
THE MOSLEM WORLD: THEORETICAL AND PHILOSOPHICAL PROBLEMS

BAKHROMJON MAMADIEV. FATWAS OF MUSLIM
SCHOLARS ON EARLY MARRIAGE AND POLYGAMY //
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*Abstract. Author analyzes modern fatwas on early marriage and
polygamy issued by Fatwa Centers in Egypt, Turkey, Qatar, Saudi
Arabia, Tunisia and Indonesia. The material considers the positions of
the ulama of various Sunni madhabs on the issues mentioned.*

Introduction

In the Moslem world, conjugal marriage – nikah¹ – is of particular importance. On the issue of marriage, the Prophet emphasizes the importance of marriage in Islam and warns that rejection of marriage is equivalent to rejection of the scriptures. There are many misunderstandings and problems in family matters, despite the importance of marriage. This article analyzes fatwas regarding family issues in modern Moslem societies.

From the point of view of Islamic jurisprudence, the family is a group of people, which is considered the core of society, formed through the marriage of a man and a woman, who then have offspring. Family members maintain constant relations with the ancestors of this couple, as well as with brothers and sisters, grandchildren, uncles and aunts from the side of the father and mother and their children. (Quran. Sura 30 Al-Rum ayah 21).

According to the Quran, the definition refers to protection, support and the existence of a strong bond based on consanguinity, affinity or foster relationship. [1]

Care of the family and family relationships is an integral part of the processes of state building and religion in many Arab-Moslem countries. Islamic lawyers are actively discussing family issues, in which fatwas are prominent.

In determining the role of the family, many Islamic lawyers consider the family a concise image of society, its morality and cohesion as morality and cohesion of society as a whole. The relevance of family relations in Islamic jurisprudence differs from those that were in the past. Although these issues were of a socially significant nature, however, state and religious regulation was absent in this area. In family relations, Shariah covers marriage, divorce, inheritance issues, as well as

¹ Nikah (from Arabic: marriage) – in Islamic family law, a marriage concluded between a man and a woman. For the marriage to be valid, it is necessary to fulfill a number of conditions. The spouse must be an adult Moslem and not fall under the category of mahram.

guardianship of children, which in many modern Moslem countries are legalized by modern standards.

Fatwas of early marriage

By the example of Qatar, where Islam is based on the Hanbalith madhhab, the Ulama defend the traditional Islamic concept of early marriages. They support the possibility of Moslems getting married before they reach the minimum age of majority. Nevertheless, Article 17 of the Qatar Family Law prescribes 18 and 16 years as the minimum age for men and women, respectively.

In 2003, muftis published a fatwa on the Islamweb Internet publication managed by the Ministry of Donations and Islamic Affairs of Qatar (the only authorized body authorized to issue fatwas in Qatar), according to which a child marriage is permissible, referring to the hadith of Imam Bukhari, which says that the Prophet married Aisha when she was six years old, and she was with him in a conjugal relationship when she was nine years old. [2] Currently, ulama and muftis, adhering to modernist and conservative ideas, continue to argue among themselves over the question of permissible age at the time of marriage. [3] In addition, the Qatari muftis state that the consent of a minor girl is not necessary for marriage, the consent of her guardian is sufficient. [4]

The Hanbalite ulama of Saudi Arabia hold a similar position. In 2009, after numerous public debates about the controversial practice of child marriage, the Supreme Mufti of KSA issued a fatwa which allows girls to be married at the age of 10 years. [5]

In January 2019, the Advisory Council of Saudi Arabia (KSA Parliament) approved rules prohibiting marriage for girls and boys under the age of 15 years, and persons under 18 years of age need the approval of a specialized court. [6] The ulama of fatwa publishing centers of the countries where the Hanafi

madhhab prevails tend to take different approaches to the issue of child marriage. For example, in Turkey, the Department of Religious Affairs (Diyanet) in 2009 and 2012 published two fatwas [7] [8] on its internet portal fetva.net, the content of which is as follows: unacceptability of minor marriages. Modern society reacts harshly to crimes related to the violence of children, which cannot be compared with certain historical periods.

Nowadays, such interpretations, as well as the dissemination of other information without taking into account the historical, geographical, cultural, traditional and social aspects, cause distress and ideological disorder (the acquisition of the right to choose after reaching adulthood) in the minds of modern society. We must solve these problems by substantiating the misinterpretation of such issues using the Quranic ayahs, since, in our modern world, many facts of child violence continue to be recorded... [9]

According to the Civil Code, Turkish citizens can marry on reaching 18 years old. At 17 years of age, a marriage may be concluded with the consent of the parents, at 16 years of age - for special circumstances with the approval of the court.

According to the Institute for Strategic Analysis of Turkey, families do not comply with the law establishing marriageable age. Some parents who want to marry their daughters early go to court, but most simply evade involving public services in this process. Religious betrothal ceremony of the newlyweds is conducted by an imam and is not registered officially. More than 40% of girls in rural areas marry under the age of 18, which is based on local traditions. Experts in the field of sociology indicate that in the culture of rural areas of eastern and south-eastern Turkey, it is customary to marry off 12-15 years old girls. This problem has been ignored for a long time. Legal proceedings on the fact of marriage with minor girls are rarely instituted, especially since the brides themselves in most cases agree to get engaged to the groom. Girls generally get married at the age of 14 and give birth to their first child at the age of 15. If the girl is

13 years old or less, then such marriages most often end with the arrest of her husband, who faces 8 to 15 years in prison.

The problem of early marriages in Turkey, according to women's organizations, is characteristic of all Turkish cities. However, the situation is beginning to improve gradually. In society, they began to perceive the observance of the legal age of marriage not for granted, but as a problem. [10]

Despite an increase in the average age of marriage, child marriages remain a constant problem in Turkey and reflect a model of gender inequality that reinforces the stereotyped roles of girls and limits their education, jeopardizes their health and puts them at risk of violence and poverty. [11]

In 2016, in view of the severity of this social problem, Diyanet published a fatwa regarding juvenile marriage, which condemned early (child) marriages, i.e. both marriages of adults and minors, and marriages of two children. Fatwa also emphasized that early marriages increased the risk of biological, psychological and economic problems that minors cannot cope with. Early marriages also make them fall behind with studies and prevent them from having a right childhood. [12]

A similar problem exists in Egypt. In an official report by the Egyptian Statistical Agency, it was announced that 117,000 children under the age of 18 in Egypt were married, even though Egypt was actively combating early marriages. The report announced that there were 39 million children in Egypt, accounting for 40% of the total population. Egypt's gender difference is 51.7% of men and 48% of women. 117 thousand children aged 10 to 17 years are married or were married. [13]

In this regard, in October 2017, in response to the attempt by President Abdel Fatah al-Sisi to take measures to combat child marriages, Al-Azhar announced the launch of awareness campaigns against this practice. By the order of the great Mufti of Egypt, Ahmad Tayyib, the Friday sermons actively explained the negative consequences of child marriages, especially in rural areas, where such cases are common.

A. Tayyib also issued a fatwa, according to which in Islam there are no sacred texts permitting child marriage. The document states that Islam categorically prohibits any action that could lead to health complications or imminent physiological harm that could be caused by child marriages. [14]

Since 2018, Egypt has criminalized the marriage of minors. The sentence for those who participated in the process is imprisonment of up to one year, as well as the granting special services the authority to take children from the parents, who allow their children to marry at an early age. The law also stipulates that the official performing the marriage procedure, incl. a mufti, must notify the Prosecutor General of cases of marriage with a child, while a refusal to do so will be assessed as a crime punishable by suspension of work of this official and imprisonment for one year. The law also states that a marriage contract with a person under the age of 18 will not be certified and the contract cannot be ratified without the approval of the family court. [15]

In Indonesia, the Marriage Act of 1974 allows women and men to marry at the age of 21, but allows girls to marry at the age of 16 and boys at age of 19 with parental permission. Parents may also ask religious courts or local officials to allow girls to marry earlier, in which case the minimum age is not set. [16]

All the largest Moslem organizations - Nahdlatul Ulama and Muhammadiyah, as well as the Indonesian Ulama Council (focused on the Shafi'i madhhab) in their fatwas allow the practice of child marriages and refuse to support amendments to the law on the minimum age of marriage for girls under 18, which is required by international organization. [17]

In 2017, the Congress of Moslem Women Clergy at the Indonesian Ulama Council issued a fatwa against marriages with girls under the age of 18. The assembled women called on the local government to increase the minimum age for marriage for women from the current 16 to 18 years. According to this fatwa,

early marriage prevents Indonesians from continuing education, and half of such unions end in divorce. [18]

The above situation in Indonesia reflects the so-called pluralism, where there are three fatwa issuing centers that differ from each other in the madhhabs, as well as many other organizations that can issue fatwas.

Fatwas about polygamy

The most heatedly discussed issue in family relations in Moslem countries is the problem of polygamy.

History shows that for many peoples, although to a small extent, practiced polygamy. The predominance of female population in number and the decrease in the number of men due to wars forced people to practice polygamy. In every society, polygamy became first a necessity, then the norm. Even later, polygamy, which first appeared to solve social problems in society, turned into a practice that violated the rights of women, playing with their honor and dignity.

In eastern countries, the practice of polygamy took place even before the advent of Islam. This practice was not fair. Men were able to have as many wives as they wanted, and this led to great injustice and a decline in morals.

Currently, state family law and women's rights laws in many Moslem countries restrict this practice.

In 2014, new results of a study of polygamy undertaken by scientists from the United Arab Emirates [19] showed that polygamy harms women's mental health, stimulates negative feelings, and ultimately creates conflicting circumstances that harm healthy emotional life. In some countries, polygamy is perceived as a normalized phenomenon in marriage and is presented as a solution to various social problems.

Despite the permissibility of polygamy in Islamic prescriptions, researchers have found that many men are mistaken in their efforts to legalize polygamy. The wives of

polygamous families interviewed during the study complained not only that they did not see their husbands regularly, but also that they fulfilled their financial and fatherly obligations carelessly.

Similar but broader studies of polygamy were carried out by the Malaysian group "Sisters in Islam" in 2010, the results of which showed that polygamy not only negatively affected wives, but also had an extremely detrimental effect on children who were the product of such unions. As the number of wives and, consequently, the number of children grows, resources and attention become smaller. These conditions also jeopardized children's attitudes towards their mothers, whom they considered weak and unable to properly attract the attention of their fathers. [20]

In most Islamic countries, polygamy is a legal norm. However, in Turkey, Tunisia and Algeria, polygamy is prohibited by law. In Iran, the consent of the first wife is required for remarriage. In Iraq, Morocco, Syria and Pakistan, this requires permission from the authorities.

Despite legislative restrictions in secular states with Moslem population, there is a desire on the part of confessors to promote and maintain in society the acceptability of polygamy in marriage. Modern proponents of polygamy argue their position as a way to solve various social problems of society. According to the Emirate and Malaysian researchers, in response to such calls, it is extremely important for clergymen to use restrictive fatwas that could show the negative effects of polygamy.

Tunisia is the only Arab country that prohibits polygamy legally. Four months after obtaining independence, the government of this country ordered to officially ban polygamy. The Family Code provides punishment for offenders in the form of imprisonment for one year. These ulama, who support the reformist trend, did not hesitate to endorse the efforts of Tunisian President Habib Bourguiba to end polygamy once and for all, not considering themselves to be contrary to Sharia principles.

Tunisian Islamic jurists have built their jurisprudence on the basis of the general goals and objectives of Islam. Their practice focused on the idea that a man cannot achieve justice among his wives, and therefore the state should intervene to prevent polygamy in order to protect the rights of women and their children.

In Morocco, the leader of the nationalist movement of the 1950s, Allal al-Fassi, also issued a fatwa prohibiting polygamy. He argued his position on the basis of Islamic experience in the field of pluralism. Legally, Allal Fassi's demands remained a dead letter, although the Moroccan Family Code (2004) gives women the right to demand from their husbands not to marry a second woman.

At the beginning of the last century, the Mufti of Egypt Mohamed Abdo (1849–1905) called for prevention of polygamy, becoming the first Islamic leader to oppose polygamy and issued a fatwa. He submitted to the government a proposal to introduce a system restricting polygamy, but this proposal was not accepted. His students made similar proposals in 1928 when the Committee on Amending Certain Articles of the Civil Code was created. But they also failed to legitimize this. [21]

In March 2019, the renowned Egyptian imam of Al-Azhar Sheikh Ahmad Tayyib issued a fatwa based on Sura 4 "Women," ayah 3 of the Quran, where he called for reforms of the practice of polygamy in Moslem societies, considering it an institution that oppressed women. The fatwa of the great imam was announced in the Sheikh Al-Azhar program, which is broadcasted on Egyptian satellite television every Friday. In the course of the program, it was noted that in recent years the problem of polygamy had become an urgent topic in women's social networks, that numerous fatwas of religious Salafi scholars were trying to persuade girls to accept polygamy in Egypt. In the last episode of his program, Ahmad Tayyib said that polygamy was often unfair to women and children and was a distortion of the correct understanding of the Quran and Sunnah. Many ulama, based on their subjective judgments, distort this verse of the Holy

Quran, as a result of which many Moslem societies have problems associated with polygamy, gender inequality, divorces and orphaned children.

A more thorough analysis of the above ayah shows that it does not call for polygamy, but clarifies the need for care and protection of orphaned girls.

In early October 2017, A. Tayyib issued a decree establishing a committee to draft a bill amending certain provisions of Egyptian laws regarding personal status in order to protect the rights of an Egyptian family. The committee held its first meeting under the chairmanship of A. Tayyib at the end of October of the same year, during which he determined that many problems arise as a result of polygamy, as well as unequal rights and obligations of the husband and wife after the divorce.

In May 2008, the Turkish Religious Affairs Directorate - Diyanet, in response to raging polemics in the public about the permissibility of polygamy, published the fatwa on polygamy. The Diyanet statement said that the permissibility of several marriages, which are mentioned in the main sources of religion, used for several centuries in Moslem-Turkish societies, has never been correct. Diyanet states that a second marriage is unacceptable to the community.

Diyanet also emphasizes that the Department of Religious Affairs acknowledges the historical fact of the practice of polygamy, however, regardless of the interpretation of the norms of the Holy Quran and Hadith, it urges Turkish society to emphasize that such issues should be resolved on the basis of Turkish law, in particular family law and Civil Code. This position of Diyanet is based on the need to correctly explain the religion to the population and comes from the responsibility of the Religious Affairs Authority in providing services based on the principle of secularism to the public.

Similarly, Diyanet emphasizes that the corresponding ayah of the Quran (Surah 4 "Women," ayah 3) promotes monogamy, not polygamy, in a country where one marriage is essentially a

legally faithful and publicly accepted aspect, since otherwise the rights of a woman and her children cannot be protected – i.e. fairness ensured. [22]

Conclusion

Analysis of the above fatwas in some countries of the Moslem world shows the degree of development of Islamic jurisprudence and the tendency of its adaptation to modern standards.

References

1. Sheikh Wahba al-Zuheili: Family in Islam, published on 08.26.2019 Islamic educational resource "Islam DINR | Ahlu Sunnah al-Jamaqa," <http://islamdinr.ru/semja-v-islame>
2. "Fatwa on marrying minors, the answer to the question: is it permissible to marry a child," 2003, website of the Ministry of Charity and Islamic Affairs of Qatar, <https://fatwa.islamweb.net/ar/fatwa/21361/>
3. "How old was Aisha when she married the Prophet?", October 17, 2018 islam.ru publication, <http://islam.ru/content/veroeshenie/53891>
4. "Fatwa about marrying minors, the answer to the question: when can a woman marry?", 2008, website of the Ministry of Charity and Islamic Affairs of Qatar <https://fatwa.islamweb.net/ar/fatwa/115917/>
5. Mohammed Jamjoom, "Top Saudi cleric: OK for young girls to wed", January 17, 2009, Cable News Network, <http://edition.cnn.com/2009/WORLD/meast/01/17/saudi.child.marriage/index.html>
6. "Saudi Arabia's Shoura Council bans child marriages", Saudi newspaper "Arab News", January 10, 2019, <https://www.arabnews.com/node/1433416/saudi-arabia>
7. "Aİşe Validemiz dokuz yaşındayken mi Resûlullâh ile evlendi?" (Our Aisha married The Messenger of Allah, when she was nine years old?) March 23, 2012, <http://www.fetva.net/yazili-fetvalar/aise-validemiz-dokuz-yasindayken-mi-resulullah-ile-evlendi.html>
8. "Kız çocuğunun evlendirilme yaşı minimum kaç olabilir (minimum age for marrying a girl?), 10 August 2009, <http://www.fetva.net/yazili-fetvalar/kiz-cocugunun-evlendirilme-yasi-minimum-kac-olabilir.html>
9. Fatih Orum: "Kur'ân ve Geleneğe Göre Küçüklerin Evlendirilmesi" (Marriage of Minors by Quran and Traditions), Marmara Üniversitesi

- İlahiyet Fakültesi, Jan. 2019.<http://www.suleymaniyevakfi.org/kutsanan-gelenek-ve-kuran/kuran-ve-geleneg-gore-kucuklerin-evlendirilmesi.html>
10. "Early marriage in Turkey. The problem of early marriage is still relevant in Turkey", March 16, 2019 Vesti Turkey Bosphorus, <http://www.vestiturkey.com/rannie-braki-v-turcii-1137h.htm>
 11. "Child marriage. Convention on the Rights of the Child", Turkey, explore UNICEF, <https://www.unicef.org/turkey/en/child-marriage>
 12. Ramiz Samedov: "Turkey will speak out against child marriage" published on October 29, 2016, Turkey News, <http://newsturk.ru/2016/10/29/diyanet-turtsii-vyistupil-protiv-detskih-brakov/>
 13. "Early marriages have been formally criminalized in Egypt since 2018", 11/23/2018, Egypt, Hurghada, EGYPT-HRG.RU, <https://egypt-hrg.ru/kriminal/443-rannie-braki-ugolovno-nakazuemy-v-egipte-s-2018-goda.html>
 14. "Azhar launches awareness campaigns against child marriage" by: Egypt Today staff, Wed, Oct. 4, 2017, https://www.egypttoday.com/Article/2/26019/Azhar-launches-awareness-campaigns-against-child-marriage?fbclid=IwAR2er1_HWDI4q35hNOBF-YWzSICsbxOT8S9CpHYe5mEBBD
 15. "Early marriages have been officially punishable in Egypt since 2018," 23-11-2018, Egypt, Hurghada, EGYPT-HRG.RU, <https://egypt-hrg.ru/kriminal/443-rannie-braki-ugolovno-nakazuemy-v-egipte-s-2018-goda.html>
 16. "Indonesia, Child marriage rates", 2017, Girls Not Brides, <https://www.girlsnotbrides.org/child-marriage/indonesia/>
 17. Y. Perempunan: "National Report: Indonesia, The Influence of Conservative Religious Interpretations on Child Marriage in West Java and East Java", Women's Health Foundation, 2017, <https://arrow.org.my/wp-content/uploads/2017/09/NR-Indonesia-WEB.pdf>
 18. "In Indonesia, fatwas were issued against marriage to girls under the age of 18," April 28, 2017. <https://www.bbc.com/russian/news-39743181>
 19. Dr Rana Raddawi: "Polygamy can negatively affect women, study finds", The National Staff, Sep 26, 2014, <https://www.thenational.ae/uae/polygamy-can-negatively-affect-women-study-finds-1.234509>
 20. Rafia Zakaria: "The problems of polygamy", October 01, 2014, <https://www.dawn.com/news/1135346>
 21. Elsie Melkonian: "Corrupting the nation... Lawyers against polygamy," May 1, 2019.<https://www.irfaasawtak.com/a/489310.html>
 22. "Diyanet: "İkinci eş dinen uygun değil", 01 Mayıs 2008, <https://www.memurlar.net/haber/108832/diyanet-ikinci-es-dinen-uygun-degil.html>