

Thinking about Marriage

a consultation paper
Part of the ‘Muslims against Forced Marriage’ campaign

By

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A prolific author who has written on a wide variety of topics from marriage guidance to mosques, concentrating mainly on social issues and problems she has encountered in the course of her work amongst the Muslim community. Holding degrees in Theology and Education from Hull University, she has been instrumental in winning acceptance for Islamic studies in the Religious Studies GCSE examinations. She tutors in the distance-learning course for the AMR (Association of Muslim Researchers). She also sits on local education committees devising syllabuses in RS at school level. She has campaigned for the legal recognition of mosques as places for the registration of marriage, and her book *The Muslim Marriage Guide* has received widespread acclaim. She converted to Islam in 1986.

The Purposes of Marriage, in Islam

‘Among Allah’s signs is this, that He created mates for you from among yourselves, that you might dwell in peace with them. And He put love and mercy between your hearts. Without doubt, in this are signs for those who reflect.’ (Surah 30:21).

It was not without good reason that our Blessed Prophet taught that marriage, in Islam, is ‘half the faith’. The goal of married life is much greater than just two people trying to live successfully together. It is to practise Islam within a set group of people (your family – spouse, offspring, dependants), to bring about peace, love, security and happiness, and having achieved this in the microcosm of your own family, to then reach out to the world at large and spread these values to all.

None of this just comes naturally – it has to be created with love, patience and compassion, and practised without ceasing, and protected at all costs against the selfishness, laziness and temptations that will beset the relationship. We can see all around us the effects of people neglecting and abusing the family relationship. Muslims are requested by Allah to do their utmost to create happy, pious, content and secure households, and to follow the prophet’s *sunnah* (practice) as far as possible.

When the Prophet’s wife Aishah was asked about the way the Prophet lived at home, she replied simply: ‘His way of life *IS* the Qur’an.’ He was the same beloved person, noble and compassionate, within the privacy of his home as he was in public outside it!

The Aims of Muslim Marriage

The first and main aim of Muslim marriage should therefore be *ibadah*, the worship of Allah. This includes:

- believing without question that Allah is Lord, and is aware of your every thought, intention and action, and that everything you have been granted in life, even your next breath, is a gift – which could be withdrawn at any moment should Allah so wish.
- Being aware that you do not know how long your time will be on this earth, or when you or anyone you love will be taken away - and therefore being noble, kind, tolerant, compassionate and generous in all your dealings.
- Performing as nobly as possible all the rituals requested by Allah – which include not only the five ‘pillars’ of shahadah, salah, sawm, zakah and hajj, but also, in marriage, the promises of sexual fulfilment and companionship, etc.
- righteousness and honesty in all behaviour and transactions
- offering to Allah all your deeds and words in all walks of life, in your service to humanity, productive efforts, words spoken etc.

If both husband and wife observe this main purpose, they would overcome many difficulties and shortcomings.

The second aim is to respond to the basic biological instincts and needs, for sexual fulfilment, personal companionship, safety and security, and procreation – to provide the most wholesome and happy atmosphere for bringing up the next generation.

The third aim is to protect us against the social and character problems that are associated with celibacy (that is, living without sex at all by subduing the natural urges), immorality, promiscuity, illegitimacy, loneliness, and depression.

Marriage in Islam is therefore:

- a form of *ibadah*
- a social contract
- a means of emotional and sexual gratification
- a mechanism to reduce tension and promote happiness
- a means of legitimate procreation
- a way of encouraging good family and group solidarity
- an act of piety

The Duties and Trusts of Marriage

The husband is charged with maintenance, protection, dealings with matters outside the home, and leadership within the family. The woman is entrusted with caring for and rearing the children, organising the home, and creating the loving atmosphere within the home.

A new husband needs to remember that his wife is not his mother – she may not *ever* cook like his mother, or do for him the things his mother did, or think like his mother, or make allowances for him like his mother.

A new wife needs to remember that her husband is not her father – he may never think like her father, make allowances for her like her father, do the things her father did, or have any of the same skills that her father had.

Fathers and mothers (God willing) love their children without reservations, and forgive them all sorts of awful conduct, and plead for them, and make allowances for them. Even if their children are awful, they (God willing) never cease to love them. They will not ‘divorce’ them. On the contrary, husband and wives are ‘new’ to each other; nobody has the *right* to be loved if they are not making themselves lovable. **You cannot force someone to love you. You cannot force someone to respect you.** Love and respect have to be earned – both by your chosen life-partner, and also by your in-laws (who will not see you in the same light as your own parents).

Islam does offer a few rights, however:

- A Muslim woman has the right not to be pushed to work in order to gain money, although work and trade are not prohibited to her, provided such work is within the framework of modesty and does not jeopardise the happiness and contentment of husband or family.
- A Muslim man has the right to expect his wife to be faithful and loyal to him, and vice versa.
- A Muslim man has the right to be head of his household
- A Muslim woman has the right to expect the head of her household to treat her with respect and love, and not become tyrannical or a foolish spendthrift, etc.
- A Muslim woman has the right to expect her man to provide adequate funds for her housekeeping.
- Muslim men and women have the right to have their sexual desires satisfied within the marriage, since they have promised never to seek this outside the marriage. However, neither has the right to cause pain, or be abusive or inconsiderate when a spouse is tired or ill.
- A Muslim man has the right to expect his wife to care and cherish for him and their children, to protect his good name, and provide him with support and comfort.

Choosing a Spouse

Although Allah has granted freewill to human beings, in fact we have very little freewill in our lives. We cannot choose our parents or families; we cannot choose our physical characteristics or genetic make-up, we cannot choose our brothers and sisters, or our children. If we do not like these relatives of ours, we are stuck with them. However, there is one person we can choose – and although not a relative to start with, that person becomes our closest relative and our nearest neighbour - **we can choose with whom we will share our lives and our physical moments of intimacy.**

Therefore this choice is vitally important. If a woman is going to accept a man as the head of her own household, carry out his wishes, keep him healthy, fed and clean, and bear children to him – then it is **vital that she chooses someone she is able to respect**, someone who will be ‘up to the job’.

Men need to be respected, and women need to be loved. It is vital, therefore, that Muslims use their freewill sensibly. It is pointless for a woman to choose a handsome free-spending man full of flattery. Try to see him ten years down the line at the parents’ evening. Will he simply prove vain, a spendthrift, a charming liar? It is pointless for a man to choose a woman for her pretty face and sweet helpless nature and innocent chatter. Try to see her ten years down the line – will she have driven him mad with endless wittering, her prettiness have concealed a spoiled nature, her insecurity make her clinging and demanding?

This is where the business of the wali comes in.

The Function of the Wali

A *wali* is a person trusted by the bride (or it could be the groom also) to find out all the things it is prudent to know about the intended husband (or wife) – his character, his tendencies, his likes and dislikes, his faults and shortcomings (both physical and mental and social), his financial position, what his parents are like, what family commitments he already has, his mode of employment and prospects – in fact anything that it would be sensible to know in advance of the marriage.

The *wali* should be **careful to check everything out honestly and prudently**. Sometimes, when a young man is given a glowing reference by his family, it may conceal their heartfelt desire to ‘get rid of him’, or see him ‘settled’ comfortably.

Your parents are not necessarily the best wali for you – they may have vested interests which may or may not be to your advantage. They may feel they are obliged to organise your marriage to a cousin or other family member because of some ancient arrangement, or past debt. Remember that forced and false marriages are invalid both in UK and *Shari’ah* law – they can be made null and void.

In cases where the young couple are content to accept the choices of their parents, and have not seen the intended partner, they are nevertheless allowed to have a clear idea of what the intended spouse looks like physically – as regards height, weight, facial beauty, hair colouring, and so on. Honest photographs are very useful. The Prophet disapproved of people being married without having not only seen each other, but seen each other enough that they might genuinely feel attracted to them, and come to see ‘why it is they would wish to marry’.

Suppose you see someone and fall in love? Be very careful – **love is a strong intoxicant and it can easily cloud the mind and upset rational judgement**. Love is ‘blind’ – it only sees what it wants to see. If the intended spouse has ‘faults’, you may think you will be able to ‘love’ them into giving them up and changing. Be warned – **faults only get worse after marriage**, not better. Make sure that you really do **like** the person you intend to marry, and not just feel ‘in love’ with them.

Muslims are reminded, of course, that **beauty is only skin-deep, and can change very rapidly** – after childbirth, a few years’ comfortable living, accidents, illness, and so on. Muslims should never marry simply because of attraction to the other’s beauty, but **marry for their ‘piety’ – the beauty of their characters.**

Miscellaneous things you might like to know before committing to a marriage

- Is he/she a smoker?
- Is he/she a studious academic, always ‘with a nose in a book’, boring, not quite ‘in this world’?
- Does he/she prefer excitement or peace and quiet?
- Does he/she like lots of visitors, or finds that a burden?
- Does he/she expect to live with the in-laws; expect you to look after her parents, or have them to live with you?
- Is he/she tidy or untidy? Lazy? Bone idle? Never picks things up, puts things away, never shuts cupboard doors, etc?
- Is he/ she nosy, interfering, gossipy?
- Is he/ she domineering, nagging, picky, tyrannical
- Is he/she over-houseproud?
- Does he/she care enough for their appearance; or care too much/ always in front of a mirror/stuck in the bathroom?
- Does he/she have too many demanding friends; have no friends at all and if so, why; always want friends in when you wish to be alone or just with the family?
- Is he/she nicely fit, an athletics and sports freak, a complete slob?
- Is he/she capable of doing the things you expect a spouse to do – gardening, home maintenance, cookery, etc?
- Does he/she have a ‘dream ideal’, that he/she may try to turn you into?
- Is he/she mean or generous?
- Is he/she a spendthrift, or a liar, or thinks nothing of cheating in business, a bully?
- Do other people actually **like** your intended spouse, and if not, why not?
- Does he/she have a sense of humour? A cruel and malicious sense of humour?
- Will he/she boost your self-confidence, or make you feel inadequate?
- Is he/she a religious fanatic, spends most of the time at the mosque, prays forever and ignores you and everything else?
- Is he/she a ritually meticulous type, or takes a more general, relaxed view?
- Is he/she a faultfinder or a fault-coverer?
- Can you live with each other’s politics?
- Is he/she a hypocrite? Does Islam stop at his/her neck, or go down into his/her heart?
- Is he/she boastful, arrogant, loud-mouthed, or modest and humble? Or too delf-deprecating? Or irritatingly lacking in confidence?
- Would he/she respect your privacy – not read your diary, not open your letters, not open your handbag, or go through your pockets – without just cause?

Preparing for Marriage

Every job, every walk of life needs skills. Most skills do not just come to us naturally – we have to take the trouble to learn them. Exactly the same is true for marriage.

The young bride or groom will **never** be the same as their parents, although there may be similarities. They are different people entirely.

They are **younger** people. It is pointless expecting a young bride and groom to have all the skills and talents and expertise when they start out that it took their parents years to learn.

They are **poorer** people. It is pointless to expect young folk to have the earnings and status of their elders. It will come to them in due course, if they earn it. Don't forget in the UK the breadwinner may well be the wife.

They are **inexperienced** people. The young husband taking on the responsibilities of a manager in his household, will need to learn how to manage. He would do well to go on a management course, and learn how to deal with people, how to avert trouble, how to give orders without offence, how to reward those who work for him. The young wife will need to learn how to manage her part in the household – the budget, the care of the family health, cleanliness, etc.

They have been **loved and spoiled**, and need to **learn how to earn love and respect**. Your parents love you and make allowances for you simply because they are your parents. They will excuse every failing, stick up for you through thick and thin, and love you even though you are a completely horrible person. When you leave your parents and start life with your spouse, you must remember that your wife is not your mother; your husband is not your father. They will not make the same allowances for you. They will soon feel upset, offended and become critical of you, and their parents might even become their allies against you.

Helpful Checklists

Skills for a Good Wife:

- The ability to cook
- The ability to run a halal kitchen
- The ability to see to healthy nutrition
- Knowledge on health care
- Hospitality routines to avoid embarrassment
- Basic medical knowledge and First Aid skills
- Important telephone numbers
- How to do the cleaning
- How to deal with toilets, sick, and poo – to develop a 'hard' stomach
- How to drive
- Shopping skills – where to get good bargains etc
- Money management – how not to waste money
- Budgeting for household bills – gas, electricity, telephone, rates, water rates
- How to carry on when exhausted
- How to be aware of your own 'women's problems' and make allowances (hormones, PMT, menstruation, 'nerves', depression, pregnancy etc)
- Sexual skills – how to satisfy your husband so that he is content with your relationship
- Knowledge of children's stresses
- Monitoring of children's progress
- How to provide love, security, a safe haven, a place in which to grow and learn
- Garden skills – caring for wild life and pets.

Skills for a Good Husband

- Noble character, *deserving* of respect
- Honesty, courage, gentleness, reliability, truthfulness, good humour
- The ability to earn an honest living
- The ‘solidness’ so that the family may depend on you
- The willingness to do the ‘dirty’ jobs
- House maintenance – for example, basic repair and woodwork skills
- Car maintenance
- Money management skills – little gifts always appreciated, not irresponsible money-wasting
- Budgeting bills, and providing enough money to cover household bills
- Generous appreciation
- Being thoughtful and considerate
- Remembering birthdays and anniversaries etc
- Understanding of women’s problems – hormones, PMT etc
- Endurance – to keep going when exhausted, especially during pregnancy, childbirth and infancy
- Sexual skills, to keep your wife satisfied with her relationship with you.
- Sexual control – to learn how to deal with moments of attraction and temptation outside the home.
(The Prophet advised going straight home and having intimacy with one’s own wife).
- Giving a noble example to your children by the way you treat your wife, so that they will properly respect her as a mother.
(If you are curt and rude and not affectionate or considerate, they will copy you).

Although you do not pay your wife wages as such, if you are in any doubt as to what she is worth in money terms, try to replace her services for a month with paid employees – a cook, housekeeper, cleaner, chauffeur, nurse, secretary, lover etc. And vice versa.

Sexual Skills.

In Islam, even the physical act of sex can be reckoned by Allah as *sadaqah*. It becomes *sadaqah* when it is:

- **halal** – that is, keeping within the marriage relationship and not going outside it.
- not simply leaping upon the other like an animal, but considering their needs, moods, etc.
- **Being scrupulously clean.** It is advisable to have a bath or shower, or at least wash private parts *before* sexual intimacy.
- **Learning how to physically prepare your wife for sexual intercourse** – the car won’t work properly if you don’t put the petrol in. It’s no good kicking it!
- **putting the needs of the other before one’s own.** One *hadith* was: ‘He is not one of us who does not satisfy his wife’s need of him before he satisfies his need of her.’ (Hadith recorded by Imam Ghazzali).
- **Learned with accuracy** so that no spouse need fake satisfaction and in actual fact be suffering from severe frustration and misery. Men in particular may need to **learn** these skills – satisfying a woman is **quite different from satisfying a man**; and it is usually nothing like what you see in the films. For example, it takes around 15-30 minutes of specific activity to bring ‘the average woman’ to climax. But remember that not all women need this every time. Ask!
- Making sure both parties have achieved satisfaction before going to sleep. **There is no point in complaining that women’s sexual urges are never satisfied if you haven’t learned how to satisfy them, and always leave her frustrated.**
- **Not forcing the other partner to do anything they do not wish to.**
- **Not insisting on sex when the other partner is ill, in pain, or exhausted.** If they are simply not ‘in the mood’, don’t force – do something about it. The Prophet suggested ‘sending a messenger’ first – he meant kisses and caresses, what these days are called ‘foreplay’.

- **Overcoming shyness and distaste** for what Allah has created *halal* for us. Private parts are not ‘dirty’ unless they have not been washed.

The Most Frequent Complaints

The most frequent complaint of women about men is that they don’t listen.

The most frequent complaint of men about women is that they are always trying to change them.

Blueprint for Compatibility

- Have realistic expectations. Don’t expect the impossible, much less insist on it.
- Be clear about who controls the money, and what it is for.
- Solve problems together. Don’t always insist on being right, which is, after all, often a matter of opinion.
- Listen, and be clear when you speak. Men are traditionally poor mind-readers.
- Ask for what you want or need.
- Give each other time together – even if you have to pencil in dates! Make it regular.
- Do an MOT test – list three nice things and three rotten things he’s done to you, and you to him. Then discuss them.
- Fight to the same rules – and have ‘olive branch’ signals (or even twigs) to cease hostilities
- Agree to disagree
- Realise you don’t have to be the same to be a success together; you don’t do much need the ability to see ‘eye to eye’, but should know how to cope with your differences.
- Be very careful and patient in response to major changes – childbirth, new job, new home, new area, retirement, bereavement, etc.
- Be committed to your partnership, not obsessed with being right all the time. Be prepared to compromise for the sake of the relationship – so long as what is asked for is halal in Islam.
- Try to have similar attitudes and shared values – but you don’t have to have shared interests.
- Tolerate each other’s habits, and still love them.
- Allow each other a measure of independence – for football, shopping, etc.
- Talk freely to each other, and express your feelings honestly and with assertiveness.
(Don’t say things like: ‘You always.....’, ‘You never.....’. Use – ‘When you say/do that, it makes me feel.....’)
- Express your appreciation when things are done to please you.
- Support each other emotionally.
- Accept and allow the other spouse to be himself/herself. Relish your differences. Don’t try to change your partner.
- Be aware of how the other expresses himself/herself and accept it.
(The answer ‘yes’ to the question ‘Do you love me?’ might come out ‘I’m still here, aren’t I?’ Or, ‘I work hard, I don’t play around, I fix the car – what more do you want?’)

Getting Legally Married

There are different requirements for a *nikah* marriage according to the various schools of Islam. But following are minimum compulsory requirements:

- The bridegroom must be competent to marry
- The bride must be competent to marry, and should neither be in *iddah* (waiting period after divorce) nor in the state of *ihram* (ritual purity, as for Hajj).
- Nikah ceremony – that is (a) *ijab* – the proposal, and (b) *qabul* – the acceptance
- The *mahr* payment must be agreed.

It is *mustahab* (commended) to give a *khutbah* before the marriage rites are performed, an opportunity for advising the bride and groom of their marital responsibilities and duties in Islam. The very shortest *khutbah* would be ‘Praise be to Allah and blessings and salutations be on the Messenger of Allah.’

The Prophet’s *sunnah* was to recite the following verses: - 3:102; 4:1; 33:71-72.

‘O you who believe, have reverence for Allah as He should be revered, and do not die except in the state of Islam.’ (3:102)

‘O humanity, give reverence to your Lord Who created you from a single soul, and created of like nature its mate, and from these two spread countless men and women like seeds. Have reverence for Allah, through Whom you expect your mutual rights, and have respect for the wombs that gave you birth – for Allah is ever watching over you.’ (4:1)

‘O believers, have reverence for Allah and always direct your words to the right, that He may make your conduct whole and sound, and forgive you your sins. Those who obey Allah and His Messenger have already attained the highest achievements.’ (33:71-72)

The Prophet would then make some short du’a (prayers) on behalf of the couple. For example:

‘May Allah bless you, and may blessings be upon you, and may your coming together be blessed, and increase goodness.’

It was strongly recommended that the bridegroom should then host a public *walimah* (marriage feast and celebration) for friends and well-wishers, on the day following the marriage. All schools regard this as *sunnah mu’akkadah* (a binding *sunnah*). However, as always in Islam, extravagance and ostentation is disapproved.

Legal Marriage in the UK

If you wish to marry in England or Wales, the marriage must be **legally registered**. The traditional Islamic *nikah* does not count as legal marriage in the UK – it must be registered as well. To be legally married in the UK it is actually not compulsory to have a religious ceremony at all, although most Muslims would not feel properly married without the religious ceremony. However, if you **legally** married abroad, your *nikah* will be recognised as legal, so there is no need to register it.

To be legally valid, a marriage must be

- voluntary
- between two single people
- between people who are over sixteen
- between people of the opposite sex, and
- between people who are not too closely related.

There is no such thing as homosexual or ‘gay’ marriage. Homosexuality is forbidden in Islam, and whereas one can have every sympathy with cases where this has been caused by genuine genetic disturbance, it is nevertheless regarded as a perversion and a sexual relationship outside marriage.

(Where a person is homosexual, or has homosexual tendencies, but does not actually have a physical relationship with anyone of the same sex – they have committed no sin, but rather have earned blessings and *hasanat* for their self-control and sacrifice – just as those with strong sexual urges control them by not seeking sexual relationships with anyone outside their marriage, no matter how tempted they might be).

The civil ceremony can take place at a register office, or any other non-religious premises that have been approved by the local authority for marriages (for example, hotel, stately home).

The civil ceremony can also take place in any place of worship which has been formally registered by the Registrar General for Marriages. A mosque can also get itself registered.

No Force or Falsehood.

- Both man and woman **must be acting voluntarily**. Force, fear and duress will invalidate the marriage, both in UK law and in *Shari'ah* law. However, it must be real duress, and not just a giving in to social pressure or the desire to please one's parents.
- The marriage is invalid if one of the couple **did not realise what he or she was doing**, for example through drunkenness, old age or deliberate deception such as a girl being made to sign papers she does not understand.
- If there is a **mistake as to the identity of the other partner** the marriage is invalid. Other mistakes, however, do not invalidate it – things such as being mistaken as to the partner's financial standing, social status or career prospects.
- **Neither party can be already married**. They must either be single, widowed or divorced. If either is already married at the time of the ceremony, the marriage is void and the offence of bigamy will have been committed. If the bigamist duped a woman maliciously or fraudulently, she is entitled to prosecute. Normally the police do not prosecute these days if the sole purpose of the bigamous marriage was to allow the couple to live together 'respectably' as man and wife. When a person has been married, but long separated from a previous spouse, the court should be asked to grant a **decree of presumption of death and divorce**, or to grant a **divorce based on the grounds of five years' separation**. Unless such an order is obtained, there is always a risk that such a marriage will be bigamous. A bigamous marriage is null and void, as if they have never married.
- Since 1929 the **minimum age for marriage in the UK has been sixteen**. Persons under eighteen need to obtain the signed consent of parent or guardian to the marriage. If the consent is forged by the youngster aged between sixteen and eighteen, or if the youngster lies about his or her age, the marriage will remain valid but the youngster will have committed a criminal offence. The marriage is invalid if the youngster is under sixteen. In Muslim cases where a young person has been married outside the UK at an age less than sixteen, the marriage should be performed again legally in the UK once that person has reached sixteen. If the parents refuse consent to someone over sixteen and under eighteen, the person may apply to a magistrate's court, county court or the High Court. It is usually most convenient to go to the local magistrate's court.
- Homosexual or lesbian 'marriages' have no legal validity. Nor do 'sex-change' marriages.
- Certain family relationships are '*prohibited degrees*'. In these cases marriage is prohibited in UK law.

A man may not marry his – mother, daughter, grandmother, granddaughter, sister, mother-in-law, stepdaughter, daughter-in-law, grandfather's wife, wife's grandmother, wife's granddaughter, grandson's wife, aunt or niece.

A woman may not marry her – father, son, grandfather, grandson, brother, father-in-law, stepson, son-in-law, grandmother's husband, husband's grandfather, husband's grandson, granddaughter's husband, uncle or nephew.

In addition to these UK prohibited decrees, Allah lay down others in the Qur'an, for Muslims. On the other hand, some of these relationships, such as stepdaughter, are allowed in Islam on the grounds that it is not a blood-relationship – but they are not legal in the UK.

'Forbidden to you for marriage are: your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, daughters of your brothers, daughters of your sisters, your foster-mothers, your foster-sisters, the mothers of your wives, your stepdaughters under your guardianship from those wives with whom you have consummated your marriage, (no prohibition if you have not consummated that marriage); the wives of your sons that proceeded from your loins; or two sisters in wedlock at the same time, except for what happened in the past – for God is forgiving, most merciful. Also prohibited are women already married, except those whom your right hands possess; thus has Allah ordained prohibitions against you. Except for these, all others are lawful, provided you seek them (in marriage) with gifts from your property, desiring chastity not lust. Seeing that you derive benefit from them, give them their dowers as prescribed; but if after a dower is prescribed you agree mutually (to vary it) there is no blame on you; God is all-knowing, all-wise. If you have not the means to wed free believing women, they may wed believing girls from among those whom their right hands possess; and God has full knowledge about your faith. You are one from another; marry then with the permission of their owners, and give them their dowers according to what is reasonable – they should be chaste, not lustful nor taking paramours; when they are taken in marriage, if they fall into shame their punishment is half that of free women. This permission is for those among you who fear sin. But it is better for you that you practise self-restraint. And Allah is Oft-Forgiving, Most Merciful. (Surah 4:23-25).

Marriage to cousins is allowed, but not recommended. It is also not recommended to marry your husband's brother unless your husband dies (or wife's sister).

- Polygamous marriages. **No marriage that takes place in the UK can be valid if one of the parties is already married.** Such a marriage is void, and also bigamous. However, it is understood that Muslim cultures allow a man to have more than one wife, and the question then arises of whether UK courts will recognise all the marriages made by a polygamous foreigner in his country of origin, or whether they will recognise only the first marriage. The position is complicated, but basically our courts will recognise all the marriages if:
 - (i) They took place in the Muslim country of origin
 - (ii) They complied with the laws of the country where they took place
 - (iii) The spouses were capable of marrying (ie not within the prohibited decrees etc) according to the laws of their respective countries.

Anyone in doubt should seek legal advice.

The Prophet's Sunnah

The Prophet presented two *sunnat* – firstly, he married an older woman and took no other spouse while she lived – a total of twenty-five years. Had he married a younger woman, as was traditional, there would probably have been no *sunnah* of polygamy at all. Allah knows best.

His second *sunnah* was to marry polygamously, for various reasons, after his first wife had died. He contracted marriages with at least thirteen other women. The Qur'an set the limit of four wives for other Muslim men. (Surah 4:3).

The Prophet did marry two of his cousins – Umm Salamah bint Abu Umayyah and Zaynab bint Jahsh, but these were not his first choices, and the marriages were undertaken for various reasons.

There was no suggestion that marriage to a virgin was in any way preferable to marriage to a widow or divorcee. Only two of the Prophet's wives were virgins – Aishah bint Abu Bakr, and Maryah Qibtiyah. All the rest were widows or divorcees, many of them with existing children.

Making the Arrangements for Legal Marriage

This will depend on the type of ceremony you wish to have and where you wish to marry. Two types of marriage are valid in the UK – a Church of England ceremony or a civil ceremony. Obviously, Muslims do not require the Church of England ceremony, and wish to maintain their practice of a Muslim *nikah* ceremony.

The ‘normal’ *nikah* ceremony, although valid in the Islamic sense, is not a valid marriage on its own in the UK. It is a solely religious ceremony, and cannot be validated on its own.

It is not necessary in the UK to have any religious ceremony at all. Many citizens have no religion. If you wish to marry by civil ceremony only, at a register office or other building approved for civil marriage, you should contact the superintendent registrar of the district where you wish to marry. You have to give formal notice of your marriage to the superintendent registrar of the district where you live. You may marry at any register office or approved premises of your choice in England or Wales. If the marriage is at an approved premises you will also need to make arrangements at the place in question.

If you wish to have a religious ceremony, and you want the civil marriage to take place at the same time as the religious ceremony, you should first check whether your mosque has in fact been *registered* both as a place of worship and for marriages. If it has qualified, paid the fees and gained the authority, then you can arrange to see the Imam or other registered person in charge of marriages at the mosque. The mosque in question should normally be in the registration district where you or your partner live. You still have to give formal notice of your marriage to the superintendent registrar of the district where you live. A visiting registrar may need to be booked.

The Legal Formalities

Applying for the marriage

You and your partner **must attend personally** at the register office for the district where you live to give notice of your marriage to the superintendent registrar. This may not be done by your parents, or representatives.

You may choose one of two ways to register the marriage. Both require a fee.

1. By Certificate

This is the normal procedure for couples seeking marriage.

- both of you must have lived in a registration district in England or Wales for at least seven days immediately before giving notice at the register office.
- If you both live in the same district you only need to give one notice. If you live in different registration districts then each of you will need to give notice in your own area.
- After giving notice you must wait a further twenty-one days before the marriage can take place. For example, if you give notice on 1st July the marriage may take place on or after 23rd July.
- The fee for this notice is £23.

2. By Certificate with a ‘special’ licence

This speeds things up, but is a lot more expensive.

- One of you must have lived in a registration district in England or Wales for at least fifteen days before giving notice at the register office.
- Your partner only needs to be a resident of, or be physically in England or Wales, on the day notice is given.
- After notice is given the marriage can take place after one clear day, excluding Sundays, Christmas Days or Good Fridays. For example, you can give notice on a Tuesday and be married on the Thursday.
- The fee for this licence is an additional £46.50 over and above the set £23 – a total of £69.50.

How far in advance may bookings be made?

A notice of marriage is valid for twelve months. Therefore you may not book any earlier than twelve months before the date of your intended marriage. However, the sooner you arrange to book the marriage, the more likely it is that you will get the date and time of your choice. Certain times of year are very busy indeed. You may be able to make a provisional or advance booking, and the superintendent registrar will give you more precise information if you need it.

Documents you will need to produce for the Registrar.

When you go to the superintendent registrar to make the formal arrangements you will need to produce certain documents.

- If you have been married before you should produce evidence to confirm that you are now free to marry - a decree absolute of divorce bearing the court's original stamp.
- If your husband or wife died, you should show a certificate of their death.
- You will be asked to produce documents which confirm the use and spelling of your name – preferably a current valid full passport (or a Home Office Travel Document, a Standard Acknowledgement letter, or a national identity card). Photocopies are unlikely to be acceptable. If you are not able to produce any of the above documents, the registrar will explain what other documents may be acceptable – usually two documents such as cheque book, cheque guarantee card, store/credit card or birth certificate.
- If one of the partners is over sixteen but under the age of eighteen, a signed consent from the parent(s) or guardian(s) may be required.

Your Marriage Cannot Go Ahead Unless the Legal Formalities Have Been Completed

Notice of marriage must be given in person to the registrar by you or your partner. No-one else can do so on your behalf. (Note: A woman's silence, or lack of protest, is not taken as consent in UK law. It would probably have been acceptable for Muslims had all Muslims behaved in a trustworthy manner, but unfortunately there have been too many cases of abuse).

The registrar must be satisfied that neither husband nor bride is being coerced, forced, blackmailed, or subjected to any other sort of pressure, and wishes to marry of his or her own free will. Any marriage brought about by force or any other coercion is null and void in UK law, as it is in *Shari'ah* law. Any person being subjected to such force or coercion should collect as much evidence in their own defence as they can, should they wish to have the 'marriage' annulled afterwards, and seek legal advice as soon as possible.

On the day of your marriage **you will need to bring with you at least two other people who are prepared to witness the marriage and sign the marriage register.**

The Validation of the Marriage

The 'normal' *nikah* ceremony, although valid in the Islamic sense, is not a valid marriage on its own in the UK. It is a solely religious ceremony, and cannot be accepted in the UK as a legal ceremony.

For the marriage to be properly valid in the UK, **it *must* be registered according to UK law.** No Muslim should seek to contract a marriage without the full protection of the law of the land. If the marriage is not registered in a civil ceremony it is not recognised legally, and although the couple may *feel* married before Allah, they are in effect committing *zina* so far as UK law is concerned. The husband, wife and children would therefore have no rights in law as regards pensions, benefits etc, and the children would be regarded as illegitimate.

If any of the intended partners, or a relative, or an Imam attempted to coerce either spouse into resting content with the *nikah* religious ceremony, they would be acting in direct opposition to the *sunnah* of Islam, which is to have proper legal contracts, declared publicly, before witnesses. Persons most likely to be harmed by avoiding the civil registration would be the wives, who would only then have the status in the UK of unmarried 'partners' – a status forbidden in Islam. The children would be illegitimate. No Muslim man should wish to put his spouse

or offspring in such a dishonourable position. A Muslim man doing so would certainly be accountable for this in the Life to Come, even if they 'got away with it' on this earth.

Polygamous Marriage

Although this is permitted in Islam, it is a pre-Islamic practice (like slavery), which was not banned outright but made subject to various limitations. Before the coming of Islam polygamy was the normal practice for men who could afford it. Women were not allowed to have more than one husband at once, but women married and divorced numerous times. In Islam, in situations where there were large numbers of widows with little provision for themselves and their children, polygamy was encouraged up to the limit of four wives, in order to help vulnerable Muslims who had got into a difficult situation.

The first rule in Islam, of course, is that **no Muslim should ever act in a way that would deliberately hurt another**; on these grounds alone many consider polygamy to be impossible in virtually all other situations. It should therefore only, ever, take place with an existing wife's permission, without causing her hurt or dismay. If the marriage to the original wife has broken down, then honourable divorce is perfectly permissible. However, in some societies an existing wife might perhaps choose to remain with her partner, even if he wished to marry another wife, rather than re-start life on her own or be obliged to return to her parents or find another spouse.

Allah allowed polygamy only on the terms that each wife was treated equally as regards lodging, food, clothing and time spent with her.

'And if you fear that you shall not be able to deal justly with the (female) orphans, marry women of your choice, two, three or four; but if you fear that you shall not be able to deal justly with them, then only one. Or (a woman) that your right hands possess. That will be more suitable, to prevent you from doing injustice.' (Surah 4:3)

If such treatment was impossible, then polygamy was forbidden.

In the UK, however, polygamy is illegal. If a Muslim man 'married' more than one woman in the UK, only the first of them would be counted as his legal wife. Any other women with whom he had a physical and sexual relationship would be counted as adulterous, and any offspring of their unions would be illegitimate. The first wife could certainly use evidence of these relationships as grounds for divorce. The second wife could only have legal rights, title, benefits and protection in law if the first wife divorced her husband by UK law.

All parties are expected to tell the truth, and not commit perjury. It is not expected that a Muslim person would lie, for that is totally *haram*. For example, if a Muslim man has a previous wife in Pakistan, Bangladesh or some other country, his marriage to a second wife here cannot be legal unless he has divorced the first wife. A divorced person will be asked to show proof of that divorce. In cases where there is doubt, the Home Office may be involved. Bigamy and Polygamy are not legal in the UK.

Marriage in the UK is according to the Marriage Act of 1949, with its amendments.

If a Muslim man wished to involve himself in an illegal marital relationship with a woman in the UK, he should tell the woman concerned **her accurate position, and she might agree to it, but it must be without coercion or deception**. If the man deceives a woman into a false marriage, not only is that marriage null and void, but a criminal offence has been committed, of fraud and deception. Such a thing is totally against the sunnah of Islam. However, if the woman knew all the facts and she then chose to live with the man, that would be her business, but she would not be his legal wife. The UK law would only take action against such a man if the matter was reported because of some particular reason, and evidence produced. In view of the fact that so many people in the UK live together without marriage, as common-law partners, lovers, etc, a Muslim man who acted in similar fashion would not be hounded for no reason. However, he would have acted totally against the spirit and law of Islam; he would have jeopardised the security and honour of the second 'wife' or others, their children would be illegitimate, and he himself will have to render account for his actions in the Life to Come. So will she, if she has acquiesced knowingly in the supposed 'marital' relationship.

It is highly debatable whether a simple religious ceremony performed by an Imam would 'cover' the requirement in the eyes of Allah that there should be no sexual relationships outside honourable marriage. That is a matter that would be left to the consciences of all concerned.

One of the main areas of concern, and the most likely reason for the refusal of a Muslim man to divorce his 'wife back home', is the fact that he probably also has children by her 'out there' and is still responsible for their upkeep. Secondly, it may be much more socially acceptable 'out there' for the first wife to remain married, even if the marriage is no more than in name by now, rather than be branded as a divorced woman, and perhaps lose not only her status but also her home and protection, and her children by him to also lose their status and respect.

However, although an Imam might understand the motivation, it is highly debatable whether he should condone it, or acquiesce in it. In Islamic law, a husband should not abandon a wife for an unreasonable length of time, for any reason – even if it is to gain employment and wages abroad. The generally accepted length of time a wife can be asked to exist without her marital relationship is four months. One of the caliphs ruled that one reason why polygamy was limited to four wives was that a wife should be able to expect her husband to fulfil his sexual obligation to her at least once every four days.

'Temporary Marriage' – Mu'tah and Urfi

It is known that at the time of the Prophet many people contracted 'temporary marriages'. These occurred when a man with a strong sexual appetite was 'away from home' for some reason, such as long stay in another place, away in battle, away at university, away on a work contract elsewhere, etc. Rather than just 'sleep around', a temporary union was given some sort of validity by payment to the woman for her agreed services for an agreed length of time. The Prophet at first had no revelation to condemn the practice, but it was soon over-ruled by the revelation that no Muslim should have a sexual relationship outside proper marriage.

A Mu 'tah marriage is by agreement between a man and woman, for a specific period of time, on the payment of a *mahr* (see Mahr section), which in these cases really acts as a fee for services rendered. The practice of Mu 'tah marriage still takes place, largely in Shi'ite Muslim societies. Some scholars argue that it is still legal; but the vast majority of Muslim scholars regard it as little more than a form of prostitution, especially when such a 'marriage' may be contracted for just a few hours!

An Urfi marriage is similar, a practice of some wealthy Muslim business men travelling abroad from their own countries. Girls are 'bought' for an agreed price, and 'paid off' when the visitor leaves. Since some of these men are extremely wealthy, money is no object.

Both practices are in direct opposition to the *sunnah* and spirit of Islam, and are in any case completely illegal in the UK.

Guidance for Imams

The following five-point plan is suggested for Imams to consider prior to a marriage for which they are responsible:

- Arrange to meet the prospective couple, and **make absolutely certain** that they are both genuinely happy to get married
- Have the courage and integrity to be prepared to take on the parents of the prospective couple if you are in any doubt about the free agreement of either of them to the wedding
- Provide some sort of basic guidance for their marriage
- Ask the couple if they have discussed with one another things they hold as important, and encourage these issues to be aired while you are present with them, or on some other occasion prior to the marriage. You could perhaps use some questionnaires to check their compatibility with each other
- Remind the couple of their life-long commitment, their rights and duties and responsibilities towards each other and the new families they will (insha'Allah) create.
- If you are conducting *nikah* ceremony, please ensure that the couple has already registered their marriage with the registrar of marriages or a date for such a marriage has been set.
- In the absence of either do not conclude the *nikah* religious ceremony.

Procedure for Marriage

It is not necessary to have the religious and civil ceremonies together at the same event. Some Muslims might like the two to be performed together, others might not. For example, if the civil ceremony is to be performed at the religious ceremony, then it must take place between the hours of 8am and 6pm. Civil ceremonies cannot be performed at other times by registrars. Therefore, for example, an evening civil wedding is ruled out.

If you wish to have the two ceremonies separately, the best procedure is to have the civil ceremony and registration first, before the mosque ceremony, although this is not compulsory, and it can be done the other way round. The time between the two ceremonies should preferably be as short as possible.

Alternatively, the mosque ceremony may be organised so that it includes the civil ceremony if the mosque has been officially registered firstly as a place of worship, and secondly as a place for civil marriages.

The Legal effects of Marriage for the Woman

In Islam, Muslim men are given the position of authority in the household, as the provider of funds, and the wife's *qawwam* (protector and maintainer). The word 'guardian' is not a good translation, as it implies that the woman needs a person in authority over her, who is responsible for her and her decisions. In Islam, she is responsible to no-one except Allah, and if her husband expects her to do anything contrary to the known will of Allah, she is obliged to refuse him.

Allah, in the Qur'an, states: '*Men are the qawwam (protectors and maintainers) of women because Allah has made some of them to excel others, and because they support them from their means.*' (Surah 4:34).

Among other things, the newly married couple have a duty to maintain one another, to live together, and to share the same bed.

- **A new name?** On marriage, a woman may change her surname. This is only tradition, and there is no legal obligation upon her to do so, either in Islam or in UK law. She may retain her own name if she wishes. The normal social convention is to adopt the husband's name; if the wife does so, she is entitled to keep it even after he dies or if they divorce.
- **A new nationality?** No. Nationality is a political status of an individual, and this is not affected by marriage. A British national who marries a foreigner remains British.
- **A new domicile?** This is where a person has his permanent home or, if he is living abroad, where he intends to remain permanently. Residence is the place where a person happens to be living; a person can be resident in several countries at the same time, but can only have one domicile. At birth, a baby normally acquires its father's domicile, or the mother's if the father is dead. It is very difficult to change that before the child is sixteen, but thereafter the individual may choose. Although a wife may not acquire her husband's domicile on marriage, it is usually the case that she will live with him and plan to spend her life with him in his domicile. Thus she will normally acquire that new domicile.
- **A new passport?** The bride may obtain a new passport in her married name, and in practice often obtains one before the wedding takes place (if she is planning a foreign honeymoon), although she must agree to surrender it should the marriage be cancelled. An existing passport can be altered to her new name by sending it and the marriage certificate to the Passport Office. They will amend the passport to show her new name. The wife is not obliged to change her name. She may choose to continue with her existing passport until it expires. Then her new passport will give her married name, if she has chosen to adopt it and has not retained her original name.
- **A new bank account?** If the bride has adopted her husband's name, she should make sure that her bank changes her account name. The couple may consider opening a joint account, but it should be realised that if the marriage fails the money in it will quite likely be shared equally between the couple. If the wife is financially dependent upon the husband, she would be advised to ask for a joint account, and vice versa.
- **A new home?** Married couples are obliged to live together and to give each other the benefit of their comfort and support; the legal phrase for this is '*consortium*'. However, the law regards either spouse as being free to leave if he/she wishes, but by doing so, that spouse will be in desertion and may be liable to be divorced and ordered to pay maintenance to the other. In practice, many women cannot just leave the home as they are financially dependent upon their husbands and need a home for themselves and their children. Who chooses where to live? Normally, it is the need to be near the breadwinner's place of work that will decide the issue. In practice it is usually the man who has the final say, and if the wife refuses to move with him to a new workplace she may well be in desertion.
- **A new mortgage?** If a couple buy a house, it is advisable if it is in the name of both parties and fully insured – so that if one passes away, the house automatically becomes fully paid for, and remains in the name of the surviving spouse.
- **A new bedfellow?** By marrying, the couple agree to have sexual intimacy with each other. The concept of 'reasonableness' prevails in this matter, so, excessive demands for sex or a virtual refusal to have sex will be considered unreasonable and may justify a petition for divorce on the grounds of 'unreasonable behaviour'. It all depends on the circumstances. A refusal of sex by an invalid may be reasonable, but by a healthy virile person unreasonable. So also will be the insistence on always using contraceptives so that the couple will never have any children. If the marriage is never consummated, it may be annulled.

- **New in-laws?** Sometimes the new bride is expected to live with the bridegroom's parents, or vice versa. All Muslims concerned should think this through with kindness and compassion. Sometimes living with in-laws can cause enormous stresses and pressures, especially if there is not much room for everyone. It is not always a good idea for a new wife to be obliged to live in another woman's home, where she could feel little more than a servant. On the other hand, Muslims have duties to care for their parents. It is not compulsory, however, to live in the same house.

New Financial Effects of Marriage

Marriage may result in:

- **New tax arrangements.** There are different allowances for married persons, and the date of the marriage will affect that liability.
- **New entitlement to DHSS benefits.** The wife is normally eligible for national insurance widow's benefit and other benefits if her husband dies before her.
- **New inheritance rights.** If a married person dies without leaving a will, then most of his or her possessions will pass to the surviving spouse. If there is a will, but little or nothing is left to the spouse, the court can intervene and over-rule it. If a Muslim couple wish to follow the *Shari'ah* guidelines for inheritance, then they should leave a will stating this, and their wishes will be upheld.
- **New credit rights.** A wife may be able to make her husband liable to pay some of the household bills she incurs. A good Muslim man should pay them anyway, as part of his duty.
- **New property rights.** Both husband and wife will be able to claim a share in their joint assets. Make sure the home is registered in the names of both husband and wife, and fully insured.
- **Maintenance.** In the UK both husband and wife are liable to maintain one another. In Islam, a wife is not obliged to maintain her husband, but occasionally circumstances are such that she ends up doing so. If this is done willingly and out of love, it is credited to her as *sadaqah*. It is becoming increasingly common in the UK for women to be the breadwinners, and men to become unemployed.

Marital Confidence and secrets

Most married people tell one another things they would not tell other people. If necessary, these marital confidences and secrets will be respected by the courts. Thus, in a criminal trial, the husband or wife of the accused cannot be called to give evidence for the prosecution, or compelled to give evidence for the defence. In civil cases, where spouses are subpoenaed to give evidence, the judge will excuse the spouse from answering questions if to do so would breach marital confidences.

Payments to and from the Bride in Islamic Law and Tradition

Dowry and Mahr

In the first era of Islam marriage was a simple affair, without pomp or ceremony. Any expenditure incurred in its performance was quite minimal, and not a burden on either family. Indeed, the Prophet stated: ‘the most blessed marriage is one in which the marriage partners place the least burden on each other.’ (al-Haythami, Kitab ab-Nikah, 4:255).

Nowadays, much difficulty and hardship can be caused by the setting and giving of **dowries, bride-prices and mahr** – not to mention enormous wedding feasts and celebrations in some cultures which bring a most unreasonable financial burden on the families concerned. Financially crippling celebrations are totally in opposition to the spirit of Islam, and are not necessary. They are purely a matter of the culture of certain regions. **No Muslim should feel obliged to continue these unIslamic traditions, or be embarrassed about breaking with their old cultural traditions.**

It is very important that Muslims themselves realise that there is an enormous difference between dowry, bride-price and *mahr*. **Many books and articles on the subject confusingly use the word dowry to mean *mahr*, but in fact the correct word for dowry is *jahez*, and its function is totally different.**

What is a dowry?

The custom of giving dowry (*jahez*) is not part of Islam, although it actually seems to be on the increase among several Muslim cultures, notably those of Indian, Pakistani and Bangladeshi origin, even when they have settled in the UK. In fact, it is a practice which has never been sanctioned by Islam and is not prevalent amongst Muslims of other cultures. It seems to be in imitation of ancient Hindu culture in which daughters were not given any share in the family property, but were given payments, part of which might be in the form of household goods, as a measure of compensation. Islam granted daughters a rightful share in their family property and inheritance.

A ‘bride-price’ is either :

- an amount of money, goods or possessions given to the bride by the bride’s family at the time of her marriage, in order to attract a good husband for her. It would in effect become the property of the husband or his family upon his marrying her. This is a totally unIslamic practice. In Islam, women are not ‘owned’ by their families and should not be ‘traded with’ in this manner. It is an insulting practice. Or
- an amount of money demanded from the bridegroom or his family by the bride or her family, usually the bride’s father, without which the daughter will not be given in marriage. In the jahiliyyah society before Islam, this money was regarded as the property of the girl’s guardian.

The matters of fathers giving the bride gifts of money or property, or paying for an enormous wedding feast, or providing a home, or setting her up in her home with furniture and household effects are left to the discretion of the people involved in Islam. The Prophet himself saw to the marriages of his four daughters. He gave his daughter Fatimah various gifts when she married Ali b. Abu Talib, but there is no record of his having given anything to his other daughters on the occasion of their marriages. Had such gifts been a recommended *sunnah*, he would surely have given the others gifts as well. Moreover, the gifts given to Fatimah were extremely modest household articles – a sheet, a leather water-bag, and a pillow stuffed with grass and fibre.

Nothing could be more unIslamic than ostentation. It is ridiculous to attempt to justify flamboyant displays of wealth in lavish gifts or feasting by citing the Prophet’s extremely modest gifts to Fatimah.

What is the Mahr?

The *mahr* is a compulsory part of an Islamic marriage contract. The other words for *mahr* generally used in the Qur’an are *sadaqah* and *ajr*, meaning reward or gift to the bride in which there is profit but no loss, and *faridah*, literally that which has been made obligatory, or an appointed portion. Allah commanded: ‘Give women their *faridah* as a free gift.’ (4:4) (Unfortunately the word is frequently incorrectly translated as ‘dowry’).

It is a gift of money, possessions or property made by the husband to the wife, which becomes her exclusive property. It is an admission of her independence, for she becomes the owner of the money or property immediately, even though she may have owned nothing before. It has nothing to do with either of their parents, except that a husband might need to take a loan. This should only be done with the intention of repayment. It is also intended as a token of the husband's willing acceptance of the responsibility of bearing all the necessary expenses of his wife.

Even if the wife owned no property or money of her own before her marriage, she is given this money or property when she marries so that she commences her married life in her new status with money or property of her own. The wife gives herself and her services to her husband, and in return he gives her property to own herself, even if she had nothing before, and pledges that he will maintain her. Muslim women are placed in charge of the internal arrangement of the household, while Muslim men are responsible for its financing (even if the wife earns her own money subsequent to her marriage).

The Prophet gave each of his wives a payment of *mahr*, ranging from token sums, the granting of freedom from slavery when being made a wife, to the payment of 400-500 *dirhams*. His wife Umm Habibah's *mahr* consisted of 4000 *dirhams*, this sum having been fixed by Najashi, the Negus (a Christian ruler) of Abyssinia. (Abu Dawud, Kitab an-Nikah, 2:235).

There was in fact no fixed upper limit for *mahr*. Allah required the provision to depend upon the circumstances of the husband:

'...the wealthy according to his means, and the straitened in circumstances according to his means. The gift of a reasonable amount is necessary from those who wish to act in the right way.' (2:236).

In a famous case, the second Caliph, Umar b. al-Khattab, once gave a public sermon in which he asked the congregation to refrain from fixing heavy mahrs, and stated that the Prophet had declared no-one should give more than 400 *dirhams*. A woman immediately stood up and challenged him, quoting the verse 4:20 from the Qur'an:

'But if you decide to take a wife in place of another, even if you had given the first a heap of gold (quintar) for a dowry, you shall not take the least bit back.'

Umar went back to the minbar and withdrew his words stating 'the woman is right, and Umar is wrong. Whoever wishes may give as much property as he wishes to give.' (Ibn Hajar al-Athqalani, Fath al-Bari, 9:167).

Who owns the mahr? Can it be refused?

It is owned solely by the wife. The husband is not allowed to refuse to pay his wife a proper *mahr* or *faridah*. The settling of the payment is obligatory.

'Women are lawful to you....provided that you take them in marriage and not fornication. As to those through whom you profit (through marriage), give them their faridah as appointed.' (2:24).

The same applied when marrying Jewish or Christian women (5:5). If a Muslim man married someone 'whom his right hand possessed' (ie a slave or prisoner of war), the *mahr* was to grant her freedom and other payment was not required.

Caliph Umar ruled that if a woman had excused her husband his *mahr*, but later demanded it, the husband should be compelled to pay it on the grounds that the fact that she demanded it was a clear proof that she had not remit it of her own free will.

The case of a woman whose husband died before fixing the amount of the dowry or consummating the marriage was brought to Abdullah b. Mas'ud. He ruled that she should be paid according to the *mahr* of women of like status to herself.

The Shafi 'I school rules that a wife may refuse to consummate the marriage if the husband agreed to pay the *mahr* immediately, but did not do so. She may have the marriage annulled.

How much should the Mahr amount be?

It is unIslamic for a Muslim woman to set a huge demand for herself, with the intention of deterring suitors of humble means. Islam does not require husbands and wives to come from the same social strata or income brackets – although this may often seem to be advisable. Islamic compatibility is based on religious faith and mutual respect, not on money, class, background etc.

It is just as unIslamic to demand a huge *mahr*, generally beyond the husband's means, based on the intention of checking the husband from ill-treating his wife, or wrongfully or causelessly divorcing the wife, or preventing him from remarrying another later – the reasoning being that in cases of divorce the woman can demand the full payment of the *mahr*. The fixing of a substantial mahr for the above purposes rests on the supposition that the *mahr* has to be fixed at the time of marriage, but not handed over until divorce – which gives it a supposed 'deterrent' value. This is unlawful in Islam, for in this case the wife has no use or ownership of the *mahr* during the time of the marriage.

If the prospective husband is not a wealthy man, a generous wife may choose to accept very small mahr, but this has to be her own free choice. She should not be coerced or have pressure put on her in any way. Some of the Prophet's female companions accepted their husbands' conversions to Islam, or memorising of ayat of the Qur'an, or giving education to others as their *mahr*.

The *mahr* has to be fixed taking into account the bridegroom's position in life. That is, it should not normally be more than he is easily able to afford, whether it be a lump sum or some article of value. Jurists have different views on what the minimum amount should be, but all agree that it should be substantial enough for something to be bought against it. In other words, any amount which is sufficient for a purchase is acceptable as *mahr*.

The husband may be loaned money by his father or family, but it must be repaid. In the case of Nabi Musa (the Prophet Moses), when he left Egypt for Madyan he married Safura the daughter of the Prophet Shu'ayb. His *mahr mu'ajjal* was settled and paid off by binding himself to grazing his father-in-law's cattle for ten years without wages. Presumably Shu'ayb had paid Safura on Musa's behalf.

A good woman might agree on a low *mahr* if she wishes, or none at all, according to the circumstances of her husband. Once fixed it is fixed, and legally binding – so it is good practice to have it written down and witnessed on a document. The wife should take advice on her decision, and not be blinded by emotion, or coercion, or fear, or family pressure. If any person pressurises a woman into a decision she might not have otherwise made, that person will be held to account in the Life to Come, even if he 'got away with it' on this earth.

One recorded hadith suggests that 'the best woman is the one whose *mahr* is the easiest to pay.' (al-Haythami, Kitab an-Nikah 4:281).

However, it is sensible for a wife to accept a reasonable *mahr*, as this becomes her own property as stated, and is hers to keep should the marriage fail and end in divorce.

Under what conditions is it payable?

There are two main ways of properly presenting *mahr* to the bride.

The first way is to hand it over in full at the time of marriage, in which case it is known as *mahr mu'ajjal*, or 'promptly given *mahr*'. (Notice the ' . The word is derived from '*ajilah*, meaning 'without delay'. This was the accepted practice during the time of the Prophet, and the amount fixed was generally quite minimal.

In the case of Fatimah and Ali, Ali informed the Prophet that he had nothing to give her. The Prophet reminded him of a coat of chain-mail he had been given. It was still in his possession, although in a delapidated condition and worth less than four *dirhams*. The Prophet suggested he gave that to Fatimah, and this was done.

The second way of presenting *mahr* is to defer it, to hand it over to the bride after a certain period of time, the duration of which must be specified, fixed by the man and agreed by the wife. This has to be settled, with witnesses, at the time of the marriage. This form of *mahr* is known as *mahr muwajjal*. (the word implies 'in a period of time').

The five major schools of Islamic jurisprudence all agree that delay in handing over the *mahr*, whether in full or in part, is lawful provided that the fixed period for payment is not indefinite.

This method should never be used as an excuse to wilfully postpone the payment. A definite date should **always be fixed, witnessed, and adhered to**. It should certainly not be left ‘hanging’ *in case* the marriage breaks down and the couple come to consider a divorce - because of the inevitable emotions, bitterness, arguments, hostilities and financial problems involved at that time.

If the husband died, or they got divorced, the *mahr* debt must be paid up immediately to the widow before his inheritance or other financial settlements are considered. It is her property, and not his.

Repayment of Mahr in cases of *khul* divorce.

A *khul* divorce is one in which a wife sues for divorce even though the husband has not driven her to it by his unreasonable behaviour.

If there is no good reason for a wife wishing to divorce her husband, but it is a case in which she simply wishes to finish the marriage **with no particular legal grounds** against the husband, the **husband may agree to grant her the divorce if she returns all or part of the *mahr***. This has to be agreed between them.

If the wife does have genuine grounds for divorce – such as cruelty, mental cruelty, breaking of the marriage contract, adultery, desertion, incurable insanity, long-term imprisonment, abandonment of Islam – then the divorce is not *khul* but a normal *talaq*, in which the wife has as much right to instigate proceedings as the husband. In these cases, she most certainly **does not have to hand over any of the *mahr***.

If the wife has genuine grounds for divorce but the husband refuses the divorce, she may then approach lawyers for *khul*, and appoint an Imam to act for her. It is sensible to do this as well as having a UK lawyer. She is not required to pay back any of her *mahr*. Indeed, **the lawyers may demand some further compensation** for her if the husband is guilty. (She may have to prove his guilt, and should gather as much evidence beforehand as she can – such as signed and witnessed statements of witnesses, photographs of injuries sustained, etc).

Separation and Divorce

‘Of all the things Allah has allowed, divorce is the most disliked.’

Divorce is only for dead marriages. If there is any possibility of a **reconciliation** then the divorce should not go through. It is a Muslim spouse’s duty to do everything possible to save the marriage, and for all other Muslims to do their utmost to help save the marriage. Nevertheless, if the marriage has definitely broken down, honourable divorce is sanctioned in Islam, and is preferable to people being obliged to carry on living in unhappiness, despair and unIslamic conditions.

There are numerous **agencies** that will give advice and help to a couple in difficulties – religious leaders, doctors, the Muslim Women’s Helpline, the Marriage Guidance Council, Relate, the Family Planning Association, the probation service, child-care officers, etc. The husbands and wives generally have to seek this help for themselves, but sometimes a solicitor will put clients in touch with suitable agencies.

In good Islamic practice, before any effort is made to seek a divorce, all efforts possible should have been made to solve the problems and reconcile the spouses. A Muslim spouse has a genuine grievance if either partner has behaved in such a way as to go against the sunnah of Islam, in other words, their ‘normal’ behaviour has become cruel, vindictive, abusive, unfaithful, cheating, lying, neglectful, selfish, sexually abusive, tyrannical, perverted, or they have taken up habitual foul language, drinking, gambling, taking drugs, stealing etc.

Attempting to Bring About Reconciliation

- The practice advised in the Qur'an is for each spouse and to try to behave in the first place according to the good *sunnat* of Islam as regards kindness, compassion, generosity and so on, in order to prevent problems, and if they should arise, to make genuine efforts to solve the problems.
- Each spouse do their best to overcome shyness, shame, or any other inhibiting factor, and communicate clearly to the other what it is that has upset them. The duty of a good Muslim spouse is to listen to the complaint, and put matters right so far as it is possible to do so.
- Should this not be sufficient, each spouse should argue their case before two 'helpers' or 'advisers' for each side, who may then intervene on their behalf, and discuss carefully what it is that has caused the marriage to break down. These helpers should give their best advice.
- The spouses should also seek advice from their own families, and listen carefully to that advice.
- Every effort should be made to communicate and discuss their grievances, concerns and problems. If things have reached a drastic stage, it is usually far better to do this with witnesses for both sides, so that unpleasant 'slanging matches' and abusive time-wasting talk does not develop.
- The 'hurt' spouse should not shrink from honesty in describing the unwanted nonIslamic behaviour that has upset them. In many cases, the first step towards a cure from such things as alcohol and gambling abuse is for the abuser to recognise and admit what he or she is doing, and how it has affected the other spouse and probably the entire family. It is obviously quite normal for guilty parties to resist this strongly, even with threats, but the more it can be brought into the open the more likely it is to be resolved, and the more defence the hurt party should receive.
- If the offending spouse is told very clearly that 'when you do this I feel.....', or 'when you do this the reaction, and what happens in the family, is.....', then the responsibility for their future actions falls squarely on them, and they are certainly to blame if they continue to do whatever it is, or give adequate explanation of why they are doing it.

These days the general policy of the divorce law is that after all possible avenues for reconciliation have been explored, and the spouses have been properly advised, dead marriages should be ended and not allowed to continue against the wishes of one of the parties. The law does not usually need to look too closely at the conduct of either party when a marriage is failing. Blame will only be relevant in exceptional cases. The courts are generally most concerned to safeguard the welfare of any children, and to ensure that a dead marriage is not perpetuated as a sham.

Legal Possibilities to Consider

When a marriage is in trouble, there are five legal possibilities to consider;

- **Divorce** – this legally ends the marriage and the husband and wife are both single again.
 - **Annulment** – this legally ends the marriage and the husband and wife are both single again.
 - **Judicial Separation**
 - **Separation by informal agreement**
 - **Separation under a written deed**
 - **Separation by magistrates' court order**
- } These do not legally end the marriage - they just end the obligation to cohabit; the parties cannot remarry.

If there is any prospect of a reconciliation, then separation is the better choice, since divorce and annulment terminate the marriage. The phrase used is 'that the marriage has irretrievably broken down'. If the marriage has not died, but has only temporarily broken down, then divorce is not allowed.

Grounds for Divorce

There are five. All of these are valid in UK law, and also in *Shari'ah* law.

- Adultery
- Unreasonable behaviour
- Desertion or abandonment
- Two years' separation
- Five years' separation.

In the UK 99% of divorces are undefended. In the 1% where a spouse wishes to reject the divorce, a solicitor should be consulted immediately.

1. Adultery

This is voluntary sex between two people of different sexes, either or both of them being married. Sex when drunk or drugged or raped cannot count as adultery. In UK law eye-witness evidence is not required. If the petitioner can show inclination and opportunity, the court will assume intercourse took place. Circumstantial evidence will normally suffice – for example, they may have been seen kissing, there may be love letters, evidence of many telephone calls, or a wife becomes pregnant when it was impossible for her husband to have been the father. More often than not, the adulterous spouse will sign a statement of confession of where and when the adultery took place, and with whom. The co-respondent's identity will not usually be kept a secret. The court will normally accept the fact of adultery as being enough to make living together intolerable.

Abuses of adultery law and 'honour killings'

It is not enough evidence to suspect adultery if a woman has simply been outside the home without permission, been seen talking to someone who is non-mahrem, etc. The so-called 'honour-killings' that have taken place in various societies have nothing to do with Islam, and are in fact murder. Murder of an innocent female by a father or brother or uncle is one of the most horrendous crimes. One can understand strong cultural conditions prevailing to defend family honour, but in Islam people who accuse others of adultery without genuine grounds for doing so should actually face the penalty for being a false witness and for slander.

Confusing adultery with rape

Where the powers-that-be confuses adultery with rape, women may suffer terrible abuses without recourse to proper legal redress.

If a woman is subject to some form of sexual abuse, either rape, or made drunk or drugged in order to be subjected to abuse, then this cannot be considered as adultery, either in UK law or in Shari'ah law. Those who go on to subject these unfortunate female victims to accusations of adultery, or brought them to court, or even sentence these victims to imprisonment (!) are in gross abuse of Islam.

2. Unreasonable Behaviour

This phrase is deliberately vague and imprecise, so that it may receive the widest interpretation. The only concern is to show that the behaviour is so grave that the petitioner cannot reasonably be expected to go on living with the husband or wife. It all depends on how serious is the misconduct and what is its effect on the petitioner. Small incidents, seemingly trivial, can also combine to make the behaviour unreasonable. This is now the most common ground for divorce, and 90% of petitioners are women.

Some examples of 'unreasonable behaviour':

- physical assault or ill treatment
- verbal assault – such as persistent nagging, insults, unkindness, threats of assault, boasting of sexual experience with other people – whether true or not
- persistently ignoring the other spouse

- insanity
- adultery and cohabitation with another as husband and wife
- sexual activity with another person which is not adultery but is improper – such as a lesbian or homosexual relationship, bestiality, or sexual intimacy that falls short of full intercourse
- unreasonable sexual activity, such as excessive demands on the petitioner, or a complete refusal to have sex, or to have sex without using a contraceptive, or sodomy and other unnatural practices forced on the petitioner
- refusal to have children
- obsessive tidiness
- dirty habits
- frequent drunkenness or drug taking
- financial irresponsibility, such as failure to provide sufficient housekeeping money
- failure to look after the home
- irresponsible gambling
- refusal to work when a reasonable job is available.

All these kinds of ‘unreasonable behaviour’ are totally against the *sunnah* of Islam, and a Muslim spouse is quite entitled to regard such things as unreasonable and grounds for marriage breakdown.

Obtaining evidence of unreasonable behaviour of any sort

- If a wife has been assaulted and has received hospital treatment, she should obtain a certificate from the hospital confirming date, time and nature of the treatment.
- If her GP has been consulted in connection with marital difficulties, he or she should write a letter confirming her attendance and his opinion as to the cause.
- Medical evidence that the marriage problems are getting on top of the petitioner can be invaluable.
- Friends, neighbours and relatives may be able to give evidence as to such things as loss of weight, nervousness, tension, panic attacks, sleeplessness, depression, inability to concentrate at work, lack of interest in regular hobbies, weepiness.
- The petitioner should keep a diary or record of the husband’s behaviour, noting the day and the way in which he abused or insulted her.
- If the police have been involved, the police record or crime number is invaluable.

3. Desertion or Abandonment

This can be either spouse abandoning the other. At the commencing stage of abandonment, of course, most partners would not have a clear idea if the abandonment was going to be temporary or permanent. It is a good idea to make a note of the date, and the probable reasons for the abandonment.

If a husband whose wife relies on his support abandons his wife, she should protect herself in the short term by

- Checking if he is still paying the rent or mortgage, and if not, arrange to do it herself.
- Claim supplementary benefit if she has little or no money.
- Apply for maintenance for herself and her children.
- If she has a joint bank account, she should make sure he cannot draw out all the money – perhaps she should draw it out before he does!
- If the husband has been violent she should see a solicitor. It might be possible to have him excluded from the home.

4. Separation for Two Years

This is the 'divorce by consent' provision. It allows a couple who have been living apart for two years to end the marriage mutually. If, however, only one of them wants the divorce and the other will not consent, there can be no divorce unless they have been living apart for five years.

A couple may continue to live in the same house and still be counted as 'living apart' if they have 'separate households'. They may share the same kitchen and bathroom, but they must not share the same bedroom or living room, nor should they cook for one another, spend their evenings together, or watch TV together. In other words, they should cease living as a couple and act as though they were two strangers sharing the same house. They will need to produce independent evidence confirming this state of affairs, and how they have ceased to cohabit. Before the judge declares the decree of divorce, he will consider all the circumstances of the marriage, such as the age, health, earning capacity, conduct and finances of both husband and wife, and he will not make the decree absolute unless he is satisfied that the petitioner has made reasonable provision for the other spouse or has promised to do so, or that the other spouse does not need maintenance.

5. Separation for Five Years

This allows a blameless spouse to be divorced against his or her will. There is virtually no way that the petitioner can be prevented from obtaining a divorce. The only possibility is for the spouse not wanting the divorce to plead exceptional hardship, but the courts generally interpret this very narrowly indeed. For example, a wife who had returned to her old country with her children opposed her divorce to a husband remaining in the UK because it would result in her being socially ostracised back home, but this plea was rejected and the divorce went through.

The judge can grant a decree nisi, but refuse to make it absolute until he is satisfied that adequate provision has been made for the other spouse.

Costs

The costs vary according to the complexity of the case. The more work involved, the more a solicitor will charge. If the divorce is defended, the costs rise dramatically, or if there are complicated financial disputes, or disagreements over the arrangements for the children.

The petitioner cannot be sure the case will be undefended right up to the day of the court hearing, for spouses can change their minds at the last moment. If the case is defended, legal advice will be necessary. Legal aid may be available to help with the costs.

Solicitors cannot give you a definite price until they know how complex the case is likely to be. They should be able to give a quote on a 'typical' case.

In undefended divorces, both petitioner and respondent may act for themselves if they wish. It is also possible in defended cases, but extremely unwise.

In addition, there will be court fees to pay. You have to pay to file the petition, and you may have to pay for a bailiff to serve the petition on the other spouse.

How to Choose a Solicitor

Consult the yellow pages in your telephone directory. Solicitors do specialise, so it is wise to ask if he or she does a lot of matrimonial work. If he or she does not, consider choosing someone else who does. The solicitor will not be offended.

Embarrassment

Many people find it very embarrassing to be obliged to tell a complete stranger the full details of their matrimonial affairs, including, perhaps, their sexual relationship. Lawyers treat their information as strictly confidential, and will not tell anyone else about it. They will not be shocked or embarrassed – they will have

'heard it all before', and will treat the matter in as unemotional a manner as would a doctor. They will not become emotionally involved in the case. They are paid to procure objective advice, and they cannot do that if their judgement is clouded by prejudice in favour of a particular client.

They will also test the strength of their client's case by asking the sort of questions that the other spouse's solicitor may ask. Some people are surprised when cross-examined by their own solicitors – but they need to find out the weaknesses in the case so that they can take steps to strengthen them.

Do not blame the solicitor for the law. If solicitors say a case is hopeless, it doesn't mean they are incompetent and can't handle it, or that they dislike the client. If the law does not support the case, it is pointless to seek another solicitor.

We have made you a vicegerent in the earth, so rule among the people with justice and do not follow your own desires lest they mislead you from the Way of Allah. As for those who go astray from the Way of Allah, they shall surely have a severe punishment because of forgetting the Day of Reckoning. (Surah 38:26).

How to obtain your own Undefended Divorce

- Get a copy of your marriage certificate.
- Go to the local divorce court and
 - (i) get three copies (four in an adultery case) of the standard divorce petition form (Form D8).
 - (ii) If there are children, get three copies of the standard Statement of Arrangements for Children form (Form D8A).
 - (iii) Get a copy of the notes for guidance on filling in the forms and the free booklet on DIY Divorce.
 - (iv) If you are claiming a share in the family home you may also need to register your claim against the land.
- Fill in all the copies of the divorce petition form and the Statement of Arrangements for Children form if applicable. Use the notes for guidance, and the free booklet.
- To start the proceedings, take or send to the court:
 - (i) two copies of each form to the court. If the case is based on adultery, then give the court three copies of the petition.
 - (ii) The copy marriage certificate
 - (iii) The fee of £35 (people of limited means are exempt – ask at the court)
- The court will allocate a reference number to your case. You have now become the petitioner. Your other spouse, against whom you are seeking divorce, is known as the respondent.
- The court will send the respondent
 - (i) a copy of the divorce petition form and Statement for the Arrangements for Children form, if there are any
 - (ii) a Notice of Proceedings form
 - (iii) a form for him to sign to acknowledge that he has been served with these documents. This is called the Acknowledgement of Service Form.
- The respondent will sign the form stating that he or she does not intend to defend the petition, and sends it to the court.
- The court will then send you
 - (i) a copy of the Acknowledgement of Service form
 - (ii) a standard form for you to request Directions for Trial
 - (iii) a standard form of affidavit for you to complete. This will set out the basis of your petition and the evidence in support.
- Complete the affidavit of your evidence
- Sign the completed affidavit and the copy Acknowledgement of Service form in front of a court official or solicitor.
- Send those documents to the court together with the completed form asking for Directions for Trial.

- The affidavit and evidence then goes before a registrar. If he or she thinks the evidence is sufficient to entitle you to a divorce, a certificate will be issued, a copy of which is sent to both spouses. The registrar also fixes a date for either the pronouncement of the decree nisi if there are no children (and there is no need for either spouse to attend court on that day), or the date of the appointment before the judge if there are children. Both husband and wife should attend on that day, when the judge will consider the arrangements in a private hearing. If the judge is not satisfied, the proceedings will be adjourned until the problems are resolved. If there is not sufficient evidence the judge may order a welfare officer's report.
- Once the decree nisi has been pronounced, a copy is sent to both spouses together with a copy of the judge's order concerning the children if applicable.
- Finally, you get the standard form applying for the decree nisi to be made absolute, and send it to the court. It is not sent automatically – you have to apply for it.
- If there is no outstanding business, the registrar will make the decree absolute and send a certificate of decree absolute to both spouses, some six weeks after the decree nisi.
- That's it. If there are no children involved, it can all be done through the post

Repayment of Mahr in cases of *khul* divorce

A *khul* divorce is one in which a wife sues for divorce even though the husband has not driven her to it by his unreasonable behaviour.

If there is no good reason for a wife wishing to divorce her husband, but it is a case in which she simply wishes to finish the marriage **with no particular legal grounds** against the husband, the **husband may agree to grant her the divorce if she returns all or part of the *mahr***. This has to be agreed between them.

If the wife does have genuine grounds for divorce – such as cruelty, mental cruelty, breaking of the marriage contract, adultery, desertion, incurable insanity, long-term imprisonment, abandonment of Islam – then the divorce is not *khul* but a normal *talaq*, in which the wife has as much right to instigate proceedings as the husband. In these cases, she most certainly **does not have to hand over any of the *mahr***.

If the wife has genuine grounds for divorce but the husband refuses the divorce, she may then approach lawyers for *khul*. It is sensible to do this as well as having a UK lawyer. She is not required to pay back any of her *mahr*. Indeed, **the lawyers may demand some further compensation** for her if the husband is guilty. (She may have to prove his guilt, and should gather as much evidence beforehand as she can – such as signed and witnessed statements of witnesses, photographs of injuries sustained, etc).

There are a number of Shariah Councils who act as a shariah court to settle cases relating to Islamic divorce. Two such councils are listed here: (1) Shariah Council, 34 Frances Road, Leyton, London E10 6PW, Tel: 020 8558 0581, (2) Shariah Council, 20-22 Creffield Road, London W5, Tel: 020 8992 6636.

Annulment

The difference between an annulment and a divorce is that a divorce is granted to end a marriage that has broken down irretrievably, but an annulment is granted if the marriage was not valid in the first place, or is defective in some way.

The law distinguishes between two types of annulled marriage

- those that are void
- those that are voidable

In the former, there never was a marriage; in the latter there was a marriage but it was defective.

The grounds for annulment are as follows:

Void

- the couple are too closely related
- either was under sixteen at the time of marriage
- certain marriage formalities were not followed
- it is bigamous
- the couple are of the same sex
- invalid polygamous marriage – because, although the marriage was valid abroad, one of the parties was domiciled here at the time of the marriage.

Voidable

- There was no consummation of the marriage because one of the spouses was incapable. (Consummation means any one act of sexual intercourse involving full penetration and a sustained erection; ejaculation is not necessary. Premarital sex does not count as consummation).
- Wilful refusal by the other spouse to consummate the marriage
(This means a determined refusal, persisted in over a period of time. It does not cover nervous first-night fears! Only one act of intercourse is necessary for the marriage to have been consummated, but if a spouse *then* refuses any further sexual intercourse he or she is guilty of unreasonable behaviour justifying divorce).
- Lack of consent at the time of the marriage
(This applies if the spouse was forced, coerced, tricked, duped, under the influence of drink or drugs, or suffering from mental disorder as defined by the Mental health Act).
- At the time of the marriage the other spouse was suffering from communicable venereal disease (proceedings for this must be started within three years of the marriage or the claim will not be allowed)
- At the time of the marriage the woman was pregnant by another man (proceedings for this must be started within three years of the marriage or the claim will not be allowed).

If any woman was **forced or tricked into a marriage**, it is legally null and void, both by UK law and in *Shari'ah* law. Consent **must** be freely given, both parties must fully understand the proceedings and be in full possession of their senses.

Coercion

If a young woman was 'worn down' and forced into agreeing to a marriage because:

- she was frightened of physical hurt if she refused,
- or had been threatened,
- or would be disowned

- or thrown out of the family home,
- or her parents would never speak to her again,
- or her mother would commit suicide if she didn't do it,
- or she was made to feel that by her refusal she would be acting dishonourably because the engagement had been agreed since her infancy,
- or she would discover all her 'silly fears' were just 'female nerves' and she would soon get used to the idea and would be grateful in the end,
- or she would be letting some relative down,
- or she would perhaps be condemning some person to being sent 'back home' because they could not get a visa
- or her parents had already accepted a money payment from the bridegroom's family

- these are all moves of coercion, and could render the marriage null and void. Any of these behaviours on the part of her parents is not only totally unIslamic, but it is cruel in the extreme – the physical and mental torment coming from the very people the girl had been urged to love and trust, and who should have been protecting her best interests. The sense of betrayal is complete, and families rarely get over the trauma and rift caused.

If a woman was forced into a marriage ceremony but **never consummated the marriage**, it could be voided most easily if the woman concerned could prove medically that she was still a virgin. If she was not a virgin – for example, it could be a second marriage - but the marriage with this particular man has never been consummated, proof would have to be sought, and it would be vital to confide in a doctor immediately to back up your case. If the husband admitted the lack of consummation, the marriage would be swiftly voided.

If it is a case of a young girl sent back to her parent's country of origin and married to a person without her knowledge or consent, perhaps through her complete innocence, or through trickery and connivance on the part of relatives, or her lack of understanding of the language or the legal processes in that country, that marriage is null and void both in UK law and in *Shari'ah* law. This applies whether the relatives force the couple to live together or not, or even if children are born to the 'union'.

Even if she has signed her consent on forms, it might be the case that she had not understood the forms, or that someone had misled her into thinking the forms were for something else. These marriages are not valid, either in UK law or in *Shari'ah* law.

Sexual Abuse

This can include not only rape and inappropriate sexual intimacy, but it may be someone touching you in a way you don't like, showing you pictures that you are not comfortable with, or talking about your body or sex in a way which disturbs you.

Sexual abuse happens to women and girls of all ages, from all backgrounds, and from all cultures and faiths. Any Muslim man involved in this unpleasantness will certainly have it recorded against him, and will face judgement for it in the Life to Come, whether or not he 'gets away with it' on this earth.

Many women and girls are sexually abused by men they know and trust, for example fathers, grandfathers, uncles, boyfriends or friends of the family. At least 65% of rapes are carried out by someone known to the woman. It is also abuse for a husband to force himself upon his wife, or act in any way she regards as offensive or distasteful.

Some women abuse, but the overwhelming majority of abusers are men. A woman can either abuse or seduce a man, but she has not got the physical equipment to *rape* him. Rapists often target very vulnerable people – such as small girls, women alone in vulnerable situations, or old ladies. It has little to do with the sexual attractiveness of the victim. The crime of men raping young boys or other men through the anus has now become much more common, and has made men in general more aware of how unpleasant a crime it is. Raped women have *not* secretly enjoyed it, or made a fuss over nothing!

Men often argue that the women concerned have 'asked for it', led them on by flirtatious behaviour or provocative clothing, or that they were unable to control their sexual urges. In fact, more than 80% of rapes are planned in advance. Muslim women can avoid arousing male urges by their modest dress, but it must be stated that many men are actually 'turned on' by veiled and modest women.

Some men think that if they spend a lot of money on a woman, they have the right to have sex with her. This is not the case. If a man buys a woman something, that is his choice; she does not owe him anything, least of all sex.

What you could do to help

For all these suggestions, the assumption is that you are an innocent husband or parent or guardian. If the husband, parent or guardian is in fact the abuser, the woman involved should seek outside help as soon as possible.

Listen to the woman and believe her. Let her know you are there to listen whenever she needs to talk. Women are often accused of making malicious allegations of rape against innocent men. In fact, false allegations are the same as for any other crime – around 2%.

If you are swiftly 'on the spot', make sure she does not destroy any evidence she might need – she should not take a bath but preserve any bodily fluids for forensic testing – including semen, blood, skin scratched under her fingernails, etc. She should keep her clothing for forensic testing also.

Respect her decision regarding reporting to the police. You can help her weigh up the pros and cons, but you do not have the right to pressure her.

Help her deal with the practical consequences. She may need to go to a clinic to be tested for any sexually transmitted diseases, or she may need a pregnancy test.

Allow her to cry as and when she needs to. Crying and expressing her feelings are an important part of the healing process. Many women suffer all sorts of problems as the result of abuse. These include depression, self-disgust, panic attacks, suicidal feelings, eating disorders and sleeping problems. They also include guilt feelings, and the overwhelming feeling that one has become 'dirty'.

Reassure her that what happened was not her fault. Help her put the blame where it belongs – with the abuser.

Respect her feelings and decisions regarding any sexual contact. She may need reassurance that she is still attractive. Do not put any pressure on her. At all times she will need to be in control of intimate and sexual contact, even if you are her husband.

Above all, if you are a Muslim husband, do not regard your wife as in any way to blame – she is the victim of a crime, and one of her worst sufferings will be fearing that you will no longer love her, will treat her with distaste or distrust, or will abandon her and not be able to establish your own marital relationship with her again. You must raise above all your natural feelings, and do your utmost to reassure her and help her to heal. She has been abused, not dishonoured. Your feelings towards her should be as supportive and protective as if it was your **son** who was raped.

[End]

Some Suggested Nikah Promises for a Muslim Man

I take you as my lawful wedded wife. I promise to be a noble and righteous *qawwam*¹, to do my best to love and to cherish you as my chosen spouse, to care for you and maintain you in sickness and in health, to stand by you during hard times and times of tragedy, to appreciate your efforts on my behalf, and to respect you and cherish you as we change, mature and grow old together

- to recognise your equal Muslim rights to mine, as a woman who had her original creation from the same single soul (Surah 4:1)
- to be aware of your different physical, emotional and hormonal characteristics and needs, and to make the appropriate efforts to understand, sympathise with and support you during your times of pain, weakness and disturbance
- to be a good household manager, and when exercising this function to act towards you with tact and discretion, and to consult your opinions
- to do my best to be a good provider, and earn adequate money so as to run my household in an honest and honourable manner
- to encourage your education and that of our children ‘from cradle to grave’, according to your talents, abilities and aptitudes
- to make easy your access to the law and justice system
- to encourage your acquiring, owning and disposing of your own property, without seeking to take it over, borrow it, or go beyond my rights
- to support you in lawful contracts, in our marriage, in business, or in any other lawful purpose
- to be supportive of you if you work outside the home in a *halal* way, in order to improve our household, or your own character or wellbeing
- to respect your wages and salary, and not expect to take them from you or to over-rule your wishes as regards their use
- to respect your considered decisions, as I expect you to respect my own, and to listen to your reasoning and explain my own position with full logical reasons when I am obliged to over-rule your decisions
- to encourage your access to *halal* social gatherings, celebrations, family visits, lectures, schools, or any other place where there is adequate protection of your reputation
- to encourage your access to the mosque and the services and wisdom of the Imam
- to be faithful to you in physical intimacy and to turn aside from temptation to any *haram* relationship
- to fulfil my duty as a husband in satisfying your own physical needs in a noble and generous way, and to acquire the skills necessary to understand and satisfy them
- to keep my body clean and pleasant (especially the areas of mouth, armpits, feet and private parts), especially when seeking physical intimacy with you

¹ Qawwam or Protector is taken from Surah 4:34

Some suggestions for the noble conduct of Muslim males: points to consider before marriage, in order to make their marriage successful

(These items are all based on Islamic sunnah, and if adhered to should go a very long way towards creating a successful and happy marriage. A Muslim woman is requested to accept her husband as head of the household, and carry out his wishes as far as possible – so long as they do not conflict with the wishes of Allah as expressed in the Qur'an and the Prophet's sunnah. If a Muslim man chooses to go against any of these items, he would in effect be going against those wishes of Allah. He should be aware that a Muslim woman has the right to place her duty towards Allah before her duty towards him, and conflict would certainly arise which could endanger, if not end, the marriage.)

I will make all my marital dealings legal, according to the law of the land, so that myself, my wife and children will have full rights, benefits and access to the protection of the law, both in marriage and should the marriage fail.

I will give her a set amount of money every week, adequate for household budgeting, and if she does not earn any money of her own, I will also allocate a set amount for her own personal use and pleasure.

If she earns her own money, I will appreciate it if she uses it for the wellbeing of the household, but I will make no personal claims upon it, or try to take it from her, or use it.

I will maintain scrupulous personal cleanliness, paying particular attention to areas that attract unpleasant body odours – mouth, armpits, feet and private parts.

I will keep my hands and fingernails clean.

I will wash my private parts *before* sexual intimacy, and perform *ghusl* after intimacy, before the next prayer.

I will never require her to co-operate in, or perform, any sexual act in her presence that is distasteful to her, or likely to cause her fear, revulsion, disgust or dismay.

I will never force myself upon her, bearing in mind her times of sickness, discomfort, exhaustion, menstruation, or post-childbirth physical and hormonal adjustment.

I will endeavour to remember those anniversaries that are meaningful to her – including such as her birthday, our wedding anniversary, the UK 'Mother's Day', the birthdays of our children and parents – and will celebrate them with little cards, gifts, meals or outings.

I will do my best to train our children to treat her with respect and consideration, and will set a noble example in this by my own treatment, respect and consideration of her.

I will remain faithful and loyal in my affections towards her, even though she will naturally age and lose her figure and skin tone, and may suffer illness.

I will do my best to listen to her points of view and understand the reasons for her wishes, and carry them out so far as it seems reasonable and *halal* for me to do so.

I will never abuse her or our children with violence, enforced sex, verbal abuse, mental abuse, disloyal talk or cruel jokes and torments, drunkenness, drug addiction, physical perversion, or enforcing a dirty and unpleasant body upon her.

I will make allowances for her natural hormonal upsets and difficult times – such as menstruation and premenstrual tension, pregnancy, childbirth and the difficult months after childbirth.

I will support her in her care of our children, from cradle to grave if they should die before me.

I will not treat her as a slave or servant, or expect her to provide unreasonable hospitality when she is exhausted, sick or suffering from hormonal upsets and depressions.

I will protect her from unwanted and unexpected visitors by encouraging such visitors to follow the Prophet's *sunnah* of invitation, arrangement, and withdrawal without resentment should the visit not be accepted.

I will offer my help in the household, either personally or by provided/paid help, if she is in need of this help either temporarily (through sickness etc), or more permanently (through her own employment outside the home, for example).

I will clothe her and our children to the same standard as I clothe myself.

I will provide food for her and our children to the same standard as I feed myself.

I will provide medical attention for her and our children to the same standard as I would expect for myself.

I will provide sexual satisfaction for her pleasure and contentment, adequate to protect the sexual safety of our household. I will do this by acquiring the necessary skills and understanding, and by consultation with her and affectionate response to her needs.²

I will be courteous and generous to her family and maintain a noble balance as regards visiting them and them visiting us etc, so as not to create any burden, jealousy or hurt.

I will endeavour to earn her respect and love by my honest and fair behaviour at work, in business and in the home.

I will not attempt to co-erce her into accepting any *haram* conduct, earnings, deals, business practices etc.

If our marriage ends in a divorce, I will continue to maintain my children adequately, as regards their food, lodging, clothing and education, and will act with compassion towards my ex-wife and see that she is safe and provided for (especially if she does not remarry). Should she remarry, my responsibility ceases.

I will not attempt a polygamous marriage unless the terms of my wife's contract to me have been deliberately broken, without any hope of reconciliation and repair, or without her full knowledge and consent, and will not attempt to gain that consent by threat, cruelty, co-ercion, blackmail, or mental pressure – on the principle that no Muslim should ever deliberately hurt another. If I insist on a polygamous marriage, I must allow my existing wife free right of divorce and continued maintenance for herself and my children.

² Hadith quoted by Imam Ghazzali – 'He is not one of us who satisfies his need of her before he satisfies her need of him.' (In other words, sexual intimacy is NOT sadaqah if performed as an animal – falling upon her and using her for satisfaction without any preparation, and then rolling over in sleep or whatever without checking her own satisfaction. Women are often accused of having enormous sexual appetite – this if most frequently because the man has made no attempt whatsoever to give her any satisfaction, which will usually take at least 15 minutes of specific sexual activity.)

Marriage Hadiths

In Encyclopaedia of Muhammad's Women Companions – Shaykh Muhammad Hisham Kabbani and Laleh Bakhtiar.

1. The case of **Kabshah bint Man Ansariyyah**. (p-354)

She was the wife of Abu Qays b. Aslat Ansari. Not mentioned by Ibn Sad.

When her husband died, her stepson claimed her in marriage as was the jahiliyyah custom. She went to the P and asked him to help her so that she would not have to marry him but could be free to marry someone else. Surah 4:19 was revealed:

‘O you who believe. You are forbidden to inherit women against their will. Nor should you treat them with harshness that you may take away part of the dowry that has been given to them, except where they have been found guilty of open lewdness. On the contrary, live with them on a footing of kindness and equity.’

He gave widows the full right to remarry anyone they wanted to marry after they had completed the waiting period.

2. The case of **Khansah bint Khudham al-Ansariyyah**. (p. 360-361)

She was the sister (?) of Unays b Qatada, wife of Abu Lubaba b. Abu Mundhir, of the Malik an-Najjar clan of Khazraj.

She accepted Islam, and the hadith was recorded by her that a father alone without his daughter's consent could not arrange her marriage.

Nafi b. Jubayr related that she was widowed, and her father gave her in marriage when she was unwilling. She went to the P, and said her father had followed his own opinion and given her in marriage without consulting her. The P said: ‘There is no marriage. Marry whom you wish.’

The marriage was revoked, and she married Abu Lubaba b. Mundhir.

Said b. Abdu'r Rahman al-Jahshi said she was married to Unays b. Qatada, who was killed at the battle of Uhud. Her father then gave her in marriage to a man she did not want, although she preferred her son's paternal uncle. The P gave control of her life to her.

3. Case of **Bint Amr b. Wahb**. (p.304).

She was the wife of Sad al-Aswad Sehmi. She was not mentioned by Ibn Sad.

One of the Companions, Sad al-Aswad, was extremely unattractive. No-one was prepared to marry his daughter to him. He informed the P, who told him to go to Amr b. Wahb, who would give him his daughter. Amr refused to accept this. However, his daughter had heard the conversation, and went to the door and told Sad that if he were really sent by Allah's Messenger she would happily and willingly marry him. Sad returned to the P and told him what had happened. The P then prayed for the girl who, in the meantime, had warned her father of Allah's punishment. Her father went to the P and asked forgiveness. They were married, but Sad was martyred in battle before he could take his bride home.

4. Case of **Tamimah bint Wahb** of Banu Malik an-Najjar of Khazraj. (p.222-3, and 420-21)

She was married to Rifa'a b. Samawel al-Qurayzi. He divorced her irrevocably, and after the waiting period she married Abdu'r Rahman b. Zubayr. She went to see the P while he was sitting with Aishah and Abu Bakr, and Khalid b. Said was at the door. She wanted release from Abdu'r Rahman, because ‘he only had something like the fringe of a garment’, she said, showing the fringe of her veil. This either meant he had a very small penis, or he was impotent and had been unable to consummate the marriage. It was said he was averse to her, and divorced her, and Rifa'a wanted to remarry her. Khalid was shocked to hear her speak to the P like this and asked Abu Bakr why he did not stop her. The P did nothing but smile. He told her that she could not return to Rifa'a until Abdu'r Rahman had consummated the marriage. He told Rifa'a that ‘she is unlawful to you until she has tasted the sweetness.’

5. Case of **Habibah bint Sahl** (p.327).

Her father was Sahl b. Thalaba, of the Malik b. Najjar clan of Khazraj, and she was the wife of Thabit b. Qays.

She married Thabit after the P had considered marrying her himself, but then decided against it in case of jealousy amongst the other Ansar women. Thabit had a violent temper, and used to beat her, and Aishah reported that he had even broken her bones. She went to the P's door in the early morning darkness, and told him she could not remain with Thabit. At that point Thabit arrived. She put on her veil when she saw he was coming towards them. She said he was the darkest, the shortest and the of the worst appearance of them all. She did not dislike him for any of his defects in morals or religion, but simply because he was so ugly. She wanted to spit in his face when he came near her. The P asked if she was prepared to return the garden he had given her as mahr? She said she was more than willing – she would give whatever he asked. He ordered Thabit to accept the garden back, and divorce her.

Later Thabit married a second wife, **Jamilah**, and was violent towards her also, and she was also allowed divorce from him.

When he sought to marry the beautiful captive Juwayriyyah, the Prophet took her for himself.

Muslim Women's Charter

(International Declaration of the Human Rights of Women in Islam)

As a Muslim Woman, Allah has granted me the rights:

- To be acknowledged as an equal created being to a man, on the grounds of our original creation from a single soul (Surah 4:1).
- To have my different physical, emotional and hormonal characteristics and needs recognised as designed by Allah, not by mistake or because women are in any way inferior.
- To have social equality with men, and not be prevented from access to mosques, halal gatherings, schools, lectures, or any other halal social function, so long as my reputation is not compromised by being obliged to be alone with a non-mahrem male.
- To have access to education 'from cradle to grave', according to my intellectual capacity and aptitude, including access to primary, secondary and further or higher education.
- To have equality of access to the law and the justice system, as regards giving evidence, accepting the validity of my word, being regarded as innocent until proved guilty, and to have equality of sentencing when proved guilty.
- To acquire, own and dispose of my own property.
- To choose my own husband, or give free consent to an arranged marriage without coercion.
- To enter into lawful contracts – for marriage, business or any other halal purpose.
- To have my *nikah* marriage supported by full legal civil marriage.
- To expect my husband to support and protect me and my children financially, and not oblige me to work to earn money against my will.
- When working outside the home, to earn, keep or dispose of my own wages or salary, and have my financial contributions towards the household recognised as sadaqah, and not be taken for granted.
- To be granted fair wages, working hours and conditions when working inside or outside my home for any employer who is a relative, or any other Muslim person.
- While accepting my husband as the head of my household, to make my own decisions and have these respected when my reasons are given.
- To divorce my husband when the marriage contract has been permanently broken through violence, abuse, neglect, infidelity, mental cruelty, desertion, unreasonable conduct, desertion of Islam, or any other unIslamic conduct.
- To refuse acceptance of a polygamous marriage if it was contracted to my hurt or dismay.
- To be released from a polygamous marriage by divorce if being denied my full Islamic rights to equality with the other wife or wives, and a happy and contented relationship with my husband in my own household.
- To be treated with respect by my children, with my husband setting them a noble example.
- To be allowed to wear modest clothing, but not forced to wear any item of clothing, either Muslim or non-Muslim, that seems oppressive to me.
- To be defended by my husband from malicious gossip, and to expect my husband never to defame or malign me himself, or ridicule me, or subject me to verbal and mental abuse.
- To expect my husband never to reveal matters of private sexual intimacy between us to the public, other than medical consultations.
- To be maintained properly during divorce proceedings, and to be treated with generosity after divorce.
- To have our children maintained by their father in marriage and after divorce.

Some Suggested Nikah Promises for a Muslim Woman

I take you as my lawful wedded husband. I promise to be a noble and righteous partner in your life, to do my best to love and to cherish you as my chosen spouse, to care for you and maintain you in sickness and in health, to stand by you during hard times and times of tragedy, to appreciate your efforts on my behalf, and to respect you and cherish you as we change, mature and grow old together.

- to recognise your Muslim rights as the head of our household, and to carry out your wishes to the best of my ability, so long as they are consistent with Islamic conduct and behaviour.
- To be aware of your different physical, emotional and hormonal characteristics and needs, and to make the appropriate efforts to understand, sympathise with and support you during your times of ill health, pain, weakness and disturbance.
- To be a good household manager, and to act towards you with tact and discretion
- To support you in lawful contracts, in our marriage, in business, or in any other lawful purpose
- To be supportive of you in your work outside the home, provided it is undertaken in a halal way, and not to seek to undermine you or make you feel small or inferior
- To respect your wages and salary, and not waste what you provide for me, or use it for dishonourable purposes
- To respect your considered decisions, as I expect you to respect my own, and to listen to your reasoning and explanation of your position, and accept it with good grace when I am obliged to let your decision over-rule mine
- To encourage your access to the mosque and the services and wisdom of the Imam, so long as it is not to the neglect and detriment of our relationship and our family wellbeing
- To be faithful to you in physical intimacy and to turn aside from temptation to any *haram* relationship
- To fulfil my duty as a wife in satisfying your physical needs in a noble and generous way, and to acquire the skills necessary to understand and satisfy them, so long as your demands are not unreasonable, or forced upon me, or not in keeping with Islamic decency
- To keep my body clean and pleasant (especially the areas of mouth, armpits, feet and private parts), especially when seeking physical intimacy with you
- To encourage your education and that of our children 'from cradle to grave' according to your talents, abilities and aptitudes
- To learn the rules of halal food provision, and protect the household food consumption from haram substances, and to do my best to cook or provide meals that are to your taste and give you pleasure
- To do my best to attend to the health of the family, by learning basic first aid, by giving adequate nutrition, by keeping our household clean and as free from germs as possible
- To do my best to have an attractive physical appearance, and to take care of my appearance, without seeking to flaunt such physical charms as I have in public
- To attend to your laundry needs and that of our children, either personally or through arranged help, and provide a regular supply of clean clothing

Suggestions for the noble conduct of Muslim women: points to consider before marriage, in order to make their marriages successful.

Contents

The purposes of marriage, in Islam -----	2
The aims of Muslim marriage-----	2
The duties and trusts of marriage-----	3
Choosing a spouse-----	4
The function of the <i>wali</i> -----	4
 Miscellaneous things you might like to know before committing to a marriage -----	6
Preparing for marriage-----	7
 Helpful Checklists	
Skills for a Good Wife-----	7
Skills for a Good Husband-----	8
Sexual Skills-----	8
The most frequent complaints-----	9
Blueprint for compatibility-----	9
 Getting legally married -----	10
Legal marriage in the UK-----	10
No force or falsehood-----	11
The Prophet's (pbuh) sunnah-----	12
Making the arrangements for legal marriage-----	13
 The Legal Formalities	
Applying for the marriage-----	13
(a) By certificate	
(b) By certificate with special licence	
(c) How far in advance may bookings be made?	
(d) Documents you will need to produce for the Registrar	
 Your marriage cannot go ahead unless the legal formalities have been completed-----	14
The validation of the marriage-----	15
Polygamous marriage-----	15
'Temporary' marriage – Mu'tah and Urfi-----	16
 Guidance for Imams	
Five Point Plan-----	18
Procedure for marriage-----	18
How to register a Mosque for Civil Marriages-----	18
Registration as a Place of Worship-----	18
Registration for the Solemnisation of Marriages-----	19
Performing the Civil Ceremony at the Mosque-----	20
The fees for the marriage Itself-----	20
How to become an Authorised Person to act in place of the Registrar-----	21
Things which must be done when including the Civil Ceremony within the Religious Ceremony-----	21
Registration-----	23
 The legal effects of marriage for the woman -----	24
New financial effects of marriage-----	25
Marital confidence and secrets-----	25
 Payments to and from the bride in Islamic Law and Tradition -----	27
Dowry and Mahr-----	27
What is a dowry-----	27
What is the Mahr?-----	28
Who owns the Mahr? Can it be refused?-----	28
How much should the Mahr amount be?-----	29
Under what conditions is it payable?-----	29

Repayment of Mahr in cases of <i>khul</i> divorce -----	30
Separation and Divorce -----	31
Attempting to bring about reconciliation -----	31
Legal possibilities to consider-----	32
Grounds for divorce -----	32
Adultery-----	32
Unreasonable behaviour -----	33
Obtaining evidence of unreasonable behaviour of any sort -----	33
Desertion or abandonment-----	34
Separation for two years -----	34
Separation for five years -----	34
Costs-----	35
How to choose a solicitor-----	35
Embarrassment-----	35
How to obtain your own undefended divorce-----	35
Repayment of mahr in cases of <i>khul</i> divorce-----	36
 Annulment -----	37
The grounds for annulment	
(a) Void marriage-----	37
(b) Voidable marriage-----	37
(c) Coercion -----	38
 Sexual abuse -----	39
What you could do to help-----	39
 Some suggested nikah promises for a Muslim man -----	41
Some suggestions for the noble conduct of Muslim males-----	43
Marriage hadiths -----	46
Muslim Women’s Charter -----	48
Some suggested nikah promises for a Muslim woman -----	49
Some suggestions for the noble conduct of Muslim women -----	50