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TYPES OF MARRIAGE AND MARRIAGE CONTRACT IN TRADITIONAL KAZAKH SOCIETY AND THE ISSUE OF KHITBA IN ISLAMIC LAW

This overview examines the diversity of marriage types in traditional Kazakh society, emphasizing their legal, social, and cultural dimensions. It focuses on how marriage functioned not only as a personal union but also as a legally and socially regulated institution deeply influenced by customary law and Islamic principles. The study highlights the decisive role of parents and extended family in pre-marital arrangements, demonstrating how collective interests often prevailed over individual choice. Particular attention is given to the conditions and motivations behind different marriage forms, including their legal consequences for all parties involved. The analysis underscores the family's responsibility in resolving social issues, maintaining moral order, and ensuring compliance with established norms. A comparative approach is applied to evaluate the consistency and divergence between traditional Kazakh marriage practices and Sharia law, revealing both harmonization and adaptation within local customs. Additionally, the overview explores the concept of divination and spoken declarations in marriage, stressing that in traditional Kazakh society, verbal acts carried contractual and legal authority beyond simple agreement or collusion. By comparing khitbah in Muslim law with Kazakh customary practices, the study provides a nuanced understanding of how speech, intention, and legal recognition shaped marital relations. Overall, the analysis offers a comprehensive perspective on the intersection of law, tradition, and religion in Kazakh marital institutions. The study talks about practices in traditional Kazakh society. And ethnographic scholars refer to the traditional Kazakh society as the period up to the October Revolution at the beginning of the XX th century. However, practices in traditional society may, in some cases, continue even after that, and even up to today.

Keywords: customs, muslim law, marriage, family, tradition, dowry

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Дәстүрлі қазақ қоғамындағы некенің түрлері мен құдалық және ислам құқығындағы хитба мәселесі

Бұл мақала дәстүрлі қазақ қоғамындағы неке түрлерінің мазмұны мен ерекшеліктерін кешенді түрде талдауға арналған. Неке институты қазақ қоғамында тек ер мен әйелдің жеке одағы ретінде емес, әулетаралық қатынастарды реттейтін, әлеуметтік және құқықтық мәні зор қоғамдық жүйе ретінде қалыптасты. Зерттеуде неке келісіміне қатысушы тараптардың өзара байланысы мен олардың құқықтық салдары қарастырылады. Ата-аналар мен үлкен әулеттің некеге дейінгі келісімдердегі рөлі ерекше назарға алынады, себебі дәстүрлі қоғамда жастардың некесі көбіне ата-ананың шешімімен жүзеге асқан. Әртүрлі неке түрлерінің пайда болу себептері, шарттары және олардың әлеуметтік негіздері талданып, әр неке формасының қоғамдағы орны айқындалады. Сонымен қатар отбасының қоғамдық мәселелерді шешудегі, тәртіп пен моральдық құндылықтарды сақтаудағы маңызы көрсетіледі. Зерттеу барысында қазақтың дәстүрлі неке түрлері ислам шариғаты нормаларымен салыстырмалы түрде қарастырылады. Бұл салыстыру арқылы шариғат талаптары мен жергілікті әдет-ғұрыптардың өзара ықпалы мен айырмашылықтары анықталады. Сондай-ақ қазақ қоғамында сөздің, айтылған уәде мен бал ашудың келісімдік-құқықтық күші болғаны көрсетіліп, мұсылман құқығындағы хитба ұғымымен салыстырылады. Нәтижесінде неке қатынастарындағы сөз, ниет және құқықтық жауапкершіліктің маңызы жан-жақты ашылады. Зерттеу дәстүрлі қазақ қоғамындағы тәжірибелерден сөз етеді. Ал дәстүрлі қазақ қоғамын этнограф ғалымдар XX ғасыр басындағы қазан төңкерісіне дейінгі кезенді айтады. Дегенмен дәстүрлі қоғамдағы тәжірибелер жекелеген жағдайда одан кейін де, тіптен бүгінге дейін жалғасуы мүмкін.

Түйін сөздер: әдет-ғұрып, мұсылмандық құқық, неке, отбасы, дәстүр, қалың мал

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Виды брака и брачного договора в традиционном казахском обществе и проблема хитбы в исламском праве

Данный обзор посвящён анализу различных форм брака в традиционном казахском обществе с точки зрения их правовых, социальных и культурных особенностей. Брак рассматривается не только как личный союз, но и как важный общественный институт, регулируемый нормами обычного права и исламского шариата. Особое внимание уделяется значительной роли родителей и рода в добрачных договорённостях, где коллективные интересы часто преобладали над индивидуальным выбором. В работе раскрываются условия и причины существования различных типов брака, а также их правовые последствия для всех участников брачного договора. Подчёркивается роль семьи в решении общественных вопросов, сохранении нравственных ценностей и поддержании социальной стабильности. Сравнительный анализ традиционных казахских браков с нормами шариата позволяет выявить как сходства, так и различия, отражающие процесс адаптации религиозных норм к местным обычаям. Отдельное место занимает анализ значения словесных актов и предсказаний, которые в традиционном казахском обществе обладали юридической силой и рассматривались как часть договорных обязательств. Сопоставление хитбы в мусульманском праве с казахскими обычаями углубляет понимание правовой роли речи в брачных отношениях. Исследование посвящено практической стороне проблемы в традиционном казахском обществе. К традиционному казахскому обществу ученые относят период до Октябрьской революции в начале XX века. Тем не менее, данные практики в традиционного общества в отдельных случаях продолжаться и после этого, вплоть до сегодняшнего дня.

Ключевые слова: обычаи, мусульманское право, брак, семья, традиция, приданое

Introduction

The family institution holds a significant place in society and the state, with its roots grounded in the concept of marriage as a contract. Understanding the complexities of family structures within modern Kazakh society and differentiating the strengths and weaknesses of Kazakh traditions requires a thorough examination of marriage contracts and their various forms within traditional Kazakh communities. An in-depth study of different marriage types and the substantial influence of parents in traditional Kazakh society is particularly important. The issue of parental consent is especially relevant when considering the legal frameworks that govern marital relationships involving minors over the age of 16, which is common in contemporary society. Various nations worldwide have set minimum age requirements for marriage with parental consent, often in response to pre-adult pregnancies. These age requirements vary across countries, with some allowing marriage at 16 years and others at 17 years. Controversies and societal discord often arise from the registration of religious or traditional marriages compared to the state's official marriage contracts. In addition, challenges emerge due to the resistance of certain religious factions and traditionalist elements to adhere to secular state laws, which can hinder the enforcement of legislation and the

functioning of government bodies. A comprehensive scholarly analysis of these complex issues and an examination of the diverse types of marriages rooted in religious and legal frameworks across different societies will be crucial in seeking viable solutions to these multifaceted challenges.

In traditional Kazakh society, the institution of marriage was not merely the contract between two young people as we think of it today, but the foundation of the social structure, the tribal governance system, and legal relations. In order to develop the institution of the family today and preserve the national code, it is important to adapt some values of traditional Kazakh society to present an alternative to today. It is important to analyze traditional society based on the understanding and conditions of that period. In addition, although the legal system of the Kazakh people is based on customary law, Sharia law has also been influential in personal and family matters. Determining this level of influence and the correspondence and inconsistency is necessary for the formation of the Kazakh family institution. This topic is chosen to understand the causes and consequences of the conflict between modern-traditional perspectives and the continuity of modern tradition.

The main goal of the study is to uncover the social, legal and religious significance of the types of marriage and betrothal encountered in practice in traditional Kazakh society by analysing them from

a comparative-legal perspective in relation to the norms of Muslim family law.

The objectives of the study: to codify and describe the types of marriage in Kazakh society, to determine the legal meaning of the practice of marriage in customary law (whether it is a legal contract, not a simple agreement), to identify the role and legal meaning of the khitba in Muslim legal practice with the Kazakh marriage contract, and to identify the differences between the two practices.

Scientific research methodology

First, using the historical method, information about the terms and development of the institution of marriage in traditional Kazakh society is analyzed based on historical data. Secondly, using the comparative legal method, a legal comparison of the practice of marriage and betrothal in customary law and the initial agreement on the marriage contract in Muslim law. Thirdly, a religious studies analysis is conducted in terms of the presence or absence of a religious motive or sanctification in the experiences.

The main part

In traditional Kazakh society, 1) the prevalent form of marriage is “marriage by betrothal.” This involves a prearranged agreement, often made during childhood or infancy, between the families of the betrothed. In Kazakh culture, this betrothal is referred to as “besik kuda,” while in Turkish culture, it is known as “besik kertu.” Even individuals of equal standing may enter into a betrothal agreement before the birth of their children, with the betrothal being termed “Bel kuda.” Another form of betrothal, referred to as “to renew matchmaking,” involves the participation of more than seven elders. The individual representing the girl’s family in this arrangement is known as the “karsy kuda” when a girl is promised to them (Тауұлы, 2017). We will focus on the most important of these separately. 2) Levirate marriage occurs when a man marries the widow of his brother to provide for her. 3) In some cases, a groom marries as a way to assist the family of the bride, particularly if he is an only child and the girl’s father needs support. This type of marriage involves the husband moving into the wife’s household. 4) Another type of marriage involves women being taken as prisoners of war. 5) There are specific prohibitions on marriage, such as a girl not being allowed to marry the sons of her brothers. However, daughters born from the same woman can be married to sons.

6) Marriage to the daughters of the mother’s sisters, also known as one’s maternal cousins, is referred to as “bole alu”. This practice, although not very common, does exist (Төлебаева, 2010).

In the “zheti zhargy,” which is the customary law code of the Kazakhs, there is a specific rule outlined in the section related to Shon bi Tauke Khan. According to this rule, after the transfer of the bride’s money, if the prospective groom faces a disadvantage due to the refusal of marriage by the bride, the bride’s money will not be returned. However, if the disadvantage is faced by the bride, then the bride’s money will be returned to the prospective groom (Исабаев, 2006). These ancient custom serves to illustrate the significant strength and importance of kinship bonds within the Kazakh culture. The custom sheds light on the intricate dynamics and traditions surrounding marriage and family relationships in Kazakh society.

According to Islamic law, it is important to note that a premeditated understanding does not constitute a formal agreement but rather a commitment. Similarly, in Kazakh tradition, such commitments are made between senior family members or elders. However, once a mutual understanding is reached regarding the bride price and a specific engagement contract is established, it becomes a binding agreement that cannot be reneged upon. Upholding one’s word is a common practice, largely due to the significant emphasis placed on honoring commitments in the customs of the steppe. Additionally, the redemption of the dowry through labor is permitted, allowing items such as livestock to be used as compensation (Kasani, 2010). The issue of levirate marriage is also given special consideration.

The practice of enslaving prisoners of war is a consequence of the right to war. In Islamic law, non-Muslim prisoners of war could become slaves, subject to specific conditions such as the call to faith, zhizia (payment of tax), provision of well-being, and phidia. The status of concubines arises from the context of war. When it comes to marriage with a concubine, the master may be with the subordinate concubine without any agreement, while marrying someone else’s maid requires the master’s permission. A concubine, whether alive or deceased, gives birth to a certain child or becomes the mother of a child with the support of her husband if she is pregnant, thereby acquiring a different status. She is not to be sold or exploited, and if her husband grants her freedom after giving birth, she will be liberated, and the child will be free as well (Ibn Rushd, 2004).

The Kazakhs had a unique cultural perspective on common-law marriage, viewing it as a valid form of marriage. This indicated that a person could attain freedom through marriage, or continue to be recognized as their mother's child even after marriage. In Kazakh culture, concubines were considered legal, and often viewed as a form of compensation for dowry payments or property (Ибрагимов, 2006). Throughout history, the majority of concubines were of Kalmyk (Mongol) descent.

According to Kazakh tradition and Islamic law, it is acceptable for individuals to marry close relatives on the mother's side, even if they do not share close ancestors. Islamic law regards those descended from a male as being part of the same dynasty, leading to strong kinship ties that influence matters such as inheritance, social value, and daily life. The absence of any restrictions on marriage between individuals descended from the same female ancestor creates a closer connection with the concept of dynasty in Islamic law. This means that when a mother or girl from the same maternal lineage enters a family, marriage has no barriers, as they are considered part of a different generation and bloodline. This practice is termed "atasy baska" (grandfather is different) among Kazakhs and does not extend to children born to daughters who become brides in other families. The saying "As from a nephew in the female line there will be no man of his own, so from the neck vein there will be no food," is meant to avoid interference with the offspring. In this context, while Kazakhs are permitted to marry their maternal cousins, it is not permissible to marry their paternal cousins. It is generally considered preferable for an uncle to marry his niece rather than his nephew, indicating that there are perceived risks associated with marrying individuals from the same lineage. This belief is supported by modern medical science.

Make a counter-engagement and the Shighar marriage

In traditional Kazakh culture, a common practice for betrothal is mixed betrothal, in which both parties agree that if one family has a son and the other has a daughter, they will be pledged to each other. This reciprocal arrangement creates a bond between the two families. In some cases, ceremonies and festivities involving bridesmaids and groomsmen are also conducted concurrently with the betrothal. It's worth noting that this type of betrothal is often observed in circumstances of poverty or during times of conflict when material rewards are not feasible

(Төлебаева, 2010). The custom of engagement in Kazakh culture traditionally involves the concept that a girl should have a dowry. Even though some researchers claim that this event occurs in instances where there is no dowry, the saying among Kazakhs is "Even if there is a dowry, a girl without a dowry is not given." However, it's important to note that in practice, the exchange of gifts and wealth during this type of engagement is typically less elaborate and involved. It's essential to consider that simply transferring the same amount of wealth from one party to another may not always carry the same significance in this cultural context.

In traditional Islamic law, the practice of Shigar marriage bears resemblance to exchanging daughters without providing a dowry. However, contrary to popular belief, Islamic sects maintain that the mahr, or dowry, must hold tangible value. As a woman cannot be treated as property, this principle distinguishes Shigar marriage from other forms of marriage. In the Hanafi madhhab, it is permissible to enter into a Shigar marriage. This is based on the belief that a marriage can be validly concluded even if certain conditions are not specifically stipulated, such as asking for an invalid amount of worldly possessions as part of the marriage contract, leaving the Mahr (dower) amount to the discretion of the husband, or not specifying the exact size of the Mahr (Al-Majdani, 2016). The Hanafi scholars did not forbid marriage outright, but they did forbid the surrender of the Mahr, which is the compulsory payment or gift given by the groom to the bride in Islamic marriage. According to their interpretation, the Mahr cannot be given up; it must be given as a part of the marriage contract. In contrast, in the Shafiya sect, not abiding by this requirement is considered to invalidate the marriage (Kasani, 2010). In some regions of Turkey, similar customs emerged due to the inability to provide a traditional dowry. This led to the practice known as "berdel" where alternative arrangements were made in place of the traditional dowry (Hasan Gulech, 2010). Another interesting custom is seen among the Kazakhs, where it is common for individuals to become engaged again after some time.

Levirate The next type of marriage, common among Kazakhs, is known as "levirate." If a girl passes away after becoming engaged or getting married, it is customary for various alternatives to be considered. These include the possibility of marrying her sister, sister-in-law, or even her older or younger brother if her husband passes away (Омар, 2008). This practice reflects the cultural customs and

traditions of the Kazakh people (Арғынбаев, 1973). In the Kazakh community, there is a traditional understanding that places significant responsibility on the betrothed woman, especially in the event of her husband's passing. Regardless of whether she is in her husband's home or her father's, the expectations of a widow are firmly established. It is believed that she should not leave the country and is expected to consider marrying someone from the same family or clan if her husband's native brothers are not deemed suitable. Additionally, if she chooses to remarry, the second or third husband is anticipated to be from the same dynasty. If she is unable to find a suitable match and the chosen man refuses the dowry, she has the option to return to her homeland, taking the dowry with her. In future times, she will continue to live her own life separately, as stipulated by the "zheti zhargy" in the law (Төлебаева, 2010). The primary objective is to ensure that livestock and children are not left unattended (Саққұлақұлы, 2005). According to Ybrai Altynsarin's works, it was customary for Kazakhs to marry off their sons at the ages of 11-12, and at times, the children married their wives were as young as 7-8 years old. This practice was influenced by the ritual of levirate (Алтынсарин, 1994).

The tradition of levirate among the Kazakhs has been deeply ingrained in their culture for centuries. This tradition, based on addressing social issues, has evolved into a set of rules that hold legal significance within the community. Kazakh researcher K.Zh. Artykbayev has provided a comprehensive summary of these rules. According to these customs, a widowed woman can only consider remarriage one year after the passing of her husband. Furthermore, it is customary for a widow to marry only one sibling of her deceased husband, as decided by the elders. In instances where a widowed woman has both a deceased husband and brother, it is deemed necessary for her to marry her husband's brother. Should a woman wish to marry someone outside of her family, she may only do so after renouncing all property, and the marrying outsider is required to provide a substantial dowry. These rules not only reflect the intricate customs of the Kazakh community but also serve as a testament to the significance of tradition and social order within their society. In the event of a husband's passing, any children he leaves behind will be cared for by his siblings. It is customary for a woman who wishes to remarry outside of the deceased husband's family to provide a payment of no fewer than five camels as a penalty. The practice of levirate was enforced during the

Russian rule in Tsarist and Soviet times, aiming to eradicate Kazakh traditions by alienating them from their legal systems. Yet, upon thorough examination of present-day Kazakh legal frameworks, it has been determined that reviving the Amen tradition is essential. To achieve this, influential authorities have developed necessary plans and undertaken various efforts to incorporate this significant ritual into the Kazakh Constitution (Musa, 2010).

The challenges of adapting to a nomadic lifestyle within traditional Kazakh society, combined with the geographical distance from one's clan, underscored the significance of preserving this age-old tradition. Persistent warfare and demographic obstacles underscored the necessity for stability and certainty. Consequently, this convention emerged as a safeguard aimed at preventing harm. Within the community, avoiding the remarriage of widows became an established practice. It is apparent that this custom, designed to perpetuate lineages and surnames, also seeks to prevent children from their own families from joining another clan through their mother. Additionally, it contradicts the tradition of not marrying within seven generations. The tradition of levirate is not unique to Kazakhs, as it is also practiced by other Central Asian nationalities (Төлебаева, 2010). Among the Kyrgyz, it is known as "levirate," while the Uzbeks refer to it as "levirate." Furthermore, in the post-Islamic Karakhans, Selchuks also adhered to this custom within the Khan family (Musa, 2010). Etymologically, it involves assuming the care of a brother's children and livestock as a matter of trust. the daughter-in-law's inventing new names for her husband's relatives

One of the most common customs used by Kazakhs is "inventing new names for her husband's relatives", that is, not to mention the names of mother-in-law, grandfather, and brother-in-law. Even those with the same name should not be named. If she says it carelessly, she is ashamed to pretend to have made a big mistake (Nusipoqasuly & Zhapparyuly, 2011). It is a common belief among the people that a certain bride shares the same story. The father-in-law and brothers of the daughter-in-law were known as Kulbay, Kamysbay, Wolfbay, and Koishybay. On the opposite side of the lake, when the bride approached the water, wolves attacked and killed the sheep on the other side of the reeds. Gasping for breath, the bride exclaimed, "Beyond the glimmer, beyond the rustle, the manyrama is devouring my son" (Алтынсарин, 1994, p. 183). In traditional cultures, the distinction between the brother-in-law and the in-laws held great signifi-

cance for the bride. This distinction was marked by specific rituals that were observed, which served to elevate the respect and maintain a sense of distance between the mother-in-law and the daughter-in-law. These rituals also played a role in shaping the dynamics of the relationship between the in-laws and the bride's family. Additionally, the formation of unique rituals, along with appropriate humor, contributed to fostering harmonious relationships and mutual understanding between the family members, especially in times of tragedy. These customs and rituals have also played a role in maintaining respect and fostering good relations between the brother-in-law and the sister-in-law.

In certain societies, scholars have observed that it is unethical to consider women as property to be inherited. We have also discussed the underlying motives and justifications for this practice. The custom of levirate marriage often involved a man marrying the widow of his deceased brother or taking her as a sister-in-law. This practice served as a means of maintaining communication within the family, especially in cases where certain information could not be openly shared among adult family members. It also underscored the continuity of the husband's relationship with his deceased brother's wife or sister within the family structure. There are varying viewpoints on whether inheritance should pass to the daughter-in-law rather than to the husband's brothers. Some argue that this approach is more appropriate (Тауұлы, 2017). It has been noted that following the rise of Islam, there was a distinct emphasis on the cautious consideration of the issue of dowry.

There is evidence suggesting that a woman's gratitude is also taken into account, even though levirate is strictly observed as a law. For instance, Samakvasov presents the following fact: "If a woman is not satisfied that she will not marry anyone, then no one can force her. The cattle are also not confiscated". Article 47 of the "Karamola" code, established during Abay Kunanbayuly's governance, contains provisions regarding marriage and inheritance in the event of spousal death. It states that a woman who has lost her husband has the option to marry one of her late husband's siblings, should she choose to do so. However, if she prefers not to remarry, she retains the right to make that decision. Furthermore, if a daughter-in-law passes away, her sister may take her place in marriage if both parties consent. If the sister is not agreeable to this arrangement, any received dowry must be returned (Андабеков, 2005).

In Islamic law, there are no restrictions on a certain type of marriage. According to the Hanafi madhhab, a marriage is considered valid even if it is the result of coercion or violence. After a year, the waiting period (iddat) for such a marriage will be over. However, it is essential that both parties enter into the marriage willingly and without any form of compulsion or force. This perspective is widely held but may vary in different contexts (Kasani, 2010). The absence of discussions related to levirate in classic fiqh books can be attributed to the lack of emphasis on the practice in traditional Islamic jurisprudence. This absence suggests that among the Kazakh community, there is a strong adherence to Islamic principles that discourage practices such as the inheritance of women in non-Muslim marriages, thereby preventing situations that may contravene Islamic marital laws.

Levirate marriage is a practice that involves the marriage of a widow to her deceased husband's brother. In this context, it is important to consider that the traditional ritual of "the groom's first visit to the bride's house" may not have taken place. If the engaged woman passes away before this visit occurs, it is customary for the groom to provide an additional bride to the family of the deceased woman to establish a sisterly bond. This act symbolizes the fulfillment of the original marriage agreement. For instance, if the dowry provided was 37, the groom would supplement it to 47 in this scenario. If the deceased woman did not have a sister to stand in for her, it is customary for the family to return half of the dowry to the groom (Әділбаев, 2005). At first glance, this tradition served the purpose of ensuring that a second bride was not acquired without a dowry, and also safeguarding the property from disputes following a distant marriage arrangement. This practice is set to endure to uphold this custom. If the groom fails to visit the bride's home, it signifies that the full dowry will be returned. This not only indicates that, during that era, engagements were considered as a singular marriage contract in Muslim law, but also that it is not related to the death of one of the spouses. Instead, it pertains to the return or partial return of the mahr, not because the valid contract ("Al'aqd Alsaḥih") – encompassing "duhul" (opening the shymyldyq) or "Saḥih haluat" (seclusion) – did not take place.

In Islamic tradition, the act of asking for a girl's hand in marriage is known as "marital relations" or "khitbah" and is considered within the framework of Islamic law. This custom also involves discussions about the topics of Mahr (dower) and iddat (waiting

period). According to Islamic law, the male suitor, known as the “Khatib,” who intends to marry, proposes to the girl, who is then referred to as “makh-tubah.” This symbolic act signifies the initial step towards an agreement, with both parties recognizing each other as part of a potential family or as a future daughter-in-law. It is believed that Prophet Muhammad emphasized the importance of getting to know and seeing each other for those desiring a successful and harmonious family life in the future.

In Islamic law, certain impediments exist that prohibit marriage, which is categorized as muharramat. It is prohibited for an individual to propose marriage to someone who is already engaged. The Prophet Muhammad addressed this issue in a Hadith, stating that no one should propose to a woman who has already been proposed to by another Muslim brother. Permission to propose can only be granted if the initial proposal is declined or if the person who originally proposed gives consent. Additionally, it is considered inappropriate to propose to a woman who is in the waiting period known as iddat (Shamsuddin, 1994). According to the Maliki and Hanbali madhhab, when a woman has accepted a marriage proposal, any subsequent proposal is considered disapproved, and in some cases, even forbidden (Ibn Abidin, 1992). However, if there is no clear indication of acceptance or rejection, an outsider may still propose (Ibn Kudama, 1968). According to the Shafihi madhhab, even if a woman has not responded openly, it is permissible for another party to propose, provided that it is known that she is positive about the first offer. Additionally, it's established that there's no need to propose marriage to a woman who is widowed and waiting for the waiting period to end (Әкімханов & Аһарбаев, 2021). Although Islamic scholars have mentioned that it is permissible to propose to a divorced woman through Ba' in talaq (explicit, final divorce), they have also stated that it is not permissible to propose to a divorced woman with Raji talaq (revocable divorce) (Ibn Kudama, 1968). Furthermore, in Kazakh tradition, it is considered inappropriate to propose marriage to a woman whose husband has recently passed away, especially if she is in mourning attire (Palen, 2006). In the Kazakh tradition, due to the small number of divorces and iddats by giving talaq, there are not much data related to this. Islamic law focuses on family happiness and narrative. That is why it is so important to meet to get engaged and find out whether they are suitable for each other or not. In this regard, in this context, we can consider almost all such practices in Kazakh law as pre-mar-

riage events, a gift from the groom's parents to the bride's parents over the dower, the groom's first visit to the bride's house, in the owl's feathers, etc. However, the engagement agreement of the parents can be said to be a marriage contract. In the comparison, the rejection of each other by two parties, who are engaged and conspicuously marked, is considered to be the same as an agreement. If the shymlydyq is opened to return half of the dower, since it is often an agreement that cannot be returned, as we have already mentioned, it is clear that it is not a khitbah or approval in Islamic law. In Islamic law, both parties are considered namahrem, as khitbah (to propose) is not part of the agreement. Marriage during the period of acquaintance is not allowed to get to know each other better and strengthen the bond between them (Ibn Kudama, 1968). After all, the marriage contract is the most fundamental.

In Islamic law, the concept of khitbah involves the giving of a dower as a prerequisite for the formation of a family. If the khitbah is terminated before implementation, the giver is entitled to withdraw the dower since the proposal has not taken effect. However, if the dower is given as a gift rather than as a dowry, it cannot be reclaimed, even with proof. There is a provision for the return of the dower if the family is not established as a result of the termination of the agreement (Ali Hajdar Efendi, 1991). In Kazakh law, failure to fulfill the agreement could result in a penalty of serving nine, and the issue of revocation of dowry in Islamic law specifically focuses on the topic of dowry.

In the context of marriage rules, according to Islamic Sharia, if there is no courtship and a promise is broken, there may be consequences. Similarly, in Kazakh customs, there are provisions for penalties for breaking a promise, such as forfeiting horses and chapan, cattle. Under Islamic law, the concept of khitbah does not legally bind the parties to marry, as it is more of a suggestion. This means that the engaged individuals can unilaterally or mutually terminate the engagement with or without a reason. However, it is generally recommended to consider the financial and emotional impact on the other party when terminating the engagement and act accordingly. It is important to note that transactions involving the giving of gifts or wearing of earrings constitute a legally binding contract in Kazakh law, which differs from the Islamic concept of khitbah. Once the promises and proposals are made before the betrothal transition into the formal engagement period, the obligations outlined in the Marriage Act come into effect, and the groom assumes full responsibility for

the well-being of the bride. There are penalties in place for violations of these regulations.

Conclusion

The role of family in traditional Kazakh society has historically been essential, serving as a crucial institution that remains resilient despite the complexities of modern society. While there are various forms of marriage practiced among Kazakhs, traditional customs continue to influence contemporary marital relationships. Many families deeply rooted in tradition prioritize upholding these norms without alteration. Despite claims by religious groups that Kazakh customs are not tied to religion, it is evident that several observed norms have religious origins. Scholars and religious texts often erroneously equate the tradition of divination with the concept of *khitbah*, leading to confusion and misinterpretation. Further research is needed to address these issues within both religious and legal

contexts. To effectively navigate the complexities of modern marriage, it is imperative to conduct a thorough examination of these concepts. It is time to introduce new, practical initiatives to address contemporary family challenges in a meaningful way.

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Authors contribution

Tabarak Khamit: Conceptualization, methodology design, investigation, and preparation of the initial draft.

Tussipkhan Imammadi: Supervision, review and editing, and finalization of the manuscript.

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