

Western Europe

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Untying the Knot Divorce and Muslim law in the UK

Severing the ties of marriage in any context is a trying process, while in almost proportionate contrast, obtaining marital status is nearly always relatively easy. If Muslim women in the UK are unable to obtain an Islamic divorce (*talaq*) from their husbands, they are obliged to go through a complex set of procedures in order to dissolve their Islamic marriage contracts (*faskh of nikah*). If the women are recognized as legally married according to UK civil law, they must take steps to change that status as well by undergoing the civil divorce process.

'Surely there is some part of Muslim law to look after women's rights and general and personal needs.' (Case 715) The results of a two year investigation into what Muslim women experience whilst trying to divorce their husbands reveal that although women may be unaware of many facets of the Shariah applicable to the dissolution of the *nikah* contract, they are conscious that there must be some way of terminating their Islamic marriages, and are active in finding solutions:

The time has come that I have chosen to marry again...My solicitor has advised I can get a divorce from (X) on the basis of English Law using the grounds of five-year separation or grounds of indecent behaviour. I have decided to file my divorce on the grounds of five-year separation. However, I am a Muslim, and according to Islam, only the man has the right to divorce, but there must be a way in which a woman can divorce herself from the man under special circumstances (like the trouble I've been through). (Case 8145)

The study focuses on applicants to the Muslim Law (Shariah) Council (MLSC), an independent body established by the Muslim community in the UK in 1985. The fieldwork comprised two stages: the first stage involved examining over 280 detailed case files of women who approached the organization during the period from 1985-1996; and the second was to conduct in-depth interviews with over 20 women whose cases were being processed during 1999 and 2000. Although men do apply to the organization, and many husbands communicate in detail with the MLSC, the findings in this summary focus on the women applicants.

The MLSC comprises *imams* (authoritative religious figures) and *fuqaha'* (jurists) from all over the country representing the five schools of law (Hanafi, Maliki, Shafi'i, Hanbali, and Ja'fari). One central aspect of the MLSC's work is the ability to facilitate a divorce according to the Shariah, and to act in the capacity of an Islamic judge (*qadi*) and function as he would in an Islamic court of law. The majority of applicants are women who approach the MLSC with a view to securing their intervention in marital disputes. The women come from different areas of the UK and many are from outside London. There is also a considerable number of enquiries from elsewhere in Europe.

The case files demonstrate that the women come from a variety of socio-economic backgrounds, ranging from qualified professional women to those with minimal formal education. The ages of the women range from the very young (16-18 years) to women in their forties and fifties. Similarly, the women's cultural backgrounds are diverse, with applicants from South Asia, the Middle East, Africa, migrant refugees from the Balkans and ethnic UK* women who

have converted to Islam. In addition, there is also a number of ethnic UK* women who marry Muslim men, but do not become Muslim. They are aware that their Muslim marriages may have no legal status in this country, but nonetheless feel personally compelled to obtain Islamic divorces in order to sever their marriage ties. This may be done in addition to obtaining civil divorces in those instances where these women were also married according to civil law.

Now we have been separated for three years. I would like a divorce certificate issued. I would now like to seek your guidance and help on this matter and would be grateful if you would issue a divorce certificate in order to dissolve the marriage. (Case 728)

The vast majority of women who apply to the MLSC are unable to obtain a *talaq* from their husbands. This can be for a variety of reasons such as the husband's desertion or intransigence. In the latter case, the MLSC seeks to facilitate negotiations between the parties in order to resolve the conflict. The women often approach the MLSC without having taken other prior formal steps. They seek the supportive intervention of the organization in order to help them negotiate a divorce with their husbands and obtain the support of their families. This role is comparable to approaching the family solicitor upon a breakdown of the marriage, but it is also parallel to mediation facilitation inasmuch as the woman maintains a high degree of participation in the process, thereby differing from the act of 'handing over' matters to the solicitor. In all cases, the MLSC insists on communicating directly with the woman, even if she is not the one who first approaches the organization. Although the MLSC is keen to keep the door of reconciliation open, in almost all the cases where this is not a possibility, they then seek to persuade the husband to divorce his wife. If this is not so straightforward and the parties still require the intervention of the MLSC, they will continue to mediate in the dispute. In a small minority of cases, the MLSC negotiates what is called a *khulla* agreement, whereby the wife releases herself from her marriage by paying an agreed sum of money (usually returning the amount of money received as dower, the *mehr*). However, in the vast majority of cases, the MLSC acts to terminate the *nikah* contract for the wife.

The MLSC's intervention can result in the man divorcing his wife, but should he refuse, the MLSC acts to dissolve the *nikah* contract by declaring a *faskh of nikah*. The MLSC considers the husband's refusal to pronounce a *talaq* a deliberate act intended to harm the interests of the wife and is therefore considered valid grounds for terminating the *nikah* contract. In almost all applicable cases, the MLSC also encourages applicants to institute civil divorce proceedings according to English law if they have not already done so. However, this is irrelevant to a category of women who are not

married according to English civil law and whose Muslim marriages are not valid in the UK. These women have no option but to approach organizations like the MLSC. These women, in addition, often seek supportive counsel from the MLSC as well as its intervention in facilitating divorce. The majority of women perceive themselves, to varying degrees, as practising Muslims; sometimes it is a question of deep faith and a need to comply with religious laws in every aspect of their lives. The women consider their ability to approach the MLSC an empowerment to which they are without question entitled:

Because of this help and my faith in Allah (SW), I have now found the courage to ask for a divorce as I believe this to be my God-given right. (Case 8173)

From the case files, it became apparent that in those cases where women had a strong adherence to Islamic religious values, they confided in the MLSC by offering many details about their marriage and their own feelings. This was often in contrast to the sparse and perfunctory information given to the solicitor to set in motion civil divorce proceedings. In interviews, the women expressed a reluctance to divulge information about immigration matters, or about the breakdown of family customs as they complained that those advisers who were not Muslim would 'not understand'. While they were reluctant to make the effort to challenge the prevailing stereotypes of Muslim women's lack of autonomy, many considered themselves independent and free of any burden of stigma attached to divorce:

Actually there is someone I would like to marry, but I cannot until I am free from this matter because I do not wish to do anything against Islamic Law, which I greatly respect and believe in with all my heart. (Case 779)

Where the women's religious adherence was not strong, but they nonetheless chose to approach the MLSC because of a desire to comply with cultural community norms, they did not provide the MLSC with many details about their emotions and the reasons for marital breakdown. Often, concomitantly, their civil divorce documentation revealed a more intimate relationship with their solicitors. These women often approached the MLSC after having approached civil lawyers, or at about the same time, but rarely before doing so.

Parameters and empowerment

The MLSC is constrained both by a lack of resources and to a certain extent by the self-imposed parameters of its current role in the Muslim community because it cannot function as a fully equipped court of law. Its

activities have been hindered by the exigencies of operating within a different 'host' system. It is reluctant to become involved in disputes pertaining to property or other financial matters, other than writing letters urging frankness and fairness on the part of the disputants. Both the applicants and the MLSC itself vest the organization with a morally prescriptive role regarding the welfare of the Muslim community. However, it is apparent that the disputants attribute to the organization a wider remit than it defines for itself. Predicated on achieving a moral consensus amongst the Muslim community members, the MLSC's role has evolved over the years, responding to the ever-changing needs of its applicants. The interaction between the MLSC and the larger social matrix within which it is situated is a dynamic process that continually refines the nature and function of this organization.

It is evident from the range of ideas, emotions and demands expressed by the women in this study that such organizations as the MLSC can serve to empower those Muslim women who make their demands within the framework of the Shariah. Obviously, the sample could not include women who choose to ignore the precepts of the Shariah and for whom a civil divorce suffices. However, for those who approach the MLSC and those women whose marriages are only recognized by the Shariah, the MLSC is the only recourse. ◀

Note

* The term 'Ethnic English' was coined by Fatima Hussain and Margaret O'Brien, and is useful because it signifies that 'white' British people have an ethnicity; and it also avoids the notion of racial origin as a determinant of cultural identity. See their valuable report (1999), *Muslim Families in Europe: Social Existence and Social Care*, University of London Press. In their glossary of terms they state: '(this term) is used to emphasise that every individual has an ethnicity and that the ethnic majority should not be labelled "white".' The term has been adapted here as 'ethnic UK', in order to include women from Wales, Scotland and Ireland who would most often be classified 'white'.

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