

The Islamic Juridical Vacuum and Islamic Authorities' Role in Divorce Cases

Jesper Petersen¹

Abstract

This article argues that Islamic authorities do not try to sustain a jurisdiction over Islamic divorce in Denmark. They respond to a juridical demand caused by the absence of Islamic legal institutions in Denmark, which I call the *Islamic juridical vacuum*. This vacuum entails that sharia is often defined locally in communities or families rather than by Islamic authorities, and when women are unable to obtain an Islamic divorce they turn to Islamic authorities for help. That is, in the absence of Islamic legal institutions they expect Islamic authorities such as imams and teachers in mosques to take the role of an Islamic judge upon themselves and issue Islamic divorces. However, Islamic authorities in Denmark have no formal legal power to issue divorces and they are often incapable of helping women whose husbands object to divorce. Therefore, some women end up in a type of marital captivity that Anika Liversage and I – with the Arabic word for marriage, *nikah* – call *nikah-captivity* (Liversage and Petersen 2020).

It is often assumed in Danish public debates that imams uphold a sort of parallel legal jurisdiction centred around sharia courts (see for example Birk 2020, Borg 2016, Hedin 2017 or the documentary *Moskeerne bag Sløret*). The term sharia court (*shariadomstol*) implies that Islamic authorities uphold a jurisdiction, keep a registry of people's marital status, and that they can enforce their decisions. However, no such parallel legal system has been found by researchers anywhere in Europe. Instead researchers have found a variety of practices that in their most institutionalized form exist as sharia councils (Bano 2013; Bowen 2016). However, Islamic juridical practice is in most places characterised by the absence of institutions and there is no indication of monopolization of Islamic authority (Eijk 2019; Jaraba 2019; Liversage and Jensen 2011; Mustasaari 2018; Roald 2009). Even British sharia councils' performance is sometimes unstable and the losing party may threaten the scholars in the councils (Bowen 2016: 63, 88-102).

1 Jesper is PhD in history of religions specialized in Islamic studies.

In this article, I will argue that Muslim immigration from countries with religious family law to Denmark has created an *Islamic juridical vacuum*, which has generated a demand for legal institutions that can assist women who want to divorce Islamically without their husbands' consent. No institution has so far filled the vacuum in Denmark and for this reason Islamic authorities such as imams and teachers in mosques are often called upon to take this role upon them. However, most Islamic authorities are reluctant to get involved and even if they do, they can't enforce their decisions. This means that there is no entity that lay down the rules of Islamic divorce, and thus the Islamic juridical vacuum produces a variety of practices that are often defined in the social networks in which they are practiced.

The article is based on 21 semi-structured interviews with Islamic authorities of whom 19 are male and 2 are women. Male informants are referred to as M followed by a number from 1-19 and female informants are referred to as F followed by 1 or 2. I made the interviews in 2018-19 as part of a research project led by Anika Liversage on Islamic divorce practice in Denmark at VIVE (The Danish Center for Social Science Research).

The informants' jurisprudential orientation is spread over Hanafi, Shafi'i, Maliki, Jafari, and a few informants are not following a school of interpretation (*madhhab*).² Many Shia Muslims follow Jafari, but due to this school's historical development in close proximity with the Shafi'i school, which is a Sunni-school, the discussions regarding divorce are very similar between these branches of Sunni and Shia (Stewart 1998). Although the present study found that school of interpretation has a limited influence on how Muslims divorce, the Marja-institution had an influence on a few cases because their authority is not territorially confined (Liversage and Petersen 2020: 222-230).

An Islamic authority is defined as a person who in a community can speak with authority on Islam; some are imams, others are teachers while others again are in other ways recognized for their knowledge on Islam. The data from the interviews with imams and religious authorities have been triangulated with interviews with 37 women who have difficulty or who can't obtain an Islamic divorce (details on the sample, triangulation and further results of the project can be found in Liversage and Petersen 2020 and in Petersen and Vinding 2020).

2 See details on the sample in Liversagen and Petersen (2020) page 46-47.

The article starts with a brief introduction to *nikah* (Islamic marriage) followed by a short genealogy of Islamic divorce practice from sharia to Islamic law in the late 19th century. Today Muslims navigate three juridical spaces related to divorce: pre-modern sharia, Islamic law, and secular law. This genealogy is followed by an explanation of the current situation in Denmark where a segment of Muslim women is unable to obtain Islamic divorces. The last part of the article focus on overlaps between Danish law and sharia, and the effect sharia practice can have on the outcome of divorces cases under Danish law.

It should be stressed that there is a vast diversity in Islamic divorce practices in Denmark and that the informants for this article have been purposely selected because of their relation to the juridical vacuum (Bernard 2011: 147-155). That is, this article does not reflect normative Muslim practice in Denmark, it describes a segment of women who are unable to divorce Islamically.

Nikah – Islamic marriage

It is common for both Islamic authorities and a segment of religious Muslims in Denmark to make a distinction between nikah (Islamic marriage) and civil marriage. Imam M1 explains that this is a distinction between the Islamic and the secular:

... nikah is not a human invention. It is a divine decree that came with the creation of Adam and Eve while the civil marriage was invented a century ago or something like that. So, it is obvious that the nikah which came by divine decree thousands and thousands of years ago is more important [than civil marriage]. (interview 27 April 2019).³

As imam M1 understands it, there is no overlap between Islamic and civil marriage. They constitute two separate marriages that regulate personal status: the nikah regulate personal status under sharia and civil marriage regulate personal status under Danish law. This conception of religious marriage is not unique to Muslims, it is also upheld by members of other religious minorities in Denmark such as a segment of the Jewish, Catholic, and Hindu communities (Liversage and Jensen 2011: 10; Liversage and Petersen 2020: 14 and 101-102).

3 Translated from Danish

There is no church in Islam and *nikah* (Islamic marriage) is therefore not a sacrament. That is, imams are not ordained by a religious institution to perform *nikah*. Within *fiqh* (Islamic jurisprudence) a *nikah* is merely a civil contract between two people: a groom puts an offer forth and the bride or her guardian (*wali*) accepts the offer (or vice versa) in front of two witnesses (Hallaq 2009: 271-280 and Vikør 2012: 300-309). The *nikah* renders a sexual relation between the bride and the groom free of sin, and in addition to this, *nikah* is seen as a highly recommended part of a good Muslim life. Imam M3 explains that:

Marriage is a contract between two partners. That is, the state is not involved, the imam is not involved – the imam merely facilitates the conclusion of the marriage contract. He explains that you should say this, you say that, you say this, and there you go, you are married in front of two witnesses etc. It is not the imam who performs the marriage ceremony – he is in principle superfluous in the conclusion of a marriage. (interview 14 March 2019).⁴

It should be noted that even though there is no basis for it within the Islamic legal tradition many Muslims conceptualize the imam as a sort of Islamic priest whose ritual performance is needed to render a *nikah* valid. Similarly, the Danish law on religious communities outside the state-church § 15 (*Lov om trossamfund uden for folkekirken*) is based on a Christian conception of religion according to which marriage is a sacrament administered by a priesthood on behalf of a religious institution such as a church. That is, the Danish state issues marriage licences to imams as if they were ordained by a churchlike institution to perform an Islamic marriage ritual even though such a role does not exist in the Islamic legal tradition.

Sharia, Islamic law, and secular law

The historical origin of the distinction between *nikah* and civil marriage is important for the understanding of the current situation. In the 19th century Muslim majority countries adopted the model of European legal systems and this entailed a transition from pre-modern sharia to Islamic law that we still see the aftereffects of today in both Muslim majority countries and especially in Europe. The transition from pre-modern

4 Translated from Danish

to Islamic law entailed so fundamental changes to the conception of law that the former system is largely incomprehensible to people other than historians and legal scholars, or as professor Jakob Skovgaard-Petersen puts it: “today these [modern] legal institutions and procedures are so ingrained that people in the Muslim world, like us, can hardly imagine what a pre-modern legal system looked like before the modern territorial state” (Skovgaard-Petersen 2019).⁵

Sharia is conceptually a divinely revealed set of instruction on how to live a good Muslim life in accordance with God’s commandments. These instructions cover rituals, ethics, instructions for everyday life, and an area that could be called pre-modern law. It is important to stress that there is no text or written document that contains the sharia; only God knows the sharia and humans are therefore destined to derive the sharia from sources such as the Qur’an, the narrations about Muhammed (hadith), and a range of other texts. Human attempts at deriving the sharia from the sources is called *fiqh* which means insight. Islamic legal scholars – or people with insights as they are called in Arabic (*fuqaha*) – belong to a range of different schools of interpretation and there are even disagreements over the correct interpretation of sharia within these schools (for an overview see Bakhtiar 1996). That is, *fiqh* is a discursive tradition rather than a fixed set of laws and this was the basis of pre-modern sharia practice within Islamic courts. It is important to notice that there were no common point of reference to a legal text for these courts. The individual Islamic judge (*qadi*) practiced his profession based on his insight into the discursive legal tradition that he was educated within (Hallaq 2009; Vikør 2012; Zubaida 2003).

The practice of marriage under pre-modern sharia was largely a private matter and often the *nikah* contracts were merely oral. Likewise, divorce was a private matter. A man who wanted to divorce could pronounce the *talaq*-divorce, which effectively terminated the marriage. If a woman wanted to divorce, this could be negotiated and the husband would receive a compensation for agreeing to a *khula*-divorce, which also terminated the marriage. Again, this was a private matter and no legal institutions were involved (for details see Hallaq 2009: 280-287 Vikør 2012: 309-316).

However, if disputes couldn’t be handled in the private sphere, between families, or private arbitrators one could seek the assistance of the Islamic court. This was for

5 Translated from Danish.

example necessary if a husband had travelled abroad without returning and therefore effectively rendered his wife without maintenance and unable to marry another breadwinner. In the absence of her husband a woman – possibly a widowed woman – could not obtain her husband's consent to divorce and she therefore needed an Islamic judge who could issue the divorce. However, some schools of interpretation (*madhab*) like the Hanafi school would not allow such a legal action because this was seen as a violation of the husband's right to withhold consent. However, as professor Knut Vikør explains, Islamic judges would often be practical about this, and when Islamic judges from for example the Hanafi and Shafi'i school sat on the same court, the Hanafi judge would delegate this type of divorces to the Shafi'i judge:

The Hanafi court has often accepted that this is a real weakness in their law, which has led to unacceptable hardship for women who through no fault of their own have lost their only realistic provider. When Hanafi and Shafi'i judges have worked in the same court, this has on occasion made them come to a tacit understanding: If such a case came before a Hanafi judge he would often excuse himself and let such cases go before his Shafi'i colleagues. The latter could then dissolve the marriage according to his school and the Hanafi judge would later accept this decision on the bases of reciprocal acceptance of verdicts made by the other schools. (Vikør 2012: 313-4).

This case demonstrates two important points: in the pre-modern courtroom sharia was applied as a discursive tradition with an eye on the practical effects of it and Islamic judges would accept each other's verdicts even though they themselves did not agree with the interpretation of sharia that formed the bases of it. Similar observations have been made by other scholars both historically and in contemporary practice (Bowen 2013: 138-155).

With the advent of European legal systems in large parts of the Muslim world in the 19th and 20th century, Islamic law was introduced as a replacement of pre-modern sharia. Legislators picked the most suitable interpretations of sharia and drafted Islamic legal codes that were implemented within a European inspired legal system. This drastically changed the practice of marriage and divorce because couples were now required to register their marriages and apply for divorce under Islamic law. That is, marriage and divorce were no longer a private matter, it was regulated under the

jurisdiction of an Islamic court system that could enforce its verdicts (See Otto 2010 for examples).

Some Muslim countries went even further and secularized the personal status law. On 4 October 1926 Turkey for example introduced a new family law based on the Swiss civil code, which replaced the former Islamic law, *Mecelle*. The new law constituted a clear break with the past by abolishing polygamy and making the sexes substantially equal in rights to divorce, but most importantly it transferred marriage and divorce from the domain of the Islamic clergy to a secular legal system. Marriages had to be registered with the state and divorce became subject to court rulings under secular personal status laws (Kocak 2010, 243). Because the transition from *Mecelle* to secular law in Turkey took place almost a century ago it has become part of the Turkish way of doing things, and Turks therefore tend to accept European divorces issued under European legal codes as Islamically valid (Liversage and Petersen 2020: 196; Roald 2009: 110).

However, a segment of Danish Muslims from countries that practice Islamic law such as Afghanistan, Pakistan, and most Arab countries do not accept the Islamic validity of divorce under secular law. It should be noticed that some immigrants from these countries do accept secular divorce as Islamically valid but so far, no research project has determined how many belong to either segment in Denmark. The absence of an Islamic legal institution has caused an Islamic juridical vacuum from which highly diverse Islamic legal practices emerge. Islamic authorities who get involved in Islamic divorces do not oppose Danish law, they accept that a divorce ruling by a Danish court changes a person's status under Danish law, but this is seen as unrelated to divorce according to sharia (Liversage and Petersen 2020: 196-200).

Immigrants continue their way of doing things after migration but school of thought typically plays a minor role. The majority of Turks and Pakistanis in Denmark for example belong to the Hanafi madhab but Turks typically use the Danish secular legal institutions to divorce, whereas segments of Pakistanis maintain the notion that an Islamic divorce is needed in addition to the secular divorce. This is because Pakistan use Islamic law whereas Turkey – as mentioned above – use secular law, and these ways of doing things are continued in the diaspora and in some cases inherited in modified versions by their children (see Liversage and Petersen 2020 for details).

The Islamic juridical vacuum in Denmark

Some Muslim countries have revised their Islamic legal codes so that women have access to divorce without their husband's consent, but even in countries where these revisions haven't been made, women have developed somewhat effective strategies for obtaining divorces without their husbands consent even though the legal system bestow unequal rights on the sexes (see for example Mir Hosseini 2000). However, in a Danish context these legal institutions do not exist, and this absence means that a segment of Muslims falls back on locally adapted understandings of pre-modern sharia as a way of regulating divorce as a private matter. Women therefore rely on their husbands consent if they want an Islamic divorce that is accepted socially but in cases of disputes there are no legal institutions that can hear their cases. For this reason, some women start searching for court-like institutions that can play the role of an Islamic court or Islamic authorities who can play the role of an Islamic judge. In other words, it is not the imam or Islamic religious authority who tries to uphold a jurisdiction, he is cast in the role of a sort of quasi Islamic judge by a demand among a segment of Muslim women (Liversage and Petersen 2020: 177-180). However, the interviewed Islamic authorities are well aware that they do not hold the institutional power to dissolve a marriage and for this reason most of them reject this casting and take the role as mediators instead. Islamic authorities are, furthermore, well aware of other issues of involving themselves in divorces such as security concerns, time constrains, and some do not see what Islamic divorce has to do with the imam-role.

Interestingly the juridical vacuum empowers the husband in a marital dispute in that his right to withhold divorce is not disputed by any legal institution. As it is now, a woman who wants an Islamic divorce without her husband's consent, finds herself in a legal vacuum with three paths that are unlikely to provide her with a stable Islamic divorce: 1) pre-modern sharia under which she may need her husband's consent to divorce. 2) provided that the marriage is registered under Islamic law abroad, she may be able – depending on the country in question – to obtain a divorce there. However, this will take time, be costly, and may require support from her family. 3) provided that she is also married to her husband under Danish law, she can obtain a divorce from the administrative unit that handles divorces, *Familieretshuset*. However, this divorce is unlikely to be accepted as Islamically valid in a community that does not understand secular law to have an effect on nikah.

Path two and three are not available to all women because they rely on prior registration of the marriage, and path one and three take place within the Islamic juridical vacuum and can therefore lead to unstable Islamic divorces. In practice, the rules for Islamic divorce are laid down locally in communities and sometimes just between families, and a woman's ability to obtain a divorce either by declaring it herself or declaring a secular divorce under Danish law valid depends on the resources she has available. In other words, as the field is structured as an Islamic juridical vacuum it is the local power dynamics that determine the rules by which Muslims divorce and often Islamic authorities will not become involved. Women with many resources such as family support, a strong network, education, job, proficiency in Danish or English, knowledge about their rights and how the Danish system works etc. are much more able to define the rules that regulate divorce and they merely declare themselves Islamically divorced. That is, they make a decision but its effect depends on whether they have the resources to "enforce" it. On the other hand, women who lack resources can become trapped in what is called *nikah-captivity* (a neologism coined in Liversage and Petersen 2020). However, as mentioned above, type 1 and 3 divorces are bound to be disputed and the outcome of them largely depends on how it is received by the woman's significant others and her community. Descendants' higher level of resources compared to immigrants' level of resources is the most important variable for explaining why descendants and converts in general are more able to Islamically divorce their husbands (Liversage and Petersen 2020: 17-18).

Type 1 and 3 divorces can be unstable in the sense that women may come in doubt as to whether they are valid, and this doubt may arise much later in life when they for example want to remarry. In rare cases this also holds true if the woman files her divorce petition in a British sharia council even though these decisions seem to meet widespread acceptance because of the British sharia councils' high degree of institutionalization. However, it should be noted that even though British sharia councils have achieved the highest degree of institutionalization in Europe, their performance is also unstable in some cases (Bowen 2016: 88ff.).

The role of religious authorities

The juridical vacuum puts pressure on imams and Islamic religious authorities to act even though they in many cases do not have the institutional power to issue divorces as speech acts (Austin 1975). The American anthropologist, John R. Bowen, suggests

that we in the context of sharia councils instead understand speech acts from the perspective of the French philosopher Jacques Derrida, who in his book *Limited Inc* argues that speech acts primarily are effective because of a pre-linguistic consensus that exists prior to them being pronounced (Bowen 2016: 88; Derrida 1977). That is, a religious authority can issue a divorce, but it will only be seen as valid if both the wife and the husband have the intention of divorcing. Otherwise it will be disputed and declared invalid by the disagreeing part. This means that the more a woman need the Islamic authority's assistance to obtain a divorce, the less he is able to do for her because his decision depends on the husband's acceptance of his claim to institutional power. Furthermore, it is often the women who do not have sufficient resource to Islamically divorce themselves who turn to the Islamic authorities, and as the effect of the authorities decision in many cases depends on the woman's resources they do are unlikely to have much effect. This inverse correlation is amplified by other variables such as security: if the woman is married to a violent husband, Islamic authorities will be more reluctant to get involved because of concern for their own and their family's safety. Stories about violent husbands are widespread among Danish Islamic authorities with the most extreme case being a husband who showed up in the mosque and put a gun to the head of an imam who had issued a divorce to his wife. It should be noted that even in Britain security is an issue. A scholar in Bradford for example had his house torched by a disgruntled husband after he had issued a divorce (Bowen 2016: 63).

Therefore, imams and religious authorities who choose to interfere on behalf of a woman in a divorce case first and foremost try to convince the husband to pronounce the divorce because this is the only viable way to create stable Islamic divorces without a legal institution. In other words, it is the husband who performs the speech act that terminates the marriage – not the imam (for a more detailed analysis of the related fiqh and its application in a Danish context see Petersen and Vinding 2020).

Divorce constitutes a problem for Islamic authorities because they are expected to make juridical evaluations without formal training in the relevant fiqh, and because their engagement in bad divorce cases as mere civilians without institutional power seldom have the intended effect. This is especially the case with type 2 divorces as a private person's decision in Denmark have no effect on a woman's personal status under the law of a foreign country. However, some women merely want an Islamic authority's assurance that she is divorced in the eyes of God, and some religious authorities feel obligated to do something for these women who find themselves in the Islamic juridical

vacuum as Imam M1 explains: "It is because somebody has to do it. You know, we can't just let people who have that kind of problems be stuck in limbo or leave them on their own. That is not okay." (interview 27 April 2019).⁶ However, Imam M1 also explained that one has to be weary of helping too much because then it is rumoured that one can help and that attracts many more cases and all the problems that comes with them. Not all interviewees were as sympathetic as M1, but all agreed that the vacuum is a problem not just for the women, but also for the imams, religious authorities, and ultimately the Danish state.

When the interviewed Islamic authorities get involved in cases, they employ a number of strategies if men are reluctant to divorce. That is, they have ways of strategically trying to fill the vacuum by posing as a valid Islamic institution or in other ways produce divorces that are mistaken for "real" divorces. Others form ad-hoc divorce councils where a number of imams come together and issue a divorce which is typically written on a stamped paper with a letterhead. This spreads the security risk over several individuals and the divorce may hold a higher level of validity in the community when several prominent imams have signed it.

Some Islamic authorities comfort women by explaining that they are in fact Islamically divorced by referring to fatwas or arguments that either state that women have the right to unilateral divorce (Jaraba 2019: 85-6) or that a civil divorce constitutes an Islamic divorce (European Council for Fatwa and Research 2017). It should be noted, though, that these fatwas are disputed even though they come from such authorities as the sheikh of al-Azhar, which is one of the world's leading universities within Islamic studies, and the European Council of Fatwa and Research, which has several distinguished Islamic legal scholars on their board. One Danish imam has even written a 200+ pages argument for the Islamic validity of civil divorce in a Scandinavian context (Chendid 2015). However, a woman's ability to apply such a fatwa to her own case depends on her resources. In other words, even though an Islamic authority may apply such a fatwa in a conversation with a woman it does not necessarily have any effect on her social status as Islamically married or ability to divorce Islamically (see Jaraba 2019 for a typical case or Liversage and Petersen 2020: 73-74 and 196-199).

6 Translated from Danish.

These and similar fatwas' inefficiency underline that Islamic divorce is a matter of social dynamics in the web of relations around the Muslim woman who wants to divorce, and that Islamic authorities often have limited power in this web. In bad divorce cases the symbolic value of concepts related to Islamic marriage and divorce often merely constitute semantic resources, which are utilized – or weaponized⁷ – in the coercive control of a woman, and men who exercise this coercive control will not let themselves be disarmed by an imam or other religious authority when they can choose to ignore them instead.

Attempts at resolving the issue of the juridical vacuum

There have been several attempts – especially in the last decade – to found a more permanent Islamic institution that can fill the juridical vacuum, but this has proven difficult due to the high demographic diversity among Danish Muslims. There is no common Islamic marriage and divorce practice among Danish Muslims, and it is therefore difficult to come to an agreement on a central Islamic authority that serves all Muslims such as the Jewish Beth Din or the Catholic Ecclesiastical council (Liversage and Jensen 2011: 26 and 44). The interviews with Islamic authorities demonstrate that a few divorce councils have existed for short periods of time, but they tend to disintegrate either due to internal disputes or the pressure from disgruntled husbands and families. It should also be noted that even if a divorce council has made a decision in a case this may not deter a man who is stalking his (ex)wife or engage in other kinds of post-separation violence. In other words, even though a decision by a divorce council holds a higher degree of validity its effect still depends on the woman's resources or ability to implement it. Some Islamic authorities refer women to British sharia councils or similar institutions abroad and a few help women write a good petition for divorce to these institutions.

The interviews and collection of juridical documents for the study, furthermore, demonstrates that some imams have started using nikah marriage contracts within which the bride has the right to divorce her husband. Likewise, some imams have started to write a clause into the contracts that delegates the power of declaring the marriage dissolved to the imam himself. These solutions constitute practical ways of

7 This term is coined by professor in Islamic studies, Jørgen S. Nielsen, but as he has not used it in writing yet I am unable to make a reference.

limiting the power of the husband in the juridical vacuum or making him share it with his wife. Even though these types of contracts are becoming increasingly popular, they are not widespread, and some couples even object to them.

Islamic divorce and Danish secular divorce

As explained above, none of the interviewed Islamic authorities see Islamic divorce practice as an infringement on Danish law because *nikah* and civil marriage are seen as two separate marriages. Some informants – as mentioned above – even argue Islamically for the Islamic validity of divorce under Danish law. However, conflicts can arise when it comes to child custody. All 21 interviewed Islamic authorities held the position that Muslims should follow Danish law. Imam M8 for example explains that:

There are many [men] who says to me: “but in Islam we have the right to keep the children living with me – you know the ones who are older.” I say: “*akhi* [my brother], we live in Denmark, we do not live in Saudi Arabia or Lebanon or Jordan. We live in Denmark; here it is Danish law that is the law.” We are of course Muslims and we follow the word of Allah as well as we can, but legally we are under Danish law. We can’t establish our own legal system in Denmark... (Interview 27 February 2019)⁸

The husband that imam M9 refers to makes a clear reference to pre-modern sharia and some versions of Islamic law under which children of a divorced couple belong to the mother until they reach puberty when custody is transferred to the husband (Hallaq 2009: 287-289). Although all 21 Islamic authorities acknowledge Danish law many also noted that men occasionally weaponize the *talaq* when they negotiate civil divorce. That is, they threaten to withhold the Islamic divorce if their wife does not agree to his terms in the settlement. These terms can be financial as K2 – one of the two female Islamic authorities – explains:

The worst is that so many women jump on that wagon where they say: “But I just want to get rid of him, so I will give him what he wants”. And also: “But I do not want anything from him – if we can just get

8 Translated from Danish.

divorced”. That is where I try to stop the woman and say: “Now, sit down and think. I know you want to get out of this marriage, and that you psychologically feel bad, but you should not leave this marriage without your *haqq* [justice]. You should not let him take it all.” But unfortunately, that is often how it ends. The woman says: “I do not care, if I can just get out of it, he can have what he wants”. And this is a distortion of women’s rights... (Liversage & Petersen, 2020, p. 228)

As several other Islamic authorities K2 explains that men sometimes use sharia as it is defined in their own community to bargain a good divorce under Danish secular law. That is, they promise a stable divorce, which means that they will agree to an Islamic divorce with witnesses provided that the woman agree to a good settlement under secular law. It should be stressed that this study employs a qualitative method and therefore it cannot say anything about the extend of this practice.

Some men also use child custody as a bargaining tool in secular divorce cases. That is, the man can demand that his wife renounces custody of their shared children or another major sacrifice in return for his consent to Islamic divorce (cf. Jaraba 2019: 83-86). Because of this overlap between secular law and sharia – as it is defined locally within the Islamic juridical vacuum – some Muslims expect Islamic authorities to get involved as well because their arbitration or mediation in Islamic divorce cases can extend into an area that is regulated by Danish law. Some Islamic authorities engage in these discussions, but most stay out of them (see Liversage and Petersen 2020: 194-6 for details).

Bibliography

Austin, J. L. (1975): *How to do Things with Words*. Oxford University Press.

Bakhtiar, Laleh (1996): *Encyclopedia of Islamic Law: A Compendium of the Major Schools*. ABC International Group, Inc.

Bano, Samia (2013): *Muslim Women and Shariah Councils : Transcending the Boundaries of Community and Law*. Palgrave MacMillan.

- Bernard, H. Russell (2011): *Research Method in Anthropology: Qualitative and Quantitative Approaches*. Femte udgave. AltaMira Press.
- Birk, Christian (2020): "Københavnmoské agerer som islamisk domstol: Nu varsler minister opgør. In: *Berlingske Tidende* (2 February).
- Borg, Orla og Martin Johansen (2016): "Forskere: Der findes shariaråd flere steder i Danmark". I: *Jyllands-Posten* (8. marts).
- Bowen, John R. (2013): *A New Anthropology of Islam*. Cambridge University Press.
- Bowen, John R. (2016): *On British Islam: Religion, Law, and Everyday Practice in Shari'a Councils*. Princeton University Press.
- Chendid, Mustafa (2015): اجنومذ ايفاندنكملا :برغلا يف نيجوزلا نبيدق اقسلا (Eng: Breakup between Spouses Abroad: The Scandinavian Model). Copenhagen: The Islamic Moroccan Council in Scandinavia.
- Derrida, Jacques (1977): *Limited Inc*. Evanston: Northwest University Press.
- Eijk, Esther Van (2019): "Khul' Divorce in the Netherlands: Dutch Muslim Women Seeking Religious Divorce". In *Islamic Law and Society* (26:1-2). Leiden: Brill.:
- European Council for Fatwa and Research (2017): مسلملا ريغ يضاقتا ق يلطت مكد (Eng: Divorce ruling by a non-Muslim judge). Available at: <https://www.e-cfr.org/%D8%AD%D9%83%D9%85-%D8%AA%D8%B7%D9%84%D9%8A%D9%82-%D8%A7%D9%84%D9%82%D8%A7%D8%B6%D9%8A-%D8%BA%D9%8A%D8%B1-%D8%A7%D9%84%D9%85%D8%B3%D9%84%D9%85/> (retrieved 31 August 2019).
- Hallaq, Wael B. (2009): *Sharia: Theory, Practice, Transformations*. Cambridge University Press.
- Hedin, Thomas (2017): "Hvor er Mette Frederiksens sharia-domstole?". In: *Mandag Morgen* (12. oktober). <https://www.mm.dk/tjekdet/artikel/hvor-er-mette-frederiksens-sharia-domstole> (retrieved 1 September 2019).

Jaraba, Mahmoud (2019): "The Practice of *Khul'* in Germany: Pragmatism versus Conservatism". In: *Islamic Law and Society* (26:1-2). Leiden: Brill.

Kocak, Mustafa (2010): Islam and national law in Turkey. I: Otto, Jan Michiel (ed.): *Sharia incorporated – a comparative overview of the legal systems of twelve Muslim countries in past and present*. Dordrecht: Amsterdam University Press. Side 243.

Liversage, Anika and Tine Gudrun Jensen (2011): *Parallelle Retsopfattelser i Danmark: Et Kvalitativt Studie af Privatretlige Praksisser*. København: SFI – Det National Forskningscenter for Velfærd.

Liversage, Anika og Jesper Petersen (2020): *Etniske minoritetskvinder og skilsmisse – med fokus på muslimske praksisser*. København: VIVE – Det Nationale Forsknings- og Analysecenter for Velfærd.

Mir-Hosseini, Ziba (2000): *Marriage on Trial: Islamic Family Law in Iran and Morocco*. I. B. Tauris.

Moors, Annelies, Rajnaara C. Akhtar, and Rebecca Probert (2018): "Contextualizing Muslim Religious-Only Marriages". In: *Sociology of Islam* (6:3).

Mustasaari, Sanna (2018): "Between 'Official' and 'Unofficial': Discourses and Practices of Muslim Marriage Conclusion in Finland". *Oxford Journal of Law and Religion* (7:3).

Otto, Jan Michiel (ed.) (2010): *Sharia incorporated – a comparative overview of the legal systems of twelve Muslim countries in past and present*. Dordrecht: Amsterdam University Press. Side 243.

Petersen, Jesper and Niels Valdemar Vinding (2020): *Sharia og Samfund – Islamisk ret, etik og praksis i Danmark*. København: Forlaget Samfundslitteratur. Forthcoming.

Roald, Anne Sofie (2009): *Muslimere i Nya Samhällen*. Göteborg: Bokförlaget Daidalos AB.

Skovgaard-Petersen, Jakob (2018): *Hvad er sharia?* Unpublished. https://www.academia.edu/38074394/Hvad_er_sharia (retrieved 17 August 2019)

Stewart, Devin J. (1998): *Islamic Legal Orthodoxy: Twelver Shiite Responses to the Sunni Legal System*. Salt Lake City: The University of Utah Press.

Vikør, Knut S. (2012): *Between God and the sultan – a history of Islamic law*. Hurst & Co.

Zubaida, Sami (2003): *Law and Power in the Islamic World*. I. B. Tauris.

