

Marriage with the intention of divorce: A jurisprudential and objective study.

Summary: One of the contemporary issues raised now in our Arab and Islamic world is the issue of marriage with the intention of divorce. This has happened because of the injustice suffered by many individuals in Arab and Islamic countries, so some of them resort to marriage with the intention of divorce in order to obtain citizenship or work. In a few cases, they marry with the intention of chastity without considering the woman's status, whether she is a Christian or not, and whether she is chaste or not.

Recently, marriage with the intention of divorce has become widespread, whether the motive behind it is to obtain the nationality of the country in which the Muslim lives, due to political and economic reasons that prevented him from returning to his country of origin, or the motive behind it is to seek pleasure and enjoyment without bearing responsibility.

The researcher attempted to use the descriptive inductive method in describing the problem under study, and then the scientific method in terms of collecting and critiquing the scientific material and then reaching the results that are extracted from the premises. The researcher sought to document the texts from their approved sources, write the verses in the Uthmani script, and trace the hadiths from the approved books of Sunnah.

This research attempts to answer the following questions:

- What is the ruling on marriage with the intention of divorce, and what is its impact on the individual, the family, and society?
- What is the impact of marriage with the intention of divorce on the image of Islam and Muslims in the eyes of non-Muslims?
- Can we evaluate modern forms of marriage according to the objectives of Islamic law? This undoubtedly requires examining the relevant legal rulings.

This research is presented in an introduction, two main sections, a conclusion, and the research findings:

Introduction: This section discusses the reason for choosing the topic, the research problem, and the objectives.

Keywords: marriage – intention – divorce – aims

Introduction .

All praise is due to Allah. We praise Him, seek His help, guidance, and pleasure. We believe in Him, rely upon Him, and extol Him with all goodness. We thank Him and are not ungrateful. We renounce and

abandon whoever transgresses against Him. We bear witness that there is no god but Allah alone, without partner, and we bear witness that our master and role model, Muhammad, is His servant and messenger. Now then... Among the contemporary issues raised in our Arab and Islamic world is the issue of marriage with the intention of divorce. This has occurred due to the injustice suffered by many individuals in Arab and Islamic countries, leading some to resort to marriage with the intention of divorce in order to obtain citizenship or employment. In a few cases, they marry with the intention of chastity, without considering the woman's status—whether she is Christian or not, and whether she is chaste or not.

Research objectives.

The researcher aims to achieve several objectives through this study, the most important of which are:

- 1- To examine the Islamic legal ruling on marriage with the intention of divorce, comparing it to the objectives of Islamic law.
- 2- To demonstrate the negative impact of this type of marriage on the image of Islam among non-Muslims.
- 3- To critique and evaluate contemporary forms of marriage in light of the general and specific objectives of Islamic law.

Research methodology.

The researcher attempted to use the descriptive inductive method in describing the problem under study, and then the scientific method in terms of collecting and critiquing the scientific material and then reaching the results that are extracted from the premises. The researcher sought to document the texts from their approved sources, write the verses in the Uthmani script, and trace the hadiths from the approved books of Sunnah.

Research problem.

The research problem revolves around the issue of marriage with the intention of divorce and the search for the jurisprudential ruling and the objectives of Islamic law.

Research questions.

This research attempts to answer the following questions:

1. What is the ruling on marriage with the intention of divorce, and what is its impact on the individual, the family, and society?
2. What is the effect of marriage with the intention of divorce on the image of Islam and Muslims in the eyes of non-Muslims?
3. Can we evaluate modern forms of marriage in accordance with the objectives of Islamic law? This undoubtedly requires examining the relevant legal rulings.

This research consists of an introduction, two chapters, a conclusion, and the research findings:

Introduction: This section discusses the reason for choosing the topic, the research problem, and the objectives.

Chapter One: The reality of marriage with the intention of divorce.

Chapter Two: The ruling of the Islamic Fiqh Academy of the Muslim World League on marriage with the intention of divorce.

Conclusion and research findings.

We ask God Almighty for help, guidance, wisdom, and acceptance, and that He forgive our shortcomings and conceal our faults. He is the Guardian of that and is Capable of it.

(رَبَّنَا لَا تَوَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ وَاعْفُ عَنَّا وَارْحَمْنَا أَنْتَ مَوْلَانَا فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ) [Al-Baqarah: 286]

First topic: The reality of marriage with the intention of divorce:

Marriages with the intention of divorce have become increasingly common recently. This is often motivated by the desire to obtain citizenship in the country where the Muslim resides, due to political and economic reasons preventing their return to their country of origin. Alternatively, it may stem from a desire for pleasure and enjoyment without the responsibilities of marriage.

The husband may harbor this intention, or it may be evident to the other party, even if not explicitly stated, through context, custom, and the repetition of the act.

There are also marriages solely for the purpose of obtaining citizenship, where neither party genuinely desires the marriage. The wife may receive payment for signing the contract, and the husband may never see her again. Neither party intends to marry, and both are aware of each other's motives. The man pays for the marriage certificate, which facilitates permanent residency or citizenship in the country, and the woman is also aware of this and receives payment for it.

This is known as a sham marriage. Such sham marriages contradict the objectives of Islamic law, especially if they lead to legal violations and the loss of rights. As for cases of necessity, they are determined by their extent. A person's life may depend on this procedure—I mean a sham marriage—under political tyranny that deprives people of their most basic rights, namely, identity documents. This is a right guaranteed by all secular laws and mandated by Islamic law. Necessity permits what is forbidden, and necessity is determined by its extent. What is permitted due to necessity ceases when the necessity ceases.

Ibn Taymiyyah (may God have mercy on him) said: As for the marriage of coercion, the judge and others stated that it is valid, like the marriage of one who jokes, because the main issue with it is that the person is not intending the contract but is merely joking about it, and the marriage of one who jokes is valid. This is supported by the well-known opinion among us that if a condition is stipulated in the contract to nullify its obligations, such as stipulating that he will not have intercourse with her,

or that she is not permissible for him, or that he will not provide for her, and so on, the contract is valid without the condition. The agreement to enter into a marriage of coercion is essentially that they agreed to enter into a contract that does not entail its obligations, and this does not invalidate it. This is unlike the marriage of the one who marries a divorced woman for the purpose of making her permissible for her former husband (tahlil), because he intended to nullify the contract after it had taken place, and this is possible. Thus, his intention became effective in nullifying the contract. This is a second difference, and in reality, it clarifies the first difference between the marriage of the one who marries a divorced woman for the purpose of making her permissible for her former husband and the marriage of one who jokes.

It can be concluded that the marriage of coercion is invalid. Because an agreement made before the marriage contract is considered a condition within the contract, according to the more apparent of the two opinions of our scholars. Even if they stipulated in the contract that it was a forced marriage and not a genuine one, it would be an invalid marriage. And even if it is said that there is a difference of opinion on this, the worst-case scenario is that it is like stipulating that she is not permissible for him. This condition invalidates the contract according to the well-known difference of opinion. This is unlike jest, which is a pure intention that they did not stipulate, but rather one of them intended. A man is not permitted to jest when addressing another, and the matter is open to interpretation. [Ibn Taymiyyah: 6/68]

This statement by Ibn Taymiyyah—may God have mercy on him—regarding forced marriage occurs in temporary marriages for the purpose of obtaining citizenship. This contract, in addition to violating the laws of the country that allowed the person to enter it, gives a bad image of Islam and Muslims, portraying them as not respecting the law or honoring covenants and contracts. As for marriage with the intention of divorce, if it is for the purpose of fulfilling desires or seeking protection in a foreign land, early jurists differed on the validity of this marriage. Those who permitted it meant the intention hidden in the man's heart, unknown to the woman or her guardian. Their argument was that as long as this intention was not verbalized by the man and not stipulated in the marriage contract, it is not a temporary marriage (mut'ah). The intention may change later, and the marriage may then become stable and lasting.

However, if the man verbalized the intention, or if it was known to both parties according to the context or prevailing custom, then this is a temporary marriage (mut'ah), which is forbidden according to the consensus of Sunni jurists.

- Marriage with the intention of divorce according to the Hanafi school:

If he marries her without any intention of divorce, and intends to stay with her for a period he intends, then the marriage is valid and there is nothing wrong with marrying during the day, which is when he marries her on the condition that he will stay with her during the day and not at night. [Al-Zayla'i: 2/115, Mulla Khusraw: 1/334]

According to the Malikis: If a man marries a woman not intending to keep her, but rather intending to enjoy her for a period and then divorce her, Muhammad narrated from Malik that this is permissible, though not considered good or in accordance with human morals. This is the meaning of what Ibn Habib said: that the marriage took place as it should, without any stipulations. Temporary marriage (mut'ah) is only that in which separation is stipulated after a period of time. Malik said: A man may marry a woman without intending to keep her, but then be pleased with her and keep her. Or he may marry her intending to keep her, but then find her unsuitable and divorce her. He meant that this does not invalidate marriage, as the man has the right to keep or divorce. What invalidates marriage is the time limit. [Al-Baji: 3/335]

According to the Shafi'is: The invalidity of a time limit applies only if it is stipulated in the core of the marriage contract. However, if they agree upon it beforehand and leave it in the contract, it does not invalidate it, but it should be disliked, based on the analogy of the temporary marriage (tahlil). [Al-Bajirmi: 3/397]

As for the Hanbalis: If he marries her without a condition is that if he intends to divorce her after a month, or if his need in this country is fulfilled, then the marriage is valid, according to the majority of scholars, except for al-Awza'i, who said: It is a temporary marriage (mut'ah). The correct view is that there is nothing wrong with it, and his intention does not invalidate it. A man is not obligated to intend to keep his wife if she agrees to his wishes, otherwise he may divorce her. [Ibn Qudamah: 7/136]

Ibn Taymiyyah (may God have mercy on him) said: Ahmad was asked about a man who marries a woman while intending to divorce her, and he disapproved of it. This is not with the intention of making her permissible for her former husband (tahlil), but rather with the intention of enjoying her. There is a difference between the two. The one who makes her permissible for her former husband has no desire for marriage at all; his only aim is to return her to the divorced man. The one who enjoys her has a desire for marriage for a limited time. This is why temporary marriage was permitted at certain times, then prohibited, and making her permissible for her former husband (tahlil) was never permitted. Therefore, Sheikh Abu Muhammad al-Maqdisi said: "If he intends to divorce her at a specific time, such as a man who arrives in a town and marries a woman with the intention of divorcing her after his departure,

then this is permissible.” He followed what Ibn Abd al-Barr mentioned, that this is the opinion of the majority, along with the opinion of those who say that the intention of making it permissible (for the purpose of making it permissible to remarry) invalidates the marriage. However, what is explicitly stated from Imam Ahmad is that he disliked this type of marriage, and he said: “It is a temporary marriage (mut'ah).” Thus, it is known that it is a disliked act bordering on prohibition, and this is the opinion of most of his followers. He said in another place: “It resembles mut'ah.” Based on this, it is permissible if he intends it as disliked but not prohibited. Among those who prohibited it was al-Awza'i [Ibn Taymiyyah: 6/12-13].

The Second Topic: The Decision of the Islamic Fiqh Academy of the Muslim World League on Marriage with the Intention of Divorce:

The Islamic Fiqh Academy of the Muslim World League discussed the most prominent newly introduced types of marriage: “Misyar marriage, marriage with the intention of divorce, and marriage with the intention of divorce if children are born.” The Academy concluded that the first type is permissible if it fulfills the essential elements of marriage, and that the other two types are prohibited because the first involves a time limit, and the second involves deception.

This is the text of the Academy's decision: - Praise be to God alone, and peace and blessings be upon the one after whom there is no prophet, and upon his family and all his companions. The Council of the Islamic Fiqh Academy of the Muslim World League, in its eighteenth session held in Mecca from 10-14/3/1427 AH (corresponding to 8-12/4/2006 CE), considered the topic of “Newly Introduced Marriage Contracts.” After listening to the presented research and extensive discussions... The Assembly resolved the following:

It affirms that newly established marriage contracts, regardless of their names, descriptions, and forms, must adhere to the established rules and regulations of Islamic law, including the fulfillment of essential elements and conditions, and the absence of impediments. In our present era, some such contracts have been introduced, the rulings of which are outlined below:

- 1- A marriage contract in which the woman waives her rights to housing, maintenance, and equal division of time, or some of these, and agrees that the man may come to her home at any time he wishes, day or night. This also includes a marriage contract stipulating that the woman remains in her parents' home, and the couple may meet whenever they wish, either at her parents' home or elsewhere, where they have no housing or maintenance. These two contracts and similar ones are valid if they fulfill the essential elements and conditions of marriage and are free from impediments. However, this is not preferable.

2- Temporary marriage based on procreation: This is a contract that fulfills all the necessary conditions and requirements, except that one of the contracting parties stipulates in the contract that if the woman gives birth, the marriage will be dissolved, or that he will divorce her. This marriage is invalid because it contains the element of temporary pleasure (mut'ah). The fixed duration, such as a month, or the unknown duration, such as procreation, makes it a form of temporary marriage, and temporary marriage is unanimously considered forbidden.

3- Marriage with the intention of divorce: This is a marriage in which the essential elements and conditions of marriage are met, but the husband secretly intends to divorce the woman after a specified period, such as ten days, or an unknown period, such as making the marriage conditional upon completing his studies or achieving the purpose for which he came. Although some scholars have permitted this type of marriage, the consensus is that it is prohibited because it involves deception and fraud. If the woman or her guardian knew about this, they would not accept the contract. Furthermore, it leads to significant corruption and serious harm that damages the reputation of Muslims.

The opinion of Sheikh Rashid Rida – may God have mercy on him –

In his commentary on Al-Manar, Sheikh Muhammad Rashid Rida says regarding marriage with the intention of divorce: The strictness of scholars, both past and present, in prohibiting temporary marriage (mut'ah) necessitates prohibiting marriage with the intention of divorce. While jurists say that a marriage contract is valid if the husband intends a time limit but does not stipulate it in the contract, concealing this intention constitutes deception and fraud. This is more deserving of invalidation than a contract that stipulates a time limit, which is agreed upon by the husband, the woman, and her guardian. The only harm in such a contract is the trivialization of this great bond, the most important of human bonds, and the preference for indulging in pleasures and desires, leading to reprehensible acts. A marriage that does not stipulate a time limit, even if it does, is deceitful and fraudulent, resulting in other evils such as enmity, hatred, and the loss of trust, even among sincere individuals who intend marriage for its true purpose: the protection and fidelity of each spouse to the other, and their cooperation in establishing a righteous home within the community. [Rida: 5/17] See also Marriage The structure of divorce according to the evidence of the Quran and Sunnah and the objectives of Islamic law (Dr. Saleh bin Abdul Aziz Al Mansour, Dar Ibn Al-Jawzi, 1st edition, 1428 AH. This is an important and beneficial book on this issue. Its author has made a commendable and rewarding effort—God willing—in demonstrating the impermissibility of this type of marriage. I have benefited greatly from it, so may God reward him.

Based on the statements of previous jurists, both early and later, we see that prohibiting this type of marriage is the preferred opinion in light of the objectives of Islamic law. There is no objection to a man marrying with the intention of permanence, not divorce. This intention leads him to choose the best alternatives, to be thorough in his marriage, and to take his time in selecting a wife. He will not do any of this if his intention is to divorce. The husband will not seek chastity and protection, nor will he look for character and religious commitment. Rather, his focus will be on beauty, with the intention of satisfying fleeting desires without bearing the slightest responsibility. This contradicts the objectives of marriage. [Abu Zahra: 136]

Furthermore, if the husband has taken all the necessary steps to ensure the continuation and permanence of the marriage, and it then becomes clear to him that he cannot continue in this manner... Marriage is a right for him, and no one can prevent him from it, but the important thing is that the intention is to continue, and this cuts off the path for those who are tasteless and frequently marry and divorce and leave wounds in society that will not heal because of their excessive selfishness and unbridled desires. [Al-Khadimi: 1/234]

Being lenient in this matter—I mean permitting marriage with the intention of divorce—will open a Pandora's box of evils that will never close, and will create problems in society that are difficult to solve or treat. It will also allow young people, under this guise, to indulge their desires without bearing the slightest responsibility for preserving and caring for the family, or raising children and attending to their needs. [Al-Qaradawi 241] As for the state of necessity I mentioned earlier, it is assessed on its own merits, and necessity cannot become a general rule. Rather, each case should be studied individually. In this case, a sham marriage is the solution, where the woman knows that she is receiving payment for facilitating the stay of this man in need in this country, whether through obtaining citizenship or stable permanent residency. In this case, there is no meeting between the husband and wife, no seclusion, and no intimacy. It does not matter whether she is chaste or not, because the intention is to reside in this country in a state of necessity that permits what is forbidden, and in which deception and fraud are absent, or cohabitation with a woman who is not chaste, and perhaps she is not a People of the Book. An atheist or polytheist, and it is a void or invalid contract according to Islamic law, even if it is legally valid. [Ibn Ashur 1/215] Violating the law is less serious than violating Islamic law, especially in cases of necessity.

Conclusion and research findings:

Through this study, we arrived at several conclusions and recommendations, some of which we will mention as examples, not as an

exhaustive list. First: There are newly developed forms of marriage, some permissible according to Islamic law, some prohibited, and others subject to differing opinions. Therefore, we must refer to the principles of Islamic jurisprudence (maqasid al-shari'ah) when studying any of these newly developed marriage contracts to determine their proximity to or distance from the objectives of Islamic law.

Second: Marriage with the intention of divorce is prohibited according to Islamic law, and it is even more forbidden than temporary marriage (mut'ah), which is unanimously considered prohibited by the majority of Sunni scholars, contrary to the view of the Shi'a, whose opinion is refuted.

Third: A sham marriage is also impermissible due to the sanctity of the marriage contract and the prohibition against treating it lightly.

The most important recommendations: First: The researcher recommends that fatwa-issuing bodies and Sharia courts conduct intensive courses in simple, contemporary language for young men and women preparing for marriage. To learn the rulings on engagement, marriage, and divorce, young men and women are not permitted to marry until they have completed this course, which is conducted according to the official school of thought of the country in which they reside. The Malaysian government has been implementing this system for a long time.

Secondly, the researcher recommends that Al-Azhar institutes and Sharia colleges focus on the objectives of Islamic law alongside the study of legal rulings, so that students graduate with a comprehensive understanding of both the rulings and the objectives.

Thirdly, the researcher recommends that preachers, religious scholars, satellite channels, and all media outlets focus on the rulings and objectives of Islamic law in matters of engagement, marriage, and other rulings related to the jurisprudence of the Muslim family.

Praise be to God, first and last, outwardly and inwardly. Praise be to God forever and ever.

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