Muslim Family Law: British-Bangladeshi Muslim Women and Divorce in the UK

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Islam Uddin

Middlesex University London

School of Law

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Abstract

This socio-legal study investigates the phenomenon of Islamic divorce in the UK. The background to the research problem is situated in discussions on Muslim women's rights in topics such as Shariah law, multiculturalism and legal pluralism. These may echo concerns that classical interpretation of Muslim family law (MFL) follows patriarchal practices that discriminate against Muslim women, whilst civil law is committed to gender equality as promoting social progress. The debate regarding the diasporic Muslim communities in Britain focuses on concepts such as multiculturalism and legal pluralism. Critics of MFL argue against policies that accommodate group rights and contend cultures socialise members to their designated status, with oppressive practices hidden in the private and domestic spheres, and specifically in the use of Shariah councils. Proponents, by contrast, argue for religious freedom, among other grounds. Many agree that further empirical research is required on the subject.

This study addresses this empirical gap. The central research question asks, 'how do British-Bangladeshi Muslim Women (BBMW) pursue divorce in the UK?' and investigates the choices women made, as well as the role of experts, religion and culture in influencing decisions. It uses a phenomenological-inspired methodology, with data collection involving 27 in-depth interviews with BBMW, 12 interviews with experts, participant observation of Shariah Council hearings, and document analysis. Thematic analysis of data produced findings with conclusions applicable to the British-Bangladeshi Muslim community and to a wider field including legal practitioners and mediators, academics, policy-makers and others. The insights gained reveal the strong influence of religion and culture in establishing norms, dictating the importance of *nikah*, and in establishing the marriage, whilst the taboo of divorce hindered women from divorcing and affected them moving on, post-divorce. The community avoided professional mediation and viewed family disputes as a private matter. The diversity of Islamic opinions caused further confusion suggesting a need for a specific information reference point for British Muslims. The women displayed a multifaceted approach in dealing with civil and Islamic divorce, and utilised the different systems to their benefit, forming new mechanisms of securing religious divorce without the use of Shariah councils.

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Glossary

Faskh	Annulment
Fatwa	Religious edict
Fiqh	Islamic jurisprudence
Fiqh Al-Aqalliyyat	Jurisprudence of minorities
Hadith	Saying of the Prophet Muhammad
Ibadat	Worship
Iddah	Waiting period
Ijab	The offer of a marriage proposal
Imam	Muslim cleric
Izzat	Honour
Khul or Khula	Wife-initiated divorce
Madhhab	Legal school of Islamic jurisprudence
Mahr	Dower
Mahram	Husband or unmarriageable kin
Muajjal	Immediate payment of dower
Muamalat	Transactions
Mubarah	Mutually agreed divorce
Muwajjal	Deferred payment of dower
Nikah	Islamic marriage
Nikah-nama	Islamic marriage contract
Nushz	Marital discord
Qabul	Acceptance of marriage proposal
Qadi	Islamic judge
Qawama or Qiwamah	Men's authority
s.a.w	Peace and blessings upon him
s.w.t	May He be glorified and exalted
Shahidain	Two male witnesses for *nikah* contract
Sharam	Shame
Shariah	Islamic law
Sunnah	Prophetic tradition

Tafreeq	Annulment
Talaq	Husband's right to unilateral divorce
Talaq Ahsan	One *talaq* given and three months *iddah*
Talaq Baain	Irrevocable divorce
Talaq Bidah	Three *talaqs* given at one sitting
Talaq Hasan	*Talaq* given at three separate sittings
Talaq Rajai	Revocable divorce
Talaq Tafwid	Delegated divorce
Wali or Wali Amr	Guardian

Chapter One: Introduction

This thesis explores the research question 'How do British-Bangladeshi Muslim women (BBMW) pursue divorce in the UK. The topic of 'Islamic divorce' was of particular interest to me, due to my experience as an imam, and have over the years have received many questions from the British-Muslim community regarding Muslim marriage and divorce. In particular, Muslim women inquired about their Islamic rights as a wife and needed clarification on issues such as marital discord, dispute resolution and Islamic divorce. Furthermore, my previously completed empirical research on 'Muslim women in Britain: Challenges faced in education and work' informed me that some Muslim women faced difficulties in married life especially in negotiating rights and power within the family structure (Uddin, 2013). Thus, my own experience as an imam represented one perspective on the subject matter, whilst my previous research with Muslim women pinpointed the home environment or the 'private sphere' as a factor to consider in contributing to the problems of Islamic divorce.

1.0   Background to the Study

A review of the existing literature revealed the problem of Muslim women and Islamic divorce was relevant to discussions situated in topics such as Shariah law, Muslims in Britain, multiculturalism, legal pluralism, religious marriage and divorce, and dispute resolution including Shariah councils. The key debate on Shariah law centred on the rights of women in Muslim majority countries and the practice of Muslim family law (MFL) i.e. the aspect of Shariah that governs marriage, divorce, maintenance, child custody and inheritance (An-Naim, 2002, Latif, 2002). Traditionalists argued the classical interpretations of MFL are immutable and cannot change over time, whereas modernists and reformists argued MFL needed to reflect the socio-economic condition of the society and were critical of patriarchal practices found in MFL that subordinated the rights of Muslim women (Esposito, 2010). The mid-twentieth century saw the formation of many modern Muslim nation-states, some with colonial pasts and experience with civil law, introduced reforms to regulate marriage and divorce, and applied restricted traditional privileges for men, and extended rights for women (Esposito, 2010, Mir-Hosseini et al., 2013). The concern remains in the implementation

and monitoring of MFL, especially in rural areas where customary laws may take precedent (Joseph, 2006). Another issue in relation to the practice of MFL centres on how Muslim women express agency and power in conservative and religious contexts. Some view agency from a feminist perspective is the resistance of male authority and emancipation from subordination (McNay, 2016). Others argue power is not resistance, rather the capacity to create or enable action even when subordinated (Foucault, 1980, Foucault, 1988); whilst others assert social norms are necessary grounds to enable subjects to realise agency (Butler, 1993, Butler, 1997). Others contend freedom and autonomy are liberal western values, and pious women express agency in submission to religion and achieve autonomy within Islamic framework; and therefore agency is not about gender equality or following traditions (Mahmood, 2005, Shitrit, 2013). Burke (2012) argues such views force feminist to examine how non-feminist actions are agentic.

The phenomenon of Muslims living as minorities in a non-Muslim majority state can be traced back to the earliest Islamic history; living as a minority is now a common experience with the Muslim diaspora in the West (Iner and Yucel, 2015, p. 41). Multiculturalism refers to the co-existence of diverse cultures (Chu, 2005), and as a policy faces criticism that the over protection of minority cultures, leads different ethnic or faith communities to pursue 'parallel lives' in isolation (Cantle, 2001, p. 9). Moreover, there are concerns in extending group rights, as cultural practices hidden within the private and domestic spheres may be oppressive towards women (Okin et al., 1999, p. 6). The opposing argument views groups as having their own societal culture, which needs protection for their preservation (Kymlicka, 1991, p. 165), though groups that overtly denying women's rights do not deserve special preference. (Kymlicka, 1995, p. 153). Similar arguments regarding Muslim women's rights are found on the topic of legal pluralism, which refers to the concept that there is more than one law or legal system within a nation state (Davies, 2010b, p. 805). Legal pluralism views law as a multiplicity of legal orders, incorporating official and unofficial law, at different levels of civic society, spanning national, transnational and international boundaries; it is uncoordinated and coexists in legal and quasi-legal forms (Tamanaha, 2008, p. 375).

Pluralistic legal structures are features characteristic of non-European countries with a colonial past (Büchler, 2013, p. 75); whereas European states struggle with the notion of legal pluralism (Grillo et al., 2009, Rohe, 2014). In particular, there is resistance to Shariah law and its incompatibility with the principles of human rights, gender equality, and perceived discrimination against Muslim women (Cox, 2015b, Manea, 2016, Zee, 2016). Others contend that legal pluralism is a reality as people in Western societies belong to more than one community (Akhtar, 2013b, Douglas et al., 2012, Yilmaz, 1999).

According to the 2011 census, the Muslim population in Britain is 2.7 million, predominately from a South Asian background, with large established communities in London, Birmingham, Leicester, Bradford, and Manchester (ONS, 2011); and follow norms from their country of origin, giving them a distinct ethnoreligious identity (Gilliat-Ray, 2014, Pearl and Menski, 1998). Muslims have a need for religious marriage (*nikah*) and divorce (*talaq*) (Curtis, 2010, p. 154), hence, many Muslims will marry and divorce according to the customary laws of their country of origin (Ramadan, 2004, p. 139). English law is a monolithic legal system, thus, matters pertaining to marriage, divorce, and children are exclusively legislated by civil law (Butler-Sloss and Hill, 2013, p. 108). Legislation such as the Marriage Act 1949 (MA 1949) and the Matrimonial Causes Act 1973 (MCA 1973), stipulate conditions for a valid marriage and divorce. Religious marriage or divorce must comply with English law to be valid. However, only 1 in 10 mosques in the UK are registered to provide such a service (Khan, 2012), thus, many Muslims may marry twice and divorce twice i.e. have separate religious and civil processes (Yilmaz, 2002, pp. 348-350).

Some raise concerns that 75-80% of Muslim marriages remain unregistered (Grillo, 2015a, Khan, 2012). *Nikah*-only ceremonies conducted in the UK are seen as a 'non-marriage' from a legal perspective, and the couple treated as cohabitees, with no recourse to family courts for financial relief (Probert, 2013, p. 314). Others highlight how Muslims then turn to a religious framework and norms for marriage and divorce and refer to alternative forums such as Shariah councils for dispute resolution (Giunchi, 2014, MacFarlane, 2012b). Shariah councils are quasi-legal, unofficial bodies that

function to mediate, arbitrate and issue Muslim divorce certificates (Bano, 2012b, p. 84). Shariah councils face criticism for following interpretations of Islamic norms and values, which marginalise women and provide favourable terms for men (Ahmed and Norton, 2012, Bano, 2007). Some are vehement that English law is best suited to protect women and feel Muslim women are coerced into using Shariah councils, which apply Shariah law that contradicts human rights law (Manea, 2016, Namazie et al., 2010, Patel, 2016). Other commentators note that Shariah councils have a flexible approach and provide a religious need (Douglas et al., 2011, Keshavjee, 2013). It is argued that there are considerable empirical gaps in understanding the experience of those who use a non-state normative field of social action, and whether they face unjust outcomes or secure autonomy as individuals (Malik, 2012, p. 53). In 2016, the government launched two inquiries on Shariah law and Shariah councils; investigating issues of incompatibility with English laws, discrimination and social harm and highlighting the current public interest in the subject matter (Home Affairs Committee, 2016, Home Office, 2016b). The practice of MFL among British-Muslims exists within the private sphere, and there was a lack of documented evidence of Muslim marriages and divorce cases reported. Thus, in line with other empirical studies on MFL in the British-Muslim community (Akhtar, 2013b, Bano, 2012b, Douglas et al., 2011, Keshavjee, 2013, Shah-Kazemi, 2001), this study takes an empirical approach to investigate the phenomenon of Islamic divorce among BBMW; it seeks to explore the subtleties of cultural differences, and to fill a knowledge gap in the experiences of MFL relating to this community.

1.1 Research Questions

The central research question in this thesis asked, 'how BBMW pursue divorce in the UK.' In understanding the phenomenon of divorce among the research subjects, this study investigated three sub-research questions, which first asked what types of processes Muslim women chose when pursuing a divorce i.e. civil or Shariah? The lived experiences of the participants provided an insight into the practice of marriage and divorce, and descriptions of the processes highlighting their opinions, attitude and feelings leading up to divorce, and the choices available to them at the different stages

from marriage, marital discord, dispute resolution, divorce and post-divorce. Thus, this sub-question explored participants informed choices and the levels of autonomy in making decisions, and their understanding of civil law and Shariah law.

The second sub-question asked, how do experts i.e. professionals, shape, influence and support Muslim women pursuing divorce? The participants identified the use of services from experts or professionals such as Imams, solicitors, counsellors, and Shariah councils. Participants' narratives of contact with experts gave an insight of the user experience of utilising such services and allowed an exploration of factors that determined their use during stages of marriage and divorce. The expert interviews provided an interpretive and practical understanding of services provided to Muslim women, demonstrated their competency and authority in their field of expertise, and contributed knowledge to subject areas with limited empirical data. Observations of Shariah Council proceedings provided a holistic understanding of Islamic divorce and a shared experience from the participants' perspective, which explored their choices, motivations and influences, and provided insights available to few insiders due to the private nature of such hearings.

Thirdly, this study asked what role of religion, culture and other factors play in influencing the decision to divorce for Muslim women. In selecting BBMW as participants, this research explored the Bangladeshi-Muslim subculture i.e. participants' shared beliefs, values, customs and social practices, and examined the influences of religious and cultural norms within this ethnic group. The research investigated whether ethnoreligious community practices oppressed women within the private sphere, or coerced women to use religious institutions e.g. mosques, Shariah councils, which may provide unfavourable outcomes for Muslim women; and whether women were hindered from using civil remedies due to religion, culture or other factors. Moreover, whether there were socio-legal or ethnoreligious practices among participants associated with norms found in Bangladesh, which influenced their decisions in pursuing divorce in the UK.

1.2   Research Methodology

In socio-legal studies, the concept of knowledge refers to ontological and epistemological theories found in the social sciences (Henn et al., 2006, p. 1). A phenomenological-inspired methodology was selected as the most suitable approach for this study, as phenomenological studies address specific knowledge and participants' detailed subjective experiences and describe the meaning for several individuals of their lived experiences of a concept or a phenomenon (Creswell, 2013, p. 76).

The main method for data collection was in-depth interviews. Interviews yield rich insight into people's biographies, experience, opinions, attitude and feelings (May, 2011, p. 131); we can learn about cultures, values, challenges people confront, and the meanings of relationships (Elliott, 2005, p. 19). I conducted twenty-seven in-depth interviews with BBMW living in London to gain an insight of the research problem from their lived experience of Muslim marriage and divorce. Furthermore, I conducted interviews with experts or professionals identified as providing services to Muslim women during the marriage, marital disputes and divorce. The advantage of expert interviews is that they can provide insights into topics, where there are insufficient data, or limited available knowledge about the subject (Trochim et al., 2015, pp. 88-89). In addition, I partook in participant observation of Shariah Council hearings and document analysis.

I maintained reflexivity throughout the fieldwork i.e. interviews, observations, transcriptions, and data analysis. Reflexivity is a process whereby the researcher reflects upon their role in the study [i.e. positionality], taking into account their background, culture, and experiences, which shape their understanding of the subject of study, and how they interpret themes and give meaning to data received (Creswell, 2014, p. 186). I had to consider my positionality in the research process, being a male researcher, who is a PhD candidate, and an imam. The phenomenological nature of the interviews meant I could not presuppose any responses from the participants or experts, therefore, I 'bracketed' i.e. put aside or suspended my own presuppositions, biases, assumptions, theories or previous experiences during the interview phase, to gain the essence of the participants' experiences (Given, 2008, p. 63).

The data were analysed using thematic analysis, which examines data to derive themes and sub-themes (Bryman, 2012, p. 13), and the method was chosen for its flexibility in use across different epistemological and ontological spectrums (Wood et al., 2012, p. 161). The themes and subthemes that emerged from the data provide a valuable insight into the practice of marriage and divorce among the research subjects.

1.3   *Ethical Considerations and Limitations*

Ethics ensure the research is conducted with due consideration of the researcher's behaviour and the consequence of the research on the participants involved in the study. Thus, the researcher has to consider ethical issues such as informed consent, confidentiality, anonymity, data protection among other considerations; whilst also being aware of their positionality in relation to the research, and being reflexive to ensure bias is removed from the processes of data collection, analysis and dissemination, thereby reflecting objectivity in research. Before commencing any fieldwork I gained 'research ethics approval' from the Middlesex University School of Law Ethics Committee. The ethics approval application considered all ethical issues in relation to the research methodology and procedures and included draft interview schedules, participant information sheet, consent forms, and fieldwork risk assessment. All fieldwork was conducted in compliance with research ethics, which included awareness of power relations and sensitive issues during the interview process, and the practice of positionality, reflexivity and objectivity throughout the research process; and not to assume epistemic privilege in sharing some qualities with the sample population.

This study has several limitations. Firstly, the subject of MFL encompasses many different topics; as such, the focus on exploring the issue of Islamic divorce references Shariah as understood by the Sunni schools of thought in line with the beliefs of the community explored and does not engage with wider forms of Shariah. Secondly, the methodology is interdisciplinary and uses concepts from the disciplines of sociology and law. In that regard, it blends the research methodologies of both disciplines and does not claim to be exclusively within one or the other domain. Thirdly, the sample population for the in-depth interviews were BBMW, which excluded other ethnic groups, and male

participants, the exception being participant observations of Shariah Council hearings, where clients were also of Pakistani and Somali ethnicity. The study considered women over the age of eighteen, born or arriving in Britain at an early age, and those divorced or undergoing divorce. Fifthly, the sample population resided in London and the findings may be reflective of the researched community of that demographic location.

1.4   Outline of the Thesis

This thesis comprises nine chapters. Chapter 2 provides an overview of the relevant literature that forms the background to this study, which discussed six topics: Shariah law, Muslims in Britain, multiculturalism, and legal pluralism, religious marriage and divorce in the UK, and Shariah councils. Chapter 3 details the research methodology used for this empirical study, highlighting the methodological approach, data collection methods, data analysis, ethical considerations and limitations.

The next five chapters present the thematic findings from this research with discussions. Chapter 4 presents some statistics on participants' marital age, year of marriage and length of the marriage, before discussing how participants chose their partners and the type of marriage ceremonies including transnational marriages. Chapter 5 discusses marital problems experienced by participants like domestic violence and abuse, in-law interference, transnational marriage, adultery, desertion and polygamy; and explores health implications to participants. Chapter 6 discusses mechanisms for reconciliation, mediation and counselling; and examines participants' experience of separation. Chapter 7 discusses civil divorce, Islamic divorce including Shariah councils, *mahr*, and financial relief and child arrangements. Chapter 8 discusses post-divorce issues like counselling and remarriage, and the thesis ends with chapter 9 conclusion.

1.5   A Note on Transliteration and Terminology

The Arabic words in this thesis are in their most basic form of transliteration. Other conventions used often differentiate between elongated vowels e.g. '*a*' and '*aa*' or '*e*' or '*ee*', the *hamzah* (') and the *ayn* (') by using apostrophes, and the broad sound sounding letters *dhal* from its lighter sounding equivalent *daal*; as such words following this system would be transliterated as Qur'an and *Bukharee*. However, these same words are

written as Quran and Bukhari in this thesis. Moreover, the use of *taa marbutah* i.e. '*ah*' vary for different conventions of transliteration, for the purpose of this thesis I have kept the *taa marbutah* and the word Sharia as found in other writing is referred to as Shariah throughout my writing. Some words commonly found within discussions in the English language like Shariah and Quran have not been transliterated, whilst other not so commonly known terms such as *talaq* (divorce) and *mahr* (dower) have been transliterated.

The variance of terminology used to describe the same phenomenon in different discourses can lead to confusion. In engaging with the existing literature in this thesis, I have tried to remain close to the terminology used by previous authors whilst discussing an issue. For examples, Islamic family law is also referred to as Muslim family law or Muslim personal law, though all mean a system of Islamic laws as found in the Muslim community, therefore, in this case, I used the term MFL, which is the predominant term used in current debates and discussions. Similarly, at times religious divorce, Islamic divorce and *talaq* are all referring to the same issue, and the choice of the term used relates to existing literature.

<center>**Chapter Two: Literature Review**</center>

"Divorce is among the most important issues for Muslim women living in the West" (Mehdi et al., 2012)

2.0   Introduction

This chapter presents a literature review of the current state of knowledge in the field of study; and presents the theoretical framework for this research. In reviewing the literature on Islamic divorce, existing studies highlight many complexities concerning the practices of marriage and divorce among the British-Muslim community, in particular, the role of Shariah law, civil law, culture, customs and traditions.

This literature review focuses on six distinct topics: Shariah law, Muslims in Britain, multiculturalism, legal pluralism, religious marriage and divorce in the UK, and dispute resolution including Shariah councils. The chapter starts by examining Shariah law from a historical and global perspective, briefly explaining the formation of Shariah law and then explores the major debates related to Shariah law and women's rights, the calls to reform Shariah law or MFL in the Muslim world, and Muslim women and agency. The chapter then shifts its focus to the situation of the diasporic Muslim community in Britain, briefly giving a history of Muslims in Britain and the British-Bangladeshi Muslim community (BBMC). The next sections explore the key debates on multiculturalism and legal pluralism, and the practice of religious marriages and divorce including 'unregistered' Muslim marriages. The final section examines dispute resolution and explores Shariah councils, and considers the policy debates and discussions within the British context.

2.1   Shariah Law: History and Global Perspective

2.1.2   What is Shariah Law?

The Arabic word Shariah literally means a 'path to follow' or 'the way to a watering place' like an oasis, and is generally understood to mean Islamic law (Doi, 1998, p. 2). The primary source of the Shariah is the Quran and the *Sunnah* (prophetic tradition); and

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other secondary sources as developed by the early Islamic jurists and their legal schools of thought (Kamali, 2003). The Islamic rulings derived from these sources were collected in the books of *fiqh* (Islamic jurisprudence) and encompass topics such as ritual worship (i.e. prayer, fasting, and pilgrimage), contracts and obligations, family law and succession, and property and ownership (Hallaq, 2009b). The vast majority of the classical *fiqh* was compiled in the eighth and ninth century i.e. one to two hundred years after the death of the Prophet (Hallaq, 2005). The understanding of *fiqh* revolved around jurists and their disciples, leading to the formation of many different schools of thought named after their founders; with four major schools among the Sunnis: Hanafi, Maliki, Shafi and Hanbali; and the Jafari school, which is the principal Shii legal school (Campo, 2009). In the development of *fiqh,* no single *madhhab* (legal school) can claim to represent 'Islamic law' or 'Shariah' in its totality; that authority only remained with the Prophet whilst he was alive (Philips, 2003, p. 15). The early caliphates conquered land to spread Islam to regions beyond the Middle East, encompassing North Africa and East Asia, subsequent dynasties expanded Muslim lands to include South Asia, with the Ottomans entering Europe in the mid-fifteenth to the sixteenth century (Lapidus, 2014). Historically, Islamic law has always been pluralistic, with the Islamic state adopting a particular *madhhab* as the official state version of the Shariah; this practice continued until the fall of the Ottoman Empire (Lapidus, 2014).

The arrival of the West and the European colonisation of Muslim lands from the mid-sixteenth century to the mid-twentieth century present an unparalleled period of change in Muslim history; spanning from North Africa, the Middle East, the Balkans, and the Central and South Asian subcontinent (Armstrong, 2008). One of the profound effects of colonisation was to alter the practice of Shariah law, for example, the French required Algerians to relinquish Shariah law to gain citizenship, whereas the British in India did not interfere with religious personal laws (Robinson, 2013). As a result, Shariah was marginalised to represent laws pertaining to ritual worship and the personal system; thus, even after gaining independence, 'Muslim personal law' became synonymous with Shariah law (Esposito, 2010). Hence, the term 'Shariah' today represents a normative system of Islam, consisting of a code of obligations covering the

legal and moral spheres (An-Naim, 2002, Monsoor, 1999), as such 'Islamic law' that is binding on Muslims in a personal capacity (An-Naim, 2010, p. 28).

2.1.3   Reforming Shariah Law

The turn of the twentieth century saw a new wave of Islamic scholarship grounded in modernist and feminist ideologies challenge the traditional understanding of Shariah law, in particular, MFL i.e. that aspect of the Shariah law which governs areas such as marriage, divorce, maintenance, child custody, polygamy and inheritance (An-Naim, 2002, Latif, 2002). Traditionalists argued that the advent of Islam liberated women in the Arabian Peninsula, at a time when women were seen as no more than commodities (Engineer, 2008, p. 23). There are many chapters of the Quran such as *Al-Nisa* (the Women), *Al-Nur* (the Light) and *Al-Ahzab* (the Confederates), which stipulate rights, duties, and protection dedicated to issues concerning, women, marriage, divorce and family life. The prophetic tradition (*Sunnah*) instructed the early Muslim community in the conduct of their family and society. The Prophet himself married several times during his lifetime, and his relationships and interactions with his wives are documented in his biography and books of traditions (Al-Mubarkpuri, 2002). Traditionalists adhere to the literal or classical understanding of religious text, believing that to go astray from the text would lead to misguidance; as the Prophet said 'I have left among you two matters by holding fast to which, you shall never be misguided: the Book of God and my prophetic tradition' (Al-Muwatta, 2014, no. 1628). However, there are many practices mentioned in classical texts which are contested by modernists and feminists, such as, the necessity for a *wali* (guardian) of the bride, having two male witnesses, the permissibility of polygamy for men, unconditional obedience to the husband, disciplining the wife, and the right to unilateral divorce for the husband (Al-Asqalani, 2002).

Muslim feminist scholars argue that such texts and their rulings need interpretation within the context of time and space. Barlas (2009, xi) argues the Quran was revealed to a patriarchal society and interpreted with patriarchy since that time, and therefore Muslim women need to challenge patriarchal exegesis. Similarly, Wadud

(2006, p. 25) views the Quran as treating men and women unequally in divorce; though the Quran does permit equitable divorce (Wadud, 1999, p. 78). Mir-Hosseini (2014, p. 17) contends that the unequal treatment of women in the Quran (4:34) and the concept of 'male authority' (*qiwamah* - providers), was a juristic construct necessary to protect married women in a patriarchal society; and this is not to deny that the classical jurists were concerned with women's rights or their welfare. In other words, the divinity of the Quranic text is not devoid of historical context.

Another criticism levelled at the sacred texts is the number of *hadiths* (prophetic traditions) falsely attributed to the Prophet. The Quran confirms the authority of the Prophet to legislate in matters of the religion 'O you who believe! Obey Allah, and obey the Messenger (Muhammad) and render not vain your deeds' (Quran, 47:33). Thus, to disobey the Prophet was akin to disobeying God, and, therefore, Muslims were fervent in following any narrations reported to be from the Prophet. The forgery of *hadiths* was prevalent during the first four hundred years of the Islamic civilisation; some forgers did so for political gains, whilst others were saintly figures who claimed pious reasons for their forgeries (Brown, 2009, pp. 72-73). Barlas (2009, p. 45) contends the anti-woman content of *hadiths* is troubling, whilst Mernissi (1992, viii) claims traditions were used for promoting misogyny, even though historically women were equal participants in the society during the life of the Prophet in Madinah. It is more likely the *hadith* literature reflected patriarchal attitudes as the early Islamic society came into being in patriarchal and male-dominated societies (Roald, 2003, p. 118), and egalitarianism was an ideal aspired for by the Prophet (Hamdan, 2009, p. 12).

Modernist and reformist scholars questioned the relevance of classical interpretations of Shariah law, in a world fast moving towards gender equality and social justice. A key debate among modernists and traditionalists is whether it is permissible to reform Islamic law or not. Muslim traditionalists argued that MFLs do not change over time and space and are immutable like the laws of *ibadat* (worship) (Esposito, 2010, p. 157). In contrast, the reformists contended that MFL fell into the category of contracts and *muamalat* (transactions), and can change over time to reflect the conditions of modern society (Esposito, 2010, p. 158, Mir-Hosseini et al., 2013, p. 4). Another key

premise of reform lies in the distinction between the terms 'Shariah' and *'fiqh',* whereby Shariah represents the revealed text in a non-codified manner which is considered divine, whereas *fiqh* is the understanding of the Shariah as interpreted by legal scholars, much like positive law, and is therefore not divine (Cesari, 2012, pp. 5-6, Mir-Hosseini et al., 2013, p. 4). The traditionalist interpretation of MFL remained the dominant perspective in the twentieth century. Even so, the efforts of reformists such as Tahar Haddad (d.1935), Muhammad Abduh (d.1905), Sayyid Ahmad Khan (d. 1898), Muhammad Iqbal (d.1938) and Fazlur Rahman (d.1988), ensured some reforms to Muslim personal laws in countries such as Tunisia, Egypt, India, Pakistan and Bangladesh (Esposito, 2010, Mir-Hosseini et al., 2013). The reforms introduced addressed issues such as registering marriages and divorce, the minimum age for marriage, restricting polygamy, and protecting rights to *mahr* and maintenance (Esposito and DeLong-Bas, 2001, Welchman, 2004). These reforms administered MFL and brought a sense of social justice within the constitution, whilst being mindful of Muslim norms and values. The problem remains in implementing and monitoring these laws within the population, especially in rural areas where the administration of MFL may prove more difficult as customary laws may take precedent (Joseph, 2006, p. 303).

2.1.4   *Muslim Women and Agency*

Another aspect to consider in the discussion on Muslim women and the practice of MFL is the ways religious women are able to express agency in what may be deemed 'conservative' and 'religious' contexts. In sociological terms, agency is defined as 'the faculty of action' (Ritzer and Ryan, 2011, p. 8) or it 'implies the capacity for willed (voluntary) action' (Scott, 2014, p. 11). In psychology, one understanding of agency is 'the power to originate actions for a given purpose; where the efficacy of personal belief is a key factor of human agency' (Bandura, 1997, p. 6). McNay (2016, p. 39) comments that agency is a key concept in feminist theory; its meaning is widely contested, and suggests different connotations in line with cultural context, with some individuals and groups having more agency than others; the concept overlaps with notions such as freedom, free will, intentionality, and power struggle i.e. feminist resistance of male

authority and feminist assumptions of emancipation. Foucault (1980, 1988). contends that power is not solely a model of domination over others; rather it permeates life producing new forms or desires, relations and discourses; 'power' is not a synonym for resistance, but the capacity for action that specific relations of subordination create and enable. Butler (1993, 1997) questions emancipatory models of agency, and asserts that social norms are necessary grounds through which the subject is realised and enact their agency; and asserts the concept of 'performativity' i.e. the reiteration of structures of norms – change between states of power and destabilisation, which leads to agency among subjects. Others call for a hermeneutical perspective of social experience to understand women's agency, though this approach is rejected by some feminists as subjectivism, instead, others have proposed feminist standpoint theory as an approach to gain genuine knowledge from women's experience (McNay, 2004).

In addition to the aforementioned concepts of agency, studies of Islamic movements in non-Western countries reveal a different understanding of agency as found among Muslim women. Mahmood (2005, pp. 5, 15) who examined Islamic movements in Egypt, argues, the concept of agency, as expressions of freedom and autonomy, are representative of a liberal western perspective, whereas pious Muslim women view agency, not as resistance but submission to their religion, and do not seek freedom of choice but to choose to live their lives by what they feel is right. Furthermore, Mahmood (2005, p. 7) asserts that the absence of resistance is not the absence of agency, rather such statements conflate matters; in practice, the individual has choice and consciousness, and the capacity to inhabit norms or resist norms - agency is to realise one's own interest, even against the weight of customs, traditions and obstacles. Similarly, others such as Abu-Lughod (1990) who researched the Bedouin community in Egypt - advise limited use of the term resistance as agency, in the analysis of the agential practices of subordinated groups; as Muslim women's agentive differ from the western notion of agency (Abu-lughod, 2013). Likewise, Shitrit's (2013, p. 92) study of Muslim movements in Jerusalem found Muslim women would use an Islamic framework to achieve autonomy from harmful internal and external influences; and membership couple with religious knowledge gave women members the authority to

resist oppressive practices. Mahmood (2005, p. 15) adds that agency in the context of pious women is not about gender equality, not about resisting male authority, or to follow traditions [blindly]. Thus, Religious women use religion as a schema and draw on a range of resources to take actions in different ways and to accomplish their goals (Swidler, 1986). Studies such as those by Mahmood on religious movements face criticism of interpretative bias, following a normative agenda with a narrow scope view without to consider a broader socio-political context (McNay, 2016, p. 49). The differing concepts of agency as found in secular and religious societies lead some to argue that feminist scholars are forced to examine how non-feminist actions are agentic (Burke, 2012, p. 129); and this is particularly of importance when one considers how beliefs and values transcend national borders as in the case of religious minorities as found in diasporic communities, as in this study.

2.2 *Muslims in Britain*

The Muslim community in Britain has a well-established history, with Muslims migrants arriving since the 1800s. The period during the 1970s saw many Muslim families join migrant workers who had previously arrived in Britain seeking employment (Ansari, 2004). According to the last census in 2011, the Muslim population in Britain is 2.7 million, making Islam the second largest religion in the UK. The majority of British Muslims originate from South Asia: Pakistan, Bangladesh and India; and there are large Muslim communities in cities like London, Birmingham, Leicester, Bradford, and Manchester (ONS, 2011) (See Figure 1).
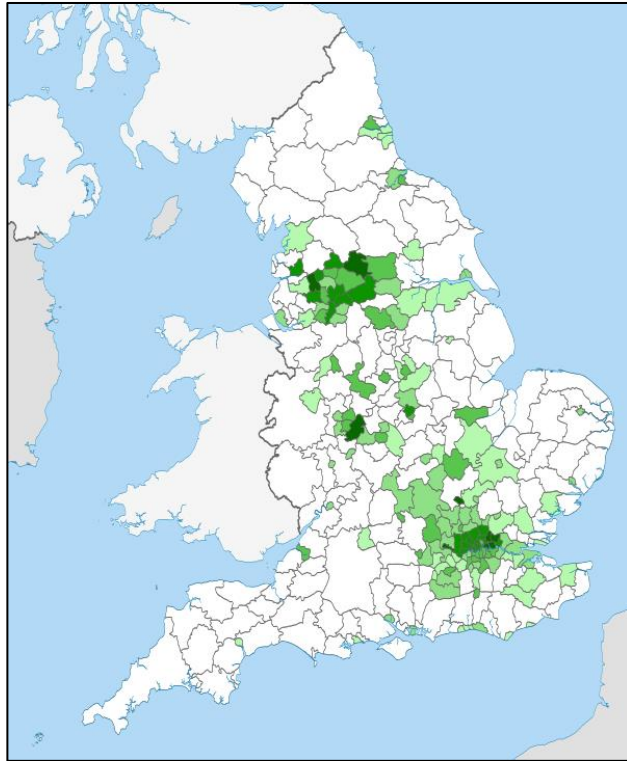
Muslims in England by district, data from the 2011 census

☐ 0.0%-0.9%
☐ 1%-1.9%
☐ 2%-4.9%
☐ 5%-9.9%
☐ 10%-19.9%
☐ 20% and more
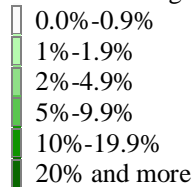
Figure 1 The Muslim Population in England

The migrant community strived to maintain elements of family life from their country of origin, giving them a distinct ethnoreligious identity (Gilliat-Ray, 2014, Pearl and Menski, 1998). The multicultural policies adopted by the government from the 1970s-1990s allowed ethnic minorities with different cultural and religious beliefs to coexist within the wider society (Ali, 2016a). British Muslims today participate at every level of British society, from politics, law, education, banking, health and social care, media, and journalism, fulfilling civic duties, whilst the vast network of mosques, Islamic schools, and Muslims organisations are reflective of their religious identity.

2.2.2   British-Bangladeshi Muslims

The migration of ethnic Bengalis from Bangladesh to Britain can be summarised in three main phases: the 1950s saw the arrival of sailors working with the merchant navy, the 1960s saw men arrive to work in industry, and the 1970s a period of mass migration whereby families joined workers already settled in the UK (Ansari, 2004). Bangladeshi nationals continue to settle in the UK through family unification, with children of the original migrants returning to Bangladesh to marry and bringing spouses over (Ahmed, 2005, p. 195). The current population of British-Bangladeshis is around half a million, with the largest concentration in cities like London, Birmingham, Oldham, Burnley, Luton and Bedford (ONS, 2011). In London alone, there are over 200,000 British-Bangladeshis, spread over boroughs such as Camden, Westminster, Hackney, Newham and 'Tower Hamlets – where 33% of the population of the borough are Bangladeshis' (ONS, 2011).

According to the Change Institute (2009, p. 7), older Bangladeshi people have a stronger attachment to Bangladesh, whilst second and third generations define themselves as British-Bangladeshis with multiple or hyphenated identities. The majority of British-Bangladeshis consider themselves Sunni Muslims, follow the Hanafi School, and speak the Sylheti dialect – coming from Sylhet, a district in the Northeast of Bangladesh (see Figure 2).

Figure 2 Map of Sylhet Division, Bangladesh

The roles and expectations of British-Bangladeshi women are changing with the generations; whereas the older generation of women accepted their roles in the home, more British-Bangladeshi women today are going into employment and participating in public community life (Aston et al., 2007, p. 95). Family and religion are key influences in the everyday life of British-Bangladeshis; and Bangladeshi men still have a prominent role and dominate affairs in the British-Bangladeshi community (Change Institute, 2009, p. 10). In some cases, there is still a cultural expectation that after marriage, women with careers will adopt a traditional female role in serving the husband and his extended family (Rozario and Samuel, 2011, p. 31).

2.3   *Multiculturalism*

Multiculturalism refers to the co-existence of diverse cultures, where culture includes racial, religious, or cultural groups, customary behaviours, cultural assumptions and values (Chu, 2005). The notion of multiculturalism was nearly unknown in the 1970s and became significant in the 1990s with discussions on cultural diversity (Modood et

al., 2006, p. 25). Since the 2000s multiculturalism faced criticism that the over protection of minority cultures, was detrimental to the promotion of integration and national identity (Leach, 2015, p. 222); with different ethnic or faith communities pursuing 'parallel lives' in isolation (Cantle, 2001, p. 9). In recent years, the debate has focused on British-Muslim communities and their practice of Shariah law. Others believe that multiculturalism has not failed. Kymlicka (1998, p. 22) argues there is no evidence to support the claim that multiculturalism promotes ethnic separateness or impedes immigrant integration. Parekh (1990, p. 701) contends that integration is a two-way system where mainstream society and immigrants must adapt to each other. Modood (1993) warns that statements and generalisations, which claim Muslims, are incapable of integration are nothing more than 'Islamophobia' and shows careless in argument and an appeal to taken-for-granted stereotypes. Moreover, Parekh (2006, p. 23) asserts that Muslims do not pose any major problems to multicultural accommodation, as any changes requested [by the Muslim community] are within the existing structure of society.

Another concern is that multiculturalism as a policy can be disadvantageous for women. Okin (1999, p. 12) argues that group rights should not supersede individual rights, as some group rights are anti-feminist and limit the capacity of women and children. In contrast, Kymlicka (1995, p. 76) believes that groups have their own societal culture, which must be protected for their preservation, though he does concede that cultures that discriminate overtly denying women education and public space do not deserve special rights. Even so, Okin (1999, pp. 27, 117) still urges caution in extending group rights, as many cultures oppress women and socialise members to their designated status while many oppressive practices remain hidden within the private and domestic spheres. Furthermore, Shachar (1998, p. 296) offers a third opinion to this discussion on multiculturalism, an 'intersectional' understanding which acknowledges the multidimensionality of the insider experience where group members are caught in the intersection of multiple affiliations. The multicultural model proposed by Shachar (1998, p. 300) demarcates the boundaries of membership of culture to the group, whilst the

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state may be involved in the distribution of rights and duties for example during a divorce, the state determines alimony, property division, and child support.

Parekh (2005, p. 340) considers, that a good multicultural society accepts the reality and desirability of cultural diversity; as humans are shaped by cultural identity, and all cultures deserve some respect, and any cultural changes are best from within. Modood (2006, pp. 15, 176) believes that the incorporation of Muslims has become the most important challenge of egalitarian multiculturalism, and in considering the inclusion of Muslims, one has to recognise Islam is an organised religion and the Muslim identity is a public identity. In other words, those who argue for the complete assimilation of ethnic and religious minorities within the mainstream society are unreasonable and unrealistic in their demands.

2.4 *Legal Pluralism*

Legal pluralism refers to the idea that there is more than one law or legal system within a nation state (Davies, 2010b, p. 805). Tamanaha (2000, p. 313) claims that law is a cultural concept and is whatever people identify and treat through social practice as law. Tamanaha (2008, p. 375) further asserts that legal pluralism is everywhere, and every social arena has a multiplicity of legal orders, ranging from the village and town level to states and districts, national, transnational and international laws; this multiplicity is uncoordinated, coexisting and forms overlapping bodies of law and quasi-legal activism. Merry (1988, p. 878) comments that to view a situation as legally plural allows the examination of the cultural and ideological nature of law and systems of normative ordering; however, she asks the question 'when do we stop speaking of law and simply describe social life?'. Furthermore, Menski (2011) argues that there is no agreed global understanding of what is meant by law, and lawyers continue to waste time defining law, instead of acknowledging that the internally plural phenomenon of law has fuzzy boundaries which manifests itself in different cultural-specific forms over time and space. Menski (2011) explains this internal pluralism in the form of a kite (see Figure 3), within its competing four corners there is the tussle between natural laws (i.e. ethics and values, which are religious or secular) and positive or state laws; and the tussle between

social legal norms or people's customs and international laws e.g. human rights. Hence, there is a strong argument to understand the nature of law and its effects on people from a legally plural perspective.

Note: Each corner is plural– 'plurality of pluralities' (POP).
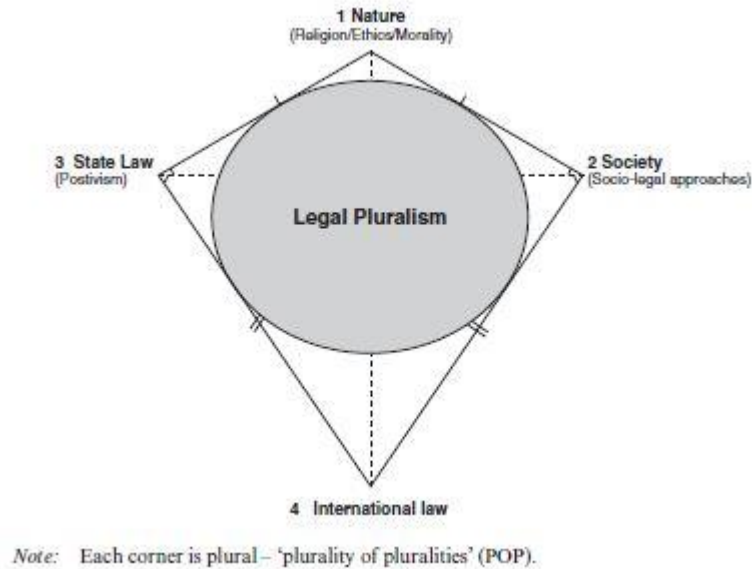
Figure 3 Menski Kite Model

Pluralistic legal structures, where state law, religious and customary laws co-exist, are features characteristic of non-European countries with a colonial past; in many Asian countries, Islamic law coexists with modern state law (Büchler, 2013, p. 75). However, the notion of implementing Shariah in Europe is still an ongoing debate. Some argue that Europeans are afraid of legal pluralism (Grillo et al., 2009) and that Europeans have a narrow understanding of Shariah as opposing secular legal order; though Shariah in the broad sense encompasses any religious or legal rules prescribed by Islam (Rohe, 2014, p. 658).

According to a survey in 2010, there are an estimated 44 million Muslims living in Europe and this figure is set to rise over the coming years (Pew Forum, 2015), with significant minorities in Britain, France, and Germany, the question of Shariah law and legal pluralism is not a debate that the state can afford to ignore. Menski (1998, p. 276) observes that South Asian Muslims have maintained aspects of Islamic law which they combined with English law, a hybrid form of law he calls '*Angrezi Shariat*' i.e. English

Shariah. However, there is political hostility and resistance from some elements of society that argue Shariah law has no place in British society due to incompatibility with the principles of human right and equality (MacEoin, 2009) and discrimination against Muslim women (Cox, 2015b, Manea, 2016, Zee, 2016). The French ban on the public wearing of the *niqab* (veil) in 2010, is a demonstration of the struggles some European countries have in balancing human rights and cultural diversity (Schattle, 2012, p. 110). Such adverse reactions to the question of Muslim identity only divert the real question of legal pluralism in society, whilst having little effect on the practice of MFL ingrained in the characteristics of Muslims.

In 2008, the then Archbishop of Canterbury Dr Rowan Williams became embroiled in a fierce political and religious row when he mentioned in a public lecture, it 'seemed inevitable' that elements of Shariah law would be adopted in Britain (Petre and Porter, 2008). What the Archbishop had intended was to 'tease out the broader issues around the rights of religious groups within a secular state' in particular Muslim marriage and divorce (Williams, 2008). Instead, the reaction received was, calls for the Archbishop's resignation (Doughty and Seamark, 2008), and an apprehension towards Shariah that has continued to the present day (Sandberg, 2015). Surprisingly, the fact that there have been Sharia-compliant banks operating in the UK since 2004 is missing from the debate (Ercanbrack, 2015, p. 143). This is because of the main objection against Shariah law and MFL, is the practice of polygamy, forced marriage, underage marriage, unilateral divorce (for men only), and banning women from marrying non-Muslim men, which violate human rights (Poulter, 1990, p. 159); without further research, it would be difficult to determine the extent to which these issues of concerns are problematic in society. Existing studies suggest that subjects matters such as *nikah*, *talaq*, *mahr*, and polygamy are issues that conflict with the common law (O'Connor, 2003, p. 142).

2.4.2   Islamic Marriage

The Islamic marriage contract (*nikah*) requires the fulfilment of its forms and ceremony to be valid according to Shariah law, otherwise, the marriage can be void or irregular

(Esposito and DeLong-Bas, 2001, p. 17). The key components of the *nikah* contract are the offer (*ijab*) and acceptance (*qabul*) to marry, a guardian (*wali*) to give permission for the marriage of a woman, the stipulation of a dower (*mahr*) given to the woman, and two male witnesses (*shahidain*) or one male and two female witnesses (Arshad, 2010, pp. 46-52); the *nikah* contract may be written or oral (Hallaq, 2009b, p. 272). *Nikah* marriages conducted in the UK are invalid unless it is part of a ceremony complying with the MA 1949. Similarly, English law recognises marriages conducted in mosques under certain conditions, though the Islamic elements of the *nikah* contract stipulating a guardian and dower receive criticism from some, of inequality towards women. In response to such criticism, the Muslim Institute (2008) designed a model Muslim marriage contract in a move towards justice and equality in the family. However, the contract was rejected as being 'modernist' by the Muslim Council of Britain (MCB) and thus, proved unpopular with the Muslim community (Drabu, 2008).

Polygamy and *talaq* are two further practices that contradict UK laws. According to the MCA 1973 s.11 (d), a polygamous marriage entered into after 31 July 1971 is void if either party to the marriage was, at the time, domiciled in England and Wales. As such, bigamy rather than polygamy can constitute a criminal offence under s.57 of the Offences Against the Person Act 1861 repealing the precedent set by the Bigamy Act 1604 (1 Jac 1 c 11). Nonetheless, under s.5 (1) of the Private International Law (Miscellaneous Provisions) Act 1995, potentially polygamous marriages are valid under English law on the grounds neither party are already married, and the marriage entered in a jurisdiction that permits polygamy and that either party is domiciled in England and Wales. Similarly, English law recognises polygamous marriage of a person whose country of domicile permits him to enter into a polygamous union under its jurisdiction, though s.2 (2) of the Immigration Act 1988 states a second wife will not be entitled to enter the UK and exercise the right of abode whilst the first wife is living in the UK.

Nikah ceremonies conducted in the UK that do not comply with the MA 1949 are invalid, therefore, there are reports that there is a rise in the number of polygamous marriages using Shariah law (Casey, 2016, Harley, 2015), which if legally recognised would constitute the act of bigamy, as such, unregistered polygamous marriages are not

legally recognised. In November 2016, Baroness Cox at the House of Lords Committee stage of the Policing and Crime Bill (now the Policing and Crime Act 2017) called for celebrant of a religious marriage to ensure marriages conducted are legally registered and a potential penalty of imprisonment if failing to do so, however, the committee resisted the amendment, which was withdrawn (Parliament UK, 2017c). Amra Bone, a female Shariah council judge at the Birmingham Central Mosque, argues that the government cannot ask Muslims to not to have more than one wife, as people have a right to decide for themselves (Gibb, 2015). In examining the French legal attitude towards polygamy, in 1981 under Private International Law, the French government recognised the right for polygamous unions and granted the second wives to be naturalised (Shadid and van Koningsveld, 1995, p. 69). The French banned polygamy in 1993, though the wives from polygamous marriages were still entitled to enter France on the basis they had French children (Zeitzen, 2008, p. 167). In more recent years, the French government has targeted polygamous marriages, which are seen as an affront to women's rights and a drain on the welfare system, and as such, the government has threatened the removal of work permits and citizenship in cases where husbands do not 'de-cohabit' from their polygamous wives (Davies, 2010a, Zeitzen, 2008).

2.4.3   Islamic Divorce

Divorce according to Shariah law can take many forms, *talaq*, *tafwid*, *khula*, *mubarah* and *faskh*. *Talaq* refers to a husband's right to unilateral divorce, whereas *tafwid, khula, mubarah* are means for the wife to be released from the marriage, and *faskh* or *tafriq* is annulment at the bequest of a Shariah authority (Arshad, 2010, Esposito and DeLong-Bas, 2001). The two most common forms of divorce are *talaq* and *khula*, a key difference is that in the case of *talaq* the husband must ensure full payment of the dower, and thus financially more advantageous for women, whereas with *khula* the wife requests a divorce and in turn may have to return the dower to the husband. According to classical interpretations of Islamic law, both *talaq* and *khula* can be extrajudicial, thus, conflicting with English laws, which do not recognise any form of extrajudicial divorce.

From a classical interpretation of the Islamic divorce, a sense of justice would be to grant a religious divorce, provide maintenance to women during their three-month waiting period (*iddah*) and resolve issues related to *mahr* (Doi, 1998). In contrast, English law views that both spouses should have equality in petitioning for divorce, the matrimonial property and assets are divided to ensure the spouses' financial interests are adequately protected, and arrangements for children made according to the Family Law Act 1996 (FLA 1996) (Herring, 2017, p. 156). English law in comparison to classical interpretations of Shariah law takes into consideration what each partner has contributed to the marriage and divides assets in most cases according to the parties' needs (Gilmore and Glennon, 2016, p. 202), whereas Shariah only considers *mahr* and maintenance during *iddah*. Nonetheless, some Muslims will still seek a religious divorce, as they feel bound by religion in the private sphere, even if British law is superior in society (Pearl and Menski, 1998).

2.4.4   Legal Pluralism in the UK

In considering legal pluralism in the UK, Islamic scholars argue that English courts cannot deal with *mahr* and Islamic divorce, and view Shariah law as providing women with better rights and protection (Benson, 2011, p. 23). Others believe that the English legal system has accepted different sources in the past, and English law can provide ways to integrate knowledge of social practice, and recognise common sense in cases (Bowen, 2009b, Sandberg et al., 2013). Others argue, that British legislation should be amended to recognise *nikah* and *mahr* (Jindani, 2005), and Western courts need to deal with *mahr* (Fournier, 2010). A counter-argument is that, although religion and culture are relevant in disputes, only English law should apply, and there can be no delegation of the jurisdiction of secular courts to religious courts (Butler-Sloss and Hill, 2013, p. 109). In contesting that there are no foreign laws operating in Britain, some argue that there is no denying that unofficial laws co-exist with official ones (Chiba, 1989, p. 54), and Western societies do live with 'legal pluralism' as people belong to more than one community (Douglas et al., 2012, p. 156).

2.5   *Religious Marriage and Divorce in the UK*

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According to Herring (2017, p. 74), it is impossible to provide a single definition of marriage, because marriage is whatever the parties take it to mean; it can be a status or a contract. Historically, marriage has had different functions and meanings to people at different times and places (Coontz, 2006, p. 28). Marriage may have an internal or personal meaning to the parties, though one also has to consider its external meaning in society. Hence, marriage is an arrangement that the State has an interest, which as a contract cannot be created or terminated at the will of the parties, and as a status has legal consequences (Standley and Davies, 2013, p. 23). For Muslims, the *nikah* is seen as a moral imperative and binding 'legal' contract, which legitimises sexual intercourse (Tucker, 2008, p. 41), not a sacrament, but spiritually marriage is seen as worship (Gilliat-Ray, 2010, p. 134). *Nikah* is the basis to start a relationship, and found a family, as the Quran (Q.23:5-7) prohibits any premarital sexual relationship. Muslim family life represents one of the greatest expressions of religious identity; especially as Muslims feel a need for religious marriage (*nikah*) and divorce (*talaq*) (Curtis, 2010, p. 154). Hence, many Muslims will marry and divorce according to the customary laws of their country of origin (Ramadan, 2004, p. 139). In Britain, a religious marriage or divorce does not necessarily mean it is a legally recognised marriage or divorce.

English law is a monolithic legal system, meaning there are no foreign or parallel systems of law, thus, matters pertaining to marriage, divorce, and children are exclusively legislated by civil law (Butler-Sloss and Hill, 2013, pp. 108-109). Legislation such as the MA 1949 and the MCA 1973 stipulates the conditions for a valid marriage and divorce; and the laws governing how people marry can be described in three stages: preliminaries, ceremony and registration, with differing rules for civil, Anglican, Jewish, Quaker, and other non-Anglican religious marriages (Law Commission, 2015). There are exceptions to the MA 1949 for Jews and Quakers, who may marry according to their usage, which dates back to the Marriage Act 1753. The preliminary stage requires the couple to give notice of their intention to marriage for civil and non-Anglican marriages to the superintendent registrar at the register office (s.28 MA 1949), no notice is required for Anglican marriages, rather banns of marriage matrimony called in church or a common or special licence obtained (Part II MA 1949).

Moreover, to be eligible to marry in England and Wales, a person must be aged sixteen years or above, free to marry (single, divorced or widowed), avoid prohibited degrees of relationship, and have permission from the parents if under eighteen years of age (Part I MA 1949), although the marriage is generally valid even if such permission is not given (Hill and Shúilleabháin, 2016, p. 357).

The marriage ceremony must comply with certain legal formalities, which differ whether the marriage is civil or religious. Civil marriages require the presence of both a superintendent registrar to conduct the ceremony and a registrar to register it, and the ceremony can take place at a register office or on approved premises (Gilmore and Glennon, 2016, p. 10). With regard to religious marriages, there are different rules for the ceremony; with Anglican, Jewish and Quaker ceremonies conducted within a church, synagogue or Quaker worship place respectively. Other Non-Anglican religious ceremonies must take place in a registered building in compliance with s.41 MA 1949 and the Marriage (Registration of Buildings) Act 1990. As such, places of worship like mosques, temples and churches of non-Anglican denominations can register for the solemnisation of marriages under the MA 1949, and the government provides an updated list of registered premises (Gov.UK, 2017b).

Regarding marriage registration, the Church of England clergy both celebrate and register the marriage, whereas the Quakers Society has a registering officer appointed by the district and for a Jewish marriage, the secretary of the synagogue register the marriage, for other non-Anglican religious marriages, registration requires a civil registrar or an authorised person appointed for the registered building in question (Probert, 2017). The validity of foreign or overseas marriages under English law follows the principle that the *lex loci celebrationis* or the law of the land where the marriage was celebrated governs the formal validity of the marriage (Hill and Shúilleabháin, 2016, p. 359). The Foreign Marriage Acts, 1892 to 1947 recognises as valid 'a marriage between parties, of whom one at least is a British subject, has been duly solemnised in a foreign country, in accordance with the local law of the country'.

Similarly, before granting a decree of divorce or judicial separation, the courts need to be satisfied the marriage is valid; and extra-judicial divorce (e.g. *talaq*) has been

invalid in Britain since the passing of the Domicile and Matrimonial Proceedings Act 1973. The Divorce (Religious Marriages) Act 2002 (DRMA 2002) gives the court the power to refuse a decree absolute if steps are not taken to dissolve the religious marriage; though this act is primarily used in cases where a '*get*' is refused in Jewish usage, it states it extends to other 'prescribed' religions, but no other religions have been prescribed (Proudman, 2013). Any religious marriage or divorce must meet the aforementioned conditions to be valid in an English court. As a result, some Muslims marry twice and divorce twice (i.e. have separate religious and a civil processes) (Yilmaz, 2002, pp. 348-350).

2.5.2 Unregistered Muslim Marriages

According to some sources, 75-80% of Muslim marriages remain unregistered i.e. the marriages in question tend not to comply with any of the requirements of the MA 1949, and there are calls for the requirement to have compulsory registration of *nikah* marriages (Grillo, 2015a, Khan, 2012). Gohir (2015) argues such statistics are questionable and ignores the fact foreign or overseas marriages are valid under British law, and therefore such flimsy statistics are used to scaremonger and misinform. Indeed the very nature of non-registration means there are no official records of such ceremonies, and therefore it is difficult to gauge the extent of the phenomenon. Qualitative studies of Shariah councils in Britain have produced statistics for unregistered marriages varying from 23% (Shah-Kazemi, 2001) 51% (Douglas et al., 2012) and 64% (Bano, 2012b), however, such samples may be indicative of cases that come to Shariah councils, and do not represent practices across the Muslim community. Another concern is that even though it is possible to marry in a religious ceremony that is legally binding (Douglas et al., 2012, Edge, 2013), only 1 in 10 mosques in the UK are registered to provide such a service (Khan, 2012). Some view the reasons Muslim opt for *nikah*-only marriages are due to; complacency or ignorance of state law, reluctance or avoidance of the legal system, protect family assets, practice polygamy, immigration status, ideology – Shariah is superior (Grillo, 2012, Rohe, 2014). Akhtar's (2015) study found the majority of the participants saw no incentive to register their

marriage, as it added no value to their status as married couple according to their own perception; thus, the civil ceremony was not a priority, and compliance was a matter of finding time and convenience; though there were varying degrees of legal awareness among participants.

Couples who marry by *nikah*-only ceremonies are classed as cohabitees, and their *nikah* seen as a 'non-marriage' meaning the civil courts do not have the same powers to make financial orders as when granting a divorce [for the dissolution of a valid marriage] (Probert, 2013). A *nikah*-only marriage lends the status of 'living together' but not a valid marriage, and this can cause complications such as in the death of a spouse, the other spouse will not automatically inherit and is not exempt from inheritance tax (Standley and Davies, 2013). As cohabitees there is no legal duty of financial support from each other, taxed separately, housing rights are dependent upon the name(s) on the tenancy agreement or property deeds, and money is co-owned if deposited in a joint account (Gilmore and Glennon, 2016). However, cohabitees are treated the same by the government when dealing with some welfare benefits, though not always to the advantage of the cohabiting couple, and the same rights to court orders relating to domestic violence (Lowe and Douglas, 2015, Probert, 2011). Overall, the non-registered of marriages leave couples with fewer rights and protections in comparison to a valid marriage. Nonetheless, some could argue, that Muslims may not approach a civil court for a religious divorce, especially as the judge, firstly, would not refer to Shariah law, and secondly not have the expertise about Islamic laws (Cesari, 2010, p. 15). Menski (1993) contends many British Muslims will not take family disputes to official courts as secular Western laws lack legitimacy and moral standing to deal with intricate matters of obligations relating to the personal law system. Yilmaz (2001, p. 298) believes that British Muslims as avoiding civil courts for family matters because some aspects of MFL have traditionally been extrajudicial, though one could argue Muslims are familiar with State involvement in family matters with the codification of MFL in Muslim majority countries.

2.6   *Dispute Resolution and Shariah Councils*

2.6.2 Dispute Resolution

According to the Office for National Statistics (2016), there were 106,959 divorces of opposite-sex couples in 2016, an increase of 5.8% compared with 2015; and unreasonable behaviour the most common fact for wives petitioning divorce. Lampard (2014) notes that whilst adultery and violence dominate the reasons for separation, other explanations such as 'growing apart' are becoming more common. Divorce laws are a contentious subject in family law, some argue the purpose of divorce laws is to save marriages, whilst others seek to liberalise divorce to assist the emancipation of women (Herring, 2017, Lowe and Douglas, 2015). The FLA 1996 section 1(a) states that the institution of marriage is to be supported, and section 1(b) that the parties to a marriage, which may have broken down, are encouraged to take all practicable steps, whether by marriage counselling or otherwise, to save the marriage. Under s.10 (1) of the Children and Families Act 2014 it is a legal requirement to attend, a family mediation information and assessment meeting (MIAM) before making a family application (e.g. divorce); Part 3 of the Family Procedures Rules 2010 – Practice direction 3a, set out MIAM exemptions in cases of domestic violence and bankruptcy (Justice.gov.uk, 2017).

Moreover, the law encourages families in dispute to resort to other means such as arbitration, mediation, conciliation, and 'alternative dispute resolution', to avoid protracted court proceedings (Lowe and Douglas, 2015, pp. 11, 832). The Arbitration Act 1996 makes provisions for arbitration proceedings in England, Wales and Northern Ireland, founded on the principles of a fair resolution of disputes by impartial tribunal and agreement of the parties on how disputes are resolved, subject to safeguards necessary of public interest. As such, arbitration agreements and awards compliant with the Act are legally binding and enforceable. The Institute of Family Law Arbitrators (IFLA) provides legal advice to practitioners and the public on Family law arbitration (IFLA, 2017). Religious tribunals can sit as arbitral tribunals in respect of civil disputes according to the Arbitration Act 1996, however, it cannot replace criminal law and most family law matters (Norton, 2016, p. 131).

2.6.3 Shariah Councils

Muslim communities in Western countries may follow Islamic personal law or Shariah in matters of family law (Black et al., 2013, p. 109). Some traditional interpretations of the Shariah discourage taking disputes to court, rather arbiters should be chosen from each side of the family to resolve the dispute (Doi, 1998). Where friends and family are unsuccessful in resolving the matter, Muslims will refer marital disputes to alternative channels e.g. mosque or Shariah Council (Giunchi, 2014). Muslim men and women turn to religious frameworks and norms, for personal needs, and during a crisis e.g. divorce (MacFarlane, 2012b, p. 51). In particular, there is limited scope for Muslim women to divorce, who if their husbands refuse to grant divorce by way of *talaq*, must approach a religious authority to attain release from the marriage whether it is *khula* or *faskh*. The Muslim community does not recognise secular divorce, and therefore, women granted civil divorce will still be considered married unless they receive a Muslim divorce (Wilson, 2010), thus, one of the reasons for the emergence of Shariah councils (Black et al., 2013, p. 139).

According to Bano (Bano, 2012b, pp. 84-86), Shariah councils are quasi-legal or unofficial legal bodies that function to mediate, arbitrate and issue Muslim divorce certificates; the product of transnational networks unique to the British diaspora. However, studies in other Western countries such as France, Canada, the United States of America and Australia have confirmed that Muslims there also refer marital disputes to Shariah councils (Krayem, 2014, Macfarlane, 2012a), albeit these institutions are not as structured as the Shariah councils found in Britain. Furthermore, religious courts are not a phenomenon exclusive to the Islamic faith; the existence of the Jewish Beth Din and the Roman Catholic courts precede the history of Shariah councils in the UK (Douglas et al., 2011). Shariah councils mainly deal with women who have initiated divorce and may issue an Islamic divorce certificate without the husband's consent if he is at fault (Akhtar, 2010, Ali, 2013). Bano (2012b, p. 266) observes Muslim women use Shariah councils for a particular purpose; or as Malik (2012, p. 10) describes, as a minority legal order (MLO) – non-state normative field of social action that shares some of the characteristics of state law, and may refer to cultures or religious groups that regulate social life by coherent and consistent norms, rather than random or arbitrary.

Shariah councils are criticised for following Islamic norms and values, which marginalise women and provide favourable terms for men (Ahmed and Norton, 2012, Bano, 2007, p. 22). Commentators argue that women have to tolerate the intolerable to get a Muslim divorce certificate, an informal piece of paper which is not recognised by the civil courts (Ali, 2013). Others note that the interpretation of Shariah in the West is harsher than in Muslim countries and encourage Shariah privileges of a particular religious practice (Bano, 2008, Mehdi et al., 2012). Moreover, others are critical of Shariah councils to the level of calling for their ban, seen as operating as a parallel legal system to English law, gender discriminating against Muslim women, coerced to use Shariah councils (Cox, 2015b, MacEoin, 2009, Namazie et al., 2010). In May 2016, Baroness Cox introduced a Private Members' Bill on the application of equality legislation to arbitration and mediation services, which had its second hearing at the House of Lords in January 2017, with the session prorogued and the Bill making no further progress (Parliament UK, 2017a). Opposing such criticisms, others have found that Shariah councils have a flexible approach, encourage people to civil marriages and divorce, and do not seek state recognition, whilst providing certificates needed spiritually and from a religious legal perspective (Douglas et al., 2011, Keshavjee, 2013). Malik (2012, p. 53) contends there are considerable empirical gaps in understanding the experience of those who use MLO, and whether they face unjust outcomes or secure autonomy as individuals. The Muslim Arbitration Tribunal (MAT) refers to the Arbitration Act 1996 for dispute resolution. However, arbitration awards are enforceable subject to discrimination law i.e. must not fail to comply with the Equality Act 2010; and cannot deal with criminal or family law matters like divorce and children (Edge, 2013, p. 124). Shariah councils, such as the Muslim Law Shariah Council UK (MLSC) will not issue a divorce certificate until they receive a copy of the decree absolute. According to Ali (2013, p. 136), despite having no legally binding authority, Shariah councils are around for the foreseeable future and 'are not going away'.

In 2016, the government launched two inquiries: an independent review of Shariah law in England and Wales and a Home Affairs Committee (HAC) inquiry into Shariah councils operating in the UK. The Independent inquiry is investigating whether

Shariah law is incompatible with the laws of England and Wales and discriminates against certain groups, undermines shared values, and causes social harms (Home Office, 2016b); the report of this review is expected in 2017, and the decision to publish the report will be for the Home Secretary (Parliament UK, 2017e). The HAC inquiry is examining the operational practices of Shariah councils in resolving family and divorce disputes, and their relationship with the British legal system (Home Affairs Committee, 2016). To date the enquiry has received 42 separate written evidence from solicitors, women's groups, academic scholars, think tanks, peers, Shariah councils, secular and religious groups, and individuals, and one oral evidence session with solicitors, women's groups and Shariah councils. The inquiry was closed in June 2017 due to the general elections, as all Select Committees cease to exist during elections, and no reports published to date, though a new Committee may refer to the evidence gathered if an inquiry on this subject is held in the future (Parliament UK, 2017d).

2.7   *Conclusion*

The aim of the chapter was to present a survey of the current literature in the field of study. It started by describing Shariah law in a global perspective, with a particular focus on its historical formative years. It explored Muslim feminist literature that challenges classical interpretations of Shariah law, which privilege men with greater rights, actions that oppose a world today moving towards gender equality and social justice. It then moved to debates on reforming Shariah law incorporated as personal family law in Muslim countries, and concerns that people in rural areas may follow customary laws despite legal reforms providing women's rights. The next section examined the question of women's agency, the contested meanings of agency as understood in feminist and non-feminist perspectives, in particular, the understanding of agency among Muslim women in conservative or religious contexts.

The chapter then focused on the situation of Muslims in Britain, providing a brief history of migration of British Muslims, and then focused on the BBMC, who are the subject population of this study. The themes of next three sections are inter-related and discussed multiculturalism, legal pluralism, and religious marriages and divorce in the

UK. Some of the key debates explored centred on issues such as preserving group rights as opposed to the assimilation into greater society, and the practice of official and un-official laws within a minority community, and conflicts between State law and Shariah law. An examination of religious marriages and divorces provided an overview of practices within the UK, explained the legal requirements for compliance according to English law, and discussed non-compliance in the form of unregistered Muslim marriages and extra-judicial Islamic divorces such as *talaq* and *khula*.

The last section of this chapter discussed dispute resolution and Shariah councils and their emergence as an alternative dispute resolution forum among British Muslims, with claims that the Muslim community does not recognise civil or secular divorce, women approach Shariah councils to secure Islamic divorce. Critics of Shariah councils argue they operate as a parallel legal system, implementing Shariah law which conflict with human rights law, gender discriminate against Muslim women coerced to use such service. Opposing such views, others found Shariah councils operate within the bounds of English law, have a flexible approach and provided a religious service needed by the British Muslim community. In recent times, the government has initiated an independent review of Shariah law and a Home Affairs committee review of Shariah councils, these investigations are still ongoing, with no conclusions published to date. Overall, the review of the literature highlighted the need for further empirical research to understand the private practices of marriage and divorce among British-Muslims, especially the lack of data on the BBMC.

Chapter Three: Methodology

3.0   Introduction

This chapter explains the research design used to explore the central research question, 'How do BBMW pursue divorce in the UK?' An extensive review of existing literature informed me that the nature of the problems faced by Muslim women when pursuing divorce required further research, especially as the practice of MFL exists within the private sphere, and there was a lack of documented evidence of Muslim marriages and divorce cases reported. The studies to date provided limited access to such data, and therefore, necessitated the need for this empirical study.

Under the umbrella of 'Socio-legal studies', which relates to the empirical study of law, I chose a phenomenological-inspired methodology to explore the socio-legal effects of Islamic divorce. There were many challenges considered from the early stage of the research design. Two of the main concerns were, that firstly the topic of Islamic divorce fell within the category of 'sensitive' research – i.e. these issues are those considered private, stressful, or sacred (Lee, 1993, p. 4). A strategy was required to gain access to BBMW willing to speak about their lived experience of Islamic divorce; and ethical consideration given to all aspects of the fieldwork. Secondly, the role of the researcher or 'positionality' was an important consideration, as the manner of interaction with the 'sample population' could affect data collection, analysis and findings, especially as a researcher I was a male, PhD candidate, and an imam (cleric), therefore the need to be reflexive and reduce research bias.

After gaining ethical approval, the sequence of the fieldwork commenced with in-depth interviews. The phenomenological nature of the interviews meant I could not presuppose any responses from the participants or the experts, therefore, I considered my positionality and 'bracketed' i.e. put aside or suspended my own presuppositions, biases, assumptions, theories or previous experiences (Given, 2008, p. 63) during the interviews, and as such, there was not any advantage in interviewing in any particular order. Thus, I conducted participant and expert interviews as and when access became available. The expert interviews initially concentrated on imams and Shariah Council

judges, as previous studies highlighted their importance in dealing with issues of marital discord. After conducting several interviews with BBMW participants, themes emerged from the data which necessitated further expert interviews with family law solicitors and women's group advisors and counsellors. In addition, I partook in participant observation of Shariah Council hearings and analysed its procedural documents to gain a further understanding of the research problem.

The research focused on the central research question, 'how do BBMW pursue divorce in the UK?' and the sub-research questions asked what types of processes do Muslim women choose when pursuing a divorce i.e. civil or Shariah? How do experts shape, influence, and support Muslim women pursuing divorce? What role do culture, religion and other factors play in influencing the decision to divorce for Muslim women? I chose to study BBMW as there was a lack of empirical data from previous studies for this ethnic minority group, and thus there was a knowledge gap in the experiences of MFL relating to this community. Moreover, previous studies have highlighted that religious communities are not homogenous, the choice of one ethnic group allowed an exploration of cultural differences related to ethnicity. The sensitive nature of the topic of divorce meant that I conducted all the interviews; and considered my role in the research process and my impact on data collection and data analysis, and therefore the requirement of positionality and reflexivity.

This study is different from other studies in that the focus is not primarily on evaluating Shariah councils or other institutes; rather it looks deeper into where the main problems of Islamic divorce arise by considering participants with the lived experience of the phenomenon. The remainder of this chapter explains the key issues considered for the different components of the research design and begins with a brief understanding of socio-legal studies and then provides a detailed explanation of the methodology, data collection methods, data analysis, ethical issues, and limitations.

3.1 *Socio-Legal Approach*

In the 1980s researchers turned to a social-legal approach to understanding how laws affect the lives of ordinary people (Ewick and Silbey, 1991, p. 738). This 'law in action'

approach used inter-disciplinary methods from the social sciences to gain empirical knowledge of actions, relationships, and attitudes of those affected by law (Salter and Mason, 2007, p. 152). In the US, such studies became the focus of 'Legal Consciousness' (LC) scholars, whilst in the UK they formed Socio-Legal Studies (SLS).

3.1.2 Legal Consciousness

Legal consciousness can be defined as 'the understandings and meanings of law circulating in social relations' (Cane and Conaghan, 2008, p. 695) or 'the way people understand and use the law' (Merry, 1990, p. 5). The primary concern of LC scholarship is to study society, rather than law per se, and focus on the subjective experiences of people and put legal phenomena at the heart of its methodology (Cowan, 2004, p. 929). Legal consciousness is not a unitary phenomenon and is situated in relation to the type of laws encountered, social hierarchies, and the experience of different groups with the law (Nielsen, 2000, p. 1055). Thus, in relation to this study, the way Muslims understand the concept of law will differ according to how much interaction they have with Shariah law and state law, and its institutes. Another point to consider is that, before people bring a problem to court, they have to view that the law can help them according to their understanding of the categories of law; and often people are urged to go to the courts by their friends, family, police or town officials (Merry, 1990, p. 39). In the case of Muslims, it could be an issue of deciding which type of court has legitimacy in the matter of law pursued. Hence, LC research is also concerned with examining legality outside of the formal law (Halliday and Morgan, 2013, p. 3).

Legal consciousness studies employ a qualitative methodology drawing on disciplines such as anthropology and sociology, to understand how people see the world in their own social construction (Silbey, 2005, p. 327). According to Berger and Luckmann (1967, p. 13), a socially constructed reality is one 'we cannot wish away', as knowledge, the phenomena are real and possess specific characteristics, linked to space and time i.e. it exists for the person. Ethnographic studies, through observations and extensive interviewing of participants, attempt to capture variable meanings to events (Silbey, 2005, p. 338). In assessing 'consciousness', scholars differ in its definition.

Some view consciousness as an idea or attitude which determines the form and texture of social life; others see consciousness as an epiphenomenon where the individual is not the focus rather society and its institutions; whilst others view consciousness as a cultural practice, and more a reciprocal process than a mental attitude (Fantasia, 1989, p. 14). The reality of consciousness may be a mixture of these definitions, nonetheless, it is argued consciousness is always intentional and directed towards an object (Berger and Luckmann, 1967, p. 31). In other words, researchers are cautious in the manner they engage with participants, so as not to influence them with their own views, and only elicit the subjective views from the lived experience of others.

Part of the methodology of legal consciousness research is not to mention law or its importance to participants, rather the researcher waits for the mention of law; as the researcher does not want to assume the place of law in the lives of the participants (Ewick and Silbey, 2003, Silbey, 2005). Although, that is not to deny the researcher has a role to play in the data collection, especially when conducting in-depth interviews. In the opinion of White (1990), it is a natural impulse for people to explain actions to other through stories; which enact, construct, describe the world as lived and understood by the storyteller. Van Maanen (1988) believes that all stories contain sociology - 'accounts of the organisation of life'. The depth and the details of the accounts obtained from interviews rely partly on the willingness of the interviewer to listen to the interviewee; 'as people provide hints about a story, and the audience help to unpack and elaborate an account' (Jefferson, 1985). Framing acts in the story externalises the consciousness of the storyteller – reasoning, knowledge, memory, decision-making, judgement and evaluation (Smith, 1987). In the interview, the researcher is gaining first-hand knowledge from the experience of participants, who are narrating on the assumption that 'what is true for me is true for others' (Ewick and Silbey, 2003). Thus, US studies of legal consciousness have much to offer socio-legal studies in the UK (Cowan, 2004).

3.1.3   *Socio-Legal Studies*

Socio-legal studies (SLS) is defined as, 'an approach to law which covers the theoretical and empirical analysis of law as social phenomenon' (ESRC, 1994); and according to

the Socio-Legal Studies Association (SLSA) 'where law meets the social sciences and humanities' (Hunter, 2012, p.3). The methodologies employed in SLS are broader than legal consciousness studies, as they incorporate quantitative methods as well as qualitative methods; nonetheless, the aim of SLS is still to examine 'law in action'.

In recent years the socio-legal approach has produced, some groundbreaking studies, which have focused on Muslims and the practice of Muslim family; among them (An-Naim, 2002, Mir-Hosseini, 2000, Welchman, 2004) which examined MFL in Muslim countries; and (Akhtar, 2013b, Bano, 2012b, Keshavjee, 2013, Shah-Kazemi, 2001) which examined the phenomenon of Shariah councils in the UK. This current study relates to the later mentioned body of works, albeit the focus of the study is 'Islamic divorce' and not Shariah councils per se. Nonetheless, these works set a precedent in following a qualitative methodology in answering the research questions to the problem. The interdisciplinary approaches used in these socio-legal studies were content analysis and in-depth interviews (Shah-Kazemi, 2001), feminist standpoint (Bano, 2012b) ethnography and interpretative phenomenology (Keshavjee, 2013) and grounded theory (Akhtar, 2013b).

In examining some of these previous studies of MFL in the UK, there are apparent limitations and gaps in the field of knowledge. The earliest of these studies by Shah-Kazemi (2001, p. 63) mentions that by approaching Shariah councils for all its participants, the study chose women who had difficulty obtaining a religious divorce, and therefore, the results may represent a minority grouping. Moreover, the experience captured by the study may be more representative of the British-Pakistani subculture as opposed to the British Muslim community; as 'religious groups are not homogenous' (Sandberg et al., 2013, p. 290).

Similarly, the research on the British-Pakistani community by Bano (2004, p. 65), the snowballing technique produced a biased sample, representative of an educated socio-economic group, which made it difficult to establish what was really happening with the British-Pakistani community. Bano (2012b, pp. 60-61) acknowledges, the logic of sub, and besides to attach ethnic groups to a homogenised Muslim community presumes the primacy of a universal Muslim identity. The findings from this study gave

an insight into the field of knowledge unparalleled at the time, though Bano (2012b, p. 59) mentioned difficulties in obtaining access to Shariah councils and their case files.

The study by Keshavjee (2013) employed methods from ethnography and phenomenology. The fieldwork spanned a period of eight years, and involved 50 in-depth interviews, which included imams, academics, and mosque users; the research gave a valuable insight of the Muslim community in Hounslow. However, due to the sensitivities of the community studied, the study was unable to gain access to interview Muslim women who faced marital discord i.e. disputants; and therefore, unable to provide insight from the perspective of Muslim women's experience of ADR (Keshavjee, 2008, p. 13).

The research by Akhtar (2013b) employed a mixed methodology to gather data, with grounded theory used for data analysis. The majority of the participants completed a questionnaire with open-ended questions. However, questionnaires do not provide the level of detail that one can gain from the in-depth interview; as face-to-face interviews give the researcher an opportunity to probe participants to gain deeper insights of the problems (Henn et al., 2006, p. 162). Akhtar (2013b, p. 30) comments that the data analysis stage revealed respondents were mostly university educated British Muslims, as such, the findings were representative of socio-legal practices among this socio-demographic profile.

Thus, considering the contribution and limitations of previous studies of MFL in the UK, the next section of the chapter will explain the research design used for this thesis, which examined the lived experience of divorce from the perspective of BBMW.

3.2   *Methodological Framework*

Methodology refers to the philosophical approach or paradigm that underpins and guides the research (Blaxter et al., 2010, p.59). It is one of the most import considerations in the research design, as the choice of methodology affects the conduct of the research and the explanation of findings. The phenomenon studied 'Islam divorce' explored a legal issue with sociological consequences, which meant an interdisciplinary or applied approach was required i.e. the use of insights from other disciplines e.g. anthropology, to

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investigate the legal problem (Morris and Murphy, 2011, p. 35). An empirical or socio-legal approach was selected as the most suitable methodology, as it enabled the law to be examined 'in context' – by investigating a problem in society; and exploring whether law contributed to the problem, or provided a solution, or needed a political or social arrangement (McConville and Chui, 2007).

3.2.2 The Two Paradigms of Social Research

In socio-legal studies, the concept of knowledge refers to ontological and epistemological theories found in the social sciences. For example, one way of gaining knowledge is to ask questions about the social world; and collect empirical evidence to gain further understandings, with any conclusions supported by evidence (Henn et al., 2006). Furthermore, the methods used to collect empirical data is determined by the two main paradigms for social research, quantitative (positivist) or qualitative (interpretative). The aim of quantitative research is to determine the extent of the problem, by quantifying variations in the phenomenon (Kumar, 2014). As a result, quantitative studies are larger in scale; focus on many participants, use questionnaires and surveys to gain statistics, to present findings in a numerical manner (Dawson, 2009, pp. 15-16). By contrast, qualitative studies investigate the underlying motivations that people have for the actions they do (Henn et al., 2006), and how their subjective experiences shape their understanding of the world. As such, qualitative studies are smaller in scale, have fewer participants but with greater contact, to gain detailed data, which is presented in a non-numerical format (Dawson, 2009).

3.2.3 Qualitative Research Methodologies

Qualitative research methodologies vary depending on the aim of the study, which can further influence the methods chosen for data collection and analysis. Some of the major approaches to qualitative inquiry considered were action research, grounded theory, ethnography, narrative research, and phenomenology. Action research focuses on practitioners investigating a specific problem for a particular situation and then using the findings to recommend good practices in the field of work (Bell, 2014, p. 8). I discounted the action research approach, as it did not meet the aim of this study, which

examined a phenomenon within a sample of a particular community. The grounded theory approach (Glaser and Strauss, 2017) as the name suggests is a methodology whereby the researcher investigates a problem, without a hypothesis, and develops theories from a complex series of data analysis (Bell, 2014, p. 20). Elements of this approach are evident in the data analysis stage, especially in relation to initial coding. Ethnographic research is characterised by its centrality to social and cultural anthropology (Atkinson et al., 2007, p. 2). Ethnography involves the researcher participating in people's lives to gather data to explain issues that are the focus of the inquiry, most often through participant observations (Creswell, 2013, p. 90, Hammersley and Atkinson, 2007, p. 3). This study involved participant observation of Shariah Council divorce proceedings.

In considering narrative research, elements of this approach seemed appropriate, as this would allow participants to give accounts of the phenomenon from an autobiographical perspective. However, this approach usually focuses on one or more individuals to understand a phenomenon in the form of a story told in a chronological order (Creswell, 2013, pp. 13-14). The aim of this study was to gain a deep understanding of the phenomenon of Islamic divorce as experienced by Muslim women from a select community and to find common and reoccurring themes among their experiences, to give an insight into the problems and issues faced. In considering all the aforementioned qualitative methodologies, I utilised a phenomenological approach for this study. However, before discussing phenomenology in more detail, the next section discusses feminist standpoint theory, proposed as the most suitable approach to study women's experience.

3.2.4   Feminist Standpoint Theory

Feminist scholars argue the prevalence of male bias in traditional research methods necessitates a new approach to correct gender bias and produce new objectivity that recognised power structures shape and limits what we know of knowledge; as a result standpoint feminism emerged in the 1970s (Intemann, 2016, p. 261). Standpoint theories view the world from a socially situated perspective and lay claim to epistemic privilege

or authority for those in positions of subordination (Crasnow, 2011, p. 774). Feminist standpoint theorists make three principal claims: firstly, that knowledge is socially situated; secondly, marginalised groups are more aware of their situation and ask more questions than the non-marginalised; and thirdly, research focused on power relations should start with the lives of the marginalised (Bowell, 2017). Feminist scholars such as Dorothy Smith, Nancy Hartsock, Hilary Rose, Sandra Harding, Patricia Hill Collins, Alison Jaggar and Donna Haraway have contributed to standpoint theories in various disciplines like sociology, politics, social science, and argue knowledge is not neutral or abstract but varies according to different social actors and scholars (Bowell, 2017, Kang, 2009, p. 79).

In taking a feminist standpoint, the researcher views the research problem from the 'unique' vantage point of women (Gelsthorpe, 1992, p. 215), testing theory against women's experience whilst actively struggling against male domination politically and intellectually, as such, the knowledge produced serves the interest of dominated, exploited, and oppressed women (Mies, 1993, pp. 68-69). Haraway (1988, pp. 583-584) explains feminist objectivity as linked with limited location and situated knowledge, whereby the standpoints of the subjugated are not viewed as innocent (i.e. value free) but preferred - less likely to deny critical aspects of knowledge and provide adequate and sustained accounts of the world. Similarly, Harding (2015, pp. 29, 35) argues that the prevailing knowledge in society is not value free and represents the interests of dominant groups, and therefore standpoint theories provide a more objective account of the nature of social relations; and the perspective of oppressed groups brings novel insights to research.

Critics of feminist standpoint theory argue that the approach falsely assumes that women have universal shared experiences and interest by virtue of being oppressed and have epistemic privilege; moreover, they allege the theory fails to capture the differing ways sexism intersects with other systems of oppression, though they accept the knowledge produced is more likely to benefit marginalised groups (Intemann, 2016, p. 262). Others believe all observations are theory-laden and artefacts of our making, as such, insights from observation-based data can equally serve as credible evidence for

more than one theory (Bowell, 2017). In response to claims of feminist bias in research, Harding (2004, p. 93) claims that complete 'impartiality is unachievable, for knowledge is always from somewhere'. There are differences of opinions as to whom can partake in feminist standpoint theory research, one view is that men can conduct feminist research sympathetic to the feminist standpoint (Henwood and Pidgeon, 1993), whilst others insist only women can conduct such research (Letherby, 2003, p. 139). Other commentators assert the essence of good research is to capture the complexity of social reality (Humphries, 1997); where truth is the only value goal of the researcher (Hammersley, 1997).

No doubt feminist standpoint theories propose many principles that are also important to consider for this study, like the consideration of women's experience as a starting point for inquiry, and power relations in acquiring knowledge, and objectivity – i.e. avoiding male bias. However, such principles are also found in other qualitative methodologies, namely phenomenology; especially if the researcher's goal is to capture the essence of the subjective reality of participants' experience. The question of whether marginalised groups intrinsically have an epistemic privilege is debated among scholars, whereas investing social realities as subjective experiences (i.e. qualitative research) forms one of the two major paradigms of social research. Moreover, doubts cast by some feminist scholars as to whether men can conduct feminist standpoint research could bring uncertainty to the credibility of such studies if done by a male researcher; whilst phenomenological studies take into consideration researcher bias from many different perspectives including gender differentiation and provide the potential to present 'women's voices' as research findings .

3.2.5 *Phenomenology*

A phenomenological-inspired methodology was selected as the most suitable approach for this study, as phenomenological studies address specific knowledge and participants' detailed subjective experiences and describe the meaning for several individuals of their lived experiences of a concept or a phenomenon (Creswell, 2013, p. 14). Phenomenologists attempt to understand the hidden meaning and essence of an

experience, with how participants make sense of these; the 'essence' being an object or idea understood by imaginative intuition (Grbich, 2013, p. 92). In other words, an essence may or may not exist in reality; nonetheless, its understanding is taken from the subjective experience of an individual's perspective.

According to the encyclopaedia of phenomenology, there are seven forms of phenomenology: descriptive (transcendental/classical), naturalistic, existential, generative historicist, genetic, hermeneutic and realistic phenomenology (Embree and Embree, 1996). Grbich (2013, pp. 92-102) simplifies this list to four main forms of phenomenology: classical/descriptive, existential, hermeneutic/interpretive and heuristic; which differ in the manner consciousness is understood. In classical phenomenology, Husserl (d.1936) views 'consciousness' as a separate entity, without reference to the real existence of the world beyond consciousness (Lewis and Staehler, 2010, p. 5). Therefore, in classical phenomenology, any objective experience is not included in the conclusion. However, Husserl's successors, existential phenomenologists such as Sartre (d.1980), Heidegger (d.1976), Merleau-Ponty (d.1961) and Moustakas (d.2012) see consciousness not as separate entity but linked to the 'intentionality' of human existence with their physical contexts i.e. real world, or 'Dasein - being in the world' as called by Heidegger, whereas 'nothingness' through death is the final outcome (Grbich, 2013, p. 96). Hermeneutic or interpretive phenomenology as promoted by Heidegger, Gadamer (d.2002) and Van Manen, contend that the understanding of individuals cannot occur in isolation of their culture, social context, or historical period in which they live (Campbell, 2001) As a result, individuals cannot abstract themselves from various contexts that influence their choices and give meanings to lived experience (Heidegger, 2008). In this form of phenomenology, bracketing does not occur; rather the researcher keeps a reflective journal, recording their own experiences, presumptions, and views; with the realisation that there is co-construction of data with respondents (Grbich, 2013, p. 97). In heuristic phenomenology, the approach focuses on the experiences and insights of the researcher in the world in an autobiographical manner (Moustakas, 1994).

In considering, the four main forms of phenomenology, I opted for an interpretive phenomenological-inspired approach, which differs from a descriptive

approach in the sense; the emphasis is on understanding the phenomena in context, rather than describing a universal essence; with a belief that the contexts of culture, practice and language are what humans share (Wojnar and Swanson, 2007, p. 175). Furthermore, I adopted the concept of bracketing during the interview process, whilst being aware that an interpretive approach acknowledges the researcher as an active co-creator in the interpretations of the phenomenon.

3.3 Data Collection Methods

The term 'method' can be understood to relate principally to the tools of data collection or analysis (Blaxter et al., 2010, p. 59). There are many methods available for qualitative research such as surveys, questionnaires, interviews, focus group, observations, and document analysis (Glatthorn and Joyner, 2005). The advantage of surveys and questionnaires is that by 'having closed ended and open ended questions it is possible to collect large amounts of quantitative and qualitative data in a relatively short timeframe' (Katsirikou and Skiadas, 2010, p. 293). However, I discounted these two methods as the nature of the topic researched was sensitive, and such methods would not yield the depth of data required to gain a deep understanding of the phenomenon of study. The aim of focus groups is to stimulate discussion among people and bring to the surface responses that may otherwise lay dormant'(Henn et al., 2006, p. 164), similarly, this method was also discounted, as it was felt that participants were unlikely to speak openly in a group about a matter seen as private, sensitive, and personal.

3.3.2 In-Depth Interviews

The main method for data collection for this study was in-depth interviews. Interviews yield rich insight into people's biographies, experience, opinions, attitude and feelings (May, 2011, p. 131); we can learn about cultures, values, challenges people confront, and the meanings of relationships (Elliott, 2005, p. 19). Interviews, unlike other methods such as observation or questionnaires, allow the researcher the latitude to question and discuss issues [directly] with the participants (Bell, 2014, p. 196). The format for the interviews are between two scales; structured - rigid in asking predetermined questions, or unstructured - flexible, whereby the researcher can formulate questions during the

interview process (Kumar, 2014, p. 188). Structured interviews are popular in quantitative studies such as survey research e.g. telephone marketing; in theory, participants are asked the same questions in the same manner, and the differences in responses are compared with the results (May, 2011, p. 133). In contrast, unstructured interviews allow the interviewees to speak about the subject within their own framed reference, which provides greater subjective understanding of the subject (May, 2011, p. 134); however, a disadvantage of this method is that the interviewee dictates the schedule, and therefore, may not address the research questions. Alternatively, in between these two scales of interviewing techniques are narrative, in-depth or 'semi-structured' interviews, which allow the researcher to set the agenda for the topic covered, but the responses received from the interviewees determines the kinds of information produced and its relevant importance (Green and Thorogood, 2004, p. 80). Thus, I chose in-depth interviews as the most suitable method to collect data for this study.

In-depth interviews can be conducted face-to-face or on the telephone, and use a flexible outline interview schedule, with open-ended questions, probes and prompts, to uncover issues and concerns not previously thought or understood (Henn et al., 2006, p. 126). The majority of the interviews for this study were conducted face to face, and some on the telephone. I took an interpretive phenomenological stance which meant that my 'prior knowledge of the field of study was not eschewed, as this informs the research questions' (Miner-Romanoff, 2012). During the interview process, I bracketed my own thoughts and biases about the topic, and my previous experiences; which may otherwise hinder the ability to listen to participants' experience (Liamputtong, 2013). In capturing the 'essence' of the phenomenon from the lived experience of the participants, I avoided 'leading questions' i.e. a query phrased to suggest an expected answer (Crano et al., 2014, p. 294). The interview schedule consisted mainly of open-ended questions, and focused on the following areas, how the participant married, what were the issues leading to divorce i.e. marital discord, dispute resolution, how they obtained or were pursuing a divorce, and any post-divorce issues. In addition to the in-depth interviews, I

used a brief post-interview survey sheet to collect information relating to the age of the participant, marital status, the level of education and occupation.

3.3.2.1 Sample Population

A 'sample' is a segment of the population selected for research; and the method of selection may be based on probability sampling or non-probability sampling principles (Bryman, 2012, p. 715). Qualitative and quantitative research methodologies have different underlying assumptions leading to differences in sampling goals and strategies (Abrams, 2010). Quantitative studies select unbiased samples to represent the population and draw inferences, whereas qualitative studies select biased samples identified for gaining in-depth knowledge about the research interest (Kumar, 2014, p. 228). Probability or random sampling was discounted for this study, as is associated with quantitative research, and it assumes each person chosen in the sample can reproduce characteristics that can be inferred [or generalised] to the wider population (May, 2011, p. 99). This study followed the principles of non-probability or non-random sampling; whereby the researcher selects subjects [participants] who know most about the phenomenon and explain its nuances (Brink et al., 2006, p. 132). In other words, this type of sample is not representative of the general population, rather a specific element of the population.

For the purpose of this study, the sample chosen was BBMW living in London. These women were classed as BBMW and not just Muslim women, as previous studies have identified that not all populations or religious groups are homogenous (Dwyer and Buckle, 2009, p. 56, Sandberg et al., 2013, p. 290). Society has within it a dominant culture and different subcultures – groups with shared beliefs, values and customs and social practices (Bryman, 2012, p. 32). British-Muslims may represent a subculture with the wider British society, though this subculture can be further differentiated by ethnicity or race - shared unique culture, language, national origin and racial characteristics (Yang, 2000, p. 11). Identity is a multifaceted concept, it relates to people's understanding of whom they are and what is meaningful to them (Appelbaum et al., 2017, p. 81); thus, at times there may be multiple identities displayed, dependent upon

the context or situation. For example, a person may be Sylheti, Bangladeshi, British, and Asian at different times and places, and sociological inquiries may treat ethnicity differently depending on the focus of the investigation (Scott, 2014, p. 70). Therefore, the selection of BBMW allowed the exploration of subtle cultural differences related to ethnicity, and an examination of the 'complex interplay between religion and ethnicity that defines Muslim communities' (Ryan et al., 2011, p. 50).

I had a choice of many types of non-probability sampling techniques, such as quota, accidental, convenience, purposive, expert and snowball sampling (Kumar, 2014, p. 243). Quota and accidental sampling were discounted, as quota sampling is focused on ensuring an adequate number from a certain group are represented in a study (Sekaran and Bougie, 2010), and this was more aligned with a quantitative approach. Accidental sampling select participants according to the researcher's accessibility e.g. passer-byes in one location; however, the people selected may not have the required information (Kumar, 2014, p. 243). Thus, this study used a combination of three sampling techniques: purposive sampling - chosen specifically for knowledge and experience: convenience sampling - accessibility, geography, known contacts; and snowball sampling - where existing participants suggest other participants for recruitment (Dawson, 2009, Kumar, 2014). In this manner, I selected twenty-seven BBMW as participants for this research.

I consciously avoided approaching institutes and organisations such as solicitors, Shariah councils and women's groups for selecting participants for three reasons. Firstly, it would entail approaching a gatekeeper or someone who controlled access to participants, and, therefore, influence the selection of participants and the possibility of producing biased samples for the research (Breakwell et al., 2012). Secondly, previous studies have indicated that approaching one or two particular institutes can produce samples that represent a minority grouping and limit findings to a specific sub-category (Shah-Kazemi, 2001). Thirdly, I took an inductive method of inquiry, i.e. bottom-up approach, and wanted to explore the problems without testing any hypothesis associated with any institutional practices (Patton, 2014).

I used a network of contacts using friends, family, colleagues, and associates from the Muslim community to recruit participants. The majority of the participants I recruited were via convenience sampling and some via snowballing. The snowballing techniques was not a success as hoped, mainly due to participants feeling the subject of the study 'divorce' was a sensitive matter, and not all their friends or contacts were willing to give an interview. This initially proved problematic, as I perceived that many participants would become available via snowballing, nonetheless, I continued to pursue the convenience technique until I found twenty-seven participants for this study. According to Creswell (2013), qualitative research samples vary depending on the approach chosen; for narrative research one or two individuals, phenomenology five to twenty-five; grounded theory, twenty to thirty; ethnography, one single culture-sharing group; and case studies, four to five cases. The number of participants selected for this study was based on the concept of gaining 'data saturation' whereby the number of interviews continued until the data collected produced no further insights (Kumar, 2014).

3.3.2.2 *Profile of the Women Interviewed*

The data collected from the interviews gave a profile of the women who participated in the study. All the women interviewed were BBMW living in London, who were either born in the UK or arrived before school starting age, with their family originating from the Sylhet district of Bangladesh. All participants spoke English and were bilingual in the Sylheti Bangladeshi dialect. A summary of the profile of the participants is available in the appendix section (see Appendix 1). There is a detailed breakdown below of their age, education level, occupation, marital status and whether there were children from their marriages.

3.3.2.2.1 Age
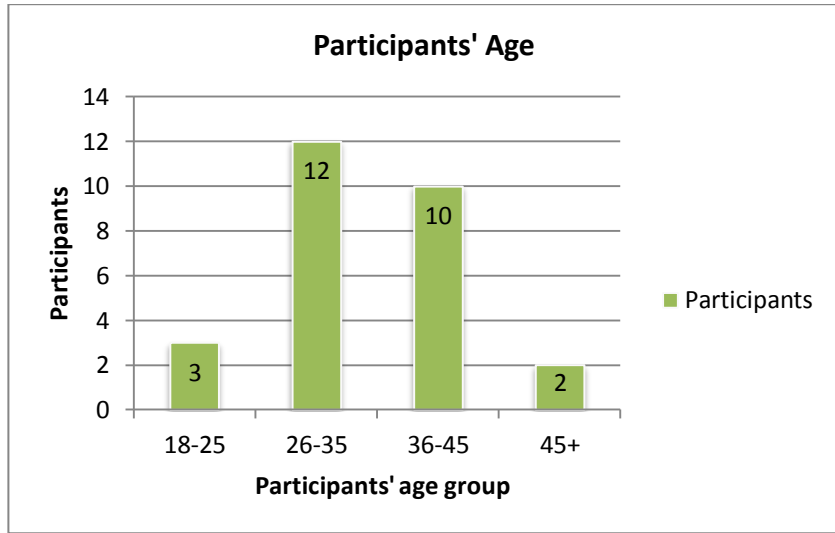
Figure 4 Participant Age

The majority of the participants were in the mid-20s to their mid-40s (see Figure 4). Between them, their experiences of marriage and divorce spanned over three decades, starting in the 1980s to the present.

3.3.2.2.2 Education
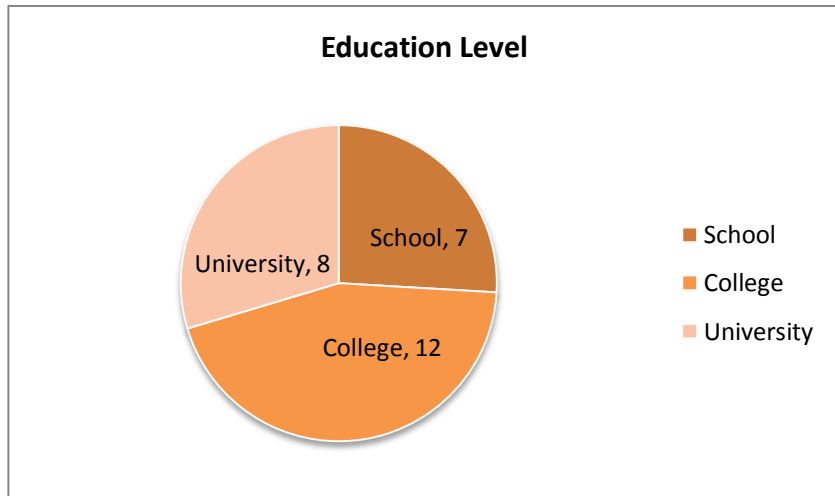
Figure 5 Education Level

52

The majority of the participants were educated up to the age of 18 i.e. college or sixth form level (see Figure 5). Eight of the participants were university graduates, and seven participants left school at the age of 16.

3.3.2.2.3 Occupation

Figure 6 Occupation

The participants were nearly equally split between those in employment and unemployed, though many among the unemployed classed themselves as homemakers or carers.

3.3.2.2.4 Marital Status
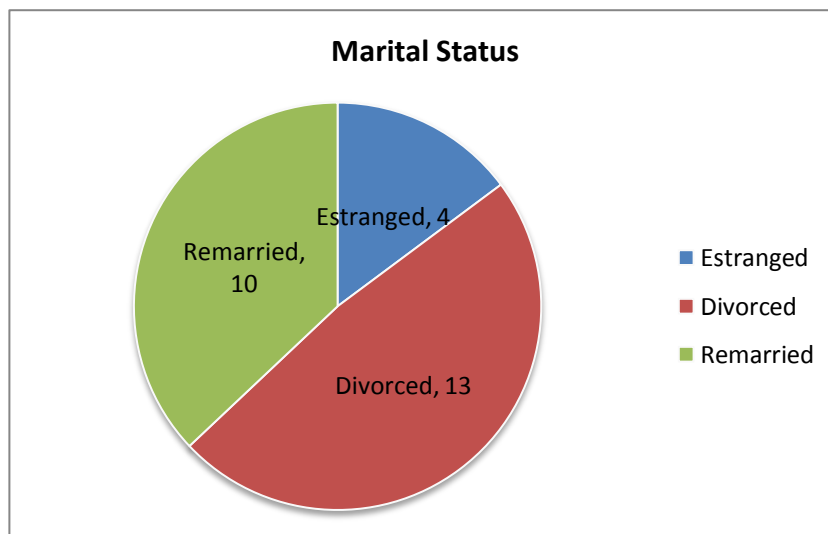
Of the twenty-seven participants interviewed, four were estranged, thirteen divorced and ten participants remarried.

3.3.2.2.5 Children
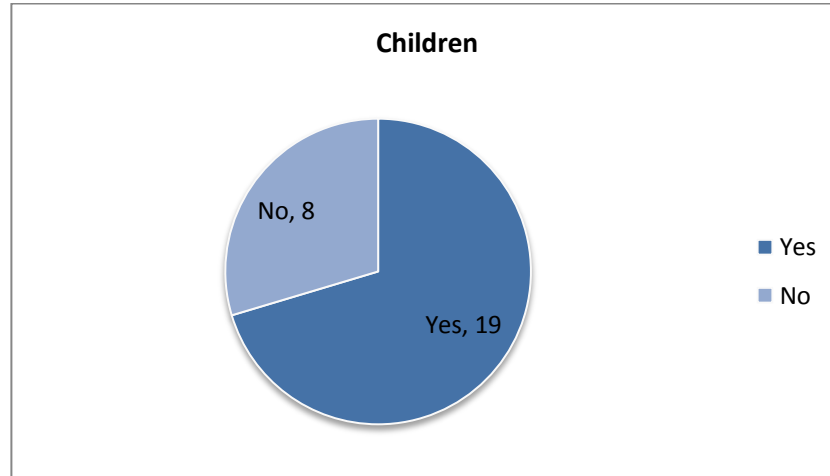
Figure 8 Children

The majority of the participants i.e. nineteen had children from their marriages.

3.3.3 Expert Interviewees

In addition to the twenty-seven BBMW participants, I interviewed twelve experts i.e. professionals, identified as providing services to Muslim women during marital disputes and divorce. One could argue that the participants are themselves experts having experienced divorce; nonetheless, for the sake of this study, I refer to the professionals as experts throughout this thesis, and the Muslim women studied as participants. I chose experts using the method of 'expert sampling', which is a form of purposive sampling and involves interviewing persons known to have demonstrable expertise and experience in the area of study (Singh, 2007, p. 108). The advantage of expert interviews is that they can provide insights into topics, where there are insufficient data, or limited available knowledge about the subject (Trochim et al., 2015, p. 89). In contrast, to biographical interviews, the [expert] interviewees are of less interest as a [whole] person than their capacities as experts in a certain field of activity (Flick, 2009). As experts are

chosen for their particular competency and authority in certain matters of fact, in interviews they are probed for their interpretative and practical knowledge in their specific professional sphere of activity (Flick, 2009). In addition, their knowledge must be different and superior from everyday knowledge, not accessible to everyone and must avail itself of a theoretical perspective (Bogner et al., 2009)

The number of expert interviewees chosen followed the same theory of data saturation used for selecting the BBMW participants. The total numbers of experts interviewed were twelve, which included two imams and three Shariah Council judges, two family law solicitors, one immigration solicitor, three domestic violence counsellors and one Islamic marriage counsellor, the counsellors all worked with Muslim women's groups, and some with local authorities. All the experts were female except for the two imams and two of the Shariah Council judges. One of the solicitors was a non-Muslim; the two imams were of Bangladeshi ethnicity, whilst the other experts had varied ethnicity related to Muslim countries. Initial data findings from participants' interviews guided the selection of experts based on the notion services sought related religious, legal and social requirements, rather than a need specific ethnicity-related need. For the purpose of this study, the identities of the experts remain anonymous. Initially, I chose some experts based on a literature review of existing studies in the field, whilst others experts were chosen, from the categories and themes extracted from participants interviews, which identified professional services. The expert interviews were semi-structured, and the interview schedules tailored to explore the different areas of specialisations of the interviewees. Again as with the participants, I refrained from using leading questions, and bracketed preconceived ideas in the specialisations of the experts, to gain an insight of their knowledge of the subject matter. Being an imam, I was treated as 'insider' – a person who possesses intimate knowledge of the community and its members (Hellawell, 2006), when interviewing the Islamic scholars, and this was reflected in the depth of data gained from their interviews.

In analysing the data, the experts can be categorised into three broad categories: those who provide Islamic or Shariah services, those who provide legal services, and those who provide counselling to women.

3.3.4   Participant Observation

In this study, I partook in participant observations of one Shariah Council and observed hearings over a period. The identity and location of this council remain anonymous for this study. A journal of the visits noted observations of the setting and participant observations of divorce case hearings and a *nikah* ceremony. The cases observed involved clients with Bangladeshi, Pakistani and Somali ethnic origins. The Shariah Council judges presiding over the cases were male and female. The descriptive accounts of observations in the form of field notes and reflective analytical notes focused on themes and patterns that emerge from the data collected (Henn et al., 2006, p. 174). Participant observations give a holistic understanding of the phenomena under study that is as objective and accurate as possible given the limitations of the method (DeWalt and Dewalt, 2010). Others view that one of the reasons for doing participant observations is that many aspects of some social milieus are only visible to insiders, and only certain people can get inside (Guest et al., 2012).

The participant observation of Shariah Council hearings allowed me 'to share the same experience as the subjects, and to understand their actions' (Bell, 2014). Access to these hearings was gained by undertaking a confidentiality agreement with the Shariah Council and its clients, whilst applying due ethical research consideration. No recording was allowed whilst the hearing was in procession, this included audio or visual recordings and written notes. Observational notes were written very soon after the hearing finished. The constraints on recording the observations put a strain to recollect reliably the experience from memory, and some aspects of the phenomenon, therefore, could be missed. However, under the circumstances, it was vital to observe the hearings to gain a better understand the issues faced by Muslim women approaching a Shariah council for an Islamic divorce. The participant observations were undertaken, with the aim to provide data that supplemented the core focus of the study, which was Muslim women's account of experiencing divorce.

3.3.5   Document Analysis

Documents refer to a whole range of written sources available on a certain topic, and according to Green (2004), all research rely on some analysis of documentary sources. Document Analysis is the systematic review and evaluation of documents; which can contextualise data collected, suggest questions to ask of the research, provide supplementary data, and verify findings of other sources (Bowen, 2009a). There are several other arguments put forward for the use of document analysis in research. Document analysis can be useful in understanding a situation and setting a context and provides a clear tangible record [of an event] (Grady, 1998). Another view is document analysis is a relatively unobtrusive form of research, as respondents are not approached first hand for data (Blaxter et al., 2010). In some fields, the abundant availability of documentary sources is an incentive for research.

The lack of documented records of Muslim marriages and divorces and the difficulty in gaining access to the limited number of cases recorded with Shariah councils meant the method was limited to analysing Shariah Council procedural. Thus, documentary analysis was used to supplement information obtained by other data collection methods (Bell, 2014). I obtained application forms and information sheets from the Shariah councils relating to the procedure for *talaq* (male-initiated divorce) and *khula* (female-initiated divorce); and further documents relating to *nikah*, civil divorce, the *wali (*guardian), domestic abuse, Shariah Council fees and Islamic divorce case statistics.

3.4   *Objectivity, Positionality and Reflexivity*

Objectivity is social research is a principle drawn from positivism (i.e. quantitative research) whereby the personality, beliefs and values of the researcher are distanced from the study findings; a concept not accepted in interpretative traditions (i.e. qualitative research) (Payne and Payne, 2004, p. 152). Haraway (1988, pp. 583, 592) asserts feminist objectivity is about limited location and situated knowledge, where the object of knowledge i.e. women are seen as actors or agents in the research process and not just as part of the background or a resource. Harding (2015, p. 30) acknowledges research findings are not value-free and proposes 'strong objectivity' a concept

emerging from standpoint theory, with an aim to provide more objective accounts of nature and social relations in the daily lives of oppressed women. Others contend, complete objectivity is a myth, which is unattainable, and what matters is not researcher neutrality but credibility i.e. other researchers are content with the interpretations advanced; researchers being open and honest about their own values and subjectivity (positionality) allow readers to consider 'qualified objectivity' in evaluating findings (Given, 2008, p. 334, Payne and Payne, 2004, pp. 154-155). Thus, in conducting this study, I had to consider my positionality within the research process and report findings with qualified objectivity.

Positionality refers to the steps taken by the researcher to explain their 'position' in relation to the study, and how the research process might be affected by their background, beliefs and values own (Hammond and Wellington, 2013, p. 118). Positionality takes into consideration power relations in the research process between the researcher and participants as they share social space, and the interplay between assumed positionality and notions of difference, sameness, and insider or outsider identities (Given, 2008, p. 98, Ryan et al., 2011). In qualitative studies, there is a presumption that the researcher is in the position of power relative to the participants – and be assured their voices are represented, though participants also have the power to withhold information (Given, 2008, p. 334). I had to consider my positionality in the research process, being a male researcher, who was a PhD candidate, and an imam (cleric). The sensitive nature of the research topic meant that I conducted all the in-depth interviews for this study. The interviews were conducted in a professional and respectful manner, whilst also being receptive and non-judgemental. The questions were asked in simple and easy language when needed, to reduce any social distance with the participants; with the option for them to refuse to answer or leave the interview process at any time they wished, thus redressing of any power imbalance during the research process.

Community-based research is grounded in methodologies that challenge privilege access to truth, bias and objectivity (Given, 2008, pp. 97-98). Researcher membership in relation to participants is essential and ever-present in investigations,

influencing data collection and analysis (Dwyer and Buckle, 2009, p. 55). I shared many characteristics with the participants, such as religion, culture, language and ethnicity, being a British-Bangladeshi Muslim. I was, considered an 'insider' of the community, albeit an 'outsider' with regard to gender. Dwyer and Buckle (2009, p. 57) assert that the insider role status allows researchers more rapid and complete acceptance by their participants, and therefore participants are more open and give greater depth to data gathered. My insider membership status was evident during the interviews, with participants using Bengali dialogue intermittently, and used references to religion and culture, which they felt only an insider would understand and hence the use of collective words such as 'we' or 'our' in referring to issues with myself. Furthermore, others comment that professional researchers are seen as 'outsiders' - lacking experience, knowledge, and status within the community; whereas, community or peer researchers are seen as insiders who have trust, empathy, connectedness and integrity (Ryan et al., 2011).

Nonetheless, one has to consider whether insider access to a community is advantageous or disadvantageous to the overall research process especially in relation to objectivity. Some argue, whilst insider status may overcome suspicion or wariness with the sample population, there could be assumptions of shared knowledge, and therefore some issues not be probed (Turnbull, 2000). Others believe insiders may know too much and are too close to the project studied to provide objectivity (Kanuha, 2000, p. 444); and there can be issues of loyalty tug and role confusion - to know where the self and others begin and end (Brannick and Coghlan, 2007, p. 70). One response to such concerns is for researchers to apply disciplined bracketing, detailed reflection of the subjective research process, and close awareness of one's bias; though outsiders are not immune to personal bias (Dwyer and Buckle, 2009, p. 59).

Reflexivity is a process whereby the researcher reflects upon their role in the study taking into account their background, culture, and experiences, which shape their understanding of the subject of study, and how they interpret themes and give meaning to data received (Creswell, 2014, p. 186). Reflexivity ensures the researcher's overall involvement is not a threat to the credibility of the study (Chilisa, 2012, p. 168). Chavez

(2008, p. 49) suggests several reflective exercises for qualitative researchers: to reveal the practical knowledge of the field, reflect on their own intentions, consider their roles and identities in the research process, and develop strong observational skills to help differentiate what they' know' from what they 'see'. In addressing the issues of positionality and reflexivity, I started a reflexive diary before commencing the fieldwork, with early entries recording my thoughts, feelings, experiences and previous knowledge of the area of study. The diary also noted the steps required to gain access to participants and any pre-interview and post-interview notes from the interviews. The use of good listening skills and expressions of genuine interest allowed trust and rapport to develop with the participants, whilst applying bracketing during the interviews. In bracketing, the researcher needs to identify prejudgements, and recognise their own relevant values and norms, however, this does not entail bracketing the researcher's expertise, but to limit preconceptions in interviewing participants (Miner-Romanoff, 2012). I was mindful throughout the interview process not assume insider privilege, nor to intimidate participants or bias the research process; rather the participants expressed that a male conducting this study showed genuine concern towards the research problems.

3.5   *Data Analysis*

Data analysis is the process of bringing order and structure to data collected to give an understanding of its meaning (Shkedi, 2005, p. 94). The type of data collected can be identified by its distinctive quantitative (numerical) or qualitative (non-numerical) characteristics.(Henn et al., 2006). For this qualitative study, there were many methods available for data analysis such as content analysis, conversational analysis, discourse analysis, grounded theory and thematic analysis (Flick, 2013). Each of these methods are concerned with different aspects of data; content analysis examines document and text for key phrases which form categories, conversational and discourse analysis examine language and the structure of talk in interaction, grounded theory, code data to drive theories, whilst thematic analysis examine data to derive themes and sub-themes (Bryman, 2012). In selecting the most suitable method for data analysis, I had to ensure

the method was in line with the theoretical framework of the study i.e. underpinned by a phenomenological approach. The aim of phenomenological inquiry is to unravel structures, logic, and interrelationship in the phenomenon under inspection (Valle and Halling, 2013, p. 50). Two of the most popular methods for data analysis in phenomenological studies is interpretative phenomenological analysis (IPA) and thematic analysis (Langdridge, 2007, p. 55). Both methods are similar in that, codes and themes are identified in data collected, however, IPA provides an entire framework for conducting the study, whereas thematic analysis is a flexible method that is used across epistemological and ontological spectrums (Wood et al., 2012, p. 159). As this study was phenomenological-inspired and not pure phenomenology, I chose thematic analysis for data analysis.

The first stage of data analysis was to prepare data ready for analysis, this included collating all the field notes from the participant observations, transcribing the audio recording of the interviews, and referring to the reflexive journal. Audio transcription was very time-consuming, but essential, as the audio recording accurately captured the interviews, which would have been difficult if just note-taking. Moreover, the audio recordings allowed me to pay close attention to participants during the interviews, whilst giving the opportunity to listen to the audio again for any issues that may not have been obvious or apparent during the actual interview. The second stage was to read the interview transcript several times over, to focus on the participants' experience, as the constant reading of the source can capture the essence of an account (Miles and Huberman, 1994). The third stage involved 'data reduction' – reducing a large amount of information gathered to make sense of it, by grouping textual material into categories or themes (Bryman, 2012, p. 6). The themes were identified by isolating text central to the experience of the participants; whilst my intuition and constant reflection allowed the essence of the phenomenon to be understood by patterns developing from the themes (Grbich, 2013). The fourth and final stage was to report the findings of the study, by using description and anecdotes from the lived experience of the participants and using significant statements of interest (Mills and Birks, 2014). I chose to analyse the data manually, without to refer to computer software programmes

such as NVivo 10; 'as the manual method engages the researcher's intuitive responses' (Groenewald, 2008).

3.6   Validity, R*e*liability, and Generalisability

The characteristic of what constitutes good research is debatable. Fink (2005, p. 138) claims the requirements for research are five: specific research questions, defined and justified sample, valid data collection, appropriate analytical methods [for data analysis], and interpretations [findings] based on the data. According to Kumar (2014, p. 10) research is a process of collecting, analysing and interpreting information [data] to answer research questions, and have the following characteristics; to be controlled, rigorous, systematic, valid, verifiable, empirical and critical. This research considered three key concepts usually used to define quantitative research; validity, reliability and generalisability; all measure certain qualities of the research, validity – the accuracy of data collection instruments, reliability – the extent to which outcomes are repeatable, generalisability – extending research findings to the general population (Muijs, 2010). As the philosophical framework for qualitative research is anti-positivist, applying the technical procedures of validity, reliability and generalisability may be problematic, whilst the broader ideas of the concepts may still be useful (Mason, 2002, p. 38).

One manner of understanding these concepts is to adapt them to the nature of qualitative studies, and therefore, validity is understood as trustworthiness i.e. getting to the truth, reliability is dependability or a sound research design, and generalisability remains local and conceptual only (Grbich, 2013, p. 5). The research followed Mason's (2002, p. 38) understanding of the concepts; namely, that validity constituted to observing, identifying or measuring the research aims,   reliability represented the accuracy of data produced from the methods used, and   generalisability may be applicable to some claims from a theoretical perspective; whilst also considering arguments that generalisation is possible from a theory building perspective (Falk, 2007). Furthermore, I applied some 'validity strategies' to strengthen the research, by using rich, thick descriptions to convey findings, clarified bias by being reflexive, and

conveyed any negative or discrepant information when apparent (Creswell, 2014, pp. 201-202).

3.7 *Ethical Considerations*

Ethics in social research, address issues concerning the behaviour of the researcher and the consequences of their research to the people they study (Henn et al., 2006, p. 68). Ethics issues arise predominately with qualitative methods due to the close relationship between the researcher and the researched; and the consideration of a range of issues such as privacy, informed consent, anonymity, secrecy and avoiding deception (Blaxter et al., 2010, p. 161). According to Bell (2014, p. 49), research ethics is an agreement between the researcher and the research subjects which involves informed consent and agreements on the use of data, its analysis and dissemination. Creswell (2014, p. 98) adds the ethical consideration of power imbalance during the interview and awareness of sensitive research that may cause stress to participants.

Before commencing any fieldwork, I gained 'research ethics approval' from the Middlesex University School of Law Ethics Committee. The ethics approval application considered all ethical issues in relation to the research methodology and procedures and included draft interview schedules, participant information sheet, consent forms, and fieldwork risk assessment. Particular consideration was given to the following issues: informed consent, voluntary participation, privacy, confidentiality, anonymity, data protection, harm, and the right to withdrawal. I consulted ethical guidelines provided by British Sociological Association (BSA, 2002), Social Research Association (SRA, 2003) and the British Society of Criminology (BSC, 2006).

Having selected suitable participants to interview, I provided participation information sheets (PIS), which gave information on the purpose of the research, why the participants were selected, the advantages of participating, the potential harm in participating, and how the data would be used. As the research involved BBMW and expert interviewees, there were two types of PIS. In addition to explaining the nature of the study, I gave guarantees of confidentiality, anonymity, privacy and data protection. As a result, participants had their identification removed from the data, with

pseudonyms replacing their real names, and respected issues they required to remain private, with the data collected being stored securely (Henn et al., 2006). The participants were given time to consider taking part in the research, which allows informed consent and voluntary participation. All participants signed a consent form preceding the interview, which also included consent to audio recordings of the interviews; with participants aware they could withdraw from the interview at any time.

In undertaking sensitive research, there are two main issues of safety - physical and psychological (McCosker et al., 2001). Firstly, with regard to physical safety – the time and place had to be in an environment where the researcher and interviewee felt mutually safe. The majority of the interviews with BBMW were face to face and took place in public places or venues where there was access to other people. I took into account that some women may not want to speak one-to-one with a male researcher, for personal, religious or cultural reasons; however, none of the participants objected to speaking one-to-one with me. Secondly, there was the issue of psychological safety or well-being, as the interviews entailed reliving the past and could cause emotional distress (Green and Thorogood, 2004). I used my awareness of cues and signals from the interviewees indicating any distress, and allowed pauses and time for reflection, before continuing the interview, with the option to withdraw. Post-interview, a list of useful telephone helplines with support agencies was given to participants, should they wished to seek further help and advice regarding the problems they faced. Furthermore, I had to address issues of power imbalance during the interview, due to my positionality in relation to the female participants. As a male researcher, I was careful not to exhort any elements of power and authority during the interview process, taking into consideration differences in gender, and respecting the participants' religious and cultural beliefs and values (Green and Thorogood, 2004, Oliver, 2010). I ensured the data was collected, analysed and findings reported with due consideration to ethical guidelines.

3.8 Limitations

The limited time and resources available for this project meant there were constraints on the areas in the field of study that I could research. Firstly, in relation to the subject

matter, MFL encompasses many different topics; therefore, the research focused on exploring the issue of Islamic divorce only. Any reference to Shariah law in this study corresponds to the Sunni Islam, as this relates to the sample population, who ethnically originate from Bangladesh, are Sunni Muslims, and predominately follow the Hanafi school of thought. Secondly, the methodology is interdisciplinary and uses concepts from the disciplines of sociology and law. In that regard, it blends the research methodologies of both disciplines and does not claim to be exclusively within one or the other domain. Thirdly, the sample population chosen for participant interviews were BBMW, which excluded other ethnic groups, and male participants, the exception being participant observations of Shariah Council hearings, where clients were also of Pakistani and Somali ethnicity. The participants were over the age of eighteen, living in London, though not all are originally from London, chosen because they had lived experience of divorce or were undergoing a divorce. The study excluded women who only pursued a civil divorce, as the phenomenon under study was 'Islamic divorce'.

Fourthly, as the focus of the research was to give voice to the participants and gain insight from their lived experience, this study did not conduct a comparative study of different Shariah councils, rather it observed one council, to supplement or provide a holistic understanding of the participants' account of events from their experiences. Fifthly, as the sample population resided in London, the experiences may be reflective of the Muslim community in London, though there may be similarities with other demographic locations that share commonness in beliefs, values and experiences.

3.9   Conclusion

This chapter provided an overview of the methodology adopted for the study of Islamic divorce as experienced by BBMW. The theoretical approach was guided by the quest to answer 'How do BBMW pursue divorce in the UK?' In considering the current studies in the field of research, this thesis employed a socio-legal approach and explored the concept of legal consciousness; the chapter started by explaining these terms in detail and their significance in understanding the experience of law in the context of social realities. The next section considered the two main paradigms in social research:

quantitative and qualitative methodologies and explained why the later allows the researchers to capture depth and detail of the social experience. There were many qualitative methodologies available to consider for this study, among them action research, grounded theory, ethnography and feminist standpoint theory, these approaches were discussed in relation to their suitability to fulfil the research aims. The section ended with an explanation of phenomenology and explained the reasons why a phenomenological-inspired approach was chosen as the most suitable approach for gathering empirical data and thematic analysis for data analysis.

The next section discussed sample selection and explained the reasons why participants were not chosen from institutes such as Shariah councils or family solicitors, which may represent a minority grouping or subcategory, rather participants were selected from the wider community and explored the problem from a broader perspective than institutional practices. The sample population chosen were described as BBMW and not just British-Muslim women, as previous studies have highlighted that not all religious groups are homogenous, and the choice of one ethnic group allowed the exploration of subtle cultural differences. The chapter then discussed other sources of data collection: expert interviews, participant observations and document analysis of a Shariah council. The primary aim of this thesis was to discuss Islamic divorce from the perspective of BBMW, and therefore to represent their 'voices' within the context agency and power in relation to their socio-legal reality. The other sources of data provided a holistic understanding of the research problem and supplemented the findings from the participants' interviews, thus, this study remained focused on the topic of Islamic divorce and women's voices and not form a comparative study of Shariah councils and other institutional practices.

The next part of this chapter focused on issues of objectivity, positionality, reflexivity and the role of the researcher in the research process. It considered the advantages and disadvantages of the researcher being an insider or outsider to the sample population with regard to shared beliefs, values and identity, and requirement to reduce research bias and to avoid presumptions in data collection due to privileged access as an insider. Thus, positionality and reflexivity were applied throughout the

research process, which included data analysis. The later parts of the chapter discussed validity, reliability and generalisation; ethical consideration and limitations.

The next five chapters present the findings from the empirical data collected from 27 in-depth interviews with BBMW, 12 expert interviewees, and participant observations of a Shariah Council, and document analysis of its application forms and information sheets. The five data finding chapters are as follows: getting married, marital discord, dispute resolution, getting divorced, and post-divorce.

Chapter Four: Getting Married

4.0   Introduction

Following on from the methodology chapter, this chapter will present the findings from the participants' experience of 'getting married'. The focus of this chapter is an examination of the participants' experience of Islamic marriage, analysed in light of other empirical data, such as expert interviews, participant observations and document analysis, and discussed in the context of other studies in the field of Shariah law and diasporic Muslim communities.

In researching divorce, it was natural to ask participants how they married in order to determine any influencing factors that later contributed to the divorce process. The data collected gave an insight into the manner by which the participants married, and the choices made, with their consideration of religion, culture, ethnicity and other socio-legal factors. The experts interviewed provided a further understanding of the marriage process and highlighted their experience with clients and their concerns about practices among the Muslim community. The observations of the Shariah Council hearings and the analysis of their documents provide an understanding of how this form of alternative dispute resolution (ADR) views the Muslim marriage process in the UK.

The structure of this chapter follows the common themes that emerged from the data relating to marriage. It starts with an examination of the marital age and the year married and length of the marriage, the choice of partner, type of marriage ceremony or ceremonies, and concludes with transnational marriages. Though this study focuses primarily on the subjective experiences of the participants' marriage and divorce, some statistical information is also included to contextualise the findings relative to the sociological conditions of the participants' experiences.

4.1   Marital Age, Year and Length of Marriage

The data collected from the participants gives a profile of the sample population researched; and provides an overview of their marital ages, the year they married and the length of their marriages.
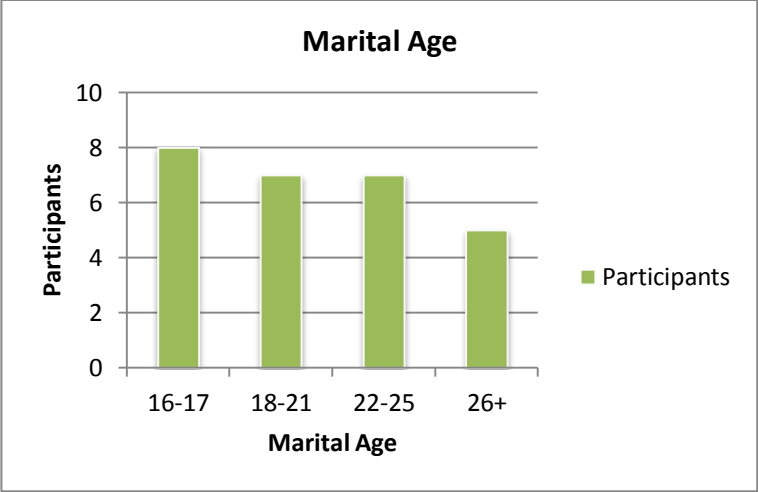
Figure 9 Marital Age

The average marital age for participants was twenty-one, with the majority married by the age of twenty-five (See Figure 9). Participants who chose their own partners were all above the age of eighteen, and those with *nikah*-only (i.e. unregistered) marriages were above the age of twenty. In the case of forced marriages, two of the participants were below the age of eighteen, and one participant was 25.
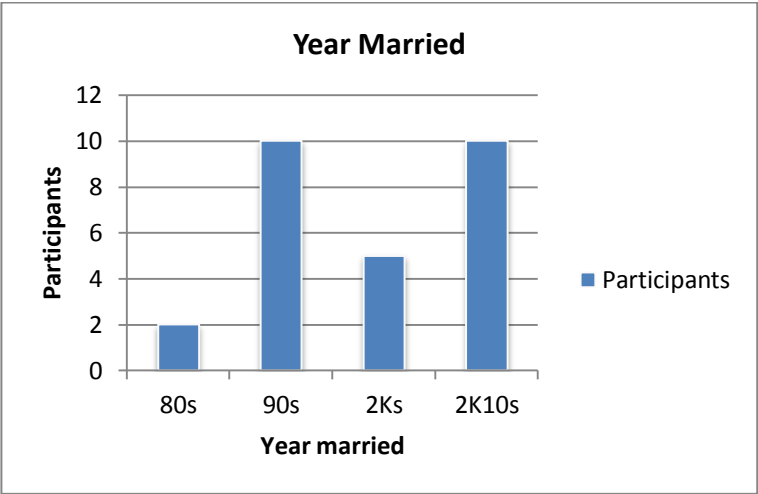
Figure 10 Year Married

The participants' collective experiences of marriage and divorce spanned over four decades (see Figure 10). The majority of the *nikah*-only marriages were after the year 2000.
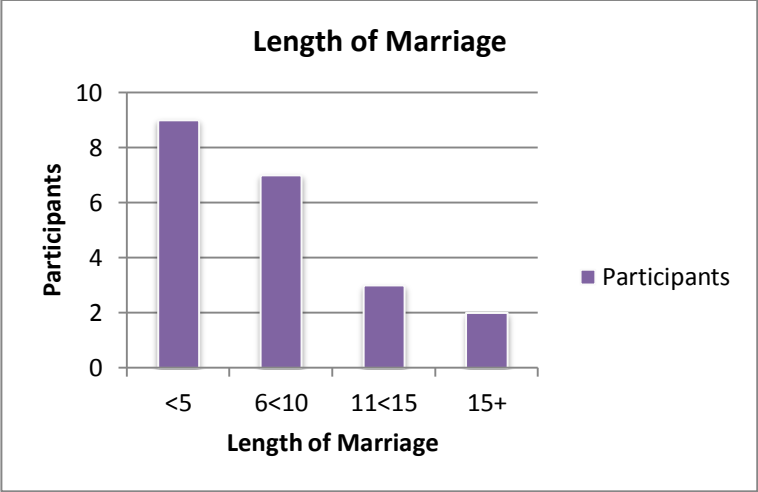
Figure 11 Length of marriage

The shortest lengths of marriage among participants were *nikah*-only marriages, and longest were those arranged and legally binding; including transnational marriages (see Figure 11).

4.2   *Choice of Partner*
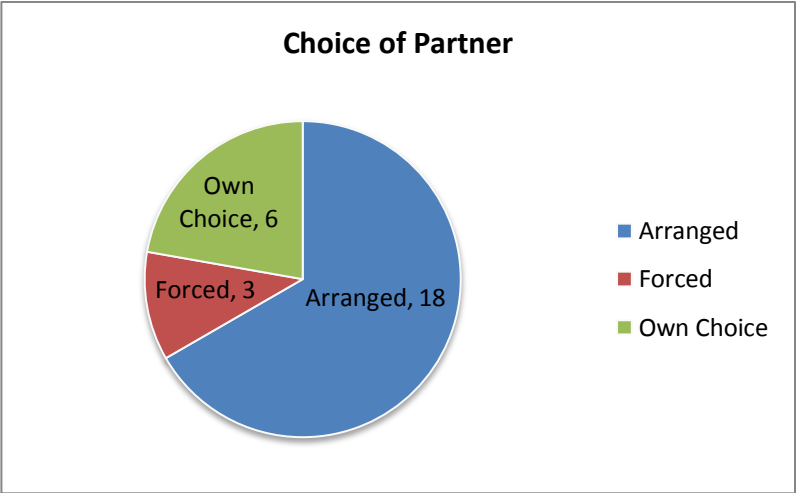
Figure 12 Choice of Partner

This study identified three ways by which participants chose partners for marriage, the most common was arranged marriage, followed by own-choice marriage, and then forced marriage (see Figure 12).

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4.2.2   Arranged Marriage

Traditionally arranged marriages have been the norm in Muslim societies, with parents drawing on a number of sources in the family and community to find suitable spouses for their children, from relatives, close family friends to matrimonial brokers (Esposito, 2011). Arranged marriages have long been the most widely accepted marriage practice across South Asia (Mines and Lamb, 2010, p. 10), and in the Bangladeshi community arranged marriages are considered Islamic (Rozario and Samuel, 2011, pp. 29-30). Previous research shows that British Muslims involve their family in arranging marriage, to gain approval and support (Bano, 2012b, Basit, 1996).

Arranged marriages were a common practice among the participants in this study. The data collected gave an insight into the decision-making process of arranged marriages, and the level of autonomy or dependence of participants on their family in negotiations. In the first instance, proposals for arranged marriage came via participants' parents, extended family members, and friends. The family determined the age by when participants married, often disrupting plans for further education and careers.

> I was young when I got married. The proposal was brought by my *dula-bhai* (sister's husband), he knew him [ex-husband]. (Aisha)

> My dad was old-fashioned, he would not let me study or work. He didn't allow me to go to university. He doesn't trust Uni boys. (Jahanara)

> I was told by my family that I could not go to college. I asked my husband after I got married and he said 'no.' (Zaynab)

The perception in arranged marriages is that there is an element of choice to accept or refuse a suitor, and there is a mutual trust between the parent and child, and the agreement is consensual (Bano, 2012b, Charsley, 2007, Okasha, 2012). However, participants' experiences show, some are faced with immense pressure to comply with their families wishes for the sake of preserving family respect and honour.

> My brothers were not keen on me getting married. I was young and they probably sensed this guy is not suitable for me. My dad had the upper hand. He said 'If you don't marry, then go and stay with your brothers. If you think I'm right, then stay with me [i.e. agree to marry].' (Zaynab)

> My family found out I had a boyfriend at college, so they found me someone else. My mum said 'marry this guy'. My dad did not stop it; he was worried about the family reputation.

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> We're well known in Bangladesh. I had this whole big wedding, I cried on the *nikah* night. (Lubna)

The findings of this study, like previous research show Muslim women, may marry under pressure, to meet family approval and forsake their own personal fulfilment (Bano, 2012b, Qureshi et al., 2014). Arranged marriages are viewed as a family affair, to provide stability in the relationship, if not romance (Charsley, 2012, Dale, 2008). Nonetheless, the experiences of other participants show more involvement in the decision-making process, a common pattern here being, that these participants were slightly older at the time of marriage.

> My marriage was arranged by mutual agreement. Initially, it was just me and him [husband to be] at my brother-in-law's house, just to see whether we like each other, we did the formalities straight after. (Kulsuma)

> I met him a few times we had coffee. I had my *mahram* (unmarriageable kin) with me. There was no free mixing. He seemed like a nice person. I told my family, who invited him and his family. (Rahima)

The martial age and the level of autonomy in choosing a partner are significant themes in arranged marriages, as they relate to the participants' understanding of and preparedness in getting married. In some of the cases, participants were clearly not ready for marriage, though they envisaged that at some stage they would get married. Similarly, the respondents in Bhopal's (1999. pp. 125-126) study accepted arranged marriages as part of the distinct cultural identity of South Asian people. Even so, the manner and the timing of marriage meant some participants had little autonomy in making the final decision on key choices that affected their arranged marriage.

The experts mentioned the issue of 'premarital training' to prepare people for married life, and the need for people to make informed choices without coercion in deciding on their partner.

> Pre-marital counselling is vital in the community. When people get married they realise, the person is not the type of partner they wanted. The counselling is about helping them understand the decision to marry is their choice, as opposed to being pressured. (Marriage counsellor)

> There needs to be basic training for life skills. The majority of boys do not understand marriage. There need to be courses preparing people for marriage; how they will become parents, how they will raise children. (DV counsellor #3)

The experts were also concerned that arranged marriages often overlooked or do not delve deeply into the background character of the husband. As a result, the wife finds out later in marriage the husband has bad traits or characteristics that contribute to a marital breakdown.

> The family [groom side] hide the man's fault from the prospective bride, such as mental issues, drug addiction, and criminality. (Solicitor #3)

> Family members are introduced to a person not known. He [a suitor] shows a different personality to them. Then once married, the problems arise. By then it's too late, the family pressure the woman to stay with him. (DV Counsellor #3)

One of the participants mentioned how she realised soon after the marriage that she made the wrong choice in partner.

> Before the marriage, I felt in my heart that things are being rushed because of Ramadan coming. But I did not want to lose the opportunity to marry him. I made the choice. I made a big mistake in my life. (Rahima)

The conventional view of arranged marriages is that they are safer than love marriages, allowing the family to make choices. However, young persons and their parents may view it as riskier (Qureshi et al., 2014, pp. 266-267), as can be seen from this study.

4.2.3   Forced Marriage

According to the Crown Prosecution Service (CPS), a Forced Marriage (FM) is defined as 'a marriage conducted without the valid consent of one or both parties and where duress is a factor' (CPS, 2016). In tackling FM, the government introduced the Forced Marriage Unit (FMU) in 2005 and provided publications and guidelines, until eventually Forced Marriage became a criminal offence under section 121 of Anti-social Behaviour, Crime and Policing Act 2014 (Julios, 2016, p. 71).

The CPS (2016) legal guidance advise contacting the FMU via the British embassies in the event of a forced marriage, and Muslim-majority countries mentioned include Bangladesh, Pakistan, Turkey, and Yemen. The FMU statistics for 2016 reported 1,428 cases, 80% involved female victims; the three highest volume countries were Pakistan 612 cases (43%), Bangladesh 121 cases (8%) and India 79 cases (6%) (Home

Office, 2017). The problem of forced marriage among British nationals is higher among South Asians, in particular, the Pakistani community; thus, the problem can be viewed as an Asian issue and not a Muslim problem (Cesari, 2010). Others view that Muslim women enter forced marriages in compliance with community norm, otherwise, they are ostracised or alienated (Phillips and Dustin, 2004, p. 533).

In this study, three participants explicitly stated they had forced marriages. In two of the cases, the participants were under the age of eighteen and taken abroad by the family on the pretence of a holiday. The participants explain the circumstances under which they got married.

> I didn't know I was getting married. I found out on the wedding day. My brother took me to an empty room. There were about ten to twelve relatives at the door. He locked the door and said 'you're getting married'. I couldn't believe it was true, my brother was doing this to me. He wouldn't let my mother come in. He said I have to agree to marry in order to get back to the UK. I sat there like a statue for three hours, my uncle made the imam wait. I never agreed [remained silent]. My brother told the imam I agreed and that I was shy and missing family. (Nabila)

> I was forced to get married, not by my parents but my cousin's family. They brought the proposal. I was young, and my family did not agree, they [cousins] put so much pressure on them. (Tina)

A third participant, who was in her mid-twenties when she travelled abroad, explained her situation.

> I was told I had three weeks to choose a groom out of the three they had chosen. I didn't like any of them, but for the sake of my family, I had to marry one of them. My whole family had flown out to Bangladesh for the wedding. I had to agree, I had no other choice, for the family respect and honour. To not have a wedding would have put shame on my family. (Farida)

The two participants married at a young age mentioned they did not feel compelled to remain in the marriage and took action to dissolve the marriage at the earliest opportunity. In other words, they did not follow community norms; however, their families eventually persuaded them to remain in the marriage longer, sometimes by offering a bargain as well as emotional blackmail, as one participant explained.

> I told my dad I did not want to be in the marriage. He said to give him time, give him two weeks, and get to know each other. My dad's made me feel emotional, I cried, I thought for the sake of my dad I'll give the relationship a try. (Nabila)

The number of forced marriage cases reported in this study was few, though some of the descriptions of arranged marriages among participants clearly show coercion; the experience of FM had an adverse effect on the participants, which contributed to a bleak outlook to their marriages, and eventually led to divorce. The Shariah Council statistics on divorce applications mention forced marriage is one of the reasons women apply for divorce, even so, it was not one of the most common reasons for seeking a divorce.

4.2.4 Own-Choice Marriage

The alternative to arranged or forced marriages was own-choice marriages, often referred to as 'love marriage'(Knight, 2014, p. 157). There is a fear among parents and the community that in choosing a self-choice model, Muslims will not maintain their distinct religious, social and cultural identity within the diaspora (Joseph, 2006, p. 266). However, there are examples in *hadith* literature where a woman proposed to the Prophet and the act deemed permissible (Al-Bukhari, 1997, no. 6123); the Prophet stated that two people in love should marry (Majah, 2007, no. 1847), and therefore the notions of love and choice in marriage exist in religious texts. Even so, some deny there can be such a thing as 'Western-type' love marriage, as it links to passion, whilst [Islamic] marriage is a sacred relationship (Khan, 2006, p. 355, Rahmaan, 2012, p. 182). The issue in choosing a marital partner is conflated with the notions of pre-marital relationship and religiously forbidden practices.

Bano's (2012b, p. 155) study on British Muslim Pakistani women found that women went ahead with own choice marriages after obtaining family consent, the important factor being family participation. However, this study on BBMW found family consent was not a factor in own-choice marriages. From the sample, six of the participants stated they chose their own partners. These participants generally married boyfriends, known for years, whom they met during college, university, or work. Participants mentioned the circumstances and the reasons why they chose to marry their partners.

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I met him when I was young. My parents had split up and he was a shoulder to cry on, I wanted a happy ending, so I left home. (Faiza)

At the time, the home was an abusive environment. My marriage was the only secure thing. (Lily)

I met him at college. I'd known him for two years. I was going away to university with him. We married so we could live together. (Fahima)

The consequence of own-choice marriages left some participants feeling a lack of family support. As such, participants felt they had to resolve any marital problems on their own.

I knew him for two years before we got married. I was blind to his [bad] behaviour. After we got married, I thought, he's my choice. My parents weren't happy I married him, so I have to put up with it. (Rupa)

Only certain people knew about the *nikah*. When they found out I was divorced they were shocked; they were screaming and shouting 'what are we going to do with her now.' (Lily)

Participants that chose to marry non-Bangladeshis faced further problems with their family and in-laws. Participants mentioned how the clash of different cultures proved problematic for their family and their in-laws, in accepting the marriage.

My parents were against the marriage. My dad came round eventually. Accepting to marry a non-Bengali was a big deal it broke all stereotypes. My husband lived with us but my brother never spoke to him, never exchanged one word. (Henna)

We were from different cultural backgrounds; this caused a problem from day one. My mother-in-law did not accept us. (Fahima)

The Islamic marriage counsellor explained how people's choices of partners lead to problems, especially as people use marriage as a way out of family problems, only to face marital problems.

Sometimes people get married for the wrong reasons. They have had a difficult family background, and they want to get out of the family system. They use the concept of marriage as a way out. When they do get married they realise he's not the type of partner they wanted or it's not the lifestyle they wanted. Sometimes, people have been abused. They choose partners similar to their parents; sometimes it is an unconscious process. (Marriage counsellor)

Own-choice marriages gave the participants the autonomy to choose their partner and set the timing of their marriage. However, the difficult circumstances around some of their marriages meant they were entering a relationship without the support of their family, which left participants vulnerable and under strain once married.

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4.3   Type of Marriage Ceremony

All the participants mentioned they had a *nikah* ceremony and took for granted that a religious ceremony was necessary. In fact, I had to inquire as to whether there was also a civil marriage in order to get further clarification. As a result, two patterns emerged among participants regarding the type of marriage ceremonies: the majority chose a *nikah* and a civil ceremony, whilst others chose a *nikah*-only ceremony (see Figure 13).
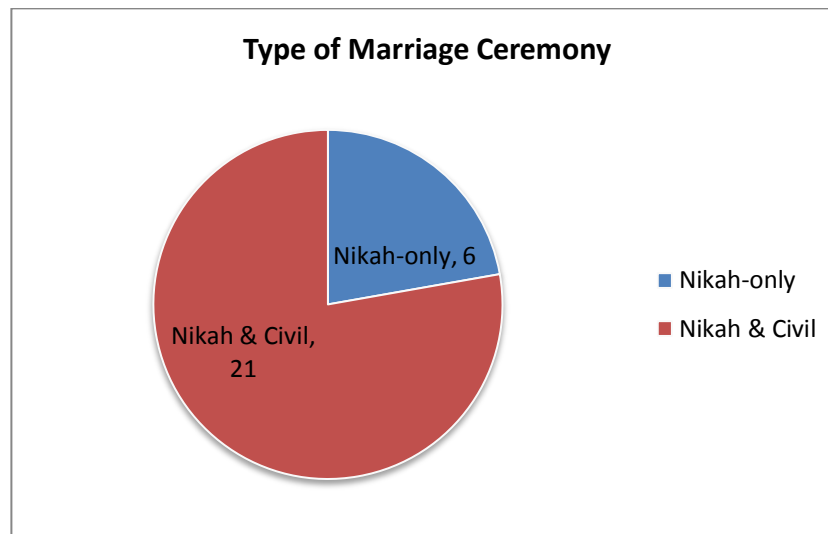
Figure 13 Type of Marriage Ceremony

4.3.2   Nikah

There are many arguments for the Muslim need for an Islamic marriage contract (*nikah*). Some view the *nikah* as a moral imperative and binding contract (Tucker, 2008, 41). Others view the *nikah* allows the couple to cohabit and not violate community norms (Estin, 2008, p. 461, Liversage, 2014, p. 165). Ramadan (2004, p. 139) argues that diasporic Muslims view part of being faithful to the religion is to follow the customs of their country of origin, and that includes marriage and divorce. Whereas, Black (2010, p. 243) contends that *nikah* is sufficient for the Muslim community; and *nikah* is seen as the real marriage (Macfarlane, 2012a, p. 43). In this study, any reference participants made to the word 'marriage' during interviews referred to their *nikah* ceremony. *Nikah* literally means 'to tie up together' and in MFL refers to marriage, providing a social and

legal relationship for making a family (Singh, 2011, p. 59). The experts in this study agreed that *nikah* was a necessity for Muslims.

> Obviously, any Muslim has to get the Islamic marriage, it's a norm, I mean a Muslim cannot be married until they do the Islamic *nikah*. (Imam #1)

> Clients have a religious need for a *nikah* ceremony. The family accept the *nikah*. (Solicitor #1)

> Academically they say *nikah* is a contract, yet ordinary people, including the scholars, view *nikah* a sacrament. (SC Judge #1)

Some experts raised concerns about the lack of record keeping for Islamic marriages, and not informing Muslim women of their rights to add *talaq tafwid* (delegated divorce) as a condition of the *nikah* contract.

> I went to the mosque and asked them to provide proof of my client's *nikah*. The maulana (imam) said he had no record of the marriage, and if it occurred then the husband must have a copy of *nikah-nama* [marriage contract]. I complained and said 'this is not right; you should have records of all marriages that take place in this mosque.' The mosque committee got scared and said they would give a copy of the *nikah-nama*. (Solicitor #1)

> People think it is distasteful to do a prenup as if they are wishing the worse. One imam crossed out the *talaq tafwid* part of the *nikah* contract, yet the woman being married wanted the clause left in. (SC Judge #1)

Others have also voiced concerns that imams fast track *nikah* marriage without any official administrative procedure (Ramadan, 2004, p. 139), and that women are poorly informed about marriage and its stipulation (Cesari, 2010, p. 37).

In this study, two influential factors of the *nikah* contract observed were the guardian (*wali*) and the dower (*mahr*). According to classical Islamic jurisprudence (*fiqh*), the conditions of the *nikah* contract are the two parties (bride and groom), two witnesses, a guardian, and dower (Arshad, 2010, Doi, 1998). From among these conditions, the role of the guardian and the importance of the dower were two key themes that influenced participants' experiences.

4.3.2.1   The Guardian (Wali)

The data collected from the Shariah Council and participants both show the importance of the guardian in the *nikah* contract. The Shariah Council *nikah* form stipulates a particular emphasis on the guardian and the dower (see Appendix 2). In stressing the

importance of the guardian, the council have a change of guardian form (see Appendix 3) in the event the father (guardian) does not consent to the Islamic marriage. Nevertheless, the Shariah Council will only conduct the *nikah* if they view the woman has an Islamic right to marry without consent. A Shariah Council judge highlighted the importance of the guardian, as observed during a hearing where he questioned the validity of a woman's second *nikah*.

> The judge asked who her *wali* (guardian) was. The woman seemed confused and said a Qari [Quran reciter] conducted her *nikah* and she had witnesses at the time. The judge said 'I asked about *wali* and not witnesses.' Her son intervened and explained to his mother the judge's request. The judge further explained 'a guardian is a father, uncle, grandfather, or mature (*baligh*) son.' The woman said she was not told at the time of the *nikah* that she needed a *wali*, and if the judge wanted, he could speak to the *Qari* (reciter of Quran) on the phone [i.e. in Pakistan]. The judge said 'I am asking you' and then quoted a *hadith*, that there could be no *nikah* without a *wali*. (PO6)

Subsequently, the judge annulled the *nikah*, on the basis, there was no guardian present during the ceremony. Nonetheless, a trainee judge present at the hearing, later questioned the decision, away from the client, saying that the woman was of Pakistani origin and in her country, women can marry without a guardian, the judge presiding said

> That may be the case, but I did not want to give her leeway in this situation, due to the turmoil the second *nikah* has caused her family. (SC Judge #3)

In the above case, the trainee judge interjected as the Hanafi School, which is the predominant *fiqh* followed in South Asia, allows an adult Muslim woman to conduct her own *nikah* without the guardian's consent (Mir-Hosseini et al., 2013, p. 138). The Muslim family laws ordinance 1961 as applied in Pakistan and Bangladesh also reflect the non-compulsory requirement of a guardian. Therefore, the ruling observed during the Shariah Council hearing shows the council is inclined toward other schools of jurisprudence such as the Maliki, Shafi and Hanbali Schools, which stipulate a guardian for a valid *nikah* contract (Domingo, 2016, p. 191). Thus, there are many variations of Islamic family laws pertaining to marriage and divorce, which differ according to the school of thought and the country of origin (Cesari, 2010), adding to the complexities of dealing with Muslim marital problems.

The role of the guardian influenced many of the participants' choices in arranged marriages. Firstly, some participants were married at a young age, a decision taken by

their family, primarily the father. Secondly, some participants felt pressure to accept the suitor offered to them. Thirdly, participants had the impression they had to maintain the marriage in honour and respect of their family.

> I was 16 or 16½ at the time of marriage, I couldn't be unhappy with my father's decision. He said 'I've married you off, now it's between you and your husband'. (Parvin)

> I took the proposal to my dad. I told him, his [boyfriend's] family would come to meet him. My dad was strict; he said 'no, if you start a love marriage, then what will the rest [i.e. family] do?' He found me someone else, a visitor to marry. (Monwara)

> My father and his [husband's] father were good friends. My dad gave his word that we would get married. My husband was trying to break away [from getting married], but his dad was pressurising him to get married. Between the two friends, they had given their word, so we got married. (Mahida)

Manea (2016) argues the concept of a male guardian is problematic for Muslim women, as before civil law she is an equal individual capable of making her own choices, whilst Muslims community norms see her a perpetual minor in need of a male guardian. Hence, why reforms to MFL have addressed this issue as mentioned previously.

4.3.2.2   The Dower (Mahr)

The dower (*mahr*) is a monetary or valuable sum nominated at the time of marriage (Al-Asqalani, 2002), symbolically a gift from the husband to the wife. The dower is viewed as a compulsory part of the *nikah* contract and an important stabilising factor in the marriage (Krayem, 2014, p. 119, Rosen, 2000, p. 15), as it protects against casual divorce (Charsley, 2006, p. 1180). All participants mentioned there was a dower nominated at the time of *nikah*. In most cases, the participants were aware of the exact amount written in their *nikah* contract, including the sums paid and the amounts that remained outstanding. A few participants mentioned they were young at the time and did not know the exact amount. The *mahr* sums varied from £1,000 to £15,000 cash and in some cases included gold and land abroad.

> We got married in the mosque. The *mahr* was £5,200. He paid me £200 and £5000 owed. (Aisha)

> The *mahr* was £10,000, and some land in Bangladesh and gold. (Salma)

He gave me £6,000 worth of gold. It was a lot. He was the only son and his mother wanted to make an issue in our culture [i.e. show off]. (Mahida)

The dowry [sic] was paid before the *nikah*. The amount was £5,000 in total, of which £3,500 was the gold and £1,500 was cash. (Lubna)

He was a visitor [to the UK], he gave me £15,000 cash and a gold set. (Shopna)

In many cases, the *nikah* contracts had the dower payments deferred for later payment. This is a common practice in Muslim countries, where the *mahr* is nominated for prompt (*muajjal*) or deferred (*muwajjal*) payment (Fournier, 2010), as seen in the *nikah-nama* used in Bangladesh (see Appendix 4). The Shariah Council *nikah* form simply asks for the *mahr* agreed, though one of the judges acknowledged deferred *mahr* payments are problematic.

Sometimes *mahr* is a massive sticking point. One case dragged on for 18 months as the couple could not resolve the *mahr*. (SC Judge #1)

Similarly, for many participants retrieving outstanding amounts of *mahr* proved difficult; an issue discussed in detail in the getting divorced chapter.

4.3.3   Civil Marriage

Previous research shows that if Muslims need a civil marriage, they will marry twice i.e. have separate religious and civil ceremonies; and Muslims are skilful navigators of managing dual identities (Yilmaz, 2002). Few mosques are registered to offer a dual ceremony, though this option is available to the Muslim community (Douglas et al., 2011, p. 13). The majority of the participants had civil marriages, and in most cases, the *nikah* ceremony proceeded the civil ceremony; with the only dual ceremonies being overseas marriages.

I had a *nikah* and *wali*ma, and then a month later had a civil registry. (Salma)

It was the *nikah* first, and then civil registry in the town hall. (Fahima)

Foreign or overseas marriages are valid in the UK, provided the parties have the capacity to marry in the country of the domicile and follow the law of that country (Probert, 2016, p. 184). Some of the participants with foreign marriages, at the time, did not appreciate their marriage ceremony was simultaneously civil registered. The validity

of the overseas marriage became apparent to participants once they applied for a spouse visa for their husbands. For example:

> Researcher: Did you have a *nikah* and civil registry in Bangladesh?
>
> Participant: No civil registration, I had the *nikah* there. I don't know how things work there; I only just turned 18 the following week. (Mahida)

> Another example:

> Researcher: Did you have an Islamic and civil marriage in Bangladesh?
>
> Participant: Your normal typical Asian wedding… when I returned, I did not apply for him to come over straight away. I worked; I studied and then made the application. (Rushna)

Participants who married in the UK had separate civil and religious ceremonies. There were no dual ceremonies, which require a building registered for the solemnization of marriages, in accordance to the Marriage (Registration of Buildings) Act 1990, and the presence of a registrar or an authorised person. The *nikah* fulfilled the need for marriage for many participants, and the civil marriage was a secondary issue.

> The civil marriage to me is just a paper, so for me, it's all about the *nikah*. (Henna)

> I thought it was strange that he would not give me the Islamic divorce because I believed in the Islamic marriage more than the court marriage. (Fahima)

Some Muslims may play the advantage of the two systems of marriage according to their needs, as observed at the Shariah Council.

> The woman requested an Islamic divorce certificate from the Shariah Council. She was previously married to man via *nikah* and had two children with him. He walked out from the marriage, and after six months, the woman got married to another man via civil registration. Her family wanted her to get an Islamic divorce certificate to confirm she was released from the first marriage.

> The judge explained to me that the woman had got married to the second man without being Islamically divorced. She is playing with two systems of marriage. (PO4)

In general, two main themes emerged from the interviews with the experts with regard to civil marriage. Firstly, the recommendation to get Muslim marriages registered, which the imams and the solicitors agreed gave women legal rights and protection.

I personally advise people to register their marriage, because it is a safety net for women, obviously, I'm not a lawyer, but the law protects women, it's actually Islamic in my opinion. (Imam #1)

Civil registration of marriages gives the couples access to the court; the spouses are protected financially. Solicitor #2)

In a normal marriage [civil registered] you can get court orders. The husband would not mess the wife around, he knows through his solicitor that she has rights. (Solicitor #1)

Secondly, the Shariah Council were adamant that a civil ceremony did not meet the requirement for an Islamic marriage, and the judges explained the reasons why:

Civil registration is for legal convenience i.e. benefits and taxes. For Muslims civil registry is not getting married but a pre-party to the *nikah*, it carries no weight. The *nikah* has weight in the eyes of God, faith and the community. The couple would not live together after a civil registration. (SC Judge #1)

There are four conditions of an Islamic marriage: 1) offer and acceptance, 2) two witnesses, 3) *wali amr* (guardian) and 4) *mahr*. In a civil registration, the first two points are present and the last two are absent. In the Hanafi *madhhab*, a woman does not need a guardian, but it still leaves the issue of the *mahr*. (SC Judge #3)

Islam tells us how to marry and divorce. (SC judge #3)

Similarly, there is information available on religious forums that reinforce the requirement of a *wali* and the nomination of mahr, and even advice for Muslims in the West to avoid civil marriage offices in preferences to marriages at Islamic centres (Islamhelpline.net, 2017, Islamqa.info, 2017). Moreover, the European Council for Fatwa and Research (ECFR, 2010), a body often seen as reconciling differences in issues relating to civil law with Islamic law, ruled that civil marriage alone was not sufficient to fulfil the requirements of an Islamic marriage. Nevertheless, the Shariah Council still require a copy of the civil marriage certificate before they can provide the original *nikah-nama*, until then, they only provide a photocopy. Whereas, the council require non-EU nationals to have a civil marriage first even before applying for a *nikah* ceremony. The Shariah Council explained why they ask for proof of a civil marriage.

We ask for a copy of the civil registration, in order to avoid fake marriages and temporary marriages, we insist couples show real commitment before the original *nikah* certificate is issued. (SC Judge #1)

Therefore, the status of civil marriage is important in *nikah* applications with the Shariah Council, though they do not consider a civil ceremony as an Islamic marriage.

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4.3.4 Unregistered Marriage (Nikah-Only)

Nikah-only or 'unregistered marriages' as referred to in current discourse, afford no legal right to the couple from the state, and there are no common law marriages in England (Ahdar and Aroney, 2010, Bowen, 2009b). In Muslim countries, marrying couples can register their *nikah* marriages with the State, who will legally validate the marriage and provide citizens with their rights and protections (Sona, 2014, p. 118). In the UK, there is a concern that *nikah*-only marriages leave Muslim women with little security and rights and vulnerable to exploitation within the marriage (Jaan, 2014, Ramadan, 2004, pp. 139-140). There are no definitive figures on the extent of unregistered marriages among the British Muslim community; some estimates say 50-80% (Douglas et al., 2011, Grillo, 2015a).

Six participants opted for a *nikah*-only ceremony, though in some cases it was not necessarily the optimum choice or due to any mutual agreement. For example, some participants later found out they could not have had a civil marriage even if they wanted to, as their husbands already had legally married co-existing wives. For other participants, the *nikah* was a precursor to an anticipated civil marriage that never occurred.

> We had the *nikah* but the main party was not done. They were waiting for his older siblings to marry. I lived at my parents' house and I waited for two years, I couldn't be patient anymore. Only certain people knew about the *nikah* from my family. My dad did not know, he was in and out of the picture and can be violent. (Lily)

> He admitted he was married but said he had nothing to do with her. He legally married her abroad and brought her over, and felt obligated to her. She lives in his family's house. (Faiza)

> I wanted a registry. He [the husband] kept saying it's not necessary, but I know that in this country it is necessary. He didn't want to do it. (Jahanara)

In addition, *nikah*-only ceremonies were common among participants who remarried. The majority expressed it was their choice, whilst a few participants were again denied a civil marriage.

> I just had an Islamic marriage. Not bothered with a civil [registry], because it's my second marriage. It's irrelevant. (Rushna)

I say, don't do the civil until you are comfortable enough. I registered my marriage later on so that my child has a [birth] certificate that says the parents are married. (Kulsuma)

He had another wife, whom he married by civil registration. He said he has nothing to do with her, she just lives with his family. (Fahima)

Basically, the registry was important to me and my family, but not important to his family. After the wedding, he said 'what's the rush?' Eventually, two years later we separated because of my mother-in-law, it never got done. (Lily)

The lack of recognition and legal rights with unregistered marriages was a concern for the experts.

Non-registration is a problem. They have no legal rights. (Imam #2)

In *nikah*-only marriages, the women are cohabitees or girlfriends. They have to prove their contribution to the marriage [if they break up]. They are throwing away their opportunity to justice. (Solicitor #2)

Even the Shariah Council was concerned with unregistered marriage, as observed during a *nikah* ceremony conducted on their premises.

The judge asked the couple if they are going to civil register the marriage. The man looked bewildered and glanced towards his new bride. They both shrugged their shoulders, the man almost giggled. The wife then said 'don't look at me' [meaning I am not making the decision]. The man then said to the judge 'probably not'. The judge said 'why not?' He reminded them that they could not access the civil courts in the future if they have marital disputes. The couple did not discuss this any further and left the room happily married. (PO7)

In the above case, the judge felt it was his duty to remind the couple to register their marriage, though ultimately the decision to act remained with the couple. Technically, a *nikah*-only ceremony cannot be registered with the Register Office after the event, as all religious marriages in England and Wales must comply with the MA 1949 and its formalities, and therefore a separate civil ceremony is implied here. The experts mentioned some reasons as to why some Muslims do not register their marriages, which varied from the husband refusing, to being ignorant of the law, consciously avoiding civil courts, being lazy, practising polygamy, claiming single parent benefits and a dislike for civil law to interfere in religious marriages.

Wealthy men say to women have *nikah*-only marriage, the men keep the wealth in the family. (Solicitor #1)

Nikah-only marriage gives woman less protection. Men feel they have more rights over the women. (DV counsellor #3)

Some are told by the husband, take it or leave it, he doesn't want to register, and he will cancel at the last minute. Others think living together gave rights, they did not know there is no such thing as common law marriage. (Solicitor #2)

Many do not register their marriage, due to the cost if they were to have a civil divorce. The Shariah option would be a cheaper way to divorce. (SC Judge #3)

Registration is important as it safeguards girls [women] but it will not get rid of problems in the marriage. People will not register marriage due to the sheer hatred of [English legal] system, laziness, to practice polygamy and to claim benefits [as single parents]. (SC Judge #1)

Some of the reasons given by the experts for unregistered marriages resonate with the experiences of participants in this study. One solicitor mentioned a case study from one of her clients.

My client married a divorced man who refused a civil marriage and chose a *nikah*-only ceremony. He has a child with his new wife, yet he refuses to take her to his house, she lives with her mother. (Solicitor #1)

Akhtar's (2015) finds Muslims do not register their marriages, as there are no incentives for a civil ceremony, which adds no further value to the status of being married in their perceptions. Unregistered marriages may be a conscious choice for some Muslims; however, the consequences are that it can lead to exploitation and the denial of rights and protection, whereas others feel there is a personal benefit in avoiding the civil system.

4.3.5 *Transnational Marriage (TNM)*

The current literature on the experience of transnational marriages mainly reflects the British-Pakistani community (Charsley, 2006, Charsley, 2012, Qureshi et al., 2014). In this study, fourteen participants had transnational marriages, with half travelling abroad to marry, whilst the other half married visitors to the UK. Among the overseas marriages, three were forced marriages, one was an own-choice marriage, and the rest were arranged marriage. There were different circumstances leading to participants travelling abroad. Some participants mentioned they were abroad on holiday with their family and taken aback by the forced marriages. Other families forewarned participants that they would marry abroad, especially if they had boyfriends in the UK, in which case the overseas marriage aimed to sever this relationship. Thus, these participants travelled

abroad knowing that they had no other choice on the matter, and their families would have the final say on their marriage.

> I was there five months [abroad] before the wedding happened. I knew I would not come [back] to London as a single lady, I would come back married. My dad asked my opinion; considering the circumstances I left [had a boyfriend], it didn't matter to me, for me whatever my dad says goes, it doesn't matter if the person is a beggar or a butcher, whoever came first, that's how it was. (Rushna)

> My dad caught me hanging out with guys. He said you're on the wrong track and took me to Bangladesh to get married. (Saima)

Most participants sponsored their spouses to enter the UK. However, one of the participants had doubts and did not complete the application process, whilst another participant chose not to reapply for her husband's visa.

> After marriage, I stayed in Bangladesh for seven months, came back to the UK pregnant. He had no love for his child. It put more doubt in my mind. He would say on the phone [to his child] 'when is mum bringing me over?' I wondered what his real intention to marry me was. Was it an issue of wanting British status? (Tina)

> He [the husband] decided to back home for a bit. I heard he ripped up his visa in an argument with his sister. I called up the British Embassy and was told I have to redo the application. (Henna)

Other participants had their transnational marriages arranged by their families to visitors to the UK. Again, in some cases, the families coerced participants into marrying a visitor rather than their boyfriends, in order to avoid the shame of a 'love marriage'. Whilst other participants acknowledged that they knew their families would arrange their marriages and agreed to marry a visitor.

> His sister knew my mum's friend. She liked me, and when he came to the UK, he saw me. After a few meetings, I consented to the wedding. I was working at the time. After I married, I left the job of my own choice. (Salma)

> Even if I wanted to study more I couldn't. My dad was like 'girls do not need to study' he was old-fashioned. My husband was an illegal immigrant [no visa] he came to my parents, who knowingly married me to him. In those days it was easy to become legal, nowadays it's hard. (Parvin)

The nature of transnational marriages meant they were civil registered. Even the Shariah Council stipulate they will not conduct *nikah* for non-EU nationals until they have a civil marriage first, and they remind clients that any foreign or overseas marriages require a civil process to complete its dissolution.

4.4 Conclusion

This chapter examined the key findings related to participants getting married. It explored the processes and the problems associated with finding a partner, choosing a type of marriage ceremony and transitional marriages. The lived experiences of the participants gave an insight into the reasons, motivations and influences of the choices made in the marriage process. The findings show that participants face many challenges in getting married. Firstly, family life and community norms influenced the options available to marry for the participants, as such arranged marriages were seen as the norm for choosing a partner. Involvement of the family invariably gave authority to the guardian (*wali*) to dictate the arrangement, with participants feeling pressure to comply with family wishes, whilst key decisions relating to the marriage process remained in the hands of others, rather than the participants. Moreover, there were clear indications that some arranged marriages were, in fact, forced marriages, including transnational marriages; however, this study reported a low number of forced marriages in line with participants' own definition of the situation. Participants that chose to find their own partners risked losing support from their family leaving then vulnerable and strained in their marriages.

Secondly, the *nikah* contract defined the actual marriage among participants, and civil marriages a secondary issue. Nonetheless, there were missed opportunities to add clauses to the marriage contract, such as *talaq tafwid* (delegated divorce), as the *nikah* marriages in many cases were conducted without informed choices for participants. The necessity for a *wali* during the *nikah* is questionable, as the Hanafi School do not stipulate such a requirement, neither does the MFLO 1961, yet the norm among participants showed otherwise. The deferment of the dower, though a common practice among South Asians potentially leads to problems at the dissolution of marriage with the husband withholding sums due to the wife.

Thirdly, the prevalence of civil marriages among participants demonstrates there is no aversion among British-Bangladeshis to have a civil ceremony, though the *nikah* established the marriage among the participants. Similarly, the experts including imams and Shariah Council judges recommended civil marriages to gain legal recognition,

rights and protection, however, they viewed a civil ceremony did not establish the Islamic marriage, and as such civil marriages are seen as a secondary issue compared to the *nikah*. Unregistered marriages among participants were in some cases a conscious decision, whilst for others, not the optimal choice or a mutually agreed arrangement. The main concern with such marriages is the lack of legal recognition and the potential for women to be vulnerable and exploited within the marriage, with little security or rights. A combination of the aforementioned factors contributed to marital problems experienced later in the marriage, as explained in the next chapter, marital discord.

Chapter Five: Marital Discord

5.0   Introduction

This section of the chapter provides a detailed examination of the marital problems experienced by the participants. It explores the causes of the problems, the effect it had on the participant, and how it contributed to the marital breakdown. The second section explores the implication the marital problems had on the participants' health and well-being.

5.1   Marital Problems
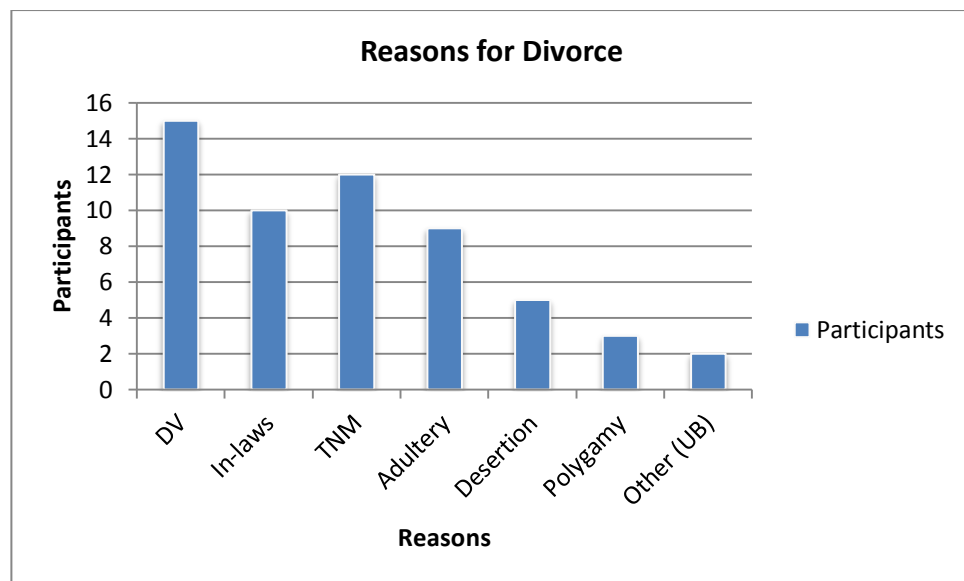
Figure 14 Reasons for Divorce

In describing their marital problems, seven themes emerged from participants interviews, which formed the reasons for divorce (see Figure 14). The most common problems faced by participants were DV (domestic violence and abuse), in-law interference, issues related to TNM (transnational marriage) and adultery. Other problems mentioned include desertion, polygamy and unreasonable behaviour i.e. mental health and drug addiction. Finance, culture and religion were also influencing factors, which participants mentioned intertwined with the main themes. In general,

participants rarely cited one problem as a reason for divorce rather it was a combination of issues.

Shariah Council Reasons for Divorce
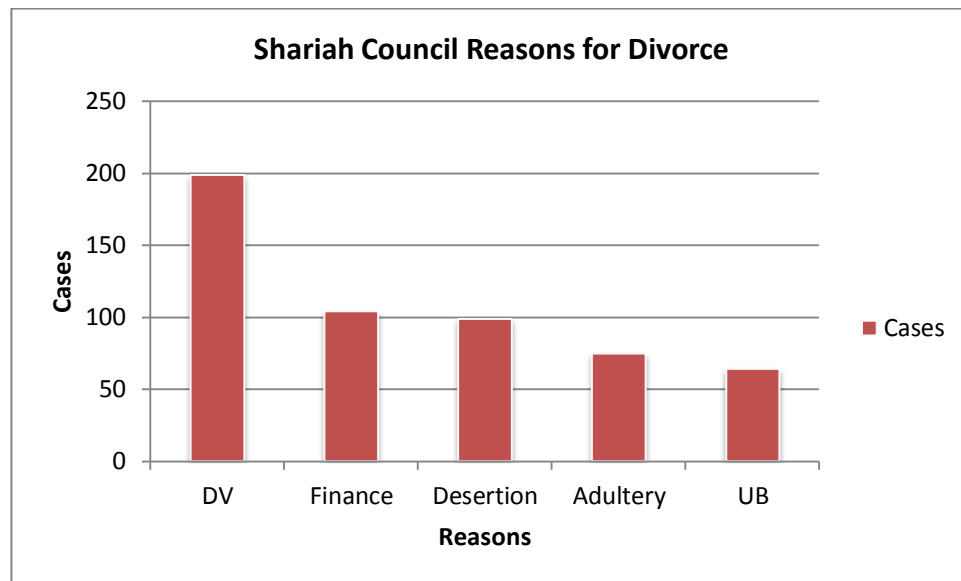
Figure 15 Shariah Council Reasons for Divorce

Statistics obtained from the Shariah Council show that from 700 divorce cases applied for in 2010, the top five reasons given were DV, no finance, desertion, adultery, and unreasonable behaviour (see Figure 15). One Shariah Council judged explained the types of cases they dealt with.

> The type of cases people come with are: Physical violence or abuse – incredibly common, lack of financial maintenance – the husband is not working, or not spending on the wife, or the wife is forced onto benefits, addiction – alcohol and drug is common, men in prison or involved in grooming, drugs or violence, or the couple do not get on. However, usually, there is more than one reason. (SC Judge #1)

A detailed examination of the marital problems found in this study follows the remainder of this section.

5.1.2 *Domestic Violence and Abuse*

The cross-government definition of domestic violence and abuse is 'any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are or have been, intimate partners or family

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members regardless of gender or sexuality; the abuse can encompass but is not limited to psychological, physical, sexual, financial, and emotional aspects (Woodhouse and Dempsey, 2016, p. 4). According to the CPS statistics for 2014/15, eighty-four percent of victims were women (CPS, 2016). Statistics from Women's Aid show domestic abuse is a gendered crime, and in the majority of cases, the abusers are men, though any woman can experience domestic abuse regardless of race, ethnic or religious group, class, disability or lifestyle (Women's Aid, 2015).

Fifteen of the participants in this study mentioned they suffered from domestic violence and abuse. In most cases, the perpetrators were their husbands and included the in-laws, and sometimes their own families. The abuse came in many forms, such as physical violence, emotional, mental and financial abuse. Some participants' descriptions of domestic abuse have elements of in-law interference and factors related to transitional marriage; which is discussed in more detail as separate sub-categories.

5.1.2.1   Physical Violence

Government statistics show 1 in 4 women in England and Wales will suffer from DV in their lifetimes (ONS, 2013), and on average the police receive calls for domestic abuse every 30 seconds (HMIC, 2014). According to Ramadan (2004, p. 143), Western Muslims face the same difficulties as their fellow citizens i.e. divorce, [domestic] violence and abandonment of children. Similarly, research by Idriss and Abbas (2011) found domestic violence affects the wider society and viewed honour-related violence (HRV) required a detailed socio-legal academic study in the UK. In recent years, the subject of honour-based violence (HBV) has been of interest to the government, think tanks and academics (Brandon and Hafez, 2008, Gill et al., 2014, Home Office, 2009). Goodmark (2012, p. 72) contends that in tackling domestic abuse, women of colour may not approach outside assistance, and view services unavailable or not culturally competent to deal with their situation; furthermore, cultural and religious norms, gendered roles and family primacy shape women's response and avoid outside interference. In other words, whilst the problem of DV may be present in the wider

society, the manner by which the problem presents itself within different communities and the means to tackle DV require examination.

The participants in this study mentioned how the physical abuse started very soon into their marriage and how they were taken aback when it first occurred. Some participants initially blamed themselves for the abuse; however, in most cases, the husband soon became more controlling and isolated the participant from friends and family. Participants expressed that DV was not acceptable behaviour in their marriage.

> The DV started three months into our marriage. The first time it happened, I thought it was my fault. I blamed myself for six years [of the marriage], but mentally he was controlling me. (Aisha)

> He changed completely after marriage. He used to beat me up. I got tortured. I was not allowed out of the house, not contact anybody, not allowed to go to my parent's house. Basically, I was a prisoner. (Rupa)

Chaudhry's examination of DV according to Islamic tradition in historical contexts found classical scholars were divided on the exegesis of the verse in the Quran, which mentions 'strike them' i.e. the wife (Q.4:34), the discussions centred on the extent of the manner of disciplining the wife but did not deny the right of the husband to admonish the wife. Opposing such views Ahmed (2009, p. 81) argues that numerous [contemporary] studies of Islamic religious texts have shown Islam does not endorse violence or abuse, yet the Muslim community engages in actions that defy Islamic teachings. Thus, the reaction by participants to being shocked at experiencing DV showed that despite theoretical discussions in Islamic circles on the permissibility or impermissibility of DV, the social reality was that personally, they felt DV was not acceptable or justified.

Nonetheless, having accepted the correct stance on the impermissibility of DV from a religious perspective, in many of the cases, the first reaction from participants was to hide the DV from their family out of fear of bringing shame to the family or dishonouring them in the eyes of the Muslim community - i.e. consideration of cultural values and norms. Such response from participants is reflective of previous research which shows, the notion of *izzat* (honour) shape women's response and secure their silence (Gill, 2004, Mullender et al., 2002). Faizi's (2001, p. 217) study found Muslim

women did not seek help from others, for fear of being the subject of gossip, or appearing a failure to their family. Similarly, Ahmed (2009, p. 81) contends victims are reluctant to approach the community fearing gossip, feeling helpless and lacking confidence [over the situation].

In this study, the concepts of *izzat* and *sharam* (shame) were reoccurring themes that participants expressed stopped them from disclosing the DV to others. Some participants felt that to return to their family would dishonour the family, whilst others felt it was their fault (i.e. self-blame) and therefore they suffered the DV in silence.

> I was ashamed to tell my parents because of *izzat* (honour). My dad would take me back. Then people would laugh, and give *sharam* (shame) to my dad. I didn't go forward having those thoughts in my mind. Hiding stuff ruined my life. I should have told my dad from the beginning. He would have taken action. (Parvin)

> For the first two years, I hid the DV from my family. I felt it was my fault. I was made to believe so. Finally, I told my mum, she was upset, why I hid it for so long. I didn't want to break the family. But hiding it made him think I'm not going to leave him. (Aisha)

Studies on South Asian communities show that families often encourage women to stay in abusive relationships due to the shame of divorce, and therefore accept DV as part of married life (Idrus, 2003, p. 57, Maguire and Shaikh, 2007, pp. 77-79). Indeed, the participants made the same assumptions that the family be unsupportive, in some instances this was the case, however, as the above example show, in other cases, the families would have been supportive had they approached them when DV initially started. Thus, the need to ensure that there is a common understanding that DV is not tolerated from a religious or cultural perspective; and to dispel any misconceptions regarding this issue in the Muslim community, which otherwise exacerbates the situation, as discussed next.

Research on BME (Black & Minority Ethnic) women suggests they tend to experience a wider range of abuse at the hand of men and other family members and remain in an abusive relationship longer, facing the possibility of increased frequency and severity of abuse (Gill and Anitha, 2011, Thiara and Gill, 2012). Participants from this study described how the situation in their marriage got worse with time. Some participants suffered miscarriages due to the DV and mentioned how their children also suffered.

He never stopped hitting me, even when I was pregnant. I had a miscarriage from the beating. I only told my bhabi (sister-in-law). The school noticed my son had marks on his face. He was young and could not explain how it happened. They asked me I said 'I had no idea.' (Nabila)

I was struggling whilst pregnant. He used to hit me in the stomach a lot [breaks down crying]. I get so upset when I think about that time. I was expecting twins, but one died in the belly. The hospital did not suspect. If I had gone to the police, they would have known but I was so embarrassed, I used to hide stuff. (Parvin)

Participants' descriptions show there was a reluctance to disclose the abuse to others outside of the family, such as the police, health authorities or school. Thus, like other studies on South Asian women living in diasporic communities (Gill, 2004, Kock et al., 2014), the participants in this study treated DV as a private family matter. McCue (2008, p. 79) asserts that the belief that DV is a private affair contributes towards under-reporting of incidents; there are various other reasons why women culture to culture fail to involve law enforcement authorities, among them a lack of awareness of their legal rights. The participants' concerns around shame and bringing adverse consequences upon themselves e.g. social service hindered the reporting of incidents; whereas if DV was seen as a criminal act and therefore a public concern, it would help towards changing perceptions of DV in the Muslim community and allow victims to take action to escape the situation.

Furthermore, some participants mentioned how they suffered DV whilst abroad, with an increase in the severity of the abuse over time. Being abroad left participants isolated from their immediate family and friends, as a result, the husband inflicted abuse knowing there would no intervention or retributive action. Abrahams (2007, p. 19) discusses how women's world 'closed in' as they went abroad and became isolated from friends and family by the abuser, and isolation made DV worse in rural areas. Two of the participants described how their situation became worse whilst abroad.

When we lived abroad, he became more violent it got worse by year. (Aisha)

In an argument, he would say 'I'm going to take you Bangladesh and kill you.' I thought what kind of talk is this. Like a child, I would say 'then I won't go.' Eventually, we went abroad. He beat me so bad, a doctor had to come and bandage me up. The doctor said 'this is not human behaviour.' (Parvin)

Pence and Paymer (1993, p. 31) assert that the ultimate goal of the abuser is to wield power and have control over their partner and use tactics that involve isolation, intimidation and threats. Participants' examples show that by going abroad the likelihood of violence increased due to the participant being isolated from her family, moreover, foreign countries may demonstrate a more lackadaisical attitude towards addressing DV; thus, tackling DV is a global issue.

Another common theme among participants was the accusation of extramarital affairs, mainly by husbands doubting the paternity of the children. Thiara and Gill (2012, p. 33), claim allegations of sexual promiscuity against Asian women are a common experience, accused by men and their families to taint women's character and to justify their abuse and explain women's absence from their family. Participants mentioned how their husbands would torment them with their accusation of paternity, causing them distress, and questioning their honour and dignity.

> I fell pregnant straight away. He made accusations about the dates. This threw me back, as we were newly married. (Shilpa)

> He was completely mentally torturing me. He started saying it's not his child. I said 'once we have the baby we can have a DNA test. I have nothing to hide, Allah is my witness.' We didn't have any DNA test. (Rupa)

> My father-in-law said I had an affair. He said to me 'how do I know the kids are his [husband's]?' he brainwashed my husband. (Zaynab)

According to Stark, (2007, p. 206) abusers use tactics of shaming and degradation to establish dominance and privilege over the abused i.e. to highlight that which is intrinsically humiliating or against the nature of the victim. Strickland (2007, p. 68) argues historically the honour of an Arab family is tied the purity of its women i.e. to be chaste. Similarly, South Asian families link family honour with a women's sexual purity (Hunjan and Towson, 2007). The concept of Muslim women's honour and sexual purity is an overarching theme that remains throughout a woman's life, and therefore, there is the possibility of scrutinisation from others at any time, as can be seen from this study. No doubt, the participants held the issue of honour as a matter of great importance; hence, the accusation of being unchaste caused them much distress and pain. Yet, the Quran clearly prohibits accusations of *zina* (adultery) without proof and

prescribes punishment for those who make false accusations (Q.24:4). Therefore, the accusations made against participants were a means for the husband and his family to perpetuate DV.

Murray and Crowe (2017, p. 73) argue some perpetrators hide their abusive behaviour from others, so only the victim knows the violence they are capable of committing; this plays out in extended family relationships, and religious and cultural groups, whereby the abusers are not held accountable by the communities around them. Participants found it difficult to explain to their families that their husbands were perpetrating DV, as their husbands showed good character in front of their families; participants explained their frustration.

> My mum and my brothers would not believe me when I complained about him. In front of their eyes, he was the perfect guy, he could do no wrong. (Nabila)

> No one would think what he is doing because he's a people pleaser. Why can't he be like that with me at home? (Polly)

Many of the participants mentioned the lack of support received from the family after disclosing the DV. The situation was made worse by families pressurising participants to remain in the marriage. Faizi (2001, p. 218) argues, there is great emphasis on Muslim women to maintain the marital home [i.e. marriage] and to leave the situation is met with strong disapproval from the family and the [Muslim] community. Others view, there is an expectation from the community that Muslim women must perform the family role, even in the face of DV, whilst being uncomplaining, patient and accepting (Hassouneh-Phillips, 2003, Thiara, 2010). Participants described how their families ignored their disclosure of the DV and pleas for help; rather they were pressured to remain in the marriage for the sake of honour and family respect. One participant mentioned how her family stopped her from going to a women's refuge, for fear of what the community would say.

> I told my family what he was like. My dad said you have to stick to it [marriage]. I was forced to stay with him; I suffered for many more years. (Monwara)

> I came outside and called my brother, told him what was happening [DV], he spoke to my dad who said 'She's not allowed in my house.' Then I went to women's refuge. The pressure I was getting from everybody [i.e. family]. They said I had to go back [to the

husband]. I'm not allowed to go to a women's refuge. What are people going to think and say? (Rupa)

Ahmed (2009, p. 81) comments that despite the availability of women's shelter as a refuge, women are reluctant to use such services as firstly they are unaware of them, and secondly the services provided may not be culturally sensitive to their needs. Participants faced a difficult situation whereby disclosure of abuse is disregarded, and seeking outside help is frowned upon. For some participants, matters got worse after disclosure as they faced further DV at the hands of their family, who decided to side with husband in the marital dispute. Participants described how their family did not believe their version of the situation, and one participant was told to let the husband back into the house, even though he was wielding a knife outside; though this participant eventually called the police.

> I went back to my parents' house. The next morning my brother came, He called me. I was upstairs changing the baby. He got angry, came upstairs and grabbed me by my hair. He banged my head against the wall, and then dragged me downstairs. He was upset because my husband accused me of having an affair. He put his hands around my throat and said 'I can just kill you right now'. I said 'you might as well [Sobs] if you don't believe me.' (Zaynab)

> He got a knife and put it to my neck. My son was crying, but he would not stop. I moved slowly to the door, pushed him out and locked it. I called my mum I said 'he's going to kill me, come and save me,' she said 'if he kills you, let him kill you, open the door for him.' I said 'are you crazy.' I knew I was on my own from that day onwards. I called the police. (Nabila)

Graham-Kevan (2006, p. 145) argues that by concentrating on the attributes of the victim rather than the perpetrator it removes responsibility from the attacker i.e. 'victim blaming'. Thus, participants' experiences show cases of victim blaming rather than to hold the husband to account or his actions, and this again is linked to the notion of preserving family honour and preventing disclosure of family problems to outsiders, which makes the situation worse for the wife; and an issue that needs addressing when tackling DV in the community.

An HMIC (2014) inspection of 43 police forces in England and Wales found police response to domestic abuse was not good enough and needed to improve, among the concerns were the quality of the initial investigation and that officers may lack skills to tackle DV. However, recent statements from the Metropolitan Police mention they

take domestic abuse very seriously, dealing with incidents positively and promptly, and can advise the best course of action for victims (Metropolitan Police, 2017). The participants mentioned a satisfactory response from the police whenever they responded to an incident. In most cases, participants called the police to intervene in violent incidents; some participants did not press charges, whilst others pursued protection orders against their husbands.

> When he got upset, he got physical. I got the police involved to kick him out, I had no choice, my family was getting nowhere with him. (Lubna)
>
> My husband was violent, over time he got more and more aggressive. I called the police, who arrested him. I did not let him back in and took out an injunction against him. He started stalking me at work. I called the police again, and they gave him a warning. (Inaya)
>
> My mother-in-law would tell him lies about me and make things worse. He became more violent towards me. I called the police. I left the house and wanted my stuff, but he said there's no goods here. I went to my parent's house. (Tanya)

Participants mentioned, that after repeated call-outs to deal with DV, the police advised victims to take action. One participant mentioned how the police charged her husband with criminal damages, whilst another participant mentioned how the officer advised her to take out an injunction. In one case, the police officer expressed disappointment in Asian women refusing to press charges against their husbands for DV.

> The third time the police came they interviewed me. I told them my husband was mentally abusing me. They advised me to get an injunction. (Aisha)
>
> The officer came and took a report from me. He told me to press charges. I said 'no'. His clear words to me were, 'Because of you Asian women [not pressing charges], these men get away with things like that. (Zaynab)

Participants were aware of the interventional powers of the police in instances of domestic violence, yet were hesitant to call upon their services. However, in many cases, after the police intervened, the advice received by participants encouraged them to approach solicitors and seek court orders to prevent further harm and gain protection.

5.1.2.2 Emotional Abuse

In addition to the physical abuse, participants experienced mental or emotional abuse, usually in the form of controlling and isolating behaviour from the husband or in-laws. Faizi (2001, p. 211) asserts Muslim women face abuse with threats of divorce,

remarrying, children being taken, and have their freedom restricted. Participants gave examples of how their husband isolated them from friends and family.

> He made a big deal out of going to see my family; I only went once a year. (Shilpa)

> He made is such, so no one could visit us, like my parents. If they wanted to come, I would say no, I'll visit you. Then he used to tell me off if I was at my parents. He didn't let me go shopping or go out. I ate if he gave me food. I never looked out the door, I was afraid. He was worried if I went out I would tell people. So, no women were allowed in my house. It was only me and the children. Shocking, considering I was brought up in this country. (Parvin)

Participants described the methods their husbands used to control their behaviour, which included a strict regime of cooking and cleaning, how to dress, and comments on their weight.

> We moved into our new house. This was his domain now. He gave me a cleaning schedule, clean the TV, Hi-Fi, and hoover the house. He'd tell me to cook this, cook that, he made food portions in packs. Everything, even my clothing, how I presented myself, my weight, he'd have a say. I literally had no social life outside of marriage. (Rushna)

> I promised I would not call the police [anymore]. I didn't chuck him out. He would still beat me, but then smother me with love. My in-laws would tell him off, but he controlled everything. I never went out, and he hated me going out. At one point I couldn't even speak English, I had forgotten. (Salma)

The husband would make threats of expelling participants from the marital home; knowing to return to their families would bring distress to participants. The Jaan report (2014) on female victims of honour and cultural based abuse, found half of their sample population felt their families and the Muslim community would not support them if they sought a divorce. Participants in this study described how the husband made a point of making the marital home his domain.

> He just wants me to be scared of him. He said it himself. Always saying I disrespect him. One day he was so angry, he got my luggage, got my clothes out and chucked it in the living room. He told me 'pack your bags and go to your mum's.' He's always saying it's his house, and I'm just living in. (Polly)

> He used to have this effing language all the time. He used to swear at my parents. He would say 'get out from this house. This is my house.' Like, I got no right to stay in the house. Basically, I always used to get [mental] torture from him. (Rupa)

Stark (2007, p. 206) argues abuse is a combination of coercion and control; and the tactics used by the abuser include intimidation, surveillance, degradation, shaming, and isolation; all with the aim to achieve dominance and privilege over the abused. The

participants' narratives of mental abuse fit the government's understanding of 'controlling and coercive behaviour' as a form of domestic abuse, whereby the victim is isolated from sources of support and controlled by threats (Woodhouse and Dempsey, 2016). In tackling emotional abuse, Elliot-Wright (2016) believes victims need to stand against the abusive partner and not take sole blame for the problems in the relationship, and that responsibility for abusive behaviour belongs to the abuser alone. No doubt, participants' experiences show that emotional abuse is long lasting and the level of control can affect many aspects of their daily routines in their lives. In many cases, once their husbands were confronted with their abusive behaviour it caused one of two reactions: it either escalated the problems or eventually led to a separation - breaking the 'wheel of power and control' (Pence and Paymar, 1993).

5.1.2.3   Financial Abuse

Financial abuse is characterised by the abuser denying the partner access to cash or credit and exercising control over all financial decisions (Sanderson, 2008, p. 26). According to Thiara (2016, p. 115), financial abuse comes in two form; total dependence on the husband and his family for finance, often resulting in poverty; and men taking women's money, including [welfare] benefits. Similarly, Adams (2008, p. 564) contends in economic abuse, the abuser uses tactics to control a woman's access to economic resources and threatens her self-sufficiency. There are two elements to economic abuse: economic control – prevent women working or withholding, or dictating how money is spent; economic exploitation – acquiring debt, refusing to work or squandering money (Adams et al., 2008, p. 567).

Participants in this study faced financial abuse in the form of their husband controlling all aspects of the household income and expenditure. Moreover, the husband would not spend from his earnings any more than what would be required of basic and essential shopping, which left participants often-needing extra financial support from their families. Even in cases of welfare benefits, the husband would control the money, and sometimes make applications without the wife knowing. One participant mentioned how her husband would incur debts expecting her to pay it back.

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The main issue is, he always wanted money. He was working but he still demanded money from me. I had no money; I had to borrow from my brothers, and if I didn't give him money, he would beat me. All the child benefit and tax credit would go into his account. Yet he would still borrow money from outsiders and expect me to pay it back. (Nabila)

He was greedy, selfish man. Never gave any extra money, only paid for the rent. He would give the rest to Bangladesh. He would buy some food, but my mum would provide the rest, like clothing, even though she's was a pensioner. I tried to claim for tax credit, they told me we were already getting it; a joint claim and they've paid two thousand pounds into my husband's account already. He was such a greedy person. (Salma)

His motivation was making money. He would earn money but not give any. We constantly argued about money. He kept saying he's saving to back home. I would have to get the kids food and nappies. I went back to work; he got people over complaining why my wages weren't going into his account. He wanted me to set up a direct debit. I said that's never going to happen. He was even claiming tax credit but I never knew that. (Rushna)

Thus, the two components of economic abuse: economic control and economic exploitation were evident among participants' experiences. Furthermore, participants described some specific incidents regarding *mahr*, savings and *Eid* shopping. One participant mentioned how her husband would demand the *mahr* he paid at the time of marriage back. When her family refused and stated it was the right of the wife to keep the *mahr*, the participant faced further physical abuse. Another participant mentioned how her husband objected to her savings, which she procured prior to marriage, which from an Islamic perspective is her right to keep. She mentioned how her husband no longer trusted her, once he found out about her savings. Even spending for the occasions of *Eid*, a religious festival, which occurs twice in the year, was a matter controlled by the husband.

He wanted his *mahr* back. My dad said this money is not returnable. He would beat me no sooner did he talk about the *mahr*. I said I can't give it back. He would beat me all over, head, hands. He had all the money; I didn't even know how much child benefit was. I never even asked him for five pounds. *Eid* came; he would buy me something if he wished. (Parvin)

He's got a problem with my savings. I left some savings at my mum's house. I didn't want to put it in my account. He found out somehow, and now he doesn't trust me because of my savings. (Polly)

The subjects of *mahr*, the wife's savings, and spending on *eid* are all Islamic issues linked to the right of the wife and the responsibilities and obligation of the husband (Chowdhury, 2017). Yet, despite established norm on these matters, the husbands continued to deprive participants of their financial rights. Harne (2008, pp. 6-

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7) argues, financial abuse is a form of economic deprivation not to be confused with poverty, as the partner may have wealth but controls the distribution of income between the parties. Raphael (2000, p. 37) adds that economic abuse entraps women into abuse relationship, reliant upon the husband – who manipulates the conditions of poverty. The participants' description of financial abuse show there was sufficient household income in the form of the husband's wages or welfare benefits; however, the abuser controlled all aspect of the expenditure and left the victims feeling totally incapacitated to argue against the matter. Hence Women's Aid (2017) have highlighted the importance of understanding how financial abuse is a barrier to women leaving abusive relationships, increases risk to danger by remaining, and prevents an independent life – even after separation there are debts and financial insecurities; such an understanding could have helped participants in this study.

5.1.2.4   *DV in the Muslim Community*

The experts gave their experiences of dealing with DV in the Muslim community; and felt the problem of DV was not specific to any particular community, a view common with other studies (Idriss and Abbas, 2011, Kelly et al., 2016). Nonetheless, the experts agreed the problem of DV was gender-specific, the victims being mainly women, and the perpetrators being men and included their family (i.e. the in-laws).

> DV is common all the time in Islamic divorce cases. (Solicitor #1)
>
> DV is not an Islamic problem; it affects every race, colour and nationality. Just because it feels like a Muslim problem doesn't mean it is. (DV Counsellor #2)
>
> Women say their in-laws join in on the DV; the whole family is imposing oppression on her. (DV Counsellor #3)

According to Newman and Newman (2010, p. 11), there are several factors involved in causing DV, such as learnt behaviour, drug and alcohol abuse, lack of anger and stress management skills; but the heart of the matter is a belief system that condones physical or verbal abuse in a relationship. Susmitha (2016, p. 605) claims that cultural mores, religious practices, economic and political conditions are factors contributing to DV, but in the end, the individual makes the choice out of a range of options. The

experts in this study viewed there were various causes for DV; nonetheless, a common theme was power and control.

> DV, it varies, there are certain reasons and behaviours. It could be alcohol or drug issues, or culture i.e. this is the way, where I come from, or the mother-in-law says it [DV] is normal. (DV Counsellor #1)

> The majority of DV is learnt behaviour, witnessed growing up and seen as normal behaviour; at other times it is triggered by stress. In the community, men are in charge and the women are under control. (DV Counsellor #2)

> With DV, the majority of women blame themselves, they've been told by their family. More deeply, it is the perpetrators unhealthy thinking pattern, manifested as unhealthy behaviour. (DV Counsellor #3)

In exploring the role of culture in DV, Ahmed (2009, vii) considers family roles, values, customs and expectations rooted in a person's culture and religious traditions are contributing factors; however, he argues, cultural patterns by themselves do not cause DV but can create an environment that promotes DV. Yoshioka (2008, p. 87) contends a deep understanding of culturally informed social rules, protocols and expectations of women's personal conduct can help practitioners understand DV from a multi-cultural perspective. The experts explained how cultural and religious interpretations were also factors contributing to DV, in particular, the role of the husband and his power to make rules in the marital home.

> Culture does play a part and the wider society feeds that. In culture there are positive aspects, others can take the negative aspect and use that for personal gain. (DV Counsellor #3)

> In many cases, the problem of violence is the perception of the role of the husband in a Muslim family, a Bengali family, the role and rights. In the home, people make rules they set boundaries. (Imam #2)

The perception of DV in the Muslim community is another factor to consider that influences the experiences of Muslim women. Previous studies show, family and community disapproval of divorce is a disincentive for Muslim women to leave an abusive marriage (Faizi, 2001, p. 211), whereas the community believes that there is a spiritual reward for suffering (Hassouneh-Phillips, 2003). The experts explained how the family and the community have a role in condoning DV and victim blaming, using religion as a source of justification or referring back to *izzat* or *sharam*.

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> The community says it's [violence] 'give or take', the odd slap is acceptable, unless it becomes extreme, even then they have to try to work it out. (Solicitor #3)

> The community like victim blaming. It is easier to pick on the seemingly weak. Women are told put up with it [DV], your reward is *Jannah* [Paradise]. (DV counsellor #2)

Ahmed (2009, 82) recognises that Muslims turn to mosques for help in the first instance, however, imams are ill prepared to provide support for eth community as they lack awareness of DV. The counsellors and solicitors in this study felt that mosques and imams contributed to the problem of suffering DV by trying to reconcile the wife with the husband when clearly a different strategy was required.

> The majority [women] tried speaking to family, community members and local imams. They are told to be patient, be a good wife. Women exhaust all other means then decide they can't take anymore and then leave. (DV Counsellor #3)

> Mosque put pressure on Muslim women to reconcile. They say don't break the home. There was this one case, where the mosque told the woman to try and work it out. She's been trying for two to three years. Her priority should have been to go to the police. In the end, she called the police, the DV unit got involved, the husband was such a violent man." (Solicitor #1)

Esposito (2001, p. 36) comments the Quran's emphasis on the importance of marriage and encouragement to reconciliation discourages divorce. Nonetheless, the imams interviewed in this study did not tolerate DV and were aware of its implications. They were clear in expressing that the relevant authorities needed to be involved in DV cases.

> If someone comes or calls the mosque and says my husband is beating me, say call the police, that's the first thing to do, it's a difficult situation, but it's a necessity. (Imam #1)

> The problem is not simple; I think domestic violence has sort of taken a different direction now because 9 out of 10 times in a situation where there is domestic violence the police will be involved and maybe even solicitors are involved. So, therefore, it becomes a little bit difficult [to intervene]. (Imam #2)

In considering the role of religion in DV, Faizi (2001) believes that abusive men use the Quran and *Sunnah* as a tool to justify abuse; the use of the verse (Quran, 4:34) about dealing with *nushuz* to hit women, though the Prophet never hit a woman. Similarly, Chaudhry (2013, p. 85) argues that classical scholars interpreted the word 'hit' in verse (Quran, 4:34) as non-violent hitting, and prohibited marking the body; whereas, Doi (1998, p. 130) contends a light beating is permissible, avoiding the face.

Chaudhry (2013, p. 222) expresses that there been a marked shift from classical to contemporary understanding of the subject, mainly due to egalitarian principles adopted by contemporary scholars, however, traditionalism is stifling contemporary views among the Muslim community. The experts were critical of perpetrators using religion to justify their DV. A common theme mentioned by experts related to religious knowledge; they felt abusers limited their victims from seeking the correct Islamic knowledge and manipulated Muslim women's commitment to faith.

> He physically stops her from seeking Islamic knowledge. He stops her from accessing the internet, reading books, attending study circle. He picks and chose aspects of faith and imposes it on her. DV Counsellor #3)

> Muslim women refer back to Islam and stay in the relationship. To clients, Islam is a values system. The only thing they believe with certainty. The perpetrator living with them is dictating to them. He will use Islam to gain further control over the woman, and refer to popularised *hadith*s. (DV Counsellor #1)

The experts mentioned some case studies involving their clients, which give an insight of domestic abuse in the Muslim community. Their narratives highlight how domestic abuse affects all social classes, the use of emotional abuse to incapacitate victims, and perpetual abuse of different women by remarrying.

> A lot of the time it's emotional abuse, and it can be more severe than physical violence. It's mind games, they make the victim feel incapacitated, too tired to think, become controlled. For women the most ridiculous of threats become realistic. He isolates her and his words become more encompassing. (DV Counsellor #1)

> There is a misconception that DV is among the uneducated. There is DV among professionals as well. My clients are educated and wealthy; the DV is shocking. Sometimes, ordinary people are more reasonable to deal with. (Solicitor #1)

> This is the husband's third civil marriage, the previous [two] ended in divorce, as he was violent. He married my client to look after his parents, they complained about her behaviour, so the husband would beat her. (Solicitor #3)

In explaining why women stay in abusive relationships, Brewster (2002, p. 30) considers factors such as self-blame, denial, sanctity of marriage, feeling responsible for the batterer. The experts mentioned why victims of DV remained in the marriage, which they felt was due to family pressure and having hopes for the marriage; for some women, the level of abuse reached the point, they self-harmed or attempted suicide to leave the situation.

The majority of women spend years before they leave their marriage. They have so many hopes, try to make it work and give it a second chance. (DV Counsellor #3)

Some women self-harm or attempt suicide to get out of the relationship. (DV Counsellor #2)

In analysing DV in the Muslim community, like the wider society, the problem is gender-specific and women are mainly the victims as the issue is one of male authority, power, and control. The religious emphasis of reconciliation and the discouragement of divorce lead some elements of the community to condone DV, reinforced in cultural values that expect to wife to suffer and be forbearing, with pressure to remain in abusive relationships. In turning to mosques and imams to resolve marital problems, Muslim may find such services ill-equipped to provide support for victims of DV, though the imams in this study emphasised that DV not be tolerated, thus there is a need for an educational programme to create this awareness among the Muslim community.

5.1.2.5   Tackling DV

The government states there are criminal and civil remedies for victims of DV, and coercive and controlling behaviour is an offence under Section 76 of the Serious Crime Act 2015, whilst civil measures include non-molestation orders, occupation order, and domestic violence protection orders (Woodhouse and Dempsey, 2016). In tackling DV, experts mentioned the need for intervention and support, which included the relevant authorities, family and the community.

The primary concern is harm to them or their children. The priority is to get them refuge and a protection order. (Solicitor #3)

People should educate each other. They should recognise the pattern of DV and step in. It could be their son or brother abusing a partner. (DV Counsellor #1)

A woman came to us and she was trembling with fear. She said her husband was violent towards her. We called the police, who came and took a statement from the woman. (SC Judge #1)

Thiara (2016, p. 113) argues post-separation violence is a significant issue among BME women. The counsellors agreed that women in most cases had to leave their marriage to stop the domestic abuse, and advised against reconciliation with the abusive husband.

> We don't encourage reconciliation, but we don't say they can't go back either, that is disempowering them. We educate them regarding domestic abuse. Besides, a lot of women cannot accept counselling until their situation is stable; if their children are on a child protection plan or they have unstable housing. (DV Counsellor #1)

> Reconciliation is not always the best, in DV cases. It could be down to a life and death situation, women have been in the hospital. (DV Counsellor #2)

Harne (2008, p. 149) feels there is an increased emphasis on the unacceptability of domestic violence in public awareness campaigns, with the use of posters and billboards, newspapers articles, radio and TV. The counsellors in this study thought more DV awareness was required in the Muslim community, focusing on families, schools and mosques, and emphasis DV training for imams.

> Men need to think about how they bring up their children. Women should not perpetuate the cycle. Mothers say 'I put up with it [DV], so can you'. [Rather,] Mothers should say 'no, you're not allowed to do that to my daughter.' (DV Counsellor #2)

> DV awareness in the schools and mosques is important. Children need to understand DV is not acceptable. The sermons at the mosque are a good way to get the message across not to abuse the family. (DV Counsellor #1)

> There is a lack of training, awareness of DV issues among imams. Women go to imams, as they know they have influence over their spouses, but imams are not going to know how to deal with DV unless they know learn about it… A person should know that if they raise their voice at their wife it will be known in the community, and there are social consequences. That is what needs to be the aim. (DV Counsellor #3)

From a legal perspective, there are remedies available for women to tackle DV, however, in accessing this help this study shows there are many religious and cultural barriers within the Muslim community that hinder seeking assistance, including a lack of support from families and friends. Moreover, the infrastructure for support among Muslim institutes such as mosques may not provide appropriate advice to support victims of DV, as in some cases they may follow classical or traditional interpretations of the subject and lack awareness of DV. The participants and experts expressed views that showed DV is not condoned, and therefore there is work to do in the Muslim community to change perceptions that tolerate DV. Domestic abuse was a major theme among the participants and the experts, thus a significant part of this chapter discussed the findings on DV. The next sections discuss the other major themes: in-law inference, transnational marriages, adultery, desertion, polygamy, and health implications.

5.1.3 In-Law Interference

A common theme among participants was to live with the in-laws after marriage. Venkataramani-Kothari (2007, p. 16) explains that South Asian brides traditionally live with their in-laws, including their husband's siblings, so become answerable to many people. Mittra and Kumar (2004, p. 34) assert the cultural expectation of Bangladeshi women is that the wife is subordinate to all the other members of the household, females included. Ten of the participants mentioned in-law interference as a reason for divorce. There is some overlap of this subcategory with that of DV. Even so, participants' narratives of this sub-theme provide a valuable insight into the marital problems caused by in-laws. For example, participants mentioned there was an expectation from the in-laws to conform to traditional norms associated with a South Asian wife, i.e. clothing, customs, practices, and role. Participants expressed they found some traditional cultural practices conflicted with their upbringing and religious beliefs; whilst one participant despaired at the fact of being an Asian woman, feeling it left her disadvantaged to the cultural expectations of the community. Participants also described how the in-laws expected them to obey and serve their family.

> I never used to wear jeans or tight clothes. I wore baggy, loose clothes. After marriage, they wanted me to wear a saree, give salams [bow down] by their feet. He let his family rule over me. (Mahida)

> His family was not practising at all. My mother-in-law had traditional views, in her eyes, I couldn't do right. She was always telling me off or having a go at me. When I told my husband, he didn't say anything, and if he did speak, he was angry with me. It was really unbearable, to be honest. (Kulsuma)

> His parents were extremely traditional and cultural. They had this superiority complex 'we're the in-law family, she has to obey us, what we say goes.' (Lily)

> My culture ruined me, right from the beginning, even before I was born [being female]. Our culture created problems. A lot of people [in-laws] were upset. He was upset towards my family. (Jahanara)

Al-Haddad (d.1935) writes about the tradition views in Muslim countries regarding the marital home, and how the husbands' family believe that they have a right to arrange his marriage and control his spouse; in particular, interference and control by the mother [in-law] (Husni et al., 2007, p. 121). In this study, participants mainly

complained about the mother-in-law being interfering, controlling and influencing the husband.

> My mother-in-law used to back-chat me all the time. She would go to my husband and complain about me, tell him lies, so he'd get angry at me. (Tanya)

> I did not want to have kids after kid every year. That was the main issue between us. He said my mum wants more children, he thought I was a [baby making] machine; I had to go along with it. His mother was a big factor in our marriage breaking down. (Jahanara)

Participants found it frustrating that the husbands remained silent when there was in-law interference as if they were complicit. Ehrlich's (2002, p. 180) anthropological study of American society shows that the husband's negative reaction to dealing with the mother-in-law problems is not specifically an ethnic or culture problem rather it is a power struggle within the family structure. This study found there were cultural undertones for the mother-in-law interfering, stemming back to the arrangement of authority in a South Asian family, or in this case, Bangladeshi family. Participants described due to lack of response from their husbands, they spoke out in frustration instead.

> He didn't speak out, so I spoke out. I'm quite upfront. They would complain to him when he came back from work. He'd say stuff to me, but I knew it didn't come from him. (Mahida)

> I hate mummy's boys, men with no brains for themselves. Don't stick up for themselves or the wife. Follow what the family say. I was told a week into my marriage that I'm not patient enough, don't persevere enough, don't wait long enough, don't try hard enough. Give up too quickly and easily. I'm quoting him, the things he said to me. (Lily)

> He would take his mum's side, he knew the full story but he hid from his own family, to cover his back. He would not make them understand, he was too scared of them. (Fahima)

In-law interference extended beyond the mother-in-law and included the sister-in-law and other daughters-in-law in the family. Participants mentioned how the sister-in-law had authority in the family and made things difficult for them, especially with their criticism. There was an expectation that the daughter-in-law (i.e. the participants) should complete all the housework for the in-laws, without the need to show her any appreciation or gratitude, which again contributed to marital problems.

> The day after the wedding his sister said you're not good enough. You're not like how an older sister-in-law should be. I spoke back 'Your brother should have married a servant'. After that, I had nothing to do with her. He worshipped his sister. (Salma)

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> My sister-in-law made it difficult for me. She would be rude to me. My brothers-in-law were not aware of this. I'm not what his mum wanted initially. I wasn't what she expected. The sister-in-law used to make digs, and make comments. (Kulsuma)

> My in-laws were so rude and abusive. They showed no gratitude to me for looking after the house and played one daughter-in-law against the other. My sister-in-law had so much power in the house. (Shilpa)

> His sister got involved. I distanced myself from her and just did the work. My mother-in-law expected me to do everything [housework], whilst pregnant as well. (Jahanara)

The experts explained the cultural expectation of Muslim women in marriage caused marital problems among the spouses. They mentioned in-law interference proved problematic where there are demands upon the wife conflicting with her religious practice or the imposition of a strict traditional interpretation on the role of the wife. The experts viewed living with the in-laws as challenging for the wife, but the problem can also occur living away from the in-laws, as the social network allows in-law interference to continue causing problems in the marriage.

> A lot of the time the problem is culture, the South Asian community have certain cultural practices that conflict with Quran and *Sunnah*. The couple finds it difficult to reconcile these cultural practices with the wider family. (Imam #1)

> The reality is the wife becomes part of the husband's household, she lives with the mother-in-law, father-in-law, and other siblings of the husband; and this is challenging. Even if the wife does not live with the extended family, there is still the influence of social network. (Imam #2)

> The problem is the husband's family may have a cultural expectation that the wife will look after the family. But the wife has a background where she has never done that sort of work before; she never had that expectation imposed on her [before marriage]. (Marriage counsellor)

The in-law interference described by participants identified cultural expectations rather than religious obligations as a factor causing marital problems. The expert also viewed conflicts with cultural expectations i.e. being South Asian, or Bangladeshi contributed to the complexities associated with in-law interference. Thus, whilst in-laws interference may be a problem found in the wider society, this study shows the issues are further complicated by religious and cultural expectations that make unfair demands on Muslim women.

5.1.4   Transnational Marriages

The majority of studies on transnational marriage (TNM) relate to women joining their husband, though there exists some research on husbands joining their wives (Charsley, 2012). As this study focused, on BBMW the cases of TNM mentioned involved the husbands joining their wives. There were fourteen participants with transnational marriages, and from among them, twelve participants cited TNM as a cause for their divorce; seven cases also involved DV and there were three forced marriages.

The participants were primarily concerned their husband married them for entry into the UK and residency. The government definition of a sham marriage is one where the relationship is not genuine but one party hopes to gain an immigration advantage from it; and there is no subsisting relationship, dependency, or intent to live as husband and wife or civil partners (Home Office, 2015). Participants did not describe their marriages as a sham or bogus marriages; rather they felt their husbands' ulterior motive for marriage was for immigration reasons. Participants described how the lack of affection shown towards them made them suspicious of the husbands' motives for marriage.

> After marriage, I stayed in Bangladesh for seven months, came back to the UK pregnant. He had no love for his child. It put more doubt in my mind. He would say on the phone [to his child] 'when is mum bringing me over?' I wondered what his real intention to marry me was. Was it an issue of wanting British status? (Tina)

> I just got used to the man wanting to make money to send back home [sobs]. I knew he married me for residency. We had a child, yet he never gave us any attention, never gave us any money. (Zaynab)

> At first, I said Alhamdulillah [praise to God] he got his legality, he got his passport, but things got worse. I realised he married me to be legal and just to use me [i.e. sex] and nothing else. (Parvin)

> His intention was to move on. He married me just to come over and be legal. I found out he had a girlfriend back home. (Farida)

Surprisingly for some participants, their husbands confirmed their suspicions, by stating they married for passport and residency. The participants' descriptions show that there were marital strains caused by the power struggle in the family structure, and the husbands asserted their authority once they gained residency.

> We had different upbringing, different mentality, it clashed. I remember that argument before he got his legality. He provoked my mum and said 'wait until I get my legality, nothing's going to stop me then.' He threatened us, the nerve of it. (Rushna)

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I said to him [husband] 'you're interested in the passport and money'. He started crying, showing that he would return to Bangladesh if that were the case. Later, when he got his residency, he changed, he said that's [passport] all I wanted'. I was very shocked when he said it, but I knew it all along. (Nabila)

Participants mentioned culture clash as a factor for marital problems with their husbands. Some participants found it difficult to bond with their husbands due to their different backgrounds, whilst others complained their husbands were obsessed with Bangladesh. Some of the narratives show the husbands had a negative perception of British culture.

I never felt I loved him. I always wanted someone from the UK. We argued, I said you should never have married me. I blamed my mother; she said to get him legal. (Lubna)

He was obsessed with back home. We had lots of arguments. We had kids, I gave him the [welfare] benefits, but still, it was not enough, he'd take the petty cash. (Salma)

He generalised everybody, he saw British girls as frivolous and committing *zina* (adultery), and all that stuff. He doesn't see that we live our lifestyle as Muslims here. (Henna)

He said, this is how people in Bangladesh are, I don't follow British law. He didn't want to listen to me. He'd say 'In Bangladesh, women have to listen to men'. I said 'no' you need to respect women, show good behaviour. (Nabila)

In some cases, participants described how they stopped visa applications for their husbands by refusing to follow up applications or appeals. The underlying motives for this cause of action were due to participants feeling the marriage had broken down irretrievably.

I heard he ripped up his visa in an argument with his sister. I called up the British Embassy and was told I have to redo the application. (Henna)

I delayed the application for four years. I didn't apply straight away. His application got rejected. Something missing from his passport or something like that. I thought maybe it's a sign from Allah. I spoke to my parents and told them I don't want to continue with the marriage. I didn't reapply. (Tina)

There were many different aspects of transnational marriages that participants viewed contributed to marital problems; the two key themes were marrying for residency and passport, and a culture clash. As previously described, in the chapter on getting married, many participants entered some TNM against their wishes or faced immense pressure to comply with family decisions, which overlooked compatibility

issues between participants and their husbands, and the motives for why the husband entered such marriages.

5.1.5 Adultery

According to government statistics, one in seven divorces granted in the UK is because of adultery (ONS, 2012a). It is difficult to say to what extent adultery is a cause for divorce in the Muslim community, as sex outside of marriage is generally a taboo in Muslim societies, and adultery is forbidden and a sin, and punishable according to the Quran (Ali, 2011, pp. 549-550). Nine of the participants cited adultery as a reason divorce. Participants described how it was obvious their husbands were having extra-marital affairs. One participant mentioned how the husband fled the scene upon discovery of the affair, whilst others mentioned the husbands' defiance in questioning their activities.

> He used to go for air here and there [means sex with other women]. When I was in Bangladesh, he went AWOL for four to five days. He was packing his bag and I said 'when will you return?' He said, 'If I do, I do, why are you asking me.' (Parvin)

> He was with other women from the beginning of our marriage. He moved in with some next girl, I knew her as well. I went out shopping one day, and I saw them kissing. I thought O God. I used to ask him why he was so late. He's like 'who the hell are you to ask me'. (Rupa)

In most cases, even after the adultery was established, participants continued with their marriage. One participant mentioned how she forgave her husband, whilst others remained in the marriage for the sake of their family.

> At work, he was mixing with different people. He was going astray. I wasn't happy. I found out he had a relationship with her [another woman]. I caught them on the phone as well. I forgave him; I thought it must be a mid-life crisis. (Mahida)

> I heard he was having an affair with a girl back home. I told him [husband] that I wanted to end the marriage. I am sure he had the intention to move on, but my mum made me stay with him to make him legal. (Farida)

> I caught him [husband] cheating. I spoke to him about it, but he got violent and more aggressive. I said I want a divorce. My family got involved and said to forgive him. (Inaya)

Al-Qaradawi (1999, p. 149) says it not surprising that Islam is strict in prohibiting *zina* (adultery) as it leads to confusion in lineage, breaking up families, and bitterness in relationships. The effect of adultery on some participants' marriage was

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devastating and contributed as the main reason for divorce. Other participants viewed adultery as one of many problems they had to contend with, among other problems such as DV, in-law interference and TNM.

5.1.6 Desertion

Desertion is defined as the unjustifiable withdrawal from cohabitation, without the consent of the remaining spouse, and with the intent of being separated permanently (Herring, 2017, p. 148). Five of the participants mentioned desertion as a reason for divorce. Again, the desertion formed part of other complications faced within the marriage. Three participants mentioned their husband deserted the marriage once confronted with their adultery.

> When he disappeared for a month I realised I didn't need him. He was with another woman. I gave him a few days to make the final decision. His sister called up and said he needed more time, a couple of weeks. I heard nothing from him. He wasn't supporting me or his child. It was affecting my health. I put his clothes in a suitcase and took it to the girl's house. He saw my brother and me and ran away. My brother said, 'Let him go, he's a coward.' (Faiza)

> I told my dad he had another woman, but I was made to stay with him. Four years later, he decided he wanted to move. Packed his stuff and walked out the door. I said 'what about the kids?' He said he'd still see the kids. (Monwara)

> He admitted seeing someone else and wanted a divorce. I got upset and said 'I don't want a divorce.' He took action and moved out. Later I found out he had married by *nikah* with someone else. (Saima)

Desertion for two other participants came at the end of enduring DV and In-law interference. One of the participants mentioned how her husband left the marital home, taking with him valuable possessions; whilst another participant was shocked that her husband walked out having just returned from a trip abroad.

> I went to see my parents, in that four-five hours, he took everything, clothes, money, jewellery, everything. When my dad called him and tried to reconcile. He [husband] said 'I didn't leave with everything to return.' Parvin)

> He came back to this country. That night he slept, next day he said he's going to his parent's house, and he's leaving for good. He gave me *talaq* [divorce] and left saying he'll come back later for his things. (Mahida)

No doubt, the cases of desertion mentioned highlight underlying problems in the marriage. All bar one of these five participants did not expect or want their husband to

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leave the marriage, though the participants themselves were suffering from other problems by remaining in the marriage.

5.1.7   Polygamy

According to some reports, there is a high rate of polygamy practised among British-Muslims, and polygamy is one of the reasons why Muslims do not register their marriages (Grillo, 2012, Stewart, 2014). However, polygamy was not high on the list of reasons for divorce among participants in this study. Similarly, polygamy did not form many of the caseloads for the Shariah Council observed. There could be two reasons for this; either British Muslims do not view the practice of polygamy as problematic; or alternatively, polygamy may not be widely practised among British Muslims, and if practised, becomes problematic, hence some cases referred to the Shariah Council. This latter view is supported by Yilmaz (2002, p. 349) who attributes the decline in the practice of polygamy among British Muslims to changes in economic conditions and the improvement of education for women.

Three of the participants cited polygamy as a reason for divorce. In all of these cases, participants found out after they had married that their husbands had other wives.

> Once married, I realised he lies about certain things. His friend told me he [husband] married twice previously. I found out later he still feels he is still married to these two women. (Rahima)

> He disappeared for a week. I called his phone, another lady answered, she said she was his wife. I asked for him but she said he's not around. I found out from his sister that he did have another wife whom he married Bangladesh, who now lives with the family in the UK. Eventually, he turned up and admitted he was married but said he had nothing to do with her but feels obligated to her. (Faiza)

> The worst blow was when he got married behind my back. He's got a child with this other lady. Not sure if he married her before, but I definitely know he is married to her now. (Tina)

These participants expressed they were not happy to be in a polygamous marriage or to be co-wives. One participant felt the polygamous marriage was a betrayal of her trust in her husband.

> I was absolutely shocked. I could not understand what was going on. I felt like I was kicked in the stomach. I trusted him so much, more than my family; I needed to find out more. I couldn't be the second wife to anybody. (Faiza)

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The practice of polygamy found among participants was not accepted as a given right for Muslim men, especially as in all cases mentioned there were deception and secrecy involved. Islamic scholars have discussed the practice of polygamy and its conditions, some argue it is permissible as long as practised with justice, and whilst others contended, polygamy can be prohibited. The approach towards polygamy in Muslim countries vary, the examples of Bangladesh and Pakistan apply the MFLO 1961 which stipulate conditions of seeking the permission of the Arbitration council and the consent of the existing wife or wives; with punishment liable if polygamous marriage contracted without permission. By insisting on a civil registration certificate, the Shariah Council was able to avoid conducting polygamous marriages for legal and moral reasons, and one imam expressed his personal preference to avoid conducting polygamous marriages.

> We avoid conducting polygamous marriages, primarily because it conflicts with English law, and because it can be unjust in the way it is practised among British Muslims, contrary to the way encouraged in the Quran, so they abuse it, and the wives are left without legal redress. (SC Judge #1)

> To date I have not conducted a polygamous marriage, but if asked I would avoid performing the nikah, as many people who practice polygamy do so without justice. (Imam #1)

Polygamy formed one of many factors that inclined participants to seek divorce, however, the problem related to deception on the husband's part in not disclosing an existing wife or wives. Nonetheless, polygamy or the potential state of being in a polygamous marriage was more accepted or caused less problem, when participants remarried, as the difference was informed consent, agency and autonomy.

5.2   *Health Implications*

The previous section mentioned the reasons participants gave for marital breakdown, which eventually led to participants pursuing a divorce. This section of the chapter examines the health implications to participants suffered due to the marital problems. Participants mentioned how the strains of the marital relationship led to problems such as depression, obsessive-compulsive disorder (OCD), anxiety and panic attacks. One participant recalls how her work told her to take time off due to stress.

> I had to travel to work. On route, I had to drop off my child at my mum's. My husband wasn't working, but he had money in his account [hidden from the wife], which I did not know. It was so stressful, my manager said 'you're going to have a nervous breakdown, take some time off'. (Rushna)

In the above example, the husband had money hidden, yet he made the participant struggle in her daily life to earn a living, thus as Raphael (2000, p. 42) reports men use a wide range of economic tactics to control their partners among them preventing women from working. Other participants described being housebound, and isolated from friends and family, with a lack of attention or interaction with the husband or the in-laws. In desperation, these participants would turn to God in prayer, seeking guidance, solace and fortitude.

> I got so lonely. No one was talking to me. I had no phone; he broke it [DV]. I felt so isolated and alone. I was so depressed. All day I stood there and talked to Allah, 'O Allah you are watching, you are seeing this, I'm being isolated, please help me.' (Jahanara)

> I used to look up to the sky and pray to Allah, and say 'why am I unhappy, I'm not asking for much, just time [felt isolated].' I used to pray for guidance and say 'O Allah, I will stick with it [marriage] until I get a sign from you.' (Zaynab)

Isolation is a tactic frequently used in domestic abuse to isolate the victim from potential support systems (Pence and Paymar, 1993, p. 116). Moreover, the lack of attention and support from the husband in the marriage meant some participants felt tied down with the thought of having children. One participant mentioned how she had an abortion and could not bear to have another child, whilst another participant recalls how she wished her first child had died during pregnancy, as an excuse to leave the relationship.

> I was suffering from diabetes; it went, but it came back due to stress. I fell pregnant, I was so unhappy. I went crying to my brother and said, 'I can't have another baby.' My brother asked a mufti (Islamic jurist) who said I could do it [abortion] for health reasons. So I had the abortion. (Salma)

> This may sound horrible. I hope Allah forgives me. I wish my first child died during pregnancy, I was going through depression [crying]. I wish the child died so I could leave him. There are times I wanted to cut myself in front of him. Just to show him, I have feelings too. I'm a human being listen to my problems. Your mum's ruining my life. He just didn't care. I was in major depression. I wanted to die. I couldn't do anything about it. (Jahanara)

Unwanted pregnancies are another means of control with demands and pressure on the partner to conceive and birth control sabotaged (Goodmark, 2012, p. 43). As seen

from the description by the last participant above, many times the situation worsened for participants to the point of wanting to self-harm, having suicidal thoughts or even attempting suicide. Chantler (2003, p. 37) reports there are many inter-linking factors that contribute towards self-harm and suicide attempts among South Asian women such as DV, immigration issues and forced marriage. Participants described their situations.

> I cracked. I felt suicidal. If I didn't have my kids, I would have jumped off the balcony. I felt like a robot, eating, and standing [i.e. emotionless]. (Rushna)

> I hated myself. I tried to commit suicide as well. Because of the torture, I was going through there [at the in-laws]. I hated myself. (Rupa)

> We were always fighting. When angry I felt suicidal. I tried twice. I thought this guy won't leave me, Hell is better. The last attempt was when he said he wouldn't leave me. I wanted to jump off the balcony. I had half my body out and he was pulling me back. I thought in my head that's it. I was screaming 'Allahu Akbar (God is great)' [crying] All I could recall was my kids crying, I went numb and fainted. (Salma)

The above highlights the extent to which participants went to leave a marriage, due to the underlying marital problems discussed in the previous section, such as DV, in-law interference and adultery. The severity of the situation meant many participants even considered suicide, normally an unthinkable act in Islam as the Prophet said such acts condemn a person to eternal hell (Al-Bukhari, 1997, no. 1365). Thus, intervention and health support are required for Muslim women enduring difficulties during their marriage and counselling post-divorce.

The counsellors mentioned the difficulties many Muslim women faced in leaving a broken marriage, mainly due to family pressure to remain in the relationship and the negative view of divorce in the Muslim community. They felt it took courage for Muslim women to leave an abusive and problematic marriage, having exhausted all the means available to them first. The counsellors viewed the lack of family support to leave a marriage leads many Muslim women to contemplate self-harm and suicide.

> Women face the threat of shame from the community [if they divorce]. Victims are isolated and accept everything he [husband] says; they are low in confidence and cannot move away. (DV Counsellor #1)

> People are not interested in dealing with DV. Some women have self-harmed or attempted suicide to get out of the relationship. (DV Counsellor #2)

When the wife is not acknowledged, the argument is a route out of the marriage." (Marriage counsellor)

It takes courage to leave. The majority [of women] have tried speaking to the family, community members and the local imam, and been told to be patient, be a good wife. They've exhausted all other means, and then decided they can't take no more then leave. (DV Counsellor #3)

Previous studies suggest that the rate of self-harm in British South Asian women is higher than the rest of the population, and there are sociocultural factors contributing to depression; and cultural psychosocial stressors for self-harm (Hicks and Bhugra, 2003, Husain et al., 2006). Similarly, this study found participants faced ethnoreligious and sociocultural factors associated with marriage that contributed to the health problems.

5.3   Conclusion

This chapter examined the six main reasons given by participants for marital problems and the causes for pursuing a divorce. Some of the reasons given such as DV, adultery and desertion are common within the wider society. The participants' experiences showed there were religious and cultural influences associated with the abuse experienced, in its different forms: physical, emotional and financial. The concepts of shame and honour played roles in perpetuating the abuse and refrained participants from seeking support to tackle DV. There was an expectation in the Muslim community that women be patient and have forbearance when martial problems occurred including domestic abuse. In asking participants to reconcile with abuse partners, Mosques and imams may contribute to the problem of prolonging abuse, though the experts interviewed did not tolerate DV, thus agreed an educational programme was required to create awareness of DV in the Muslim community that domestic abuse was not acceptable.

In like manner, adultery is a taboo subject in the Muslim community; some participants chose to remain in the marriage, whilst the families of other participants pressured them to stay to save face in the community. The husbands that deserted participants were rarely accounted by the family or the community, even though in some cases they were also the cause of other marital problems suffered by participants. An

examination of in-law interference, transnational marriages and polygamy revealed further cultural and religious influences. The extended family network played a major role in participants' marriages, especially as there was an expectation to live with the in-laws. The distribution of power and authority in the extended family i.e. in-laws left participants as subordinates and accountable to other members of the husband's family, which in many cases led to domestic abuse. In exploring transnational marriages, two main themes emerged, marrying for residency and culture clash, though this study did not reveal any sham or bogus marriages. In examining polygamy as a reason for divorce, participants' experiences show an unwillingness to enter such marriages, and where incidents did occur, they did so without consent or approval from the participants.

The last section of this chapter explored health implications to participants due to the marital problems. The narratives gave an insight into numerous health problems suffered such as depression, OCD, panic attacks and anxiety. Moreover, some participants felt overwhelmed with marital problems to the extent of self-harming, having suicidal thoughts, and attempting suicide. In summary, this chapter gave an insight into the immense pressure participants felt due to marital problems, and identified cultural and religious influences that further exacerbated problems. No doubt, these influences delayed participants from seeking remedies, as discussed in the next chapter on dispute resolution.

Chapter Six: Dispute Resolution

6.0   Introduction

Following on from the chapter on marital discord, this chapter provides an examination of participants' experiences of dispute resolution. According to Webley (2013), in family disputes, there are two main approaches to resolving disputes, an adversarial approach involving solicitors and courts, or a consensus-based approach using family mediation professionals; the latter form is also termed Alternative Dispute Resolution (ADR) and refers to processes that avoid litigation or formal adjudication (Roberts, 2014). The ADR process can still have adjudicative options involving lawyers trained as arbitrators or mediators, or non-adjudicative options such as negotiation, mediation and conciliation (Blake et al., 2016, p. 24).

Previous studies on the British Muslim community have identified different forms of ADR. Some studies have focused primarily on the experiences of British Muslim women and their use of Shariah councils (Bano, 2012b, Jaan, 2014, Shah-Kazemi, 2001). Other studies have explored the different forms of ADR used by the Muslim community, such as family, friends, imams (Akhtar, 2013b) or *biraderi* (extended kinship network), *adula* (elders or trusted elders), and *pirs* (heads spiritual orders) and coteries (small group of people with similar interest) (Keshavjee, 2013).

The government recognises the value of marriage and the need to reconcile wherever possible, as such the FLA 1996 states that marriage is an institution, and parties to a marriage, which may have broken down, are encouraged to take all practicable steps, whether by marriage counselling or otherwise, to save the marriage. Since 22 April 2014, in England and Wales, it is a legal requirement in most cases, that divorcing couples attend a Mediation Information & Assessment Meeting (MIAM), with the exemptions being cases involving DV and child protection concerns (Sendall, 2017, p. 31).

Similarly, the importance of marriage and family has been persistent throughout Islamic history and Islamic societies (Gilliat-Ray, 2010, p. 134). The Quran encourages reconciliation, as the verse says 'If there appears to be discord between a wife and her

husband and if they desire reconciliation choose arbiters from the families of both sides' (Quran, 4:35). Furthermore, the *Sunnah* (tradition) of the Prophet shows that divorce is among the most detestable of permitted acts (Abu Dawud, 2008, bk. 12 no. 2173), meaning not to pursue divorce lightly or without attempts of reconciliation. Nonetheless, the Prophetic tradition does not supersede the fact that the Quran permits divorce, and recommends parties that decide to separate, do so in an amicable manner (Quran, 65:2).

The major themes that emerged from the data on the subject of dispute resolution were reconciliation, mediation, counselling and separation. This chapter discusses these themes in the context of their mainstream definitions as used in the wider society, and the ethnoreligious understanding of participants, and the norms of their community. The experts provided a further insight into these themes and described their experiences of dealing with dispute resolution in the Muslim community.

6.1 Reconciliation

One definition of reconciliation is a situation where two people or parties become friendly again after they have disputed (Cambridge Dictionary, 2017). In the UK, the terms mediation and conciliation are used interchangeably, though the latter term refers to a general approach to mitigating family conflicts (Roberts, 2014, p. 9). Part of the policy of divorce laws is to save saveable marriages; hence, Part 1 of the MCA 1973 aims to encourage reconciliation, thus a court can adjourn divorce proceedings if there is a reasonable chance of reconciliation (Standley and Davies, 2013, p. 135). Under section 10(1) of the Children and Families Act 2014, it is now a requirement for a person to attend a MIAM before making a relevant family application e.g. divorce.

Participants in this study mentioned the dilemma they faced, and to whom to turn for dispute resolution during marital discord. In describing their situations, four possible scenarios emerged from the data: to speak to the husband, to involve family, to involve the in-laws, or to involve outsiders (e.g. imams or mediators). In the first instance, a few of the participants mentioned they spoke to their husband in an attempt to resolve marital problems. However, speaking to the husband proved an ineffective method of resolving disputes, especially as the husbands in many cases were the cause of problems

such as DV, adultery, desertion and unreasonable behaviour. Thus, speaking to their husbands only infuriated them and caused angry responses.

> Researcher: Did you speak to him about it [problem] or approach him?
>
> Participant: I did but it's my life. If you don't like it [she raises voice upset]. He used to have this effing language all the time. (Rupa)
>
> When I told my husband, he didn't say anything, and if he did speak, he was angry with me. It was really unbearable, to be honest. (Kulsuma)

The experts mentioned that it was mainly women who wanted to save their marriages, due to the hopes and aspirations they have of the relationship.

> The majority spend years before they leave. They have so much hope for the marriage. They try to make it work; give a second chance. They've been told it will work, they have false hopes. (DV Counsellor #3)
>
> Women want to save their marriage. They don't give up even in an abusive relationship. (DV counsellor #2)

Some participants were shocked to learn their husbands had preceded them in complaining of marital problems to the participants' families. This caused embarrassment and brought shame to the participants, with suspicions from their family that they were the cause of the problem.

> He [husband] called up my family and told them I'm having an affair. My brother didn't say anything to me [felt she was guilty]. My dad said you can't say that about my daughter. What proof have you got?' (Zaynab)
>
> I feel embarrassed to say this it's so shameful; he used to call my family and say I'm not fulfilling his [sexual] needs. (Shopna)

Thus, trying to resolve issues among themselves, between husband and wife was not practical due to the nature of the marital problems experienced, and the unwillingness of the husband to acknowledge and address the suffering of the wife from the problem.

6.1.2   The Family

In the majority of the cases, participants turned to their families, some with reluctance. The initial response of the families was to try to facilitate reconciliation between the participants and their husbands. According to Bano (2012b, p. 121), Muslims view

reconciliation as a moral duty and a religious obligation. Doi (1998, p. 130) maintains that Islam discourages the use of courts of law during family disputes and recommends the use of arbiters from each side of the family in accordance with the Quran. Nonetheless, the use of family courts in Muslim countries is well documented throughout Islamic history (Sonbol, 1996). The majority of participants turned to their families during disputes; they described how their families responded by approaching the husband and his family with a view to reconciling.

> My sister asked me 'what's wrong?' She could sense there was tension between him [husband] and me; we weren't talking. I replied 'nothing', but she got it out of me. She said she's gonna tell the rest of my family. She told my mum, who contacted my mother-in-law. (Polly)

> The community says you can't leave, you've got kids. I told my parents I can't live with him anymore. My mum and dad were constantly patching things up between me and my husband. (Rushna)

As mentioned in the previous chapter on marital discord, participants mentioned cultural concepts of shame and honour were influencing factors in reconciling the marriage. Thus, in some cases, participants avoided involving their families fearing shame and dishonouring the family, whilst one participant mentioned that she did not disclose her problems to avoid her family disrespecting her husband, even though he was the cause of much misery in her life.

> I was ashamed to tell my parents because of *izzat* (honour)... After many years later, the truth came out. I started saying I was beaten. My parents cried a lot and said why I did not say anything earlier. (Parvin)

> I was too embarrassed to tell my family. I didn't want my husband to look lowly in front of my family. I wanted to maintain his respect. (Zaynab)

By involving the family, many participants faced immense pressure to remain in the marriage. Gilliat-Ray (2010, p. 142) comments, as the family has a pivotal role in contracting the marriage, they have an important part to play when a marriage has broken down. Jaan's (2014, p. 7) study of Muslim women facing honour and cultural based abuse, found that nearly half the participants felt they would not receive support from the community if they decided to divorce. Munro (2012b, p. 152) reports that women's organisations argue that in practice, women's attempt to reconcile can lead to undue levels of social pressure in the face of continued threat. Participants were told that

the difficulties they faced were normal, and to be patient under the circumstances. One participant described how her family was afraid God would be angry if she divorced. Other participants mentioned their families did not want to involve the authorities such as the police, social services, or the courts, fearing the consequences of involving such authorities.

> I told my mum I wanted to leave him. She was not happy; she said 'Allah is going to be upset with you. You've got kids, you're a mother. Live with him, stay with him. You should have split before you had kids.' (Lubna)

> I thought I can't live like this, I can't cope. My parents kept sending me back. They said 'be patient, this is how it is. What can you do [speaks Bengali], be patient, you need time to adjust' (Kulsuma)

> Nowadays girls would take action [against their husbands]. My parents said 'don't do that, don't go to the police, don't' go to the social services, your life will get ruined.' (Jahanara)

> I wanted a divorce. My family asked me to stay with him. They said to 'forgive him, don't take him to court.' (Inaya)

The experts explained the reasons why their clients mainly turned to families and friends rather than to use professional services or outsiders to resolve their marital disputes, which ranged from issues of trust, cultural sensitivity and cost. Akhtar's (2013b, p. 277) study revealed the majority of the British-Muslim respondents would turn to their family first, reflecting a family-centric approach to resolving disputes, in line with Islamic teachings. However, the experts viewed that involving friends and family did not necessarily resolves the matter, mainly due to their inability to understand the nature of the problems, for example, DV, and therefore involving families sometimes made matters worse for their clients.

> They use friends for mediation. It is less cost, plus it is about whom they trust, culture comes into it as well. (Solicitor #1)

> People turn to the family first, then the community. The family don't understand DV, they start victim blaming. In DV it is not a case of provocation. (DV Counsellor #2)

> Families make things worse, their inability to make things better. (SC Judge #1)

The experts were especially critical of cases where their clients received pressure from their family to reconcile when DV was involved. Even the government policy on MIAM exempts victims of domestic violence from attending mediation meetings

provided they have evidence of DV. Smith (2005, p. 323) argues reconciliation widely used in restorative justice models run contrary to domestic violence work, and women should not return to situations where battering has occurred. In spite of their awareness of religious and cultural sensitivities in the Muslim community, the experts did not recommend reconciliation in DV cases.

> Clients get pressure from the community to reconcile. (Solicitor #3)

> Reconciliation is not always the best, in DV cases. It could be down to a life and death situation, women have been in the hospital. (DV Counsellor #2)

Some participants mentioned their families were supportive of dispute resolution, and they received encouragement to leave their husbands; though not in every case did the participants follow their families' advice.

> My family were supportive. They believed it was his fault. They knew no good would come of this marriage if I stayed with him. (Rahima)

> He [brother] wanted me to leave my husband. They had a fistfight, my brother swore at my husband. I got angry at my brother; he didn't interfere again after that. (Salma)

6.1.3   The In-Laws

As discussed in the previous chapter on marital discord, one of the common reasons for marital problems was in-law interference. According to a report on marital breakdown by legal professionals, interfering in-laws are responsible for one in 10 divorces in Britain (Bingham, 2013), thus, the problem of in-law interference is not necessarily culturally specific. Participants mentioned that when a problem occurred, in many cases, the in-laws also became involved in dispute resolution. Some participants mentioned the pressure they received from the in-laws to reconcile; though they viewed reconciliation was not for the sake of matrimonial harmony, rather their in-laws had ulterior motives. One participant described how her in-laws persistently called for reconciliation, in order to bring her husband to the UK, whilst another participant suspected reconciliation was for the sake of keeping contact with the child.

> Since his application got refused, I didn't want to continue with the marriage. My parents were supportive, but his extended family applied pressure [to reconcile] every day, it went on for years. (Tina)

He [husband] involved his family for me to go back. I said 'I'm not going back.' The only reason he wants me back is for our child, then he'd kick me out. (Rupa)

Other participants mentioned how their in-laws created obstacles or hindered reconciliation with their husbands. Whilst, in other cases, participants described how their in-laws could not influence their husband to reconcile.

They [in-laws] wouldn't let patch things up. They said you've decided [to leave] and used that against me. (Fahima)

He got his sister involved. She made excuse for him; she said he's got responsibilities. (Salma)

His mum's bare [slang 'a lot'] involved. She doesn't shout at him. But he shouts back at her, she can't do anything. (Polly)

Nobody could advise him. Not even his family. If they said anything to him, he would humiliate them. He had such a sharp tongue. (Parvin)

A few participants mentioned their in-laws were supportive of them during their disputes with their husbands, though this was rare among participants, as in most cases the in-laws were hostile and uncooperative during marital disputes.

His sister [sister-in-law] understood, she said 'I understand everything you've gone through'. She understood the torment I've gone through. His mum and dad supported me. (Henna)

I got kicked by him [husband] when I was pregnant. It was because I invited his brother [i.e. brother-in-law] for dinner. His brother was good, supportive. (Salma)

6.1.4   Outsiders

In a few cases, participants sought the help of an outsider i.e. other than their family, friends or the in-laws. One participant described her situation and the dilemma she faced with the lack of guidance on dispute resolution.

I was young and had no guidance. I didn't want to go to my family, they didn't have much knowledge. So whom do I ask? I didn't know I could ask an imam at the mosque. (Faiza)

In the above case, the participant felt specialist Islamic knowledge was required to resolve her marital problem; she did not turn to professional counsellors or mediators or take a legal course of action, rather sought Islamic advice. The experts interviewed explained that people turn to imams due to their knowledge of Shariah and their status in the Muslim community.

> The imam is seen as the most respected person in the community. He is seen as being wise, and his guidance is given weight because of that, and because people feel he is qualified to give the appropriate advice. (Imam #1)

> People want Islamic answers; it is inevitable that anyone who has studied Shariah sciences, Islamic studies, would be asked, even if they are not imams. (Imams #2)

Bano (2012b, p. 92) views imams as a linkage between mosques and Shariah councils, and who also act as mediators resolving marital disputes. In Macfarlane's (2012a) study of North American Muslims, it was common among the community to use imams for advice or intervention, though the imams mainly focused on reconciliation and preserving the marriage. The experts in this study mentioned the use of imams, counsellors or Shariah councils was usually the last resort, and even then, clients may not reconcile.

> People come to the imam or the mosque after they have tried on their own to rectify the situation. They would incorporate their family and trusted friends. The last resort would be the imam. (Imam #1)

> Sometimes clients have been to an imam to get Islamic advice. We prefer them to go to the scholars for advice on faith. We help our clients understand the therapeutic process, and give them emotional support. Imams do not offer this service; they do not fully understand the dynamics of what is going on in the relationship. (Marriage Counsellor)

> The majority of clients [that come to the Shariah Council] do not reconcile. It is nice when it happens, but it is rare. (SC Judge #1)

The Shariah Council application forms for *khula* divorce stipulate that women applying can expect the council wherever possible to reconcile between the applicant and her spouse. However, in the case where the husband is the applicant, the council simply advise him to arrange an arbitration meeting with elders from both families with a view to reconciliation. This differentiation between the genders is due to the Shariah Council viewing men have the unilateral right to divorce (*talaq*), whereas women need a valid reason to divorce.

6.2 *Mediation*

Mediation is a process of consensual decision making, whereby a third person i.e. the mediator assumes an impartial role and assists disputing parties to reach their own mutually acceptable agreements (Roberts, 2014, p. 2). The fundamental characteristics of mediation are impartiality of the mediator, voluntariness of the process,

confidentiality between the mediator and the parties, and procedural flexibility available to the mediator (McCrory, 1981, p. 56).

Previous studies have found the involvement of imams and Shariah councils in mediation often worked in the framework of reconciliation, as divorce is discouraged, and imams did not want to be responsible for breaking up marriages (Bano, 2012b, p. 104, Macfarlane, 2012a, p. 86). However, the experts interviewed for this study were clear in the distinctions between reconciliation and mediation, and the need for clients to make consensual decisions rather than face arbitration.

> Mediation is not reconciliation; it's an opportunity to speak. Men do not hear their wives. It is good for them to sit together, even if the wife is screaming at him. People learn from their mistakes. The wife can let her husband know why she is unhappy. Men sit in a cuckoo world and do not internalise what is happening in the marriage. (SC Judge #1)

> Sometimes people are thinking about divorce but are not sure. They come to the Shariah board or imam wanting mediation, guidance, is divorce the right way? (Imam #1)

Furthermore, the Shariah experts were aware of the legal nature of mediation and equated its benefit to the Islamic perspective of mediation.

> In English law, it is mandatory to have mediation. We [Shariah Council] insist on a short meeting, say ten minutes, though it could last two hours, depending on the need. (SC Judge #1)

> I'm not saying mediation is obligatory from an Islamic perspective but I think it's a must for couples. When I heard about MIAMs in English law, I was very happy. There is wisdom behind it; if people mitigate some of the problems outside court through professional mediation they save money and a lot of hassle. (Imam #1)

Mediation was an uncommon theme among participants, they described how their husbands refused mediation or the families including the in-laws objected to the involvement of an outsider.

> I told my husband, I met this guy [fortune-teller] who said our marriage was in problems. I think let's go and see someone to fix our marriage. He didn't listen to me. I said we're arguing like someone's cursed our marriage. He just walked away. (Zaynab)

> My mother-in-law didn't want to fix things, just ranting. My brother got involved. They [in-laws] wouldn't bring an outsider like an imam or someone known mutually. (Kulsuma)

Similarly, in studies by Shah-Kazemi (2001, p. 56) and Macfarlane (2012a), the participants rarely pursued mediation, and the husbands refused mediation denying any problems in the marriage. Nonetheless, there were some cases involving outsiders as

mediators in this study, such as imams, members of the extended family and the community. Two of the participants mentioned the use of imams in resolving their disputes. One participant viewed that the imam did not account the husband or address the issues causing the problem, whilst another participant felt the imam was powerless in influencing the husband to make progress during the mediation session.

> The families had a meeting and they had an imam present. They brought my husband, but they did not discuss the issues, just said 'say sorry to each other.' My mum was not happy with the meeting. She wanted something proper; they didn't go to the root of the problem. (Aisha)

> He will not give the gold back. Currently, we're seeing an imam for mediation. It is not progressing, my husband keeps saying he's got no money, he's suffering from stress. (Rahima)

Participants also mentioned involving extended members of the in-laws family, and other families.

> We went to his uncle's house [for mediation]. He [husband] said 'She's [another woman] is a friend. I didn't believe his story. That night he sneaked out of the house. I called his uncle up at 1 pm and told him. His sister called me back. I said 'If he wants to go, then go [leave marriage] but he's got to say.' (Faiza)

> My parents tried, my brothers, my mum's brother [uncle] tried to speak to him. His uncle tried to speak to him but he never met with his uncle. (Mahida)

> The family that arranged our marriage, like the middle person, got involved. They spoke to his family about returning goods and gold. I got half of my items back, they kept the gold. (Tanya)

In Shah-Kazemi's (2001) study, participants preferred mediators with the same cultural identity, as it instilled confidence that they would have a similar understanding of the problems, and to have Islamic knowledge further inspired respect for the mediator. Malik (2012, p. 8) contends that mediation services run by untrained mediators might fail to accommodate the needs of minority groups which could result in individuals turning to minority legal orders (MLO) outside the [legal] protection of the state system. The experts mentioned the complexities in dealing with Muslim clients, particularly the need to have a religious and cultural understanding of clients' situations to enable them to move forward.

> Initially, we began with a normal mainstream approach. We were bombarded with Muslim clients. They needed an understanding of their situation, connection with spirituality and

cultural reasoning. This helps Muslim clients feel they can move forward more so. (Marriage Counsellor)

Some clients use religious mediators or friends. The issue is 'shame'. They don't want to discuss their problems with outsiders. Men control women, and women comply because of the shame of knowing about what happens in the home. (Solicitor #1)

Despite the availability of cultural and religiously sensitive mediation services, the uptake of this service is low among the participants and the experience of the experts due to the norm within the Muslim community, which views family disputes as a private matter.

6.3   Counselling

Counselling refers to an interaction where a person seeks to explore, understand or resolve a troubling personal aspect of a practical issue (McLeod and McLeod, 2011). Islamic counselling is a therapeutic approach based on the Islamic understanding of the nature of human beings that incorporates spirituality into the therapeutic process (Rassool, 2015, x). One of the counsellors interviewed, explain why people use their Islamic counselling services.

Many people are aware of our organisation. We specialise in Islamic counselling and cater to the Muslim community. A lot of people come to us for that purpose… Sometimes they [clients] have been to mainstream therapists who couldn't connect with them and couldn't understand their spiritual needs, so they come to us. (Marriage counsellor)

Similar to mediation, very few participants mention incidents of seeking professional counselling. Some participants had the desire to attend counselling to resolve their marital disputes. One participant mentioned how her husband refused counselling, whilst another participant described her frustration with the outcome of the mediation session.

He had this temper. I advised him to go to anger management go to counselling. He didn't want to disclose anything. It would be embarrassing for him. (Aisha)

We have been to a marriage counsellor, a professional; there is only so much they can do. They said to him [husband] your wife has been through a lot, she cannot have patience and tolerance for the things that are happening in your marriage." (Lily)

Some research suggests that traditional gender roles affect the avoidance of seeking professional help, with men feeling the need to be independent and in control,

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and seeking help threatens their self-esteem and their ability to handle problems on their own, with an increased feeling of failure (Addis and Mahalik, 2003, Riska and Ettorre, 1999). The experts viewed that men refused to attend counselling sessions due to their ego, and their inability to admit to mistakes, and discuss their feelings; though they argued couples could benefit from attending professional counselling sessions.

> People need to say to couples get counselling. Go to relate, or anonymous.org or Muslim.org [synonyms]; they need to get help before the problem escalates. We offer a counselling service; women attend, but men do not turn up. For men, it is hard to admit to their mistakes or to talk about their feelings. The issue of ego is common among men. (SC Judge #1)

> Men don't want to go to counselling and blame women. Proper counselling could save the marriage. It doesn't help to deny issues or cover them up. (Solicitor #1)

According to McLeod (2013, p. 10), there are many ways that counselling can help people move on, such as by providing an insight into emotional difficulties people face and to take control over their feelings and actions. In addition, McLeod (2013, p. 10) considers that counselling helps people to relate to others by forming and maintaining meaningful and satisfying relationships, and helps find solutions to a specific problem that clients have not been able to resolve on their own, and encourages behavioural change to modify and replace self-destructive behaviour.

Thus, counselling is one the dispute resolution options that could have resolved marital problems faced by participants. However, the level of avoidance of counselling observed in this study shows that a greater awareness campaign is required within the Muslim community to educate people about the benefits of counselling and to overcome barriers that hinder approaching counselling services.

6.4 Separation

Participants mentioned that the marital disputes in some cases led to a period of separation. Gadou (2008, p. 25) believes that separating is a state between staying married and divorcing, whereby the couple have reached a point where other interventions and tactics to save the marriage have not worked; separation can lead to divorce, though a period apart can also bring people together. Mantle (2002, p. 27)

claims separation is an established fact before either party takes legal action or understand its consequences for the marriage.

Participants mentioned that their situation reached a point they had to separate from the husband; and in many cases, participants returned to their families' home. Some participants described how their family were unsupportive or that they felt a burden to their family. A few participants were worried about the consequence of separating, and its effect on future proposals of arranged marriage for their siblings.

> I went back to my parents. My dad was so embarrassed. He couldn't stand me. He used to hate the sight of me. (Rupa)

> I was worried that I would be the first to divorce, and my sisters may not get proposals. I felt like I was a burden, not working, and my family have to deal with me. (Rahima)

According to Martin (2000, p. 2) research shows many abused women hold optimistic or unrealistic biases in their beliefs about personal risk in returning to their abusive partners. Thiara (2009, p. 220) argues a lack of public support [funding] and the influence of social networks [friends and family] create a situation pressuring women to return to their partners. In some cases, participants who separated due to DV returned to their abusive husbands against their family's will, preferring the situation in their marital home rather than the family home, though this led to further abuse by the husband. One participant left her family home after being isolated and imprisoned by her own family during the separation. Another participant returned to her abusive husband for the sake of her children.

> That night I told my family 'if you don't let me go I'll call the police and say you're holding me.' They said 'if you step out, we don't want to see you again [i.e. disowned].' My brother drove me home, and told my husband 'we don't want her anymore, if she dies or not, we don't want to know.' My husband had the upper hand. [Thereafter] Everyday he hit me. He made sure I was struggling. (Zaynab)

> At one stage my mother kept me whilst my dad was abroad. I wrote a nice letter to my dad in Bengali, explaining that I have kids they have a future, I'm returning back to my husband. When my husband knew I left my parents, he was like 'why are you here. I don't want you.' I made a mistake I told him I wouldn't return to my parent's place. He was shrewd; he picked up on this point. Now he thought let me beat her more. (Parvin)

Some participants mentioned moving out to a separate accommodation given by the local authorities, due to DV or overcrowding in the family home. Local authorities

have measures to provide victims of domestic violence emergency or temporary housing, as the Housing Act 1996 states, it is not reasonable for a person to live in in the accommodation if there is the possibility of DV. Participants were aware of their rights to separate accommodation due to DV and described their circumstances.

> I moved house because of the DV. They [local authorities] helped me move house with my children, they didn't give the address to my husband. (Nabila)

> I went to the people who do benefits, and they helped me [find housing]. My dad had to write a letter that there's not enough space; within two to three months, they gave me temporary accommodation. I lived there alone with my child. (Rupa)

Other participants mentioned how their in-laws expelled them from the marital home. Two of the participants described how their in-laws made the decision to exclude them from the marital home after an argument. In both cases, the participants were living with their in-laws, rather than in their husband's home, so they felt no option other than to leave.

> I went to my mum's for a few days, to get some rest. My mother-in-law called up my mum and made a scene, she made out as if we've separated and getting divorced. They wouldn't let me back in their house; they packed my stuff and sent everything back in a week. (Fahima)

> That day I had enough. I was under stress, and took it out on him, chucking stuff, throwing his letters. My mother-in-law said 'call her parents, she's gone mad.' So my brother came, [then] they chucked me out of the house. (Mahida)

In contrast, where participants lived solely with their husband, some took action to remove the husband from the marital home. One participant gave her husband an ultimatum to leave, whereas, in many of the cases involving DV, participants called the police to remove the husband from the property.

> I walked out with my kids. I told my parents 'keep me here, let him move out.' They said 'ok, fine.' That night he still had the keys. I walked into the house the following morning. He said he was sorry, and started begging. I said 'either you leave or I leave.' He walked out. I went out and changed the locks myself. (Rushna)

> When he got upset, he got physical. I got the police involved to kick him out, I had no choice, my family was getting nowhere with him. (Lubna)

Sections 24-33 of the Crime and Security Act 2010 give the police the powers to issue a Domestic Violence Protection Notice (DVPN) and Domestic Violence Protection Order (DVPO). These protection notices and orders can prevent the perpetrator of DV

from returning to the residence and contacting the victim for up to 28 days. Thus, allowing victims a degree of space to consider their options, though a court hearing is required within 48 hours of issuing a DVPN (Home Office, 2016a).

In some cases, the husbands deserted the marriage and thus precipitated the separation; whilst in other cases, the separation was due to the participants not applying for a visa for their husbands to join them in the UK. Overall, the separation was a precursor in many cases to divorce.

6.5   Conclusion

Following on from the previous chapter, which identified marital problems, this chapter examined participants' experiences of dispute resolution. English law encourages reconciliation in cases of saveable marriages, and there are Quranic injunctions that encourage reconciliation, and the disapproval of divorce is found in hadith literature. Four main themes emerged from the data analysis: reconciliation, mediation, counselling and separation. In examining these themes, it is evident there are cultural and religious norms which affect participants' experience of dispute resolution. In most cases, participants experienced efforts to reconcile in the face of ongoing problems and experienced pressure to remain in the marriage from the family, friends and the Muslim community, which included imams and the Shariah Council. In the face of DV, there was a community expectation that women should suffer any marital difficulties and remain patient, and not involve external authorities. Thus, the experts stressed the need to provide alternative support rather than advise reconciliation in DV cases.

The use of outsiders other than family or in-laws was rare among the participants. Unlike in other studies, participants in this study did not use *biraderi*, *adula*, and *pirs* and coteries – reflective of the Indo-Pakistani subcultures (Keshavjee, 2013), thus, highlighting subtle ethnic differences between Bangladeshi Muslims and other South Asian Muslims. Existing studies identified the use of imams and mosques for mediation, however, the experts commented that Muslims only referred to professionals such as imams, solicitors, mediators and counsellors as a last resort; and preferred to use family and friends for reasons such as trust, religious and cultural

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sensitivities, and cost. Participants' experiences of dispute resolution showed there was great emphasis on preserving family honour and avoiding shame by not disclosing family problems to others. Nevertheless, some participants attempted to seek professional mediation and counselling service but faced resistance from their husband to attend such sessions. The experts viewed there are men avoided such services for various reasons among them not to be accounted by others, though they asserted that professional services could help clients resolve disputes, and save marriages, or at least provide solutions to allow clients to move forward. A major barrier is a norm which views family disputes as a private affair, experts claimed some families are incapable of resolving disputes due to lacking skills and having awareness of techniques to tackle marital problems, and therefore involving families could make matters worse for their clients.

The use of local authorities and other agencies was more apparent in situations where participants faced DV, in which case the police responded when called to intervene in domestic disputes, and the local authorities provide housing to the participants who were the victims of DV. However, even in cases of DV, some participants lacked support from their family in pursuing separation; as a result, some participants chose to return to their abusive husbands, even with the prospect of further abuse. Separation was a sign for many participants that the marriage had broken down, and even after attempting reconciliation, for many participants, it became evident the situation was such that divorce was inevitable. Overall, there were limited options for participants in dispute resolutions, dictated by ethnoreligious norms in the community, and attempts to challenge some of these practices faced resistance. Thus, there is a need to improve practices within the current dispute resolution mechanisms available, to provide women with suitable outcomes according to their needs in relation to their marital problems.

Chapter Seven: Getting Divorced

7.0 Introduction

This chapter presents the findings for the primary focus of this thesis 'divorce'. The previous chapter discussed marital discord, and the data showed many participants worked to reconcile their marital problems first, and only chose to divorce as a last resort, as one expert explained.

> It is not a surprise to them [clients] when they hear the word divorce. It is not something we would voice unless they have mentioned it. Clients have considered it; they have looked at all the possible options first, before looking to divorce as a last resort. (Marriage counsellor)

One prophetic *hadith* seems to overarch all other religious texts in defining the concept of Islamic divorce within the Muslim community; the Prophet said 'Of all the lawful acts, the most detestable to Allah is divorce' (Abu Dawud, 2008, no. 2173). The social stigma associated with divorce means Muslim women may prefer to remain in unhappy marriages, thus, reflecting low divorce rates in Muslim countries (Crabtree et al., 2017, p. 96). Nazneen (1998, p. 86) contends the divorce rates in Bangladesh between the 1970s and 1980s was surprisingly low considering the size of the population and believes this was attributed to social norms that discourage divorce even when the wife is suffering. Others view divorce as a taboo in many cultures for reasons associated with lone parenting, poverty, religious beliefs, social standing and negative labelling, though divorce rates are still higher in Western countries compared to Muslim countries (Gadoua, 2008, O'Reilly, 2010). Siddiqi (2012, p. 35) proposes that today perhaps divorce among Muslims does not have the same stigma as generations past and that divorce is increasingly a pragmatic, albeit undesirable way of ending a marriage.

This chapter is longer than the previous data finding chapters in that it presents many aspects of getting divorced, divided into the following five sections: civil divorce, Islamic divorce, *mahr*, financial relief, and child arrangements. As the majority of participants had a civil marriage, the chapter starts by discussing civil divorce, and the factors that influenced participants to pursue a civil divorce, including the dissolution of overseas or foreign marriages. Next, the section explores the civil divorce process and the consequence of the wife or husband petitioning the divorce and explores

participants' knowledge of the divorce process and their views regarding court fees. The section concludes by discussing religious divorce concerning English law, and the consequences of unregistered marriages in relation to civil divorce.

The second section of this chapter explores the practice of Islamic divorce in Britain. The section starts by confirming the established practices of divorce according to classical Islamic law, as defined by the early scholars of Islam, and then compares contemporary Islamic law found in modern Muslim countries as incorporated in Muslim personal law, in particular, South Asia. The section then examines the three forms of Islamic divorce found among the sample population: *talaq*, *khula*, and *faskh*, and explores the descriptions of the processes, and includes expert opinions and participant observations from Shariah Council hearings. Next, a sub-section discusses Shariah councils and begins with a brief history of their emergence in Britain, and then moves onto the key discussions for and against the use of religious tribunals, and a critical review of the Shariah Council observed in this study. The section concludes with an insight of the mechanisms participants used other than Shariah councils to secure an Islamic divorce when the husband withheld religious divorce, and the means participants used to verify the choice they made.

The remainder of the chapter discusses three key ancillary issues: *mahr*, financial relief, and child arrangements. Each of the sections, follow the previous two sections, by discussing the key issues in light of classical and contemporary Islamic law, compared with English law, and the practices observed among the participants and the Shariah Council, with expert opinions, and reference to current studies. Thus, this chapter answers the central research question 'How do BBMW divorce in the UK?'

7.1   Civil Divorce

Participants with civil marriages invariably applied for a civil divorce. In English law, according to the MCA 1973, a person can petition a divorce in England and Wales, on the ground that the marriage has broken down irretrievably, based on one of five established facts, often referred to as 'grounds': adultery, unreasonable behaviour, desertion, two years separation with consent for divorce, and five years separation. Part I

of the MCA 1973 deals with the process of divorce, nullity and judicial separation, whilst Part II of the Act is concerned with financial relief for parties to marriage and children of the family. The Domicile and Matrimonial Proceedings Act 1973 lays down the rules for hearing a petition for divorce, though the rules on jurisdiction are complex, and must consider domestic and cross-border dimensions in proceedings (Carruthers and Crawford, 2017). The petitioner for a civil divorce must have been married for one year, so as to discourage the couple from giving up too easily if difficulties arise early into the marriage (Lowe and Douglas, 2015).
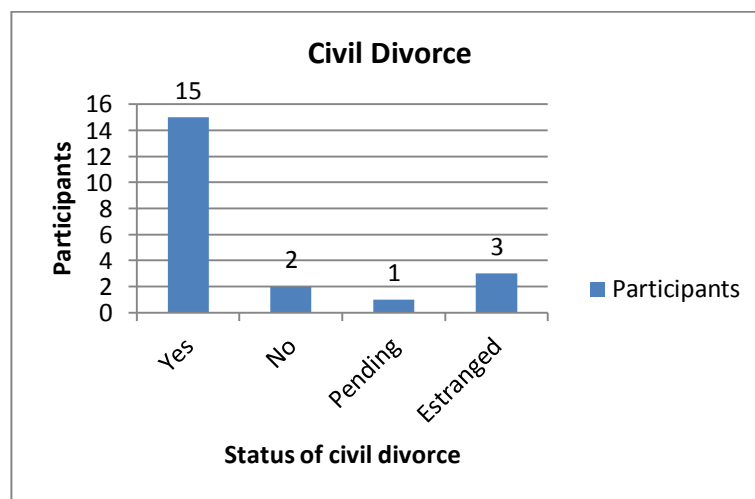
Figure 16 Status of Civil Divorce

Of the twenty-one participants who had civil marriages, fifteen had received their decree absolute, with one participant's application pending (see Figure 16). Three of the participants were estranged and not yet applied for a divorce, and two other participants cited complications in relation to their overseas marriage for delaying their applications for divorce.

7.1.2 Influences to Divorce

Participants mentioned different scenarios that eventually led them to pursue a civil divorce. In some cases, the abusive husbands would taunt and threaten participants to get a civil divorce.

He started to shout and swear at me. He said go and get a divorce, I don't want to be with a woman with men in her life [falsely accuses her of affairs]. I said to him, just be a father to your kids. He said they are not my kids… He said, be thankful I married you, start finding a solicitor. (Nabila)

We were arguing, he started hitting me he said he wants a divorce. I said 'I'm not giving you a divorce. Why should I for what reason? You want a divorce, you go and tell my family, tell your family'…He got a pen and paper and said 'write that you're going to divorce me' when I refused he started hitting me again. I called the police… we separated, after two years I filed for divorce. (Zaynab)

Other participants mentioned how they found an inner resolve to divorce their husbands. One participant described a transcendent moment, whilst another felt divine inspiration in the form of a dream.

It came to point in my life there was no turning back. [Like] I transmitted out of my body and looked down like a fly. I felt like the joke of the town [suffering domestic abuse]. I just needed some to tell me to walk out of the relationship, but nobody is going to support you. You need to do it yourself... I don't believe in violence. When he got physical, I thought that was the end. I locked him out that night. The next day I got an injunction and filed for divorce. (Rushna)

I saw a dream, I heard God saying 'time to get him out of the house.' I took action. I called the police because of DV and took out an injunction. (Lubna)

In many cases, participants that experienced DV mentioned how their contact with the police, solicitors, schools, social workers and the civil courts, influenced their decision to pursue a civil divorce. Some participants took out injunctions first i.e. non-molestation order and then filed for divorce. In other instances, the participants' families insisted on filing for a civil divorce.

He [husband] had a Bengali solicitor, I had an English lady. She said do you want to give him access to the children. I said yes. She said, you can divorce him if that's what he wants, you got so tortured. I had told her everything [i.e. about the DV]. (Parvin)

I got an injunction [non-molestation order]. My family said I should file for English divorce. I was confused. I had feelings for him, but I didn't want to go back to him. I said 'O Allah you know what is right'. (Aisha)

One solicitor explained how many of their clients who experienced domestic abuse refrained from filing for divorce, and often only attended their offices at the insistence of the family.

She [client] went to the solicitor with her family. They were shocked at the abusive behaviour of the husband and took action. Her family pressured her to get a divorce. She wanted to remain married and was a practising Muslim. [Instead] she wanted a deed of

separation, to make clear his [husband's] responsibilities. They formally separated. (Solicitor #1)

In above example, the expert mentioned the client sought a judicial separation instead of divorce. Under section 17 of the MCA 1973, the courts have the jurisdiction to grant a decree of judicial separation, where applicants have to prove one of the five facts as a reason for separation, though in this case, there is no need to prove the irretrievable breakdown of the marriage. A decree of judicial separation does not dissolve the marriage, merely the obligation to live together, and as such; applicants may apply for financial orders under Part II of the MCA 1973 (Standley and Davies, 2013). All participants in this study that petitioned for an application through the civil court chose divorce rather than a judicial separation.

Some participants pursued a civil divorce, against the wishes of their families. In these instances, the families chose to pursue an Islamic divorce first, however as the husbands refused to comply, participants felt the civil divorce process was the best option. Participants explained their situation.

> I wanted the courts to deal with him. He was violent, and harassing me [after separation], stalking me at work. My family were stalling the divorce process, they wanted the Islamic divorce first, but he was not agreeing, so I chose the civil [divorce] path. (Inaya)

> My family got the mosque involved. The imam said I was at fault and did not agree to give an Islamic divorce. I left my family to deal with the issue, and filed for [civil] divorce, as Islamically I was getting nowhere with him [ex-husband]. (Lubna)

Some participants described as estranged were at differing stages of considering divorce. One participant had only recently separated from her husband, and yet to decide how to move forward after the marital breakdown, whilst another participant delayed her application, as the husband was abroad, and not causing any direct harm. In one case, the participant agreed to the wishes of her family to delay the divorce until her husband received his residency, she explained the reason why.

> My family made me marry an illegal visitor. I didn't like him, but he was kind, affectionate and would buy me stuff. After about 6-7 months, realised I could not remain in this marriage, we were incompatible and I wanted a divorce. My family were not happy when I mentioned divorce to them, but eventually said 'okay, but you have to make him legal first', so I agreed. He said 'you can keep the *mahr*', which was gold and cash. (Shopna)

In the above case, the participant was unhappy with her marriage, though, she sought the approval of her family before requesting a divorce. However, the agreement effectively prevented the participant from moving on, until such point that the husband receives his residency, and thereafter the participant can make an application for civil divorce.

Participants did not express any aversion to the civil divorce process from a religious or cultural perspective. There were differing circumstances for delaying the applications for divorce; some participants were in abusive relationships, had children, and felt powerless to leave until advised by the authorities, whilst others faced family pressure to remain married, though eventually, they did make the decision to divorce. In many cases, the civil divorce clearly demarcated the severing of the marital relationship, with the spouses living apart; however, many participants found their husband withheld the religious divorce, and prolonged the process of being completely free from the husband.

7.1.3 Divorce for Transnational Marriages

Fourteen of the participants had a transnational marriage, of which, seven were overseas or foreign marriages. English law has provisions to recognise foreign or overseas divorce. Part II of the Family Law Act 1986, states that overseas divorce obtained by means of proceedings are recognised as valid if the divorce is effective in the country in which it was obtained and that at the relevant date either party to the marriage was a habitual resident, domiciled or national of the country. Furthermore, the Family Law Act 1986 also has provisions to accept overseas divorce obtained by means other than by proceedings, which again relies on its validity in the country obtained, and conditions related to habitual residency and domicile, though neither party should be habitually resident in the UK one year preceding the divorce. Thus, there is no requirement to petition a divorce in the UK, for a validly recognised overseas divorce. Part III of the Matrimonial and Family Proceedings Act 1984 allows applications for financial relief for overseas divorce, on the condition that either of the parties have domicile, habitual

residence or dwelling (marital home) at the time of marriage situated in England or Wales.

In the majority of the cases of overseas marriages, the husbands joined the participants in the UK and gained residence; hence, these participants filed for divorce in the English civil courts. However, in two cases, the participants' husbands were foreign nationals still living abroad, as such; the participants viewed there were complications in seeking civil divorce for their transnational marriages. The participants described their situations.

> I married abroad, but they [UK government] accept I'm married. He took the marriage certificate back with him. I need to get another copy from the embassy before I can apply for a decree nisi in the UK. Alternatively, I can go abroad, and get a judge to say my marriage is over, but then I have to be present over there, and I am not comfortable being there with him [ex-husband]. (Henna)

> My family accepts my wishes that I am Islamically divorced, but they want me to go back to Bangladesh to resolve the legal side. I tried to petition the divorce from here [UK] but the [Bangladeshi] courts said I have to be physically present there. I'm scared to go back. I sought legal advice here, but the person was vague about it, all they wanted was money, more than to give advice. (Tina)

In the above-mentioned cases, the participants were aware they have civil marriages albeit foreign marriages. Therefore, the participants had the choice to travel abroad and have the marriage annulled as an overseas divorce, though their personal circumstances showed this was not a viable option. Alternatively, being British citizens, they had the right to petition the divorce in the UK, however, being unaccustomed with the English law divorce process concerning foreign marriages, participants unnecessarily delayed their application for divorce.

7.1.4   Petition for Civil Divorce

For most participants, the civil divorce preceded the Islamic divorce process. Divorce applications to the English courts require the petitioner to have a legally recognised marriage, been married for at least one year and have a domicile or habitual residence in the UK (MCA 1973). It is compulsory, under Section 10 of the Children and Families Act 2014 for applicants to attend a family mediation information and assessment

meeting (MIAM) before making a relevant family application i.e. divorce; nevertheless, victims of domestic violence or abuse are exempt from attending a mediation meeting.

Of the sixteen cases of civil divorce applications found among participants, the wife was the petitioner in twelve cases, and the husband in four cases. According to the MCA s.1 (1) a petition for divorce may be presented to the court on the ground that the marriage has broken down irretrievably; and under s.2 the court is satisfied that the breakdown is established upon one of five facts, among them adultery, unreasonable behaviour and desertion. National statistics show 60% of applications for divorce in England and Wales in 2011 was petitioned citing facts of adultery or unreasonable behaviours (ONS, 2011), as these facts do not involve delay (Herring, 2017, p. 145). The majority of the participants filed for divorce citing unreasonable behaviour i.e. DV, that is, under section 1(2) (b) MCA 1973 – that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. One participant described her situation.

> I went to a solicitor and filed for divorce. They asked me to give a reason; I told them that he [husband] forced cohabitation. The solicitor said the application process would take six months. It took longer because he [husband] would not sign it and they had to find where he lived. (Salma)

Other participants who faced adultery chose to petition the divorce on the fact of desertion or unreasonable behaviour rather than to cite adultery, which could complicate matters, one solicitor explained.

> Clients mainly file for divorce on the fact of unreasonable behaviour. To say that he has a second wife or committed adultery complicates and delays the application. Besides, people do not want to antagonise each other. (Solicitor #1)

Under section 1(2) (a) MCA 1973, citing adultery as a fact for divorce requires that the fact adultery was committed and that the petitioner finds it intolerable to live with the respondent. Two of the participants expressed the primary reason for divorce was adultery; however, they chose to file for divorce on the fact of unreasonable behaviour.

> They [family] wanted me to get back together with him. I was not going to take him back after what he did [adultery]. He can go ahead and get married I am not bothered. I went and filed for divorce. (Zulaika)

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I told the kids that dad's left [caught committing adultery]. That he had married again, and that mummy and daddy are no longer together. My family were supportive. I went to court and got divorced. (Saima)

The husband was the petitioner in four cases. In two cases, the husband deserted the marriage, and in two cases, the husband excluded participants from the marital home.

I went to my parents after one of his mood swings. He didn't ask me to come back, basically, he'd kick me out of the house. (Polly)

Participants mentioned they found it difficult to hear their husbands chose to divorce, though in three out of the four cases participants were suffering from DV and the other case involved adultery. Nonetheless, some participants delayed signing the divorce papers hoping for reconciliation. Two of the participants described how they eventually came to sign the divorce papers.

They sent the divorce papers through the post after a few weeks. My solicitor said they wanted a divorce. I didn't agree with it. They wanted a mutual agreement. I thought what they are playing at. I didn't want to give up this easily… They kept sending letters as a reminder; it got to the point I had to act I had to agree. I responded after a year. (Fahima)

He sent the divorce papers. I didn't sign them within the time. I was waiting, hoping he would change his mind, but he sent a letter from his solicitor that the bailiffs would come. Because of getting the bailiffs involved, I signed it off, towards the end of the time limit. (Mahida)

The participants were the petitioners in the majority of the cases, as they needed a release from the marriage. Some participants petitioned the divorce in conjunction with protection orders, which gave them the space they needed to sever links with the husband, who otherwise would continue to make their daily lives a misery.

7.1.5 Experience of the Civil Divorce Process

The experts felt that the civil divorce process was a simple process to follow, with set procedures and information readily available for their clients.

Women who do not know about civil divorce learn from experience, from the police or lawyers, who inform them of their rights, the information is available for them. (SC Judge #1)

So, if the marriage is registered then it's a simple process, they go through mainstream solicitors and file an application and then the courts deal with it. (Imam #2)

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However, some participants mentioned how they felt daunted by the task of pursuing a civil divorce.

> I have never been through a divorce [before], English divorce. I was scared, how do I go about it? Am I going to be able to stand up for myself? Am I going to understand everything? Am I going to have financial issues? I went on the internet and looked up solicitors. I found one; he [solicitor] helped me through the divorce and got the property in my name. (Aisha)

> He told me he got a solicitor. The solicitor called me and then sent me a letter. I showed the letter to others, I didn't understand. I got scared. Then I found a solicitor, who told me [explained] that my husband wants a divorce and to see the children. (Parvin)

Another concern from experts and participants alike were the legal fees in pursuing a civil divorce. The current cost to start a petition is £550, whilst to contest a petition costs £245 (Gov.UK, 2017a). The government has withdrawn legal aid from family litigation other than in cases which involve the care, supervision and protection of children, family homes and domestic violence, forced marriage, and other circumstances listed in schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Lowe and Douglas, 2015). Some comments received from experts and participants highlighted this situation.

> Legal fees are expensive, clients cannot pay, and some are destitute. There is no legal aid unless there is DV and criteria met. (Solicitor #3)

> For legal aid, I had to prove I was on income support and a victim of DV. My solicitor wanted to know everything. I showed proof of my income support. I got a letter from the social worker and GP to show I was a victim of DV. The solicitor then processed the application for legal aid. (Polly)

> People avoid registering their marriages because the cost of civil divorce is expensive, and Shariah divorce cheaper. (SC Judge #3)

Many of the participants were victims of DV and were eligible for legal aid to pursue their civil divorce. Participants described their experience of the application process and court dealings. Two of the participants described how the reliance on evidence to prove unreasonable behaviour e.g. DV, affected their experience in court.

> I told the court he [husband] broke the injunction [non-molestation order], they wanted evidence, they don't believe you. The court didn't believe the incidents of DV. My husband said that I had gone mental after a family death. I said that my husband is lying, but the court believed him. I told my solicitor 'do something', the judge has no right to force me to stay married… it took me nine months to get divorced. (Nabila)

> All those years I kept evidence of his abuse, hospital reports and photos of the bruises, I thought I might need it one day. I gave the court the evidence, he [husband] tried to deny it [DV], but he didn't get anywhere with it. (Aisha)

One participant mentioned how she froze the application, hoping to reconcile, but found her husband had reverted to his previous behaviours, as such she completed the application for divorce. Another participant mentioned how she did not have to attend court for the divorce; rather attended the family court for child arrangement and maintenance.

> About six months into the application, my children saw their dad and said they missed him. They told me to forgive him and take him back. I thought my children come first. I stopped the divorce, it was frozen, I thought, keep in on file for six months, then restart if need be. He moved back in, we were happy for the first month, and then he went back to his old ways. He became violent I called the police. The kids told the social worker they did not want their dad anymore... The divorce was reopened, he would not sign it…I got my divorce. (Salma)

> I went to the family division for children once. I didn't go to court for a divorce. (Parvin)

7.1.6 *Religious Divorce and the English Civil Courts*

The State is aware that some people have a need for religious divorce, alongside civil divorce; thus, guidelines for petitioning a civil divorce make clear that civil proceedings may not dissolve the religious part of the marriage (Crown, 2014). However, under section 10A MCA 1973, inserted by the DRMA 2002, the courts have the power to refuse a decree absolute if steps are not taken to dissolve the religious marriage. Hamilton (1995, p. 119) suggests there are four reasons why there may be State interest to intervene in religious divorce, such as to promote remarriage, to uphold the human right to remarry, for fairness and equality against the withholding of religious divorce, and to avoid the husband gaining favourable settlement by bargaining and controlling religious divorce.

English law stops short of providing a full intervention in resolving religious divorce. For instance, according to Jewish law, a religious divorce is effective only if the man freely and voluntarily consents to give his wife a 'get' and any coercion will invalidate the Jewish divorce (Graetz, 2012, p. 33). The DRMA 2002 was initially introduced to stop the problem for orthodox Jewish women being tied to the religious marriage after the civil divorce proceedings and being labelled '*agunah*' or 'anchored

woman' (Lowe and Douglas, 2015, p. 225). However as the 'get' must be a voluntary act, the law can merely refuse to issue the decree absolute until the religious divorce is resolved. Consequently, if the Jewish husband has no desire to complete the civil divorce, it can exacerbate the wife's situation, leaving her neither divorced from a religious or civil perspective.

Similarly, Muslim women who fail to obtain a religious divorce after a civil divorce are described as being in a 'limping marriage' (Pearl and Menski, 1998, p. 34). Some view that the DRMA 2002 should also extend to Muslims, as currently, s10A MCA 1973 includes the Jewish religion only, but other religions can seek to be 'prescribed' within the legislation (Gohir, 2016, Proudman, 2013). Others contend the Muslim community have effectively solved the problem of chained women using the Shariah Council network (Ahmed and Norton, 2012, Sona, 2014).

The experts commented on their clients need for religious divorce.

> The civil court would not be able to deal with many of the cultural and religious issues; people will not leave their faith. People generally want the Islamic divorce, even after the civil divorce, because of religious feeling and sentiments. People want to conclude a matter in a religious way, and then be free to move on with their life, and they want reassurance that they are not liable to God. (Imam #2)

> Most scholars have told clients they need to get an Islamic divorce; otherwise, their [civil] divorce is not accepted. Women who come to us are practising, they believe in faith, to them Islamic divorce is very important… The men only accept the marriage is over after the Islamic divorce. (Solicitor #1)

One expert explained the phenomenon of limping marriage in the Muslim community.

> The concept of hanging woman [limping marriage] is common in our community. It is an issue of male dominance. The Jewish community has a similar problem with the 'get'. It stems from Islamic theology, where men are told they have authority, so they think they are superior to women, and want to make women suffer because they have religious authority, but they do not have that right. (SC Judge #1)

Eleven out of the fifteen participants who had obtained their decree absolute found their husband withheld the religious divorce. In most cases, the husbands flatly refused to entertain the idea of pronouncing *talaq* or entering the religious divorce process, whilst in other cases, the husbands stalled the Islamic divorce by failing to complete the procedure; participants described their situations.

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I thought it was strange that he did not give me a *talaq* because I believed in the Islamic marriage more than the court marriage. Why not give me the Islamic divorce. Is it because of the money [*mahr*]? (Fahima)

He gave the first *talaq*, in front of witnesses, then he gave the second *talaq* after three months, but he did not give the third *talaq*. (Aisha)

Other participants were disappointed to hear from the mosque they needed to apply for a religious divorce, despite having a civil divorce and having faced DV.

After two years of separation [i.e. civil divorce], I started practising, praying and learning religion. I spoke to the mosque about my divorce, and they said that I needed an Islamic divorce. I told them I got a civil divorce and been separated for a long time. They said, 'No, you married the Islamic way, you need to finish the Islamic way.' (Nabila)

I went to the mosque and asked for an Islamic divorce. The imam tried to patch things up, I said, 'Even after I've been through DV?' He said, 'DV is not a good enough reason'. (Salma)

The experiences of participants show, some participants moved on with their lives after the civil divorce and realised later they needed a religious divorce, whilst others pursued an Islamic divorce simultaneously, but in most cases, the husband at the final stage withheld the *talaq*, thus participants sought other means to complete their Islamic divorce.

7.1.7   Divorce - Unregistered Marriages

The experts expressed similar concerns with unregistered marriages i.e. *nikah* conducted in the UK, and the lack of legal rights and protection, and access to family courts upon separation.

Nine out of ten times the marriage will be civil registered. We advise people to register because it gives legal rights to both sides. Then you have some marriages that are not registered and this is where your problem is. (Imam #2)

Unregistered marriages are a major growing concern. The couples have no legal rights. Solicitors cannot help. English law cannot protect women, whereas, a registered marriage allows access to the divorce courts. (Solicitor #2)

According to national statistics, in 2012 there were 5.9 million people cohabiting i.e. not married or in a civil partnership, making cohabitation the fastest growing family type in the UK (ONS, 2012b), as such, unregistered marriages are not specific to any particular ethnicity, religion, race or culture in British society. A survey of British social

attitudes conducted in 2006 found 53% of respondents falsely believed that 'common law marriages' existed (Barlow et al., 2008, p. 42), that if a couple live together for a certain time they are treated as married (Probert, 2008). The number of participants with unregistered marriages in this study was considerably lower in comparison to participants with civil marriage (see Figure 13). Generally, participants with unregistered marriages were under no impression that their *nikah* constituted a legally valid marriage, though one participant did ask her solicitor about a civil divorce.

> My solicitor said that my marriage [*nikah*] was not recognised [legally]. There was no way I could apply for [civil] divorce, and that I would have to go to a Shariah Council. I thought that is why my in-laws did not do the registry. (Jahanara)

Notwithstanding, there is a legal difference between common law marriages and the presumption of marriage. In common law marriages, the couple never married or intended to marry, and suggest they have acquired the status of marriage through mere cohabitation (Lowe and Douglas, 2015, p. 56). In the case of the presumption of marriage, the presumption is of two forms: an assertion the parties married and cohabited despite the lack evidence of a valid ceremony; alternatively, a ceremony has taken place and the parties lived as husband and with and ceremony complied with English law (Harris-Short et al., 2015, p. 82). Thus, a marriage may be upheld as valid due to the presumption of marriage and long cohabitation (Standley and Davies, 2013). Examples of such cases are *Chief Adjudication Officer v Bath* [2000] 1 FLR 8 – unregistered Sikh marriage; and *Pazpena de Vire v Pazpena de Vire* [2001] 1 FLR 460 – Uruguayan marriage by proxy; in both these cases the presumption of marriage was due to long cohabitation, 38 and 35 years respectively. As such, presumption is most often used where the marriage took place a long time ago or abroad and so official records are not available (Herring, 2017, p. 80).

Unregistered marriages constituted the shortest marriages among all participants found in this study, averaging two and a half years, and the longest being five years, whereas participants with registered marriages averaged seven and a half years, and the longest being nineteen years. Thus, these *nikah* marriages would not fit the criteria of long cohabitation if a case was to go to a civil court and the presumption would be

rebutted by the fact that the ceremony in question did not comply with English law. Then again, some participants made it clear that they chose a *nikah* marriage, knowing that in the event of a marital breakdown, the Islamic divorce process would serve them better in releasing them quicker, as one participant explained.

> Living in this country, I think people should get a civil marriage. In my situation, I'm glad I didn't have a civil marriage. It [divorce] would have been so lengthy. Things would have been more difficult. Every case is different. (Rupa)

A Shariah Council judge explained how their clients also chose to have unregistered marriages to avoid the civil divorce process.

> A couple was married for four months then the woman applied for an Islamic divorce. I asked her why she did not have a civil marriage. The woman said thank God she didn't otherwise she would have had to wait a year to divorce. I thought interesting, no children, no maintenance, a quick divorce. (SC Judge #1)

Opting for a *nikah*-only marriage may enable a quick release via an Islamic divorce, however, the fact remains that these unregistered marriages are 'non-marriages' and have no legal effect other than to afford the status of cohabitees, with no recourse to financial relief, unless in the case of children. As such, the labelling of *nikah* as a non-marriage rather than a void marriage has huge legal and financial consequence; as in a void marriage the parties are entitled to a decree of nullity, and the court's jurisdiction to make financial orders (Harris-Short et al., 2015, Sendall, 2017).

The concept of non-marriage finds precedence in case law, such as *Gandhi v Patel* [2002] 1 FLR 603, *Hudson v Leigh (Status of Non-Marriage)* [2009] EWHC 1306 (Fam) and *El Gamal v Al Maktoum* [2011] EWHC 3763 (Fam. In these notable cases, the judges gave verdicts of non-marriages, in *Gandhi v Patel* – the Hindu ceremony failed on multiple aspects to comply with the MA 1949, in *Hudson v Leigh* – a Christian ceremony in Cape Town did not create a marriage, and in *El Gamal v Al Maktoum* – a *nikah* conducted in a London flat had no legal effect. Thus, the hallmarks of a non-marriage are its failure to comply with or resemble the formalities of marriage under English law in accordance with the MA 1949. In *Gereis v Yagoub* [1997] 3 FCR 755 the judge ruled the marriage was void and not a non-marriage as the ceremony bore the hallmarks of a Christian wedding. In *A v A (Attorney General intervening)* [2012]

EWHC 2219 (Fam), the judge ruled a *nikah* marriage conducted by an imam not authorised at the time, and without the parties to seek a certificate from the registrar as valid. In this case, the marriage was valid because the parties had married in a mosque that was registered for marriage, and in the presence albeit coincidentally of an authorised person i.e. chairman of the mosque, which brought the facts within the framework of the Marriage Act, with the parties not knowingly or wilfully breaching the requirements of notification and registration (Lowe and Douglas, 2015, pp. 69-70).

In many cases, British-Muslims are only concerned with fulfilling the religious aspects when conducting a *nikah* ceremony, thus, these marriages will continue to be non-marriages i.e. of no legal significance; therefore, leaving the weaker party i.e. Muslim women, without recourse to financial relief during a relationship breakdown. Findings from this study show Muslim women are more concerned with attaining release from the marriage via an Islamic divorce than the rights to financial relief and other ancillary matters, as would be their right at the dissolution of a legally valid marriage.

7.2   Islamic Divorce

Muslim communities in Western countries may follow Islamic personal law in matters of family law i.e. practice Shariah law in a personal capacity (An-Naim, 2002, Black et al., 2013), and communities may follow certain customs and traditions from their country of origin (Ramadan, 2004, p. 139). Thus, there are several factors, which influence how British Muslims proceed with an Islamic divorce, such as their understanding of classical Islamic jurisprudence (*fiqh*), their adherence, if any to codified Shariah law from Muslim-majority countries, and the relevance of an English civil divorce with regard to the status of a religious divorce.

7.2.2   Divorce in Classical and Contemporary Islamic Law

Islamic divorce according to classical Islamic jurisprudence derives rulings from the two divinely revealed sources the Quran and *Sunnah*, and human reasoning as applied by the jurists (Kamali, 2008). In the Quran, there are seventy verses dedicated to marriage, divorce, *iddah* (waiting period), dower, maintenance, custody of children, fosterage,

paternity, inheritance and bequest (Kamali, 2003). The books of *hadith* and the major legal schools (*madhhabs* i.e. Hanafi, Maliki, Shafi'i and Hanbali) further elaborated the rules of Islamic divorce (Campo, 2009). During the classical period (8-9th century CE), the *madhhabs* became prevalent in different geographical regions of the Muslim world, and affiliation to a *madhhab* shaped the daily life of Muslims, with details of ritual practice, marriage, divorce and inheritance (Powers, 2016, p. 53).
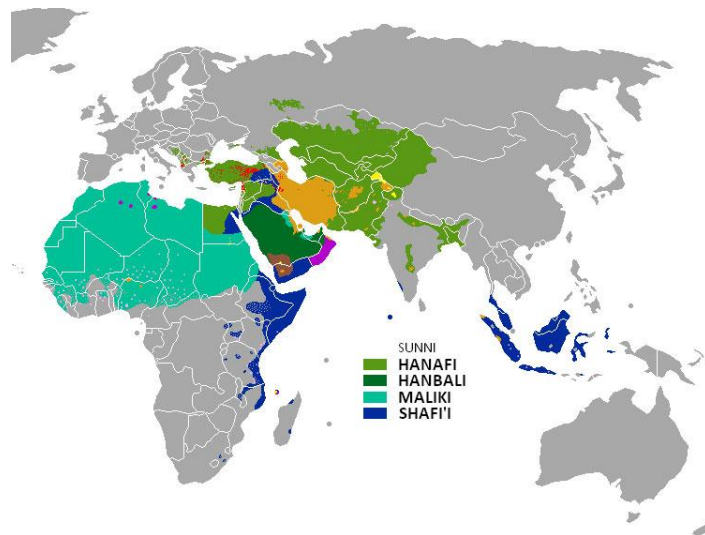
Figure 17 Dominant or Official *Madhhab*

The differences of opinions among the *madhhabs* gave a pluralistic understanding of Shariah law, which consequently affected Islamic divorce. The Hanafi School do not accept a lack of financial maintenance as grounds for the wife to seek a divorce (*khula*), whereas in the Maliki School it is accepted (Jones-Pauly, 2016, p. 142). Another example is child custody; for the Hanbali School, a child is consulted at age seven for their preference of residence, whereas the Shafi School argue the child should reach an age where their wishes and feelings carry significant weight (Arshad, 2010, p. 153). The *madhhabs* addressed the key issues surrounding divorce, namely, the manner or the form of divorce, the waiting period (*iddah*) before the divorce is finalised, maintenance during the waiting period, and post-divorce maintenance if the wife is pregnant or has a suckling child, resolving the *mahr*, child custody, and inheritance (Kamali, 2008). In classical Islamic law, the process of *talaq* has always been an

extrajudicial practice, and the Shariah courts intervening only in cases of *khula* and *faskh* (Bowen, 2016, p. 48).

The twentieth century saw the formation of many independent Muslim countries or modern nation states. Many of these countries codified MFL or personal status law, some retained classical Islamic law entirely whilst others introduced legal reforms and women's rights. In Saudi Arabia, the Basic Law of Governance 1992 applies classical Hanbali *fiqh* in personal status cases, enforced by four tiers Shariah courts (Abiad, 2008, p. 42). Similarly, in Malaysia, a Shafi majority country, they implement the Islamic Family Law Enactment 1983, which codified child and family law, overseen by three levels of Syariah (Malay for Shariah) courts (Sutherland, 2012, p. 209).

Other Muslim-majority countries like Tunisia abolished Shariah courts when it introduced the Code of Personal Status 1956, taking a modern stance on divorce, rejecting extrajudicial divorce, providing longer durations of maintenance for the wife, and awarding custody in the best interest of the child (Grami, 2013, p. 59). The Muslim Family Law Ordinance 1961 (MFLO 1961) as introduced in the Hanafi majority countries of Pakistan and Bangladesh share the principles of the ordinance to register divorce, resolve maintenance, dower, and child custody; however, Pakistan operates a Shariah court system, whilst Bangladesh enforces personal laws through the civil courts (An-Naim, 2002). By codifying Muslim personal law, the Muslim majority countries regulate marriage and divorce within the state legal system, superseding classical interpretation of Islamic law unless adopted within legislation, and in most countries have abolished the practice of extra-judicial divorce.

7.2.3   Islamic Divorce in the UK

Unlike in Muslim majority countries, Shariah law operates in the UK in an unofficial capacity, and as such, there is no official authoritative regulatory body, which administers Islamic divorce among British Muslim community. Furthermore, religious divorces obtained in England are invalid under s44 (1) of the Family Law Act 1986, which states that 'no divorce obtained in the UK will be effective unless granted by a court of civil jurisdiction'. Nonetheless, under Article 9 of the Human Right Act 1998,

an individual has the right to freedom of religion, in private and public, as an individual and in a community, in worship, practice and observance. The freedom of religion is subject to limitations as necessary by law in the interest of public safety, public order, health and morals, and the protection of the rights and the freedoms of others. Thus, an individual has the right to seek a religious divorce, though the State retains jurisdiction over matters concerning maintenance agreements (s24 MCA 1973) and the welfare of children (s8 CA 1989). There are three main forms of Islamic divorce, *talaq*, *khula* and *faskh*, though the latter form requires a Shariah authority.

7.2.4   Talaq

Talaq according to classical Islamic jurisprudence is the husband's right to unilateral divorce, without seeking the wife's consent or providing grounds for divorce, or the intervention of a court or judge (Tucker, 2008, p. 85). In codified MFL such as the MFLO 1961, the husband retains the right to unilateral divorce, though he is required to register the divorce. In contrast, the wife has no such power to unilateral divorce, though the husband may delegate the right to divorce as in *talaq tafwid*, though the Islamic jurists have stipulated terms and conditions to enact a *tafwid* divorce, (Bowen, 2012b), and as such *tafwid* is not the equivalent of a *talaq* but the closest option available to Muslim women. Black (2013, p. 137) adds that *tafwid* is effectively a woman is divorcing herself on behalf of her husband and equalizes the access of spouses to extrajudicial divorce. However, for men, there is a price to pay for the prerogative of *talaq*, that is to pay any outstanding *mahr* and provide maintenance during the *iddah* period (Hallaq, 2009b, p. 191). One imam commented on the unilateral right of *talaq*.

> Traditionally the right of divorce is to the husband. There about 6 different ways of divorce, you have the *khula*, the *talaq*, the *faskh*, *tafwid-e-talaq* about 5 to 6 different ways, but the husband in Islam if he says *talaq* to the wife technically it is divorce. I'm not saying change that type of divorce because I can't, that would be haram (prohibited) what I'm saying is that we teach, we educate, we provide them services, that you should not divorce [in haste]. (Imam #1)

There are three forms of *talaq* in practice; *talaq ahsan*, *talaq hasan* and *talaq bidah*, each have different implications. *Talaq ahsan* (lit. better) is where the husband pronounces divorce in one sitting and abstains from the wife, after a three-month waiting

period (*iddah*) if there is no reconciliation, the divorce is finalised, and counts as one revocable divorce, meaning the parties may remarry in the future (Esposito and DeLong-Bas, 2001, pp. 31-32). Most jurists prefer this gradual revocable form of *talaq* as it holds open the possibility of reconciliation (Tucker, 2008, p. 87).

The second form, *talaq hasan* (lit. good) is where the husband pronounces *talaq* at three separate sittings, each a month apart, during which time the husband may reconcile or take back the wife (i.e. *rajai*), until he pronounces the third *talaq*, in which case the divorce is finalised, and is an irrevocable (i.e. *baain*) (Doi, 1998, pp. 178-179). Thereafter, he is not able to remarry his wife, unless she marries another man, and then divorces or become a widow. The Quran mentions this form of divorce.

> Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. (Quran, 2:229)

The third form is *talaq bidah* (lit. innovation), whereby the husband pronounces three *talaq*s in one sitting, the wife immediately enters the waiting period, and the divorce is irrevocable (Esposito and DeLong-Bas, 2001, p. 32). Often referred to as a 'triple *talaq*' many classical and contemporary Islamic scholars have argued that this form of *talaq* is contrary to Quran and *Sunnah*. Engineer (2005, pp. 213-214) argues, the triple *talaq* contradicts the Quran's central theme of '*adl* – justice', and the *ulama* (scholars) agree that its practice is a *bidah* (innovation), yet this *bidah* is still enforced in the name of divine law. Others view the triple *talaq* was introduced in early Islam for the benefit of women for two reasons: firstly, to stop men hastening to divorce – in which case if they did, their divorce became final, and secondly, to stop the abuse of 'hanging women' i.e. hanging marriages, where women are neither married or divorced (Hallaq, 2009b, p. 282, Kamali, 2008, p. 229). The Quran is explicit in condemning the concept of hanging marriages.

> And when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them]. (Quran, 2:231)

Among the participants, there were ten instances of *talaq* given by the husband, four cases were unregistered marriages, and six cases were registered marriages, there

were no instances of *talaq tafwid*. Participants with unregistered marriages only required a religious divorce to dissolve their marriages. However, many these participants were shocked and taken aback to hear their husbands pronounce the *talaq*. In most cases, the husband pronounced the triple *talaq*, which meant the finality of divorce, with no further option to reconcile. The immediate effect of the divorce left participants daunted with their status of being divorced and in some cases being a single parent.

> We had argued and stopped talking. One day he called me up and said 'I've made a decision. It will be a few years before I can move out with you from my parent's house. I divorce you'. Before I had any chance to discuss the matter, he said it. I dropped the phone on the floor shocked, with endless crying. (Lily)

> We were estranged. I said 'fine, just divorce me.' A few days later, he gave me *talaq*. He gave three *talaq*s in one. I just sat and listened. Hearing divorce was difficult to swallow. It seemed unreal. (Faiza)

> We separated. He came one day and told me to sit in the car. I sat down, he said, 'I'm divorcing you, I'm divorcing you, I'm divorcing you' then turned to me and said 'that's it you're divorced.' I was a bit shocked, no explanation or nothing. It was hard to take, I was a single parent I had no support from anyone. (Rupa)

The marital problems described by these participants prior to becoming estranged such as DV and adultery meant it was highly likely would choose divorce even before the husband pronounced *talaq*; nonetheless, it was still unexpected for them. One Shariah Council judge explained that they prefer to apply the revocable form of divorce, whilst their clients were willing to accept different forms of *talaq* to benefit their situation.

> We follow the Hanbali opinion, which is to give one [*ahsan*] *talaq*, separate and move away. We tell clients this is the *Sunnah* way, and most are happy to hear this, as it gives them another chance to reconcile. [However]Some women are glad their husband gave them three *talaq*s in one, as it allows a quick divorce, though we say do not rush divorce, have a process, have mediation. (SC Judge #1)

The immediate effect of the triple *talaq* is a quick process to release women from unhappy marriages. One client observed in a Shariah Council hearing, argued for the judge to recognise a triple *talaq* received by phone text, though the council normally disregard such forms of *talaq*.

> The woman came to collect a *fatwa* that her husband's triple *talaq* over the phone is valid. The judge objected on the basis the woman needed to verify the text sent was actually from her husband, though the message shows it came from the husband's phone number. The

woman did not initially respect the judge, and was quite irate and shouted. The judge said 'I have to follow procedure'. Eventually, the judge accepted the woman's oath on her *fatwa* application form and issued the *fatwa*. (PO2)

Participants with civil marriages described how their husbands gave them *talaq*. In some cases, the husbands decided to give *talaq* first, and then apply for a civil divorce, whilst in other cases, the participants requested *talaq* from the husband.

> He said he's leaving for good and gave *talaq*. He said he would come back later for his things. I said 'don't go, what about the kids'. He said he would always be there for the kids. He said he didn't say *talaq* in anger and reiterated the *talaq* the second time he came round to the house. (Mahida)

> He gave me my [Islamic] divorce. I told him to say to me three times 'I set you free'. He said it three times over the phone. I said 'make sure your intention [to divorce] is clear. He said 'fine'. (Henna)

Some participants did not refer to any particular event as the moment of *talaq*, rather they accepted one of the numerous occasions where the husband had previously threatened, shouted or screamed *talaq*, as his intention to divorce.

> He said three *talaq*s to me, not just once but a number of times. He thought I was a disgusting woman, to want to live with him after he had said *talaq*. (Zaynab)

In the above-mentioned case, the participant was aware that the husband pronounced *talaq* on several occasions as a form of domestic abuse, knowing that she would not leave the marital home. Thus, once the participant filed and received her civil divorce, it was sufficient for her to recall an instance where the husband had pronounced *talaq* before as the final Islamic divorce, without seeking any further clarification.

According to classical *fiqh*, it is not obligatory for *talaq* to be witnessed or written down (Kamali, 2008, p. 90). All instances of *talaq* found among participants were extrajudicial; however, in two instances, Shariah councils also issued Islamic divorce certificates. In one case, the participant requested an Islamic divorce certificate, as she felt she needed proof for any prospective grooms that her first marriage had ended, whilst in the other case, the husband applied for the divorce certificate.

> I asked for the divorce certificate from the Shariah Council. He wasn't bothered, but he gave it a year later. I needed it to move on. I needed proof my first marriage ended for any potential groom. (Kulsuma)

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He [husband] approached the Shariah Council, not me. He wanted a certificate, as he intended to go abroad and remarry. When the Shariah Council called me to say my husband had applied for *talaq*. I told them, he has already divorced me. (Rupa)

Gender discrimination in the practice religious divorce i.e. namely *talaq* among British Muslims is a concern. Article 12 of the Human Rights Act 1998 states that men and women [equally] have the right to marry and found a family according to national laws, though the act does not comment on equality in the dissolution of a marriage. Nonetheless, the civil divorce process in England ensures there is equality for applicants concerning the petition, ground for divorce and due process. In contrast, the classical interpretation of Islamic divorce inherently discriminates against women (Muslim and non-Muslim women alike) on the basis of gender, and as such, the concept of *talaq* conflicts with the English divorce process. The findings from this study show that classical interpretations of *talaq* are still prevalent among the British Muslims, and the Shariah Council reinforced such interpretations through their *talaq* application process, as stated clearly in their documents:

> The right to divorce is primarily given to the husband due to the financial responsibilities he has to bear'. The husband is advised not be hasty in the decision to divorce, rather try to reconcile in the first instance using family elders. However, if the husband feels he cannot live harmoniously with the wife anymore, he may divorce her verbally or in writing, and preferably in the presence of two witnesses. Once divorced the wife must leave the matrimonial house immediately. (*Talaq* Information Sheet – Shariah Council)

Classical interpretations of *talaq* follow the patriarchal notion that men traditionally provide for their family, and therefore have the privilege of *talaq*, as the Quran says,

> Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means… (Quran 4:34)
> And when you divorce women … (Quran 2:231)

Al-Nabhan argues that Muslim women face injustice due to patriarchal practices concerning marriage, divorce and inheritance (Kamali, 2015, p. 196). However, Kandiyoti (1988, pp. 274-275) contends, the term patriarchy evokes overly monolithic notions of male dominance, without understanding the intimate inner workings of culturally and historically distinct arrangements between the genders; and how women strategize within these constraints to negotiate rights, which he termed 'patriarchal

bargaining'. Avishai (2008) identifies bargaining is one option among four available for women faced with patriarchal systems, the others being resistance, instrumental agency, and compliant agency. Burke (2012, p. 129) believes that 'agency' is typically defined through intention and autonomy, characteristics not typically used to describe religious women, though by expanding definitions of agency, feminist scholars are forced to examine how non-feminist actions are agentic. The views of Kandiyoti, Avishai and Burke reflect three different perspectives of religious women and agency, i.e. that of Muslim, Jewish and Christian women respectively. However, under classical *fiqh*, there is another favourable option for Muslim women other than to accept *talaq*, and that is *talaq tafwid*.

Talaq tafwid (delegated divorce) is a form of Islamic divorce in which the husband delegates a power of divorce to his wife (Esposito, 2003, p. 310). The authority for delegation lies in the Quran 33:29-30, where the Prophet gave his wives the choice to divorce him or remain married; *tafwid* can be a condition at the time of *nikah* or post-nuptial (Black et al., 2013, p. 137). The wife can trigger *tafwid* in instances of the husband's prolonged absence, failure to provide material and conjugal needs or to marry a second wife without consent (Bowen, 2012b, p. 146); not to be beaten or ill-treated, and not to be oppressed (Syed, 2004, p. 71). The Muslim Institute (2008) introduced *talaq tafwid* as a standard condition in the explanatory notes of their model Muslim marriage contract, however, the proposed contract proved unpopular with British Muslims who rejected it as being modernist (Drabu, 2008). One expert explained why Muslims avoid *talaq tafwid*.

> *Talaq tafwid* is like a prenuptial. The Hanbali position is that it is allowed to add conditions to a contract as long as it is halal (lawful) and the two parties agree, for example, that after marriage they will not move abroad, or not live with the in-laws. *Tafwid* can be useful, but people do not use *tafwid*. Muslims find prenups distasteful; assume the worse will happen to do a prenuptial. (SC Judge #1)

Talaq tafwid has been a provision under section 8 of the MFLO since 1961, thus in Pakistan and Bangladesh, the wife can exercise the right to dissolve the marriage other than by *talaq*. The practice of avoiding *tafwid* among British Muslims is contrary to the codified laws in Muslim-majority countries and denies Muslim women the right to

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equality in Islamic divorce, and the assumption women can apply for *khula* detracts from the fact that *tafwid* would serve them better in the event of a divorce.

7.2.5   Khula and Mubarah

Khula and *mubarah* are two instances according to classical *fiqh* where the wife can initiate divorce.   The process of *khula* and *mubarah* are different to *talaq* in many ways. *Mubarah* is a mutual agreement to divorce, which can be initiated by the wife, and if agreed by the husband, can effect an Islamic divorce, which may have different financial implications (Bowen, 2016, p. 50). *Khula* is divorce at the instance of the wife, with the husband's consent, and a financial compensation paid to the husband for release (Singh, 2011).   There are verses, which mention *khula* in the Quran.

> There is no blame upon either of them concerning that by which she ransoms herself. (Quran, 2:229)

> And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of the settlement between them - and settlement is best. (Quran, 4:128)

From the *Sunnah* there is the example where the Prophet gave Umm Qays, permission to divorce her husband Thabit, in exchange for financial compensation (Al-Bukhari, 1997, no. 5273):

> The wife of Thabit [Umm Qays] came to the Prophet and said, "O Allah's Messenger! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in a un-Islamic manner (if I remain with him)." On that, the Prophet said (to her), "Will you give back the garden which your husband has given you (as *Mahr*)?" She said, "Yes." Then the Prophet said to Thabit, "O Thabit! Accept your garden, and divorce her once."

The above narration gives an example of a non-fault Islamic divorce, though there are some questions raised regarding the *khula* process, such as, is the husband's consent necessary? How much compensation should the wife pay? What is the role of the *qadi*? (Tucker, 2008, p. 95). From the above-mentioned *hadith*, it seems the Prophet ordered Thabit to accept the terms of the *khula*, however, most jurists understood the situation as requiring the husband's consent (Bowen, 2016, p. 50).   Secondly, Umm Qays agreed and paid back the *mahr* given by her husband, and therefore the majority of schools say the compensation should not exceed the *mahr* paid, with the exception being

the Hanafi school who say the husband can ask for more (Tucker, 2008, p. 97). Some view *khula* as an extension of *talaq*, and therefore, the Shariah court plays no role in the process, whilst others see a limited role for the *qadi* in ensuring the situation is not manipulated by the husband from *talaq* to *khula* in avoiding to pay a *mahr* to the wife (Bowen, 2016, p. 50).

The term *khula* can give the impression that since the wife initiates the divorce process, she also pronounces divorce; however, the process requires the husband to state he is releasing his wife, as such the power of divorce remains with the husband. Therefore, it is a misconception to assume *khula* is simply the wife's right to divorce, as opposed to men's right to *talaq*, as clarified by the Shariah Council.

> The situation in which the wife initiates divorce proceedings is known as *khula*. Once the husband agrees to divorce her in exchange for some money or the remission of her dower, the divorce is known as *talaq*. It is as valid as the *talaq* given by the man of his own initiative. (*Khula* information sheet – Shariah Council)

Khula or *mubarah* counts as one irrevocable *talaq*, and the wife is divorced after completing a one-month *iddah* period (Esposito and DeLong-Bas, 2001, p. 34). However, the option remains after *khula*, for the couple to remarry by conducting a new *nikah*, as long as the *khula* was not the husband's third repudiation, in which case it is not possible for them to remarry (Nasir, 1990, p. 121).

The practice of judicial *khula* in Muslim-majority countries such as Bangladesh and Pakistan does not require the husband's consent, though the wife is still required to make a financial compensation, as seen in *Hasina Ahmed v Syed Abul Fazal* (32 DLR (1980) 294). However, Bhuiyan (2007) argues judicial divorce under the Dissolution of Muslim Marriages Act 1939, would serve Muslim women in Bangladesh better than using judicial khul, as she can claim her dower and maintenance; though in this case, the divorce would resemble a *faskh* and not a *khula* as applied in classical *fiqh*. Judicial *khul* in comparison to classical *khula* involves a Shariah authority, whereas latter can be extrajudicial.

There were no instances among the sample population or participant observations of an agreed *mubarah* or *khula* i.e. whereby the husband grants the wife's request for a divorce. Therefore, all cases of wife-initiated Islamic divorce started as

khula, and then went before an external religious authority, some involved imams and the local mosque, whilst others approached a Shariah Council. The husband's refusal of *khula*, in effect, meant the wife was seeking third-party intervention to either persuade the husband to agree to a *khula* or to dissolve the marriage by *faskh*.

Among the participants, there were five instances of seeking *khula*, two participants had unregistered marriages, and three were civil marriages. Approaching an imam for *khula* produced differing outcomes. One participant found the imam was unable to persuade the husband to agree to *khula*, who was stalling the divorce process. In another case, the imam told the participant that she did not have sufficient grounds to seek *khula*.

> We got the imam from the local mosque involved. The imam tried to mediate between us. My husband said he had no money, and that he was feeling stressed. It was a case where he was not going to give divorce. (Rahima)
>
> My family called the imam from the mosque. He came and listened to my case, but he said that I was at fault [shocked] and that my husband was a good man. The mosque did not agree to give me an Islamic divorce. (Lubna)

These two cases demonstrate the extent of an imam's authority, firstly a limitation, by not granting *khula* without the husband's consent, and secondly, overriding powers to deny *khula* by dismissing the wife's request. However, each case of *khula* may present a different outcome depending on the circumstances, though one imam commented where the husband refuses to grant a religious divorce, there is a need for a greater authority.

> [Islamic] divorce has two aspects. Mediation and the execution of divorce – the latter is a collective duty and requires a Shariah board. When the husband refuses to divorce a woman, where do they go, this is when they turn to a Shariah Council. (Imam #2)

In three of the cases, participants with decree absolutes turned to Shariah councils as their husbands withheld religious divorce, thus, they applied seeking a *faskh* (judicial annulment) rather than *khula*. Nonetheless, the Shariah Council only accept two types of applications: *talaq* or *khula*, though the latter form also includes dissolution (see Appendix 5). All *khula* applications require applicants to confirm they have not applied to another Shariah Council previously, allow the council to investigate their case, and agree to the council's final decision. During the application process, applicants cannot

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remarry before a decision is given and until the *iddah* period completed. The council required the wife to give reasons for divorce, and wherever possible they will seek to reconcile between the parties, except where the following grounds exist.

> Grounds outside of reconciliation: the husband has physical defects, accuses the wife of unchastity, the husband is untraceable, the husband does not embrace Islam, the husband ill-treats the wife, or fails to fulfil marital obligations or provide maintenance, and where the husband does not divorce for one of the above-mentioned reasons when so ordered by a judge. (*Khula* information sheet – Shariah Council)

In all instances, the Shariah Council state they will attempt to contact the husband before issuing any decisions, hence, the husband's contact details are imperative. Where an applicant has already received a civil divorce, and evidence provided that the husband did not defend the divorce i.e. a copy of the D10 form; the council will issue a letter to the husband informing him an Islamic divorce has been granted to the wife. Whereas under other circumstances, the council will send up to three letters to the husband to convene a joint meeting between the parties, with the last letter being a final notice.

> For applicants with a civil divorce, we ask who the petitioner was. If it was the wife, did the husband object, if not then the Islamic divorce is straightforward, we will get him to resolve the *mahr*. If husband contests the civil divorce, then it becomes more difficult, we have to apply *fiqh* (Islamic jurisprudence), then it will be *tafreeq* [*faskh*] not *talaq* [*khula*]. (SC Judge #1)

The Islamic divorce process via the Shariah Council is far from simple, and varies considerably in the occurrence of a civil divorce, taking into account the petitioner, contested divorce, any outstanding *mahr* and even the issue of locating the husband. An examination of the application process as displayed in a chart at the Shariah Council (see Appendix 6) clearly shows the *khula* process is more arduous than the *talaq* process, demanding more from women who file for an Islamic divorce. One participant mentioned how she approached the Shariah Council to apply for a *khula*, but then realised it was similar to her civil divorce, and therefore withdrew her application, as she had no requirement for an Islamic divorce certificate.

> He [husband] said Islamically he didn't divorce me. But I asked someone who said that if he signs the civil divorce papers then the divorce is Islamically done as well. I went to the Shariah Council; they told me I needed to send a letter to him. I did but he did not reply. In that time, my civil divorce came through. Then I asked someone else, who told me you

don't have to bother [with the Islamic divorce]. The fees the Shariah Council were asking was a lot of money. I couldn't afford £350 at the time. (Rushna)

One of the imams viewed that the civil divorce was sufficient as an Islamic divorce, and thus, required no further action from the parties, he cited the Hanafi School as evidence.

If they've obtained the civil divorce if the wife is seeking the civil divorce and the court sends the husband papers and he signs it's a consent. In the Hanafi opinion, Islamically they are divorced already, so they don't really need to go through the Islamic divorce but people still want to do that because they want to get a sense of comfort like they've gone through the ways Islamically and so they can get some advice and guidance on what they can do after civil divorce. (Imam #1)

However, others have argued that civil divorce is not valid as an Islamic divorce, going to the extent of issuing a fatwa that non-Muslims have no jurisdiction in the matter (Al-Haddad, 2010, Al-Munajjid, 2010), and therefore, adding confusion for users who approach Shariah councils having already obtained a civil divorce. Another participant was adamant she required an Islamic divorce certificate to finalise the divorce and was left in a limping marriage not having the necessary fees required for an application,

They [Shariah Council] said if I apply, it is £250, whereas if he [husband] applies it is £150. I asked them why it is less for men. They said in Islam, men have the right to divorce, and women do not. I thought I am already struggling [financially] where do I get the money from, I am on benefits. They explained if the man does not agree the imam [judge] gives three warning. My family said that is what happens in court, why not just accept the civil divorce, they think I'm crazy. (Nabila)

Khula applications require applicants to state the reasons for divorce. There are stern warnings from *hadith* text, which states, 'any woman who asks her husband for a divorce when it is not absolutely necessary, the fragrance of Paradise will be forbidden to her' (Al-Tirmidhi, 2007, no. 1187) and 'the women who seek a *khul* are hypocrites' (Al-Tirmidhi, 2007, no. 1186). There are some contradictions between these texts and the example of Umm Qays as mentioned before, who gained *khula* on a no-fault basis, and thus Hallaq (2009a, p. 68) argues women can still get the marriage dissolved if the husband is not at fault. However, the general practice as found in classical *fiqh* and as adopted by the Shariah councils, require a justifiable reason from the wife to seek *khula*. The Shariah Council state:

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> Divorce can be denied to an applicant on the grounds that she has failed to comply with any reasonable preconditions stipulated by her husband. (*Khula* information sheet – Shariah Council)

According to classical *fiqh*, some of the grounds accepted for *khula* are habitual ill-treatment, not fulfilling conjugal rights, non-provision of maintenance, insanity, desertion and imprisonment (Arshad, 2010, Doi, 1998). In a similar manner, codified MFL follow classical law in determining the grounds for judicial *khul*; the Dissolution of Muslim Marriages Act 1939 in Bangladesh lists desertion, negligence, cruelty, harm, among grounds for divorce and 'any other ground which is recognised as valid for the dissolution of marriage under Muslim law'. Bowen (2012b, p. 171) maintains that Islamic ideas of marriage and divorce travel transnationally, and the same basics concepts appear in Britain, France and the US; and experiences with the judicial system also travel, thus South Asians are used to *khula* divorces conducted in private. Thus, British Muslim women may follow transposed practices from Muslim countries or adhere to classical *fiqh* implemented within Muslim bodies in the UK. Some participants applied for an Islamic divorce with Muslim institutes fulfilling the requirement of the due process and achieved their goal or attaining a *khula* or *faskh*; whilst other participants chose different means to secure their Islamic divorce.

7.2.6   Faskh

Faskh means to 'annul' or 'rescind', in MFL it refers to the power of the *qadi* to annul a marriage on the petition of the wife (Esposito and DeLong-Bas, 2001, p. 33), and *faskh* can only be proclaimed by an Islamic authority (Bowen, 2012b, p. 51). *Faskh* is different from other forms of dissolution of marriage such as *talaq* and *khula*, as it occurs under circumstances where there is fault or absence of a condition or substance in a marriage (Mir-Hosseini, 2000, p. 40). The necessity for an authoritative Shariah body to proclaim *faskh* leads British Muslims to approach mosques and Shariah councils who have a panel or Shariah board to consider their divorce cases. One participant with an unregistered marriage explained her situation.

> He [husband] said he was never going to give me a divorce. So I asked my cousin, he's a *Hafiz* [memorised Quran], he said, 'apply to the Shariah Council they will help you.' So, I applied to the Shariah Council; I thought the fee was too much, and they said the process

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could take 6-9 months, I was agitated by this because they delayed my certificate. But they understood me and agreed to dissolve the marriage, which they did. (Jahanara)

The grounds for *faskh* are similar to *khula*, and some acceptable reasons are desertion, impotence, non-support finance, harm and abuse (Arshad, 2010, pp. 126-127). However, *faskh* differs from *khula*, as the wife retains her *mahr*, and the husband must pay any outstanding *mahr* (Bowen, 2016, p. 51), as such the financial outcome for the wife is similar to *talaq*; except in cases of non-consummation, where the wife must repay the *mahr* (Mir-Hosseini, 2000, p. 51), as observed in one such case at the Shariah Council.

> The woman filed for *khula* from her husband. They never consummated the marriage, nor did they live together. The man claimed he gave the woman £5k as *mahr* plus diamonds and a saree. The woman claimed he only gave £3K in *mahr* and showed a bank statement as proof. The judge did not accept the man's version of the *mahr* paid and said the bank statement would be accepted as proof. The judge ended the hearing as both parties were arguing and not agreeing. The Judge told the husband that the divorce file would be sent to the scholars with a recommendation to annul the marriage by *faskh*, the husband rejected the decision. The judge reminded the husband that the wife would be divorced after the *iddah* period, and ordered the wife to pay back the *mahr*. (PO5)

In the above case, the Shariah Council exerted their authority to grant the wife an Islamic divorce despite the husband's refusal to accept the council's decision. The wife (client) had an unregistered marriage and duly complied with the Shariah Council procedure for *khula/faskh*, leaving the hearing satisfied that at some stage in the future, she would be divorced from her husband. As far as the client is concerned, the conflict is resolved in her favour, and she can confidently move on with her life, engage within the Muslim community, and know that a Shariah authority will issue her an Islamic divorce.

> The authority of the Shariah Council is due to its reputation spanning thirty-five years; the institution and its scholars are well known… Men do not care what the community think women care more. Once a woman gets her divorce, she is released from the husband's authority, he can't bully her anymore. She can go in public, say 'I'm divorced', and remarry. (SC Judge #1)

Qureshi's (2016, p. 172) study of marital breakdown among British Asians found the bulk of the cases dealt with by Shariah councils were *faskh*s i.e. dissolutions and believes it is a sign of the unwillingness of men to recognise the authority of Shariah Council. However, the findings from this study indicate *faskh* is more due to the

unwillingness of men to release women from marriage, rather than to reject the authority of the Shariah Council, a subtle difference. The experts provided further explanations.

> To men it is an affront if a woman remarries; it is like how dare she moves on. Men are withholding *talaq* when they have every right to give the wife *talaq* [via *khula*]. In one case, man separated from his wife two years ago. Why does he not give her *talaq*? Out of spite, he withholds the *talaq*. The man gets annoyed someone else can give a certificate of divorce, so he cannot be spiteful anymore. (SC Judge #1)

> Withholding the [Islamic] divorce is a way of controlling the wife. Men make women's lives a misery; men can get on with their lives, and remarry, whilst women are hanging in the marriage. (Solicitor #3)

For this function alone, *faskh*, Shariah councils provide an important role among the British diasporic Muslim community which civil authorities are unable to provide i.e. religious divorce. Thus, in the current socio-legal reality, Shariah councils are here to stay for the foreseeable future (Ali, 2013, p. 136). However, pending the outcome of the government's independent Shariah review, it remains to be seen, in what capacity Shariah councils will operate in the future.

7.2.7   Shariah Councils

Many studies have examined the emergence of Shariah councils in Britain. According to Shah-Kazemi (2001, p. 6), the early diasporic Muslim communities from the advent of Islam were obliged to follow Shariah law and regulate their communities by Islamic legal norms, and thus the formation of Shariah councils fall under the category of *maslahah* (public interest). Yilmaz (2002) contends British Muslims live their lives on their own terms, where Shariah is a crucial influence on family laws, as such Muslims practice extrajudicial divorce, reject secular divorce, and seek their own judges [*qadi*s] to adjudicate conflicts and resolve disputes. Bano (2012b, p. 83) asserts that Shariah councils emerged from a diverse set of social, political, and religious developments in civil society, characterised by the state policy of multiculturalism, and the accommodation of cultural and religious differences. Thus, there many factors that contribute to the existence --of Shariah councils in Britain, but none more important than the fact, Muslim women turn to Shariah councils for their services, as one expert explained.

> Ninety percent of our cases are women initiated divorce. Women come to us because they want verification that they are divorced because their husband pronounced divorce, or they started the civil proceedings and want the Islamic divorce. In other cases, women have no civil marriage and come to us [Shariah Council] as they have nowhere else to go to get a divorce. (SC Judge #1)

> Clients use the Shariah councils, as they do not want the Home Office to know their situation. (SC Judge #2)

There is an ongoing debate for and against the use of Shariah councils in Britain. Firstly, those opposed to Shariah councils argue that English law is best suited to protect women and that Shariah councils are operating as a parallel legal system, acting as courts (Manea, 2016, Patel, 2016). Whereas those opposing such views argue that Shariah councils know their legal limits, and operate within the law as legitimate mechanisms of alternative dispute resolution, and seek no formal recognition from the state, and provide non-binding, non-judicial rulings. (Bano, 2012b, Douglas et al., 2011). The imams commented on the perception of Shariah councils and their role in society.

> When you hear of Shariah courts [i.e. councils], the perception is there are many operating, yet there only a few main ones across the country. The rest are one or two people in the mosque dealing with cases, I do not think they are genuine courts. (Imam #2)

> The Shariah councils, all of them, they operate in an advisory capacity, they have no legal remit, they can't force anything, they only provide pastoral care, they provide guidance, Islamic guidance, more, theory than anything else, in my opinion, that is enough really. (Imam #1)

There are reports that there are at least 85 Shariah councils operating as parallel legal systems – though mainly out of mosques around the country (MacEoin, 2009, p. 69). An empirical study by Bano (2012a, p. 15) reports a more conservative figure of 30 Shariah councils, with the conclusion that these councils do not desire to replace civil law, and any claims of forming a parallel legal system are unfounded. The imams reiterated two issues: that in reality there are probably a small number of organisations genuinely set up as Shariah councils operating in Britain, and the modus operandi of these councils is only in an advisory capacity.

The Shariah Council's documentation such as its application forms and information sheets clearly demarcate their limitations with respects to civil law, for instance, they state that all civil marriages including overseas marriages require a civil divorce for dissolution, and refer clients to solicitors for civil divorce cases. In addition,

the council explained that they do not adjudicate on matters concerning child arrangements and financial relief.

> We deal with religious divorce and *mahr*. Anything else the parties have to go to family courts or small claim courts for settlement, we cannot deal with this. (SC Judge #1)

The second concern raised against Shariah councils is the oppression of women with religiously sanctioned gender discrimination (Cox, 2015a) and the application of Shariah law which contradicts universal human rights (Manea, 2016). However, Norton (2016, p. 143) argues that religious tribunals support religious freedom, as they are a source of religious knowledge and guidance; and religious expertise is an important aspect of religious freedom. Similarly, Kymlicka (1995, p. 109) contends that minority groups have rights that must be protected, who compared to the majority culture, are disadvantaged in terms of access to their own culture.

Undoubtedly, the Islamic divorce process with the Shariah Council differentiates between male and female-initiated divorce. In *talaq* applications, men have the right to divorce unilaterally, with the council role being one of administering the process. Whereas *khula* is more arduous for the applicants, who have to justify their reasons for divorce, the process can take longer to complete, and involve more fees than the *talaq*. Gendered roles and rights are part of the religious norm in some communities; Worell (2002, p. 83) believes that gender roles regulate social interaction from people's tendency to judge others behaviour to conformity with gendered roles. In one hearing observed, the client expected a male judge and duly complained when a female judge presided over the case.

> The woman did not initially respect the female judge; she was quite irate and shouted that she wanted the previous male judge. Once explained that the female judge would preside over the case, the client then turned to the female judge and exclaimed that she should be more understanding and sympathetic to her case. The judge said 'I have to follow procedure' (PO2)

The Shariah Council was open and transparent about their divorce application process and procedures because they serve the specific needs the Muslim community i.e. Islamic divorce. The council's views reflected classical or orthodox practices of marriage and divorce, and norms widely known and practised within the Muslim

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community, as seen from the findings of this study. Where there are accusations of gender inequality and discrimination from an operational perspective, the council have addressed some of these issues such as fees.

> [Shariah Council] judges give decisions according to the situation. No woman is refused a divorce. Rather it takes time to process an application. And where there are financial difficulties, women receiving [welfare] benefits are entitled to concessions on the fees. (SC Judge #3)

The imams agreed there was more scope for improving the gender imbalance of Shariah councils by introducing female members on the Shariah board i.e. at the decision-making level; and dealing with cases with an awareness of the socio-economic reality of Muslim women in modern society.

> Because of the problem, that you see with a lot of Shariah councils there is firstly no presence of female members on the Shariah board. Secondly, a lack of understanding the mindsets of the young people, I mean second-generation Muslims, how they perceive life and family life, and relationship, and duties, and responsibilities. These are the two big challenges for Shariah councils. (Imam #2)

> Shariah councils are male-dominated, yet their clients are mainly women. The board needs to be mixed to give balance, also they need have an awareness of people's situation e.g. DV. (Imam #1)

Thirdly, there are claims that Muslim women are coerced into using Shariah councils, and forced to reconcile with abusive husbands (Namazie et al., 2010, Proudman, 2012b), and that Muslim women concede their civil rights, and agree to a weaker bargaining position using Shariah law (Manea, 2016, Walker, 2016). In contrast, Grillo (2015b) argues that Muslim women should not be viewed as victims, though they may suffer discrimination and domestic violence; but, to emphasise their victimhood and exceptionalise their situation does injustice to Muslim women's agency. Bano (2013, p. 83) contends Muslim women are aware of contested rulings of religious scholars, and their rights under civil law, and thus they are able to challenge their weak bargaining position in the marriage, during negotiations at the Shariah councils but not all. The Shariah Council commented how the women who approach their services were empowered Muslim women with agency.

> Luckily, the women who approach the Shariah Council are confident, have control, agency, independence, and make demands. Whereas the concern is for women out in society who

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are vulnerable and suffering due to lack of access to knowledge and their Islamic rights. (SC Judge #1)

In this study, there was no evidence to suggest participants felt forced or compelled to use Shariah councils. Thus, the question remains how to ascertain free consent for users of Shariah councils? One view is that an understanding of consent is already established in English criminal law, under s74 of the Sexual Offences Act 2003 which states 'a person consents, if he agrees by choice, and has the freedom and capacity to make that choice' (Sandberg et al., 2013, p. 278). Another view is that consent may be difficult to gauge from members of a community with a subordinated viewpoint, and therefore, may lack awareness of alternative options available to them i.e. civil remedies (Norton, 2016, p. 156). Nonetheless, other studies of diasporic Muslim communities in Australia and North America found little evidence of coercion, rather they reported Muslims moved between civil law and Shariah law, finding the one that would benefit them the most (Krayem, 2014, Macfarlane, 2012a). Thus, the concerns raised in the UK CEDAW committee report (United Nations, 2013, para. 23) that restricting access to legal aid may push women from ethnic minorities into informal community arbitration systems, was unfounded in this study, as participants who had achieved civil divorce still pursued a religious divorce utilising multiple options and not just Shariah councils to achieve this aim.

Fourthly, some argue Shariah councils be banned on the basis there should be one law applicable to all citizens, and there is no place for Shariah law in Britain (MacEoin, 2009, Namazie et al., 2010); and there is an archived e-petition sent to the government with over 20,000 signatories which called to ban all Shariah law in the UK (Parliament UK, 2017b). In contrast, others view banning Shariah councils will make matters worse for Muslim women. An open letter signed by 100 women organised by MWNUK (2016) called for the government to strengthen civil law so Muslim women are less reliant on Shariah councils, making them naturally redundant; but they believe that abolishing councils would result in women trapped in abusive marriages and divorce services going underground and becoming less transparent. Parveen (2017, p. 161) suggests that Shariah councils can fulfil two primary functions: the adjudication of religious divorce, and a mediation service to address disputes regarding children and

finance within an Islamic framework; though Shariah councils need female support workers, a structured timetable, and provision of information for users.

In general, the experts viewed Shariah councils contributed in a positive way in securing Islamic divorce for Muslim women; though they accepted not all Shariah councils processed divorce efficiently and there was scope to improve their procedures and infrastructure.

> There are good Shariah councils that deal with *khula* within a three-month period, and there are others, which take longer and are more flexible with the application process. Men delay cases without to give reasons why. They give women the runaround and prevent them moving on. (Solicitor #1)

> There is nothing wrong with the motive of the existing services [Shariah councils], but maybe they lack the appropriate measures and appropriate application, it is quite challenging. (Imam #2)

The Shariah Council explained how they worked in cohesion with other services such as the police, solicitors, and counsellors; though their services face constant scrutiny by the media and government, the council argued there is a need for the specialist services they provide to the Muslim community.

> On the one hand, we have local police support. On the other hand, the government are keen to demote Shariah councils. I think there is a need for this place. Honestly, I worry about smaller Shariah councils, deeming out unjust rulings, who still have a back home mentality. (SC Judge #1)

> I think English law already accommodates Shariah. There may be some discrimination against the Muslim community because we know there is a lot of media hype these days about the Shariah councils. (Imam #1)

The government inquiries into Shariah law and Shariah councils are ongoing, and outcomes yet to be published. However, the government previously issued a response when rejecting the e-petition calling for a ban on all Shariah law. The relevant departments responded as follows: Shariah law has no jurisdiction in England and Wales, and people can apply principles of Shariah law not contravening English law (including the Equality Act 2010); Britain has religious tolerance and freedom of expression, Shariah councils help the Muslims resolve family disputes, and Muslim women can find legal recourse in legislation already enacted (Parliament UK, 2017b). Thus, in the context of the current debate and the concerns of the different parties for

and against Shariah councils, the government rejects the calls to ban religious tribunals. Rather the statement supports the argument that Shariah councils supplement or complement English family law, by offering alternative dispute resolution mechanisms and resolve matters that the State is unable to i.e. religious divorce (Ahmed and Norton, 2012, pp. 373-374). Parveen (2017, p. 162) agrees that if English law wishes to help Muslim women, the answer lies not in banning Shariah councils or ignoring them, rather it should recognise the essential service the councils provide for Muslim women within normative Islam. The experiences of the users of Shariah councils in this study, at times, found the councils cumbersome to use, but none called for their abolition.

The observations of Shariah Council divorce hearings revealed a wide spectrum of issues dealt with by the council, ranging from desertion, polygamy, *mahr* disputes, and *fatwas* (religious edicts). Some cases had simple resolutions, whilst the complex nature of other cases demonstrated the expertise offered by the Shariah Council in dealing with religious divorce. For example, in one case, the husband had deserted the marriage seven years ago, yet withheld Islamic divorce, leaving the wife psychologically tied to the marriage and unable to move on. The decision of *faskh* issued by the Shariah Council released the woman from the marriage.

> In the hearing, the woman [client] explained her husband left her seven years ago. Nevertheless, he [husband] is still withholding Islamic divorce, so she cannot remarry. He said on record in the judge's notes that their marriage is very loving. The woman said where he has been for the last seven years, the situation is mentally difficult and she needs to be free, it is affecting her *ibadah* (worship) and she cannot go to *Hajj* (pilgrimage). The judge said the husband is stalling the divorce process and issued the decision of *faskh* (judicial annulment). The judge said now you can go to *Hajj*. (PO1)

In another case, the client wanted an Islamic divorce certificate, though she had moved on and remarried. The complexities, in this case, were due to the client having an unregistered marriage, which the council viewed had not followed the Islamic divorce process to completion, thus, the council viewed the woman did not have the right to remarry, albeit by civil registration.

> The woman wanted an Islamic divorce certificate from the Shariah Council. She was previously married to man via *nikah* and had two kids with him. He walked out from the marriage, and after six months, the woman married to another man via civil registration. Her family wanted her to get an Islamic divorce certificate to confirm her release from the first marriage. The judge said to the woman why she did not wait to get divorced from the first

man before marrying a second man. The woman said she thought that marriage was over, and the fact that there was a separation of six months was sufficient as an Islamic divorce. The judge said the divorce process has a procedure to follow to ensure the marriage is over. Technically the woman is still married to the first man. The judge explained to me that the woman had got married to the second man without to be Islamically divorced. The woman is playing with two systems of marriage. The woman was not accepting the judge's decision. (PO4)

The above cases demonstrate that there are differing outcomes for the women who apply to the Shariah Council. One client secured an Islamic divorce, whilst another client would have to complete the due process of Islamic divorce before she a divorce certificate issued. Namazie (2010) complains that there is no recourse to appeal against Shariah Council decisions. Others view, the lack of appeal structure in Jewish and Muslim tribunals has led to forum shopping, whereby applicants may choose a different religious tribunal if they are not satisfied the first time (Douglas et al., 2011, Norton, 2016). Thus, because of the voluntary and non-binding nature of religious tribunals, users can forum shop to attain their desired decisions. Furthermore, An-Naim (2010, p. 8) in arguing for the plurality of Islamic laws, believes there is no person or institution can decide an Islamic ruling applicable to all believers, rather each believer is responsible for their own belief in a matter; such a concept was apparent among many participants for this study.

7.2.8 Withheld Talaq

In line with An-Naim's (2010) argument for the individual believer's plurality in the application of Shariah law, participants demonstrated different strategies for securing an Islamic divorce without to approach a Shariah council, when refused a *talaq*. In the cases of participants with unregistered marriage, the majority received *talaq* from their husbands; thus, the problem of withheld *talaq* was more prevalent among participants with civil marriages. One participant with an unregistered marriage explained her situation.

> During mediation, I asked my husband to give me divorce [*talaq*]. He said he won't give me a divorce. Because he doesn't want to. I asked him 'why not?' He wouldn't answer me. I said it is more difficult for women to apply for divorce, whereas you can say it in front of witnesses. He said 'I'm not going to do it.' I found out why because he would have to give my gold [*mahr*]. (Jahanara)

Eventually, the above-mentioned participant secured her Islamic divorce via a Shariah council. Eleven of the participants who had received their civil divorce found their husbands withheld the religious divorce. Surprisingly, the majority i.e. ten of these participants procured their Islamic divorce without the use of a Shariah council; two main themes emerged regarding how they secured their Islamic divorce. Firstly, some participants accepted their civil divorce was sufficient as an Islamic divorce and many came to this decision after making inquiries. Other participants felt they had no choice but to accept their civil divorce due to their circumstances; whilst for others, their family accepted their civil divorce was sufficient.

> I went to the mosque and asked for an Islamic divorce. The imam tried to patch things up, I said, 'Even after I've been through DV?' He said, 'DV is not a good enough reason'. My brother said, 'Come on, let's go, you've got a civil divorce and that's enough'. I asked my neighbour's sister who is a Quran *hafiz*. She asked someone, who said three months *iddah* period is enough. (Salma)

> I had to believe I was divorced; by law, I was divorced. Civil divorce was sufficient for me, but people kept questioning, saying that 'you may still be his wife' as he never said divorce to me Islamically or in English, never said it directly. I questioned myself for a while and then decided to move on. (Fahima)

> My family accepted I was Islamically divorced because he chose to move out of the house [deserted] and the court confirmed the divorce. (Saima)

Some Shariah councils such as those in Birmingham's central mosque and Green Lane mosque accept civil divorce as sufficient and issue a fatwa or divorce certificate accordingly (Grillo, 2015a, Parveen, 2017). In the above-mentioned cases, it was enough for participants to know that their civil divorce was sufficient as an Islamic divorce, and hence participants felt no need to pursue an Islamic divorce certificate to confirm the fact. However, the lack of clarity from the Islamic scholars on the status of a civil divorce in validating an Islamic divorce causes confusion among the Muslim community, which exacerbates the situation for Muslim women divorcing. One participant explained the problems she faced in clarifying an Islamic divorce.

> At the time I did my own digging [research] into Islamic divorce. Ten different people were throwing ten different rubbishes at me. My brother who was seeking Islam gave me a big fat book on Islamic divorce. The more I read the more complicated it became to understand. No one teaches you about divorce, who even teaches you about marriage. In the end, I left it [research] I live in a civil country. For me the civil divorce [was sufficient] was a way of getting rid of him. (Rushna)

Ali (2016b) argues there is scope within Islamic jurisprudence in the absence of a Muslim authority to accept the rulings of secular non-Muslim courts, as in the application of the *Fiqh Al-Aqalliyyat* (jurisprudence of Muslim minorities). Thus, an argument, that British Muslim women need not approach a Shariah Council, in view of minority *fiqh* (Ali et al., 2016, p. 17). However, the concept of minority *fiqh* was not known among participants, who referred to the mainstream orthodox version of *fiqh*, therefore, some participants had to struggle against orthodox views, to find a resolution in line with their religiosity. Even so, the introduction of minority *fiqh* may complicate matters, in a community already struggling with variance in Islamic jurisprudence, especially as another mechanism exist without the use of institutions, which may be more useful and practical in application, as discussed next.

The second method for securing an Islamic divorce without the use of Shariah councils relied on the concept that spouses that spend a certain amount of time apart rendered the marriage invalid. Some participants explained their circumstances, in relation to their husbands not pronouncing the final *talaq* after a civil divorce.

> He does not need to give me the third *talaq*. I found out Islamically that as the *iddah* (waiting period) had passed after the second *talaq*, that I am no longer with him [i.e. divorced]. The only difference if he had given me the third *talaq*, we could not remarry, whereas now we can. The third *talaq* does not matter to me, I can get married [to someone else] if I want, and I don't need a certificate to do that. (Aisha)

> I asked the mosque and a *Hafiz* (memorised Quran) via a friend. She said that as three months had passed since the divorce, the marriage was dissolved. Besides, before he left, there was no physical relationship for one year. (Parvin)

In the above-mentioned cases, it was clear to the participants that the marriage was over; and both had received their civil divorce. In the first case, the participant petitioned the civil divorce, and the husband agreed to give the Islamic divorce, so he pronounced *talaq* on two occasions, but withheld the third *talaq*, which according to the participant was no more than a formality, thus the participant moved on. In the second case, the husband was the petitioner, so the participant sought clarification of the *iddah* period, and naturally assumed the husband's intention for filing civil divorce also meant the religious divorce and therefore felt no need to seek a separate Islamic divorce. Both participants displayed pragmatism in understanding their divorce process as the marriage

had irretrievably broken down, and did not overly concern their minds with religious dogma that may otherwise have hindered them moving on after their civil divorce.

However, for one participant, her situation showed all the trademarks of a 'limping marriage', and as such, the participant was unable to move on until securing an Islamic divorce; she described her dilemma.

> I called the mosque and other places. They all said I needed an Islamic divorce. My family tried contacting my ex-husband and asked him to say the *talaq*, but he won't get back to them. My family think I'm crazy, they said 'you've been through a civil divorce, that's enough'. [But] I want to do it the proper way, if that's the Islamic way, then why not do according to that. When I die, I have to answer to Allah about how much I followed my religion, not what I did by English law or Bangladeshi law, Islamic law matters. (Nabila)

For this participant, the need for an Islamic divorced occurred two years after her civil divorce. She described, it was only after she started practising her religion, and reading books about marriage and divorce, that it dawned on her to inquire about the Islamic divorce, which, unfortunately, worsened her predicament, though she initially moved on in her life when she received her civil divorce.

7.2.9   *Verification of Islamic Divorce*

In many cases, the sources for verifying an Islamic divorce contributed to problems faced by participants. The plurality of Islamic law leads to differing views of the Islamic divorce process; however, for those with limited understanding of Islamic knowledge it can cause further confusion. Macfarlane (2012a, p. 147) contends that in the absence of a single recognised procedure or set of norms, neither the facts or the process determine the outcome, rather whether the divorce is agreed or permitted in the attitude of imams and the persistence of the supplicant. One of the imams reiterated this point, that people require verification of Islamic divorce, rather than to follow a due process, thus the sources of verification can vary, and in some instances be quite informal.

> People generally ask *fiqh*y (jurisprudential) questions to those who have studied some Islamic sciences, Shariah sciences, *fiqh* sciences. People want to know the Islamic answer, what they should be doing and so forth. So it is inevitable for anyone who has studied it, Islamic studies, even if they are not Imams, people would ask them ... But there's a difference between legality and reality. So you can't always take the black and white approach. (Imam #2)

MacFarlane's (2012a, p. 148) study found, that for some respondents a consultation with an imam was sufficient for them to file for a civil divorce, and then accept they were divorced legally and Islamically. Participants in this study described how they sourced verification of their Islamic divorce, which varied from formal Muslim institutions to the informal, such as friends.

> I studied in a madrasah (Islamic school), I asked a friend who is an *alimah* (female scholar). I'd been to the mosque, but they we not helpful. I enquired with friends and they said 'yes, the [Islamic] divorce is done'. (Aisha)

> I said *talaq* in anger to him many times but told that it was not valid. I learnt from knowledgeable people like yourself [i.e. imam] and reading that if you have a long separation without contact [with the husband] that the marriage is no longer valid. I accept that as being Islamically divorced. (Tina)

Bano (2012b, p. 177) found Muslim women questioned their lack of personal knowledge and ignorance of Shariah principles as contributing to their marital breakdown. Similarly, Mehdi (2012, p. 29) argues that Muslim women in diasporic communities usually have a limited knowledge of Muslim laws, and they are not aware of their rights under Islamic law. The Shariah Council was concerned that ignorance of the Islamic divorce process can lead to hardship for Muslim women.

> People are very ignorant about Shariah. For example, misconceptions such as the triple *talaq* – the woman leaves the house immediately. The man says it is his right and the woman has no right or that the children are automatically in his custody if the woman remarries. (SC Judge #1)

Many of the respondents in Macfarlane's (2012a, p. 175) study learned about their Islamic rights through their experience of seeking a religious divorce, they were concerned some women were unaware they have the right to ask for *khula*, and in some cases not forfeit their *mahr*. Nasir (2009, p. 211) acknowledges many of the problems faced by Muslims (i.e. women) are due to a lack of knowledge and understanding of [Islamic knowledge]. Thus, the lack of clarity and confusion, can lead Muslim women to accept what is acceptable to them, and leave the judgement to God, as was the case with one participant.

> The thing is I have done so much research that it clouded my own judgement. Some say one *talaq* is enough; others say it has to be one *talaq* every three months, and then there's the one the Shariah Council give. I accept the first divorce as my final [Islamic] divorce, I've

had my menses and I'm not pregnant. I'm guessing it's done. Do you know what, I'm going to leave it between me and my Allah. (Henna)

The consequence of achieving Islamic divorce was a key factor for participants in pursuing a religious divorce. For some, the Islamic divorce meant a severance from the in-laws, for some, it removed the doubts of still being married, and for others, it meant they could remarry, whilst for many it meant freedom to move on with their lives

To hear *talaq* meant it was official, you've severed the link with them [in-laws]. (Faiza)

Otherwise, people think you are still married. (Fahima)

Religious divorce is more important to me. I needed freedom I needed my sanity. (Henna)

The attainment of divorce is only one aspect of the process, the consequence of the divorce still leaves other issues to resolve such as the *iddah*, *mahr*, maintenance and child arrangements (Esposito and DeLong-Bas, 2001).

7.3 *Mahr*

Mahr is dower, a gift from the husband to the wife nominated at the time marriage, paid immediately/promptly (*muajjal*) or deferred (*muwajjal*), kept by the wife in *talaq*, and paid back to the husband in *khula*, it is an obligatory part of *nikah*, with no fix limit specified in the Shariah (Doi, 1998, p. 163). Dower is distinct from dowry - whereby the bride pays the groom a payment in the form of money or luxury goods, though similar practices also occur in some Islamic societies, particularly in South Asia (Sait and Lim, 2006, p. 139). The Quran mentions the obligatory nature of paying the *mahr* 'And give the women [upon marriage] their [bridal] gifts graciously…' (Quran, 4:4). The Prophet emphasised the need to nominate something of value no matter how small, 'Marry, even with (a *mahr* equal to) an iron ring' (Al-Bukhari, 1997, no. 5150).

There is some debate as to whether the *mahr* is a gift or deterrent to divorce and the significance of its value. According to Fazalbhoy (2003, pp. 106-108) the amount paid for *mahr* varies for different regions in South Asia, in most cases it is a token amount with no real economic significance, in a few regions it is fixed to the weight of gold, in general practice large *mahr* are usually deferred and act as a deterrent to divorce. Another view is that *mahr* was the traditional means by which a woman

supported herself where the divorce is not her fault, or if she is widowed (Black et al., 2013, p. 118). The Shariah Council provided further clarification on *mahr*.

> From the classical text, the scholars could not decide whether *mahr* was simply a gift or a deterrent from divorce. The Quran says do not take back the *mahr* even a qintar (heap of gold). The *hadith* says the man had nothing of monetary value, so he taught his wife the Quran that was the *mahr*. In the Muslim community, some see *mahr* as a gift, so keep it small. Other people see the *mahr* as helping their daughter's future and ask for £10,000 upwards. (SC Judge #1)

Mir-Hosseini (2016, pp. 73, 76) takes the view that women in the Middle East usually demand *mahr* in order to induce divorce, and seldom use it as deterrent or compensator, and there are instances of men baulking divorce to force their wives to apply for *khula* and forfeit their *mahr*. One participant mentioned a similar incident.

> He said to me if I don't go back to his house and say sorry to his mum, then I should ask for a divorce [*khula*]. I said why I should ask for a divorce so that you don't have to pay the rest of the *mahr*. He said 'no, you want the divorce, then you can ask for it'. I said I don't need you to tell me to divorce. (Lily)

In spite of the debate whether *mahr* is a gift or a deterrent, many view the *mahr* as an integral part of the *nikah* contract; the model Muslim marriage contract states that 'the *mahr* is an essential element of Muslim marriage' (Muslim Institute, 2008). The Shariah Council reinforced this view; hence, the application forms for *nikah*, *talaq* and *khula* all requested information on the amount of *mahr* paid. The council follows classical interpretations of payments for *mahr* in the event of a divorce. Thus, for *talaq* applications, the council requires the husband to pay the dower in full before the divorce can be finalised. Hallaq (2009a, p. 191) believes that men have a price to pay for the prerogative of *talaq*, and that is to pay outstanding *mahr* and provide maintenance when divorcing. In *khula* applications, the wife abandons her right to dower (if not paid) or returns the dower amount; in exchange, the husband agrees to divorce her. However, in cases of *mubarah*, there is usually no financial compensation to pay, whereas in *tafriq* or *faskh* the husband is liable to pay the wife the *mahr* (Doi, 1998, p. 194). The dower can be in the form of land, jewellery, money or other items; thus, the *khula* application also requires the wife to list items of value such as jewellery or furniture given by her parents that may still be in the husband's possession; though the council mentioned retrieving *mahr* has its complication.

Sometime *mahr* is a massive sticking point; it can drag on in cases as no divorce certificate issued until the *mahr* is resolved. One case dragged on for eighteen months because the wife [client] refused to pay back £20,000 owed to the husband. They were only together [married] for two and a half months; the husband was not at fault, no violence and no children. Eventually, the man got fed up and gave her divorce, even though the wife filed for *khula*. As a *qadi*, we have to look at justice for both parties. Each case is dealt differently, and the scholar [*qadi*] decides when divorce is given linked to resolving *mahr*, land and property. (SC Judge #1)

In the above example, the Shariah Council attempted to retrieve *mahr* from the wife in a *khula* case without success. In other examples observed at the Shariah Council, women were willing to forgo their *mahr* in order to expedite their divorce application.

The woman's husband owes her £5,000 in *mahr* but she said that it is not important. She works part-time; all she wants is the divorce. [PO1]

The woman [client] said she is willing to forgo the £50,000 dower written in her marriage contract. The judge said that is quite a large amount. She said he [husband] put that amount down to win her over for the marriage, but the woman is not bothered now and wants to be free from the man. [PO2]

In Muslim majority countries, the state has the power to enforce the payment of *mahr*, for example in Bangladesh, under s10 MFLO 1961 which says 'the entire amount of the dower shall be prescribed to be payable on demand'. However, as Shariah councils have no powers to enforce *mahr* payment, they are referred to as councils and not courts (Grillo, 2015a, p. 21), and are reliant on the parties good will to accept their decisions, which in contentious cases can prolong the divorce process. There is the option to pursue the enforcement of *mahr* via the civil courts, though it was not a practice found among the participants in this study; one expert mentioned the difficulty in pursuing the process.

Men avoid paying *mahr* and make women suffer. It is expensive to pursue *mahr* claims via the civil courts. (Solicitor #1)

In Shah-Kazemi's (2001, p. 29) study women were frustrated with the difficulties in legal redress through the civil courts, namely the problem of costs and legal expertise. Proudman (2012a) contends that civil courts may award *mahr* in ancillary relief proceeding e.g. *NA v MOT* [2004] EWHC 471 (Fam) [2004] – couple with Iranian civil marriage; and in cases of *nikah*-only marriages, as civil litigation, separate from matrimonial proceedings e.g. *Shahnaz v Rizwan* [1965] 1 QB 390 and *Uddin v*

Choudhury & Ors [2009] EWCA Civ 1205. In the case of *Shahnaz v Rizwan*, the judge viewed there was a right to pay the *mahr*, enforceable by a civil action without taking matrimonial proceedings, and ruled that English courts should recognise in favour of Muslim women, enforcing the contract and payment of what was so promised in Muslim marriages. In *Uddin v Choudhury*, the plaintiff had applied to the court for the retrieval of gifts given to the wife at the time of *nikah* of the value of £25,000. The wife had previously approached a Shariah Council and attained a *khula*. The judge ruled in favour of the defendant (wife) enforcing the payment of *mahr* for £15,000 and took into consideration the views of an Islamic expert, who stated a gift was a gift, and the payment of *mahr* was a contractual obligation. For Bowen (2016, p. 187) the judge adopted the approach followed in codified personal family law, where the *mahr* is paid out to the wife regardless of *talaq* or *khula*, whereas in classical *fiqh* the wife is liable to pay back the *mahr* in *khula*. However, the case file notes that the appeal judge accepted accounts taken into consideration for the original verdict, that the husband abstained from consummating the marriage and therefore according to Shariah the wife was entitled to the *mahr*. This case highlights the complexities in dealing with *mahr* cases in civil court, even so, in general, civil courts can enforce *mahr* as a contract, whether as a marriage agreement, antenuptial agreement, legal debt, or contractual condition of marriage (Fournier, 2010, p. 64).

Many participants chose not to pursue the *mahr* due to the difficulty in retrieving the sums owed. Some participants described how they found the mosques and Shariah councils unhelpful in resolving their disputes and viewed the Muslim community took a negative view towards women chasing *mahr*.

> He wouldn't give my *mahr*. I called the mosque to get advice, and I did not find them helpful, so I've left it. I don't want to deal with my 'ex' anymore… People take *mahr* lightly. If a woman asks for payment, they think she is greedy and look down upon her. *Mahr* should be given in the beginning, and not left until the divorce. I have not forgiven him for it. (Aisha)

> I spoke to the Shariah Council on the phone. They asked me if I got my *mahr* and gold. I said I got nothing. They said your husband is giving a different story. I told them at the end of the day Allah is my witness, there's nothing more I can say. One month later, they issue him the Islamic divorce certificate… He lied. I thought, forget about it [*mahr*]. What's money and gold going to do? Nothing I didn't really care. (Rupa)

In Macfarlane's (2012a, p. 200) study, women with short marriages often gave up their claim to *mahr*, when unable to persuade their husband, and viewed the Shariah councils unlikely to enforce *mahr* payments in *khula* applications. There are reports, in South Asia, of an increase in *khula* cases registered with local Shariah courts, an indication that women give up *mahr* to purchase their freedom (Fazalbhoy, 2003, p. 107). Women in the Middle East often forgo the *mahr* to hasten their divorce, though if pursued might have received it (Mir-Hosseini, 2000, p. 82).

Some participants chose to forgive their husband from paying the *mahr*, in order to move on with their lives, one participant did not want to be accounted by God in the hereafter, whilst another participant felt personal relief.

> I said to him 'you owe me *mahr*. I forgive you'. On the day of judgement, I did not want him to be accountable for the money. The amount was neither here nor there for me. I want him to be free of me, and I don't want to deal with him in the hereafter. (Henna)

> He owes me £10,000 *mahr*. He says he won't give it to me [laughs], good riddance. I forgave him I am much happier now. If I stayed with him I would have gone mental. (Salma)

Numerous studies have found a positive relationship between forgiveness and well-being in dealing with personal relationship conflict, and forgiveness can be interpersonal – changing attitude towards another, or intrapersonal – releasing resentment (Ysseldyk and Matheson, 2007, p. 143). Even so, other participants mentioned they were still pursuing the *mahr* and other expenses owed to them and used family, friends and imams to mediate.

> He's paid the *mahr*, but he owes me money from the wedding gift. Half of that should be mine. He got his brother to tell me that he would pay me the money, but he hasn't yet. (Polly)

> He said you pay for the wedding expenditure [upfront] and I pay you back. I gave the money for the gold, other jewellery, and clothing. I believed he would pay me back but he hasn't. He's not paid me my *mahr*. His family has kept all my stuff. (Rahima)

The nomination of a *mahr* at the time of *nikah* may give the wife the impression of financial security in the event of a divorce. However, the common practice of deferring payment until a later and often unspecified date means many women never received the *mahr* owed to them. In Muslim majority countries, *mahr* payments are enforceable, with possible imprisonment if not paid. The options for British Muslims to

retrieve *mahr* are limited to filing a civil case separate from matrimonial proceedings unless of course, the family court judge allows the consideration of *mahr* during ancillary relief proceedings. The use of mediators or religious tribunals may resolve some disputes, however, the lack of enforcement powers for awards made, mean these forums are less effective in retrieving *mahr*.

7.4   Financial Relief

One of the consequences of Islamic divorce for Muslim women is the *iddah* or waiting period. During the *iddah* period, the wife is neither married, nor divorced, not permitted to remarry, and has restricted movement; the *iddah* period for menstruating women is three full menstrual cycles, and for women in menopause it is three calendar months, whilst for pregnant women the *iddah* continues until the birth (Tucker, 2008, pp. 100-101). In contrast, there is no *iddah* period for Muslim men, as according to classical *fiqh* they have the right to polygamy (i.e. polygyny), the Quran says 'then marry those that please you of [other] women, two or three or four' (Quran, 4:3). However, one can argue that polygamy is restricted by the same verse it also says 'But if you fear that you will not be just, then [marry only] one' (Quran, 4.3), and the verse, which says 'And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]' (Quran, 4.129) (Ali, 2004, p. 44). Another view is that a restricted form of polygamy is permitted as means to meet social, moral, economic and natural eventualities (Menski, 2013, p. 154). In sum, there is no concept of *iddah* for the husband in Islam; rather, the Islamic scholars view women have to observe the *iddah* to determine if they have a child in the womb (Singh, 2011), as this has implications for financial support for the father.

The *madhhabs* differ on the entitlement to material support until the *iddah* of an irrevocable divorce ends, the Hanafi view the wife is entitled to housing and financial support, the Maliki and Shafi award only housing, whereas the Hanbali say there is no support for the wife unless she is pregnant (Tucker, 2008, p. 102). The classical interpretation of maintenance is limited to support during the *iddah* period only, which lasts a maximum of three months unless the wife is pregnant. Shahid (2013, p. 198)

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argues, that the situation for Muslim women is no better in countries like Pakistan and Bangladesh where they still apply classical *fiqh* in matters of *mata'a* (post-divorce maintenance) as adopted in their codified personal family laws. Shahid (2013, p. 212) further argues, that these countries can learn from the experiences of courts in India, and from cases such as *Mohd Ahmed Khan vs Shah Bano Begum And Ors* (1985 SCR (3) 844) and *Danial Latifi & Anr vs Union Of India* (2001) 7 SCC 740 where egalitarian ethics of Islam was applied to stop Muslim women falling into destitution. The patriarchal notion that Muslim men are obliged to provide financially for the family neglects the fact that Muslim women also contribute to the marriage and the up keeping of the family in many ways, in this regard, the civil law differs with classical Islamic law and the interpretation of post-divorce maintenance.

In English law, there are provisions for maintenance under Part II of the MCA 1973, which allows the courts to provide financial relief for parties to marriage and children of the family. The act provides financial provision orders such as maintenance pending suit, periodical or lump sum payments, property adjustment orders and pension sharing orders. However, cohabitants during relationship breakdown have no right to apply to the courts for financial provision, as such there is no maintenance for the partner, though there is a duty to maintain children (Standley and Davies, 2013), moreover, the courts have no power to redistribute family wealth or property (Herring, 2017, p. 199). For married couples divorcing, s25A (1) MCA 1973 allows the court to consider making a clean break order, and settle once and for all the parties' financial liability to each other (Lowe and Douglas, 2015). The benefits of a clean break divorce are that the parties can move on, feel emotionally released, remarry without the risk of losing maintenance, and avoid the stress of periodical payments; whereas the disadvantage is that the court cannot reopen financial orders (Herring, 2017, p. 234). Following cases such as *MacLeod v MacLeod* [2008] UKPC 64 and *Radmacher (formerly Granatino) v Granatino* [2010] UKSC 42, the court can consider pre and postnuptial agreements as possible factors for consideration when deciding financial settlements.

The experts in this study were concerned for women with unregistered marriages, and the difficulty in pursuing financial relief in the event of a relationship breakdown.

> Couples with unregistered marriages are classed cohabitees under the English legal system; the options for financial relief are complex, as you are bypassing family law and going to civil law. Under trust laws, clients have to prove their contribution to the marriage [relationship] and claim back money spent. It is not a formal contract as there was no signed contract; it is where the client trusted the husband to give money and had children with him. Under contract law, the wife can claim back her *mahr*. If there is property then we can apply TOLATA [Trusts of Land and Appointment of Trustees Act 1996]. (Solicitor #2)

> My client married a divorced man who refused a civil marriage and chose a *nikah*-only ceremony… She's a practising Muslim and didn't care about the civil marriage. She had no rights other than as a cohabitee. When they split up, her husband was messing her around. (Solicitor #1)

The options for financial and property relief in unregistered marriages are limited. The Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) allows cohabitees to bring claims to the court realising a beneficial interest in a property (Arshad, 2010, p. 144). However, in the TOLATA jurisdiction, the court has no powers to adjust the parties' beneficial share in the property (Harris-Short et al., 2015, p. 525). Section 33 of the FLA 1996 has provisions for applicants with home rights, whereas s.36 FLA 1996 has provisions for cohabitants with no existing rights to occupy. Orders under s.36 (10) FLA 1996 are limited to a period of six months, subject to an extension of another six months, providing a maximum period of security for one year. Another alternative, is an application under Schedule 1 of the Children Act 1989 together with TOLATA as supporting application, though the property will revert back to the other parent on the child's majority (Arshad, 2010, p. 145).

The experts viewed the access available to divorce courts for registered marriages resolved many of the problems faced by Muslim women, though court fees were a concern.

> Under English law, the divorce courts have a protocol in place. Immediately the starting point for the marital pot is 50/50, the wife and children are not made homeless; 95% of issues are resolved, *mahr*, jewellery, furniture, she gets a bigger share. Men cannot walk away from their responsibility they feel the financial pain. (Solicitor #2)

> There is no legal aid unless DV involved. Court fees are a problem for women on benefits, who do not pursue maintenance and become destitute. (Solicitor #3)

The experiences of participants with unregistered marriages revealed one participant chose to forgo chasing maintenance, whilst two other participants involved the Child Support Agency (CSA) now called the Child Maintenance Service (CMS).

> I did not go for maintenance it was a personal choice. I was not going to beg, if he's going to give it, he should do so voluntarily. (Faiza)

> The CSA got involved. He did not want to pay maintenance. He was adamant that he's not going to give it. They [CSA] sent him three letters and then got his employers involved. The employer deducted the money from his wages and it automatically came to me. He was not happy about that. It was quite a large amount. He works hard, but he doesn't realise it only goes towards the children. It is child maintenance, not spousal maintenance. His family went around badmouthing me. I feel so sad; they made me out as if I am money hungry, bleeding him dry. (Jahanara)

> He gave £40 a month through the CSA but only paid for a couple of months. He called up the CSA and told them he has stopped working. He said to me that he would come and pay in cash. I said to him he would never pay, and I was right he didn't pay anymore. (Rupa)

Many participants mentioned how they were initially reliant on state welfare benefits to meet their financial needs, in the absence of any maintenance. The experts mentioned how men avoided paying maintenance, leaving women to rely on other means to support themselves such as state benefits, and their family. The Shariah Council confirmed they dissolved marriages where the husband became untraceable, with women favouring to sever links with the husband than to chase maintenance.

> Men do not pay maintenance during the *iddah* period [as they should]. The women rely on benefits or their elderly parents. (Solicitor#2)

> We have cases where the men have left the marriages and are untraceable. These men are worried about child support and that the CSA are after them. They do not want to pay maintenance. But women do not care about money, they want freedom. They want to know that he can't come back in a few years and ruin them. We dissolve the marriage so the women can move on; it is not always about remarrying. It is about being mentally free of him. (SC Judge #1)

Participants with civil divorce also mentioned the difficulty in receiving maintenance from their ex-husbands.

> He told the courts "I'm not working." He left work. They couldn't get anything from him, they said, "he's unemployed." (Parvin)

> I got child maintenance involved. He went part-time so the money is not that much. The CMS will check with his employer to see when he reduced his hours, and they will pay me anything extra owed backdated. (Polly)

In a few cases, the husbands gave maintenance voluntarily, and there was no need for a court order, others forwent maintenance preferring to avoid any further contact with their ex-husbands. One participant chose not to ask for maintenance hoping for reconciliation.

> I could have applied for maintenance from my ex. I haven't done any of that. I can't deal with my ex anymore. (Aisha)

> I didn't ask for maintenance. I was waiting I thought he might just calm down and we could reconcile. (Mahida)

Generally, most participants suffered financially after the divorce.

> There are times I struggled financially. I had kids. I thought let me get him back, but I remembered all the bad things he's done to me and stopped myself. So hard to be on your own feels like I'm in a black hole. (Rushna)

> He kept shuffling between Bangladesh and the UK. I got so tired of chasing him for maintenance. In the end, I did not bother. He left me thousands of pounds worth of debts to pay off. I am paying it bit by bit. (Salma)

Notwithstanding the classical *fiqh* view, that maintenance lasts for three months i.e. the *iddah*, many participants chose to pursue maintenance via the civil courts. As participants with unregistered marriages had children, they also exercised their right to claim child maintenance via the civil courts. In the majority of cases, the husbands avoided paying maintenance, choosing to stop working or reduce hours. Participants were left frustrated by such actions, especially as many had described their husbands as workaholics or money hungry during their marriage, hence, avoiding maintenance payment was another way to spite the participants and cause them further suffering. Participants that chose to forgo maintenance did so to avoid contact with their ex-husband, and not because they believed, maintenance should be limited to three months as in classical *fiqh*.

7.5 *Child Arrangements*

During family breakdowns, most couples make their own arrangements for children, with the court considering the arrangements before issuing the decree absolute (Standley and Davies, 2013, p. 280). Where the parties dispute child access and custody, the courts have the powers to issue orders in the child's best interest. Under s8 CA 1989, the court

is able to make three types of orders: a child arrangements order (CAO), which replaces the previous term contact and residence order, regulates with whom a child is to live, spend time or otherwise have contact, and when a child is to live, spend time or otherwise have contact with any person. A specific issue order (SIO) can determine a child's upbringing such as education and medical treatment, and a prohibited steps order (PSO) can prevent identified actions by parents including removing the child from the home or taking her out of the country.

Classical interpretations of Islamic law also consider residence and contact with children after divorce. The *wilayah* (guardianship) of children relate to three matters *hadhana* (infancy), *tarbiyyah* (education) and *maal* (wealth); the four Sunni schools of *fiqh* agree that at some stage the custody of child will transfer from the mother to the father, an Islamic right, albeit the schools differ regarding the age at which the child is moved (Arshad, 2010, pp. 153-154). Thus, in line with patriarchal traditions the father is made ward of custody when a male child reaches age seven and the female age nine, or if the mother remarries or is considered religiously immoral (Esposito and DeLong-Bas, 2001). Child custody laws in the contemporary Muslim world have codified MFL, such that in some countries like Turkey and Tunisia they follow civil law, whereas other Muslim countries follow the predominant Islamic jurisprudence of the region (Rafiq, 2014).

The experts in this study voiced the importance of resolving child arrangement during marital breakdowns, and where there are disputes between the parties, they recommend mediation or the use of civil law remedies.

> The courts try to minimise disruption during divorce and deal with child arrangement. (Solicitor #1)

> If they [client] do not bring up the issue of children, we will bring it up. It is about the duty of care and the welfare of the child. We need them to consider access to the child. We try the mediation approach first, if it does not work and they are not willing to compromise then we have a legal agreement plan in place. (Marriage counsellor)

The imams and the Shariah Council judges appreciated that matters pertaining to child arrangements and maintenance was a matter of civil law.

> In our policy document we write that anything that deals with custody of the children, anything that conflict with the law, we say go to the lawyers, we only provide the Islamic advice, in an advisory capacity. (Imam #1)

> The Shariah Council deals with religious divorce and *mahr*. Anything else, people have to go to family court or small claims court for settlement. (SC Judge #1)

The law in relation to child arrangements for *nikah*-only or unregistered marriages is that of cohabitees. As such, the CA 1989 states that the mother automatically gains parental responsibility for any children, though the father may acquire rights via provisions of the act e.g. being named as the father on the birth certificate.

Most of the participants with unregistered marriages made child arrangements without involving the family courts. However, in two cases, participants approached the courts for child arrangements, as they feared their husbands were unreasonable, and there was a threat of child abduction.

> The solicitor referred us to a mediator, we could not agree on anything about the children, he [husband] was not civilised. I said to him if you don't talk to me I'm not giving the children to you. We made some rules – mutual decisions to do with the children and then went back to the solicitor… The court order changed him, before that, he was constantly angry with me. He was ignorant about everything. After the court order, he became more civilised. He realised he had to be civilised. (Jahanara)

> He [husband] wanted to see the child. I said go through the solicitor. There was no trust; he tried to do a runner with the child once [abduction]. We had to call the police and everything, and then there was a big fight. (Rupa)

Thus, even as cohabitees, participants were able to approach the family courts due to having a child, and the powers of the court to make and enforce child arrangements orders eased the conflict with their ex-husbands. Furthermore, under the Child Abduction Act 1984 it is an offence to remove or send a child outside the UK without the appropriate consent, applicable alike to parents married or unmarried at the time of the child's birth; though participants did not need to resort to this law for their situations.

Most participants with civil marriages wanted to maintain child contact with their husbands after divorce. However, as many of the cases involved DV, the husbands had limited and for some, supervised access, with involvement from social services; and the courts denied shared custody of the child. Participants described their situations.

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I didn't stop my husband calling his child. I don't believe in using children as a weapon. They speak once a month, but my child doesn't want to continue talking to their father, says he's selfish and not interest in the child. My personal belief is that my child needs to have contact for their upbringing and religion. (Tina)

My children don't want to see their dad, but I make them for the reason I don't want them [children] or social services to say their mother stopped contact. He sees the children for two hours every week at a contact centre. (Nabila)

He didn't claim child custody, he was too violent. He doesn't want the children, he's moved on. He has no contact with them at all. (Salma)

In many cases, the ex-husbands ceased having contact with the children after the divorce was finalised.

The court said he could extend the hours for his visits if I felt ok. But he got fed up seeing them for two hours after a couple of weeks. He said he couldn't make it. I thought the less they see him the better. It didn't bother me. I said ok. After my divorce there has been no contact, he went back home [Bangladesh]. (Zaynab)

The children came back crying, they said dad said too much, we're not going back. In court, they said 'why did you stop access?' I explained I didn't, the kids did not want to go anymore. They requested me to try one more time. I did but the same thing happened, he twisted the kid's mind and made them confused. He saw them twice after that and then finished contact. The solicitor explained to the court what happened, then they realised keeping contact was not simple. (Parvin)

One of the clients observed at a Shariah Council hearing mentioned child custody was a theme that contributed to her applying for an Islamic divorce.

The woman explained to the judge that she has a 6-year-old child from a previous marriage in Pakistan. Her ex-husband gained custody once they divorced. However, her current husband is not willing to help her fight for custody of her daughter. Her second marriage was a *nikah*-only contract, as she is in the UK on a student visa, and her husband too. He wants to live with her casually like a friend. She says that is not possible, Asian Muslims do not live like this. She wants to end the marriage, as, among other problems such as DV and polygamy, she sees no future in the marriage. (PO3)

Child arrangements are an important issue, and the Muslim women in this study followed the civil law in all matters pertaining to their children.

7.6 Conclusion

The chapter presented the findings of the divorce process experienced by participants and clients observed in Shariah Council hearings. Many factors influenced the experience of divorce in this empirical study. Some participants had civil marriages including overseas or foreign marriages, and others had unregistered marriage; thus,

completing divorce for some participants required two processes, a civil divorce and a religious divorce.

The participants were generally hesitant to file for divorce; those faced with DV, were advised by support services to seek protection from the law for their situation, usually, a non-molestation order was a catalyst to file for civil divorce. In some cases, families were supportive of filing for civil divorce, whereas some participants found their families were averse to them applying, preferring to resolve the Islamic divorce first. Nearly half the participants had transnational marriages, and invariably these marriages required civil registration, and therefore a civil divorce at its dissolution. There are options to dissolve foreign marriages abroad, in the place of ceremony, or in civil courts in the UK. Some participants with foreign marriages were unaware they have the right to petition divorce in the UK, being British nationals; and have held off applying for a civil divorce, fearing they have to travel abroad to complete the process.

In most cases, the wife i.e. the participants were the petitioners, as they need a release from the marriage. The majority filed for divorce on the fact of unreasonable behaviour i.e. DV, though they suffered other marital problems, as this fact allowed the application to process divorce with the least delays. In a few cases, the husbands filed for divorce, though participants described them deserting the marriage, or perpetrating domestic abuse whilst married. The majority of participants with civil divorce found their husband withheld the Islamic divorce. English law was unable to resolve the religious divorce aspect, leaving participants to resolve this issue after having received their civil divorce. Participants with unregistered marriages were under no impression they had a legally recognised marriage and only sought an Islamic divorce; notwithstanding, they still approached civil courts for issues related to child maintenance and child arrangements.

All participants regardless of whether they had a registered or unregistered marriage voiced the need for an Islamic divorce. The concept of what constituted an Islamic divorce varied among the subjects in this study. There is a vast literature on the classical and contemporary interpretation of Islamic divorce, with established procedures in Muslim majority countries. Furthermore, in Muslim countries, the Islamic

divorce would form part of the general divorce procedure, thus there would rarely be a separate process. English law does not issue religious divorce, nor does it recognise such divorce effected in this country, whereas overseas divorce, which follow the laws of that country is valid. Any religious divorces sought in the UK, are outside the civil law process with no legal effect, and therefore procured to meet the individual's or the community's needs. There is clearly a disparity in gender equality between the civil and Islamic divorce process. The civil divorce process affords gender equality throughout the due process; whereas the Islamic divorce process grants unequal rights between the husband and wife, with most privileges afforded to the husband. Some have defended the inequality in the Islamic divorce process as religious freedom, norms that form part of group membership, or gendered roles are complex accommodating bargaining to secure rights (Kandiyoti, 1988, Kymlicka, 1995, Norton, 2016). The women in this study did not complain of the gendered roles in the divorce process, rather they criticised Muslim men withholding divorce unfairly, and the actions of some Muslim institutes disregarding women's circumstances if they enquired about Islamic divorce.

The participants gained Islamic divorce by *talaq* in ten cases, and in thirteen cases, the husband withheld the religious divorce –nearly all bar one were cases where the wife had attained a civil divorce. Participants approached a Shariah council in five instances, in two cases, the husband requested an Islamic divorce certificate to confirm the *talaq*; and in one case, a participant applied for *khula*, though the council had to annul the marriage by *faskh*. The majority of participants with civil divorce found other means to complete the Islamic divorce; some participants accept the civil divorce as the religious divorce, whilst others accepted a period of separation after the decree absolute as sufficient. Thus, in the majority of cases, participants did not feel a need to have their Islamic divorce officiated by a mosque or a Shariah council, nor was there a need to have an Islamic-divorce certificate, and therefore no evidence of coercion in using Shariah councils. Participants sought verification of their Islamic divorce from, various sources, some formal like imams and Shariah councils, and others less informal such as a learned Muslim friend or neighbour.

The Shariah Council observed had an open and transparent divorce procedure and followed classical or traditional interpretations of MFL. The application process was gender specific with husband-initiated and wife-initiated divorce following different procedures. The clients that approached the Shariah Council were mainly women and did so voluntarily and there was no evidence of any coercion during the hearings. Rather the women demanded the council expedite their Islamic divorce and disputed with the council on points of disagreement. The council deals with complex issues where civil law and religious law cross over. The council is aware of its legal limits, confines it services to Islamic divorce and mahr, and advises clients to seek civil law remedies in matters of financial relief and child arrangements. Banning Shariah councils would be detrimental to Muslim women, as they provide a service not available through civil courts i.e. religious divorce. The experts felt that there is scope to improve Shariah councils in particular by having more female representation at the decision-making level and their inclusion in Shariah boards and panels. In the end, the Shariah Council worked to empower Muslim women by granting Islamic divorce, fulfilling the needs of the individual in accordance with Muslim community norms.

There is an overemphasis on the importance of *mahr* in the marriage contract. Large sums are often nominated as a means of appeasing the future bride and her family, and then payment deferred in the *nikah* contract, with an assurance that wife will receive the outstanding amount in the event of a divorce and thus financial security. This study found most husbands are unwilling to pay *mahr* when divorcing, though the wife has a right to claim the amount outstanding, especially in cases of *talaq* and *faskh*. In Muslim majority countries, the wife is able to approach the civil courts to enforce payment of *mahr*, who may apply penalties to non-payers. In Britain, Muslims may approach mediators and other ADR forums to resolve disputes, however, where the husband refuses to pay; it could involve a civil court claim, though often such claims are not pursued due to costs and fees. Many women in this study decided to forgo chasing *mahr*, even in cases where substantial amounts owed; the women realised the difficulty in receiving payment without to go to court, and instead favoured severing links with their ex-husbands, to move on with their lives.

The concept of maintenance according to classical and contemporary Islamic family law is problematic, as it follows the patriarchal notion that men provide for the family, and therefore women have no right to claim maintenance after the three months *iddah* period, setting a precedent for norms found in diasporic Muslim communities. English law redresses such limited notions of maintenance, and divorced women are entitled to spousal maintenance, child maintenance, and to claim a share of the matrimonial assets and property. However, English law treats Muslims with unregistered marriages as cohabitants; as such, women are not entitled to spousal maintenance and must use trust or contract law to seek any financial relief. The majority of the participants in this study had registered marriages, and therefore had access to the family courts. Nonetheless, the lack of legal protection and financial relief for Muslim women in *nikah*-only marriages is a concern.

The difficulty in receiving maintenance from husbands who avoid payment is another matter of concern. The majority of women in this study had children, and therefore, even in cases of unregistered marriages, could claim child maintenance. However, many of the husbands told the courts they were unemployed and unable to pay maintenance, which left many participants either reliant on state benefits after divorce or destitute. Only a few participants mentioned their husbands gave maintenance voluntarily; more often, the husbands in employment refused to pay, thus participants contacted the CMS to enforce payments. Some participants forewent maintenance, preferring to sever any links with the husband.

Classical and contemporary *fiqh* stipulate that the child is awarded to the husband at some stage post-divorce, dependent upon the child's age and whether the wife remarries or not. The experts agreed all matters pertaining to the child should be resolved via mediation and follow civil law remedies, and the religious experts accepted matters of child arrangements fell under the jurisdiction of English law. Similarly, the women in this study approached child arrangements according to civil law and did not refer to any classical or contemporary interpretations of *fiqh*. In most cases, the participants tried to maintain access for their husband to see the children, however, in many cases access stopped due to the negative behaviour of the husband, or because the

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husband chose to cease contact with the ex-wife and children after the divorce became finalised.

Chapter Eight: Post-divorce (Moving On)

8.0   Introduction

Following on from the previous chapter on divorce and ancillary issues, this chapter presents the findings for post-divorce issues, which gives an insight into problems and issues faced after achieving divorce, and in trying to moving on. Several themes emerged from data collected such as post-divorce harassment, post-divorce counselling, remarrying, and community perceptions.

8.1   Post-Divorce Harassment

Participants mentioned facing post-divorce abuse and harassment from the ex-husband and the in-laws. Toews (2006, p. 86) suggests it is generally assumed that domestic abuse ends after separation or divorce, however, many studies have found the abuse continues post-divorce. In this study, the harassment came in many forms, in some cases, the ex-husbands tried to impose themselves physically on the lives of participants, by trying to enter the marital home, or stopping participants in the street or near the workplace. In other cases, participants received abuse via phone calls or emails; where the ex-husband and in-laws complained about the wife (participant) pursuing a divorce, feeling wronged and criticising her character. Participants described their situations.

> After the divorce, he would ring me and abuse me. He got his family to call me to do the same. I changed my phone number and my email. There is no more verbal abuse now. (Aisha)

> His brother saw me at an Islamic course once and started mentioning me in a bad light to others. I was tempted to knock on their door [in-laws] but eventually ignored it. I moved on for my sanity otherwise I would sit there in depression. (Lily)

The harassment and abuse for some participants were an extension of the domestic abuse faced during their marriages. Brownridge (2009, p. 58) claims previous studies consistently show that there is an elevated risk of abuse for women recently separated or divorced from abusive partners. Participants mentioned how their ex-husbands felt they still had control over them as many withheld the religious divorces. Hammer (2013, p. 251) reports that the husband withholds religious divorce after civil divorce so the community views the abused victim is not really divorced, and diminish

her prospects of remarrying. For some participants, the abuse and harassment stopped when they remarried; breaking the cycle of power and control from the ex-husband.

> He would bug me on the phone. I would give my phone to someone else to take his calls. Otherwise, he would irritate me. Any excuse, if he saw me down the market, he would comment, he'd say why am I wearing a white headscarf like an old woman, or that I'd put on weight, or say I saw you wearing this or that. He still thought he had control over me because I wasn't married. He thought Islamically he didn't divorce me so he has rights over me. He stopped contacting me after I remarried. (Rushna)

Thus, reiterating the importance of religious divorce for Muslim women, as a means to sever links with the ex-husband, and to allow women to remarry in accordance with Muslim community norms.

8.2   Post-Divorce Counselling

Many participants mentioned they fell into depression post-divorce and required counselling before they could move on. Emery (2013, p. 387) observes that depression following divorce may be due to difficult experiences during the marriage, such as verbal and physical abuse; and depression may indicate a sense of loss, anger or attributions people make of their lives. Bieber (1997, p. 31) asserts that among women 's reaction to divorce, are shock, denial, anger, sadness, frustration, self-pity, loss of control and grief. Participants described their situation, and some mentioned disappoint of their marriage breakdown, whilst others feared the difficulties of moving on as a single parent.

> I was aimless. I didn't know what I was doing after my marriage fell through. I was vulnerable, emotionally down. I've never been treated like this by anybody. It was a shock to the system…. It was really hard. It physically affected me feeling ill, chest pains and panic attacks. I was generally unwell for a year. I was going into deep depression. A friend suggested I take herbal medicine. I had lost a lot of weight. I couldn't express myself, I was so low. I tried to move forward, but I was so upset and distraught I couldn't commit to anything. (Kulsuma)

> I had health issues, and started to overthink things and became depressed. I could not get on with my life, I felt scared to settle down. I have kids, who will take me now. I thought, what is society going to say? (Lubna)

Chiriboga (1991, p. 92) believes that for women to slowly rebuild their lives after divorce, they need to accept these [low] feelings as normal; and part of women's recovery after divorce is to perceive themselves as exercising control over the situation.

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Others view that women require practical strategies combined with emotional support to help them overcome depression (Akhtar, 2013a, Goodman et al., 2009). One counsellor explained how they help women overcome depression, by encouraging them to leave their house and socialise.

> There is a grieving process after divorce. People become depressed or feel low; they need to understand how to break out of the process, and it varies for each person. We support them when they are ready. We tell them to socialise, push themselves to get out of the house. There is light at the end of the tunnel, there is hardship, but they have support. (Marriage Counsellor)

Women can be culturally trapped in a circle of self-condemnation, and to break free means to challenge the culture they live in (Jack and Ali, 2010, x). Participants mentioned the fear of their culture and the community was one of the problems that required counselling. The participants described how their counsellors help them overcome their fears, face the community, and stop self-blame.

> My biggest fear was culture. What are people going to say, I hid from people. I was scared people would bring up the subject of my divorce. The counsellor helped me come out of my fear. She was Asian; she told me stories of how other people came through. She helped me slowly, slowly. I used to blame myself. She said 'it's not your fault'. He [ex-husband] used to say it was my fault. She helped me come out from that. Two things came out of the sessions: my self-esteem - I believed in myself, and I pulled myself together; I could face people, I didn't care what they thought anymore. At the end of the day, I have to live my life. I can't live for people. (Rupa)

> I needed counselling. There were issues floating around my mind, I was depressed. I've been divorced from my husband for two years, yet he still felt the needed to prove a point to the community. He wanted to show my community that I was the evil one because I chose to divorce and he didn't. I ignored him. What else could I do, he was going to be petty, and constantly argue. My counsellor said 'just ignore it'. So, I ignored it, otherwise, the more I paid attention to it more I got depressed. (Jahanara)

The experts explained how counselling helps women move on after divorce, focusing on women gaining control of their lives, building their confidences to move forward. Similarly, a counsellor described the stages of recovery for women who faced domestic abuse during their marriages; starting by having a safe physical space, then establishing routines in their lives, and to plan ahead for the future.

> Post-divorce, we work on how they feel being on their own. We help them gain control of themselves empower them. Help them reach goals and future ambitions. Build their confidence if they want to remarry. Give them support and encouragement so they can move forward. Not let them get into depression or anxiety mode. (Marriage Counsellor)

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Recovery as a whole cannot begin unless the wife has left the situation. She needs to leave for her sanity and for his sake, otherwise, he continues (DV) until something stops him. Firstly, she needs to leave to have physical space: a safe environment, to eat healthy meals, the children to have a normal routine. Secondly, she needs to reconnect with life. Learn to do normal things again, look after herself; basic life skills deprived off during the relationship. Finally, the third stage is to look forward and plan for future. What they have been through is horrendous. No one explained what happened. Many things go round in the mind unless answered, and then they can mentally put it behind them. (DV Counsellor #3)

Abrahams' (2010, p. 121) study of abused women found they benefitted from counselling, and respondents felt counselling should be readily available at different stages of their lives as they move forward. Post-divorce counselling supported some participants remove the negative feelings associated with being labelled single or divorced and the community perceptions of these labels. For many participants moving on after divorce meant remarrying, though many mentioned their husbands moved on quicker and remarried before them.

8.3   Husband Remarries
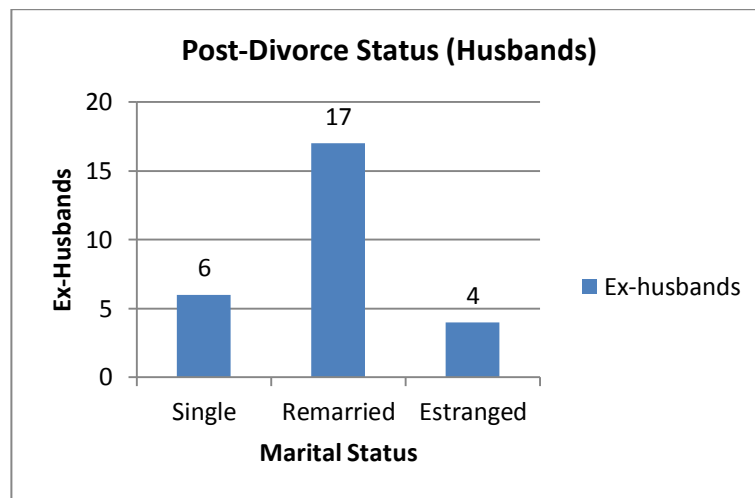
Figure 18 Post-Divorce Ex-Husbands

In the majority of cases, participants commented that their ex-husbands remarried after divorce (see Figure 18) - some chose to go abroad, whilst others remarried in the UK. Even in cases, where participants mentioned their husbands remained single, there were assumptions that at some stage in the future these men would remarry, and statistics reported are reflective of the existing statuses of the ex-husbands. Ayyub (2007, p. 27) argues Muslim men find it easy to remarry after a civil divorce, even without resolving

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the religious divorce, as the Muslim community accept men have the right to polygamy, whereas Muslim women cannot remarry unless they have a religious divorce. The experts agreed that men moved on quicker after divorce, and in some cases, leave their wives 'hanging' by withholding the religious divorce; thus, casting doubts in the community that the wife is not divorced (Hammer, 2013, p. 251). One solicitor described the post-divorce situation in the Muslim community.

> Men move on quicker after divorce, they get on with their lives and remarry. Some go abroad as they have had their civil divorce but at the same time, they keep the first wife hanging and delay the Islamic divorce. (Solicitor #1)

There were seven cases, of the ex-husband travelling abroad to remarry, and ten cases of remarrying in the UK. By remarrying abroad, men can often hide details of their past relationships, including previous marriages from any prospective bride and her family. One participant described how her ex-husband went abroad and remarried without disclosing his first marriage, and a solicitor explained why the husband's family made excuses for him.

> He [the ex-husband] went to Bangladesh and remarried; he never told them [in-laws] that he was married [previously]. He married a young girl; she was only 16 years old. Later in the marriage, she found out he was married before, but by then she had already had a child. What can she do? (Rupa)

> Society judges women harshly. A man's family will get him remarried quickly without questions, whilst people suspect the wife was the problem for the break-up of the previous marriage. (Solicitor #1)

Overall divorced Muslim men find is much easier to remarry, as they are not scrutinised by the Muslim community to the level of divorced Muslim women, who by contrast face many barriers to remarrying, which is due to, being labelled divorced, as discussed in the next section.

8.4   *Community Perception of Divorced Women*

The participants described how they viewed the Muslim community perceived divorced women. Some participants felt the Muslim community was not supportive of divorced women, treated culturally different from divorced men i.e. that divorced women were

stigmatised, labelled, questioned, and blamed for the divorce. The experts expressed similar views on the treatment of divorced women.

> Divorce is a taboo in the Muslim community. Divorced women are labelled. The community respects money [i.e. the position of men], rather than the actions of an individual. (Solicitor #1)

Roald (2003, p. 224) believes that there was no stigma attached to divorced women in early Islam, with the Prophet marrying many divorced women, thus attitudes towards divorced women have changed in the Muslim world today. Divorce carries a deep stigma for women in South Asian communities, with divorced men rapidly remarry, and divorced women blamed for the breakup and often rejected by the family and the community (Crabtree et al., 2017, p. 96). Macfarlane (2012a, p. 141) observes that divorce is more acceptable in the Middle East and in North African countries, with the most pronounced disapproval of divorced women seen in South Asian communities. Even when faced with domestic abuse, the Muslim community views women who initiate divorce as intolerant or of little patience for her husband's abuses (Curtis, 2010, p. 154). One counsellor described the many hurdles abused women face in moving on after divorce.

> They [women] have gone through trauma, we cannot even imagine. They want to move on, but find so many more hurdles: family stigma, cultural stigma, people judging them, services mistreating them, having to prove themselves, justifying why they stayed in the relationship, why they left. They need to get over it emotionally and learn to trust again. Many women are vulnerable and seeking emotional closure. Thinking of another relationship [for some] is so far away…All women need is a few people to say what you did [divorce] was right. It took a lot of strength to do that. Whatever support you need we are here, and then women can see I have a future. (DV Counsellor #3)

Some participants described how some members of the Muslim community disapproved of them remarrying, whilst others described how they became insignificant or unimportant in the community once divorced.

> I didn't care about the community. People started back chatting me, saying 'she's an old woman with grown kids, how can she remarry'. I thought no one was there to help me when I got abused. I did it Islamically, I waited the three months *iddah* period and then got married. It's a cultural thing, women have problem remarrying in the Bengali community. If they followed, Islam they will realise Khadijah was older than the Prophet when she remarried. So it is no one's business who I marry. (Salma)

> Being a divorced woman was a living nightmare, it really was. For one year I tried justifying myself to people, but people treated me as if I was worth nothing, nobody. To some members of my family, I wasn't important anymore. I was the burden, 'what are we going to do with her?' I wouldn't wish it on my worst enemy. It really was not nice. (Kulsuma)

Other participants described how the Muslim community would not believe that they were the victims of domestic abuse and that being British nationals they assumed participants would know their rights and take the necessary action; though McCue (2008, p. 53) believes many women do not know their legal rights concerning domestic abuse.

> The truth is coming out about their family. He is behaving aggressively and swearing towards elders in the community. It shows them how he must have behaved with me, and that I must have been telling the truth. At first, nobody believed me, and the abuse, they thought a girl brought up in the UK can't be treated like that. I said to them, you don't know, you weren't living with me. Just because I was brought up in this country does not mean I know my rights. Now I have the respect I deserve to be honest. (Jahanara)

Another participant commented that her friend's daughters prevented their mother from divorcing their abusive father, as they feared having a divorced mother would affect their prospect of marriage.

> My friend's daughter told her 'if you divorce him, what about us? How are we going to wed? We can't remarry'. She thinks her daughter is right. That's Bengali women's mentality for you. (Parvin)

Many cultural factors hindered participants from remarrying, especially notions among some of the Muslim community that divorces should not remarry or were of lesser status and importance in the community; views which are contrary to the teachings of the Quran and the practices of the Prophet. Hence, many participants in this study did remarry and went against cultural perceptions of divorced women.

8.5   Women Remarry
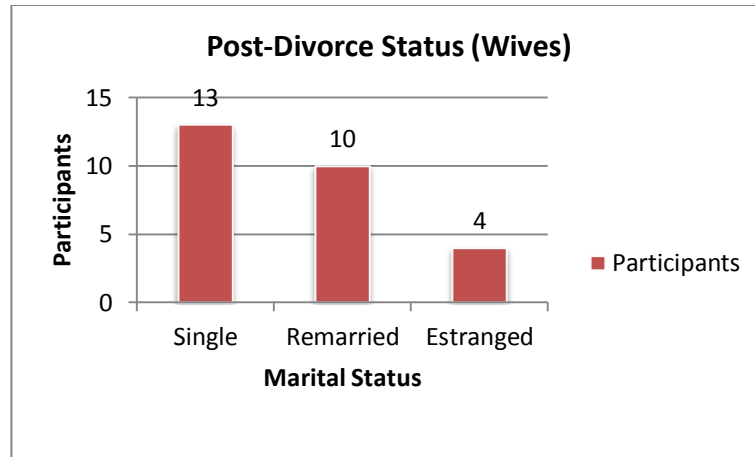
Figure 19 Post-Divorce Participants

Many of the participants remarried (see Figure 19) in some cases they were encouraged to remarry by their families, whilst others mentioned their family's frustration when they refused marriage proposals.

> I had many proposals come. I was quite surprised, mainly from divorcees in this country. I did look into quite a few of them, but it just did not feel right for me. My mum and dad were angry with me [laughs] when I would not pick someone. (Kulsuma)

> It was difficult bringing up the children on my own. My dad and my uncle wanted me to remarry. I was young. I said 'no'. I was married once; the next person may not love my children. My parents were old, and they were worried about me and kept looking for a groom. Years passed, my kids had grown up, and they wanted me to remarry. They said things [laughs], blackmailing me, that I have to remarry. It took five years [since divorce] before I remarried. (Parvin)

In other cases, the family was against participants remarrying. One participant mentioned the family's reservation to remarrying was precautionary, as the previous marriage was an abusive relationship; however, the participant made the final decision, went against the family's wishes, and chose to remarry.

> My parents didn't want me to get remarried. Personally, I wanted to settle down. I thought I can't go on like this [single], I got a little child, I need support. Thankfully, I found someone, I told my family about him but they said no to remarrying, they were scared something bad would happen to me. I told them, whether you are with me or not, I am going to go ahead and get married. (Rupa)

The majority of women who remarried had *nikah*-only ceremonies (see Figure 20).

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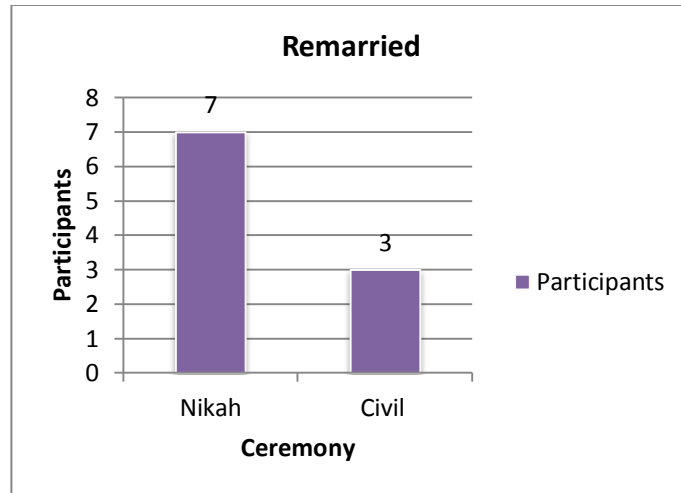
Figure 20 Participants Remarried

The choice to remarry via *nikah*-only ceremonies was a personal decision for them, some participants felt a civil ceremony was not necessary as they were marrying British nationals, or marrying a divorcee; whilst others felt it was their choice to decide how they married. Participants described their situation.

> He [new husband] was born and brought up in the UK. He was a divorcee and has a child from the previous marriage. He loves my children like his own. (Parvin)

> My family did not want me to marry in Bangladesh. I said that's my decision, I'm all grown up now. I had an Islamic marriage, not the civil registry. We had a small family ceremony and we made no fuss over it. He was a divorced so it was also his second marriage… People suspect my new husband wants a visa to come over to the UK. I don't care about the community, whatever Allah plans. (Salma)

Some participants mentioned remarrying was easier for them as they chose men known previously to them during their teens and young adulthood.

> My new husband, I've known him since my childhood. It never worked out for us, so we parted, and married other people. Now we've picked up from where we left it. (Henna)

> I married the person I fell in love with as a teen. My parents didn't let us marry at the time because I was young. I met him again whilst he was going through divorce; one of his friends recognised me and told him where I worked. We got married. Allah has a way, back to square one, maybe this is true love. Otherwise, maybe I would not have married again. (Rushna)

The participants in this study faced many cultural barriers to remarrying but challenged these cultural stereotypes and norms found in the Muslim community, and overcome the obstacles that hinder divorced women from remarrying. In most cases,

participants faced the struggle individually, with little help from others, and displayed much conviction and determination in achieving their desire to remarry; their narratives highlight the extent to which the label of divorce can affect their status in the community. Hence, there is much effort required to change the negative perception of divorced women, in the BBMC and the wider Muslim community, but in particular of South Asian origin.

8.6 Conclusion

An examination of the post-divorce problems experienced by participants identified several issues. Firstly, that having achieved divorce whether civil or religious did not necessarily stop participants from further harassment or abuse by their ex-husbands and in-laws. The harassment of many participants was an extension of the abuse faced during their marriage, and a cultural mentality within in-laws that they still had some control or authority over the wife. The withholding of religious divorce by the husband reflected tactics to maintain power and control over participants who achieved civil divorce, cast aspersions on the validity of the divorce, and hinder women moving on. There were legal remedies to address the harassment such as non-molestation orders, though many participants chose to ignore the husband and the in-laws, or found the harassment stopped once participants remarried.

Secondly, some participants required post-divorce counselling to overcome depression, the trauma of DV, and fear of integrating with society. Counselling helped the participants take control of their lives, by facing their fears especially culture and the community, provided emotional support, and stopped self-blame. Thirdly, there are many hurdles faced by divorced Muslim women before they can move on with their lives, a major hindrance being the negative perception of divorced women in the Muslim community. Divorced men do not face the same level of criticism, as such, they move on quicker and remarry, whereas divorced women are seen as problematic, the cause of marital discord and become labelled and stigmatised. Thus, participants mentioned having to overcome many stereotypes and challenge community perceptions in moving

on and remarrying, with many choosing *nikah*-only ceremonies, a personal choice according to their needs.

Chapter Nine: Conclusion

9.0   Introduction

The central research question explored in this thesis asked how BBMW pursue divorce in the UK. Three sub-research questions, asked what types of processes BBMW choose when pursuing a divorce i.e. civil or Shariah? How do experts i.e. professionals, shape, influence, and support Muslim women pursuing divorce? What role do religion, culture and other factors play in influencing the decision to divorce for Muslim women? These questions were investigated using a phenomenological-inspired methodology to gain an insight into the research problem from the subjective experiences of the participants. Under the umbrella of socio-legal studies, this research utilised an interdisciplinary approach and employed disciplines in sociology and law to examine the problems in relation to women's agency and legal consciousness; and engaged in debates on multiculturalism, legal pluralism and Shariah law. The key concerns regarding British Muslim women related to the practices of MFL and discrimination within the family structure and the wider Muslim community. In particular, debates centred on the issue of *nikah*-only or unregistered Muslim marriages and the practice of extrajudicial divorce i.e. *talaq* and *khula*, and the use of Shariah councils. The argument being that British society upholds the principles of human rights and gender equality, reflected in its legal system and the rights and protections provided to women. The counter-argument is that Britain is a multicultural society and accommodates diversity and minority rights to practise religion and culture, as such; the legal system acknowledges that people have a need for religious marriage and divorce. Furthermore, diasporic communities have customs and practices linked to their countries of origin, and therefore the needs to consideration of the global debate on Shariah law and the calls for reforms to MFL in Muslim countries.

The practice of MFL among British-Muslims exists within the private sphere, with a lack of documented evidence of Muslim marriages, and divorce cases reported, hence, some argue there are considerable empirical gaps in understanding the experience of British Muslims and the practice of MFL, and how individuals engage with official

and unofficial laws (Bano, 2012a, p. 86, Malik, 2012, p. 53). This study commenced the investigation with an argument that Muslim women face problems in practising MFL, in particular, Islamic divorce, and there existed empirical gaps in the field relating to the experience of British-Muslim women, especially that of BBMW, which necessitated this inquiry to examine the problems in greater detail. The empirical data collected produced five thematic data-finding chapters: getting marriage, marital discord, dispute resolution, getting divorce and post-divorce, which contributed to answering the research questions and provides a well-grounded understanding of Islamic divorce, giving women 'voice' to express their experiences of the phenomenon. Thus, the remainder of this chapter discusses the conclusions from this study concerning the research question and sub-questions and suggest ideas for reforms, and engages with existing literature and the conclusions from other studies.

9.1 Marriage

The debates on Muslim marriage among British Muslims centre on issues concerning the accommodation of Shariah law into British law and society. One argument is that there is no place for Shariah law in Britain; the opposing argument views Britain as multicultural society accommodating diverse values and beliefs – hence, English family law accommodates legally binding religious marriages for Anglicans, Jews, Quakers and other non-Anglican faiths including Muslims. However, the strict legal requirements to meet formalities and ceremonies to form a valid marriage means many *nikah* ceremonies conducted in the UK fall foul of the MA 1949 and are therefore classed as non-marriages, giving legal statuses of no more than cohabitees. The concern being *nikah-*only ceremonies are incompatible with human rights, discriminate against Muslim women, leave Muslim women vulnerable and lacking legal protection, give rise to polygamy, and coerce women to use of Shariah councils for dispute resolution (Casey, 2016, Cox, 2015b, Jaan, 2014, MacEoin, 2009, Manea, 2016, Namazie et al., 2010, Patel, 2016, Zee, 2016).

The majority of participants had civil marriages thus there was no aversion to a civil ceremony, rather the need for *nikah* superseded the civil ceremony; the civil

marriage was a secondary issue, entered into if there was a civic need, as was the case in TNM for immigration purposes. The finding reflects the conclusions of other studies on diasporic Muslim communities that the *nikah* was sufficient or formed the real marriage, as it allowed cohabitation – not the case with civil marriage, whereas Muslims did not find any incentive to have a registered marriage (Akhtar, 2015, Black, 2010, Macfarlane, 2012a, Tucker, 2008). The participants and experts alike agreed that the *nikah* was the most important consideration to establish marriage among Muslims, otherwise not seen as married. For participants the *nikah* formed actual marriage contract, thus, Muslims have a need for religious marriage, as a moral imperative and [Islamically] legally binding contract, not a sacrament but seen as worship (Curtis, 2010, Tucker, 2008){Gilliat-Ray, 2010 #595. Therefore, any policy consideration to reforming the status of religious marriage in civil law must take into account that a *nikah* ceremony is an absolute necessity for British Muslims and an expression of their Islamic identity.

Regarding the concerns that there are a high number of unregistered marriages among British Muslims and a rise in polygamous marriages (Casey, 2016, Harley, 2015, Khan, 2012), this study found evidence to the contrary. Being a qualitative study, the findings provide depth to the nature of these issues, whereas there is a need for quantitative studies to provide empirical data to gauge the extent or breadth of the problem. Regarding unregistered marriages, two patterns emerged among the participants: few who married first time round chose *nikah*-only marriages; however, participants who remarried after divorce predominately chose *nikah*-only ceremonies. This phenomenon relates the socio-legal reality of the participants, some who chose *nikah*-only ceremonies first time round described a troubled or turbulent family life, thus, *nikah* allowed a way out; others felt it was their personal choice. Some participants who remarried after divorce previously had TNM, however as they were now married to British nationals they felt no need for a civil marriage. In some instances, participants could not have entered into a civil marriage as their husbands were already in a civil marriage; participants unknowingly entered into a polygamous relationship objected to the situation, whilst others informed beforehand tolerated the circumstances especially where the husband was estranged or pursuing divorce. Therefore, the findings show the

motivations for unregistered marriages vary, complicated by the personal situation and options available to participants; contrary to the view that it gives rise to polygamy, many chose to remain in monogamous relationships, even though some looked potentially polygamous. Yilmaz (2002) attributes the decline in polygamy among British Muslims to changes in economic conditions and the improvement of education for women, which may be one of the factors in this study; moreover, the participants demonstrated agency within a religious framework, and the capacity to inhabit or resist norms {Mahmood, 2005 #1327}, the later in this case.

Nikah-only or unregistered marriages were a conscious choice made by participants, not necessarily under optimal circumstances, nevertheless without any coercion. Current studies show that British Muslims will marry twice i.e. have a civil ceremony if there is a need, though from an ethnoreligious perspective there was no incentive to have a register their marriages (Akhtar, 2015, Yilmaz, 2002). Even so, in this study, the religious and legal experts stressed the importance of a civil marriage to provide Muslim women legal rights and protections. The concern being, the status of cohabitees provides limited rights for the parties, and can especially affect women, as there is no legal duty for the partner to provide financial support, and there is no recourse to family courts for final relief in the breakdown of the relationship (Gilmore and Glennon, 2016, Probert, 2013). The calls to make compulsory civil registration of Muslim marriages, or to penalise the celebrant i.e. the imam conducting the *nikah* ceremony (Khan, 2012, Parliament UK, 2017c), are unlikely to resolve the problem: as firstly, such proposals could be viewed as an external attack on the Muslim institution of marriage, and secondly, other research advise any cultural changes are best from within (Parekh, 2005). Recommendations from this study suggest an educational awareness campaign within the Muslim community including mosques, schools, and other forums, to inform Muslims about civil marriage and the consequences of unregistered marriage and allow women to make informed choices. Moreover, the imams can play an active role in ensuring parties are aware of the legal rights and protection provided by a civil marriage, especially for Muslim women; imams are often the first outsiders the family

allow in marriage negotiations, and therefore their position of influence can affect change.

In addition, this study found practices within Muslim marriages that affected women's agency and autonomy which need addressing. Firstly, participants who chose their own partners i.e. outside of arranged marriages lacked support from their family and had to face marital problems on their own; thus, these women entered these relationships in a vulnerable position. Notions of preserving religious, social and cultural identity (Joseph, 2006) which ostracise women from family support in own-choice marriages need challenging, especially in light of religious text that supports choosing one's own partner. Secondly, the role of the guardian i.e. *wali* in arranged marriages raised many problematic issues. In many cases, the family dictated the age of marriage, the suitor, and the place of marriage, and therefore some participants were unable to make coercion-free informed choices, thus, many arranged marriages reported resembled forced marriages. Existing studies report arranged marriages as the norm among South Asians, with an element of choice, mutual trust, and consensual agreement consensual (Bano, 2012b, Charsley, 2007, Esposito, 2011, Okasha, 2012). However, the authority of the guardian and the pressure to comply with family choices disempowered some participants in the arranged marriage process. There is a need to question the necessity and the authority of the *wali* in arranged marriages and nikah contracts, especially as the Hanafi School the predominant Islamic jurisprudence in South Asia, and the MFLO 1961 dispense with the necessity of a *wali*. Thirdly, the absence of *talaq tafwid* in this study highlights another concern, as *tafwid* could have resolved many problems for participants in cases of withheld Islamic divorce. Clearly, this demonstrates a lack of informed choice, as the provision for *tafwid* is found in the Quran, part of the MFLO 1961, and mentioned in the model Muslim marriage contract (Muslim Institute, 2008); and imams have a duty to mention this clause to prospective brides when conducting *nikah* contracts. Fourthly, the *mahr* is a compulsory condition of the *nikah* contract, argued to protect women from casual divorce (Krayem, 2014, Rosen, 2000). However, the deferment of *mahr* payments, accepted as a norm (Fournier, 2010), is problematic as it creates a false sense of financial security for women, is difficult to

retrieve when withheld, often used by men as a tool by to further distress women or bargain a more favourable outcome, and a means to prolong the Islamic divorce process. This study suggests the problem could be resolved if prompt payment became more the norm during marriage contracts, and the Muslim community acknowledged there is a moral and contractual duty to ensure outstanding mahr is paid during divorce, and women pursued *mahr* claims in civil courts.

9.2   *Marital Discord and Dispute Resolution*

In examining the reasons why participants chose to pursue divorce, domestic violence and abuse was an overarching theme in chapter 5, which discussed marital discord. Among the seven themes mentioned as marital problems, three of them DV, in-law interference and TNM were closely interlinked. Existing literature report that DV is a gendered crime, majority of victims being women, with 1 in 4 women in England and Wales suffering from DV, is not culturally specific to any particular group, though cultural norms can shape women's responses (CPS, 2016, Goodmark, 2012, ONS, 2013, Women's Aid, 2015).

This study found the perpetrators of DV include the husband, in-laws and in some cases participants' own family members; participants endured long periods of abuse, and rarely sought outside help to resolve the problem. Participants accepted that religion did not condone DV, however, culturally they accepted DV was a private affair - concerned to reveal to others fearing gossip and shame, and disclosure of DV to family members increased the pressure to remain in the marriage. Current studies report similarly that Muslim women, particularly of South Asian origin, do not seek help, remain silence due to shame and *izzat,* fear community gossip, are encouraged to reconcile and stay despite DV, be uncomplaining and remain patient – i.e. DV is condoned by the community (Ahmed, 2009, Faizi, 2001, Gill, 2004, Hassouneh-Phillips, 2003, Idrus, 2003). Such responses are deeply rooted in Muslim community perceptions that disapprove of divorce, seen as a factor that brings shame and disrepute to family honour i.e. *izzat*, and therefore, DV is tolerated. These concepts need addressing to ensure victims of abuse are able to reach out for help and receive the appropriate support

to stop the abuse. Firstly, regarding the concept of divorce the Muslim community need reminding that whilst some religious text sees divorce as detestable, the overwhelming message of the Quran is that sometimes separation and the dissolution of the marriage becomes inevitable, therefore the process needs both parties to be fair and just with each other (Quran, 65:2). Secondly, there needs to be a decoupling of the link between divorce and shame in the South Asian community, as studies have found Muslim communities from other parts of the world are more tolerant of divorce (Macfarlane, 2012a). Moreover, there was no stigma attached to divorce in early Islam (Roald, 2003) and this message needs reinforcing in the Muslim community. Thirdly, the removal of any doubts that permit the toleration of DV, and this means to challenge classical interpretations of the Quranic verse 4:34 where the word 'hit' infers 'beating' – whether it be light or heavy (Chaudhry, 2013); to be replaced by contemporary understandings of the issue, that do not condone any form or physical or verbal abuse (Ahmed, 2009). Fourthly, to re-evaluate the family structure in South Asian families, whereby married women live with their in-laws or are part of an extended family network. The participants being of Bangladeshi origin mentioned many cultural norms as described by other studies on Muslims and Bangladeshis, such as men having a prominent role in the family, and expectations for the wife to adopt cultural roles and maintain the house, and be subordinate to other members of the household (Change Institute, 2009, Hassouneh-Phillips, 2003, Mittra and Kumar, 2004, Rozario and Samuel, 2011). The family home falls under the private sphere, and generally, people make their own rules according to their beliefs and values; and the law does not interfere unless there is harm. Some have raised concerns that cultural groups may have practices hidden within the private and domestic spheres that are oppressive towards women (Okin et al., 1999); indeed this was the case with respect to the treatment of the wife within the household. The experts commented that there positives and negatives in all cultures, though some will later of the two for personal gain; thus power and control form the basis for abuse (Pence and Paymar, 1993) – and once again the need to object to norms that oppress women and break the perpetual cycle of abuse. Lastly, the consideration of how victims are treated and the response they receive when they reach out for help in the Muslim community.

The experts agreed that DV was common among Muslim marriages, though the phenomenon was not exclusively a Muslim problem. Even so, the manner in which DV is treated among the Muslim community is a concern. Self-blame and victim blaming was common among participants, both incapacitating the victim to seek further help. Self-blame is one of the factors why women remain in abusive relationships, whereas victim blaming focuses on the attributes of the victim and removes responsibilities from the perpetrator (Brewster, 2002, Graham-Kevan, 2006). Counselling was one of the methods that helped victims from self-blame, and a lack of understanding of DV was a factor attributed to victim blaming. Thus, there is a need to create DV awareness among the Muslim community and its institutes; mosque representatives and imams need to provide appropriate support and not contribute to victims suffering.

The above-mentioned points highlight the sociological reality of DV among the participants in this study and identify ethnoreligious factors that influence the phenomenon, with suggested solutions and reforms firmly rooted in an introspective evaluation of practices with the Muslim community. In considering the legal aspects, there are criminal and civil remedies, which include non-molestation orders, occupation order, and domestic violence protection orders (Woodhouse and Dempsey, 2016). Some believe the under-reporting of DV is due to lack of awareness of legal rights (McCue, 2008). However, this was not the case with participants in this study; rather, the aforementioned ethnoreligious factors impeded the process of seeking help from the relevant authorities. Where participants cited adultery, desertion, and polygamy as reasons they formed one of many problems faced in the marriage, though again the impression gained is that the Muslim community rarely acknowledges these problems and the husbands move on with their lives and are rarely accounted; thus, demonstrating a double standard in the way men are treated, and injustice towards women. The ill effect of the marital problems had long-lasting effects in some cases leading to self-harm and attempted suicide; current studies report self-harm is higher in British South Asian than the rest of the population, linked to sociocultural factors, among them DV and forced marriages (Chantler, 2003, Hicks and Bhugra, 2003, Husain et al., 2006). The abuser aims to make the victim's daily life a struggle and uses a wide range of tactics

such as isolation and unwanted pregnancies (Goodmark, 2012, Pence and Paymar, 1993, Raphael, 2000). Undoubtedly, some of these tactics were evident in this study, and there is a need for more awareness and early intervention programmes in the community to provide support for victims of abuse and prevent self-harm. These measures and support need to be culturally sensitive; as Yoshioka (2008) contends culturally informed social rules, protocols and expectations of women's personal conduct can help practitioners understand DV from a multi-cultural perspective.

English law encourages reconciliation of saveable marriages, and where possible the use of ADR to reduce legal costs and fees. Similarly, the Quran encourages reconciliation between disputing parties (Quran 4:35). This study found there were limited options available for the participants for dispute resolution, as ethnoreligious norms viewed family disputes as a private matter. Thus, in most cases, dispute resolution involved the family and in some instances the in-laws; similar to other studies which found Muslims felt reconciliation was a moral duty and turned to their family first (Akhtar, 2013b, Bano, 2012b). However, the experts felt that the family did not necessarily have the skills required to resolve the disputes, and thus their involvement can escalate the problem. In some cases, participants involved imams from the local mosque, a norm in the Muslim community (Bano, 2012b, Macfarlane, 2012a), but even then used as a last resort, and their approach is normally to reconcile rather than mediate or provide counselling; though the imams in this study differentiated between the different methods. Some participants attempted to seek mediation and counselling, however, they found resistance from the husbands who often refused to attend such sessions. Studies report that traditional gender roles cause men to avoid professional service, fearing a loss of independence and control (Addis and Mahalik, 2003, Riska and Ettorre, 1999); the experts in this study viewed men's ego and a failure to admit to mistakes were major causes for avoiding professional help. McLeod (2013) argues counselling could help, and encourage positive behavioural change; likewise, the experts believed professional services could help clients resolve disputes. Notwithstanding the availability of culturally sensitive services, a major barrier hindering their use is the view that family disputes are a private affair; therefore the community needs to be

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reassured that the services offered are confidential, impartial, and professional; and whilst Shariah councils are a form of ADR, this study found they are mainly approached for religious divorce.

9.3   *Divorce*

In exploring Islamic divorce, current debates focus on several issues among them, the taboo of divorce, civil divorce and limping marriages, the need for religious divorce, the use of Shariah councils and the process of retrieving *mahr*. Chapters 4-6 described the stages of marriage, marital discord and dispute resolution, and revealed numerous problems faced by participants that eventually led to divorce. The decision to divorce was not an easy choice to make, as participants had to overcome many ethnoreligious barriers on route to reach their decision, in particular, the taboo of divorce was a factor that influenced many of the processes. Existing studies show the social stigma of divorce affect most cultures, even so, divorce rates are higher in Western countries, and lower in Muslim countries, as women prefer to remain in unhappy marriage than to have negative labelling as divorcees (Crabtree et al., 2017, Gadoua, 2008, O'Reilly, 2010). Nevertheless, despite the hesitance participants filed for civil divorce in the first instance; some also applied for non-molestation orders and other protection orders for DV; thus, there was no aversion to applying civil law in their lives. The divorce process signalled the irretrievable breakdown of the marriage, and allowed space between the participants and their husband, though there was still a need for an Islamic divorce.

Research shows that Muslims turn to religious frameworks and norms, for personal needs, and during a crisis e.g. divorce, and have a need for religious divorce, (Curtis, 2010, Macfarlane, 2012a). Hence, Muslims will seek a religious divorce even after a civil divorce; as some believe the Muslim community does not recognise secular divorce (Wilson, 2010, Yilmaz, 2002). The problem of men withholding religious divorce is a common to both Jewish and Muslim faiths, with orthodox Jewish women being labelled '*agunah*' or 'anchored woman', and similarly, Muslim women are in 'limping marriages'(Lowe and Douglas, 2015, Pearl and Menski, 1998).   Under the DRMA 2002, the judge can refuse to issue the decree absolute until the religious divorce

is resolved, however, the act is currently only applicable to the Jewish faith, though others have called for the Muslim faith to be prescribed, yet others believe Shariah councils have effectively resolved the problem (Ahmed and Norton, 2012, Gohir, 2016, Proudman, 2013, Sona, 2014). Indeed the problem of withheld religious divorce proved to be a major dilemma for participants in this study, and an examination of their experiences highlighted many issues. Firstly, the State is unable to resolve the matter of religious divorce, and whilst the courts can delay the issue of a decree absolute as in the case of the Jewish faith, for Muslim women such delays could prolong the problem, as Muslim men may enter polygamous marriages with a *nikah* only ceremony, and therefore not pursue a civil divorce. Nevertheless, if the Muslim faith was prescribed in the DRMA 2002, it would at least stop men who marry abroad from bringing their new wives to the UK, and thus, compel men in existing civil marriages to resolve their religious divorce.

Secondly, the pluralistic nature of Shariah law and the absence of one single form of Islamic divorce raised the problem of where to turn for Islamic advice in the event of a divorce; especially as some Muslims are not aware of their Islamic rights (Macfarlane, 2012a). Existing literature locate Shariah councils as a reference point for religious expertise (Norton, 2016). However, this study found the councils were not the obvious choice in seeking clarification on Islamic matters; rather participants in the first instance choose to research the matter themselves in books or online websites, thereafter some chose to speak to a local imam, approached the mosque or asked someone knowledgeable in Islamic studies. Participants mentioned their frustration in discovering conflicting Islamic rulings from various sources in reference to Islamic divorce in particular whether a civil divorce has any relevance to a religious divorce. The lack of clarity on issues such as DV whether it automatically led to grounds for Islamic divorce confused many participants and prolonged their search for a resolution. Even the experts were divided on some issues relating to Islamic divorce; thus, there is a need for central reference point whereby Muslim can clarify matters relating to divorce, explaining the different options available to men and women, the correct procedure to follow in each case, crossed referenced with the relevance of civil divorce.

Thirdly, *talaq, khula and tafwid* are all forms of Islamic divorce accepted as extrajudicial according to classical *fiqh*, whereas if divorce is withheld or denied there is a need for an Islamic authority to declare *faskh* (Bowen, 2012a). In Muslim majority countries, the Islamic divorce process forms part of the civil process, whereas studies have found diasporic communities use imams and Shariah councils to resolve disputed divorce cases (Bano, 2012b, Black, 2010, Krayem, 2014, Macfarlane, 2012a). The inclusion of *tafwid* in the marriage contract could have resolved the problem of withheld divorce in all cases observed, as *tafwid* effectively allows the wife to divorce herself on her husband's behalf, in instances of DV, ill-treatment and oppression (Syed, 2004). Nevertheless, this study found participants resolved the issues of withheld religious divorce, in the vast majority of cases, without the use of Shariah councils. Surprisingly, in view of current literature, most of the participants with *nikah*-only marriages found their husband gave them talaq when requested, though for many the *mahr* remained outstanding. Even so, the Shariah Council caseload shows that men are not usually so accommodating, hence many women with *nikah*-only marriages have to turn to the councils to secure their Islamic divorce. The problem of withheld divorce was more a problem for participants with civil divorce; and whilst some approached various Shariah councils, they found their use cumbersome. Therefore, after consulting various formal and informal sources of verification, these participants achieved Islamic divorce via two methods; first, many accepted their civil divorce was sufficient, and second, others accepted a long separation after the civil divorce amounted to an Islamic divorce. This study highlighted, that participants felt no need to approach a Shariah Council to officiate their religious divorce, moreover, no need to pursue an Islamic divorce certificate to confirm the fact; thus the issue was one of verification rather than to follow a due process, which by far simplifies the issue. Similarly, Macfarlane (2012a) found a consultation with an imam was sufficient for Muslim women to file for civil divorce and accept it as divorce from a legal and Islamic perspective. Therefore, Shariah councils that accept civil divorce as sufficient and issue a fatwa or Islamic divorce certificate accordingly seemingly represent the best option for Muslim women, empowering them to move on post-divorce, and councils that delay the process despite the issuing of the

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decree absolute unnecessarily prolong the problem for clients that have a need for an Islamic divorce certificate.

In focusing on women's voices and their experience of divorce, this study did not visit different Shariah councils to complete a comparative study of their practices; and whilst there are some existing studies on Shariah councils (Bano, 2012b, Keshavjee, 2013, Shah-Kazemi, 2001), the private nature of their operation necessitates further empirical inquiries. Nonetheless, the participant observation of the Shariah Council in this research contributes to existing debates and allows certain conclusions to be drawn. Like previous studies, this inquiry found the majority of clients were women, the Shariah Council operated in an unofficial quasi-legal capacity and followed the classical interpretation of MFL i.e. the divorce process differentiated between the genders, the privilege of divorce remained with the husband, whilst the wife sought permission to divorce - points made clear in their application forms. As such, the process is simply not one of verification, rather it is adjudication, and contrary to other commentators who view women should have a right to divorce, as there are examples of *hadith* literature which established non-fault divorce in favour of women (Hallaq, 2009b). Despite, these gendered norms, observations revealed; women applied on voluntarily basis and voiced their differences with the council on contested matters and gained the Islamic divorced they required. The participants demonstrated agency within a religious framework; and whilst complying with gendered roles, strategized within these constraints to negotiate rights (Kandiyoti, 1988, Mahmood, 2005).

Regarding calls to ban Shariah councils (Cox, 2015b, MacEoin, 2009, Namazie et al., 2010); this study found the Shariah Council filled a void in civil law, by resolving religious divorce; and therefore fulfilled a need in the Muslim community; any plans to ban councils would work to the detriment of Muslim women who would otherwise continue to suffer in their marriages. The Shariah Council clearly demarcated their remit from that of civil law; dealing with Islamic divorce and mahr, and do not deal with matters pertaining to child arrangements and financial relief, which are under the jurisdiction of the family courts. There was little evidence to suggest that the Shariah Council operated as a parallel legal system competing with English law (Cantle, 2001),

rather their willingness to work in collaboration with local authorities and law enforcement agencies suggests otherwise. Moreover, the nature of the complex cases handled by the council represents a level of proficiency; and Norton (2016) argues religious expertise is an important aspect of religious freedom. Some commentators believe Shariah councils supplement and complement the state legal system (Ahmed and Norton, 2012); whilst this may be the case, the council observed viewed themselves as independent from any government influence, and worked solely to serve Muslim needs. Notwithstanding the government Shariah reviews, at present time there are no proposals for the state regulation of Shariah councils. Even so, the experts agreed there was scope to improve practices within the Shariah councils, in particular by addressing gender-related issues regarding disparity in application fees, having female caseworkers and female members on the Shariah board, though the Shariah Council in this study did address many these issues. The observations of the Shariah Council was undertaken to provide a holistic understanding of problems faced by participants, and limited to the demographics of the sample population, and therefore conclusions may not be representative of Shariah councils nationwide.

The primary objective for participants was to achieve Islamic divorce, all other matters related to divorce were of secondary concern; nonetheless, the study explored the themes of *mahr*, maintenance and child arrangements, and drew the following conclusions. In general, matters of financial compensation whether *mahr* or maintenance proved difficult to obtain from the ex-husbands. Participants viewed *mahr* an Islamic issue tied in with the religious divorce rather than a contractual or civil matter; thus, tried to retrieve outstanding amounts via family, imams and Shariah councils with little success due to the lack of powers to enforce payments. In Muslim majority countries, the state can enforce *mahr* payments, and apply penalties to non-payers. Some Islamic scholars view civil courts are unable to deal with mahr (Benson, 2011), whilst case law shows English law can deal with mahr as a consideration in matrimonial proceedings (*NA v MOT*) and as civil ligation (*Shahnaz v Rizwan*). Many participants forwent chasing *mahr* due to the difficulties and fearing court fees, even so, the possibility to pursue *mahr* claims via civil courts remains an option. The classical interpretation of

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MFL views divorced women are entitled to normally for three months (Tucker, 2008), extended for pregnant women. The participants clearly did not follow such notions, and where possible pursued maintenance via the courts, however, the difficulty in obtaining payments meant many forwent chasing maintenance. Similarly, regarding child arrangements, classical *fiqh* interpret the custody of children primarily belongs to the husband (Arshad, 2010), whereas the participants followed English law regarding child arrangements. Thus, like other studies participants demonstrated that Muslims are able to navigate between Shariah law and civil law to suit their needs, live a legal plural reality (Akhtar, 2013b, Douglas et al., 2012, Yilmaz, 1999).

9.4 Final Remarks

The research findings present new insights into the practice of marriage and divorce among the British-Muslim community and provide a socio-legal examination of the problems. In focusing on British-Bangladeshi Muslim women, the study explored the subtleties of cultural differences and gave voice to women with the lived experience of divorce. The findings revealed the complexities of the problems explored, and a multifaceted approach to dealing with the issues encompassing religion, culture and citizenship. Looking forward, the findings of this study produced conclusions applicable to the British-Bangladeshi Muslim community and to a wider field including legal practitioners and mediators, academics, policy-makers and others; and highlighted areas of improvement and further exploration

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Appendices

Alias	Age	Marital Status	Education	Occupation	Choice	Ceremony	TNM	Children	Yrs married	Civil Divorce	Rel Div	SC
Aisha	19-25	Divorced	College	Employed	Arranged	Civil & Nikah	No	Yes	>5	Yes	Yes	No
Fahima	36-45	Remarried	University	Unemployed	Own Choice	Civil & Nikah	No	No	<5	Yes	Yes	No
Faiza	36-45	Remarried	College	Employed	Own Choice	Nikah	No	Yes	<5	/	Yes	No
Farida	26-35	Divorced	College	Employed	Forced	Civil & Nikah	TNM	No	<5	Yes	Yes	No
Henna	26-35	Divorced	College	Employed	Own Choice	Civil & Nikah	TNM	No	<5	No	Yes	No
Inaya	26-35	Remarried	University	Employed	Own Choice	Civil & Nikah	No	No	<5	Yes	Yes	No
Jahanara	26-35	Divorced	College	Unemployed	Arranged	Nikah	No	Yes	<5	/	Yes	Yes
Kulsuma	26-35	Remarried	University	Employed	Arranged	Nikah	No	Yes	<5	/	Yes	Yes
Lily	19-25	Remarried	University	Employed	Own Choice	Nikah	No	No	<5	/	Yes	No
Lubna	36-45	Divorced	College	Unemployed	Arranged	Civil & Nikah	TNM	yes	>5	Yes	Yes	No
Mahida	36-45	Divorced	College	Unemployed	Arranged	Civil & Nikah	No	Yes	>15	No	Yes	No
Monwara	46+	Divorced	School	Employed	Arranged	Civil & Nikah	TNM	Yes	<5	Yes	Yes	No
Nabila	26-35	Divorced	School	Unemployed	Forced	Civil & Nikah	TNM	Yes	>10	Yes	No	Yes*
Nina	26-35	Estranged	University	Employed	Arranged	Civil & Nikah	TNM	Yes	<5	No	No	No
Parvin	46+	Remarried	School	Unemployed	Arranged	Civil & Nikah	TNM	Yes	>10	Yes	Yes	No
Polly	19-25	Divorced	College	Unemployed	Arranged	Civil & Nikah	No	Yes	<5	Yes	Yes	No
Rahima	26-35	Estranged	University	Unemployed	Arranged	Nikah	No	no	<5	/	No	No
Rupa	36-45	Remarried	School	Unemployed	Own Choice	Nikah	No	Yes	>5	/	Yes	Yes
Rushna	36-45	Remarried	University	Employed	Arranged	Civil & Nikah	TNM	Yes	>5	Yes	Yes	Yes*
Saima	26-35	Remarried	School	Employed	Arranged	Civil & Nikah	TNM	yes	>5	yes	Yes	No
Salma	36-45	Remarried	College	Unemployed	Arranged	Civil & Nikah	TNM	Yes	>15	Yes	Yes	No
Shilpa	36-45	Estranged	College	Unemployed	Arranged	Civil & Nikah	No	Yes	>15	No	No	No
Shopna	26-35	Estranged	College	Unemployed	Arranged	Civil & Nikah	TNM	No	<5	No	No	No
Tanya	26-35	Divorced	University	Employed	Arranged	Civil & Nikah	No	No	<5	Yes	Yes	No
Tina	26-35	Divorced	College	Employed	Forced	Civil & Nikah	TNM	Yes	>10	No	Yes	No
Zaynab	36-45	Divorced	School	Employed	Arranged	Civil & Nikah	TNM	Yes	>10	Yes	Yes	No
Zulaika	36-45	Divorced	School	Employed	Arranged	Civil & Nikah	TNM	Yes	>10	Yes	Yes	No

Appendix 1 Profile of Participants

NIKAH APPLICATION FORM

Details	Groom	Bride
First name		
Surname		
Date of birth		
Contact number		
Address		
Nationality		
Passport Number		

Amount of Dowry (Mahr Agreed)	

Name of Wali	
Relationship to bride	
Address of Wali	
Name of Witness 1	
Address of witness 1	

Appendix 2 Shariah Council *Nikah* form

Details	Applicant	Original Wali
First name		
Surname		
D.O.B / Age		
Mobile Number(s)		
Email		
Address		

- Note the original Wali is your father unless he is deceased

How is the Wali related to you?	
Is he a Muslim?	
Does he practise Islam?	
Does he belong to any Sect?	
Have you received any proposals so far?	
If the answer is **YES** then how many?	
Are you receiving a proposal now?	
If **YES** then has the man approached the Wali?	
Did your Wali refuse him?	
If **YES** did your Wali give a reason?	
Have you tried to convince your Wali?	
Have you tried to approach your mother to convince him?	

Appendix 3 Shariah Council *Wali* Change Form

Book NO :
VOLUME NO :
PAGE NO :
SERIL NO :
YERE :

BANGLADESH FROM NO-

NIKAH NAMA

(SEAL)
SD
DATE: 17/04/1994

TRUE COPY
FOR BRIDGE/ BRIDGEROOM

From of Nikah Nama prescribed by Rule 9 of the
Bangladesh Muslim Marriage & Divorce (Registration) act-1974

1. Name of ward, Town, Union, Thasil, Thana and District in which the marriage took place:

_____

_____

_____

2. Name of the bridegroom and his father, with their respective residences:

_____

_____

3. Age of the bridegroom:

4. Name of the bride and her father, with their respective residences:

_____

_____

5. Whether the bride is a maiden, a window or a divorce?

6. Age of the bride:

7. Name of the advocate, if any, appointed by the bride, his father's name and his residence:

_____

_____

8. Names of the witnesses to the appointment of the bride's advocate with their fathers name their residences and their relationship with the bride:

(1) _____

_____

(2) _____

_____

9. Name of the advocate, if any, appointed by the bridegroom, his father's name and his residence:

_____

_____

10. Names of the witnesses of the appointment of the bridegroom's advocate with their fathers name their residences and their relationship with the bride:

(1) _____

_____

(2) _____

_____

11. Names of the witnesses of the Marriage, their Father's Name and their residences
(1) _____

_____

(2) _____

_____

12. Date on which the marriage was contracted:
13. Amount of the dower:
14. How much of the dower is Mu'ojjal (prompt) and how much Mu'ojjal (Deferred):

_____

_____

Appendix 4 Bangladesh *Nikah-Nama*

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APPLICATION TO FILE AN ISLAMIC DIVORCE (Khula/Dissolution/Talaq)

LETTER OF AUTHORITY & ACCEPTANCE

I (Name of Wife)

Of (Address)

Email Address

Contact Telephone

Authorize the _____ Sharia Council to investigate my case and then to consider my application to obtain an Islamic Divorce according to the rules and regulations of the Council.

- I agree to accept the decision made by the Council. However, I am aware that I may withdraw my case before the Council's decision.
- I understand that once the Council has initiated the proceedings I will not be able to claim the refund of the fee paid.
- I confirm that I have not applied to any other Sharia Council for my Islamic Divorce.
- I also promise not to enter into another marriage contract before the verdict of the Council and the end of the *Iddah* period.
- I confirm that I have read the procedure outlined in this form explaining our procedure and I have read it carefully and agree to it.
- I understand that the file for my case will be securely retained by the Sharia Council for a period of 6 years from the date of my application, after which it will be safely destroyed.

Signed:

Name in
BLOCK CAPITALS:

Date:

Page 1

Appendix 5 Shariah Council *Khula* Application Form

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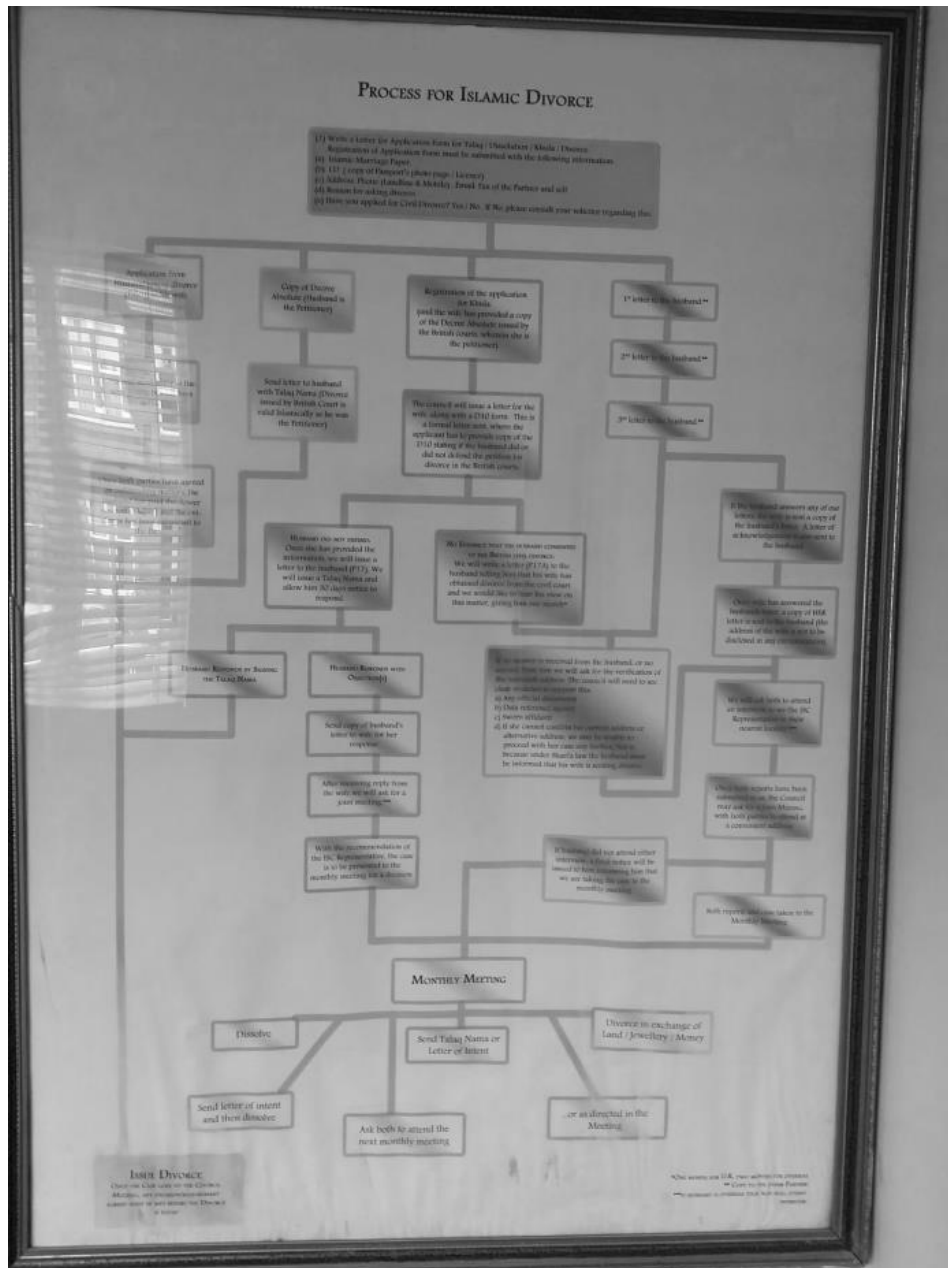
Appendix 6 Shariah Council Process for Islamic Divorce Chart