



# Prohibition of Interfaith Marriage

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# Prohibition of Interfaith Marriage

*Staff of the Global Legal Research Directorate*

## I. Introduction

This report provides information on the laws of twenty-nine countries, plus the West Bank and the Gaza Strip, that prohibit marriages between people of two different religions. In the majority of the countries identified for this report, the prohibition of interfaith marriage arises from the implementation of Islamic personal status laws, either in codified or uncoded form, with respect to marriages involving Muslims. These countries either do not have separate civil marriage laws or do not allow Muslim individuals to marry under such laws.

Under Islamic law, regardless of the school of thought, Muslim women may not marry non-Muslim men, while Muslim men may only marry non-Muslim women who meet the definition of *Kitabia* (also spelled *Kitabi*, *Kitabiyya*, *Kitabiyah*, or *ahl al-Kitab*), or “people of the book,” which typically refers to followers of Christianity and Judaism. In some countries, including Burma, Israel, and Indonesia, there appear to be restrictions on interfaith marriages involving people of religions other than Islam as well.

## II. Jurisdictional Surveys

### Afghanistan

In Afghanistan, the Civil Code applies to the marriages of the Sunni followers of Islamic jurisprudence. The Civil Code asserts that a Muslim male can marry a non-Muslim female who believes in one of the four books (“follower of the book”);<sup>1</sup> however, a Muslim female’s marriage with a non-Muslim, even to a follower of the book, is void.<sup>2</sup> In fact, one of the conditions for a marriage to be valid and enforceable is that the female should be a follower of the book.<sup>3</sup> Since Afghan law permits polygamy,<sup>4</sup> marrying a female who is a follower of the book while having a Muslim wife, or vice versa, is also permitted under the Civil Code.<sup>5</sup>

The Shiites’ Personal Status Code governs the marriage of Shiites in Afghanistan. This Code similarly allows the marriage of a Muslim male with a follower-of-the-book female while invalidating the marriage of a Shiite woman with a non-Muslim man.<sup>6</sup>

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<sup>1</sup> Book that are accepted in Islamic law are the Holy Qur’an, Bible, Torah, and Zabur.

<sup>2</sup> QANUNI MADANI [CIVIL CODE], Kabul 1355 [1977] art. 92.

<sup>3</sup> *Id.* arts. 77 & 85.

<sup>4</sup> *Id.* art. 86.

<sup>5</sup> *Id.* art. 93.

<sup>6</sup> QANUNI AHWALI SHAKHSEYAYI AHLI TASHAYU’ [SHIITE PERSONAL STATUS CODE], Kabul 1387 [2009] art. 97.

## Algeria

The Law on Personal Status of 1984 does not contain provisions related to interfaith marriage. However, article 222 of the Law states that, for all matters not provided for in the Law, reference must be made to the rules of Islamic Shari'a.<sup>7</sup> Under Islamic Shari'a no Muslim woman can marry a non-Muslim man, but Muslim men can marry Kitabia women (Christians and Jews).<sup>8</sup>

## Bahrain

Article 11 of Law No. 19 of 2009 forbids the marriage of a Muslim woman to a non-Muslim man, and the marriage of Muslim man to a woman who is not Kitabia (referring to the Abrahamic religions).<sup>9</sup>

## Bangladesh

In Bangladesh, family law matters, including marriage, are predominantly regulated by the personal status laws of the members of the religion concerned.<sup>10</sup> The majority Muslim population is governed by Muslim personal status laws that are predominantly based on the Hanafi school of thought. Under all Sunni schools of Islamic law, including the Hanafi school, a Muslim male is permitted to contract a valid marriage not only with a Muslim woman, but also with a Kitabi (or scripturalist), meaning a member of the Christian or Jewish religions.<sup>11</sup> Marriage to polytheists and idol or fire worshipers are not considered valid. Moreover, a Muslim woman cannot contract a valid marriage except with a Muslim. She is not permitted to contract a valid marriage even with a Kitabi, that is, a Christian or a Jew.<sup>12</sup>

Interfaith marriages do not appear to be favored under Hindu law, which governs Bangladesh's sizable Hindu population.<sup>13</sup>

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<sup>7</sup> Law No. 11 of 1984, *as amended*, art. 222, <http://www.joradp.dz/TRV/AFam.pdf> (in Arabic). Article 31 of the 1984 Law originally contained an explicit provision that did not allow the marriage of a Muslim woman to a non-Muslim man. *Id.* at 5 n.2. Even though this provision was abrogated in 2005 its substance continues to prevail as a result of article 222.

<sup>8</sup> JAMAL J. NASIR, *THE ISLAMIC LAW OF PERSONAL STATUS* 69–70 (3d ed. 2009), LC Call No. KBP524.7 .N37 2009, *bibliographic information at* <http://lcn.loc.gov/2009499831>.

<sup>9</sup> Law No. 19 of 2009 on the Issuance of the Provisions of the Family Code art. 11, *Al-Jaridah Al-Rasmiyah* [Official Gazette], vol. 2898, 6 April 2009, <http://www.moj.gov.bh/default7850.html?action=article&ID=1620> (in Arabic).

<sup>10</sup> Australian Government, MRT Research Response No. BGD17626 (Nov. 11, 2005), *available at* <http://www.refworld.org/pdfid/4b6fe1250.pdf>.

<sup>11</sup> Mohammad Moin Uddin, *Inter-religious Marriage in Bangladesh: An Analysis of the Existing Legal Framework*, XIII CHITTAGONG UNIV. J.L. 117, 123 (2008), <http://www.culaw.ac.bd/files/jurnal-2008/Vol.%20XIII.%202008%20%28p.117-%20139%29.pdf>.

<sup>12</sup> *Id.* at 129.

<sup>13</sup> *Id.* at 120.

Interfaith couples can marry under the Special Marriage Act, 1872,<sup>14</sup> but only if they renounce their respective religions through a declaration before the marriage is solemnized.<sup>15</sup>

## Brunei

In Brunei, family law matters for Muslims, including marriage, are predominantly regulated by codified and uncoded Islamic or Shari'a law. There do not appear to be any provisions in the Islamic Family Law Act<sup>16</sup> that regulate interfaith marriages. However, according to section 47 of the Act,

- (1) The fact that either party to a marriage becomes an apostate or converts to a faith other than Islam shall not by itself operate to dissolve the marriage unless confirmed by the Court.
- (2) The fact that either party to a marriage converts to Islam shall not by itself operate to dissolve the marriage unless confirmed by the Court.<sup>17</sup>

Under Islamic Law, including the Shafi'i school of jurisprudence, Muslim men are permitted to marry only members of the *Kitabiyya* and Muslim women are not permitted to marry non-Muslims. The Shafi'i school, which is the predominant school of jurisprudence in Brunei, has a fairly restrictive definition of *Kitabiyya*, namely Christians and Jews who are descendants of Israel.<sup>18</sup> However, it unclear how restrictively courts in Brunei are interpreting this term.

According to a 2012 State Department report, “[m]arriage between Muslims and non-Muslims is not permitted” in Brunei and “non-Muslims must convert to Islam if they wish to marry a Muslim. Authorities enforce this law through the denial of official recognition of marriages between a Muslim and non-Muslim.”<sup>19</sup> No statutory or other legal basis for this rule was located.

## Burma (Myanmar)

According to recent news reports, the Myanmar Parliament passed the Buddhist Women's Special Marriage Law on July 7, 2015,<sup>20</sup> and President Thein Sein signed the measure into law

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<sup>14</sup> Special Marriage Act, No. 3 of 1872, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=25](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=25).

<sup>15</sup> *Id.* § 10.

<sup>16</sup> Islamic Family Law Act, cap. 217, [https://www.ftcam.de/ft\\_files/Scheidung\\_BruneiDarussalam1.pdf](https://www.ftcam.de/ft_files/Scheidung_BruneiDarussalam1.pdf).

<sup>17</sup> *Id.* § 47.

<sup>18</sup> Zahidul Islam, *Interfaith Marriage in Islam and Present Situation*, 2(1) GLOBAL J. POL. & L. RES. 36, 41 (Mar. 2014), <http://www.eajournals.org/wp-content/uploads/Interfaith-Marriage-in-Islam-and-present-situation.pdf>.

<sup>19</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2012 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: BRUNEI (May 20, 2013), <http://www.state.gov/j/drl/rls/irf/2012/eap/208216.htm>.

<sup>20</sup> Several media outlets have reported the enactment. See, e.g., Pyae Thet Phyto, *MPs Pass Marriage Law Despite Warnings*, MYANMAR TIMES (July 8, 2015), <http://www.mmtimes.com/index.php/national-news/15391-mps-pass-marriage-law-despite-warnings.html>.

on August 26, 2015.<sup>21</sup> The Buddhist Women's Special Marriage Law applies to marriage between Buddhist women and non-Buddhist men.<sup>22</sup> It appears that the Law subjects non-Buddhist men who marry Buddhist women to a number of requirements not applicable to the Buddhist spouse. Non-Buddhist husbands must observe the following provisions:

- (a) to allow the Buddhist woman to profess her religion freely according to her faith;
- (b) to allow the children born from the marriage with the Buddhist woman to profess their religion freely according to their faith;
- (c) to allow the Buddhist woman to keep Buddha statues and images at their home;
- (d) to allow the Buddhist woman to donate according to her religion, to worship, to [perform recitations] to ward off evil (Payeik), to tell (one's) beads, to listen to religious sermons, to practice religious meditation, to visit Pagodas and Monasteries, to fast, to read and study literature relating to Buddhism;
- (e) not to cause the Buddhist woman to relinquish the Buddhist faith by using various means, and to convert her to his religion;
- (f) not to destroy or damage or to defile the place of worship or [sacred things] with an intent to insult Buddhism;
- (g) not to insult, in words or in writing or through visible representation or gesture, with bad intention to cause bitter feeling [toward Buddhists].<sup>23</sup>

The non-Buddhist husband who commits one of these acts is subject to criminal penalties.<sup>24</sup> Violations of these provisions are also grounds for divorce. In such a case, the non-Buddhist husband would lose his share of jointly owned property, owe his wife compensation, and be denied custody of the children.<sup>25</sup>

If a non-Buddhist man divorces a Buddhist woman because his religion does not allow the marriage due to religious differences, "or forsakes, or behaves cruelly and causes mental harm, whether or not it amounts to physical violence," the non-Buddhist husband also loses his share of jointly owned property, owes his wife compensation, and is denied custody of the children.<sup>26</sup>

Any professed member of the Hindu, Sikh, or Jaina religion who is married to a Buddhist woman is "deemed to effect his severance from such family. Besides, in case of his death before partition, his vested right shall devolve on his wife and children."<sup>27</sup>

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<sup>21</sup> Hnin Yadana Zaw, *Myanmar's President Signs Off on Law Seen as Targeting Muslims*, YAHOO NEWS (Aug. 31, 2015), <http://news.yahoo.com/myanmars-president-signs-off-law-seen-targeting-muslims-113700783.html>.

<sup>22</sup> Myanmar Buddhist Women's Special Marriage Law § 2, *unofficial translation available at* [http://www.burma-library.org/docs21/2015-Myanmar\\_Buddhist\\_Women\\_Special\\_Marriage\\_Bill.pdf](http://www.burma-library.org/docs21/2015-Myanmar_Buddhist_Women_Special_Marriage_Bill.pdf).

<sup>23</sup> *Id.* § 24.

<sup>24</sup> *Id.* §§ 38–41.

<sup>25</sup> *Id.* § 25.

<sup>26</sup> *Id.* § 32.

<sup>27</sup> *Id.* § 29.

All issues concerning the right to property ownership and inheritance for couples to whom the Buddhist Women's Special Marriage Law apply are "decided according to Myanmar Customary Law as if they and their families were Buddhist."<sup>28</sup>

## Djibouti

The laws of Djibouti forbid Muslim women from marrying non-Muslims. Indeed, the Family Code of Djibouti states that "temporary impediments [to marriage] are caused by . . . the marriage of a Muslim woman to a non-Muslim."<sup>29</sup> Such marriages are considered void, and a couple who continues or resumes living together as husband and wife after their marriage has been voided may be punished with up to six months of incarceration.<sup>30</sup> The fact that article 23 of the Code considers the marriage of a Muslim woman to a non-Muslim to be a "temporary" impediment, however, may possibly indicate that the defect could be remedied by the husband's conversion to Islam. Furthermore, the prohibition only seems to apply to Muslim women and non-Muslim men; there does not appear to be any bar on Muslim men marrying non-Muslim women.

## Egypt

There is no explicit provision in Egyptian legislation prohibiting interfaith marriage. However, since Islam is the main source of legislation according to article 2 of the Egyptian Constitution of 2014,<sup>31</sup> family matters are subject to the rules of Islamic law. According to a religious fatwa (decree) issued by Dar al ifta'a al Massriyah (an official Egyptian religious authority with the power to issue religious decrees), it is permissible for a Muslim man to marry a non-Muslim woman in certain circumstances. However, according to the same fatwa, marriage between a non-Muslim man and a Muslim woman is prohibited under Islamic law because the non-Muslim man will not respect his Muslim wife's faith.<sup>32</sup>

Islamic law forbids Muslim men from marrying women who are atheists or do not believe in the Abrahamic religions. This prohibition is based on qur'anic verse 2:221 of Surat al-Baqarah, which says that Muslim men must not "marry polytheistic women until they believe."<sup>33</sup> The same verse prohibits Muslim women from marrying men who are atheist or do not believe in any

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<sup>28</sup> *Id.* § 30.

<sup>29</sup> "Les empêchements provisoires [au mariage] résultent . . . du mariage d'une femme musulmane avec un non musulman." Loi No. 152/AN/02/4ème portant Code de la Famille [Law No. 152/AN/02/4th Establishing a Family Code] art. 23, [http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/djibouti/Djibouti\\_CodedeFamille.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/djibouti/Djibouti_CodedeFamille.htm) (translation by author).

<sup>30</sup> *Id.* art. 29.

<sup>31</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT 2014, art. 2, <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf> (unofficial English translation).

<sup>32</sup> *Why a Muslim Woman Can't Marry a non Muslim?*, DAR AL IFTA'A AL MASSRIYAH, <http://eng.dar-alifta.org/foreign/ViewFatwa.aspx?ID=6167&text=non-muslim> (last visited Aug. 19, 2015).

<sup>33</sup> *Surat Al-Baqarah: 2:221*, QUR'ĀN, <http://quran.com/2/221> (translation by Sahih International) (last visited Aug. 19, 2015).

of the Abrahamic religions, stating, “do not marry polytheistic men [to your women] until they believe.”<sup>34</sup>

## India

In India, marriage is regulated by the personal status laws applicable to the persons concerned. The Hindu Marriage Act allows members of the Hindu, Buddhist, Jain, or Sikh religions to intermarry.<sup>35</sup> Under Muslim personal status laws as interpreted by the Hanafi school of thought,<sup>36</sup> which is predominant in India, only Muslim men are permitted to marry *kitabia*, meaning members of the Christian or Jewish religions; Muslim women are prohibited from marrying non-Muslims.<sup>37</sup> If a partner is a Christian it may be possible to marry under Christian rites through the Indian Christian Marriage Act, 1872.<sup>38</sup>

Interfaith couples are able to rely on the Special Marriage Act,<sup>39</sup> which provides for a “special form marriage”—a civil marriage conducted by a registrar appointed by the state that is available to all persons in India,<sup>40</sup> irrespective of the religion, caste, or faith to which either party belongs. However, this marriage is subject to certain procedural hurdles that reportedly are difficult to meet for persons who wish to keep their marriage a secret or who wish to elope.<sup>41</sup>

Parties who intend to marry must give written notice to a marriage officer from the district in which at least one of the parties has resided “for a period of not less than thirty days immediately preceding the date on which such notice is given.”<sup>42</sup> The marriage officer publishes the notice “by affixing a copy thereof to some conspicuous place in his office.”<sup>43</sup> From the date a notice is published, a period of thirty days is allowed for any objection to the marriage “on the ground that

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<sup>34</sup> *Id.*

<sup>35</sup> Hindu Marriage Act, No. 25 of 1955, § 2(1) & (3), 20 INDIA CODE (1993), available on the Government of Punjab, Department of Revenue, Central Acts/Rules website, at <http://punjabrevenue.nic.in/hmrgact%281%29.htm#registrationofhindumarriages>.

<sup>36</sup> Muslim Personal Law (Shari’at) Application Act, No. 26 of 1937, § 2, <http://www.newdelhi.msiz.gov.pl/resource/e75c9c6a-42be-465e-822d-29bc1d01cc1d:JCR>.

<sup>37</sup> *Kaneez Fatima and Another v. Angeal Cameron*, 1978 SCC OnLine AP 41.

<sup>38</sup> Indian Christian Marriage Act, No. 15 of 1872, § 4, <http://www.newdelhi.msiz.gov.pl/resource/afed7be8-7eb7-45cd-9f05-752320c1eb1c:JCR>.

<sup>39</sup> Special Marriage Act, No. 43 of 1954, <http://keralaregistration.gov.in/pearlpublic/downloads/The%20Special%20Marriage%20Act.pdf?tok=49sddh3ss34ff4>.

<sup>40</sup> *Id.* § 1(2). The Act does not apply in the states of Jammu and Kashmir but does apply “to citizens of India domiciled in the territories to which this Act extends who are [in the State of Jammu and Kashmir].” *Id.*

<sup>41</sup> *Of Indian Marriage Laws and Conversions: The Case of Saifeena*, PATHEOS (Feb. 27, 2013), <http://www.patheos.com/blogs/mmw/2013/02/of-indian-marriage-laws-and-conversions-the-case-of-saifeena/>; see also Shoaib Daniyal, *When it Comes to Inter-faith Marriages, Indian State is Like a Super Khap Panchayat*, SCROLL.IN (Sept. 9, 2014), <http://scroll.in/article/676910/it-isnt-just-the-sangh-that-discourages-inter-faith-marriages-the-indian-legal-system-does-too>.

<sup>42</sup> Special Marriage Act § 5.

<sup>43</sup> *Id.* § 6(2).



it would contravene one or more of the conditions specified in section 4 [of the Special Marriage Act]”<sup>44</sup> for a valid marriage. If an objection is made to an intended marriage, “the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it.”<sup>45</sup> The Marriage Officer has a period of thirty days from the date of the objection for “inquiring into the matter of the objection and arriving at a decision.”<sup>46</sup> If an objection is upheld by the marriage officer it can be appealed to a district court for a final decision.<sup>47</sup>

If a Hindu (statutorily defined as including Sikhs, Jains, and Buddhists) marries a non-Hindu under the Act, he or she cannot inherit ancestral property, which is a right established under the Hindu Succession Act. Instead, provisions of the Indian Succession Act of 1925 apply.<sup>48</sup>

According to the US State Department’s 2013 report on religious freedom in India, there are “reports that many couples faced administrative difficulties” in solemnizing marriages under the Special Marriage Act and were subjected to “harassment by local officials during the registration process.”<sup>49</sup> In addition, the written notice that parties must submit, which is open for public comment for a period of thirty days, includes their “addresses, photographs, and religious affiliation,” opening the couple up to “possible harassment by religious groups objecting to interreligious marriages.”<sup>50</sup> One report also notes that the requirement of one of the parties having to reside in the area for thirty days is a hurdle for couples who wish to elope from the town or city in which they reside.<sup>51</sup>

## Indonesia

Article 2(1) of Law No. 1 of 1974 on Marriage (Marriage Law) states that “a marriage is legitimate, if it has been performed according to the laws of the respective religions and beliefs of the parties concerned.”<sup>52</sup> Article 2(2) requires that marriages be registered with the authority

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<sup>44</sup> *Id.* § 7(1).

<sup>45</sup> *Id.* § 8(1).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* § 8(2).

<sup>48</sup> *Id.* §§ 21 & 21A.

<sup>49</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2013 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: INDIA (July 28, 2014), <http://www.state.gov/j/drl/rls/irf/2013/sca/222329.htm>.

<sup>50</sup> *Id.*

<sup>51</sup> R. Nithya, *Why Does the Secular Indian State Discourage Inter-Religious Marriages?*, NEWS CLICK (Nov. 15, 2013), <http://newsclick.in/india/why-does-secular-indian-state-discourage-inter-religious-marriages>.

<sup>52</sup> Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan [Law No. 1 of 1974 on Marriage] art. 2(1), available on the website of the Indonesian Ministry of Religious Affairs, at <http://www.kemenag.go.id/file/dokumen/UUPerkawinan.pdf> (in Indonesian). The Law is translated and reproduced in DEPARTMENT OF RELIGIOUS AFFAIRS, THE COMPILATION OF ISLAMIC LAWS IN INDONESIA 71 (1996/1997).

designated by the associated regulations.<sup>53</sup> The Marriage Law therefore does not expressly prohibit interfaith marriage, and there has been debate over the meaning of article 2(1) and its impact on such marriages. A strict interpretation of the provision may lead to a conclusion that marriage between two parties of different religious beliefs is not permitted. However, some scholars argue that, since the law itself is silent on the issue, if the religions of the parties do not prohibit the marriage then it may be carried out.<sup>54</sup>

The Ministry of Religious Affairs officially recognizes six religions in Indonesia (Islam, Hinduism, Buddhism, Protestantism, Catholicism, and Confucianism), each with its own rules that may impact the ability to marry someone of a different faith.<sup>55</sup> In particular, various rulings of Islamic bodies in Indonesia have stated that marriage between Muslims and non-Muslims is forbidden.<sup>56</sup> The *Compilation of Islamic Laws in Indonesia*, produced by the Ministry of Religious Affairs in the 1990s, explicitly prohibits a Muslim man from marrying a non-Muslim woman, and a Muslim woman from marrying a non-Muslim man.<sup>57</sup>

In practice, the generally accepted view appears to be that interfaith marriages are usually not permissible.<sup>58</sup> At the government level, the registration processes create barriers to the recognition of such marriages, with the Civil Registry Office tasked with registering marriages between non-Muslims and the Office of Religious Affairs only registering marriages involving Muslims.<sup>59</sup> Reports indicate that the Civil Registry Office will only register marriages between people of the same religion, as evidenced by their identity cards. If the cards indicate different religions, “proof of conversion is required before the marriage can be recorded.”<sup>60</sup> However, there may be a degree of flexibility in the policy, and there appears to remain some uncertainty regarding the approach to be taken.<sup>61</sup>

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<sup>53</sup> Law No. 1 of 1974 on Marriage, art. 2(2).

<sup>54</sup> Ratna Lukito, *Trapped Between Legal Unification and Pluralism: The Indonesian Supreme Court's Decision on Interfaith Marriages*, in MUSLIM-NON-MUSLIM MARRIAGE: POLITICAL AND CULTURAL CONTESTATIONS IN SOUTHEAST ASIA 33, 35 (Gavin W. Jones et al. eds., 2009).

<sup>55</sup> See U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010: INDONESIA (Nov. 17, 2010), <http://www.state.gov/j/drl/rls/irf/2010/148869.htm>. See also Mark Cammack, *Legal Aspects of Muslim-non-Muslim Marriage in Indonesia*, in MUSLIM-NON-MUSLIM MARRIAGE, *supra* note 52, at 102, 123.

<sup>56</sup> See Suhadi Cholil, *The Politico-Religious Contestation: Hardening of the Islamic Law on Muslim-non-Muslim Marriage in Indonesia*, in MUSLIM-NON-MUSLIM MARRIAGE, *supra* note 52, at 139.

<sup>57</sup> DEPARTMENT OF RELIGIOUS AFFAIRS, *supra* note 50, at 11 & 12 (Book 1 – Marriage, ch. 7, arts. 40(A)(c) & 44). A fatwa issued in 1980 by the Indonesian Ulama Council forbade marriage between a Muslim man and a woman of the *ahl al-Kitab* (“people of the book”), and the Compilation of Islamic Law similarly prohibited all interreligious marriages involving Muslims. Chee Heng-Leng et al., *Muslim-non-Muslim Marriage, Rights and the State in Southeast Asia*, in MUSLIM-NON-MUSLIM MARRIAGE, *supra* note 52, at 1, 8.

<sup>58</sup> See generally KELLY BUCHANAN, LAW LIBRARY OF CONGRESS, INDONESIA: INTER-RELIGIOUS MARRIAGE (July 2010), <http://www.loc.gov/law/help/religious-marriage.php>; Cammack, *supra* note 36; Lukito, *supra* note 52.

<sup>59</sup> See Simon Butt, *Polygamy and Mixed Marriage in Indonesia: Islam and the Marriage Law in the Courts*, in INDONESIA LAW AND SOCIETY 266, 278 (Tim Lindsey ed., 2d ed. 2008).

<sup>60</sup> Cammack, *supra* note 52, at 125.

<sup>61</sup> *Id.* at 126–27.

In June 2015, in response to a challenge to article 2(1) of the Marriage Law, the Indonesian Constitutional Court found that this article does not breach provisions of the Indonesian Constitution related to freedom of religion, equal treatment before the law, and the right to form a family.<sup>62</sup> The Court considered that marriage includes spiritual and social aspects, as well as formal aspects, and held that the role of the state is to provide protection and legal certainty for marriages validly performed according to a religion.<sup>63</sup>

## Iran

The Civil Code of the Islamic Republic of Iran prohibits marriages between Muslim women and non-Muslim men. Article 1059 explicitly states, “[m]arriage of a female Moslem with a non-Moslem is not allowed.”<sup>64</sup> According to one source, this ban applies unless the man first converts to Islam.<sup>65</sup> There is no similar provision in the Civil Code prohibiting the marriage of a Muslim man to a non-Muslim woman, although according to the same source the woman must believe “in one of three religions recognized by Islam as ‘religion with a scripture (Christianity, Judaism, and Zoroastrianism)’.”<sup>66</sup>

If a Muslim leaves Islam or converts to another faith, he or she may be charged with the crime of apostasy. Apostasy, while a capital offense, is not specifically criminalized in Iran’s Penal Code. Rather, provisions in the Code and in Iran’s Constitution (article 167)<sup>67</sup> state that Shari’a (Islamic) law

applies to situations in which the law is silent. As a result, the Iranian judiciary is empowered to bring apostasy charges based on its interpretation of Shari’a law. . . .

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<sup>62</sup> Constance Johnson, *Indonesia: Marriage Law Challenged*, GLOBAL LEGAL MONITOR (Nov. 3, 2014), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205404185\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205404185_text); Kelly Buchanan, *Indonesia: Court Rejects Two Challenges to Marriage Act*, GLOBAL LEGAL MONITOR (June 25, 2015), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205404476\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205404476_text).

<sup>63</sup> Mahkamah Konstitusi, Decision No. 68/PUU-XII/2014, [http://www.mahkamahkonstitusi.go.id/putusan/68\\_PUU-XII\\_2014.pdf](http://www.mahkamahkonstitusi.go.id/putusan/68_PUU-XII_2014.pdf) (in Indonesian), cited in Erwin Sihombing, *Interfaith Marriages Still Unsanctioned as Court Rejects Judicial Review*, JAKARTA GLOBE (June 18, 2015), <http://jakartaglobe.beritasatu.com/news/interfaith-marriages-still-unsanctioned-court-rejects-judicial-review/>.

<sup>64</sup> CIVIL CODE OF THE ISLAMIC REPUBLIC OF IRAN art. 1059, unofficial English translation containing amendments through Dec. 29, 1985, available on the UNHCR RefWorld website, at <http://www.refworld.org/docid/49997adb27.html>. This report relies primarily on the translation provided by RefWorld, which has been compared by the Law Library staff with the English translation in CIVIL CODE OF IRAN (M.A.R. Taleghany trans., Fred B. Rothman & Co. 1995) and with the latest available Persian text of the code, QĀNŪN-E MADANĪ [CIVIL CODE] 18/2/1307 (May 8, 1928), as last amended 19/8/1381 (Nov. 10, 2002), available on the Islamic Parliament Research Center website at <http://rc.majlis.ir/fa/law/show/97937>, and on the Iran Law Database at <http://www.ghavanin.ir/detail.asp?id=16686>. The family law provisions of the Code were codified in 1935 and, like other parts of the Code, are based on Shiite Muslim law. Nadjma Yassari, *Who Is a Child? Consideration of Tradition and Modernity in Iranian Child Law*, 22 RECHT VAN DE ISLAM 17 (2005), [http://www.verenigingrimo.nl/wp/wp-content/uploads/recht22\\_yassari.pdf](http://www.verenigingrimo.nl/wp/wp-content/uploads/recht22_yassari.pdf).

<sup>65</sup> ELTON L. DANIEL & ALI AKBAR HAHDİ, CULTURE AND CUSTOMS OF IRAN 167 (Greenwood Press, 2006).

<sup>66</sup> *Id.*

<sup>67</sup> IRAN – CONSTITUTION (Oct. 24, 1979, as amended July 28, 1989) art. 167, available on the Universität Bern Institut für Öffentliches Recht website, at <http://www.servat.unibe.ch/icl/ir00000.html> (unofficial English translation).

While the Qur'an does not explicitly state that apostasy should be penalized, the majority of Islamic jurists agree that an apostate is to be put to death [but] [c]ases of apostasy . . . are rare occurrences in Iran.<sup>68</sup>

Moreover, based on an interview with two Iranian defense lawyers experienced in handling court cases in Teheran, a 2005 Danish fact-finding mission to Iran found that the courts do not typically punish Iranians who have converted from Islam to Christianity.<sup>69</sup>

## Iraq

Article 17 of Law No. 188 of 1959 states that a marriage contract between a Muslim woman and a non-Muslim man is not valid.<sup>70</sup> Article 18 further requires that both husband and wife be Muslims in order for the marriage to be valid. If one of them renounces his/her Islamic faith, the couple must be separated.<sup>71</sup>

## Israel

Marriage and divorce in Israel are generally regulated under the religious law of recognized religious communities and are subject to the jurisdiction of the respective religious courts.<sup>72</sup> A marriage conducted in Israel between two persons belonging to different recognized religious communities, therefore, is not recognized unless it is conducted between a Muslim man and a Jewish or Christian woman, in accordance with Shari'a (Islamic) law.

Based on private international law a marriage conducted abroad between spouses who are not citizens or residents of Israel at the time of the marriage is valid in Israel if it was valid under the law of the foreign country where and when it was performed.<sup>73</sup>

In a November 2006 decision the Supreme Court recognized, for purposes of eligibility for spousal succession under Israel's Succession Law, 5725-1965,<sup>74</sup> an interfaith civil marriage

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<sup>68</sup> *Apostasy in the Islamic Republic of Iran*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (July 30, 2014), <http://www.iranhrdc.org/english/publications/reports/1000000512-apostasy-in-the-islamic-republic-of-iran.html>.

<sup>69</sup> DANISH IMMIGRATION SERVICE, ON CERTAIN CRIMES AND PUNISHMENTS IN IRAN: REPORT FROM FACT-FINDING MISSION TO TEHERAN AND ANKARA, 22 JANUARY – 29 JANUARY 2005 (Apr. 2005), <http://www.refworld.org/pdfid/4476d5534.pdf>.

<sup>70</sup> Law No. 188 of 1959, art. 17, *Al-Waqa'i' Al-'Iraqiya* [Official Gazette], vol. 280, 30 December 1959, available at <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain/opensslpdf.pdf?reldoc=y&docid=5322d5ae4> (in Arabic).

<sup>71</sup> *Id.* art. 18.

<sup>72</sup> For Muslims, see the Palestine Order in Council, 1922, § 52, available at <http://unispal.un.org/UNISPAL.NSF/0/C7AAE196F41AA055052565F50054E656>; for Christians, see *id.* § 54(1); for Jews, see Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713-1953, 7 LAWS OF THE STATE OF ISRAEL [LSI] 139 §§ 1–2; for Druze, see Druze Religious Courts Law, 5723-1962, 17 LSI 27 § 4. See also MENASHE SHAVA, 1 THE PERSONAL LAW IN ISRAEL 225–30 (4th ed. 2001).

<sup>73</sup> H CJ 191/51 Skornik v. Skornik, 8 PISKE DIN [PD] [DECISIONS OF THE SUPREME COURT] 141.

<sup>74</sup> Succession Law, 5725-1965, 19 LSI 58, *as amended*.

conducted in Romania between a Romanian Christian woman and a Jewish Israeli man.<sup>75</sup> Although the recognition of the marriage in this case was restricted to implementation of the appellant's right to spousal succession, Court President Aharon Barak commented that if it was necessary he would extend the recognition "in order to ensure uniformity in the application of Israeli law to the relationship between the couple."<sup>76</sup>

According to Barak, such a general recognition of status is required under private international law rules as applicable to the Israeli reality as a country that is open to immigration and in which there is no civil marriage option for interfaith couples who wish to marry. In formulating choice-of-law rules, Barak opined, the constitutional right to marry and have a family should be respected. Considering the complexity of this issue, Barak, with Justices Eliakim Rubinstein and Asher Grunis consenting, called upon the legislature to provide a legislative framework to regulate the status of marriages of Israelis that cannot marry in Israel.<sup>77</sup>

A partial legislative solution was adopted by the Knesset (Israel's parliament) on March 15, 2010, with the passage of the Law on Spousal Agreements for Persons Without a Religion, 5770-2010.<sup>78</sup> Spouses registered in the registry of spousal agreements are treated as married couples for the purpose of the application of any other law, except immigration law.<sup>79</sup> To be eligible for registration, however, applicants must prove that neither spouse belongs to a recognized religious community. Therefore, if one of the spouses does belong to such a community and the other does not, registration will not be allowed.

Interfaith marriages can be dissolved in Israel by civil family courts in accordance with the Matters of Dissolution of Marriage (Jurisdiction in Special Cases) Law, 5729-1969.<sup>80</sup> Family courts are authorized to adjudicate cases under that Law by the Court for Family Matters Law, 5755-1995.<sup>81</sup>

## Jordan

Article 28 of the 2010 Law on Personal Status forbids the marriage of a Muslim man to a non-Kitabia woman, a Muslim woman to a non-Muslim man, and the marriage of an apostate of Islam even if the other party is not Muslim.<sup>82</sup>

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<sup>75</sup> Fam. Appeal 9607/03 Anonymous v. Anonymous (Jan. 27, 2005), available in the Nevo Legal Database (by subscription; in Hebrew), <http://www.nevo.co.il> (interpreting the Succession Law).

<sup>76</sup> *Id.*, Barak ¶ 23.

<sup>77</sup> *Id.*, Barak ¶¶ 22–23, Rubinstein ¶¶ K & L.

<sup>78</sup> Law on Spousal Agreements for Persons Without a Religion, 5770-2010, SEFER HAHUKIM [SH] [BOOK OF LAWS] (official gazette) 5770 No. 2235 p. 428.

<sup>79</sup> *Id.* § 13c(1).

<sup>80</sup> Matters of Dissolution of Marriage (Jurisdiction in Special Cases) Law, 5729-1969, 23 LSI 274 (5729-1968/68).

<sup>81</sup> Court for Family Matters Law, 5755-1995, SH 5755 No. 1537 p. 393, *as amended*.

<sup>82</sup> Law No. 36 of 2010, art. 28, available on the website of the Supreme Judicial Department, at <http://www.sjd.gov.jo/UploadedFiles/Documents/4de83f92-c040-4b6b-8480-b157b85efad5.pdf> (in Arabic).

## Kuwait

Article 18 of the 1984 law on personal status provides that a marriage contract is void when a Muslim woman marries a non-Muslim man, and a Muslim man marries a woman who is not Kitabia. The article also states that a marriage between a Muslim man or woman and a Muslim individual who renounces her/his Islamic faith is void.<sup>83</sup>

## Lebanon

Article 242 of the Lebanese Law of 1962 on the Organization of the Shari'a Courts<sup>84</sup> requires Sunni courts to apply the rules of personal status of the Hanafi school of Islamic legal thought if no provisions exist in the Ottoman Family Rights Law of 1917 (1917 Law),<sup>85</sup> and if no decisions of the Supreme Islamic Council are applicable. The Shia courts are required to apply the rules of personal status of the Jaafari school and the compatible provisions of the 1917 Law. Article 171 of the 1948 Law on Personal Status of the Druze Community refers to the rules of the Hanafi school in the absence of applicable provisions in that Law.<sup>86</sup>

Under Islamic law, as articulated by the various schools of Islamic legal thought, a Muslim woman cannot marry a non-Muslim man and a Muslim man cannot marry a non-Muslim woman unless she is Kitabia.<sup>87</sup> According to the Grand Ayatollah Sistani, the eminent authority for Shias following the Jaafari School in Lebanon, a Muslim man is not allowed to marry a non-Muslim woman, except that in a “temporary marriage”<sup>88</sup> a Muslim may marry a Christian or a Jewish woman.<sup>89</sup> The Ayatollah also states that a Muslim woman is not allowed to marry a non-Muslim man.

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<sup>83</sup> Law No. 51 of 1984, art. 18, *al Kuwait al Youm* (official gazette), vol. 1570, 23 July 1984, <http://www.e.gov.kw/Documents/Arabic/Forms/MOJ/قانون الأحوال الشخصية.pdf> (in Arabic).

<sup>84</sup> Law on the Organization of the Shari'a Courts of 1962, art. 242, available on the Mohamah.net Arab legal information website, at [http://www.mohamah.net/answer/?qa=blog&qa\\_blobid=11118095335587627368](http://www.mohamah.net/answer/?qa=blog&qa_blobid=11118095335587627368) (in Arabic). Article 242 of this Law was amended by Law No. 171 of 2011, OFFICIAL GAZETTE No. 41 of 2011, <http://www.pcm.gov.lb/arabic/subpgoldJo.aspx?pageid=3836> (in Arabic).

<sup>85</sup> Ottoman Family Rights Law of 1917, available on the Scharee.com website, at <http://scharee.com/?p=3017> (in Arabic).

<sup>86</sup> Law on Personal Status Law of the Druze Community of 1948, in QAWANĪN LUBNĀN: MAJMU' AT AL-NUṢUṢ AL-TASHRĪ'YAH WA-AL-TANZĪMĪYAH (Dār al-Manshūrāt al-Ḥuqūqīyah, 2001–2003), *bibliographic record at* <http://lccn.loc.gov/2004346409>.

<sup>87</sup> NASIR, *supra* note 8, at 69–70.

<sup>88</sup> A temporary marriage is a marriage contract for a term of whatever length is agreeable to the parties.

<sup>89</sup> Ayatollah Systani's opinion on marriage is available on his website, <http://www.sistani.org/arabic/book/17/964/> (last visited Aug. 18, 2015).



## Libya

Article 12 of Law No. 10 of 1984 on Family Law provides that a marriage contract is considered void when a Muslim woman marries a non-Muslim man, and a Muslim man marries a woman who is not Kitabiah.<sup>90</sup>

## Malaysia

The marriage laws that govern Muslims in Malaysia largely prohibit Muslim-non-Muslim marriages. For example, section 10 of the Islamic Family Law (Federal Territories) Act 1984 states: “(1) [n]o man shall marry a non-Muslim except a Kitabiyah. (2) No woman shall marry a non-Muslim.”<sup>91</sup> *Kitabiyah* essentially refers to a “person of the book.” In practice, the marriage of Muslim men to non-Muslim women is also highly restricted due to the definition of who constitutes a Kitabiyah in the legislation:<sup>92</sup>

“Kitabiyah” means –

- (a) a woman whose ancestors were from the *Bani Ya’qub*; or
- (b) a Christian woman whose ancestors were Christians before the prophethood of the Prophet Muhammad; or
- (c) a Jewess whose ancestors were Jews before the prophethood of the Prophet Isa.<sup>93</sup>

Most state Islamic family laws contain the same or similar wording regarding Muslim-non-Muslim marriages as the federal statute.<sup>94</sup> In addition, Malaysian state laws on apostasy make it

<sup>90</sup> Law No. 10 of 1984 (Apr. 19, 1984) art. 12, <http://aladel.gov.ly/home/?p=1246> (in Arabic).

<sup>91</sup> Islamic Family Law (Federal Territories) Act 1984 (Act 303) § 10, <http://www.agc.gov.my/Akta/Vol.%207/Act%20303.pdf>. This legislation applies to the federal territories of Kuala Lumpur, Labuan, and Putrajaya. *Id.* § 1.

<sup>92</sup> Maznah Mohamad et al., *Private Lives, Public Contention: Muslim-non-Muslim Family Disputes in Malaysia*, in *MUSLIM-NON-MUSLIM MARRIAGE: POLITICAL AND CULTURAL CONTESTATIONS IN SOUTHEAST ASIA*, *supra* note 52, at 59, 73.

<sup>93</sup> Islamic Family Law (Federal Territories) Act 1984, § 2.

<sup>94</sup> The following statutes were located:

- Islamic Family Law (State of Selangor) Enactment 2003 (Enactment No. 2 of 2003) § 10, [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Upd.nsf/f831ccddd195843f48256fc600141e84/be3982513842335848256f3900165bfb?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Upd.nsf/f831ccddd195843f48256fc600141e84/be3982513842335848256f3900165bfb?OpenDocument).
- Administration of Islamic Family Law Enactment 1985 (Enactment No. 12 of 1985) § 9 (Negeri Terengganu), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Ori\\_lib.nsf/f831ccddd195843f48256fc600141e84/6434296aebc61a4b4825766a001190b2?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/6434296aebc61a4b4825766a001190b2?OpenDocument).
- Islamic Family Law (Perak) Enactment 2004 (Enactment No. 6 of 2004) § 10, [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Ori\\_lib.nsf/f831ccddd195843f48256fc600141e84/de8e5852a9940bf8482570450007ce9a?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/de8e5852a9940bf8482570450007ce9a?OpenDocument).
- Islamic Family Law (Negeri Sembilan) Enactment 2003 (Enactment No. 11 of 2003) § 10, [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Ori\\_lib.nsf/f831ccddd195843f48256fc600141e84/3d25b3d64ba899fa4825763400035779?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/3d25b3d64ba899fa4825763400035779?OpenDocument).
- Islamic Family Law (State of Penang) Enactment 2004 (Enactment 3) § 10, [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Upd.nsf/f831ccddd195843f48256fc600141e84/7c1802f45304a5e8482576c0000454eb?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Upd.nsf/f831ccddd195843f48256fc600141e84/7c1802f45304a5e8482576c0000454eb?OpenDocument).

an offense to convert out of the Muslim faith, and such conversion must be authorized or confirmed by a Syariah (Shari'a) Court, so conversion in order to marry a non-Muslim partner is generally not an option.<sup>95</sup>

Muslims in Malaysia also cannot marry under the civil marriage law. Section 3 of Law Reform (Marriage and Divorce) Act 1976 clearly excludes marriages involving a Muslim party, stating that “[t]his Act shall not apply to a Muslim or to any person who is married under Muslim law and no marriage of one of the parties which professes the religion of Islam shall be solemnised or registered under this Act . . . .”<sup>96</sup>

It appears that interfaith marriages, where they do not involve a Muslim party, are permitted under the 1976 Act. Marriages under the Act may be solemnized in the office of a registrar or “in a church or temple or at any place of marriage in accordance with section 24 at any such time as may be permitted by the religion, custom or usage which the parties to the marriage or either of them profess or practice.”<sup>97</sup> Section 24 allows religious officiants to be appointed as assistant registrars and to solemnize marriages “if the parties to the marriage or either of them profess the religion to which the church or temple belong, in accordance with the rites and ceremonies of that religion.”<sup>98</sup> The Malaysian courts have found, for example, that where there is no religious impediment to a marriage there can be a valid contract of betrothal and marriage.<sup>99</sup>

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- Islamic Family Law Ordinance, 2001 (Cap. 43) § 9 (Sarawak), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Ori\\_lib.nsf/f831ccddd195843f48256fc600141e84/299e9c27eed852504825768c0026ab80?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/299e9c27eed852504825768c0026ab80?OpenDocument) (prohibits marriage with non-Muslims).
  - Islamic Family Law Enactment 2004 (Enactment No. 8 of 2004) § 10 (Sabah), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Ori\\_lib.nsf/f831ccddd195843f48256fc600141e84/e1e1fad0f71f3668482576260016059f?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/e1e1fad0f71f3668482576260016059f?OpenDocument).
  - Islamic Family Law (State of Johor) Enactment 2003 (Enactment No. 17 of 2003) § 10, [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Ori\\_lib.nsf/f831ccddd195843f48256fc600141e84/8a3accb491fc77c7482576c10031ed2b?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/8a3accb491fc77c7482576c10031ed2b?OpenDocument).
  - Islamic Family Law (Kedah Darul Aman) Enactment 2008 (Enactment 11) § 10, [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Upd.nsf/f831ccddd195843f48256fc600141e84/b4963688f1d67899482576c100113c0e?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Upd.nsf/f831ccddd195843f48256fc600141e84/b4963688f1d67899482576c100113c0e?OpenDocument).
  - Islamic Family Law Enactment 2005 (Enactment No. 3 of 2005) § 10 (Pahang), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Ori\\_lib.nsf/f831ccddd195843f48256fc600141e84/1314c18ff274a9e7482576af000f6670?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/1314c18ff274a9e7482576af000f6670?OpenDocument).
  - Islamic Family Law Enactment 2006 (Enactment No. 7 of 2006) § 10 (Negeri Perlis), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_enactment\\_Upd.nsf/f831ccddd195843f48256fc600141e84/b177844d1eb6530d482578f5002e3e9e?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Upd.nsf/f831ccddd195843f48256fc600141e84/b177844d1eb6530d482578f5002e3e9e?OpenDocument).

<sup>95</sup> See Mohamad et al., *supra* note 90, at 76–77; KAMALA M.G. PILLAI, FAMILY LAW IN MALAYSIA 422 (2009).

<sup>96</sup> Law Reform (Marriage and Divorce) Act 1976 (Act 164) § 3(3), <http://www.agc.gov.my/Akta/Vol.%204/Act%20164.pdf>.

<sup>97</sup> *Id.* § 22(1)(c).

<sup>98</sup> *Id.* § 24(1).

<sup>99</sup> NURAI SYAH CHUA ABDULLAH, FAMILY LAW FOR NON-MUSLIMS IN MALAYSIA 26 (2006) (referring to *Mary Joseph Arokiasamy v. Sundram* [1938] MLJ 4).



Controversial cases have arisen involving the conversion of one spouse to Islam who then seeks a divorce through the Syariah courts under the relevant Islamic family law rather than in the secular courts under the civil marriage and divorce law.<sup>100</sup> The spouse may also convert the children of the marriage to Islam, creating legal and jurisdictional issues with respect to custody matters.<sup>101</sup>

## Maldives

In the Maldives, family law matters,<sup>102</sup> including marriage, are predominantly regulated by the Family Law Act, 2000.<sup>103</sup> Section 8 of the Family Law Act, which is based on Muslim personal law, stipulates as follows:

- a. No Maldivian woman shall contract a marriage with a non-Muslim man.
- b. Where a Maldivian man wishes to contract marriage with a non Muslim female, that marriage may only be solemnized if that non-Muslim female is permitted by Islamic Shairah to contract a marriage with a Muslim male.<sup>104</sup>

According to Islamic law, including the Shafi'i school of jurisprudence, which is the predominant school in the Maldives, Muslim men are permitted to marry only members of the *Kitabiyya*. The Shafi'i school has a fairly restrictive definition of *Kitabiyya*, namely Christians and Jews who are descendants of Israel.<sup>105</sup> However, it is unclear how restrictive Maldivian courts are in interpreting this term.

## Morocco

Article 39(4) of the 2004 Personal Status Law prohibits the marriage of a Muslim woman to a non-Muslim man and a Muslim man to a non-Muslim woman unless she is a *Kitabia*.<sup>106</sup>

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<sup>100</sup> See generally PILLAI, *supra* note 93, at 405–45 (chapter 16: The Effect of Conversion and Apostasy on Family Law). See, e.g., V. Anbalagan, *No More Negotiations, Amend the Law, Interfaith Council Tells Putrajaya*, THE MALAYSIAN INSIDER (Apr. 15, 2014), <http://www.themalaysianinsider.com/malaysia/article/no-more-negotiations-amend-the-law-to-deal-with-conversion-issues-interfaith>.

<sup>101</sup> See, e.g., Elizabeth Zachariah, *Najib Rapped for Passing the Buck on Interfaith Child Custody Battles to Apex Court*, THE MALAYSIAN INSIDER (June 14, 2014), <http://www.themalaysianinsider.com/malaysia/article/najib-rapped-for-passing-the-buck-on-interfaith-child-custody-battles-to-ap>.

<sup>102</sup> HUSNU AL SUOOD, THE MALDIVIAN LEGAL SYSTEM 87 (2014).

<sup>103</sup> Family Law Act, No 4 of 2000, <http://www.agoffice.gov.mv/pdf/sublawe/Family.pdf> (English translation).

<sup>104</sup> *Id.* § 8.

<sup>105</sup> Zahidul Islam, *Interfaith Marriage in Islam and Present Situation*, 2(1) GLOBAL J. POL. & L. RES. 41 (Mar. 2014), <http://www.eajournals.org/wp-content/uploads/Interfaith-Marriage-in-Islam-and-present-situation.pdf>.

<sup>106</sup> Law No. 1.04.22 of 2004, art. 39(4), <http://adala.justice.gov.ma/production/legislation/ar/Nouveautes/مدونة%20الأسرة.pdf> (in Arabic).

## Oman

Article 35 of Royal Decree No. 32 of 1997 forbids the marriage of a Muslim woman to a non-Muslim man, and the marriage of Muslim man to a woman who is not Kitabia.<sup>107</sup>

## Pakistan

In Pakistan, family law matters, including marriage, are predominantly regulated by uncodified Islamic or Shari'a law, subject to statutory provisions,<sup>108</sup> for members of the Muslim population. According to *Mulla*, a text on Islamic law that is frequently cited by Pakistan's superior judiciary, "[a] Muslim male may contract a valid marriage not only with a Muslim woman, but also with a Kitabia,"<sup>109</sup> meaning a member of the Christian or Jewish religion. Marriage to polytheists and idol or fire worshipers are not considered valid. Moreover, "[a] Muslim woman cannot contract a valid marriage except with a Muslim. She cannot contract a valid marriage even with a Kitabi, that is, a Christian or a Jew."<sup>110</sup> However, it has not been possible to confirm whether a Muslim woman's marriage to a Kitabia is considered void or only "irregular."<sup>111</sup>

Rules also exist for situations where one of the non-Muslim parties converts to Islam. If the husband converts to Islam the marriage will subsist. If the wife converts to Islam she must inform the husband, giving him the opportunity to convert within a period of *iddat*. If he does so the marriage will persist. If he doesn't convert, however, the marriage will stand dissolved once the *iddat* period ends.<sup>112</sup>

A 1988 Pakistan Supreme Court decision noted that there should be a procedure for a court to dissolve a marriage between a non-Muslim and a female Muslim convert. The Supreme Court held that since there is no such procedure, a marriage is automatically dissolved after the period of *iddat* if the husband fails to convert.<sup>113</sup> However, according to the Lahore High Court, in order for a wife who is married to a non-Muslim to enter into a second marriage she must petition the court for dissolution of her first marriage. The court then summons the husband and informs him of the need for conversion; if the husband fails to convert within the *iddat* period, the court may "declare the marriage dissolved."<sup>114</sup>

<sup>107</sup> Law No. 32 of 1997, art. 35, *Al-Jaridah Al-Rasmiyah* [Official Gazette], vol. 601, 4 June 1997, available at [http://www.omanlegal.org/law/Resault.aspx?law\\_file=32-1997.pdf](http://www.omanlegal.org/law/Resault.aspx?law_file=32-1997.pdf) (in Arabic).

<sup>108</sup> West Pakistan Muslim Personal Law (Shariat) Application Act, No. 5 of 1962, § 2, available at [http://www.commonlii.org/pk/legis/pj/consol\\_act/wpmpla1962460/](http://www.commonlii.org/pk/legis/pj/consol_act/wpmpla1962460/).

<sup>109</sup> MUNIR AHMAD KHAN, *MULLA'S PRINCIPLES OF MAHOMMEDAN LAW* 448 (Lahore: Imran Law Book House, 2008).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Naziran alias Khalida Parveen v. State* (1988) 713 PLD (SC).

<sup>113</sup> *Id.*, cited in *Safia Bibi v. Muhammad Arif* (1997) 158 MLD (Lah.).

<sup>114</sup> *Mst. Aisha alias Nasim v. State* (2002) 197 PLD (Lah.) (applying *Safia Bibi v. Muhammad Arif* (1997) 158 MLD (Lah.)).

The Dissolution of Muslim Marriages Act also stipulates that “[t]he renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage.”<sup>115</sup>

## **Qatar**

Article 25 of Law No. 22 of 2006 states that a Muslim woman is forbidden from marrying a non-Muslim man and a Muslim man is forbidden from marrying a woman who is not a Kitabia.<sup>116</sup>

## **Kingdom of Saudi Arabia**

There is no legislation in Saudi Arabia related to family law. Since Islam is the main source of legislation in the Kingdom, family matters are subject to the rules of Islamic law. According to a religious fatwa issued by Dar al ifta’a al Saudia (the Permanent Committee for Scholarly Research and Ifta’, an official Saudi religious authority with the power to issue religious decrees), it is permissible for a Muslim man to marry a non-Muslim woman.<sup>117</sup> However, Fatwa No. 9542, issued by the same committee, states that Islamic law forbids Muslim men from marrying women who are not Christian or Jewish.<sup>118</sup>

According to Fatwa No. 13504 issued by the Permanent Committee for Scholarly Research and Ifta’, marriage between a Muslim woman and a non-Muslim man is prohibited.<sup>119</sup>

## **Somalia**

It appears that Somalia permits interfaith marriage only in limited form. The law controlling matters of personal status in Somalia is the 1975 Family Law.<sup>120</sup> It provides that in the event of

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<sup>115</sup> Dissolution of Muslim Marriages Act, 1939, § 4 available at <http://www.refworld.org/docid/4c3f1c632.html>. Section 4 is subject to two provisos.

<sup>116</sup> Law No. 22 of 2006, art. 25, *Al-Jaridah Al-Rasmiyah* [Official Gazette], vol. 8, 28 August 2006, available at <http://www.almeezan.qa/LawPage.aspx?id=2558&language=ar> (in Arabic).

<sup>117</sup> *Fatwas of the Permanent Committee, Group 1, Volume 19: Marriage (2), The Second Question of Fatwa No. 18488*, PORTAL OF THE GENERAL PRESIDENCY OF SCHOLARLY RESEARCH AND IFTA’, <http://www.alifta.net/Fatawa/FatawaChapters.aspx?language=en&View=Page&PageID=7128&PageNo=1&BookID=7> (last visited Aug. 19, 2015).

<sup>118</sup> *Fatwas of the Permanent Committee, Group 1, Volume 18: Marriage (1), Fatwa No. 9542*, PORTAL OF THE GENERAL PRESIDENCY OF SCHOLARLY RESEARCH AND IFTA’, <http://www.alifta.net/Fatawa/FatawaDetails.aspx?language=en&View=Page&PageID=6984&PageNo=1&BookID=7#P312> (last visited Aug. 19, 2015).

<sup>119</sup> *Fatwas of the Permanent Committee, Group 1, Volume 18: Marriage (1), Fatwa No. 13504*, PORTAL OF THE GENERAL PRESIDENCY OF SCHOLARLY RESEARCH AND IFTA’, <http://www.alifta.net/Fatawa/FatawaChapters.aspx?language=en&View=Page&PageID=6951&PageNo=1&BookID=7> (last visited Aug. 19, 2015).

<sup>120</sup> Family Law No. 23 of 1975, art. 1, OFFICIAL GAZETTE OF THE DEMOCRATIC REPUBLIC OF SOMALIA (Mar. 31, 1975); see also ISLAMIC FAMILY LAW IN A CHANGING WORLD, A GLOBAL RESOURCE BOOK 79–82 (Abdullahi A. An-Na’im ed., 2002); Tahir Mahamood, *The Somali Experiment with Family Law Reform*, II(1) ISLAMIC L.Q. 250, 260 (Mar. 1982). It is uncertain if the same Law currently controls family matters in Somaliland, a region in Somalia that declared its independence in 1993 following the collapse of General Mohamed Siyad Barre’s government in 1991. Mohammed Farah Hersi, *Research Guide to the Somaliland Legal System*, GLOBALEX (Feb. 2009), <http://www.nyulawglobal.org/globalex/Somaliland.htm>. The region has yet to be recognized by the

“absence of a specific provision” in the Law applicable to a particular personal status issue, including marriage and divorce, “the leading doctrines of the Shafei school of Islamic legal thought, the general principles of Islamic law (Shariat) and social justice” are applicable.<sup>121</sup> Under all Islamic schools of legal thought, Muslim women are barred from marrying anyone outside of their faith. According to Imam Shafi’I,

there is a Qur’anic verse stating “do not marry infidels until they believe,” which aims to prohibit the marriage of Muslim women with Pagan men. The same verse also prohibits the marriage between Muslim women and infidels [men] who belong to the people of the book [Christians and Jews] because there is no loyalty [*Welayah*] between Muslims and Infidels.<sup>122</sup>

It appears that this form of marriage is void in Somalia.<sup>123</sup> The only permissible form of interfaith marriage in the country seems to be one in which a Muslim man marries a Christian or Jewish woman.<sup>124</sup>

The same rules seem to govern non-Muslim married couples if one of them converts to Islam. For instance, according to the Shafei school, if the non-Muslim wife of a non-Muslim man converted to Islam and her husband did not, the husband would be required to convert to Islam as a condition of ensuring the continued validity of the marriage.<sup>125</sup> Refusal to do so would result in the termination of the marriage.<sup>126</sup> However, if the husband converts to Islam, the marriage remains valid so long as the wife is Christian or Jewish.<sup>127</sup>

It is unclear to what extent Somali courts apply principles of social justice and whether they apply them even in instances in which doing so would contradict Islamic law doctrines.

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international community as an independent country. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACT BOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html> (last updated Aug. 6, 2015). The 1975 Family Law was apparently repealed by Somaliland authorities in 1991. HASSAN ADAN ABDI (SUUDI), SITUATION ANALYSES REPORT – LEGAL TECHNICAL CONSULTANCY: FAMILY CODE 5 (Republic of Somaliland, Ministry of Family Affairs and Social Development, Apr. 2011), available at [http://www.somalilandlaw.com/Family\\_Code\\_Report\\_2010.pdf](http://www.somalilandlaw.com/Family_Code_Report_2010.pdf). However, it is unclear whether the authorities in Somaliland have the legal capacity to repeal Somali laws and issue new ones.

<sup>121</sup> Family Law No. 23 of 1975, art. 1.

<sup>122</sup> Fatwa No. 66 of the Islamic Council for Issuing Religious Decrees (Jerusalem) (Apr. 29, 2015), <http://www.fatawah.com/Fatawah/66.aspx> (in Arabic; translation provided by George Sadek, Senior Legal Analyst, Law Library of Congress).

<sup>123</sup> NASIR, *supra* note 8, at 85.

<sup>124</sup> *Id.*

<sup>125</sup> *Fiqh, The Marriage of a Non-Muslim Couple: Part 3, If One of a Non-Muslim Couple Converts to Islam*, MINISTRY OF ISLAMIC AFFAIRS, ENDOWMENT, DAWAH AND GUIDANCE, KINGDOM OF SAUDI ARABIA, <http://feqh.al-islam.com/Page.aspx?pageid=271&BookID=546&PID=1722&SubjectID=11444> (last visited Aug. 18, 2015) (in Arabic; translation provided by George Sadek).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

## Sudan

Article 19(e) of the Personal Status Law of 1991 provides that marriage of a Muslim man to a woman who does not believe in a heavenly religion (meaning Kitabia) is forbidden.<sup>128</sup> In addition, article 5(1) refers to the Shari'a law of the Hanafi school, which prohibits marriage between a Muslim woman and a non-Muslim man.<sup>129</sup>

## Syria

Article 48(2) of the Personal Status Law<sup>130</sup> stipulates that the marriage of a Muslim woman with a non-Muslim man is void. Article 305 refers to the Hanafi school of Islamic legal thought, which prohibits Muslim men from marrying non-Muslim women who are not Kitabia.

## Tunisia

While the Personal Status Law in Tunisia does not expressly prohibit interfaith marriages,<sup>131</sup> the government, by a Decree of the Minister of Justice dated November 5, 1973, prohibits civil status officers and notaries in charge of registering marriage contracts from recording the marriage of a Muslim woman to a non-Muslim man.<sup>132</sup>

## United Arab Emirates

Article 47 of Law No. 28 of 2005 forbids the marriage of a Muslim woman to a non-Muslim man, and the marriage of a Muslim man to a woman who is not Kitabia.<sup>133</sup>

## West Bank and Gaza

Article 33 of the Jordanian Law of Personal Status of 1976, which is still applicable in the West Bank, declares as void: (1) the marriage of a Muslim woman with a non-Muslim man, and (2) the marriage of a Muslim man with a non-Kitabia woman.<sup>134</sup>

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<sup>128</sup> Law of Personal Status of 1991, art. 19(e), available on the Sudan Laws Online website, at [http://lawsofsudan.net/index.php/component/docman/cat\\_view/2---?start=5](http://lawsofsudan.net/index.php/component/docman/cat_view/2---?start=5) (in Arabic).

<sup>129</sup> NASIR, *supra* note 8, at 69–70.

<sup>130</sup> Law issued by Legislative Decree No. 59 of 1953, art. 48(2), available on the website of the Syrian Bar Association, at <http://www.syrianbar.org/index.php?news=167> (in Arabic).

<sup>131</sup> Personal Status Law (issued Aug. 13, 1956), available on the Portal of Justice of Tunisia, at [http://www.e-justice.tn/fileadmin/fichiers\\_site\\_arabe/codes\\_juridiques/code\\_statut\\_personel\\_ar\\_01\\_12\\_2009.pdf](http://www.e-justice.tn/fileadmin/fichiers_site_arabe/codes_juridiques/code_statut_personel_ar_01_12_2009.pdf) (in Arabic).

<sup>132</sup> See *Can a Tunisian Woman Marry a Foreigner Who Is Non-Muslim?*, SUPPORT FOR WOMEN'S AND CHILDREN'S RIGHTS THROUGH INFORMATION TECHNOLOGY IN TUNISIA, ICTDAR, <http://wrcati.cawtar.org/index.php?a=d&faq=198> (last visited Aug. 18, 2015).

<sup>133</sup> Law No. 28 of 2005 on Personal Status art. 47, *Al-Jaridah Al-Rasmiyah* [Official Gazette], vol. 439, 30 November 2005, available at <http://www.gcc-legal.org/BrowseLawOption.aspx?country=2&LawID=3128> (in Arabic).

<sup>134</sup> Jordanian Law of Personal Status of 1976, art. 33, available on the website of the Palestinian Authority Ministry of Women's Affairs, at [http://www.mowa.pna.ps/Local\\_laws/LL2.pdf](http://www.mowa.pna.ps/Local_laws/LL2.pdf) (in Arabic).

Article 37 of the Egyptian Family Law of 1954, which applies in Gaza, states that a marriage between a Muslim woman and a non-Muslim man is void.<sup>135</sup>

## Yemen

Yemeni Law on Personal Status forbids a Muslim woman from marrying a non-Muslim man<sup>136</sup> and a Muslim man from marrying a non-Muslim woman unless she is Kitabia.<sup>137</sup>

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<sup>135</sup> Egyptian Family Law of 1954, art. 37, available on the website of the Palestinian Legislative Council, at [http://www.plc.gov.ps/menu\\_plc/arab/files/الوقائع%20الفلسطينية%20قانون%20حقوق%20العائلة.htm](http://www.plc.gov.ps/menu_plc/arab/files/الوقائع%20الفلسطينية%20قانون%20حقوق%20العائلة.htm) (in Arabic).

<sup>136</sup> Law No. 20 of 1992 on Personal Status art. 26, available on the website of the Yemeni National Information Center, at [http://www.yemen-nic.info/db/laws\\_ye/detail.php?ID=11351](http://www.yemen-nic.info/db/laws_ye/detail.php?ID=11351).

<sup>137</sup> *Id.* art. 29.