

Muslim marriage and divorce practices in contemporary Britain

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i) Introduction (Justin Jones and Shaheen Sardar Ali)

Recent years have seen heated debate about the ability of modern, purportedly secular Western nations to accommodate the practice of Islamic norms of marriage and divorce by their Muslim citizens. To what extent 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?

Consideration of issues such as these has been increasingly prominent in the UK in recent years. In a [renowned 2008 speech](#), the then Archbishop of Canterbury, Reverend Rowan Williams, made a case for the possible recognition of multiple legal jurisdictions to allow for constructive accommodation between civil laws and the religious laws of minorities; his speech was widely misconstrued as advocating the imposition of *shari‘ah* laws in Britain. Recent years have seen a further reverberation of interest in related questions regarding the legal practices of Muslim citizens, sometimes with the insinuation that Muslims are operating outside the bounds of civil laws. For instance, we have had several years of high-profile debate about the role of *shari‘ah* councils. Sections of the media have alleged that such bodies operate a parallel system of justice in the UK, while Caroline Cox, a member of the House of Lords, has [introduced several bills in the House since 2012 seeking their abolition](#). Simultaneously, there has been considerable coverage of the question of unregistered Muslim marriages, including a prominent 2017 Channel 4 documentary, [The Truth About Muslim Marriage](#), which asserted that up to 80% of British Muslims are not registering their *nikāh* marriages with the civil authorities. And in 2018, a [government-commissioned review](#) of these issues led to the production of a report, [Applying Sharia in England and Wales](#), which acknowledged the widespread persistence of *nikāh*-only marriages and Islamic divorces, and the active role of bodies such as *shari‘ah* councils in adjudicating on such matters. The full implications of the report have yet to be digested.

Alongside these discussions, there has been a rapid growth of academic interest in these questions in recent years. Scholars such as Rajnaara Akhtar, Shaheen Sardar Ali, Samia Bano, John Bowen, Rebecca Probert, Rehana Saleem, Prakash Shah and Islam Uddin are just a few of those scholars who

have reflected upon Muslim marriage and divorce practices in modern Britain.¹ All have confirmed the existence of these same modes of marital conduct among British Muslims, and have interrogated them according to a range of sociological, anthropological and legal perspectives.

While the media, academics, and policy-makers have thus all made themselves heard in these debates, the most immediate participants in these worlds—the figures who work within British Muslim communities—can often be drowned out. This blog series seeks to put forward the voices of some of the Muslim religious leaders, lawyers, and activists who handle matters of Muslim marriage and divorce in the UK at the grassroots level. This is the gap that this blog, in part, seeks to address.

Our blog arises from a thought provoking panel discussion that was held as part of a conference, “[Reformulating matrimony in Islamic law](#),” organised by Justin Jones and held at the University of Oxford in June 2018.² This panel, which was chaired by Shaheen Sardar Ali of the University of Warwick, was convened to consider Muslim marriage and divorce practices in the contemporary UK. Unlike many debates to date where discussions remain mainly within an academic and theoretical framework, the panellists for this event were all selected on the basis of their vocations: all hold practical involvements within Muslim communities, in their roles as *imāms*, members of *shari‘ah* councils, community activists, and lawyers. All were asked to reflect from their personal experience upon the matrimonial lives of Muslims in Britain: the kinds of marital and divorce practices followed within the community, and the working relationship between religious and civil laws. It was a lively session, engaging and frank, with panellists sharing their knowledge and opinions openly and honestly. They reflected upon their vast experience of actual practice among Muslim communities, and proposed their own opinions on the existing challenges and possible means of redressing them. The question and answer session too, brought into relief the rich canvass of views, perspectives, and practices prevalent within British Muslim communities regarding Muslim family law.

In this blog series, the contribution of each panellist will be presented almost unchanged (only tidied up slightly for readability and with a few later comments from Q&A incorporated), with a view to maintaining an authentic record of their accounts. We begin each instalment with a few of our own ruminations on its contents and implications.

Several striking claims arise from the contributions that follow, some of which may make uncomfortable reading for some, but which are supported by other empirical research on Muslim marriage practices in the UK. First, that significant numbers of Muslim women in *nikāḥ*-only marriages believe that their “marriage” is legally recognised under the law in England and Wales,

¹ Several particularly useful contributions by some of these scholars are available in the [Oxford Journal of Law and Religion](#) (7, 3, 2018): 367-454.

² The conference was part of a [larger comparative project on Islamic family laws and the changing nature of Muslim matrimonial practices](#), funded by the Arts and Humanities Research Council (AHRC).

even though it is not. Second, that some Muslim couples choose consciously to remain in *nikāḥ*-only marriages, for a range of reasons that will be explored in this series. Third, that *nikāḥ*-only marriages are being used by some members of the younger generation of Muslims as a form of “*ḥalāl* dating” in the absence of a civil marriage, or a means of “testing” a relationship before taking on the legal commitments of a registered marriage. Fourth, that *shari‘ah* councils serve an important community need, including issuing divorces for *nikāḥ*-only marriages; and that demand for their services remains high in many communities (although, we must note, these bodies are in no way considered a replacement for official courts). And fifth, that *nikāḥ*-only marriages create space for alternative marriage practices, such as polygamous unions, which would not be possible in the UK if these marriages were registered.

The ensuing five blogs, offered by community practitioners from different parts of England, all offer a series of interconnected glimpses into the matrimonial realities as lived by UK Muslims. The speakers are open about the challenges faced, and equally, are proactive in their search for a constructive relationship between British and Islamic legal values. Finally, in a concluding statement, we offer a few reflections on ways forward. We hope that this blog series will ask many questions, and if we are lucky, it may even suggest an answer to some of them.

ii) **Aina Khan**

Introduction

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 concerning the civil registration of religious marriages, and for awareness-building surrounding the issue.¹

Speaking here as a campaigner, Khan here focuses with urgency upon what she calls the “ticking time bomb” of British Muslims failing to register their *nikāḥ* marriages under civil law. Unregistered marriages, she argues, are the growing norm among young Muslims especially: over 80% of Muslim *nikāḥ*s are unregistered, according to her campaign’s figures. 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. If a couple with a registered marriage were to get divorced, she suggests, both parties would be entitled to a share in their collective assets (the joint home, for instance) and rights of child custody; while in the case of a *nikāḥ*-only couple who terminate this relationship, the courts have few grounds on which to confirm these rights. Women with *nikāḥ*-only marriages, therefore, are placed in vulnerable situations.

While acknowledging that some women consciously choose not to register their marriages, or take out a *nikāḥ*-only marriage with a view to “testing” the marriage prior to civil registration, Khan identifies a lack of awareness as the central reason for the prevalence of unregistered marriage. Many women, she argues, believe their *nikāḥ*s to have official recognition, whether through their ignorance or through misplaced trust in the word of their husbands to handle the formalities.

The situation, she argues, is giving rise to an unknown number of what she calls “*nikāḥ* 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.” Speaking of the “victims” of unregistered marriage, she argues 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. There is also a recognition that unregistered *nikāḥ*s can cause further problems for British Muslim women overseas, where official documentation alone is often considered to be the sole authoritative indicator of marital status.

Significantly, she notes a further contributing factor to the misery experienced by many: the cuts to legal aid. Since the Legal Aid, Sentencing and Punishment of Offenders Act (2012), funds have been withdrawn from family law litigation, depriving victims of legal assistance. Likewise, she criticises the state’s increased reliance upon out-of-court mediation as the best means of handling family law matters, especially in the wake of the Family Justice Review of 2011. Mediation, she argues, is more likely to benefit the stronger party: in this case, often husbands.

Khan’s statement reflects the common surprise—both within Britain’s Muslim community and also internationally—that English law has adopted so few legal measures to promote civil registration of *nikāḥ* marriages. This is contrary to the laws implemented both in other European nations, like France and Germany, but also in most Muslim-majority nations. These countries, she argues, have done more to extinguish the kinds of “clandestine marriages” that still exist in the UK.

Reflecting upon the strategy of her “Register Our Marriage” campaign, Khan articulates 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 those 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. 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. These measures, she argues, can offer the enticing prospect of a new *ijmā‘* (consensus) for handling the problem of unregistered *nikāḥ* marriages: in other words, a collective agreement within the Muslim community on the issue.

Transcript

‘I am a specialist in family law in England and Wales, and I have been involved in grassroots, hands-on, practitioner-based work for about 27 years [with a niche specialism in Islamic family law]. Why is our marital and divorce law in such a shambolic state? Recent years have been a rollercoaster in this area, but unfortunately, we have [as a society] not made the progress in this area that we should have. We have gone backwards and regressed, when instead we should have got our act together. I do not say this lightly. I see the consequences of this every day, and other lawyers will echo that. But I say this out of hope, for the Muslim community is mature and respected in many other areas.

Hardly a day goes by without what my team refer to as a “*nikāḥ* horror story” [unregistered in civil law]. A woman telephones [our office], very depressed upon discovering that her marriage, whether it has lasted two days or 25 years, has no legal standing whatsoever. [Such a woman] had gotten married in the best of faith, trusting her husband and the *imām*, thinking that this is a legal marriage [...] and now finds that, after divorce, she has no legal rights. In one telephone call just recently, as happens all the time, a woman who had been recently widowed, and who was bringing up four children, was called up by solicitors who said that, since there had been no marriage, they had the right to seize her husband’s property that she lived in. Her in-laws had claimed that there was no marriage, and they were taking the property back for themselves.

In another case that came to us, a woman was imprisoned in Syria, and was calling us through a human rights association. She said that she was in jail now, [and] was pregnant, but that her husband, whom she had married in Britain, had the marriage certificate [and] that she had no way of proving her marriage. Since in Syria any fornication or adultery is illegal, she faced being made to serve time in jail for *zinā* [fornication], and having her baby taken away. With no proof of marriage, she had no defence. Since everyone in Syria has an ID card, and can use it to prove their marriage, the [Syrian] judge refused to believe that, in a country like England in the twenty-first century, her story could possibly be true: that she had got married, had publicly announced the marriage among family and friends, and had photos and a video, but had no piece of paper because her husband always controlled it. I faxed the judge on the day of the hearing to say that this is an all-too-common

occurrence, [and that] it happens in the UK all the time, however surprising it was to hear that English law has not dealt with this. Thankfully her story was believed, and she has now been released.

Not every case is as dramatic as these: but the average case might be something like [a woman who says] “I got married and put all my life-savings into the house, and [my husband] has now disappeared and had the house and mortgage in his name.” Or, “[my husband] is blackmailing me by refusing to give me a [religious] divorce, telling me that he will only give me a divorce if I give him the children [or the house, or the savings], and saying that I cannot go the English courts to get a divorce [because there is no registered civil marriage].” This is happening every day.

But how many more [stories like these] are out there? [...] We only know about the women who were astute enough to seek access to justice, and my biggest despair is that we legal practitioners only see the tip of the iceberg. When we are absent, it is women’s groups, or family and friends, or the internet, that become the domain for women to seek advice. But no research has been done to the necessary level to give us the numbers.

Many *shari‘ah* councils blackmail women. The majority view of most *shari‘ah* councils is that a woman can only ask for *khul‘* if she gives up the *mahr*. This allows the *shari‘ah* councils to barter the divorce—“you give up the *mahr* [to your husband], and we will give you the *khul‘*.” It is only the reputable ones who will not blackmail like that, and who admit that this is not an issue for them to deal with because it must be dealt with through the English courts.

Cohabitation gives you no legal rights in this country. The woman or man in the street might think that living together for years, with a child, must mean something because the government would have sorted this out.

In fact, we have gone backwards. Twenty years ago, it was perhaps 80% or more of Muslim marriages that were registered; five years ago it was only 50%. But my legal experience, and the word of the *imāms*, and anecdotal evidence from any British Muslim, will now tell you that the majority of the young people getting married are not legally married. Of the marriages [we] go to, almost *none* are registered before the *nikāḥ*. Some may be registered afterwards, but this means that [men] can “test” the marriage. They [consider whether] they are satisfied, whether there are children involved, whether their wife is good to their mother, whether their wife behaves well, and then they decide, “I will ‘reward’ you with a legal marriage.” This is the way now. So we need to realise that this is not just [a matter of] ignorance of the law, as it used to be.

Unregistered marriage is a huge problem. People are sleepwalking into disaster. It is a ticking time bomb. It affects people’s housing, employment, and integration, because if family life is unstable, then everything falters. There is maybe a view that talking about registering a marriage or pre-nup is “unromantic,” to which I would say to them: “how romantic is a courtroom?”

There is another big narrative here: there is now no legal aid for these cases unless there has been domestic abuse and it has been reported. The government’s golden solution [for marital breakdown] is mediation; but people do not want mediation, because it is probably too late and

anyway mediation does not have good outcomes for the weaker party. So there is no easy [legal] solution for [unmarried] co-habitees at all.

Access to justice can't be just words; it has to be real. How would we like to see these issues resolved? To some degree, the involvement of lawyers just complicates the issue, and adds delays and costs, so we should only act as lawyers if we can find ways to be a force for good and deliver justice quickly and affordably. Meanwhile, English law is stuck in 1949, nearly 70 years ago, when we were pre-migration, meaning that the only three faiths that had to register their marriages were and are the Anglican Church (Church of England and Wales), Jews, and the Society of Friends, or Quakers. While this last category has a population of about 13,500, Britain's Muslim population was 2.7 million Muslims according to the last census, and is projected to have reached 3 million already, because of a growing youth population and migration. There is great disparity in the state offering protections to three faiths and not the others. My view is that either no faiths should be protected, as in a purely secular system like France, or all faiths must be. We know that [the French system] is not going to happen realistically, [partly] because the Church of England has a certain position as part of the establishment. This means we need another response.

I find the current legal situation inequitable and indefensible. What I am lobbying for with my "Register Our Marriage" campaign (which is a voluntary campaign that has been running for four years), is a two-pronged approach. The first element is to say the following to the government: that we want the law to be brought up to date; that all faiths must be treated equally (defined as per the Charity Commission's definition), and that the law of the land should ensure that all religious marriages must be registered, just as they are in every Islamic country. You will not find many Islamic countries that allow citizens to have secret or clandestine marriages, and they usually [implement] ID cards that name the husband and make marriage enforceable.

The second element is to build an awareness campaign, supported by the government but also by community enterprises, which gives people information through community events and roadshows. You cannot have a law that comes top-down, since you must have buy-in from the people it serves.

We need to tell people that the solution is registered marriage or nothing. Tell them that they can register the marriage, then put [the certificate] in the cupboard and forget about it. It is that simple, and no one tells the truth about it.

I am also pitching for funding for research to the necessary level. The last research was carried out by the Channel 4 TV programme that aired in November [2017], which had interviews with about 1000 women, and which found that over 80% of under-25s have not registered their *nikāh* marriage. Research needs to extrapolate this across a larger sample.

My own work is now focusing on complex international cases, since there are global families who are going through all this. There will be teams who will be working [to build up information on] case studies [of the handling Muslim family law in courts]. Ultimately, what we all need is an authoritative online repository of agreed-upon knowledge of key test cases [that have been resolved in

courts] that we can publicise and work from. We can then have a broad spectrum of knowledge [to solve legal problems in Muslim family law questions]. Let the people on the margins of opinion argue it out on each side, but the broad majority are in consensus. It is *ijmā'* [consensus] that we work towards always.

The government is unlikely to do much alone. But recently they have woken up, in the [March 2018 Green Paper](#), highlighting the need for awareness-building and integration campaigns. They are taking both prongs of the “Register our Marriage” campaign seriously, both supporting awareness-building, and looking to the Ministry of Justice to reform the law. We all have to work together now while they are listening.

We need to understand the nature of the current crisis—every second someone’s life is being destroyed. We need solutions not in five, ten, or twenty years, but today.’

iii) Musharraf Husain

Introduction

Musharraf Husain is an *‘alim* and *imām* based in Nottingham, and one of the leading Muslim community representatives of the Midlands. Trained at Al-Azhar in Cairo, he is a scholar of the Qur’ān 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.

In his statement, Husain draws upon his work as a community *imām*, and reflects upon the hindrances he has faced in encouraging Muslims to handle their marital lives in accordance with civil laws. Positioning himself as an intermediary between community and state, Husain speaks of his firm belief in the importance of the registration of *nikāḥs* as civil marriages, and sees this as a necessary condition of the *nikāḥ* in Islam. He also recounts his efforts to encourage his congregation to take up the practice, for instance, by obtaining a marriage licence for his mosque, so that the institution is able to provide civil marriages simultaneously with *nikāḥs*.

However, despite his efforts, he notes with some frustration that many Muslims are either uninterested in, or even hostile to, the idea of registering a civil marriage. Like other contributors, Husain attributes the lack of willingness within the community to various factors, including a lack of awareness; sheer carelessness; and the “callous and materialistic attitude” of those who may benefit from avoiding legal responsibility. He also notes that Muslims do not instinctively consider their mosque as a natural location for marriage, meaning that, unlike Christians, Muslim families often choose to solemnise their *nikāḥs* in homes or private settings rather than a properly licensed religious building.

Additionally, he remarks how many *imāms* and community leaders have wanted to keep marriage as “flexible [...] feasible, and easy” as possible, perhaps to avoid ruptures to community norms; and thus, they have often not pushed for civil registration. Muslim marriage in the UK, he suggests in a striking metaphor, has become like a “Drive-thru McDonald’s,” with Islamic marriages and divorces being contracted and terminated with minimal planning or consideration.

Attitudes within the community are only part of the explanation, however. The state has also played a part: by refusing to legislate on *nikāḥ*-only marriages, it has allowed them to persist. Indeed, elaborating on the state’s role, Husain offers 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 an imagined “myth of the return” to their places of origin. Meanwhile, the state offered little support for these new communities and merely “left” them to integrate. This created an ethic of community self-reliance that has led to disengagement from the state and an enduring “laissez faire attitude to marriage.”

Husain, speaking in his role as an *imām*, presents himself as seeking a constructive means forward: one that is gradualist in approach, but seeks a closer alignment between religious and civil laws of marriage. Referring to his own practices, Husain describes how the *nikāḥ*-certificates that his association provides include a written statement that a *nikāḥ*-marriage must be civilly registered for it to be considered valid. Likewise, he describes how he and other *imām* in Nottingham, when confirming Islamic divorces such as *ṭalāq* and *khulʿ*, note on a divorce certificate that the Islamic divorce only stands once a civil divorce has been confirmed. The same practice is now being conducted by some other *imāms* and solicitors in the UK who work with Muslim family law, who comparably confirm an Islamic dissolution of marriage *after* the completion of civil divorce proceedings (among these are Saher Tariq, Husain’s own student and a family solicitor based in Leeds, who works in conjunction with *imāms* to provide parallel Islamic and civil separations). This mechanism for aligning Islamic and civil legal stipulations on marriage and divorce, he implies, offers a constructive model that might feasibly be taken up more widely by *shariʿah* councils and other community forums.

Transcript

‘I would like to share my experience after working in community organizations for 40 years and as an *imām* for 25 years.

Yesterday I was conducting a *nikāḥ* for a couple; they haven’t had it registered yet, but have said that they will and I hope they will do so. Another woman came to me just before, saying that her daughter was getting married tomorrow, and she would like it if I could do the *nikāḥ*. I said that I already had three appointments that day, and couldn’t do it. But this happens time after time, even though these weddings are being planned months and years ahead. What this shows is that the

religious side and the legal side of marriage is very far from people's minds. There is nothing legal about it for them, and it can be sad, alarming, and shocking.

Five years ago, I decided to register my mosque as a place for the registration of marriage. I kept talking about how it wasn't right that we are only performing *nikāḥ* [without civil marriage]; that it is not recognized by the law; that it leads to complications; and that those who suffer most are usually women, and it is something we shouldn't be doing. I tried to inform people about this 24/7; I talked about it in my Friday sermons, and had signs and billboards made for my mosque.

Lo and behold, along came the first person who came to me to conduct the *nikāḥ* for his daughter's wedding. I told him that he wouldn't need to get his daughter and son-in-law to get a separate appointment with the registrar to get a civil marriage, and that I could do the civil marriage and the *nikāḥ* together in the same place. He told me "No no, they can do that later on, you just do the *nikāḥ*." I said "Sorry, I'm not going to do it." Finally he went to someone else. And this was one of the people from my own prayer congregation. That just shows how little marriage registration is being thought about.

After five years, the Nottingham Registry Office were supposed to give me a register so that I could do the whole thing [myself]. But they said that they couldn't give me a whole register until their superintendent had seen me do seven or eight marriages in their presence. After five years, I have done dozens and dozens of *nikāḥs*, but only four or five registered marriages. They are just not [requested] [...] In fact, one of my close colleagues, on the Board of Trustees, had his daughter's marriage conducted just a few months ago; again, he just wasn't interested in getting it registered.

I don't fully know, but I think I have some kind of explanation for [the reluctance to register marriages], partly from a historical perspective, and partly a theological one. Most British Muslims started arriving [in the UK] in the 1950s, the majority from rural areas of Pakistan, Kashmir, Bengal, and India; and they only had one priority then, which was to earn money and look after their families back home. They were keen on setting up *ḥalāl* meat shops, and mosques to cater to their needs (indeed, when we [my family] came here in the early 1960s we set up a mosque). So, most thought of this country as a transient home, and there was a sense of this myth of the return. It was the culture, religion, politics, of the home country that was real, and the rest was just transitory.

And sadly that seems to, in a sense, still be going on after 50-60 years. Maybe this is because there was no serious attempt by the state or the government to help. Little support or consideration was given to the religious and social needs of these communities, who were often *left* to integrate. They were regarded [only] as cheap labour, and little engagement was shown with *shari'ah* or their social customs. The lack of engagement with these communities and poor understanding of how Islamic law affects people has, in my opinion, given rise to [the community's] alternative avenue and this very relaxed, or lax, or laissez faire attitude towards marriage...

I have seen marriages done in my [ancestral] village in Pakistan, and it is totally different. There, the first thing that people think is, "we shall get the *munshi sahib* (the official clerk or

superintendent): we must arrange his appointment first.” But here, people invite me, and say “we want you to come and do the *nikāḥ* in my house,” and I say “no, I’m not going to do it in your dingy bedroom or your dingy lounge, I’m sorry, it’s got to be done here in the mosque.” And they say “no, then don’t do it.” And that sort of attitude is not changing yet.

That is why I am so adamant that it could be a good thing if there is a change in the law to say that a *nikāḥ* has to be done in a registered place and that anyone who doesn’t would be breaking the law, or something along those lines. On the other hand, one of my very senior *imāms* said, “we don’t want that, we need to keep [marriage] flexible; we want to keep it feasible, easy, so that people can just walk into it.” It is almost like some kind of drive-thru at McDonald’s, where people come in and then go out on the other side. There is that *laissez faire* attitude towards it, sadly.

But there is perhaps [also] a theological underpinning of it, which is that people regard British law as being based on Judeo-Christian values, and of course it is Christian to a great extent. They then say that the Qur’ān is the *muṣaddiq*, the confirmer, the affirmer, of Judeo-Christian values; therefore, it is [our Islamic practice] that is completely lawful. So whatever is happening in our lives, even if the civil law is silent about it, it is the law of Islam [that matters]; so there is no problem [with unregistered marriage]. I think that might be a reason why some people are so relaxed about registration.

And there is no doubt the question of people not wanting to face legal consequences, men in particular. Some men might have a callous and materialistic attitude, and some women are not bothered either. I always ask when people come to me, “have you made an appointment to get a civil marriage?” A lot say no. I say that they must, but even then they ignore it. Sometimes, this is because of the legal consequences. But it is not always greed and materialism [that prevents marriage registration]. Sometimes, because there is no legal requirement [to register] people just assume that they have got their Islamic endorsement, and that that is enough for them.

On the bottom of the *nikāḥ-namah* certification that we use in our mosque, we have written clearly that this document is not valid until it is registered with the marriage registry. But again, people are not bothered about it.

Another issue that I have to contend with as an *imām* is divorce. Women sometimes say that they have got their civil divorce from the courts, but then say that they are still not satisfied, and want an Islamic divorce. I say to them that [the civil divorce] is ten times more powerful than an Islamic divorce, because you and your husband have stood in the dock and declared that you are divorced. What other kind of divorce could you want? [To deal with this problem], I sat down with other *imāms* and we formulated a certificate that we hand out, that shows that, once you have received your decree of divorce from the magistrate court [...] on this date, then that stands as a valid Islamic *ṭalāq* [divorce]. Three or four of my *imāms* have signed it, so we give them that.

But even that is not satisfactory to some. So about three years ago I asked Saher Tariq, one of my students and a barrister, who with her husband runs a solicitors firm in Leeds. And after seeing the

poor handling of *khul'* divorces, and the poor performance of some of the *shari'ah* councils, we decided that it was easy enough to do this ourselves, and we set up our own a *shari'ah* council to perform this service. This means that, if people want an Islamic divorce to accompany their government divorce, they can now get their *khul'* from us.

These are the anecdotes I wanted to share with you. I think there is a persistent attitude [among British Muslims] of not taking things seriously. The law or the government might be able to step in here, but I can't see the government ever interfering, since things don't work in the way they might in France or Germany, so I would be very surprised if the British government ever involves itself [in regulating Islamic marriage], unless you get the 3.5 million Muslims in Britain suddenly becoming interested and saying they want it. I would be very happy if the British government does say that *nikāḥ*-only marriage is not allowed, or that anyone who performs it will be punished, but I can't see it happening.

We should remember something else. One of the core purposes and essence of Islam is to develop the science of human relationships. The Prophet emphasised that his real purpose was to make people of strong character, by which what was really meant was the virtues of kindness, goodness, modesty, gratitude, humility and so on; and the institution of marriage is part of this. The Qur'ān points out the four functions of marriage: it is a legal contract; it is moral (in that you have to exercise *rahma*, being moral, within it); it is spiritual, and it has a social aspect. So marriage is very important—and we would not exist as human beings if we did not have this institution... And (I am not being arrogant here since I live in a Western society), this is what the West might actually learn from Islam's view on this great institution of marriage... So as an *imām*, it is important for me to emphasise its significance for the wellbeing of my own community, and somehow we have to come back to emphasising this great institution.'

iv) Amra Bone

Introduction

Sometimes described as “the UK's first female *shari'ah* judge,” Amra Bone sits on the panel of the Shari'ah Council of [Birmingham Central Mosque](#), one of the UK's largest and best-known *shari'ah* councils, which handles a large body of Muslim divorce litigation in particular. She has also worked as a Muslim leader and chaplain within the community in Coventry and Birmingham for some thirty years.

In this statement, she reflects chiefly upon her work as a “panellist” on the Birmingham Shari'ah Council. She provides a number of vignettes on the work of the council and the life-stories of its litigants, and gives a sense of the diversity and complexity of the cases that are brought to the Council. Many of the cases that she cites defy the frequent stereotypes of *shari'ah* councils as

patriarchal institutions that indoctrinate their litigants. Instead, the overall impression given is that these institutions fulfil an important community need that would not be fulfilled were these institutions to disappear. They offer essential services, like an efficient, streamlined divorce procedure (one more affordable and efficient than the service in the civil courts) and counselling assistance for couples seeking reconciliation. The role of *shari'ah* councils, she implies, is particularly important given the new tensions within the Muslim community that have accompanied social change, such as the erosion of arranged marriage and move towards love marriages. Changing social norms have been the cause of intra-familial breakdown, and young Muslims sometimes approach *shari'ah* councils as a third party, to seek resolution or to support them against pressures from family elders.

Bone is keen to refute the impression of Muslim women as helpless. They can be “surprisingly strong,” she argues, giving examples of women who approach the *shari'ah* councils autonomously and voluntarily in pursuit of preferred outcomes. The councils, she implies, have a role in “enabling” women to express their wishes and achieve their desired ends.

Bone also evokes 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. Such arrangements might offer some women greater professional or financial independence, or free them from other marital duties. Accordingly, she makes a call to question old assumptions about Muslim marriage and acknowledge the existence of alternative forms of “balance” in Muslim society.

By Bone’s analysis, *shari'ah* councils are not only Islamic legal bodies, but spaces for promoting public religious knowledge and teaching. Expanding on this theme, she implies that decisions of marriage and divorce in the council are made with reference not simply to provisions of *fiqh*, but the wider “ethical” teachings of the Qur’ān. We see this in her emphasis upon the need for “trust, love, compassion” within marriage, and upon her interpretation of the role of the male marriage “guardian” (*walī*) in the care or provision for a woman, rather than control or instruction.

Furthermore, to dispel the misconception that *shari'ah* councils are makeshift, arbitrary institutions, Bone gives a sense of their internal regulation and clear attention to procedure. Rather than a single judge (*qaḍī*) holding discretion, the several members “come to decisions as a panel,” by ‘respecting [...] and listening to each other [...] [to] balance out our views.’ This argument potentially hints at the *Mālikī* legal principle of *jamā'at al-muslimīn al-'udūl*—a concept that Bone has referred to elsewhere—which asserts that decisions of law and guidance can be made by a “council of upright Muslims” in the absence of a Muslim government able to issue judicial decisions. The systematic and responsible nature of *shari'ah* councils is also suggested in her reference to a national Board of Shari'ah Councils, that provides a central infrastructure for these institutions and enhances their credibility.

Moreover, by referring to the council as having a “panel,” and its members as “panellists,” there is an evident avoidance of the legal language of “courts” or “judges.” The message, clearly, is

that this *shari'ah* council does not trespass onto matters of civil law. Bone is explicit that the council throws out any issues that transgress its remit.

Like other contributors, Bone gives the sense of a very “British Islam,” and suggests that any proposed solutions need to work entirely within the British environment. Similarly, comparable with other contributors, Bone makes a call for flexibility of understanding and interpretation based upon Islam’s diversity.

Transcript

‘My role has been primarily that of an educator. I started as a Muslim girls’ club leader, a role that [...] first got me involved in the community in Birmingham. That made me familiar, some 25 years ago, with the problems that Muslim girls were facing. This [club] was a place where girls could come to discuss and play sports, and often I had to go to assure the parents that this was a suitable thing for their daughters to be coming to. Things have moved on since then [...] Around 2004, we set up Coventry City Circle, a group of men and me, and I became the chair of that body that was there to promote peace and understanding through education and dialogue between people of faith and people of no faith. A lot of Muslim women would attend our programmes too, and later, a woman who came to our events and felt inspired by them, went on to set up the Muslim Women’s Network. The priority must be to teach women so that they can lead; [Muslim] women have sometimes been brought up to think that they are not leaders, or cannot be leaders because of certain [religious] constraints, but these perceptions are changing now.

During this period, I was approached by the director of [Birmingham Central Mosque], who asked me whether I would come and be part of the Shari’ah Council, not as an assistant or a helper but as a panellist. I had to think about this, since making decisions on people’s lives is such a great task, but I sought advice [...] and people said to me, “If you don’t [take on this role], just imagine who might.” So, I have considered this role to be a responsibility [for me].

Working in the Shari’ah Council has been an immense experience, and although I was already familiar from my early work with lots of problems that the Muslim community face, I came across even more. In my role as educator, I have tried to deal with problems themselves and to mediate between people, and also to offer education about Islam and its teaching about equality. [In the Shari’ah Council] we are developing, on a daily basis, understanding about what a marriage is, what the ingredients of marriage are, how to deal with our partners, and so on. Marriage must be based on trust, love, compassion, and respect between both parties.

I remember once sitting alongside some traditionally educated ‘*ulamā*’, and we were speaking about a case of divorce. One scholar claimed that he could not see the grounds for divorce [according to *fiqh*], but I asked him whether he could see any trust at work in that marriage: he said that he hadn’t thought about it. [The problem has been that] sometimes people can be legalistic and literal in their reading of Islam, starting with the classically defined grounds and working around them. But being

together on [the Shari‘ah Council] panel, by respecting each other and listening to each other, we have been able to help each other, balance out these views, and develop an understanding of Islam that is ethical and beautiful and grounded in the [principles of the] Qur’ān.

We come across all sorts of cases [in the Shari‘ah Council], and I’ll give you some examples from my experience:

We handle a lot of divorce cases [...] We tell them that we do have a procedure [for divorce], and it will take less time than the civil courts but it can still take up to three months, and we always involve the other party if they want to be involved. The council supports women who cannot afford it by waiving the fees if necessary.

We get a lot of husbands begging us, “please don’t let it happen, I love my wife” [...] and they somehow assume that we can put pressure on their wife to agree [to remain in a marriage]. We tell them that this is not our job. We are not there to investigate his story or her story. We are there to see if their marriage is workable, and if it has the right ingredients of trust, respect, and compassion between the parties. In that sense, we are not there to judge them; we are there to help them, both men and women, to move on with their lives.

Of course, in some cases, we see arranged marriages, many of which are cousin marriages; and when it comes to divorce, the parents don’t actually support the divorce. The parents tell their children “you can go to the Shari‘ah Council, but we are not coming along with you.” [...] Parents sometimes don’t want to get involved, often because they don’t want other members of their families to say that they instigated it, and so they leave their daughters or their sons alone [to deal with it].

Some cases concern love marriages, with people whose parents have not agreed with a marriage but who have gone ahead with it. Sometimes the situation is just a case of parental reluctance, but in some cases, these people have literally run away through a window to get married. In some cases, women have had love marriages and later find that the husband does not share *kafā’a* (compatibility): he may be an alcoholic, or taking drugs, or already married, or have been in prison. These are sometimes marriages in which the family are not involved, and we see plenty of these cases. Sometimes, the parents come around to supporting [their daughters], saying that they had reluctantly allowed her to go ahead with that marriage.

Most of our clients do not have strong knowledge of Islam and haven’t studied the tradition, and so [our task on the Shari‘ah Council] is to serve as their teachers. So, if we need to raise the issue of the *walī* [guardian] and their parents are sitting there, we have to explain to the parents that their role is not just to give their daughters permission or to hold power over them, but they are there in the role of an attorney, to represent their interests. In a lot of cases that we have seen, women are suffering because they went off on their own to marry someone who turned out to be incompatible, precisely because no one had been looking on their behalf. This is what [the guardians] are supposed to do. The *walī* is a protector: they can be a relative, or a friend; someone to look after the girl’s interest. So we try to educate the parents while they are sitting there that looking out for their

daughter's interests is less a case of granting permissions and more of taking due care, ensuring that she does not take out a marriage contract with someone who turns out to be unsuitable or who has a bad record. This is an example of the refinement of Islamic ethical principles. It does not imply that a woman is lower or has a lesser intellect, but that someone in the community has a responsibility to look out for them.

We have also had cases of polygamous marriages. There was a recent case of one marriage in which the wife did not know that her husband was already married. But she did not come to us to seek separation [at the outset]. She knew there had been deception but said that she wanted to give him a chance; and [she said] that if he informed his first wife, and if he could treat her equally, then she could accept it. So we invited him to the Shari'ah Council to sit with us, and as a Council we set up certain conditions that he had to fulfil, and [informed him that] if he had not fulfilled them within two months, then the marriage would be dissolved. Ultimately he did not fulfil them, but [what is significant is that] she did not say that she did not want to be a second wife [in any circumstances]. She would have accepted this, so long as her conditions were met.

There have been other cases [in which women have not objected to a husband being in polygynous marriages]. I have had women come to me personally who have said "look, I don't want to have a 'proper' marriage in that sense, I don't want a husband who is under my feet. I want to have my freedom. He can have his other wife, and he can come to see me when I want to see him." There was another woman who said that "I chose to marry a man who is already married because I don't want children. I want my career, and he has already got children and a wife somewhere else, but so long as I am free and I can do whatever I want, then I can have these marital relationships according to Islam." A number of these women who choose to express this are converts. I may not agree with them, but I do not have authority to tell them that they can't do this. I may have an opinion, but people have a choice.

This is not just an issue of education. We now have women coming to us who are willing to be second wives. They are highly educated, have money and a career, are in their early or late-thirties, and are sometimes looking to get married later when most men are already married. We have women saying that they know their husbands are already married to somebody else, and they are fine with that. There are many cases like this, and many women who are unmarried, so we do need a debate about how far do we go and where the balance lies.

If a man thinks that to have another wife is his right—and a lot of men joke about this, or at least it is in the consciousness of some men that they can [take another wife] at some point—then my role is not just to lecture him about his wife's rights or his own responsibilities, but to remind him to look upon his first wife as a human being, and that if he takes a second wife without her knowledge or agreement, he will break her trust. That is the role I am playing in the Shari'ah Council. Luckily, I am working with people [on the Council] who are open minded and agree with my perspective.

Women can be surprisingly strong, and they come to the Shari'ah Council saying very clearly what they want. We had one woman who came with her mother: the mother did not want her to divorce her husband because she had had some dealings with her son-in-law, and she had put him in charge of some family land after her husband passed away. But her daughter was saying "I don't care about that land, I don't want to be married to him." So [the daughter] stood up to everyone in the family, and said that she wanted the divorce to go ahead.

We get a lot of women coming on their own, sometimes because they don't have the support of their family, and they know that the only people who are actually going to hear their voices are the Shari'ah Council. The Shari'ah Council is actually enabling them to say what they want to say, to give them that voice even when their families will not listen to them. Of course, this isn't the side of things that we always hear in the media, but these experiences are very significant.

Most people who come to the Council are simply wanting to do the right thing by God. Some, simply want [to get] a divorce certificate to facilitate a new marriage, while others are concerned just to [dissolve] an existing failed relationship.

We have very few cases where people want to talk about their finances, and when we do, we say that we don't deal with that. Civil courts deal with assets and custody cases; our role is just to see whether their marriage is viable or not.

When we ask our clients whether they have registered their marriages, often they say no. When we ask women why they have not registered their marriages, they usually say, "because this [Islamic *nikāḥ*] is the more important one"... And when we ask [clients] whether it rang alarm bells to have not affirmed their [legal] rights, some say, "no, we didn't register it because we didn't get round to it." Some people say "it is a good thing that we did not get round to [registering our marriage], because now it is divorce time, and if we had married it would have cost us so much money and time. This way, we can now finish it, move on, and marry somebody else." [...] We had a [client who was a female] lawyer to whom we asked "why did you not register your marriage?" She said, "if I had, I would be ruined by now." There was another woman who said "I have just as many assets [as my husband], I don't want to." As things stand, our council encourages people to register their marriage, or at least, considers that they should be aware [of the consequences if they don't].

Some people try to put pressure on the individual members [of the Shari'ah Council], or on the committee of the mosque, but we are not aligned to anyone [...] I would not be there if we were. We each have our individual intellects, and as a panel we come to decisions, and we will not be pressured.

I have limited experience of the other [*shari'ah*] councils, but I have been told that women now do sit on some of them. Now that there is a Board of Shari'ah Councils, we are trying to work together, to see how each of us is working. This is the point of the Board: to standardise practices and improve ourselves. We have standardised the forms that we use, and we use both the logo of our own council and of the Board of Shari'ah Councils. So we are engaging with this kind of standardisation.

When it comes to theological arguments, we try to contextualise what we are doing within Britain. While we are aware of what is going on abroad, in Europe or in Pakistan or elsewhere, this is not our primary concern. The majority of people [that we assist] see themselves as British: they do not think of themselves as being from elsewhere and are trying to do what they can within Britain. So if we are to find a way for the *shari'ah* councils to work together, to work within the legal system, then maybe there is a way forward. We need solid answers and proposals for how *shari'ah* might work within our legal system, so that we can move forward together as a society.'

v) **Ajmal Masroor**

Introduction

[Ajmal Masroor](#) is one of Britain's most high-profile *imāms*. He 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 counsels on matters of marriage, divorce, and family mediation for British Muslims.

In this extract, Masroor articulates some of the interpretations of marriage that he offers to young British Muslims when mentoring them in advance of officiating their *nikāḥ* marriages. In particular, he asks for the rehabilitation of the spiritual qualities of marriage. He criticises the popular fetishism surrounding the glamour of weddings (and the influence of “Hollywood, Bollywood and Nollywood”—the Nigerian equivalent). He is equally disparaging of the frequent use of *nikāḥ*-marriages as easy means of licencing sexual relationships. Both these factors, he argues, cloud reflection and judgement, and incite young people to take out “DIY *nikāḥ* marriages.”

Here he calls instead for a more “spiritual” reflection upon marriage, and the role it holds in the “just and equitable system” that Allāh has provided for man through *shari'ah*. Marriage, he argues, was granted as the foundation of strong families and a stable society. Moreover, Islam's teachings on marriage carry such universal values that they may even have constructive lessons for Western societies.

Perhaps as an antidote to the focus on the stipulations of *fiqh* common to much community and public discussion, Masroor seeks a return to the Qur'ānic message of marriage. Looking to *āyahs* such as 30:21, he argues that marriage should comprise a “space of safety” for both partners. Moreover, he plays on the difference between partners being “equal” and “equitable”: the implication being that, in the latter sense, the spouses are beholden to find a relationship of balance and complementarity that works for them. In other words, it may not be that partners should expect identical roles, but rather, that they should construct their own forms of mutual support.

Masroor also hints at some of the cultural norms that detract from proper reflection on the Qur'ānic ethics of marriage. Referencing especially the South Asian communities among whom he works, he notes that *imāms*, *khandans* (families) and *biradaris* (community bodies) exact unwelcome social influence in matrimonial matters. He blames cultural norms, misunderstanding, and illiteracy for practices such as “backstreet *nikāḥs*,” instant triple-*talāq* (*talāq-i-bid'āh*) and *nikāḥ-i-halālah* (*tehlīl*), which he disparages as moral profanities.

Masroor identifies the need for more responsible community handling of matrimonial issues: not just of families, but also, the need for responsible *imāms* to officiate marriages, and for trained counsellors to handle marital breakdown in line with the Qur'ān's teachings on divorce. He notes the Bayyah al-'Ahd Institute as a forum for doing this.

Masroor argues that, by Islamic laws of contract, a *nikāḥ* contract can only be considered as lawful in *shari'ah* if it is “legally enforceable”: in other words, in the contemporary UK, an Islamic marriage must be civilly registered to be valid. He makes the same argument regarding divorces, thus forbidding non-judicial divorce. These arguments have often been used by *imāms* in Europe, and suggest possibilities for the creative reformulation of matrimonial laws in Muslim minority contexts.

Transcript

‘In my view marriage has been made far too complicated by us, our society and many other influences: the culture, the family demands that we often have to meet, and societal pressures including the ideal of the perfect marriage as portrayed by our media, Hollywood, Bollywood and Nollywood [the comparably influential Nigerian film industry].

I go to many *nikāḥs*, and conduct them often. I am selective about who I [accept to do them for], and do [sometimes] say no. There is one prominent feature of most *nikāḥs*, which is the expense, the money, the amount of Hollywood and Bollywood influence, and these in my view create huge burdens including financial demands. I had one guy who came to me and said “please can you help, my wife is demanding £20,000 in *mahr* (bridal gift) and a diamond ring, plus her family is demanding a share in my house. What do I do?” There are huge financial demands...

There is also confusion around emotion, and [the belief that] love will make anything happen [and ensure] that everything will be ok. I fear that this is a huge confusion. I ask young people, “when you feel that you are in love, where is that feeling?” They point to their heart [...] Then I ask, “what about marriage? Where is the feeling?” They point to their head [...] So then I ask, “if love is here, and marriage is here, and you get married without one and the other being the same, how do you expect the marriage to last?” [...]

There is also the impact of the secular and materialist attitude that is dominant in our world today. There is a view that the more secular you are, the more progressive you are, so any notion of

spiritual marriage is an anathema. I was laughed at on TV by secular intellectuals for talking about spirituality; they asked if I was “bringing God into the bedroom.” This attitude does have an impact.

In Islam, all contracts must be reasonable and legally enforceable. And what I have learned in my studies is that, by Islamic teaching, marriage is only a marriage when it is enforceable by contract. It is [a contract] between two adults, a male and a female, and it is social, financial, and spiritual, a vow between two people with God in their presence. If you believe in God, and have God in your vows, that is no simple thing. It is a mark of commitment to many things, of which one is accepting the other person as an equitable partner. “Equitable” does not mean “equal,” and it relates to what I call the “leaning effect”—that one partner should be able to lean on the other. When two people lean on one another, there has to be a point of equilibrium—it may not be in the centre, but may be slightly one way or the other, depending on the peoples’ height, weight, and many other factors. If you create an equal partnership it could be a problem; an equitable partnership is far better. Equitable indicates equality in honour, equality in every sphere, as well as equitable in terms of proportionality. So in my view, the first thing is acceptance of that particular partnership.

The second thing is that people often hold a notion of *sakīna*, from the Qur’ānic verse of living in *sakūna*.³ I often see a mistranslation of this from Arabic to English as “tranquillity”—“you can live with them in tranquillity”—and I find this absurd, because the Arabic word [*sakūna*] does not mean tranquillity. It refers to [the place where] you live: I translate it as “to create a safe space.” “*Li-taskunū ilayhā*”: a manifestation of living with somebody, in a place of safety, where you can both grow, emotionally, and spiritually. A commitment to creating a safe space is missing from our conversation. Marriage should be a safe space for the couple, for families, for children; but the reality has become wholly different, and it is a safe space no longer.

The other reference to safe space in the Qur’ān [is] when Allāh talks about relationships. He actually talks about two, rather than one, realms of relationship: one has relatives through blood or through marriage. But in current conversations, I often hear of [only] one or the other... This imbalance is a big problem. If the Qur’ānic notion of family is based on both your blood and your marriage, what about creating a balanced environment where there is safe space for all?

The other commitment that we are making in marriage, in my view, is investing in love and mercy. Love and mercy are two terms that are often misunderstood. The word *mawadda* is used in the Qur’ān—but what does it really mean? It comes from the Arabic word *al-wudd*—and Allāh’s name is *al-Wadūd*. The other Arabic word is *al-Raḥmān*, which is Allāh’s name too. So please don’t mistranslate these words as some mad love or infatuation that you and I have but that is only manifested materially. It can’t be, for the word would be *ḥubb*, if it only meant material love. So if Allah is talking about creating a safe space in which you will become recipient [...] Allah will be put in between the two concepts, *mawadda* and *al-rahma*, the integral part of a relationship. You can’t

³ QUR’ĀN 30:21.

have it unless there is a safe space, and you can't have it unless you understand the concept. These are very fundamental spiritual concepts. And this is missing in the majority of marital discourse.

I am afraid I have to single out the South Asian community. Being in continuous discourse with my own community, Bangladeshis, Pakistanis, Indians, Gujaratis, Sri Lankans—our communities have missed this understanding of marriage completely. It has become something very different.

So in my view, a *nikāḥ* is only valid when the following criteria are fulfilled: when there is proposal and acceptance, when there is a witnessed contract, a *mahr*, public declaration, and a *walī* for all schools of thought except Ḥanafis. But the seventh criteria, which is integral in my view, is legality. If there is no legality, there is no *nikāḥ*. There is no *nikāḥ* without legal [recognition] in my view. When people have come to me, and told me that their marriage could not be enforced, I have said to them that that marriage is not [a real] marriage. I was saying this even twenty years ago, and have received several threats as a result.

The same applies to *ṭalāq*. A man merely pronouncing “I divorce you” three times in my view is not real *ṭalāq*. It is an abuse of the word *ṭalāq*, because this is not mentioned in the Qur'ān, this is *ṭalāq-i-bid'āh* [...] I really go mad when people say to me “can I give three *ṭalāqs* in one go?” I say one more thing too, which is that *ṭalāq* must be legally enforceable. Otherwise, *ṭalāq* is not *ṭalāq*, just like a *nikāḥ* is not *nikāḥ* unless it is legally enforceable.

There are too many misunderstandings, too many backstreet *nikāḥs*, because of these problems; because there are *biradaris* (community associations), there are *khandans* (extended families), there is illiteracy, there are *imāms* who [claim to be] important and [other] people with vested interests—this conversation [about marriage] is one that the *imāms* ought to be having.

In my view, anyone who wants to divorce their wife, or husband, should go to a court, [and] whether they live in a Muslim or a non-Muslim country makes no difference. Do you think that the purpose of marriage and divorce was so that they could become kinds of DIY exercises? I think of the McDivorce—just drive through a shop and you pick up your marriage and then you go to the next window, and you get a divorce and your marriage is dissolved. It can't be this way, because this nullifies the purpose of *shari'ah*, which is to produce a just and equitable system.

We need to change law, to make [a *nikāḥ*] equal or equivalent to a civil marriage. Criminalisation alone is not the solution.

Another issue is that the *walī*-ship is not what our communities perceives it to be. As a *walī*, you don't own someone; you have a right to play a mentoring or guiding role, but it is a God-given right for [a person] to choose [their own] partner. That is one form of knowledge that we are not giving to the younger generation... The *walī* has the right to guide you, but not to tell you what to do. There is a telling story from the second Caliph of Islam, who was looking for someone to give a reference for a boy who had made a marriage proposal for his own daughter. He went to the mosque and said, “does anyone know this boy?” A man claimed that he knew the boy, since he came to the

mosque every day. Caliph ‘Umar said, “there are three criteria that I use before I can take a reference: either you know the boy because you have lived with him, or because you have had issues with him, or you have done business with him. Which are you?” The man said “none – I know him from the mosque,” and ‘Umar said, “you are thus disqualified from giving a reference.” This has a message about the guardian. He is a person who puts in the legwork to get the referencing right, to fill in the background detail, and give an objective perspective. That [point] must not be lost in translation [of the term] or in the *fiqhī* debate that we have.

A relationship cannot be formed based purely upon platonic relationship. *Nikāḥ* legalises a sexual relationship with another person, but the sexual aspect is only a part. In Britain, in the community that I come from, I see more divorces, more people separating, and more children suffering as a consequence. The way to [address] this is by strengthening families—and marriage is crucial to creating a stable society [...]

In my view, *nikāḥ* has been often misunderstood. It should not just be a case of an *imām* doing something inaudible, illegible, or without any participation [...] When I perform a *nikāḥ*, I provide some criteria [...] of which one is that the people attending are able to hear everything clearly, and can take part [...] to me, *nikāḥ* is an important agreement between two people, a prenuptial agreement. Unfortunately, Muslims don’t always do it [in this way]...

In a case I am dealing with now, a very successful girl is marrying with a young man who is just starting out, struggling, and from a difficult background. They love each other and want to get married. But she is smart, and came to me and asked if I could help make a pre-nuptial agreement; she could not go to a lawyer, since that would be too much pressure on the boy. I agreed, and went to the boy’s family. But he said, “no, I don’t want a pre-nuptial agreement, doesn’t she trust me? It’s instant blackmail!” So I said to him, “can you sign a piece of paper, saying that all the things she has and owns before her marriage, and whatever she gets by way of gifts or inheritance from her family, will be hers?” He said, “I can do that.” So we went through the details, and then I asked him “If you can sign this, can you not do it for a solicitor?” He had been afraid that a pre-nuptial agreement would mean that it would take away his rights, as a man, and would give more rights to his wife. So, there is an element of fear within our community [regarding pre-nuptial agreements] that needs to be clarified. I am very much in favour of pre-nuptial agreements, as I am of marriage, and it is the most important issue that we can clarify for our generation.

Just to finish: *nikāḥ-i-halālah* (a form of temporary remarriage) is the biggest *ḥarām* (sin) we have in our world today, and this needs to be stated loudly and unequivocally by everybody. *Halāl* is a sacred term, and it is unethical and unacceptable to use this term for prostitution. This is a manifestation of complete ignorance in our community, of a man wanting to have his cake and eat it, divorcing his wife three times, abusing the God-given right that he has, and then wanting her back. If I were a judge, I’d put him in prison [...]

When there is conflict in a marriage, couples should not resort to families, since they are not objective. I would like to analyse the Qur'ānic injunctions about reconciliation—I believe this ability should be given to a body of counsellors or a trained professional. I want to have people who are trained and accountable to provide a *nikāḥ*. I don't want untrained people conducting *nikāḥ* and therefore causing problems. We [ourselves] do this through our own organisation [the Barefoot Institute], to provide as much as we can.

A second thing is to learn from Europe. The divorce rate in Britain or Germany is close to 50%, which is too high... Marriage is integral to everything we do as Muslims.

I think that Muslims and non-Muslims should together create some universal value system that is driven by the Qur'ān and the Sunnah, as we understand, on those principles on which we have no disagreements, which is about 95%. For the [other] 5% we can create a template called “agreeing to disagree.” If we can create that, I think some of the problems can be overcome.’

vi) **Bana Gora**

Introduction

Bana Gora is Chief Executive Officer of the [Muslim Women's Council](#), an organization established in 2009 to represent the views of Muslim women across the UK. Her expertise is in matters of social policy and engagement with marginalized communities in particular, and at present she is involved in the MWC's plans to build the first woman-led mosque in the UK in her home city of Bradford.

In this statement, Gora both reflects upon her local grassroots experience, and applies academic and scholarly discourse in the search for solutions. She offers a complex portrait of contemporary Muslim communities in Bradford, and by extension, the UK. On the one hand, the city is marked by the rapidly rising knowledge and assertiveness of Muslim women; but on the other, she also notes the ongoing existence of a range of cultural matrimonial practices that persist unchecked, due to “loopholes within British law.”

Gora notes a range of startling cultural practices, 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-*ṭalāq* divorce. As a by-product of the latter, Gora even notes the existence of “*nikāḥ-i-halālāh* rackets,” that “sell” the services of men to partake in temporary marriages, so that a divorced woman may remarry a former husband under Islamic law. The Muslim Women's Council, she argues, encounters such issues “day by day.”

Simultaneously, however, she acknowledges that women themselves often exploit such “loopholes” for their own benefit: for instance, a woman choosing not to register her *nikāḥ* as a civil marriage so as to deny her “husband” the ability to make a claim upon her own personal wealth. It is

not only men, then, who might seek advantage by avoiding the civil legal system when it comes to marriage.

For solutions to these problems, Gora looks not so much to civil law, but rather, argues that “perhaps the best solutions come from within the Islamic tradition itself.” She argues that Islam’s internal “richness and diversity,” the existence of multiple legal schools, and the flexibility of *shari‘ah* all provide the basis for the religion to provide its own solutions.

This view leads Gora to emphasise a programme of public “awareness and education,” especially with regard to knowledge of Islam’s history and traditions. For instance, in a move shared with many women’s groups across the Muslim world, the Muslim Women’s Council has organised seminars and study groups to consider gender-related questions, including the histories of Islam’s female exemplars such as *Khadijah*, *Fāṭima*, and *‘Ā’isha*. By gaining insight into the importance of women in Islam’s companionate and classical era, women today can gain awareness of the space and rights that Islam has always granted them.

More striking still is her invocation of Islam’s polymorphous legal tradition to address contemporary questions. For instance, as a solution to the problem of domestic mistreatment, she notes the possibility of adding stipulations or conditions to a *nikāḥ* 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 of providing women with marital protections 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.

There is also a call to take lessons from Muslims in other parts of Europe. At one point, she notes with some admiration the “intellect [and] academic rigour” of “home-grown” *imāms* in some European countries, who are trained locally and thus are thus attuned to the cultural norms of the nations in which they work. Bradford, and by extension Britain, lack such a home-grown leadership, with many *imāms* coming from overseas. Their remoteness from contemporary Britain implies that, for now at least, British Muslims need to look beyond their *imāms* to find solutions to contemporary questions, formulating responses on their own terms.

Compared to some other contributors, Gora strikes a positive tone. She notes the increasing willingness of women among the UK’s third-generation Muslims to critique and challenge normative understandings. 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 future.

Transcript

‘How do Muslims in Britain understand their laws and their interaction with civil laws? This depends upon the Muslims [in question], their origins, and their level of education. Many conflate

shari'ah with Islamic law, and cannot distinguish between the two. Many are told that secular civil laws are *ḥarām* and contradict Islam, even though Islamic law stipulates that when Muslims are a minority in a non-Muslim majority country, the law of the land must be followed. This is important and needs to be at the heart of these conversations.

Drawing from my own experiences regarding the complexities and problems that Muslim communities currently face in Islamic law [...] the question here is “which Islamic law [do we mean]?” Islamic law is not a monolith and there are different legal schools, each with their own subdivisions. One example is the Deobandi school followed by many South Asian Muslims, which is an offshoot of the Ḥanafī school, but much more rigid than the original Ḥanafīs. The four Sunni schools are not in agreement about many details; for instance the Ḥanafī school, in contrast to [...] the other schools, allows some flexibility with regard to obtaining the consent of the woman’s guardian. The position within the school is that the marriage of a free, sane and adult woman is valid without the approval of her guardian if the person is a suitable match for her, meaning in short that the woman can conduct the marriage herself without the need for a male guardian to do it for her. This is done in the Mālikī school where a woman cannot get married without a guardian, and in cases where no relative exists, the state provides the guardian in the form of a judge or another official.

Many Muslims believe that Islamic law needs to be followed to the letter, i.e., on the basis of texts, rather than via the spirit of the law, which results in difficulties with civil/state laws. For example, British law takes second, third, and fourth marriages to be bigamy, while Islamic law permits up to four wives. Sometimes, and this is a case that we are seeing frequently in Bradford, Islamic law is being used to circumvent British law. To put it bluntly, we are seeing on a day to day basis that [elements within] the Muslim community are finding loopholes within British law and are abusing those loopholes, especially where it is beneficial to patriarchal interpretations like marrying more than one wife, marrying underage girls, withholding alimony, or distributing inheritance unequally.

Before talking about the difficult exchanges between civil laws and Islamic laws, we should talk about the difficult exchanges between Islamic schools of law, and the fact that many Muslims do not even know which school they are following or are supposed to be following. We have had this experience quite frequently when women attend our seminars and drop-in sessions. When we ask which school they follow, [they answer] “I’m a Muslim, why do you have to ask that question?”

So what are the major changes? There is a need for recognition that what works for a village in the middle of nowhere, be it in Asia, the Middle East, or North Africa, does not necessarily work in Britain, and that women will not give up their rights willingly once they know that they have them. So second and third wives, who have no rights since they have unregistered marriages that are not recognised as valid in Britain, and cannot prove the marriage existed, with good counselling and representation have realised that they can get some kind of rights, using for example the financial rights of unmarried couples living together. But while these second wives are [...] technically

unmarried because they cannot prove the marriage, and so do not have the same rights as married women, a legal claim can be made depending on the circumstances. Especially in terms of things like property, if the woman has contributed towards a purchase or a mortgage or to repair of the household, or if there are children living in it [...] [in all these cases] their housing needs must still be met.

The kind of cases that we are being presented with in the Muslim Women's Council are at both ends of the spectrum. We have women coming to us who say "I have had my *nikāh* done but I don't want to have a civil ceremony because I am the main breadwinner, the property is in my name, and I don't want him to have a share in the property if we were to divorce." What do women do in that situation? On the other side, we have women who phone in the office saying '[my husband] has just given me three *ṭalāq* by text, what do I do?' They get into a panic, and what you find is that there are [consequences like] a number of online services that are charging divorced women thousands of pounds to take part in *ḥalāl* marriages, where they marry, have sex and then divorce a stranger so they can get back with their first husband. There is a racket out there of women being charged thousands of pounds, and then the husband blackmailing the woman afterwards. And in some cases, the [*muḥallil*] husbands are actually refusing to divorce the woman, so though she may want to reconcile with the first husband, she is stuck with another man. So there are lots of nuances that we need to be aware of.

What we have been doing in Bradford with our team is supporting quite proactively the "[Register Our Marriage](#)" campaign to raise awareness. People assume that we want to raise awareness just with women, but men too need to know their rights. We have had two very successful roadshows in Bradford and are planning more.

Bradford is a city where we have a large Muslim population, but this awareness is needed nationwide, and we need partners in different cities. We need *imāms* and scholars who want to work in partnership with us to get this awareness out there. Women are not used to questioning their positions, but things are getting better with increased awareness and education.

What we do at the Muslim Women's Council is ask women what they do want without assuming that they want a particular speaker or a particular scholar. We ran frequent seminars with the women, and they would frequently ask to learn about inspirational female role models from Islam. So, last year, we hosted a series of seminars on the lives of *Khadijah*, *Fāṭima*, and *ʿĀ'isha*. The women in the audience were completely blown away by how empowered and how independent these women were in the time of the Prophet. And it took away a lot of the barriers while they were listening, thanks to the fantastic speakers.

So in terms of how to resolve some of these tensions going forward, it is straightforward, and it is about education. Women need to be informed about their rights, including the possibilities of adding stipulations or conditions to their *nikāh* contract. This is crucial, and women are simply not aware of this. I asked my own mother whether she was aware that you can put conditions into the

marriage contract at the time you have your *nikāḥ* done, and she said, “women don’t have that right.” And that is the consensus of the first and second generations in the UK. These stipulations might range from the man not taking a second wife, to compelling a husband to give divorce upon request from the wife, or demanding that a husband must provide clothes for me twice a year, or anything in between. A dear friend of mine was researching the history of what women had stipulated hundreds of years ago in their original marriage contracts, and one of the things she found was a woman who had demanded permission to visit her parents twice a week, otherwise she will divorce him. This shows how empowered women were then, and how much we have regressed since.

Formalising separate legal spaces is not the answer, and integration might not work in all areas, but regulating Islamic laws through civil law is a possible answer, like having a direct registry in these parallel legal system courts where a marriage will be registered automatically, then and there, and then a circumvention of the British law (as in the case of a second marriage) will then not be possible.

Another suggestion is to provide a mini crash-course to women in such councils and courts, educate them about their rights starting from the marriage contract: what they can write into it, the various marriage contract possibilities and conditions of the different legal schools when it comes to this. Perhaps the best solutions come from within the Islamic tradition itself, because of its richness and diversity. Islam in North Africa is different from Islam in China, and everywhere in between, so we can actually learn from the different locations and their legal-constitutional frameworks. So for example, in Tunisia, a Muslim woman is now able to marry a non-Muslim legally, and they are working on the inheritance laws there, while in Saudi Arabia, women have only just acquired the right to drive.

In seven European countries—Germany, the Netherlands, Finland, Norway, Denmark, Sweden, and Austria—there are institutes that produce their own homegrown *imāms*, and this is something that we should consider. I have just returned from Sarajevo, and was completely awed by the youthfulness of the *imāms* there: the intellect, the academic rigour, and it shows what is amiss in the UK, where *imāms* have been [mostly] imported. In or around Bradford, we have around 110 mosques, and of those, in about 60 or 70 or more, we have *imāms* who do not speak English fluently. Therefore, how can they talk to young people who come into the mosque who want to communicate in a particular language?

So, we do have a lot of issues within the Muslim community, but also, the solutions lie within the Muslim community.’

vii) Conclusions and Further Observations (Justin Jones and Shaheen Sardar Ali)

A number of recent academic studies dealing with the marriage and divorce practices of British Muslims have picked up on a number of themes that are hinted at by the speakers quoted throughout this blog: unregistered marriages, Islamic divorces, and *shari'ah* councils, to name a few. However, despite their rigour, these pieces of research are often marked by one particular flaw. Notwithstanding the neutrality of the researcher, and however widely the net is cast to identify respondents, it is somewhat inevitable that researchers have to work through personal contacts and rely on snowballing techniques to reach their respondents. This can mean that individual studies are forced to rely heavily upon sets of respondents who are known to each other and can be somewhat like-minded in their views and approach. This blog, of course, shares this flaw. It has picked up five respondents, all of whom are willing to speak to academic audiences and all of whom present themselves as modernisers aiming to facilitate the social integration of British Muslims. Their observations on their experiences within Muslim communities in Britain do, however, offer a few windows into the grassroots realities of how these practices are manifested in reality, and we would like to conclude the series by analyzing a number of themes that run through the reflections that we have presented.

One consistent, blunt observation that runs throughout these contributions is the value that British Muslims place on the *nikāh* contract. All participants seem to indicate that for most British Muslims, the *nikāh* validates their marriage, and gives them the right to be treated as husband and wife by their family, community, and society. Likewise, should their marriage break down, many British Muslims clearly also feel the need for a religious divorce rather than merely a civil divorce. It seems clear from these extracts that British Muslims have maintained a deep sense of their need for Islamic marriages and marital dissolutions; and the assumption that this conviction will somehow dissipate in the face of authoritative civil laws applicable to all citizens seems to be spurious. The overwhelming theme of these extracts, therefore, is not whether civil or religious laws should have precedence over the other, but rather, how these two systems of law can be better brought into mutual accommodation.

Despite the consistency of this conviction, however, in most other ways this blog highlights the plurality and diversity of both thought and conduct on marriage and divorce within Muslim communities in contemporary Britain. The heterogeneity of approaches on view quashes any attempts to draw up simple generalisations about Muslim attitudes or behaviours. To speak of British Muslims as, for example, somehow naturally inclined by their religion to avoid registering *nikāh* marriages, or predisposed to seeking out community forums to handle their family disputes instead of going to court, does not do justice to the number of overlapping discourses and dynamics at play.

For instance, these contributions show that the reasons why many couples take out *nikāh*-only marriages are heterogeneous, and specific to the particular circumstances of the individuals and/or couple in question. In some cases, *nikāh*-only marriage may be the result of a couple's mutual wish to

trial their relationship prior to or instead of a civil marriage; in others it may reflect a misunderstanding about the *nikāh*'s admissibility in English law. It may be the result of an attempt by 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. These diverse factors at play mean that we cannot identify any one dominant factor behind the existence of unregistered *nikāhs*.

Indeed, while it may sound harsh, some of the material that we have covered 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 individual self-interest. Examples given here include not just the many cases quoted of men avoiding taking out legal obligations towards their "wives" through *nikāh*-only marriages, but also the partners (of either sex) seeking to keep exclusive claim on their independent wealth; and indeed, the Muslim professional woman who as one panellist stated, would not mind being in a polygamous union and in an almost "part-time relationship," since it allowed her the space to further her career.

Furthermore, the blog demonstrates that these marital practices are 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 speakers), for the most part, all the respondents are keen to emphasise that these communities consider themselves as British and thus need to fashion matrimonial customs and laws that work within the British context.

Indeed, the British context may offer certain prospects for Muslims to devise novel Muslim marital practices that are attuned to their environment. One of the speakers referred (outside of the quoted transcript) to Britain as a "land of opportunity" for the formulation of new, progressive understandings of Islamic marriage. As home to Muslim communities with origins in all parts of the Muslim world and from all Islamic legal schools, and with no authoritative civil regulation of Islamic family laws to work around, Britain can offer a setting for community leaders to pick-and-mix interpretations of matrimonial law from across the Islamic tradition to rethink these laws themselves.

Certainly, the religious practitioners quoted here all indicate how they are developing new ways of thinking and talking about Muslim marriages on their own terms, in ways that might seem most appropriate for those among whom they work. For instance, several voices here show themselves to be speaking creatively about the agency of women in Islamic history, and looking to Qur'ānic principles of gender complementarity to promote equality within marriage. We also see community

leaders interpreting the language of the Qur’ān to speak of marriage as a “space of safety,” and re-evaluating the legal concept of “guardianship” (*wilāya*) in terms of trust and protection rather than male dominance. And we see some creative borrowing across Islamic legal schools, for instance, in the case of Ḥanafī-educated, South Asian-origin community leaders borrowing from Mālikī tenets to provide women with religious divorces and to authenticate the creation of panels in *shari‘ah* councils. All of these are constructive attempts to remodel British Muslim matrimonial practices from within the Islamic tradition.

Another striking feature evident from 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” 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 according to most understandings. Moreover, a *nikāh*-only marriage is, under British law, treated as a practice akin to unmarried cohabitation; and non-married cohabitation is considered as illegitimate and effectively akin to fornication 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.

We pledged in the introduction to this blog 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 Muslim family law as discussed, and could resolve some of the “*nikāh* horror stories” of women being divested of their rights and homes after the dissolution of their *nikāhs*. Attempts to promote the parallel signing of civil and religious marriages has certainly been a theme highlighted in some [recent policy reviews](#). However, as some speakers point out, the state is in no mood to introduce any substantive legislation on the matter. The issue is perhaps too communally sensitive and, as one contributor notes, the state has come to rely increasingly on extra-judicial arbitration mechanisms to resolve disputes outside a crowded court system, especially in the aftermath of cuts to legal aid since 2012. State involvement, therefore, seems incapable of providing the main initiative in solving some of these difficulties.

Instead, it is clear that the more lasting solution lies in a multiplicity of options. For instance, there are perhaps gentle shifts in debate at the judicial level, thanks to some recent court cases. For example,

the recent court case of [Akhter v Khan \(2018\)](#) resolved that a *nikāh*-only marriage should be considered a “void marriage” rather than a “non-marriage,” which would subject a Muslim marriage to laws of financial reparation in the case of marital breakdown, akin to a regular marriage. The verdict may yet be repealed, but it does indicate movement in legal thinking, in ways that could ultimately bring unregistered *nikāhs* into the purview of the legal system.

But major moves to resolution also have to come from within the community itself. And contrary to some portrayals, the contributions in this blog reveal that there is obviously considerable will from within the community to do this, including from its religious leaders. All five of our contributors, who include two *imāms* and a panellist on a major *shari‘ah* council, instruct Muslims that they should register their marriages with the state, and should remain cognisant of their rights and duties before the law. But they make this argument not just on practical grounds, but religious ones: since the *nikāh*’s fundamental status in Islam is that of an official contract, so a marriage needs to be legally recognised if it is to be legitimate under Islamic law. And they are finding ways to align the parallel issuing of civil and Islamic marriages, and civil divorces and Islamic *khul‘* separations. We might remind ourselves of the *imām* quoted previously, who has registered his mosque to provide *nikāhs* and civil marriages simultaneously, and whose *shari‘ah* council issues a *khul‘* divorce upon the presentation of a civil divorce certificate. These are just a few examples of how some community leaders are seeking to facilitate the engagement of British Muslims with the legal system.

The contributions given thus hint at various possibilities for aligning Islamic and civil laws, finding ways to make them work together as mutually compatible systems of value for one of Britain’s largest minority communities. It seems to be a debate that is only likely to continue, and we hope that this blog might add something constructive to discussion of these complex and contentious issues.

References

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