THE IMPACT OF THE WAIVER OF MARRIAGE ANNOUNCEMENT ON THE VALIDITY OF THE CONTRACT
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ARTICLE INFO
Received: 09.05.2013
Accepted: 11.06.2013
Published online: 01.07.2013

ABSTRACT
This paper discusses the subject of waiver of a right related to both of the spouses which is the announcement of marriage. The research question is: if the couple holds the marriage contract in the presence of two witnesses, but without the knowledge of others, will their marriage be true? One objective of the research is to prove that the registration of the marriage contract in the presence of two witnesses at the competent Sharia court is a legitimate declaration of marriage. This research found, after studying the evidences of majority of scholars and the Maliki doctrine, that the contract and the condition are correct in the abovementioned case.

Key Words: Announcement of marriage, Contract, witnesses, true, false, scholars.

1. Introduction
The Islamic law scholars define marriage announcement as the demonstration of marriage to the public and it should be attended by two witnesses who work on publishing the news of marriage and they are considered as evidence on the marriage tie between both spouses in case that one of them denies the contract; moreover, by the declaration of marriage, the legal marriage is distinguished from adultery and the forms of the announcement of marriage include hitting tambourines and singing (Ibn Rushd, 1988).
The importance of the announcement of marriage was very important in the past time; in particular, before the legitimacy courts of laws and regulations had started the registration of the contract files and writing down the special conditions agreed upon by both spouses.

Therefore, it is very important to study this subject in our present time because of the weak religious morals of the people which make them accept some kinds of marriage characterized by secrecy and perhaps very far from the records of the courts.

In this research, I will compare between two opinions of the Islamic law the scholars adopt in deciding on the legalization of the waiver of the announcement of marriage. The case I want to highlight is when the spouses agree not to announce the marriage with the completion of the other conditions of the presence of the witnesses and the guardian in addition to the condition of the registration of the contract; can they waive their right of announcing their marriage?

2. Opinions of the Scholars about the Unannounced Marriage Contract

The Islamic jurists have two different points of view in regards to the waiver of the right to announce the marriage: the first is of the majority of scholars, and the second is of the Maliki jurists as follows:

2.1 The Contract and the Condition Are Correct

The majority of the scholars consider the marriage which is attended by two witnesses as valid even it is not announced by celebrations, singing and publishing through media. The majority of scholars also opine that the presence of two witnesses is sufficient to consider the
marriage announced publicly not secretly wondering how the marriage would be considered secret when it is witnessed by two trusty persons.

The importance of the presence of witnesses at the time of registration of the contract lies in the obligation of both spouses to the rights and duties of the marriage in case of the denial of the contract made by one of them. Despite the completion of the conditions of the valid true marriage which are the presence of two witnesses and the guardian, some scholars of the Hanbali doctrine hate the marriage for which the couple ask both witnesses to hide the news of the marriage so as the people do not think that there is some doubts in the relationship between the husband and the wife. However, the marriage contract which is conditioned not to be announced to the public is true before and after marriage (Shaibani, 1403 ah, Shafei, 1990, and Ibn Qudaamah, 1968).

2.1 Second Opinion: The Contract Is Invalid

The Maalikis believed that the marriage which is conditioned with concealment is void. This kind of marriage is of two kinds: the first is when the witnesses are asked to conceal the marriage, even though it is asked by the husband regardless whether the wife and her guardian agree or not. The second is asking other people than the witnesses to conceal the news of marriage even though the couple and the guardian ask for the concealment and the witnesses are not asked to do so. The Maalikis consider both cases as void before the actual marriage or the sexual intercourse. It is also terminated in the case of short period of marriage after the sexual intercourse. In case that the marriage took long time after the intercourse, the couple gets punished for committing a sin and the witnesses get punished too
for keeping the marriage confidential. However, if the wife is forced to keep the secrecy of the marriage, she is not punished.

The Imam Malik, (may Allah be pleased with him) believed that the announcement of marriage is the key evidence whether the marriage is secret or publicly declared; and it is not the case for the witnesses. He said "If two persons witnessed the marriage and did not spread the news, then the marriage would be considered secret. In fact, the Maalikis lessen the importance of the witness in the beginning of the marriage contract, considering that the declaration of marriage is more important than the witness. They claim that it can be done at any time not as a condition of the validity of the contract. They also believe that if a person marries with no witnesses and consider the people who attend the wedding ceremony as witnesses, his marriage will be correct unless the secrecy of marriage is intended. In this case, the contract is not valid due to the fact that the secret marriage could be used for committing Haram such as practicing adultery under the cover of false marriage by the presence of false witnesses. The “Sahaba” or the companions of the Prophet Mohammad (peace be upon him) maintain the announcement of marriage. The Maalikis preferred to have food feasts at the time of the announcement of marriage in order to gather people to prove the marriage and to declare it because the witnesses will die someday. (Ibn Rushd. 1988)

Some of the friends of Imam Ahmad Bin Hanbal agreed on the opinion of the Maalikis which invalidates the contract because of the lack of announcement and considers the testimony as insufficient. In addition, they demanded the declaration of marriage; otherwise, the contract is deemed null and void and the relationship between the spouses is illegitimate. Furthermore, if the sexual intercourse happened, then the couple should be stoned as punishment for the crime of adultery. (Ibn Qudaamah 0.1968)
The Maliki jurists deduced the noble Hadith narrated by Amer bin Abdullah bin Zubair quoted from his father that the prophet (peace be upon him) said: "proclaim the marriage" (Ibn Hanbal: 2001). The proclamation means the spread of the news of marriage among people not to confine it in the witnesses.

Moreover, the book of Imam Malik (may Almighty Allah be pleased with him), called “Al-Mowatta”, mentioned that Omar bin al-Khattab (may Almighty Allah be pleased with him) was informed about a marriage witnessed by a man and a woman only, and he said: “This is the secret marriage which I do not permit; if I made it, I must be stoned” (Malik, 1985). This kind of declaration was not accepted and therefore the marriage was not considered valid due to the lack of the presence of two witnesses in addition to the lack of the announcement of the marriage; furthermore, stoning is not used except for the crime of adultery.

Ali bin Abi Talib (may Allah be pleased with him) narrated that the Messenger of Allah (peace be upon him) passed with his companions by “Beni Zreik” and heard singing and entertainment and said: "What is this?" They said: O Messenger of Allah, this is the marriage of so and so. He said: "his religion is completed by this marriage not by adultery and not by the secret marriage until tambour is heard and the smoke is seen” (Bayhaqi, 2003).

The evidence of hitting the tambourines to distinguish between the secret marriage and the announced one is preferable but not a duty for those who were at that time, though in our time is not considered as preferable nor as a duty. The wedding concerts and singing do not prove marriage in the modern era unless it is proved by the competent courts and testified by witnesses.
2.2 The Most Correct Opinion

The Malikis perhaps stressed on the invalidity of the secret marriage before the documentation of the marriage contract, which calls for the precaution to protect society from immorality and corruption. However, after the existence of the laws and the courts which implement by its proceedings the related provisions, I believe that the means of the announcement of marriage exceed the tambourines; therefore, as long as there are witnesses, the marriage is considered publicly announced without the need to impose concerts and other announcement means.

The documentation of marriage contracts removed all the confusion and made the opinion of the majority of scholars reasonable. When the contract is properly documented at the Sharia court, there will be no importance of the announcement due to the fact that the announcement of marriage is a preferable act, and not a duty.

Based on the above, I found that there is a possibility for both spouses to waive their right to announce the marriage if it meets the complete marriage conditions including the presence of witnesses and the guardian if both spouses agree on it. In addition, I found that the announcement, ceremonies and banquet is a preferable matter and do not invalidate the contract.

3. RESULTS

This research found that both spouses have the right to waive their right to announce the marriage, and the contract and the condition are correct. This study also found that it is not permitted to condition the concealment of the existence of witnesses to testify the marriage contract. One more result was that the least means of marriage announcement is the presence
of two witnesses to testify the marriage contract at the competent legitimate court. Finally, this research found that the documentation of marriage contract at the competent courts preserves the rights of both spouses.

References

The Holey Qur'an.
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