

THE VALIDITY OF THE UNREGISTERED MARRIAGE OF MUSLIM WOMEN IN THE UK: A CRITICAL AND PRAGMATIC ANALYSIS

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ABSTRACT

The Marriage Act of 1753 attempted to legalize marriages of Muslim women in the UK by allowing them to register under the Marriage Act of 1753. But there is an increasing number of unregistered marriages taking place within the jurisdiction of England and Wales, especially among the British Muslims. Since these are unregistered marriages it falls outside the grasp of the law and is not accepted as legally enforceable Marriage in the eyes of law, the consequences fully unravel only in the event of a breakdown. Non-recognition of unregistered marriages leads to discrimination, unjustness, arbitrariness, and violence of basic rights of Muslim women in the UK. Women are in a vulnerable position if their marriage breaks down. Basically, Muslim women living in England have had Nikah marriage. Almost all of them have this religious celebration but half of them have not gone through a separate civil ceremony which is required under UK law. Often consequences faced by these women that they are insufficiently protected under UK law, they cannot claim maintenance, they cannot get Divorced, they cannot claim property and other related rights because they are not validly married in the eyes of law. Muslim Women then takes help of Shariah Council formed in the UK but Shariah Council is recognized as legal body/institution, it is just an informal Institution. In this paper above mentioned

Keywords: Issues and problems faced by Muslim married women in UK, UK Laws on Muslim Women, Shariah Council in UK, Validity of Nikah/unregistered marriage in UK, Islamic Law in UK, Civil Marriage in UK, rights of married Muslim women before divorce, right of divorce of Muslim women in UK.

INTRODUCTION

Muslim women are very diverse in terms of their traditions, culture, socio-economic status, education, and religiosity. Regardless of their individual background, they often lack knowledge about the status of their marriage or divorce according to civil and Islamic law. It seems that there are much confusion and misunderstandings particularly in relation to divorce. Muslim marriages and divorces conducted in Britain are not recognized under English, Welsh, Scottish law or Northern Irish law. The Reason for this situation that parallel legal systems are not allowed to be in existence at the same time and British Muslims are expected to make use of the legal mechanism that is available in that country.

Nikah or marriage under Shariah law which is performed in England is considered valid by Muslim community living in the UK but that marriage is not considered valid under English law unless it is registered in mosque and marriage certificate is issued. Muslim Women who have entered into Shariah marriage wrongly believe that she has entered into valid registered marriage, which later could not get a divorce under English law, so women's simple approach to Shariah Councils. Many Muslim Women in England are unaware of the rights, there are some cases where Women legally married but at the time of separation, these Women seek maintenance through the Shariah Council.¹ Because they think that it is the only process for them, and they think that they might not seek civil divorce under English law and thus lose access to the financial remedies and protection that they would otherwise be entitled to in the English Courts.²

Muslim's living in the UK blindly trust on Shariah Councils, and some of the Muslims believe that it is a Shariah Court which is a judicial body, but in reality, it is not a judicial body. The observance of Shariah loosely translated as Islamic law. Shariah councils call themselves councils because they deal with aspects of Islamic law. The review was set up because some shariah councils are deemed to be discriminating against women who use their services on matters of marriage and divorce. Shariah councils have no legal status and no legally binding authority under civil law.

¹CheMeakins, Sharia Divorce for England and Wales, (last accessed on Oct. 10, 2018)
<https://raydensolicitors.co.uk/blog/sharia-divorce-for-england-and-wales/>,

²CheMeakins, Sharia Divorce for England and Wales, (last accessed on Oct. 10, 2018)
<https://raydensolicitors.co.uk/blog/sharia-divorce-for-england-and-wales/>,

At present, the existing UK law does not recognize an unregistered marriage of Muslim women. Hence there is need to Amend Marriage Act of UK; So Muslim Women can have the right of Maintenance, Right of Property, Right of Divorce, Custody of Children etc.

WORKING OF SHARIAH LAW AND REQUIREMENTS OF VALID MARRIAGE UNDER CIVIL LAW IN THE UK

Status, working, legitimacy, and validity of Shariah laws in the UK:

Shariah basically is an Arabic word, meaning, "The Right Path" refers to traditional Islamic Law. Muslims Considered Shariah the Actual Word of God.

The Shariah is a body of Islamic Laws administers the principle and both the action of individual and the whole Muslim community. Shariah rules are derived from the Quran and the Sunnah i.e., the normative practice established by Prophet Muhammad. The set of rules are governing the individual relationship with God that is defined in religious practices, are not negotiable. Other criteria are a body of rules which governs all corporate relations like political, social and economic can be changed and evaluate according to definite criteria.³ The Islamic laws have developed on the basis of the principle of consensus, necessity, custom and public interest. Its purview has ranged from individual to small, isolated communities to the entire Islamic empire. The body of Islamic law has been developed on this system over the years the time from the first Islamic state has been established. The rules are in necessarily of vast scale and have had innumerable contingencies, it is incorporated as a fundamental guiding principle of legislation in Islamic law, that secures the welfare of people as well as people promotes their own benefit or protecting them against harm.

The foundation of Muslim law is shariah Council because of religious needs and the fastest growing Muslim population in England. The purpose of establishing the Shariah council is the public interest, its Aim is to protect five essential values, i.e., religion, life, intellect, property, lineage. The most well-established shariah councils in England and Wales have been in existence since the 1980s. Basically, Shariah Council does not recognize civil marriage, this

³ Sonia Nurin Shah-Kazemi, *Untying the Knot: Muslim Women, Divorce and the Shariah*, (last accessed on Sept. 26, 2018), <https://nuffieldfoundation.org/sites/default/files/files/Untying%20the%20Knot.pdf>,

Council deals only with the Islamic Nikah it has nothing to do with the civil marriage which is dissolved by the British Courts and not by Shariah Council.

Shariah is a term which includes not only law in the western sense of the world but religious observances such as fasting and prayer, ritual practices such as halal slaughter, and worship in general. These councils call themselves shariah councils because they deal with aspects of Islamic law. Shariah is written jurisprudence and law developed on the basis of a diversity of opinions among jurists in the classical period of Islam. There is no legal definition which constitutes shariah Council. Shariah council has no legal status under England law it is only a guiding source for Muslim. Shariah councils have no legal jurisdiction in England and not even legal status. Shariah councils are not courts and their members are not the Judges. If any decision is inconsistent with Domestic law, then domestic law follows over shariah law.

Shariah council has a Literature according to that ninety-five percent of all queries referred to them concern matrimonial problems faced by Muslim in this Country and majority of these problems approached by Muslim women who seek Divorce from their Husband. According to the literature number of cases referred to them through solicitors who were able to obtain civil divorces for their client but they had to turn to obtain Islamic Divorce as well.⁴

The role of sharia councils in Britain is as a dispute Resolution mechanism and it plays important role in Muslim community staying in Britain. In one of the study, it was found out that to the conflation of South Asian Muslim family laws, localized cultural practices in British Muslim communities and a rigid application of English family law as the contributory factors leading to the emergence of these bodies who have appropriated for themselves the role and position of parallel quasi-judicial institutions.

Instead of all these things shariah council has grey area also, as Shariah Council has lack of accountability and transparency, shariah councils not registered anywhere hence they are not bound by anyone to reveal the details about financial status and organizational structure etc. Due to the lack of accountability of Shariah Councils and mosques in matters relating to

⁴ Lucy Carroll, Dossier 19: Muslim Women and 'Islamic Divorce' in England, Dossier 19. (last seen on Dec. 12, 2018) , (February 1998)

divorce, Muslim women will continue to be discriminated and Incompetent advice can also put women and children at risk of harm.

UK rejected the proposal to regulate shariah councils in the UK. The proposal was rejected by the Home office saying that, it would legitimize Islamic law 'Shariah law has no jurisdiction in the UK and we would not facilitate or endorse regulation, which could present councils as an alternative to UK laws.' As many Islamic marriages carried out in the UK, are religious only, and are never registered. Women who wish to obtain a divorce are forced to go to Shariah councils, often dominated by men and beyond scrutiny thus depriving subjects of the legal protections of civil marriage. According to reports, a greater number of women will have the full protection afforded to them in family law and the right to a civil divorce, if Shariah councils registered.⁵

The Parliamentary Undersecretary of state for justice, Helen Grant Said that "Shariah law has no jurisdiction under the law of England, courts do not recognize it". She said that there is no parallel court system in England and we have no intention of changing the position in any part of England. Shariah was the code of personal religious law governing the conduct of Muslim.⁶

Requirements of a valid marriage under Civil Law in the UK:

In England the Marriage is governed by the Marriage Act of 1949, According to Sec. 26(1) (a-e) of Marriage Act, marriage to be solemnized if that occur in registered building, or marriage can be registered in office of superintendent registrar, or on approved premises, or the two persons being married are professing the Jewish religion according to the usages of the Jews, or a marriage according to the rites of the Church of England, or at the place where person is housebound at that residence, above all these may be solemnized on the authority of superintendent registrar.⁷

English law has been very strict since Lord Hardwicke's Act 1753 in treating the clandestine and informal form of marriages as invalid. According to study 80% of the marriages in the UK

⁵Gareth Browne, UK rejects the proposal to regulate shariah councils, The National, Feb. 2, 2018.

⁶ Frank Cranmer, Shariah, and the English legal system: the Government's view, aw and religion UK, (2013), (last accessed on Feb. 2, 2019), <http://www.lawandreligionuk.com/2013/04/29/sharia-and-the-english-legal-system-the-governments-view/>

⁷ Marriage Act of 1949, Sect. 26 (1) (a-e)

are not registered and not legal, and up to 90% of the mosques in the UK are not registered to conduct lawful marriages.⁸ Complete statistics are not available and but reports indicate that women face tremendous problem in untying the knot with husband.

UNREGISTERED MARRIAGE IN UK AND PROBLEMS FACED BY MUSLIM WOMEN

The author has pointed and analyzed some of the legal and pragmatic issues and problems faced by Muslim Women in the UK. The present issues are connected with the rights and plight of Muslim women in the UK.

The legal and pragmatic issues and problems faced by the Muslim women at the time separation, during separation at the time of divorce and after divorce have been considered by the author for analysis.

A passive, inconsistent, biased approach of Sharia Council and lack of jurisdiction to the court vis-à-vis rights and the plight of Muslim women in the UK:

In order to reflect on the issues, the author has chosen the case study of Farmida. Farmida found herself a victim, she experienced that Shariah council is completely biased towards Men. Despite providing statements, witnesses and evidence that her husband was violent, abusive, shirked all marital responsibilities, whose behavior was damaging to her children, she was repeatedly asked to reconcile. Every time she had to justify her position, whenever she was visiting Shariah Council every time she had to tell her whole story because they never read her statements and police reports. This was very intimidating and frustrating for her as they were not taking anything she said in consideration, she was not being heard by them. Eventually, she got her Islamic divorce only after she provided the 'Decree Absolute' from the English court to them they had no choice in granting the 'Khula' then. After that, she showed paperwork and

⁸ A Khan and D Lewis, 'Thousands of Muslim Marriages Conducted in the UK are not Legal', (last seen Nov. 30, 2018), https://www.familylaw.co.uk/news_and_comment/thousands-of-muslim-marriages-conducted-in-uk-are-not-legal.

obtained a divorce. But her concern is how about the Women who have had only Islamic Marriage in the UK because that is not recognized by English Law.⁹

Another example of unregistered marriage was that Neelam was married at a hotel that was actually valid for having a civil marriage. Both conducted their promises, Imam attended the wedding at the hotel and they performed Islamic marriage as well. Neelam has not signed any papers that time, but she assumed that marriage was legally valid, because it was performed in approved premises. She got to know when she was getting divorced that the marriage is not legally valid.

Muslim Population in Britain is increasing day by day, but still, Muslim women living in England are not secure with their marriage rights. Women in England live in a vulnerable position. Muslim couples celebrate a traditional Nikah marriage ceremony, which is recognized under Shariah Law, but there is no legal status for nikah marriage in English law.¹⁰ The consequence is that, A Muslim women who have had only nikah marriage can't go to the family court for divorce, maintenance or for property claim. According to research, so many women left without financial support and some of the women still struggling for justice.

The English law should consider an internationally recognized form of marriage at least in Islamic countries. A nikah marriage is valid under the rule of private International law and does not require additional registration so long as it complies with *lex loci celebrations*,¹¹ the law of the place of the celebration of the marriage. There is a dire need to have an arrangement under private international law or to reform the Marriage Act 1949 in the UK in order to protect the married Muslim women against injustice.

⁹ Shaista Gohir MBE, Muslim Women's Network UK, Information and guidance on Muslim marriage and Divorce In Britain, 2016, (last accessed Dec. 20, 2018),

http://www.mwnuk.co.uk/go_files/resources/MWNU%20Marriage_Divorce%20Report_WEB2.pdf.

¹⁰ Alistair Jones, Islamic divorce in English Courts: Human Rights and Shariah Law, (Last accessed Sept. 29, 2018), <http://blogs.lse.ac.uk/politicsandpolicy/islamic-divorce-in-the-english-courts/>,

¹¹ Vishal Vora, Unregistered Muslim marriages in England and Wales: the issue of Discrimination through not marriage declaration, 8 Centre of Islamic Studies, University of Cambridge, (last accessed on December 24, 2018),

https://www.academia.edu/27828967/Unregistered_Muslim_marriages_in_England_and_Wales_The_Issue_of_Discrimination_Through_Non-Marriage_Declarations, (2016)

Shariah Council and protection of rights of married Muslim women under Common Law in the UK:

The rise of extra-legal systems of law as characterized by Shariah Councils becomes an important arena to promote community but Councils' existence can also be deemed a threat to this process. For women these privatized spaces of dispute resolution in matters of family law raise fundamental questions regarding agency, autonomy and whether the principles of 'common citizenship' and 'equality before the law' are undermined. The reason why women approach Shariah council is that the Muslim women could get a religious divorce certificate rather than the desire to save their marriage.

Muslim women approach shariah council for taking Divorce because their husbands may refuse to grant them unilateral divorce. In a Muslim law divorce can be obtained in a number of ways like, in talaq husband can unilaterally repudiate marriage., another way is khul this is the divorce at the instance of the wife with her husband's agreement, and on condition that she will forego her right to the dower or mehr, and ubara that is divorce by mutual consent. Under Muslim law, a woman is permitted to divorce without the consent of her husband but this requires the intervention of religious persons whose role is to decide which kind of divorce can be granted.¹² But if nikaah marriage is performed then it is not recognized under state law, but that is only recognized by God, and communities in which the couple lives.

English law not giving divorce to Muslim not because it is an Islamic divorce but the reason is that Muslim perform their marriage under Nikaah marriage and in English law nikaah marriage not recognized as lawful because it is religious marriage. The ceremony of nikaah marriage not performed under the registered building where marriage cannot be legally performed. The act of purporting to solemnize a marriage in an unregistered building is a criminal offense that the civil ceremony precedes the nikah; the nikah then becomes merely a ceremony of religious celebration and blessing, legally without significance in either English or Muslim law as far as the status of the parties is concerned.

In this unregistered religious marriages, the female spouse is in a disadvantaged group whereas the male spouse is empowered by bread and butter as well as property, that results in the wife

¹² Shaheen Sardar Ali, Authority and Authenticity: Sharia Councils, Muslim Women's Rights, and the English Courts, 25 CFLQ. 25, 113 (2013)

being homeless and penniless upon the breakdown of the marriage. Many of the researches indicate that only religious marriages are largely inspired by a desire on the part of Muslim to observe religious principles for entering the physical intimate relationship. So when they enter into religious only marriage, that can identify that the marriage is for entering into a sexual relationship. But the women those are entering in religious only marriages face the difficulties in living together and struggling under the misconception of legal protection, but unfortunately, in England there are limited rights for them. Hence, the question arise that whether religious only marriages indicate a sign of isolation or integration.¹³

In one Arab newspaper, a Muslim woman shared her experience of divorcing In UK, her husband divorced her taken the second wife and ended up 18 years of relationship when she approached UK civil court she realized that her husband managed to bypass the settlement under the terms of their Islamic Marriage. Her problem arose because like many Muslim women who living in the UK and married under Islam, but having a divorce under British civil court, From many years, she is still struggling to put her life back together after finding herself stuck between these conflicting cultural and legal codes. But she told Arab news that they cannot do anything and no law is there to help her in this.

According to a survey held in 2017, by UK TV station Channel British Muslim women found that almost two-thirds had a nikah-only marriage and that more than a quarter and these women did not realize this meant they would be denied rights and protections which they would have in marriage union that really recognized.¹⁴ A lawyer Sarah khan Bashir specialized in shariah Divorce told that one of her clients lose her home after her husband died because she was not able to produce any proof that her husband divorced his first wife. Many Muslim men and women performed Nikah marriage in England, but lack of awareness is a major factor, sometimes wealthier partner, usually, men avoid civil marriage under English law to emit equal division of assets in a civil divorce. They scared of distribution of half of their property, but in this case, women lose out more than men.

¹³ Rajnaara C Akhtar, Modern Traditions in Muslim Marriage Practices, Exploring English Narratives, 7 OJLR. 430, 427-454 (2018)

¹⁴ OLIVIA CUTHBERT, Islamic marriage, English divorce: For growing numbers of British Muslim women, the results can be devastating, Arab News, May 19, 2018.

COMMON REASONS WHY MUSLIMS DO NOT HAVE CIVIL MARRIAGE

1. Women promised a civil registry at a later date which does not happen
2. Some Muslim Women wrongly believe their 'Islamic marriage' is legally recognized in the UK
3. Women believe that their Islamic Marriage is Registered and Recognized under British Law because it is performed by an Imam who is also an Authorized person to conduct civil marriages, but in reality, he does not conduct any civil procedure.
4. Women Sometimes in Misunderstanding that the marriage is civilly registered because it has been performed in a registered building, but they don't follow the procedure of valid civil marriage.
5. Some deliberately choose not to have a civil marriage because they feel it is sufficient to be married according to Islamic law or feel it may be against their faith
6. Commonly (but not always) men or their families oppose having a civil marriage to protect finance and property in case the union does not last
7. Men committing polygamy who are already in a registered marriage will not want to have another civil marriage because it would amount to bigamy

The majority of the women living in the UK believe that talaq divorce is superior to civil divorce. But this faith contrasted with husband's faithlessness which results in the breakdown of the marriage. Women believe that talaq divorce is a strength of their religious identity, many a times Marriage ends up because the husband does not follow a religious practice and therefore women found it very difficult to continue in that marriage.¹⁵ Muslim women living in England takes Islamic divorce from shariah council's in London even though she already obtained a divorce from English court, as women considered such course necessary. One of the women explained that Islamic Divorce is necessary for two aspects, one is she wanted that divorce would be recognized under Pakistani Law. Although the woman is a British National and was domiciled in England prior to her marriage and resumed her English domicile after they

¹⁵ Supra,2

separated, her husband is a Pakistani National and domiciled in that country. She wanted to visit Pakistan without worry and harassment because her family had close friends in Pakistan. She wanted to take a divorce that is recognizable in the country of the Middle East because her relatives were living there. She had fear that in absence of an Islamic Divorce her husband might follow her to encounter her in Pakistan or could claim his conjugal rights and enforce her wifely obedience on the ground that the matrimonial bond still subsisted.

There has been Ordinance by Muslim family court of Pakistan that Pakistani women need to send a copy of English decree with a covering letter indicating that she is giving Divorce as required by Section 8 of Muslim family law ordinance to officials who empowered to receive such notifications of Divorce under the ordinance.¹⁶

CONCLUSION, FINDINGS, RECOMMENDATIONS, AND SUGGESTIONS

Muslim Women are lack knowledge about the marriage registration and validity of the marriage. An author in this paper tried to explore the problem facing by Muslim women if their marriage not registered in UK law.

Basically, Muslim women living in the UK and Have not registered Civil Marriage go to the Shariah Council for untying the relation with husband and forgetting maintenance. Shariah councils formed for public Interest by taking into consideration the fastest Growing Muslim population in the UK. It acts as a dispute resolution Machinery for the Muslims who are living in the UK and not registered their marriages under the Marriage Act. Even though there is a Shariah Council, Muslim women still facing the problem because these Shariah Councils act biased towards men as per the research conducted.

The Shariah Council in the UK is not recognized as a legal body under any legislation including the Marriage Act. Therefore, decisions or remedies provided by the Shariah Council are not legally binding on the parties. These decisions are not considered and implemented by the UK.

¹⁶ Supra,4

Legally speaking Shariah Council does not have any jurisdiction to decide any claim by either of the party.

The paper demonstrates that current laws are not sufficient to deal with Islamic marriage and Divorce. A large number of British Muslims is getting married without undertaking the civil registration of Marriage and they are unaware of the Legal Consequences. In Marriage Act 1949 of the UK has no provision about Islamic Marriage. Hence those Muslims who are migrated from India or Pakistan have no right to claim Divorce under the Marriage Act because the requirement for a valid marriage under Marriage Act not fulfilled by these Muslims. Muslims women living in England thinks that religious marriage is valid legally but it is not, hence there is need to be aware of the valid Islamic marriage in the UK. Non-marriage declaration in the UK prevents the financial orders from being made and until there is no change in the legal framework Mainly Muslim women will be suffering badly in separation.

Recommendations and Suggestions:

1. The Marriage Act, 1949 shall be amended to validate unregistered marriage of Muslim women in the UK.
2. There is a need to introduce a provision for shelter and protection of basic rights of Muslim women of unregistered marriage, their children and elderly person in the family, in the instances of:
 - a) Husband/relatives of a husband are/are incapable to maintain the married women, children and elderly person in the family.
 - b) A widow is incapable to maintain herself, children and elderly person in the family.
 - c) Husband is absconded or not found and wife is incapable to maintain herself, children and elderly person in the family.
3. The Muslim women of unregistered marriage shall have the right to free legal aid.
4. The judiciary shall provide legal remedies under the common law to the women of unregistered marriage. In order to provide the legal remedies under common law 3 years, cohabitation of male and female shall be deemed as a valid marriage.
5. There shall be a quasi-judicial system in place of Shariah Counsel to support, help and counsel the Muslim women of unregistered marriage.
6. There shall be an awareness campaign about the rights of Muslim women and remedies available to them in instances of unregistered marriage in the UK.

7. There shall be an awareness campaign about the status of an unregistered marriage of Muslim women and importance, the procedure for registration of the marriage in the UK.

