

**COMPARATIVE ANALYSIS OF ISLAMIC LAW AND STATUTORY LAW ON MARRIAGE
AND DIVORCE IN NIGERIA**

By

**MMAHI CHRISTIAN CHUKU
(2020/LW/20752)**

**A PROJECT PRESENTED TO THE FACULTY OF LAW,
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**SUPERVISOR
CHARITY CHINEDU-UHUO ESQ.**

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TITLE PAGE

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**MMAHI CHRISTIAN CHUKU
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**SUPERVISOR
CHARITY CHINEDU-UHUO ESQ.**

DECLARATION

I, Mmahi Christian, hereby solemnly declare that this research work, titled **A Comparative Analysis of Islamic Law and Statutory Law on Marriage and Divorce in Nigeria**, submitted in partial fulfilment of the requirements for the award of LL.B, is an original and authentic production of my intellectual endeavours.

I attest that:

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Name: MMAHI CHRISTIAN CHUKU

APPROVAL AND CERTIFICATION

PURSUANT TO THE REQUIREMENTS of Alex Ekwueme Federal University, Ndufu-Alike, Ikwo, Ebonyi State, and the Faculty of Law therein, it is hereby certified that the research work titled **A Comparative Analysis of Islamic Law and Statutory Law on Marriage and Divorce in NIGERIA**, submitted by **Mmahi Christian** in partial fulfillment of the requirements for the award of LL.B, has been examined and approved as meeting the standards of scholarship and research.

NOW, THEREFORE, BE IT RESOLVED that the research work titled, **A Comparative Analysis of Islamic Law and Statutory Law on Marriage and Divorce, Compare and Contrast The Laws and Regulations Surrounding Marriage and Divorce in Islamic and Statutory Marriage**, is hereby approved:

BARR. CHARITY CHINEDU-UHUO (SUPERVISOR).	_____ Signature.	_____ Date
DR K.G ONYEGBULE. (COORDINATOR).	_____ Signature.	_____ Date
PROF. ESENI AZU UDU. (DEAN OF FACULTY).	_____ Signature.	_____ Date
EXTERNAL EXAMINER.	_____ Signature.	_____ Date

DEDICATION

To my loving mother, elder Hannah c. Mmahi, my elder brothers Morgan Mmahi and Dr. James c. Mmahi, for their un-ending support through my educational pursuit, I dedicated this to you all.

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1. The 1999 Constitution of the Federal Republic of Nigeria (as amended)
2. The Marriage Act, 1990.
3. The Matrimonial Causes Act, 1970
4. Sharia laws
5. Child Rights act, 2003

LIST OF ABBREVIATIONS

1. NSCIA---. The State Sharia Council, particularly ----- page 40
the Nigerian Supreme Council
for Islamic Affairs.
2. VAPP ACT- The Violence Against Persons -----page 60,61
(Prohibition) Act 2015.
3. IMC--- Inter-Governmental Marital Committee -----page 45
4. EI&I--- The Ministry of Interior's Enforcement,---page 43
Inspection, and Investigation .
5. FCT---. The federal capital territory. -----page 41,42,43

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ABSTRACT

Marriage and divorce are pivotal institutions in every society, governed by diverse legal frameworks. This study undertakes a comprehensive comparative analysis of Islamic law and statutory law on marriage and divorce, with a focus on the laws and regulations surrounding these institutions in Nigeria. The purpose of this research is to bridge the knowledge gap in the comparative analysis of Islamic and statutory laws on marriage and divorce. Despite the coexistence of these legal frameworks in many jurisdictions, there is a dearth of scholarly research on their comparative analysis. This study aims to contribute to the existing body of knowledge by examining the similarities and differences between Islamic and statutory laws on marriage and divorce, and exploring the implications of these differences for individuals, families, and society at large. This study reveals significant differences between Islamic and statutory laws on marriage and divorce, particularly in areas such as marriageable age, consent, dowry, and grounds for divorce. The study employs a qualitative research methodology, involving a comparative analysis of relevant Islamic and statutory laws, as well as a review of existing scholarly literature on the subject. The study concludes that a deeper understanding of the differences and similarities between Islamic and statutory laws on marriage and divorce is essential for promoting legal pluralism, protecting human rights, and fostering social cohesion in multicultural societies. The study highlights the need for legal reform and policy changes to address the gaps and inconsistencies in the current laws and regulations governing marriage and divorce. The study recommends the development of a more nuanced and context-specific approach to the regulation of marriage and divorce, one that takes into account the diverse legal and cultural traditions that coexist in many jurisdictions. The study also recommends the establishment of mechanisms for dispute resolution and access to justice for individuals who experience marriage and divorce under both Islamic and statutory laws.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The institution of marriage is a fundamental aspect of human society, and its regulation is a key concern of both religious and secular legal systems. In many Muslim-majority countries, including Nigeria, Islamic law (Shari'ah) plays a significant role in governing marriage and divorce. Islamic law, which is based on the Quran and the Hadith (the sayings and actions of the Prophet Muhammad), has a comprehensive set of rules and regulations governing marriage and divorce. These rules cover aspects such as the requirements for a valid marriage, the rights and obligations of spouses, and the procedures for divorce¹. The application of Islamic law in Nigeria is facilitated by the existence of Shari'ah courts, which have jurisdiction over Islamic law matters, including marriage and divorce.

However, statutory law also regulates marriage and divorce in Nigeria, often leading to complexities and conflicts between the two legal systems. The Nigerian Marriage Act² and the Matrimonial Causes Act³ are the primary statutory laws governing marriage and divorce in Nigeria. The Marriage Act regulates the formalities and requirements for a valid marriage, while the Matrimonial Causes Act provides for the granting of divorces and the resolution of matrimonial disputes. The coexistence of Islamic law and statutory law in Nigeria creates a complex legal landscape, which can lead to confusion and conflict, particularly in cases where

¹ ARI Doi, *Shariah: The Islamic Law* (Ta-Ha Publishers, 1984).

² Nigerian Marriage Act, 1990

³ Nigerian Matrimonial Causes Act, 1970

one spouse is a Muslim and the other is not, or where the parties have different understandings of their rights and obligations under each legal system. The interplay between Islamic law and statutory law in Nigeria is further complicated by the existence of customary law, which also regulates marriage and divorce in certain contexts. Customary law in Nigeria is based on the traditional practices and customs of the various ethnic groups in the country. In some cases, customary law may be in conflict with Islamic law or statutory law, leading to further complexities and challenges⁴. The Nigerian legal system is characterized by a complex interplay between Islamic law, customary law, and statutory law, which can create challenges for individuals seeking to navigate the legal system.

The importance of understanding the laws and regulations surrounding marriage and divorce in Nigeria cannot be overstated. Marriage and divorce have significant social, economic, and emotional implications for individuals and families, and the legal framework governing these institutions can have a profound impact on their well-being⁵. Moreover, the regulation of marriage and divorce is closely tied to broader issues of human rights, gender equality, and social justice. The Nigerian government has a responsibility to ensure that the laws and regulations governing marriage and divorce are fair, just, and equitable, and that they protect the rights and interests of all individuals, regardless of their religion, ethnicity, or social status. This study aims to contribute to the existing literature on Islamic law and statutory law in Nigeria by providing a comprehensive comparative analysis of the laws and regulations surrounding marriage and divorce. The study will examine the key similarities and differences between Islamic law and statutory law in this area, and will consider the implications of these differences for individuals, families, and society as a whole.

⁴ P Ostein, 'The Intersection of Islamic Law and Statutory Law in Nigeria: Challenges and Opportunities'. *Journal of Islamic Law and Culture* [2012] (14) (1) 1-15.

⁵ AA An-Na'im, *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Books, 2002).

The study will also explore the challenges and complexities arising from the interplay between Islamic law, customary law, and statutory law in Nigeria, and will consider the implications of these challenges for the development of a fair, just, and equitable legal system.

1.2 Statement of the Problem

The regulation of marriage and divorce in Nigeria is characterized by a complex and multifaceted legal framework, which is comprised of Islamic law, customary law, and statutory law. This pluralistic legal system creates a myriad of challenges and conflicts, particularly in cases where one spouse is a Muslim and the other is not, or where the parties have different understandings of their rights and obligations under each legal system.

One of the primary problems with the current legal framework is the lack of clarity and consistency in the application of Islamic law and statutory law. For instance, the Nigerian Constitution recognizes Islamic law as a source of law, but it does not provide clear guidelines on how Islamic law should be applied in cases involving marriage and divorce (Nigerian Constitution, 1999). Similarly, the Nigerian Marriage Act and the Matrimonial Causes Act, which are the primary statutory laws governing marriage and divorce, do not provide clear guidelines on how to reconcile conflicts between Islamic law and statutory law (Nigerian Marriage Act, 1990; Nigerian Matrimonial Causes Act, 1970). Furthermore, the existing laws and regulations governing marriage and divorce in Nigeria have been criticized for being inadequate, inconsistent, and discriminatory, particularly against women and vulnerable groups. For example, Islamic law in Nigeria has been criticized for its patriarchal bias, which can lead to unequal treatment of women in cases involving marriage and

divorce (An-Na'im, 2002). Similarly, statutory law in Nigeria has been criticized for its failure to provide adequate protection for women's rights in cases involving marriage and divorce (Ostein, 2012). Despite the importance of marriage and divorce as social and economic institutions, there is a dearth of research on the comparative analysis of Islamic law and statutory law on marriage and divorce in Nigeria. The existing literature on the subject is limited, and there is a need for a comprehensive study that examines the similarities and differences between Islamic law and statutory law on marriage and divorce, and the implications of these differences for individuals, families, and society as a whole. This study is aimed to address this issue.

1.3 Research Questions

This study seeks to address the following research questions:

1. What are the key principles and provisions of Islamic law and statutory law on marriage and divorce in Nigeria?
2. What are the similarities and differences between Islamic law and statutory law on marriage and divorce in Nigeria?
3. What are the implications of the similarities and differences between Islamic law and statutory law on marriage and divorce for individuals, families, and society as a whole?
4. How can the existing laws and regulations governing marriage and divorce in Nigeria be reformed to ensure greater consistency, clarity, and fairness?

1.4 Aim and Objectives of the Study

The main of this study is to conduct a comparative analysis of Islamic law and statutory law on marriage and divorce in Nigeria, with a view to comparing and contrasting the laws and regulations surrounding marriage and divorce in Islamic and statutory marriages, and identifying areas of convergence and divergence.

1. To identify and analyze the fundamental principles and provisions of Islamic law and statutory law governing marriage and divorce in Nigeria.
2. To examine and compare the similarities and differences between Islamic law and statutory law on marriage and divorce in Nigeria.
3. To investigate the social, economic, and cultural implications of the similarities and differences between Islamic law and statutory law on marriage and divorce for individuals, families, and society in Nigeria.
4. To propose recommendations for reforming the existing laws and regulations governing marriage and divorce in Nigeria to ensure greater consistency, clarity, and fairness.

1. Research Methodology

This study employs the doctrinal research approach, which involves a systematic and analytical examination of legal principles, concepts, and rules. The doctrinal approach is particularly suited to this study, as it enables a detailed analysis of the legal frameworks governing marriage and divorce in Nigeria. The study relies on primary and secondary sources of data. Primary sources include statutes such as the Marriage Act and the Matrimonial Causes

Act, judicial decisions of Nigerian courts on marriage and divorce, and Islamic law texts including the Quran, Hadith, and juristic opinions.

Secondary sources comprise academic journals, books and monographs written by scholars and experts on Islamic law, Nigerian law, and comparative law, as well as reputable online resources. The data collected from these sources will be analyzed using a qualitative approach. The analysis will involve a detailed examination of the language, structure, and content of the legal texts and case law, as well as a comparative analysis of the legal principles, concepts, and rules governing marriage and divorce in Islamic law and Nigerian statutory law. A critical evaluation of the strengths, weaknesses, and implications of the legal frameworks governing marriage and divorce in Nigeria will also be conducted.

The research design for this study is doctrinal, involving a systematic and analytical examination of legal principles, concepts, and rules. The study will follow a qualitative research approach, using primary and secondary sources of data. The data analysis will involve textual, comparative, and critical analysis, providing a comprehensive understanding of the legal frameworks governing marriage and divorce in Nigeria.

1.6 Significance of the Study

The significance of this study lies in its potential to contribute meaningfully to both practical and theoretical discourse on the intersection of Islamic law and statutory law on marriage and divorce in Nigeria. On the practical level, this research aims to provide a comprehensive understanding of the similarities and differences between Islamic law and statutory law on marriage and divorce in Nigeria. The findings of this study will be beneficial to various stakeholders, including legal practitioners, judges and magistrates, policymakers, and

individuals, families, and communities seeking to understand their rights and obligations under both Islamic and statutory laws.

The study's practical significance extends to its potential to inform policy reforms and legislative initiatives, promote greater awareness and empowerment among individuals and communities, and enhance the effectiveness of legal services and judicial decision-making. By providing a nuanced understanding of the complexities of marriage and divorce laws in Nigeria, this study aims to contribute to the development of a more just, equitable, and effective legal system.

On the theoretical level, this study contributes to the existing body of knowledge on comparative legal studies, particularly in the context of Islamic law and statutory law. The study's comparative analysis framework provides a useful model for future research on comparative legal studies, while its engagement with theoretical debates on the intersection of religion and law, and the implications of legal pluralism for individuals and societies, advances our understanding of the complex relationships between law, religion, and society. By addressing the theoretical gaps in the existing literature on comparative legal studies, Islamic law, and legal pluralism, this study aims to make a meaningful contribution to the development of a more nuanced and contextualized understanding of the intersections between law, religion, and society. Ultimately, this research seeks to promote a deeper understanding of the complexities of marriage and divorce laws in Nigeria, and to contribute to the development of a more just, equitable, and effective legal system.

1.7 Scope of the Study

This study focuses on a comparative analysis of Islamic law and statutory law on marriage and

divorce in Nigeria. The scope of the study encompasses the legal frameworks governing marriage and divorce in Nigeria, including the Marriage Act, the Matrimonial Causes Act, and Islamic law. A comparative analysis of the laws and regulations surrounding marriage and divorce in Islamic and statutory marriages is also conducted. However, the study is limited to the Nigerian context, exploring the application of Islamic law and statutory law on marriage and divorce within the country.

1.8 Limitations of the Study

The study is subject to several limitations. Firstly, it is jurisdictionally limited to Nigeria and does not explore the application of Islamic law and statutory law on marriage and divorce in other jurisdictions. Secondly, the study focuses primarily on the legal aspects of marriage and divorce, without delving into the social, cultural, or economic implications. Thirdly, the study relies on available data and literature, which may not be exhaustive or up-to-date. Finally, the study's interpretation of Islamic law may be subject to variation depending on the school of thought or jurisdiction.

1.9 Chapter Analysis

This paper explores the intersection of Islamic law and statutory law on marriage and divorce in Nigeria, examining the legal regime, institutional framework, and comparative analysis of both systems.

Chapter One introduces the study, providing background information, research questions, aim and objectives, research methodology, significance, scope, limitations, and chapter analysis. The chapter sets the stage for the investigation, outlining the research design, methods, and

expected outcomes.

Chapter Two reviews relevant literature, clarifying key concepts such as marriage, divorce, Islamic law, and statutory law. The chapter provides an overview of Islamic and statutory perspectives on marriage and divorce, understanding the concept of Islamic law (Shariah) and its application to marriage and divorce, and the meaning and scope of statutory law in relation to marriage and divorce. The chapter also examines the intersections and divergences between Islamic and statutory laws on marriage and divorce. Furthermore, the chapter examines theoretical foundations, including social contract theory, legal pluralism theory, and feminist legal theory, providing a framework for analyzing the intersection of Islamic law and statutory law on marriage and divorce.

Chapter Three examines the legal regime and institutional framework for regulating marriage and divorce in Nigeria. The chapter analyzes relevant statutes, including the Marriage Act, the Matrimonial Causes Act, the Sharia Court of Appeal Act, the Child Rights Act, and the Violence Against Persons (Prohibition) Act. The chapter also examines international conventions, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Additionally, the chapter explores the institutional framework, including the Supreme Court of Nigeria, the Sharia Court of Appeal, and the National Human Rights Commission.

Chapter Four presents a comparative analysis of Islamic law and statutory law on marriage and divorce, examining procedural requirements, rights, obligations, and implications for women and children. The chapter compares the procedural requirements for marriage and divorce under Islamic and statutory laws, examines the rights and obligations of spouses under both systems,

and assesses the impact of Islamic law and statutory law on the welfare and well-being of women and children in marriage and divorce. The chapter concludes by exploring possibilities for a harmonized approach to resolving tensions and conflicts between Islamic law and statutory law on marriage and divorce.

Chapter Five summarizes the key findings, draws conclusions, highlights contributions to knowledge, identifies areas for further studies, and provides recommendations for harmonizing Islamic law and statutory law on marriage and divorce in Nigeria.

CHAPTER TWO

LITERATURE REVIEW

2.1 Conceptual Clarifications

2.1.1 Marriage and Divorce

Within Islamic jurisprudence, marriage, termed *nikah*, is conceptualized as a contractual institution ordained by divine law, primarily delineated in the Quran and elucidated through prophetic traditions (Hadith), serving to regulate sexual relations, legitimize procreation, and establish a framework of reciprocal rights and obligations⁶. This includes the husband's duty to provide financial maintenance (*nafaqa*), encompassing shelter, food, and clothing, and the wife's entitlement to a dowry (*mahr*)—a mandatory gift symbolizing commitment—and inheritance rights upon the husband's death, as stipulated in Quranic verses such as Surah al-Baqarah 2:229. The contractual nature requires mutual consent, typically formalized with witnesses and a officiant (*wali*), ensuring transparency and voluntariness, though interpretations vary across legal schools, with the Maliki school dominant in Nigeria allowing paternal authority in arranging marriages for minors, subject to repudiation at puberty⁷. A hallmark of Islamic marriage is the permissibility of polygyny, sanctioned under Surah an-Nisa 4:3, permitting a man to wed up to four wives provided he maintains equitable treatment in material and emotional support—a provision rooted in historical contexts of supporting widows and orphans in early Islamic society⁸. In Nigeria, this framework is operationalized

⁶ AO Sanni, 'Fundamentals of Valid Marriage in Islamic Law: An Evaluation of Muslim Practices in Nigeria'. *Journal of Islamic Law Review* [2018] (14) (2) 123-145.

⁷ AL Badmus, *Islamic Family Law in Nigeria* (Ibadan: University Press PLC, 2020) 45.

⁸ N Aini, Inter-Religious Marriage from Socio-Historical Islamic Perspectives. Academia.edu. [2014] . Retrieved from Google Scholar.

predominantly in northern states under Sharia jurisdiction, where Islamic courts integrate Maliki interpretations with local customs, such as elaborate wedding ceremonies (fatiha), reflecting a synthesis of religious doctrine and socio-cultural norms⁹. This adaptability highlights the dynamic interplay between Islamic legal principles and Nigeria's pluralistic legal environment, where Sharia governs Muslim communities alongside statutory and customary systems, often leading to debates over issues like child marriage when juxtaposed against national laws like the Child Rights Act¹⁰. Consequently, Islamic marriage in Nigeria not only fulfills religious imperatives but also navigates the complexities of a multi-juridical state, balancing tradition with contemporary legal challenges. Divorce (talaq) in Islamic law, while permissible, is framed as an undesirable yet regulated mechanism, reflecting a pragmatic acknowledgment of marital discord¹¹. The husband may unilaterally pronounce talaq, subject to a revocable waiting period (iddah)—typically three menstrual cycles—intended for reconciliation, whereas the wife may pursue khul' (divorce by mutual consent with forfeiture of financial rights) or faskh (judicial dissolution) for reasons like spousal neglect, adjudicated by a qadi¹². Post-divorce, maternal custody is prioritized for young children, transitioning to paternal custody at majority, with property division based on ownership rather than equitable distribution¹³. In Nigeria's Sharia-implementing jurisdictions, these processes are formalized through Islamic courts, offering a streamlined alternative to statutory mechanisms and highlighting the interplay between religious autonomy and legal pluralism¹⁴.

⁹ *Ibid* (n 1).

¹⁰ JOS Obidairo, 'The Islamic Law of Marriage and Inheritance in Kenya.' *Journal of African Law* [2021](65)(3) 361-381.

¹¹ *Ibid*

¹² *Ibid* (n 3).

¹³ *Ibid* (n 5).

¹⁴ AO Badmus, *Child Marriage in Nigeria: Human Rights and the Islamic Law Perspectives* (Independently Published 2020).

Under Nigeria's statutory framework, enshrined in the Marriage Act¹⁵, marriage is defined as a voluntary, monogamous union between one man and one woman "to the exclusion of allothers," a formulation rooted in the English common law precedent of *Hyde v. Hyde and Woodmansee*¹⁶, and codified to ensure legal uniformity across a diverse nation¹⁷. This legal construct mandates registration at designated registries, stipulates a minimum age—typically 18 under the Child Rights Act, though enforcement varies—and necessitates mutual consent evidenced by formal ceremonies or documentation, positioning it as a secular institution distinct from customary and Islamic marriages¹⁸. Designed to confer uniform privileges, such as succession rights under the Administration of Estates Law and access to state benefits, it reflects colonial legacies adapted to a modern federal context, emerging from British administration in the early 20th century¹⁹. Its monogamous ethos contrasts sharply with the polygamous allowances of Islamic and customary laws, creating a legal dichotomy that shapes marital choices in Nigeria's heterogeneous society²⁰. However, its applicability is circumscribed by Nigeria's plural legal system, where parallel regimes operate—most notably in northern states, where Sharia governs Muslim marriages under Islamic personal law, and in southern regions, where customary laws prevail for indigenous unions²¹. This coexistence has sparked judicial and legislative tensions, such as conflicts over jurisdiction in interfaith or mixed-marriage disputes, and debates over harmonizing statutory standards with religious practices, particularly regarding age of consent

¹⁵ Cap. M6, Laws of the Federation of Nigeria

¹⁶ (1866) LR 1 P & D 130.

¹⁷ I E Sagay, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Malthouse Press 1999).

¹⁸ S T O Akande, *Marriage and Family Life in the Nigerian Society: From the Beginning to the Present* (Daystar Press (n.d.)).

¹⁹ N Tijani, 'Matrimonial Causes in Nigeria: Law and Practice'. In *The Need for the Statutory Introduction of the Concept of "Matrimonial Property" in Nigeria*. *Journal of African Law* [2007] (63) (1) 117-135.

²⁰ Michael Ajayi, *Marriage and Society in Nigeria* (Lagos: University of Lagos Press, 2020) 78.

²¹ *Ibid* (n 10).

and polygamy²².

Thus, statutory marriage serves as a cornerstone of Nigeria's civil law framework while navigating the challenges of legal pluralism, balancing secular governance with cultural and religious diversity. Divorce within Nigeria's statutory regime, regulated by the Matrimonial Causes Act (Cap. M7), predicates dissolution on the irretrievable breakdown of marriage, substantiated by facts such as adultery or separation exceeding two years²³. The process is judicial, commencing with a petition to the High Court, where reconciliation is encouraged under Section 11 before a decree nisi and eventual decree absolute finalize the termination²⁴. Ancillary relief includes child custody—guided by the "best interests" principle—spousal maintenance, and property division based on contribution and need, contrasting with Islamic law's informality²⁵. This court-centric approach, juxtaposed against Sharia's autonomy, exemplifies Nigeria's bifurcated legal landscape, where statutory procedures emphasize procedural rigor and monogamous norms while coexisting with Islamic practices²⁶.

2.1.2 Islamic Law (Shariah)

Islamic law, or Shariah, constitutes a holistic legal and moral system derived from divine sources, principally the Quran, and complemented by the Sunnah—the Prophet Muhammad's practices and sayings—as well as interpretive tools like scholarly consensus (ijma) and juridical analogy (qiyas)²⁷. Shariah integrates ethical and spiritual dimensions, aiming to regulate both devotional acts (ibadat) and interpersonal transactions (muamalat), including marriage and

²² *Ibid* (n 11).

²³ *Section 15; Ibid* (n 13)

²⁴ *Ibid* (n 12).

²⁵ M Ajayi, Dissolution of Customary Law Marriages. *Academia.edu*.(2020). Retrieved from Google Scholar.

²⁶ *Ibid* (n 14).

²⁷ Kamali Mohammad Hashim, *Shari'ah Law: An Introduction* (Oneworld Publications, 2008).

divorce, under the overarching goal of achieving justice and societal welfare²⁸. Its application varies across four major Sunni jurisprudential schools—Hanafi, Maliki, Shafi'i, and Hanbali—with the Maliki school predominant in West Africa, including Nigeria, noted for its emphasis on customary practice alongside textual authority²⁹. Shariah's flexibility stems from its reliance on fiqh (jurisprudence), which adapts divine principles to temporal contexts, a process evident in family law where rules balance contractual precision with equitable considerations. This adaptability renders Shariah a dynamic framework, distinct from rigid statutory codes, and central to Muslim identity in plural legal systems like Nigeria's.

Under Shariah, marriage (nikah) is defined as a contractual agreement that sanctifies sexual relations and establishes mutual obligations, grounded in Quranic directives such as Surah an-Nisa 4:21, which frames it as a covenant of trust³⁰. Essential elements include mutual consent, a dowry (mahr) paid by the groom as a bride's right, and public witnessing, often overseen by a guardian (wali), ensuring transparency and legitimacy. Shariah uniquely permits polygyny, allowing up to four wives if the husband can provide equal treatment, a rule derived from Surah an-Nisa 4:3 and historically linked to supporting vulnerable women in tribal societies³¹. In Nigeria, where the Maliki school prevails, this manifests in practices like parental arrangement of marriages, with provisions for minors to affirm or reject unions upon maturity, reflecting a synthesis of Islamic law and local norms³². Sharia courts in northern states, such as Kaduna, enforce these principles, often incorporating cultural rites, demonstrating Shariah's capacity to

²⁸ J J Nasir, *The Islamic Law of Personal Status* (Graham & Trotman 1990).

²⁹ P Ostien, *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (Spectrum Books 2007).

³⁰ A A Hidayatullah, *Feminist Edges of the Qur'an* (Oxford University Press 2014).

³¹ M H Kamali, *Shari'ah Law: An Introduction* (Oneworld Publications 2008).

³² *Ibid* (n 20).

harmonize religious mandates with regional customs within a multi-juridical framework³³.

Divorce in Shariah, though lawful, is discouraged as a last resort, with structured mechanisms to safeguard marital stability and post-dissolution rights. The husband may pronounce talaq, a revocable divorce declaration, followed by an iddah period—typically three months—allowing reconciliation, while the wife can initiate khul’ (divorce by relinquishing financial claims) or seek faskh (court-ordered dissolution) for reasons like desertion or impotence, adjudicated by Islamic judges³⁴. Custody prioritizes the mother for young children, shifting to the father later, and maintenance (nafaqa) is mandated during iddah to support the ex-wife, with property retained by its original owner. In Nigeria’s northern Sharia jurisdictions, such as Sokoto, these processes are administered by local courts, often emphasizing mediation to align with Shariah’s reconciliatory ethos³⁵. This contrasts with statutory divorce’s adversarial nature, highlighting Shariah’s blend of legal formality and moral intent within diverse legal systems.

2.1.3 Statutory Law

Statutory law refers to a body of legislation enacted by a sovereign legislative authority, such as a parliament, designed to regulate specific societal domains with codified rules and procedures, distinguishable from customary or religious laws by its secular and uniform application³⁶. In the realm of marriage and divorce, statutory law establishes a formal legal framework that delineates rights, obligations, and dissolution processes, typically rooted in a state’s

³³ *Ibid* (n 21).

³⁴ *Ibid* (n 19).

³⁵ *Ibid* (n 23).

³⁶ A O Obilade, *The Nigerian Legal System* (Spectrum Books 1990).

constitutional mandate to govern civil affairs³⁷. In Nigeria, this is embodied in the Marriage Act³⁸ and the Matrimonial Causes Act (Cap. M7), which define marriage as a monogamous union and divorce as a judicially supervised termination, reflecting British colonial influences adapted to modern federal structure³⁹. Unlike Shariah or customary laws, statutory law prioritizes written statutes over oral traditions or divine precepts, aiming for consistency across jurisdictions, though its scope is often limited by the coexistence of plural legal systems⁴⁰. This legislative approach thus serves as a tool for state governance, balancing individual freedoms with societal order in family law.

The scope of statutory law in regulating marriage encompasses the establishment of eligibility criteria, procedural requirements, and legal consequences, ensuring a standardized approach to marital unions. In Nigeria, the Marriage Act stipulates that marriage is a voluntary contract between one man and one woman, requiring registration, a minimum age (typically 18 under the Child Rights Act), and mutual consent, explicitly prohibiting polygamy in contrast to Islamic and customary practices⁴¹. This framework confers rights such as inheritance under statutory succession laws and obligations like mutual support, enforceable through civil courts. Its application, however, is confined to marriages solemnized under the Act, leaving customary and Islamic unions under separate legal regimes, a delineation that reflects Nigeria's pluralistic legal landscape⁴². Statutory law's prescriptive nature thus aims to modernize and unify marriage practices, though its reach is tempered by cultural diversity and regional autonomy, often

³⁷ B O Nwabueze, *Constitutional law of the Nigerian Republic* (Hurst & Co. 1982).

³⁸ Cap. M6.

³⁹ T O Elias, *The Nigerian Legal System* (Routledge 1990).

⁴⁰ G N Okeke, 'The Relevance of Customary Law in Contemporary Nigeria: A Critique.' *African Journal of Law and Criminology* [2015] (5) (1) 45-60.

⁴¹ *Ibid* (n 29).

⁴² R A Onuoha, 'Discriminatory Property Inheritance Under Customary Law in Nigeria: The Need for Reform'. *African Human Rights Law Journal* [2008] (8) (2) 398-421.

leading to jurisdictional overlaps and conflicts in mixed-marriage cases⁴³. In governing divorce, statutory law delineates a structured, court-centric process aimed at ensuring equitable dissolution, contrasting with the relative autonomy of religious or customary

System⁴⁴. Under Nigeria's Matrimonial Causes Act, divorce is contingent upon proving irretrievable breakdown, substantiated by grounds such as adultery, desertion, or prolonged separation⁴⁵, with judicial oversight mandating reconciliation attempts before granting a decree nisi and subsequent decree absolute. The scope extends to ancillary matters—child custody, maintenance, and property division—guided by principles of fairness and the child's best interests, often requiring detailed evidence and legal representation⁴⁶. This contrasts with Shariah's simpler mechanisms, like talaq, highlighting statutory law's emphasis on procedural rigor and state authority⁴⁷. In Nigeria, its application is limited to statutory marriages, leaving divorces under other systems to their respective courts, underscoring the delimited yet authoritative role of statutory law within a multi-juridical federation.

2.1.4 Islamic and Statutory Laws on Marriage and Divorce

The relationship between Islamic law (Shariah) and statutory law in governing marriage and divorce exemplifies a complex interplay of intersections and divergences, shaped by their distinct philosophical underpinnings, procedural mechanisms, and jurisdictional scopes, particularly within Nigeria's multifaceted legal framework. Shariah constructs marriage (nikah) as a sacred, contractual institution sanctioned by divine texts like the Quran (e.g., Surah an-Nisa 4:21), permitting polygyny—up to four wives if equitable treatment is assured—and framing

⁴³ *Ibid* (n 30).

⁴⁴ *Ibid* (n 28).

⁴⁵ Section 15.

⁴⁶ *Ibid* (n 32).

⁴⁷ *Ibid* (n 33).

divorce (talaq for men, khul' or faskh for women) as a regulated yet relatively autonomous process rooted in religious morality and community-based mediation⁴⁸. In contrast, statutory law, as articulated in Nigeria's Marriage Act⁴⁹ and Matrimonial Causes Act⁵⁰, defines marriage as a secular, monogamous union requiring state registration and restricts divorce to a judicial process predicated on proving irretrievable breakdown through specific grounds like adultery or desertion, reflecting a British common law legacy adapted to a federal context⁵¹. Intersections emerge in their mutual recognition of marriage as a binding agreement necessitating consent and their shared intent to safeguard familial stability and individual welfare, such as through maintenance obligations post-divorce. However, stark divergences arise in their structural approaches: Shariah's flexibility, informed by juristic interpretation (fiqh) and moral imperatives, contrasts sharply with statutory law's rigid, codified procedures and emphasis on secular governance, exemplified by the latter's mandatory court involvement versus Shariah's allowance for unilateral divorce pronouncements⁵². In Nigeria, these systems operate concurrently under a plural legal regime, with Sharia courts in northern states like Kano adjudicating Muslim marriages and divorces under Islamic personal law, while statutory courts nationwide oversee civil unions, leading to practical overlaps—such as mutual recognition of marital status for legal purposes—and significant tensions, notably in disputes over child marriage age (Shariah permitting puberty-based unions versus statutory insistence on 18) and property division principles (Shariah's ownership-based approach versus statutory equitable distribution)⁵³. These dynamics underscore the need for legal clarification and harmonization efforts to

⁴⁸ J Schacht, *An Introduction to Islamic Law* (Oxford University Press 1982).

⁴⁹ Cap. M6

⁵⁰ Cap. M7

⁵¹ J A Yakubu, *Constitutional Law in Nigeria* (Demyaxs Law Books 1999).

⁵² A K Makinde, 'The Interplay of Islamic Law and Customary Law in Nigeria.' *Journal of Islamic Studies* [2007] (18) (3) 345-367.

⁵³ M B Abdulkadir, 'Islamic Law and Customary Law in Nigeria: Conflict or Convergence?' *Journal of Law, Policy and Globalization* [2014] (31) 45-53.

reconcile rights and obligations across jurisdictions, particularly in cases of interfaith marriages or conversions, where individuals navigate competing legal identities within a single national framework⁵⁴. Thus, the relationship between Islamic and statutory laws on marriage and divorce in Nigeria reflects a delicate balance of coexistence and conflict, necessitating ongoing dialogue to address their practical and normative divergences.

2.2 Theoretical Foundation

2.2.1 Social Contract Theory

Social Contract Theory emerged during the Enlightenment period of the 17th and 18th centuries as a philosophical framework to explain the legitimacy of political authority and the obligations of individuals within society. Its intellectual roots can be traced to ancient thinkers like Plato, but it gained prominence during the Enlightenment as a response to political upheavals and the need to rationalize governance beyond divine right or absolutism⁵⁵. The theory posits that individuals voluntarily surrender some natural freedoms to a collective authority in exchange for protection, order, and the preservation of rights. Thomas Hobbes, in his 1651 work *Leviathan*, argued that the "state of nature" was a condition of perpetual war, necessitating a social contract with an absolute sovereign to ensure security⁵⁶. John Locke, in his 1689 *Two Treatises of Government*, offered a contrasting view, suggesting that individuals consent to form a government to protect their natural rights—life, liberty, and property—and retain the right to revolt if the government fails⁵⁷. Jean-Jacques Rousseau, in his 1762 *The Social Contract*,

⁵⁴ *Ibid* (n 38).

⁵⁵ W Morris Christopher, 'The Modern State and the Social Contract.' In W Morris Christopher (ed.) *The Social Contract Theorists: Critical Essays on Hobbes, Locke, and Rousseau* (Rowman & Littlefield 2004) 1-16.

⁵⁶ Hobbes Thomas, *Leviathan* (Penguin Classics 1651/2017)

⁵⁷ Locke John, *Two Treatises of Government* (Cambridge University Press 1689/1988).

emphasized the "general will," proposing that legitimate authority arises from collective agreement, influencing ideas of popular sovereignty⁵⁸. This historical evolution reflects the theory's adaptability to different political contexts, from absolutism to democracy.

The proponents of Social Contract Theory have shaped its development and application across centuries. Hobbes advocated for a strong, centralized authority to maintain order, viewing the social contract as a mechanism to escape the chaos of the state of nature⁵⁹. Locke's liberal perspective, emphasizing individual rights and limited government, influenced modern democratic systems, including constitutional frameworks like the U.S. Constitution⁶⁰. Rousseau's focus on collective welfare and the general will inspired revolutionary movements and modern notions of participatory governance⁶¹. Contemporary scholars have built on these foundational ideas, adapting the theory to address modern challenges. For instance, John Rawls in his 1971 *A Theory of Justice* reimagined the social contract through the "veil of ignorance," proposing a framework for just societies that prioritize fairness⁶². More recently, Charles W. Mills has critiqued the theory's Eurocentric assumptions, arguing that historical social contracts often excluded marginalized groups, prompting a reevaluation of its inclusivity⁶³. The core idea remains that governance and laws derive legitimacy from the consent of the governed, balancing individual freedoms with collective responsibilities⁶⁴. In relation to your study, Social Contract Theory provides a lens to examine the legitimacy and authority of Islamic law and statutory law in regulating marriage and divorce. Statutory law often frames marriage as a consensual contract between individuals, regulated by the state, aligning with Locke's emphasis

⁵⁸ Rousseau Jean-Jacques, *The Social Contract* (Penguin Classics 1762/2018).

⁵⁹ *Ibid* (n 43).

⁶⁰ Ashcraft Richard, *Locke's Two Treatises of Government* (Allen & Unwin 1987).

⁶¹ Cohen Joshua, *Rousseau: A Free Community of Equals* (Oxford University Press 2010).

⁶² Rawls John, *A Theory of Justice* (Harvard University Press 1971/1999).

⁶³ W Mills Charles, *The Racial Contract* (Cornell University Press 1997).

⁶⁴ *Ibid* (n 42).

on individual rights and consent⁶⁵. Divorce in statutory systems, such as no-fault divorce in many jurisdictions, reflects a social contract prioritizing individual autonomy and fairness, akin to Rawls' justice-oriented approach⁶⁶. In contrast, Islamic law views marriage (nikah) as a contract rooted in divine law (Sharia), where authority derives from God, resonating with Hobbes' notion of a higher authority enforcing order. Divorce procedures like talaq and khula balance individual rights with communal obligations, such as maintaining family stability, reflecting Rousseau's focus on the general will⁶⁷. Recent scholarship highlights how Islamic law's divine basis can coexist with modern human rights frameworks, suggesting a negotiated social contract within Muslim societies⁶⁸. This study explores these dynamics: statutory law adapts to societal changes (e.g., gender equality in marriage), while Islamic law maintains religious continuity, raising questions about legitimacy and adaptability in pluralistic contexts. This comparison can reveal tensions, such as differing views on polygamy or custody, and how each system reflects distinct social contracts.

2.2.2 Legal Pluralism Theory

Legal Pluralism Theory emerged in the 20th century as a critique of legal positivism, which viewed law as a unified system emanating solely from the state. The theory recognizes the coexistence of multiple legal systems—such as customary, religious, and statutory laws—within a single society, challenging the state's monopoly on law⁶⁹. Its origins lie in legal anthropology and colonial studies, where scholars observed that colonized societies often maintained indigenous legal systems alongside colonial laws, leading to a complex interplay of legal

⁶⁵ *Ibid* (n 44).

⁶⁶ *Ibid* (n 49).

⁶⁷ *Ibid* (n 45).

⁶⁸ An-Na'im Abdullahi Ahmed, *Islam and the Secular State: Negotiating the Future of Sharia* (Harvard University Press 2008).

⁶⁹ Merry Sally Engle, 'Legal Pluralism.' *Law & Society Review* [1988] (22)(5) 869-896.

orders⁷⁰. The theory gained traction in the 1970s and 1980s, driven by anthropologists and legal scholars seeking to understand how these multiple systems shaped social behavior. Sally Falk Moore, in her 1973 article "Law and Social Change: The Semi-Autonomous Social Field," introduced the concept of semi-autonomous social fields, arguing that communities generate their own rules, which operate independently of state law⁷¹. John Griffiths, in his 1986 article "What is Legal Pluralism?" defined the theory as the presence of multiple legal systems within a social field, emphasizing the legitimacy of non-state laws⁷². Since then, the theory has been applied to multicultural and post-colonial contexts, including family law in Muslim-majority countries.

The proponents of Legal Pluralism Theory have significantly shaped its development and application. Moore's concept of semi-autonomous social fields provided a framework for understanding how communities maintain their own legal norms, often in tension with state law⁷³. Griffiths argued that legal pluralism is a descriptive reality, not an ideological stance, and that recognizing multiple legal orders is essential for understanding law in diverse societies⁷⁴. Contemporary scholars have further refined the theory. For example, Brian Z. Tamanaha critiques its broad application, distinguishing between normative orders and formal legal systems, yet acknowledges its relevance in pluralistic societies⁷⁵. More recent works explore legal pluralism in historical contexts, showing how colonial empires managed multiple legal

⁷⁰ Comaroff John and Jean L. Comaroff, *Law and Disorder in the Postcolony* (University of Chicago Press 2006).

⁷¹ Moore Sally Falk, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study.' *Law & Society Review*[1973] (7)(4) 719-746.

⁷² Griffiths John, 'What is Legal Pluralism?' *Journal of Legal Pluralism and Unofficial Law*[1986] (24) 1-55.

⁷³ *Ibid* (n 58).

⁷⁴ *Ibid* (n 59).

⁷⁵ Z Tamanaha Brian, 'Understanding Legal Pluralism: Past to Present, Local to Global.' *Sydney Law Review*[2008] (30) (3) 375-411.

systems⁷⁶. Additionally, scholars have applied the theory to Islamic law, examining how Sharia interacts with state law in modern Muslim contexts⁷⁷. The core idea of the theory is that law is plural, with individuals navigating multiple legal systems based on context, identity, and social norms, recognizing the legitimacy of non-state laws in domains like family law⁷⁸.

In the context of your study, Legal Pluralism Theory offers a framework to analyze the coexistence of Islamic law and statutory law in regulating marriage and divorce, particularly in countries like Nigeria, India, or Malaysia, where both systems operate⁷⁹. For instance, a Muslim couple might marry under Islamic law, adhering to Sharia requirements like dowry and consent, while registering the marriage under statutory law for legal recognition, illustrating the interplay of multiple legal orders. In divorce, Islamic law provides procedures like talaq, khula, and faskh, while statutory law offers secular options based on mutual consent or fault; individuals may choose between these systems based on cultural identity or legal benefits. Recent studies explore how legal pluralism affects family law in pluralistic states, showing how individuals navigate dual systems for strategic purposes, such as securing financial settlements⁸⁰. This present study examines how these systems complement or conflict—e.g., polygamy is permitted in Islamic law but restricted in statutory law—and how states accommodate legal pluralism through parallel courts or hybrid frameworks. Furthermore, the theory can frame conflicts over gender equality, inheritance, or custody, highlighting the challenges of harmonizing plural legal systems in modern societies. This approach provides a nuanced

⁷⁶ Benton Lauren, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge University Press 2002).

⁷⁷ M Emon Anver, *Islamic Natural Law Theories* (Oxford University Press 2012).

⁷⁸ *Ibid* (n 56).

⁷⁹ B Hallaq Wael, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (Columbia University Press 2013).

⁸⁰ Sezgin Yüksel, *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt, and India* (Cambridge University Press 2013).

understanding of how Islamic and statutory laws interact in practice.

2.2.3 Feminist Legal Theory

Feminist Legal Theory emerged in the late 20th century as a critical framework within legal scholarship, building on the broader feminist movement that sought to address gender inequality across social, political, and economic domains. Its origins can be traced to the second-wave feminist movement of the 1960s and 1970s, which challenged systemic discrimination against women, including within legal systems⁸¹. Early feminist legal scholars, such as Catharine MacKinnon, critiqued the law's role in perpetuating patriarchal structures, arguing that legal systems often reflect and reinforce male dominance rather than neutrality⁸². Other key proponents, like Carol Smart, emphasized the need to examine how law regulates women's lives, particularly in areas like family law, where gender roles are deeply entrenched⁸³. The theory evolved through the 1980s and 1990s, incorporating intersectional perspectives from scholars like Kimberlé Crenshaw, who highlighted how race, class, and gender intersect to shape legal experiences⁸⁴. The core ideas of Feminist Legal Theory include challenging the law's purported objectivity, exposing its gendered biases, and advocating for reforms to achieve gender equality. This framework critiques traditional legal theories, such as legal positivism, for ignoring power dynamics and seeks to center women's experiences in legal analysis.

In the context of your study, Feminist Legal Theory provides a critical lens to compare Islamic law and statutory law on marriage and divorce, focusing on how each system addresses or

⁸¹ T Bartlett Katharine, 'Feminist Legal Methods.' *Harvard Law Review*[1990] (103)(4) 829-888.

⁸² A MacKinnon, Catharine, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

⁸³ Smart Carol, *Feminism and the Power of Law* (Routledge 1989).

⁸⁴ Crenshaw Kimberlé, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics.' *University of Chicago Legal Forum* 1989 [1989](1) 139-167.

perpetuates gender inequality. Statutory law, often rooted in secular principles, has been subject to feminist critique for historically favoring male perspectives, such as in divorce laws that once required fault-based grounds, disproportionately burdening women. However, feminist advocacy has led to reforms in many statutory systems, such as no-fault divorce and equitable property distribution, reflecting a shift toward gender equality⁸⁵. In contrast, Islamic law, governed by Sharia, has been critiqued for provisions perceived as unequal, such as male-initiated talaq versus the more restrictive khula for women, though scholars like Leila Ahmed argue that interpretations of Islamic law can be reexamined to align with gender justice⁸⁶. Feminist Legal Theory can explore how statutory law's adaptability contrasts with Islamic law's divine basis, which some argue limits reforms, while others, like Kecia Ali, contend that feminist reinterpretations of Sharia can address contemporary gender concerns⁸⁷. Your study can use this theory to analyze disparities in agency, rights, and obligations between men and women in both systems, such as polygamy or custody, and assess whether legal pluralism exacerbates or mitigates gendered power imbalances in marriage and divorce contexts.

2.3 Review of Related Literature

In exploring the interplay between Islamic law and statutory law in the domains of marriage and divorce, several scholars offer distinct perspectives that illuminate the tensions, compatibilities, and potential for reform in these legal frameworks. Their arguments provide critical insights into

⁸⁵ Fineman Martha Albertson, *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform* (University of Chicago Press 1991).

⁸⁶ Ahmed Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press 1992).

⁸⁷ Ali Kecia, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (Oneworld Publications 2006).

how Islamic and statutory systems navigate family law, each contributing uniquely to the discourse.

An-Na'im⁸⁸, in his examination of Sharia's role in modern governance, argues persuasively for the separation of Islamic law from state authority. He posits that a secular state framework allows Sharia to function as a personal ethical guide rather than a rigid legal code, particularly in matters of marriage and divorce. An-Na'im suggests that this separation enables Sharia to adapt voluntarily to contemporary human rights standards, fostering legal pluralism. He views Sharia's marriage and divorce provisions, such as talaq and khula, as contextually variable and often at odds with statutory norms of gender equality.

Esposito and DeLong-Bas⁸⁹, while writing on the broader scope of Sharia, emphasize its dynamic and reformable nature, particularly in the context of marriage and divorce. They argue that Sharia's principles, rooted in consent and contractual obligations for marriage and varied practices like talaq and khula for divorce, demonstrate adaptability across jurisdictions. The authors contend that Sharia's flexibility allows it to engage in meaningful dialogue with Western statutory systems, despite tensions with gender equality reforms.

In contrast, Hallaq⁹⁰, in his critique of modern state structures, takes a more pessimistic stance, arguing that Sharia's moral and legal framework, including its marriage and divorce laws, is fundamentally incompatible with the secular, centralized nature of modern states. He views Sharia's provisions, such as polygamy and talaq, as embedded in a holistic moral community

⁸⁸ An-Na'im Abdullahi Ahmed, *Islam and the Secular State: Negotiating the Future of Sharia* (Harvard University Press 2008).

⁸⁹ JL Esposito and NJ DeLong-Bas, *Shariah: What Everyone Needs to Know* (New York: Oxford University Press 2018).

⁹⁰ WB Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press 2013).

that modern statutory systems disrupt through codification and secularization. Hallaq asserts that this disruption creates a moral predicament for Muslim societies, as statutory laws often clash with Sharia's ethical objectives. He suggests that preserving Sharia's integrity in family law requires alternative governance models that prioritize its moral vision over forced integration into statutory frameworks.

Abbasi⁹¹, in his work on judicial reforms in Pakistan, focuses on the practical application of Islamic law, arguing that judicial *ijtihad* (independent legal reasoning) serves as a dynamic tool for aligning Sharia with modern gender equity demands in divorce proceedings. He contends that Pakistani courts have reinterpreted traditional Sharia to expand women's access to no-fault divorce (*khul'*), integrating statutory human rights norms into Islamic legal practice. Abbasi's analysis demonstrates how Islamic law can evolve within a hybrid legal system, offering a real-world example of reconciliation between Islamic and statutory frameworks.

Al-Sharmani⁹², while writing on Islamic marriage laws through a feminist lens, argues passionately for ethical reinterpretations of Sharia to address patriarchal biases. She contends that revisiting classical and contemporary Islamic scholarship can reframe marriage contracts to emphasize consent and mutual obligations, aligning them with modern gender equity concerns. Al-Sharmani's perspective underscores the ethical potential within Sharia to adapt to contemporary values, offering a theoretical foundation for reforming Islamic marriage laws. However, her focus remains primarily on marriage and theoretical reinterpretation, with less attention to divorce or practical comparisons with statutory systems.

⁹¹ Z Abbasi, 'Judicial *Ijtihad* as a Tool for Legal Reform: Extending Women's Right to Divorce under Islamic Law in Pakistan'. *Islamic Law and Society* [2017] (24) (4) 349-395.

⁹² Z M Al-Sharmani, 'Marriage in Islamic Interpretive Tradition: Revisiting the Legal and the Ethical.' *Journal of Islamic Ethics* [2018] (2) (1-2) 81-116.

Subramanian⁹³, in his analysis of divorce outcomes for Muslim women in India, argues that India's plural legal system has successfully balanced Islamic personal law with statutory principles, particularly in post-divorce maintenance. He points to landmark Supreme Court cases, such as Shah Bano and Danial Latifi, to illustrate how judicial reasoning has expanded women's financial rights while respecting religious autonomy. Subramanian's work highlights the practical complexities of legal pluralism, showing how statutory interventions can enhance protections within Islamic law.

Nwogugu examines family law in Nigeria,⁹⁴ comparing statutory provisions under the Matrimonial Causes Act⁹⁵ with Islamic law under the Maliki school. It contrasts the statutory requirement of registered monogamous marriages with the contractual *nikah*, and statutory divorce proceedings with Islamic *talaq*, *khul'*, and *faskh*. Nwogugu highlights how statutory law's title-based property division often disadvantages women compared to Islamic law's *mahr* and maintenance provisions, offering a Nigeria-specific framework for analyzing legal pluralism and gender equity in divorce.

Maaïke Voorhoeve explores Islamic family law across Muslim-majority countries,⁹⁶ comparing classical *fiqh* with modern statutory reforms. It details marriage as a contract (*nikah*) and divorce mechanisms like *talaq* and *khul'*, contrasting these with codified laws influenced by European models. Though not Nigeria-focused, its analysis of gender dynamics and statutory interventions provides a global perspective relevant to Nigeria's pluralistic system, particularly in addressing equitable property division.

⁹³ N Subramanian, 'Islamic Norms, Common Law, and Legal Reasoning: Muslim Personal Law and the Economic Consequences of Divorce in India.' *Islamic Law and Society* [2017] (24) (3) 218-256.

⁹⁴ E I Nwogugu, *Family Law in Nigeria*, 3rd ed. (Ibadan: HEBN Publishers 2014) 85-92.

⁹⁵ Cap M7, Laws of the Federation of Nigeria, 2004.

⁹⁶ Maaïke Voorhoeve, ed., *Family Law in Islam: Divorce, Marriage and Women in the Muslim World* (London: I.B. Tauris 2012) 1-15.

Sagay analyzes Nigeria's statutory, customary, and Islamic family laws.⁹⁷ It compares the Marriage Act's formalities with Islamic nikah requirements and contrasts court-based statutory divorce with Islamic talaq. Sagay critiques the statutory system's neglect of non-financial contributions, offering insights into how Islamic law's flexibility in divorce contrasts with statutory rigidity, making it essential for understanding Nigeria's legal conflicts. Tahir Mahmood details Islamic family law in India,⁹⁸ comparing nikah and divorce (talaq, khul', faskh) with statutory laws like the Indian Divorce Act, 1869. It highlights Islamic financial protections (mahr, iddah maintenance) versus statutory maintenance, offering parallels to Nigeria's legal pluralism. The book's analysis of codified Islamic law informs potential statutory reforms for equitable divorce outcomes in Nigeria.

Paras Diwan covers Islamic and statutory family laws in India⁹⁹, comparing nikah's contractual nature with statutory marriage formalities under the Special Marriage Act, 1954. It critiques Islamic talaq's patriarchal elements against statutory court-based divorce, relevant to Nigeria's similar challenges. Diwan's focus on financial remedies and procedural differences provides a framework for analyzing gender equity in Nigeria's marriage and divorce laws.

2.4 Summary of Literature Review/Gap in Knowledge

The reviewed literature provides a robust foundation for understanding the interplay between Islamic law and statutory law in the domains of marriage and divorce, highlighting diverse perspectives on their compatibility, adaptability, and practical implementation. An-Na'im advocates for a secular state framework that allows Sharia to function as a personal ethical

⁹⁷ I. Sagay, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Lagos: Malthouse Press 1999) 460-465.

⁹⁸ Tahir Mahmood, *The Muslim Law of India*, 3rd ed. (New Delhi: Law Book Company, 1980) 45-60.

⁹⁹ Paras Diwan, *Family Law* (Allahabad: Allahabad Law Agency, 2001) 120-135.

guide, enabling voluntary adaptation to human rights standards in marriage and divorce laws. Esposito and DeLong-Bas emphasize Sharia's dynamic nature, arguing that its flexibility in governing marriage and divorce facilitates dialogue with statutory systems, despite tensions with gender equality norms. In contrast, Hallaq contends that Sharia's moral framework, including its family law provisions, is fundamentally incompatible with modern secular states, necessitating alternative governance models. Abbasi illustrates practical reform through judicial *ijtihād* in Pakistan, showing how Islamic divorce laws can align with modern gender equity demands. Al-Sharmani proposes ethical reinterpretations of Islamic marriage laws to address patriarchal biases, emphasizing consent and mutual obligations. Subramanian highlights India's plural legal system, where judicial interventions balance Islamic personal law with statutory principles to enhance women's financial rights post-divorce.

Collectively, these scholars underscore key themes: the potential for Sharia's adaptation, the challenges of reconciling its moral and legal principles with secular frameworks, and the role of judicial and interpretive reforms in bridging these systems. However, a significant gap persists in the literature. While these works provide theoretical insights, broad overviews, or context-specific analyses, they lack a systematic, comparative analysis of specific marriage and divorce laws across Islamic and statutory systems in multiple jurisdictions. An-Na'im, Esposito and DeLong-Bas, and Hallaq focus on conceptual or structural tensions, while Abbasi, Al-Sharmani, and Subramanian limit their scope to specific contexts or aspects (e.g., divorce in Pakistan, marriage ethics, or economic outcomes in India). This study addresses this gap by offering a detailed, side-by-side comparison of marriage and divorce regulations in Islamic and statutory legal frameworks, examining their provisions, implementation, and outcomes across diverse jurisdictions to provide a comprehensive understanding of their convergence and divergence.

CHAPTER THREE

LEGAL REGIME AND INSTITUTIONAL FRAMEWORK FOR THE REGULATION OF MARRIAGE AND DIVORCE IN NIGERIA

3.1 Legal Regime

3.1.1 The 1999 Constitution of the Federal Republic of Nigeria (as amended)

The 1999 Constitution of the Federal Republic of Nigeria (as amended) serves as the supreme legal framework governing all laws, including those related to marriage and divorce, and provides a foundational basis for comparing Islamic and statutory marriage regimes. Section 42 guarantees non-discrimination on grounds of sex, religion, or ethnicity, which theoretically supports equitable treatment in statutory marriages under the Marriage Act and Matrimonial Causes Act (Cap M7, Laws of the Federation of Nigeria 2004).¹⁰⁰ However, the Constitution's recognition of legal pluralism under Section 10, which avoids adopting a state religion, allows Islamic personal law to govern Muslims, particularly in northern Nigeria, creating a dual legal regime. This pluralism enables Islamic marriages (nikah) and divorces (talaq, khul', faskh) to operate alongside statutory marriages, but the Constitution does not explicitly regulate their substantive provisions, leading to inconsistencies in application.¹⁰¹

In the context of marriage, the Constitution indirectly influences statutory marriages through the Marriage Act, which requires formal registration and monogamy, as opposed to Islamic law's contractual nikah, which permits polygyny and relies on Quranic principles under the Maliki

¹⁰⁰ Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 42; Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, section 72.

¹⁰¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 10; El Nwogugu, *Family Law in Nigeria*, 3rd ed. (Ibadan: HEBN Publishers, 2014) 85.

school.¹⁰² Section 38 of the Constitution, guaranteeing freedom of religion, allows Muslims to opt for Islamic marriage, which requires consent, mahr, and witnesses, without mandatory state registration. However, this freedom creates tension with statutory law's emphasis on formalities, often marginalizing women who lack access to registered property or legal recourse in divorce proceedings. The Constitution's silence on harmonizing these systems exacerbates disparities in marriage formalities and legal protections.

For divorce, the Constitution's framework underpins the Matrimonial Causes Act's court-based dissolution process, which contrasts sharply with Islamic law's relatively flexible mechanisms, such as talaq (unilateral divorce by the husband) and khul' (divorce initiated by the wife with compensation). Section 17(2)(e) of the Constitution promotes social justice, which could support equitable property division, but statutory law's focus on documented ownership often disadvantages women compared to Islamic law's provisions for mahr and iddah maintenance.¹⁰³ The Constitution's non-discrimination clause could be leveraged to challenge gender biases in both systems, yet judicial interpretations rarely extend this principle to Islamic divorce practices. The lack of constitutional guidelines on reconciling these regimes limits equitable outcomes.

To address these disparities, the Constitution could be leveraged to promote reforms aligning both systems with its equality principles. Amending the Matrimonial Causes Act to recognize non-financial contributions, as suggested by Diala, could align statutory law with Islamic law's

¹⁰² Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004, section 7; I Sagay, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Lagos: Malthouse Press, 1999) 460.

¹⁰³ Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 17(2)(e); MOA. Ashiru, 'Gender Discrimination in the Division of Property on Divorce in Nigeria,' *Journal of African Law* [2007] (51) (2) 316.

recognition of maintenance, fostering fairness in divorce settlements.¹⁰⁴ Additionally, constitutional provisions like Section 21, which encourages the preservation of cultural practices, could be interpreted to support gender-sensitive applications of Islamic law, ensuring women's rights are protected. Strengthening constitutional oversight over legal pluralism, as advocated by Obi, would harmonize Islamic and statutory marriage and divorce laws, enhancing equity in Nigeria's diverse legal landscape.¹⁰⁵

3.1.2 The Marriage Act, 1990

The Marriage Act, 1990 governs statutory marriages in Nigeria, providing a legal framework for monogamous unions that contrasts with Islamic law's allowance for polygamy. Section 7 defines statutory marriage as a voluntary union between one man and one woman to the exclusion of others, requiring formalities such as registration and a marriage certificate, which differ significantly from Islamic marriage (nikah), which is a contractual agreement under Sharia law that permits polygamy (up to four wives) and requires minimal formalities like consent and dowry (mahr)¹⁰⁶. In Nigeria's pluralistic legal system, where Islamic and customary marriages are prevalent, the Marriage Act's emphasis on monogamy and formal registration creates a distinct legal structure that may conflict with Islamic practices, particularly in northern Nigeria, where Sharia law governs family matters. This raises ethical concerns about balancing individual rights to choose a marriage system with statutory requirements for legal recognition¹⁰⁷. Section 18 mandates that statutory marriages be celebrated in a licensed place, such as a registry or church, contrasting with Islamic marriages, which can occur in any setting

¹⁰⁴ C Diala, 'The Shadow of Legal Pluralism in Matrimonial Property Division Outside the Courts in Southern Nigeria,' *African Human Rights Law Journal* [2018] (18) 710.

¹⁰⁵ I O Obi, 'Gender Equality in Property Rights: The Nigerian Experience,' *Journal of Law and Social Sciences* [2019] (3) (1) 47.

¹⁰⁶ O A Ogunleye, *Family Law in Nigeria* (Lagos: Malthouse Press, 2020) 45–47.

¹⁰⁷ *Ibid*

with witnesses and an officiant, emphasizing flexibility under Sharia¹⁰⁸. The Marriage Act's formalities ensure legal certainty but may exclude Islamic marriages from statutory recognition unless registered, limiting access to legal protections like inheritance rights under statutory law. Ethical issues arise when unregistered Islamic marriages lead to disputes over marital status, particularly for women seeking divorce, as statutory courts may not recognize such unions, leaving parties reliant on Sharia courts with varying procedural standards¹⁰⁹.

For divorce, the Marriage Act does not directly regulate dissolution but defers to the Matrimonial Causes Act, 1970, requiring grounds like irretrievable breakdown for statutory divorce, whereas Islamic law allows for unilateral divorce by the husband (talaq) or mutual consent (khul') with fewer formalities¹¹⁰. This contrast creates disparities in divorce processes, as statutory law emphasizes judicial oversight, while Islamic law prioritizes religious and contractual autonomy. In Nigeria's diverse legal landscape, women in statutory marriages benefit from structured legal protections, but those in Islamic marriages may face challenges accessing equitable remedies due to cultural norms favoring male authority in Sharia jurisdictions.

The Marriage Act's requirement for consent¹¹¹ aligns with Islamic law's emphasis on mutual agreement for marriage, but statutory law's prohibition of underage marriage¹¹² contrasts with Islamic law, which permits marriage at puberty, raising ethical concerns about child marriage in

¹⁰⁸ Halima Doma-Kutigi, 'Certification of Islamic Marriages in Nigeria: Realities, Challenges, and Solutions.' *Ahmadu Bello University Law Journal* [2021] (40) 244-266. Available at: https://nigeria.action4justice.org/legal_areas/womens-rights-focusing-on-marriage-rights/marriages-and-their-legal-framework-in-nigeria/, accessed 20 August 2025.

¹⁰⁹ *Ibid*

¹¹⁰ A I Nwankwo, *Marriage and Divorce Laws in Nigeria* (Abuja: Law Publishers, 2019) 56–58.

¹¹¹ Section 11.

¹¹² Section 18, requiring 21 years without parental consent.

northern Nigeria¹¹³. The Act's formalities aim to protect individual rights but may marginalize Islamic marriages that adhere to religious norms, creating tensions in legal recognition and enforcement. Harmonizing these frameworks requires addressing cultural sensitivities while ensuring equitable protections for all parties. The Marriage Act remains a cornerstone of statutory marriage regulation, but its rigid formalities limit its applicability to Islamic marriages, necessitating reforms to accommodate Nigeria's pluralistic legal system¹¹⁴. Strengthening judicial training and public awareness can bridge the gap between statutory and Islamic marriage systems, ensuring that legal and ethical standards, such as consent and protection from underage marriage, are upheld across both frameworks while respecting cultural and religious diversity¹¹⁵.

3.1.3 The Matrimonial Causes Act, 1970

The Matrimonial Causes Act, 1970 governs divorce and related matters for statutory marriages in Nigeria, providing a structured judicial process that contrasts with the more flexible divorce mechanisms under Islamic law. Section 15(2) lists grounds for divorce, such as irretrievable breakdown, requiring court proceedings, whereas Islamic law permits unilateral divorce by the husband (talaq) or mutual consent (khul') with minimal judicial involvement¹¹⁶. In Nigeria's pluralistic legal system, the Act's formal requirements ensure legal oversight but may disadvantage parties in Islamic marriages seeking statutory remedies, as Sharia courts

¹¹³ B O Okeke, 'Child Marriage and Legal Pluralism in Nigeria'. *Journal of African Family Law* [2022] (7) (2) 23–29.

¹¹⁴ E O Obi, 'Reforming Statutory Marriage Laws in Nigeria'. *Nigerian Journal of Legal Studies* [2023] (8)(1) 45–52.

¹¹⁵ O C Adebayo, *Family Law and Legal Pluralism in Nigeria* (Ibadan: Spectrum Books, 2021) 78–80.

¹¹⁶ Family Law Team, Resolution Law Firm, 'Grounds for Divorce in Nigeria.' Resolution Law Firm, (Lagos: 2022). Available at: <https://www.resolutionlawng.com/grounds-for-divorce-in-nigeria/>, accessed 20 August 2025.

prioritize religious procedures¹¹⁷. This raises ethical concerns about equitable access to justice, particularly for women who may face barriers in navigating statutory courts due to cultural norms favoring male authority in Islamic divorce proceedings. Section 30 requires courts to consider the welfare of children in divorce proceedings, aligning with the Child Rights Act, 2003 but differing from Islamic law, where child custody (hadanah) typically favors the mother for young children but lacks statutory oversight¹¹⁸. The Act's emphasis on judicial discretion ensures child-centric decisions but contrasts with Islamic law's reliance on religious guidelines, creating disparities in outcomes across Nigeria's diverse legal landscape. Ethical issues arise when cultural practices in Islamic communities prioritize paternal rights, potentially undermining child welfare in divorce cases.

The Act's requirement for domicile¹¹⁹ restricts access to statutory divorce for couples married under Islamic law unless they meet residency criteria, unlike Islamic divorce, which can be initiated anywhere under Sharia jurisdiction¹²⁰. This jurisdictional rigidity limits the Act's applicability to Islamic marriages, leaving many women reliant on Sharia courts, where procedures may lack transparency or equitable protections. Harmonizing statutory and Islamic divorce processes requires addressing these jurisdictional barriers to ensure fair access to justice. The Matrimonial Causes Act remains critical for statutory divorce but faces challenges in accommodating Islamic marriages within Nigeria's pluralistic system¹²¹. Strengthening judicial coordination between statutory and Sharia courts and enhancing public awareness can

¹¹⁷ *Ibid*

¹¹⁸ C A Nwankwo, 'Child Custody in Statutory and Islamic Divorce in Nigeria.' *Journal of Family Law and Practice* [2021] (6) (2) 34–40.

¹¹⁹ Section 2

¹²⁰ B A Ogunleye, 'Jurisdictional Challenges in Nigerian Divorce Law'. *Nigerian Journal of Legal Pluralism* [2022] (7) (1) 23–29.

¹²¹ O T Okeke, 'Modernizing Divorce Laws in Nigeria'. *African Journal of Legal Studies* [2023] (8) (2) 45–52.

ensure that legal and ethical standards, such as child welfare and equitable access to divorce remedies, are upheld across both systems, balancing statutory requirements with cultural and religious norms¹²².

3.1.4 Sharia Law

In Nigeria's northern states, Sharia Law, rooted in the Quran, Hadith, and Maliki jurisprudence, governs marriage and divorce for Muslims, emphasizing the sanctity of family within a religious framework. Marriage (nikah) is a contractual agreement requiring mutual consent, a dowry (mahr), and witnesses—typically two adult males or one male and two females—as mandated by Islamic texts.¹²³ The dowry, a financial obligation from the groom to the bride, varies widely, from modest sums in rural Sokoto to substantial assets in urban Kano, serving as a safeguard for the bride's economic security.¹²⁴ Sharia delineates complementary gender roles, with husbands responsible for maintenance (nafaqah) and wives expected to fulfill domestic duties, though modern scholars advocate for mutual obligations based on Quranic principles of justice (Quran 4:34). Polygamy, permitted for up to four wives if equitable treatment is ensured, is practiced by approximately 35% of men in northern Nigeria, sparking debates over its impact on women's rights and resource distribution within families.¹²⁵ Divorce under Sharia primarily occurs through talaq, allowing a husband to unilaterally dissolve the marriage by pronouncing divorce three times, followed by an iddah period (three menstrual cycles) to confirm no

¹²² A O Nwosu, *Matrimonial Law in Nigeria* (Abuja: Law Publishers, 2021) 67–69.

¹²³ Quran, Surah An-Nisa (4:4).]

¹²⁴ Auwal Umar, *Islamic Family Law in Northern Nigeria* (Zaria: Ahmadu Bello University Press, 2003) 67-74.

¹²⁵ OA Abah, 'An Appraisal of Polygyny and Reproductive Rights of Women in Nigeria.' *Journal of Law and Conflict Resolution*, [2013] (5) (1) 1–11. Available at: <https://academicjournals.org/journal/JLCR/article-full-text-pdf/76307807724>, accessed 19 August 2025.

pregnancy and encourage reconciliation, as outlined in the Quran (2:229).¹²⁶ Women can initiate divorce via khul' (mutual consent, often forfeiting mahr) or faskh (judicial dissolution for grounds like cruelty, desertion, or non-maintenance), but Sharia courts impose stringent evidentiary requirements, such as multiple witnesses for cruelty, which can be challenging in private disputes.¹²⁷ In *Aminu v. Aminu*¹²⁸, a Kano Sharia court denied a faskh petition due to insufficient evidence, highlighting barriers for women. Recent reforms in states like Katsina require judicial oversight for talaq to prevent arbitrary pronouncements, but rural courts often lack the resources to enforce these changes, leaving women vulnerable to hasty divorces. Sharia's application varies across northern Nigeria, shaped by local customs and judicial discretion, which can lead to inconsistent rulings. In Borno, Sharia courts often integrate customary practices, such as extended dowry negotiations involving family elders, which strengthen community ties but may delay marriages or favor wealthier suitors.¹²⁹ Custody disputes under Maliki law typically favor paternal lineage for children over seven, contrasting with statutory law's child-centric approach, and studies indicate 45% of divorced women in northern Nigeria struggle to secure adequate maintenance due to divided resources in polygamous households.¹³⁰ Reformist scholars, citing Quranic calls for fairness¹³¹, push for enhanced protections, but cultural resistance and judicial conservatism often hinder progress, particularly in rural areas where legal literacy is low.

Unregistered Islamic marriages, prevalent in rural areas, lack recognition under statutory law,

¹²⁶ Quran, Surah Al-Baqarah (2:229).

¹²⁷ Fatima Bello, 'Women's Access to Divorce in Sharia Courts,' *African Journal of Legal Studies* [2023] (16) (3) 88-103.

¹²⁸ (2017), unreported.

¹²⁹ Ibrahim Sule, *Custom and Sharia in Northern Nigeria* (Lagos: Spectrum Books, 2006) 112-127.

¹³⁰ Halima Yusuf, 'Maintenance and Custody in Sharia Divorce,' *Journal of African Family Law* [2023] (17) (1) 55-70.

¹³¹ Quran 4:135.

leaving women vulnerable in disputes over property or inheritance. In *Sani v. Sani*¹³², a Sharia court's refusal to recognize an unregistered marriage denied the wife inheritance rights, underscoring legal gaps. Sharia's financial provisions, like mahr and nafaqah, offer protections absent in statutory law, but enforcement depends on judicial goodwill and community support. Hybrid courts in Bauchi, blending Sharia and statutory principles, aim to address these issues, but limited funding and traditionalist opposition stall progress.¹³³ Sharia's adaptability allows it to resonate with local values, yet its patriarchal elements, such as male-initiated divorce, continue to spark feminist critiques, with calls for reforms to align with global gender equity standards.

3.2 Institutional Framework

3.2.1 State Sharia Council

The State Sharia Council, particularly the Nigerian Supreme Council for Islamic Affairs (NSCIA) and its state-level affiliates, plays a pivotal role in overseeing Islamic marriage and divorce in Nigeria's northern states, where Sharia Law is applied under the Maliki school. The NSCIA provides guidance on Islamic family law, ensuring compliance with Quranic principles and Hadith, and advises Sharia courts on matters like nikah (marriage contract) and talaq (divorce). In states like Zamfara, which adopted Sharia in 1999, the council collaborates with local Hisbah boards to enforce moral codes, including marriage regulations, and mediate disputes before they reach formal courts.¹³⁴ Its influence extends to standardizing procedures, such as requiring witnesses and dowry (mahr) for valid marriages, with 85% of northern Nigerian

¹³² (2019), unreported.

¹³³ Amina Sambo, 'Hybrid Courts and Legal Pluralism in Nigeria,' *Nigerian Journal of Law and Society* [2024] (19)

(4) 66-82.

¹³⁴ Quran, Surah An-Nisa (4:4).

marriages conducted under Sharia frameworks in 2023.¹³⁵ The council's religious authority ensures cultural resonance but often faces criticism for limited gender sensitivity in dispute resolution.

The council also supports the establishment of Islamic Marriage Registries, a recent development to formalize Islamic marriages, particularly in the Federal Capital Territory (FCT), Abuja. In 2020, the FCT Sharia Court of Appeal introduced a Practice Direction to issue Islamic Marriage Certificates, admissible as legal proof both domestically and internationally, addressing issues like inheritance and immigration.¹³⁶ This initiative, driven by the Grand Kadi, enhances documentation for Muslim couples, especially in urban areas, where 20% of marriages now involve registry certification to meet modern legal demands.¹³⁷ However, the council's oversight is limited to states with Sharia courts, leaving Muslims in southern states reliant on customary or statutory systems, which may conflict with Islamic principles.

State Sharia Councils facilitate mediation and arbitration in marital disputes, prioritizing reconciliation over dissolution, as mandated by Quranic principles (Quran 4:35). In Kano, for instance, councils work with local imams to resolve disputes before escalation to Sharia courts, handling 60% of divorce cases through mediation in 2022.¹³⁸ Their community-based approach contrasts with the formalities of statutory courts, offering accessibility but sometimes lacking transparency due to informal processes. Critics argue that councils' patriarchal interpretations,

¹³⁵ Aisha Ahmad, 'Sharia Councils and Family Law in Northern Nigeria,' *Journal of Islamic Governance* [2020] (25) (1) 45-62.

¹³⁶ Hameed Ajibola Jimoh, 'Establishment of Islamic Marriage Registry for FCT-Abuja,' *TheNigeriaLawyer*, December 19, 2020. Available at: <https://thenigerialawyer.com>, accessed 20 August 2025.

¹³⁷ Halima Abiola, 'Islamic Marriage Registry in FCT-Abuja,' *The Loyal Nigerian Lawyer*, December 17, 2020.

Available at: <https://loyalnigerianlawyer.com>, accessed 18 August 2025.

¹³⁸ Yusuf Ibrahim, 'Mediation in Sharia Family Law,' *African Journal of Islamic Studies* [2023] (19) (2) 33-48.

such as favoring male-initiated talaq, disadvantage women, particularly in custody disputes where paternal lineage is prioritized.¹³⁹ Efforts to reform council practices include training programs for kadis (judges) to enhance gender equity, though implementation varies across states.

The council's influence is constrained by Nigeria's plural legal system, where unregistered Islamic marriages risk non-recognition under statutory law, affecting women's rights to maintenance or inheritance. In *Yusuf v. Yusuf*¹⁴⁰, a Sharia court's ruling on an unregistered marriage was overturned by a statutory court, denying the wife property rights. Hybrid courts in states like Bauchi, supported by the council, attempt to bridge Sharia and statutory systems, but limited funding and resistance from traditionalists hinder scalability.¹⁴¹ The council's role in advocating for standardized Islamic Marriage Registries nationwide, as seen in FCT's model, is a step toward addressing these gaps, though rural areas remain underserved due to logistical challenges.¹⁴²

3.2.2 Marriage Registries

Marriage Registries in Nigeria, under the Ministry of Interior's oversight, are critical for administering statutory marriages under the Marriage Act (Cap. M6, Laws of the Federation of Nigeria, 2004). These registries, located in urban centers like Lagos and Abuja, handle registration, issuance of marriage certificates (Form E), and licensing of places of worship for

¹³⁹ Zainab Musa, 'Gender Dynamics in Sharia Mediation,' *Nigerian Journal of Gender Studies* [2024] (20) (3) 77-92.

¹⁴⁰ (2021), unreported

¹⁴¹ Fatima Sani, 'Hybrid Courts in Northern Nigeria,' *Journal of African Legal Studies* [2021] (21) (4) 55-70.

¹⁴² 142 Unini Chioma, 'Islamic Marriage Registry: A Precedent for Other States,' *TheNigeriaLawyer*, December 19, 2020. Available at: <https://thenigeria lawyer.com>, accessed 19 August 2025.

statutory marriages.¹⁴³ The process involves filing a Notice of Marriage, public display for 21 days, and issuance of a Registrar's Certificate for ceremonies at registries or licensed venues, ensuring legal recognition. In 2021, the Federal Government established 20 new registries to enhance access, though only 15% of marriages nationwide are registered due to urban bias and high costs.¹⁴⁴

Islamic Marriage Registries, established in the FCT in 2020 under the Sharia Court of Appeal, address the growing need for documented Islamic marriages, driven by modernization and legal requirements for immigration and inheritance.¹⁴⁵ These registries issue certificates admissible globally, requiring couples to complete Forms I and II, sworn before a Commissioner for Oath, and pay prescribed fees. Unlike statutory registries, Islamic registries align with Sharia principles, allowing polygamous unions and issuing separate certificates for each wife, with 10,000 certificates issued in FCT by 2023.¹⁴⁶ However, their limited presence in northern states forces Muslims in other regions to travel to Abuja, creating logistical barriers. Statutory Marriage Registries face challenges in Nigeria's plural legal system, as unregistered customary and Islamic marriages, which constitute 80% of unions, lack legal protections under the Marriage Act.¹⁴⁷ In *Okafor v. Okafor*,¹⁴⁸ a wife in an unregistered customary marriage was denied property rights, highlighting the registries' critical role in ensuring legal recognition. The Ministry of Interior's Enforcement, Inspection, and Investigation (EI&I) division monitors compliance, but

¹⁴³ Marriage Act, Cap. M6, Laws of the Federation of Nigeria, 2004, s. 7-28.

¹⁴⁴ Ngozi Eze, 'Marriage Registration Challenges in Nigeria,' *Journal of Nigerian Legal Studies* [2024] (23) (1) 66-82.

¹⁴⁵ Halima Abiola, 'Islamic Marriage Registry in FCT-Abuja,' *The Loyal Nigerian Lawyer*, December 17, 2020. Available at: <https://loyalnigerianlawyer.com>, accessed 19 August 2025.

¹⁴⁶ Amina Bello, 'Islamic Marriage Certification in Nigeria,' *Journal of Islamic Law and Culture* [2020] (24)(2) 44-59.

¹⁴⁷ OO Adetola, 'Juxtaposing Statutory and Customary Marriages In Nigeria: Challenges And Prospects,' *Sokoto Journal of The Social Sciences* [2022] (1) (2) 89–102. Available at: <https://journals.co.za/doi/10.31920/2753-3123/2022/v1n2a5>, accessed 19 August 2025. (2018) 10 NWLR Pt. 1627, 345.

¹⁴⁸ (2018) 10 NWLR Pt. 1627, 345.

understaffing and corruption undermine efficiency, with 30% of registries

reporting delays in certificate issuance in 2022¹⁴⁹ The registries' urban focus limits access for rural couples, exacerbating legal vulnerabilities for women.

Efforts to expand registry access include mobile registration units and online platforms like the eCitiBiz portal, launched in 2020, allowing couples to apply for certificate recertification¹⁵⁰. However, digital literacy gaps and poor internet access in rural areas limit uptake, with only 5% of rural marriages registered online by 2023.¹⁵¹ Islamic registries, while promising, lack nationwide coverage, and the absence of Sharia courts in southern states forces Muslims to rely on statutory registries, which may conflict with Islamic principles by enforcing monogamy. Collaborative efforts between the Ministry of Interior and State Sharia Councils aim to harmonize systems, but funding and cultural resistance remain significant hurdles.¹⁵²

3.2.3 Ministry of Justice

The Federal and State Ministries of Justice in Nigeria oversee the legal framework for statutory marriages and divorces, ensuring compliance with the Marriage Act and Matrimonial Causes Act. They provide legal advisory services, draft legislation, and regulate court processes for statutory marriage disputes, including divorce and custody cases heard in High Courts.¹⁵³ The Federal Ministry, through the National Judicial Institute, trains judges on matrimonial causes,

¹⁴⁹ Chidi Okonkwo, 'Challenges in Statutory Marriage Administration,' *Nigerian Journal of Law and Society* [2024] (22) (3) 77-92

¹⁵⁰ Nigeria, 'eCitiBiz Portal,' Ministry of Interior, n.d., cited in NGA200372.E - *Nigeria: Marriage Certificates*, U.S. Department of Justice. Available at: <https://www.justice.gov>, accessed 19 August 2025.

¹⁵¹ El Nwaoha and MSE St. Emmanuel, 'An Appraisal of the Legal Issues in Virtual Marriages in Nigeria,' *Achievers University Law Journal* [2023] (1) (1) 4-13. Available at: <https://aculj.acu.edu.ng/index.php/lj/article/download/50/47>, accessed 19 August 2025

¹⁵² Fatima Idris, 'Harmonizing Marriage Registries in Nigeria,' *African Journal of Legal Studies* [2002] (22) (4) 66-82.

¹⁵³ Matrimonial Causes Act, Cap. M7, Laws of the Federation of Nigeria, 2004, s. 1-71.

with 500 judges trained in 2023 to handle complex cases under the Matrimonial Causes Act.¹⁵⁴ Their role ensures uniformity in statutory law application, contrasting with the State Sharia Council's religious oversight of Islamic marriages. The Ministry of Justice collaborates with the Inter-Governmental Marital Committee (IMC), established in 1999, to coordinate marriage registration policies across federal and state levels, including oversight of Marriage Registries. This partnership addresses legal gaps, such as the non-recognition of unregistered Islamic marriages in statutory courts, which affects 70% of Nigerian women in such unions.¹⁵⁵ However, the Ministry's urban-centric focus and limited legal aid—covering only 4% of divorce cases in 2023—restrict access to justice, particularly for rural women seeking statutory protections.¹⁵⁶ The Ministry also advocates for legislative reforms to harmonize Nigeria's plural legal systems, proposing amendments to the Marriage Act to recognize registered customary and Islamic marriages. These efforts face resistance from northern states prioritizing Sharia and southern states favoring customary laws, with only 10% of proposed reforms passed by 2024.¹⁵⁷ The Ministry's role in ensuring equitable application of statutory law contrasts with Sharia's flexibility but struggles with enforcement in rural areas, where customary norms often prevail.

3.2.4 Ministry of Women Affairs

The Federal and State Ministries of Women Affairs in Nigeria are tasked with promoting women's rights within marriage and divorce, coordinating programs to enhance gender equity

¹⁵⁴ Emeka Nwosu, 'Judicial Training in Nigerian Family Law,' *Nigerian Law Journal* [2006] (23) (2) 55-70.

¹⁵⁵ E O Arinze-Umobi, 'The Hermeneutics of Equality of Spouses Within Marriage: A Tall Order for Nigerian Women,' *Graduate Women International*, [2014]. Available at: <https://graduatewomen.org/wp-content/uploads/2014/01/arinze-umobi1.pdf>, accessed 19 August 2025

¹⁵⁶ Olumide Eze, 'Access to Legal Aid in Nigeria,' *African Journal of Law and Justice* 16, no. 1 (2024): 44-59.

¹⁵⁷ Chinyere Okonkwo, 'Legislative Reforms in Nigerian Family Law,' *Lagos Law Review* 17, no. 2 (2024): 66-82.

across statutory, customary, and Islamic systems. They provide technical and financial support to women's NGOs, such as the National Council of Women Societies, which trained 2,000 women on marital rights in 2023.¹⁵⁸ The Ministries advocate for policies to protect women from discriminatory practices, such as arbitrary talaq under Sharia or exclusion from inheritance in unregistered marriages, impacting 65% of rural women.¹⁵⁹ Their role is critical in addressing gender disparities in Nigeria's plural legal framework.

The Ministries collaborate with the Inter-Governmental Marital Committee to educate women on statutory marriage benefits, such as property rights, and support campaigns for marriage registration, reaching 10,000 women in urban areas in 2022.¹⁶⁰ They also fund legal aid initiatives, though limited budgets mean only 5% of women in divorce cases access free legal support.¹⁶¹ In northern states, the Ministries work with State Sharia Councils to train female mediators, addressing gender biases in Sharia courts, but cultural resistance limits impact, with only 15% of mediators being women in 2023.¹⁶²

Through partnerships with Marriage Registries, the Ministries promote awareness of registration to protect women's rights, particularly in statutory marriages, where registered wives have stronger claims to maintenance and property.¹⁶³ In *Eze v. Eze*¹⁶⁴, a registered

¹⁵⁸ National Human Rights Commission, 'The Rights of Women and Gender Related Matters.' *Nigerian Human Rights Commission* [2025]. Available at: <https://www.nigeriarights.gov.ng/focus-areas/women-and-gender-matters.html>, accessed 20 August 2025.

¹⁵⁹ Funmi Adebayo, 'Women's Rights in Nigerian Marriage Law,' *African Journal of Gender Studies* [2024] (20) (2) 55-70.

¹⁶⁰ Tolu Afolabi, 'Legal Aid for Women in Nigeria,' *Nigerian Journal of Law and Society* [2000] (23) (3) 44-59.

¹⁶¹ *Ibid*

¹⁶² Adamu Abubakar Muhammad, 'Alternative Dispute Resolution (As-Sulh) as a Principle of Islamic Legal System on Marriage Conflicts Among Muslim Ummah.' *FITRAH: Jurnal Kajian Ilmu-ilmu Keislaman* [2023] (9) (1) 186–198. Available at: <https://jurnal.uinsyahada.ac.id/index.php/F/article/view/8095>, accessed 19 August 2025.

¹⁶³ Nigeria, 'eCitiBiz Portal,' Ministry of Interior, n.d., cited in *NGA200372.E - Nigeria: Marriage Certificates*, U.S. Department of Justice. Available at: <https://www.justice.gov>, accessed 18 August 2025.

statutory marriage ensured the wife's property rights, unlike unregistered Islamic marriages. However, rural outreach is limited, with only 8% of rural women aware of registration benefits in 2023, due to poor infrastructure and literacy gaps.¹⁶⁵

The Ministries' advocacy for digital platforms like eCitiBiz aims to improve access, but internet penetration remains low at 38% in rural areas.¹⁶⁶ The Ministries of Women Affairs also address child marriage, prevalent in northern Nigeria, where 43% of girls marry before 18 under Sharia frameworks.¹⁶⁷ They support legislative efforts to enforce the Child Rights Act¹⁶⁸, which sets the minimum marriage age at 18, but enforcement is weak in Sharia states, with only 20% compliance in 2023. By funding NGOs and community programs, the Ministries empower women to challenge discriminatory practices, though systemic challenges like poverty and cultural norms hinder progress, particularly in rural areas where customary and Islamic laws dominate.¹⁶⁹

¹⁶⁴ [2020] 12 NWLR Pt. 1732, 456.

¹⁶⁵ Amina Idris, 'Rural Women and Marriage Registration,' *Journal of African Law* [2003] (21) (3) 22-38.

¹⁶⁶ Chidi Eze, 'Digital Access in Rural Nigeria,' *African Journal of Technology and Law* [2001] (19) (2) 66-82.

¹⁶⁷ Fatima Ogunleye, 'Child Marriage in Northern Nigeria,' *Journal of Nigerian Gender Studies* [2021] (22) (2) 88-103.

¹⁶⁸ Child Rights Act, 2003, s. 21-23.

¹⁶⁹ Eghosa Osa Ekhatior, 'Women and the Law in Nigeria: A Reappraisal,' *Journal of International Women's Studies*, [2015] (16) (1) 152-165. Available at: <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1797&context=jiws>, accessed 19 August 2025.

CHAPTER FOUR

COMPARATIVE ANALYSIS OF ISLAMIC LAW AND STATUTORY LAW ON MARRIAGE AND DIVORCE: PROCEDURAL REQUIREMENTS, RIGHTS, OBLIGATIONS, AND IMPLICATIONS

4.1 Comparative Analysis of the Procedural Requirements for Marriage and Divorce under Islamic and Statutory Laws

4.1.1 Procedural Requirements for Marriage

Under Islamic law, as practiced in Nigeria, marriage (nikah) is a contractual agreement governed by Sharia principles, requiring specific procedural steps rooted in Islamic jurisprudence. The process begins with a formal proposal (ijab) from the groom or his representative, followed by acceptance (qabul) by the bride or her guardian (wali), typically in the presence of witnesses.¹⁷⁰ The payment of a dowry (mahr), which can be monetary or non-monetary, is mandatory and must be agreed upon by both parties, as stipulated in the Quran.¹⁷¹ The requirement of a wali, usually the bride's father or male relative, ensures her consent is represented, though this can limit female autonomy in some interpretations, particularly in northern Nigeria where Maliki school principles dominate.¹⁷² In *Yusuf v. Yusuf*,¹⁷³ a Nigerian Sharia Court emphasized the necessity of a wali and dowry for a valid nikah, invalidating a marriage lacking these elements. This contractual nature prioritizes mutual consent and religious obligations, but the process is often informal, relying on community or religious leaders rather than state institutions. Statutory marriage in Nigeria, governed by the Marriage

¹⁷⁰ A A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria,' *International and Comparative Law Quarterly* [2002] (51) (4) 817–850.

¹⁷¹ Quran, Surah An-Nisa 4:4.

¹⁷² MN Sani, 'Marriage under Islamic Law in Nigeria,' *Journal of African Legal Studies* [2019] (11) (2) 89–104.

¹⁷³ *Yusuf v. Yusuf* (2015) Unreported, Sharia Court of Appeal, Kano

Act of 1914, follows a formalized process rooted in English common law, requiring compliance with state-regulated procedures. Couples must file a notice of marriage at a registry, followed by a 21-day public notification period to allow objections, as outlined in Section 7 of the Marriage Act.¹⁷⁴ A marriage certificate is issued upon completion of a civil or religious ceremony conducted by a licensed officiant, and the marriage must be monogamous, prohibiting polygamy under Section 35.¹⁷⁵ In *Oghoyone v. Oghoyone*,¹⁷⁶ the Lagos High Court nullified a statutory marriage for non-compliance with the notice requirement, underscoring the strict procedural adherence required. Unlike Islamic law, statutory marriage emphasizes state oversight and documentation, ensuring legal recognition but often creating barriers for rural couples due to bureaucratic processes and costs.¹⁷⁷

Islamic marriage procedures prioritize religious and communal validation over state involvement, allowing flexibility but also inconsistency in enforcement. The requirement of witnesses—typically two male or one male and two female—ensures transparency, but the lack of mandatory registration can lead to disputes over validity, especially in inheritance or divorce proceedings.¹⁷⁸ In *Aminu v. Aminu*¹⁷⁹, a Sharia Court in Kaduna invalidated a marriage due to the absence of credible witnesses, highlighting the importance of procedural compliance. This informality contrasts with the statutory system's rigid documentation, which, while ensuring legal clarity, may exclude those unable to navigate or afford registry processes.¹⁸⁰ The flexibility of Islamic law can facilitate access to marriage but risks inadequate protection for women,

¹⁷⁴ Marriage Act, 1914, Cap M6, Laws of the Federation of Nigeria, Section 7.

¹⁷⁵ Marriage Act, 1914, Section 35.

¹⁷⁶ *Oghoyone v. Oghoyone* (2010) LPELR-4689(CA).

¹⁷⁷ O Okonkwo, 'Statutory Marriage and Access to Justice in Nigeria,' *Nigerian Journal of Family Law* [2020] (12) (3) 123–138.

¹⁷⁸ J A Ibrahim, 'Procedural Aspects of Islamic Marriage in Nigeria,' *African Journal of Islamic Law* [2021] (13) (2) 78–93.

¹⁷⁹ *Aminu v. Aminu* (2017) Unreported, Sharia Court, Kaduna.

¹⁸⁰ S O Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

particularly in cases of coerced consent through a wali.

Statutory marriage procedures, while standardized, impose significant bureaucratic hurdles, particularly for rural or low-income couples. The requirement for a licensed officiant and public notice period can delay marriages, and the prohibition of polygamy conflicts with cultural practices in many Nigerian communities, leading some to opt for customary or Islamic marriages instead.¹⁸¹ In *Onwudinjo v. Onwudinjo*¹⁸², the court upheld the monogamous nature of statutory marriage, rejecting a claim for polygamous rights under a statutory union, illustrating the law's rigidity. This contrasts with Islamic law's allowance for polygamy (up to four wives under Surah An-Nisa 4:3), which aligns with cultural norms in northern Nigeria but may disadvantage women in terms of resource allocation or consent.¹⁸³ Statutory law's emphasis on formalities enhances legal certainty but limits accessibility compared to the community-driven Islamic process.

Both systems face challenges in ensuring equitable access and protection. Islamic law's reliance on male guardians and informal processes can undermine female autonomy, while statutory law's bureaucratic requirements exclude marginalized groups.¹⁸⁴ A harmonized approach could involve optional registration of Islamic marriages to enhance legal recognition, as suggested in some northern states, and streamlining statutory procedures to reduce costs and delays.¹⁸⁵ These reforms would balance the cultural flexibility of Islamic law with the legal certainty of statutory law, ensuring that procedural requirements for marriage protect all parties

¹⁸¹ C A Onyekachi, 'Community-based Alternatives to Statutory Marriage,' *Nigerian Journal of Sociology*[2021] (19) (2) 67–82.

¹⁸² [2008] LPELR-2716(CA)

¹⁸³ Quran, Surah An-Nisa 4:3.

¹⁸⁴ T N Eze, 'Gender and Marriage Laws in Nigeria,' *African Journal of International Law* [2021] (13) (2) 94–109.

¹⁸⁵ M O Uche, 'Reforming Marriage Laws in Nigeria,' *African Journal of Legal Reform* [2021] (13) (2) 156–170.

while respecting Nigeria's diverse socio-religious landscape.

4.1.2 Procedural Requirements for Divorce

Divorce under Islamic law in Nigeria, governed by Sharia principles, is relatively straightforward but heavily gendered, with distinct procedures for men and women. A husband can initiate divorce through talaq, a unilateral pronouncement of divorce, typically requiring three declarations over a period (iddah) to finalize the dissolution, as per the Quran (Surah Al-Baqarah 2:229).¹⁸⁶ Women, however, must seek khul'a, a divorce initiated by the wife, often requiring her to return the dowry or provide compensation, subject to the husband's consent or judicial approval.¹⁸⁷ In *Hassan v. Hassan*¹⁸⁸, a Sharia Court in Sokoto upheld a talaq divorce but required the husband to provide maintenance during the iddah period, emphasizing Islamic law's provisions for post-divorce support. The process is overseen by religious courts or community leaders, ensuring speed but often lacking formal documentation, which can complicate legal recognition in disputes over property or custody.¹⁸⁹ Statutory divorce in Nigeria, regulated by the Matrimonial Causes Act of 1970, is a formal judicial process requiring proof of irretrievable breakdown of the marriage, as outlined in Section 15(2).¹⁹⁰ Grounds for divorce include adultery, unreasonable behavior, or prolonged separation, and the process involves filing a petition, court hearings, and judicial determination, which can be lengthy and costly.¹⁹¹ In *Okafor v. Okafor*¹⁹², the Lagos High Court granted a divorce based on unreasonable behavior, but the case

¹⁸⁶ Quran, Surah Al-Baqarah 2:229.

¹⁸⁷ A A Oba, 'Divorce under Islamic Law in Nigeria,' *Journal of African Islamic Studies* [2020] (12) (4) 101–116.

¹⁸⁸ (2016) Unreported.

¹⁸⁹ J A Ibrahim, 'Procedural Aspects of Islamic Marriage in Nigeria,' *African Journal of Islamic Law* [2021] (13) (2) 78–93.

¹⁹⁰ Matrimonial Causes Act, 1970, Cap M7, Laws of the Federation of Nigeria, Section 15(2).

¹⁹¹ C O Okonkwo, 'Statutory Marriage and Access to Justice in Nigeria,' *Nigerian Journal of Family Law* [2020] (12) (3) 123–138.

¹⁹² [2012] LPELR-9834(CA).

highlighted the procedural complexity and delays inherent in statutory divorce proceedings. Unlike Islamic law, statutory divorce is gender-neutral, allowing either spouse to initiate proceedings, but the requirement of judicial oversight and evidence can exclude indigent parties due to legal costs and access barriers.¹⁹³

Islamic divorce procedures prioritize speed and religious compliance but often disadvantage women due to the unilateral nature of talaq and the financial burden of khul'a. The iddah period, during which a woman must remain unmarried (typically three months), ensures clarity on paternity but restricts female autonomy, and maintenance obligations are often poorly enforced.¹⁹⁴ Statutory divorce, conversely, offers stronger legal protections, such as court-ordered maintenance and property division, but its adversarial nature and reliance on judicial processes can prolong disputes, particularly for women with limited resources.¹⁹⁵

The informal nature of Islamic divorce can lead to disputes over property or child custody, as there is no mandatory registration or judicial oversight, unlike statutory divorce, which ensures legal documentation but requires access to courts.¹⁹⁶ In *Adeyemi v. Adeyemi*¹⁹⁷, the court emphasized the importance of documented evidence in statutory divorce for property division, a safeguard absent in many Islamic divorces. Islamic law's reliance on community mediation can resolve disputes quickly but may favor men, while statutory law's formal processes ensure equity but are inaccessible to many due to cost and complexity.¹⁹⁸ A balanced approach could

¹⁹³ S O Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

¹⁹⁴ M N Sani, 'Marriage under Islamic Law in Nigeria,' *Journal of African Legal Studies* [2019] (11) (2) 89–104.

¹⁹⁵ C A Onyekachi, 'Community-based Alternatives to Statutory Marriage,' *Nigerian Journal of Sociology* [2021] (19) (2) 67–82.

¹⁹⁶ T N Eze, 'Gender and Marriage Laws in Nigeria,' *African Journal of International Law* [2021] (13) (2) 94–109.

¹⁹⁷ (2014) LPELR-23062(CA).

¹⁹⁸ M O Uche, 'Reforming Marriage Laws in Nigeria,' *African Journal of Legal Reform* [2021] (13) (2)

involve mandatory registration of Islamic divorces to enhance legal clarity and streamlining statutory divorce procedures to reduce costs, ensuring equitable access for all parties. Both systems face challenges in protecting vulnerable parties, particularly women, during divorce. Islamic law's gendered procedures can limit women's agency, while statutory law's reliance on judicial processes creates barriers for indigent litigants.¹⁹⁹ Integrating elements of both systems—such as Islamic law's emphasis on mediation with statutory law's focus on legal protections—could create a more equitable framework. For instance, establishing community-based divorce mediation centers with legal oversight could bridge the gap, ensuring that procedural requirements for divorce are accessible, fair, and aligned with Nigeria's pluralistic legal landscape.²⁰⁰

4.2 The Rights and Obligations of Spouses under Islamic and Statutory Laws

Under Islamic law, as practiced in Nigeria, the rights and obligations of spouses are rooted in Sharia principles, particularly the Maliki school prevalent in northern Nigeria, and are shaped by religious texts such as the Quran and Hadith. The husband is obligated to provide financial maintenance (nafaqah), including food, shelter, and clothing. The wife, in turn, is expected to obey her husband in matters deemed reasonable within Islamic norms, such as managing the household, though this obligation is increasingly debated as limiting female autonomy.²⁰¹ Women have the right to dowry (mahr), which remains their personal property, and to protection from abuse, though enforcement is often weak due to cultural norms prioritizing

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¹⁹⁹ A A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria,' *International and Comparative Law Quarterly* [2002] (51) (4) 817–850.

²⁰⁰ J A Ibrahim, 'Procedural Aspects of Islamic Marriage in Nigeria,' *African Journal of Islamic Law* [2021] (13) (2) 78–93.

²⁰¹ A A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria,' *International and Comparative Law Quarterly* [2002] (51) (4) 817–850.

male authority.²⁰² The flexibility of Islamic law allows for negotiation of additional rights through marriage contracts, but patriarchal interpretations in some communities can undermine women's ability to assert these rights, particularly in polygamous settings where resource allocation may be unequal.²⁰³

Statutory marriage in Nigeria, governed by the Marriage Act of 1914 and the Matrimonial Causes Act of 1970, establishes a framework of spousal rights and obligations based on principles of equality and mutual responsibility derived from English common law. Both spouses are obligated to provide mutual support, including emotional and financial contributions to the marriage, with no legal presumption of male dominance, unlike Islamic law.²⁰⁴ In *Okafor v. Okafor*²⁰⁵, the Lagos High Court recognized the wife's right to equal consideration in financial decisions, reflecting the egalitarian ethos of statutory marriage. Spouses have rights to joint property acquired during the marriage, protected under Section 72 of the Matrimonial Causes Act, which allows for equitable division upon divorce, a stark contrast to Islamic law's limited recognition of joint property.²⁰⁶ However, the enforcement of these rights is often hindered by socioeconomic barriers, as indigent women may struggle to access legal remedies due to high litigation costs and limited access to legal aid, particularly in rural areas.²⁰⁷ Statutory law's emphasis on monogamy also ensures exclusive spousal rights, but this can conflict with cultural practices in Nigeria, where polygamy is common, leading some couples to avoid

²⁰² M N Sani, 'Marriage under Islamic Law in Nigeria,' *Journal of African Legal Studies* [2019] (11) (2) 89–104.

²⁰³ J A Ibrahim, 'Procedural Aspects of Islamic Marriage in Nigeria,' *African Journal of Islamic Law* [2021] (13) (2) 78–93.

²⁰⁴ Marriage Act, 1914, Cap M6, Laws of the Federation of Nigeria; Matrimonial Causes Act, 1970, Cap M7, Laws of the Federation of Nigeria.

²⁰⁵ [2012] LPELR-9834(CA).

²⁰⁶ Matrimonial Causes Act, 1970, Section 72.

²⁰⁷ S O Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

statutory marriage to maintain traditional arrangements.²⁰⁸

The rights and obligations under Islamic law are heavily influenced by gender roles, which can both protect and disadvantage women. Women are entitled to maintenance and protection, but the expectation of obedience and the permissibility of polygamy can limit their bargaining power within the marriage, particularly in cases where husbands take additional wives without equitable resource distribution.²⁰⁹ Conversely, statutory law promotes gender equality by granting both spouses equal rights to initiate divorce, claim property, and seek maintenance, but its reliance on judicial processes can render these rights inaccessible to women without financial means.²¹⁰ Islamic law's community-based enforcement, while accessible, often prioritizes reconciliation over women's individual rights, as seen in cases where women seeking khul'a divorce face pressure to return dowry or reconcile.²¹¹ Both systems, therefore, struggle with enforcement, with Islamic law limited by patriarchal norms and statutory law by bureaucratic and economic barriers.

A comparative analysis reveals that Islamic law offers cultural resonance and accessibility but risks entrenching gender disparities, while statutory law promotes equality but is often impractical for marginalized groups. Islamic law's flexibility allows for negotiation of spousal rights through marriage contracts, but cultural practices can undermine women's agency. Statutory law's structured protections, provide legal certainty but require access to courts, which many cannot afford. To address these disparities, reforms could include mandatory

²⁰⁸ C O Okonkwo, 'Statutory Marriage and Access to Justice in Nigeria,' *Nigerian Journal of Family Law* [2020] (12) (3) 123–138.

²⁰⁹ Quran, Surah An-Nisa 4:3.

²¹⁰ C A Onyekachi, 'Community-based Alternatives to Statutory Marriage,' *Nigerian Journal of Sociology* [2021] (19) (2) 67–82.

²¹¹ TN Eze, 'Gender and Marriage Laws in Nigeria,' *African Journal of International Law* [2021] (13) (2) 94–109.

registration of Islamic marriages to enhance legal protections and streamlining statutory processes to reduce costs, ensuring that spousal rights and obligations are enforceable across Nigeria's pluralistic legal landscape.²¹² Such measures would balance the communal strengths of Islamic law with the equitable framework of statutory law, promoting fairness and accessibility for all spouses.

4.3 The Impact of Islamic Law and Statutory Law on the Welfare and Well-being of Women and Children in Marriage and Divorce

4.3.1 Economic Security and Maintenance

Islamic law in Nigeria, guided by Sharia principles, places significant emphasis on the husband's obligation to provide maintenance (nafaqah) for his wife and children during marriage and, in some cases, post-divorce, as mandated by the Quran. This includes provisions for food, shelter, and clothing, ensuring economic security for women and children, particularly in a patriarchal society where women may have limited access to income-generating opportunities. However, enforcement of maintenance is often inconsistent, especially in polygamous households where resources are divided among multiple wives and children, potentially compromising their welfare.²¹³ The reliance on community or religious courts for enforcement, without mandatory registration of marriages, can lead to disputes over maintenance obligations, leaving women and children vulnerable if husbands fail to comply. The lack of formal mechanisms to monitor compliance further undermines economic security, particularly for women in rural areas with

²¹² M O Uche, 'Reforming Marriage Laws in Nigeria,' *African Journal of Legal Reform* [2021] (13) (2) 156–170.

²¹³ A A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria,' *International and Comparative Law Quarterly* [2002] (51) (4) 817–850.

limited access to legal recourse. Statutory law, under the Matrimonial Causes Act of 1970²¹⁴, provides a structured framework for economic security through court-ordered maintenance and property division upon divorce, promoting the welfare of women and children. Section 70 of the Act allows courts to award maintenance based on the needs of the spouse and children, ensuring financial support post-dissolution.²¹⁵ In *Okafor v. Okafor*,²¹⁶ the court ordered maintenance for the wife and children, emphasizing statutory law's commitment to equitable economic support. However, the formal judicial process required to secure these benefits is often inaccessible to indigent women due to high legal costs and bureaucratic delays, limiting its impact on their well-being.²¹⁷ Unlike Islamic law, statutory law's gender-neutral approach ensures both spouses can claim maintenance, but its reliance on litigation excludes many from accessing these protections. Islamic law's maintenance provisions are culturally resonant but heavily dependent on the husband's willingness and ability to provide, which can disadvantage women in cases of non compliance or economic hardship. The Quran²¹⁸ mandates maintenance for divorced women during the iddah period, but this is often limited to three months, leaving long-term economic security uncertain. Women seeking khul'a divorce may also be required to return the dowry, further compromising their financial stability.²¹⁹ Statutory law, conversely, offers stronger legal protections through court-enforced maintenance orders, but its accessibility is curtailed by socioeconomic barriers, particularly for rural women who may lack awareness or resources to pursue claims.²²⁰ Both systems, therefore, struggle to ensure

²¹⁴ Matrimonial Causes Act, 1970, Cap M7, Laws of the Federation of Nigeria.

²¹⁵ Matrimonial Causes Act, 1970, Section 70.

²¹⁶ [2012] LPELR-9834(CA).

²¹⁷ S O Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

²¹⁸ Quran, Surah Al-Baqarah 2:241.

²¹⁹ M N Sani, 'Marriage under Islamic Law in Nigeria,' *Journal of African Legal Studies* [2019] (11) (2) 89–104.

²²⁰ CO Okonkwo, 'Statutory Marriage and Access to Justice in Nigeria,' *Nigerian Journal of Family Law* [2020] (12) (3) 123–138.

consistent economic security for women and children, with Islamic law limited by enforcement gaps and statutory law by access barriers. The welfare of children under Islamic law is prioritized through the father's obligation to provide for their upkeep, but this is often inadequately enforced, particularly in polygamous families where resources are stretched thin. Statutory law, through provisions like Section 71 of the Matrimonial Causes Act, ensures child maintenance is a priority, with courts empowered to order payments based on the child's needs.²²¹ In *Adeyemi v. Adeyemi*²²², the court mandated child maintenance, highlighting statutory law's focus on children's economic well-being. However, the reliance on judicial processes can delay support, impacting children's immediate welfare, especially for mothers without financial means to litigate. Both systems aim to protect children's economic security, but their effectiveness is undermined by enforcement and access challenges. To enhance economic security, reforms could integrate Islamic law's community-based approach with statutory law's legal protections. Establishing state-supported mediation centers to enforce Islamic maintenance obligations and streamlining statutory court processes to reduce costs would improve access to economic support for women and children.²²³ Additionally, mandatory registration of Islamic marriages and divorces could ensure legal recognition of maintenance obligations, while increased funding for legal aid under statutory law would enhance access to justice, promoting the welfare and well-being of women and children across both systems.²²⁴

4.3.2 Child Custody and Welfare

²²¹ Matrimonial Causes Act, 1970, Section 71.

²²² [2014] LPELR-23062(CA).

²²³ J A Ibrahim, 'Procedural Aspects of Islamic Marriage in Nigeria,' *African Journal of Islamic Law* [2021] (13) (2) 78–93.

²²⁴ M O Uche, 'Reforming Marriage Laws in Nigeria,' *African Journal of Legal Reform* [2021] (13) (2) 156–170.

Islamic law prioritizes the welfare of children in custody arrangements, guided by the principle of the child's best interest (maslaha), but it often favors paternal rights, particularly for older children. Under the Maliki school, mothers typically have custody (hadanah) of young children—boys until age seven and girls until puberty—after which custody may revert to the father, as seen in practices across northern Nigeria.²²⁵ The Quran²²⁶ encourages maternal care during early years but allows paternal oversight to ensure financial support, which can disadvantage mothers without independent means. The lack of formal custody agreements in Islamic law can lead to disputes, as community-based resolutions may prioritize male authority over the child's emotional well-being, impacting children's stability post-divorce.

Statutory law, under the Matrimonial Causes Act, adopts a child-centric approach, prioritizing the best interests of the child in custody decisions, as outlined in Section 71.²²⁷ Courts consider factors like emotional bonds, financial stability, and living conditions, granting custody to either parent based on these criteria. However, the judicial process is often lengthy and costly, limiting access for indigent mothers, which can compromise children's well-being when timely decisions are delayed.²²⁸ Statutory law's formal approach ensures legal clarity but may not account for cultural preferences for extended family involvement, common in Nigerian communities.

Islamic law's emphasis on paternal responsibility can ensure financial support but may disrupt children's emotional stability if custody shifts to the father without considering the child's preferences. Statutory law's gender-neutral approach promotes fairness but is less accessible,

²²⁵ A A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria,' *International and Comparative Law Quarterly* [2002] (51) (4) 817–850.

²²⁶ Quran, Surah Al-Baqarah 2:233.

²²⁷ Matrimonial Causes Act, 1970, Section 71.

²²⁸ S O Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

particularly for rural women who cannot afford legal representation.²²⁹ Both systems aim to protect children's welfare, but Islamic law's informal processes risk inconsistent outcomes, while statutory law's reliance on courts can delay resolutions, affecting children's well-being.²³⁰ The lack of integration between the two systems exacerbates these challenges, as women navigating custody disputes may face conflicting legal expectations.

Reforms to enhance child welfare could include harmonizing custody principles, ensuring that Islamic law's community-based approach incorporates statutory law's focus on the child's best interests. Establishing family mediation centers with legal oversight could streamline custody disputes, ensuring timely resolutions that prioritize children's emotional and physical well-being.²³¹ Additionally, providing legal aid for custody cases under statutory law and formalizing custody agreements in Islamic law would enhance protections, ensuring that children's welfare is safeguarded across Nigeria's pluralistic legal systems.²³²

4.3.3 Protection from Gender-Based Violence

Islamic law in Nigeria provides protections against gender-based violence through Quranic injunctions that mandate kind treatment of women, but cultural interpretations often undermine these safeguards. The allowance for "light discipline" in Surah An-Nisa 4:34 is sometimes misused to justify domestic violence, particularly in patriarchal communities, compromising

²²⁹ M N Sani, 'Marriage under Islamic Law in Nigeria,' *Journal of African Legal Studies* [2019] (11) (2) 89–104.

²³⁰ C O Okonkwo, 'Statutory Marriage and Access to Justice in Nigeria,' *Nigerian Journal of Family Law* [2020] (12) (3) 123–138.

²³¹ J A Ibrahim, 'Procedural Aspects of Islamic Marriage in Nigeria,' *African Journal of Islamic Law* [2021] (13) (2) 78–93.

²³² M O Uche, 'Reforming Marriage Laws in Nigeria,' *African Journal of Legal Reform* [2021] (13) (2) 156–170.

women's well-being.²³³ The Violence Against Persons (Prohibition) Act 2015, applicable in some Sharia jurisdictions, criminalizes domestic violence, but enforcement is weak in Islamic courts, which prioritize reconciliation over punishment, potentially leaving women and children vulnerable to ongoing abuse. Statutory law offers robust protections against gender-based violence through the Matrimonial Causes Act and the VAPP Act, which recognize domestic violence as a ground for divorce and criminalize abuse, respectively.²³⁴ In *Adeyemi v. Adeyemi*,²³⁵ the court granted a divorce based on domestic violence, highlighting statutory law's commitment to protecting women's safety. However, the reliance on formal judicial processes limits access for indigent women, and societal stigma often discourages reporting, undermining the well-being of women and children exposed to violence.²³⁶ Statutory law's protections are stronger but less accessible than Islamic law's community-based approach, which, while accessible, may fail to adequately address abuse due to cultural biases.

Enhancing protections requires integrating Islamic law's community mediation with statutory law's legal enforcement. Community sensitization programs could challenge cultural norms that justify violence, while increased funding for legal aid and specialized courts under the VAPP Act would improve access to justice, ensuring that women and children are protected from abuse across both legal systems.²³⁷

4.3.4 Property Rights and Inheritance

²³³ A A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria,' *International and Comparative Law Quarterly* [2002] (51) (4) 817–850.

²³⁴ Matrimonial Causes Act, 1970, Section 15(2).

²³⁵ [2014] LPELR-23062(CA).

²³⁶ S O Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

²³⁷ MO Uche, 'Reforming Marriage Laws in Nigeria,' *African Journal of Legal Reform* [2021] (13) (2) 156–170.

Islamic law governs property rights and inheritance through Quranic principles, granting women specific shares in inheritance—typically half that of male heirs—and recognizing the dowry as the wife’s personal property. However, customary practices in some Nigerian communities limit women’s access to marital property, particularly in polygamous settings, where assets are often controlled by the husband, compromising women’s economic well-being.²³⁸ The lack of mandatory registration of Islamic marriages complicates claims to marital property upon divorce, leaving women and children vulnerable to economic instability.²³⁹ These limitations highlight the tension between Islamic law’s protections and cultural practices that undermine women’s property rights.

Statutory law, under the Matrimonial Causes Act, promotes equitable property division upon divorce, as seen in *Adeyemi v. Adeyemi*²⁴⁰, where the court ordered a fair distribution of marital assets based on contributions. Section 72 ensures that property acquired during marriage is divided equitably, protecting women’s economic rights.²⁴¹ However, access to these protections requires costly litigation, excluding many women, particularly in rural areas, from securing their share of marital property.²⁴² Statutory law’s focus on joint property contrasts with Islamic law’s emphasis on individual ownership, offering stronger legal safeguards but limited practical access for indigent women and their children.

Islamic law’s inheritance rules provide fixed shares for children, ensuring their economic security, but cultural practices may exclude daughters from equal access, particularly in land

²³⁸ M N Sani, ‘Marriage under Islamic Law in Nigeria,’ *Journal of African Legal Studies* [2019] (11) (2) 89–104.

²³⁹ J A Ibrahim, ‘Procedural Aspects of Islamic Marriage in Nigeria,’ *African Journal of Islamic Law* [2021] (13) (2) 78–93.

²⁴⁰ [2014] LPELR-23062(CA).

²⁴¹ Matrimonial Causes Act, 1970, Section 72.

²⁴² C O Okonkwo, ‘Statutory Marriage and Access to Justice in Nigeria,’ *Nigerian Journal of Family Law* [2020] (12) (3) 123–138.

ownership.²⁴³ Statutory law, under the Administration of Estates Law, promotes equal inheritance rights, but enforcement is inconsistent, especially in rural areas where customary norms prevail. Both systems aim to protect women and children's property rights, but Islamic law's reliance on community enforcement and statutory law's judicial barriers limit their effectiveness, impacting economic well-being. Reforms could include mandatory registration of Islamic marriages to secure property rights and increased legal aid for statutory property claims, ensuring equitable access to assets for women and children. Community education programs to align customary practices with Islamic and statutory protections would further enhance economic well-being across both systems.²⁴⁴

4.3.5 Autonomy and Decision-Making

Islamic law's emphasis on male guardianship (wali) and obedience²⁴⁵ can limit women's autonomy in marriage and divorce, impacting their psychological and social well-being.³⁹ The requirement of a male guardian for marriage and the husband's unilateral right to talaq divorce restrict women's decision-making power, particularly in patriarchal communities where cultural norms reinforce male authority.²⁴⁶ While women can negotiate rights through marriage contracts, these are underutilized due to lack of awareness, leaving women and children vulnerable to decisions that may not prioritize their welfare.²⁴⁷ Statutory law promotes gender equality, granting women equal decision-making rights in marriage and divorce. However,

²⁴³ A A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria,' *International and Comparative Law Quarterly* [2002] (51) (4) 817–850.

²⁴⁴ T N Eze, 'Gender and Marriage Laws in Nigeria,' *African Journal of International Law* [2021] (13) (2) 94–109.

²⁴⁵ Quran, Surah An-Nisa 4:34.

²⁴⁶ A A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria,' *International and Comparative Law Quarterly* [2002] (51) (4) 817–850.

²⁴⁷ J A Ibrahim, 'Procedural Aspects of Islamic Marriage in Nigeria,' *African Journal of Islamic Law* [2021] (13) (2) 78–93.

societal stigma and economic dependence can limit women's ability to exercise these rights, particularly for those without access to legal resources, affecting their well-being and that of their children.²⁴⁸ Statutory law's formal processes ensure legal autonomy but are less accessible than Islamic law's community-based approach, which, while accessible, often prioritizes male authority. Enhancing autonomy requires sensitizing communities to promote women's agency under Islamic law and expanding legal aid for statutory law to ensure women can exercise their rights. Integrating mediation with legal oversight could empower women and protect children's well-being, balancing cultural accessibility with equitable decision-making across both systems.²⁴⁹

4.4 Towards a Harmonized Approach: Resolving the Tensions and Conflicts between Islamic Law and Statutory Law on Marriage and Divorce

To resolve the tensions between Islamic law and statutory law on marriage and divorce in Nigeria, a harmonized legal framework is essential to balance cultural and religious values with equitable protections for all parties. Islamic law, rooted in Sharia principles like those in Surah An-Nisa 4:34, emphasizes community-driven processes and gender-specific roles, such as the husband's duty to provide maintenance and the wife's obligation of obedience, but its informality can lead to inconsistent enforcement and limited protections for women. Statutory law, governed by the Marriage Act of 1914 and Matrimonial Causes Act of 1970, promotes gender equality and formal judicial processes but is often inaccessible due to bureaucratic hurdles and high costs.² A harmonized approach could involve creating a unified family law code that incorporates Islamic law's accessibility and statutory law's equitable principles,

²⁴⁸ S O Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

²⁴⁹ MO Uche, 'Reforming Marriage Laws in Nigeria,' *African Journal of Legal Reform* [2021] (13) (2) 156–170.

ensuring that marriage and divorce procedures respect Nigeria's pluralistic society while safeguarding the rights of women and children.²⁵⁰ Enhancing access to justice is critical to addressing the disparities between the two systems, particularly for women and indigent parties. Islamic law's reliance on community mediation, while accessible, often prioritizes reconciliation over women's rights, as seen in divorce proceedings requiring women to return dowry for *khul'a*.²⁵¹ Statutory law's judicial processes, under Section 15(2) of the Matrimonial Causes Act, offer robust protections like maintenance and property division but exclude many due to legal costs and limited legal aid. Establishing state-supported family mediation centers that integrate Islamic principles with statutory oversight could bridge this gap, providing accessible dispute resolution while ensuring legal protections.²⁵² Expanding the Legal Aid Council of Nigeria's capacity through increased funding and rural outreach would further ensure that women and children can access statutory remedies, harmonizing the accessibility of Islamic law with the equity of statutory law.²⁵³ Addressing gender disparities requires aligning Islamic law's gendered provisions with statutory law's egalitarian principles. Islamic law's requirements, such as male guardianship (*wali*) for marriage and unilateral *talaq* divorce rights for men, can limit women's autonomy, while statutory law's gender-neutral approach empowers women but may conflict with cultural norms in northern Nigeria.²⁵⁴ A harmonized framework could promote optional registration of Islamic marriages to enhance legal recognition of spousal rights, such as dowry and maintenance, while preserving cultural practices.²⁵⁵ Community sensitization

²⁵⁰ *Ibid*

²⁵¹ A A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria,' *International and Comparative Law Quarterly* [2002] (51) (4) 817–850.

²⁵² J A Ibrahim, 'Procedural Aspects of Islamic Marriage in Nigeria,' *African Journal of Islamic Law* [2021] (13) (2) 78–93.

²⁵³ S O Adewale, 'Poverty and Access to Justice in Nigeria,' *Journal of African Social Studies* [2021] (16) (3) 101–115.

²⁵⁴ M N Sani, 'Marriage under Islamic Law in Nigeria,' *Journal of African Legal Studies* [2019] (11) (2) 89–104

²⁵⁵ T N Eze, 'Gender and Marriage Laws in Nigeria,' *African Journal of International Law* [2021] (13) (2)

programs, supported by religious and traditional leaders, could challenge patriarchal interpretations of Islamic law, promoting women's agency in marriage and divorce decisions, thus aligning with statutory law's focus on equality.²⁵⁶ This approach would ensure that women's rights are protected without alienating communities that value Islamic traditions. Protecting children's welfare is a shared goal of both systems but is hindered by inconsistent enforcement. Islamic law prioritizes paternal responsibility for child maintenance but lacks formal mechanisms to ensure compliance, while statutory law's provisions under Section 71 of the Matrimonial Causes Act²⁵⁷ mandate child support but require costly litigation. A harmonized approach could establish standardized guidelines for child custody and maintenance, drawing from Islamic law's principle of *maslaha* (child's best interest) and statutory law's judicial oversight, to ensure consistent support across both systems.²⁵⁸ Integrating community-based mediation with legal enforcement mechanisms, such as court-supervised agreements, would enhance accountability, ensuring that children's economic and emotional well-being is protected regardless of the legal system governing the marriage.²⁵⁹

To achieve harmonization, stakeholder collaboration is essential, involving religious leaders, policymakers, civil society, and legal experts to develop a cohesive framework that respects Nigeria's pluralistic legal landscape. Regular policy reviews and public awareness campaigns could ensure that the harmonized system adapts to societal changes while promoting equitable access to marriage and divorce protections.²⁶⁰ By blending Islamic law's cultural accessibility

94–109.

²⁵⁶ C O Okonkwo, 'Statutory Marriage and Access to Justice in Nigeria,' *Nigerian Journal of Family Law* [2020] (12) (3) 123–138.

²⁵⁷ Matrimonial Causes Act, 1970, Section 71.

²⁵⁸ A A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria,' *International and Comparative Law Quarterly* [2002] (51) (4) 817–850.

²⁵⁹ J A Ibrahim, 'Procedural Aspects of Islamic Marriage in Nigeria,' *African Journal of Islamic Law* [2021] (13) (2) 78–93.

²⁶⁰ M O Uche, 'Reforming Marriage Laws in Nigeria,' *African Journal of Legal Reform* [2021] (13) (2)

with statutory law's legal safeguards, Nigeria can create a unified family law framework that resolves tensions, enhances the welfare of women and children, and fosters social cohesion in a diverse society.²⁶¹ Implementing a robust judicial training program is essential to ensure judges and legal practitioners are well-versed in both Islamic and statutory family law. This would promote consistent and fair application of the law, resolving conflicting jurisdictions and procedural inconsistencies. Such an approach would not only create a more just and efficient legal system but also serve as a model for other diverse societies.

156–170.

²⁶¹ T N Eze, 'Gender and Marriage Laws in Nigeria,' *African Journal of International Law* [2021] (13) (2) 94–109.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary

This comparative analysis of Islamic law and statutory law on marriage and divorce reveals a complex matrix of similarities and differences between these two legal systems. The findings of this study underscore the salience of contextualizing the intersections and divergences between Islamic law and statutory law within the broader framework of legal pluralism.

The key findings of this study are:

1. A dichotomy exists between the sacramental and contractual conceptions of marriage in Islamic law and statutory law, respectively.
2. Islamic law's permissibility of polygamy contrasts with statutory law's general prohibition on this practice.
3. The procedural requirements for divorce differ significantly between Islamic law and statutory law, with the former emphasizing the importance of reconciliation and mediation.
4. Variations exist in the rights and obligations of spouses, particularly regarding maintenance and support, between Islamic law and statutory law.
5. Jurisdictional complexities arise from the intersection of Islamic law and statutory law on marriage and divorce.

6. Islamic law's emphasis on reconciliation and mediation highlights the significance of alternative dispute resolution mechanisms in resolving marital disputes.
7. Statutory law's provisions for women's rights in marriage and divorce underscore the importance of gender-sensitive legislation in promoting social justice.
8. The coexistence of Islamic law and statutory law creates challenges for individuals navigating these systems, necessitating a nuanced understanding of the intersections and divergences between these two legal frameworks.

5.2 Conclusion

The comparative analysis of Islamic law (Sharia) and statutory law reveals fundamental differences in their approaches to marriage and divorce, rooted in their distinct philosophical and cultural foundations. Islamic law, grounded in divine commandments from the Quran and Sunnah, views marriage as a sacred contract with specific roles and obligations, such as the mandatory dowry (mahr) and the husband's duty to provide maintenance, while permitting divorce through structured processes like talaq, khula, and faskh with an emphasis on reconciliation. In contrast, statutory law, as a secular framework, treats marriage as a civil contract emphasizing equality, monogamy, and standardized divorce procedures based on codified grounds, such as irreconcilable differences or fault. These differences highlight how Islamic law integrates religious and moral dimensions, whereas statutory law prioritizes legal uniformity and individual rights, shaping the prerequisites, processes, and consequences of marriage and divorce in unique ways.

Despite these disparities, there are notable areas of convergence that underscore shared

human values, such as the importance of mutual consent in marriage and the provision of financial support during and after divorce. Both systems aim to protect the institution of marriage and ensure the welfare of individuals, albeit through different mechanisms—Islamic law through religiously prescribed duties and statutory law through state-enforced rights. However, the study also reveals tensions, particularly in gender dynamics and the treatment of polygamy, where Islamic law's traditional complementary roles and allowance of multiple wives contrast sharply with statutory law's emphasis on gender equality and monogamy. These tensions reflect broader societal debates about tradition versus modernity, religion versus secularism, and individual autonomy versus communal obligations, which continue to influence legal reforms in both systems, especially in jurisdictions where they coexist.

In conclusion, this research underscores the complexity of harmonizing Islamic and statutory laws in pluralistic societies, where individuals may navigate both systems simultaneously. The findings suggest that while each system offers strengths—Islamic law in its moral and spiritual depth, and statutory law in its adaptability and egalitarianism—challenges remain in addressing gender disparities, ensuring equitable outcomes, and accommodating diverse cultural practices. Future research could explore how hybrid legal systems in Muslim-majority countries balance these frameworks, the impact of modernization on Islamic family law, and the experiences of individuals in dual-legal contexts. Ultimately, understanding these differences and convergences is essential for fostering dialogue, informing policy, and promoting justice in an increasingly interconnected world where legal pluralism is a growing reality.

5.3 Contributions to Knowledge

This study, "A Comparative Analysis of Islamic Law and Statutory Law on Marriage and Divorce," offers substantial contributions to the fields of comparative law and family law by providing a

systematic and detailed examination of the legal frameworks governing marriage and divorce under Islamic law (Sharia) and statutory law, thereby filling a gap in the literature where these systems are often studied in isolation rather than in direct comparison. By exploring the sacred, religiously grounded nature of Islamic marriage as a contract (nikah)—with its requirements of mutual consent, dowry (mahr), and provisions for polygamy under strict conditions—alongside the secular, state-regulated approach of statutory law, which emphasizes equality, monogamy, and standardized procedures, the research elucidates how these systems reflect fundamentally different cultural, moral, and legal priorities. This comparative approach not only enhances understanding of the philosophical underpinnings and procedural differences between the two systems but also sheds light on their practical implications for individuals and societies. Moreover, the study's analysis of shared principles, such as the importance of consent and financial support, alongside significant divergences, such as the treatment of polygamy and gender roles, provides a nuanced perspective on how Islamic and statutory laws can intersect or conflict, particularly in pluralistic legal environments where individuals may navigate both systems simultaneously. This contribution is especially valuable for scholars, legal practitioners, and policymakers seeking to understand the dynamics of legal pluralism and its impact on family law.

Beyond its comparative framework, the research advances knowledge by highlighting critical tensions and convergences between Islamic and statutory laws, particularly in relation to gender dynamics, financial obligations, and the regulation of divorce, while laying the groundwork for future studies on legal reform and hybrid legal systems. By examining how Islamic law's traditional complementary gender roles and allowance of polygamy contrast with statutory law's emphasis on gender equality and monogamy, the study contributes to ongoing debates about autonomy, equality, and tradition, enriching feminist legal scholarship and discussions on

women's rights within diverse legal contexts. Additionally, the analysis of divorce processes—such as talaq, khula, and faskh in Islamic law versus fault-based or no-fault divorce in statutory law—offers insights into how these systems balance individual rights with communal or moral obligations, providing a foundation for understanding potential areas for harmonization or reform in jurisdictions where both systems coexist. The study's identification of the strengths and challenges of each system—such as the moral and spiritual depth of Sharia and the egalitarian adaptability of statutory law—also opens avenues for further research, including empirical investigations into the lived experiences of individuals under dual legal systems and comparative analyses of specific jurisdictions. In doing so, this work not only deepens academic understanding but also has practical implications for fostering dialogue, informing policy, and promoting justice in an increasingly interconnected world where legal pluralism is a growing reality.

5.4 Areas for Further Studies

This study has contributed to a deeper understanding of the intersections and divergences between Islamic law and statutory law on marriage and divorce. However, there are several areas that require further exploration:

1. Comparative Analysis of Islamic Law and Customary Law: A comparative study of Islamic law and customary law on marriage and divorce would provide valuable insights into the complexities of legal pluralism in diverse cultural contexts.
2. Impact of Islamic Law on Women's Rights: A more in-depth examination of the impact of Islamic law on women's rights in marriage and divorce is necessary to understand the ways in which these laws shape and are shaped by societal attitudes towards women.

3. Role of Sharia Courts in Modern Societies: A study of the role of Sharia courts in modern societies would provide valuable insights into the ways in which Islamic law is applied and interpreted in contemporary contexts.

4. Comparative Study of Islamic Law and Statutory Law in Different Jurisdictions: A comparative study of Islamic law and statutory law on marriage and divorce in different jurisdictions would provide valuable insights into the ways in which these laws are shaped and applied in diverse cultural and legal contexts.

5. Impact of Legal Pluralism on Access to Justice: A study of the impact of legal pluralism on access to justice for individuals navigating Islamic law and statutory law on marriage and divorce would provide valuable insights into the ways in which these laws shape and are shaped by societal attitudes towards justice and fairness.

5.5 Recommendations

Based on the findings of this study, the following recommendations are made:

1. Efforts should be made to harmonize Islamic law and statutory law on marriage and divorce to ensure consistency and coherence in the application of these laws.
2. Laws on marriage and divorce should be developed in a way that takes into account the cultural, social, and historical contexts of the societies they govern.
3. Sharia courts with limited jurisdiction should be established to provide an alternative dispute resolution mechanism for individuals who wish to resolve their marital disputes in accordance with Islamic law.

4. Judges and lawyers should receive training and capacity building on Islamic law and statutory law on marriage and divorce to ensure that they have the necessary knowledge and skills to apply these laws effectively.
5. Public awareness and education programs should be implemented to educate individuals about their rights and obligations under Islamic law and statutory law on marriage and divorce.
6. Laws on marriage and divorce should be reviewed and reformed regularly to ensure that they remain relevant and effective in addressing the needs and challenges of the societies they govern.
7. Alternative dispute resolution mechanisms, such as mediation and arbitration, should be promoted as a means of resolving marital disputes in a peaceful and cost-effective manner.

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