

## **A Kurdish Folio on the Marriage\***

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### **Abstract**

In order to secure itself and to ensure people's interests and freedom of action every society has made a set of rules for marriage. The minor differences between Islamic and Kurdish marriage suggest that *sharī'a* did not undergo a major revision during its transmission to the Kurds<sup>i</sup>. As an Islamic form, the Kurdish marriage system is clearly derived from *Qur'ān* and *sunna*, providing a system for the preservation of its values and society. It does not mean of course that there is no any difference between Kurdish and Islamic marriage. The Kurdish system as a whole is sometimes (and only sometimes) based on a conception of tribal order which again sometimes makes no precise reference to all Islamic values. Sometimes they are impressed by their own local customs as well<sup>ii</sup>. This note presents a unique Kurdish folio on the marriage, divorce, and unified return. It provides the edition and English translation of the folio.

**Keywords:** Kurds, Marriage, Islam

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## INTRODUCTION

There are many Islamic marriage contracts<sup>iii</sup>. The text that will appear in this brief note is among the treasures of this written tradition. But it is more than that. It is the inheritance of both Kurds and Muslims.

i) Traditional Islam regarded the marriage (*nikāh*) as a contract between bride's father or her legal guardian (*walī*) and the prospective husband. The *sharī'a* law usually gives the guarantee of the nuptial gift (*mahr*), an amount of money given to the woman by prospective husband in order to recognize the legitimacy of the marriage and the financial independence for the woman. In the first section of the text, Kurdish tribal simplicity is visible. It is most likely written by a local author, or it is recited by a local informant to the educated author of the corpus.

ii) The second section of the folio is devoted to the divorce. According to Islamic *sharī'a*, the prospective husband must pronounce the phrase 'I divorce you' to his wife three times (*anti tāliqun thalāthan*). As there is no waiting period (*'idda*) between the three *talāqs*, it seems that the folio is from Sunni Kurdistan.

The author of the folio has differently indicated the three *talāqs*. Each stone was a way of controlling behaviour for the man himself. When the man throws the three stones, then his divorces would take effect. Within this context, it is possible to say that throwing stones was a way of saying something like "just as surely as I am throwing *three* stones, I intend to divorce you three times".

iii) If a man has divorced his wife three times, but then has a change of mind, he can not simply remarry her. The last section of the folio is on the *rujū'* (unified return) and *sharī'a* condition on how one can marry a woman whom divorced for three times. In order to reinstate a woman to her former husband, she has to get married to another man and have sex with him at least once. A person who marries a divorced woman even for one hour in order to make it possible for her ex-husband to reinstate her is named *muhallil* (he who makes lawful). An indirect reference to *muhallil* as the punishment for those Kurdish men who divorced their wives three times is clear in the third section of the folio, but Kurdish tradition applied an exclusive and much harsher punishment for the men. It may provide a warning against unconsciousness and fury. It is very easy to divorce a woman for three times but it should be accompanied with a healthy mind and intention. The regret can not be enough to guarantee a *rujū'*<sup>iv</sup>.

### Text

The folio we are dealing with is preserved in an early eighteenth century *jung*. Literary sources, known as *jung* works, are very useful in different fields of social and historical studies. They mostly contain fragments about the cultural and literary life of the period they cover, though incidental information on Kurdish literature and history can also be included.

The present unpublished manuscript derives from Central Library of Tehran University. The MS *jung* 3015 contains 103 folios. The size of each folio is 21 x 10.5 cm. The MS is written on light brown paper. The text is written with black ink on both sides of each

folio of the manuscript. It is written in cursive script. The script is *shikasta nasta'liq*, the language – southern Kurdish and Persian.

As an 11th century composition, this *jung* includes very important historical letters, some poems by Sūzanī, Bu al-‘Ajabī Jurjānī, Tārīkh Khalaf Ishāq Bayg, laments, fragments on clothes, horses etc. The author is identified as Mīr Abu al-Hasan Tāj Husaynī who was the vizier of a district of Isfahān in late 11th/17th and early 12th/18th century<sup>v</sup>. According to the dīwān of Qāsim Khādīm Isfahānī, he died in 1133/1721<sup>vi</sup>.

Paper’s analysis and palaeographical data allow us to date the only Kurdish folio of the manuscript by 11<sup>th</sup>/17<sup>th</sup> century. The introductory notes of the author or a further owner of manuscript (fol.1r.) of course makes it somewhat unlikely that the folio in question really belongs to the 11<sup>th</sup>/17<sup>th</sup> century, and it would best fit sometime between 1120/1708 and 1126/1714. Based on the other sections of the *jung* and the scattered dates, this dating very possibly is correct. As our Kurdish folio come from the same hand and from the last sections of the corpus, it seems more likely that it is written sometime between 1124/1712 and 1126/1714.

### Transcription

tarz-i ‘aqd-i nikāh dar Kurdistān wa talāq dādan wa rujū‘ dar mīyān-i ānān

Huwa Allāh Ta‘ālā

**tarīqa-yi ‘aqd kardan-i ahl-i Kurdistān.** ākhund bi pidar-i dukhtar gūyad: Mehmūd Axa! bûj kenîşkim Guļ Xetta we nam bi jinîyit bi ser mihranîyey pônze tomen dam be Ehmed Axa kuṛ-i ‘Ezîm Axa be kuṛ-i ‘iyb weṛ-i çûpanel, weṛ-i gawanel u kuwiṛ ṽowanel. qisiyk gurûhke. agar hikāyatî rû dād ki qabûl ast. pisar gūyad: u beṽi axa kuṛ-i ‘iyb qebûṽime, bûj mobarik bû maṣa‘ellah. **tarīqa-yi talāq-i ishān.** shawhar-i zan si rîg az zamîn bar mîdārad wa mîgūyad: si tiṽaxim kefteke. be çûar mezhebu ki î jine we min herame. **tarīqa-yi rujū‘-i ishān.** hamān zanî rā ki talāq dadihand bāyad ghiyirî ū rā bardāshita bar bālā-yi pusht-i bāmî barad ki shawhar dar zîr-i ān bāshad. jamā‘ namāyad. dar h□ālat-i jamā‘ kardan tāq harakat karda, gardî ki az tāq bar sar-i shawhar mîrîzad mawjib-i salb-i [sic] jawāz<sup>vii</sup> gardad. wa ān zan-i mutallaqa bar shawhar halāl mîshawad. wa ma‘nî-yi rujū‘ īn ast.

### Translation

The method of marriage contract in Kurdistan, and divorce and unified return among them.

He is God, may He be exalted

**The method of marriage contract of the people of Kurdistan.** “Mahmūd Āghā! Say I gave you Ahmad Āghā, son of ‘Azîm Āghā, my daughter, named Gul Khattā, as your wife for a nuptial gift of 15 *tūmāns*, with all her deficiencies, [and] before shepherds, cow- and sheep-keepers”, the priest says to the daughter’s father. A word of group this is. [Do declare] if any objection; so it is accepted. “And yes, sir! I accept all

deficiencies. Say congratulations! Whatever God wills!” the son says. **The method of their divorce.** The woman’s husband took three pebbles from [the surface of] the earth and says: “I throw my three divorces. I swear to the four schools<sup>2</sup> that this woman is unlawful to me”. **The method of their unified return.** Someone else should take the same woman that they have divorced to the top of a roof that the husband would be under it [and] make sexual intercourse [with her]. During the sexual intercourse, roof will move [and] the dust, which poured from the roof to the head of husband, will divest the license. And that divorced woman will be lawful to [her]

## REFERENCES

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- Dirāyatī, Mustafā (2010). *Fihristwāra-yi Dastniwisht-hā-yi Īrān*. Tehran: Kitābkhāna, Mūza wa Markaz-i Asnād-i Majlis.
- Mokri, Mohammad (1962). Le mariage chez les kurdes, *L’Ethnographie*, 56, 42-68. husband. And this is the meaning of unified return.

## Endnotes

<sup>i</sup> For a general survey on Kurdish marriage, see Mokri 1962.

<sup>ii</sup> Compare Barth 1986, where the prevalence of preferential father’s brother’s daughter marriage in the southern districts of Iraqi Kurdistan is discussed. Here the close family endogamy is associated with a desire to maintain family property in the face of Qur’ānic rules of inheritance.

<sup>iii</sup> See, for example, ‘Aqdnāmcha, MS 3781/3, Malik Library (Tehran); Izdiwāj wa Nikāh□, MS 2580/2, Wazīrī Library (Yazd); and ‘Aqdnāma, Doc. 9-493, National Library (Tehran).

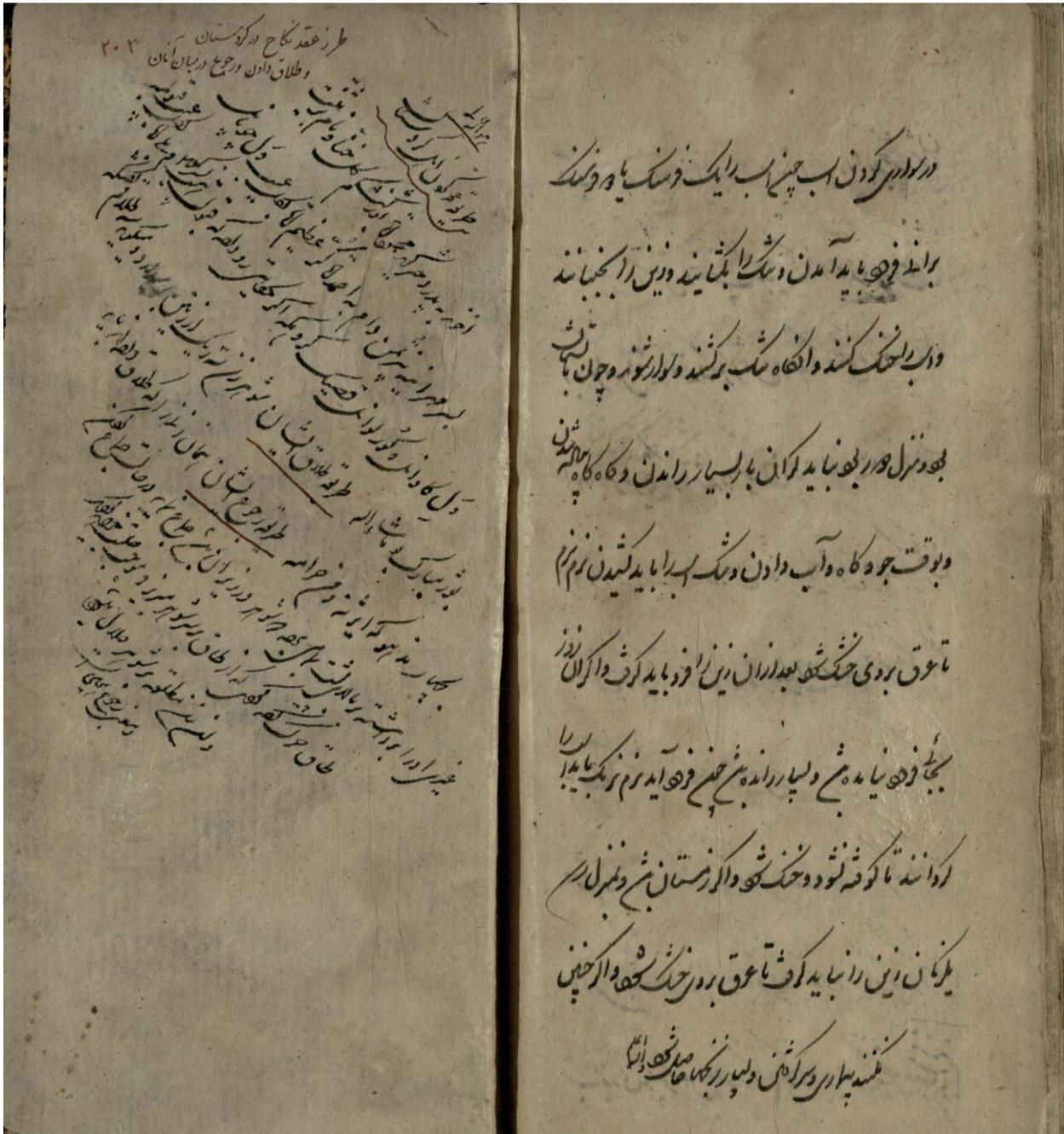
<sup>iv</sup> For a good survey on the rules of Islamic marriage and divorce, see Abū Zahra 1971.

<sup>v</sup> MS 3015, fols. 27r.-29r.; Dirāyatī, 2010: iii, 996.

<sup>vi</sup> MS 3015, fol.1r.: *chun Mīr Abu al-H□asan az īn gham ābād ▪ shud ‘āzim-i bāgh-i khalid bā khāt□ir-i shād; guft az piy-i tārikh-i wafātash khādim ▪ az tārik-i arbāb-i sukhan Tāj uftād* (chronogram: 1133).

<sup>vii</sup> The reading is doubtful.

<sup>2</sup> The reference is to Shāfi‘ī, H□anbalī, H□anaftī, and Mālikī schools.



Fols.102v.-103r.