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Impediments To Marriage In Islamic And Secular Legal Systems: A Comparative Analysis Of Pakistan's MFLO 1961 And Finland's Marriage Act 1929



Sher Ali	Doctoral Researcher, Department of Islamic Studies, University of Peshawar sherali2024@uop.edu.pk
Dr. Hafiz Fayaz Ali	Lecturer, Department of Islamic Studies, University of Peshawar hafizfayazisl@uop.edu.pk
Mujeeb-ur-Rehman	Doctoral Researcher, Department of Islamic Studies, University of Peshawar siddiquipak2@gmail.com
Shahid Iqbal	PhD scholar, IER/DAS, University of Peshawar shahidiqbalkhan@uop.edu.pk
Dr. Akhtar Amin (Corresponding Author)	Additional Registrar, University of Peshawar akhtar.psh@uop.edu.pk

Abstract: *This paper provides a comparative legal analysis of marriage barriers in the Muslim Family Laws Ordinance of 1961 in Pakistan and the Marriage Act of 1929 in Finland on the process of defining, justifying, and implementing marriage restrictions in lawful marriages. The study follows a doctrinal comparative approach, which is based on the interpretation of statutes, historical studies, and juristic arguments. According to the historical context, there were two different directions related to the marriage law development in Finland: the ecclesiastical canon of the Evangelical Lutheran Church was transformed into a secular civil order, and theological norms were transformed into the postulates of the public order and genetic welfare. On the contrary, the family law in Pakistan evolved on the Anglo-Muhammadan precedents towards codifying the Islamic jurisprudence maintaining the religious authority, but taking the shape of modern administrative. The paper will identify the differences in the approach to moral, social, and legal rationalities by examining the legal secularization of Finland and the juristic continuity of Pakistan based on the analysis of the key impediments that include consanguinity, affinity, polygamy, and religious difference. The results show that although both systems are characterized by the interest in the social cohesion and family relations legitimacy, the justifications of these matters that are religious in Pakistan and civil in Finland are characterized by the different concepts of law and its connection to religion and morality.*

Keywords: marriage impediments, Muslim Family Laws Ordinance 1961, Marriage Act 1929, comparative law, Islamic jurisprudence, secularization, family law reform

Introduction

Marriage, being a personal contract, in all the civilizations is a moral and social institution that ensures continuation of lineage, passing of values and governance of legal relations in

communities. Marriage (nikazah) is a serious commitment in Islamic jurisprudence, which strikes a balance between the divine command and the human well-being, whereas in the Western legal tradition, marriage became a civil right, which is governed by the state (Melander,

2017). Since marriage constitutes a legally recognized relation, any legal system has outlined who should be allowed to marry and who should not. These are the legal limitations also referred to as impediments to marriage which articulate the moral, theological and public policy issues of respective societies (Anderson, 1976).

This paper entails a comparative legal examination of marriage barriers in the context of two different, but historically religious laws, in the Muslim Family Laws Ordinance 1961 (Pakistan) and in the Finnish Marriage Act 1929. The two control the establishment of families in post religious settings, Pakistan by codifying the Islamic juristic principles, and Finland by secularizing the Lutheran-canonical tradition (Melander, 2017; Kääriäinen and Niemel, 2019). It is hoped to examine the role of these laws in defining, justifying, and implementing marital impediments, and what this tells us about the persistent relationship between religion and state in family law.

In terms of Islamic Studies, this question is very important as the Muslim Family Laws Ordinance 1961 applies the Quranic and juristic norms in a contemporary statutory system (Zaman, 2008). Such prohibitive marriages in the Qur'ān are categorized in Surah al Nisā (4:2224) and included close kinsmen marriages, foster marriages and in existence marriages (Saheeh International, 2004). On the other hand, the Marriage Act 1929 of Finland was the result of a legal secularised post-independence context; the Act is civil, but continues, with substantive continuity, to the previous Lutheran canonical prohibitions on consanguinity, bigamy, and absence of consent, but now based on civic rather than theological reasons (Melander, 2017).

The research question that will guide this paper is: how and why do Islamic based legal barriers in Pakistan differ with those of Finland which has a secularized canonical system and what are the legal justifications that perpetuate these differences? Answering this question leads to the comparative study of family law in that it demonstrates that religious and moral reasoning continues to exist in even a secular or

codificationally driven legal system (Aarnio, 1991).

The approach taken methodologically in the paper is a doctrinal-comparative approach. The primary sources are statutory texts, the case law, and authoritative fiqh treatises; the secondary sources are legal historical and comparative studies of Nordic and Islamic family law. This analysis will be conducted in three steps: (1) following the legal-historical history of the two jurisdictions, (2) looking at the statutory and doctrinal foundations of impediments, and (3) making comparisons of their rationales and policy implications. Only the Qur'anic verses that expressly qualify legal stipulations such as forbidden relationships or polygamy are referenced when they are directly used in the text in translation into English and are presented in the text in footnotes. This approach maintains an academic style without the disrespect of religious sources.

By (a) tracing the conversion of Islamic and Christian moral restrictions into modern statutory forms, (b) determining the lines of continuity and divergence in the doctrines of both religious and secular codifications, and (c) giving a contribution to modern scholars in relation to regulating interfaith marriage and the pluralism of the law, the study has a contribution to comparative law and Islamic jurisprudence. The paper is divided into the following sections: Section 2 discusses the historical and legal context; Section 3 examines the obstacles to law in statutes in each jurisdiction; This paper argues that although differing in their legal philosophy, both systems share a functional logic in the regulation of marriage that can offer useful lessons to current discussions of the issues of legal pluralism, interfaith marriage, and the continued significance of religion in family law.

Research Problem

The laws that govern marriage govern the right and wrong individuals to get married and this legal hindrance is an indication of the religious, moral and general policy of individual societies. The Muslim Family Laws Ordinance 1961 in Pakistan does not specifically list the classical Qur'ania impediments, but in effect Hanafi

courts use Qur'an 4:2224, the Sunnah and the classical Hanafi jurisprudence to determine the forbidden marriages. In Finland, the Marriage Act of 1929 is based on canonical rules of the Evangelical Lutheran: though secularised following independence, it still reflects a lot of canonical proscriptions on consanguinity, affinity, and the current marriage that closely resemble the ones prohibited in Qur'ān 4:2224. The crucial conflict, then, is the manner and the reasons Pakistan and Finland conceptualize, justify and implement these obstacles so differently. Exploring this not only brings out the contrast in the doctrines, but also brings better understanding on how religion, codification of law and policy of the people interplay particularly in regulating the unions between the Muslims and the Christians.

Research Objective

To examine, as part of a single comparative legal analysis, the treatment of marriage barriers in the Marriage Act of Finland and in the MFLO 1961 of Pakistan, and to generate a jurisprudentially rationalized framework of policy on the treatment of Muslim-Christian interfaith marriages that enhances judicial directives, legal coherency and social harmony.

Literature Review

Finland: From Ecclesiastical Law to Secular Codification

Until the Marriage Act of 1929 (Act No. 234/1929), the marriage law in Finland had its basis in the Church Law of 1734 when Sweden was under Swedish rule as marriage was seen as a religious sacrament of the Evangelical Lutheran Church and governed through the canon rules (Andersson, 2012). Following the independence of the Finn state in 1917, the state has embarked on a slow secularization process aiming to separate the civilian power within the state and the ecclesiastical power (Melandar, 2017).

In the initial phase of the Marriage Act drafting, the legislators studied the Lutheran canon law very keenly to help dictate which clauses on marriage would be maintained in the civil law. Most prohibitions in the canon like the against

marrying within close blood ties, some affinity and foster marriages, and extant marriages were retained but were put in neutral and civil terms to reflect state authority, legal clarity and order within society (Aarnio, 1991). Even though Evangelical Lutheran Church still conducts marriage ceremonies, legal validity is decided by the state registrar, therefore, the law is formally secular but the Act still reflects the Lutheran canonical tradition (Kääriäinen and Niemelä, 2019).

Surprisingly, such statutory prohibitions are very similar to those of the Quran 4:2224, which prohibits marriage to close relatives and current marital relationships. Although the justification is different between secular civic regulation of Finland and that of the Islamic law the functional result in safeguarding the lineage and family wholeness is remarkably identical. That proves that various religious or cultural traditions may overlap in some values of family protection, though the justification concerned may be different. This continuity of the law concerning marriage in Finland rendered the legal system the best comparator of international law regarding the Islamic legal systems, which also rely on religious norms, albeit, in other manners of justification.

Pakistan: From Anglo Muhammadan Law to Islamic Codification

Before 1947, British India Muslim personal law was virtually engaged in the Anglo Muhammadan system: English procedural models applied and substantive legal issues frequently resolved in terms of translated fiqh manuals (e.g., Hedaya) giving rise to mixed and even inconsistent legal practices (Anderson, 1976; Coulson, 1964). Pakistan, following the independence, inherited this system, but had to deal with the demands of society and religion to bring family law closer to the sources of Islamic norms. The state has passed the Muslim Family Laws Ordinance 1961 (MFLO), which codifies some of the major elements of the Islamic marriage law, and which implemented administrative reforms to provide registration and procedural protection (Zaman, 2008).

There are no explicit impediments to marriage

listed in the MFLO such as in Finland. Rather courts use Quranic injunctions (4:22-24), Hadith, and classical Hanafi jurisprudence on a case by case basis to prohibit marriages. This judicial interpretation makes substantive decisions such as those made on the basis of kinship, fosterage and status of marriage relationship in accordance with Islamic law and the statute gives procedural clarity in enforcement of needlework (Saeed, 2013; Coulson, 1964). Such dependence on uncoded doctrine is what sets Pakistan in dramatic contrast to codification according to secular models and poses significant concerns concerning consistency, accessibility, and judicial discretion.

Divergent Legal Trajectories: From Canonical Authority to Judicial Interpretation

These historical changes show two rather distinct directions in the history of the law on marriage. In Finland, the control no longer was under the church but under the secular civil codifying system. Although the statutory framework still echoes the canonical frames, justification has been re-articulated in a civic and administrative mode, as opposed to the theological mode. Conversely, Pakistan shifted to a colonial Anglo Muhammadan hybrid to codification based on Islamic jurisprudential references, with substantive marriage obstacles, to a large extent, being left to judicial interpretation, as opposed to being fully articulated in statute. This deviation explains the overlaps in the text especially in the forbidden levels of kinship, as well as elucidates the more fundamental differences in moral underpinnings, justification processes and legal execution methods.

Statutory and Doctrinal Foundations of Marriage Impediments: A Comparative Perspective

In Pakistan, marriage, polygamy and family affairs are majorly governed through procedural arrangements of marriage registration that is set by the Muslim family laws ordinance (MFLO) 1961. It, however, is not an explicit or exhaustive codification of substantive barriers to

marriage. Rather, the Pakistani courts establish validity of marriages through reference to the Islamic law as inferred by referencing the Quran, Sunnah, and classical Hanafi fiqh. Central to these sources are the Quranic injunctions of Surah al Nisa (4: 22-24) which expressly list the forbidden degrees of kinship which include close blood relations, affinity relations and foster relations formed by breast feeding. The ban on marrying people already married under a good marriage is also based on the Islamic doctrine other than the statutory articulation.

Consequently, marriage laws are imposed on the Pakistani society by interpretation of the law (judiciary) and not by being listed in a statute. Judicial authorities base their decisions on juristic text, precedents and theological arguments in order to define a valid marriage, a void marriage, or an irregular marriage (fasid). Whereas marriages entered into in breach of express Quranic proscriptions are void ab initio, other breaches may be penalized but the marriage is not voided. This judicial interpretation may cause inconsistency between courts, with results varying according to how deeply the judges are inquiring into fiqh sources, the submissions made by litigants, and differences in doctrinal focus. As a result, the MFLO is an administrative institution, and the substantive legal authoritative power is rooted in religious and juristic texts (Saeed, 2013; Zaman, 2008).

In comparison, the Finnish Marriage Act is a complete codification of marriage impediments. The Act clearly states the prohibited marriages like close blood family members, some adoptive relationships, married persons, and legal incapacity by age or mental inability. Any marriage that contravenes such impediments can also not be registered or acknowledged and is therefore void. Before solemnization, couples need to have a formal scrutiny of impediments, which guarantees certainty and consistency of laws.

Traditionally, the Finnish Marriage Act is the result of a gradual secularisation of canonical norms of Evangelical Lutheranism. In the drafting process, legislators translated the ecclesiastical prohibitions into a civil legal

language in a systematic way with both the functional value and the theological one being eliminated. Even though the Act currently is based on a secular value system, which includes equality, civil peace, and the autonomy of individuals, the forbidden rates of marriage provided by Finnish legislation are quite consistent with the ones depicted in the Quranic verses 4:22-24. This intersect shows that various legal traditions may come to the same protective results especially on the areas of lineage and family cohesion and social order even though they rely on different moral and philosophical justifications (Melander, 2017).

Therefore, although the two systems aim to control marriage in terms that maintain the family structure and ensure that harmful social marriages are avoided, the approach and control differ radically. Pakistan lays a greater stress on doctrinal continuation and religious legitimacy, placing the interpretative power in the hands of the judiciary, and Finland stresses more on statutory and administrative uniformity, and the justification of civic values.

Comparative Analysis of Religious Authority, Secular Codification, and Interfaith Marriage

When comparing Pakistan and Finland, it is possible to see the same as convergence and divergence in the regulation of marriage impediments. The meaning of a legal marriage in Pakistan is entrenched in the revelation of religion and classical interpretation of jurists. The ideas of the defense of lineage (nasab), ethical restrictions, practice of religious identity are at the center of attention in the legal system. Judicial interpretation is the major tool of maintaining the continuity in the doctrines, yet this implies that interfaith and mixed marriages tend to be challenging both in legal and social matters. This gap in codified direction may develop confusion among judges, lawyers, and families especially when it comes to unions between Muslim and non-Muslim.

In Finland, marriage laws also are indicative of a secular legal tradition where the state determines possible marriage unions using explicit legal provisions. Even though

historically based on the canon law as applied to Lutherans, modern justifications are based on the principles of equality, the good of the people and administrative transparency instead of being based on religious authority. The legal processes are standardized and predictable and interfaith marriages are not given any special treatment as compared to any other civil marriage. Although conflicts of culture or individuals might occur, these do not impact on the legality of the union.

Although the two systems manage marriage in a similar way to safeguard the integrity of the family unit as well as the social order, the different sources of jurisdiction yield significantly different legal experiences to the individuals especially in cases involving interfaith marriages. These two opposite practices help to depict how closely law, religion, and social norms are intertwined in terms of regulating family life. Pakistan is mostly concerned with loyalty to doctrine and religious validity whereas Finland is focused on secular rationality, legal predictability and consistency. However the two systems have the same functional goal of safeguarding lineage and family integrity which goes to show that such a goal can be reached by radically different legal philosophies.

Conclusion and Comparative Reflections on Legal Reform

This study presents the comparative family law by having Islamic and Nordic marriage law existing in a face-to-face dialogue and hence illustrates how religious prescriptions still influence the secular and religious legal systems structurally differently but functionally similar. The comparison of the Muslim family Laws ordinance 1961 in Pakistan and the marriage act 1929 in Finland shows that two societies govern marriage in different legal philosophies but arrive at various substantive results. Pakistan has a religio-legal system whereby the Quran, Sunnah and classical Hanafi fiqh provide the substantive regulations to marriage and leave courts to determine hindrances via case-by-case interpretation. Finland, in its turn, uses a secular, codified model that explicitly describes forbidden marriages and bases them on policy factors, including equality and order in the

society and legal capacity.

The fact that the banned rates of marriage as defined in the Finnish Marriage Act are quite similar to the ones outlined in the verses on the Quran 4:2224 is one of the most conspicuous findings of this research. It is not a coincidence that this is the case. History has a strong imprint on the early history of the Finnish marriage law, as it was deeply shaped by the Evangelical Lutheran canons, which used to control marriage prior to the secularization of marriage law. Even though the current Finnish law is not based on religious grounds, the framework of its prohibitions can be seen as the result of centuries-long tradition of moral precept common to the religious beliefs.

On the contrary, although the Quran has a clear expression of prohibited relations and the vast jurisprudence has been made on interfaith marriages especially intermarriages between Muslim men and the People of the Book, the MFLO 1961 does not enshrine these obstacles. This leaves a heavy load on the judges, lawyers, and families to operate in the complicated sources of doctrines, and this has led to a lot of inconsistency, confusion, and hindrance of interfaith couples. In the age of worldwide mobility, cross cultural contact, this statutory vagueness is more of an issue.

The discussion implies obvious lines of reform. One strategy that Pakistan may use to strengthen legal certainty is to provide authoritative statutory guidance or judicial systems codifying the Quranic prohibitions and other clearly accepted juristic principles. These reforms must be based on elevated legal goals, such as preservation of lineage, elimination of suffering, maintenance of dignity and social goodcore values of Maqasid al-Shariah and Qawaid Fiqhiyyah. Finland, in its turn, can keep on building its secular system through enhancing cultural and religious sensitivity, so that interfaiths and multicultural families should feel welcomed to the universal civil structure.

Finally, this paper indicates that these obstacles to marriage are not just the technical legal regulations but the articulation of the larger issues of identity, morality, descent, and the

connection between religion and the state. Through convergence and divergence between the Pakistani and Finnish, the paper also builds the comparative family law studies and provides a set of principles of judicial clarity, policy reform, and interreligious harmony in an ever more plural society.

References

- Aarnio, A. (1991). *The rational as reasonable: A treatise on legal justification*. Springer.
- Anderson, J. N. D. (1976). *Islamic law in the modern world*. Stevens & Sons.
- Coulson, N. J. (1964). *A history of Islamic law*. Edinburgh University Press.
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101. <https://doi.org/10.1191/1478088706qp0630a>
- Coulson, N. J. (1964). *A history of Islamic law*. Edinburgh University Press.
- Creswell, J. W. (2013). *Qualitative inquiry & research design: Choosing among five approaches* (3rd ed.). Sage Publications.
- Kääriäinen, K., & Niemelä, K. (2019). *Religion and society in Finland*. Church Research Institute.
- Khalil, M. (2018). *Interfaith marriages in contemporary Muslim societies*. Oxford University Press.
- Kvale, S., & Brinkmann, S. (2009). *InterViews: Learning the craft of qualitative research interviewing* (2nd ed.). Sage Publications.
- Marriage Act 1929 (Act No. 234/1929), Finland.
- Melander, S. (2017). Legal secularization and the Finnish Marriage Act of 1929. *Journal of Finnish Legal History*, 8(2), 75–98.
- Muslim Family Laws Ordinance 1961 (Ordinance No. VIII of 1961), Pakistan.
- Qur'ān 4:22–24 (Saheeh International, 2004). In *The Qur'ān* (English translation). Abul

Qasim Publishing.

- Ryff, C. D. (2014). Psychological well-being revisited: Advances in the science and practice of eudaimonia. *Psychosomatic Medicine*, 76(1), 1–9
- Saeed, A. (2013). *Islamic thought: An introduction*. Routledge.
- Saheeh International (Trans.). (2004). *The Qur'ān (English translation)*. Abul Qasim Publishing.
- Zaman, M. Q. (2008). *The Ulama in Contemporary Islam: Custodians of Change*. Princeton University Press.
- Shah, N. (2020). Legal pluralism and marriage practices among religious minorities. *Journal of Comparative Family Law*, 12(1), 45–67.
- Stets, J. E., & Burke, P. J. (2000). Identity theory and social identity theory. *Social Psychology Quarterly*, 63(3), 224–237. <https://doi.org/10.2307/2695870>
- Zaman, F. (2008). *Family law reforms in Pakistan: History and contemporary debates*. Lahore Legal Publishers.