


I got these
when I got
MARRIED



Now I get
bruises when he
ABUSES me



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Report by Yasmin Khan, Churchill Fellow

2017 Churchill Fellowship to study support services for domestic violence victims from Indian Sub-continent communities.

Awarded by The Winston Churchill Memorial Trust.

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Signed

Dated

Keywords

Women Domestic Abuse Muslim Indian Culture

Acknowledgements

My fellowship was to explore what support services were available for domestic abuse victims of Indian subcontinent origin, what communities were doing to minimize harm, how religious leaders were engaging with service providers, contribute to perpetrator programs and support victims of domestic abuse.* As migrants from the subcontinent make up the largest single ethnic group coming into Australia each year, and knowing the difficulties women face in those communities, I wanted to see what those migrant groups have done in other places where they have established large communities and what was being done to help women actively participate in their own self-determination, free from oppression and abuse.

My travels took me to Singapore, Malaysia, UK, Canada and the USA to talk to communities, service providers, law enforcement, legal people and the judiciary about combatting domestic abuse in these communities, to look at ways of educating people and to see what engagement opportunities can be undertaken to allow the communities to improve reporting and acknowledgement of issues within their cohort.

I want to sincerely thank the Winston Churchill Memorial Trust of Australia for selecting me to be an alumna of their prestigious organisation. I have said previously that many of those selected were highly skilled, highly educated participants and I often felt I was on a fool's errand to finalise this project. If nothing else, this endeavour shows if you have passion and apply commitment to whatever it is that you do, wonderful things can happen and be achieved.

I wish to thank all the people that I met on my journey – from my supporters at home, dear friends Faiza El-Higzi and Carole Beck and stalwarts of the domestic abuse community, Betty Taylor, Di Mangan and Di Macleod who have been very patient with me and my steep learning curve.

To the hospitable Saleemah Ismail and Terence Nunis in Singapore, Noor Siddiqi in Birmingham, Farkhanda Chaudhry and Ghazala Avan in Glasgow, your insights were refreshing, your contacts enlightening and your friendship invaluable.

To my darling Mum, Azmat Khan, who realized many life dreams on this trip as she accompanied me on my journey, watching her joy and excitement as she ventured into foreign lands was extremely rewarding. To the team at Eidfest Community Services who held the fort whilst I was away, if there was ever a lesson in succession planning and training, you proved it. And lastly to my husband Sabahat Mahmood, who constantly surprises me with his support and advice, I am comforted and blessed.

*I have consciously used the word abuse and not violence in this report and will from now on. The reason for this is outlined in the recommendations.

Introduction

I have been an advocate for women from CALD communities for more than 25 years mainly representing Muslim women and women from the Indian Sub-continent, as this is my heritage. For the last 5 years or so, I have been advocating on behalf of domestic abuse victims, many of them who have been threatened with further abuse, deportation or family retribution to be able to tell their story of abuse and violence within their family home.

We run a totally voluntary, unfunded support service for domestic abuse victims, based in Brisbane, and we network in with domestic violence services to provide support for our clients. Most of our clients are migrants on various visas, and we work closely with the Department of Home Affairs, Centrelink and other agencies to provide safety and stability for our clients.

The purpose of this Fellowship was to explore how other countries with large Indian sub-continent populations engaged with community, educated them around domestic abuse, minimized occurrences of domestic abuse and maybe offered innovative solutions that we could adopt here. Even though this community is rather an old community in Australia, dating back more than 150 years, it is a small community, which is rapidly increasing with student visas and skilled migrant visa applications. I wanted to see what other countries were doing that we could utilize here before the population got too big and create unnecessary social issues.

You have enemies? Good. That means you've stood up for something, sometime in your life.

- Winston Churchill

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*Courage is what it takes to stand up and speak.
Courage is also what it takes to sit down and listen.*

- Winston Churchill

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Executive Summary

Domestic abuse is an insidious societal and systemic disease, and western countries are trying to grapple with the issues with little success. If we look at communities from the Indian subcontinent who are also trying to bring about cultural and societal changes the complexities of their plight can't be fathomed, and solutions need to be more holistic in their approach.

The Indian Subcontinent is a geographical term that constitutes seven countries – India, Pakistan, Bangladesh, Sri Lanka, Bhutan, Maldives, and Nepal. Others around the world refer to it as South Asia*, and may also include Afghanistan. It's based around a people that are similar in language, culture, tradition and religion across all countries and is home to approximately 1.8 billion people.

In Australia today we have nearly 800 000 ¹ people who were born in countries from the Indian subcontinent, including Afghanistan. If we then take into account second, third and further generations of people who identify with that cultural identity and then include those from Indian heritage who come from other parts of the world, Fiji, South East Asia, South Africa, the Middle East and the UK, and 200 000 each year on temporary visa's ² there is close to two million people living in Australia who associate with the Indian subcontinent diaspora.

With this community being very entrenched in cultural and traditional practices dating thousands of years, coupled with religious overtones, where women are seen as second class citizens, their freedoms limited and their social interactions monitored, we can see social issues including integration and domestic abuse becoming a rather substantive problem that needs to be recognized, addressed and remedied as best we can.

We hear of honour killings, acid attacks, forced marriages and dowry abuse and whilst this report will not look at those issues in particular, it highlights the cultural attitude to women and girls that is pervasive across the sub-continent. When we also consider the very conservative attitudes across, Islam, Sikhism and Hinduism, this adds a layer of complexity in trying to work through some of the remedies for domestic abuse. The breakdown of the family, the intergenerational families living together, religious leaders encouraging couples to stay together are some of the constant issues that women talk about as to why they have not reported to the authorities, year of domestic abuse.

When we look at domestic abuse data we can see all the statistics that give us a picture of the mainstream population³, but fails to address some major gaps in data collection. There is no breakdown of ethnicity in datasets and no breakdown of religion in the datasets. If we had this

¹ http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/7201_036

² <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/temp-entrants-aus-31-dec-2016.pdf>

³ <https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-in-australia-2018/contents/summary>

data, it would go some way to supporting what workers in the area know and anecdotally are assuming, however it limits us in proving there is a growing problem in this population base. However no amount of data is ever going to fully understand the issues within the community if no one ever tells, or reports the issues they are facing, and that is the biggest hurdle we must overcome to help the victims.

My report will hopefully shine a light on some of the issues within the communities, highlight some of the challenges and maybe offer some remedies to help these victims of domestic abuse. In my travels, no one had the solutions, engagement with communities was sporadic and service providers were just getting by, servicing the clients they had. No matter where I went, the stories were the same, the excuses were the same and unfortunately the results were the same: a woman abandoned if she had the courage to speak up, a woman shunned if she challenged, a woman killed if she rebelled, a woman ostracized if she escaped, a woman abused if she could do none of those things.

However it wasn't all doom and gloom and I saw some wonderful survivors of domestic abuse and even in our own organisation, I have seen women come out the other end to become vibrant, healthy individuals that contribute to their families and their communities. There are many factors as to why some thrive and others continue to stay, but a strong support network, both familial and community is a vital first step in helping these women overcome some major hurdles.

The recommendations I offer will mean a commitment from the community to support their women to come forward and report abuses, it will mean a commitment from religious leadership to actively work at reducing abuses in the name of religion and a commitment from government and agencies to understand that this cohort of women have complexities that mainstream service providers don't have capacity to cope with or knowledge to support.

* The term South Asian will be interchangeable with the term Indian Sub-continent. In Australia we term it as Indian subcontinent however I was slightly confused when in the UK and Canada they referred to it as South Asian, so for purposes of this report either will be used.

The background of the entire page is a close-up photograph of a woman's back. She is wearing a vibrant orange sari with intricate gold and red floral embroidery. Several small, red, circular marks, which are bruises, are visible on her skin. The text is overlaid on the lower half of the image.

THIS IS MEANT
TO **COVER** YOUR
MODESTY.
NOT **HIDE**
YOUR **BRUISES**

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Programme – People And Places Visited

Singapore/Malaysia
19th-25th June

Community Justice Centre
Terence Nunis
Saleemah Ismail previous Director, Casa Raudha Women's Home
Mohd Ali Mahmood PPIS
Laura Meehan Support Services Executive AWARE
Musawah (email contact only due to public holidays)

London
26th June -
1st July

Imelda Ryan Muslim Community Helpline
Metropolitan Police
All other appointments in London were cancelled due to sickness
Dr Ziba Mir-Hosseini University of London (email contact only)

Birmingham
2nd-4th July

Noor Siddiqi Artis Legal
Mahmood Khan K Legal Solicitors
Angela Whittaker National Domestic Abuse Portfolio Coordinator

Manchester
5th-10th July

Pakistani Community Centre
Nadia Siddiqui Manager Women's Voices
Hasina Chowdhury Manchester Bangladeshi Women's Org

Glasgow
10th-13th July

Ghizala Avan Regional Manager AMWRC
Farkhanda Chaudhry MBE Cross Cultural Educator

Dundee
11th July

Sara McHaffie Amina MWRC
Nasreen Mohammed Scotland Police Diversity Officer
Dundee International Women's Centre

Edinburgh
12th July

Giri Polubothu Shakti Women's Aid
Saheliya Women's Group

Toronto
14th-30th July

World Sociology Conference
Abir Al Jamal, MRCCSI and University of Guelph
Baldev Mutta PCHS Punjabi Community Health Services Brampton
Kripa Sekha South Asian Women's Centre
Mathura CASSA

New York
31st July

Prof Evan Stark
New York Family Justice Centre
Rehana Zala Safe Horizon

The Journey

SINGAPORE

Community Justice Centre

In Singapore I was interested in their version of a community justice centre, as it's a project I have envisaged in Brisbane, modelled after the Family Justice Centres established in the United States. The one in Singapore is government sponsored and a joint project with social service providers, the legal fraternity and donors. It allows people going through the justice system to navigate with the help of the CJC, with some free legal advice, access to food and money if family members are incarcerated, legal students and advocates helping with filling in forms and being a support person through the court hearings.

This year they launched a Self Help E-web (SHeW) which allows litigants to access forms and be guided through the process by a program that shows how to fill in forms, access information and advises them of next steps. They have people that volunteer their time to help people use the system, be with them in the court especially if they are unrepresented and they utilise legal students from universities and pro bono lawyers to offer advice to clients – the first 20 minutes is free.

There is no means test or citizenship needed to access the services and it does simple legal work like personal protection orders and spousal visas. The social side of this centre looks after those who have family in jail who may be the main breadwinner. They provide social support including food and money, and support witnesses who may be appearing in court and for prisoners coming out of prisons, through a volunteer program. It's a one stop hub that allows those people who are unrepresented in court cases to access information, help and support to work their way through the system and various programs that support those going through hardship or trying to re-establish themselves after having been through the system.

There are three centres in Singapore, located in the Family Court, State Court and a satellite office in the Supreme Court. This year the CJC had more than 17000 interactions utilizing their services, and within their five years of establishment has proven to be a valuable resource for many who would otherwise be lost in the justice system.



Outside the Singapore Family Justice Courts





Our Mission
Access to Justice for Litigants-In-Person through
Community Partnership

Our Services
Providing Resources and Information
Assistance on court processes and procedures
Referral to social services and legal aid
Appointment for legal advice
Legal clinics

Community Justice Centre Community Justice Centre

AWARE (Association of Women for Action and Research) Laura

“AWARE is Singapore’s leading gender equality advocacy group.

AWARE believes in the rights of women and men to make informed and responsible choices about their lives and to have equal opportunities in education, marriage and employment, and in the right of women to control their own bodies, particularly with regard to sexual and reproductive rights.

AWARE provides a feminist perspective in the national dialogue. It has effectively advocated against laws, public policies and mindsets that discriminate against women. AWARE has contributed towards the strengthening of laws dealing with domestic violence.”⁴

I spent some time with the people at AWARE and was impressed by their range of services for the women of Singapore. They offer domestic abuse support, run a helpline and have case workers for sexual assaults. They work closely with the Singapore Police, training their officers in dealing with sexual assault and domestic abuse cases, and work with the Islamic Council of Singapore around women’s rights and issues.

They also collaborate with Daughters of Tomorrow⁵ to train women in financial literacy and job ready programs so they can transition through their traumatic experience and be self-sufficient and independent.

One of the major issues that I see within the community is rape in marriage. Whether it is religious overtones or cultural ones, there are cases of rape in marriage that exploit women, and most instances women are oblivious to the fact that it is assault and not normal healthy relationships, so I made a point of asking service providers about how they treat rape in marriage. In Singapore rape in marriage is not an offence in itself, however you can be charged with sexual assault by penetration. In conservative communities it can be difficult to talk about these issues and it’s difficult to get women together to talk about it.

⁴ <https://www.aware.org.sg/about/>

⁵ <http://daughtersoftomorrow.org/>

Syariah Court Singapore – Shafiqah (Mediator)

In Singapore, there is a separate Syariah Court, which looks after Muslims and their rights under sharia law. The court only looks at Muslim family cases, including marriages, divorce, inheritance and child custody.

They keep a register of Muslim marriages, and then can adjudicate through the divorce process and issue a Certificate of Divorce.

The Register of Muslim Marriage is a good idea for non-Muslim majority countries to adopt, as it allows those marriages “nikaah” that are not registered with the State to be legitimised in some capacity. Whilst those in Australia could lay claim to de facto relationships, and in fact a lot of “nikaah only” marriages are legally recognised as de facto relationships and then treated as such should a breakdown in the marriage take place, the problem arises when women find it difficult to get Islamic divorces, and need to go to Family court to get property settlements etc.

When there is an abusive relationship, the difficulties are more so, because the male partner has refused to divorce his wife, Islamically, and yet then goes onto another “nikaah only” marriage and starts another family whilst not releasing his obligations with his previous partner. This is termed a “limping marriage”, and Associate Professor Ann Black talks about this in her paper, *‘Adaptations of Islamic family law for the Australian context’*, which is attached in the appendices.

Because there are no formal guidelines around how Islamic divorces and marriages are handled in Australia, women are left to the lottery of “imam shopping” looking for someone to give her a fair hearing and grant her request.

I would recommend that a Muslim Marriage Register be adopted in Australia, not as alternative to the current system, but one that can sit beside it, to allow women an opportunity to have their marriages properly authorised and sanctioned within a religious context, and also for an avenue to prove their validity when applying for divorce.



PPIS – CEO Mohd. Ali Mohammed

“Founded in 1952, PPIS (Persatuan Pemudi Islam Singapura or the Singapore Muslim Women’s Association) is a non-profit organisation focused on community services. We are dedicated to working with women of all ages in carrying out their multiple roles in society. PPIS runs three core community services namely Family Services, Student Care and Early Childhood Education (ECE). With 16 centres island wide, the services work together to provide a quality and holistic support as well as developmental programmes for women and their families”⁶.

PPIS is a wonderful organisation that caters for women and families in domestic abuse situations, foster care and childcare. They have an As-salaam program which assists women who are widowed or divorced and their childcare subsidy is almost 100%. They have seven childcare centres, which they run as social enterprises and have two family service centres – one for high risk and families in crisis and one for domestic abuse.

They offer programs that build healthy relationships between “step families” and they talk to and counsel children of blended families. Young couples marrying as minors under 21 (women, 24 for men) attend a marriage program which includes premarital consultations, marriage preparations and post marriage courses that sanctify marriage within the Islamic and secular context, and they work closely with the Syariah Court and Muslim Marriage Register to monitor underage marriages.

They have an extensive range of courses that allows families to work together to ensure stable family lives.

⁶ <https://ppis.sg/aboutus/>



PPIS – CEO Mohd. Ali Mohammed



LONDON

Imelda Ryan Muslim Community Helpline – UK

This helpline started 30 years ago and continues today, totally voluntary with no government funding and this suits the founder Imelda Ryan perfectly. With no funding or data to collect for funding providers she doesn't keep any records or recordings or client files on the many thousands that ring through each year. That way she can assure her clients that no one will be able to access their information.

It relies on word of mouth advertising and whilst it primarily looked after women, it changed its name from “women” to “community” because of the influx of calls around forced marriage from men and women. Domestic abuse and forced marriage are the majority of their calls and her volunteers are recruited if they have good listening skills, because sometimes the clients just want to talk and not necessarily make a complaint. In the end even with forced marriages, they still love their parents and want a circuit breaker rather than police descending on their house with arrest warrants.

Her big issues are around the help and protection women get from their religious leaders. Sharia Councils, a panel of Imams who make decisions on family law within a religious context, are not legal bodies and are not monitored, which means their rulings can be lacking in their application, go against British law, be administered as harsh or conservative judgements because of their own cultural background and therefore impose an injustice on the female victim. Some Councils, mostly attached to mosques, are good for women however most are not, and it's difficult to engage with them to change their attitudes or ideas of justice and equality.

There are many “nikaah only” marriages and men often take advantage of the loopholes in the system to abandon wives and their responsibilities and actively work around secular and sharia systems. The system of “three talaqs”⁷ is widely used in the South Asian communities and can leave women vulnerable and abandoned.

There is very little done in engaging with the community to look at education or prevention or harm minimising and Imelda believes that the community don't want to be educated or engaged and these are cultural and religious practices that communities have practiced for many years and living in foreign countries hasn't changed their perceptions or attitudes.

⁷ https://en.wikipedia.org/wiki/Triple_talaq_in_India

BIRMINGHAM

Noor Siddiqi - Artis Legal and Hijaz College

I met with Noor Siddiqi, a lawyer and Islamic scholar and we talked about the difficulties faced by Muslim women in particular around marriage and divorce and the need for some resolution to issues facing the community. Mr Siddiqi was critical of Muslim communities that don't adapt to their surroundings and misuse the religious teachings to subvert the social system in non-Muslim countries. There was little authority in Sharia Councils across the UK, and each mosque had their own interpretation of what constituted a breakdown in relationships or domestic abuse and therefore made it difficult for women to get justice.

He has been instrumental in forming the Muslim Arbitration Tribunal, which can address some of the 21st century issues that affect the local community, with highly qualified legal people to sit on the Tribunal - a sitting judge, a solicitor and an Imam. Rulings from the MAT can be enforced by courts in England and Wales, but the MAT cannot grant divorces, but can grant a talaq. It is primarily used for dispute resolution as an alternative to the court system.

Angela Whitaker – National Domestic Abuse Policing Portfolio Holder West Midlands Police

Supt. Angela Whitaker is a retired police officer who is the National Domestic Abuse Portfolio Holder which reports direct to Deputy Chief Constable Louisa Rolfe on the National Police Chiefs Council. She was a font of information as to how the UK is dealing with domestic abuse. The NDAP is a policing initiative and links in with all services providers and to the Government through a national stakeholder's network that meets quarterly and includes strategic partners and their sector charities such as Women's Aid, Safelive and Refuge. They talk about issues within the sector, any high risk cases and where improvements can be made and at the time of meeting had just finished consultations with the Government on the Domestic Abuse Bill.⁸

For BME (Black, Minority Ethnic) women, there is difficulty gaining access to services and counsellors that understand culture and therefore can be quite challenging making sure that

⁸ <https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/>

section of the community get the help they need. Most mainstream services were not culturally appropriate.

The police believe that the issue of domestic abuse needs to take a public health approach and not a policing approach. It's important that everyone understands each area's expertise and look at the issues of domestic abuse as a societal issue rather than just law and order.

The UK police do collect data on ethnicity and religion for victims, which make it easier to assess service provision and support for minorities or specific communities.

Angela spoke about the coercive control legislation introduced into the UK and the work of Evan Stark. Coercive behaviour is: a continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.⁹

Ms Whitaker also introduced me to the term domestic abuse as opposed to domestic violence. When asked about this she suggested that it was a conscious decision to change the language, because a lot of women believed that unless their partner had been violent or hit them then their relationship wasn't abusive. So to challenge that notion the language was changed to allow the community to understand that abusive relationships don't have to be violent and things like financial abuse and emotional abuse are also contributory factors to domestic violence.

The UK has introduced Safeguarding¹⁰, a child protection system, where there is mandatory reporting to safeguard the welfare of children and young people. This system covers all schools and all organisations that work with children, including Police. It allows the welfare of children to be foremost and everyone's responsibility to maintain. It is through this that many instances of domestic abuse is being recognised, especially within minority communities.

The UK Police use the Domestic Abuse, Stalking and Honour Based Violence (DASH) risk assessment method¹¹, that is now be renewed, but asks questions to further understand how domestic abuse is assessed. It is also an assessment tool that has been adopted by agencies and service providers across the UK, so there is uniform method of assessment from all contributing parties to the welfare of the victim. It offers questions to assess more information

9

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf

10

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729914/Working_Together_to_Safeguard_Children-2018.pdf

¹¹ <https://www.dashriskchecklist.co.uk/wp-content/uploads/2016/09/DASH-2009.pdf>

that police and agencies can use to assist the victims, including how scared is the victim, has there been affairs, is the person suicidal, is the abuse getting worse?

Ms Whitaker spoke about a perpetrator intervention program that is being trialled which the police support called the Drive Project.¹² This project looks at changing behaviours in perpetrators. According to their website, *the response to domestic abuse in the UK has always focused on expecting the victim to leave and start a new life in a new community, causing major disruption and taking them away from their support network of family and friends.*

Often the perpetrator is left to continue their life as normal and frequently repeats the same behaviour with new partners, creating more victims.

Providing an extensive system of support for victims and their children is essential, but on its own it will not stop domestic abuse. We need to develop effective interventions for perpetrators that minimise repeat and serial patterns of abuse and complement support for victims and children.

The Police have tried a number of initiatives to connect with local South Asian communities, including Project Cara an arrest and alternative program that was piloted in the Sikh community. They also supported a local police officer who was of South Asian descent, who knew of the issues in the community and the difficulties around women coming forward. She set up in the local public library for many months, just reading books, out of uniform and used that time to strike up conversations with women from her community, just to make connections. After those connections were made and she was trusted did they explore other conversations and getting them the help they needed.

Mahmood Khan Lawyer

I met a criminal defence lawyer in Birmingham who had a very different viewpoint on domestic abuse in the South Asian communities. He suggested that some Islamic sects are very extreme in their interpretation of Islamic law and therefore make it difficult for Muslim women to seek help or be offered guidance when asking their religious leaders.

He suggested that most Imam's were uneducated around domestic abuse and the legal implications, had very little or no social work or community skills and therefore were unable to

¹² <http://driveproject.org.uk/>

help women at all. There seemed to be little or no community support to help with these issues and it also depended on where you originated from. It seems that many in the Birmingham Muslim community come from one geographical area of Pakistan, and therefore everyone knows everyone, so they don't want to sully their own reputation.

Mr Khan also suggested that government policy supporting convictions, was not taking into account a breakdown in society and community that contribute to domestic abuse and criminality, but just the need to meet targets. Mr Khan suggests that some women were making up accusations of domestic abuse to manipulate the system to gain access to welfare and visas. As a defence lawyer he has had to defend clients against this and was his personal experience. Whilst that idea has been heard here in Australia, I don't believe that it could be possible to fabricate domestic abuse to obtain a visa as the standard to meet the criteria is extremely high and women would get found out.

MANCHESTER

Greater Manchester Pakistan Assoc – Nadia (Volunteer Manager)



Met with Nadia, a long time feminist warrior, who was jaded and disillusioned and probably just tired. She has been working in the women's rights area for many years, and was yet to see any major improvement in community attitudes. Issues that she was fighting for 30 years ago, she seemed to be still fighting for and even with second and third generation South Asians in the UK, she saw little change in general attitudes around women and their rights. She had worked on a variety of programs working with minority communities and expresses her dismay as to the difficulties for South Asian women to engage with services and service providers.

Hasina Chowdhury Ananna Manchester Bangladeshi Women's Org



Ananna, has been supporting the South Asian community of Manchester for more than 25 years. They offer a range of community programs from English language, lunch clubs, mothers groups and other community education programs. Hasina, the Director, spoke about some of the issues the South Asian women have, similar to all the others, and their reluctance to engage due to cultural and religious pressures. They engage with women in non-threatening activities so they can gain their trust and make them feel comfortable and then introduce other subjects around domestic abuse and sexual health down the track.

Saheli Asian Women's Project

The SAWP is a great organisation that works on a number of fronts for South Asian women and their community. It addresses issues around domestic abuse, forced marriage, child abuse and honour killings. They are part of a collaboration of service providers that look after Black, Asian, Minority Ethnic and Refugee (BAMER) women in the Maya Project.¹³ They also participate in the Safety4Sisters program.¹⁴

¹³ <http://saheli.org.uk/maya-project/>

¹⁴ <https://forevermanchester.com/safety4sisters/>

They have a very haunting wall display in their offices of victims of honour killings, which they know about, telling their story and their circumstances.



Issues for women in the community are around domestic abuse and women suffering in silence because of families pressuring them not to report, either about domestic abuse or forced marriage. There are husband's threatening to deport because they are mostly migrant brides and because of that they don't know what their rights are or where to go to get help.

There are some major issues around financial abuse and the community is reluctant to talk about it. As with many migrant communities, many people are supporting family back in their home country, and as they are overseas, they become their “meal ticket”, so the pressure is on to constantly send money back, quite possibly inhibiting their own lifestyle whilst doing so. They also run some housing programs in collaboration with other suppliers and can change locks on houses should the victim continue to stay in the house. They also work with the Child Protection Register and Child in Need Register, doing outreach to those families that are in need.

A lot of their work is around forced marriage and they work closely with authorities to offer protection and support for victims.





GLASGOW

In Glasgow I met with a group of women from South Asian communities, some who are members of the Violence Against Women Partnership,¹⁵ social workers and community workers. Each told their stories of engaging with the local community, around issues affecting society and the difficulties there can be getting women to tell their stories. They have some difficulties with religious leaders and they have had to align themselves with leaders who are little more progressive in their thinking.

I met with two wonderful women, Ghizala Avan and Farkhanda Chaudhry MBE, both formidable, who have been speaking loud and clear on women's issues and community engagement. Ghizala is the head of Amina Muslim Women's Resource Centre and looks after the organisation that is based across Scotland. Amina MWRC looks at programs for women and those experiencing domestic abuse. Farkhanda is an educator in community engagement who has worked and trained across the world in peace projects and capacity building and is also an active contributor to the Muslim community and women in particular in Glasgow and across Scotland.

DUNDEE

Amina Muslim Women's Resource Centre

Made a trip up to Dundee and met up with the wonderful Sara McHaffie, who was the local manager of the MWRC. A lot of the work done in Dundee, is around engaging the local community to come together, primarily to socialise. There are a lot of overseas students in the area, and their partners (primarily women) are left to fend for themselves. There is also an influx of refugee settlements in the area, so Amina are working with a variety of women to cater to their needs.

One big focus for Amina in Dundee is around financial capacity. They offer talks on budgeting and financial abuse which they run often, encourage women to have their own bank accounts and account for their own money. Whilst at Amina, I had the pleasure of meeting Janice Aitken, who is the President of Dundee Women's Aid, a national organisation that advocates for women and children experiencing domestic abuse.

¹⁵ <http://www.glasgow.gov.uk/Councillorsandcommittees/viewSelectedDocument.asp?c=P62AFQNTDXUTDX2U>

Oppression – a network of forces and barriers which are systematically related and which conspire to the mobilisation, reduction and moulding of women and the lives we live –

- Marilyn Frye



Police Scotland

Met with Nasreen Mohammed, the Equality and Diversity Adviser at Police Scotland in Dundee. Nasreen also expressed similar issues around changing community attitudes, and how after many decades of working with the South Asian community, little has changed. Her work in Police Scotland is making a difference, with the police making real inroads in community engagement and recruitment from diverse migrant populations. She works closely with community organisations and women's groups to keep on top of community sentiments and is encouraged and supported in her work by the Police hierarchy.

Dundee International Women's Centre



Spent a lovely afternoon with the women from the Dundee International Women's Centre. It is a vibrant and busy centre that caters for many women from the South Asian and other migrant communities. It provides a social haven for isolated women and offers leisure activities, as well as educational opportunities and courses.

Again, the women there experience very similar situations as others that I came across with attitudes to women in their communities, the role of women and the ability of women to voice their concerns and anxieties.

EDINBURGH

Saheliya

Went to Edinburgh and the spent some time with Saheliya, a wonderful women's support group that has been around for a number of years. Saheliya offers a variety of opportunities for women and young girls, and also offers counselling and trauma care. They have an onsite child care facility that contributes – women's support group – childcare group



The team from Saheliya.



The wonderful Farkhanda Chaudhry highlighting the UK on the map, in the Saheliya offices, but I was mightily amused by the representation of Australia – all sorts of wrong!

O you who believe! You are forbidden to inherit women against their will. Nor should you treat them with harshness, that you may take away part of the dowry you have given them..

Quran 4:19

Shakti Women's Aid

Spent the afternoon with Shakti Women's Aid, an agency that looks after BME women, experiencing domestic abuse, offers refuge services, forced marriages, FGM and children services. BME women are very easily racially vilified as they are most visible. Giri, the manager had some issues around the criminalisation of forced marriage, suggesting it made it difficult for victims to report it because they loved their parents, and didn't want them to be in trouble or go to jail. She said the issue around forced marriage, wasn't about the age of the victims, but rather consent.

Giri also spoke about the domestic abuse visa concession that has been introduced in the UK, however it is fraught, as there is no appeal on the decision that is made, and the victims lose all other visa rights, making it very precarious whether they even apply in the first instance.

"If we are to fight discrimination and injustice against women we must start from the home for if a woman cannot be safe in her own house then she cannot be expected to feel safe anywhere."

- Aysha Taryam

"It is seldom that domestic violence is an isolated episode; rather it is comprised of a number of episodes over an extended period of time."

- Asa Don Brown

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POWER, VIOLENCE AND JUSTICE: REFLECTIONS, RESPONSES and RESPONSIBILITIES

POUVOIR, VIOLENCE ET JUSTICE:
réflexions, réponses
et responsabilités

PODER, VIOLENCIA Y JUSTICIA:
reflexiones, respuestas
y responsabilidades

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TORONTO

I attended the 19th International Sociological Association World Congress of Sociology. It brought together sociologists and academics across the world with the theme of **Power, Violence and Justice: Reflections, Responses and Responsibilities**. There were a number of sessions that looked at women in society and domestic abuse, marginalisation, religious restrictions, cultural attitudes and societal barriers. Over the eight days of the conference I attended many talks and presentations and was overwhelmed with the depth of analysis and information that was available. I have presented below, some of the abstracts that were relevant toward this Fellowship and some notes that I took throughout their presentations.

Theorizing Violence: Neoliberalism, Gender, and the Increase in Violence

Sylvia WALBY, Lancaster University, United Kingdom

Is violence increasing or decreasing? According to Pinker, drawing on Elias, violence is decreasing. But, when gender-based violence is made visible by recent developments in measurement and data collection, violence can be seen to be increasing not decreasing. As the neoliberal project restructures societies, increasing inequalities and shrinking welfare, the resilience of potential victims is reduced, and the rate of violence increases. Too often, violence has been dispersed or fragmented in social theory, and treated as less important than other forms of power. When considered, it has traditionally been more often considered as deviant behaviour from the disadvantaged, rather than the deployment of power by the more powerful. The new scholarship from women and the global south has challenged this traditional account of the direction of violence; documenting the scale of the violence from the powerful. It is time the analysis of violence was moved from the margin to the centre of contemporary sociology, as proposed in this conference, and its significance for society developed in social theory. This requires rethinking the concept of violence, redefining it as an institution parallel in significance to those of economy, polity and civil society. This would facilitate the inclusion of violence in analyses of societal transformation, including the contradictory implications of neoliberal forms of securitisation for power and justice.

Notes: Violence was vanquished; UNESCO and the European Union were peace projects. Violence was marginal, exceptional – limited to war and criminology.

There is a lower rate of femicide when there is a higher representation of women in Parliament.

Gendered rates of violence correlated with gendered economic and political inequality.

Muslim Immigrant Bangladeshi Women and the Politics of Gender, Class and Religion

Pallavi BANERJEE, University of Calgary, Canada

In this ethnographic study, I explore how participation in two types of religious groups - mosque-based and home-based - structures the material lived experiences of Muslim immigrant Bangladeshi women in terms of their immigrant experiences and gendered relationships within the families. I deploy "multiple intersections" approach to find that women's participation in the two forms of religious groups is filtered through their class identities such that their religious participation is largely mediated by how they perceive their own class positions. This approach "interrogates the boundary-making and boundary-defining process itself" and focuses on "social groups at neglected points of intersections" (McCall 2005, 773-74). Class dictates what religious groups and institutions the women can access, their experiences participating in religious groups and what it does for them as women and migrants in the context of these groups, their own conjugal families and the larger American social structure. I interrogate how different forms of religious participation (in the mosque and in the home) become the site of contestation over multiple identities filtered through class, immigrant subjectivities, religious participation and gendered relationships. The strength of this work is twofold: first, it illuminates the importance for qualitative researchers to tease apart nuances in their data. Second, it shows that even small differences in class locations can alter access to religious participation, which in turn has incremental but lasting influence on familial gendered relationships and overall affective wellbeing of the women participants of this study.

Notes: Western Feminism believes that Muslim women are universally dependant – husband, state etc., they have no agency and need saving.

These Muslim women use gender to get things otherwise denied to them.

Class, gender, religion and race – lots of intersectionality.

Language and culture was important.

Women look for institutionalised religious networks for socialising and that lends itself to other forms of community.

Powerlessness of marginalised women in dialectics of violence in Pakistan

Syeda Khizra ASLAM, SAP (Sociological Association of Pakistan), Pakistan, GC University, Faisalabad, Pakistan

Saira SIDDIQUI, GC University, Faisalabad, Pakistan

South Asia is encumbered by cultural conflicts and violence in the countries it has and the size of their populations. Four of the ten South Asian nations have the highest rate of violent cultural conflicts. Around the entire South Asian countries, Pakistan gives an impression of unsure growth towards women empowerment and gender discrimination, and remains lower in ranking than others. The reason is clear that Pakistani society has patriarchal setup that little recognizes the capabilities of marginalized women, rather make persistent problems in their way towards liberation. Marginalized women often face physical and mental violence as a result of numerous innate psychological and behavioural encounters and appear powerless. Powerlessness of marginalized women dwindles in a synthesis of opposing terms of 'violence' and 'non-violence', and as Bataille thinks about the same type of two antagonistic concepts, these are 'mutually constitutive and there is synthesis of opposing terms each lending its power of signification to the other'. In Sadean dialectic, 'opposing terms are united in synthesis which structures their initial emergence into the discursive arena'. The emphasis on violence as a synthesizing force is just one of the ways in which Sade's dialectical system differs from Hegelian dialectic which is essentially historical and operates chronologically through times. The binary oppositions become supportive and constitutive. The dialectics of violence is the central theme in this paper. Keeping this viewpoint, this paper will be based on an empirical research conducted by different government agencies in Pakistan with a sample of 3,687 women about domestic violence that revealed that marginalized women suffered from physical abuse as "hitting, kicking, biting, shoving, restraining, slapping, or throwing objects" and other "sexual and emotional abuse, controlling or domineering behaviours, intimidation, stalking, and passive or covert abuse."

Risk assessment tools – are they being used to filter responses to domestic abuse – if they are low risk, then less responsive.

Changing Marriage Considerations, Notion of Honour and Choices in Haryana, India

Neerja AHLAWAT, M.D University, Rohtak, Haryana, India,

Over the past few years, the institution of marriage is undergoing tremendous change. Marriage remains universal and nearly compulsory both for boys and girls as this is an indicator of one's overall position in society. In case of women, marriage is considered important especially for protecting their sexuality and family honour. In case of men too, marriage is important as it is linked with reproduction, their masculinity and having control on their wives and children. The state of Haryana is fast urbanising, with extensive consumerist culture and individualism. In view of the emerging scenario in Haryana, there is serious crisis penetrating deep inside the rural society where forces of tradition and modernity are in sharp contrast defying each other

The present paper is based on extensive ethnographic study to examine the marriage norms, restrictions and notion of honour associated to women/girls. How does the violation in the observance of the prescribed rules of marriage result into severe punishment sabotaging freedom of choice to enter into matrimony. The study concluded the need to create an environment of dialogue, freedom and gender space to protect individual interests. For this, civil society organizations, academia, activists and media together should take the lead.

Notes: Marriage is an indicator of masculinity for men and is a social marker for women.

In previous generations, families looked for women who are very strong – so they can look after (extended) family and animals. Nowadays it's beautiful, slim, fair and educated but still needs to be domesticated.

15-20 years ago for boys it was how much land does the family have and are they a reputable family; today its around education, whether they have a government job or professionals, and if they urban property and not agricultural lands.

There is a major emphasis on education – for the boys to get out of agriculture and become professionals or have white collar jobs in the government and banks and for girls the chance to get better prospects for marriage partners, because no one will marry an uneducated girl, even if she never uses her education skills in a career pathway.

Dowry – even though outlawed, if the boy's family has a higher status it equals a higher dowry.

Each year the Government promotes a list of graduate intakes into the public service, and the parents of prospective brides use that list as a scouting opportunity to look for potential grooms.

Unlimited money is spent on wedding ceremony on gold, clothes, guests etc.

Families are educating girls, and they may work in their profession, but they have no choice in marriage – it will be arranged by the family. And even if the girl is educated and financially independent, she will have no decision making ability on any aspect of her life.

Male/female ratio is skewed, primarily due to the need for male heirs, and more males' leads to lack of girls to marry so men "purchase" brides from other areas of India.

Families still believe in honour killings for elopement and violence against women.

Kinship and caste equals power and status.

Security and Empowerment of Indian Women: A Study on the Role of Protection of Women from Domestic Violence ACT 2005

Mamta GAVSHINDHE, BARKATULLAHA UNIVERSITY BHOPAL (M.P.) INDIA, India, Department of Sociology/Social Work, Saifia Arts and Commerce College, India

Gajanan MISHRA, MAHATMA GANDHI UNIVERSITY KARELA, INDIA

In Indian society women occupy a vital position and also a vulnerable place. Today they are the most vulnerable section as far as their safety and security are concerned. Although the constitution of the country has the largest number of laws ostensibly for the benefit of Indian women but their conditions is still far from satisfactory. Protection of Women from Domestic Violence Act 2005 was passed by the parliament and gives special protection to women- being aware of their work position. This Act helps in protecting women and also provides safety to economically, physically mentally challenged women. There are many organizations which conducted welfare awareness and help program campaigns to stop domestic violence. This research paper focuses on the role of Domestic Violence Act (2005) and its social implications. The study has been conducted in Madhya Pradesh state of India. This paper is based upon descriptive design of research, besides interpretation of data. The research objectives on this study were as follow: 1) To know the Domestic Violence Act as understood by Indian women; 2) To find out the role of this act in protection, security and empowerment of Indian women; 3) To find out its reflections on Indian women's status, social change and justice. The findings of the study suggest that Domestic Violence Act (2005) has been found to be more than effective for the protection of the rights of Indian women guaranteed under the Indian constitution.

<https://www.theraveproject.org/>

In another presentation, the Rave Project was referenced and I went to research it. It's a web based e-learning resource that equips religious leaders with knowledge on how to respond to domestic abuse. Whilst I think something like this could work to some extent here, it would be limited in its capacity with religions other than Christianity, due to the nature and roles of the clergy in other religious practices. The information on the project website seems geared toward Christian teachings and practices; however an online referral system may be a better option for other faiths, especially those who are not fulltime religious leaders.

The RAVE Project (Religion and Violence e-Learning) at the University of New Brunswick is an initiative that seeks to understand the interface between religion and domestic violence in the family context. Web-based resources equip religious leaders to respond to domestic violence in ways that are compassionate, practical, and informed by the latest research and best practices for professionals and to walk alongside victims and survivors on their journey to healing and wholeness. As members of the RAVE Project team, we strive to meet the challenges presented when working across the disciplinary boundaries of academia, churches and seminaries, and community agencies in order to provide faith-based resources for social action. Based on over twenty years of social scientific research, this paper considers both the obstacles and rewards of working with partners from criminal justice, advocacy, religious and therapeutic communities in four regional sites across North America. In trying to build bridges between the steeple and the shelter we need to develop the trust of the people from different constituencies while remaining sensitive to their unique informational and spiritual needs.¹⁶

¹⁶ <http://www1.uwindsor.ca/criticalsocialwork/the-rave-project-developing-web-based-religious-resources-for-social-action-on-domestic-abuse>



Abir Al Jamal, Muslim Resource Centre for Social Support and Integration

I met with Abir at the Conference, where she was representing the University of Guelph. As a social worker she said that religion and culture intertwined and people had difficulty separating the two. The attitude from the community is that patriarchy is bad if it abuses me, however if I need a man to buy a car then who cares.

When she's called to a family disturbance, she allows people to stay in the house if they are safe; she advocates self-determination and allows the clients to make their own decisions that suit their needs and family structures, rather than imposing something that may not suit.

There seems to be an overreach on being politically correct, and this means that some oppressive behaviour within communities are not being called out and people are reluctant to tackle religions. She said, if people wanted to talk about the burqa or nikaab being oppressive or against Canadian values, the conversation is halted because it is touted as racism or Islamophobia.

South Asian Women's Centre – Toronto

The South Asian Women's Centre was a wealth of knowledge about issues in the South Asian community. Many of the issues were around forced marriage and human trafficking, acid burns and domestic abuse. They are linked in with the Police and the local hospitals who refer clients to them for support.

Kripa Sekhar, the long term manager of the Centre talked about issues within the justice system and the racial profiling of honour killings, leading to two systems of justice. She says that if a South Asian woman is killed, she is referred to as an honour killing, and her culture and religion is highlighted, however if a non-South Asian woman is killed, that is seen as a homicide and the two murderers are treated differently in the justice system.

The SAWC does have some interaction with local South Asian religious community and their faith leaders, however finds them to be non-responsive to issues within the community. Kripa says religious leaders like to bring the two parties into a room and mediate a solution; however, "you cannot mediate violence."

All of the faith leaders are male, and it can be difficult seeing change within community attitudes because they refuse to address issues relating to women. She said that mosques were very territorial – what goes on in the mosque, or Muslim community, can be handled by the mosque. Unfortunately this has been more damaging, because those that seek to do that have no skills to address the issues. In the 2018 State elections in Canada, a campaign was launched against a proposed sex education program for school children. Most of the South Asian religious community worked with the conservative parties to vote against the campaign.

One of the other main issues, Kripa and the team at the SAWC come up against, is culturally appropriate housing for migrant women. South Asian women need access to prayer spaces, special food, culturally appropriate counselling etc, and many of the shelters and refuges have a similar mainstream system which doesn't cater for all.



Mathura – researcher with CASSA – Council of Agencies Serving South Asians*

Mathura has been working with the South Asian communities for a number of years. She echoes some of the same issues that the SAWC have, especially around religious leaders not engaging with service providers to counteract abuse. She also mentioned that attitudes may be slightly changing as the younger generation accept change as opposed to the rigid lives of their parents.

Mathura is a volunteer Train the Trainer on a domestic abuse program for the Tamil community, called Abuse Never Becomes Us (ANBU, which is the Tamil word for love). She also said that many women were stuck in domestic abuse situations due to the uncertainty over their visa rights, and therefore too scared to alert authorities.

She also suggested that better data needs to be collected for accurate information, so that a true picture can be assessed for the needs of the victims and the extent of the situation, and also service providers need to address perpetrator programs for South Asian communities, taking into account the cultural and religious perspectives.

**Mathura's thoughts and ideas in our meeting were her own, and in no way as a representative of CASSA.*

Punjabi Community Health Services – CEO Baldev Mutta

Baldev was one of the founders of the PCHS, an organisation that started nearly 30 years ago to address social issues within the Punjabi Sikh community. Their biggest programs include alcohol abuse, domestic abuse and family breakdowns.

The PCHS did extensive research on the reasons these things were happening and found that a lot of the issues stem from the birth of girl children. In other parts of this report, I have talked about the birth of girls in the South Asian context, and in the research conducted by PCHS, it was found to be a major contributor of abuse in that community. Leading on from that Baldev offered that abortions are very high in the South Asian community and the major factor in that is the realisation of a girl foetus.

The South Asian community that Baldev has worked with over the last 30 years or so, is very patriarchal, and this makes it difficult for women to be independent or self-determining. Women are oppressed and subjugated and many times don't even realise they are. A new trend he has seen is the threat to the victim (Canadian citizen) to get their younger sister married off to another family member, so they can get a visa to come to Canada.

Baldev makes a point of saying to all his staff that no one will tell any of their clients that they are strong women. He says for South Asian women, especially Hindus and Sikhs, this can have an adverse effect, as they believe that strong women are like the goddess Sita, and their abuse is therefore being glorified as an honourable thing.

“Sita Syndrome” is not a terminology I had heard before, and I'm not sure where it came from, even though Baldev suggests that he coined the phrase, but the story of Sita was referred to in a work by Associate Professor Archana Pathak Bhatt from the University of Richmond¹⁷.

In her paper she explains the legend of Sita,

In the Hindu epic, the Ramayana, the heroine queen, Sita gives everything up to follow her husband into exile. Despite her deep seated loyalty and commitment, Sita is continuously tested, questioned and doubted. Even when she passes the most rigorous of tests for fidelity, the agnipariksha, (the fire test), doubt remains and ultimately she is punished with banishment. In the fire test, Sita steps into a bonfire asking the fire god Agni to burn her if she is impure. However, even as she stands amidst the flames, Sita is left unscathed, proving that like gold, she is pure and untouched by the fire. Agni lifts Sita out of the fire and places her next to King Rama, claiming that she has passed the strictest of purity tests and she has proven her purity without a doubt. However, despite passing such a difficult standard of purity, Sita was ultimately banished

¹⁷ <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1323&context=jiws>

from her husband's palace and sent to live in the forest. Sita is the ultimate standard of selflessness and loyalty. Despite the cost to her and her status, throughout the epic, she acts with a focus on what is best for her husband. Sita's story is well known throughout the South Asian communities both in South Asia and in the U.S. diaspora. The story is passed down through long standing oral traditions as well more contemporary political and media outlets. This story exemplifies the way in which narratives shape, discipline and control identity performances as Sita becomes the marker of ideal womanhood.

The PCHS team, when they take on a client, often have to be creative in the way they explain what has happened to them. One method that the team use is the graph method of recording abuse. On a piece of paper, the social worker will ask a series of questions and chart the answers from one to ten on a simple number line. They will ask questions around how often does he hit you, how long has he been abusing you, how often does he get angry, and charts those numbers on the scale. It is with this visual aid, that clients can see the trends in the numbers and the severity of their situation and admit it is a problem.

In the appendix I have placed a copy of the form Violence Against Women Scale, which is also used by PCHS to form a risk assessment. You will note that this is peculiar to the South Asian communities, as it asks questions about dowry abuse, girl children, mother in law and sister in law abuse and whether the husband is compliant when it happens. Baldev finds that the husband may not be the perpetrator and the in-laws are the abusers, but because he stays quiet or ignores it, he is just as culpable and this is more common as many extended families live in the one house, which is quite prevalent in South Asian communities.

Baldev, with his years of experience believes that for single women, 70% of the abuse is from her own family, and for married women, 97% of the abuse is from his family. Either way, the victim has lost her support system and is all alone to carry the shame and community attitudes.

From her, Kings are born

- Guru Nanak Devi Ji



Punjabi Community Health Services – CEO Baldev Mutta

UNITED STATES

Prof Evan Stark

Professor Stark is the author of *Coercive Control*, a book examining domestic violence and how the “industry” is not serving the needs of women. Prof. Stark argues that domestic violence is not about the violence or the safety of women, but rather the control and power over women, and that we should be encouraging “dignity, autonomy, liberty then safety”.

As a society we put in place structures that systemically thwart the full participation of women which contributes to the ongoing control over women that can end in violence. Stark says that, “we look at the situation of domestic violence too narrowly” and don’t look at all the things we allow which contribute to it, gender pay gap, women’s participation in the workforce, education, abortion rights and most importantly capitalism.

Stark suggests that the level of control would be a better indicator of abusive relationships and a “better predictor” of future assaults and abuse, rather than violence, which may only happen rarely. Because advocates have only looked at violence in relationships, they have missed controlling factors on women’s liberty and independence, Stark says, that domestic violence should be seen as human rights crime with agencies such as Amnesty International leading the way.

Abusive relationships that have no physical abuse are no less abusive, and the control a male partner has over the female is just as corrosive and degrading. The way they are told to dress, to perform sex, to spending controls are seen as more pervasive and a woman who has never been physically abused will still be traumatised from the coercive control he exerts over her.

He says that compliance is the abusers end goal, to have their partner be totally subordinated to him. He told a story of how one client had refused her husband sex, and he grabbed her arms and tied them up, then raped her. The next time, she complied without a word; because she knew what the result would be should she say no. So her abuse is ongoing, but because there has been no violence, this will be overlooked as a crime.

Professor Stark believes this subjugation of women is quite dominant in the religious communities, and religious men hold back the advancement of women to counteract the emancipation of women. He also was quite vocal in the role capitalism plays in the subjugation of women, and that women are treated unfairly in the workplace, working mothers are given less access to the full benefits of corporate success than their male colleagues, the lowest paid workers are primarily women, and when there is a downturn in the economy it’s usually women who are laid off first. Also their contribution as stay at home mothers is degraded and downplayed as not fully participating in the economy.

I found Prof Stark to be quite compelling in his arguments for coercive control legislation, and it's something that we should be exploring here in Australia. I have attached his paper, "*Representing Battered Women: Coercive Control and the Defense of Liberty*" in the appendix. It is a conversation that needs to be had here, and I do understand there has been some pushback to having separate legislation¹⁸ but it's a bigger issue than just laws in Australia, and will need a whole systemic and mindset change. As women are continuing to explore new freedoms, access to education, to vote, to drive, we see other structural barriers put in place to limit access for women to fully participate, equal representation in politics, access to promotion and overtime, which means dismantling the patriarchy and capitalist system that supports it.



Made arrangements to visit the New York City Family Justice Centre but was unable to secure an interview due to bureaucratic juggling.



Safe Horizon – Rehana

“Safe Horizon is the nation’s leading victim assistance organization. Our mission is to provide support, prevent violence, and promote justice for victims of crime and abuse, their families and communities.”¹⁹

I spent some time with Rehana who was a local manager at one of their 57 offices across New York. Rehana’s neighbourhood is very multicultural, so they get a variety of ethnicities that use their service. Whilst the Hispanic community seems to be the dominant one, as someone of South Asian heritage, Rehana is acutely aware of the issues within that community and the impediments others have offered as to some of the difficulties they have to engage with service providers.

¹⁸ <https://theconversation.com/australia-should-be-cautious-about-introducing-laws-on-coercive-control-to-stem-domestic-violence-87579>


¹⁹ <https://www.safehorizon.org/>

**“The strong man is the one
who can keep hold of
himself when he is angry.”**

Prophet Muhammed (PBUH)



Don't let **concern** become **regret**. DV Connect – **make the call**.

Womensline 1800 811 811 www.qld.gov.au/makethecall 



Glossary

Talaq	Talaq is when a man grants a divorce to his wife, in Islam.
Khula	is when women asks for a divorce from her husband.
BME	Black, Minority Ethnic
Nikaah	Marriage contract in Islam
CALD	Culturally and Linguistically Diverse
ImmiAccount	An online portal for immigration issues with the Australian Government
MyGov	An online portal that deals a variety of Australian Government agencies, including, the Australian Tax Office, Centrelink and Medicare
ANIC	Australian National Imam's Council

"Men who hit do so because they can...someplace they enjoy or need to humiliate another. There is no love in violence, only control and domination."

- Na'ama Yehuda, Emilia

Conclusions And Recommendations

PRIORITY

- **Family Justice Centres – one stop shop for domestic abuse victims**

We should as a matter of priority look at establishing a Family Justice Centre, as they have in the USA. The model of the FJC started in San Diego, and has now spread around the country, which enables a domestic abuse victim to visit one building to have all her needs met. The newest one just opened in Nashville and is the biggest in the USA, and houses all services in the one building.²⁰ The FJC would house a variety of agencies, including but not limited to, medical, justice, legal, police, counseling, Housing, Centrelink, Immigration and Child Services. This would mean that a victim wouldn't need to traipse around looking for service providers; rather they would be in one building servicing all victims throughout the stages of their recovery. FJC should be trialled immediately as a pilot program, and I strongly suggest that Brisbane be the site of the pilot. I have had preliminary talks with Qld Police and they are willing to trial this, but it needs to be a whole of State Government and Federal Government commitment to see this work properly.²¹

- **All payments to be made to individual bank accounts – including wages**

Everyone should have an individual bank account, where all and any income is paid into. This makes sure that women have some control over their own finances, and any transferring of monies from their account, is done with some conscious decision making. Too often money is paid into joint accounts, which becomes quite difficult to alter, if and when a breakdown in the relationship occurs. It also allows a perpetrator to “clean out” the bank account before leaving. If there is a breakdown, there can at least be some continuity of income for women fleeing domestic abuse or when having to move house for any reason.

FAITH COMMUNITY

- **Muslim Marriage Register**

All Muslim marriages should be registered within a central database, possibly controlled by the Australian National Imam's Council (ANIC). This register needs to be maintained for all “nikaah only” marriages, with the proviso, that no marriage is legal within the Sharia context if it is not registered with the MMR, and that marriages can only be legal if they are conducted by a registered Imam. This makes it official, and stops the backyard convenience marriages, and then the convenience divorces.

²⁰ <https://tmpartners.com/project/metropolitan-nashville-police-department-headquarters-and-family-justice-center/>

²¹ https://libres.uncg.edu/ir/uncg/f/H_Nemati_Community_2014.pdf

- **Imams Council to be more proactive in setting guidelines around marriage**

Imams and ANIC as the peak body, needs to inform the community of the guidelines around marriage: what is considered a nikaah, the rights of women to seek divorce, the rights of women to maintenance during divorce, and to make sure that procedures are in place for the husband to honour those commitments. The rules around divorce in a Muslim context needs to be examined within the Australian framework and strict guidelines enforced, to make it easier for women to obtain sharia compliant divorces.

- **Muslim Arbitration Tribunal**

A Muslim Arbitration Tribunal be set up that incorporates a sitting Judge or solicitor from outside the community to handle cases in accordance with Australian law, taking into account Sharia compliance as well. This means that women could find it easier to obtain divorces and maintenance, without clogging up the family court system. Litigants would have options to utilize either system, but it introduces a level of competency into the system, with learned people within the legal system and the Islamic system working together to achieve an outcome that does not go against Australian law and is fair to all.

- **All religious leaders to undertake social science degrees in Australia – or some other humanities training**

Overseas trained non-Christian clergy need to undertake some sort of course in humanities or social science. Many that come here have an understanding of their own religious teachings, but then find it difficult or ignore all together their commitment to the community to advise them on contemporary issues within an Australian context. If they undertook some sort of social science training including counseling, community building, youth work or social work, it would lead to a much more aware religious leadership. I have found that the Christian churches, through their seminary or theology colleges produce a much more rounded and educated individual who can handle the day to day issues that parishioners may have, but found that overseas trained religious leaders to be focused only on the religious aspects and not the secular aspects of community life.

- **Online information and focus by all faiths on rape**

Many faith based communities, believe that women are to be submissive to men, and to offer themselves when their partner asks, regardless of their own personal wellbeing. This has led to many women being constantly raped in marriage, and answers are referred to Holy Books when trying to justify this. All faiths must stamp out this abuse on women and address their interpretations of religious teachings.

GOVERNMENT

- **Compulsory DA training on arrival for migrants**

All migrants to undertake comprehensive domestic abuse awareness, to introduce them to Australian law, and the impacts that perpetrating domestic abuse can have on future stays in the country, permanent residency applications and citizenship.

- **Protection for sponsored migrants with information gathering on ImmiAccount**

There must be protection for sponsored migrants and any issues and complaints they make to the Department of Home Affairs, through the ImmiAccount system, especially with domestic abuse. They may be a sponsored spouse who is experiencing domestic abuse, and if they talk to the Department about domestic abuse issues or their visa status, there is no guarantee that that information is only being sent to their ImmiAccount, as their sponsor also may receive a copy of the information. This may make it more difficult for the victim to escape an abusive relationship as they have already flagged an issue with the Department.

- **All online accounts to be applicant only**

As with the above ImmiAccount, there seems to be a breach in the MyGov account at the time of writing, where victims of domestic abuse can be tracked according to their account.²² Therefore, as with bank accounts, everyone should have one account individually, and then they make the choice to share information, rather than accounts being linked automatically.

- **Checks to be done for all sponsor visa applicants around their previous relationships**

More stringent vetting needs to be undertaken for all applicants applying for a spouse visa. Do they have the correct divorce papers, is it a genuine divorce paper or “made up” papers to sponsor another partner. Is the marriage registered and how legitimate is the whole application. Too many women have had their “husbands” apply for another spouse, pretending they have divorced them, only to then force themselves on the women, because it was not a genuine divorce.

- **Judges to be trained to understand significance of gold jewellery**

The judiciary needs to understand the importance of gold jewellery and gifts given to South Asian brides. Many times it has been argued that gold jewellery belonging to the woman, and given by the husband or his family as a gift, is seen as communal property. As in western marriages, we wouldn't consider wedding rings and other personal jewellery to be considered as communal property, nor should we suggest that the South Asian bride's jewellery is anything but personal property.

²² https://www.vice.com/en_au/article/8xj3mg/mygov-could-be-compromising-the-whereabouts-of-domestic-abuse-victims

- **Cross cultural training for service providers about South Asian women**

Mainstream service providers need to be trained to work with CALD women in general and South Asian women in particular. A one size fits all service delivery can never work for all, and we need to see our service providers have some understanding of the requirements and complexities of the CALD population.

- **Funding to be quarantined for specialist providers**

As mainstream organisation are trying to cater to those outside the mainstream, it would be vitally important and logical that funding for specialist CALD providers be granted, as this would make the transition for women out of abusive relationships and into some sort of independence, much easier as women don't get overlooked or put into the 'too hard basket'. Specialist providers can also understand the cultural sensitivities in these cases, and give easier recommendations and help to those in need.

- **Introduce coercive control legislation**

Having met Prof Evan Stark, I understand his logic and ideas on coercive control. I think it's important that it be a part of the discussions on reducing violence against women, and as his research suggests, it is more rampant and pervasive as a control mechanism than physical abuse. Advocates in the sector and the Government, need to seriously consider the introduction of this legislation as it can encompass a wider range of behaviours that are just as insidious and dangerous for women in today's societies.

- **Police to liaise directly with CALD South Asian service providers**

In communities where there are large ethnic communities, Police should be liaising directly with culturally appropriate service providers, rather than referring clients to the mainstream service providers. The benefits have been outlined previously.

- **Culturally appropriate housing options, where required**

When it comes to refuges and shelters, women from the South Asian community can find it difficult to adjust in a mainstream environment. If there is little or no access to prayer spaces, cultural foods, religious outreach or family connections, women can easily disengage with the process. In areas with large South Asian populations, consideration should be given to refuges that cater to their needs.

- **Translators for CALD women fleeing domestic abuse**

Female translators need to be trained in domestic abuse situations, so they can offer correct translation services to clients and authorities. Whilst most women will speak to a male doctor or male police officer, who comes with some authority, it can be difficult for migrant women to offer personal intimate details to a male translator who may or may not be a local community member. Also due to that it will be important that translators are not selected from the same community environment as the victim or perpetrator.

- **Change the terminology to domestic abuse**

I have consciously changed my language from domestic violence to domestic abuse. It was in conversation with Angela Whitaker in Birmingham who explained that the use of the word abuse, in this context, allows victims to fully understand what they are going through. In her experience, women were mistakenly assuming that domestic violence only occurs when there is some physical contact, and the financial and psychological abuse, including other forms of coercive control wasn't really seen as domestic violence. Since then I have undertaken to use the words domestic abuse. Whilst I understand that the term domestic violence is enshrined in law, and the meaning is being expanded to take in other forms of abuse, a change to this wording shouldn't be difficult. We as a society talk about elder abuse and child abuse which have far ranging meanings, I think it's time to speak about domestic abuse.

- **Data collection for migrant domestic abuse victims**

All agencies to record ethnicity and religion as markers for data collection, either through the Police, the domestic abuse service providers, or any other agency that women are using. This enables much more targeted responses and strategies for communities to address, when we know if there is a trend in anyone grouping. At the moment, data is non-existent, allowing for little understanding of the issues in CALD and faith communities, thereby not addressing the issues sensitively.

"The enemy of feminism isn't men. It's patriarchy, and patriarchy is not men. It is a system, and women can support the system of patriarchy just as men can support the fight for gender equality."

- Justine Musk

Dissemination and Implementation

Now that the journey is over, the important part is to share the knowledge!

I have made preliminary attempts to talk to those I need to, but will now start this more determinedly, now the report is finalized.

I have made an appointment to see a university in the next few weeks, to talk about issues with their overseas student cohort, especially South Asian ones. I have also spoken to Assoc Prof Ann Black about the implementation of the Muslim Marriage Register and how it would work. I have made arrangements to meet with the leadership of ANIC to discuss this issue and others affecting the Muslim community around this topic.

Requests have been made to the Federal Government for meetings for funding opportunities and I am already booked in for some upcoming public talks and events. As stated previously talks have been undertaken re a pilot program for the Family Justice Centre, and I will now endeavor to bring along other stakeholders to work through this.

I have a full agenda of things that I wish to accomplish from this, and I am working my way through a number of avenues to realize them. I have already done some media work with the ABC before I left, and since I have returned, and have received some feedback on it.

With my organisation, and as a Director of the Red Rose Foundation, this issue is something that I am involved with in a real way, every day, and I have a vision of where I want to see the conversation progress, systems and services to be put in place and hopefully do myself out of my voluntary job!

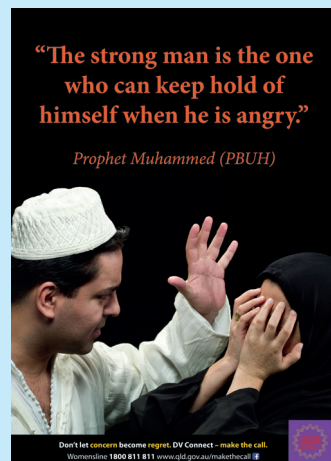
POSTERS

The four posters used throughout this document, was our opening gambit to having our own centre to support women from South Asian communities experiencing domestic abuse.

A small grant from the Queensland State Government, allowed these posters to be designed, printed and distributed across Australia. The designs are my own, including the watermark used in the footer, which shows outlines of religious buildings behind the word stop, which have been professionally bought to life with the help of a wonderful graphic designer, Craig Burns.

The NSW Police and Qld Police have these in their stations, and they are in a number of Mosques, Gurdwara's and Temples. We will be looking at printing and promoting these in other languages in the near future.

I'm very proud of the posters and the conversations they start and in 2015 we were a finalist for the Migration Council Awards. I used these posters as the basis for my journey on this Fellowship, because this is where it all started.



Appendices



Articles

Adaptations of Islamic family law for the Australian context

Ann Black*

This article reflects on how Australia as a multicultural and multi-religious nation approaches resolution of disputes for personal status matters: marriage and divorce. The vehicle for doing so is the lived experiences of Muslim Australians whose adherence to their faith invokes the application of Islamic family law, and who may or may not, also accept the validity of Australian [secular] law. The article argues the alternatives open to Muslims and lack of compulsion inherent in system means that Muslims, like all Australian citizens, can follow the formal official pathway of state courts applying Australian law regardless of a person's religion, or can take the informal official route where religious law is used resolve these matters [providing there is no breach of Australian law]. No one is compelled and no one is locked out of either approach. The article looks specifically at the issues of mahr, dual registration of marriage, and Islamic divorce options for wives, noting Australian adaptations and drawing on comparisons with other jurisdictions, particularly reformist Muslim nations.

I Introduction

Waves of migration have brought such ethnic diversity to Western nations that today countries like Australia acknowledge themselves as multicultural and ethnically, linguistically and religiously pluralistic. In this plural environment, traditional 'state' law is seen by some as failing to respond and adapt to this new reality particularly in matters of personal status: family and inheritance law.¹ Yet, the inescapable fact is that multiple orderings in family law are occurring in the West as citizens are able to prioritise religious law over state law, relegate state law to optional status, or simply reject state law's validity.² Family law is always centre stage because, as Poulter observed, it embodies

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This article was developed from a paper presented at the Shari'a, Culture and Legal Pluralism Symposium, UWS Bankstown Campus, 14–15 September 2015. The author would like to thank the referees for their instructive comments and also Kawthar Girach for the interviews she conducted.

1 See Australian Federation of Islamic Councils, Submission to Joint Standing Committee on Migration, *Inquiry into Migration and Multiculturalism in Australia*, 2012, <file:///F:/http--www.aphref.aph.gov.au-house-committee-mig-multiculturalism-subs-sub81.pdf>. Also, Marion Boyd, *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*, Report to the Attorney-General of Ontario (December 2004). Noting that criminal law, administrative law, torts, and corporate law are generally accepted to require equal application.

2 See *Shible & Mead* [2010] FMCAfam 354 (20 April 2010); *Irvine v Irvine [No 2]* [2013] FCCA 1076 (27 August 2013). In both cases the wife filed the application for divorce and in response the husband rejected the jurisdiction of a secular court submitting it was against

the ‘quintessential culture of a distinctive group’ which cannot, especially in new cultures, ‘be discarded lightly’.³ For Muslims in a Western nation adhering to Islamic family law is a way to unite as a group, preserve identity, and to distinguish, even defend, family and community from what may be seen as ‘corrupting’ western influences and *haram* (not permissible) practices.⁴ In addition, the religious leaders in the West seek to maintain their authority and influence by not ceding either to secular or religiously-neutral institutions.

As a consequence, there are genuine tensions felt by Australian Muslims vis a vis Australian [state/official] law and Islamic [religious/unofficial] law however, it is important to keep in mind that similar tensions between state law and religious law are being experienced by Muslims across the globe, including in Muslim majority nations. As Islamic law is adapted to meet contemporary exigencies different forms of pluralism have evolved. Governments in Muslim majority nations have encroached on the once unfettered powers of the religious scholars (*‘ulama’*) and legislated codes have been enacted to replace or to supplement the classic *fiqh*⁵ on key aspects of Muslim family and inheritance law. Judicialisation of religious authority has occurred to require judicial oversight on aspects of family law which once were purely extrajudicial. Polygynous marriages, for example, may now require court oversight and approval; judges can assume the role of a *wali* (‘male legal guardian usually the father’); and official government registration of Islamic marriage and divorce has supplanted mosque and personal records. In some Muslim nations, notably in Turkey, there has been complete abrogation of Islamic family law to a civil western-inspired ‘official’ system, but as in the West customary Islamic practices still operate in the unofficial realm. Bureaucratisation has resulted in government standardised marriage contracts rather than the individually negotiated contracts of the past. The subtleties of *fiqh* have been replaced by certainty of codification as Muslim governments also strive to safeguard vulnerable citizens, to reflect conceptual

his religious beliefs to divorce in a non-Islamic forum. Note also, that in cases before the Family Court, the names of cases are pseudonyms approved by the court pursuant to *Family Law Act 1975* (Cth) s 121(9)(g).

3 Sebastian Poulter, ‘The Claim to a Separate Islamic System of Personal Law for British Muslims’ in Chibli Mallat and Jane Connors (eds), *Islamic Family Law* (Graham and Trotman, 1990) 147.

4 Practices such as prostitution, alcohol and drug use, pornography, child abuse, marital breakdown, extramarital affairs, illegitimate children, same-sex relationships, and neglect of the elderly. See: Ann Black and Kerrie Sadiq, ‘Good and bad Sharia: Australia’s Mixed Response to Islamic Law’ (2011) 34 *University of New South Wales Law Journal* 383, 396.

5 *Fiqh* is essentially Islamic jurisprudence. It forms part of the shari’a (also transliterated as sharia, shariah, shariat, syariah) — the divinely ordained law embodied in the Quran (actual word of God as revealed to the Prophet Mohammad), Sunnah (practices and traditions of the Prophet) supplemented by *fiqh* as the scholarship of jurists based on the first two sources. The *fiqh* is the means by which jurists can extend principles contained in the Quran and Sunnah to deal with new situations. There is a range of approved juristic techniques including *ijma* (consensus of scholars) and *qiyas* (analogical deduction and application) with *maslaha* (in the public interest) playing an increasing role. For an overview of shari’a from different perspectives see: H Patrick Glenn, *Legal Traditions of the World* (Oxford University Press, 2nd ed, 2004) 170–221; also generally, Wael B Hallaq, *Introduction to Islamic Law* (Cambridge University Press, 2009).

shifts in gender and societal roles, and to conform to international norms. An-Na'im argues that this has meant Islamic family law has been transformed.⁶

Menski finds it natural that Muslim societies will 'inevitably negotiate and create different types of Islamic law', whether this occurs officially or unofficially, or happens within or outside a Muslim state.⁷ The laws of Muslim societies will always be 'culture-specific' because, he argues, they are 'lived systems managed and manipulated by real people'.⁸ This too is true in the Australian cultural context and it is the adaptations made by Muslims in Australia⁹ that are the focus of this article. It aims to explore the lived and managed experience of Australian Muslims through three key issues of concern: first, *mahr* ('dower') in an Islamic marriage contract; second, unregistered marriages, specifically, Islamic marriages performed by an Imam which are not registered as marriages in Australian law; and third, the stalemate situation when a Muslim woman is not granted a religious divorce but has an Australian divorce, known as the 'limping marriage'.¹⁰

II Methodology

To analyse how Muslim couples can, in Menski's words, 'manage and manipulate' outcomes in the Australian legal context this article commences with a case study on a dispute over an Islamic marriage contract. *Mohamad v Mohamad* shows how the Court used Australian contract law to determine whether a wife was entitled to her *mahr*, the impact of non-registration of marriage and the role to be played by Islamic requirements for 'separation and divorce'. It is informative in highlighting how a Muslim wife used Australian law and procedure to obtain what she believed to be a more optimal outcome than she would obtain in an Islamic forum. Although hers was an Islamic marriage contract and the parties had not married under Australian law, the case was decided by application of Australian law.

This case study is supplemented with a comparative law approach to *mahr*, non-registration, and limping marriages to demonstrate how concerns about these are not unique to the Western context, but arise also in Muslim nations through the interplay between official and unofficial law. It is useful to show that some current issues raised as a clash between Australian and Islamic law are also played out in Muslim nations when there are differences between the

6 Abdullahi A An-Na'im (ed), *Islamic Family Law in a Changing World* (Zed Books, 2002) 18.

7 Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge University Press, 2006) 353.

8 Ibid.

9 The precise numbers of Muslims is not known because many respondents do not declare their religious status for census purposes. At the last census in 2011 the Australian Bureau of Statistics stated the number as 476 300 making Muslims the third largest religious group in Australia, after Christians and Buddhists. However it is believed this is an under-representation and that there has been considerable growth in the Muslim demographic over the last 5 years. See <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features902012-2013>>.

10 The 'limping marriage', is also a relevant matter for Hassidic Jews, Catholics, some Orthodox Christians and other faith communities where religious law has its own distinct requirements for marriage and divorce.

authority of the state and religious authority, as is seen occurring in Indonesia in the Ahok case. Similar clashes occur when traditional views are confronted by reformist interpretations or when patriarchal positions are challenged by modernist or feminist perspectives. This is evident in Malaysia where the reformist, feminist Sisters-in-Islam reinterprets Islamic family precepts to propose reforms to divorce, maintenance, *nushuz* ('disobedience of a wife') in order to reduce gender bias¹¹ which directly challenge the conservative interpretation of the Malaysian *ulama* ('senior Islamic scholars'). An-Na'im writes that like 'all aspects of the legal system of each country, family law is really based on the political will of the state, and not on the will of God'.¹² The result is different types of Islamic law have, and are still being created not only in the West, but in Muslim countries. Considering interpretations and strategies Muslim nations have engaged to manage some of the same issues facing Muslims in Australia is just as valuable as turning to other western countries for ideas and solutions.

The third component and reference point for the paper comes from a series of in-depth semi-structured qualitative interviews conducted and recorded with 20 Muslim women in Queensland regarding their marriage contracts.¹³ The interviews are not meant to be demographically representative of Muslim women in Australia as each self-selected to be interviewed as part of this project, and so cannot be considered representative of Muslim women of all ages, ethnicities, school of law, and religiosity across each states and territory of Australia. However, the interviews were useful to show that adaptation is not only possible, but is occurring. It demonstrates Menski's notion of 'lived system managed and manipulated by real people'¹⁴ in a non-Muslim state. All interviewees were tertiary-educated women, married in an Islamic *nikkah* ('marriage ceremony') in the last 10 years, and reflect the demographic pattern in the state of Queensland — mostly Sunni, Hanafi school, of South-Asian ethnicity (Pakistani, Afghani and Indian), although several came to Queensland via Fiji and Zimbabwe. There were two Shafii school adherents whose ethnicity was Southeast Asian, one Shia originally from Iran, and one Australian convert to Islam. Four of the women provided the interviewers with a copy of their own marriage contract. The interviews showed that for these, and by inference, for some other Muslim women, Islam, its laws and practices for family life are retained but are being adapted for life in the Australia context. Islamic marriage encompasses the guidance laid down in the Quran, Sunnah and *fiqh* for marriage validity but also reflects the customs

11 Zainah Anwar, 'Advocacy for Reform in Islamic Family Law' in Asifa Quraishi and Frank E Vogel (eds), *The Islamic Marriage Contract* (Harvard University Press, 2008) 280.

12 Abdullahi Ahmed An-Na'im, 'Shari'a and Islamic Family Law: Transition and Transformation' (2006) 23 *Afhad Journal* 2, 30.

13 Semi-structured interviews were held during 2012–13 by Kawthar Girach and the author as part of a research project on Islamic marriage contracts. The recordings were transcribed and analysed. The records were depersonalised. The aim was to gain insight into how Australian Muslims view their marriage contract and how and by whom any conditions and *mahr* are negotiated. Given that a marriage takes place in a different legal and social milieu from in a Muslim nation it is relevant to learn where this Australian dimension is reflected, or not, in *nikkah* contracted in Australia as part of acculturation. The funding was from Contestable Research Funds of the TC Beirne School of Law, The University of Queensland.

14 Menski, above n 7.

of the people at a given place and time. For this reason, the Islamic marriage contract is ‘fruitful’ for exploring observable contexts of practice.¹⁵

Not considered in this paper are the many cases brought by Muslim couples to the Family Court which involve application of overseas (foreign) law recognised under the rules of private international law. This is a way by which some Islamic legal concepts are recognised by the legal system including polygamous marriage, fault and unilateral divorces. Instead this paper’s focus is on Muslims who marry in Australia according to Islamic law and then seek relief in either the Australian courts or in an unofficial Islamic forum.

III Case study: *Mohamed v Mohamed*

The case of *Mohamed v Mohamed* offers insight into how Australian law can be used to interpret an Islamic marriage contract, in particular the *mahr*, without applying the Islamic family law principles. An outline of *Mohamed v Mohamed* is given at the outset to provide the relevant facts and court history before discussing the legal matters decided by the judges hearing the case.¹⁶

In 2004, Mostafa Mohamed (husband) and Neima Mohamed (wife) were married in accordance with the tenets of Islamic law. The marriage contract said it was a ‘relationship blessed by Islamic shari’a’, but was also a ‘relationship within the meaning of the *Property Relationships Act 1984* (NSW)’.¹⁷ A clause in the contract stated they intended to marry at a future date under Australian law. The *mahr* [set out as ‘*moackar sadak* also known as dowry’]¹⁸ was A\$50 000, however, it was qualified by the provision that if the husband ‘initiated separation and/or divorce’ he would pay her *moackar sadak* of A\$50 000 but if she initiated divorce, or there was mutual agreement, no money was to be paid to the wife. It would remain part of his assets. The contract provided that each would keep their own other assets if the marriage was to end.¹⁹

The couple did not marry under Australian law. Three years later, the marriage was in trouble. The wife claimed that in April 2007 she left the marital home after being told to do so by her husband and his daughter (from an earlier marriage). This, she argued, was an initiation of separation on his part. Despite several attempts at reconciliation, in September 2008, during another argument, the wife claimed that Mostafa divorced her by saying: ‘You are divorced.’ The husband disputed that claim [namely that he had pronounced divorce — *talaq*]²⁰ and argued it was his wife who initiated the separation when she took his key and left the home in 2007. The wife brought

15 Quraishi and Vogel, above n 11, 1.

16 *Mohamed v Mohamed* commenced in the NSW Local Court (Local Court, Blacktown, 10/09/2010: 2009/380) went on appeal to the Supreme Court of New South Wales (2012) 47 Fam LR 683, then to the Court of Appeal [2013] NSWCA 65 (27 March 2013) and finally to the High Court of Australia as a special leave application [2014] HCASL 56 (12 March 2014).

17 This Act provides for the adjustment of property and maintenance in de facto and other domestic relationships.

18 The wording of cl 11 of the Mohameds’ marriage contract.

19 The *Property Relationships Act 1984* (NSW) and also the *Family Law Act 1975* (Cth) were specified in the contract as applicable law.

20 See below n 32.

the case to court suing her husband for the A\$50 000 *mahr* she claimed was owed her under their marriage contract. The Local Court referred the claim to arbitration²¹ but it returned to the Local Court for determination of two factual issues: who initiated the separation and when did this separation or divorce occur?²²

It is not mentioned in any of the judgments whether the couple tried to have the matter resolved informally through an unofficial Islamic tribunal or by an Imam. This is likely to have occurred as the Supreme Court judgment does refer to attempts at reconciliation, which is considered desirable, even mandatory, under Islamic law. It can be inferred from a statement the wife made in an interview after the judgment in the NSW Supreme Court that she felt Australian law offered her greater protection, stating it was important for 'Muslim women to fight for their rights'.²³ No expert evidence on Islamic law was presented in any of the court hearings, although the judge in the NSW Supreme Court did refer to academic writings on some of the issues raised.²⁴

When in 2010 the case commenced in the NSW Local Court, the husband did not challenge the jurisdiction of the Local Court, nor sought leave to bring in shari'a expert evidence. Magistrate Trad found, as a matter of fact, that the couple separated in April 2007, at the initiation of the husband. She entered a judgment in the wife's favour for the A\$50 000 and her husband was ordered to also pay her costs.²⁵ The husband appealed to the NSW Supreme Court on several grounds. One of those grounds was that the operation of the *mahr* clause meant the contract should be unenforceable on public policy grounds for two reasons. First, it imposed a penalty on him which he argued amounted to an agreement for servitude. Second, it was against public policy for a court to determine which party had left the relationship. Both will be considered in light of the judgment and also the role of *mahr* in Islamic family law generally.

IV *Mahr*

At the heart of Islamic marriage is the contract ('*nikkah*') based on offer and acceptance ('*ijab and qabul*') made by two persons with the legal capacity to enter into such a contract (this may, or may not include the prospective spouses),²⁶ which is witnessed, with a dower ('*mahr*') specified,²⁷ together with contractual conditions, a breach of which by one party terminates the contract and thus the marriage. It also requires that there are no legal impediments to the marriage (kinship, religious, temporary or permanent).²⁸ The contract is both sacred and functionary. Sacred, as the Prophet

21 *Civil Procedure Act 2005* (NSW) s 38.

22 *Mohamed v Mohamed* (2012) 47 Fam LR 683, 686 [6] ('*Mohamed's Case*').

23 Nicola Berkovic, 'NSW court tells man to pay Islamic divorce dowry', *The Australian*, 1 August 2012.

24 *Mohamed's Case* (2012) 47 Fam LR 683, 690 [28], 690 [31] referring to Black and Sadiq, above n 4.

25 *Mohamed's Case* (2012) 47 Fam LR 683, 686 [9].

26 Kecia Ali, 'Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines' in Quraishi and Vogel, above n 11, 13.

27 Quran: Sura An-Nisa: 4 in Abdullah Yusuf Ali, *The Qur'an: Text, Translation and Commentary* (Tahrike Tarsile Quran, 2005).

28 Permanent impediments include relationships of consanguinity, affinity and fostering. Temporary impediments arise when the relationship is between a Muslim and a non-Muslim

Mohammad is reported as saying that those who marry fulfil half their religion,²⁹ and functionary, as an Islamic marriage is first and foremost an agreement in the form of a legally binding contract.³⁰

The *mahr* ('dower') also known as *moackar sadak*, *faridah* or *mas kahwin*, is variously described as a marriage gift, portion, or a token of friendship, and may be either property, a benefit, or a financial entitlement that accrues to the wife for her exclusive use. Once given, a wife can also voluntarily remit the *mahr* back to her husband as is the custom especially in some parts of South Asia. *Mahr* can be promptly settled (in which case it is paid at the time of the marriage), paid in instalments or deferred, which is when it becomes an obligation or debt a husband owes to his wife if the marriage terminates by his death³¹ or by his pronouncement to divorce ('*talaq*').³² Neima Mohamed claimed the (deferred) *mahr* accrued to her either in 2007 when she was told to leave the home, or alternatively in 2008 when her husband said 'you are divorced'.

Disputes over *mahr* in cases like this one arise because although it is a gift to a wife, she may lose

her entitlement if she is the one initiating divorce. In traditional interpretations, unless she can prove 'fault' on her husband's part which an Islamic Court accepts as a legitimate ground warranting an annulment of the marriage ('*faskh*'),³³ her main remaining option is the process of renunciation or redemption ('*khul*', *khula*, or *cerai tebus talaq*)³⁴ in which the wife requests divorce and in return provides her husband with compensation. This is usually the return of part or all of her *mahr*. It is possible too for greater compensation ('*awaz*') to be ordered by the court. If her *mahr* was deferred, she foregoes her rights to it, along with rights to maintenance during her period of *iddah*. There is debate in Islamic jurisprudence on whether the

(with some exceptions for Muslim men); existing marriage of a woman; and marriage during time of purity for the *haji* pilgrimage. Temporary impediments can be removed by conversion, divorce or different timing. See Ann Black, Hossein Esmaceli and Nadirsyah Hosen, *Modern Perspectives on Islamic Law* (Edward Elgars, 2013) 112–14.

29 Jami at-Tirmidhi, vol 5, Book 44, Hadith 3096.

30 Definitions of marriage in Muslim nations always highlight its contractual nature. See the *Personal Status Law 1984* (Algeria, Law No 84) which defines marriage as a 'contract that takes place between a man and a woman according to Islamic law'. Under Kuwaiti law marriage is a 'contract between a man and a woman who is lawfully permitted to him, the aim of which is cohabitation, chastity and national strength': *Personal Status 1984* (Kuwait, Law No 51).

31 Any remaining *mahr* is in addition to her share of her husband's estate under the Islamic distribution.

32 A husband-initiated divorce gives a husband the power to divorce extrajudicially through unilateral pronouncement — *talaq* — which once pronounced, requires him to wait 3 months (the wife's *iddah* period) in order for the divorce to be final. This is based on the Quran, Sûrah Baqarah 2:228. Once final, the husband can remarry [unless his wife is pregnant, in which case the divorce becomes final only after the birth of the child]. If the couple reconcile during the 3-month waiting period their marriage continues. During the 3-month period the husband provides for his wife and children. The decision to reconcile ('*ruju*') is for the husband and does not require the wife's consent, which means that during the *ruju* period she cannot refuse to continue with the marriage.

33 Discussed later at Part VI.

34 Quran, Sûrah Baqarah 2:229 is the basis for this form of divorce. Discussed later at Part VI.

husband must agree to this and whether a lack of consent negates *khul'*.³⁵ Reforms of this will be discussed later in Part VI, however over centuries the more accepted position was that *khul'* was contingent upon the husband's consent.³⁶

This is why the marriage contract in the *Mohameds' Case* reflected the Islamic principle of different outcome for *mahr* depending on who in fact initiated the divorce.

A Mahr in Australian courts

Australian courts do not delve into Islamic law grounds for divorce, nor will they apply any of the Islamic legal tests for determining who should obtain, or retain, the *mahr*. Accordingly, the result may be different from what would have been obtained in an Islamic forum, showing that both legal avenues can be managed and manipulated for desired outcomes.

In the *Mohamed's Case*, the marriage contract was viewed as any other contract, and its terms, including the *mahr* clause, were construed by application of Australian contract law. This meant that the Supreme Court (on appeal) looked not to *fiqh* but at recent case law from Australia on agreements where one party had raised similar public policy concerns. Harrison ASJ concluded that where the parties had full capacity, the law should give full effect to the enforceability of such contracts,³⁷ and looked to English decisions such as *Radmacher v Granatino*³⁸ where the Court found obsolete any notion that agreements about the future separation of parties to a marriage was contrary to public policy.³⁹ There were numerous authorities from North American courts cited as well. Her Honour found favour with the view expressed by Moen J of the Alberta Court of Queen's Bench in *Nasin v Nasin*⁴⁰ that *mahr* agreements should be enforced as long as they 'complied with the formalities of the applicable Canadian legislation' and so a religious component in the contract did not make a case 'non-justiciable'.⁴¹ In *Kaddoura v Hammoud*⁴² the contrary view that a court should not determine the rights and obligations of the parties under a *mahr* agreement because *mahr* is a 'religious obligation and should not be viewed as an obligation that is justiciable in the civil courts of Ontario' was rejected. The contract in that case differed as it was written in Arabic and it was not clear if the parties understood what their obligations were under the contract.⁴³

The husband in *Mohamed's Case* also argued that there were public policy objections to a court of law determining which party left the relationship in

35 Jamila Hussain, *Islam: Its law and Society* (Federation Press, 2011) 125–6.

36 *Ibid* 126.

37 *Mohamed's Case* (2012) 47 Fam LR 683, 689 [26], citing Hayne J in *Cattanack v Melchior* (2003) 215 CLR 1, 86 [235].

38 [2011] 1 AC 534.

39 *Mohamed's Case* (2012) 47 Fam LR 683, 690 [28].

40 (2008) 291 DLR (4th) 432.

41 *Mohamed's Case* (2012) 47 Fam LR 683, 690 [39] and 690 [28], also citing *Braker v Marcovitz* (2007) 3 SCR 607 at 12–13.

42 (1998) 168 DLR (4th) 503.

43 *Mohamed's Case* (2012) 47 Fam LR 683, 691 [37]. In *Kaddoura v Hammoud*, *ibid*, the Court held that they would be entering the 'religious thicket': at [25]–[26].

order to determine who was entitled to the *mahr*.⁴⁴ This was rejected by her Honour, noting that courts regularly have to ‘determine sensitive factual matters’.⁴⁵ She upheld the Magistrate’s finding of fact, that the date of separation was April 2007. In the husband’s further appeal to the NSW Court of Appeal,⁴⁶ Barrett JA (with Ward JA concurring) rejected the argument a contract of this nature requires courts to make findings on the ‘subjective morality of the parties, instead the court held it was premised on well-defined and determinable events.’⁴⁷ Whether it is the husband or wife who ‘initiates separation’ and when it occurs are ‘criteria of fact. No moral judgment is involved’.⁴⁸

The husband further argued [ground four] that the effect of the *mahr* clause was to compel him to remain in the marriage which amounted to a penalty clause.⁴⁹ If so, the *mahr* provision should be found void for illegality. Harrison AsJ said that as the agreement covered all of the couple’s property it could not be seen as imposing a penalty on either party to the marriage. After further canvassing case law from Canada and the United Kingdom, her Honour rejected that such an arrangement was *contra bonos mores*⁵⁰ and held the Islamic marriage contract was not a contract for servitude. She found as a matter of law that the *mahr* clause did not invalidate the contract. Although there had been attempts at reconciliation, these ‘were not relevant’ as the couple had not reconciled.⁵¹ The appeal was dismissed.

B *Mahr*: Contemporary adaptations in Australia

The Muslim diaspora in Australia tend to gravitate to the practice emanating from their ‘country of origin’⁵² which, given that Muslims in Australia come from over 90 different nations, has meant there has been wide divergence in the content and timing for *mahr* in Australian marriage contracts.⁵³ Inter-marriage between Muslims from different ethnicities has led to compromise and new arrangements. For most, *mahr* remains an essential ingredient for the validity of their marriage.⁵⁴ Nowadays contracts tend to be in the standard form used by a particular mosque and the couple insert their relevant details. However, not all are. The Muslim convert interviewed for the marriage contract project, discussed below, had drafted her own contract. This she had approved by the Sheikh who conducted the *nikkah*, and the contract was agreed to and signed by her husband, and also witnessed.

Aware that in Muslim countries the *mahr* provision in a marriage contract

44 *Mohamed v Mohamed* (2012) 47 Fam LR 683, 692 [25].

45 *Ibid* 693 [51].

46 *Mohamed’s Case* [2013] NSWCA 65 (27 March 2013).

47 *Ibid* [11].

48 *Ibid*.

49 *Mohamed’s Case* (2012) 47 Fam LR 683, 688–9 [25].

50 *Ibid* 692 [42].

51 *Ibid* 702 [107].

52 Malcolm Voyce and Adam Possamai, ‘Legal Pluralism, Family Personal Laws, and the Rejection of Shari’a in Australia: A case of Multiple or “Clashing” Modernities?’ (2011) 7 *Democracy and Security* 338, 342.

53 Ghena Krayem, *Islamic Family Law in Australia: To Recognise or Not to Recognise* (Melbourne University Press, 2014) 143–4.

54 *Ibid* 145.

has both symbolic meaning and legal consequences, it seemed relevant to see if it was viewed differently in Australia, given Australian family law provisions for property and financial settlements when a marriage ends. The 20 women interviewed in the marriage contract project⁵⁵ were asked, how and by whom was the *mahr* decided, what factors were taken into account in that decision, and the significance it had, and has, for them as a term of their marriage contract. It was interesting that in some way each had contextualised their *mahr* for the local Australian setting. The interviews revealed that *mahr* was no longer seen as a way to prevent economic hardship should the marriage end, but rather had assumed symbolic significance. *Mahr* was important, not for financial security, but as a symbol of the husband's commitment to the marriage reflecting his willingness to love and care for her. Finding the right man, a good Muslim, was, they argued more important than 'demanding' a large *mahr*. Gifts of a Quran, to be taken on the Hajj, items of jewellery [in particular gold bangles], flowers, silver candlesticks, and sums of money ranging from \$50 to \$3000 were the items specified in their contracts. The dominant theme was that *mahr* was no longer needed to guarantee a wife's financial security should the marriage end. Two interviewees said they would return to live with their parents should the marriage end, but most did stress the desirability of financial equality in the marriage and joint contribution to the running of the household. Several expressed negative views about wives who had negotiated for substantial sums of money or for decadent forms of *mahr*,⁵⁶ such as overseas first class travel. Most seemed to know of stories where wives had negotiated seemingly extravagant sums of money or frivolous items; all saw it as either greedy, mercenary or unnecessary. It was pointed out that 'one should always ask for less as Allah will give you more'.

This adaptation of *mahr* is instructive. Muslims enculturated in Australia are shaping their Islamic marriage contracts to reflect some quintessential Australian features while not diminishing Islamic principles and tradition. It is implicit in their reasoning that divorced wives in Australia today have many choices: employment, social security, and property settlements under applicable Australian legislation, which has meant parents and/or the bride no longer needs to negotiate the *mahr* as they did in the past, or need to do in some Muslim countries. Such adaptations for the Australian context are not contrary to Islamic law. The Quran did not lay down a formula for determining *mahr*, thereby considerable latitude is possible. There is a benchmark derived from what the Prophet set down for his daughter Fatima's *mahr*, known as *mahr el Fatima*, which by many accounts was quite a modest sum ten or up to 400 dirhims, although there is difference of opinion on maximum and minimum levels for *mahr*.⁵⁷

In Australia, as elsewhere, disputes involving *mahr* show it can be contentious, as the *Mohameds' case* demonstrates. It is more likely to be so

55 Above n 13.

56 Krayem notes similar negative views, above n 53, 146.

57 Online fatwas sites deal regularly with this question. See, also Rubya Mehdi, 'Danish Law and the Practice of *mahr* among Muslim Pakistanis in Denmark' (2003) 31 *International Journal of the Sociology of Law* 115, 124. In Australia, see *ibid*.

when the married couple have been in Australia for only a few years or where the marriage was contracted in an overseas country and the monetary value of the *mahr* is significant. It is said the more valuable the *mahr* the more contentious the dispute. In the absence of a state shari'a court, whether the *mahr* should rightly be given to the wife or retained by the husband post-divorce can be either resolved by a local Islamic jurist or it may end up in Australian courts. Questions of *mahr* arise too in property settlements for divorcing Muslim couples. The family law courts do not treat *mahr* as a debt owed to the wife but it is factored into the assets of the marriage. In *Hashim v Hashim*⁵⁸ the Court accepted that the *mahr* in the marriage contract was A\$70 000, with A\$25 000 paid promptly at the time of the wedding and an additional sum of A\$45 000 deferred. While the wife disputed ever receiving the A\$25 000, the Court found this was inconsistent as the details of the contract had her signature.⁵⁹ The remaining portion of the *mahr* however was not dealt with as a separate item accruing to the wife but was seen as part of the overall available asset pool including home, cars, superannuation, and bank accounts, all of which was to be divided under the formula of a just and equitable division of the matrimonial assets. The *mahr* as a term of the marriage contract had no independent standing.

V Registration of marriage

In Islamic jurisprudence marriage does not require registration or notarisation. Registration is irrelevant to marriage validity. Yet, in recent times many Muslim nations have enacted legislation requiring registration of all marriages, including Islamic ones.⁶⁰ Registration is seen as desirable because the formal documentation of marriage protects the inheritance and maintenance rights of wives and children. The issue of how to deal with unregistered marriage remains controversial. Traditional Islamic jurists adopt the stance that if the key ingredients for an Islamic marriage are present, then the marriage is valid and the state should not penalise or discrimination against such unions.

A Registration or non-registration of Islamic marriage in Australia

In Australia, an Islamic marriage conducted by an authorised Islamic marriage celebrant can also be officially registered if there is compliance with the requirements of *Marriage Act 1961* (Cth). An Islamic marriage can therefore be valid under both sets of laws and accordingly registered with the relevant state government office for births, deaths and marriages. This inclusive approach provides a uniform civil framework while recognising the validity of unique and varied cultural and religious ceremonies.

58 (2012) FamCA 135 (19 March 2012). In this case the Court also had to make parenting orders.

59 The Court noted however that the financial records were not conclusive and there were deficiencies in the evidence of both parties.

60 *Muslim Marriages and Divorces Registration Act 1974* (Bangladesh); *Administration of Muslim Law Act 1966* (Singapore, 2009 rev ed); *Personal Status Law of Algeria 1984* (Algeria, Law 84); and *Civil Code 1926* (Turkey, 2002 rev 2002).

In the *Mohamed's Case* the marriage contract stated they intended to marry under Australian law. They did not. The marriage remained a purely Islamic one, but would be accepted as a de facto marriage under Australian law.⁶¹ One ground of the husband's appeal in the Supreme Court was that marriage under Australian law was a condition precedent for validity of their marriage contract and as they did not marry the contract was unenforceable. This was rejected by Harrison AsJ for several reasons⁶² including that the contract did not state an Australian marriage was a condition precedent; the wording was only that the parties 'intend' to marry and it was never certain they would; the date of execution and commencement was when both were not married under Australian law; it referred to the *Property Relationships Act 1984* (NSW) which applies to de facto marriages in New South Wales; and as the terms 'separation' and 'divorce' were both used this indicated the contract was meant to cover both notions of separation in a de facto relationship and divorce in the case of a marital one.⁶³ As the concepts of 'divorce' and 'separation' operate under Australian law, the court concluded that the jurisdiction of the court was not ousted because the couple were not married under Australian law.

Given their stated intention to marry under Australian law, it is not clear why Neima and Mostafa Mohamed did not have their Islamic marriage also registered under Australian law. There may have been an obstacle to immediate registration, perhaps going to the one month notice of intention to marry⁶⁴ as in the case of *Wold v Kleppier*,⁶⁵ or the Imam or celebrant was not authorised under the *Marriage Act 1961* (Cth) as in the case of *Oltman & Harper [No 2]*,⁶⁶ or there was a legal impediment, for example if Mostafa was not divorced from his first wife. Other legal impediments which mitigate against registration include when one of the parties is under the lawful age for marriage, which in Australia is 18 years,⁶⁷ or consent is dubious and could amount to what are referred to as 'forced' or 'servile' marriages.⁶⁸ Apart from legal reasons, another factor that account for non-registration includes an overt rejection of the secular in favour of an Islamic union ('*nikkah*') with the latter being seen as the only necessary or legitimate foundation for a marriage.

61 *Family Law Act 1974* (Cth) s 4AA.

62 *Mohamed's Case* (2012) 47 Fam LR 683, 700–1 [92]–[96].

63 *Ibid.*

64 *Marriage Act 1961* (Cth) s 42.

65 In [2009] FamCA 178, the Imam gave evidence that Islamic marriages are 'very, very quick to perform' as the 1-month notice period of intention to marry is not required, nor are birth certificates and other forms of identity required.

66 [2009] FamCA 1360 (3 September 2009) ('*Oltman*').

67 *Marriage Act 1961* (Cth) s 1: 'Subject to section 12, a person is of marriageable age if the person has attained the age of 18 years.' Section 12 allows a person who has attained the age of 16 years but has not attained the age of 18 years to apply to a judge or magistrate for an order authorising him or her to marry a particular person of marriageable age. The judge will require the circumstances of the case to be so exceptional and unusual as to justify the making of the order. An underage marriage is unlawful and also an offence under s 95 of the *Marriage Act*. It is a defence to a prosecution under s 95 for the defendant to prove that he or she believed on reasonable grounds that the person with whom he or she went through the form or ceremony of marriage was of marriageable age, or had previously been married, or had the consent of the court to do so in accordance with the Act.

68 *Madley & Madley* [2011] FMCAfam 1007 (1 April 2011).

Non-registration can also happen by oversight or miscommunication. Cases have come to the Australian courts where one or both of the spouses believed their marriage would be registered and the Imam failed to do so, or could not as he was not an authorised celebrant, or there was an erroneous assumption that an Islamic marriage is automatically a state marriage. In *Oltman*⁶⁹ the wife, a non-English speaking immigrant from Somalia told the court that: ‘When we married I trusted the husband had organised our marriage so that it would be recognised in the eyes of Allah and in Australian society’,⁷⁰ however the sheikh was not authorised as a celebrant, nor had knowledge of Australian law, facts known to the husband but not the wife. The Court invoked s 48 of the *Marriage Act 1961* (Cth) which allows for a marriage to be valid despite procedural noncompliance.

B Registration and non-registration in Muslim countries

As noted earlier, registration of all marriages, Islamic or otherwise, is now required in many Muslim nations. Legal and social consequences flow from non-registration. For example, Egypt requires marriage registration, and unregistered marriages are described as customary (*urfi*). *Urfi* marriages have legal implications as non-registration means the shari’a courts lack jurisdiction to hear claims for either maintenance or *mahr* enforcement.⁷¹ The *urfi* union is considered religiously valid but is outside state law and its protections. However, in Egypt, Fawzy writes that *urfi* is used sometimes as a strategy to circumvent Egyptian state family law for the benefit of the wife. Without registration she may be able to keep her entitlement to a former husband’s pension, or use it to have her son exempted from national service.⁷² Turkey’s *Civil Code 1926* (2002 rev) requires a civil ceremony for a valid marriage. Marriages performed by Imams in accordance with traditional Turkish marriage ceremonies are not recognised by law. A religious marriage (*imam nikkah*) should only be performed after the couple are already officially married.⁷³ However, religious marriages without a prior civil registration ceremony continue, particularly in rural areas. To deal with this, the Turkish Government has passed a series of amnesties whereby the legitimacy of these *urfi* unions is recognised.⁷⁴

Recently, the Indonesian Government attempted to enact legislation⁷⁵ to criminalise ‘unregistered marriages’ (including unofficial polygamous marriages) for Muslims, by making it a felony with a 3-year imprisonment

69 [2010] FamCA 1360 (3 September 2009).

70 Ibid [27].

71 Lynn Welchmann (ed), *Women’s Rights and Islamic Family Law: Perspectives on Reform* (Zed Books, 2004) 9.

72 Essam Fawzy, ‘Personal Status Laws in Egypt: An Historical Overview’ in *ibid* 42.

73 *Turkish Civil Code (1926)* art 110. Otherwise, the couple is in breach of the *Turkish Penal Code (2004)* art 230. Furthermore, if the religious official conducts the religious ceremony without documentary proof that the civil ceremony has already been completed in accordance with the law, he too is committing an offence that is also punishable under the *Penal Code*.

74 An-Na’im, above n 6, 32.

75 Bill on Muslim Marriage Law was presented to Parliament in 2010.

term. Non-Muslims were already subject to a fine for non-registration.⁷⁶ While many Muslim women's groups supported the criminalisation of non-registration seeing it as a way to address negative social, psychological and legal consequences for women and children in unregistered unions⁷⁷ others strongly opposed it. It was contentious and the bill was opposed by two of the major Muslim organisations, Muhammadiyah and Nahdlatul Ulama, on the basis that registration is not an Islamic law requirement and it is sufficient for the *fiqh* requirements to be fulfilled. The result was that the bill did not become law and registration of Muslim marriages is not mandatory.⁷⁸

C Australian adaptations for registration

Seventeen of the 20 women interviewed⁷⁹ in Queensland as part of the marriage contract project had had their marriage registered as an Australian [civil] marriage. They considered registration to be desirable. Of the three who did not, two said that 'they would do it one day' with just one indicating there was no point really as there weren't any advantages arising from Australian registration. Given the small numbers interviewed, it is impossible to conclude whether their preference for dual registration is representative of Muslims generally in Australia. Data from England shows that less than half the women domiciled in England had registered their marriage.⁸⁰ As de facto entitlements in Australia mimic what accrue to formal marriages there are few legal or social consequences from not having a registered marriage.

VI Divorce stalemate: When wife is refused an Islamic divorce

The Quran permits divorce but divorce is seen as undesirable. The Prophet said nothing is more hated in the sight of Allah.⁸¹ The Quran is clear that couples need not stay in an unhappy or destructive marriage, but instead should part 'with kindness'.⁸² Reconciliation and mediation⁸³ are important prior to any separation or divorce. A husband by tradition had a right to

⁷⁶ *Law No 23 of 2006 on Civil Registration* [Indonesia].

⁷⁷ Eg, wives in unregistered marriages cannot claim their entitlements to maintenance ('*nafkah*') during the marriage, to marital property after divorce, and to inheritance. There may also be social stigma and their children are in legal terms, seen as illegitimate.

⁷⁸ Stijn Cornelis van Huis and Theresia Dyah Wirastri, 'Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws' (2012) 13 *Australian Journal of Asian Law* 2012, 1.

⁷⁹ Interviews were recorded and the questions followed a semi-structured format. See above n 13.

⁸⁰ Samia Bano, 'Muslim Family Justice and Human Rights: The Experience of British Muslim Women' (2007) 2 *Journal of Comparative Law* 1, 14. Some reports indicate fewer than 80 per cent of Muslim marriages are currently registered. See Aina Khan, finding in Alam, 'Unregistered Marriages: A Muslim Concern', 15 September 2015 <http://www.duncanlewis.co.uk/islamicLaw_news/Unregistered_Marriages_A_Muslim_Concern__%2821_September_2015%29.html>.

⁸¹ Abu Dawud, Hadith 1863.

⁸² Quran, Sūra Baqarah, 2:229.

⁸³ Quran, Sūra Nisáa 4:128 and 4:35.

pronounce divorce by *talaq*, providing the requisite conditions were met. The wife was entitled to her *mahr* and also maintenance for her *iddah*,⁸⁴ usually of 3 months. No reason needed to be given nor did the husband require court endorsement. A wife, on the other hand, has always needed a judicial decision to terminate her marriage and Islamic jurists developed a range of procedures for a wife to lawfully do this. The simplest way was, and is, for a wife to ask or persuade her husband to pronounce *talaq* for them both, or to reach a mutual agreement (*'mubarat'*) to end the marriage, with neither at fault, or both equally at fault. In *mubarat* the feeling is mutual and the amount of compensation is agreed upon, but will not usually exceed the value of the *mahr*.⁸⁵

In all other cases, a Muslim wife will need a judicial pronouncement from an Islamic court, or in the Australian context a determination by a local Islamic scholar. If she can prove fault on the husband's part, she can seek the equivalent of an annulment (*'faskh'*, also *'taliq'* or *'tafriq'*). Grounds vary according to the school of law and country, but generally include proven desertion, impotence, insanity [extended recently to a range of communicable diseases],⁸⁶ failure to consummate the marriage, detention, imprisonment, failure to support his wife, and in the Maliki school and more recently in other schools, abuse or harm (*'dharar'*) both physical and emotional.⁸⁷ If proven, she is no longer married and retains her *mahr*. Otherwise, an unhappy wife can use the process of renunciation or redemption (*khul'*, *khula*, or *cerai tebus talaq*)⁸⁸ in which she requests divorce and in return provides her husband with compensation, which is usually the return of part or all of her *mahr*. This was discussed earlier as it underpins the Mohameds' contract.

There are other under-utilised avenues which resolve the perceptible gender imbalance in Islamic divorce proceedings, and these will be outlined shortly at 'B Solutions for limping marriages'.

A Islamic divorce in Australian courts

Cases which come to Australian courts, involving divorce proceedings which took place or were commenced in an overseas Muslim country, will have the principles of private international law applied.⁸⁹ Cases where the Islamic marriage, separation and divorce occurred in Australia, regardless of whether the marriage was registered or not, can be brought by a Muslim spouse to an Australian court for the applicable family or contract law of Australia will govern the outcome. This was seen in the *Mohamed's Case*. When one party brings a dispute to the Australian courts, the other Muslim party⁹⁰ may dispute

84 *Iddah* is the 3-month period for reconciliation after *talaq* or the 3 months after death of the husband. See Black, Esmaili and Hosen, above n 28, 133. Also above n 32.

85 Ibid 134.

86 Islamic Family Law Order (1999) Brunei Darussalam s 46(1) includes AIDS, HIV or venereal disease in a communicable form.

87 Samia Bano, *Muslim Women and Shari'ah Councils: Transcending the Boundaries of Community and Law* (Palgrave MacMillan, 2013) 117.

88 Quran, Sūra Baqarah 2:229 is the basis for this form of divorce.

89 See: *Daler & Ehan* [2014] FamCA 741 (9 September 2014); *Maidar & Carrigan* [2008] FamCA 862 (9 October 2008).

90 In *Irvine & Irvine [No 2]* [2013] FCCA 1076 (27 August 2013) [25] the husband argued the

or reject the authority of the civil system. However, this does not, nor should it, oust the court's jurisdiction. Any citizen, regardless of religion or ethnicity, is entitled to have their legal issues determined in an Australian court of law.

In the *Mohamed's Case*, counsel for the husband submitted that the Magistrate did not have jurisdiction to make a decision (grounds 2 and 5 of the appeal) as to what is an initiation of Islamic separation or divorce on the basis it is distinct to Islamic law and could only be decided by an Islamic court.⁹¹ The Magistrate rejected this submission as their marriage contract was silent on the application of shari'a law, did not define the words 'separation' and 'divorce', nor required them to be interpreted in accordance with an Islamic meaning. Nor did the contract require resolution in an Islamic forum. Harrison AsJ noted that no expert evidence on shari'a law was relied on in the Local Court or in the Supreme Court, concluding that the magistrate: 'did not apply Sharia law, nor was she required to do so to properly interpret the agreement'.⁹²

As theirs was an Islamic marriage, if Neima wished to remarry according to Islamic law, she would require an Islamic decree of divorce. Once the *mahr* determination had been made by the NSW Court of Appeal, and the avenues of appeal ended with the High Court refusing special leave,⁹³ Mostafa may have agreed to pronounce *talaq* so both could move on with their lives.

If he did not, Neima would need to find 'someone', be it an individual Imam or Sheikh, or an 'organisation' such as one of the Islamic Councils to grant her an Islamic divorce. These operate in each state of Australia. The process can be quite ad hoc as it is neither open nor accountable, nor are the decisions reported and published. Outcomes can be inconsistent as individualised justice prevails dependent on the Islamic interpretation deemed valid by the jurist or the forum.⁹⁴ Anecdotally, traditional interpretations prevail over revisionist ones. One result, Essof found, is that the Islamic forums allow 'recalcitrant husbands' to refuse to finalise their divorces.⁹⁵ In Islam, a wife cannot remarry without the Islamic divorce decree, although the husband can,⁹⁶ making the 'limping marriage' problem gender specific.

court did not have jurisdiction as 'no other belief, laws or way or life or practices may be regarded as applicable, nor equal or superior and may not be allowed to go or act contrary to, violate or contravene the Commandments and Orders of Allah'. In *Dinal & Tohim [No 2]* [2009] FamCA 540 (12 June 2009) [11], [15] the wife sought the proceedings to be adjourned to an Islamic body so she could receive her Islamic rights.

91 *Mohamed v Mohamed* (2012) 47 Fam LR 683, 694 [55].

92 *Ibid* 695 [62].

93 *Above* n 16.

94 *Dinal & Tohim [No 2]* [2009] FamCA 540 (12 June 2009) is an example where the Court was presented with different Islamic opinions and decisions given by imams affiliated with different Islamic legal institutions. See also, A Buckley, 'The Dual System of Divorce and its Implications for Muslim Women in Australia' in Abdullah Saeed and Helen McCue (eds), *Family Law and Australian Muslim Women* (Melbourne University Press, 2013) 136.

95 Ismail Essof, 'Divorce in Australia from an Islamic perspective' (2011) 36 *Alternative Law Journal* 182.

96 In contrast, a husband can marry without the Islamic divorce providing he does not have more than four wives at the one time.

B Solutions for limping marriages

As Neima retained her *mahr* through a secular court decision, a *kuhl'* divorce may not be forthcoming, given that an ingredient in the *khul'* is renunciation of *mahr* entitlement. Some jurists in Australia hold to the traditional view that *khul'* is contingent on the husband's consent.⁹⁷ In many Muslim nations this consent fetter has been removed, especially when arbitration has failed to bring about reconciliation. Egypt, Bangladesh and Pakistan allow a wife to unilaterally apply to an Islamic registrar or Sharia court for a *khul'* divorce without the husband's consent.⁹⁸ Conversely, legislation in some countries does not specify the need for his consent but the traditional jurisprudential interpretation is applied in practice, for example in Singapore. Analysis of Syariah court decisions in Singapore reveals that a husband's consent is required as a precondition for *khul'/khula* divorce.⁹⁹ In Australia, whether *kuhl'* is granted and the fate of the *mahr* will depend on the vagaries of which interpretation the jurist or Council considers valid and will apply. This can result in acquiescence or Imam-shopping to obtain a more favourable outcome.¹⁰⁰

As noted earlier, a wife can also obtain annulment when there is fault on the part of the husband. The recognised grounds were noted, but once again classic interpretations have been expanded by jurists seeking to solve contemporary problems. Indonesia's divorce law,¹⁰¹ for example, is gender neutral and art 19 of *Marriage Regulation No 9 of 1975* lists six grounds for divorce, five of which reflect the accepted traditional fault grounds, but includes another ground — 'irreconcilable differences' and 'irretrievable breakdown in the marriage', which can be initiated by either spouse. The Constitutional Court of Indonesia upheld the constitutionality of both grounds. The reasoning of the Justices was that irreconcilable differences were inconsistent with the objective of a Muslim marriage to maintain affection, tranquillity and compassion.¹⁰² This ground was also seen by the justices as a preventative measure against domestic violence.¹⁰³ In the *Mohamed's Case*, Neima did allege that in 2007 acts and threats of violence were made requiring police intervention.¹⁰⁴ Given the variation that occurs regarding divorce in the

97 Hussain above n 35, 125. This also was observed in the ABC documentary *Divorce Aussie Islamic Way*, 21 June 2012 <<http://www.abc.net.au/tv/guide/abc1/201206/programs/DO0967H001D2012-06-21T213357.htm>>.

98 *Personal Status Law 2000* (Egypt); *The Dissolution of Muslim Marriages Act 1939* (Bangladesh); *The Dissolution of Muslim Marriages Act 1939* (Pakistan), cited above in Quraishi and Vogel n 11, 159, 166, 235.

99 While the *Administration of Muslim Law Act 1968* does not specify this, the Syariah court has ruled in accordance with traditionalist juristic opinion to require husband's consent as a precondition for *khula* divorce. See Noor Aisha Abdul Rahman, 'Traditionalism and its Impact on the Administration of Justice: The Case of the Syariah Court of Singapore' (2006) 5 *Inter-Asia Cultural Studies* 415, 425.

100 Voyce and Possamai, above n 52, 343; Krayem, above n 53, 89; Bryan Turner and James Richardson, 'Islam and the Problems of Liberal Democracy' in Maurits Berger, *Applying Shari'a in the West* (Leiden University Press, 2013) 55.

101 *Law No 1 of 1974 Concerning Marriage*.

102 *Halimah v State* (No 38/PUU-IX/2011) 15.

103 *Ibid*.

104 *Mohamed v Mohamed* (2012) 47 Fam LR 683, 702 [105].

jurisprudence and outcomes between neighbouring Indonesia and Singapore, it is not surprising that different outcomes occur here in Australia.

Another avenue for a wife to obtain an Islamic divorce is if a condition was inserted in her marriage contract giving her the same right to pronounce *talaq* extrajudicially as her Muslim husband. This is *talaq-i-tafwid* also known as '*isma*'.¹⁰⁵ When so stipulated it places both husband and wife in the same position regarding divorce. His consent comes at the time of contract formulation, or in a postnuptial contract, not at the time of separation. In this way it redresses the imbalance derived from traditional *fiqh* allowing husbands to divorce at will, and is an option Mir-Hosseini writes is 'regarded by reformers and supporters of women's rights as the most effective way to protect women ... [it puts] women on par with men in terms of unilateral access to divorce'.¹⁰⁶ It does not prejudice or extinguish the husband's right of *talaq* but confirms an equal right possessed by both to terminate the marriage. Zulficar sees '*isma*' as the 'natural reflection of the contractual nature' of Islamic marriage by confirming equal unilateral termination for both contracting parties.¹⁰⁷ Despite its basis in the Quran 33:28–29, *talaq-i-tafwid*/*'isma*' is not widely utilised in Australia, possibly for cultural reasons or as a consequence of a patriarchal ethos. Mir-Hosseini recognises that *talaq-i-tafwid* creates 'a tension, between what the Sharia in theory grants women and what happens in practice'. 'Sharia ideals and the spirit of its legal rules ... [are] often modified, by-passed or even negated when they are translated into a legal code or when they are interpreted and applied in courts.'¹⁰⁸ Even though it is under-utilised, Carroll and Kapoor demonstrate that *talaq-i-tafwid* has had a long and well documented history in South Asia,¹⁰⁹ and experience from this region suggests it is 'a useful strategy capable of being adapted by women elsewhere in the Muslim world'.¹¹⁰ It would seem that were such a condition to become part of the standard marriage contract used in Australian mosques the problem of 'limping marriages' for Muslims in western nations like Australia would be resolved.

C Australian adaptations in case of divorce

Each of the Muslim women (apart from the converttee) interviewed as part of the marriage contract project was uncertain as to what was actually in their marriage contract, and moreover, had not been informed as to what could be put in it. While all were familiar with their *mahr*, few were aware of what

105 A term which means 'option'.

106 Ziba Mir-Hosseini, 'A Woman's Right to Terminate the Marriage Contract: The Case of Iran' in Quraishi and Vogel, above n 11, 215–16.

107 Mona Zulficar, 'The Islamic Marriage Contract in Egypt' in Quraishi and Vogel, above n 11, 252.

108 Ziba Mir-Hosseini, 'The Delegated Right to Divorce: Law and Practice in Morocco and Iran' in Lucy Carroll and Harsh Kapoor (eds), *Talaq-i-Tafwid: The Muslim Woman's Contractual Access to Divorce* (Women Living Under Muslim Laws, 1996) 127 <<http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/misc/talaq-i-tawfid-eng.pdf>>.

109 Carroll and Kapoor, above n 108, 9; also *Muslim Marriage & Divorce Registration Act 1939* (Bangladesh) s 6 and the *Muslim Family Laws Ordinance 1939* (Pakistan) s 8.

110 In Egypt, eg, the inclusion of '*isma*' in a marriage contract gives a wife legal authority to divorce herself before the registrar. A court hearing is not required.

conditions, if any, may be in their contract, and some were unaware that stipulations could be negotiated on their behalf. Most referred to oral discussions had at the time of planning their marriage especially regarding living arrangements, working, financial support of the husband, and principles for raising children. They believed that verbal arrangements were more natural, trusting and conducive to a happy marriage than written terms in a contract. It was as though there was something distrustful if a wife or her family wanted a series of protections inserted in the contract.¹¹¹ Even on the issue of their Muslim husband taking a second wife, several indicated that as he can do that anyway without the wife's permission there is little point in demanding it be in the marriage contract.

As with the *mahr*, these Muslim women saw the contract as one of symbolic importance. It was a recognised part of the Quranic tradition passed down from the time of the Prophet, but was not seen as a mechanism of protection and security today as it would have been in the past. However, in reading several of these marriage contracts there were conditions dealing with a form of *tafwid*, should certain situations arise, including 'irreconcilable differences', or if 'the husband failed to provide reasonable financial support for his wife and children'. However, the effectiveness was reduced as contracts went on to specify that the marriage needed to be dissolved by a reputable 'Sharia-based Council with powers to authorise divorce', or by a 'recognised Imam or Sheikh in Australia', after his assessment of whether there were 'irreconcilable differences' or if 'reasonable financial support was not provided'. One contract had a provision that the marriage shall be monogamous and 'if the groom were to enter into a polygamous marriage then the bride shall have the autonomous right to divorce (*'tafwid'*) from the current marriage'. Only one contract gave the wife unilateral right to pronounce divorce. It simply stated that the wife [named] 'has equal right to divorce without resorting to an Islamic Court or a Sheikh, as [her husband] has'. [Name of] the wife 'retains the right to request and be granted a full divorce if she deems it necessary'. Clauses such as this would seem a workable mechanism to protect wives and to reduce the problem of the 'recalcitrant husbands' creating limping marriages. By empowering a wife with this mechanism, she can bypass conservative Imams who refuse to grant her a divorce in situations where her husband's opposes it. The fact that the husband can be married to more than one wife (and up to four) exacerbates the problem.

VII Conclusion

It is accepted that Islamic law has never been static or monolithic and now there is more diversity than ever across Muslim nations. This diversity is reflected in a country like Australia where for over a century Muslims have migrated from many nations, doing so for different and distinctive reasons.¹¹² Adapting to life in a secular, or religiously neutral nation, where there is no state sanctioned form of Islam, has meant Muslims have had to make choices about how to define and express their Islamic identity. In making such choices

111 This is not dissimilar to views on prenuptial agreements.

112 On the variation see Black and Sadiq, above n 4, 384–8.

it is possible to 'to negotiate and create different types of Islamic law'.¹¹³ Adaptations of Islamic law to reflect the Australian context have been, as Menski writes, 'inevitable'.¹¹⁴ This article looked at three important aspects of Islamic family law, *mahr*, state registration of Islamic marriage, and the 'limping marriage' phenomenon, to reflect on how Muslims have to varying degrees, developed strategies to ensure compliance with shari'a and the laws of Australia.

The first important adaptation is that Muslims, like everyone in this multi-faith nation, are able to go to a religious forum of their choosing to resolve interpersonal disputes and to have religious law applied. They are not limited by a state imposed interpretation of shari'a, nor do they have to go to a state mandated religious forum. Equally they are entitled to use Australian law to protect their interests and have Australian courts apply domestic law to resolve any matter. There can be skilful navigation between the two systems as was seen in the case of *Mohamed v Mohamed*. The couple married according to Islamic rites and had an Islamic marriage contract but it also specified their intention to marry under Australian law. It was both a relationship 'blessed by Islamic shari'a' and also one 'within the meaning of the *Property Relationships Act (NSW)*'. In deciding whether the wife was entitled to *mahr* after their marriage ended, the wife had the choice to go to an Imam or an Islamic forum but she elected to go to a State court where the principles of Australian contract law and not Islamic law, would be used to interpret and enforce the terms of their Islamic marriage contract. Hearing the case, Barrett AsJ noted cases like this are decided in our courts on 'criteria of fact [with] no moral judgment involved'.¹¹⁵ Islamic principles were not applied. The case highlights a skilful navigation of both systems of law, which was possible because as the President of the NSW Court of Appeal Margaret Beazley reflected the 'rule of law is the protector of all individuals' in this 'wonderfully diverse society'.¹¹⁶ Neima Mohamed believed it was her 'right' to have her Islamic marriage contract interpreted in these courts. The judges agreed.

Other adaptations are also occurring. Muslim women like Neima Mohamed can, and are negotiating contextually specific Islamic marriage contracts. The amount and type of *mahr* is evolving and it is likely that Australian registration of marriage is becoming accepted, in keeping with legal requirements in some Muslim majority nations. The Muslim women interviewed cherish their marriage contract for its meaning and what it symbolises rather than for the financial protections once needed in earlier times and in other places.

Lastly the article considered some of the legitimate concerns that arise in

¹¹³ Menski, above n 7.

¹¹⁴ Ibid.

¹¹⁵ *Mohamed's Case* (2012) 47 Fam LR 683, 686 [11].

¹¹⁶ Beazley P also noted: 'The rule of law is the protector of all individuals in society. The rule of law has its foundation in openness and equality before the law, and the obligation on judicial officers to treat all parties fairly regardless of gender, ethnicity ... religious and cultural affiliation.' See Margaret Beazley, 'The Intersection of Australian Law and the Islamic Faith: a Selection of Cases' (Paper presented at the Affinity Cultural Foundation, Sydney, 27 August 2014).

Australia when an Imam or an Islamic dispute resolution forum applies patriarchal interpretations to allow 'recalcitrant husbands'¹¹⁷ to refuse to grant their wives an Islamic divorce. When wives have obtained a civil divorce they are left in an invidious position. Drawing on comparative analysis from Muslim majority nations it can be seen how this issue and other aspects of gender disadvantage in Islamic marriage and divorce, can be more equitably addressed. This article discussed how Indonesia, the worlds' largest Muslim nation, allows divorce to be initiated by either spouse when there are 'irreconcilable differences' or irretrievable breakdown' in the marriage. To take this approach also would align Islamic divorce quite closely with Australian law. As well, scholars in Australia could issue rulings to make a husband's consent for a wife-initiated *khul'* divorce unnecessary, as already occurs in Egypt and Bangladesh. Lastly, encouraging the use of *talaq-i-tafwid'*/*isma* as a standard clause in a marriage contract as happens in Egypt and Bangladesh would put women on an equal footing with Muslim men for divorce. The Islamic validity of '*isma* has been verified by both the Egyptian Ministry of Justice and the Grand Mufti.¹¹⁸ In this way, the problems of religious divorce which Essof says 'allow[s] men to distort and abuse'¹¹⁹ divorce law could be internally reformed.

There is no reason why these patterns of adaptation which are occurring in other Muslim societies cannot be applied in Australia. Marriage contracts are already evolving to better reflect what is required in the Australian setting. Both forms of adaptation are in keeping with Menski's concept of 'lived systems' managed and manipulated by Muslim communities everywhere.

117 Essof, above n 95, 185.

118 Zulficar, above n 107, 253.

119 Essof, above n 95.

Violence Against Women Scale

#s	Topic	0	1	2	3	4	5
		Never	Once	A few times	Several times	Many times	A great many times
	Threats Mild						
	• How often did he hit or kick a wall						
	• How often did he throw things						
	• How often did he drive recklessly with you in the car						
	Threats Moderate						
	• How often did he shake his finger or fist at you						
	• How often did he make threatening gestures at you						
	• How often did he act like a bully at you						
	Threats Serious						
	• How often did he destroy something belonging to you						
	• How often did he threaten to harm or damage things you care about						
	• How often did he threaten to kill himself						
	• How often did he threaten to kill you (with a weapon)						
	Total Score /50						

#s	Topic	0	1	2	3	4	5
		Never	Once	A few times	Several times	Many times	A great many times
	Acts Mild						
	• How often did he hold you down pinning you in place						
	• How often did he push or shove you						
	• How often did he <u>shake or roughly handle you</u>						
	Acts Moderate						
	• How often did he scratch you						
	• How often did he pull your hair						
	• How often did he twist your arm						
	Acts Serious						
	• How often did he slap you with the palm of his hand						
	• How often did he slap you around your face and head						
	• How often did he hit you with an object						
	• How often did he punch you, kick you, stomp on you, choke you						
	• How often did he burn you with something						
	• How often did he use a club-like object on you						
	• How often did he use a knife or gun on you						
	Sexual aggression						
	• How often did he demand and or force sex whether you wanted it or not						
	• How often did he make you have oral (mouth) sex against your will						
	• How often did he make you have anal (bottom) sex against your will						
	• How often did he use an object on you in a sexual way						
	Total score / 85						

#s	Topic	0	1	2	3	4	5
		Never	Once	A few times	Several times	Many times	A great many times
	Acts Addictions						
	<ul style="list-style-type: none"> How often did he verbally, emotionally, and psychologically abuse you after he gets drunk How often did he hit you after he gets drunk 						
	Total score /10						

Has he been diagnosed with a mental illness?

- Yes
 No

What illness is he been diagnosed with?

- Depression
 Psychosis
 Any other _____

Has the violence intensity (frequency) increased?

(less) 0-----1-----2-----3-----4-----5 (more)

Has the violence lethality (severity) increased

(less) 0-----1-----2-----3-----4-----5 (more)



Is your mother-in-law abusing you verbally?

- Threatening you
- Threatening to do harm to your parents or siblings
- Threatening to kill you
- Threatening to divorce you

Is your mother-in-law abusing you physically?

- How many has she hit you?

Is your father-in-law abusing you verbally?

- Threatening you
- Threatening to do harm to your parents or siblings
- Threatening to kill you
- Threatening to divorce you

Is your father-in-law abusing you physically?

- How many has he hit you?

Is your sister-in-law abusing you verbally?

- Threatening you
- Threatening to do harm to your parents or siblings
- Threatening to kill you
- Threatening to divorce you

Is your sister-in-law abusing you physically?

- How many has he hit you?

Has anyone else abused you verbally, physically or in any other manner?

List: _____



Where is your husband when abuse against you is going on?

Is he away?

Yes

No

Is he in the house?

Yes

No

Does he join in the abuse?

Yes

No

Does he remain silent?

Yes

No

What does he say about the abuse to you? (list specific words he may have said)

Is dowry an issue in your marriage?

Yes

No



Are all your offspring daughters? Is your abuse related to having no son?

Yes

No

Was there an agreement between your parents and your in-laws about sponsoring a person in exchange for this marriage?

Yes

No

Is there anything else we should know so that we can develop a care plan to assist you in the most appropriate manner?

Note:

The higher the score – more risk to woman

More yes – more risk to woman

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Re-presenting Battered Women: Coercive Control and the Defense of Liberty *

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Presses de l'Université du Québec (2012)

Throughout the world, with a few exceptions, the legal and policy responses to domestic violence are typically built on a violence model that equates partner abuse with discrete assaults or threats. Implicit in this response is the assumption that the severity of domestic violence can be assessed by applying a calculus of physical and psychological harms to particular assaults. Based on this model, programs focus only on victims' immediate safety. Laws target violent acts; batterer intervention programs (BIPs) seek to "end the violence;" public education campaigns highlight dramatic injuries or fatalities; and child welfare agencies emphasize how children are harmed by "exposure to violence." Assessment instruments designed to predict "dangerousness" consider few abusive tactics other than physical and sexual violence (Campbell et al. 2003).

However, a growing body of research shows that the form of subjugation that drives most abused women to seek outside assistance is *not* encompassed by the violence model and that, therefore, interventions predicated on this model are ineffective in protecting women and children from this type of abuse. These women have been subjected to a pattern of domination that includes tactics to isolate, degrade, exploit and control them as well as to frighten them or hurt them physically. This pattern, which may include but is not limited to physical violence, has been variously termed 'psychological or emotional abuse, patriarchal or intimate terrorism (Tolman, 1992; Johnson, 2008), and coercive control (Stark, 2007), the term I prefer.

Some countries have either included "psychological" or "emotional" abuse in their definitions of domestic violence or, as in France, created a separate criminal statute prohibiting "psychological abuse." In September 2012, England expanded its cross-governmental definition of domestic violence to encompass coercive control. The new definition recognizes that patterns of behavior and separate instances of control can add up to abuse – including instances of intimidation, isolation, depriving victims of their financial independence or material possessions and regulating their everyday behavior.

The terms "psychological" and "emotional" abuse can be applied to certain aspects of coercive control, including acts designed to intimidate victims where threats remain implicit. But they are vague and easily manipulated by offenders who claim emotional abuse by victims. In addition, if a woman claims

psychological violence, in order to access legal remedies in some countries, she may be required to produce the 'expert' testimony of a psychologist to prove damages or harm.

Some of the tactics used in coercive control are criminal offenses, such as stalking, while others are crimes only if committed against strangers such as economic exploitation or deprivation, enforced isolation or sexual coercion. But most tactics used in coercive control have no legal standing, are rarely identified with abuse and are almost never targeted by intervention. These tactics include forms of constraint and the monitoring and/or regulation of commonplace activities of daily living, particularly those associated with women's default roles as mothers, homemakers and sexual partners and run the gamut from their access to money, food and transport to how they dress, clean, cook or perform sexually.

By ignoring or minimizing the tactics used in coercive control, current domestic violence laws also miss many of its most devastating effects. There is mounting evidence that the level of "control" in abusive relationships is a better predictor than prior assaults of future sexual assault and of severe and fatal violence. This is because coercive control targets a victim's autonomy, equality, liberty, social supports and dignity in ways that compromise the capacity for independent, self-interested decision-making vital to escape and effective resistance to abuse. Moreover, in a significant minority of abuse cases, offenders are able to subjugate and entrap female partners without the use of violence. Arrest for assaults, the provision of shelter or legal protections against violence are vital for short-term safety. But the long-term safety and independence of battered women can only be secured if current protections against domestic violence are extended to encompass coercive control.

This contribution argues that reliance on the violence model limits the efficacy of current interventions because it masks the scope of most partner abuse and minimizes the harms it causes. Adopting the coercive control model would broaden our understanding of partner abuse to more closely resemble what most victims are experiencing and so greatly improve intervention.

I have divided my discussion into three parts. Part I identifies the shortcomings of the violence model as the exclusive framework for responding to partner abuse. The violence model applies to only the minority of situations where abuse is limited to physical assaults and threats of physical abuse. It ignores the large majority of cases where physical assaults are accompanied by multiple non-violent tactics that can be both more devastating and more salient to victims.

Section II outlines the alternative model of coercive control, cites evidence from the U.S. and England to document the relative prevalence of its various components and shows that the presence of 'control' tactics predicts a range of harms, including sexual, physical and fatal violence, far better than prior assault (Glass et al., 2004; Beck and Raghavan, 2010). The major outcome of coercive control is a hostage-like condition of *entrapment* that arises from the suppression of a victim's autonomy, rights and liberties through coercive control. Assessments based on coercive control identify the victim's vulnerability to serious injury or psychological trauma as a function her objective or structural subordination rather than of the level of physical violence.

My focus is on what perpetrators do *to* their partners. But the political significance of coercive control in the typical case derives from what abusive men prevent women from doing for themselves. The coercive control model defines abuse as a "liberty" crime and sets the use of violence in the context of the abrogation of women's human rights, the realization of which is critical to overall social and economic development as well as their ability to fulfill their purposes in the world. Women can be controlling as well as men. When the offender is a male, however, coercive control exploits and reinforces sexual inequalities in the larger society in ways that make it far more devastating than when women are controlling.

Section III addresses some implications of adapting a coercive control for improved intervention. The priority on 'safety' is complemented with an emphasis on liberty, autonomy, dignity and equality. To fully grasp how the forms of subjugation harm women, we must first imagine they have the same rights to personhood as men.

I. The Limits of the Violent-Incident Model of Abuse

Since the first programs for battered women opened in the 1970's, many countries have criminalized physical abuse by partners, held offenders accountable through some combination of sanctions and counseling, offered victims emergency shelter and provided legal and social support for victims and their children. Arrest for domestic violence now occurs in many countries. But almost none of those arrested go to jail. Nor is there compelling evidence that BIPs significantly improve victim safety (Stark, 2007).

The Violence Model

Drawn from criminal justice, the violence definition of abuse targets discrete episodes of assault whose seriousness is measured by the degree of injury or other harm inflicted or intended. Protection orders, BIPs and other interventions are predicated on the belief that there is sufficient time “between” assaultive episodes for victims and perpetrators to contemplate their options and make self-interested decisions to end their abuse or exit the abusive relationship.

The first problem with this model is the well documented fact that physical abuse almost never consists of an isolated incident, with almost half of all reported cases involving “serial” abuse and many involving daily assaults. Meanwhile, evidence from the U.S. shows that the average abusive relationship lasts between 5.5 and 7.3 years. Thus, a large number and perhaps a majority of abused women have been assaulted dozens and many hundreds or thousands of times. For the victims in these cases, abuse has much more in common with a chronic problem, like HIV-AIDS, than the sort of acute, time-limited assaults anticipated by our current laws and court interventions.

A second problem with the violence model is the weight it assigns to injury. Between 95% and 99% of domestic violence involves non-injurious assaults: pushes, shoves, grabs, punches, kicks and the like. This is true even in cases where police or emergency medical responders are involved (Stark, 2007; Stark & Flitcraft, 1996). The significance of these seemingly “trivial” incidents only becomes clear in their historical context as part of a pattern of physical intimidation that is typically “ongoing” and has a cumulative effect based on all that has happened to this victim before.

When interventions are guided by laws or policies that target discrete incidents, the typical pattern of physical abuse is trivialized. If resources are rationed based on injury, over 95% of all domestic violence will be missed. But even if most reports of domestic violence lead to arrest as they do in England and in some US jurisdictions, punishment will be minimal or nonexistent, even when an offender commits multiple offenses.

Thus, when researchers followed 692 offenders arrested in Northumbria for assaulting partners, perpetrators were charged and convicted in only 120 (5%) of 2,402 incidents, an attrition rate from report to conviction of 95%. Abuse was chronic in Northumbria, with half of the offenders re-arrested within the three-year study period and many arrested multiple times. Because each incident was treated independently, however, and no injury occurred in the vast majority, there was no correlation between the

likelihood that a perpetrator would be arrested and either the number of his domestic violence offenses or even whether he was judged “high risk.” Interviews confirmed that offenders recognized their assaults would not be taken seriously. (Hester, 2006; Hester & Westmarland, 2006).¹

Because abuse is typically “ongoing,” victims seek help repeatedly. Given the assumption that victims and offenders can exercise decisional autonomy ‘between’ episodes, however, service providers stigmatize persistent help-seekers. They attribute victims’ apparent inability to ‘leave’ to character deficits and consider their escalating expressions of fear exaggerated, fabricated or as the byproduct of mental illness. Thus, many abused women appear in family court, child welfare or health systems carrying pseudo-psychiatric labels that imply *they* are the problem, not the abuser. As a victim’s entrapment becomes more comprehensive, the service response may actually become more perfunctory, a process termed “normalization.” It seems inevitable that women of this “type” will continue to be abused.

The third problem with the violent incident model is that between 60% and 80% of the victims who seek outside assistance are experiencing multiple tactics to frighten, isolate, degrade and subordinate them as well as assaults and threats. These tactics run the gamut from sexual exploitation, material deprivation and imprisonment to the imposition of rules for how victims carry out their daily affairs. Some of these tactics are crimes (such as stalking or sexual assault) and some are crimes when committed against strangers (such as harassment or taking a partner’s money). But most of these tactics are not crimes and almost none are included in current domestic violence laws, assessments or charges.

II. An Alternative Model: Coercive Control

The coercive control model was developed to encompass the ongoing and multifaceted nature of the abuse which research shows is experienced by the 60% to 80% of victimized women who seek outside assistance from shelters, police or other sources of assistance. Coercive control may be defined as an ongoing pattern of domination by which male abusive partners primarily interweave repeated physical and sexual violence with intimidation, sexual degradation, isolation and control. The primary outcome of coercive control is a condition of *entrapment* that can be hostage-like in the harms it inflicts on dignity, liberty, autonomy and personhood as well as to physical and psychological integrity.

¹ Some US States have responded to this dilemma by increasing penalties for repeated offenses, sometimes known as the “three strikes and you’re out” policy.

Women as well as men physically assault their partners. But coercive control is “gendered” because it is used to secure male privilege and its regime of domination/subordination is constructed around the enforcement of gender stereotypes. “Domination” here refers to both the power/privilege exerted through coercive control in individual relationships and to the political power created when men as a group use their oppressive tactics to reinforce persistent sexual inequalities in the larger society.

The Technology of Coercive Control

Coercive control has identifiable temporal and spatial dimensions, typical dynamics and predictable consequences. For the purposes of assessment, these may be subdivided into tactics deployed to hurt and intimidate victims (coercion) and those designed to isolate and regulate them (control). Perpetrators adapt these tactics through trial and error based on their relative benefits and costs in particular societies and cultures and the perceived vulnerabilities of their partners. Hostage-taking, kidnapping, torture and other ‘capture’ crimes share many of the same tactics. The ‘particularity’ of coercive control derives from its gendered focus: the unique access intimacy affords perpetrators to personal information about a partner; widespread normative support for male “control” (even where violence is condemned); and a host of situational factors such as whether women can access resources independently through employment or dowry arrangements, for instance.

COERCION:

Coercion entails the use of force or threats to compel or dispel a particular response. In addition to causing immediate pain, injury, fear, or death, coercion can have long-term physical, behavioral, or psychological consequences.

(a) Violence

Partner assaults frequently involve extreme violence. In a British survey of 500 women who sought help from Refuge UK (referred to as ‘the ‘Refuge UK sample’), 70% had been choked or strangled at least once, 60% had been beaten in their sleep, 24% had been cut or stabbed at least once, almost 60% had been forced to have sex against their will, 26.5% had been “beaten unconscious,” and 10% had been “tied up.” As a result of these assaults, 38% of the women reported suffering “permanent damage.” (Rees, Agnew-Davies and Barkham, 2006).

Even so, the vast majority of assaults used in coercive control are distinguished by their frequency and duration, not by their severity. Johnson (2008) reported that men using coercive control assaulted women six times more often on average than men who used physical violence alone. In the Refuge UK sample, the women reported that “often” or “all the time,” their partners “shook” or “roughly handled” them (58%); pushed or shoved them (65.5%); slapped or smacked them or twisted their arm (55.2%) or kicked, bit or punched them (46.6%) (Rees et al. 2006). To many of these men, assault was a routine, like using the toilet, and not the byproduct of overt anger or a “conflict.”

(b) Intimidation

Intimidation is used to keep abuse secret and to instill fear, dependence, compliance, loyalty and shame. Offenders induce these effects in three ways primarily—through threats, surveillance, and degradation. Intimidation succeeds because of what a victim has experienced in the past or believes her partner will or may do if she disobeys, the “or else” proviso. If intimidation sufficiently undermines a partner’s will to resist, violence may not be deemed necessary. In a Finnish population survey, a subgroup of older victims who had not been physically assaulted for 10 years or more reported significantly higher levels of fear than younger women who were experiencing ongoing assault (Piispa, 2002).

In the Refuge UK sample, 79.5% of the women reported that their partners threatened to kill them at least once, and 43.8% did so “often” or “all the time.” In addition, 60% of the men threatened to have the children taken away, 36% threatened to hurt the children, 32% threatened to have the victim committed to a mental institution, 63% threatened their friends or family, and 82% threatened to destroy things they cared about (Rees et al., 2006). Few threats are reported. The destruction of property is another common intimidation tactic. Intimidation extends to subtle warnings whose meaning eludes outsiders or may even seem like expressions of love, such a demand that the victim continually report her whereabouts

Another class of threats creates the “battered mother’s dilemma,” where a victim is made to choose between her own safety and the safety of a child. Many of the same tactics used to extract information or compliance from hostages are deployed in coercive control, including withholding or rationing food, money, clothes, medicine, or other things. Thirty-eight percent of the men in the Refuge

UK sample stopped their partners from getting medicine or treatment they needed and 29% of the men in a US study did so (Rees et al., 2006; Tolman, 1989; 1992). Passive-aggressive threats such as emotional withdrawal, disappearing without notice or the 'silent treatment' can be equally devastating. In the Refuge UK sample, more than half of the men threatened to hurt or kill themselves if the woman left, and 35% used the same threat to get her to obey (Rees et al., 2006).

Another class of threats, illustrated by the meticulously organized cabinets in the American film *Sleeping with the Enemy* (1991), involves anonymous acts whose authorship is never in doubt. Men using coercive control leave anonymous threats on answering machines, sabotage electronic communication, remove pieces of clothing or other memorabilia from the house, cut telephone wires, steal their partners' money or their mail or remove vital parts from their cars. Abusers also exploit secret fears to which they alone are privy or play "gaslight" games to make their partners feel "crazy" (such as moving their car in the night or removing car keys from their pocketbooks). In the Refuge UK sample, 75% of the women reported that their partners had tried to make them feel crazy "often" or "all the time" (Rees et al. 2004). To remind partners that any challenge is dangerous, perpetrators will tell transparent or outrageous lies or say or do things in a public setting that insult or embarrass them. The more transparent the offense, the more humiliating is compliance.

Stalking is the most prevalent form of surveillance used in coercive control. It is distinguished by its duration (lasting 2.2 years on average, twice the typical length of stalking by strangers), its link to physical violence, and its combination with complementary forms of intimidation and control. Of the 4.8 million women in the U.S. who reported being stalked by present or former partners, 81% were physically or sexually assaulted (31%), 61% received unsolicited phone calls, 45% were also threatened verbally or in writing, and roughly 30% had their property vandalized or received unwanted letters or other items (Tjaden & Thoennes. 2000).

Designed to convey the abuser's omnipotence and omnipresence, stalking falls on a continuum with a range of surveillance tactics that include timing partners activities (calls, toileting, shopping trips, etc.); monitoring their communications; searching drawers, hand-bags, wallets or bank records; cyber-stalking with cameras or global positioning devices or having partners followed. Eight-five percent of the women in the U.S. study by Tolman (1989) and over 90% of the Refuge UK sample (Rees et al. 2006)

reported that their abusive partners monitored their time. Surveillance tactics allow abusers to 'cross social space,' making physical separation ineffective.

Degradation establishes abusers' moral superiority by denying self-respect to their partners. Virtually all of the women in the Refuge UK sample reported that their partners called them names (96%), swore at them (94%), brought up things from their past to hurt them (95%), "said something to spite me" (97%), and "ordered me around" (93%). In more than 70% of these cases, this happened "often" or "all the time" (Rees et al., 2006). The insults used in coercive control target areas of gender identity from which the woman draws esteem such as cooking or child care. Insults are devastating in coercive control because the woman cannot respond without putting herself at risk.

Common *shaming tactics* involve using a tattoo, burns or bites to "mark" ownership; forcing a partner to submit to sexual inspections or participate in sexual acts she finds offensive; or demanding she engage in other rituals around personal hygiene, toileting, eating or sleeping she finds degrading. In the Refuge UK sample, 24% of the women reported being forced to engage in anal intercourse at least once (Rees et al., 2006). My clients have been denied toilet paper or the right to cut their hair (in one case, for two years); made to sleep standing up; or to steal money from their boss or their children. Other abusers force partners to obey rules that would be used to discipline a child, such as staying at the table until they've eaten all their food.

CONTROL

Perpetrators use control tactics to compel obedience indirectly by depriving victims of vital resources and support systems, exploiting them, dictating preferred choices and micro-managing their behavior by establishing "rules" for everyday living. These rules remain in play even when the perpetrator is absent physically, such as when a partner is shopping, at work or with her friends or family. Because of their portability, control tactics make victims feel their abuse is all-encompassing and their partner is omnipresent.

(a) Isolation

Controllers isolate their partners to prevent disclosure, instill dependence, express exclusive possession, monopolize their skills and resources, and keep them from getting help or support. In a study of women in shelter, 36% had not had a single supportive or recreational experience during the previous

month (Forte, Franks, Forte & Grigsby, 1996). By inserting themselves between their victims and the world outside, controllers become their primary source of information, interpretation and validation. Eighty-one percent of the Refuge UK sample reported they had been kept from leaving the house with almost half (47%) reporting this happened “often” or “all the time (Rees, et al. 2006).

To isolate a partner from her support system, abusers have assaulted and threatened family members, friends and coworkers; forbidden calls or visits; forced victims to choose between “them” and “me;” called them repeatedly at work or showed up unexpectedly; denied partners funds to travel for visits; or forced them to steal from friends, family or employers; showed up drunk or otherwise embarrassed their partners at family gatherings. Over 60% of the women in the US Sample and 48% in the UK Refuge sample said their partners kept them from seeing their families (Rees et al., 2006; Tolman, 1989). Immigrants and fundamentalists can be particularly vulnerable to isolation because many traditional cultures are typically patrifocal, reject divorce or separation, assign custody in a marital dispute to the father, discourage women from working, and ostracize women who reject their obligations as wives.

Isolation tactics also include denying women access to phones or cars—as in more than half of abusive relationships in the United States and UK Refuge samples. Among teens, a common isolating tactic is to sabotage birth-control and use unwanted pregnancies to force a girlfriend to drop out of school.

Isolation tactics are often designed to keep women from working or to isolate them at work, significantly impacting their employability as well as their performance or chances for promotion. More than a third of women in the U.S. study by Tolman (1989) and Refuge UK sample (Rees et al. 2006) were prohibited from working and over half were required to “stay home with the kids.” To keep women from going to work, men in my practice have blocked in their partner’s cars, taken their keys or items of clothing, demanded sex just as they were going to work, blackened their eyes, forced them to call in sick and suddenly found they could not babysit or transport a child to day care.

(b) Deprivation, Exploitation and Regulation

Control tactics also foster dependence by depriving partners of the resources needed for autonomous decision-making and independent living, exploiting their resources and capacities for personal gain and gratification, and regulating their behavior to conform to gender stereotypes.

The “materiality of abuse” is rooted in a partner’s control over basic necessities such as money, food, housing and transportation, sex, sleep, toileting and access to health care. Seventy-nine percent of the Refuge UK sample (Rees et al. 2006) and 58% of Tolman’s (1989) U.S. sample were denied access to money or had it taken from them through threats, violence or theft. Conversely, 54% of the men charged with assaulting their partners acknowledged they had taken their partner’s money (Buzawa & Hotaling, 2003). Financial exploitation extends from denying victims credit cards or money for necessities to forcing them to account for and justify even small expenses.

Complementing material control is the micro-regulation of women’s behavior in everyday life. While micro-management often extends to the most trivial activities (such as what women watch on TV or which internet sites they visit), its main targets are women’s default responsibilities for housework, child care and providing sexual pleasure. Abusive men regulate how women emote, dress, wear their hair, clean, cook and discipline their children. Rules given to women have extended to how the carpet was to be vacuumed (“till you can see the lines”) and the height of the bedspread off the floor to the heat of the water in the bath drawn each night for a husband. Here, too, there is the relationship between the pettiness of the rules perpetrators impose and the shame associated with compliance. Since the only purpose of the rules is to exact obedience, they are continually being revised. As Mrsevic and Hughes (1997, P. 123) put it, “As men’s control over women increases, the infractions against men’s wishes get smaller, until women feel as if they are being beaten for ‘nothing.’”

Assessment

Advocates have long identified “power and control” as the aim of physical abuse. But a growing body of evidence shows that the presence of control sets the stage for violence and injury, including fatal injury. A large, well-designed, multi-city study showed that the level of control in an abusive relationship increased the risk of a fatality by a factor of nine. (Glass, Glass, Manganello & Campbell, 2004). Neither the frequency nor the severity of violence was predictive. In a study of over 2000 individuals referred to mediation in Arizona during divorce, the presence of coercive control was more than four times more likely than the presence of violence to explain the post-separation escalation of violence (81% vs. 20%), threats to kill (80% vs. 17%) and forced sex (76% vs. 24%) (Beck & Raghaven, 2010). These findings show that women’s vulnerability to physical and sexual abuse is typically a byproduct of an *already*

established pattern of domination that has disabled their capacity to mobilize personal, material and social resources to resist or escape.

III. Implications for Intervention

Reframing domestic violence as coercive control changes everything about how we respond to partner abuse, from the underlying principles guiding intervention to the ways we evaluate “success.” Intervention to combat coercive control is guided by our opposition to subjugation of any kind, not merely the prohibition against violence. This is the same principle used to combat discrimination, “hate” crimes or other acts used to dominate members of a class who are already unequal and so are assumed to be harmed in a different and more socially consequential way than when the same acts are used against equal persons. The reasoning is that persons should be treated as having innate dignity whose individual sovereignty deserves our fullest support.

A first step is to ‘name’ coercive control. By fixing attention on behaviors, dynamics and harms that have been invisible, naming brings a new class of ‘bad’ acts and victims to the fore and instigates a corresponding reallocation of justice and other resources. Even where governments are wary of complicating their definitions of domestic violence, naming coercive control provides a broad ground for public education.

Changes in law, policy and other types of practice follow from the fact that coercive control is “ongoing” and its effects cumulative. It includes multiple tactics and has a gendered focus on exploiting sexual inequalities and enforcing gender stereotypes. Recognition of coercive control entails defining a new ‘course of conduct’ crime with sanctions appropriate to the rights and liberties that are jeopardized.

Such a crime will include elements such as psychological and economic abuse, along with stalking, harassment and isolation, among others. However, for a coercive control law to be effective, it must be written and implemented in a way to avoid manipulation by offenders who claim emotional abuse by victims. That said, with an effective coercive control law in hand, police can assess whether a seemingly trivial incident is an isolated event or part of the pattern typical of the most serious cases.

When abuse is reframed as a pattern or course of conduct, police, clinicians and other providers learn to anticipate, even to encourage repeat visits and to interpret expressions of fear of ‘staying’ as indicative of the severity of the entrapment involved, even when there is little or no violence. Recognizing

that abuse is typically chronic shifts a court's attention from why victims don't "leave" to the challenge of denying perpetrators continued access. Against this background, protective orders, awards of funds to support victims, arrests and other interventions can be reframed as part of the long-term strategy to end abuse rather than as a one-time antidote.

Instead of stigmatizing victims, judges, police, shelters and hospitals can respond to repeat requests for help as signaling they have done something right. They can expand the scope of prohibited behaviors to encompass controlling acts and provide the resources women need over time to get free. Conversely, in the context of attempts to quash their freedom, dignity and autonomy, women's retaliatory violence can be seen as a liberatory response to progressive entrapment similar to the response we would expect from a man who had been held captive.

The multiple tactics deployed in coercive control imply that the scope of identification and intervention must be broadened. These tactics must encompass routine, but minor violence; subtle forms of intimidation and forms of surveillance or monitoring that "cross social space" by extending abuse to the workplace or school, for instance; a range of sexually coercive acts. The tactics must also include patterns of isolation; and the explicit and implicit "rules" that govern everything from a woman's access to money and other material necessities to how she sleeps, dresses or talks on the phone.

If taken alone, many tactics used in coercive control could typify a "bad" marriage. So it is critical to recognize that it is the combination of these tactics into a pattern of domination that comprises the offense, not the acts themselves. Front-line responders will determine appropriate interventions based on the particular combination of violence, intimidation, humiliation, isolation and control they encounter. They will emphasize safety where injury is prominent, for instance, empowerment where control is key, and help build support networks for those whose isolation is the major source of vulnerability.

Adopting a coercive control model also has far-reaching implications for community-based services such as shelters and programs for abusive men. Safety should remain a paramount concern. But given the fact that women's autonomy and liberty are also being targeted, shelters should balance safety concerns with programs that help restore freedom, autonomy, dignity and equality. On the one side, this will require offering 'empowerment' strategies at all the points where autonomy has been

denied. This requires looking beyond shelter to opening up zones of safety and independent decision-making in women's extended families and where they work, attend school or shop.

Ending the violence may do little to end coercive control unless programs for men challenge the foundations of gender-based authority in homes, relationships and beyond. Because coercive control is so tightly linked to systemic sexual inequalities, even the most gender conscious programs are unlikely to succeed apart from a combination of much stiffer sanctions for abuse and broader challenges to sexual inequalities in society-as-a-whole.

Refocusing on male domination rather than male violence alone may cost the movement to end violence against women important allies. This is particularly likely to be true where governmental or voluntary sector organizations oppose violence as a matter of public order or morality and endorse male authority over women so long as it is enforced without violence. Reframing partner abuse as a crime against liberty and equality and insisting that women can only be safe when they are also free and equal may also seem too radical in some contexts.

In these contexts, I propose a three prong strategy: (1) joining the anti-violence agenda more closely to the equality and human rights agendas; (2) incorporating those facets of coercive control that are already criminal such as stalking and harassment into domestic violence statutes; and (3) extending the scope of offenses to partners or former partners that are currently crimes only when committed against strangers. The first step entails recognizing that coercive control is a crime that is both predicated on and that extends gender inequality. At a minimum, gender equality language should be included in anti-violence statutes as well as language making it explicit that emphasizing protections for women against violence is *not* to be interpreted as a form of sex discrimination (as in Turkey).

Equally important would be to extend protections from strangers to partners for a range of acts designed to isolate, exploit, frighten, degrade or control them. These include taking their money, keeping them from leaving the house, denying them access to means of communication or transport, forcing them to endure sexual inspections and other forms of sexual harassment and coercion. Wherever possible, arguments supporting the extension of these protections should emphasize how we would respond if men were subjected to these tactics. Our hope is that broadening the definition of domestic violence to encompass coercive control will win new allies across the broad spectrum of the women's, civil rights,

labor and human rights communities as well as support from the millions of women who have insisted from the start that “violence isn’t the worst part” of the abuse they experience.

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