

The Scientific Competence in Marriage between Sharia and Law

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Abstract:

The subject of academic competence in marriage is of utmost importance in life and family organization. It is the right of a woman and her guardian that her husband is competent for her, not inferior to her in status, as he will be the head of the household, responsible for her care. As societal norms evolve with time and place, academic achievement, cultural refinement, and intellectual advancement have become crucial qualities of competence when discussing marital compatibility in our present time, especially if the woman holds high academic degrees and prestigious positions.

The scientific competence in marriage is a topic that has not received much attention, focus, or research from jurists of Sharia and Arab legislators compared to other qualities considered in marital competence.

Keywords: competence marriage; law; Islamic Sharia

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1. INTRODUCTION

The Islamic Sharia and positive legislations both focus on the family regarding its formation, continuity, and sustainability in life. One aspect they emphasize is the importance of competence in marriage, as it is considered a factor for stability between spouses in most cases. More precisely, it means that each spouse should be suitable for the other according to the customs of society. Equality in the context of marriage refers to limited qualities such as religion, lineage, freedom, skill, wealth, age, and educational attainment.

Neglecting these standards leads to the destruction of families and the breakdown of their bonds, as it fosters resentment in the hearts of women and their guardians. The loss of these standards is considered a hindrance to marital life, with a negative impact on the structure that undermines family life. When a woman feels superior to her husband, she may belittle and disrespect him, leading to a sense of inadequacy for both the woman and her guardians. This lack of respect and appreciation that a wife should maintain can disrupt marital interests when efficiency is lacking. Consequently, marital interests are disrupted, leading to the disintegration and instability of family life. Therefore, it is essential to consider these standards during marriage contract as they have a significant impact on the sustainability and stability of marital life.

Since the honor of knowledge is above the honor of lineage and wealth, considering it takes precedence. If the wife is knowledgeable, it is not sufficient if the husband is ignorant. Without understanding and stability, marital life cannot thrive on this assumption, and marriage does not fulfill its intended purpose if the husband does not possess higher knowledge than the wife or at least matches her level of knowledge.

This study aims to shed light on a highly important topic, which is the level of education and its impact on marital competence in Islamic jurisprudence and Arab legislative frameworks. Given its significance in our present time for the sustainability of marital life between spouses, and the potential consequences of neglecting it leading to the destruction of

families and their instability, this contradicts the goals of Islamic Sharia and secular laws in terms of preserving families as the fundamental unit of society. When a family weakens, the entire society weakens, and when it strengthens, the society strengthens because society as a whole is nothing but an integrated group. Therefore, it is essential to highlight the major aspects of the legal purposes in marital competence while emphasizing their reality in comparative laws to bridge the specifications between spouses, and to highlight the various factors that have influenced the balance of competence between spouses in marriage contract.

Given the prevalence of divorce in Islamic societies and particularly in Algerian society, which has witnessed new differences and changes that had a significant impact on the initiation and continuation of marital relationships in our Arab communities. This is due to the lack of harmony or compatibility between spouses, indicating a lack of societal recognition of the importance of compatibility between spouses, especially in terms of educational attainment criteria, giving great importance to women achieving high academic degrees and occupying high positions. Therefore, it is essential for anyone considering marriage to consider closeness and compatibility in choosing their partner, as making the right choice achieves the purpose of marriage, especially social, educational, and psychological goals.

The importance of efficiency between spouses and its impact on family and social life in achieving marriage goals does not differ. However, the characteristics of this efficiency vary greatly among scholars, as they are based on the understanding of people in determining its rules. People's understanding has changed significantly, especially in recent years due to the rapid development in the world, women's entry into the labor market, and their acquisition of the highest academic degrees. This necessitates a change in the characteristics that determine the efficiency of the spouse and their similarity. Therefore, the research paper raises the question:

what extent does Islamic sharia and the positivelaw consider the impact of academic achievement on copetence in marriage?

To answer this problem, we adopted an inductive-analytical approach through a dual plan. In the first chapter, we will discuss the position of scientific competence in marriage in Islamic law. The second chapter will be dedicated to the stance on competence in marriage within legislative provisions.

First chapter: Scientific Competence in Marriage in Islamic Sharia.

Competence in marriage means that the husband matches his wife in various qualities such as religion, lineage, profession, ease, freedom, and educational attainment. When it comes to scientific competence in marriage, it refers to the intellectual compatibility and educational level of both partners. This includes having similar levels of education, intellectual interests, and the ability to engage in meaningful discussions and support each other's intellectual growth.

SECTION ONE: The nature of scientific competence in marriage:

It is worth mentioning before delving into defining scientific competence in marriage to understand what is meant by competence in marriage, and who is the one with equivalent academic achievement?

A: Definition of competence in marriage:

Competence: Means Equality and similarity, whoever rewards someone, makes them equal. It is said that someone is competent for someone else, meaning they are equivalent to them. Competent means: counterpart, equivalent, equal. Everything that is equivalent to something else is considered competent (IbnMandhur, 1989, p. 117). As mentioned in the Quran.

"And there was none equivalent to him, (SurahAlIkhlas) " meaning there is no match for him. Jurists have different opinions on defining competence and in determining the qualities and characteristics considered in that regard.

-The Hanafi school defined competence as: "A man should be equal to a woman in her lineage, religion, age, and other aspects. " (IbnMoussa, First Edition 2000, p. 107)

-The Maliki school defined it as: "Similarity in three matters: status, religion, and freedom. " (Mohamed Khalil Abd el Karim Al-Abbasi & Mohamed, 2023, p. 447)

-The Shafi'i school defined it as: "A matter that necessitates no shame. " (Mohammed bin Saeed & Al-Shakili, 2023, p. 2)

-The Hanbali school defined it as: "Competence is equality in five significant matters: religion, profession, financial status, freedom, and lineage. " (Boulahia, First edition 2018, p. 12)

B: Definition of Scientific Competence in Marriage

Scientific Competence in marriage refers to the concept where a man should be equal to or higher in educational attainment compared to the woman. By "knowledge," it encompasses all beneficial knowledge for Muslims, whether it is religious knowledge or modern and contemporary sciences that do not contradict the values and spirit of Islamic religion, and provide benefit and prosperity to the community. The facets of knowledge are numerous, including but not limited to medicine, engineering, astronomy, military sciences, education, artificial intelligence, mathematics, physics, chemistry, and other beneficial sciences (Hadi, 2008, p. 196).

The norms in our time have changed significantly from what they were in the time of the early jurists. This calls for a change in the perception of competency traits and the meaning of each of these traits. Many qualities that were considered essential for competency by the early jurists have now lost their significance in the eyes of people.

In the customs and considerations of people, new qualities and characteristics have emerged that were not a source of pride and honor in the time of scholars. Today, in the customs of people, competence has become one of the most important qualities, with the most consideration given to knowledge, academic degrees, and the abundance of certificates, known as educational competence.

The first question that the family of a girl asks when a young man proposes to them for marriage is about his education and university degrees. The reason why people focus on academic achievement varies, although most people seek it to ensure that their daughter will lead a comfortable life.

As the higher the degree, the higher the deserved salary that comes with it. The issue goes beyond materialistic concerns, as not everyone seeks financial gain through academic achievement. Some consider academic attainment as a quality that earns its holder respect and intellectual sophistication. (Mohammed bin Saeed & Al-Shakili, 2023, p. 05)

C: Determining the owner of the equivalent educational level.

The view of ancient scholars on this was limited to the extent of the father's knowledge. They said that the daughter of a scholar is unmatched, because the honor of knowledge surpasses the honor of wealth and lineage.

Today, due to the tremendous advancement in the methods of acquiring knowledge, its widespread and organized dissemination under state supervision, schools, institutes, and universities have been established. Enrollment in these educational institutions has become free and mandatory in their early stages. Moreover, legislators in many countries, including Algeria, have provided legal protection for the child's right to education regardless of gender. These institutions grant certificates to their affiliates based on various academic achievements. Academic attainment has become one of the most important criteria that people boast about and differentiate themselves with. Today, one of the first questions asked when considering a potential partner is about their certificates and academic qualifications, especially since women have equal opportunities to pursue education systematically. They study and teach in various universities, colleges, and institutes, and have become professionals in diverse fields such as doctors, engineers, teachers, judges, nurses, and more. It has become imperative to consider a woman's level of education based on her competence rather than solely relying on the educational background of her male relatives, a notion widely accepted today. (Rahifah Sulaiman Hamadeh, 2014, p. 80)

SECTION TWO: The Islamic Sharia's stance on scientific competence in marriage.

The jurists of Islamic Sharia did not focus in the past on the trait of academic achievement as a criterion for marital competence; rather, their focus was on other qualities such as religion, lineage, wealth, profession,

etc., despite their respect and reverence for scholars, their presence in gatherings, their esteemed status, being considered among the elite of the nation and the best of its sons, and ensuring their households were maintained. Perhaps the reason for not considering academic achievement as a criterion for marital competence, despite acknowledging it as being lower and less than knowledge itself, is:

1-Education, teaching, and scientific research were not as organized and regulated as they are in our era, with schools, universities, colleges, institutes, and research centers offering degrees at various academic levels.

2- The evolution witnessed by humanity in establishing educational institutions and universities has enabled women to engage in academic pursuits and continue their studies in prestigious universities. Women now have equal access to education as men and often excel in their academic endeavors in our era.

3-The alarming spread of divorce phenomenon in Arab and Islamic societies, especially divorce initiated by women, where educated women with high academic degrees and senior employees find it challenging to continue their marital life with men who are not on par with them in academic achievement, cultural compatibility, and intellectual advancement.

Despite that, applicants from scholars argue for considering the attribute of academic achievement in the competence for marriage according to the Quran and the Sunnah and what is reasonable as follows

A: from the Quran

Many noble verses in the Quran indicate the consideration of knowledge and the preference of its people over others, including

1: Allah says: "Say, 'Are those who know equal to those who do not know? (SurahAzumar). Only they will remember [who are] people of understanding." This verse highlights the distinction between those who possess knowledge and those who do not, emphasizing the importance of knowledge and understanding, which should be considered in marriage.

2: Allah says: "Allah will raise those who have believed among you and those who were given knowledge, by degrees. And Allah is Acquainted with what you do " (SurahAl-Mujadela). This verse illustrates that Allah

has favored people of knowledge by elevating their status, similar to how He has favored believers and raised their ranks. Therefore, it is essential to prioritize education as part of competency in marriage.

B: From the Prophetic Sunnah

Many hadiths have mentioned the virtues of knowledge and scholars over others, so it is necessary to consider this as a criterion for competence.

1: One of these hadiths is narrated by Abu Ad-Darda who said: "I heard the Messenger of Allah (peace be upon him) saying: 'Whoever treads a path in search of knowledge, Allah will make easy for him the path to Paradise. Indeed, the angels lower their wings out of contentment for the seeker of knowledge. And verily, everyone in the heavens and on earth, even the fish in the sea, seek forgiveness for the knowledgeable person. The superiority of the scholar over the worshipper is like that of the full moon over all other heavenly bodies. The scholars are the heirs of the Prophets; they do not inherit gold or silver but they inherit knowledge. So whoever takes hold of it has taken hold of a bountiful share'" (IbnMajah).

2:- Abu Huraira (may Allah be pleased with him) narrated that the Messenger of Allah (peace be upon him) said, "The best of you in the pre-Islamic period are the best of you in Islam if they have understanding" (Al-Bukhari).

These two hadiths indicate that understanding and education are the criteria that elevate a person to the ranks of the righteous, providing clear evidence of the importance of competence in acquiring knowledge.

C: Reasonable

Reasoning can be approached from various perspectives:

1 ; Scholars have considered some qualities for which there is no clear evidence of their validity or negation, such as lineage and profession, because people have accepted them in their customs, so they were considered. Therefore, considering competence at the educational level is more appropriate for establishing evidence from the Quran and Sunnah as a standard for differentiation among people, in addition to people's consideration of it in their customs.

2 ; Academic achievement is considered in the selection of a job and promotion, as it is prioritized in marriage.

3; People's customs and traditions nowadays consider educational competence as a point of pride and importance. Competence is judged based on how people value and respect it.

4; Contemporary scholars have shifted towards considering competence in knowledge and culture. Among them, Wahba Al-Zuhayli stated: "...but it is preferable to consider the compatibility between these qualities, especially age and culture, as their presence leads to harmony and understanding between spouses. Their absence can lead to confusion and insurmountable differences due to varying perspectives and assessments, hindering the goal of marriage and the happiness of both parties" (al-Zuhayli, 2006, p. 75).

5;It is essential to consider the convergence between the significant qualities in marriage compatibility, especially cultural aspects; as their presence facilitates harmony and understanding between spouses, while their absence can lead to confusion and insurmountable differences due to varying perspectives, assessments of matters, achieving the goal of marriage, and ensuring the happiness of both parties. (Mustouri, April 2020, p. 328)

6 ; Some link the issue of considering academic achievement with customary law as a result of the evolution of the concept of competence. Therefore, they said: 'One of the most difficult things for a woman today is to be forced to marry an ignorant person if she holds a university degree or higher than that. (Al-Ashqar, p. 93)

7 ; Considering the cultural convergence between spouses or their families is of utmost importance in understanding general life and comprehending marital issues to reach optimal solutions. This leads to a stable marital life and peaceful coexistence. (Rahifah Sulaiman Hamadeh, 2014, p. 80)

8 ;Academic achievement holds significance and prestige among people; it is one of the key criteria by which individuals differentiate themselves and take pride in this era.

9 ; This criterion has now taken precedence over some criteria that were considered by scholars in the past, such as lineage and profession, which are no longer as distinguishing in this era as academic achievement. With changing societal norms, knowledge has become one of the most important criteria by which people distinguish themselves. (Al-Kurdi, 2019, p. 109).

Second chapter: Scientific Competence in Marriage in Positive Legislation

Arab legislations differ in their views on marital competency, with some emphasizing it while others remain silent on the matter. Unlike the Algerian legislator who did not explicitly address marital competency within the Algerian Family Law, except for what was mentioned in divorce provisions, in contrast to the majority of personal status laws in Arab countries. On the other hand, the personal status laws of the United Arab Emirates, Kuwait, Jordan, Syria, Libya, and Sudan have addressed the issue of marital competency without specifically mentioning educational attainment as a component of marital competency

However, with the evolution of Arab societies and the empowerment of women in terms of economic, political, and social rights and freedoms, their participation in the workforce and education, and their attainment of a prestigious status in society, as well as in economic and political life, among other aspects that have created disparities in academic, intellectual, and professional levels, Arab legislators have not kept pace with this progress. They explicitly consider academic achievement as a key attribute in assessing marriage suitability.

The first section: The Algerian legislator's stance on academic achievement competence

The stance of the Algerian legislator is unclear regarding the issue of competency in marriage in the first place, let alone considering academic achievement. The Algerian legislator stated in Family Law 84-11, (Law84-11, 1984), annulled by Order 05-02 (OrderNo05-02, 2005) a condition of impediment and prohibited the guardian from preventing someone under

their guardianship from marrying if they desired and it was deemed beneficial for them, as per the annulled Article 12 which previously stated: "The guardian may not prevent someone under their guardianship from marrying if they wish to and it is in their best interest. If prevention occurs, the judge may authorize it while considering Article 09. However, a father may prevent his unmarried daughter from marrying if it is in her best interest."

Here we wonder what are the criteria for determining the most suitable spouse? Has the Algerian legislator defined the meaning of "most suitable"? It is agreed that "most suitable" means the most competent, meaning that the spouse is more suitable for the woman if she proves that he is most suitable for her and there is no justification for prevention. In this case, the father becomes arbitrary in preventing his daughter from marrying someone who is suitable for her, or more precisely, someone who is competent for her. However, those familiar with the current Algerian family law texts find that the Algerian legislator did not specify competence in marriage contracts and did not clarify its stance on this issue. Therefore, in this situation, Article 222 of Algerian Family Law 05-02 should be applied, which states: "Anything not addressed in this law shall be subject to the provisions of Islamic Sharia." It would have been better for the Algerian legislator to adopt the position and opinions of Maliki jurists to clarify and resolve the dispute. Perhaps the reason for the Algerian legislator's lack of mention of competence in marriage is due to changing customs, where women nowadays marry men without considering their suitability. The legislator has left individuals free to choose who they deem suitable for marriage and to organize their personal affairs according to prevailing customs in that region.

Second section: The stance of some Arab legislations on the educational level competence in marriage.

Arab legislations generally do not differ in their view on the issue of marriage competence in general, and scientific marriage competence in particular, so we will limit our study to the position of both the Syrian and Jordanian and Iraqi legislators.

A: The Syrian legislator's stance on competence in marriage.

The Syrian Personal Status Law has not specified a specific definition for competence or the qualities considered in competence. Instead, it has simply used the term in a general sense, leaving the details to custom, which may vary from one region to another. This can lead to legal disputes and differences in judgments due to the variation of customs between regions and even within the same region.

The Syrian legislator organized the qualifications for marriage in the fourth chapter of the second section of the Personal Status Law in Articles 26 to 32. (DecreeNo59, 1953) The Syrian legislator considered competence a requirement for men more than women because a man does not give importance to marrying a woman of lower status, unlike a woman who may consider marrying a man of lower status. The qualifications for marriage vary depending on prevailing customs in the country, including religion, lineage, social status, prestige, wealth, educational qualifications, and academic achievement

Efficiency is a necessary condition for marriage contract, as its absence results in the loss of the right to request dissolution of the contract. Dissolution is the annulment of the marriage contract due to a defect that accompanied its formation or due to an impediment that arose during the marriage preventing its continuation after it was validly established. The importance of this condition is evident given the serious consequences it entails, especially with the legislator's emphasis on its significance and its repetition in several legal articles. Article 20 of the Syrian Personal Status Law states: "A woman who has reached the age of seventeen, if she wishes to marry, the judge shall request her guardian's opinion within a specified period. If he does not object or if his objection is not considered valid, the judge permits her marriage with the condition of efficiency."

This is further confirmed in Article 27 which states: "If an adult woman marries without the consent of her guardian, if the husband is efficient, the contract is binding; otherwise, the guardian can request annulment of the

marriage." However, the condition for dissolution due to inefficiency is waived if the woman shows consideration for family life as per the legislator's provisions.

B: the Jordanian legislator's stance on competence in marriage.

The Jordanian legislator drew provisions of marriage competency from the Hanafi school of thought, where the Personal Status Law regulates marriage competency in Chapter Three of the first section from Article 21 to Article 23. (lawNo15, 2019) It stipulates that for a marriage to be valid, the man must be competent in matters of religion and finance for the woman, without addressing educational competency.

Competency is a specific right for the woman and her guardian, and it is considered at the time of contracting. If it is lost afterwards, it does not affect the marriage. If a guardian marries off a virgin or previously married woman with their consent to a man whose competency they do not know, and it later turns out he is not competent, neither of them has the right to object.

Competency must be ensured at the time of contracting or before it. If the husband or guardian was informed or pretended to be competent and it later turns out otherwise, both the wife and guardian have the right to request annulment of the marriage. Additionally, the right to annul the marriage contract due to the husband's incompetence is forfeited if the wife becomes pregnant, consents, or three months pass after the guardian's knowledge of the marriage.

C: The Iraqi legislator's stance on the educational level competence in marriage.

In the context of Iraqi Personal Status Law, the legislator did not address the issue of competence in marriage at all, let alone delving into the academic level as a facet of competence. The Iraqi legislator often refers to Islamic jurisprudence whenever the need arises to clarify the meaning of competence. This is based on the provisions of the second paragraph of Article 1 of Iraqi Personal Status Law (N88of1959, 1959) as amended, which states that "if there is no legislative text that can be applied, judgment shall be made according to the principles of Islamic law most suitable for

the provisions of this law." This allows for referencing the opinions and definitions of jurists regarding competence to derive a definition of competence in marriage and its characteristics¹.

It is evident from the stance of comparative Arab legislations that they have not regulated the issue of competence in marriage, nor have they defined the qualities considered in competence, leaving this to custom to determine in a manner that aligns with the progress in society and the evolution witnessed by communities.

Conclusion:

In conclusion of this study, we have reached a set of results and suggestions summarized as follows:

1- Competence is either being similar to one's spouse in significant qualities or being superior in these qualities, which are the rights of women.

2-The ancient scholars differed in their opinions regarding the requirement of competence, with one group not stipulating it for marriage and the other group requiring it. Each group presented their evidence and arguments, and we have leaned towards the majority opinion that advocates for the requirement of competence in marriage.

3-The standard for determining the considered qualities in competence is custom in time and place, and the custom in our time necessitates that academic achievement, the husband's profession, and the wife's profession are among the most important considered qualities in marital competence.

4-People in the past used to consider the father's profession and his level of education in the concept of competence, but now it is no longer sufficient. It is more appropriate to also consider the woman's profession and her level of education as equally important.

We have seen that it is necessary to consider this criterion as one of the marital competence standards for the following reasons:

1-The academic degree and university certificate are considered the first qualities that the bride and her family inquire about in the suitor. This quality has become more important than other qualities that were considered by scholars in the past, such as lineage and profession.

2-People no longer differentiate themselves as much in this era based on anything other than their educational achievements. Education has become one of the most important criteria by which people distinguish themselves and boast about in this day and age. With changing societal norms, education has become one of the most significant criteria for differentiation.

3-Women's enrollment in universities, colleges, institutions of higher education, and scientific research, along with their excellence in all fields of knowledge, rising to leadership positions and academic excellence, has led women to surpass men in many sciences. For example, the Faculty of Medicine (Elite College) at the University of Constantine graduated 1008 female and male doctors in 2023, with over 80% of graduates being female.

4-Some Arab legislations have addressed the issue of marital competence; however, they have not explicitly stated that educational attainment is a characteristic of marital competence. This aspect has been left to the customs of each country. The Algerian legislator has remained silent on regulating marital competence in family law and considering educational level as one of the most important criteria that should be taken into account in marriage contracts. Therefore, we call on the Algerian legislator to regulate this matter with clear legal provisions to be included in family law

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