

## **LAWS: Marriage Requisites—Capacity<sup>1</sup>**

### **18 years for females; exceptions not permitted**

Bangladesh

-Minimum age for marriage is 21 for males and 18 for females, with no exceptions

Kyrgyz Republic

-Minimum marriageable age is 18 for males and females

## **LAWS: Marriage Requisites—Capacity<sup>2</sup>**

### **17-19 for females; exceptions are possible**

Turkey

Marriageable age has been raised from 15 to 18 for females

-Can be lowered to 16 with court permission

Uzbekistan

-Minimum marriageable age is 17 for females and 18 for males

-In special circumstances the age may be reduced one year

Tajikistan

-Minimum marriageable age for both genders is 17

-May be reduced up to one year for both genders in exceptional circumstances

Jordan

-Minimum marriageable age is 18 for males and females

Morocco

-Minimum age for marriage is 18 for both genders, raised from 15 for females

-A judge may authorize a marriage below this age in exceptional circumstances

Algeria

-Minimum age for valid marriage is 19 for both genders

-A judge can grant an exception on grounds of benefit or necessity

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<sup>1</sup> International Solidarity Network, *Knowing Our Rights: Women, family, laws and customs in the Muslim World* (London: Women Living Under Muslim Laws, 2006), 70.

<sup>2</sup> International Solidarity Network, *Knowing Our Rights: Women, family, laws and customs in the Muslim World* (London: Women Living Under Muslim Laws, 2006), 70.

Tunisia

- minimum marriageable age 17 for females and 20 for males
- For exceptions both males and females must have permission of guardians or obtain permission from the court

**21 years for females and males; exceptions are possible**

Fiji

- People under the age of 21 need parental consent in order to marry
- In some cases, when the parents refuse, a female over 16 and a male over 18 can seek permission from the Magistrate

Gambia

- People under the age of 21 need parental consent in order to marry

Indonesia

- People under the age of 21 need parental consent in order to marry
- Minimum age of marriage is 16 for females and 19 for males

Nigeria

- Under English law, people must be 21 in order to marry, or 18 with parental consent

**16 years for females; exceptions are possible**

Senegal

- Minimum marriageable age is 16 for females and 20 for males
- Judge may authorize marriage below this age for 'grave reasons'
- Enquiry and parental consent also required
- Parent can have under-age marriage annulled as long as they do not tacitly approve the marriage or parents fail to act after one year of marriage

Pakistan

- minimum marriageable age is 16 for females and 18 for males
- Muslim female has right to choice in marriage
- Marriage under 16 is offence, but marriage is valid if female has reached puberty

Egypt

- Minimum age of marriage is 16 for females and 18 for males
- A wali is required for a marriage where spouses are younger than minimum age

Malaysia

- Minimum marriageable age is 16 for females and 18 for males
- Shariah judge can give permission for marriage of minors

Nigeria

-16 is minimum marriageable age

### **LAWS: Women's Capacity for Marriage<sup>3</sup>**

#### **No wali Required**

-Non-Muslim laws exist in Cameroon, Fiji, Gambia, Nigeria, Turkey, Uzbekistan, Kyrgyz Republic,

Kyrgyz Republic

-it is a crime to obstruct a marriage

Tunisia

-both husband and wife have right to contract marriage themselves

Morocco

-A woman of legal majority may conclude a marriage herself

### **PRACTICES: Marriage Requisites--Capacity<sup>4</sup>**

#### **Wali has limited powers**

Northern Nigeria

-Community can pressure wali

-Wali can be other male relatives

### **LAWS: Women's Capacity for Marriage<sup>5</sup>**

#### **Walis Required; mechanisms exist for alternatives**

Egypt

-Walis required, but marriage can be authorized by the court if wali refuses. Wali cannot prevent a marriage.

Iran

-If bride is a virgin, regardless of age, she needs the consent of father or grandfather. For subsequent marriages, no wali required. Court may authorize marriage against wali's wishes.

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<sup>3</sup> International Solidarity Network, 72.

<sup>4</sup> International Solidarity Network, 75.

<sup>5</sup> International Solidarity Network, 72.

### Malaysia

- It is an offence to prevent a marriage of a 16 year old woman or 18 year old man from marrying
- Wali is required for valid marriage. However, court's consent can take place of wali's consent.

### Philippines

- Consent of marriage given through the wali, but the contracting parties must also give consent.
- Technically, Hanafi women do not require wali

### Sri Lanka

- Muslims governed by law of their sect
- A woman whose wali is withholding consent can request Quazi from court to authorize marriage

### Sudan

- Wali is an agent, not a guardian
  - Virgins require a wali, neither do divorcees or widows
  - Wali does not have to be relative
  - Women can choose who their wali is if their official wali does not approve of the marriage
- Walis have limited powers

### **Wali is required; mechanisms for alternatives are unclear**

### Algeria

- Woman must contract marriage in presence of her father, close relative, or other person of her choice
- Judge may authorize marriage against wali's wishes, but woman must prove marriage is beneficial

### Nigeria (marriages under Muslim laws)

- A wali is required
- Unspecified when a woman no longer needs a wali
- No alternative offered for when wali refuses permission
- Case law indicates that wali is closer to agent than guardian

### **LAWS: Marriage Requisites—Witnesses<sup>6</sup>**

### **Witnessing of the bride's consent is only implied**

### Tunisia

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<sup>6</sup> International Solidarity Network, 112.

- Two trustworthy witnesses essential for validity of spouses and mahr
- Implies that consent should be witnessed
- Gender of witnesses unspecified

#### Turkey

- Marriage needs to be conducted before an official and two witnesses
- Sex of witnesses unspecified
- Marriage needs witnesses in order to be valid

#### Cameroon

- Sex of witnesses unspecified
- Marriage without witnesses void
- Names of witnesses need to be recorded on marriage document

#### Bangladesh

- Sex of witnesses unspecified
- Only implied that signing marriage contract implies bride's consent
- Witnesses signature needs to be on marriage contract

#### Indonesia

- Does not specify gender of witnesses or their function

#### Algeria

- Marriage must be contracted in presence of wali and two witnesses
- Sex of witnesses unspecified
- Marriage without witnesses before consummation is void

#### Pakistan

- Marriage contract requires signature of two witnesses
- Only implied that the signature requires the bride's consent
- Women cannot equally witness signing of financial documents as men, but it is unclear if this has affected the validity of a marriage

### **LAWS: Marriage Requisites—Witnesses<sup>7</sup>**

#### **Witnesses attest to bride's consent**

##### Senegal:

- Two witnesses of either sex are required for both sexes at the marriage, and must attest to the acceptance of the spouses

##### Philippines:

- Ijab, qabul and stipulation of mahr must be witnessed by two people

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<sup>7</sup> International Solidarity Network, 112.

Morocco

-Two public notaries must hear and attest in writing the offer and acceptance of the parties.

Sudan

- Witnesses must be trustworthy
- Witnesses must attest in writing the wife's consent
- Witnesses may be two men or one man and two women

Yemen

-Two male Muslims or one man and two women may act as witnesses

**Indonesia**

Presence of walis for both parties is required for marriage

**LAWS: Marriage contracts—inherent rights and responsibilities** (pg 161)

**Rights and Responsibilities of spouses are equal**

Turkey

- Family is based on equality between spouses
- Spouses have joint decision-making powers regarding family
- Contribute towards family expenditures towards labor
- Jointly decide on residence
- Spouses must cohabit (repealing provision that wife lives where husband lives)
- Husband no longer sole representative of the union, or have sole control over savings
- wife can keep name
- neither spouse requires other's permission for profession choice
- Wife can leave home at will

Fiji

- equal rights of consortium over each other
- husband cannot restrict wife's mobility
- provisions of restitutions for conjugal rights are gender neutral

Central Asian Republics

- Soviet family code has not changed, and stipulates that spouses have mutual obligations of marital maintenance
- family relations should be based on mutual affection, trust, respect, cooperation, support, and responsibility

Indonesia

-rights and responsibilities of wife equal to that of husband

- husband is head of family, wife is mother of household
- husband protects wife and provides for her
- wife takes care of household

#### Algeria

##### Mutual rights and responsibilities of spouses:

- safeguarding conjugal union and duties
- harmonious cohabitation and mutual respect (new)
- joint contribution to safeguarding family interests
- protection of children and healthy education
- mutual consultation in family affairs and birth spacing (new)
- respect for each other's relatives (now gender-neutral specification)
- Other provisions about wife's obedience to the husband have been repealed

#### Morocco

##### Mutual rights and responsibilities of spouses:

- cohabitation
- mutual fidelity
- respect and affection
- preservation of interests of the family
- mutual inheritance
- joint responsibility with managing house and children, and joint consultation about these issues
- consultation with family planning
- Good relations with relatives
- Very much amended in 2004 from previous provisions

#### Tunisia

- spouses should treat each other with kindness
- fulfill conjugal duties in accordance with custom and usage
- Cooperation in household affairs and upbringing of children
- husband remains head of family
- husband has no right over wife's money

### **LAWS: Polygyny<sup>8</sup>**

#### **Polygyny is banned**

##### Tunisia

- A man in a polygynous marriage is subject to a fine or a year of imprisonment
- A wife who knowingly enters into such a marriage is also subject to same punishments
- legal paternity of children is recognized

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<sup>8</sup> International Solidarity Network, 205.

-woman can claim her mahr

Fiji, India, Gambia, Nigeria, Turkey, Uzbekistan, Kyrgyz Republic, Tajikistan

-Laws influenced by British colonial laws, Soviet law, Napoleonic Code

-Subsequent wives have no rights and subsequent marriages cannot be registered

-In Turkey, extramarital affairs are illegal

Lebanon

-Polygyny is prohibited under one law for Druze, but another piece of legislation that would have outlawed polygyny never passes

Paternity of children born from

### **LAWS: Maintenance<sup>9</sup>**

**Maintenance is not linked to 'obedience'**

Fiji

-Spouses are required to maintain each other to a reasonable extent if the other party is unable to do so

-valid reasons to not be able to maintain oneself: care of children, mental or physical incapacity that precludes gainful employment

-A court may make an order for maintenance, taking into account factors such as:

- health and age of party

- income, and capacity for employment

- responsibilities of dependents

- living standards

- whether maintenance would increase the chances that a party could become economically independent

- the party's contribution to other party's income

- duration of marriage and loss of potential income

- financial circumstances relating to cohabitation

- impact on property order by court

-Father must contribute maintenance of mother during childbirth

Turkey

-Either spouse can ask judge to specify amount of contribution

-Judge can take into account housework, childcare, and other unpaid labor

Uzbekistan

-Mutual obligation of spousal maintenance

Gambia

-If a husband is able to provide maintenance to his wife and abandons or neglects her, he should pay her a monthly sum

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<sup>9</sup> International Solidarity Network, 222.

-Either party to marriage can petition the court if one party has neglected to provide proper maintenance for the party or a child

#### Tunisia

- husband is obliged to provide maintenance for his wife after consummation, unless he is destitute
- If wife was aware of his condition at time of marriage, she is not allowed to divorce him
- If husband is away from wife and leaves no maintenance, if he returns after one month, the judge can divorce them

#### Senegal

- Both spouses contribute to maintenance of family, with the husband bearing primary responsibility
- non- or insufficient maintenance is grounds for divorce

#### Bangladesh

- If husband fails to maintain wife (wives) adequately or equitably, the wife/wives can apply to the court or local council for a maintenance certificate which certifies the amount due
- does not require 'obedience', but if the couple is separated the wife needs to show she left the home with 'reasonable cause'
- can obtain order for past and future maintenance

#### Pakistan

- Court can pass interim order for maintenance
- if husband does not pay, wife's suit will be decreed
- if maintenance is still not paid, it is recoverable as arrears for land revenue
- maintenance includes that which is necessary for mental well-being
- husband can respond to wife's suit with claim for restitution of conjugal rights

#### Morocco

- spousal rights and responsibilities are mutual
- rights and responsibilities come from shari'a law
- if responsibilities are not met, court can order spouses to comply or apply procedure for dissolution
- a wife can petition for divorce on grounds of non-maintenance
- court can refuse to grant divorce if the husband has the means to provide maintenance and the court will set the means for payment
- wife loses right to maintenance if she refuses to return home
- mothers are due additional maintenance for breastfeeding

#### Algeria

- husband is required to provide maintenance, consisting of food, clothing, medical care, accommodation or rent and all considered necessary
- amount of maintenance depends on circumstances of spouses

-wife can demand divorce for failing to pay maintenance

### **LAWS: Status of Children<sup>10</sup>**

**A child's status is not dependent upon marriage; parentage may be established by wide means before the courts or the father's acknowledgment**

Turkey

- discarded term 'illegitimate'
- discusses establishment of descent
- maternal descent is established by birth
- paternal descent is established by marriage with the mother, acknowledgment, or a court ruling
- an unmarried mother can claim maintenance for her child
- children whose descent is established have same inheritance rights as those from a valid marriage

Fiji

Parentage can be established through:

- marriage,
  - registration,
  - court findings
  - paternal acknowledgment
- Orders can include medical procedures

Cameroon

- paternity of children born outside of wedlock can be established after birth by
  - parent's declaration in mayor's office
  - court decision
- acknowledgment of paternity does not need wife's consent
- declaration needs to be corroborated by two witnesses

### **LAWS: Child Marriage<sup>11</sup>**

**Marriages involving spouses younger than 15 are not recognized**

Uzbekistan and Kyrgyz Republic

- Minimum marriageable age of females is 18
- Marriages may be authorized at 17 with parental permission

Gambia

- Minimum age of marriage is 21 for females and males
- Marriage possible at 18 with parental permission
- Marriage is void otherwise

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<sup>10</sup> International Solidarity Network, 237.

<sup>11</sup> International Solidarity Network, 125.

### Nigeria

- Minimum age of marriage is 18
- Only a few states have introduced legislation that makes this law effective

### Fiji

- Minimum marriageable age is 21 for males and females
- Marriage possible at 16 with parental consent

### Indonesia

- Minimum age for marriage 16
- Those under 21 require parental permission

### Turkey

- Marriageable age for females is 18 (recently increased from 15)
- Courts may lower it to 16
- Minors and adults can get marriage annulled on the grounds of coercion

### **Courts may grant permission for marriages involving spouses younger than 15 but not younger than 12**

### Senegal

- Minimum marriageable age 16 for females
- Judge can allow marriage for those younger than 16
- Minimum age for consummating marriage is 13

### Bangladesh

- Minimum marriageable age 18 for females
- Anyone involved in a child marriage (except for child) is can be punished
- Men who have intercourse with a wife if she is younger than 13 is considered rape
- Marriages below age 18 can be valid and recognized

### Cameroon

- Minimum marriageable age is 15 for females
- Marriages involving girls younger than 15 are void; the only possible circumstances where this could occur is if the president gave his/her consent
- Being in a marriage that violates these parameters can result in imprisonment

### Nigeria

- minimum marriageable age is 12
- Does not specify ramifications if wife is younger than this age

### Philippines

- minimum marriageable age is puberty; female presumed to reach puberty by 15
- Wali needs to consent if wife is younger than 15

**Courts may grant permission for marriages involving spouses younger than marriageable age, but family laws are either silent regarding an absolute minimum age or specify a low absolute minimum age**

Algeria

-minimum marriageable age is 19 for males and females

**LAWS: Marriage Contracts—Inherent Rights and Responsibilities<sup>12</sup>**

**'Obedience' is not codified; the law does not state the husband is the head of the household**

Bangladesh and Pakistan

- Husband has responsibility to adequately/equitably maintain wife/wives
- mutual inheritance
- wife has right to control own property and follow own religion
- husband cannot restrict wife's mobility or profession
- in Pakistan, husbands have option to file for conjugal rights if wife files for maintenance or dissolution

Pakistan

- some laws seem to give men superior status in family
- a woman who has joined government service before marrying retains domicile after marriage, but a woman that joins government service after marrying loses domicile and acquires that of her husband, which affects women's access to jobs
- woman must take husband's name

India

- Mutual inheritance
- Wife has right to control her own property and to follow her own religion

Sri Lanka

- rights and obligations are determined by the sect to which the parties belong
- husband's right of chastisement does not justify assault
- husband's right to maintain wife
- non-payment of prompt mahr, domestic violence, or failure to provide separate accommodations for different wives can allow the wife to refuse sexual access or not live with the husband

**Obedience is not codified, but the husband is head of household or has other powers of control over the wife**

Philippines

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<sup>12</sup> International Solidarity Network, 161.

- Spouse have right to cohabit, have mutual respect and fidelity, to render mutual respect and support, to inherit from one another, and to initiate divorce
- Wife has right to maintenance
- Wife must manage affairs of household
- Husband must reimburse wife for household purchases
- husband has right to decide marital residence unless mahr hasn't been paid or dwelling does not coincide with wife's social status
- wife controls property she brings to the marriage
- cannot acquire property without husband's permission
- wife needs husband's consent to take on a job; not applicable to other communities

#### Senegal

- spouses are obliged to cohabit, be mutually faithful, provide and support care, share a communal life, show respect and affection, offer moral and material assistance
- husband is head of family, has primary authority over children
- his decision overrides his wife's if they disagree, as long as it's decided in interests of family
- husband has right to choose marital home—wife has to live there unless it will be dangerous
- husband has primary capacity for expense, and both spouses contribute what they can to the marriage
- each spouse has power to enter into contracts
- wife may follow any profession,
- each spouse may open bank accounts, are responsible for each other's debts

#### Cameroon

- husband is the head of the family
- wife obliged to live with him, husband obliged to accept her
- refusal to cohabit is grounds for divorce
- spouses have duty for mutual assistance
- wife allowed to live apart from her husband if he poses a danger
- husband has full powers of administration over family property
- husband has right to object to wife's professional or commercial activity

#### **LAWS: Polygyny**<sup>13</sup>

**Polygyny is conditional upon formal permission, and this permission is granted on specified grounds; failure to follow procedure is penalized (205)**

#### Indonesia

- polygyny permitted through an application to the court
- the court may grant permission if:
  - wife is unable to fulfill sexual obligations

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<sup>13</sup> International Solidarity Network, 205.

- suffers from physical defects or an incurable disease
- is infertile
- Requirements:
  - approval of wife
  - husband's assurance that he can provide for wives and children
  - guarantee that husband will act justly in regard to wives and children
- Requirements do not apply if wife is absent or cannot be solicited for opinion
- A marriage can be prevented if it violates procedures
- no provisions for divorce if wife does not agree with court's decision

#### Malaysia

- Polygamous marriage requires written permission of the court
- Court may order the marriage to be valid if the marriage is otherwise valid but did not originally have permission of the court
- Requirements:
  - proposed second marriage is just and necessary (the wife is insane, avoids conjugal relations, is incapable of conjugal relations, etc)
  - husband can support new wife and dependents
  - husband treats wives equally
  - new marriage would not cause harm to existing wife
  - husband provide details of financial obligation
  - Court hears both wife and husband
- Failure to adhere to fines can result in six months of imprisonment and a fine

#### Morocco

- Marriage to more than one woman constitutes a temporary impediment, making a marriage null and void.
- IF the marriage is consummated, the wife is due her mahr
- Polygamy is forbidden when there might be inequity between two wives
- court will only if exceptional and objective justification is proven
- Husband must be able to prove that he can support the wives
- court can provide extra benefits to first wife and children
- if wife refuses she has right to divorce husband
- husband is subject to penalties if he does not provide accurate details

#### Bangladesh and Pakistan

- husband needs to obtain permission of local authorities
- polygamous marriage must be just and necessary (wife is insane, cannot have children, cannot have sexual relations, refusal to live with husband)
- a woman can seek dissolution if husband does not treat her equitably or fails to follow procedure
- husband is liable to fine and imprisonment

#### Singapore

- Husband is required to apply to a Syariah Court

- The court conducts a hearing into the husband's financial position, potential for treating wives equitably, if there are lawful benefits to the union
- solicits consent from current and new wives
- proceedings can be appealed

#### Philippines

- A Muslim male is permitted more than one wife only if he can provide equal treatment
- Required to file written notification, submitted to Sayriah Court and circulated to wives
- court can decide whether to sustain wife's objections
- Husband liable if he violates procedure

#### **LAWS: Maintenance, <sup>14</sup>**

#### **The link between maintenance and 'obedience' is implied but not explicit**

#### Philippines

- wife's right to maintenance specified
- wife's duty to manage affairs of household

#### Sri Lanka

- husband obliged to support wife
- wife cannot claim maintenance for a period while she was living with her husband
- can be denied on grounds of 'disobedience'—refusing to live with husband on unjustifiable grounds
- ill treatment, failure to provide own residence, non-payment of prompt mahr are grounds for refusal to live with husband
- cumbersome mechanisms that wife has to go through to reclaim maintenance

#### **LAWS: Status of Children<sup>15</sup>**

#### **Paternity is presumed if the child is born within marriage; mechanisms exist for establishing paternity**

#### India (all marriages)

- if a person is born during valid marriage or within 280 days after its dissolution, the mother remaining unmarried, shall be proof that the child of the marriage is the legitimate child of the man
- this applies unless it is proven that the spouses had no access to each other during this period

#### India (marriages under the SMA, 1954)

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<sup>14</sup> International Solidarity Network, 224.

<sup>15</sup> International Solidarity Network, 237.

- children of a marriage declared void are legitimate if conceived before court decree
- provisions for alimony and maintenance of children

#### Algeria

- filiation established by valid marriage, acknowledgment of paternity, evidence, apparent or voided marriages, and all marriages after consummation annulled under law

#### Morocco

- illegitimate filiation to the father do not produce effects of legitimate filiation
- This means child cannot take father's name or religion, cannot inherit, no rights and responsibilities between child and father
- paternity established by conjugal bed, acknowledgment, or sexual relations by error
- a child arising out an engagement but where the marriage wasn't finalized, the child is affiliated with the father if: couple's families were aware of engagement, the woman became pregnant during engagement, and couple mutually acknowledges pregnancy
- paternity can also be proved through testimony of two public notaries and all other legal means
- husband can only disavow child if he proves wife has committed adultery

#### **Paternity is presumed if the child is born within marriage but husbands can deny paternity via li'an**

- If a child is born during a valid marriage, and not earlier than 6 months after the marriage, or two years after the dissolution of marriage, the child will be legitimate son of the father, unless father refuses
- the above does not have to apply to non-Muslims
- courts are reluctant to declare child illegitimate, and denial of paternity by husband does not take away status of legitimacy
- li'an proceedings can remove status of legitimacy from child, and also dissolves marriage
- Irregular marriage and cohabitation are also grounds to establish paternity
- extra-marital sex carries heavy penalties, hindering mothers from attempting to establish paternity of a child born out of wedlock

#### Philippines

- children born after 6 months following consummation of marriage or within 2 years after divorce or death of husband are legitimate
- only situation that can counter this establishment of paternity is if spouses had no access to each other during this time
- acknowledgment of father can establish paternity and allow each to inherit from one another, as long as age makes relationship possible and father publicly acknowledges child
- a child subject of li'an proceedings that resulted in mother being divorced can only inherit from mother's family

## Malaysia

-most state Muslim laws establish paternity if child is born 6 months after marriage to man or 4 years after divorce or death of husband, as long as mother remained unmarried

-Other requirements:

- paternity of child not established in anyone else
- sufficient age gap between parent and child
- child accepts acknowledgment when having reached age of discretion
- man and mother of child could have been lawfully married at time of conception
- man is competent to make a contract

Acknowledgment can only be rebutted by:

- disclaimer of child
- child and man are too close in age for man to be able to be father
- proof child is someone else's
- proof that mother could not have been lawful wife when child could have been conceived

Paternity is presumed; fathers can only deny paternity within time limits; children regarded as property of fathers

## Iran

- child born during marriage belongs to husband, as long as the child is born between 6 and 10 months after conception
- only father can issue child's birth certificate, register child in school, consent to child's marriage, or send child to work
- man may only reject paternity within 2 months of child's birth or within 2 months of discovering true date of birth
- extra-marital sex carries heavy penalties, which prevent any claim or acknowledgment of paternity of a child born out of wedlock
- child born out of fornication does not belong to man involved

## **LAWS: Talaq<sup>16</sup>**

### **Talaq takes place through court proceedings**

#### Algeria

- one of grounds for divorce is will of husband
- divorce can be established only through court judgment
- Court judgment must be preceded by several attempts at reconciliation by the judge within three months of the date of initiation of the case
- Court's rulings not subject to appeal

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<sup>16</sup> International Solidarity Network, 262.

## Iran

- husband can divorce wife without ascribing any reasons, as long as he settles her financial rights
- all divorce cases have to go through court
- Registrar can only register divorce if permission is issued from court and after mahr, maintenance, or wages for housework have been paid
- no court can force a man not to divorce wife
- divorce is revocable unless before consummation, after wife has reached menopause, or third divorce between husband and wife

## Morocco

- if reconciliation fails, husband must pay all monies to wife and children, and if he does not withdraw his intention to repudiate
- repudiation prohibited by person who is inebriated, irate, or forced to do so
- vows and pledges cannot result in repudiation, and conditional repudiation has no effect
- multiple expressions of talaq result in only one repudiation
- talaq by husband is revocable but must be certified by two public notaries and confirmed by court, who summons wife to inform her of revocation
- if she refuses to return, she can resort to irreconcilable differences procedure

## **Notification and registration of talaq are required; some standardization of forms and effects has been attempted**

## Bangladesh and Pakistan

- husband must provide written notification of having pronounced talaq, providing a copy to the wife
- talaq is not final until expiry of 90 days from receipt of notification by the Union Council, or if a wife is pregnant, until she delivers
- Talaq can be revoked during this period
- case law has undermined requirement of registration

## Egypt

- a divorcing husband must have written certification of his talaq notarized within 30 days of pronouncement of talaq
- wife deemed aware of talaq if she attends notarization, given notification, or if representative of wife is given copy of certificate of talaq
- Up to three talaqs are revocable
- talaqs are ineffective if they are given by a man who is inebriated, under coercion, or conditional talaq
- failure to follow required procedure can result in imprisonments and fines

## Philippines

- repudiation of wife can be filed with clerk of sharia court in writing
- arbitration council is constituted, which makes report and then the court issues an order

#### Malaysia

- divorce outside court is an offence punishable by fine or imprisonment, and apply to people to register an extra judicial divorce or husbands who fail to register divorce
- husband must apply for divorce in writing, and must state reasons
- if wife refuses, a conciliatory committee is convened, which is given six months to attempt reconciliation
- court can appoint another committee to replace first one if inadequate
- if court satisfied that the marriage is irreparable, it will authorize husband to pronounce talaq.
- this divorce is revocable

#### **LAWS: Talaq Tafwid/ 'Esma and the Delegated Right of Divorce<sup>17</sup>**

#### India

- Muslim Personal law is the rule of decisions where the parties are Muslim
- Talaq tafwid recognized and upheld by the courts
- talaq tafwid recognized and upheld by courts

#### Philippines

- if husband has delegated the right to effect a talaq, she may repudiate the marriage
- This would have the same effect if it were pronounced by husband

#### Iraq

- divorce terminates the bond of marriage when pronounced by husband
- wife may announce divorce if she has been delegated authority to do so or by the Qadi
- only a divorce pronounced through legal means can be effective

#### Morocco

- procedure for talaq tafwid follows procedure as talaq
- court shall rule financial rights of wife and children as in talaq
- husband cannot prevent wife from repudiation if he had originally delegated this right to her
- talaq tafwid is irrevocable

#### **LAWS: Talaq<sup>18</sup>**

#### **Family laws are based on Muslim laws, but talaq is not required**

#### Indonesia

- all divorces must go through court

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<sup>17</sup> International Solidarity Network, 270.

<sup>18</sup> International Solidarity Network, 262.

- husband must provide written statement and reasons for divorce
- if the reasons are valid grounds, parties are called separately for reconciliation with counselors
- if reconciliation fails, divorce is permitted
- three months must lapse between suit and public notification

#### Tunisia

- divorce shall only take place in court
- both husband and wife have equal grounds to divorce

#### Tanzania

- talaq is intention for divorce, but a governmental marriage board must meet with the spouses before divorce can be granted

#### Yemen (South Yemen)

- all divorces required to go through courts
- husband and wife have equal access to grounds for divorce
- violation of provisions punishable by fine or imprisonment

#### **LAWS: Talaq Tafwid/Esma and the Delegated Right of Divorce<sup>19</sup>**

Cameroon, Central Asian Republics, Fiji, Gambia, Indonesia, Nigeria, Senegal, Tunisia, and Turkey do not recognize talaq or talaq tafwid

#### **Recognized in law and provided for in the standard marriage contract**

Bangladesh and Pakistan:

- talaq tafwid procedures are governed by law
- optional clause in marriage contract asks whether or not the husband has delegated the power of talaq to his wife

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<sup>19</sup> International Solidarity Network, 270.