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United Kingdom: A push to reform Islamic divorce could make Sharia councils redundant in Britain

Tuesday 22 December 2020, by [ALI Shaheen Sardar](#) (Date first published: 9 December 2016).

Controversy over Sharia councils in Britain has resulted in an [ongoing parliamentary enquiry](#) on their role and remit. Some of those giving evidence before MPs on the Home Affairs Select Committee suggest Sharia councils should be abolished altogether, while others are calling for reform or for a code of conduct to be introduced to regulate these institutions. A separate independent review is [also ongoing](#) about whether Sharia law is being used to discriminate against women.

As these debates continue, it is worth looking at the main use of Sharia councils in Britain: to carry out religious divorces by an “Islamic institution”. Yet I argue that an English court can clearly provide an “Islamically” valid divorce – but that conservative members of some Muslim communities are not doing enough to inform people about the options available to them.

Sharia councils emerged in Britain in the 1980s as informal, extra-legal bodies. They are not a replacement for English law, nor are they courts – though they are often mistakenly [called them](#) in the media.

Estimates of the number of Sharia councils in Britain vary [between 30](#) and [over 80](#). These range from councils with a single member to a formally constituted council with multiple members. Most of the councils are all-male, although there is one woman member, [Amra Bone](#), in the Birmingham Sharia Council.

Matrimonial matters

Sharia councils were supposedly created to provide “Islamic” advice and assistance to Muslim communities, but have been primarily used for [issuing religious divorce](#) certificates to Muslim couples. In my [own research](#), I have studied three of the largest Sharia councils operating in Britain today. Their websites acknowledge that the vast majority – as many as 95% – of cases before them deal with matrimonial matters.

Muslim women seeking divorce also constitute the largest group accessing Sharia councils, approaching them to terminate their marriages rather than using the English courts. This is usually the case when couples have entered into an unregistered Muslim marriage through a *nikah* ceremony which is not recognised by English law.

There are no reliable statistics on the percentage of all Muslim marriages which are only performed in this way, but anecdotal evidence from [my own research](#) suggests that it is quite high. This means that if a husband or wife wishes to dissolve their marriage, they must turn to a Sharia council. Muslim women also seek the assistance of Sharia councils to obtain a religious divorce if they have a

civil divorce but also wish to make it religiously valid, a process that would allow them to remarry.

Registered marriages provide protection

Unregistered Muslim marriages place women at a disadvantage. If they want to seek a divorce they must approach a Sharia council which is unregulated and may apply the rules surrounding religious divorce in an inconsistent way. If a woman has been married using a *nikah* service she has no choice but to seek divorce through a Sharia council - but it means she is not afforded rights available to a wife under English law.

So I argue that Muslim women should have to register their marriage under English law. In Islam, [marriage is a civil contract](#) that must be formalised before state and society in order to protect the wife and any children, and for the state to place responsibility of maintenance on the husband.

Research [has shown](#) that Sharia councils often apply the most conservative and rigid interpretation of Islamic law, which regularly favours the husband. For instance, the abusive behaviour of a husband is a religiously valid cause for divorce and requires that he pays up the *mahr* or marriage gift to the wife. But women, even if they have been abused, are often reported to have been told that they must opt for *khul*, a type of divorce seen as the initiative of the wife and which means she gives up her marriage gift. As a result, Muslim women have had to bargain away some of their rights.

Other options are available

The reason this issue persists is that British Muslims have not been made aware of the variety of Islamically valid options of engaging with English law, including those relating to marriage and divorce. For instance, parties to a Muslim marriage contract [may enter](#) legally binding stipulations whereby the wife is given the right to divorce herself or a clause is included in the *nikah* to accept the civil court as the forum for divorce. Were this to be the case for every Muslim marriage in Britain, the role of the Sharia councils would in due course become redundant.

Another way forward would be for more mosques to be encouraged to obtain a licence to conduct marriages in accordance with civil law, in the same way that a Church is. This would mean that rather than having two marriages - a religious and a civil one - one ceremony would suffice. These suggestions are within the boundaries of Islamic law and are common in Muslim countries including Pakistan, Malaysia, Bangladesh and Indonesia.

I think there should be a robust and rigorous information campaign telling British Muslims how to proceed with marriage and divorce in ways that are Islamically valid. A simple handbook on Islamic family law for civil society organisations, activists, lawyers, legal aid workers and Muslim resource centres would be a useful starting point. And a code of conduct could be agreed for mosques and imams to follow for marriages and divorces.

At the heart of this debate are the rights of Muslim women as equal citizens of Britain and it is they who must be empowered and enabled to make informed choices. Yet at the moment, Sharia councils are mainly used by women who have no other recourse to end their marriages.

While Sharia councils should not be their only means to seek a divorce, it does not mean that these institutions should be banned outright, as prohibition will simply drive them underground. But if more couples are given information about marriage and divorce, then one of the main reasons why Sharia councils still exist in Britain could begin to fade away.

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P.S.

The Conversation

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