

Stipulations in the Marriage Contract

“Knowledge, Perceptions, and Practices
Related to Stipulations in the Marriage Contract
/ Jordan”



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① Project Background

Since 2019, the Information and Research Center King Hussein Foundation (IRCKHF) has worked on the Project on Optimal Use of the Conditions in the Marriage Contract to promote the rights of women and men, as this project seeks to enable intending spouses to include conditions that protect their rights in the contract document.

Initially, the Arab and Islamic literature and practices on conditions of the marriage contract were reviewed. A comparative study between the Islamic jurisprudence and the Jordanian Personal Status Law was conducted with respect to the Sharia standards and the legal and administrative regulation of conditions of the marriage contract¹. Subsequently, a qualitative research was conducted, where in-depth interviews, focus group discussions and a national survey were conducted with the aim of learning about the society's perceptions and practices about the inclusion of conditions in the marriage contract².

IRCKHF cooperated with a consultative committee formed for this purpose. The said committee was composed of 22 experts in the Islamic Law and civil law and representatives from various official and national departments and civil society institutions.

In the light of findings of literature and research, a social media awareness-raising campaign on the importance of conditions in the marriage contract was launched³, and the committee designed an instruction manual to educate intending spouses on the right to stipulate in a marriage contract and importance of such stipulation in preserving the rights of both spouses. The manual also clarifies the most important conditions for the intending spouses, and illustrates position of Islamic Law and the Jordanian Personal Status Law on the stipulation in the marriage contract⁴.

Having learned about the challenges and obstacles associated with the optimal use of the conditions in the marriage contract, the consultative committee developed a policy paper entitled "Improvement of Procedures Associated with Marriage Contracts: Optimal Use of the Conditions in the Marriage Contracts" with the aim of finding legal solutions and clarifying the administrative practices associated with the conclusion of marriage contracts in order to protect and promote the rights of women and men in the marriage contract.

1 A study on Sharia Standards and the Legal and Administrative Regulation of the Conditions Associated with the Marriage Contract, <https://bit.ly/3SaVz3F>

2 You can view the project: "Stipulation in Marriage Contracts" on IRCKHF's website: <https://bit.ly/3SdLjYs>

3 Awareness-raising campaign launched on IRCKHF's social media pages (Facebook, Twitter and Instagram).

4 You can view the Instruction Manual for Intending Spouses with respect to the stipulation in the marriage contract on <https://bit.ly/3cxbjPb>

② Introduction

The social life is built on marriage, and as such the divine laws contain a set of provisions and controls on marriage to ensure that the family is well-built and continues, and that the justice between the spouses is achieved and their rights are maintained. The Islamic Law gives spouses the right to insert stipulations in the marriage contract in line with the purpose of the marriage contract. However, stipulations are rarely included in the marriage contract. This might be attributed to either the ignorance of their importance or for community considerations. Many people refuse to add conditions to the marriage document though the purpose of these conditions is to preserve the rights of both spouses. It should be noted that the stipulation serves interest of both spouses, helps maintain family stability and reduces future family disputes, as conditions are mutually agreed upon before the marriage contract is made.

Given the importance of including conditions in the marriage contract, the Arab countries have paid attention to including in their “family” or “personal status” quite similar wordings, including Algerian, Moroccan law and Tunisian Family Laws. The UAE law deals with the inclusion of stipulation in the marriage contract in detail, where Article (20) contains the conditions on the marriage contract and consists of seven paragraphs, each paragraph deals with a certain type of condition⁵.

Men and women have rights and duties towards each other. However, a woman cannot exercise her rights except through a man. For example, a woman needs a man’s consent to continue to work, complete her education and move. Though article six of the Jordanian constitution provides for equality before the law, it does not expressly prohibit discrimination on the basis of gender. Additionally, many national laws still discriminate against women, uphold traditional gender roles, view women as care providers and men as breadwinners, and provide that a wife must obey a husband.

Based on the foregoing, the issue of the inclusion of stipulations in the marriage contract is essential as it addresses an important social issue that has had consequences that may lead to the destruction of the family entity. The Sharia courts have started to consider many divorce cases as a result of the spouses’ lack of knowledge of their rights and duties towards each other, and not including the legally permissible conditions in the marriage contract. These conditions might include that a wife stipulates that she has the right to work outside the home, that she wants to live in a certain place of domicile, or that her husband does not marry another woman, etc. Therefore, it has been necessary to clarify the Islamic rulings and the provisions of the civil laws related to the stipulation in the marriage contract, and to familiarize the intending spouses with such rulings and provisions. Being aware of the provisions on the inclusion of stipulations in the marriage contract may have positive effects on the family’s future, continuity and stability, and reduce the cases of conflict, separation and divorce between spouses in the future.

⁵ Boualem, Nasser, The stipulation and its impact in the marriage contract between Sharia and law - a comparative study between Islamic jurisprudence, Algerian family law and some Arab legislation, Oran University (2012), pp. 137-138.

Hence, this study is an attempt to clarify the knowledge, trends and practices towards the inclusion of stipulations in the marriage contract in Jordan at the society and the individual levels, and it provides an in-depth analysis on the obstacles that prevent the inclusion of conditions in the marriage contract document.

③ Study Methodology

The descriptive analytics approach was employed in this study using quantitative and qualitative research methods in order to obtain the largest amount of data and information needed to achieve the desired objectives.

Study Design

3.1

This study is significant since the descriptive and quantitative studies conducted on the inclusion of stipulations in the marriage contract are limited at the national level. At large, research institutions and researchers in Jordan and the Arab countries have rarely addressed the issue of inclusion of stipulations in the marriage contract. They have also rarely tackled the social and cultural factors, and the practical attitudes and practices associated with the inclusion of stipulations in the marriage contract, where most studies have focused on the marital disputes and violence-related issues.

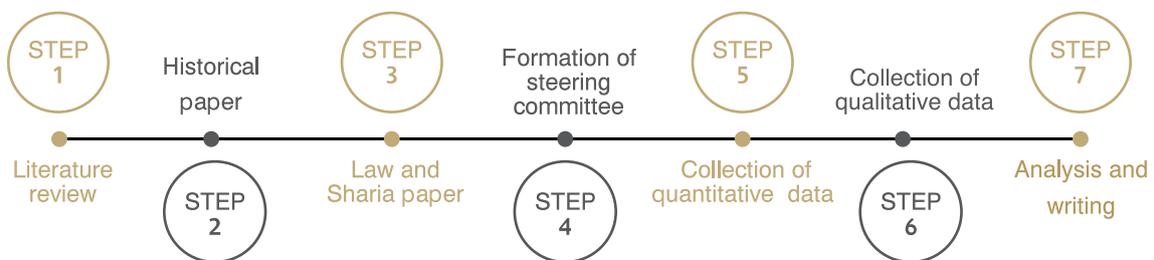
As mentioned earlier, this study used the quantitative and qualitative research methods, and the process of collecting data and information from the target group was preceded by an in-depth review of all relevant literature and research in Jordan and other countries that derive their legislation on marriage from jurisprudence and Islamic law. The said review resulted in research papers, including a paper on historical practices towards inclusion of conditions in the marriage contract, and a paper on legal controls and the legal and administrative organization of the conditions associated with the marriage contract in Jordan⁶. These steps helped us develop a solid foundation for this study and create a holistic view of the legislation and practical and institutional practices towards inclusion of stipulations in the marriage contract.

6 Ibid

In conjunction with the in-depth review of the literature and the aforementioned research papers, IRCKHF formed a steering committee which consisted of a group of national experts to oversee the study design process, and discussed the main themes of the subject-matter in question. The steering committee recommended the use of both quantitative and qualitative research methods in order to reach an in-depth understanding of the community-based knowledge, trends and practices towards the inclusion of stipulations in marriage contract. [Figure (1) shows the steps that were taken to conduct this study].

Steps of the Study

Figure (1)



Sampling and Data Collection Process

3.2

The samples of both quantitative and qualitative studies were determined by a team under the supervision of the steering committee, using scientific methods to select them and define their characteristics accurately. The Department of Statistics was contacted to select a representative sample consisted of 2500 respondents at the level of Jordan for the quantitative study. The characteristics of the sample are explained below:

The quantitative sample of the study included males and females over the age of eighteen years, including the following categories:

- Married couples (Muslim males and females, and non-Muslim females who are married to Muslim males).
- Males and females who have never been married.
- Males and females who have ever been married.

shows the percentage of the sample distribution over the governorates of the Kingdom. and the Percentage distribution of the quantitative study sample over the governorates of the Kingdom

Figure (2)

| | |
|------------|-----|
| Amman | 23% |
| Irbid | 15% |
| Aqaba | 6% |
| Al Mafrq | 8% |
| Madaba | 5% |
| Al Karak | 6% |
| Maan | 4% |
| Al Tafileh | 4% |
| Al Balqa | 7% |
| Ajloun | 5% |
| Jerash | 5% |
| Al Zarqa | 13% |



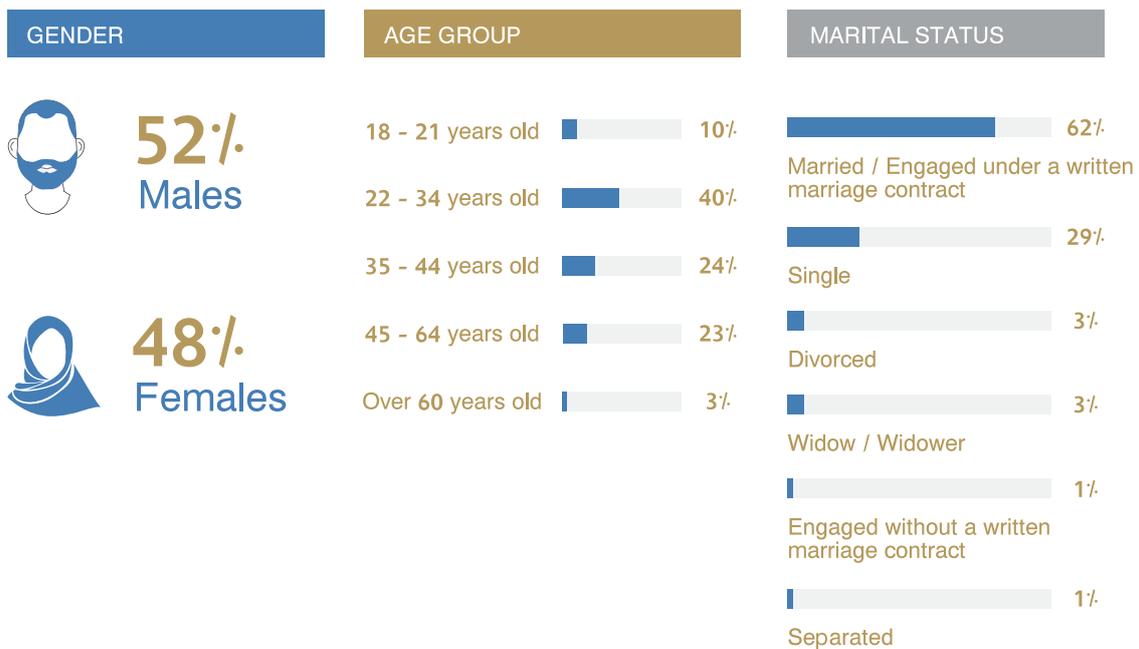
Sample: all respondents (2,612)

After quantitative study sample and the terms of the respondents from all governorates had been determined, data were collected from the field by filling in the questionnaire designated for quantitative research. A few months before starting the field research, the Covid-19 swept the world, which required governments, including the Jordanian government, to take strict measures with respect to movement to limit the spread of the virus, including total and partial lockdowns that lasted for months. These procedures affected the plan for collection of the data from the field, which was supposed to take place on one-on-one basis in all governorates of the Kingdom. Accordingly, the data were collected via phone using the “random digit dialing” system to ensure that all individuals in society have had equal opportunities to participate in this study.

Before starting this process, the research team, which has extensive experience in the process of collecting quantitative data, was trained on how respondents are required to fill out the questionnaire. The data collection process lasted from December 15, 2020 to February 3, 2021. During the said period, the research team managed to get (2612) questionnaires distributed over all governorates of the Kingdom filled out, which is higher than the sample obtained from the Department of Statistics. Figure (3) shows the characteristics of the respondents by gender, age group and marital status.

Characteristics of the Quantitative Study Sample

Figure (3)



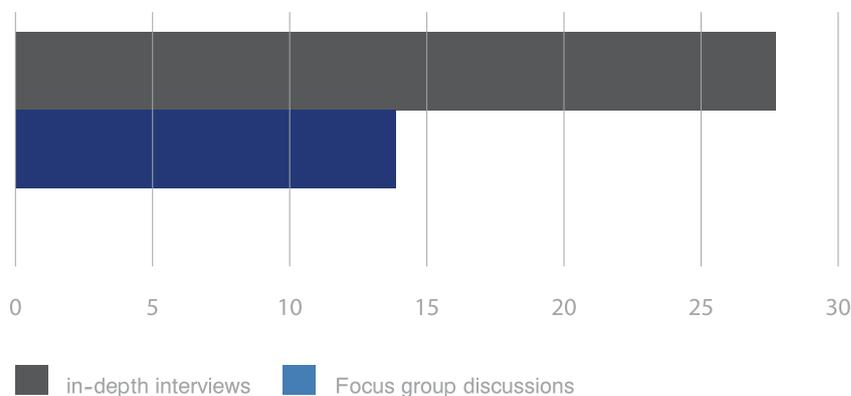
The second part of the data collection process in this study included the use of the qualitative approach, through a tool assigned for both the in-depth interviews and focus group discussions. These interviews and discussions provided in-depth results and a detailed description of the knowledge, perception and attitude of society towards the stipulation in the marriage contract. This is since the interviews focused on some groups of Jordanian society that were not included in the quantitative data collection process, including those who included conditions in the marriage contract when they got married, Christian wives married to Muslims, and Arab and foreign wives married to Jordanian Muslims.

The use of qualitative research tools, such as in-depth interviews and focus group discussions, is an essential part of the research processes conducted by IRCKHF in various studies, as the research team has sufficient experience to attract participants and conduct field research within the approved research protocols and ethics. Additionally, the in-depth interviews and focus group discussions were conducted with the consultative committee to take feedback.

In-depth interviews and focus group discussions were conducted during August and September 2021. The research team managed to conduct (26) in-depth interviews and (12) focus group discussions over all governorates of the Kingdom. It should be noted that various characteristics of the participants in terms of gender, age group, marital status, employment status, income bracket and academic qualification were taken into account. Figure (4) shows the qualitative study sample, and Appendix (1) contains the detailed characteristics of the respondents who participated in the qualitative research.

Qualitative Study Sample

Figure (4)



The consultative committee played a key role in guiding the quantitative and qualitative research, and determining the necessary research tools. The research team shared these tools with the Scientific Research Ethics Committee of the University of Science and Technology to take feedback and approve the tools. Further, the research team received the necessary training before collecting quantitative data from the field, and observed all the necessary ethical considerations to protect the privacy of the participants, such as the obtaining the free and informed consent from all participants to participate in this study, and making sure of the audio recording of the interviews and focus group discussions after taking their consent.

Finally, participants were kept anonymous at all stages of the research and their names were replaced with sequential codes. All in-depth interviews and focus groups were literally transcribed and qualitative and quantitative data were objectively classified and analyzed.

Covid-19 affected the collection of quantitative data, which were supposed to be collected in the field on one-on-one basis. As a result, quantitative data were collected via phone, where all members of society were given equal opportunities to participate in this study. The research team conducted more in-depth interviews with the married participants who included conditions in the marriage contract.

Moreover, the research team targeted representatives of the relevant institutions by conducting five in-depth interviews with them via audio-visual means through (Zoom) application or the phone. This is because of the restrictions on movement and communication due to the Covid-19, where the research team hoped to conduct more interviews, especially with the marriage registrars.

④ Discussion of Findings

General Findings

- At large, most respondents were aware that: inclusion of stipulations in the marriage contract by a husband or a wife is legally permissible.
- 75% of the respondents believed that “stipulation by a wife that she has the right to divorce herself” is legally impermissible. In general, the differences over various statements between samples of governorates were slight.
- As to the general knowledge about the Jordanian Personal Status Law, a high level of knowledge was noticed, especially with respect to documenting the conditions in the marriage contract and that such conditions are binding upon a husband and a wife, where 86% of respondents were aware of this point. 45% of respondents showed a low level of knowledge about the Jordanian Personal Status Law, where they thought that “if a wife does not fulfill the conditions included in the marriage contract, a husband may avoid the contract and a wife will not be entitled to the deferred dowry and the post-divorce waiting period support”. In general, the differences over various statements between samples of governorates were slight.
- As to the perceptions of the Islamic marriage contracts, half of respondents agreed that inclusion of conditions in the marriage contract reduce cases of divorce, and 80% of respondents believed that inclusion of conditions in the marriage contract does not degrade status of a husband.
- 48% of respondents believed the society’s culture, traditions and customs are the main reasons that prevent intending spouses from including conditions in the marriage contract.

Married Respondents

- 5% of the married men are married to more than one wife, and 5% of the married women got married when they were under 24 years old.
- 54% of the respondents reported that their engagement periods lasted for 6 months or less, while 85% of the respondents believed that the engagement period was sufficient.
- 94% of the married respondents did not include conditions in the marriage contract as the traditions and customs do not permit them to do so.
- The most frequent two conditions that were included in the marriage contracts were “a wife’s right to complete her education” and “a wife’s right to work”.
- 17% of married respondents (mostly females) who did not include conditions in the marriage contract wished they could back in time to include conditions in the marriage contract. The most important two conditions were “a wife’s right to complete her education” and “a wife’s right to work”.
- Slightly more than half of the respondents accepted the idea that their sons/daughters include conditions in the marriage contract in the future.

Divorced Respondents

- 44% of divorced respondents reported that their marriage lasted for more than 3 years, and 7% of them reported that they divorced in the first month of marriage.
- The main reasons for divorce were misunderstanding, interventions of extended family and the economic situation, respectively.
- 37% of divorces were initiated by husbands and 23% of them were initiated by wives through Khula in the court.

- 41% of divorced women waived dowry and the post-divorce waiting period support.
- 85% of divorced respondents reported that their engagement period was one year or less, while 55% of the respondents said that the engagement period was insufficient.
- 95% of divorced respondents did not include conditions in the marriage contract as the traditions and customs do not permit them to do so.
- 32% of divorced respondents believed that appointment of a female sharia judge is contrary to the Islamic Law.
- 53% of divorced respondents who did not include conditions in the marriage contract wished they could back in time to include conditions in the marriage contract, and they accepted the idea that their sons/daughters include conditions in the marriage contract in the future.

Unmarried Respondents ---

- 60% of unmarried respondents did not know that some conditions are not legally permissible to be included in the marriage contract, and that such conditions are deemed to be invalid and the contract remains valid.
- 31% of unmarried respondents did not know whether they would or would not include conditions in the marriage contract, while 39% of them reported that they would not. 60% of the unmarried respondents reported that they accept the idea that their future partner includes conditions in the marriage contract. These percentages differ between males and females, where 65% of the female respondents reported that they intend to include conditions in the marriage contract. As for accepting the idea that their future partner includes conditions in the marriage contract, 61% of male respondents, compared to 39% of female respondents, accepted the idea.
- It was reported that the culture of society and the traditions and customs are the main reasons that prevent intending spouses from adding conditions to the marriage contract.
- More than 60% of unmarried respondents accepted the idea that their sons/daughters add conditions to the marriage contract in the future.

Findings of the In-Depth Interviews and the Focus Group Discussions

- ❖ Marital rights related to the stipulation in the marriage contract are still unclear to many participants, and there is a clear violation of a wife's rights.
- ❖ Concepts of guardianship and caretaking are unclear contrary to the Islamic Law.
- ❖ Many males believe that a man is permitted under Sharia to force a woman to discontinue her education or work, move to live with him in a certain place, control her independence and dispose of her salary or legacy, etc.
- ❖ Women do not exercise their right to stipulate to avoid disputes that might lead to divorce, and to avoid the idea that her husband deserts her or take a co-wife.
- ❖ Community traditions and customs play a crucial role in the ability of intending spouses to include conditions. There are stereotyped beliefs in the community that stipulation undermines role of the man in the family and affect his social standing as a guardian and caretaker who decides on behalf of his wife and controls several rights such as education, work, etc.
- ❖ Educating intending spouses about stipulation before concluding of the marriage contract makes them more able to discuss stipulations, and reduces the embarrassment if either of them wants to add conditions that preserve their rights and reduce the potential problems in the future.
- ❖ Females fear that they will lose their work, that they will not be able complete their education, that they will not be able to determine their future and make their own decisions, and that they will not be able to move if they get married.
- ❖ The inclusion of conditions in the marriage contract guarantees women economic independence, and gives them the ability to secure their future and realize their aspiration.

The stipulation in the marriage contract means the right of either party to the contract to add appropriate conditions that serve his/her interest. Yet, many intending spouses are not aware of the permissibility of a stipulation in the contract, which constitutes a major dilemma when it comes to knowledge of the permissibility of stipulation and the permissible and impermissible conditions under Sharia and law. On the other hand, the legal framework that governs this process is not clear to some intending spouses, even if they are aware of permissibility of stipulation.

The majority of respondents believed that inclusion of stipulations in the marriage contract is legally permissible. It is noticed that there is a low level of knowledge of the Personal Status Law. The findings of the quantitative study show that 78% of the respondents believed that inclusion of conditions in the marriage contract is permissible under Sharia, and that inclusion of conditions in the marriage contract by a wife is permissible under Sharia. It is noticed that more than 10% of the respondents thought that only females are permitted to include conditions in the marriage contract.

Further, the findings show that the older participants at the focus group discussions have a low level of knowledge of concept of stipulation and its permissibility under Sharia. Some respondents, especially older females who have ever been married, believed that a woman plays a secondary role in concluding the marriage contract, and that the male members of the family are required to be aware of permissibility of stipulation under Sharia and law. **A married woman from Karak said “I got married in 1993. I did not know that stipulation is permissible. A woman could not include any conditions she wished. However, it was shameful for a woman to stipulate. In the past, parents were responsible for everything and a woman was prevented from expressing her opinions. Now, women have started to include conditions in the marriage contract, and all people have become educated. Yes, it is permissible”.**

Permissibility Inclusion of Some Conditions in the Marriage Contract

Table (1)

| OPINIONS OF MALE AND FEMALE RESPONDENTS ON PERMISSIBILITY OF INCLUSION OF THE FOLLOWING CONDITIONS: | | |
|---|---------|-----|
| A wife stipulates that she has the right to divorce herself | Males | 14% |
| | Females | 24% |
| A wife stipulates that her husband does not take a co-wife | Males | 16% |
| | Females | 30% |
| A wife stipulates that her husband does not force her to leave her country | Males | 36% |
| | Females | 50% |
| A husband stipulates that his wife lives with him in a certain country | Males | 74% |
| | Females | 77% |
| A husband stipulates that his wife does not work outside home | Males | 61% |
| | Females | 60% |
| A wife stipulates that she lives in a housing she elects | Males | 35% |
| | Females | 57% |
| A wife stipulates that her husband does not prevent her from working | Males | 68% |
| | Females | 83% |
| A wife stipulates that her husband does not prevent her from completing her education | Males | 79% |
| | Females | 88% |

The in-depth interviews and focus group discussions show considerable consensus among the respondents with respect to permissibility of stipulation under Sharia, such as a wife stipulates that she completes her education and continues to work. The findings show that there is a considerable disagreement among the respondents with respect to the permissibility of certain stipulations, namely a wife stipulates that she has the right to divorce herself or a wife stipulates that her husband does not take a co-wife. The vast majority of the male and female respondents believed that a wife is not permitted under Sharia to stipulate that she has the right to divorce herself.

The respondents have misconceptions about permissibility of certain conditions under Sharia. The vast majority of the respondents confirmed that the condition that a woman can initiate divorce is impermissible under Sharia. Such misconception became clear through the respondents' responses, where they thought that a wife can divorce her husband by saying "You are divorced", and argued that since a woman is emotional, reckless and nervous; it is unreasonable to permit her to initiate divorce. This is confirmed by the quantitative study on the knowledge about permissibility of conditions that can be made by a wife, as shown in the findings contained in Table (1).

Most of the foreign women married to Jordanians said that they do not know that a woman has the right to make conditions in the marriage contract, while the non-Muslim women married to Jordanians mentioned that they are totally unaware of the right to stipulate or the other marital rights unless such rights and their consequences are explained by a husband or by someone else when the marriage contract is made. A foreign woman married to a Jordanian man said **"In Ukraine, we do not include conditions in the marriage contract. Inclusion of certain conditions is a good idea, indeed. These conditions make the marital life better"**.

As to the Personal Status Law, 34% of the respondents were unaware of an article in the said Law that permits a woman to include conditions in the marriage contract, while 41% of the respondents said that they are unaware of the fact that the law permits a man to include conditions in the marriage contract. As to the respondents' knowledge about the legal consequences if either spouse fails to fulfill the conditions contained in the marriage contract and the right of the other spouse to terminate the contract, 34% of the respondents said that they have no idea about the legal actions to be taken if a husband does not fulfill the conditions included contract by a wife in the marriage, and about a wife's right to terminate the contract and claim all marital rights from a husband. Additionally, 53% of the respondents confirmed that they have no idea that if a wife does not fulfill the conditions included by a husband in the marriage contract, a husband may terminate the contract and the deferred dowry and the post-divorce waiting period support are forfeited. Table (2) shows the respondents' knowledge of the Personal Status Law.

Respondents Knowledge of the Personal Law.

Table (2)

| Knowledge of the Personal Status Law | Statement | I Know | I do not know | I refuse to answer |
|---|---|--------|---------------|--------------------|
| | | | | |
| <p>Figures represent respondents' knowledge of a statement</p> <hr/> <p>Sample: all male and female respondents (2,612)</p> | The Personal Status Law permits a man to include conditions in the marriage contract | 59% | 41% | 0% |
| | The Personal Status Law permits a woman to include conditions in the marriage contract | 65% | 34% | 1% |
| | If the conditions are written in the marriage contract, such conditions are binding on both spouses | 86% | 14% | 0% |
| | If a husband does not fulfill the conditions contained in the marriage contract, a wife may terminate the contract and claim all her marital rights from a husband | 67% | 32% | 1% |
| | If a wife does not fulfill the conditions contained in the marriage contract, a husband may terminate the contract and the deferred dowry and the post-divorce waiting period support are forfeited | 45% | 53% | 1% |
| | If a condition written in the marriage contract is legally impermissible, such condition is invalid and the contract remains valid | 45% | 53% | 2% |

Society's Perceptions about the Inclusion of Stipulations in the Marriage Contract

4.3

As mentioned above, the Jordanian society's knowledge of inclusion of conditions in marriage contract is incomplete as discussion and knowledge of such conditions are not part of the family priorities.

Many families usually avoid talking about the conditions, especially the women's right to stipulate, for various reasons; including lack of knowledge that stipulation is permitted under Sharia and law as long as such stipulation is in line with the determined controls.

In this context, a divorced male from Karak governorate said “It is difficult. Considerable effort should be exerted to educate people about this matter. The competent authorities must educate and familiarize people with this matter. Many people know nothing about the stipulation in the marriage contract. Even if people know about stipulation, a further phase is needed to familiarize them with it”.

It is argued that non-acceptance of the stipulation in the marriage contract is attributed to facilitating and completing the procedures for conducting the marriage contract and to fear of reluctance of a fiancé to marry, since bringing up the subject of stipulation by a fiancée or a fiancé might hinder the marriage process. In fact, parents often do not want their daughter to include conditions, and if she wishes to include conditions, she is prevented from doing so. In contrast, after marriage, the husband gives himself the right to solely determine the future of the family and the form of the marital relationship, such as determining the place where they live, preventing a wife from working, etc. “under customs and traditions, a wife is prohibited from demanding anything as long as her husband provides her with a residence, food and drink? This belief gives a husband to do whatever he wants. The parents prevent their daughter from inclusion of stipulations with the aim of facilitating the marriage procedures. If a fiancée wants to add conditions to the marriage contract, a fiancé’s parents start saying “if you accept her conditions, she will twist you around her little finger after you get married”, and they might order the fiancé to discontinue the marriage procedures”. (A female from Zarka governorate).

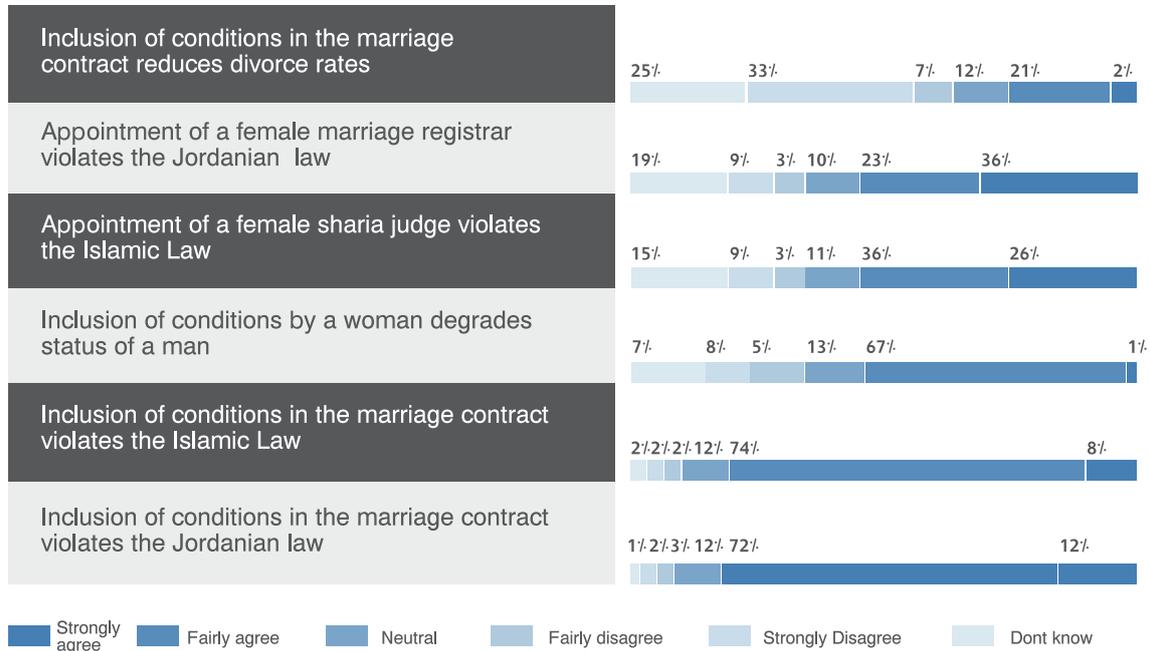
The findings of the study show that male guardianship over women in marriage is misunderstood. The guardianship in marriage is given to males such as a woman’s father, grandfather, son or brother, and the marriage contract is invalid if the guardian does not approve it. However, many fathers or brothers determine all details of the marriage contract of their daughters or sisters and prevent them from adding conditions to the marriage contract. Some people may argue that such practices are part of the responsibilities given to a male by the society and customs and traditions in his capacity as a guardian of the woman. However, Sharia and law give a woman the right to add any condition she wants to the marriage contract.

As shown in Figure (5), 59% of the respondents supported the idea of inclusion of conditions in the marriage contract as such conditions reduce divorce rates in the future. In practice, the intending spouses do not add conditions to the marriage contract, as explained in detail in the sections below.

The findings of the quantitative study show that the respondent’s views on appointment of a female sharia judge were different as shown in Figure (5). 47% of respondents believed that appointment of a female sharia judge does not violate the Islamic Law, while (24%) of them said that such appointment violates the Islamic Law. 26% of the respondents said that they have no idea about this matter. As to whether appointment of a female marriage registrar violates the Jordanian law, 36% of the respondents said that they have no idea, and 33% confirmed that it does not violate the law, while 28% believed that it violates the law.

Perceptions about the Inclusion of Stipulations in the Marriage Contract

Figure 5

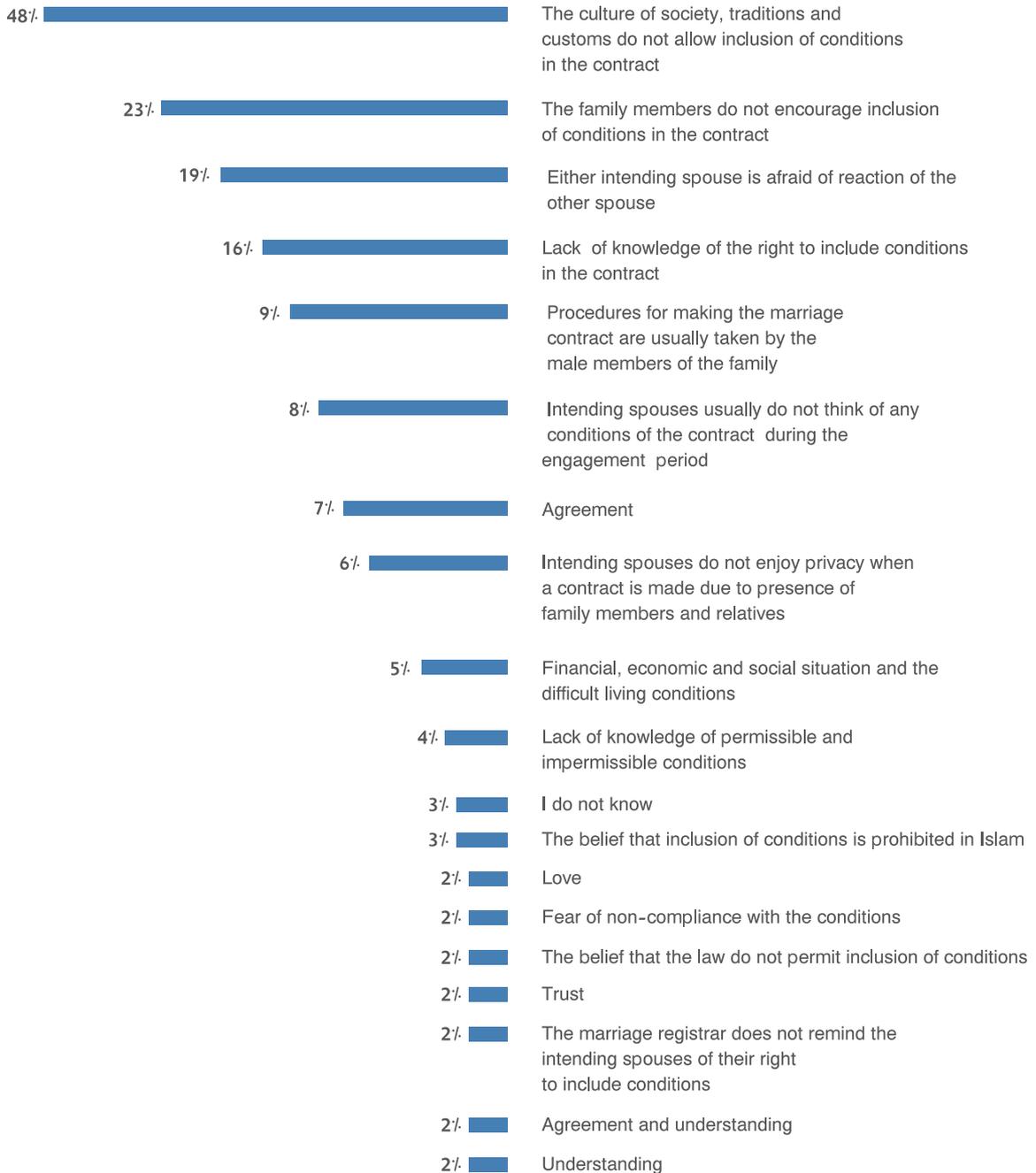


Stereotypes in society are one of the main obstacles that prevent the inclusion of conditions in the marriage contract document. Many female intending spouses find it very difficult to convince their family members to allow them to include conditions in the marriage contract. Some respondents reported that some fathers and brothers think that it is shameful to discuss these rights with the fiancé's family, and that social customs prevent them from doing so. Further, a fiancée finds it difficult to convince a fiancé that she wishes to include conditions in the marriage. Some male respondents justified their unwillingness to talk about the conditions for many reasons, including that they do not accept inclusion of conditions by a woman as she does not have the right to do so and as this degrades status of a man and embarrasses him in presence of his family members and invitees.

Moreover, the findings of the study show that , as shown in Figure (6), the culture of society , customs and traditions followed by objection by parents are the main reasons that prevent intending spouses from including conditions in the marriage contract by frequencies of (48%) and (23%), respectively. Some respondents indicated that talking about conditions during the engagement period might make either intending spouse afraid of the other, which may make him/her reluctant to continue the conclusion of marriage by a frequency of (19%), followed by unawareness of intending spouses that they have the right to include conditions in the marriage contract by a frequency of (16%).

Main Reasons That Prevent the Inclusion of Stipulations in the Marriage Contract

Figure 6



Societys Perceptions about Stipulation by the Wife: The Wide has the Right to Divorce Herself

The findings of the study evidently show that the condition that a wife has the right to divorce herself sparks considerable controversy and a clear disagreement between the respondents. The vast majority of the participants believed that it is not permissible for a wife to divorce herself. As mentioned earlier, when they were asked whether a wife is permitted to divorce herself, (84%) of the male respondents and (76%) of the female respondents believed that a wife is not permitted to include such condition in the marriage contract.

However, the Islamic Law and article 37/a of the Jordanian Personal Status Law give a wife the right to divorce herself. This right does not mean that a husband cannot initiate the divorce; rather a husband authorizes a wife to initiate divorce by following the established official procedures in the court. Such authorization may be for a definite or indefinite period.

In this context, most of the respondents believed that if such condition is included in the marriage contract, a wife can say to her husband “you are divorced”. A female respondent in a focus group discussion in Irbid governorate said “this means that a wife can say to her husband “you are divorced” if she gets angry at him”. This shows that authorization of a wife by a husband to divorce herself is not understood by both male and female respondents.

Additionally, the respondents confused the wife’s right to initiate divorce with concept of caretaking, where Islam gives men the right to caretaking according to Quran, where Allah says “Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially”, (An-nisa:34). According to jurists’ interpretation, “caretaking” means that men are required to take care of and protect women and support them financially. Caretaking does not contradict the wife’s right to divorce herself.

The stereotype about women has been reinforced based on the general qualities of women, such the emotional nature of women and that women cannot control their feelings in many situations, unlike men. Some male respondents said that women are nervous and impulsive and make hasty decisions, and that the right to initiate divorce is given to men and that giving such right to women harms dignity of men and degrades their status. From this point of view, many male respondents argued that jurisprudence and Sharia do not give the woman the right to initiate divorce, but rather give it to the men only.

At large, the findings of the study show different practices and attitudes towards inclusion of conditions in the marriage contract. The findings of the in-depth interviews and focus group discussions show that the marriage rites in Jordan prevent intending spouses from including conditions in the marriage contract. Intending spouses often get to know each other through a family member or close friends of the family, and they traditionally get married. As to the traditional marriage, it is a custom that male members of families of the intending spouses meet twice or three times before offer and acceptance. During such meetings, they negotiate the advanced and deferred dowries and set the date for conclusion of the marriage contract. After the marriage contract is concluded, intending spouses start to meet and get to know each other in line with the community traditions and customs. Before the marriage contract is concluded, intending spouses are not permitted to meet separately to discuss details of their future life or the conditions they wish to include in the marriage contract. In this respect, a women interviewed in Ajloun governorate said **“you know that the society’s view is a problem. If a fiancé meets a fiancée before the marriage contract is concluded and they do not agree, people will start spreading rumors about the girl”**.

Yet, as to the traditional marriage, some female respondents thought that conditions must be included in the marriage contract and intending spouses must meet to get to know each other and to avoid the future problems. In a focus group discussion in Irbid governorate, a female respondent said **“a wife must add conditions to the marriage contract, especially in the traditional marriage. All information about a fiancé collected by a fiancée before marriage is superficial, who knows what his character will be in the future. Hence, conditions should be added to the marriage contract”**.

The majority of female respondents confirmed that intending spouses must be allowed to get to know each other before marriage, but reality is at complete odds. In practice, the marriage contract is concluded before the intending spouses get to know each other and discuss details of their future life, including place of residence, living in a certain governorate, residing in a certain country, etc.

In addition to residence-related matters, female respondents talked about their fundamental right to complete their education and their right to work after marriage. In this context, a female respondent from Karak governorate said **“promises are not kept after marriage. Promises must be written in the marriage contract so that rights of both spouses are preserved. If intending spouses add conditions to the marriage contract, they will live without problems in the future”**.

Some marriage rites might prevent the intending spouses from adding conditions to the marriage contract, such as concluding the marriage contract in presence of many people. In certain communities, when a marriage contract is made by the marriage registrar, details of the marriage contract, including the advanced and deferred dowries and conditions, are announced in front of all invitees. The participants said that it is difficult for the intending spouses to include conditions in the marriage contract in presence of a large number of invitees for the avoidance of embarrassment. The community customs also prohibit such practices. In a focus group discussion in Balqa governorate, a participant said **“In presence of 100 or 200 men, it is difficult for an intending spouse to add conditions to the marriage contract, it is very embarrassing! Even if deferred dowry has not been paid yet, the wife’s family members declare before people that the deferred dowry has been received. Many problems could happen with respect to the deferred dowry”**.

The marriage contract is sacred and the Islamic law pays great attention to it. The marriage contract is a contract for a union between a man and a woman with the aim of starting a family and having children. The marriage contract is as important as any other civil contract. Elements of the marriage contract include offer and acceptance, presence of a wife’s guardian, and presence of two witnesses. Publicity of details of the marriage contract is not an element of the marriage contract. Publicity of marriage (wedding day) is different from publicity of details of the marriage contract.

“It is shameful for a husband to accept a wife’s conditions in front of the invitees since people will defame him. I think intending spouses should reach an agreement during the engagement period” (focus group discussion for males- Mafraq governorate).

Married couples who added conditions to the marriage contract

The Supreme Judge Department and Sharia courts still maintain hard copies of marriage contracts, and they do not have any official statistics for married couples who already included conditions in the marriage contract, so that they can be compared with the findings of the quantitative study. This cannot happen unless the marriage contracts are electronically archived.

As mentioned above, 2612 respondents were targeted in the quantitative survey. Figure (7) shows that there were 1671 married couples. Only 4% of the married respondents included conditions in the marriage contracts, i.e. 89 married respondents. The conditions added by the married couples include: a wife's right to complete her education by (38%), a wife's right to work by (28%), and living in a separate house by (15%).

According to the married respondents, the main reasons that prevented them from adding conditions to the marriage contract included the community customs and traditions by (29%), non-discussion of the idea of stipulation in the engagement period by 18%, lack of conviction of the need for adding conditions to the marriage contract by 16%, and lack of knowledge of the right to add conditions to the marriage contract by 12%, as shown in Figure 7.

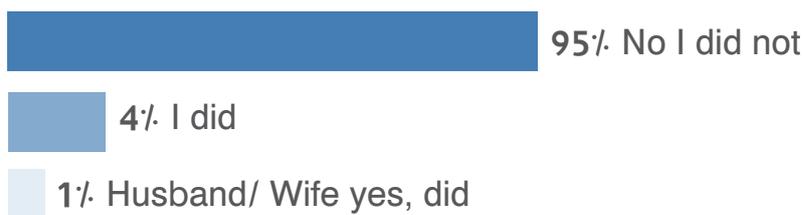
Inclusion of conditions in the marriage contract

Figure 7

| Conditions that were included | | Why conditions were not included | |
|--|-----|---|-----|
| A wife's right to complete her education | 38% | Customs and traditions prevent stipulation | 29% |
| A wife's right to work | 28% | No need for stipulations | 18% |
| A wife's right to determine the marital home | 15% | Unconvinced that inclusion of conditions in the marriage contract is necessary | 16% |
| Living in a separate house | 15% | Unaware of stipulation | 12% |
| Advanced and deferred dowries | 3% | Understanding | 10% |
| The wife controls her salary | 2% | The wife controls her salary | 9% |
| A wife stipulates that her husband does not take a co-wife | 2% | Relatives | 8% |
| Refuse to answer | 2% | Prior agreement | 3% |
| Payment of deferred dowry at a specific time | 1% | Prior acquaintance | 1% |
| A husband does not dispose of a wife's salary | 1% | Fear of problems with the other spouse | 1% |
| Taking care of a husband's elderly parents | 1% | The marriage registrar did not mention the right to include conditions in the marriage contract | 1% |
| A husband stipulates that wife takes care of his children from a previous marriage | 1% | Trust | 1% |
| A wife stipulates that her children from a previous marriage live with her in the marital home | 1% | Young age | 1% |
| A husband stipulates that a wife travels abroad with him | 1% | Love | 1% |
| A wife stipulates that she wears Hijab | 1% | Prior acquaintance, relatives | 1% |
| Others | 12% | The idea was refused by family members | 1% |
| | | No reason | 6% |

Sample: married respondents who included conditions (89)

Sample: married respondents who did not include conditions (1,567)



Respondents' reluctance to include conditions in the marriage contract

Some female respondents believed that men are unconditionally permitted under Sharia and law to include conditions in the marriage contract. They also believed that after marriage men are permitted under the law to do whatever they deem suitable such as travel, determining domicile, approving a wife's work or education, etc. However, other female respondents said that their husbands prevent them from achieving their goals and realizing their aspirations. Female respondents in a focus group discussion said **“a husband needn't add conditions to the marriage contract. He is the guardian and the caretaker. He can do whatever he wants whether conditions are added or not. In practice, addition of conditions to the contract will change nothing”**.

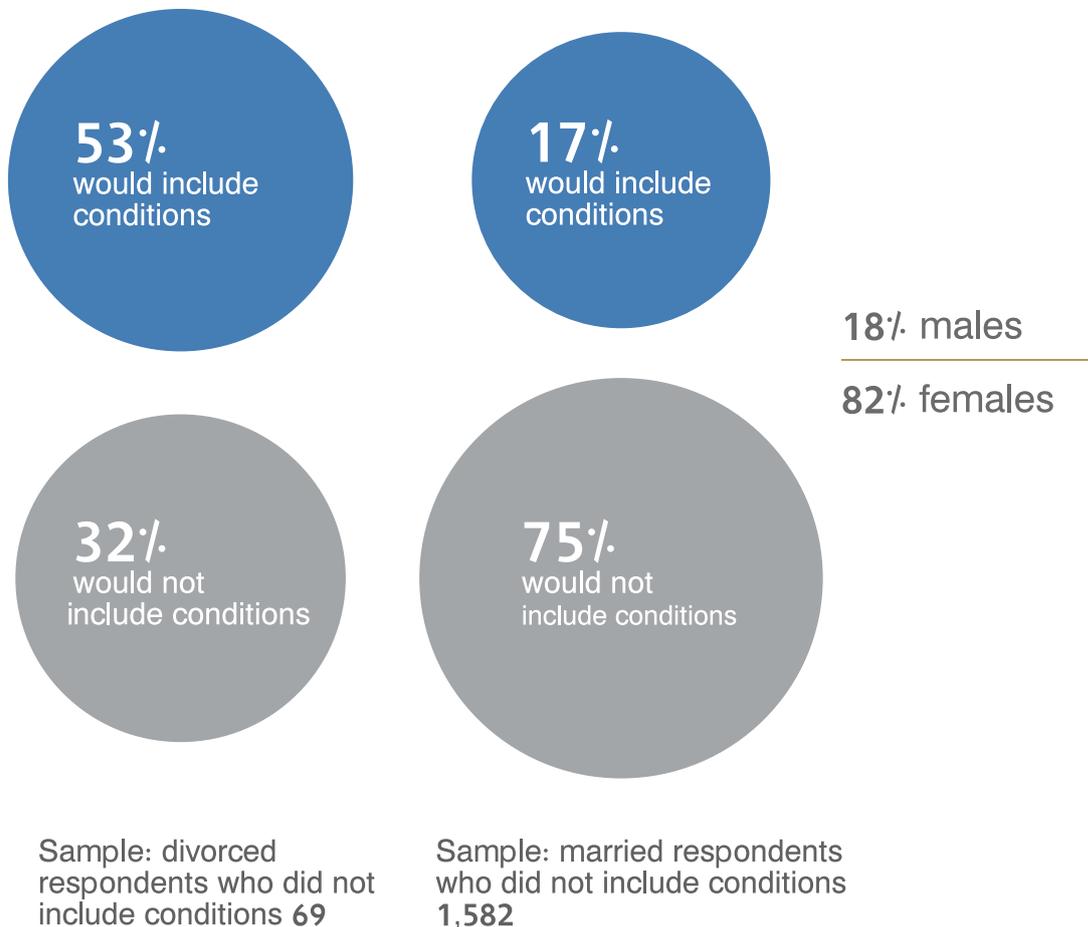
Additionally, some female respondents said they are reluctant to exercise their right to add conditions to the marriage contract for dissatisfaction of family members, especially the male ones. Other female respondents said that they fear that such stipulations might drive the other party to break off the engagement. A number of female respondents believed that non-fulfillment of conditions by a husband might result in divorce, and a divorced woman is negatively viewed in the society.

Some male respondents mentioned the conditions that a wife can add to the marriage contract. They said that such conditions might restrict their freedom in the future. Other male respondents said that it is difficult for a man to violate the customs and traditions established in the society.

Moreover, the respondents said that some men fear that they would not be able to comply with the conditions in the future, which has financial consequences. This is confirmed in the quantitative study, when the respondents were asked about the extent to which the conditions are binding after they are added to the marriage contract, where 86% of the respondents confirmed that they know that they conditions are binding. Figure (8) shows that 75% of the respondents who did not add conditions to the marriage contract would not add conditions to the marriage contract if they could go back in time, while 17% said that they would do so. As to divorced respondents, 53% said that they would add conditions to the marriage contract if they could go back in time, while 32% said that they would not do so.

Views of married and divorced respondents on inclusion of conditions in the marriage contract if they could go back in time

Figure (8)



The quantitative study sample consisted of 745 unmarried respondents. When asked whether they intend to include conditions in the marriage contract in the future, 39% of the unmarried respondents said they would not include conditions, while 30% (mostly females) said they would. Figure (9) shows the most important conditions they will add. The conditions that a wife has the right to work, that a wife has the right to continue her education, that a wife has the right to determine the marital home, that a wife must work, and that a wife has the right to travel and move were the most frequent conditions by 51%, 34%, 12%, 10% and 7%, respectively.

Additionally, the unmarried respondents who do not intend to include conditions in the marriage contract reported that the main and most frequent reasons for not including conditions in the marriage contract are lack of conviction and lack of necessity, understanding and agreement, customs and traditions, refusal of inclusion of conditions by the other spouse by 33%, 33%, 12% and 12%, respectively.

Respondents' views on the conditions to be included in the marriage contract and the reasons for non-inclusion

Figure (9)

| Unmarried respondents and conditions that may be included | What conditions will you include? | | Why won't you include | |
|--|--|------------|--|------------|
| | Condition | Percentage | Reason | Percentage |
| Reasons for not including conditions in the future marriage contract | A wife's right to work | 51% | I am unconvinced that inclusion of conditions in the marriage contract is necessary | 33% |
| | A wife's right to complete her education | 34% | Understanding and agreement | 33% |
| | A wife's right to determine a marital home | 12% | Customs and traditions do not allow inclusion of conditions in the marriage contract | 12% |
| | A husband stipulates that a wife does not work | 10% | I refuse that the other spouse include conditions in the marriage contract | 12% |
| | Separate marital home | 8% | Including conditions in the marriage contract is unnecessary | 11% |
| | A wife's right to travel and move | 7% | I am afraid of reaction of the other spouse | 7% |
| | Sincerity, loyalty, and non-cheating on the part of both spouses | 5% | Trust | 2% |
| | A husband stipulates that a wife wears Hijab | 5% | Familiarity | 1% |
| | A wife stipulates that her husband does not take a co-wife | 4% | Prior acquaintance | 1% |
| | A husband treats his wife's parents kindly and lovingly | 4% | Love | 1% |
| | Do not know | 3% | Economic and social conditions | 1% |
| | A husband stipulates that a wife does not complete her education | 3% | Lock of knowledge of inclusion of conditions in the marriage contract | 1% |
| | Respecting decisions and privacy, and good treatment | 3% | | |
| | A wife disposes of her salary | 2% | | |
| | A wife buys and drives a car | 2% | | |
| | A wife tells a husband about everything and obeys him | 2% | | |
| | A husband supports a wife and does not dispose of her jewelry | 2% | | |
| | A wife does not leave home without approval of a husband | 2% | | |
| | A wife does not work | 2% | | |
| | Others | 19% | | |

Sample: unmarried respondents who intend to include conditions

Sample: unmarried respondents who do not intend to include

A woman, whether married or never married, undertakes responsibilities to her home and her husband, and she believes that marital and family duties must be performed, and a husband has duties towards his wife and children that he must perform. Performance of these complementary roles by spouses leads to the stability and permanence of the family and marriage and reduces future marital disputes. The findings of the study show that the marital rights related to stipulation in the marriage contract, whether by a wife or a husband, are not clear to many respondents, and that there is a clear violation of the rights of the other spouse, especially a wife. The findings also show that the male respondents confused the concept of guardianship with concept of caretaking, contrary to Sharia.

Moreover, many male respondents believed that Sharia gives them the right to prevent a wife from completing education or working, to force a wife to live with them in the place they want, to control her financial independence and to dispose of her salary and legacy. On the other hand, female respondents believed that such practices by husbands are violation of their rights and freedoms. However, the wives give these rights to husbands to avoid problems that might lead to divorce, desertion, or taking a co-wife.

The findings of the study also show that the majority of the female respondents and some of the male respondents affirmed that women's ambition is not limited to marriage and family life, and it is not their only role to become a wife and mother, although they acknowledged this role. Females fear losing their career ambition, their ambition to complete their education, and their ability to determine their future, make their own decisions or move. Thus, it has become important to document rights in the marriage contract, which can alleviate concerns of female intending spouses and restore their rights.

Female respondents reported that economic independence is a right and a necessity for them, and it gives them the ability to secure their future and realize their aspirations. Many of the interviewed female respondents indicated that there are many obstacles that prevent them from doing so, such as preventing them from completing their education or continuing their work due to the refusal of husbands or male family members, and the majority of them confirmed that documenting such conditions in the marriage contract guarantees their economic independence. A female respondent from Jerash governorate said "I do not want my daughter to compete university or graduate studies to stay at home after marriage.

Giving sufficient time to the intending spouses before concluding the marriage contract with the aim of talking about the affairs of their marital life, and finding solutions to issues that could lead to future disputes, helps them to live a stable family life, and reduces divorce cases. Adding agreed upon conditions to the marriage contract reduces the marital problems in the future. This is confirmed by the findings of the quantitative study, which show that approximately 59% of the divorced respondents believed that giving the intending spouses an opportunity to include conditions in the marriage contract may reduce the divorce cases in the future, while 33% of the respondents believed that inclusion of conditions has nothing to do with reducing divorce cases in the future.

With respect to the importance of stipulation in reducing divorce rates in the future, a divorced male respondent said “Intending spouses must add conditions to the marriage contract so that their rights and duties are clear. Lack of stipulation made my life stressful..... Spouses will not know their rights and obligations without stipulation”.

Institutional and societal roles with respect to stipulation in the Islamic marriage contract

4.6

The findings of the interviews and focus group discussions show that the issue of inclusion of conditions in the marriage contract is a joint responsibility of the relevant official institutions and civil society organizations concerned with human rights. Also, every member of society plays a role in strengthening this system of thought, because of its great impact on strengthening family stability and protection of the rights of both spouses in the long term.

Raising awareness of the conditions of the marriage contract is one of the most important tools that enhance people’s knowledge, especially women, of their rights. Awareness clearly contributes to educating women and girls about their rights, which makes them more knowledgeable and able to take advantage of and demand those rights. Most of the respondents believed that educating the intending spouses about the right to add conditions before concluding the marriage contract makes them more able to discuss such conditions, and makes them less embarrassed if they want to add conditions that preserve their rights and reduce the potential problems in the future.

In this context, a female respondent said that one of the most important factors in the increase of divorce rates among people who marry at a young age is the lack of knowledge of marital responsibilities and rights, and therefore educating them about marriage issues and that they have the right to add conditions to the marriage contract may help reduce divorce rates.

In the in-depth interviews and focus discussion groups conducted in several governorates of the Kingdom, the respondents mentioned a set of challenges that impede adding conditions to the marriage contract, including the lack of knowledge about the permissibility of adding conditions under sharia and law. The respondents pointed to the institutional responsibility to promote a culture of adding conditions to the marriage contract. The respondents suggested that the Supreme Judge Department should, in cooperation with Sharia courts, prepare a list containing all permissible conditions for the benefit of the intending spouses and the marriage registrars. A number of jurists and experts indicated that a large number of marriage registrars, especially who do not hold university degrees, are unaware of the conditions permitted under the Islamic Law. Hence, the marriage registrars should be provided with training courses before the exercise of their duties.

Furthermore, it is important to allocate a separate place within the Sharia courts in which an expert meets with the intending spouses. The expert is required to explain to them the most important conditions that they can add to the marriage contract, clarify their the duties and rights, and encourage them to add the conditions in front of him in order to avoid embarrassment in presence of the invitees during marriage rites.

According to several specialists, having a separate place makes the intending spouses more comfortable to talk about their desires and perceptions regarding the conditions. One of the realistic examples that demonstrates the importance of this procedure is what an experience of a female respondent, where she verbally stipulated that she completed her education and her husband agreed to that, but when they went with their parents to the court to conclude the marriage contract and she asked the judge to add the said condition to the contract, the husband and parents objected to adding it fearing of social stigma.

According to a number of public stakeholders, the Supreme Judge Department provides awareness-raising- courses to the intending spouses. They also asserted the importance of creating “Pre-marriage Family Life Organization” offices that the intending spouses are required to visit in order to complete the marriage contract. In these offices, intending spouses are made aware of the information and the main pillars of marital life and the rights and duties of both the husband and wife, and the permissible conditions under Sharia and law are explained, provided that a certificate is given to the intending spouses to be presented when the marriage contract is made.

This proves the societal and media role in enhancing the culture of inclusion of conditions in the marriage contract, neglecting any other community considerations. Most of the respondent's views in the in-depth interviews and focus group discussions affirmed the importance of educating the members of society, in general, and the intending spouses, in particular, by certain bodies including, without limitation, the official institutions such as the Sharia courts, the Supreme Judge Department, the Ministry of Awqaf, and any other religious institutions. Further, the permissibility of inclusion of conditions in the marriage contract must be addressed in the Friday Sermon and the social media in order to raise awareness of this issue.

It is also essential to make changes to the curricula in schools and universities with the aim of shedding light on issues related to marriage, including the conditions permitted under sharia and law that can be included in the marriage contract. This was affirmed by several officers of the official institutions, where attention should be paid to introducing a course on personal status for university students within the compulsory requirements, in addition to updating the courses and curricula with respect to personal status, marriage and the stipulation in the marriage contract.

