

Limping Marriages!

Divorced Muslim spouses who ask the US courts to enforce the civil conditions of their Islamic marriages face problems unique to this country. These problems take several forms, from the unilaterally divorced (talaq) wife being left with no alimony, to children of the deceased being denied their inheritance because their parents were involved in a polygynous marriage. One marital situation gaining greater attention in the United States is what British experts on Muslim family law called the limping marriage. In such a marriage the wife is divorced in terms of one law, but not the other. So, for example, she may be divorced by her husband by way of talaq, but not civil law, or vice versa. This is particularly difficult for the wife because she is denied the protection of the Islamic marriage, for example, but still encumbered with the burdens of her secular marriage. As a result some have turned to the US judiciary for relief, with results that are less than satisfactory.

There are naysayers in our legal system, for instance, who believe that such competing legal claims—one religious and the other secular—are firstly, new to the West, a consequence they claim, of an increasingly restive Muslim immigrant community bent on disrupting the secular nature of this country. And secondly, that there are no solutions to this legal conundrum except for Muslims to abandon Islamic laws that impinge on public policy. It turns out however, that not only do solutions to this problem exist, but these in fact, were created by western colonialists themselves in far off Muslim lands in the Far East, South Asia, and North Africa. The way to quell resistance, colonialists discovered, was to recognize and implement Muslim family law in the colonial courts.

Now the trend has reversed, with Muslims from these same colonial outposts migrating to the West, and bringing along with them marriages solemnized according to classical Islamic law or according to a hybridized form thereof as practiced in many Muslim countries. Some western governments try to accommodate at least those elements of Muslim family law that are either not too disruptive to their human rights culture, or to specific legal precepts. In Europe, in particular, the challenge is to balance European laws guaranteeing gender equality with the religious and cultural rights of Muslim citizens. In June 2003, the Norwegian parliament amended its marriage act with the aim of improving the rights of women in limping marriages. In order to avoid singling out Muslims alone, however, the amendment required that all marriages be recognized only if the systems in which they were performed also recognizes mutual rights to divorce. The first to object to this amendment was the Catholic Church because the amendment forced its members to sign a document tacitly endorsing the institution of divorce. Muslims in Norway, surprisingly, were concerned less about the amendment itself than about the shadow of doubt it cast on the longevity of the Muslim marital household.

What of the United States? Until this question is addressed explicitly by U.S. courts Muslims in this country will have no way of knowing what legal remedies exist for spouses suffering the inconveniences of limping marriages. The Constitution, by way of the establishment clause and the free exercise of religion clause, restricts judicial interventions in religious matters including, it would seem, religious divorces. But what

of our basic human rights as protected by the US Constitution which will certainly be undermined as a result of such limping marriages? Do the courts have sufficient latitude, in light of the Constitution, to enforce at least some of the contractual stipulations of a marriage solemnized by way of Islamic law? Legal experts tell us that there is indeed some constitutional relief, albeit limited, that the courts may employ to alleviate some of the burdens of such marriages. But such relief, they argue, is to be sought not by seeking recognition of Muslim personal law—as was attempted recently by Muslims in Canada—but by characterizing specific violations of such contractual agreements as violations of civil contracts.

Given the demographic mix in this country, the legal trend understandably, has been to maintain a uniform, secular family legal system that would facilitate the assimilation of disparate cultures into America's melting pot. But exceptions have been made with regard to family law, as is the case with the New York Get Law. In Jewish law, more so than in the Shari`a, only husbands can institute divorces; this they do by signing a divorce document known as a Get. And so, the state of New York, in order to by pass husbands unwilling to sign the Get, requires that in a contested divorce the applicant must also file a statement that: "he or she has taken, or will take, all steps within his or her power to remove all barriers to the other spouse's remarriage." This example, I believe, should provide hope to those Muslim spouses facing similar obstacles to remarriage. But until Muslims in America settle on a single religious authority with powers to bless court initiated dissolutions, limping marriages will remain unresolved.