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# CONFLICT OF LAWS IN INTERNATIONAL MUSLIM MARRIAGES: LEGAL CHALLENGES AND HARMONIZATION APPROACHES ACROSS JURISDICTIONS

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## I. ABSTRACT

As globalization increases the rates of international Muslim marriages, varied interpretations of Islamic marriage law across jurisdictions present multifaceted legal challenges. Several conflicts flow in the issues of marital rights, procedures of divorce, and inheritance rights that spring from the differences in legal traditions and socio-cultural contexts. In Muslim-majority countries, the reconciling of interpretations of Sharia to secular legal frameworks creates sometimes difficult scenarios on practices that include unilateral divorce (talaq) and polygamy. These disparities lead to complications on the consent issue, dowry or mahr, and recognizing marriages across borders. Consequently, different jurisdictions have been looking for fluid solutions and have begun exploring the solutions of dual recognition frameworks and bilateral agreements for mutual recognition of marital status. International bodies like the Hague Conference on Private International Law facilitate harmonization within treaties, bearing in mind the considerations both of cultural diversity and uniformity in family law. This discussion heavily relies on international human rights standards, giving basic guidance in bringing religious practices to reconcile principles of equality and justice. This paper analyses the intricacies of international Muslim marriages, identifies relevant legal conflicts, discusses the role of human rights law, and further presents mechanisms for the effective harmonization of legal provisions for spouses worldwide.

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## II. KEYWORDS

Muslim marriages, International law, Jurisdiction.

## III. INTRODUCTION

As globalization and migration increase the number of international Muslim marriages, they tend to link people from countries with different legal applications of Islamic marriage law. These marriages thus pose a highly complex legal challenge, especially in the case of conflict-of-law situations where two countries may have different interpretations of marital rights, obligations, and dissolution procedures. It is motivated by a desire to study these challenges in greater depth, focusing on the cases where one country adheres strictly to the interpretation of a Muslim law whereas the other goes along with a more liberal or regionally adapted approach.

Most of the conflicts around Muslim marriages across jurisdictions are mainly rooted in the difference in legal recognitions for marital obligations, divorce procedures, and inheritance rights of property, all these varying from one jurisdiction and approaching issues in the legal traditions and socio-cultural contexts unique to its jurisdictions. Muslim-majority countries are likely to incorporate the law to fill their system; therefore, the scope is not only family matters but numerous cases of marriages and divorces, all under Sharia principles. In any case, in secular states or Muslim-minority countries, civil law often prevails, which again leads to disagreement with Muslim marriage practices such as polygamy, unilateral divorce (*talaq*), and Islamic inheritance rules prevailing in local laws that prohibit discrimination or enforce monogamy.

Sometimes, the conflicts might make certain marital rights not recognized, divorce complicated, or the inheritance may not go as was expected for Muslim couples experiencing cross-border situations. To address these conflicts, some jurisdictions have had to embrace more fluid solutions, such as the establishment of dual recognition frameworks, where personal laws can apply in family matters for religious communities or even through bilateral agreements established with Muslim-majority countries for mutual recognition of marital status.

International bodies, such as the Hague Conference on Private International Law, continue to push harmonization of principles in family law through the use of treaties that respect diversity, at the same time striving towards uniformity, such as in practices of custody, spousal support, and recognition of divorces. Those efforts at harmonization are buttressed by efforts to balance local standards with their different religious and cultural practices regarding Muslim couples eventually supporting greater legal consistency and fairness in cross-border family law matters.

#### IV. WHAT IS ISLAM?

The word Islam is taken from the root word "sa-la-ma" meaning peace in Arabic. In Arabic, "Islam" refers to "submission,"<sup>2</sup> And it is a monotheistic religion whose revelations come through Prophet Muhammad. There, therefore, is one God, Allah, and the guide is found by way of living life according to the Quran, Hadith-the sayings and actions of the Prophet, and Islamic interpretation. For the faithful, the religion's followers are called Muslims, and they look towards five core elements or "Pillars": *faith* (Shahada), *prayer* (Salah), *fasting* (Sawm), *charity* (Zakat), and *pilgrimage to Mecca* (Hajj), all of which are tenets of faith in Islam.<sup>3</sup>

Islam, broadly speaking, has two major branches - Sunni and Shia. Both have a little bit different views about leadership and stand on theological points. In terms of numbers, Sunni Muslims comprise about 85-90 percent of the world's Muslim population. They follow the established practice of the Prophet's companions and rely on a community-driven selection to leadership. The Shia, comprising about 10-15% of the population, believe in a line of Imams whom they believe have been divinely appointed as descendants from the Prophet's family, particularly Ali, his cousin and son-in-law<sup>4</sup>. There are also smaller sects, such as Ismailis, Zaidis, and Ibadi Muslims, with their unique interpretations of theology and cultural practices.

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<sup>2</sup> Muslim Unity Center, 'What is Islam?' (last accessed 27 November 2024) <https://muslimunitycenter.org/what-is-islam/>.

<sup>3</sup> J L Esposito, *Islam: The Straight Path* (Oxford University Press 2002).

<sup>4</sup> S H Nasr, *The Heart of Islam: Enduring Values for Humanity* (HarperOne 2004).

Marriage in Islam is referred to as Nikah. It is, in fact, a contract between two consenting adults, looking at marriage as a union satisfying spiritual, social, and personal needs while serving both as a religious duty and a social obligation toward companionship and mutual support. Other religions looked upon marriage as sacramental; conversely, the base of an Islamic marriage is fundamentally one of contract, aimed at protecting rights and ensuring mutual respect and understanding between spouses.

A valid Islamic marriage consists of three primary elements: consent, Mahr, and witnesses. Consensus also must exist on the part of both spouses because, in Islam, a forced marriage is not acceptable.<sup>5</sup> Mahr is a sign of commitment and financial provision on the part of the groom, since the Quranic injunction prescribes it, especially 4:4, which states, "And give the women upon marriage their bridal gifts graciously."<sup>6</sup>

A marriage under Islam represents unique rights and obligations. The man will usually be accountable for economic support, with the married couple also obligated to display consideration, respect, and loyalty to one another. The relationship is defined as one founded on grace and peace, and, consequently, the beating of one's wife or use of any form of psychological abuse is generally prohibited. There are some differences in practices and meanings of marriage between cultures and across legal systems.

Islam did provide for divorce, or Talaq when this is the "need of the hour," with certain formalities to guide re-thinking and reconciliation. Talaq is a declaration by the husband and it can be effected by one, two, or three utterances; reconciliation is possible after one or two but not after the third. Women are entitled to divorce by Khula by apostatizing the Mahr or any other compensation; women can also seek Faskh-divorce annulment through a court decision when the marriage has become abusive or abandoned. In case of divorce, there is a waiting period, Iddah-so that a

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<sup>5</sup>K Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (Oneworld Publications 2012).

<sup>6</sup>Islamic Studies, 'Surah An-Nisa, Verse 4' (last accessed 27 November 2024) <https://www.islamicstudies.info/tafheem.php?sura=4&verse=4&to=4>.

time is given for reconciliation, and so that any possible lineage issues relevant to the divorce are considered.

Islamic inheritance laws are enacted and compulsory, thus guaranteeing equal distribution of wealth among all family members. For example, Quranic verses give shares for relatives, in which men take twice that of women; that is because of their financial commitments within traditional social systems based on Islam. Although the shares are set, Islam urges generosity to needy people, especially orphans.

Islamic precepts of marriage are formal and informal; they place much responsibility in the family's hands while at the same time advocating equity and spiritual fulfillment in marriage. Deviations in these interpretations and implementations differ between majority and minority Muslim contexts, but on its foundation, there is mutual respect, economic security, and compassionate union that will guide the Muslim through the formation of their family as well as facing challenges within marriage.

## **V. HOW DO COUNTRIES WITH DIFFERENT INTERPRETATIONS OF MUSLIM MARRIAGE LAW ADDRESS CONFLICTS OF LAWS WHEN MUSLIMS FROM DIFFERENT JURISDICTIONS MARRY?**

Muslim marriage laws are influenced by different schools of thought, different cultural practices, and the integration of secular legal systems. This landscape creates a very complex one when it comes to legal norms guiding marriage. For example, while in some countries such marriages are strictly forbidden-including that of a Muslim woman to a non-Muslim man; in others it is permitted subject to certain provisions, leading to possible friction when the parties come from different jurisdictions<sup>7</sup>. Conflicts of laws when Muslims from different jurisdictions enter into marriage are uniquely posed by countries with different interpretations of Muslim

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<sup>7</sup> Law Library of Congress, *Interfaith Marriage Prohibitions* (last accessed 27 November 2024) <https://maint.loc.gov/law/help/marriage/interfaith-prohibition.php>.

marriage law. Such conflicts are the result of differences in legal frameworks, cultural practices, and recognition or lack thereof of interfaith marriages under Islamic law.

Countries whose understanding of the Muslim marriage law is different tend to deal with the conflict of laws by the principles of private international law that best fit the circumstances of a particular case. A widely applied principle is the *lex loci celebrationis*, which refers to the law of the place where the marriage was solemnized. Take a marriage that has been legally sanctioned under the Sharia-compliant rules of one jurisdiction. Depending on the circumstances provided it satisfies minimum procedural and substantive requirements within the frame of the other jurisdiction, there is recognition as valid for example. This kind of thing also helps bridge some of those variations: for instance differences in unilateral talaq or polygamous marriages.

In some jurisdictions, the marriage is governed by the personal law of the individuals concerned, determined by nationality or domicile. For example, Muslim marriages in India are governed by the Muslim Personal Law (Shariat) Application Act, 1937, the couples may choose to marry under the special marriage act that grants marriage under the civil regime by disregarding religion, and thus it avoids those restrictions of personal status. Muslim marriages performed under-recognized religious or civil procedures are valid in countries like the UK. Conflicts may emerge when one jurisdiction's interpretation, like accepting a child marriage or triple talaq, conflicts with the public policy of another jurisdiction, which might hold such practices to be inconsistent with human rights standards.

Most Muslim-majority countries have Sharia law in their legal systems, particularly about family law, like marriage and divorce. The application of Sharia, however, varies. In Afghanistan and Pakistan, for example, certain provisions permit a Muslim man to marry a woman who is a "People of the Book," but not a Muslim woman to marry a non-Muslim man. Such conflicts are compounded when legal systems do not allow for separate civil marriage laws; marriages may not be recognized in a jurisdiction that enforces stricter interpretations.

In Egypt, though there is no law against interfaith marriage, the implementation of Sharia law often denies recognizing the marriage between a Muslim and a non-

Muslim unless they meet a specific religious decree. In Lebanon, the law is significantly different due to religious nuances, as Sharia is interpreted in vastly different ways. The courts have the discretion to look into the individual case and might allow the marriage to take place if it meets some denominational rule.

Some nations enter international cooperation in which they establish a law treaty for determining the rights and rules of conducting a marriage in one country versus another and help eliminate issues and clear the law surrounding inter-jurisdiction marriages. Courts may exercise discretion and grant recognition of marriages under specific circumstances, especially in those cases where parties have cohabited or when a marriage is recognized by one of the jurisdictions.<sup>8</sup>

The problem of legal conflicts in Muslim marriages between subjects of different jurisdictions is complex and results from differences in the interpretation of Islamic law, cultural context, and legislative frameworks. Different countries opt for different approaches to overcome such challenges. Some countries create dual legal systems, while other countries make international cooperation applicable. The importance of solving these legal conflicts increases as globalization impacts migration and cultural exchange between different jurisdictions.

## **VI. WHAT ARE THE PRIMARY LEGAL DIFFERENCES AND CONFLICTS THAT ARISE IN THE CONTEXT OF INTERNATIONAL MUSLIM MARRIAGES, SUCH AS CONSENT, DOWRY (MAHR), AND DIVORCE?**

International Muslim marriages embody a very complex landscape, shaped by the differences in legal frameworks, cultural practices, and interpretations of Islam. Conflicts are likely to arise mainly around consent, dowry, and divorce.

The basic essence of Islamic marriage is the need for consent, although there are differences in its implementation in various jurisdictions. Most of the countries, for example, Pakistan and Saudi Arabia, strictly require explicit consent by both parties

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<sup>8</sup>The Second Report on the Application of the General Data Protection Regulation (GDPR) (last accessed 27 November 2024) <https://conflictoflaws.net/>.



under Sharia, though the role of a guardian varies significantly. For instance, Saudi law generally mandates that a male guardian will give his consent, though the wali's presence is obligatory in Malaysia and it can be bypassed if there is court permission. Countries like Tunisia emphasize individual consent and reduce the role of the wali to ensure gender equality. If couples are migrating or if their marriages are under examination in countries that have strict interpretations, like some European nations, then legal hurdles can arise in case the consent process is considered to be coercive or not according to international human rights standards.

The role of a guardian (wali) is more significant within traditional settings, particularly in some schools of Islamic thought. For example, an adult woman under the Hanafi school of thought can marry without seeking consent from her guardian; however, other schools like Maliki and Shafi'i require that she have a guardian contract for her marriage.<sup>9</sup> In many cultures, particularly in South Asia and the Middle East, the practice of arranged marriages complicates the notion of consent. Women are, for instance, coerced into marriages without any legal or valid consent.

In cases where jurisdictions favor individual consent, disputes arise about the legitimacy of such marriages. Divergencies in the legal systems of countries also contribute to the problem. For instance, where some jurisdictions recognize that a marriage contracted under compulsion is void, other jurisdictions lack similar provisions, thereby creating potential situations where such marriages can be considered valid in some situations and may therefore pose considerable conflicts during the validation of such marriages.

The concept of mahr is universally recognized in Islamic law as a mandatory gift from the groom to the bride; however, its regulation varies. Mahr is an obligatory marriage contract, which should be specified in the marriage contract. Its form and enforceability are distinctively interpreted by different schools of thought in Islam.

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<sup>9</sup>Fatima Seedat, 'Consent in Marriage Under Traditional Muslim Jurisprudence' (last accessed 27 November 2024) <https://www.brandeis.edu/projects/fse/muslim/consent.html>.

For example, mahr payment upon a declined mahr may be imposed differently for the Hanafi school rather than the Maliki school, which is keen to ensure that a wife deserves her mahr regardless of the circumstances surrounding divorce. The view on mahr in society varies between Muslims and others who see it only as a form of financial expense. This can lead to inconsistencies where marriages are taken through legal checks, especially when couples relocate to another country where other legal expectations may be prevalent.

In some areas, especially Western countries, the laws do not provide for Islamic marriage contracts of mahr.<sup>10</sup>; hence disparities arise in the sense that a woman may be denied the financial benefits expected by Islamic law<sup>11</sup>. In countries like Iran, mahr is enforceable as a financial obligation is often included in marriage contracts and courts strictly uphold it.

While mahr may be considered as part of the personal law in other jurisdictions, such as India, there is potential for uneven application due to the pluralistic legal structure. Issues then arise when the couple relocates to a jurisdiction that does not recognize mahr or applies mahr at parity with secular marital duties. For instance, it has been observed that UK courts occasionally decline to enforce the agreements on mahr as those were religious obligations unless agreed as contractual.

International Muslim marriages often lead to significant legal problems and disputes, based on different grounds, processes, and recognition issues. There are several ways to dissolve an Islamic marriage: talaq, unilateral divorce initiated by the husband, and khula.<sup>12</sup>, where the wife requests the dissolution of the marriage, each having procedural requirements that vary considerably between the various Islamic

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<sup>10</sup>Oxford Academic, 'Chapter Abstract' (last accessed 27 November 2024) <https://academic.oup.com/book/8465/chapter-abstract/154279681>.

<sup>11</sup> Musawah, *Musawah Policy Brief 4: Equal Divorce Rights in Muslim Family Laws* (last accessed 27 November 2024) <https://campaignforjustice.musawah.org/wp-content/uploads/2023/05/Musawah-Policy-Brief-4-Equal-Divorce-Rights-in-Muslim-Family-Laws-1.pdf>.

<sup>12</sup>Bryan Fagan, 'An Introduction to Islamic Divorce and Marriage' (last accessed 27 November 2024) <https://www.bryanfagan.com/blog/2024/may/an-introduction-to-islamic-divorce-and-marriage/>.

jurisprudential schools<sup>13</sup>. Such differences can create disputes on the basis of divorce and the rights each party is entitled to after divorce. Another contentious issue is the recognition of divorce decrees, such as a divorce valid in one country may not be recognized in another because of different legal traditions or a lack of understanding of Islamic law.<sup>14</sup>

There have also been cases where people attempt to file for divorce in one country after being married in another, creating jurisdictional problems. The inequality of the rights that are given in cases of divorce under Islamic law only makes things more complicated. Women may then be at a disadvantage when the family courts in these non-Muslim countries.<sup>15</sup> Do not accept Islamic principles which can then limit their legal protection over dowry and child custody.<sup>16</sup>

This is another major area of contention as there are significant differences between the recognition and process of talaq. For instance, in countries like Saudi Arabia or Pakistan, talaq is considered valid if it meets the proper procedural requirements that are applied, which may include notice to the wife and registration. However, most jurisdictions, especially in Europe, find unilateral talaq discriminatory and against public policy. For instance, the European Court of Human Rights has consistently nullified divorces that were secured through talaq where they violated gender equality principles. The Indian Supreme Court also ruled triple talaq unconstitutional in *Shayara Bano v. Union of India* (2017)<sup>17</sup>, which marked a shift toward aligning Islamic practices with constitutional rights.

International Muslim marriages are characterized by notable differences in laws and conflicts related to issues such as consent, dowry, and divorce. These varied cultural interpretations and legal practices result in the need for better insight into Islamic

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<sup>13</sup>Fatima Seedat, 'Acceptable Grounds for Divorce in Traditional Muslim Jurisprudence' (last accessed 27 November 2024) <https://www.brandeis.edu/projects/fse/muslim/divorce.html>.

<sup>14</sup> International Divorce, 'Islamic Divorce vs. U.S. Divorce' <https://www.international-divorce.com/ISLAMIC-DIVORCE-VS-US-DIVORCE.htm> accessed 27 November 2024.

<sup>15</sup> Oxford Academic, 'Chapter Abstract' (last accessed 27 November 2024) <https://academic.oup.com/book/8465/chapter-abstract/154275432>.

<sup>16</sup>ISPU Report: Marriage II (last accessed 27 November 2024) [https://www.ispu.org/wp-content/uploads/2016/08/ISPU-Report\\_Marriage-II\\_Macfarlane\\_WEB.pdf](https://www.ispu.org/wp-content/uploads/2016/08/ISPU-Report_Marriage-II_Macfarlane_WEB.pdf).

<sup>17</sup> *Shayara Bano v. Union of India* (2017) 9 SCC 1, AIR 2017 SC 4609.

marital law due to its implications for personal rights and the legitimization of marriages globally. Understanding these complexities becomes paramount as the world grows ever more globalized with transnational marriages. The knowledge and experience acquired in these legal structures will strengthen the rights and safeguards for those entering international Muslim marriages.

## VII. HOW DO INTERNATIONAL HUMAN RIGHTS STANDARDS AND TREATIES INFLUENCE THE ADJUDICATION OF SUCH CASES IN DIFFERENT JURISDICTIONS?

International human rights standards and treaties also significantly shape the case law regarding Muslim marriages across different jurisdictions. These instruments can provide a framework through which religious laws can be aligned with universal principles of equality, dignity, and justice. This often provides courts resolving conflicts of laws a point of reference.

The *UDHR*, *International Covenant on Civil and Political Rights (ICCPR)*<sup>18</sup>, the principles of equality before the law, and non-discrimination all have a significant impact on how marriage-related disputes are adjudicated. Article 16 of the UDHR<sup>19</sup> Explicitly states that the rights between spouses during marriage and when it is dissolved are equal, which obliges the courts to view practices like unilateral divorce or unequal mahr provisions through the gender equality prism.

For instance, the European Court of Human Rights has often declared unilateral talaq decisions violating the guarantees of equality under the European Convention on Human Rights to be null and void.<sup>20</sup> Such practices are incompatible with modern human rights standards the, court's decision in the *Refah Partisi* case emphasizes the

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<sup>18</sup> OHCHR, 'Universal Declaration of Human Rights: Article 16' <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30-articles-30-articles-article-16> accessed 27 November 2024.

<sup>19</sup> United Nations, 'Universal Declaration of Human Rights: Article on Marriage' <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Marriage%20shall%20be%20entered,intending%20spouses>. accessed 27 November 2024.

<sup>20</sup> OHCHR, 'Universal Declaration of Human Rights: Article 16' <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30-articles-30-articles-article-16#:~:text=Some%20subsequently%20interpreted%20the,these%20lines>. accessed 27 November 2024.

necessity for legal systems to reconcile traditional practices with international human rights standards. It illustrates that legal interpretations must not only adhere to local customs but also ensure compliance with overarching human rights norms.<sup>21</sup>

In such jurisdictions, courts will also use public policy exceptions as a basis to refuse to recognize foreign judgments or practices that are deemed in contradiction with local norms. An example is *Shayara Bano v. Union of India* (2017)<sup>22</sup> Wherein the Indian Supreme Court ruled out triple talaq on account of international human rights obligations and gender justice. European courts have not given effect to mahr agreements if it is seen that they contradict equality principles or are entered into in situations of inequality and coercion in *Uddin v. Choudhury, (UK)* <sup>23</sup>.

Treaties such as CEDAW and CRC stress-free consent and minimum marriageable age. This is why the courts are increasingly looking at child marriage or forced marriages under Muslim personal laws to determine whether the marriage conducted is valid or not. In France, for example, courts have annulled marriages conducted abroad under Muslim personal laws as they violated provisions under CRC in protecting children from harmful practices as ruled in *M.A. v. France*.<sup>24</sup>

Cultural and religious diversity often creates tension between the respect for that diversity (cultural relativism) and the universality of human rights norms. Despite the courts in many Muslim-majority countries focusing on adherence to local interpretations of Sharia, international treaties are increasingly informing legal reforms. For instance, Tunisia's personal status laws were reformed to conform to international human rights norms, such as eliminating the requirement for a male guardian in marriage under Tunisia's Law No. 58, 2017.<sup>25</sup>

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<sup>21</sup> Refah Partisi v. Turkey (last accessed 27 November 2024) <https://iilj.org/wp-content/uploads/2016/08/Refah-Partisi-v.-Turkey.pdf>.

<sup>22</sup> *Shayara Bano v. Union of India* (2017) 9 SCC 1, AIR 2017 SC 4609.

<sup>23</sup> *Uddin v Choudhury* [2009] EWCA Civ 1205.

<sup>24</sup> International Divorce, 'Divorces in France - Islam' <https://www.international-divorce.com/divorces-in-france-islam.htm> accessed (27 November 2024).

<sup>25</sup> Human Rights Watch, 'Tunisia: Domestic Violence Law Not Protecting Women' (8 December 2022) <https://www.hrw.org/news/2022/12/08/tunisia-domestic-violence-law-not-protecting-women> accessed (last accessed 27 November 2024).

International human rights standards and treaties can be seen as the guide in balancing religious practices with principles of justice and equality. Courts are now relying on these instruments to make cross-jurisdictional Muslim marriage decisions in a manner that respects cultural identities and fundamental human rights. However, there is a difference in this influence depending on local political, cultural, and legal frameworks.

## VIII. WHAT MECHANISMS EXIST, OR COULD BE DEVELOPED, TO HARMONIZE CONFLICTING LAWS AND INTERPRETATIONS TO PROTECT THE RIGHTS OF SPOUSES IN INTERNATIONAL MUSLIM MARRIAGES?

Harmonization of conflicting laws and interpretations of international Muslim marriages is key to the protection of spouses' rights, especially in cross-border disputes. The mechanisms and potential developments involve establishing common legal frameworks, judicial cooperation, and universal human rights standards.

### A. Existing Mechanisms

- **International Treaties and Conventions:** The Convention on the Elimination of All Forms of Discrimination Against Women and the Hague Conference on Private International Law provide frameworks to address cross-border marital disputes. That is, the efforts under CEDAW being gender equality-focused result in scrutinizing unilateral talaq or unequal mahr arrangements under international standards. *The Hague Convention on the Recognition of Divorces (1970)* enables recognition of divorce in cross-border situations, though it has limited reach since many Muslim-majority countries are not parties to this convention.<sup>26</sup>
- **Conflict of Laws Principles:** Typically, choice of law rules would help courts determine which country's laws apply in marriages and divorces. To cite

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<sup>26</sup> HCCH, 'Convention on the Recognition of Divorces and Legal Separations' (1 June 1970) <https://www.hcch.net/en/instruments/conventions/full-text/?cid=80> accessed [27 November 2024].

some examples, perhaps there are the *lex loci celebrations*<sup>27</sup> The principle of applying the law of the place where the marriage is celebrated, or perhaps their law would solve any discrepancies between the spouses. After all, there are diversities in legal interpretations as well.

- **Judicial Precedents and Public Policy:** Public policy exceptions enable courts to deny the recognition of foreign practices that violate local norms. For example, European courts usually decline talaq-based divorces when they contravene gender equality principles under the European Convention on Human Rights as ruled in *Djebbar v. France, ECHR*<sup>28</sup>.

## B. Potential Mechanisms for Harmonization

- **Bilateral and Multilateral Agreements:** Making treaties between two or more countries for Muslim marriage and divorce laws may help in recognizing rights for all. For instance, treaties between countries that have a high number of Muslims such as Indonesia and Malaysia may make rules for mahr, consent, and divorce uniform.
- **Unified Model Laws:** Drafting uniform model laws for international Muslim marriages is also possible, modeled from the Model Law on International Commercial Arbitration to follow the courts. Such international Islamic laws could harmonize the understanding and interpretation of Islamic principles toward those of international human rights standards.
- **Global Registry for Marriages and Divorces:** A global digital register for registering marriages and divorces can make things clearer and stop arguments because of unrecognized marital statuses. This system can interface with the existing civil registration systems, ensuring that recognition is observed everywhere.
- **Judicial Training and Cooperation:** Training programs in Islamic law and international human rights for judges and other legal workers may help

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<sup>27</sup> LSD Law, 'Lex Loci Celebrationis' <https://www.lsd.law/define/lex-loci-celebrationis> accessed [27 November 2024].

<sup>28</sup> BBC News, 'France Bans Full-Face Veil in Public' (BBC, 11 October 2010) <https://www.bbc.com/news/world-europe-42424547> accessed 27 November 2024.

create more uniform legal decisions. Models for such regions include the ASEAN Judicial Cooperation Framework.

- **Role of Islamic Institutions:** For instance, institutions such as the Organisation of Islamic Cooperation could adopt a consistent presentation of contentious issues to bring validity to unilateral talaq, child marriage, and mahr in harmony with modern human rights standards.

### C. Role of International Human Rights Standards

Human rights standards would be incorporated into the domestic laws and ensure uniformity of application across jurisdictions. This would be illustrated by examples, such as the removal of the male guardian's requirement in marriage, now introduced by the reforms of Tunisia, in line with international norms.<sup>29</sup>

## IX. CONCLUSION

There are very many legal and cultural/religious complications inherent in the complex international marriage landscape, and careful collective solutions have to be employed. Increasing inter-cultural marriages as well as international Muslim marriages imply that such differences and the lack of uniformity from one region to the next across jurisdictions clearly indicate an essential need for harmonizing international law.

Issues like consent, dowry, mahr, and divorce, among others, are cardinal to Islamic family law. These therefore must be approached with cultural traditions in mind and human rights standards of the present day. In this regard, there becomes a delicate balancing act by ensuring that the rights of spouses, particularly women are protected while being sensitive to religious and cultural differences.

The use of international human rights standards and treaties in guiding legal decisions would be paramount. Such standards offer guidelines that are necessary in promoting equality and dignity. These, in turn, can influence reforms in the national legal systems. With dialogue and collaboration, nations could build up a common approach

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<sup>29</sup> Musawah, 'Tunisia' <https://campaignforjustice.musawah.org/repository/tunisia/> accessed 27 November 2024.



to handling the problems that arise due to international Muslim marriages. Bilateral agreements, model laws, and judicial cooperation are thus some of the viable options in reconciling differences between secular and Islamic family law and ensuring that both cultural practices and human rights are respected. In the end, it will be a legal system where everyone's rights and dignity are protected regardless of their marital situation and opens doors to more just and harmonious relationships in a global society.