The Challenges of the Unrecognised: An analysis of Muslim Marriage recognition in England and Wales

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Introduction

- Growth of Islam in England and Wales
- Clash of Shariah and English Civil Law
- Recent manifestations of practical challenges
- Structure of presentation
Regulation of marriage ceremonies in England and Wales: An issue emerges

- Marriage Act 1949 - Rules in English law for solemnising a Muslim marriage

- Nikah ceremony

- Analysis:
  - Completely different idea of marriage
  - Lack of registration of mosques: 205 of 930 registered mosques in England & Wales
  - Serious issue:
    - Shah-Kazemi (2001)
    - Aina Khan Muslim Marriage Project estimates
Overview of case law pre-Hudson

- **Gereis v Yagoub** [1997] 1 FLR 854
- **A-M v A-M (Divorce Jurisdiction: Validity of Marriage)** [2001] 2 FLR 6
- **Chief Adjudication Officer v Bath** [2000] 1 FLR 8
- **Hudson v Leigh (Status of Non-Marriage)** [2009] EWCA Civ 1442
- **Gandhi v Patel** [2002] 1 FLR 603
- **R v Bham** [1966] 1 QB 159
The Hudson v Leigh criteria

- Whether the ceremony purported to be a lawful marriage,
- Whether it bore enough of the hallmarks of marriage,
- Whether the key participants, especially the officiating official, believed, intended and understood the ceremony as giving rise to the status of a lawful marriage, and
- The reasonable perceptions, understandings and belief of those in attendance
Overview of case law post-Hudson

- **El Gamal v Al-Maktoum** [2012] 2 FLR 387
- **Al-Saedy v Musawi** (Presumption of Marriage) [2010] EWHC 3293 (Fam)
- **Dukali v Lamrani** [2012] EWHC 1748 (Fam)
- **Shabatly v Shagroon** [2012] EWCA Civ 1507
- **MA v JA and the Attorney General** [2012] EWHC 2219
Practical implications (non-existent marriage)

- Implications on ‘marital’/relationship breakdown
- Vulnerability of women...
  - Matrimonial Causes Act 1973
- Possible remedies at civil law?
  - CICT
    - Difficulties?
- Specific performance of the marriage contract
  - Uddin v Choudhury [2009] EWCA Civ 1205
  - Difficulties?
Practical implications (non-existent marriage)

- Possible remedies in Shariah law?
  - Shariah Council
    - Maintenance during period of Iddat
    - Maintenance while breastfeeding
    - Payment of the mahr
    - Difficulties with this?
      - Only available where Talaq is declared by husband (usually)
      - Inconsistency in approach of Councils
Solutions

 Amend the Marriages Act?
 Judicial development in SC?
 Legislative intervention to recognise nikah as void marriage?
 Registration of mosques?
 Education (women in particular)
 Give the right of divorce to women (in the nikah)
Conclusion

Challenges in multicultural societies

Muslim Marriage Project 2014/15

No easy solution!

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