

## Article

# Deceptive Debauchery: Secret Marriage and the Challenge of Legalism in Muslim-Minority Communities

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**Abstract:** “Secret Marriage” is a category accommodating a range of arrangements that seek to conceal a marital union, typically from an existing spouse, the family of the bride or groom, a segment of the community, or the state. These contentious unions have seen an upsurge in recent times in Muslim-majority countries, and, more recently, in minority-Muslim communities in the West. This essay examines the phenomenon in minority communities using three interrelated lenses of analysis: the legal, the moral, and the socio-institutional. Taking this multi-faceted approach, in this essay, I first examine the legal doctrines of the four Sunni schools of law on the requirement of publicity and witness testimony in marriage before situating that legal discussion about contractual validity within a comprehensive analysis of the broader moral and religious legitimacy of entering into a secret union. I argue that while jurists stipulate disparate minimums for contractual validity, nearly all secret marriage arrangements are nonetheless considered invalid (*fāsid*), meaning they are incorrectly conducted by failing to meet the required conditions for the contract to produce its legal effects (*ṣilḥa*) and are also prohibited (*ḥarām*) in themselves or for their entailments, meaning contracting such a marriage is sinful and entails punishment. As I show, even as some jurists may make arguments that may seem to imply that some versions of secret marriage meet the basic conditions to make them technically valid, these same jurists nonetheless argue that such marriages are immoral, religiously deficient, unbecoming of a Muslim, and little more than a pretext for illicit sex. Apart from the theoretical question of whether a secret marriage meets the conditions of contractual validity, parties to a secret marriage in Muslim communities today further engage in a number of sins and transgressions and cause harms to spouses, children, parents, extended family, and the community that must also be reckoned with. The essay concludes with recommendations for how religious authorities can take steps towards regulating marriage in minority-Muslim communities, highlighting the need for public education on Muslim marriage practices that is embedded in a deeper religious morality centering the Sunna to counteract the dominant legalism in the Muslim community that underlies numerous contemporary dilemmas.



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## 1. Introduction

In recent years, the incidence of secret marriages and discussion about it have been on the rise among Muslims living in the West, particularly in North America and Europe. The practice, which has been debated in the Muslim world for some time, is further complicated by a string of revelations that prominent Muslim leaders in the West, from whom countless young Muslims have sought religious guidance, have engaged in extra-marital affairs and shady marriage practices that entailed abuses of the authority and trust vested in them by the Muslim community.<sup>1</sup>

Anecdotally, my conversations with countless Muslims have brought to light the ongoing confusion about the religious and legal status of clandestine marriage. I have been approached by women and men contemplating entering secret unions and inquiring

about the validity of such an arrangement. I have heard firsthand accounts from Muslim women encountering Muslim men online who present themselves as deeply devout, only to proposition them into secret marriages. In one instance, after corresponding online for a few weeks, the couple met for the first time at the airport. The man solicited two witnesses at the airport chapel to attest to their marriage, which they consummated at a hotel nearby. She went along with it because he convinced her that they would only conceal their relationship for some time until he could persuade his family to accept the marriage. But he discarded her after their second meeting, which ironically took place at a major Islamic convention. I have also sat with heartbroken wives contending with the fallout of the infidelities of their spouses upon discovering that their husbands had affairs they justified as polygamous secret marriages. I have also sat with young Muslims devastated and demoralized after hearing that the religious scholar or preacher who inspired them to live a pious life had a secret second family, a shady string of functionally temporary marriages, or extra-marital relationships.<sup>2</sup>

Muslim-minority communities have only begun to seek out clarity about the religious legitimacy of secret marriage and to contemplate institutional measures for prevention and accountability to safeguard those vulnerable to exploitation through its practice. A number of recent studies have examined the phenomenon of secret and/or unregistered marriages in specific countries or regions in the Muslim world, including Turkey, Egypt, Mauritania, Indonesia, Kenya, and Nigeria.<sup>3</sup> These studies have utilized a range of approaches—legal, sociological, and anthropological—to analyze how secret marriages operate within the broader social, political, and legislative contexts of these regions. Secret marriage practices in minority-Muslim communities in Western countries are subject to a different set of social conditions, legal regimes, and systems of religious and moral leadership that require distinct attention. Recently a series of popular online essays were authored by Muslim leaders in these communities condemning secret marriages, explicating the religious problematics of the practice, and warning against the celebrity culture in the community that has enabled some scholars to exploit women through these relationships.<sup>4</sup> Nonetheless, the ongoing incidence and debates surrounding secret marriage indicates the persistence of the practice, the need for a fuller analysis of its legality and morality, and deeper contemplation of effective solutions. Even a cursory consideration of views current among Muslims about secret relationships reveals the range of ill-informed sentiments and opinions on the legitimacy of secret marriage, ranging from “I checked, and it’s *ḥalāl*. There is nothing wrong with me marrying a married man in secret,” to “how can God allow it?!” and “if Shaykh X is doing it, it must be ok”. This spectrum of views highlights the moral, legal, and socio-institutional dilemmas surrounding secret marriages in minority-Muslim communities today and the urgent need for a comprehensive diagnosis of the practice.

This essay attempts such an evaluation by examining the phenomenon of secret marriages in Muslim-minority communities using three interrelated lenses of analysis: the legal, the moral, and the socio-institutional. While these three domains overlap in some respects, analytically disaggregating them serves as a heuristic that reveals the limitations of utilizing a single analytical perspective and demonstrates the increased clarity and nuance produced by examining the issue from multiple perspectives. Nonetheless, as distinct discourses, the legal, the moral, and the socio-institutional at times define terms and concepts differently, which can result in dissimilar perspectives on a single issue. An apt example is the very conceptualization of what constitutes a “secret marriage.” In their *legal* definition of a secret marriage, jurists are primarily concerned with the validity of a marriage contract, leading them to very narrowly construe secret marriages as those that fail to meet the minimum conditions of witness testimony or public proclamation. In contrast, an *ethical or social* analysis—sometimes carried out by these same jurists—takes a broader view and problematizes all marriages that are not communally enacted, publicly announced, and fully embodied among family, community, and broader society because they are in opposition to the Sunna and social norms. The upshot of these differing renderings is that a single jurist may consider a marriage contractually valid (and thus not

a “secret” marriage in the juristic sense) while simultaneously describing that marriage as “secret” in the moral or social sense, leading him to condemn it as religiously deficient and morally problematic and to advocate additional legal and social measures to prevent the practice in society. As this paper will show, the gap between the legal and the moral can sometimes be broad and can sometimes be narrow. In the case of secret marriages, among the Sunni legal schools, the Mālikī doctrine comes closest to collapsing the distinction by proscribing as invalid any marriage that is subject to an agreement among its parties to keep the marriage a secret or any marriage that is not publicly proclaimed.

This paper will use the term “secret marriage” in this broader social or phenomenological sense, which approximates the Mālikī conceptualization. This approach allows us to consider a range of relational arrangements and marital configurations that some juristic assessments would not strictly define as contractually invalid. More importantly, it also allows us to detect the deeper malaise underlying the problem of secret marriage: namely, the legalism dominant in Muslim communities in which *fiqh* minimums and technical validity are elevated as the sole benchmarks of an act’s religious legitimacy and legal rules become the overriding paradigm of religious concern and moral authority. As I will show, Muslim jurists have never considered legality and validity alone as exhaustive of the horizon of religious morality, especially when *fiqh* is narrowly construed as a discourse limited to addressing questions of legal minimums and baseline validity. To highlight this category error, I discuss *validity* (the determination of whether a contract has come into legal effect) separately from *legitimacy* (the domain of the moral and religious that is socially embedded). Beyond presenting an assessment of secret marriages, the broader argument and conclusion of this paper is that while abiding by minimum *fiqh* requirements is an essential condition for the religious legitimacy of an act, it does not suffice to establish its legitimacy, nor does it exhaust the entire horizon of God-pleasing ideals of religious morality and social correctness.

Taking this multi-faceted approach, the heart of this essay examines the legal doctrines of the four Sunni schools of law on the requirement of publicity and witness testimony in marriage. It then situates this legal discussion about contractual validity within a comprehensive analysis of the broader moral and religious legitimacy of entering into a secret union. As we will see, jurists stipulate disparate minimums for contractual validity, and thus the range of judgements concerning a typical secret marriage ranges from absolutely invalid (*fāsid*)<sup>5</sup> and prohibited (Mālikī) to likely invalid and most often entailing the prohibited (e.g.,: Shāfiʿī, Ḥanbalī, and Ḥanafī).<sup>6</sup> Stated otherwise, I demonstrate that, according to the conditions that Sunni jurists stipulate for marriage contracts, nearly all secret marriage arrangements are invalid (*fāsid*), meaning they are incorrectly conducted by failing to meet the required conditions for the contract to produce its legal effects (*ṣiḥḥa*) and are also prohibited (*ḥarām*) in themselves or for their entailments, meaning that undertaking such a marriage is sinful and entails punishment. As I show, even as some jurists *may* make arguments that may *seem* to imply that *some* versions of secret marriage meet the basic conditions to make them technically valid, these same jurists nonetheless argue that such marriages are immoral, religiously deficient, unbecoming of a Muslim, little more than a pretext for illicit sex, and thus that they undermine the very purpose of an Islamic marriage. Apart from the atomized and theoretical question of whether a secret marriage meets the conditions of contractual validity, parties to a secret marriage further engage in a number of sins and transgressions and cause harms to spouses, children, parents, extended family, and the community that must also be reckoned with.<sup>7</sup>

Methodologically, the analysis presented in this paper is largely textual, with some historical, sociological, and institutional insights integrated. As for what concerns my positionality, I am not writing this merely as a legal historian but also as a committed Muslim scholar enmeshed in the Muslim community and normatively committed to Islam’s ethico-legal discourse. Accordingly, I am advancing a constructive argument and proposing solutions from within this ethico-legal tradition specifically oriented to address an issue of contemporary salience in minority-Muslim communities in the West. To make this essay

accessible to a wider non-expert audience, essential background information is included about the purposes of Islamic marriage, the basic functioning of Islamic law, and the rules of Islamic marriage contracts.

This paper is divided into four parts. The first discusses the purposes of Islamic marriage according to the Qur'an and the Sunna of the Prophet Muḥammad. The second part introduces the form and function of the substantive rules of Islamic law (*fiqh*) broadly and then examines the legal doctrines governing a valid marital contract, with a particular focus on witness attestation and public proclamation. The discussion of these legal conditions compares the doctrines and approaches of the four Sunni schools. The third part contextualizes these legal doctrines within a broader discussion of the Sunna's ethics in supplementing the legal minimums of *fiqh* in Muslim religious life and presents a moral diagnosis of secret marriages among Western Muslims. The essay concludes with recommendations for how religious authorities can take steps towards regulating marriage in minority-Muslim communities. This includes the implementation of policies to foster healthy marriage cultures in Muslim communities, hold religious leadership accountable, and protect the vulnerable from exploitation, as well as establishing public education programming on Muslim marriage practices that is embedded in a deeper religious morality centering the Sunna to counteract the dominant legalism in the Muslim community that underlies numerous contemporary dilemmas.

## 2. The Goals of Islamic Marriage and The Sunna of the Prophet: Love, Mercy, Trust, and Commitment

The Qur'an characterizes the marriage contract as a "solemn covenant" (*mīthāqan ghalīẓan*),<sup>8</sup> highlighting that it is both a serious undertaking and a long-term commitment. In other verses, this term "covenant" (*mīthāq*) is used to describe a spiritual agreement between God and the prophets, the Israelites, or the believers, indicating the transcendental dimension of the marriage bond: it is not only a secular contract between two individuals, but also a covenant between them and God.<sup>9</sup> The solemn covenant has been understood by some exegetes to refer to the spoken contract the groom utters during the marriage ceremony assenting to the marriage to his new bride (see, for example, [al-Qurṭubī \[1427\] 2006](#), vol. 6, pp. 169–70). Other exegetes consider the solemn covenant a reference to the Prophet's exhortation to men in his sermon at the Farewell Pilgrimage: "Fear God concerning women (*ittaqū Allāh fī al-nisā*). Truly you take them as a trust from God, and intercourse with them has been made lawful for you by the word of God."<sup>10</sup> Both interpretations seem to address men specifically, admonishing them to regard their wives with reverence and the marital bond uniting them as a solemn commitment sanctified and authorized by God's commands.

The Prophet Muḥammad himself embodied this reverential ethic towards women, as evident in his relationships with his wives and the women of his household. He exemplified beautiful conduct towards his wives and family, and exhorted his companions to emulate him, teaching, "The best of you are the best of you to your family, and I am the best of you to my family."<sup>11</sup> In contrast with the Prophet Jesus who did not marry, the Prophet Muḥammad was not only married, but his conjugal life has also been documented in minute detail, providing Muslims with an exemplary model of how to initiate and live a married life that is pleasing to God. Entire books have been written about the palpable love and subtle affection between the Prophet Muḥammad and his wives, demonstrating how marital relationships can embody the Qur'anic ideals of tranquility, love, and mercy placed by God between the hearts of spouses (Quran 30:21).<sup>12</sup>

The Prophet encouraged his companions to marry and characterized marriage as half of the religion: "Whoever marries has completed half of his faith, so let him be wary of God in the remaining half."<sup>13</sup> He described it as "his way" (*Sunna*), condemning those who deliberately rejected it in favor of celibacy.<sup>14</sup> He emphasized that marriage should be made easy—meaning that unnecessary or worldly impediments should not obstruct a couple seeking to marry.<sup>15</sup> But he also warned that marriage, a solemn covenant, is a

serious matter that should not be taken lightly, stating, “There are three matters in which seriousness is solemn and jesting is solemn: marriage, divorce, and reconciliation after divorce (*raja*).”<sup>16</sup>

When examined comprehensively, Quranic and Sunnaic guidance concerning marriage points towards several goals and purposes (*maqāṣid*) that the conjugal bond is intended to achieve, both in the form of benefits for the two spouses, as well as broader social goods for the Muslim community (see, for example, [Ibn Qudāma \[1417\] 1997](#), vol. 9, p. 343).

First, and most immediate, is the happiness and fulfillment of the spouses. By legitimating sexual intercourse between spouses, marriage makes possible sexual fulfillment and the achievement of chastity, described in the Qur’an as *iḥṣān*. The emotional bond and sexual intimacy between spouses is not only legitimated by marriage, but marriage transforms the relationship into a highly rewarded act of worship. Among the highest goals of marriage is the enduring companionship, affection, and intimacy between the spouses. In a beautiful parable, God describes the spouses as garments for one another: “They are garments for you and you are garments for them,” underlining the mutual protection and beautification the spouses provide for one another.<sup>17</sup> God describes the conjugal bond as a Divine sign and favor: “And among His signs is that He created for you from among yourselves spouses, in whom you find repose, and He placed between you love and mercy. Indeed, in that are signs for a people given to careful thought.”<sup>18</sup> This marital union is intended for lasting rather than temporary or short-term love, intimacy, and mutual support between the wife and the husband.<sup>19</sup> This bond persists into the next world; God promises that believers will be reunited with their spouses and children in paradise.<sup>20</sup> Among the many other purposes and benefits of marriage that are also dependent on its permanence are financial security, pooled labor and resources to create a household in which subsistence needs are met, and the securing of care and service during times of illness and vulnerability.

Second, marriage has the social function of connecting families, fostering or strengthening the bonds of solidarity connecting the extended families of the husband and wife, and facilitating the inter-generational transmission of wealth, property, and religious commitment (see, for example, [al-Sarakhsī \[1409\] 1989](#), vol. 5, p. 23). Third, beyond the couple and their families, marriage has the crucial social function of ensuring the continuity of religion through the production and reproduction of a stable and healthy Muslim community. This is encouraged by a number of teachings in which the Prophet directs his followers to have numerous children so that he may proudly boast of the large following of his community on the day of resurrection (al-Suyūṭī, *al-Jāmi al-ṣaḡhīr*, no. 6233). One of the goals of marriage is thus raising a new generation of Muslim children in loving and stable homes and in a nourishing community. From the perspective of the needs of children, stability and predictability are primary to support their social and intellectual learning, which is yet another rationale bolstering the persistence of their parents’ union.

The familial and communal goals of marriage reinforce, rather than undermine, the promotion of the first goal, the happiness of the couple. When the public formalities surrounding marriage are observed—such as the dower, attestation by witnesses, and the permission of a guardian—the rights of both spouses are publicly recognized by the community. In fact, by publicly making the commitment to respect the rights of their spouse, a newlywed couple internalizes a commitment to their duties within the marriage. Therefore, “public knowledge and recognition of a marriage does not obstruct a couple’s long-term personal happiness, but rather secures and strengthens it.” ([Fadel 2016](#)).

Marriage thus supports several of the primary goals of Islamic law at both the individual and communal levels, namely, the preservation of life, religion, property, family, and lineage. When we consider the phenomenon of secret marriages in light of the Islamic ends of marriage, it is obvious that an agreement to keep a marriage secret from another person, families, or the community undermines each of these goals. While it may further the short-term personal happiness of the spouses insofar as it facilitates their immediate gratification, it is unlikely to do so over the long term, and therefore it is inconsistent with



the divine end for marriage, namely, that it leads to lasting intimacy and the furtherance of secondary goals for the couple's families and communities.

### 3. The *Fiqh* of Marriage: Baseline Conditions of Validity and Secrecy

#### 3.1. *The Concerns of Fiqh: Validity, Minimums, and Worldly Regulation*

Before delving into the conditions for an Islamic marriage contract, it is essential to understand a few key concepts and distinctions about *fiqh* as a tradition of legal knowledge and practice. These are intended to serve as correctives to misunderstandings prevalent among Muslims about the purposes and operation of the law and its relationship to the broader Sunna and Prophetic ethics. It is not only difficult to meaningfully understand the conditions of a marriage contract without clarifying these distinctions, but their significance and relevance extend beyond the case study at hand to countless other issues of widespread concern in which morality and legal minimums are recurrently conflated.

First, determinations of legal rulings (*ḥukm taklīfī*) are assigned to outward acts. Islamic law is fundamentally concerned with categorizing bodily acts into one of five categories of legal rulings (*ḥukm taklīfī*): obligatory, recommended, permitted, disliked, and prohibited. These are supplemented by two additional categories, valid (*ṣaḥīḥ*) and invalid (*bāṭil* or *fāsid*), which determine the soundness of acts of ritual worship and contracts on the basis of the fulfillment or non-fulfillment of essential and minimal integrals or conditions (*arkān wa-shurūṭ*). Though jurists may at times stipulate intention as a requirement for the soundness of an act (e.g., intending to fast a day of Ramadan as a requirement for the fast's validity) or interrogate an individual's intention (e.g., in ambiguous divorce pronouncements), their primary concern is with regulating the outward. The domain of intentions and inward states are largely left to God and cultivated in other ethical and spiritual disciplines (*akhlāq* or *taṣawwuf*).

Pertaining to the act of marrying, jurists determine the validity of a marriage exclusively on the basis of what is accessible to them, namely, observable outward actions that are reasonably assumed to be indicative of inward intentions. On the basis of a couple's conformance to outward formalities, their good or bad intent is inferred, and jurists assign legal determinations of validity or invalidity, and allowance, permission, or disallowance. At times there may be dissonance between a person's outward behavior and inward intent. For example, a man may outwardly contract a legally valid marriage while deceiving his bride and her family that he is committed to a long-term relationship with her, only to discard her after consummating the marriage or gaining citizenship. Or a woman may only be interested in plundering her spouse's financial resources before leaving him. Or a couple marries while sharing an implicit understanding that the husband who is studying abroad will return to his home country after he completes his education, when they will divorce (Fadel 2016).

In cases like these, the law makes no attempt to investigate these hidden motives and assumes good faith on the part of both parties so long as they fulfill the outward conditions legitimating their union. This does not mean that *no one* investigates the couple's motives, particularly the intentions of the man. Traditionally, this responsibility fell to the family of the bride and her guardian, who would probe a prospective husband's intentions through challenging personal interviews, spending time with him, and soliciting personal references from individuals who had had dealings with him. Because the mobility of modern life makes it difficult to gain long-term knowledge of people, and because many women do not have sufficient family members to perform these investigatory functions, Imams in some Muslim-minority communities today require premarital counseling, which, among other things, is designed to uncover bad-faith approaches to marriage. It is worth noting here that all of these safeguards are circumvented by a secret marriage.

Second, the strict validity of a marriage depends on fulfilling essential and minimal integrals or conditions (*arkān wa-shurūṭ*), which are features of an act essential to or constitutive of its fundamental form. While the ideal is always the Sunna, Islamic law distills from it—alongside the Qur'an and the practice and understanding of the early Muslim

community—a set of absolute baseline minimums required for a valid and binding Islamic marriage (these are discussed briefly in the next section). Contract law, including marital contracts, is in the first instance concerned with the validity or invalidity of a contract. The conditions of validity are absolutely integral for a contract to be considered a marriage, thus distinguishing a marital relationship from any number of other illicit relationships. These baseline integrals are believed to be the minimal, objective indicators that the parties to the union seek to fulfill the Divinely intended purposes of marriage and are not merely using the scaffold of marriage to pursue Islamically illicit goals. Once fulfilled, these minimal conditions lift potential criminal liability from a couple for cohabitation. This skeletal structure of essentials and conditions is then supplemented by, but distinguished from, other formalities. These formalities may be very important—even strongly emphasized by the Prophet and necessary to avoid personal and social harms—but are not integral to the validity of the contract itself.

The stipulation of minimums for validity is the ordinary approach of jurists determining regulations for any given human act. To give an example that would be familiar to a non-specialist Muslim, when it comes to the ritual ablution (*wuḍūʾ*), Muslim children are taught a form of the *wuḍūʾ* in which they are instructed to begin with the *basmala* and then perform each of the following actions three times: wash the hands, rinse the mouth and nose, wash the face, the arms, the entire head, then the ears, and finally the feet. They are taught to wash each of these three times, to wash the right before the left, and to maintain the sequential order of the limbs in washing. Very few Muslims know exactly which of these acts are strictly necessary for a valid ablution. In the Shāfiʿī school, they can dispense with all but washing the face once and the arms once, touching the scalp with a wet finger, and washing the feet once, so long as the order is maintained. Everything additional to that is strongly recommended, but the *wuḍūʾ* would be technically sound if omitted. The point of distinguishing between integrals and recommendations is not for Muslims to fulfill only the bare minimums, but rather to enable jurists to establish whether a individual's washing of their limbs counts as a valid *wuḍūʾ* or the person was merely washing to clean themselves or to cool off, which does not itself fulfill the prerequisite washing before the prayer.

Similarly, Muslim jurists distinguish between the absolute integrals of marriage and recommended elements that do not affect its validity. Jurists are rightly circumspect when interpreting scriptural indicants concerning marriage to distinguish absolute requirements from favored recommendations. Jurists did not impose additional conditions beyond what they believed the Prophet had legislated—even if they nonetheless expressed, sometimes emphatically, that only maintaining the absolute minimums was deeply morally problematic, against the Sunna, and undermined the very institution of marriage. For example, early Muslim jurists who only stipulated that two witnesses were required to attest to the marriage nonetheless assumed that those witnesses would share news of the marriage with others, as we will see below. They maintained that keeping the marriage a secret between the couple and the two witnesses was contrary to the spirit and intent of the Prophetic injunction of witness attestation, and his strong encouragement and practice to publicly proclaim the marriage—even if, strictly by law, the attendance of two witnesses sufficed to lift potential criminal liability from the couple for cohabitation.

Third, jurists seek to validate as many marriages as possible for both the social benefits and legal effects that they engender. Islamic law is concerned with determining legal facts on the basis of which relationships are regulated and binding rights and obligations are established for the worldly benefits of all those implicated. When it comes to marriage, jurists seek to authorize as many unions as possible, which hinges on the validity of the marriage contract. This baseline validity is important, and it is in the best interest of society that as many agreements as possible that people enter into believing them to be contracts of marriage be recognized as such. In addition to making sexual intercourse lawful, contracting a marriage gives rise to a number of important legal consequences: mutual rights and obligations come into effect, offspring from that union are recognized, inheritance is established, and certain categories of women are deemed impermissible

to marry synchronously or in the future. If a contract and the ensuing relationship are considered legally invalid, some of these legal outcomes may be impeded, in addition to other possible consequences, such as punishments for engaging in illicit sex.<sup>21</sup> For these reasons, oftentimes, jurists will find ways to recognize and legalize unions after the fact that would otherwise not be considered valid if entered into knowingly.

It makes good sense to make the required conditions very few and the threshold very low. This is part of a larger minimally interventionist approach of the law, which depends on reasonable assumptions of good faith, self-governance, and social ties to preclude many harms and abuses. An example of such an assumption is that a father is believed to have the best interests of his daughter in mind, which is the rationale that many jurists used to explain the rule allowing him to contract a marriage for her without having to secure her consent.<sup>22</sup> At the same time, safeguards are put in place in cases in which assumptions like these are shown to be untrue: if a father does not marry her to a suitable mate, or if there is enmity between the bride and her guardian, she can contest an undesired marriage or override his objection to a desired one (al-Shirbīnī 1997, vol. 3, pp. 200–1). If guardianship passes to other than the father, this assumption is not made of other close male kin, who may privilege other interests over hers and who do not ordinarily have the same degree of care and compassion towards her as does her father.<sup>23</sup> In instances in which the daughter's interests are not served by her male guardian—such as when a father is preventing his daughter from marrying someone suitable to her, or he consistently avoids the topic of her marriage by disappearing when it is time for the contract or refuses to discuss the topic whenever she receives a proposal—her guardianship passes to the Imām (ibid.). While the law assumes the integrity of ordinary familial and social ties, when these no longer serve the ends for which they are purposed, another set of legal provisions are triggered to redress the misuse of prerogatives or the neglect of responsibility.

### 3.2. *Fiqh Minimums of Islamic Marriage and The Centrality of Public Proclamation*

In Islamic law, marriage comprises a few core integrals (*arkān wa-shurūṭ*), the most salient of which are: the two parties (the bride and groom), the permission of the bride's guardian (for a previously unmarried virgin), the spoken contract, two witnesses attesting to the union, public proclamation of the marriage, and a dower gifted by the husband to the wife. Sunni jurists have differed concerning the details governing each of these elements and have debated which of them, when absent or deficient, invalidate the contract and which do not.<sup>24</sup> Beyond these integrals, there are additional customs recommended by the Prophet Muḥammad, such as the delivery of a sermon at the time of the marriage and the hosting of a public celebration of the marriage (*walīma*). While each of these elements could be the subject of a detailed analysis, here, I focus primarily on the conditions that distinguish an Islamic marriage from an illicit secret relationship: witness attestation and public proclamation.

Everything we know about the Prophet Muḥammad's married life and his teachings is completely antithetical to a secret marriage initiated and maintained behind closed doors and without the knowledge of family and community. The Prophet instructed his community to make marriages public: "Proclaim the marriage publicly (*al-linū al-nikāḥ*), hold it in the mosques, and beat for it the drums."<sup>25</sup> To this end, he obligated witnesses to attest the marriage contract in emphatic terms, stating, "There is no marriage without a guardian and two witnesses," with some narrations specifying that they be "two upright witnesses" in addition to "a guardian possessing good judgment (*walī murshid*)."<sup>26</sup> Abd Allāh b. 'Abbās stated (or narrated from the Prophet), "The woman who fornicates (*al-bāghiyya*) is the one who marries herself without indisputable evidence (*bayyina*)" and, in another narration, "without witnesses."<sup>27</sup> This "indisputable evidence" signifying witness attestation is the means by which the couple legitimizes their union socially and removes any potential doubt or misapprehension about their relationship. The Prophet Muḥammad exemplified this public transparency; when he was speaking to his wife Ṣafiyya bint Ḥuwayy (d. 50/670 or 52/672) at the gate of the mosque and two men passed by them, he went out of his way



to clarify to them that the woman with whom he was speaking was his wife so that there would be no misgivings in their minds, explaining, “Satan reaches everywhere within the human being just as blood flows through him, and I was afraid lest Satan might place an evil thought in your minds.”<sup>28</sup>

The Prophetic community was one in which marital unions were not only announced but widely proclaimed and celebrated; he encouraged every person marrying to host a wedding feast in accordance with his means. When he discovered that one of the companions had recently married, he instructed him to host a wedding feast, “even if it consists of only a single yearling (*shāt*)!”, meaning even if one can only afford a simple feast (Mālik b. Anas 2019, no. 1711). He himself hosted wedding feasts when he married, some so modest that neither bread nor meat was served (Mālik b. Anas 2019, no. 1712). The communal importance of the wedding feast was highlighted in the very strong obligation to attend when invited, and in the directive to invite the entire community, including members of diverse socio-economic classes, to partake. As the Prophet instructed, “The vilest food is that of a wedding feast to which the rich are invited but from which the poor are excluded. Anyone who refuses to attend a wedding feast has disobeyed God and His Messenger.” (Mālik b. Anas 2019, no. 1714).

In light of these clear, unequivocal teachings, it is no surprise that the leading jurists among the companions and their successors likewise commanded public proclamation of marital unions in emphatic terms. In his *Muwattaʿa*, Imām Mālik b. Anas (d. 179/795) reports that Umar I (d. 23/644) was once presented with the case of a marriage for which the only witnesses were one man and one woman. He said, “This is a secret marriage, and I do not permit it to stand. Had I been the first to rule on such a case, I would have ordered the parties to be stoned to death for adultery.” (Mālik b. Anas 2019, no. 1675). Similarly, al-Zuhrī (d. 124/742) stated, “If someone marries secretly, brings two witnesses but commands them to keep it secret, it would be obligatory to separate the husband and wife.” (al-Dusūki 1931–1934, vol. 2, p. 216).

On the basis of these injunctions directing the public pronouncement and celebration of a new marriage, jurists determined precise regulations (*dawābiṭ*) for witness attestation and public proclamation. In other words, what was entailed by these two elements on which the Prophet premised the legitimacy of a marriage? What constitutes proclamation? And how do we determine whether the condition of witness testimony has been fulfilled?

The Prophetic command to publicly proclaim marriages and not keep them secret was formalized by Shāfiʿī jurists through two conditions. The first was the requirement that the bride’s guardian be involved in and consent to the marriage (al-Shirbīnī 1997, vol. 3, pp. 194–95). This was a condition stipulated by all the legal schools except the Ḥanafīs, who considered it recommended but not required that a woman ask her father’s permission and appoint him, or another close male relative if he is deceased, as her agent for the contract (al-Kāsānī 2003, vol. 3, pp. 348, 369–76; al-Marghīnānī [1417] 1996, vol. 3, pp. 31–36). While the guardian’s function is not primarily to witness the union as he is party to the contract in most schools, his presence nonetheless signals the participation of the woman’s family, who is assumed to protect her best interests, while also involving more people who then convey news of the union to others.

Second, all the Sunni schools except the Mālikīs stipulated witness testimony as a condition of validity; the Mālikīs considered it a strongly recommended Sunna but did not make the contract’s validity contingent on it. The other schools did, though they differed concerning the details of the requirement of witness testimony. The Shāfiʿīs required that the contract be witnessed by a minimum of two witnesses who are sane, male, mature, and upright (al-Shirbīnī 1997, vol. 3, pp. 194–96). The stipulation of only two witnesses originated in the Prophet’s directive that “there is no marriage without two [upright] witnesses.” Shāfiʿīs understood this categorical negation to indicate the converse to be true—if there are two witnesses, there is a marriage. By having two upright witnesses attest to the marriage, a conjugal union was removed from the realm of the clandestine and distinguished from the secret marriage prohibited by the Prophet. They therefore rationalized that a secret is

by definition something that is shared with a single person; once it is disclosed to at least two, it is no longer a secret (Ibn al-Humām [1424] 2003, vol. 3, p. 192).

The Shāfiʿīs, however, stipulated very exacting standards for the uprightness of witnesses. They required that the moral rectitude of a witness not only be apparently believed or outwardly known (*ẓāhiran*), but also that his integrity be probed to ascertain that he is in fact inwardly upright (*bāṭinan*) (al-Shirbīnī 1997, vol. 4, pp. 569–88). While later Shāfiʿīs sufficed themselves with apparent uprightness because of the difficulties of ascertaining inward uprightness, in medieval Muslim societies, this problem was overcome by relying on court-appointed witnesses who were vetted by the religious establishment and who, as a formal matter, witnessed and notarized contracts as part of a broader process of registering marriage with the state.<sup>29</sup> In the absence of court-appointed witnesses, and due to the concern of witnesses not meeting the condition of uprightness, Shāfiʿī jurists recommended that marriages take place in front of as large a congregation as possible in the hope that at least two people in the crowd witnessing the ceremony would meet the standard and constitute the two upright witnesses (al-Shirbīnī 1997, vol. 3, p. 194).

The congregational attestation of a marriage is in keeping with the purpose and ethos of witness presence: while clinging to the explicit specification of two witnesses as the decisive regulation, Shāfiʿī jurists nonetheless considered public proclamation strongly recommended even if a contract's validity did not hinge on it. In fact, for them, witnesses—ordinarily more than two, but at least two—were not merely a formal condition but were intended to spread the news of the marriage to others, as well as to eliminate any doubt concerning the legitimacy of the couple, and any potential disavowal or denial of the marriage or offspring from it by either party (al-Kāsānī 2003, vol. 3, p. 404; Ibn Rushd [1415] 1994–1995, vol. 3, pp. 35–36; Ibn Qudāma [1417] 1997, vol. 9, p. 348). They argued that two witnesses, in addition to the couple, and their families, would reasonably be expected to spread the news of the marriage, making it public knowledge (al-Kāsānī 2003, vol. 3, p. 393). Their presence sufficed to technically and formally validate a marriage, though not having greater attestation and proclamation was disliked because the Sunna is its proclamation.

The Ḥanbalīs maintained a position similar to that of the Shāfiʿīs: they stipulated the guardian's involvement on behalf of the bride as well as the attestation of two male witnesses (Ibn Qudāma [1417] 1997, vol. 9, p. 344). There are two views in the Ḥanbalī school concerning the degree of moral probity required, one matching the Shāfiʿī view, and the other matching the Ḥanafī view.<sup>30</sup>

The Ḥanafī approach diverged from that of the Shāfiʿīs and Ḥanbalīs. Ḥanafī jurists were more lenient in the conditions they stipulated for witnesses by not requiring that their moral rectitude be investigated and sufficing with the outward or apparent uprightness of a witness. They also allowed one man with two women to attest as witnesses (al-Kāsānī 2003, vol. 3, pp. 402–5). Furthermore, in opposition to the majority view, Ḥanafī jurists did not strictly require but only encouraged the consent of the guardian. This has been mistakenly understood to be a license for a couple to marry without the involvement of their parents and families. However, the Ḥanafī position is that it is strongly disliked for a woman to marry without her guardian's involvement, and in some predominantly Ḥanafī Muslim societies, this allowance was precluded in favor of the dominant juristic position requiring a guardian's consent (Peters 2020, pp. 590–92). Furthermore, while a woman can contract her own marriage independently without the permission of a guardian just as she freely concludes financial contracts, Ḥanafī law nonetheless enables her guardian to dissolve her marriage through judicial intervention if she marries an unsuitable groom, generally defined as a husband inferior to her in lineage or socio-economic status (*kafāʾa*).<sup>31</sup> This therefore assumes and necessitates, a priori, that the guardian be made aware of the union in order to enable him to exercise this safeguarding duty. Beyond the remit of the law, and all things equal, there is a very strong moral obligation for children, both men and women, to seek and secure their parents' consent before marrying.<sup>32</sup>

But what if the two witnesses were asked to keep the marriage a secret, or they themselves devised to conceal it? Would that then negate the contract's validity? Jurists contemplated this scenario. Some argued that an agreement to keep the marriage secret defeated the very purpose of witness attestation and was a means to illicit sex (*zinā*), and that this was the secret marriage the Prophet prohibited (see, for example, [Ibn al-Farrā \[1405\] 1985](#), vol. 2, p. 85; [Ibn al-Humām \[1424\] 2003](#), vol. 3, p. 192; [Ibn Rushd \[1415\] 1994–1995](#), vol. 3, pp. 35–36; see also [Baydar 2023](#)). Most jurists, however, concluded that while an agreement to conceal the union was morally problematic and impeded a primary purpose of witness attestation, this did not in itself render the contract void retroactively. For instance, if two witnesses and a guardian attested to a marriage but agreed to keep it a secret between them, most Ḥanbalī jurists concluded that the marriage would be disliked (*makrūh*) but that the contract would nonetheless be binding. They understood Aḥmad b. Ḥanbal's condemnation of a secret marriage, or one in which “they do not announce it, provided they are married with the approval of the guardians (*bi-l-awliyā*),” as an expression of the strong disfavor of such a union, not its invalidity ([Ibn Ḥanbal \[1401\] 1981](#), p. 320).

From the perspective of doctrinal consistency and procedural law, maintaining the validity of a marriage that witnesses conceal is a reasonable conclusion for a number of reasons. For one thing, if keeping the marriage secret was at the bidding of anyone other than the couple, such as at the initiative of the witnesses or the guardian, they were blameless. While concealing their knowledge of a marriage could call into question the moral integrity of the witnesses—and certainly giving false testimony about it would—this would occur after the fact of their having witnessed the union and would therefore have no retroactive impact of the contract they attested, which was concluded at a time when the witnesses were believed to be upright before there was any question of their immorality (*fisq*) ([Ibn Qudāma \[1417\] 1997](#), vol. 9, p. 349; [al-Shirbīnī 1997](#), vol. 3, pp. 196–97). Furthermore, recall the principles that the law judges only on the basis of the outward and is minimally interventionist; thus, unless secrecy was explicitly stipulated in writing, or the witnesses lied about the marriage in their testimony in court, their failure to fulfill the ordinary role of witness attestation and proclamation would be a moral and not a strictly legal failing on their part.

Importantly, even while Shāfiʿī, Ḥanafī, and Ḥanbalī jurists considered the presence of two qualified witnesses sufficient to establish the legal validity of a contract, they nonetheless argued that formally meeting these requirements while effectively concealing a union was morally problematic and strayed dangerously close to the Qurʾanic condemnation of fornication and the taking of secret lovers. They underlined that broad witness attestation and public proclamation of a marriage was the distinguishing marker between a valid and religiously sanctioned marriage and fornication (*al-sifāḥ* or *zinā*) ([al-Kāsānī 2003](#), vol. 3, p. 393). They argued that the primary purpose of witness attestation was not to arbitrate potential disputes, because were that the case, it would make sense to allow a couple to inform witnesses about a marriage after it was contracted or even after it was consummated. Rather, the witnesses were required to make emphatic the importance of the marriage (*tafkīḥ amr al-nikāḥ*) and to distinguish it from fornication, “because customarily fornication is in secret and behind closed doors, and so the law wanted marriage to clearly contrast with that.” ([al-Abyārī \[1434\] 2013](#), vol. 3, pp. 124–25). Jurists remarked that without proclamation, a man could easily fornicate with a woman, then falsely claim that she was his wife by bringing two false witnesses to attest to a marriage that may have never been concluded ([al-Dusūkī 1931–1934](#), vol. 2, p. 216). Ibn Taymiyya (d. 728/1328) characterized a secret marriage that two parties collude to conceal as a type of fornication because it was perilously close to the Quranic prohibition against taking secret lovers (*ittikhādh al-akhḍān*), especially if conducted without the knowledge of the woman's guardian or the attestation of witnesses who share social ties with the couple.<sup>33</sup>

The last of the Sunni legal schools, the Mālikī school, stipulates the most stringent conditions concerning the public proclamation of a marriage and maintains an unequivocal proscription towards the concealment of marital unions. While Mālikīs recommended

witnesses to the contract, they placed primacy on the public declaration of the marriage (*ishhār* or *i lān*). They required a public declaration of the union as well as the absence of an agreement to keep it secret (*tark al-tawāṣī' alā al-kitmān*) for the legitimization of a marriage (al-Dusūkī 1931–1934, vol. 2, p. 216). The Mālikīs argued their position on the basis of the Prophetic command to “proclaim the marriage,” as well as the fact that illicit sex took place in secret and without the knowledge of others, while licit intimacy occurred within a conjugal bond known publicly to have been legalized (al-Kāsānī 2003, vol. 3, p. 393; al-Dusūkī 1931–1934, vol. 2, pp. 216–17).

Mālikī jurists strictly upheld this condition, and recommended, but deemed insufficient, the mere attestation of two witnesses as upheld by their Shāfi'ī and Ḥanafī colleagues. They stipulated that a secret marriage not publicly announced was void, to which they provided very few exceptions (al-Qarāfī 1994, vol. 4, pp. 398–401). However, Mālikī jurists disagreed concerning the precise delineation of the secrecy that voided the union, with two positions crystallizing in the school. The first view, articulated by Abū al-Walīd Sulaymān al-Bājī (d. 474/1081), was that secrecy was when the groom (possibly in addition to others) asked that *anyone* keep the marriage a secret, whether it be the witnesses, the wife, her guardian, another wife, or any other individual. In contrast, Ibn 'Arafā al-Warḡhamī (d. 803/1401) defined the secret marriage as the groom telling the witnesses specifically to keep the marriage secret (Fadel 2016; al-Qarāfī 1994, vol. 4, pp. 398–400). Interestingly, in both cases, if the wife or her guardian, rather than the husband, sought to keep the marriage a secret, this did not invalidate the contract. This distinction suggests that publicizing the marriage was understood as particularly important for safeguarding the rights of the bride and her family, a consideration valued to the extent that its subversion triggered voiding the contract.

Not only did Mālikī jurists deem secret unions to be legally void, but they also punished all individuals involved in such a contract (i.e., the husband, the wife, the guardian, and the witnesses). Furthermore, if the marriage had been consummated, the paternity of any child was established, but the couple was separated, and the bride gift (*mahr*) was due. Only after the woman completed her waiting period (*idda*) could the couple initiate a new valid contract. If the marriage had not been consummated, there was no bride gift or waiting period, but the parties were separated and punished nonetheless (al-Qarāfī 1994, vol. 4, pp. 398–401). In al-Bājī's exacting view, these effects were all triggered even if the marriage was deliberately kept secret from a single person (al-Qarāfī 1994, vol. 4, pp. 398–99).

#### 4. Morality beyond *Fiqh's* Remit: Ethics and the Sunna in the Lives of Believers

##### 4.1. Why Doesn't *Fiqh* “Do More”?

Many readers may wonder why *fiqh* does not stipulate even more conditions and requirements to safeguard against potential abuses and sham marriages. They may ask: if Islamic law is intended to establish justice and morality, is it doing enough to regulate the practice of secret marriages in Muslim communities today? In contemplating the function of Islamic law in Muslim communities today, a number of important facts and distinctions need to be considered.

First, it is essential to recall that *fiqh* is only one dimension of Prophetic guidance, and one with a narrow scope limited to regulating the mutual rights and obligations of worldly relationships and adjudicating any conflicts arising in those relationships. *Fiqh* is assumed and intended to be operating within the Sharī'a more broadly and in tandem with other aspects of Prophetic guidance, some of which are captured in the recommended and encouraged stipulations of the law, while others are detailed in other disciplines and bodies of knowledge. The most obvious are the disciplines detailing the internal *Sunna*, or the virtues and character of the Prophet Muḥammad (i.e., *taṣawwuf*, *ilm al-akhlāq*) and how they can be acquired. Inculcating the virtues of truthfulness, integrity, and generosity with one's spouse and family are the surest restraints to protect against men abusing their spouses. While a fuller treatment of shady marriage practices from the lens of *akhlāq*



norms detailed in ethical treatises is beyond the scope of this paper, a consideration of the applications of the cardinal virtues of temperance (*iffā*), courage (*shajā'a*), wisdom (*ḥikma*), and justice (*adāla*) would further underscore the moral and religious problematics inherent in undertaking a secret marriage (see, for example, [Taşköprüzade 2018](#)).

Second, pre-modern *fiqh* is minimally interventionist and is intended to be operationalized through robust legal institutions alongside strong social and communal ties. Traditional *fiqh* was elaborated in pre-modern collectivist societies, in which there was typically shared communal oversight of the behavior of individuals, families were relied upon to intervene in a marriage when problems arose, and no individual could flourish in society unless they appeared to uphold customary norms and expectations. In societies like these, there was less of a need for state intrusion into family life, which is why many important norms regarding domestic life were classified by jurists not as obligatory but only recommended, or as *adab* and not law. This is also why *adab al-muftī* literature outlining the protocols for fatwā-giving advises the muftī to give fatwā in his locale to ensure that the legal and religious counsel he provides is consistent with customary practice, social norms, and cultural expectations (see, for example, [Ibn al-Ṣalāḥ 1407/1986](#), 115).

Among Muslims today, there is a mistaken impression that whenever marital disagreements arise, they can be resolved by making recourse to *fiqh*, which will determine who is at fault or who neglected to fulfill a right or duty. As a body of rules, *fiqh* is not intended to instruct us on how to be good spouses or good children, especially when we hedge as close as possible to minimum absolute obligations and duties and nothing more.<sup>34</sup> For example, if we turn to another relationship that *fiqh* minimally regulates, that between adult children and parents, we will gain very little insight into how to honor parents from *fiqh* alone. *Fiqh* delineates the minimum obligations of financial maintenance that a child must fulfill in order to avoid liability before a judge in court for neglect of their duty of care. This legal discussion would typically define the conditions concerning which children are liable for financial care; which parents and relatives are eligible for that care and the conditions they must meet; the scope of that obligation, and any exceptions to that obligation (see, for example, [al-Shirbīnī 1997](#), vol. 3, pp. 584–91). *Fiqh* obligations do not capture the emphatic Qur'anic virtues of *iḥsān* and *raḥma* towards parents.<sup>35</sup>

The same applies to marriage: while *fiqh* may instruct a husband regarding the quantity of provision of sustenance and clothing he must provide his wife and children to fulfill his financial obligations towards them, these legal details are taught to jurists training to be judges, arbiters, and muftīs to draw on in the event of disputes brought before them. The jurists who detailed these rules never intended them to be taken as a standard or aspirational ideal for how to live a married life or how to care for parents. *Fiqh* alone does not instruct us about how to be good children, parents, wives, or children. The day-to-day interactions, needs, and dynamics of these relationships will hardly be ameliorated by learning more *fiqh*. Domestic conflicts are rarely *fiqhi*; even when couched as a legal dilemma, they are almost always a highly personal need or social concern requiring better communication, balancing competing priorities and needs, and perhaps the intervention of a professional therapist or counselor.

The primary purpose and utility of the law is apparent when contracting a marriage, when irresolvable disputes or claims arise requiring judicial intervention, or at the termination of a marriage. It is here that an evaluation of whether precise minimum requirements and obligations were met comes into effect. In fact, most couples experience marital life oblivious of the law until they begin to contemplate divorce or when a serious dispute arises. For instance, if one party claims that a marriage was contracted, while the other denies it, this is when the witnesses who attested the contract become essential. Or if one party claims the marriage was consummated, while the other claims that it was not, the jurists in such a scenario would make recourse to reasonable outward markers, like whether the couple had spent time in marital privacy, and whether that had occurred at his home or hers. Or if they quarrel over whether the husband is providing adequate financial support, this is when a judge would make recourse to *fiqh* minimums to determine whether



his claim of sufficiency is true or if she is owed maintenance in arrears. The trouble with legal minimums is when they are treated as religious ideals and moral standards to aspire to. The answer to most marital tensions does not usually lie in more knowledge and the application of the law, but in taking moral responsibility and accountability for ourselves and searching for creative solutions to resolve tensions arising in our relationships inspired by the Sunna of the Prophet Muḥammad. In seeking to live a God-centered life, adhering to the law's minimum requirements is foundationally a necessary condition, but it is far from sufficient for developing fulfilling and God-pleasing marriages and family relationships.

Third and finally, *fiqh* does not represent the totality of Islamic law as it operates in Muslim societies, especially when widespread challenges arise that threaten the public order. Historically, Muslim communities have routinely relied on extra-*fiqhi* legal and institutional safeguards to manage the exploitation of legal loopholes or to suspend normally permitted conduct due to its social harms or cultural unsuitability for a particular society. This typically entails jurists and/or the state institutionalizing the view of one legal school to the exclusion of all others, or suspending the application of a universally allowed legal rule or a *madhhab*-specific allowance. When it comes to forms of marriage, the Muslim state or commensurate public authority has the prerogative to curtail or regulate normally allowable forms of marriages for the public good (*maṣlaḥa 'amma*); a policy initiative that is frequently triggered or supported by muftī fatwās. An application of this from the early history of Islam is 'Umar I's interdiction against senior companions and the leaders of the Muslim community marrying scripturalists and limiting them to marrying Muslim women for the benefit of the community (al-Ṭabarī [1387] 1967, vol. 3, p. 588). Similarly, Imām Mālik prohibited Muslim men living in non-Muslim lands from marrying scripturalists, who would otherwise be legitimate marriage partners, for fear that their children would not be raised as Muslims (Fadel 2016). Yet another example is the practice of *taḥlīl*, in which an irrevocably divorced woman marries and consummates the marriage with another man in order to remarry her former husband. Though the second marriage might appear technically “valid”, the practice has long been condemned by jurists and the state, who actively legislated through both *fiqh* constraints and *siyāsah* legislation (see, for example, Rapoport 2005, 90–109). More recent examples of nineteenth- and twentieth-century Muslim states suspending legally permissible acts include the proscription of slavery, polygyny, verbal *ṭalāq* divorce, and child marriage (see Shareef 2023).

Furthermore, Muslim state authorities have the prerogative to punish improprieties, like sham marriages, for which insufficient evidence exists to carry out criminal punishment through such penalties as fines, imprisonment, or corporal punishment (*ta zīr*). This still happens in the Muslim world, where, for example, polygamy and unregistered marriages are either banned or closely regulated in many countries, and perpetrators who circumvent these regulations are punished if caught (ibid). In the absence of a Muslim political authority, leaders of institutions in Muslim-minority communities are tasked with the responsibility of developing governance policies, codes of conduct, and mechanisms for moral accountability binding Muslim leaders, personnel, and congregants that both adhere to the law of the land and uphold Islamic principles.<sup>36</sup> In the next section, I recommend a set of policies that can be implemented towards eliminating secret marriages from Muslim-minority communities.

In sum, *fiqh* is intended to be operationalized through social technologies and communal institutions that together enable Muslims to live God-centered lives and to find culturally appropriate ways to institutionalize the Sunna in a way that builds on the required minimums of *fiqh* without stopping at them. For instance, while the law requires two witnesses to attest a marriage, it stipulates conditions for the moral integrity of these witnesses and encourages that large congregations witness the contract, that the wedding is publicly proclaimed, and that a public wedding feast is held. Furthermore, it assumes strong social ties within and between families and the community that would support the couple at various stages of their courtship and union. It also assumes that a functioning court system and, thus, an apparatus of legal functionaries exist to oversee contracts and resolve conflicts, like court-appointed witnesses, magistrates to register marriages, and judges

to adjudicate disputes that arise. Without institutions—social, communal, and legal—social life falters, Islamic law is a fiction, and abuses are difficult to prevent and redress.

#### 4.2. Religious Morality beyond Legality

One of the central arguments of this paper is that legal validity is not synonymous with morality. It is a gross error on the part of Muslims to believe that an act that some jurists consider merely valid or not forbidden is morally unproblematic to engage in, or, put another way, to assume that legal validity and allowance overlap with the ethical categories of the moral, good, favorable, and pleasing to God. As we have seen, jurists will be the first to point out that some acts that they deem strictly valid may also be “not advisable” (*ghayr mustahsan*), “disfavored” (*makrūh*), or counter to the Sunna. For example, when jurists limit the minimal witnesses to a marital contract to two, or state that a husband taking a second wife without the knowledge or consent of his first wife is contractually valid, this only means that the marriage is legally in force and binding and produces all the relevant legal effects of marriage from a secular perspective. This does not mean that such marriages are Islamically permitted, encouraged, or desirable in general, let alone for a particular individual given his personal circumstances and social context.

This last point is essential: the general rulings of *fiqh* establish universal, default determinations for acts in the abstract, not how or whether they apply to individual cases or communities. In particular, an act categorized as permissible (*mubāḥ*) can have its ruling modified through consideration of external features connected to it: “A ruling of permissibility changes out of regard for extrinsic factors. The permissible becomes obligatory if leaving it leads to perdition; it becomes forbidden if committing it leads to abandoning an obligation or a harmful outcome, like commerce during the [Friday] call to prayer; it becomes disliked if motivated by a disliked intention; and it becomes recommended if intended to support religious devotion” (al-Zarkashī [1413] 1992, vol. 1, p. 275).

In this way the general statements found in *fiqh* books are not taken to apply in every situation, but must be subject to a more sophisticated and nuanced legal analysis or confirmed by consulting a qualified specialist who takes into consideration place, time, culture, intentions, social outcomes, and individual circumstances. For instance, while marriage is generally recommended, it would be obligatory for the person who fears falling into illicit sexual relationships if they do not marry, or it would be forbidden for the person unable to fulfill the material and sexual needs of his wife. Similarly, assuming that plural marriage is either permissible or disfavored as a default rule, if the husband is unable to tend to the material and personal needs of either wife, or to treat them fairly, it may be forbidden. While such nuances may be known to the scholar, most non-specialist Muslims assume that the baseline legal ruling implies a comprehensive legal and religious assessment.

Yet another level of consideration is the particular circumstances and configurations in which an act is undertaken. What relative benefits and harms will the marriage most likely entail given the prospective husband and wife’s circumstances and in view of the wider familial, communal, and societal contexts? The circumstances will not be the same for any two people, and neither will the legal and ethical legitimacy of an act. If a man lures a young woman into a sham “marriage” without the knowledge or permission of her family, her parents and friends believing her to be single and searching for a suitable mate for her while she is married to a man with whom she can only spend time behind closed doors and who cannot give her children, this is not an Islamic marriage. If he has a first wife and children from her, they too are being deceived, deprived of his time, resources, and a dignified relationship. All parties are harmed in the process. Even if jurists may contractually validate the relationship legally so that the couple is not liable for illicit sex (*zinā*), the relationship entails a number of prohibitions, harms, and transgressions against the rights of others. Foremost would be the string of lies and deceit required to maintain the secret relationship—which the Qur’an and Sunna expressly deem not just *ḥarām* but one of the gravest of the major sins<sup>37</sup>—let alone the innumerable harms, betrayals, and transgressions of the rights of parents, spouses, and children that will necessarily be

incurred. Secret relationships like these are little more than infidelity in a religious garb and would be characterized by any reasonable onlooker as an affair in today's relational economy. The couple is morally liable for all of this, even if they believe they have found a legal loophole to validate their relationship.

While the legality of a contract and its legal effects are determined by *fiqh*, the morality of a relationship is judged according to how closely it adheres to the Sunna of the Prophet, in terms of how it is sought, pursued, and contracted, and in the manner that the concerned parties—wives, parents, children, and the community—are harmed and benefited and honored and dishonored in the process. Meeting the conditions of validity is a necessary but not a sufficient condition for an act to be deemed consistent with the Sunna, pleasing to God, and morally justifiable. In sum, the various entailments of a relationship and the context in which it is initiated must also be evaluated in the assessment of its religious status.

#### 4.3. Degrees of Secrecy, Legality, and Morality

On the basis of the principles presented above, we can differentiate between a range of arrangements that are often conflated under the broad rubric of “secret marriages.” Below are three scenarios that I argue are distinct arrangements that ought to be differentiated in terms of the evaluation of their legal validity and moral legitimacy:

1. A secret marriage that does not meet the minimum conditions of legal validity.

This is a marriage conducted completely in secret or one lacking meaningful witness attestation to the contract (e.g., complete strangers whose uprightness is unknown or who can never be retrieved). There is no guardian or familial involvement on the part of the bride. It would be difficult to make an argument that any legal school would validate this relationship. This is an illicit sexual relationship that the law would deem contractually invalid and social norms would deem illegitimate. Jurists rightly argued that these sham “marriages” are closer to an illicit relationship; for an onlooker, there is no obvious difference evident among people between a secret relationship like this one and fornication (See, for example, [Ibn Taymiyya \[1425\] 2004](#), vol. 2, pp. 102–3).

For the individuals involved, this is an inauspicious beginning to their relationship, and rarely do such unions endure in the absence of the involvement of families and the knowledge and support of friends and community. These relationships are almost always inevitably discovered by others, with devastating consequences to the lives and reputations of both parties.

Women are especially vulnerable in such relationships, which is why Islamic teachings emphasize the involvement of a woman's family in her marriage. While many women appreciate the autonomy provided by the Ḥanafī school to marry themselves without requiring the consent of their guardians, it is for good reason that most jurists—all but the Ḥanafīs—stipulate this as a requirement, and even the Ḥanafīs strongly advise the Involvement or deputizing of a guardian and assume that of the family. They further allow a woman's guardian to dissolve her marriage through judicial intervention if she marries an unsuitable groom, which assumes and necessitates that the guardian be made aware of the union. There are, of course, instances in which guardians do not act in the best interests of their wards, or in which racism, classism, or a desire to exercise control drive guardians to reject suitable suitors for their daughters or wards. In scenarios like this, the Ḥanafī dispensation provides the would-be bride with the autonomy to contract a marriage for herself, while other legal schools transfer the responsibility of guardianship to another suitable male guardian or to the Imam or his representative. In either case, without the involvement of a woman's male family members or other male allies, women are much more vulnerable not only at the start of a relationship, but throughout the marriage as well. When a man entices a woman into a secret marriage, the secrecy is almost always a deliberate move to keep her isolated from family and friends who would intervene to prevent the unsuitable and ill-chosen union.

2. A semi-secret marriage wherein the conditions of validity are formally met according to at least some jurists. The minimal requirement for witnesses is fulfilled, the bride

has a guardian who is involved, but the marriage is not made public. If the man is already married, his first wife is not apprised, and her consent is not sought.

While this union *may* meet the minimal conditions for a legally valid marriage according to *some* jurists, it is nonetheless immoral. Both parties are liable for the inevitable harms done to any other individuals in the process—whether parents, family members, or another wife and family, if they exist. The sustainability of such a union beyond the very short term is questionable because marriages are nearly impossible to keep discreet, especially if either party wants to have a family or enjoy the social benefits of the union. Most often, the parties to this arrangement are not interested in a long-term marriage but in enjoying temporary sexual benefits for which they seek to construct a fictitious legal legitimization.

If there is a first wife, the secrecy and/or her lack of involvement is morally problematic. In this case, there is also the legal question as to whether the husband is in fact abiding by the obligation of treating the two wives fairly given that one of them does not know about the existence of the other, and the second wife cannot benefit from the many public and social privileges of married life with her husband. This second wife and any children born through this union are often not supported according to what is due to them, and because they are hidden from the wider community, they are without adequate recourse to support and intervention. This is one of the greatest threats of secret marriages, namely, that the family operates shrouded in secrecy, and this precludes family members from obtaining support for many of their needs. The starting point is not what is pleasing to God and His Prophet, but finding a legal loophole to feign a veneer of religious legitimacy for what is nothing less than an affair. Secret marriages like these are a religious ruse for all kinds of lying, deception, and infidelity. By failing to involve families in a meaningful way, and not announcing the marriage, this is the marriage that jurists describe as mimicking licentious behavior and undermining the very purposes of marriage.

3. A private marriage wherein all conditions are met, including the involvement of the bride's family and, if the man is married, his first wife, and her consent is also acquired. For reasons agreed upon by all, the marriage is known to some but kept private from others.

This union, a private matter among families, is valid legally according to most jurists, although al-Bājī and the Mālikīs following him would invalidate it on the grounds of it being kept secret from some. Nonetheless, maintaining a “semi-secret” marriage as a private affair over the longer term is very difficult and emotionally taxing on all parties, especially when children are involved. These marriages are usually kept private because of the fear of social stigma and/or the legal consequences of engaging in legally unsanctioned plural marriages. The inevitable and gradual disclosure to individuals over time and the threat of discovery is its own punishment. There is also a cost to the community when religious leaders choose to keep second marriages private, which fuels gossip, rumors, and confusion about the legal and moral legitimacy of the marriage. Furthermore, those entrusted with the moral leadership of the community have a responsibility to behave not only in exemplary ways that others can imitate, but also, like the Prophet with his wife Ṣafiyya at the mosque, in ways that they can publicly demonstrate are beyond reproach.

### **5. Legal Loopholes and Subverting the Sunna: Secret Marriages in 21st-Century Minority-Muslim Communities**

Readers of this paper may reach different conclusions. Some readers may be disappointed that Islamic law does not seem to provide the far-reaching moral and social regulation they expected. Others may be emboldened to exploit legal loopholes to illicit ends. It would be a mistake to walk away with either of these conclusions. The Muslim community and its leaders must be guided by a desire to establish God-centered lives in which individual and collective conduct befits our submission to God and His Prophet. Towards this end, I share some preliminary recommendations for communal accountability measures, institutional safeguards, and core themes to center in efforts of public education and regulation in the domain of Muslim marriage in the West.

First, the analysis presented in this paper has revealed the ways in which religious discourse in the Muslim community has devolved into a legalistic discourse emphasizing minimums and validity over and above Sunnaic norms, their purposes, and their underlying morality. This highlights the need for communal re-education to clarify a number of the essential distinctions about law and religious morality examined in this paper that relate directly to the fundamental teachings and practices at the heart of what it means to be a Muslim. Our moral compass is broken if we think that the only difference between a wife and an illicit girlfriend or affair is a sham formality with two strangers acting as witnesses, or when we think that there is nothing wrong with a secret second marriage because “it’s a man’s right to have second wife”. Framing these egregious religious and relational indiscretions in these ways is indicative of a deeply entrenched malaise in the Muslim community rooted in a superficial understanding of what it means to be a Muslim and to a culture in which Islamic norms are all about the outward form with no principles, purposes, morality, or social ordering behind them. In such a culture, so long as an individual follows the outward forms of a religiously sanctioned behavior, regardless of their intentions, the ends they are pursuing, and the individuals they harm, they consider themselves morally vindicated. The licentiousness of fatwa shopping, where we look for any religious legitimation for what we know to be illicit and fail to determine whether our conduct is authorized by a legitimate or illegitimate authority, is an abdication of our moral responsibility as Muslims. Furthermore, the irony is that such a “legalistic” approach in the absence of a functioning Islamic legal system and institutions is nothing more than a faux legalism, a simulacrum of legality and not true legality. In any historic Muslim society and in contemporary Muslim nation states, there are legislative and juridical authorities that regulate marriage and courts authorized to examine the validity of contracts and arbitrate marital conflicts.

Second, the incidence of secret marriage in the Muslim community highlights a number of critical issues pertaining to marriage, divorce, sexuality, and plural marriage that require further examination and communal deliberation. Divorce is perhaps the easiest one. One of the main reasons cited for engaging in secret marriages is to “try out” a relationship before committing to it fully. This is especially the case for previous divorcées who had to contend with the stigma and judgement arising from the termination of a first marriage and are often unwilling to initiate another public marriage that they fear may not endure. Yet, divorce has been permitted as a final recourse for a reason. Studies of divorce in historical Muslim communities show that women married, on average, from two to three times, and sometimes up to six times ([Rapoport 2007](#)). By destigmatizing divorce and remarriage, we remove one of the main impediments to the publicizing of marriages. Closely related, marriage needs to be made easier for young people wishing to marry, and divorce made less of a stigma. More than half of Muslim college students are experimenting with premarital sex (57% of boys and 48% of girls) (see [The Family and Youth Institute n.d.](#)). If support is provided for young people wanting to marry early, such as supplying adequate premarital counseling while destigmatizing divorce if the relationship does not work out, young adults are equipped to take responsibility for themselves and their choices and to learn from past relationships and experiences.

There is a further complication between polygamy and secret marriages: many secret marriages are polygamous unions undertaken by already married men. This is a more complicated issue to tackle, not only because of the social stigmas surrounding plural marriage and the absence of cultural safeguards to support its practice, but also because in most countries where Muslims live as minority communities, there is legal prohibition against plural marriages. In the vast majority of cases, this means that equal financial maintenance of multiple wives and families is not possible given that only one wife and family can be legally recognized and eligible for state services like tax benefits, health care, and education. While there is overwhelming anecdotal evidence of Muslim men engaging in polygyny in Muslim-minority communities, the phenomenon remains covert and understudied, and thus largely without any legal or social oversight. The difficulty



is that when a lawful and socially accepted alternative for plural marriage does not exist, secret marriages tend to ensue, which historical studies have shown was the case in some historical Muslim communities (Rapoport 2007, p. 32; 2013). Any move in the direction of seeking formal recognition for plural marriage requires serious consideration of the legalities involved and careful study of what a culture of healthy polygyny looks like, in which learning from the greater openness, visibility, and safeguards in polygamous unions among African American Muslims may be a good starting point for the broader Muslim community (see, for example, Majeed 2015). Furthermore, women who are not interested in engaging in polygamous marriages should be offered routine opt-outs in their marital contracts granting them an automatic divorce, or the option of divorce, should the husband violate the stipulation, as was historically institutionalized in Muslim contract formulas (see, for e.g., Sonbol 2008, pp. 87–122; Zomeño 2008, pp. 136–55; Fadel 1998).

The third recommendation is a counsel to Muslim scholars, preachers, and students of religious knowledge. While oftentimes irreligious trends and troubling innovations are initiated by ill-informed or non-scholarly Muslims, I believe the opposite is true in this case: the wave of secret marriages in the Muslim community has been facilitated by those entrusted with the moral leadership of the community. Most lay Muslims only recognize marriage as what accords with the normative Sunna of the Prophet: honorable, negotiated between families, and public. By virtue of their knowledge of *fiqh*, some preachers and scholars have exploited loopholes and exceptions to licentious ends. In so doing, they bear the responsibility of initiating and exacerbating the incidence of sham marriages in the community. Speaking of the introduction of damaging trends in the Muslim community, the Prophet Muḥammad taught, “Whoever initiates a good practice (*sunna sayyia*) and is followed by others, will have his own reward and a reward equal to that of those who follow him, without it detracting from their reward in any way. Whoever initiates an immoral practice (*sunna sayyia*) and is followed by others, will bear the burden of his own sin and a burden equal to that of those who follow him, without it detracting from their burden in any way.”<sup>38</sup>

If the scholars and community leaders do not uphold the moral values and religious standards that they are exhorting their congregation to adhere to, they are incapable of guiding or benefiting others. The people of knowledge and practice are to be the moral exemplars of the community as representatives of the Prophet Muḥammad. I would remind them that the scholar who is not benefited by the knowledge he has acquired is the very first to enter the fire. Do not put a woman in a position you would not accept for your daughter. And whatever you would not want to see become a norm in the community you are working tirelessly day and night to build, do not yourself engage in it. If the honor and attention of leadership and scholarship is too difficult a trial, the best service a religious leader can do for themselves, their family, and their community is to exit center stage. The instigation on the part of women is never an excuse for immoral behavior. The Prophets too were pursued by women; women literally offered themselves to the Prophet Muḥammad and threw themselves at Joseph.<sup>39</sup> Not only have Muslim leaders failed to embody the religious ethic of the Islamic teachings they preach, but one of the reasons for the absence of a direct, effective, and unequivocal resolution to shady marriage practices in the Muslim community is that some of the leaders best placed to address it are afraid to because of their own behavior or that of their close colleagues. One of the lessons from the analysis of the Catholic clergy abuse scandal is that when a leader is trying to keep his relationships secret, he is vulnerable to explicit or implicit threats that if he confronts another leader’s violations, the skeletons in his own cupboard will be revealed (Johnson 2018; Pennsylvania Diocese Victims Report n.d.).

The moral rectification of Muslim leadership is crucial for resolving many challenges in the community. Commitment to pursuing spiritual development and moral alignment between learned knowledge and embodied ethics is incumbent upon scholars, for which accountability among colleagues and mentorship by senior scholars and genuine spiritual guides remains a tried and tested approach. This collegiate network of peers should involve

female scholars and community leaders who provide a critical perspective on community work and best practices for leadership. When accusations of abuses of power or financial, moral, and sexual improprieties are made against Muslim religious leaders, mechanisms need to be in place for unbiased investigation and resolution. Unfortunately, over the past decade, senior scholars' efforts to resolve such cases on an ad hoc basis have not always been successful, either because the implicated abusers do not follow through on penitent promises of reform or because senior scholars lack the expertise to address these abuses of power effectively. Scholars stand to benefit from the perspectives and expertise of other specialists, especially in cases of harm and abuse, including therapists, lawyers, public health professionals, and other experts specializing in sexual abuse and harassment, the investigation of misconduct, and preventative best practices.

Fourth and finally, in addition to public education and a renewed paradigm of religious leadership, institutional safeguards and policies are imperative. Muslim institutions and religious leaders should unequivocally prohibit the concealment of marriages and require their public proclamation. This would be an implementation of the Mālikī view as articulated by al-Bājī, which requires that a marriage not be kept secret from any individuals whatsoever, and a fulfillment of the recommended practice of the other legal schools that uphold public proclamation as an important Sunna to be emulated. This approach follows the precedent of late Ottoman practice: while the Ottomans largely championed Ḥanafī law, on the issue of marital proclamation, they required it by law as the Mālikīs did (Baydar 2023). Today, a number of Muslim countries have required the registration of marriages or legislated restrictions on polygyny towards ending secret and harmful polygynous marriages.<sup>40</sup> These are practical instantiations of the normative practice of Muslim leaders institutionalizing one *madhhab* position or curtailing normally allowable practices to realize a public benefit or social good.

Practically, a zero-tolerance policy for secret marriages can be effectively institutionalized in Muslim-minority communities through the implementation of a set of policies, like those outlined below:

1. It should go without saying that recourse must be made to state institutions when gross crimes take place, such as marrying underage girls or any abuse of children;
2. Imams and marriage officiants must refuse to officiate plural marriages, especially when it is against state law and/or it is without the knowledge and consent of the first wife and the involvement of the family of the second wife;
3. Imams and community leaders should clearly and unequivocally communicate the invalidity and prohibition of secret marriages;
4. Officiants performing a nikah must register all Islamic marriages with the state, without exception;
5. Officiants must try their utmost to involve guardians and families. If guardians and families are recalcitrant or act unjustly towards their wards, officiants must do their due diligence to ensure that both the bride's and groom's interests are adequately represented, and they should perform the marriage in public;
6. Access to women officiants should be facilitated as a step towards making the marriage process more accessible to women, which several Muslim countries have introduced and institutionalized in recent years<sup>41</sup>;
7. Mosques should institutionalize community-appointed upright witnesses who can fulfill this communal obligation (*farḍ kifāya*) on behalf of the community, who would have the additional benefit of being keepers of the records of the community's collective memory of marriages and divorces;
8. Boards of Muslim institutions should maintain a zero-tolerance policy for religious leaders engaging in shady marriages with congregants. This begins by establishing clear policies regulating intimate relationships between the institution's employees and its congregants, alongside systems of accountability and mechanisms for deplatforming leaders or terminating staff who fail to abide by these policies (Fadel 2021).

## 6. Conclusions

In this essay, I have argued that secret marriages are, on the whole, religiously illegitimate and, according to some jurists, legally invalid. This is because a number of essential elements of the marriage contract stipulated by the Prophet Muḥammad remain unfulfilled when marriage is kept a secret, be it public proclamation, adequate witness attestation, or guardian consent, and also because of the demonstrable harms, sins, and transgressions entailed in these marriages.

It is true that some jurists centered witness testimony as the minimum requirement for contractual validity rather than proclamation, which they strongly recommended. This may seem to imply that a semi-secret marriage could meet the basic conditions to make them technically valid. However, this superficial analysis does not account for the many conditions placed upon the attestation of witnesses, including their uprightness and responsibilities, as well as the permission of the guardian stipulated by the majority of jurists. When these precise conditions are taken into account, most secret marriages would not even meet the standards of technical validity for the vast majority of jurists. Furthermore, even as *some* jurists *may* make arguments that may *seem* to imply that *some* versions of secret marriage meet the basic conditions to make them technically valid, they nonetheless argue that such marriages are immoral, religiously deficient, unbecoming of a Muslim, and little more than a pretext for illicit sex, and that these marriages undermine the very purpose of an Islamic marriage. Finally, apart from the question of whether a secret marriage contract is technically valid, parties to such a relationship further engage in a number of sins and transgressions and cause harms to spouses, children, parents, extended family, and the community that must also be accounted for.

The broader takeaway from the analysis presented in this paper is the essential distinction between a morally sound, religiously legitimate, and Sunna-sufficing marriage on the one hand, and technical contractual validity on the other. These two assessments are distinct, although they are often collapsed in public discourse and even in scholarly analysis, which is indicative of an underlying fallacy of the over-legalization of religion, on the one hand, and the moralization of a feature of contract law (technical validity) that does not entail a moral valuation, on the other. The validity of a marital contract merely signifies that a couple is not legally liable for illicit cohabitation and that the legal consequences of marriage ensue, such as inheritance, the establishment of the paternity of children, and the deeming of certain categories of women as impermissible to marry synchronously or in the future. Such a marital contract, even if judged technically valid, may also be prohibited to enter into and may entail a number of sins, transgressions, and deprivations of the rights of various parties—spouses, children, parents, extended family, and the community—for which the parties are morally and legally liable. It goes without saying that when Muslim religious leaders engage in shady marital practices, often entailing abuses of the power and authority vested in them by the community, an even clearer denunciation and zero-tolerance policy is required. When we zoom out from individual couples to the wider community and consider the incidence of secret marriages in the context of Muslim-minority communities in the West, the observed harmful outcomes of these arrangements, particularly to women, children, and the community, are sufficient grounds for a wholesale disallowance of any type of unpublicized marriage, a policy position that many Muslim countries have legislated towards, and one that Muslim communities in the West should take steps towards institutionalizing.

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## Notes

- <sup>1</sup> See, for example, the cases discussed by the Facing Abuse in Community Environments (FACE) organization, Face Investigation Reports ([Facing Abuse in Community Environments](#) n.d.).
- <sup>2</sup> A note on temporary and functionally temporary marriages: In most cases, temporary and functionally temporary marriages are conducted in secret. Among Sunni jurists, there is unanimity that temporary marriage (*zawāj al-mutʿa* or *zawāj ilā ʿajal*), which is a marriage contracted for a specified and temporary period, at the end of which the marriage automatically dissolves, is forbidden and null and void, by consensus. Twelver jurists consider the *mutʿa* marriage disfavored (*makrūh*) rather than forbidden and govern it by a different set of rules than that of regular marriages. On this practice, see ([Murata 1986](#); [Haeri 2014](#); [Iqbal 2023](#)). Functionally temporary marriages are marriages intended to be short-lived unions by one or both spouses, but without the stipulation of an exact time for the end of the marriage. So long as the couple does not stipulate an explicit end date in their marriage contract, Sunni jurists deem the contract legally valid. I believe that the problematic surrounding functionally temporary marriages is largely resolved by addressing secret marriages.
- <sup>3</sup> On secret marriage in the Muslim world, see ([Baydar 2023](#); [Quri et al. \[1443\] 2022](#); [Nisa 2018](#); [Ishola and Abdulrahman 2018](#); [Wynn 2016](#); [Fortier 2011](#)).
- <sup>4</sup> A number of articles for the general Muslim public have been published, all clearly condemning secret marriages. See, for example, ([Fadel 2016](#); [al-Nadawi 2017](#); [Syed 2018](#); [Ansari 2015](#)). A recent New Yorker article explores the phenomenon among Muslim College Students in the United States (see ([Green 2022](#))).
- <sup>5</sup> An invalid contract is one that is incorrectly concluded by failing to meet the required conditions for the contract to produce its legal effects. While the Shāfiʿīs, Ḥanbalīs, and Mālikīs use the term *bāṭil* and *fāsid* synonymously for an invalid contract, the Ḥanafīs draw a distinction between the two terms and would consider a marriage that fails to fulfill one of its conditions, such as adequate witness attestation, *fāsid* rather than *bāṭil*.
- <sup>6</sup> For basic definitions of these categories of legal rulings, especially differences in the usages of the technical terms *bāṭil* and *fāsid*, see an introductory work on *uṣūl al-fiqh*, like [al-Zuḥaylī \(al-Zuḥaylī \[1426\] 2006](#), p. 283f.).
- <sup>7</sup> Some possible exceptions to this general assessment are discussed below, in a sub-section entitled “Degrees of Secrecy, Legality, and Morality”.
- <sup>8</sup> Quran 4:21.
- <sup>9</sup> For verses exploring spiritual agreements between God and the Israelites, see Quran 2:63, 83–4; 4:154; 5:12, 70; 33:8; between God and the prophets, see Quran 3:81; 33:7, and between God and the believers, see Quran 13:20; 57:8.
- <sup>10</sup> Ṣaḥīḥ Muslim, 1218.
- <sup>11</sup> Tirmidhi, 3895; Ibn Mājah, 1621.
- <sup>12</sup> See, for example, manuals describing the character and physical description (*shamāʾil*) of the Prophet Muḥammad, the most popular of which have been translated into English, such as ([Iyāḍ b. Muṣā 2011](#); [al-Tirmidhī 2017](#)).
- <sup>13</sup> Ṭabarānī, *al-Muʿjam al-awsaṭ*, 8794.
- <sup>14</sup> Sunan Abū Dāwūd, 1369.
- <sup>15</sup> “The best of marriage is that which is made easiest,” Ibn Ḥibbān, 4072.
- <sup>16</sup> Tirmidhī 1184, Ibn Mājah 2039, Abū Dāwūd 2194.
- <sup>17</sup> Quran 2:187.
- <sup>18</sup> Quran 30:21.
- <sup>19</sup> This is implicit in much of revelation and juristic discourse, although, at times, it is made explicit. Al-Sarakhsī, for instance, states, “Marriage is for life (*li-l-ʿumr*) and it is comprised of interests and objectives (*aghrāḍ wa-maqāṣid*) such as companionship, affection, intimacy, and establishing kinship ties.” (*Kitāb al-Mabsūṭ*, 5:23).
- <sup>20</sup> See, for example, Quran 2:25; 4:57; 13:23; and 36:56.
- <sup>21</sup> The punishment for *zinā* can also be averted on the basis of the doubt maxim “avoid criminal punishments in cases of doubt” (*idraʾū al-ḥudūd bi-l-shubuhāt*). On this maxim, see ([Rabb 2015](#)). Nonetheless, validating non-ideal marriages entails the benefits of maintaining the status quo and privacy of an existing relationship and upholding public norms of sexual morality.
- <sup>22</sup> These rules are based in several hadiths, such as “The matron has a stronger claim than her guardian does with regard to her own marriage, and the virgin, too, must be consulted with regard to her marriage—but her silence constitutes consent on her part.” See Bukhārī, *Jāmiʿ*, 5136, 6968, 6970, 6971.
- <sup>23</sup> Shāfiʿī jurists extended this to the paternal grandfather, on the assumption that he too would treat her with the compassion and care of a daughter ([al-Shirbīnī 1997](#), vol. 3, pp. 200–1).
- <sup>24</sup> These details are beyond the scope of this paper and can be found detailed in the works of substantive law of each legal school. See, for example, ([al-Kāsānī 2003](#), vol. 3, p. 317f; [Ibn Qudāma \[1417\] 1997](#), vol. 9, p. 344–vol. 10, p. 220; [Ibn Rushd \[1415\] 1994–1995](#), vol. 3, pp. 12–31; [al-Maḥallī 2013](#), vol. 2, p. 210).

- 25 There are various narrations of this hadith that are found in al-Tirmidhī, 1089; al-Nasāī, 3369; al-Ḥakīm, 2748; Aḥmad, *Musnad*, 16130.
- 26 Abū Dāwūd 2085, Ibn Mājah 1881, Ibn Ḥibbān 1364, Bayhaqī, *Sunan al-Kubrā*, 13645 and 13713.
- 27 Tirmidhī 1103–04.
- 28 Bukhārī, 2039.
- 29 On the *shāhid*'s role in the Mamluk period, see Petry (1981, pp. 225–27), and in Damascus from the twelfth to the twentieth century, see Miura (2016, pp. 228–36).
- 30 (Ibn Qudāma [1417] 1997, vol. 9, p. 349). On early Ḥanbalī debates about the condition of witness testimony in social context, see (Spectorsky 2017, pp. 35–49).
- 31 (al-Kāsānī 2003, vol. 3, pp. 573–85; al-Marghīnānī [1417] 1996, vol. 3, pp. 32–33). On the doctrine of *kafā'a* generally, see, for example, al-Marghīnānī (al-Marghīnānī [1417] 1996, vol. 3, pp. 50–56).
- 32 It is worth noting here that all of these rules entrusting the guardian and family with moral authority assume a functional family in which the parents, especially the guardian, are tending to the best interests of the daughter and thus that their interests align. When these assumptions break down, such as scenarios in which tyrannical families or repressive guardians veto suitable matches for their daughters or seek to coax them into unfitting marital arrangements, there are numerous Islamic resources for recourse. The Ḥanafī position provides the daughter with autonomy to contract her own marriage. Additionally, the Shāfi'ī school, as cited above, provides numerous exceptions to the guardian rule, shifting that responsibility from the male guardian to the Sultan or his representatives, or in the absence of an Imam and Muslim state, to a community leader. The Mālikī position on guardianship has been interpreted by Mohammad Fadel as a delegation of power from the public authority that can be withdrawn if the interests of the bride are not served by her guardian. See (Fadel 1998).
- 33 Quran 4:25, 5:5.
- 34 On the relationship between *fiqh* rules and moral imperatives, see (Katz 2022).
- 35 See, for example, Quran 4:36, 17:23–24.
- 36 For a discussion of policies suitable for preventing sexual misconduct in North American Muslim institutions, see (Fadel 2021).
- 37 See, for example, Quran 16:105; 51:10.
- 38 Ibn Mājah, 207.
- 39 See Quran 12:23–35 and 33:50 and the exegeses of these verses.
- 40 See, for example, the state regulations in Pakistan requiring husbands to obtain permission for a polygamous marriage from the Union Council (Abbasi and Cheema 2020).
- 41 See, for example, female wedding officiators in Egypt: (Zakzouk 2022; Melhem 2015).

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