

Muslim Marital Regulations: A Revisit In The Light Of Existing Practices Among Some Communities In Ghana

Dr. M. Sey
University of Cape Coast
Cape Coast

Abstrak

Artikel ini cuba mengenalpasti beberapa adat istiadat yang berkaitan dengan perkahwinan masyarakat Islam di Utara Ghana, samada ianya selaras dengan Syari'ah Islam atau sebaliknya. Juga ia membincangkan kesan daripada buku al-Risalah oleh al-Qairawani terhadap perkara-perkara negatif pada pandangan penulis seperti kahwin muda dan lain-lainnya

One features of Islam upon which so much literature has been bestowed and which continues to generate healthy debates among Muslims and non-Muslims alike is the Islamic system of marriage otherwise known as *Nikah*. Muslim scholars, see marriage as a religious duty, a moral safeguard and a social commitment.¹ It has also been stressed that as a religious duty it must be fulfilled but like all duties in Islam it is enjoined only on those who are capable of meeting the responsibilities involved.² In this small article I wish to address the following issues.

- i) Premature marriages of Muslim girls most often to elderly men.
- ii) The effect of such marriages on the society.
- iii) What ought to be done to avoid turning marriage into a fetish at the expense of human dignity.

I also wish to draw attention to some of the existing practices among some communities which expose Islam to adverse curiosity. My immediate objective in this paper, like Sheikh Uthman Dan Fodio in his magnum opus, *Ihya' al-Sunna Wal Ikhdamul Bid'a*, is to make a distinction between what is Islam and what is not.³ This is strictly within the limits of the marital practices in West African Muslim communities in general and Ghana in particular.

Reasons for Marriage

There are two principal reasons why Muslims should marry. In the first place it is the will of God as revealed in the Holy Quran and second, it is the confirmed practice of the Holy Prophet (s.a.w.). This, however, Islam to say the least. It is to be recalled here that these two reasons are embedded in the Prophet's Farewell sermon, in which he says:

*"I am leaving with you two things, the Book of God and the sunnah of his Prophet. If you follow them you will never go astray."*⁴

The Quran states emphatically in Chapter 4:3,

"Marry women of your choice ..."

The verse makes it imperative that any adult male Muslim who is in a position to support a woman should marry. Traditions also abound to indicate that marriage in Islam is a confirmed prophetic practice. There is a famous *Hadith* recorded in al-Bukhari in which the Prophet of Islam (s.a.w.) is reported to have addressed the young men of all time saying:

*"Youngmen, those of you who can support a wife should marry, for it keeps you from looking at women and preserves your chastity."*⁵

In another *Hadith* by al-Bukhari and quoted by Yusuf al-Qaradawi the Prophet (s.a.w.) is reported to have said:

*"I am the one who fears Allah the most among you, yet I fast and break my fast, I pray and I sleep, and marry women. He who turns away from my sunnah has nothing to do with me."*⁶

This was indirect in response to three men who had gone to the Prophet's wives to find out the way the Prophet (s.a.w.) conducted his worship. Upon being told how he conducted his worship one of them said *"I will always pray during the night"* and another said *"I will have nothing to do with women and I will never marry."*⁷ The implication in the last assertion is that any decision not to marry by the one who is capable of it is contrary to the teachings of Islam. Celibacy is therefore forbidden in Islam.

A Muslim may also marry with the sole desire to live a chaste life and this is perfectly in line with the teaching of Islam.⁸

Apart from the reasons for marriage within the framework of the Quran and Hadith, every civilized society places much importance on married life and Muslims are therefore not being singular by living a married life religiously. Yet still no civil society encourages living in sin, that is a situation whereby a couple live together without the formalities of marriage while still bearing children. Still further the respect accorded to children born out of wedlock is anything but healthy. An Arabian bard of several centuries ago wrote:

*"Sons of concubines have become numerous amongst us. Lead me O Lord to a land where I shall see no bastard."*⁹

The fate of children born out of wedlock is also a deterrent to people who do not want to marry but live in sin.

Islamic Marital Regulations

One of the most popular works of Muslim jurisprudence widely used in West Africa is *al-Risalah* written by Abdullah Ibn Abi Zayd al-Qairawani (922 - 996 A.D). Writing along Maliki lines, al-Qairawani says:

*"No marriage is valid without a matrimonial guardian (Wali), a dower (sadaq) and two witnesses of good character."*¹⁰

From this quotation it is clear that there are three conditions for a valid marriage. In discussing the powers of a matrimonial guardian however al-Qairawani states:

*"A father may give his unmarried daughter (bikr) without her consent, even if she has reached puberty. But if he wishes he may consult her."*¹¹

In the case of a lady who has been married before, her consent must be sought before being given in marriage.¹² Here I see a germ of ambiguity in the marital regulation because the idea of mutual consent of both parties in the marriage contract is not very clear as seen in later works on Muslim jurisprudence. A jurist who is conversant only with this work and acting upon it is likely to create confusion and the result would be bad for the couple. As this work is used widely in our Ghanaian society many young girls are given in marriage without their consent and the result is a collapse of the marriage before long. Experience has shown that most of such girls rather than return to the family home would travel outside the country most likely to Abidjan in the Ivory Coast, follow a loose life, contract a deadly disease, and is brought back home to Ghana only to die. As this is the direct result of forcing girls into marriage there ought to be a change of plan since it is against the teachings of Islam. On the issue of consent of a would-be bride the Prophet (s.a.w.) is reported to have said:

*"Let no widow be marriage without her consent and let no virgin be marriage without her consent."*¹³

This, I think, clarifies the issue of consent in marital regulations. Practitioners of forced marriages should therefore advise themselves as it is unIslamic to force a ward into marriage. The blame however should not be placed on the work *al-Risalah* because as Joseph Kenny remarks “*Ibn Abi Zayd al-Qairawani’s Risalah can be appreciated only in the context of the development of Islamic Law up to the time of its composition in the year 938 AD.*”¹⁴ Later writings on Islamic marital regulations which tend to be an improvement of *al-Risalah* should not be ignored if we are to respond to modern realities.

Mustapha Ibrahim in his recent work on the Islamic marital regulations mentions four conditions for a valid marriage as follows:-

- 1) mutual agreeent (*al-Taradi*)
- 2) Matrimonial guardian (*Wali*)
- 3) Dower (*Sadaq* or *Mahr*)
- 4) At least two irreproachable witnesses (*Shahadah al-‘Adlayn*).¹⁵

He then goes on to stress the need for the would-be couple to know each other and agree to the marriage failing which renders the contract invalid. A Hadith to this effect is also quoted: Khansa bint Khidam al-Ansariyah narrated that her father gave her in marriage when she was a matron and she disliked the marriage, so she when to the Prophet (s.a.w.) who then declared the marriage invalid.¹⁶ The three other conditions are equally discussed and admirable too. On the question of the amount of dower, Mustapha Ibrahim quotes the Hadith which says, “*The best dower is that which is easy to pay.*”¹⁷ ‘Umar Ibn al-Khattab is reported to have cautioned people not to fix a heavy dower as if it were a mark of nobility or a pious act in the eyes of God.¹⁸

Laudable as the work of Mustapha Ibrahim is his treatment of the conditions of marriage leaves so much unsaid. As for example if the four conditions of marriage as Mustapha Ibrahim enumerates are duly met and the marriage contracted, does it guarantee permanence or security if no consideration is given to the sanity of the husband? No, certainly not because if the husband is found to be mentally defective the marriage cannot go on and should be dissolved. Yet still if the husband turns out to be a man who is not capable of managing his own affairs, the marriage is bound to collapse. This and many other issues regarding the conditions of marriage are fully discussed in the *al-Muqadimah al-‘Izziyah* by Abul Hasan Ali al-Maliki and translated into English by Y.A. Quadri and I.O. Oloyede.

In chapter eight of this work which is captioned *Marriage and Divorce*, we have the following details about the essentials of a marriage contract. It is written that the marriage contract has four constituents. These are:

- i) Marriage guardian
- ii) Dower
- iii) Witnessing

iv) Legally qualified spouses¹⁹

It is further explained that no marriage contract is valid without a matrimonial guardian and a dower and gives the minimum amount of dower as a quarter of a dinar but sets no maximum limit. Witnessing, the author sees as a condition for a valid consummation but not a condition for marriage contract.²⁰ This explanation seems to be in line with what al-Qairawani says, that if the witnesses are missing, the marriage may not be consummated unless they witness the contract.²¹ This implies that the marriage may be contracted but cannot be consummated unless it has been witnessed.

On the issues of legally qualified spouses I find a very lively exposition. It says that the woman should be free from legal inhibitions which render her forbidden in marriage and for the man mention is made that there are four conditions for its validity and five conditions for its confirmation.²² The conditions for its validity are: Islam, discretion, consciousness (or sanity) and manliness. This is so because a hermaphrodite shall not be marriage.²³ Five confirmatory conditions are given. These are:

- i) Freedom from bondage
- ii) Maturity
- iii) Management of one's own affair
- iv) Sound health
- v) Compatibility of spouses.

Marriage equality or compatibility, the exposition continues, is the right of the woman and the marriage guardian, if the woman agrees to wave it is proper.²⁴ The commentary then closes with a sixth point. The formula, that it is, the pronouncement with which marriage is contracted. The formula expected from the marriage guardian is such as "*I have contracted the marriage*" or "*I have given her in marriage*" and the groom would say something like "*I accept*" or "*I am pleased with it*".²⁵

It should be clear by now that any jurist who operates within the limits of the *Risalah* is likely to contract a marriage that would be open to leakages in so far as the issue of mutual agreement between the spouses is not mandatory. Mustapha Ibrahim's treatment of the conditions of marriage will no doubt result in a valid contract but it should be realised that it takes so much for granted and this is not good enough in our present day circumstances.

It is in the *'Izziyya* that a more comprehensive treatment of the conditions of marriage is made. I would therefore like to suggest that jurists of today in the Maliki tradition should to manage one's own affairs and masculinity before contracting a marriage. It seems to me that unless such issues are taken into consideration, a marriage is bound to crumble as each of these issues constitutes a sufficient ground for the dissolution of the marriage.

Marital Regulations Among Muslim Communities In Ghana

Marital practices as found in many Muslim communities in Ghana appear to be coloured with marital practices in Hausaland (Northern Nigeria) and this shows far Hausa customs have invaded local Muslim marital practices. The cause is however not far fetched because one of the channels of Islamic penetration into Ghana was through Hausa Muslim traders who settled in isolated communities in the northern and upper parts of this country during the later part of the 16th century.²⁶ In this time Muslim traders spread their influence southward and today in Ghana there are Hausa Muslim settlements all over the country. Whenever another ethnic group embraces Islam through the agency of these traders it is almost entirely affected by Hausa customs. It is not surprising that ethnic groups such as the Basare, Kusuntu, Chamba, Kotokoli and Zugu who have come into contact with the Hausa, follow almost the same pattern when it comes to marriage.

In local Muslim communities dominated by Hausa and other ethnic groups, the procedure for marriage as pointed out by Mustapha Ibrahim is as follows:

1. *Kudin Sallama* or *Kudin Gaisuwa*. This means money for calling or money for greeting. It is the first stage in the process and the token fee involved is the first to be paid when a man wants his people to meet the would-be bride's family for negotiations to start. The amount involved varies. Among the Mamprusi in northern Ghana it is between five thousand cedis (c5,000) and one hundred thousand cedis (c100,000), a calabash full of coconuts and a ram. If the bride's family agrees to negotiate by accepting the offer and showing interest they respond with what is called *Kudin godiya* i.e. money for thanks.
2. *Kudin Sarana*. This is the second stage in the process. The term *Kudin sarana* means money for fixing a date. This is paid by the family of the bridegroom when they go to inform the bride's family about the date of the formal marriage.
3. *Kudin Sadaqi* (Islamic dowry). This is the most important part in the process.²⁷

In addition to these monies the bridegroom will have to provide the bride with other items such as shoes, scarf, clothing, powder etc. The first two are not refundable but *Kudin sadaqi* is refundable if the would-be bride disagrees or rejects the man before the marriage. If after *Kudin sallama* no response comes from the family of the bride it is an indication that the family is not interested in the marriage. If however the family agrees and negotiations take place the marriage is finally formalised by an *Imam* or a competent member of the Muslim clergy who will read the marriage sermon in the presence of witnesses.

After the marriage the parents of the bride will have to send a number of gifts to their daughter and these gifts sometimes match what has been given by the family of

the bridegroom if not more. There is always the wedding feast which is very popular in this country because of its extravagance in many cases.

In communities where Hausa customs are mixed with native custom, the situation is very alarming. As for example in addition to *Kudin gaisuwa* or *Kudin sallama* (greeting or knocking fee) there is *Kudin kai* (head money) and *Kudin abinci* (chop money) that is money for feeding the would-be bride even though the marriage contract has not been concluded yet. Still further in case any *Eid* comes in between *Kudin abinci* and *Sadaqi* the man will have to provide the bride with *Kayan salla* that is goods for the *Eid*. Before the actual marriage therefore the would-be bridegroom had been over stretched. This situation gives rise to illicit pre-marital sexual relationship between the bride and bridegroom with disastrous results. It is high time Muslims in Ghana adhered strictly to the regulations laid down by the Shariah with regard to marriage.

It is my considered view that a distinction should be made between what is Islam and what is not. The practice of *Kudin Sarana*, *Kudin abinci*, *Kudin salla* and *kudin kai* which are all traditional practices should give way to Islam norms when it comes to marital regulations. What non-Muslims see Muslims do is what they assume to be Islamic and the result is always disastrous for Islam because of the misconceptions that go with it. In a conversation recently with an opinion leader in the Central Region he agreed that matters are getting out of hand and efforts should be made to shift traditional customs to true Islamic custom which he consented was simpler and more humane than the elaborate customary practices. He emphasized that once a couple agree to be married and a matrimonial guardian is available to give away the bride and a reasonable dower (*sadaq*) paid, the marriage should be contracted and duly publicised so that the couple can begin life according to the teachings of Islam. This I believe is in line with the provision the Hadith which says:

*“Three matters should not be delayed: salat when its time comes; burial when the funeral has arrived and the marriage of a single woman when a man of equal status has proposed.”*²⁸

In truth, there are some practices among Muslims which need much to be desired. Mustapha Ibrahim alludes to one such practice when he writes:

*“Among some societies, who even though are Muslims, daughters who have reached the age of puberty are allowed to sleep in the rooms of their future husbands. The aim is to get to know each other. The man can engage in physical intimacies with her but the girl should not get pregnant before the formal marriage. Some people do not see anything unlawful with the future wife having children with her future husband. To them once the parents are aware and in agreement with their relationship and the negotiation for marriage is in progress the girl becomes lawful for the man.”*²⁹

This attitude is wrong says Mustapha Ibrahim and against the teachings of Islam.³⁰ The caution from our side is therefore that Muslims should desist from such practices because they tarnish the image of Islam in the eyes of the moralists. A Muslim should desist from having intercourse with a girl he intends to marry at the negotiation stage because it can only be deemed *Zina*, which is forbidden in Islam and therefore a punishable offence as the Quran says:

“The woman and the man guilty of adultery or fornication flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by god, ...” Q24:2

With such a stern warning staring at us should we then not desist from *Zina*? As Allama Yusuf Ali explains in a footnote, *“the law of marriage and divorce is made easy in Islam so that there may be less temptation for intercourse outside the well defined incidents of marriage. This makes for greater self respect for both man and woman”*.³¹

Some customary practices given up as Islamic makes the marriage too cumbersome and need to be revised in the interest of the true teaching of Islam.

My particular concern in this article is the early marriages into which many of our teenage girls are subjected. To begin with, it has been proven over the years that early marriages lead to the production of a large army of school drop outs who parade the streets of urban centres selling whatever they can afford to sell and more often than not become victims of circumstances and a burden on and a disgrace to the community. A stop therefore should be put to the practice. A very recent case in the Central Region of Ghana should not go without mention. A young girl who has just completed Junior Secondary School and is hoping to attend the Senior Secondary School was informed by her parents that a very wealthy *Alhaji* from Nigeria was coming to marry her. The girl collapsed and at the time of going to print she has still not recovered. This is not the result of Islam law, it is the fault of man and should not be blamed on Islam. The Islamic regulation is plain: No virgin should be married against her will and no matron should be married without her consent. What is more a girl of fourteen years is certainly not ready for marriage.

The caution here is that is that our young girls should be given time to mature and learn a profession or trade to make them independent until they are ready to shoulder the responsibilities involved in marriage. The times demand that Muslims should make a distinction between what is Islam and what is not.

Notes:

1. Hammuda Abdalati, *Islam: Focus*, Islamic Teaching Centre, Indiana, 1975, p. 14.
2. *Ibid.*
3. Suleiman Musa, *The Dawah Approach of Sheikh Uthman Dan Fodio*, Al-Kauthar Publishing Co. Kaduna, 1994, p. 9.
4. Muhammad Haykal, *The Life of Muhammad*, North American Trust Publications, 1976, p. 487.
5. Yusuf al-Qaradawi, *The Lawful dan the Prohibited in Islam*, American Trust Publications, 1960, p. 173.
6. *Ibid.*
7. *Ibid*, p. 172.
8. *Ibid*, p. 173
9. It has been very difficult to locate this extract which I read several years ago while in Istanbul but I strongly believe it was written during the golden age of the Ottoman Empire.
10. Joseph Kenny (tr.), *The Risalah by Abdullah Ibn Abi Zayd al-Qairawani*, Islamic Education Trust, Minna, 1992, p. 115.
11. *Ibid*, p. 116.
12. *Ibid.*
13. Muhammad Azizullah, *Glimpses of the Hadith*, The Crescent Publications, Indiana, 1992.
14. Joseph Kenny (tr.), *al-Risalah*, p. 1.
15. Mustapha Ibrahim, *Islamic Law of Marriage*, King Saud University, 1985, p. 10.
16. *Ibid*, p. 11.
17. *Ibid*, p. 13.
18. *Ibid.*
19. Y.A. Quadri and I.O. Oleyede, (tr.) *al-'Izziyya* by Abdul Hasan Ali al-Maliki, al-Shazili Shebiolimo Publications, Nigeria, 1990, p. 134.
20. *Ibid.*
21. Joseph Kenny , *op.cit.* p. 115.
22. Y.A. Quadri and I.O. Oleyede, (tr.), *op.cit.*
23. *Ibid.*
24. *Ibid.*

25. *Ibid*, p. 136.
26. M. Sey, *Islamic Literacy Almanac*, Dept. of Religious Studies, University of Cape Town, 1992.
27. Mustapha Ibrahim, *op.cit.*, p. 14.
28. Yusuf al-Qaradawi, *op.cit.*, p. 177.
29. Mustapha Ibrahim, *op.cit.*, p. 38.
30. *Ibid*.
31. Yusuf Ali (tr.), *The Holy Quran Text Translation and Commentary*, Amana Corp., 1993, p. 896.