Judicial Treatment of Religious-Only Marriages Under English Matrimonial Laws

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Abstract

*This article examines how judges of courts in England and Wales treat religious-only marriages, particularly Islamic marriages (*nikāḥ*). It analyzes how judges have approached* nikāḥ*-based unions under the Matrimonial Causes Act 1973, distinguishing between valid, void, and non-qualifying ceremonies. Drawing on leading judicial authorities from the 1960s to 2025, I trace the transformation of judicial reasoning from questions of formality and jurisdiction to issues of human rights, equality, and non-discrimination. I argue that the insistence of judges on legal formalities has produced a dual system: one that privileges state-sanctioned forms of Anglican Christian and civil marriages while leaving other religious-only and humanist unions without legal protection. The article concludes that the challenge is not merely one of doctrinal classification but of reconciling multiple legal norms within a secular framework that aspires to equality, inclusion, and neutrality regarding religious practices.*

Keywords: foreign marriages, hallmarks of marriage, human rights law, Islamic marriage (*nikāḥ*), non-marriage, non-qualifying ceremony (NQC)

Introduction*

In December 1998, Nasreen Akhter, then a trainee solicitor, married Mohammed Shabaz Khan in an Islamic marriage (*nikāḥ*) ceremony at a London restaurant. Beforehand, Mr. Khan promised that the couple would also register their marriage through a civil ceremony, but this never took place. For nearly two decades, they lived together in London and Dubai as husband and wife, raised four children, and presented themselves as a married couple. When the relationship broke down, Ms. Akhter sought financial relief under the Matrimonial Causes Act 1973, claiming that her marriage was void rather than a legal nullity. At first instance, Williams J. agreed, holding that the *nikāḥ* bore sufficient hallmarks of marriage to bring it within the statutory framework, thus entitling her to financial remedies.[1] The Court of Appeal, however, overturned that decision, introducing the category of the "non-qualifying ceremony" (NQC) to declare

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1 Nasreen Akhter v. Mohammed Shabaz Khan & Att'y Gen. [2018] EWFC 54, [3] (Eng.). Most commentators welcomed Williams J.'s judgment for extending financial relief to Muslim wives following the breakdown of Islamic marriages, describing it as "monumental," an "enormously important step forward," a "step in the right direction," and "instinctively just." *See, e.g.*, Raffia Arshad, *Muslim Marriages: Financial Remedies*, 49 Fam. L. 517, 521 (2019); Gillian Douglas, *Marriage—Nullity: Akhter v. Khan*, 48 Fam. L. 1386, 1388 (2018); Amy Pratt, *Akhter v. Khan: One Small Step for Woman, One Moderate Leap for Womankind*, 27 Tul. J. Int'l & Comp. L. 435, 446 (2019); Claire Fenton-Glynn, *Human Rights and the Law of Nullity: Akhter v. Khan*, 48 Fam. L. 1265, 1268 (2018); Chris Barton & Rebecca Probert, *The Status of a Religious-Only Marriage: Valid, Void, or "Non"? Akhter v. Khan*, 48 Fam. L. 1540, 1540 (2018).

that the marriage was neither valid nor void, but a non-marriage that conferred no rights.[2]

This judgment is doctrinally significant, but its implications reach further. It represents a moment in which the judges redraw the boundaries of legal recognition: privileging statutory formality over purposive interpretation of remedial legislation intended to benefit weak and vulnerable parties such as wives, widows, and children. For Ms. Akhter, the outcome was exclusion from financial remedies. For the law more broadly, the NQC crystallized a shift from flexible, equity- and human rights-infused reasoning towards rigid formalism. The case exemplifies how family law can function as a site where a secular authority determines which religious practices to recognize and which to render invisible.[3]

In this article, I argue that the introduction of the NQC test represents a significant shift in English marriage law. First, the NQC test is a judicial innovation with no explicit statutory basis, sitting uneasily with the beneficial section 11 of the Matrimonial Causes Act 1973, which extends financial remedies even to void marriages. Second, its narrow focus on ceremony disproportionately disadvantages religious minorities, particularly Muslim women, whose Islamic marriages (*nikāḥ*) are socially binding but legally disregarded. Third, subsequent case law indicates that the NQC test has not displaced the hallmarks test entirely. Judges continue to apply both tests, sometimes in the same case, as positive and negative tests to determine the legal implications of marriages.

To broaden the scope of discussion, I situate the discussion on NQC within a comparative framework. Under classical Islamic law, marriage is a contract formed through consent, with formalities serving evidentiary purposes rather than constitutive ones. Modern Muslim-majority jurisdictions adopt permissive, dismissive, or accommodative models for unregistered marriages, none of which map neatly onto the NQC category. These comparisons highlight both the contingency of English law's

2 Attorney General v. Akhter & Ors. [2020] EWCA Civ 122, [123] (Eng.).

3 Talal Asad, *Secularism, Nation-State, Religion*, *in* Formations of the Secular: Christianity, Islam, Modernity 181 (2003).

strict formalism and the risks of excluding religiously valid but legally unrecognized marriages.

In the literature, marriages that fail to meet statutory formalities are variously described as "unregistered" (religious, pagan, humanist), "religious-only," "non-legally-binding," "non-marriages," and "non-qualifying ceremonies" (NQCs).[4] This article adopts "religious-only marriage" as the default term, unless context requires otherwise. The Law Commission defined "religious-only marriage" as: "a marriage that is recognised by a religious community or organisation but not by the state, because the wedding did not follow the legal requirements."[5] Following the High Court's judgment in *R (Harrison and others) v. Secretary of State for Justice*, which held that the absence of legal recognition for humanist marriages engaged Articles 9 and 14 of the European Convention of Human Rights (ECHR), such ceremonies may be treated as analogous to religious-only marriages, in that both fall outside the framework of legally recognized marriage in England and Wales.[6] This conceptual alignment provides a consistent analytical baseline for assessing the legal consequences of non-compliant ceremonies across religious and belief-based contexts.

The core research question is whether the NQC test provides a coherent and just framework for regulating religious-only marriages in English law. This article argues that the test undermines the protective purpose of the Matrimonial Causes Act 1973, entrenches inequality, and widens the gap between lived family relationships and legal recognition. More broadly, it asks the following: Who has the authority to define marriage—the legislature, the judiciary, or religious communities? Should the law prioritize certainty and exclusion, or protection and inclusion? And can English law reconcile statutory formality with the plural realities of contemporary family life in England and Wales?

4 Rebecca Probert, Rajnaara C. Akhtar & Sharon Blake, When Is a Wedding Not a Marriage? Exploring Non-Legally Binding Ceremonies 10 (2022).

5 Law Comm'n, Celebrating Marriage: A New Weddings Law xii, Law Com No. 408 (2022) (UK).

6 R. (on the application of Harrison) v. Secretary of State for Justice [2020] EWHC 2096 (Admin), [129] (Eng.).

To answer these questions, the article proceeds in three parts. Part I traces the development of the NQC test from the perspective of Ms. Akhter, showing that until the Court of Appeal's intervention, most applications of the "non-marriage" doctrine concerned polygamous marriages. Part II analyzes the judgments of the High Court and the Court of Appeal in *Akhter*, highlighting the transformation from a contract-based, multi-factor test of the hallmarks of marriage to a status-based, single-factor NQC test. Part III reviews recent case law and demonstrates that the NQC has not completely supplanted the more flexible hallmarks test, which continues to be applied on a case-by-case basis.

Judicial Treatment of Religious-Only Marriages, 1998–2011

This section examines the case law concerning religious-only marriages during the marital relationship of Ms. Akhter and Mr. Khan. It shows that as late as 2011, English courts continued to recognize such marriages for financial relief, provided they were not polygamous, where the ceremony bore the "hallmarks of marriage" or where a presumption of marriage could be drawn from cohabitation and reputation.

Hallmarks of Marriage and Presumption of Marriage

The *nikāḥ* of Ms. Akhter and Mr. Khan took place at a restaurant in Southall in London in December 1998. As a trainee solicitor, Ms. Akhter appreciated the importance of civil registration under the Marriage Act 1949. Later, in his testimony, Mr. Khan claimed that his wife was "extremely religious and felt it unnecessary to register the marriage."[7] He alleged that his wife knew that their *nikāḥ* ceremony was not "valid in English law" and that she "deliberately set out to deceive the court."[8] Conversely, Ms. Akhter testified that their *nikāḥ* ceremony was agreed to be followed by a civil ceremony and, based on her legal

7 Nasreen Akhter v. Mohammed Shabaz Khan & Att'y Gen. [2018] EWFC 54, [20] (Eng.).

8 *Id.*

training, she informed her husband that they would be "treated as cohabitees" under English law.[9] She also stated that raising the issue of a civil ceremony often led to arguments.[10]

At the time of their marriage, judicial treatment of religious-only marriages was not settled. The leading decision was *Gereis v. Yagoub*, where a Coptic Orthodox ceremony conducted without statutory notice and by an unauthorized officiant was nevertheless treated as a void marriage.[11] H.H.J. Aglionby reasoned that the ceremony bore "the hallmarks of an ordinary Christian marriage" and should be recognized for the purposes of financial relief under section 23 of the Matrimonial Causes Act 1973.[12] He confined the category of "no marriage at all" to sham proceedings such as plays or plainly polygamous unions.[13]

Unlike the brief union in *Gereis v. Yagoub*, which lasted less than a year, Akhter and Khan lived together for nearly two decades. Their first child was born on September 29, 1999. Around that time, Ms. Akhter requested a civil ceremony; Mr. Khan refused, accusing her of being "materialistic."[14] Had she petitioned under the Matrimonial Causes Act 1973 in 1999, would a court have regarded the *nikāḥ* ceremony as bearing the hallmarks of an ordinary marriage? One contemporary commentary on *Gereis* suggested that an Islamic marriage ceremony could attract legal recognition if "an English court is prepared to accept that Muslim ceremony as evidence of parties effecting mutual intention to marry each other."[15] On that view, English law could treat a *nikāḥ* as a civil contract comparable to an ordinary Christian marriage: valid on proof of the ceremony and void, rather than a non-marriage, where statutory formalities or elements of formation were missing.[16] That analysis starts

9 *Id.*

10 *Id.*

11 Gereis v. Yagoub [1997] 1 FLR 854 (Fam. Div.), 858 (Eng.).

12 *Id.*

13 *Id.* at 857. In this case, the wife had already availed a certificate of annulment of marriage from the Council of the Coptic Orthodox Church in Cairo.

14 Akhter v. Khan [2018] EWFC 54, [20] (Eng.).

15 W.K. Leong, *A Fresh Look at Void Marriage: Gereis v. Yagoub*, 1997 Sing. J. Legal Stud. 580, 582 (1997).

16 To support this argument, Leong quoted S. M. Cretney & J. M. Masson, Principles of Family Law 70 (5th ed. 1990). In the later edition Rebecca Prob-

from a contractual conception of marriage. English law, however, blends contract and status, and although recent case law has moved somewhat towards the contractual end of that spectrum,[17] courts have not consistently treated contract-based, religious-only marriages of Hindus, Sikhs, Muslims, or humanists as equivalent to "ordinary Christian marriages."

Islamic Marriage as "Non-Marriage" and Polygamous Marriages

The first reported judgment addressing financial relief following a *nikāḥ* was in 2001.[18] The ceremony took place in London in 1980. The husband, already married, was advised by the legal consultant of his organization that his second wife would not be entitled to a pension because their polygamous marriage was invalid in England. He was told to divorce and remarry abroad so that the English courts would recognize the union as a valid foreign marriage. He then travelled to Sharjah, divorced his second wife, and remarried her there. The couple subsequently lived together for two decades and had two children. When the relationship broke down, the wife petitioned for divorce in England and sought financial relief. The husband argued that the London ceremony created no legal rights because it was a non-existent marriage. Hughes J. held that the 1980 ceremony was neither valid nor void but that the wife could rely on the presumption of a subsequent marriage in an Islamic country to obtain relief.[19]

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ert, Cretney and Probert's Family Law 36 (7th ed. 2009), it is noted: "While it is sensible for non-compliance to be a matter of degree, it would be indefensible for a Sikh or Muslim marriage to be struck down in circumstances in which a Christian marriage would be upheld." As discussed later, the judges did exactly that in their judgments starting from early 2000.

17 Nigel Lowe et al., Bromley's Family Law 11–12 (12th ed. 2021).

18 A-M v. A-M (Divorce: Jurisdiction: Validity of Marriage) [2001] 2 FLR 6 (Fam. Div.), [59] (Eng.).

19 *Id.* at [55] & [58]. This was the first judgment which applied the concept of "non-marriage" to an Islamic marriage, after it was applied in a criminal case in which the court overturned the conviction of an *imām* for performing the ceremony of "a potentially polygamous marriage" after holding that since English law did not recognize the marriage "solemnised under Islamic law," the *imām* did not violate the law. R v. Bham (Usuf Arif) [1966] 1 Q.B. 159, 168 (Eng.).

In contrast to the marriage in the above case in *A-M v. A-M*, Ms. Akhter's marriage was monogamous. Even so, the presumption of marriage arising from continuous cohabitation and reputation may explain why she did not insist on civil registration after the birth of their second and third children. When the family moved to Dubai in 2005 and the authorities required proof of marriage, Mr. Khan produced a certificate from the *imām* (prayer leader) who had officiated in 1998. This was an opportunity for Ms. Akhter to secure recognition of her marriage in England and abroad through a civil ceremony, but Mr. Khan circumvented it by procuring a marriage certificate from the *imām*. It is reasonable to ask whether existing case law would have made her believe that her *nikāḥ* did not have any legal implications at all and constituted a "non-marriage."

The concept of non-marriage emerged in an early 2000s inheritance case. A widow, Hasmita, had participated in a polygamous ceremony at an Indian restaurant before a Brahmin priest but without complying with the Marriage Act 1949.[20] The court held there was "no marriage at all" and rejected her claim under the Inheritance (Provision for Family and Dependents) Act 1975. The polygamous character of the union was decisive; the court did not apply either the hallmarks test or the presumption of marriage, which it had used in a case involving a monogamous marriage ceremony conducted at a Sikh gurdwara to recognize a widow's entitlement to financial rights.[21]

Two further cases involving Islamic ceremonies also resulted in findings of non-marriage, both in polygamous contexts. In *Sharbatly v. Shagroon*, the parties married in a London hotel without attempting to comply with the 1949 Act or to supplement the Islamic ceremony with a civil one.[22] They later settled in Saudi Arabia after the husband pronounced *ṭalāq* (divorce) and agreed to financial provision. A consent order in 2002 preserved the wife's ability to apply under the Matrimonial and Family Proceedings Act 1984. When she applied a decade later, the High Court granted relief, but the Court of Appeal, per

20 Gandhi v. Patel [2002] 1 FLR 603, 604 (Eng.).
21 Chief Adjudication Officer v. Bath [2000] 1 FLR 8, 10 (Eng.).
22 Shagroon v Sharbatly [2012] EWCA Civ 1507, [7] (Eng).

Thorpe L.J., held that she was not entitled to orders based on the Saudi divorce because the London marriage was not recognized in English law. In a short concurring judgment, Hedley J. emphasized that each case regarding the legal recognition of marriage ceremonies "must continue to be decided on its own facts."[23] Rather than endorsing the application of non-marriage to a Islamic marriage, the judgment in this case shows the willingness of English judges to recognize religious-only marriages in the early 2000s, a view that changed later. In *El Gamal v. Al-Maktoum*, a private *nikāḥ* at the husband's London flat was proven to have occurred, but Bodey J. refused a decree of nullity and financial relief because the ceremony did not meet English formal requirements.[24]

Taken together, *Gandhi*, *Sharbatly*, and *El Gamal* cast doubt on the status of Ms. Akhter's religious-only ceremony under English law. A key distinction, however, is that her marriage was monogamous. In each of the other three cases, a second wife sought financial relief, and the courts treated the union as a non-marriage.[25]

Concerns about polygamy crystallized for Ms. Akhter in 2011 when Mr. Khan said he intended to take a second wife. She grew worried about the legal status of her *nikāḥ*, which could not prevent a second marriage even though bigamy is a criminal offence in England. On returning from Dubai in June 2011, she again raised the need for civil registration with Mr. Khan but did not commence judicial proceedings.[26]

The judgment in *G v. M* demonstrates that the courts could have applied the "hallmarks of marriage" test to Ms.

23 *Id.* at [40].

24 El Gamal v Al-Maktoum [2012] 2 FLR 387 (Eng.); *see* El Gamal v Al-Maktoum [2011] EWHC B27 (Fam), [26] (Eng.). The reported judgment in El Gamal v Al-Maktoum [2011] EWHC B27 (Fam) provides more details of the facts in this case, including the husband's polygamous marriages. See para. [26] for the details of polygamous marriages of the husband.

25 Two further pre-*Akhter* authorities illustrate the courts' approach. In Al-Saedy v. Musawi [2010] EWHC 3293, Bodey J. held that an Islamic ceremony conducted in London was not a "bona fide ceremony" because the husband was already married. In Dukali v. Lamrani (Attorney General intervening) [2012] EWHC 1748 (Fam), a monogamous ceremony at the Moroccan Consulate in London was likewise treated as a "non-marriage" under English law.

26 Akhter v. Khan [2018] EWFC 54, [20] (Eng.).

Akhter's case had her dispute arisen in the early 2010s.[27] In that case, the High Court granted permission to present a petition for nullity where evidence indicated that both parties believed they had undergone a valid Islamic marriage recognized in English law and that the *imām* also believed he was conducting a valid Islamic marriage. Relying on this evidence, Hedley J. declined to treat the ceremony as a "non-marriage" or "non-existent marriage," despite non-compliance with the Marriage Act 1949 and the absence of a marriage certificate.[28] Although *G v. M* concerned an interlocutory stage, it is significant for two reasons. First, it confirms that judges were still applying the hallmarks test as late as 2011. Second, it indicates that the three polygamy cases often cited for non-marriage, *Gandhi v. Patel*,[29] *Sharbatly v. Shagroon*,[30] and *El Gamal v. Al-Maktoum*,[31] did not displace the hallmarks test.[32]

Later events underline Ms. Akhter's awareness of conflicting precedents. After a long career break, she qualified as a solicitor in July 2014 and began to secure financial protection for herself and her children. She drafted a will for Mr. Khan that would leave two-thirds of his estate to her and the children; he refused to sign. When he bought a house the following year and registered himself as sole owner, she again pressed for a civil ceremony, including to mitigate inheritance tax, and he rebuffed her.[33] That dispute marked the end of their relationship.[34]

Ms. Akhter then alleged assaults and sought non-molestation orders. She applied for financial relief, including property adjustment orders, and for child arrangements and prohibited

27 G v. M [2011] EWHC 2651 (Fam), [8] (Eng.).

28 *Id.* at [11].

29 Gandhi v. Patel [2002] 1 FLR 603 (Eng.).

30 Sharbatly v. Shagroon [2003] EWCA Civ 156 (Eng.).

31 El Gamal v. Al-Maktoum [2011] EWHC 3769 (Fam) (Eng.).

32 I am grateful to Prof. Probert for drawing my attention to this point.

33 In *Re: RA (Appeal: Validity of a Marriage: Finding of Fact)* [2025] 1 FLR 301, [34], the High Court allowed the wife's appeal in part on the basis that the district judge had failed to address a material issue of fact, whether the husband's denial of participation in the civil marriage was a strategic attempt to defeat the wife's claim for financial relief. As the Domestic Abuse Act 2021 includes economic abuse, such conduct may fall within its scope, offering protection to women in situations similar to *Akhter* (Domestic Abuse Act 2021, c. 17, § 1, [Eng.])

34 Akhter v. Khan [2018] EWFC 54, [20] (Eng.).

steps orders. Mr. Khan applied for parental responsibility and shared care. When she petitioned for divorce, he responded that they had never been legally married. She contended that their two-decade relationship should be treated as marriage by presumption and estoppel, or, in the alternative, that she was entitled to a decree of nullity based on a void marriage.[35]

The central issue was whether the *nikāḥ*, followed by eighteen years of cohabitation and four children, created any rights under English law. The High Court held that Ms. Akhter was entitled to financial relief based on a "slightly more flexible interpretation of section 11 of the Matrimonial Causes Act 1973 informed by fundamental rights arguments."[36] The Court of Appeal disagreed. The two judgments are examined in the next part.

Judicial Treatment of Religious-Only Marriages (2018–2020)

This part evaluates the judgments of the High Court and the Court of Appeal to show the transition from the positive "hallmarks of marriage" test to the negative "non-qualifying ceremony" (NQC) test.

Framing of Legal Issues: Legal Non-Recognition of Marriage

The framing of the issues largely determined the outcomes in the High Court and in the Court of Appeal. Williams J. framed the questions positively: whether the parties should be treated as validly married by a presumption of marriage and, if not, whether the marriage was void and susceptible to a decree of nullity.[37] By contrast, the Court of Appeal (Sir Terence Etherton M.R., King, and Moylan L.JJ.) framed the questions in negative terms: first, whether there are ceremonies that do not create a marriage within English law for the purposes of section 11 of

35 *Id.*
36 *Id.* at [96].
37 *Id.* at [2].

the Matrimonial Causes Act 1973, and second, if so, whether the ceremony in this case fell within that category or was, as Williams J. held, a void marriage.[38]

Answering the first question, the Court of Appeal held that certain ceremonies are "non-qualifying ceremonies" that create neither a valid nor a void marriage.[39] The parties to such ceremonies may regard themselves as married, and others may treat them as such, yet in law they remain cohabitants without any entitlement to a decree of nullity or to financial remedies.[40] A non-qualifying ceremony does not become a valid or void marriage simply because of prolonged cohabitation or the birth of children.[41] It lies outside the statutory regime, which treats it as a non-marriage with no legal consequences. On the second question, the Court of Appeal held that the Islamic marriage (*nikāḥ*) at issue was a non-qualifying ceremony. A couple falls within the regulatory regime only if they undertake a ceremony that is itself within that framework.[42]

The Court of Appeal framed the issues using the term "ceremony," whereas Williams J. had spoken in terms of "marriage." In its closing passage, the court stated: "We repeat that, in our view, the effect of a ceremony of marriage must be determined as at the date it was performed. To use the language of the 1949 Act, the issue of whether a marriage has been validly 'solemnised' depends on what has in fact *happened when it was allegedly 'solemnised.'*"[43] From the Court's perspective, this approach provided certainty and uniformity by setting a clear benchmark: legal recognition turns on the objective features of the ceremony as performed, not on the intentions of the parties or later developments. Such clarity, the judges reasoned, was essential for a consistent regulatory framework governing all marriages in England and Wales.

38 Attorney General v. Akhter & Ors. [2020] EWCA Civ 122, [5] (Eng).
39 *Id.* at [121].
40 *Id.*
41 *Id.* at [124].
42 *Id.* at [123].
43 *Id.* at [125] (italics original).

Yet the Marriage Act 1949 establishes a process rather than a single dispositive formality.[44] The Act does not prioritize any one requirement, but contemplates notice, place, officiant, and registration working together.[45] Where a couple has at least engaged with that statutory process, for example by giving notice, a subsequent non-compliant event can fall within the framework as a qualifying ceremony that is void rather than a non-marriage. In other words, treating "what happened on the day" as the only benchmark risks overlooking the Act's process-based scheme.

The Court of Appeal accepted that the legal formalities of marriage can be described as a "process," but it insisted that the existence of a qualifying ceremony is the determinative question for legal recognition.[46] In doing so, it rejected Williams J.'s view that the court should take "a holistic view of a process rather than a single ceremony" when deciding whether there is a marriage.[47] While marriage under the Marriage Act 1949 can be seen as a process beginning with notice and ending with registration, Williams J. proposed that the court should consider factors beyond formalities, drawing on the hallmarks analysis developed in *Gereis v. Yagoub*[48] and elaborated in *Hudson v. Leigh*.[49]

The hallmarks test evaluates "questionable ceremonies" on a "case by case basis" by "taking into account various factors and features" including: (a) whether the ceremony or event set out or purported to be a lawful marriage; (b) whether it bore all or enough of the hallmarks of marriage; (c) whether the three key participants (most especially the officiating official) believed, intended, and understood the ceremony as giving rise to the status of lawful marriage; and (d) the reasonable perceptions,

44 Chris Bevan, *The Role of Intention in Non-Marriage Cases Post Hudson v. Leigh*, 25 Child & Fam. L. Q. 80, 93–95 (2013) (arguing that judges have preferred external aspects of marriage over its internal aspects to construct the category of "non-marriage" and proposing a hierarchical test in which formalities take precedence over the parties' intentions).

45 Marriage Act 1949, 12, 13 & 14 Geo. 6 c. 76, §§ 26, 27, 31 & 49 (Eng.).

46 Attorney General v. Akhter & Ors. [2020] EWCA Civ 122, [126] (Eng.).

47 Akhter v. Khan [2018] EWFC 54, [94] (Eng.).

48 Gereis v. Yagoub [1997] 1 FLR 854 (Eng.).

49 Hudson v. Leigh [2009] EWHC 1306 (Fam), [2010] 1 FLR 602 (Eng.).

understandings, and beliefs of those in attendance.[50] Williams J. supplemented these factors with the Article 8 ECHR considerations and set out a flexible, process-based approach.[51] He identified, in particular, whether the parties had agreed that the necessary legal formalities would be undertaken; whether the event was public, witnessed and involved promises; and whether failure to complete formalities was joint or due to one party's default. In doing so, he effectively replaced *Hudson* factor (d) with a focus on responsibility for non-compliance and sought to recognize "inchoate marriages," that is, unions that do not fully satisfy formalities but display sufficient marital characteristics to merit a legal response.

Earlier, in *MA v. JA*, Moylan J. cautioned that a purely contractual model based on consent is too wide.[52] He proposed an approach that applies the 1949 Act consistently with Ormrod J.'s statement in *Collett v. Collett* [1968] P 482 that "the essence of marriage" is the formal exchange of voluntary consents, while also taking into account the *Hudson v. Leigh* factors.[53] This synthesis accommodates both the parties' substantive intent and the statute's procedural requirements.

Rationale for the NQC Test

In *AG v. Akhter,* the Court of Appeal described "certainty" as the main purpose of the marriage regulatory framework that has developed over 250 years, and adopted a purposive interpretation of the Marriage Act 1949.[54] From this perspective, the NQC test promotes certainty and predictability: by excluding ceremonies that fail to comply with any statutory formality, the court sought to avoid *ad hoc* extensions of legal recognition and to safeguard the integrity of the statutory scheme. In the judges' view, certainty was itself a form of protection, ensuring that individuals understood the consequences of marrying within or

50 *Id.* at [79].
51 Akhter v. Khan [2018] EWFC 54, [94] (Eng.).
52 MA v. JA [2012] EWHC 2219 (Fam), [96] (Eng.).
53 *Id.* at [26].
54 Attorney General v. Akhter & Ors. [2020] EWCA Civ 122, [10] (Eng.).

outside the legal framework and preventing the unfairness of variable or inconsistent rulings.

The certainty rationale is plausible, but it has limits. First, a purposive and mischief-based reading of the Act tends towards inclusion rather than exclusion. Sections 25 and 49, which identify void marriages, use the language "knowingly and wilfully," introduced in 1823 to curb late challenges to marriages for technical non-compliance with the Clandestine Marriages Act 1753.[55] Courts, therefore, historically confined legal non-recognition. In *Gereis v. Yagoub,* H.H.J. Aglionby suggested that non-marriage should be limited to a marriage ceremony in a play.[56] Williams J. echoed this in *Akhter,* recommending, "the expression non-marriage should be reserved only to those situations such as acting or children playing where there has never been any intention to genuinely create a marriage."[57] Similarly, in *AM v. AM*, Hughes J. gave the example of "a staged dramatic marriage 'ceremony' conducted in a play or in the course of a television soap opera" and also of "alternative marriage" rites consciously and deliberately conducted altogether outside the Marriage Acts and never intended or believed to create any recognizable marriage.[58]

Second, *Akhter* concerned a petition for financial relief and engaged in a purposive reading of section 11 of the Matrimonial Causes Act 1973, which is remedial in design and extends financial relief even where a marriage is void.[59] Historically, ecclesiastical nullity left parties without remedies and rendered children illegitimate. Successive statutes addressed both problems: the Legitimacy Declaration Act 1858 allowed declarations of legitimacy and marital status, and the Family Law Act 1986 removed the power of the courts to declare "that a marriage was at its inception void"[60] with the objective "to

55 Rebecca Probert, *Determining the Boundaries Between Valid, Void and "Non-Qualifying" Ceremonies: Past, Present and Future*, *in* Cohabitation and Religious Marriage: Status, Similarities and Solutions 15, 17 (Rajnaara C. Akhtar, Patrick Nash & Rebecca Probert eds., 2020).

56 Gereis v. Yagoub [1997] 1 FLR 854, 857 (Eng.).

57 Akhter v. Khan [2018] EWFC 54, [81] (Eng.).

58 A-M v. A-M (Divorce: Jurisdiction: Validity of Marriage) [2001] 2 FLR 6, [55] (Eng.).

59 Tousi v. Gaydukova [2024] EWCA Civ 203, [38] (Eng.).

60 The Family Law Act 1986, § 58(5)(a). (UK).

prevent parties from avoiding the ancillary relief powers of the court which arise in nullity."[61] In this remedial context, a broad exclusionary category such as the NQC risks undermining Parliament's protective aims.

Third, the certainty rationale may also cut the other way: upholding religious-only marriages can itself promote predictability and fairness by ensuring protection for parties and children. In extrajudicial writing before *Akhter*, Moylan L.J. (one of three judges of the Court of Appeal in *Akhter*) questioned whether the need for certainty could override the legal policy that marriages should, wherever possible, be upheld, and he warned that defining large numbers of ceremonies as having no effect risks striking the wrong balance.[62]

Finally, the formal requirements of the 1949 Act have developed in a piecemeal fashion. As Probert notes, many current requirements have their origins in past panics, expediency, compromises, or quick fixes.[63] It is therefore unrealistic to ascribe a single "main purpose" to a regulatory framework that has grown inconsistently over time. In 2002, the Law Commission described the current law as "ancient and, as the result of its incremental development, complex … inconsistent and complicated, inefficient, unfair, and needlessly restrictive."[64] Half a century ago, on the question of what is sufficient to bring a marriage under the Act, the Law Commission's Report stated: "Unfortunately, the Act gives little indication of what are the minimum requirements of a 'form known to and recognised by our law … as capable of producing … a valid marriage.'"[65]

From the case law, it is clear that judges have gradually developed the category of "non-marriage" and extended it to religious-only ceremonies. Commentators describe this as a judicial creation grounded in a narrow reading of the statutes.

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61 Law Comm'n, Family Law Declarations in Family Matters, Law Com No. 132, ¶ 3.18 (1984) (UK).

62 Moylan, *The Approach of English Law to the Recognition of Islamic Marriages*, 46 Fam. L. 87, 89 (2016).

63 Rebecca Probert, *Getting Married: The Origins of the Current Law and Its Problems*, 23 Ecclesiastical L. J. 255, 266 (2021).

64 Law Comm'n, *supra* note 5, at 6.

65 Law Comm'n, Family Law Report on Solemnisation of Marriage in England and Wales, Law Com No. 53, ¶ 120 (1973) (UK).

Valentine Le Grice QC argued that "nothing in the 1973 Act, or any other legislation, gives the court power to decide that a ceremony amounts to a non-marriage as opposed to a void marriage. Non-marriage is a judicial concept and one that has not been approved by the Supreme Court."[66] By contrast, Rebecca Probert contended that courts are justified in declaring non-marriage where a ceremony fails to meet any of the formal requirements in the Marriage Act 1949.[67] She accepted that the category is judge-made, but reasoned that the Act supplies a framework for identifying the "minimum degree of compliance" needed for a valid or void marriage and, by inference, when a ceremony must be treated as a non-marriage. Even so, she would confine non-marriage to play-marriages and alternative rites never intended to have legal effect.[68] Similarly, in extrajudicial writing, Moylan J. accepted that non-marriage has a place but questioned whether "the net … has been cast too widely."[69]

It may be legitimate to classify some unions, with or without ceremony, as non-marriages. Yet whether religious-only ceremonies should fall into that category is a question for Parliament, not the judiciary. The Forced Marriage (Civil Protection) Act 2007, for instance, already adopts a broad definition that encompasses both religious and civil ceremonies regardless of legal enforceability.[70] Absent a clear legislative exclusion, courts should interpret matrimonial statutes consistently with their protective and inclusive aims. That is also the thrust of Mostyn J.'s critique that non-marriage sits uneasily with section 11 of the Matrimonial Causes Act 1973 and that it has been deployed to

66 Valentine Le Grice, *A Critique of Non-Marriage*, 43 Fam. L. 1278, 1278 (2013).

67 Rebecca Probert, *The Evolving Concept of Non-Marriage*, 25 Child & Fam. L. Q. 314, 314 (2013).

68 "Non-marriage is only appropriate where there is a play-marriage, which no one could seriously have thought to constitute a marriage." Rebecca Probert, *When Are We Married? Void, Non-Existent and Presumed Marriages*, 22 Legal Stud. 398, 409 (2002).

69 Moylan, *supra* note 62, at 88. Moylan J. was one of the three judges on the Court of Appeal in the *Akhter* case (Attorney General v. Akhter & Ors., [2020] EWCA Civ 122). Given his expertise in this area, he was most likely the author of the unanimous judgment. Notably, however, the legal position he adopted as a judge in *Akhter* differs from the views he had previously expressed in this paper.

70 Anti-Social Behaviour, Crime and Policing Act 2014, c. 12, § 121 (UK).

deny access to financial relief that Parliament otherwise intended to be available on nullity.[71]

On this analysis, classifying a religious-only ceremony that bears the hallmarks of an ordinary marriage as a non-marriage or NQC does not fit the remedial purpose of the Matrimonial Causes Act 1973 and is difficult to reconcile with earlier case law that took a benevolent and case-by-case approach to protect vulnerable parties, notably wives, widows, and children.

Religion, Human Rights Law, and the NQC Test

A striking feature of the emergence of the NQC test is that the early authorities did not concern Islamic marriages. The line of cases that laid the groundwork for the modern taxonomy involved a Coptic Orthodox ceremony treated as void rather than as a non-marriage,[72] a Sikh wedding celebrated at a London gurdwara,[73] a Hindu ceremony conducted in a restaurant,[74] and a Christian ceremony performed in Cape Town.[75] The first reported claim for financial relief following a religious-only Islamic marriage (*nikāḥ*) appeared only in 2001.[76] Writing shortly before this period, Pearl and Menski observed that because English law did not recognize *nikāḥ* as a marriage, Muslim women rarely approached the courts for divorce or financial relief. They noted that very few cases involving religious-only Islamic marriages reached adjudication and even fewer were reported, partly because of reluctance to bring test cases that might provide a definitive ruling.[77] This position shifted markedly in the 2010s. Between 2010 and 2020, all but one reported judgment, *Galloway v. Goldstein*,[78] applying the emerging non-marriage framework concerned religious-only Islamic marriages, and after 2020

71 Tousi v. Gaydukova [2023] EWHC 404 (Fam), [49] (Eng.).

72 Gereis v. Yagoub [1997] 1 FLR 854 (Eng.).

73 Chief Adjudication Officer v. Bath [2000] 1 FLR 8 (Eng.).

74 Gandhi v. Patel [2002] 1 FLR 603 (Eng.).

75 Hudson v. Leigh [2009] EWHC 1306 (Fam), [2010] 1 FLR 602 (Eng).

76 A-M v. A-M (Divorce: Jurisdiction: Validity of Marriage) [2001] 2 FLR 6 (Eng.).

77 David Pearl & Werner Menski, Muslim Family Law 166–71 (3d ed. 1998).

78 Galloway v Goldstein [2012] EWHC 60 (Fam) (Eng.).

almost all reported applications of the test arise in the context of Islamic marriages. This trajectory calls for explanation.

The principal explanation lies in developments within English law, particularly following the enactment of the Human Rights Act 1998, which gave effect to ECHR rights, notably Articles 8, 12 and 14, and A1P1. The incorporation of Convention rights transformed disputes about marriage formalities into rights-bearing claims concerning family life, marriage, equality, and property. The Act enabled litigants to frame religious-only ceremonies not merely as matters of legal non-compliance but as sites of potential interference with rights and interests protected under the human rights regime. As a result, questions of status that had previously remained marginal or unresolved became justiciable and increasingly contested. These rights-based developments also coincided with changes in the remedial landscape of English family law. From 2000 onwards, matrimonial finance adopted equality as its starting point, significantly increasing the practical importance of marital status.[79] Access to financial remedies became the central prize in litigation following relationship breakdown. Parties to religious-only marriages therefore had strong incentives to seek financial remedies, while respondents had corresponding incentives to invoke the developing category of non-marriage. It was within this legal environment that the NQC test assumed practical significance, with religious-only Islamic marriages becoming its most frequent testing ground.

Conflict of laws considerations play a secondary but reinforcing role. Many Islamic marriages were celebrated overseas in jurisdictions where Islamic family law governs marriage formation and requires what Hughes J. calls "comparatively slight formality" for a valid marriage.[80] Islamic law also recognizes marriage through consent, cohabitation, and reputation. These features may later conflict with the formal requirements of English law when couples relocate. However, such private international law issues only acquire significance

79 White v. White [2001] 1 AC 596 (UK); Miller v. Miller [2006] UKHL 24; Charman v. Charman [2007] EWCA Civ 503 (Eng.).

80 A-M v. A-M (Divorce: Jurisdiction: Validity of Marriage) [2001] 2 FLR 6, [35] (Eng.).

because English law now attaches substantial rights and remedies to the recognition of marriage, making classification disputes legally consequential.

Demographic change likewise operates in the background rather than as a primary cause. The growth of the Muslim population in England and Wales, together with its comparatively young age profile, has expanded the number of individuals likely to form relationships and eventually to experience relationship breakdown.[81] This increases the pool of potential litigants but does not itself explain the doctrinal prominence of Islamic marriages in NQC jurisprudence. Rather, demographic factors amplify the effects of domestic legal developments by increasing the frequency with which English courts are required to classify religious-only marriages within a rights-based and remedial framework shaped decisively by the Human Rights Act 1998.

It is important to acknowledge a range of judicial and institutional concerns that have shaped the restrictive trajectory of non-qualifying ceremony jurisprudence. Courts have been particularly anxious about opening the floodgates to claims insufficiently anchored in statutory form, and judges have consistently resisted expanding access to financial remedies through incremental development rather than legislative design. These concerns are neither illusory nor reducible to mere exercises of judicial discretion; they reflect deeper commitments to legal certainty, institutional competence, and the integrity of the statutory framework governing marriage.

Nonetheless, these concerns are not determinative. A more inclusive approach, whether through a recalibrated

81 The Muslim population in England and Wales grew from about 1.5 million (3.0%) in 2001 to 2.7 million (4.8%) in 2011 and 3.9 million (6.5%) in 2021, making Muslims the largest religious minority. The age profile is also younger: in 2021, 84.5% of Muslims were under 50, compared with 62.0% of the population overall. Off. for Nat'l Stat., *Full story: What does the Census tell us about religion in 2011?*, (May 16, 2013), www.ons.gov.uk/ons/dcp171776_310454.pdf. Off. for Nat'l Stat., *Religion by Age and Sex, England and Wales: Census 2021*, (Jan. 30, 2023), https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/religionbyageandsexenglandandwales/census2021. The estimated number of Muslims in England and Wales under the 1966 Census was 250,000. David Pearl, *Muslim Marriages in English Law*, 30 Cambridge L. J. 120, 143 (1972).

doctrinal test or targeted legislative intervention, is preferable for three reasons. First, it better aligns legal status with lived family reality. Second, it mitigates distributive injustice borne disproportionately by economically vulnerable partners. Third, it gives principled effect to human rights values enshrined in the ECHR without collapsing form into irrelevance or undermining the structural coherence of matrimonial laws.

Judicial Application of the NQC Test Since 2020

Since its formulation in 2020, courts have applied the NQC test in a series of reported judgments. Taken together, these decisions confirm that the NQC has not supplanted the hallmarks test; rather, the two coexist. The hallmarks test continues to identify the positive features of legally recognized marriages, valid, voidable, and void, while the NQC provides a negative standard, distinguishing void marriages from non-marriages on the basis of the ceremony.

The NQC Test and Conflict of Laws

In *Tousi v. Gaydukova*, the parties underwent a ceremony at the Iranian Embassy in Kyiv but did not register the marriage with the Ukrainian state authorities, although registration was required for validity under Ukrainian law.[82] After moving to the United Kingdom, they acquired a joint tenancy. When the relationship ended, the wife sought a transfer of tenancy under section 53 and Schedule 7 of the Family Law Act 1996, which permits transfers to cohabitants when a relationship ends, whereas a spouse ordinarily proceeds by a nullity order. On these facts, the wife would benefit from a finding of non-marriage rather than a void marriage. Mostyn J. held that the Kyiv ceremony did not create a marriage for English law purposes. He also questioned the legitimacy of the NQC category in England and Wales, observing that while void and voidable marriages are recognized by statute, the non-marriage category sits uneasily with section

82 Tousi v. Gaydukova [2023] EWHC 404 (Fam), [5] (Eng.).

11 of the Matrimonial Causes Act 1973 because it is deployed to exclude parties from financial relief.[83]

Mostyn J. suggested that if one party to a ceremony believed it created marital status, that belief should suffice to satisfy the definition of a void marriage under English law.[84] He described the law as "a disreputable mess" that requires substantive and procedural clarification.[85] He proposed limiting the reach of the NQC test in overseas cases so that the *lex loci celebrationis* governs not only validity but also the consequences of invalidity or irregularity.[86] On appeal, Moylan L.J. disagreed, holding that foreign law determines validity, while English law determines remedies on relationship breakdown.[87] In *Tousi,* the divergence did not affect the outcome, because Ukrainian law, since 2002, recognizes "in-fact marriage relations," which provided the parties with financial protection comparable to English tenancy transfer provisions.[88] The position could have been different had the claim concerned financial relief under the Matrimonial Causes Act 1973.

Other judgments applying the NQC test to financial relief reveal persistent uncertainty, especially in conflict-of-laws settings where marriage is treated as a process rather than a single event. Two cases illustrate the point. In *Asaad v. Kurter*, Moylan J. held that a Syriac Orthodox ceremony that lacked prior official permission to marry a non-Syrian national could be made formally valid, because that permission could have been obtained as part of the post-ceremony registration process; on that basis, the union was treated as void rather than a non-marriage, and a decree of nullity was available.[89] In *Boughajdim v. Hayoukane*,

83 *Id.* at [36].

84 Mostyn J. proposed this solution to the problem of the legal recognition of "religious (usually Islamic) marriages," which amount to "non-qualifying ceremonies" under the law in England and Wales but are recognized as valid by the entire Islamic world. Tousi v. Gaydukova [2023] EWHC 404 (Fam), [90].

85 *Id.*

86 Mostyn J. criticized the judgment in Hudson v. Leigh [2009] EWHC 1306 (Fam). As a lawyer, he succeeded in persuading Bodey J. that such a category existed in English law. However, as a judge he disagreed with this view. Tousi v. Gaydukova [2023] EWHC 404 (Fam), [78].

87 Tousi v. Gaydukova [2024] EWCA Civ 203, [55]–[74] (Eng.).

88 *Id.* at [39].

89 Asaad v. Kurter [2013] EWHC 3852 (Fam), [100] (Eng.).

MacDonald J. gave effect to Morocco's subsequent recognition and registration of the union and allowed the English divorce to proceed.[90] These cases suggest that where a foreign legal system validates marriage through later steps such as registration or court approval, English courts have accommodated that process, an approach difficult to reconcile with the NQC test's strict focus on "what happened on the day" of the ceremony as argued by the Court of Appeal in *Akhter*.

The Court of Appeal in *Akhtar v. Secretary of State for Work and Pensions* [2022] 1 WLR 421 reinforced the restrictive approach to marital status. Although Ms. Akhtar's marriage in Pakistan was valid there, it was void under English law because her husband was domiciled in England and already married. When she claimed bereavement benefits, the court held she was not a "spouse" under the relevant legislation. The judges unanimously refused to treat the marriage as valid or capable of generating financial rights, classifying it instead as an NQC. While acknowledging the harshness of this outcome, the Court stressed the need for certainty and Parliament's choice to link financial relief and social security benefits to legally recognized marriages. The Court also considered *Re McLaughlin*, where the Supreme Court found it discriminatory under Article 14 ECHR to exclude long-term cohabitants with children from Widowed Parent's Allowance (WPA).[91] In *Akhtar*, this reasoning was accepted for WPA but not for the lump-sum bereavement payment, which was confined to legal spouses. This bifurcation shows how the NQC doctrine operates as a gatekeeping device: while *McLaughlin* embraced a functional approach to protect children in cohabiting families, *Akhtar* reaffirmed a formalist stance that limits broader financial rights to parties in legally recognized marriages.[92]

The judgment in *Coventry City Council v. MK and GK and MAK* illustrates the difficulties of applying the NQC to

90 Boughajdim v. Hayoukane [2022] EWHC 2673 (Fam), [155] (Eng.).

91 Re McLaughlin's Application for Judicial Review (Northern Ireland) [2018] UKSC 48 (UK).

92 Kathy Griffiths, From "Form" to Function and Back Again: A Comparative Analysis of Form-Based and Function-Based Recognition of Adult Relationships in Law at 25–28 (May 2017) (Ph.D. dissertation, Cardiff University) (on file with Cardiff University).

foreign-facing unions.[93] The local authority sought a Forced Marriage Protection Order after an arranged ceremony was conducted over WhatsApp between a 21-year-old man with mild learning disability and ADHD in England, and a woman in Pakistan. Morgan J. held the union to be a non-qualifying ceremony because it was invalid under the *lex loci celebrationis* (Pakistani law): expert evidence established that physical presence of the parties at the place of celebration was required, which was not satisfied on these facts.[94] She then analyzed the arrangement under English law and, instead of moving straight to the NQC test, applied the *Hudson v. Leigh* hallmarks analysis and found the ceremony deficient and incapable of creating any legal relationship.[95] Having determined invalidity, she classified the outcome as an NQC but noted uncertainty as to whether Pakistani law draws a void/non-marriage distinction; she therefore grounded her declaration in English public policy and made no financial orders under the Matrimonial Causes Act 1973.[96] The judgment confirms that courts continue to use both the hallmarks test and the NQC test, deciding "questionable ceremonies" on a case-by-case basis.

As NQC jurisprudence develops in English law, the category is likely to complicate conflict-of-laws disputes, particularly those involving marriages linked to Muslim-majority countries. Under Islamic law, a union is recognized as valid on proof of consent exchanged in the presence of witnesses. A ceremony, treated as an NQC in England and Wales, could therefore be valid under the *lex loci celebrationis* abroad. That recognition carries significant consequences for transnational families, including questions of parental responsibility, paternity and legitimacy, financial provision, gifts, wills, and succession, especially where assets in Muslim-majority states are governed by the *lex situs*. How official laws in those jurisdictions regulate such marriages is addressed in the next section.

93 Coventry City Council v. MK [2023] 2 FLR 1021 (Eng.).
94 *Id.* at [39].
95 *Id.* at [19].
96 *Id.* at [46].

Legal Treatment of Religious-Only Marriages under Muslim Family Laws

Under classical Islamic law (*fiqh*), marriage (*nikāḥ*) is a contract (*ʿaqd*).[97] Its essence is the voluntary exchange of consent. Formalities such as witnesses, registration, and certificates serve evidentiary functions rather than constitutive ones. Failure to comply with formalities may impede enforcement, but it does not invalidate the union. Defects can be remedied by subsequent registration, judicial ratification, or presumption of marriage. This is consistent with Hughes J.'s observation that the presumption of a marriage "will more readily be applied where the marriage being presumed could have occurred with comparatively slight formality."[98] Islamic essentials are offer and acceptance in the presence of two witnesses at one sitting.

Historical practice across the Muslim world shows that marriage registration served multiple aims: deterring clandestine unions, protecting parties' rights in maintenance and inheritance, and enforcing age and polygamy restrictions.[99] English statutory history reflects comparable concerns; the drive to record and regulate marriages from Hardwicke's Act 1753 onward was likewise animated by protection and publicity.[100] Courts in England interpreted these formalities purposively, insisting on

97 Burhān al-Dīn al-Farghani al-Marghīnānī, al-Hidāyah 475–77 (Imran Ahsan Khan Nyazee trans., 2006); Kecia Ali, *Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines*, *in* The Islamic Marriage Contract 11, 11–45 (Asifa Quraishi & Frank E. Vogel eds., 2008). Judges in England and Wales have recognized the contractual nature of Islamic marriages and enforced them as such. In *Shahnaz v. Rizwan* [1965] 1 QB 390, the court held that a wife could sue for breach of contract if the husband refused to pay the agreed sum of dower as set out in their marriage contract. In *Uddin v. Choudhury* [2009] EWCA Civ 1205, the court held, "This was not a matter of English law. There was no ceremony which was recognized by English law, but it was a valid ceremony so far as the parties were agreed and it was valid for the purposes of giving legal effect to the agreement which had been made about gifts and dowry."

98 A-M v. A-M (Divorce: Jurisdiction: Validity of Marriage) [2001] 2 FLR 6, [35] (Eng.).

99 Lynn Welchman, Women and Muslim Family Laws in Arab Staes: A Comparative Overview of Textual Development and Advocacy 53–54 (2007).

100 Rebecca Probert, Marriage Law and Practice in the Long Eighteenth Century 206–243 (2009); Lawrence Stone, *From the Marriage Act of 1753 to 1868*, *in* Road to Divorce: England 1530–1987, 121, at 122 (1990).

strict compliance where protective policies are engaged, for example, where required consent was absent, but applying a robust presumption of marriage where long cohabitation and reputation point to a settled union.[101] Muslim jurists adopt analogous presumptions: prolonged cohabitation can be a ground for presumption of marriage to safeguard wives and children. The leading commentary on Muslim personal law in South Asia, *Principles of Mahomedan Law*, states, "Marriage will be presumed, in the absence of direct proof, from … prolonged and continued cohabitation as husband and wife."[102]

The foregoing reflects the classical *fiqh* position. From the nineteenth century onward, many Muslim-majority states reformed marriage law to require registration.[103] Judges in those systems then faced challenges similar to those encountered in England when adjudicating unregistered or unofficial religious-only unions. Contemporary approaches can be grouped into three broad models: permissive, dismissive, and accommodative, each balancing legal certainty against pragmatic recognition.

Pakistan illustrates a permissive approach. The Muslim Family Laws Ordinance 1961 requires registration and prescribes penalties for non-registration, yet courts have treated registration as directory rather than constitutive, meaning that an unregistered religious-only marriage remains valid because registration is evidentiary.[104] The reported judgments under this model fall into two main categories: the first concerns the inheritance rights of widows whose marriages are unregistered,[105] and the second concerns prosecutions for extramarital sex.[106] In

101 Rebecca Probert, *The Judicial Interpretation of Lord Hardwicke's Act of 1753*, 3 J. of Legal Hist. 129, 134–43 (2002); *Id.*, Marriage Law and Practice in the Long Eighteenth Century 284–85 (2009).

102 D.F. Mulla, Principles of Mahomedan Law 342–43 (20th ed. 2013)

103 Majid Khadduri, *Marriage in Islamic Law: The Modernist Viewpoints*, 26 Am. J. Comp. L. 213, 213–18 (1978).

104 The Muslim Family Laws Ordinance, No. 8 of 1961, § 5, Pak. Code, Mar. 2, 1961 (Pak.).

105 In *Mirza Allah Ditta v. Amina Bibi* 2004 YLR 239 (Pak.), a widow claimed inheritance right over a property and the defendant claimed that since her marriage was unregistered, she was not entitled to inherit the property. The court rejected the defendant's argument.

106 In *Azra Bibi v. S.H.O.*, Police Station Thingi, Dist. Vehari 2005 YLR 1859 (Pak.), the petitioner's brother filed a criminal complaint against her with the

both types of cases, judges have recognized unregistered religious-only marriages as valid.

By contrast, Tunisia and Egypt have adopted dismissive stances at various times.[107] In Tunisia, unregistered customary (*ʿurfī*) unions are unlawful and null under article 36 of the Code of Personal Status 1957.[108] In Egypt, Law No. 78 of 1931 restricted enforcement of unregistered marriages; later reforms in Law No. 1 of 2000 allowed judicial dissolution of such unions but continued to limit other remedies.[109]

A third model is accommodative. Several Gulf jurisdictions allow marriage to be proven by alternative means. Qatar's Family Law 2006 provides that marriage is established by a formal contract but "may be proved by other evidence" as the judge decides.[110] Similarly, Saudi Arabia's Personal Status Law 2022 requires registration of marriages yet permits provision of evidence to prove unregistered marriages.[111]

All three models aim to balance legal certainty with flexible recognition. English courts have repeatedly asked whether Islamic law contains an analogue to "non-marriage" (NQC) under Islamic marriage law. In *Coventry City Council v. MK and GK and MAK*,[112] Morgan J. asked the expert witness to clarify whether Pakistani law had an equivalent of the NQC but did not receive a satisfactory answer. It is evident that both permissive and accommodative models of Muslim law are unlikely to apply

police stating that she had illicit sexual relationship with a man. She claimed that she married that man though her marriage was not registered. The court held that a simple statement of spouse is sufficient to prove the validity of a marriage.

107 Turkey also falls within this category. Unlike other Muslim majority countries, Turkey replaced Islamic family law with the Swiss Civil Code which did not recognize religious ceremonies of marriage. Yigit v. Turkey, App. No. 3976/05, 53 Eur. Ct. H.R. 25 (2010) (The European Court of Human Rights held that states are not obligated under the ECHR to recognize religious-only marriages or grant them legal effects because states have a margin of appreciation to require civil marriage as a condition for legal benefits.)

108 R. C. Akhtar, *Contemporary Issues in Marriage Law and Practice in Qatar*, 20 Hawwa: J. Women Middle East & Islamic World 124, 124–58 (2020).

109 Lynn Welchman, Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy 56–57 (2007).

110 Law No. 22 of 2006 Promulgating the Family Law, art. 10 (Qatar).

111 Personal Status Law, Royal Decree No. M/73, art. 8 (Mar. 8, 2022) (Saudi Arabia).

112 Coventry City Council v. MK [2023] 2 FLR 1021, [36] (Eng.).

the stringent NQC test. Only the dismissive model, as adopted in Tunisia, is likely to adopt the NQC test. Under Article 36 of the Tunisian Code of Civil Status 1957, secretive customary (*ʿurfī*) marriages are illegal, and unregistered marriages are null and void. Yet, unlike English judges who categorize religious-only marriages as "non-marriages," Tunisian courts prosecute cohabiting couples who fail to register their unions for the offence of extramarital sex.[113]

A more compelling explanation for the absence of an NQC equivalent in many Muslim jurisdictions lies in the fundamentally different remedial architecture governing marital breakdown. In England and Wales, financial provision on divorce or nullity is extensive under the Matrimonial Causes Act 1973. The NQC has, in practice, operated to exclude parties to religious-only marriages from these remedies. By contrast, classical *fiqh* adopts a separate-property regime: spouses do not share assets by default; typical entitlements are limited to dower (*mahr*) and maintenance during the cooling-off or waiting period (*ʿidda*).[114] Only a few Muslim-majority countries, such as Malaysia, recognize the spousal right to matrimonial property under customary laws and modern legal reforms based on the contractual nature of marriage under Islamic law.[115] Consequently, when Muslim women seek financial relief following marital breakdown in the courts of England and Wales, they do so by asking the application of English law rather than Islamic law.[116]

113 Maaike Voorhoeve, *Law and Social Change in Tunisia: The Case of Unregistered Marriage*, 7 Oxford J.L. & Religion 479, 493 (2018). *See* Iris Kolman, *Cohabitation and "Urfi" Marriages in Tunisia: Public Discourse and Personal Narratives*, *in* Muslim Marriage and Non-Marriage: Where Religion and Politics Meet Intimate Life 127 (Julie McBrien & Annelies Moors eds., 2023).

114 Rajnaara C. Akhtar & Faizal Ahmad Manjoo, *Matrimonial Property in Islamic Law*, *in* Research Handbook on Family Property and the Law 77, 78–79 (Margaret Briggs and Andy Hayward eds., 2024); M. Siraj Sait, *Our Marriage, Your Property? Renegotiating Islamic Matrimonial Property Regimes*, *in* Changing God's Law: The Dynamics of Middle Eastern Family Law 245, 245–86 (Nadjma Yassari ed., 2016).

115 In Malaysia, section 58 of the Islamic Family Law (Federal Territory) Act 1984 gives courts the power to order a division of assets between parties keeping in view their contributions towards acquiring the assets and the needs of their minor children. Islamic Family Law (Federal Territories) Act 1984 (Act 303) § 58 (Malay.).

116 Muslim women in England and Wales approach the courts for financial relief rather than for divorce, as a court decree does not dissolve a religious marriage

It is therefore ironic that such claims are rejected against a backdrop of media portrayals framing judicial engagement with Islamic marriages as the recognition of "sharia law" in England.[117]

Conclusion

The litigation brought by Nasreen Akhter illustrates both the promise and the limits of English matrimonial law. After dedicating nearly two decades to her family, she secured some protective orders through the courts, but she was ultimately denied financial remedies under the Matrimonial Causes Act 1973 because her marriage was classified as a "non-qualifying ceremony."[118] The Court of Appeal's introduction of the NQC test drew a sharper boundary between valid, void, and non-recognized unions, clarifying the law while also exposing its limits. The Court of Appeal's creation of the NQC test thus left her, and many others in similar circumstances, without the

but causes the problem of "limping marriage" which is legally dissolved but religiously valid. Islam Uddin, Muslim Women and Islamic Family Law: Lived Experiences in Britain 164–65 (2025).

117 The attitude of the English print media is reflected in headlines covering the High Court judgment in *Akhter*. *The Telegraph* described the decision as a "British court recognises sharia law in landmark divorce case" (Kate McCann, *British Court Recognises Sharia Law in Landmark Divorce Case*, The Telegraph (Aug. 1, 2018), https://www.telegraph.co.uk/news/2018/08/01/british-court-recognises-sharia-law-landmark-divorce-case/); while the *Daily Mail* claimed that "British Court recognise sharia law for the first time" (Cheyenne Roundtree, *Landmark Ruling sees British Court Recognise Sharia Law for the First Time as Judge Rules Wife Married in Islamic Ceremony Can Make Claim on Husband's Assets Under UK law*, Daily Mail (Aug. 2, 2018), https://www.dailymail.co.uk/news/article-6018133/Landmark-ruling-sees-British-court-recognise-sharia-law-time.html). In contrast, *The Guardian* framed the judgment by emphasizing its legal implications, with the headline: "English law applies to Islamic marriage, judge rules in divorce case" (Harriet Sherwood, *English Law Applies to Islamic Marriage, Judge Rules in Divorce Case*, The Guardian (Aug. 1, 2018), https://www.theguardian.com/law/2018/aug/01/english-law-applies-to-islamic-marriage-judge-rules-in-divorce-case).

118 Sociological research shows that Muslim women reaffirm their religious identity by choosing religious-only marriages while still engaging with the formal legal system to claim their secular rights. Simran Kalra, *Religious Knowledge and Legal Rights: A Study of Nikah and Secular Marriage Among South Asian Muslim Women in England*, *in* Relationship Rights and Legal Pluralism: The Inadequacy of Marriage Laws in Europe 157, 157–72 (Mateusz Stępień and Anna Juzaszek eds., 2025).

protections historically designed to safeguard homemakers and dependent spouses.

This article identifies three interlinked stages in the development of the NQC test. In the first stage, judges applied the doctrine of "non-marriage" primarily, though not exclusively, to polygamous religious-only marriages conducted in England and Wales, as illustrated in *Gandhi*, *Sharbatly*, and *El Gamal*.[119] Even so, courts often extended some financial protections to wives by employing alternative mechanisms. These included the presumption of marriage, applied in both monogamous and polygamous contexts (e.g., *Bath* and *AM*); the inclusive "hallmarks of marriage" test (e.g., *Gereis* and *G*); and liberal statutory interpretation informed by ECHR principles and equity (as in *Akhter*).

The Court of Appeal's judgment in *AG v. Akhter and Others* marked a decisive shift. The judges formulated the NQC test to distinguish between void marriages and non-marriages, thereby denying financial relief under the Matrimonial Causes Act 1973 to parties to religious-only marriages, whether monogamous or polygamous. Unlike the hallmarks test, the NQC test has a narrow scope. It was designed to exclude ceremonies that fail to comply with any statutory formality from the regulatory framework, with the specific objective of withholding remedies under the Matrimonial Causes Act 1973. Notably, the test does not identify which formalities are essential for recognition; rather, it operates as a negative device to demarcate void marriages from non-marriages, not to determine recognition of marriages themselves.

119 Polygamous marriages are not a significant portion of religious-only marriages as research conducted in 2017 showed that just over 10 per cent of 903 women interviewed in the UK were in religious-only polygamous Muslim marriages. Rajnaara C. Akhtar, *"The Truth About Muslim Marriages": 60% of Muslim Women Surveyed Are in Marriages Not Recognised by Law*, True Vision (Nov. 21, 2017), https://www.truevisiontv.com/films/the-truth-about-muslim-marriages; Rajnaara C. Akhtar, *Modern Traditions in Muslim Marriage Practices: Exploring English Narratives*, 7 Oxford J.L. & Religion 427, 446–54 (2018). Naqvi observes that rather than engaging with the social and relational realities underpinning these unions, English law tends to categorize them as "non-existent" marriages. Zainab Batul Naqvi, Polygamy, Policy and Postcolonialism in English Marriage Law: A Critical Feminist Analysis 46–47 (2023).

Because of its narrow scope, the NQC test has not displaced the hallmarks test. In recent judgments, judges have faced two challenges. First, they have been unable to locate an equivalent to the NQC test in foreign jurisdictions (e.g., *Tousi* and *Coventry City Council*). Second, they have found that the NQC test cannot be used to distinguish valid marriages from invalid ones (whether voidable or void) because it is a negative test concerned only with the void/non-marriage divide. As the NQC test does not specify which formalities are required for a qualifying ceremony under section 49 of the Marriage Act 1949, judges have continued to rely on the hallmarks test to identify the positive features of a marriage. Consequently, the two tests coexist and overlap.

Normatively, the NQC test raises important questions. Its uncertain statutory foundation and its restrictive application risk undermining the remedial purpose of section 11 of the Matrimonial Causes Act 1973 and disproportionately disadvantage religious minorities, particularly wives and widows.[120] In comparative perspective, English law stands apart: while Australia and many Muslim-majority jurisdictions require registration, they often provide limited recognition or evidentiary presumptions for unregistered marriages rather than excluding them altogether.[121] The challenge, therefore, is one of reform.

English law requires a principled framework that balances certainty with substantive fairness. The present reliance

120 A handful of reported cases apply the non-marriage (NQC) analysis beyond matrimonial finance, notably in child abduction and widow's benefits. In *Northumberland & Durham Prop. Tr. Ltd. v. Ouaha* [2014] EWCA Civ 571 (Eng.), the Court of Appeal rejected a widow's claim to succeed to a statutory tenancy under the Rent Act 1977 on the basis that her mosque ceremony in England was a non-marriage. In *Akhtar v. Sec'y of State for Work & Pensions* [2022] 1 WLR 421 (Eng.), the Court of Appeal dismissed a widow's claim to a bereavement payment under the Social Security Contributions and Benefits Act 1992 because, at the time of celebration, the marriage was polygamous and therefore not capable of recognition for the relevant statutory purpose. The NQC also adversely affect the rights of fathers. In *A v. H* (Registrar General for England and Wales intervening) [2010] 1 FLR 1 (Eng.), the court held that the father had no rights of custody under the 1980 Hague Child Abduction Convention because his religious-only *nikāḥ* in England was a non-marriage.

121 Rajnaara C. Akhtar, Ghena Krayem & Anisa Buckley, *Vesting Powers in Officiants: Reforming Weddings Law in England and Wales; Lessons from Australia's Muslim Communities*, 35 Child & Fam. L.Q. 49, 50 (2023).

on the unstable and judge-made category of the "non-marriage" risks undermining both. One judicial response, as suggested in earlier judgments, would be to confine non-marriage to sham, fictitious, or purely play-acted ceremonies, where neither party intended to enter into a marriage and where the event lacked the objective characteristics of a marital union.[122] This would preserve certainty while preventing the concept of non-marriage from being applied to relationships that in substance functioned as marriages. A more comprehensive solution lies in legislative reform of the law of weddings, as proposed by the Law Commission.[123] By shifting the focus away from rigid formalities tied to venue and authorized officiants and toward advance notice and registration, Parliament could clarify the legal status of religious-only ceremonies without undermining the integrity of the marriage regime. Such reform would reduce reliance on judicial categorization and provide clearer guidance to couples, religious communities, and courts. Either approach would better align marriage law with its underlying policy: to protect the vulnerable, to regulate family life consistently, and to reflect the plural social realities of contemporary England and Wales.

Returning to Ms. Akhter, she eventually qualified as a solicitor after a sixteen-year gap and secured a series of court orders against Mr. Khan concerning access to the matrimonial home, child arrangements, and parental responsibility. She ultimately settled her dispute following the High Court's judgment. In the end, not all was lost; yet Mr. Khan retained much of the property accumulated during their relationship, while she had devoted two decades to caring for their family as a homemaker. The NQC test has undoubtedly brought greater clarity, but it also narrows the reach of legal protection at the very point where it is most needed. Rather than extending the regulatory regime to

122 Gereis v. Yagoub [1997] 1 FLR 854, 861 (Eng.); A-M v. A-M (Divorce: Jurisdiction: Validity of Marriage) [2001] 2 FLR 6, [55] (Eng.); Akhter v. Khan [2018] EWFC 54, [81] (Eng.).

123 Law Comm'n, *supra* note 5, at 425–49. On Oct. 2, 2025, UK's Ministry of Justice announced that the wedding law will be reformed in accordance with the Law Commission recommendations. Ministry of Justice, *Major boost to economy through wedding law reform*, Gov.UK (Oct. 2, 2025), https://www.gov.uk/government/news/major-boost-to-economy-through-wedding-law-reform.

safeguard the financial rights of homemakers, the NQC test restricts those rights, leaving wider scope for religious norms to operate in the shadow of the formal legal system. This outcome reflects not judicial impartiality but the exercise of secular state authority in defining which family forms count for legal recognition.[124] As feminist and family law scholars have long observed, the law's claim to impartiality often masks its role in reproducing hierarchies and reinforcing vulnerability.[125] In the context of religious-only marriages, the NQC test exemplifies how formalist reasoning entrenches structural inequality under the guise of doctrinal clarity, legal certainty, and judicial consistency.

124 Asad, *supra* note 3, at 181–201; Saba Mahmood, Religious Difference in a Secular Age: A Minority Report 190–95 (2015).

125 Carol Smart, Feminism and the Power of Law 20–25 (1989); Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law 40–47 (1990).