

Appendix 31: Faith based organisations and legal arbitration (See Article 16)

Shariah Councils have existed in the UK since 1982 and there are now an estimated 85 of them, although actual numbers may be more than this because of their informal nature. The oldest one, the Islamic Shariah Council, has made determinations on 7,000 cases of which 95% are about divorce. Shariah Councils have continued to exist as unregulated, informal but influential bodies in Britain. Shariah is in direct conflict with UK law on the following issues: inheritance and the unequal division of property between male and female children; rules for determining the custody of children which effectively provide greater rights for the father especially if the mother seeks to remarry; maintenance orders and polygamy.¹

In terms of the application of Shariah Law under the Arbitration Act 1996² there is concern about the treatment of some women by Shariah Councils due to their negative experience while seeking divorce. The use of parallel religious laws, through religious arbitration in minority communities in violence against women and girls (VAWG) and family cases can sometimes discriminate against Black, minority ethnic and refugee (BMER) women, and endanger their lives through the practice of mediation and reconciliation. For example, it is claimed by the Muslim Arbitration Tribunal (MAT) that their rulings can be upheld by the Arbitration Act 1996. It is therefore critical that the Act is amended to ensure that the State does not accommodate religious law.³

Women's rights NGO the Iranian and Kurdish Women's Rights Organisation (IKWRO)⁴ interviewed three survivors of domestic violence who have sought divorce from Islamic Shariah Councils (ISC), MAT or more informal bodies. Two were told that their applications could not proceed until they attended a meeting with their husband. One of them was too frightened of her husband to proceed.⁵ The other agreed to a joint meeting but was sent home because she was menstruating, and was told to return when 'clean'.⁶ A third woman was told that in order to get a divorce, she would have to facilitate regular contact between her husband and child. She could not agree to this given the husband's violent history.⁷ (See Appendix: 30) These stories are not unusual. A television documentary⁸ and BBC programmes⁹ have also shown that clerics are very reluctant to grant women

¹ Dhaliwal, S. (2011) *Gender, Faith and Equality in the UK*. Produced for Amnesty International UK

² Arbitration Act 1996 <http://www.legislation.gov.uk/ukpga/1996/23>

³ Patel, P. and Sen, U. (2010) *Cohesion, Faith and Gender: A report on the impact of cohesion and faith based approach on black and minority women in Ealing*. Southall Black Sisters Trust <http://www.southallblacksisters.org.uk/reports/cohesion-faith-and-gender-report/>

⁴ Iranian and Kurdish Women's Rights Organisation (IKWRO) <http://ikwro.org.uk/> Accessed: 22/04/13

⁵ Interview by Iranian and Kurdish Women's Rights Organisation with Iranian woman, February 2012.

⁶ Interview by Iranian and Kurdish Women's Rights Organisation with Kurdish woman, October 2011.

⁷ Interview by Iranian and Kurdish Women's Rights Organisation with Afghan woman, December 2011.

⁸ 'Divorce: Sharia Style', Channel 4, 3rd February 2007

⁹ 'Sharia Britain', BBC Asian Network Reports, 16th January 2012

<http://www.bbc.co.uk/programmes/b019lxp9> and Panorama (2013) 'Secrets of Britain's Sharia

divorce. The ISC told one woman to wait until her husband got out of jail so they could have a meeting and advised another to go back to her husband although she had a restraining order against him.

Some bodies are also encouraging women to drop criminal charges. In 2008 Sheikh Faiz Siddiqi told *The Times*¹⁰ that MAT had dealt with six domestic violence cases and in each, the women withdrew complaints to the police. The domestic violence section of the MAT website¹¹ also focuses on abandoning criminal charges. The MAT promotes itself as the ideal body to tackle forced marriage,¹² however, their website makes no mention of what will be done to protect victims of forced marriage, and instead focuses on how the MAT can assist parties in obtaining spousal visas.¹³ (See Appendix: 29)

There is also evidence that several bodies in the UK are refusing to annul forced and underage marriages. The ISC will recognise a marriage where the bride was not even present, as long as her male marriage guardian gave consent on her behalf,¹⁴ unless she is a recent convert to Islam. The Centre for Islamic Pluralism¹⁵ documented the case of a 15 year old Pakistani girl who was tricked into a phone marriage with a man who had a mental age of five. While the Home Office did not recognise the marriage the Islamic Shariah Council accepted it.¹⁶

As with the MATs, the Jewish Beth Dins are recognised as a form of civil arbitration under the Arbitration Act 1996 but their power lies rather in their extended influence over family and other 'private' areas and they act as a formal religious court in matters of divorce and litigation. There is no single Beth Din with overarching authority but rather individual ones organised according to the broad lines of Orthodox and non-Orthodox Judaism.¹⁷

Jewish women may approach the Beth Dins for a divorce certificate (a Get) where the husband is not co-operating or refusing to provide a religious divorce. There is far greater stigma for a Jewish woman that remarries (in civil registry) without a religious divorce certificate than for a Jewish man who is relatively unaffected by such stigma. The ability to gain a religious divorce can also affect the future legitimacy of the woman's children; if she remarries without a Get her children can

Councils', BBC 1, 22nd April 2013

http://www.bbc.co.uk/iplayer/episode/b01rxft/Panorama_Secrets_of_Britains_Sharia_Councils/

¹⁰ The Sunday Times (2008) 'Revealed: The UK's first Sharia Courts', *The Sunday Times*, 14th September 2008

¹¹ Muslim Arbitration Tribunal, Family dispute cases www.matribunal.com/cases_faimly.html
Accessed: 08/05/13

¹² Muslim Arbitration Tribunal, Forced marriages
www.matribunal.com/cases_forced_marriages.html Accessed: 08/05/13

¹³ Muslim Arbitration Tribunal (2008) *Liberation from forced marriages*. MAT: Nuneaton
<http://www.matribunal.com/downloads/MAT%20Forced%20Marriage%20Report.pdf>

¹⁴ 'Being at different locations at the time of the Nikah?', taken from Islamic Shariah Council website, 26/04/2012

¹⁵ Qanta, A. et al. (2009) *A guide to Sharia Law and Islamist Ideology in Western Europe 2007-2009*. Centre for Islamic Pluralism: London <http://www.islamicpluralism.org/documents/shariah-law-islamist-ideology-western-europe.pdf> Page 50

¹⁶ The Sunday Times (2008) 'Family of teen Muslim invited men to rape her', *The Sunday Times*, 3rd February 2008

¹⁷ Dhaliwal, S. (2011) *Gender, Faith and Equality in the UK*. Produced for Amnesty International UK

be labelled illegitimate and this has profound implications for her access to both spaces and resources within the community.¹⁸

Whilst Jewish divorce is supposed to be based on the consent of both parties, rabbinical courts do issue a religious divorce to husbands where the wife does not consent (known as a Get Zikkui). Men and women start from an unequal legal standing but moreover, Beth Dins have an inbuilt male bias because they usually comprise three men.¹⁹ Therefore, the system is inherently patriarchal. A women's experience of the process can also be difficult, especially if they have experienced abuse as their husband may not consent to divorce, trapping them in the abusive situation. There is also anecdotal evidence that judges may pressurise women into agreeing to certain things to facilitate the divorce process.

In the current context of the localism agenda, it would be useful to map the connections between existing Jewish faith based welfare services and Orthodox or Ultra-Orthodox Synagogues in order to chart a clearer picture of the possible wider implications for Jewish women and their children in accessing these services and the pressure to gain 'recognition' or 'legitimacy' in the eyes of these institutions.²⁰

The requirement to dissolve a religious marriage before any civil divorce is granted provides husbands with an opportunity to delay the civil process and insist the woman also goes through a religious process. This also has the consequence of validating the role of religious bodies in the formal legal process.²¹ Both the MATs and the Beth Dins claim that there is no coercion and that women enter arbitration agreements voluntarily, consensually and out of choice but of course there is now a growing body of empirical evidence²² that suggests notions of 'choice', 'agency' and 'voluntary' must be interrogated in the context of family, 'community', 'honour' and other cultural or religious pressures on women within minority communities.²³

Concern about the provision of services to women by Christian based organisations is raised elsewhere in the CEDAW shadow report (See Articles 6, 10 and 12). There is anecdotal evidence that Christian religious leaders are also providing informal judgements and advice to women regarding family matters which can lead to women being discriminated against or forced in to difficult situations which may increase their vulnerability to violence and abuse. This can also have an impact on their position in the community and access to their children and their rights, and needs to be thoroughly researched, especially as Christianity is embedded in UK culture and practice.

There is a strong human rights argument for secular services as they provide a greater guarantee of universal welfare provision and adherence to equalities legislation. However, religious groups are seeking government reassurance that

¹⁸ Dhaliwal, S. (2011) *Gender, Faith and Equality in the UK*. Produced for Amnesty International UK

¹⁹ Dhaliwal, S. (2011) *Gender, Faith and Equality in the UK*. Produced for Amnesty International UK

²⁰ Dhaliwal, S. (2011) *Gender, Faith and Equality in the UK*. Produced for Amnesty International UK

²¹ Taylor, J (2009) 'Scandal of women trapped in marriages by Jewish Courts', *The Independent*, 1st August 2009 <http://www.independent.co.uk/news/uk/home-news/scandal-of-women-trapped-in-marriages-by-jewish-courts-1765888.html>

²² See One Law for All campaign <http://www.onelawforall.org.uk/> Accessed: 08/05/2013

²³ Dhaliwal, S. (2011) *Gender, Faith and Equality in the UK*. Produced for Amnesty International UK

they will not be forced to change their services to fulfil equalities criteria. Engaging religious groups in the growth of independent provision would involve the State encouraging violations of human rights and equalities duties at a structural level. Also a commitment to secular services is the only way to ensure VAWG commitments are met.²⁴

Faith based services must comply with human rights legislation, equalities duties and equalities impact assessments. Faith based providers need to be viewed as public not private institutions and as such to be obliged and pressured to fulfil equalities duties and other regulations.

The Government response to date

Under the Arbitration Act 1996 all British citizens have the right to resolve civil – and not criminal or family – disputes through arbitration, however decisions can be legally overturned if they are deemed unreasonable or contrary to public policy.

In June 2011 Baroness Caroline Cox initiated the Arbitration and Mediation Services (Equality) Bill,²⁵ which would, among other things, make it explicit that bodies involved in religious arbitration are not permitted to engage with disputes involving criminal or family law matters and which would subject arbitration proceedings to sex discrimination law. In a statement published in August 2011²⁶ on behalf of the Government, Lord Tom McNally writes that “*the Government will not be endorsing the Bill*”. Indeed, Lord McNally fails to acknowledge any of the issues which the Bill seeks to tackle, simply stating that “*when accessing services, they [Muslim women] are protected from discrimination because of sex or religion or belief in line with the Equality Act 2010*”.

However, the Government's emphasis on (legally aided) mediation as preferred over court proceedings, linked to the cuts to legal aid (see Appendix: 28), effectively reduces access to effective family law representation and so faith based services may become the only option for many women.

There is more cooperation between Beth Dins and the UK legal system and they are recognised within the Arbitration Act 1996. The Divorce (Religious Marriages) Act (2002)²⁷ – lobbied for by the Orthodox communities – compels the Beth Din to issue a religious divorce if either party to a civil divorce requires it and safeguards against the religious divorce being used as a bargaining tool. The Act is open to all religious groups in the UK though no others have taken advantage of it but this does not grant the Beth Din legal recognition: rather it compels Jewish individuals and the Beth Din to reflect the situation according to UK law – not act outside it.²⁸

²⁴ Dhaliwal, S. (2011) *Gender, Faith and Equality in the UK*. Produced for Amnesty International UK

²⁵ See Parliament, Arbitration and Mediation Service (Equality) Bill: Lords second reading <http://www.parliament.uk/business/news/2012/october/lords-arbitration-and-mediation-services-bill-second-reading/> Accessed: 20/04/13

²⁶ Statement from Lord Tom McNally, Minister of State for the Ministry of Justice, 24/08/2011

²⁷ Divorce (Religious Marriages) Act 2002 <http://www.legislation.gov.uk/ukpga/2002/27/contents>

²⁸ Centre for Social Cohesion (2009) *The Beth Din: Jewish Courts in the UK*.

Centre for Social Cohesion: London <http://henryjacksonsociety.org/2009/01/04/the-beth-din-jewish-law-in-the-uk/>

A report²⁹ in 2009 argued that the demand to recognise Shariah cannot be defended on the basis of the current legal standing of the Beth Dins because the recognition of Beth Dins within the Arbitration Act 1996 is specifically limited to contractual, tort and intellectual property disputes and does not cover criminal and family matters. English family law is still privileged within the Act invalidating any pronouncements that contradict it.

The Government must ensure that women of any faith have equal rights within marriage to comply with CEDAW Article 16.

Recommendations:

- **Acknowledge women’s rights concerns relating to the application of religious law including informal judgments. Detailed research on women's experiences, of how and when such religious judgements are utilised and accepted by English courts, needs to be conducted**
- **Amend the Arbitration Act 1996 so that it does not accommodate religious law and certainly does not cover family, criminal or inheritance matters**
- **Amend the Localism Bill to ensure that public services are not devolved to religious organisations as it would restrict access to existing universal provision**
- **Issue a clear statement opposing the use of religious mediation groups by social services and other public welfare bodies in cases of family and child welfare and any form of mediation at all where there has been or is a risk of domestic violence and abuse**

²⁹ Centre for Social Cohesion (2009) *The Beth Din: Jewish Courts in the UK*.
Centre for Social Cohesion: London <http://henryjacksonsociety.org/2009/01/04/the-beth-din-jewish-law-in-the-uk/>