

Who regulates marriage? The case of religious marriage and divorce

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Two 'problems' of power over marriage

- The avoidance of civil rules concerning entry
- The role of religious tribunals in managing exit

Marriage formation in breach of the rules

- Shortfall in recognised religious marriage ceremonies
 - 198 mosques registered for marriage for a population of 2.7 million Muslims in England and Wales
 - 8% of population record themselves as non-Christian
 - 3.8% of religious marriage ceremonies are non-Christian
 - Up to $\frac{3}{4}$ of applicants for sharia divorces do not have a legally recognised marriage
- Reasons for avoidance
 - Complexity, ignorance?
 - Polygamy?
 - Financial consequences?
 - Ideological?
 - Trial marriage?

Consequences of a marriage performed in breach of the rules

- Might still be valid – *MA v JA and HM Attorney-General* (2012)
- Might be void but still within the matrimonial jurisdiction – *Gereis v Yagoub* (1997)
- Might be a ‘non-existent’ marriage – *AM v AM (Divorce: Jurisdiction: Validity of Marriage)* (2001)

Role of religious tribunals in the ending of marriage

- The licence to remarry
 - ‘[No religious divorce] would mean that a subsequent relationship they would enter into, if they hadn’t dissolved their marriage, would be adultery ... we take it very seriously from our traditional Jewish teachings and off-spring of such a union would be regarded as seriously handicapped in terms of Jewish status law.’ (Interviewee at Beth Din)
 - ‘There have been cases where a woman ... was pregnant by a man she wasn’t married to so we have to resolve the case in times of divorce and people are put ahead because that cannot be left to carry on like that because that would be living in sin. Islamically it’s far better to be divorced than committing adultery and so we have to make an effort to deal with it as soon as possible so that she can marry him.’ (Interviewee at Sharia council)

Role of religious tribunals in the ending of marriage

- The ‘ancillaries’
 - ‘Sometimes parties might want us to be involved in other areas of the dissolution of their marriage - it could be finance, it could be children and access to children. Now of course, there is a process in the civil law framework for dealing with those issues and we can’t, as it were, oust the courts from that, but what is possible is the parties will want us to hear it and our decision will be made the subject of a consent order and that then will be submitted to the courts for their ratification. Of course they [the courts] have the right to review that and see whether it meets with their approval.’ (Beth Din)
 - ‘We refer to the Quran, we also advise the clients as well, one of the things we advise them on is to be generous because even though we do not have any legal powers to divorced people to provide financially for the wife but we do encourage them by stating the Quranic statements about being generous, both to husband and wife to not be stingy even in these situations ...’ (Sharia Council)

Are religious tribunals more coercive or biased than the courts?

'The scholars granted Jameela a religious divorce, but not before lecturing her on the importance of maintaining a peaceful relationship with her husband. "For the sake of the children, you must keep up the façade of cordial relations," Mohammed Naseem, chairman of the council, told the mother of three. "The worst thing that can happen to a child is to see the father and mother quarrelling."'

'Do not have heated arguments or discussions in front of your children: Parent conflict is one of the most damaging aspects of divorce or separation for children - so do not involve your children in an argument between the two of you. Additionally consider the best times to arrange telephone conversations with the other parent and make sure children will not be able to listen in.'

'They were right from the beginning on his side they didn't even listen to what I was saying. I mean I do read books. I don't go into it that much but I do know the basics you know what a husband has to do. I was really disappointed with the mulana's because he just wouldn't blame my ex-husband.'

'You get the impression that the courts are 100 per cent against dads, no matter what's gone on, no matter how bad the mother is and how saintly the dad is, you get the impression the courts are like, bang, the dad's the enemy.'

Conclusion: the secular context

Withdrawal from and by the state in family issues

- Growth of extra-marital cohabitation
- Decline in marriage
- Encouragement of 'ADR'
- Discouragement of litigation/ withdrawal of legal aid
- Promotion of marital property agreements