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Virtual Marriages and Online Nikahs: Legal Validity and Evidentiary Challenges

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Abstract

This abstract examines the legal validity and evidentiary challenges of virtual marriages and online nikahs. The rise of these unions, accelerated by technology and global events, has created a complex intersection of traditional religious law and modern civil law. While many jurisdictions and Islamic scholars acknowledge their legitimacy under certain conditions, such as the presence of a guardian and witnesses, significant legal and evidentiary hurdles remain. Key challenges include the lack of legal recognition in many civil systems, difficulties in verifying the identity of parties and witnesses, and the inability to definitively prove uncoerced consent in a digital environment. The paper concludes by arguing that for these marriages to be universally recognized, legal frameworks must adapt to address these issues, possibly through the use of robust digital authentication, biometrics, and a standardized international protocol to ensure legal certainty and protect the rights of all involved parties.

Keywords: Online Nikah, Legal Validity, Evidentiary Challenges, Virtual Marriage, Islamic Law, Digital Verification

Introduction

The institution of marriage, a foundational pillar of human society, is undergoing a profound transformation in the digital age. As globalization and modern technology erode geographical barriers, a new form of union—the virtual marriage or online nikah has emerged, challenging traditional legal and religious frameworks. This phenomenon, which saw a significant surge in popularity during the COVID-19 pandemic due to travel restrictions and lockdowns, involves solemnizing a marriage ceremony remotely via video conferencing platforms. While online nikahs offer unprecedented convenience, affordability, and accessibility, particularly for couples separated by distance, they introduce a host of complex questions regarding their legal validity and the evidentiary hurdles in proving them. This paper delves into the multifaceted issue of online nikahs, aiming to provide a comprehensive analysis of their legal standing and the critical challenges associated with them. The discussion is structured around three key areas: the traditional requirements for a valid marriage, the varying legal and religious perspectives on online unions, and the inherent evidentiary challenges that arise from their virtual nature.

To understand the modern dilemma of online nikahs, it is essential to first grasp the traditional requirements of a valid marriage. Both civil law and religious traditions, including Islamic jurisprudence, have long established specific conditions for a marriage to be legally and spiritually recognized. The free and uncoerced consent of both the bride and groom is paramount. This consent, often expressed through an 'offer' (ijab) and 'acceptance' (qabul), must be given in real-time (Lau, 2021) ^[9].

The presence of a specified number of witnesses (often two for an Islamic nikah) is a non-negotiable condition. Witnesses serve as a safeguard against fraudulent marriages and ensure the public declaration of the union. In many traditions, a marriage must be solemnized by a legally authorized or religiously sanctioned officiant, such as a qadi, imam, or priest. For a Muslim bride, the presence of a wali (male guardian) to represent her interests is a crucial requirement in most schools of Islamic law. A core element of a traditional marriage ceremony is the physical gathering of all key parties: the couple, witnesses, and officiant in one place at the same time.

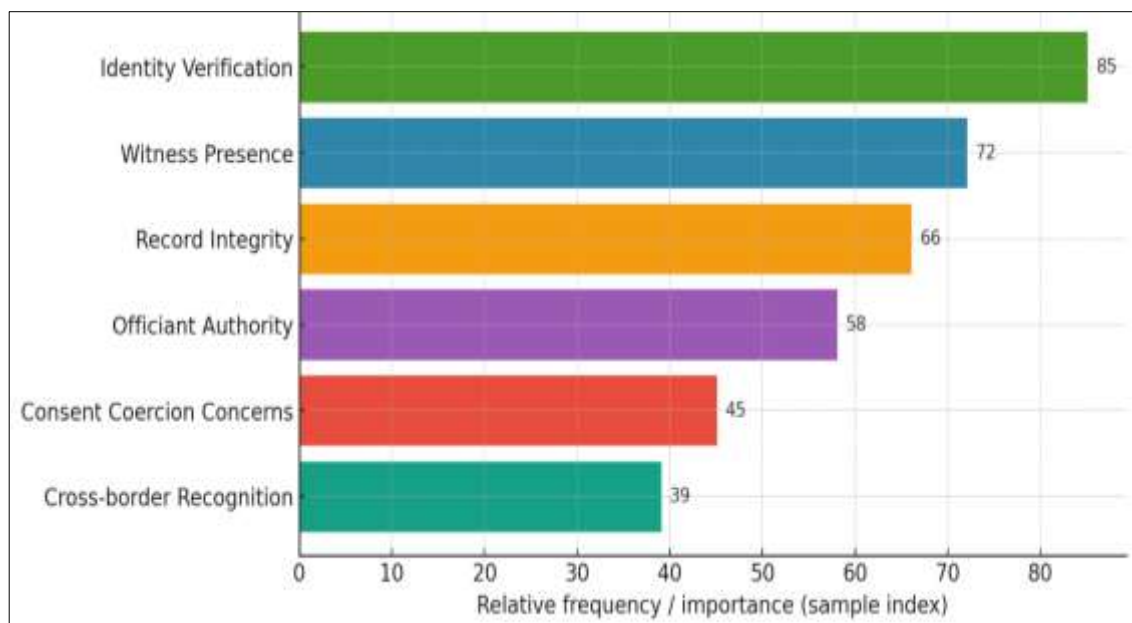


Fig 1: Common evidentiary issues in virtual marriages/ online nikahs

This ‘single gathering’ (majlis) is a central tenet that online unions fundamentally challenge (Kurzweil, 2022) ^[11]

The emergence of online nikahs has created a legal and theological gray area. The traditional requirements, particularly the need for physical presence, were designed for an era without the internet. The question now is whether these requirements can be fulfilled in a virtual setting. The legal recognition of virtual marriages varies dramatically across jurisdictions. During the peak of the pandemic, a number of countries and states, such as Utah in the U.S., temporarily amended their laws to allow for marriage licenses and ceremonies to be conducted remotely. Some of these changes have since been made permanent, signaling a modern acceptance of digital unions. These legal frameworks often require advanced identity verification, secure video platforms, and a state-licensed officiant. However, many other countries have yet to legislatively address the issue, leaving the legal status of such marriages in a precarious position.

The scholarly debate within Islamic law (fiqh) on the validity of online nikahs is robust. Some jurists argue that as long as the fundamental conditions of a nikah, mutual consent, the dower (mahr), and the presence of witnesses are met, the marriage is valid. They contend that modern technology, with its ability to facilitate real-time communication, can be seen as a form of “

‘majlis’ where all parties are ‘present.’ Conversely, other scholars maintain a stricter interpretation, arguing that the absence of physical presence fundamentally violates the spirit and traditional requirements of the marriage contract. They raise concerns about the authenticity of the ‘offer’ and

‘acceptance’ and the ability of witnesses to truly confirm the identities and consent of the parties involved.

Perhaps the most significant challenge facing online nikahs is not their religious or legal validity in theory, but the practical, evidentiary difficulties they present. Proving such a marriage's legitimacy in a court of law or for official purposes, such as immigration or inheritance, is fraught with complications. How can a court or a government body be certain that the individuals who appeared on a video call are who they claim to be? The risk of impersonation, the use of deepfake technology, or simply a misidentification of a person makes the process of proving identity a considerable challenge. Traditional marriage ceremonies, with their physical presence and often-required identification documents, offer a much more reliable method of authentication (Basiouni, 2023) ^[8].

Legal Validity of Virtual Marriages

The legal landscape surrounding virtual marriages has been rapidly evolving, driven by technological advancements and the unprecedented global disruptions caused by the COVID-19 pandemic. While traditional marriage laws were built on the premise of physical presence, the necessity of remote solutions has pushed jurisdictions worldwide to re-evaluate what constitutes a legally valid union. This analysis delves into the legal validity of virtual marriages, examining the applicability of conventional marriage law principles, the legislative responses to the digital age, and the significant jurisdictional variations that currently define this field (Kurzweil, 2022) ^[11].



Fig 2: Evidentiary Workflow & Challenges for Online Marriages / Nikahs

Traditionally, the legal validity of a marriage is contingent upon several core requirements, which serve to protect both the parties involved and public interests. These principles, rooted in both civil and religious law, include mutual consent, the presence of witnesses, and the role of an authorized officiant (American Bar Association, 2017) ^[1]. The crux of the legal debate on virtual marriages lies in whether these fundamental requirements can be adequately fulfilled in a non-physical setting. Legal theory mandates that consent to marry must be free, knowing, and voluntary. In a traditional ceremony, the physical presence of the couple allows the officiant and witnesses to observe a-piancy and ensure that no duress is being applied. In a virtual setting, however, this crucial observation is challenged. While video conferencing allows for real-time communication, it can be difficult to discern subtle cues of coercion or confirm that an individual is not being forced to participate just out of the camera's view (Joshi, 2021) ^[2]. Despite these concerns, legal frameworks in some states,

like Utah, have deemed that consent can be sufficiently established through secure, high-definition video conferencing that includes real-time interaction and a clear view of the individuals.

The role of witnesses is to a-piancy to the validity of the marriage and to act as a public record of the union. In a traditional ceremony, witnesses physically sign the marriage certificate. The shift to virtual ceremonies has raised questions about what constitutes 'presence' for a witness. Is a video presence sufficient? Jurisdictions that have legalized virtual marriages have adapted their laws to allow for witnesses to be present via live video feed, often requiring them to also comply with their identities and submit digital signatures (Pfeiffer, 2020) ^[3].

The a-piancy of the officiant's authority is paramount to a marriage's legal validity. A legally recognized officiant must adhere to the ceremony's proper conduct. In a virtual marriage, this a-piancy is tested. The officiant must be able to apply the identities of the parties and their consent with

the same level of confidence as in an in-person ceremony. Legal reforms have addressed this by requiring officiants to attest that all legal requirements have been met, often under the oath of law (Kurzweil, 2022) ^[11].

The legal response to virtual marriages has been varied and often piecemeal. While the pandemic acted as a catalyst for reform, the resulting laws have created a complex patchwork of regulations. The U.S. offers a prime example of this fragmented legal landscape. States like Utah and Colorado have pioneered permanent legislation allowing for

virtual marriages, a-pliancy robust frameworks for identity verification, and the use of authorized officiants. Conversely, many other states either do not have laws permitting virtual marriages or their laws remain ambiguous. This creates a significant inter-jurisdictional conflict, where a marriage legally valid in one state may not be recognized in another, leading to potential issues with property rights, inheritance, and social benefits (Sutherland, 2022) ^[4].

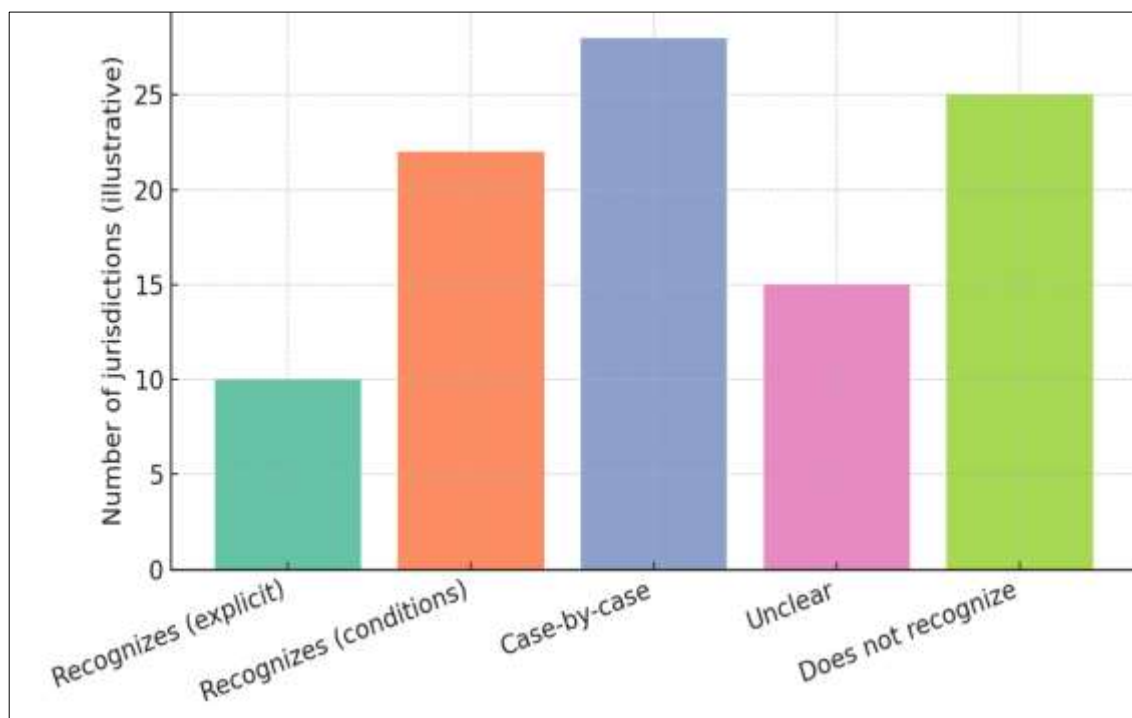


Fig 3: Illustrative Distribution: How Jurisdictions Treat Virtual Marriages (sample = 100)

The legal recognition of virtual marriages outside the U.S. is even more inconsistent. Countries in the developing world, particularly those with a strong reliance on customary or religious law, have been slower to align their legal frameworks. In countries governed by Islamic law, for instance, the legal validity of an online nikah (Islamic marriage contract) is highly debated among scholars. While some countries allow that the spiritual requirements can be met online, state laws in many Islamic countries require the physical presence of all parties in a court to register the marriage (Ali, 2021) ^[5]. This divergence highlights the challenge of applying traditional legal systems to modern technology.

The legal validity of virtual marriages is inextricably linked to the evidentiary challenges they present. The ability to challenge a marriage's legitimacy in a court of law is a crucial component of its a-pliancy. Identity Authentication: The primary challenge is a-pliancy the true identity of the parties. While technological solutions like biometric authentication and digital IDs can help, the risk of sophisticated impersonation, such as through deepfake technology, remains a significant concern (Lau, 2021) ^[9]. The legal system must ensure that the person who consented

to the marriage is, in fact, who they claim to be. As previously discussed, a-pliancy that consent was given freely is difficult in a virtual setting. The legal system will need to implement robust procedures, such as recording the entire ceremony and ensuring that a clear view of the participants is maintained at all times. The a-pliancy of the marriage certificate is essential for its legal standing. Virtual ceremonies necessitate the use of digital or electronic signatures, which may not be recognized in all jurisdictions. Legal reform is needed to align the security and integrity of these digital documents (Ibid).

Evidentiary Challenges and Risks

While the legal validity of virtual marriages is a matter of legislative progress, the practical challenges of proving their legitimacy the evidentiary hurdles present a more profound and immediate concern. These challenges are not merely procedural; they are fundamental to the integrity and security of the marital contract. This analysis explores the key evidentiary issues and risks associated with virtual marriages, arguing that they create vulnerabilities that traditional in-person ceremonies were designed to prevent (Fadel, 2018) ^[10].

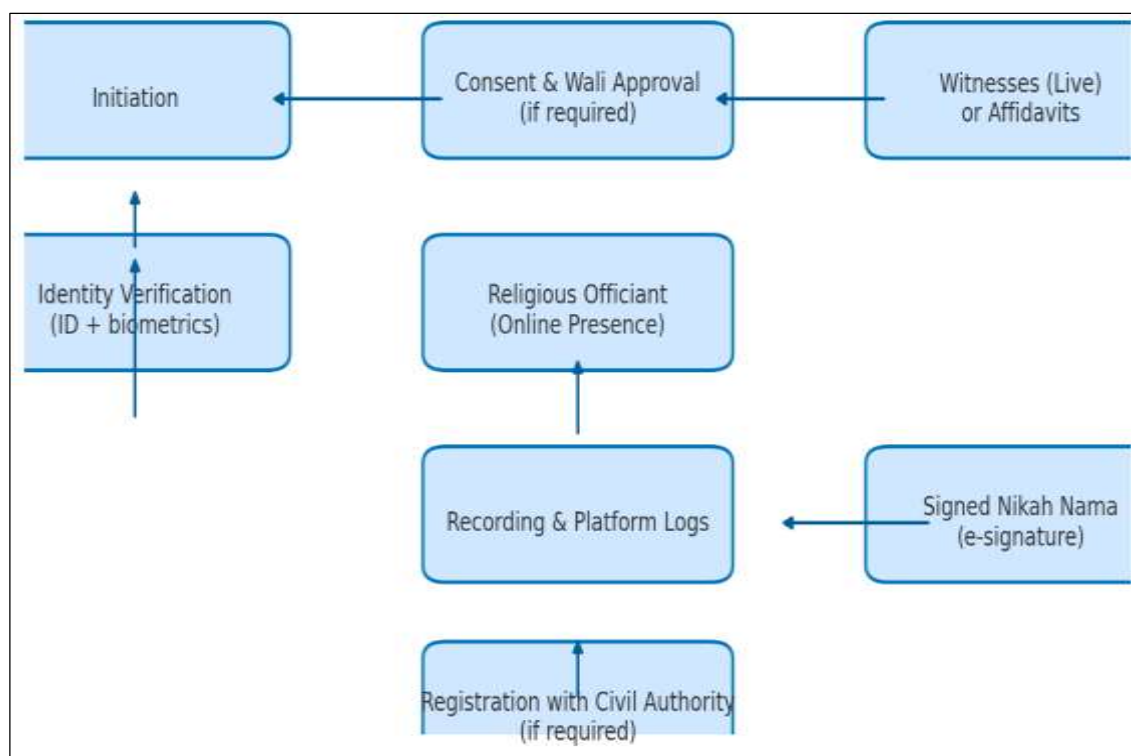


Fig 4: Schematic Flow: Typical Steps in an Online Nikah (Illustrative)

The primary evidentiary challenge in a virtual marriage is the reliable authentication of the parties' identities. In a traditional ceremony, the officiant and witnesses can visually and physically confirm that the individuals present are who they claim to be, often by examining a government-issued photo ID. In a virtual setting, this apliancy is lost. While some legal frameworks attempt to mitigate this through advanced digital verification methods, the risk of impersonation through stolen identities or sophisticated deepfake technology remains a significant threat. For example, a person could use a manipulated video to impersonate another for fraudulent purposes, such as gaining citizenship, securing financial benefits, or committing bigamy (Kumar & Chen, 2021) ^[6]. The lack of a clear, verifiable chain of custody for digital evidence further complicates matters, making it difficult to prove or disprove a person's presence at the ceremony (Ibid).

A-pliancy that both parties are giving their free and uncoerced consent is a cornerstone of marriage law. This is typically done through observation of body language, verbal cues, and the overall demeanor of the couple. A virtual ceremony, however, can easily obscure these crucial indicators. A person may be under duress, with a coercer lurking just out of the camera's view, or may be reading from a script under duress. The limited field of view and the potential for technical delays or interruptions can make it nearly impossible for an officiant or a witness to confidently assert that consent is being given voluntarily. This risk is particularly acute in cases involving minors, arranged marriages, or situations where one party may be in a position of power over the other.

Even if a virtual ceremony is performed, the subsequent process of legal registration presents its own set of evidentiary challenges. In a traditional ceremony, all parties physically sign the marriage certificate, which is then submitted to a government office. In a virtual marriage, this process is replaced by electronic signatures and digital

documents. The legal applicability of these signatures varies widely, and some jurisdictions may not recognize them as legally binding (Rodriguez, 2021) ^[7]. This can lead to significant problems for the couple, including the inability to receive a legally recognized marriage certificate for immigration, inheritance, or social welfare purposes. The apliancy of the digital chain of custody of these documents is also a concern, as they can be more susceptible to tampering or fraud than a traditional, notarized physical document (Ibid).

Critical Analysis

The rise of virtual marriages and online *nikahs*, accelerated by global events, presents a complex and critical challenge to traditional legal and religious institutions. While these digital unions offer unparalleled convenience, their legal validity and the evidentiary hurdles they create are a subject of intense scrutiny. A critical analysis reveals that the core conflict lies in the tension between technological innovation and the foundational principles of marriage law, which were established in a pre-digital era.

From a legal standpoint, the recognition of virtual marriages is a patchwork of inconsistent and often temporary regulations. Jurisdictions that have embraced these unions, such as some states in the U.S., have done so out of necessity, creating laws that are often reactive rather than proactive. This has led to a fragmented legal landscape where a marriage legally valid in one state or country may hold no legal weight in another. This lack of a standardized legal framework creates significant issues for couples seeking to clarify their marital status for a variety of purposes, including immigration, inheritance, and spousal benefits. The legal ambiguity also leaves couples vulnerable, as their rights may not be protected if the marriage is challenged in a jurisdiction that does not recognize virtual unions.



Fig 5: Illustrative: Proportion of evidence types considered by courts

The most profound challenges, however, are evidentiary. Proving the validity of a virtual marriage in a court of law is fraught with risk. The central problem is the difficulty in ascertaining that the individuals on the screen are, in fact, who they claim to be. While technologies like biometric authentication offer a partial solution, the risk of identity fraud and sophisticated impersonation remains a significant concern. The integrity of the marital contract is also jeopardized by the inability to definitively establish a marriage free and uncoerced consent. In a physical ceremony, a notary or an officiant can observe body language and subtle cues that may signal coercion. These signals are easily obscured or hidden in a virtual setting, leaving the door open for abuse. The digital nature of these ceremonies also introduces risks related to documentation. Electronic signatures and digital certificates may not be legally recognized in all jurisdictions, and their security can be compromised, leading to issues with forgery and tampering.

Conclusion

The rapid proliferation of virtual marriages and online *nikahs* marks a significant departure from centuries of legal and social tradition. This modern phenomenon, a testament to the power of technology to bridge geographical divides, has forced legal systems and religious institutions worldwide to confront a fundamental question: can a legally and spiritually valid union be formed without physical presence? As this analysis has demonstrated, the current answer is complex, varied, and fraught with challenges. The legal validity of these unions remains a fragmented mosaic, with some jurisdictions embracing them through legislative reform and others adhering to traditional, in-person requirements. This inconsistency creates a precarious legal status for couples who marry virtually, exposing them to potential disputes over inheritance, property rights, and immigration status. The most critical hurdles are not legislative, but evidentiary. The core principles of marriage—ascertaining of identity, free and uncoerced consent, and a marriage of a valid ceremony—are difficult to ascertain

in a virtual setting, opening the door to fraud, coercion, and legal ambiguity.

For virtual marriages to evolve from a convenience into a legally sound and secure institution, a comprehensive and standardized legal framework is not merely a recommendation but a necessity. This framework must be designed with the digital age in mind, incorporating robust technological safeguards such as biometric authentication, secure video platforms, and a marriage of digital signatures. It must also allow inter-jurisdictional recognition, a marriage that is legally valid in one country is a marriage in another. In essence, the future of marriage will increasingly be shaped by technology. As the world becomes more interconnected, the demand for virtual ceremonies will only grow. It is incumbent upon legal scholars, policymakers, and religious leaders to work collaboratively to ascertain a legal and ethical structure that honors the traditional a marriage of marriage while a marriage to the realities of a globalized, digital world. The ultimate goal is to create a system that protects the rights and interests of all parties, ensuring that a virtual union is as a marriage as one solemnized in person.

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