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South Asian Muslim Women's Experiences of Divorce in Scotland

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This briefing examines South Asian Muslim women's experiences of religious and civil divorce in Scotland, highlighting how navigating two parallel systems can place women in disadvantaged and vulnerable positions. It shows how unregulated religious divorce processes and costly, complex civil divorce procedures can enable coercive control, prolong uncertainty, and create forms of marital captivity, especially in the absence of legal recognition of withheld divorce as abuse.



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Key Points

- South Asian women with legally registered religious marriages have two processes to navigate for divorce – religious and civil. Both may place them in disadvantaged situations.
- The study found that participants experienced the talaq, a private and unregulated religious divorce process. Initiated in variable ways and on numerous occasions, men were found to weaponize this process to exert control.
- Participants experienced uncertainty, control and abuse in the process of religious divorce, in some cases leading to what is known as ‘marital captivity’.
- Civil divorce created a legal and financial burden, and it may also function to keep women in a form of ‘marital captivity’.
- There is a lack of protective legislation in cases where divorce is withheld as a form of control or abuse.

Background

Little is known about separation and divorce experiences of South Asian Muslim women in Scotland, which has a distinct legal system within the United Kingdom; in particular, there is little evidence about whether and how Scottish civil law interacts within Islamic law in cases of divorce. Islamic ceremonies and civil registration processes may be combined in Scotland, but research in England and Wales has shown that they occupy distinct and separate cultural spaces. The Muslim nikah is a marriage contract that requires ‘legal capacity, consent, acceptance and the dowry or mahr’ (Bano, 2022: 247). The mahr is where the groom provides a ‘sum of money that the parties have agreed’ which belongs to the wife (Bano, 2022: 247). Research shows that the nikah holds more importance to women than the civil process (Kalras, 2025).

The predominant form of Muslim religious divorce – talaq – introduces asymmetric inequalities, where men withhold it or refuse to give it (Mohee, 2011: 244). The withholding of a religious divorce can create ‘limping marriages’ (Bano, 2022) or what Deogratias (2020: 1) refers to as ‘marital captivity’, where women are forced to remain in religious marriages against their will. There are other forms of Islamic divorce available, the first of these being talaq at-tafwid which is an agreement placed in the nikah which transmits the right to divorce from the husband to the wife. In the absence of this agreement, if the woman wants to instigate the divorce, she has the options of a khula or fasqh. A khula can be obtained with the husband's agreement, where the wife ‘gives something for her freedom’ such as the return of the mahr (Aghtaie et al., 2020: 159; Bano, 2022: 251). Importantly, the return of the mahr is based on no wrongdoing on part of the husband. Fasqh is a form of ‘judicial intervention’ (Aghtaie et al., 2020: 159) which allows the marriage to be terminated in the event of unreasonable behaviour by the husband and does not require the return of the mahr (Bano, 2022: 251). While these options are provided to women, they are gained through ‘mutual consent’ or obtained from a Shariah Council (Bano, 2022: 251). Shariah Councils in England have been criticised for ‘lacking consistency’ and being favourable to men (Uddin, 2018: 406; Aghtaie et al., 2020: 171; Qureshi, 2016). The main point here is the ease with which men can divorce, which discriminates against and leaves women feeling powerless.

Divorce law is distinct in Scotland, as parties with children are required to have child arrangements agreed or ordered prior to divorce. Financial provisions may need to be agreed or ordered, dependent upon circumstances. While the Domestic Abuse Act 2021 in England has recognised the withholding of religious divorce as a form of domestic abuse, specifically coercive and controlling behaviour (Ladha, 2022), this does not cover Scotland and there is no equivalent provision in Scotland. The Family Law (Scotland) Act 2006 allows the court to postpone granting a civil divorce if a religious one has not been obtained. However, this provision had the power to potentially exacerbate a situation where religious divorce is being withheld as a form of control (Norrie, 2006: 34).

The Study

The study was a pilot project focusing on South Asian Muslim women who had experienced separation and divorce (see Elliot and Mirza, 2025; Mirza and Elliot, forthcoming). We recruited from a range of community groups. We interviewed seven participants who came from a Muslim Pakistani background, and one Muslim women from Southwest Asia. The ages of participants ranged between 27 and 48 at the time of interview. We did not specifically look for participants who had experienced long and protracted divorces, nor did we specifically seek experiences of domestic abuse, but these were key themes which emerged. Four participants had been married more than once. All had been given or sought a religious divorce prior to the civil process, and four were stuck at some stage in the latter, in some cases for many years and/or within a context of domestic abuse. Two participants had commenced litigation but discontinued this. The study was conducted in 2022-23, before the advent of the Scottish Shariah Council in 2024¹. Participants real names are not used here.

Findings

Participants described their marriages as '*arranged*', '*love*', and in some cases, feeling pressurised to enter the marriage, with two participants married at the age of 17. Despite the experiences of abuse, mistreatment and affairs, most participants reported wanting to make the marriage work, and experiencing the divorce as unexpected and sudden. The desire to '*fix things*' was based on gendered advice participants received to 'forgive' and be 'patient'. This desire was ascribed to the '*sacredness of marriage*' and to societal judgement where women are '*blamed*' for marital breakdown (see Qureshi, 2013). Despite efforts to save the marriage, participants in our study found themselves navigating complex Islamic and civil divorce proceedings. They did so in a context where, as participants described, stigma around divorce perpetuated silences around domestic abuse and disempowered women from sharing their stories.

¹ <https://islamicshariascotland.co.uk/who-we-are/>

Inequalities of Religious Divorce

Six participants received an Islamic divorce by *talaq*, while two participants obtained what they called a *khula*.

Talaq

Participants experienced the *talaq*, a private and unregulated process, being initiated in various ways and on numerous occasions.

They described being divorced over the phone, by text message, by letter and verbally, and this being a sudden and unexpected event with no consultation. The *talaq* was not always straightforward and there was a lot of back and forth, particularly in terms of uncertainty about the validity of the *talaq* and denial on part of the husband that the *talaq* had been given (see Qureshi, 2016). This suggests that men can weaponize the religious divorce process to exert control. Participants felt their husbands yielded the power. Fatima described feeling confused and uncertain as to the status of her marriage:

I asked him again, I said what are you wanting to do? He didn't really give me a proper answer. Two more weeks went by, and I said, I need to know, are we married? Are we not married? He wasn't giving me an answer.

These experiences had a psychological and physical impact, as participants described taking absences from work, attending counselling, feeling unwell, and experiencing depression.

Inadequate support, consultation and informal mediation

Participants highlighted a lack of support and opportunity to discuss their problems with others such as family, friends, Islamic scholars and counsellors. Reflecting on her experiences, Maariyah noted that there was no step in the *talaq* process where anyone outside the marriage could intervene or mediate:

Somebody should step in and say, right, are you sending the second one [talaq]? I think it's about time you came together, and you talked about it.

Qureshi and Metlo (2021) showcase the role of family members as mediators and advisors in the decision-making process to end a marriage which, at times, leaves women in disadvantaged situations. Participants in our pilot study who wished to divorce received gendered advice deterring them from divorce, such as Amina who was reminded of societal blame placed on women for marital breakdown that could lead to bleak future martial prospects.

Khula

Two participants described the process of obtaining a religious divorce when the husband would not agree, which took them to Shariah Councils in England. Amina's husband refused to provide a divorce, which, along with family pressure to stay, meant

that Amina was captive in her marriage for 18 years. During this time, her husband fathered a child with another woman and used deportation threats to intimidate her. When Amina applied for a khula through a Shariah Council, they contacted her husband who did not reply which delayed the process:

They gave four weeks' time; he would give a last-minute response. He was trying to prolong as much as he can. He tried his best for [two months] I was saying to them "I have nothing to say, all I want is divorce". They were trying their best, if anything can be done. All I was saying... no.

Amina felt that the council were following 'procedure' where they allow the husband to respond to the *khula* request, rather than trying to make her reconcile. However, in situations of domestic abuse, as experienced by Amina, having to interact with their ex-husband can be re-traumatising and can exacerbate existing forms of coercive control (Bano, 2012: 213).

Inequalities of Civil Divorce

Participants' experiences of uncertainty, control and abuse in the process of religious divorce were echoed and exacerbated through the process of civil divorce. Participants spoke about being in a state of 'limbo' for various reasons such as their husbands refusing to initiate a civil divorce or refusing to consent and/or being stuck due to delays in and costs of the legal system.

One participant's marriage was marked by extreme and prolonged domestic violence in the forms of physical, sexual and emotional abuse, which continued in the form of stalking after she had managed to leave. She took legal advice and progressed the paperwork for a civil divorce, but her husband refused to consent. She explained that her husband kept refusing to divorce her and saying that he would make sure that if she was not staying with him, she would not be able to marry anyone else. He stated that she would need to 'keep his name' and stay with him.

Qureshi (2016: 150) discusses the significance of 'keeping the name' of the husband which can be experienced as a form of marital captivity. In the case of the above participant, she was left frustrated and distressed by both the Islamic and civil process of getting a divorce as these processes facilitated her husband's desire to continue to exert control. Scots law does not explicitly recognise withholding divorce as a form of abuse, even though intentionally failing to do something which then causes physical or psychological harm to another is recognised as a form of coercive control as per the Domestic Abuse (Scotland) Act 2018.

Financial burden

Seven participants described being left financially worse off because their husbands refused to engage in the legal process and/or because the legal process itself was expensive, lengthy and time-consuming. Participants also described not receiving money or other assets they were legally entitled to.

Tazeem's solicitor initially advised her that she was entitled to half the matrimonial assets. However, her husband's on-going refusal to disclose his financial assets meant that she was advised five years later that the way to conclude the divorce was to give up any claim for her share of the matrimonial assets. She explained that the situation affected her mental health and financial well-being:

... maybe if I take action to start proceedings myself ... just the financial costs put me off. In the past year I've been doing extra hours at work. I thought, if I cut down my hours, I will go back to the lawyer and say, can you apply for Legal Aid for me now? [...I've] tried to dwindle away my savings. I think just applying for Legal Aid, he doesn't know if I'll qualify. That initial cost is £500 just to apply. I have to set up a monthly direct debit for the solicitors, which is just I think with the cost-of-living crisis and just... I'd rather spend the money on me and the kids or bills.

Losses through lack of financial settlement were on top of the legal costs of seeking a divorce. Tazeem highlighted the need for easier access to Legal Aid and greater affordability of legal services, given the expenses involved and the profit motive of legal firms.

The need to have the child arrangements agreed by both parties or a final court order in place before a civil divorce will be granted added a further barrier. Laila explained that she was advised that a Minute of Separation would be required with the child arrangements, which, if her husband did not contest, would cost almost £5000. Having taken on household costs and bills, Laila could not afford this and resented having legal costs when she had not initiated the civil divorce. She had asked her husband to pay the legal costs and/or initiate the civil divorce himself. As he 'refused to do it', Laila and her husband remained legally married. At the time of interview, Laila had been separated a decade and reflected that once her child was sixteen, getting divorced would be easier and cheaper. As such, the need to have child arrangements agreed or ordered may also be a way in which divorce can be stalled and/or legal expenses accrued to the detriment of the family.

These examples suggest that aspects of the Scottish legal process for divorce may also function to keep women in 'marital captivity' and trying to get out of this creates a financial burden. The impact of the civil divorce process was such that some participants explained that they would not have another civil marriage, which arguably could be seen as a way of exercising agency given their experiences.

Conclusion

The research adds to existing literature by shedding light on the position of women experiencing both religious and civil divorce in Scotland. South Asian women who engage in a religious and civil marriage have two separate processes to navigate for divorce, both of which may place women in disadvantaged situations in different ways.

The *talaq* was viewed by participants as too fast, lacking adequate support and structure, and was often implemented without discussion and agreement. The *talaq* could be withheld by the husband within the context of coercive control. The civil divorce process created obstacles in terms of finances, child arrangements, and refusal from the

husband to engage or provide information, leading to a form of marital captivity. Nonetheless, there were elements of agency in two participants' experiences of accessing the khula, in women's often persistent, if protracted, engagement with civil processes to ensure that their civil marital status aligned with their religious marital status, and in the disavowal of civil marriage for any future relationship.

Policy and practice recommendations

- Policy and practice should be cognisant of different religious needs.
- Withholding divorce should be understood within the context of coercive control and as a form of domestic abuse. There should be improved religious consultation opportunities and information on divorce for women as well as improved access to legal and other support services.
- The government should conduct a review of the need for child arrangements to be agreed or ordered prior to divorce.
- There needs to be easier access to Legal Aid and greater affordability of legal services.

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