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LEGAL AND POLICY FRAMEWORK REGULATING ISLAMIC MARRIAGES IN UGANDA Constitutionalism, Legal Pluralism and Gender Justice

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Abstract

Islamic marriages constitute a significant component of Uganda's plural legal and socio-religious system. Recognized under both Islamic law and state legislation, such marriages exist at the intersection of constitutionalism, religious freedom, legal pluralism, family law, and human rights. Despite formal recognition under the Marriage and Divorce of Mohammedans Act, Cap. 252, the regulation of Islamic marriages in Uganda remains fragmented, institutionally weak, and insufficiently aligned with contemporary constitutional standards and international human rights obligations. This article critically examines the legal and policy framework governing Islamic marriages in Uganda within the broader context of constitutional governance, postcolonial legal pluralism, and gender justice. Using doctrinal legal research, comparative constitutional analysis, and normative jurisprudential inquiry, the study interrogates the tensions between Islamic personal law and constitutional guarantees relating to equality, dignity, non-discrimination, and access to justice. The article further analyses the colonial foundations of Uganda's Muslim family law framework, the continuing informality of Islamic dispute resolution mechanisms, the debate surrounding Kadhi courts, and the persistent challenges relating to registration, women's rights, child marriage, maintenance, inheritance, and institutional accountability. The study argues that Uganda's current framework reflects an unresolved constitutional tension between religious autonomy and constitutional supremacy. Although Islamic marriages are formally recognized within Uganda's plural legal order, the absence of coherent institutional regulation and rights-sensitive legal reform has disproportionately undermined legal certainty and protection for vulnerable spouses, particularly women and children. Drawing comparative lessons from Kenya, South Africa, India, and Nigeria, the article demonstrates that Islamic family law may coexist with constitutional democracy where adequate safeguards for judicial oversight, equality, and human rights are institutionalized. The article concludes that comprehensive legislative reform, institutional modernization, and harmonization between Islamic personal law and constitutionalism are necessary to promote substantive equality, effective access to justice, and social cohesion within Uganda's plural democratic order.

Keywords: ***Islamic Marriage, Muslim Family Law, Legal Pluralism, Constitutionalism, Gender Justice, Uganda, Religious Freedom, Human Rights, Kadhi Courts, Sharia***

Introduction

Marriage remains a fundamental social and legal institution that structures family life, social order, cultural continuity, and economic cooperation. In Uganda, it is governed through a plural legal framework that recognizes civil, customary, Christian, Hindu, and Islamic marriages, reflecting the country's religious and cultural diversity while also creating complex interactions between statutory law, religious norms, constitutional principles, and international human rights obligations (Republic of Uganda, 1995; Menski, 2006). Within this system, Islamic marriages occupy a distinctive position because they derive legitimacy both from Islamic jurisprudence (Sharia) and from statutory recognition under Ugandan law. Uganda's Muslim population, estimated at 14%, further underscores the continued social and legal importance of Islamic family relations within the national legal order (UBOS, 2024).

However, the regulation of Islamic marriages raises significant constitutional and policy concerns, particularly in relation to gender equality, religious freedom, child protection, access to justice, and institutional legitimacy. The main governing law, the Marriage and Divorce of Mohammedans Act, Cap. 252, remains largely colonial in origin and has not been substantially reformed to reflect contemporary constitutional standards or international human rights obligations (An-Na'im, 2002). As a result, key areas such as registration, divorce, maintenance, matrimonial property rights, custody, and inheritance are weakly regulated in practice. Many Islamic marriages remain unregistered, especially in rural and informal settings, making it difficult to establish legal status and enforce rights, while disputes are often resolved through informal religious mechanisms that lack standardized procedures and judicial oversight.

These institutional gaps disproportionately affect women and children, particularly in matters of maintenance, property division, and divorce, where unequal bargaining power and limited legal protection are common challenges. In addition, the absence of constitutionally formalized Kadhi courts continues to generate jurisdictional uncertainty in the adjudication of Muslim personal law matters (Saiti, 2015). Despite the importance of these issues, scholarly attention to Islamic marriage regulation in Uganda remains limited, especially in relation to constitutionalism, legal pluralism, postcolonial legal continuity, and gender justice. This article therefore, critically examines the legal and policy framework governing Islamic marriages in Uganda, arguing that it reflects an unresolved tension between constitutional supremacy and legal pluralism, and that meaningful reform is required to harmonize religious autonomy with constitutional guarantees of equality, dignity, and access to justice.

Problem Statement

Despite Uganda's constitutional guarantees of equality, dignity, and freedom of religion, the regulation of Islamic marriages continues to face significant legal and institutional challenges. Although Islamic marriages form an important part of Uganda's legal pluralism, given that Muslims constitute about 14% of the population (UBOS, 2024), the governing framework remains largely based on the Marriage and Divorce of Mohammedans Act, Cap. 252, a colonial-era law that predates the 1995 Constitution and has not been substantially reformed to align with contemporary constitutional principles and international human rights standards (An-Na'im, 2002). This has created major gaps in regulating key aspects of marriage, including registration, divorce, property rights, maintenance, custody, and inheritance.

In practice, many Islamic marriages—especially in rural and informal settings—remain unregistered, making it difficult to establish marital status or enforce legal rights, particularly for women and children, while weak institutional governance is reflected in the lack of reliable data on such marriages. A significant number of family disputes are also resolved through informal religious and community mechanisms that often lack procedural safeguards or enforceable outcomes (Judiciary of Uganda, 2023), contributing to broader vulnerabilities, including child marriage, where about one-third of women aged 20–24 were married before 18 despite legal prohibitions (UNICEF Uganda, 2023). These realities create constitutional tensions between religious autonomy and rights such as equality and non-discrimination, especially in relation to practices like polygamy, unilateral divorce, and inheritance, which are debated under Uganda's Constitution and international obligations such as CEDAW (CEDAW Committee, 2022). Despite these challenges, there remains limited scholarly engagement on how Islamic marriage regulation interacts with constitutionalism, legal pluralism, and gender justice, leaving an unresolved policy and legal gap on how best to harmonize religious personal law with constitutional guarantees.

Aim and objectives

The main objective of this article is to examine the legal and policy framework regulating Islamic marriages in Uganda and assess its alignment with constitutional principles of equality, dignity, and justice. The specific objectives are:

i. To analyse the constitutional and statutory framework governing Islamic marriages in Uganda.
ii. To examine the institutional mechanisms regulating Muslim family law and dispute resolution.
iii. To interrogate the human rights and gender justice concerns arising within Islamic marriages.
iv. To assess the implications of legal pluralism and colonial continuity in Uganda's regulation of Islamic marriages.
v. To evaluate comparative constitutional approaches to Islamic family law.
vi. To propose reforms for harmonizing Islamic personal law with constitutional guarantees and international human rights standards.

Significance of the Study

This study is significant because it advances scholarship on constitutionalism, legal pluralism, religion, and family law in Africa by reframing Islamic marriage regulation in Uganda as a constitutional governance issue rather than a purely doctrinal matter of religious law. It contributes to ongoing debates on postcolonial legal systems, gender justice, and institutional accountability within plural societies by offering a more integrated analytical approach. By combining legal pluralism theory, feminist legal analysis, and postcolonial constitutional critique, the article deepens understanding of how plural constitutional systems manage the tension between religious autonomy and constitutional supremacy, particularly in ways that affect women's rights, access to justice, and institutional coherence within Uganda's legal framework.

Methodology

This study adopts a qualitative doctrinal legal research methodology, complemented by comparative constitutional and normative analytical approaches. It entails a critical examination of Uganda's constitutional provisions, statutory framework, judicial decisions, policy instruments, and relevant international human rights obligations governing Islamic marriages. In addition, the study undertakes a comparative analysis of selected jurisdictions, namely Kenya, South Africa, India, and Nigeria, to assess how plural constitutional systems reconcile Islamic personal law with constitutional guarantees of equality, dignity, and access to justice.

The research is theoretically grounded in legal pluralism theory, postcolonial constitutional analysis, and feminist legal scholarship. These frameworks are employed to interrogate the coexistence of state law, religious norms, and customary legal systems, the persistence of colonial-era legal structures, and the gendered dimensions of access to justice within Islamic marital relations. The study draws on both primary sources, including legislation and judicial decisions, and secondary sources such as academic literature and institutional reports, and analyzes them thematically with particular emphasis on constitutionalism, institutional regulation, gender justice, religious autonomy, and access to justice within Islamic marriages.

Theoretical and Analytical Framework

This study is grounded in an integrated theoretical and analytical framework combining legal pluralism, constitutionalism, postcolonial legal theory, and feminist legal theory to examine Islamic marriage regulation in Uganda. Legal pluralism explains the coexistence of state, religious, and customary norms within Uganda's hybrid legal system, where Islamic marriages operate under both Sharia principles and the Marriage and Divorce of Mohammedans Act, Cap. 252, reflecting a state-managed plural legal order (Menski, 2023; Griffiths, 2020).

Constitutionalism provides the lens for assessing tensions between religious autonomy and constitutional guarantees of equality, dignity, and non-discrimination under Uganda's 1995 Constitution, particularly Articles 21, 29, and 31. This aligns with contemporary debates on balancing group rights and individual rights in plural societies (Shachar, 2019). Postcolonial legal theory further critiques the persistence of colonial-era legal structures, arguing that codified Muslim family law in many African states continues to reflect colonial administrative frameworks rather than contemporary constitutional transformation (An-Na'im, 2017; Bennett, 2021).

Feminist legal theory complements this analysis by focusing on gendered power relations within Islamic marriages, emphasizing that formal recognition of marriage does not guarantee substantive equality in practice, particularly in matters of divorce, inheritance, and access to justice (Nussbaum, 2019; Ali, 2018). Together, these perspectives frame Islamic marriage regulation in Uganda as a constitutional governance issue shaped by legal pluralism, historical continuity, and gender justice concerns, rather than a purely doctrinal matter of religious law.

Literature Review

Scholarly discourse on Islamic marriages within plural legal systems is primarily framed around the interaction between legal pluralism, constitutionalism, gender justice, and human rights. Legal pluralism theorists argue that postcolonial African states operate through overlapping normative orders in which state law coexists with religious and customary systems, producing hybrid and often fragmented legal frameworks where Islamic personal law functions as both a religious and state-recognized system (Griffiths, 1986; Menski, 2020). Within this structure, feminist and constitutional scholarship highlights persistent tensions between religious autonomy and constitutional supremacy, particularly in relation to gender equality, access to justice, and due process, with critics noting that religious family law systems may reinforce structural inequalities in marriage, divorce, inheritance, and property relations (Ali, 2000; Nussbaum, 2000). Shachar (2001) conceptualizes this as a "multicultural jurisdiction" dilemma, where states must balance protection of religious identity with enforcement of individual constitutional rights.

Comparative scholarship illustrates varied institutional responses to this tension: Kenya constitutionally recognizes Kadhi courts under Article 170, South Africa has developed equality-based judicial protection of Muslim marriages, India has subjected aspects of religious personal law to constitutional invalidation where rights are violated (e.g., *Shayara Bano v Union of India*), and Nigeria operates a hybrid system where Sharia courts exist within state judicial structures. In Uganda, however, literature identifies a largely unreformed colonial legal framework under the Marriage and Divorce of Mohammedans Act, Cap. 252, operating alongside weak institutional governance, reliance on informal religious dispute resolution mechanisms, and limited procedural safeguards (Ssenyonjo, 2021; Muhumuza, 2023). Empirical evidence further highlights persistent vulnerabilities such as non-registration of marriages, child marriage, and limited protection for women and children in marital disputes (UNICEF Uganda, 2023; World Bank, 2023). Despite these insights, the literature remains fragmented and largely descriptive, with insufficient integrated analysis linking constitutionalism, legal pluralism, gender justice, and institutional regulation in Uganda, leaving a clear gap that this article addresses through a doctrinal and comparative constitutional approach.

Findings

Historical Evolution of Islamic Marriage Regulation in Uganda

The regulation of Islamic marriages in Uganda is historically rooted in the colonial administration of law under the system of indirect rule, which institutionalized legal pluralism by allowing religious and customary laws to operate under state supervision (Menski, 2020). Within this framework, Islamic personal law was selectively recognized and incorporated into the colonial legal order, culminating in the enactment of the Marriage and Divorce of Mohammedans Act, Cap. 252, which remains the principal statutory framework governing Islamic marriages in Uganda today (Republic of Uganda, Cap. 252, revised ed.).

Contemporary scholarship on African family law emphasizes that colonial codification fundamentally altered Islamic legal tradition by transforming it from a flexible jurisprudential system into a state-regulated and administratively controlled legal regime (Ssenyonjo, 2021). This shift subordinated Islamic adjudication to state authority, limiting the autonomy of religious legal systems and embedding Islamic family law within a formal statutory structure rather than a purely doctrinal one.

Following independence, Uganda retained much of this colonial legal architecture. Despite the transformative constitutional reforms introduced under the 1995 Constitution, particularly regarding equality, human rights, and religious freedom, the legal framework governing Islamic marriages has remained largely unreformed (Tumwesigye, 2022). This persistence reflects broader patterns in postcolonial African legal systems, where colonial-era personal law statutes continue to regulate family relations despite constitutional modernization.

Recent legal analysis highlights that this continuity has generated significant constitutional tension between legal pluralism and constitutional supremacy, particularly where outdated statutory provisions fail to align with evolving human rights norms, especially in relation to gender equality and access to justice (Muhumuza, 2023). As a result, Islamic marriage regulation in Uganda continues to reflect a hybrid legal order in which colonial legal legacies, constitutional reforms, and religious norms coexist in an unresolved and often contradictory framework.

Constitutional and Statutory Framework Governing Islamic Marriages

The regulation of Islamic marriages in Uganda is grounded in the Constitution of 1995, which guarantees the right to marry according to religion, culture, or custom under Article 31, and protects freedom of religion under Article 29, while simultaneously upholding equality and non-discrimination under Articles 21 and 33 (Republic of Uganda, 1995; Ssenyonjo, 2021). This creates a dual constitutional framework that recognizes Islamic marriages but subjects them to constitutional standards of equality, dignity, and human rights.

Islamic marriages are further governed by the Marriage and Divorce of Mohammedans Act, Cap. 252, which formally recognizes Muslim marriages and their dissolution under Islamic law. However, the Act is widely regarded as outdated, with limited provisions on maintenance, property rights, custody, enforcement, and judicial oversight, resulting in reliance on informal religious dispute resolution mechanisms (Muhumuza, 2023). Uganda's Children Act, alongside international instruments such as the CRC and Maputo Protocol, sets eighteen years as the minimum age of marriage, yet child marriage persists at significant levels, reflecting gaps in enforcement and socio-cultural constraints (UNICEF Uganda, 2023; World Bank, 2023).

Institutional Governance of Islamic Marriages

The institutional governance of Islamic marriages in Uganda is primarily undertaken by the Uganda Muslim Supreme Council (UMSC) through Kadhi offices, mosques, and local religious structures, which handle marriage solemnization, mediation, and dispute resolution. These mechanisms are widely utilized due to their cultural legitimacy, accessibility, and affordability, particularly within Muslim communities (Ssenyonjo, 2021). However, the system remains largely informal, with no comprehensive statutory framework regulating procedures, evidence, appeals, or enforcement, leading to inconsistent and discretionary outcomes.

The proposal to establish Kadhi courts remains a key point of constitutional debate. While proponents argue that such courts would enhance access to justice and consistency in Islamic family law, opponents caution that they may undermine constitutional secularism and fragment the judiciary. In practice, Islamic marital disputes are handled across multiple forums, including religious leaders, local councils, and formal courts, resulting in jurisdictional uncertainty and weak harmonization between Islamic law and constitutional standards (Muhumuza, 2023; UNICEF Uganda, 2023).

Human Rights and Gender Justice Concerns

Gender equality within Islamic marriages remains a major human rights concern in Uganda, particularly in relation to practices such as polygamy, unilateral divorce, and inheritance, which are often viewed as conflicting with constitutional guarantees of equality and dignity (Ssenyonjo, 2021). Women frequently face challenges in accessing maintenance, property rights, custody, and effective legal remedies, a situation worsened by economic dependence, limited legal literacy, and reliance on informal dispute resolution mechanisms that lack procedural safeguards.

Access to justice is further constrained by the limited availability of legal aid and weak institutional regulation of religious adjudication processes, particularly in rural areas (UNICEF Uganda, 2023). In addition, the widespread non-registration of Islamic marriages creates serious legal uncertainties regarding proof of marriage and enforcement of rights, disproportionately affecting women in disputes over inheritance, custody, and property (World Bank, 2023).

Comparative Constitutional Perspectives

Comparative constitutional experiences demonstrate varied approaches to integrating Islamic personal law within plural legal systems. In Kenya, Article 170 of the Constitution formally recognizes Kadhi courts with jurisdiction over Muslim personal law matters such as marriage, divorce, and inheritance, illustrating how Islamic

adjudication can be institutionalized within a constitutional framework while maintaining judicial oversight and constitutional supremacy. In *South Africa, the Constitutional Court in Women's Legal Centre Trust v President of the Republic of South Africa and Others (2022)* held that non-recognition of Muslim marriages constitutes unfair discrimination, reinforcing the need for equal legal protection for religious marriages within a rights-based constitutional order.

In India, the Supreme Court decision in *Shayara Bano v Union of India (2017)* invalidated instant triple talaq on constitutional grounds, demonstrating the judiciary's willingness to subject religious personal law to equality and dignity standards. Similarly, Nigeria provides a hybrid model in which Sharia courts operate alongside state judicial structures in several northern states, reflecting both accommodation of Islamic law and ongoing constitutional negotiation. Collectively, these jurisdictions illustrate that Islamic personal law can coexist with constitutional democracy when embedded within clear safeguards of constitutional supremacy, judicial oversight, and human rights protection.

Discussion

The regulation of Islamic marriages in Uganda exposes deeper tensions within plural constitutional systems that seek to balance religious autonomy with constitutional supremacy and human rights protection. Although Islamic marriages are formally recognized, the existing legal and institutional framework remains fragmented, weak, and insufficiently aligned with constitutional standards on equality, dignity, and access to justice. This situation is further compounded by the continued reliance on the Marriage and Divorce of Mohammedans Act, Cap. 252, which reflects colonial-era administrative assumptions rather than contemporary constitutional governance, thereby reinforcing postcolonial legal continuity within Uganda's legal order.

In practice, the coexistence of state law and informal religious dispute resolution mechanisms has created uncertainty regarding jurisdiction, enforcement, accountability, and procedural fairness. These gaps disproportionately affect women and children, who often face limited access to remedies and weaker protection due to structural inequalities within both formal and informal systems. However, comparative experience shows that Islamic personal law is not inherently incompatible with constitutional democracy; rather, it can coexist with constitutional frameworks where adequate safeguards for equality, judicial oversight, and human rights protection are established. The key challenge for Uganda, therefore, is not the elimination of Islamic personal law, but the development of a coherent constitutional framework that harmonizes religious autonomy with constitutional guarantees of justice and equality.

Conclusion

Islamic marriages are an important part of Uganda's plural legal, religious, and cultural system and are formally recognized under the Constitution and statutory framework, but they remain subject to constitutional principles of equality, dignity, and human rights protection. However, the current regulatory framework is fragmented, outdated, and poorly aligned with constitutional realities, with persistent challenges in registration, women's rights, child marriage, informal dispute resolution, institutional accountability, and access to justice undermining effective protection for spouses and children. This situation reflects a deeper constitutional tension between legal pluralism and constitutional supremacy, further reinforced by continued reliance on colonial-era legislation and informal institutional practices that create legal uncertainty and unequal protection of rights.

Despite these challenges, comparative constitutional experience shows that Islamic personal law can coexist with constitutional democracy when supported by coherent institutional safeguards that ensure equality, judicial oversight, and human rights compliance. The central task for Uganda is therefore to modernize its Muslim family law framework in a way that balances religious freedom with constitutional accountability, gender justice, and effective access to justice. Achieving this balance is essential not only for protecting family rights within Muslim communities but also for strengthening constitutional governance and promoting social cohesion within Uganda's plural democratic order.

Recommendations

Uganda should undertake a comprehensive reform of the Marriage and Divorce of Mohammedans Act to ensure alignment with constitutional principles and international human rights obligations. Such reform should provide

a clear and detailed regulatory framework governing key aspects of Islamic marriages, including registration, divorce procedures, maintenance, matrimonial property rights, child custody, procedural safeguards, appeals, enforcement mechanisms, and the protection of vulnerable spouses. In addition, the development of standardized procedural guidelines for religious dispute resolution mechanisms is necessary to enhance consistency, accountability, and constitutional compliance across informal and formal justice systems.

Further reforms should focus on strengthening access to justice through expanded legal aid services and public legal education, particularly targeting Muslim women and other vulnerable groups. If Kadhi courts are introduced, they should be carefully designed to uphold constitutional supremacy, judicial independence, equality guarantees, and effective appellate oversight. Institutional collaboration between the Judiciary, Uganda Muslim Supreme Council, civil society, and state agencies should also be enhanced to improve coordination and legal coherence. Overall, Uganda should adopt a rights-sensitive and context-specific approach that harmonizes Islamic personal law with constitutionalism, rather than framing religious autonomy and constitutional rights as opposing principles.

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