

Saudi-American Forum



SAF Essay #16

July 2, 2003

The Children of Saudi-American Marriages

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Encouraged by an increase in oil revenues in the 1970s, Saudi Arabia launched an ambitious program of sending a large number of its young citizens overseas to get higher education in developed countries. Since then, more than 200,000 Saudi students have lived and studied in the United States alone.

Simultaneously, a large number of Americans found jobs in Saudi Arabia. For many decades, Saudi Arabia has been host to one of the largest American communities living anywhere outside the United States. It is estimated that currently there are more than 35,000 Americans living in Saudi Arabia.

Overall the experience of coming together has been a rewarding one on both sides and, by any measure, has contributed positively in developing friendly and mutually beneficial relations between the two societies.

In some cases, however, the unfamiliarity and the challenge of adjusting to the demands of the two distinct social systems has taken its toll and has resulted not only in divorce but a breakdown of communication between parents in reaching amicable solutions with regard to the guardianship and custody of their children.

Almost invariably, upon divorce between a Saudi man and an American woman living in Saudi Arabia, the American woman returns to the United States. There are various reasons for this, namely visa limitations under Saudi law, which preclude a non-Saudi from living in Saudi Arabia without a Saudi sponsor. Upon divorce, the non-Saudi woman typically loses her sponsor, her ex-husband. Additionally, without a system of alimony and very limited job opportunities for women in Saudi Arabia, and without having the support of her extended family, an American woman typically does not have the financial ability to remain in Saudi Arabia to be near her children. As a result, divorce between an American woman and a Saudi man often becomes not only a parting of a family unit, but also a geographic separation, and a political one.

In my personal experience, in the majority of the cases involving divorce and child custody among Saudi-American couples, initially, both parents have tried to find a solution in the best

interest of their children. However, in the absence of a multilateral or bilateral treaty between Saudi Arabia and the United States dealing with the enforcement of custody agreements or judgments, parents are skeptical and reluctant to work out, and abide by, a solution for sharing the love and company of their children, for fear that there is no legal remedy available to them if one of them fails to live up to his or her agreement.

A Saudi father is fearful of sending his children to America to spend time with their mother and the American mother is similarly fearful of sending her children to spend time with their father in Saudi Arabia. Neither of them is sure that the children, after leaving the country of their residence, will be returned as agreed. Similarly, the American mother is fearful of allowing her ex-husband to be alone with his children in America for the fear that he may secretly take them to Saudi Arabia. The Saudi father is similarly reluctant to sponsor his ex-wife's visit to Saudi Arabia due to the fear that she may secretly take her children to America. There have been incidents in both cases which justify such fear. Most visits between parents and their children, therefore, take place under supervision. A male relative of the mother is generally present if the Saudi father is meeting his children in America. If the mother is visiting her children in Saudi Arabia the visitation normally takes place under the supervision of a female Saudi police official. Not a very pleasant experience for anyone in creating the bond of love and trust between a parent and a child.

In most cases, the fault is not with the parents as much as with the system or rather the lack of a system. Most parents I have dealt with recognize that some marriages do not last forever and do wish to minimize the negative impact of their divorce on their children. They are willing to do the right thing for their beloved children, if they can only be assured that the authorities on both sides, instead of shielding their own citizens, will honor and enforce a fair and binding agreement of the parents. Repeated disappointment with the bureaucracy, lack of any enforceable legal mechanism to alleviate their fears of each other and undue restriction placed on visa requirements have greatly contributed to worsening of the situation.

So far, the only consistent lesson which has emerged in dealing with these cases is the rule of "actual control." The parent with the actual possession and control over the children always has the upper hand. If the children are in Saudi Arabia, there is very little an American mother can do to get custody and if the children are in America, there is little which a Saudi father can do to get the custody.

In case of a divorce, the rules of the Islamic Shari'a place the greatest emphasis on the "best interest of the child" in deciding the custodial and guardianship rights of parents. U.S. law and judges too follow the same criteria in deciding cases involving custody disputes. A treaty concluded between the two countries guaranteeing the best interest of the child, therefore, would not violate any of the principles of the Islamic Shari'a or U.S. public policy. Having thought over this problem for over a decade, I believe a treaty is the only solution to spare these unfortunate children from choosing one parent over the other and becoming a victim of a never-ending international struggle. A carefully drafted treaty will discourage kidnapping, facilitate visitation, and provide maintenance for the children and effective remedy against the party breaching an agreement or violating a court order.

Like American mothers and American society, Saudi fathers and Saudi society greatly prize and value the well-being of children. A man once asked Prophet Muhammad, "Who is the most deserving of my love and care?" The Prophet answered, "Your mother." The man then asked him, "And then who?" The Prophet answered, "Your mother." The man asked him again, "And then who?" The Prophet again answered, "Your mother." The man asked the Prophet the third time, "And then who?" The Prophet replied, "Your father."

Children growing up in the Saudi society know their religious and moral obligations towards their mother. The authorities on both sides need to provide them with a legal framework to enable them to implement one of the most sacred teachings of Islam - respecting the desires and needs of their parents, particularly their mothers.

The solution does not lie in demonizing one society against the other, denying one parent his or her God given rights in favor of the other or neglecting the existence of a problem which requires a serious, immediate and effective solution. Both societies owe it to their children to conclude an international treaty and enforce it faithfully to alleviate the fear of parents and to create an environment of faith and trust to enable them to do what is in the best interest of all of our children.

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ABOUT THE AUTHOR

Muddassir H. Siddiqui is an expert in *Shari'a* (Islamic law), and an attorney practicing as of-counsel with the law firm of Kalbian Hagerty, LLP, Washington, D.C. Before joining the Firm, Siddiqui served for 12 years as legal advisor of the Royal Embassy of the Kingdom of Saudi Arabia in Washington, D.C. He works closely with American law firms representing Saudi governmental departments, corporations and individuals on transactional and litigation matters in the United States. He mediated numerous out-of-court settlements involving disputes between the Embassy and U.S. claimants.

Preceding his appointment with the Embassy, Siddiqui served as legal advisor of King Abdulaziz University in Jeddah, Saudi Arabia, for seven years. While there, he drafted contracts regarding the University's design, construction, supervision and maintenance projects. He also negotiated and drafted agreements between the University and a number of international research institutions. He supervised the translation of a broad array of legal documents for the University, to and from Arabic and English. While in Saudi Arabia, Siddiqui was also a legal advisor for the Saudi Arabian National Center for Science and Technology and participated in the preparation of the first draft of Saudi Arabia's patent law in compliance with Islamic law.

Siddiqui has lectured internationally on Islamic law topics; he has been much sought after by international business concerns for his knowledge of *Shari'a* (Islamic law) particularly in the areas of family law, corporate law and Islamic finance as it relates to corporations and financiers seeking to do business in the Arab world. Mr. Siddiqui is available to serve as expert witness in any litigation/arbitration involving issues of *Shari'a* laws.

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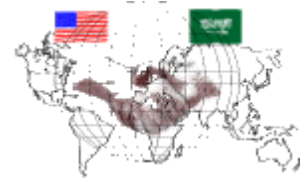
Siddiqui received his initial law degree from the Shari'a College of Islamic University at Madinah, Saudi Arabia. He obtained a certificate in Islamic and Comparative Law from the University of London's School of Oriental and African Studies, as well as L.L.M degrees from Temple Law Center and Harvard Law School. He obtained his J.D. degree from Chicago Kent College of Law.

Siddiqui is admitted to practice in the State of New York. He is fluent in Urdu, Arabic and Hindi. His admission to the District of Columbia Bar is currently pending.

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The Forum is a resource for Americans who value the relationship between the United States and Saudi Arabia and who want to act in response to erroneous and misleading depictions of the relationship in the media and elsewhere. The Forum is a vehicle for stakeholders in the Saudi-U.S. relationship to contribute their experiences and their ideas and opinions on the issues of the day.

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