

The Fatwas of the International Islamic Fiqh Academy in Jeddah on Personal Status Issues Related to Women: An Analytical Jurisprudential Study of the Rulings on Marriage and Divorce

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Abstract: This study examines the fatwas issued by the **International Islamic Fiqh Academy (IIFA)** concerning women's personal status, considering them a model of contemporary jurisprudential reasoning that seeks to reconcile Sharia texts with the demands of social reality. The study highlights the Academy's flexibility in addressing issues of marriage, divorce, alimony, custody, and guardianship, while adhering to the higher objectives (*maqāṣid*) of Sharia and promoting social justice, particularly in cases such as **khul'** (divorce initiated by the wife), separation due to harm, and domestic violence. The study also identifies gaps in the practical application of fiqh, particularly regarding **nushūz** (marital disobedience), **da'wā al-tā'ah** (the legal claim for a wife's obedience), and the deprivation of women from financial guardianship and custodianship. These gaps necessitate a broader review of classical jurisprudence and the development of legislative and judicial mechanisms that respond to societal transformations. The study concludes that contemporary **ijtihād** is both a religious and social imperative for building a just and balanced family system. Such *ijtihād* contributes to the protection of women's rights and the stability of Muslim societies and underscores the need for ongoing analytical research to assess and enhance the positions of Islamic jurisprudential councils in this domain.

Keywords: Women's Fiqh; Fatwas of the International Islamic Fiqh Academy; Marriage; Divorce; **Qiwāmah** (Spousal Authority); Women's Rights; Personal Status Law; Contemporary *Ijtihād*.

فتاوى المجمع الفقهي الإسلامي الدولي، في جدة في قضايا الأحوال الشخصية المتعلقة بالمرأة:

دراسة فقهية تحليلية في أحكام الزواج والطلاق

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الملخص: تتناول هذه الدراسة تحليل فتاوى المجمع الفقهي الإسلامي الدولي المتعلقة بالأحوال الشخصية للمرأة، باعتبارها نموذجاً للاجتهاد الفقهي المعاصر الذي يسعى إلى التوفيق بين النصوص الشرعية ومتطلبات الواقع الاجتماعي. وتُبرز الدراسة مرونة المجمع في معالجة قضايا الزواج، الطلاق، النفقة، الحضانة، والولاية، مع الالتزام بمقاصد الشريعة وتحقيق العدالة الاجتماعية، خاصة في قضايا مثل الخلع والتفريق للضرر والعنف الأسري، كما تشير الدراسة إلى وجود ثغرات في التطبيق الفقهي، لا سيما في مسائل النشوز، دعوى الطاعة، وحرمان المرأة من الوصاية والولاية المالية، مما يستدعي مراجعة أوسع للتراث الفقهي وتطوير آليات تشريعية وقضائية تُراعي التحولات المجتمعية. وتخلص الدراسة إلى أن الاجتهاد الفقهي المعاصر يُعد ضرورة شرعية ومجتمعية لبناء منظومة أسرية عادلة ومتوازنة، ويُسهم في تعزيز حقوق المرأة واستقرار المجتمع الإسلامي، داعيةً إلى استمرار الدراسات التحليلية لتقييم وتطوير مواقف المجمع الفقهي في هذا المجال.

الكلمات الدالة: فقه المرأة، فتاوى المجمع الفقهي الإسلامي الدولي، الزواج، الطلاق، القوامة، حقوق المرأة، الأحوال الشخصية، الاجتهاد الفقهي المعاصر.

Introduction

Issues related to women's personal status constitute one of the most prominent fields of Islamic jurisprudence, receiving significant attention in both classical scholarship and modern contexts due to their direct impact on family and society and their intrinsic connection to the rights and obligations of each family member. In this context, the present study aims to examine the fatwas of the International Islamic Fiqh Academy (IIFA) concerning women's rulings on marriage and divorce through a comparative jurisprudential analysis based on a descriptive-analytical methodology, highlighting points of convergence and divergence between the Academy's resolutions, classical Islamic jurisprudence, and other fiqh councils.

The study focuses on two main axes:

Marriage Legislation and Related Issues Concerning Women

The study demonstrates that the Academy emphasizes facilitating marriage as a legitimate framework for family building, while safeguarding women's rights in selecting a spouse, ensuring their entitlement to alimony (nafaqah), protecting them from harmful cultural practices, and affirming their financial independence and legal capacity to manage their property, in accordance with the higher objectives (maqāsid) of Sharia.

The study also addresses the concept of qiwāmah, clarifying the distinction between traditional interpretations, which often reduced it to male dominance, and contemporary understandings, which regard it as a shared responsibility aimed at justice and mutual benefit within marriage. Furthermore, the research examines issues such as child marriage, dowry (mahr), innovative contractual arrangements, interfaith marriage, and polygamy, reviewing relevant fatwas issued by the Academy and analyzing their consideration of both the public and private interests of women. These issues are discussed considering jurisprudential principles such as sadd al-dharā'i' (blocking the means), maṣlaḥah mursalah (unrestricted public interest), and istiḥsān (juristic preference), while also considering modern social, economic, and legal transformations.

Divorce Legislation and Related Issues Concerning Women

The study highlights the Academy's efforts to restore balance between spousal rights, ensuring women's entitlement to alimony (nafaqah) and post-divorce compensation (mut'ah), while defining the husband's responsibilities in cases of revocable (raj'ī) and

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irrevocable (bā'in) divorce, in accordance with the maxim “harm must be eliminated” (al-ḍarar yuzāl) and the principle of mitigating major harm through lesser harm. Additionally, the study examines domestic violence, explaining the Academy’s stance on disciplinary measures (ḍarb wa-ta’dīb) and emphasizing the protection of women within the limits set by Sharia, while stressing the importance of cooperation among judicial, legislative, and religious institutions to ensure the proper implementation of Islamic principles in a manner consistent with human rights frameworks and international conventions.

The study relies on an analysis of the contemporary jurisprudential reasoning (ijtihād) employed by the International Islamic Fiqh Academy, focusing on its methodology and the evidentiary sources it uses—including the Qur’an, the Prophetic Sunnah, consensus (ijmā’), considerations of public interest (maṣlaḥah mursalah), juristic preference (istiḥsān), and the weighing of evidence (tarjīḥ al-adillah)—while also considering local customs (‘urf) and societal norms¹.

The objective of this study is to elucidate the mechanisms by which Islamic jurisprudence adapts to contemporary social and legal developments without compromising its foundational principles, with particular emphasis on the role of the Academy’s fatwas in safeguarding women’s rights and enhancing their status within the family and society.

The study relies on an analysis of the contemporary ijtihād of the International Islamic Fiqh Academy, examining its methodology and the sources of evidence it employs,

¹ The principle of “mitigating greater harm by incurring lesser harm” (daf’ al-mafāsid al-kubrā bi-l-ḥad min al-ḍarar al-aṣghar) in Islamic jurisprudence reflects both a rational and legal maxim that permits the infliction of lesser harm to prevent a greater one. It is also referred to as “choosing the lesser of two evils” or “removing the greater harm by the lesser harm.” This principle is applied when it is impossible to avoid both harms simultaneously; the lesser harm is incurred to achieve a more compelling benefit or to prevent a greater corruption.

Several subsidiary jurisprudential rules fall under this maxim. Among the most prominent are:

- “Preventing harm takes precedence over achieving benefit” (dar’ al-mafāsid awwal min jalb al-maṣāliḥ), which prioritizes avoiding harm over obtaining good, except in cases where the harm is trivial and the benefit is substantial.
- “What cannot be achieved entirely should not be abandoned altogether” (mā lā yudrak kulluhu lā yutraku julluhu), which emphasizes the obligation to mitigate harm to the greatest extent possible, even partially, in order to uphold the objectives of Sharia in promoting justice and preventing harm to people.
- As referenced in Resolution No. 161 (17/10) of the International Islamic Fiqh Academy concerning the Shariah guidelines for biomedical research on humans, achieving benefit (jalb al-maṣāliḥ) is a fundamental objective in Islamic law, through both promoting good and preventing harm to the people. In cases where harm is unavoidable, the greater of two harms is mitigated by choosing the lesser and more manageable harm.

including the Qur'an, the Prophetic Sunnah, *ijmā'* (consensus), *maṣlaḥah mursalah* (considerations of public interest), *istiḥsān* (juristic preference), and the weighing of evidences (*tarjīḥ al-adillah*), while also taking into account local customs (*'urf*) and societal norms. The aim is to reveal the mechanisms through which Islamic jurisprudence adapts to social and legal developments without compromising foundational Sharia principles, with particular emphasis on the role of fatwas in protecting women's rights and enhancing their status within the family and society.

The study concludes that the fatwas of the International Islamic Fiqh Academy represent an advanced model of contemporary *ijtihād* on women's issues, combining adherence to the higher objectives of Sharia with consideration of social and legal realities. The Academy employs a flexible jurisprudential methodology that facilitates a balance between rights and obligations, ensuring justice and equality. This approach contributes to the development of Islamic jurisprudence in personal status matters and enhances its effectiveness in addressing contemporary societal challenges.

Personal status issues, especially those concerning women, have been among the most significant areas of focus in Islamic jurisprudence from its inception to the present, due to their profound impact on family and society and their connection to the fundamental rights and responsibilities of each family member. Within these issues, marriage and divorce stand out as the cornerstone for organizing familial relationships and achieving a balance between Sharia rights and social duties, safeguarding women's dignity and interests while promoting family and social stability.

Over the centuries, Muslim societies have experienced various social, economic, and legal changes, necessitating ongoing *ijtihād* to adapt Sharia rulings to contemporary developments without compromising the higher objectives of Sharia. In this context, the International Islamic Fiqh Academy plays a pivotal role as a contemporary body aiming to unify jurisprudential perspectives and issue fatwas and advisory opinions that combine collective *ijtihād* with recognized Sharia standards, while considering the differences between local customs and national laws in Islamic countries, as well as the circumstances of Muslim communities in non-Islamic countries, striving to achieve harmony between Sharia texts and contemporary social realities.

This study aims to shed light on the fatwas of the International Islamic Fiqh Academy concerning the rulings on marriage and divorce, with a particular focus on their

jurisprudential analysis and their relationship to women's rights and status within the family.

The research adopts a comparative jurisprudential analysis approach, examining the texts of the fatwas issued by the Academy and comparing them with those found in traditional Islamic jurisprudence, as well as in national and international fiqh councils, in order to identify points of convergence and divergence, and to reveal how the Academy addresses contemporary issues for which no explicit textual ruling exists.

The study also seeks to investigate the Academy's jurisprudential methodology in issuing fatwas, in terms of the rules and principles employed, such as *ijmā'* (consensus), *maqāṣid al-sharī'ah* (higher objectives of Sharia), *maṣlaḥah mursalah* (considerations of public interest), *istiḥsān* (juristic preference), *sadd al-dharā'i'* (blocking means to harm), *istishhāb* (presumption of continuity), the weighing of evidences (*tarjīḥ al-adillah*), reliance on the opinions of the Companions and their jurisprudential schools, as well as approaches of flexibility, facilitation, and *talfiq* (reconciliation of opinions). It also aims to clarify how these principles are employed to address women-related issues in marriage and divorce, enabling a deeper understanding of contemporary jurisprudential reasoning and its alignment with the overarching objectives of Sharia and the needs of families and society in the modern era.

Studying these fatwas provides an opportunity to understand the dynamics of contemporary *ijtihad* and the ways Islamic jurisprudence is adapted to social and legal changes, while maintaining the immutable principles of Sharia. It also allows scholars and legal and social practitioners to evaluate the extent to which contemporary fatwas protect women's rights and strengthen their role within the family and society, without compromising the principles of justice and equality emphasized by Islamic law.

Considering the above, this study aims to provide a comprehensive analytical framework linking jurisprudential theory with the practical application of fatwas, highlighting the strengths and weaknesses in modern jurisprudential treatments. This contributes to the development of Islamic *ijtihad* in personal status matters and enhances the effectiveness of fiqh in addressing contemporary societal challenges. Accordingly, this research represents a scholarly effort to enrich the jurisprudential discourse on women's rights in marriage and divorce, providing a solid academic reference for researchers and scholars in this field.

Marriage Legislation and Related Women’s Issues in the Academy’s Fatwas

The jurisprudential and legal landscape of personal status in some Islamic countries has witnessed significant developments over the past decades, driven by unprecedentedly high divorce rates, increasing post-divorce challenges, the prevalence of child marriage, and honor-related crimes. The greatest challenge for religious institutions has been to correct course and mitigate these societal issues by addressing violations and social injustices affecting women in marriage legislation, spouse selection, maintenance, divorce, domestic violence, and the misapplication of the concept of *qiwāmah*. Such misapplications have often restricted women’s ability to transcend the limits set by religious authorities for the “righteous woman,” and have led to exploitation of women’s financial resources and salaries, as well as injustices in inheritance.

Despite the growing academic interest in *maqāṣid al-sharī‘ah* (the objectives of Sharia) over the past two decades, and the rise of interpretive discourse seeking to reread Qur’anic texts from a gender perspective, there remains a pressing need to examine the capacity of contemporary Islamic institutions to adopt this approach. Reformist studies have emerged, such as the study by Adis Doudreh (2014), which proposed a non-patriarchal interpretive model based on the objectives of Sharia—such as justice, mercy, and equity—to reconstruct Islamic family law in a way that achieves gender justice².

In this context, it becomes essential to analyze whether the International Islamic Fiqh Academy represents such an interpretive model, by integrating traditional jurisprudential discourse with *maqāṣid*-oriented approaches, thereby facilitating a more equitable interpretation between genders in personal status matters.

Family Organization, Family Building, and Spouse Selection

In February 1988, the International Islamic Fiqh Academy issued a resolution urging society to strengthen family building by facilitating marriage procedures. The resolution emphasized the necessity of preparing women to fulfill their roles as mothers and household managers in accordance with Sharia and called for the elimination of the practice of employing foreign domestic caregivers due to its detrimental effects on the family. In June

² Duderija, A. (2014). *Maqasid al-Shari’ah, gender non-patriarchal Qur’an-Sunna hermeneutics and the reformation of Muslim family law*. In *Maqasid al-Shari’a and contemporary reformist Muslim thought: An examination* (pp. 193–218). Springer.

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2006, another resolution highlighted the protection of women from practices and customs that expose them to injustice and violate rights guaranteed by both international human rights principles and Islamic law³.

Research published in the Academy's journal indicated that the man's *qiwāmah* entails financial provision, housing, protection, and the fulfillment of essential life necessities. Conversely, the wife's responsibilities include safeguarding her husband's honor, managing his wealth and household, and refraining from interaction with those who are not among her close relatives⁴.

In 2009, the Secretary-General of the Academy, Dr. 'Abd al-Salām al-'Abbādī, compiled all resolutions issued by the Academy regarding women across its various sessions. He submitted this compilation to the Secretary-General of the Global Moderation Forum, representing a summary of the Academy's stance since its inception, as it serves as the primary jurisprudential reference for the Muslim world. Al-'Abbādī also submitted a study titled "Towards a Harmonious and Stable Family", which addressed issues pertaining to the Muslim family and its foundational principles.

A review of the Academy's discourse in both this compilation and the study reveal adherence to the general jurisprudential framework established by earlier Fiqh academies and Islamic legal opinion institutions, particularly regarding the man's *qiwāmah* over the woman. The Academy had, in 1986, explained the rationale for prohibiting a Muslim woman from marrying a non-Muslim man, citing that *qiwāmah* entails male control and guardianship. This guardianship was considered necessary to protect her, her religion, and her children, and thus marriage to a non-Muslim man was prohibited to prevent her from potential deviation from faith, as "women generally follow men."

In 2005, the Academy affirmed the woman's right to manage her own property independently, establishing that the husband has no authority over her wealth and that she does not require his permission to own or dispose of her property-a position contrasting with

³ Resolution No. 38 (4/13) on "The Methods of Combating Moral Corruption" (previously cited reference); and Resolution No. 159 (17/8) on "The Status of Women and Their Social Role from an Islamic Perspective" -available at: <https://www.iifa-aifi.org/ar/2218.html>.

⁴ Muhammad al-Hāj al-Nāṣir, "Islam and the Conclusion of Contracts via Modern Means of Communication," *Journal of the International Islamic Fiqh Academy*, Vol. 6, Part 2 (1410H/1990), pp. 1051–1236.

earlier Fiqh views where the man oversaw the wife's financial affairs and other matters⁵.

A qualitative shift occurred in 2007, when the Academy issued a resolution advocating cooperation with international institutions to protect the family, women, and children. This resolution marked a significant step toward openness to other currents previously considered threatening to the integrity of the Islamic society. As part of this shift, discussions emerged regarding the evolving role of women in the family and social development, "within the recognized Sharia guidelines, since the general principle is that religious obligations encompass both men and women, except for those obligations specifically designated to one gender⁶."

In 2009, the Academy reaffirmed the man's obligation to fulfill his responsibilities under *qiwamah*, to comply with Sharia rules governing marital relations, and emphasized the woman's "primary role" in motherhood and household care, including the stipulation that a husband may restrict his wife from traveling only with his consent and under Sharia-compliant conditions⁷.

The March 2015 resolution on women and guardianship further emphasized that Islam guarantees a woman's rights, status, and innate disposition, as well as her roles as mother, daughter, and wife⁸. The Academy also granted guardians the authority to prevent a woman from marrying a person whose illness poses a risk to her or her children. Moreover, it established that a healthy spouse may seek divorce if the woman chooses to marry a person who is insane, defective, or leprous, as guardians may prevent such marriages to protect her dignity and her family, akin to preventing her from marrying someone unsuitable. The Academy also addressed prohibitions on guardians or authorities allowing women to marry individuals infected with HIV/AIDS, and similarly, it restricted men from choosing such women as spouses to prevent public and private harms leading to prohibited outcomes⁹.

Islamic jurisprudence concerning women, as reflected in the resolutions of the

⁵ The recommendations issued by the Fifth Forum Conference, held in Amman, Jordan, in July 2009, which addressed the topic: "Women's Issues in Islamic Societies and the Challenges of the Contemporary Era."

⁶ Resolution No. 169 (18/7) concerning the Rights and Duties of the Muslim Woman, July 2007: <https://www.iifa-aifi.org/ar/2273.html>.

⁷ Resolution No. 180 (6/19) on "Domestic Violence" at the 19th Session held in Sharjah (United Arab Emirates), 26–30 April 2009.

⁸ "Decision No. 211 (22/7) concerning Women and Public Offices, March 2015: <https://www.iifa-aifi.org/3993.html>".

⁹ Saud bin Mas'ad Al-Thubaity, "Acquired Immunodeficiency Syndrome (AIDS): Its Rulings and the Patient's Familial and Social Relationships," *Journal of the Islamic Fiqh Academy*, Issue 9, Vol. 4 (1996), pp. 391–457.

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International Islamic Fiqh Academy between 1986 and 2015, has undergone gradual rather than radical development. It has maintained the traditional gendered structure based on male *qiwāmah* and the woman's role in motherhood and household management, while showing partial shifts toward recognizing certain economic and social rights for women.

Whereas the 1988 resolution emphasized preparing women for their familial roles and prohibited the employment of foreign domestic caregivers, the 2005 resolution affirmed a woman's right to manage her property independently without her husband's consent. The 2007 resolution called for cooperation with international institutions to protect women and children. However, the 2009 and 2015 resolutions reaffirmed the obligation of women to fulfill their domestic roles, remain subject to *qiwāmah*, and prohibited them from traveling without their husband's permission. Thus, it can be concluded that official Islamic jurisprudence evolved toward a relative openness and limited expansion of women's rights, without abandoning the entrenched patriarchal framework that defines a woman's position within the family.

Al- Qiwāmah

Numerous studies have demonstrated that the concept of **qiwāmah** in the Qur'an inherently implies equality between men and women, requiring both to fulfill general responsibilities aimed at promoting good and preventing wrongdoing. However, some interpretations have deviated from the intended purposes of Shariah by asserting the husband's right to absolute and blind obedience, denying the wife the right to express her opinion even when the request exceeds her capacity.

Khaled Abu al-Fadl, in his book *Speaking in God's Name*, provides a sharp critique of the notion of blind obedience to the husband in traditional Islamic jurisprudence, arguing that such a conception contradicts the objectives of Shariah, which are based on **love, mercy, and justice**. He emphasizes that the marital relationship in Islam is not one of a master and a subordinate but rather a partnership of equals. Abu al-Fadl points out that some jurist's monopolized interpretive authority, which marginalized women and constrained pluralistic interpretation within Islam. Similarly, Abu Bakr and Al-Murabit stripped the concept of **qiwāmah** of connotations of dominance and control, limiting its application to

contexts explicitly specified in the Qur’anic verses¹⁰. They argue that verse 34 of Surah An-Nisa does not imply divine preference for men over women, nor does it confer any inherent superiority or honor on men in terms of **qiwāmah**. Rather, it represents a moral commitment to general justice and sound governance. Some interpreters, however, distorted this concept by restricting the meaning of **qiwāmah** to the private personal domain, thereby obscuring its broader implications across classical and contemporary exegetical traditions. Defining **qiwāmah** solely in terms of regulating marital life and the responsibilities of spouses effectively reinforces male supremacy over women¹¹.

Larsen highlights the complexities of **qiwāmah** rulings for Muslims in the West and the tensions faced by jurists seeking to issue legal opinions that account for the realities of Muslim families in Europe, aiming to achieve balance and stability, while traditional fatwas in the Islamic world continue to uphold hierarchical notions within the household¹².

Conversely, some critics accuse “Islamic rationalists” of adapting **qiwāmah** and guardianship concepts to Western contexts to facilitate the “acceptance of Islam,” particularly regarding women’s rights and human rights more broadly, framing them in line with United Nations standards. A third trend views **qiwāmah** as a relic of the past, advocating for its complete abolition due to the changing needs of contemporary women, including the right to leave the home or travel without the husband’s permission.

The International Fiqh Academy’s journal has noted comparisons between the Islamic and Universal Declarations of Human Rights. The Universal Declaration provides equal rights for men and women, encompassing matters such as maintenance, dowry, and divorce. The Islamic Declaration details these issues while emphasizing that a woman’s rights are commensurate with her duties. It affirms her legal personality, financial autonomy, right to retain her name and lineage, and assigns the man the responsibility of financial support and

¹⁰ Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld, 2001), pp. 248–251.

¹¹ Lena Larsen. *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe* (Leiden; Boston: Brill, 2018), 156-189; Serdar Kaya, "Institutionalization of Islam in Secular Europe: The Influence of State-Religion Relations on Anti-Muslim Attitudes." *Policy Studies Journal* 47(3) (2019), 793-818.

¹² Ahmed Abd al-Rahman Abdallah Al-Khamis, *The Contemporary Rationalist Approach to Guardianship and Women’s Public Authority: A Critical Study* (Riyadh: Al-Rushd Library, 2016), 185; Mir Hosseini, Ziba & Maleki al-Sharmani & Jana Raminjer, *The Hermeneutical Legacy of Guardianship as a Structure in Interpretation*, translated by Randa Abu Bakr (London: One World, 2017).

care, reflecting an appropriate conceptualization of **qiwāmah**¹³.

Considering contemporary debates on qiwāmah, it is evident that the International Islamic Fiqh Academy has not offered substantial reform toward women's interests, maintaining a traditional conception that perpetuates hierarchical family structures¹⁴. While reformist studies assert that qiwāmah signifies shared moral responsibility rather than dominance, and consider blind obedience as a form of servitude, the Academy's discourse continues to link qiwāmah primarily to the burdens of financial provision and care, without critically reassessing spousal authority. Furthermore, the Academy's comparison of the Islamic and Universal Declarations of Human Rights did not result in a reinterpretation of qiwāmah that promotes gender justice but rather reaffirmed traditional roles. This demonstrates that the Academy has not adopted a purposive (*maqāṣidī*) approach aimed at a more equitable interpretation between the sexes, remaining within a model that entrenches male superiority in family structures.

Zawaj al-qasirat (Marriage of a minor)

In 2018, the International Islamic Fiqh Academy defined a "minor girl" as one who has not yet reached puberty, aligning with classical jurists who set the marriageable age between fifteen and sixteen years. The Academy emphasized that Islamic law does not stipulate a fixed age for concluding a marriage contract, while the age of consummation should be determined according to the temporal and spatial circumstances, as well as the readiness of both parties to enter marriage and establish a family.

The father, owing to his duty of care and concern for his daughter's welfare, is permitted to marry her off with the authorization of a judge. However, if marriage is proven to cause harm to the girl, the father is prohibited from arranging the marriage. Non-guardians are not allowed to contract marriage for a minor until she reaches the legally recognized age. The determination of the marriageable age with judicial approval is entrusted to the guardian in each state, in accordance with local circumstances and considerations of public interest. Guardianship-whether the father or another legal guardian-

¹³ Muhammad Ali Al-Tusi Al-Tisikhuri, "Human Rights between the Islamic and the Universal Declarations and the Iranian Islamic Constitution," *Journal of the Islamic Fiqh Academy*, Issue 13, Vol. 1 (2001), pp. 177–237: <https://al-maktaba.org/book/8356/24453#p3>

¹⁴ According to the most recent decision, Decision No. 180 (19/6) concerning Domestic Violence, in its nineteenth session in the Emirate of Sharjah (United Arab Emirates) from 1 to 5 Jumada al-Awwal, corresponding to 26–30 April 2009. Last accessed 03 November 2025.

is conditional upon safeguarding the girl's welfare. A girl's consent is mandatory for marriage; any marriage conducted without her approval entitles her to request annulment¹⁵.

The Academy further stated that each state has the right to set an appropriate minimum marriageable age based on the interests of the girl, her family, and society. States may also legislate penalties for those who marry minors without judicial consent. The Academy recommended establishing health-related regulations for child marriage, to be assessed by trusted medical professionals, with marriage prohibited without meeting these conditions.

This approach illustrates the application of the principle of blocking the means (*sadd al-dharā'i'*) and the consideration of public interest (*maṣlahah*), emphasizing the need to regulate child marriage through well-defined safeguards. This is particularly important given the documented psychological, social, and physical harms resulting from child marriage, and its persistence due to ignorance, poverty, and harmful traditional practices.

Adopting a stance to issue a legal-religious recommendation to prohibit child marriage is not solely a matter of religious jurisprudence; rather, it is a practical issue influenced by societal changes. Some Islamic countries, guided by the principle of public interest, have legislatively restricted marriageable age, specifying that marriages below eighteen years cannot be registered. For instance, Morocco amended its Personal Status Code in 1999 within the "National Plan for Women's Integration in Development," rising the marriageable age from 15 to 18 years, aligning with Western models. However, some conservative Islamists criticized these reforms as "a plot against Islam and female temptation" that would "lead to moral decay and familial collapse¹⁶."

Under Turkish Penal Code, "child marriage" is considered a form of child abuse, punishable by imprisonment, and mandates reporting by state institutions, NGOs, and individuals¹⁷. Additionally, the Global Fiqh Index (GFI), affiliated with Egypt's Dar al-Ifta, highlighted that extremist organizations' fatwas permit child marriage, relying on Qur'anic

¹⁵ "Decision No. 217 (1/23) on the Marriage of Young Girls: Between the Right of the Guardian, the Girl's Welfare, and the Extent of the Ruler's Authority in Its Prevention or Restriction, from a Shariah Perspective," International Islamic Fiqh Academy, 23rd Session, Al-Madinah al-Munawwarah (19–23 Ṣafar 1440 H / 28 October–1 November 2018). Available at: <https://www.iifa-aifi.org/ar/4867.html>.

¹⁶ 'Awad, Ikram Kamal Al-Masri. *Globalization of the Muslim Woman: Mechanisms and Strategies of Confrontation*. Riyadh: King Fahd Library, 2010, p. 210.

¹⁷ United Nations High Commissioner for Refugees (UNHCR) – Turkey. *Marriage and Divorce in Turkey*. Available online: <https://help.unhcr.org/turkey/ar/social-economic-and-civil-matters/marriage-and-divorce/>

and Prophetic evidence detached from its temporal and spatial context¹⁸.

Considering this, the Academy's position on child marriage is characterized by caution and regulatory limitation rather than outright prohibition. The Academy mandates judicial authorization, the minor's consent, and consideration of health and social safeguards, reflecting an approach focused on regulating the phenomenon rather than eradicating it. Despite invoking the principles of blocking the means and public interest, the Academy did not adopt a definitive religious stance prohibiting child marriage, leaving discretion to the guardian in each country. In contrast, some Islamic countries, such as Morocco and Turkey, have taken stricter legal measures, either raising the minimum marriageable age or criminalizing child marriage, while some conservative religious discourses continue to justify such marriages outside their proper temporal and spatial context. Consequently, the Academy's position remains a balancing act between tradition and contemporary realities, without producing a critical break with inherited jurisprudence, raising questions about the capacity of religious institutions to keep pace with evolving human rights and social norms.

Al-Mahr

In the context of illustrating the tension between customary practices and Islamic law, the International Islamic Fiqh Academy's research journal recorded fatwas issued by the Academy's jurists based on local custom ('urf) and prevailing practices ('āda)¹⁹. For example, in Medina, it was traditionally customary that a husband should not consummate the marriage until the full mahr (dower) had been paid, whereas contemporary practice often differs²⁰. Similarly, the wife's consent and statement during the marriage contract are adjusted considering differing local customs. Today, marriage contracts and the rights of women are formally recorded in the registers of Sharia courts. The Academy also applied

¹⁸ Global Fatwa Index: The first index of its kind that monitors, documents, and analyzes fatwas worldwide. It is published annually by the Strategic Studies Unit of the General Secretariat. The Fatwa Index reported that it tracked 2,500 fatwas from various religious currents and analyzed them, concluding that fatwas on "Child marriage" accounted for 13% of all fatwas globally. It also noted that the issue represents a concern for terrorist organizations that rely on fatwas in 25% of cases. The Strategic Studies Unit recommended that the Dar al-Ifta responsible for the Fatwa Index enact legislation to regulate the matter, penalize those involved, abolish exceptions regarding the legal age of marriage, and raise it to no less than 18 years. See the Egyptian Dar al-Ifta Media Center Facebook page: <https://www.facebook.com/EgyptDarAlIftaMedia/posts/2230584493826279/>.

¹⁹ Abd Allah Al-Sheikh Al-Mahfouz bin Bayyah, "Ways to Benefit from Contemporary Issues: Fatwas and Jurisprudential Practice in Modern Applications," *Journal of the Islamic Fiqh Academy*, Issue 11, Vol. 2 (1998), pp. 529–578: <https://al-maktaba.org/book/8356/21759#p1>.

²⁰ Ahmad ibn Idris ibn Abd al-Rahman al-Maliki al-Qarafi, *Al-Ihkam fi Tamyiz al-Fatawa 'an al-Ahkam wa Tasarrufat al-Qadi* (Beirut: Dar al-Basha'ir al-Lubnaniyya, 1995), pp. 231–234.

principles such as "ensuring equality in marriage and payment of an appropriate mahr"²¹."

The Academy adapts overarching jurisprudential principles such as *istihsan* (juristic preference), *maslahah* ('public interest), and customary usage to serve societal benefit. The maxim "custom is authoritative" and "people practice is a valid proof" reflects that customary practice can have the weight of consensus (*ijma*) in the absence of explicit textual guidance. The Academy identified eleven principles affirming the authority of customs. From this, it is evident that the Academy employs Islamic jurisprudential rules flexibly, determining whether a matter represents a public or private interest.

The journal details practical examples: if spouses dispute the amount of the mahr—e.g., the husband proposes 1,000 units and the wife demands 2,000—the principle of *mahr mithl* (equivalent dower) is applied. Initially, both parties may negotiate, but ultimately the mahr is determined according to equivalence. In many Islamic countries, customary practice considers a significant portion of the mahr as deferred debt (*mahr mu'akkhar*), payable only upon death or divorce²².

In this context, the Academy addressed the impact of inflation and currency value changes, which affect people's economic lives, trade, loans in general, and women in particular concerning the mahr. In 2019, after reviewing research and discussions on inflation and changing currency values, the Academy unanimously ruled that in cases of moderate inflation, fixed debts should be repaid in kind rather than value. In cases of severe inflation, the repayment should be determined through mutual agreement or judicial resolution. Creditors and debtors may agree to settle debts according to current value at the time of payment (*sadd al-dharā'i'*), but not at the time of contract formation. This ruling demonstrates that inflation-related adjustments are jurisprudentially flexible, with justice requiring that excessive payment due to nominal increases does not constitute an undue increment²³. The Academy emphasized that value adjustments are not predetermined but assessed according to fairness. Debt rulings apply equally to dowries, as they are also considered debts.

Furthermore, the Academy recognized that in many Islamic countries, customary

²¹ Abd Allah Al-Sheikh Al-Mahfouz bin Bayyah, "Ways to Benefit from Contemporary Issues: Fatwas and Jurisprudential Practice in Modern Applications," *Journal of the Islamic Fiqh Academy*, Issue 11, Vol. 2 (1998), pp. 529–578. <https://al-maktaba.org/book/8356/21759#p1>.

²² The same reference, p. 554.

²³ Decision No. 231 (2/24) on Inflation and Currency Value Fluctuations, 24th Session of the International Islamic Fiqh Academy (Dubai, November 2019). Available at: <https://www.iifa-aifi.org/ar/5209.html>.

practice treats a substantial portion of the mahr as deferred debt (mahr mu'akhkhar), payable only upon death or divorce. When discussing the impact of inflation on this deferred mahr, the 2019 ruling clarified that in cases of moderate inflation, repayment should be equivalent in kind, whereas in cases of extreme inflation, settlement may follow mutual consent or judicial determination, with repayment according to current value permissible at the time of settlement but not at the time of contract. This flexible, jurisprudentially grounded ruling reflects the Academy's awareness of economic changes' effects on financial contracts, including dowries, and emphasizes justice and balance between the parties.

Thus, the Academy provides an advanced jurisprudential approach that considers contemporary realities and relies on principles such as istihsan (juristic preference) and maslahah (public interest), without abandoning foundational Sharia norms. This demonstrates the capacity of institutional fiqh to engage with women's issues from an economic perspective, even if not explicitly framed in gendered terms.

Implications of Marriage on the Ownership of Women

In recent years, a call has emerged in Islamic societies to establish a legal framework whereby properties acquired after marriage become jointly owned by both spouses, unless otherwise agreed upon. This demand targets civil society institutions, policymakers, and religious and judicial bodies, aiming to provide a basis for legal reforms that economically protect women. The adoption of such financial systems for spouses is considered to have Western origins. For example, the Algerian Family Code resembles the French financial system, which separates spouses' finances during marriage and allocates half of the acquired property to each spouse upon dissolution of the marriage²⁴. In contrast, Tunisian law defines joint ownership as a consensual system chosen by the spouses at the time of contracting marriage or thereafter, making real estate jointly owned whenever it pertains to family property²⁵.

Lebanese law stipulates that any property acquired during marriage is jointly owned by both spouses, while properties owned prior to marriage, inherited, or received as gifts generally remain separately owned. The Moroccan Family Code requires that each spouse

²⁴ Fatima Al-Zahraa Al-Qushayri, "The Financial Contract between Spouses in Sharia and Law," *Al-Bahith Journal for Academic Studies* 11 (2017), p. 798.

²⁵ The System of Joint Ownership between Spouses in Tunisia, Law No. 91 of 1998, dated 9 November 1998. Available at: Communaute_biens.pdf (cawtar.org).

maintain a financial estate independent of the other, which aligns with the rules of Sharia, in contrast to the French civil law, which grants spouses the choice between a system of separate estates or a unified estate²⁶.

The Academy issued a decision on this matter in 2005, regulating the financial estate between spouses. The decision stated that the wife has full legal capacity and an independent financial estate. She has absolute rights over the income she earns from her work and over her personal wealth, and the husband has no authority over her property; she does not require his consent to own or dispose of her assets. She is also entitled to full maintenance due to her, according to the husband's means and in accordance with socially and religiously acceptable norms; such maintenance is only forfeited in cases of disobedience. If the wife contributes her money or labor to the acquisition of real estate or a business project, she is entitled to ownership of that property or project in proportion to her contribution²⁷.

After reviewing studies in 2018 regarding the impact of the marriage contract on spouses' property, the International Islamic Fiqh Academy concluded that each spouse maintains an independent financial estate. Property owned by either spouse, whether acquired through the marriage contract or otherwise, is considered the personal property of that spouse and passes to their heirs upon death. The Academy further determined that if spouses mutually agree to divide their property amicably, there is no religious objection, and such division is not mandatory²⁸.

In summary, regarding ownership and financial transactions, the Academy confirmed that women have independent financial estates, granting them full legal capacity in financial matters equivalent to men; they may own property and real estate. Financial relations between spouses are governed by Sharia rules, which regulate financial matters generally. In 2019, the Academy reaffirmed that there is no distinction between men and women in terms

²⁶ *Family Code between Text and Practice through the Judicial Work of the Court of Cassation*, January 2019, Democratic Association of Moroccan Women – Advisory Body accredited to the UN Economic and Social Council (pp. 46–56). Available at: *ADFM's Research Study – Family Law – Arabic.pdf* (learningpartnership.org). Decisions of the Supreme Council, Sharia and Inheritance Chamber, Vol. 4, 2010, (5). Muhammad Al-Shafei, “The Family Code in Judicial Practice: Outcomes of Six Years of Practical Application,” *Legal Research Series 19* (Marrakech: National Printing House, 2011), p. 45. Khalid Ktari, *Judicial Application of Article 49 of the Family Code Concerning the Distribution of Acquired Property between Spouses*, published 07/02/2008.

²⁷ International Islamic Fiqh Academy, “Decision No. 144 (2/16) on Differences between a Working Husband and Wife, 16th Session (Dubai, United Arab Emirates, 9–14 April 2005).” Available at: <https://www.iifa-aifi.org/ar/2174.html>.

²⁸ International Islamic Fiqh Academy, “Decision No. 227 (11/23) on the Effect of the Marriage Contract on the Property of the Spouses,” 23rd Session (Al-Madinah al-Munawwarah, November 2018). Available at: <https://www.iifa-aifi.org/ar/4899.html>.

of human dignity and religious obligations²⁹.

The stance of the International Islamic Fiqh Academy on the issue of women's financial ownership after marriage represents a significant step toward consolidating the principle of financial equality between spouses. In its 2005 and 2018 resolutions, the Academy affirmed that women possess an independent financial estate and have full rights to own and manage their property without the need for the husband's consent. They are also entitled to ownership of any property or projects in which they contribute, in proportion to their actual participation. This position aligns with Sharia rules that recognize a woman's legal personality and her right to own property, thereby reinforcing her economic independence within the institution of marriage.

Although some legal systems in Islamic countries, such as Algeria, Tunisia, and Lebanon, have adopted models inspired by Western regulations on joint ownership, the Academy did not reject these models. Rather, it acknowledged the possibility for spouses to mutually agree on the division of acquired property, without imposing it as a binding system. This reflects a jurisprudential flexibility that considers diverse legal and social contexts while emphasizing voluntariness and fairness in marital financial relations.

Accordingly, the Academy's position represents an evolution in institutional jurisprudence toward full recognition of women's financial rights. It provides a Sharia-based discourse that can support legal reforms protecting women economically, without conflicting with Sharia principles or imposing a uniform model on all societies.

Marriage of a Muslim Woman to a Non-Muslim

This issue has emerged within Muslim communities in Western countries, where such marriages are regarded as civil contracts, with no consideration given to differences in religion. Collective jurisprudential reasoning initially addressed the matter by prohibiting this type of marriage. The Egyptian Dar al-Ifta stated on its Facebook page in November 2020 that it is not permissible for a Muslim woman to marry a non-Muslim; this ruling is considered definitive (qat'i), and its underlying reason is ta'bidi (worship-related). The statement came in response to remarks by Amina Nasir, a Member of the Egyptian

²⁹ International Islamic Fiqh Academy, "Resolution No. 233 (4/24) on Tolerance in Islam: Societal-International Necessity and Its Effects," 24th Session, Dubai (United Arab Emirates), 7–9 Rabi' al-Awwal 1440H / 4–6 November 2019. Available at: <http://www.iifa-aifi.org/5201.html>

Parliament and Professor of Creed and Philosophy at Al-Azhar University, who claimed that “there is no explicit text forbidding this marriage.” The response emphasized that this issue has been conclusively settled by the consensus (ijma ‘) of early jurists (salaf), and it is not subject to contemporary reinterpretation, nor is it dependent on changes in time, place, or social customs. “The ruling does not change by the independent reasoning (ijtihad) of an individual, even if they are a qualified jurist.” It is agreed that if a consensus from a past era is to change, it can only be through a new, valid consensus³⁰.

In 2017, Tunisian President Beji Caid Essebsi announced the formation of a committee tasked with allowing Tunisian women to marry foreigners without the latter’s conversion to Islam. He also reviewed legal provisions to ensure equality between men and women in inheritance. Many considered these initiatives to conflict with the Constitution and the Islamic identity, viewing them as a transgression of the Qur’an and explicit texts that leave no room for independent reasoning (ijtihad). This sparked widespread debate both within Tunisia and abroad. Al-Azhar intervened at the time, considering the matter highly sensitive and prohibited³¹. The Tunisian Dar al-Ifta expressed its support for Essebsi’s proposals, and the Grand Mufti of Tunisia, Othman Btikh, stated that they served the public interest. Furthermore, in July 2008, the fatwas issued during the 18th session of the “European Council for Fatwa and Research” explicitly prohibited the marriage of a Muslim woman to a non-Muslim under any circumstances, whether the man is from the People of the Book or otherwise, even if he promises not to harm her religious practice. This ruling is intended to protect her and her offspring from potential influence, intentional or unintentional, as the husband, by virtue of responsibility and guardianship, may affect them. Likewise, Islam prohibits a Muslim husband from harming his wife or forcing her to abandon her faith³².

In 1986, the International Islamic Fiqh Academy responded to an inquiry regarding the ruling on a Muslim woman marrying a non-Muslim, stating that it is prohibited by the Qur’an, Sunnah, and consensus (ijma ‘). If such a marriage occurs, it is considered null and

³⁰ Amina Nasir, “Debate in Egypt following a statement on the permissibility of a Muslim woman marrying a non-Muslim,” *Al-Anba’* [Al-Anbaa newspaper], Wednesday 18 November 2020. Available at: <https://www.alanba.com.kw/BBCNews/7376>.

³¹ Tunisian Dar al-Ifta, Preliminary Statement, 14 August 2017. Available at: https://www.facebook.com/permalink.php?story_fbid=1671712956234363&id=642700865802249.

³² European Council for Fatwa and Research, Paris, France, Fatwa No. 114 (1/18) on the Marriage of a Muslim Woman to a Non-Muslim. Available at: e-cfr.org.

void, and the legal effects associated with a valid marriage do not apply. Children born from this union are regarded as illegitimate.

The inquiry also addressed cases where a wife converted to Islam while her husband remained a non-Muslim, and she had children from him. Concern was raised about the potential harm to the children and the hope that the husband might embrace Islam if the marriage continued. Additionally, the wife feared that leaving him would prevent her from finding a Muslim husband. The Academy's response was that upon the woman's conversion and the husband's refusal to convert, the marriage is immediately annulled, making marital relations impermissible. The woman must observe the waiting period ('iddah), and if the husband converts during this period, the marriage is reinstated under the previous contract. If the waiting period expires without his conversion, the marital bond is permanently severed. Should the husband convert later and both parties' desire to resume the marriage, a new contract must be concluded. Neither good treatment (*husn al-mu'ashara*) nor the hope of the husband's conversion affects this ruling³³. Research published in the Academy's journal confirms that "the marriage of a Muslim woman to a non-Muslim is invalid and reprehensible³⁴." Even if Muslim women claim that there are no competent Muslim men available to them, or that they face the risk of moral deviation, marriage to a person from the People of the Book, a polytheist, or a Zoroastrian remains impermissible. No justification is acceptable, and any such marriage is considered null and carries no legal effect under Sharia³⁵.

The stance of the International Islamic Fiqh Academy on the issue of a Muslim woman marrying a non-Muslim is among its most consistent and strict positions. It has been unanimously agreed upon that such a marriage is prohibited by the Qur'an, Sunnah, and consensus (*ijma*), and it is considered a null contract with no legal effects of a valid marriage. The Academy has affirmed in its resolutions that this ruling is definitive, not

³³ International Islamic Fiqh Academy, "Decision No. 23 (11/3) on Answering the Questions of the International Institute of Islamic Thought (IIIT) in Washington, D.C." — 3rd Session, Amman, Jordan, 8–13 Şafar 1407H (11–16 October 1986).

³⁴ International Islamic Fiqh Academy, "Discussion: Rulings on Paper Money and Currency Value Fluctuations," *Journal of the Islamic Fiqh Academy*, Issue 3, Vol. 3 (1987), pp. 1897-1961. Available at: <https://al-maktaba.org/book/8356/2494#p1>.

³⁵ The same reference, pp. 1897-1961.

subject to contemporary *ijtihad*, and does not change with variations in time, place, or customs, even in exceptional cases such as good treatment (*husn al-mu'ashara*) or the hope that the husband might later embrace Islam.

Although some Islamic countries, such as Tunisia, have proposed legal initiatives allowing a Muslim woman to marry a non-Muslim, motivated by the principles of equality or social realities, traditional religious institutions—including Al-Azhar and the International Fiqh Academy—strongly rejected these initiatives, considering them contrary to explicit texts and the objectives of Sharia. Similarly, the European Council for Fatwa and Research affirmed that such a marriage is impermissible even with guarantees of non-harm to the wife, to protect her faith and the faith of her offspring from indirect influence.

Accordingly, the Academy's position represents a model of closed jurisprudence on women's issues, leaving no room for reconsideration despite changing legal and social contexts in Western societies. The ruling remains tied to *tabbed* (worship-related) rationale and historical consensus, without consideration for necessity, public interest, or lived reality. This raises questions regarding the capacity of collective jurisprudence to engage with the challenges faced by Muslim communities in the West, particularly amid the expansion of civil contracts that do not account for religious differences.

Innovative Marriage Contracts

The names and forms of innovative marriage contracts have varied and are subject to the oversight of Sharia rules and regulations, requiring the fulfillment of essential elements and the absence of prohibitions. For example, in a "*Misyar*" marriage, the parties mutually agree to the marriage while fulfilling the contractual conditions, but the woman may waive her rights to housing or maintenance or exempt the husband from spending nights with her. Abu El Fadl criticized the fatwa of Ibn Baz that permits *Misyar* marriages, noting that this and similar fatwas lack rigor and novelty, and exhibit selective use of evidence, while failing to address contemporary needs and public interest³⁶. On Ibn Baz's official website, he is reported to have disapproved of this marriage except under certain conditions: "If the conditions are met and it is announced, there is no objection, as far as we know," and if the woman relinquishes a right, it is also acceptable to him³⁷.

³⁶ See: Zuhur, *Speaking in God's Name*, previously cited.

³⁷ Official Website of Ibn Baz: Ruling on *Nikah al-Misyar* (binbaz.org.sa).

The Fatwas of the International Islamic Fiqh Academy in Jeddah on Personal Status Issues Related to Women: An Analytical Jurisprudential Study of the Rulings on Marriage and Divorce

The Islamic Fiqh Council in Sudan considered *Nikah al-Misyar* or “altruistic marriage” to involve “legitimate interests,” such as the preservation of honor, prevention of corruption, and serving the interests of some financially capable women for whom marriage is otherwise difficult³⁸. The Egyptian Dar al-Ifta also permitted *Misyar*, granting the woman the right to revoke this agreement by requesting maintenance and accommodation, since these rights are renewable and the agreement does not constitute a permanent waive.

It is noteworthy that the International Islamic Fiqh Academy did not explicitly mention *Misyar* marriage in its resolutions. However, in an inquiry submitted to the Academy in 1986 regarding the marriage of a student abroad, which was intended to end automatically upon his return to his home country, the Academy responded that “the default in marriage is continuity, permanence, and the establishment of a stable family unless something occurs that terminates it”³⁹. Another form is the “marriage with the intention of divorce,” in which all essential pillars and conditions of marriage are fulfilled, but the husband conceals his intention to divorce the wife after a specified period, such as completing his studies or achieving the purpose for which he married. Although some jurists have permitted this type of marriage, others have prohibited it because it involves deception and misrepresentation toward the woman or her guardian, and because it may cause harm and tarnish the reputation of Muslims. “Mut‘ah marriage” (temporary marriage) involves a man marrying a woman for a specified period in exchange for a sum of money. This type of marriage ends automatically at the expiration of the agreed period without requiring a formal divorce. It does not obligate the husband to provide maintenance (*nafaqa*), housing, or inheritance of rights between the spouses if one dies before the term concludes.

The key difference between *Mut‘ah* and *Misyar* marriage is that in *Misyar*, both parties are fully aware of the contract’s conditions and duration. If the intention to terminate the marriage is removed, the *Misyar* marriage remains valid under Islamic law.

³⁸ Sudanese Islamic Fiqh Council. (2014, December 7). Ruling on *al-Ithar* marriage. Sudan – Fatwas. https://www.facebook.com/aoif.gov.sd/posts/406308236191004?comment_tracking=%7B%22tn%22%3A%22O%22%7D.

³⁹ Resolution No. 23 (11/3) concerning inquiries submitted by the International Institute of Islamic Thought in Washington, during the third conference session in Amman, Jordan, October 1986: <https://www.iifa-aifi.org/ar/1686.html>; see *Journal of the International Islamic Fiqh Academy*, Issue 2, Part 1 (1986), p. 199, and Issue 3, Part 2 (1987), p. 1087.

The Misyar contract fulfills all the essential legal pillars of marriage (*arkan*), but the woman waives her rights to housing and maintenance.

The Jordanian Fatwa Department has declared *Mut'ah* marriage prohibited (*haram*) because its prohibition is established by strong, continuous evidence⁴⁰. According to the International Islamic Fiqh Academy's journal research, *Mut'ah* is valid only if the duration is explicitly disclosed to the woman. If the husband keeps the duration secret and the woman or her guardian learns of it later, it does not affect the contract's validity.

There is also the "customary marriage" ('urfi marriage), which some jurists have invalidated, while others have permitted certain forms of it. In one version, the man writes a paper acknowledging the woman as his wife, two witnesses attest to it, and two copies are made—one for the man and one for the woman—while giving her a sum of money, all without the involvement of a guardian or public announcement. The legally permissible form of this type resembles a regular marriage but is not officially registered with the competent authorities. Some jurists prohibit it due to potential problems arising from its lack of official registration. Additionally, there is the "temporary marriage with reproduction," which is a contract that fulfills all the essential pillars and conditions, except that one of the parties stipulates that if the woman bears a child, she will be divorced. This form of marriage is considered invalid by many jurists.

In 1988, the International Islamic Fiqh Academy stated that one of the objectives of marriage in Islam is procreation and the preservation of the human species. Undermining this objective contradicts the directives of Sharia, which seek to protect and multiply offspring, as it is considered one of the five fundamental purposes (*al-kulliyāt al-khams*) that Sharia aims to safeguard. Consequently, it was determined that no law may be enacted to restrict either spouse's freedom to procreate or to eliminate one's reproductive capacity unless a necessity justified by Sharia criteria exists. Temporary control over procreation is permitted for the purpose of spacing pregnancies or for a Sharia-compliant need, if it is

⁴⁰ Jordanian Fatwa Department. (2012, July 25). Ruling on *Mut'ah* marriage, Fatwa No. 2418. From the Encyclopedia of Past Jurists. Fatwas by Sheikh Nuh Ali Salman (Personal Status Fatwas, Fatwa No. 24). Retrieved from <https://www.aliftaa.jo/Question.aspx?QuestionId=2418#.YZIESNBBzIV>

done with the mutual consultation and consent of the spouses, does not result in harm, employs a lawful method, and does not affect an existing pregnancy⁴¹.

Considering the diversity of newly developed marriage contracts, contemporary Islamic jurisprudence exhibits varied positions, as these contracts are subject to Shariah oversight to ensure the fulfillment of essential pillars and the absence of prohibitions. The International Islamic Fiqh Academy has partially endorsed some forms without issuing a comprehensive position, highlighting the need for collective ijihad to reassess these contracts in accordance with the objectives of Shariah and the interests of women and families.

Mut‘a marriages have been permitted by some authorities due to the benefits they offer to certain women, whereas contracts such as “marriage with the intent to divorce,” mut‘a, and “temporary marriage for procreation” have faced jurisprudential reservations because they involve deception or violate the objectives of marriage, such as permanence and procreation. The Academy’s position demonstrates a commitment to regulating these contracts within a Shariah framework, yet there remains a need to develop a comprehensive jurisprudential vision that considers social realities and serves the public interest without compromising Shariah principles.

Polygamy

The issue of polygamy has long remained at the forefront of debates in the Islamic world. It has posed a significant challenge to the slow pace of jurisprudential reform in some Muslim-majority countries. Developments in family law in certain Islamic countries have aimed at regulating this practice by placing it under judicial supervision. Some countries have prohibited polygamy entirely, while others have permitted it according to the general conditions set forth in Islamic law. In more developed jurisdictions, judges are required not to authorize a marriage contract in cases of polygamy unless certain conditions are met.

Some non-Arab Islamic countries have further expanded the criteria that a judge must verify, in addition to ensuring equality among wives and the financial capacity to support

⁴¹ Resolution No. 39 (5/1) on Family Planning, Fifth Session of the Conference, Kuwait, December 1988: <https://www.iifa-aifi.org/ar/1746.html>

them. For instance, Turkish law does not allow a man to be married to more than one wife at the same time and stipulates a penalty for violating this rule⁴². The issue generated extensive controversy when the ruling Justice and Development Party submitted a bill to the parliament proposing amendments to the existing marriage law, which the opposition viewed as a violation of the “secularity of the state” and considered polygamy a criminal offense⁴³.

In Tunisia, social and political transformations have established a new reality, particularly following the report presented by the “Committee on Individual Rights, Liberties, and Equality” launched by President Beji Caid Essebsi, which declared the prohibition of polygamy and affirmed the equality of women and men in social rights. This was preceded by the first President of Tunisia after independence, Habib Bourguiba, who reflected his vision in the Code of Personal Status in 1957, which included the issue of polygamy. At that time, some jurists went as far as excommunicating in Bourguiba. Later, President Zine El Abidine Ben Ali refrained from formally endorsing the proposal, considering the topic highly contentious. Following the state fragility after the January Revolution, pressure on the Tunisian government resurfaced.

In Morocco, the Family Code imposes stringent conditions on those seeking polygamy, approaching a near-prohibition, such as requiring written consent from the first wife. Algeria recently amended its Family Code, making polygamous marriage more difficult, requiring the consent of the first and second wives, along with a valid Sharia-based justification. In Malaysia, several factors are considered before permitting polygamy.

Research published in the International Fiqh Academy Journal justified the permissibility of polygamy as a measure to address improper social circumstances, noting that Islam prohibits polygamy in cases where justice cannot be ensured. Polygamy is limited to four wives, and each wife retains the right to seek judicial intervention if justice

⁴² Polygamy was officially abolished in Turkey in 1926. Therefore, a marriage cannot be contracted until the first marriage has ended, and it is necessary to provide official documents proving this. Among the required documents for completing a marriage is an important certificate referred to as the "Certificate of Singleness," the "Marriage Eligibility Certificate," or the "Proof of Civil Status" document. (Marriage Laws in Turkey, available at Turkey for Arabs: turkeyforarabs.com).

⁴³ UNHCR Turkey. (2023). Marriage and divorce in Turkey. Ankara/Istanbul: United Nations High Commissioner for Refugees. Retrieved from <https://help.unhcr.org/turkey/ar/social-economic-and-civil-matters/marriage-and-divorce/>

is not maintained⁴⁴. In 2009, the International Fiqh Academy emphasized that polygamy must be based on the principle of fairness⁴⁵.

Considering the ongoing debate surrounding polygyny, the jurisprudential and legal reality in the Islamic world shows a clear divergence among countries and religious institutions. Some states have moved to regulate polygyny by placing it under judicial oversight, while others, such as Turkey and Tunisia, have entirely prohibited it for social or political reasons. Countries like Morocco, Algeria, and Malaysia have imposed strict conditions that make polygyny practically very difficult, such as requiring the consent of the first wife, a valid Sharia-based justification, and financial capacity.

On the other hand, the International Islamic Fiqh Academy, in its resolutions, affirmed that the permissibility of polygyny is conditional upon justice, and it is not lawful if this condition is not met. It also recognized the right of the wife to appeal to the courts in cases of injustice. Although the Academy did not prohibit polygyny outright, it tied the practice to the objectives of Sharia, considering it a means to address certain social circumstances rather than an end.

Accordingly, the Academy's position reflects a balance between conditional permissibility and practical restriction. However, it still requires the development of a jurisprudential perspective that accounts for contemporary social transformations and provides collective ijihad that re-evaluates polygyny from the standpoint of justice and family welfare.

Domestic Violence

The enactment of laws addressing women's need for protection from domestic violence should not conflict with religious principles, as all religions unanimously condemn such abuse. However, religious legislation alone cannot regulate punitive measures, since it lacks enforcement powers. Just as secular laws do not negate the role of religious institutions in awareness-raising and education; legal frameworks address the factual and procedural aspects of domestic violence cases.

⁴⁴ Ghnaim, M. N. (1992). Methods of intellectual invasion: Attacking the Qur'an. *Journal of the International Islamic Fiqh Academy*, 7(4), 505–608. <https://al-maktaba.org/book/8356/15407#p2>.

⁴⁵ Resolution No. 125 (8/13) on Human Rights in Islam, at the 13th session of the conference in Kuwait, December 2001: <https://iifa-aifi.org/ar/2107.html>

Crimes such as honor killings represent serious violations of human rights. There is considerable variation in penal codes across the Islamic world, with punishments often disproportionate to the severity of the crime. This necessitates intervention by religious institutions to reinterpret laws and redefine the concept of honor, in accordance with resolutions issued by Islamic fiqh academies.

In the context of enacting laws to regulate marital relations, for example, the Muslim Brotherhood in Jordan has maintained a position opposing equal rights in the personal status law. Meanwhile, nationalist movements advocated equal rights for women but failed to achieve political or social gains due to the entrenched structures of conservative ideological powers.

By contrast, success was achieved in reforming the Law on Protection from Domestic Violence and the Penal Code, including the repeal of the controversial article allowing a rapist to marry his victim, through royal support in response to women's movements and international obligations. The central challenge for reformist Muslims remains that traditional interpretations constrain reform. Any non-traditional, reformist interpretation is often regarded as less authentic and less legitimate⁴⁶.

In April 2009, the International Islamic Fiqh Academy defined "prohibited" domestic violence as any physical or moral aggression among family members through words or actions. However, the Academy clarified that the following do **not** fall under domestic violence: divorce, polygyny, guardianship, preventing a wife from traveling alone without her husband's permission, the lawful rights of spouses when one party lacks desire, guardianship over a virgin daughter in marriage, the shares of inheritance and wills as determined by Sharia, limiting a woman's role to motherhood and household care, and resolving marital disputes related to a wife's disobedience or departure from marital duties.

Conversely, the Academy regulated the rules of marital intimacy and called on legislative authorities to enact laws criminalizing all forms of family violence, considering it prohibited by Sharia. The Academy limited the enforcement authority to competent judicial bodies and emphasized addressing domestic violence while avoiding verbal abuse or humiliation. It instructed that a wife should be treated according to the Sharia-sanctioned method: beginning with admonition, then separation (abandonment), and

⁴⁶ Al-Salti Al-Tal, S. (2014). The history of the Jordanian women's movement from 1944 to 2008. Amman: Azmina Publishing and Distribution. p. 118.

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finally, if necessary, light, non-injurious physical discipline as a warning rather than action. The Academy noted that even this light discipline contradicts the prophetic guidance, based on the saying, *“The best of you is those who refrain from striking their wives.”* and following the Prophet’s example, who never struck a woman.

The Academy also recommended involving mediators when marital disputes escalate, adhering to the Sharia-prescribed forms of divorce (revocable, irrevocable—major or minor—and the timing of pronouncements), and regarded divorce as one of the most disliked lawful acts. The same resolution emphasized religious education, social upbringing, family-building, cooperation, compassion, proper marital conduct, and the use of dialogue to resolve family issues.

The Academy called on official institutions to organize awareness campaigns for families about the dangers of domestic violence, guide media messaging, and coordinate among relevant ministries and departments to adopt a unified policy that does not contradict religious principles. It urged Islamic countries to present all international agreements and draft laws concerning women and children to scholars before ratification and to reject provisions that conflict with Sharia, respecting the cultural particularities of Islam. The Academy rejected measures that abolish gender-specific societal roles, enforce complete equality in inheritance, undermine the Sharia system of divorce and guardianship, or permit violations of Sharia such as same-sex marriage, extramarital sexual relations, or prohibited forms of gender mixing.

Finally, the Academy called for the formation of a committee to draft a codified set of rights and duties for family members, from which a family law aligned with Islamic Sharia could be developed⁴⁷.

The issue of wife-beating is a phenomenon present in the laws of most Islamic countries and often derives its roots from religion and the traditional interpretation of verse 4:34 of the Qur’an: *“Wa adriboohunna”*. This interpretation holds that a husband’s right to discipline his wife, including striking her or separating from her (hajr), is legally and religiously sanctioned as part of marital discipline. Such practices, however, conflict with human rights and universal ethical values. Some Islamic countries punish wife-beating

⁴⁷ International Islamic Fiqh Academy. (2009, April). Resolution No. 180 (6/19) on Domestic Violence (19th Session, Sharjah, UAE). Retrieved from <https://www.iifa-aifi.org/ar/2304.html>.

only when it results in severe harm, and in certain contexts, the enactment of laws prohibiting wife-beating is perceived as appealing Western norms. Conversely, other Islamic countries completely forbid the beating of wives, asserting that such acts are not intrinsic to the religion. Typically, wives refrain from reporting abuse to preserve the marital relationship and because the act of beating is often regarded as legitimate within the marital framework⁴⁸. It was stated at an expert-level symposium in the Tehran Declaration on the Role of Women in the Development of Islamic Society, April 1995, implemented in accordance with the resolutions of the Sixth and Seventh Islamic Summit Conferences held in Dakar, Senegal, and Casablanca, Morocco. The declaration called for alleviating the suffering of women and vulnerable groups who are victims of armed conflicts, foreign occupation, poverty, economic pressures, and sanctions⁴⁹.

Conclusion

This study highlights the significance of the fatwas issued by the International Islamic Fiqh Academy in the field of women's personal status, serving as a reflection of contemporary jurisprudential efforts to reconcile Sharia texts with the demands of reality. The fatwas under examination demonstrate a commitment to balancing religious constants with emerging social developments, addressing issues such as marriage, divorce, alimony, custody, and guardianship, while considering the interests of women, families, and society.

The Academy's positions have been characterized by flexibility and openness to *ijtihad*, while remaining committed to the objectives (*maqasid*) of Sharia, particularly in matters such as *khul'* (judicial divorce initiated by the wife), *tafriq li-darar* (separation due to harm), alimony, and domestic violence. The Academy has also shown a growing

⁴⁸ In Iraq, for example, a husband is legally entitled to "discipline his wife" under Article 41 of the Penal Code No. 111. In the United Arab Emirates, until 2016, a husband was permitted to strike his wife for disciplinary purposes, as stipulated in the Federal Penal Code of 1987, which states: "No crime shall be deemed committed if the act was done with a legitimate intention, exercising a right established by law and within the scope of that right. The disciplining of the wife by the husband is considered an exercise of this right" (Article 53). In Egypt, the law implicitly allows the disciplining of a wife, as Article 60 of the Penal Code provides: "The provisions of this law do not apply to anyone who acts with a legitimate intention in exercising a right established by Sharia." Human rights organizations have called for a review and reform of these provisions.

⁴⁹ Karīm, Ṣ. ' (1997). *Al-Istinsākh: Taqniyyah, Fawā'id, wa Makhāṭir* [Cloning: Technology, Benefits, and Risks]. *Journal of the International Islamic Fiqh Academy*, 10(3), 271-311. <https://al-maktaba.org/book/8356/21157#p1>

awareness of social justice and the need to protect women from marginalization or exclusion, without compromising Sharia guidelines.

Nevertheless, the study points to certain gaps in jurisprudential application, especially regarding *nushuz* (marital disobedience), claims of obedience, and restrictions on women's guardianship and financial autonomy. These gaps necessitate a broader review of the classical jurisprudential heritage and the development of legislative and judicial mechanisms that ensure fairness while accommodating societal transformations.

As this study emphasizes, contemporary jurisprudential *ijtihad* is not a mere intellectual luxury but a religious and social necessity. It enables the construction of a cohesive family system that ensures justice and equality, preserves women's dignity, and contributes to the stability of the Islamic society. Therefore, continued analytical research on the positions of jurisprudential councils constitutes a crucial step toward the development of Islamic jurisprudence, providing a comprehensive framework for policymakers and scholars, and fostering a more just and equitable future for women and families.

The International Islamic Fiqh Academy has used the term “**contemporary activation**” to indicate its orientation toward modernity, incorporating certain foundational principles such as public interest (*maṣlahah*), the removal of harm (*daf' al-ḍarar*), and the principle that harm must be eliminated. For instance, if a marital relationship ends and the wife suffers harm as a result, she is entitled to *mut'ah* (compensation) after divorce. Statistics across the Islamic world have shown an increase in cases of harm to wives due to economic conditions and the ignorance of some husbands regarding the meanings of Qur'anic verses related to authority (*qiwāmah*), striking, and discipline.

In Malaysia, for example, an affected wife may seek redress through either a Shariah or civil court. A comparison of the penalties issued by these courts shows that civil law generally imposes stricter and more deterrent punishments than those of Shariah courts. This occurs despite efforts by religious authorities to mitigate harm in accordance with the jurisprudential maxim that harm must be removed (*al-ḍarar yuzāl shari'an*)⁵⁰.

⁵⁰ Hafsa Haji Sama & Ms. Ziri Sitris. (2017). *Harm to the Wife in Selangor: A Study in Light of Islamic Jurisprudence*. Kuala Lumpur: International Islamic University Malaysia Press & IIUM Press.

In Lebanon, the Lebanese Dar al-Fatwa⁵¹, Shaykh Muhammad Rashid Qabbani, and several jurists and Shariah judges—including the dean of the Faculty of Shariah at Beirut Islamic University—opposed the “**Law on the Protection of Women from Domestic Violence**”, which had been proposed by women’s associations, lawyers, and forensic doctors and was approved by the Cabinet in 2010. The law fell under the Penal Code rather than the Personal Status system, which is managed by various religious communities in Lebanon. The Dar al-Fatwa criticized the law for allegedly harming women by restricting their access to Shariah courts and for including provisions deemed contrary to Islamic law, claiming it was derived from secular legislation. They argued that referring women’s complaints to public prosecution could dismantle the family rather than resolve conflicts through reconciliation and consent. The law also introduced what were considered new offenses, such as “husband’s rape of his wife” (*ibtidā‘ junāyah jadīdah*)⁵².

This position aligns with statements by the International Islamic Fiqh Academy, which clarified that it is not considered domestic violence to exercise one’s legitimate marital rights in the absence of desire by either spouse, when done for the purpose of chastity and safeguarding marital fidelity⁵³.

It is evident from the examination of domestic violence that the International Islamic Fiqh Academy recognizes its prohibition under Sharia and defines it as physical or psychological abuse within the family. However, it excludes from this definition certain practices considered legitimate rights, such as guardianship (*qiwamah*), divorce, polygyny, and parental authority (*wilayah*), which raises debate regarding the boundaries of permissible violence under Sharia. While the Academy calls for the criminalization of forms of domestic violence, it does not categorize non-severe physical discipline as violence, considering it merely a warning rather than an act, based on a traditional understanding of the Qur’anic verse “*Wa adriboohunna*” (Q. 4:34), a stance criticized by human rights advocates as legitimizing harm.

The Academy’s position also reflects an effort to reconcile modernity with Islamic principles, as evidenced by its call to establish a family code and its emphasis on education and dialogue. Nonetheless, it rejects international agreements that conflict with Sharia,

⁵¹ Dar al-Fatwa Lebanon. Retrieved from <https://www.darelfatwa.gov.lb>.

⁵² Kabbara Sha’rani, A. (2011, August 4). [Article on women and Islam]. *As-Safir*. Retrieved from <http://assafir.com/Article/246567>.

⁵³ Resolution No. 180 (6/19) on Domestic Violence: International Islamic Fiqh Academy, 19th Session, Sharjah, United Arab Emirates, April 2009. Retrieved from <https://www.iifa-aifi.org/ar/2304.html>

such as full inheritance of equality or the elimination of gender-based distinctions. Legal experiences in countries such as Malaysia and Lebanon demonstrate a divergence in handling domestic violence, where civil law penalties are generally more stringent than those imposed by Sharia courts, alongside religious reservations regarding laws derived from secular systems.

Therefore, the Academy's stance indicates an intention to regulate domestic violence within a Sharia framework, yet it still requires a review of its traditional interpretations of certain texts and the development of *ijtihad* that respects women's dignity and strengthens their actual legal protection.

Second: Divorce Legislation and Women-Related Issues in the Academy's Fatwas

Divorce laws in the Arab and Islamic world reflect a bias against women, as the authority to initiate divorce is largely confined to the husband, often occurring against the wife's will and without her consent. These societies have also become patriarchal due to traditions dominating the core of religion. Men frequently wield divorce as a weapon against women. Research published in the *International Islamic Fiqh Academy Journal* justified the husband's exclusive right to pronounce divorce by noting that women are entitled to the marital dower (*mahr*); consequently, annulment of the contract by the wife would result in harm to the husband⁵⁴.

Islam has made divorce a last resort and the least desirable solution, to be considered only when married life becomes unbearable due to conflicts between spouses. In some cases, divorce may even become necessary for the well-being of the family, under carefully regulated and detailed rules. The rights and obligations of both parties in divorce are clearly defined and can be divided into two categories: financial and non-financial. Decisions are made regarding the dower (*mahr*) and living arrangements during marital disputes. The husband is obligated to provide maintenance (*nafaqa*) in the case of

⁵⁴ Ghanaim, *Methods of Intellectual Invasion: Criticism of the Qur'an*, previously cited; Taher Ahmad Moulana Jamal al-Layl, "Human Rights in Islam," *Journal of the International Islamic Fiqh Academy*, Issue 13, Part 1 (2001), 379–439: <https://al-maktaba.org/book/8356/24645>.

revocable divorce (*ṭalāq raj'ī*) if the wife fulfills her duties, and he must pay maintenance to a pregnant wife in the case of irrevocable divorce (*ṭalāq bā'in*)⁵⁵.

The Sharia prohibits divorce that occurs without necessity if it causes harm to the wife and children; such prohibited acts are considered sinful. The ruling of prohibition or permissibility depends on the presence or absence of the cause of injustice. There are cases where a husband divorces his wife without granting her *mut'ah* (financial entitlement) or maintenance, leaving the children dependent. Research published in the *Majallat al-Majma'* (Journal of the Islamic Fiqh Academy) states: "The spouses must exercise patience and consult each other; if there is a fear of harm to honor, divorce should be legislated with benevolence⁵⁶."

The principle of *holding with kindness (al-imsāk bil-ma'rūf)* and *releasing with goodness (al-tasrīḥ bil-iḥsān)* is intended as guidance, i.e., in accordance with customary rights that do not contradict Sharia, such as fair treatment during marital relations and amicable separation. If the guardian (*walī*) observes that there is no mutual consent between the spouses and that reconciliation would lead to corruption, he may prevent his ward from proceeding out of concern for her welfare. However, if the spouses mutually agree, he has no right to prevent them⁵⁷. This ruling is distinguished by its reliance on customary practice (*'urf*) in determining rulings; otherwise, it would contradict the Qur'anic injunction of holding with kindness (*al-imsāk bil-ma'rūf*) and the duty of justice⁵⁸.

The International Islamic Fiqh Academy, after discussions, weighing of evidence, and consideration of proofs regarding the promotion of benefits and prevention of harms, ruled that both spouses have the right to separation. This is based on the principle that the evidence "commands the preservation of wealth and forbid the unlawful consumption of others' property." Anyone who does not grant both spouses the right to annul the marriage or seek separation due to defects after the contract would be responsible for causing a loss

⁵⁵ Supinder Kaur, "Muslim Women's Rights in Divorce in Islamic Jurisprudence and Iranian Law: An Analysis," *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 22, no. 9 (2017): 80–85.

⁵⁶ Harun Khalif Jili, "How to Combat Moral Corruption," *Majallat al-Majma' al-Fiqhi al-Islami* [Journal of the Islamic Fiqh Academy], Issue 4, Vol. 3 (1988), 2357–2458: <https://al-maktaba.org/book/8356/8285>.

⁵⁷ Al-Ahzab 33:49: *Fa-matti'oo-hunna wa-sarrihuhunna sarahan jameelan* At-Talaq 65:5: *Fa-itha balaghna ajalahunna fa-amsikoohunna bima'rufin aw fareeqoohunna bima'rufin*.

⁵⁸ Juait, "Al-'Urf", previously cited reference.

of their property, in violation of the overarching principles that prohibit harm, such as the rule “*harm must be removed.*”

The Academy further established that granting the healthy spouse the right to separate may cause harm to the other, following principles such as: “*harm is removed by lighter harm,*” “*the greater harm is prevented by the lesser harm,*” and “*when two harms conflict, the greater harm is avoided by allowing the lesser.*” The private harm may be endured to prevent public harm.

Remaining together when one spouse is healthy and the other is afflicted with disease poses unbearable hardship for the spouses, the family, and society. Therefore, preventing harm takes precedence over attaining benefits. Even if one spouse has a legitimate interest, if it entails harm to the other, preventing the harm is prioritized over realizing the benefit⁵⁹.

The Islamic Fiqh Academy journal stated that divorce (ṭalāq) dissolves the marriage contract through the utterance of divorce or similar expressions⁶⁰. In such cases, the wife is entitled to the dower (mahr) and *mut‘a* (consolatory gift) during the waiting period (‘iddah) if the divorce occurs after consummation. If she is divorced before consummation, she is entitled to half of the specified mahr; if no mahr was specified, she is entitled to *mut‘a*. In the case of annulment due to a defect known to the husband before consummation, the husband owes neither half of the mahr nor *mut‘a*. If the defect is discovered after consummation, the wife is entitled to the full mahr corresponding to what she was touched with, and the guardian who deceived her must reimburse the husband for any mahr paid. The mahr after consummation is fixed regardless of whether the defect lies in it or in her.

The Academy further ruled that either spouse may request separation if the husband is infected with HIV/AIDS, considering it a contagious disease transmitted through sexual contact. In this ruling, the Academy followed the view of many jurists—Shafi‘is, Hanbalis,

⁵⁹ Thubaiti, Saud bin Mas‘ad. (Previous reference). *HIV/AIDS: Rulings and the Patient’s Family and Social Relations*. Al-Majalla, Issue 8, 1330. <https://al-maktaba.org/book/8356/16990>.

⁶⁰ Al-Baqarah 2:236–237: “*La junaha ‘alaykum in tallaqtumu an-nisaa ma lam tamassuhunna aw tafriiduu lahunna faridatan wa matti‘uhunna ‘ala al-muwsi‘i qadruhu wa ‘ala al-muqtirri qadruhu mata’an bil-ma’ruufi haqqan ‘ala al-muhsineen; wa in tallaqtumuuhunna min qabli an tamassuhunna wa qad faradtum lahunna faridatan fansifu ma faradtum illa nan ya’fuwna aw ya’fu alladhi biyadihi ‘uqdatun-nikah; wa an ta’fuu aqrabu littaqwa; wa la tansaw al-fadla baynakum; inna Allaha bima ta’maloon baseer.*”

and Malikis—without delving into the intricate jurisprudential details of the case, postponing further discussion to its ninth session⁶¹.

It is evident that divorce laws in the Arab and Islamic world tend to discriminate against women, as the right to initiate divorce is often monopolized by the husband and sometimes exercised arbitrarily. Although Islam considers divorce a last resort, legislative realities do not always adhere to this guidance. The International Islamic Fiqh Academy has affirmed that divorce should occur only when necessary and with fairness, considering both financial and non-financial rights of the parties. It also permits either spouse to request separation in cases of harm. Despite this relative progress, the Academy still requires broader review to ensure justice, the dignity of women, and their autonomy.

Khula‘ and Spousal Separation

Views on consensual divorce and khula‘ have varied, as has the so-called arbitrary divorce. These forms of divorce are considered legal reforms that have allowed women to negotiate using financial compensation and access the courts to resolve marital disputes. Some critics opposed khula‘, arguing that some women exploit it unjustly. Others viewed it as a legitimate Islamic solution for women who have been wronged. The rise of khula‘ in recent times has been attributed to women’s economic independence and their increasing liberation from male control.

Algerian and Pakistani Legal Approaches to Khula‘

The Algerian Family Code stipulates: “*A wife may seek khula‘ from her husband in exchange for an agreed-upon sum of money...*” However, it did not specify the legal nature of khula‘, which caused inconsistencies in judicial interpretation. The prevailing view initially held that a wife could not request separation via khula‘ without the husband’s explicit consent, considering it a consensual contract. Following a 1996 decision, the Supreme Court established that a wife’s request for khula‘ does **not** require the husband’s approval, aligning with opinions in Islamic jurisprudence⁶².

⁶¹ Bar, *AIDS wa Mashakiluh al-Ijtima‘iyya wa al-Fiqhiyya*, previously cited reference.

⁶² Rabeḥ Ibn Gharib, “Aḥkām al-Khul‘ fī Qānūn al-Usra al-Jazā’iriyya: Dirāsa Muqārana bi-Qawānīn al-Duwal al-‘Arabiyya wa al-Sharī‘a al-Islāmiyya,” *Tārīkh al-‘Ulūm* 7 (2017): 81. <https://www.asjp.cerist.dz/en/downArticle/348/4/7/12602>.

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In Pakistan, the judiciary employed methodological tools that went beyond classical forms to justify expanding women's rights to obtain divorce under Sharia, including techniques such as *takhrīj* (derivation), *talfīq* (synthesis), and *takhyīr* (selection). The courts adopted historical-comparative jurisprudential research to analyze the evolution of women's rights to judicial khul' without the husband's consent, comparing this with legal developments in other Muslim-majority countries and considering Sharia-based legal reforms⁶³.

The International Islamic Fiqh Academy has permitted the dissolution of the marital bond through divorce in cases where the continuation of the marriage results in discord, "such as through khul' and redemption (iftidā')⁶⁴." Research in the Academy's journal notes that scholars differ on the nature of khul': the majority hold that it constitutes a form of divorce, while others consider it an annulment (fasakh). This distinction carries implications in various jurisprudential matters—for instance, those who view khul' as divorce consider that it reduces the number of allowed divorces (ṭalāq), whereas those who consider it an annulment hold that it does not count against the total, even if the woman undergoes khul' a hundred times⁶⁵. The journal also states: "The husband may divorce his wife, and the wife may initiate khul'⁶⁶."

This position was discussed in the context of marital separation due to HIV/AIDS in the Sixth Medical-Jurisprudential Seminar organized by the International Organization for Medical Sciences in collaboration with the Academy and the World Health Organization in Kuwait, December 1993, in which both jurists and physicians participated⁶⁷.

According to Saud Al-Thubaiti's research, three jurisprudential opinions emerged regarding marital separation. The Zahiri position holds that separation is impermissible under any circumstances, whether the disease existed before marriage or developed afterward, although khul' is allowed as an exception. The Hanafi position maintains that the husband retains the right of divorce (al- 'isma), while the wife does not have the right to

⁶³ See: Abbasi, *Judicial Ijtihad as a Tool for Legal Reform*, previously cited, 386–387.

⁶⁴ Al-'Uthmānī, *Al-Akhdh bi-al-Rukhs al-Shar'iyya wa Hukmuh*, previously cited.

⁶⁵ Bin Bayyah, *Subul al-Istifāda min al-Nawāzil: Fatāwā*, previously cited.

⁶⁶ Al-Bār, *Al-'Aydz wa Mashākiluh al-Ijtimā'iyya wa al-Fiqhiyya*, previously cited.

⁶⁷ Al-'Abbādī, *Dawr Majma' al-Fiqh al-Islāmī al-Dawlī fī al-Binā' al-Fikrī wa al-'Amālī lil-Umma*, previously cited.

initiate divorce but may request separation through a judge. The majority opinion (jūmhūr) distinguishes between defects and illnesses that justify annulment, categorizing them into those existing prior to marriage and those arising afterward, each carrying its own legal implications⁶⁸.

The recommendations issued by the International Fiqh Academy following this discussion, in its 1993 resolution on acquired immunodeficiency syndrome (AIDS), granted the right of annulment to the spouse of an HIV-positive partner⁶⁹. In 1995, a subsequent resolution established that the infection can be transmitted through sexual contact, contaminated blood, or from an infected mother to her child during pregnancy or childbirth. The issue of marital relations in cases of HIV infection was postponed for further study⁷⁰. Based on these findings, the healthy spouse has the right to request separation from the infected partner. In 2009, the Academy issued a resolution affirming that divorce, when conducted according to its defined Shariah guidelines, does not constitute violence or discrimination from an Islamic perspective⁷¹.

In 2018, the International Islamic Fiqh Academy affirmed that if a marital relationship ends by divorce, repudiation (talāq), or khul‘and causes harm to the wife, she has the right to claim compensation for the damages incurred⁷². This contemporary activation grants the right to *mut‘ah* (financial entitlement) after divorce. The resolution also called for the establishment of governmental and non-governmental institutions to support and meet the needs of divorced women. The Academy recognized that khul‘and the dowry are contracts in which penalties may apply in case of delay. This decision reflects a new direction in favor of women⁷³.

⁶⁸ Al-Bār, *Al-’Idz wa Mashākiluh al-Ijtimā’iyya wa al-Fiqhiyya*, previously cited.

⁶⁹ Decision No. 82 (13/8) on Acquired Immunodeficiency Syndrome (AIDS). *Journal of the International Islamic Fiqh Academy*, 9(4), 693–698 (1996). Retrieved from <https://al-maktaba.org/book/8356/19599#p1>.

⁷⁰ International Islamic Fiqh Academy. (1995, April). Decision No. 90 (7/9) – Acquired Immunodeficiency Syndrome (AIDS) and the Shariah-rulings related to it (9th Session, Abu Dhabi, UAE). Retrieved from <https://www.iifa-aifi.org/ar/1978.html>.

⁷¹ International Islamic Fiqh Academy. (2009, April). *Resolution No. 180 (6/19) on Domestic Violence* (19th Session, Sharjah, United Arab Emirates, 26–30 April 2009). Retrieved from <https://www.iifa-aifi.org/ar/2304.html>.

⁷² International Islamic Fiqh Academy. (2018, November 11). *Resolution No. 227 (11/23): On the Marriage Contract’s Impacts on Spouses’ Ownership* (23rd Session, al-Madinah al-Munawwarah). Retrieved from <https://www.iifa-aifi.org/ar/4899.html>

⁷³ Al-Bār, *Al-AIDS wa Mashākiluh al-Ijtimā’iyyah wa al-Fiqhiyyah* [AIDS and Its Social and Jurisprudential Issues], previously cited.

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The discussion of khul‘and marital separation shows a diversity of jurisprudential and legal positions. Khul‘is viewed as a legitimate instrument that allows a woman to end the marital relationship in cases of harm, despite some scholars’ reservations about women potentially abusing this option. Legislation in some countries, such as Algeria and Pakistan, has evolved to grant women the right to khul‘without requiring the husband’s consent, based on flexible jurisprudential reasoning.

The International Islamic Fiqh Academy has affirmed the legitimacy of khul‘and *fidā’* (redemption) as solutions for ending marriage in cases of incompatibility, while scholars differ on its legal nature-whether it constitutes a divorce or annulment. The Academy also affirmed the right of either spouse to seek separation in cases of contagious diseases such as HIV/AIDS and emphasized that divorce, when conducted according to its prescribed regulations, does not constitute domestic violence or discrimination. In 2018, the Academy further recognized a woman’s right to compensation in the event of divorce or khul‘if harm occurs and encouraged the establishment of institutions to care for divorced women, representing a contemporary approach supporting women’s rights.

The issue of separation due to the husband’s absence and inability to provide maintenance has been subject to differing opinions among scholars. Some hold that a wife whose husband is unable to provide maintenance does not have the right to request separation, while others permit it. If the husband is absent for a long period and leaves no money for her to spend, the wife’s right to seek separation is not based on maintenance per se, but rather on the prolonged absence itself.

The International Islamic Fiqh Academy authorized the judge to annul the marriage contract of a woman whose husband is absent, as a measure to prevent potential harm or social discord. According to Maliki jurisprudence, if a man is absent and his wife remains awaiting his return, she may petition the judge for separation. The judge may then require her to wait up to four years after the request, possibly in addition to any prior waiting period. However, the judge has discretion to act based on what seems appropriate, considering the woman’s youth and the social environment. The Academy emphasized that

applying these principles without proper jurisprudential awareness could lead to misuse and harmful consequences, which must be guarded against⁷⁴.

If a husband leaves his wife for an extended period, this results in the neglect of her rights, which is sinful. A woman who suffers due to her husband's absence and fears falling into immorality has the right to demand his return or request a divorce; if he refuses, she may turn to a judge. Regarding this issue, Ibn Baz stated: "A believer should strive not to prolong absence, for the woman is a responsibility and a potential danger, so he must take care of his wife and it is not proper for the absence to be prolonged⁷⁵." If the disappearance continues for a long period, the Sharia judge determines a waiting period, and if the husband does not return within that time, the judge may rule him deceased.

The International Islamic Fiqh Academy of the Muslim World League stated that the determination of the waiting period for a missing husband is left to the judge, provided it is no less than one year and no more than four years from the date of disappearance⁷⁶. The judge may use contemporary methods of investigation and communication, consider the circumstances of each case, and rule according to what he considers most probable. Since the matter lacks a definitive textual ruling, jurists have differed on specifying this period.

From the discussion on separation due to a husband's absence or inability to provide maintenance, jurists have differed on granting the wife the right to request dissolution of the marriage, especially in cases of prolonged absence or incapacity. The International Islamic Fiqh Academy approved that the judge may annul the marriage contract in the event of a long absence, as a measure to prevent harm, while considering the circumstances of the wife and potential social corruption. It emphasized that leaving the wife without maintenance or support constitutes a violation of her rights and permits her to request divorce if she fears harm.

The Academy also indicated that the waiting period for a missing husband is subject to the judge's discretion, not less than one year and not exceeding four years, with reliance on modern investigative tools. This position reflects jurisprudential flexibility in addressing

⁷⁴ Al-Qasimi, *Sadd al-Dhara'i'*, previously cited.

⁷⁵ Ibn Baz, A. 'A. A. al-Baz. *Hukm għiyāb al-zawj 'an zawjatih muddat ṭawīlah* [Ruling: Husband's long absence from his wife]. Retrieved from <https://binbaz.org.sa/fatwas/9727/>.

⁷⁶ International Islamic Fiqh Academy (2012, December 8–12). *Twenty-first Session of the International Islamic Fiqh Academy – Mecca*. Retrieved from <https://ar.themwl.org/node/8>

real-life situations, though it still requires clear legislative regulations that safeguard the rights of women and prevent prolonging their harm.

Al-Iddah

In the event of divorce or the husband's death, a set of rulings applies, including *'iddah*, which is the period a woman must observe before entering a new marriage. This period serves to preserve lineage by ensuring the woman is not pregnant and to allow her to mourn the deceased husband. A divorced woman or a widow is prohibited from marrying another man until her *'iddah* is completed. During this period, she is required to refrain from wearing perfume, adornments, kohl, or any form of beautification that may attract male attention, as being adorned could increase desire toward her. This precaution prevents the woman from becoming a means of committing a prohibited act—marriage during the *'iddah*. Engagement of a woman observing *'iddah* is also forbidden to prevent false claims about the completion of the waiting period, as the prohibition aims to avoid potential harms⁷⁷. The *'iddah* begins either at the actual time of the husband's death or upon a legal ruling of death, such as in the case of an absent husband whose death is confirmed by a judge under prescribed conditions⁷⁸.

Among the studies of the Academy concerning *'iddah*⁷⁹ (waiting period) issues is the question of considering the moment of brain death as the moment of death. If a person remains with a beating heart and breathing, for example, for a month after brain death before passing away, the prevailing opinion is that death begins now of brain death. Consequently, it is natural to legislate accordingly in matters such as the *'iddah* of a woman whose husband has died, inheritance rules, and other related issues. These findings are therefore presented to medical professionals to ensure ongoing communication with jurists in the drafting of laws, so that legislation serves the interests of the people. The Academy's journal research stated: "It is not appropriate to constrain Islamic law from

⁷⁷ Ibrahim Fadel Al-Dabbo, "Blocking the Means (Sadd al-Dhara'i')," *Journal of the Islamic Fiqh Academy*, Issue 9, Part 3 (1996), pp. 9–34. Retrieved from: <https://al-maktaba.org/book/8356/18676#p5>.

⁷⁸ Abdullah Muhammad Abdullah. (1987). "The End of Human Life." *Journal of the International Islamic Fiqh Academy*, Issue 3, Part 2, 627–635. <https://al-maktaba.org/book/8356/1439#p2>.

⁷⁹ International Islamic Fiqh Academy. (1985). Decision No. 7 (7/2) on Life-Support Devices. Retrieved from <https://www.iifa-aifi.org/ar/1588.html>. International Islamic Fiqh Academy. (1986, Amman, Jordan). Decision No. 17 (3/5) on Life-Support Devices (Postponed decision). Retrieved from <https://www.iifa-aifi.org/ar/1667.html>.

accommodating new developments, codifying innovations, and fulfilling public interests⁸⁰.”

‘Iddah (waiting period) is a legal ruling in Islamic law associated with divorce and death, aimed at preserving lineage and observing propriety in cases of loss. During this period, a woman is prohibited from remarrying and is required to refrain from adornments, perfume, and other marital attractions to prevent temptation.

The engagement of a woman in ‘iddah is also forbidden to avoid false claims regarding the completion of the period. The ‘iddah begins either from the moment of actual death or a legally established death, such as in the case of a missing husband whose death is judicially declared.

The International Islamic Fiqh Academy has addressed the issue of considering brain death as the starting point of death, due to its implications for ‘iddah, inheritance, and related rulings. The Academy emphasized the need for coordination between jurists and medical professionals to regulate these new developments. This position demonstrates the Academy’s flexibility in accommodating medical advances while upholding the objectives of Shariah and the public interest.

Custody, Guardianship, and Trusteeship over Children

Child custody is generally shared between both spouses; in the event of divorce, custody is determined either by mutual agreement or by a court decision. Custody is usually granted to the mother due to the child’s need for maternal care. Consideration is given to the child’s age and needs, as well as the social and economic status of the parents, while also considering the child’s opinion if they can express it.

The International Islamic Fiqh Academy prioritized the mother in child custody in its September 2000 resolution, stating: “The child has a right to custody and care in a clean and dignified environment, and the competent mother is most entitled to this right, followed by other relatives in the order recognized by Shariah.” This principle has been

⁸⁰ Hassan Hathūt. (1988). “Mata Tanṭahī al-Ḥayāh?” (When Does Life End?). *Majallat Majma‘ al-Fiqh al-Islāmī*, 3 (2), 605–609. <https://al-maktaba.org/book/8356/1424#p9>

consistently emphasized in all Academy decisions regarding women and their “natural” role in child-rearing⁸¹.

Among the emerging issues faced by women in the Islamic world is the right of a mother to guardianship over her children. While a woman who has custody of her child has the right to care for them, she does not have the authority to manage or dispose of the child’s property; such guardianship and management rights belong to the father or, in his absence, to someone acting in his stead, such as the grandfather. Complications arise, for instance, when a woman marries a man who does not hold the nationality of her country. In such cases, the children legally follow the father’s nationality. If the father dies, divorces, or flees, the children residing in the mother’s country are treated as foreigners, often unaware of their father’s country. This situation requires legal intervention and legislation to ensure that children are granted the mother’s nationality and sufficient financial support, considering that they are Muslims. Turkey is considered pioneering in this area, as divorce procedures are enforceable even if the marriage took place outside Turkish territory, particularly concerning refugees or stateless individuals⁸².

In such matters, the case is referred to the guardian or judge to determine who has guardianship over the children, since the hierarchy of guardians after the father is subject to scholarly debate. For this purpose, the judge is granted authority based on the Prophetic tradition, “The ruler is the guardian of one who has no guardian.” According to the International Islamic Fiqh Academy, safeguarding the interests of individuals and the community is essential, and the Academy’s selection of rulings from the recognized schools of thought is not binding unless the ruler commands adherence. The ruler’s directive carries significant weight, and obedience is required if the command serves the welfare of the subjects and aligns with Shariah guidelines⁸³.

The *Journal of the International Islamic Fiqh Academy* defines guardianship (alwasiyah) as the supervision of managing the minor’s financial affairs, delegated either by the guardian (alwali) or by the judge. Guardianship refers specifically to authority over

⁸¹ Decision No. 113 (7/12) on the Rights of Children and the Elderly at the 12th Session in Riyadh, September 2000: <https://www.iifa-aifi.org/ar/2069.html>.

⁸² UNHCR – The UN Refugee Agency, *Marriage and Divorce in Turkey*. Retrieved from <https://help.unhcr.org/turkey/ar/social-economic-and-civil-matters/marriage-and-divorce/>.

⁸³ Zuhayli, W. M. (2000). *Rights of Children and the Elderly*. *Journal of the International Islamic Fiqh Academy*, 12(4), 301–356. <https://al-maktaba.org/book/8356/24110#p1>.

the property of young children who have not reached maturity; the mother has no right to it. It primarily belongs to the father, and if he is absent, to the paternal grandfather. If neither exists, it passes to whoever was appointed by the father or grandfather, and if none were appointed, then the judge assumes the role. This reflects the position of the Shafi 'i school and those who agree with it.

There are two types of guardians: the judicial guardian, appointed by the judge, and the chosen guardian, designated by an individual before death, exercising discretion to select someone deemed competent to oversee the child's affairs, in line with the Prophetic tradition: "*The ruler is the guardian of one who has no guardian*". According to Hanafi school, the mother's guardian is considered a weak guardian, like a brother's or paternal uncle's guardian. A strong guardian, such as the father or grandfather, has authority over both the movable and immovable property of the minor. A weak guardian, acting in place of the mother, brother, uncle, or similar, is limited to safeguarding the property without the power to dispose of it. Only in the absence of a strong guardian can a weak guardian exercise guardianship; if a strong guardian exists, the weak guardian has no authority over the minor's property⁸⁴.

As for *wilayah* (custodial authority), it is a power established by law, enabling an individual—usually male—to care for a minor and manage their property through legitimate means until they reach maturity. *Wilayah* generally involves two aspects: authority over the person of the minor and authority over their property. The journal's research defines *wilayah* as the management of the personal and financial affairs of a minor by a competent adult⁸⁵.

The father is the legal guardian (*walī*) of his children according to Sharia, unless a judicial ruling prevents him from exercising this guardianship. The mother may act in urgent matters concerning her children if the father is unable to do so. In some Islamic countries, guardianship transfers to the mother upon the father's death, absence, or loss of legal capacity. It is agreed that the mother has priority in child custody, while the issue of guardianship (*wilāyah*) is more contested. Guardianship is generally granted to the father, and then, in his absence, it may pass to the grandfather or to a guardian appointed by the father to care for his children after his death. The Islamic Fiqh Academy has affirmed that

⁸⁴ The previous Reference.

⁸⁵ The previous Reference.

the Qur'an grants women the right to participate and give their opinion regarding the breastfeeding, weaning, and upbringing of their child. Similarly, the Prophetic Sunnah gives the mother a voice in her daughters' marriages—“consult the women regarding your daughters”—while the final decision rests with the daughter herself: the virgin must give her consent, and the married woman has the right to decide for herself.

The guardian's authority over the child includes discipline, healthcare, education, and oversight of the daughter's marriage. If the minor is female, the guardian may not place her under someone who would teach her a craft or trade in which she would mix with men. Regarding financial guardianship, the guardian's powers include financial management, preservation of assets, concluding contracts, and investing funds in a way that serves the minor's best interests. It is well-established among the jurists that the mother does not have guardianship (*wilāyah*) over her young children after the father's death; this guardianship is held by the paternal grandfather or the father's male relatives, who assume responsibility for the children. According to the Hanafis, guardianship over a boy ends when he reaches the age of fifteen. For a girl, guardianship ends upon her marriage; if she marries, her husband assumes authority over her, and if she does not marry, she remains under the guardianship of another until she reaches an age of maturity and self-reliance, at which point she may live independently or with her mother. The Hanafis do not specify this age precisely, though their texts imply it is when she becomes elderly and no longer desired by men. In the Maliki School, guardianship over a person ends once its underlying cause—such as minority, illness, or incapacity—ceases. For a girl, however, guardianship does not end until she enters marriage⁸⁶.

Thus, the principle of male guardianship over women acquired a legal and religious character in some Islamic countries, limiting a woman's authority and capacities by treating her as a minor in need of a guardian in various aspects of life, including marriage and travel. According to this principle, a woman cannot manage her own affairs without male oversight, and guardianship does not end at a specific age to allow her to act independently. Any male relative of an adult woman serves as her guardian, even if he is considered incompetent or immoral. In Saudi Arabia, recent reforms concerning women's guardianship have taken place following Crown Prince Mohammed bin Salman's

⁸⁶ Al-Zuhaili, “*Children's and Elderly Rights*”, previously cited reference.

accession, bringing Saudi Arabia into the spotlight, especially in the aftermath of the September 11 events, perhaps more so than any other country in the Middle East⁸⁷.

The authority of a man over a woman in matters of marriage is explicitly stipulated within personal status laws across all Islamic countries. However, the broader authority of men over women in other areas has indirectly extended control over women's lives, often contradicting numerous social, civil, and personal human rights systems. If a woman cannot manage her own affairs, how can she manage those of others, or exercise financial independence and control over her personal matters? The extent of reform depends on several factors, including political will, efforts to adopt new reforms, and a supportive societal environment⁸⁸.

The legislation of the International Islamic Fiqh Academy regarding guardianship (wilāyah) of children after divorce is based on multiple factors, with the guiding principle being the child's welfare and safety. The same resolution states: "Guardianship over the child, whether by the family or the judiciary, over both the child's person and property, is a right that must not be neglected⁸⁹."

The Academy issued a resolution in 1995 concerning mothers infected with HIV/AIDS, stipulating that if there is no confirmed risk in her caring for or breastfeeding the child, and normal interaction and cohabitation are safe, there is no religious prohibition against her performing her guardianship duties, provided that medical reports do not restrict her custody rights. The *Journal of the Academy* emphasizes that "custody by women is more appropriate due to their compassion and experience⁹⁰."

The appointed custodian is obligated to assume custody if no one else is available, with priority given to the mother, then the grandmother, even if the mother is divorced. The mother is unanimously deemed the most entitled to custody after divorce or widowhood due to her natural compassion, except in cases where she is an apostate or flagrantly immoral, which could harm the child. If there are no eligible female relatives—the mother, grandmother, sister, maternal or paternal aunt—custody passes to male

⁸⁷ See: Al-Atawneh, "Wahhabi Self-Examination Post-9/11," previously cited.

⁸⁸ Ziba Mir-Hosseini, "Muslim Women's Quest for Equality: Between Islamic Law and Feminism," *Critical Inquiry* 32(4) (2006), 629–645.

⁸⁹ Decision No. 113 (7/12) regarding the rights of children and the elderly. <https://www.iifa-aifi.org/ar/2069.html>.

⁹⁰ Al-Zuhaili, "Rights of Children and the Elderly", previously cited reference.

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relatives in order of kinship. The Academy's research annulled a woman's custody upon her remarriage, following the hadith: "You are most entitled to the child so long as you do not remarry."

The *Journal of the Academy* confirms that the custodian is entitled to maintenance from the child's property if he has assets; otherwise, the father or responsible guardian must provide for the child. The custodian is also entitled to support housing, wages, and, according to the Hanafis, a servant. Once the custody period ends, the child is placed under the father's or grandfather's care, not any other party.

In some divorce cases, the custodial mother may face difficulties in receiving financial support for her children, encountering judicial delays in executing court rulings. It is evident from the discussion of custody, guardianship, and trusteeship that Islamic jurisprudence recognizes the mother's priority in child custody after divorce or the father's death, due to her compassion and experience. However, she is generally excluded from legal guardianship or trusteeship over her children's property, which is instead granted to the father, the paternal grandfather, or a designated guardian. The International Islamic Fiqh Academy (IIFA) has affirmed that custody is a right of the child, and that a qualified mother is the most entitled to it, whereas financial guardianship and trusteeship remain with male relatives unless a judicial ruling dictates otherwise.

Some Muslim-majority countries, such as Turkey, demonstrate legislative flexibility in protecting the rights of children and women, particularly in cases of the father's absence or incapacity. Nonetheless, in many countries, women are still treated as legal minors in matters of marriage, travel, and financial management, restricting their autonomy. The Academy has called for prioritizing the child's best interest when determining guardianship, emphasizing that both personal and financial guardianship are rights that must not be neglected, and that custody is forfeited upon the mother's remarriage, transferring to relatives according to the prescribed Sharia order. Despite certain legal reforms in some countries, women continue to face challenges in obtaining child support and fully exercising their parental responsibilities. This underscores the need for ongoing jurisprudential and legislative review that accounts for contemporary realities and upholds justice.

Al- Nafaqah

Islamic law obligates a husband to provide financial maintenance (*nafaqah*) for his wife, as established by the Qur'an, Sunnah, consensus (*ijmā'*), and analogy (*qiyās*). This obligation is viewed as compensation for the wife's lawful marital commitment to her husband. The studies of the International Islamic Fiqh Academy (IIFA) considered maintenance a necessary condition of marriage. According to the Mālikī School, marriage is forbidden for one who is incapable of financially supporting his wife⁹¹. Many jurists—Ḥanafīs, Mālikīs, and Ḥanbalīs—hold that the wife's maintenance is not fixed by a specific amount but rather assessed according to her reasonable needs and standard of living⁹².

The Academy rejected any ruling that obliges an impoverished husband to pay more than he can afford, or that requires a wealthy husband to give an insignificantly small amount of maintenance or clothing. Instead, it affirmed that maintenance should be determined according to the husband's financial capacity—whether he is affluent or in hardship. If the wife demands more than what is customary for her social peers, she is not entitled to it; and if the husband provides less than the customary standard, he is compelled to make up the deficiency. The Academy emphasized that “financial capacity” (*al-wus'*) is governed by local custom: each people should provide for their families according to what is typical in their society, as the proper estimation of maintenance is based on prevailing norms and reasoned judgment⁹³. In its **Resolution No. 144 (2/16)** (April 2005), the Academy affirmed that a wife is entitled to full, customary maintenance, in accordance with the husband's means and in line with sound social traditions recognized by Islamic law. This obligation is not nullified except in the case of *nushūz* (disobedience or marital rebellion). The resolution further clarified that a wife's employment, if conducted within Sharī'ah-compliant limits, does not nullify her right to maintenance unless such work entails *nushūz*.

⁹¹ "Family Planning: A Document from the Supreme Islamic Council of the People's Democratic Republic of Algeria," *Journal of the International Islamic Fiqh Academy*, Vol. 5, Part 1 (1988), pp. 649–657: <https://al-maktaba.org/book/8356/9054#p1>.

⁹² Salma bint Mohammed bin Saleh Hawsawi, "The Legal Rulings Related to the Maintenance of the Wife and the Divorced Woman," *Journal of the Arabic Language*, vol. 35 (2015), p. 637.

⁹³ Khalil Muhyiddin Al-Mays, "Custom ('Urf)," *Journal of the Islamic Fiqh Academy*, vol. 5, part 4 (1988), pp. 2925–2971: <https://al-maktaba.org/book/8356/10980#p4>.

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The Academy also stated that a wife is not legally required to share in the husband's financial responsibilities. However, voluntary contribution by the wife toward family expenses is commendable, as it promotes cooperation between spouses. Any agreement about how to allocate the wife's earnings must be mutual and based on consent. Moreover, if the wife contributes financially to the purchase of a house, property, or business, she is entitled to a proportional share of ownership corresponding to her contribution⁹⁴. The research published in the *Journal of the Islamic Fiqh Academy* established that **custom ('urf)** plays a significant role in determining the *maintenance (nafaqah)*, *dowry (mahr)*, housing, and clothing, stating: "The wife is entitled to food, condiments, clothing, and accommodation according to custom, in proportion to the husband's means, her social status, the locality, and prevailing prices⁹⁵." It was also stated that **the wife's maintenance is due from her husband** in the customary amount appropriate to their mutual circumstances⁹⁶. Moreover, in **October 1986**, the Academy affirmed-when responding to an inquiry-**that it is permissible for the wife and children who are unable to earn a living to consume food provided through the husband's unlawful earnings only in cases of dire necessity, and only after making every effort to persuade him to seek lawful income and alternative employment**⁹⁷.

The Academy adopted, in some matters, the predominant opinion of many jurists, such as the issue of spousal maintenance (*nafaqa*). The reason for this preference lies in the fact that maintenance is intended to meet basic needs, as the relevant texts explicitly indicate; thus, it is determined according to adequacy and the wife's needs, both of which are governed by custom ('urf). Analogy (*qiyās*) was not applied in this case, since it contradicts the explicit text stipulating adequacy - "*or part with them in a fair manner*" (Qur'an 2:229). Hence, the Academy's studies established the principle that maintenance is to be assessed based on achieving sufficiency for the dependent⁹⁸.

⁹⁴ Decision No. 144 (16/2) regarding differences between husband and employed wife at the 16th session, Dubai, UAE, April 2005: <https://www.iifa-aifi.org/ar/2174.html>.

⁹⁵ Al-Mays, "*Custom ('Urf)*", the previous reference.

⁹⁶ Ja'it, "*Custom ('Urf)*", the previous reference.

⁹⁷ Decision No. 23 (3/11) on Inquiries to the International Islamic Fiqh Academy from the International Institute of Islamic Thought – Washington, D.C., at its 3rd Session (Amman, Jordan – October 1986): <https://www.iifa-aifi.org/1686.html>.

⁹⁸ "Discussion: The Legal Rulings on Paper Money and Currency Value Fluctuations," previously cited reference.

However, the Academy did not provide detailed guidance regarding the wife's interest when the husband abstains from providing maintenance without a valid excuse - such as granting her the right to appeal to the judge to compel payment. If the husband fails to comply with the court's order, the wife may be authorized to take from his property the amount owed to her, whether with or without his consent. In cases where the husband is unable to pay due to insolvency, the judge may instruct the wife to borrow in his name, and the husband must later repay the debt - a procedure followed in many Islamic countries. It is clear from the examination of maintenance that Islamic law obliges the husband to provide for his wife as a condition of marriage, with the amount determined by adequacy and customary practice rather than by a fixed standard. The International Islamic Fiqh Academy affirmed that maintenance should be calculated according to the husband's financial status - whether affluent or poor - and in line with legally accepted customs, and that it is forfeited only in cases of disobedience (*nushūz*). The Academy also confirmed that a wife's employment does not nullify her right to maintenance, and that any voluntary contribution she makes to family expenses is commendable but not obligatory, provided it is done by mutual consent.

Despite the clarity of these principles, the Academy did not elaborate sufficiently on handling cases where a husband refuses to provide maintenance without justification, which weakens the woman's legal protection. It noted, however, the possibility of judicial intervention to compel the husband to pay, to permit the wife to take from his wealth, or to borrow in his name in cases of insolvency - measures already implemented in several Muslim countries.

The Maintenance of Women in Different Waiting Periods: Revocable Divorced, Irrevocably Divorced, Widowed, and Khul' Cases

Islam guarantees financial maintenance (*nafaqa*) for a woman in a *revocable divorce* (*'iddah raj'iyah*), since she remains under the legal bond of marriage. Therefore, she is entitled to full maintenance from her husband throughout the waiting period, by consensus of the jurists, without dispute. As for a woman in an *irrevocable divorce* (*'iddah bā'in*), many scholars - including the Mālikīs, Shāfi'īs, Ḥanbalīs, and some Ḥanafīs — hold that she is entitled to maintenance from her former husband during the waiting period **only if she is pregnant**. If she is not pregnant, she is **not entitled to maintenance**. As for the woman in her waiting period due to the death of her husband, she is not entitled to

maintenance from the deceased if she is not pregnant - this is unanimously agreed upon by the four schools: Mālikī, Shāfi'ī, Ḥanbalī, and Ḥanafī.

However, if she is pregnant, there are two opinions. The Ḥanafī school holds that the widow is not entitled to maintenance at all, whether pregnant or not. In contrast, the Mālikī, Shāfi'ī, and Ḥanbalī jurists maintain that maintenance is due for the fetus, not for the mother herself, as the woman's seclusion (*ḥabs*) during this period is ordained by divine law, not by the husband's authority⁹⁹. This view is supported by the Qur'anic verses: “*Wa ‘ala almawloodi lah rizqahunna wa kaswatumunna bialma‘roof.*” (al-Baqarah 2:233), and “*Wa in kunna aulat hamlin fanfiqoo ‘alayhinna hatta yad‘una hamlahunna*” (al-Ṭalāq 65:6)¹⁰⁰.

It has been established by Ibn Baz that al-mut‘addah al-raj‘iyyah (the widow of a revocable divorce) is entitled to maintenance if she was divorced once or twice. However, al-mut‘addah al-bā‘innah (the widow of an irrevocable divorce-the last of the three permissible divorces) is not entitled to any maintenance or housing. Similarly, a widow whose husband has died after an irrevocable divorce is not entitled to maintenance from the deceased husband, as his wealth passes to the heirs; her maintenance comes only from her share of inheritance. Likewise, a woman who has been released through khul‘ (al-makhlū‘ah) is considered bā‘innah and is not entitled to maintenance, as she is not considered a wife during the waiting period (‘iddah). The Journal of the Islamic Fiqh Academy notes that upon the declaration of death, "the maintenance that was obligatory upon the husband during his lifetime is nullified¹⁰¹." From the rulings on maintenance for the different types of ‘iddah, Islamic jurisprudence distinguishes according to the type of waiting period:

⁹⁹ Aida Hameera'e (2015). *Nafaqat al-Zawja al-Mutallaqa fi Nazra al-Fiqh al-Islāmī: Dirāsa Muqārana bayna al-Madhāhib al-Arba‘a* [The Wife's Maintenance after Divorce in Islamic Jurisprudence: A Comparative Study of the Four Schools]. Jakarta: College of Islamic and Arabic Studies, Sharīf Hādīyah Allāh State Islamic University, pp. 77–86. <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/28652/1/TSANI%20ITSNA%20ARIYANTI-FDI.pdf>.

¹⁰⁰ Surat al-Nisa: 19; Surat al-Baqarah: 233; Surat al-Talaq: 6.

¹⁰¹ Tawfiq al-Wa‘i, “The Reality of Death and Life in the Qur’an and the Legal Rulings,” *Journal of the International Islamic Fiqh Academy*, Issue 3, Part 2 (1988), 695–718: <https://al-maktaba.org/book/8356/1500>

- **Al-mut‘addah al-raj‘iyyah (revocable divorce):** Entitled to full maintenance from the husband during the ‘iddah, as she is still considered in the status of a wife. This is agreed upon by scholars.
- **Al-mut‘addah min ṭalāq bā’in (irrevocable divorce):** Entitled maintenance only if she is pregnant; maintenance is required until the completion of the pregnancy, according to the majority.
- **Al-mut‘addah min wafāh (widowhood):** Not entitled to maintenance if not pregnant; if pregnant, there is a difference of opinion: the Hanafis deny maintenance, while the majority (Malikis, Shafi‘is, Hanbalis) consider it obligatory for the duration of the pregnancy but not for the non-pregnant widow.
- **Al-makhlū‘ah (khul‘):** Not entitled to maintenance, as she is considered bā’innah and not a wife during the ‘iddah.

The Academy also highlighted that maintenance obligations cease upon the official declaration of the husband’s death, as his wealth passes to the heirs, thereby releasing him from financial responsibility toward the ‘iddah. This allocation reflects attention to regulating rights according to the woman’s status, though it still requires review to ensure the interests of the ‘iddah, particularly in cases of pregnancy or need.

Al-Nushūz

In cases of dispute between spouses, if the wife leaves the marital home, the husband may file a “obedience” claim (da ‘wa al-ṭā‘a) in the Sharia court to compel her to return. If the court orders her to return and she does not comply, she is considered *nāshiza* (disobedient), and her right to maintenance is suspended. Research published in the *Journal of the International Islamic Fiqh Academy* noted that in Sudanese law and the Tunisian Personal Status Code, if one spouse complains of harm without clear evidence, the judge appoints two arbiters (ḥukam). If they can reconcile the spouses, the matter is resolved; otherwise, it is referred to the judge. The Academy’s journal also noted that Egyptian Personal Status Law requires the arbiters to be just and knowledgeable about the spouses, or otherwise individuals with the ability to reconcile.

According to the Moroccan Personal Status Code, if a wife proves harm that makes cohabitation impossible and the judge cannot reconcile them, the husband must divorce her. Algerian Family Law mandates that the arbiters submit a report on their task. The

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Arab Unified Personal Status Code, issued by the Arab Ministers of Justice, also stipulates that either spouse may request divorce for harm that renders continued marital life untenable¹⁰². Marriage in Islam is based on mutual consent, understanding, and the right of choice, and it cannot be enforced upon a woman who refuses to continue the marriage. Depriving a wife of her maintenance if she leaves the marital home without her husband's permission, or refuses to travel with him, is not automatically justified. Filing a "ta'ah" (obedience) claim on the grounds that the husband has paid the dowry and provided housing does not grant him the right to override her personal autonomy, as dowry and obedience must coexist with the principles of love and mercy between spouses. The standard of obedience is not clearly defined and may allow the husband to act arbitrarily.

The International Islamic Fiqh Academy (IIFA) has held that a wife's going out to work, when done under prescribed conditions, does not nullify her entitlement to maintenance unless such action constitutes *nushuz* (disobedience) that legally terminates the husband's obligation¹⁰³. Here, the Academy confirms the permissibility of depriving a wife of maintenance if she is deemed *nashiza* (disobedient), which may, however, be unjust if the disobedience, has valid reasons, such as the husband's mistreatment. In such cases, it is necessary first to verify the reasons for *nushuz* and attempt reconciliation. If reconciliation fails, arbitration is obligatory, in accordance with the Qur'anic injunction: "*Wa in khiftum shiqqa baynahuma fab'athu hakaman min ahlihi wahakaman min ahliha*" (Surah An-Nisa 4:35). The appointed arbitrators are to act in what they deem best, whether to unite or separate. The Academy, however, has not detailed procedures for resolving such disputes exactly as indicated in the verse. Nevertheless, its journal affirms the principle of arbitration between spouses and relies on "customary norms and socially accepted traditions in accordance with Sharia" when applying the suspension of maintenance due to *nushuz*¹⁰⁴.

The discussion of *nushūz* (disobedience) shows that Islamic jurisprudence recognizes the suspension of a wife's maintenance if she is considered *nāshiz*, that is, if she leaves the

¹⁰² Muhammad Jabr Al-Alifi, "Arbitration in Islamic Jurisprudence", *Journal of the International Islamic Fiqh Academy*, Issue 9, Volume 4 (1996), 167–253.

¹⁰³ Decision No. 144 (16/2) on Differences Between Husband and Working Wife. 16th Session, Dubai, April 2005. Retrieved from <https://www.iifa-aifi.org/ar/2174.html>.

¹⁰⁴ Muhammad Badr Yūsuf Al-Minyāwī. (1996). "Arbitration in Islamic Jurisprudence". *Journal of the International Islamic Fiqh Academy*, 9(4), 9-108.

marital home without permission or refuses to return after a “claim of obedience” (*da‘wā al-ṭā‘ah*), a principle applied in some Sharia-based laws. However, this concept raises questions about the fairness of such measures, especially if the wife’s disobedience results from the husband’s mistreatment, which necessitates careful investigation and arbitration before maintenance is suspended.

The International Islamic Fiqh Academy indicated that a wife’s working outside the home does not constitute *nushūz* if conducted according to Shariah guidelines. The Academy also emphasized the necessity of arbitration between spouses in case of disputes, as prescribed in the Qur’anic verse. Although the Academy affirmed the principle of arbitration, it did not elaborate on the mechanisms for its implementation, which weakens protection for women in cases of abuse. Moreover, relying on “correct customs and socially acceptable practices” in suspending maintenance highlights the need for more precise jurisprudential guidelines that account for contemporary social realities.

Recommendations

Considering the analysis of the fatwas issued by the International Islamic Fiqh Academy concerning women’s personal status, the study has reached a set of recommendations aimed at developing contemporary jurisprudence to achieve social justice and preserve the objectives (*maqasid*) of Sharia. These recommendations are as follows:

- **Activating collective purposive ijthihad** in women’s issues by adopting flexible jurisprudential methodologies that consider social and economic realities and balance between Sharia texts and their intended objectives.
- **Reconsidering certain traditional concepts** such as *nushuz* (marital disobedience), claims of obedience, and the monopolization of divorce, to ensure women’s dignity and prevent the misuse of marital authority.
- **Unifying jurisprudential and judicial standards** in matters of marriage, divorce, alimony, custody, and guardianship to reduce discrepancies among Islamic countries and guarantee the rights of women and children.
- **Empowering women to exercise their legal and financial rights**, such as participating in family asset management, exercising guardianship over children, and the right to annulment or *khul‘* without procedural obstacles.

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- **Developing flexible national legislations** that regulate family matters according to Sharia principles, while considering sound customs and the evolving circumstances of Muslim societies.
- **Activating the role of the Sharia judiciary** in protecting women from neglect, abuse, or deprivation of alimony, and facilitating access to family justice through effective enforcement mechanisms.
- **Utilizing medical and technological advancements** to inform Sharia rulings, such as determining the precise moment of death for the purposes of ‘iddah or using modern communication means in cases of absence and locating a spouse.
- **Raising societal awareness** of family law rulings and their Sharia objectives through media, education, and religious institutions, to foster a culture of justice and compassion within the family.
- **Establishing institutions supporting divorced and custody-bound women**, providing legal, social, and economic assistance, and ensuring stability after separation.
- **Reviewing personal status laws** to achieve Sharia-compliant equality and enhance women’s independence in marriage, travel, and financial transactions without compromising fundamental Sharia principles.

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