



Decisions and recommendations of AMJA's second annual convention – Denmark

The second annual session of the Assembly of Muslim Jurists in America (AMJA) took place in Copenhagen, the Danish capitol, with the cooperation of the Muslim League in Denmark in the duration of 4-7 Jumada Al-'Ulaa 1425, the 22-25 June, 2004. A group of AMJA's members and experts participated actively in the proceedings of the session. Furthermore, the opening session was marked by the presence of official representatives from the Danish government.

The discussions of the session addressed the papers that were submitted by AMJA's members and experts. The papers focused on various topics concerning Muslims residing in America, specifically, and in the West, in general.

After four consecutive days of extensive discussions, AMJA arrived at the following jurisprudential resolutions:

1.

AMJA asserts that dealing with non-Muslims who desire to live in peace with Muslims is based on justice and kindness. This covers many forms of dealings such as responding to their invitations, inviting them to Muslims homes, allowing them to enter mosques in order to introduce Islam to them and make it closer to their hearts, exchanging gifts with them in other than their religious celebrations, visiting the ill among them, and in some cases, following their funeral processions if they do not involve any non-Islamic religious rituals.

The ruling in these kinds of dealings may rise to the degree of recommendation if the parties involved are neighbors, colleagues at work, travel companions, or something similar to that, provided one maintains the intention to call them to Allah and bring them closer to Islam as much as possible.

AMJA also asserts that it is permissible to congratulate non-Muslims in their social and private occasions, as this is included in the justice and kindness with which Muslims were commanded to deal with non-Muslims. However, AMJA asserts that participating in non-Muslim religious celebrations or congratulating them for these occasions is prohibited, as this implies endorsement for rituals and doctrines that are not part of the Islamic creed.

1.

AMJA members discussed the permissibility of resorting to the judiciary system outside of the land of Islam. In this connection, AMJA asserts that in principle, it is incumbent upon all Muslims to resort to Islamic law for arbitration inside and outside the land of Islam. Indeed, resorting to Islamic law for arbitration whenever it is within one's ability to do so is what distinguishes a believer from a hypocrite.

However, it is permissible to resort to a man-made judiciary system in a land that is not ruled by Islamic law if it becomes the only way for someone to retrieve one's legitimate right or alleviate a grievance- provided one does not exceed what rightfully belongs to him under the Islamic law. Therefore, one should consult with

the scholars first to know precisely what is due for him in that specific dispute under Islamic law.

Furthermore, since attorneys are representative of their clients, it is permissible to practice law within the scope of permissible, just, and legitimate cases that are filed to demand a right or alleviate a grievance. Similarly, it is permissible to study, teach, and understand man-made laws for the purpose of realizing the superiority of the Islamic laws, or practicing law in an environment that does not recognize the sovereignty of the Islamic law, intending to defend the oppressed people and retrieve their rights. This is, however, contingent upon the possession of enough Islamic knowledge, in order to avoid becoming an unwitting participant in sinful actions and transgressions.

AMJA members agreed that, in principle, it is prohibited for someone to assume a judiciary position under an authority that does not rule by Islamic law unless it becomes the only way to alleviate a great harm that is threatening the main body of Muslims. This is, again, conditional upon possessing knowledge about Islamic law, knowing rules and regulations of the Islamic judiciary system in Islam, and choosing a branch of practice as close in specialty as possible to the rules and regulations of Islamic law. In addition, one should judge between people according to Islamic law as much as one can. Furthermore, while in this position, one should maintain displeasure in his heart to the man-made laws. Needless to say, this ruling is an exception that is governed by the aforementioned provisions and restricted to necessity only.

AMJA further clarified that it is permissible for Muslims to serve as members in a jury proceeding, with the stipulation that their opinions be in compliance with Islamic law and with the intention to establish justice for all.

- 1.
- 2.

AMJA clarified the reality behind the new term "Jurisprudence of Minorities," defining what is acceptable and what is not acceptable in this connection. The following are valid and legitimate circumstances whereupon the AMJA support the use of the term "Jurisprudence of Minorities:"

- 1.
- 2.
- 3.

However, there are situations that warrant the harmful use of this term- following the mistakes of the scholars, adopting some of their eccentric positions, or mixing up their different opinions to come up with a new one, claiming reform or serving the greater interest of people. These are invalid interpretations that will eventually lead to the separation of these minorities from their genuine roots, and the creation of new versions of jurisprudence through innovative maxims ostensibly used for issues facing Muslim minorities in the West. Therefore, it is incumbent upon us to warn against this trend, and its consequences, and sincerely advise those who follow that direction.

- 1.

General belonging to Judaism or Christianity is what is required in women to be considered from the People of the Book. Marrying the chaste women of the People of the Book is valid with *karaahah*[3]. However, this kind of marriage is risky, especially when considering the future of children involved. Furthermore, the resolution clarifies that wives from the People of the Book possess the right to practice their religious rituals, and the right for her child's custody until the age of seven, except in the case where this is deemed to cause

harm to the creed of the child.

1.

In this case, it is prohibited that these spouses have any sexual contact between themselves. The rights of the husband are pending throughout the *iddah*[4]. If he embraces Islam during this waiting period, then the previous marriage remains valid. However, if he chooses to remain on his creed, then the Muslim wife has the option to take the issue to the Muslim judge to annul their marriage contract, or to wait longer to give him a chance to come back to Islam so that they may return to their marital relationship.

1.

The nominal marriage is the marriage contract in which the parties involved do not intend the reality of marriage and have no regard for its requirements and prerequisites. Rather, it is only used as a means to gain certain benefits. This type of contract is prohibited for lack of intention to consummate it, for the violation of the objectives for which marriage was legislated, and for the devising of prerequisites that are contrary to the objective of marriage.

However, the outward legality of this contract is dependent on how verifiable the nominal nature of this contract is before the court. If it is incontestable, then the contract is invalid, but if it is not, then the contract is considered valid, provided that all the prerequisites of marriage are fulfilled and no preventive reason existed.

1.

The nominal divorce is considered a divorce provided that the husband actually declared it or gave someone else the power of attorney to do the divorce papers, whether he intended divorce or not. This is because writing is the main tool for documentation in the current time. However, as far as one's responsibility before Allah, divorce is not valid without proper intention, according to the stronger position of the scholars regarding this matter.

1.

The civil marriage conducted by American courts falls short of some of the Islamic prerequisites and requirements. Therefore, it is considered null and void from an Islamic viewpoint. However, if a couple were married in the American court and their marriage became widely publicized, their marriage contract should be dealt with as though it was a legitimate one, provided there was no preventive reason that countered its Islamic validity. This is due to the marriage-like circumstances that surrounded the contract of this particular case. Nevertheless, this marriage contract must be re-conducted in order to ensure that all its prerequisites and requirements are fulfilled.

1.

It is permissible to apply for divorce in American courts for the sake of documentation, after having divorced according to Islamic law. If there is a dispute about the divorce, then both the spouses should resort to Islamic centers. In the absence of an Islamic judiciary system, Islamic centers fill in the position of a Muslim judge. However, when settling marital disputes, parties involved should follow the required legal procedure. Divorce decreed by the American court alone is not sufficient in ending the marriage from an Islamic perspective. Therefore, it is incumbent upon the spouses seeking the divorce, after getting the divorce from the court, to refer to the qualified people in any Islamic center to get a valid divorce. Necessity is not a valid

justification for depending solely on the decree of the court in matters of divorce, because of the availability and accessibility of Islamic centers in America.

1.

Islamic centers that are out of the land of Islam possess a judiciary authority. Therefore, the *khulu'* or annulment decision that is issued by the Imam of an Islamic center is valid, so long as the Imam is commonly accepted by the community as an arbitrator because of his knowledge or is personally chosen as an arbitrator by the disputing spouses. However, the Imam/arbitrator should take the necessary legal measures to protect himself from any liability.

The arbitrators should follow the Islamic judiciary etiquettes before issuing their judgment, such as listening to both sides, allowing reasonable time for the absent party to be present, and exerting one's best effort to establish justice in the case without rushing to judgment.

1.

AMJA asserts the necessity of sponsoring orphans and refugees, which is a very rewarding and virtuous act.

Furthermore, AMJA differentiates between sponsorship and adoption in the manner that existed in the pre-Islamic time of ignorance where the adopted child was attributed to an ancestry other than his real one. Indeed, there is an unambiguous prohibition for the latter. However, if this becomes the only way to save Muslim children refugees from being adopted by non-Muslim organizations outside of the land of Islam, then it becomes permissible.

This permissibility is conditional upon the adoption contract being used in a nominal fashion, practical measures are taken to restrict the relationship with the adopted child within the permissible limits, and the distortion of ancestral lineage is prevented.

1.

AMJA adopts the position of permitting the fornicator to marry someone with whom he committed fornication provided that she is not already married. This is in consideration of the spirit of Islamic law concerning shielding and protecting people, and as an encouragement for both fornicators to turn to Allah in repentance.

Regarding the status of the child of fornication, AMJA takes the tentative position of allowing it to be attributed to the fornicator if he claims it and if his partner in fornication has no husband. The reasoning for this position is to protect the child from the dangers of growing up in these societies without definitive ancestral lineage. However, taking a final position is deferred to the next annual session pending further research and deliberations.

1.

If the wife participates in the business investments of her husband through her skills or labor, in a manner that exceeds the reasonable house service that usually exists in marital life, then she shall possess a share in his wealth in accordance with her efforts in building the business. Estimating the share in this case is left to the experts in this field.

1.

AMJA asserts that *hijab* is one of the commands of Allah upon Muslim women that is as sacred as any other divine command. Therefore, *hijab* should not be compared with other religious symbols such as a cross on the chest of a Christian person or a copy of the Qur'an on the chest of a Muslim person.

Banning the *hijab* in French public schools and French government jobs is a clear form of transgression that is condemned by divine and man-made laws, and international human rights' accords. It represents an attack on an individual's freedom of religion.

Muslims in France should declare their strong disapproval of this measure and attempt to change it using all available legal means. Muslims in France should rush to establish their own Islamic schools that provide a suitable environment for the education of their youngsters.

Furthermore, Muslims all over the world should help their brothers and sisters in France by declaring their strong disapproval of all those who attempt to confiscate this right from Muslim women anywhere in the world.

1.

AMJA in its resolution concerning insurance differentiates between two types of insurance. The first type is based on cooperation and solidarity, and considered permissible. It falls under the category of helping one another in matters of righteousness and piety. The other type of insurance, commercial insurance, is prohibited because it involves *gharar*[7], *riba*[8], and devouring the wealth of other people wrongfully.

However, in consideration of the special circumstances of Muslims living outside of the land of Islam and the necessity of their abiding by the law of the land, AMJA permits the insurance that is legally required and the insurance that is badly needed such as health insurance and some other types of liability insurance. At the same time, AMJA urges Muslims to hasten in establishing insurance companies that follow the Islamic model of insurance, in order to protect the Muslim community from dealing with such invalid contracts. Meanwhile, people who qualify to use this permission should deal with insurance companies that are closer in their practices to the Islamic model in insurance, which is based on solidarity and cooperation between people.

1.

AMJA asserts that banks' interest is prohibited *riba*; therefore, acquiring loans from banks is prohibited except in the case of necessity as defined by Islamic law. This is true whether the acquired loans are for building homes or otherwise. Moreover, necessity should meet the following Islamic prerequisites:

- 1.
- 2.
- 3.

AMJA also asserts that general need may take the ruling of necessity in permitting what otherwise is prohibited, provided that the prerequisites of this maxim are met, such as:

- 1.
- 2.
- 3.
- 4.

AMJA's resolution in this regard explains that the person who cannot afford to buy a home through an

interest-free, permissible means should be content with renting.

Renting a residence provides a way out from falling into the *riba* that is prohibited by Allah and His Messenger. However, if renting becomes extremely hard for some people due to irreconcilable considerations such as the number of family members that exceeds what is allowable in a rented place, an amount of rent that supercedes the family's financial capacity or any other legitimate urgencies, then, it becomes permissible to use mortgage in light of the aforementioned governing principles.

Nonetheless, this permission can only be used after referring to the people of knowledge, in order to estimate the extension of the need, and to ensure that the prerequisites of necessity-like need are fulfilled.

1. The topics of discussion which were deferred:

AMJA decided to defer the discussion of the following topics to its next annual conference due to the small number of papers submitted regarding them:

- 1.
- 2.
- 3.
- 4.
- 5.

6. A declaration about the phenomenon of violence:

In conclusion of its second annual session, AMJA issued a declaration about the phenomenon of violence and terrorism that are taking place in parts of the world today. In its declaration, AMJA asserts the following:

- 1.
- 2.
- 3.
- 4.

Terrorism also includes any and all acts that fall under highway robbery and every act of violence that is done individually or collectively with a criminal intent to threaten, strike terror or inflict harm on a person's freedom and/or security. Causing damage to the environment, public utilities, personal or public property, or to national or natural resources are also considered forms of terrorism.

Each of these acts is but a form of spreading corruption on earth which is prohibited by Allah, The Almighty God. Allah said: "Do not spread corruption on earth, for, indeed, Allah does not like those who spread corruption." [Qur'an 28:77]

- 1.
- 2.

Furthermore, the primary causes for the recent emergence of extremism in some Muslim societies are:

1) Prejudice and hostility practiced by secularists and agnostics in some Muslim societies which is reflected in their ridiculing, mocking, and belittling of the religion with the attempt to alienate it from all aspects of life.

2) The bias, unfair handling, and the maximum exploitation of the phenomenon of terrorism by the media in

order to attack religious values and morals.

Therefore, it is incumbent upon people to help one another in order to root out these causes, eradicate their potential consequences, and allow the world to enjoy peace and security.

- 1.
- 2.

Then, the declaration points out **some preventative measures against extremism that leads to violence and terrorism such as:**

- 1.
- 2.
- 3.
- 4.

Then, the declaration directs a **sincere word of advice to Muslims residing in the West**, stating that Muslims living in the West are bound by the contract and the security pact that exist between them and the respective governments of their residence. Fulfilling contracts is a solemn Islamic duty. Therefore, it is incumbent upon all Muslims who reside in the West to comply with the laws of the land in their respective places of residence. Moreover, Muslims are to fulfill all obligations and rights of their residency provided that they do not contradict Islamic law.

In the end, the declaration expresses deep thanks and appreciation to the Danish government for facilitating the conference in its land, issuing visas, sending official representatives to attend the opening session, and providing media coverage for the conference.

[1]**Ijtihad** linguistically is "Striving, exerting effort"; the term *ijtihad* refers to a process of using juristic reasoning that is governed by certain principles to arrive at a ruling on a particular issue by *amujtahid*. This process requires exerting one's utmost efforts to reach the truth, and relates to matters in which there is no authentic clear cut evidence. A *mujtahid* is a scholar qualified to perform *ijtihad*.

[2]Related to *Ijtihad*.

[3]**Karahah** "Dislike"; in *Fiqh*, an action which the Muslim is rewarded for avoiding, but he is forbidden from doing. It is one of five categories under which all Islamic rulings fall.

[4]**Iddah** is the waiting period, which a wife must observe upon divorce or her husband's death before she can marry again.

[5]**Khulu'** is a separation between a husband and a wife, granted by a Muslim judge, in response to a request of the wife, in exchange for a sum of money to be given to the husband.

[6]**Hijab** is the attire that meets certain Islamic prerequisites. Muslim women who reach the age of puberty are required to wear *hijab*.

[7]**Gharar** is uncertainty or unknown factor in a transaction.

[8]**Riba** is usury; interest; any stipulated increment on a debt, or any increase on one of the exchanged items to which usury is applicable.