

## International



## Islamic family law

## Marriages of inconvenience

BRUSSELS

## How sharia unions can hurt women in the West

**S**HIRIN MUSA draws on bitter experience to inspire her work to help women caught between legal and cultural worlds. Educated and long-resident in the Netherlands, she was unhappily married to a man from her native Pakistan. In 2009 a Dutch judge put a legal end to their union but her husband would not grant an Islamic divorce. Although she lived in secular Europe, this refusal mattered. If she remarried, she would be considered an adulteress under Islamic law and risk punishment if she returned to Pakistan.

So Ms Musa pursued her spouse through the Dutch courts. In 2010 she received a landmark judgment: he would be fined €250 (\$295) a day, up to a maximum of €10,000 (\$11,795), as long as he refused to cooperate. This had the desired effect. She then persuaded the Dutch parliament to make holding women in such “marital captivity” a criminal offence, in theory punishable by jail. Now she runs Femmes for Freedom, a charity that campaigns for people in similar situations. “I was lucky to be well-educated and have a supportive blood family,” she says. “Others are not.”

The Dutch law, in force since 2013, is an unusual effort to protect women in the West from rules made in harsher places. But in a transient world it is hard to seal one country’s legal and cultural norms from another’s. Under the basic principles of so-called private international law, courts in country A can enforce the legal norms of

country B as they apply to people who are clearly from country B and to transactions which occurred in country B. This can have odd effects. Iranians who fled after the revolution in 1979 found 30 years later that German courts were adjudicating their marital affairs by the Islamic rules of their homeland. In most democracies, recognition of foreign codes is balanced by a countervailing principle. A judge can refuse to recognise, say, a child marriage contracted overseas if it offends “public order”.

Still, the risk of being trapped between systems is acute for those in transition from the Islamic world, which has detailed prescriptions for marriage, divorce, custody and inheritance, to Western countries where egalitarian, secular standards prevail. In classic Muslim thinking a man can renounce his wife unilaterally by pronouncing the word *talaq* on three occasions. The ex-wife keeps the *mahr*, the gift which the man gives her on marrying. For a woman, obtaining a divorce is far harder. She can start proceedings, with the help of an imam or Islamic authority, and this can lead to a *khul’a* or divorce by consent, though she may have to cede her *mahr* to make her husband agree. If he has behaved badly and refuses a termination, an Islamic judge can impose a *faskh* or judicial divorce. But getting this can be hard.

The situation for hundreds of thousands of Pakistani-descended women in England is in some ways worse than for

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those living in their homeland where only one, Islamic set of rules applies. That is thanks to an ever-growing habit among English Muslim couples: having an Islamic ceremony which is not registered with the British state. A recent survey of 1,000 married Muslim women by Britain’s Channel 4, a publicly owned broadcaster, found that 600 had religious-only unions.

Only a few imams in England are licensed as state registrars. In England, if the relationship breaks down, the financially weaker partner, usually the woman, is poorly placed to claim maintenance or a share of assets. (This is rarely an issue in Scotland, where many imams are registered as celebrants.) “If they had married Islamically back in Pakistan, that would have standing,” says Aina Khan, a lawyer and activist. A religious rite in Pakistan can ultimately gain recognition in England, but a religious-only union conducted in England can be the worst of all worlds.

## A rite mess

England has an elaborate subculture where Islamic family law is practised. There are dozens of *sharia* councils, whose main work concerns appeals from women who want release from failed marriages. Ms Khan thinks these councils have burgeoned in an unhealthy way, in part because of English law’s inconsistent treatment of faiths. Anglican marriage includes the signing of a registry which makes the union official, and the state also acknowledges Jewish and Quaker ceremonies, but not automatically those of other creeds. A reformed law could either insist that unions of all kinds be registered civilly, as happens in France, or else it could give legal standing to the rites of popular faiths.

In the Netherlands it is illegal to conduct a religious ceremony unless a civil one has already been carried out. When ▶▶

► Dutch judges adjudicate the affairs of Muslims who have married elsewhere, they can use a generic provision in the civil code against “wrongful acts” as a way of delivering judgments which seem humane in modern eyes. In practice, their rulings in Muslim marital matters usually favour women, says Eefje de Kroon, a Dutch human-rights campaigner.

For the 800,000 or so Muslims of Belgium, many of whom oscillate between there and Morocco, marrying is an obstacle course. In Belgium only civil marriages are valid. But the Moroccan state recognises only Islamic procedures, either in Morocco or one of its consulates. Without a religious marriage a couple cannot dispose of property or even share a bedroom in Morocco. Meanwhile, Belgian-Moroccans often feel the need to have a religious rite in Belgium, even though it has no legal status anywhere. Many couples do all three. Simply cohabiting is not an acceptable option, any more than it is for young Muslim couples growing up in east London or Marseille.

Yacob Mahi, one of Belgium’s best-known imams, says he tries to limit harm by refusing to conduct a religious ceremony unless the couple has already undergone a civil procedure. He also tries to ascertain if the marriage is abusive or forced. Yet despite the efforts of vigilant imams, people game the system. For example, a Belgian-Moroccan man can use a religious rite in Brussels to dignify a bigamous marriage which would be banned even in Morocco (unless the first wife had consented).

Spain is a rare European country where marriage in a mosque (or synagogue or church) enjoys state recognition. Germany used to insist on civil marriage for all couples before any spiritual rites. But from 2009 it has allowed religious-only marriages, in deference to newcomers from Muslim countries and Israel, another land where only religious nuptials count.

As they dodge between cultures and systems, the parameters for Muslims in Europe keep shifting. Morocco’s family law was modernised in 2004 and the knock-on effects are still emerging. But a complex reality is no argument for inequality of rights, and a forum exists where this should be sorted out. Whatever the fate of the continent’s other clubs, there is one institution, the Council of Europe, whose job is to uphold the rule of law and basic human rights across its 47 member states (28 of which belong to the EU).

Without trying to harmonise every piece of family law, the council could do useful work by pooling experience and elaborating some common standards to ensure that no European lives under a harsh marital regime through being born into the wrong religion, the wrong country or the wrong sex. That would feed through to other democracies, and perhaps to Islam’s heartland as well. ■

## Islamic marriage in Canada

# One is enough

OTTAWA

**Feminism and multiculturalism make for an awkward mix**

**M**ENTION polygamy in Canada and what might come to mind is Bountiful, a suitably named town in British Columbia. It is home to Canada’s best-known polygamist, Winston Blackmore, who has an estimated 148 children. He and James Oler, a fellow adherent of a fundamentalist splinter sect of the Mormon church, practised “plural marriage” for decades until a court found them guilty in July of the crime of polygamy. (Their appeal will be heard on December 12th.)

It was the first conviction for more than a century under a law from 1892 that aimed to stop American polygamists (many of them Mormons irked by their church’s renunciation of polygamy in 1890) from practising in Canada. Authorities had been wary of laying such charges for fear of a constitutional challenge. That obstacle was removed in 2011 when the Supreme Court in British Columbia found freedom of religion could not be used to justify actions that harmed others.

The debate about the conflicting principles of human rights and religious freedom is shifting to Islamic immigrants. That is partly because of the trial of Mohammad Shafia, an Afghan immigrant who in 2009, with the help of his second wife and son, murdered three of their other children, as well as his first wife; and partly because of the passage in 2015 of the Zero Tolerance for Barbaric Cultural Practices Act by the previous Conservative government. The law, which reiterated that polygamy is a crime, as are “barbaric practices” such as genital

mutilation and the forced marriage of children, was criticised for having an Islamophobic tone. Yet it struck a chord with those Canadians who feel Muslims do not share their values.

Polygamy is legal for Muslims in three of the top five source countries for immigrants to Canada in 2015 (the Philippines, Iran and Pakistan) and quite common in another (India). Canada has advised UNHCR, the UN’s agency for refugees, not to refer any refugees in polygamous marriages to Canada for resettlement. But border agents in Canada must often make snap judgments based on little information. Often the only way they can identify a polygamist is if he were to volunteer the information or tried to bring in more than one wife at once. Easier to bring them in separately as domestic servants or relatives (Ms Shafia was brought in as a servant and described as the children’s aunt).

Often the first sign officials have of a polygamous relationship is when it comes to light in a case of domestic abuse, says Shalini Konanur of the South Asian Legal Clinic of Ontario, which helps women in violent relationships who risk deportation. The impact of enforcement falls most heavily on women, who are barred at the border, abandoned in their home country or stuck in abusive relationships in Canada for fear of being found out and deported.

Martha Bailey, a specialist in family law at Queen’s University in Kingston, says polygamy sometimes comes up as an issue when multiple wives seek shares in an inheritance. Susan Drummond, a legal anthropologist, argued in 2009 that the ban on polygamy should be dropped because Canada has other laws and regulations to protect women and minors.

Canada’s prime minister, Justin Trudeau, has promised to ensure Canadian laws are analysed to see if they harm women. That is a nice gesture. But he should look at how laws work in practice, too. ■



More than Canada can handle