

Third-Person Interference in Marriage in Malaysia: A Socio-Legal Review

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DOI: <https://doi.org/10.47772/IJRISS.2026.10100049>

Received: 01 January 2026; Accepted: 07 January 2026; Published: 21 January 2026

ABSTRACT

Marriage constitutes a fundamental social institution that underpins family formation, social stability, and societal well-being. However, third-person interference in marriage remains a persistent social issue that frequently contributes to marital conflict, breakdown, and divorce, resulting in complex social and legal implications. This study examines third-person interference in marriage from both social and legal perspectives within the Malaysian context, with particular emphasis on moral values, legal regulation, and enforcement challenges. This research adopts a mixed-methods approach, integrating qualitative and quantitative methodologies. Qualitative data were obtained through doctrinal legal analysis, literature review, and document analysis of statutory provisions, judicial decisions, and academic writings to establish the relevant legal and theoretical framework. Quantitative data were collected through a structured questionnaire distributed to respondents from diverse backgrounds, including academics, legal practitioners, and members of the public. The findings indicate that, from a social perspective, third-party interference particularly through adultery and extramarital relationships is widely regarded as contrary to the moral, cultural, and religious values upheld by Malaysian society. Such conduct is perceived to undermine marital trust, family harmony, and social order. From a legal standpoint, although the criminal offence of third-party interference under Malaysian civil law has been abolished following a Federal Court decision, civil remedies based on tortious claims remain available to aggrieved spouses. In contrast, Syariah law continues to recognise third-party interference as a criminal offence applicable to Muslims. Nevertheless, enforcement under the Syariah legal framework faces significant challenges, particularly due to limitations in the admissibility of digital evidence and jurisdictional constraints arising from state-based authority. This study recommends the introduction of new statutory provisions under the Penal Code to address third-party interference in marriage within the Civil Courts in a gender-neutral manner, alongside the strengthening of Syariah legal provisions to enhance enforcement effectiveness and to safeguard the family institution in Malaysia.

Keywords: Third-Party Interference, Marriage, Morality, Adultery, Family Institution

INTRODUCTION

Marriage constitutes a fundamental social institution that underpins family formation, social stability, and national well-being. Beyond its legal character as a union between spouses, marriage functions as a core social framework for nurturing emotional security, mutual trust, responsibility, and moral values within the family unit. As the primary site for socialisation and care, the stability of marriage has a direct bearing on the welfare of children and the broader cohesion of society. In contemporary Malaysian society, however, the institution of marriage is increasingly confronted with complex social challenges that threaten its harmony, one of the most significant being third-party interference.

Third-party interference arises when an external individual engages in emotional, intimate, or sexual involvement with one of the married partners, thereby disrupting marital trust and undermining the integrity of the marital relationship. Such interference frequently escalates into marital conflict, emotional distress, and, in many cases, divorce. In Malaysia, third-party interference is consistently identified as a major contributing factor

to marital breakdown, with its effects extending beyond the spouses to adversely impact children and family structures. From a sociological perspective, interference of this nature often results in psychological trauma, anxiety, and long-term emotional harm to affected family members. From a broader social standpoint, it contributes to the erosion of family stability and challenges the sustainability of marriage as a foundational social institution.

Although third-party interference is often framed primarily as a moral or ethical transgression, its implications extend well beyond moral disapproval. Historically, conduct that undermines marital fidelity and family harmony has been regulated through legal norms and institutional mechanisms to preserve social order and protect the rights of spouses. In the Malaysian context, third-party interference has traditionally been closely associated with the offence of adultery, reflecting the strong interrelationship between moral values, religious principles, and legal regulation. Given the central role of religion, particularly Islam, in shaping Malaysia's moral landscape and legal development, interference in marriage is widely perceived not only as a private moral failing but as conduct with serious social and legal consequences.

Accordingly, third-party interference in marriage raises critical legal questions concerning accountability, deterrence, and the adequacy of existing legal frameworks to protect the institution of marriage. The tension between evolving social realities, moral expectations, and legal responses necessitates a careful examination of how the law addresses such interference, particularly in light of recent legal developments affecting its regulation under civil and Syariah law. This study therefore approaches third-party interference not merely as a social or moral issue, but as a socio-legal problem that demands coherent legal analysis and regulatory reform to safeguard family integrity and uphold social stability in Malaysia.

LITERATURE REVIEW

Adultery as a Moral Offence from Religious and Historical Perspective

Marital interference is closely associated with infidelity and adultery, both of which constitute serious violations of marital fidelity and religious injunctions. Within the Islamic framework, adultery is not regarded merely as a private moral failing but as a moral and social offence that threatens the stability of the family institution and the wider social order. Islam places significant emphasis on the sanctity of marriage, viewing adultery as conduct that undermines trust between spouses, tarnishes personal dignity, and erodes social harmony. In the Malaysian context, this moral position is particularly significant given that Islam occupies a constitutionally recognised status as the religion of the Federation under Article 3(1) of the Federal Constitution. This position reflects not only religious doctrine but also the historical, cultural, and moral values underpinning Malaysia's legal and social structures, rendering violations of Islamic law such as adultery simultaneously moral, religious, and societal transgressions.

Classical Islamic jurisprudence provides detailed doctrinal definitions of adultery across the major schools of law, namely the Maliki, Hanafi, Shafi'i, and Hanbali schools. While these schools articulate adultery using different technical formulations, a comparative reading reveals substantial normative convergence rather than substantive disagreement. The Maliki school defines adultery as unlawful sexual intercourse committed by a legally accountable person with one who is not lawfully permissible (Al-Dusuki, 1929), while the Hanafi school similarly characterises it as sexual intercourse between a man and a woman not lawfully bound to each other (Al-Zabla'ei, 2010). The Shafi'i school emphasises deliberate penetration without ambiguity (Al-Nawawi,

2001), whereas the Hanbali school includes both vaginal and anal intercourse as constitutive of the offence (Ibn Qudamah, 1948). Despite these technical distinctions, all schools unanimously regard adultery as a grave violation of marital exclusivity and a serious moral wrong. Accordingly, the relevance of these doctrinal discussions lies not in their definitional nuances, but in their shared normative objective of preventing intrusion into lawful marital relationships.

The prohibition of adultery is explicitly affirmed in the Qur'an, which not only forbids the act itself but also proscribes conduct leading towards it, as stated in Surah al-Isra' (17:32). Ibn Kathir (1997) explains that this prohibition reflects the severe social consequences of adultery, including confusion of lineage, moral corruption, and violence arising from the defence of honour. Similarly, Al-Maraghi (1945) condemns adultery for reducing

human conduct to instinctual behaviour devoid of lawful commitment and responsibility. From a broader ethical perspective, adultery has been described as a form of moral destruction that trivialises fidelity and undermines family responsibility, thereby contributing to the collapse of family institutions across historical periods (Syed Qutb, 1972).

In Islamic law, adultery is categorised as a *hudud* offence, reflecting its status as a transgression against divine limits. According to the majority of jurists (*jumhur fuqaha*'), *hudud* punishments represent the rights of Allah SWT and are fixed in nature (Abu Zahrah, 1997), distinguishing them from *qisas*, which serves to vindicate individual rights (Ibn al-Humam, 1970). This classification underscores the broader legal philosophy underlying the prohibition of adultery, namely the protection of the objectives of *maqasid al-shariah*, particularly the preservation of religion (*al-din*), life (*al-nafs*), intellect (*al-'aql*), property (*al-mal*), and lineage (*al-nasl*) (Suhaizad et al., 2021). From this perspective, the criminalisation of adultery is not merely punitive but preventive, aimed at safeguarding marriage and preventing third-party interference that threatens family integrity.

The moral condemnation of adultery is not confined to Islamic tradition. Other Abrahamic religions similarly regard adultery as a serious moral offence warranting severe sanctions. In Christianity, for instance, adultery is explicitly prohibited in the Old Testament, with the King James Version prescribing capital punishment for adulterers, as reflected in Leviticus (20:10–12) and Deuteronomy (22:22–24). These provisions demonstrate a shared moral stance across religious traditions concerning the sanctity of marriage and the social harm caused by external interference in marital relationships (Azman, 2010). Such cross-religious consensus reinforces the argument that third-party interference has long been perceived as a matter of public concern rather than a purely private moral issue.

Historically, the regulation of adultery and related forms of marital interference has been deeply embedded in the Malay legal tradition following the Islamisation of the Malay Sultanates. Islam was formally embraced in Melaka around 812 Hijrah (1409 CE), leading to the establishment of Islamic legal principles within governance and law (Syed Muhammad Naquib al-Attas, 1969). The *Hukum Kanun Melaka*, which was predominantly grounded in the Shafi'i school while incorporating elements of Malay customary law, codified a comprehensive legal framework encompassing criminal law, family law, evidence, and governance (Mahmood Saedon, 1988). Provisions within this code addressed adultery and related sexual offences, including acts intended to deceive or seduce another person's spouse, which could be punished under *ta'zir* where the strict requirements of *hudud* were not met.

Subsequent legal developments, such as the *Hukum Kanun Pahang* and legal provisions in Kedah, demonstrate the continuity of this regulatory concern across different Malay states (Abu Hasan, 2011; Mariyam, 2005). While these historical legal codes differ in structure and enforcement mechanisms, they collectively illustrate a longstanding legal recognition that interference in marital relationships poses a serious threat to family stability and social order. The enduring significance of this historical experience lies not in the replication of past punitive models, but in its normative affirmation that marriage merits legal protection from external interference.

Viewed collectively, the religious and historical literature establishes that third-party interference in marriage has consistently been regarded as conduct with serious moral and social consequences warranting legal intervention. This doctrinal and historical foundation provides an essential normative context for contemporary socio-legal analysis, particularly in assessing whether current civil and Syariah legal frameworks in Malaysia adequately reflect the moral objectives of protecting marriage, family integrity, and societal well-being.

METHODOLOGY

This study adopts a mixed-methods research approach, integrating both qualitative and quantitative methods to achieve a comprehensive understanding of third-party interference in marriage from social and legal perspectives. Qualitative data were obtained through library-based research and document analysis, involving the examination of academic literature, statutory provisions, judicial decisions, and relevant legal documents to establish the theoretical foundation and legal context of the study. Content analysis was employed to systematically evaluate these materials and to identify key themes relevant to the research topic.

For the quantitative component, a structured questionnaire was utilised to capture societal perceptions of thirdparty interference in marriage. Respondents were drawn from diverse backgrounds, including academics, legal practitioners, and members of the general public. Although the majority of respondents were unmarried, this sampling composition is consistent with the objective of the survey, which seeks to examine prevailing social and moral perceptions rather than lived marital experiences. The inclusion of unmarried respondents is therefore appropriate, as perceptions of marital interference reflect broader societal norms that influence legal legitimacy and public acceptance of regulatory frameworks.

The quantitative data were analysed using descriptive statistical methods, specifically frequencies and percentages, to illustrate general patterns of attitudes towards third-party interference in marriage. This analysis is descriptive in nature and does not purport to establish causal relationships or inferential generalisations. Rather, the findings are intended to provide empirical context to the doctrinal legal analysis by highlighting dominant social attitudes relevant to the regulation of marital interference. The adoption of this mixed-methods design strengthens the study by situating legal analysis within its social context, thereby enabling more informed and practically grounded recommendations in addressing the legal and social challenges associated with thirdparty interference in marriage in Malaysia.

DISCUSSION AND FINDINGS

Implications of Third-Party Interference in Marriage on Social Institutions

In Malaysia, religious values particularly those of Islam play a significant role in shaping both societal norms and the legal system. Acts of infidelity culminating in adultery are regarded as serious moral transgressions and are widely perceived as contrary to the values upheld by Malaysian society. Third-party interference in marriage is frequently identified as a primary cause of marital breakdown, adversely affecting spouses, children, and the stability of the family institution. Interference by an external party is commonly perceived as a betrayal that erodes mutual trust between spouses, a foundational element of marital relationships, particularly where such interference involves emotional or sexual infidelity.

Empirical and professional observations support this perception. In the Malaysian context, marital breakdown resulting from betrayal and extramarital relationships is not uncommon (Rogayah et al., 2021). Professional counselling experiences further indicate that infidelity has become an increasingly prominent factor contributing to divorce, with technological developments—particularly social media and digital communication platforms—facilitating the initiation and continuation of extramarital relationships (Shafiyah, 2020; Avvyat & Mirna Nur Alia, 2024). These developments underscore the evolving nature of third-party interference and its growing impact on marital stability in contemporary society.

To examine societal perceptions of this issue, a questionnaire survey involving 108 respondents from diverse backgrounds was conducted. Of these respondents, 92.6% expressed disagreement with the repeal of Section 498 of the Penal Code, which previously criminalised certain forms of third-party interference in marriage. This overwhelming opposition reflects widespread public concern regarding the legal vacuum created by the abolition of this provision. From a socio-legal perspective, this finding suggests a clear disjunction between prevailing social values and the current state of civil law, indicating that the repeal of Section 498 may not align with societal expectations concerning the protection of marriage from external interference.

Further analysis reveals that 89.8% of respondents believed that the absence of legal provisions addressing thirdparty interference would negatively affect public morality. More specifically, 96.3% of respondents agreed that the repeal of Section 498 would have a detrimental impact on the family institution, potentially resulting in increased divorce rates, illegitimate children, and the normalisation of adultery. These findings provide empirical support for the argument that legal regulation plays a symbolic and normative role in reinforcing moral boundaries and deterring conduct perceived as socially harmful. The data thus strengthens the critique that the removal of criminal sanctions against third-party interference under civil law may undermine both moral regulation and family protection.

This normative expectation is further reinforced by the finding that 97.2% of respondents viewed legal provisions addressing third-party interference as closely connected to religious teachings particularly Islamic

principles as well as the moral values of Malaysia's multi-ethnic society. This indicates that legal regulation in this area is perceived not merely as a mechanism of punishment, but as an expression of collective moral standards. Consequently, the absence of corresponding legal provisions risks weakening the perceived legitimacy of the legal system in addressing conduct that society regards as morally reprehensible.

Moreover, 99.1% of respondents agreed that adultery involving married individuals constitutes a violation of religious and moral values, regardless of religious affiliation. This near-unanimous response highlights a broad moral consensus across different faith communities regarding the sanctity of marriage and the unacceptability of third-party intrusion. From a legal standpoint, this finding underscores the argument that third-party interference is not a sectarian concern limited to religious doctrine, but a societal issue warranting coherent legal regulation within a plural legal system.

Finally, 86.1% of respondents expressed support for the introduction of a new legal provision that is genderbalanced and criminalises acts of seduction involving married individuals, whether directed at a husband or a wife. This finding directly supports the proposal for legislative reform following the repeal of Section 498, suggesting that public opposition was directed not at the principle of regulation itself, but at the genderdiscriminatory nature of the former provision. Accordingly, the survey data provides empirical justification for the introduction of a reformed statutory framework that addresses third-party interference in a manner consistent with constitutional equality while continuing to protect the institution of marriage.

Third-Party Interference under Civil Law in Malaysia

Under Malaysian civil law, adultery is not classified as a criminal offence (Roslina, 2021). Nevertheless, a specific provision previously criminalised the act of enticing or detaining a married woman with the intention that she engage in unlawful sexual intercourse, as provided under Section 498 of the Penal Code. This offence was commonly referred to as the offence of enticing a married woman or third-party interference (Roslina, 2021). Section 498 was situated within the chapter on offences relating to marriage and criminalised the act of enticing, taking away, or detaining a married woman with criminal intent.

Pursuant to this provision, several essential elements were required to establish the offence, namely: the act of enticing, taking away, or detaining a married woman; the presence of malicious or criminal intent; knowledge that the woman was lawfully married; and the intention that the woman engage in sexual intercourse with another person or commit an act in breach of her marital obligations. The prosecution bore the burden of proving all elements constituting the offence as facts in issue before the evidential burden shifted to the accused (Suhaizad et al., 2024). Under criminal law, the accused was also entitled to raise defences such as alibi, general exceptions, specific knowledge of facts, or presumptions. Accordingly, criminal litigation proceedings placed significant emphasis on evidentiary requirements, the allocation of the burden of proof, and the applicable standard of proof (Suhaizad & Hanifah, 2024). In addition to evidentiary rules, Section 132 of the Criminal Procedure Code specifically provided that prosecution for an offence under Section 498 of the Penal Code could only proceed upon a complaint lodged by the husband of the woman concerned. In other words, no investigation could be initiated if the complaint was made by any person other than the husband. Furthermore, the legal framework permitted constitutional challenges to be brought before the courts to contest the validity of statutory provisions on constitutional grounds.

In 2023, however, the Federal Court invalidated Section 498 of the Penal Code in *Lai Hen Beng v Federal Constitution* [2024] 1 CLJ 681 on the ground that the provision was unconstitutional. The Court held that Section 498 contravened Article 8(2) of the Federal Constitution as it amounted to gender-based discrimination. Article 8 of the Federal Constitution guarantees equality before the law, with Article 8(1) affirming that all persons are equal in the eyes of the law regardless of background, and Article 8(2) prohibiting discrimination against citizens on grounds of religion, race, descent, place of birth, or gender in law or public appointments (Suhaizad & Bernard, 2025). In its judgment, the Federal Court emphasised that Section 498 permitted only husbands to lodge complaints, thereby excluding wives and resulting in impermissible gender discrimination.

The Court further observed that Section 498 was enacted prior to independence and was therefore subject to Articles 162(6) and 162(7) of the Federal Constitution. Article 162(6) empowers courts to apply preindependence laws with such modifications as may be necessary to bring them into conformity with the

Constitution, while Article 162(7) defines “modification” to include amendment, adaptation, and repeal. The Court concluded that Section 498 could not be modified without fundamentally altering the character of the offence, rendering judicial repeal the only viable remedy. Notwithstanding the repeal of Section 498, recent judicial developments demonstrate that civil remedies remain available. In a recent case involving a woman who had been married for nearly 50 years, the High Court ordered a 38-year-old woman to pay RM200,000 in damages to the aggrieved wife following the breakdown of the marriage due to adultery. The wife initiated a civil claim against the woman involved with her husband, alleging that the extramarital relationship caused the collapse of a marriage spanning almost five decades. In its decision, the Court held that the third party who contributed to the destruction of the marital relationship was liable to compensate the wife for the emotional distress and losses suffered as a result of the infidelity.

In this case, the applicable legal basis was a civil claim grounded in the tort of interference with domestic relations. Under this tort, a third party who interferes with a lawful marital relationship such as through adulterous conduct may be held liable to pay damages to the affected spouse. This principle reflects the recognition that individuals who cause harm to a valid and long-standing marital relationship may be required to provide monetary compensation to redress the losses and emotional suffering inflicted upon the innocent party.

Third-Party Interference in Marriage under Syariah Law and Enforcement Challenges

Within the framework of Syariah law, which applies exclusively to Muslims in Malaysia, third-party interference in the marital relationship is regarded as a serious offence that undermines the sanctity and harmony of a valid marriage. The Syariah Criminal Offences Act (Federal Territories) 1997 contains several provisions criminalising conduct that interferes with marital relationships, including enticing a married woman to abscond, obstructing spouses from cohabiting, and inciting a spouse to divorce or neglect marital responsibilities. These legal provisions are designed to protect the institution of marriage and family, and to ensure that third parties do not unlawfully influence marital decisions or disrupt domestic harmony. From a normative perspective, Syariah law conceptualises marriage not merely as a private contractual relationship, but as a moral and social institution that warrants legal protection in the public interest.

Section 36 of the Syariah Criminal Offences Act criminalises any act of enticing or causing a married woman to abscond or leave her husband, including influencing her to leave the matrimonial home designated by the husband. Such conduct constitutes a form of third-party interference that may result in marital breakdown. Upon conviction, the offender may be punished with a fine not exceeding RM5,000, imprisonment for a term not exceeding three years, or both. In addition, the court may order the woman to return to her husband, reflecting the law’s restorative aim of repairing marital relationships affected by third-party interference. Section 37 further provides that any individual who obstructs a lawfully married couple from cohabiting as husband and wife commits an offence, while Section 38 criminalises the act of inciting or persuading a husband or wife to divorce or to neglect marital duties. Collectively, these provisions illustrate that Syariah law recognises third-party interference as a spectrum of conduct capable of destabilising marriage, rather than a single isolated act.

Despite the existence of these statutory provisions, significant challenges arise in proving cases involving third-party interference, particularly those involving persuasion, incitement, or indirect influence over marital decisions. In practice, such interference is rarely overt and is increasingly facilitated through private digital communications. Evidence in these cases is therefore predominantly digital in nature, including WhatsApp messages, emails, screenshots, and other electronic communications generated through smartphones and online platforms. These forms of evidence are often crucial in demonstrating the existence of sustained communication, emotional manipulation, and intent to interfere with a marital relationship.

However, within the Syariah legal system, particularly under the Syariah Court Evidence Enactments (SCEE), the absence of explicit statutory provisions governing the admissibility of digital evidence presents a significant obstacle (Suhaizad et al., 2025). Unlike the Evidence Act 1950 (Act 56), which expressly recognises computergenerated documents as admissible in civil courts, the SCEE lacks comparable provisions. This legislative gap creates uncertainty for prosecutors and courts alike, particularly when the authenticity of electronic evidence is challenged on grounds such as data integrity, chain of custody, or the possibility of digital manipulation (Suhaizad et al., 2025). As a result, enforcement efforts may be weakened even where strong factual indicators of interference exist.

In addition to evidentiary challenges, jurisdictional limitations further constrain effective enforcement under Syariah law. Syariah courts possess jurisdiction only over Muslims and are confined to state-based territorial boundaries, as matters relating to Islamic law fall within the legislative competence of the states (Suhaizad et al., 2025). Consequently, cases involving non-Muslim third parties, cross-border digital communications, or acts committed outside the relevant state jurisdiction may fall beyond the authority of the Syariah courts. This structural limitation highlights a practical enforcement gap between the moral objectives of Syariah law and its ability to respond effectively to contemporary forms of third-party interference, particularly in an increasingly digital and interconnected social environment.

CONCLUSION

This study has examined the issue of third-party interference in marriage from both social and legal perspectives in Malaysia. The findings demonstrate that such interference has a detrimental impact on the family institution and broader social well-being, and is widely perceived as contrary to the moral and religious values upheld by Malaysian society, particularly where it involves adultery. From a legal standpoint, although third-party interference is no longer classified as a criminal offence under Malaysian civil law, affected parties may still pursue civil remedies through tort-based claims, particularly in cases involving interference with marital relationships. Within the Syariah legal framework, offences relating to third-party interference remain recognised; however, significant enforcement challenges persist, primarily due to limitations in the admissibility of digital evidence under the Syariah Court Evidence Enactments (SCEE) and jurisdictional constraints arising from state-based authority. Consequently, cases involving non-Muslim third parties or acts committed outside the relevant state jurisdiction often fall beyond the competence of the Syariah courts. In light of these limitations, this article proposes the introduction of new statutory provisions under the Penal Code to address third-party interference in marriage within the Civil Courts in a gender-neutral manner, alongside the strengthening of Syariah laws to enhance enforcement effectiveness among Muslims. From a scholarly perspective, this study contributes to socio-legal scholarship by integrating moral and religious norms with empirical social perceptions and doctrinal legal analysis, thereby demonstrating how societal values can inform contemporary legal reform. The combined moral–empirical–legal approach adopted in this study offers a nuanced framework for evaluating family law reform in plural legal systems, particularly in societies where law, religion, and social morality are deeply interconnected.

ACKNOWLEDGEMENTS

This work is financially supported by Geran Universiti Penyelidikan (GUP), Universiti Kebangsaan Malaysia (UKM), project code GUP-2025-001.

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