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**REPORT**



# ISPU

## UNDERSTANDING TRENDS IN AMERICAN MUSLIM DIVORCE AND MARRIAGE:

*A Discussion Guide for Families and Communities*

*by Dr. Julie Macfarlane, ISPU Fellow*



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Julie's most recent books are "The New Lawyer: How Settlement is Transforming the Practice of Law" (University of British Columbia Press 2008) and "Dispute Resolution: Readings and Case Studies" (Emond Montgomery, 3rd edition 2011). A book on this study – "Islamic Divorce in North America: A *Shari'a* Path in a Secular Society" – will be published by Oxford University Press in early 2012.

Julie is an active mediator, and consults regularly on conflict resolution design and training. This is her first study of Islamic dispute resolution processes.

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## Executive Summary

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The divorce rate among North American Muslims has risen sharply in the last 25 years. While marriage breakdown is also on the rise in some Muslim countries, for many members of the older generation divorce was unusual or even unheard of in their family. When marriages did end, the widespread social taboo associated with divorce meant that it was difficult to talk openly with one's family and other community members about marital discord and breakdown. This taboo continues today, to some degree, in the North American Muslim community.

This four-year empirical study has encouraged individuals and groups to discuss marital conflict openly and frankly. The goal was to explore what they understand as their Islamic obligations in marriage, the challenges they face in their married lives, and under what circumstances they might consider divorce – including their decision-making process, where they turn for help, and what rituals of closure and divorce outcomes are important to them.

While most Muslims who end their marriages will obtain a civil court order, many want to ensure that they have fulfilled their Islamic obligations – including the commitments they made in their *nikah*—and so some also seek some type of religious approval for their decision (usually from an imam). The continued significance of religious divorce for some Muslim men and women is evident among both newer immigrants and those born in the United States or Canada, and regardless of their level of education and assimilation into a secular society. Respondents in this study described the significance of Islamic marriage and divorce for them both as believing Muslims, and as members of their cultural community for whom these processes represent their affirmation of an Islamic identity.

The debate over marriage and divorce in Islam reflects a wide range of ideals and aspirations about Muslim family life in 21st century North America. It offers a case study of an evolving shari'a-compliant approach to marriage and divorce in contemporary North America. At the same time, it has ignited a firestorm of public debate over “*shari'a* law” which misunderstands the role of Islamic tradition and principle in Muslim marriage and divorce, and marginalizes the Muslim community.

Muslim couples face many of the same challenges as non-Muslim couples as they adapt to changing societal values and norms, including gender roles within marriage, attitudes towards

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*This four-year empirical study has encouraged individuals and groups to discuss marital conflict openly and frankly.*

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the participation of women in work and education, the role of the extended family, and attitudes towards divorce. At the same time, contemporary Islamic family identity is emerging from a range of traditions and practices which are rooted in cultural values as well as religious principles. This evolving identity reflects a continuing commitment to an “Islamic imagination” among Muslim families whose children are born and raised in North America—what Tariq Ramadan calls “...the building of the Muslim personality in the West and...in the modern era.”<sup>1</sup>

### **A National Debate**

There is widespread and growing fear of Islam in the U.S. often fixated on the concept of *shari'a*. Media coverage constantly reinforces an image of *shari'a* as a rigid, authoritarian and brutal system of punishments. Misinformation and misunderstanding has made *shari'a* a toxic word in public discourse, associated with the idea that Muslims wish to impose “their” laws on non-Muslims.

This study shows that for North American Muslims, whatever their level of observance, the most commonplace expression of their *shari'a* obligations is through critical rites of passage and family transitions, especially marriage and divorce. None of the 212 individuals – including imams, religious scholars, social workers, therapists, lawyers and divorced men and women—interviewed for this study suggested that they wanted the extension of the most notorious penal regimes described as “*shari'a*” to North America. This is hardly surprising since the majority of respondents regarded these regimes as aberrant and lacking in Qur’anic authority. Further, only three of 212 respondents favored a separate, parallel Islamic legal process for family matters or the legal recognition of Muslim marriage and divorce. On the contrary, there was widespread and consistent acceptance of the civil courts both as legitimate state institutions, and as a forum for dispute resolution. All the respondents in this study understand their private choices of Islamic marriage and divorce as separate from the formal legal system, drawing a distinction between God’s law— regarded as a matter for personal conscience rather than public adjudication—and the law of the state or “human law.” They consistently expressed a desire to be able to continue to access their Islamic traditions in a private, informal system, and also to be able to use the legal process (many used the courts to resolve contentious issues).



Ironically, hostility and negativism towards Muslims and *shari'a* post 9/11 may be reinforcing and entrenching recourse to traditions such as Muslim marriage and divorce. In the face of hostility one strategy for the Muslim community in North America is withdrawal, including a falling back on familiar norms and customs and a reassertion of identity. Another – not incompatible–strategy is to increase efforts at mutual understanding and integration. The first step in such a strategy is greater openness and discussion among Muslims themselves about the issues raised by Muslim marriage and divorce in the West.

### The Study

The impetus for this study was the 2003-2005 Ontario “*shari'a* debate” which reflected widespread public fear and ignorance regarding Islamic divorce, as well as divisions within the Muslim community. This followed the highly publicized appeal by a small group, the *Darul-Qada*, for a formal Islamic tribunal to arbitrate family matters. The debate that ensued exposed the lack of data on what types of processes were being used, how they were used, and why they remained important to some Muslims in Ontario – all of which further stoked public alarm.

The primary objective of the study was to document, using a qualitative, interview-based approach, how North American Muslim communities manage divorce. Specifically, the study explores Islamic approaches to marriage, reconciliation, and divorce and the meaning and significance they retain for Muslims in North America. Men and women who had experienced religious divorce were solicited to join the study. Also part of the respondent group were imams and scholars who play a role in reconciliation and, in some cases, divorce, as well as other professionals working with families (social workers, therapists, lawyers). Interviews were conducted with a total of 212 individuals between 2006 and 2010.

Interviews with divorcés or divorcées discussed their marital relationship from the beginning. They described their decision to marry and the signing of their *nikah* or marriage contract, the conflicts they experienced in their marriage, and the final breakdown of the relationship. In-depth interviews illuminate broader changes taking place within diverse Muslim communities in North America as they adjust not only to life in the West, but also to more systemic changes in societal norms. Data gathered in interviews, as well as larger group conversations in mosque

and Islamic community centers, provides a window into many of the critical social and cultural forces at play in North American families.

Interviews were conducted face-to-face in Dearborn, Michigan; Orange County, Los Angeles; Omaha, Nebraska; and Toronto, Windsor, London and Ottawa, Ontario; and by telephone with individuals in cities all across the United States and Canada. The project website ([www.islamicdivorce.org](http://www.islamicdivorce.org)) was an entry point for many men and women and it was also regularly visited by other men and women seeking advice and information on Islamic divorce. Approximately 75% of the data was collected from respondents in the United States, and 25% from Canada. No pervasive differences were noted between the two jurisdictions, and the analysis presented here does not distinguish between the United States and Canada.

Three slightly different semi-structured interview formats were used for the three major respondent groups (imams and other facilitators of divorce processes; divorcés or divorcées; and “community specialists”, including social and community workers, therapists and mental health professionals, and lawyers). Interviews lasted between 30 and 90 minutes. All were noted contemporaneously, including transcribing many direct quotations. Audio recording was avoided because it seemed to alienate some respondents and generally reduced comfort with sharing sensitive and/or personal data.

Data was analyzed using the NVivo 7 software<sup>2</sup> and a variety of other manual processes including story synopses, a model for distinguishing different divorce process narratives, outcome narratives, motivations for seeking religious divorce, and a typology for mapping a range of imam approaches and interventions.

### **Study Demographics**

It is clear that not all North American Muslims seek a religious sanction for divorce, and just how many do is unknown. Just 5% of those seeking divorce in this study were clear that they did not want an Islamic divorce, but this number is not representative of the general population because the study specifically solicited individuals who would talk about their experience of religious divorce. However it is clear that the desire for religious divorce among North American

Muslims is both widespread and common. Once trust had been established in both the researcher and the research project, the study was able to easily identify many individuals for whom religious approval for divorce was very important; moreover each of these respondents knew of others who had also sought religious divorce. The majority (80%) of stories of divorce come from women, probably because they are required to be more proactive than men in obtaining permission for divorce.

The other demographics of the sample show that those who seek religious divorce are an extremely diverse group. Divorced study respondents included both first and second-generation immigrant American Muslims as well as recent immigrants. Approximately half came to North America as an adult (often to study), a quarter as a young child, with the other 25% born in the United States or Canada. Divorced men and women also came from all ethnic groups. Almost half the sample identified as South Asian (predominantly Indo-Pakistani), nearly 30% said that their families came originally from the Middle East, 10% identified as African, and 6% were African-American. A small number (2%) were Caucasian converts to Islam. Almost 20% of the marriages were cross-cultural, that is, the spouses did not share the same cultural or ethnic background.

The ethnic breakdown of study respondents closely reflects the estimated breakdown of the whole North American Muslim population in all but one respect; the under-representation of African-American/Canadian Muslims.<sup>3</sup> The wide ethnic diversity of the sample and the inclusion of both new and more established immigrants and citizens demonstrate that there is no “typical” profile for those who seek a religious sanction for divorce.

Also reflecting the demographic of the wider North American Muslim community, the sample was a highly educated group. Approximately half identified themselves as professionals (lawyers, doctors, dentists, researchers, teachers and journalists among others), many with graduate degrees. Almost all the remainder held college or university degrees, with a very small number having a high school diploma and no secondary education.

Both Sunni and Shia imams contributed to the study, representing all five schools of Islamic jurisprudence. However all the imams described themselves as taking a highly pragmatic

approach to applying the relevant rules to each case. The following comments are typical: “I use the school that can solve the problem before me”; “As a Muslim living in the West I cannot afford to follow just one school. I must construct a modern approach that responds to the reality of the contemporary West and in particular ... the diversity of (Muslim) communities”; and “We are not here to be Hanifi, Maliki and so on—but to be a human being.” This pragmatism means that there was no consistent differentiation between approaches to divorce based on school or sect. Far more significant were the imams’ attitudes towards a woman’s role in the family, and sometimes the degree of conservatism of his community and their tolerance of divorce.

### **Report Purpose & Structure**

This Report presents some of the results of this research project, focusing on what it reveals about Muslim family life in North America, and the many challenges faced by Muslim families as they adapt their culture and values to life in a Western secular state. The Report is directed at anyone who is concerned about the future integrity and vibrancy of Muslim family life, whatever different forms that might take. It covers four discrete topics – Getting Married, Marital Conflict, Staying Married and Getting Divorced.

Each section includes suggested questions for reflection and discussion. Much of what this Report describes – the rising rate of divorce, changes in women’s expectations, their growing independence via participation in professional work and higher education – is as yet a relatively new and often unfamiliar development for Muslim communities in North America. Debate and dialogue – in which many different opinions and Islamic values will be expressed—is crucial to developing an informed response. As increasing numbers of marriages fail, the Muslim community should be looking at how marriages are arranged, recurrent marital conflicts, and attitudes towards divorce. Where there seems to be a need for new thinking or programming – for example, more pre-marital counseling, or the modernization of the *nikah*, or greater consistency among imams in relation to giving women permission to divorce – it will also be important to consider just how such an enhancement could be promoted, and by whom? Discussion of the questions suggested – and many others that could be added—is a step towards formulating a community response.

## Getting Married

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### The *Nikah* or Marriage Contract

The use of an Islamic contract as a part of a wedding ceremony is commonplace and widespread among North American Muslims, regardless of their levels of observance or formal religiosity. One young imam at a campus told me “I don’t know anyone who wouldn’t get a *nikah*.” Ninety-eight percent of the marriages in this study were contracted using a *nikah* and 95% also obtained a legal marriage license.

The meaning and significance of the marriage contract to those who sign it varies widely. Many Muslims regard the *nikah* as a contract between themselves and God, and an important expression of faith. “We are in this to become better Muslims and to further our faith. We move forward towards God, not away from God.” As one imam explained, “The *nikah* binds people together in the eyes of God. It is not only a legal document. It is binding also in a different way, (as) a sacred covenant.” But not all Muslim couples who use a *nikah* understand their marriage as a religious commitment. Many young Muslims who describe themselves as “not very religious” and follow a relatively secular lifestyle embrace the rituals of their faith at important moments of transition – birth, death and marriage. These occasions motivate reaffirmation of emotional and behavioral touchstones, even for those who do not practice their faith by attending mosque, praying or fasting regularly.

“The average Muslim person knows this (having a *nikah*) is just part of how life is, even when they are not “good” Muslims, they take these rules very seriously.”

A pervasive theme throughout this study is that the affirmation of an Islamic identity is often independent from (but not exclusive of) traditional religious adherence. The desire for an Islamic identity is widespread among North American Muslims, and may have become more important since the events of 9/11 (which many respondents referred to in interviews). Many Muslim men and women sign a *nikah* when they marry in order to please their parents rather than to meet a formal religious obligation – but at the same time many speak about the symbolism of the *nikah* as an affirmation of their Islamic identity and values.

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*“The average Muslim person knows this (having a nikah) is just part of how life is, even when they are not “good” Muslims, they take these rules very seriously.”*

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The *nikah* is not generally used as an alternative to, but in addition to, obtaining a legal marriage license. Marriage using a *nikah* alone is not a legal marriage in North America (although in some jurisdictions an imam can oversee both the signing of a *nikah* and legal registration in a single ceremony). A legal marriage that takes place in a Muslim country using a *nikah* can be recognized as a legal union by the American courts, where one or both spouses move their residence to the United States, using the principles of comity (allowing for the recognition of legal acts in other jurisdictions). However a Muslim couple who marry in North America using a *nikah* must also obtain a local marriage license if their union is to be recognized.

In 95% of cases in this study, both a *nikah* and a civil license were included in the marriage formalities (not necessarily at the same time). Most considered legal registration to be an obvious step, in order that they would be regarded as husband and wife in their jurisdiction. A significant number of imams will not officiate at a *nikah* ceremony until the couple has already obtained a civil marriage license.

If the marriage is not legally registered, both spouses may face some practical problems if the marriage ends or if they separate. For example, it may be difficult to obtain an order for financial relief or equitable property division. Probate for both spouses and children will be complex and difficult. While some provinces and states have a common law marriage concept that allows long-term partners to access some of the remedies available to legally married couples, it is unclear how acceptable this route would be to Muslim men and women who understand themselves to be married, not “common law” partners.

Reliance on a *nikah* alone appears to be mostly limited to particular communities where, for a range of reasons, this has become the usual practice. For example, in Highland Park, an inner-city suburb of Detroit, it is common to find African-American Muslims who have been married using a *nikah* but did not legally register their marriage. Interviews with imams and community workers revealed that reliance on a *nikah* alone reflects widespread alienation from and mistrust of the legal system. In another example, the Somalian community that has migrated to Toronto and Ottawa during the last 15 years rarely obtains a marriage license. One imam in this community estimates that up to 85% of his members who have married using a *nikah* do not register their marriages. In this case, reliance on a *nikah* alone appears to be passive

rather than reactive – in interviews, members of this community suggest that there is little advantage to registering a marriage, and that this is not generally a community expectation.

#### DISCUSSION:

*Should Muslim couples be encouraged to register their marriages? How and why?*

#### **Legal Issues and the *Nikah***

Despite its many similarities to a secular pre-nuptial contract—in which spouses make promises to one another regarding, for example, property division in the event of divorce – and which are usually legally enforceable, the *nikah* is not generally regarded as an enforceable contract in either the U.S. or Canadian courts. Even where a *nikah* complies with the technical requirements of an enforceable agreement (for example, clarity of terms, voluntariness, the presence of witnesses), the courts have historically avoided enforcing what they regard as “a contract for a religious purpose.”

This means that collecting a *mahr* (Islamic dowry) by bringing a legal action for breach of contract (the *nikah*) is still a very long shot. In this study, women who did not receive their *mahr* and contested it in court were generally unsuccessful. A few recent cases have upheld a *nikah* promise to pay a *mahr* where the judge has been persuaded that the husband was unfairly avoiding his obligation to pay,<sup>4</sup> but the situation remains very uncertain.

Legal recognition of the *nikah* and its promises would allow for certainty for Muslim men and women and ensure that their marriage contracts were treated in the same way as any other pre-nuptial agreement. The most significant aspect of conflict that arises from the *nikah* relates to the payment of the *mahr* – and if the *nikah* were treated as a pre-nuptial agreement, such a promise would be contractually enforceable.

Case law suggests some of the hurdles to achieving this goal include demonstrating clear consent to the terms of the *nikah* – for example the groom would have to show that he agreed to the amount of the *mahr* stipulated and didn't simply accede to a parental plan, and both

spouses would need to show that they understood what was in the *mahr* (for example, it is written in a language they can both read and understand).

#### DISCUSSION:

*What advantages are there to the legal recognition of the nikah by the courts?*

*How important -in light of civil law remedies setting out support obligations—is the continuation of the tradition of the mahr, and should the mahr be legally recognized?*

#### Using the Nikah for Trial and Multiple Marriages

The *nikah* is used in two other ways in some Muslim communities. One is to allow for a trial marriage with the approval of the community. While this is not common, a few imams oversee such processes, preferring this to a hasty marriage that does not last (a trial marriage does not require a divorce if the parties decide not to stay together). Less unusual is the use of a *nikah* to enable multiple marriages, where the first marriage is legally registered and subsequent wives are married with a *nikah* only. This practice is controversial, and some imams are clear that they will not facilitate it. I came across a few examples of this arrangement in the families I interviewed, and many imams told me that they were aware of this practice even if they did not participate in it.

#### DISCUSSION:

*Should the nikah be used for (i) trial marriages (ii) multiple unions?*

While 95% obtained both a *nikah* and a legal marriage license, all saw the signing of the *nikah* rather than the legal registration of their marriage as their meaningful commitment to one another. This was their “real” marriage, and the civil license simply a formality that had to be completed. Despite this, most men and women admitted that they paid little or no attention to the substantive content of their *nikah*, using a boilerplate model which they often did not even read. Some women were shocked to discover later in their marriage that their husband assumed the benefit of some of the traditionally implied terms of the *nikah* - for example,



the right to take a second wife, or the unilateral to divorce or *talaq* (but requiring her to seek permission). At the same time, some men tried to avoid following through on their promise to pay a *mahr* in the event of a divorce, despite the fact that this was clearly set out in their *nikah*. In hindsight, many wished they had both read their *nikah* more carefully, and paid more attention to negotiating its terms.

#### DISCUSSION:

*How can couples – and not just their parents – be encouraged to review their nikah and take its obligations more seriously?*

#### Choice of Partner

Many families still expect that parents will be closely involved in the choice of a partner for their son or daughter. At minimum, parental approval is sought. How far parental preferences are advised or insisted upon depends on the individual family, and power relations both inside and outside the family (community norms are also be a factor). A number described resisting their parents' choice initially but ultimately giving in, explained by their desire to avoid disappointing their parents. Parental preferences – for example, for someone within the same ethnic group—are still regarded as safe choices by some young Muslims who are concerned that “romantic love” is an insufficient basis for a lasting marriage.

The problem is that the ability of parents to make “safe” choices for their children may be diminishing as their children's expectations change. These young women expressed typical sentiments:

“I told my father it wouldn't work. His expectations were based on the norms at home, mine are based on growing up here.”

“I expressed doubts about our compatibility, but I was told ‘Your family knows what is best for you’.”

Problems appear to be especially common when one spouse grows up in North America, and is married by arrangement to a partner from overseas in a so-called trans-national marriage

(see also below, Marital Conflict). While there is no evidence that an arranged marriage is more likely to fail than any other, factors often associated with trans-national marriage – including differences in age, cultural upbringing, and language barriers – can lead to incompatibility.

There are some signs that these traditions are being questioned not only by young people, but also by their parents. Where an arranged marriage has not worked out for an older sibling, parents will often take a different approach with subsequent siblings, allowing greater independence and choice.

#### DISCUSSION:

*How can parents constructively help their children to choose a partner?*

*What are important qualities in choosing a partner? How important is shared culture – and what does that culture include/ exclude? (ethnicity, familial country of origin, level of education, other?)*

#### Pre-marital Counseling

Pre-marital counseling is limited in most cases to a brief meeting with an imam. None of the men and women in the study had had anything other than a cursory conversation with an imam. Almost all signed a standard form *nikah* (there are many examples on the Web) and did not negotiate specific clauses, despite the fact that Islamic jurisprudence allows for consensual variation of any of the terms of the contract. Pre-marital counseling is an opportunity to discuss the clauses of the *nikah*, but only a very small number of imams say that they do this. There was a sense that anticipating conflict before the marriage was unwelcome, and avoided.

A few mosques are developing pre-marital classes in which the couple will discuss a range of issues before making their *nikah*. Almost all the divorcés and divorcées in this study wished that they had been offered more extensive pre-marital counseling. But the community is not yet clearly asking for this service. As one leading advocate for pre-marital counseling points out, “Most couples spend more time preparing for the wedding than they do preparing for the marriage.”

DISCUSSION:

*Do you think that pre-marital counseling would be helpful to prospective spouses?*

*What issues should be covered/ discussed?*

*How could couples be encouraged to attend pre-marital counseling?*

*Should the nikah be individualized through discussion and negotiation in each case?*

*What issues should be included?*



## Marital Conflict

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**M**any men and women described in detail the conflicts that led in most cases to the end of their marriage. Their stories describe many common experiences and three broad themes emerge.

### Gender Roles and Authority

Different expectations and assumptions over the role of women inside and outside the home were the single most common source of marital conflict described by both men and women. Typically, couples struggled with the fact that younger women are growing up with an expectation that they would attend college or university and work outside the home, possibly in a professional area – and this assumption does not always jibe with their husband’s (often tacit) idea of a “good Muslim wife.” Some women talked about their husband’s annoyance at their assertiveness when they expressed contrary views to them, and being labeled “uppity” or “opinionated.” The entry of increasing numbers of women into higher education and professional roles also implies a very different lifestyle for these young women than their mothers and grandmothers. They often have no role models for their aspirations and may face a lack of family support, especially once they are married.

Unresolved tensions over these changing expectations are often reflected in how decisions are made inside a marriage, and who has authority in the relationship. Some women described an assumption of male authority. Their husbands expected that they would be the decision-maker on a range of matters, from working outside the home, to where they would live, to whether they would financially support relatives, or live with in-laws. Many men saw this as their moral responsibility, and core to their self-image as a “good” Muslim husband – however, this is not how many of the younger women in this study want to organize their marriages. They hope and expect their husbands to share their expectations of greater equality, and are often disappointed in practice. For their part, some men described their confusion over what they felt were inconsistencies between their wife’s aspiration to greater equality and independence and their continuing desire to be “taken care of” by their husband, as their fathers had provided for their mothers.

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*The entry of increasing numbers of women into higher education and professional roles also implies a very different lifestyle for these young women than their mothers and grandmothers.*

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Disputes over gender roles are most frequently played out in relation to household chores, work outside the home, and access to continuing or higher education. Many women who worked outside the home with their husband's approval complained that they were still expected to shoulder all the household chores. They were often exhausted from working a job and having sole responsibility for cooking, cleaning and childcare. Some of the imams talked about the frequency with which this issue came up in marriage counseling, often saying that modern-day husbands needed to be better educated on the need to share tasks where both spouses were working.

A smaller but significant number of women described finding, often to their surprise, that their husbands expected them to stop working or studying after the wedding and instead stay home and have children. Some talked about jealousies and suspicions of their relationships with male colleagues at work, and even being under constant surveillance by their husbands, especially when they were the sole breadwinner. A few women described more extensive curtailing of their basic freedoms, including whom they socialized with and when they could visit their own family.

The changing role of women, both inside and outside the family unit, presents challenges for all families, and not only for Muslim couples. The restructuring of gender roles and expectations – especially where both spouses work outside the home – causes conflict in many non-Muslim marriages also,<sup>5</sup> as does the extent of generational change found by this study. The study shows that some individuals and families resist these societal changes with claims that aspirations to greater gender equality and an empowered role for women are inappropriate, “un-Islamic” even. Some women who asked their husbands to consider different sharing of responsibilities in the home—for example, sharing household tasks where they both worked outside the home – or expressed aspirations such as returning to school, were accused of being “a bad Muslim wife.”

Religious justification (no matter what the religion) can be a highly effective means of control. Challenging something framed as a “religious” obligation is far more difficult and risky to standing up against than a perspective grounded in personal opinion, or even historical tradition. Many of those who told such stories did not accept the constraints imposed on them as authentic

religious principles, but as a practical matter often had to deal with pressure from their own family, who were sometimes inclined to counsel submission in order to preserve marital harmony.

#### DISCUSSION:

*How are changing gender roles outside the home affecting the dynamics and expectations inside the home?*

*What are the challenges for families in which both spouses work outside the home?*

### Islamic Family Traditions

As well as changes in gender roles and authority within marriage, other aspects of Muslim family life are under pressure from changing societal norms. Some divorcés and divorcées described disputes that arose from the structure and customs of traditional Muslim family life and values.

#### *Relations with In-laws*

Traditionally, a marriage is seen as a blending of two families and the husbands' parents in particular are often expected to play an important role in the couple's life. Sometimes the relationship between mother-in-law and daughter-in-law is a particular point of tension, with each believing that they should play the dominant role in the husband's life. In some Muslim cultures, a newly married woman is expected to give way to the will and authority of her mother-in-law on a range of matters, even in her own household.

This norm sometimes creates a struggle over independence for the new couple. Typical battlegrounds are the couple's personal privacy within a shared household, or independent decision-making without parental oversight. One writer suggests that conflict with in-laws is the most common cause of conflict in Muslim marriages.<sup>6</sup> Some described their struggle to deal with their marital conflicts without the oversight of their extended families, who have traditionally played a crucial role in conflict resolution in Muslim families (and still do, in many cases). While for some this was a helpful and supportive intervention, other couples felt that

they needed to deal directly with one another and make their own decisions, rather than relying on the mediation of their parents or other (usually male) relatives.

#### DISCUSSION:

*What are the common sources of conflict between a married couple and their in-laws?  
What can be done to address these conflicts?*

*How can in-laws play a positive role in the lives of their married children, and what boundaries should there be?*

#### *Trans-national Marriages*

Some stories reflected the experience of being married to a person from overseas chosen by parents in a so-called “trans-national” marriage. These marriages often encountered especially difficult mismatches of expectations over gender roles. The majority of these marriages in this sample were unions between women who grew up in North America and were married to men from their parents’ country of origin. The following comments are typical of their experiences:

“I really tried to adapt, but it just did not work. He wanted me to be submissive.”

“My husband expected me to make all the compromises. There is still an assumption in my community that younger girls are easily moulded.”

Nonetheless some parents continue to see trans-national marriages as an opportunity to continue to strengthen the traditions and values of their country of origin in their families.

#### DISCUSSION:

*Under what circumstances can trans-national marriages work? What are the risks?*

*What is the role of values and principles from the family country of origin in North American Muslim marriages?*



### *Second Wives/Adultery*

One in seven women described the major reason for the ending of their marriage to be their husband's relationship(s) with other women (there were no accounts of female infidelity in this sample). In some cases these women were presented by the husband as a second wife, but against the wishes of the first wife. In most cases these additional marital relationships were formalized by *nikah* only, although there were a few instances of bigamy.

There are signs that Muslim women are beginning to take a stronger stance over any remaining assumption that their husband may take multiple wives. It was noticeable that marital infidelity was explicitly described as "adultery" – as opposed to a dispute over a second wife – by more than half these women. This suggests that women are rejecting the assumption of many of their own mothers and grandmothers that men are entitled to go outside their first marriage to take another partner. Some men share this perspective.

Several women described unsympathetic responses from imams when they took this issue to them, which they interpreted as tacit tolerance of polygamy. If imams were able to confront the issue of polygamy instead of (in some of the cases in this study) looking the other way or even facilitating this practice, there would be an opportunity for a re-examination of the place of polygamy in contemporary Muslim communities in North America. As one woman observed, "Multiple marriages are a problem for the community as a whole, not just for women."

### DISCUSSION:

*Is the practice of polygamy appropriate in contemporary North America? Is it Islamic? Is this a private matter, or is it the business of the community?*

*What role should the imams play in the facilitation or discouragement of multiple marriages?*

### *Cross-cultural Marriages*

Many imams assumed that marriages between partners from different cultural backgrounds were largely responsible for the rising rate of divorce. This study does not bear out that

assumption. The types of conflicts presented by the cross-cultural marriages in the sample (approximately 20%) are to a large extent no different than those that arise between Muslims who share the same cultural background—mismatched expectations, disputes over appropriate gender roles, and the sharing of power and authority in the relationship.

There are some special challenges in cross-cultural marriages, and the most significant are often unanticipated. For example, one woman described how her husband assumed that they should circumcise their children. Conflicts may also arise from different norms of communication and tolerance for conflict. One man described his American convert wife (he was Indian) behaving in ways that were alien to him, including talking casually about divorce and having heated arguments. “To me it was foreign to bring up divorce, and to yell so much.” Some female converts complained that their husbands treated them like “second class Muslims,” constantly reminding them that they were not “really” Muslim. In a cross-cultural marriage one or both spouses may have married against the wishes of their family, and when there is conflict may find that their family is only too happy to see the marriage come to an end.

#### DISCUSSION:

*What types of cultural difference do you anticipate might raise conflicts in a marriage?*

*How should a family respond when their son or daughter presents a prospective spouse from another culture?*

#### *Differences in Religious Practice*

While some cross-cultural marriages encounter differences in approaches to religious practice, this problem is not limited to these marriages – as many as one in four of the divorced men and women cited this as a major source of the breakdown of their marriage. Such differences were relatively rarely attributable to cultural differences, but typically reflected different views about the importance of formal observance.

A number of women complained about a “double standard,” where (as they asserted) their husband did not conform to Islamic principles (for example, prayer, abstinence from alcohol,

extra-marital affairs) but would nonetheless require or prohibit certain behaviors by them (for example, particular forms of public dress, communication with other men at work). Some of the stories were particularly bizarre, such as the husband who told his wife that Muslim women did not wear underwear, and another who told his wife that she was not permitted to call him by his first name. The women who told these stories did not “buy” these as authentic religious claims; instead, “He was using Islam in his own way – he was manipulating and making things work for him.” Some respondents believed that their marriage “...got in the way of my faith,” and these women often felt that the ending of their marriage allowed them to draw closer to God.

Disputes over religious practice between Muslim couples carry a powerful symbolism. While some of these couples had genuine differences of religious belief and practice, some cases appear to be a further example of using a (so-called) religious justification to control the woman’s behavior. As one woman put it, “It’s hard to confront someone who questions whether you are a good Muslim.”

#### DISCUSSION:

*How important is it to find a partner who shares your approach to religious practice? What types of differences can be accommodated? What types of differences are less easily managed?*

### Domestic Violence and Abuse

One in three female divorcées described domestic abuse. Almost all these cases involved allegations of physical violence – including hitting, punching, and rape. A smaller group described emotional or verbal abuse, including instances where a woman was repeatedly told by her husband that he would divorce her and take away their children, or take another wife. All the violence reported was directed at women and not at children, who were sometimes witnesses to verbal and physical abuse. While no partner violence was described by men, this does not mean that men do not sometimes experience domestic violence – however statistics suggest this is far less common than for women.<sup>7</sup> Perhaps unsurprisingly given Islamic constraints placed on alcohol and drug use, violence appeared to be only occasionally related to excessive drinking or drug use.<sup>8</sup>

Such a high incidence of domestic violence in marriages that ended in divorce is not unique to the Muslim community, and these numbers are, shockingly, no higher than the norm in the general population.<sup>9</sup> Domestic violence is endemic in North America, and one would expect such accounts to be especially commonplace in a study of divorce. There is a tendency for North American media to attribute Muslim family violence to culture, and non-Muslim family violence to deviant behaviors.<sup>10</sup> Domestic violence is not inherent to any particular culture – it is a reflection of systemic patriarchy and occurs across all cultural communities.

However, how far a community tolerates male violence on women is critical to the development of cultural norms,<sup>11</sup> and tolerance often supports influential community narratives that minimize and justify male violence. Some women described such community tolerance, which then made appealing for help – or, eventually, deciding to ask for divorce—extraordinarily difficult. Religious values – just as any other belief or ideology – can be called in aid to support and justify violent behaviors that are based in patriarchy and assumptions of male control. While none of these women described their batterer as directly using religious dogma as “justification” for their behavior, religious issues – usually the assertion by the husband that his wife was behaving un-Islamically—often lit the fuse for abuse. Again, a small number of men used the assertion that she was a “bad Muslim” to shame and control their wives. This is an especially potent insult for those women for whom traditional religiosity is very important. One researcher describes this as “spiritual abuse.”<sup>12</sup>

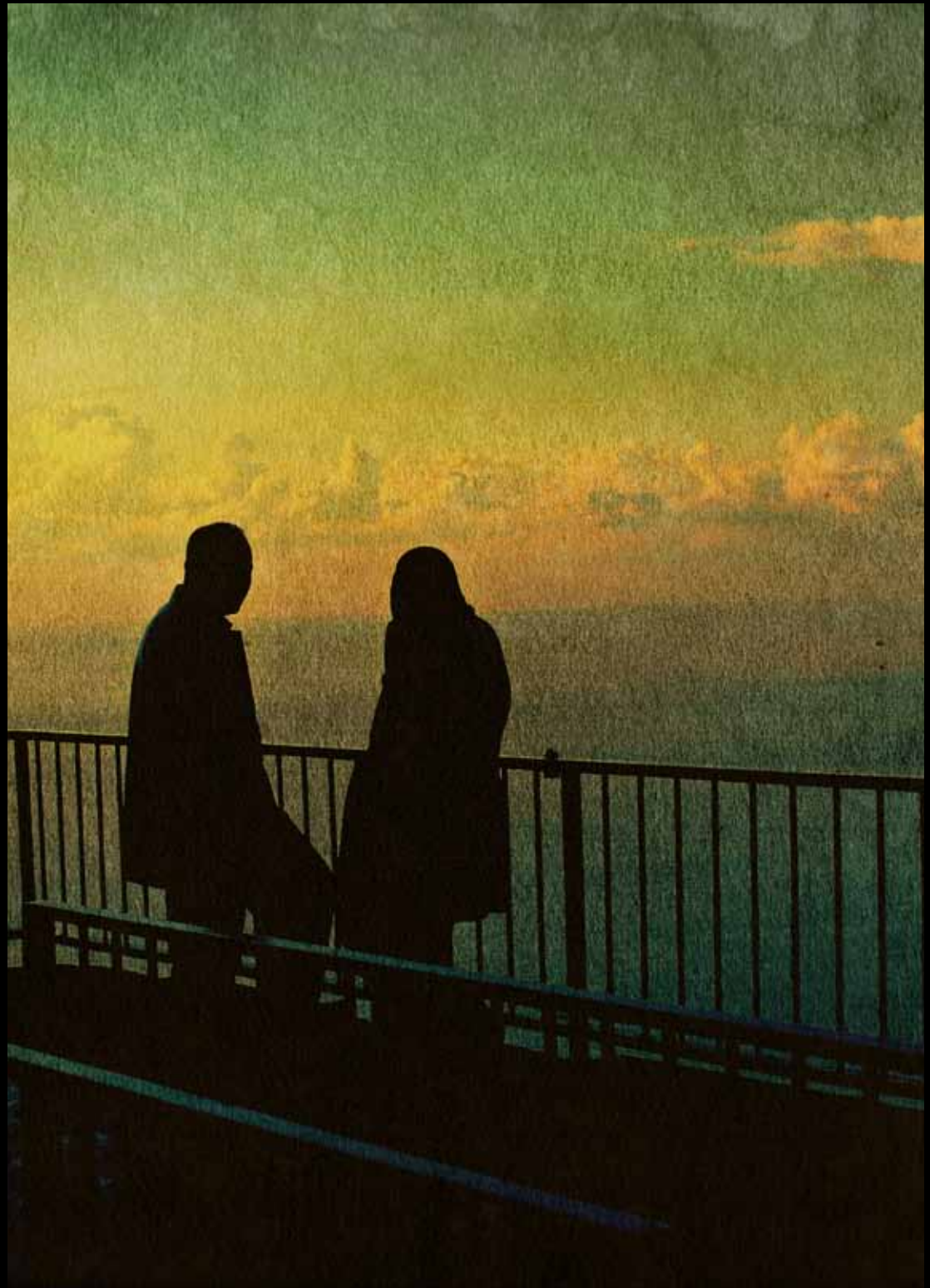
None of the women who described experiences of domestic abuse believed that Islam in any way permitted their batterer’s behavior. Many saw their abuser as trading on a cultural expectation of male dominance, that enabled him to rely on community tolerance of his behavior – only a small number reported their spouse’s fear of being reported to others. In practical terms, their anticipation of the response of other family and community members to whom they might tell their story of abuse obviously affected their decision about remaining in the marriage, or reporting the violence. “(T)he message given...is to be patient and accept.” This also affects willingness to report domestic violence to outside authorities—many women described how they felt that calling for outside help would be disloyal to the community. Some imams explicitly discourage women from calling the police, suggesting that they are better placed to deal with such conflicts than non-Muslims, and warning that the police may not

understand the importance of marriage to Muslim families (see below, Staying Married). Other imams operate a “zero-tolerance” policy for domestic abuse, counseling the intervention of legal authorities and childrens’ aid.

#### DISCUSSION:

*There are many exhortations in the Qur’an and hadith that make it clear that male violence against women is not permissible. To what extent do you see this reflected in the attitudes of your own family and community towards domestic violence?*

*What barriers do women face in reporting domestic violence – to their families, their imams, and to outside authorities? How could these be overcome or reduced?*



## Staying Married

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There is a strong tradition of reconciliation and peace making in Islam that dovetails with a desire to avoid ending a marriage wherever possible. The Qur'an exhorts warring couples to reconcile, exemplifying Islam's commitment to dialogue and peace building and specifically to enable a marriage partnership to continue wherever possible. Conflicting spouses are encouraged to meet with family arbitrators – one chosen by each family—to try to avoid a breach.<sup>13</sup>

There is no evidence in this study for marriage being treated as an easily disposable commodity, shed at the first signs of “trouble.” None of the divorcés and divorcées in this study reached their decision easily, quickly, or lightly. They describe confusion, disappointment, anger, hurt, and fear for the future. “I needed to feel that I had tried everything I could to save my marriage, (therefore) that I had done nothing wrong.” Some members of the community, and especially the older generation, appear to believe that young couples who divorce simply “don't try hard enough.” The stories told by men and women in this study in this study suggest otherwise. The decision to end a marriage is always accompanied by months and sometimes years of personal angst and introspection.

### Decision-Making Factors

Four factors seem to be critical to decision-making about staying married. The first is the nature and extent of marital conflict. Conflicts that turn violent and abusive present very different issues than those that relate to incompatible lifestyles or divergent religious practices, although any one of these may be a decisive factor in ending a marriage. A second factor is the individual's understanding of the relevant religious laws. This was on the mind of every person experiencing marital conflict, no matter what their level of religiosity. Every divorced man and woman—including those who did not contemplate a religious divorce—talked about what their faith taught about the ending of a marriage. The most religious individuals sometimes understood their devotion to their faith to require personal suffering and sacrifice, which may mean suffering in an unhappy marriage for many years. A promise to marry and remain married for life is made not only to one's spouse, but also to God. “It's not simply a matter of saying ‘it doesn't work', because marriage is a promise for life.”

Despite this, many women pointed to the discrepancy between the tolerance for divorce in

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*Every divorced man and woman—including those who did not contemplate a religious divorce—talked about what their faith taught about the ending of a marriage.*

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the Qur'an—where it is described as the “most hated permitted thing”<sup>14</sup> – and the intolerance of their communities for divorce. “I kept going (in an unhappy marriage) for years and years because that was how I grew up – you are told, marriage is for life, whether good or bad, and you just put up with it.” This implicates a third (often the most significant) factor in individual decision-making over staying married – cultural attitudes towards divorce in one’s immediate community, including family members. “When you divorce you not only divorce your spouse, but also your friends and family.” In some Muslim cultural communities there is deep-rooted resistance towards the ending of marriage – including the stigmatizing and social exclusion of divorcés and divorcées. This intolerance of divorce, and in particular of divorced women, appears to be the most extreme in some South Asian communities. There is a differential intolerance towards female divorcées, as both men and women attested. Women are widely regarded as responsible for keeping the family together. Patriarchal values assume that the woman in a broken marriage is “at fault” or culpable, whatever the circumstances. Anticipation of this community judgment meant that in some cases “It is the fear of what awaits you if you get divorced that actually keeps you in the relationship.”

Family attitudes towards a son or daughter who talks about leaving their spouse sometimes reflect the values of their immediate community and their fears of the social consequences. One woman described being constantly sent back to her abusive husband by her mother and sister. “They did this because divorce is taboo and in their minds I could not possibly leave a man ... with social prestige and status.” More commonly, respondents experienced initial pushback when they first announced that they wanted a divorce, but as their families came to understand more about the nature of the conflict this usually turned to sympathy and support. Sometimes—for example where there was violence and abuse – this experience marked a fundamental change in their family’s attitudes and expectations regarding arrangements for marriage.

Each of these variables interact with a fourth factor in decision-making—the values and personality of the individual. Stereotypes of Muslims, particularly Muslim women, often underestimate the importance of individual personality, preferences, and goals as part of the overall complexity of the decision-making processes for each individual.



## DISCUSSION:

*How has your family/community historically reacted to individuals who consider divorce? Are you comfortable with the prevailing attitudes within your own community and family towards divorce?*

*Is there a different attitude towards women as compared with men who have been divorced? What are the practical consequences of this?*

## Marriage Counseling and Reconciliation

There is a strong commitment to attempt reconciliation in the face of marital conflict. Both the extended family and the imams play a role in reconciliation efforts – professional counselors (who are often viewed with skepticism as “paid” advisors with an agenda) less so. Some imams were initially unwilling to discuss the facilitation of religious divorce, instead focusing on their efforts at marriage counseling to emphasize their commitment to reconciliation.

This emphasis on reconciliation evokes many different reactions among men and women seeking assistance. Many only approach the imam once they feel fairly certain that they are ready to end their marriage, and may be frustrated at being asked to try again. The most extreme cases included women who took stories of violent abuse, alcoholism and other addictions and criminal behaviors by their husband to their imam only to be told “wait, be patient, he may change.” The minimization of abuse, a rejection of recourse to outside authorities with enforcement powers, combined with an insistence that reconciliation is always the preferred course, raises serious safety concerns. In contrast, some imams believe that “...in domestic violence cases, there is no room for reconciliation.” Instead their protocol is to refer the woman to the police or to a shelter.

Other men and women spoke about how helpful and effective their imam was in keeping them talking and, in a few cases, enabling reconciliation with their spouse. A relatively small and overwhelmed group of imams are shouldering the burden of these counseling services. Not all imams are willing to meet with parties to talk about marital conflicts, despite the lack of other support and resources available to many community members who may have come

to North America without their extended family. Some imams are uncomfortable counseling women. Those who do take on this work are often dedicated and motivated – but largely untrained and unskilled. “(T)he Imam in the west is expected to be a One Stop Shop, a marriage counselor, prayer leader...”

#### DISCUSSION:

*What role should the extended family play in marital counseling and reconciliation?*

*How can the imams be better supported and resourced to carry out their social welfare role in their communities?*

*Should reconciliation be attempted in cases of domestic violence? When and how?*

## Getting Divorced

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Only a civil divorce decree issued by a court is a legal divorce in the United States and Canada. In the absence of Islamic courts, Islamic divorce in North America is a social and not a legal phenomenon, an example of informal, private dispute resolution. Informal, non-legal processes are common in all societies and often hold considerable social, psychological and cognitive significance for members of that group.

This study shows that religious divorce is very important for a diverse group of North American Muslims. For men this usually means following the required procedure for giving *talaq* to their wives (which Quranic sources anticipated would include a dialogue between them). For women this means obtaining permission for divorce, either from their husbands (*khula*) or an imam.

### Motivations

For some obtaining an Islamic divorce is understood as a religious obligation and “not a matter of choice.” Individuals who are motivated by a strong sense of religious duty often go to great lengths to obtain religious approval for divorce. Some women spend months, even years, returning over and over to the same imam, or going between different imams (“imam-shopping”) in their efforts to obtain approval for divorce.

For others, their connection to Islam as a matter of personal identity is more significant than their formal obeisance to God. These individuals may lead a relatively secular lifestyle yet continue to embrace some critical rituals, usually associated with times of crisis and personal transition. They may seek a religious divorce “because my mother wanted me to get one,”—and they often have a niggling feeling that they want one too. Religious approval legitimizes their decision to divorce in the eyes of their community, and also satisfies their own conscience – it is “... affirmation that they don’t need to feel guilty.” There is also some sense of symmetry among both observant and more secular Muslims that having signed a *nikah* when they married, it is appropriate that they also obtain a religious divorce. “If you come in by the Islamic door, you should leave by the Islamic door.”

The desire to comply with religious obligations regarding the process of divorce extends to both men and women. Some couples who agree on the need to end their marriage, and who have sufficient knowledge of the required steps, will conduct their own process (usually the

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*As private ordering systems, Muslim marriage and divorce continue to flourish as expressions of religious, cultural, and community identity.*

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formal pronouncement of *talaq*). Where there is no agreement between husband and wife, women are more often the supplicants to a third party (usually an imam), because the structure of Islamic divorce requires that they seek permission.

Some imams grumble that many of those who come to them for religious divorce are people they have never seen at prayers. But they recognize that “Life-altering things people choose to do Islamically” and that “(E)ven if they are secular, they don’t want to mess with sensitive family issues...they want to do it right.” There is also a need for closure in many cases, allowing the individual to accept their new, unmarried status, and to move on with their life. This may be connected to a sense of religious duty, a more private spiritual need, or simply a psychological need for an appropriate ritual of closure. For some women the possibility that they should be free to consider other relationships and perhaps to remarry is a critical practical issue.

Religious divorce offers other practical advantages also including timing (the waiting period or *iddat* is shorter than the required wait period in most legal jurisdictions) and cost (the services of the imam are almost always free). More worrying, a few women reported that without a religious divorce their husbands would continue to treat them as if they were still married, despite a civil divorce.

### DISCUSSION:

*Why does religious divorce continue to be so important to some Muslims?*

*At least in theory, men do not need permission for divorce. Is the structure of religious divorce unfair to women? What are the safeguards?*

### Process and Practice

Most religious divorces are facilitated by a single imam, working alone. A small number are approved by self-styled arbitrators. In a couple of cities, panels of imams have developed to oversee contentious divorces. The vast majority of religious divorces, however, continue to be the purview of individual imams.

There is no single or even consistent process and practice adopted, although there are some common features. All imams want to discuss possibility of reconciliation with one or both spouses. Those who are approached by the wife alone will often require some communication with the husband before approving divorce at a woman's request, and make various efforts – by letter or by phone—to contact him.

Some imams refuse to approve divorce unless they can speak with the husband, adopting a narrow approach to the grounds on which they can dispense with a husband's permission and grant a divorce to his wife. They may be motivated by fear of backlash from male community members if they approve divorce for women. Other imams believe that the Islamic law gives them wide discretion to approve a divorce where the woman is unhappy and unwilling to continue in the relationship, for almost any reason. These imams will eventually grant a divorce if the husband refuses to participate in the discussion. Individual tolerance for divorce reflects the imam's attitudes towards women and family life – how sympathetic they are to women who complain about their husband's failure to support them, relationships with other women, or domestic violence—rather than their following of any particular school of law.

Some imams issue a written paper setting out the reasons for the divorce. Others use no paperwork at all. Some require women to bring them a copy of their civil divorce decree before approving divorce. A *fatwa* from the European Council for Fatwa and Research recognizes an uncontested civil divorce as the equivalent of a religious divorce, with no further steps necessary in order to release an individual from their *nikah* promises.<sup>15</sup> However, many of those who were aware of the fatwa still felt the need for some type of “official blessing” for their divorce from a religious authority.

Process and practice in religious divorce is inconsistent and highly idiosyncratic. This means that for many women, access to religious approval for divorce depends on where they live and who they approach. Panels of imams are beginning to emerge which can develop clearer policies and guidelines for decision-making, but these are still in development.

## DISCUSSION:

*If a fatwa (publicly approved by many North American Muslim leaders) says that a civil divorce on consent is the equivalent to a religious divorce, is there any need for a separate process overseen by the imams?*

*Access to religious approval for divorce could be more consistent if there were guidelines for “best practice” in process and decision-making. What would such guidelines look like?*

## Financial and Legal Outcomes in Divorce

Some imams – approximately half of those in this study—limit their intervention to approving a divorce, and do not discuss ancillary issues such as support, property division or the custody of any children. Others see their role as including negotiation of the financial and legal consequences of the divorce. This is more likely where both spouses are involved in the dialogue with the imam. In some cases such a negotiation results in a written agreement which can then be filed in court as a consent order. Most commonly, the imam will propose an amount for child support, often based on the jurisdiction’s formal child support guidelines. There were no cases in the study in which an imam made an agreement over custody – such contentious matters seem to be uniformly sent to family lawyers for resolution.

Many agreements, particularly those made by younger and well-educated couples, represent a blend of family law and Islamic principles – for example, observing the *iddat* or waiting period, a notarized statement of *talaq* and the payment of the *mahr*, as well as paying child support according to the jurisdiction’s payment guidelines, and in some cases a limited period of spousal support. These types of agreements reflect the awareness of the divorcing couple that a court would likely order such payments so they might as well agree them voluntarily and take the opportunity to incorporate some Islamic elements.

Where there is no agreement over financial and other issues, or where an agreement falls apart, it is common for women – and occasionally men—to bring an application to the family court to resolve support and other practical issues. The types of issues which are litigated typically

reflect the length of the marriage and whether or not there are children. More than half of the marriages in the study lasted for less than five years and of these shorter marriages, 90% were childless. In common with a “clean break” approach taken by the family courts, most of these short marriages did not result in any order for ongoing support, and conflicts were generally over the division of shared possessions. Only one in three women whose marriages lasted five years or less received their deferred *mahr* in part or in full – the rest gave up their claim. Among those whose marriages lasted longer – more than 5 years and sometimes more than 20 years – this figure rises slightly to approximately 50% (although in some of these cases women did not receive the *mahr* directly but instead obtained court-ordered support which they understood to be inclusive of their *mahr*). Many women reported that their imam told them that if they asked for the divorce, they were not entitled to their *mahr*. Whether or not this advice was correct, some willingly accept a trade of their *mahr* for their freedom. “My mental peace and freedom are more important than money.”

Around a third of the marriages in the sample lasted between 5 and 15 years, and 17% more than 15 years. These longer marriages usually involved more complex family and financial issues, and were more likely to go directly to court and ask for adjudication using family law principles. Of marriages that lasted between 5 and 15 years, one in three made an agreement by consent (sometimes based on discussions with an imam), with the remainder resolved by a court order (i.e. imposed not agreed to). Financial settlement in all but one of the marriages that lasted 15 years or more was resolved following an application by the wife to the court and an order being made. Having tried to make a reasonable settlement by agreement, and sometimes having waited many years for a divorce, these women felt justified in using family law principles to achieve what they understood as a just outcome. Many expressed a strong sense of entitlement to a reasonable financial settlement. Women who received court-ordered spousal support after long marriages commonly described being censored by others as “un-Islamic”, but they faced down the criticism.

A small group of women insisted that they did not wish to receive anything from a court that they would not have been entitled to Islamically, for example, spousal support in addition to the *mahr*. In one case, a woman even paid back court-ordered support to her husband because she had already received her *mahr*.

## Social Outcomes

The negative social consequences of divorce that many women dread are often short-lived as family and friends adjust to the idea that the marriage is over. Some women experienced more extended and intense social shunning. In a few cases, they chose to relocate with their children to escape community judgment. Men acknowledged that they experienced some, but far less, negative social judgment than their former wives.

Being single and unmarried is an undesirable status in many Muslim cultures because of the emphasis placed on marriage as the completion of the individual. Being divorced carries an even greater stigma of “failure.” Some women told me that once divorced, they were seen as a threat to others who wish to keep their families together, and even regarded as sexual predators looking for a new husband. Some respondents talked about older female relatives who were divorced decades ago and who had been excluded from family gatherings ever since. Occasionally I interviewed a woman who first described her “friend” as being divorced, eventually acknowledging that this was herself. When I spoke at conferences and in mosques, women sometimes approached me afterwards to say that they could not attend the open forum because they were afraid of being labeled as considering divorce.

All agreed that this stigma is gradually lessening as divorce becomes increasingly common. Nonetheless, in some communities it remains a real barrier to women making good decisions.

## Spiritual Outcomes

The majority of divorced men and women said that their divorce had not affected their spiritual life, and that they were at peace with their decision to end their marriage. Many added that the trauma of divorce had strengthened their relationship with God. In a small number of cases, women were so disillusioned with the response of their family and community to their decision to seek a divorce that they distanced themselves from their faith.

### DISCUSSION:

*What financial consequences for divorce – child support, property division, support of the ex-spouse—are Islamic and just in a modern society?*

*How can the community support marriage but also support men and women who feel that they have no choice but to divorce?*



## Recommendations

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The following recommendations are based on the study data and are offered as proposals for community discussion.

### Getting Married

1. The *nikah* is an important potential vehicle for the negotiation and expression of a couple's expectations of one another before they commit to marriage. Individual pre-marital counseling, or pre-marital classes, provides a forum for this discussion. Recourse to a boilerplate *nikah* which the parties may not even read before signing misses an important opportunity for the couple to make meaningful promises to one another. This study shows that couples sometimes make erroneous assumptions over the operating principles of their marriage. These might include whether the wife will work outside the home, or whether the husband expects to take a second wife. Negotiating the *nikah* and treating it as a serious commitment would raise discussion of these and other issues, and may enable serious differences between a couple to be identified ahead of time.

2. In the same spirit, the promises made in the *nikah* should be taken seriously. Islamic law clearly allows for any modifications that are agreed between the couple. For example, a realistic amount should be set for the *mahr*, especially if this is a genuine effort to achieve financial fairness in the event of a divorce (or default to the civil law system).

3. Multiple marriage is a problem for families and for the community at large. The use of the *nikah* for multiple unions should be discouraged by imams and other community leaders. One in seven marriages in the sample ended because of conflict over another relationship, variously described as a "second wife" or adultery. There is a need for a stronger and more explicit stand against polygamy in North America rather than the passive tolerance evident in some communities.

4. It is time to question the (sometimes default) assumption of arranging marriage unions within the same culture – for example, so-called trans-national marriages where one spouse grows up in North America and the other comes to the West from the family's country of origin. This study found that a significant number of these marriages failed. Muslims who have grown up in North America often have far more in common with another North American Muslim, albeit

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*Multiple marriage is a problem for families and for the community at large. The use of the nikah for multiple unions should be discouraged by imams and other community leaders.*

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from a different cultural community, than someone from their family's country of origin who has grown up in very different circumstances and with very different expectations. In fact, cross-cultural marriages between men and women who had both grown up in North America experienced very similar types of marital conflicts as couples from the same culture.

### **Marital Conflict**

5. The most frequent source of marital conflict in this study was conflict over changing gender roles and expectations. Like other families, some Muslim couples are struggling with the dramatic changes that have occurred in the last 30 years, both in North America and elsewhere, as more and more women attend higher education, enter professional workplaces, and in many cases are trying to integrate childrearing and family life with professional goals. As a community that includes growing numbers of well-educated and professional women, the Muslim community should pay attention to these new challenges and encourage discussion of the many attendant issues and challenges. The older generation, especially women, should be encouraged to be part of this discussion. Many of the respondents' stories suggest that it is important for community leaders to explicitly acknowledge the compatibility of women's empowerment (in education, in work, and in public life) with Islam, and to separate discussion of responses to these broader societal changes from matters of faith.

6. This study found that another significant factor in marital conflict is the relationship between a married couple and their extended families. There is an increasing expectation of greater autonomy among younger couples. A further challenge arises where there are significant differences between the two families regarding marital and gender roles. While the extended family is very important in Muslim culture, it is equally important for young couples to be able to negotiate their own norms and expectations, even (perhaps especially) where these are different from those of their parents and in-laws.

7. One in three women in this study experienced domestic violence, that is, physical or sexual assaults or in a small number of cases, prolonged emotional abuse, by their husband. While this issue is not unique to Muslim communities, these communities need to recognize it as a serious challenge to their integrity and cohesion and develop strategies for raising awareness

and ensuring the safety of women and children. The imams are an important part of the social system that responds to domestic violence, and their commitment to addressing this problem – including referring women to police, shelters and other resources—is critical. Community tolerance of male violence against women was evident in some communities. Steps are being taken to address this issue more openly. These efforts should be continued and expanded, in dialogue with both Muslim and non-Muslim agencies.

### **Staying Married**

8. Reconciliation is an important value in Islam and a central part of the imam’s role in marriage counseling. However reconciliation may be inappropriate where there has been domestic violence, or where one party is already clear that they wish to be divorced. Women in particular reported a great deal of pressure to reconcile (from imams and sometimes from family members) which was sometimes inappropriate and usually ineffectual. More useful would be the broader development of marriage counseling services and the removal of the stigma of using such services.

### **Getting Divorced**

9. Decisions to divorce are painful and personal, and many of those who participated in this study expressed the desire for greater support – from family, friends and others—in thinking through their decision. More open discussion of divorce – in mosques, community centers, and using social media—and a reexamination of the social stigma which still attaches to divorce and especially to women divorcées, is vital to identifying ways to both support marriages and establish caring and compassionate norms around divorce.

10. Some imams are doing admirable work assisting women in leaving violent or abusive husbands, and facilitating outcomes for mutually agreed divorces. However access to religious divorce is inconsistent and patchy, reflecting a wide spectrum of approaches among the imams. Some women report “imam-shopping” in an effort to secure permission for divorce. Greater consistency requires a more open dialogue about the problem of women trapped in “limping marriages” where their husband has already left but refuses to agree to divorce

– and ways to address this problem. The emergence of regional panels is an encouraging development. It is also important for imams to discourage the use of *talaq* to end a marriage without dialogue or discussion.

11. Marriage support and counseling services should not be limited to the mosques, and need to be provided to a wider community including those who prefer not to approach an imam for help. There is also an important and as yet undeveloped role for Muslim lawyers to provide assistance with asserting Islamic rights and meeting Islamic obligations in relation to both divorce and its financial consequences. Another area that should be explored is the establishment of co-operative relationships between imams and lawyers to provide a complete range of services for divorcing couples.

12. The imams are highly influential in setting norms and expectations for family life (for example on divorce, domestic violence, and polygamy) for the Muslim community in North America. Many imams find themselves overwhelmed and inadequately prepared to manage the volume and complexity of the family issues they are asked to help with. Additional resources are needed to support them – for example, the integration of professional counselors and social workers into the services provided by the mosques. While there are some signs of increasing interest in imam education, there is an urgent need for the development of specialized training to prepare them to work with families in crisis.

Further information on this study and its results is available in a forthcoming book, “Islamic Divorce in North America: A *Shari’a* Path in a Secular Society” (Oxford University Press 2012)

## Endnotes

<sup>1</sup> Ramadan T. (2004) *Western Muslims and the Future of Islam* Oxford University Press New York at 7

<sup>2</sup> Widely used by qualitative researchers, NVivo (QSR International) allows for coding and analysis of interview data. See [www.qsr.org](http://www.qsr.org)

<sup>3</sup> E. Patel, *Being Muslim in America* (U.S. Department of State and Bureau of International Programs, 2009), 49, estimates that 27 percent of Muslim Americans are African Americans

<sup>4</sup> See for example *Khanis v. Noormohamed* (2009] O.J. No. 2245, para.67 ; *Nathoo v. Nathoo*, [1996] B.C.J. No. 2720 (S.C.), *Amlani v. Hirani*, [2000] B.C.J, *N.M.M. v. N.S.M*, [2004] B.C.J. No. 642 (S.C.)

<sup>5</sup> See for example Greenhaus J.H. and Beutell N.J. "Sources of Conflict between Work and Family Roles" 10(1) *Academy of Management Review* (1985) 76 and Duxbury, L E., & Higgins, C.A. "Gender differences in work-family conflict" 76(1) *Journal of Applied Psychology* (February 1991) 60

<sup>6</sup> Siddiqui S. "Divorce Among American Muslims : Statistics, Challenges and Solutions" (*Sound Vision magazine* available at [www.soundvision.com](http://www.soundvision.com))

<sup>7</sup> Bachman, R. (1994) *Violence Against Women: A National Crime Victimization Survey Report* U.S. Department of Justice Bureau of Justice Statistics, Washington D.C. at 6

<sup>8</sup> Also similar to the findings of Ruksana Ayub : see Ayub R. "Domestic Violence in the South Asian Muslim Population" 9(3) *Journal of Social Distress and the Homeless* (2000) 1

<sup>9</sup> See Federal Bureau of Investigation Uniform Crime Reports (1990) Washington D.C. and for a study within the Muslim community see Kulwicki, A.D. and Miller, J. 20(3) “Domestic Violence in the Arab American Population: Transforming Environmental Conditions through Community Education” (1999) *Issues in Mental Health Nursing*

<sup>10</sup> Mamdani M. (2004) *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror* Pantheon Press New York at 18 and see also (Mamdani ed.) (2000) *Beyond Rights Talk and Culture Talk: Comparative Essays on Rights and Culture*. M St. Martin's Press, London

<sup>11</sup> Grewal Z. (2009) *Death by Culture? How Not to talk about Islam and Domestic Violence* Institute for Social Policy and Understanding, Clinton Michigan at 5

<sup>12</sup> Latif, Z. “The silencing of women from the Pakistani Muslim Mirupi community in violent relationships” in Idriess M and Abbas T. (eds) (2010) *Honour, Violence, Women and Islam* Routledge, London at 29.

<sup>13</sup> The Holy Qur'an verse 4:35

<sup>14</sup> Hadith of Abu-Daud, verse 13 : 3

<sup>15</sup> European Council on Fatwa and Research, Fatwa (17) Resolution 3/5, “Ruling on a divorce issued a non-Muslim judge” in *Resolutions and Fatwas, Second Collection*, Translators Shakir Nasif Al-Ubaydi & Anas Osama Altikriti, Editors Anas Osama Altikriti & Mohammed Adam Howard 2008

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