Untying the Knot: Divorce and Muslim law in the UK

Severing the ties of marriage in any context is a trying process, while in the UK, marriages are not easily dissolved. An Islamic divorce (talaq) from their husbands, they are obliged to go through a complex set of procedures in order to dissolve their Islamic marriage contracts (faskh of nikah). If the women are recognized as legally married according to UK civil law, they must take steps to change that status as well by undergoing the civil divorce process.

"Surely there is some part of Muslim law to look after women's rights and general personal needs." (Case 715) The results of a two-year investigation into what Muslim women experience whilst trying to divorce their husbands reveal that although many are unaware of the intricacies of obtaining marital status is nearly always relatively easy. If Muslim women choose to divorce according to the Shariah, and to act in accordance with Islam, only the man has the right to divorce, but there must be a way in which a woman can divorce herself from the man under special circumstances like the trouble I've been through.

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

The MLSC comprehends imams (authoritative religious figures) and fuqaha (jurists) from all over the country representing the five schools of law (Hanafi, Maliki, Shafi'i, Hanbali, and Jafari). One central aspect of the MLSC's work is the ability to facilitate a divorce according to the Sharia, and to act in the capacity of an Islamic judge (qadi) and function as he would in an Islamic court of law. The majority of applicants are women who approach the MLS because of the dispute in question, such as the inability of the woman to divorce her husband. From the case files, it became apparent that in those cases where women have a strong adherence to Islamic religious values, they confided in the MLSC by offering details about their own feelings. This was often in contrast to the sparse and perfunctory information given to the solicitors. In divorce proceedings, in interviews, the women expressed a reluctance to divulge information about immigration matters, or about their personal marriage disputes, as they complained that those advisers who were not Muslim would not understand. However, while they were reluctant to challenge the prevailing stereotypes of Muslim women's lack of autonomy, many considered themselves independent and free of any burden of stigma attached to divorce.

Because of this help and my faith in Allah (SWT), I have now reached the courage to ask for a divorce as I believe this to be my God-given right. (Case 717)

Where the women's religious adherence was not strong, but they nonetheless chose to approach the MLSC because of a desire to comply with cultural community norms, they did not provide the MLSC with many details about their emotions and the reasons for marital breakdown. However, they did demonstrate that in some cases the MLSC was not well equipped to handle disputes pertaing to property or other financial matters, other than writing letters urging frankness and fairness on the part of the disputants. Both the applicants and the MLSC itself vested the organization with a morally prescriptive role regarding the welfare of the Muslim community. However, it is evident from the range of ideas, emotions and demands expressed by the women in this study that such organizations as the MLSC can serve to empower those Muslim women who make their demands within the framework of the Shariah. Obviously, the sample could not include women who choose to ignore the precepts of the Shariah and for whom a civil divorce suffices. However, for those who approach the MLSC and those whose marriages are only recognized by the Shariah, the MLSC is the only recourse.

Actually there is someone I would like to marry, but I cannot until I am free from this matter because the law does not allow me to do anything against Islamic law. I greatly respect and believe in with all my heart.

(Case 779)

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

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