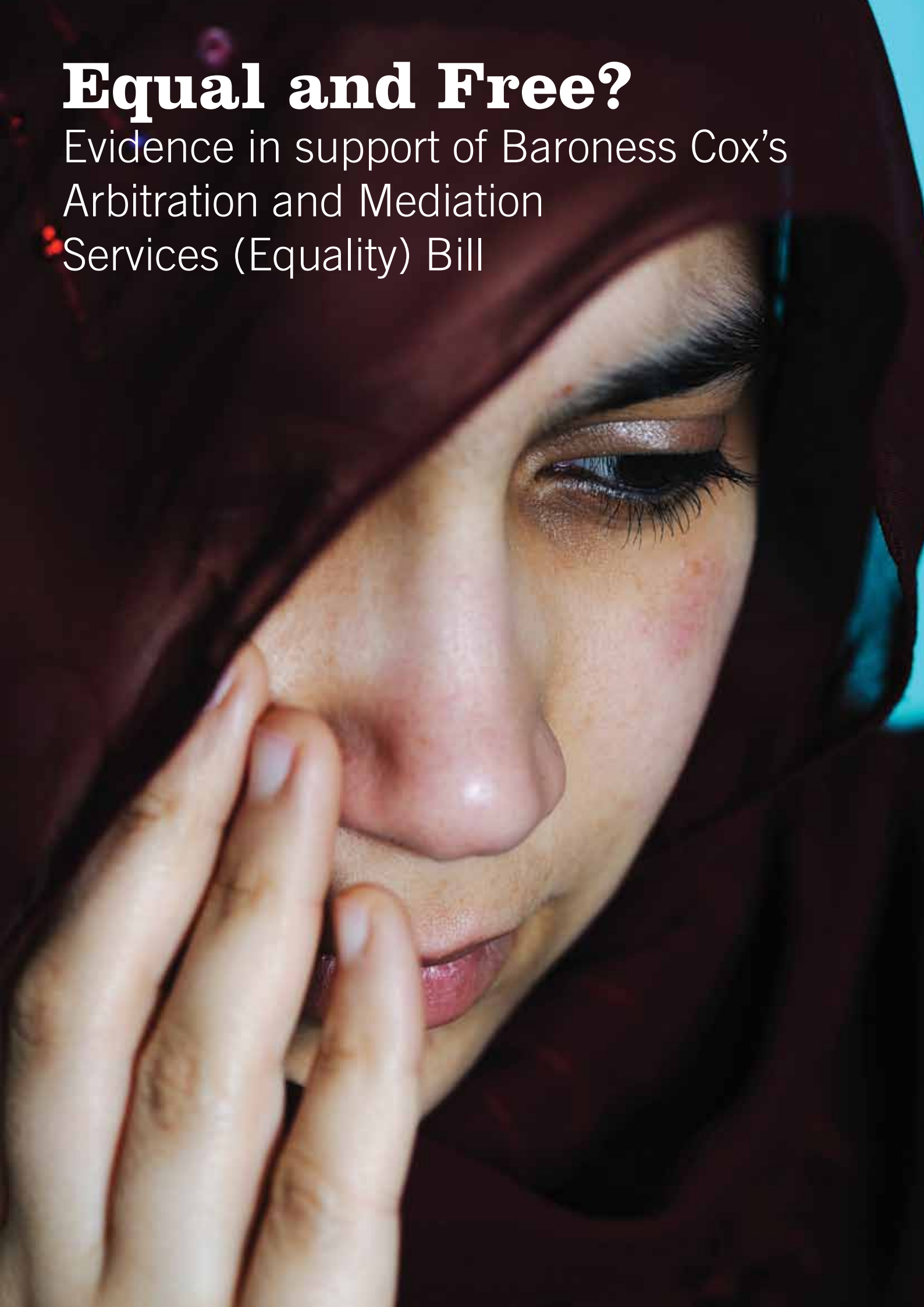


Equal and Free?

Evidence in support of Baroness Cox's
Arbitration and Mediation
Services (Equality) Bill



EQUAL AND FREE?

Evidence in support of Baroness Cox's Arbitration and Mediation Services (Equality) Bill

Researched and drafted by Charlotte Rachael Proudman

May 2012



I am deeply concerned by the knowledge that many women and girls in this country are suffering from gender discrimination, often associated with polygamy and domestic violence.

We are fortunate to live in a democracy, which enshrines the principle of equality before the law and is committed to the promotion of gender equality.

But I have sat with oppressed and abused women from communities which foster discrimination, here in this country, and wept with them as they told their stories.

Therefore, in an attempt to highlight this unacceptable situation and to alleviate the suffering of these women and girls, I introduced a private members Bill, The Arbitration and Mediation Services (Equality) Bill, into the House of Lords June 2011.

I have been greatly encouraged by the response. Andrew Brown in The Guardian reckoned the Bill is a “thoroughly good thing and a skilled piece of politics”. The founder of the Muslim Women’s Network UK, who has long claimed that Muslim women in Britain suffer from fewer rights than in many Islamic countries, welcomed the Bill arguing that its provisions may increase pressure on Sharia councils/courts to “improve their practice and actively clarify for their clients... that their decisions have no legal weight”.

This booklet provides Parliamentarians and others with evidence of the need for the Bill: action is needed – urgently. The Bill is scheduled to have a further first reading in the new Parliament this month and second reading as soon as possible. I would warmly welcome your support.

The Baroness Cox

May 2012

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Executive Summary

1. The United Kingdom has a long and cherished tradition of equality before the law and a current commitment to the eradication of gender discrimination.
2. There is growing concern over the emergence of a 'quasi-legal' system operating in parallel with our own which violates the principles of equality before the law and which is based on religiously sanctioned gender discrimination.
3. The establishment of Muslim arbitration tribunals and the growth of Sharia Councils may be welcomed in so far as they relieve British courts from pressure and provide perceived theologically appropriate resolutions to commercial and other disputes, whether under the Arbitration Act or via voluntary mediation.
4. However, often based on inherently gender-discriminatory principles, or operating outside their legal limits, they have also often been the cause of much suffering for women in this country.
5. One British Muslim woman claims; 'I'm speaking as a British Muslim – I would like to say that I feel terribly let down by the British State, with its schizophrenic response to the law, its own law, its abrogation of its responsibility to safeguarding rights of Muslim women.'
6. Many Muslim women claim they came to Britain hoping to escape the injustice of Sharia law – and found their plight is worse here than in their countries of origin.
7. The injustice inherent in religiously sanctioned discrimination is often compounded by intimidation: pressure from families and communities often prevents women from seeking their legal redress available in civil law.
8. Although the UK Government claims that all UK citizens have equal rights and access to the law of the land, this 'de jure' right is not a 'de facto' reality.
9. This report provides evidence of the problems and suffering of Muslim women in Britain today, including: condoning of domestic violence by Sharia courts and councils; asymmetrical access to divorce; rulings regarding child custody that ignore the best interests of the child; discriminatory policies defining the testimonies of women as being only worth half that of men; and the denial of the concept of marital rape.
10. This booklet was commissioned to provide a greater understanding of the way in which some religious law operates, it includes:
 - case studies of women who have suffered under the current provisions;
 - testimonies from organisations seeking to help victims of injustice and intimidation who support the Bill;
 - a chapter on implications of the current situation for children;
 - accounts of the operation of some Sharia courts;
 - a lawyer's description of the Bill's objectives and provisions;
 - and consideration of the implications of the Bill for other faith traditions, including a chapter dedicated to the Jewish Beth Din.
11. The booklet summarises the objectives of the Bill, including: protection for women from discrimination and intimidation; prevention of the establishment of a parallel quasi-legal jurisdiction; a requirement for relevant authorities to provide information to women to enable them to know their legal rights and how to access them.
12. The bill cannot solve all of the problems faced by Muslim women today. However, a repeated refrain from many Muslim women and from the organisations who seek to help those suffering under the present situation in this country is reflected in these typical statements:

‘We fully support the Bill. Sharia law discriminates against women and children and puts those who have experienced violence and abuse at further risk. Its rulings are incompatible with UK legislation including the Sex Discrimination Act 1975, the Children Act 1989 and the Human Rights Act 1998.’

IKWRO (Iranian and Kurdish Women’s Rights Organisation)

‘Karma Nirvana fully supports the Bill as it will raise women’s voices and enable them to gain their rights. Women must be aware of the UK legal system to resolve matters and to seek legal redress.’

Jasvinder Sanghera, Karma Nirvana

‘One Law for All supports this Bill and encourages the Government to do the same.’

Anne-Marie Waters, One Law for All

Introduction

This booklet was commissioned to gain a greater understanding on a grassroots level of the way in which Sharia law is applied in the UK and the purpose and aims of the country's Sharia bodies. We sought views from service users, women's rights organisations, religious leaders and UK lawyers.

A number of interviews were conducted with Muslim women who had experience of Sharia Councils and service providers who help Muslim women to use Sharia Councils. Lawyers' views are also documented.

In compiling this booklet, a number of Sharia Councils in the UK were contacted in order to engage them in the issues surrounding the Arbitration and Mediation Services (Equality) Bill. Further dialogue will continue with these organisations in the hope that we can work together in progressing with the Bill in the most effective way possible.

Contact has been successfully established with Beth Din specialist lawyers in order to gain an insight into the way Beth Din systems operate, the areas of law that on which they rule and whether the Arbitration and Mediation Services (Equality) Bill will have an impact on their services.

Buddhist, Sikh and Hindu organisations in the UK were also contacted to ascertain whether they purport to adjudicate on criminal and/or family matters and if so, whether the Arbitration and Mediation Services (Equality) Bill will impact upon any alternative dispute resolution systems they may have.

Findings of this document indicate a central principle: there must be equality for all under the law of the land and the application of Sharia law in particular is undermining that principle. The Arbitration and Mediation Services (Equality) Bill seeks to tackle some of the flagrant injustices outlined in this report. It does so, principally, by trying to ensure that women are protected from discrimination and intimidation, and that attempts by any individuals or organisations to establish a parallel legal jurisdiction in this country are outlawed.

'Equal and Free?' is divided into six parts. Part One highlights women's experiences of Sharia law. Service providers' statements regarding the operation of Sharia Councils can be found in Part Two. Part Three consists of a number of statements provided by UK lawyers including analysis of Sharia Councils and Beth Din systems in the UK. Part Four outlines the conflict between Children's rights and Sharia law. An overview of Sharia law in practice is provided in Part Five. Finally, Part Six addresses the potential impact of the Arbitration and Mediation Services (Equality) Bill upon Sikhs, Hindus and Buddhists.

PART ONE:
WOMEN'S STORIES

Sami

“The wellbeing of the majority is more important than the sensitivity of the minority”.

Sami, born and raised in the Middle East, married very young. She had four children and took on the role of a housewife. When her husband died, she was left with no inheritance as the male members of her family were legally entitled to her inheritance and her two daughters were forced into marriage at the age of 16 by her male family members. Meanwhile her third daughter fled a forced marriage, whilst her son escaped to Jordan at the age of 11, alone. Sami eventually sought asylum in the UK when her life was in danger following her controversial position as a women's rights journalist in a country dictated by a patriarchal regime.

Sami: My Marriage Dictated by Sharia Law in the UK

“A leader of my community visited me and told me that he wanted me to marry Khaled. I felt under enormous pressure to accept his proposal.

The Imam told Khaled and me that he required permission from a male guardian from my family before he could marry us. I told him that I am in my late 40s, I have travelled all over the world, faced death on numerous occasions, provided for my children and supported male members of my family. “I have grey hair – what kind of mentality is this?” I said to him. The Imam insisted that he was applying Islam.

Khaled travelled to Jordan to gain written permission from my 11-year-old son, who represented my guardian according to the Imam. My son's written permission stated that I could marry Khaled. I received a copy of my son's letter and I still have a copy of it. I agreed to the marriage at the Imam's home.

On reflection, I decided that I could not marry him due to his traditional mentality. I gained an annulment.

Everyone should be made to abide by the same rules. Women's rights are compromised by the operation of Sharia law in the UK. Sharia Councils often permit polygamy. Men have multiple Nikahs (Muslim marriages) and have multiple wives to gain sex and/or money. Polygamy is not about protecting women.

If women marry through an Imam and they eventually have a problem with their marriage, they will be forced to go back to an Imam and discuss the problem; these women feel intimidated. Many women are unable to discuss their personal issues with an Imam; they feel embarrassed and do not feel comfortable talking to a total stranger about personal issues.

I am in contact with large numbers of women who have a language barrier. They are not in contact with the wider community and they have no understanding of the laws available to them. Instead they believe the lies that their husbands tell them. These women, unable to speak English, are tied to unhappy marriages and have no way of accessing their rights. If a legal dispute arises they go to a Sharia Council and consult an Imam, they are not aware of the English legal system, nor are they ever informed of their rights under English laws.

Like me, many Muslim women are asylum seekers. They have fled their home country to live a safe life, they are running away from oppression and persecution that they suffered in their home country. They should not arrive in the UK to be met with further oppression through the operation of Sharia law. The Government should ensure that everyone in the UK abides by the English legal system.

For these reasons I am totally against Sharia law in the UK. The law should not be left to religious men to manipulate women in a democratic state. It is the responsibility of the Government to make sure that everyone in the UK submits to the law equally. I am worried because the Government and people outside the Muslim community are frightened to address sensitive issues like Sharia law, when the wellbeing of the majority is more important than the sensitivity of the minority.”

Sara

"People argue that Sharia Councils should be allowed to operate in Britain because Britain allows Beth Din systems, but Jewish Law does not affect mainstream life as much as Sharia Law which aims to control rather than simply affect mainstream life".

Sara, a British national, was forced into a marriage with Abdul, from Pakistan, in order for Abdul to gain British citizenship. Eventually she became pregnant with Abdul's child in Pakistan and was allowed to return to the UK to await her husband's arrival. The marriage soon broke down on Abdul's arrival. Sara ensured Abdul returned to Pakistan before ending their marriage and cancelling his spousal visa. Sara rapidly gained a civil divorce through the British courts.

Sara: My Sharia Council Experience

"In early 2000 I applied to an Islamic-Sharia Council in London to obtain a Sharia divorce. Despite all the time, money and emotional energy that I spent, and the fact that Abdul is remarried with a child, over 10 years later the Islamic-Sharia Council still refuse to give me an Islamic divorce.

The Sharia Council 'judges' did not listen to a word I had to say. They did not look at me when they were talking to me, rather they would look at the floor. It was awful. I felt like a second class citizen.

I took a copy of my civil divorce to the Sharia Council. However they were not interested in this information. They explained that they wanted Abdul to present his case.

The first time the Sharia Council wrote to me they pressurised me to go back to Abdul and continue the marriage despite my protests. After I refused to reconcile with Abdul, the Sharia Council wrote to me a second time and told me that I should continue living as married and not apply for a divorce. I told them this was an unsatisfactory resolution.

The Sharia Council eventually wrote to me for the third time and informed me that they would only grant me a divorce if I agreed to the following conditions:

1. To sign an affidavit, a legal document which stated that I would allow Abdul to have access to my daughter. I had to agree to pay for Abdul to visit England once a year to see our daughter and to pay for my daughter to visit Pakistan once a year to have contact with Abdul. I simply could not afford this.
2. I must agree to a 'cooling off' period to see whether the marriage could be reconciled. I explained that I had not seen Abdul in five years and that I just wanted to obtain an Islamic divorce and to move on with my life.

During my civil divorce, Abdul wrote a long letter to my solicitor stating that he had no intention of providing financially for our child. This letter was used as evidence in the England and Wales courts and was thus extremely helpful in gaining a civil divorce. When I showed the same letter to the Sharia Council they informed me that the letter was not relevant to my case.

The registration fee cost £100. The Sharia Council would then ask me to pay £30 for every letter they wrote. The Sharia Council asked me to pay a further £200 so that my case could be heard before the panel. I refused to pay any more money.

Within six months of applying for the civil divorce I gained a decree absolute. The civil route certainly upheld my rights as a woman. The civil route was so easy and more importantly, I was respected.

People argue that Sharia Councils should be allowed to operate in Britain because Britain allows Beth Din systems, but Jewish Law does not affect mainstream life as much as Sharia Law which aims to control rather than simply affect mainstream life. For example, in inheritance disputes, women will still gain a lesser proportion of property according to Sharia law."

Sania

“My experience of Sharia Councils in the UK is another example of the abuse that I and many other Muslim women in the UK suffered and continue to suffer and where are the UK Government to help us?”

Sania, a British national, lived in Pakistan between the ages of seven and thirteen where she was a victim of sexual abuse within the family. At the age of 16 before she had completed her GCSEs, Sania was taken to Pakistan and forced to marry her cousin, Janaid, in order for him to gain British citizenship. Sania was subjected to rape and physical and emotional abuse perpetrated by Janaid. Sania had four daughters during her marriage. Eventually Sania involved the police and gained the strength to leave Janaid. The UK courts made a number of orders to protect Sania and her daughters (non-molestation orders and forced marriage protection orders). Janaid now aged 37, has recently married a teenage girl in Pakistan and their first child is due to be born.

Sania: My Sharia Council Experience

“I applied to the Dewsbury Sharia Council for an Islamic divorce. I was informed that the process takes a maximum of three months. It’s been two years and I still haven’t obtained a Sharia divorce.

During the continued lengthy divorce process, I spoke to the leader of the Sharia Council a number of times over the telephone. On every occasion he was unprofessional and intimidating. They questioned everything that I said to them.

I asked the Sharia Council to contact my UK solicitor who would hand over my legal files and copies of the court orders to the Sharia Council, which would then make them understand why I want a divorce so desperately. They viewed the UK court orders in place to protect me and my children from Janaid as irrelevant when applying for a divorce.

Janaid replied to my application for an Islamic divorce stating that he had been a good father. Janaid stated that he would not give me a divorce as divorce is un-Islamic and is a sin.

The Sharia Council then informed me that I needed to attend the Sharia Council along with Janaid. I informed them that I am not allowed to go anywhere near Janaid, I am in danger of my life, there are a number of injunctions against him prohibiting him from going anywhere near me. This is another example of their blatant disregard for UK court orders and the trauma victims experience having been battered by their husbands. Despite my protests, the Sharia Council arranged a form of mediation for Janaid and me to attend. I did not attend. The Sharia Council refused to accept the fact that I was in fear of my life as a justification for not attending the mediation. I asked whether it would be possible for someone to come to my house. They said, no.

The Sharia Council then insisted that I brought along two Muslim witnesses to attend the Sharia Council with me to confirm that I was telling the truth. However, Janaid did not require any witnesses because he is a man. I did not know any Muslim women who could be witnesses and I didn’t want to get anyone from my community involved.

In total I paid the Sharia Council in Dewsbury £170.”

Miri

“Then I was sent a letter to say that I had to give him full access or, if not, hand over my children for him to raise!!!... I thought my life had ended and I was thrown into deep water and there was no way out”.

In July 2000, Miri's parents decided that she was going to get married at the age of 19. This was a crucial time for Miri as she had just gained employment as an office junior in an international IT company and hoped to continue with her studies and career progression. Miri's parents took her to Pakistan where she was emotionally coerced into marrying Mohammed. Miri returned to England two weeks after her marriage and applied for a spousal visa for her husband enabling him to settle with her in England. Eventually Mohammed arrived in England. He struggled to settle into the western way of life in England. He found it difficult to accept that his wife worked and wore western clothing. Mohammed's frustration resulted in arguments and tension within the marital relationship. The emotional abuse became physical abuse. Miri's family discovered that she was a victim of domestic violence at the hands of Mohammed and she was encouraged to leave the marriage and to rebuild her life.

Miri: My Sharia Council Experience

“I knew I had to bite the bullet and face the fact and get it sorted. So I took the first steps of ringing around and finding out how to obtain a Sharia divorce. I was advised that it would be easy to just ring my local mosque and see if they would send a scholar or an Imam down who would chat to the both of us and get me the divorce I want. It all seemed straight forward but little did I know it was far from it.

When I contacted the Imam he said there was nothing he could do for me. He said there was no number I could contact or no one else he knew that could help me. I was new to this and it was extremely hard to accept and adjust to the concept that this was going to be my battle and I had to be strong for my family and my kids.

I found a Sharia Council telephone number on the internet. Eventually when I got through to them they said I had to complete an application form and pay a fee of around £100. Thinking that the procedure would be straight forward it was far from it. It was a battle that was to commence and continue for 2 years!! Emotionally I was drained, mentally shattered and physically tired already. Once my application was accepted I had to ring every other day just to find out the process due to their lack of response. I still didn't give up, if anything this was making me stronger and determined to fight more. I wanted justice!!

A month after submitting my application I received my first letter to say they had received my application and it had been forwarded the correct department. The Sharia Council then sent out another letter that I had to fill in.

By this time two months had gone by and very little had been done. I received a request to send proof of my husband's whereabouts. Luckily for me, my Sharia case was running in conjunction with my civil divorce. My solicitors had all the proof but this then meant that I had to arrange another appointment with my solicitor to get this letter written up confirming my husband's address. Every time a job was done it would set me back by a month and prolong the case.

The Sharia Council had sent my husband three letters with no reply. This, in my eyes, should have been enough for a divorce but not for them. Even after the last letter they said they had to give him a three month cooling off period to comply or respond.

Then I was sent a letter to say that I had to give him full access or, if not, hand over my children for him to raise!!!! This was the ultimate blow for me as I felt I had been waiting all this time only to be told that my children will be taken away from me and my family. I thought my life had ended and I was thrown into deep water and there was no way out. I was told that if I didn't accept this then my divorce could not go ahead. I was at the same time in court for the contact for my children with my husband. The courts and the Children and Family Court Advisory and Support Service who were independently going through the case to resolve this in the best interests of the children said my husband was not to have any contact with the children. In court he accepted this without argument due to the level of violence involved. When I told this to the Sharia Council they wanted evidence, so I sent them all the court documents.

As far I was concerned the Sharia Council had all the required documents and there could be no reason to refuse. Then a letter came stating that I had to return the entire dowry I had in order for the final process. I then wrote back saying that I no longer had the gold jewellery stated on the Nikah (marriage certificate) because all the jewellery had already been sold by my husband in order to pay off his debt. His letter was taken into account and only then was I granted my certificate.

It was a long road which I feel should not have taken so long. The pain and stress was unnecessary. I feel I was let down by the Sharia Council and demeaned just for being a woman. And what shouldn't be forgotten is that all this time not only was I suffering but also my children and my family.”

PART TWO:
SERVICE PROVIDERS' STATEMENTS

Rizwana Iqbal

Refuge

“They were insistent on witnesses attending because of her gender and Nasrin agreeing to mediation despite the fact that this could have put her and her son’s life in danger”.

Rizwana is a service provider from Refuge, which is a large organisation providing safe places for victims of domestic violence to stay, often with their children. Rizwana supported Nasrin, a service user of Refuge. Nasrin, a British national, entered an arranged marriage to her cousin, Hasan in Pakistan, to enable him to gain UK citizenship. Nasrin and Hasan had a son together. Their relationship was turbulent. Nasrin fled to Refuge after being subjected to domestic violence at the hands of her husband and extended family members. Eventually Nasrin applied for a Sharia divorce and Rizwana provided her with emotional and practical support.

Rizwana’s account of Nasrin’s Sharia Council Experience

"Nasrin applied to Dewsbury Sharia Council to obtain an Islamic divorce, which took a number of months to obtain. The total cost of the divorce was £180.

We sent the completed Sharia divorce application to the Sharia Council. A few weeks later we received a letter from the Sharia Council informing Nasrin that a copy of her application form had been sent to her husband. Nasrin was not informed by the Sharia Council that her application form would be sent to her husband. Fortunately, Nasrin did not disclose her address on the application form. Nasrin was in fear of her life and lived in a secret location to ensure that she had no contact with her husband. Had she disclosed her address on the application form, which Hasan then received, the consequences could have been life threatening for Nasrin and her son.

Procedure

Hasan had three months to respond to Nasrin’s application for an Islamic divorce. Hasan eventually wrote back to the Sharia Council and stated that he was not willing to divorce and denied being violent towards Nasrin. Nasrin responded reiterating that she wanted a divorce. Following this, Nasrin and I had great difficulty contacting the Sharia Council.

Spousal Meeting

The head of the Sharia Council insisted that both parties, Nasrin and Hasan, attend a joint meeting in the form of mediation at the Sharia Council. Nasrin was horrified at the thought of this. I then telephoned the Sharia Council and informed them (again) that Nasrin was scared for her life and living in a secret location. I went further and asked the head of the Sharia Council “do you really expect her to sit in the same room as him, you will be putting her (Nasrin) and her child at risk and the staff member (me)?” The head of the Sharia Council responded stating that the Sharia Council would safeguard Nasrin. I replied stating that the Sharia Council couldn’t make such promises. After much debate they reluctantly agreed not to pursue a joint mediation meeting.

Witnesses

They demanded that Nasrin brought along two witnesses to the meeting with the Sharia panel of ‘judges’ to confirm her version of events. In contrast, as Hasan is a man he did not have to bring along two witnesses to confirm his version of events. Nasrin and I explained to the Sharia Council that there were no witnesses to the violence perpetrated at the hands of Hasan. The Sharia Council continued to demand two witnesses.

Meeting with the Sharia ‘Judges’

Eventually a meeting with the Sharia Council was scheduled. Nasrin was so frightened that the Sharia Council would not listen to her that she brought along two friends to confirm that what she was saying was the truth. The Sharia Council panel called Nasrin, her two friends and me in to the room. I addressed the panel straightaway, “you have put so much fear into this lady (Nasrin) that she has found two witnesses who do not know any history of the case”. The panel agreed that the witnesses could not give evidence and they were sent home. Nasrin put her case forward, she was viewed as only a partial

witness. The meeting came to an end.

Hasan attended the Sharia Council the following week.

Two weeks after our meeting with the Sharia Council in Dewsbury the Sharia Divorce was granted.

Concluding Comments Regarding the Operation of Sharia Councils

As an observer of the workings of the Sharia Council in Dewsbury, I can honestly say the process was difficult and the Sharia Council was not willing to be flexible. They were insistent on witnesses attending because of her gender and Nasrin agreeing to mediation despite the fact that this could have put her and her son's life in danger. There was no female member on the panel of 'judges', which was very daunting for me and Nasrin. The panel consisted of three Muslim elderly men, an Imam, a Sharia Council member and a note taker."

Kalsoom Bashir

Preventing Violent Extremism, Bristol City Council

“Women that attend Sharia Councils find that the experience is humiliating and daunting when their testimonies are not taken seriously”.

Kalsoom Bashir has worked extensively for the past 25 years with the Muslim community, as a teacher, school governor, community liaison officer, councillor, and now as a Preventing Violent Extremism officer for Bristol City Council. This work has given Kalsoom a good understanding of the unique diversity, aspirations and challenges that exist within the Muslim community. Kalsoom has undertaken and completed a Chaplaincy course and is now a Chaplain at Bristol University. Kalsoom uses her skills to support the most vulnerable in the Muslim community.

Kalsoom is the head of The Bristol Muslim Women's Network. She began a series of consultations across the city and established an advisory group of approximately 25 women. These women are leaders in the community. In consultation with this group Kalsoom is leading a programme of activities designed to enable the voices of Muslim women from all walks of life to be heard.

Kalsoom is also a member of Inspire, an organisation that delivers projects on a local, national and international level focussing on empowering Muslim women, strengthening community cohesion, preventing all forms of extremism, enhancing gender equality and promoting human rights.

Inspire's work was featured in the Guardian as a short film 'Under the Prayer Mat' and in the local media after challenging the lack of support women receive from faith institutions and faith leaders in tackling the problem of domestic violence.

Kalsoom's Concerns Regarding Sharia Councils in the UK

"My experience of working with Muslim women has demonstrated that there is a clear lack of knowledge of the rights that they have within their own faith and this is manipulated and abused by males in the family and in local mosques.

Many Islamic marriages are not registered legally so women do not have the protection of the courts. When marriages break down, there is huge pressure to keep quiet by members of the community or faith leaders in order to protect the 'honour' of the family.

There is an increasing rise in polygamy within Muslim families and again the women who are involved are not in a position to be able to challenge the situation or get any form of justice. They find it difficult to obtain any maintenance as the marriages are not registered legally. Polygamy is used to control first wives who are told that if they are a problem the man has the Islamic right to take another wife. Sometimes just one of the marriages is registered leaving one wife without any legal protections.

Although, in Islam, women are entitled to the rights of divorce and a prenuptial contract, lack of education on Islamic rights on both the parts of men and women in the community means that women are not fully aware of them and find it impossible in many cases to find the support they need. Men, on the other hand, believe they are able to pronounce divorce (talaq) three times to end a marriage and this threat is used to control wives.

Women who attend Sharia Councils find that the experience is humiliating and daunting when their testimonies are not taken seriously. My most recent experience is of a white English convert to Islam who, although understands her rights, cannot find the support she needs to end her marriage. On a practical level it is difficult for her to travel to the Sharia Council and to gain access to a computer to deal with the issues online.

Arbitration and Mediation Services (Equality) Bill

I fully support the Arbitration and Mediation Services (Equality) Bill as I do think it will help those women that require the law to act on their behalf. At the moment there are Muslim women that, despite having rights under British law, are under pressure to live under religious rules with which they may not necessarily agree. I would also hope that a Bill of this

nature would put pressure on Sharia Councils to improve their practice - to actively move in line with understandings of equality and justice that require gender equality in family matters and communicate these more effectively to the Muslim community."

Fehmida Abbas

Shakti Women's Aid

“As Aalia is a woman, the Sharia Council refused to listen to her, they only listened to Nav, they have an incredibly biased and gender discriminatory attitude towards women”.

Shakti Women's Aid is an organisation based in Edinburgh, working since 1986 to offer support, advocacy and information to all black, minority ethnic women, children and young people experiencing and/or fleeing domestic abuse.

Rabia, a support worker from Shakti Women's Aid, has supported a number of women who applied for a Sharia divorce. Rabia explained that the process of obtaining a Sharia divorce for a woman is a gender discriminatory process, as the Sharia Council engages in a lengthy divorce process if the applicant is a woman, yet a male applicant can divorce his wife unilaterally. Rabia is extremely concerned about the astronomical cost of Sharia divorces. The Islamic-Sharia in Leyton, London, have increased their fees from £160 to £400 for women petitioners, meanwhile male petitioners only have to pay £200. Rabia explained that this is an example of gender discrimination.

Rabia: Sharia Council Experiences

Aalia's Case

"Aalia entered into an arranged marriage which lasted for over 30 years. During the majority of this time, Aalia suffered from domestic violence perpetrated by her husband, Nav. Eventually Nav left Aalia and married another woman in Pakistan.

Aalia decided to apply for an Islamic divorce, it took her over one year before she obtained an Islamic divorce. Nav argued that Aalia owed him large sums of money that she had borrowed from him, although he had no evidence to prove this allegation. In reality, Nav had taken Aalia's money and gold and personal items that her parents gave her at the time of their marriage. The Imam threatened Aalia saying that unless she paid a certain sum of money to Nav she would not be entitled to a divorce. Aalia could barely afford the cost of the divorce.

As Aalia is a woman, the Sharia Council refused to listen to her, they only listened to Nav. They have an incredibly biased and gender discriminatory attitude towards women.

Fortunately Nav stopped corresponding with the Sharia Council as a result Aalia managed to obtain a Sharia divorce.

Samreen's Case

Samreen entered into an arranged marriage with Shezhad and they had one child together. The marriage lasted four years. Samreen was a victim of domestic violence perpetrated by Shezhad.

Samreen applied for a Sharia divorce. It took over 18 months before Samreen was issued with a Sharia divorce. The delay was caused by Shezhad who produced false receipts from Pakistan to substantiate his claim that Samreen was in possession of a huge quantity of gold jewellery that she had no right to keep upon divorce, regardless of the fact that she was a victim of domestic violence.

The Imam asked Samreen to meet with Shezhad to undergo a reconciliation meeting. Samreen was horrified, not only was she was scared of Shezhad but she could also not afford to travel over eight hours to attend the meeting.

During lengthy discussions which lasted over an hour and a half, the Imam eventually agreed to give Samreen a Sharia divorce. It seemed to me during the entire process that the Sharia Council was not trying to help or support the women applicants, rather they were hindering them.

Nudret's Case

Nudret entered into an arranged marriage which existed for over 14 years and they had four children together. During this

time Nudret was a victim of domestic violence perpetrated by her husband, Syed. Syed abused alcohol and drugs and as a result all four children were removed from his care by the local authority and put on the child protection register. When Syed returned to Pakistan, Nudret petitioned for a Sharia divorce.

During the Sharia divorce process, the Imam never considered the background of the marriage and the domestic violence Nudret and their children suffered, they were only concerned with Syed's feelings with regard to the maintenance of the marriage. The Sharia law services only support men. When domestic violence has been proved by the UK courts, Sharia divorces should be issued without any unnecessary delay."

Shahien Taj MBE

Henna Foundation

“The Arbitration and Mediation Services (Equality) Bill will help a huge number of Muslim women who are unaware of their rights. For example, the Bill will place a statutory obligation upon the public sector to inform women of their rights under UK law”.

About The Henna Foundation

The Henna Foundation is a national registered charity committed to strengthening families within Muslim communities. Special attention and support is given to the needs of Muslim women, young people and children, ensuring that the Foundation acts as brokers, supporting positive engagement between marginalised sections of Muslim communities and the voluntary, statutory and government agencies and service providers.

The Foundation has been working for over a decade and operates a “One Stop” shop service that offers advice, support, sign-posting and advocacy for vulnerable individuals and families that are faced with social pressures including isolation and the difficulties and challenges of family and community life.

The Foundation communicates with a wide network of individuals, families and communities at varying levels of the Muslim community and wider sections of civil society. As a result of this direct contact we are ‘in touch’ with the issues, concerns, social trends and climate.

Both in a formal and informal capacity the Henna Foundation is regularly called upon to assist in Criminal and Family Court proceedings which involve matters relating to Forced Marriage and honour based violence (HBV).

Sharia Councils

"The Foundation navigates through gender biases and cultural boundaries to ensure a holistic community approach to support individuals and their families. One third of our work over the past 12 years involves working with Muslim women seeking clarity on their Muslim marriage status or seeking an Islamic divorce - the majority of who have great difficulties. Based on casework experience and anecdotal evidence of the current state of play in relation to Sharia Councils, it is difficult for us to support the legitimacy of the services that they provide.

The lack of regulation and accountability of the Councils has caused undue stress and pressure particularly on Muslim women. This can be illustrated in the lack of acceptance of decree absolutes as a valid and finalised divorce for Muslim women.

A number of renowned scholars have made it clear that a decree absolute is sufficient to fulfil the requirements of an Islamic divorce and technically Muslim women need not obtain a Sharia Council divorce. However due to community pressure, lack of understanding of divorce, and also for peace of mind, a large majority of Muslim women will apply for an Islamic divorce once given their decree absolute.

The lack of understanding on the issue of divorce is particularly concerning as there are religious leaders and ex-husbands etc. who exploit this and tell vulnerable Muslim women that they are still married in Islam and that they have to continue to perform their duty/role as a wife.

Based on casework experience and anecdotal information, it is not uncommon for Sharia Councils to charge a minimum of £400 to process a divorce application even when a decree absolute has been awarded. In some cases Muslim women are forced into long drawn out situations that require them to spend substantial amounts of money in obtaining an Islamic divorce certificate. In addition, they would still have to justify to the Sharia Council as to why they were requesting an Islamic divorce and the Council would then get in touch with the ex-partner and proceed from there.

As an organisation we have attempted to find an alternative to the Sharia Councils. Over the last three years we used a highly regarded scholar to provide women who had obtained decree absolutes with a Sharia divorce certificate at no charge and with no questions asked. It was understood that the issuing of the certificate was just a formality. However the organisation that he works for has now changed its policy in relation to Islamic divorces and we have been asked to provide client and case details. The organisation would then contact the ex-husband and attempt a reconciliation/

mediation between the two parties.

Case study (1): Amina's Case

Amina is a young lady of Asian heritage who was in full-time education and was brought up in a moderately religious family. Whilst she was raised to understand the basics of the Islamic faith and to dress in a modest way, she was never forced to wear hijab or niqab. She met Faisal through a social network where he had set up a group to answer questions on Islam and he invited her to the group. Over a matter of weeks she was emotionally manipulated by Faisal to leave her family and to marry him as he convinced her that it was the 'Islamic' thing to do.

Ten days into their marriage, Amina was forced to adopt the veil and had to wear gloves to ensure that even her hands were fully covered. She also suffered emotional abuse and sexual exploitation at the hands of Faisal.

Due to the fact that she only had a Nikah with him and not a registry marriage, Amina applied to a Sharia Council in the UK for a Sharia divorce. The Imam who had the power to grant Amina a divorce was also teaching her husband to become an Islamic scholar. The Imam in this case was not functioning in a professional capacity; instead he used his personal relationship with Faisal to attempt to reconcile the marriage without informing Amina of his conflict of interest. Amina was then requested to attend the Sharia Council unaccompanied. We were able to inform Amina ahead of time and she made the decision to cancel the meeting.

Case study (2): Sumiah's Case

Sumiah is a British citizen of Pakistani descent. She comes across as a woman who is confident, self-assured and had realistic expectations of marriage. When she was 22 years old, her marriage was arranged to a cousin from Pakistan. After they were married, Sumiah was able to secure a spouse visa for him and he moved to the UK to be with her.

There were problems in their married life, primarily due to the fact that her husband was an only child and was used to a lifestyle where there was always someone who would take care of his needs. After eleven years of marriage and having had two children with him, Sumiah decided that she could no longer continue to stay married to him due to his unreasonable behaviour (this includes him getting jealous if she bought presents for their children, she wasn't allowed to laugh in front of him etc.).

She was able to secure a divorce through the British legal system and the only difficulty she faced in doing that was due to her husband's refusal to sign the divorce papers.

After obtaining her decree absolute she approached a very well-established Sharia Council to request her Islamic divorce papers. This caused her a significant amount of problems:-

- 1) She had to pay them £400 to process the application (£150 initial payment, £250 second payment). This was a major issue as she was a single mother on a very limited income and due to the complexities of 'honour' (izzat) she was not in a position to ask her family for financial support.
- 2) After the initial acknowledgement of her request, there was no contact from the Council. Sumiah had to initiate contact with the Council on numerous occasions in order to get an update on her case. On most occasions, there was no progress made. The reason given to her was that they needed to write to her 'ex-husband' to get his side of the story and then the committee would have to consider her request.

It was only after she made a fuss over the lack of progress did they inform her that she could meet with their representative in the area that she was from and he would be able to consider her case.

She managed to present her case to the representative and it was only after this representation was she given her Islamic divorce certificate despite the fact that she was already legally divorced from her ex-husband.

Case study (3): Megan's Case

Megan is a British European convert to Islam. She was a single parent with a young child from a previous relationship and embraced Islam in 2009. Within weeks of embracing Islam she entered into a religious with a Muslim man who had been pursuing her before her conversion. In addition to emotionally manipulating her, he also sexually assaulted her and exploited her vulnerabilities to the extent that he had her believing that she was responsible for making him assault her.

She fell pregnant six months into the marriage and when she found out she was pregnant, she made the decision to end

the marriage. The sexual and physical abuse was not only affecting her and her pregnancy but also the emotional well-being of her eldest child. She also made the decision to pursue legal action against her ex-husband as he began harassing her.

Whilst she believed she was divorced as her ex-husband pronounced the 'talaq' on numerous occasions, she wanted confirmation in writing from a religious/Sharia institution. Unfortunately, all the organisations she approached had advised her to re-consider her decision and she was offered mediation services instead. This was offered to her despite her providing them with proof of the the legal action she was perusing against her ex-husband.

She also explained to them that mediation or speaking to her ex-husband was not an option as she would be putting herself, her eldest child and unborn child at risk. Getting back with her ex-husband was also not an option as social services would have taken her child into care.

To date she has still not been given a clear response on her marital status.

The Arbitration and Mediation Services (Equality) Bill

The Arbitration and Mediation Services (Equality) Bill will help a huge number of Muslim women who are unaware of their rights. For example, the Bill will place a statutory obligation upon the public sector to inform women of their rights under UK law. A large number of Muslim women approach Sharia Councils for help. This is due to the fact that they are unaware that they have recourse through UK law. For instance, many Muslim women have only had an Islamic marriage (Nikah). They therefore are not married under UK law and have no rights upon divorce. It's essential that all women are aware that they need to enter a legal marriage to gain the rights that they deserve.

There is substantial evidence that some Sharia Councils and their Imams are involving themselves in matters of domestic violence and violence against women in a way that is prejudicial to criminal justice. Through offering mediation they persuade victims and potential victims to not seek a criminal justice solution nor to seek protection of the police and the authorities which, on occasions, puts them at greater risk. There needs to be measures put in place where all matters involving domestic violence and violence against women to be referred to the relevant authorities and Sharia Councils need to withdraw their involvement in such cases."

Jasvinder Sanghera

Karma Nirvana

“Once women begin the Sharia divorce process, the Sharia Councils soon pressurise vulnerable and marginalised women to reconcile their marriage”.

Jasvinder Sanghera, a victim of forced marriage herself at the age of 16, later had to bear the death of her sister Robina who, at 24, set fire to herself to escape the brutality of her marriage and the obduracy of her own family. She died from 90 per cent burns.

Jasvinder Sanghera provides expert evidence and opinions in family law matters to UK courts of law. For example, she provides evidence of the honour based systems to which South Asian families conform and the pressure under which these systems place women.

Jasvinder Sanghera established Karma Nirvana, a registered charity, which supports victims and survivors of forced marriage and honour based abuse. Karma Nirvana receives over 500 calls from victims every month.

Sharia Councils in the UK

"Many women telephoning Karma Nirvana are calling to ask how to obtain a Sharia divorce. Karma Nirvana supports them with their application, often providing women with a letter of support. Once women begin the Sharia divorce process, the Sharia Councils soon pressurise vulnerable and marginalised women to reconcile their marriage. Family members also become involved further adding to the pressure these women are under to return to the matrimonial home regardless of the abuse that they have, and will continue to, suffer.

Where women refuse to return to their husband, Sharia Councils have insisted that women return their children to their husbands. Once the child is returned to its father there is a high risk that the child will be abducted.

The Arbitration and Mediation Services (Equality) Bill

Karma Nirvana fully supports the Bill as it will raise women's voices and enable them to gain their rights. Women must be aware of the UK legal system to resolve matters and to seek legal redress. Sharia Councils often overlook children's rights which should be upheld and supported. It's essential that all child-related matters are dealt with through UK courts of law."

Diana Nammi

Iranian and Kurdish Women's Rights Organisation

“In most cases women do not receive any practical advice or assistance to help them exit discrimination, and instead face further abuse and discrimination perpetrated by Sharia judges”.

IKWRO is a registered charity which provides advice and support to women and girls from the UK's Middle Eastern communities (Iranian, Kurdish, Arab, Afghan and Turkish) who are facing violence and abuse. Women and girls approach IKWRO for assistance with issues such as forced marriage, 'honour' based violence, domestic violence, sexual abuse, marital breakdown and female genital mutilation. IKWRO is a secular organisation but many of their clients are Muslim.

IKWRO has supported many women who have sought advice from mosques and from bodies applying Sharia Law in the UK. In most cases women do not receive any practical advice or assistance to help them exit discrimination, and instead face further abuse and discrimination perpetrated by Sharia 'judges'.

Leila's Case

"Leila was forced to marry her first cousin when she was in her teens. The marriage took place in a mosque in the UK. From the outset Leila's husband was physically abusive. He was also verbally abusive and threatening, including in front of their three children. He did not give her any money and Leila was in debt trying to feed and clothe herself and her children.

Leila went to an Imam and asked for help to end her marriage. The Imam told Leila that he would talk to her husband about the abuse, and would tell him to give her money. After this, the situation became worse. Leila came to IKWRO for assistance and told us that she wanted a divorce.

We soon realised that as Leila's marriage was never registered, it was not legally recognised in the UK, making it difficult to enforce her rights in the UK courts. Leila had very little knowledge of the law and she came under pressure from the Imam and her family to avoid the courts and settle things through a council in the mosque. Although IKWRO linked Leila with a solicitor she did not attend appointments and eventually returned to her husband.

Sara's Case

Sara's husband became physically abusive while she was pregnant. The abuse continued after the baby was born and Sara decided to leave her husband. Sometime later, she went to the mosque where they had been married to ask for a divorce. They had never married under UK law but Sara wanted to end the marriage officially so that she could move on with her life.

Even though Sara explained that her husband has been extremely violent, the Imam said that he could not grant her a divorce without her husband's permission. Sara asked the Imam to telephone her husband and the Imam agreed but after a month nothing had happened. When Sara contacted the Imam, he claimed that he had tried to phone the husband but Sara knew that this was not true. She continued to telephone and visit the mosque in person but nothing changed. The Imam then told her that he could initiate a procedure through which Sara could get a divorce without her husband's permission, at a cost of £1000. With a baby to look after, Sara could not afford this.

Eventually Sara persuaded her husband to attend an appointment at the mosque and discuss the divorce. At the appointment the Imam first asked Sara whether she had been praying. She said that she had not and the Imam asked if she was menstruating. When she confirmed that she was, the Imam said that she would have to go home, pray for two weeks and return. Sara was so humiliated that she never returned to the mosque. She has still not been granted a divorce.

Arbitration and Mediation Services (Equality) Bill

We fully support the Bill. Sharia Law discriminates against women and children and puts those who have experienced violence and abuse at further risk. Its rulings are incompatible with UK legislation including the Sex Discrimination Act 1975, the Children Act 1989 and the Human Rights Act 1998."

Tahmina Saleem

Inspire

“This Bill is welcomed as it would extend the law to offer an opportunity to review or revoke agreements at a later stage if Muslim women choose to champion their rights”.

Inspire is an award winning consultancy helping Muslim women to reach their full potential in life. Inspire delivers projects on a local, national and international level focusing on empowering Muslim women, strengthening community cohesion, preventing all forms of extremism, enhancing gender equality and promoting human rights. Ultra conservative interpretations of Islam are being used to define and regulate women's lives and to place restrictive roles on them; Inspire challenges these positions by using progressive interpretations relevant to life in Britain today.

As executive Manger of Inspire Tahmina Saleem's experience includes working within the voluntary sector for over 20 years. Tahmina Saleem has held various leadership positions within Muslim organisations within the UK including chairing Islam Awareness Week in 2007 and 2008. She has also worked as a consultant with the London Borough of Redbridge from May 2008 – Feb 2009, helping to meet the Local Authority NI35 targets as the PVE Projects Manager. Over the years Tahmina Saleem has travelled extensively within UK towns and cities meeting and hearing from Muslim women on the ground.

During her experience of working within Muslim communities, she has found that many Muslim women are fully integrated into British life and are making huge contributions. However, Tahmina Saleem explains that far too many Muslim women are unable to contribute to society due to personal, cultural and religious barriers. They are for example most likely to be economically inactive compared to women of other faith groups and report the worst health according to the Office for National Statistics.

Experience of Sharia Councils

“Mediation services such as Sharia Councils are operating within the UK in an unregulated manner. Many Muslim women do not have sufficient grasp of Islamic theology to refute the decisions of these bodies which are viewed as authorities by Muslim families. Some of the Sharia bodies operate in a way that is at times discriminatory towards women, undermining their human rights that are protected by law.

Sharia Divorce Case Studies

Inspire were recently approached by a woman from Birmingham; a mother of five who is seeking to divorce her violent husband. She was a young convert who married in her teens and soon fell pregnant. Although she preferred to go on to higher education, the local Imam instructed her to marry a young Muslim stranger as she was advised that ‘a good Muslim woman should be married’. She opposed his choice and was, in her words, blackmailed and bullied into accepting. Today with limited means she cannot afford the £400 that is required by the local Sharia body for the divorce she seeks (although men are charged £200 by the same body).

The mother of another woman who is a convert approached Inspire recently requesting we speak to her daughter who is currently in a refuge seeking protection from her violent husband. With three children to care for the daughter was considering returning to him as he had said it was a sin to turn to ‘non Muslims’ for help when, according to his misinterpretation of the Quran, he had the right to ‘chastise’ her. She knew no better and felt she was failing as a Muslim woman if she did not return to him. Her mother sought our assistance as this had happened several times before and this time social services were threatening to take the children into care if she returned.

Why the Arbitration and Mediation Services (Equality) Bill is urgently needed

Sharia bodies are currently failing where they might help educate and are often unwittingly perpetuating human rights violations themselves. Inspire supports this Bill in principle as we believe a safety net is required to protect women in particular from excesses that occur via Sharia courts. Unfortunately many Muslim women today are submitting to patriarchal interpretations of their faith as they are not equipped with a nuanced and relevant understanding of life as a British Muslim woman in 21st Century Britain. This Bill is welcomed as it would extend the law to offer an opportunity to

review or revoke agreements at a later stage if Muslim women choose to champion their rights.

Inspire believes that for substantial change to be made for Muslim women and other women of faith, alongside this Bill, an open debate and an awareness campaign is vital to ensure that Muslim communities are aware of the true nature of what it entails."

Tehmina Kazi

British Muslims for Secular Democracy

“The Arbitration and Mediation Services (Equality) Bill is to be lauded for its multi-pronged approach to tackling gender discrimination”.

Tehmina Kazi has been the Director of British Muslims for Secular Democracy since May 2009. British Muslims for Secular Democracy is a registered charity which aims to raise awareness, amongst British Muslims and the wider public, of democracy and particularly how ‘secular democracy’ helps to contribute to a shared vision of citizenship. BMSD’S aims include promoting civic engagement among Muslims as well as combating extremism and Islamophobia. Previously, Tehmina Kazi was a Project Officer at the Equality and Human Rights Commission, where she worked on the first inquiry of its kind into the Human Rights Act. Tehmina Kazi regularly contributes to a wide variety of media outlets on issues relating to British Muslims’ civic engagement, including the role of Muslim women in public life.

Arbitration and Mediation Services (Equality) Bill

"The Arbitration and Mediation Services (Equality) Bill is to be lauded for its multi-pronged approach to tackling gender discrimination. Various women’s groups and activists have supplied significant anecdotal evidence of gender discriminatory arbitration being conducted under the Arbitration Act 1996, as well as on family matters (which they should have no jurisdiction over in any case). While the Bill doesn’t mention any particular religion by name, in practice, the bulk of its remit extends to Sharia tribunals and Sharia councils. While these terms are often used interchangeably by the mainstream media, there are clear distinctions between these bodies, and the Bill represents a long-overdue attempt at demarcating these.

Firstly, Sharia tribunals operate under the Arbitration Act 1996, and as with all arbitration, their outcomes are legally binding (as long as all parties agree to this). Unlike these tribunals, Sharia councils have no legal status, and could potentially be set up in someone’s front room. Problems arise when they falsely claim a legal status that they do not have, and this kind of posturing is exactly what the Arbitration Bill seeks to criminalise. It is a pioneering proposal, because the onus is on the Sharia councils to clarify for existing and potential clients that their decisions have no legal weight, before any mediation can take place.

The second key issue that the Bill brings to light is one of education. If its proposals were passed, it would become incumbent on front-line public sector professionals e.g. health visitors and GPs, to explain to women what their rights are under civil law. Having worked in social services before, I recognise that a multi-agency approach is the best way to safeguard vulnerable people. While local authority waiting rooms are replete with “Know Your Rights” leaflets, this is simply not enough. How many more women will have to suffer the ignominy of being unable to get a religious divorce, before we realise that professionals – who have a statutory duty to engage with them – must also spread the word?

The third key issue that the Bill seeks to address is facilitating the prosecution of domestic violence perpetrators by using laws against witness intimidation to protect the victim. This is an absolutely crucial measure for the thousands of domestic violence victims who live in terror of their abusive former partners.

It goes without saying that, like all legislation, the Bill can only do so much to safeguard women from unjust treatment. The role of voluntary sector organisations, in helping women to make informed choices, is equally vital. But the message that comes out of most of our roundtables on religious arbitration – time and time again – is that existing legislation is not being enforced properly in these cases. It is my hope that the Bill can provide a salve for some of these concerns, and assist women whose struggles for justice and equality are “stuck” within the system."

Anne-Marie Waters

One Law for All

“We ask however that the law ensure that any arbitration carried out in England and Wales is respectful of the secular law and protects the fundamental human rights of women and children”.

"The emergence of Sharia law in the UK brings with it questions of both law and morality – how far should the law allow cultural and religious practices to be observed, and what effect does this have on the rights and protection of women and children?

The Muslim Arbitration Tribunal (MAT) and the Islamic-Sharia Council (ISC) seek to implement Sharia law in Britain. The MAT operates under the powers of the Arbitration Act 1996 which allows parties to consent to the appointment of an agreed arbitrator and to be bound by their decision.

As then Shadow Home Secretary Dominic Grieve confirmed in 2008, the intent of such arbitration was not to cover family or criminal matters, which, he confirmed, should be the sole responsibility of the mainstream English courts. However, the MAT acknowledges that it deals with matters of crime, including domestic violence and marital rape, but that neither of these offences are considered worthy of punishment under Sharia law. The MAT has described its plans to take full ‘jurisdiction’ over domestic violence cases involving Muslims in Britain, and it intends to deal with ‘smaller’ criminal cases in the future.

The ISC operates as a registered charity and operates a system of mediation. 90% of its cases are in matters of family law. It too has expressed a desire to expand its remit in future years, and it too considers domestic violence to be unworthy of punishment. The ISC confirms on its website that, in dealing with matters of family law, the testimony of a woman is given only half the weight of that of a man – in practice this can mean that a woman must provide a witness, or other evidence, or her husband will automatically be believed in any dispute. The ISC also confirms that mothers have no child custody rights when children reach a certain age; in stark contrast with the law of England and Wales which demands that issues of child custody and contact be decided in the best interests of the child only. Women have no right to divorce without the permission of the husband or a Sharia body – regardless of the circumstances and in direct conflict with English law which provides both parties to a marriage with equal divorce rights.

Both the MAT and the ISC are hearing increasing numbers of cases involving children. They also hear inheritance cases in which females receive only half the value of males.

The Arbitration and Mediation Services (Equality) Bill

In 2011, Baroness Caroline Cox introduced the Arbitration and Mediation (Equality) Bill to the House of Lords. One Law for All supports this Bill and encourages the Government to do the same. It is our belief that this Bill will send a powerful message to both the MAT and ISC that discrimination under Sharia is unacceptable in the UK. It will disallow any arbitration that treats a woman’s testimony as worth half of her husband’s and it will ensure that matters of family and criminal law are dealt with only under the laws of England and Wales and with all necessary protections in place. As a result of the work of many women’s organisations in Britain, such as the Iranian and Kurdish Women’s Rights Organisation (IKWRO), it is known that many women are led to believe that Sharia bodies in Britain represent the “law of the land” and that many women do not know or believe that they have any option but to follow the rulings of Sharia bodies.

Baroness Cox’s Bill will create a criminal offence in this regard and will help prevent women being manipulated or lied to in this way. It is also widely known that many women are threatened with violence or community exclusion if they do not agree to attend Sharia tribunals and councils. The Bill also confronts this issue by extending the protections contained within the Criminal Justice and Public Order Act 1994, designed to protect witnesses from intimidation – the Bill extends this protection to victims of domestic violence and abuse and ensures that intimidation of witnesses in matters of family arbitration is also outlawed.

It must be made clear that One Law for All does not oppose arbitration per se, nor do we oppose alternative dispute resolution. We ask however that the law ensure that any arbitration carried out in England and Wales is respectful of the secular law and protects the fundamental human rights of women and children."

PART THREE:
UK LAWYERS' VIEWS

Anne-Marie Hutchinson

Solicitor, Dawson Cornwell Solicitors

“Such women are sometimes subjected to overtures and sometimes forceful overtures or at the very least emotional pressure to either reconcile or to abandon the civil protections to which they are entitled”.

Anne-Marie Hutchinson OBE is a Partner and Solicitor in the firm of Dawson Cornwell Solicitors which is a niche law firm practising in the area of family law. Anne-Marie is head of the Children’s Department specialising in international family law.

In addition to Anne-Marie’s work on international children’s cases, Anne-Marie is also a Resolution accredited specialist in forced marriage and Honour Based Violence. Anne-Marie’s caseload covers a wide spectrum of cases falling one way or the other under that umbrella (HBV). For a significant number of years Anne-Marie has carried out work in the area of family law relating to ethnic minority communities. As such Anne-Marie has acted for a significant number of clients who adhere to the Muslim religion.

In a professional capacity Anne-Marie has visited Pakistan, India and Bangladesh, Lebanon, Egypt and the United Arab Emirates. In addition she has lectured extensively in those jurisdictions on the issue of forced marriages and international child abduction.

Anne-Marie was instrumental in initiating the Forced Marriage (Civil Protection) Act. She handles many forced marriage cases which involve the nullity of marriage by way of civil process.

Concerns Regarding the Operation of Sharia Councils in the UK

"I have, in the past, attended lectures and events at the Regent’s Park Mosque and at the East London Mosque to speak about issues relating to international child abduction, forced marriages, Honour Based Violence and other issues that arise particularly for vulnerable members of the Muslim community in our jurisdiction i.e. women and children.

A significant number of my clients, because of their personal status and religious beliefs, do wish to have the civil process and dissolution of their marriage replicated within a religious context. A significant number of them have approached a Sharia Council in order to obtain a religious dissolution of their marriages following a civil decree.

I have for a number of years been concerned that the starting point for a Sharia Council is not the Civil Decree but the marriage itself. This means that the participants in that process have commenced what is, in effect, a full hearing of the matter despite the fact that the marriage has already been dissolved by the Civil Court.

I understand that the current fee from the Islamic-Sharia Council in London for a wife seeking such a religious dissolution is £400 whereas a male seeking a religious dissolution is charged £200. Many women who have been through the Civil Court process in England have done so necessarily under a legal aid certificate and can ill afford to pay such sums.

My further concern is that in family breakdown disputes, the wider family are engaged in the process and there are a number of competing agendas and factors within the family. Many of those who enter into that process do so unprotected and without any legal representation. Such women are sometimes subjected to forceful overtures or at the very least emotional pressure to reconcile or to abandon the civil protections to which they are entitled.

My very real concern however is when the Sharia Council is the only port of call in the legal process for the Applicant. Thus a situation arises where a religious marriage has been dissolved but they do not understand that their civil marriage remains valid and in being.

I have misgivings where mediation arrangements are made within this context. Mere common sense would indicate that necessary protections for the women and children involved have not been put in place. This is all the more worrying where decisions of Sharia Councils appear to undercut and negate the very real protections that have been put in place by the Civil Courts such as domestic violence injunctions, orders relating to the residence of children and orders relating to the manner in which contact with children might be conducted.

I fully appreciate that the process of each Sharia Council is said to be a mediatory one. However mediation can only be appropriate where there is no power imbalance and where there is an equality of arms. I find it difficult to accept any mediated agreement under such a process where careful checks and balances including safeguarding checks are not undertaken.

I do not seek to undermine the role of religion or religious councils but they cannot, in my view as an experienced practitioner, be a substitute for the protections and rights that are underwritten in our statutes such as the Matrimonial Causes Act 1996, The Children Act 1989 and Forced Marriage (Civil Protection) Act 2007.

Accordingly I fully support the proposed Arbitration and Mediation Services (Equality) Bill and indeed endorse the necessity for such a Bill."

Daniel Greenberg

Parliamentary Counsel, Berwin Leighton Paisner LLP

“My fundamental impression of the implications of the Bill for the Beth Din system is that it provides a welcome and timely opportunity to regularise existing practice, to codify best practice, and to ensure that the principles underlying the Bill are properly reflected in the practice of the Beth Din systems in this country.”

Daniel Greenberg has had formal and informal involvement with different Beth Din systems in this country over a number of years. He has been closely involved in Beth Din procedures for conversion to Judaism, and has had occasional involvement in other aspects of Beth Din operation including advising on, and attending, hearings operating under the Arbitration Act 1996, and advising rabbis of different Beth Din systems on their practices and procedures. Daniel Greenberg does not write in any representative capacity and his personal opinions and impressions as set out below are no more than that; in particular, he has no knowledge or experience of the Beth Din system as operated outside the orthodox Jewish communities.

The Beth Din system in the United Kingdom

"There are a few different Beth Din systems operating in the United Kingdom.

The most “official” is the London Beth Din, which operates under the auspices of the United Synagogues of Great Britain and the Commonwealth. Its nominal head is the Chief Rabbi, although he does not sit. It deals with matters of kashrut (Jewish law about food) certification, marriages, and conversion to Judaism; but it also is available to hear commercial and other property disputes, for which purpose (and for no other) it operates under the provisions of the Arbitration Act 1996.

Each of the other large synagogue bodies in the United Kingdom has its own Beth Din, mostly operating only in London or Manchester.

Certain orthodox communities operate their own arrangements including a Beth Din system. The Union of Orthodox Hebrew Congregations has one Beth Din sitting regularly in Stamford Hill and one sitting as required in Golders Green. Less formal arrangements are also made by individual communities, which may include the convening of an ad hoc tribunal to hear a particular dispute, with rabbis chosen for that purpose by the parties.

All these Beth Din systems are capable of operating, and do operate, under the terms of the Arbitration Act 1996.

Implications of the Arbitration and Mediation Services (Equality) Bill

I wrote about the implications of the Bill for the Beth Din system in the Jewish Chronicle on 12th August 2011.

I identify three principal policy issues in the Bill:

1. sex discrimination,
2. involvement in criminal matters or family disputes, and
3. jurisdiction by coercion.

On all these matters I believe both that there are issues for the Beth Din system to address and that there is no reason why, by paying proper attention to those issues, a Beth Din should not operate in a way that satisfies all the concerns addressed by the Bill.

Sex discrimination

On sex discrimination, there are aspects of Jewish religious law in respect of which men and women are treated differently, at least within the orthodox communities. In matters of synagogue ritual, in particular, women are not able to participate in certain ways.

As regards the operation of a Beth Din as an arbitral tribunal in this country, however, there is no need as a matter of Jewish law for a Beth Din to act in a manner which offends against the principles underlying the Bill. In particular, the property rights of women are able to be contested and protected as rigorously as those of men; and the evidence of men and women can be given equal weight.

I believe that the practice of the principal Beth Din systems of the United Kingdom, and in particular the London Beth Din, would be likely to be found to be fully compliant with the anti-discriminatory principles of the Bill. I am less confident that the same would be found of all Beth Din systems as at present operating. I am confident, however, that it would be possible to devise a code of practice for each Beth Din that was entirely in accordance with Jewish law and which fully satisfied the principles underlying the Bill.

Involvement in criminal matters or family disputes

So far as I am aware, no Beth Din in this country purports to adjudicate on matters that would amount to the commission of a criminal offence; and a person approaching a Beth Din to complain of a matter amounting to the commission of a criminal offence would be directed to the police.

There are, however, three qualifications to add to this otherwise satisfactory position.

First, there is some anecdotal evidence of an occasional inclination on the part of some of the less formal Beth Din systems to hear and attempt to mediate on matters which are on the edge of the criminal law or which might involve actual criminal offences. This might involve one or more individual rabbis agreeing to mediate rather than a formal hearing of a Beth Din, but in practice the result in social and religious terms could be the same. While all the more responsible elements of the orthodox community are solid in rejecting any notion of criminal jurisdiction on the part of a Beth Din, there may be rogue elements that are less clear on the appropriate limitations of Beth Din activity.

Secondly, the divisions between criminal matters and civil disputes are not always entirely clear-cut. For example, a regulatory system such as that for planning control can give rise to disputes between individuals, but is fundamentally a matter of social regulation, for which the ultimate sanctions are criminal. There is a degree of uncertainty in some orthodox Jewish circles as to the extent to which a Beth Din can legitimately operate in relation to the enforcement of regulatory law, as to which clarification would be welcome.

Thirdly, as to family disputes, a particular complication arises because of the Beth Din's involvement in Get divorce proceedings. Although this is not a Beth Din hearing as such, or a matter on which the Beth Din has discretion, Get arrangements are customarily overseen by a Beth Din. An issue arises here both as to jurisdiction and as to equality, since the prime actor in the giving of a Get divorce is the man, with a resulting potential for abuse in the form of refusing to give a Get despite the breakdown of the marriage. I and many others worked successfully with the former Chief Rabbi, Lord Jakobovits, to bring about changes to the civil law as a result of which it would no longer be possible for men to manipulate their active role in the ritual aspect of the Get divorce in order to obtain a negotiating advantage in respect of property or other matters. There are still issues that one could discuss about the Get procedure, but they arise in connection with Jewish substantive family law rather than Beth Din procedure and practice and are therefore outside the scope of the Bill.

The overall position on this aspect of the Bill is that there are no respects in which Jewish law requires a Beth Din to interfere in criminal matters or in the application of civil matrimonial and family law. Again, I am confident that it would be possible to devise a code of practice to ensure that no Beth Din inadvertently interfered, or was invited to interfere, in matters that require civil social regulation and that are not appropriate for determination under the Arbitration Act 1996.

Jurisdiction by coercion

The most difficult issue for the Jewish community arising out of the Bill is possibly the issue of coercion.

The website of the London Beth Din contains the following statement: "In Jewish Law, Jewish parties are forbidden to take their civil disputes to a secular court and are required to have those disputes adjudicated by a Beth Din. The London Beth Din sits as an arbitral tribunal in respect of civil disputes and the parties to any such dispute are required to sign an Arbitration Agreement prior to a hearing taking place. The effect of this is that the award given by the Beth Din has

the full force of an Arbitration Award and may be enforced (with prior permission of the Beth Din) by the civil courts. At a hearing before the Dayanim, the parties do not require legal representation although they are allowed to have legal or other representation.”

This is an accurate representation of orthodox Jewish law, and the use of the word “forbidden” is an accurate reflection of the position. Considerable social and religious sanctions can be applied to a Jew who chooses to litigate in the secular courts rather than submitting to arbitration. To what extent pressure to conform to religious law in this respect amounts to coercion is open to discussion.

It is not for me to determine whether the position in Jewish law in this respect is inconsistent with the policy underlying the Bill. But if, as I suspect, the Bill’s concerns around coercion are part of broader concerns about exploitation and manipulation of those who are in a relatively weak position, I believe that it would be possible to clarify the processes and rules of Beth Din operation so as to demonstrate that the requirement to submit certain disputes to arbitration is not used, and cannot be used, in a discriminatory or exploitative way. Again, a code of practice could be used to reinforce these aspects of the Beth Din procedure.

Conclusion

As expressed in my Jewish Chronicle article, my fundamental impression of the implications of the Bill for the Beth Din system is that it provides a welcome and timely opportunity to regularise existing practice, to codify best practice, and to ensure that the principles underlying the Bill are properly reflected in the practice of the Beth Din systems in this country. I do not believe that there is anything in Jewish law which would prevent a codification of this kind, and I believe that the result of a codification exercise would be of overall benefit to the efficiency and effectiveness of the Beth Din system."

Sam Webster

In-House Solicitor, The Christian Institute

The principal approach of Baroness Cox's private members bill is to regulate bodies which hold themselves out to be tribunals or courts - whether religious or otherwise.

There are five things the Bill would do:

Firstly, the Bill would remove any doubt that sex discrimination law does apply to arbitration services and so a claim for damages may be made to the county court where an arbitration provider discriminates on the grounds of sex. Because arbitration tribunals can make binding rulings, it may be argued currently that this is akin to a judicial function and - as such - exempt from equality legislation.

Secondly, the Bill applies the Public Sector Equality Duty in the Equality Act 2010 to create a new duty on public authorities to inform women of the legal disadvantages of not being in a legally recognised marriage. It is understood that women in some communities suffer disadvantage because they believe they are married according to English law when they may have only been through a religious ceremony.

Thirdly, the Bill would make sex discrimination a "serious irregularity" in arbitration proceedings. This would make it easier for an arbitration decision to be set aside by a court if one of the parties to the arbitration challenges it.

Fourthly, the Bill seeks to deal with the situation where resolutions to disputes have been enforced by the civil courts on the basis that they reflect an agreement between the parties. The Bill requires courts to satisfy themselves properly that a negotiated agreement has been entered into freely and with full knowledge of the alternatives to a negotiated settlement. The Bill also creates an additional safeguard for an independent third person to go to court and make an allegation that a settlement agreement was obtained under duress.

Fifthly, the Bill inserts an express statement on the face of the Arbitration Act 1996 that arbitration tribunals cannot adjudicate on criminal and family law matters, something which is already generally accepted as the position under common law but where some arbitration tribunals may be setting themselves up with authority to adjudicate. Related to this, the Bill creates a new criminal offence, carrying a potential custodial sentence, to tackle the problem of pseudo-courts.

So, at its core, the Bill applies the principles of gender equality law to arbitration services and tightens up the law in several other areas to prevent arbitration tribunals and other bodies encroaching on the jurisdiction of the courts of England and Wales.

Then, there are four things which the Bill would not do:

Firstly, the Bill does not single out any particular group but applies principles equally to any tribunal or body – religious or otherwise - which might seek to adjudicate in areas which are the proper domain of the courts. In doing so, the Bill seeks to ensure that all such bodies function according to the standards of decency and fairness which are accepted across public life.

Secondly, the Bill does not affect the ability of faith groups to govern themselves according to their own rules and beliefs. Ecclesiastical courts maintain their own jurisdiction in matters pertaining to church order and discipline (a different sphere of jurisdiction to the civil courts). Neither would the Bill affect services provided by bodies such as the Beth Din which, for example, deal with religious divorce and do not purport to exercise a jurisdiction parallel to the civil courts.

Thirdly, the Bill does not interfere with the rights and duties of professional disciplinary panels or tribunals, which have a different sphere of jurisdiction from the civil courts. For instance, a doctor who commits a criminal offence may be prosecuted and punished in the courts, but his regulator would try the same allegations with a view to imposing a sanction on the practitioner's professional registration.

Finally, this Bill does not impinge on the principle that there may sometimes be proper exemptions to the general law, such as the exemptions for the benefit of faith groups contained within the Equality Act 2010. Rather, this Bill seeks to ensure that parallel legal systems do not effectively operate.

PART FOUR:

CHILDREN'S RIGHTS OR THE RIGHT TO
SHARIA LAW?

Anne-Marie Waters - One Law for All

Sharia Law and the Children Act 1989

The Children Act 1989 – Private Provisions

The Children Act 1989 provides a framework for issues such as child custody, contact, and other important areas regarding the raising of children. When taking these decisions, courts apply what is known as ‘the welfare principle’ to any and all decisions it makes with regard to child residence and contact. The primary and binding demand of the Children Act is that the best interests of the child are paramount. The development of the welfare principle as determined by the Courts is outlined below.

The Welfare Principle

In determining what is in the best interests of a child, the courts of England and Wales ask the following questions and apply these to each individual case. They are:

1. The ascertainable wishes and feelings of the child concerned. How much weight is given to this will depend on the age of the child. The Court will not always allow the child’s wishes to take precedence as it may feel that the child’s wishes are not in his or her own best interests.
2. The child’s physical, emotional, and educational needs. In this, the Court will look at the child’s accommodation, school, and medical needs. It will not equate welfare with material advantage and one parent having more money than the other will not mean the child will live with the more well-off parent.
3. The likely effect on the child of any change in circumstances. It is generally felt that disruption to a child’s life should be kept to a minimum, and if arrangements are working well for a child, it is unlikely that the Court will change them. Because of this, whoever the child lives with – or is the child’s sole or main carer – will be at a considerable advantage.
4. The child’s age, sex, background, and any characteristics the Court considers relevant. The age of the child may be taken in to account and it is likely that it will be considered best for a very young baby to live with his or her mother. However, as a child ages, their own wishes will be considered. Religion, culture, and gender are also considered under this heading.
5. Any harm the child has suffered or is at risk of suffering. The Court will look at any past abuse of the child and this will cover both physical and psychological injury. It will also consider if the child is likely to be in any danger in the future.
6. The capability of the parents. This involves the Court assessing the parents (or other proposed carers) and their ability to care for the child. Criminal records will be relevant, as will the parent or carer’s medical background and mental and physical health.
7. The range of powers available to the Court. The Court has the power to make any order in favour of any person and so this factor encourages the Court to think of other possibilities – in the child’s best interests – than the ones mentioned above. For example, the Court may not give residence to the person who applied for it, but to another person altogether - if it feels this to be in the child’s best interests.

Further considerations made by courts in the matter of child residence and contact include ensuring that there are not unnecessary delays in proceedings which may harm a child, the availability of orders which can be made on specific issues raised by either parent, and preventative measures to avoid actions being taken by parents (or guardians) which may be harmful to a child. Regardless of the matter before the court, be it contact with a child or who the child will live with, the overriding imperative of the Children Act remains that in all matters, the best interests of the child is paramount and supersedes all other considerations. The Islamic Sharia Council however appears to take a rather different view.

The Islamic Sharia Council and Children

The Islamic Sharia Council runs the largest network of Sharia councils in Britain. It deals primarily with matters of family law

and describes itself as “an authoritative body, consisting of a panel of scholars, representing many established institutions in the UK”. Founded in 1982, the Council sought to establish a “quasi-Islamic court (which would) apply Islamic rules in what was presented to it, of the Family problems in particular”. By 2002, the Council claimed to have “dealt with almost four thousand five hundred cases” – the majority of which concerned matters of family law.

As the Islamic Sharia Council does not provide public records of the cases it hears or on how its decisions are reached, there is no way of knowing for certain if, and how many, cases heard by the Council involve matters of child residence or contact. However, on October 25th 2011, in a broadcast entitled ‘What Would Sharia Do?’ on British television, Aina Khan – a family law solicitor who works with Sharia law clients – stated the following:

“Traditionally, Sharia Councils dealt only with Islamic divorces asked for by women, with time, they’ve been asked to do mediated solutions for example with children’s matters and finance, because the law is so very expensive and so slow so these alternatives have been set up”.

Due to the lack of public records, one needs to look to the general advice issued by the Islamic Sharia Council and its online advice service to get an idea of what principles are applied upon questions of children in Sharia family law.

In beginning to advise on matters of family law, the Council states the following: “When spouses separate by divorce or annulment, these welfare responsibilities get also split according to best abilities of each parent”. This statement instantly raises some alarms as it does not state, as with English law, that the interests of the children are paramount but instead places the emphasis on parents. It goes on to say: “While fathers are vested with financial burden and legal guardianship roles, mothers are given role of physical carer and emotive guardian of child(ren)”. This principle implies a sex-related role for women and men and does not take in to account the attributes of the individual parent (without regard to sex) nor does it place the rights or needs of child as priority.

The Council then states that it believes women are better placed for raising small children and would “give first preference to a mother’s claim to physical custody of her young child”. However, this only applies for as long as the mother does not remarry.¹

Under Sharia law, according to the Council, the period for which children live with their mother is referred to as the “period of female custody”. This period ends, and custody of children is awarded to fathers, at a preset age. The age will depend upon the interpretation or the school of Islamic law applied. The Council states:

“Till the age of seven the mother has the sole right to have the custody of the child if she marries someone who is not related to the child, she loses her right in the custody. If the child were still under seven, he would be given custody of a female (preferably among the mother’s relatives like his maternal aunt or grandmother). But if he is above seven, he is no more in need of a woman’s care and he is to be in custody of the father”.

It further states: “Under the Hanafi School, female custody of a boy ends when he is able to feed, clothe, and cleanse himself. Most Hanafi jurists set this age of independence at seven years, although some set it at nine. Hanafi jurists differ on when a mother’s custody of her daughter ends. Most maintain that the mother’s custody ends when the girl reaches puberty, set at either nine or eleven years of age”.

The above statements on the position of Sharia law with regard to the raising of children are demonstrative of conflict between Sharia law and the principles of the Children Act. It is fair then to question what would happen, for example, if a father were abusive or violent towards his children, and whether the practice of Sharia law in such cases places children within the Muslim community at a distinct disadvantage and subjects them to a greater risk of harm. The Islamic Sharia Council does not address this issue.

Does English law show preference to mothers?

The ISC states on its website: “Islamic Sharia councils have little control over custodial orders. But they have a balancing act to perform when matters are in Sharia courts. Currently Family courts are overlooking father’s rights and input to child(ren) development. Recent high profile public protests reflect that imbalance in the courts orders. There is extensive lobbying and cry to give fathers significant contacts and say in child(ren) development”.

It is often cited, including by Sharia advocates and practitioners, that English law favours mothers unfairly in matters of child residence (custody). However, as outlined above, it is the Welfare Principle that is applied and followed in such cases. Under the Welfare Principle, the courts try to cause as little disruption as possible to a child’s life as the courts

¹ The ISC states: “A woman came to the Prophet and said: ‘Truly my belly served as a container for my son here, and my breast served as a skin-bag for him (to drink out of) and my bosom served as a refuge for him; and now his father has divorced me, and he (also) desires to take him away from me.’ The Prophet Sallallahu Alaihe wasallam said: ‘You have a better right to have him, as long as you do not marry again’”.

believe this to be in a child's best interests. One of the consequences of this approach is that the child's primary carer will often be at an advantage as a child continuing to live with their primary carer is seen as the least disruptive course. In the majority of cases, a child's primary carer will be their mother and therefore it could be seen that mothers are advantaged because they are mothers – this however is untrue. It is the best interests of the child and the lack of disruption to their lives which inform the Court's decisions in these matters.

The Children Act 1989 – Public Protections for Children in Need

As well as directing judges to place the best interests of children as their paramount consideration on the event of divorce and/or separation of parents, the Children Act also provides that local authorities take steps to protect children from harm, and to remove them from their homes if necessary to do so.

Section 47 of the Children Act places local authorities in a position of responsibility when it comes to caring for children in their area. There is a duty under the Act to "safeguard and promote the welfare" of children in need. A child in need is one whose health or development "is likely" to be significantly impaired. The practicalities of how authorities are to respond to a child in need varies depending on the circumstances, and can range from supporting parents to removal of the child from the home on a permanent basis.

Among the powers available to local authorities to assist them in cases of children in need are the powers to apply for a care or supervision order to protect a child. A court will make these orders only if the local authority can show that the child "is suffering, or is likely to suffer, significant harm". This harm should be attributable to the care of the parent, or the child being outside of the parents' control. These are the minimum requirements. Case law in this area has determined that the possibility of significant harm means "a real possibility, a possibility that cannot sensibly be ignored".

In 2011, the London Safeguarding Children Board – which provides advice, guidance, and support to London councils in regard to child safety – issued guidelines on the application of their powers when dealing with cases of children in need. We will focus particularly on the guidance given on the issue of domestic violence.

The Home Office definition of domestic violence is "any incident of threatening behaviour, violence or abuse (psychological, sexual, financial or emotional) between adults who are or have been, intimate partners or family members, regardless of gender or sexuality". The guidance provides that "children of all ages living with a mother who is experiencing domestic violence, are vulnerable to significant harm through physical, sexual, emotional abuse and/or neglect". Significant harm has been defined as "a situation where a child is suffering, or is likely to suffer, a degree of physical, sexual and/or emotional harm (through abuse or neglect) which is so harmful that there needs to be compulsory intervention". This was redefined in 2005 to include "the harm that children suffer by seeing or hearing the ill-treatment of another, particularly in the home".

The guidance describes how professionals, such as doctors, teachers, sexual health professionals and GPs should prepare a plan for mothers and children to be made safe if they have been subjected to domestic violence. It goes on to state that if a mother chooses to stay within a violent relationship; a multi-agency assessment should be carried out with regard to the safety of the children.

The above paragraphs briefly describe some of the protections provided to children by the state and offers guidance on the protection of children at risk of violence. While the presence and operation of Sharia tribunals in the matter of child residence (custody) does not exclude the protections available in the Children Act 1989 or make them unavailable to children within Muslim communities, there is arguably a possibility that the accommodation and expansion of an exclusive system of family law for Muslims risks taking children out of the mainstream family law system in Britain and therefore denying them many of its protections. This is particularly worrying given the attitude to domestic violence voiced by Sharia advocates and practitioners in Britain.

Sharia Law and Domestic Violence

Shaikh Haitham al-Haddad is a member of the Islamic Sharia Council and a Sharia Council 'judge' in London. In a speech entitled 'Why Marriages Fail' Shaikh a-Haddad made the following observation:

"A man should not be questioned why he hit his wife because this is something between them. Leave them alone. They can sort out their matters among themselves. Even the father of the daughter who is married to the man, he should not ask his daughter why you have been beaten or hit by your husband".²

2. See, <http://standforpeace.org.uk/sfp/?p=303>

Sheikh Faiz-ul-Aqtab Siddiqi is a spokesman for the Muslim Arbitration Tribunal (MAT) headquarters in Warwickshire. In 2008, the Telegraph reported that Sheikh Siddiqi stated, with regard to the domestic violence cases being heard by the MAT, that the judges ordered husbands to take anger management classes and mentoring from community elders. There was no further punishment and criminal complaints lodged with the police were often withdrawn following rulings by Sharia courts.

In an interview with the BBC in the same year, Sheikh Siddiqi claimed:

“we do not get involved in any criminal cases, but the only sort of remit we are looking at at the moment, and we are discussing it with the authorities like the CPS and the police at the moment, is where we desire to give – in the case of domestic violence, primarily it’s a woman though sometimes it is a man as well – the opportunity to look at an alternative form of resolution”.

In October 2010, the President of the Islamic Sharia Council, Sheikh Maulana Abu Sayeed stated that rape within marriage is “impossible”. He explained:

“(Marital rape) is not an aggression, it is not an assault, it is not some kind of jumping on somebody’s individual right. Because when they got married, the understanding was that sexual intercourse was part of the marriage, so there cannot be anything against sex in marriage. Of course, if it happened without her desire, that is no good, that is not desirable. But that man can be disciplined and can be reprimanded”.³

In a film produced by the Guardian newspaper in 2011, Dr Suhaib Hasan, Secretary of the Islamic Sharia Council, asked a woman who had approached the council whether her husband had ever hit her. She replied that he had hit her once. Dr Hasan laughed and stated “only once? So it is not a very serious matter”.

The above examples demonstrate a stark contrast between how Sharia law approaches domestic violence and the laws and protections of England and Wales. This is not only evident in terms of the protections provided by the Children Act with regard to violence in the home, but also the provisions of the Family Law Act which allow women to apply for injunctions against violent partners (Non-Molestation Order) or for an order to remove a violent husband from the home (Occupation Order).

Various concerns stem from these attitudes to domestic violence. However it must be made clear that Sharia bodies such as these do not legally prevent any person from approaching the British legal system for protection. There are growing concerns however that people, women in particular, are pressured and coerced in to choosing to be governed, in matters of family law, by Sharia councils and tribunals. The volume of cases being heard by Sharia councils in Britain has led some to voice concerns about the possible emergence of a parallel social and legal system for Muslims, which is distinct from that of the non-Muslim majority.

A Parallel System

One of the concerns often raised about the use of Sharia in Britain, with regard to marriage and divorce, is the lack of registered marriages within Muslim communities. Neil Addison, who is a practising barrister, has claimed that Islam is unique among religions in Britain in failing to register marriages carried out at mosques. He claims “No Christian church will perform a religious marriage unless there is a registrar present or there has been a previous civil ceremony. Synagogues, Sikh Gurdwaras and Hindu Temples register under the Act to provide couples with the full protection of the law”⁴. Unregistered marriages mean fewer rights, particularly with regard to property and finances, if that marriage then comes to an end – this is because the couple were not deemed to be married under UK law.

In 2011, the BBC reported an increase in the number of polygamous marriages among British Muslims. British law allows a person to marry only one partner at a time and any breach of this amounts to the crime of bigamy – which can carry a prison sentence. However, as these marriages are taking place outside of the established British system of family law, they are unrecognised and therefore only deemed valid under Islamic Sharia law. Under Sharia law women can be divorced summarily and, as we have seen, can lose custody of, or contact with, their children from a preset age. In 2010, One Law for All reported the case of a woman who had been married under Sharia law and lost custody of her children in the divorce that followed. When she eventually approached UK law in an attempt to regain custody of her children, the UK courts found that the children had lived for so long with their father that to remove them now would not be in their best interests. In this woman’s case, the custody rights of her children had been lost as a direct result of her marriage and divorce taking place under Sharia rather than English law.

3. The Daily Telegraph, 15 October 2010, see <http://www.telegraph.co.uk/news/religion/8064571/Rape-within-marriage-is-impossible-claims-Muslim-cleric.html>

4. Lapid Media, 5 August 2009, see <http://www.lapidomedia.com/government-fails-muslim-women>

The criminal code of Sharia law is one area which causes great controversy across the globe. Its punishments include death for homosexuality and adultery, and the amputation of hands for theft. Though most Sharia practitioners in Britain deny any desire to implement Sharia's criminal codes here, there are signs that this position may be ambiguous. In an article in the Telegraph in 2008, Sheikh Siddiqi of the Muslim Arbitration Tribunal said he hoped that Sharia bodies in Britain would eventually expand in to "smaller" criminal cases. It is known for example that at least one case of stabbing has been dealt with through the Sharia system. As has been outlined, Sharia councils and tribunals are deciding upon cases of domestic violence and rape (both criminal matters) and that complaints have been withdrawn from the police following such rulings in Sharia courts.

Leaders of Sharia bodies have also expressed a wish for the full criminal code to be imposed in Britain, and for legal and political dominance. For example, Dr Suhaib Hasan said:

"If Sharia law is implemented, then you can turn this country into a haven of peace because once a thief's hand is cut off nobody is going to steal. Once, just only once, if an adulterer is stoned nobody is going to commit this crime at all. We want to offer it to the British society. If they accept it, it is for their good and if they don't accept it they'll need more and more prisons".⁵

Given the expansion of Sharia law in Britain, and the attitudes of those driving this expansion, questions must be raised as to the future of Sharia and the future of the concept of a single legal system applied to all citizens equally. There is a danger that the democratic principles underlying the UK's legal system are at risk.

5. Sharia Law in Britain: A threat to one law for all and equal rights, One Law for All, June 2010, page 5

Sharia Law in the UK: Compromising the safety of women and children

Fionnuala Murphy, IKWRO

The Iranian and Kurdish Women's Rights Organisation is a registered charity which provides advice and support to women and girls from the UK's Middle Eastern communities. The main issues facing the women we work with are domestic abuse, forced marriage and "honour" based violence.

Many of IKWRO's clients need assistance with family law issues such as child residence and divorce. While IKWRO is a secular organisation a large proportion of our clients are Muslims and some of them have resorted to religious dispute resolution.

In the UK a number of bodies are involved in dealing with family disputes including applications for Islamic divorce. The London-based Islamic Sharia Council (ISC) provides Sharia 'judgements' and advice in accordance with the four Sunni schools of thought, and primarily handles marital disputes and divorces. The Muslim Law (Sharia) Council UK also provides advice, marriage and divorce services. Muslim Arbitration Tribunals (MATs) have claimed a wider remit and adjudicate on civil and commercial cases involving disputes in relation to debt, commerce and inheritance. Many Muslims also use more informal mechanisms, such as meetings in local mosques, in order to resolve disagreements.

Among women IKWRO has worked with, the main reason for using religious dispute resolution is to obtain an Islamic divorce. This will often involve wider investigation into why the woman wants to end her marriage, touching on issues such as domestic violence and forced marriage. It can also involve discussions concerning child residency after a divorce and how decisions about the children's upbringing will be taken. IKWRO has three main concerns about religious dispute resolution in relation to cases involving these issues:

Inappropriate responses to women and children who have experienced domestic violence

Women and children from ethnic minorities can be especially vulnerable to domestic violence, both because they are less able to seek help (e.g. due to lack of knowledge of their rights, insecure immigration status or language barriers) but also because of cultural attitudes to domestic violence. Many of the women IKWRO works have been brought up to believe that they should accept violence as part of family life. They are often expected to make their marriage work, even where they and their children are experiencing severe abuse. If they decide to leave an abusive husband they can face great stigma from the community as well as pressure, and even threats, from their family. In many cases they will approach religious leaders for help in dealing with their husband's abusive behaviour before seeking other kinds of support.

Many of IKWRO's clients have at some stage gone to an Imam for help. In most cases, they were not offered any practical advice or assistance to enable them to protect themselves and their children – for example help with accessing safe housing. Instead, the emphasis was placed on preserving family unity.

Leila's experiences outlined by IKWRO in Part 2 are not out of the ordinary. In fact they are very much reflected in the domestic violence section of the MAT website, which despite its subject matter offers no practical advice to women or children who are experiencing abuse at home. The first three paragraphs concentrate on questioning whether domestic violence is really a problem in the Muslim community. The MAT then goes on to acknowledge that some Imams are reluctant to address the issue because they believe that "the practise of domestic abuse derives legitimacy from the Islamic scriptures". The MAT does not state that this belief is incorrect, but instead vaguely says that its intention is "to dispel certain myths about Islam and domestic abuse and also to discuss avenues for tackling the problem".

In 2008 Sheikh Faiz-ul-Aqtab Siddiqi, founder of the Muslim Arbitration Tribunal, was quoted in The Sunday Times as saying that MAT had dealt with six domestic violence cases.⁶ In each of the cases the women withdrew complaints they had made to the police and the husband was ordered to attend anger management classes and to receive mentoring from community elders. The MAT webpage on family disputes gives more detail on the MAT's role in encouraging withdrawal of criminal complaints:

"Where there are criminal charges such as assault within the context of domestic violence, the parties will be able ask MAT to assist in reaching reconciliation which is observed and approved by MAT as an independent organisation. The terms

6. The Sunday Times, 14 September 2008

of such a reconciliation can then be passed by MAT on to the Crown Prosecution Service (CPS) though the local Police Domestic Violence Liaison Officers with a view to reconsidering the criminal charges.”

The “advantage” of this approach according to Sheikh Faiz-ul-Aqtab Siddiqi is that marriages are saved and couples given a second chance. IKWRO is very concerned about the obvious disadvantages in terms of the risk posed to the safety of women and children.

One Law for All’s last report, Sharia Law in Britain, found that of the women who went to bodies applying Sharia with cases involving domestic violence, 40 per cent actually had court orders against their husbands on the grounds of violence. These orders are aimed at protecting women and their children from violence and ensuring their health, safety and well being. It is extremely worrying that bodies involved in applying Sharia law are convening hearings in violation of these orders.

Furthermore, the MAT seems to be suggesting that violence against women and children can be dealt with simply by a person in authority telling an abusive man to change his behaviour. In reality, for men to change abusive behaviour they need to face serious legal ramifications and to go through a credible offender programme which has been proven to be effective. Mentoring from an Imam or anger management classes, which are being presented as solutions by the MAT, will not address the underlying reasons why men are abusive to their wives and children, and will not challenge the assumptions that men are entitled to control and discipline their wives and other family members. IKWRO is concerned that while operating with a semi-official status, many MAT members appear to have no understanding of effective ways to deal with violence against women and children. In some cases religious leaders have shown not just an ignorance of how to tackle the problem, but an ideological position which is hostile to the idea that women have a right to take control of their own safety and that of their children. A short film made by the Guardian using footage from inside a Sharia Council shows a Sheikh telling a woman that if her husband has only hit her once, it is “not a serious matter”. As one woman told IKWRO:

“If you go there and say you have been a victim of domestic violence they look at you like you’re a nuisance, or like you’re dirty. They don’t have any respect for you. The Sheikh wouldn’t even look me in the eye.”

Violence against women and children is a serious crime which has wide-ranging consequences for those affected and for wider society. IKWRO has concerns that religious dispute resolution is not an appropriate means to deal with violence against women and children. These concerns are echoed in the 2009 UN Handbook for legislation on violence against women, which recognises that religious courts can present problems in relation to violence against women and that they have “been seen to preclude the survivor from seeking redress within the formal justice system”. The handbook recommends that “where there are conflicts between religious law and the formal justice system, the matter should be resolved with respect for the human rights of women and in accordance with gender equality standards”.

From the provisions of the Arbitration Act 1996 bodies engaging in religious arbitration are not permitted to adjudicate on criminal cases such as those regarding violence against women and children. At present the MAT are openly engaging in disputes where a crime has been recorded and charges have been brought. IKWRO believes that MAT and other arbitration bodies are going beyond their legal remit by adjudicating on situations where a criminal prosecution is pending. We recommend as a matter of urgency that the UK government regulates the activity of the MAT and other bodies involved in religious arbitration to ensure that they abide by the provisions of the Arbitration Act which excludes criminal cases such as cases where violence against women and/ or children has occurred.

Involvement in disputes relating to child residence and contact

The MAT and Muslim Law (Sharia) Council UK websites do not mention any involvement in decisions relating to children or to child residence. The website of the Islamic Sharia Council (ISC) does have a page which sets out the Islamic perspective on child custody after divorce. Provisions of note include;

- Custody of young children goes to their mothers, but fathers retain “legal guardianship”.
- If a mother remarries after the divorce she forfeits custody of children.
- The period where children live with their mother ends once the child reaches a certain age, which varies from 7 to marriage depending on the gender of the child and the school of Islamic thought.

In response to the Arbitration and Mediation Services (Equality) Bill the ISC published a statement on its website arguing that it advises clients to approach the family courts to settle child custody disputes. However, elsewhere on the same website the ISC states, in relation to child custody, that:

“Whether the child stays with the mother or the father the other party must have a full right to see the child on agreed terms. If any of the parties is reluctant for the other party to see the child on a regular basis the council regrets not to proceed with the application of divorce”.

In other words the ISC actually makes both parents agree that the other can have contact with children as a pre-condition to the granting of Islamic divorce. Even if such agreements are not legally binding, there will be a significant amount of pressure on women to comply.

The ISC also goes on to say that currently the “family courts are overlooking father’s rights” and argues that “all major decisions affecting the life of children should be taken in consultation with both mother and father even after separation or divorce”. In reality, this approach could pose very real risks to children who have been abused by their fathers or have seen their mothers abused by them. Furthermore, it ignores the fact that contact with children and involvement in decision-making about their lives can be used by men as a means to re-victimise their former partner and perpetuate abuse.

IKWRO is concerned that the ISC requires women to agree to child contact arrangements or to involve an abusive parent in making decisions about a child, when this may be against the child’s best interests and in contravention with key principles of UK legislation on protecting children. As set out by the Children Act 1989, in all decisions regarding the upbringing of a child, the child’s welfare should be the paramount consideration.

The concept of welfare is not defined in the Children Act 1989. But in decisions relating to child residence and contact a number of factors known as the ‘welfare checklist’ are used by courts in the UK to help them make decisions about children, particularly in relation to whether they should live with or have contact with one or both parents. The checklist includes factors such as the physical, emotional and educational needs of the child, any harm which the child has suffered or is at risk of suffering and the wishes and feelings of the child.

On their website the ISC claim that “family courts in the UK and west in general are broadly in conformation with Islamic Law of custody”. This statement is extremely misleading, given that the provisions on child custody set out on that same website are not based on the fundamental principle of protecting children’s welfare.

The Law Lords have recognised that Sharia Law conflicts with the right to family life, as protected under Article 8 of the Human Rights Act 1998 and the European Convention on Human Rights. In 2008 they ruled that a woman could not be returned to Lebanon where she would be separated from her son under Sharia Law. The woman – referred to as EM – had looked after the boy since he was born, but was in danger of being separated from him under laws that automatically award fathers custody of their children from the age of seven. Lord Bingham called the system ‘arbitrary and discriminatory’ while Lord Hope described it as ‘created by and for men in a male dominated society’.

The provisions of the Arbitration Act 1996 are clear that bodies engaging in religious arbitration cannot adjudicate on family law cases which include disputes relating to child residence and contact. IKWRO believes that religious dispute resolution is not an appropriate means to resolve complex questions of child welfare, particularly in situations where there has been abuse against the children or their mother. We recommend that the provisions of the Arbitration Act are regulated, in order to ensure religious arbitration tribunals do not take cases which relate to children’s welfare including adjudicating on child residence and contact disputes.

Harmful attitudes and practises in relation to forced marriage

Under UK law forced marriage is defined as “a marriage in which one or both parties do not (or in the case of some adults with disabilities cannot) consent to the marriage and duress is involved. Duress can include physical, psychological, financial, sexual and emotional pressure.” Forced marriage is a violation of human rights in itself, because it deprives victims of the ability to choose their own partner and to make basic decisions about their lives. It also leads to many other human rights violations including imprisonment, rape, and domestic violence. Under the Forced Marriage (Civil Protection) Act 2007 and the pursuant statutory guidance on forced marriage, all public bodies have a statutory duty to protect individuals at risk of forced marriage.

Statistics suggest that forced marriage is a serious problem in the UK. The Forced Marriage Unit, a branch of the UK Foreign and Commonwealth Office, dealt with over 1700 cases of forced marriage in 2010. The majority of the victims are young women, and IKWRO has worked on forced marriage cases involving girls as young as 13.

The MAT is also involved in forced marriage cases and sets out their approach on the forced marriage page of their website. The focus of that page is not on assisting victims of forced marriage (indeed it makes no mention of what action will be taken to protect young people who are at risk or have been the victim of forced marriage) but rather on ensuring

that in marriages where one of the parties is not from the UK, the MAT can issue a certificate certifying that the marriage has not been forced, in order to help them obtain a spousal visa. This fact in itself is unlikely to instil confidence in victims of forced marriage or encourage them to come forward.

In their report *Liberation from Forced Marriages* the MAT goes on to make claims that the incidence of forced marriage between spouses who are both resident in the UK “is remote, as usually both parties have had some say ... and an opportunity to get to know one another”. In fact the vast majority of IKWRO’s forced marriage cases relate to situations where both parties are already living in the UK.

The report also provides further detail on how the MAT proposes to intervene in situations where a party is applying to enter the UK for the purposes of joining a spouse. In order to reach their decision on whether coercion has taken place, the MAT first interviews the potential victim’s family. This approach conflicts with the Forced Marriage Unit guidelines on forced marriage which unequivocally advises against consulting the family of a potential victim of forced marriage. In IKWRO’s experience involvement of the family will deter a victim from speaking about what has happened to them, and can put them in significant danger.

Following this, the person who normally lives in the UK has to make a voluntary deposition stating that the marriage has not been forced. On the basis of this the MAT will make a written declaration that it is satisfied that no force has occurred. The MAT argues that there is no likelihood that a person might be forced to make this deposition, claiming that the party could simply abstain if they wished to.

The MAT then goes on to describe what action it will take in cases where a marriage has been forced, including sending the family a written warning or asking a community elder to visit them. Again, all of this goes against the advice of the Forced Marriage Unit and, in IKWRO’s experience, could put the victim at risk of harassment or violence.

The MAT report repeatedly claims that it is the ideal body to tackle forced marriage and argues that the problem “would not benefit an official, judicial or governmental jurisdiction. Any such attempts would be deemed by the community as infringement of their civil liberties and the government placing further obstacles prejudicing the Asian community”. Forced marriage is a violation of human rights, and most often involves the commission of serious crimes. Protecting victims from these crimes must be the priority in any response to forced marriage, and IKWRO is extremely concerned that the MAT suggests that the community’s “civil liberties” in relation to the practice of forced marriage should take precedence over the protection of individuals from it.

We are also concerned at the definitions used by the MAT in their report on forced marriage, particularly the distinction they make between ‘coerced’ marriage where emotional pressure has been applied, and ‘forced’ marriage where other forms of pressure have been exerted. The statutory definition of forced marriage under UK law recognises emotional duress, but the MAT definition does not.

The UK definition also encompasses situations where the victim cannot consent – for example because they are under the age of 16. However the Centre for Islamic Pluralism interviewed some 90 Muslim women living in England and found a number of cases where Imams had encouraged victims of forced marriage “to stay with their husband or with their in-laws, whereby they have a duty bound under the Sharia”. The report documented the case of a girl who was forced into marriage at 13. She later consulted three Imams and each ruled that she was legally married according to Islam. When she requested an Islamic divorce this was refused and she was instead advised to go for counselling – thus placing the blame with her rather than with her husband or family. Similarly, a 15 year old girl in Pakistan was tricked into a phone marriage with a man in his 40s who had the mental age of a four-year-old. According to the study, the Home Office refused to recognise the validity of the marriage but the Islamic Sharia Council in Britain accepted it.

Given the examples set out above, IKWRO does not believe that it is appropriate for religious tribunals or councils, or for religious leaders, to adjudicate on forced marriage cases. Undoubtedly religious leaders have an important role to play in challenging forced marriage within their communities. However in the interests of victims – the majority of whom are young and vulnerable - we believe that cases of forced marriage should only be dealt with using the mechanisms and protections established by the Forced Marriage (Civil Protection) Act 2007 and the UK criminal courts. We strongly recommend that the UK government ensures that the Arbitration Act 1996 is consistently applied so that the issue of forced marriage is kept out of religious arbitration tribunals.

PART FIVE:
SHARIA LAW IN PRACTICE

Fatwa on Domestic Violence and the Rights of Women in Islam

Mark Durie

“Islamic states are instructed to ignore every article of any convention or covenant which is inconsistent with the Sharia”.

Dr Mark Durie is a theologian, human rights activist and pastor of an Anglican church. He has published many articles and books on the language and culture of the Acehnese, Christian-Muslim relations and religious freedom. A graduate of the Australian National University and the Australian College of Theology, he has held visiting appointments at the University of Leiden, MIT, UCLA and Stanford, and was elected a Fellow of the Australian Academy of the Humanities in 1992.

"In April 2009, the Islamic Fiqh Academy made a ruling entitled 'Domestic Violence'. This is a highly significant document which reflects a high-level consensus of leading Muslim scholars in the world today. It was clearly issued in the context of criticisms of Islam and Muslim societies for the treatment of women.

The Islamic Fiqh Academy (IFA) was established by the Organization for the Islamic Conference in 1981. It is comprised of 43 scholars, who are elite Islamic jurists of their respective nations. Many are chief justices or grand muftis of their nations. IFA's resolutions are in Arabic, and they can be found on their website at <http://www.fiqhacademy.org.sa/>.

IFA's aims are:

- to unite the Ummah (the global Muslim community, conceived of as a single nation, by conforming conduct to the norms of Islam at all levels, from individual to international);
- to apply Islam to contemporary problems;
- and to create a body of Islamic jurisprudence to meet the needs of modern life.

In IFA's deliberations, issues are subjected to extensive research, with prior distribution of papers, extensive consultation and discussion, before rulings are agreed upon and issued. These rulings are very distilled. The process "allows for a Muslim to see the final opinion without having to use up time and effort considering the research consultations that may extend to hundreds of pages".

Undoubtedly IFA speaks for the Islamic mainstream. In the words of Dr Abdul-Salam Al-Abbadi, Secretary General of IFA, it is intended to function as the 'supreme juristic reference for the Muslim world'. Furthermore, IFA's rulings have the backing of the OIC, which is one of the most significant groupings of states in the world today.

IFA's fatwa or ruling on domestic violence warrants detailed study. A translation into English is given below. A few key features are:

1. This fatwa represents the unapologetic assertion of the absolute authority of the Sharia over all understandings of human rights as they apply to women and the family, specifically including international human rights conventions and covenants. Islamic states are instructed to ignore every article of any convention or covenant which is inconsistent with the Sharia.
2. The fatwa upholds the right of a husband to beat his wife: wife-beating is specifically excluded from its definition of 'domestic violence', as long as the beating conforms to Sharia requirements. The memorable phrase 'non-violent beating' is coined to express this perspective. Note also the implied threat which warns against 'slander' in the context of resolving marital disputes (implying that a woman must not criticize her husband).

Here are some hadiths of Muhammad on wife-beating from Sunan Abu Dawud:

- Muhammad: 'When one of you inflicts a beating, he should avoid beating the face.'
- Muhammad: "A man will not be asked as to why he beat his wife." – This principle means that a man cannot be required to answer to a Sharia court for beating his wife.

- Muhammad: “Do not beat your wife as you beat your slave-girl.”
- Muhammad: “They are not the best among you.” – said of women who complained to Muhammad when he gave permission for their husbands to beat them.

3. This fatwa also upholds the right of a husband to rape his wife, for it is not ‘domestic violence’ for a man to insist upon his conjugal rights (section 2(F)). The key term *ihsan* ‘preservation’ is very difficult to translate into English. It is derived from the root *h.s.n* which means to fortify or make something inaccessible by building a fortified wall around it. A ‘fortified’ woman is a married woman who has a husband to protect her. He also has conjugal rights over her (as she is kept inside his fortress). The meaning of *ihsan* is defined by Lane as: ‘With the lawyers, *ihsan* means the act of *coitus conjugal* in a case of valid marriage.’ This fatwa is written in legal language, so what 2(F) is saying is that it is not domestic violence for a Muslim man to ‘fortress’ his wife, and force her to have sex with him, even if she is unwilling.

4. The fatwa also upholds the right of a male guardian to contract the marriage of a virgin female (2(H)): he has the right to marry her to another. Muhammad said that a virgin gives permission to a marriage ‘by her silence’: in practice this often means the guardian has the sole say over who she will marry.

5. The fatwa also implicitly upholds the Sharia’s laws concerning the treatment of adulterers (2(A)).

6. The fatwa endorses a husband’s guardianship over his wife: this means that he legally controls her in many respects.

7. There is implacable opposition to principles of equality between the sexes.

8. The right of women to move around freely in public without a supervising male is rejected as contrary to Sharia law.

9. The fatwa upholds Sharia law’s non-reciprocal approach to divorce, which make it easy for man to divorce his wife, but very difficult for a women to obtain a divorce, except through a difficult legal process. (In fact Arabic has two different words for these: a divorce initiated by a man, and one initiated by a woman are regarded as two quite different things.) If a man divorces his wife, this is *halal* ‘permitted’ – although dispreferred – but if a woman divorces her husband without “just cause”, this is a mortal sin:

Muhammad said: “If any woman asks her husband for divorce without some strong reason, the odour of Paradise will be forbidden to her.” (Sunan Abu Dawud).

Conclusion

This fatwa implicitly upholds many other aspects of Sharia law which are opposed to women’s rights. An example is the rule that if a woman sues for divorce for excessive beatings, she must return the bride price he paid for her (i.e. she must pay him to win her divorce). Another is the shockingly humiliating law that a woman irrevocably divorced by her husband can only remarry him after she has married another, had sexual relations with the new husband, and been divorced by him (or he dies first). These regulations, and the way in which they work to deny women basic rights of safety and equality before the law have been well-documented by others and can be found in Islamic legal texts, but deserved to be better known. This fatwa upholds such conservative time-honoured principles of Sharia law without conceding an inch to modern understandings of human dignity or human rights."

Birmingham Central Mosque's Sharia Council

In consultation with Birmingham Central Mosque's Sharia Council regarding the Arbitration and Mediation Services (Equality) Bill, Charlotte Proudman visited the Sharia Council and observed three mediators presiding over 20 divorces in one day. All the divorce applicants were women.

Background

Established in the late 1990s, the Sharia Council rules mainly on Islamic divorce. However, they hope to establish a parallel Sharia legal system in the UK, through which they will engage with all areas of law.

Three people decide on Islamic divorce. They do not have any legal qualifications. The Sharia divorce applicants are not informed of their professional status or qualifications.

Having attended a number of Sharia councils in England, it is important to note that all Sharia councils are distinct in their approach to Islamic divorce. The cost of an Islamic divorce varies from one Sharia council to another. The cost of an Islamic divorce at Birmingham Central Mosque's Sharia Council is £200 (£100 at the application stage and a further £100 is payable when a divorce certificate is issued). The Sharia Council rule on at least 20 Islamic divorces in one day of each month, thus the minimum amount the Sharia Council earns per month is £4,000, equating to £48,000 per annum.

Outlined below are the two Islamic divorce processes conducted by Birmingham Central Mosque's Sharia council: first, the Islamic divorce process appropriate to parties who have entered into an Islamic marriage (Nikah contract) but have not registered their marriage under English law; and, second, the Islamic divorce process appropriate where the petitioner has obtained a divorce (decree absolute) from the English courts.

Islamic divorce process: Nikah contract but no marriage recognised by UK law

Growing numbers of Muslims are entering Nikah contracts without registering a marriage under UK law. Sadly many Muslims believe their Nikah contract is registered under English law, only to discover upon divorce that they are merely cohabitants with no matrimonial legal rights. When there is a valid Nikah contract but the marriage is not registered under English law, Birmingham Central Mosque's Sharia Council implements a gender distinct procedure for Islamic divorce.

Petitioner: Husband

Men can divorce their wives unilaterally by pronouncing talaq three times either consecutively or on three separate occasions depending on the Islamic school of thought by which the married couple abide. Wives do not have the right to reject their husband's talaq.

The husband and/or the wife may apply to the Sharia council for an Islamic talaq certificate for a sum of money, which can be used as evidence that the couple are now divorced.

Petitioner: Wife

Unlike men, women cannot unilaterally divorce their husbands. As a result, 98% of Islamic divorce petitioners at Birmingham Central Mosque are women.

When a wife approaches the Sharia Council to obtain a divorce she is asked to complete an application form. Upon completing the application stage, the petitioner will be invited to meet with the Sharia Council's reconciliation unit to discuss the marriage breakdown.

Following the reconciliation meeting, the Sharia Council will send the respondent up to three letters, putting the respondent on notice of the petitioner's divorce application and requesting an immediate response. If the respondent replies to the Sharia Council's letter, a joint reconciliation meeting between the parties will be arranged, providing both parties agree.

In the event that the respondent does not reply to any of the Sharia Council's letters or the joint reconciliation meeting is

unsuccessful, the next stage involves the parties presenting their case before a panel.

Both the petitioner and respondent are asked to bring to the final hearing two witnesses to the events surrounding the marital breakdown. If they are unable to produce two witnesses they must provide reasons for their failure.

Three Sharia law practitioners sit at Birmingham Central Mosque on one day of each month. During their sitting they often rule on over 20 divorces.

The panel always emphasise the importance of marriage and reconciliation. If the petitioner and respondent have children of the family, the petitioner will be asked about current contact arrangements. The panel emphasise the importance of contact and appeal to the mother to facilitate contact. However, Birmingham Central Mosque does not have jurisdiction to rule on child related matters, as jurisdiction is reserved to the civil courts. Therefore the Sharia council can only emphasise the importance of contact, it has no power to enforce it.

On the basis of the case presented to them, the panel will decide whether the petitioner should be granted a Sharia divorce. When the divorce is finalised the petitioner and respondent are issued with an Islamic divorce certificate.

Islamic divorce process: where the petitioner has obtained a divorce (decree absolute)

Upon obtaining a divorce (decree absolute) from the English civil courts, the husband or wife may apply to Birmingham Central Mosque's Sharia Council to obtain an Islamic divorce. The Sharia Council will then issue the petitioner and respondent with an Islamic divorce for a sum of £200. In the event that the respondent wants to object to the petitioner's application for an Islamic divorce, the respondent is entitled to make representations before the Sharia Council but it is most unlikely the Sharia Council would refuse to issue an Islamic divorce as a decree absolute demonstrates that reconciliation is highly unlikely.

Islamic-Sharia Council

In consultation with the Islamic-Sharia Council, Leyton regarding the Arbitration and Mediation Services (Equality) Bill, Charlotte Proudman visited the Sharia Council to meet with Dr Suhaib Hasan at the Islamic-Sharia Council. Charlotte also observed Dr Hasan ruling on two Islamic divorces. In both cases the applicants were women.

Legal Disputes

The Islamic-Sharia Council has been operating since 1982. The Council states that it rules on all matters of Muslim personal law including marriages, divorces, child residence and contact, inheritances and financial and business disputes. Many of the areas that the Islamic-Sharia Council decides upon (e.g. child disputes) are the legal jurisdiction of English courts.

Islamic Divorce

Cost

The Islamic-Sharia Council issue talaq divorces for husbands at a cost of £200 and khula divorces for wives at a cost of £400. This is a form of gender discrimination that appears to be contrary to the Equality Act 2010. According to Dr Hasan 52 women apply for an Islamic divorce each month from the Islamic-Sharia Council at a cost of £400 per application. The Islamic-Sharia Council are therefore earning over £20,800 per month, and £249,600 per annum. This amount does not include the money earned from talaq certificates and the range of other disputes they decide upon from business matters to child residence and contact disputes.

Talaq – divorce initiated by the husband

Dr Hasan explained that the Islamic-Sharia Council only issue a talaq divorce if the husband applicant attends the Sharia Council with two witnesses (wives are not asked to attend) and the husband has paid any outstanding dowry amount to the wife. Dr Hasan explained that the Islamic-Sharia Council complements the English legal system by ensuring that husbands pay any outstanding dowry amount to their wives before issuing the husband with a divorce.

In fact the English legal system can order husbands to pay any outstanding dowry amount to their wives either upon financial divorce proceedings or through a contract law claim in the English civil courts. In reality only a minority of husbands apply to the Council for a divorce certificate because they have the right to unilaterally divorce their wives. Wives are not even invited to the Council to make representations regarding their husband's talaq application thus there is no way of ascertaining whether husbands have paid any outstanding dowry amount when their wives are not present to give evidence.

Khula – divorce initiated by the wife

Prior to issuing wives with a khula, there will be an attempt to reconcile the parties by inviting elders from the husband's and wife's side. The Council insists on reconciliation and mediation even though they have not undertaken any formal training. I am aware of situations where there has been an insistence on mediation between spouses with a history of domestic violence and the mediation resulted in increased violence.

If the parties are unable to reconcile the wife must bring along two witnesses to corroborate her version of events. If the spouses have children, the wife must sign a 'solemn declaration' form indicating that she agrees to allow her husband to see their children.

Solemn Declaration

Many women are forced to sign 'solemn declarations' permitting contact between children and their fathers in situations where questions are not even asked to ensure that contact is in the children's best interests. Many women are unaware that the 'solemn declaration' is not legally binding under UK law. However, they comply with the form as the declaration makes clear that the Islamic-Sharia Council can and will revoke Islamic divorces where mothers refuse contact. It's important to emphasise that all child-related matters are strictly reserved for the English courts.

Dowry

The wife must also return any dowry amount given to her by her husband. Even in situations of domestic violence, rape or polygamy, the wife must return her dowry to her husband because she is the divorce petitioner. This rule is unjust for women.

Maryam's Divorce Application

I observed Dr Hasan rule upon Maryam's divorce. As Maryam walked into Dr Hasan's room, he did not greet her with a 'hello' or a smile, he did not even look at her. Maryam was clearly distressed by the situation as she sat crying but Dr Hasan did not attempt to reassure her or put her at ease.

Maryam had a unique marriage certificate in that it permitted her to obtain an Islamic divorce unilaterally. Maryam had already gained a divorce (decree absolute) from the English civil courts. However, the Islamic divorce process had still taken over 6 months. Maryam was also owed a £2,000 dowry by her husband. There was no attempt to deal with the dowry issue or refer her to the English courts where she could have pursued a contract law claim to obtain her outstanding dowry payment.

Dr Hasan continued to encourage her to reconcile her marriage. When Dr Hasan asked her why she didn't want to return to her husband, she said: "I have given him many chances, I don't want to". I asked her why she left her husband. She explained he was violent towards her. With a sharp look I knew Dr Hasan did not want me to pursue this line of questioning any further.

Dr Hasan asked Maryam to sign a solemn declaration form permitting contact between her two children and their father. Maryam explained that her children saw their father twice a week in a contact centre. Dr Hasan asked no further questions regarding child contact. I asked Maryam why a contact centre was necessary, she explained that there were numerous injunctions in place because her husband was violent towards her and her children, so the court ordered supervised contact in a contact centre. Dr Hasan asked no further questions.

Fatwas

The Islamic-Sharia Council issues numerous fatwas (Islamic rulings) every week. All fatwas are uploaded onto their website.

I came across a "Denying Husband's Marital Rights" fatwa outlined below on their website.⁷ I discussed the fatwa with Dr Hasan as I was concerned that the fatwa condones marital rape. According to the fatwa it is a wife's duty to have sexual intercourse with her husband whenever he desires sexual intercourse. Dr Hasan explained that "marital rape is a western type of emotion" and marital rape does not exist in Islam.

"Denying Husband's Marital Rights."

Question: what is the ruling regarding a couple where the wife had suffered abuse in childhood and due to that she refuses to respond to her husband's sexual needs. The husband himself has recently been affected by some bad thoughts relating to the abuse. He has several kids from her. How long can the husband put up with that and for how long can he stay with her?

Answer:

Narrated by Abu Hurayrah that the prophet said, "if a man calls his wife to his bed and she does not come, and he goes to sleep angry with her, the angels will curse her until the morning." This narration should be enough to make any woman pay heed to the severe warning by the prophet that the angels curses are upon those who do not respond to husbands sexual needs because the purpose of a woman is to fulfil that. It is the woman's duty to respond to her husband's requests for conjugal relations. She should not give silly excuses and try to avoid it. The prophet said "if a man calls his wife to his bed, let her respond, even if she is riding her camel (ie. very busy)." Reported by Al-Bazzar The prophet said, "if a man calls his wife, then let her come, even if she is busy at the oven".

Reported by Tirmidhi Narrated by Jaabir the prophet said "if anyone of you is attracted to a woman, let him to go his wife and have intercourse with her, for that will calm him down" reported by Muslim.

Conclusion: After this advice, if your wife should persist upon not responding to your sexual needs then you should divorce her."

The Future

The Islamic-Sharia Council hopes to raise awareness of their work. They are working with Regents Park mosque towards regularising Sharia Councils, so that all Councils have one unified procedure. Further they are working towards opening [a Sharia appeal court](#).

7See <http://www.islamic-sharia.org/marriage-fatwas-related-to-women/denying-husbands-marital-rights-2.html>

Dewsbury Sharee Council

The Dewsbury Sharee (or Sharia) Council was established in 1994 to resolve legal disputes for Muslims. I attended an Islamic divorce final hearing at the Sharee Council with Sania whose case is outlined elsewhere in this booklet. Sania is a forced marriage victim. She obtained non-molestation orders from English civil courts and forced marriage protection orders for her four daughters in order to protect herself and her daughters from her husband. With an abundance of evidence indicating that her marriage was forced, Sania applied for an Islamic annulment of marriage rather than an Islamic divorce on the basis that the marriage was flawed at the point of inception and therefore was never capable of recognition. On the facts of her case she would be entitled to apply for an annulment of her (forced) marriage through the English courts.

Dewsbury Sharee Council contacted Sania and asked her to bring along two Muslim male witnesses to the final hearing to corroborate her version of events. Sania had explained to the Sharee Council on a number of occasions that her family had disowned her and as a result she has been ostracised from the Muslim community.

Prior to the final hearing someone from the Dewsbury Sharia Council, who purports to be a trainee solicitor and mediator, although he was unable to provide copies of his qualifications, telephoned me. He was extremely abusive as he attempted to intimidate me in a bid to prevent me from attending the Sharee Council to support Sania.

Final Hearing

Sania and I attended the Sharee Council along with Sania's close Muslim friend, Ania, who was able to corroborate Sania's version of events.

On arriving at the Sharee Council six Muslim men insisted on speaking with Sania alone for 30 minutes. When Ania and I were invited to also speak we were informed that Sania had told them during their "private" discussion that her marriage was not forced. Sania denied this.

Sania was refused an Islamic annulment of marriage and instead it was insisted that a divorce would be granted. The Imam said to Sania: "It's right that you signed the Nikah (marriage) contract and there were two witnesses?" Sania replied: "Yes". The Imam then said: "Well your marriage is valid". I explained that the Nikah contract was never valid because her marriage was forced. Sania described the emotional coercion she experienced. The panel refused to accept that forced marriages exist. They appeared to have no comprehension of the concept of forced marriage. Towards the end of the hearing the men refused to speak in English and instead spoke in Urdu, leaving Sania to translate for me. They abruptly ended the hearing before concluding the issues.

After the final hearing I spoke with a member of the Council who informed me that he had no Sharia law or legal experience but was a "respected member of the Muslim community". Despite having no legal experience he told Sania that she did not need to apply for a divorce under UK law. He explained that all Sania needed to do was to file her Islamic divorce with Bradford Muslim Council. This demonstrates a lack of regard for English law and an attempt to work in parallel to English law. I then explained to Sania that this was incorrect, however, many other women who attend the Sharia Council would have believed this inaccurate statement and acted upon it.

The council member then explained that over 60% of all female divorce applicants experience "some force" to ensure that they enter into marriage. Despite this they never issue women with a certificate of annulment instead they issue women with Islamic divorces. Sania along with many other forced marriage victims who attend Dewsbury Sharee Council are provided with Islamic divorces but not annulments. By refusing to grant Islamic annulments of forced marriages Dewsbury Sharia Council is failing to recognise and rectify the wrongs of forced marriage.

PART SIX:
THE IMPACT OF THE BILL
ON OTHER FAITHS

SIKHS

The Inter Faith Network was founded in 1987 to promote good relations between people of different faiths in this country. I made enquiries as to whether Sikh courts operate in the UK. The Inter Faith Network has confirmed that there are no formal Sikh arbitration or mediation services operating in the UK.

BUDDHISTS

The Network of Buddhist Organisations aims to make known the principles of Buddhism and to encourage the study and practice of those principles. I made enquiries as to whether Buddhist courts operate in the UK. They confirmed that there are no Buddhist arbitration or mediation services operating in the UK.

HINDUS

The National Council of Hindu Temples UK (NCHT) was established in 1978 and is the oldest and one of the largest Hindu umbrella bodies, linking over 200 Hindu Temples and Faith Organisations. NCHT acts as a resource centre and one of the main consultative and advisory bodies on the matters relating to the British Hindu community, culture and religion. It regularly interacts with many government and statutory departments.

I made enquiries as to whether Hindu courts operate in the UK. They confirmed that there are no formal Hindu arbitration or mediation services operating in the UK.

DISCUSSION

The wide-ranging information gathered and presented in this booklet affirms the need for the Arbitration and Mediation Services (Equality) Bill. It is clear from the evidence that the desire of some religious adherents to settle their disputes in accordance with the relevant religious law extends into areas which are the proper preserve of the UK courts. Some religious arbitration tribunals are adjudicating on matters outside the arbitration framework.

Sharia Councils and the MAT

The information gathered from extensive interviews with Muslim women who have experience with Sharia Councils, with service providers helping Muslim women to use Sharia Councils and with lawyers, suggests many Sharia Council procedures are incompatible with the principles of UK legislation. For example, in child residence disputes Sharia law dictates that once the child attains the age of seven the child will reside with his or her father. To apply inflexible and arbitrary rules which are not based on any analysis of the child's best interests contravenes the principles outlined in the Children Act 1989. The Arbitration and Mediation Services (Equality) Bill addresses this issue by making clear that arbitration tribunals may not deal with matters of family or criminal law, such as custody of children or domestic violence.

The evidence here suggests that some Sharia bodies are falsely claiming to have powers which only the UK courts possess. Those that operate under the Arbitration Act are claiming jurisdiction over family and criminal law matters which the Act does not grant them. A variety of Muslim bodies are portraying themselves as being able to make legally binding decisions for members of the Muslim community. But in reality such bodies under UK law cannot adjudicate on family and criminal law matters. The Arbitration and Mediation Services (Equality) Bill addresses this issue by explicitly stating that 'falsely claiming legal jurisdiction' is a criminal offence. The maximum penalty would be five years in prison.

According to the evidence some Sharia proceedings are inherently gender discriminatory. For example, a woman's testimony is given less weight than a man's. The Arbitration and Mediation Services (Equality) Bill aims to tackle the problem of discrimination suffered by Muslim women within Sharia systems. For instance the Bill will firmly outlaw the practice of giving women's testimony half the weight of men's.

The Beth Din system

According to one solicitor the Bill "provides a welcome and timely opportunity to regularise existing practice, to codify best practice, and to ensure that the principles underlying the Bill are properly reflected in the practice of the Beth Din systems in this country".

Ultimately it is unlikely the Bill will impact upon the operation of the majority of Beth Din systems in the UK, as they do not purport to rule on family and criminal matters which belong to UK courts. It seems that the Bill would be an overall benefit to the efficiency and effectiveness of the Beth Din system.

Hindu, Sikh and Buddhist Dispute Resolution

Following enquiries with Hindu, Sikh and Buddhist networks, it seems that they do not exercise any form of alternative dispute resolution, therefore the Arbitration and Mediation Services (Equality) Bill does not impact the way in which these religious communities operate in the UK.

Conclusion

The Arbitration and Mediation Services (Equality) Bill is needed to strengthen the law to support progress on equality in other methods of dispute resolution, and to help ensure that family law and criminal matters are dealt with by the proper authorities.

Consultation with arbitration tribunals and mediation services in the UK is ongoing.

About this document

This booklet was commissioned to provide a greater understanding of the way in which some religious law operates.

There is growing concern over the emergence of a 'quasi-legal' system operating in parallel with our own which violates the principles of equality before the law and which is often based on inherently gender-discriminatory principles.

Religious tribunals and councils have often been the cause of much suffering for women in this country by operating outside of their legal remit and on religiously sanctioned discriminatory procedures.

This report provides evidence of some of the problems faced by Muslim women today including:

- condoning of domestic violence by Sharia courts and councils
- asymmetrical access to divorce
- rulings regarding child custody
- discriminatory policies defining the testimonies of women as being only worth half that of men.

This booklet summarises the remedies of the Arbitration and Mediation Services (Equality) Bill which:

- protects women from discrimination and intimidation at the hands of religious courts;
- criminalises anyone who attempts to set up a parallel legal jurisdiction;
- requires public authorities to inform women of their legal rights and how to access them.