



Family Issues in the American Society

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**The main resource of the following is the verdicts of the Assembly
of Muslim Jurists in America**



Meaning of “*Jurisprudence of Muslim Minorities*”

The following are valid and legitimate circumstances whereupon AMJA supports the use of the term “Jurisprudence of Minorities”:

- The use of *Ijtihad* (independent reasoning), by the qualified people of knowledge to deduce rules and regulations for new issues facing Muslim minorities, based on relevant Islamic maxims.



Meaning of ..Cont

- To activate the already existing fundamentals of *Ijtihad* dealing with exceptional circumstances.

These include: the maxim of considering the general interests of people, the maxim of considering the consequences of actions, and the maxim of considering necessities and true needs.



Meaning of ..Cont

- “Jurisprudence of Minorities,” is used in a harmful way if it means:
- Following the mistakes of scholars.
- Adopting isolated and weird positions.
- Mixing up different juristic schools to come up with a new one while claiming to bring about reform.



Subjects at a Glance 1

- Marrying from the People of the Book
- Embracing Islam by the wife while the husband remains non-Muslim
- Nominal marriage for the purpose of getting permanent residency
- Nominal divorce for the purpose of acquiring some official benefits
- Civil marriage in American courts



Subjects at a Glance 2

- Validity of divorce decreed by American courts
- Adopting Muslim children refugees in the west
- Marrying someone who is pregnant from fornication
- The contribution of the wife who participates by her skills and labor in building the wealth of her husband



Subjects at a Glance 3

- Ruling of the non-registered marriage (الزواج العرفي)
- Temporal marriage (زواج المتعة)
- Marriage with the intent of divorce (الزواج بنية الطلاق)
- Traveler's marriage (زواج المسيار)
- Testament & Last will



Marrying from the People of the Book

- Generally, belonging to Judaism or Christianity is what is required for a woman to be considered from “the People of the Book” . Basically, marrying a woman from the People of the Book is permissible regardless of the intentional change/ distortion they committed in their Religions.
- Having chastity is another requirement. Chastity means not to have illegitimate conjugal relation with men.



Marrying from ...Cont

- This kind of marriage is disliked because it is risky, especially when considering the future of the children from this marriage.
- Marrying from the people of the book is permissible for Muslim men only. Muslim women are strictly prohibited to marry from the men of the people of scriptures.



Marrying from ...Cont

- Islamic centers should warn their communities against conducting such a marriage. They do have the right to refrain from performing the marriage contract in their centers!
- Wives from the People of the Book possess the right to practice their religious rituals, to go to their Churches or synagogues regularly, as well as to celebrate their holidays.



Marrying from ...Cont

- She has to have her non- Muslim **Wali** or Guardian to represent her in the marriage contract. From his side (the **Wali**), he can ask a Muslim man to be his deputy.
- The two witnesses in the contract have to be Muslims. If this is not possible, then having non-Muslim men witnesses will be sufficient.



Marrying from ...Cont

- They have the right for their children's custody- in case of divorce - until the age of seven, except if this is deemed to cause harm to the creed of the child.
- The Muslim husband has to do his best assuring in the contract that the custody of the children is his right when they reach the age of seven, and that his kids are Muslims.



Marrying from ...Cont

- When having a marital dispute, they have to be judged according to the Islamic Law.
- He inherits from her, but she does not.
- He can prevent her from doing, eating, or drinking whatever might affect his marital rights as a husband, like to drink alcohol for instance.



Embracing Islam by the Wife While the Husband Remains Non-Muslim

- In this case, it is prohibited that these spouses have any sexual contact between themselves. The rights of the husband are pending throughout the *Iddah* (waiting period). If he embraced Islam during this waiting period, then the previous marriage remains valid.



Embracing Islam...Cont

However, if he chooses to remain on his creed, then the Muslim wife has the option to take the issue to the Muslim judge to annul their marriage contract, or to wait longer to give him a chance to come back to Islam so that they may return to their marital relationship.



Nominal Marriage for the Purpose of Getting Permanent Residency

- GOALS & PURPOSE OF MARRIAGE
 - 1 – PROCREATION
 - 2 – PHYSICAL PLEASURE
 - 3 – ATTAINMENT OF MATURITY
 - 4 – FORMING THE CORNERSTONE OF A MORAL SOCIETY
 - 5 – BRINGING UP THE NEXT GENERATION
 - 6 – BINDING PEOPLE & FAMILIES TOGETHER



Nominal Marriage...Cont

- The nominal marriage is the marriage contract in which the parties involved do not intend the reality of marriage and have no regard for its requirements and prerequisites. Rather, it is only used as a mean to gain certain benefits. It is nominal, a marriage in name only.



Nominal Marriage...Cont

- This type of contract is prohibited for the following reasons:
 - 1) the lack of a proper intention to consummate it.
 - 2) the violation of the objectives for which marriage was legislated.
 - 3) for the devising of prerequisites that are contrary to the objective of marriage.



Nominal Marriage...Cont

- However, the outward legality of this contract is dependent on how verifiable the nominal nature of this contract is before the court.
- If it is (the nominal nature) incontestable, then the contract is invalid, but if it is not, then the contract is considered valid, provided that all the prerequisites of marriage are fulfilled and no preventive reason existed.
- Real marriage is the Islamic alternative.



Nominal Divorce for the Purpose of Acquiring Some Official Benefits

Marriage relationship is one of the sanctified relations in Islam, in which no one should abuse it to obtain some personal benefits.

Some people resort to that in the U.S either to marry another wife, or to fix their immigration status.

- The nominal divorce is considered a divorce provided that the husband actually declared it or gave someone else the power of attorney to do the divorce papers, whether he intended divorce or not.
- This is because writing is the main tool for documentation in the current time.



Nominal Divorce...Cont

- The Prophet SAAW said (Three matters are counted and valid, even if they were taken jokingly: Marriage, divorce, and returning one's wife).
- However, writing it down by the husband, without having proper intention; divorce is not valid according to the stronger position of the scholars regarding this matter.



Civil Marriage in American Courts

- After obtaining the Marriage license; Muslims should resort to Islamic centers to conduct their marriage contracts accordingly.
- It is preferred to register the marriage contract in the civil court after that, so to protect the wife's rights.



Civil Marriage...Cont

- If all conditions for the validity of the marriage contract are satisfied, then the marriage contract is valid, even if it is conducted in a civil court.
- Realistically; the civil marriage conducted by American courts falls short of some of the Islamic prerequisites and requirements. Therefore, it is considered null and void from an Islamic viewpoint.



Civil Marriage...Cont

- However, if a couple were married in the American court and their marriage became widely publicized, their marriage contract should be dealt with as though it was a legitimate one, provided that not all the requirements for its Islamic validity were violated.
- This is due to the marriage-like circumstances that surrounded the contract of this particular case.
- Nevertheless, this marriage contract ***must*** be re-conducted Islamically in order to ensure that all its prerequisites and requirements are fulfilled.



Validity of Divorce Decreed by American Courts

- Basically, Initiating divorce is the right of the husband.
- In some circumstances, the Muslim judge has this right, like in case of the long absence of the husband, if he is imprisoned, failed in sponsoring his wife, abusing her physically or verbally...etc



Validity of Divorce...Cont

- In the absence of an Islamic judiciary system (like in the west), Islamic centers fill in the position of a Muslim judge.
- However, when settling marital disputes, Islamic centers involved should follow the required legal procedure, like to register in the civil court as an (Islamic arbitration committee), so to have the required authority.



Validity of Divorce...Cont

- Even if the Islamic center is not registered as an (Islamic Arbitration Committee) in the civil court, it still can have a judicial power in any of the following cases:
 - 1- The two disputing parties authorized the Islamic center to judge between them.
 - 2- Three qualified Imams agree unanimously on a judgment, even without being authorized by the husband!



Validity of Divorce...Cont

- The arbitrators in Islamic centers should follow the Islamic judiciary etiquettes before issuing their judgment such as listening to both sides, allowing reasonable time for the absent party to be present, and exerting one's best effort to establish justice in the case without rushing to judgment.
- After having divorce according to Islamic law, it is permissible for the Muslim couple to apply for divorce in American courts for documentation purposes only.



Validity of Divorce...Cont

- Divorce decreed by the American court alone is not sufficient in ending the marriage from an Islamic perspective.
- Therefore, it is incumbent upon the spouses seeking the divorce, after getting the divorce from the court, to refer to the qualified people in any Islamic center to get a valid divorce.
- Necessity is not a valid justification for depending solely on the decree of the court in matters of divorce, because of the availability and accessibility of Islamic centers in America.



Adopting Muslim Children Refugees in the West

- AMJA asserts the necessity of sponsoring orphans and refugees, which is a very rewarding and virtuous act.
- Furthermore, AMJA differentiates between sponsorship and adoption in the manner that existed in the pre-Islamic time of ignorance. This is where the adopted child was attributed to an ancestry other than his real one. Indeed, there is an unambiguous prohibition for the latter.



Adopting Muslim...Cont

- However, if the legal adoption becomes the only way to save Muslim children refugees from being adopted by non-Muslim organizations outside of the land of Islam, then it becomes permissible.
- This permissibility is conditional upon the adoption contract being used in a nominal fashion.
- Practical measures should be taken to restrict the relationship with the adopted child within the permissible limits, and the distortion of ancestral lineage is prevented.



Adopting Muslim...Cont

- Registering this (nominal adoption) in the local Islamic center could be a solution, especially when the whole community is aware of it.
- Suckling the less than- two years baby for a minimum of five times by the adopter's wife will make the husband, the wife, and their kids ***Mahram*** for the adopted child permanently.
- If this solution is not available, then suckling the baby by the wife's sister will permanently prohibit the wife only.



Marrying Someone Who is Pregnant From Fornication

- Fornication is a major sin, in which the Prophet saaw told that a fornicator lacks any Eyman (Faith) while committing such a sin.
- (لا يزني الزاني حين يزني وهو مؤمن)
- A Muslim man is prohibited from marrying a fornicator women before declaring a sincere repentance. (الزاني لا ينكح إلا زانيةً أو مشركة).
- This is why having (Chastity) is one of the conditions for Muslim men to marry from the women of the people of the book.
- (والمحصنات من الذين أوتوا الكتاب)



Marrying Someone...Cont

- If she is pregnant from somebody else, then he can not marry her before delivering her pregnancy.
- However, if she is pregnant from the same person proposing her for marriage, AMJA adopts the position of permitting the fornicator to marry someone with whom he committed fornication, provided that she is not already married.
- This is in consideration of the spirit of Islamic law concerning shielding and protecting people, and as an encouragement for both fornicators to turn to Allah swt in repentance.



Marrying Someone...Cont

- Regarding the status of the child of fornication, AMJA takes the position of allowing the child to be attributed to the fornicator (The biological father) if he claims him/her and if his partner in fornication has no husband.
- The reasoning for this position is to protect the child from the dangers of growing up in a non-Muslim society without definitive ancestral lineage.



The Contribution of the Wife who Participates by Her Skills and Labor in Building the Wealth of Her Husband

- Mutual cooperation between spouses is what is expected from them to have harmony, love, and respect.
- Women in Islam have their own ***independent financial accountability***, and without being dominated by their guardians!
- Restricting their ownership is to be determined only by a Muslim judge, and because of a legitimate reason.



The contribution...Cont

- Sponsoring the family is the sole responsibility of the husband, even if the wife is rich.
- Her only responsibility is providing the environment of raising the kids and comforting the household.
- She can work within the limits of Islamic permissibility, and upon her husband's permission.



The Contribution...Cont

- In case of working; whatever earning she gains is solely her. Her husband does not have any right in this money.
- If allowing her to work was conditioned with her responsibility in sponsoring the household partially, then she has to abide with that condition.



The Contribution...Cont

- If the wife participates in the business investments of her husband through her skills or labor, in a manner that exceeds the reasonable spousal support that usually exists in marital life, then she shall possess a share in his wealth in accordance with her efforts in building the business. Estimating the share in this case is left to the experts in this field.



Ruling of the Non-Registered Marriage (الزواج العرفي)

- Definition: A marriage contract that is not registered in the civil court.
- Status: A valid one if all prerequisites and requirements are fulfilled.
- However, it is ***extremely disliked***, because it will not be recognized by the judicial system in case of having marital disputes.
- The wife might loose all of her rights.



Temporal Marriage (زواج المتعة)

- It is a temporal marriage contract, in which its timing nature is explicitly mentioned in the contract.
- Pleasure marriage was permissible in the beginning, as needed, and in special circumstances only.
- The Prophet saaw, then, prohibited it completely after the conquest of *Khaybar*. In some other narrations: after the conquest of *Mecca*.
- It is not true that Omar Bin Al-Khattab raa is the one who prohibited it!

:انظر من كتب الشيعة مثلاً

تهذيب الأحكام - للشيخ الطوسي ج 7 ص 251

محمد بن يحيى عن أبي جعفر عن أبي الجوزا عن الحسين بن علوان عن عمرو بن خالد الواسطي عن زيد بن علي عن آبائه عن علي عليهم السلام قال:
(حرم رسول الله صلى الله عليه وآله يوم خيبر لحوم الحمر الأهلية ونكاح المتعة)



Marriage With the Intent of Divorce

(الزواج بنية الطلاق)

- A kind of marriage in which the man has a predetermined intent of divorcing his wife, whether after a definite or indefinite period of time.
- The temporal nature is not mentioned in the contract.
- Outwardly; it is a valid marriage. And the husband is- Judicially-abide with the following:
 - Approving of parentage for the children.
 - Sponsoring his wife during their marriage time, and during her waiting period (**Iddah**) after her divorce from him, and towards his kids too.
 - He should spend on her (Alimony), and she should watch for her waiting period of `Iddah after her divorce from him, and she also, has the right to inherit from him in case he died before divorcing her.



Marriage With the Intent of Divorce...Cont

- Inwardly; it is prohibited because of the lying, cheating, and deception associated with this contract from the husband's side.
- No one would allow his ward marrying anyone if he knows in advance his intention of divorce after a while.
- No women would agree too, unless she is OK with the temporal marriage mentioned earlier.



Difference Between the Two Marriages

- The termination of the contract is predetermined and agreed upon in the pleasure marriage.
- No privileges other than the **wage** is prescribed for the woman in the pleasure marriage.
- Special waiting period for the woman in the pleasure marriage.
- The husband can not extend the marriage after its expiration date. He has to establish another one.



Traveler's Marriage (زواج المسيار)

- It is a permanent and registered marriage.
- The wife waives some of her marital, social, or financial rights out of her own mind!
- Men and women might resort to such a marriage when singleness between women becomes a threatening ethical issue in the Muslim society.



Traveler's Marriage...Cont

- The basic rule of this marriage is that it is permissible one, for the following evidences:
- (فإن طبن لكم عن شيءٍ منه نفساً فكلوه هنيئاً مريئاً...)
- What means (But if they, by their own free will, give up to you a portion of it, then you may enjoy it with pleasure).
- *Sawdah* raa waived her day with the Prophet saaw to *Ayesha* raa when realizing that the Prophet saaw might divorce her.



Traveler's Marriage...Cont

- The two evidences show the permissibility for wives to waive some of their rights after initiating the marriage contract. While *partial marriage* requires waiving those rights from the beginning.
- No big difference between the two cases.
- Although such a marriage does not satisfy all purposes of marriage in Islam, but it is a solution in some irregular circumstances.
- It is a disliked marriage (مباح²⁸ مع الكراهة)



Testament & Last will

- Definition: An act by which a person determines the disposition of his or her property after death.
- Writing the testament is a highly recommended act mentioned in the Ahadeeth of the Prophet SAAW.
- It becomes an ***obligatory act*** upon Muslims who have estates in countries ruled by non-Islamic inheritance law.



Testament...Cont

- Testament must indicate the following:
- Mandate to the executor and the court that the estate must be distributed according to the Islamic Inheritance Law.
- All the financial rights and debts the person owes others, and that they have to be deducted and paid off before the distribution of the estate.



Testament...Cont

- Payment of the expenses of the corpus preparation(washing and shrouding the body), funeral, and burial before distributing the estate.
- Payment of Zakah if the person passed away before paying his due Zakah.
- Payment for a deputy to perform Hajj on behalf of the deceased if he was obliged to perform Hajj and died before fulfilling this obligation.



Testament...Cont

- It ***could*** indicate the following:
- Assigning up to 1/3 of the estate to be given in charity.
- Accommodating some household members who are not entitled to inherit, like a foster child and non-Muslim wife, from within the 1/3 mentioned above.
- No accommodation allowed for any of the heirs.



Testament...Cont

- A sample of a last will could be found at:
- http://monzer.kahf.com/contracts/LAST_WILL_independent_REVISED_JAN_19_2007.pdf
- Another one is available on Al-Huda University website.