

Kingdom of Saudi Arabia
Ministry of Higher Education
University of Imam Muhammad bin Saud Islamic University
Higher Institute for the Elimination of
Department of Comparative Jurisprudence



Controls jurisprudential
Enough from the book by Ibn Qudaamah

(The first book of the marriage to the end of the door is deprived of the marriage)

A gathering and studying

Supplementary search provider to obtain the degree of Master of
Comparative Jurisprudence

Prepare students

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Praise be to Almighty God, who created and guidance, who has the most beautiful names and sublime attributes, I bear witness that there is no God but Allah and he has no partner, I bear witness that Muhammad is the Messenger of Allah and the chosen one of God's creation - May Peace and Blessings of Allah be Upon Him and on his family, companions, his followers and a lot of peaces till the day of judgment ...

To be proceed:-

This a brief of most basic points contained in this research; it consists of introduction, preamble and three chapters.

Introduction:- the introduction includes the subject preamble, importance, the reasons to select this subject (topic), previous studies, research plan, and the research methodology.

Preamble:- the preamble includes three basic points:-

First basic point:- the definition of the jurisprudential regulation (regulatory) and the difference between the jurisprudential regulations and its rules:-

The definition of the jurisprudential regulation (regulatory):- is the fully practical legitimacy which is concerned with one of jurisprudence's sections and is included with force on provisions of its particles.

The difference between the jurisprudential regulations and its rules:- the jurisprudential regulation is a combination of many chapters from one section, but the jurisprudential rule is a combination of many chapters from many sections.

Second main point: recognizing Ibn Qdama and his book "Al-Kafi":

Ibn Qdama: is Mowafq Al-Den Abo Mohammed Abdullah Ahmed bin Mohammed bin Qdama bin Mqdam bin Nasir Al-Maqdesi Al-Jam'i Al-Salh Al-Hanbli.

"Al-Kafi" book:- is Al-Kafi in Imam Ahmed's doctrine, the third book written by Al-Mwafq in Al-Hanbali's doctrine – excelled in its authorship – mercy from Allah on him – it became as a reference for whom may be concerned with recognizing the doctrine, and often referred to it. Ibn Qdama made upon moderately between stretching and briefing, and he

had referred to briefed evidences. It had been said that, he wrote it for middle-taught people, and also had been said that it was for above middle-taught level.

Third main point:- the definition of the study (research) sections:-

Definitions:-

"Marriage" as an term:- truly and correctly – God only know – that it is the religious (legislation) term called on marriage contract. It will be accepted and implemented, except the illegitimate cases.

Marriage conditions:- the conditions made by population (community), which shall be provided to complete the marriage correctly. And it does not indicate the conditions placed by contractors.

Forbidden marriage:- the women who are forbidden to be married and intercourse on a permanent basis or limit ..

First chapter:- the jurisprudential regulation to proceed the Marriage.

Divided into seven sections:-

First section:- the marriage shall not be occur, without the consent of the custody.(father).

This regulation had been agreed by the most of Islamic jurists which indicates that, the father has the ability to hold marriage of his minors such as; little girl, crazy, idiot and his young slave.

Second section:- the suitor has the right to look at the female who wants to be married.

The Likely that, the suitor has no right to look at except his fiancée's hand and face, and this the second said by Al-Hanablah, Al-Shafi'ah, Al-Malukah and Al-Hnfiah.

Also it is likely to look at her without her permission (if necessary).

Third Section:- the female who is deprived to be married and intercourse on a permanent basis whether in accordance with pedigree or reason.

Islamic jurists had agreed that, the females who are deprived to be married and intercourse on a permanent basis whether in accordance with

pedigree or permitted reason, is considered as a deprived female to be married by him.

Fourth section:-

Non- discrimination children, shall not be conceal from them.

Islamic jurists – mercy from Allah on them - had agreed that, the children who are in same description "non-discrimination" shall not be conceal from them, due to he/she does not know Awrah or could be able to see it yet.

Fifth section:- it is permitted to look at what often appeared from the old woman, if she is Undesirable sexually.

Likely: in accordance with Al-Hanablah, Al-Hnfiah and Al-Shafi'ah, it is permitted to look at what often appeared from old woman.

Sixth section:- it is deprived for the female to look what is deprived to her at the male, also the male does the same.

Likely: she can look everywhere at the male except what is between the navel and the knee.

Doctrine of Al-Hanablah, Al-Hnfiah, Al-Malukah and Al-Shafi'ah, tended by Al-Gweni and others.

Seventh section:- What is permitted to be seen from the deprived fiancée/suitor, shall not be for a sexual desire.

Islamic jurists had agreed on this regulation, except what had been mentioned of disagreement by Al- Hnfiah about the look of the suitor at his fiancée; whereas they permitted to the suitor to look at her, even if he is afraid from arousal, and even if he recognizes that he desires her sexually. Al-Shafi'ah agreed them.

Second chapter:- the jurisprudential regulation for the marriage conditions

Divided into seven sections:-

First section:- if the person's acknowledge is not accepted, shall not be asked for a swear on a deny

The researcher did not find any objections on the said enunciation regulation. all Islamic Jurists agreed that, if the person's acknowledge is not accepted, shall not be asked for a swears if he is denying the claimed right.

Second section:- a person who has no legitimacy ability and capacity to sponsor (custody) himself in marriage, has no right to seek for the marriage of others, as a priority.

All Islamic Jurists agreed that, a person who has no legitimacy capacity or custody on himself, has no legitimacy capacity or custody on others, as a priority.

Third section:- A continuous backbiting shall be considered, when it is broken through commissioning and suffering.

Islamic Jurists – Mercy from God on them– agreed that, if the absence of the closest guardian is for a while - discontinuous backbiting – he shall be waited. And if it is for a continuous backbiting, he and this condition shall not be waited.

Islamic jurists disagreed on this continuous backbiting regulatory: it is likely that the regulation is “when it is broken through commissioning and suffering” – god only know – and the custody is transferred from the closest guardian (custody) to the farthest guardian.

Fourth section:- a person who is not able to prove the marriage through his words (talking), his witness shall not be deemed, as the child.

This regulation agreed on by all Islamic Jurists who had stipulated the witness in marriage. They said that, the only accepted witness is the efficient, and it is known that, a person who is not able to proof the marriage through his words (talking), his witness shall not be deemed and he is not efficient to be a witness.

Fifth section:- The efficient is a religious person and a person has authority (job)

The efficient person is a religious person, moral, non womanizer, and has the ability to proceed his engagement to end with marriage. the person who is preventing his fiancée to marry him is deemed “Aadil”.

General Islamic Jurists deemed that, the qualification (efficiency) is a condition required by/to the marriage, not the health.

There is a disagreement between Islamic Jurists on efficiency determination standard of marriage. all of them agreed on deeming the religious as one of an efficiency condition. The researcher could not find out the likely determination standard .

Sixth section:- the considered “Yasar” is what he is estimated to be spent (money) on the female as per what she is entitled to.

Islamic jurists agreed on the liability to spend money (expenses) and dress the wife. Ibn Battal had included the context of this consensus of this principle.

There is a disagreement between Islamic Jurists on determination standard of this “Yasar”. It is likely – God only know - to deem the husband a solvent if he is able to spend money on his wife as per what she is entitled to such as dowry and expenditure (expenses). Hereby Al-Hanabla, and the selection of Al-Muhli from Al-Shaf’ia.

Third chapter:- the jurisprudential regulation of forbidden marriage

Divided into seven sections:-

First section:- mothers such as; every female who you are belonged to her through a birth. Girls such as; every girl belongs to you through a birth.

Islamic jurists did not differ about the definition of the mothers who are contained in Quran Verse “mothers of the man”, also they did not differ about the definition of the girls “every girl belongs to you through a birth”.

Second section:- the shared suckling children are deprived as the pedigree

Islamic jurists agreed on that males who are deprived to marry the females who had shared them the suckling as a pedigree such as; aunt, daughter, brother’s daughter and sister’s daughter, due to mothers and sisters are deprived in verse, accordingly the other girls (women) are measured in accordance with this process. Ibn Qdama had included this

context in Al-Mghni, he said “we do not know a disagreement on this”, also Shekh Al-Islam had included his agree on this context.

Third Section:- the female who is deprived to be married from, also deprived to be intercourse in accordance with owning her.

This regulation means:- that every female is deprived to be married from also deprived to be intercourse in accordance with owning her. Except the book (Jewish & Christians) bondwoman(slave), she is deprived to be married but they can be Concubinage.

Islamic jurists agreed on the meaning of this regulation, which is mentioned by Al-Mowafk – Mercy from God on them– and there was no disagreement on this – God only know.

The exception is the words of the majority of scientists, it is permitted to Concubinage the book bondwoman, although it is not permitted to be married from her.

Fourth section:- all females who are deprived to be married from such as; girl’s mothers, mother’s daughters, father’s wives and son’s wives are deprived to be intercourse in accordance with owning them, suspicion or adultery.

Islamic jurists agreed on this regulation, except the deprived intercourse; some of them said that the intercourse is deprived as same as the marriage, others said that the intercourse is not deprived as same as marriage. And the researcher did not find out the likely in this matter, but it is likely to the first diligence in consideration.

Fifth section:- Every two women, if one of them is male, the other is deprived and combining both of them is deprives as the two sisters.

Islamic jurists agreed on this regulation, but some of them said that, it is necessary to add strict item which is depriving it in accordance with pedigree or shared suckling, in order to extend from it the regulation of the matter of the female with her husband’s daughter, accordingly, it is permitted to combining them and depriving the marriage from one of them if the other is male, likely – God only know.

Sixth section:- all free females who are permitted to marriage from, it is permitted to intercourse their bondwomen through owning.

Islamic jurists agreed on – Mercy from God on them – the permitting to intercourse the bondwomen owned by married the free females through the owning, such as book people (Jewish & Christians). The Islamic jurists had agreed as aforementioned on permitting to intercourse the book people. Ibn Al-Nazir had transferred their Consensus.

Seventh section:- the accepted male to engage a female is depriving others to engage her, but with his permission or disengagement.

This regulation had been stipulated to prevent the engagement over another, in case of the acceptance of his engagement. There is no disagreement between Islamic jurists on this, hereby the text of the Hadith “till he give the permission, disengagement or leaving. It indicates that, it keeps the Muslim’s right and that it takes into consideration the Muslim’s right toward Muslim.