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Citation for published version:
Qureshi, K 2022, 'Courting agency: Gender and divorce in an English sharia council', *Contemporary South Asia*, vol. 30, no. 1, pp. 30-43. https://doi.org/10.1080/09584935.2021.2021858

Digital Object Identifier (DOI):
10.1080/09584935.2021.2021858

Link:
Link to publication record in Edinburgh Research Explorer

Document Version:
Peer reviewed version

Published In:
Contemporary South Asia

Publisher Rights Statement:
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Download date: 13. Nov. 2023

Courting agency: gender and divorce in an English sharia council

Abstract

Sharia councils have been in existence in England since the 1980s, providing advice and guidance in matters of Islamic family law. The vast majority of their users are women applying for Islamic divorces. The *ulamā* (scholars) at the councils encourage reconciliation and only grant divorces where this is deemed impossible. This paper, based on observations at a large sharia council in East London, supplements earlier institutional analyses by focusing not on what the *ulamā* are doing, but on what women are doing at the council. The paper identifies a spectrum of compliance with the council and its procedures, ranging between those who say they just want what the sharia wants, to foot-dragging, actively contesting the *ulamā* and exiting the council. Further, these forms of engagement may change over time. Overall, the paper contributes by illustrating the complexity of British South Asian Muslim women's identities and affiliations and engaging with questions of gendered agency. It is clear that even when women petitioners contest, confront or exit the council, they may inscribe their moves within, rather than in opposition to, Islamic norms and values. The paper draws out the wider political implications of this non-opposition between Islamic subject positions and agency.

Keywords: sharia councils, women, South Asian Muslim, religiosity, agency, everyday resistance

Introduction

This paper speaks to current political concerns about sharia councils compromising women's rights in the negotiation of Islamic divorce through an ethnographic study of marriage breakdown among British South Asians, based in East London and involving participant observation at a large sharia council. Sharia councils first began to be established in England in the 1980s. Initially the intent was to address the whole range of issues of Islamic law affecting Muslims in Britain. However, the

mainstay of their work came to be arbitrating women's applications for Islamic divorces (Pearl and Menski 1998: 77). The council at which I worked is one of 12-15 large councils in the UK. In contrast with earlier observational studies of sharia councils in the UK, which have largely provided institutional analyses of the *ulamā* (scholars) (see e.g. Zee 2015; Bowen 2016; Manea 2016), this paper focuses on the women petitioners, adding to existing analyses based on retrospective interviews (Shah-Kazemi 2001; Bano 2012; Parveen 2018). I show the complexity of women's religious identities and affiliations, and engage with questions of gendered agency. Although some women petitioners do actively challenge the *ulamā*, it would be wrong to equate agency only with resistance and subversion (Mahmood 2005). Furthermore, it is clear that even when women contest the council's procedures, they may inscribe their moves within, rather than in opposition to, Islamic norms and values. I discuss the wider political implications of this non-opposition between Islamic subject positions and agency, with regards to the UK government's stance towards sharia councils.

To say that there is political controversy surrounding sharia councils in the UK would be an understatement. This controversy began to mount in 2008, when Rowan Williams, as then Archbishop of Canterbury, caused moral panic by giving a lecture at the Royal Courts of Justice in which he concluded that some recognition of the sharia would be 'unavoidable' in future (Bano 2008). Many commentators objected that Islamic law was inherently patriarchal, and focussed their criticism on the 'subordinating effect' that Islam has upon Muslim women (p.285). This criticism folds into a broader zeitgeist of cultural discourses about 'imperilled' Muslim women (Razack 2004) which had at the time been stirred up by the war on terror (Abu Lughod 2002; Bhattacharyya 2009). Subsequently, concerns about sharia councils violating Muslim women's rights moved some legislators, namely Christian peer Baroness Cox, to try to regulate these bodies more closely, prohibiting forms of arbitration found to discriminate by gender, and making criminal and family law matters not arbitrable (Grillo 2015). Cox's Arbitration and Mediation Services (Equality) Bill was discussed in parliament repeatedly between 2011 and 2015-16 before running to ground (Al

Astewani 2017). Subsequently, two high-profile reviews were commissioned. The Siddiqui Review, published in 2018, proposed measures to encourage the civil registration of marriage alongside Islamic marriages, and the creation of state body that would create and monitor a code of conduct for sharia councils. The government's response to the review however declined the proposal of creating a body to monitor sharia councils, on the grounds that it would 'add legitimacy to the perception of the existence of a parallel legal system' (Grillo 2018: 291), and thus 'simply rehearsed the traditional stance of the government' (Al Astewani 2020: 205) – namely that of accepting people's voluntary adherence to the sharia.

The concern that sharia councils may compromise women's rights has animated much socio-legal research, which has become a similarly polarized field. Several observational studies have been published on sharia councils, some of which present a picture of sharia councils as dominated by Islamic fundamentalists who follow classic forms of Islamic law which discriminate against women, and are averse to the kinds of modern *ijtihad* (juridical reasoning) applied in Muslim-majority societies (Manea 2016), or that they imprison women in religious marriages longer than necessary, bargain away women's rights to custody or property, and condone domestic violence (Zee 2015). By contrast, Bowen (2016) – on the basis of far more extensive fieldwork – presents a more supportive account, concluding that 'nowhere in the case files and sessions' he examined was there evidence of the council he worked in adjudicating on custody or property matters, condoning domestic violence or preventing women from seeking help against it (p.208). These observational works have all been critiqued for focusing more on the reasoning of predominantly male *ulamā* than the experiences of those undergoing divorces, or on the councils' impact on women (Parra 2017; Liberatore 2018).

By contrast, Samia Bano (2008; 2012; 2017) has consistently called for the narratives of British Muslim women to underpin any discussion of sharia councils. Her work examines women's gendered agency, but as with other studies based on retrospective interviews with former users her focus is

primarily on question of their religious, or other compulsions for approaching a sharia council. Bano's interviewees typically went to a sharia council after multiple rounds of unsuccessful informal family mediation, in pursuit of an Islamic divorce that would be acceptable to their families and communities. Often they saw the intervention of the *ulamā* as a means of challenging 'cultural practices that they deemed oppressive to all Muslim women and ultimately "un-Islamic"' (Bano 2012: 203). Drawing from black feminist theories of intersectionality, Bano demonstrates the complexity of religious affiliations among women users of sharia councils: 'some are happy to conform, others are not; some trade identities, but for others there is a primacy of a Muslim identity' (p.278). However, she affirms that, even among those without a particular primacy of a Muslim identity, the turn to sharia councils is due to religious commitments (see also Shah-Kazemi 2001; Parveen 2018). There are other interpretations, however. Pragna Patel (2017), a founding member of the secular black feminist organisation Southall Black Sisters, reports that the Muslim women on their caseload turn to sharia councils only reluctantly, or are socially coerced into going to them, out of the need to reclaim lost honour or pursue legitimacy as divorced women. Patel is broadly critical of the emphasis on multi-faithism in UK government policy and argues that the language of 'female agency' and 'choice' is being co-opted by the religious right 'to reinforce the right to "manifest religion" in ways that extend absolute control over women' (p.86). She contends that if Muslim women are exercising agency in turning to sharia councils, then this is 'a highly constrained form of agency and choice in contexts where the stranglehold of religion has left them little room to manoeuvre' (p.91).

The present study picks up the inquiry into women's agency in their recourse to sharia councils, but unlike these earlier interview studies about women's motivations for using sharia councils, the paper is concerned with the forms of agency that manifest *within the council*. To understand what women petitioners do at the council, I draw from a vein of ethnographies from courtrooms across the world, which since the 1990s have shifted our understandings of law from a site for the exercise of

domination and the reproduction of hegemony, to being also the site of ‘everyday resistance’ (Lazarus-Black and Hirsch 1997, drawing on Scott 1985). Thus, contrasting with prevailing understandings of the sharia as biased against women, Hirsch (1998) found that women’s use of Islamic *kadhi* courts in Kenya reflected ‘a quiet resistance to patriarchy’ (p.219). Women tended to win cases when they brought claims in the mould of the virtuous ‘persevering wife’, which was sanctioned by the sharia as well as local constructions of gender and conjugality. However, other subject positions also emerged in the court, ‘the obedient wife of reported conversations presented an image quite divergent from that of the woman who exposes family conflict by telling stories in court’ (p.222). Recently however, Fadil and Fernando (2015) have critiqued the argument that ‘quiet’ or ‘everyday resistance’ necessarily takes place in space outside of, or opposed to religious norms, as resting on a conception of the everyday as ‘a normative frame that enables the restoration of a conceptualization of agency primarily understood as creative resistance to (religious) norms’ (p.65). They take inspiration from Saba Mahmood’s (2005) ethnographic challenge of rejecting the equation of agency with ‘the capacity to realise one’s own interests against the weight of custom, tradition, transcendental will, or other obstacles’ (p.8). For Mahmood, agency lies not in the efforts of the self, but in the discourse that ‘summons’ the self: ‘the kind of agency I am exploring here does not belong to the women themselves, but is a product of the historically contingent discursive traditions in which they are located’ (p.32). Similarly inspired, in her ethnography of divorces adjudicated in by *dar-ul-qazā* bodies in Delhi, Lemons (2019) sees women petitioners as speaking in the voice of the persevering Muslim wife not ‘deceptively’, but because ‘here, as in other court contexts, there are certain rhetorical tropes that “work”’ (p.72) and thus, that their capacity to speak intelligibly and successfully in the *dar-ul-qazā* is produced by the discursive tradition in which the court operates.

In this paper, I seek to address the assumption that agency should be understood as resistance to (religious) norms, as critiqued by Fadil and Fernando (2015). After introducing my research setting and methods, I provide examples of arbitration for marital disputes that illustrate women

negotiating compliance with the council and its procedures in widely varying ways. Although there is a full spectrum of compliance, it becomes clear that it is not only in challenging the *ulamā* that women exercise agency. Furthermore, in order to resist, women do not have to step outside of Islamic norms.

Research setting and methods

This paper draws from a study of marital breakdown among British South Asians, which involved two months of observational fieldwork at a large sharia council in East London, in 2012. The council is reputedly the oldest sharia council in England. Established in 1982, over the four decades of its existence it has adopted a prominent role in the national public sphere, coordinating with representatives of other sharia councils and campaigning for a formal field of jurisdiction in relation to Islamic divorce. Whilst the organisation is, under the current stance of accepting people's voluntary adherence to the sharia, a 'quasi-judicial institution without a legal base' (Bowen 2016: 99), the council would like to see greater recognition of the work of sharia councils by the government. Like the majority of South Asian Muslims in the UK, the council members are Sunni Muslims, and further, they do not represent the full diversity of British Muslims either in religious orientation or in linguistic or ethno-national terms. Since its establishment, the council has been staffed by South Asian-heritage scholars trained in the Deobandi and Ahl al-Hadith schools of Islam. The senior *ulamā* at the time of my fieldwork included Urdu-speaking Sheikh A, who has Pakistani heritage and a Salafi training from Saudi Arabia; Bengali-speaking Sheikh B, with Bangladeshi heritage and a Deobandi training; Urdu-speaking Sheikh C, with Indian heritage and a Deobandi training from North India; as well as Arab sheikhs with Salafi training from Saudi Arabia, with whom I did not interact. There are other sharia councils in the country with *ulamā* representing other schools of Islam, such as the large West London council, which was largely formed by Sufis, and included Shia Muslims; there are Shia centres elsewhere in London (Bowen 2016: 63). Sunni-Shia differences aside, Bano (2012) provides evidence of women moving different councils or scholars

depending on the response they receive, rather than their approach being determined only the school of Islam predominant at the councils.

I interviewed Sheikh A early on in my fieldwork, and he permitted me access to the council as a base for my research. Over a two-month period, I went to the council on Mondays and Tuesdays, when the Urdu and Bengali-speaking sheikhs were in attendance, and made observations of those couples who agreed to have a researcher sit in at the back of the arbitration room. I observed forty cases of couples seeking arbitration for marriage breakdown. At that time, I found the council leadership very open to researchers – evidenced by the fact that for the first two weeks, I shared the row of chairs at the back of the room with a law undergraduate whose father attended the same mosque as Sheikh A, who was doing a work experience placement. Like the law student, I was asked to write a record of the sessions I observed, for the council to keep in their case files. This allowed me to write notes then and there, in summaries that were checked by the sheikhs before being sent to the clerks for filing. This helped me to remember details for the longer fieldnotes I wrote up in the evening afterwards.

In addition to the observational character of the descriptions I provide of mediation and arbitration sessions at the council, a distinctive aspect of my work is that I combined these observations with long-term fieldwork with South Asian Muslims in the local area and interviews with 74 people, including 23 men and 51 women about their broken marriages and divorces, some of whom had generated files at the council, and others of whom I also witnessed in arbitration at the council. This allowed me to set women's recourse to the sharia council in a broader context. I learnt that British South Asian Muslims in East London had widely varied views about the council (AUTHOR 2016, pp.155-84). Thus, men who were summoned to the council – who often failed to turn up to meetings – would sometimes criticise the *ulamā* as self-appointed pretenders or moneymaking businessmen. Whilst some women complained that the sheikhs were unsympathetic to problems of

polygamy or domestic violence, and were frustrated at the slowness or idiosyncracies of the council's procedures, other women found the sheikhs sympathetic to their difficult marriages and narratives of suffering. One woman expressed deep spiritual reverence to Sheikh A, describing him to her mother 'my sheikh… he did a lot for me back when I was having my problems'. Finally, in those cases where I was also able to follow up with women I observed at the council, as in one of the vignettes below, this enabled me to situate what I witnessed at the council against women's reflections about it over time.

Negotiating compliance

Upon contacting the sharia council, a woman petitioner's first action is to make a *darkhwāst* (written application) setting out the details of their *nikah* (Islamic marriage)*, haq mahr* (the dower payable to the wife upon the marriage), any children involved in the marriage, and the grounds for their grievances. They are also asked to pay the fee of £400. With the prompt on the form being 'main reason for asking for a divorce', the default application is for a *khula*. This initiates the process of arbitration. The council posts a series of three letters to the ex-/husband, at monthly intervals, inviting him to come in and put forward his side of the story, before bringing them together at a joint meeting aimed at reconciling the parties. The cases take months, and even years to get through this stage, as the *ulamā* may expend considerable energy in trying to reconcile the two parties: this is the hard grist of their sheikhly duties (cf. Clark 2012). If reconciliation proves impossible, they move to considering the terms and conditions of divorce. As Sheikh A explained to me, these two roles, the sheikh and the jurist, are distinct; 'if we can reconcile them, then we do. If not, then we act as *qāzī* (judge)'.

The two forms of woman-initiated divorce overseen at the council are *khula* (a divorce granted on the authority of a jurist, at the request of a woman, in exchange for the return of the *haq mahr*, and hence sometimes interpreted by scholars as a divorce by purchase or a divorce by ransom) and *faskh*

(the dissolution of a marriage on the authority of a jurist). *Faskh* is the predominant form of divorce granted by council, because in the majority of cases that come to them, the husbands either refuse to grant their wives a *khula*, or to recognize the authority of the council at all (AUTHOR 2016, p.172-3; Uddin 2020). In addition to these woman-initiated divorces, which make up the mainstay of their work, the council also oversees a smaller number of decisions relating to *talāq* (unilateral divorce by repudiation by the husband, requiring the full payment of the *haq mahr*/dower, to the ex-wife).

As Bowen (2016) has richly analysed, the *ulamā* perceive their actions to differ across the three main classes of divorces that they arbitrate (p.88-102). Important from the perspectives of the women petitioners, however, is that the actions of the council also differ between divorce on the one hand, and reconciliation or *sulā* on the other. In the following I detail a series of cases, across the work of divorce and the work of reconciliation, which are emblematic of women's different ways of negotiating compliance with the council and its procedures. This spectrum ranges between those who seemingly just want what the sharia wants, to those engaging in foot-dragging, actively fighting the *ulamā* and exiting the council. Furthermore, these forms of engagement may change over time.

Wanting what the sharia wants

At the most compliant end of the spectrum are those women petitioners who approach the council with a stance of seeking their authoritative view of the sharia position on a matter and intending to act on the sharia position. The case of Pakistan-born Shaista is illustrative of one such woman, who presented herself as a 'persevering wife' (cf. Hirsch 1998) merely seeking affirmation of the appropriate stance towards her marriage. Shaista had been signposted to the council by the Citizens Advice Bureau, with whom she had been in contact since she had exited her husband's home, for the second time, to go and live in a women's refuge. Shaista presented herself to the council and met with Sheikh A. Shaista had filled out a written application for a *khula*, but Sheikh A soon

determined that she was not actually in pursuit of a divorce but seeking reconciliation, and proceeded accordingly.

Shaista recounted the story of her marital difficulties in a refined Urdu, speaking earnestly and with great pathos, her black *niqāb* (face covering) and *jubba* (full-length cloak) flowing as she paced back and forth between the podium and the chairs at the back. She had been to the council before, she explained – four years previously, when she had left her marital home for the first time. Fundamentally the problem was not with her husband, she said, but with his younger brother (her *devar*), who had locked her and the children in the kitchen and made violent threats. That time, she had notified the police, and she and her two older boys were given shelter in a refuge and then in a temporary accommodation. Still, Shaista continued, she didn't want to leave the marriage because in her heart she knew that according to the *dīn* (the faith/religion), once married she should stay with her husband and bear everything that is thrown at her. Four years previously, she did apply for a *khula* from the council, but her heart wasn't in the divorce and so she returned to the family home. She sought the intervention of some elders in the community (*barhon ne sulā karvāī*) who spoke to her husband about taking their own accommodation, separate from his mother and brother, to which he agreed. She returned to the marital home and stayed there for another three years; they conceived their youngest son, who was sleeping in the pushchair next to her as she spoke. However, her husband reneged on his promise to provide separate accommodation. The conflictual situation with the *devar* did not improve and she had left the marital home again in January of 2012. At this point in Shaista's story, Sheikh A interrupted and asked whether she had left of her own volition, or whether her *devar* had made her leave. Shaista explained she had done this because of the involvement of a social worker, who had told her that if she didn't leave the family home, social services could take the children into care because of the risk of their being harmed. For the first four months, social services had kept her and the children in a bed and breakfast, and then they were given a temporary council flat. Giving praise to God, *Alhamdulillāh*, Shaista reported that a

permanent council flat had now come available. Sheikh A checked whether the husband knew where she was living nowadays; no, he did not. At this, Sheikh A nodded approvingly and commented upon how good the system was in this country. He checked whether she was receiving welfare benefits, and seemed pleased that, between the interventions of social services and the Citizens Advice Bureau, she now was.

At this point, Sheikh A became purposeful and asked Shaista what she wanted the sharia council to do. She told him that she wanted to reconcile with her husband. Sheikh A laughed and asked her why she had then filled out an application for a *khula*. Shaista explained that this had been a mistake and all she wanted from them was to know what was her situation as per the sharia. 'Is it wrong for me to be living separately from my husband and in that flat, according to the sharia? What does the sharia say? *Dīn kyā kehtā hai* (what does the faith/religion say)? Do I need to have a *khula*? Is there anything wrong with it? Or should I just go back to Pakistan?'. Sheikh A laughed at the very suggestion that it might be better for her to go back to Pakistan, where she would be entirely reliant on her brothers for financial support; something her brothers' wives would be sure to have a low opinion about. He reassured her that there was nothing in the sharia against her staying in the council flat, and that she didn't need to have a *khula*. He asked her, again, what she wanted from the sharia council. She then said she wanted them to explain to her husband what the *dīn*, the sharia prescribed, and persuade him to take a separate accommodation so that they might go back to living together. Sheikh A laughed in a resigned manner and said 'what the sharia says? Ha! The sharia is only for those who care about it. If you believe it's important, then it is vitally important. If you don't care, then it's irrelevant'. Shaista agreed, with an expression of equal resignation: what can one do, about the lapses of others. Sheikh A made a note in her file to the effect that what she wanted was actually mediation. He then checked the husband's phone number and said that they would send him a letter inviting him to come and give an interview because 'you told us the story from your side, but we don't know what his complaints might be about you'. She agreed to that and made to leave,

laboriously unlocking her son's pushchair and wheeling him out with a *Jazākallāh khair* (may god bless you/reward you).

Shaista's stance seemed to be one of earnest compliance with the authoritative judgements of the sheikh. She presented herself as a woman who at no stage had sought, or intended to rock the boat, rather she had tried to stay in the marriage even under circumstances of family violence. She spoke, I suggest, in the mould of the 'persevering wife' (Hirsch 1998). In this interaction with the sheikh, she clarified two burning questions: whether it was Islamically correct for her to be living apart from her husband with the support of the welfare state; and whether it was Islamically correct that her husband should provide her with separate accommodation, away from his mother and brother, so that they might return to living together. Sheikh A affirmed that both were correct in this situation, but regretted that the sharia would have little hold over her husband were he not to give it importance – a point to which I return below. Sheikh A set out to establish a course of mediation, wherein he would ascertain the husband's side of the story and try to chart out some compromises through which the marriage would be saved. At the next point in negotiating compliance, we see women going along with the *ulamā*'s course of attempted reconciliation, but with less earnestness and cooperativeness.

Abstention and foot-dragging

The next point in the spectrum that I want to discuss are those women petitioners who go along with the council's procedures but, in the course of their interactions with the sheikhs, display 'weapons of the weak' (Scott 1985) which have classically been read as tokens of everyday resistance. Two such 'weapons of the weak' are abstention and foot-dragging: I provide brief instances of both.

British-born Bangladeshi woman Mahnoor was going along with the course of reconciliation with her husband Martin, a White British convert, with Sheikh B, the Bengali-speaking *ālim*. Outside the council, she was making the compromises demanded on her by Sheikh B, but during the arbitration session I witnessed, she became so frustrated with the process that she stormed out of the arbitration room. This was surprising, in that Mahnoor and Martin turned up to the joint meeting apparently as a united front: in the waiting room beforehand, I saw them whispering conspiratorially to one another about how the council was always running late. The session began with a conversation that implied that both were prepared to reconcile in the marriage. They settled into their chairs, Mahnoor fiddling with her scarf and pulling it repeatedly over her long, open hair. Martin announced 'We come with some good news. We spent the afternoon together, she let me take the children to visit my parents in Manchester. I want to extend the trial separation period'. From the podium, Sheikh B nodded that this was good progress. Abruptly though, he then asked 'But are you sleeping together?'. Martin replied that no, they were not sleeping together, or indeed living together at the moment. 'Have patience', announced the sheikh, directed still to Martin. Mahnoor broke in with her perspective. 'Martin says the main problem is family, that I'm not letting his parents see the kids or whatever, but we both know what it is really. He's been chasing his girlfriend! I've lost so much weight because of this. Last week I had an abusive phonecall from that woman. I never had any issues with his family or with them seeing the kids. I love him a lot, but he's confused about whether he wants me and the kids, or whether he wants his other woman. If it wasn't for that, then I wouldn't want a divorce'.

Martin interrupted, swearing that he wasn't committing adultery or treating Mahnoor as a second wife. Sheikh B tutted and instructed him to be silent, saying 'I'm speaking for you'. Mahnoor persisted with accusing Martin of lying, adding that they weren't having a physical relationship because he was having this relationship with another woman. Her voice suddenly rose in pitch as her emotion piqued, and she slammed her hands down on the table and demanded a *talāq* that very

moment. As she dissolved into tears, Sheikh B paused to think. He went on to prescribe a further three weeks of trial separation, during which he wanted to see them resume their physical relationship, living together and the phonecalls from the other woman to stop. 'If not', Sheikh B continued, 'then I also see no way forward and there will be a *talāq*'. Mahnoor, sobbing loudly by this stage, raised her voice to accuse Martin again of lying, bringing forward new accusations of Martin of having started proceedings for a *talāq* secretly, and then sent the notification to an address where she was not living. In another pique of fury, Mahnoor got up and left the room, swearing at Martin.

Martin and Sheikh B met one another's gaze and the sheikh's eyes widened empathetically. The sheikh apologised for Mahnoor's rudeness. However, his message was not one of solidarity with Martin. Martin tried to have his one-on-one hearing with the sheikh. Sheikh B listened graciously, but pointed out that Mahnoor had shown lots of good will on Martin's key sticking point: the children had met Martin's parents. Sheikh B then leaned forward and adopted an intimate tone, telling Martin that, within three weeks, there had to be progress on at least these two issues – they should resume their physical relationship, and there must be no more abusive phonecalls from that woman. Sheikh B intoned, solemnly, that it was unacceptable for him to keep this other woman. 'Women... they feel very pinched by this thing. No woman can bear to share her husband with another woman. You have to respect this and if you wish to reconciliate the relationship then you must break off contact with this other lady, I don't know whoever she might be'. Martin bowed contritely, and left the room.

In this case, Mahnoor was going along with the course of reconciliation, but uncooperatively, even rudely. Mahnoor demanded a divorce and stormed out, making the prospects for reconciliation appear precipitous. But as Sheikh B pointed out, she had actually compromised on Martin's key sticking point. Further, as part of his mediatory role ('I am speaking for you') he legitimated

Mahnoor's anger, agreeing that Martin's unfaithfulness was unacceptable from a wife's perspective. The next case, of British-born Pakistani woman Lubna, is illustrative not only of uncooperativeness in complying with the council, but of obstructive foot-dragging. Again, this was a joint meeting, with Sheikh A, but Lubna's estranged husband Liaqat did not turn up in person. In Liaqat's absence, Lubna seemed determined to secure the *khula* for which she'd applied, so that she wouldn't have to attend any further meetings, and she was willing to impede the process as much as she could. She presented herself wearing high-heeled patent leather shoes and a summer coat on top of *salwār kamīz.* Unusually, she left her head uncovered in the presence of the sheikh, something he picked up on at the end of the meeting, and which also seemed significant in the interaction that played out.

Sheikh A seemed to have a recollection of her case, and leafed through the file, re-familiarising himself with the details. He checked with Lubna what was happening over the access to the children, because Liaqat had initially refused the *khula* on the grounds that she wasn't giving him access. Lubna protested that she wasn't preventing him from seeing them, 'I don't mind him seeing the children, I've offered him a contact order with the children but he never comes, he's not bothered'. Sheikh A pondered over Liaqat's non-appearance at the meeting. 'Are you willing to come for another appointment?'. 'No', Lubna replied firmly. 'I can't afford to keep coming down. My kids aren't well. I had to take my younger one to hospital yesterday and I was up with him all night'. Sheikh A judged that he would get nowhere that day without the husband's involvement, and asked Lubna if she had his phone number. 'No I haven't', she said, although it can't have been true. Sheikh A called the receptionist and asked her for the number. Eventually, she managed to find it.

The joint meeting took place over the phone, which Sheikh A put on loudspeaker. He got to business and asked Liaqat what they were meant to do now. 'What's she saying', said Liaqat gruffly. Sheikh A explained that Lubna had applied for a *khula*. 'Tell her to come to court and give me the children', retorted the husband. 'But she's not stopping you from seeing the children – you've got no reason to

take her to court', replied Sheikh A reasonably. 'They're small children aren't they, they should be with their mother'. Liaqat then started to complain in earnest. 'It's our family problem. I've told her that if she wants a divorce, I'll talk to her. Why does she need to take it in front of the whole family'. Sheikh A said with a laugh in his voice, 'but that's exactly what we are saying as well! There would be nothing better than *agar āp donon kī sulā ho saktī hai'* (that you two should be reconciled).

Sheikh A then began addressing the sticking points, turning to Liaqat first. 'She says that you beat her'. Liaqat became animated and denied this passionately, 'I can tell you, hand on the Qurān, I pray five times *namāz* (prayers). I've done nothing to her. I don't want a *talāq*. If you want to sort out a *rāzīnāmā* (an agreement to reconcile) then that's fine'. Sheikh A asked Lubna if she would consider a *rāzīnāmā*. '*Jī nahīn*' she said firmly; no indeed. 'I brought up those kids on my own, he's never been there for them. He can see them, I'm not going to stop him if he wants to see them, but he can't have them'. Sheikh A changed tack and put it to Liaqat like this. 'If she says she won't do a *rāzīnāmā*, so what am I supposed to do? Allah's *hukam* (command) is not to keep someone hanging'. Liaqat then brought up a second major area of grievance, which was a complicated story about a cheque, for several thousand pounds, that had been sent by a personal insurance company for an accident claim that had been filed under his name, but which had arrived in Lubna's name and which she had cashed herself. Lubna retorted that she didn't see why she should give him that money back – she used it to buy all the things for the house that he'd purchased and then never paid for, 'the carpets, the beds, the cooker, the fridge, he left everything in debt with me'. Sheikh A then brought up the return of the *haq mahr*, which was written on her *nikāhnāmā* as Rs 93,500, in the form of gold jewellery. Lubna refused to be drawn on that subject. 'That gold was only Paki gold, it was worth nothing'. Sheikh A sighed in exasperation and moved towards a resolution, giving Liaqat an appointment in two week's time, for him to come in with all the files from the solicitors. Liaqat was not very gracious in making a time to come in for a face-to-face meeting. Lubna was not very gracious either, saying she wouldn't come in for the meeting because she couldn't afford to take

more time away from the children and keep coming and going. Sheikh A told her 'you don't come. You'll just be available on the phone', but even then she protested, refusing to commit to being free at any particular time.

After the phonecall, Lubna continued to complain about Liaqat's demand for access to the children. She made a moral argument to the effect that he had no right to apply for contact with the children, since he had not provided for them financially (see Lemons 2019, p.88 on the need to enact morally upright, proper spousal roles of obedience-maintenance to achieve judicial success at *dar-ul-qazā* in Delhi, and Dutta 2021 on *qāzīs* disciplining of men who fail to provide). 'It was his responsibility to pay off the debts, but he never supported me and the children'. Sheikh A informed her that she would have to pay a certain amount to the husband – 'the dower amount or jewellery is due to your husband as a condition of the *khula*'. Lubna thought for a moment and said that 'if that's the case, then I can pay it back to him on instalments, slowly slowly, but now I can only do...', she paused, '... about £2 or £5 a week. I'm unemployed, I'm at home looking after the children and I've got no support, I'm doing it all on my own. One of my children, the younger one is sick, he's in hospital every month. He has fits'. Sheikh A requested to me, the scribe at the back, to make a note of that detail.

Sheikh A was interested to establish other facts. 'Does he practice?'. 'No', retorted Lubna. 'But he says he prays five times *namāz* and goes to Friday prayers?'. 'No', she insisted, 'he doesn't'. 'And what about you?', he asked with slight sternness. She inhaled and started to defend herself. 'I do it when I can. I don't do five times prayers though'. 'Why not?', laughed Sheikh A. 'I can't! I've got little children, it's too hard for me to pray every single time but I do pray when I can and *inshāllāh* I will. This has been too much headache for me. It's been three and a half years already – it's been going on for too long now'. Sheikh A gently challenged her, saying 'but if you don't ask Allah, how will he help you?'. She repeated 'my little one's too ill', but acknowledging his point, she added, 'I will

inshāllāh'. He lectured 'these are just excuses, these are just day-to-day things. The first thing you'll be asked about on the day of judgement is *namāz*'. As she exited the arbitration room, she shot me a look, literally rolling her eyes in muted protest at the procedures she was going through.

Lubna's case illustrates the particular difficulty, for the council, of enforcing the repayment of the *haq mahr* which is a condition in the negotiation of the *khula*. This contrasts sharply with the legal enforcement of *haq mahr* in other countries, such as Iran, where this is a major deterrent to women in demanding a divorce (Mir-Hosseini 1993; Osanloo 2007, and see above comment about the frequent interpretation of *khula* as divorce by purchase or by ransom). By contrast, at this English sharia council the repayment of the *haq mahr* was an issue over which women petitioners seemed often to drag their feet (AUTHOR 2016, p.173). After Lubna left the room, the law student who was interning at the council along with me asked Sheikh A if it was possible for a woman to pay back the *mahr* on instalments. He said it was acceptable, but lamented 'we've got no assurance'. To convince Lubna of the necessity of returning the *haq mahr* as part of the *khula* Sheikh A therefore presented her with a broader argument about the sharia as a divine blueprint for life, how it prescribes a particular way of doing everything, from divorce down to everyday practices such as prayer. Lubna tried to counter Liaqat's claims to being an observant Muslim, but because of her own seemingly intermittent religious observance, Sheikh A reprimanded her and reminded of her religious obligations, that she should treat the sharia's position on her divorce, and the injunction to five obligatory daily prayers, with the same seriousness. Sheikh A's insistence on her obligations to live up to the sharia as a divine blueprint seemed to be inseparable from the normative character of enforcement.

Challenging the ulamā

From these cases of foot-dragging, the next point to identify in the spectrum of compliance are those cases of women who, whilst going along with the council's procedures, actively challenged the

ulamā over their decision-making. Over the forty cases I observed were two in which women complained to the council about the lengthy character of the sheikhs' attempts at reconciliation. The first was a case that had been at the council for nearly two years by the summer of 2012. It was of Aiza, a British Pakistani woman who in 2009 married Amir, a migrant husband from Pakistan. On her initial application for the *khula* she wrote that Amir had married her 'only for the visa' and verbally abused her ever since he arrived in the UK. They had been separated since March 2010, a point that Amir did not contest. According to the reports in their file, Amir testified, in his separate interviews, that Aiza's parents had poisoned her mind against him, that he loved her from his heart, and that there was no problem in the marriage: he was thus averse to giving the *khula*. In an earlier joint interview, Sheikh C had discussed the matter of compensation for the *khula* and she had agreed that she would return the two gold jewellery sets that had been given to her in her *haq mahr* but that he should, in turn, give back a sum of gold that had been given to her side of the family. Amir had rejected subsequent invitations for joint interview. Aiza had also refused to attend the meeting I observed, so Sheikh A phoned her, via the speakerphone, during a monthly review meeting. Aiza refused to come in for another joint meeting, and further, she confronted Sheikh A that she had the right to divorce as she had been separated for more than two years and according to Islamic law, this gave her the 'automatic right to divorce', 'this *khula* is very overdue'. After the phonecall, the sheikhs deliberated over her intransigent stance. Sheikh B agreed that this was lamentably an old case, 'we don't want it to be dragged out, we don't want women to suffer even one more month in the marriage if there is no chance of reconciliation'. However, their agreement was that a further joint meeting would be required 'because there are claims and counter-claims over the jewellery, and because of her tone'.

In Aiza's case, a confrontational tone did not seem to help expedite her case because the sheikhs saw inherent complexity in resolving the return of the *haq mahr,* which was confused because of Aiza's insistence that other jewellery had been transacted at the time of the marriage needed to be

accounted for before she would return the *haq mahr*. In the other case I observed, Sheikh A was more inclined to act swiftly. This was a drop-in visit from a British Pakistani woman, Soraya, who had applied for a *khula* in 2010. She asked to know the procedure for complaint, because she had made the application two years ago and still no decision had been made. Sheikh A apologised that such a long period had lapsed and that there had been no resolution. He asked the receptionist to bring in her file. As he read through, he looked up in surprise and remarked to Soraya 'You have a doctorate in biological chemistry!' – to which she assented. A little further down, he muttered again: 'The husband is completing a doctorate in linguistics!'. He went through the file and first seemed to think that actually, everything was already present and correct in the file and it should be ready for completing on. Sheikh A instructed one of the clerks to phone the husband, and Soraya left the room.

These two cases of direct confrontation go some way to indicate that women do actively challenge the *ulamā* and the council's procedures, but also, that the council may respond to women's complaints with varying degrees of responsiveness. In the final section I follow up with the case of Shaista, introduced before, and track her case forward in time to document her exit of the council.

Exiting the council

After meeting her at the council, I interviewed Shaista over three lengthy interviews in the summer of 2012, followed up by several interviews in late 2013. I learnt from Shaista's evolving situation that in spite of her initial professions to Sheikh A that she only wanted to know what the *dīn* or the sharia would say, there were ultimately some limits as to what she would allow it to prescribe.

By late 2013, Shaista's solicitor had succeeded in securing from her husband a commitment to reconciliation, and had advised her to undergo formal family mediation so as to work out the terms and conditions for their reconciliation. Although Shaista had earlier sought support from the council,

in between she had turned to another religious scholar from their Salafi sect, as her husband had a distrust for the council due to some controversial views expressed by Sheikh A's son. However, Shaista was not inclined to appoint either the council *or* the Salafi scholar to mediate the conditions for their reconciliation. 'AUTHOR, the scholar, told me that I should allow [him] to take the children to see his mother. So according to the Islamic way I should do that. But I CAN'T'. Rather than risk being morally obliged to take her children to her mother-in-law, who had, like the *devar*, been abusive in the past, Shaista was in favour of going to Relate – a secular family mediation service. 'I want to go to Relate, but some people say "go to Muslim mediation". I'm not sure. When they chucked me out, they didn't do in the Islamic way. So why would I choose the Islamic way, to give them benefits?!'.

At this later stage, then, Shaista sought to opt out of the sharia altogether as a forum for arbitrating her marital difficulties. Her interview suggests that sharia authorities may exert a hold over women not only through a moral, ethical register but also through a communal register, speaking in the voice of the community ('some people say "go to Muslim mediation"'). Despite this multi-faceted bind in which she felt placed, for Shaista there remained an important distinction between the procedures and prescriptions of the *ulamā* – which she was now seeking to avoid – and the *dīn* (religion/faith), which she was committed to following at all time. Indeed, in one of our last interactions, she wanted to end the interview by handing me a pen and saying 'write this down AUTHOR, I want the other women to know this. My main power was Allah's love. I just believe on Allah. If you trust on Allah, Allah will never destroy you. Even for the tough times I felt that this is my test. Every ease come after hardship. Allah never makes you bare-handed. Allah gives you *sabar* (patience) like this'. Though she was at that time avoiding arbitration by the sharia, she still spoke as a 'persevering wife' (Hirsch 1998).

Discussion and conclusion

The ethnographic material described in this paper contributes to the study of sharia councils in the UK by examining not what the *ulamā* are doing but what the women petitioners are doing at the council. Further, the material sheds light on the impact of sharia councils on women experiencing Islamic divorce from a different tack – not primarily the question of their motivations for turning to a sharia council, but the extent to which they go along with the council and its procedures. Nonetheless, similar questions, concerning the extent to which Muslim women's religiosity represents a source of agency, must be asked in relation to women's engagements with the *ulamā* at the council.

The religious identities and affiliations of the women I observed at the council varied widely. As shown in Bano's (2012; 2017) earlier study, there is a heterogeneity of experience amongst British South Asian Muslim women, and their experience at the council was criss-crossed by other interlocking axes of social difference (Crenshaw 1990; Yuval-Davis 1997). This intersectionality filtered through women's engagements with the *ulamā,* and also, how the *ulamā* read their performances at the council – as suggested by the contrasting cases of Aiza and Soraya, who both challenged the council's lengthy procedures; seemingly, the significance of Soraya's threat of complaint drew not only from the inherent reputational damage, but also from her advanced educational credentials. This varying religiosity and intersectionality feed in to the spectrum of compliance I have outlined, though in ways that are by no means straightforward.

Shaista's initial inquiry in the mould of seeking affirmation of the Islamically correct stance towards her marriage, her earnestness and cooperativeness were inseparable from her piety. At other points of the spectrum, the uncooperativeness and irreverence with whom other women went along with the council's procedures could elicit lectures from the *ulamā* concerning the moral authority of the sharia as a blueprint for life, or remonstrations that the sharia is 'only for those who care about it', as Sheikh A complained to Shaista. Petitioners seemed often thrown back on projecting their

identities as observant Muslims, as in the exchange between Lubna and Liaqat; and persuasive narratives, in this institutional context, are those that speak from Islamic subject positions. An important observation is that even those who are the least compliant with the council and its procedures, such as those who are most vocal in their protest, or who exit and withdraw from the council altogether, do not need to step outside of the religion in order to resist the *ulamā*. When Aiza unsuccessfully challenged the council over the tardy completion of her *khula* she did so citing principles of Islamic law. When, in Shaista's case, with the passage of time she withdrew from the council, and indeed from adjudication by any form of sharia authority, she continued to inhabit the mould of the 'persevering wife' (Hirsch 1998) that is the subject position sanctioned by the sharia, trusting in Allah and exercising the *sabar* (patience) gifted to her. These forms of everyday resistance vis-à-vis the council, therefore, do not necessitate women opposing themselves to the Islamic tradition or stepping outside of it. As Mahmood (2005) argues, agency is not indexed only by resistance and subversion but can inhere in moulding oneself around the demands of the religion, in wanting what the sharia wants. To this, I add that even when women may resist, they may make these moves from within the Islamic tradition.

Given the political controversy raging over sharia councils in the UK, there are wider implications of the non-opposition between Islamic subject positions and agency. Patel (2017) expresses well-founded concerns over how the language of 'female agency' and 'choice' may be co-opted by the religious right. Her concern is that the more the state recognises the status quo of religious arbitration structures and outcomes, the more conservative forces will make it difficult for women to opt out of religious arbitration. She contends that sharia councils 'function primarily as a means of exercising control over female autonomy and policing the boundaries of religious and community affiliation' (p.88). She takes issue with the government's acceptance of people's voluntary adherence to the sharia, arguing that the mere existence of sharia councils exerts pressure on women to enter religious arbitration and thus inherently infringes on their freedoms. Bano (2012) also problematizes

the principle of voluntarism (see e.g. p.275). However, as she later points out, feminist theorists over the past decades have shown that 'it is simplistic to contrast belonging to a religious group, and the constraints this may bring, with the autonomy of opting out' (Bano 2017: 57). This paper provides some evidence of the kind of communal pressures that may act on women, to have their marital disputes arbitrated by sharia councils ('some people say "go to Muslim mediation"'). As the vignettes described here suggest, there is not just a binary option of either complying with the sharia, or exiting the community of co-religionists. Thus the stance of passive acceptance of people's voluntary adherence to the sharia is simplistic. It presumes an autonomous and choosing subject, whereas on the ground gendered agency is enacted within constraining discourses and conditions of coercion.

The constraining hold of moral/ethical discourses and of narratives of allegiance to religious communities and identities returns us to Mahmood's (2005) critique of indexing agency by resistance as 'impos[ing] a teleology of progressive politics on the analytics of power' (p.9). This provides some final thoughts about the implications of the material in this paper. Madhok et al. (2013) observe that the impact of critiques of ethnocentricism in the analytics of agency, such as those of Mahmood, have often been taken – particularly by liberal feminists – as a disciplining of judgementalism – as a call to refuse paternalism, not leap automatically into protective mode, and to respect the choices individuals make about their lives. But 'judgementalism is not the same as judgement' (p.12). Naïve celebrations of agency can engender undue complacency and obscure the conditions within which agency is exercised, which 'certainly matter – some circumstances are more empowering while others are more constraining' (p.3). This continual calibration of judgement is the hard work to which feminist political responses to sharia councils must remain committed.

Bibliography

Abu-Lughod, L. (2002). Do Muslim women really need saving? Anthropological reflections on cultural relativism and its others. *American Anthropologist*, *104*(3), 783-790.

Al-Astewani, A. (2017). Reflections on the rise and fall of the Arbitration and Mediation Services (Equality) Bill. *Public Law*, *2017*(4), 544-552.

Al-Astewani, A. (2020). English responses to Shariah tribunals: A critical assessment of populist attitudes toward Islamic Law. *Critical Policy Studies*, *14*(2), 193-213.

Bano, S. (2008). In pursuit of religious and legal diversity: a response to the Archbishop of Canterbury and the Sharia Debate in Britain. *Ecc LJ*, *10*, 283.

Bano, S. (2012). *Muslim women and Shari'ah councils: Transcending the boundaries of community and law*. Palgrave Macmillan.

Bano, S. (2017). Agency, autonomy, and rights: Muslim women and alternative dispute resolution in Britain. Pp.46-76 in Bano, S., (ed.), *Gender and justice in family law disputes: women, mediation, and religious arbitration*. London: Brandeis University Press.

Bhattacharyya, G. (2009). *Dangerous brown men: exploiting sex, violence and feminism in the 'war on terror'*. London: Bloomsbury.

Bowen, J. (2016). *On British Islam: religion, law, and everyday practice in Shariʿa councils*. Princeton: Princeton University Press.

Clarke, M. (2012). The judge as tragic hero: Judicial ethics in Lebanon's shari'a courts. *American Ethnologist*, *39*(1), 106-121.

de Certeau, M., (1984). *The practice of everyday life*. Berkeley: University of California Press.

Dutta, S. (2021). Divorce, kinship, and errant wives: Islamic feminism in India, and the everyday life of divorce and maintenance. *Ethnicities*, 21(3), 454-476.

Fadil, N., & Fernando, M. (2015). Rediscovering the “everyday” Muslim: Notes on an anthropological divide. *HAU: journal of ethnographic theory*, *5*(2), 59-88.

Hirsch, S. (1998). *Pronouncing and persevering: gender and the discourses of disputing in an African Islamic court*. Chicago: University of Chicago Press.

Grillo, R. (2016). *Muslim families, politics and the law: a legal industry in multicultural Britain*. London: Routledge.

Grillo, R. (2018). Comment on the Report of the Siddiqui Review Panel, 2018. *Journal of Muslims in Europe*, *7*(3), 283-308.

Lazarus-Black, M., & Hirsch, S. F. (Eds.). (1997). *Contested states: law, hegemony and resistance*. London: Routledge.

Lemons, K. (2019). *Divorcing traditions: Islamic marriage law and the making of Indian secularism.* Cornell: Cornell University Press.

Liberatore, G. (2019) Review of: On British Islam. *Journal of the Royal Anthropological Institute*, 25, 182-3.

Madhok, S., Phillips, A. and Wilson, K. (Eds.) (2013). *Gender, agency, and coercion*. London: Palgrave.

Mahmood, S. (2005). *Politics of piety: The Islamic revival and the feminist subject*. Princeton: Princeton University Press.

Manea. E. (2016). *Women and sharia law: the impact of legal pluralism in the UK*. London: IB Tauris.

Mir-Hosseini, Z. (1989) *Marriage on trial: Islamic family law in Iran and Morocco*. London: IB Tauris.

Osanloo, A. (2009). *The politics of women's rights in Iran*. Princeton: Princeton University Press.

Parra, H. (2017). Review of: Women and sharia law: the impact of legal pluralism in the UK. *Law & Justice: The Christian Law Review*, 178, 111-113.

Parveen, R. (2018). *Do shari'a councils meet the deeds of Muslim women?* Unpublished PhD Thesis, University of Birmingham, Birmingham Law School.

Patel, P. (2017). The growing alignment of religion and the law: what price do women pay? Pp.46-76 in Bano, S., (ed.), *Gender and justice in family law disputes: women, mediation, and religious arbitration*. London: Brandeis University Press.

Pearl, D., and Menski, W. (1998). *Muslim family law* . London: Sweet and Maxwell.

Phillips, A. (2009). Gender and culture. Paper prepared for ‘Feminism and cultural diversity: conference in honour of Hanna Beate Schopp-Schilling’, Berlin, 6 May. Available at https://www.researchgate.net/publication/48910268_Gender_and_Culture

Razack, S. H. (2004). Imperilled Muslim women, dangerous Muslim men and civilised Europeans: Legal and social responses to forced marriages. *Feminist legal studies*, *12*(2), 129-174.

Scott, J. C. (1985). *Weapons of the weak*. Yale: Yale University Press.

Shah-Kazemi, S. N. (2001) *Untying the knot: Muslim women, divorce and the shariah*. London: The Nuffield Foundation.

Uddin, I. (2020). Reformulation of Islamic matrimonial law: British Muslims, contemporary understandings and normative practices. *Journal of Muslim Minority Affairs*, 40(1), 6-25.

Zee, M. (2015). *Choosing sharia? Multiculturalism, Islamic fundamentalism and sharia councils.* The Hague: Eleven International Publishing.