

# Marriage with the Intention of Divorce in Islamic Jurisprudence

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## ABSTRACT

In Islamic law, each lawful or unlawful action is guided by underlying wisdoms and philosophies that may not be readily apparent to all. Upon deeper contemplation and analysis, the rationale behind the lawfulness or unlawfulness of actions reveals significant insights and benefits. This article addresses marriage with the intention of divorce, defined as a legitimate marriage wherein the husband, unbeknownst to the wife, intends to divorce her after a predetermined period. From the perspective of the objectives (*Maqasid*) of marriage, its prohibition is justified due to the lack of valid benefits within the union. However, when studied through the lens of its causes, reasons, pillars, and conditions, such a marriage, despite the husband's concealed intention for its temporary nature, meets all essential requirements without any deficiencies. This is why Islamic jurists are divided into two groups on this issue:

One group, emphasizing the apparent conditions and pillars, considers it permissible, while the other, highlighting the absence of legitimate benefits, deems it prohibited. The author's preferred opinion is that it is permissible and, in cases of necessity, may be utilized. Nevertheless, the general recommendation is to discourage this practice and advise individuals to seek continuity and permanence in marriage, barring circumstances where continuation is impossible according to Islamic legal principles.

**Keywords-** Marriage Wisdom, Divorce, Intention, Benefits, Harm.

## I. INTRODUCTION

Every lawful action within Islamic Sharia, whether pertaining to transactions or acts of worship, is underpinned by a series of wisdoms and benefits that may not be immediately evident to every individual. It becomes clear through profound contemplation and rigorous investigation, assessing reality and truth rather than succumbing to emotions and human sentiments that one may begin to grasp these underlying benefits and wisdoms. This principle is particularly applicable to the domains of Islamic jurisprudence (*fiqh*), each of which encompasses myriad wisdoms and benefits often beyond the comprehension of ordinary individuals. In determining the legitimacy of actions, Islamic Sharia has preemptively considered every conceivable condition and circumstance for humanity, ensuring that temporal and spatial contexts are meticulously accounted for in their application.

The Importance of the Topic DOWIn Islamic Sharia, each subject carries its own significance based on the needs of its domain; however, certain topics necessitate more extensive discussion and investigation due to societal needs and urgency. One such topic is marriage with the intention of divorce. For instance:

1. Addressing family issues is of utmost necessity in contemporary circumstances, where adversaries of Islam employ various deceptive schemes to undermine the fabric of the family.
2. A significant threat to the foundation of the family is the false promises made to Muslim women and girls by individuals who exploit their gentleness and naivety. These individuals enter into marriage solely to satisfy their desires, without any intention of maintaining the relationship. Therefore, it is imperative to explore what measures Islamic Sharia has in place to prevent such actions, necessitating thorough and scientific examination.

3. Some individuals draw comparisons between this type of marriage and temporary marriage (mut'ah), warranting scholarly investigation from this perspective.
4. Despite the aforementioned challenges, there are occasionally some positive aspects to this issue that can play a constructive role in resolving familial and social matters. For example, a young man who travels abroad for trade, studies, or similar purposes may find it challenging to enter into a permanent marriage. In the absence of marriage, he may risk engaging in sinful acts; hence, resorting to this type of marriage to maintain his chastity and avoid sin could be beneficial. Thus, this subject requires further study and research.

## II. RESEARCH QUESTIONS

### Main Questions

1. Is marriage with the intention of divorce permissible in Islamic jurisprudence or not?
2. Is the intention of divorce at the beginning of a marriage contradictory to its permanent nature?

### Sub-Questions

3. Does this action violate the "firm and solemn covenant" (mithaq ghalidh) of marriage?
4. Could this type of marriage be considered a form of moral betrayal?

## III. DEFINITION OF DIVORCE

In linguistic terms, "ṭalāq" (with a "faḥa" on the "ṭā") is a noun derived from the verb taṭliq, meaning "to release" or "to let go." In the terminology of Islamic jurists, it refers to the dissolution of the marital bond through a specific verbal expression (Kashaf Istilahaat al-Funoon, under the root "ṭ-l-q").

Legally, divorce is the removal of the marital bond established between a husband and wife through specific words (Majma' al-Lughah al-Arabiyyah al-Mu'āsirah, under "ṭalāq").

### Definition of Intention (Niyyah)

Linguistically, niyyah denotes will, determination, intent, or purpose—what one holds in the heart as a form of intent (Dehkhoda Dictionary).

In legal terminology, it is defined as: "The heart's inclination towards something perceived as bringing benefit or avoiding harm, whether in the present or future" (Al-Ashbah wa'l-Naza'ir, by Suyuti, p. 30).

### Definition of Marriage with the Intention of Divorce:

Marriage with the intention of divorce occurs when a man marries a woman intending to divorce her after completing his studies, residency, or fulfilling his need (Marriage with the Intention of Divorce in Light of the Evidence of the Qur'an and Sunnah and the Objectives of Islamic Sharia, p. 43). This type of marriage meets all the pillars and conditions of the contract but harbors the husband's intention to divorce

after a specified or unspecified period (e.g., after completing studies or achieving a particular goal) (Decisions of the Islamic Fiqh Council, Rabat-Makkah, p. 106).

In summary, it is a marriage that fulfills all conditions and pillars—offer, acceptance, dowry, presence of witnesses, guardian, etc.—but the husband intends to divorce his wife after a period known only to him.

### The Difference between Marriage with the Intention of Divorce and Temporary Marriage (Mut'ah)

1. In mut'ah marriage, the contract is based on an agreement between the two parties for a specified duration, with separation occurring automatically at the end of that period. In contrast, in marriage with the intention of divorce, separation only occurs through a ba'in divorce (irrevocable divorce) and the obligatory waiting period ('iddah).
2. In mut'ah marriage, the woman has no rights except for compensation (mahr or dowry). Conversely, a woman in a marriage where the husband intends to divorce her is entitled to inheritance rights, financial support during the waiting period, and all other rights afforded to a wife over her husband.
3. The waiting period for a divorced woman in a marriage where the man concealed his intention to divorce is the same as that for other divorced women. However, in mut'ah marriage, the woman has a specific waiting period after the expiration of the marriage, differing from that of a divorced woman or widow.
4. A marriage with the intention of divorce can continue if the man chooses to do so and changes his intention. However, in mut'ah marriage, neither the man nor the woman has the right to continue the relationship after the set period, with separation becoming obligatory immediately after the agreed-upon time.

## IV. CLARIFICATION OF THE DISPUTE

If, at the inception of the marriage contract, the man explicitly stipulates that he will divorce the woman at a specified time, it is regarded as mut'ah marriage and is invalid. However, if he privately harbors this intention without explicitly mentioning it in the contract, it differs from mut'ah marriage. Opinions of classical and contemporary scholars on this matter vary, and it will be examined below.

### First Topic: The Ruling on Marriage with the Intention of Divorce

**First Point:** The View of Those Who Permit It: The Hanafi, Maliki, Shafi'i, and one view of the Hanbali schools (as reported in al-Mughni and its commentary) maintain that this type of marriage is valid as it fulfills all the essential pillars and conditions of the marriage contract, and the intention of divorce does not invalidate

it. The contract remains free from conditions that would nullify the marriage. Furthermore, a person may intend something without acting on it, or act on something without having initially intended it. Therefore, the intention of divorce does not negatively impact the contract, and mut'ah marriage is not established by mere intention but requires the verbalization of the condition. Consequently, this type of marriage is not considered mut'ah.

#### A. The View of Shafi'i Jurists

Imam Al-Shafi'i, in his book *Al-Umm*, states: "If a man enters a city and wishes to marry a woman, with the intention of staying with her only for the duration of his stay—whether for one, two, or three days—whether this intention is held solely by the man, solely by the woman, or by both parties, even if the woman's guardian shares this intention, as long as the marriage contract is made unconditionally and without stipulations, the marriage is valid. Sometimes a person intends something but does not act on it, and sometimes they intend something and act upon it, so the action is separate from the intention." Imam Al-Shafi'i, may Allah have mercy on him, adds: "Even if there were prior discussions and the man promised the woman that he would stay with her only for a few days, for the duration of his stay in the city, or until he had been intimate with her—whether this promise was made with an oath or without—it makes no difference. I consider such discussions to be makruh (disliked), but I focus on the contract itself. If the contract is unconditional and without stipulations, it is valid, as it grants both spouses their marital rights. However, if the contract is made with such a stipulation, it is invalid and akin to mut'ah marriage." (*Al-Umm* by Imam Al-Shafi'i, vol. 5, p. 86, *Al-Fikr* edition) Imam Al-Nawawi, may Allah have mercy on him, states: "Qadi Iyad indicated consensus among jurists that if a person marries a woman unconditionally, intending in his heart to stay with her only for a short period, the marriage is valid and lawful, and it does not resemble mut'ah marriage. This is because mut'ah marriage involves an explicit condition in the contract." However, Imam Malik, may Allah have mercy on him, remarked: "This practice is far from human decency," while Imam Al-Awza'i viewed it as mut'ah marriage, saying: "There is no good in it." (*Sharh Al-Nawawi on Sahih Muslim*, vol. 3, p. 529)

#### B. The View of Hanbali Jurists

Imam Ibn Qudamah, may Allah have mercy on him, in his book *Al-Mughni*, asserts: "If a man marries a woman without any conditions but intends to divorce her after a month or upon completing his task in that city, the majority of scholars consider this marriage valid. Only Al-Awza'i regarded it as mut'ah marriage. The correct opinion is that this marriage is valid, and the internal intention does not affect it. The man is not obligated to intend to keep his wife permanently; if they agree to stay together, fine, but if not, he may divorce her." Sheikh Dardir, in his commentary on Sheikh

Khalil's *Mukhtasar*, explains: "The reality of mut'ah marriage, which is always invalid, is that a specific time period is mentioned in the marriage contract either by the woman or her guardian. However, if this is not mentioned in the contract and the husband does not inform the woman, and he only harbors the intention of separation after some time in his heart—even if the woman or her guardian become aware of this—there is no harm in it. This practice is beneficial as it provides assistance to travelers." (*Al-Mughni*, vol. 7, pp. 179-180)

**Question** to Sheikh al-Islam Ibn Taymiyyah – May Allah have mercy on him – as recorded in *Fatawa al-Kubra*: A man who travels between cities, staying in each city for one or two months, fears falling into fornication. Is it permissible for him to marry during his stay in a city, with the intention to divorce the woman once he resumes his travel, and give her her due rights? Is such a marriage valid or not?

**Answer:** He may marry, but the marriage must be unconditional, without setting a time limit. This means that if he wishes, he can keep her, and if he wishes, he can divorce her. If he is absolutely determined to divorce her at the end of his stay, this is makruh (disliked), and there is a difference of opinion about the validity of such a marriage. However, if his intention is to keep her if he likes her, and divorce her if he does not, then this is permissible. But if a time limit is stipulated, this is a mut'ah marriage, which the four imams and others unanimously agree is prohibited. (*Majmu' al-Fatawa*, vol. 32, p. 107)

#### C. The View of Hanafi Jurists

Regarding the permissibility of marrying with the intention of divorce, *Fatawa al-Hindiyya* states: If a man marries a woman unconditionally but intends in his heart to live with her for a specific time and then divorce her, the marriage is valid. This is also mentioned in *Sharh Kanz al-Daqa'iq*. Furthermore, if a man marries a woman with the intention of divorcing her after a month, this is permissible, as noted in *Bahr al-Ra'iq*, a commentary on *Kanz al-Daqa'iq*. (*Fatawa al-Hindiyya*, vol. 1, p. 283)

#### *Muhammad Taqi Usmani elaborates on this matter:*

A Muslim student, male or female, who marries without the intention to continue the marriage, but rather with the plan to end it after completing their studies and returning to their permanent residence—such marriages are typically valid, provided all the required conditions for the marriage contract are met, and the contract terms are free of any time limitation. In such cases, the marriage bond is formed, and the marital relations are lawful. The intention of separating after graduation, which one or both spouses may harbor, does not affect the validity of the marriage. However, since marriage in Islamic law is regarded as a permanent contract, the couple should aim to continue their shared life and not separate without genuine necessity. Undoubtedly, concealing the intention of separation from the outset conflicts with the goal of marriage, which is the

continuity of shared life. Religiously, such an intention is not free of dislike (*karahah*), and thus such marriages should only be pursued in cases of necessity, where a person is at the peak of desire and sees no other escape from falling into unlawful fornication. (Bahuth fi Qadaya Fiqhiyya Mu'asirah, translation by Muhammad Reza Rakhshani, p. 344)

### **Section Two: The View of Opponents**

**First Point:** The Opinions of Jurists Shafi'i scholars, Hanbali jurists (in the correct opinion of their school), and Imam al-Awza'i hold that this type of marriage is invalid, categorizing it as a form of *mut'ah* marriage. Al-Bahram, a Maliki scholar, concurs, especially if the woman becomes aware of this intention. This is because anything whose explicit condition would invalidate a marriage, its concealment renders it *makruh* (disliked). Hence, to avoid disagreement, deeming it *makruh* is preferable and more appropriate. Furthermore, marriage with the intention of divorce contradicts the principles of permanence and continuity, evident from the prohibition of temporary and *mut'ah* marriages, on which all Sunni jurists agree.

Imam Nawawi, may Allah have mercy on him, asserts that *Nikah mut'ah* is invalid, whether tied to an unspecified duration or a defined period, thus indeed classifying it as *mut'ah* marriage. Sheikh Abu al-Qasim al-Kharqi, a Hanbali scholar, states that if a person marries a woman with the condition that he will divorce her at a specified time, the marriage does not take effect. Additionally, it is established in the noble hadith that the Prophet, peace and blessings be upon him, instructed people to fear Allah in their treatment of women: "Fear Allah regarding women, for you have taken them as a trust from Allah, and their private parts have been made lawful to you by the word of Allah." This type of marriage bears a strong resemblance to *mut'ah* marriage, as the legal principle states: "What is customary is equivalent to a stipulated condition."

Furthermore, such marriages involve deceit and trickery, often tarnishing the reputation of Islam and its values through reliance on cunning and deception. This directly opposes the purposes and objectives of marriage in Sharia, misrepresenting Islam to the world and making it an un-Islamic and wrongful act. Moreover, the greatest covenant emphasized by Allah Almighty in the Qur'an, urging adherence to it, is the covenant of marriage. As Allah says: "And they have taken from you a firm covenant." (Surat An-Nisa', 4:21), which is translated as: "Women have taken from you a firm covenant through the marriage contract."

Therefore, marriage with the intention of divorce, especially when it culminates in divorce, constitutes a violation of this firm covenant (*mithaq ghaliz*) and is condemned by Islamic law. How can an act condemned by Sharia be deemed permissible?

### **D. The View of the Islamic Fiqh Academy**

Despite some scholars permitting this type of marriage, the Islamic Fiqh Academy opposes it due to its inherent

deception and trickery. Were the woman or her guardian aware of the intention, they would reject the contract. Furthermore, this type of marriage leads to significant moral corruption and serious harm, tarnishing the reputation of Muslims. (Resolutions of the Islamic Fiqh Academy, Makkah, p. 106)

### **E. The Preferred View**

The contemporary juristic disagreement on the subject of marriage with the intention of divorce centers on two main points:

1. The fulfillment of the necessary pillars and conditions: This perspective considers the marriage permissible.
2. The deceptive nature of the intention: This perspective deems the marriage prohibited.

Upon examining the arguments of both groups, the discussion can be analyzed as follows: The proponents' arguments are robust and contextually valid, affirming the marriage's validity. Even opponents have not claimed the marriage is invalid.

In my view, the initial stance of prohibition is correct. However, for those who have entered such a marriage, it is advisable to fear Allah regarding their spouse, rectify their intentions, fulfill all marital rights, and refrain from proceeding with the intention of divorce.

## **V. CONCLUSION THE DISCUSSION YIELDS SEVERAL CONCLUSIONS**

1. Every lawful action in Islamic law, whether in transactions or acts of worship, has wisdom and benefits not always easily comprehensible.
2. Understanding these wisdoms requires deep contemplation and precise examination, not merely emotions.
3. Islamic law considers all conditions and circumstances in determining the permissibility of any act.
4. Actions unrecognized by Islamic law typically entail harm or detriment.
5. In any legal matter, two important factors are: the reason (basis for prohibition or permissibility) and the wisdom (philosophy of the ruling).
6. The permissibility or prohibition of a ruling does not necessarily depend on its wisdom.
7. The prevailing view among scholars is that marriage with the intention of divorce is technically permissible but not devoid of *makruh* (dislike). Thus, it should be initially prohibited; however, if undertaken due to urgent necessity, parties should be advised to respect the rights of the other party and shift from the intention to continue the marriage.
8. Marriage with the intention of divorce is not *\*mut'ah\** marriage; rather, there is a clear distinction between the two. This is because someone who

marries with the intention of divorce may change their intention, leading to the continuation of the marital relationship and improvement of circumstances.

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