

The Customary Marriage and the Issue of Proving it: A Comparative Study

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Abstract---Some believe that Customary Marriage may be a Solution to some of the Problems Facing Young People. Others; However; Believe that this Type of Marriage Leads to Several Social, Humanitarian, and Psychological Problems. Therefore; The Personal Status Laws in Arab and Islamic Countries, including the Algerian Family Law, Stipulate the Necessity of Registering Marriage Contracts and Recording them in the Civil Status Registers and Official Departments, for Practical Purposes that Protect Rights from being Lost. However; Some Individuals overlook this Procedure and Enter into Customary Informal Marriages without Registering them. This is a Social Phenomenon that is Increasing Day by Day, raising Legal and Practical Problems regarding the Issue of Proving such Marriages.

Keywords---Marriage, Customary Marriage Contract (Common-Law Marriage - Informal Marriage), Records, Proof (Proving).

Introduction

The Islamic Shari'a Law gives Great Importance to Family Matters in order to Build a Cohesive Society Characterized by Love and Compassion. Therefore; The Islamic Shari'a Stipulates the Necessity of Consent, the Guardian's Approval, the Dowry, and Witnesses for a Valid Marriage Contract. However; The Islamic Shari'a does not Consider the Writing and Documentation of Marriage Contracts as Essential or a Condition for the Validity of the Marriage. Then Came the Positive Laws in Islamic Countries, including the Algerian Family Law, which Stipulated the Necessity of Documenting Marriage Contracts for Practical Purposes to Prevent the Loss of Rights. This is what is Called the Official or Documented Marriage. This Situation persisted among Muslims Until those in Authority Observed that the Balance of Faith had diminished in Many People's Hearts, and that Conscience had withered in some. Consequently; The Secular Legislator was Compelled to Intervene Legislatively to Address the Dire Consequences of Failing to Document this Contract, in order to Protect the Family and its

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Integrity, and to Safeguard Marital Life and Honor from such Manipulation, by Establishing Legal Restrictions and Conditions. The Legislator intended, by Imposing these Legal Restrictions, to Achieve Certain Objectives that would have a Significant Impact on the Social Life of the State and Society. The Legislator intervened by Establishing these Legal Conditions for Documenting Marriage Contracts.

Similar to Other Arab Legislations; The Algerian Legislator has enacted Legal Provisions that Affirm the Necessity of Registering the Marriage Contract with an Official Employee. However; The Number of Lawsuits filed in Algerian Courts regarding this Matter indicates that Informal Customary Marriages in Algeria have been Increasing Significantly recently. The Requests for Official Recognition of these Marriages are Coming from Various Segments of Society, Seeking to Register their Marriage Contracts in the Civil Registry. This Process often takes months. This Necessitates an Examination of this Situation from its Social and Legal Aspects. Therefore; We Pose the Following Question:

What is the Concept of the Customary Marriage?

And what is the Issue in Proving it?

Chapter I: Determining the Concept of the Customary Marriage

The Informal Customary Marriage is a Widespread Phenomenon in Arab Societies, contrasting with Marriage Officially Registered with Government Authorities. It acquired this Name due to Certain Procedures Implemented by a Particular Country, such as the Requirement to Register Marriages with its Official Institutions. The Term "Customary" is derived from the Word "Custom". In the Islamic Legal Terminology; Custom has its Own Meaning, Status, and Authority, provided that it is Considered Valid and does not Contradict Religious Texts. The Custom, in general, in the Islamic Law; Is One of the Secondary Sources that Occupies a Significant Place in the Islamic jurisprudence. Furthermore; This Term is Modern and is not Found with this Specific Designation in the Old Islamic Legal Tradition. The Customary Marriage does not Mean that People have Created a Marriage or a Custom regarding the Marriage Contract on their Own. It doesn't Mean that they invented a Formula for Offer and Acceptance, or that they Established Conditions for this Contract themselves and Agreed Upon this Formula and these Conditions. That is not what is Meant. The Main Reason for this Designation, and why this Type of Marriage is Generally Called the Customary Marriage, is that it is Not Officially Registered or Documented.¹ If a Man and a Woman Marry Verbally, and this Marriage Fulfills all its Essential Elements and Conditions; People refer to it as a Customary Marriage; Meaning that it is Not Documented with an Official Certificate. Therefore; The Customary Marriage is a Marriage Conducted according to the Islamic Law, fulfilling all its Legal Pillars and Conditions, including the Contracting Parties, Guardian, Witnesses, Declaration, and Dowry. It was Only Called a Customary Marriage because People were accustomed to Concluding it Outside the Official State Channels and without a Document Bearing a Specific Number. This is the Reason for Calling this Type of Marriage a Customary Marriage.

It should be noted that; There are Two Forms of the Customary Marriage; The First is: It takes Place with the Consent of the Husband, the Wife, and her Guardian, and in the Presence of Witnesses, in addition to being Publicly Announced among People. However; The Contract is Not Officially Registered with Government Agencies and Departments. This Form of Marriage has been Practiced since the Beginning of Islam and is Still Prevalent in many Arab Societies, especially in the Rural Areas. As for the Second Form: It is Incomplete in its Essential Elements, Lacking Witnesses, a Guardian, or a Public Announcement, for Example.²

Section I: The Legislative Stance regarding the Customary Marriage:

In this Section; We Examine the Stance of Some Arab Legislations regarding the Customary Marriage, as well as the Position of the Algerian Law on this Matter.

Subsection I: The Stance of Arab Legislation regarding the Customary Marriage:

All Personal Status Laws require those Intending to Marry to Register the Marriage Contract with the Relevant Official Authority. However; These Laws differ in their Treatment of those who Enter into an Unregistered, Informal, Customary Marriage. Nevertheless; The Stance of the Personal Status Laws regarding this Matter falls into Four Main Approaches, which We Summarize Below:³

1. The First Approach:

The Law that mandated the Registration of the Marriage Contract in the Official Department and Stopped at that. No Penalty was Imposed on those who did not register their Contract. This Approach is Evident in the Moroccan Personal Status Law, where (Article 43) Stipulates that: "The Marriage Contract Shall be Registered in the Marriage Registry at the Court, and a Copy thereof Shall be Sent to the Civil Status Department".

2. The Second Approach:

The Law that Refused to Hear or Acknowledging the Marriage Suit Until an Official Document Proving the Marriage Suit was Presented. This is what the Egyptian Personal Status Law Stipulated in (Article 99) of the Regulations for the Organization of Sharia Courts, as amended by (Law No. 78 of 1931 CE). However; The Law's Provisions do not Apply to Marriage itself, but are Limited to Litigation Concerning it. Egyptian Fatwa House Issued the Following Fatwa: "The Marriage is Legally Concluded between the Two Parties, the Husband and the Wife themselves, or through their Representatives or Guardians, by an Offer from One to the Other, provided that this Contract Fulfills all its Legal Conditions as Detailed in the Books of Islamic Jurisprudence. This Contract Entails all the Effects and Consequences. Each Spouse is Entitled to all Rights and Obligations from the Other, regardless of whether the Contract is Officially Notarized or Written on a Private Customary Document, all from the Religious and Sharia Perspective. From the Legal Standpoint; The Decree (Law No. 78 of 1931 CE) Stipulated in (Paragraph 04 of Article 99), that in Cases of Denial, Claims of Marriage or Acknowledgment thereof are not admissible Unless they are Proven by an Official Document in Incidents Occurring from (August 1, 1931 CE) Onwards. This Implies that the Law did not require a Marriage Contract to be in the Form of an Official Document for its Validity, but rather Stipulated this Requirement Only for the Admissibility of a Case in Court". It is worth noting that the Kuwaiti Personal Status Law Followed the Same Approach as the Egyptian Law. (Article 93, Paragraph A), States: "A Claim of Marriage Shall not be Heard in the Event of Denial, unless it is Proven by an Official Marriage Certificate, or Unless the Marriage was Previously Acknowledged in Official Documents before the Denial".

3. The Third Approach:

The Law that Imposed a Penalty on those who do not register their Customary Marriage in an Official Document. Among the Laws that Followed this Approach is the Jordanian Personal Status Law. (Article 10) of the Text States: "The Prospective Groom Must Consult the Judge or his Deputy to Finalize the Marriage Contract. The Marriage Contract is also Concluded by the Judge's Authorized Representative by Means of an Official Document. The Judge, by Virtue of his Office, may in Exceptional Cases Handle this himself with the Permission of the Chief Judge. If the Marriage is Conducted without an Official Document, the Person who Officiates the Marriage, the Couple, and the Witnesses will all be Punished with the Penalties Stipulated in the Jordanian Penal Code, and each will be Fined an Amount not exceeding 100 Jordanian Dinars. Any Licensed Marriage Officiant Who Fails to Register the Contract with an Official Document after Collecting the Fees will be Punished with the Two Penalties mentioned in the Previous Paragraph, in addition to Dismissal from their Position".

Among the Laws that Followed the Approach of the Jordanian Law is the Iraqi Personal Status Law. (Paragraph 05 of Article 10) of the Law States: "Any Man who Contracts his Marriage Outside the Court Shall be Punished with Imprisonment for a Period of Not Less than Six Months and Not Exceeding One Year, or with a Fine of Not Less than 300 Iraqi Dinars and not exceeding One Thousand Iraqi Dinars. The Penalty Shall be Imprisonment for

a Period of Not Less than 3 Years and Not More than 5 Years if another Marriage is Contracted Outside the Court while the Marital Relationship Still Exists”.

4. The Fourth Approach:

The Tunisian Personal Status Law; Which Stipulates in (Chapter 04 of the Provisions Relating to Marriage) that: “The Marriage Shall Only be Proven by an Official Document, regulated by a Special Law”. This Text Contradicts the Legal Provisions in Egyptian and Kuwaiti Law, which Stipulate that the Hearing of the Marriage Claim is inadmissible. The Text in the Tunisian Law is Explicit in Stating that the Marriage is not Legally Established. This means the Contract is Invalid in the Eyes of Tunisian Courts. This Clause Undoubtedly Constitutes a Clear Violation of the Provisions of the Islamic Sharia Law.

Subsection II: The Algerian Legislator's Position on Customary Marriage:

In (2005 CE); The Ministry of Religious Affairs and Endowments issued Instructions, Coinciding with the Amendment to the Family Law, prohibiting Mosque Imams from Conducting Religious Marriage Ceremonies Unless the Civil Marriage Contract had already been Concluded, in order to Avoid Problems arising from the Lack of Official Documentation. The Instructions also Stipulated that Imams are Obligated to Implement them, and that all Citizens are Responsible for Reporting any Violations. However; These Instructions do not Include any Disciplinary or Punitive Sanctions. Furthermore; The Algerian Court Rulings Have Consistently Upheld the Customary Marriage, considering it Valid as long as it Fulfills its Legal Requirements. One such Ruling states:⁴ “Every Marriage is Considered Valid if its Essential Elements are present, even if it is Not Registered with the Civil Registry, and all the Resulting Rights are Applicable”.

Furthermore; One of the Supreme Court's Rulings stated that: “Marriage has Four Pillars, namely: Consent, the Guardian, the Dowry, and Two Witnesses. In addition to the Absence of any Legal Impediments between the Couple, if Two of the Pillars of Marriage, other than Consent, are Missing, the Marriage is Invalid”.⁵

In Another Ruling;⁶ It was stated that: “When the Customary Marriage Fulfills all its Complete and Valid Requirements; The Court's Decision to Validate this Marriage, register it in the Civil Registry, and Attribute the Children's Lineage to their father is in accordance with the Islamic Sharia Law and Civil Law. Therefore; The Appeal must be Rejected”. An Unregistered Customary Marriage Contract, Not Recorded in the Civil Status Registers; Is Considered an Omitted Contract according to (Article 39 of the Civil Status Law),⁷ which states: “Except as mentioned in (Article 79, Paragraph Four), when the Contract is Not Declared to the Civil Status Officer within the Prescribed Time Limits or its Acceptance is Impossible, or when the Registers Do Not Exist or have been Lost for Reasons other than Catastrophic Events or Acts of War; The Birth, Marriage, and Death Certificates Shall be Registered Directly and without Charge, by Means of a Simple Judgment Issued by the President of the Court of the Judicial District in which the Contracts were Registered or Could have been Registered, based Solely on a Request from the Public Prosecutor of that Court by Means of a Summary Petition, and based on all Available Documents or Evidence”.

Returning to the Algerian Family Law;⁸ It Lacked a Clear Timeframe for Registering Marriages Concluded Informally, or Deterrent Penalties to Curb the Phenomenon of Unregistered Marriages. However; The Legislator Stipulated in (Article 22 of the Algerian Family Code) the Necessity of Registration. The Article states: “Marriage is Proven by an Extract from the Civil Registry. In the Absence of Registration; It is Proven by a Court Judgment. The Judgment Confirming the Marriage must be Registered in the Civil Registry at the Behest of the Public Prosecutor”.

Section II: Reasons for the Existence and Spread of Customary Marriage

Many Factors drive People to Enter into the Customary Marriages, leading to the Continued Prevalence of this Traditional Form of Marriage, despite the Legal Requirement to Register it in Official Departments, regardless of the Different Administrative Procedures in Place.

Subsection I: Reasons for its Existence and Spread in Arab Countries:

Many Believe that Informal Customary Marriage offers a Solution to Many of the Problems Facing Young People who are about to get married, especially those Facing Financial Difficulties. These Obstacles have Led Many Young People to opt for Informal Customary Marriage instead of the Formal, Legally Documented Marriage. It Eliminates Many of the Restrictions Associated with Formal Marriage. In this way; Young People Protect themselves from Falling into Vice or Engaging in Illicit Relationships. Therefore; This Type of Marriage has become Very Widespread Recently. The Most Important Reasons for its Prevalence in Arab Countries are Summarized as Follows:⁹

- The Restrictions Imposed by the Personal Status Laws on Spouses in Some Arab Countries include Prohibiting Polygamy except by Court Order after Stating the Compelling Reasons for it. Another Restriction is Granting the First Wife the Right to Request the Divorce if her Husband marries another woman. Therefore: Many Young People resort to Circumventing these Laws, finding Customary Marriage to be the Ideal Solution to their Problems.
- Many Young People Face Financial Difficulties, including Exorbitant Dowries and Excessive Wedding Expenses. This, coupled with Widespread Unemployment, Limited Resources, and the High Cost of Living Associated with Rising Poverty Rates, Leads Young People to Resort to this Type of Marriage, which does not Entail Significant Financial Burdens.
- The Weak Religious Conviction is a Contributing Factor. This Leads Young People, driven by their Desires and Unable to Marry, to Resort to this Type of Marriage to Satisfy their Urges and Whims, only to Abandon the Wife and Leave her Once they have had their Fill.
- One of the Parties may wish to Conceal the Marriage due to the Disparity in Social Status between them and the Woman they intend to Marry. Examples include a Doctor Marrying a Nurse, a Manager Marrying a secretary, or a Master Marrying a Maid, and Similar Situations that are Not Socially Accepted. The Person then resorts to an Informal Customary Marriage because it Fulfills their Desire while Keeping it Hidden from Public View.
- A Husband's Desire to Marry another Woman without the First Wife's Knowledge, especially in Countries that Impose Restrictions on Polygamy, or that Require the First Wife's Consent, or that Give the First Wife the Right to Request the Divorce.
- The Material Necessities are among the Reasons that Lead Some People to Enter into Informal Customary Marriages, such as Cases where a Widow does not want to give up her Deceased Husband's Pension, especially if She has a Child from him to Care for, so She resorts to an Informal Customary Marriage in order to Continue Receiving the Pension.
- An Informal Customary Marriage does not Entail the Same Obligations as a Formal Marriage.

Subsection II: Reasons for its Existence and Spread in Algeria:

The Reasons for the Informal Customary Marriages in Algeria are Diverse and Numerous, the Most Important of which are the Following:¹⁰

- Marriage is sometimes Used as a Means of Marrying Underage Girls. (Article 07 of the Family Law) Sets the Legal Age of Marriage at (19 Years) for Both Men and Women. Marriage of Minors, according to the Same Article, is Subject to Certain Conditions, including Obtaining Permission from a Judge. The Judge has Discretionary Power to Approve or Reject the Marriage of a Minor Girl. Consequently; Most Men who wish to Marry Underage Girls resort to Informal Customary Marriages to Avoid Legal Procedures or as a Result of the Judge's Refusal to Grant the Necessary Permission for such a Marriage.
- Customary Marriage is sometimes Used by Foreigners as a Means of Marrying Algerian Women. Marriage between Foreigners and Algerian Citizens is Subject to Certain Conditions,

including the Foreigner's Legal Presence in Algeria and Obtaining Authorization from the Governor of the Relevant Region. Therefore; If the Foreigner is in an Irregular Situation, such as being an Undocumented Immigrant, or if the Governor refuses to Grant Authorization; The Customary Marriage is sometimes resorted to.

- Nomadic Bedouins and Inhabitants of Remote Areas resort to Customary Marriage due to their Isolation and Distance from the Official Institutions.
- Those Wanted by the Authorities also resort to Informal Customary Marriages, given that these Individuals have Committed Crimes. Consequently; They Fear being Arrested if they Appear before Official Authorities to Conclude a Marriage Contract.
- However; The Most Important Reason for Informal Customary Marriage in Algeria is to Circumvent the Provisions of (Article 08 of the Family Code), which Obliges a Man Wishing to Marry a Second Wife to Obtain the Consent of his first wife and Authorization from the Competent Court. Therefore; In this Case; The Man resorts to Informal Customary Marriage in order to Conceal his marriage to a Second Woman and to Avoid Obtaining the First Wife's Consent. This is Especially Relevant since the Algerian Law allows the Husband to Legalize his marriage to the Second Wife.

Chapter II: The Issue of Documenting Customary Marriage Contracts

The Process of Proving the Customary Marriage requires Many Legal Steps as Stipulated by the Algerian Law. However; To Prove this; It is Necessary to refer to the Evidence Provided by the Islamic Sharia Law and the Specific Laws, particularly the Civil Law, regarding Methods of Proof. To Address the Issues of Proving this Marriage according to the Regulations Established by the Algerian Legislator; We Must Understand these Methods as Follows:

Section I: The Issue of Proving the Customary Marriage Contract Legally and Religiously:

Proving the Existence of the Informal Customary Marriage Contract is One of the Most Significant Problems Faced by the Parties Involved. This is because such Marriages are Often Contracted for Specific Purposes, and as soon as Disagreements Arise between the Spouses, some try to Evade their Obligations. Therefore; Both the Islamic Sharia Law and the Algerian Legislation have Surrounded it with Rules Governing its Methods of Proof, if it is Official, by Means of an Extract from the Civil Status Register, in accordance with (Paragraph One of Article 22 of the Algerian Family Law).¹¹ As for the Validity of its Conclusion, it Can be Established in Three Ways: Acknowledgment, Testimony, and Oath and Refusal to Swear the Oath.

Subsection I: Acknowledgement:

It is Considered One of the Strongest Forms of Evidence. According to (Article 341 of the Algerian Code of Civil Procedure),¹² it is the Admission by a Party before the Court of a Legal Fact Alleged against them, made during the Course of the Proceedings related to that Fact. It is also Considered Evidence Binding Only on the Person Making the Admission and does not Extend to others, or to those against whom a Judgment Based on this Evidence would be Rendered.¹³ For its Validity; Certain Conditions must be Met, Including:

- **Regarding the Person Making the Acknowledgment:** They must be of Sound Mind and of Legal Age. As for a Discerning Minor, their Acknowledgment remains Invalid because Reaching Puberty is a Condition for its Validity.¹⁴ The Acknowledgment of Someone Under Duress, Intoxicated, or Legally Incapacitated is also Invalid. Furthermore; The Person Making the Acknowledgment must be Serious and Not Joking.
- **Regarding the Person in whose Favor the Acknowledgment is Made:** They must be Known and Sufficiently Identified. The Woman must also Confirm the Man's Statement, and She must be Legally Permitted to Marry him if He is the One Making the Acknowledgment, and Vice Versa.¹⁵

- **Regarding the Subject of the Acknowledgment:** This refers to the Existing Marital Relationship between the Two Parties. Therefore; Marriage must be Possible between them; that is, the Woman must Not be Permanently or Temporarily Prohibited from Marrying the Man.¹⁶
- **The Form of the Acknowledgment:** It must be Definitive and Not Contingent on any Condition. It must also Establish the Right being Acknowledged and be Made before a Court of Law.¹⁷

Regarding the Types of Acknowledgment; There is Judicial Acknowledgment, which is Informing the Opposing Party of a Legal Fact Alleged against them before the Court. For Example; A Husband Appearing before a Judge and Acknowledging that He was in a Marital Relationship with the Defendant. Non-Judicial Acknowledgment; On the Other Hand, Occurs Outside the Courtroom. It may also Occur before the Court, but in a Case Unrelated to the Subject of the Acknowledgment. An Example of this is Acknowledging the Marriage in an Administrative Complaint. This Type of Acknowledgment is Subject to the Judge's Discretion, who may Consider it Conclusive Proof, a Written Document Establishing a Prima Facie Case, or Merely Circumstantial Evidence.¹⁸

As for its Validity from a Jurisprudential Perspective; Most Jurists Agree that an acknowledgment is Binding Only on the Person Making the Acknowledgment and No One Else. It is a Sufficient Means of Proving the Customary Marriage. If One of the Parties refuses to Acknowledge the Marriage, then Recourse is Made to Evidence or an Oath.¹⁹ From the Legal Standpoint; The Algerian Legislator Explicitly Stipulated that an Acknowledgment Constitutes Conclusive Evidence against the Person Making it, pursuant to (Article 342, Paragraph 1, of the Algerian Code of Civil Procedure).

Subsection II: The Testimony:

Testimony is One of the Most Important Means Relied Upon to Prove the Fact of Marriage. It is One of the Strongest Forms of Evidence because it is Conclusive Evidence, and what is Established by it is Binding on Everyone. In the Context of Legal Texts; It refers to Informing the Court about what a Person Witnessed, and the Resulting Legal or Religious Implications.²⁰

The Conditions for Giving Testimony: These include Conditions related to the Witness and Conditions related to the Testimony itself, as Follows:

- **The Witness:** Competence is Required; Meaning that the Witness must be of Sound Mind and have Reached the Age of Majority at the Time of Giving and Bearing Witness. Legally: The Legislator has Specified that the Witness's Age must not be Less than (19 Years), according to (Article 33 of the Personal Status Law).²¹ Also Required is Male Gender; that is, Two Men, or One Man and Two Women. Furthermore; The Witness must be Muslim; Meaning that the Testimony of a Non-Muslim against a Muslim is Not Permissible, based on Almighty Allah's Saying: ﴿Let not Believers take Disbelievers as allies [i.e., Supporters or Protectors] rather than Believers﴾.²² Finally, the Witnesses must be Trustworthy; the Testimony of a Transgressor is Not Accepted.
- **Testimony:** Its Meaning is to Declare or Affirm, as in: "I Bear Witness that he Acknowledged such and such, or something similar". It must also be Consistent with the Claim and be Given before the Court or Judicial Council.
- **Its Quorum of Evidence:** The Standard of Quorum Proof is the Testimony of Two Men or One Man and Two Women. A Witness is also Permitted to retract their Testimony with Justification if the Retraction is in Pursuit of the Truth, provided it is Done before the Court.²³

Subsection III: The Oath and the Refusal to take it:

An oath is a Solemn Declaration Made in the Name of Allah and His Attributes. The Defendant is Obligated to Take the Oath when Requested by the Plaintiff. Its Evidentiary Value is Limited to the Person Taking the Oath and their heirs, as their successors, whether regarding the Oath itself or the

Refusal to take it, and does not Extend to others. The Court does not Consider it a Sufficient Means of Proving the Fact of Marriage, but rather the Judge Directs it to the Plaintiff. This is in addition to Hearing the Testimony of Witnesses who Confirm the Validity of the Marriage and the Fulfillment of its Islamic Legal Requirements.²⁴

As for Refusal to take the Oath; It is the Refusal of the Person to whom the Oath was Directed to Perform it. Consequently; They Lose their Case. It is Evidence Upon which the Judge Rules against the Person who Refuses to take the Oath, as Stipulated in (Article 347 of the Algerian Code of Civil Procedure).

Section II: The Issue of Registering the Customary Marriage Contracts and their Implications:

The Formal Marriage Contract Fulfills all the Procedural Requirements and is Proven by Obtaining a Marriage Certificate from the Civil Registry. However; The Issue Lies with Marriage Contracts Concluded according to the Islamic Sharia Law but Not Officially Registered (Customary Marriage). How Can such a Marriage be Registered according to Legal Procedures? And what are the Negative Consequences of Not Registering it?

Subsection I: Procedures for Registering an Uncontested Customary Marriage Contract:

The Algerian Legislator, in (Article 71 of the Civil Status Law), Clarified that: "The Marriage Contract Shall be Concluded by the Civil Status Officer or the Judge within whose Jurisdiction the Place of Residence of the Prospective Spouses, or One of them, or the Dwelling in which One of them has Continuously Resided for at Least One Month Prior to the Date of the Marriage, is Located". (Article 22 of the Algerian Family Code) Stipulates that an Unregistered Marriage Can be Proven by a Court Judgment, provided that this Judgment is Registered in the Civil Registry at the Request of the Public Prosecutor. Therefore; The Marriage Contract Registered by a Notary or a Civil Status Officer in the relevant Jurisdiction is the Official and Original Document for Proving the Marriage, in accordance with (Articles 18-21 of the Algerian Family Code) and (Articles 71-77 of the Civil Status Law).²⁵

The Algerian Legislator has also worked Diligently through a Series of Laws to Promote the Principle of Registering Marriage Contracts; in order to Avoid Personal Disputes between Spouses and the Emergence of Repudiation Claims and Complications in Resolving Disputes. The Algerian Legislator also worked on Introducing a System for Registering Previous or Unregistered Marriage Contracts in the Civil Status Records, within the Framework of the General Regulations, including Decree (No. 62/126) Dated (13/12/1962 CE) Concerning Civil Status. Therefore; (Article 72 of the Algerian Civil Status Procedures Law) and (Articles 18-22 of the Algerian Family Law) Stipulate that the Marriage Contract must be Registered in the Civil Status Register Immediately after it is Concluded before the Civil Status Officer. The Couple is then Issued a Family Register Confirming the Marriage. The Marriage Can also be Performed before a Notary Public or a Legally Authorized Official, provided this takes Place before Consummation. If the Marriage Occurs after Consummation or if the Marriage Contract is Concluded Informally through a Religious Ceremony (Fatiha) in the Presence of a Group of Muslims, then it is Necessary to Resort to the Court and Present Evidence Confirming the Marriage. After the Court Issues its Judgment, the Court Clerk sends a Copy to the Civil Status Officer in the Municipality, who then Registers it in the Civil Status Register.²⁶

The Competent Authority for Reviewing Marriage Registration Applications is the Court of the Judicial District where the Marriage Contracts were Registered. This Process begins after the Notary Prepares a Marriage Declaration for One of the Spouses, who then Submits an Application to the Public Prosecutor through a Written Petition accompanied by the Following Documents: (Birth Certificates for Both the Husband and Wife - a Certificate of Non-Registration of the Marriage with the Civil Registry - a Certificate of Single Status - a Medical Certificate Confirming or Denying the Wife's Pregnancy - Copies of Both Spouses' Identification Cards - the marriage Declaration Document). After

the File is Submitted; The Public Prosecutor Summons the Parties and Hears the Witnesses to Verify the Authenticity of the Documents.

However; In the Case of Registering an Uncontested Marriage Concluded Abroad, (Article 99 of the Civil Status Law) Stipulates that it must be Registered if the Marriage Certificate has not been Registered due to Failure to Declare it, provided that Local Law Permits Late Declarations, or by Obtaining a Court Order from the President of the Algiers Court, mandating its Registration in the Consular Registers. This is Done according to Specific Procedures, such as Submitting a Written Request from One or Both Spouses, or from anyone with a Legitimate Interest, to the Public Prosecutor at the Algiers Court. This is Submitted along with the Birth Certificates of the Couple and the Certificates of Two Witnesses who attended the Marriage Ceremony. The Petition is Submitted by the Lawyer to the Head of the Court after the Necessary Investigations have been Conducted. The Head of the Court then Issues an Order to Register the Marriage Contract at the Algerian Consulate or Embassy. A Copy of the Order is Sent to the Ministry of Foreign Affairs within Three Days of its Issuance and Registration, in accordance with (Article 60 of the Civil Status Law).

Subsection II: Procedures for Registering a Disputed Customary Marriage Contract:

In the Event of a Dispute between a Couple regarding the Existence or Non-Existence of a Marriage; The First Legal Step taken by the Party Claiming the Marriage is to File a Lawsuit to Prove the Marriage before the Competent Regional Court. This is Done in order to Obtain a Court Ruling in their Favor, after Verifying that the Essential Elements and Conditions of Marriage are Met, in accordance with (Article 21 of the Civil Status Law) and (Article 22 of the Algerian Family Law). The Legislator also mandated the Application of these Provisions in the Procedures for Registering the Marriage Contract, either by a judgment or an order Confirming its Registration in the Civil Registry. It Should be Noted that this Ruling is Subject to Appeal.²⁷

A Lawsuit to Prove a Marriage Contract is Filed Like any Other Civil Lawsuit, in terms of the Procedures for Filing it and the Legal Standing of the Parties Involved. It Falls Under the Category of Personal Status Cases and Concerns Disputes arising between Members of the Same Family. As Stated in (Article 13 of the Algerian Code of Civil Procedure); No Person may Litigate Unless they have Legal Standing or a Legitimate Interest in the Case.²⁸

Jurisdiction in a Disputed Common-Law Marriage Case Falls to the Court within whose Jurisdiction the Defendant Resides. If the Defendant has No Known Place of Residence; The Jurisdiction reverts to the Court within whose District the Defendant's Place of Domicile is Located, according to (Article 08 of the Algerian Code of Civil Procedure). This Article Clarifies the Procedures for Submitting Documents and Evidence, as well as the Litigation Process. This is Further Supported by (Articles 02, 12, 13, and 459 of the Same Law). Therefore; In Both Disputed and Undisputed Common-Law Marriage Cases; It is Necessary to resort to the Courts for a Ruling, provided that the Conditions for Filing a Lawsuit are Met, and after Confirming the Existence of the Marital Relationship through a Court Judgment that is then Registered in the Civil Registry.²⁹

Conclusion

Although the Common-Law Marriage Contract is Valid from the Religious Standpoint and Grants Both Spouses the Right to Cohabitation, it does not, in Our Present Time, have the Legal Force to Prove the Rights of either Spouse in Case of Disputes or Disagreements. Furthermore; Neither the Husband nor the Wife Can Use it to Prove the Paternity of their Children or Establish Inheritance Rights between them.

1. Results:

- ✓ The Customary Marriage Contract is Subject to the Provisions of the Islamic Sharia law, provided that it Fulfills its Legal Requirements, even if it is Not Officially Registered.

- ✓ The Arab Legislations Vary in their Stances on the Informal Customary Marriage, ranging from Recognizing it to Requiring its Official Registration, and even Imposing Penalties on those who Enter into such a Contract without Registering it.
- ✓ The Algerian Law Considers the Customary Marriage a Valid Marriage, Despite the Lack of Official Registration.

2. Suggestions and Recommendations:

The Recent Spread of the Phenomenon of the Informal Customary Marriage must be Confronted with Many Measures, Including:

- ✓ Strengthening religious awareness among young people and developing religious education in their minds will provide a sure guarantee for reducing injustice and corruption.
- ✓ Imposing a hefty fine on those who enter into an informal marriage would be an additional restriction on marriage. Considering that one of the reasons and motivations for informal marriage is the restrictions imposed on formal marriage, including financial ones, adopting this approach would add yet another restriction to the existing ones. This would contribute to reducing the prevalence of informal marriages.
- ✓ Amending the law involves prohibiting the conclusion of customary marriage contracts between citizens and rendering them legally invalid. It also entails enforcing the law requiring the marriage contract to be finalized at the municipality before the religious ceremony. Furthermore, it emphasizes the need for imams of mosques to respect this provision and treat it as mandatory.
- ✓ In order to address the phenomenon of informal marriages, it was necessary to simplify the marriage process and its requirements. These requirements have burdened young people, leading them to resort to informal marriages. Adding restrictions to this type of marriage will only increase instances of moral decay and push young people to seek other avenues to fulfill their desires. Such restrictions will only complicate matters instead of resolving them.

Endnotes List:

- ¹ - Raed Bdeir, The Customary Marriage: Its Definition and Rulings, Available on the Website: <https://nawazel.net>, (March 10, 2021 CE), 15:20.
- ² - Husni Mahmoud Abdel-Dayem Abdul Samad, The Customary Marriage Between Prohibition and Permissibility, University Thought House, Alexandria, 2011 CE, p. 127.
- ³ - Osama Omar Suleiman Al-Ashqar, Jurisprudential Developments in Marriage and Divorce Issues, Research Published on the Website: <http://mddi.over.com>, Accessed on: (March 10, 2021 CE), at: 19:20.
- ⁴ - Decision Dated: (November 22, 1982 CE), File (No. 28784), Judges' Bulletin, Vol. 2, p. 32.
- ⁵ - Decision Dated: (January 02, 1989 CE), GH.A.Sh.M., Supreme Court, Judicial Journal, No. 03, 1995 CE, p. 53.
- ⁶ - Decision Dated: (December 25, 1989 CE), GH.A.Sh.M., Supreme Court, Judicial Journal, No. 4, 1991 CE, p. 110.
- ⁷ - Law (No. 62-126) Concerning the Civil Status, dated: (December 13, 1962 CE), Official Gazette of the Republic of Algeria, No. 08, Amended and Supplemented by Order (70-20), dated: (February 19, 1970 CE), Official Gazette of the Republic of Algeria, No. 21, Published on: (February 27, 1970 CE), and Amended by Order (No. 14-08), dated: (August 09, 2014 CE), Official Gazette of the Republic of Algeria, No. 49, Published on: (August 20, 2014 CE).
- ⁸ - Ordinance (No. 05-02), dated: (February 27, 2005 CE), Containing the Family Law, Official Gazette of the Republic of Algeria, No. 15, Published on: (February 27, 2015 CE).
- ⁹ - Ahmad Al-Hasanat, The Customary Marriage, Library of the General Fatwa Department, Hashemite Kingdom of Jordan, 2019 CE, pp. 410-411.
- ¹⁰ - Eithar Moussa, The Customary Marriage in Algeria, Article Published on the Website: www.mohamah.net/law, Accessed on: (March 15, 2021 CE), 20:13.
- ¹¹ - Law (No. 84-11), Ibid.
- ¹² - Ordinance (No. 75-58), Comprising the Civil Code, dated: (September 26, 1975 CE), Amended by Ordinance (No. 05-10), dated: (July 20, 2005 CE), Official Gazette, No. 44, and further Amended by Ordinance (No. 07-05), dated: (May 13, 2007 CE), Official Gazette, No. 31, Published on: (May 13, 2007 CE).
- ¹³ - Muhammad Shta, The Unofficial Customary Marriage, 2nd Edition, Dar Al-Majd for Publishing and Distribution, 2008 CE, p. 45.
- ¹⁴ - Maazouz Dalila, Procedures for Concluding the Formal Marriage Contract and Methods of Proving It, and the Issue of Proof in the Customary Marriage, Master's Thesis, Specialization: Contracts and Liability, Faculty of Law, University of Algiers, 2004 CE, p. 129.

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- ¹⁵ - Mamdouh Azmi, *The Unofficial Customary Marriage*, Undated Edition, University Thought House, Alexandria, Egypt, Undated Publication, p. 58.
- ¹⁶ - *Op. Cit.*, p. 58.
- ¹⁷ - *Op. Cit.*, the Same Page.
- ¹⁸ - Muhammad Shta, *Op. Cit.*, p. 53.
- ¹⁹ - Mamdouh Azmi, *Op. Cit.*, p. 59.
- ²⁰ - Muhammad Shta, *Op. Cit.*, p. 45.
- ²¹ - *Law* (No. 62-126), *Ibid.*
- ²² - The Holy Quran, Surah Al-Imran, Verse 28.
- ²³ - See: The Holy Quran, Surah Al-Baqarah, Verse 282.
- ²⁴ - Belhadj Laarbi, *The Family Law with Amendments (05-02) and Commentary on it with the Principles of the Supreme Court over Forty Years*, 3rd Edition, University Publications Office, Algiers, 2007 CE, p. 233.
- ²⁵ - *Op. Cit.*, p. 352.
- ²⁶ - See: (Article 72 of the Civil Status Law) and (Articles 18-22 of the Algerian Family Law).
- ²⁷ - Al-Hussein bin Sheikh Ath Malouya, *The Guide to Family Law Supported by the Jurisprudence of the Supreme Council and the Supreme Court from (1982 CE) to (2004 CE)*, Dar Houma Publishing and Distribution, Algiers, 2014 CE, p. 63.
- ²⁸ - Barbara Abdul Rahman, *Explanation of the Law of Civil and Administrative Procedures (Law No. 08-09) dated: (February 23, 2008 CE)*, Al-Baghdadi Publications, Algiers, 2009 Edition, p. 34.
- ²⁹ - See: (Articles 08-12-13-459) *Law (08-09) dated: (February 28, 2008 CE) Containing the Code of Civil Procedure*, Official Gazette of the Republic of Algeria, No. 21, Issued on: (April 23, 2008 CE).

❖ List of Abbreviations:

1. (C.S.L.): Civil Status Law.
2. (A.F.L.): Algerian Family Law.
3. (A.C.L.): Algerian Civil Law.
4. (C.P.A.L.): Code of Civil and Administrative Procedure.