

FOREWORD

Reformulating Muslim Matrimony: Islamic Marriage and Divorce in the Contemporary United Kingdom and Europe

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Introduction

In recent years there have been major ongoing debates in academia and in public life concerning the marriage and family practices observed by European Muslims, and the extent to which these do or can operate within or alongside the jurisdiction of local civil laws in European countries.¹ Lately, there have been a range of studies on issues such as the encounters between European civil laws and *shari'ah*-based Islamic laws²; and questions have been raised regarding the extent to which practices based in the *shari'ah* may or may not be recognised within the secular legal frameworks of these European countries.³

Recent studies, for example, have examined issues such as the registration or otherwise of Muslim marriages in civil law⁴; the existence of non-state dispute resolution bodies⁵; the judicial recognition of Islamic divorces, or of *mahr* (bridal dowry) or other Islamic legal contracts in European courts⁶; and the difficulties caused by controversial Muslim marriage practices such as polygamy or child marriages that appear to be in conflict with Western laws.⁷

Other studies have asked whether the community bodies that administer matrimonial affairs for some Muslim communities in Europe comprise a form of 'parallel justice', separate from mainstream civil laws.⁸ Moreover, the linkage between migration and marriage within the European context has also been studied intensively. Respective studies have been undertaken on transnational Muslim marriages⁹; the influence of transnational family ties on spousal choices¹⁰; and on the marital practices and 'family wellbeing' of certain Muslim migrants coming to these European countries from Turkish, Moroccan or Somali backgrounds.¹¹

Muslim Marital Unions and Dissolutions in the European Context

The papers collected in this Special Issue of the *Journal of Muslim Minority Affairs* represent a selection from two conferences held in the U.K. in 2018. We are extremely grateful to all the

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presenters and participants who participated in both these conferences, and to their funders, for helping to generate these discussions.

The first conference organised was by Justin Jones under the theme: **‘Reformulating Matrimony in Islamic Law: New Questions and Responses among Muslims in Europe.’** It was held at the University of Oxford in June 2018 and funded by the Arts and Humanities Research Council (the U.K.’s principal research council for the humanities). This conference included the contributions here by Amra Bone, Justin Jones, Mouez Khalfaoui, Iris Sportel and Islam Uddin. This conference addressed the question of how far the practices of marriage and divorce among Muslims in European countries are influenced by the legal and political approaches to the laws of religious minority communities within these nations, and the ways in which these nations manage, facilitate or restrict these practices.

The second conference was organised by Yafa Shanneik under the theme: **‘Europe’s New Migrants: Marriage Practices and Policies.’** It was held at the University of Birmingham in the U.K. in March 2018 and funded by the British Academy (the U.K.’s national academy for the humanities and social sciences). This conference included the contributions here by Mahmoud Jaraba, Haifaa Jawad and Ayse Elmali-Karakaya, Nicole Stybnarova, Frederica Sona and Vishal Vora. This conference handled the pressing questions of how the movement of migrants and refugees from Muslim majority countries into Europe has brought about huge complexities in marriage laws: for instance, the ability of courts to recognise marriages across legal jurisdictions, and the development of alternative marriage practices such as mixed-faith marriages.

Bringing together the themes discussed at both these conferences, this Special Issue of *JMMA* fills a gap in existing literature on Muslim marriages in Europe. It sheds light on the historical developments of different forms of Muslim marital unions and dissolutions in Europe, and examines the extent to which they may or may not be recognised within legal frameworks on matrimony in European countries.

1. Normative Muslim Matrimonial Transactions in Europe

The first section of this Special Issue examines the everyday, lived realities of Muslim marriage and divorce, and how these matrimonial transactions work in the given European environments. These papers all reflect upon how Muslim communities in Europe engage a combination of existing state laws, and non-state community leaders and institutions, to regulate and resolve their matrimonial issues. European Muslims, these papers show, manage to navigate their lives in ways that blend these different domains of official and non-official legal governance, and often employ community-led mechanisms or institutions to handle their matrimonial lives.

In the first paper under this theme, **Islam Uddin** offers a rich ethnographic discussion of British Muslim practices, including the prevalence of unregistered *nikah*-only marriages, and the existence of institutions such as the *shari‘ah* councils to serve these communities. The paper suggests a form of legal existence that takes place outside of the structures of the formal law. Moving on to Germany, **Mahmoud Jaraba** next considers the difficulties faced by Muslims in obtaining a religious divorce (*khul‘*), given the lack of an established legal procedure in German law for doing so. He demonstrates how community demand brings into being religious

‘experts’ able to supply such services. Tracing a longer term perspective of some of these community-level, quasi-legal practices, **Justin Jones** takes up the question of Muslim reliance on non-state alternative dispute resolution as means of handling disputes on family matters. He traces this trend to colonial South Asia, where Muslims developed their own community-based dispute resolution mechanisms which were thereafter transposed through migration into post-imperial Britain.

2. Dilemmas of Transnational Muslim Marriages

The second section of this Special Issue examines the challenges and dilemmas posed by transnational Muslim marriages: those marriages contracted outside of Europe and then encountering the legal systems of European countries. The increasing size and diversity of the Muslim population in Europe, combined with the spread, speed and scale of the arrival of refugees and migrants (particularly since the start of the Syrian civil war in 2011), have raised new questions in marriage law.¹² Engaging with these debates, the three papers in this section reveal how the transplantation of marriages between legal jurisdictions via Private International Law both challenges existing legal frameworks, and also, creates problems for the spouses and families transporting such marriages across national borders.

In the first of these essays, **Iris Sportel** offers a *longue durée* discussion of Dutch-Moroccan Muslim families in the Netherlands. She reveals how spouses (especially wives) within these marriages can face numerous threats, such as spousal abandonment abroad, and explores the efforts of women’s NGOs and policymakers in the Netherlands to address some of these issues. Focusing on another issue arising from transnational marriages – that of the appearance of child marriages in Europe – **Frederica Sona** shows how marriages that were contracted outside of European jurisdictions pose a particular challenge to European family law, raising legitimate human rights concerns and causing numerous complexities in terms of recognition procedures. In the final essay in this section, **Nicole Stybnarova** explores the policies of the European Union towards polygamous marriages and their encounter with the Private International Law. She argues that restrictions on the recognition of such unions seem not to protect women’s rights and equality between the sexes, as they claim to, but rather place husbands in an advantageous position over their wives.

In different ways, the articles in this section all illustrate that the emancipatory claims of European matrimonial legal frameworks are not always matched by the actual experiences of women in Muslim marriages that lack unambiguous legal recognition. Instead, women often find themselves suffering new kinds of subjugation, enacted both by states and by families.

3. Shifting Perspectives on Marriage and Divorce among European Muslims

The third and final section focuses on the ways in which contemporary understandings and practices of marriage and divorce among European Muslims seem to be shifting, and suggests some paths by which European civil laws and *shari’ah* laws of marriage might be brought into dialogue. Of these four papers, the first two chiefly consider the evolution of social attitudes among Muslim populations, and Muslim approaches to accommodation with European norms

of marriage. The latter two then, in different ways, explore or suggest different means by which European states might accommodate Muslim matrimonial norms.

Presenting the results of a public survey among ‘ordinary’ Muslims in Germany, **Mouez Khalfaoui** offers an initial exploration into German Muslims’ views on marriage, divorce and other family matters. He infers that Muslims in Germany are moving towards a synthesis of Western and Islamic modes of understanding of marriage and divorce, and suggests that the European context is producing a hybrid perspective that combines assumptions from both systems. Next, **Haifaa Jawad** and **Ayse Elmali-Karakaya** consider the issue of the increase in Muslim interfaith marriages. Focusing on Turkish-origin Muslims in the UK, their paper examines in particular how Muslim women navigate this issue within their own kinship networks, off-setting long-standing cultural assumptions and developing their own perspectives on Islamic teachings concerning interreligious marriage.

Shifting focus to consider how the contemporary state is reforming its policies towards Muslim marriages and how this might prompt useful solutions to legal problems, **Vishal Vora** takes up a recent, landmark court case concerning unregistered Muslim marriage in England. Discussing the legal concept of ‘non-marriage’, he argues that the principle of cohabitation rights might provide a useful mechanism for recognising a wider range of relationship types, providing ‘non-married’ couples with some legal rights. Finally, **Amra Bone**, a practising Muslim community leader and a panellist on one of Britain’s major *shari’ah* councils, offers some reflections on the possible future of family law in Britain. Arguing that English laws on marriage are embedded in fundamentally Christian precepts that do not reflect many of the needs of a contemporary cosmopolitan society, she makes a strong initial case for a new kind of ‘*nikah* union’ that could be recognised under English law.

Concluding Remarks

The articles in this Special Issue collectively represent the practices and understandings relating to Muslim marriages and divorce in the U.K. and Europe, both in their complexity as well as in their state of flux. The papers illustrate that Muslim matrimonial norms are constantly evolving as a result of social change, shifting assumptions in Islamic religious law, and the influence of local and state legal systems and politics. They also demonstrate how the transplantation of marriages across jurisdictions poses continuous legal, social, cultural and religious challenges to Muslim minorities in various European contexts. And, finally, the papers reveal the dynamic ways in which legislatures, courts and community leaders alike are incurring amendments in Muslim matrimonial practices. We hope that these papers will collectively make a useful contribution to these many debates.

NOTES

¹ See for example, Maurits Berger, ed., *Applying Sharia in the West: Facts, Fears, and the Future of Islamic Rules on Family Relations in the West*, Brill: Leiden, 2013; Mathias Rohe, *Muslim Minorities and the Law in Europe: Chances and Challenges*, Delhi: Global Media Publications, 2007; Marie-

Claire Foblets, Mathias Rohe and Prakash Shah eds., *Family, Religion and Law: Cultural Encounters in Europe*, Abingdon: Routledge, 2014; Niels Valdemar Vinding, Egdunas Raciús and Jörn Thielmann eds., *Exploring the Multitude of Muslims in Europe*, Leiden: Brill, 2018.

² Sherene H. Razack, “Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages”, *Feminist Legal Studies* Vol. 12, 2004, pp. 129-174; Garbi Schmidt, “Law and Identity: Transnational Arranged Marriages and the Boundaries of Danishness”, *Journal of Ethnic and Migration Studies* Vol. 37, No. 2, 2011, pp. 257-275; Katharine Charsley, *Transnational Marriage: New Perspective from Europe and Beyond*, New York and London: Routledge, 2013; Ralph Grillo, *Muslim Families, Politics and the Law: A Legal Industry in Multi-Cultural Britain*, London: Routledge, 2015.

³ Jorgen Nielsen and Lisbet Christoffersen, eds., *Shari’a as Discourse: Legal Traditions and the Encounter with Europe*, New York: Ashgate Publishers, 2010.

⁴ Rajnaara Akhtar, “Modern Traditions in Muslim Marriage Practices: Exploring English Narratives”, *Oxford Journal of Law and Religion*, Vol. 7, No. 3, 2018, pp. 427-454;

⁵ Samia Bano, *Muslim Women and Shari’ah Councils: Transcending the Boundaries of Community and Law*, Basingstoke: Palgrave Macmillan, 2012; Lucy Carroll, “Muslim Women and ‘Islamic Divorce’ in England”, *Journal of Muslim Minority Affairs*, Vol. 17, No. 1, 1997, pp. 97-115.

⁶ Pascale Fournier, *Muslim Marriage in Western Courts: Lost in Transplantation*, Farnham: Ashgate, 2010.

⁷ Katherine Charsley, “Transforming Polygamy: Migration, Transnationalism and Multiple Marriages among Muslim Minorities”, *Global Networks* Vol. 13, No. 1, 2013, pp.60-78.

⁸ For very different uses of this concept, see Joachim Wagner, *Richter Ohne Gesetz: Islamische Paralleljustiz Gefährdet Unseren Rechtsstaat*, Berlin: Econ Verlag, 2008; Mathias Rohe and Mahmoud Jaraba, *Paralleljustiz*, Senatverwaltung für Justiz und Verbraucherschutz, 2015.

⁹ Elisabeth Beck-Gernsheim, “Transnational Lives, Transnational Marriages: A Review of the Evidence from Migrant Communities in Europe”, *Global Networks*, Vol. 7, No. 3, 2007, pp. 271–288; Charsley, *Transnational Marriage*; Nicole Constable (ed.), *Crossborder-Marriages: Gender and Mobility in Transnational Asia*, Philadelphia: University of Pennsylvania Press, 2005; Anne Britt Flemmen, “Transnational Marriages-Empirical Complexities and Theoretical Challenges. An Exploration of Intersectionality”, *Nordic Journal of Feminist and Gender Research*, Vol. 16, No. 2, 2008, pp. 114–119.

¹⁰ Sarah Carol, Evelyn Ersanilli and Mareike Wagner, “Spousal Choice among the Children by Turkish and Moroccan Immigrants in Six European Countries: Transnational or Co-ethnic Migrant”, *International Migration Review*, Vol. 48, No. 2, 2014, pp. 387–414; Johanna Leinonen and Saara Pellander, “Court Decisions over Marriage Migration in Finland: A Problem with Transnational Family Ties”, *Journal of Ethnic and Migration Studies*, Vol. 40, No. 9, 2014, pp. 1488-1506.

¹¹ Marja Tiilikainen, Mulki Al-Sharmani and Sanna Mustasaari (eds.), *Wellbeing of Transnational Muslim Families*, New York and London: Routledge, 2020; Marja Tiilikainen, “Somali Women and Daily Islam in the Diaspora”, *Social Compass*, Vol. 50, No.1, 2003, pp. 59-69; Carol et. al., “Spousal

Choice”; Anika Liversage, “Transnational Families Breaking Up: Divorce among Turkish Immigrants in Denmark” in *Transnational Marriage: New Perspectives from Europe and Beyond* edited by Katherine Charsley, New York and London: Routledge, 2012, pp. 145–160; Ruba Salih, *Gender in Transnationalism. Home, Longing and Belonging Among Moroccan Migrant Women*, London/New York: Routledge, 2003.

¹² Loretta Baldassar and Laura Merla, eds., *Transnational Families, Migration and the Circulation of Care: Understanding Mobility and Absence in Family Life*, New York and Abingdon, Oxon: Routledge, 2014; Deborah Bryceson and Ulla Vuorela (eds.), *The Transnational Family: New European Frontiers and Global Networks*, Oxford: Berg, 2002.