

Mixed marriages from a legal perspective

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Abstract:

Marriage is a legally binding contract and an important covenant established by God between a man and a woman, as stated in the Qur'an: "And among His signs is that He has created for you from among yourselves spouses, that ye may find rest in them; and He has placed between you affection and mercy. Verily in this are Signs for a people who reflect. (Surah Ar-Rum, 21).

This institution is designed to establish a Muslim family and protect individuals from falling into immorality. It is one of the basic pillars on which the Muslim community is built. God has made the Muslim nation a moderate community to be the centre of all things, provided that this contract is based on sound principles in accordance with divine law.

Some people are forced by circumstances to move and live alone away from their families, or social media has facilitated relationships between people with different lifestyles. To avoid the forbidden, mixed marriages have emerged to address this dilemma.

It is therefore important to understand mixed marriage from both a legal and a religious perspective. My paper will focus on the conceptual framework entitled: Mixed Marriage from a Legal Perspective.

Keywords: Mixed Marriage, Legal Perspective, Its Verses, Muslim Community

INTRODUCTION

Globalisation is a major historical, social and economic transformation that poses a number of challenges both internally and externally in various dimensions: political, social, cultural, scientific and technological.

While globalisation has many positive aspects that cannot be overlooked, it also has some negative consequences, leading to its characterisation as a double-edged sword. Among its many benefits, globalisation exposes us to people from different backgrounds with different cultural practices, customs and traditions.

This connection can lead to different forms of relationships, including friendship, kinship and marriage. As gender and distance vary, so do the names of these relationships, giving rise to the concept of mixed marriage. The Qur'anic verse illustrates that God created us in different nations and tribes so that we might know each other, and emphasises that the only criterion for superiority among human beings is piety:

”O mankind! We have indeed created you from male and female, and made you peoples and tribes, that you may know one another. Verily the most righteous of you in the sight of Allah is the most righteous of you. For Allah is Knowing and Knowing.”(Surah Al-Hujurat, 13)

Globalisation has effectively shortened distances, leading to many distinctive outcomes, one of which is the expansion of an individual's social circle, culminating in diverse social relationships, especially mixed marriages. What exactly is an intermarriage?

To answer this question, we will follow the following outline:

Introduction

I. Marriage and its legal purposes

1.1 Definition of marriage: Linguistic and Terminological

1.2 The legal purposes of marriage

II. Mixed marriages from a legal point of view

2.1 Definition of mixed marriage: Linguistic and Terminological

2.2 Mixed Marriage from a Legal Perspective

Conclusion

1.1 The concept of marriage: Linguistic and Terminological

God created marriage primarily to preserve the human species, along with many other purposes that we will mention later. So what is marriage?

1.1.1 The linguistic definition of marriage

Before defining marriage linguistically, it is important to understand the origin and source of the word “marriage” and how that source has evolved to refer to the contract between a man and a woman.

The root of the word “marriage” comes from the term “زوج” , which means “pair” or “couple.” It is contrasted with “زوج” “ , which means “pair” or “couple.” It is contrasted with

“شفع” and “وتر” (Abdullah Al-Alayli, 1974, p. 550).

The term “زوج” can also refer to species or types, as seen in the Quranic verses: “Eight pairs” (Surah Al-Anam, 143) and “from every noble pair” (Surah Ash-Shu’ara, 7). Another verse states: “Glory be to Him who created all pairs” (Surah Ya-Sin, 36).

From this, we derive the term “مزاوجة”, meaning “duality” .to “ازدواج” means to resemble each other in rhythm or structure, or for one proposition to be related to another.

Additionally, “زوج” can refer to a companion or partner, where anything that is “ ” “ ,linked to another is considered a couple. For example “I paired the camels” means that each was linked to another. As stated in the verse: “And when the souls are paired” (Surah At-Takwir, 7), meaning that everything is associated with what it is akin to, or linked with its deeds (Murtada Al-Zabidi, n.d., 2/52). Moreover, the verse: “And We paired them with beautiful companions” (Surah At-Tur, 20) indicates that they were united. As the poet Thalab said:

“And the youth do not hesitate to elevate, If the spirit is not paired with a form.”

From the term “إقتران”, the word “زواج” emerged to signify the union of one thing with another after a period of separation. This is reflected in the Qur’anic verse: “And when the souls are paired” (Surah At-Takwir, 7), indicating that each individual is paired with others of similar deeds: the wicked with the wicked, and the righteous with the righteous. As stated by Abdul Rahman ibn Yazid, they are paired according to the similarity of their deeds (Al-Qurtubi, 1985, 19/231). The term “أزواج” refers to companions, peers or equals (Al-Zabidi, n.d., 2/54).

The use of the term “زواج” became widespread specifically to denote the union of a man and a woman with the intention of forming a family. Consequently, when the term is mentioned, it is understood to refer only to this meaning, whereas before it was used to describe any pairing, whether between a man and a woman or among others (Ibn Manzur, 1988, 6/714).

In this context, the husband is referred to as the “زوج” of the wife, and the wife is referred to as the “زوجة” of the husband. This is illustrated in the verse: “You and

your wife shall dwell in Paradise” (Surah Al-Baqarah, 35). While “زوج” is used for the man, “زوجة” is also used for the woman, as noted by Al-Farra (Al-Qurtubi, 2/209).

The poet Al-Farazdaq expressed this view:”

And indeed, one who seeks to corrupt my wife is like one who runs towards a fierce lion to confront it”

The term “زواج” is not distinguished from “نكاح” in common usage, as both refer to the contract by which a man enjoys the companionship of a woman. “نكاح” is derived from the cause of marriage, and Al-Qurtubi noted that it is commonly used to refer to the contract itself (Al-Kandahlawi, 1980, 9/265).

1.1.2 Definition of Marriage in Islamic Law

From a legal point of view, marriage has several definitions, of which the following can be highlighted

- It is a contract that allows the enjoyment of a non-mahram woman, a magian, or a woman from the People of the Book, established by agreement between a capable and needy party (Sayed Ahmed Al-Dardir, 1992, 2/92).
- In legal terms, “nikah” is the marriage contract, and when the term is mentioned, it refers to this unless there is evidence to the contrary (Al-Diziz Qudama and Shams Al-Din Ibn Qudama Al-Maqdisi, 1983, 7/33).
- It is a contract between spouses permitting sexual intercourse (Al-Shawkani, n.d., 6/401).
- It is a contract that includes permission to enjoy a woman through sexual intercourse, direct contact, kissing, hugging and more, provided that the woman is not a mahram by blood or breastfeeding, and that a dowry is given (Wahbah Al-Zuhaili, 1992, 7/29).

In the light of this scientific overview of the concept of marriage provided by some scholars, it is clear that this issue is important because it directly affects the family, which is the fundamental building block of society. For this reason, Algerian legislation has attached particular importance to family law. We will examine some articles to understand the legislator’s perspective on marriage.

- Article 2: The family is the basic unit of society and is composed of individuals united by the bonds of marriage and kinship.
- Article 3: The family is based on cohesion, solidarity, good relations, proper education and good morals, rejecting social vices.

- Article 4 (amended): Marriage is a consensual contract concluded between a man and a woman in accordance with the law, with the aim of creating a family based on affection, mercy, cooperation and the preservation of the family tree (enacted by law no. 84-11 of 9 June 1984).

- Article 11 (amended): An adult woman shall enter into marriage in the presence of a guardian, who shall normally be her father, a relative or a person of her choice.

Without prejudice to the provisions of article 7 of this law, the marriage of minors is solemnised by their guardians, who include the father, a close relative or, for those without a guardian, the judge. This was amended by Decree No. 05-02 of 27 February 2005 (Official Gazette No. 15), issued pursuant to Law No. 84-11 of 9 June 1984, as follows “The marriage of a woman shall be conducted by her guardian, who shall be her father or a close relative, and the judge shall act as guardian for those who have no guardian.”

Article 13 (amended): A guardian, whether a father or otherwise, shall not force a minor in his care to marry, nor shall he marry her without her consent. This was amended by Decree No. 05-02 of 27 February 2005 (Official Gazette No. 15), issued pursuant to Law No. 84-11 of 9 June 1984, as follows “A guardian, whether a father or not, may not force a person under his care to marry, nor may he marry her without her consent.”

After this comprehensive review, we conclude that the marriage contract is both a legal and a religious agreement between two parties, a man and a woman, which allows them to enjoy each other according to the law. The law complements the religious directives by establishing rules that protect the rights of both parties, both material and moral.

Indeed, what God has ordained is always for profound wisdom. This leads us to examine the legal purposes of marriage in order to better understand God’s powerful decrees for humanity. So what is the legal purpose of marriage?

1.2 The legal purpose of marriage:

1.2.1 From the Qur’an:

God has ordained marriage, like many other things, for the benefit of mankind, and there is profound wisdom in this decree. The Qur’an states:

“O mankind! fear your Lord, Who created you from a single soul, and from it created its mate, and from them dispersed many men and women”* (Surah An-Nisa, 1).

This verse emphasises that God has blessed mankind with the gift of a spouse, beginning with our father Adam (peace be upon him), who recognised the importance of having a partner for tranquillity and peace of mind.

Moreover, in another verse, Allah says:

“O Adam, dwell with your wife in Paradise and eat of her freely wherever you wish...” (Surah Al-Baqarah, 35).

Historically, marriage has been a common practice among mankind since time immemorial. All humanity comes from one source, our father Adam and our mother Eve. From their union many men and women were born, and Allah established marriage as a natural law among human beings. This practice was exemplified especially among the prophets and messengers to serve as examples for humanity. Allah declares:

“And indeed We sent messengers before you and made for them wives and progeny” (Surah Ar-Ra’d, 38).

A review of the lives of the Prophets reveals that all of them adopted marriage as a means of finding peace and procreation, except two - Jesus and John (pbuh) - for specific reasons relevant to their times that deviated from the natural inclination towards marriage.

Since marriage is the foundation of humanity, Allah established it among human beings in order to preserve the human race and fulfil His mission on earth. This is stated in many verses of the Qur’an, and various commentators have provided interpretations that clarify this concept. For example, one commentary states:

“Allah constantly erects barriers and walls to protect the honoured and dignified human being, which are essential for the preservation of his species and to ensure the fulfilment of his vicegerency on earth. This is manifested through the signs of God that are shown in successive generations. This reflects God’s wisdom in the succession of generations, which necessitates the presence of sexual instincts that cannot be completely suppressed without harm to body, soul and life. However, they cannot be completely unleashed as this would reduce man to the level of animals. Therefore, these instincts must be regulated in order to create a flourishing human community. Thus He forbade illicit relations and commanded marriage, encouraging it and promising rewards for it”. (Bayyoudh, 1998, 6/263).

The Qur’an pays considerable attention to this natural inclination because God understands the complexity of human nature and recognises the importance of

instituting marriage as a necessity for the well-being of the individual and society.

1.2.2 From the Sunnah

An overview of the Sunnah, including both verbal and practical traditions, reveals a strong emphasis on marriage and a prohibition of celibacy in many hadiths. One notable statement by the Prophet Muhammad (peace be upon him) encourages young people - who are often the most in need of marriage - by saying:

“O young people, whoever among you can afford it, let him marry, for it helps to lower one’s gaze and preserve one’s chastity” (Bukhari, 1422, 3826).

Recognising the nature of youth and their susceptibility to desires, the Prophet advised them to enter into marriage in order to channel their sexual energy in a lawful manner, thereby avoiding what is forbidden, such as adultery or celibacy - both of which are detrimental to human nature and can be considered morally reprehensible.

A close examination of many hadith collections reveals numerous narrations that advocate marriage because of its significant benefits for individuals. The Prophet criticised those who neglected marriage in favour of excessive worship by saying:

“O Abdullah, did I not tell you that you should fast during the day and pray at night?” He replied, “Yes, O Messenger of Allah. Then the Prophet said: “Do not do this. Fast and break your fast, pray and sleep, for your body has a right over you, your eyes have a right over you, and your spouse has a right over you” (Bukhari, n.d., 6/37).

Recognising the importance of marriage, Ibn Abbas (may Allah be pleased with him) said: “The worshipper’s worship is not complete until he marries”. This suggests that marriage is an integral part of one’s spiritual practice, as it allows the heart to be freed from the overwhelming burden of desire, enabling a person to concentrate on his worship. So it was customary for him to gather his young men... (Abu Hamid Al-Ghazali, n.d., 2/32).

The Prophet Muhammad (peace be upon him) encouraged marriage and emphasised the importance of choosing a righteous spouse with strong faith, as this helps an individual complete half of his faith. He advised his companions on the qualities to look for in a wife, saying:

“A woman is married for four reasons: her wealth, her lineage, her beauty, and her religion. So concentrate on the one with religion, may your hands be dusted” (Bukhari, n.d., 6/37).

From these selected texts, among many others, we observe the strong emphasis of the Sunnah on marriage because of its importance and benefits. When a person is with his family, he may feel a sense of belonging; however, the loneliness he experiences when he is away from his family highlights the need to find companionship through legal means, such as marriage. This need becomes even more pressing when one is surrounded by people with different values and beliefs.

2.1 Mixed Marriage: Definition and Rationale

This brings us to the concept of mixed marriage, which has been introduced to address such situations.

We have already recognised the importance of marriage for individuals and how it is emphasised in both the Qur’an and the Sunnah. In certain circumstances, when a person is far from his or her community and family, he or she may need companionship to fill the gaps in his or her life while abiding by God’s law. This may require them to marry a non-Muslim or someone from another faith tradition, and such unions fall under the umbrella of mixed marriages.

So what exactly is a mixed marriage, and what are its conditions? To answer these questions, we will explore them in the next section of the research.

To answer these questions we will follow the outline below:

2.1.1 Linguistic Definition of Mixed Marriage

A. Concept of the word (mixed)

Before defining “mixed marriage” as a term, it is important to examine each word individually and then consider them together as a compound term. What does “مختلط”

mean from its linguistic roots?

The root of the word “مختلط” comes from “خلط” which means to mix. To understand the meaning of “خلط” it is necessary to strip the word of any additional features that may affect its meaning.

A definition of the root “خلط” indicates that it refers to a mixture where elements retain their distinct characteristics. As stated by Ahmed Mukhtar Abdul Hamid

(2008).”**خلط**” suggests that the components are mixed while still preserving their individual traits.

Another linguistic definition states: “**اختلط الشيء بالشيء**” meaning that one thing has mixed with an other (Al-Farahidi,n.d 4/318)

From this, we understand that linguists define “**مختلط**”as blending of two entities , involving interaction and sharing while each retains its essential structure .

Now, we need to connect this term with “**زواج**” to formulate a definition for the compound term “**زواج المختلط**” mixed marriage .

2.1.2 Definition of Mixed Marriage

Mixed Marriage: refers to a union between individuals from different backgrounds, particularly in terms of religion or culture, where both sides retain their unique identities while entering into a marital relationship. This concept has gained prominence in recent times, especially with the advent of social media and globalisation, which have facilitated connections between diverse individuals, effectively making the world a smaller place.

With this understanding, we can now explore the legal and jurisprudential implications of mixed marriage, as it involves significant considerations in both religious and legal contexts.

2.1.2 Defining Mixed Marriage Terminologically

We have already established that marriage is a union between two people, which may take place in the same place or in different places. It inherently involves the coming together of two people who may differ in religion, culture, customs and traditions.

The concept of mixed marriages has historical roots, arising during the expansion of Islam following the early Islamic conquests and during the migration of Muslims to Medina, where they interacted with Jews and others who practised different religions and had different customs and traditions. In modern times, mixed marriages have become more common as a result of increased travel and exposure to different cultures, largely due to globalisation, which has transformed the world into a smaller community where people coexist despite significant differences.

As the term “mixed marriage” has both legal and juridical implications, it has been defined in various ways, including

1. “Mixed marriage is a contract that binds one spouse to another through a legal and social bond. When this occurs between spouses of different nationalities, it is called a mixed marriage” (Zalasi Bushra, 2001, p. 2).

2. “Any marriage contracted in Algeria or abroad between a person of Algerian nationality and another of foreign nationality; for example, an Algerian Muslim marrying a Christian in Germany, or an Algerian Muslim marrying a French Muslim.” (Belhaj Al-Arabi, Part One, p. 2).

These definitions focus primarily on nationality, while overlooking other aspects that contribute to the mixed nature of the marriage. This suggests that mixed marriages encompass a wider range of factors, including but not limited to differences in religion, culture and social practices.

Understanding these dimensions is crucial to fully addressing the implications and regulation of mixed marriages.

Other definitions of mixed marriage:

According to another definition, a mixed marriage is a marital union with a foreign element in which each party - husband and wife - has a nationality different from that of the other. For example, a marriage between a French citizen and an Algerian citizen is considered a mixed marriage (*mariage mixte*) because the husband has Algerian nationality while the wife has French nationality. In other words, both spouses are foreign to each other because of their different nationalities (Sinnat Abdullah, 2008, p. 9).

Another definition describes mixed marriages as “a union between two parties where one is a national and the other a foreigner**”. This means that both spouses initially have different nationalities. However, there may also be cases where both spouses initially have the same nationality, but one later acquires a different nationality (Majd Al-Din Tahir Kharbout, 1997, p. 88).

2.1.3 Historical context of mixed marriages

Looking back at historical developments, the earliest instances of mixed marriages occurred after the Islamic conquests, starting from the Arabian Peninsula and spreading throughout its territories. When the Arab conquerors arrived in Andalusia in 92 AH (710 CE), people were forced to adapt to their new circumstances, which necessitated the establishment of effective means of living together. It is human nature to seek companionship, even in difficult environments.

As a result, mixed marriages became widespread, encompassing all social classes, from rulers to commoners. Many marriages took place between the Arab-Islamic and Spanish communities, as people came to Andalusia in an organised way, often leaving their wives back home. This created a practical need to marry local women, who became their wives and the mothers of their children. This phenomenon became known as intermarriage.

This mixing of cultures, particularly between the Arab and Spanish cultures, was greatly facilitated by these marriages. Each culture adopted elements from the other, enriching their languages and traditions - a characteristic of mixed marriages.

After the conquests, the motivations for intermarriage evolved. As the world became smaller, many people were forced to migrate in search of better living conditions, from the most basic to the most sophisticated. This expansion of social networks brought people into contact with vastly different cultures and backgrounds. Human nature prevailed, leading individuals to seek companionship to share both the hardships and the pleasures of life, making mixed marriages increasingly visible.

Another important reason for the rise of mixed marriages, especially in Arab and developing countries, is the economic crisis. These nations have faced rampant unemployment and a lack of job opportunities, leading to large waves of migration towards Europe and the West. In response, many European countries have tightened immigration policies, making it harder for unskilled workers to find employment.

As a result, those seeking work often found that the easiest way to obtain residency documents was to marry someone with the nationality of the desired country. As a result, many young Arabs began to see this type of marriage as a means of achieving financial and psychological stability, along with the European or Western citizenship that has become a widespread aspiration.

Thus, mixed marriages are increasingly driven by economic motivations, stemming primarily from the desire of young people to secure a prosperous and stable future (Hossam Al-Din Fathi Nasif, 1993, p. 947).

As relations between communities expanded, the need for cultural exchange became apparent. Increased interaction between nations made it impossible for national societies to remain economically and socially isolated from one another. This openness led to the emergence of a new culture - a large international community characterised by a degree of harmony and integration.

However, the intertwining of interests and conflicting desires necessitated the search for a different system that would allow for the implementation of specific laws governing relations between foreigners.

This review provides an insight into the historical development of mixed marriages, which arose out of pressing needs within different communities. The resulting interactions have led to various conflicts in different aspects of life, as each party brings their own way of life, which may be very different from that of the other. Initially, these effects were felt within the family structure and then extended to the wider community.

2.2 Mixed marriage from a legal perspective

We have already examined how mixed marriages can occur between parties of different nationalities or from the same country but of different nationalities. The criteria for defining a mixed marriage can vary, reflecting the complex realities of modern relationships.

In this context, it is important to explore the legal and religious perspectives on mixed marriages, considering the impact they may have on family life and social norms. Understanding these perspectives will help to clarify the rights and responsibilities of individuals involved in such unions, as well as the wider implications for communities and cultures.

In Islamic jurisprudence, the defining criterion of a person's affiliation has traditionally been his or her religion. In ancient Islamic society, Christian and Jewish communities existed alongside Muslims. A fundamental principle within the Islamic state was the distinction between Muslims and non-Muslims; however, the door remained open for anyone who wished to join the Islamic community by embracing Islam and thereby acquiring citizenship. In this context, religion determined an individual's national identity, with Muslims' citizenship linked to their faith.

In legal matters involving non-Muslims, Islamic law applied primarily in financial matters, while personal status issues were governed by their own religious laws.

As different ethnic groups began to mix, the criterion of nationality became more important, especially as legal and jurisprudential thought advanced, especially in the field of private international law. Modern legislation has made nationality a central point of reference in conflict of laws.

In cases where people of different nationalities are united by a common faith, or when they enter into what is considered a mixed marriage, the applicable law is the Sharia, which comprises various texts and jurisprudential issues to be referred to in the event of a dispute. The decisive factor remains God's law, which has outlined what is appropriate for the different identities of each party, in order to facilitate a lawful decision in potential conflicts.

In conclusion, mixed marriage, like other legal unions defined by Islamic law, is governed by the principles set forth in our sacred texts. It is subject to the laws enacted by the legislature of each country to which the individuals belong, ensuring that the rights and responsibilities of both parties are upheld in accordance with their respective legal frameworks.

Conclusion

In conclusion, our study of mixed marriages shows that it is a legitimate and legal union between two or more people, often characterised by geographical distance or differences in the nationality of at least one of the partners. This requires the application of specific laws during the marriage contract and its dissolution, governed by established rules.

We arrive at several key recommendations, the most important of which are:

- Mixed marriages continue to pose numerous challenges and complexities, mainly due to the different religious, ideological and legal backgrounds of the spouses. This has led countries to seek different solutions based on the diversity of individuals and ethnicities involved.
- In Islamic jurisprudence, religion serves as the defining criterion for determining a person's affiliation.
- Legal conflicts relating to mixed marriages require careful consideration of the applicable laws.

This concludes our research. We hope that we have provided a sufficient explanation of this issue. Any shortcomings in our work reflect the nature of human endeavour, while any successes are due to God's guidance and the support of knowledgeable individuals.

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