



Islamic Marriage and the English Legal System: Nikkah

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Tahir Khan, barrister, provides some useful legal and practical guidance on Islamic marriage and its validity and recognition under English Law, together with some of the challenges and difficulties that face practitioners when confronted with such matters.

Introduction

Islam is now the second largest religion in the United Kingdom, with results from the United Kingdom 2011 Census giving the UK Muslim population in 2011 as 2,516,000, 4.4% of the total population, while more recent Office of National Statistics sources have it in 2018 as 3,372,966. With the rapid rise in numbers, it is no surprise that there are occasions when Sharia Law conflicts with English law. Hence why it is ever more important to look at this in the context of the English Courts. There is an increasing number of cases coming before the courts in England arising from this very conflict. To compound matters with further complications, the Muslims are mainly split up into two groups Sunni and Shia with several subgroups depending on which madhhab school of thought Islamic jurisprudence the individual believes in. This article considers the Sunni jurist's view according to the four main schools of thought, each named after the classical jurist who taught them. The four primary Sunni schools are the **Hanafi, Sahafi, Maliki and Hanbali rites**. The legal interpretation and application differ, largely depending on what methodology is being used and to what degree.

The aim of this article is to provide some guidance for Family Law practitioners in England and Wales on how best to deal with Muslim clients that have undertaken a Nikkah only. It is instrumental to have a good grasp of Islamic Family Law to be able to best advise the client on what is required and how it should be done. Managing the client's expectations has never been greater when dealing with matters of this kind. The complexities are insurmountable, especially when dealing with clients who have very little understanding of Islamic/Sharia Law and rulings. There are several sources that are required to be examined and understood to advise comprehensively. Islamic/Sharia Law legal rules are namely devised from the following four sources: The Holy Quran, Sunnah, Ijma and Qiyas. The outcome will differ depending on which school the client follows. The four schools of thought are now recognised by the vast majority of Sunni Muslims. It should be noted that these schools are in good agreement on all essential aspects of the religion of Islam. They all acknowledge the authority of the Holy Quran and the authentic Hadith (sayings, teachings, and observations of the Prophet Mohammad) (PBUH). Only in situations where these two sources are silent, do the four schools use their independent reasoning in which they may differ with each other.

The Demand for a Parallel System of Islamic Law

Rowan Williams, then Archbishop of Canterbury, gave his lecture on Civil and Religious Law in England on 7 February 2008 in the Great Hall of the Royal Courts of Justice. He had recently given two speeches touching on the themes that he would explore more deeply there: the first at the Building Bridges Seminar in Singapore on 6 December 2007; and the second, 'Religious Hatred and Religious Offence', at the James Callaghan Memorial Lecture in the House of Lords on 29 January 2008 (when the planned abolition of the common law offence of blasphemous libel was the subject of heated debate).] "Civil and Religious Law in England" might then be seen as the completion of a series of three lectures.

In the lecture at the House of Lords, the Archbishop had suggested: It is commonly said that since a religious believer chooses to adopt a certain set of beliefs, he, or she is responsible for the consequences, which may, as every believer well knows, include strong disagreement or even repugnance from others. But this assimilation of belief to a plain matter of conscious individual choice does not square with the way in which many believers understand or experience their commitments. For some - and this is especially true for believers from outside the European or North Atlantic setting - religious belief and practice is a marker of shared identity, accepted not as a matter of individual choice but as a given to which allegiance is due in virtue of the intrinsic claims of the sacred. We may disagree, but I do not think we have the moral right to assume that this perspective can be simply disregarded. It is one thing to deny a sacred point of reference for one's own moral or social policies; it is another to refuse to entertain - or imagine - what it might be like for someone else to experience the world differently. The uncomfortable truth is that a desecralised world is not, as some fondly believe, a world without violence, but a world in which there can be no ultimate agreement about the worth of humans or other beings.

Nikkah – Marriage Contract

The Literal and Religious Meaning of Nikāh

Nikkah literally means intercourse and union. In practical terms, it is a marriage contract that makes a sexual relationship between a couple permissible. In Islamic terminology, Nikkah is a marriage contract and with it, the couples can benefit from each other in a lawful way. Nikkah implies mutual benefit between couples.

Imam Shafi holds that Nikkah only means the marriage contract. However, the Quran uses this word with more than one meaning: “when they reach the age of marriage (mikab).” In another verse, Nikkah is used to mean sexual intercourse: “If he divorces her (finally, for the third time), she will no longer be lawful to him unless she marries (nikkah) another husband,” Quran 20:230. This verse informs us that a woman who is divorced for the third time cannot lawfully remarry to her first husband unless, in the meantime, she marries another man, and the marriage is consummated through sexual intercourse. If she then divorces the second husband, it is lawful for her to remarry the first husband. Here the word Nikkah is used to mean sexual intercourse but not to mean the marriage contract. The meaning of Nikkah is extracted from the expression “another husband” in the previous verse. Thus, to understand the proper meaning of Nikkah, the context must be known. If God addresses the guardians of girls to get them married, the meaning of the marriage contract is understood from the context: “marry (Nikkah) those among you who are single (whether men or women),” Quran 24:32. Under Islamic law, marriage is viewed as a contract by which the parties agree to live as husband and wife in accordance with the guidance contained in two sources: The Holy Quran and the Sunnah of the Prophet Mohammad (PBUH).

Nikkah Contract and the treatment by English Law

It is a common misnomer that most Muslims believe that a Nikkah Contract performed in England and Wales is valid in the eyes of God, it is not a valid marriage per se under the law of England and Wales. It would stand then that the parties are merely cohabitants. Thus, Muslims must marry in a registered mosque in England and Wales in accordance with s.26(1)(a) Marriage Act 1949 or undergo a civil marriage as well as nikkah.

To help illustrate this it would be useful to consider the case of [*MA v JA \[2012\] EWHC 2219\(Fam\) \[2012\] All ER \(D\) 338 \(Jul\)*](#). The court was concerned with whether the parties' Islamic ceremony of marriage could create a valid marriage under English law and if so, whether the ceremony had in fact created a valid marriage in that case.

Facts

The applicant and respondent asserted that they were validly married pursuant to a ceremony of marriage which took place at a mosque in England. The mosque was registered for the solemnisation of marriages under s.41 of the Marriage Act 1949 (MA 1949). The applicant planned for the marriage. He knew nothing of the formal requirements of the MA 1949 and made no enquiries beyond his discussion with the chairman of the mosque.

During the ceremony, the parties were asked words to the effect of whether there was any reason why they could not marry and whether they both freely consented to marry. The parties each agreed to take the other as husband/wife. After the ceremony the Imam assured the applicant that the parties were now married and that there was nothing further, they needed to do. The parties signed a register book and were provided with a document signed by the Imam and headed 'Contract of Marriage'. The document certified that the 'Marriage Contract was concluded according to Islamic Sharia' and that the marriage was 'proposed by' the petitioner and 'accepted by' the respondent in the presence of two named witnesses. The parties failed to give notice to the superintendent registrar and there was no certificate of marriage. However, the parties intended to conduct a marriage which was valid under English law and believed that they had done so because of the ceremony. They had lived together as a married couple since the date of the ceremony. The respondent was subsequently advised by the Register Office that the marriage was not registered. The applicant supported by the respondent sought a declaration under s.55(a) of the Family Law Act 1986 that the marriage had been a valid marriage.

The intervener, the Attorney General, contended that the purported marriage was void under s.11 (a)iii of the Matrimonial Causes Act 1973, in that the parties had 'Intermarried in disregard of certain requirements as to the formation of marriage', or alternatively, that it was a 'non-marriage' on the basis that the ceremony had not even purported to be of the kind contemplated by the 1949 Act. Consideration was given to the principles summarised in [Collett v Collett \[1967\] 2 All ER 426](#) and [Hudson v Leigh \[2009\] All ER \(D\)124 \(Jun\)](#).

Overseas Nikkah and its validity under English law

*Always check: GOV.UK getting Married abroad.

If you're a British national getting a marriage or civil partnership abroad, you might need certain documents from the UK government, for example, a certificate of no impediment (CNI). Use this website to find out how to get the documents you'll need.

You'll need to contact the local authorities where you want to get married to find out what you need to do.

Your marriage or civil partnership will be recognised in the UK if both of the following apply:

- you followed the correct process in the country where you got married; and
- it would be allowed under UK Law.

Family Procedure Rules 2010, PD 7A, 3.1 provides that the validity of a Nikkah conducted overseas, if undisputed, is proved in England and Wales by the production of a marriage certificate or similar document issued under the law in force in that country; or a certified copy of such a certificate or document obtained from the register of marriages kept under the law in force in that country. Where a Nikkah contract is not in English it must be accompanied by a translation, certified by a notary public or authenticated by a statement of truth.

[Akhter -v- Khan \(2018\) EWFC 54](#)

Although the decision in the recent case of [Akhter -v- Khan](#), has given some Muslim women 'hope'. It is important to note that Mr Justice William in the High Court stressed that each case will be decided on its own facts to see if it falls within the Marriage Act 1949. As the case was "not about whether an Islamic marriage ceremony should be treated as creating a valid marriage in English law". In his judgement, Mr Justice William declared that the parties 18-year relationship was void, as opposed to a non-marriage. Ms Akhter was therefore entitled to a decree of nullity under the Matrimonial Causes Act 1973, as they had only had an Islamic marriage ceremony and not a civil ceremony. The case of [Akhter -v- Khan](#) has opened the doors to various questions, to which no one seems to have the answer. It is however hoped that as these questions have arisen at an interesting time, this area will evolve in line with modern practices.

Conclusion

In the 21st Century, it is seriously surprising to note that approximately 61% of Muslims do not register their marriage in the UK as they believe their Islamic marriage, commonly referred to as Nikkah will be recognised in the UK. This is simply not true as the UK Courts generally do not, sadly, recognise the validity of a Nikkah. It is seen to be a religious ceremony and so not seen as carrying the same weight as a civil ceremony.

As couples do not take steps to register their marriage in the UK, they find that they are without any financial security in the unfortunate event of a divorce, which often leaves women in a vulnerable position. Under Sharia Law, a husband can divorce his wife by saying 'talaq' three non-consecutive times, without addressing the division of any matrimonial assets. This differs to the way in which matrimonial assets are divided if divorce proceedings were issued within the UK Courts, which you can only do if your marriage is recognised under UK Law.

Glossary

Madhab - A madhhab is a school of thought within fiqh. The major Sunni madhhabs are Hanafi, Maliki, Shafi'i and Hanbali.

Nikkah - In Islamic law, marriage – or more specifically, the marriage contract.

Quran - The Islamic sacred book, believed to be the word of God as dictated to Prophet Muhammad (PBUH) by the archangel Gabriel and written down in Arabic.

Sharia: Islamic canonical law based on the teachings of the Quran and the traditions of the Prophet (Hadith and Sunna).

Shia - The Muslims of the branch of Islam comprising sects believing in Ali and the Imams as the only rightful successors of Prophet Muhammad (PBUH) and in the concealment and messianic return of the last recognised Imam.

Sunni – A member of the branch of Islam that accepts the first four caliphs as rightful successors to Prophet Muhammad (PBUH).

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Please note this article does not constitute legal advice for any specific case or cases. © Tahir M. Khan

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