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Legal systems very different from ours

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**Marriage in Islam and Judaism**

**Introduction:**

A comparative study on modern Jewish and Islamic law relating to marriage. What commonalities does Israeli and Saudi Arabian law have in terms of marriage? Where does Jewish and Islamic law intersect? The focus is on marriage as they are most common among all aspects of both communities. Unlike with criminal law, the marriage affect everyone all the time.

Islamic law and Jewish law are divine law so there are many similarities. Modern Israeli and Saudi Arabian law both consider themselves to come from two separate sources, the Torah and Quran respectively. The focus is on how does Israeli and Saudi Arabian law as based on the Torah and Quran handle marriage. Through these two similar narratives, we will display similarities and differences between Israeli and Saudi Arabian law in this aspect.

**The primary sources of Islamic law:**

The Quran (القرآن): was sent down to Prophet Mohammad (محمد) by angel Gabriel (جبريل) by Revelation, during the last twenty-two of Mohammad life[[1]](#footnote-1).

The original text of the Quran is in Arabic[[2]](#footnote-2). The translation use it only to study for non-Arabic speakers, however, and conflict of interpretation must return to the Arabic text[[3]](#footnote-3). The Arabic text is the official text[[4]](#footnote-4).

It is remarkable that only the marriage, divorce, inheritance and criminal principle are existing in Quran[[5]](#footnote-5).

Sunna and Hadith(السنة والحديث) : The definition of Sunna is all acts and says of Prophet Mohammed and everything he accepted during his life[[6]](#footnote-6). However, the Hadith written tales about what Prophet Mohammed was said and acted and agreed[[7]](#footnote-7).

**The secondary sources of Islamic law:**

The secondary sources of the Islamic law are the point of view of the Islamic scholars[[8]](#footnote-8). Most of Islamic studies happen after the prophet Mohammed's dying[[9]](#footnote-9). There were a big number of Islamic jurists during Islamic history[[10]](#footnote-10). Some of them have their defenders and fowlers[[11]](#footnote-11). Many of schools were ended or disappeared. In the current time, there are five existing schools: Hanafi, Maliki, Hanbali, Shafii, and Shia[[12]](#footnote-12).

1. Hanafi's school (الحنفي): Hanafi's school was created by Jurist Abu Hanifa[[13]](#footnote-13). The teaching and principles of this school are applying in Middle East and India[[14]](#footnote-14).
2. Maliki's school (المالكي): this school was established by jurist Malik who was practicing in the city of Medina (المدينة) the teaching and principles follow in Africa[[15]](#footnote-15).
3. Hanbali's school (الحنفي): it was established by jurist Ahmed Ibn Hanbal[[16]](#footnote-16). this school considers strictest Islamic school and its principles are applying in Saudi Arabia[[17]](#footnote-17).
4. The Shafi's school (الشافعي): it was established by jurist Alshafi who was a student of jurist Malik[[18]](#footnote-18). He adopted the mild and balanced thoughts interpretation of Islamic law and principles[[19]](#footnote-19). These followers are in south East Asia[[20]](#footnote-20).
5. The Shia(الشيعة): who consider about ten percent of Muslims[[21]](#footnote-21). They believed that the leader of Muslims should had been by Ali (علي) and his family[[22]](#footnote-22). There are many differences between Shia and Sunni (السنه) [[23]](#footnote-23). The Shia principle are applying in Iran and some of countries.

The four schools Hanafi Hanbali, Shafi, and Maliki are only the existing schools in the present and follow by 90 percent of Muslims. There are no differences between them regarding the essential Islamic principle, however, each school has different interpreter about some issues[[24]](#footnote-24).

Ijtihad (الاجتهاد): it means a personal reasoning. It used to be the method to make a judgment and gave the answer for question and helps to adapt the new conditions of life and should not use it for some matter for instance: existing of God or the truth of prophet Muhammed validity of Quran[[25]](#footnote-25).

**Marriage in Islamic Law:**

The Islam urges each Muslim to wed[[26]](#footnote-26): And of His signs is that He created for you from yourselves mates that you may find tranquillity in them, and he placed between you affection and mercy. Indeed in that are signs for a people who give thought.[[27]](#footnote-27)

Jurists and Islamic schools agreed that everyone has the ability to marry should marry, however, if someone can not afford the expenses of the marriage or to support a women should not to marry. For example, if someone does not have financial capacity or does not have sexual capacity or has significant medical issue.[[28]](#footnote-28)

The marriage in Islam consider a contract and needs some requirements to be valid or legal. Often people do ceremonies with the marriage. Many fundamentals of the marriage were written in Quran and Sunnah[[29]](#footnote-29).

**Engagement:**

The engagement is not required according to Islamic law. However, many societies do engagement before the marriage. (more details)

**The requirements for marriage:**

1. The marriage have to be between male and female.
2. The parties of the marriage have to be at legal marriage age.
3. The man has the option to marry Muslim women or Kitabyyah (Jewish or Christian). On the other hand, the Muslim women does have the right to marry only Muslim man.
4. The parties must not get married with some of relative.
5. The contract of the marriage require offer and acceptance from both parties and the Islamic law require the consent of the *Wali* (the guardian or the father of the bride) in some cases does require.
6. The Mahr[[30]](#footnote-30) is an obligatory payment must be paid by the groom to the bride at the meantime of the marriage contract.[[31]](#footnote-31)
7. The parties should be equal and same position and class.
8. The bride must not be married a man or divorce period, and the groom must not have more than three wives[[32]](#footnote-32).

**The marriage have to be between male and female:**

Same-sex marriage is prohibited in Islamic law. The fundamental condition to be the marriage is correct that the parties must be a male and female[[33]](#footnote-33).

**The parties of the marriage have to be at legal marriage age:**

The age of marriage is vary. The marriage of minors were very popular in the past between Islamic communities. Some reason for this kind of marriage to take advantage of this agreement regardless of the age of the parties. The other reason because the Muslims want the girl be preserved by marriage.

The marriage of minors are correct. However, the parties must reach the adulthood, or the minimum age, according to the Hanafi at nine years for girls and twelve years for boys. The minors’ marriage are prohibited in many Muslim country, and they regulation for minimum age of marriage[[34]](#footnote-34). For instance, in Saudi Arabia, the Saudi Ministry of Justice has legislated a regulation to control this sort of issues. This regulation determine that any potential marriage under 16 years old must be held by the competent court. According to the regulation, there are three condition:

1. Provide a petition by the guardian (Wali) to get exception from the official marriage age, which is 18 years.
2. Provide a medical report to prove that the girl is completed in term of physical and mental position, and the marriage does not constitute any risk to her.
3. The potential bride and her mother must consent to the marriage, especially if her mother was divorced.
4. Ensure that not to do the wedding after signing the contract unless give her training for the family life and prepare her psychologically.[[35]](#footnote-35)

**The marriage with a person of different religion:**

The Islamic law prohibits marriage with gentile. However, it allow the men to marry Jewish and Christian (Kitabyyah), women. All Sunni schools permit this kind of marriage but it is not preferable because the wife may eat ham or drink alcohol. Some Shia schools do not allow this kind of marriage. In the other hand, Muslim woman must marry only Muslim man. Except one case if, the man convert to Islam.

**The parties must not get married with some of relative:**

There are some of relatives have a bar of married. These kind of relatives were mentioned in the Quran:

And do not marry those [women] whom your fathers married, except what has already occurred. Indeed, it was an immorality and hateful [to Allah] and was evil as a way.[[36]](#footnote-36)

Prohibits you [to marry Lyle are your mothers, your daughters, your sisters, sisters and father, sisters and mother, daughters of your brother, daughter, your sister, your [milk] mothers who nursed you, your sisters through nursing, your wives' mothers, and your step daughters under the guardianship of your [ old wives so that you have gone. but if you were not gone in to them, there is no sin on you. and also forbidden are] the wives of your sons who are from the crucifixion of your [own], and you have to take [in marriage] two sisters simultaneously, with the exception of what actually happened. indeed, Allah is Forgiving, Merciful.[[37]](#footnote-37)

The person is barred of marriage his: mother, daughter, sisters, father’s sister, mother's sister, brother’s sister, sister’s daughter, foster, foster’s siblings, descendants, (more details from other book)

**The offer and the acceptance:**

The approval is required from both parties. There are many “Ahadith” confirm that the consent have to be taken from the girl before sign the contract. However, some girls get shy, so her silence considers an acceptance. It is often in Muslim society that the person relay on his family like his mother or sister to look for a girl to marry and there is no meeting between the person and potential wife before arraignment by his family and her family. However, he has the right to reject the girl if he does not like her. Fall in love and romantic story are not important to marry. There are more important things have to ask about it before the marriage be taken place. For instance, the reputation of the groom and bride, education and financial conditions of the groom, family status. The *Wali* maybe the father of the bride. In the absence of him, it might be her brother or uncle. The approval must disclosed by both the *Wali* beside the bride. According to (Hanafi) opinion, the *Wali* consent is not required if the bride become majority, regardless if she was a virgin or not. If the women has no relatives act as a *Wali* such as father or brother etc. in this case the judge will be the *Wali*. If her *Wali* reject the bridegroom in purpose or without any reason, in this case, the Judge will be the *Wali* to complete the marriage[[38]](#footnote-38). In Saudi Arabia, there are increasing of the prevention of marriage. According to MBC website the family court was issued a verdict against guardian of the bride who has rejected the bridegrooms, then the judge asked him about the reason, the guardian said the bridegrooms are not equality in status. The judge found out that the last bridegroom was equality in status, and the guardian was taking advantage of her high salary. This case is not the only one; there are many of prevention of marriage for many reasons. For example, some guardians prevent their daughters to marry them to their cousins, or to a man in same tribe. It is an old habit in Saudi Arabia.[[39]](#footnote-39)

**The Mahr مهر (dower):**

It is a mandatory payment of money the bridegroom has to pay it only to the bride when they sign the contract[[40]](#footnote-40). There is an optional payment due when the husband divorce his wife[[41]](#footnote-41). The Mahr maybe money, property[[42]](#footnote-42). According to the traditions, the Mahr has no limitation[[43]](#footnote-43). According to Sunna, the minimum amount of Maher maybe as an iron of ring, or teaching a small part of the Quran.[[44]](#footnote-44) In Saudi Arabia, the amount of Mahr is a disturbing issue[[45]](#footnote-45). Since the family and the prospective bride ask for very high amount of Mahr which makes the prospective bridegroom to refrain from marriage[[46]](#footnote-46). The government of Saudi Arabia urges the families to stop exaggeration of the amount of Mahr and the expenses of wedding day[[47]](#footnote-47). The Saudi government suggests that to specify the limitation of the Mahr to be no more thirteen thousand dollar for the virgin girls and no more than eight thousands dollar for divorced woman[[48]](#footnote-48). According to recent study there is increasing of High rates of spinsterhood between women, it shows that in 2015 spinsterhood between women is four millions girls compare with one million and half in 2010[[49]](#footnote-49).

**The marriage contract:**

The marriage is a contract and requires an offer and an acceptance from the bridegroom and the *Wali*[[50]](#footnote-50). The celebrating of marriage is not necessary but it is unusual[[51]](#footnote-51). The contract required two witnesses[[52]](#footnote-52). The contract may has additional conditions. For example, the husband has not marry a second woman or determine the city of living.[[53]](#footnote-53) These conditions will be enforced by the court if the hushed does not carries out or violate them. In United States of America, these kind of Islamic marriage contracts enforceable by the law if were signed and registered at the city hall[[54]](#footnote-54).

**The parties should be equal and same position and class (Kufw كفؤ):**

Some Islamic families consider equality in status a very important requirement to complete the marriage[[55]](#footnote-55). Some Islamic schools disagree with this concept because the Quran states that all people are equal and Prophet Mohammed said that there is no difference between Muslim people except in faith[[56]](#footnote-56). In the Saudi Arabia, there are many issues and conflicts arise between families because they are not equal in social status or tribe status. The recent case the judge issued a divorce verdict because the husband is not in same family status of the wife. The court representative justified that the husband cheated on the information he gave about himself, and he got married accordingly.[[57]](#footnote-57)

**The bride must not be married or in divorce period and the groom must not have more than three wives:**

**Conclusion:**

1. Jamila Hussain, Islamic law and society: an introduction (1999), p 27. [↑](#footnote-ref-1)
2. Id. p 27. [↑](#footnote-ref-2)
3. Id. p 27. [↑](#footnote-ref-3)
4. Id. p 27 [↑](#footnote-ref-4)
5. E. Ann Black, Hossein Esmaeili & Nadirsyah Hosen, Modern perspectives on Islamic law (2013) p 11. [↑](#footnote-ref-5)
6. Jamila Hussain, Islamic law and society: an introduction (1999), p 28. [↑](#footnote-ref-6)
7. Id. p 28 [↑](#footnote-ref-7)
8. Jamila Hussain, Islamic law and society: an introduction (1999), p 31. [↑](#footnote-ref-8)
9. Id. p 31 [↑](#footnote-ref-9)
10. Id. p 31 [↑](#footnote-ref-10)
11. Id. p 31 [↑](#footnote-ref-11)
12. Id. p 31 [↑](#footnote-ref-12)
13. Id. p 31 [↑](#footnote-ref-13)
14. Id. p 31 [↑](#footnote-ref-14)
15. Id. p 31 [↑](#footnote-ref-15)
16. Id. p 31 [↑](#footnote-ref-16)
17. Id. p 31 [↑](#footnote-ref-17)
18. Id. p 31 [↑](#footnote-ref-18)
19. Id. p 31 [↑](#footnote-ref-19)
20. Id. p 31 [↑](#footnote-ref-20)
21. Id. p 31 [↑](#footnote-ref-21)
22. Id. p 31 [↑](#footnote-ref-22)
23. Jamila Hussain, Islamic law and society: an introduction (1999), p 31. [↑](#footnote-ref-23)
24. Jamila Hussain, Islamic law and society: an introduction (1999), p 32. [↑](#footnote-ref-24)
25. Id., 32-33 [↑](#footnote-ref-25)
26. Id., 60 [↑](#footnote-ref-26)
27. <https://quran.com/30/21-31> [↑](#footnote-ref-27)
28. Jamila Hussain, Islamic law and society: an introduction (1999), p 60. [↑](#footnote-ref-28)
29. Id. [↑](#footnote-ref-29)
30. Id., 61 [↑](#footnote-ref-30)
31. https://en.wikipedia.org/wiki/Mahr [↑](#footnote-ref-31)
32. Jamila Hussain, Islamic law and society: an introduction (1999), p 61. [↑](#footnote-ref-32)
33. Id., 61 [↑](#footnote-ref-33)
34. Id., 62 [↑](#footnote-ref-34)
35. http://www.alarabiya.net/articles/2013/03/05/269776.html [↑](#footnote-ref-35)
36. https://quran.com/4/22 [↑](#footnote-ref-36)
37. https://quran.com/4/23 [↑](#footnote-ref-37)
38. Jamila Hussain, Islamic law and society: an introduction (1999), p 65. [↑](#footnote-ref-38)
39. Increasing of the prevention of marriage, mbc.net, http://www.mbc.net/ar/programs/mbc-news/articles/-%D8%A7%D8%B1%D8%AA%D9%81%D8%A7%D8%B9-%D9%82%D8%B6%D8%A7%D9%8A%D8%A7--%D8%B9%D8%B6%D9%84--%D8%A7%D9%84%D9%85%D8%B1%D8%A3%D8%A9-%D9%81%D9%8A-%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF%D9%8A%D8%A9---%D8%B8%D9%84%D9%85-%D8%A3%D9%83%D8%AB%D8%B1-%D8%A3%D9%85-%D9%88%D8%B9%D9%8A-%D8%A3%D9%83%D8%A8%D8%B1%D8%9F.html (last visited Mar 24, 2017). [↑](#footnote-ref-39)
40. Jamila Hussain, Islamic law and society: an introduction (1999), p 66. [↑](#footnote-ref-40)
41. Id. p 66 [↑](#footnote-ref-41)
42. Id., 66 [↑](#footnote-ref-42)
43. Id. p 66 [↑](#footnote-ref-43)
44. Id. p 66 [↑](#footnote-ref-44)
45. Determine the value of marriage dowry, alarabiya.net, http://ara.tv/bj876 (last visited Mar 20, 2017). [↑](#footnote-ref-45)
46. Id. [↑](#footnote-ref-46)
47. Id. [↑](#footnote-ref-47)
48. Id. [↑](#footnote-ref-48)
49. Determine the value of marriage dowry, alarabiya.net, http://ara.tv/bj876 (last visited Mar 20, 2017). [↑](#footnote-ref-49)
50. Jamila Hussain, Islamic law and society: an introduction (1999), p 67. [↑](#footnote-ref-50)
51. Id. 67 [↑](#footnote-ref-51)
52. Id. 67 [↑](#footnote-ref-52)
53. Id., 68 [↑](#footnote-ref-53)
54. Jamila Hussain, Islamic law and society: an introduction (1999), p 68. [↑](#footnote-ref-54)
55. Id., 69 [↑](#footnote-ref-55)
56. Id. [↑](#footnote-ref-56)
57. Divorce verdict, alarabiya.net, http://ara.tv/p9n2r (last visited Mar 24, 2017). [↑](#footnote-ref-57)