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Sharia law review: Right to civil divorce 'reduces need to access sharia councils'

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An independent review into the application of sharia law in England and Wales published by the Home Office has recommended that Muslim couples must undergo a civil marriage alongside a religious ceremony, in a move expected to give Muslim women increased legal protection. Senior associate Augustus Della-Porta from Bates Wells Braithwaite LLP said that the review serves as an 'important reminder that sharia councils are primarily decision-making bodies', highlighting that the right to a civil divorce will 'reduce the need to access sharia councils'. Senior consultant lawyer and director of the 'Register Our Marriage' campaign, Aina Khan, discusses the impact of the review.

The report focuses on the work of sharia councils, originally set up in the UK in the early 1980s to grant women Islamic divorces in cases where the husband was refusing to divorce them. The review was launched in May 2016 by former Home Secretary Theresa May, and finds that while many aspects of sharia have been modernised, many Muslim societies still 'observe rulings of classical jurisprudence', whereby Islamic marriage and divorce disputes are settled solely by sharia councils.

The review was led by Mona Siddiqui and the panel includes family law experts, a retired High Court judge and two imams. The review makes several recommendations, which include a legal requirement to civilly register marriages and to increase awareness campaigns and educational programmes for both women and sharia councils.

Legislative changes

The first recommendation is a legislative change to ensure that civil marriages are conducted before or at the same time as the Islamic marriage ceremony. This proposed amendment to the Marriage Act 1949 would bring Islamic marriage in line with Christian and Jewish marriage in the eyes of the law. This is arguably the most important recommendation put forward; Aina Khan OBE says that 'by linking Islamic marriage to civil marriage—as happens in all Muslim countries—Muslim women are given the full protection of civil family law'. Accordingly, a greater number of women are expected to face less discriminatory practices.

Awareness campaigns

Another recommendation is to introduce awareness campaigns and educational programmes to 'educate and inform women of their rights and responsibilities, including the legal protection that civilly-registered marriages provide'. Della-Porta adds that these campaigns would equally raise awareness within sharia councils of how to 'operate within the law and comply with best practice'.

Della-Porta continues: 'It is, however, unclear who will deliver these campaigns and how these will reach the audience intended.'

Regulation of sharia councils

The review proposes the 'the creation of a body by the state with a code of practice for sharia councils to accept and implement'. However, the review rejects the possibility of self-regulation, as evidence shows councils would not be able to self-regulate mainly due to a Sunni tradition that states 'each Mosque is an independent body not susceptible to the authority of any other mosque or council'.

The report outlines that no sharia councils opposed some form of regulation, and some even 'positively welcomed it'.

The growing practice of 'sharia-compliant' legal services

The review informs sharia councils that any arbitration that sought to apply sharia law in respect of financial remedies and/or child arrangements would breach UK law. Importantly, however, it highlights a growing practice of law firms advertising 'sharia-compliant' services alongside their mainstream civil law services. Della-Porta says this gives the incorrect impression that 'in addition to civil law remedies, redress to sharia councils is required.

'It is likely that the Law society will be looking into this further'.

The Home Office said it would carefully consider the review's findings and other recommendations.

Source: Report: The independent review into the application of sharia law in England and Wales

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