

108806 - Stipulating Conditions in Marriage Contracts in Islam: Allowed?

the question

I am a young man who is engaged and is going to get married. I've heard that at the time of the marriage contract, the wife can stipulate conditions in the contract. My question is: what are the limits of these conditions? What happens if the conditions are broken? Is it possible to give the wife herself the right to divorce (talaq) if I break these conditions? Is it possible for the condition to be, for example, that I will not take another wife and in the event that I do take another wife she will be divorced from me?

I hope you can advise and explain this matter in detail. May Allah reward you with good.

Summary of answer

1- The basic principle with regard to the conditions stipulated by both partners in the Islamic marriage contract is that it is a valid condition that must be fulfilled, and it is not permissible to break it.

2- If a wife stipulates that her husband should not take another wife, this is permissible. If the husband breaks this condition, his wife does not become divorced as a result of that, rather she has the right to annul the marriage.

Detailed answer

Praise be to Allah.

Stipulating conditions in marriage contracts in Islam: Permissible?

The basic principle with regard to the conditions stipulated by both partners in the [marriage contract](#) is that it is a valid condition that must be fulfilled, and it is not permissible to break it. The proof is that the Prophet (blessings and peace of Allah be upon him) said: “The condition which most deserves to be fulfilled is that by means of which intimacy becomes permissible for you.” Narrated by al-Bukhari (2721) and Muslim (1418).

Shaykh Ibn ‘Uthaymin (may Allah have mercy on him) said:

“The basic principle with regard to conditions in the marriage contract is that they are valid, unless there is proof to show that [they are not valid](#) . The evidence for that is the general meaning of the evidence which speaks of fulfilling covenants:

“O you who believe! Fulfil (your) obligations” [al-Maidah 5:1]

“And fulfil (every) covenant. Verily, the covenant will be questioned about” [al-Isra 17:34]

And in the hadith narrated from the Messenger (blessings and peace of Allah be upon him) it says: “The Muslims are bound by their conditions, except a condition that forbids what is permissible or permits what is forbidden.” Narrated by al-Tirmidhi (1352). And he (blessings and peace of Allah be upon him) said: “Whoever stipulates a condition that is not in the Book of Allah it is not valid, even if he stipulates a hundred times.” Narrated by al-Bukhari (2155) and Muslim (1504).

To sum up, the basic principle with regard to [conditions](#) is that they are permissible and valid, whether they are to do with marriage, buying and selling, renting, pledges or mortgages, or awqaf. The ruling on the conditions that are stipulated in contracts, if they are valid, is that they must be fulfilled, because of the general meaning of the verse (interpretation of the meaning):

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“O you who believe! Fulfil (your) obligations” [al-Maidah 5:1].” (Al-Sharh al-Mumti’, 5/241
(Egyptian edition)

For examples of that, please see the answers to questions number [20757](#) and [10343](#)

Stipulating not to take a second wife: Permissible?

With regard to the woman stipulating that the husband should not take a second wife, the opinion of some scholars is that this condition is permissible, and if the husband breaks it, the wife has the right to annul the marriage and take her dues in full.

Ibn Qudamah (may Allah have mercy on him) said:

“If he stipulates that he will not take her out of her house or her city, or that he will not travel with her or will not take another wife, then he is obliged to fulfil that, and if he does not do so, then she has the right to annul the marriage. This was narrated from ‘Umar, Sa’d ibn Abi Waqqas and ‘Amr ibn al-‘As (may Allah be pleased with them).” (Al-Mughni, 9/483)

Shaykh Ibn ‘Uthaymin (may Allah have mercy on him) said:

“If she stipulates that he should not take another wife, this is permissible. Some of the scholars said that it is not permissible, because it is restricting the husband in something that Allah has permitted to him, and it is contrary to the Quran in which it says (interpretation of the meaning):
“then marry (other) women of your choice, two or three, or four” [al-Nisa 4:3].

It may be said in response to that that she has a reason to ask him not to marry another wife and she is not transgressing against anyone. The husband himself is the one who is giving up his right; if he has the right to marry more than one, he is giving it up. So what is to prevent this condition being valid?

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Hence the correct view with regard to this matter is the view of Imam Ahmad (may Allah have mercy on him), which is that this condition is valid.” (Al-Sharh al-Mumti’, 5/243)

It should be noted that if the husband breaks this condition, his wife does not become divorced as a result of that, rather she has the [right to annul the marriage](#) , and she may either annul it or give up the condition and accept what her husband has done, and remain as his wife.

Shaykh Salih al-Fawzan (may Allah preserve him) said:

“Among other conditions that are valid in marriage is if she stipulates that he should not take another wife. If he fulfills the condition (all well and good), otherwise she has the right to annul the marriage because of the hadith, “The condition which most deserves to be fulfilled is that by means of which intimacy becomes permissible for you.”

Similarly, if she stipulates that he should not separate her from her children or parents, this condition is valid and if he breaks it, she has the right to annul the marriage. If she stipulates that her mahr should be increased or that it should be in a specific currency, the condition is valid and binding, and he has to fulfill it, and she has the right of annulment if it is broken.

In that case, she has the choice and may decide any time she wants and may annul it whenever she wants, so long as there is nothing on her part to indicate that she accepts it if she knows that he has gone against what was stipulated; in that case she would no longer have the option.

‘Umar ibn al-Khattab (may Allah be pleased with him) said to the one who he ruled was obliged to fulfill what his wife had stipulated, when the man said, “Divorce us in that case,” ‘Umar said: It is a must to fulfill the conditions, because of the hadith, “The believers are bound by their conditions.”

Al-‘Allamah Ibn al-Qayyim said: It is obligatory to fulfil these conditions which are the most deserving of being fulfilled. This is what is implied by shari’ah, reason and sound analogy, if the woman did not agree to become a man's wife except on these conditions, and if it were not

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obligatory to fulfil them, then the marriage contract would not be based on mutual agreement, and it would be making something obligatory upon her that Allah and His Messenger have not made obligatory.” (Al-Mulakhkhas al-Fiqhi (2/345, 346)

And Allah knows best.