

214343 - Types of shighaar marriage (zawaaj al-badal): when is it invalid?

the question

I married my paternal cousin approximately one year ago, but I am confused about the validity of my marriage. My husband's sister is married to my brother, and I read on your website that this kind of marriage is called shighaar marriage (quid-pro-quo marriage) and is prohibited in Islam. Please note that this is very common in Pakistan and Afghanistan, where it is called in Pashto "zawaaj al-badal (exchange marriage)." This has been the practice for a very long time. If getting married in this way is prohibited according to Islamic teaching, why don't the scholars and imams raise any objection to it, and why don't we find them refraining from doing this kind of marriage contract? I asked for information about shighaar marriage, but I still do not know whether my marriage is considered to be of this type or not, because I found various scholarly views about this issue. For example, I found out that the Hanafi madhhab regards this marriage contract as valid, and states that a dowry (mahr), whilst other madhhabs say something different. What is shighaar marriage? Does my marriage come under the heading of shighaar marriage? What is the solution if the couple are happy with their life and have children from this marriage? Do they have to get divorced, taking into consideration the problems that may arise between the two families as a result of that?

Detailed answer

Praise be to Allah.

Firstly:

Shighaar marriage (quid-pro-quo marriage) – or what people call zawaaj al-badal (exchange marriage) is prohibited and forbidden according to the teachings of Islam, because of what it involves of injustice towards the woman and denying her her rights, as well as exploitation of the

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position of guardianship.

It was narrated from Ibn 'Umar (may Allah be pleased with him) that the Prophet (blessings and peace of Allah be upon him) said: "There is no shighaar marriage (quid-pro-quo) marriage in Islam. Narrated by Muslim (1415)

It was narrated that Jaabir ibn 'Abdullah (may Allah be pleased with him) said: The Messenger of Allah (blessings and peace of Allah be upon him) forbade shighaar marriage. Narrated by Muslim (1417).

Secondly:

Marriage by way of exchange (shighaar) has three forms:

1. where two men each marry a female relative of the other or a woman who is under his guardianship, without stipulating that the marriage of either of them be conditional upon and connected to the marriage of the other, and with a specified dowry given to each of them.

This kind of marriage is not regarded as coming under the heading of shighaar marriage, and there is nothing wrong with it.

It says in Fataawa al-Lajnah ad-Daa'imah (vol. 1 - 18/427):

If one man proposes to the ward of another (i.e., a woman under the guardianship of the other man), and the other man proposes to the ward of the first man, without there being any conditions attached (to connect the two marriages), and the marriage contracts are done with the consent of the two women and fulfilling all the other conditions of marriage, then there is no difference of scholarly opinion concerning that, and in that case it does not come under the heading of shighaar marriage. End quote.

2. Where the marriage contract is done on condition that each of them marry the ward of the

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other, with no dowry (mahr), and intimacy [through marriage] with one of the women is granted in return for intimacy with the other.

This type comes under the heading of shighaar that is prohibited according to the Prophetic Sunnah and the consensus of the scholars.

Imam ash-Shaafa'i (may Allah have mercy on him) said:

if a man gives in marriage his daughter or a woman under his guardianship, no matter who she is, on condition that the other man give him his daughter or a woman under his guardianship, no matter who she is, in marriage, and the dowry of each of them is intimacy [through marriage] with the other, and neither of the men specifies a dowry, then this is the shighaar marriage that the Messenger of Allah (blessings and peace of Allah be upon him) prohibited. So the marriage is not valid and must be annulled. End quote from al-Umm (6/198).

Ibn 'Abd al-Barr (may Allah have mercy on him) said:

With regard to what it means in shar'i terms, it refers to when one man gives his ward in marriage to another man, on the basis that the other man will give his own ward in marriage to him, with no dowry between them except intimacy (through marriage) with one woman in return for intimacy (through marriage) with the other, according to the explanation given by Maalik and a number of the scholars. End quote from al-Istidhkaar (5/465)

He also said: This is a matter concerning which there is no difference of opinion among the scholars that it is the shighaar marriage that is prohibited in this hadith. End quote from at-Tamheed (14/70).

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

With regard to shighaar marriage, the scholars are agreed that what is meant is when a man gives

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his ward in marriage to another man on the basis that the other man gives his own ward in marriage to him, with no dowry between them except intimacy (through marriage) with one woman in return for intimacy (through marriage) with the other, and the scholars are agreed that it is a marriage that is not valid, because it is proven to be prohibited.

End quote from Bidaayat al-Mujtahid (3/80).

This ruling is not limited to daughters or sisters; rather it includes any woman who is under the guardianship of a man.

An-Nawawi (may Allah have mercy on him) said: The scholars are unanimously agreed that women other than daughters, such as sisters, nieces, paternal aunts, female cousins and slave women come under the same ruling as daughters with regard to this issue.

End quote from Sharh Saheeh Muslim (9/201)

The scholars of the Hanafi madhhab are in agreement with the majority of scholars that this form of marriage is prohibited and is not permissible; however they regard the marriage as valid and say that it is obligatory to give each of the women a dowry like that of her peers. They said: Then it will not be a shighaar marriage.

See: al-Mabsoot (5/105); Badaa'i' as-Sanaa'i' (2/278).

3. Where a man gives his daughter, sister or woman who is under his guardianship in marriage to another, on condition that the other man give his own daughter or ward in marriage to him, but with a dowry for each of them, whether it is the same or different.

This type of marriage is the subject of a difference of opinion among the scholars.

Some of the scholars are of the view that this type also comes under the heading of shighaar marriage that is prohibited, and the fact that this condition is stipulated is sufficient to make it a

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shighaar marriage. This is the view of the Zaahiris and was the view favoured by some Shaafa'i and Hanbali scholars.

Al-Khuraqi – who is Hanbali – said:

If he gives his ward to him in marriage on condition that the other man give his own ward to him in marriage, then there is no marriage between them, even if they also specify a dowry.

End quote from Mukhtasar al-Khuraqi (p. 238). See also: al-Muhalla by Ibn Hazm (9/188)

This view was also favoured by Shaykh Ibn Baaz (may Allah have mercy on him) and the scholars of the Standing Committee. In a fatwa issued by the Committee, it says:

If a man gives his ward in marriage to another man, on condition that the other man give his own ward in marriage to him, this is the shighaar marriage that the Prophet (blessings and peace of Allah be upon him) forbade, and this is what some people call zawaaj al-badal (exchange marriage), which is an invalid marriage, regardless of whether a dowry is specified or not, and regardless of whether or not it was done on the basis of consent.

End quote from Fataawa al-Lajnah ad-Daa'imah (vol. 1 – 18/427)

They quoted as evidence the report narrated by Muslim in his Saheeh (1416) via Ibn Numayr from 'Ubaydullah, from Abu'z-Zinnaad, from al-A'raj, from Abu Hurayrah (may Allah be pleased with him) who said: The Messenger of Allah (blessings and peace of Allah be upon him) prohibited shighaar marriage. Shighaar marriage is when one man says to another: Give your daughter to me in marriage and I will give you my daughter in marriage, or give your sister to me in marriage and I will give you my sister in marriage.

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

The correct view is that once the condition is in place, then it is to be regarded as a shighaar

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marriage, regardless of whether other factors (the dowry, consent, and so on) are also present, because of the apparent meaning of the hadiths from the Prophet (blessings and peace of Allah be upon him), because in the hadith of Abu Hurayrah (may Allah be pleased with him), it says: Shighaar marriage is when one man says to another: Give your sister to me in marriage and I will give you my sister in marriage, or give your daughter to me in marriage and I will give you my daughter in marriage. And he did not say: and there is no dowry between them; rather he spoke in general terms (regardless of anything else).

End quote from Majmoo' Fataawa Ibn Baaz (20/280)

He (may Allah have mercy on him) also said:

Nikaah al-badal (exchange marriage), which is also called shighaar marriage (quid-pro-quo marriage) is not permissible. It was prohibited by the Prophet (blessings and peace of Allah be upon him) in a number of hadiths. So exchange marriage in which a condition is stipulated – when one man says, Give me your sister in marriage and I will give you my sister in marriage, or give me your daughter in marriage and I will give you my daughter in marriage – is not permissible. This is nikaah al-badal, which is also called shighaar marriage. Even if a dowry is specified, and regardless of whether the dowries (of the two women) are the same or are different, so long as this condition is stipulated, it is not permissible.

End quote from Fataawa Noor 'ala ad-Darb by Ibn Baaz (21/26).

The Maalikis call this type of marriage a kind of shighaar, and the ruling on it in their view is that it preferable to annul it before it is consummated; however after the marriage has been consummated it is to be deemed valid and a dowry is to be given, greater than the typical dowry, or the greater of the two dowries stipulated, to each of the two women.

In at-Tahdheeb fi Ikhtisaar al-Mudawwanah (2/132) it says:

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If one man says to another: Give your daughter to me in marriage for one hundred, on condition that I give my daughter to you in marriage for one hundred, or for fifty, there is nothing good in that, and it comes under the heading of wajh ash-shighaar. [Such a marriage] is to be annulled before it is consummated, but is to be deemed valid after consummation has occurred, and each of the women is to be given the greater of the two dowries specified, or a dowry like that of her peers, and this is not shighaar in a clear or blatant sense, because there is a dowry involved. End quote.

It is called a kind of shighaar because it is shighaar in one aspect but not another. Because a dowry is stipulated for each of them, it is not shighaar, because the marriage contract is not without a dowry. But because it is stipulated that one of the marriages is in return for the other, then it is shighaar.

End quote from Haashiyat al-'Adawi 'ala Kifaayat at-Taalib ar-Rabbaani (2/52).

The view of the majority of scholars is that this marriage is not regarded as being shighaar, because a dowry is stipulated for each of them.

Imam ash-Shaafa'i (may Allah have mercy on him) said:

If a man gives his daughter or a woman under his guardianship in marriage to another man, on the basis that that man give his own daughter or woman under his guardianship to him in marriage, and on the basis that the dowry of one of them should be such and such - something that is specified - and the dowry of the other should be such and such - something else that is also specified, whether it is less or more... Then this is not the shighaar marriage which is prohibited. End quote from al-Umm (5/83).

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

But if they also stipulate a dowry, so he says: I give my daughter to you in marriage on condition

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that you give me your daughter in marriage, and the dowry of each of them will be one hundred, or the dowry of my daughter will be one hundred and the dowry of your daughter will be fifty, or less or more, then what is narrated from Ahmad, as far as we know, is that it is valid.

End quote from al-Mughni (7/177).

Ibn al-Qayyim said: There was a difference of opinion concerning the reason for the prohibition:

It was said: It is making each of the two marriage contracts conditional upon the other.

And it was said: The reason has to do with making intimacy (through marriage) the dowry, and making intimacy with one as the dowry for the other, in which case the woman does not benefit and does not receive the dowry herself; rather the dowry goes to her guardian, and his intimacy with his wife is gained by allowing the other man to be intimate (through marriage) with his ward, and this is injustice to both women and is depriving the marriage of a dowry that could benefit her.

This is in accordance with the linguistic meaning and usage, because the Arabs say: baladun shaaghirun min ameer (a land devoid of any ruler) or daarun shaaghiratun min ahliha (a house devoid of its inhabitants) when it becomes empty; they also say shaghara al-kalb to refer to a dog lifting one of its feet and leaving its place empty.

If a dowry is stipulated, then there are no reservations concerning it, and there is no issue left except that of each of the men stipulating a condition on the other, which does not affect the validity of the marriage contract. This is what was narrated from Ahmad. End quote from Zaad al-Ma'aad fi Hadiy Khayr al-'Ibaad (5/99).

This is also indicated by the report narrated by al-Bukhaari (5112) and Muslim (1415), via Maalik, from Naafi', from Ibn 'Umar (may Allah be pleased with him), that the Messenger of Allah (blessings and peace of Allah be upon him) forbade shighaar, and shighaar is when a man gives his daughter in marriage on condition that the other man give his own daughter in marriage to

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him, with no dowry between them.

Imam ash-Shaafa'i (may Allah have mercy on him) said:

I do not know whether the explanation of shighaar is part of the hadith or is the words of Ibn 'Umar, Naafi' or Maalik.

End quote from al-Umm by ash-Shaafa'i (6/197)

There is a report which indicates that this explanation is the words of Naafi' (may Allah have mercy on him).

In Saheeh al-Bukhaari (6960) it is narrated that 'Ubaydullah ibn 'Umar al-'Umari said: Naafi' told me, from 'Abdullah (may Allah be pleased with him) that the Messenger of Allah (blessings and peace of Allah be upon him) forbade shighaar.

I said to Naafi': What is shighaar?

He said: Marrying a man's daughter and giving one's own daughter to him in marriage without any dowry, or marrying a man's sister and giving one's own sister to him in marriage without any dowry.

Al-Jawhari said in as-Sihaah (2/700):

Shighaar is a kind of marriage that was done during the Jaahiliyyah. It refers to when one man says to another: Give me your daughter or sister in marriage on condition that I will give you my sister or daughter in marriage, and that the dowry of each of them will be intimacy (through marriage) with the other. It is as if they waived the dowry and deprived the women of it. End quote.

With regard to the report narrated by Muslim via Ibn Numayr from 'Ubaydullah ibn 'Umar al-

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'Umari, from Abu'z-Zinnaad, from al-A'raj, from Abu Hurayrah(may Allah be pleased with him) who said: The Messenger of Allah (blessings and peace of Allah be upon him) forbade shighaar, and shighaar is when one man says to another: Give me your daughter in marriage and I will give you my daughter in marriage, or give me your sister in marriage and I will give you my sister in marriage -

This explanation of shighaar is not the words of the Prophet (blessings and peace of Allah be upon him) either. An-Nasaa'i (6/112) narrated it and stated that the explanation of shighaar is the words of 'Ubaydullah ibn 'Umar al-'Umari - one of the narrators of the hadith - and is not the words of the Prophet (blessings and peace of Allah be upon him).

Based on that, this explanation does not constitute proof; rather it is more appropriate to accept the explanation of Naafi'. The view of the majority of scholars is stronger, so if a dowry like that of her peers is specified, the husband is compatible and the woman agrees to it, then this is not a shighaar marriage.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said:

The correct view is that of the people of Madinah, Maalik and others, and it is what is narrated from Ahmad and most of his earlier companions, that the reason why it is regarded as being invalid is the fact that the marriage is devoid of any dowry.

End quote from Majmoo' al-Fataawa (34/126).

This view was favoured by Shaykh Muhammad ibn Ibraaheem (may Allah have mercy on him) when he was asked about nikaah al-badal (exchange marriage) when both wives agree to it and they have a complete dowry.

He replied: If the matter is as you say, that each of the wives has a dowry like that of her peers, and each of them agrees to the marriage, then there is nothing wrong with the marriages

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mentioned, and they do not come under the heading of shighaar marriage which is prohibited. And Allah is the source of strength.

End quote from Fataawa ash-Shaykh Muhammad ibn Ibraaheem (10/159).

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said:

If the dowry is like that of her peers, and is not lacking, and the woman accepts the husband and he is compatible with her, then this is valid. This is the correct view in our opinion: that if all three conditions - namely compatibility, a dowry like that of her peers, and the woman's consent - are fulfilled, then there is nothing wrong with that, because there is no injustice to the wives, for they have been given the dowry in full, and there is no compulsion; all there is, is the fact that each of the men wanted to marry the daughter of the other, and stipulated a condition to that effect...

The apparent meaning of the evidence implies that if the usual dowry is given, the wife agrees to the marriage, and the husband is compatible, then there is no reason to prevent it.

End quote from ash-Sharh al-Mumti' 'ala Zaad al-Mustaqni' (12/174).

Although we say that the marriage contract is valid in this case, it should be noted that it is not appropriate to resort to this form of marriage.

Shaykh Muhammad ibn Ibraaheem Aal ash-Shaykh (may Allah have mercy on him) said in Majmoo' al-Fataawa (10/158):

It should be noted in future that no marriage contract in which there is an exchange should be done, whether a dowry is mentioned or not, because of the strength of the argument which says that it is invalid, for it leads to serious bad consequences, as it forces women to marry people they do not want and gives precedence to guardians' interests over those of the women which - as is obvious - is not permissible. Moreover it also leads to depriving the women of a dowry like that of

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their peers, as it usually happens among people who do this type of marriage, and it also leads to a great deal of conflict and dispute after marriage. End quote.

Thirdly:

If a shighaar marriage does take place – i.e., in the manner which the scholars agree is the shighaar that is prohibited, as discussed above – then it is invalid and must be annulled, according to the majority of scholars, then a new marriage contract should be done.

Imam Maalik (may Allah have mercy on him) was asked, as it says in al-Mudawwanah al-Kubra (2/98):

If a shighaar marriage takes place, and the men consummate the marriages to the women and they stay with them until they have children – do you think that this is valid or should it be annulled?

Maalik said: It should be annulled in all cases. End quote.

Ash-Shaafa'i said:

The marriage is not valid and is to be annulled. End quote from al-Umm (6/198).

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

There is no difference in the reports from Ahmad which say that a shighaar marriage is invalid.

End quote from al-Mughni (10/42).

Ibn 'Abd al-Barr (may Allah have mercy on him) said:

This marriage contract is not valid, and should be annulled whether that is before consummation or after.

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End quote from al-Istidhkaar (16/203).

Based on that:

If it becomes clear to a person that his marriage was done on the basis of shighaar, then he must annul this marriage and do a new marriage contract, fulfilling all the necessary conditions, and he must specify a dowry for his wife that they agree upon. Shaykh Muhammad ibn Ibraaheem (may Allah have mercy on him) was asked about shighaar marriage and he said:

The marriage is invalid, and they must be separated... Then after that he is like any other suitor; if the woman wants to marry him and he gives her a dowry like that of her peers, then it is permissible for him to marry her with a new marriage contract.

End quote from Fataawa ash-Shaykh Muhammad ibn Ibraaheem Aal ash-Shaykh (10/160).

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

Her guardian may give her in marriage to him again, with a marriage contract and dowry as prescribed in Islam, and in the presence of two witnesses. There is no need for 'iddah in this case, because the water (semen) is his [i.e., there is no need to determine if she is pregnant before allowing remarriage because the child is his]... But if he does not want her and she does not want him, then he may divorce up with a single talaaq, then when her 'iddah is over, she may marry whoever she wants.

End quote from Fataawa Noor 'ala ad-Darb by Ibn Baaz (21/39).

But as noted above, the scholars of the Hanafi madhhab regard marriage in this manner as valid, and they stipulate that a dowry like that of her peers must be given to each of the women.

Whoever follows them in this view, or lives in a country where most of the people follow the Hanafi madhhab, or where the courts issue verdicts on the basis of that view, his marriage is not to be

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annulled in such a case, as is the guideline on issues concerning which there are differing scholarly views.

Ibn Qudaamah (may Allah have mercy on him) said, after discussing the invalidity of a marriage contract done without a guardian (wali), as is the view of most of the scholars apart from the Hanafis:

If a judge deems this marriage contract to be valid, or the one who did the marriage contract was a judge, then it is not permissible to annul it.

The same applies to all invalid marriage contracts.

End quote from al-Mughni (7/6).

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

Whoever follows a scholar in regarding a marriage contract as valid will not have to be separated from his wife if his view changes.

End quote from al-Furoo' (11/218).

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) was asked about tahleel marriage; what if a Muslim follows some of the scholars who regard it as permissible?

He replied:

With regard to tahleel [a marriage to a woman who has been thrice divorced, for the purpose of making it permissible for her to go back to her previous husband] in which there is an agreement with the husband - either verbally or on the basis of custom - that he will divorce his wife, or the husband has that intention in mind, it is prohibited. The Prophet (blessings and peace of Allah be upon him) cursed the one who does that in a number of hadiths... The woman does not become

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permissible by means of this procedure for the first husband who divorced her, and she is not permissible for the second husband to keep her on the basis of this tahleel marriage. Rather he must leave her.

But if he decides on the basis of ijtihaad, or following a scholar's view, that this is permissible, so she marries the second husband, then he divorces her and she goes back to the first husband after that, then the first husband realises that this procedure is in fact prohibited and was not as he initially thought, then the stronger view is that he does not have to leave her; rather he should refrain from doing such a thing in the future, and Allah will pardon him for what happened in the past.

End quote from Majmoo' al-Fataawa (32/152-151)

Based on that, your marriage is valid, but people should be prevented from doing that in the future, as Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said.

And Allah knows best.