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Assimilation, Acculturation, and the Law: Solving a “Problem” Like Shar’ia

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Abstract

An unexpected development in the English legal system involves Muslim women’s use of legally binding Shar’ia councils to protect their autonomy, marital security, and property rights. Although scholars and political commentators alike have voiced concerns that Muslim women will be treated unfairly in these councils, there is some indication that women have become adept at navigating this plural legal landscape and that they have often managed to secure better outcomes from Shar’ia family law than from English courts. Over 80 Shar’ia tribunals have been established to issue legally binding decisions on divorce, child custody, inheritance, and other areas of family law. My paper investigates the ways in which Muslim women living in England navigate secular and religious systems of law, and will compare decisions made by English family courts to those made in Shar’ia councils. In so doing, I will suggest that Shar’ia law may be proliferating in England in part because it affords divorced Muslim women better outcomes than English family law.

Legally Binding Shar’ia Law in the British Isles: A Short History and Introduction

At present, Muslims are a significant religious minority in Great Britain, numbering over 1,500,000 people, and are primarily of South Asian, East African, or Middle Eastern origin (Peach 2006, 637-638). British sociologists and political scientists, influenced primarily by the models developed by the Chicago School of sociology, have generally assumed that Muslims’ interest in *Shar’ia* law would discontinue as they became more acculturated to life in Great Britain. This has not, however, been the case: A 2007 *Telegraph* poll, for example, showed that nearly 40% of Muslims in the U.K. held *Shar’ia* law in higher esteem than state law (Meehan 2007), and there is evidence that Muslim couples in England frequently decline to register their marriage with the state, marrying only in the mosque (Yilmaz 2005, 73-76).

The *Shar’ia* councils, which grew out of informal neighborhood tribunals, have therefore become a permanent part of many Muslim religio-ethnic enclaves. This development, of course, has been a topic of heated controversy, particularly after the councils’ decisions became legally binding in 2008 due to a new application of the 1996 Arbitration Act. These councils represent different schools of Islamic thought in order to serve the various Muslim communities in Britain and act as mediators to those wishing to preserve Islamic principles, however defined. The role of the British *Shar’ia* councils is typically limited to overseeing matters that pertain to family

law, and the councils mediate divorces, separations, and reconciliations. They also produce *fatawa*, or non-binding opinions issued by religious scholars, on Muslims' crises, questions, or concerns. The council summarizes the need for their existence, as well as the services they offer, as follows:

Historically, Muslim organisations have urged the legislative authorities in the UK to factor the Islamic viewpoint into all aspects of the legislative process, not least in the field of family law: the response to this call has been surprising indeed. The answer has been clear and unequivocal: one country - one law. Given that what was traditionally known as, 'the Christian perspective' in the UK has been essentially annexed from all legal and legislative processes, it almost seems inappropriate to expect that the perspective of yet another religion - Islam - be factored into the discussion...The [*Shar'ia*] Council is also widely accepted by the UK Muslim community and this is shown by the sheer volume of enquiries related to marital problems which it receives from the general UK public: additionally, a significant number of solicitors who were able only to secure civil divorces for their clients have found recourse with the Council regarding also securing Islamic divorces for their respective clients. (Islamic *Shar'ia* Councils 2011, "About Us")

The issues raised by the above passage will be explored in the following section, particularly the degree to which English law is, indeed, informed by Christian presumptions of what is normative, and the nature of the "sheer volume of enquiries related to marital problems."

First, however, it should be clarified that these councils have no power to issue a civil divorce: divorce is a matter of personal status under state law, and as such, there is a difference between one's "status" under state law, and the resolution of disputes between individuals. More specifically, in the event that individuals are unable to settle a dispute on their own, and are disinclined to begin legal proceedings, they can choose to have their disputes resolved by an arbitrator, which is sort of like a private judge. Unless there is some sort of irregularity, procedural or otherwise, the decision of the arbitrator will be enforced in the same way as a court ruling.

It thus follows that parties might decide to select an arbitrator that is able to settle their dispute under the aegis of *Shar'ia* law. As of 2008, this is permitted in England, and the results enforceable in a court of law, provided (as noted above) that there are no procedural irregularities and all parties agree that its procedures are fair. The Muslim Arbitration Tribunal (MAT) "offer[s] the Muslim community a real and true opportunity to settle disputes in accordance with Islamic Sacred Law with the knowledge that the outcome as determined by MAT will be binding and enforceable" (Muslims Arbitration Tribunal 2012, "Legals"). Disputes settled according to *Shar'ia* are therefore still operating "within the legal framework of England and Wales" (Rozenberg 2008). When sitting, the MAT has on its panel a scholar of Islamic sacred law and a solicitor or barrister registered to practice in England and Wales (Rozenberg 2008). Given that the panel is not authorized to change a person's status under civil law, as aforementioned, the couple must still seek a decree absolute certificate from the state in the event that the panel issues a divorce under the *Shar'ia*. In order for the divorce to remain legally binding, the High Court, generally speaking, must agree to uphold the decision of *Shar'ia* tribunal (Rozenberg 2008).

In the event that a Muslim couple is divorcing in the civil sense and one of the parties refuses for whatever reason to initiate a divorce under the *Sha’ria*, the other party can seek the help of *Shar’ia* councils in filing a *decree nisi*, meaning that the civil court can choose to make a religious divorce a condition for finalizing the civil divorce (Proudman 2012). A discussion of these concepts in application will occur in a following section, however for now, suffice it to say that the *Shar’ia* councils are like any other kind of venue for arbitration in that they must conform to the overall framework of state law, and assuming they do so, their decisions will be accepted as the basis of an English court decision and legally enforceable.

In order to get a sense of the motivations behind Muslims’ bicultural, bi-legal navigation, and in order to understand the Islamic *Shar’ia* Council’s above claim that the Christian perspective has been “essentially annexed from all legal and legislative processes,” we must first explore the role of marriage in Islam, and compare it to the role of marriage as articulated by family law in England and Wales. The following section will discuss Muslim marriage practices and English and Welsh family law before moving on to explore the potential tensions between the two. In so doing, I will show how British Muslim women living in England and Wales are motivated to use the *Shar’ia* councils not necessarily out of a resistance to assimilate culturally, but due to well-founded concerns about English and Welsh family law, its treatment of divorced women in general, and of divorced Muslim women in particular.

Marriage And Islam And Marriage In England And Wales: Differences And Similarities

A detailed assessment of Muslim marriage and divorce within the context of Islamic jurisprudence would be outside of the scope of this paper; what will follow is a summary of its most salient features, leading into a discussion of relevant aspects of English and Welsh family law. A comparison of these legal frameworks will demonstrate that the formal system has not always succeeded in protecting the rights of Muslim women, motivating them to continue using the *Shar’ia* councils in place of the English courts.

It should first be noted that although the popular press often refers to “*Shar’ia* law” as though it is a monolithic and unchanging legal system, it is in fact much like any system of common law in that it has changed significantly throughout space and time. It is subject to local and temporal variation and always has been. In other words, *Shar’ia* law may be interpreted in Saudi Arabia in a manner that differs considerably from the way it is interpreted in Pakistan or Iran, and the contemporary interpretations in all of these countries and for all these peoples differs significantly from past interpretations in the same physical locations. This variety and variation is a *reflection* of Islamic law, rather than a deviation from it. Therefore, what follows will be a series of generalizations about the way Islamic law has developed in England, forming a hybrid system of law that the legal anthropologist Werner Menski (2006) refers to as “*shariat angrezi* or “English *Shar’ia*.”

Generally speaking, Islamic jurisprudence in England and elsewhere does not so much grant rights to women as it does to wives, ex-wives, daughters, and mothers (Tucker 2000). A woman’s position in her extended kinship network is therefore of critical importance to her ability to control and manage her own property, to retain guardianship of her children, and to supervise her own affairs. In this framework, even though rights and obligations are certainly gendered, women have mechanisms available to them to protect their property and safeguard their autonomy. For example, women are independently able to enter into marriage, are entitled

to retain whatever assets they brought into the marriage, and can receive a stipend from their husbands for breastfeeding, housekeeping, and performing other domestic work.

The Islamic concept of marriage also differs from the Christian one in that Christian marriage is either a sacrament (Catholic) or a covenant (Protestant)—that is, it is a rite or a ritual invested with sacred significance, marking the beginning of a relationship that is (ideally) to last in perpetuity and that triggers divinely mandated rights and obligations. Furthermore, whereas the traditional Christian view of divorce is that it is undesirable at best and a sin at worst, classical Islamic jurisprudence permits the Muslim marriage contract to be terminated by the husband at any time, and for any reason. Classical Islamic jurisprudence, in fact, regards marriage as no more or less significant than a contract legitimating sexual relations between certain people for a certain period of time and under certain conditions. As Islamic law expert Azizah al Hibri (2000) puts it, “If a woman gets divorced it's not a big deal. Now it's a big deal, but historically, ‘It's only a husband.’ She goes back to her family, brothers, father, and sisters. That's her family. Husbands come and go. In our families the real basic relationship is the blood relationship. You can divorce a husband; you cannot divorce a brother or a father” (in Q&A). The normative conception of marriage has, of course, changed in the post-colonial condition as well as for Muslims in diaspora, but contemporary Islamic law as it has developed in the U.K. and elsewhere is still informed by the premise that divorce is not a “sin,” nor is it a blight on the family or community.

When a Muslim woman gets married, she is entitled to a gift called a *mahr* under *Shar'ia* law. This is often translated to mean “dowry,” but this is an inaccurate translation as the wife does not give the *mahr* to the husband; rather, the husband gives it to the wife. Therefore, I will use the term “marriage portion.” The marriage portion is a sum upon which the husband and wife must agree before getting married, and their families on their behalf usually negotiate it. If the bride is so inclined, she can appoint a member of her family to negotiate it on her behalf. This sum can be paid in cash, stocks, bonds, property, or livestock; alternatively, it can be a symbolic token of appreciation or sentiment, such as a family *Qur'an*, an heirloom, or the engagement ring itself. In short, it can be anything, so long as the two agree on it. The initial marriage portion is given to the wife before the marriage. It cannot be used to pay off the husbands' debts, to pay for the children's care or education, to buy a house, or to subsidize the cost of the wedding. It is the wife's sole and separate property and remains as such in perpetuity, even if the husband divorces her, abandons her, or dies.

The amount of the marriage portion is recorded in the marriage contract. The marriage contract also can function as a safeguard of the woman's dignity, independence, and autonomy, setting forth the terms and conditions for the marriage. The contract can forbid the husband from taking on a second wife, for example, stipulate that the wife remain employed while married, provide that she finish her education before having children, or even set limits on the amount of nights per week that the husband can go out.¹

There is, for all practical purposes, only one way to obtain a divorce in English and Welsh family courts: the couple simply files for divorce, and, generally speaking, it doesn't

¹ See, for example, Nelly Hanna's (1998) *Making Big Money in 1600: the Life and Times of Isma'il Abu Taqiyya, Egyptian Merchant*, Syracuse: Syracuse University Press. Hanna has found 17th-century marriage contracts that limit the amount of wives a husband can take, specify the quality of lodging that he must provide for his wife, limit the number of nights per week he can make social calls, and set a stipend that he must pay to his wife if she is breastfeeding, or is expected to perform household tasks.

matter which spouse filed first. Within the context of Muslim marriage practices, on the other hand, there are (broadly speaking) two ways to initiate divorce, and these are distinguished by whether it is the wife or the husband who initiates the proceedings. *Talaq* is unilateral repudiation on the part of the husband, and *khul*, or *khul’a*, describes a situation wherein the wife initiates divorce. *Talaq* can be broken down further into *ahsan talaq* and *hasan talaq*. A husband is said to have issued an *ahsan talaq* if his wife is between two menstrual periods, and the couple has not had sexual intercourse during this time. After the wife is initially *talaq’d*, she must wait three menstrual cycles before the divorce is finalized, assuming that her husband does not revoke his request; the purpose here is to make sure that she is not pregnant when the final *talaq* is issued (Thompson and Yunus 2007, 364-367). *Hasan talaq* takes place during three consecutive periods when the wife is not menstruating, and the husband has the option of revoking his request until he pronounces it the last time; once again, the purpose being to determine whether or not the wife is pregnant (Thompson and Yunus 2007, 364-367). The “triple *talaq*” is when the husband simply announces to the woman that he divorces her three times; it is considered to be in bad taste, but is supported by *Shar’ia* law just the same. This method, it should be noted, is not upheld in British courts.

If the husband initiates a *talaq*, whatever type of *talaq* it is, he must pay his wife the deferred marriage portion, which, as stated earlier, is recorded in the marriage contract and upon which both husband and wife must agree before marrying. This is an entirely separate sum from the initial marriage portion, which the wife is still entitled to keep regardless of who initiated the divorce. The husband is also required to pay his wife the marriage portion if he abandons her, and it must also be paid to her upon his death. The criterion for establishing a husband’s abandonment differs, however, in the various schools of Islamic Law and is further subject to local variation.

If the wife wants to initiate a divorce, she can initiate *khul*. However, if she fails to demonstrate that the husband violated the terms of the marriage contract, or fails to show that certain conditions were present that made the marriage unworkable, she may lose the right to her deferred marriage portion. These conditions are again subject to local variation; however, generally speaking, if a husband abused his wife, prevented her from seeing her family, or failed to provide her with enough to eat, for example, the marriage would likely be considered unworkable and the wife would be owed her deferred marriage portion even if she had initiated divorce. Finally, it should be noted that both classical Islamic jurisprudence and *shariat angrezi* entitles the woman to keep any property that she brought with her into the marriage, be it financial or physical, and to keep the initial marriage portion no matter the circumstances surrounding the divorce.

Family law in Britain, on the other hand, operates under an entirely different set of assumptions.² The state first started taxing marriages in 1690 and soon found that large numbers of parishioners (nearly half, in one case) had married under the blessing of a traveling clergyman or in some other private setting rather than under the supervision of the Church of England (Walker 2009, para. 8). This complicated the collection of taxes as well as the ability of the government, state, or community to establish whether or not a given marriage was valid. In fact, well into the eighteenth century, thousands of couples had no idea if they were legally married, and this widespread occurrence of clandestine marriages enabled abuses that ranged from the

² Family law is subject to some variation in Scotland, Ireland, and England and Wales; for the purposes of this paper, we will focus on English Family Law as it is applied in England and Wales.

forced kidnapping, drugging, raping, or marrying of wealthy heiresses to incestuous, bigamous, or under-aged marriages (Walker 2009, para. 12, 13). The fact that so many marriages had taken place with no witnesses and no paperwork made it relatively easy for many of these practices to continue (Walker 2009, para. 13). In an attempt to end the proliferation of such abuses, the 1753 Marriage Act was passed, which essentially gave the Church of England a “monopoly” on the legitimization of marriage ceremonies (Beresford 2011, 3-4) and declared that all marriage ceremonies had to be conducted by a minister in a parish church or chapel of the Church of England in order to be legally binding (UK Parliament 2012, under “Irregular marriages”). The presence of witnesses as well as their participation in various social rituals marking the occasion of a marriage also significantly decreased the likelihood that any future questions of its validity would arise. In the nineteenth century, the House of Commons recommended the establishment of a national—rather than ecclesiastical—registry of birth, marriages, and deaths to be carried out by civil, rather than church, officials; these recommendations became enshrined in the Registration Act of 1836 and the Marriage Act of 1836 (Beresford 2011, 4).

These and other laws, though centuries old, have continued to place burdens on British Muslims. The Places of Worship Registration Act of 1855, for example, allows a legal marriage to take place in venues other than the Church of England so long as the ceremony is held in a separate building used only for worship; however, as most English mosques double as community or cultural centers, only 74 out of 452 mosques were suitable for a legal marriage to take place as recently as 1991 (Yimaz 2002, 347). The Marriage Act of 1949 allows the Church of England and the Church of Wales to conduct marriage ceremonies that enjoy both religious and legal standing; other denominations, however, must obtain a registrar’s certificate or license, as religious officials belonging to any organization other than the Churches of Wales or England are not authorized by the state to issue certificates or licenses. Mosques have therefore had to invite a state official to act on behalf of the registrar, or alternatively, seek out permission to have an imam act as such. These impositions, as well as the restrictions placed on the physical building in which a valid marriage can take place, have meant that most Muslims are compelled to undergo two different ceremonies in order to contract a legal marriage: one civil ceremony taking place under the authority of English law, and one Muslim *nikah* ceremony. Muslims who have failed to conform to any aspect of Marriage Act of 1949 will find that they do not have a legal marriage, and they will be treated as a cohabiting couple under civil law. The act of getting (legally) married is thus shaped by Christian assumptions and values to the point of burdening non-Christians; so too are notions of marriage, and family law itself.

As aforementioned, contemporary British Muslim marriage practices are informed by a long history of classical Islamic jurisprudence wherein a marriage was simply regarded as a certain kind of contract that legitimated sexual relationships under certain conditions and between certain people. To be sure, it should be stressed once again that the character of Muslim marriage has changed significantly in the post-colonial period and in diaspora; however, it has retained *inter alia* the notion that divorce, while undesirable, is not a sin, as well as the idea that women should use their marriage contracts to protect themselves from destitution in the event of a divorce.

The character of marriage in England and Wales, on the other hand, is still informed by the view that the couple is expected to bond for life. As Lord Justice Thorpe, one of the judges of the Court of Appeal at England and Wales, wrote in *N v N* (Jurisdiction: Pre-nuptial Agreement) (1999) 2 F.L.R 745, which has been cited in numerous cases where a prenuptial agreement is in play:

The attitude of the English Courts to antenuptial agreements [...] has always been that they are *not enforceable*. The difference between an antenuptial settlement and an antenuptial contract or agreement is that the former seeks to regulate the financial affairs of the spouse on and during their marriage. It does not contemplate the dissolution of the marriage. By contrast, an agreement made prior to marriage which contemplates the steps the parties will take in the event of divorce or separation is perceived as being contrary to public policy as it *undermines the concept of marriage as a life-long union* [emphases mine].³

Although the normative conception of marriage as a lifelong union is certainly changing, this value still explicitly informs English and Welsh family law, and divorce is still formally considered to be against public interest. Therefore, as established by the Matrimonial Causes Act of 1973, the British court has not under any circumstances been obligated to uphold the prenuptial (also called antenuptial) agreement, even if the terms and conditions of the agreement are in keeping with English and Welsh law, or if the agreement was considered a legal and binding contract in the country where it was made. This does not mean, however, that courts have completely ignored the cultural context of a marriage or the religious values of the respondents, as Dame Florence Jacqueline Baron wrote in her decision in *A v T (Ancillary Relief: Cultural Factors)* (2004) 1 F.L.R. 977:

When carrying out the exercise under s 25 of the Matrimonial Causes Act 1973 in a case involving a family with only a secondary attachment to the English jurisdiction and culture, an English judge should give due weight to the primary cultural factors, and not ignore the differential between what the wife might anticipate from a determination in England as opposed to a determination in the alternative jurisdiction, including that as one of “the circumstances of the case.” [...] It is my view that this rationale applies to an application for full ancillary relief [alimony, or maintenance].

It should be noted that there are no official guidelines as to what kinds of couples have a “secondary attachment” to the English jurisdiction; however, couples who wish to settle assets using the Muslim marriage contract as a guide are, by definition, possessive of a “secondary attachment” to English jurisdiction, given that the Muslim marriage contract is based on *Shar’ia* law, rather than English law. In 2010, the Supreme Court ruled that English courts were ready to attribute “appropriate” weight to a prenuptial agreement, and that this weight could be “decisive... in the right case,” but they added that courts would still be able to waive them at their discretion (“Supreme Court Rules in Favour of Pre-nuptial Agreements” 2010, para. 2). In practice, therefore, the Muslim marriage contract is not dispositive, but is rather regarded as a

³ As established by the Matrimonial Causes Act of 1973, British courts are not bound by a prenuptial agreement even if it is considered a legal and binding contract in the country where it was made. However, it can be given “evidential weight” when a family has a “secondary attachment” to English jurisdiction and culture. There is no official policy on how to determine whether or not a family has a “secondary attachment” to English jurisdiction and culture; this is generally left to the discretion of the presiding judge. However, generally speaking, Muslims are often presumed to have this secondary attachment even if they have lived in the U.K. for years, or even decades.

suggestion; the court may or may not uphold it, depending on the inclinations of the presiding judge.

For Muslim women, this has profound consequences, particularly since English family law is not as fair to women as one might expect. A 2009 study by the Institute for Social and Economic Research concluded that the incomes of ex-husbands rose by 25% immediately after a divorce, but women saw a sharp fall in their finances, which rarely regained pre-divorce levels (Gray 2009, para. 2). About 27% of divorced women ended up living in poverty after splitting with their husbands, which is about three times the number of ex-husbands who were relegated to poverty (Gray 2009, para. 3). Finally, slightly less than one third of divorced women with children receive child support from their ex-husbands (Gray 2009, para. 3).

Muslim women have therefore learned to strategize very carefully: if the couple has a marriage recognized both under English law and under the *Shar'ia*, the husband can choose to file a civil divorce and refuse to give the *talaq*, thus freeing him not only from his legal marriage and the burdens associated therewith, but also from the obligation of paying the deferred marriage portion as he will not be divorced according to the *Shar'ia*. This practice, in fact, had become fairly widespread by 2008, when the *Shar'ia* councils became legally binding. As an example of the cases the Muslim Women's Helpline addresses, a 2001 report quoted the testimony of an anonymous caller, "Siti" (lady in Arabic):

Please, please can you help me? I am so despairing, I feel like ending it all. I am divorced from my husband but he tortures me by not divorcing me religiously [...] I contacted [the] Mosque and they said, "their only job is to make marriages, not to break them." They don't understand that my husband has left me and the kids for seven years now and he has a new life. I am struggling with no chance of re-marriage... (quoted in Césari, Caeiro, and Hussain 2004, 38)

Women who are married in the eyes of the *Shar'ia* but not according to the state, on the other hand, are not exposed to the possibility of ending up in a "limping marriage" like the caller above, wherein they remain legally divorced, but married within the eyes of their community, under *Shar'ia* law and without their deferred marriage portions. In this case, there is but one way for a man to initiate divorce under the *Shar'ia*: this is through the triple *talaq*, thus triggering his obligation to pay his wife the deferred marriage portion, and ending the marriage in the eyes of God and the Muslim community.

There is significant disincentive for Muslim British men to utter the *talaq*, however, given that the Muslim marriage contract can entitle a woman to far more than she would receive under English family law. The fact that women who seek the court's help are, as aforementioned, at the mercy of the presiding judge has meant that the outcome is often unpredictable. The following two examples illustrate the reasons behind Muslims' perceived capriciousness of the English legal system, and show further why Muslim women have chosen only to marry using *Shar'ia* councils and skip the formality of registering their marriages with the state, before the advent of legally binding *Shar'ia* law.

Theory Into Practice: The Courts And *Shar'ia* Law

In the 2000 case *Ali vs. Ali*, the couple, both professional working people, were both legally married and married under *Shar'ia* law. Mrs. Ali and her family had driven a hard

bargain and the deferred marriage portion, or deferred *mahr*, as stipulated by the marriage contract, was to be £30,001 (Menski 2002, 47). Mr. Ali attempted to file for divorce with the state a few months after marrying Mrs. Ali, and declined to issue a *Shar’ia*-compliant divorce, or *talaq*, thus avoiding any obligation to pay the deferred marriage portion under Islamic law (Menski 2002, 48). Mrs. Ali was therefore put in the position of being in a “limping marriage”: legally divorced, but still married under the *Shar’ia*, and furthermore, unable to collect on her deferred marriage portion because her husband had not uttered the *talaq*.⁴

Mr. Ali’s wife therefore cross-petitioned the court to refuse her husband’s request for divorce until he paid her the deferred marriage portion. Mr. Ali himself, however, argued that because he had not issued the *talaq*, he was not initiating divorce proceedings in the religious sense—merely in the civil sense—and did not owe it to her. He argued further that Muslims never actually intend to pay the deferred *mahr*, but agree to high sums in order to maintain one’s social status, or *izzat*. Finally, he pointed out that under English law that she would not have been entitled to any financial relief, much less £30,001, given that she was a professional woman who had been married for only a few months and did not have any children (Menski 2002, 48). Under *Shar’ia* law, however, she was entitled to ancillary relief in the form of the deferred marriage portion. The expert witness disagreed strongly with Mr. Ali’s characterization of the deferred *mahr* as well as his description of *izzat*. In the end, the judge ordered Mr. Ali to divorce Mrs. Ali under *Shar’ia* law by issuing a *talaq* and to pay out a sum of £30,000: this way, he would avoid enforcing *Shar’ia* law in his courtroom while still managing to uphold the trust of the Muslim community.

Other women, however, are not so fortunate as Mrs. Ali. In the case of *NA v MOT* (2004) E.W.H.C. 471 (Fam),⁵ an educated, 29-year-old woman left Iran at the age of 24 to move to England and marry a 40-year-old, well-off Iranian businessman who had lived in the U.K. since 1978. Before her marriage and subsequent move to England, she had owned a small business in Iran, held a degree in English translation from an Iranian university, and had strong social and family ties. Her husband, the court noted, was well aware of her education, her independence, and her business. After selling her business in Iran, moving to England, and spending seven weeks of cohabitation with her new husband, the wife felt that her husband’s unwillingness to allow her to pursue full-time studies or any employment, as well as his insistence on controlling various other aspects of her life, made the marriage ultimately unsustainable. Furthermore, his behavior violated various stipulations in the marriage contract.⁶

⁴ It should be noted that my synopsis of this case is based entirely on Werner Menski’s own synopsis thereof; I am thus unable to parse the specific details behind the court’s reasoning using the court’s own words, nor the words of Mr. and Mrs. Ali themselves. Werner Menski is, however, an expert on *Shar’ia* law as practiced in England, and is as reliable a source for which one could possibly hope.

⁵ See also *NG v KR*, (2008) E.W.H.C. 1532 (Fam), (2009) 1 F.L.R. 1478, (2009) 1 F.C.R. 35, (2008) Fam Law 1082 (Royal Courts of Justice Strand, London, WC2A 2LL July 28, 2008).

⁶ Unfortunately, the marriage contract is not included in the public record, and the court declined to transcribe or even describe it during proceedings. It is therefore difficult to assess claims that his treatment of her violated specific and clear conditions outlined in the marriage contract. It is possible, however, that his behavior could have nonetheless been considered abusive according to some contemporary schools of *Shar’ia* law. In cases of abuse, women are able to petition the court for a divorce and should the court find her claims compelling, allow her to keep the deferred marriage portion. Different courts and different schools of law disagree, however, on whether or not emotional or verbal abuse rises to the threshold of abuse, and some explicitly require that the abuse be physical in nature.

They separated, but the husband did not grant her the *talaq* and refused to pay her the deferred marriage portion to which she was entitled. Divorce proceedings in civil court were postponed for five years as the wife was forced to apply for state-funded representation to obtain her legal divorce in England. In its decision, the court noted that the husband had not really been affected by the marriage in terms of his ability to continue his life and could afford to pay the full sum of £60,000 that she was owed. The wife, on the other hand, would be forced to make a fresh start either in England or in Iran at the age of 29, had spent five years in a “limping marriage,” and was now in debt £37,000 because she had moved to England to join her husband. In the court’s estimation, the husband had simply thought he was marrying a “traditional Iranian wife” and found, sadly, that this was not the case when his wife arrived from Iran. In the end, the court ordered the husband only pay half the marriage portion to which the wife was entitled, which did not even cover her expenses from moving to England and the court costs she had incurred in the process of divorcing [NA v MOT (2004) E.W.H.C. 471 (Fam)].

Concluding Notes and Observations

These two cases—Ali v Ali and NA v MOT—demonstrate first that some British Muslim women may, in fact, be better off under *Shar’ia* law than English and Welsh family law in the event of a divorce, disrupting conventionally held assumptions about the relative fairness of the two systems insofar as women’s rights are concerned. Second, these cases and others like them suggest that the continued use of the *Shar’ia* councils may be rooted in pragmatic considerations about property and autonomy rather than in a stubborn refusal to culturally assimilate.

It should again be stressed that the *Shar’ia* councils cannot issue civil divorces; they can, however, request that the court mandate the husband *talaq* his wife as part of the divorce settlement, as was the case in both of the examples provided above. Such a service spares women the possibility of a “limping marriage,” and allows both parties to achieve closure once a civil divorce is filed. Those arguing that the *Shar’ia* councils will subject women to unfair treatment should therefore reevaluate this claim in light of the fact that the councils must operate within the framework of state law and regard the decision of the High Court as final. In allowing the introduction of legally binding *Shar’ia*, the state has not only managed to meet the needs of British Muslims, but also to retain its coercive authority over all systems for regulating behavior.

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