

Islamic Marriage and English Divorce - a new Decision from the English High Court

In England, almost all married Muslim women have had a nikah, a religious celebration. By contrast, more than half of them have not also gone through a separate civil ceremony, as required under UK law. The often unwelcome consequence is that, under UK law, they are not validly married and therefore insufficiently protected under UK law: they cannot claim maintenance, and they cannot get a divorce as long as the marriage is viewed, in the eyes of the law, as a nullity.

The government has tried for some time to remedy this, under suspicious gazes from conservative Muslims on the one hand, secularists on the other. A 2014 report (the 'Aurat report'), which demonstrated, by example of 50 cases, the hardships that could follow from the fact that nikahs are not recognized, found attention in the government party. An independent review into the application of sharia law in England and law, instigated by Theresa May (then the Home Secretary) in 2016 and published earlier this year, recommended to ensure that all Islamic marriages would also be registered; it also recommended campaigns for increased awareness.

Such steps do not help where the wedding already took place and has not been registered. A new decision by the High Court brings partial relief. Nasreen Akhter (who is a solicitor and thus certainly not an uneducated woman ignorant of the law) asked to be divorced from her husband of twenty years, Mohammed Shabaz Khan. Khan's defense was that the marriage, which had been celebrated as a nikah in west London, existed only under Islamic, not under UK law, and therefore divorce under UK law was not possible. Indeed, up until now, the nikah had been considered a non-marriage which the law could ignore, because it did not even purport to comply with the requirements of English law. The High Court was unwilling to presume the lived marriage as valid. However, drawing at length on Human Rights Law, it declared the marriage void under sec 11 of the Matrimonial Causes Act 1973 and granted the wife a decree of nullity. This has important consequences: Unlike a non-marriage, a void marriage allows a

petitioner to obtain financial remedies.

The decision represents a huge step towards the protection of women whose Islamic marriages are not registered. It makes it harder for men to escape their obligations under civil law. At the same time, the decision is not unproblematic: it refuses recognition of an Islamic marriage as such, while at the same time, under certain conditions, treating it like a recognized marriage. In all likelihood, only registration will create the needed certainty.

The decision is here.