

Erasmus**Islam, marriage and the law**

How best to help women caught between different kinds of family law

No easy answer to the conundrums posed by religious marital law



Alamy

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AS IS reported by *The Economist* in this week's print edition

(<https://www.economist.com/news/international/21732105-differences-marital-law-provide-opportunity-unscrupulous-men-how-sharia-marriages>), almost everybody can agree that there are acute difficulties at the interface between Islamic family law and the liberal West. Especially for married Muslim women, living in a kind of limbo between the Islamic world and the secular world can be

exceptionally tough. So far, so much consensus. What people don't agree on, however, is how to improve this situation.

Start with England, which presents an extreme case of the pathologies facing Muslim minorities in the West. In no other country have so many "sharia councils" sprung up to adjudicate the affairs of Muslim people, especially women who are trapped in unhappy marriages and want a religious divorce. (Some say these councils should be regulated, others want them abolished.) And in no other country is it so common for young Muslim couples to have religious-only marriages or *nikahs* which are never registered with the state, so that in the event of a breakdown the financially vulnerable partner, usually female, has few entitlements.

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Aina Khan, a London-based lawyer who specialises in family law, is prime mover of a campaign called "[Register Our Marriage \(https://www.registerourmarriage.org/\)](https://www.registerourmarriage.org/)", which aspires both to change the law and to make Muslims, especially women, more conscious of the dire consequences of a religious-only rite.

The campaign wants to close the gap between faith-based and civil wedding ceremonies by making it easy, virtually automatic and indeed compulsory for religious nuptials to be registered in the eyes of the state. In other words, all faiths would acquire the status (and the corresponding obligations) long enjoyed by the Anglicans, Jews and Quakers.

As the website puts it:

"This Petition is to reform outdated English marriage law, which is no longer fit for purpose." We need to reform the Marriage Act 1949 as it is 70 years out of date. Make it compulsory for every faith to register marriages, not just three faiths...100,000s have no legal rights in an unregistered religious marriage

and this figure is rising yearly.”

A different view is taken by Sadikur Rahman, a London solicitor who is also a supporter of the National Secular Society. He agrees that there is an anomaly in treating Anglicans, Jews and Quakers differently from other faiths. But he wrote in a recent article that according civil status to all Muslim marriages would be “highly problematic” for several reasons. As he argues:

“The question of “what is a Muslim marriage” is a vexed one. Muslim marriage encompasses a range of unions which would not be acceptable on the basis that they may be discriminatory or open to abuse. For example polygamous marriages, temporary marriages amongst Shia Muslims and nowadays young Muslims of all sects...[and] marriages between adults and children.”

On the other hand, Mr Rahman adds:

“If we start debating what is and is not a Muslim marriage and go down the route of...siding with Islamic reformers in not accepting the above types as Muslim marriages at all, then the state would be entering into a religious theological debate which is no position for a secular state to be in. It is not for the state to start defining what is and is not a Muslim marriage.”

The best approach, in Mr Rahman’s view, is for the state to be blind to all forms of marriage except the civil sort. That would involve stripping the Anglican, Jewish and Quaker faiths of their current privileged status and insisting that adherents of those faiths must register their nuptials with the state as a separate act if they want any legal status for their union.

Mr Rahman’s view highlights one of the paradoxes of rigorous secularism. If secularism is understood to mean that the state does not interfere in theological matters, then this can leave a large social space in which religions and sub-cultures can act according to their own traditions, which may be pretty conservative.

The Netherlands has, on the face of things, an approach that is quite secularist but also addresses the problems identified by Ms Khan that occur when civil and religious nuptials drift apart. Dutch law says that a religious wedding cannot take place unless a civil union has also been contracted. But the country still has the problem of “marital captivity”—in other words, the dire situation of women whose husbands will not give them a religious divorce.

Kathalijna Buitenweg, a prominent Green member of the Dutch parliament, is lobbying the government for a change in civil law that would make it easier and more routine for judges to compel reluctant husbands to release their wives from the religious bonds of a dead marriage.

Thanks to the efforts of Shirin Musa, a campaigner, keeping a woman in such “marital captivity” is notionally a criminal offence under Dutch law. But that provision is so draconian that it will hardly be used in practice. A few civil-law cases, including Ms Musa’s own personal case, have been pursued successfully against reluctant husbands. But if Ms Buitenweg gets her way, civil-law cases will become much easier.

But here is a paradox. By the lights of strict secularism, using civil law to bring about religious divorce is problematic. Since religious marriages do not exist in the eyes of a rigorously secular state, it makes no difference to the state whether or not they are terminated. But by the lights of common decency, some would say, a woman caught inside a traditionalist sub-culture who wants to restart her life does need help and should get it.