

# Non-Legally Binding Muslim Marriages in England and Qatar: Circumventing the State

by Rajnaara C. Akhtar\*

## Table of Contents

I.	Introduction.....	14
II.	Marriage Recognition in England and Qatar.....	14
III.	Religious-only Marriages in England and Qatar.....	18
IV.	Legal Outcomes of Non-recognition of Marriage in England and Qatar.....	22
V.	Conclusion.....	24

## Abstract

*Marriage and relationship norms are changing globally. The state's role in administering marriages and relationship breakdown is coming under mounting stress due to the increasing manifestation of differing relationship norms. In England, the state is grappling with non-legally binding marriages and non-formal relationships, including Muslim religious-only marriages and cohabitation respectively. In Qatar, on the other hand, the state carefully regulates marriages, including, in some instances, the question of who marries whom. However, the issue of non-legally binding "religious-only" marriages can be located in both of these very disparate legal systems. This paper explores the way in which couples in both countries are bypassing the state to enter marriages based on their individual circumstances, and the situations in which non-legally binding marriages are a conscious choice.*

\* Rajnaara C. Akhtar is Senior Lecturer at Leicester De Montfort University, where her research focuses on marriage formalities and non-legally recognized religious-only marriages. She has undertaken empirical research on marriage in Qatar, and is Visiting Assistant Professor and Scholar in Residence at Georgetown University in Qatar (October 2018 to July 2020). She received her PhD from the University of Warwick in 2013, where her research focused on legal pluralism, family law, and family dispute resolution.

## I. Introduction

The *nikāh* marriage ceremony, in its myriad forms, is universally accepted as evidencing the commitment made by Muslim couples to each other, and sanctified in the eyes of God as a marriage.<sup>1</sup> However, the resultant legal rights ensuing from such marriages differ according to state laws and required legal formalities. In England,<sup>2</sup> the state usually requires certain formalities to be observed under the Marriage Act 1949 in order for a marriage to be legally valid. In Qatar, the Family Law Code 2006<sup>3</sup> similarly sets out the parameters for a legally recognised marriage. This paper shall set out the legal requirements for a valid marriage in both England and Qatar, and then discuss the legal outcomes for marriages conducted without adhering to these respective formalities. The focus on these two disparate legal systems is prompted by empirical research findings revealing comparable practices in the form of non-legally binding religious-only marriages—usually arising, however, due to differing underlying reasons. As a result, exploring the approaches of couples and their motives in choosing this marriage form in both settings provides a fascinating account of evolving global relationship practices between Muslims prompted by autonomous decision-making. The focus of discussion shall be on marriages that are conducted by undertaking a religious-only ceremony, which the state does not recognise in and of itself. In the case of England, this may be the declaration of a “non-qualifying ceremony”,<sup>4</sup> and in the case of Qatar this may be a marriage only recognised by “other evidence” in certain circumstances under Article 10 of the Family Law 2006.

The paper shall begin by setting out the legal parameters for marriage recognition in England and Qatar, and then continue to discuss the issue of religious-only marriages and their manifestations as identified by empirical research findings in both settings. It will then assess the legal treatment of such marriages and the likely legal outcome.

## II. Marriage Recognition in England and Qatar

Both England and Qatar have codified family laws, however the historical manifestation of these laws in each setting is significantly different. Marriage laws in England have been codified for centuries, with current laws dating back to 1753 and with newer renditions of the law responding to changing social settings. However, in recent times, the Marriage Act 1949 (as amended) has come under severe pressure and scrutiny for being out-dated and out of sync with contemporary relationship norms, expectations, and social realities.<sup>5</sup> The Qatar Family Law 2006, on the other hand, is the culmination of at least a decade’s work modernising previous written codes and the family-law infrastructure, separating legal and religious interventions in dispute resolution, and it forms an integral part of the nation-building project in the

<sup>1</sup> See further, ESPOSITO JOHN, *Women in Muslim Family Law*, Syracuse 1982.

<sup>2</sup> All references to England and English law are understood to include Wales.

<sup>3</sup> Law No. 22 of 2006 Promulgating “The Family Law” 22/2006. Hereafter referred to as “Family Law 2006”.

<sup>4</sup> *Akhter v Khan* [2018] EWFC 54, *Attorney General v Akhtar and Khan* [2020] EWCA Civ 122.

<sup>5</sup> See for example, CRETNEY STEPHEN, *Family Law in the Twentieth Century*, Oxford 2003; PROBERT REBECCA, *A Uniform Marriage Law for England and Wales? Child and Family Law Quarterly* (2018), 259–278; AKHTAR RAJNAARA / NASH PATRICK / PROBERT REBECCA (eds.), *Cohabitation and Religious Marriage; Status, Similarities and Solutions*, Bristol University Press 2020.

Gulf region.<sup>6</sup> Both states' family law origins can be found in dominant religious traditions, with English family law harking back to canon law,<sup>7</sup> and Qatari family law seeking to uphold Islamic legal principles.<sup>8</sup>

Modern societies in both England and Qatar are making increasing demands on the state to provide adequate family-law infrastructure, including the need to respond to diverse and multi-cultural populations. In England and Wales, the last national census revealed that, out of an overall population of 56.1 million, 14% were from a range of backgrounds including Asian, black, and mixed groups.<sup>9</sup> Currently, there are thought to be approximately 3.3 million Muslims in England and Wales.<sup>10</sup> The diversity in population is not limited to ethnic or religious groupings, however, and relationship norms differ across a wide spectrum of other factors including social class, age group, beliefs, economic activity, etc. Thus, any proposed marriage law reforms must respond to issues such as the rise in cohabitation,<sup>11</sup> the issue of religious-only marriage,<sup>12</sup> and demands for a wider range of wedding venues to be accepted for legally recognised ceremonies, amongst other things.<sup>13</sup> In Qatar, a much smaller population of 2.76 million<sup>14</sup> is possibly more diverse, with only 10.5% being Qatari citizens: sixteen percent are other Arab, 22 % Indian, 12.5 % Nepali, 12.5 % Bangladeshi, 4 % Sri Lankan, 5 % Pakistani, and 17.5 % from other places.<sup>15</sup> A large part of the population is comprised of migrant labourers, resulting in a massive gender imbalance: just over two million of the population are male, but only approximately 709 000 female. This discrepancy compounds stresses upon the family-law infrastructure. Despite the vast majority being Muslim, the family courts are responding to applicants from a range of religious Schools of Thought, as well as a range of cultural norms and customs linked to marriage and divorce practices.<sup>16</sup> This makes overarching responses very challenging to achieve.

Calls for marriage law reform in England have been on-going in recent decades. The government has asked the Law Commission to undertake a review of weddings law, currently un-

<sup>6</sup> WELCHMAN LYNN, *Women and Muslim Family Law in Arab States*, Amsterdam 2007. For the development of family law in Muslim states and the Middle East region more generally, see AN-NA'IM ABDULLAHI (ed.), *Islamic Family Law in a Changing World; A Global Resource Book*, Zed 2003; WELCHMAN LYNN, Introduction, in: Welchman Lynn (ed.), *Women's Rights & Islamic Family Law*, London/New York 2004; MAHMOOD TAHIR, *Statutes of Personal Law in Islamic Countries: History, Texts and Analysis*, New Delhi 1995.

<sup>7</sup> PROBERT REBECCA, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment*, Cambridge 2009.

<sup>8</sup> BOU SHEHAB MOHAMED, *Qanun Al'Osra Alqatari (Qatari Family Law)*, PhD thesis (original in Arabic), University of Qatar 2017.

<sup>9</sup> Office of National Statistics (ONS) *Ethnicity Facts and Figures*.

<sup>10</sup> ONS, *Freedom of Information: Muslim Population in the UK*, 2 August 2018. Figures for England, Wales, and Scotland [www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/muslimpopulationintheuk](http://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/muslimpopulationintheuk) (last accessed 26 March 2020).

<sup>11</sup> Cohabitants are the fastest-growing family type in England and Wales: ONS, *Families and Households: 2017*, available at [www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/families-andhouseholds/2017/pdf](http://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/families-andhouseholds/2017/pdf) (last accessed 21 March 2020).

<sup>12</sup> AKHTAR et al., *supra* n. 5.

<sup>13</sup> See blog post "Law Commission begins work on weddings reform" at [www.lawcom.gov.uk/law-commission-begins-work-on-weddings-reform](http://www.lawcom.gov.uk/law-commission-begins-work-on-weddings-reform) (last accessed 21 March 2020).

<sup>14</sup> Qatar Planning and Statistics Authority, *Qatar Monthly Statistics*, March 2019 [www.psa.gov.qa/en/pages/default.aspx](http://www.psa.gov.qa/en/pages/default.aspx) (last accessed 21 March 2020).

<sup>15</sup> See <http://priyadsouza.com/> (accessed 1 May 2020). See also HARKNESS GEOFF/KHALED RANA, *Modern Traditionalism: Consanguineous Marriage in Qatar*, *Journal of Marriage and Family*, Vol. 76 (June 2014), 587–603.

<sup>16</sup> Article 3 of the Family Law 2006 provides for the Hanbali School of thought to be primarily adhered to but allows for other schools of thought to be consulted where appropriate. Article 4 extends the provision and allows for parties with different schools of thought and religions to have their own beliefs and principles upheld by the court.

derway, in particular focussing on how and where people can marry.<sup>17</sup> At present, those wishing to marry can do so under the Marriage Act 1949 by complying with Section 25 or 49, referring to Anglican and civil marriages respectively. These require the publishing of banns or giving of notice, the issuing of a common licence, the ceremony taking place in a church or other approved/registered premises, in the presence of a person in Holy Orders or registrar/authorised person. In order for the marriage to be valid, the parties must not be within the prohibited degrees,<sup>18</sup> both parties must have capacity to marry, and the marriage must not contravene Section 11 of the Matrimonial Causes Act 1973, which details grounds for nullity.

A non-qualifying ceremony arises where there has been no attempt at all made by the couple to engage with the formalities required under the Marriage Act 1949.<sup>19</sup> Without any attempt to adhere to legal formalities, the question of the validity of the marriage and therefore the potential to set it aside as “void” does not arise. Where it is deemed to be a non-qualifying ceremony — previously called a “non-marriage” — then financial resolution, which allows a court to make a ruling on how the couple divide their assets upon the breakdown of the relationship, is not available. Crucially, such a financial ruling would be available where a marriage is held to be void rather than a non-marriage, and a void marriage can be found to have arisen where the couple engaged or attempted to engage with some of the legal formalities for a valid marriage but failed to comply with one or more of the requisite elements,<sup>20</sup> and where this failure to comply was done “knowingly and wilfully”.<sup>21</sup> Muslim religious-only marriages, which do not engage with the statute law at all, can occur in a range of venues including wedding halls, the home, and even mosques.<sup>22</sup> Such ceremonies are most likely at risk of being categorised as non-qualifying ceremonies and therefore treated as mere cohabitation for legal purposes as, usually, no steps are taken at all to engage with legal formalities. This means there is no recourse to financial resolution through the courts, which can result in the financially vulnerable party being left in dire circumstances.<sup>23</sup> This outcome has been the key cause for calls for law reform to compel legal registration of all religious-only marriages in England. However, this assumes a certain level of homogeneity, disempowerment, and absence from decision-making amongst British Muslim women, which is not evidence-based and clearly erroneous. For example, in previous research engaging those in religious-only marriages, the findings demonstrated a simple lack of priority given to arranging a formal registration ceremony where the *nikāh* ven-

<sup>17</sup> See [www.lawcom.gov.uk/projects/weddings](http://www.lawcom.gov.uk/projects/weddings) (last accessed 19 March 2020).

<sup>18</sup> Article 1, Marriage Act 1949.

<sup>19</sup> Previous case law defined this as a “non-marriage” (see *Shagroon v Sharbatly* [2012] EWCA Civ 1507; *Dukali Lamrani* [2012] EWHC 1748 (Fam); *El Gamal v Al-Maktoum* [2011] EWCH 3763 [Fam]). The 2020 case of *Attorney General v Akhter and Khan* [2020] EWCA Civ 122 replaced this with the term “non-qualifying ceremony”.

<sup>20</sup> Sections 25 and 49 of the Marriage Act.

<sup>21</sup> *Supra* n. 20. Marriage Act 1949.

<sup>22</sup> These were found to be the most oft-used venues for *nikāh* by a large survey of Muslim women conducted by True Vision (2017). The Truth about Muslim Marriages survey findings are at [truevisiontv.com/films/details/295/the-truth-about-muslim-marriage](http://truevisiontv.com/films/details/295/the-truth-about-muslim-marriage) (last accessed 26 March 2020). Hereafter referred to as True Vision Survey.

<sup>23</sup> AKHTAR RAJNAARA, *Modern Traditions in Muslim Marriage Practices: Exploring English Narratives*, *Oxford Journal of Law and Religion*, Vol. 7, No. 3 (2018), 427–454, at 429–430. For further research on Muslim religious-only marriages, see PARVEEN REHANA, *Religious-only marriages in the UK: Legal Positionings and Muslim Women’s Experiences*, *Sociology of Islam*, Vol. 6, No. 3 (2018) 316–337; VORA VISHAL, *Unregistered Muslim Marriages in England and Wales: The issue of Discrimination through “Non-Marriage” Declarations*, in: Yasir Suleiman (ed.), *Muslims in the UK and Europe II*, Cambridge 2016, 129–141.

ue was not registered for marriage, while the more important cultural and religious celebrations were being planned.<sup>24</sup>

In Qatar, the Family Law 2006 is a comprehensive legislative endeavour, with 301 substantive Articles, covering all aspects of the family.<sup>25</sup> Marriage formalities are contained in Book 1 Part 2, Articles 9 to 48. The marriage is considered a contract “issued in accordance with the law”.<sup>26</sup> Articles 11 to 13 set out the formalities required for a valid marriage. Article 11 outlines the two “pillars” for a valid marriage: “[t]he following two preconditions shall be prerequisite in a marriage contract: 1. Both parties shall satisfy such conditions required of them. 2. Offer and acceptance from both parties.”<sup>27</sup> The conditions are contained within Article 12, and include competence of the parties, the validity of the offer and acceptance, a guardian and witnesses (two Muslim males); and that both parties consent.

Further legal parameters for these conditions include issues of affinity,<sup>28</sup> “matching” of the parties,<sup>29</sup> the *mahr* (dowry),<sup>30</sup> and marital property.<sup>31</sup> Procedurally, Article 18 requires medical certificates to be obtained to identify whether the parties are carriers of certain genetic and other diseases. Decisions to marry are expected to be made with full knowledge of any genetic risks, unsurprising for a state in which a large proportion of marriages occur between first- and second-degree relatives: in 2018, 556 first-degree (25 %) relation marriages were recorded, 367 second-degree (17 %), and 1,261 unrelated marriages (58 %).<sup>32</sup> The usual formalities for marriage involve a religious ceremony taking place with an official present, who records the marriage as legally valid by completing the requisite paperwork, once he has assured himself of the consent of both parties. Thus, the religious and state formalities coalesce. For a marriage to be unregistered, the ceremony would usually take place in private without official engagement and usually without public knowledge.

Article 10 of the Family Law 2006 sets out that “Marriage shall be established by a formal contract issued in accordance with the law, as an exception, it may be proved by other Evidence as may be decided by the Judge.” The use of “other Evidence” is exemplified in case 137/2010,<sup>33</sup> involving a Qatari man who married a Jordanian woman in Syria. The marriage was not registered with the state in Syria, and the husband failed to take the necessary steps to seek permission from the state Marriage Commission prior to marrying a non-Qatari citizen; a necessary prerequisite for any Qatari national wishing to marry out.<sup>34</sup> They subsequently had a child in 2006, but the husband later disowned the son. The wife pursued legal action in Qatar to protect

<sup>24</sup> AKHTAR RAJNAARA, Unregistered Muslim Marriages: An Emerging Culture of Celebrating Rites and Compromising Rights, in Probert/Miles/Mody (eds.), *Marriage Rites and Rights*, Hart 2015, 167–192.

<sup>25</sup> *supra* n. 8.

<sup>26</sup> Article 10.

<sup>27</sup> Article 11.

<sup>28</sup> Articles 20 to 24.

<sup>29</sup> Articles 31 to 35.

<sup>30</sup> Articles 37 to 41. The *mahr* is a gift given by the groom to the bride at the time of marriage, and usually stipulated in the religious marriage contract.

<sup>31</sup> Articles 42 to 48.

<sup>32</sup> State of Qatar Planning and Statistics Authority, *Vital Statistics Annual Bulletin, Marriage and Divorce 2018*. [www.psa.gov.qa/en/statistics/Statistical%20Releases/Population/MarriagesDivorces/2018/marriageanddivorce\\_qatar\\_2018\\_AE.pdf](http://www.psa.gov.qa/en/statistics/Statistical%20Releases/Population/MarriagesDivorces/2018/marriageanddivorce_qatar_2018_AE.pdf) (last accessed 26 March 2020).

<sup>33</sup> Court of Cassation – Civil and Commercial Circle, Case No. 137/2010, Session 11/2011, Cassation No. 137 of 2010 – Civil.

<sup>34</sup> Law Decree No. (21) of 1989 Regarding the Regulation of Marriage to Foreigners. Amended 17 March 2005.

the rights of her child as well as establishing her own rights. The case was primarily raised to confirm the status of the child as the legitimate offspring of the Qatari father. The recognition of the marriage was key to achieving this. The wife presented witnesses from the wedding ceremony in Syria, which the courts accepted as reliable evidence where these were not directly ascending or descending relatives. The court had also requested a DNA test to be carried out, however the father had failed to cooperate. The court decided that, based on the evidence presented, a marriage did exist and confirmed the legitimacy of the son. In this case, the wife herself did not benefit from the marriage but did, however, achieve her goal of protecting her son's birth rights. This case demonstrates Qatari family law erring on the side of recognition, by providing a flexible framework in which judges are able to take a range of evidences into account. As a result, marriages which are non-legally recognised can still obtain legal recognition through a judicial process.

### III. Religious-only Marriages in England and Qatar

In England, religious-only marriages have been identified as problematic due to the lack of legal recognition that they attract. As stated above, this may result in poor outcomes on relationship breakdown for the financially vulnerable party, who is invariably the woman.<sup>35</sup> Such marriages are thought to account for as much as 60 % of all Muslim marriages, making the issue both widespread and problematic.<sup>36</sup> Reform proposals have ranged from making such marriages illegal unless conducted following a legal ceremony of marriage,<sup>37</sup> to changing the way in which a marriage can be registered to simplify the process,<sup>38</sup> and to law reform to provide all cohabitants with legal protection which would encompass this relationship type.<sup>39</sup> While no up-to-date statistics are currently accessible, in 2009 the ONS recorded only 238 Muslim marriages in registered buildings.<sup>40</sup> The remainder of legally recognised marriages between Muslims occur necessarily as a "dual ceremony", where a (non-recognised) religious ceremony is preceded or followed by a valid civil ceremony.

The reasons for Muslim couples in England entering into a religious-only marriage vary, and empirical research conducted in 2015 found that, for many couples, the legal formalities are simply not a priority while they plan their non-legally recognised religious ceremony and celebrations.<sup>41</sup> The relatively small number of mosques registered for marriage also limits the availability of religious ceremonies being conducted in a form that attracts legal recognition.

<sup>35</sup> See for example, KAZEMI SHAH, *Untying the Knot: Muslim Women, Divorce and the Shariah*, Nuffield Foundation 2001; AKHTAR, *supra* n.24, at 182; VORA VISHAL, *The Problem of Unregistered Muslim Marriages: Questions and Solutions*, *Family Law*, Vol. 46 (2016), 95–98; O'SULLIVAN KATHRYN/JACKSON LEYLA, *Muslim Marriage (non) Recognition: Implications and Possible Solutions*, *Journal of Social Welfare and Family Law*, Vol. 39, No.1 (2017), 1–22, at 22; AKHTAR RAJNAARA, *Modern Traditions in Muslim Marriage Practices, Exploring English Narratives*, *Oxford Journal of Law and Religion*, Vol. 7, No. 3 (2018), 427–454.

<sup>36</sup> True Vision Survey, *supra* n. 22.

<sup>37</sup> For example, the *Register Our Marriage* campaign calls for compelled registration of all religious marriages.

<sup>38</sup> PARVEEN REHANA, *From Regulating Marriage Ceremonies to Recognising Marriage Ceremonies*, in: Akhtar/Nash/Probert (eds.), *supra* n. 5.

<sup>39</sup> AKHTAR RAJNAARA, *Religious-Only Marriages and Cohabitation; Deciphering Differences*, in: Akhtar/Nash/Probert (eds.), *supra* n. 5.

<sup>40</sup> MUSLIM MARRIAGE WORKING GROUP, *Report of Working Group (2012)*, available at [www.whatdotheyknow.com/request/179578/response/444442/attach/7/MMWG%20SUBMISSION%20AND%20FINAL%20REPORT%2011.10.12.pdf](http://www.whatdotheyknow.com/request/179578/response/444442/attach/7/MMWG%20SUBMISSION%20AND%20FINAL%20REPORT%2011.10.12.pdf) (last accessed 26 March 2020), at 3.

<sup>41</sup> AKHTAR, *supra* n. 24.

For most couples, a separate civil ceremony must be undertaken to ensure legal recognition, and this appears to be falling by the wayside.

In response to an online survey<sup>42</sup> seeking to ascertain why civil registration did not occur, participants made statements including:

“We don’t feel the need to. The most important part was the Islamic ceremony.”

“We never thought it was important, can’t see the need.”

“The right time has not arisen. We will do once [we] have children. Think I want to maintain maiden name or go ‘double barrelled’ and adopt both his surname but still keep mine.”

“No incentive to register. It doesn’t change anything at all.”

“I did not feel the need to have civil ceremony as I felt the *nikāh* was sufficient to recognise that the marriage is a legal valid marriage in my own life.”

“Not really required for the purposes of Islam. I am fully aware that a *nikāh* registered in the UK is not binding in UK law but that is not important. However, I have told my wife we will have to register it later with the registry for tax purposes and also for UK inheritance law purposes.”

Factors such as a cultural transition in younger generations also helps explain the changing practices. Younger couples are less likely to have a legally recognised marriage, opting instead for a religious-only ceremony which is reflective of the practices of their wider peer group—who may date, cohabit, or be engaged while younger, and not marry until they are older. The True Vision Survey conducted for a television documentary on Muslim marriages in 2016 found that, of the 900 people surveyed, those aged under 25 were the most likely to be in religious-only marriages:<sup>43</sup> 80% of the respondents in this age category who were married had entered into such a relationship. In a separate empirical study conducted by this author using the focus group method, young Muslims in particular were found resistant to being “forced” to legally marry.<sup>44</sup> However, this age group was also least likely to be aware of the legal consequences of non-recognition.<sup>45</sup>

Another reason for failing to enter into a legally recognised form of marriage is changing patterns of relationship behaviour, including the decline in transnational marriages, removing the requirement for state involvement for immigration purposes. Others may enter a religious-only marriage on the mistaken assumption that their religious ceremony has legal effect. This group is particularly vulnerable to adverse outcomes, as they expect legal protection and will often only become aware of their relationship status upon breakdown of the marriage. This confusion may arise due to marriage ceremonial norms in countries of origin, or due to being misled. Others may enter into a religious-only marriage on the promise of a valid civil marriage to fol-

<sup>42</sup> Twenty participants in religious-only marriages responded. See further, AKHTAR, *supra* n. 24.

<sup>43</sup> True Vision Survey, *supra* n. 22.

<sup>44</sup> AKHTAR, *supra* n. 23, at 438.

<sup>45</sup> AKHTAR, *supra* n. 23, at 438.

low, only to have this withheld by their spouse. This was the case in the recent English family court case of *Akhter v Khan*,<sup>46</sup> where Williams LJ held in the first-instance decision that Articles 8 and 12 of the European Convention of Human Rights were being contravened, and that this allowed a flexible approach to be taken to the interpretation of section 11 of the MCA.<sup>47</sup> However, this reasoning was considered dubious and upon appeal was overturned in the interests of maintaining “certainty” in the law.<sup>48</sup>

The incidence of religious-only marriages in Qatar is more inconspicuous. An unregistered religious-only marriage conforms to *Shari‘a* principles in its formation, with offer/acceptance, consent, *mahr*, and witnesses.<sup>49</sup> However, the lack of engagement with state formalities usually places it outside of the realm of legally recognized marriages, with a possibility of obtaining recognition under Article 10 under certain circumstances. Very little evidence of such marriages exists in the public domain; however, both anecdotal evidence and empirical qualitative research conducted during 2018 and 2019<sup>50</sup> revealed that non-state registered religious-only marriages do occur, despite a legally recognised marriage taking the same ceremonial form as a religious marriage. Research interviews found that women who are divorced and have custody of children may enter unregistered marriages rather than legally recognised ones. The reason for this is Article 168 of the Family Law 2006, which states that when a mother has custody of her children “she must not be married to a husband who is a stranger to the Child [...] unless the Court decides otherwise for the Child’s interest.” Thus, unless she remarries someone from the family of her ex-husband, child custody may be compromised. This is likely to have a limited impact on Qatari women themselves since, as stated above, large numbers still marry first- or second-degree relatives.<sup>51</sup> Interviews and anecdotal evidence suggest that it may be a greater concern for non-Qatari women who are long term residents of Qatar and whose marriage partners may be more diverse. However, despite the position of the law and general opinion, research failed to locate any examples of women actually losing custody in such circumstances. Nonetheless, it is clearly a coercive factor in relationship behaviour. One participant in the study stated that she refused to remarry following her divorce as, when she was once approached for marriage, her ex-husband made it clear that he would take her son if she remarried. Despite divorcing while in her twenties and with a 4-year-old son, at the time of the interview her son was about to turn 18 and she had remained unmarried.

One female participant who was in a religious-only marriage had married in Egypt, and the marriage authorities in Qatar were aware of this; however, it had taken years for permission to be granted and the marriage to become legally recognised in Qatar. She had had a child in this time and produced the *nikāh* certificate to prove a marriage existed. This document is sufficient proof of marriage for institutions such as hospitals in Qatar. It is also something that can be used to prove the existence of a marriage under Article 10 of the Family Law 2006 for legal purposes if required. If no such evidence exists, the outcome for the woman (and the man

<sup>46</sup> [2018] EWFC 54. Appeal: *Attorney General v Akhtar and Khan* [2020] EWCA Civ 122.

<sup>47</sup> *Supra* n. 46 [83].

<sup>48</sup> SANDBERG RUSSELL, Farewell, ‘Flexible’ Fudge: The Position of Unregistered Religious Marriages Returns to Square One, Law & Religion UK Blog 2020, [www.lawandreligionuk.com/2020/02/25/farewell-flexible-fudge-the-position-of-unregistered-religious-marriages-returns-to-square-one](http://www.lawandreligionuk.com/2020/02/25/farewell-flexible-fudge-the-position-of-unregistered-religious-marriages-returns-to-square-one) (last accessed 26 March 2020).

<sup>49</sup> The requirement for these conditions may differ according to particular schools of thought.

<sup>50</sup> AKHTAR RAJNAARA, *Marriage law and practice in Qatar*, [forthcoming 2020]. The research involved interviews with individual citizens and long-term residents in Qatar, family law practitioners, and family-law academics.

<sup>51</sup> Cousins or other relatives.



where he can be identified) will be imprisonment for having a relationship and child out of wedlock under *zinā* laws.<sup>52</sup>

For another female participant who was divorced with two children, despite losing custody of the children and having only visitation rights, when she remarried she refused to enter into a legally registered marriage because of concerns that her ex-husband would stop her access to her children. While he would have little grounds for doing so legally, she found the processes for ensuring access to be opaque and convoluted, resulting in her fear of being unable to navigate them if needed. In this case, an unregistered marriage enabled her to embark on a relationship while still having access to her children. She detailed her journey to the second marriage:

“He took the opportunity to travel to [my home country] to meet my family [...]. We continued the friendship but my father already gave his blessings [...]. Then we agreed there would be no signed agreement but that we can do the *ḥalāl* marriage without the legal marriage.”

This participant’s religious marriage was something both of their families knew about, but which was not public knowledge and of which her ex-husband was also unaware. She went on to explain her motivations:

“If I sign a paper and legally marry, then my ex can go against me and not give me access to the children. He could reduce visitation to about two hours a week [...]. We are not doing anything wrong in front of God but it should not be something that can be proven.”

As for other positive outcomes in entering into the religious-only marriage, she said:

“By the time it comes to the proper marriage, I would already know him properly.”

She had been engaged in a non-legally binding marriage for 18 months at the time of interview, and as she grew more confident of her rights and with her new husband’s support, they had applied for permission to officially marry.

A second category of religious-only marriages located in the empirical research findings was those between Qatari nationals and non-Qataris. Termed “marrying out”,<sup>53</sup> empirical research found that some couples had entered religious-only marriages abroad before returning to Qatar to undergo a formal marriage recognition process. Under the law regulating marriage to foreigners,<sup>54</sup> Qatari nationals must apply to a Commission for permission to marry.<sup>55</sup> They are required to undergo an interview, during which they are asked for their reasons for wanting to

<sup>52</sup> Article 281, Law No. 11 of 2004 Issuing the Penal Code provides for imprisonment for *zinā* (unlawful sexual relations outside of marriage), up to a term of seven years.

<sup>53</sup> ALHARAHSEH SANNA/MOHIEDDIN MOHAMED/ALMEER FARAS KHALID, *Marrying Out: Trends and Patterns of Mixed Marriage amongst Qataris*, *International Journal of Social Science Studies*, Vol. 3, No. 6 (2015), 211–225.

<sup>54</sup> Law Decree No. (21) of 1989 Regarding the Regulation of Marriage to Foreigners. Amended 17 March 2005.

<sup>55</sup> *Supra* n. 54.

marry out. Females are represented by a male guardian, whereas a male, whether Qatari or non-Qatari, must represent himself.

One participant, a non-Qatari seeking to marry a Qatari, described the interview:

“During that interview, they will call her father or guardian and they will question me and they will question the father. Like, are you willing to assist her to live a life like she used to live in her family house? If she needs a driver you have to provide her a driver. You know, they will talk about the lifestyle.”

He recognised that the process was intended to prepare the couple for the realities of being married across nationalities:

“She will definitely suffer. Not being married to a Qatari. You know due to the lifestyle at least. Like it will impact her life.”

Qatari citizens enjoy many state benefits upon marriage, and these are not fully available for those marrying out. For Qatari women in particular, marrying out has severe consequences, including a lack of citizenship for any children of the marriage. This unequal treatment of men and women, where Qatari men marrying out can pass on citizenship, has been an issue of great contention.<sup>56</sup>

Delays in the permission process mean that some couples wait years to marry. Those who choose to enter religious-only marriages during this waiting period will keep this a secret, as knowledge often leads to further delays in the process. One participant commented:

“I have a friend whom it took ten or twelve years to get approval as they had got married in the States while he was there studying.”

Two of the participants of the study had waited over 12 months for permission to marry. For them the wait was not of concern, as it enabled time for the relationship to be tested adequately before a legal commitment was made. Thus, religious-only marriages can be used in a utilitarian way to navigate around personal wishes, state legal requirements, and legal provisions.

## IV. Legal Outcomes of Non-recognition of Marriage in England and Qatar

In England, non-recognition of marriage means the couple are considered to be merely cohabiting, which attracts no legal rights under family law except limited right to child maintenance.<sup>57</sup> As outlined above, the category of “non-qualifying ceremony” for couples whose ceremony did not conform to any of the legal formalities required by the state results in a lack of access to financial resolution upon relationship breakdown. The rights that cohabitantes can access are not

<sup>56</sup> See for example, Qatar Shadow Report submitted to Convention of the Elimination of Discrimination Against Women (CEDAW). Submitted by: Independent Group of Concerned Citizens (2014), available at [binter.net/ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT\\_CEDAW\\_NGO\\_QAT\\_16177\\_E.pdf](https://binter.net/ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT_CEDAW_NGO_QAT_16177_E.pdf) (last accessed 28 March 2020), at 6–9.

<sup>57</sup> BARLOW ANNE et al., *Cohabitation, Marriage and the Law: Social Change and Legal Reform in the Twenty-First Century*, Hart 2005.

easy to decipher, and “we have to go hunting in various corners of the law in search of rights, duties and other legal provisions that apply to these relationships.”<sup>58</sup> Claims over property have to be pursued primarily using property law, through which rights are far more difficult and expensive to establish, placing it out of reach for most. The question for the courts here is merely who owns the property, and not any of the considerations around division of assets which arise upon breakdown of a legally recognised marriage.

This is particularly problematic where one or both parties may not realise that their marriage has no legal status and assumes that the law will protect them. In a legally recognised marriage there is little need to ensure assets are in joint names, while financial resolution means that financial needs should be met where funds and assets are available. For those who mistakenly believe they are legally married, financial planning is unlikely to take place. The least impact here may be where children are concerned, as the law will largely treat couples the same regardless of marital status and ensures child maintenance.<sup>59</sup> There is no longer any legal consequence of legitimacy or illegitimacy for children in the UK.

In Qatar, the consequences of a non-recognised marriage depend on its circumstances. Under Article 10, as set out above, a judge will consider “other evidence” that a marriage has taken place, thus enabling unregistered marriages to be legally recognised if needed, to protect any children of the relationship. This provides for flexibility in marriage recognition, as exemplified in case 137/2010. This flexibility is inherent in Muslim family law and necessary to protect children from being considered illegitimate, which has grave life-long consequences<sup>60</sup> quite unlike the lack of impact under English law. Thus, the Article 10 bias in favour of finding a marriage is unsurprising. This is further evidenced by the extreme leniency accepted where evidence is concerned, and in case 137/2010 “the legislator also permitted hearsay evidence in matters related to affinity.”<sup>61</sup> Further to this, where evidence can be deduced to support both a claim for and against affinity, affinity is to be assumed. Judges are given a wide discretion with regards to evidence and decision-making on this issue. The case in question indicates the general predisposition of the family courts in Qatar to protect children, providing some security to women who are in religious-only marriages. However, the question still arises as to the extent of legal protections which would be available to women without children in such circumstances. In this case, the wife was not afforded any of the rights which would arise from a valid marriage to a Qatari, such as Qatari citizenship.

The circumstances in which unregistered marriages may arise in Qatar, then, are where a Qatari citizen is “marrying out” and undergoes a marriage ceremony abroad prior to the legally recognised Qatari marriage; or where a female is seeking to retain child custody or access to children. In the latter circumstances, the couple wishing to marry would usually not want legal recognition, as this can undermine other rights and processes. In the case of marrying out, it may undermine a couple’s application to legally marry. In the case of a woman who is fearful that remarriage will result in a loss of child custody (under Article 168), she will only marry if

<sup>58</sup> MILES JOANNE, ‘Cohabitants’ in the Law of England & Wales: A Brief Introduction, in: Akhtar /Nash/Probert (eds.), *supra* n.5.

<sup>59</sup> For non-married couples, children are protected by Schedule 1 of the Children Act 1989.

<sup>60</sup> The issue of child filiation in Muslim states is covered in detail in: YASSARI NADJMA /MOLLER LENA-MARIA /NAJM MARIE-CLAUDE (eds.), *Protection of Parentless Children; Towards a Social Definition of the Family in Muslim Jurisdictions*, Asser 2019.

<sup>61</sup> Case No. 137/2010, *supra* n.33, at para. 6.

there is no paper trail and therefore, in both cases, the marriage may be entered into outside the officially recognised framework.

Those research participants who were “marrying out” worried about the length of time the process of obtaining permission was likely to take. However, not all undertook unregistered marriages while awaiting permission to marry.<sup>62</sup> Of the participants, nine were in Qatari/non-Qatari mixed marriages, of whom five had entered into religious-only marriages abroad before returning to Qatar to undergo the formal process. Keeping the unregistered marriage unofficial was seen as key to obtaining permission to formally marry. However, such a marriage enabled couples to begin their intimate relationship. Thus, to an extent, this also overlaps with Muslim marriages in England where couples may be testing their relationships or informally entering them before taking steps to make them official. However, in the examples from Qatar, all participants fully engaged with the state legal process immediately or soon after. One participant expected delays to occur and stated that being unregistered removed the pressure of expectations that they would live together and have children straight away.

## V. Conclusion

Non-legally recognised religious-only marriages clearly serve differing purposes depending on who is entering into them and the laws of the land in which they live. Research in England demonstrates that a set of complex and multi-layered issues must be taken into account when seeking to reform laws in response to religious-only marriages. Here, younger couples are less likely to be in legally recognised marriages; however, this behaviour is not unlike (non-Muslim) peers within their age group, who are similarly unlikely to formally marry. Thus, religious-only marriages can provide an opportunity for couples to get to know one another prior to legal commitment. Such marriages become more problematic when one or both parties believe they have entered into a legally recognised marriage, or when one party withholds such a marriage following a religious ceremony. While this may not impact on married life, it serves to significantly disadvantage the economically dependent spouse in the event of relationship breakdown.

On the other hand, Muslims in Qatar, both citizens and residents, may utilise the religious-only marriage route to circumvent other legal processes which would be triggered either prior to (in the case of those wishing to “marry out”) or following (in the case of women with custody of children) a legal marriage. In Qatar, these relationships are often a means for enabling couples to enter intimate marital relationships where other factors and processes may hinder such relationships, either completely or for a limited time. It is clear that couples who enter such marriages are exercising their right to marry, which is universally recognised as a basic human right.

In Qatar, the legal outcomes of recognition may not be in the couple’s interests, but for reasons starkly different to those in England, where decisions are prompted by a range of differing factors, however, a lack of recognition is likely to be of detriment to only one party—the financially dependent one. Regardless of these disparities, the existence of religious-only marriages is indicative of shortcomings in the marriage laws of both states.

<sup>62</sup> AKHTAR, *supra* n. 50.