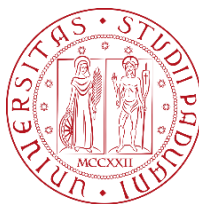


UNIVERSITÀ DEGLI STUDI DI PADOVA

DEPARTMENT OF POLITICAL SCIENCE,  
LAW AND INTERNATIONAL STUDIES

**Master's degree in  
Human Rights and Multi-level Governance**



**Promoting Pluralism and Protecting Religious Freedom: A Comparative  
Socio-Legal Analysis of Italian Marriage and Divorce Laws and Sharia  
Norms**

*Supervisor:* Prof. Olga Breskaya

*Candidate:* Aliaksandr Vinahradau

Matriculation No. : 2005922

A.Y.2023/2024

## Table of contents

<b>Abstract</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>CHAPTER 1: Italian point of view on legal pluralism, divorce and religious freedom</b>	<b>6</b>
1.1 Legal pluralism and its role in Italian legal system	6
1.2 Divorce and Marriage in Italian Law	13
1.3 Reflection of Right to Religious Freedom in Italy and EU	19
<b>CHAPTER 2: View on marriage and divorce in Hanafi madhub of Sunni Islam</b>	<b>27</b>
2.1 What is the Hanafi Madhhub?	27
2.2 Quran approach to Marriage, Consent and Divorce	29
2.3 In-depth view on dissolution of marriage	34
<b>CHAPTER 3: Confrontation of Religious and Secular essences</b>	<b>61</b>
3.1 Islam as Italy's second religion, but without proper representation	61
3.2 The Impact of Islamic Centers on the Protection and Realization of Rights of Muslims in the Italian Republic	66
3.3 Keystone of the legality of marital status	68
3.4 The Problem of Civil Marriage in the Muslim Community	70
3.5 Individual Preferences and Approaches to Marriage of Italian Muslims	73
3.6 Divorce proceedings and Islamic centers	76
3.7 The role of Imams	77
3.8 The practical role of Islamic centers	79
<b>Conclusion</b>	<b>81</b>
<b>Bibliography</b>	<b>85</b>

## **Abstract**

This dissertation examines the relationship between legal systems and religious norms in Italy. The focus of the study is on whether legal pluralism can support and protect religious freedom and whether it succeeds in this task in a particular country - Italy. While most studies examine legal pluralism on a broader scale, it is difficult to find studies that specifically examine how effectively it protects the rights of specific religious communities, in particular Muslims. The main objective of this study is to determine whether legal pluralism actually protects religious rights, fills legal gaps or potentially creates new problems, within the framework of divorce law.

The dissertation is divided into three main sections. The first section examines how Italy views divorce, legal pluralism and its impact on marriage and divorce laws, and how this fits into the pan-European legal framework. The second section examines the Hanafi school of thought, drawing on the Quranic scriptures on marriage and divorce. The final section focuses on the obstacles that arise when religious and secular laws collide, especially in light of Italy's changing demographics. Here we also look at the role of Islamic centers as representatives of the Muslim community in Italy, their role in upholding the rights of Muslims and the problems they face during divorce or marriage procedures.

This interdisciplinary study is based on socio-legal analysis, using a range of primary and secondary sources, including legal documents, religious texts, news articles, academic papers, and other sources. Ultimately, this study aims to contribute to the evolving conversation about how societies can harmonize secular legal systems with the rights and practices of not only foreign but what's more important diverse religious communities to create a more pluralistic and inclusive legal system.

## Introduction

In this thesis I research the interconnections between legal systems and religious norms and problems derived from this interaction. The main aim of this thesis is to research how legal pluralism functions within the Italian legal system and its capabilities for promoting and protecting religious freedom. Key questions guiding this research include: Is legal pluralism being a reflection of religious freedom capable of protecting religious rights? Does this mechanism cover the legal gaps? Does it create new ones? How do Italian laws accept and work with diverse religious practices under the framework of marriage and divorce? What are the effects of these laws on the Muslim community in Italy? How do the Italian Muslims practice their religious customs within or outside the law?

To achieve these goals, I conducted a comprehensive socio-legal analysis that covers different spheres of the subject. The first chapter discovers a framework for understanding Italian view on legal pluralism, investigating its role in divorce and marriage laws formation and the reflection of religious freedom in both Italian and EU contexts, which is fundamental for understanding the western point of view and for conducting the further comprehensive analysis.

The second chapter focuses on the Hanafī madhhab, detailing its teachings on marriage and divorce, taken from the Quran. By highlighting the nuances of Islamic family law, I aim to provide insight into how these norms intersect with Italian legal practice and societal expectations.

The final chapters examine the complexities that arise when religious and secular spheres interact, particularly in the context of Italy's changing demographic landscape, where Islam is increasingly recognized as a significant presence. This part of the research is focused on the actual role of Islamic centers in protection of the rights of Muslim communities, the obstacles of recognizing civil marriages, and the different preferences of Italy's Muslim population regarding marriage and divorce practices.

The relevance of this study lies in the interdisciplinary approach that explores the relationship between the norms of secular law and religious law. Since in Italy there is a large Muslim community, the relevance of this work is also in

understanding how Sharia law works in practice and in the field in such a sensitive topic as divorce and marriage. The results of the following research can be used in the educational process, research activities, and law enforcement practices.

To achieve and conduct the comprehensive analysis several methods of scientific research were used. They can be divided into general scientific and particular scientific research methods of theoretical and empirical direction. These include, in particular, analysis, deduction, modeling, synthesis, analogy, induction, and the comparative legal method, which refers to the particular scientific method of studying legal science. When writing the work, the principles of scientific research were also taken into account, the most important of which in this work was the principle of objectivity. It was achieved in particular through the study of numerous sources, as well as an open mind to the object of study.

In order to provide objectivity in writing the practical part of the work, numerous sources were used: documents from the European Union and the Italian Republic, the Quran, Sunnah, and interpretations of Sharia law, as well as numerous articles and monographs. In general, sources can be divided into two parts: primary and secondary sources.

Primary sources typically include various documents, autobiographies, biographies, archival documents, databases, scientific research and legal acts. In my work, this group of sources is represented by the legal acts of the European Union and the codes and documents of the Italian Republic. In addition, documents and religious texts that contain the norms of Sharia law are also important.

Secondary sources - a group of sources that include monographs and articles that research and describe legal norms. In this paper, these sources were used to write both theoretical and practical parts of the study. Compared to primary sources, this group of sources is not as extensive, but it plays an important role in understanding the general issues of the study.

# **CHAPTER 1: Italian point of view on legal pluralism, divorce and religious freedom**

## **1.1 Legal pluralism and its role in Italian legal system**

The global environment we live in today is characterized by socio-cultural fluidity, political dynamism, and extensive interconnection. Technological advances have significantly reduced temporal-spatial distances between nation-states, communities, and individuals. This connection has led to increased movement of people, ideas, and networks on various scales, from local to international and transnational levels.<sup>1</sup>

Based on the statistics as of December 31, 2022, the population of Italy has been recorded at 58,850,717 individuals. Even though there is an evident downward trend in overall population growth, it's important to note that the percentage of migration flows has continued to experience a consistent annual increase.<sup>2</sup> All of them are people of different cultures, traditions, foundations who live in the territory of one country and what has a key factor in this work – of the different religious views.

Being a country with Catholicism as the dominant religion, 33% of people of foreign origin living in Italy are Muslims, and according to statistics for 2019, about 1.6 million Muslims live in Italy

Being a country where Catholicism stands as the dominant faith, it's remarkable to note that 33% of the foreign-origin population residing in Italy adheres to Islam. Based on 2019 data, the Muslim community in Italy has approximately 1.6 million people.<sup>3</sup>

---

<sup>1</sup> Fethi Mansouri and Tariq Modood, "The Complementarity of Multiculturalism and Interculturalism: Theory Backed by Australian Evidence," *Ethnic and Racial Studies* 44, no. 16 (2021), Available at: <https://doi.org/10.1080/01419870.2020.1713391> (Accessed: 10.06.2024)

<sup>2</sup> Carlo Marroni, 'Istat: Nascite 2022 Ancora in Calo (-1,9%). Popolazione Sotto i 59 Milioni, Aumenta l'Arrivo di Immigrati,' *Il Sole 24 Ore*, 20 March 2023, Available at: <https://amp24.ilsole24ore.com/pagina/AEmV8C7C> (Accessed: 10.06.2024)

<sup>3</sup> International Institute for Counter-Terrorism (ICT), 'First Section: Data Regarding the Muslim

In Islam, just like in many other religions, there are numerous schools of thought that have views radically different from each other. The vast majority of Muslims residing in Italy follow the Sunni school of thought. Additionally, the majority of communities which represent 95% of Muslims in Italy also belong to the Sunni belief system.<sup>4</sup> It's a crucial fact for the current research as it determines not only the type of social interaction but also what kind of conflicts on what issues can arise in society. To make the approach more systematized, the Sunni school of Islam will be considered within the framework of the Hanafi madhhab as the most widespread.<sup>5</sup>

At a quick glance, 1.6 million might not seem like a big number compared to Italy's total population. However, it's essential to recognize that these 1.6 million individuals come with significantly diverse cultures and perspectives, distinct from the dominant Catholic majority. They form their own communities with specific rules and what's even more important this population continues to grow and spread, resulting in not only a slow merge through the exchange of cultures and integration as seen for example in mixed marriages but also in clashes between two cultures, leading to challenges in both social and legal aspects. On one side, there are the established traditions, religion, and laws of Italy's local population. On the other side, there's a radically different way of looking at laws and order that comes from Islam.

In the delicate issue of the interaction of these two systems, it is worth starting first of all with multiculturalism and interculturalism, to which lead migration processes and the spread of cultures. In this work, they will be considered not only for a more thorough understanding of the social aspects of Italy, but also as an engine encouraging the development of a pluralistic approach in the social and legal spheres. A detailed examination of the terms of multiculturalism and

---

Population in Italy,' Index of Muslim Radicalization and De-Radicalization in Italy, 1 January 2021, pp. 10–39, Available at: <https://www.jstor.org/stable/resrep30904> (Accessed: 13.06.2024)

<sup>4</sup> International Institute for Counter-Terrorism (ICT), 'First Section: Data Regarding the Muslim Population in Italy,' Index of Muslim Radicalization and De-Radicalization in Italy, 1 January 2021, pp. 10–39, Available at: <https://www.jstor.org/stable/resrep30904> (Accessed: 13.06.2024)

<sup>5</sup> ReOrienting the Veil, Islamic Jurisprudence & Law, University of North Carolina at Chapel Hill, Available at: <https://veil.unc.edu/religions/islam/law/> (Accessed: 10.06.2024)

interculturalism can distinguish 5 basic founding concepts: difference, equality, ethno-religious groups, national identity and dialogue.<sup>6</sup>

The first concept of multiculturalism (MC) is centered around the idea of difference, which has two aspects (Modood 2019). The first aspect involves the difference imposed on people from the outside, such as negative ascriptions like racism that perpetuate superiority-inferiority beliefs based on race or cultural identity. An example of contemporary cultural racism is Islamophobia. The second aspect of difference in MC is experienced from the inside, referring to the subjective or intersubjective differences that individuals feel about their group identity. These identities are not solely individual but pertain to some form of group identity. Building on Charles Taylor's concept of recognition, multiculturalists emphasize the importance of identity recognition in the process of multiculturalizing citizenship and embracing diversity within countries of interest. While individual identities can be fluid and diverse, the recognition of group identities remains significant in promoting a multicultural society.<sup>7</sup>

The second concept related to multiculturalism (MC) is equality, which has two aspects. The first aspect is non-discrimination, which is a central principle in liberal thought. MC does not oppose non-discrimination but goes further by introducing the unique concept of equality as respect. This means that equality does not require treating everyone by the same standard or applying policies uniformly to all groups. Instead, it recognizes that different groups may have distinct needs, which are crucial for their survival, and achieving equality involves accommodating these specific needs. In this context, equality is about respectfully including and valuing diversity rather than promoting assimilation.<sup>8</sup>

---

<sup>6</sup> Fethi Mansouri and Tariq Modood, "The Complementarity of Multiculturalism and Interculturalism: Theory Backed by Australian Evidence," *Ethnic and Racial Studies* 44, no. 16 (2021), Available at: <https://doi.org/10.1080/01419870.2020.1713391> (Accessed: 10.06.2024)

<sup>7</sup> Fethi Mansouri and Tariq Modood, "The Complementarity of Multiculturalism and Interculturalism: Theory Backed by Australian Evidence," *Ethnic and Racial Studies* 44, no. 16 (2021), Available at: <https://doi.org/10.1080/01419870.2020.1713391> (Accessed: 10.06.2024)

<sup>8</sup> Fethi Mansouri and Tariq Modood, "The Complementarity of Multiculturalism and Interculturalism: Theory Backed by Australian Evidence," *Ethnic and Racial Studies* 44, no. 16 (2021), Available at: <https://doi.org/10.1080/01419870.2020.1713391> (Accessed: 10.06.2024)



The third concept of multiculturalism (MC), especially emphasized in Western Europe, is the inclusion of ethno-religious groups within the framework of MC. In the early stages of MC, particularly in Canada, religious identities and groups were not prominent, with the focus primarily on language, ethnicity, indigeneity, or migration as defining factors of multicultural interest. However, in Western Europe, the emphasis has shifted towards considering religion as a significant aspect of multiculturalism, particularly concerning Muslims. Some scholars argue that this shift represents progress as equality needs to be extended to these groups in contemporary circumstances.<sup>9</sup>

The fourth concept explored is national identity in relation to multiculturalism (MC) and interculturalism (IC). Multiculturalists like Kymlicka, Parekh, and Taylor view MC as a way to transform national citizenship and embrace diversity. In contrast, the interculturalists (Bouchard, Cantle, and Zapata-Barrero) have different perspectives on the national aspect. Bouchard emphasizes Quebecan nationalism and diversity within a national identity framework.<sup>10</sup>

The last key concept discussed is "dialogue," which has been central to multiculturalism (MC). Scholars like Parekh and Tully emphasize the importance of intercultural dialogue in multicultural societies.<sup>11</sup>

In the development of a multicultural environment, all these concepts lead to one big phenomenon, which is basically the quintessence of the current work, namely, legal pluralism, which includes both social and religious aspects. It is worth noting that in the issue of gaining rights, we are interested namely in the aspects of legal pluralism but not religious pluralism or social pluralism, which are separate concepts and exciting other aspects of life.

---

<sup>9</sup> Fethi Mansouri and Tariq Modood, "The Complementarity of Multiculturalism and Interculturalism: Theory Backed by Australian Evidence," *Ethnic and Racial Studies* 44, no. 16 (2021), Available at: <https://doi.org/10.1080/01419870.2020.1713391> (Accessed: 10.06.2024)

<sup>10</sup> Fethi Mansouri and Tariq Modood, "The Complementarity of Multiculturalism and Interculturalism: Theory Backed by Australian Evidence," *Ethnic and Racial Studies* 44, no. 16 (2021), Available at: <https://doi.org/10.1080/01419870.2020.1713391> (Accessed: 10.06.2024)

<sup>11</sup> Fethi Mansouri and Tariq Modood, "The Complementarity of Multiculturalism and Interculturalism: Theory Backed by Australian Evidence," *Ethnic and Racial Studies* 44, no. 16 (2021), Available at: <https://doi.org/10.1080/01419870.2020.1713391> (Accessed: 10.06.2024)

So, what exactly is legal pluralism? In the book "Legal Pluralism - Qui Bono?" (Marju Luts-Sootak, 2018) the authors point out that legal pluralism, in a broad sense, can be defined as the coexistence of several laws simultaneously in the same space. It covers several legal orders and systems in various contexts such as religious-legal or social-legal. While legal pluralism lacks a precise definition, there are four main things that it shares. First, it doesn't only focus on laws that come from the government – it suggests that law can exist independently of the state. Second, legal pluralism presupposes that there are other laws alongside the official ones. These other laws could be from religion, society, or even different countries or in other words transnational laws. Third, it looks at how all these laws interact with each other – sometimes they compete or cause problems, but other times they work together or even complement and support each other. And lastly, legal pluralism looks at things from a critical point of view. It changes official laws, empowers alternative legal systems, and makes other sets of rules and norms stronger by calling them "law" contributing to and changing ideological agenda.<sup>12</sup>

Legal pluralism, viewed through the nomological concept, offers several benefits and challenges. In the empirical sense, legal pluralism allows communities to govern themselves according to their norms and values, reducing the distance between lawmakers and lawtakers and fostering deliberation in law and politics. It enhances the discourse between different legal worldviews, promoting democratic ideals and the separation of powers. It takes on the usual way we think about law, which is often linked closely to the government. Also, it points out that there isn't just one clear-cut way to define law. Instead, there are lots of conceptions of law that serve specific intellectual interests and contexts. Each concept of law claims to be valid in its own context and for specific purposes, emphasizing the subjective nature of legal definitions.<sup>13</sup>

When we focus on legal pluralism in Italy, especially in relation to its religious aspect, our interest lies in the protection and acquisition of rights. We also

---

<sup>12</sup> Irene Kull, Hesi Siimets-Gross, Karin Sein, and Marju Luts-Sootak, *Legal Pluralism – Cui Bono?* (Tartu: University of Tartu Press, 2018), pp. 13-22.

<sup>13</sup> Irene Kull, Hesi Siimets-Gross, Karin Sein, and Marju Luts-Sootak, *Legal Pluralism – Cui Bono?* (Tartu: University of Tartu Press, 2018), pp. 13-22.

want to understand how it resolves clashes between different ways of seeing the world and how the relevant laws interact with all of this. The main goal of this work is to try to find the link between legal pluralism and the right to religious freedom, specifically in the context of Italy's rules about marriage and divorce. We're either looking to show this connection or prove its absence. To do that, we'll dig deep into not just the Italian laws but also the Hanafi madhhab in Sunni Islam. It's a big task that involves looking closely at two different systems. But before diving into local legislation, it's necessary to start by figuring out what the Italian Republic thinks about legal pluralism as a concept, mentioned and described above. This is an important foundation for all the things that are going to be explored later.

It's possible to actually determine how sensitive a country to pluralism is, including its religious aspect, by looking at its legal setup or its primary law. In our case, that means the Constitution of the Italian Republic. This constitution holds the key to understanding how much importance a country places on accommodating various perspectives, including those connected to religion.

When you first look at the Italian Constitution it appears to be very open and susceptible to differences. Already at the very beginning, namely in Article 2, the Republic seeks to protect individualist rights. It emphasizes that these rights are given without caring about the group someone belongs to. This makes pluralism a basic principle of the Constitution by accepting and respecting different perspectives and groups: "The Republic recognizes and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic, and social solidarity be fulfilled."<sup>14</sup>

Article 6 acknowledges linguistic and ethnic pluralism and emphasizes Italy's commitment to protecting this diversity: "The Republic safeguards linguistic minorities by means of appropriate measures."<sup>15</sup>

---

<sup>14</sup> Constitution of the Italian Republic (1948), Available at: [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf). (Accessed: 14.06.2024)

<sup>15</sup> Constitution of the Italian Republic (1948), Available at: [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf). (Accessed: 14.06.2024)

Article 19 addresses the concept of religious pluralism: “Anyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality.”<sup>16</sup>

In a broader sense, based on these articles, it can be concluded that the Constitution doesn't aim to diminish the rights of distinct cultures or other types of differences among citizens. Instead, it actively promotes such diversity through religious, linguistic, and fundamental legal pluralism. The Constitution also endeavors to establish religious equality, as evidenced in Articles 2, 8, and 20:

- “The Republic recognizes and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic, and social solidarity be fulfilled.”
- “All religious denominations are equally free before the law. Denominations other than Catholicism have the right to self-organization according to their own statutes, provided these do not conflict with Italian law. Their relations with the State are regulated by law, based on agreements with their respective representatives.”
- “No special limitation or tax burden may be imposed on the establishment, legal capacity or activities of any organization on the ground of its religious nature or its religious or confessional aims.”<sup>17</sup>

The Constitution of Italy, much like in any other country, serves as the primary legal document that should be understood as the state's intentions regarding its responsibilities and rights. But it's important to note that beneath this

---

14.06.2024)

<sup>16</sup> Constitution of the Italian Republic (1948), Available at:

[https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf). (Accessed: 14.06.2024)

<sup>17</sup> Constitution of the Italian Republic (1948), Available at:

[https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf). (Accessed: 14.06.2024)

constitutional framework reside numerous laws, treaties, and court cases and decisions, collectively reflecting the country's legal landscape and societal values "de facto". After having considered what legal pluralism is and what it is based on, its reflection in the constitution, we can proceed to a fragmented consideration of the concept of religious freedom, the very laws on marriage and divorce in Italy, and the attitude of the Muslims towards these same things, as well as their legal status, according to which it will be built a socio-legal analysis of legal pluralism in Italy.

## 1.2 Divorce and Marriage in Italian Law

To review Italian legislation and find out not only the definition of the divorce itself but also how it is regulated, and what the marriage is under Italian Law. As Italy is part of the European Union, it is also worth mentioning and reviewing the legislation of the European Union.

First of all it should be admitted that divorce is just a part of the complex legal procedure of marriage dissolution.<sup>18</sup> In Italian legislation, it is tightly bound with the right of getting married and with the types of marriage specifically.

Section VI "About the Marriage" of Italian Civil Code divides marriage into 3 legally equal procedures: Marriage concluded before the ministers of the Catholic faith, Marriage concluded before the ministers of the faith admitted by the state and Marriage concluded before the registrar officer. A distinctive feature of Italian law is that the marriage in the church (*matrimonio in chiesa*) which is basically the marriage before the ministers of the faith which performs a secular function, is officially recognized by the state and carries legal obligations that already show the tight connection of religious and secular branches.<sup>19</sup> During the religious ceremony, the priest must read aloud articles 143, 144, and 147 of the Civil Code on the rights

---

<sup>18</sup> Roberta Ceschini, 'International Marriage and Divorce Regulations and Recognition in Italy,' Family Law Quarterly 29, no. 3 (Fall 1995), American Bar Association, pp. 567–575.

<sup>19</sup> Codice Civile, Libro I, Titolo VI, 'Del Matrimonio - Della Promessa di Matrimonio', Available at: <https://www.altalex.com/documents/news/2014/11/10/del-matrimonio-della-promessa-di-matrimonio>. (Access: 07.02.2024)

and obligations of the spouses to legalize it as it is mentioned in the Lateran Treaty of 1929.<sup>20</sup>

Though all types of marriages may and should be terminated by the court it's necessary to admit for further research that the Catholic Church doesn't consider marriage as dissolved after the civil procedure and requires it to be terminated with a special ceremony called "Sacra Rota" which includes hearings in a special ecclesiastical court and a list of grounds which are different from the ones used in secular legislation and which are specified in Book 5: Sanctions of the Church of Code of Canon law.<sup>21</sup> Though Canon Law with its provisions allows to have a formal marriage procedure as soon as Sacra Rota is finished, the Italian Civil Code requires the official decision of the court with the divorce decree to consider old marriage terminated officially and to start a new one.<sup>22</sup>

The divorce procedure didn't exist in the Italian legal system until the 18th of December in 1970 when the Law No. 898 "Disciplina dei casi di scioglimento del matrimonio" was implemented.<sup>23</sup> Italian legislation defines divorce as the final part of the dissolution or termination of civil consequences of marriage.<sup>24</sup>

Concerning the list of parties, who can enjoy the right to divorce, Italian law provides the next list:

- an Italian citizen ("Cittadino") and a foreign citizen both resident ("residente") not in Italy but abroad;

---

<sup>20</sup> Lateran Treaty of 1929, Available at: <https://sppc.prf.cuni.cz/dokument/lateran.htm> (Access: 18.02.2024)

<sup>21</sup> Codice di Diritto Canonico, Libro VII, Parte III, Titolo I, 'I Processi Matrimoniali' (Cann. 1671–1707), Available at: [https://www.vatican.va/archive/cod-iuris-canonici/ita/documents/cic\\_libroVII\\_1671-1673\\_it.html#PA RTE\\_III](https://www.vatican.va/archive/cod-iuris-canonici/ita/documents/cic_libroVII_1671-1673_it.html#PA RTE_III). (Access: 18.02.2024)

<sup>22</sup> Articolo 191 Codice Civile (R.D. 16 marzo 1942, n. 262), Available at:

<https://www.brocardi.it/codice-civile/libro-primo/titolo-vi/capo-vi/sezione-iii/art191.html>.

<sup>23</sup> Roberta Ceschini, 'Divorce Proceedings in Italy: Domestic and International Procedures', Family Law Quarterly 28, no. 1, Spring 1994, American Bar Association, pp: 143-149.

<sup>24</sup> Legge sul divorzio (Legge 1 dicembre 1970, n. 898), Disciplina dei casi di scioglimento del matrimonio, Available at: <https://www.altalex.com/documents/codici-altalex/2012/06/27/disciplina-dei-casi-di-scioglimento-del-matrimonio>. (Access: 07.02.2024)

- two Italian citizens, both resident not in Italy but abroad;
- two foreign (“straniero”) citizens, both resident not in Italy but abroad, who got married in Italy or have lived in Italy or who decide to choose the Italian Law as the applicable law;
- an Italian citizen and a foreign citizen, both resident in Italy;
- two Italian citizens, both resident in Italy;
- two foreign citizens, both resident in Italy.<sup>25</sup>

The Law No. 898 admits the next reasons for the divorce: finishing of legal separation, obtainment of divorce or another marriage abroad, non-consummation of marriage, court definitive gender reassignment judgment, conviction of a serious crime within the family, against sexual freedom or with a sentence of more than 15 years of imprisonment or the acquittal for one of these crimes due to mental illness.<sup>26</sup>

A noticeable thing in the Italian legislation is that spouses may apply for an annulment of the marriage in case norms of the civil code have been violated, for example, one of the spouses is already married.<sup>27</sup> What’s important here is that the marriage which includes the above mentioned reasons will be counted as valid for the Italian Republic until it’s not challenged in the court with the proper observation of the case which will take a minimum of a year.<sup>28</sup>

The Civil Code of Italy under Article 150 covers a mandatory procedure of legal separation before the divorce, which will take place in one of 2 forms: judicial

---

<sup>25</sup> DIVORCE IN ITALY: ITALIAN DIVORCE, Marzorati Studio Legale, Available at: [https://www.marzorati.org/en/divorce-italy-italian-divorce/#Causes\\_of\\_divorce\\_from\\_a\\_different\\_standpoint\\_than\\_the\\_criminal\\_one\\_pursuant\\_to\\_Italian\\_Law](https://www.marzorati.org/en/divorce-italy-italian-divorce/#Causes_of_divorce_from_a_different_standpoint_than_the_criminal_one_pursuant_to_Italian_Law). (Access: 16.02.2024)

<sup>26</sup> Legge sul divorzio (Legge 1 dicembre 1970, n. 898), Disciplina dei casi di scioglimento del matrimonio, Available at: <https://www.altalex.com/documents/codici-altalex/2012/06/27/disciplina-dei-casi-di-scioglimento-del-matrimonio>. (Access: 07.02.2024)

<sup>27</sup> Legge sul divorzio (Legge 1 dicembre 1970, n. 898), Disciplina dei casi di scioglimento del matrimonio, Available at: <https://www.altalex.com/documents/codici-altalex/2012/06/27/disciplina-dei-casi-di-scioglimento-del-matrimonio>. (Access: 07.02.2024)

<sup>28</sup> Roberta Ceschini, ‘International Marriage and Divorce Regulations and Recognition in Italy,’ Family Law Quarterly 29, no. 3 (Fall 1995), American Bar Association, pp. 567–575.

or by mutual consent<sup>29</sup>. The difference in these 2 forms lies in the decision taken: judicial separation is appointed by the court itself when only one of the spouses applies for the dissolution of marriage and mutual consent means that 2 parties have already agreed on the results and sequences after marriage termination.<sup>30</sup> It should be admitted that the terms of separation were changed with the Law No. 55/2015 down to 12 months for judicial separation and 6 months for mutual separation after receiving a separation decree.<sup>31</sup>

As it has been mentioned before, divorce takes place after the phase of separation, and depending on the type of separation it will be a litigated divorce - where the judge defines the provisions of child custody, alimony, etc. or a divorce by mutual consent where the agreement of the spouses concerning all legal consequences of divorce will be validated and approved.<sup>32</sup>

For the purposes of legal analyses of Italian legal norms and in order to compare them with the Islamic legal system which will be covered in the further 2 chapters of the current work, it is necessary to designate the rules of recognition of marriage abroad, foreign divorce recognition and parties who can enjoy the right of divorce in Italy.

To recognize the applicable law of the marriage made abroad, Italian legislation is guided by the law No. 218 of 1995 which provides next list of criteria:

- the law of the place where the marriage is officiated
- the law of the place of residence of one of the spouses
- Italian law if one of the parties is non-Italian<sup>33</sup>

---

<sup>29</sup> Articolo 150 Codice Civile (R.D. 16 marzo 1942, n. 262), Separazione personale, Available at: <https://www.brocardi.it/codice-civile/libro-primo/titolo-vi/capo-v/art150.html>. (Access: 07.02.2024)

<sup>30</sup> Roberta Ceschini, 'Divorce Proceedings in Italy: Domestic and International Procedures', Family Law Quarterly 28, no. 1, Spring 1994, American Bar Association, pp: 143-149.

<sup>31</sup> Gazzetta Ufficiale della Repubblica Italiana, LEGGE 6 maggio 2015, n. 55, Disposizioni in materia di scioglimento o di cessazione degli effetti civili del matrimonio nonché di comunione tra i coniugi (GU Serie Generale n. 107 del 11-05-2015), Available at: <https://www.gazzettaufficiale.it/eli/id/2015/05/11/15G00073/sg>. (Access: 05.03.2024)

<sup>32</sup> Roberta Ceschini, 'International Marriage and Divorce Regulations and Recognition in Italy,' Family Law Quarterly 29, no. 3 (Fall 1995), American Bar Association, pp. 567-575.

<sup>33</sup> L. 31 maggio 1995, n. 218, Riforma del sistema italiano di diritto internazionale privato, Available



If it's hard to define the applicable law as 2 or more criteria take place, then the law that results in the validity of the marriage will prevail. The law applicable to the legal substance of the marriage is the law of the place of residence of each spouse.<sup>34</sup>

The usual procedure after getting married abroad requires the spouses to contact the Italian Consulate and provide it with the required documents for being added to the Public Register system and what's more important, avoiding this procedure doesn't make the marriage itself invalid. At the same time, some people, mistakenly, believe that if the marriage is not properly registered in Italy, then no one will know about it, which makes it invalid for the Italian law.<sup>35</sup>

When it comes to recognition of marriage made in Italy but by non-resident parties, the procedure requires receiving a statement made by the authorities of the state of origin.<sup>36</sup> Considering the fact that non-residents may enjoy their right to get married in the presence of a minister of the faith, they should check if the Italian Government has signed any treaty with the representatives of their religion.<sup>37</sup> In case they do not succeed in it, they are still able to receive a statement from the government authority to independently appoint a minister of the represented faith but with an obligatory check of its qualification.<sup>38</sup>

Recognition of divorce made from abroad is a special procedure that checks if the received decree complies with the norm of Italian legislation:

---

at: [https://www.esteri.it/mae/doc/L218\\_1995.pdf](https://www.esteri.it/mae/doc/L218_1995.pdf). (Access: 12.05.2024)

<sup>34</sup> Roberta Ceschini, 'International Marriage and Divorce Regulations and Recognition in Italy,' *Family Law Quarterly* 29, no. 3 (Fall 1995), American Bar Association, pp. 567–575.

<sup>35</sup> Roberta Ceschini, 'International Marriage and Divorce Regulations and Recognition in Italy,' *Family Law Quarterly* 29, no. 3 (Fall 1995), American Bar Association, pp. 567–575.

<sup>36</sup> Roberta Ceschini, 'International Marriage and Divorce Regulations and Recognition in Italy,' *Family Law Quarterly* 29, no. 3 (Fall 1995), American Bar Association, pp. 567–575.

<sup>37</sup> Giuseppina Vassallo, "Famiglia, minori e successioni: Matrimonio", *AltalexPedia*, aggiornato il 27/06/2014, Available at: <https://www.altalex.com/documents/altalexpedia/2014/06/27/matrimonio>, (Access: 12.05.2024)

<sup>38</sup> LEGGE 24 giugno 1929, n. 1159, Disposizioni sull'esercizio dei culti ammessi nello Stato e sul matrimonio celebrato davanti ai ministri dei culti medesimi (029U1159), Normattiva, il portale delle legge vigente, Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1929;1159>, (Access: 12.05.2024)

1. The foreign authority which issued the divorce decree had jurisdiction over the Italian defendant;
2. The defendant was given proper notice in accordance with the laws of the country where the divorce proceedings were initiated and was given a reasonable amount of time to appear in court;
3. All parties against whom the judgment is to be enforced have appeared before the foreign court;
4. The divorce decree to be enforced in Italy is final and conclusive;
5. The foreign divorce decree does not conflict with decisions rendered by an Italian court on the same matter;
6. No parallel divorce proceedings between the parties, instituted prior to the foreign judgment becoming final, are pending before Italian courts;
7. The divorce decree is not contrary to Italian public order.<sup>39</sup>

The procedure is held by the Court of Appeals and as soon as the divorce itself is enforced it will be added to the Public Register.<sup>40</sup>

The key point in the divorce recognition is that it should comply with the motivation of the Italian Legislation and as an example, if it affects the children or affects the separation then it will not be enforceable.<sup>41</sup>

When it comes to the divorce of people of different nationalities, international conventions may apply determining the jurisdiction on the basis of citizenship or place of living during the marriage. Due to different reasons and procedures for marriage termination, some countries may be considered as more

---

<sup>39</sup> LEGGE 31 maggio 1995, n. 218, Riforma del sistema italiano di diritto internazionale privato, Normattiva, il portale delle legge vigente, Available at:

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1995:218>, (Access: 12.05.2024)

<sup>40</sup> Roberta Ceschini, 'International Marriage and Divorce Regulations and Recognition in Italy,' *Family Law Quarterly* 29, no. 3 (Fall 1995), American Bar Association, pp. 567–575.

<sup>41</sup> Roberta Ceschini, 'International Marriage and Divorce Regulations and Recognition in Italy,' *Family Law Quarterly* 29, no. 3 (Fall 1995), American Bar Association, pp. 567–575.

favorable for the divorce but as it has been mentioned above, it doesn't mean that it will be recognized in Italy.<sup>42</sup>

A huge role in the divorce procedure plays an Italian statement in the European Union which is basically a supranational entity with its own legislation and approaches to legal procedures. At the same time the EU does not have any basic EU-wide rules that determine which law will govern a couple's divorce or legal separation.<sup>43</sup>

The only documents that spouses are advised to be guided by are Brussels IIa and Council Regulation (EU) No 1259/2010 which should be checked for the signed countries. EU countries that do not participate in this regulation continue to apply their own rules to determine which national law should apply to a divorce.<sup>44</sup>

Basically, under the European Union legal system covers only positions of applicable law when there is a multinational subject of the case and left the counters how to regulate the legal procedure of divorce and marriage by themselves. The necessity of the international conventions to be signed may give birth to numerous cases of legal abuse. The Italian Republic is a member-state that is part of all divorce-related treaties and their reflection is clearly seen in the legislation. The procedure of divorce itself is pretty strict and complex which makes it look defensive in terms of individual rights. At the same time, some legal gaps and abuses on religious grounds may take place in both marriage and divorce procedures as the legal system is strongly bound to religion, and overloaded with treaties between church and government, so the instruments may look unclear without proper legal consultation.

---

<sup>42</sup> Roberta Ceschini, 'International Marriage and Divorce Regulations and Recognition in Italy,' *Family Law Quarterly* 29, no. 3 (Fall 1995), American Bar Association, pp. 567–575.

<sup>43</sup> FAQs - Divorce and Legal Separation, Your Europe, Available at: [https://europa.eu/youreurope/citizens/family/couple/divorce-separation/faq/index\\_en.htm](https://europa.eu/youreurope/citizens/family/couple/divorce-separation/faq/index_en.htm), (Access: 07.02.2024)

<sup>44</sup> Divorce and Separation: Information on Divorce Law Applicable in Cases of International Couples in the EU, European Commission, Available at: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/family-law/divorce-and-separation\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/family-law/divorce-and-separation_en), (Access: 07.02.2024)

### 1.3 Reflection of Right to Religious Freedom in Italy and EU

Besides the in-depth analyses of the divorce procedure and its legislation, it's necessary to research what is religious freedom and how it is approached by the Italian Republic separately from worldwide human rights tendencies and specifically by the European Union which is a superior unity where Italy takes place.

The Amsterdam Treaty (1999) established in its Declaration 11 that “The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.”<sup>45</sup>

For the first time, the EU thus made a clear statement in the Treaties that the regulation of religion and religious matters is primarily a question for the member states. This statement was confirmed by its inclusion in Article 17 of the Treaty on the Functioning of the European Union (TFEU). There is no EU policy on religion; nor is there any direct legal competence in the Union treaties to intervene in religion and religious affairs.<sup>46</sup>

Religious freedom, as well as the freedom to express and practice any religion, is one of the basic human rights, which is stipulated in both international documents (for example, in the Declaration of Human Rights) and in the legislation at the regional level.

Its definitions and mentions may be found in numerous essential documents signed by member-states, such as ECHR, Universal Declaration of Human Rights, ICCPR etc.

---

<sup>45</sup> Sergio Carrera and Joanna Parkin, The Place of Religion in European Union Law and Policy: Competing Approaches and Actors inside the European Commission, RELIGARE Working Document No. 1 (September 2010), Available at: [https://www.ceps.eu/wp-content/uploads/2010/09/RELIGARE%20-%20Religion%20and%20the%20EU\\_Final.pdf](https://www.ceps.eu/wp-content/uploads/2010/09/RELIGARE%20-%20Religion%20and%20the%20EU_Final.pdf), (Access: 07.02.2024)

<sup>46</sup> Sergio Carrera and Joanna Parkin, The Place of Religion in European Union Law and Policy: Competing Approaches and Actors inside the European Commission, RELIGARE Working Document No. 1 (September 2010), Available at: [https://www.ceps.eu/wp-content/uploads/2010/09/RELIGARE%20-%20Religion%20and%20the%20EU\\_Final.pdf](https://www.ceps.eu/wp-content/uploads/2010/09/RELIGARE%20-%20Religion%20and%20the%20EU_Final.pdf), (Access: 07.02.2024)

The key fundamental document that regulates and secures fundamental rights and freedoms in the territory of the European Union is the Charter of Fundamental Rights of the European Union, adopted in 2000. The Charter has become binding for all countries that are members of the European Union since December 2009, from the moment the Lisbon Treaty came into force.<sup>47</sup>

In addition to the fundamental freedoms and rights stipulated in it, we are interested more in the Article 10 - which is about the right to freedom of religion:

*“Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance”.*<sup>48</sup>

It is necessary to note, however, that the Charter allows for restrictions on freedom of religion: *“necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”*<sup>49</sup>

Religious freedom is also protected by one of the first and most basic human rights documents on the territory of the European continent - the European Convention on Human Rights. In particular, the right to freedom of religion is reflected in Article 9 of the Convention, which also states that “Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.”<sup>50</sup>

---

<sup>47</sup> Why Do We Need the Charter? European Commission, Available at:

[https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter\\_en](https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_en), (Access: 07.02.2024)

<sup>48</sup> Charter of Fundamental Rights of the European Union (2000/C 364/01), Official Journal of the European Communities, 18 December 2000, Available at:

[https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf), (Access: 14.02.2024)

<sup>49</sup> Charter of Fundamental Rights of the European Union (2000/C 364/01), Official Journal of the European Communities, 18 December 2000, Available at:

[https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf), (Access: 14.02.2024)

<sup>50</sup> European Convention on Human Rights, European Court of Human Rights, Council of Europe, 2010, Available at: [https://www.echr.coe.int/documents/d/echr/convention\\_eng](https://www.echr.coe.int/documents/d/echr/convention_eng), (Access: 14.02.2024)

At the same time, it is interesting that the European Court of Human Rights has ruled that this article can be applied to both: religion itself and religious sects. This is confirmed by court decisions that dealt with Scientology, Druidism, and the Divine Light Zentrum.<sup>51,52</sup>

Religious rights and their protection can even be found in the treaty on the functioning of the European Union. In particular, in Article 13, where EU member states undertake to “*pay full regard to the welfare requirements of animals while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions, and regional heritage*”.<sup>53</sup>

Among other honorable mentions ICCPR should be admitted with Article 18:

*1. Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.*

*2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*

*3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

---

<sup>51</sup> X. and Church of Scientology v. Sweden, Application No. 7805/77, European Court of Human Rights, 5 May 1979, Available at:

[https://www.stradalex.eu/en/se\\_src\\_publ\\_jur\\_eur\\_cedh/document/echr\\_7805-77\\_001-73995](https://www.stradalex.eu/en/se_src_publ_jur_eur_cedh/document/echr_7805-77_001-73995), (Access: 22.03.2024)

<sup>52</sup> Omkarananda and Divine Light Zentrum v. Switzerland, Application No. 10461/83, European Court of Human Rights, 19 March 1981, Available at:

[https://www.stradalex.com/nl/sl\\_src\\_publ\\_jur\\_int/document/echr\\_10461-83\\_001-45496](https://www.stradalex.com/nl/sl_src_publ_jur_int/document/echr_10461-83_001-45496), (Access: 22.03.2024)

<sup>53</sup> Consolidated Version of the Treaty on the Functioning of the European Union, Document 12016E013, PART ONE - PRINCIPLES, TITLE II - PROVISIONS HAVING GENERAL APPLICATION, Article 13, European Union, Available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E013>, (Access: 22.03.2024)

*4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*<sup>54</sup>

In general, religious freedom is one of the basic human rights in the European Union. As it has been already mentioned above, it is stipulated in several human rights documents. Moreover, freedom of religion is also an important value on which the European Union is based. In particular, this may be found in the EU Guidelines on the promotion and protection of freedom of religion or belief, which were adopted in June 2013. In addition to the fact that the EU once again reaffirms its commitment to protect religious freedom, it also recognizes the fact that religious freedom contributes to the development of democracy, the rule of law, peace and stability.<sup>55</sup> Moreover, according to the document, religious freedom is closely related to a number of other rights that cannot be fully ensured without it.<sup>56</sup>

When it comes to the Italian Republic, the provision of Article 10 of the Charter of Fundamental Rights of the European Union is also reflected in two articles of the Italian Constitution. In particular, articles 19 and 20 of the Italian Constitution testify to this. Article 19 states that all citizens of the country have the right to profess and express their religious beliefs.<sup>57</sup> Article 20 also prohibits the imposition of additional restrictions or additional taxes on organizations based on their religious beliefs.<sup>58</sup> At the same time, Article 19 contains a clause that religious

---

<sup>54</sup> International Covenant on Civil and Political Rights, adopted 16 December 1966, General Assembly resolution 2200A (XXI), Available at:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>, (Access: 22.03.2024)

<sup>55</sup> EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief, Foreign Affairs Council meeting, Luxembourg, 24 June 2013, Council of the European Union, Available at:

<https://www.eeas.europa.eu/sites/default/files/137585.pdf>, (Access: 24.03.2024)

<sup>56</sup> EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief, Foreign Affairs Council meeting, Luxembourg, 24 June 2013, Council of the European Union, Available at:

<https://www.eeas.europa.eu/sites/default/files/137585.pdf>, (Access: 24.03.2024)

<sup>57</sup> Constitution of the Italian Republic (1948), Available at:

[https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf). (Accessed: 14.06.2024)

<sup>58</sup> Constitution of the Italian Republic (1948), Available at:

[https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf). (Accessed: 14.06.2024)

freedom is ensured only on condition of compliance with public morality, namely: “... provided they [religious belief] are not offensive to public morality”.<sup>59</sup>

The church and the state in Italy are separated, and since 1984 Christianity has lost the status of the official religion. At the same time, Italy still has a law that dates back to the fascist era, which provides for the display of crucifixes in public places.<sup>60</sup> This law not only provoked fierce debate but was also a key element in *Lautsi vs. Italy*.

In the *Lautsi* case, the mother appealed to the Veneto Regional Administrative Court in 2002 because her children's school had rejected her proposal to remove crucifixes from classrooms. TAR and the Council of State have found that the mandatory and exclusive display of the crucifix is compatible with the Italian Constitution as it is a cultural and religious symbol that does not discriminate against non-believers. Ms. Lautsi then applied to the European Court of Human Rights and in 2009, the first decision of a chamber of the European Court of Justice was in favor of Ms. Lautsi, however, in 2011, the Grand Chamber overturned the first decision, arguing that the display of the crucifix in schools does not violate the freedom of education of unbelieving parents.<sup>61</sup>

Since 2021, however, this state of things has changed slightly with the case of Franco Coppoli, a teacher, who removed the crucifix from the classroom wall before lectures. Now, with the latest court decision - the demonstration of crucifixes in school classes is optional, but not prohibited. In addition, the same court ruling that

---

<sup>59</sup> Constitution of the Italian Republic (1948), Available at: [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf). (Accessed: 14.06.2024)

<sup>60</sup> Paolo Fucili, Continued Controversy Over Crucifixes in Italian Classrooms, *The Catholic World Report*, 29 November 2021, Available at: <https://www.catholicworldreport.com/2021/11/29/continued-controversy-over-crucifixes-in-italian-classrooms/>, (Accessed: 25.04.2024)

<sup>61</sup> Paolo Fucili, Continued Controversy Over Crucifixes in Italian Classrooms, *The Catholic World Report*, 29 November 2021, Available at: <https://www.catholicworldreport.com/2021/11/29/continued-controversy-over-crucifixes-in-italian-classrooms/>, (Accessed: 25.04.2024)



introduced the innovation to the law ruled that the display of crucifixes was not against secularism in Italy.<sup>62</sup>

Considering the protection of Religious Freedom, Article 403 of the Penal Code of Italy cannot be ignored as:

*“Anyone who publicly offends a religious confession, by insulting those who profess it, is punished with a fine of between € 1,000 and € 5,000.”*<sup>63</sup>

Another kind of protection of the right to enjoy religion has been already mentioned in the Divorce section of the current chapter. Due to the Civil Code of the Italian Republic, spouses have a right to get married before the ministers of the faith are admitted to the state. By “admitted to the state” the legislation means different religious groups that have relations with the Italian Republic governed by treaties.<sup>64</sup>

The difficulties in protecting the right of religion starts with the list of religious groups, which are not registered or do not have any treaties with Italy.

Due to the Constitution, each religious community has the right to establish its own institutions in accordance with its statutes, if they do not contradict the law and the State do not have any justifications to add any kind of restrictive measures including taxes on the creation of such group because of their religious aims or nature.<sup>65</sup> All relations between states should and will be regulated by the treaties.<sup>66</sup>

---

<sup>62</sup> Paolo Fucili, Continued Controversy Over Crucifixes in Italian Classrooms, The Catholic World Report, 29 November 2021, Available at: <https://www.catholicworldreport.com/2021/11/29/continued-controversy-over-crucifixes-in-italian-classrooms/>, (Accessed: 25.04.2024)

<sup>63</sup> Articolo 403 Codice Penale (R.D. 19 ottobre 1930, n. 1398), Offese a una confessione religiosa mediante vilipendio di persone, Available at: <https://www.brocardi.it/codice-penale/libro-secondo/titolo-iv/capo-i/art403.htm>, (Accessed: 25.04.2024)

<sup>64</sup> Articolo 83 Codice Civile (R.D. 16 marzo 1942, n. 262), Matrimonio celebrato davanti a ministri dei culti ammessi nello Stato, Available at: <https://www.brocardi.it/codice-civile/libro-primi/titolo-vi/capo-ii/art83.html>, (Accessed: 25.04.2024)

<sup>65</sup> Constitution of the Italian Republic (1948), Available at: [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf), (Accessed: 14.06.2024)

<sup>66</sup> Constitution of the Italian Republic (1948), Available at: [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf), (Accessed: 14.06.2024)

When it comes to unregistered religious groups, then they operate freely and can legally operate as cultural associations which allows them to receive any kind of tax exemptions, access to different kinds of institutions, and legal recognition of marriages.<sup>67</sup>

At the same time, these kinds of benefits are attainable in an easier procedure if the religious group has any kind of agreement with the government which has a very complicated mechanism of receiving. When all these steps may look as the protection or even favorable conditions for the enjoyment of religious rights, there are only 12 groups in Italy have such kind of treaties: The Confederation of Methodist and Waldensian Churches, Seventh-day Adventists, Assemblies of God, Jews, Baptists, Lutherans, Church of Jesus Christ, Orthodox Church of the Constantinople Patriarchate, Italian Apostolic Church, Buddhist Union, Soka Gakkai Buddhists, and Hindus.<sup>68</sup>

Such religions as Islam are still not only underrepresented but face lack of possibilities to enjoy their right which is basically a violation.

The Islamic Cultural Center of Italy is still trying to reach an agreement with the government which does not recognize any other Islamic religious entities but the Center itself, which operates the Great Mosque of Rome, and making it the only existing entity that is viable to complete the procedure of signing a treaty with the Italian Republic.<sup>69</sup>

---

<sup>67</sup> 2021 Report on International Religious Freedom: Italy, U.S. Department of State, 2 June 2022, Available at:

<https://www.state.gov/reports/2021-report-on-international-religious-freedom/italy/#:~:text=Legal%20Framework,not%20offensive%20to%20public%20morality>, (Accessed: 25.04.2024)

<sup>68</sup> 2021 Report on International Religious Freedom: Italy, U.S. Department of State, 2 June 2022, Available at:

<https://www.state.gov/reports/2021-report-on-international-religious-freedom/italy/#:~:text=Legal%20Framework,not%20offensive%20to%20public%20morality>, (Accessed: 25.04.2024)

<sup>69</sup> 2021 Report on International Religious Freedom: Italy, U.S. Department of State, 2 June 2022, Available at:

<https://www.state.gov/reports/2021-report-on-international-religious-freedom/italy/#:~:text=Legal%20Framework,not%20offensive%20to%20public%20morality>, (Accessed: 25.04.2024)

This leads to other problems like receiving permission to build mosques in different Italian regions or even the exercise of face covering which is prohibited in Liguria, Veneto, and Lombardy.<sup>70</sup>

In conclusion, it should be admitted that though the European Union has such a wide and strong legislation basis concerning the protection of religious freedom based on numerous binding international treaties the Republic of Italy due to its past and interdependence of the dominant religion has multiple gaps not only in national legislation but also fails to comply its international duties. De jure the people of different kinds of religious groups are protected by the law and its mechanisms but de facto they face multiple obstacles during the enjoyment of their rights.

---

<sup>70</sup> 2021 Report on International Religious Freedom: Italy, U.S. Department of State, 2 June 2022, Available at: <https://www.state.gov/reports/2021-report-on-international-religious-freedom/italy/#:~:text=Legal%20Framework,not%20offensive%20to%20public%20morality>, (Accessed: 25.04.2024)

## CHAPTER 2: View on marriage and divorce in Hanafi madhub of Sunni Islam

This chapter concentrates on the study of marriage and divorce under Shariah and is intended to be a comparative study of the Divine Law that, according to authentic Islamic doctrines, embodies the Will of God, who is the ultimate legislator in Islamic society.

Taking into account the various approaches and sources of law regarding the divorce process in Islam, it was decided to narrow the research group to the Hanafi school within Sunni Islam. Of course, representatives of Islam in the Italian Republic adhere to different schools, but the choice fell on the Hanafi legal school as the most widespread group.<sup>71</sup>

This madhhab is dominant among people from Turkey, Afghanistan, Pakistan, India, China, Syria, the Balkans and partly Indonesia, since it is in these regions that it is the dominant legal school.<sup>72</sup>

### 2.1 What is the Hanafi Madhhab?

In Islamic jurisprudence known as “fiqh” – a madhhab is understood as a theological and legal school.<sup>73</sup> At the moment, There are currently four main schools named after their founders: Hanafi, Maliki, Shafi'i and Hanbali.<sup>74</sup> They arose approximately simultaneously in the 9-10th century AD and despite the recognition

---

<sup>71</sup> ReOrienting the Veil, Islamic Jurisprudence & Law, University of North Carolina at Chapel Hill, Available at: <https://veil.unc.edu/religions/islam/law/>, (Accessed: 10.06.2024)

<sup>72</sup> Ханафитский мазхаб – история и проблемы развития, e Islam, 4 November 2021, Available at: <https://e-islam.kz/ru/islam/ishki-kategoriyalar/fiqh/khanafi-mazkhaby/item/271-eIslam/>, (Accessed: 10.06.2024)

<sup>73</sup> Ализаде А. А., *Ханафитский мазхаб*, in *Исламский энциклопедический словарь*, Moscow: Ансар, 2007, ISBN 978-5-98443-025-8, (CC BY-SA 3.0), Available at: [https://ru.wikisource.org/wiki/%D0%98%D1%81%D0%BB%D0%B0%D0%BC%D1%81%D0%BA%D0%B8%D0%B9\\_%D1%8D%D0%BD%D1%86%D0%B8%D0%BA%D0%BB%D0%BE%D0%B%D0%B5%D0%B4%D0%B8%D1%87%D0%B5%D1%81%D0%BA%D0%B8%D0%B9\\_%D1%81%D0%BB%D0%BE%D0%B2%D0%B0%D1%80%0](https://ru.wikisource.org/wiki/%D0%98%D1%81%D0%BB%D0%B0%D0%BC%D1%81%D0%BA%D0%B8%D0%B9_%D1%8D%D0%BD%D1%86%D0%B8%D0%BA%D0%BB%D0%BE%D0%B%D0%B5%D0%B4%D0%B8%D1%87%D0%B5%D1%81%D0%BA%D0%B8%D0%B9_%D1%81%D0%BB%D0%BE%D0%B2%D0%B0%D1%80%0), (Accessed: 10.06.2024)

<sup>74</sup> Rabb, Intisar A., "Fiqh", in John L. Esposito (ed.), *The Oxford Encyclopedia of the Islamic World* (Oxford: Oxford University Press, 2009).

of each other's existence, were in constant legal debate. The primary source of law for all of them is the Qur'an, but key differences lie in the approaches to additional sources of law and methods of decision-making, leading to differences in the practical usage of Islam.<sup>75</sup>

The Hanafi madhhab is named after its founder, Imam Abu Hanifa, who was a follower of the school of “common sense” or “rational discretion” (*Ahl al-Ra'y*). During the formation of madhhabs, theologians were divided into two main categories: Ahl al-Ra'y and Ahl al-Hadith. The Ahl al-Hadith were traditionalists with the main idea of direct commitment to the Hadith, while the Ahl al-Ra'y took a rational and logical approach to interpreting traditions about the life of the Prophet Muhammad.<sup>76</sup>

A distinctive feature of Abu Hanifa's worldview was his desire to understand the logic of the traditions of the Prophet Muhammad and apply it to modern realities. He believed that Islam must adapt to a changing world in order to remain relevant and applicable.<sup>77</sup>

In matters of fiqh, Abu Hanifa was a proponent of rational methods for addressing issues not directly covered by the Quran or Sunnah, employing the method of analogy — qiyas. For making an analogy, a Faqīh needed to identify the reasoning behind a normative ruling and use it to resolve similar issues. For instance, while Islamic primary sources prescribe charitable almsgiving (*sadaqa al-fitr*) during the holy month of Ramadan in the form of natural products, Abu Hanifa allowed the substitution of these products with monetary equivalents. This decision was based on

---

<sup>75</sup> Hussin I., ‘Sunni Schools of Jurisprudence’, in E. El-Din Shahin (ed.), *The Oxford Encyclopedia of Islam and Politics* (Oxford: Oxford University Press, 2014).

<sup>76</sup> Ханафитский мазхаб – история и проблемы развития, e Islam, 4 November 2021, Available at: <https://e-islam.kz/ru/islam/ishki-kategoriyalar/fiqh/khanafi-mazkhaby/item/271-eIslam/>, (Accessed: 10.06.2024)

<sup>77</sup> Чеснокова, Лена, "Ясно-понятно. Что такое ханафитский мазхаб и почему его придерживаются татарстанские мусульмане," *Инде - Интернет журнал о жизни в городах Республики Татарстан*, 20 декабря 2016, Available at: <https://inde.io/article/2472-yasno-ponyatno-chno-takoe-hanafitskiy-mazhab-i-pochemu-ego-priderzhivayutsya-tatarstanskije-musulmane>, (Accessed: 11.06.2024)

the fundamental principles of the Quran and Sunnah, adapting the existing norms to the modern circumstances.<sup>78</sup>

Abu Hanifa's method of making legal decisions was based on the following foundational sources of law:

a) Qur'an. The Word of God and the fundamental basis of Sharia.

b) Sunnah – life examples of the Prophet Muhammad, his words and sayings, which are used as commentaries on the Āyahs of the Koran.

c) Ijma - Statements made by the Companions of the Prophet Muhammad. This source also clarifies various aspects of Sharia, since the companions were close to the Prophet and knew the essence, or background, of various problems. It should be noted the following generations of these companions like Tabi'uns can not be viewed as equal as in that case they did not directly communicate with the Prophet.

d) Qiyas – a judgment made by analogy. The essence of this method is that the legal problem can be solved on the basis of an analogy with what is already available in Revelation in cases when there were no literal solutions mentioned. The decision is based on comparison of new problems to ones which are already solved.

e) Istihsan - the possibility of rejecting qiyas arguments if a formally correct judgment by analogy in a given situation is not entirely appropriate. Istikhsan is used when qiyas conflicts with ijma and urf.

f) Urf - the usage of any widely held opinions in Muslim society as evidence in the absence of direct indications in the Revelation. The concept of "Urf" is divided into two types: "Sahih", which corresponds to the Teaching and does not contradict the Sacred Texts, and "Fasid", which, on the contrary, violates the principles of Revelation. Only "Sahih" Urf is accepted as justification, while "Fasid" is rejected as evidence.<sup>79</sup>

---

<sup>78</sup> Ханафитский мазхаб – история и проблемы развития, e Islam, 4 November 2021, Available at: <https://e-islam.kz/ru/islam/ishki-kategoriyalar/fiqh/khanafi-mazkhaby/item/271-eIslam/>, (Accessed: 10.06.2024)

<sup>79</sup> Али-заде, Айдын, "История и правовые методы ханафитского мазхаба," Татаровед, Available

## 2.2 Quran approach to Marriage, Consent and Divorce

To fully understand one of the main objects of the research of this work – *Divorce* – it is necessary to understand the process that precedes it – the Marriage. Here it is important to immediately define the framework: in Islamic jurisprudence, regardless of the legal school and contrary to the classical reflection in Western religions – Marriage is not a sacrament.

Marriage in Islam is nothing else but a civil contract (*'aqd*) concluded by two people or persons acting on their behalf, and which legitimizes sexual relations and the creation of offspring through religion, as well as transferring legal rights and responsibilities to the spouses.<sup>80</sup>

### A. Consent of Marriage

It is immediately worth outlining the voluntariness of this agreement - Consent.

According to traditional Muslim jurists, although an element of individual choice was recognized, the marriage itself still depended on the choices made by families. Hence the importance of the institution of guardianship, namely the types (or variants) of guardianship (*wilaya*). There are 2 types of guardians (*wali*), but regardless of which one is used, both guardians must meet certain criteria: adults, men, Muslims, free and sane - most often such a guardian was and is the father but in certain cases it can be grandfather. The father has the exclusive right to force the marriage (*jabr* or *ijbar*), while the other guardian, in the absence of the father, can only approve it.<sup>81</sup>

---

at: <http://www.tataroved.ru/religion/publ/1/>, (Accessed: 02.06.2024)

<sup>80</sup> Ali Kecia, "Muslim Sexual Ethics: Marriage Contracts in Islamic Jurisprudence," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/marriage.html>, (Accessed: 22.05.2024)

<sup>81</sup> Ali Kecia, "Muslim Sexual Ethics: Consent & Forced Marriage," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/consent.html>, (Accessed: 22.05.2024)

Without going deep into the specific aspects of the differences of all 4 Sunni schools regarding the rights of other guardians to force marriages for minors (which are women before the start of menstruation or 9 years and up to 15 years of men) – all of them recognize one thing, namely the right of the father to enter into compulsory marriages for minor children who do not have the right to vote.<sup>82</sup>

After reaching adulthood, men and women are subject to different rules. The opinions of lawyers of all schools agree that a man, having reached the age of adulthood, has the right to enter into marriage independently without a guardian. In the Hanafi school, a woman can also marry on her own, but her marriage can be challenged by the guardian if certain conditions are not met, such as the social equality of the groom (*kuf'*) and an appropriate dowry. In examining the differences between the Hanafi approach and other schools, it is worth noting that most representatives of Hanbali allow a woman over nine years of age to avoid being forced into marriage by her father (a guardian is still necessary for a legal marriage procedure), while the rest of the jurists, along with the Malikis and Shafi'is, believe that the father can force his daughter to marry against her will while she remains a virgin (*bikr*).<sup>83</sup>

Lawyers of all schools require the consent of a mature virgin for marriage if the guardian is someone other than the father. When she ceases to be a *bikr*, her consent is required for any subsequent marriage. However, according to Maliki, Shafi'i and Hanbali jurists, the guardian must perform any marriage on her behalf. Only Hanafis consider that an adult woman is capable of concluding a marriage contract independently.<sup>84</sup>

## **B. The Nature of Marriage**

---

<sup>82</sup>Ali Kecia, "Muslim Sexual Ethics: Consent & Forced Marriage," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/consent.html>, (Accessed: 22.05.2024)

<sup>83</sup>Ali Kecia, "Muslim Sexual Ethics: Consent & Forced Marriage," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/consent.html>, (Accessed: 22.05.2024)

<sup>84</sup>Ali Kecia, "Muslim Sexual Ethics: Consent & Forced Marriage," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/consent.html>, (Accessed: 22.05.2024)



Most schools of Islamic jurisprudence are united in the opinion of the main purpose of the marriage contract which is to make sexual intercourse legal (*halal*) and legitimize offspring. The contract also defines the rights and responsibilities of the spouses, which differ by gender and are interdependent: if one spouse does not fulfill his or her responsibilities, his or her rights may be jeopardized.<sup>85</sup>

When entering into marriage, the husband is obliged to pay his wife the dowry (*mahr* or *sadaq*) agreed upon by her demands, which becomes the property of the wife and she will remain the only person who can use it and at her own discretion only. In return, he receives *milk al-nikah*, *milk al-aqd* or *milk al-bud*, "the right of ownership (or control) of the marriage (or sexual intercourse) / marriage contract / vulva [of wife]"; which is a necessary condition for legal sexual intercourse. He also receives the right to conclude marriage and dissolve it unilaterally (*talaq*) at any time.<sup>86</sup>

It is also worth noting that the wife has the right to housing, clothing, support and, in most cases, to obtain a servant who will have to help her and do the housework. In case there are other wives, she is entitled to spend the same amount of time with her husband as the others. The husband, while supporting his wife with her rights and needs, has the right to limit her movements and expect her availability for sexual intimacy in exchange. If a wife refuses intimacy or leaves the house without her husband's permission, then she loses the right to be cared about (including financial part) and her equality in time spending with her husband (if there are co-wives).<sup>87</sup>

Lawyers also do not have common opinion considering the inclusion of clauses (*shurut*, sing. *shart*) in the marriage contract that establishes certain rights of

---

<sup>85</sup> Ali Kecia, "Muslim Sexual Ethics: Marriage Contracts in Islamic Jurisprudence," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/marriage.html>, (Accessed: 22.05.2024)

<sup>86</sup> Ali Kecia, "Muslim Sexual Ethics: Marriage Contracts in Islamic Jurisprudence," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/marriage.html>, (Accessed: 22.05.2024)

<sup>87</sup> Ali Kecia, "Muslim Sexual Ethics: Marriage Contracts in Islamic Jurisprudence," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/marriage.html>, (Accessed: 22.05.2024)

the wife, such as prohibiting the husband from additional marriages or prohibiting the wife from being moved from her current city. Hanbalis recognize such clauses as legally binding, allowing the wife to dissolve the marriage if they are violated while other schools (Maliki, Shafi'i and the Hanafi which keep the main interest in this research) consider them as invalid or void, although nothing prevents the wife from including these terms in the contract.<sup>88</sup>

From a civil perspective, in modern Muslim societies, there is a huge debate about including clauses in contracts to protect women's rights. In Muslim-majority countries, shurut are regulated by legal codes. For Muslim minorities in more secular societies, including terms in the contract can help define the expectations of the spouses, although such contracts will be largely considered as morally binding and not always legally enforceable under civil law. Nevertheless, in the classical understanding of the Western world, organizations appear that work on standard marriage contracts among Muslims and structure them in such a way that they are subject to execution in the country of conclusion with all positions included.<sup>89</sup>

Summarizing, Muslims are divided over the extent to which modified marriage agreements can eliminate the legal difficulties muslim women face during marriage and divorce procedures. If the spouses agree to follow traditional rules, such as dowry obligations, the prenuptial agreement becomes an important and, indeed, a powerful tool. However, for those who disagree with the classic system of shared rights and responsibilities or male prerogatives, changes in contracts will not solve the problem. By prerogatives meant that regardless of the terms of the contract, Islamic jurisprudence provides for the husband's constant access to his wife's body and his absolute right to unilateral divorce (de facto at his own will and at any time). Solving these problems requires rethinking the concept of *milk* (ownership or

---

<sup>88</sup> Ali Kecia, "Muslim Sexual Ethics: Marriage Contracts in Islamic Jurisprudence," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/marriage.html>, (Accessed: 22.05.2024)

<sup>89</sup> Ali Kecia, "Muslim Sexual Ethics: Marriage Contracts in Islamic Jurisprudence," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/marriage.html>, (Accessed: 22.05.2024)

control) and its role in Muslim marriage, which is, reconsidering the very nature of the marriage contract.<sup>90</sup>

### C. The Divorce

The Holy Prophet (SAW) declared: "Of all the lawful acts the most detestable to Allah is divorce."<sup>91</sup>

Initially, no marriage is intended to end in divorce as there is a strong belief among the muslim population of all schools that divorce is some kind of evil that should be avoided almost at all costs, though in some cases that evil is nothing else but a necessity, to avoid corruptive relations which will be based on hatred and disaffection.<sup>92</sup>

The basis for divorce is the inability of the spouses to live together harmoniously, rather than any specific fault or wrongdoing by one party that can also take place.<sup>93</sup>

## 2.3 In-depth view on dissolution of marriage

Under Islamic law, it can occur either through the actions of the spouses or by the decision of the court. To clarify the status of divorce procedure in social and

---

<sup>90</sup> Ali Kecia, "Muslim Sexual Ethics: Marriage Contracts in Islamic Jurisprudence," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/marriage.html>, (Accessed: 22.05.2024)

<sup>91</sup>"Divorce (Kitab Al-Talaq): Partial Translation of Sunan Abu-Dawud, Book 6," available at International Islamic University Malaysia, Available at: [https://www.iiu.edu.my/deed/hadith/abudawood/006\\_sat.html#:~:text=The%20Prophet%20\(peace%20upon%20him\)%20said%3A%20Of%20all%20the%20lawful%20acts.wife%20while%20she%20is%20menstruating%3F](https://www.iiu.edu.my/deed/hadith/abudawood/006_sat.html#:~:text=The%20Prophet%20(peace%20upon%20him)%20said%3A%20Of%20all%20the%20lawful%20acts.wife%20while%20she%20is%20menstruating%3F), (Accessed: 23.05.2024)

<sup>92</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." Journal of Law, Policy and Globalization 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>93</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." Journal of Law, Policy and Globalization 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

legal life - in Islam, divorce is a termination of a social contract which leads to exception to the legal status of marriage.<sup>94</sup>

Shariah defines 2 categories of the divorce - classic judicial divorce and extra judicial divorce which is divided into 3 types depending on the initiator:

- Talaq, Talaq-il-Bid'ah, Illa, and Zihar (initiated by Husband).
- Talaq-i-tafweed and Li'an (initiated by wife).
- Khul'i (initiated by mutual agreement).<sup>95</sup>

- **Talaq**

**Talaq** (a key-word during divorce procedure initiated by man): is a noun taken from a shortened version of a verb "*talaq*" in Arabic, and meaning to untie or to make free. Talaq represents the unique one-sided power of a husband to abandon his wife at his discretion and technically the usage of this right by pronouncing divorce. It is recognized throughout all schools of Sunnis and Shias (with some differences) and is widespread in a way that even Imams utilized it. The term is often translated as "denial," originating from the root of '*talaq*' as it was mentioned above, which signifies releasing an animal from its tether, metaphorically freeing the wife from the bonds of marriage. In Islamic law, it signifies the husband's absolute power to divorce his wife.<sup>96</sup>

The following Quranic verse is frequently cited to support the husband's authority to pronounce unilateral divorce: "Men are the protectors and maintainers of

---

<sup>94</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." Journal of Law, Policy and Globalization 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>95</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." Journal of Law, Policy and Globalization 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>96</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." Journal of Law, Policy and Globalization 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

women, because Allah has given the one more (strength) than the other, and because they support them from their means".<sup>97</sup>

By absolute one-sided power of Muslim husband to claim the divorce is meant that he can do it by himself, without reasons or proofs, at his whim, as a joke or even being drunk, without intervention of the 3rd party (as example court or anything/anyone) and even in the absence of his wife - everything that is needed is just the pronouncement of the words such as 'You are divorced' or 'I have divorced you' or 'Talaq' to start the legal process of dissolution. Though he is obliged to notify her.<sup>98</sup>

In practice, husbands give conditional divorce to their wives saying something like: "You will be divorced if you go alone there" and this kind of divorce will count as valid in case she breaks his condition.<sup>99</sup>

Islamic jurisprudence divides divorce by 2 groups which are revocable - a type of divorce in which the husband can annul it during the period of iddah by pronouncing 'I revoke the divorce' (the wife's consent is not required for this procedure or by showing sexual affection to the wife and irrevocable. During a revocable divorce, there are two the most important rules worth mentioning: first one is the moment of consummation, namely, the marriage itself should be considered consummated, because a wife who is a virgin should not observe iddah in accordance with Surat al-Ahzab: "O believers! When you marry the believing women and then divorce them before you touch them, you are not entitled to reckon

---

<sup>97</sup> Brandeis University. "Muslim Sexual Ethics: Understanding a Difficult Verse, Qur'an 4:34: Additional Translations.", Available at:

<https://www.brandeis.edu/projects/fse/muslim/translation.html#:~:text=YUSUF%20ALI%3A%20Men%20are%20the,Allah%20would%20have%20them%20guard>, (Accessed: 18.02.2024)

<sup>98</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." Journal of Law, Policy and Globalization 42 (2015), Available at:

<https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>99</sup> Hussain, Kashif. "The Fiqh of Divorce in the Hanafi School." The Wise Word, June 7, 2023, Available at: <https://thewiseword.co.uk/the-fiqh-of-divorce-in-the-hanafi-school/>, (Accessed: 19.02.2024)

for them an 'iddah....” and second one is that during revocable divorce procedure, there is no compensation on payments which should be made in any kind.<sup>100</sup>

Revocable divorce may be done only 3 times with further reconciliation after the first and second divorces. When the third divorce is done, they cannot remarry unless the wife marries another man and that marriage ends for any reason.<sup>101</sup>

In the case of a revocable divorce, the divorced woman retains the rights of the wife, and the divorced husband retains all the rights of the husband. This includes inheritance rights in the event of the death of one of the spouses during iddah. The delayed mahr is paid only after the expiration of the iddah, unless the husband revokes the divorce during this period.<sup>102</sup>

As for irrevocable divorce - the husband has no rights of returning to divorcee if it falls into one of these categories:

- 1) Divorce before consummation
- 2) Third divorce
- 3) Divorcee used khul procedure before
- 4) Valid sexual intercourse with wife (khalwah) during iddah.<sup>103</sup>

Hanafi legists also recognize divorce as irrevocable if the husband pronounces: "You are divorced irrevocably», «divorced firmly", "She is separated",

---

<sup>100</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>101</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>102</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>103</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

"cut off", "disassociated" or any other kind of strong words meaning end of the relationship.<sup>104</sup>

On the first view talaq could be an impressively simple procedure, though there are different conditions and pitfalls so it could be acknowledged as valid.<sup>105</sup>

### 1. Condition of the Divorcer (al-Mutalliq)

Husband initiating divorce should meet several characteristics: Adulthood and Sanity. By adulthood is meant that divorce of an underaged person even if he has reached a discerning age (*mumayyiz*) will be seen as invalid.<sup>106</sup>

Considering minors - no guardian of him can pronounce talaq for him and by his means. Both the Hanafi and the Shafi'i schools state that traditions prohibit any kind of guardian, even if it's his father to start divorce proceedings on behalf of his minor son.<sup>107</sup>

Same goes for sanity as an insane person no matter if it's temporary or permanent, if a person is unconscious or in a state of delirium due to high fever will take no legal grounds. Even anger is covered by this condition - divorce is valid if a person in a fit of anger pronounces it with intentions to have it, though losing completely his senses will be considered as a failed attempt.<sup>108</sup>

---

<sup>104</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>105</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>106</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>107</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>108</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

The only difference is that for an insane person - the Qadi or a local Judge has the ultimate right to start a marriage dissolution representing the husband.<sup>109</sup>

For all schools except researching one there is also a free violation rule meaning that a person should decide to pronounce talaq by himself, while the Hanafis consider the divorce valid if it took place under influence of another person, any kind of fraud or deception or voluntary intoxication etc. (involuntary intoxication is considered as a false condition and divorce won't be valid).<sup>110</sup>

Abu Zuhrah admits it in his quote: "The Hanafi school considers divorce by all persons except minors, lunatics and idiots as valid. Thus divorce pronounced by a person in jest or under intoxication by an unlawful intoxicant, or under duress, is valid. It is the accepted view of the Hanafi school that a divorce by mistake or in a state of forgetfulness is valid. Malik and al- Shafi'i concur with Abu Hanifah and his followers regarding a divorce pronounced in jest, which should be considered as valid also."<sup>111</sup>

## 2. Condition of the Divorcee (al-Mutallaqah)

Under Divorcee is commonly understood a wife who is a subject to divorce procedure. Meanwhile the "subjectness" includes different characteristics which should be met according to Islam: not pregnant, free from menses at the time of divorce, and with absence of sexual intercourse during her period of purity (*thur*).<sup>112</sup>

---

<sup>109</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>110</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>111</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>112</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)



Al-Razi, a famous Islamic philosopher and researcher in the field of Islam legal studies, says in his exegesis of the first verse of Surat al-Talaq: "By 'iddah is meant the period of purity from menses, by consensus of all Muslims. A group of exegetes has observed that by divorce at the time of 'iddah is meant that the wife may be divorced only during the period of purity in which intercourse has not occurred. In brief, it is compulsory that divorce occur during the period of purity, otherwise it will not be according to the Sunnah, and divorce according to the Sunnah is conceivable only in the case of an adult wife with whom marriage has been consummated, and one who is neither pregnant nor menopausal. For there is no sunnah concerning the divorce of a minor wife, a wife who has not been copulated with, or a wife in menopause or pregnancy."<sup>113</sup>

Remarkable thing is that due to Hanafi thought, pronouncing divorce when wife does not meet one of these conditions is Haram (unlawful) but the divorce itself still will take place and will be considered as valid.<sup>114</sup>

Ground for it could be found in al-Mughni: "The meaning of a sunnah divorce (talaq al-sunnah) is a divorce in consonance with the command of God and His Prophet; it is divorce given during a period of purity in which intercourse with her has not occurred. A divorce contrary to the sunnah (talaq al-bid'ah) is a divorce given during menses or during a period of purity in which she has been copulated with. But if a person pronounces such a divorce, he sins, though the divorce is valid according to the view generally held by the scholars."<sup>115</sup>

### 3. Formalities of the Pronouncement of Divorce (al-Sighah)

---

<sup>113</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>114</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>115</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

Under formalities Islamic Jurisprudence means that talaq is valid if it is oral or written and with no obligatory need for witnesses. The main rule which should be followed is that the words chosen by any method must clearly indicate the intention to break the marriage. Shias have some additional rules like only deaf people can utilize written talaq which is not the case for Hanafi. <sup>116</sup>

Unlike Shias who recognize only the express and delegated forms of divorce, Sunnis distinguish express, implied, contingent constructive and delegated talaq. Shariah law let the husband to step aside from classic pronouncement of “I divorce you”, dividing the talaq declaration by 2 subtypes not changing the essence of the procedure:

1) Talaq-Sareeh - a clear intention of the divorce by pronouncing “I divorce you”;

2) Talaq-Kinaya - a vague or indirect declaration with other words not meaning the divorce but imply or hint at it like: “you are clear”, “you are irrevocable”, “you are cut off”, “you are concluded”, “you are a free woman”, “you are forbidden”.<sup>117</sup>

Talaq-Kinaya by its nature is not a popularized way to divorce and considering legal status recognized by the followers of Muhammad ibn Abd al-Wahhab who identified themselves either as opponents to the madhub system of Hanbalis. So the irrevocability of divorce for them depended on the intentions during the pronunciation of the words hinting at divorce itself.<sup>118</sup>

#### 4. Al-'Iddah

---

<sup>116</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>117</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>118</sup> Glasse, Cyril. *The New Encyclopedia of Islam*. Lanham, Maryland: AltaMira Press, 2001, pp. 469–70.

Iddah is a special waiting period that is imposed on a wife during a divorce and during which she can't get into marriage. One of the main aims of this period is to make sure that the wife is not pregnant. There is a consensus among Muslims of all schools regarding the general need for iddah as its marked in both Quran and Sunnah: "Women who are divorced shall wait, keeping themselves apart, three (monthly) courses" and "Observe 'iddah in the house of Ibn Umm Maktum" accordingly.<sup>119</sup>

The wife should remain in the marital home during the iddah unless there is danger or special reason for separation. Or if she has committed adultery, he may ask her to leave.<sup>120</sup>

Nevertheless the period and procedure may vary depending on the wife: whether she is separated due to divorce or annulment of marriage, she is a widow, a wife of a missing husband or its iddah of a woman copulated by mistake.<sup>121</sup>

- Divorcee's Iddah

Iddah counted as divorced iddah for any kind of separation between husband and wife except cases of death: due to khul, li'an, annulment due to a defect or as a result of difference of religion.<sup>122</sup>

---

<sup>119</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>120</sup> Hussain, Kashif. "The Fiqh of Divorce in the Hanafi School." *The Wise Word*, June 7, 2023, Available at: <https://thewiseword.co.uk/the-fiqh-of-divorce-in-the-hanafi-school/>, (Accessed: 19.02.2024)

<sup>121</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>122</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

Moreover, iddah will take place even if the husband secluded with his wife and then divorced without consummation. Only without seclusion an unconsummated wife has the right to avoid iddah.<sup>123</sup>

Considering the duration of iddah - for a menstruating woman it will be 3 months, for a wife in post-menstrual period it will be also 3 months, for a pregnant woman it will be till the birth of child or last child if she is pregnant with several in accordance with the verse: "And as for pregnant women, their term shall end with delivery."<sup>124</sup>

Iddah also applies for a consummated child before completing nine years and it will last 3 months besides the months of divorce or 3 kuru (which means menstruation period).<sup>125</sup>

- Widow's Iddah

Widow's Iddah is different to the others as no matter of conditions of her being adult or minor, menopausal or not, consummated or not it will last 4 months and 10 days due to the verse: "And those among you who die and leave behind wives, (these wives) should keep themselves waiting for four months and ten days."<sup>126</sup>

At the same time the same rules for pregnant wives apply here - iddah ends with childbirth or if she is not sure whether she is pregnant, she should wait either till birth or till the moment she will know for sure.<sup>127</sup>

---

<sup>123</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>124</sup> Hussain, Kashif. "The Fiqh of Divorce in the Hanafi School." *The Wise Word*, June 7, 2023, Available at: <https://thewiseword.co.uk/the-fiqh-of-divorce-in-the-hanafi-school/>, (Accessed: 19.02.2024)

<sup>125</sup> Hussain, Kashif. "The Fiqh of Divorce in the Hanafi School." *The Wise Word*, June 7, 2023, Available at: <https://thewiseword.co.uk/the-fiqh-of-divorce-in-the-hanafi-school/>, (Accessed: 19.02.2024)

<sup>126</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>127</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*.

In case of husband's death during the iddah of revocable divorce, the woman immediately starts a new widow's iddah as it is believed that they are still connected to each other. At the same time irrevocable divorce depends on some conditions: if he is healthy during the moment and then dies of irrevocable divorce, she will observe iddah of divorce; the same rule applies if he is ill but the divorce itself takes place on her demand. Though if she is deadly ill during pronouncement of irrevocable divorce and then dies - she will start widow's iddah.<sup>128</sup>

- Iddah for Intercourse by Mistake

Under intercourse by mistake most muslim schools mean a sexual act which won't bring penalties irrespective where the subject was a woman of unlawful relations (like married woman or sister of the wife) or of lawful (unmarried woman outside of the prohibited degrees of marriage).<sup>129</sup>

The terms of this iddah is similar to iddah of divorce - 3 months/3 kuru/till childbirth.<sup>130</sup>

- Wife of a Missing Husband

A missing person may find himself in two situations:

1) His whereabouts are known and news about him has been received. In this case, according to the unanimous opinion, his wife has no right to remarry.

---

Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>128</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>129</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>130</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

2) There is no news about him or his whereabouts. Here the opinions of the imams differ.<sup>131</sup>

Abu Hanifa, al-Shafi'i (in his later and preferred opinion), and Ahmad (according to one of his traditions) hold that the marriage of the wife of a missing person is not permissible as long as he can be considered alive based on normal life expectancy. Abu Hanifa set this period at 120 years, al-Shafi'i and Ahmad at 90 years. If the first husband returns after the wife has married another, the second marriage will become invalid and she will again become the wife of the first.<sup>132</sup>

A special issue is the divorce of people belonging to two different religions or one religion but different movements (which is a more popular matter), for example Shiites and Sunnis.

If a Sunni husband divorces his Shia wife through a conditional divorce, for example, in a period of purity during which sexual intercourse occurred, or without mandatory witnesses, or even during the menstrual period, in general, in any situation permissible by Sunni law but contrary to Shia law, then the law and procedures will be applied in accordance with the rules of law (religion) of the initiating person.<sup>133</sup>

The Imams of Ahl al-Bayt have left 4 traditions to utilize in that case:

1) "Bind them with the laws with which they have bound themselves."

2) Roots of second traditions comes from the case when al-Imam al-Sadiq was asked about mentorship in case where Sunni husband divorced his Shiah wife

---

<sup>131</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>132</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>133</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

against the keystone principles of Sunnah which should be regarded as obligatory to comply for wife, and the response was next: “She will marry, and a woman shall not be left without a husband.”

3) “For the followers of every religion, that which they consider lawful is permissible for them.”

4) “One who follows the religion of a particular sect, is bound by its rules.”<sup>134</sup>

- **Talaaq-il-Bid’ah**

By talaaq-il-Bid’ah is meant the so-called triple divorce procedure with pronouncing “I divorce you three times” or “I divorce you” 3 times in a row which is commonly practiced in countries like Nigeria where the majority are followers of Maliki school.<sup>135</sup>

Talaaq-il-Bid’ah is a triple declaration of talaq in one sentence or three, or a single irrevocable pronouncement during thurr. This divorce is irrevocable in its nature.<sup>136</sup>

Once the couple is divorced, the woman becomes non-mahram (unlawful) to the man, requiring observance of hijab rules (veil). Unlike Shias, where talaq is considered completed after iddah and is required to have 2 witnesses to confirm the end of the marriage especially if triple talaq took place, Hanafi school like other Sunnis are free from it.<sup>137</sup>

---

<sup>134</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>135</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>136</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>137</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

The consequences of this procedure require the husband to help his ex-wife in caring for their children.<sup>138</sup>

The schools concur that a man divorcing his wife 3 times has no right to remarry her until she gets into another marriage with another man and the new husband consummates it in accordance with verse 230 of Surat al-Baqarah: “So if he divorces her, she shall not be lawful to him afterwards, until she marries another husband.”<sup>139</sup>

The current rule is applicable for all schools as it is reflected also in the Quran itself: “ And when you divorce women, and they have come to the end of their waiting-term, hinder them not from marrying other men if they have agreed with each other in a fair manner. This is an admonition unto every one of you who believes in God and the Last Day; it is the most virtuous [way] for you, and the cleanest. And God knows, whereas you do not know”.<sup>140</sup>

Nowadays muslim started to utilize new practice to bypass the rule of 3 divorces after which she is obligated to start a new marriage and finish it before returning to the husband. In this practice divorced woman starts a new fake marriage with the “condition” of instant divorce. That kind of agreement accompanied by pronouncement "I marry you on the condition that the power to divorce be in my hands" what is kind of a rule as new husband (*muhallil*) may refuse to divorce her after the tahlil (praising of God), so he has to respond with the words of acceptance: "I accept this condition". After this the contract will take legal force and the right to divorce will be redirected to the wife who will utilize it solely and at any time. The pronouncement of the sentences mentioned above is crucial as any change of the

---

<sup>138</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>139</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>140</sup> Qur'an 2:232, Available at: <https://www.islamawakened.com/quran/2/232/#:~:text=And%20when%20you%20divorce%20women%2C%20and%20they%20have%20reached%20their,and%20in%20the%20Last%20Day>, (Accessed: 18.02.2024)



structure will make the marriage arrangement void, as example if he say: "I marry you on the condition that your affair (of divorce) be in your own hands" - marriage will be considered as legally completed but the right to divorce won't be redirected as the condition is failed.<sup>141</sup>

Summarizing written above - every time a wife receives 3 divorces she becomes haram (unlawful) for her previous husband and to become halal again only after another marriage and divorce due to any reason. The procedure can be repeated unlimited times due to Hanafi school.<sup>142</sup>

Sociological surveys show that in most Islamic societies the status of a wife of being alone is not acceptable and she can't live with no guard, so that they usually return to the home of their families or close relatives.<sup>143</sup>

- **Ila**

By its nature - *Ila*' is a husband's oath to abstain from intimate contact with his wife. The concept of it is laid in the Quran (verse 226 - Surat al-Baqarah): "Those who forswear their wives (by pronouncing *ila*') must wait for four months; then if they change their mind, lo! God is Forgiving, Merciful. And if they decide upon divorce, then God is surely Hearing, Knowing."<sup>144</sup>

---

<sup>141</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>142</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>143</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>144</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

In jurisprudence its reviewed as a kind constructive divorce which takes place once a husband promises not to have any sexual intercourse followed by separation in terms of not living together with his wife for the rest of her life or for a period exceeding four months and keeps his word in practice according to Hanafi legists. After the fourth month the marriage is considered as dissolved irrevocably. Though the procedure is vague as the wife has a right to restore conjugal rights even after the expiration of Ila through local court of law. Ila can be broken if the husband continues cohabitation during the 4-month period, and thus he will become an oath breaker with obligation of atonement and restriction of having sexual intercourse with his wife during it: to feed ten needy persons, to provide clothing to ten needy persons or to free a slave. He should fast for 3 days as an ultimate option. Some sub-schools consider this method as lacking legal grounds, though it is still used in some muslim society groups.<sup>145</sup>

- **Zihar**

Zihar by its nature is pretty similar to Ila as it also requires 4 months of separation with the spouse. Meanwhile, to start the procedure the husband should compare his wife with a woman prohibited to have any kind of relationship with, like his mother, pronouncing something like: "You are to me like the back of my mother". Wife at the same time can receive a judicial divorce or ask for restitution of conjugal rights as it is during Ila. Remarkable thing during Zihar is that the obligations for canceling are stricter. He has to observe fast for 2 months, feed at least 60 people or provide freedom to a slave.<sup>146</sup>

- **Khul'i**

---

<sup>145</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>146</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

Before reviewing wife-initiating types of divorce is important to mention so-called mutual agreement - *khul'i* or *mubarat* or *khul*. It has become a useful divorce tool after the Dissolution of Muslim Marriages Act in 1939 which expanded the reasons for getting divorce through court procedure. Before this act, the grounds were limited by: false charges of adultery, insanity, or impotence of the husband.<sup>147</sup>

Though in Islamic jurisprudence *Khul'i* is called a mutual agreement and de-facto this kind of divorce may be considered as wife-initiating as wife utilizing her right to receive a divorce with paying of consideration to the husband, to petition a judge (*qadi*) or to special Islamic commission to receive a divorced status if husband refuses to provide her with it. *Khul* by *qadi* is a judicial type of divorce and require special conditions for it (in case agreement is not possible), thus it will be called *Talaq Al-Qadi* in cases of unsafe conditions, intermittent absence, life imprisonment etc due to the words of Abu Hanifa: "A judge is not entitled to divorce someone's wife, whatever the cause, except when the husband meet the following conditions."<sup>148</sup>

After the completion - the divorce will be counted as irrevocable. *Iddah* during *khul'i* is 3 menstrual cycles (3 months if she is post-menopausal) or until she gives birth to a child if she is pregnant.<sup>149</sup>

New conditions for starting this procedure include absence of sexual intercourse for 3 months or more, failure of providing husband duties granted by marriage like shelter or food or any other kind of needs.<sup>150</sup>

---

<sup>147</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>148</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>149</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>150</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

Every step of khul is considered as a legal procedure including returning the mahr or paying of the abovementioned consideration (depending on the agreement) through all schools of jurisprudence but theologians like imams in local societies find and review this procedure as disgusting and unworthy (*makruh*).<sup>151</sup>

As for the obligatory payment (consideration) - all schools concur that it can be equivalent to mahr but should have tangible value which can be lesser, equal or greater in volume than mahr depending on the agreement of the spouses, but usually under khul everything what is considered sufficient and valid as mahr will be considered so also for khul.<sup>152</sup>

There are cases when consideration is paid with the property of something prohibited to own like pigs, alcohol or any kind of haram property - thus Hanafi legists respond: "If both knew that such ownership is haram, the khul' is valid and the divorcer is not entitled to anything, making it a khul' without consideration."<sup>153</sup>

There are also situations affecting ownership and property rights, when the wife asking for divorce offers something that was previously her but at the current moment has changed the owner. In that case everything will depend on the will of the current owner - if he accepts it, the husband will receive his consideration and the divorce will be completed, if he refuses to give it back in the terms asked, then the husband can enjoy his right to ask wife for the equivalent to it either in cash or in any other kind.<sup>154</sup>

---

<sup>151</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>152</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>153</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>154</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

Consideration can be seen also as services or maintenance like taking care of and feeding their child for the determined period. Hanafi legists went even further with this statement and added “the wife seeking for khul has all legal ground for asking consideration in a the form of maintaining the child in her womb and it will be made on the same grounds on which it is valid for her to seek khul by undertaking the maintenance of a born child.”<sup>155</sup>

The principles of Shariah at its core only confirm such a right to support a child, since the nature of such consideration is not just the maintenance of a child in the womb, but also the first necessary care for him if he is born alive. In fact, the main rule of concluding a consideration agreement is that compensation can take absolutely any form as long as both parties are satisfied with it and as long as it does not lead to “halal becoming haram”. The very type of agreement is mandatory and requires unquestioning execution, which does not imply anything legally void.<sup>156</sup>

In case husband grants khul to his wife in exchange of maintenance of their children/child, she will still have the right for any kind of ailments and payments helping her with this duty but only in case she won't be capable to do it by herself, and moreover the husband is obliged to pay it. This usage of this right can be stopped by the request of the husband in situations when the wife restores its financial condition. In case of death of the child during the agreed period of the maintenance, the consideration will be considered as partially paid and the husband can ask the wife for the rest in accordance with the period left due to the verse (2:229): “It is better for a woman to undertake the nursing and maintenance of the

---

<sup>155</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>156</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

child for a certain period so long as it is alive. Then the divorcer will not have the right to a claim against her if the child dies.”<sup>157</sup>

The conditions of such restitution are complicated as all schools recognize the right of concluding such agreement with any other person besides the wife, who offers certain consideration. In case the divorce takes place after the agreement, the person who asked for this should complete it (and is obliged to) by paying the agreed amount to the divorcer. Such right depends on communities and sometimes reviewed and used as a guarantor for the divorcee as 3rd person promises to pay the restitution upon the execution of the divorce and after these formalities the wife is obliged to pay the agreed sum back to guarantor - in other words a loan.

In practice for women it's always hard to deal with divorce procedures, as they face legal, financial and social obstacles during and after the procedure. Thus she should repay her dowry, close all marriage expenses and fight for their children's custody.<sup>158</sup>

The Khul procedure itself also requires special conditions for the characteristics of both husband and wife.

First of all, the wife should be an adult and sane person. If she is recognized as safih (stupid/bawdy/obscene/dissolute) khul won't take place and will be void as the permission of her guardian is required for this. Khul granted by the guardian is valid only in cases he gave permission for it and only in case he agreed to be a guarantor and to pay consideration from his personal assets.<sup>159</sup>

---

<sup>157</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>158</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>159</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

In a case of the last and deadly illness of the wife who is asking for divorce via khul, it should and will be considered as valid by the consensus of all Islamic schools of thoughts. The only point of contention for them is the size of consideration as it is bound and intersects with inheritance. Hanafi specify that “it should not exceed one third of her wealth or the husband's potential share”. He is entitled to receive the least of three amounts: consideration, share of inheritance or one-third of owning estate in material equivalent: here is an example done by legists: “if consideration is 5, inheritance - 4 and one third of estate 3 he is entitled to 3.”<sup>160</sup>

As for husband conditions (a subject granting khul) - he should also be an adult and sane person as his wife. As it was mentioned above (conditions of husband granting talaq) all the same rules apply as he can do it as he wants: in jest, under duress, in a state of anger (but only until he remains sane) or in a state of intoxication. Even a husband who is recognized as safih can grant a valid khul though the guardian will receive the consideration and everything paid to him individually will be counted as invalid. For delaying ill or dying husband khul will still remain legal ground and will be counted as valid as if due to other types of divorce which do not require any payments it's considered to be so, with consideration it will even more then so.<sup>161</sup>

Hanafi's also regulate the method of pronouncement of the khul and pay special attention to this: divorcing wife should use explicit words which derivative of al-khul' and al-faskh (dissolution) or implicit such as "bara'tuki" (I relinquish you) and "abantuki" (I separate myself from you). It's also permissible to use such words for husband as al-bay' (to sell) and al-shira' (to purchase) in cases when he says: "I sell you to yourself for so much", and the wife replies: "I purchase", or when he says: "Buy your divorce for so much", and she replies: "I accept".<sup>162</sup>

---

<sup>160</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>161</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>162</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*.

The khul also can take place in an extended time-frame, the same rule comes for payment of consideration. This citation takes place when the husband is far away from his wife for a long period of time and only after a while from the moment of decision to have a divorce he receives from his wife something like: “I seek a khul’ for so much” and accepts it. Basically it's mostly used for prolongation of payment as the amounts for consideration could be significant.<sup>163</sup>

- **Talaaq-it-tafweed**

Talaaq-it-tafweed is an absolute, conditional, temporary or permanent delegation of the right to divorce to another person who can be wife. Only temporary delegation of such power is not revocable. It should be done clearly in favor of the person to whom the authority is delegated with a transparently stated purpose. This kind of delegation is usually mentioned upon the beginning of marriage (considering that marriage is a contract as mentioned above) or even in any kind of post-marriage agreements made between spouses. Talaaq-it-tafweed implies different conditions which a wife can choose and include by herself like failure of maintenance or second wife. In case of contingency, the wife with such right is deciding if she wants to exercise this kind of divorce or not.<sup>164</sup>

- **Li’an**

Li’an has the right to divorce with a husband under circumstances of false charges of unchaste behavior or adultery which damages the public and social character of the wife. The key word here is false accusation which upon refutation

---

Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>163</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>164</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)



leads to formation of the right to divorce. If the feelings of the husband are hurt by the behavior of the wife and in exchange he accuses her, it won't be considered as reasonable ground for starting li'an.<sup>165</sup>

Li'an is based on Quran verses which say that husband should "swear four times" meaning he has to prove adultery having four witnesses and if he fails to do so he will face the punishment of qazf by being spanked with eighty blows.<sup>166</sup>

To be valid li'an requires a state of effective and continuing marriage and absence of qazf (false accusation of adultery) for husband.<sup>167</sup>

Considering Mahr (obligatory dowry promised upon marriage procedure) islamic jurisprudence distinguishes the conditions and initiator as keystones to avoid abuse of the legal norms. If the husband is the initiator and sexual intercourse took place then he pays the full dowry, if not then only half. In case the wife is initiator and she is not a virgin then husband is obliged to pay half of the mahr, if she is a virgin then he pays nothing. Conditions may vary also depending on children and common property of the spouses. What is remarkable is that unlike European laws where spouses share the assets and divide them, Islam provides the wife the right to husband's property.<sup>168</sup>

History of Islamic society behavior shows that divorce was a common thing unlike European societies where it was popularized closer to modern times. In the Ottoman Empire it was exercised much more than nowadays in the Middle East. A third of women in 15th century Egypt stepped into marriage more than once and in the 20th century some societies had up to 70% of divorce rate. Talking about current

---

<sup>165</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>166</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>167</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>168</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

state of the things it's a complicated secular and religious procedure with consequences and obstacles to women. The right itself is not easy to enjoy compared to husband as the ways to do it are limited.<sup>169</sup>

- **Return to The Divorcee (Al-Raj'ah)**

After considering the types of divorce and their procedures, one cannot miss the keystone of these processes, namely the return of the husband to his wife and their reunification.

Al-raj'ah in the terminology of legists is restoration of the divorcee and her marital status.<sup>170</sup>

This process doesn't have any kind of obligations on husband like mahr, guardians, wife's consent or any other kind of actions from her part in accordance with the verses: "Their husbands are better entitled to restore them..." and "So when they have reached their prescribed term retain them honorably or separate from them honorably..."<sup>171</sup>

The only governing rule for it is that it could be made only if the revocable type of marriage dissolution took place and it should be made during the period of iddah.<sup>172</sup>

---

<sup>169</sup> Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>, (Accessed: 18.02.2024)

<sup>170</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>171</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>172</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

The consensus of all Islamic schools was met that the return by its nature should be done orally and the pronouncement/the way it is done should be done in complete and unconditional way. Any kind of conditions or reasons will lead to void Al-Raj'ah, for example he says that he will return if she wants or asks for it - it won't lead to reunion and can't be used as legal grounds. So if he doesn't take any satisfactory steps like clear and straight declaration or any other kind of actions he is in the risk of losing his wife as the period of iddah may expire, divorce will be considered as completed and irrevocable and she will become a stranger for him and his family.<sup>173</sup>

By acts Hanafis mean sexual intercourse or as well as kissing, caressing, prelude made between spouses with the frame of sexual intent. Such actions will be counted valid without any pronouncement preceding them.<sup>174</sup>

Raj'ah will be counted as valid even if there is a sexual intercourse with sleeping wife or any kind of above mentioned acts made by an absent-minded or insane person or under coercion. The only rule here is the period of iddah.<sup>175</sup>

In case we look at irrevocable divorce procedure which prohibits any kind of restoration of relationship between spouses, there is one exception from the rules - khul'i. It is possible for a husband to reunite with his wife during the period of iddah but only if it is not the 3rd divorce and in case it has been consummated with the divorcee who was initiator and grantor of such divorce in exchange of consideration. To clarify the rules, Hanafi legists admit that though it will be recognized as a new marriage contract with all his obligations and rules like nikah, new mahr, consent

---

<sup>173</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>174</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>175</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

and/or permission of the guardian if there is a necessity in it, it won't require any kind iddah to complete before reunion.<sup>176</sup>

The thing that can lead to the judicial problems is disagreement between the divorcer and divorcee during or after revocable divorce. Thus is he claims that he has returned or reunited with her in accordance with all requirements but she denies it, the words of the divorcer will be counted as the truth (upon at least some proofs) and he will be considered a returned husband as if it took place during the iddah period (even if he is lying). The same rules apply oppositely as if he is saying that he won't return to his wife during iddah and has no intentions to it because in the islamic jurisprudence he is the person that prove and guarantee connection between himself and his wife.<sup>177</sup>

In Shariah the burden of proof always rests on the divorcer, and raj'ah is not an exception. The husband should prove that he has returned exactly during the period of iddah and if the opinion differs regarding the expiration period, the divorcee should take an oath that the non-kind of sexual intercourse or other actions took place and this will lead to a long court procedure. If the initiator claims that he used oral pronouncement but not an act, the wife will again take an oath that she didn't hear it and knows nothing about it. The only case when the divorcee has any chances to finish court procedure faster and get her word accepted as truth is the disagreements regarding expiration of iddah, e.g. when she claims that it was expired by menstruation in a sufficient period as in this case none can prove the opposite besides herself.<sup>178</sup>

---

<sup>176</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>177</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>178</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

These cases from some points of view can be absurd but they are real and took place only because there is no necessity in such instruments as witnesses. As it was reviewed above it is not obligatory to have any kind of witnesses for any kind of actions that will create numerous collisions in the legal procedures. Raj'ah is not an exception - considering the opinion of imams and legists of almost all Sunni schools including Hanafi it is recognized as mustahabb - an action which is desirable or recommended but not necessary.<sup>179</sup>

At the same time even Qur'anic verses mention and expect the command to summon witnesses as the confirmation of the legality of the processes and validity of revoking the dissolution. Witnesses' summons should be related to dissolution of the marriage process due to the holy book which is also explaining the reasons for it: "The God seeks thereby to admonish those who believe in God and the Last Day, confirms this interpretation, because the presence of just witnesses is not without the good advice which they would offer to the couple; and this could bring about for them an escape from divorce, which is the most hated of lawful things in the eyes of God. If it were for us to choose the law to be acted upon in Egypt, we would choose this opinion, which requires the presence of two just witnesses for effecting a divorce."<sup>180</sup>

Due to the Quran if the spouses/subjects of the divorce or one of them decided to utilize their right to call for witnesses in the name of the will of Allah they should ask for 2 people who should hear the divorce and be the 3rd person for the purity and legality of it. Moreover, if spouses ask for witnesses they can't just invite a single one as it won't be sufficient, even if he is an infallible (ma'sum) person. Both of them should witness the talaq and its pronouncement and both of them should testify to its conclusion and completion. The crowd can't be used as witnesses also even if it's so big that the inner process between 2 people becomes a public fact

---

<sup>179</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>180</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

known by the majority. If the husband pronounces the divorce and only after that calls for witnesses it will not have any effect as they should be present from the start and till the end.<sup>181</sup>

- **Claim without proof in courts**

During the research of raj'ah there was mentioned the burden of proof and the acknowledgment of the word both divorcee and divorcer especially in terms of iddah as the governing rule. Though the right and procedure of proof is discussed as a side topic among the legists of Hanafi school and not widely reviewed in their works, it still requires more clarification.

As it has already been mentioned, the burden of proof as the obligation during court procedure lands on the divorcer or the claimant and the denier is binded with his oath to the court and God. It is so but with exception that claimants' word will be accepted only if it concerns about intention which cannot be known by anyone else or cannot be witnessed or wasn't witnessed. This approach is usually related to any kind of 'ibadat (local ritual) or deals/agreements (*mu'amalat*):

1. In case a husband being initiator of the divorce, starts the dissolution by pronouncing talaq and then says that he didn't want or minted it, his claim will be accepted if the actions take place during iddah period;

2. The claim of the divorcee about menstruation, thur, pregnancy, iddah period will be accepted;

3. The claim of the wife of being in a state of poverty and in need will be accepted;

4. The claim of the divorced woman about her state considering being ready and free from any kind of obstacles to enter new marriage will be accepted;

---

<sup>181</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

5. The claim of a young person being reached the sexual maturity will be accepted;

6. The claim of a husband about having sexual intercourse with his wife, after her statement of him being impotent will be accepted.<sup>182</sup>

What unites all these precedents taken as examples is nothing else but impossibility to provide reliable grounds a proofs as there were/are no witnesses who could confirm or deny anything as the act was private and made in front of God and on personal responsibility thus only a subject has the right to insist on his statements. Almost all of them are reflected in Sunnah, related books and interpretations of imams via verses like this: “I asked al-Imam al-Rida, what is to be done if a man marries a woman and then a doubt arises in his mind that she has a husband?” The Imam replied, “He is not required to do anything; don't you see that if he asks her for a proof, she will not be able to find anyone who can bear witness that she has no husband?”<sup>183</sup>

The need for an oath is due to the common opinion of all schools that in every action where the word of the claimant has priority, he is obliged to take it. Disputes are resolved either by evidence or under oath. If evidence cannot be presented, the plaintiff's oath is only used as an alternative instrument when a dispute cannot be resolved otherwise. The denier cannot be burdened with an oath, since he cannot know about the intention of the plaintiff.<sup>184</sup>

If there is no dispute, the word of the claimant is accepted without oath (for example, a statement. Acceptance of the plaintiff's claim also requires the absence of

---

<sup>182</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>183</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>184</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

indirect evidence to reject his claim. If the plaintiff's actions prove intent (for example, a purchase or sale followed by a claim of negligence), this will result as demonstration of falsity.<sup>185</sup>

As regards the plaintiff's admission that he did not intend to obtain a divorce what is much closer to the current research subject, this only applies to a revocable divorce as long as the wife is under iddah. In this case, his statement is considered as a return to his wife. If the divorce is irreversible or the application is made after the completion of the Iddah, his words will not be trusted.<sup>186</sup>

By trusted words it's meant the final decision of the court in favor of someone and further coming consequences of lost or won case.

Finalizing the research of the divorce procedure under Hanafi school of law – it can be confidently remarked that the procedure itself is much more difficult and complicated than the classic secular divorce procedure. It requires numerous rules, traditions, contains many pitfalls, depends and varies on interpretation and community when the Italian system relies on codes. There is a tendency of collision and unequal protection of rights but only under the Western point of view as by its nature for the Islamic society that concept was conceived exactly like this, especially taking into consideration the unusual system of law which is totally different from the classic codified and precedent systems. Even being tradition-interpretation oriented we can find a tendency for evolution and changes to meet the modern needs of society.

---

<sup>185</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)

<sup>186</sup> Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>, (Accessed: 18.02.2024)



## **CHAPTER 3: Confrontation of Religious and Secular essences**

In this chapter, which is the final one in the current study, the main attention will be focused on the current state of the Muslim population in Italy. Its purpose is nothing less than to study the implementation of legal pluralism in practice, finding answers to questions such as whether it is a key factor in the protection of religious freedom within the framework of marriage law, how Muslims adapt and practice their religious traditions within or outside the framework of Italian legislation, what are their requests and whether the Italian Republic provides appropriate mechanisms to satisfy them.

Field data here refers to indicative information on how Muslims perceive religiosity and the values of marriage and divorce, and how they apply this in their lives in European society, and specifically in the Italian Republic.

The study will touch upon the current role of Islamic centers in Muslim marriage and divorce in Italy, their role in Muslim marriage or divorce and what policies they follow as religious leaders on the one hand and representatives of the Muslim community, what are Islamic centers in general and why do Muslims in Italy go to them and are they generally interested in getting married or divorced by the state?

### **3.1 Islam as Italy's second religion, but without proper representation**

It is worth starting with how Muslims are represented in Italy and the so-called “current state of affairs”.

At the beginning of the 21st century, Italy has a mixed profile of cultures, ethnic groups and religions. As mentioned in the first chapter, Islam is the second religion by number of followers in Italy and despite this, it still does not have a generally recognized national representation. According to Istat, there are about 1,700,000 Muslims in Italy who are citizens of Italy and there are 8 official mosques

and more than 700 prayer rooms, but the Muslim majority remains unrecognized because the Lateran Treaty has not yet been signed, which is more of a significant than a formal fact when it comes to the protection of rights and rights fulfillment in general.<sup>187</sup>

Like other religious groups in Italy, Muslims seek protection for their religious rights through the pluralistic expressions of the Italian Constitutional Charter, which contains provisions aimed at protecting religious rights and freedoms that have already been discussed, such as the inviolability of the right (Article 2) to formal and substantive equality of all, so that there are no obstacles to the full development of the personality (Article 3), freedom of assembly, association, expression of thought and of the press (Articles 17, 18 and 21), as well as the profession of one's faith in any form, individual or collective, as well as its propaganda, carried out in private or during public worship (Article 19), without the religious character of an association or institution being the cause of special legislative restrictions or financial burdens (Article 20). Relations between the Republic and religious confessions are referred to the exclusive legislative competence of the State (c) of the second part of Article 117).<sup>188</sup>

Furthermore, Article 8 of the Constitution establishes that religious denominations are equally free before the law (first paragraph). It also provides that religious denominations, other than Catholic ones, have the right to organize themselves according to their statutes, if they do not contradict the Italian legal system (second paragraph), and that their relations with the state are regulated by agreements with the relevant representatives (third paragraph).<sup>189</sup>

---

<sup>187</sup> ANSAmed. "Islam: è Seconda Religione d'Italia, ma Senza Rappresentanza." 11 February 2024, Available at:

[https://www.ansa.it/ansamed/it/notizie/rubriche/cronaca/2014/02/11/Islam-seconda-religione-Italia-ma-senza-rappresentanza\\_10055830.html](https://www.ansa.it/ansamed/it/notizie/rubriche/cronaca/2014/02/11/Islam-seconda-religione-Italia-ma-senza-rappresentanza_10055830.html), (Accessed: 21.06.2024)

<sup>188</sup> Senato della Repubblica. "Legislatura 17ª - Dossier n. 45.", Available at:

[https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier\\_dossier1-sezione\\_sezione1](https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier_dossier1-sezione_sezione1), (Accessed: 21.06.2024)

<sup>189</sup> Senato della Repubblica. "Legislatura 17ª - Dossier n. 45.", Available at:

[https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier\\_dossier1-sezione\\_sezione1](https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier_dossier1-sezione_sezione1), (Accessed: 21.06.2024)

And it is precisely because of this feature, although not very noticeable at first glance, a feature that allows us to define Islam as a "religious confession", as sharing religious beliefs, that no regulation of relations with the Italian state has so far been achieved by means of an "agreement", a special legal agreement known as the Laterno Pact. Hence the degradation of the legal system, since in the absence of constitutional coverage of rights, it is necessary to resort to the judicial system using the provisions of the 1929-1930s (Law 24-6-1929, n. 1159 and the documents attached to it, which covered "active/recognized cults").<sup>190</sup>

These provisions do not cover in themselves the range of specific topics and issues (such as spiritual care, for example in places of treatment or detention; religious holidays; construction and religious buildings; tax regime and means of financing; handling of remains and burial; feeding and ritual slaughter) in which affiliation with the Islamic religion is manifested. Legislative initiatives on a general law on freedom of religion, although initiated, have not completed the parliamentary process.<sup>191</sup>

The failure to apply the instrument of the "agreement" (which governed the relations of the Italian state with numerous other confessions) to Islam to date can be explained by the absence of a hierarchically organized church and clergy, due to differences in schools and approaches (even in Spain, where in 1992 a cooperation agreement was signed by the "Islamic Commission of Spain", representing the Islamic community - on issues such as marriage, religious assistance in community centers, teaching of the Islamic religion, religious holidays and others - these provisions have not been widely and effectively applied).<sup>192</sup>

---

<sup>190</sup> Senato della Repubblica. "Legislatura 17<sup>a</sup> - Dossier n. 45.", Available at: [https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier\\_dossier1-sezione\\_sezione1](https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier_dossier1-sezione_sezione1), (Accessed: 21.06.2024)

<sup>191</sup> Senato della Repubblica. "Legislatura 17<sup>a</sup> - Dossier n. 45.", Available at: [https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier\\_dossier1-sezione\\_sezione1](https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier_dossier1-sezione_sezione1), (Accessed: 21.06.2024)

<sup>192</sup> Senato della Repubblica. "Legislatura 17<sup>a</sup> - Dossier n. 45.", Available at: [https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier\\_dossier1-sezione\\_sezione1](https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier_dossier1-sezione_sezione1), (Accessed: 21.06.2024)

Despite this, attempts aimed at establishing an institutional dialogue with the Islamic community for a deeper understanding of the problem and the protection of rights continued and continue to be undertaken in Italy, such as the Council of Italian Islam at the Ministry of the Interior, the Scientific Committee at the same council, the Youth Council for Religious and Cultural Pluralism or the Committee of Italian Islam, but they cannot be called successful because from a political and legal perspective their final goal was not achieved. They either lost relevance due to the final documents issued from the prism of Christian values, or did not cover the needs of the Muslim community, or did not gain sufficient support in higher political circles for the concrete implementation of at least some goals.<sup>193</sup>

The refusal and opposition of political forces, as well as the not particularly successful attempts to build a human rights dialogue with Muslims in Italy, are mentioned in this context for a reason, since legal acts or consequences are nothing more than the result of long political debates, which in turn reflect the social moods of society.

Pew Research Center statistics show that 61 percent of Italians have an unfavorable view of Muslims, the highest percentage of any country surveyed (24 percent in France and 18 percent in the United States). Italians are also among the European nations most fearful of Islamic terrorism. In a series of surveys conducted in 2015, ISIS and Islamic terrorism consistently ranked among Italians' top concerns, often above unemployment and the economic crisis.<sup>194</sup>

The 2018 national report, published by the SETA Foundation in April last year, noted that “the xenophobic and anti-Islamic climate, fuelled by traditional right-wing political actors, Lega Nord and Fratelli d'Italia, far-right movements

---

<sup>193</sup> Senato della Repubblica. “Legislatura 17<sup>a</sup> - Dossier n. 45.”, Available at: [https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier\\_dossier1-sezione\\_sezione1](https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier_dossier1-sezione_sezione1), (Accessed: 21.06.2024)

<sup>194</sup> De Luca, Davide Maria. “L’Italia è un Paese islamofobo?” Strade, September/October 2016, Available at: <https://www.stradeonline.it/50-numeri/2016/settembre-ottobre-2016/2273-l-italia-e-un-paese-islamofobo>, (Accessed: 15.07.2024)

(Casa Pound a Forza Nuova) and more conservative sectors of the media, such as Il Giornale, have had a very negative impact at the social level.<sup>195</sup>

Moreover, according to a 2019 study by the NGO Vox Diritti, Islamophobia remains the most common online hate speech in Italy. Speaking of politics, Amnesty International's study, entitled "Hate Barometer 2019", is entirely dedicated to the 2019 European elections, where hate speech was tracked in Italy on the social media profiles (Facebook and Twitter) of candidates in the last election campaign. The parties that were most exposed to hate speech were the Northern League (51% of statements) and Brothers of Italy (27%). Migration was mentioned in 91% of the cases collected, while discussions specifically related to Islamophobia accounted for 11%.<sup>196</sup>

This leads to problems with the implementation of rights on a broader topic related to religious freedom and the implementation of Muslims - mosques. In this issue of the review, it can be said that Muslims can only half use their right to religion because local administrations of the regions of Italy speak negatively about the presence of mosques if they are present, raise anti-Islamic flags and posters near them and try in every way to block the possibility of their construction on the territories under their control, thereby blocking the right to religion, namely, to prayer.<sup>197</sup>

To say that Muslims in Italy are denied freedom of religion in general would be wrong, given the de facto presence – all over the peninsula – of mosques and Islamic centers where the Islamic community can meet and pray and get married. However, local administrations try to violate, either directly or indirectly, Article 19 of the Constitution and Article 10 of the ECHR on freedom of religion. A recent case

---

<sup>195</sup> Lipori, Michele. "Islamofobia in Europa e in Italia." *Confronti*, 26 August 2020, Available at: <https://confronti.net/2020/08/islamofobia-in-europa-e-in-italia/>, (Accessed: 15.07.2024)

<sup>196</sup> Lipori, Michele. "Islamofobia in Europa e in Italia." *Confronti*, 26 August 2020, Available at: <https://confronti.net/2020/08/islamofobia-in-europa-e-in-italia/>, (Accessed: 15.07.2024)

<sup>197</sup> Buonomo, Felicia. "Libertà di culto: in Italia i musulmani ne godono solo a metà." *Osservatorio diritti*, 13 August 2019, Available at: <https://www.osservatoriodiritti.it/2019/08/13/liberta-di-culto-in-italia-costituzione-islam/>, (Accessed: 16.07.2024)

in Casalmaggiore is a case in point: a dispute over permission to build a prayer building (mosque), which first reached the TAR (Administrative Court) and then the Council of State, where it was decided that as long as the urban development plan did not provide for an area for the construction of a mosque, it could not be built. The official citation from the City Council is as follows: “The decision of the Council of State, in essence, distinguishes between the right to prayer and the right to religion. The right to prayer can never be restricted. The right to religion also cannot be prohibited, but must be exercised within the framework of urban planning laws.”

198

### **3.2 The Impact of Islamic Centers on the Protection and Realization of Rights of Muslims in the Italian Republic**

In this situation, Islamic centers come to the aid of Muslims, which also have additional social and cultural functions. It is there that Muslims prefer not only to gather to maintain their connection with the community, but also to marry and divorce - only in the largest of them, located in Rome and Milan, more than 50 marriages are concluded per year, not to mention less popular cities and local centers. Through Islamic centers, Muslims can also interact with other institutions and associations, for example, with local national authorities. By exploring this opportunity (one of the few), one can try to find answers to such questions as: the attitude of Muslims and imams to current restrictions and the attitude and perception of Muslims towards Islamic marriage and divorce in Italy in general.<sup>199</sup>

The legal status and official recognition of Islamic centers as places of worship, as well as the appointment of imams heading these centers in Italy, is a very sensitive topic because, as was discussed earlier, Article 19 of the constitution cannot fully protect local Muslims - they all fall under Article 8 as a religious cult whose

---

<sup>198</sup> Buonomo, Felicia. “Libertà di culto: in Italia i musulmani ne godono solo a metà.” *Osservatorio diritti*, 13 August 2019, Available at: <https://www.osservatoriodiritti.it/2019/08/13/liberta-di-culto-in-italia-costituzione-islam/>, (Accessed: 16.07.2024)

<sup>199</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

actions can be regulated in accordance with an agreement with the state, which in turn is absent. The consequence can be called the lack of the ability to appoint imams as official representatives and clergy to conduct any divorce procedures that could at least be legally recognized.<sup>200</sup>

Based on this, all their legal relations fall under national legislation, the same laws of the 30s "La legislazione sui culti ammessi" No. 1159/1929 and its additions in the form of decree No. 289, which were adopted by the Constitutional Court, and it is this legislative act that creates a gap in the legal system since it also does not include or indicate any regulation regarding clergy.<sup>201</sup>

The principle of autonomy and freedom of appointment of religious representatives applies only and exclusively to religions that have an agreement with the Italian Republic and are under its strict supervision.<sup>202</sup>

In this situation, legal pluralism, despite its presence in the Constitution, not only does not have any protective basis, but on the contrary, creates a legal gap.

In order to take advantage of this right and have an adequate (recognized and viable) religious representation that could close the emerging problems, the Muslim community is now working on a project that would allow them to obtain the desired agreement in accordance with Article 8 of the Constitution.<sup>203</sup>

Regarding the current state of affairs in Italy, it is the Ministry of the Interior that plays a key role in the question of the existence of Islamic centers as such and the question of appointing their representatives. It is the Ministry that has issued courses for imams on the possibility of obtaining legal recognition as individual religious representatives and organized conferences by the Council for Relations

---

<sup>200</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>201</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>202</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>203</sup> Ferrari, A. *Islam in Europa/Islam in Italia tra diritto e società*. Milan: Il Mulino, 2008.

with Italian Islam and the issuance of subsequent documents on the training and recognition of imams.<sup>204</sup>

At the moment, the status of a clergyman can only be obtained by passing a strict selection process from the Italian Ministry of Internal Affairs, and only a few imams responsible for large Islamic centers have managed to do so. However, although this status allows one to represent Muslims in prisons or have access to hospitals, which can already be called progress, it does not entail any legal consequences or legal formations.<sup>205</sup>

Regarding the importance of imams in the context of Muslim marriage, it should be noted right away that, being a contract and not a sacred religious rite, it should be noted that de facto it does not require the presence of a religious authority or a religious place such as a mosque.<sup>206</sup>

The need for these things arises precisely in compliance with the basic procedures and principles of Sharia for which the imam will be a reliable witness: consent of the parties, the recital and exchange of the offer and acceptance by both, the obligatory mahr, the consent of the guardian, witnesses.<sup>207</sup>

It is precisely the possibility of observing standards that subsequently had a secular value that is the stumbling block in the problem of religious rights in Italy and their protection by legal pluralism - after all, in their perception, religious marriage is at the same time civil and, when compared with the classical administrative procedure, even more important.<sup>208</sup>

---

<sup>204</sup> Buttinelli, C., Costantino, M.G. "Un Patto con il mondo islamico per costruire una società integrata e sicura." *Ministero dell'Interno*, 1 February 2017, last updated 26 January 2018, Available at: <https://www.interno.gov.it/it/notizie/patto-mondo-islamico-costruire-societa-integrata-e-sicura>, (Accessed: 19.07.2024)

<sup>205</sup> Carnì, M. "I ministri di culto delle confessioni religiose di minoranza: problematiche attuali." *Stato e Chiesa, Rivista telematica*, no. 19 (2015), Available at: <https://riviste.unimi.it/index.php/statoeChiese/article/view/4881>, (Accessed: 19.07.2024)

<sup>206</sup> O'Sullivan, K., and Jackson, L. "Muslim marriage (non) recognition: implications and possible solutions." *Journal of Social Welfare and Family Law* 39, no. 1 (2017): 22–41, Available at: <https://www.tandfonline.com/doi/full/10.1080/09649069.2016.1272767>, (Accessed: 19.07.2024)

<sup>207</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>208</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy."



### 3.3 Keystone of the legality of marital status

According to field reports, Islamic centers play a very sensitive role in religious marriages, at least from the position that a marriage concluded there is marked as a marriage concluded in a mosque, which gives significance and legitimacy in religious circles.<sup>209</sup>

The value of this role lies in the reverent observance of all conditions that are the guarantor of its religious validity, and the Islamic center with the imam act as intermediaries in this.<sup>210</sup>

This is where the main task of the imams themselves comes from - to make sure that everything complies with the norms of Sharia.

Despite the value of this local institution, from the point of view of secular laws they do not bring full protection and legal ownership, and Italy is not a unique example in this matter. For example, in Germany, religious marriages that have not been officially registered by filing an application with the local administration are not legally recognized.<sup>211</sup>

This practice is most often manifested in the form of a subsequent refusal to fulfill their marital obligations, a violation of the classic rights and procedures of family law, and in such a situation no one can influence them, neither the state nor

---

Oñati Socio-Legal Series 11, no. 4 (2021): 959–989, Available at:

<https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>209</sup> Sona, F. “Mosque Marriages and Nuptial Forms among Muslims in Italy.” *Oxford Journal of Law and Religion* 7, no. 3 (2018): 519–542, Available at: <https://doi.org/10.1093/ojlr/rwy038>, (Accessed: 18.07.2024)

<sup>210</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>211</sup> Jaraba, M. “Khul’ in Action: How Do Local Muslim Communities in Germany Dissolve an Islamic Religious-Only Marriage?” *Journal of Muslim Minority Affairs* 40, no. 1 (2020): 26–47, Available at: <https://doi.org/10.1080/13602004.2020.1737414>, (Accessed: 19.07.2024)

the imams, because no accessible instrument exists due to the limited official powers of the clergy and the lack of de facto legal force.<sup>212</sup>

In turn, imams are trying to adapt to the realities of the Muslim community and in order to somehow protect spouses, they have adjusted the internal policy that is typical for most Islamic centers - after the conclusion of a religious marriage - to submit documents to the local administration while registering the marriage itself in three copies: 1 for the Islamic center and 2 for the spouses.<sup>213</sup>

In practice, according to the comments of the imams, it can be noted that all of them conduct explanatory talks, the purpose of which is to conduct a civil ceremony that would be considered official for the state. Such an approach seems to them to be the only tool capable of somehow influencing something, being informal representatives.<sup>214</sup>

In general, regarding the requested documents, Islamic centers consider identity documents and documents confirming the absence of a valid marriage between the spouses to be necessary. The second is needed to avoid violating local legislation on polygamy - of course, it is difficult to control this aspect. Firstly, it depends on the policy of the Islamic center and the beliefs of the imam. Secondly, the situation is almost hopeless if the polygamous marriage was concluded in the country of origin. Accordingly, this element remains uncontrolled since even for Italy, polygamous marriage is not recognized as not corresponding to state policy.<sup>215</sup>

In terms of government regulation, Italy is very strict in this matter: Registration of foreign marriages in all municipalities is simply carried out in

---

<sup>212</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>213</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>214</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>215</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

accordance with the Civil Code and current judicial practice - only the first marriage concluded according to the Islamic rite between an Italian citizen and a citizen of the Islamic religion can be registered.<sup>216</sup>

Another sensitive issue is age. Since in the Italian Republic the spouse must be at least 18 years old (under certain conditions the marriage can be concluded at 16, but the conditions as such are a necessity) Islamic centers have also begun to require a birth certificate.<sup>217</sup>

In practice, there are cases of avoiding the submission of unnecessary documents or lying about their absence, as well as a selective attitude in the choice of imams and Islamic centers.<sup>218</sup>

### **3.4 The Problem of Civil Marriage in the Muslim Community**

When it comes to the internal rules/policy of the Islamic center regarding the conditions that are set for spouses before marriage - the popular practice of requesting a referral for the civil marriage procedure is narrowed down. Imams require either proof such as confirmed records in the registry office or other administrative institution for the registration of the marriage.<sup>219</sup>

This condition is caused by the desire to comply with the legal norms of the state and an attempt to avoid both the negative impact (reputation) and side problems that the spouses may later encounter.<sup>220</sup>

---

<sup>216</sup> Ferrara, Salvatore. “Poligamia, la replica dalla Sinistra a Cisint: «Non conosce la legge».” *Il Goriziano*, 23 May 2024, Available at: <https://www.ilgoriziano.it/articolo/sinistra-ribatte-cisint-poligamia-non-conosce-legge-lancia-falso-alla-rme-23-maggio-2024>, (Accessed: 18.07.2024)

<sup>217</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>218</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>219</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>220</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at:

The question arises: why hold a religious ceremony in an Islamic center if the couple has already entered into a civil marriage?

The point of a religious marriage in an Islamic center, even after a civil ceremony, is to meet all the religious requirements of Sharia that may not be met in a civil marriage. Although a civil marriage is legally binding, especially in countries like Italy, it does not always fully satisfy the religious requirements such as Muslim witnesses, payment of a dowry, and other conditions prescribed by Sharia. Thus, a civil marriage may be considered religiously binding, but this depends on whether the Muslim spouses have included all the necessary elements of a Sharia marriage. In the face of such uncertainty, many Muslims choose to marry in a mosque to be sure that all religious requirements are met and the imam is responsible for ensuring that they are fulfilled. This reflects the importance of the religious aspect and spiritual meaning of marriage for Muslims.<sup>221</sup>

On the question of whether illegal residents could perform religious marriages, the imams were divided. Some said they could not perform such ceremonies if the couple did not have legal status. However, other imams did not attach importance to the residency issue and believed that it was their duty to take into account personal circumstances and not make it difficult for people to marry even if they did not have the necessary documents.<sup>222</sup>

One imam explained that the lack of documents makes it almost impossible for such people to marry officially, so mosques should help them. This applies to those who cannot obtain documents for civil marriage or have difficulties obtaining them in their country of origin. Such cases are found not only in Italy, but also in other European countries.<sup>223</sup>

---

<https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>221</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at:

<https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>222</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at:

<https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>223</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at:

<https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

This situation most often concerns refugees and asylum seekers who have difficulty obtaining personal documents. Despite this, imams still recommend registering the marriage officially when possible to protect the rights of the spouses. Some Islamic centers have strict rules regarding legal residence or previous marriage, and in such cases the imam may consider each case individually.<sup>224</sup>

Sometimes, when both spouses cannot enter into a formal marriage, the imam may make an exception by performing a religious marriage with additional conditions. For example, the couple must be well known to the community and there must be witnesses present. This is done to ensure the seriousness of the couple's intentions and to protect their marriage within the Muslim community.<sup>225</sup>

However, such decisions depend on the individual imam, and sometimes marriage certificates are not issued. In such cases, couples may not worry about documents, since their goal is to live according to the norms of Islam, which prohibits intimate relations outside of marriage. Some couples already live together and turn to Islamic centers to formalize their relationship before their religion.<sup>226</sup>

Imams believe that it is their moral duty to help Muslims observe religious norms, even if the couple does not have official documents. This approach has also been seen in other countries, such as Finland, where imams see performing such marriages as part of their religious duty, despite the fact that such marriages have no legal force in the country of residence.<sup>227</sup>

---

<sup>224</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>225</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>226</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>227</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

### 3.5 Individual Preferences and Approaches to Marriage of Italian Muslims

The results of the field research show that the main reasons why people choose to marry in Islamic centers fall into two categories. Firstly, religious and cultural motives, and secondly, various personal circumstances, which quite often serve as a driving factor in the Muslim community in Italy.<sup>228</sup>

Many respondents viewed marriage at an Islamic center as an essential part of their Muslim identity. Regardless of how actively they practice their religion, it is important for them to celebrate a religious event with friends, family, and community. For many, this religious marriage serves as a way to affirm their belonging to Islam and to follow its traditions. The survey found that many respondents perceived religious marriage as part of their cultural and spiritual identity, regardless of whether their union was officially recognized by the civil authorities.<sup>229</sup>

At the same time, many couples also seek to supplement religious marriage with civil marriage in order to combine both forms. This desire to combine civil and religious marriage is connected with the practice common among Muslims in Europe, where both elements are important for the creation of a full and legitimate family from both a religious and legal point of view.<sup>230</sup>

Religious marriage also becomes a means of resolving conflict between young people and their parents when they marry without the full consent of the family. The parents, faced with a situation in which they cannot stop the union, offer to hold a religious ceremony in an Islamic center. In this way, they try to maintain

---

<sup>228</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>229</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>230</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

respect for cultural traditions and norms, which allows them to avoid possible embarrassment in front of the Muslim community.<sup>231</sup>

This approach helps families maintain their social status and adhere to cultural norms, even if their relationship with religion may vary. Conducting a religious marriage within the family and community not only satisfies religious standards, but also eliminates potential social difficulties that might arise if the marriage were performed outside these traditions.<sup>232</sup>

Another reason for entering into a religious marriage at an Islamic center is the lack of the necessary official documents to register the marriage in civil institutions. In such cases, people turn to the imam at the Islamic center to enter into a religious marriage only, which does not require the same legal formalities as a civil marriage.<sup>233</sup>

This is especially true for refugees and migrants who may lack documentation to prove their right to marry, such as marriage certificates from their country of origin, which are difficult or impossible to obtain. The documentation problem, as in other European countries such as Germany, leads to Muslim couples, especially from Arab communities, choosing a purely religious marriage as a temporary solution to legitimize their relationship before religion, even if it is not confirmed by the state.<sup>234</sup>

It is also worth mentioning the seriousness of intentions - this concerns young Muslims who enter into a religious marriage at an Islamic center without a subsequent civil marriage because they seek a relationship that meets their religious

---

<sup>231</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>232</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>233</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>234</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

standards, known as "halal." These marriages allow young people to avoid premarital relations that are forbidden in their culture and religion. However, many of these marriages are not accompanied by official registration, since the couples do not consider it necessary to tie themselves to civil obligations.<sup>235</sup>

This type of marriage resembles “test” or “starter” marriages. Young couples who cannot officially date or enter into a relationship for social and religious reasons can use religious contracts to create a relationship with less commitment. This allows them to avoid violating religious norms, but without serious legal consequences. This type of marriage becomes an acceptable solution for the families of young people, since it respects cultural and religious standards, preserving the honor of the family and the newlyweds, and preventing relationships outside of marriage.<sup>236</sup>

Many young couples, especially students who are not yet ready for the full responsibility of marriage, use this tool because couples continue to live in different cities, depending on their studies or work, and meet when possible. They usually discuss their plans for the future, hoping to build a stable family life, but postpone the official registration of marriage until they are sure of the strength of their relationship.<sup>237</sup>

For many of them, this type of marriage provides the freedom to end the union if they feel the relationship has not worked out, without having to bear the serious consequences of ending it.<sup>238</sup>

It is also worth mentioning cases when spouses, one of whom is a Muslim, live together and have a common life for many years, but are not in a marital

---

<sup>235</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at:

<https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>236</sup> Vora, V. “The Continuing Muslim Marriage Conundrum: The Law of England and Wales on Religious Marriage and Non-Marriage in the United Kingdom.” *Journal of Muslim Minority Affairs* [online] 40, no. 1 (2020): 148–162, Available at: <https://doi.org/10.1080/13602004.2020.1744839>, (Accessed: 20.07.2024)

<sup>237</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at:

<https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>238</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at:

<https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)



relationship. If they want to consolidate their union in accordance with religious norms (to enter into a Halal marriage), they turn to an Islamic center and this does not always lead to the conclusion of a classic civil marriage, since the religious motives of people in this case prevail.<sup>239</sup>

The same motives accompany pregnant women or couples with children from other marriages - the Islamic center provides the opportunity to “register” them within the religious framework.<sup>240</sup>

From the above reasons, it can be concluded that couples seek to consolidate their relationships with religious obligations and try to ensure that the marriage complies with Islamic standards, which is an expression of religious values. The question remains open - is this a challenge to the concept of marriage as such within Islam, in the case of the beginning of a relationship, since in Islam as such there is no "trial period". Can a marriage concluded only on religious grounds be considered a type of cohabitation that is so popular in Europe and even has a special legal status in some countries, for example in France?<sup>241</sup>

The answer is likely to be negative, since in nikah they celebrate its conclusion like a classic wedding in other religions, they take vows, which is not typical of a purely secular understanding of cohabitation. And being easily dissolved, people conclude these marriages within the community in order to be accepted and approved in religious circles, even if the marriage does not entail official registration. The procedure of civil marriage for such couples is rather a way to solve material problems such as the lack of necessary documents or an obstacle to registering a religious marriage.<sup>242</sup>

---

<sup>239</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>240</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>241</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>242</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

### 3.6 Divorce proceedings and Islamic centers

Divorce in Islam, which was already discussed in Chapter 2, can be carried out by the will of the husband unilaterally, by agreement of both parties and by the court by the decision of a Sharia judge, which may vary depending on each case. In each of these types, the financial issue is sensitive, namely the division of property and the wife's rights to it, as well as mahr.

If the divorce is unilateral, the dowry remains with the spouse, by mutual consent - there is a waiver of financial rights and the subsequent return, in case of legal proceedings - the legal relationship is decided by the court.<sup>243</sup>

These cases work well in countries where Islam is the central religion, each case is certified and registered in an authorized court to protect the rights of the parties.<sup>244</sup>

If the spouses were able to agree on everything, then accordingly no problems arise, however, according to statistics, most divorces end in the Sharia court, since no one can guarantee the fulfillment of financial obligations until the court considers the case. This implies the need for some official body for divorce processes. Islamic centers, being deprived of official powers, cannot provide sufficient legal protection for spouses, since even despite the presence of imams, they cannot replace the role of a judge.<sup>245</sup>

---

<sup>243</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at:

<https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>244</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at:

<https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>245</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at:

<https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

### 3.7 The role of Imams

What is the role of imams in family issues and how do Islamic centers handle divorce cases? Why do Muslims go to these centers for divorce?

As has already been mentioned, the role of imams is limited since they cannot replace a judge de facto, they cannot influence people legally, and accordingly the role of the Islamic center in this procedure is called into question.

Nevertheless, people continue to seek help there, although they often receive a refusal with reference to the need for the presence of an official judicial representative.<sup>246</sup>

Being a kind of advisor to Muslims, imams first of all try to use spiritual tools to reconcile spouses and bring them together again, since they consider reconciliation as a moral duty and a religious obligation, however, the priority, position and attitude to the matter very much depends on whether the marriage itself was concluded in this Islamic center.<sup>247</sup>

It is worth noting two exceptional cases important for the study, considered by Amal Yousef Omar in interviews with imams and reflected in her work *Marriage and divorce practices in Islamic centers in Italy*. In the first, a couple entered into a religious marriage only in an Islamic center, and when the wife wanted a divorce, the husband refused to grant her a divorce. Since their marriage was not officially registered by the state, the woman could not go to court to obtain a divorce through the Italian legal system. The imam found himself in a difficult position: he did not have the authority as a judge to formalize a divorce with legal consequences, such as property issues, but he decided to help the woman by acting as a religious authority and issuing a divorce decree as if he himself were a judge. The imam described this

---

<sup>246</sup> Alqawasmī, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>247</sup> Alqawasmī, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

case as rare because imams usually do not interfere in such cases, since divorce, especially when one party is against it, requires an official court decision. The woman in this situation did not want to assert any financial rights and simply wanted to leave the marriage, and the imam, by taking on the responsibility, created an exceptional precedent.<sup>248</sup>

In the second case, a civil marriage was also involved. When a couple decides to divorce in court, as in the example described by the imam, and if they are in a civil marriage in addition to a religious one, the imam can act as a witness on the wife's side. This shows that Islamic centers in Italy take part in the divorces of Muslim couples, maintaining contact with civil cases. Moreover, imams themselves advise spouses to go to civil court if reconciliation is impossible, since according to the generally accepted position of Islamic centers and Muslim communities in Italy, the fact of a civil divorce will also be valid from a religious point of view. In other countries, such as Great Britain, such a practice is not accepted, and a civil divorce is not considered religiously valid. This difference is generally due to the diversity of religious and cultural norms.<sup>249</sup>

However, as was stated earlier, the role remains limited and the Islamic center is simply unable to resolve more serious matters due to the lack of legal instruments to do so.

### **3.8 The practical role of Islamic centers**

In general, Muslims turn to Islamic centers to solve their family problems. Imams play an important role in supporting spouses, helping them overcome crises in their relationships. People seek help from imams when they cannot find solutions

---

<sup>248</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>249</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

within the family or among friends, as Muslim communities believe that family problems are personal matters that should remain within the family.<sup>250</sup>

Imams act not only as religious leaders, but also as spiritual and social mentors, helping spouses maintain their marriage or, in some cases, support a divorce.<sup>251</sup>

Young Muslim couples who have entered into a purely religious marriage (without official civil registration) often decide to divorce by mutual consent through Islamic centers. Such divorces happen quite quickly, as the centers try to save the marriage first, but if this is not possible, the divorce procedure becomes simple. The main reason for entering into such marriages is the desire to have a relationship that complies with religious norms ("halal"), without the obligations of a civil marriage. This makes it possible to easily start and end a relationship if it does not develop, without the need for formal legal procedures, and divorce by mutual consent in Islamic centers meets their needs: the religious component of marriage, but without committing to long-term legal obligations.<sup>252</sup>

When looking at women, their motives are often to save a failing relationship. Despite this desire, if divorce is inevitable, they try to use formal legal procedures to secure rights, such as financial support, that are not provided in divorce through an Islamic center.<sup>253</sup>

Another problem may be the lack of an official civil marriage, and in such cases the imam may be the only person women can turn to. In such marriages, women often find themselves in difficult situations where their husbands do not

---

<sup>250</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>251</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>252</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

<sup>253</sup> Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

provide for them financially or emotionally, and they cannot divorce without their husband's consent. Imams, not having legal authority, cannot intervene if the husband refuses to divorce. Many women who enter into such marriages do not understand the legal consequences, such as the lack of marital rights and the inability to file for divorce in civil court. Regardless of the reasons for which they entered into such a relationship - without official recognition of the marriage, they cannot count on legal protection and support after divorce, including alimony. Islamic centers try to help these women as much as they can, trying to persuade their husbands to divorce, but imams are constrained in this matter.<sup>254</sup>

From all of the above, we can summarize that the role of Islamic centers in the lives of Muslims is great, especially in the context of marriage and divorce proceedings and family problems, and at the same time is cut off due to the impossibility of making any effective intervention. Religious freedom does not support full protection, leaving the community without the only mechanism acceptable to them, such as self-appointment of imams or any semblance of a judicial apparatus. And although couples have the opportunity to enter into a marriage in accordance with their religion using local “crutches”, they still remain without protection, because this procedure does not represent any civil value and does not provide any official family status.

Regarding divorce, the situation is even worse since the only option for couples is mutual consent due to the absence of a religious judicial institution. Nevertheless, Islamic centers continue to play a role in the Muslim community, being primarily a socio-religious institution.

People's choice to marry or divorce in Islamic centers depends on their individual preferences. Muslims turn to religious marriages in Islamic centers to comply with Sharia, prevent extramarital affairs, and fulfill cultural and religious obligations, and many consider religious union sufficient.

---

<sup>254</sup> Alqawasmi, Amal Yousef Omar. “Marriage and Divorce Practices in Islamic Centers in Italy.” *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.ijsj.net/index.php/osls/article/view/1201/1385#toc>, (Accessed: 18.07.2024)

Among those who turn to Islamic centers for divorce, most are seeking help in resolving family problems; however, in cases of officially registered marriages, women more often turn to civil courts to protect their financial rights.

The lack of a universal approach to combining religious and civil marriages leads to legal uncertainty, where not all marriages are recognized by the state, which complicates the situation, especially for women.

This is also accompanied by a local block on the development of sites where Islamic centers or meeting places for Islamic communities could be established. This is the case with the draft law on foreign direct investment, which aims to prohibit the conversion of industrial warehouses or garages into places of worship. The draft law concerns urban planning rules and establishes that, for religions that have not signed an agreement with the state, cultural associations that use a property cannot change its intended use to use it as a place of worship. As rapporteur Fabrizio Rossi (Fdi) explained, illustrating the text of the Environment Commission, the proposal "intends to limit the application of the current rules, given the proliferation over the last decade of associations that essentially have or have the predominant function of managing places of worship for Islamic communities, located on sites without the urban planning, construction and safety requirements necessary for this intended use." Islam is the only religion among the most widespread in Italy that has not signed an agreement with the state.<sup>255</sup>

---

<sup>255</sup>Carlo Marroni, 'Istat: Nascite 2022 Ancora in Calo (-1,9%). Popolazione Sotto i 59 Milioni, Aumenta l'Arrivo di Immigrati,' *Il Sole 24 Ore*, 20 March 2023, Available at: <https://amp24.ilsole24ore.com/pagina/AEmV8C7C>, (Accessed: 12.07.2024)

## Conclusion

From a legal point of view, it is impossible to reproach the Italian Republic for the absence of legal pluralism as a mechanism aimed at protecting and providing legal rights. Pluralism itself as a phenomenon is enshrined in the country's fundamental document - the Constitution of Italy in Articles 2, 6, 19. The Constitution also enshrines norms for the protection of religious rights and religious freedom - Articles 2, 8, 20. Above of it Italy is an EU country and, accordingly, has additional obligations to observe and protect religious freedom as a country party to such documents as Charter of Fundamental Rights of the European Union, the Treaty on the Functioning of the European Union or ICCPR which leads to the further development of the legal pluralism there. But the question remains open whether all these above-mentioned instruments are a sufficient measure in the framework of the development of legal pluralism in the Muslim population of Italy?

The main problem that arises from this question lies in the clash of secular and religious interests of the Italian Republic with the alternative approach to the marriage process and the divorce process of Muslims, or to be more precise, in the legality of the procedures.

Italy recognizes marriage only if it is officially registered through the local administration, regardless of whether it is a classic civil process or a religious marriage in a church, since the state is interested in the fact of registration itself, which entails the particular rights and obligations of the spouses, regulated by secular laws such as the civil code or the family law code. The traditions that the spouses decided to burden themselves with, as well as the type of celebration, are of no particular importance but the signature and approval through an authorized state person are important. The same applies to divorce - the need for an authoritative representative in the form of a court, for example, is a key factor in recognizing the legality of the procedure, since the future status of the spouses and their rights depend on this.

The Muslim approach to this situation is different - after all, it is based on the fact that the religious prism is the legislative at the same time and, accordingly, the



obligatory one, which is evident from the numerous types of divorces and the special attitude towards marriage. The effect of differences in the belief system is imposed, from which the importance and conditions of the procedures may change.

One of the keys to solving the clash of views is the awareness and clear understanding that when in Italy the divorce process, despite its religious basis, is currently an exclusively secular process, for the other side it combines these properties and puts them before a difficult choice of priorities in which often it is the canonical Muslim religious marriage or divorce that wins, because for them it is both a legal and religious process.

All these conclusions could be reduced to a simple answer about the unwillingness to socialize and partly this might be true, however, it is also impossible to ignore the side of the host country which, in turn, instead of searching for compromises, on the contrary, does not want to put up with the presence of other fast-growing groups and, bypassing the main documents on the protection of religious freedom, tries to find tools if not to deprive, then at least to limit the right to own such as local regulations on blocking local prayer rooms, mosques and Muslim centers or artificial blocking of the development of religious internal structures covered by the absence of signed agreements with the government and entailing at least the impossibility of the official appointment of religious representatives. The results of such a policy are the absence or limitation of real protection of the religious rights of spouses in divorce and marriage, since there are no persons in the field who could represent them or resolve disputes using the example of the local religious judicial apparatus.

The main conclusion of this study is that despite the obvious existence of legal norms regulating religious freedom and the “existence” of legal pluralism as such, it in turn does not protect or contribute to the protection of the religious aspect of the divorce process, although a Muslim marriage concluded outside the Italian Republic is recognized as valid and endowed with rights and status equal to a civil marriage.

In Italy, the dominant regulator is secular law, which in turn does not prevent Muslims or representatives of other religions from registering their relationships with local administrative authorities and also from using the Italian legal system to terminate these relationships. This could be called a compromise, but it does not take into account the religious factor itself and its expression by the other side. A possible way out of this situation could, of course, be the long-awaited official recognition of religious representatives, or the creation of some kind of Muslim local courts resolving such disputes, but this would lead to discontent on the part of the state, since it could create the impression that they are trying to take away the monopoly on executive and judicial power. A universal solution to this problem can be found in the local practice of imams, discussed in the last chapter, which consists of promoting the idea of concluding a civil marriage on an equal basis with a religious one and demanding a list of the necessary documents. Italian local authorities could oblige imams to simultaneously conclude 2 types of marriage, using the example of a church marriage in Italy, and immediately submit the relevant notification documents about its conclusion to the local administration, which would simplify the situation with divorces and divisions of property and also provide sufficient legal protection for spouses, albeit from a European legal standpoint. In exchange, they could provide the status of imam, although not a full-fledged, but still a legal status with certain powers. Of course, this would not solve the problem completely, since approaches to divorce, as already indicated above, also differ and for many Muslims the process of observing religious traditions is very important, but this could ease the workload of the internal affairs agencies during the transition period. Legal pluralism will not fully protect not only divorce but also the basic religious rights of Muslim society in Italy until the Lateran agreement is signed, for which they first need to unite and choose a representative, which seems almost impossible in the frames of the nearest time due to the fragmentation of the cells of religious structures of Islam.

## Bibliography

### Books

"Divorce (Kitab Al-Talaq): Partial Translation of Sunan Abu-Dawud, Book 6," available at International Islamic University Malaysia, Available at: [https://www.iium.edu.my/deed/hadith/abudawood/006\\_sat.html#:~:text=The%20Prophet%20\(peace%20be%20upon%20him\)%20said%3A%20Of%20all%20the%20lawful%20acts,wife%20while%20she%20is%20menstruating%3F](https://www.iium.edu.my/deed/hadith/abudawood/006_sat.html#:~:text=The%20Prophet%20(peace%20be%20upon%20him)%20said%3A%20Of%20all%20the%20lawful%20acts,wife%20while%20she%20is%20menstruating%3F).

International Institute for Counter-Terrorism (ICT), 'First Section: Data Regarding the Muslim Population in Italy,' *Index of Muslim Radicalization and De-Radicalization in Italy*, 1 January 2021, pp. 10–39, Available at: <https://www.jstor.org/stable/resrep30904>.

Irene Kull, Hesi Siimets-Gross, Karin Sein, and Marju Luts-Sootak, *Legal Pluralism – Cui Bono?* (Tartu: University of Tartu Press, 2018).

Qur'an 2:232, Available at: <https://www.islamawakened.com/quran/2/232/#:~:text=And%20when%20you%20divorce%20women%2C%20and%20they%20have%20reached%20their,and%20in%20the%20Last%20Day>.

Rabb, Intisar A., "Fiqh", in John L. Esposito (ed.), *The Oxford Encyclopedia of the Islamic World* (Oxford: Oxford University Press, 2009).

Hussin I., 'Sunni Schools of Jurisprudence', in E. El-Din Shahin (ed.), *The Oxford Encyclopedia of Islam and Politics* (Oxford: Oxford University Press, 2014).

### Articles

Ali Kecia, "Muslim Sexual Ethics: Marriage Contracts in Islamic Jurisprudence," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/marriage.html>.

Ali Kecia, "Muslim Sexual Ethics: Consent & Forced Marriage," Brandeis University, June 19, 2003, Available at: <https://www.brandeis.edu/projects/fse/muslim/consent.html>.

Alqawasmi, Amal Yousef Omar. "Marriage and Divorce Practices in Islamic Centers in Italy." *Oñati Socio-Legal Series* 11, no. 4 (2021): 959–989, Available at: <https://opo.iisj.net/index.php/osls/article/view/1201/1385#toc>.

ANSAmed. "Islam: è Seconda Religione d'Italia, ma Senza Rappresentanza." 11 February 2024, Available at: [https://www.ansa.it/ansamed/it/notizie/rubriche/cronaca/2014/02/11/Islam-seconda-religione-Italia-ma-senza-rappresentanza\\_10055830.html](https://www.ansa.it/ansamed/it/notizie/rubriche/cronaca/2014/02/11/Islam-seconda-religione-Italia-ma-senza-rappresentanza_10055830.html).

Brandeis University. "Muslim Sexual Ethics: Understanding a Difficult Verse, Qur'an 4:34: Additional Translations.", Available at: <https://www.brandeis.edu/projects/fse/muslim/translation.html#:~:text=YUSUF%20ALI%3A%20Men%20are%20the,Allah%20would%20have%20them%20guard>.

Buonomo, Felicia. "Libertà di culto: in Italia i musulmani ne godono solo a metà." *Osservatorio diritti*, 13 August 2019, Available at: <https://www.osservatoriodiritti.it/2019/08/13/liberta-di-culto-in-italia-costituzione-islam/>.

Buttinelli, C., Costantino, M.G. "Un Patto con il mondo islamico per costruire una società integrata e sicura." *Ministero dell'Interno*, 1 February 2017, last updated 26 January 2018, Available at: <https://www.interno.gov.it/it/notizie/patto-mondo-islamico-costruire-societa-integrata-e-sicura>.

Carlo Marroni, 'Istat: Nascite 2022 Ancora in Calo (-1,9%). Popolazione Sotto i 59 Milioni, Aumenta l'Arrivo di Immigrati,' *Il Sole 24 Ore*, 20 March 2023, Available at: <https://amp24.ilsole24ore.com/pagina/AEmV8C7C>.

Carnì, M. "I ministri di culto delle confessioni religiose di minoranza: problematiche attuali." *Stato e Chiesa, Rivista telematica*, no. 19 (2015), Available at: <https://riviste.unimi.it/index.php/statoechiese/article/view/4881>.

De Luca, Davide Maria. "L'Italia è un Paese islamofobo?" *Strade*, September/October 2016, Available at: <https://www.stradeonline.it/50-numeri/2016/settembre-ottobre-2016/2273-l-italia-e-un-paese-islamofobo>.

*Divorce and Separation: Information on Divorce Law Applicable in Cases of International Couples in the EU*, European Commission, Available at: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/family-law/divorce-and-separation\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/family-law/divorce-and-separation_en).

*DIVORCE IN ITALY: ITALIAN DIVORCE*, Marzorati Studio Legale, Available at: [https://www.marzorati.org/en/divorce-italy-italian-divorce/#Causes\\_of\\_divorce\\_from\\_a\\_different\\_standpoint\\_than\\_the\\_criminal\\_one\\_pursuant\\_to\\_Italian\\_Law](https://www.marzorati.org/en/divorce-italy-italian-divorce/#Causes_of_divorce_from_a_different_standpoint_than_the_criminal_one_pursuant_to_Italian_Law).

Glasse, Cyril. *The New Encyclopedia of Islam*. Lanham, Maryland: AltaMira Press, 2001.

Hussain, Kashif. "The Fiqh of Divorce in the Hanafi School." *The Wise Word*, June 7, 2023, Available at: <https://thewiseword.co.uk/the-fiqh-of-divorce-in-the-hanafi-school/>.

*FAQs - Divorce and Legal Separation*, Your Europe, Available at: [https://europa.eu/youreurope/citizens/family/couple/divorce-separation/faq/index\\_en.htm](https://europa.eu/youreurope/citizens/family/couple/divorce-separation/faq/index_en.htm).

Ferrara, Salvatore. "Poligamia, la replica dalla Sinistra a Cisint: «Non conosce la legge»." *Il Goriziano*, 23 May 2024, Available at: <https://www.ilgoriziano.it/articolo/sinistra-ribatte-cisint-poligamia-non-conosce-legge-lancia-falso-allarme-23-maggio-2024>.

Ferrari, A. *Islam in Europa/Islam in Italia tra diritto e società*. Milan: Il Mulino, 2008.

Fethi Mansouri and Tariq Modood, "The Complementarity of Multiculturalism and Interculturalism: Theory Backed by Australian Evidence," *Ethnic and Racial Studies* 44, no. 16 (2021), Available at: <https://doi.org/10.1080/01419870.2020.1713391>.

Jaraba, M. "Khul' in Action: How Do Local Muslim Communities in Germany Dissolve an Islamic Religious-Only Marriage?" *Journal of Muslim Minority Affairs* 40, no. 1 (2020): 26–47, Available at: <https://doi.org/10.1080/13602004.2020.1737414>.

Lawal Mohammed Bani, Hamza A. Pate. "Dissolution of Marriage (Divorce) under Islamic Law." *Journal of Law, Policy and Globalization* 42 (2015), Available at: <https://core.ac.uk/download/pdf/234650383.pdf>.

Lipori, Michele. "Islamofobia in Europa e in Italia." *Confronti*, 26 August 2020, Available at: <https://confronti.net/2020/08/islamofobia-in-europa-e-in-italia/>.

Maghniyyah, Allamah Muhammad Jawad. *Divorce According to the Five Schools of Islamic Law*. Volume 6 of 8. Published on Al-Islam.org, Available at: <https://ijtihadnet.com/wp-content/uploads/Divorce-according-to-the-Five-Schools-of-Islamic-Law.pdf>.

O'Sullivan, K., and Jackson, L. "Muslim marriage (non) recognition: implications and possible solutions." *Journal of Social Welfare and Family Law* 39, no. 1 (2017): 22–41, Available at: <https://www.tandfonline.com/doi/full/10.1080/09649069.2016.1272767>.

Paolo Fucili, *Continued Controversy Over Crucifixes in Italian Classrooms*, The Catholic World Report, 29 November 2021, Available at: <https://www.catholicworldreport.com/2021/11/29/continued-controversy-over-crucifixes-in-italian-classrooms/>.

*ReOrienting the Veil*, Islamic Jurisprudence & Law, University of North Carolina at Chapel Hill, Available at: <https://veil.unc.edu/religions/islam/law/>.

Roberta Ceschini, 'International Marriage and Divorce Regulations and Recognition in Italy,' *Family Law Quarterly* 29, no. 3 (Fall 1995), American Bar Association.

Roberta Ceschini, 'Divorce Proceedings in Italy: Domestic and International Procedures', *Family Law Quarterly* 28, no. 1, Spring 1994, American Bar Association.

Sergio Carrera and Joanna Parkin, *The Place of Religion in European Union Law and Policy: Competing Approaches and Actors inside the European Commission*, RELIGARE Working Document No. 1 (September 2010), Available at: [https://www.ceps.eu/wp-content/uploads/2010/09/RELIGARE%20-%20Religion%20and%20the%20EU\\_Final.pdf](https://www.ceps.eu/wp-content/uploads/2010/09/RELIGARE%20-%20Religion%20and%20the%20EU_Final.pdf).

Sona, F. "Mosque Marriages and Nuptial Forms among Muslims in Italy." *Oxford Journal of Law and Religion* 7, no. 3 (2018): 519–542, Available at: <https://doi.org/10.1093/ojlr/rwy038>.



Articolo 150 Codice Civile (R.D. 16 marzo 1942, n. 262), *Separazione personale*, Available at: <https://www.brocardi.it/codice-civile/libro-primo/titolo-vi/capo-v/art150.html>.

Articolo 191 Codice Civile (R.D. 16 marzo 1942, n. 262), Available at: <https://www.brocardi.it/codice-civile/libro-primo/titolo-vi/capo-vi/sezione-iii/art191.html>.

*Articolo 403 Codice Penale* (R.D. 19 ottobre 1930, n. 1398), Offese a una confessione religiosa mediante vilipendio di persone, Available at: <https://www.brocardi.it/codice-penale/libro-secondo/titolo-iv/capo-i/art403.html>.

*Articolo 83 Codice Civile* (R.D. 16 marzo 1942, n. 262), Matrimonio celebrato davanti a ministri dei culti ammessi nello Stato, Available at: <https://www.brocardi.it/codice-civile/libro-primo/titolo-vi/capo-ii/art83.html>.

*Charter of Fundamental Rights of the European Union* (2000/C 364/01), Official Journal of the European Communities, 18 December 2000, Available at: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

*Codice Civile*, Libro I, Titolo VI, ‘Del Matrimonio - Della Promessa di Matrimonio’, Available at: <https://www.altalex.com/documents/news/2014/11/10/del-matrimonio-della-promessa-di-matrimonio>.

*Codice di Diritto Canonico*, Libro VII, Parte III, Titolo I, ‘I Processi Matrimoniali’ (Cann. 1671–1707), Available at: [https://www.vatican.va/archive/cod-iuris-canonici/ita/documents/cic\\_libroVII\\_1671-1673\\_it.html#PARTE\\_III](https://www.vatican.va/archive/cod-iuris-canonici/ita/documents/cic_libroVII_1671-1673_it.html#PARTE_III).

*Consolidated Version of the Treaty on the Functioning of the European Union*, Document 12016E013, PART ONE - PRINCIPLES, TITLE II - PROVISIONS HAVING GENERAL APPLICATION, Article 13, European Union, Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E013>.

*Constitution of the Italian Republic* (1948), Available at: [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf).



*EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief*, Foreign Affairs Council meeting, Luxembourg, 24 June 2013, Council of the European Union, Available at: <https://www.eeas.europa.eu/sites/default/files/137585.pdf>.

*European Convention on Human Rights*, European Court of Human Rights, Council of Europe, 2010, Available at: [https://www.echr.coe.int/documents/d/echr/convention\\_eng](https://www.echr.coe.int/documents/d/echr/convention_eng).

Giuseppina Vassallo, “Famiglia, minori e successioni: Matrimonio”, *AltalexPedia*, aggiornato il 27/06/2014, Available at: <https://www.altalex.com/documents/altalexpedia/2014/06/27/matrimonio>.

Gazzetta Ufficiale della Repubblica Italiana, LEGGE 6 maggio 2015, n. 55, *Disposizioni in materia di scioglimento o di cessazione degli effetti civili del matrimonio nonché di comunione tra i coniugi* (GU Serie Generale n. 107 del 11-05-2015), Available at: <https://www.gazzettaufficiale.it/eli/id/2015/05/11/15G00073/sg>.

*International Covenant on Civil and Political Rights*, adopted 16 December 1966, General Assembly resolution 2200A (XXI), Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

L. 31 maggio 1995, n. 218, *Riforma del sistema italiano di diritto internazionale privato*, Available at: [https://www.esteri.it/mae/doc/L218\\_1995.pdf](https://www.esteri.it/mae/doc/L218_1995.pdf).

*Lateran Treaty of 1929*, Available at: <https://spcp.prf.cuni.cz/dokument/lateran.htm>.

LEGGE 24 giugno 1929, n. 1159, *Disposizioni sull'esercizio dei culti ammessi nello Stato e sul matrimonio celebrato davanti ai ministri dei culti medesimi* (029U1159), Normattiva, il portale delle legge vigente, Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1929;1159>.

LEGGE 31 maggio 1995, n. 218, *Riforma del sistema italiano di diritto internazionale privato*, Normattiva, il portale delle legge vigente, Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1995;218>.

Legge sul divorzio (Legge 1 dicembre 1970, n. 898), *Disciplina dei casi di scioglimento del matrimonio*, Available at:

<https://www.altalex.com/documents/codici-altalex/2012/06/27/disciplina-dei-casi-di-scio-glimento-del-matrimonio>.

*Omkarananda and Divine Light Zentrum v. Switzerland*, Application No. 10461/83, European Court of Human Rights, 19 March 1981, Available at: [https://www.stradalex.com/nl/sl\\_src\\_publ\\_jur\\_int/document/echr\\_10461-83\\_001-45496](https://www.stradalex.com/nl/sl_src_publ_jur_int/document/echr_10461-83_001-45496).

Senato della Repubblica. “Legislatura 17<sup>a</sup> - Dossier n. 45.”, Available at: [https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier\\_dossier1-sezione\\_sezione1](https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/902346/index.html?part=dossier_dossier1-sezione_sezione1).

*X. and Church of Scientology v. Sweden*, Application No. 7805/77, European Court of Human Rights, 5 May 1979, Available at: [https://www.stradalex.eu/en/se\\_src\\_publ\\_jur\\_eur\\_cedh/document/echr\\_7805-77\\_001-73995](https://www.stradalex.eu/en/se_src_publ_jur_eur_cedh/document/echr_7805-77_001-73995).