

A Comparative Study of the Status of the Prohibition of Violence against Women in Hanafi Jurisprudence and International Instruments

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1. Round 1

1.1. Reviewer 1

Reviewer:

In the second paragraph of the Introduction, the sentence “many manifestations of violence against women in Muslim societies do not arise from authoritative jurisprudential teachings but from the blending of ethnic and customary traditions with religious rulings” is important but currently asserted rather than demonstrated. The article should identify concrete examples, such as baad-dadan, denial of inheritance through tribal custom, or forced exchange marriages, and explicitly show how these practices diverge from authoritative Hanafi doctrine. This would strengthen the article’s central argument that the problem often lies in customary distortion rather than in Hanafi legal doctrine itself.

In the methodological paragraph beginning “The main question of this study is...,” the research method is described as “descriptive-analytical” and “comparative,” but the operational procedure remains underdeveloped. The article should explain the criteria for selecting Hanafi sources, the hierarchy among classical and later Hanafi authorities, the method for interpreting conflicting Hanafi opinions, and the criteria for selecting international instruments. Without this clarification, the comparative analysis may appear selective rather than methodologically controlled.

In section 2.1.5, the paragraph stating that “the father and paternal grandfather have guardianship over a minor girl and may marry her off” requires a more careful distinction between contract formation and marital consummation. Many Islamic legal discussions distinguish between the permissibility of concluding a contract and the permissibility of cohabitation or consummation. Since the article frames child marriage as a potential form of violence, it should explain whether Hanafi jurisprudence imposes safeguards concerning physical maturity, harm, best interest, or judicial intervention before consummation.

In section 2.1.5, the discussion of “the option of puberty” should be critically assessed rather than presented only as a protective guarantee. The sentence “This option demonstrates Hanafi jurisprudence’s attention to the importance of the

woman's consent in marriage" is plausible, but the article should also acknowledge limitations: the girl may lack knowledge of the right, may face family pressure, may lose the option through delay or consummation, or may lack access to a court. Addressing these limitations would make the analysis more balanced and more convincing.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

In section 2.1, the paragraph stating that "Marriage, as one of the most important social institutions, can under certain conditions become a context for the perpetration of violence against women" would benefit from a more explicit definition of "violence" before applying the concept to Hanafi jurisprudence. Since the article compares fiqh with international human rights law, it should clarify whether it uses the international definition of violence, a fiqh-based concept such as harm, coercion, injustice, or violation of consent, or a synthesized analytical definition. This clarification is essential because the concept of "violence against women" is modern, whereas Hanafi texts often discuss related issues through categories such as ikrah, darar, ghasb, ta'zir, wilaya, and mahr.

In section 2.1.1, the sentence "in Hanafi jurisprudence, an adult and legally competent woman, whether virgin or previously married, has the right to marry by her own consent and choice" is a strong and central claim, but it should be nuanced by discussing the Hanafi doctrine of kafa'ah and the guardian's right of objection in cases of perceived non-equivalence. The article later discusses kafa'ah in section 2.1.4, but the current paragraph may give the impression of unrestricted autonomy. A cross-reference or brief qualification should be added to avoid internal inconsistency.

In section 2.1.2, the discussion of baad-dadan is valuable, but the paragraph beginning "The practical implementation of this custom is such that..." uses a highly descriptive and normative tone that should be made more analytical. Expressions such as "This girl is oppressed as a servant of the family until the end of her life" should either be supported by empirical or legal sources or reformulated in more academically cautious language. The article would be stronger if it distinguished between the legal invalidity of the practice, its social consequences, and its classification as violence under international instruments.

In section 2.1.2, the paragraph comparing baad-dadan with al-Shaybani's issue of a woman marrying the man she injured is conceptually interesting, but the legal analogy requires clearer explanation. The article should state explicitly why this case is being introduced: is it to show that compensation may become connected to marriage in Hanafi legal reasoning, or to show that baad-dadan cannot be justified by analogy to this case? Without a clearer analytical bridge, the example may appear tangential and could confuse readers.

In section 2.1.3, the paragraph defining coercion through al-Sarakhsi is one of the strongest parts of the article, but it should be connected more directly to modern categories of forced marriage. The sentence "Coercion is the name of an act that a person commits against another in order to negate his consent or deprive him of choice..." should be followed by an analysis of whether psychological pressure, family pressure, threats of honor-based violence, economic dependence, or social coercion qualify as ikrah under Hanafi doctrine. This would make the comparison with CEDAW and the Istanbul Convention more legally precise.

In section 2.1.3, the paragraph beginning "In the Hanafi school, various classifications of contracts have been offered" introduces a detailed discussion of void, defective, and suspended contracts, but the relevance to forced marriage needs to be stated more explicitly. The article should clarify whether forced marriage of an adult woman is treated as void, defective, suspended pending ratification, or valid but punishable under specific Hanafi opinions. This distinction is crucial because the legal consequences for the woman, husband, guardian, dower, and dissolution differ depending on the classification.

In section 2.1.4, the discussion of kafa'ah is extensive, but its connection to "violence against women" is not sufficiently theorized. The paragraph stating that "Hanafi jurists believe that 'adl, or unjust obstruction, occurs when an adult and rational girl chooses a suitable and equivalent man, and her guardian prevents her from marrying that man" should be expanded to explain when guardianship functions as protection and when it becomes coercive or structurally discriminatory. This is particularly important because the article's central theme is not marriage law generally, but violence and rights violation.

In section 2.1.4, the sentence “This right of rescission is intended to protect the rights of the family and prevent social disgrace or shame that may befall the family” needs critical engagement. From a human rights perspective, using family honor or social shame as a basis for annulling a woman’s chosen marriage may itself raise concerns about autonomy and gender equality. The article should not merely report the Hanafi position but should analyze whether this doctrine creates tension with international standards on free choice in marriage.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor’s decision: Accepted.

Editor in Chief’s decision: Accepted.