



Research Article

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Characteristics of the Fiancé and Fiancée in The Marriage Contract from The Perspective of Islamic Jurisprudence (Fiqh) And the Civil Code of Afghanistan

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Abstract: The topic of the characteristics of the fiancé and fiancée in the marriage contract from both a jurisprudential and legal perspective is one of the important subjects in examining the legal and social relations in marriage. In Islamic jurisprudence, the marriage contract is regarded as a valid agreement between two parties, through which mutual rights and duties between the man and woman are established. This thesis, through legal and jurisprudential analysis, examines the necessary features and conditions required for the fiancé and fiancée. According to jurisprudential principles, marriage as a valid contract requires the recognition of characteristics such as maturity, intellect, consent, and the full capacity of will from both parties. Additionally, in Afghanistan's Civil Code, specific conditions such as the autonomy and qualification of the parties involved are emphasized. This research uses credible jurisprudential and legal sources to conduct a comparative analysis of these features and explores the challenges and contradictions present in the interpretation of these conditions. The main objective of this study is to provide comprehensive and comparative perspectives on the required conditions and characteristics for both the fiancé and fiancée.

Keywords: Marriage contract, fiancé, fiancée, Islamic jurisprudence, Civil Code, marriage conditions.

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INTRODUCTION

Marriage, as one of the most fundamental social institutions, plays an unparalleled role in shaping both the family and society. This sacred bond, in addition to its personal and emotional dimensions, has religious, legal, and social aspects, each of which requires careful examination and clarification. In Islamic societies, including Afghanistan, marriage holds a special status not only from an ethical and social perspective but also from a jurisprudential viewpoint.

Islamic jurisprudence, as the primary source for regulating religious rules and laws, has established specific conditions and characteristics for the fiancé and fiancée in the marriage contract. These conditions are designed on one hand, to ensure justice and protect the rights of both parties, and on the other hand, to guarantee the health and stability of the family foundation. Alongside these discussions, Afghanistan's Civil Code, which is based on Islamic teachings and the demands of contemporary society, also thoroughly addresses the characteristics and conditions of marriage. This law strives to balance religious principles with the social transformations and needs of modern society.

Given the importance of the topic, examining the characteristics of the fiancé and fiancée in the marriage contract from the perspectives of Islamic jurisprudence and Afghanistan's Civil Code seems essential. This examination can help clarify the points of similarity and differences between these two legal

systems, thereby facilitating a better understanding of the rights and duties of both parties in the marriage contract. The present research, focusing on this topic, aims to explain and analyze the conditions and characteristics outlined for the parties involved in the marriage contract, in order to provide a comprehensive framework for a deeper understanding of this issue.

THESIS

Marriage is one of the most important social and religious pillars in Islamic societies, especially in Afghanistan, upon which the foundation of family and society is built. This sacred institution holds a special status not only in Islamic religious teachings but also in the Civil Codes of Islamic countries. According to the verses of the Holy Quran, marriage is introduced as a means of establishing tranquility and spiritual peace: {And He has placed between you affection and mercy} [Quran 30:21]. Translation: And He has established between you and your spouses, as well as among your gender, affection and kindness, after there was no prior acquaintance between you, through marriage, which helps organize and manage your livelihood, as human living is dependent on mutual understanding, affection, and mercy.

In Islamic jurisprudence, marriage is defined as a lawful and binding contract that requires specific conditions for its validity. These conditions include the characteristics of the fiancé and fiancée, such as maturity, intellect, mutual consent, and the absence of

religious prohibitions like consanguinity (mahram). These issues are discussed in detail in jurisprudential sources such as *Al-Mughni* by Ibn Qudamah (Ibn Qudamah, 1402: 420).

Afghanistan's Civil Code, drawing on Islamic jurisprudence and the needs of contemporary society, has established specific regulations for the marriage contract. Article 60 of the Civil Code of Afghanistan states: 'The marriage contract must be conducted with the explicit consent of both parties, without any coercion' (Civil Code, Article 60). This article reflects the legislator's efforts to align jurisprudential rulings with the requirements of modern society.

Despite this alignment, there are subtle differences between the jurisprudential approach and the Civil Code in defining the characteristics of the fiancé and fiancée. For example, in some jurisprudential schools, physical maturity in a girl is considered a sufficient condition for marriage, while Afghanistan's Civil Code has set the legal age for marriage at 16 years (Civil Code, Article 71). Furthermore, the concept of consent in marriage presents challenges both in jurisprudence and the Civil Code. In some cases, societal customs may influence the decisions of the parties involved. This can lead to a conflict between legal principles and social norms, which requires a more thorough examination. The impact of cultural, social, and economic differences on the definition and implementation of marriage conditions is also noteworthy. For example, in rural Afghan communities, cases of forced marriages or underage marriages are still observed, which not only contradict the Civil Code but also Islamic jurisprudential principles (Hakim, 1392: 118).

Alongside these issues, the lack of sufficient awareness of religious rulings and the Civil Code among many members of society, particularly in disadvantaged areas, is another challenge facing this issue. This lack of awareness leads to legal violations and the infringement of the rights of both parties in the marriage contract, which results in negative social and familial consequences (Rahmani, 1397: 89).

Given the importance of the conditions of the fiancé and fiancée in the marriage contract and their impact on the stability of the family and society, the present research aims to carefully examine the jurisprudential and legal foundations in Afghanistan, identify the strengths and weaknesses of each, and propose solutions for better integration of these two domains. This study could significantly contribute to improving the legal and religious practices related to marriage.

RESEARCH QUESTIONS AND HYPOTHESES

Research Questions

- What are the jurisprudential and legal characteristics of the fiancé and fiancée in the marriage contract?
- How do the conditions of Hanafi jurisprudence align with Afghanistan's Civil Code in this regard?
- What contradictions exist in the interpretation and implementation of these conditions in Hanafi jurisprudence and Afghanistan's Civil Code?

Research Hypotheses

- The necessary jurisprudential and legal characteristics for the fiancé and fiancée are similar in both Hanafi jurisprudence and Afghanistan's Civil Code.
- There are differences in the interpretation of the jurisprudential and legal conditions of the parties in the marriage contract between Hanafi jurisprudence and Afghanistan's Civil Code.
- The implementation of the jurisprudential and legal conditions of the parties in the marriage contract in Afghanistan may face challenges in its execution.

The importance and necessity of research

Research on the topic of courtship and its conditions is not only important from a jurisprudential and legal perspective, but also plays a significant role in better understanding the interaction between the parties involved in marriage and assessing their qualifications. It also contributes to raising public awareness about the rights and responsibilities of both parties. A comparative study of Hanafi jurisprudence and the Civil Code of Afghanistan can help clarify the differing interpretations and legal challenges related to marriage in the country, providing solutions to improve and streamline marriage and family matters within society. This research could also be beneficial to judges, defense lawyers, courts, prosecutors, and individuals involved in legal affairs.

RESEARCH METHODOLOGY

This research will be conducted using an analytical and descriptive approach. The necessary data will be gathered from reliable Hanafi jurisprudential sources, the Civil Code of Afghanistan, as well as legal and jurisprudential articles and books, and will be analyzed accordingly. For the comparative analysis, similar cases from Hanafi jurisprudence and the Civil Code of Afghanistan will be extracted and examined. Additionally, a comparative method will be employed to identify the differences and similarities in the interpretation of the conditions and characteristics of the parties involved in the marriage contract.

LITERATURE REVIEW

Numerous studies have been conducted on the characteristics of the groom and bride in the marriage contract. Some researchers have focused on the jurisprudential analysis of marriage and the qualities of its parties, such as studies on the conditions for the

validity of marriage in Hanafi jurisprudence. Additionally, some research has been done on the application of Afghanistan's Civil Code in relation to Islamic jurisprudence in the areas of family law and marriage. However, few studies have conducted a precise comparative analysis between Hanafi jurisprudence and Afghanistan's Civil Code regarding the characteristics of the parties involved in the marriage contract, which this article aims to address.

Arifi (1389) in his book *Islamic Marriage* examines the jurisprudential and social concepts of marriage in Islam, highlighting the necessary characteristics for both parties in an Islamic marriage. He emphasizes that for a marriage contract to be valid, the moral, religious, and social qualities of both parties must be carefully considered to ensure that the marriage is established as a sacred and lasting covenant.

Abdullah (1392), in his work *Family Rights*, outlines the legal principles of marriage in Afghanistan's Civil Code and discusses the necessary legal characteristics for choosing a groom and bride within Afghan law. He asserts that, according to Afghanistan's Civil Code, potential spouses must possess specific qualities such as maturity, mental capacity, and free will, and these conditions must be taken into account when selecting the parties for the marriage.

Ghani-Zada (1394), in his book *Legal Foundations of Marriage in Hanafi Jurisprudence*, provides a jurisprudential analysis of marriage from the Hanafi perspective and examines the necessary characteristics for both parties in the marriage contract. This work emphasizes the principles for selecting the parties, including ethics, religious devotion, and maturity, all of which are primarily based on religious teachings.

Faiz (1388), in his book *Family Rights*, analyzes the conditions and characteristics of spouses from both a jurisprudential and legal perspective in Afghanistan. He particularly highlights the ethical and religious qualities that should be considered when selecting marriage partners. This book emphasizes the importance of safeguarding the rights and consciences of both parties in the marriage contract.

Nail (1396), in *Family Law in Jurisprudence and Law*, provides a comparative analysis of various legal issues related to marriage in Islamic jurisprudence and Afghanistan's law. He outlines the necessary conditions for selecting a groom and bride from both a legal and jurisprudential perspective and stresses the importance of justice in choosing the parties.

Rasouli (1376), in his book *Marriage or Sacred Covenant*, approaches marriage from a jurisprudential viewpoint and analyzes the ethical and religious principles involved in selecting a groom and bride. He

emphasizes that in Islam, marriage should be based on ethical and religious principles, and both parties must be selected with full consent and according to appropriate religious and social criteria.

Research Theoretical Framework **Conceptualization of Courtship (Khastegari)**

The term "*Khutbah*" (خطبه) with a kasrah under the "kha" in Arabic literally refers to a request for marriage with a woman. On the other hand, *Khutbah* and *Khitabah* with a dammah or fatha over the "kha" refer to delivering a sermon or speech, such as a moral or religious address. In this context, the words spoken during such an address are also referred to as a *Khutbah*.

In Islamic jurisprudence, scholars have defined *Khutbah* or courtship as follows: "It is the request by a man to marry a specific woman, whose marriage to him is not prohibited (according to Islamic law)." In other words, *Khutbah* refers to a man expressing his intention to marry a particular woman, provided that there are no legal or religious obstacles to their union (Nail, 1396: 21).

As is customary, before the marriage contract ceremony is held, a series of preliminary arrangements, which are largely cultural, are made between the parties (the man and woman) or their families. Among these arrangements is the process of courtship.

Courtship refers to the act of a man, or his representative, requesting marriage from a woman or her guardian (either explicitly or implicitly). As Allah Almighty states: "*There is no blame upon you if you make a hint concerning a proposal to women.*" [Surah Al-Baqarah, 2:135]. This verse emphasizes that it is not a sin to indirectly express intentions regarding courtship and marriage. If the woman (or her guardian) responds positively, the next stage is engagement (Nadhir, 1394: 24).

In other words, courtship is the proposal for marriage made by a man to a woman or girl with whom he is eligible to marry. This proposal is usually made by the man. In Arabic jurisprudential terms, this is referred to as *Khutbah*, and the person proposing is called the *Khatib* (the suitor), while the woman being proposed to is called the *Makhtubah* (the fiancée).

In Islamic jurisprudence, courtship is defined as the request or desire of a man to marry a specific woman in the future. It can also be described as expressing interest in marrying a particular woman, provided there are no legal or religious obstacles between them. Alternatively, it can also refer to the proposal for future marriage, which can be initiated by either party (Rahmani, 1383: 46).

Courtship is essentially a step towards marriage and the first step in forming a family. Therefore, both the

man and woman, or their families, should get to know each other well before the marriage, becoming aware of each other's qualities. It is important that during courtship, aspects such as age, culture, education, family status, economic condition, and other personal traits—referred to as *Kafa'a*—be considered. After completing these investigations, it is recommended that the families of the bride and groom discuss the matter of marriage, the terms of the marriage contract, and wedding arrangements together. The families should ensure that the questions asked about the bride and groom are answered in accordance with religious, logical, cultural, and commonly accepted practices, showing sincerity and honesty throughout the process (Adalatkah, 1387: 47). The Civil Code of Afghanistan defines courtship in Articles 61 and 64.

Types of Courtship (Khastegari)

It should be noted that courtship can be discussed in two forms, commonly referred to as *explicit* and *implicit* courtship:

A) Explicit Courtship:

Explicit courtship occurs when the desire for marriage is clearly and directly expressed. For instance, the suitor (Khatib) might directly tell the woman (Makhtubah), "*I wish to marry you.*" This type of courtship involves clear and unambiguous communication about the intention to marry (Abdullah, 1386: 42).

B) Implicit or Indirect Courtship (Through Hints):

In some cases, courtship takes on a more implicit or indirect form. This means that the suitor uses words or phrases that do not directly or explicitly state the intention of marriage or engagement, but the underlying meaning hints at it. In this case, the language used conveys the idea of a potential marriage in an indirect or figurative manner. For example, if a man intends to propose marriage to a woman, he might say, "*You are a woman of good character, and I would want to marry a woman with such admirable traits,*" or "*Any man would be lucky to have someone like you as his partner.*" Such indirect expressions convey the intention of courtship or marriage without directly stating it (Norwegian Delegation, 1392: 57).

These two forms of courtship reflect different cultural and personal approaches to expressing intentions regarding marriage, with explicit courtship being clear and straightforward, while implicit courtship relies on hints and indirect communication.

The Importance of Courtship in Afghan Society

In many parts of Afghanistan, it is not customary for men and women to meet before marriage. Pre-marriage agreements and meetings are considered contrary to social norms and traditions and can cause significant problems for both parties, especially in rural areas. In these areas, women are often viewed as the

property of men, and the separation of men and women in society prevents any form of interaction between them, hindering potential marriage arrangements.

In some regions, neither the girl nor the boy is allowed to independently choose their future spouse. Marriage and the selection of a partner are essentially family matters, and particularly in rural areas, it is the heads of the family who arrange the marriage for their children. First, suitable spouses are sought within the close family circle, then among extended relatives, neighbors, and finally, other families. This means that marriages are often arranged within the extended family or among close acquaintances. Usually, the groom's family initiates negotiations with the bride's family, and both families then meet to discuss the dowry. This process is referred to as *Khastegari* (courtship) (Norwegian Delegation, 1392: 55).

Conditions of Courtship (Khastegari).

Just as marriage between any man and any woman is not permissible due to certain obstacles, similarly, there are Shari'ah-based barriers in the context of courtship and proposing to women that must be understood. Islamic scholars have outlined two conditions for the permissibility of a proposal to a woman: first, there should be no existing religious barrier preventing the marriage of the suitor and the prospective bride, such as permanent or temporary prohibitions (Mahram); second, no one else should have previously proposed to her. (Nail, 1396: 27). Among the conditions for proposing to a prospective bride, the following can be mentioned:

A) The Absence of Permanent and Temporary Prohibitions between the Suitor and the Prospective Bride

The first condition for a proposal is the absence of a permanent or temporary prohibition between the suitor and the prospective bride. In Afghan Civil Law, prohibitions are generally divided into two categories: permanent prohibitions and temporary prohibitions.

In general, there are three main factors that create permanent and eternal prohibitions, which prevent courtship, engagement, or marriage between certain individuals, either permanently or temporarily.

The factors that create prohibitions are as follows:

- Kinship by Blood (Consanguinity) – Relational prohibitions due to blood ties.
- Kinship by Marriage (Affinity) – Relational prohibitions due to marriage connections.
- Kinship by Breastfeeding (Fosterage) – Relational prohibitions due to breastfeeding.

Permanent prohibitions refer to the types of obstacles that, if present, prevent marriage with certain

individuals, either currently or in the future, under all circumstances.

On the other hand, temporary prohibitions refer to individuals with whom courtship, engagement, or marriage is temporarily prohibited due to specific reasons or circumstances. However, once the cause for this prohibition is removed, the possibility of marriage between the two parties may be restored. (Adalatkah, 1394: 30).

B) The Prospective Bride Not Being Engaged to Another Person

If the woman is neither related to the suitor by blood nor by marriage, and she is not in the waiting period (iddah) after a revocable or irrevocable divorce, and there are no other religious or legal barriers to her being proposed to, but she is already engaged to someone else, the suitor has no right to propose to her until the first suitor has received a rejection from her or the woman herself withdraws from the engagement. (Heiat Norway, 1389: 59)

If the prospective bride (the woman being courted) is engaged to someone else, then no other suitor may propose to her unless she withdraws from the engagement. This is supported by numerous hadiths from Prophet Muhammad (PBUH), who said: **"A man should not propose to a woman already engaged to another unless he marries her or she decides to withdraw her engagement."**

Based on this hadith and others narrated by Prophet Muhammad (PBUH), Islamic scholars unanimously agree that if a man has proposed to a woman, no other suitor should step forward until the result of the first proposal is known, as long as the woman has not given a clear response or the initial suitor has not withdrawn his proposal. This is to preserve the respect and honor of the brotherhood between believers. Engaging in actions that may lead to tension or resentment between men is to be avoided. If the woman has explicitly rejected the first suitor's proposal, then another suitor is free to propose without any objection. (Rasouli, 1376: 50).

It should be clarified that if the woman has neither accepted nor rejected the proposal, and she has not expressed her consent or discontent, but is still in a state of contemplation, Islamic scholars have differing opinions on the matter. (Ghani Zada, 1394: 140).

The scholars of the Hanafi school of thought believe that if the woman has not made a decision regarding the first proposal, then it is not permissible for another suitor to propose to her. The reason for this is that the lack of response and silence from the woman might be due to her desire for further reflection and contemplation. She may want to gather more information and ensure she is making the right choice. To respect the

rights of the first suitor and avoid interfering with the woman's wishes, the Hanafi scholars prohibit another proposal in such a situation. Additionally, if another suitor is allowed to propose during this time, it could lead to a dispute between the first and second suitors. To prevent such conflicts, proposing to a woman already under consideration is not allowed. Moreover, Hanafi scholars refer to the previously discussed hadith to support this ruling (Adalatkah, 1394: 31).

C) The Fiancée Not Being the Wife of Another in Her Waiting Period

Another condition for engagement is that the woman should not be in her waiting period (Iddah) as the wife of another man. Based on this principle:

If the woman is in the Iddah period after a revocable divorce (Talaq Raj'i), engagement with her is not permissible. This is because both the man and the woman have the right to reconcile before the Iddah period ends. Therefore, during this time, the woman remains in the status of the wife of her husband, and engagement with her is not allowed under Islamic law. The Civil Code of Afghanistan also rejects such an engagement (whether explicit or implied) in Article 63.

If the woman is in the Iddah period following an irrevocable divorce (Talaq Bain), engagement with her, whether explicit or implied, is not allowed according to the Civil Code and the Hanafi school of thought. This is because during the Iddah period, the marital relationship and its consequences remain intact, and engagement might lead to conflicts or worsen the situation between the husband and the suitor, resulting in disputes and emotional distress. (Heiat Narwi, 1389: 58)

However, Islamic scholars have noted that in cases of irrevocable divorce (Talaq Bain), where the marital relationship has fully ended, engagement by implied words is not an issue, as the woman is completely free to decide about her future spouse after this type of divorce.

If the woman is in the Iddah period after the death of her husband (the waiting period is four months and ten days), all Islamic schools of thought agree that engagement with her using implied words is permissible (Rosuli, 1376: 48).

The Civil Code of Afghanistan provides the following ruling on this matter: "Engagement with a woman is allowed if she is not in the marital bond or in the Iddah period of another" (Civil Code: Article 62).

As can be seen, the Civil Code does not address the prohibition of engagement with women who are permanently prohibited (Mahram), but it does highlight the prohibition of engagement with certain temporary Mahram women, such as the wives of others and women in their Iddah period.

Article 63 of the Civil Code states the difference between the ruling on engagement with a woman in her Iddah due to the death of her husband and engagement with a woman in her Iddah due to divorce. It states: "Engagement with a woman in the Iddah period of a revocable or irrevocable divorce is not allowed, whether explicit or implied, and engagement with a woman in the Iddah period after the death of her husband is not allowed with explicit words, but implied engagement is permissible." Thus, the Civil Code of Afghanistan differentiates between the two types of Iddah, allowing implied engagement with a woman in the Iddah period following the death of her husband while prohibiting it in the case of a divorce. (Nail, 1396: 28).

The ruling on looking at a fiancé (woman who is engaged)

In Islam, looking at a fiancé is permissible under specific conditions. The general ruling is that looking at the body of a non-mahram woman by a man, and vice versa, is prohibited. However, the sacred law has made an exception due to the sensitivities involved in marriage and because mutual understanding and awareness before marriage can ensure the health of the family. The exception is the permissibility of looking at a woman with the intention of marriage. Islamic scholars believe that the permissible look refers to observing the face, the palms, and the limbs of a non-mahram woman over her clothing, provided that the person is of legal age, mentally sound, and acts of their own free will. This ruling is also valid during the engagement period because, according to Islamic jurisprudence, fiancés are not considered husband and wife.

In this regard, the following verse from the Quran is relevant:

{ "Tell the believing men to lower their gaze and guard their private parts. That is purer for them. Indeed, Allah is acquainted with what they do." } (Quran, Surah An-Nur: 30).

There is also a Hadith narrated by Abu Hurairah: The text of the Hadith is as follows: "I was with the Prophet when a man entered and informed him, 'O Messenger of Allah, I want to marry a woman from the Ansar.' The Prophet (PBUH) asked, 'Have you looked at her?' The man replied, 'No.' The Prophet (PBUH) then said, 'Look at her, for this will help your marriage to be enduring.'" (Sahih Muslim, Vol. 1, p. 569).

RESEARCH FINDINGS

Characteristics of the Fiancée in Islamic Jurisprudence and Civil Law

Islam and the Civil Law of Afghanistan have set specific characteristics and conditions for the fiancée (the girl being proposed to) to establish a stable and successful family. These criteria are based on religious and legal foundations. Below, these characteristics are presented from the perspective of Islamic jurisprudence

and Afghan Civil Law under specific headings. (Shawkani, 1973: 210)"

Puberty and Legal Capacity

Puberty is one of the essential conditions for marriage in Islam and Afghan Civil Law. From the perspective of Hanafi jurisprudence, marriage to a girl who has not reached physical and intellectual puberty is prohibited. Puberty refers to an individual's ability to bear the responsibilities of marriage and manage a household. In Islam, puberty is not only related to physical maturity but also to intellectual development. The Prophet Muhammad (peace be upon him) emphasized that marriage should be carried out considering the conditions of both parties (Nazeer, 2012: 30).

Afghan Civil Law also addresses this issue in Article 70, determining the legal age for marriage for girls to be 16 years. In special cases, with the approval of the court, marriage with girls as young as 15 years old may be allowed. This emphasis on legal maturity demonstrates the alignment between law and jurisprudence in recognizing the importance of both physical and intellectual puberty. Legal capacity for marriage ensures that the girl can fully exercise her rights (Afghan Civil Law, Article 70).

Furthermore, Hanafi jurisprudence specifies that marriage to an immature girl, even with the consent of her guardian, is not valid unless there is a legitimate religious interest. This perspective reflects Islam's emphasis on safeguarding the girl's interests and preventing abuse of her immature status (Fayez, 2011: p.42). This alignment between law and jurisprudence indicates that puberty is the cornerstone of a successful and healthy marriage."

Guardian's Consent and Freedom of Choice

The consent of the guardian is one of the key issues in the marriage of girls. From the perspective of Hanafi jurisprudence, the guardian of a virgin girl must be involved in the decision-making process regarding her marriage. This view is based on the belief that the guardian, as a person with experience and knowledge, is capable of making the best decision in the best interest of the girl. The Prophet Muhammad (peace be upon him) said: "There is no marriage without the guardian" (Tirmidhi, Hadith 1101)."

In Afghan Civil Law, Article 71 also emphasizes the importance of the guardian's consent. This article states that for girls under the age of 18, the guardian's consent is necessary for marriage. If the guardian prevents the marriage of a girl with a righteous individual, the girl can petition the courts to claim her right to marry. This reflects the alignment between the law and jurisprudence in safeguarding the rights of girls (Afghan Civil Law, Article 71).

On the other hand, both law and jurisprudence emphasize the freedom of the girl in choosing her spouse. Marriage must be based on the mutual consent of both parties, and any form of coercion or threat in this regard is unacceptable. In Islam, "consent" is considered one of the essential conditions of marriage. Afghan Civil Law also addresses this issue in Article 71. This alignment highlights the value of individual freedom in marriage (Abdullah, 2012: 50).

Absence of Legal and Shari'ah Obstacles

Islamic jurisprudence and Afghan Civil Law emphasize that the fiancée should not have any legal or Shari'ah obstacles to marriage. One of these obstacles is the status of 'iddah (waiting period). In Hanafi jurisprudence, marriage to a woman who is in the 'iddah period of a revocable divorce, an irrevocable divorce, or widowhood is prohibited. This ruling is intended to protect the rights of women and clarify the status of their previous relationship (Nazeer, 2012: 40).

Afghan Civil Law also addresses this issue in Articles 60 and 63. Article 63 explicitly states that marriage to a woman who is in the 'iddah period is prohibited. This law shares similar objectives with the Shari'ah rulings, aiming to ensure the legitimacy of the marriage and the protection of the rights of both parties. Additionally, the fiancée should not have a close familial relationship (blood, marriage, or breastfeeding) with the suitor. This condition is carefully outlined in Islamic jurisprudence as well (Afghan Civil Law, Articles 60 and 63).

Moreover, both the law and jurisprudence address matters such as ensuring justice in a second marriage. In cases of polygyny, the husband must be capable of maintaining fairness between his wives; otherwise, the marriage is not permissible. This issue is affirmed in both Islam and Afghan Civil Law (Fayez, 2011: 48).

Religiosity and Good Morality

Religiosity and morality are key qualities in selecting a fiancée. From the perspective of Hanafi jurisprudence, marrying a woman who is religious and possesses good morals directly impacts the stability of the family. The Prophet Muhammad (peace be upon him) said: "Marry a religious woman and your hands will prosper," (Bukhari, Hadith 5090).

Afghan Civil Law also emphasizes that the person to be married should be morally and behaviorally appropriate.

Islamic jurisprudence further advises that women who are humble, chaste, and come from a noble family should be chosen as wives. These qualities not only help in the stability of the marital relationship but also play a role in the upbringing of children and the creation of a healthy society. These ethical principles are

also indirectly referenced in Afghan Civil Law (Nazeer, 2012: 35)

- Characteristics of the Suitor from the Perspective of Jurisprudence and Civil Law
- Characteristics of the Suitor from the Perspective of Jurisprudence and Civil Law

In both Hanafi jurisprudence and the Civil Code of Afghanistan, there are specific characteristics for the suitor that should be considered during the process of engagement. Engagement is seen as a preliminary step in establishing the institution of marriage, and it holds significant importance in both Islamic jurisprudence and Afghan Civil Law.

Maturity and Legal Capacity

Maturity is one of the fundamental conditions for marriage in Islamic jurisprudence and the Civil Code of Afghanistan. It refers to the individual's reaching a stage of physical and mental growth that allows them to understand and manage the responsibilities of marital life. In Hanafi jurisprudence, maturity is not only about physical changes but also emphasizes the mental and intellectual development of the individual. This principle is based on the idea that marriage requires not only physical readiness but also the ability to comprehend marital responsibilities, make decisions in shared life matters, and fulfill family rights and duties (Ibn Abidin, 1421 AH, Vol. 1, p. 450). This view points to a more comprehensive understanding of maturity, considering both physical and intellectual growth (Shibli, 1370 AH: 270).

The Civil Code of Afghanistan specifically refers to the legal age of marriage in Article 70, setting the age for men at 18. This age is seen as a sign of both physical and mental maturity to ensure that the individual is capable of making sound decisions and managing a shared life. Thus, the Civil Code of Afghanistan emphasizes both physical and intellectual development to ensure that an individual can fulfill marital responsibilities (Civil Code of Afghanistan, Article 70). The difference between Hanafi jurisprudence and Afghan Civil Law is that Hanafi jurisprudence focuses more on the natural and religious principles of maturity, while the Civil Code of Afghanistan uses a specific legal age standard that applies to all individuals.

Financial Ability

Financial ability is a crucial condition for marriage emphasized in both Hanafi jurisprudence and the Civil Code of Afghanistan. In Islamic law, the responsibility of providing for the family falls upon the man. According to Hanafi jurisprudence, the man must have sufficient financial means to support the needs of married life, which include daily living expenses, housing, food, clothing, and other essential needs. Additionally, the payment of the dowry is the man's responsibility, as it is considered one of the woman's financial rights. This principle is derived from the

Quranic verse: "Men are the protectors and maintainers of women because Allah has made one of them to excel the other, and because they spend of their wealth" (Quran, An-Nisa 4:34), which indicates that men are responsible for providing financially for the family (Subhani, 1416 AH: 160).

The Civil Code of Afghanistan also refers to the man's responsibility to provide for the wife in Article 95, stressing that the man must be capable of meeting the basic needs of the family. This law is designed to ensure the stability of married life, which can only be achieved if the man has the financial means to provide for the family. Therefore, financial ability is an essential prerequisite for marriage in Afghan Civil Law and reflects a practical approach to the stability and strength of family life (Civil Code of Afghanistan, Article 95). While both the jurisprudential and legal systems emphasize financial ability, the Civil Code of Afghanistan more explicitly addresses this condition and refers to the financial provision as a legal requirement.

Consent and Serious Intent for Marriage

Consent and a serious intention to marry are fundamental principles in both Hanafi jurisprudence and the Civil Code of Afghanistan. In Hanafi jurisprudence, a marriage contract is considered invalid without the genuine consent and serious intent of both parties, especially the man. This principle is derived from the Hadith: "Actions are judged by intentions" (Bukhari, 1422 AH), which indicates that all actions, including marriage, must be carried out based on pure and sincere intention. This view emphasizes that true intent and a serious desire to form a shared life should exist in the heart of the individual, and no external pressure or coercion can replace this intent (Hakim, 1392 AH: 290).

The Civil Code of Afghanistan also specifically refers to the necessity of mutual consent in Article 71, emphasizing that no coercion or pressure is acceptable in the marriage process. This provision aligns with Islamic law and stresses the importance of full consent from both parties to prevent any form of compulsion or imposition in the marriage process. This shared view highlights the importance of freedom and choice in selecting a life partner. Therefore, in both the jurisprudential and legal systems, genuine consent and a serious intent to marry are considered fundamental principles, without which a marriage is not valid (Civil Code of Afghanistan, Article 71).

Absence of Legal or Religious Barriers

Islamic law, particularly the Hanafi school, deems marriage with close relatives (by blood, marriage, or suckling) as prohibited, which is referred to as the "prohibition of close relatives." This principle is derived from the Quranic verse: "Do not marry those whom your fathers married, except what has already passed" (Quran, An-Nisa 4:22), which prohibits marriage with individuals who are close relatives by blood, marriage,

or suckling. Additionally, marriage with a woman who is in her waiting period (iddah) following divorce or the death of her husband is forbidden in order to maintain respect for family relationships and the rights of both parties. The Civil Code of Afghanistan also addresses this issue in Articles 60 and 63, prohibiting marriage with individuals who are close relatives or in a waiting period following divorce or death (Civil Code of Afghanistan, Articles 60 and 63). This alignment reflects the impact of Islamic jurisprudential principles on Afghan legislation. Although there may be differences in phrasing and details between the two systems, the core principles are the same.

Good Intentions and Proper Morality

Good intentions and appropriate morals are recognized as essential characteristics for the suitor in both Hanafi jurisprudence and the Civil Code of Afghanistan. In Islamic law, the suitor should be a religious, ethical person with a strong character. This principle is derived from the Hadith: "When a man with whom you are satisfied with his religion and character comes to you for marriage, marry him" (Tirmidhi, 1422 AH), which emphasizes that moral and religious criteria should be considered in marriage. Good morality and religiosity are fundamental elements of a successful married life and can contribute to the stability and happiness of the family. The Civil Code of Afghanistan also refers to good conduct between spouses in Article 72, stressing that the suitor should be a person of good morals and intentions to ensure a strong and lasting marital relationship. This article indirectly highlights the importance of ethics in choosing a life partner. In both the jurisprudential and legal systems, the emphasis on good morals and intentions is seen as an essential condition for a stable married life, particularly in creating a healthy and happy family environment (Civil Code of Afghanistan, Article 72).

Cultural and Social Influences

In addition to religious and legal principles, cultural and social factors also have significant influences on the characteristics of the suitor and the marriage process. In Hanafi jurisprudence, choosing a spouse is primarily recommended based on piety and morality, but in different societies, particularly in Afghanistan, this choice is influenced by specific cultural and social standards. Factors such as social status, education, economic conditions, and even family expectations can affect an individual's decision-making regarding marriage. In fact, in Islamic societies, particularly in countries with diverse cultures, marriage is considered a social and familial contract that is closely tied to the customs and traditions of the society. The Civil Code of Afghanistan also takes these social and cultural influences into account. While the Civil Code of Afghanistan sets the general rules for marriage, it also acknowledges the impact of social and cultural factors on certain issues such as determining dowry, the bride's possessions, the economic status of the parties, and

family expectations. This is especially relevant in situations where families play a significant role in marriage decisions (Rasouli, 1376 AH: 160).

Moreover, some laws and social decisions, particularly regarding women's rights, may reflect specific cultural influences in different regions of Afghanistan. In this context, the interplay between culture and law highlights the complex relationship between religious principles, civil law, and social norms. While the Civil Code of Afghanistan is based on Islamic principles, cultural and social influences lead to variations in its application in different regions. In some parts of Afghanistan, traditional customs may heavily influence the legal processes, with significant importance placed on family traditions, inter-family relationships, and the social status of individuals. This interaction between culture, law, and religious principles significantly shapes family formation and marital relationships within the community. In this regard, the institution of family, as one of the cornerstones of society, is deeply influenced by this combination of factors, which may lead to future cultural, social, and even legal transformations (Rahmani, 1383 AH: 43).

CONCLUSION

As marriage for men is not valid with every woman, and there are legal and religious obstacles in this regard, similarly, there are also Islamic prohibitions regarding the proposal and courtship of women that must be understood. Islamic scholars have set two main conditions for the legitimacy of a man proposing to a woman: first, there must be no religious or legal barrier to the marriage, such as permanent or temporary prohibition (e.g., permanent or temporary relations of mahram); second, the woman must not have already been proposed to by another man.

Marriage proposals in Islam are considered a critical step in the marriage process, with specific conditions that must be met for them to be valid. Scholars emphasize that two fundamental conditions must be satisfied for a proposal to be legitimate: there should be no existing legal or religious obstacle to the marriage, such as permanent or temporary mahram status, and secondly, no one else should have already proposed to the woman.

The prohibitions for proposing include various conditions. One key factor is the absence of any permanent or temporary mahram relationship. These relationships are categorized into **mahram by kinship** (e.g., close blood relatives) and **mahram by marriage** (e.g., in-laws). If a man and woman are considered mahram to each other, a proposal between them is not allowed. Permanent mahram status refers to a type of prohibition that forbids any possibility of marriage, while temporary mahram status refers to situations where marriage may become permissible once the specific prohibitions are resolved.

Another condition for a valid proposal is that the woman should not have already been proposed to by another man. If a man has proposed to a woman and she has not given a final answer, another man cannot propose to her until she has made a decision.

Additionally, women who are in specific situations, as highlighted by Afghan Civil Law, such as being in a **iddah** (waiting period) due to divorce (whether revocable or irrevocable) or the death of their husband, cannot be proposed to. In these cases, remarriage is prohibited until the iddah period has ended.

These conditions and prohibitions are set to protect the rights of women and prevent potential legal and social issues within families. They ensure that marriages are conducted based on religious and legal principles, maintaining social order and fairness.

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