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Corrupt Marriage: Its Concept and Effects in Islamic Jurisprudence and Jordanian Law

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Abstract

This study aims to clarify the concept of corrupt marriage (al-zawaj al-fasid) in the terminology of Islamic jurists and under Jordanian law, as well as to explain the consequences arising from such marriages. The researchers employed the inductive method and the comparative analytical method. Among the main findings, the study revealed that most jurists differentiate between invalid (batil) and corrupt (fasid) contracts, contrary to what some legal theorists of their schools assumed. Some jurists, however, consider invalidity and corruption synonymous. Jordanian personal status law distinguishes between an invalid marriage contract and a corrupt one but does not provide precise definitions of either; it only lists the cases in which a contract is invalid or corrupt. It was also found that the consequences of corrupt marriages are not fully applied but only to the necessary aspects. Such marriages are not permitted to continue and are subject to annulment by law. The study recommends that legal and family institutions conduct workshops, seminars, and lectures for youth to raise awareness about the negative effects and consequences of corrupt marriages.

Keywords: Corrupt marriage, Islamic jurisprudence, Jordanian law

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Introduction

Marriage is one of the most important social systems in the life of individuals and communities, helping to maintain social balance, cohesion, and stability. The legitimate bond ensures communication between the sexes, provides emotional security, strengthens social ties, and protects individuals and society from social harm that could undermine societal structures. As stated in the Quran:

“And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy.” (Ar-Rum: 21)

God has established pillars and conditions for marriage contracts to protect the rights of spouses and children, ensuring that marriage embodies love and mercy, and establishes lineage and kinship. However, sometimes a pillar may be neglected or a condition overlooked, yet the parties proceed with the contract. Such a contract differs from a valid marriage regarding its legal rules and consequences.

This study addresses corrupt marriage, its concept, and its consequences due to the significant disagreement among jurists, and clarifies the position of Jordanian law on this matter.

Research Questions

1. What is the concept of corrupt marriage according to Islamic jurists?
2. What is the concept of corrupt marriage under the law?
3. What are the consequences of a corrupt marriage?

Objectives

The study aims to:

1. To define corrupt marriage according to Islamic jurisprudence.
2. To define corrupt marriage under Jordanian law.
3. To explain the consequences of a corrupt marriage.

Significance of the Study

1. Limited studies have addressed the topic of corrupt marriage.
2. Studying marriage contract corruption in jurisprudence and Jordanian law.
3. There is a contemporary need to correct corrupt marriages in some cases.

Methodology

This study uses inductive and comparative analytical methods, reviewing religious texts and legal provisions, collecting relevant jurisprudential materials and legal articles concerning corrupt marriage, and analyzing and comparing Islamic jurisprudence and Jordanian law rules.

Discussion

The Concept of Corrupt Marriage

This chapter clarifies the meaning of corrupt marriage in language, Islamic jurists' terminology, and legal texts. We also discuss the general provisions regarding the invalidity of marriage in Jordanian law and relevant observations.

Linguistic Concept of Corrupt Marriage

Definition of Marriage in Language

Linguistically, marriage (zawaj) is the union of a husband and wife or a male and female, joining together after they were previously separate (Ibn Manzur, p.29). The term "marriage" commonly refers to the permanent union of a man and a woman to form a household and family. In this context, marriage signifies this specific meaning.

Definition of Corruption in Language

Corruption (fasad) is derived from the root "fasad–yafsidu." It is used in several meanings related to the opposite of goodness, indicating deviation from a proper state or imbalance (Al-Raghib Al-Asfahani, 2009, p.286). Among its meanings are unlawful appropriation of wealth, defect or flaw, and in the Quran:

"Corruption has appeared on land and sea because of what the hands of people have done, so that He may let them taste part of what they have done, perhaps they will return." (Ar-Rum: 41)

It is also said that *"the people became corrupt"* when kinship ties were severed (Al-Fayrouz Abadi, p.391). From the above, it is evident that linguistically, corruption opposes righteousness, denotes deviation from balance, harm contrary to benefit, and deterioration opposite to improvement.

The Concept of Corrupt Marriage in Jurisprudence

Jurists (usuliyyun) differ in defining corrupt marriage, with two main perspectives:

First Perspective:

Some jurists hold that invalidity (batil) and corruption (fasid) are synonymous, whether in worship or transactions, and both oppose validity. According to the

majority, a contract either fulfills all its pillars and conditions and is thus valid, producing its legal effects, or it is defective in one aspect and becomes invalid and void. Corruption here means complete nullity; the contract is considered non-existent legally despite the act being performed, and it produces no legal effects prescribed for a valid contract. This occurs when the contract violates the contractual system established by Sharia, such as a lack of consent, discrepancy between offer and acceptance, or deficiency of essential conditions (Ibn Hazm, 1997, pp.46, 79, 125; Ibn Al-Lahham, 1995, p.95).

Second Perspective:

Other jurists, particularly Hanafis, distinguish between invalidity and corruption, viewing corruption as an intermediate state between invalidity and validity. A corrupt contract is one in which the violation concerns a non-essential aspect: all essential pillars and conditions are fulfilled, but certain conditions of validity are missing or restricted, considered by jurists as a breach of the contract's requirements. If consummation occurs, some legal effects follow, unlike an invalid contract, which produces no effects. Consummation in a corrupt marriage is considered illicit in all respects, which justifies distinguishing between corrupt and invalid marriages (Ibn Al-Murtada, 2001, p.210; Al-Kurdi, p.126).

Accordingly, a corrupt marriage may raise doubts about permissibility, yet establishes lineage, dowry, and waiting period, such as marriage without witnesses.

In contrast, an invalid marriage is invalid, e.g., a man knowingly marrying a close relative, such as his daughter or sister. It is equivalent to adultery; no lineage or dowry results, and the legal punishment (hudud) applies according to the most authoritative opinions (Al-Zarqa, p.688).

The Concept of Corrupt Marriage in Law

The Jordanian Personal Status Law defined marriage in Article 5 (2010) as:

"Marriage is a contract between a man and a woman, permissible to him by Sharia, whose purpose is to establish a bond for shared life and procreation."

The law distinguishes between an invalid (batil) marriage and a corrupt (fasid) marriage, although it does not explicitly define either. Instead, it specifies the circumstances in which a contract is invalid or corrupt.

Article 30 of the law stipulates that a marriage contract is invalid in the following cases (Jordanian Personal Status Law, 2010):

1. A man marries a woman who is permanently forbidden to him due to blood relation or affinity, as specified in Articles 24 and 25 of the law. Such a contract has no legal effect, and the spouses

cannot remain married. If they do not separate, the judge intervenes on behalf of public Sharia rights. Article 33 clarifies that if the contract is invalid, whether consummated or not, it produces no legal effect regarding maintenance, lineage, waiting period, or inheritance.

2. A man marries another man's wife or a woman who is legally prohibited from him.
3. A Muslim man marries a woman from a non-Book (non-Abrahamic faith).
4. A Muslim woman marries a non-Muslim man.

The law further requires knowledge of the prohibition in cases 1, 2, and 3 of paragraph (a) of Article 30. Ignorance is not an excuse if the claim is unacceptable under similar circumstances (Jordanian Personal Status Law, 2010).

1. As for corrupt marriage, Article 31 of the law lists the following cases (Jordanian Personal Status Law, 2010):
2. A man marries a woman prohibited to him due to breastfeeding relationships.
3. A man marries a woman whom he is forbidden to combine with his wife.
4. A man marries more than four women.
5. A man marries his former wife three times without her marrying another man in between.
6. Marriage without witnesses or with witnesses who do not meet Sharia requirements.
7. Temporary or fixed-term (*mut'ah*) marriages.
8. When one or both parties lack the legal capacity at the time of the contract, or are coerced, while respecting Article 35(c).

It is observed that the Jordanian Personal Status Law mentions only certain forms of corrupt marriages, leaving many others unaddressed. Some legal scholars argue that the law should not limit corrupt marriage cases to these examples and suggest that Article 31 should list these as examples, following the Hanafi perspective (Article 325), while proposing a comprehensive standard for all forms of marital corruption. The suggested standard includes all marriages with a legitimate dispute, not outlier cases, consistent with Maliki and Hanbali jurisprudence.

Article 51 of the law addresses the effects of a corrupt contract, stating:

"If separation occurs after consummating a corrupt contract, the lesser of the named or customary dowry is due. If the dowry was not named or the naming was invalid, the customary dowry is due. If separation occurs before consummation, no dowry is owed."

In this context, Article 34 stipulates:

"If the contract is corrupt and has not been consummated, it produces no legal effect. If consummated, the dowry and waiting period are due, lineage is established, and affinity prohibitions apply, but other effects such as inheritance or maintenance do not."

The Jordanian Personal Status Law prohibits continuation of invalid and corrupt marriages. Separation in a corrupt marriage depends on judicial ruling. Additionally, claims of corrupt marriage due to minor age are not entertained if the wife has given birth, is pregnant, or both parties meet legal capacity requirements at the time of the claim. This prohibition is based on the principle that marriage of minors is generally permissible. If childbirth or pregnancy occurs, both parties are deemed of legal age, protecting the rights of the child or fetus (Jordanian Personal Status Law, 2010).

The effects of a corrupt marriage vary depending on whether it satisfies the conditions of validity entirely, partially, or not at all, such as lacking witnesses, having only one witness, or the inability of one spouse, e.g., if a minority is married by someone other than the father or grandfather.

A corrupt marriage *before consummation* is, like an invalid marriage, null in all respects under Sharia and the Jordanian Personal Status Law and produces no legal effect.

However, if consummation occurs, some essential effects of a valid contract come into force, though not the secondary or discretionary effects. These effects are directly linked to the contract followed by consummation and do not require any specific legal doubt. These essential effects include:

- The obligation of the dowry (mahr),
- Establishment of lineage (nasab),
- The waiting period ('idda) following dissolution due to death, divorce, or annulment,
- Prohibition of affinity (mahram relationships).

The Jordanian Personal Status Law aligns with this principle, as reflected in Articles 34 and 51:

1. Before consummation, a corrupt marriage produces no legal effect. Article 34 states:

"If the contract is corrupt and has not been consummated, it produces no legal effect."

2. After consummation, the following consequences apply:

- A. Dowry obligation, at least the lesser of the named or customary mahr.
- B. Establishment of the children's lineage to the father.
- C. Prohibition of affinity (mahram relationships).
- D. Waiting period (idda).
- E. No obligation for maintenance.
- F. No inheritance between spouses.

Article 51 provides:

"If separation occurs after consummating a corrupt contract, the lesser of the named or customary dowry is due. If the dowry was not named or the naming was invalid, the customary dowry is due. If separation occurs before consummation, no dowry is owed."

Similarly, Article 34 specifies:

"If the contract is corrupt and has not been consummated, it produces no legal effect. If consummated, the dowry and waiting period are due, lineage is established, and affinity prohibitions apply, but other effects such as inheritance or maintenance do not."

Observations regarding the Jordanian Personal Status Law:

1. The law does not grant maintenance during the waiting period after its completion, although Maliki jurisprudence allows it if the wife is pregnant; otherwise, she is entitled only to housing.
2. Temporary (mut'ah) marriage is included under corrupt marriage, though it is invalid according to the majority opinion. The law should define corrupt marriage as any marriage missing one or more validity conditions, listing them clearly.

Dowry (Mahr):

The dowry is the property required in a marriage contract, either named or implied. It is also defined as what a woman is entitled to under the marriage contract or consummation (Ibn Abidin, 2003, p. 230).

The dowry in corrupt contracts is treated differently depending on consummation:

- Before consummation: According to Hanafis, Shafi'is, and Hanbalis, no dowry is due because a corrupt contract is treated as non-existent in terms of obligation (Ibn Abidin, p. 274; Al-Rafi'i, p. 288; Ibn Najjar, 1999, p. 161).
- After consummation: The dowry is established upon consummation. According to Hanafis and Shafi'is, the lesser of the named or customary dowry is due; Hanbalis require the customary mahr, while Malikis grant

the named mahr if valid, otherwise the customary mahr applies (Al-Jaziri, 1999, pp. 110–111).

Legal Position in Jordan:

Articles 46 and 51 of the Jordanian Personal Status Law (2010) regulate dowry in corrupt contracts. Article 51 states:

“If separation occurs after consummating a corrupt contract, the lesser of the named or customary dowry is due. If the dowry was not named or the naming was invalid, the customary dowry is due. If separation occurs before consummation, no dowry is owed.”

Article 46 adds: *If no dowry was specified in a valid contract or it was agreed that no dowry applies, but a dowry is later named and the naming is invalid, the customary mahr is due, not exceeding what the wife claims and not less than what the husband claims.*

The ‘Iddah (Waiting Period)

Jurists agree on the obligation of observing the ‘iddah after the dissolution of a corrupt marriage, if consummation has occurred. The Hanbali and Maliki schools require it after a valid consummation, whereas the Shafi’i and Hanafi schools do not consider it obligatory in a corrupt marriage; in this case, the ‘iddah is like that of a divorced woman for the purpose of clarifying her womb (Bokan, 2012, p.116).

Ibn Uthaymeen stated in Al-Sharh Al-Mumti’ that: *“A woman married by a corrupt contract, if consummated, observes the ‘iddah like a divorced woman. It is correct because the person who completed the contract believed it was valid. However, in the case of a null contract, the woman does not observe the ‘iddah, as the null contract is considered non-existent and has no effect”* (Ibn Uthaymeen, 1428H, p.382).

Ibn Taymiyyah held that there is no ‘iddah; rather, it is only one menstrual cycle for clarification, since Allah prescribed three menstrual cycles for divorced women from their husbands, and thus there is no ‘iddah in this case except for a legitimately divorced woman (Ibn Taymiyyah, 1426H–2005, p.176).

Legal Position:

Article (34) of the Jordanian Personal Status Law stipulates: *“If the contract is corrupt and no consummation occurs; it has no legal effect. If consummation occurs, the dowry, ‘iddah, parentage, and prohibitions of in-law relationships are established”* (Jordanian Personal Status Law, 2010). Therefore, the law obliges a wife to observe the ‘iddah in a marriage consummated.

Parentage:

All schools agree on establishing parentage in a corrupt marriage where consummation occurs, as a measure to protect the child's welfare, considering such a marriage closer to a valid one than a void one (Bokan, 2012, p.116). Some jurists consider the child's legitimacy by applying the principle of respecting differing opinions.

The conditions for establishing parentage in a corrupt marriage include (Ibn Najim, 1997, p.299):

1. Existence of marriage, whether valid or corrupt.
2. Proof of consummation in a corrupt marriage.
3. The husband must be capable of fathering a child.
4. The child must be born after at least six months from consummation.

Legal Position:

The Jordanian Personal Status Law affirms parentage in corrupt marriages. Article (34) provides that if the contract is corrupt and consummation occurs, the dowry, iddah, parentage, and prohibitions of in-law relationships are established. Article (158) specifies that the child is attributed to the father if born at least six months after consummation, with six months being the minimum and one year the maximum period for legal consideration (Articles 156, 158, Jordanian Personal Status Law, 2010).

Prohibition of Marriage Between In-Laws (Mahram Relationships):

Jurists agree that the prohibitions arising from in-law relationships are effective after consummation in a corrupt marriage. The Maliki school extends this prohibition even before consummation, unlike the majority. Article (34) of the Jordanian law confirms this prohibition.

Maintenance (Nafaqah):

Maintenance is obligatory for a wife in a valid marriage under juristic conditions. In corrupt marriages, jurists agree that maintenance is not obligatory because the husband lacks authority over the wife and the contract is considered void in effect (Kasā'ī; Ibn 'Abidin, 1993, pp.117, 278; Ramli, 1993, p.211).

Legal Position:

Article (34) of the Jordanian law stipulates that maintenance is not obligatory in corrupt marriages. The law does not specify reimbursement if the husband spent on his wife in a corrupt marriage; the Hanafi opinion suggests that if he spent voluntarily, it is not recoverable, but if by court order, it is recoverable (Ibn al-Humam, p.341; Ibn 'Abidin, p.281).

No Inheritance Between Spouses:

Inheritance determines the rights of heirs. The Shafi'i, Hanbali, and Hanafi schools do not allow inheritance between spouses in corrupt marriages. The Maliki school distinguishes between divorce before death and continuation until death, allowing inheritance only if death occurs before annulment. The prevailing view and Jordanian law deny inheritance in corrupt marriages because inheritance requires a valid marital contract (Ibn 'Abidin, pp.497–498; Al-Sharbini, p.8; Bahuti, p.491; Jordanian Personal Status Law, 2010).

Conclusion

The researchers have reached a set of conclusions and recommendations, summarized as follows:

Findings:

1. Most jurists diverged from the principles established by the founders of their schools across various branches of jurisprudence, distinguishing between void (*batil*) and corrupt (*fasid*) contracts. Some other jurists, however, considered nullity and corruption synonymous, whether in acts of worship or transactions, both being opposites of validity. Corruption, in this sense, signifies complete nullity, as the act is regarded as devoid of legal effect and consequences in the eyes of Islamic law.
2. The Jordanian Personal Status Law differentiates between a void marriage contract and a corrupt marriage contract but does not define either explicitly. It only lists the circumstances under which a contract is considered void or voidable.
3. The Jordanian Personal Status Law specifies the causes of a corrupt marriage in Article (34), which include the lack of eligibility of the contracting parties, irregularities in the contract's timing or formulation, coercion into marriage, and unions between prohibited degrees of kinship.
4. The effects of a corrupt marriage do not fully apply. However, they are limited to the necessary consequences, such as the dowry, the status of prohibited in-laws, and 'iddah (waiting period).
5. The occurrence of these effects in corrupt marriages does not justify the continuation of marriage; instead, such marriages are subject to annulment by operation of law.

Recommendations:

1. Legal scholars and family counseling experts are encouraged to develop community programs targeting groups with prevalent corrupt marriages. These programs should address the legal rulings, negative consequences of corrupt marriages, the principles of a valid marriage contract, the ideal model of a legitimate marriage, and proper partner selection.
2. Legal and family institutions should conduct training sessions, workshops, and seminars for young men and women to raise their awareness of the adverse effects and consequences.

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