The Nature of the Islamic Marriage: Sacramental, Covenantal, or Contractual?

Azizah Y. al-Hibri

University of Richmond, aalhibri@richmond.edu

Follow this and additional works at: http://scholarship.richmond.edu/law-faculty-publications

Part of the Religion Law Commons

Recommended Citation

The nature of the Islamic marriage contract (kitab) has been largely misunderstood by Muslims and non-Muslims alike. On the Muslim side, the problem has been one of over- secularization of the law of contract, a trend that led to a trivialization of the marriage contract, and hence of the commitment of some marriage partners to it. On the non-Muslim side, the problem has been one of trying to explain the Islamic marriage contract from world perspectives that are at times incongruent with it. This has led to unintended distortions in characterizing its nature.

For example, Muslims and non-Muslims often assert the purely contractual nature of the Muslim marriage contract in order to draw a distinction between it and the nature of marriage in other traditions. Unlike Catholic marriages, for example, it is pointed out that a Muslim man can dissolve the marriage bond at will and pay his wife a set amount (called the mahr or sadaq) agreed upon in advance in the marriage contract. The marriage ceremony may take place at home, and thus, it is argued, is not “before God” as in a church, but rather “temporal.”

I was one of those propagating this point of view until I started researching Islamic law, especially in the areas of marriage and divorce, more seriously. As it turns out, Islamic law is a seamless web, and it is quite difficult to understand
The Nature of the Islamic Marriage

one part of it without having some knowledge of the other parts. I can safely as­
sert now that almost every claim in the preceding paragraph is false.¹

In this chapter, I shall remove some of the confusion and misunderstand­
ning about the Islamic marriage contract by taking the reader with me on a brief
route of the fundamentals of Islamic law as they pertain to our subject. I shall
start with an introductory discussion of the Islamic worldview in general, and
the Islamic view of gender relations in particular. It will be followed by a dis­
cussion of the nature of contract in Islam. I shall then turn to the Islamic marriage
contract and its special status in Islamic law and religion, and, finally, examine
the nature of marriage among Muslims in the United States.

The Islamic Worldview

The Islamic worldview is based on the fundamental concept of tawhid (the
unicity of God).² There is only one Creator and one Supreme Will. Any view
which associates partners with this Supreme Will, whether directly or indi­
rectly, results in shirk (the opposite of tawhid), which is a sin that God tells us in
the Qur’an he will not forgive (4:48). Iblis (Satan) missed this important point
and disobeyed God when God ordered him to bow to Adam (15:31). By refusing
to obey a divine command, Iblis made his own will supersede that of God. For
that unforgivable sin he was cursed (15:35). But the critical question in this
Qur’anic story is this: What prompted Iblis to disobey God? The answer is his
vanity. The Qur’an tells us that in justifying his disobedience, Iblis told God,
“I am better than he [Adam] is” (7:12). This Iblisi worldview, which is based on
vanity intertwined with hierarchy, is directly opposed to divine logic, which cel­
ebrates diversity and the fundamental equality of all human beings as signs of
God’s miracles on earth.

The Qur’an tells us,

1. The full extent of this error will be made clear in my forthcoming book on marriage con­
tracts.
2. This is most clearly stated in Chapter 112 of the Qur’an itself. It states in its entirety, “Say:
   He is God the One and Only. God the Eternal, Absolute; He begetteth not, Nor is He begotten;
   And there is none Like unto Him.”

In this chapter, I use The Meaning of the Holy Qur’an, trans. A. Yusuf Ali, 10th ed. (Mary­
land: Amana Corp., 2004). However, where critical for our discussion, I have revised some of
the translations that are inaccurate linguistically or legally, or are unjustifiably patriarchal. I
have also consistently replaced the word “Allah” with “God” since that is the proper translation
of the word into English. Leaving it in its Arabic form will cause confusion as to the identity of
the God in which Muslims believe. He is the same God of the other Abrahamic religions. All the
translations of the Arabic sources, other than the Qur’an, are mine.