

MARRIAGE NEGOTIATIONS IN ISLAMIC LAW - TOWARDS A BETTER GOOD?

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ABSTRACT

Negotiation is the process of reaching an agreement by the process of a detailed discussion between the parties. It is an important component of ADR and is increasingly adopted by people and corporations in daily life both in their commercial and domestic affairs. It will be wrong to consider negotiation is a compromise as both the parties to the negotiation. In a negotiation, each person gets something in exchange for giving something their partner wants. In compromise, neither partner gets what they want. They often settle on some middle ground between two ends of an issue, with the result that neither is satisfied with the solution.ⁱ Therefore, negotiation agreements are better than compromise as both the parties get what they want but on negotiated terms. Both the parties feel that they have an equal say in the agreement, and they do not feel deprived of their satisfaction.

This paper examines the issue whether negotiations in marriage under Islamic law can improve the positions of women to bargain a better living. It establishes how a smart negotiation before entering into a marital contract can uplift the social status of women both during their subsistence or on dissolution of their marriage by analyzing various techniques of negotiations.

INTRODUCTION

It has been proved that negotiation settlements work well in relationship matters in ensuring a healthy and long-term bond where each partner gets something, they really want in exchange for giving something their partner really wants. There is an opportunity for each partner to give something to the relationship and expect something back in return and that makes them feel more committed to their partner. As both the partners pre-requisitely know what the other

partner wants, they tend to treat each other better and feel better about their relationship. It is because of this that marriage settlements are considered very important in setting a marriage on a right path. It is therefore important that negotiation agreements should be entered before marriages to ensure its long sustenance.

LITERATURE REVIEW

Marriage negotiations are common in Islamic law where marriage is treated as a contract. Islamic marriage contracts are very practical tools that allow couples to engage in negotiations to ensure their major goals and philosophies are in line.ⁱⁱ In addition to financial matters, even details of married life considered important by the parties involved is up for negotiation. It is found that some mothers will even go so far as to negotiate whether the bride should use contraception the first year or have a child and then use contraception.ⁱⁱⁱ Many scholars have argued that marriage negotiations have not only encouraged women participation in public places but have also motivated them to exercise their financial rights granted to them in their marriage contracts.

Hooma Hoodfar, after examining the condition of women in low income Egyptian communities have propounded that “Marriage negotiations have also been expanded to include areas such as the right to education, access to transport, or participation in the labour market. In so negotiating, women have overcome some juridical restrictions and improved their positions”.^{iv}

Mulki Al-Sharmani, while analyzing the dominating position of man in seeking divorce under Islamic Law says that, ‘The husband has unilateral right to repudiation and polygamy, while the wife’s access to divorce is restricted; and is secured either judicially on the grounds of specific fault-based reasons, which differ from one school to the other, or through negotiation with the husband, often involving her forfeiting her financial rights’.^v

DISCUSSION

It is a well settled fact that dowry in marriages are common. Even though it has been declared illegal in various countries, instances of dowry haven’t declined much. Some consideration

always flows from the bride's family to the groom no matter whether it is given wilfully or under pressure. In some areas, dowry is treated as a custom where unless a heavy consideration flows from the bride's family, the marriage is treated incomplete, while in some communities, dowry is treated as a sign of pomp and show. It is, however, important to note that Islam through no religious authority mandates dowry. This custom has been developed since historical times where money and other goods were given to the bride in order to support the newly wed couples. Hence, in such scenarios, where marriage consideration from the bride's side is widespread, it is important that the bride's family negotiate a marriage agreement to put them in an equal footing with the groom's family, to also lift the position of their daughter in the marital bond and to leave some recourse for the bride in case of dissolution of marriage.

Marriage negotiations in Islamic law have two components: first, the material contribution of each side to the marriage and the new household; and second, other relational arrangements between the bride and the groom after the marriage. For the most part, the first includes the size of the bride's mahr^{vi}. Mahr is a monetary gift promised by the groom to the bride at the time of marriage. It is mandatory and is fixed before signing the marriage contract. It plays a crucial role in divorce cases. A husband must pay mahr whenever his wife requests it or when he initiates a divorce.

The second component which are the relational arrangements, includes the responsibilities expected by the groom in the marriage, conditions as to first pregnancy, continuing job after marriage etc. These two components play a vital role in deciding the position of women both during their subsistence or on dissolution of their marriage and are negotiated through detailed discussions.

The negotiations are usually carried out by the parents of the bride and grooms in the presence of elderly people in the family, the mother of the bride plays an important role in the negotiation. As the mother is closer to her daughter and knows her personal needs and requirements from a marriage, she is expected to note the details to be discussed in the negotiation. She may not actively participate in the negotiations but conveys her opinions to the husband. During formal discussions the bride's father, while making his wishes known, chooses his words very carefully, remaining non-committal until later in the negotiations.^{vii}

The negotiations start by listing the wants and requirements of each of the parties, the groom starts revealing information about his family and himself, such as the details of his education, job, income, worldly possessions, and future plans on which the groom's father specifies his desired amount of dowry. The bride's father on the other hand, indicates his bottom line in terms of the maximum amount that he can pay as dowry. However, neither side expects any concrete agreement from this and leaves scope for further negotiation.

When the final negotiation takes place, the groom's father specifies the amount to be paid as dowry and other items to be given from the bride's family as the best alternative to the negotiated agreement (BATNA). The bride's father again negotiates the amount to be paid as dowry to the most of his efforts but in order to reach a zone of possible agreement (ZOPA), intends to keep a large amount to be paid as mahr in case of dissolution of marriage and declares the property and other non-perishable items given by him as dowry in the name of his daughter in the marriage contract.

CONCLUSION

It can thus be concluded that marriage negotiations not only result to act as a deterrent for divorce and polygamy for grooms but also reminds them to treat their wives well. It leads to deferred marriage which excludes the possibility of parents forcing to marry their daughter at a very earlier age. It also encourages potential grooms, who normally live with their parents and have few housekeeping expenses, to work hard and save money so that they can begin married life with a higher standard of living. As the man works hard to make an earning so that that he is able to marry, he develops a vested interest in trying hard to make the marriage work. Especially since if he divorces his wife, he will lose all that he worked for, because it all belongs to the woman. In this way, too, men who are of modest means are effectively banned from marrying a second wife because to provide all these items again takes them forever. Given that divorce, even within the revised version of family law, is so much easier for men than for women, women tend to protect themselves through these strategies while simultaneously paving the way for a higher standard of living.^{viii}

REFERENCES

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- ^{vi} *Supra* note 3
- ^{vii} *Id.*
- ^{viii} *Id.*