

**A COMPARATIVE ANALYSIS OF CONFLICT OF LAWS RULES GOVERNING
PERSONAL STATUS IN THE LEGAL SYSTEMS OF IRAN AND AFGHANISTAN**

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Abstract. *Personal status constitutes one of the most significant domains of private international law, as issues relating to marriage, divorce, filiation, guardianship, legal capacity, and succession frequently involve conflicts among different legal systems. The determination of the applicable law in such matters plays a fundamental role in safeguarding legal certainty, protecting individual rights, and ensuring the stability of family relationships.*

The legal systems of Iran and Afghanistan, despite their shared Islamic legal heritage and cultural affinities, have developed distinct approaches to the resolution of conflict-of-laws issues concerning personal status. This study aims to undertake a comparative analysis of the conflict-of-laws rules governing personal status in the legal systems of Iran and Afghanistan.

Employing a descriptive-analytical and comparative methodology, the research examines the conceptual foundations of personal status, the principal connecting factors utilized in determining the applicable law, and the legal treatment of key institutions such as marriage, divorce, parent-child relations, guardianship, tutorship, and legal capacity.

Particular attention is devoted to the role of nationality as the primary connecting factor in both jurisdictions and to the challenges arising from characterization, public policy, multiple nationality, statelessness, and cross-border family relations.

The findings indicate that both legal systems predominantly adhere to the nationality principle in matters of personal status, reflecting the close relationship between an individual's legal identity and the state of nationality.

Nevertheless, differences exist in the scope of application, judicial interpretation, and mechanisms adopted to address contemporary transnational legal disputes. The study further demonstrates that increasing international mobility, migration, and the emergence of complex family relationships necessitate a more flexible and functional approach to conflict-of-laws rules, particularly through greater consideration of factors such as habitual residence and the best interests of vulnerable persons.

The article concludes that while the nationality-based approach continues to provide stability and predictability in personal status matters, legal reforms aimed at enhancing flexibility

and accommodating modern transnational realities would contribute significantly to the effectiveness and fairness of private international law in both Iran and Afghanistan.

Keywords: *Personal Status; Conflict of Laws; Private International Law; Iran; Afghani.*

1. Introduction

The concept of personal status has received considerable attention in both Islamic jurisprudence and legal scholarship. The term *ahwāl* (status) has traditionally been used in two lexical senses: first, to denote years, and second, to signify conditions, circumstances, or states. In contemporary usage, the latter meaning predominates, while the former has largely fallen into disuse. Likewise, the term *personality* is derived from the word *person*. A person is understood as a member of society possessing the capacity to hold rights and bear obligations, whereas personality refers to an individual's legal aptitude to enjoy such rights and assume corresponding duties. In Islamic jurisprudence, the notion of a “person” is commonly expressed through the term *mukallaf* (a legally accountable individual), although certain persons may possess rights without being subject to legal obligations.

In legal doctrine, persons are generally classified into two categories: natural persons and juridical (legal) persons. The field of personal status is primarily concerned with matters relating to natural persons. The term “personal status” itself is an imported legal concept that originated in Western legal systems and subsequently entered the legal frameworks of Islamic countries through translation and legal reception. Approximately a century has passed since the introduction of this concept into the legal discourse of Muslim jurisdictions.

Nevertheless, much of the scholarly literature addressing personal status has focused on particular applications and instances rather than undertaking a comprehensive examination of its nature, conceptual foundations, and constituent elements. One possible explanation for this tendency is the limited familiarity of many Islamic jurists with Roman law, which is generally regarded as the historical source of the concept of personal status.

Another contributing factor lies in the differences between legal and juristic methods of classification. Personal status occupies a distinct place within the taxonomy of modern legal systems, whereas the classificatory structure of Islamic jurisprudence differs substantially.

Although most issues encompassed by personal status are addressed within Islamic jurisprudence, the divergence in conceptual organization has led jurists to employ the term in a more limited sense.

The significance of understanding the nature and scope of personal status becomes even more apparent within the framework of private international law. This is because conflicts of laws, one of the principal subjects of private international law, manifest most prominently in matters relating to personal status. Consequently, questions concerning nationality, marriage, divorce, filiation, guardianship, capacity, and inheritance frequently give rise to conflicts between competing legal systems, making personal status a central domain for the operation of conflict-of-laws rules.

2. The Concept of Personal Status

Personal status is generally divided into two principal components: status and capacity.

Status refers to the set of legal attributes or characteristics that distinguish an individual from others and are recognized by law as having legal significance. Such attributes may include conditions such as being single, married, divorced, or the legitimacy or illegitimacy of filiation.

Capacity, on the other hand, is traditionally classified into capacity to enjoy rights (*capacity of enjoyment*) and capacity to exercise rights (*capacity of exercise*), through which an individual's legal position and competence within society are determined.

In some definitions, personal status is described as the collection of an individual's familial and natural characteristics that are ordinarily recorded in civil registration documents, such as birth certificates and identity records. Despite the variety of definitions advanced in legal literature, it is evident that no single comprehensive and universally accepted definition of personal status has emerged. Rather, legal scholars have generally identified its manifestations and applications rather than providing a precise conceptual formulation. Consequently, an extensive evaluation of the strengths and weaknesses of the various definitions appears of limited utility.

One of the defining characteristics of personal status is its non-pecuniary nature. Personal status cannot be converted into money, exchanged for economic value, or associated with an individual's profession, occupation, or social standing. From a legal-analytical perspective, the term is employed in two distinct senses: a broad sense encompassing both status and capacity, and a narrower sense referring exclusively to status while excluding capacity (Langroudi, 1380/2001, p. 17; Behnoud, 1369/1990, p. 11).

Within private international law, the study of personal status revolves around the two fundamental concepts of status and capacity, both of which constitute essential elements of an individual's legal identity. Status concerns the legal position occupied by a person within society and encompasses matters such as lineage and family affiliation, whereas capacity determines an individual's ability to acquire rights and to exercise them independently. These two elements are directly affected by conflict-of-laws rules, and the applicable law governing them is typically determined through connecting factors such as nationality or domicile. The analysis of status and capacity therefore provides the foundation for determining the law applicable to personal matters, including marriage, divorce, parent-child relationships, guardianship, and succession.

Civil status refers to the collection of legal characteristics and attributes that individuals possess under the laws of a particular state. It encompasses legal matters such as marriage, divorce, age, filiation, and legal incapacity, all of which play a fundamental role in defining the rights and obligations of individuals. Legal relationships to which the law attaches specific legal consequences are considered part of civil status. Marriage, for example, creates both rights and obligations for spouses. Thus, while the husband may be recognized as the head of the family under certain legal systems, he is simultaneously burdened with obligations such as the maintenance of his wife.

In Roman law, the status of persons was traditionally examined through three principal dimensions. The first concerned the distinction between freedom and slavery, which determined an individual's rights and obligations according to whether the person was freeborn, emancipated,

or enslaved. The second concerned political status, namely citizenship, distinguishing Roman citizens from Latins and other subjects of the Empire. Roman citizens enjoyed legal privileges unavailable to other groups. The third concerned family status, under which a person's position within the family—whether as *paterfamilias* or as a child under paternal authority—determined the rights and responsibilities attached to that position. In addition, social class exerted a significant influence on legal status, as an individual's rights frequently varied according to social rank.

A comparable distinction existed in classical Islamic law, where the legal status of persons was influenced by whether they were free or enslaved. Enslaved persons generally enjoyed fewer rights than free individuals. Although this distinction has lost all practical relevance today and slavery has been abolished throughout both Western and Muslim legal systems, it historically constituted an important component of personal status.

Political status also occupied a prominent position within Islamic jurisprudence. Muslims and non-Muslims were subject to different legal regimes, and non-Muslims were further classified into various categories, including belligerent non-Muslims and non-belligerent non-Muslims. Distinct legal institutions, such as the contract of temporary safe-conduct, truces, and treaties, governed the legal relations between Muslims and these groups.

Political status remains important in modern legal systems. Nationals and foreign citizens are frequently subject to different legal rules, particularly with respect to political rights. Foreign nationals, for example, are generally excluded from voting and holding certain public offices. While the legal status of foreigners is typically examined within private international law, political status itself falls primarily within the domain of public law.

Family status likewise occupies a significant place in both civil law and Islamic jurisprudence. In civil law, status generally refers to the legal position of persons within private and family relationships. Such status is non-pecuniary in nature and constitutes an integral aspect of an individual's legal personality. Financial rights and economic privileges therefore fall outside the scope of civil status (Nisari, 1392/2013, p. 8). In legal terminology, capacity denotes the legal competence of a person both to possess rights and to exercise them. A distinction is traditionally drawn between capacity to enjoy rights (*legal capacity* or *capacity of enjoyment*) and capacity to exercise rights (*capacity to act* or *capacity of exercise*). A person who lacks either of these forms of capacity may, under certain circumstances, be regarded as legally incapacitated. Capacity is generally divided into two categories. The first is capacity of enjoyment (*ahliyyat al-wujūb*), which refers to the ability to acquire and hold rights. For example, a natural person possesses the legal capacity to marry, whereas a juridical person does not. The second is capacity of exercise (*ahliyyat al-adā'*), which refers to the ability to exercise and enforce rights independently.

Possessing the capacity to enjoy a right does not necessarily imply the capacity to exercise it. Consequently, a person may hold a legal right while lacking the competence to exercise it personally.

The absence of capacity of exercise does not invariably result in legal incapacity (*hajr*).

Foreign nationals, for example, may be deprived of certain political rights, such as voting, without being regarded as legally incapacitated. Nevertheless, the majority of cases involving a lack of capacity concern persons who are legally incapacitated. Conversely, adults possessing sufficient maturity and sound judgment are ordinarily deemed capable of exercising their rights.

Under Article 1210 of the Iranian Civil Code, the age of majority is fifteen lunar years for boys and nine lunar years for girls. Furthermore, the Note to Article 1210 requires proof of maturity (*rushd*) before property may be entrusted to a person who has attained legal majority.

Legal incapacity may arise for two principal reasons. The first is the protection of the rights of others, as in cases of insolvency, where restrictions are imposed to safeguard creditors, or limitations placed on a terminally ill person's testamentary dispositions exceeding one-third of the estate in order to protect heirs. The second concerns the protection of the incapacitated person himself, as in the case of minors, persons suffering from insanity, or prodigals (*safih*). The objective of such restrictions is to preserve the individual's property and interests from potential harm.

Persons such as minors, the mentally incapacitated, and prodigals are therefore unable to exercise their civil rights independently. Capacity of enjoyment, however, constitutes an exception because it is inseparably linked to human personality. This capacity arises upon live birth and terminates only upon death. Capacity of enjoyment is independent of the ability to dispose of rights; thus, a child may own property even though he or she cannot validly administer or dispose of it until attaining legal competence.

There exists a close relationship between status and capacity, although the two concepts are not identical. Certain aspects of status, such as age, directly affect capacity, since a minor lacks full legal competence by reason of minority. Conversely, capacity may also affect status. For example, the legal ability to marry presupposes a certain degree of capacity, thereby influencing an individual's family status. Many legal scholars therefore argue that excluding capacity from the concept of personal status is conceptually unsound, as capacity plays a significant role in numerous matters traditionally classified as personal status.

Moreover, no individual may completely renounce either the capacity to enjoy rights or the capacity to exercise all civil rights. Since capacity of enjoyment is inherent in human personality, its total negation would be tantamount to denying the legal existence of the individual. Some scholars have characterized this capacity as a natural endowment bestowed upon human beings and terminating only upon death. Consequently, a person cannot wholly relinquish fundamental capacities such as the capacity to marry, although partial waivers relating to the exercise of particular rights may be permissible. It is on this basis that the legal maxim "*every holder of a right may waive his right*" is generally confined to specific instances of the exercise of rights and cannot extend to the total relinquishment of legal personality itself.

Since personal status constitutes a branch of civil law, its historical development is closely linked to that of civil law generally. Nevertheless, an important question arises as to when personal status emerged as an independent legal concept and which legal system first introduced the distinction between personal and real statutes.

Most scholars maintain that the concept of personal status first appeared in the Italian city-states during the thirteenth and fourteenth centuries. At that time, Roman law operated alongside various local laws. In order to distinguish between these legal systems, the general law derived from Rome was referred to simply as “law,” whereas local regulations were designated as “statutes” (*statuta*). These statutes were subsequently classified into two categories: those relating to persons and those relating to property. Italian jurists adopted this distinction and divided civil law accordingly, distinguishing between matters concerning persons, their legal capacity, and their personal characteristics on the one hand, and matters concerning property on the other. The former became known as personal statutes, while the latter were designated real statutes. Other scholars have traced the concept to French law, arguing that the drafters of the *Code Civil* developed the modern notion of personal status and that the term subsequently entered Persian legal terminology through translation from French. The expression “personal status” entered Islamic legal discourse only toward the end of the nineteenth century. This development does not imply that Islamic jurisprudence had previously ignored such matters. On the contrary, the principal subjects encompassed by personal status—including marriage and its legal consequences, guardianship, succession, trusteeship, and legal incapacity—have long occupied a central place within Islamic jurisprudence. Indeed, the personal status provisions contained in the civil codes of many Muslim countries are largely derived from classical Islamic legal doctrine.

The reason Islamic jurists focused primarily on marriage and related matters rather than on the broader theoretical framework of personal status appears to be that the concept itself, as developed in modern legal systems, was not fully articulated within the traditional juristic classifications. Consequently, while the substantive rules existed, the conceptual category of personal status remained underdeveloped. In contemporary private international law, three principal connecting factors govern personal status matters: nationality, domicile, and habitual residence. In addition to these factors, party autonomy and the choice of law are recognized to a limited extent in certain personal status issues. In England and the United States, domicile traditionally serves as the primary connecting factor for personal status matters. By contrast, in Iran and most continental European legal systems, nationality remains the principal connecting factor.

Domicile is generally understood as a person's permanent legal home. In the common law tradition, the principal legal relationship between an individual and a particular territory is established through domicile. Domicile is regarded as a legal concept rather than a purely factual one. Every person must possess a domicile at all times and, as a general rule, cannot possess more than one domicile simultaneously. Friedrich Carl von Savigny, the leading nineteenth-century German theorist of conflict of laws, emphasized the importance of identifying the “seat” or “centre of gravity” of legal relationships. In his view, matters relating to personal status should be governed by the law of the place where a person resides, since that location represents the natural center of the individual's legal and social existence.

One of the principal difficulties associated with domicile lies in the divergent meanings attributed to the concept in different legal systems.

The notion of domicile in English law differs substantially from its counterparts in Iran and continental Europe. This discrepancy gives rise to what conflict-of-laws scholars describe as a conflict of connecting factors.

In France and many jurisdictions influenced by French law, domicile generally refers to the principal center of a person's affairs. In English law, however, domicile is considerably more complex and resists precise definition. Indeed, what English lawyers often describe as “ordinary residence” closely resembles the continental concept of domicile, whereas the English concept of domicile bears a closer resemblance to nationality in continental legal systems.

Although domicile has long served as a connecting factor in many jurisdictions, modern conflict-of-laws scholarship increasingly criticizes it as artificial and unpredictable. In many cases, only courts are capable of determining a person's domicile, and individuals themselves may find it difficult to ascertain with certainty where their domicile lies. Nationality, by contrast, is generally easier for both individuals and third parties to determine. Nevertheless, reliance on nationality may lead to the application of a law that bears little connection to the actual circumstances of the dispute, particularly where individuals reside outside their state of nationality for extended periods. Moreover, nationality-based systems may create unequal treatment among persons living within the same territory but possessing different nationalities. Additional difficulties arise in cases involving multiple nationalities or stateless persons. Where one of the multiple nationalities corresponds to the forum state, that nationality is ordinarily preferred. However, where all relevant nationalities are foreign, courts may be compelled to resort to alternative connecting factors or to apply the law of the forum (*lex fori*). Similar challenges arise in relation to stateless persons, often resulting in the application of forum law. Such solutions, however, suffer from the same unpredictability associated with domicile and may encourage forum shopping by litigants seeking the most favorable legal regime. The principal weakness shared by both nationality and domicile lies in their relative rigidity. Neither adequately reflects the increasingly mobile nature of modern societies. Millions of individuals now reside in countries other than those of their nationality and are fully integrated into the social and economic life of their host states. In such circumstances, the application of the law of nationality to matters such as marriage or succession may prove both inappropriate and inequitable.

For this reason, the concept of habitual residence has emerged as an increasingly important connecting factor in contemporary private international law. Developed largely under the influence of The Hague Conference on Private International Law and first employed in international conventions at the beginning of the twentieth century, habitual residence was intentionally left undefined in order to preserve flexibility. Habitual residence constitutes an objective and factual connecting factor that requires consideration of all relevant circumstances surrounding a particular case. It is sufficiently flexible to identify both the most appropriate forum and the law most closely connected to the individual concerned. Moreover, it reflects contemporary developments in both national and international legal practice.

Habitual residence differs fundamentally from domicile. First, a person may possess more than one habitual residence, whereas domicile is generally unique.

Second, habitual residence is based primarily on factual circumstances, while domicile incorporates both factual and legal dimensions. Third, habitual residence depends upon a person's actual and continuing presence in a particular place; once that connection ceases, habitual residence may likewise disappear. Domicile, however, may continue to exist despite prolonged physical absence because it embodies a legal relationship as well as a factual one. Consequently, habitual residence appears to provide a more suitable and equitable connecting factor than either nationality or domicile, particularly in relation to stateless persons, refugees, and individuals whose social and personal lives are more closely connected to their place of residence than to their formal nationality.

3. Analysis of the Governing Law of Personal Status in the Iranian Legal System

Given the cultural, historical, and religious affinities between Iran and Afghanistan, the legal systems of both countries have adopted broadly similar approaches to determining the law governing matters of personal status. Under the civil laws of Iran and Afghanistan, the principle of nationality (*Lex patriae*) constitutes the primary connecting factor governing personal status matters, including marriage, divorce, succession, and legal capacity. Rooted in the notion that an individual's legal identity is inseparably linked to his or her political community, this principle reflects the view that a person's status and capacity should be governed by the legal and cultural framework of the state of nationality. Nevertheless, judicial practice and the interpretation of this principle may differ in each jurisdiction in response to particular social and legal circumstances. A comparative examination of this issue not only reveals the similarities and differences between the two legal systems but also contributes to a better understanding of the challenges arising from the application of conflict-of-laws rules in cases involving a foreign element.

In determining the law applicable to personal status, two principal connecting factors have traditionally been proposed: nationality and domicile. Proponents of domicile argue that an individual's connection with the host society is generally stronger and that familiarity with local laws makes the application of the law of domicile more consistent with social realities. By contrast, supporters of nationality maintain that personal status possesses a transnational character and that the stability and continuity of an individual's legal status can only be ensured through the application of the law of the state of nationality, irrespective of the place of residence. In practice, the choice between these two connecting factors is often influenced more by national policy considerations than by purely legal arguments. States that receive large numbers of immigrants tend to favor domicile as the connecting factor, whereas states that traditionally send emigrants abroad generally prefer nationality. Iranian law has adopted the latter approach and recognizes nationality as the principal basis for determining personal status.

The Iranian Civil Code strongly emphasizes the application of national law to matters of personal status and provides that all Iranian nationals, whether residing within Iran or abroad, remain subject to Iranian law in such matters. The rationale underlying this approach is the preservation of stability and consistency in an individual's status and legal capacity, ensuring that personal status is not subjected to varying legal systems depending on geographical location. It should be noted, however, that personal status is not limited to the examples expressly mentioned

in Article 6 of the Iranian Civil Code. Those examples are merely illustrative and intended to clarify the concept. Consequently, other matters addressed under different legal provisions may also fall within the scope of personal status. Examples include legal guardianship and the appointment of guardians under Article 1180 and related provisions of the Civil Code, as well as adoption, which is recognized under the Law Concerning the Observance of the Personal Status of Non-Shi'a Iranians enacted in 1933.

Article 7 of the Iranian Civil Code expressly extends the nationality principle to foreign nationals residing in Iran. According to this provision, foreign nationals in Iran remain subject to the laws of their own states with respect to matters of personal status, legal capacity, and succession rights, insofar as applicable treaties permit. Consequently, when foreign nationals bring claims relating to personal status before Iranian courts, Iranian substantive law will generally not apply. Instead, the courts are required to adjudicate the dispute in accordance with the national law of the parties concerned. The application of this principle, however, is qualified by the phrase "within the limits of treaties." Accordingly, bilateral and multilateral agreements concluded between Iran and the state of nationality of the foreign individual must be taken into consideration. One of the most significant challenges in this area concerns the issue of characterization (qualification). The scope of personal status may differ between Iranian law and foreign legal systems. A matter that is classified as personal status under one legal system may be categorized differently under another. Therefore, before applying foreign law, Iranian courts must first determine whether the issue in question falls within the category of personal status according to Iranian law. If it does, the national law of the foreign individual will govern; otherwise, another applicable legal regime must be identified.

This issue frequently arises in succession disputes involving immovable property owned by foreign nationals and located in Iran. In such cases, the court must first determine whether the matter concerns personal status or property law. If the issue pertains to personal status, the law of the deceased's nationality applies. Conversely, if the dispute relates to rights in rem over immovable property, the governing law will be the law of the situs, namely Iranian law.

Article 967 of the Iranian Civil Code further clarifies this position by providing that matters relating to the succession of foreign nationals in Iran—including the determination of heirs, their respective shares, and testamentary dispositions—are governed by the law of the deceased's state of nationality. Given that different legal systems may define personal status differently, conflicts of characterization remain possible. To minimize such difficulties, states often attempt to provide detailed definitions of personal status in international agreements. A notable example is the Residence Treaty concluded between Iran and Switzerland in 1933, which expressly classified marriage, divorce, filiation, legal capacity, guardianship, tutorship, and inheritance rights as matters of personal status. Such detailed classifications reduce uncertainty and facilitate the uniform application of conflict-of-laws rules. More broadly, these agreements contribute significantly to legal certainty in international relations by clearly identifying the matters governed by personal status and ensuring respect for the national laws of the parties concerned.

Within the field of personal status, the principle of nationality manifests itself most clearly in fundamental institutions that form the basis of family law and personal legal identity. These include marriage and its substantive validity, divorce and its legal consequences, filiation and the legal relationship between parents and children, legal incapacity and guardianship, as well as parental rights and obligations such as maintenance and respect. Because these matters directly affect a person's status and legal capacity, Iranian conflict-of-laws rules generally subject them to the law of the individual's nationality. Consequently, the legal consequences of these institutions are determined according to the domestic law of the parties' state of nationality, even where they reside in a foreign country.

The following sections examine some of the principal manifestations of this rule within Iranian private international law.

Pursuant to Article 6 of the Iranian Civil Code, “laws relating to personal status, including marriage and divorce, shall apply to all Iranian nationals, even if they reside abroad.” This provision establishes the principle that the personal status of Iranian citizens remains governed by Iranian law irrespective of their place of residence. Nevertheless, the application of this principle requires a distinction between the formal requirements and the substantive requirements of marriage. With regard to the formal validity of marriage, including matters such as registration procedures, documentary requirements, and the competent authorities authorized to solemnize the marriage, Iranian law contains no specific provision directly governing marriages concluded abroad by Iranian nationals. However, Article 969 of the Civil Code provides a general rule according to which “the form of legal instruments shall be governed by the law of the place where they are executed.” Consequently, Iranian nationals residing abroad are not required to comply with the formal requirements prescribed by Iranian law when concluding a marriage. Provided that the marriage complies with the formal requirements of the law of the place of celebration, it will generally be recognized as formally valid in Iran.

Accordingly, differences among legal systems concerning matters such as compulsory registration before civil authorities, the necessity of religious ceremonies, or the procedural requirements for solemnization do not affect the formal validity of a marriage concluded by Iranian nationals abroad, so long as the applicable local formalities have been observed. In contrast, the substantive validity of marriage is governed by the national law of the parties. Matters such as legal capacity to marry, minimum age requirements, consent, and impediments to marriage—including prohibited degrees of relationship and affinity—are determined in accordance with Iranian law whenever Iranian nationals are involved. The purpose of this rule is to preserve the continuity of an individual's legal status and to safeguard the legal identity associated with nationality.

Furthermore, the legal effects of marriage, whether proprietary or non-proprietary, are likewise governed by the national law of the spouses. These effects include issues such as maintenance obligations, management of family property, family leadership, residence, and the financial independence of spouses. Consequently, provisions of the Iranian Civil Code governing family relations—including those relating to the headship of the family, determination of the

matrimonial residence, the wife's independent ownership of property, and maintenance obligations—continue to apply to Iranian spouses residing abroad. Where disputes arise before foreign courts, the application of Iranian law will depend upon the conflict-of-laws rules of the forum state. If the forum employs a connecting factor similar to that adopted by Iranian law, the foreign court may be required to apply Iranian substantive law in adjudicating the dispute. Under Article 7 of the Iranian Civil Code, the personal status of foreign nationals residing in Iran, including matters relating to marriage, is governed by the law of their respective states of nationality. Accordingly, the substantive requirements of marriage—including legal capacity and matrimonial impediments—are determined by the national law of the foreign parties. As a consequence, Iranian courts generally recognize the validity of a marriage involving foreign nationals whenever the marriage is valid under the law of the parties' nationality. The application of foreign law, however, is not absolute. Two important limitations exist.

The first limitation concerns the doctrine of *envoi*, recognized under Article 973 of the Civil Code. Where the foreign law designated by Iranian conflict-of-laws rules refers the matter to another legal system, Iranian courts may, under certain circumstances, take such referral into consideration. The second and more significant limitation is the doctrine of public policy (*ordre public*), embodied in Article 975 of the Civil Code. Under this provision, Iranian courts are not required to apply foreign laws that are contrary to the fundamental moral, religious, or social values of the Iranian legal order. For example, even if a particular foreign legal system permits marriages between close relatives, an Iranian court would refuse to recognize such a marriage because it would violate the public policy and ethical foundations of Iranian law. This approach reflects a balance between respect for the personal law of foreign nationals and the necessity of preserving the fundamental values of the forum state. A particularly complex issue arises where the prospective spouses possess different nationalities. In such circumstances, an important question emerges: which national law should govern the substantive validity of the marriage—the law of the husband's nationality, the law of the wife's nationality, or a combination of both? Two principal approaches have been advanced in legal doctrine.

The first approach, influenced by the traditional conception of the husband as the head of the family, advocates the application of the husband's national law. According to this view, family unity is best preserved through the application of a single governing law, namely the law of the husband's nationality.

The second approach emphasizes the protective function of personal status laws and argues that each prospective spouse should satisfy the requirements imposed by his or her own national law. Under this approach, if the law of either party's nationality prohibits the marriage, the marriage cannot validly be concluded with respect to that individual, regardless of whether the other party's national law would permit it. This approach has particular relevance in Iranian law. For example, Article 1059 of the Iranian Civil Code prohibits the marriage of a Muslim woman to a non-Muslim man. Likewise, Article 1060 requires governmental authorization for the marriage of an Iranian woman to a foreign national under certain circumstances. In such cases, the individual concerned is deemed legally incapable of entering into the marriage, and the permissive

provisions of the other party's national law cannot remove that incapacity. Acceptance of this approach by Iranian courts serves to preserve the authority of Iranian personal status law and to protect Iranian nationals even where the foreign law applicable to the other party would permit the marriage. Conflicts of laws do not necessarily cease upon the conclusion of marriage. They may continue throughout the marital relationship, particularly where one spouse changes nationality or where the legal system recognizes the independent nationality of married women.

Under such circumstances, determining the law governing the effects of marriage becomes increasingly complex. In the absence of a universally accepted solution, Iranian private international law generally adopts the principle that each spouse must possess the legal capacity required by his or her own national law at the time of marriage. This approach reflects both the protective objectives of personal status law and the sovereign authority of states to regulate the legal status of their nationals. Accordingly, nationality continues to play a central role not only in determining the validity of marriage but also in shaping the legal consequences that arise from the marital relationship. Where both spouses possess the same nationality, whether Iranian or foreign, the law governing divorce is determined in accordance with the general principles of Iranian private international law. Pursuant to Articles 6 and 7 of the Iranian Civil Code, matters relating to personal status are governed by the law of the parties' nationality. Accordingly, a foreign national may obtain a divorce in Iran only if the grounds relied upon constitute legally recognized grounds for divorce under the law of his or her state of nationality. In adjudicating such disputes, a fundamental distinction must be drawn between substantive rules and procedural rules. Procedural matters, including judicial proceedings, evidentiary requirements, and court procedures, are invariably governed by the law of the forum (*lex fori*), namely Iranian law. Consequently, even where the national law of the spouses prescribes particular procedural requirements for divorce, Iranian courts conduct proceedings in accordance with Iranian procedural law.

Furthermore, the characterization of an issue as procedural or substantive is itself determined according to the law of the forum. Therefore, Iranian courts retain authority to decide whether a particular matter falls within the procedural or substantive domain.

By contrast, the substantive conditions of divorce—including legally recognized grounds such as failure to provide maintenance, abuse, abandonment, or mental incapacity—are governed by the common national law of the spouses. For example, an Iranian court would grant a divorce sought by a French wife against her French husband on the ground of insanity only if French law recognizes insanity as a legally valid ground for divorce. This approach preserves the authority of the parties' national law over the substance of family relations while simultaneously respecting the territorial sovereignty of the forum state over judicial proceedings. More complex issues arise where spouses possess different nationalities, either because they held different nationalities at the time of marriage or because one spouse subsequently acquired a new nationality after the marriage.

In such circumstances, determining the law governing divorce becomes significantly more challenging. Iranian private international law resolves this conflict through the application of the law of the husband's nationality.

This solution is reflected in Article 963 of the Iranian Civil Code, which accords priority to the husband's national law over other potentially applicable legal systems, including the law of the wife's nationality and the law of the spouses' residence. Two principal justifications have traditionally been advanced in support of this rule.

First, it reflects the classical conception of family unity, according to which the husband serves as the legal center of the family. Under this view, applying the husband's national law ensures consistency and coherence in the legal regulation of family relations.

Second, the application of a single national law promotes legal certainty and stability in personal status matters. By subjecting divorce to one governing law, the legal consequences of the marital relationship remain predictable and are not affected by changes in residence or domicile.

Consequently, when Iranian courts adjudicate divorce disputes involving spouses of different nationalities, they generally determine the substantive grounds and legal effects of divorce in accordance with the law of the husband's nationality. The legal relationship between parents and children constitutes another important category of personal status. Iranian law provides a clear solution to conflicts of laws in this field through Article 964 of the Civil Code.

Under this provision, the legal relationship between parents and children is generally governed by the law of the father's nationality. This rule establishes a single and stable connecting factor, thereby minimizing uncertainty and reducing the possibility of conflicting legal outcomes.

An exception arises where a child's filiation is established exclusively through the mother, such as in cases where the identity of the father is unknown. In such situations, the law of the mother's nationality governs the legal relationship.

The rationale underlying this approach is the preservation of consistency in family relations through the application of a single governing law. For example, where a child seeks maintenance from a parent, Iranian courts determine the existence and extent of the maintenance obligation according to the law of the father's nationality rather than the nationality of the child or the mother.

By adopting a fixed connecting factor, Iranian law seeks to ensure legal certainty and uniformity in matters relating to parental authority, maintenance obligations, and other aspects of the parent-child relationship. In matters of legal guardianship, a distinction must be drawn between two situations. The first concerns cases in which the guardian and the minor possess the same nationality. The second concerns cases in which they possess different nationalities. Where both parties share the same nationality, the law of that state naturally governs their legal relationship. More difficult questions arise where the guardian and the minor are nationals of different states. In such circumstances, it becomes necessary to determine whether guardianship should be governed by the law of the guardian's nationality or by the law of the minor's nationality.

One view maintains that legal guardianship should be governed by the law of the guardian's nationality. Proponents of this approach argue that guardianship forms part of the broader parent-child relationship, which is traditionally governed by the law applicable to the father.

Since guardianship derives from that relationship, it should be subject to the same legal system. A competing view emphasizes the protective function of guardianship. Since guardianship exists primarily to safeguard the interests of the minor, the law of the minor's nationality is regarded as better suited to ensuring such protection.

Iranian law adopts the latter position. Article 965 of the Civil Code provides that legal guardianship is governed by the law of the nationality of the person under guardianship.

Consequently, where a foreign guardian exercises authority over an Iranian minor, the guardian must comply with Iranian law rather than the law of his or her own nationality.

For example, if a foreign guardian seeks to consent to the marriage of an Iranian minor, the validity of such consent must be assessed according to Iranian law. This rule reflects the protective orientation of Iranian private international law and its emphasis on safeguarding the interests of vulnerable persons. Tutorship likewise falls within the scope of personal status and is therefore generally governed by national law. Nevertheless, where the tutor and the person under tutorship possess different nationalities, conflicts may arise regarding the establishment of tutorship, the administration of property, and the respective rights and obligations of the parties.

Differences among legal systems may be particularly significant with respect to the grounds giving rise to legal incapacity. A circumstance that justifies tutorship in one legal system may not have the same legal effect in another.

The prevailing view in Iranian law is that tutorship should be governed by the law of the nationality of the person under tutorship rather than that of the tutor. This approach reflects the fundamental purpose of tutorship, namely the protection of the interests of the incapacitated person rather than the protection of the tutor.

Article 965 of the Civil Code embodies this principle by providing that the appointment of a tutor is governed by the law of the nationality of the person under tutorship. Accordingly, where a foreign national is placed under tutorship in his or her home state and a tutor is appointed in accordance with the applicable foreign law, that appointment will generally be recognized in Iran.

Moreover, the scope of Article 965 extends beyond the mere appointment of a tutor. The legal relationship between the tutor and the person under tutorship—including the tutor's powers, duties, and responsibilities—is likewise governed by the law of the nationality of the protected person.

This approach demonstrates the protective philosophy underlying Iranian conflict-of-laws rules and ensures that the legal regime governing tutorship remains closely connected to the individual whose interests require protection.

4. Analysis of the Law Governing Personal Status in the Afghan Legal System

The law governing personal status in Afghanistan is founded upon a distinctive combination of codified legislation and principles derived from Islamic jurisprudence. With respect to Afghan nationals, the principal conflict-of-laws rule applicable to matters of personal status is the nationality principle (*lex patriae*). Various manifestations of personal status under Afghan law are discussed below.

Article 17 of the Afghan Civil Code provides that the legal capacity of a person is governed by the law of his or her nationality. Accordingly, the capacity of a foreign individual is generally determined according to the law of the state of which that person is a national.

Afghan law, however, adopts a twofold approach with respect to the capacity of foreign nationals. First, a foreign person's capacity is assessed in accordance with the law of his or her state of nationality. Second, where a foreign national undertakes a financial transaction in Afghanistan and is considered fully incapable under his or her national law but capable under Afghan law, Afghan law recognizes such person as possessing full legal capacity. This rule applies even where the incapacity results from a “hidden cause”. Although the legislature has not expressly defined this concept, it appears to refer to situations in which a person is deemed incapable under foreign law while being fully capable under Afghan law (Farahmal, 2019, p. 137).

Marriage constitutes one of the most important legal institutions giving rise to family relations and serves as the starting point of numerous rights and obligations associated with personal status. The Afghan Civil Code defines marriage as “a contract that legitimizes the cohabitation of a man and a woman for the purpose of establishing a family.”

From the perspective of private international law, four principal situations may arise:

1. Marriage between two Afghan nationals outside Afghanistan;
2. Marriage between two foreign nationals within Afghanistan;
3. Marriage between an Afghan national and a foreign national within Afghanistan;
4. Marriage between an Afghan national and a foreign national outside Afghanistan.

Each of these situations is governed by specific conflict-of-laws rules.

Foreign nationals are entitled to marry within Afghanistan. Article 17 of the Afghan Civil Code provides that matters relating to the civil status of persons are governed by the law of their nationality. Furthermore, Article 19 stipulates that the substantive validity of marriage is subject to the national law of each spouse.

A significant issue arises from the wording of Article 19, which refers to “the laws of the respective states of nationality of each spouse.” For example, where the husband is a French national and the wife is a Turkish national, practical difficulties emerge regarding the reconciliation of potentially conflicting national laws. Unlike certain legal systems, such as France, which often resort to the parties’ common domicile when conflicts arise between different national laws, Afghan law does not provide a clear mechanism for resolving such situations.

With respect to the effects of marriage, however, the Afghan legislature has adopted a more definite rule. The Civil Code provides that the legal consequences of marriage, including proprietary matters, are governed by the law of the state of which the husband was a national at the time of the marriage. This provision resolves certain conflict-of-laws issues concerning marriages involving foreign nationals.

A further issue concerns marriages between Afghan nationals concluded abroad. The resolution of such cases largely depends upon the conflict-of-laws rules of the state where the marriage takes place. If that state follows the nationality principle in matters of personal status, Afghan nationals will generally be able to marry in accordance with Afghan law.

Conversely, if the foreign state adopts domicile or residence as the connecting factor, a positive conflict of laws may arise.

In such circumstances, bilateral or multilateral agreements become particularly important. Afghan law itself does not contain explicit provisions governing marriages of Afghan nationals abroad, nor does it establish a mechanism through which foreign states may be compelled to apply Afghan law. Even a broad interpretation of Article 17 cannot overcome the fundamental principle of state sovereignty, according to which Afghanistan cannot require another state to enforce Afghan law within its territory.

The Hague Conventions likewise emphasize the role of international agreements in resolving such conflicts. Under these instruments, the national law of the parties may be applied where relevant agreements exist between the state of nationality and the state of residence, provided that such application does not violate the public policy of the forum state.

The marriage of an Afghan national to a foreign national within Afghanistan is governed by specific provisions of the Afghan Civil Code. Pursuant to Articles 19 and 20, where one of the spouses is an Afghan national at the time of marriage, Afghan law generally governs the marriage, except in certain matters relating to legal capacity.

Thus, both the formal and substantive requirements of marriage are, in principle, subject to Afghan law. Nevertheless, an exception exists concerning the personal status of the foreign spouse, which remains governed by the law of his or her nationality.

An important question concerns the law governing the effects of marriage. Article 20(1) of the Civil Code provides that the legal effects of marriage, including proprietary consequences, are governed by the law of the state of which the husband was a national at the time of marriage.

Consequently, matters such as matrimonial property and other legal consequences arising from the marital relationship are determined according to the husband's national law (Farahmal, 2019, p. 149). Where an Afghan national marries a foreign national outside Afghanistan, Afghan law does not provide a clear and comprehensive solution. In practice, the law of the state where the marriage is celebrated plays a decisive role. If both parties are foreign to the forum, the court will ordinarily apply its own conflict-of-laws rules. However, where one of the spouses is a national of the forum state, courts frequently apply their own national law, reflecting the reluctance of states to permit foreign law to govern the personal status of their nationals within their territory. Divorce and judicial separation are distinct legal concepts, both of which bring marital relations to an end but in different ways. Divorce results in the definitive dissolution of the marriage, whereas judicial separation generally produces a temporary separation, leaving open the possibility of reconciliation under certain circumstances.

Legal systems differ significantly in their treatment of divorce. Some jurisdictions do not recognize divorce and permit only judicial separation, while others determine the applicable law on the basis of nationality or domicile. Afghan law adopts a nationality-based approach.

According to the Afghan Civil Code, divorce involving foreign nationals is governed by the law of the state of which the husband is a national at the time the divorce takes place. The relevant provision states: "In matters of divorce, the law of the state of which the husband is a

national at the time of divorce shall apply.” Thus, the governing law is determined by the husband's nationality at the time of divorce rather than at the time of marriage.

Similarly, judicial separation is governed by the law of the husband's nationality at the time proceedings are initiated. Accordingly, both divorce and judicial separation are linked to the husband's personal law, reflecting the traditional approach adopted by Afghan private international law (Zolmi & Ebrahimi, 2016, p. 123). The Afghan Civil Code provides that issues relating to filiation, parental authority, guardianship, and other rights and obligations between parents and children are governed by the law of the state of which the father is a national. Article 22 expressly states that: “In matters relating to filiation, guardianship, and other obligations between parents and children, the law of the state whose nationality is held by the father shall apply.”

Consequently, the legal responsibilities and rights existing between foreign parents and children residing in Afghanistan are generally determined according to the law of the father's nationality.

Tutorship constitutes a legal relationship established to protect persons who, by reason of minority, mental incapacity, or prodigality, are unable to manage their own affairs. The tutor assumes responsibility for administering the property and interests of the protected person until legal capacity is acquired or restored.

Different legal systems adopt different approaches regarding the law governing tutorship. Some apply the law of domicile, whereas others apply the law of nationality.

The Afghan Civil Code provides that matters relating to persons who are fully or partially incapable, as well as absent persons, are governed by the law of the state of their nationality. The same principle applies to issues concerning tutors, guardians, executors, and other protective institutions established for their benefit. Accordingly, Afghan law regards the national law of the protected person as the primary governing law in matters relating to tutorship, guardianship, and similar protective relationships. This approach reflects the protective purpose of such institutions and seeks to ensure that vulnerable persons remain subject to the legal system most closely connected to their personal status (Farahmal, 2019, p. 152).

5. Conclusion

Personal status constitutes one of the most significant fields of private international law, serving as a primary arena for conflicts of laws and interactions among different legal systems. Matters such as marriage, divorce, filiation, legal capacity, guardianship, tutorship, and succession are closely connected to the legal identity and status of individuals and have therefore long been subject to special conflict-of-laws rules. This study undertook a comparative examination of the rules governing personal status in the legal systems of Iran and Afghanistan and demonstrated that, despite certain differences in legislative structure and practical implementation, both jurisdictions are founded upon a common approach to determining the applicable law.

The findings reveal that the principle of nationality remains the primary connecting factor governing personal status in both legal systems. This approach is based on the premise that an individual's status and legal capacity form an integral part of his or her legal identity and should therefore be regulated by the legal system of the state of nationality.

Consequently, matters relating to marriage, divorce, parent–child relationships, guardianship, tutorship, and succession are generally governed by the national law of the individual concerned.

Despite this common foundation, the comparative analysis demonstrates that Iranian private international law has undergone a more extensive theoretical and legislative development.

Concepts such as characterization, renvoi, and public policy have been addressed with greater precision and sophistication within the Iranian legal framework. By contrast, although Afghan law similarly adheres to the nationality principle, certain legislative ambiguities and practical challenges remain, particularly in cases involving foreign elements and transnational family relationships.

The study further indicates that exclusive reliance on nationality as a connecting factor is increasingly challenged by contemporary social realities. The growth of international migration, mixed-nationality marriages, multicultural societies, dual nationality, and statelessness has generated new legal complexities that cannot always be adequately resolved through a rigid application of national law. In some circumstances, strict adherence to nationality may produce outcomes that are inconsistent with social realities and the broader objectives of justice and legal certainty.

In conclusion, both Iran and Afghanistan continue to regulate personal status primarily through the principle of nationality, reflecting their shared legal traditions and common legal heritage. Nevertheless, contemporary developments in private international law require both legal systems to reconsider and modernize certain aspects of their conflict-of-laws rules. Drawing upon comparative legal experience and international legal developments may contribute to the creation of a more coherent, equitable, and effective framework for resolving personal status disputes in an increasingly interconnected world.

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