

# To Register or not to Register? Reflections on Muslim Marriage Practices in Britain

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## Abstract

This is an abridged version of the article. The full article is available in *Jahrbuch für islamische Rechtswissenschaft*, edited by Cefli Ademi and Mathias Rohe and published by C.H. Beck/Munich in 2020. The article looks at practices regarding Muslim marriages (*nikāhs*) in Britain. In Britain, entry on the civil register is required for a Muslim marriage to be recognised as a valid marriage. However, some Muslims do not register their marriage and live in *nikāh*-only marriages. This article draws upon multiple pieces of research to investigate whether decisions not to register are informed and conscious. This includes surveys, focus group discussions and academic conference panels. The results clearly highlight the plurality and diversity of both Muslim thought and conduct in contemporary Britain, and finds that Muslims are developing a number of ‘new’ Muslim marriage practices, such as taking out a *nikāh*-only marriage as a means of validating a dating relationship. The article concludes with reflections on possible responses to the considerable challenges in accommodating Muslim and civil laws of marriage.

## Introduction

In Muslim majority jurisdictions, as well as countries where Muslims form a minority population (such as Britain), Muslim marriages (*nikāhs*) are conducted in a variety of ways. These include ‘oral’ marriages with no written record,<sup>2</sup> or marriages for which written *nikāhnāmāhs* (marriage certificates) have no official recognition. They

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2 Such as that of the first author, Shaheen Sardar Ali in 1974 in northern Pakistan. Historically, the *nikāh* ceremony itself was a private event with only very close family in attendance, followed later by celebratory *valima* to publicise the union. Oral *nikāh* is becoming less frequent nowadays in view of laws requiring registration of births, divorces and deaths.

also include marriages where *nikāh* is recorded by filling out and signing pre-printed marriage contracts in the presence of an official of the state, such as is prevalent in most jurisdictions in the Muslim world and beyond.<sup>3</sup>

However, while in most Muslim majority jurisdictions there is a standard procedure for ensuring that a *nikāh* marriage gains formal recognition by the authorities, this is less the case in Europe, and especially in Britain. In Britain, entry on the civil register, separately from a *nikāh*, is required for a Muslim marriage to be recognised as a valid marriage; yet, there is little by way of an institutionalised legal mechanism to ensure that this happens. Therefore, a different dynamic relating to marriage comes into play among Muslim communities in Britain and other European jurisdictions, with attendant complexities regarding what constitutes a valid marriage and what does not.

The debate about Muslim marriages seems to have intensified in recent years in Britain, as in many European nations. In particular, there has been considerable discussion of the apparent reluctance of some Muslims to register their *nikāh* marriages with the civil authorities. Why do many Muslims take out *nikāh*-only marriages, and why is formalising a *nikāh* through registration resisted by some British Muslims? Moreover, is this act of contracting an unregistered *nikāh* – often in the full knowledge that such a marriage does not carry official recognition, and with the full and free consent of both partners – *an informed, conscious and new iteration of Muslim family law in England and Wales*? This is the key question we seek answers to, and one that potentially offers important insights into the way forward for Muslim family law in non-Muslim jurisdictions including Britain.

These central questions also lead to further questions that the state has to engage. How far should Muslims be able to live under the jurisdiction of laws derived from their religious traditions in matrimonial and family questions, should they choose to do so? And, to what extent should modern states tolerate or accommodate the existence of these laws – for example, by permitting or recognising *nikāh*-only marriages and religious divorces within the legal system? Finally, what solutions might be suggested in bridging the gaps between official government policy and practice of Muslim communities in Britain? This paper touches on some of these additional issues.

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3 For discussion of the *nikāh* contract in many different contexts, see Asifa Quraishi and Frank Vogel eds, *The Islamic Marriage Contract: Case Studies in Islamic Family Law* (Harvard University Press, 2009)

## Background and Context

It is worth mentioning at the outset that, in some ways, the debate about unregistered Muslim marriages in Britain is one of fairly recent prominence. Earlier generations of Muslims in Britain, often first-generation migrants, had mostly married in their countries of origin and brought along state certified documents testifying to their matrimonial status – and did not appear to have any problems with registering their marriages. Even those who were married in oral *nikāh*-only ceremonies appeared to have no qualms in approaching relevant state bodies for a marriage certificate and/or recognition of their marital status. This process was followed in order to shore up newly gained legal status as British citizens and called upon especially when couples sought spousal visas to travel abroad.

However, in more recent times, there has been an increasing sense in media and policy circles that younger (second and third) generations of British Muslims have shown increasing ambivalence to matters of marriage registration. As an example, we might cite the Register Our Marriage Campaign, set up in 2016 by Aina Khan, a practicing barrister who claims long experience of representing women whose *nikāh* marriages were unregistered, subjecting them to ills including being excluded from wills and deprived of shares in property.<sup>4</sup> The campaign has claimed that unregistered marriage is what she calls a ‘ticking time-bomb’ within the British Muslim community, and especially among young couples.<sup>5</sup> By neglecting to register their marriages, she argues, women (and men also) carry the legal status of co-habitees, rather than spouses, putting themselves and their children at risk of social and financial insecurity. Khan’s perspective also fed into a prominent 2017 Channel 4 documentary *The Truth About Muslim Marriage*, which asserted that up to 80% of young Muslims are not registering their *nikāh* marriages with the civil authorities.<sup>6</sup>

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4 Aina Khan is a London-based solicitor with expertise in International and Islamic family law, who runs her own legal practice in London. With three decades of professional experience in Muslim family and matrimonial law, she has worked both in matters of British civil law and private international law. She founded the high-profile ‘Register Our Marriage’ campaign in 2014, and has been a leading advocate both for the reform of English marriage law for the registration of religious marriages under civil law and for awareness-building for the vulnerable.

5 Sources: [www.registerourmarriage.org](http://www.registerourmarriage.org) [www.ainakhanlaw.com](http://www.ainakhanlaw.com)

6 <https://www.channel4.com/programmes/the-truth-about-muslim-marriage/on-demand/64545-001>

Every so often, the Law Commission and various governments in Britain have also commissioned studies and reviews on reforming family law provisions to seek ways of providing protection to cohabiting couples as well as tackling the questions of integration, the role of community dispute resolution bodies such as *shari'ah* councils in England and Wales, and whether Islamic law is being misused or applied in a discriminatory way. The most recent of government-commissioned reviews is the independent review into the application of Sharia law in England and Wales by Prof Mona Siddiqui, *Applying Sharia in England and Wales* (also known as the 'Siddiqui Report'), commissioned by the Secretary of State for the Home Department and published in 2018.<sup>7</sup> This report once again recognised the persistence of practices within the community of *nikāh*-only marriages and 'Islamic' divorces, and the active role of bodies such as *shari'ah* councils in exercising duties such as providing Islamic dissolutions of marriage. The Siddiqui Report made three significant main recommendations: (i) legislation ensuring that civil marriages are conducted before or at the same time as a *nikāh* (ii) encouraging civil registration through awareness raising programmes (iii) state regulation of *shari'ah* councils through a code of practice.<sup>8</sup> To do this, the review recommended amendments to the Marriage Act 1949 and the Matrimonial Causes Act 1973 to ensure that civil marriages are conducted before or at the same time as the Islamic marriage ceremony, bringing Islamic marriage into line with Christian and Jewish marriage in the eyes of the law. The review also, controversially, put forward the recommendation of amending the offences provisions of the Marriage Act 1949 to impose penalties on the celebrant of any marriage, including Islamic marriage, should they fail to ensure that the marriage is also civilly registered.

The debate on Muslim marriages in Britain, therefore, remains vigorous. However, while the media, academics and policy-makers have been vocal in these discussions, the most immediate participants in these worlds – the community voices who work within British Muslim communities, and individual Muslims - can often be drowned out. In view of the complexity and multi-layered nature of the research question/s at hand, as well as the impossibility of reaching out to every member of the British Muslim communities, authoritative research on this complex subject is a challenging endeavour. Bearing these challenges in mind, the present contribution seeks to put forward the

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7 Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/678478/6.4152\\_HO\\_CPGF\\_Report\\_into\\_Sharia\\_Law\\_in\\_the\\_UK\\_WEB.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/678478/6.4152_HO_CPGF_Report_into_Sharia_Law_in_the_UK_WEB.pdf)

8 *Ibid.*

voices of a cross-section of British Muslims, Muslim religious leaders, lawyers and activists, who handle matters of Muslim marriage and divorce in Britain. It is an attempt to offer reflections on Muslim marriage in Britain as it exists at the grassroots level.

## Methods

This paper draws upon multiple pieces of research and has grown organically over a number of years. It is informed by a rich array of source materials, including surveys among a cross section of British Muslims, focus group discussions within diverse constituencies of British Muslims and dedicated panel discussions on the subject at academic conferences.

A major concern to us as researchers, academics, activists and members of diverse communities, with our own ideological, political religious and cultural positions on issues which include *nikāh*-only marriages in Britain, was to conduct research that included voices of members of Muslim communities from a diverse range of constituencies. We were conscious of the difficulty of basing our conclusions on a single research method; hence the decision of adopting a mixed method for obtaining information and views informing our research findings. We decided to use surveys, focus group discussions and academic conferences with dedicated panels on Muslim marriage practices to deepen and enrich our data set. This survey was then followed by two focus group discussions in Bolton and Manchester, and a subsequent panel discussion with solicitors, *imams*, Muslim community workers and activists at Oxford University in June 2018. All three methods collectively provided a rich canvass of information, opinions and perceptions on why some British Muslims register their marriages whereas others resist the practice – outwardly, at least – in the name of religion. It is to this we now turn our attention.

## Reaching out through surveys: Responses of British Muslims regarding their marriage practices.

To listen to voices from the ground, Ali and Shahid developed a brief questionnaire on Muslim marriage practices among Muslim communities in the following towns and cities: London, Birmingham, Manchester, Bolton, Standish, Wigan and Coventry. A survey was carried out to explore the lived realities and experiences of Muslim men

and women in light of their immigrant background, socio-economic status, legal and cultural position in the family and society. The aim of collecting empirical data was to bring knowledge of the lived reality of Muslim marriage practices in Britain, and to include diverse voices that are not heard at the decision-making forums where reform processes are initiated, debated and implemented. Questions posed included those about respondents' own marriage practices, and why they chose a particular way of marrying (*nikāh*-only/ civil marriage only/ *nikāh* plus civil registration). We also asked respondents their views about the reasons for their preference, including their opinion on marrying in mosques that were registered to conduct marriages.

The total number of respondents participating in the survey was 88, representing a range of voices from the ground. Our respondents, many of whom were contacted using the snowball technique, were chosen bearing in mind variables of gender, age, marital and professional status. Muslim communities in Britain are closed communities and gaining access to the community especially women can be complicated. However, we already have established links with the Muslim community through friends and community organisations, and as Muslim women building on strong networks, we are not considered as 'outsiders' in the community.<sup>9</sup>

Voices from the Field: Most of the respondents participating in the survey were in registered marriages, as well as having undergone a *nikāh* by holding two separate ceremonies. Out of the total of 88 respondents 39 respondents were married in the UK: of these, 11 had their civil ceremony followed by *nikāh*; and 24 respondents had a *nikāh* ceremony followed by a civil ceremony. Only 4 couples had marriages at a registered mosque. Most respondents found registration procedures at the registry office more complicated and time consuming. Respondents also emphasised the importance of registration for protecting women and provide them security in case of divorce.

The main reason given for conducting marriage in a registered mosque was that conducting the two ceremonies together will save time; will be more convenient and

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9 Ethical and Access Issues: Informed consent of the participants was taken before asking them to fill out the survey form. All participants were informed about the purpose of the survey, use of the data, and were given assurances of anonymity for reasons of confidentiality, privacy, and data protection. Privacy of our participants and interviewees will be protected and all data anonymised. Warwick University's Research and Ethics Committee has scrutinized and approved the survey.

cost effective; and most importantly, the marriage will also be registered and legally recognised under the law of the United Kingdom. To quote one participant:

“holding it in a registered mosque allows me to practice my religion fully and the law of the land under same roof, don't have to do two ceremonies ...Save time and money”.

Another respondent commented:

“Beneficial to conduct both ceremonies in one place as it would be economical too.”

A third remarked:

“This would be a beneficial route and a time saver in view of conducting two ceremonies”.

Information in the surveys also reflected awareness of the legal requirement of registering a marriage among professional men and women. At the same time, they were keen to maintain their religious tradition; hence the response from majority of the respondents of having undergone both civil ceremony as well as *nikāh*.

Amongst our respondents, we also found women who had been married overseas. 13 respondents were married in Pakistan; 5 had marriages registered in Pakistan, while 8 had *nikāh* in Pakistan but were not sure if the marriage was registered there. 1 respondent was married in Kenya. All 14 in their comments mentioned that it was important to have their marriages registered and wanted their children's marriages to be registered in the UK.

We also distributed questionnaires to unmarried young men and women between the ages of 18-35. The data shows that they wanted their marriages to be registered and also to have a *nikāh* ceremony. Out of 17 respondents in the unmarried category, 6 wanted *nikāh* in a mosque with registrar in attendance; and 7 wanted *nikāh* in a registered mosque with authorised person in attendance; and 2 participants preferred to have only civil ceremony in the registry office. It is also interesting to note that of all the respondents in this category, only 2 were content with a *nikāh*-only marriage (with no

registration) to take place at home or in a mosque. They considered *nikāh* to be the only appropriate way “according to their faith and to seek Allah’s blessings”.

One of the respondents commented: *“it’s important to have the ceremony in a holy place, I will feel more comfortable and it will be easier to attend. I also trust mosques more”*.

A similar response was given by another respondent from Manchester who was also in favour of conducting the marriage ceremony in the mosque. He commented; *“would be a blessing to conduct the wedding in a mosque. It will be a simple ceremony. The Islamic way of marriage would be more appropriate”*.

In our data sample, we had 18 respondents who had a *nikāh*-only marriage in the UK. 4 out of 18 were divorced. They regretted that their marriage was not registered, due to which they were unable to receive any support from the former husband and could not claim their share in the property of the husband. They could also not claim any child support from the former husband. The reasons given by respondents for having a *nikāh*-only marriage included lack of awareness (11 respondents), personal preference (2 respondents), and to fulfil parents desire of conducting a *nikāh*-only ceremony (1 respondent). The data also indicates that it was chiefly women who were not aware of the legal requirement of registering marriage. This was visible clearly from the responses of housewives, those who were married in Pakistan, and single mothers. It was also interesting to note that women who were in *nikāh*-only marriages wanted more information and awareness from the researchers about the legal requirements of a valid marriage in the UK. Another surprising finding was that very few have used registered mosques for marriage purposes.

An important fact emerging from the data brings into question the perception that young educated Muslim men and women do not want a registered marriage and want non-interference from the state and the right to exercise their personal choice. Responses from the field also suggest that the trend is in fact *towards* registering marriages. Muslim men and women are registering their marriage either through separate civil ceremonies or by conducting the *nikāh* and civil ceremony in one place. Our data shows that having a civil ceremony or registering marriage is more than just a ‘tick box’ exercise, and our respondents want to follow the law of the land. This is a sign of integration and adaptation to the socio-legal norms of the country that is now their home, while maintaining their religious values.



In summation, some questions and reflections arose from respondents' conversations with us beyond the survey as well as from responses provided in the questionnaire itself: For instance, why is it that despite the fact that some mosques are authorised to register, the number of marriages held at such mosques is very low? Should the law on marriage be amended to recognise Muslim marriages in the same way as Jewish or Christian marriages? To what extent is the perception that younger Muslims do not want to register their marriages a widespread emerging trend and reflective of reality on the ground?

### Voices from a women's only group in Bolton and 'dars' group in Manchester: An inter-generational collage

Conscious of the diversity and inter-generational understandings and practices of British Muslims relating to marriage, we also reached out to Muslim communities in north-west England including those in Bolton and Manchester.<sup>10</sup> Two groups were identified for focus group discussions, one in each city. Shaheen Sardar Ali was aware of, and had met some members of these groups from as far back as 1990 when she was a postgraduate law student at the University of Hull.

In 2018, the all-women group in Bolton invited Shaheen to their monthly meeting. Set up as an informal women's only group over two decades ago, this inter-generational group included women from Bolton, Preston, Standish, Wigan and Manchester who met every month at different members' homes to catch up on social and family events. At times, they would meet to read the Qur'an for some special occasion, and every now and again they would go for a picnic or go to the cinema together. These lunchtime meetings included generous spread of food contributed by the group.<sup>11</sup>

Most of the women had met Shaheen on several previous social occasions and were pleased to see her at their meeting. They had already been made aware of the research questions, as the survey was shared with them both in its English and Urdu versions.

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10 This access was made possible through the good offices of Shaheen's paternal uncle, Dr Miftaullah and his wife, Iffat who have lived in that part of the country since 1969. We gratefully acknowledge their facilitation and support.

11 Thirty-two women were present on the day. Ages of group members ranged between 25-75; educational levels were quite varied with most women having obtained high school qualifications or below. A few were university graduates; most were home-makers; a couple of the younger were in employment.

The inter-generational dynamic was very interesting, particularly in how they engaged with the question of whether or not to register a Muslim marriage.

Views across the generations were almost unanimous. As voiced by the 75-year-old grandmother:

“of course: marriages should be registered! How else would the wife get her rights within marriage in Britain?”

Another woman, a mother whose daughter was in a *nikāh*-only marriage, said:

“It is so unfair when the bride-groom’s family insist on a *nikāh*-only marriage, saying they will register it shortly after the wedding, [when] they actually don’t have any intention of doing so. Look at the case of our own daughter. Born and raised in England, she knew it was important to register her marriage, but we all conceded to the groom’s family and left it at *nikāh* only. After a while their relationship became quite rocky and still is. We asked them to register the marriage but they wouldn’t. We now know why. They did not want my daughter to have any share in her husband’s assets. She left her job to look after the family and her children but, if the marriage ends, she will be left penniless. I will say to all parents: make sure the marriage of your children is registered.”

Only one out of the 32 women in the group was of the view that marriage need not be registered and that a *nikāh*-only marriage is sufficient. Shaheen says that: “I noticed that beyond making this statement she was not prepared to elaborate, so I went up to her and sat next to her to broach the subject further”. In a one to one whisper she said:

“I say this because my son was married and upon his divorce, we feared his (ex) wife would take away everything. Thank God we realised that if you don’t register the *nikāh*, then that is fine, as it is only in a civil marriage that the wife gets a share of the matrimonial property. Why should she (wife) take away my son’s hard earned money? That is why I am not in favour of registering a *nikāh*.”

In our discussion, whether those in *nikāh*-only marriages do so due to their religious conviction believing that being married in the eyes of God and the community is all that counts, women were unanimous in their understanding that:

“Our religion (Islam) wants us to follow the law of the land which we have made our home, and make all parties to the marriage safe. So even though *nikāh* means that we know the couple is married, registering is equally important. There is no contradiction between Islam and civil registration of marriage. In fact one supports the other.”

The general mood of the meeting led Shaheen to infer that this group of women were clear in their views regarding the importance of civil registration of a *nikāh*. They appeared aware of developments in their country of origin (Pakistan) declaring that: “people in Pakistan fill out marriage forms and have certificates that are recognised by law, so what is the difference between those marriage registrations and the one in England?”

On a Monday evening, the ‘Manchester *dars* group’ of men and women meet at members’ homes to listen to recitation of the Qur’an and its translation and explanation; hence the name of the group.<sup>12</sup> This group too, was formed several years ago and served as an opportunity of members of the British Muslim communities to collectively understand their religious tradition, seek responses to questions from scholars invited to these events, and expand their networks.<sup>13</sup> Shaheen’s uncle introduced her to the group, and encouraged them to engage with her research theme and offer their insights and views on the subject.

Of the over forty men and women present, not a single one doubted the necessity of registering a marriage. Neither did any person present show any sign of resistance to a civil marriage. In fact, Shaheen was questioned about what they thought was self-evident:

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12 Describing it as the ‘Manchester *dars* group’ was due to the fact that it had been set up by those living in Manchester but with membership from surrounding towns.

13 Ages of members ranged from 35-80 years. Most members were over 60 although younger membership was being encouraged.

“Why are you asking us whether *nikāh* ought to be registered? Of course it has to. How else would the couple be married in the eyes of the law in this country?”

When asked why some did not wish to register their marriage, a 75 year old gentleman who said he had lived in the country for over fifty years remarked:

“bad-nyatee (bad intentions), what else? They want to hide some ‘wrong doing’ of course... let me give you an example. The imam of a mosque in our city already has more than one wife. Last weekend, he married yet another wife. Why would he register his marriage with the state? To go to jail!!!”

The *dars* session too offered a unanimous opinion regarding the importance as well as acceptance of registering a Muslim *nikāh*-only marriage; they believed it to be a religious obligation, and not simply something required by law. Interestingly, while our surveys and conversations with *imams* and others in Muslim communities were aware of and raised the matter of ‘trial’ relationships and ‘halal dating’, neither the Bolton women’s group nor the Manchester *dars* group appeared to be aware of it. It may also be that they were not comfortable in raising it as a reason for *nikāh*-only marriages.

## Keeping their ear to the ground? Reporting some community leaders’ voices on Muslim marriage practices in Britain

The third source of data for the present study comes out of a thought-provoking panel discussion at the international conference held at the University of Oxford, ‘Reformulating matrimony in Islamic law’, organised by Justin Jones and funded by the Arts and Humanities Research Council (AHRC) in 2018. The panel, chaired by Shaheen Sardar Ali, brought together speakers from a range of vocations: –*imams*, members of *shari’ah* councils, and Muslim community activists and lawyers. All the panellists were asked to reflect from their personal experience upon the matrimonial lives of British Muslims: the kinds of marital and divorces practices that they follow, and the implications of these for the relations between religious and civil laws. The panellists selected for this event were all deeply involved with Muslim communities in their various roles, and their words reflected their vast experience of actual practice among Muslim communities. It was a lively session, engaging and frank, with panellists sharing

their knowledge and opinions openly and honestly. The question and answer session too, brought into relief the rich canvass of views, perspectives and practices prevalent among Muslim communities in Britain regarding Muslim family law, and in particular, the question of Muslim marriage registration.<sup>14</sup>

A number of participants affirmed that significant numbers of Muslim women in *nikāh*-only marriages believe mistakenly that their *nikāh* is (legally) recognised under the law in England and Wales. Aina Khan, the barrister and activist cited above, identified a lack of awareness as the central reason for the prevalence of unregistered marriage. Many women, she argued, believe their *nikāh* marriages to have official recognition, whether through their ignorance or through misplaced trust in the word of their husbands to handle the registration process. The situation, she powerfully argued, is giving rise to an unknown number of what she calls ‘*nikāh* horror stories’, referring to cases of women being ejected from their homes, deprived of inheritance or their fair share of marital assets, or abandoned internationally by men that they considered their ‘husbands.’ She argued that women without civil marriages are also leaving themselves open to the possibility of extortion or blackmail, whether by their ‘husbands’, in-laws, or community bodies such as *shari‘ah* councils. She also noted that unregistered *nikāh* can cause further problems for British Muslim women outside of the UK, where legal documentation alone is considered the authoritative indicator of marital status. Significantly, she also noted that the cuts to legal aid since the Legal Aid, Sentencing and Punishment of Offenders Act (2012) has withdrawn funds from family law litigation, depriving victims of legal assistance and thus rendering many women even more vulnerable. They are put into weaker positions vis-à-vis family, and possibly, forced to seek intervention by unregulated community bodies, such as *shari‘ah* councils.<sup>15</sup>

Khan’s statement reflected the common surprise – both within Britain’s Muslim community and also internationally – that British law has adopted so few legal measures to promote civil registration of *nikāh* marriages. This is contrary to the laws

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14 For a full transcript of the panel and more detailed commentary than is possible here, see the blog on ShariaSource available in seven parts at: <https://islamiclaw.blog/2019/11/20/muslim-marriage-and-divorce-practices-in-contemporary-britain-part-1-introduction/>; <https://islamiclaw.blog/2019/12/06/muslim-marriage-and-divorce-practices-in-contemporary-britain-part-7-conclusions-and-further-observations/>.

15 <https://islamiclaw.blog/2019/11/22/muslim-marriage-and-divorce-practices-in-contemporary-britain-part-2-aina-khan/>;

implemented both in other Western European nations, like France and Germany, but also in most Muslim-majority nations. These countries, she argued, have done more to put an end to the existence of the kinds of ‘clandestine marriages’ that still exist in the UK.

As well acknowledging the prevalence of unregistered, marriage, many panellists were alert to an assortment of other problems that it creates. One example is Bana Gora, president of the Muslim Women’s Council, a community organisation based in Bradford.<sup>16</sup> She noted a range of startling cultural practices which are, in different ways, by-products of unregistered *nikāhs*, many of which violate the rights of women especially. These include polygamous and underage marriages; the withholding of alimony after divorce; the unequal distribution of inheritance; and instant triple-*talāq* divorce. All of these practices exist as a consequence of unregistered *nikāhs*.

Other panellists, however, indicated a body of other reasons for the choice to take out a *nikāh*-only marriage, some of which make for uncomfortable listening. Some confirmed that some members of the younger generation of Muslims as a form of ‘*halal* dating’, or a means of ‘testing’ a marriage before taking on the legal commitments of a registered marriage. Some also suggested that it often owed to carelessness on the part of young Muslims. Ajmal Masroor, one of Britain’s most high-profile *imams*,<sup>17</sup> blamed especially the ‘Bollywood’ influence in popularising glamour weddings, and the frequent use of *nikāh*-marriages as easy means of licencing sexual relationships. A culture of celebrity and ebullience, he argued, can cloud reflection and judgement, and incite young people to take out ‘DIY *nikāh* marriages,’ or ‘backstreet *nikāhs*’, with little consideration of the consequences. The pressure of *imams*, *khandans* (families) and *biradaris* (community bodies), he argued, also exact unwelcome social influence in matrimonial matters.

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16 <https://islamiclaw.blog/2019/12/03/muslim-marriage-and-divorce-practices-in-contemporary-britain-part-6-bana-gora/>; Bana Gora has particular expertise in matters of social policy and engagement with marginalized communities in particular, and at present is involved in the MWC’s plans to build the first ever woman-led mosque in the UK.

17 <https://islamiclaw.blog/2019/11/29/muslim-marriage-and-divorce-practices-in-contemporary-britain-part-5-ajmal-masroor/>. Masroor leads prayers in four London mosques, and has been a high-profile spokesperson and broadcaster for British Muslims. He has been a well-known proponent of reformist Islamic thought, including on issues of family values and laws, and has headed the Barefoot Institute, which handles matters of marriage, divorce and family mediation for British Muslims.

All panellists acknowledged that sometimes one partner or the other might favour a *nikāh*-only marriage for their own personal benefit. Men might, by not registering a marriage, seek to escape sharing their assets with their wives. Some panellists were also open that some men desire to take out *nikāh*-only marriages to keep a door open for a second, polygamous marriage – something that is illegal under civil law. But it is easy to forget that sometimes women too have found favour in taking out unregistered marriage. Bana Gora and Ajmal Masroor alike spoke of women who had chosen not to register their *nikāh*, so as to deny their husbands the ability to make a claim upon their own personal wealth.

Particularly instructive on this was a contribution by Amra Bone, a panellist on the Birmingham Shariah Council, and has often been known as Britain's first female 'shari'ah judge'.<sup>18</sup> She argued that women could be 'surprisingly strong', and rather contradicted the stereotype of the helpless Muslim wife. Some women, she said, wanted *nikāh*-only marriages to ensure their own financial independence. She also evoked some unexpected examples of Muslim women's legal behaviour: for instance, women who willingly, and sometimes even by preference, share their husband in polygamous marriages, to provide them with a greater degree of personal freedom to build a career or avoid burdens such as having children. This was a strong call to question old assumptions about Muslim marriage and acknowledge the existence of alternative forms of 'balance' in Muslim society that depart from orthodox ideas of marriage. However, like other panellists, Bone was clear to say that she advises Muslim couples to register their marriages. She admitted that she cannot force them, but always tells them that they should at least be aware of the consequences of not doing so.

A different approach to the question came from Musharraf Husain, a scholar and *imam* based in Nottingham, and one of the leading Muslim community representatives of the Midlands.<sup>19</sup> Departing from the idea that *nikāh*-only marriages stemmed chiefly

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18 <https://islamiclaw.blog/2019/11/27/muslim-marriage-and-divorce-practices-in-contemporary-britain-part-4-amra-bone/>; Bone has also worked as a Muslim leader and chaplain within the community in Coventry and Birmingham for some thirty years.

19 <https://islamiclaw.blog/2019/11/26/muslim-marriage-and-divorce-practices-in-contemporary-britain-part-3-musharraf-husain/>; Trained at al-Azhar in Cairo, he is a scholar of the Qur'an and Islamic sciences, and is a public community spokesperson and educator; he is also the chief executive of the Karimia Institute, an Islamic foundation that engages in numerous activities of religious education and charity. He has been an important Muslim spokesperson on issues of integration and community cohesion in the UK.

from ignorance, he argued that it was often a proactive *choice*, made either by partners or their families. Despite having registered his mosque to conduct parallel religious and civil marriages, he argued that many of even his own congregation have refused to take out the latter, asking him to perform *nikāh*-only marriages. Muslim marriage in the UK, he suggested in a striking metaphor, has become like a ‘Drive Thru McDonalds’, with Islamic marriages and divorces being contracted and terminated with minimal planning or consideration.

While he reflected some similar explanations to the other panellists (e.g. avoiding legal obligations to a spouse; carelessness by the parties), he also noted that Muslims do not instinctively consider their mosque as a natural location for marriage, meaning that, unlike Christians, Muslim families often envisage their *nikāhs* as being solemnised in private settings, rather than a religious building that can be licensed for marriages. But he also argued that many *imams* and religious leaders in Britain, fearing the erosion of community values, have wanted to keep marriage ‘flexible... feasible and easy’ as possible, and thus, they have avoided complicating the *nikāh* with legal conditions or baggage in order to bring people into marital unions.

Attitudes within the community are only part of the explanation, however. The state has also played a part: by refusing to legislate on *nikāh*-only marriages, it has allowed them to persist. Indeed, elaborating on the state’s role, Husain offered a striking interpretation of ongoing Muslim disengagement from marriage registration, which goes back to the initial migrations from South Asia in the 1950s-60s. At this time, he argues, economic migrants from Pakistan and Bangladesh considered the UK to be merely a ‘transient home’: they remained focused upon ‘the myth of return’,<sup>20</sup> while the state offered little support for these new communities and merely ‘left’ them to integrate. This ‘*laissez faire* attitude’ on the part of the state towards the Muslim population served to foster an ethic of community self-reliance that has led to tendencies among Muslims towards community autonomy in handling personal and community affairs, and has meant that many Muslims have tended to see questions of state recognition as an irrelevance.

The views of the panellists, therefore, confirmed some of the same issues raised by respondents in other research elements of this study. Equally, they posited a range

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20 This is an allusion to Anwar, Muhammad (1979), *The Myth of Return: Pakistanis in Britain*. London: Heinemann Educational Books.



of possible solutions to the problem of unregistered Muslim marriages. Aina Khan, speaking of her 'Register Our Marriage' campaign, outlined a three-fold approach to addressing the issue. First is the call for reform of the law. She proposes that the Marriage Act of 1949 be widened to automatically register *all* religious marriages as civil marriages, rather than, as now, only the marriages of Anglicans, Jews and Quakers: a fair and equal marriage law, she argues, should either cover all faiths, or none. Second, she argues for a public awareness campaign to target the Muslim community, working through 'roadshows' and other large events, to communicate the benefits of registering marriage. This is something that her campaign has consistently embarked upon. Third, there is a call for further research and professional advocacy, with a particular proposal for the construction of an international database to identify landmark court judgements and compare international mechanisms for adjudicating religious marriages.

Other community figures tried to answer the question not just in terms of the law, but the need for proactive engagement from community leaders. Musharraf Husain was among those who, unlike Aina Khan, saw little appetite within the government for any major interventions into the laws of Muslim marriage in the UK; and for him, this suggested that community practitioners needed to find solutions themselves. He noted his own licencing of his mosque for marriage as an example, along with his encouragement of his congregations. He also describes how the *nikāh* certificates that his association provides include a written statement that a *nikāh*-marriage must be registered for it to be considered valid. This mechanism is comparable with some of the ways in which *shari'ah* councils have found ways to engage religious and civil laws alongside each other; for instance, issuing *khulās* (Islamic divorces) upon the presentation of a civil divorce certificate.<sup>21</sup> There is, then, the prospect for aligning civil and religious laws of marriage and divorce in mutually constructive ways.

Ajmal Masoor identified the need for more responsible community handling of matrimonial issues: not just of families, but also, the need for qualified *imams* to officiate marriages. It needs community leaders to emphasise the seriousness and sanctity of marriage in the Islamic tradition and it needs trained religious counsellors to handle marital breakdown in line with the Qur'an's teachings on divorce. Masoor also developed a particular Islamic line of reasoning in favour of registering marriage.

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21 Musharraf Husain also refers to family solicitors with training in Muslim family law, who can issue *khula'* to accompany a civil divorce certificate.

He argues that, by Islamic laws of contract, a *nikāh* can only be considered as lawful in *shari'ah* if it is 'legally enforceable': in other words, in contemporary Britain, a Muslim marriage must be civilly registered to be valid. These arguments have often been used by *imams* in Europe, especially in countries with a higher degree of marital regulation than the UK, and suggest possibilities for the creative reformulation of matrimonial laws in Muslim minority contexts.<sup>22</sup>

In a comparable but different way, Bana Gora argued that 'perhaps the best solutions come from within the Islamic tradition itself'. She suggested that Islam's internal 'richness and diversity', the existence of multiple legal schools and the flexibility of *shari'ah* all enable the religion to provide its own solutions. More striking still was her invocation of Islam's polymorphous legal tradition to address contemporary questions. For instance, as a solution to the problem of marital mistreatment, she notes the possibility of adding stipulations or conditions to a *nikāh* contract. As she notes, this practice has often fallen out of favour in the contemporary world, but it has a long legal pedigree and was widely adhered to in some legal eras; and so perhaps it can offer a means to protecting women today. Similarly, she proposes looking to Islam's different legal schools, and indeed to the different legal-constitutional frameworks across Muslim Africa and Asia, to seek lessons for the handling of matrimonial practices. Pushing the need for public education and a recognition of Islam's pluralism, she makes a particular call for ordinary Muslims to take charge of the community's destiny, and engage the civil process where necessary.

Gora, like others, strikes a positive tone on the question of moves towards the alignment of religious and civil laws of marriage. She notes the increasing willingness of women among the UK's third-generation Muslims to critique and challenge normative understandings. Things are changing, she argued, on account of generational change and the expansion of knowledge and enquiry. Memorably, Aina Khan called for the enticing prospect of a new *ijmā'* (consensus) for handling the problem of unregistered *nikāh* marriages: in other words, a collective agreement on the issue within the Muslim community.

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22 Source: <http://ajmalmasroor.com/>

## Some Concluding Reflections

The present contribution arose from the need to deepen our understanding of the changing nature of law and practice in diverse communities. In particular, we were interested in how both meanings and practice of concepts evolve over time and place, and how they impact heavily on the lives of people, particularly in the case of minority communities who encounter plural legalities. Using the institution of marriage in the Islamic legal tradition as an example, this paper set out to demonstrate differing articulations of what constitutes a ‘marriage’ in Muslim majority as well as Muslim minority jurisdictions such as the United Kingdom and how Muslim communities in Britain, now firmly rooted in a British identity, are re-defining marriage and divorce in their own terms.

The conclusions posited here cannot be comprehensive. We are conscious of the fact that the present study also shares the flaw of limited reach. Of millions of British Muslims, we were able to reach out to just 150 or so respondents who voiced their opinion on the question of Muslim marriage practices in Britain. At the Oxford conference, we picked up five respondents, all of whom are willing to speak to academic audiences and all of whom position themselves as modernisers aiming to facilitate the social integration of British Muslims. Nevertheless, we would like to close by picking up on a number of themes that run through the research findings.

First, this study clearly highlights the plurality and diversity of both Muslim thought and conduct in contemporary Britain. Rather than searching for a dominant Muslim perspective, we are reminded to consider the multiplicity of perspectives on matrimonial questions at work in this community today. To speak of British Muslims as somehow naturally inclined by their religion to avoid registering *nikāh* marriages does not do justice to the number of overlapping discourses and dynamics at play.

Our data shows that the reasons why many couples take out *nikāh*-only marriages are heterogeneous, and specific to the circumstances in which the women and/or couples find themselves. In some cases, may be the result of a mutual wish to trial their relationships prior to or instead of a civil marriage; in others it may reflect a misunderstanding about the *nikāh*'s admissibility in English law. In other cases, *nikāh*-only marriage may arise from the wish of one partner to evade legal obligations towards another, or the attempt of a husband to keep the door open to a second marriage. Or indeed, as in some quoted cases, a *nikāh*-only marriage might reflect the wish of either

partner to protect their own private wealth and assets. Indeed, while it may sound harsh, some of this material might also lead us to conclude that the *nikāh* has been combined with the minority status of Muslims in Britain to be used instrumentally as and when it suits the self-interest of Muslim individuals. Examples given here include not just the many individuals quoted as having personal advantage in *nikāh*-only marriages, but also the Muslim women who as one panellist stated, wouldn't mind being in a polygamous union and in an almost 'part-time relationship'. These diverse factors at play mean that we cannot make generalisations.

Other quoted factors in the debate include pressure from in-laws to avoid registration; or an obsession with the glamour and show of marriages without due attention to legal niceties. There is also the matter of the difference between a Muslim idea of marriage, which is based around an officiating *person* (*imam*, *qazi* etc), and the Marriage Act of England and Wales that predicates the registration of marriage upon the *place* in which it occurs; as many respondents reflected, a mosque is not inherently seen as a natural location for a marriage. There is also the suggestion that long-term patterns of immigration and a '*laissez faire*' state attitude towards integration in Britain have encouraged a disengaged attitude within the Muslim minority towards English civil laws, and a consciousness of organising the community's internal affairs on their own terms.

Yet, a striking feature evident that runs through these discussions is the sense that some British Muslims are reaching new definitions of what constitutes a Muslim marriage. They are developing a number of 'new' Muslim marriage practices and are moving far beyond the definition of marriage as rendered in *fiqh* as a contract between partners to legalise the procreation of children. One could argue, for example, that taking out a *nikāh*-only marriage as a means of validating a dating relationship in the absence of an official marriage infringes the traditional understanding of the Islamic marriage contract, for which legal recognition and intended permanence are compulsory conditions. Moreover, a *nikāh*-only marriage is, under British law, treated as a practice akin to unmarried cohabitation; and non-married cohabitation is considered illegitimate under Islamic law. The kinds of Muslim marriage being practiced in the UK, therefore, illustrate how Muslims in Britain, and perhaps in other Muslim minority contexts, are redeveloping the traditional form of the *nikāh* in new ways, perhaps pushing definitions of Islamic marriage to their very limits in the process.

That said, across this study, the overwhelming impression is that taking out a *nikāh*-only marriage reflects the value placed on the *nikāh* contract itself for British Muslims. It seems clear from these extracts that many British Muslims have maintained a deep sense of the need for religious marriages and divorces; and many consider the *nikāh* rather than the civil marriage to be the one that carries meaning for them, even when they may hold both together. To argue that this feeling will somehow dissipate in the face of authoritative civil laws seems to be a spurious debate. At the same time, though, these marital practices as discussed are all being developed within a self-consciously British Islam, rather than being ‘foreign’ cultural norms imported in wholesale from elsewhere. While some speakers indicate that certain attitudes towards marriage reflect a residual ‘memory’ of countries and cultures of origin (South Asia particularly is cited by several), for the most part informants are keen to emphasise that these communities consider themselves as British Muslims and are thus in need of matrimonial customs and laws that work within the British context.

We pledged in the introduction to offer some possible responses to the considerable challenges in accommodating Muslim and civil laws of marriage as they exist in Britain today. Of course, bringing *nikāh*-only marriages into the fold of the English legal system via compulsory registration could take away some of the manipulative uses of *nikāh*-only marriage as discussed, and could resolve some of the ‘*nikāh* horror stories’ of women being divested of their rights or homes after the dissolution of their *nikāhs*. However, as some point out, the state is in no mood to introduce any substantive legislation on the matter. The issue is perhaps too politically sensitive; and as one respondent notes, the state has come to rely increasingly on practices of arbitration to resolve disputes outside a crowded court system, especially in the aftermath of cuts to legal aid. State intervention, therefore, seems unlikely to provide a holistic response.

Instead, it is clear that the more lasting solution rests in a multiplicity of options. For instance, there are perhaps gentle shifts in debate at the judicial level. For example, the recent court case of *Akhter vs Khan* (2018) resolved that a *nikāh*-only marriage should be considered a ‘void marriage’ rather than a ‘non-marriage’, which would make a Muslim marriage subject to laws of financial reparation in the case of marital

breakdown.<sup>23</sup> The verdict may yet be repealed, but it does indicate movement in legal thinking.

But major moves to resolution also have to come from within the community itself. And contrary to some portrayals, these contributions reveal that there is obviously considerable will from within the community to do this. The vast majority of our respondents, as well as our panellists who include two *imams* and a panellist on a major Shariah council, argue that Muslims should register their marriages with the state and should remain cognisant of their rights and duties before the law. They also argue, explicitly or implicitly, that since the *nikāh*'s fundamental status in Islam is that of an official contract, so an Islamic marriage needs to be legally recognised if it is to be legitimate. And they are finding ways to align the parallel issuing of civil divorces and Islamic *khulā* separations. These are just a few examples of how community leaders are advocating the engagement of British Muslims with the legal system.

Our findings hint at various possibilities for aligning Islamic and civil laws, finding ways to make them work together as mutually cognisant systems of law in British Muslim society. It seems to be a debate that is only likely to continue.

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