

# Matrimonial Contract in the Religion of Islam and Zoroastrianism: A Family Law Study

Dr. Kulsoom Fatima \*, Bilal Hussain \*\*, Dr. Alvina Afsar\*\*\*

\*Assistant Professor, Department of Mechanical Engineering, School of Mechanical and Manufacturing Engineering (SMME), National University of Sciences and Technology (NUST), H-12 Campus, Islamabad.

\*\*Graduate Research Assistant (GRA)/PhD Research Scholar, Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM)

\*\*\*Lecturer, Department of Islamic Learning, Faculty of Islamic Studies, University of Karachi, Karachi

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## ABSTRACT

Marriage, recognized as a significant catalyst for human growth and societal progress, is intrinsically linked to religious rituals. This research compares matrimonial contracts in the family laws of Islam and Zoroastrianism, with a focus on marital contract formation, spouse rights, and familial implications. It is a comparative study that aims to explore the similarities and differences between Islam and Zoroastrianism in matrimonial relationships, highlighting the shared heritage between the two religions. Notably, both religions emphasize essential elements of the marital contract, including offer and acceptance, representation, witnesses, and bride-wealth. Furthermore, they address several contemporary issues such as the age for marriage, consent from guardians, consent of spouses, and the principle of equality, among others. Drawing upon primary sources, religious texts, and scholarly interpretations, this rigorous investigation delves into the historical evolution and practices of marriage contracts in Islam and Zoroastrianism, contributing to a deeper understanding of the significance of marriage within these religious traditions.

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## Introduction

Marriage is a traditional practice for a lawful coital relationship throughout human history. To ensure the continuity of the human race and maintain societal stability, marriage has been deemed lawful. Besides, it holds a sacred status akin to worship and serves as a human necessity. In fact, matrimonial relations establish the first social institution in society, termed the family.

Family is a fundamental human social unit that fosters relationships between individuals and contributes to society. Religion and belief systems play a pivotal role in shaping human values, norms, and ways of life. Naturally, the existence of two distinct genders, male and female, has given rise to bilateral relationships. Across the globe, numerous divine and non-divine

religions and belief systems offer unique teachings for societal living and civilization.

Among the Semitic religions, the major ones include Judaism, Christianity, and Islam. Islam is rapidly expanding worldwide and is esteemed for its moderation, enlightenment, and emphasis on justice and fairness. In the non-Semitic religions, Zoroastrianism shares commonalities with Semitic faiths. Zoroastrianism is an ancient religion originating in Persia (Iran) around 2,000 BCE. Present-day Zoroastrian communities are found in India, Pakistan, Iran (World Factbook 2008, p. ix-xiii) and diaspora communities in North America, Canada, Britain, Australasia, and the Middle East (Aramesh, 2019). Zoroastrianism was once the dominant religion in Iran but declined after the Arab conquests. It is still officially recognized in Iran along with Sunni Islam.<sup>1</sup> The religion is thought to have influenced the Shi'ite mut'a practice in Iran (Hjerrild, 1995, p. 53).

Some scholars argue that Islamic law inherited certain aspects from Zoroastrian legal jurisprudence due to their shared sources of law, as found in Zoroastrian law: (1) The Avesta, the holy book of Zoroastrians; (2) oral law; (3) the consensus of the sages; and (4) the judicial practice of the courts (kardag) (Janos, 2005, p. 291). Additionally, insights from MHD suggest that Sasanian jurisprudence, especially in

family law, did not adhere to comprehensive legal norms but rather relied on the opinions of prominent jurists (Emrani, 2011, p. 50).

Marriage has been an essential social institution since ancient times, valued and practiced in diverse cultures worldwide. Rooted in the union of Adam and Eve, this sacred bond between a man and a woman has persisted throughout history, adapting to the customs of different civilizations. The stability of any society relies on strong families, with the foundation being the unity between spouses. In this research, we embark on a comparative exploration of matrimonial contracts in Islam and Zoroastrianism, seeking to understand their historical and cultural significance and the roles they play in shaping the rights and responsibilities of married partners.

As Abu Rayhan al-Biruni articulately asserts, "No nation can survive without marriage." This observation underscores the crucial role of marriage in human society, transcending mere physical desires and serving as a means to control base instincts for the greater good of individuals and families (Sachau, 2002, p. 374). The comparison to animals living in pairs emphasizes the necessity of marriage as an institution that fosters support, protection, and stability. Al-Biruni's perspective highlights the broader importance of

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<sup>1</sup> Article 13 of the Constitution provides that Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious

rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.

marriage in maintaining societal order and harmony.

Additionally, Syed Abul Ala Maududi's insight further emphasizes the enduring significance of marriage as a fundamental human need. His observation that wise and intelligent people are still perplexed by establishing relationships between men and women underscores the complexities involved in creating harmonious social bonds (Mododi, 1989, p. 10). This reaffirms the importance of understanding how marriage is treated in religious traditions like Islam and Zoroastrianism. By examining their matrimonial contracts, we gain valuable insights into how these religions address the essential human need for marriage and its implications for spousal rights and responsibilities.

There are finite studies on comparative views on Islamic and Zoroastrian family laws in the academic inquiries. But there are number of myths regarding Zoroastrian marriage contract for instance, next-of-kin marriage was not only absolutely prohibited by Muslims, but also, just after a few centuries of Islamic era, Zoroastrian communities denied the existence of such practice in their history.

In practice, Islamic law extended the designation of "People of the Book" (ahlal-kitab) to encompass various religions, including Zoroastrianism, Buddhism, and Hinduism. As a result, these religious communities were able to coexist under Islamic rule for centuries and continue to

thrive today. Muslims permitted non-Muslim populations under their governance to observe their own legal systems unless it posed a threat to protected basic rights. For instance, when Egypt was conquered, 'Amr ibn 'As allowed the Egyptians to follow their customary laws, except for the practice of sacrificing girls to the Nile for more water (Senturk, 2005, p. 13). Similarly, in India, Hindus were permitted to practice their laws, except for the custom of sati, which involved burning widows with their deceased husbands' bodies (Sharma, 1972, pp. 42-44; Mubed, 1993, p. 7). Similarly, among Zoroastrians in Iran, marriage between brothers and sisters was prohibited as it was deemed to violate the protection of the family. (Senturk, 2005, p. 13).

In this comparative study, we seek to shed light on the shared heritage and distinctive features that define matrimonial relationships within Islam and Zoroastrianism. Understanding the historical and cultural context surrounding marriage in these religious traditions enriches our comprehension of family laws and societal dynamics, contributing to a deeper understanding of the significance of marriage in human civilization.

### **The Concept and Significance of Marriage in Islam**

Throughout human history, marriage has been a universal institution, found in every community and culture. Its purpose is to sanction the sexual relations between a man and a woman, establishing a faithful family

through the fulfillment of their obligations under the marriage contract. In the Islamic context, marriage involves the union of the bride and groom as husband and wife, with witnesses present to seek God's blessings, fostering a bond of love and compassion between the couple.

The family holds a central and indispensable role in sustaining human society, deeply ingrained in all aspects of life, including cultural, economic, and political domains. In Islam, the family institution is revered and highly esteemed, as it unites a man and a woman to lead their lives together in adherence to Islamic principles and guidelines. They become inseparable, much like a garment cling to the body, with the husband's honor intertwined with his wife's, and vice versa. Together, they share in each other's joys and challenges, supporting one another through prosperity and adversity (Ebrahimi, 2005, p. 315-354).

The Primary Source for Islamic law, the Qur'an generally promotes the institution of marriage, it advises those who lack the means to establish a household to practice temporary abstinence until their circumstances improve. The Qur'an emphasizes the solemnity of marriage, even though it is essentially a contract that can be dissolved through divorce or dissolution. In classical Muslim law, three crucial conditions are necessary; without any one of them, the marriage is considered invalid from the outset. These conditions include the consent of both parties, a specified dowry agreed upon by the husband and wife, and the

presence of two witnesses. The marriage contract allows the prospective wife to incorporate conditions such as the level of her maintenance, the stipulation that her husband will not marry another wife, and even the reservation of her right to initiate a divorce (Rahman, 1980, p. 451–465).

Contemporary Muslim legal jurists defined marriage as is a lawful relationship between a man and a woman ensuring their right to enjoy each other sexually. And Some Shariah jurists stated that it is a contract giving legitimacy to each of the spouses to enjoy the other (Abdul Hamid, 1985, p. 10).

Marriage in Classical Fiqhi texts is structured as a contractual exchange with well-defined terms and consistent legal consequences. Drawing inspiration from a sales contract, its fundamental elements comprise an offer presented by either the woman or her guardian, followed by the man's acceptance, and the settlement of the dowry. The dowry, which can be a monetary amount or any valuable asset, is paid or promised by the husband to the bride before or after consummation (Z. Mir-Hosseini, 2003, p. 4-5).

The Holy Qur'an holds a set of verses on family institution and marital matters even revealed a complete chapter with title of "Women". There are six permanent chapters expounding on marital matters; Baqra (Cow), Nisa (Women), Noor (Light), Ahzab (Congregation), Talaq (Divorce), and Tahrim (Prohibition). The most fundamental source of Islam, the Holy Quran, has more than one

third instructions on family matters. These texts have detailed rulings for family matters including matrimonial relationship, marital contract, and rights and duties etc (Hussain, Qazi, Hamid, & Altaf, 2021, p. 541-551).

In Islam, the concept and importance of marriage hold paramount significance. Regarded as a sacred institution, marriage is the foundation of human life in every society. The Quran describes marriage as a solemn covenant, (Quran 4:21) while Islamic jurisprudence considers it as one of the essential purposes of the Shariah (Tahir bin Ashur, 2011, p. 139, 273).

Marriage in Islam is viewed as a contractual agreement that not only permits permissible sexual relations between a man and a woman but also ensures the legitimacy of offspring and establishes the legal rights and responsibilities of the spouses (Abu Zahra, 1957, p. 17). Specific conditions govern the Islamic marriage contract, including eligibility, compatibility, consent, the role of the guardian, the provision of dowry and maintenance, and the requirement for witnesses. These conditions underscore the importance and sanctity of this bond.

Beyond the fulfillment of sexual desires, Islam considers marriage a means to fulfill natural instincts through the creation of multiple rights and obligations. It distinguishes Islam as a comprehensive way of life, providing guidance in every aspect, and setting out principles for human behavior. Consequently, Islam discourages a solitary lifestyle, encouraging individuals to embrace the institution of marriage.

In divine guidance, Allah's creation of human beings was complemented by the creation of their mates. The attraction, desire, and love between them were instilled by Allah. The Quran emphasizes this divine plan for procreation and the continuation of the human race, stating,

“O mankind! Be conscious of your Lord who created you from a single soul, and from it He created its mate, and from the two of them He spread countless men and women throughout the earth. Be conscious of Allah, in whose name you make demands of one another, and also of the wombs. Surely, Allah is watching over you” (Quran 4:1).

This Quranic verse highlights the profound importance of marriage in Islam, not only as a means of procreation but also as a basis for maintaining family ties and fostering consciousness of Allah in all relationships.

### **The Origins of the Ritual of Nikkah**

The ritual of Nikkah (marriage) finds its roots in the earliest days of human history, tracing back to the first human beings, Prophet Adam (peace be upon him) and Bibi Hawa (Eve). Their Nikkah marked the beginning of this sacred institution, a tradition that has persisted among their descendants throughout time. Allama Haskefi (may Allah have mercy on him) acknowledges the profound significance of Nikkah, stating that among all the acts of worship established from the time of Adam until now. He stated that “There is no worship for us that has been established from the time of Adam until now

and continues until Paradise except for Nikah and faith. Only Nikah and faith (are two such worships)” (Ibn 'Abidin, 1992).

In Islamic jurisprudence, Nikkah is recognized as a contract that bestows mutual rights and benefits on both parties. It allows a man and a woman to come together in a lawful union, deriving fulfillment from their companionship and shared journey in life.

### **Rights of Woman and Matrimonial Contract: Islamic Perspective**

One's family is a fundamental unit of society and plays an essential role in maintaining a well-organized and civilized society. To achieve this goal, it is crucial to establish a family structure that recognizes and upholds the rights of both men and women. As the foundation of a family unit is based on the relationship between a man and a woman, it is imperative that both parties recognize and respect each other's rights. Without this mutual understanding and respect, a well-organized and harmonious family structure cannot exist. Thus, to ensure the protection of women's rights in marriage, Islam has established a set of family laws that aim to safeguard their rights and ensure their well-being. These laws serve as a reminder of the significance of upholding women's rights and the importance of their contributions to the family and society as a whole.

### **Age of Marriage**

In Islam, the age at which individuals can enter into marriage is not specifically

stipulated in Islamic law. However, Islamic teachings provide guidance on the appropriate age for this sacred contract. Holy Quran states: "And test the orphans [in your charge] until they reach a marriageable age; then, if you find them to be mature of mind, hand over to them their possessions." (Quran 4:6)

It is widely agreed among Muslim jurists that the first condition for marriage ability is puberty, while the second condition, mental maturity, has been a subject of discussion (Mawdudi, 1989, vol. 2, p. 10). This Quranic verse indirectly implies that the marriageable age is a mature age. Moreover, the Holy Prophet encouraged young men who are capable of supporting a wife to marry, as it helps restrain their eyes from casting evil glances and preserves them from immorality.

“O young men, those among you who can support a wife should marry, for it restrains eyes (from casting evil glances) and preserves one from immorality; but he who cannot afford it should observe fast for it is a means of controlling the sexual desire” (Sahih Muslim, 1400c: Book 16, Hadith 3; Book 8, Hadith 3233).

However, it is essential to ensure that individuals have the physical and intellectual capacity for marriage before entering into the sacred contract. In certain extraordinary cases, child marriage may be permitted to protect the child's rights.

**The Right to Choose a Spouse**

In the Islamic faith, the validity of a marriage is contingent upon the agreement and consent of both parties involved. If one of the parties expresses dissatisfaction with the marriage, it is deemed illegitimate. And if a married couple chooses to separate, it is recommended that they do so in the best possible manner, as instructed by God.

"O you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality. And live with them in kindness. For if you dislike them - perhaps you dislike a thing and Allah makes therein much good. And if you wish to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin?" (Quran 4:19, 20).

Islam has given the right to express their consent to a girl in the matter of marriage. In the matter of a girl's marriage, Islam attaches great importance to the opinion of her guardian and head of the family. However, it has also been taught that marriage can only take place with the permission of the girl, as the girl is considered to be a symbol of modesty and shyness. There are many Hadiths that prove this. Hazrat Aisha (RA) narrates:

"I asked the Messenger of Allah (peace be upon him) about a virgin girl whose father married her off. Is her permission required or not? The Messenger of Allah

(peace be upon him) said, "Yes, her permission must be sought." I asked him, "What if she is shy?" The Messenger of Allah (peace be upon him) said, 'If she remains silent, that is her permission."

From the above incidents, it is proven that the consent of a woman is a necessary condition for marriage. If someone marries without the consent of a woman, then that marriage can be annulled. Islam has shown kindness to women by giving them the first priority in such an important decision of life so that marital life can be peaceful and calm.

**Mehr (The Bridal Gift)**

Islamic law commands men to give their wives a mehr at the time of marriage, as it is a fundamental requirement of the marriage contract. In Islam, the man is considered the head of the household and the primary provider, and therefore, he accepts the responsibility of providing for the woman's financial needs through the dowry. The concept of mehr is established in the Quran and Sunnah. The word "Sadaqah" is used for mehr in the Quran, and Allah says:

"And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease." (Quran 4:4)

The above verse proves that the mehr is the right of the woman in Islamic law, and she cannot be deprived of it. However, if a woman voluntarily gives up her mehr or gives her husband the right to use it, there is no harm in it. The mehr can be anything that

the husband gives to his wife at the time of marriage in exchange for her hand, including cash, property, jewelry, gold, or anything else. Its value is also determined in Islam, and at that time, the minimum value was ten dirhams. No maximum limit was set.

### **Maintenance and Expenditures**

Islam places the onus of bearing the expenses and fulfilling the essential needs of the wife on the husband. This responsibility includes providing for her residence, clothing, food, and other necessities in a complete and appropriate manner, as enshrined in the teachings of Islam. The husband is considered the guardian and caretaker of his wife and is obligated to fulfill this responsibility as per the evidence presented in the books and traditions of Islam. Surah At-Talaq highlights this duty with the following guidance from Allah:

“Let him who has abundance spend out of his abundance, and whoever has his means of subsistence straightened to him, let him spend out of that which Allah has given him; Allah does not lay on any soul a burden except to the extent to which He has granted it. Allah brings about ease after hardship” (Quran 65:7).

The husband should spend according to his capacity and wealth, and if he is not able to fulfill his wife's necessities, then he should spend from what Allah has given him. Allah does not burden a soul beyond its capacity, and after hardship, there will be ease.

In Surah Al-Baqarah, Allah has provided guidance regarding the expenses of divorced women, stating:

“There is no blame upon you if you divorce women, you have not touched nor specified for them an obligation. But give them [a gift of] compensation - the wealthy according to his capability and the poor according to his capability - a provision according to what is acceptable, a duty upon the doers of good” (Quran 2: 236).

This verse emphasizes that providing for the expenses of a divorced woman is the responsibility of the husband, according to his means and financial status.

### **The Procedure for Marriage**

Marriage is considered a sacred bond in Islam, and the procedure for marriage is simple and straightforward. The contract of marriage in Islam only requires an offer and acceptance between the two parties involved. However, to protect the rights of women, Islam mandates the presence of witnesses, a specified amount of dower, maintenance, and announcement of the marriage. As Allah Almighty says in the Quran:

“And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease” (Quran 4:4)

Additionally, Prophet Muhammad (peace be upon him) said: “The marriage is not valid without the consent of the guardian and the presence of two witnesses” (Abu Dawood. Kitab al-Talaq, no. 2080). Thus, the

simplicity of the marriage contract is coupled with the necessary safeguards for women's rights, ensuring a fair and just union for both parties involved.

### **Marriage with Prohibited Relationships**

In Islam, there are certain relationships with whom marriage is prohibited, as they are considered sacred and inherently respected in the human heart. These prohibitions exist to maintain social order, prevent harm, and uphold moral values. The religion of Islam strictly prohibits marital relationships with certain close relatives, and this guidance is from Allah Almighty as revealed in the Quran. The Quran states:

“And do not marry those women whom your fathers married, except what has already passed. Indeed, it was an obscene and hateful thing, and an evil way. Forbidden to you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, your brother's daughters, your sister's daughters, your mother who nursed you, your sisters through nursing, your wives' mothers, and your stepdaughters who are under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already passed. Indeed, Allah is ever forgiving and Merciful” (Quran 4:22-23).

These restrictions on marriage are designed to protect the sanctity of family relationships, prevent conflicts, and maintain the harmony within families and society at large. The prohibition includes blood relatives such as mothers, daughters, sisters, aunts, and nieces, as well as relationships established through nursing, stepdaughters, and the wives of one's sons. Marrying two sisters simultaneously is also forbidden, except in cases where one has already divorced one of them.

By adhering to these prohibitions, Islam ensures that marriages are based on ethical foundations, maintain family integrity, and foster a sense of respect and sanctity within familial bonds. The guidance provided in the Quran emphasizes Allah's mercy and forgiveness, encouraging believers to follow these laws for the betterment of society and the well-being of individuals involved in marriage.

### **The Concept and Significance of Marriage in Zoroastrianism**

In the Zoroastrian religion, marriage holds great value, while rejecting it and opting for a celibate life is viewed as unpleasant and disapproved. Termed a "covenant of love and affection," marriage is considered sacred within their texts. The religion emphasizes the significance of establishing a family, promoting order in worldly matters, fostering unity, preventing moral corruption, and procreating offspring. It is emphasized that a man with a wife is esteemed over a man without one, and similarly, a man with a

family or children is considered superior to those without. Being childless is seen as a heavenly punishment, leading to an obligation for those without children to adopt. Thus, marriage is held as a cherished and holy aspect of Zoroastrian beliefs, while celibacy is regarded unfavorably (Razavi Jarrah et al., 2023, p. 109).

During the Sasanian period, a marriage relied on contractual agreements for several centuries, while neighboring nations practiced customs like "buying the bride" or "stealing the bride" (For instance see, Kleinbach & Salimjanova, 2007). However, these practices were abolished due to the teachings of Zoroaster (Mazaheri, Khanevadeh Irani, 33).

In this era, marriage was typically an arranged matrimony established through a contract between the families or guardians of the bride and groom. Scholars like Macuch and Ilya Yakubovich analyzed a marriage contract template from the Thirteenth century CE, utilized by Zoroastrian officials and preserved in the Codex MK. This codex bears similarities to pre-Islamic Sasanian marriage contracts, aligning with the legal norms found in the late Sasanian "Book of the Thousand Judgments" and post-Sasanian Pahlavi Rivayats (Macuch, 2007, p. 184).

Within the Zoroastrian religion, marriage is highly cherished, and rejecting it or choosing a celibate life is regarded as disagreeable and condemned. Referred to as a "covenant of love and affection," marriage holds sacred significance. Zoroastrian texts emphasize the purpose of forming a family, maintaining order in the world, fostering

unity, preventing moral corruption, and procreating children. They believe that a man with a wife is esteemed above one without, and similarly, a man with a family or children is considered superior to those without. Being childless is viewed as a heavenly punishment, leading those without children to have an obligation to adopt someone. In the Zoroastrian faith, marriage is considered a sacred and desirable union, while opting for celibacy is viewed unfavorably. As per the Codex, a regular or principal marriage entailed the following key aspects: the transfer of the wife's guardianship from her agnate family to the husband's family; her position as the "mistress of the house"; and her and her children's status as the legal heirs of the husband, with him being responsible for their well-being.

### **Rights of Woman and Matrimonial Contract: Zoroastrian Perspective**

In Zoroastrian primary sources concerning family law, two prominent books played significant roles: *Mādayān ī Hazār Dādestān* (MHD) or The Book of A Thousand Judgments, and *Rivāyat of Ēmed ī Ašawahištān* (REA). While both contain a wealth of information about women, surpassing other Sasanian sources, it is widely believed that the former was written shortly before the Arab conquest of Iran, whereas the latter dates back to approximately three centuries later. Other essential texts that contribute to the subject of family law include *Dēnkard* (Dk), *Dādestān ī Dēnīg* (Dd), the Pahlavi Rivāyat of

Adurfarnbag (PRA), Mēnōg ī Xrad (MK), and Videvdād (Vd) (Shaki, 1999).

The family structure and relationships among Zoroastrian Sasanians can be comprehended by examining some of their fundamental beliefs and concepts. Initially, in the early Sasanian era, the family operated as an independent social unit, having economic, military, and judicial autonomy. However, with time, the authority of the family head was partly transferred to the state and jurists, while the father's authority over his family remained intact (Mazaheri, 1994, p. 15). Consequently, the legal rights of the family were vested in the collective unit, represented by the father or guardian, rather than individual members. Consequently, women, children, and slaves were left with minimal legal rights.

Moreover, the primary purpose of marriage, as described in Zoroastrian sources, was to produce a male heir capable of safeguarding the household and upholding religious rituals after the death of the father or guardian. The necessity of providing a male successor led Sasanian/Zoroastrian law to devise distinct approaches to ensure an heir for a man who was biologically unable to produce one. This concern gave rise to various types of Zoroastrian marriages designed to address the need for a suitable male successor (Macuch, 2003, pp. 231-232).

In Zoroastrian family laws, the core of the social order during the Sasanian period was the patriarchal agnatic family. A woman's complete custody rested with the family head, who could be her father, guardian, or husband. Any earnings or gifts

she received belonged to the head of the family. An ideal wife was expected to possess three prominent traits: beauty, benignity, and obedience. The book of Mēnōg ī Xrad [MX] specified the characteristics that deemed a woman superior in her rank: youthfulness (lovely appearance), beauty, devotion, good temperament, and modesty (Taffazzoli, 1364 HS, pp. 78-79). It was emphasized that a wife must obey and revere her husband. The disobedience of a wife could even endanger her children's right to inherit from their father. Regarding polygamy, middle and lower-class men usually practiced monogamy or bigamy, while wealthy men had the means to engage in polygamous relationships based on their social status and wealth (Shaki, 1971, p. 324).

During the Sasanian era, the age of marriage for boys was around fifteen, typically coinciding with the age of puberty in the region. For girls, particularly in areas like the Iranian plateau, puberty occurred between the ages of nine and twelve, and a girl might marry between nine and twelve years of age (Daryaei, 2008, p. 60). From the Sasanian legal perspective, it was considered a serious sin if a girl refused to marry or if her guardians failed to marry her off by the age of fifteen (Shaki, 1999). However, in practice, a minor child could be married off even earlier than the aforementioned age range for consummation of marriage.

### **The Marital Teachings in Zoroastrianism**

Zoroastrianism emerged in Iran at a time when idol worship and polytheism were widespread. Therefore, Zoroaster made efforts to reform society and prevent people from idol worship. He not only discouraged idol worship but also gave special attention to ethics. Ethics holds fundamental importance in the Zoroastrian religion. Zoroaster emphasized purity, truthfulness, honesty, piety, and financial assistance while preaching his teachings, which were centered on men and women alike. Zoroastrianism places great importance on marriage, as a means of improving and enhancing human physical and mental abilities.

Zoroaster stated the virtues of marriage, saying: "And here in this manner having a wife certainly he abundantly prefers that, O Spitama Zarathushtra as a righteous person (he) is able to live a life that is (better) than having no family; he who has children (is better) than that (being) poor" (Tehmurasp Rustamji Sethna, 1977, p. 30).

The above quote can be used to estimate the importance of marriage in Zoroastrianism. At another point, Zoroaster designated the household with a wife and children as a happy home.

"Zarathustra asks: O Creator of the physical world! Which is the second place on the earth that feels happy? Ahura Mazda replies: That (Place is happy) over which a holy man builds a house with fire, cattle, wife, children, and good followers" (Vend, III: 1).

This is why there are many customs in the Zoroastrian religion related to marriage and they are taken care of in a very

meticulous way. William Tegg, in his book "The Knot Tied (Marriage Ceremonies of all Nations)", considers marriage as a means of strengthening human relationships:

"Marriage may with propriety be called the Chief concern of human life. When we reflect that from it arises the nearest and most endearing relationships which go to form the comfort and happiness of existence in this world husband and wife, parents and children, brothers, and sisters and many other the importance of the institution, in all its bearings on the welfare of society, will at once be recognized. In a word, marriage may be designated the hinge of all kindred, or the strongest link in the chain that binds mankind together" (Tegg, 1877, p. 4)

This narration emphasizes that marriage is not only crucial for individual happiness but also forms the foundation of strong familial relationships and overall societal well-being.

### **The Marriageable Age**

According to the religious book "Avesta" of the Zoroastrians, the appropriate age for marriage is 15 years, as stated in Jivanji Jamshedji Modi's book "The Religious Ceremonies and Customs of the Parsees." This age is considered suitable for both men and women, without any distinction based on caste or gender, as supported by various references.

According to the Avesta, in ancient Iran, a person reached adulthood at the age of fifteen, as indicated in various passages (Yt.VIII, Tir, 13-14; Yt.XIV, Beharam, 17;

Yasna, IX,5). This age is stated as the suitable age for marriage for both males and females. The Pahlavi Bundelesh also confirms the same age for marriage (Chap III, 19, S.B.E, Vol.V; 16). Notably, the Avesta contains prayers of brides seeking suitable husbands, indicating the absence of early marriages (Yt.V, Âbân 87; Yt.XV, Râm 40; Yacna IX, 23).

Based on the aforementioned references, it can be concluded that the Zoroastrian religion states the appropriate age for marriage for both boys and girls as fifteen years. The presence of prayers in the Avesta where brides seek suitable companions further supports the notion that there are no teachings regarding marriage at an age younger than fifteen.

### **The Right to Choose a Husband**

The right to choose a husband is granted to girls according to the teachings of Zoroastrianism. They have the right to pray during their daily worship rituals, seeking a suitable life partner for themselves.

In the foundational book of the Zoroastrian religion, "YAŠHT-BAĀM (AA)ŪNI," it is mentioned in the following words: "They then asked of him (i.e., Vayu yazata). Oh, powerful Vayu yazata! Grant us this boon that we may obtain young and most handsome husbands. Moreover, may our husbands treat us well as long as we both live together in life. Additionally, may our husbands bless us with children (i.e., may we have children through our husbands)" (Kanga, 2001, p. 195).

The above passage mentions all the qualities that are essential for a happy and fulfilling life. Alongside highlighting these qualities, Zoroastrianism also provides guidance to its followers, particularly women, to choose their life partners with wisdom and freedom. The directive is clear: "May Ahura Mazda grant you him who is steadfast in good mind and united with righteousness and with the wise one. Therefore, consult with your wisdom and decide in full tranquility" (Yasna 53, verse 3).

There is no doubt that Zoroastrianism grants girls the freedom to make choices regarding their husbands. However, when looking at the historical practices among Zoroastrians, it becomes apparent that despite this freedom and autonomy, the final decision often relied on the consent of the parents. The girl's choice was subject to confirmation by her parents. In rare cases where the girl did not have a proper guardian, she could make the choice for herself.

Indeed, it is evident that Zoroastrianism grants women the freedom to choose their husbands. However, when we examine the prevailing practices among Zoroastrians in the past, it becomes apparent that despite this freedom and autonomy, the final decision relied on the consent of the parents. While the marrying maiden took great care in selecting her husband, there were instances where she had to depend on the judgment of her parents. Her choice was subject to their confirmation. Only in very rare cases, when the maiden lacked a suitable guardian, did she make a choice for herself (Sanjana, 1892, p. 26).

### **The Fixing of An Auspicious Day**

In the Zoroastrian tradition, the selection of an auspicious day for weddings holds great significance. It is believed that the chosen day can bring blessings and prosperity to the couple. While modern practices may vary, some Parsi families still follow age-old customs rooted in astrology and celestial alignments. Among these families, the task of determining the auspicious day for marriage is entrusted to an astrologer. This knowledgeable individual assesses the positions of stars and planets to identify the most favorable cosmic influences. The new moon day and the full moon day are widely regarded as propitious for initiating marital unions, as they are believed to be infused with divine energies.

Conversely, Tuesdays are considered inauspicious for weddings in Zoroastrian culture. It is believed that the cosmic forces on this particular day may not be conducive to the harmonious and blissful beginning of a marriage.

The process of fixing an auspicious day extends beyond astrological considerations. Zoroastrian wedding festivities typically span four days, with each day holding its own significance. The first day, known as mandav-saro, involves a unique ritual where a twig from a tree, often a mango tree symbolizing fertility, is planted near the entrance of the wedding venue. This act serves as a hopeful wish for a fruitful and prosperous marriage. The subsequent two days, referred to as Varadh-Patra days, are

dedicated to performing religious ceremonies that honor and remember the departed ancestors. These rituals not only connect the couple with their lineage but also reinforce the spiritual and cultural foundations of their union.

While the influence of astrology and the significance of certain days persist in Zoroastrian tradition, individual practices may vary among families. Nevertheless, the endeavor to choose an auspicious day for marriage reflects the deep-rooted beliefs in the power of cosmic alignments and the desire to begin the marital journey with blessings and positive energies.

According to Mary Boyce and Frantz Grenet in their book "*A History of Zoroastrianism: Vol. 3, Zoroastrianism under Macedonian and Roman rule*", certain days are considered auspicious for marriage in Zoroastrianism. They highlight that even in present times, some Parsi families rely on astrologers to determine the favorable wedding day, with new moon and full moon days being regarded as particularly propitious. However, they also note that the selection of an auspicious day is not solely dependent on astrology, as other customs and rituals are involved, such as the mandav-saro ritual and the Varadh-Patra days (Boyce & Grenet, 1991, pp. 216-217).

### **Preliminary Blessings**

After the completion of all the prescribed rituals, the wedding ceremony officially commences according to the established Zoroastrian religious teachings. It is initiated

by the two Parsi priests, who hold significant roles in the proceedings. The senior priest, usually the one with higher seniority, stands on the groom's side, while the second priest stands on the bride's side.

The ceremony begins with the senior priest reciting the following words of benevolent supplication: 'May the Creator, the Omniscient Lord, grant you a progeny of sons and grandsons, plenty of means to provide yourselves, abiding love, bodily strength, long life for a hundred and fifty years' (Masani, 2001, p. 144).

### **Questions and Answers between the two parties**

Following the Preliminary Blessings, a significant moment of interaction unfolds as the presence of the witnesses and the couple's families creates a solemn atmosphere. It is during this time that a series of questions and answers are exchanged between the priests and the couple. These inquiries serve as a formal affirmation of commitment and a declaration of their intention to embark on the journey of marriage.

The questions posed by the priests often revolve around the couple's willingness to fulfill their responsibilities as husband and wife, their understanding of the sanctity of marriage, and their dedication to upholding the values and principles of the Zoroastrian faith.

The couple responds to each question with sincerity and clarity, expressing their commitment to honor and cherish each other, to support and nurture their relationship, and

to uphold the teachings and traditions of Zoroastrianism. This exchange of vows and affirmations solidifies their bond and sets the foundation for the subsequent rituals and ceremonies that will follow in the wedding celebration (ibid., p. 145).

After confirming the consent of both parties, finally, the officiants offer some advice and prayers to the bride and groom. These are mentioned in the book "The Teachings of Zarathushtra" by T.R. Sethna.

May you both have happiness and prosperity, forever remain with a good aura, be full of blessings and prosperity, be victorious, learn to practice purity, and be worthy of good actions.

Always think positive thoughts, speak kind words, and engage in virtuous actions, while driving away negative thoughts, words, and deeds.

Always work with positive intentions, accumulate honest wealth, speak the truth, be obedient in the presence of elders, be humble and well-mannered in the presence of friends, and approach others with good intentions. Avoid slander, anger, shameful acts, greed, harm, jealousy, vanity, arrogance, licentiousness, and taking someone else's property.

Do not engage in conflicts with vengeful individuals, avoid partnerships with the greedy, refrain from befriending scandal-mongers, avoid association with those of bad reputation, do not involve yourself with foolish people, treat your enemies justly, show love towards your friends, and avoid discussions with quarrelsome individuals.

In meetings, speak words of justice, show restraint when addressing authority figures. Strive to achieve greater success than your father, treat your mother with respect and refrain from causing her any harm, and lead a righteous life for the liberation of your soul.

Always maintain a good conscience and exhibit good behavior. Recognize God as your Lord, respect Zarathushtra as the leader of the religion, and despise Ahreman (evil mind) as the embodiment of evil. Be virtuous, and may you attain the best in life. Make yourself deserving of divine blessings, and you shall receive them. Through the power of good thoughts, good words, and good deeds, may you achieve the utmost excellence (Sethna, p. 25).

### **Advice to the Spouses by Zarathushtra**

Zarathushtra, addressing the bride and groom, said:

“I address words of advice to the brides, and to you, O Bridegrooms! So, listen carefully to these teachings. Being well versed in religious doctrines, learn to value the life of the Good Mind; may each of you strive with the other to attain Truth. Indeed, this will be to him or her a blessed existence. In this way, O men and women, you will unite with Truth” (Yasna 53, verses 5-6).

Zoroastrian marriage commences with the profound involvement of religious priests, which is highly esteemed. These priests offer guidance and counsel to the bride and groom on various occasions, ensuring that the foundation of this new

relationship is built upon virtuous thoughts and noble intentions. Certain rituals are also observed, which hold religious significance. These rituals foster mutual love and affection between the spouses, signifying the strength of the new bond and its enduring nature.

### **Authorized Marriage: Rights and Implications**

Authorized marriage established a formal and legally recognized union, akin to Christian marriage. It hinged upon the woman's consent, sanctioned by her father or guardian and a detailed marital contract (Shaki, 1971). Under this contract, the husband assumed guardianship, ensuring upkeep for the wife and their children. If the husband died, they retained inheritance rights. Notably, a widow's consent for her daughter's marriage was permitted under specific circumstances (Emami Namin, 2018, p. 3–4). Diverging from death scenarios, if a man left no offspring, his widow remarried to guarantee "intermediary succession." This involved bearing children who were considered the former husband's heirs. Historical accounts attest to these complex practices.

Divorce carried distinct property provisions in the marriage contract, setting it apart from other unions (Macuch, 2007). Authorized marriage could also be temporary, wherein the dowry was returned to the wife upon completion or to the husband if she died prematurely (Shaki, 1999).

Regarding legal status, authorized marriage bestowed significant rights, except for a sole child named Padishah-wife.

Without this situation, a woman's rights waned, necessitating her son's transfer to her father's family to attain Padishah-wife status. This hierarchy included Satar-wife and Chagar-wife, influenced by factors like infertility (Emami Namin, 2018, pp, 7–8). Inheritance norms were impacted by these statuses. Only the Padishah-wife could inherit, receiving an equal share as her son. In her absence, children inherited, and gender differences manifested as sons received double daughters' shares. For daughters without male heirs, selection as the "adopted son" occurred. Contrasting authorized marriages, other unions arose from women marrying without parental consent, leading to questions of legality and inheritance rights, exemplifying complex historical dynamics.

### **Next of Kin Marriage**

In Zoroastrianism, the concept of forbidden marriages, specifically next-of-kin or close-kin marriages, is found and is considered not only commendable but also highly beneficial for attaining purity and righteousness. This form of marriage was prevalent during the late Sasanian period and the advent of Islam.

According to the Middle Persian (Pahlavi) texts in Zoroastrianism, the term "xwēdōdah" refers to marital unions between a father and daughter, mother and son, or brother and sister, and it is regarded as one of the most virtuous actions possible (Skjærvø, 2013). Historical indications of this definition can also be identified in the third book of the Dēnkard (lit., "Acts of the religion"):

“That relationship (formed) for (the sake of) offspring, which is deserving of most thought, is, in particular, of three kinds: of these one is that of father and daughter, the second is that of son and mother, and the third is that of brother and sister” (Denkard, Book 3: 80).

The practice of next of kin marriages, particularly within the context of xwēdōdah in Zoroastrianism, is closely tied to inheritance and the transfer of wealth from one generation to another. This practice served to legitimize and protect the financial interests of Zoroastrian families, as well as to perpetuate their lineage (Daryaei, 2013, pp. 94-95). It's worth noting that such practices of nuclear family unions do not appear to have been widespread throughout society. Instead, they seem to have been more confined to royal and noble families, sometimes referred to as "dynastic incest" (Mitterauer, 1994, pp. 235-6).

## **COMPARATIVE ANALYSIS BETWEEN BOTH TRADITIONS**

### **Principal Marriage Concept**

This central concept entails a formal and legally sanctioned union between a man and a woman, characterized by essential components like mutual consent, the presence of witnesses, and the customary exchange of a marriage portion. This shared recognition highlights the fundamental importance of these elements in solidifying the validity and sanctity of marital bonds within both cultural and religious frameworks. In the Sasanian Zoroastrian

tradition, virginity constituted a crucial criterion for principal marriages, rendering non-virgin brides ineligible and impacting their legal and economic rights. Conversely, Islamic law did not enforce such a prerequisite for principal marriages or inheritance, highlighting a distinct divergence. While not explicitly stipulated in Islamic law, both traditions historically ascribed significance to virginity, particularly for initial marriages, as it was associated with marital honor.

### **Family Guardianship**

In matters of family guardianship, differences between Zoroastrianism and Islamic law are notable. In Islamic law, a guardian's authority extends to various legal aspects, including marrying off a minor daughter and intervening in her marital decisions. This stands in contrast to Zoroastrianism, where the extent of a guardian's authority remains implicit. Nevertheless, both traditions underline the necessity of a guardian in the marriage process and have legal maxims emphasizing this role. Islamic law's maxim, "There can be no marriage without a guardian," finds a counterpart in the Zoroastrian text MHD 4.9-10, asserting that divorce is effective only with dissolution of guardianship. Importantly, both religions condemn marriages without proper guardianship for girls, reflecting a shared concern for protecting individuals within marital bonds.

### **Marriageable Age**

In Zoroastrianism, the suitable age for marriage, as per the Avesta, is set at fifteen for both genders, supported by references and absence of early marriages. In Islam, while not explicitly defined, the Quran encourages marriage at a mature age when individuals are mentally and physically capable, aligned with the aim of preserving morality and modesty.

### **Temporary Marriages/Proxy Marriage**

Under the concept of temporary marriages, diverse practices existed in different cultural and religious contexts. In Zoroastrian tradition, temporary unions were employed, often to ensure the birth of a male heir or to maintain lineage, and these marriages could be dissolved upon fulfilling their intended purpose. In contrast, Islamic temporary marriage, known as *mut'a*, found within Shi'a Islam, entailed a time-bound marital contract serving various aims.

### **Second Marriage for Women**

In Zoroastrianism, a woman's second marriage was categorized as *čakarīh* (auxiliary marriage), resulting in her and her children's exclusion from the benefits of a principal marriage. In Islamic law, second marriages are not stigmatized and are considered virtuous, allowing women to marry again without such legal implications. This difference underscores contrasting attitudes towards women's remarriage in these traditions.

**Comparing Slave Marriage and Concubinage**

The Zoroastrian and Islamic traditions reveal distinct approaches to unions involving slaves. In Zoroastrianism, there is no explicit mention of marriage to slaves. In contrast, Islamic law extensively addresses this issue, delineating rights, regulations, and prerequisites for such unions. Consent from both the slave and the owner is a crucial component within Islamic marital arrangements involving slaves.

Regarding concubinage, the two traditions share similarities. In Zoroastrianism, concubinage is practiced, granting sexual access to female slaves. This finds a parallel in Islamic law, where concubinage similarly exists. Within both contexts, specific rights and considerations are outlined, ensuring a framework that respects the interests of all parties involved.

**Cross-Religious Marriages**

Zoroastrian doctrine does not explicitly address mixed marriages with individuals from other religious communities. In contrast, Islamic law permits Muslim men to marry women who belong to the "people of the book" – referring to individuals adhering to Abrahamic faiths such as Judaism or Christianity. However, the marriage of Muslim women to non-Muslim men is generally proscribed within Islamic teachings.

**Marriage Contract and Consent:**

Unlike the perspective that Zoroastrian marriage is distinct from trade, certain aspects seem to align with trade-like elements. For instance, the daughter is transferred to the husband's family, severing legal ties like guardianship and inheritance within her agnate family. The father receives the dowry from the husband's family and gives his daughter her share from the family's wealth, as her future right to inheritance is eliminated. This arrangement essentially functions as a trade contract, wherein the father relinquishes his rights and responsibilities over his daughter to whoever has paid for her. Conversely, in Islam, the Quranic stipulations on women's rights and responsibilities curtail the ability to entirely sever legal connections between a daughter and her paternal family. This limitation results in the marriage contract only affecting the purchase of the wife's sexuality, not her entire existence (Mir-Hosseini, 2012, pp. 128-132).

The husband's control over his wife's activities is maintained through jurisprudential reasoning, rooted in the notion that the husband's access to his wife's sexuality, obtained through the marriage contract, should not be hindered. Consequently, the wife's movement is restricted, and her actions require her husband's permission, even for endeavors such as visiting her parents.

**Polygamy**

Polygamy was prevalent among the affluent and high-ranking men, whereas monogamy

and bigamy were more common among the middle and lower classes. Despite the acceptance of concubinage among the elite, polygamy was generally viewed unfavorably, except for specific circumstances. The religious perspective that marrying a second spouse, unless compelled by necessity, is not considered a virtuous deed (Lenfant, 2019). In contrast, Islamic law provides a distinctive approach to marital practices. Islamic law permits polygamy, enabling men to marry up to four wives simultaneously, subject to specific conditions. Notably, divorce and subsequent remarriages are not inherently regarded as negative actions and are undertaken without significant difficulty within Islamic legal frameworks.

### **Divorce**

In Sasanian legal frameworks, discussions surrounding divorce primarily revolved around divorcing a principal wife, as other forms of marriage entailed limited legal and economic rights for wives. It was a tradition that the termination of marriage could occur through either mutual agreement or solely at the husband's decision (Mofidi, 2018, pp. 87-88), although elite women in the upper class could sometimes do so due to their social status. Divorce wasn't the only avenue for terminating a marriage; proxy marriages could be dissolved without formal divorce proceedings once a son had been born, and *čakar* wives had no right to claim property or provisions, and divorcing them didn't necessitate their consent.

In Islamic family law, divorce was applicable to regular marriages, whether with free women or slave girls. Temporary marriages and concubinage, on the other hand, could be terminated without formal divorce proceedings. The principles of Islamic divorce encompass several key components, which may slightly vary across jurisprudential schools. Generally, the foundations of legal divorce include a verbal statement or formula, a mentally sound and mature husband intending to divorce his wife, and a legally wedded wife who is in a permissible phase for divorce. The husband must willfully and rationally seek divorce, as divorce under coercion is invalid (Spectorsky, 2010, pp. 28-29, 36). Furthermore, a wife cannot be divorced during conditions such as menstruation or childbirth.

### **CONCLUSION**

The examination and study of the comparison between Islam and Zoroastrianism reveal numerous similarities between the two religions. Both emphasize the significance of purity and cleanliness in actions, thoughts, and deeds. The shared principle of goodness and righteousness in thinking, speaking, and behaving showcases remarkable agreement with the lofty ethical principles of Islam. Moreover, matters related to marriage and nuptials also exhibit considerable similarities between the two religions. These include the rights of a girl in choosing her husband, the importance of the guardian's opinion, the prompt payment of the dowry, and the

questioning and answering between the parties involved.

However, it is essential to acknowledge a significant difference between the two religions concerning marriage with prohibited relatives. In Islam, such unions are not permissible as they violate the sanctity of those relationships. In contrast, Zoroastrianism allows these marriages, promoting the idea that pure and righteous offspring can only be obtained through such unions. This prescribed standard of purity conflicts with established ethical principles in the world.

It is worth noting that while Zoroastrianism contains many virtues within itself, historical developments and changing circumstances have led to modifications within the religion. As a result, certain practices may have deviated from the original teachings, impacting the religion's true beauty and morality over time.

In conclusion, the comparative study between Islam and Zoroastrianism highlights the shared ethical principles, rituals, and practices, underscoring the common ground between the two faiths. However, the divergent views on marriage with prohibited relatives reveal an important distinction in their respective teachings. As with any religious tradition, understanding the historical context and developments is crucial

to appreciate the core tenets and beliefs accurately. Further research could delve deeper into the historical evolution of Zoroastrianism and its impact on contemporary practices to gain a more comprehensive understanding of this ancient faith.

However, in the religion of Islam, marriage with prohibited relatives is not permissible because it violates the sanctity of those relationships. In contrast, Zoroastrianism allows such marriages. As mentioned above, obtaining pure and righteous offspring is only possible through marriage with these prohibited relatives. This prescribed standard of purity is incompatible with any ethical principles in the world. The teachings of Zoroastrianism contain enough disturbance, undoubtedly due to the adherents of this religion in the later centuries who, due to changing circumstances, continued to engage in modifications within the religion. Hence, it can be said that Zoroastrianism has countless virtues within itself, but its followers have distorted its true beauty and morality over time.

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