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RESTRICTIONS ON MARRIAGE IN KAZAKH CUSTOMARY LAWS

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Abstract. This article comprehensively examines the restrictions surrounding marriage within the customary laws of traditional Kazakh society, alongside the significant influence of religious norms. One notable legal norm is the prohibition of marriage within seven degrees of kinship, recognized as a means of preserving blood purity and lineage, which persists in contemporary practice. The discourse also addresses the implications of distant marriage outlined in Islamic law. Additionally, the study compares the establishment of kinship relations stemming from breastfeeding and their corresponding marriage restrictions with those dictated by Muslim law, highlighting that such customs have largely faded from memory. However, remnants may still exist in certain regions. The article analyzes the impact of religious differences on marital unions, detailing the dynamics involved in marriages between individuals of differing faiths. Furthermore, it reviews the social status-related restrictions prevalent in traditional Kazakh society, examining their implementation and adherence intricacies. Through this historical and functional assessment, the study elucidates the enduring nature of these marital restrictions and offers insights into the contemporary relevance of these issues within Kazakh society.
Keywords: Family; Marriage; Tradition; Religion; Customs; Sharia; Law.

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ҚАЗАҚТЫҢ ӘДЕТ-ҒҰРЫП ҚҰҚЫҚТАРЫНДАҒЫ НЕКЕГЕ ҚОЙЫЛАТЫН ШЕКТЕУЛЕР

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ОГРАНИЧЕНИЯ БРАКА ПО КАЗАХСКИМ ОБЫЧАЯМ И ТРАДИЦИЯМ

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Аңдатпа. Мақалада дәстүрлі қазақ қоғамының әдет-ғұрып жүйесіндегі некеге тұруға қойылған шектеулер зерттеліп, сондай-ақ діни нормалардың некелік қатынастарға тигізген ықпалы талданады. Ерекше назар жеті атаға дейін қыз алыспауға қатысты даулы мәселеге аударылады. Авторлар бұл тыйымды, әдетте қан тазалығын сақтау және шежірені қорғау қажеттілігімен түсіндірілетін қағиданы, оның құқықтық нормаларға сәйкестігі тұрғысынан қарастырады. Сонымен қатар еңбекте мұсылман құқығы аясында қашықтан неке қию институтына талдау жасалады. Әдет-ғұрып құқығы мен мұсылман құқығындағы емшек сүті арқылы туыстық қатынастарды қалыптастыру және соған байланысты некелік шектеулерге салыстырмалы талдау жүргізіледі. Қазіргі қазақ қоғамында бұл әдет-ғұрып жекелеген өңірлерді қоспағанда, негізінен жойылғаны атап өтіледі. Діни айырмашылықтардың некелік одақтарға әсері туралы деректерді талдау негізінде авторлар әртүрлі дін өкілдері арасындағы некелерді қию тәжірибесін зерттейді. Сондай-ақ мақалада дәстүрлі қазақ қоғамындағы әлеуметтік мәртебеге байланысты шектеулер қарастырылып, олардың жүзеге асу ерекшеліктеріне салыстырмалы талдау жасалады. Бұл ережелер мен шектеулердің көпшілігі бүгінгі күні де өз маңызын сақтап отырғаны атап көрсетіледі. Қорытындыда қарастырылған шектеулерге тарихи және функционалдық баға беріліп, бұл бағалау қазіргі заманғы неке және отбасы қатынастары саласындағы мәселелерді тереңірек түсінуге мүмкіндік береді.

Түйін сөздер: отбасы; неке; дәстүр; дін; әдет-ғұрып; шариғат; құқық.

Аннотация. В статье исследуются ограничения на заключение брака в обычном праве традиционного казахского общества, а также анализируется влияние религиозных норм на брачные отношения. Особое внимание уделяется дискуссионному вопросу о запрете браков до седьмого поколения. Авторы рассматривают данный запрет, традиционно объясняемый необходимостью сохранения чистоты крови и поддержания родословной, с точки зрения его соответствия правовым нормам. В работе также анализируется институт браков на расстоянии в контексте мусульманского права. Проводится сравнительный анализ установления родственных связей посредством грудного вскармливания и связанных с этим брачных ограничений в обычном и мусульманском праве. Отмечается, что в современном казахском обществе данный обычай практически утрачен, за исключением отдельных регионов. На основе анализа данных о влиянии религиозных различий на брачные союзы, авторы исследуют практику заключения браков между представителями различных вероисповеданий. В статье также рассматриваются ограничения, связанные с социальным статусом в традиционном казахском обществе, проводится сравнительный анализ особенностей их реализации. Подчеркивается, что многие из этих правил и ограничений сохраняют свое действие и в настоящее время. В заключение дается историческая и функциональная оценка рассмотренным ограничениям, позволяющая углубить понимание современных проблем в сфере брачно-семейных отношений.

Ключевые слова: семья; брак; традиция; религия; обычай; шариат; закон.

Introduction

The customary laws of the Kazakh people have historically played a significant role in maintaining genetic integrity and social cohesion within the community. The customs, traditions, and prohibitions surrounding marriage are deeply embedded in the cultural, historical, and religious frameworks of the Kazakh society. Key aspects of customary marriage laws among the Kazakhs include prohibitions against marrying within the seventh generation, preferences for distant marriages, and restrictions based on religious affiliations and social standing. It's essential to recognize that many of these prohibitions, particularly the ban on marrying before the seventh ancestor, are often interpreted as measures for maintaining blood purity or social nobility. However, this interpretation overlooks the historical context in which these prohibitions were established, rooted in a meticulously followed legal framework of the time. Even though these historical laws no longer hold legal authority, their legacy endures within social practices and communal beliefs. Additionally, remnants of societal restrictions stemming from the elevated statuses of figures such as hodjas (religious teachers) and tores (nobles) still resonate in contemporary discourse. This illustrates traditional norms and rules' profound impact on current familial dynamics and social interactions. Engaging with the structures of traditional society doesn't imply a rigid adherence to past values and customs. Instead, it calls for exploring the national identity and cultural distinctiveness while proposing contemporary solutions to modern familial issues. The perception of religious edicts or customary laws as immutable principles often masks the complexities and conflicts that arise within society over time. A comprehensive examination of the interplay between customs and religion, and an assessment of their historical functions, is crucial for addressing the challenges of contemporary society and familial structures. From this perspective, we assert the relevance and significance of this study, as it contributes to a better understanding of both the past and the potential pathways for the future of the Kazakh family.

To thoroughly comprehend any set of regulations, it is essential to examine the contextual purpose for which they were created, their specific functions, and the prevailing social norms and structures of the relevant historical period. In traditional societies characterized by a robust clan system, the dynamics of responsibility and authority exhibit distinct characteristics that differ significantly from contemporary understandings. Certain regulations emerge from a place of heightened vigilance, aimed at curtailing specific maladaptive behaviors or criminal activities, and are thus rigorously enforced. Conversely, other regulations, which may appear straightforward, are often the result of a strategic pursuit of overarching societal interests. This study delves into the constraints surrounding marriage and evaluates their correlation with Islamic legal principles.

Methodology

The article utilizes a comparative historical analysis as its methodological framework. It begins by delineating the constraints imposed on marriage within customary law and subsequently examines their interplay with religious doctrines. Examining these marriage restrictions is contextualized within traditional societies, exploring their functional roles and contemporary relevance. The aforementioned analytical methods will substantiate the correlation between Kazakh family law and Islamic legal principles. Conclusions will emerge from a thorough evaluation of the data. This analysis incorporates a multidisciplinary approach, integrating

insights from religious studies, history, sociology, and cultural studies. The existing norms will be scrutinized from an institutional perspective, ensuring objectivity and avoiding a singularly humanistic viewpoint, while also considering the intrinsic nature of traditional societies.

Main Part

The restriction concerning unmarried individuals to the lineage of seven ancestral generations

Russian researchers have observed that interethnic marriage practices among Kazakhs and Kalmyks diverge significantly in terms of religious adherence. It is common for Kazakhs to marry Kalmyks without altering their religious affiliations. However, in instances where Kazakhs seek to marry within their own ethnic group, they often aim to select partners from distant locales. Exceptions to these norms arise in specific contexts, such as when a brother dies; in such cases, it is customary for his sibling to take his widow as a wife. Furthermore, intra-village marriages are strictly prohibited; for instance, members of the same lineage, such as a Zhagalbaily, are not permitted to marry another Zhagalbaily or any female relatives up to seven generational lines (Левшин, 2016: 413).

The prohibition against marrying within the seventh degree of consanguinity is rooted in concerns articulated by the prominent educator Y. Altynsarin in the late 19th century. He argued that consanguineous marriages could lead to health complications for offspring, including increased morbidity and reduced life expectancy, despite the possibility of multiple births. Beyond the health implications, Altynsarin highlighted the sociocultural risks associated with kinship marriage, suggesting that such unions could disrupt familial harmony and provoke immoral behaviors, particularly among male relatives drawn to their female kin. The custom of prohibiting close kin marriages up to seven generations effectively fosters social cohesion and unity within the population, thereby ensuring the integrity of the community as a whole (Алтынсарин, 1870: 101-104).

S. Bayzakov has articulated that the prohibition against marrying individuals within a lineage of up to seven ancestors is a noteworthy example of maintaining genetic integrity and lineage preservation. He emphasizes that adherence to this custom (Байзаков, 2000: 51).

As previously discussed, avoiding marriage within a threshold of seven ancestral generations is crucial not only for familial and genetic considerations but also for preserving inter-community ties. From a military and administrative perspective, it is essential, as the defense of each locality falls under the purview of its inhabitants and their extended kin networks. Historical accounts support this practice.

For instance, Y. Altynsarin noted that Kazakhs in western Kazakhstan avoided marriages up to eight generations deep until the late 19th century (Левшин, 2016: 104) —similarly, Kh. Argynbayev documented instances where certain villages forbade marriage within a lineage of up to 13 ancestors, expressing concerns that such unions would diminish social cohesion (Арғынбаев, 1996: 58).

This tradition persists in contemporary society, with many small Kazakh villages avoiding matrimonial ties with neighboring communities. In some cases, villages extend this practice to encompass as many as 20 generations as a strategy for self-protection and maintaining social unity.

This practice is atypical for the hodjas and tores, not part of Kazakh village structures, as they have historically engaged in marriages among the third generation. This phenomenon primarily serves the purpose of lineage preservation and is condoned by authorities. For instance, since the 1730s, intermarriages have been documented among the descendants of Sultans Abulkhair and Kayip, who were embroiled in a power struggle within the Younger Zhuz. Noteworthy unions include Sultan Batur's marriage to the sister of Sultan Abulkhair, as well as the marriages of Sultans Karabas and Bori to the daughters of Sultan Abulkhair. Furthermore, another descendant of Batyr, Kayip, united with the daughter of Sultan Kyryksan Barak. Koshek Khan, close kin of Sultan Barak, was the father-in-law of Nuraly Khan, while Abulfayiz, the Sultan of the Middle Zhuz, wed Nuraly Khan's daughter. This historical context illustrates the absence of prohibitions among the tores regarding marriages up to seven generations removed (Артықбаев, 1995: 138). Such practices do not appear to be rooted in notions of honor or religious prohibitions, but rather reflect a strategic framework established to enhance inter-clan relations. Additionally, preserving nobility and implementing medical safeguards were mainly the responsibilities of the hodja and the tore community members.

Rumors suggest the recent decision is not purely political but rather rooted in alternative considerations. Ybray Altynsarin articulates two primary rationales for this perspective: Firstly, he posits that consanguineous marriages are likely to result in offspring with diminished health, potentially leading to shortened life spans. Secondly, Altynsarin argues that such unions may foster immorality and detrimental behaviors among relatives, thereby jeopardizing social cohesion and harmony. Interestingly, the framework allows for marriages between relatives after seven generations, a practice referred to as "bone renewal," purported to maintain regional unity (Левшин, 2016: 101-104). Altynsarin's second argument carries significant implications from a socio-legal standpoint, as it highlights the intersection of kinship, morality, and social stability.

On the other hand, it is possible that this custom arose from the fact that people grew up memorizing their seven ancestors from childhood, and blaming them as "ignoble and uneducated who do not know their seven ancestors." There is a custom among neighboring peoples to marry close relatives. We can say that the reason for the formation of such a custom was to pay a small dowry. And when they were asked about this, they answered that it was so as not to take wealth outside. The custom of knowing one's village and lineage is still preserved. Therefore, those who were getting married did not get married without asking about their villages.

It is incorrect to defend this custom from ancient times, that is, due to the law of Shyngys Khan, or as a custom left over from the ancient Turkic peoples. If this were the case, the labors and waste of some neighboring peoples would also have been encountered. Also, the nobles of the Khan's lineage who ruled the Kazakhs should have adhered to it firmly. However, on the contrary, we are witnessing today that the tores and hodjas (seits and hodja families) who descended from Shyngys Khan do not follow this custom and marry their relatives. Therefore, we can see that this custom was a trend formed to maintain the unity of the people. This rule was so strictly observed that those who married were separated and even sentenced to death. This is also written in the "Seven charters" of legislation, which the Kazakhs are based on (Қамбаров, 2020: 322).

The famous Kazakh literary epic "Kalkaman-Mamyr" was published in 1722. The epic vividly portrays the tragedy of two young people who sought to marry before the lineage of seven

ancestral generations. The girl is killed by her own brother, and both she and the boy demand that Kalkaman be killed (Сапарқызы, 2003: 20-26). Ultimately, the boy shoots an arrow at her as she rides a fast horse. They agree that if he survives the bullet, he will be saved. As a result, the bullet strikes thick flesh, and he escapes death. However, the boy, feeling unfit to live among his own clan, goes to his uncle's house (Құдайбердіұлы, 2009: 280-291). This customary law has endured in contemporary Kazakhstan, manifesting in the practice whereby small clans abstain from intermarriage. This tradition likely serves as a testament to the rigorous adherence to these regulatory norms in historical contexts.

The issue of marriage from distant and proximate marital relationships

In the context of Islamic jurisprudence, the principle that "the state has the authority to regulate permissibility" implies that legal decisions are often made to promote societal welfare. This principle, however, was not prevalent among many Turkic communities that coexisted peacefully. Adherence to this principle was a deeply entrenched practice for the Kazakh people, who occupied extensive territories. For instance, while intermarriage with "people of the Book" (Christians and Jews) was generally allowed, it was regarded as *makruh* (discouraged), with certain scholars even classifying it as *haram* (forbidden) (Al-Bartrati 2017: 332). During Hazrat Umar's caliphate, this practice was formally prohibited, which effectively curtailed the intermarriage between Muslims and "people of the Book," thereby restricting the options for Muslim women (Zuhaili, 1994: 6653). Furthermore, institutions such as the Egyptian Sharia court and the Ottoman Family Law imposed limitations on specific permissible practices, including the marriage of minors and the system of polygamy (*taaddud al-zawjat*). As Mansurizadeh articulates, "In matters of permissible practices, the authority to legislate for the collective benefit resides with the ruler" (Mansurizadeh, 2011: 236).

Despite the objections voiced by Hadith scholars, certain scholars within the Shafi'i and Hanbali schools advocate for the permissibility of long-distance marriage (Nawawi, 2005: 83). In contrast, the Hanafi perspective posits that if a man gazes lustfully upon a woman's private areas or engages in physical contact, such as touching or kissing with sexual desire, this creates significant marital prohibitions. Specifically, the woman would then be rendered *haram* (forbidden) to the man's mother and daughter, and likewise, she becomes forbidden to his father and son (Haravi, 2010: 15). This underscores the gravity of *sikhriyat* - actions or conditions that lead to impediments in marriage. Furthermore, it is pertinent to note that marriage within blood relations does not constitute an obligatory practice. The Prophet's actions delineate the boundaries of what is deemed permissible in this context.

The jurists identified the primary rationale for the dissolution of kinship ties within marriage as severing familial relationships (Әл-Касани, 2015: 383). Consequently, distant marriages are posited to reinforce these kinship bonds. A predominant view among scholars and within popular belief suggests that marrying outside one's close kin results in healthier offspring. At the same time, consanguineous unions are associated with a decline in offspring viability and an increase in mental health issues. Certain imams within the *madhhab* even advocated for distant marriages, despite the relatively weak evidence for such claims (Ibn Qudama, 1968: 109). They further argued that passion tends to be diminished between relatives, thus impacting marital dynamics (Gazali, 2004: 132]. Certain scholars within the Shafi'i framework argue against the practice of marrying close relatives, emphasizing that such unions can undermine clan

cohesion. They assert that intermarriage within families can erode the social fabric that these relationships are meant to reinforce (Demiri, 2014: 108). This perspective is also reflected in the teachings of Imam Shafi himself (Ash-Shirbini, 1987: 206).

While consanguineous marriages or marriages among distant relatives are not extensively covered in classical fiqh literature, it is noteworthy that certain researchers in the Arab world and Turkey have posited that such unions may carry significant religious endorsement, potentially to the degree of being obligatory. This argument often cites the marriages of Hazrat Ali to Fatima, as well as the union of the Prophet Muhammad's cousin, Zaynab bint Jahsh, as key illustrations.

In Islamic jurisprudence, marriages between kin are generally regarded as *mustahabb* (recommended), or at times could be construed as disobedience to authority if the state enforces prohibitions. In contrast, Kazakh customary law exhibits a markedly stringent approach toward this matter, with severe repercussions such as capital punishment or exile for violations, indicating a robust societal aversion to consanguinity in marriage. This stance persists into contemporary practice. When addressing whether such unions are deemed *haram* (forbidden), it is crucial to clarify that they are not strictly classified as such. Instead, the prevailing custom has evolved to discourage marriage among close relatives. In this context, it is essential to acknowledge that within the *mubah* (permissible) category, there exists a hierarchy dividing *mubah* into *zaruri* (necessary), *haji mubah* (recommended), and *tahsini mubah* (commendable) (Ali Haydar Afandi, 1999: 243). Marriages among relatives fall under the *tahsini mubah* classification. This leads to the perspective that engagement in such marriages could be framed within the *hajjat*, where the merits of good and evil are balanced. The preferable choice should be made in scenarios where multiple good options are available. Notably, forgoing a *wajib* (obligatory act) may become permissible in the presence of other virtuous alternatives (Ali Haydar Afandi, 1999: 99), while abandoning *mubah* customs is comparatively less burdensome.

The rule established at the state level reinforces the national foundation and inter-tribal relations, falling under the category of necessity (*maslaha*) concerning *maqasid*. The state administration utilizes its granted authority to delineate permissible actions based on the tenets of Islamic law. This jurisdiction is referred to as "*haq al-saltana*" or «*haqqul-imama*» (Al-Buti, 1990: 244-245). For instance, within the context of the «*Asbabi Mujiba Laihasyin Huququ Aileh Decree*» enacted during the Ottoman period concerning polygamy, it is stipulated that a condition whereby an individual vows not to remarry or asserts that the first wife will be divorced upon a second marriage carries legal weight. Article of law 38 elaborates on this issue by asserting that "the authority of the guardian of power (*ululamr*) pertains to permissible matters" (Orhan, 1982: 89-90).

Breastfeeding Limitations

In certain areas of Kazakhstan, a cultural taboo exists surrounding the hygiene of breastfeeding and food consumption. Specifically, the saliva of a child who breastfeeds from their mother and the remnants of what the child consumes are regarded as impure. Consequently, traditional practice dictates that only the mother may interact with the child's saliva or remnants, and utensils used by the child must be thoroughly cleaned before others can utilize them. When inquiring about the origins of this practice, locals attribute it to longstanding customs. Elders often caution against women breastfeeding children who are not their own or doing so without the consent of their husbands, deeming such actions morally reprehensible.

Additionally, the narrative of Domalak Ana, the third wife of Baidibek Bi from the 16th century, is notably significant in this cultural context. A widely shared account describes an incident where a group intent on seizing livestock arrived at her residence, requesting sustenance. In a potentially perilous situation, Domalak prepared goat's kefir and bread. To ensure nourishment while ensuring her safety, she infused the bread with her own milk, claiming it as an ingredient. In response, the visitors expressed gratitude, proclaiming her maternal presence and vowing to maintain ongoing connections with her. This story has several variations, but its core message emphasizes Domalak's maternal role towards the group and their subsequent disavowal of hostile intentions. Furthermore, this account is documented in the genealogy authored by Akkus Satybaldyuly and published in Tashkent in 1841. Domalak's legacy is reinforced through references depicting her as a favored servant of God, notably cited in Abilgazy Bahadur's work, "Insaniyati Dihnat Mama" (Dautulu, 2009: 110).

In the Hanafi jurisprudential framework, a perspective considers a drop of milk to establish a fraternal bond among individuals. I. Ibragimov, a 19th-century scholar, examined the concept of maternal bonding in Kazakh culture, particularly in relation to breastfeeding. He noted that in instances where a biological mother is unable to nurse - whether due to lactation ceasing or other circumstances - another woman may step in to breastfeed the infant. This act of wet-nursing designates the lactating woman as a "sultana" (Ибрагимов, 2018: 20).

The phenomenon of "sutbauyr," or the implications of illicit breastfeeding bonds, appears to be uncommon within Kazakh society. This may stem from cultural practices that discourage prolonged breastfeeding. Notably, a complete prohibition against breastfeeding may also arise from the apprehension that it could result in a woman being labeled a "sutbauyr," thereby complicating familial and social ties.

In the context of Islamic jurisprudence, there is a consensus among scholars on the necessity of nursing a child during the critical stage of infancy. Dawud az-Zahira posits that the status of a foster child can be attained even beyond infancy. The three principal Sunni schools—Hanafi, Shafi'i, and Maliki - equate breastfeeding with the establishment of foster care, while Ahmad ibn Hanbal diverges, asserting that foster kinship cannot be formed solely through breastfeeding. With respect to the age parameters for nursing, Abu Hanifa stipulates a duration of 2.5 years, while Imam Zufar extends this to 3 years. Abu Yusuf, Muhammad, Shafi'i, and Ahmad ibn Hanbal agree on the obligation of breastfeeding up to 2 years of age. Discrepancies also exist among the schools regarding the minimum number of sucklings required to establish the foster relationship. The interpretation allowing for foster care beyond infancy may be linked to a hadith reported about Salim, which suggests a case-specific allowance, or it may be subject to abrogation. Thus, the discourse highlights the nuanced and varied interpretations within Islamic law concerning the concept of foster care and breastfeeding (Kasani, al, 2018: 4-6).

The Hanafis and Malikis maintain that it suffices for a child to nurse multiple times or for the infant's stomach to receive the milk, whereas the Shafi school stipulates that nursing must occur five times for it to be considered valid for establishing a milk relationship. Ahmad ibn Hanbal presents three interpretations: three times, five times, or multiple instances varying based on circumstances. With regard to the mixing of milks, if the milk from different mothers is blended, it is regarded as a milky relationship (sutbauyr) by some interpretations. Imam Muhammad argues that regardless of the quantity mixed, the milk is deemed a sutbauyr. Hanafi scholars clarify that if milk is combined with non-liquid substances, it ceases to be considered a liver if its fundamental characteristics undergo a transformation - such as when heated. In contrast,

Imam Malik asserts that if the milk remains unabsorbed by the combined substance, it retains its status as a liver. According to Imam Ahmad and Imam Shafi, any ingestion of substances mixed with milk, irrespective of quantity, contributes to establishing the milk relationship (Muhammad, 2017: 380).

The deliberation regarding the amalgamation of milk with food underscores the significance scholars place on this topic, reflecting a deep-rooted concern, as evidenced by Kazakh apprehensions surrounding milk potentially becoming hazardous. Furthermore, the context of breastfeeding necessitates the husband's consent, emphasizing the importance of familial awareness regarding breastfeeding as a means to establish kinship ties. Only in instances where an infant's life is endangered is it permissible to nurse a child that is not one's own (Ibn Nujaym, 1997: 238).

The dynamics surrounding familial relationships in the context of foster care present unique challenges, distinct from those typically encountered with biological kinship. Specifically, foster children and their descendants are prohibited from entering into marital relationships with their foster relatives. This prohibition extends to the foster mother, foster father, foster grandparents, and any descendants of the foster child. To elaborate, the offspring of the foster child - namely, foster siblings, their descendants, and their spouses - are included in this restriction. Additionally, relatives connected through lactation ties, such as where two foster mothers have breastfed each other's children, further complicate these familial boundaries. For instance, if two wives of the same man were foster siblings through the adoption of one another's daughters, the foster father is barred from marrying either, as they fall under the same sibling classification. The same restrictions apply to other foster children in this network, preventing potential marriages across these defined boundaries (Cheker, 1982: 209).

Constraints associated with religious exclusivity and social status

F. Lazarevsky presents significant insights regarding matrimonial practices among the Kazakh people, notably that marriages predominantly occur within their own religious group. He notes that those who do not share the same faith are often regarded as slaves by the Kazakhs (Лазаревский, 2005: 145). Conversely, A.I. Levshin provides an interesting perspective on intermarriage, indicating that many Kazakhs enter into matrimony with Kalmyks without imposing religious conversion on their partners (Алекторов, 2006: 85). This suggests that when Kazakhs marry Russians, there is an implicit expectation for the latter to embrace Islam. Furthermore, the term "Kalmychka" in certain historical documents is indicative of a status akin to slavery, reinforcing the notion that Kazakhs historically viewed Kalmyk women of different faiths through a lens of subjugation, despite potential cultural parallels. Additionally, another reference from Lazarevsky elucidates the strict parameters governing these unions, stipulating that if either spouse converts to Christianity, the marriage contract is instantly dissolved, with the dowry obligations remaining intact irrespective of the consummation status (duhul) (Лазаревский, 2005: 168-169).

In the context of Islamic jurisprudence, the prohibitions are distinct. A Muslim woman is categorically forbidden from marrying a non-Muslim. In contrast, a Muslim man may take a wife from the People of the Book, though this too is accompanied by specific prohibitive conditions. Should a Muslim wife find herself married to a non-Muslim, dissolution of the marriage is mandated. In cases where the husband is Muslim and the wife adheres to polytheism, she is

granted a period to convert to Islam. If she remains resistant, the option to accept a man of the Book is offered; failure to accept either results in the annulment of the marriage (Muhammad, 2017: 292).

The saying among the Kazakhs, "Khoja and Tore do not give a daughter to a black man," encapsulates a deeply rooted social norm within the strata of traditional Kazakh society. This phrase reflects the hierarchical distinctions among clans, particularly emphasizing the Tores, considered descendants of the Prophet Muhammad, and the Khojas, linked to Shyngys Khan's lineage. Members of these elite groups typically do not recognize other clans as peers, showcasing a prevalent sense of superiority (Алекторов, 2006: 185). Research conducted by A. Kudaibergenova indicates that in the 19th century, many Russian scholars observed this stratification, noting that the aristocratic Tores and Khojas refrained from marrying their daughters to those of lower social standing, including commoners, referred to derogatorily as "black men." However, these clans were known to accept daughters from other noble families, engaging in marriages that aligned within the constraints of Sharia law, typically allowing such unions after three generations, aimed at preserving their lineage and social status (Кудайбергенова, 2001: 143).

The reluctance of the Khojas and Tores to offer their daughters to men from lower-status backgrounds is intrinsically linked to the concept of *kafaa*, or marital equality, in Islamic jurisprudence. This principle emphasizes the importance of social equality in matrimonial alliances, particularly from the perspective of women. The dynamic is further complicated by the traditional view that elevates male status, reinforcing the idea that lineage and social standing significantly dictate marital choices. Consequently, the ruling elite's decision to accept marriages from other clans underscores their perceived distinction, while still navigating the broader framework of Muslim family law concerning equality and social hierarchy.

In Islamic jurisprudence, particularly within the Hanafi school, the concept of equality is intricately connected to the roles of guardians in marriage arrangements. Under Hanafi doctrine, a woman's union with a man deemed her social inferior invites potential objections from her guardians; she lacks the authority to override their rights unilaterally. Despite the marriage being considered valid and authentic in principle, its implementation hinges on the guardians' approval. This stipulation safeguards women's rights and aims to prevent future exploitation (As-Sarahsi, 2015: 19-20). Proponents of the Hanafi perspective acknowledge the arguments against the necessity of equality, viewing it instead as a contingency of the afterlife. They postulate that mutual consent suffices for marital validity without objection from guardians. As defined by this school, the hierarchy of equality primarily prioritizes lineage, followed by freedom, economic standing, vocation, and social status (As-Sarahsi, 2015: 34-37). Conversely, notable scholars such as Imam Malik, Sufyan al-Sawri, and al-Karhi contend that equality should not be a precondition for marriage. However, most other Islamic jurists maintain that it is essential, with some expanding the categories of equality even further than those already enumerated (As-Sarahsi, 2015: 90).

Additionally, the Kazakh cultural context highlights a distinct valuation of noble lineages, particularly in matters of retribution and compensation, suggesting an intrinsic inequality in social standing. Islamic law permits a marriage to be devoid of consequences when a person weds outside their social equal, reinforcing that only parental figures possess the authority to raise grievances. Kazakh customs do not impose penalties if a noble daughter marries outside her social class, even in marital dissolution cases. This indicates a parallel between the clan-based prohibitions in Kazakh society and the parental rights recognized in Islamic legal doctrine.

Discussions

Exploring these sociocultural issues remains pertinent as they continue to be upheld formally in contemporary society. Analyzing the role of restrictions in historical traditional societies can provide insights into current challenges. While contemporary social structures do not rigidly enforce hierarchical statuses, clan-specific restrictions and religious exclusivity remain prevalent. For instance, the Khoja and Tore clans exhibit preferential marriage practices, albeit with limited influence. The endurance of these customary rules suggests significant legal weight behind them, countering assumptions that they are merely long-standing habits without legal consequences. The tradition of restricted intermarriage has historically functioned to preserve genetic purity. However, the regulation limiting marriage among up to seven ancestral lines within Kazakh society serves a broader purpose beyond bloodline continuity; it reflects a political strategy aimed at fostering territorial integrity, reinforcing tribal relationships, and enhancing communal defense. From an idealistic perspective, these restrictions are not solely about maintaining noble lineage but are strategic measures for national cohesion. If reliable means existed to sustain nobility through medical and scientific advancements, those of noble descent would likely prioritize implementation for their own benefit. Nonetheless, the current implications for national integrity and genetic purity can be viewed as a positive outcome of this political maneuvering. While it is appropriate to regard these practices as culturally significant and integral to national identity, they may lack formal legal recognition. Embracing them as part of cultural heritage rather than as obligatory legal norms presents a balanced approach.

The discourse surrounding breastfeeding restrictions is increasingly relevant in contemporary Muslim contexts. The emergence of natural breast milk banks and storage solutions raises significant psychological and religious considerations. Among the Kazakh populace, there is a prevalent belief that breast milk, integral to a child's development, significantly influences their physiological and psychological makeup. Consequently, concerns are often voiced regarding the potential implications of utilizing milk from a donor mother on a child's identity and well-being. Recognizing that these apprehensions are deeply rooted in religious and ritualistic frameworks is essential. The complexities surrounding this topic reflect ongoing discussions within modern jurisprudence, and they remain a point of interest among Muslims globally, including in our nation.

Conclusion

The imposition of restrictions on religious affiliation in marital practices functions as a socio-cultural mechanism designed to prevent assimilation and preserve Muslim identity and values. Historically, while the Quran permits interfaith marriages, early Islamic societal norms-imposed constraints against unions with women from adjacent communities, particularly Jews and Christians, this prohibition was primarily motivated by the need to sustain cultural integrity and mitigate external influences that could disrupt the social cohesion of the Muslim community. The proscription against interfaith marriages served a dual purpose: it aimed to safeguard the rights and dignity of women during periods when their status was precarious, ensuring they were protected from humiliation or marginalization in unfamiliar socio-cultural contexts. The dynamics observed in the marriages of the Khoja and Tore families illustrate this phenomenon, as they predominantly engage in intra-class unions, deliberately avoiding

connections with individuals from lower socio-economic strata. Such practices perpetuate social stratification and embody the entrenched belief that matrimonial alignments should uphold dignity and honor within the community. This scenario prompts a nuanced exploration of social status within marital dynamics. While marrying women from lower-status groups is generally deemed unacceptable, unions with women from other societal segments remain permissible provided they meet certain criteria of suitability. In contemporary contexts, especially where legal frameworks advocate for rights and equal treatment, the relevance of these traditional concerns appears to diminish. Nonetheless, it is crucial to acknowledge that numerous customs persist within communities, indicating an ongoing tension between adherence to tradition and the realities of modernity. Some cultural practices play a significant role in fostering community cohesion and identity. Conversely, it is also evident that certain practices may have outlived their initial significance and could benefit from critical re-evaluation against contemporary societal values of equality and mutual respect. Navigating the balance between these enduring traditions and the imperative for social progress remains a significant challenge for many communities today.

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