⁹ These statements are further supported by the following verse, “And fulfill the covenant of Allah when you have promised.” According to the Qurtubi, „and“ written above persuade „ common“ surrounded by any promises and commitments that make a person, whether it concerns business, relationships or anything else that is approved in religion.³⁰

²⁷ E. H. Dr. Muhammad,(2015). *Muslim family law: Sharia and Modern World* (1st ed. London College of Legal Studies) Pp. 121. URL:

https://www.researchgate.net/publication/345323246_Muslim_Family_Law_Sharia_and_Modern_World

²⁸ Al-Quran 5:1 URL: <https://al-quran.info/#5:1>

²⁹ Al-Quran 27:34 URL: <https://www.islamawakened.com/quran/27/34/>

³⁰ M. Muhammad,(2006-6). Stipulation in a Muslim Marriage Contract with Special Reference to talaq al tajwid provisions in Pakistan, (University of London, vol12),Pp 235-262,237 URL: https://www.academia.edu/355195/Stipulations_in_a_Muslim_Marriage_Contract_with_Special_Reference_to_Talaq_al_Tafwid_Provisions_in_Pakistani_Law_12_Yearbook_of_Islamic_and_Middle_Eastern_Law_2005_2006_pp_235_262

The holy Prophet (sm) also said in favor of the requirement in a marriage contract. “Form among all the provisions which you have to fulfill the requirement which make it legal for you to have sexual relations (marriage contracts) have the grand rights to be completed. In other words, “The suitable requirements to be dignified are those that make women lawful for you.” Most of the Muhaddithin (Compilers of a Hadith) have recovered this hadith and contemplated it as binding possession.³¹

Abd al- Rahman ibn Ghunaym describes that a couple came to, Umar (the second caliph) in presence, and the woman prosecute that her husband, having accepted at the time of their marriage to keep her ancestral home, now should accept it and not take her from there, therefor Umar governed in her favor. It is worth noting that the event took place in Madinah and none of the companion’s object to it .³²

3.2 Different Opinions of Imams Regarding Condition of the Marriage Contract:

Condition is a thing that is not as described clearly in Quran and Hadith. Rather the matters of conditions are pure and clear according to Islamic jurists. But jurists are separated concerning the insertion of requirements. The area of some requirements in a marriage agreement is guided by the various imams of the Sunni schools. The four main imams of the Sunni schools are given their counsel about the requirement of a marriage contract. Imam Ahmad Ibne Hanbal was given the simplest and most liberal approach to consolidating the terms of the marriage contract. And along with the other three most popular imams, there are restrictions on combining the terms of the marriage contract according to current customs.³³

Based on the different counsel of the imams we may classify some conditions nature is arguable. However, the spouses will benefit if the requirement is incorporated into the marriage contract. Some conditions are neither prohibited, nor directly allowed in Islam. It is said to be controversial because there are many different opinions about such opinions. The terms of the marriage contract cannot be said to be controversial, for example, if a wife stipulates that a second wife cannot be taken or taken to another city not possible then he is bound to do so. Imam Ahmad Ibne Hanbal think the such condition is binding upon them if those parties are

³¹ E. H. Dr. Muhammad,(2015). *Muslim family law: Sharia and Modern World* (1st ed. London College of Legal Studies)Pp. 119-123. URL: https://www.researchgate.net/publication/345323246_Muslim_Family_Law_Sharia_and_Modern_World

³² I. M. Abu,() Jami` at-Tirmidi, Kitab al-nikah, Sunan(Lahore Maktabah,n.d vol.1),p.347. URL: <https://sunnah.com/tirmidhi>

³³ E. H. Dr. Muhammad ,(2015).*Muslim family law: Sharia and Modern World* (1st ed. London College of Legal Studies) p.119.URL: https://www.researchgate.net/publication/345323246_Muslim_Family_Law_Sharia_and_Modern_World

agreed. But the other three Sunni imams think that such conditions are not valid under Islam.³⁴

According to the argument of majority of scholars Their opinion is pasted on the Hadith. the prophet (sm)Stated that any conditions that are not stated in the Holy Quran are invalid. So we can reach this argument based on the above stated that conditions do not take place in the Quran and it is never a Chain that binds people for harm. To evaluate this argument Professor Dr. Mohammad Ikram Ul Haq and Muneer Concluded. Whenever any unlawful activities are prohibited by the Holy Quran. Regarding immediate action, a man or a woman cannot require that he or she will not have sexual relations with his or her spouse, or one put forward by a man trying to escape the obligation of maintaining his wife, and so on.³⁵ Ibn Taymiah(d. 728 A.H.) argues that something that is not in the Quran implies that which is not forbidden by the Quran. Those things which are forbidden cannot be promised while mubah or permissible things may be agreed upon and therefore, they will be compulsion on both parties.

3.3 Chapter Summary:

In the above discussion of chapter III, it is crystal clear that the requirement in a marriage contract is valid if that condition is under the Quran and Hadith. And this requirement is the output of the exploration of Islamic scholars of different schools of jurisprudence which need societies for constructing an equal platform for both. Hanbali school experts Ibn Taymiah argued an important basis for the condition. His thought is which are not directed in the Quran and if it is not illegal directly that is valid under the Quran.

³⁴ M.Amira,(may 2005). Jstor, Islamic Law and Gender Equality: Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt.

URL: <https://www.jstor.org/stable/20069797>

³⁵ E. H. Dr. Muhammad,(2015). *Muslim family law: Sharia and Modern World* (1st ed. London College of Legal Studies),Pp. 119-124

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CHAPTER FOUR

MARRIAGE CONDITION: COMPARISON BETWEEN BANGLADESH AND MOROCCO

4.1 Condition in a Marriage Contract in Bangladesh with the Reflection of Sharia and Statutory Law:

Bangladesh is a place of people who follows multiple religion. 4 Major religions are Islam Hinduism Christianity and Buddhism. Islam stated marriage is conducted by the Sharia law in Bangladesh. In the case of *Abdul Kadir v Salima and Another*,³⁶ Mahmood J observed:

“A marriage among Muhammadan is not a reformation, but truly a civil contract”. Given the above case, Muslim marriage is a summation of sharia and contract law.

From the above condition we can say that Muslim marriage in Bangladesh is a Civil and systematic construct it has to be registered under the local law of Bangladesh just to and sure advantage for the future And save all the rights and constraints of the contract of marriage section 3 of Muslim marriage and Divorce (Registration) Act, 1974 provided-

Notwithstanding contained in any law, custom, or usage, every marriage is serious under Muslim law shall be filed by the provision of this Act.³⁷

Huge numbers of women in our society are very helpless and vulnerable. the bridegroom is always considered to be the superior in society and they demand Their wish to be highlighted in the marriage contract. The girl is only allowed to give Affirmative consent to the Proposal. According to society, the bride gives consent without any conditions in the marriage contract. Whereas Sharia law created a fair ground For the conditions of the marriage contract but the customs are very e much full of equality in the terms of inserting search right in the marriage contract.

In Bangladesh, there are no dedicated law-related conditions of a marriage contract except Kabinnama. In Kabinnama Both the parties will insert their conditions and the lawyers also don't have the proper knowledge about creating a marriage contract however Kabinnama provides limited scope to insert conditions in a marriage contract.

³⁶*Abdul Kadir v Salima and Anr* (1886) ILR 8 All 149.URL: <https://indiankanoon.org/doc/119342/>

³⁷ The Muslim Marriages and Divorce (Registration) Act 1974' s 3. URL: <http://bdlaws.minlaw.gov.bd/act-details-476.html>

Kabinnama gives limited space for inserting conditions in a marriage contract. Those places are given below.³⁸

Columns 17 is placed in kabinnama, where both parties will be free to add narration of the special conditions according to sharia law if there are any. Columns 18 of the kabinnama is especially contained for the placing of conditions regarding giving the power of divorce to the wife. Columns 19 of kabinnama is a place where the husband's power to talaq reduces in any way. And finally, column 20 of the kabinnama is contained for insertion of conditions about dower, maintenance, and wife allowance or other financial matter which creates for the change of a marriage contract.³⁹

So Bangladesh is living in a place where the condition of a marriage contract is unknown in the light of statutes made in a different country like Morocco.

4.2 Condition in a Marriage Contract in Morocco with the Reflection of

Sharia and Statutory Law:

Morocco is an Islamic country. Islam existed at the center of political and social life in morocco. Morocco got independence from the French in 1956. It was delightful for the Moroccan people. After independence, Morocco got its own identity. Morocco made the “All Al Fassi” own family status law.

In all parts of the world gender discrimination has been created in creating customs. Such customs say that women have no rights, but are inferior to men. The Holy Quran came with plain and unequivocal promulgation in sura Al-Baqara verse 2:⁴⁰

“And women shall have rights; Similar to those against them (Men) According to what is equitable.

Then the holy verses make everything clear and simple and the right of women over men and the rights of men over women is stated. From the holy verses, it is understood that the relationship between husband and wife is on equal footing and their various affairs are determined by the holy verses and this is the supreme command.

³⁸ E. H. Dr. Muhammad,(2015). Muslim family law: Sharia and Modern World (1st ed. London College of Legal Studies),p. 136

URL:

https://www.researchgate.net/publication/345323246_Muslim_Family_Law_Sharia_and_Modern_World

³⁹ Kabinnama, Column 17-20 URL: <https://form-4-kabin-nama.pdfFiller.com/>

⁴⁰ Al-Quran 2:2

After one year, Mudawana goes forward in Morocco. The Mudawana was commenced according to Maleki School. Article 3 of the Moroccan constitution explained:

The state religion is Islam but everyone has the freedom to believe.⁴¹

A country has the responsibility to give all kinds of safeguards for men and women in juridical, social, and economic views. According to the law under section 101 of the personal status code 1957:

Iddat cannot be saved, nor can the husband be freed from it, unless there is an agreement of contract of khula.⁴²

The Maliki school of khula is instituted in Morocco's code of personal status: a wife can divorce her husband but she must be 21 years old or older. Children are not permitted to practice these powers.

According to the law under section 31 of the personal status code 1957:

A woman can add a condition in her marriage contract, she may also provide that her husband may not take a second wife, and if she finds such she shall have the right to annul his marriage contract⁴³

In 2004 Morocco rectified the personal status code (Mudawana) for increasing the rights of women. Moroccans believe this and follow Islam as the right rule in all aspects of life.

Improvement of the personal status code formed the first step in making rule of law. By establishing a personal status code, women in Moroccan are in a better position and they can take an active position in different areas of life.

In Mudawana, a great challenge is made up by the providing, Because of these claims against the husband, wives cannot be legally bound to their husbands. The universal norm is that wives obey their husbands. The Mudawana 2004 edition is the source of Islamic law.⁴⁴

Which announces engaging in couples counseling.

⁴¹ Article 3 of the Family Status Code (Mudawana) 2004, URL:

<https://learningpartnership.org/sites/default/files/resources/pdfs/Morocco%20Family%20Code%20%28Moudawan%29%202004%20English.pdf>

⁴² K. H. Dr. Muhammad, (2015). *Muslim family law: Sharia and Modern World* (1st ed. London College of Legal Studies) Pp. 124-135 URL:

https://www.researchgate.net/publication/345323246_Muslim_Family_Law_Sharia_and_Modern_World

⁴³ Article 31 of the Family Status Code 1957, URL:
<https://www.lawyersnjurists.com/article/muslim-family-law-reforms-in-jurisdiction-other-than-the-indian-sub-continent/>

⁴⁴ Article 3 47 of the Family Status Code Mudawana 2004 URL:

<https://learningpartnership.org/sites/default/files/resources/pdfs/Morocco%20Family%20Code%20%28Moudawan%29%202004%20English.pdf>

A conversation and their mutual obligations are fully understood, Quranic order of fair treatment, consultation, and dialogue.

And calling upon Muslims to disobey the illegitimate order that is imposed by parents and husbands. 17:93⁴⁵

According to Article 13(3) of the Mudawana 2004-

The legal capacity of the condition is that they must need to be reached at the age of 18.⁴⁶

In past, the husband is solely responsible for maintaining a family. But Mudawana declared that husband and wife are equally responsible for family governance.

The issue of polygamy has created much controversy:

If the husband wants to marry again, he does not have to take any permission from the court. The wife can give the condition that the husband cannot remarry and if he remarries then the wife will be entitled to a divorce. There must be enough capital to provide both families to serve both families equally.⁵⁷

All the terms of the marriage contract are binding except the terms to the contrary.⁴⁸ Comparatively morocco is more developed than Bangladesh and their women's status is also higher than Bangladesh.

4.3 Chapter Summary:

This chapter is made up for aiming to make a correlative analysis between Bangladesh and Morocco in the light of the standard marriage contract (Kabinnama) of BD and the Family status code of Morocco the book of Mudawana 1 and 2 and the final corrected version of Mudawana, 2004. There is no statutory law in Bangladesh other than kabinnama through which conditions can be required in the marriage contract. But kabinnama allows women to add a condition to the marriage contract. On the other hand, The Mudawana Family status code of Morocco is provided many spaces are given regarding requirements in a marriage contract with the light of Hanbali madhabs under the Quran and Hadith, Such as giving the power of talaq to the wife, Property governance, requirement about the study, house and working, etc. Moroccan women are more powerful than Bangladeshi women based on the terms of the marriage contract.

⁴⁵ Al-Quran 17:93 URL: [https://myislam.org/surah-isra/ayat-93/#:~:text=\(17%3A93\)%20or%20that,\)%3A%20%E2%80%9CHoly%20is%20my%20Lord!](https://myislam.org/surah-isra/ayat-93/#:~:text=(17%3A93)%20or%20that,)%3A%20%E2%80%9CHoly%20is%20my%20Lord!)

⁴⁶ Article 13(3) of the Mudawana 2004 URL: <https://learningpartnership.org/sites/default/files/resources/pdfs/Morocco%20Family%20Code%20%28Moudawan%29%202004%20English.pdf>

⁴⁷ E. H. Dr. Muhammad,(2015). *Muslim family law: Sharia and Modern World* (1st ed. London College of Legal Studies) p. 132 URL: https://www.researchgate.net/publication/345323246_Muslim_Family_Law_Sharia_and_Modern_World

⁴⁸ Article 47 of the Mudawana, 2004 URL: <https://learningpartnership.org/sites/default/files/resources/pdfs/Morocco%20Family%20Code%20%28Moudawan%29%202004%20English.pdf>.

CHAPTER FIVE

CONCLUDING REMARKS

5.1 Findings:

The results of the comparative examination that describe Bangladesh and Morocco's woman's conditions regarding the requirement in marriage contract practices are different from each other. The condition of modern law regarding marriage contracts in the above Muslim countries are discussed below-

- Mudawana 2004 sets out the standing of Moroccan women's right to marriage contracts. On the other hand, there is no clear law in Bangladesh regarding the terms of marriage contracts other than kabinnama. That is why most of the time women waste their marital rights in the field of Marriage. They will not be mentioned for proper defense from the law.
- In a true sense, Bangladeshi women lag behind Moroccan women in adding their rights when entering into a marriage contract, because Bangladesh is a Husband dominated country. Parents are worried about the dowry of the marriage, even if they did not notice the perfect marriage form. This type of worry of the bride's family makes the woman a product. In this way, women go into a form of indifference in society.
- Not only does the bride lack awareness, but lawyers who work on marriage contracts in Bangladesh also lack sufficient knowledge. On the other hand, the Moroccan bride is more updated on the matter of their marriage contract rights than Bangladesh.
- Experts' opinions are that local officials regarding marriage, For instance, the Marriage registrar and Kazi do have not sufficient Knowledge in the matter of conditions in a marriage contract. In the case of Morocco marriage take place in presence of public Notaries. It is known that in Bangladesh Assistant Judge court is counted as a Family court. Most of the time, women's rights are infracted in this court. Because of the low knowledge of family courts and for a long time in the trial.
- Personal Law of Bangladesh has made more scope for the Husband about divorce than a woman. A woman has few chances to in a rusticated way

Like the judiciary adds conditions to the divorce or marriage contract and empowers the wife to grant a divorce.

Lack of social assistance and awareness, For instance, institutional research gap, lack of study in institutions, lack of presence of media, lack of seminars, lack of talk shows, and lack of government and non-governmental intuitions programs related to conditions in a marriage contract.

5.2 Recommendations:

Stipulation in a marriage contract is the scope for the insertion of some specific rights by the law. Sharia and statutory laws created such stipulations for enhancing the equal rights of women. But the woman of Bangladesh is unaware of the stipulation in a marriage contract. In the consideration of the above discussion following recommendations have been made for the better protection of the rights of women in Bangladesh.

- Bangladesh's government should have to make clear statutory laws regarding stipulations in a marriage contract. The following matter regarding stipulation in a Muslim marriage contract should be focused on and which needs to pass by a frame of a statutory provision in Bangladesh. Creates an option for insertion of the stipulation, Condition for the valid stipulation, Description of a void stipulation, Impact of the void stipulation, Scope of a stipulation for the spouses, and some examples regarding marriage stipulation should be included.
- Review all family courts, appellate procedures in case of aggrieved, drawn line to minimize delays determination of divorce maintenance, compensation for the consequence of divorce, and power to interim order before the final order for protection and enforcement rights of the woman in which she inserted her marriage contract.
- People in villages and towns who do not have a proper understanding of marriage contracts are presented with religious misinformation. It is the big problem for Bangladesh that they give arbitrary information to protect their interest.

- The issue of equal rights over property recognizes the nation that women are equal in terms of marriage rights and divorce, and are aware of their condition of the marriage contract.
- Citizens should be made aware of marriage contracts in various electronic media and formats. It may be started by conducting a seminar, talk show, newspaper reports, educational programs in institutions, etc.
- Considering the different conditions of marriage and ensuring the equal rights of everyone in divorce, since Sharia law itself has given these rights to women, the government of Bangladesh should be more attentive to the issue of divorce.
- Public and private institutions should adopt supportive programs to make women aware of marriage contracts and rights. For instance, the marriage condition related decided slogan may add to national women's programs.
- Bangladesh's government should take some additional measures regarding marriage conditions including marriage certificates. Kazi will listen to both the husband and wife about the various conditions of marriage. After that, I recommend some conditions according to experts, the following written conditions will be written as legal provisions and standard marriage contracts.
The condition regarding dower: A point to be noted is that the wife can stipulate in her marriage contract the timing and mode of late dowry.

Conditions regarding rights and obligations: The prenuptial agreement may contain provisions on various household tasks and decisions, including the place of residence after marriage and the custody and care of children.

The condition regarding the work: After marriage, the wife can give the condition that she should work outside the home.

The condition regarding the study: A wife can enact a condition in the marriage contract that she wants to complete her education.

The condition regarding property rule: A wife can usurp his property, and she has the right to sell, donate and manage it.

The condition regarding Polygamy: A wife can specify in her marriage contract that she can prevent her husband from marrying a second time.

Condition about the power of divorce: The husband can delegate the power of divorce to the wife if she wants, so the wife can demand it as a condition.

Condition about compensation on divorce: If the husband divorces the wife of his own free will, it is assumed that the wife is not at fault and she can claim damages for it if there was an agreement in this regard during the marriage.

5.3 Conclusion:

A Muslim marriage is a social contract, it is an essential feature of Muslim marriage. A Muslim marriage contract is like a document in which various conditions are attached.

Islamic law gives the husband more rights than the wife in the marriage contract. However, Islamic Sharia law allows women's rights to be added to marriage documents to enhance the rights or status of the wife. Some countries have adopted statutory marriage laws to reflect Sharia law. In this way, men and women are given equal rights in a patriarchal society.

Among all Madhhabs, the Hanbali Madhhab is the most liberal regarding the marriage contract and liberal in adding various conditions. Most Muslim countries follow the Hanbali school of thought and prefer to legislate on marriage contracts.

So, Bangladesh can enact marriage contract laws following Hanbal Madhhab to enhance the rights of husband and wife, as other countries of the world do. And by enacting such laws it is possible to give more rights and protection to the wife.

In a patriarchal society, a woman is not given her due rights and is neglected. Her real rights and freedoms are legal rights that are given in Sharia laws, she is deprived of, and not allowed to enjoy, what Sharia law stipulates about the wife. The State shall issue marriage contracts and possible conditions keeping women in mind. A state that will consider brides through Sharia law and statutory laws and create new laws for their fair rights.

Research Needs More Information and Advice Much more research is needed on Muslim family law and marriage contracts to understand modern Muslim marriages. Kabinnama allows for more conditions to be added to the marriage contract. But Kabinnama is not clear and clear, so it is necessary to pass new provisions by adding more conditions during marriage to protect the equal rights of Muslim brides and women.

The writer purposes the following types of research for the understanding of the placing of the condition in a marriage contract, and the effect of promissory terms on a marriage contract. This survey was conducted mainly to establish women's rights and equal rights in marriage. Cooperative research may be operated along with teachers regarding the condition in the field of marriage under family law.

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