Muslim Diasporas: 
The Complexity of Being Outside ‘the Land of Islam’
An Examination of family matters

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Abstract

Muslims in their homelands usually have an assumed way of life, which encompasses their families, food, drinks and institutions. Faith-based regulations permit and forbid personal and communal actions. When migrating to non-Muslim majority states, their faith-based assumptions and practices are challenged. They confront issues concerning dietary practices, banking, family traditions, and interaction with non-Muslims. In such a scenario, Muslim jurists (scholars with the power to issue *fatwas*) attempted to rethink the sources of law in order to ease the difficulties faced by Muslim diasporas in the West. This branch of law is known as ‘minority jurisprudence’, legal rulings relating to Muslims living as minorities. However, in contrast to the help the minority jurisprudence to those who work in mainstream jobs, those who are self-employed in the food industry (restaurants or fast-food shops) often do not receive the same level of religious guidance from official channels. Advice concerning family traditions often remains an issue as juristic decisions are often academic and unhelpful to many Muslims. The current paper is considerably based on the PhD awarded by Middlesex University in 2019, through the Oxford Centre for Mission Studies. I have taken the opportunity to extend my work to profit the wider readers. Dr David Singh of the Oxford Centre for Mission Studies, and Dr Mohammad Talib at the Institute of Social and Cultural Anthropology, University of Oxford were my two supervisors. The paper investigates some aspects of family matters reported in my research as problematic because of the social context in which Muslims live.

Keywords

Introduction

Issues relating to the family have been a subject of concern in Islamic texts. Many of the *ahkam* (legal injunctions of the Qur’an) relate to the family and its proper regulation. The Prophetic Traditions\(^1\) further explained these issues. Muslims are obliged to keep these family rulings regardless of where they live; in Islamic or secular countries, and whether in minority or majority positions. Yet, when Muslims move outside the lands of Islam, family issues are challenging as some of them present struggles not only because of their internal complexity but also because they stand out within the European culture and are often in conflict with local laws. In the context of Europe, the ECFR (European Council for Fatwa and Research) issues *fatwas* (legal rulings)\(^2\) to help Muslims. The voices of Muslim diasporas and the resolutions issued by jurists demonstrate the struggle. Thirty out of the 80 *fatwas* issued in the two very first sessions (1997, 1998) concerned the position of women, their rights, duties and other related matters. Later sessions were devoted to discussing other family matters, which mainly relate to inheritance, autonomy, gender equality, marriage, child-rearing and family conflicts. I divided the above-mentioned matters into three sub-categories: family structure, intrafamilial relationships, and crisis circumstances.

Family Structure

The concept of family structure in Islam is different from that of the Western notion. The latter is marked by an individualistic nuclear understanding of a family as spouse and dependents\(^3\) whereas in Islam the concept of family extends to include other blood ties. Abd al-Ati explained this contrast:

> There can be little doubt that traditional Muslim family structure has actually been closer to the extended-than to the nuclear type. Family members are entitled to their rights and are assigned reciprocal obligations. The principle holds for both primary foundations of the family ascribed blood ties and the acquired marital relationship.\(^4\)

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\(^1\) Prophetic Traditions: refer to Sunnah and Hadith which are often considered synonymous with each other, although there is a slight difference between them. Sunnah means precedent and custom implies the doings and the practices of the Prophet. Hadith means a story or a report that stands for words, actions, approval, or disapproval of the Prophet.

\(^2\) The plural of *fatwa* in Arabic is *fatāwā* but for readability in English, the plural here is rendered as *fatwas*.


The Qur’an attributes this view of family structure to the divine order as reported by the text: Surah 4.1 reminds the believers that it is a divine command to be dutiful to ‘relatives of the womb’ and as such Muslims are lawfully required to be more mindful towards their blood relatives. These injunctions are not only ethical but also legal rulings. The texts explain what the duty to family entails and how serious this matter is for Muslims as it not only involves social and moral implications but also legal ones which may be at odds with Western regulations. The Qur’an 4:11-13 and 4:176, Surah 4:11-13 explains the legal rights given to each circle of the family members in the context of inheritance. Some of these legal rights stand in odd with European laws.

**Inheritance**

Inheritance is of such importance that the texts also detail the rights of those who should inherit and fix the share of the estate for each category. Accordingly, the laws of inheritance have become an integral part of Shari’ah, and their application is a mandatory aspect of the teachings of Islam. Comparing these rulings regulating inheritance, one can easily realize that they are different from European laws. Furthermore, secular laws allow writing a will in case of a wish to apply the laws differently. In Islam, writing a will is not forbidden but it is assumed to be done within some set boundaries. Al Qaradawi said ‘It is not lawful to cut out of the will of any member whose rights on inheritance are outlined in the texts. As such, rights cannot be taken away regardless of others’ wishes.

The Islamic ruling may be clear and precise but the assumption that the issue of inheritance is settled based on Islamic legal instructions is not true. Those who live in the West can choose between Islamic and European Laws. Some of my research informants tell their stories. A second-generation female Moroccan informant tells her story explaining how the Shari’ah rulings of inheritance were problematic for her. She had established with her husband a business in Morocco:

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5 The branch of Shari’ah dealing with family matters is the second most important after the branch of religious duties. These rulings on family issues are the slowest to reform: Hosseini, Ziba Mir: *Marriage on Trial: A Study of Islamic Family Law*, I.B Tauris Publishers London- New York 2000.

6 In Europe, for example, inheritance law recognizes heirs based on different groups of people, ranked in descending order starting with spouses, and children. Each group only inherits if there is nobody left in the previous group. All heirs in the same group inherit equal shares regardless of their gender. People are free to divide their wealth as they wish by allowing individuals to write their wills differently than indicated in the law.


When my husband died in an accident, we had only a daughter and no male children. I could manage to claim the wealth we had in Belgium for me and our daughter. But as for our business in Morocco, I could not. It was divided according to the legal Islamic ruling applied in the country. I tried to appeal the decision in a Belgian court, but it was refused on the basis that Belgian law may not overrule the law in the country of origin.

When her husband died in an accident, she could not maintain authority over their business in Morocco, but she had no problem claiming their wealth in Belgium. Her story demonstrates that in Muslim countries the Shari’ah law on inheritance is applied to all citizens regardless of their place of residence. A first-generation female Tunisian for example, reported:

I do not accept a Shari’ah ruling giving unconditional rights on inheritance to my extended family members. In my case, the extended members who might have rights on our inheritance had more wealth than us. The European laws regulating inheritance eligibility helped me challenge those who claimed religious rights on my father’s wealth when he died since all his children were females.

According to her, the unconditional religious ruling is morally incorrect. These testimonies provide insights into the dynamics of conflicts and resolutions. In contrast with their countries of origin where the Shari’ah rulings are imposed unequivocally regardless of their place of residence, the European laws allow Western Muslims to make different choices. Unfortunately, there are no alternative Muslim juristic positions to help Muslims in Europe to strike a balance between religious and government laws.

Moreover, I became aware of another problematic issue concerning the inheritance of non-Muslim family members. A Male Belgian Muslim convert told me that the non-Muslim members of his family were not presumed to have the same rights regarding their wealth as the Muslim members. When I asked whether there was a religious ruling to support his statement, he told me: The tradition explains the ruling, as Muslims are not permitted to inherit anything of the wealth of a non-Muslim relative, as the Prophet said: “The believer does not inherit from a *kafir* (disbeliever) and the *kafir* does not inherit from a believer”9. His testimony raises awareness of the problematic division of inheritance between Muslims and non-Muslims from the same family. In addition, cutting off the rights of non-Muslims could be considered overt discrimination and an infringement according to Western laws. The ECFR introduced an instruction to answer some precise questions: Can a non-Muslim wife from ‘The People of the Book’ (Jewish or Christian) inherit from her Muslim husband? And in cases where only certain family members convert to Islam what happens to the rights of inheritance for those involved?

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“Islam [does] not prevent Muslims from being dutiful to their non-Muslim in-laws … as this will make him [The Muslim husband] in a position to bring them [the non-Muslim in-laws] closer to Islam”\textsuperscript{10}. Thus, the instruction as presented by the ECFR is conditional in allowing an action to bring non-Muslim members closer to Islam. Writing a well to give claims on wealth to non-Muslim relatives by a bequest is possible but conditional\textsuperscript{11}. However, the position, as adopted by the ECFR, does not totally close the door. Non-Muslim wives may have autonomy over their wealth. Furthermore, I found a case enabling the Shari‘ah ruling to override the European civil law on inheritance. Bingham reported the issue in the context of the United Kingdom:

Islamic law is to be effectively enshrined in the British legal system for the first time under guidelines for solicitors on drawing up “Sharia-compliant” wills. Under ground-breaking guidance, produced by The Law Society, High Street solicitors will be able to write Islamic wills that deny women an equal share of inheritances and exclude unbelievers altogether. The documents, which would be recognised by Britain’s courts, will also prevent children born out of wedlock – and even those who have been adopted – from being counted as legitimate heirs. Anyone married in a church, or in a civil ceremony, could be excluded from succession under Shari‘a principles, which recognise only Muslim weddings for inheritance purposes. Nicholas Fluck, president of The Law Society, said the guidance would promote “good practice” in applying Islamic principles in the British legal system\textsuperscript{12}.

The issue of inheritance needs more intention, jurists need to give equal rights to access inheritance regardless of gender, and moral or religious affiliations. Policymakers need to create clear guidelines for applying religious and civil laws.

\textit{Care for the Elderly}

The Qur’an and the Prophetic Traditions require Muslims to care for their relatives, especially their parents. Surah 4:36 indicates that the command to honour one’s parents is important and as such is accompanied by the command to believe in Allah alone: “Worship Allah and associate nothing with Him, and to parents do good. The traditions criticised the actions of the son who does not care for his parents as: ‘let him be humbled into dust’ and attributed goodness to the son who cares: This divine order did not only present moral obligations but legal requirements as well, as reported by al-Qaradawi: “Taking care of one’s parents is considered so important … [it] is a greater obligation than \textit{jihad} in the cause of Allah”\textsuperscript{13}. When one or both parents grow old, the children should not prod or reproach them but speak to them respectfully. Relatives also deserve the same good treatment, which is given to the parents. The ECFR instructed, “The finest

\textsuperscript{10} ECFR First Session: Sarajevo, Bosnia 24-26 Rabi‘i Al-Thani 1418AH, [Hijrah correspondent to] 28-30 August 1997, \textit{fatwa} 31.
\textsuperscript{11} ECFR First Session 28-30 /08/1997, \textit{fatwa} 31.
\textsuperscript{12} Bingham, Religious Affairs Editor 9:35 PM GMT 22 Mar 2014.
\textsuperscript{13} Al-Qaradawi 1960-2003:234.
act of goodness on the part of a son is to treat kindly the loved ones, especially his father”\textsuperscript{14}. Caring for the elderly is a religious obligation. Care for the Elderly provided by professionals has been a standard in Europe but for many Muslims care for aged Muslim parents meant that the family takes care of them rather than the professionals, which is challenging. Not caring for an elderly member was reported by 92% of my research informants as an act of disobedience to Allah but, at the same time, they were not sure of the exact meaning of caring. There was a case of a second-generation Turkish informant who told me that caring for his father was problematic:

My father used to live with me after the death of my mother. When I and my wife set plans to get married, she asked me to move my father to an elderly home. I was ashamed to do so and was afraid to disobey the commandments of Allah. When she insisted, I informed some relatives and asked for the help of a local imam who knew my father and the lady I was going to marry. The imam told me to listen to her and move my father to a care home. The imam promised to help me care for my father and to regularly visit him.

The advice of the local imam was important, declared the informant: “The imam saved my marriage as I was going to stop my plans and look for another partner”. Another female first-generation Moroccan wife was obliged to care for her aged husband:

I had to care for my husband till he was ninety-two years old. I did this to obey Allah and my family. I was advised by his medical doctor to move him to a care home, but I refused. When I became too weak and not able to care anymore for him, I asked a relative for help. He has been coming daily to offer his help. He is happy that Allah gave him the possibility to care for an aged relative.

This particular informant became emotionally disturbed when I told her it might be better to listen to the medical doctor. She was deeply convinced that her action was in accordance with the commandments of Allah.

Care for aged relatives is a religious duty, however, jurists who were able to re-interpret the meaning of caring for one’s parents were able to help the community when it became an issue. The collective cultural norms that require families to care for aged members within the family are not always practical. The creative interpretations of the meaning of care benefit both the younger and the aged family members. Therefore, jurists are expected to provide sustainable and clear resolutions. They may need to allow certain measures of freedom enabling the community to move aged family members to care homes.

\textsuperscript{14} Sahih Muslim Book 032: 6189-6196.
**Intrafamilial Relationship**

**Autonomy and Gender Equality**

Autonomy and gender equality are related subjects. Autonomy, freedom of choice and gender equality are fundamental social rights given to individuals whether Muslims or non-Muslims in Europe\(^1\). The autonomy, and gender equality given to individuals, Muslims and non-Muslims imply legal capacities and rights to self-determination. A problematic implication concerned the struggle between the rights given by European laws and what the family, jurists consider to be their right to decide.

The concepts of individualism and collectivism from an Islamic viewpoint were not seen as two opposite concepts but as two intertwined precepts complementing and enhancing each other:

> The concept of individualism and collectivism always stand in sharp contrast to each other. Islam views individualism (accountability) and collectivism (innovation) as foundational and innovative concepts. The former, as fundamental building bricks that constitute principles of accountability in human activities, and the latter as an innovative element that flourishes from principles of accountability and stipulates human activities\(^2\).

Thus, the rights of individuals and families are not seen as standing in contrast to each other as both are equally governed by Islamic laws. There was a case of a family that tried to force a decision on an individual, regarding their choice of subject to study. A male first-generation informant told me:

> When I was a student, my family wanted to force me to study medicine while I wanted to study computer science. They told me that it was the wish of my grandfather that I study medicine. I had to move out of the family in order to be able to make my choice in what to study. The Belgian law enabled me, and I was able to decide what was best for me.

When I asked him if in so doing, he dishonoured his parent he said: “I hope not”. This informant might have succeeded in deciding for himself, but he had to move out of the family. A more balanced decision might have helped him to keep a relationship with the family and prevent the possibility of dishonouring his parents. Another informant was a Tunisian second-generation female; when she finished her studies, she had to choose between working in Belgium and working in Holland. Working in Holland would be

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\(^1\) EU Charter of Fundamental Rights Article 14 2000/C 364/01. Council of Europe Key Standards 2015.

better as she said. “It was a better job with a good salary. My father told me that I should stay in Belgium with the family. I obeyed but I regret it.” She was caught between what could have enhanced her future, and moving out and living alone, as a female, which was culturally not acceptable to her father.

The autonomy of females is an even more difficult issue. The ECFR issued many fatwas to answer questions about women demanding guidance relating to basic day-to-day matters. It is reported: “The single greatest number of questions received by the ECFR is related to the status of women, appropriately reflecting the politicization of gender issues in European Islam”17. The inquiries reflected what was problematic for females, particularly for wives. They mostly referred to women’s demands for personal autonomy. Some of their struggles concern basic questions, such as can a woman cut her hair without the permission of her husband? Jurists from the ECFR issued fatwas and resolutions to help the community. The ECFR sessions One and Two settled the following matters: Can a woman cut her hair without the permission of her husband? The answer was “If the cut does not change the appearance and surprise the husband, it does not usually require the permission of the husband”18. Another inquiry refers to the question: Does the woman have the right to rest for a period of time after giving birth or is she obliged to carry out the duties of receiving guests? The fatwa said:

Indeed, the custom in Islamic countries is for the woman who has just given birth to be served and looked after until her full health returns to her and she is fully recovered. However, a woman who lives in a foreign country finds herself in a position where she must help herself and look after her children and household. In this situation, her duties must be reasonably set, and guests and well-wishers must not over-burden such a woman by compelling her to serve them beyond her ability19.

The fatwa advised husbands not to burden wives after giving birth. A related question was: if a woman fell ill and wished for her husband to stop receiving guests during her illness, does she have the right to do so or is she compelled to serve the guests regardless of her illness? The opinion, which the ECFR finds to be appropriate, is that:

The wife is obliged to work in her home caring for her husband and children. It is wrong for a man to over-burden his wife with guests, especially during her time of illness. An Eastern or Arabic Muslim, who is married to a Western woman, must take into consideration that she may not be used to receiving guests. She must also appreciate that Islam holds in great regard a person who is hospitable to his or her guests20.

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18 ECFR First Session 28-30/08/1997 fatwa 21.
20 ECFR First Session 28-30/08/1997 fatwa 24.
In this context, the ECFR gives more balanced answers. Their *fatwas* forbade husbands to over-burden their wives, especially after giving birth or when ill. At the same time, these rulings also advise wives not to neglect hospitality as an important Islamic virtue.

Concerning the authority given to a husband, there was a question: Can a husband prevent his wife from attending Islamic women’s gatherings? The response was that:

This woman’s activity must never transgress the rights of her husband and children, as it is only fair that each receives their due attention. In addition, whilst Islam gave the husband the right to govern and rule the household; he must not abuse this authority and prevent members of his family from exercising their respective rights and freedoms, as Islam prevents harm to be caused.

The response is a conditional possibility, a husband must not abuse his authority and a wife must not transgress the rights of her husband. In a similar context, there was an inquiry: ‘Is a husband allowed to prevent his wife from visiting a particular woman’ (a Christian woman, for example)? The advice was that: ‘A man may prevent his wife from visiting this particular woman, whether Muslim or otherwise if he felt that this relationship has an adverse effect on his wife, children or marital life in general.

Accordingly, the ECFR’s *fatwas* shed light on the struggles females faced, and the solutions given. Some are concerned about the ruling on Muslim wives. In case women have to speak to visitors or with any foreign man, the advice was:

Women do not initiate a conversation with strange men. Nevertheless, it is important to realise that Islam does not forbid women from talking to men, nor men to women if the situation calls and the conversation abides by the boundaries of Islamic Shari‘ah.

Another question alarms whether a woman is allowed to ride a bicycle or teenage girls who may lose their hymen in the process. The ruling was that:

Riding a bicycle or car or any other form of transportation is permissible in itself, however, a woman must abide by Islamic mannerisms when riding a bicycle, such as wearing appropriate Islamic dress and avoiding physical contact with men. As for the possibility of teenage girls losing their hymen, it is important to examine such a possibility.

In an inquiry into whether it is acceptable for women to participate in children’s games, which involve some dancing movements. The *fatwa* said that “If such movements cause desires to be affected and moved and for lusts to be raised, then women must not take part in such games, particularly if foreign men are present.” These inquiries demonstrate that someday-to- day activities are more problematic for women. Some matters present basic

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21 ECFR First Session 28-30 /08/1997 *fatwa* 25.
22 ECFR First Session 28-30 /08/1997 *fatwa* 32.
24 ECFR First Session 28-30 /08/1997 *fatwa* 38.
25 ECFR First Session 28-30 /08/1997 *fatwa* 39.
rights that European laws offer but remain difficult for Muslim women to decide for themselves.

In a different issue, the ECFR gives rights to wives to have autonomy over their own wealth:

A woman has complete rights to open a personal account in which she deposits her income, whether it be her salary, inheritance or any form of gift given by her father or otherwise. The husband has no right to force his wife to place her income in a joint pot or account along with his, so that he may provide for the household.\footnote{ECFR First Session 28-30 /08/ 1997 fatwa 27.}

The \textit{fatwa} permits wives to have authority over their wealth. It does not put any conditions to differentiate between Muslim and non-Muslim wives. As such, this ECFR resolution could allow non-Muslim wives to have autonomy over their wealth but not over the wealth of their Muslim husbands.

Autonomy for individuals is problematic, and even more difficult for females. In some cases, females go against the wishes of their families. I refer to some testimonies and experiences from my research illustrating claims for personal autonomy. Two self-employed females decided to establish their businesses despite family opposition. A female second-generation said, “I had to carry on our business alone after the death of my husband and to go against the wishes of my family demanding that my brother-in-law should take over the work.” Another female first-generation shared her testimony: “I succeeded in working as a metro driver despite an initial refusal by my husband and family. It was difficult for me because my husband insisted that metro driving was a male job. I risked a divorce, but I could finally convince him with the help of our local \textit{imam}.”

The resolutions provided by the ECFR, and the situation on the ground confirm that there are unsettled issues. Those who went against the rulings were aware of the problem but in their view, they had sufficient justifications for their decisions.

Gender equality is a hot subject of debate. According to Islamic texts, females and males are morally equal and, as such, are expected to fulfil the same religious duties. Nonetheless, they are not identical. In line with this view, the ECFR states: “The wife is equal to her husband within a marital relationship…. equality in principle, does not contradict the fact that there are duties and responsibilities unique and specific to each part of this relationship.”\footnote{ECFR Fourth Session: Dublin, Ireland 18-22 Rajab 1420 AH, 27-31 October 1999. Resolution 6.} The ECFR emphasises that the duties and obligations of males and females are equal apart from a few exceptions as stated in the Qur’an 4:34:

\begin{quote}
Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth.
\end{quote}
The authority as attributed to men in this text is divine, but not absolute in the view of ECFR. It depends on the fulfilment of men’s obligations as mentioned in the text. Additionally, according to Prophetic Traditions: ‘Females are not expected to be alone in Khulwah with foreign males even with in-laws’.

"Females, more than males, are required to know how to conduct themselves in the context of the family as well as in society at large. The rulings of Khulwah or allowing a woman to be alone with men extended to working places, social events and travelling. In the context of the West, the issue became a subject of debate. The debate is due to the definition of being alone. The ECFR presents a position:

Meeting, co-operating and integrating between men and women is an instinctive and natural matter, which cannot be averted in reality. Indeed, Islam: the religion of natural instincts and inclinations, conveyed nothing which prevented such meetings from taking place but rather set the following conditions and restrictions: The forbiddance of the meeting of a man and a woman in solitary. The woman must observe proper conduct in her speech and avoid physical contact or revealing parts of her body which are forbidden by Allah.

The ECFR proposed a definition allowing a Muslim female a conditional possibility to meet men. The conditions were to observe proper conduct. It assumes a “Khulwah which is haram in the first place, the ruling permits. The ECFR extends conditional privacy to medical treatment even by non-Muslims:

Primarily it is permissible for Muslims to be treated by a non-Muslim if needed. Secondly: In the case of treating a member of the opposite sex, ECFR recommends Muslims to refrain from the prohibited Khulwah and abide by modesty and ethics of dealing with members of the opposite sex shunning the prohibited dressing of oneself with ostentation.

The issue of Khulwah was presented as a serious ruling by Prophetic Tradition, but creative interpretations set conditions to relieve the problem and give females access to the work market.

The issue of autonomy still requires a further look to have a comparative perspective of the European laws with the religious rulings. There is still a gap between the unconditional gender equality that Europe offers and the conditional equality that religious rulings offer. Most importantly, some individuals had to go against traditional values.

28 Sahih Muslim Book 007, Number 3110& Bukhari Volume 4, Book 52, Number 250.
Choice of Partners for Marriage

Marriage (nikah) in Islam is a religious requirement. Islam has specific regulations for it. On the social level marriage works as a bridge between families.

Nikah is a contract that leads to legal responsibilities as pointed out by the ECFR:

Marriage is one of the most important contracts due to the fact that it signals the creation of a new family within society; the birth of new individuals into the world and the duties and responsibilities which fall on each of the two partners and procreation as suggested by its name; literally means the contract of coitus.\(^{31}\)

Accordingly, any failure to fulfil these duties may end the contract. In addition, the texts identifying marriage set some rulings to direct the choice.

One restriction, for a choice of a partner, is concerned with the choice of a non-Muslim partner. Muslim women are forbidden from marrying men amongst the people who believe in the earlier scriptures while Muslim men are allowed based on Surah 60:10 and 5:5. In this context, a Muslim female sent an inquiry to the ECFR, “I am a girl and I am twenty years old. A Christian man, who is ready to respect Islamic obligations and does not mind our children being Muslims proposed to me, so is it permissible to marry him?” The answer was: “It is not permissible for a Muslim woman to marry a non-Muslim man, even though he is from ‘the People of the Book’ and promises to respect your religion after marriage”\(^{32}\). The answer was applying the academic ruling that forbids Muslim females from marrying Christian or Jewish men. In contrast, there was another fatwa issued by the ECFR that made a conditional exception for a Muslim convert woman to maintain her marriage to a non-Muslim if her conversion to Islam happened after marriage:

The Council affirms and repeats that it is forbidden for a Muslim female to establish marriage to a non-Muslim male. This has been an issue of consensus throughout the history… However, in the case of marriage being established prior to the female entering Islam, the Council has decided this conditional resolution\(^{33}\).

According to this fatwa, what was forbidden became permissible in the context of the partner’s conversion to Islam after marriage.

The Shari‘ah rulings as presented by the ECFR were meant to direct family traditions. However, the rulings forbidding a Muslim female to marry men from amongst the people who believed in the earlier scriptures posed a problem in the European context. They do not only limit the choices of Muslim women but also, they are not in line with the

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\(^{31}\) ECFR Fourth Session 27-31 /10/ 1999 Resolution 3.
unconditional rights for choosing partners as represented by the European laws. The Charter of Fundamental Rights gives all citizens the right to marry and the right to found a family: “The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.” In addition, a male first-generation informant who was married to a non-Muslim wife pointed out the ruling as ambiguous: “Most of the European females, who are assumed to be from ‘the People of the Book’ do not believe anymore.

Significantly, testimonies in my research reflect the dynamics of these rulings in the field. For example, an informant challenged the traditions about forbidding a Muslim female to marry a non-Muslim. She was a Moroccan female who immigrated with her family when she was young. She was aware of the ruling but decided to go against it. She told me:

My father, while in Morocco, had two wives; one a Moroccan Muslim and the second a Moroccan Jew. I was young when I came to Belgium, so, I followed education in Belgium. The challenge I had as a Muslim was concerning my choice of a partner. When a co-worker asked for marriage, I agreed. He was a Belgian citizen like me, but he was a Jew and I was a Muslim… My father had some understanding. The main issue that dominated the discussion was that my friend would never force me to become a Jew and that we should allow our children to choose their religion. My friend agreed and even signed a document and handed it to my father. Finally, the decision was to allow us to marry.

When I asked whether they had a religious wedding she said the Imam refused and they had a civil marriage and not a religious one. In addition, another female told me that she married a non-Muslim who refused to convert to Islam. She decided to go against her conviction, but she refused to share details. Thus, the assumption that a Muslim woman will never accept marrying a non-Muslim is, therefore, not borne out by facts on the ground.

Another problem directly connected with the freedom of choice is marriage guardianship which gives the ultimate authority to the father, a brother, or a male relative over females. The right of the father or a male guardian to give a female in marriage regardless of her wishes or to prevent her from the right to choose is a compulsion versus freedom of choice in marriage as applied in Europe. The ECFR studied the issue and reported:

The majority of scholars agreed that the approval of the guardian is a condition, without which the contract would be incorrect. The followers of Imam Abu Hanifa stated that the permission of the guardian is not a condition. They added that the permission of the guardian only becomes a condition if the girl is under the age of puberty.

However, the ECFR advised:

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34 EU Rights to Marry and Rights to Find a Family article 9
35 ECFR Fourth Session 27-31/10/1999 Resolution 3.
Women are not to disregard their guardians, whom wish only for their best interest and that they marry good men rather than deceitful and ill-heart proposers. The Council also advises fathers to facilitate the marriage of their daughters and to consult with them in regards with those whom propose to them in marriage, without transgressing in using the rights that Islam granted to them.

The ECFR does not give unconditional permission to women to choose their partners or to sign their own marriage contracts, thus these issues still need further studies. There are also related matters where males and females may not have equal religious rights, such as the right to divorce, to re-marry and child custody.

**Impacts on Child-Rearing and Circumstances of Crisis**

*Child-Rearing*

Child-rearing as good Muslims is another important concern for jurists. Although every Muslim is obliged to take care of his family, such an obligation is stressed in the West. Al-Qaradawi gives this strict advice to Muslim families in the West:

I told brothers and sisters living in the West that if they find it extremely difficult to bring up their children as Muslims, they should return to their countries of origin as staying in the west, in this case, will cause an irreparable harm to the whole family. It will be of no avail to amass worldly riches and neglect religious ordinances.

Rafi’i reported his personal experience in Germany:

What young Muslims receive at the school is stronger than the Islamic education they receive from their parents. The schools do not only teach morals that are different than Islamic morals but teach children their rights to oppose their parents. Thus, the number of bad Muslim children in Europe is higher than the good ones.

Muslims in the West fear influence of the dominant culture of the majority. In a different context, the challenge was not only due to cultural differences but owing to demands from the majority as one parent wrote:

In the years immediately following 9/11, kids who were coming of age received a different kind of messaging, a particular mix of pressures: to condemn terrorism, express their patriotism, and sometimes downplay their Muslimness. Today, for my kids, with 9/11 more than 15 years in the past, they are facing something wholly new: an era when it’s encouraged to be unapologetically Muslim while at the same time staking claim to their Americaness.

From the Islamic perspective, there is the fear culture of the majority teaches morals that are different from Islamic norms. In addition, the demands from the majority referring to

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36 ECFR Fourth Session 27-31/10/1999 Resolution 3.
the rights of children make it even more difficult for parents. Consequently, insistence on wearing women’s headscarves, and the establishment of Qur’anic schools for children are some actions adopted by Muslims to signal their difference from the majority community. The ECFR calls for establishing Islamic schools and Islamic recreational centres where their unique, independent character can grow safely\(^{40}\). Thus, the situation on the ground, if not followed, may lead to greater separation between Muslims and non-Muslims.

Al-Qaradawi pointed out another subject concerning parental claims over children. According to him, “Every child born to her [the wife] in the wedlock will be her husband’s child, without any need for recognition or public proclamation of the fact by him or a corresponding claim on the part of the mother”\(^{41}\). For this reason, a divorced woman should not enter into another marriage before it becomes sure that she is not pregnant by her former husband.

According to European regulations, the parental rights and duties with regard to the child are different. They include the right and duty to establish and preserve the child’s identity:

The child shall be registered immediately after birth and shall have the right to a name and citizenship. Parents shall choose the first and last name of the child…. The right to determine the child’s home. The minor child shall live with his parents. If the parents do not live together, they shall decide the child’s home by mutual agreement. In case of disagreement between the parents, the Guardianship Court (Instanţa de tutelă) shall decide\(^{42}\).

In cases of a child born out of wedlock:

The rights and duties belong equally to both parents); if the parents are married after divorce: to the parent whose filiation has been established; if the child was born out of wedlock to both parents if the parents live in domestic partnership. If the parents of the child born out of wedlock do not live in a domestic partnership parental authority shall be exercised by one of the parents only\(^{43}\).

As such, Islamic parental claims are different from the European guidelines. Furthermore, the legal adoption and artificial insemination demonstrate specific challenges to rulings in Islamic jurisprudence. In cases of conflict, the ECFR advises Muslims to submit to Islamic rulings when there is any conflict with European laws:

The European norms and traditions are valueless if they contradict clear Islamic texts such as calling for equality between man and woman in inheritance under the guise of the change of time and place. This is because the rules of inheritance are determined by clear texts unaffected by changing time and place (ECFR Session 24, 16-19/08/2014/Resolution 9).

The ECFR counsels Muslims to follow Shari‘ah rulings and to ignore European laws if they are not identical.

\(^{40}\) ECFR recommendation: 3rd session 19-22/05/1999 that was again enforced in resolution 4 session 15/29/06-03/ 2005.

\(^{41}\) Al-Qaradawi 1960, 2003:221.


\(^{43}\) Articles 503, 505 of the Civil Code.
Family and Jurists hope for effective transmission of religious identification, belief and practices to the younger generations. The younger generations may receive a ‘transmitted package of heritage from the elders, but they are not born in a vacuum. Younger generations should not expect to be just passive recipients. They may try to relate to both heritages and negotiate in such a way as to maintain relations with family and achieve full European citizenship. The ECFR offers a solution through the European states’ recognition of Muslim family law44.

Upbringing Muslim children in the West are challenging and have been a matter of ongoing study. The dominant culture’s influence on children, the media, and interaction with non-Muslim friends may lead second and third generations to suffer from maintaining loyalties to religion and the laws of the European countries45. We can therefore say that the future will depend, largely, on the responses to the threats and challenges faced by Muslims. A reformed model is needed to enable both young and old to fulfil their obligations.

Circumstances of Crisis

Crisis circumstances concern medicine, death and burial. Medicine is challenging for Muslims because it is often processed from items forbidden by Islamic law. The permissibility of consuming medicine processed from forbidden items was not unique to Muslims in Europe. It has been an issue of concern in the global Muslim community46. Scholars have not reached a united position on this issue. Some forbade any products containing processed alcohol or pork. Others, consider the final product that may become halal if the haram substances have turned (via some process) into something else so that it is no longer the same. The bottom line in the argument is the nature of the final product.

The ECFR adopted the final product position. In June 2013, during the 23rd Session, they reported:

Examples of Istihala (Denaturation) and Istihlak (Diminish) of foods and medications including converted prohibited ingredients [during processing] is converted to another material… it becomes Halal, whereas if not converted and it preserves its structure it remains Haram. Blood plasma, used in pizzas, soups, sausages and pastries and also the blood added

46 Several medicines (including tablets, injections, capsules, creams, mixtures and vaccines) contain animal products or are animal derived is an issue of concern not only for Muslims but for other religious groups as well.

to milk products, a number of medications and children’s foods, are not blood in form nor in essence and consequently, these foods are Halal.

According to the ECFR, the nature of the final product set the basis for judgement. However, not all are on the ground following this judgment. Empirical data in my research pointed at three positions adopted by the informants. 52% followed the position according to the new instructions and, consequently, allow all medicines. Those who adopted the position based on the original components were 37% of the participants. A third group represented those who reported that they were “not aware of any need for rulings on medications or any need for justifications”; and these represented 11%. The principle may extend to consuming bonobos, cookies, and makeup substances.

An additional matter was in the context of death and burial. The Islamic traditions include rulings for ceremonies, washing the deceased and burials. The religious rulings concerning the Muslim on his death, such as washing, wrapping with a shroud, and performing prayers, are not in conflict with European laws. However, the wish to bury the dead as soon as possible sometimes conflicts with European demands. The regulation requires issuing a burial permission that may take more than 24 hours depending on the cause of death especially in case of accidents or criminal circumstances.

The extra struggle is due to insufficient Islamic burial cemeteries nearby. Jurists attempt to help Muslims in their search for solutions. In case of no nearby Muslim cemeteries, the ECFR issued a resolution to help Muslims, in times of necessity, to bury their deceased in a non-Muslim cemetery:

Should they [Muslims] fail to have a cemetery of their own, they should, at least, have a particular patch somewhere in the cemetery of non-Muslims to bury their dead persons in it. Otherwise, if both alternatives are not available, the deceased may be buried wherever possible, even if it were in other than Muslim cemeteries, for Allah places no burden on a soul greater than it can bear. In this case, it does not harm a Muslim to be buried in the cemetery of non-Muslims when he dies; the Muslim will be benefited in the Hereafter only by his own endeavour and righteous deeds and not by the place of his burial47.

In the case of the demolition of cemeteries, Islamic traditions demand permanent tombs where the body is not to be transferred after burial. The ECFR studied the issue and advised Muslims:

In case of necessity e.g., laying out a public road or any project for the benefit of Muslims, it is permissible to transfer a body to a different grave as public need is a necessity…. Body transfer is to be done carefully and in a way that shows respect to the deceased48.

47 ECFR Sixth Session, Dublin, 18 Jumada Al-Ula - 3 Jumada Al-Akhir 1421 AH, 18 August and 01 September 2000, fatwa 5.
The ECFR helps Muslims deal with death and burial. However, there is an emotional side to the subject. A first-generation female informed me about a complexity: “The issue of death and burial is not restricted to the religious and cultural traditions, but it is also an experience and emotions of an individual”. Some may wish to peruse burials in their countries of origin. The wish for an actual return to their countries of origin to be buried was referred to by more than half of the research informants (57%). Returning to the soil of one’s roots was frequently mentioned as an important consideration. There are more emotions to be buried in lands of origin than religious basis.

**Conclusion**

The paper breaks new ground in relating Islamic family traditions to the everyday lives of individuals. The study demonstrated that family traditions are different and sometimes even at odds with European laws. The issue is not which ruling is better but how to achieve a balance between the two. In addition, the complexity is not only concerned with moral issues but also legal ones. It extends to hot issues such as caring for the aged, child rearing, inheritance, gender equality and autonomy. The ECFR proposed different positions, however, there remain some concerns:

Firstly, there is some confusion regarding bringing up Muslim children in Europe. Jurists put more emphasis on teaching the younger generations Islamic principles to protect them from the influence of the culture of the majority. They need to understand that younger generations are not simply passive recipients. Parents, as well, should balance authority over younger generations and their desire for harmony and possible integration into European societies.

Secondly, females’ freedom of choice especially in the context of marrying non-Muslims remains unresolved and, as such, challenging when compared with the European laws. The ECFR made their judgment based on the religious narratives apparently without considering the change in time or context. Their rulings may have been rooted in Islamic jurisprudence but the changing time and context demand rethinking the rulings. A balanced conclusion combining the religious rulings and European laws requires further consideration as some females decided to go against these traditions. In addition, the necessity of male guardianship to validate marriage and the equal rights to divorce needs more juristic attention to keep the higher principles of gender equality and justice.
Thirdly, creative interpretations helped to balance the cultural norm of caring for the aged and dealing with crisis circumstances. Restriction and conditional resolutions in other matters may conflict with, European laws. Allowing non-Muslim members of the family access to inheritance and permitting equal rights to males and females regarding inheritance remain challenging matters.

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