

An Introduction to Syariah Law in Singapore

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I. INTRODUCTION

Singapore is home to a multitude of religions and while Muslims form only 15.6% of the total population,¹ our legal system provides for a Muslim to be governed by Syariah law.² However, many Singaporeans do not understand what Syariah law entails or how it is enforced.

This commentary seeks to answer the frequently-asked questions regarding this matter. First, we answer the question of what is Syariah law. Second, we elaborate on the persons affected by Syariah law. Third, we set out how Syariah law is administered, and finally, we discuss the substantive differences between Syariah law and “regular” law. “Regular” law in this discussion is confined to the domain of family law in Singapore.

II. DISCUSSION

A. *What is Syariah law?*

Syariah law is essentially “law based on the Quran”.³ The Arabic word “Syariah” means the “way to the watering place”,⁴ which in its Islamic context refers to a clear path that believers should tread and follow to obtain guidance in this world. This includes commands, prohibitions, and principles that Muslims believe God has addressed to mankind pertaining to their conduct. Syariah law is meant to cover all aspects of a believer’s life, ranging from their everyday transactions to contracts, marriages and even criminal law.⁵

However, in Singapore, the areas of Syariah law which have been codified in legislation relate only to the practice of family law. This can be traced back to Singapore’s colonial era. The

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¹ The Singapore Department of Statistics, “Singapore Census of Population 2020, Statistical Release 1: Demographic Characteristics, Education, Language and Religion” (June 2021) <https://www.singstat.gov.sg/publications/reference/cop2020/cop2020-sr1/census20_stat_release1> (accessed 19 September 2021).

² Ahmad N. bin Abbas, “The Islamic Legal System in Singapore” (2012) 21 Pacific Rim Law & Policy Journal 163 (“*Ahmad*”), at p 163.

³ Merriam-Webster’s Collegiate Dictionary (10th Ed, 1999) <<https://www.merriam-webster.com/dictionary/sharia>> (accessed 19 September 2021).

⁴ ‘Abdur Rahman I. Doi, *Shariah: The Islamic Law* (A.S. Noordeen, 4th Ed, 1998) at p 2.

⁵ C.G. Weeramantry, *Islamic Jurisprudence – an international perspective green book* (The Other Press, 2011) at p 1.

founder of Singapore, Sir Stamford Raffles, laid down rules for Muslims that personal law, such as ceremonies of religion and marriages and rules of inheritance, were to be respected where these were not contrary to reason or justice.⁶ When Singapore became independent in 1965, the rights of Muslims were enshrined in the Constitution.⁷ This was reinforced through the enactment of the Administration of Muslim Law Act (“AMLA”) in 1968 which sets out applicable Syariah principles.⁸

B. Whom does it affect?

To answer the question simply, Syariah law only governs Muslims.⁹ The actions of non-Muslims do not fall under its purview.

In the context of marriages and divorces, if one of the parties is not a Muslim, they will not be affected by the provisions under AMLA and will instead be governed under the Women’s Charter.¹⁰ However, if both parties were Muslims at the point of marriage and one of the parties subsequently renounces Islam, Syariah law would still apply.¹¹

C. How is it administered in Singapore?

The administration of Syariah law is primarily governed by AMLA which sets out the powers and scope of key Islamic institutions in Singapore: Islamic Religious Council (“MUIS”); Registry of Muslim Marriages (“ROMM”); and the Syariah Court system.¹² Apart from Islamic institutions, the civil courts also aid in the administration of Syariah law.

⁶ *Ahmad, supra* n 2, at p 164.

⁷ *Ibid.* See also Constitution of the Republic of Singapore (1999 Reprint) Art 153.

⁸ Administration of Muslim Law Act (Cap 3, 2009 Rev Ed), (“AMLA”). See also Michelle Woodworth Cordeiro, “Conversation with Ahmad Nizam, Chairperson of the Muslim Law Practice Committee”, *Law Gazette*, November 2013 <<https://v1.lawgazette.com.sg/2013-11/898.htm>> (accessed 19 September 2021); Ahmad Nizam Abbas, Arif A. Jamal, Halijah Mohammad and Jaclyn L. Neo, “Recent Developments in Muslim Law Practice in Singapore”, *Law Gazette*, March 2019 <<https://lawgazette.com.sg/feature/recent-developments-in-muslim-law-practice-in-singapore/>> (accessed 19 September 2021).

⁹ Majlis Ugama Islam Singapura (Islamic Religious Council Of Singapore) Academy, “Interplay between Shariah and Civil Laws”, 16 March 2015 <<https://www.muis.gov.sg/muisacademy/Academic-Resources/Publication/Summaries/Interplay-between-Shariah-and-Civil-Laws>>

¹⁰ Women’s Charter (Cap 353, 2009 Rev Ed) s 3(4), (“WC”).

¹¹ AMLA s 35.

¹² AMLA ss 3–73A; *Ahmad, supra* n 2, at p 167.

(1) *MUIS*

MUIS is a statutory body which establishes and administers rules regulating the general religious life of Muslims in Singapore such as pilgrimage affairs and halal certification.¹³

(2) *ROMM*

The ROMM administers Muslim marriages under Syariah law. Similar to its civil law counterpart, its work is largely administrative.¹⁴

(3) *Syariah Court and the Appeal Board*

The jurisdiction of the Syariah Court and Appeal Board covers actions and proceedings in which all the parties are Muslims involving issues of marriages, divorces, nullity of marriage or judicial separation, and division of property upon divorce.¹⁵

(4) *Civil courts*

The civil courts can also be said to “administer” Syariah law by enforcing Syariah Court orders. It is also within the jurisdiction of the civil courts to hear any matters relating to Muslim wills or disputes involving Syariah law of inheritance.¹⁶

D. *How does it differ from “regular law”?*

The main areas in which Syariah law differs from “regular law” are in the areas of divorces, custody, and inheritance.

(1) *Divorce*

The two main differences between the laws are the available grounds of divorce and which of the two parties to the marriage can raise the specific grounds. Under AMLA, there are four grounds that a Muslim couple can rely on for divorce: *Talaq*; *Fasakh*; *Taklik*; and *Khuluk*.¹⁷

¹³ Majlis Ugama Islam Singapura (Islamic Religious Council Of Singapore), Roles and Functions <<https://www.muis.gov.sg/About-MUIS/Roles-Functions>> (accessed 19 September 2021).

¹⁴ AMLA s 103. See also *Ahmad*, *supra* n 2, at p 183.

¹⁵ AMLA s 35.

¹⁶ AMLA ss 114–115.

¹⁷ AMLA ss 46B, 47, 48 and 49.

The first ground of *Talaq* provides that husbands have a unilateral right of divorce through repudiation.¹⁸ The husband would simply need to pronounce a divorce in unambiguous terms, such as “I pronounce *talaq* on you”, for it to take effect.¹⁹

Wives seeking divorce can only rely on the remaining three grounds. Further, they must be able to prove the specific requirements.²⁰

- a. The second ground of *Fasakh*, divorce by judicial decree, can only be relied on by women. AMLA prescribes specific instances for this ground such as cruel treatment by the husband, failure to provide maintenance, or failure to perform marital obligations.²¹
- b. The third ground of *Taklik* provides for divorce where there is a breach of conditions prescribed in the marriage certificate.²² These include instances such as causing injury to his wife or her property, deserting her for four months or more, or causing wife to lose her self-respect.
- c. The fourth ground of *Khuluk* is a divorce by redemption where the wife can request for a pronouncement of *Talaq* from her husband upon some form of payment to him.²³ For such a divorce to take effect, the wife will return her dowry or a Court-assessed payment to the husband.

However, there is a general partiality in favour of the husbands. Not only is the husband able to unilaterally end the marriage via *talaq*, but he is also able to refuse consent to the divorce under *Khuluk*.²⁴ If the husband does not agree to the divorce, the matter will be referred to arbitration where impartial third parties will be appointed to act for the husband and wife respectively in determining if the marriage should come to an end.²⁵

In contrast, parties relying on “regular law” have a single ground of divorce under the Women’s Charter, which requires an irretrievable breakdown of marriage.²⁶ This ground is more gender-

¹⁸ Noor Aisha Abdul Rahman, “Muslim Personal Law within the Singapore Legal System: History, Prospects and Challenges,” (2009) 29 *Journal of Muslim Minority Affairs* 109 (“*Noor*”), at p 113.

¹⁹ AMLA s 46B(3). See also Noor Aisha Abdul Rahman, “Muslim Personal Laws and the Accommodation of Minorities: The Need to Better Balance Individual Rights and Group Autonomy in Singapore”, (2019) 20 *German Law Journal* 1079 (“*Aisha*”), at p 1086.

²⁰ *Noor*, *supra* n 18, at p 113.

²¹ AMLA s 49(1)(a) – (g).

²² AMLA s 48.

²³ AMLA s 47(4).

²⁴ *Noor*, *supra* n 18, at p 113.

²⁵ AMLA ss 47(5) and 50(1)–(2).

²⁶ WC s 95.

neutral given that it can be raised by either the husbands or wives. Further, neither party has a unilateral right of divorce or the ability to refuse consent to a divorce.

(2) *Custody of children*

First, the legitimacy of the child is a consideration of higher importance in Syariah law than “regular law”.

Under Syariah law, custody of illegitimate children is typically awarded to the mother. This is because under Syariah law, a child conceived out of wedlock does not have paternal legal relations.²⁷ Consequently, the child is neither able to inherit nor to be maintained by the father.²⁸ While this remains the position in Syariah law, the Syariah court has also put forth an argument that while the rights of the father to the child would be lost because of the illegitimacy, the rights of the child to have proper care and upbringing still remain. This is because of the paramount consideration of the child’s welfare in Singapore.²⁹ In the case of *AA v AB*, the court awarded both parents joint custody despite the children being born out of wedlock since it was in the children’s best interest to maintain a relationship with their father.³⁰

However, under “regular law”, legitimacy status of the child does not affect nor determine which parent gets custody. Further, the illegitimacy status can be legitimated upon the subsequent marriage of the biological parents.³¹

Second, there are slightly different considerations in determining which parent should be awarded custody, care and control. Civil courts typically focus on the child’s physical, educational and emotional needs.³² However, under Syariah law, a pertinent factor is which parent will better attend to the child’s upbringing in Islam.³³ For instance, in the case of *AY v AZ*, the Mother was awarded care and control of the child because the child was more likely to acquire Islamic knowledge and be raised in a Muslim environment under the Mother’s care as compared to the Father.³⁴

²⁷ Ahmad Nizam Abbas, “Custody Issues - Differences and Similarities between Civil and Syariah Courts in Singapore” (2018) 30 SAcLJ 695 (“*Nizam*”), at p 719. See also *AC v AD* (2011) 6 SSAR 78 (“*AC*”), at [11].

²⁸ *Ibid.*

²⁹ Guardianship of Infants Act (Cap 122, 1985 Rev Ed) s 3. *AC*, *supra* n 27, at [11].

³⁰ *AA v AB* [2011] 6 SSAR 120, at [16], [18], [27] and [29].

³¹ Legitimacy Act (Cap 162, 1985 Rev Ed) s 3.

³² *TSF v RSE* [2017] SGHCF 21, at [51].

³³ *Nizam*, *supra* n 27, p 721–722. See also *AY v YZ* (2015) 6 SSAR 386 (“*AY v AZ*”), at [36] at [37].

³⁴ *AY v AZ*, *supra* n 33, at [36]–[37].

(3) *Inheritance*

The principles which determine who are the beneficiaries and their shares differ between Syariah law and “regular law”.

Under Syariah law, the estate of a deceased Muslim will be divided amongst *faraid heirs* which include spouses, children and parents who will be awarded specific proportions as determined by the Syariah court based on Islamic principles.³⁵ For instance, sons are entitled to double the share of daughters because of the additional responsibilities prescribed onto them in Islam.³⁶ Further, non-Muslim spouses or children are not considered *faraid heirs* and would not have an automatic right to a share of the estate.³⁷

However, under “regular law”, the beneficiaries of a deceased dying intestate (without a will) are determined by the Intestate Succession Act, such that a spouse gets half while the remainder is shared among the deceased’s children equally.³⁸

III. CONCLUSION

Despite the differences in the administration and substance of Syariah and Civil law, both legal systems aim to uphold the principles of justice and equity and govern essential aspects of the everyday lives of Singapore citizens. Therefore, while there may be additional considerations or rules under Syariah law, the decisions remain to be in line with this overarching goal and is able to co-exist alongside our civil law. Further, as a country professing our multicultural and multireligious society, we as citizens should do our best to learn and understand the nuances between the two legal systems in our small nation.

³⁵ *Ahmad, supra* n 2, at p 177.

³⁶ *Aisha, supra* n 19, at p 1087. See also *Noor, supra* n 18, at p 115.

³⁷ *Noor, supra* n 18, at p 116. A proportion may be set aside in a will but this is dependent on the scholar which the individual follows. In Singapore, most Muslims follow the Shafiee principles which only allows one third of the estate to be set aside in a will. The remaining two thirds must be distributed to the faraid heirs.

³⁸ Intestate Act (Cap 146, 2013 Rev Ed) s 7.