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The Effect of Marriage on Nationality: A Comparative Study Between Nigeria and Iran

Yasir Maiwada Inuwa[1] | Mohamad Setayeshpur[2]

1 Corresponding author, BSc, Law, Faculty of Law, University of Qom, Qom, Iran. | y.inuwa@stu.qom.ac.ir
2 Associate Professor, International Law Department, Faculty of Law, University of Qom, Qom, Islamic Republic of Iran. m.setayeshpur@qom.ac.ir

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ABSTRACT

Marriage, as a social institution with inevitable legal consequences, brings about legal effects within any legal system and has historically constituted a primary source of conflict of laws in Private International Law. This article examines the issues arising from these effects comparatively, aiming to elucidate how familial interactions, specifically marriage, influence questions of nationality, among which dual citizenship is a well-known phenomenon. In Nigeria, marriage is not strictly codified; the domestic legal order officially recognizes three distinct types: customary, Islamic (Shariah), and statutory marriages, each governed by its own legal regime. Internationally, however, the Nigerian government only recognizes only the statutory marriage, by virtue of its formal registration. As a result, marriages contracted under customary or Shariah law are more vulnerable to legal issues on the international stage. These issues have prompted many couples in Nigeria to opt for the so-called "double-decker marriage," a combination of two marriages: a customary or shariah marriage along with a statutory marriage, mainly to reduce international legal complications by securing a state-issued marriage certificate. In Iran, by contrast, the legal landscape is markedly distinct. The State recognizes only one form of marriage: statutory marriage. Iran maintains a stricter stance on nationality issues, ensuring that public order, legislative intervention when needed, and state prerogative are consistently upheld. Everyone in the country, regardless of religion, sect, or custom, must follow this one mode of marriage. Notably, failure to register a "permanent marriage" (nikah da'im) in Iran is a criminal offense punishable by law. A noteworthy commonality between the two jurisdictions is the influence of Shari'ah law, although each follows a distinct school of Islamic jurisprudence (madhhab). In family law, especially marriage, the legal schools of both nations share many similarities.

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Introduction

The sanctity of marriage is a well-established standard globally, and matrimonial relationships are universally recognized and respected as a necessary prerequisite for the establishment of a legally recognized family.[1] Marriage is a social institution governed by socio-cultural and religious norms in every society. Where people of different ethnicities and religions populate a nation, the recognition and application of various legal systems will naturally be required to govern their respective customs, a reality reflected mostly in the forms of their ceremonies, including marriage.[2]

Nowhere is this legal pluralism more evident than in Nigeria, Africa's most populous country, with a population of 239.7 million people.[3] It is also one of the most ethnically diverse countries in the world, with well over 250 ethno-linguistic groups, some of which are larger than many sovereign states in Africa.[4] Roughly half of the population in the country is Muslim, followed by a large percentage of Christians, and a minority population of traditional religious practitioners and atheists.[5] Reflecting the multi-ethnic and multi-religious nature of the country, the Constitution of Nigeria[6] sanctions three systems of marriage, namely statutory marriage, customary marriage, and Islamic marriage, which are acknowledged as distinct and separate from each other.[7]Conversely, in the Islamic Republic of Iran, a state renowned for its implementation of Islamic law based predominantly on the Shi'i (Ja'afari) school of jurisprudence, the demographic and legal landscape presents a different model. With an estimated population of 92.8 million people[8] and numerous ethno-linguistic groups, including Kurdish, Turks, Arabs, and others, the Iranian legal system has established a unitary

1 Halima Doma-Kutigi, 'Certification of Islamic Marriages in Nigeria: Realities, Challenges, and Solutions' (2022) 12 Journal of Islamic and Middle Eastern Law 23.

2 Isaac Oluwole Agbede, *Themes on Conflict of Laws* (Lagos 1989) 67-.

3 'Nigeria Population (2025)' *Worldometer* https://www.worldometers.info/world-population/nigeria-population/ accessed 14 December 2025.

4 'World Directory of Minorities and Indigenous Peoples' (*Minority Rights Group*) <www.minorityrights.org> accessed 20 March 2025.

5 Abdullahi Ahmed An-Na'im (ed), *Islamic Family Law in a Changing World: A Global Resource Book* (London 2002) 299.

6 Constitution of the Federal Republic of Nigeria 1999.

7 Accordingly, the formation, annulment, and dissolution of marriages other than marriages under Islamic law and customary law, including matrimonial causes relating thereto, are in the Federal Exclusive Legislative List.

8 'Iran Population (2025)' *Worldometer* https://www.worldometers.info/world-population/iran-population/ accessed 14 December 2025.

framework. Despite the internal differences in language, culture, and ethnicity, the legislature has instituted a united legal sphere in which national laws are applied uniformly. This is particularly evident in the law governing marriage.

The legal framework governing religious recognition and practice in Iran emphasizes the country's constitutional commitment to Islam (and shariah law), particularly the Twelver Ja'fari school of Shia Islam, as the official state religion. This establishes a clear legal hierarchy in which Shia Islam is prioritized, while also acknowledging other Islamic schools, such as Sunni traditions, and guaranteeing a degree of autonomy in personal status matters for their followers. The recognition of these Sunni schools indicates a policy to accommodate intra-Islamic diversity, permitting their adherents to manage personal status issues like marriage, inheritance, and divorce according to their respective legal traditions (*fiqh*). This aspect reflects a decentralized approach to governance in specific religious matters, allowing local councils to create regulations that align with the predominant school of thought in their regions, subject to the overarching state law.[1]

With respect to religious minorities, the Iranian Constitution explicitly recognizes Zoroastrians, Jews, and Christians as the officially protected non-Islamic faiths (*ahl al-kitab*). These recognized minorities are granted the right to practice their religions and administer their personal affairs according to their own laws, albeit within the confines of the broader Iranian legal and constitutional framework.[2]

Overall, it can be concluded that the Iranian legislature has, to a significant extent, managed the complex interface between state law and religious communities, balancing a strong constitutionally-mandated Islamic identity with a degree of accommodation for certain religious practices and recognized communities.

1. Nature of Marriage in Nigeria

Three systems of marriage fully recognized under Nigerian law - statutory or registry marriage, customary marriage, and Islamic marriage - each operating as a distinct and separate legal regime.[3] The primary laws regulating marriage in Nigeria are the Marriage Act, which governs statutory marriage; the customary law (of the various ethnic groups in Nigeria), which governs customary marriage; and the Shariah law, which governs Islamic marriage.[4]

1.1. Statutory Marriage

This form of marriage is contracted under the Marriage Act, a federal enactment providing for the solemnization of a voluntary union between a man and a woman to the exclusion of all others during the continuance of the marriage.[5] This type of marriage colloquially termed "registry marriage" or "marriage under the Act", is strictly monogamous; thus, parties must be unmarried at the time of the ceremony. Furthermore, a party cannot during the lifetime

1 The Constitution of the Islamic Republic of Iran, art 12.
2 Ibid., art 13.
3 Emmanuel Nnamani, 'Misconceptions and Inadvertences Affecting the Customary Courts System in Nigeria' (2017) 3 NJI Law Journal 1322, 1323.
4 Halima Doma-Kutigi (n 1) 25.
5 Marriage Act (cap M6 LFN 2004).

of the other, lawfully contract another marriage, whether under customary or statutory law, unless the prior union has been dissolved by a court of competent jurisdiction. Section 33(1) of the Marriage Act provides that: "No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person to whom such marriage is had." Additionally, the marriage must not be between parties within prohibited degrees of consanguinity or affinity, a prohibition common to both statutory and Shari'ah law. Christians in Nigeria go through a statutory marriage in the Marriage Registry before proceeding to the church for solemnization. However, this preliminary step is unnecessary if their church is recognized as a licensed place of worship for marriage. Such licenses are obtained from the Ministry of the Interior, authorizing the church to conduct statutory marriages upon fulfillment of certain requirements.

1.2. Islamic Marriage

This marriage is conducted according to the tenets of Islamic law. It is also permissibly polygynous, allowing one man to marry up to four wives, provided the man is capable of meeting the requirements and conditions stipulated under Islamic law. For a valid Islamic marriage, the following conditions must be satisfied: there must be a clear proposal (*ijab*) and acceptance (*qabul*), two competent witnesses (*shuhud*), a dower (*mahr*), and a guardian (*wali*) for the bride, if applicable. In Nigeria, it is a settled principle that Islamic law and customary law marriages are in no way inferior in status to marriages contracted under the Act. Instructive in this regard is the Supreme Court decision in *Jadesimi v. Okotie Eboh*, which held that "the status of being married under Islamic law or customary law is well recognized in this country and such marriages should not be accorded any status that is inferior to that of marriage conducted under the Marriage Act."[1]

1.3. Customary Marriage

This is essentially a marriage contracted and regulated under the native laws and customs of the various communities in Nigeria. It is the most prevalent form of marriage in Nigeria, and it is recognized under the law as a legitimate matrimonial union absent formal registration. There is no single, uniform system of customary law applicable throughout Nigeria; rather, customary laws differ from one locality to another. However, under the indigenous customary laws of Nigeria, marriage is conceptualized as a union of a man and a woman for the duration of their lives, involving a wider association between two families or sets of families. Thus, customary marriage is conducted as proof to the community the couple's status as husband and wife, to establish the children's parentage; and to uphold customary values.[2] From the foregoing, it is clear that customary law expressly permits and facilitates polygamy, imposing no limit on the number of wives a man may marry. The basic requirements for a valid customary law marriage are: legal capacity,[3] the consent of the parties and their families, payment of the

1 *Jadesimi v Okotie-Eboh* (1996) 2 NWLR (Pt 429) 128, 142.

2 M C Onokah, *Family Law* (Ibadan 2003) 144146-.

3 Child's Rights Act 2003, s 21. The parties to the marriage must be of marriageable age. Although no custom expressly states any age for marriage, the Child's Rights Act provides that 18years is the minimum age for any marriage.

bride price, and the celebration of marriage through a ceremony. Prohibitions on marriage within certain degrees of kinship often exist under customary law, but the specific prohibited relationships differ significantly from those under the two other systems.

1.4. Multi-tiered/Double-decker Marriage

A fourth, hybrid type of marriage practiced in Nigeria is the multi-tiered or "double-decker" marriage, wherein a single couple contracts marriages under different systems of law.[1] This practice is termed "double-decker marriage" by *M.C. Onokah*, who defines it as "involving the celebration by the same couple of a marriage under one system and their subsequent marriage under another system".[2] The author posits that the Nigerian Marriage Act has given validity to this practice by allowing those who are married under customary law to remarry each other under statute. Further statutory accommodation can be inferred from Section 35 of the Marriage Act 1914, which prohibits couples from contracting any further marriage(s) after a statutory marriage, whether with each other under a different law or with a third party. Any such subsequent marriage is declared null and void, with attendant punishments under Sections 47 and 48 of the Act. The Act, however, permits subsequent "customary law" marriage between the same spouses. Historically, the term 'customary law' as used in the 1914 Act was intended to include Islamic law.[3] Many Nigerians opt for statutory marriage mainly for its perceived formal "legality", the assurance of monogamy, the utility of the state-issued certificate, urbanization pressures, and social status.[4] There is also a general impression that couples who engage in several forms of marriage are somehow "more securely married" and thus are entitled to greater legal and social protection.[5]

1.4.1. Registration of Marriage in Nigeria

As Boparai notes, of all forms of legally-recognized marriages in Nigeria, only statutory marriage is formally registered *ab initio*, with an official certificate issued to the parties.[6] This observation merits analysis. No legal principle requires the registration of a customary or Islamic marriage; therefore, evidentiary proof of such a marriage entails greater difficulty than for statutory marriages. Although the matrimonial process and ceremony are public, which serve as *prima facie* evidence, the probative value of such evidence is attenuated by its reliance on witness testimony, which may become unavailable or unreliable over time.[7] Thus, efforts have been made around the country to provide for the registration of customary law marriages. To this end, the local government laws in most states of the federation have authorized local authorities to enact bylaws for the registration of customary law marriages within their respective jurisdictions. For example, the Registration of Marriages, Adoption By-Laws Orders, applicable in Lagos, Ogun, Oyo, Ondo, and Bendel States, require a husband in

1 Muhammad Kamaldeen Imam-Tamim, 'A Doctrinal Review of Literature on Multi-Tiered Marriage in Nigerian Family Law' (Postgraduate Colloquium on Innovation in Postgraduate Research, Goal Centre, USIM, 10 June 2015).
2 Onokah (n 15) 144-146.
3 Native Courts Ordinance 1914, s 2.
4 Onokah (n 15) 147-151.
5 Doma-Kutigi (n 1) 26.
6 Harinder Boparai, 'The Customary and Statutory Law of Marriage' (1982) 46 Rabel Journal of Comparative and International Private Law 530, 548.
7 Ibid., 553

a customary law marriage (which includes Islamic law) to register the marriage in the relevant local government office within one month of its celebration.[1] The by-law also states that any person may, on the payment of the appropriate fees, inspect or make copies of the contents of the marriage register. The records, however, may be extremely unreliable because the registrar can only record the particulars as submitted by the parties. Many of these bylaws do not stipulate any penalty for non-compliance, a notable contrast to the Iranian model discussed *infra*, thereby reinforcing the belief held by many people that registration is not necessary.

This laxity regarding registration is particularly prevalent in the predominantly Muslim northern part of the country. Many Muslims believe that in an Islamic marriage, paperwork is not necessary and registration is not a validating condition. However, as Imam-Tamim points out, neither the Qur´an nor the Sunnah contain explicit provisions for or against registration of marriage.[2] Therefore, it has been argued that the purpose for which Muslims conduct a multi-tiered marriage is to protect against modern challenges and perceived injustices faced by unregistered marriages, and, as such, rendering registration an obligation for the public interest (*maslahah*) and protection of society at large. The emergent trend indicates increasing awareness among Muslim couples of the need for registration, driven largely by the practical exigencies requiring a marriage certificate. Hence, in most urban centers in the North, the officiating cleric (*imam*) or mosque, which conduct the *nikah*, often facilitates registration and provides a corresponding certificate. The salient question that arises is the extent of legal recognition accorded to such certificates, both in Nigeria and abroad, especially when compared to the certificate issued under the Marriage Act. [3]

2. Nature of Marriage in Iran.

In the Islamic Republic of Iran, matrimonial relationships are governed by a unitary statutory system. Under the country's Civil Code, two distinct types of marriages are recognized: permanent marriage (*nikah da'im*) and temporary marriage (*nikah munqati'*).[4]

Permanent marriage corresponds to the globally practiced form of a legally binding conjugal contract based on a relationship that is often presumed to be life-long. This marriage does not have an end date and continues until dissolved by the parties or by law. Its solemnization is contingent upon the compulsory submission of an application by the couple, followed by an official process that includes blood tests and vaccinations. Upon approval, registration of the marriage by a state-authorized notary, and the endorsement of the marriage information in both spouses' civil identification documents (*shenasnameh*) is mandatory. The ceremony is typically officiated in the presence of witnesses, during which the contract is executed and the parties verbally exchange the offer and acceptance. These formal registration requirements are not applicable to temporary marriage.[5]

1 Western Region of Nigeria Legal Notice No 4 of 1957; see also Laws of Eastern Nigeria 1963, cap 79, ss 84, 90; Laws of Northern Nigeria 1963, cap 77, s 38.

2 Imam-Tamim (n 17).

3 See further, Doma-Kutigi (n 1) 29.

4 Ziba Mir-Hosseini, 'Muslim Women's Quest for Equality: Between Islamic Law and Feminism' (2006) 32 Critical Inquiry 629, 629-645.

5 Abolfazl Alishahi and Farzaneh Eskandari, 'Investigating Juristic and Legal Consequences of Not Registering Marriage by Official Registration Authorities' (2018) 23 Fiqh and Family Law 121-143.

Temporary Marriage has historically been referred to as a legal form of marriage between a man and a woman for a short and predefined period, in exchange for a specified remuneration (*mahr*) to the woman. While the practice is proscribed in Sunni traditions of Islam, it remains legitimate under Shi'i jurisprudence and is legally sanctioned in Iran.[1]

In both forms of marriage, any offspring are legitimate and possess inheritance rights from their parents. The obligatory waiting period (*'iddah*) also applies to the woman following the termination of either union.[2] There are, however, differences between the two types of marriage: While inheritance from the spouse is the natural result of a permanent marriage, such rights do not accrue in a temporary marriage.[3] Additionally, permanent marriage requires a formal divorce (*talaq*), whereas a temporary marriage automatically dissolve automatically after the predefined period of marriage has passed. In discussing the legal structure of temporary marriage, Shi'i jurists employ the analogy to a contract of lease in contrast to the conceptualization of permanent marriage as a contract of sale.[4]

In contemporary Twelver Shi'a Islam in Iran, temporary marriage remains a legal and religious union between an unmarried woman and a married or unmarried Muslim man (due to laws that permit polygyny), contracted for a fixed period in return for a a specified dower.[5] The practice is not only permitted but also encouraged in dominant Shi'i discourses. This is because any form of extramarital sexual relationship (*zinā*) is prohibited (*harām*) by Islamic law and prevailing social norms.[6] Temporary marriage is, in this context, promoted as a religiously-permissible (*halāl*) alternative, providing an Islamically-sanctioned avenue to avoid premarital, extramarital, and other "illegitimate" sexual relationships. It is thus considered a sanctified means of fulfilling earthly sexual desires without having to step outside of religious moral precepts.[7]

It is notable that this form of marriage finds no recognition in Nigerian law, where only the permanent Islamic marriage is accorded legal status. Moreover, most of the Islamic countries today do not recognize temporary marriage. And not only do they not legalize it, but they also illegitimize it. Although the reason behind such acts isn't the nature of the marriage, but rather, the school of thought it was derived from.

2.1. Registration of Marriage in Iran

As noted above, permanent marriages, which are the default marriage to be registered, take place only after a compulsory submission of an application by the couple, followed by an official process that includes blood tests and possible vaccinations. If the application is

1 Shahla Haeri, *Law of Desire: Temporary Marriage in Shi'i Iran* (New York 2014).

2 Iranian Civil Code 1928, art 1150. This is the period after a divorce during which women should abstain from marrying another man. *Idda* only applies to women and in Shi'a, this period is three lunar months.

3 Leila Saadat Asadi, 'Critique of Laws on Marriage Registration' (2008) 10 Women's Strategic Studies 103.

4 Ayatollah Ja'far Sobhani, *Doctrines of Shi'i Islam: A Compendium of Imami Beliefs and Practices* (tr and ed Reza Shah-Kazemi, London 2013).

5 Mohammad Jalal Abbasi-Shavazi and others, 'The "Iranian Art Revolution": Infertility, Assisted Reproductive Technology, and Third-Party Donation in the Islamic Republic of Iran' (2008) 4 Journal of Middle East Women's Studies 1.

6 Ladan Rahbari, 'Premarital Dating Relationships in Iran' in Constance L Shehan (ed), *The Wiley Blackwell Encyclopedia of Family Studies* (Chichester 2016).

7 Farzaneh Milani, *Veils and Words: The Emerging Voices of Iranian Women Writers* (Syracuse 1992).

approved, registration of the marriage by a notary and entering the marriage information in the IDs of both spouses will become compulsory.[1]

While an Islamic marriage does not require state registration to be religiously valid, it lacks legal effect absent such formalization. As such, unregistered marriages, though religiously validand not considered illicit sexual conduct (*zinā*) if provable, are deemed unlawful by the state and deprive the parties, particularly women, of legal protections. Non-registration carries legal penalties, including fines and possible imprisonment for the male partner,[2] as well as for any any officiant solemnizing a marriage without state authority. The law mandates that the husband register the marriage (and any subsequent divorce) at an official registry within twenty days of the religious ceremony.

The existence of such strict rules, however, does not mean that unregistered marriages do not take place. Data on unregistered marriages in Iran is scarce, and they are frequently omitted from official government statistics.[3] The practice has connections to other socio-legal challenges, such as early or child marriage (discussed subsequently), which are more prevalent in context where registration is also commonly avoided. Unregistered marriages can have severe social and legal consequences, especially for women, whose entitlements to maintenance (*nafaqah*), divorce, and inheritance remain unenforceable in state fora.

3. The Effect of Nationality in Marriages Between a Citizen and a Foreigner

Any marriage involving nationals of different states are governed by special laws referred to as global private matters, which fall within the realm of Private International Law. Rather than being subject to a harmonized international regime, these matters are domestically dealt with. This decentralized approach affords each State the sovereign prerogative to enact laws it deems most conducive to the interests of its nationals and affected foreign persons.

Two principles elucidate the issue of spouses' nationality. The default scenario in transnational marriages involves spouses of different nationalities. The legal effects of marriage - such as the status of children, divorce, and cohabitation - can give rise to complex international issues, including dual nationality, statelessness, and the potential for discriminatory treatment, especially against women, as documented in several countries.

The governing principles are: first, the principle of dependent nationality (also known as the principle of unity of spouses), and second, the principle of the independent nationality of spouses.

3.1. The Principle of Dependent Nationality

This principle entails the assimilation of spouses' nationalities into a single one, meaning either both the spouses and the children acquiring the husband's nationality or the wife's. Historically, most legal scholars and States have traditionally privileged the husband's

1 Iranian Civil Code 1928, art 993.
2 Marriage and Divorce Registration Act 1937, art 2.
3 *Veiled and Wed: Enforced Hijab Laws, Early Marriages, and Girl Children in the Islamic Republic of Iran* (Justice for Iran 2015).

nationality.[1] According to this classical theory, which held sway well into the 20th century, marriage *ipso facto* alters a woman's nationality, subsuming it under that of her husband.[2] This theory posits the family as a unitary legal entity and, for which a unified nationality is deemed essential; hence, imposing the nationality of one spouse upon the other, should their nationalities differ.[3]

3.2. The Principle of Independent Nationality

In contrast, this principle advocates for the retention of separate nationalities by the spouses. Thus, in a transnational marriage, each spouse retains their original nationality; the wife is not automatically conferred her husband's nationality, nor is the husband subjected to any analogous imposition.

The principle of independent nationality gained momentum during the 20th century. This transformation was grounded on the modern idea of gender equality and the global movement to eliminate discrimination against women. Advocates argue that a woman's personal commitment in marriage is to her husband as an individual, not to his nationality, domicile, or legal status.[4] As a result, in their vigorous efforts, pro-women communities and movements emphasized that the imposition of husbands' nationality upon women must be revoked.[5] This advocacy, supported by progressive legal scholarship, led several States to place women on equal grounds with men.[6]

The advantage of the absolute independence system is that it empowers women to marry foreigners without having worries about the imposition of the husband's nationality on them. Moreover, it ensures that such marriages do not make changes to the country's population. Notwithstanding these merits, this system presents certain drawbacks. For example, it precludes the application of a single national law to all familial relations, potentially creating fragmentation within the family unit. Moreover, the likelihood of acquiring dual nationality for the children intensifies at birth, depending on the *jus sanguinis* rules of both parents' states. In addition, when the diplomatic relations between two countries reaches a critical point or a war starts, limitations are imposed on foreign nationals, which can undermine the unity of families and exacerbate conflicts on the rules and regulations affecting transnational spouses.[7]

3.2.1. Governing Principle of Nationality for Spouses – Iran

The Iranian legislature adheres to the principle of "unity of spouses" as the governing principle for the nationalities of spouses. Accordingly, if an Iranian man marries a foreign woman, and if an Iranian woman marries a foreign man, the nationality of the husband is imposed on his

1 Eg, British Nationality Act 1948; Code Civil (France); Bürgerliches Gesetzbuch (Germany).
Eg, Hans Kelsen, Hugo Grotius, Sir Edward Coke.
2 Mohammad Nasiri, *Private International Law* (Teyf-e-Negareh Press 2006) 6.
3 Seyyed Mohsen Hashemi-Nasab Zavareh, Elham Ghaffarian and Naser Ghamkhar, 'The Principles of the Dependent and Independent Nationality of Spouses…' (2018) 7 Ius Humani 101, 108.
4 Nasiri (n 41) 53.
5 Mohsen Sheikh-al-Eslami, *Private International Law* (Ganj-e-Danesh Press 2005) 42.
6 Fatemeh Bodaghi, 'Marriage and the Iranian Woman's Nationality' (2004) 6(24) Women's Strategic Studies 123, 126.
7 Hossein Mehrpour, *Internal Law System* (4th edn, Etela'at Publications) 445.

wife.[1] The rationale behind this view is that transnational marriages are increasing worldwide due to tourism, education, employment, asylum, or family relocation, or for some other reasons. In this type of marriage, regarding the matter of nationality, because the legal systems apply different approaches, there is often a conflict of laws. Essentially, if a man and a woman who wish to get married have different nationalities, the situation becomes more complicated due to various legal issues related to nationality, family name, property, and child custody. To resolve this conflict, the traditional solution was to implement the principle of unity of the spouses' citizenship, and the husband's nationality was imposed on his wife.[2] However, the principle of independence of spouses' nationality has recently been considered in the Iranian nationality law, as explained beneath.

3.2.2. Governing Principle of Nationality for couples – Nigeria

An analysis of Nigerian regulations on married couples indicates that the principle of independent nationality of spouses is, in fact, applied in most matters concerning spousal nationality.[3] This is evident in the Nigerian Constitution's express refusal from imposing Nigeria's nationality on a foreign spouse; instead, it provides for acquisition through registration for a foreign wife of a Nigerian citizen, and through naturalization as the sole avenue for a foreign husband of a Nigerian citizen. Scholars such as *Ngwoke Rita* and *Ukoh* have critiqued this provision as discriminatory in the conferment of citizenship.

For instance, while the principle of dependent nationality typically allows a woman to acquire her husband's nationality upon marriage, this benefit is not reciprocally extended to a Nigerian woman vis-à-vis her foreign husband. Section 26(2) of the 1999 constitution (as amended) provides that the President may confer Nigerian citizenship on "any woman who is or who has been married to a citizen of Nigeria." By implication, this limits the right of a Nigerian woman to transmit her nationality to a foreign husband *ipso iure*. However, the same Constitution provides the right to freedom from discrimination on grounds including sex:[4]

> *"No citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall, by reason of being such a person, be subjected either expressly by, or in the practical application of any law, to any disabilities or restrictions to which citizens of Nigeria, or any other community, ethnic group, place of origin, sex, religion, or political opinion are not made subject."*[5]

The rationale behind the Nigerian lawmaker's rejection of the principle of unity of spouses is unclear but somewhat complementary, as independence of women from Nigeria who are married abroad and foreign women who are married in Nigeria will be secured, meaning they don't have to depend on their husband's citizenship, which might attribute having limit

1 Manuchehr Tavassoli
Naeini, 'A Comparative Study of the Impact of Marriage to Foreigners on Nationality in the Laws of France, Germany, and Iran' (2021) 5 Comparative Law Review 67.
2 Ibid, 70.
3 Constitution of the Federal Republic of Nigeria 1999, s 26(c).
4 RA Ngwoke and FN Ukoh, 'A Critical Appraisal of the Principles of Dependent Nationality' (Research Gate) 280-281.
5 Constitution of the Federal Republic of Nigeria 1999, s 42.

their privileges of living. It also mitigates the risk of statelessness in case of divorce or the death of the husband. The children are also protected from statelessness, having acquired dual nationality, a status possessing both advantages and complications in the contemporary international arena.

Thus, while the unity of family nationality retains theoretical appeal, in the modern world, its practical disadvantages are widely perceived to outweigh its benefits.

Under Nigerian law, although millions of Nigerians marry foreign individuals and live both in and out of the country, this indisputably brings about legal implications and consequences that only nationality regulations could cover. The Nigerian Citizenship Act, along with the relevant constitutional provisions, however, have remained unaddressed for over five decades. This seems to be a notable weakness in the Nigeria's legal framework for transnational matters, which requires swift reform.

Examining the Nigerian legal system more broadly, discourse on "foreign" marriages often focuses not on non-Nigerians, but on Nigerians who are non-indigenes of a particular state within the federation. Given the countries' political structure as a federal republic, Nigeria's laws exhibit differences between states, though this is tempered by the application of Islamic law in the northern region, which covers a majority of the national territory and population.[1] The *Shariah* lawapplicable in the north governs all legal aspects of civil status for Muslims, operating alongside customary and statutory laws, including marriage. From the general provision of marriage in Islam, nationality does not have any effect whatsoever on individual and social interactions between Muslims and even non-Muslims alike. And thus, in Nigerian Shariah law, which is in accordance with the Maliki school(*madhhab*), differences in nationality do not affect the validity of a marriage contract nor alter its inherent legal effects.

4. Marriage with a Foreign Person in Iranian Law

The rules of nationality in the Civil Code of Iran were enacted over nine decades ago. This legal framework has largely been influenced by Islamic law and the Twelver Shi'i (*Imamiyah*) jurisprudence, which does not emphasize "nationality" in its conventional sense. This is because nationality, in its conventional meaning, pertains to the arbitrary territorial borders, whereas Islamic legal principles are predicated on religious convictions *(ummah)*.[2]

Nevertheless, the influence of certain European legal systems, such as those of France and Switzerland, can be observed in specific provisions. However, in certain areas, such as the transfer of nationality *jure sanguinis* through the father or the application of the law of the husband's nationality in family disputes involving transnational spouses, the jurisprudence of *Imamiyah* has impacted Iran's nationality law. Since the enactment of the Civil Code of Iran, the global community, and particularly Iranian society, has undergone numerous political, economic, and social transformations that necessitate a revision of this law.[3] In this law,

1 Central Intelligence Agency, *The World Factbook: Nigeria*. 70% of the land is covered by the north, and around 60% of the population as well.
2 Ahmad Arab Ameri, and Mohammad Reza Parsamanesh, Citizenship in Islam' (2003) 11 Islamic Law Quarterly 110, 114.
3 Naeini (n 46) 69

transnational marriage is divided into two categories: marriage of an Iranian man to a foreign woman and marriage of an Iranian woman to a foreign man.[1]

4.1. Marriage of an Iranian Man to a Foreign Woman

Article 976 of the Iranian Civil Code specifies the conditions for Iranian citizenship. Clause 6 of this article states: "Any foreign woman who marries an Iranian man" is considered Iranian. This provision aligns with the traditional doctrine of dependent nationality or " following the husband's citizenship," which was historically accepted by most States.[2] It appears that Clause 6 is derived from Articles 12 and 19 of the French Civil Code of 1804, which will be examined subsequently.[3]

From Clause 6, it can be inferred that the marriage must be formally recognized under Iranian law, If solemnized abroad, the woman's civil status must be determined and registered by the Iranian consulate in that jurisdiction, pursuant to Article 970 of the Civil Code. This requirement is grounded in Article 6, which stipulates that the personal status, including marriage, divorce, and inheritance of Iranians, even those residing abroad, is governed by Iranian law. A marriage conducted solely according to the laws of a foreign country, lacks validity under Iranian law. To attain validity, the parties must have the marriage contract executed and registered at the Iranian consulate in compliance with Iranian regulations.[4]

Article 986 of the Civil Code explains certain rights of foreign women who acquire Iranian nationality through marriage. It permits such a woman to renounce her Iranian nationality and revert to her former nationality following divorce or the death of her husband, provided she informs the Ministry of Foreign Affairs in writing. However, a widow with minor children from her deceased husband cannot exercise this right until her children reach the age of 18. Additionally, a woman who resumes her foreign citizenship under this article forfeits the right to own immovable property, unless such ownership is generally permitted for foreigners. If she possesses or subsequently inherits property exceeding the permissible limit for foreigners, she must alienate the excess within one year from the date of renunciation or inheritance; otherwise, the property will be auctioned under the supervision of the local public prosecutor, with the net proceeds remitted to her.

Article 976 establishes the principle of unity of nationality for spouses and stipulates that a woman's nationality follows that of her husband. A primary consequence is the potential for dual nationality of foreign wife, if her state of origin does not necessitate the renunciation of citizenship upon marriage to a foreign national. It is critical to note that dual citizenship is not recognized under Iranian law. In addition to the issue of dual citizenship, these provisions present other complexities regarding property rights that warrant re-examination.[5] Some scholars argue that, notwithstanding the problem of dual citizenship, Iranian lawmakers

1 Ibid., 81

2 JS D Chin Kin, 'International Marriage and Divorce with Reference to the Korean Conflict Rules' (1979) 4 Korean Quarterly: A Korean Affairs Review 125, 127.

3 Naeini (n 46) 82.

4 Behshid Arfa Nia and Maryam Dashtizadeh, 'The Impact of Iran's Accession to the Convention on the Elimination of Discrimination against Women on Civil Law' (2010) 11 Journal of Free Legal Research 1, 7.

5 T Naeini and AW Aghzali, 'Legal Developments Resulting from Marriage Multinationalities in the Light of Developments in Dual Citizenship, with an Approach to Iranian Citizenship Laws' (2015) 45 Quarterly Journal of Private Law Studies 103.

prioritize family unity in matters of citizenship, deeming the resolution of conflicts between family citizenships more important than addressing conflicts of citizenship (dual citizenship) for the individual.[1]

4.2. Marriage of an Iranian Woman to a Foreign Man

Regarding Iranian women's marriage to foreign nationals, the legislature has adopted a different approach. According to Iranian citizenship laws, an Iranian woman's marriage to a foreign man is contingent upon government authorization. Article 1060 provides that an Iranian woman's marriage to a foreign national requires special permission from the government, even absent other legal impediments. A marriage contracted without this permission, while potentially valid *religiously*, is *legally* void and produces no legal effects; it may also incur criminal penalties for the foreign man involved in this violation.

The authority to register such marriages is vested in the Ministry of Interior. Based on Article 4 of the "Regulation on the Marriage of Iranian Women to Non-Iranian Foreign Nationals" (approved 28 October 1966), this authority may be delegated to provincial and district governors and, with the agreement of the Ministry of Foreign Affairs, to certain Iranian diplomatic and consular missions abroad. These missions may issue licenses and subsequently notify the Civil Registration Office. Specifically, the registration of such marriages abroad is delegated to the head of mission (Ambassador, Consul General, Chargé d'Affaires).

According to Article 35 of the Consular Services Implementation Guidelines at Representations (regulations related to personal status and civil registration) approved in April 2020, the issuance of marriage licenses and the registration of marriages between Iranian women and nationals of India, Pakistan, Bangladesh, Sri Lanka, Iraq, and Afghanistan is contingent upon permission from the Personal Status and Civil Registration Office of the Ministry of Foreign Affairs in Tehran. Required documents include:

- A certificate from the embassy of the man's home country confirming there are no obstacles and recognizing the marriage.
- A certificate from the embassy of the man's home country confirming his marital status as single
- If previously married, a divorce decree certified by his home country's embassy.
- The woman's divorce decree, if applicable.
- A certificate of conversion to Islam from the man if the Iranian woman is Muslim.
- Permission from the woman's guardian, with their signature verified by a notary public.

The request for these documents is primarily intended to safeguard the rights of the Iranian woman.

Article 987 of the Iranian Civil Code stipulates: "An Iranian woman who marries a foreign national retains her Iranian nationality, unless her husband's country imposes his nationality upon her by virtue of the marriage. In any event, following the husband's death,

1 Mohammad Javad Shariat Bagheri, 'The Superiority of International Treaties over Ordinary Law' (2010) 14 Journal of Legal Research 67.

divorce or separation, she may regain her original nationality and all attendant rights by submitting a request and relevant documents to the Ministry of Foreign Affairs." According to note 1 of this article, "If the nationality law of the husband's country allows the woman to choose between retaining her original nationality and acquiring her husband's nationality, in this case, an Iranian woman may, upon demonstrating valid reasons and submitting a written application to the Ministry of Foreign Affairs, be permitted to acquire her husband's nationality."

The policy rationale behind Article 987 is to maintain a system of unity in family nationality, prevent dual nationality for Iranian women, and align with the principle of derivative spousal nationality.[1]

5. Marriage with a Foreign Person in Nigerian Law

Before examining the provisions governing the nationality of foreigner spouses in Nigeria, it is noteworthy to understand that despite millions of citizens being engaged with foreign partners in marriage, the concept of indigeneity has, in practice, superseded citizenship as the determinant of rights. This manifests in limitations on the rights and privileges of dual citizens in Nigeria, indigeneity of children etc. Indigeneity in Nigeria is used to specify between a Nigerian citizen who is born in a particular Nigerian state (province), as such a person is presumed entitled to certain exclusive rights and privileges in all aspect of life just by being born in that state(province), while a similar Nigerian-born citizen from a different state (province) will be denied of such rights and privileges for being an indigene of a different state (province).

It is a clear act of cultural-political discrimination among Nigerian citizens with less logical justification from the lawmakers of the states. Now, the relation to marriage, a citizen of Nigeria, especially women, when married into a place where they are not indigenes, faces discrimination, or in a more suitable term, faces some 'limitations' in regards to the rights and privileges rendered to citizens in that particular area.

Among the challenges they face is the inability to acquire the spouse's indigence even post-marriage, which is in comparison to the principle of unity of family nationality, represents a violation. While, in some cases, imposition of indigence could also be the issue, which conflicts with the principle of independent nationality. It is best described as a similar issue for foreign spouses in Nigeria.

Regarding actual foreign individual marriages in Nigerian laws, the effect of marriage on the nationality of the spouses depends on the provisions of the applicable law in each case, according to *Nwogugu*.[2]

5.1. A Nigerian Man Marrying a Foreign Woman

Regarding Nigerian men marrying a foreign woman, when we examine the rules on the acquisition of Nigerian citizenship through marriage, discrimination based on the sex of the spouse is seen. Section 26 of the Nigerian Constitution permits a foreign woman married

1 Ibid., 67
2 EI Nwogugu, *Family Law in Nigeria* (Heinemann Educational Books 1974) 89.

~~to~~ a Nigerian man to acquire citizenship by registration, a right not extended to a foreign man married to a Nigerian woman.[1] Although this process is easier than naturalization, the acquisition of citizenship by a woman based on marriage is discretionary. The applicant must satisfy the President of her good character, show the intention to remain domiciled in Nigeria, and take the oath of allegiance.

Ultimately, this means that a foreign woman does not automatically acquire Nigerian citizenship by marriage to a Nigerian citizen. But she may acquire Nigerian citizenship through a discretionary registration process.[2] However, contrary to Iranian provisions, any child born of this marriage, whether *jus soli* or *jus sanguinis*, is a Nigerian citizen by birth and does not face any issue or limitation when exercising his rights and privileges as a Nigerian.

Additionally, it is worth noting that there is no discrimination of gender when discussing children in Nigeria; regardless of which parent is Nigerian, the child will be considered a Nigerian by birth.[3]

5.2. A Nigerian Woman Marrying a Foreign Man

Regarding the acquisition of citizenship by a foreign husband, as noted, his sole avenue is naturalization, under the same terms as any other foreigner. According to Nwogugu, when a Nigerian woman marries a foreign national, whether or not she acquires the nationality of her husband will depend on the law of his country. However, no provision of the Nigerian law enables a Nigerian woman who acquired another nationality to retain her Nigerian citizenship.[4] Coincidentally, the Iranian provision on the acquisition of citizenship of a foreign man through marriage is similar.

5.3. Certification of Non-Statutory Marriages Involving a Foreign Spouse

Given that among the types of marriages officially recognized in Nigeria, only the statutory marriage is directly affiliated with the Ministry of Interior, thus nationally and internationally credible and recognized, the Nigerian government suggested a solution to document both shariah and customary marriage by licensing certain religious and customary figures to officiate and issue a marriage affidavit. But the question that arises here for a transnational couple who choose to go for the Islamic or customary marriage is: how certified is such a marriage in the international realm? Can the affidavit issued by the local imams and customary marriage initiators suffice for foreign authority? What proof is there to verify the certificate, which is quite different from the official one issued by the ministry?

Normally, for statutory (monogamous) marriages celebrated abroad, recognition of such Marriages in Nigeria requires a court ruling, which only occurs if the Nigerian court recognizes that it complies with the *lex loci celebrationis* regarding form, and if each party possesses the capacity to marry under the *lex domicilii ante-nuptial.* [5]

1 Yaser Maiwada Inuwa and Mostafa Fazaeli, 'Nationality and Citizenship in the Laws of Nigeria: Acquisition and Loss of Nigerian Citizenship with a Comparative Analysis of the Laws of Other Nations' (2024) 2 Iranian Journal of International and Comparative Law 135.
2 Constitution of the Federal Republic of Nigeria 1999, s 25(1)(a)-(c).
3 Ibid, s 25(1)(c).
4 Nwogugu (n 61) 89.
5 Ibid, 40

A marriage celebrated abroad will be treated as monogamous in Nigeria if it is recognized by the law of the place where it was contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage. The non-customary rules on matrimonial causes in Nigeria apply equally to monogamous marriages celebrated under the Marriage Act abroad.[1] While the statutory marriage celebrated in Nigeria wouldn't have to bear such long endurance, as a certificate will be directly issued upon its celebration by the appropriate office. Such a certificate will suffice as evidence of marriage between all individuals, foreign-Nigerian or both locals. But considering that the marriages given in this case are both non-statutory, none of these solutions apply. In answering the questions, *Kutigi-Doma* found that whereas all marriage certificates issued for non-statutory marriages, either by the mosques or courts in the form of marriage affidavits or declarations are generally accepted everywhere and for every purpose within Nigeria, the same weight is not attached to such documents abroad, and thus they are not automatically accepted as evidence of marital status for international transactions and documentation. For instance, to qualify for a marriage-based visa to join a spouse abroad, most countries would require a certificate of legal marriage. A legal marriage in this sense is officially recognized by the government in the country or state where you were married. This usually means that an official record of the marriage was made or can be obtained from some government office. Therefore, a copy of the civil marriage certificate is required, and the only way to obtain this in Nigeria is through the Marriage Registry.[2] This legal reality explains the prevalence of the «double-decker» marriage, whereby couples solemnize both a non-statutory and a statutory marriage to secure internationally valid documentation.

Conclusion

The Nigerian legal system upholds the principle of independent nationality for spouses, albeit accompanied by certain discriminatory provisions that are purportedly aimed at safeguarding national interests and the welfare of citizens. In contrast, the Iranian legal system adheres to the principle of dependent nationality, a framework influenced by French legal scholarship, as much of its civil legislation is derived from France. Scholars have called for further consideration of these regulations, suggesting that they are not only discriminatory, particularly against women, but also outdated in light of contemporary international human rights standards, including those of France, where these laws were inspired by. Preferably, the Iranian legal framework would want a dedicated legislative act specifically for nationality laws, rather than relying solely on its current Civil Code.

Both Iran and Nigeria exhibit significant gender discrimination in matters of nationality, particularly regarding the acquisition of citizenship and the treatment of foreign spouses. Such discrimination is increasingly at odds with evolving global norms, as many leading nations have advanced beyond these outmoded practices. Both States would benefit from drawing inspiration from progressive nations that share similar developmental challenges

1 Ibid, 40
2 Doma-Kutigi (n 1) 33-34.

and aspirations. It is imperative to address gender discrimination both internally, through issues of indigeneity, and externally, in terms of citizenship laws.

In Nigeria, the lack of international legal recognition for non-statutory (Islamic and customary) marriages is a notable weakness in the legal framework. This shortcoming may deter couples who wish to engage internationally from solemnizing their unions, ultimately undermining the recognition of Shariah and customary marriages. The phenomenon of "double-decker marriages," while seen as a potential solution, often results in more complications than benefits for Islamically wedded couples. It is the authors' belief that the Nigerian legislature should consider adopting aspects of Iran's marriage registration provisions while incorporating necessary exceptions. This could include making marriage registration mandatory through the Ministry of Interior and ensuring the availability of sufficient registry institutions for citizens, while allowing Shariah law to govern the personal status of Muslims (e.g.: inheritance) for couples who opt for a dual union (double-deckered).

Conversely, the Iranian government should draw insights from Nigeria's approach to nationality law by transitioning from a model of unified couple nationality to one that recognizes independent nationality. Such a reform would prevent the imposition of a husband's nationality on his wife, as is currently practiced.

In conclusion, there is a pressing need for Nigerian legal scholars to engage more substantively with international law developments and contemporary global issues. Nigeria has been represented by capable intellectuals thus far, but further emphasis on these areas will foster a robust research environment and assist the legislature in addressing contemporary legal challenges effectively.

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