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The Role of Muslim Religious Code of Conduct (Islamic Law or *Shariah*) in Child Protection Within Muslim Migrant Communities in Australia

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Abstract

This paper investigates and examines the role of the Muslim religious code of conduct known as Sharia or Islamic law in relation to the protection of children, in particular child neglect, within Australian Muslim communities. Australia has a secular and unified legal system. This legal system applies to all Australian citizens and residents, regardless of their religious, ethnic, or cultural background. However, it is argued here that for certain Culturally and Linguistically Diverse (CALD) communities, particularly Muslim communities, their personal, cultural, and religion code of conduct may be relevant in shaping their family relations. What this paper offers is an understanding of the possible relevance of Muslim law and culture in relation to personal law and family and community cultures of Muslim migrants in Australia. This article utilises a scoping review and doctrinal legal research methodology provide a broad overview of the existing literature, relevant legislation, limited Australian case law, and sources of Islamic law that respond, or are relevant, to child neglect in Muslim migrant communities in Australia. It is concluded that Muslim culture and religious teachings support very strong and positive family bonds, which is positive in relation to the protection of children. However, some cultural practices relating to forced marriage, child marriage, gender inequality and family violence may lead to child neglect and result in adverse effects for child protection within Muslim communities in Australia.

Keywords: child protection in Australia; Islamic law; Muslim migrant communities in Australia; religious codes; family violence; forced marriage



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1. Introduction

This paper investigates and examines the role of the Muslim religious code of conduct known as *Shariah* or Islamic law in relation to the protection of children, in particular child neglect, within Australian Muslim communities. It analyses how the Muslim code of conduct, known as Islamic law or *Shariah*, and Muslim cultural norms may be relevant, at least as a matter of fact before judicial institutions, and hence interact with Australian law with respect to child protection. As elaborated below, Muslim communities and individuals, in spite of their diversity and differences, follow certain principles, rules, cultural norms, and code of conduct which, in particular circumstances, function as legal obligations within the community, family, or from an individual perspective.

The Muslim population in Australia exceeds 800,000 people, equating to 3.2% of the total Australian population (ABS 2022). The backgrounds of Muslim migrants in

Australia include Asian countries, such as Indonesia, Bangladesh, and India, Middle Eastern countries, such as Lebanon, Iraq, and Iran, and other regions of the world, such as Turkey, Bosnia-Herzegovina, and Afghanistan. Muslim populations in Australia, like the rest of the world, are culturally homogenous, and include different sects, such as *Shia* and *Sunni*, and various ethnicities and languages (Ali 2020).

Australia has a secular and unified legal system (Parkinson 2012, p. 7). This legal system applies to all Australian citizens and residents, regardless of their religious, ethnic, or cultural background. However, it is argued here that, for certain Culturally and Linguistically Diverse (CALD) communities, particularly Muslim communities, their personal, cultural, and religion code of conduct may be relevant in shaping their family relations. This does not mean that the Muslim code of conduct, or *Shariah*, must be observed, or implemented in Australia. What this paper offers is an understanding of the possible relevance of Muslim law and culture in relation to personal law and family and community cultures of Muslim migrants in Australia. This understanding may help service providers, policy makers, researchers, court systems, and the broader community to deal more effectively with the protection of children.

The Muslim code of conduct, known as *Shariah*, is the traditional legal system of Islam which is applicable, at least in part, in almost all Muslim majority countries as well in the legal system of some non-Muslim countries with a sizable Muslim population such as India (Esmaili 2015, p. 83). Australia has a secular unified legal system and Islamic law, or *Shariah*, is not part of that system (Parkinson 2012, p. 7). However, personal codes of conduct and practice of Muslim communities, as long as they are not inconsistent with Australian law, may be practiced by Muslim individuals, institutions and communities (Richards and Esmaili 2012, p. 172). *Shariah* is a 'dominant normative force in the lives of many Australian Muslims' (Black 2008, p. 217). According to Jamial Hussain, 'since Muslims are bound to obey Islamic religious law as well as the laws of the country they live in, it is possible that Muslims may sometimes be put in a position of conflict' (Hussain 2011, p. 256). Also, rules of Islamic *Shariah* law may be relevant before Australian courts and legal institutions as matters of fact (not law) (Esmaili 2015, p. 75).

Islamic law is also an important part of Muslim culture, whether in Australia or elsewhere. Most principles of the Muslim code of conduct, or *Shariah*, that are observed by Muslims, particularly in relation to personal laws, may be consistent with Australian law. However, if *Shariah* or Muslim cultural practices are inconsistent with Australian law then they are not valid in Australia. For example, a case before the Supreme Court of the ACT proves that an Australian court may rule application of Islamic law or *Shariah* invalid if they find that a principle of *Shariah* is inconsistent with Australia law (Omari v Omari 2016). This is the case even though, in relation to personal law, under the common law principle of freedom of contract, people can enter into any contracts they like, as long as the contracts themselves are still legal. While there are no statistics on cases of child neglect within Muslim migrant families in Australia, it can be said that gender inequality accounts for some forms of child maltreatment and neglect (AMWCHR 2013, p. 27). 'Forcibly limiting girls' education and mobility, forced marriages and some forms of child sexual abuse are examples of this' (AMWCHR 2013, p. 27). In this article, we discuss how certain cultural and legal complications within Muslim communities may contribute to child neglect. Therefore, references to gender discrimination, child marriage, forced marriage, and family violence are in the context of issues and complications that may arise in relation to child neglect. In addition, from a legal perspective, child neglect can be part of domestic and family violence and gender discrimination. Further, some of these issues, like domestic and family violence, significantly fuel child neglect, and hence are discussed here in the context of child protection.

2. Methodology

This article's research utilised a scoping review (Pham et al. 2014) together with doctrinal legal research (Hutchinson and Duncan 2013) to provide a broad overview of the existing literature, relevant legislation, limited Australian case law, and sources of Islamic law that respond, or are relevant, to child neglect in Muslim migrant communities in Australia.

Given the proficiency of both authors in the Arabic language, we involved primary sources on Islamic law (Qur'an, Fiqh resources—Islamic classical jurisprudence) and Muslim cultural norms significantly. We searched them in libraries and databases and included some classical resources available to us. Secondly, we searched online academic and scholarly databases (e.g., Hein Online, Google scholar, PsychARTICLES, Australian Institute of Health and Welfare, Families and Society Collection) to find relevant sources in the English language. Articles only relevant to child neglect from the perspective of Islamic law and relating to the Muslim minority communities in the West were selected to answer our research question.

In addition, both primary and secondary Islamic sources were selected based on their originality, relevance, and scholarly content, as well as their practical significance. Both authors have been involved as content experts and continue to be involved in research projects concerning Muslim communities in the West and particularly in Australia. Notably, this article focuses on the *practical, legal and cultural lenses* of child protection and their interaction with Australian secular law, rather than providing a critical and analytical engagement with original sources of Islamic law—a broader and often debated concept within public and scholarly discourse in the Muslim world.

After providing an overview of child neglect, the paper investigates the main sources of the religious code of conduct of Muslims, *Shariah*, relevant to child protection. First, original sources of Islamic law and culture, namely the *Quran*, the *Sunnah* (the practice of Prophet Muhammad), and original *fiqh* (Islamic jurisprudence) resources (in Arabic) are investigated. Second, it explores the existing literature, including research papers, and official reports and statistics available in English in relation to child protection in Muslim communities in Australia. Thirdly, it investigates Australian judicial case law databases to find and discuss court cases where issues of child protection from the perspective of the Muslim religion and culture are relevant. Finally, the family law legislation in selected Muslim countries where Australian migrants largely originated are investigated to understand the laws in relation to child protection in those countries.

3. Overview of Child Neglect

Research on child protection and neglect in ethnic Muslim communities in Australia is largely absent. Neglect, the most prevalent form of maltreatment experienced by children (Solem et al. 2020; Avdibegović and Brkić 2020; DePanfilis 2006), is defined as ongoing failure to meet a child's basic needs that impacts on their development and wellbeing (Avdibegović and Brkić 2020). Unlike child abuse, neglect often goes unreported, particularly as the signs of neglect are less visible compared to the visible bruises and scars that abuse may leave behind (DePanfilis 2006; Friedman and Billick 2015). However, some forms of physical neglect can leave signs too, such as hunger and lack of hygiene.

Although evidence about the reporting of child abuse and neglect in Muslim communities in Australia is lacking, reporting in CALD communities demonstrates 22.7% police notifications and 19.2% school notifications, in which a significantly small percentage (0.6%) of cases are reported by the child involved (AIHW 2023), demonstrating the vulnerability of children and the lack of power they hold in keeping themselves safe.

Extensive research has consistently documented that child abuse and neglect (CAN) puts children and young people in danger and has severe adverse effects on the mental and physical health of affected children. It impacts their educational attainment, labour market participation, and increases the risk of antisocial behaviours (Gilbert et al. 2009; Hébert et al. 2018; Islam et al. 2017; Kalmakis and Chandler 2015; Kimber et al. 2018; Maniglio 2009; Norman et al. 2012). Some studies show that neglect may in fact be more detrimental to early brain development than other forms of violence against children (DePanfilis 2006).

Multiple factors often contribute to neglect in families and include societal (e.g., social isolation and poverty) and environmental variables that influence parents' abilities to cater to their children's basic needs (Avdibegović and Brkić 2020; Friedman and Billick 2015). At times, the parent's health and well-being (e.g., mental illness, substance abuse and domestic violence) can also contribute to neglect (Lee et al. 2023). As such, not all incidents where the parent or caregiver fails to provide for the basic needs of a child can be considered as neglect and caution needs to be exercised when assessing cases for neglect.

Defining neglect in a culturally sensitive manner is challenging, especially concerning the perspectives of Muslim communities living in Western countries, including Australia. Further, child neglect can be hard to identify (Zeanah and Humphreys 2018), especially to the untrained eye. Although there are many forms of neglect, the four main types include: physical, educational, emotional, and medical.

Physical neglect is the most widely recognised form of neglect and related to Abraham Maslow's primary hierarchy of needs (Maslow and Lewis 1987), where a child's basic needs of food, clothing and shelter are not being met (DePanfilis 2006). It can include abandonment, expulsion, shuttling, nutritional neglect, clothing neglect, and reckless disregard for the child's safety and welfare.

Medical neglect constitutes the failure or delay of caregiver to provide the child with proper health care and can take the form of missed appointments, not obtaining appropriate preventative medical care or dental care, inadequate mental health care, and not following medical recommendations (Jenny and Metz 2020). Often, this may be related to lack of health cover or advanced stages of medical conditions that may delay or hinder appropriate therapeutic care (DePanfilis 2006).

Educational neglect refers to the unmet rights of the child to an education (Van Wert et al. 2018). Both parents and schools are responsible for meeting the requirements of children's education. Educational neglect could include permitted, chronic truancy; failure to enrol the child; and inattention to special education needs.

Emotional neglect is often difficult to assess although it can have severe, long-term lasting mental health consequences (Kaplan et al. 1999). Emotional neglect often co-exists with other forms of neglect that are easier to identify. Emotional neglect is typically where the child's need for nurturing and stimulation is denied or hindered and manifests in them being ignored, humiliated and isolated (Marici et al. 2023).

4. Australian Law and Child Protection

Child neglect that comes under child protection is regulated in Australia through various legislation, state and Commonwealth, and common law precedents. The *Family Law Act 1975* (Cth) aims to resolve disputes within families and deals with allegations of the child. However, child protection is primarily governed by state and territory jurisdictions. Generally, child protection regulations and policy are fairly consistent across Australian states and territories, but there are differences in relation to their reporting and investigatory processes (Cashmore and Taylor 2023).

Federally, the relevant statutory provisions applicable to protection of children are set out in Part VII of the *Family Law Act 1975* (Cth). Section 60B sets out the objectives of Part VII:

- (a) to ensure that the best interests of children are met, including by ensuring their safety; and
- (b) to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.

While the Australian legal system is cautious about incorporating international treaties into Australian law, the *Family Law Act 1975* (Cth) gives effect to this Convention, making it part of Australian law. Article 19 of the Convention obliges state parties to:

...take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

It should be noted that, given that this paper is dealing with improving the response to child neglect, this is a matter for child protection legislation and, hence, the state system is the relevant regulatory framework. There are a series of state and territory legislation with relevant provisions for child protection in Australia, such as the *Children and Young Persons (Care and Protection) Act 1998* (NSW), the *Child Protection Act 1999* (Qld), and the *Children and Young People (Safety) Act 2017* (SA). The child protection system in Australia has faced significant challenges in recent years but has been subject to remarkable reform and changes, including strategies to establish a more coordinated community service system (Wise 2017). Historically, there was no legislative distinction between children and adults before the law, in terms of legal responsibility and capacity, until 1849, when the first piece of legislation applying to children was introduced (the *Infant Convict Act 1849*) (Conte 2025, p. 35). Conte (2025) provides a comprehensive history of the development of laws relating to children in Australia, including child protection law (Conte 2025, chap. 3).

In South Australia, Section 6(1) of the *Children's Protection Act 1993* (SA) defines child abuse or neglect as sexual abuse or physical or emotional abuse or neglect of the child to the extent that the child has suffered or is likely to suffer physical or psychological injury detrimental to their wellbeing or development.

To protect children, the family law system in Australia, such as the *Children and Young People (Safety) Act 2017* (SA), and the *Children's Protection Act 1993* (SA), provides that children can be included in a parent's intervention order if necessary. For example, s 7(1)(b) of the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) provides that an intervention order may be used for the protection of any child who may hear or witness or be exposed to the effects of an act of abuse.

The existing literature on CALD communities and the Australian child protection system shows a lack of effective research and a gap between knowledge surrounding regulations and policies for the needs of CALD communities and the framework of the child protection system in Australia (Kaur 2012; Abdul Rahim et al. 2023).

5. Islamic Law (Shariah) and Child Protection

An important question to consider here is the position of the Muslim code of conduct, or *Shariah*, with respect to prevention of child neglect. What are the rules and provisions of Islamic *Shariah* in relation to protection of children, particularly in cases of child neglect?

There are a number of historical, legal, and cultural elements that shape the position of Muslim culture and law with respect to rights and protection of children. These include the relevant content and rules set out in the *Quran*, the *Sunnah* (the practice of the Prophet

of Islam), and in the Islamic jurisprudence (*fiqh*). The *Fiqh* is a study of the Islamic system of belief and law (Esmaeili et al. 2017). Indeed, Muslim scholars and jurists, through certain means of interpretation of the *Quran* and the *Sunnah*, known as *usul al-fiqh* (principles of Islamic jurisprudence), have established significant legal and scholarly literature, which is relied on by Muslims to shape and regulate their conduct and cultures.

Typically, Islam is divided into beliefs and *Shariah* (Shaltout 1968). The reference to *Shariah* is comprised of *ibadat* (rituals), *mu'amalat* (transactions/civil law), and *uqubat* (punishments/criminal law) (Shaltout 1968). As can be seen, *Shariah* has a broader concept than law in the modern context. *Shariah* encompasses rituals which, in a modern legal system, are not subject of legal rules (Esmaeili 2011, p. 340). The *Shariah* system is a collection of religious norms that consist of many non-legal elements. As a result, there are diverse positions, including schools of thought, on the nature of *Shariah* and the obligations it imposes on Muslim individuals (Esmaeili 2009, pp. 10–12). Consequently, there is no unified definition of *Shariah* and its legal principles among the diverse Muslim communities, whether in Muslim-majority countries or in Australia. Nevertheless, a diverse body of legal and religious principles and norms based on Islamic sources may be applied in parts of Muslim communities and societies (Esmaeili 2011, p. 340). In fact, *Shariah* provides legal and religious rules and codes for all human conduct. According to Muslim scholars and jurists, all forms of human conduct are divided into *wajib* (obligatory), *haram* (prohibited), *mustahab* (recommended but not obligatory), *makruh* (disliked but not prohibited) and *mubah* (permissible) (Black et al. 2013, p. 4).

While there are variations in Islamic literature and the different schools of thought and law, and diverse cultural backgrounds (Hassan 2015), similarities and common elements are so significant that concepts such as Muslim culture and Islamic law can accurately refer to a unified but diverse cultural and legal system.

Generally, under Islamic law and Muslim culture, 'children are entitled to be born within marriage, to be given a good name, to be educated, to be provided with protection and care and finally to be treated equally within the family' (Rajabi-Ardeshiri 2009, p. 479).

The following sections discuss child neglect and protection from the perspectives of *Quranic* principles, the *Sunnah*, and Islamic law.

5.1. Islamic Teaching and Islamic Law

5.1.1. Drawing from the *Quran*

The *Quran*, which is the primary source of Muslim culture and Islamic law, outlines rules and principles with respect to the rights and protection of children. One of the earliest legal rules in the *Quran* was the banning of infanticide, which was a recognised practice in pre-Islamic era (Jahyiah) or the era of ignorance (The *Quran*, 17:31). The spirit of the *Quran* considers children as blessings from God. According to Giladi, while the Bible only reports the facts surrounding the rescue of Moses (as an infant in the Nile River), the *Quran* exemplifies, in great detail, the feeling, sorrow and strength of Moses' mother (Giladi 2014, p. 588). The *Quran* refers to children as jewels of the parents' life (The *Quran*, 18:46) and the joy of hearts (The *Quran*, 25:74), signifying the value and importance of children and the attribution of caring responsibilities as a result on parents and families to ensure their safety and wellbeing.

The *Quran* (31:15) explicitly, gives the right to think and believe independently:

'But if your parents force you to partner with Me (God) what you have no understanding do not obey them. Still keep their company and respect them and follow the way of those who turn to Me...'

While this verse of the *Quran* is concerned with independent thinking of children with respect to their belief in God, it sets a rule for rights and independence of children from

their parents in a 7th century environment where children were subjected to infanticide and sacrificed for idols and gods. This *Quranic* rule recognises that children have no obligation to follow misguided parents (O’Leary et al. 2020, p. 1210). A rational interpretation and approach to this verse may be that, for example, parents of Muslim children may not have authority over their children if they neglect them in breach of existing Australian law and child protection policies.

5.1.2. Evidence from the *Sunnah*

The *Sunnah* is the practice of the Prophet of Islam. This involves the sayings, conduct, and approvals of the Prophet, and provides more specific guidance and rules regarding the rights and protection of children. These sayings and practices are collected in six major volumes, known as the *Soha Setteh*.

According to one of these treaties, Sahih Al-Tirmidhi (Al-Tirmidhi 2007), the Prophet of Islam said that the best gift from parents to their children is education and correct upbringing (Tirmidhi *Hadith* No. 4977). According to another treatise, *Sahih Muslim* (Muslim 2007), ‘when a person dies, they are survived by their ongoing charities, their contribution to knowledge in the society and by their well raised children’ (Sahih Muslim No. 1631).

5.2. Child Neglect and Islamic Law

Based on original sources of Islamic law, chiefly the *Quran* and the *Sunnah*, Islamic law has developed rules and principles that can be applied for the protection of children. These principles are regulated into evolving legislation and policies in many Muslim majority countries. For example, a scoping review on child maltreatment in the six Arab Gulf countries, in which the legal systems are heavily influenced by *Shariah*, shows these Muslim-majority countries have initiated strategies, policies and legal initiatives to prevent child neglect; however, much of this content is informed by a medical lens (Neville et al. 2022). In the following sections, these principles are discussed with respect to a number of relevant areas pertaining to child protection.

5.2.1. Physical Neglect

There is limited literature and information in Islamic classic texts about children, given that during the advent of Islam (7th century), childhood was a short period of individuals’ lives and would end at puberty (AMWCHR 2013, p. 9). Under Islamic law, parents, primarily the father, are responsible for providing the basic needs of children (The *Quran*, 65:7). According to Islamic jurists and the family law of modern Arab and Muslim countries, parents (father first, then mother) or a line of kinship if the parents are unable or unavailable, are responsible for maintenance of children. This principle is called ‘*nafaqah*’, which literally means financial support provided for family members, including children and elderly parents (The *Quran*, 2:233; Al-Sabiq 1998). The principle of ‘*nafaqah*’ is based on the concept of kinship. According to Islamic jurisprudence (*fiqh*), ‘*nafaqah*’ or financial maintenance of the family members including children is not only a moral duty, but also a legal responsibility and it can be enforced by courts (Al-Sabiq 1998, p. 115; Black et al. 2013; Wani 2003, pp. 423–25). Under legislation of various Muslim countries, such as Egypt, Iraq, Jordan, Syria, Morocco, Somalia and Tunisia, there exist variations on parental responsibility for financial maintenance of children (Wani 2003, pp. 423–27). In addition, if the responsible person is able and has financial means to do it, failure to pay the *nafaqah* without justifiable reasons is an offence and is considered an area for corrective action under Islamic law (Fyzee 2008, p. 175; Black et al. 2013, p. 140). This means that physical neglect of children, under *Shariah*, is a crime (Islamic Punishment Act 1991 (Iran), s 642). According to Muslim legal scholars, *nafaqah* or maintenance consists of all those things

that are essential in family life, such as food, clothing, and shelter. Also, even if a father is financially unable to support his child, the responsibility to properly maintain his children remains a debt to be paid when he may be able to pay (Nasir 2009).

The mandatory responsibility of proper physical maintenance of children under Islamic law is well regulated through modern legislation in the legal systems of modern Muslim countries (Nasir 2009; Ibrahim and Mohd 2011). One important issue to consider is whether there are any rules, provisions, or ethical and moral principles within Islamic teachings or cultures that may establish hurdles in relation to the physical protection of children in Muslim families. For example, while the *Quran* has no express rules on contraception, for some traditional Muslim families contraception is against the teaching and Islam (Atighetchi 1994). According to a study, in some areas of Pakistan, a large portion of Muslim men and women consider contraception to be against Islam and refuse to participate in family planning (El Hamri 2010, p. 27). This may lead to families with large numbers of children. One study in Indonesia showed that the high number of children in certain Muslim families may contribute to physical neglect of children (Ramadhoni et al. 2023, p. 43).

5.2.2. Educational Neglect

Under Islamic teachings and law, children have rights to an appropriate education. A number of Islamic international instruments, adopted by Muslim countries, emphasise the right of children to education within the Muslim family. These instruments are: the Universal Islamic Declaration of Human Rights (UIDHR 1981), the Cairo Declaration on Human Rights in Islam (CDHRI 1990), the Declaration on the Rights and Care of the Child in Islam (Casablanca 1994) and the Rabat Declaration on Child's Issues (2005).

The Declaration on the Rights and Care of the Child in Islam, adopted by the Seventh Islamic Summit Conference in Casablanca in 1994, covers the rights to social, health, psychological and cultural care, rights to ownership, and education as the most necessary rights of children (Rajabi-Ardeshiri 2009).

For example, according to Article 7 of the Universal Islamic Declaration of Human Rights, 'every child has rights due from the parents, the society and the state to be accorded proper nursing, education and material, hygienic and moral care.' It further provides that:

Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shariah. (UIDHR 1981, Article 7)

Therefore, there is no provision in *Shariah* prohibiting education of children or putting obstacles in the place of educating children. However, certain cultural barriers and cultural misunderstanding and lack of education amongst certain families may become barriers to child education, particularly for female children. Examples can be seen in Afghanistan and in certain Muslim communities in Western countries (see Macey 1999; Hosseini 2024).

5.2.3. Health and Medical Neglect

For many practicing Muslims in Muslim societies, every aspect of their lives, including medical treatment and healthcare, needs to be consistent with the principles of *Shariah* (Zawawi and Othman 2018). While *Shariah* does not have a comprehensive regulatory system in relation to medical treatment and healthcare, some Muslim academics refer to the *Shariah*-compliant healthcare system without clearly explaining this system. For example, according to one study, the concept of *Shariah*-compliant healthcare and medical services is defined as healthcare services offered by medical and health institutions that observe the needs of Muslim patients while meeting the specific requirements of *Shariah*

(Ismail and Mutalib 2022). They consider, *Shariah*-compliance as a system that, for example, provides a prayer room for Muslim patients, halal food, and observes halal (permitted) and haram (prohibited) activities (Ismail and Mutalib 2022, p. 11610). It must be noted that *Shariah* and Islamic teaching provides certain rules for medical treatment. These rules have further developed, in modern times, with advances in medical and health developments. Issues such as abortion, contraception, blood transfusions, and organ transplants have been subject of debate by Muslim jurists and legal scholars.

Neglecting children in terms of health can occur within Muslim migrant families in Australia as a product of broader issues of child neglect. Many Muslim migrants, particularly women, who may experience family violence, are less likely to report violent relationships, for many reasons including fear, misinformation, limited English and lack of support; inadvertently, this may result in migrant children being exposed to violence and neglect (AMWCHR 2013, p. 27). Also, many Muslim and non-Muslim immigrant families may not seek or accept assistance from medical service institutions, given their 'past experiences of oppression, fear of being deported, and a general distrust of authority figures' (AMWCHR 2013, p. 27).

Research indicates that, in the US and Canada, instances of child abuse and neglect within migrant communities may be reported more often by official institutions than the rest of the society for a number of reasons. These include misunderstandings with professionals, and 'parenting norms that conflict with those of the dominant culture' (AMWCHR 2013, p. 27). This may also lead to child neglect in terms of health and wellbeing.

Within Islamic teaching, there are no provisions that may adversely contribute to neglecting the health of children. However, certain rules of *Shariah*, or more accurately, interpretations of Islamic teaching, may contribute to general neglect, including health neglect of female children. For example, in a case before the Supreme Court of Australian Capital Territory, a girl, through the will of her mother, was given half of the inheritance of her brother (Omari v Omari 2016). The Court ruled that the mother's will was invalid in Australia (Omari v Omari 2016). In addition, male child preference is common in many migrant communities, including in Muslim cultural groups (AMWCHR 2013, p. 27). This may lead to neglect of female children in certain Muslim families, which may extend to their health.

Another issue may relate to a strict and narrow interpretation of *Shariah* regarding medical treatments, such as blood transfusions, vaccinations, and some other modern medical procedures. These may not, per se, be parts of Islamic law and teachings but they may be practiced within parts of Muslim communities. Ethical and *Shariah* complications in relation to providing medical treatments have also been raised in other contexts.. One health neglect/abuse issue heard by the NSW Court of Criminal Appeal, that went to the High Court of Australia, concerns female genital circumcision. In this case three people were charged with female genital circumcision offences against two female school aged children. The mother of two girls was charged with the offence of female genital circumcision and two community leaders were charged as accessories to the crime. All three perpetrators were sentenced to 15 months in jail, according to the criminal law of NSW. The perpetrators claimed that their act had been ritual only and no physical damage was done to the bodies of the girls. The NSW Court of Criminal Appeal quashed the charges, but the High Court of Australia ruled that female circumcision in any form, even ritually, is an offence in Australia (*R v A2* (2019) 269 CLR 507). Here again, the practice of female genital circumcision stems from cultural practices that predate Islamic law (Amin and Lendrawati 2022).

6. Interaction and Conflict with Australia Law

Child neglect may arise from a range of causes. For Muslim communities, a number of factors may contribute to the occurrence of child neglect, which is in turn inconsistent with Australian law. For example, incidents such as gender discrimination, child marriage, forced marriage, and family violence, all may significantly contribute to the likelihood of child neglect within families.

6.1. Gender Discrimination

Australian law prohibits gender discrimination. Issues related to gender inequality (discrimination), child marriage, forced marriage, and female genital circumcision, if practiced within Muslim communities, can have a significant impact on children. These issues, which are often rooted in deeply ingrained cultural or traditional beliefs (Wadesango et al. 2011), can lead to situations where children's rights and well-being are compromised. For example, child marriage and forced marriage deny children the opportunity to experience a healthy childhood, leading to long-term emotional, physical, and psychological harm. Female genital circumcision, while illegal in many countries, may still be practiced within certain communities (Wadesango et al. 2011), and can lead to lifelong health consequences for girls (Reisel and Creighton 2015).

According to a report by the Australian Muslim Women's Centre for Human Rights, 'gender inequality and discrimination also account for some forms of child maltreatment and neglect in migrant Muslim communities' (AMWCHR 2013, p. 21). This suggests that, in some cases, girls and boys may face neglect not just due to direct harmful practices like child marriage but also due to the broader societal dynamics that fail to address gender-based disparities. These forms of inequality can lead to children being deprived of their basic needs, including education, emotional support, and protection, thereby affecting their overall development. In addition, for some Muslim women, including youth and children, religious practices have limited their ability to socialise with their peers, which may lead to isolation and feelings of exclusion (AMWCHR 2020).

Moreover, external factors like Islamophobia and discrimination further exacerbate the challenges faced by Muslim communities in Australia (AMWCHR 2020). Islamophobic attitudes and stereotypes can result in marginalisation (Sadek 2017), which may create environments of fear, stress, and isolation for families. This social exclusion can make it harder for communities to access essential services or seek support, leading to an increased risk of neglect. The broader societal discrimination against Muslims can also perpetuate feelings of powerlessness (Elkasssem et al. 2018) and affect the way child welfare issues are addressed within these communities.

6.2. Child Marriage

The legal age of capacity for marriage under traditional Islamic law is the age of puberty. However, different schools, traditions, and countries have varied marriageable ages. This may lead to inconsistencies with the marriageable age in Australia within Muslim communities. Given the diversity of Muslim populations in Australia, these communities tend to follow the religious norms and social expectations within their home country. In Australia, a person is of a marriageable age once they turn 18 years old (*Marriage Act 1961* (Cth) s 11). If a person is under the age of 18, but over 16, they may apply to a judge or magistrate in any state or territory for an order authorising them to marry a person of marriageable age (*Marriage Act 1961* (Cth) s 12). The judge or magistrate must then hold an inquiry and be satisfied that the person applying for the order has attained 16 years of age and that the circumstances of the case are 'so exceptional and unusual' as to justify making the order (*Marriage Act 1961* (Cth) s 12).

Puberty, under Islamic law, is determined by the ‘traditional, physical signs of maturity’ (Black et al. 2013). The practice of determining marriageable age through puberty and physical signs of maturity is continued in certain Muslim societies and countries, including Saudi Arabia, Yemen, and some South Asian Muslim countries. However, some Muslim countries have set a minimum age for marriage. For example, in Libya, the minimum marriageable age is 20 years for both men and women (An-Na’im 2002).

Other Muslim countries have varied their marriageable age in recent years. According to Tunisian law, the marriageable age for a man used to be 20 years of age, and for a woman, 17 years (Tunisian Personal Status Code, Article 5). However, in 2007, the minimum marriageable age was amended to 18 years old for both women and men (Tunisian Personal Status Code, Article 5). The Moroccan marriageable age was previously 18 for men and 15 for girls (Nasir 2009). However, in 2004 this minimum marriageable age was raised to 18 for both men and women (UNICEF Regional Study on Child Marriage 2017). In Egypt, the *Egyptian Civil Code* of 1948 required the marriageable age to be established by the *Shariah Court Act*, which provided that a marriage can be considered legal even if the girl is under 16 and if the male is under 18. Since 2008, Egypt’s *Child Law* increased the age of marriage to 18 for both females and males. However, despite these provisions, many girls are still married before they turn 18 years of age (UNICEF Regional Study on Child Marriage 2017).

6.3. Forced Marriage

Forced marriage is an offence under Australian criminal law (*Criminal Code Act 1995* (Cth), s 270(7A)). However, the regulatory regime of Australian law only partially recognises victims’ many vulnerabilities in relation to incidents of forced marriage (Askola 2018, p. 979). Forced marriage is different from arranged marriage, which is practiced by certain communities in Australia, including Indian and Muslim communities. However, there is a blurred area between the two practices (Marmo et al. 2023). Forced marriages, particularly within traditional Muslim families, are not often reported. In a study in South Australia, it was found that the concept of forced marriage is not well understood within communities and, indeed, it was only criminalised in Australia in 2013 (*Criminal Code Act 1995* (Cth), s 270(7A)).

In July 2024, in a landmark case, a woman in Melbourne was sentenced to three years imprisonment for forcing her 20-year-old daughter into a marriage. Her daughter was later killed as result of family and domestic violence by her husband in Western Australia (*DPP (Cth) v Jan* [2024] VCC 1122). This decision of the Supreme Court of Victoria marked Australia’s first successful conviction for forced marriage. Following this decision, in October 2004, in New South Wales, a man was jailed for an attempt to orchestrate forced marriages for two of his children, who were aged 15 and 17 (AFP 2024). The man, aged 51, was sentenced to a total of three years and four months’ imprisonment by the Downing Centre District Court in Sydney (AFP 2024).

Under Islamic law and Islamic teaching, forced marriage is prohibited and clear consent is needed for a valid marriage (Black et al. 2013). According to Muslim jurists (*fuqaha*), the fundamental principle of marriage in Islam is the consent of both parties¹, and this consent should be manifested in their decision to enter into a marital relationship (Abd al-Ati 1995; Al-Sabiq 1998, p. 23). Consent is usually innate and, according to Islamic law, it must be clearly communicated in person in the physical presence of witnesses (Al-Sabiq 1998, pp. 23 and 38). Nonetheless, aspects of traditional *Shariah* may complicate the issue of consent. These concepts include the role of guardianship (*wilayah*) in relation to under-age children (Abd al-Ati 1995; Al-Sabiq 1998, p. 87). Under certain schools of thought (law), and the law of certain Muslim countries, the *Wali* (guardian), in special circumstances, may

have the right and power to marry off a prepubescent child, subject to them giving consent, once they reach puberty (Abd al-Ati 1995; Al-Sabiq 1998, p. 23).

Also, as stated above, arranged marriage is practiced in Muslim communities. In some cases, there may be a grey area between arranged marriage and forced marriage 'given that it can be difficult to determine the point at which family or cultural expectations become coercive rather than influencing factors in a person's decision to marry' (DIAC 2012, p. 28; Marmo et al. 2023).

Forced marriage can significantly contribute to child neglect in Muslim communities by denying children their fundamental rights and wellbeing. Children forced into marriage often experience emotional trauma, including feelings of powerlessness, anxiety, and depression, which are forms of neglect (Burgess et al. 2022). Further, forced marriages often lead to the disruption of education, as children may be removed from school to fulfil marital duties, limiting their future opportunities (Bartels et al. 2018). The physical health of children in forced marriages can also be compromised, especially in cases of early pregnancy, which can result in serious health complications (Sezgin and Punamäki 2020). These children are also often more vulnerable to other forms of abuse within the marriage, further exacerbating their neglect, especially where they are denied the autonomy to make decisions about their lives and futures (Ricker et al. 2023).

Cultural or societal pressures may normalise these practices (Askola 2018), overshadowing the child's needs and further reinforcing neglect. Additionally, forced marriages often lead to social isolation, leaving children without the support of peers or access to resources (Bartels et al. 2018; Marmo et al. 2023). This isolation perpetuates neglect, as children are cut off from help and advocacy. Addressing forced marriage and its connection to neglect requires legal intervention, community education, and cultural change to ensure that children's rights are prioritised and that they are protected from harmful practices.

6.4. Family Violence

Family violence is a complex and contentious issue from different perspectives, including legal, cultural and social views (Wallace et al. 2019). It is not specific to a particular country, culture or religion. A British study highlights several factors across different cultures that may contribute to family violence, particularly within migrant communities (El-Abani et al. 2018). These factors may include approaches toward family violence, economic dependence of parties in a marriage, language barriers, immigration status, and community culture and traditions (El-Abani et al. 2018). According to some studies, the occurrence of family violence is higher within migrant communities than in the general population, yet some others suggest that the prevalence of family violence is lower in migrant communities than in the wider population (Ghafournia 2011). *The Australian National Plan to Reduce Violence against Women and Their Children 2022–2032* outlines a plan for Australian women and their children to live free from violence. Within the plan, the National Priority Area aims to assist religious and other community leaders to effectively address family violence occurring in their communities (DSS 2022).

More often than not, family violence has been found to be linked to complex cases of child abuse and neglect where the child has been removed (Mackenzie and Goodwin-Smith 2023). Family violence creates an unsafe and unstable environment. Children exposed to family violence often face emotional trauma (Mackenzie and Goodwin-Smith 2023), which leads to emotional neglect. Caregivers, overwhelmed by the violence, may struggle to meet the emotional needs of their children, neglecting their need for love, attention, and security (Segal and Amos 2023).

The presence of family violence can also lead to physical neglect. Caregivers who are dealing with violence may be unable to provide basic necessities like food, clothing,

hygiene, and medical care, as their focus is diverted to managing the violence (Johnson et al. 2022). This can result in children being neglected in their fundamental needs, which further impacts their wellbeing.

Family violence further hinders the ability of parents to engage in positive, nurturing parenting (Johnson et al. 2022; Segal and Amos 2023). A parent's emotional and physical exhaustion from dealing with violence can reduce their capacity to effectively care for their children. This, combined with potential social isolation, leaves children more vulnerable to neglect, with limited external support or intervention. The long-term effects can include difficulties in emotional development and a higher risk of perpetuating neglect or violence in future generations (Segal and Amos 2023; Siegel 2013).

There are various conflicting views on the position of Islam on family violence (Esmaeili et al. 2022). Islamic law can be interpreted differently and is applied in a range of societies and countries in a myriad of ways. In addition, there are some vague principles in traditional Islamic texts which are, occasionally, used by Muslim men to justify their harsh positions in controlling their families (Esmaeili et al. 2022). Nevertheless, while Islamic law, similar to other religions and legal systems, has a historical background of condoning elements of family violence, the position of Islamic law on family violence has developed and reformed over time and must be further adapted to new social changes in line with gender equality (Esmaeili et al. 2022).

7. Conclusions

Child protection has become progressively important in the Australian legal system, and hence, it is presently influencing the cultural and religious practices of many communities, particularly Muslim communities. The Muslim cultural and religious code of conduct, known as *Shariah*, has an important role in child protection in Australian Muslim communities, both positively and, if misunderstood and perceived literally, adversely. Child protection policy with respect to Muslim communities in Australia would work much more effectively if Muslim cultural and religious values, as well as misconceptions and problems, were better understood in the context of child neglect. Greater consistency between Muslim cultural and religious practices and Australian law would aid in more effective child protection.

Generally, Islamic culture and religious teachings support very strong and positive family bonds and contain significant rules for financial maintenance, education, health and wellbeing of children. Nevertheless, some cultural practices relating to forced marriage, child marriage, gender inequality and family violence may lead to child neglect and may result in adverse effects for child protection within Muslim communities in Australia. These practices not only lead to the abuse of children who are subject to neglect and forced marriage but also elicit follow-on effects and implications that may be generational in nature.

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Notes

- ¹ Ar-rukun al haqiqi lizawaaj huwa ridaa attarafain. (The pillar of marriage is the consent of both parties): (Al-Sabiq 1998, vol. 2, p. 23).

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