

Contracts Related to the Marriage of Slaves and Non-muslims, which Imam Al-Shafi'i Described as Corrupt in his Book Al-Umm, a Comparative Jurisprudential Study

By

Amena Ali Tarmouz

College of Islamic Sciences, Department of Fiqh- University of Anbar/Iraq

Ahmed Obaid Jassim

College of Islamic Sciences, Department of Fiqh- University of Anbar/Iraq

Email: ami20i1001@uoanbar.edu.iq

Abstract

This study was based on an explanation of the corruption of contracts related to marriage according to Imam Al-Shafi'i in his book Al-Umm, and its comparison with other schools of jurisprudence, in order to reach the cause of its corruption according to Imam Al-Shafi'i and not others, The study showed the disagreement between the jurists and the statement of the most correct of them based on the strength of the evidence of the doctrine, and the evidence proved the cause of the dispute and addressing the significance of each evidence from the book or the Sunnah.

Keywords: Marriage of Slaves; Jurisprudential Study; Imam Al-Shafi'i

Introduction

Praise be to God, Lord of the worlds, and the best prayer and peace be upon our master Muhammad, the master of the first and the last, and upon his family and companions altogether.

Islamic law has been concerned with a clear interest in issues related to marriage contracts, especially with regard to the marriage of slaves and non-Muslims, and this care motivates us to research and explain to students of knowledge and to the public the importance of such contracts, so, being a researcher, I have deliberately addressed this topic for the reason that these issues are involved in all aspects of life. The researcher may face some problems, including the lack of time and the fact that the material is wide, and there may be some topics for which the sources are few in terms of being new. In this modest research, I tried to follow the correct methodology in his book. I attributed the Qur'anic verses to their places in the Noble Qur'an, the hadiths of the Prophet came out, the media and places were translated, and the evidence for Islamic sects was mentioned and the evidence was given to them, and some sects that I believe are the most correct. The research was divided into three issues: the first issue entitled the rule of the dowry in the marriage of the shegar, the second issue the rule of a woman's leave to have some of the dowry for her father, and the third issue is the rule of the dowry for a term or not, and mentioned the most prominent results, then sources and references.

The first issue

Judgment, if the master gives permission to his servant or mastermind of concubinage

Origin of the issue:

What is meant by tasri? Language: sra: (cypress) is a single tree (cypress) and (cypress) also generosity in chivalry. (Sirra) from Bab Adrif, which means it became a secret, and the

collection of Siri (Sirat) is a crowd that is dear to the family of a family. And (tosra) the cost of cypress. And the slave woman also goes out of secrecy. (Al-Baghdadi, 428 AH)

Idiomatically: Al-Tasari is the preparation of the nation to be immolated without being isolated. (Al-Maliki, 422 AH). God Almighty said {And those who guard their private parts} to His saying {Not to be blamed} (Al Shaibani ,189 AH) So the Book of God Almighty indicated that what he permitted from the private parts, he permitted it in one of the two ways, marriage or what the oath possessed. So, he has a master over the doctrines (Raju & Rajanna, 2020; Reddy et al., 2021).

The first doctrine: It is not for the slave, nor the mastermind, nor the one in whom the freedom is not complete, to marry except with the permission of his master, and he does not have the right to consummate the marriage under any circumstances. The nation was not the mother of a child who had that child under any circumstances. Because it is corrupt intercourse, not intercourse with a true king, and this is the saying of Al-Shafi'i, the Malikis, the Hanbalis, and those who said this, Ibn Umar and Ibn Abbas (Al-Qattan, 628 AH) and used the following as evidence (Rasmin et al., 2021).

1- {It is He who created for you all that is on earth} (Al-Makki, 204 AH)

Significance: the slave is included in the generality, and from the people of assignment and worship, so he is worthy of the king, and therefore king in marriage (Al-Madhab, 502 AH).

The Messenger of God, may God's prayers and peace be upon him, said: "Whoever sells a slave and has money, his money belongs to the seller, unless the purchase is stipulated." (Al-Ruyani: 502 AH).

Significance: Because the slave and his money belong to the seller, so if he sells the slave, the sale is restricted to him and not others.

4- Because he has complete control over it. As for his marriage, he must have rights related to all of them, so consider the master's approval of him, to be satisfied with the attachment of the right to his property (Al-Qurtubi, 595 AH).

It is replied to them that the slave may not be freed or gifted, so the relief is not permissible for him by the king of the right, and this is because the slave is owned by money, it is not permissible for him to be the owner of money for what is between the Maliki and the Mamluk of the contradiction, and the king of pleasure is not proven except by establishing its cause, if its cause is the king of the neck It is not proven in the right of the slave, so is his ruling, unlike marriage (ibid). And also, unanimously that his master has the right to extract from him all that he has of money from his earning and other than his earning, and unanimously that he does not inherit his kinship. Just as a man does not take away the money of his offices; They also said: And when they unanimously agreed that the slave does not inherit, it indicates that whatever money he gets from his hand belongs to his master, and that he does not own it. And they carried the addition of the Messenger of God - may God's prayers and peace be upon him - the money to the slave in his saying: "Whoever sells a slave and has money, his money belongs to the seller unless the buyer stipulates it" - on the metaphor (Al-Hanafi, 587 AH).

I answer that their protest unanimously that the master can extract the money of his slave, they have no argument in it; Because the unanimity does not address the subject of the dispute, since the dispute between us and them is prior to the extraction, as well as their unanimous protest that the slave does not inherit, and they have no argument in it. It is not granted to them that the reason for preventing the inheritance of the slave is that he does not own it, so what they used as evidence is not valid for them until after establishing the evidence

for the validity of the reason, and they have no evidence of its validity except what they think most of the time. (Al-Hanafi, 587 AH). The second madhhab: It is not permissible for a slave to be married, even if his master permits him, and this is the saying of the Hanafis (Al-Qurtubi, 520 AH) and they used the following as evidence

1. The Almighty said: {God strikes an example of a slave owned, who is unable to do anything} (Al-Hanafi: 743 AH)
- 2- Because the slave does not own anything; Because it is owned, so it is impossible for it to be the owner, and by permission it does not depart from being owned, so the impossibility does not evade (Al-Barakti, 1986)

Their reasoning is given by the words of God Almighty: {God struck an example of owned slave who is unable to do anything} (An-Nahl: 75). There is no argument for them in it on the grounds -: the first of which is that God Almighty did not say: This is the characteristic of every owned slave, rather he mentioned of the Mamluks of this is his attribute, and the Almighty said: {And God gave an example of two men, one of whom is dumb and is unable to do anything, and he is entrusted to his master. Wherever he directs him, he does not bring good.} Own something? This is what they do not say, and there is no difference between the two verses.

We do not deny that among the free, and the slaves there are those who have nothing to do with justice; And he can't do anything, and not all of them are? The second - is that this verse does not contain a text, nor evidence, nor an indication of the mention of property, nor money, but in it: that he is not capable of anything, it is in it the negation of power and strength only, either with weakness or disease or the like. And the third - that if they forfeit his possessions by this verse, it is more appropriate for them to forfeit his prayer and fasting through it. Because they are two things - and in it he is unable to do anything, so he clarified the corruption of their attachment to it altogether. (Al-Makki: 204 AH). It was answered that concubinage has wisdom in addition to the chastity of the owner of the nation by it - that concubinage immunizes female slaves so that they do not incline to immorality, and the lineage of their children to the master is proven, and the children are free. And if the nation is born from its master, it will be the mother of a son, and it becomes free upon his death (Al-Mawardi : 450 AH).

The most correct view is what the adherents of the first school of thought held, due to the strength of the evidence they used as evidence from the Book and the Sunnah And because God Almighty has only permitted concubine to the owners, and the slave is not an owner in any case, and likewise everyone in whom freedom has not been completed from a slave who has emancipated part of it, or offices or a mastermind, and it is not permissible for him to trample an oath property in any case until he is emancipated, and marriage is transferred to him with the permission of his owner. Confidentiality from him and his marriage to her, if he wills. (Al-Asqalani: 852 AH).

The second issue: the ruling on a slave's marriage if he writes to his master and he has a woman.

The origin of the issue

Correspondence: It is for a man to write to his slave and the slave to his master, if the slave disposes of a business and returns his profits to his master and buys himself with it.

The ruling on the writer sells the master of his slave to himself with money in his custody, and it is obligatory to be a question if the master knows of his servant good and asks

him for his kindness, and he learned his ability to earn. But if the slave had a woman and then the scribe of his master, then here the jurists differed in his ruling on schools of thought.

The first doctrine: If a slave has a woman and then a clerk buys her for trade, then the purchase is permissible as it is permissible to buy it for someone else, and the marriage is corrupt. This is what al-Shafi'i said (ibid), and the evidence for it is the following:

1- The Almighty's saying: "Write them down if you know good in them." (Izz Al-Din: 1182 AH).

Evidence: He explained the good as earning and trusting, and because what is meant by writing is the emancipation of money, and by earning and trusting, it is reached.

2- Because if the master agreed to marry her to her, then he married her to her, it is not permissible because she is the property of the offices as he owns his money.

3- By analogy with al-Shafi'i's saying in the new that he does not own, and if he owns, he does not have the right to seize, and if the master permits him, because conquest is valid in a property, and the office is not an owner. (Abu Issa: 279 AH). It is replied to them that the offices in writing benefited from the freedom of the hand for the situation, and for this he became more entitled to his offices and the freedom of the neck in the second when performing, so he has the power to prove it to others, do you not see that the authorized slave possesses the permission of his slave in trade, and do you not see that the free possesses the obligation of freedom for his slave? Because the truth of freedom is fixed to him for the case.

Unlike the emancipation of money, because it affirms the reality of emancipation of the case, and it is not fixed for the offices of the case, so it is not possible to prove it to anyone else (Al-Ja'fi, 1980).

He replied that if Al Mukatib is freed, his loyalty to the master is like a free man's release; And if what he takes was a definite consideration, there would be no loyalty to him, just as if he freed him in return for a compensation given by someone else. The second doctrine: If the slave writes to his master and he has a woman, the validity of his marriage depends on the master's permission and his consent to make him possess her.

1- Because the prohibition from marrying him is the right of his master, and if he permits him, the impediment is removed, and because if he authorized his slave to enslave him in the marriage, it is valid for him, so the offices are more appropriate (Al-Siqali : 451 AH).

2- Because if he bought the offices under a slave girl and trampled her and then she became due, then the dowry is obligatory for him. Because this is by buying and selling. This is not the same as marriage; Because buying and selling is permissible for him, and marriage is not permissible for him without the permission of his master (Ibn Abi Hatim: 327 AH).

3- Because if a slave married without the permission of his master, and his master freed him, and he did not know, his marriage would be permissible, and so are the offices (ibid)

4- Because the rule of offices is the rule of the slave until he pays the money for writing, as evidenced by the hadith of Amr bin Shuaib (Al-Mawardi : 450 AH), on the authority of his father on the authority of his grandfather that the Prophet, peace and blessings of God be upon him, said: "Anyone who writes for one hundred ounces and pays it except for ten ounces is a slave."(Al-Mawardi , 450 AH).

The most correct is what the first school of thought held, which is the saying of al-Shafi'i due to the strength of its evidence.

The third issue: the ruling on the marriage of a slave and a nation without the permission of their master.

Origin of the issue:

The slave does not own himself, because it is money owned by his master, and since the marriage contract has financial consequences of money and alimony, so he made the matter of marrying the slave to his master, as well as the nation, whose matter is entrusted to its master.

The first doctrine: the marriage of a slave without the permission of his master, and the marriage of a nation without the permission of her master. Everything that took place in the entire marriage is not complete, in which intercourse is permitted by contract, and the inheritance falls between the spouses, and no one has the dissolution of a husband, wife, or guardian. This is the saying of the Hanafis and Ahmad in the narration of Ibn Hazm and they used as evidence what follows:

1- The Messenger of God, may God's prayers and peace be upon him, said: "Any slave who marries without the permission of his master, he is a fornicator." (Al-Shaibani: 189 AH).

The point of indication: the hadith is evidence that the marriage of a slave without the permission of his owner is invalid, and its ruling is the rule of adultery (Al-Shaibani: 189 AH)

2- The Messenger of God (may God bless him and grant him peace) said: "Your blood and your money are forbidden to you." (Al-Yamani: 1250 AH).

Evidence: The nation is the property of its master, so it is forbidden for him except by marrying him with the text of his words - peace be upon him (Izz Al-Din, 1182 AH).

3- Because in the implementation of their marriage there is a fault in them, as the marriage is a fault in them, so they do not own it without the permission of their master (Al-Sijistani: 275 AH).

It is replied to them that whoever has the right to remove something is the property of putting it down, and it is forbidden by a king to remove the harm from the soul, and he does not have the power to prove it legally against himself, and therefore the king of medicine and he does not have the power to eat poison and introduce the harmful to the body. The aspects are her statement that his property is divorce; Because it is one of the characteristics of human beings, so is marriage. (Al-Daraqutni: 385 AH).

He answered them with what was reported on the authority of Ibn Umar that he found a slave to him who married without his permission, so he separated them. And he voided his contract. And hit the limit. It indicates that the marriage of a slave without the permission of his guardian is invalid. Its ruling is the ruling on adultery according to the public. (Al-Yamani: 1250 AH).

The second doctrine: that the marriage of a slave is valid, and the guardian annulled it, so it is suspended on the guardian's permission, then the permission is complete, and if his response is annulled, and this is the money of Abu Hanifa and the Malikis and a narration by Imam Ahmed (Al-Bayhaqi:458AH) and they used the following as evidence:

1- Every contract issued by the curious and authorized person was held suspended on the license and that the corner of the disposal was issued by its people in addition to its place and there is no harm in its conclusion, so it is held suspended even if he sees the interest in it and implement it and the contract rule may be relaxed about the contract.

(Al-Dhahabi: 748 AH).

- 2- Because an owned marriage is owned by the master because of the reform of his property, and the benefits of a few owned ones as well, and no one has the right to invalidate his property without his consent, so he was suspended and could be rescinded, so no one is harmed by it (Hanbali: 772 AH).
- 3- Because marriage is an individual obligation, and the imposition of notables does not need permission (Al-Hanafi: 370 AH).

It is replied to them that there has been consensus that the marriage of a slave without the permission of his master is not permissible (Al-Busti : 354 AH).

And I answer them that the report that you argued with is a prostitute is not in it: If he had intercourse with her, and you say: If he did not have intercourse with her, is he not a prostitute? We said: It has been authenticated on the authority of the Messenger of God - may God's prayers and peace be upon him - with the wording "if he gets married" and he gets married in the language in which God Almighty addressed us and he spoke to us - peace be upon him - "it falls on the contract and falls on intercourse." It is not permissible to single out one of the two parties without the other. - It is clear that he - may the peace and blessings of God be upon him - only made him an adulteress if he married and got married (Al-Sayed 1960).

And what seems to me to be more likely is what the adherents of the first school of thought who said that the marriage of a slave and a nation is corrupt without the permission of their master, due to the strength of the evidence they argued, and because Imam Al-Shafi'i does not allow a fiduli contract.

The fourth issue: the ruling on the one who curses from a corrupt marriage[○]

The jurists differed as to whether a woman deceived her husband and cursed her according to the following schools of thought:

The first doctrine: the one who is cursed not deceived by a corrupt marriage or forbidden and the like. The dowry is attributed to the one who deceived him, and this is what Imam Shafi'i, Malik and Ahmad said in a narration and Abu Yusuf from the Hanafis (Al-Shirazi: 476 AH) and its evidence is the following:

- 1- It was narrated on the authority of Ibn Omar, may God be pleased with him, that the Prophet, may God's prayers and peace be upon him, said to the cursers: "Your account is with God, one of you is a liar, you have no way over it." He said: O Messenger of God, my money. What she asked for from her vagina, and if you lied to her, that is further away from you or from her."

The point of indication: the hadith indicates that some of them have been likened to some of those who are attributed to knowledge in them, that he accused her of fornication and his accusation of fornication requires him to have a punishment or curse, including that he denied her pregnancy. On him, when he claimed that it was from adultery, and he said that if she brings such-and-such, then it is for the one who is accusing him, so she came with that epithet.

- 2- Because if he married a woman in an invalid marriage and then slandered her, then the ruling on her is the same as the divorced woman. If there is a son between them, he is cursed to deny him, otherwise no; Because lineage is attached to corrupt marriage (Al-Qazwini : 623 AH).
- 3- Because one of the slanderers necessitates it in a valid marriage, so it is obligatory that it necessitates it in a corrupt marriage, such as the denial of lineage.

And it is replied to them that the rule of slander is proven by text in wives, God Almighty said: {And those who accuse their wives} and neither marital in corrupt marriage nor after Al-Banunah; And because if the curse takes place between them, it only takes place to banish the child, and the Sharia has ruled that the lineage of the child is established from him when it required the dowry and the waiting period through a corrupt marriage, and after the ruling that the lineage is established, it is not imagined his denial: his clarification that the denial of lineage follows the severance of marriage, the separation between them, and the follow-up of the subordinate, if it is not possible to judge him By severing the marriage, the flow of intercourse between them is prevented. (Al-Granati: 741 AH).

And it was answered that if intercourse in a corrupt marriage is made as intercourse in a valid marriage in the provisions of the obligation of dowry, the waiting period, and the rights of lineage, then the same is the case with denial with li'an, and it was said: This in denial with li'aan is more preferable because lineage is stronger in a valid marriage.

The correct marriage, and if it is permissible to negate the strongest, because it is permissible to negate the weakest (Al-Qurtubi: 463 AH).

The second doctrine: There is no curse in corrupt marriage due to lack of marriage in reality, which is the saying of the Hanafis and Ahmed in the narration and they used the following as evidence: the Almighty's saying: {And those who reproach their wives...} (Al-Hanbali: 1051 AH).

Significance: God Almighty singled out husbands with this ruling, and made their curse stand in place of evidence for what his wife had slandered. It is replied to them that if the curse is in a corrupt marriage, it is not forbidden to perpetuate; Because it is a curse that does not affect the prohibition and the severing of marriage, and it does not affect the perpetuation of the sanctity, which is like the branch and the description of it (Al-Jaziri: 1360 AH). And I answer because if the suspension is with a corrupt marriage or a suspicion of marriage, the lineage of the child does not negate the denial; Because abstaining by means of li'aan, and there is no li'aan in corrupt marriage due to lack of marriage, is a reality as it is known in the book Al-li'an. The most correct view is what the adherents of the first school of thought held regarding the occurrence of cursing, even if the marriage was corrupt, and the one who was cursed with dowry returns to the one who deceived him due to the strength of what they used as evidence.

Apostasy Linguistically: So, and so apostatized: withdrew and came back, turned back: went back - turned back on his heels, turned back on his back went back, retreating from where he came. Abandoned his religion: he disbelieved after his conversion to Islam, left it and went back from it (ibid).

Idiomatically: he is the one who renounced the religion of Islam, or he is the one who disbelieved after belief (Al-Qari: 1014 AH).

It means leaving Islam after entering it by word or deed, which is blasphemy, whether it is based on belief, stubbornness, or mockery

(If a Muslim apostate, then he marries a Muslim woman, apostate, polytheist, or pagan, then the marriage is invalid, whether they embraced Islam or one of them or did not convert to Islam or either of them. And it is not permissible for a husband to divorce her three times, because the marriage is invalid (Ibn Al-Farra: 458 AH) and this is what the majority of jurists

went to and agreed upon (ibid)

But the dispute occurred as to whether the apostasy occurred after the entry, does the sect fall immediately or not on the doctrines

The first doctrine: If the apostate converts to Islam before the waiting period ends, they are obligated to marry, and if he does not convert until it is over, she becomes obliterated from him.

- 1- Because the property of the apostate is removed from his money, and if he returns to Islam, his property returns. (Al-Makki: 204 AH).
- 2- Because it is a term with which the division falls, and if it is found after consummation, it is permissible to stop at the expiry of the waiting period, such as a revocable divorce. (Al-Naysaburi: 261 AH).
- 3- It was said on the authority of the Prophet (may God bless him and grant him peace): In a dhimmi he was divorced three times. Then they embraced Islam that he said: Islam destroyed divorce. And it was said about him: It is not permissible for him except after a husband. (Al-Hanbali: 1243 AH).

It is answered to them that apostasy is contrary to marriage; Because it is contrary to infallibility, and the divorce is elevating, so it is not possible to make a divorce, unlike the father, because it misses the holding of the good, so it must be released with kindness (Al-Shafi'i: 510 AH).

The fifth issue: the ruling on the apostate's marriage to a Muslim or non-Muslim woman
The origin of the issue

Apostasy Linguistically: So, and so apostatized: withdrew and came back, turned back: went back - turned back on his heels, turned back on his back went back, retreating from where he came. Abandoned his religion: he disbelieved after his conversion to Islam, left it and went back from it.

Idiomatically: he is the one who renounced the religion of Islam, or he is the one who disbelieved after belief (Mohieddin: 647 AH).

It means leaving Islam after entering it by word or deed, which is blasphemy, whether it is based on belief, stubbornness, or mockery

(If a Muslim apostate, then he marries a Muslim woman, apostate, polytheist, or pagan, then the marriage is invalid, whether they embraced Islam or one of them or did not convert to Islam or either of them. And it is not permissible for a husband to divorce her three times, because the marriage is invalid (Omar: 1424 AH), and this is what the majority of jurists went to and agreed upon (Al-Asbahani: 430 AH).

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- 1- Because the property of the apostate is removed from his money, and if he returns to Islam,

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- 2- Because it is a term with which the division falls, and if it is found after consummation, it is permissible to stop at the expiry of the waiting period, such as a revocable divorce. (Al-Maqdisi: 620 AH).
- 3- It was said on the authority of the Prophet (may God bless him and grant him peace): In a dhimmi he was divorced three times. Then they embraced Islam that he said: Islam destroyed divorce. And it was said about him: It is not permissible for him except after a husband. (Al-Khwarizmi: 387 AH).

It is answered to them that apostasy is contrary to marriage; Because it is contrary to infallibility, and the divorce is elevating, so it is not possible to make a divorce, unlike the father, because it misses the holding of the good, so it must be released with kindness (Al-Qurtubi: 520 AH).

I answered that what requires annulment does not change when the waiting period expires and does not differentiate between consummation and after it, such as breastfeeding, buying a wife and having intercourse with her mother. (Hanafi: 461 AH).

The second doctrine: If one of the spouses apostates from Islam, the separation takes place without a divorce, and this is according to Abu Hanifa, and Abu Yusuf - may God have mercy on them - and Muhammad - may God have mercy on him - said: If the apostasy is from the husband, then it is a divorce divorce, he considers it as father (Al-Erbali : 681 AH), and this is what he went to Al-Malikiyah and Ahmad in the narration (Al-Yamani : 1250 AH) and they used the following as evidence:

- 1- (If you know them as believing women, do not return them to the infidels, for they are not permissible for them, and they are not permissible for them) for him.
Significance: This is evidence that the one who obligated the separation of a Muslim woman from her husband is her conversion to Islam, not her emigration.
- 2- The Prophet, may God's prayers and peace be upon him, said: "Whoever does an act that is not in accordance with our command, it will be rejected." (ibid)
Significance: This is an authentic hadith that includes every issue that is contrary to what the Messenger of God - may God's prayers and peace be upon him - commanded - and the issue of dispute is of this nature.
- 3- Because if the man apostasy and joined the house of war, the woman does not have to divorce him; Because the contrast of the two homes is contrary to marriage, and it is contrary to divorce, which is one of the rulings of marriage. Because the opposite, which is the contrast of the two worlds, has risen, and the locality of divorce is due to the waiting period, and it is present, so it occurs.

Results

- 1- A slave does not have the right to take possession of it unless his master permits him, because the slave's property belongs to his master
- 2- If a slave writes to his master and buys a woman for trade, his business is valid, but if he marries her, his marriage is invalid.
- 3- The principle is that the slave does not have his own property, and therefore his marriage is not valid without the permission of his master, and so is the nation
- 4- The curse that takes place is if the marriage is valid, so if the marriage is invalid, it does not take place
- 5- Apostasy is considered one of the causes of discord between spouses, and the separation

- occurs as soon as apostasy occurs without the need for divorce
- 6- The basic principle with regard to the marriage of infidels is that they are corrupt as long as they do not believe that it is permissible in their law.

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