

Muslim women in Britain: The impact of segregation on
unregistered Muslim marriages, effects, problems and
recommendations

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Abstract

British Muslim women face several challenges in marriages formed by religious ceremonies – “nikah only marriage” referred to as unregistered Muslim marriages. The recent decision of the Court of Appeal in the case of *Akhter v Khan* sheds light on the plight of British Muslim women in Britain. In this case, the court held that the nikah was a non-marriage, described the ceremony as a “non-qualifying ceremony”, and as a result they do not create a marriage or even a void marriage under English law. This study aims to investigate the reasons British Muslim women living in segregated communities in Britain irrespective of their ethnic origin are entering the “nikah only marriage” as well as Muslim women’s reasons and level of knowledge for not considering a civil marriage based on the fact that the nikah in a private home is not legally recognised in Britain.

A triangulated approach was used consisting of semi-structured interviews with thirty-three British Muslim women which focused on Muslims living in segregated communities in the cities of Birmingham (Alum rock, Bordesley Green and Sparkhill), Bradford, Leicester, and London (Walthamstow) as well as a questionnaire. A total number of one hundred and ten fully completed questionnaires were returned. The questionnaire was to complement findings from the interview process to gain a more nuanced statistical data of the reasons British Muslim women were entering the nikah only marriage.

The semi-structured interviews were analysed into themes in line with the grounded theory approach. The major themes that were identified: problem of segregation, maintaining “izzat” (honour), family and expectations: the role of parents, influence of culture, ethnicity and identity, education and awareness. The subthemes that emerged were: “civil marriage is for the whites”, issue of divorce, neighbourhood, lack of integration, obedience to the head of the family, “I paid homage to my family and the Muslim community on the day of my wedding”,

“it brings shame to the family”, friendships, collectivist cultures: the impact of marriage and finally acculturation.

Using the theoretical frameworks of multiculturalism, legal pluralism and critical race theory, this research provides a new analytical understanding of Muslim marriages; and argues that problem of segregation, maintaining the izzat, the family especially the first generation of Muslim parents, influence of culture, religion, ethnicity, lack of education as well as awareness are some of the deep-rooted reasons that British Muslim women in this study are entering the nikah only marriages.

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Chapter 1: Introduction

1.1 Introduction

British Muslim women face several challenges in marriages formed by religious ceremonies – “nikah only marriage” referred to as unregistered Muslim marriage. The recent decision of the Court of Appeal in the case of *Akhter v Khan*¹ sheds light on the plight of British Muslim women in the UK. In this case, the court held that the nikah was a non-marriage, described the ceremony as a “non-qualifying ceremony”, and as a result they do not create a marriage or even a void marriage under English law therefore do not entitle a party to a decree of nullity or financial remedies. Furthermore, Muslim women may rely on Sharia Councils that are perceived to be discriminatory against female users.² More importantly, an application may be made under Schedule 1 of the Children Act 1989 if there are children, but this is restricted to financial relief for the benefit of the children under the age of eighteen.

This thesis seeks to contribute towards and builds on existing body of literature on unregistered Muslim marriage. Existing research on unregistered Muslim marriages has provided an explanation on some of the reasons Muslim women are entering a religious only marriage. For instance, the study conducted by Akhtar in 2015³, Vora in 2016⁴ and Uddin in 2018⁵. This will

¹ [2020] EWCA Civ 122 at 123.

² Charlotte Proudman, ‘A Practical and Legal Analysis of Islamic Marriage, Divorce and Dowry’ (2012) Family Law p.1; Shaheen Ali, ‘Authority and Authenticity: Sharia Councils, Muslim Women’s Rights and the English Courts [2013] Child and Family Law Quarterly 113; Miranda Fisher, Shabana Saleem and Vishal Vora, ‘Islamic Marriages: Given the Independent Review into the Application of Sharia Law in England and Wales, what is the way Forward?’ [2018] Family Law 552.

³ Rajnaara Akhtar, ‘Unregistered Muslim Marriages: An Emerging Culture of Celebrating Rites and Conceding Rights’ in Joana Miles, Pervez Mody and Rebecca Probert (eds.), Marriage Rites and Rights (Hart Publishing 2015)168.

⁴ Vishal Vora, ‘The problem of Unregistered Muslim Marriage: Questions and Solution’ [2016] Family Law 95.

⁵ Islam Uddin, ‘Nikah-only Marriages: Causes, Motivations, and Their Impact on Dispute Resolution and Islamic Divorce Proceedings in England and Wales’ (2018) 7 Oxford Journal of Law and Religion 401.

be discussed in detail in chapter two of this thesis. More importantly, using the theoretical frameworks of multiculturalism, legal pluralism and critical race theory, the study aims to bridge this gap in knowledge by investigating segregated communities in Britain and their reasons for the nikah only marriage, using data collected from British Muslim women. It is important to note that Britain is made up of four countries such as (England, Wales, Scotland as well as Northern Ireland) each with its distinct family law. In effect, the reference in this thesis is to the laws of England, Wales and Scotland.

This chapter explores the significance of this study and some of the core family law principles that form the basis of the research. The chapter begins by setting the scene for this research by discussing the notion of Muslim family law; the meaning of nikah; examining divorce in the context of the problematic nature of nikah; aims of the research and the structure of the thesis.

1.2 Muslim family law

Since the seventh century, Britain had contact with the Muslim world although Muslim migration began in nineteenth century to the early twentieth century when Britain colonised majority of Muslim territories.⁶ As a result, the UK census 2021 figures puts Muslim religion as the second largest group after Christianity with 6.5% of the population.⁷ The prominence of the Muslim population in Britain has raised awareness on the role of Sharia and Islamic practice.⁸

⁶ Nahid Kabir, *Young British Muslims: Identity, Culture, Politics and the Media* (Edinburgh University Press 2010) 29.

⁷ [Religion, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk) accessed 17 August 2022.

⁸ Jessie Brechin, 'A Study of the Use of Sharia Law in Religious Arbitration in the United Kingdom and the Concerns That This Raises for Human Rights' (2013) 15 *Ecclesiastical Law Journal* 293.

The notion of Muslim family law defines those aspects of Sharia that deals with marriage, divorce, custody of children, maintenance, and succession.⁹ For example, Islamic law is a moral code that incorporates justice, economics, and morality, in fact “it is more than law in the real sense”.¹⁰ Nasir refers to Islamic law as a continuity of ideas, writings and thoughts that encompasses norms, interpretations, codes and local practices.¹¹ More specifically, Islam encourages marriage as a significant part of religious practice and places emphasis on preservation of the family within the community.¹² Turner and Arslan assert that the meaning and interpretation of Islamic law is diverse and changes depending on the generation or society with some archaic laws that are no longer in existence.¹³ Nielsen describes Muslim family law in Britain as personal law because of the demand among Muslim scholars for an adoption of a personal regime of law within the area of family law.¹⁴ It is worthy to note that personal law is wider in scope and it encompasses all codes of law that relate to the family not only in Britain but also various Muslim majority countries in the world.

Personal law systems refer to the existence of different bodies of laws applicable to diverse individuals depending on their religious or ethnic identity.¹⁵ Despite the absence of a universal meaning and understanding of Islamic family laws, the subject matter is important for Britain’s legal and judicial systems.¹⁶ It is important to the legal system because as a result of the

⁹ An-Naim Ahmed, *Islamic Family Law in a Changing World: A Global Resource Book* (1st edition, Zed Book Limited 2002)3.

¹⁰ Sami Zubaida, *Law and Power in the Islamic World* (2nd edition, I.B. Tauris London 2005) 1.

¹¹ Mohamad Nasir, ‘Islamic Law and Paradox of Domination and Resistance: Women’s Judicial Divorce in Lombok, Indonesia’ (2016) 44(1) *Asian Journal of Social Science* 78.

¹² Dena Hassouneh-Phillips, ‘Marriage is Half of Faith and the Rest is Fear Allah: Marriage and Spousal Abuse Among American Muslims’ (2001) 7(8) *Violence Against Women* 927.

¹³ Bryan Turner and Berna Arslan, ‘Sharia and Legal Pluralism in the West’ (2011) 14(2) *European Journal of Social Theory* 139.

¹⁴ Jorgen Nielsen, ‘Muslims in Europe: History Revisited or a Way Forward?’ (1997) 8(2) *Journal of Islam and Christian-Muslim Relations* 135.

¹⁵ Hadas Tagari, ‘Personal Family Law Systems- A Comparative and International Human Rights Analysis’ (2012) 8(2) *International Journal of the Law in Context* 231.

¹⁶ Javaid Rehman, ‘The Sharia, Islamic Family Law and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq’ (2007) 21(1) *International Journal of Law, Policy and Family* 108.

constant growth of adherents of the Islamic faith and Muslim marriages, there is need to create awareness and sensitivity towards the cultural and religious values of Muslims in Britain.

It is a common assumption that Muslim marriages are often associated as being forced or arranged which in turn supports the idea that “the experience of marriage for all Muslim women is based upon oppressive and archaic religious traditions”.¹⁷ However, marriage in Islam is considered as a union between a man and a woman either by agreement, religious bond, contract whether oral or in writing based on mutual consent.¹⁸ Even the Qur’an supports marriage as a contract based on mutual consent.¹⁹ Nevertheless, this does not counter the fact that there is still in existence forced or arranged marriages in the UK. However, this argument does not fall within the limits of this study.

The rights and duties emanating from the marriage are governed by religious law and cannot be deviated from by means of a private agreement.²⁰ Adelaide goes further to explain that while some rights and duties are mutual, others relate to particular gender role, however “the requirement for the same religious affiliation is applied more strictly to a woman”.²¹ On the other hand, the nikah is a contract that outlines the duties and responsibilities agreed by the parties and it can contain any terms.²² Adelaide’s research outlines the various elements which either proves a limitation or an influence on the exercise of freedom to have access to marriage, and on the choice of a partner by the family group.²³ First, the influence of the wali (matrimonial guardian) the guardian of the women. Although these guardians were known to have coercive powers in the past, it is worthy to note that the coercive powers of the guardian

¹⁷ Samia Bano, ‘Muslim marriage and Mahr: The Experience of British Women’ in Rubya Mehdi and Jorgen Nielsen (eds), *Embedding Mahr in the European Legal System* (DJOF 2011) 263.

¹⁸ Kristine Uhlman and Elisa Kisselburg, ‘Islamic Shari’a Contracts: Pre-Nuptial and Custody Protections’ (2013) 10 *Journal of Child Custody* 359.

¹⁹ Qur’an 30:21.

²⁰ Adelaide Madera, ‘Juridical Bonds of Marriage for Jewish and Islamic Women’ (2009) 11(1) *Ecclesiastical Law Journal* 51.

²¹ *Ibid.*

²² Nazia Rashid, ‘Dowry Claims in England and Wales’ [2018] *Family Law* 53.

²³ *Ibid.*

continue to exist; second, the prospect of “premature” marriages and finally, the constant use of proxy as a guardian by a woman to arrange a marriage.²⁴

Family law remains the core feature of religious normativity in the lives of Muslims residing in Muslim minority states as religious norms and jurisprudence are considered more important on issues relating to marriage formalities, dispute resolution and family formation.²⁵ Indeed, Bowen posits, “family law is the area in which the majority of social and legal concerns have emerged, in response to the suggestion that private Islamic bodies may adopt some of the functions that have historically been the domain of civil courts”.²⁶

The research of Buchler is useful in understanding Islamic personal law.²⁷ She states that family law is universally recognised as that area of law, which primarily concerns religions, cultural values, and traditions. An-Naim posited that Muslims in Britain argue that as members of the Islamic community, they are obliged to follow the principles of Sharia in organising their family lives.²⁸ This argument is based on the fact that Shariah refers to the Muslim way of life and it includes law as well as non-law issues such as the religious duties of Muslims, the correct way to worship God and known by Muslims to originate from an authoritative body.²⁹ The sources of Islamic law are Quran (the holy book of Islam) sunnah(traditions of the Prophet Muhammad), ijma(consensus) qiyas (analogy).³⁰ However, it is not the intention of the writer to explore the sources of Islamic law as it is beyond the scope of this thesis.

²⁴ Ibid.

²⁵ Rajnaara Akhtar, ‘Plural Approaches to Faith-based Dispute Resolution by Britain’s Muslim Communities’ [2019] *Child and Family Law Quarterly* 189.

²⁶ John Bowen, ‘How Could English Law Recognize Shariah’ (2010) 7(3) *University of St Thomas Law Journal* 412.

²⁷ Andrea Buchler, *Islamic Family Law in Europe? From Dichotomies to Discourse- or: Beyond Cultural and Religious Identity in Family Law* (2012) 8(2) *International Journal of Law in Context* 196.

²⁸ Abdullahi An-Naim, ‘Compatibility Dialectic: Mediating the legitimate Coexistence of Islamic Law and State Law’ (2010) 73(1) *Modern Law Review* 1.

²⁹ Rawaa Gebara, ‘Islamic Law and Modernity’ [2017] 6(2) *Oxford Journal of Law and Religion* 323.

³⁰ Mashood Baderin, ‘Understanding Islamic Law in Theory and Practice’ (2009) 9 *Legal Information Management* 186.

Closely tied to the justification to adhere to the principles of Sharia is the reasoning that Muslims feel a “strong affiliation” with the broader ummah (Islamic community), and it gives them a sense of identity.³¹ The notion of ummah will be explored in chapter two of this study. Discussions on Islamic marriages have focussed more on gender disparity and reciprocity.³² Abu-Odeh depicts the situation where the wife in Islamic marriage provides sexual pleasure (obedience) in return for her right to maintenance by her husband.³³ Welchman notes that the sanction for refusal of the duty of obedience is the loss of her right to maintenance.³⁴ Despite secularisation process in various branches of law, a woman’s individual liberty in a marriage is said to be autonomous from her own religious rule.³⁵ The author explains further that the presence of gender disparity is not entirely due to the complicated affinity between secular and religious laws but due to the political, historical and social factors that “tend to direct social praxis, creating pockets of resistance”.³⁶ Finally, perhaps more cogently, Islamic family law has a “direct bearing” on Muslim men and women living in Europe, particularly as family life and religious convictions are closely related.³⁷ From the above discussions, British Muslim women in Britain are more inclined to follow religion in matters relating to marriage. This relates to the purpose of this study, to investigate the reasons for the nikah only marriage and Muslim women’s reasons for not considering a civil marriage based on the fact that the nikah in a private home is not legally recognised in Britain. The data will be collected from British Muslim women living in segregated communities in Britain.

³¹ Kathleen Moore, *The Unfamiliar Abode: Islamic Law in the United States and Britain* (Oxford University Press 2010) 4; Nahid Kabir, *Young British Muslims: Identity, Culture, Politics and the Media* (Edinburgh University Press 2010) 6.

³² Sarah Carmichael, ‘Marriage and Power: Age at First Marriage and Spousal Age Gap in Lesser Developed Countries’ (2011) 16(4) *The History of the Family* 416.

³³ Abu-Odeh Lama, ‘Modern Family Law, 1800-Present: Arab States’ (2005) *Encyclopaedia of Women in Islamic Cultures* 11 460.

³⁴ Lynn Welchman, ‘A Husband’s Authority: Emerging Formulations in Muslim Family Law’ (2011) 25(1) *International Journal of Law, Policy and Family* 1.

³⁵ *Ibid*

³⁶ *Ibid*.

³⁷ Buchler (n27).

However, Islamic personal system has been criticised because it is deemed to discriminate against women.³⁸ This has been associated with the idea of patriarchal aspect of Muslim personal law discussed in chapter two of this research. This argument has centred on the effect of the incorporation into law customs and beliefs, advocacy of male privilege which is contrary to Islam that upholds gender equality.³⁹

The relationship between the Muslim women and Islamic legal tradition is a complex and multifaceted one.⁴⁰ This is clearly articulated in Ali's writing which reveals that the gap between the rhetoric and reality of Muslim women's lives, the status and rights she enjoys are informed by plural normative frameworks that stems from cultural, socio-economic, political and traditional practices.⁴¹ British legal system is secular which means that decisions in the courts are based on the law.⁴² It is important to note that the British legal system applies to all citizens including Muslims. This means that Sharia law can only govern matters in areas permitted by law.

Islamic law has been criticised due to discrimination against women in family law matters such as unilateral divorce by the husband, custody of children, rules forbidding non- Muslims from inheriting from Muslims and polygamy.⁴³ In effect, some aspects of Islamic law are deemed to be incompatible with the accepted standard of women's rights and gender equality such as

³⁸ Farrah Ahmed, 'Remedying Personal Law Systems' (2016) 30(3) *International Journal of Law, Policy and Family* 248.

³⁹ Azizah Al-Hibri, 'Muslim Women's Rights in the Global Village: Challenges and Opportunities' (2001) 15(1) *Journal of Law and Religion* 37; Ziba Mir-Hosseni, 'Muslim Women's Quest for Equality: Between Islamic Law and Feminism' (2006) 32(4) *Critical Inquiry* 629.

⁴⁰ Shaheen Ali, 'Cyberspace as Emerging Muslim Discursive Space? Online Fatawa on Women and Gender Relations and its Impact on Muslim Family Law Norms' (2010) 24(3) *International Journal of Law, Policy and Family* 338.

⁴¹ *Ibid.*

⁴² Victoria Miller, 'Islamic Personal Law in an International Context: The Perspective from England and Wales' [2012] *International Family Law* 209.

⁴³ Abdullahi An-Na'im, 'The Compatibility Dialectic: Mediating the Legitimate Coexistence of Islamic Law and State Law' (2010) 73(1) *Modern Law Review* 1.

divorce and polygamy.⁴⁴ Despite the fact that each religious group has its own personal law which they adhere to in Britain, they are still bound to comply with the law of the state. It is in the light of this reality that the main focus of this thesis is British Muslim women.

1.3 What is the nikah?

Marriage under Sharia law is a contract between the bride and groom known as nikah.⁴⁵ The parties to the marriage are permitted to incorporate certain agreements and conditions into the contract before, at the time or after the marriage to govern their marriage relations.⁴⁶ In Islamic law, the formalities attached to marriage as a contract are the ijab (proposal of marriage), consent of the bride, groom and qabul (acceptance of the proposal) in the presence of two male witnesses) and puberty.⁴⁷ For a marriage to be valid, there must be consent from both the bride and groom. The role of the guardian includes selecting the best husband for the bride and protecting the bride's interest at the time of the marriage. If the woman wants to marry a man and the guardian refuses, this will be taken to a judge who will investigate the reasons for the objection. The role of the wali (guardian) vests in the male relatives and are ranked in order of priority such as father, grandfather or any other male relative.⁴⁸ A valid contract of marriage is established once the above requirements are satisfied. Nevertheless, in current times, the

⁴⁴ Amira Mashhour, 'Islamic Law and Gender Equality: Could There be a Common Ground? A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt' (2005) 27(2) Human Rights Quarterly 562.

⁴⁵ Sara Hanna and Eleanor Lowes, 'The Problem with Nikah Contracts and Other Marriages' (2018) 4 Private Client Business 133.

⁴⁶ Nanda Rao, 'Marriage Agreements Under Muslim Law- A Weapon in the Hands of Women' (2013) 55(1) Journal of the Indian Law Institute 94.

⁴⁷ Javaid Rehman, 'The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq' (2007) 21(1) International Journal of Law, Policy and Family 108. Rehman mentions the "option of puberty" in circumstances where permission is given to the parent or guardian (known as in Islamic law as Wali) to enforce child marriages and the marriage is rescindable at the age of puberty.

⁴⁸ Lena Edlund, 'Cousin Marriage is Not Choice: Muslim Marriage and Underdevelopment' (2018) 18 AEA Papers and Proceedings of the One Hundred Thirtieth Annual Meetings of the American Economic Association 353.

marriage contract is signed in the presence of an Islamic judge, Imam (religious leader) or trusted community elder who is familiar with Islamic law.⁴⁹ The marriage contract can be conducted by proxy on behalf of the bride and groom or their guardians.⁵⁰ It is important to bear in mind that the nikah can be performed anywhere, with no written proof and even the ceremony can be conducted without the presence of an imam.⁵¹

Another prerequisite element of Muslim marriage is the mahr (reward). Mahr meaning reward or nuptial gift has been defined as a mandatory settlement either in monetary form or property paid by the husband to the wife.⁵² The significance attached to it is to prevent the woman to become “economically helpless” upon the termination of her marriage or death of her husband.⁵³ Siddiqui asserts that women are in most cases more financially vulnerable than men especially after a divorce and the mahr serves to safeguard the wife’s financial interest.⁵⁴ In order for the mahr to constitute a valid contract, the amount must be agreed by the bride and groom.⁵⁵ The intention of the donor of the gift should be stated in clear terms and recorded in the nikah contract.⁵⁶ In Islamic law, a woman has the right to receive the mahr from her spouse during the course of marriage as the mahr permits a man to unilaterally terminate the marriage.⁵⁷ However, if the divorce is initiated by the wife as a khula divorce, the mahr will be re-payable. On the other hand, the deferred mahr is debt paid only when the marriage is

⁴⁹ Bano (n17).

⁵⁰ Ayesha Hasan, ‘Marriage in Islamic Law- A Brief Introduction’ [1999] Family Law 164.

⁵¹ Patrick Nash, ‘Sharia in England: The Marriage Law Solution’ (2017) 6 Oxford Journal of Law and Religion 523.

⁵² Raihanah Azahari and Hasbi Ali, ‘Mahr as a Form of Economic Security: A Preliminary Study’ (2015) 29(3) Arab Law Quarterly 269.

⁵³ Ibid.

⁵⁴ Tracie Siddiqui, ‘Interpretation of Islamic Marriage Contracts by American Courts’ (2007) 41(3) Family Law Quarterly 639.

⁵⁵ Machteld Zee, ‘Five Options for Relationship between the State and Sharia Councils Untangling the Debate on Sharia Councils and Women’s Rights in the United Kingdom’ (2014) 16 Journal of Religion and Society 3; Somaya Abdullah, ‘Social Work, Family Welfare, and Muslim Personal Law in South Africa’ (2012) 34(3) Journal of Social Welfare and Family Law 315.

⁵⁶ Nazia Rashid, ‘Dowry Claims in England and Wales’ [2018] Family Law 53.

⁵⁷ Adelaide Madera, ‘Juridical Bonds of Marriage for Jewish and Islamic Women’ (2009) 11(1) Ecclesiastical Law Journal 51.

terminated by divorce or death.⁵⁸ Fournier writes that the enforcement of mahr in family law proceedings by Western courts is distributive in nature even though in many cases it is referred to as a “mere expression of religious recognition” by the judiciary.⁵⁹

An integral part of the nikah is incorporating prenuptial contracts known as talaq (divorce) agreements and these become effective upon dissolution of the marriage.⁶⁰ The terms are negotiated as part of the commitment in the marriage and there is no limit to number of terms except those contrary to the principles of Sharia law.⁶¹ Another idea often associated with the talaq agreement is the transfer by the husband of the right to divorce to the wife called tafwid (delegation).⁶² Khan suggests that this should be written into their contracts either at the time of the nikah or subject to a contractual agreement after the nikah.⁶³ The Islamic marriage contract is used to outline gender division between men and women; the terms are differing in favour of men and this remains the source of “legalised” gender inequality.⁶⁴

1.4 The problematic nature of nikah: “Divorce”

Islamic law permits different methods of dissolution of marriage which involves the consent of the parties, arrangement between respective families, delegated right to divorce by transfer from the husband as stated in the nikah contract⁶⁵ or even an informal unilateral

⁵⁸ Azizah Al-Hibri, ‘Muslim Women’s Rights in the Global Village: Challenges and Opportunities’ (2000) 15(1) *Journal of Law and Religion* 37.

⁵⁹ Pascale Fournier, ‘Flirting with God in Western Secular Courts: Mahr in the West’ (2010) 24(1) *International Journal of Law, Policy and the Family* 67.

⁶⁰ Zia Akhtar, ‘Prenuptial Agreements, Muslim Marriages and UK Law’ [2013] *International Family Law* 63

⁶¹ Ibid. The writer mentions some of the examples of the talaq agreements: terms to include the amount of maintenance the wife will receive per month during the marriage, division of their assets on separation and prohibition of the right of the husband to pronounce the talaq is contrary to the principles of Sharia law.

⁶² Fareeha Khan, ‘Tafwid al- Talaq: Transferring the Right to Divorce to the Wife’ (2009) 99(3) *Muslim World* 502.

⁶³ Ibid.

⁶⁴ Maznah Mohamad, ‘Malaysia Sharia Reforms in Flux: The Changeable National Character of Islamic Marriage’ (2011) 25(1) *International Journal of Law, Policy and the Family* 46.

⁶⁵ Lucy Carroll, ‘Talaq-i- Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife’ (1982) 16(2) *Modern Asian Studies* 277.

repudiation of the wife by the husband known as the “bare talaq”.⁶⁶ Moreover, as explained by Ahmad, marriage in Islam is a sacred institution that should be respected, and divorce is “valid only if there is reasonable cause for it”.⁶⁷ Marriage is a social institution (contract) and there has been some arguments that it is a “sacred” without any supporting evidence from Islamic legal literature. Divorce is permitted on any grounds; however modern practice requires the women in particular to provide cogent justification. Nonetheless, during the prophetic era, women were allowed to divorce for simple reasons such as not finding their husbands attractive.

Islamic law defines talaq as ‘the dissolution of a valid marriage contract forthwith or at a later date by the husband, his agent, or wife duly authorised by him to do so, using the word talaq, a derivative or a synonym thereof’.⁶⁸ A divorce initiated by the husband is called talaq (I divorce you) which Alami and Hinchcliffe describes as a one-sided act, exclusively a male’s right that dissolves the marriage contract through the declaration of the husband.⁶⁹ This is deemed to be discriminatory as the wife has “no voice” in the issue of the divorce even if she wants a reconciliation.⁷⁰ A single declaration of “I divorce you” is sufficient to suspend the marriage.⁷¹ When three declarations of divorce are given at once, they are considered three separate divorces and the divorce is irrevocable afterwards.⁷² The husband can pronounce the talaq

⁶⁶ Sebastian Poulter, ‘Divorce- Recognition of Foreign Divorces- The New Law’ (1987) 84 Law Society Guardian Gazette 253.

⁶⁷ Furqan Ahmad, ‘Understanding the Islamic Law of Divorce’ (2003) 45(3) Journal of the Indian Law Institute 484.

⁶⁸ Najma Moosa, ‘An Overview of Divorce and Dispute Resolution in Islamic Law’ [2004] International Family Law 225; Arlette Gautier, ‘Legal Regulation of Marital Relations: An Historical and Comparative Approach’ (2005) 19(1) International Journal of Law, Policy and the Family 47.

⁶⁹ Alami Dawoud and Hinchcliffe Doreen, *Islamic Marriage and Divorce Laws of the Arab World* (1st edition, Kluwer Law International 1996)22.

⁷⁰ Fatimah Farag, ‘Unprecedented Review of ‘Triple Talaqs’ by the Indian Supreme Court’ [2017] International Family Law Journal 221.

⁷¹ Nausheen Yousuf, ‘Will a Ban on Triple Talaq Truly Help Muslim Women in India?’ Herald (Glasgow,09 August 2016) 1.

⁷² Nehaluddin Ahmad, ‘A Critical Appraisal of ‘Triple Divorce’ in Islamic Law’ (2009) 23(1) International Journal of Law, Policy and the Family 53-61; Muhammad Munir, ‘Triple “Talaq” in One Session: An Analysis of the Opinions of Classical, Medieval, and Modern Muslim Jurists Under Islamic Law’ (2013) 27(1) Arab Law Quarterly 29.

orally, in writing and by way of deed of divorce.⁷³ A bare talaq once pronounced by the husband will be declared an irrevocable divorce by Sharia Councils.⁷⁴ Nonetheless, Islamic law recommends the need to appoint an arbitrator before a divorce is initiated to facilitate reconciliation.⁷⁵ It is only when reconciliation fails that the right to divorce can be permitted as mentioned above.⁷⁶

A wife on the other hand does not have the automatic right to terminate her marriage unless it has been expressly delegated to her by her husband in the marriage contract.⁷⁷ The wife is required to undergo a process called faskh -e- nikah (annulment) which entails notification to the Qadi (Muslim judge) of her intention to divorce with proof that the husband has not fulfilled his marital responsibilities and has unreasonably refused to grant the talaq.⁷⁸ Nevertheless, Muslim women in Britain can make a request to her local Sharia Council for an appointment of an expert in Islamic Jurisprudence to act as her Qadi.⁷⁹ This serves to ameliorate the difficulties faced by the wife where the husband refuses to grant a divorce.⁸⁰ However, attention needs to be drawn to the stigma, religious belief and social pressure from the Muslim community that prevents a woman from divorcing her husband.⁸¹

⁷³ Muslim Family Law Ordinance, 1961 (Ordinance No VIII of 1961) s.7.

⁷⁴ Deborah Levy, Joanna Uzoka and Caoimhe Sykes, 'A Brief Overview of the Issue relating to the Recognition of Talaq and Get in the UK' [2019] Family Law 386.

⁷⁵ Shams Pirzadah, 'Talaq: When and How?' (1985) The Islamic viewpoint 1.

⁷⁶ Ibid. The Qur'an and the Sunnah provide guidelines for the dissolution of marriage.

⁷⁷ Ziba Mir- Hosseini, 'A woman's Right to Terminate the Marriage Contract; The Case of Iran' in Asifa Quraishi and Frank Vogel (eds), *The Islamic Marriage Contract: Case Studies in Islamic Family Law* (Islamic Legal Studies Program 2008) 215.

⁷⁸ Charlotte Proudman, 'A Practical and Legal Analysis of Islamic Marriage, Divorce and Dowry' (2012) Family Law 1.

⁷⁹ Siddique Patel, 'Talaq, Khula, Faskh and Tafweeth: The different methods of Islamic separation – Part 1' (2014) Family Law 1, Victoria Miller, 'Islamic Personal Law in an International Context' (2012) International Family Law 135. It is worthy of note that Sharia courts can only grant religious divorce and not legal divorces.

⁸⁰ Gillian Douglas, Norman Doe, Sophie Gilliat-Ray, Russell Sandberg and Asma Khan, 'Marriage and Divorce in Religious Courts: A Case Study' (2011) 41(9) Family Law Journal 911.

⁸¹ Wesahl Domingo, 'Marriage and Divorce: Opportunities and Challenges Facing South African Muslim Women with the Recognition of Muslim Personal Law' (2005) *Empowering Women for Gender Equity* 68.

Islamic family law also makes provision for a wife to terminate the marriage by khula.⁸² It occurs when the parties separate by mutual consent on the condition that the wife agrees to reimburse her mahr to the husband and the husband agrees to the talaq.⁸³ The khula is permitted only when the couple have consummated the marriage and acceptance by the husband of the wife's demand for a divorce.⁸⁴ The wife can also be granted judicial khula without the husband's consent if she is willing to forfeit her financial rights.⁸⁵ The grounds for judicial khula includes amongst others are failure to provide maintenance for two years, desertion for four years, insanity and impotence.⁸⁶ The court will issue a decree for the khula to become effective and this terminates the marriage.⁸⁷

Tafweez-e-talaq (delegated divorce) is another method for the dissolution of marriage by a woman.⁸⁸ The wife has the right under Islam to request for the power of talaq from her husband which can be delegated to her both orally and in writing under certain conditions.⁸⁹ Once this right has been delegated, it cannot be repudiated, she can then dissolve the marriage.⁹⁰ Munir notes stipulations in terms of the wife's authority over divorce should be included either before or at the time of the nikah on the performance of certain acts on the part of husband as agreed by the parties.⁹¹ He emphasises the relevance of such agreement to prevent abuse of authority by the husband and the consequence is that the wife will be left without a remedy.⁹²

⁸² Siddique Patel, 'The Different Methods of Islamic Separation- Part 3: Khula and Faskh-e-Nikah' (2016) Family Law 1.

⁸³ Siddique Patel, 'Khula- The Islamic Non-Fault Divorce' (2014) Family Law 1.

⁸⁴ Neelum Atkins, 'A Guide to Islamic Marriage and Divorce' [2012] Family Law 721.

⁸⁵ The Dissolution of Muslim Marriage Act, 1939 (Act no VIII of 1939), s1.

⁸⁶ The Dissolution of Muslim Marriage Act, 1939 (Act no VIII of 1939), s2.

⁸⁷ Ibid.

⁸⁸ Lucy Carroll and Harsh Kapoor, *Talaq-Tafwid: The Muslim Woman's Contractual Access to Divorce: An Information Kit* (1st edition, Women Living Under Muslim Laws 1996)11.

⁸⁹ Shagufta Omar, 'Dissolution of Marriage: Practices, Laws and Islamic Teachings' (2007) 4(1) Policy Perspectives 91.

⁹⁰ Ibid.

⁹¹ Muhammad Munir, 'Stipulations in a Muslim Marriage Contract with Special Reference to Talaq Al-Tafwid Provisions in Pakistan' (2005) 12 Yearbook of Islamic and Middle Eastern Law 235.

⁹² Ibid.

It is important to bear in mind that in Britain, talaq is not recognised as a divorce procedure.⁹³ The difficulty arises where the parties have undertaken a religious marriage that does not satisfy the legal requirements under the Marriage Act 1949.⁹⁴ Sandberg and Cranmer advance the view that it would give the parties little to no remedy under civil law unless children are concerned.⁹⁵ This is clearly illustrated in the argument that in regards to the mahr, it is not binding on the judge in the English courts to take into consideration what has been agreed by the parties in determining any financial resolution.⁹⁶ The essence of this argument is predicated on the fact that most mahrs do not satisfy the Supreme Court requirement for an agreement fairly entered into and at the time of divorce fairness in its terms.⁹⁷ From all indications, it appears that in relation to financial resolution, “the door is closed to radical contracting out of the core principles of English law”.⁹⁸

As nikahs can be performed anywhere as previously mentioned, there are no reliable statistics of the number of “unofficial wives” and as a result impracticable to accurately assess the true scale of the practice in the Muslim community.⁹⁹ One of the reasons furnished for this lack of documented evidence is that Muslim marriages and divorce practices amongst British Muslims exists within the private domestic sphere of Muslim family law.¹⁰⁰ Having said that, it is noteworthy that the couple involved may “ponder” on the legalities of the marriage at different

⁹³ Cheryl Morris, ‘Divorce in a Multi-faith Society’ [2005] Family Law 727.

⁹⁴ Russell Sandberg and Frank Cranmer, ‘The Council of Europe and Sharia: An Unsatisfactory Resolution’ (2019) 21 Ecclesiastical Law Journal 203.

⁹⁵ Ibid.

⁹⁶ Brigitte Clark, ‘Should Greater Prominence be given to Pre-nuptial Contracts in the Law of Ancillary Relief?’ [2004] Child and Family Law Quarterly 399; Andrea Bucher, *Islamic Law in Europe? Legal Pluralism has its Limits in European Family Laws* (Ash gate 2011) 68.

⁹⁷ David Hodson, *The Islamic Marriage in the Context of the Practice of English Family Law* [2016] Family Law 90.

⁹⁸ Enright Mairead, ‘The Beginning of the Sharpness: Loyalty, Citizenship and Muslim Divorce Practice’ (2013) 9(3) International Journal of Law in Context 295.

⁹⁹ Patrick Nash, ‘Sharia in England: The Marriage Law Solution’ (2017) 6 Journal of Law and Religion 523; Sara Hanna and Eleanor Lowes, ‘The Problem with Nikah Contracts and Other Marriages’ (2018) 4 Private Client Business 133.

¹⁰⁰ Islam Uddin, ‘Nikah-only Marriages: Causes, Motivations, and Their Impact on Dispute Resolution and Islamic Divorce Proceedings in England and Wales’ (2018) 7 Oxford Journal of Law and Religion 401.

points in time for example, before the religious ceremony, following the celebrations, during the marriage or upon breakdown of the marriage usually after consultation with a solicitor.¹⁰¹ It follows that Muslim women may have recourse to Sharia Councils that are deemed to be complex.¹⁰² The discussion on the complexity of Sharia Councils will be explored in chapter two of this thesis.

1.5 Aims of the research

The main aim of this thesis was to examine the reasons British Muslim women irrespective of ethnic origin are entering the “nikah only marriages” as well as Muslim women’s reasons and level of knowledge for not considering a civil marriage based on the fact that the nikah in a private home is not legally recognised in Britain. To advance the discussion necessary to explore the key research question, the aim was broken down into two sub-research questions:

- Could segregation play an important role in Muslim women’s choice of marriage?
- Does the level of education influence Muslim women in their choice of marriage?

The reason why education is prioritised as one of the research questions is that both segregation and lack of education are as a result of isolation as well as lack of information. To achieve the above aims, a two-phase approach was used consisting of semi-structured interviews with thirty-three British Muslim women living in segregated communities of

¹⁰¹ Vishal Vora, ‘The Problem of Unregistered Muslim Marriage: Questions and Solutions’ [2016] Family Law 95; Kathryn O’ Sullivan and Leyla Jackson, ‘Muslim Marriage (non) Recognition: Implications and Possible Solutions’ (2007) 39(1) Journal of Social Welfare and Family Law 22; Rajnaara Akhtar, ‘Modern Traditions in Muslim Marriage Practices, Exploring English Narratives’ (2018) 7 Oxford Journal of Law and Religion 427.

¹⁰² Gillian Douglas, Norman Doe et al, ‘The Role of Religious Tribunals in Regulating Marriage and Divorce’ [2012] Child and Family Law Quarterly 139.

Birmingham (Alum rock, Bordesley Green and Sparkhill), Bradford, Leicester, and London (Walthamstow) as well as a questionnaire.

A total number of one hundred and ten fully completed questionnaires were returned. The questionnaire was to complement findings from the interview process to gain a more nuanced statistical data of the research questions under investigation. In effect, this research used mixed methods which is a combination of qualitative and quantitative data to evaluate the reasons British Muslim women are entering the nikah only marriages as well as Muslim women's reasons and level of knowledge for not considering a civil marriage based on the fact that the nikah in a private home is not legally recognised in Britain.

1.6 Structure of the thesis

This current chapter introduces the main principles that form the basis of the study such as Muslim family law, meaning of a nikah, the problematic nature of the nikah in relation to divorce and the aims of the research. Chapter two reviews existing literature to identify the gaps in knowledge and the place of this research within existing literature. Chapter three explores legal pluralism, multiculturalism and critical race theory. Chapter four explains the methods used in the study. It explains ontology and epistemology of the research, mixed methods such as semi-structured interviews and questionnaires, grounded theory, the rationale for using grounded theory, constructivist grounded theory, the strengths and limitations of grounded theory. The chapter further discusses the snowball sampling, ethical approval, reflections on insider and outsider perspectives in the research, thematic analysis, coding and triangulation. Chapter five presents the findings of the first and second phase of the study. The chapter begins with an overview of the findings of the questionnaire. The chapter also explores the major themes and subthemes that emerged from the semi-structured interviews. Chapter 6 is a continuation of the

discussion of findings that emerged from the semi-structured interviews and the questionnaire. Chapter seven is the final chapter of the research and discusses the conclusions from the semi-structured interviews and the questionnaire. Finally, it discusses the original contribution to knowledge, the recommendations from the research and the limitations of the study.

Chapter 2: Literature review

2.1 Introduction

The previous chapter provided a general introduction to the thesis. This chapter reviews existing literature in the areas of marriage, law, and religion. The purpose of this chapter is to present a comprehensive overview of the legal complexities of unregistered Muslim marriages. It discusses the overlap between law and religion as well as the intersection between civil and religious marriages. It explores unregistered Muslim marriages and non-qualifying ceremonies. It looks at “constructive” cohabitation, the law on *Lex loci celebrationis* (law of the land where the marriage was celebrated), the mahr and polygamous marriages. Finally, it examines patriarchy, Sharia Councils, the notion of ummah, possible solutions to unregistered nikahs and areas of reform to identify the gaps in literature.

2.2 Marriage in contemporary Britain: The interface between law and religion

The institution of marriage is of central importance within the general framework of family law.¹⁰³ In this regard, family law defines the criteria for the legal status of marriage, rights and obligations of the married couples and the mechanism for divorce.¹⁰⁴ Marriage is one of the oldest social institutions approved by laws, religions and social norms that provide a pillar of

¹⁰³ Andrew Borkowski, ‘The Presumption of Marriage’ [2002] Child and Family Law Quarterly 251.

¹⁰⁴ Sir James Munby, ‘What is Family Law? - Securing Social Justice for Children and Young People’ [2018] Family Law 819.

stability and a strong foundation to build a family.¹⁰⁵ Straw posits that as marriage remains the choice of the majority of people in Britain, there is need to strengthen the institution to assist more marriages to thrive.¹⁰⁶ Waite¹⁰⁷ and Lewis¹⁰⁸ have commented on the significance of the stability of marriage and family in terms of the benefits derived by having children, material welfare, importance of the need for attachment and protection against depression. In this regard, one of the paramount features of marriage from the perspective of the state and society is certainty in terms of who is entitled to the rights and responsibilities in a valid marriage.¹⁰⁹ Exponents of marriage promotion policies argue that the institution of marriage if properly constructed would sufficiently cater for the economic needs of women within the family unit.¹¹⁰ Marriage as an institution is a notable event in the personal lives of many which can only be expressed if it has been solemnised in accordance with a deeply held belief.¹¹¹ Bradney stated that “one feature of family law that is more certain than any other to touch upon people’s lives in a positive manner is the law relating to the formalities of the marriage ceremony”.¹¹² The case of *Hyde v Hyde and Woodmansee*¹¹³ has often been cited as the legal definition of marriage in English Law. In this case, Lord Penzance defined marriage as “the voluntary union

¹⁰⁵ Max Rheinstein, ‘Trends in Marriage and Divorce: Laws of Western Countries’ (1953) 18(1) *Law and Contemporary Problem* 3; Alexis Water, ‘A Symposium on Marriage and its Future’ (2004) 66(4) *Journal of Marriage and Family* 843; Dirk Betmann and Michael Kvanicka, ‘The institution of Marriage’ (2011) 24(3) *Journal of Population and Economics* 1005.

¹⁰⁶ Jack Straw MP, *Supporting Families: A Consultation Document* (1998) <https://dera.ioe.ac.uk/4194/1/Supporting%2520families%2520summary%2520of%2520responses.pdf> accessed 19 June 2020.

¹⁰⁷ Linda Waite, *Does Marriage Matter?* (1995) 32(4) *Demography* 483.

¹⁰⁸ Jane Lewis, ‘Debates and Issues Regarding Marriage and Cohabitation in the British and American Literature’ (2001) 15(1) *International Journal of Law, Policy and Family* 159.

¹⁰⁹ Stephanie Pywell and Rebecca Probert, ‘Neither Sacred nor Profane: The Permitted Content of Civil Marriage Ceremonies’ [2018] *Child and Family Law Quarterly* 415.

¹¹⁰ Ariela Dubler, ‘In the Shadow of Marriage: Single Women and the Legal Construction of the Family and the State’ (2013) 112(7) *Yale Law Journal* 1641.

¹¹¹ John Eekelaar, ‘Marriage: A Modest Proposal’ (2013) 43(1) *Family Law Journal* 83-85.

¹¹² Anthony Bradney, ‘How Not to Marry People: Formalities of the Marriage Ceremony’ (1989) *Family Law* 408.

¹¹³ (1866) LR 1P and D 130.

for life of one man and one woman to the exclusion of all others”.¹¹⁴ Lord Nicholls of Birkenhead in the case of *Bellinger v Bellinger*¹¹⁵ stated that ‘marriage is an institution, or a relationship, deeply embedded in the religious and the culture of the society. It is deeply embedded as a relationship between two persons of the opposite sex.’¹¹⁶ Probert opines that this definition of marriage should be understood as a defence and that the judiciary are not restricted to it.¹¹⁷ However, the introduction of section 1(1) of the Marriage (Same Sex Couples) Act 2013 makes marriage of the same sex lawful. This thesis will adopt the traditional definition of marriage as stated in the case of *Hyde v Hyde* that are still relevant. For example, the monogamous aspect and though not necessarily lifelong because of divorce, the marriage is created with the intention that it will be lifelong.

Duran’s study views marriage from the perspective of anthropology. Duran suggests that it is pertinent for the definition of marriage to impute a marital construct to all societies which must accommodate a “presupposition of its ethnographic universality”.¹¹⁸ The fact is that there is no universally acceptable definition of marriage.¹¹⁹ Every society defines marriage in a way beneficial to its citizens, economic needs and to reflect the contemporaneous social values.¹²⁰ Eekelaar rightly notes that this lack of a single definition demonstrates the ethnic, cultural and religious diversity within the society.¹²¹ Smith research indicates that marriage represents a form of self-improvement which entails giving up personal freedom for voluntary dedication to one another in order to achieve a higher moral objective.¹²²

¹¹⁴ Ibid at 133.

¹¹⁵ [2003] AC 467 at 480 Para 46

¹¹⁶ Ibid.

¹¹⁷ Rebecca Probert, ‘Hyde v Hyde: Defining or Defending Marriage’ (2007) 19(3) Child and Family Law Quarterly 322.

¹¹⁸ Duran Bell, ‘Defining Marriage and Legitimacy’ (1997) 38(2) Current Anthropology 237.

¹¹⁹ Kenneth Norrie, ‘Marriage is for Heterosexuals-May the Rest of us be Saved from it’ (2000) 12(4) Child and Family Law Quarterly 338.

¹²⁰ Ibid.

¹²¹ John Eekelaar, ‘Why People Marry: The Many faces of an Institution’ (2007) 41 Family Law Quarterly 413.

¹²² Gillian Smith, ‘Freedom and the Institution of Marriage’ (2001) UCL JR 1

The connection between law and religion has been well documented in literature.¹²³ Under English law, there is no universal definition of religion rather the courts and tribunals have developed different definitions concerning distinct religious rights.¹²⁴ Religion has been defined under section 2 of the Employment Equality (Religion or Belief) Regulations 2003 as “religion or belief means any religion, religious belief or similar philosophical belief”. Religion is a set of beliefs, commitment, practices that individual of a particular religious group, observe and follow.

The place of religion in the area of family law poses a challenge in our legal system.¹²⁵ For instance, in Britain a vast majority of the citizens do not attach relevance to any institutionalised form of religion.¹²⁶ However, religion is an integral part of an individual’s identity and belief system.¹²⁷ Ahmed concurs with the above view and asserts that religion plays a crucial part in the lives of many citizens; the freedom to make decisions on religious issues is said to strengthen personal autonomy.¹²⁸

Mirza’s research has pointed out that the problem facing British Muslims in Britain is the fact that English law is secular in nature and “encapsulating the liberal notion of universal neutrality, operates on the basis of a deeply entrenched separation between religion and law”.¹²⁹ An inevitable consequence of this is that the state law does not recognise personal law

¹²³ Robert Destro, ‘The religious Foundations of Civil Rights Law and the Study of Law and Religion in an Interdisciplinary Framework’ (1987) 5(1) *Journal of Law and Religion* 39; William Garrett, ‘Religion, Law and the Human Condition’ (1987) 47 *S A J* 1; Arland Thornton, William Axinn and Daniel Hill, ‘Reciprocal Effects of Religiosity, Cohabitation and Marriage’ (1992) 98(3) *AJS* 628; Julian Rivers, ‘Law, Religion and Gender Equality’ (2007) *Ecclesiastical Law Journal* 1; Howard Vogel, ‘Speaking of Law and Religion: Why Law and Why Religion? A Conversation between a Lawyer and a Theologian’ (2009) 24(2) *Journal of Law and Religion* 366.

¹²⁴ Russell Sandberg, ‘Clarifying the Definition of Religion under English Law: The need for a Universal Definition’ (2018) 20 *Ecclesiastical Law Journal* 132.

¹²⁵ Prakash Shah, Marie-Claire Foblets and Mathias Rohe, ‘Family, Religion and the Law: Cultural Encounters in Europe’ reviewed by Anna Marotta (2015) *Journal of Immigration, Asylum and Nationality Law* 1.

¹²⁶ Rubya Mehdi et al, ‘Law and Religion in Multicultural Societies’ reviewed by Anthony Bradney (2010) 44(1) *LSR* 189.

¹²⁷ Christopher McCrudden, ‘Religion, Human Rights, Equality and the Public Sphere’ (2011) 13(1) *Ecclesiastical Law Journal* 26.

¹²⁸ Farrah Ahmed, ‘The Autonomy Rationale for Religious Freedom’ (2017) 80(2) *Modern Law Review* 238.

¹²⁹ Qudsia Mirsa, ‘Islam, Hybridity and the Laws of Marriage’ (2000) 14(1) *Australian Feminist Law Journal* 1.

systems which are in most cases founded on religion; cultural traditions and Sharia laws are restricted from incorporation into the official law.¹³⁰ Furthermore, it can be argued that where law does not take into consideration religious motivation, it leads to failure to engage with the community in question and the implication is that it opens up real issues of power by the majority over the minority and hence community cohesion.¹³¹

Islam is a public faith in which religion intermingles in other facets of the society which involves law.¹³² Law and religion are cultural attributes of a society and their interaction poses a problem irrespective of the definition ascribed to them.¹³³ Pasquale's research on law and religion notes that the interaction helps to deduce the place of religious faith in a globalised society.¹³⁴ Nonetheless, for a better understanding of law and religion, there is need for a trans-disciplinary approach that imports perceptions from neo-pragmatism, sociology of law and philosophy.¹³⁵ Indeed, an interpretation of the interrelation between law and religion leads to a structural tension which views religion as an external phenomenon that conforms to law.¹³⁶

Sibley's study reveals that the relationship between law and religion is twofold: the sanction of the legal system systematises and then made available for the institutions of religion whereas religion strengthens and supports the system of law.¹³⁷ More specifically, law has extended significantly in a way that allows the state to safeguard and regulate religion.¹³⁸ Shrivastava's

¹³⁰ Ibid.

¹³¹ Rowan Williams, 'Civil and Religious Law in England: A Religious Perspective' (2008) 10 *Ecclesiastical Law Journal* 262.

¹³² Grace Davie, 'Law, Sociology and Religion: An Awkward Threesome' (2012) 1(1) *Oxford Journal of Law and Religion* 235.

¹³³ Winnifred Sullivan, 'Religion, Law and the Construction of Identities: Introduction' (1996) 43(2) *NUMEN* 130.

¹³⁴ Pasquale Annichino, 'Law and Religion in the Twenty-First Century: Relations between States and Religious Communities' (2009) 11 (1) *Ecclesiastical Law Journal* 212.

¹³⁵ Celia Kenny, 'Law and the Art of Defining Religion' (2014) 16(1) *Ecclesiastical Law Journal* 18.

¹³⁶ Han Kippenberg, 'Religion, Law and the Construction of Identities: Preface' (1996) 43(2) *NUMEN* 126.

¹³⁷ Mulford Sibley, 'Religion and Law: Some Thoughts on their Intersections (1984) 2(1) *Journal of Law and Religion* 45.

¹³⁸ Alice Donald, 'Advancing Debate about Religion or Belief, Equality and Human Rights: Grounds for Optimism?' (2013) 2(1) *Oxford Journal of Law and Religion* 50.

literature is vital for an analysis on law and religion because it encapsulates how law regulates the operation of religious institutions which are defined by religion.¹³⁹ Shrivastava argues that although law and religion are controlled by a diverse source of authority, they are both normative systems that affect social behaviour and essentially relate to the maintenance of social order and justice.¹⁴⁰ In effect, “pervasive overlap is inevitable, as almost all core events in human life belong within both jurisdictions”.¹⁴¹

Sandberg refers to the interaction between law and religion as the “juridification of religion”.¹⁴² He recommends the proliferation of law to regulate the activities of religion.¹⁴³ This will enable religious conflicts to be resolved with reference to law and a process of “legal framing whereby citizens think of themselves as legal subjects”.¹⁴⁴ At the heart of these dynamics is the argument that there has been a fundamental shift in the law’s attitude towards religion; secular courts are becoming less deferential to religious law and the scope of religion to offer public services in a manner conforming with their own ethos is reducing.¹⁴⁵

2.2.1 An overview of civil marriages

Civil marriage depicts a typical modern phenomenon, connected through the adjective “civil” with other distinctively modern concepts such as civil society, all of which point to the notion of individual liberty; predicated upon a modern state guaranteeing the autonomy of large areas

¹³⁹ Abhinav Shrivastava ‘Transcending Tradition: An Examination of the Manner in which Law Induces Change in Institutions Defined by Religion’ (2009) 24(2) *Journal of law and Religion* 464.

¹⁴⁰ *Ibid.* Terence research highlights that law has become neutral towards religion and adherents are allowed to practice their faith. Terence Etherton, ‘Religion, the Rule of Law and Discrimination’ (2014) 16 *Ecclesiastical Law Journal* 265.

¹⁴¹ *Ibid.*

¹⁴² Russell Sandberg, *Law and Religion* (1st edition, Cambridge University Press 2011) 193.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ Julian Rivers, ‘The Secularisation of the British Constitution’ (2012) 14 *Ecclesiastical Law Journal* 371.

of social life.¹⁴⁶ In mediaeval times, marriage was essentially a church affair, except for the common law marriages which were made illegal by the provisions of the Marriage Act 1753 commonly known as the Lord Hardwicke's Marriage Act.¹⁴⁷ This was followed by the enactment of the Marriage Act 1836 which introduced the idea of civil marriage before a superintendent registrar, in an authorised building and marriages according to the rites of other religions.¹⁴⁸ It is worth noting that "civil marriage was introduced in 1837 to provide a marriage facility for couples who did not want a religious ceremony".¹⁴⁹ The Marriage Act 1949 is the modern successor to the Marriage Act 1836.

One of the unique features of marriage solemnised in Britain is the mechanism of combining Muslim religious rites with civil registration simultaneously.¹⁵⁰ The Marriage Acts 1949-1994 is the primary statute that regulates the solemnisation and registration of marriage in Britain. The Act permits religious couples to solemnise their marriage in their own religious premises provided that the requisite conditions for the registration of buildings and appointment of authorised persons are satisfied.¹⁵¹ The parties to the marriage must satisfy the preliminary procedures before a marriage can take place.¹⁵²

Each party to the marriage must give notice of their intention to marry in person to the Superintendent Registrar of the district where he or she resides.¹⁵³ They must also obtain the

¹⁴⁶ Chatterjee Nandini, 'English Law, Brahma Marriage and the Problems of Religious Difference: Civil Marriage Laws in Britain and India (2010) 52(3) Comparative Studies in Society and History 524.

¹⁴⁷ Stephen Borton, 'Marriage in the Church of England: The Immigration Act 2014 and Beyond' (2015) 17(3) Ecclesiastical Law Journal 331-341.

¹⁴⁸ Marriage Act 1836.

¹⁴⁹ Civil Registration: Vital Change: Birth, Marriage and Death Registration in the 21st Century. Presented to Parliament by the Economic Secretary to the Treasury by Command of Her Majesty: Cm 5355 January 2002 p 20.

¹⁵⁰ Norman Doe et al, 'The Role of Religious Tribunals in Regulating Marriage and Divorce' (2012) 24(2) Child and Family Law Quarterly 139.

¹⁵¹ Marriage Act 1949, s.41-44 and the Places of Worship Registration Act 1855- makes provision for places of worship to be certified by the Registrar General.

¹⁵² Marriage Act 1949, s.5-40.

¹⁵³ Marriage Act 1949, s.27.

Superintendent Registrar's written certificates before the marriage can take place.¹⁵⁴

Furthermore, the parties' giving notice must make a solemn declaration in writing that there is no impediment of kindred, alliance or other lawful hindrance to the marriage.¹⁵⁵ Parental consent must be obtained if either party is between the ages of 16 and 17.¹⁵⁶ However, the law has now been amended by the Marriage and Civil Partnership (Minimum Age) Act 2022 and the minimum age for marriage is 18. Civil marriage ceremonies may be solemnised in the presence of the Superintendent Registrar and two witnesses in his office.¹⁵⁷ Nevertheless, religious service cannot be used at any marriage solemnised in the office of the Superintendent Registrar.¹⁵⁸

The Marriage Act 1994 amended the Marriage Act 1949 to permit civil marriages to be solemnised on approved premises and for marriages to be solemnised in registration districts in which neither party to the marriage resides.¹⁵⁹ Undoubtedly, this signifies that civil ceremony creates the valid marriage as the Act mentions the choice of having a religious ceremony after the civil ceremony.¹⁶⁰ It is pertinent to note that a marriage can be solemnised in a religious place of worship on the condition that it is registered for the purposes of marriages.¹⁶¹ Also, section 46 of the Marriage Act 1949 mentions the requirements regarding marriage in the Register office followed by a religious ceremony. The Marriage Act 1949 in addition lists the categories of persons that can register marriages depending on the place of solemnisation.¹⁶² Furthermore, section 75(2) of the Marriage Act 1949 criminalises non-compliance of the

¹⁵⁴ Marriage Act 1949, s.26. See also section 2(1) of the Marriages (Approved Premises) Regulations 1995 that defines approval means "approval of premises for the solemnisation of marriages in accordance with section 26(1) (bb) of the Marriage Act 1949".

¹⁵⁵ Marriage Act 1949, s.28.

¹⁵⁶ Marriage Act 1949, s.3.

¹⁵⁷ Marriage Act 1949, s.45.

¹⁵⁸ Marriage Act 1949, s.45(2).

¹⁵⁹ Marriage Act 1994, s.46A and 46B. Approved premises includes buildings such as hotels, stately homes and historic buildings.

¹⁶⁰ Wendy Kenneth, 'The Place of Worship in Solemnization of a Marriage' (2015) 20(2) Journal of Religion and Law 260.

¹⁶¹ Marriage Act 1949, s.41.

¹⁶² Marriage Act 1949, s.53.

registration requirements by making it a felony and liable to a term of imprisonment not exceeding five years. Finally, section 76(1) of the Marriage Act 1949 provides for offence relating to registration of marriage in situations of refusal to register the marriage without reasonable cause.

2.2.2 Irreconcilable differences? The intersection between civil and religious marriages

There is little discussion in legal texts as to the complicated relationship between civil and religious marriage ceremonies.¹⁶³ However, to avoid in-depth investigation into their relationship, this complication is made comprehensible by dividing it into a simple category of civil and religious marriages.¹⁶⁴ Although persons domiciled in the UK are subject to English family law and those domiciled in Scotland subject to Scottish family law, issues relating to Muslims are within the sphere of unofficial Islamic law. It must be stressed that religious marriages are undertaken by Muslims, and this gives religious as well as cultural validity to sexual relations.¹⁶⁵ A religious tribunal may acknowledge a religious marriage which is not recognised under civil law.¹⁶⁶ It is worthy to note that there are valid religious marriages such as Anglican, Jewish and Quaker. All other religious groups are required to comply with formalities for example, either have weddings in registered places of worship registered for the solemnisation of marriages, or civil weddings in Register offices or approved premises. Eekelaar states that any attempt to segregate the religious from civil marriage may lead to

¹⁶³ Joel Nichols, 'Marriage: Civil, Religious, Contractual and More' (2012) 50(2) Family Court Review 222.

¹⁶⁴ Ibid.

¹⁶⁵ Judith Tucker, *Women, Family and Gender in Islamic Law* (Cambridge University Press 2008) 41

¹⁶⁶ Farrah Ahmed and Jane Norton, 'Religious Tribunals, Religious Freedom and Concern for Vulnerable Women' (2012) 24(4) Child and Family Law Quarterly 371.

adverse consequences; that the type of ceremony that accompanies the formation is marriage is irrelevant so far as the essential requirements are satisfied.¹⁶⁷

From 1837 until present day, choice has been extended in the realm of marriage laws, but different kinds of religious choices still result in different status in law.¹⁶⁸ In this regard, the forms of marriage do not exist as equals, however as civil marriage is legal, it confers more benefits to parties compared to other forms of marriage.¹⁶⁹ Dittgen opines that there seems to be a genuine attachment to the institution of marriage among religious groups which can be portrayed by the decision to have a religious ceremony after or instead of the civil marriage.¹⁷⁰ Metz explains that marriage like religion is a complex institution that pre-exists and transcends any legal contract, its values and rituals are shaped by an external community.¹⁷¹ Although religion helped to structure the institution of marriage but its interaction with the civil notion of marriage reflects continuous uncertainty as to the nature of marriage as a legal concept.¹⁷² Douglas et al research acknowledges that whilst English law does not incorporate a comprehensive registration scheme for religious groups, there exist overlapping laws that recognise and regulate religious groups enabling them to benefit from both legal and fiscal advantages.¹⁷³

¹⁶⁷ John Eekelaar, 'Marriage: A Modest Proposal' (2013) 43(1) Family Law Journal 1.

¹⁶⁸ Chatterjee Nandini, 'English Law, Brahma Marriage and The Problem of Religious Difference: Civil Marriage Laws in Britain and India' (2010) 52(3) Comparative Studies in Society and History 535. The author states that civil marriage laws in Britain are a product of a well-defined modern legal approach towards religious toleration which arbitrated between rather than disregarded religious difference which resulted in competition between both laws. See also Skehteshamuddin Ahmad and SK Ehteshamuddin Ahmad, 'Marriage and The Issue of Conversion Under Muslim Personal Law During the Colonial Period' (2014) 42(11/12) Social Scientist 71.

¹⁶⁹ Elsje Bonthuys, 'Pluralist Marriage Law in a Former Colonial System: Cultural Authenticity or Hybridisation?' (2020) 34(1) International Journal of Law, Policy and the Family 84.

¹⁷⁰ Alfred Dittgen, 'The Form of Marriage in Europe: Civil Ceremony, Religious Ceremony. Survey and Trends' (1995) Population: An English Selection 95.

¹⁷¹ Tamara Metz, *Untying the Knot: Marriage, The State and The Case for Their Divorce* (Princeton University Press 2010)134.

¹⁷² Mair Jane, 'Public Ceremony and Private Belief: The Role of Religion in the Scots Law of Marriage' Juridical Review (2007) The Law Journal of Scottish Universities 1. Munby J in the case of *Sheffield CC v E and S* [2004] EWHC 2808 (fam)116 reasoned that even though we live in a multicultural society of diverse faiths, he is more concerned with marriage as a civil contract and not a religious vow.

¹⁷³ Gillian Douglas, Norman Doe, Sophie Gilliat-Ray, Russell Sandberg and Asma Khan, 'Social Cohesion and Civil Law: Marriage, divorce and Religious Courts' (2011) A report of a Research Study funded by the AHRC 7.

The conflict between civil and religious marriages can be clearly understood by the analysis of Ali.¹⁷⁴ She explains that in a diverse society like Britain where minority systems co-exist quite effectively to provide guidance for individuals and communities, the dominant legal system has the discretion in determining the extent (if any) which it extends recognition to these minority legal orders.¹⁷⁵ Consequently, civil and religious marriages are structured by the existence of hybrid cultural and religious practices, the marriage processes are then subject to interpretation and dispute.¹⁷⁶ Civil and religious marriages are therefore distinct notwithstanding procedural short-cut.¹⁷⁷ Jackson explains that in contemporary societies, individuals are synchronously members of both civic and religious communities which the resultant consequence is a “conflated regio-civic institution”.¹⁷⁸ Furthermore, there is more likely to be conflict when different laws sharing the same field come into contact.¹⁷⁹

Drawing on this discourse, is the view expressed by Akhtar, Probert and Moors that as Britain is a country where Muslims come from a variety of diverse ethnic origin, there is an expectation that they would view or approach marriage in different ways.¹⁸⁰ McCrea’s literature is very crucial to the analysis of this thesis because it highlights the difficulty of intersection of both marriages.¹⁸¹ He states that leaving matters of a religious nature to be decided by a religious court and state courts to determine matters of civil law implies the acknowledgement that in a multi-faith society, membership of a religious community does not

¹⁷⁴ Shaheen Ali, ‘Authority and Authenticity: Sharia Councils, Muslim Women’s Rights and English Courts’ (2013) 25(2) *Child and Family Law Quarterly* 113.

¹⁷⁵ *Ibid.*

¹⁷⁶ Samia Bano, *Muslim Women and Shari’ah Councils: Transcending the Boundaries of Community and Law* (1st edition, Palgrave Macmillan 2012) 159.

¹⁷⁷ Bernard Jackson, ‘Transformative Accommodation’ and Religious Law’ (2009) 11(2) *Ecclesiastical Law Journal* 131.

¹⁷⁸ *Ibid.*

¹⁷⁹ Rubya Mehdi, Hanne Petersen, Erik Reenberg and Gordon Woodman, *Law and Religion in Multicultural Societies* (1st edn, DJOF Publishing Copenhagen 2008) 24.

¹⁸⁰ Rajnaara Akhtar, Rebecca Probert and Annelies Moors, ‘Informal Muslim Marriages: Regulations and Contestations’ (2018) 7 *Oxford Journal of Law and Religion* 367.

¹⁸¹ Ronan McCrea, ‘Why the Role of Religious Tribunals in the Legal System Should not be Expanded’ (2016) *Public Law* 214.

annihilate the rights and duties of a citizen and limit the use of communal institution.¹⁸² Two crucial issues which emerge from his research are first, a secular state should not hinder the rights of religious bodies to determine religious matters. Second, religious groups have not been given the concession by the state to perform marriage rites that will produce a marriage which will be recognised by both civil and religious law.

The Law Commission has initiated a review of the law with respect to the civil and religious marriages in its scoping paper on getting married. The commission considered on one hand, the notion of legislating exclusively for civil marriages will be viewed as a deviation from the way in which the laws serves a diverse society.¹⁸³ On the other hand, the concept of legislating solely for non-religious organisations was viewed as discriminatory against religious organisations that have no liberty to conduct marriages as it suits them.¹⁸⁴ Lord Sacks and HH Freedman evaluated the significance of respect and mutual assistance in the interaction between civil and religious law.¹⁸⁵ They admitted that there are instances when the state imposes limits on religious freedom and conflicts between secular and religious law are inevitable but ‘there must be a really strong overriding interest on the part of the state to override the principle of religious liberty’.¹⁸⁶

The issue of conflict between civil and religious law also extends to divorce. When a marriage breaks down, it is necessary for couples to divorce under both laws.¹⁸⁷ For instance section 1(1) of the Divorce (Religious Marriages) Act 2002 requires a couple to dissolve their religious marriage before they can get a civil divorce, and this applies to Jewish marriages. As an

¹⁸² Ibid. Lord Hope in *R(E) v Governing Body of JFS* [2012] IRLR 136 (SC) said ‘it has long been understood that it is not the business of the courts to intervene in matters of religion’.

¹⁸³ Law Commission, *Getting Married: A Scoping paper* (Law Com ,2015).

¹⁸⁴ Ibid.

¹⁸⁵ Graeme Fraser and Anna Roiser, ‘A Multi-ethnic Society’ (2015) 45(3) *Family Law Journal* 239.

¹⁸⁶ Ibid.

¹⁸⁷ Section 10(A) of the Matrimonial Causes Act 1973, which states that parties to the marriage must co-operate if the marriage is to be dissolved in accordance with religious usages.

unregistered nikah is not recognised as valid, any divorce and financial relief is dealt exclusively by the Sharia courts. It is paramount to note that with respect to divorce, religious tribunals should not be regarded as equivalent to civil courts or as a form of alternative dispute resolution whether married under civil or religious law.¹⁸⁸

2.3 Unregistered Muslim marriages

Academic literature has drawn attention to the issue of proliferation of unregistered nikahs among Muslim community in Britain in circumstances where the parties have undertaken a religious ceremony without compliance to the legal requirements of the Marriage Act 1949-1994. The Getting Married: A Scoping Paper defines a religious only marriage as:

‘A marriage that is recognised by a faith or religious organisation but not the state because the marriage was formed in a religious ceremony not recognised as legally valid. From the perspective of the state a religious-only marriage is a form of non-marriage’.¹⁸⁹

In view of this, even though there is no specific data available on the number of unregistered nikahs, the fact is that Islamic marriage ceremonies are often conducted in private homes, mosques, restaurants or even hotels.¹⁹⁰ Furthermore, it is difficult to determine the number of unregistered nikahs based on the previous empirical research conducted in this area. The reason for this difficulty is there is no central database because the practice of unregistered nikah marriages is considered “hidden” due to places they are conducted discussed above.

Furthermore, previous research in this area of law did not attempt to quantify this. It is

¹⁸⁸ Gillian Douglas, Norman Doe, Sophie Gilliat-Ray, Russell Sandberg and Asma Khan, ‘The role of Religious Tribunals in Regulating Marriage and Divorce’ (2012) 24(2) Child and Family Law Quarterly 145.

¹⁸⁹ Getting Married, A Scoping Paper: Law Commission Reforming the Law December 2015 < http://www.lawcom.gov.uk/app/uploads/2015/12/Getting_Married_scoping-paper.pdf > accessed 20 August 2020.

¹⁹⁰ Fiona Read, ‘Resolution International Committee: Non-recognition of Islamic Marriages in England and Wales’ [2012] International Family Law 452.

significant to note that the case of *Akhter v Khan*¹⁹¹ illustrates that British Muslim women are undertaking the nikah only marriage.

Mr Justice Moylan points out that it is not difficult to enter into a marriage in England and Wales that complies with the Marriage Act as the process of registering places of worship and obtaining approval for premises for the solemnisation of marriage is very clear.¹⁹² To paint a clear picture of the issue, Morris argued that Muslims followed Islamic law and are also subject to the law of England and Wales which could lead to conflict between the two systems.¹⁹³ Morris goes on to discuss the importance of registration of marriage after the religious ceremony.¹⁹⁴ But this does not make a difference if the wedding was performed in non-approved premises.

Akhtar's earlier work on unregistered Muslim marriages identified the primary reason participants chose not to register their marriage by taking part in a civil ceremony was "not getting round to it".¹⁹⁵ However, Vora's research found the common reasons for unregistered Muslim marriages as lack of knowledge of legal validity at the time of the nikah, or on breakdown of the relationship, husband's refusal to rectify the marriage by undertaking a civil ceremony.¹⁹⁶ Meanwhile, Akhtar's research on modern traditions in Muslim marriage practices, exploring English narratives indicates that the current unregistered marriages is motivated by a "plurality of contextual realities" and the relationships are showing signs of integration not isolation.¹⁹⁷ She coined the term "paradigm case of unregistered marriages" which refers to a situation where the vulnerable spouse usually the female loses out financially

¹⁹¹ [2020] EWCA Civ 122.

¹⁹² Hon Mr Justice Andrew Moylan, 'The Approach of English Law to the Recognition of Islamic Marriages' [2016] Family Law 87.

¹⁹³ Cheryl Morris, 'Divorce in a Multi-Faith Society' [2005] Family Law 727.

¹⁹⁴ Ibid.

¹⁹⁵ Akhtar n 92 at 173.

¹⁹⁶ Vora (n 4).

¹⁹⁷ Rajnaara Akhtar, 'Modern Traditions in Muslim Marriage Practices, Exploring English Narratives' (2018) 7 Oxford Journal of Law and Religion 427.

and rendered homeless on the breakdown of the relationship.¹⁹⁸ She found that participants mentioned the importance of nikah over civil ceremony.¹⁹⁹ Uddin's research revealed similar themes in terms of Muslims give priority to the nikah over civil marriage which is considered acceptable in the eyes of God and the absence of tafwid (delegated divorce) as reasons for the nikah-only marriages.²⁰⁰ This study attempts to extend this understanding and fill the gap in knowledge by interviewing thirty-three British Muslim women living in segregated communities in Birmingham (Alum rock, Bordesley Green and Sparkhill), Bradford, Leicester, and London (Walthamstow). In addition, a questionnaire of one hundred and ten participants will be used to complement findings from the interview process to gain a more nuanced statistical data of the reasons British Muslim women are entering the nikah only marriage.

O'Sullivan and Jackson study examined the impact of the nikah only marriage on the breakdown of the relationship.²⁰¹ The authors highlight that the parties are not legally married, not entitled to divorce under English law and the resultant effect is weaker spouse when it comes to finances, has no right under the Matrimonial Causes Act 1973.²⁰² In addition, the authors attribute the limited number of mosques approved for the solemnisation of marriage contribute to the legal complexities of unregistered Muslim marriage. Barton maintains that in the absence of registration of mosques, a separate civil ceremony is important regarding religious ceremonies conducted in the mosques.²⁰³ Probert and Saleem's research on the legal treatment of Islamic marriage ceremonies focused on the formalities for entering into a legally binding religious marriage or the combining civil and religious marriages in addition to effect

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Uddin (n5).

²⁰¹ Kathryn O'Sullivan and Leyla Jackson, 'Muslim Marriage (non) Recognition: Implications and Possible Solutions' (2017) 39(1) *Journal of Social Welfare and Family Law* 22.

²⁰² Ibid.

²⁰³ Chris Barton, 'British Minority Ethnic, Religion and Family Law (yers)' [2018] *Family Law* 1217.

of failure to comply with the law.²⁰⁴ The authors opined that Muslims have the opportunity to enter into a marriage that incorporates both the legal requirements and religious ceremony.²⁰⁵ However, this will depend on Muslims knowing that the nikah does not have a legal status and therefore a civil marriage necessary. The authors identified the obstacle to combining the civil and religious marriages are the limited number of mosques registered for marriages in Britain. They go on to argue that due to the limited number of mosques registered for a religious ceremony, Muslims have fewer locations to select from compared to couples who wish to undertake a civil marriage and identified this as a problem with the current law.²⁰⁶

Apart from the wide-ranging academic literature on unregistered Muslim marriage, the Casey Review into opportunity and integration mentioned the proliferation of unregistered Muslim marriage and highlighted that it was ‘particularly concerning in a group that includes those known to have lower levels of female employment, lower levels of English language and, anecdotally at least, a lack of awareness of other civil rights’.²⁰⁷ The House of Commons briefing paper has also highlighted that a number of Muslims in the UK undertake a nikah in an unregistered building and the legal implication is that the marriage will not be recognised as valid.²⁰⁸ A discussion on the empirical findings of this research will be explored later in chapters five and six.

²⁰⁴ Rebecca Probert and Shabana Saleem, ‘The Legal Treatment of Islamic Marriage Ceremonies’ (2018) 7(3) Oxford Journal of Law and Religion 376.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Dame Casey, *The Casey Review: A Review into Opportunity and Integration* (Ministry of Housing, Communities and Local Government 2016) 133 <https://www.gov.uk/government/publications/the-casey-review-a-review-into-opportunity-and-integration> accessed 20 August 2020.

²⁰⁸ ‘Islamic Marriage and Divorce in England and Wales’ HC BF 18 February 2020 no 08747 <https://commonslibrary.parliament.uk/research-briefings/cbp-8747/> accessed 8 August 2020.

2.4 Non-qualifying ceremonies: Renaming non-marriages

A void marriage is one that will be regarded by the courts as never having taken place and is void ab initio.²⁰⁹ For example, failure to comply with the formalities enumerated under the Marriage Act 1949.²¹⁰ The grounds on which a marriage will be declared void are set out in s.11 of the Matrimonial Causes Act 1973. A marriage celebrated after 31 July 1971 is void under the Act for the following reasons : first, under the provisions of the Marriage Acts 1949 to 1986, it is not a valid marriage; second, the couple are within the prohibited degree of relationship; third, either party is under the age of sixteen, fourth, the couple have intermarried without taking into consideration certain formalities for the formation of marriage, fifth, either party was already legally married at the time of the marriage and finally, at the time a polygamous marriage was entered into outside England and Wales, either party was domiciled in England and Wales.²¹¹

On the other hand, a non-marriage is a failure to comply with the requirements of solemnisation in addition to the formation of marriage under the Marriage Act.²¹² It has also been defined as a marriage where the couple “innocently fail” to adhere to any of the essential requirements of marriage as stipulated in the Marriage Act.²¹³ Probert argues that a marriage will also result in a non-marriage if the couple “knowingly fail” to comply with the formalities laid down in the Marriage Act.²¹⁴ In effect, regardless of the intention of the parties, a total failure to comply with the formalities of marriage contained under the Marriage Act 1949 will

²⁰⁹ Ruth Gaffney-Rhys, ‘Hudson v Leigh-The Concept of Non-marriage’ (2010) *Child and Family Law Quarterly* 351.

²¹⁰ Marriage Act 1949, s.25 and 49. See also Matrimonial Causes Act 1973, s.11(a) (iii).

²¹¹ Matrimonial Causes Act 1973, s.11.

²¹² Wai Leong, ‘Formation of Marriage in England and Singapore by Contract: Void Marriage and Non-Marriage’ (2000) 14(3) *International Journal of Law Policy and the Family* 256.

²¹³ Rebecca Probert, ‘The Evolving Concept of ‘Non-marriage’ (2013) *Child and Family Law Quarterly* 314.

²¹⁴ *Ibid.*

result in a non-marriage.²¹⁵ Bevan asserts that although both void and non-marriages never legally existed, parties to a void marriage can apply for financial relief under the Matrimonial Causes Act 1973.²¹⁶ Both marriages have never been a valid marriage when compared to voidable marriages. It follows that a nikah may be regarded as a non-marriage rather than a void marriage.

Section 58(5)(a) of the Family Law Act 1986 contains a restriction that prohibits a Court from a declaration that a marriage was void ab initio. Closely tied to this, is the notion of non-marriages which is not defined by legislation. Nonetheless, Probert opines that an honest failure on the part of a couple to comply with any of the crucial requirements laid down by the Marriage Act will result in a non-marriage.²¹⁷ Miller argues that there are two options under the Marriage Act 1949 in regards to marriage ceremonies: first, where the marriage ceremony does not bear any similarity to either form of marriage and second, where the marriage ceremony has similarity to some extent but is defective.²¹⁸ It follows that the intention or state of knowledge of the parties in ascertaining whether a ceremony is either a void or non-marriage is important but not conclusive.²¹⁹ Vora argues that even though an unregistered Muslim marriage is deemed to be a non-marriage, it is “erroneous” to give a valid religious marriage a lesser status than a void marriage.²²⁰ It has been argued that the current law on non-marriage is discriminatory in its consequences based on the fact that it is not only unfavourable to women

²¹⁵ Rebecca Probert and Shabana Saleem, ‘The Legal Treatment of Islamic Marriage Ceremonies’ (2018) 7(3) 376.

²¹⁶ Chris Bevan, ‘The Role of Intention in Non-marriage Cases Post *Hudson v Leigh* [2013] Child and Family Law Quarterly 80.

²¹⁷ Rebecca Probert, ‘When are we Married? Void, Non-existent and Presumed Marriages’ (2002) 22(3) The Journal of the Society of Legal Scholars 398.

²¹⁸ Gareth Miller, ‘When “I do” Turns into “I didn’t”’ (2004) 154 New Legal Journal 252.

²¹⁹ *Ibid.*

²²⁰ Vora (n4).

in denial of financial application but also “it is insensitive to conceptualise a valid Islamic marriage as something of less legal effect than a bigamous marriage”.²²¹

There is a plethora of case laws to demonstrate a lack of clarity in the judges’ reasoning regarding what constitutes a void or non-marriage. For instance, Bodey J made it clear in the case of *Hudson v Leigh* that:

So, in my view the Court must be able, in the rare cases where such a point arises, rule that some questionable ceremony or event, whilst having the trappings of marriage, failed fundamentally to effect one, such that it neither needs nor is susceptible to a decree of nullity to determine its lack of any legal status: i.e., to find in convenient shorthand that it is a ‘non-marriage’ or a ‘non-existent marriage’.²²²

The decision in this case leads to the question whether defects in the formation of a marriage can be so crucial that what is created cannot amount to a void marriage.²²³ However, in addition and perhaps more cogently, the criteria established in this case ought to provide greater protection to Muslim minorities who undertake a religious ceremony unaware of their legal status.²²⁴

In *Geresis v Yagoub*²²⁵ a marriage ceremony in an unlicensed building under the Marriage Act 1949 was held to be a void marriage as it failed to satisfy the formalities of a valid marriage. Also, in *R v Bham*²²⁶ an Islamic ceremony conducted in a private house was declared void. In contrast, the case of *El Gamal v Al Makhtoum*²²⁷ involved parties who had a secret Islamic

²²¹ Valentine Grice, ‘A Critique of Non-Marriage’ [2013] Family Law 1278.

²²² [2009] EWHC 1306 [72] Fam.

²²³ Gillian Douglas, ‘Marriage- Hudson v Leigh [2009] EWHC 1306 (Fam)’ [2009] Family Law 810.

²²⁴ Ruth Gaffney-Rhys, ‘Hudson v Leigh- The Concept of Non-Marriage’ [2010] Child and Family Law Quarterly 351.

²²⁵ [1997] 1 FLR 854.

²²⁶ [1966] 1 QB 159.

²²⁷ [2011] EWHC B27.

ceremony performed in front of an Imam and two witnesses in a flat in London without any written contract and compliance to the formal requirements of English law was declared a non-marriage. Similarly, *Dukali v Lamrani (Attorney-General Intervening)*²²⁸ a marriage ceremony that took place in a Moroccan consulate in London that did not comply with the requirements of the Marriage Act was held to be a non-marriage.

However, the Court considered the principle of presumption of marriage based on long cohabitation in the following cases. For instance, in the case of *Chief Adjudication Officer v Bath*²²⁹ the ceremony took place in a Sikh temple not registered under the Marriage Act 1949 although the parties were unaware that the marriage was not valid. The couple had two children and had lived for 37 years until the death of Mr Bath. The marriage was held to be a valid marriage due to long cohabitation as there was strong presumption that they have agreed to do so in a proper form. Furthermore, the case of *A-M v A-M (Divorce Jurisdiction: Validity of Marriage)*²³⁰ the couple had lived together for twenty years and had an Islamic marriage ceremony. The Court held that the wife could rely on the presumption of marriage as a result of long cohabitation. Likewise, in *Piers v Piers*²³¹ a marriage ceremony that took place in a private house without the requirements of the law for validity of marriage that a special licence should be obtained. The marriage broke down and the issue before the Court was the validity of the marriage. The marriage was presumed to be valid as there was proof that a ceremony had taken place unless challenged by the party contesting the validity. Accordingly, in the case of *MA v JA and the Attorney- General*²³² a marriage ceremony that failed to comply with the registration requirement was held to be a valid marriage based on the presumption of marriage.

²²⁸ [2012] EWHC 1748 (Fam).

²²⁹ [2000] 1 FLR 8.

²³⁰ [2001] 2 FLR 6

²³¹ (1849) 2 HL Cas 331.

²³² [2012] EWHC 2219 (Fam).

Many years later, the recent decision of the Court of Appeal to clarify the uncertainty of the distinction between a void and non-marriage led to renaming the existing principle of non-marriage as “non-qualifying ceremony” in the landmark case of *Akhter v Khan*²³³. To give some factual background to the case, Nasreen Akhter and Mohammed Khan had undertaken an Islamic marriage ceremony known as the nikah at a London restaurant conducted by an Iman in 1998. It was common knowledge that the ceremony did not meet the requirements of the Marriage Act 1949 and as a result had no legal validity under English law. The parties had the intention that the ceremony will be followed by a civil marriage compliant with English law. Nevertheless, no civil ceremony took place despite repeated demands by the wife. The couple had four children and moved to Dubai for the husband’s work in 2005. They couple were treated as validly married in Dubai. The relationship broken down and the woman petitioned for divorce in 2016 arguing first, a presumption of marriage operated to create a valid marriage under English law and second, the marriage was a void marriage under section 11 of the Matrimonial Causes Act 1973 and the effect is entitlement to a decree of nullity.

There were two decisions in the case, the first instance and appeal. At first instance, the first argument for a presumption of marriage was rejected on the grounds that the couple had knowledge that the nikah did not create a valid marriage in English law. Based on the second argument, Williams J applied a new flexible approach to the facts, admitted that even though the parties had no civil marriage and the nikah did not qualify as an English marriage, the failure to undertake the civil ceremony was because of the husband’s refusal. The marriage was held to be a void marriage under s. 11 of the Matrimonial causes Act 1973 and the wife entitled to a degree of nullity.

In response to the above decision, Fenton-Glynn points out that the case has shown the dilemma associated with the Marriage Act and the debate in relation to the financial relief for

²³³ [2018] EWFC 54.

cohabitants.²³⁴ Cranmer questions the above decision on the premise that the tort of breach of promise of marriage is no longer in existence and has been abolished by the Law Reform (Miscellaneous Provisions) Act 1970 and as a result, they Court should not have even taken judicial notice of nikah-only marriage.²³⁵ Barton and Probert reacted to the above decision and concluded:

‘While one cannot but have sympathy for the wife in *Akhter*, and for Williams J's valiant attempt to ensure that her lengthy relationship had some legal recognition, the decision cannot be reconciled with either case-law or statute. Change is needed, but it should come through legislation rather than judicial innovation’.²³⁶

The Court of Appeal set aside the High Court’s decision and focused on two main issues. First, whether there are ceremonies or other acts which do not create a marriage, even a void marriage, within the scope of s.11 of the MCA 1973. Second, if there are, whether the December 1998 ceremony was a “non-qualifying ceremony” (or a non-marriage) or, as Williams J decided, a void marriage within the scope of s.11 of the 1973 Act.²³⁷ The Court concluded that the December 1998 ceremony did not create a void marriage because it was a “non-qualifying ceremony”. The parties were not married in accordance with the provisions of Part III of 1949 Act. It was not a marriage within the scope of s. 26 of the 1949 Act. The ceremony would have been permitted under s. 44 if it had been performed in a registered building and no notice had been given to the Superintendent Registrar in addition to that fact that no certificates had been issued, and no registrar or authorised person was present at the ceremony. The significance of this case to Muslims who have undertaken the nikah- only

²³⁴ Claire Fenton-Glynn, ‘Human Rights and the Law of Nullity: *Akhter v Khan* [2018] Family Law 1265.

²³⁵ Frank Cranmer, ‘Does an Unregistered Nikah Wedding Give Rise to a Valid Marriage, a Void Marriage or a Non-Marriage?’ (2019) 41(1) Journal of Social Welfare and Family Law 96.

²³⁶ Chris Barton and Rebecca Probert, The Status of a Religious-Only Marriage: Valid, Void or ‘Non’? *Akhter v Khan* [2018] Family Law 1540.

²³⁷ [2020] EWCA Civ 122 at 123.

marriage is that it is regarded as a non-qualifying ceremony and not a valid marriage or even a void marriage under Part III of the Marriage Act 1949.

The decision in this case has generated academic attention indicating that the problem of unregistered nikah has yet not been resolved. This case highlights a variety of issues; firstly, knowledge of the formalities for a valid marriage is not sufficient and a party cannot be coerced into doing something against their wish. There must be consensus between both parties. Secondly, it illustrates the issue of patriarchy in Muslim societies, where men are the decision makers in the family. Finally, as women are mostly the vulnerable party, the government needs to take adequate steps to protect them by providing some sort of financial provision to the victims of such non-qualifying ceremonies.

Akhtar asserts that it emphasises the absence of family law remedies for the financially vulnerable parties that had the nikah-only marriage.²³⁸ Furthermore, she mentions that the decision raises questions “that go the heart of family law” and the little legal significance connected to the family.²³⁹ Burrows contends that following the decision, a growing number of women will suffer and continue to be discriminated against until the law is changed.²⁴⁰ Sandberg opines that the Court of Appeal has removed a “flawed solution” to the issue of unregistered nikah but this does not eliminate the fact that the problem still exists.²⁴¹ He mentions the need to provide remedy to parties who undertake the nikah-only marriages especially in cases of ignorance on the part of one or both parties or where one party refuses to satisfy the registration requirements in compliance with Marriage Act 1949.²⁴² An inevitable

²³⁸ Rajnaara Akhtar, ‘From ‘Non-Marriage’ to ‘Non-Qualifying Ceremony’ (2020) 42(3) *Journal of social Welfare and Family Law* 386.

²³⁹ *Ibid.*

²⁴⁰ David Burrows, ‘Henry VIII & a Divorce Bill’ (2020) 170 *New Law Journal* 7884.

²⁴¹ Russell Sandberg, ‘Unregistered Religious Marriages are Neither Valid nor Void’ [2020] 79(2) *The Cambridge Law Journal* 237.

²⁴² *Ibid.*

consequence of a non-qualifying ceremony is that the parties cannot apply for financial relief under the Matrimonial Causes Act 1973.²⁴³

2.5 “Constructive” cohabitation: The perils of cohabitation

Nikah-only marriage is regarded as cohabitation in legal terminology if it is a non-qualifying ceremony and is a rising phenomenon among the Muslim community due to the status of the marriage.²⁴⁴ Cohabitation is defined in s.62(1)(a) of the Family Law Act 1996 as

“Two persons who are neither married to each other but are living together as if they were a married couple”.

Read explains that the consequences for a couple whose Islamic marriage is not recognised restricts their options; for example, on the breakdown of the relationship or if one party dies, when legal proceedings are taken, it will unavoidably be more complicated as they are treated as “cohabitees”.²⁴⁵ Echoing this is the recent decision of the Court of Appeal in *Akhter v Khan*²⁴⁶ that established that parties to an unregistered nikah have the same legal status as a cohabitant.

It has been widely documented that the law governing the proprietary rights of cohabitants is vague.²⁴⁷ Family law’s duty to protect the vulnerable spouse most often the women does not

²⁴³ Ruth Gaffney-Rhys, ‘Am I Married? Three Recent Case Studies on the Effect of Non-Compliant Marriage Ceremonies’ [2013] *International Family Law* 53.

²⁴⁴ Rajnaara Akhtar, ‘Modern Traditions in Muslim Marriage Practices, Exploring English Narratives’ (2018) 7 *Oxford Journal of Law and Religion* 427.

²⁴⁵ Read (n190).

²⁴⁶ [2020] EWCA Civ 122.

²⁴⁷ Barton Bernstein, ‘Legal Problems of Cohabitation’ (1997) 26 *FL* 366; Peter Townsend and Arthur Baker, ‘Living Together, the Thorny Question’ (1998) 148 *NLJ* 779; John Haskey, ‘Demographic Aspects of Cohabitation in Great Britain’ (2001) 15(1) *IJLPF* 48; Rebecca Probert, ‘Cohabitation in Twentieth Century England and Wales: Law and Policy’ (2004) 26(1) *LP* 27; Craig Rotherham, ‘The Property Rights of Unmarried

extend in a congruous manner to cohabitants which leaves the law ambiguous.²⁴⁸ Perelli-Harris and Gassen's study on cohabitation claims that in England, the lack of consistent approach to regulating cohabitation is accredited to government's contradictory attitude towards cohabitants.²⁴⁹ The legal implication of cohabitants' rights arises on the breakdown of relationship. Reality sets in that they have limited rights unlike married spouses.²⁵⁰ This is due to the widespread notion in the existence of "common law marriages" which is believed to give couples quasi-marital rights and is a myth.²⁵¹ Arguably a similarity with people believing that their nikah only wedding is a valid marriage. William's research indicates that this myth is still in existence because "it is erroneously used in everyday declamation perpetuated by the media, in application forms for insurance, loans and mortgages".²⁵²

Non-marital cohabitation has always been in existence but its "sensitivity and informal nature" made it difficult to study in the past.²⁵³ Previous studies on cohabitation have documented that there has been no consensus about where cohabitation stands legally.²⁵⁴ However, emerging

Cohabitees: The Case for Reform' (2004) CPL 1; Balmer et al, 'The Experience of Relationship Breakdown and Civil Law Problems by People in Different Forms of Relationship (2009) CFLQ 1; Ed Heaton, 'What is Mine is Mine' (2013) 163 NLJ 9. The rationale for this is that the Matrimonial Causes Act 1973 which regulates the affairs of married couples does not extend to cohabitants.

²⁴⁸ Anne Barlow, 'Regulation of Cohabitation, Changing Family Policies and Social Attitudes: A discussion of Britain within Europe' (2004) 26(1) 72. In England, cohabitation cases are determined individually through Ad hoc case laws, statutes and piecemeal reforms which lead to disoriented legal framework for cohabitants. This disoriented state of approach results in few protective rights for cohabitants the author asserts. However, an application can be made under the Trusts of Land and Appointment of Trustees Act 1996. The powers of the court under this Act are declaratory in nature and cannot adjust the interest of the parties.

²⁴⁹ Brienna Perelli- Harris and Nora Gassen, 'How Similar Are Cohabitation and Marriage? Legal Approaches to Cohabitation across Western Europe' (2012) 38(3) PDR 2012 461.

²⁵⁰ David Allison, 'Automatic Rights for Unmarried Couples' (2009) UK LNA 64.

²⁵¹ Kate Standley, *Family Law* (5th edition, Palgrave Macmillan 2006) 53; Claire Clark, 'The Lives we Live' (2014) 164 NLJ 8. The word 'common law marriage' arose when marriage law was a part of ecclesiastical law and strict penalties were attached to sexual relations outside marriage. At common law, two conditions necessary for the validity of marriage were '*Per Verba Praesenti*' (acceptance of each other as husband and wife) and '*Per Verba De Futuro*' (declaration of intention to do so). See Martin Parry, *The Law Relating to Cohabitation* (1st edition, London: Sweet and Maxwell 1998)1. In the absence of these two elements, the parties under Lord Hardwicke's Marriage Act 1753 required a formal ceremony of marriage. The main intention of the Act was for the 'better prevention of clandestine marriages' and to prevent minors from getting married without parental consent. See Erica Harth, 'The virtue of love: Lord Hardwicke's Marriage Act' (1988) 9 CC 125.

²⁵² Grey Williams, 'Trust of Land/Cohabitation: Who to Trust?' (2012) 162 NLJ 1169.

²⁵³ John Gillis, *For Better for Worse: British Marriages 1600 to the Present* (1st edition, OUP 1985) cited in Mike Murphy, 'Editorial: Cohabitation in Britain' (2000) 163(2) JRSS 123.

²⁵⁴ Dorian Manting, 'The Changing meaning of Cohabitation and Marriage' (1996) 12(1) ESR 53.

literature on cohabitation have suggested that although cohabitation has no special legal status attached to it, property disputes between cohabitants are resolved using existing property and trust law, succession, contract, unjustified enrichment and not the Matrimonial Causes Act 1973 or any other family law.²⁵⁵ So presumably, these are the same provisions which would apply to British Muslim women who entered in the nikah only marriage.

Standley's study identifies the drawback of applying the doctrine on the law of trusts.²⁵⁶ First, the principles applicable to constructive trust are based on intention which is very difficult to establish. Second, the prerequisite of a direct financial contribution to establish an interest under a constructive trust as postulated by Lord Bridge in *Lloyds Bank PLC v Rosset*²⁵⁷ means that contribution towards the cost of running a home cannot, effectuate a beneficial interest. Sutherland opines that the failure of the legal system to provide remedies to cohabitants on the breakdown of relationship or death of one of the parties amounts to relinquishing of the legal system to protect the more vulnerable party.²⁵⁸ In effect, British Muslim women who entered the nikah only marriage will experience these difficulties.

The Supreme Court case of *Jones v Kernott*²⁵⁹ Lord Wilson accused the parliament of a "Continued failure in delaying the issue giving recognition to cohabitants, leaving the courts with limited powers to redistribute property on the breakdown of a relationship".

²⁵⁵ Peter Tatchell, 'New Rights for Unmarried Partners' (1999) 149 NLJ 1; Anne Barlow and Grace James, 'Regulating Marriage and Cohabitation in 21 Century Britain' (2004) 67(2) TMLR 143; Wendy Manning and Pamela Smock, 'Measuring and Modelling Cohabitation: New Perspectives from Qualitative Data (2005) 67 JMF 989; John Mee, 'Property rights and Personal Relationships: Reflections on Reform' (2006) 24(3) LS 1; Anastasia De Waal, 'Cohabitation' (2008) 97(385) AIQR 47; Johanne Syltevik, 'Sense and Sensibility: Cohabitation in Cohabitation Land' (2010) TSR 445; Winnie Chain, 'Cohabitation, Civil Partnership, Marriage and the Equal Sharing Principle' (2013) 33(1) LS 46.

²⁵⁶ Standley (n251).

²⁵⁷ [1991] 1AC 107 2FLR155 Lord Bridge held that common intention to share ownership might be established either by express declaration evidenced by an agreement or by drawing inferences from conduct.

²⁵⁸ Elaine Sutherland, 'From Bidie-in' to Cohabitants' in Scotland: The Perils of Legislative Compromise' (2013) 27(2) IJLPF 143.

²⁵⁹ [2011] UKSC 53.

It is important to discuss the gendered nature of property disputes between cohabitants. Mee argues that in most cases, the male partner is in an economically stronger position and in possession of majority of the assets.²⁶⁰ He maintains that there is no protection in law for the vulnerable partner usually the woman who subjugates the advancement of her career for engagement in domestic labour and child rearing responsibilities. This is in line with the argument by Akhtar that there is no family law remedies for the financially vulnerable party who entered the nikah only marriage.

The case of *Burns v Burns*²⁶¹ highlights the injustices faced by female cohabitantes as a result of absence of legal protection. In this case, the couple lived together for 19 years, had two children. Ms “Burns” took the defendant’s surname. The house was bought in the name of the defendant, Mr Burns while Ms “Burns” made financial contribution to the household regarding bills and decorating. At the end of the relationship, the court held that Ms “Burns” had no right to beneficial entitlement to the home in the absence of any financial contribution towards the acquisition of the home. Even Lord Toulson’s county court decision in *Pamela Curran v Brian Collins*²⁶² affirmed this gendered nature of property disputes between cohabitants. He said, “The law of property can be detrimental to women, the law remains unfair to people in the appellant’s position, but he is constrained to apply the law as it is”. It was held that Ms Curran had no legal right to a share in the business or home, even though she had lived together with Collins for more than 30 years, established a business partnership and a home.²⁶³ This case emphasises the need to differentiate between cohabitation and marriage as this will highlight the potential consequences for unregistered “wives”.

²⁶⁰ Mee (n 255)4.

²⁶¹ [1984] 1 ALL ER CH 317.

²⁶² [2015] EWHC 1306 (fam) at 84.

²⁶³ See *Winderler v Whitehall* (1990) 2FLR 505.

*White v White*²⁶⁴ was a landmark case when the notion of equal sharing became a welcome development for financial settlement among divorced couple irrespective of who earned the greater income. At the time of the divorce, the couple had total assets of approximately £4.3 million which was deemed by the court to be more than what each needed for their reasonable requirements. Lord Nicholls of Birkenhead emphasised that there can no longer be gender discrimination when deciding the allocation of ancillary relief. He referred to Section 25(2) of the MCA 1973 saying that every case is determined on its merit and there was no order of priority in determination of ancillary relief for spouses. Mrs White was awarded a lump sum of £1.5 million for her contribution to the business and family.²⁶⁵ The consequence of this case is that financial relief will not be available to someone who contracted the nikah if it is treated as a non-marriage. For example, property transfer orders for the family home and pension sharing orders are not available.

However, Burton explains that a claim can be made for the transfer of property for the benefit of children if any of the relationship.²⁶⁶ Claims are made under Schedule 1 of the Children Act 1989 which allows the property to be held in trust for a period until the youngest child attains majority or leaves full-time education.²⁶⁷ After this period, the property reverts to the owner

²⁶⁴ [2000] UKHL 54, [2001] 1AC 596.

²⁶⁵ Under Section 25 of the MCA 1973, the court must have regard to all the circumstances of the case including the following matters: income, the financial needs, standard of living as at the time of the marriage, the age of each party, duration of the marriage, any physical or mental disability of either party to the marriage, the contributions made by each of the parties to the welfare of the family.

²⁶⁶ Frances Burton, *Family Law (1st edition, London; Routledge 2012)*200.

²⁶⁷ See Section 4 of the Child Support Act 1991 and the cases of *Re P (Child: financial Provision)* [2003]2 FLR 865 and *Philips v Pearce* [1996] 2FLR 230.

leaving the cohabitant homeless²⁶⁸. This law has been criticised by Singer who opined that the law is not fit for purpose and is contrary to public opinion.²⁶⁹

The vulnerability of cohabitants can also be seen when the partner dies intestate, and this is applicable to someone who entered the nikah only marriage. The cohabitee is not automatically entitled to inherit the property of the deceased or any exemption from inheritance tax in contrast to married couples. Instead, the deceased property will be transferred to the children or next of kin. Indeed, where the deceased has no surviving relative, the estate will pass ‘bona vacantia’ to the crown rather than to the cohabitant.²⁷⁰ However, a cohabitee can make a claim under Section 1(e) (3) of the Inheritance (provision for Family and Dependents) Act 1975 for reasonable financial provision from the deceased estate. Moreover, cohabitants are also treated less favourably than spouses in these claims. The condition to qualify under this section is the ability to prove maintenance either “wholly or partly” by the deceased. This is a rigorous process which is exceedingly difficult to establish.

Cohabitants are also discriminated against when it comes to capital tax gains. Section 58 of the Taxation of Chargeable Gains Act 1992 allows married spouses to transfer assets between them without being subject to capital tax. A cohabitant is liable to pay the full rate of tax on transfer of assets. Also, Section 30 of the Family Law Act 1996 automatically entitles married spouses to “home rights” which is the right not to be evicted from the family home after separation irrespective of the fact that one partner legally owns the home. This right is not automatic for a cohabitant under the Act. Married couples are jointly liable for debts incurred during the period of the marriage notwithstanding the fact that it was incurred by only of the

²⁶⁸ In *T v S* [1994] 2 FLR 883- the court held that it was unsuitable for the children who are now adults to benefit from the property which will also automatically be beneficial to their mother. The property reverted to the father.

²⁶⁹ Samantha Singer, ‘What Provision for Unmarried Couples Should the Law Make When their Relationships Break Down?’ (2009) FLJ 1.

²⁷⁰ Anne Barlow, *Cohabitants and the Law* (3rd edition, Butterworths LexisNexis 2001)12.

partner.²⁷¹ This right does not extend to cohabitants irrespective of the number of years they have been together as there is no official commencement date that the courts could use in cases of inconclusive evidence.²⁷²

In elaborating further on the complex and unjust nature of the absence of the law regulating cohabitation, apart from women, the other main victims of cohabitation are children. The intricacy of children's family life is often neglected reports Manning and Lichter.²⁷³ Research in recent decades suggests that children in cohabiting families are more likely to be economically disadvantaged compared to married couples.²⁷⁴ This hardship can be seen when the parent in custody of the children is unable to obtain financial provision from the other parent.²⁷⁵

According to Frisco et al, social scientists have analysed the relationship between separation of cohabitantes and the negative effect it has on children's educational outcomes.²⁷⁶ The authors argue that poor educational outcomes emanate either from changes in family structure or from the procedure associated with instability. This is due to little legal protection available to cohabitantes in the event of relationship breakdown.²⁷⁷

A compelling argument in support of the legal recognition of cohabitation is that of protection.²⁷⁸ Sutherland claims that this is a false dichotomy. It is alleged that whether the

²⁷¹ Perelli- Harris and Gassen (n249) at 452.

²⁷² Margaret Carran, 'Cohabitation: Schemes on hold in England and Wales' (2010) *International Family Law* 199.

²⁷³ Wendy Manning and Daniel Lichter, 'Parental Cohabitation and Children's Economic Well-being' (1996) 58(4) *JMF* 999.

²⁷⁴ Pamela Smock, Wendy Manning and Meredith Porter, 'Everything's there except Money: How Economic Factors shape the Decision to Marry among Cohabiting Couples' (2005) 67 *JMF* 680; Wendy Manning and Susan Brown, 'Children's Economic Well-being in Married and Cohabiting Parents Family' (2006) 68 *JMF* 346; Anastasia De Waal, 'Cohabitation' (2008) 97(385) *IQR* 48.

²⁷⁵ Selena Masson, 'Cohabitation Bill May Encourage Greater Familial Responsibility' (2009) *UK LNA* 32. Maintenance can be claimed through the Child Support Agency or the Child Maintenance Service, but the court has jurisdiction to deal with the issue on in limited circumstance. See Section 9 of the Child Support Act 1991.

²⁷⁶ Michelle Frisco, Kelly Raley and Elizabeth Wildsmith, 'Maternal Cohabitation and Educational Success' (2005) 78(2) *SE* 145.

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

breakdown relates to marriage or cohabitation, there will always be need for protection and readjustment which applies to both marriage and cohabitation.²⁷⁹ However, Baroness Deech views non-regulation of cohabitation as an opportunity to elevate gender equality, she asserts that “women do not need to be kept by men after the breakdown of the relationship “that equality is the goal to be pursued.”²⁸⁰ Sandberg commented that as there is no legislative provision in England and Wales that determines the financial relief of each party in the event of relationship breakdown.²⁸¹

Williams, Potter and Douglas assert that legal intervention is needed urgently to protect the vulnerable especially in terms of redistribution of property on the death of the cohabitant; by doing this, the state is “preventing improvement with minimal cost to its own pocket”.²⁸² This legal intervention will benefit British Muslim women if their marriage is treated as a non-marriage.

Auchmuty has proposed some recommendations in form of a “plea” in relation to the following; first, there should be certainty and precision in family law regarding property distribution on the breakdown of cohabitation; second, the conveyancing practice should be improved; third, the public should be educated about the law and finally, refusing to accept a “family law-style” protective system for cohabitantes”.²⁸³

The Law Commission in Cohabitation: The Financial Consequences of Relationship

Breakdown 2007 recommended the provision for financial relief for cohabitants provided that

²⁷⁹ Ruth Deech, ‘The Case against Legal Recognition of Cohabitation’ (1980) 29(2) BILCL 492. The author explained that arguments that cohabitants need family law are normally predicated on the fact that women are the vulnerable party in the relationship. She rejected this notion arguing that cohabitation should not stop a potential earner or else she becomes a burden on the society rather than the partner.

²⁸⁰ Ruth Deech, ‘Cohabitation’ (2010) 39 FL 43.

²⁸¹ Sandberg (n241).

²⁸² Catherine Williams, Garfield Potter and Gillian Douglas, ‘Cohabitation and Intestacy: Public Opinion and Law Reform’ [2008] Child and Family Law Quarterly 499.

²⁸³ Rosemary Auchmuty, ‘The Limits of Marriage Protection in Property Allocation when a Relationship Ends’ [2016] Child and Family Law Quarterly 303.

the cohabitant has suffered a financial disadvantage, lived together for a minimum period of two years or had children. However, on September 6, 2011, the government during its parliamentary term announced that it will not take forward the recommendation for reform.²⁸⁴ The reason for this according to a written statement by Justice Minister Jonathan Djanogly said that the government found that it did not have “sufficient basis for change”.²⁸⁵ This recommendation would have benefitted British Muslim women who entered the nikah only marriage.

Also, the Cohabitation Rights Bill 2014-15 a private members’ Bill is another legislation that intends to provide protection to cohabitants. Morris asserts that this Bill seeks to address the multifarious problems of non-family law that applies to cohabitation and how to tackle the inconsistencies in relation to the present law on spousal proceeding.²⁸⁶ The Bill includes provision that addresses death of a cohabitant, post-separation and an opt out system. The Bill which originated in the House of Lords session 2019-2021 has completed the first reading, if passed into Law, cohabitants in England will have some sort of legal protection as well as British Muslim women who had the nikah only marriage.

2.6 Could it be a case of confusion? An examination of the law on *lex loci celebrationis* (law of the land where the marriage was celebrated)

A nikah marriage is a valid marriage when it incorporates both the legal requirements and religious ceremony. For example, British Muslim women can solemnise their marriage in a religious place of worship provided it is registered for the purposes of marriage and presided

²⁸⁴ Diana Bently, ‘Cohabiting Couples Continue to Wait for Reform’ (2011) LBNN 55.

²⁸⁵ Jan Miller, ‘Coalition Drops Cohabitation Reforms’ (2011) 161 (3) 1264.

²⁸⁶ Geraldine Morris, ‘The Cohabitation Conundrum’ (2013) 163 NLJ 13.

over by an authorised person. Furthermore, nikah marriage in a private residence will only be valid if it is followed by a civil marriage in accordance with the provisions of the Marriage Act 1949-1994.

A foreign marriage is used to describe marriages that take place abroad and involves a foreign domiciliary.²⁸⁷ A nikah ceremony undertaken abroad will be valid if it is the form of marriage ceremony in that country, and the marriage certificate (original or certified copy) is available as proof of marriage.²⁸⁸ For example, a couple who get married under a nikah in Pakistan are validly married in England and Wales because in Pakistan, the valid form of marriage is the nikah. Carroll points out that prior to 1970, English courts did not permit extra-judicial annulment of marriage if the parties were domiciled in UK.²⁸⁹ However, with the enactment of Recognition of Divorces and Legal Separations Act 1971 and the Domicile and Matrimonial Proceedings Act 1973 statute, the position of the law changed.²⁹⁰

*The case of R v M (Validity of Foreign Marriage)*²⁹¹ illustrates that for a foreign marriage to be recognised in England and Wales as a valid marriage, it must comply with the requirements of the law of the country of the marriage ceremony, the parties must have capacity (according to English law if their domicile is England) to enter the marriage and this is a question of private international law.

Practice direction 7A paragraph 3.1 of the Family Procedure Rules states that if the validity of an Islamic marriage conducted overseas is disputed, this can be proved in England and Wales

²⁸⁷ John Murphy, 'Rationality and Cultural Pluralism in the Non-Recognition of Foreign Marriages' (2000) 49 International and Comparative Law Quarterly 643.

²⁸⁸ Neelum Atkins, 'A Guide to Islamic Marriage and Divorce' [2012] Family Law 721.

²⁸⁹ Lucy Carroll, 'Recognition in English Law of Extra-Judicial Divorces Effected by English Domiciliaries: The Privileged Position of a Pakistani's Talaq Vis-A-Vis an Indian's Talaq (*Quazi v Quazi*)' (1980) 22(2) Journal of the Indian Law Institute 266; Lucy Carroll, 'Talaq in English Law: Bare Talaqs, Procedural Talaqs and Policy Considerations in Recognition of Extra-Judicial Divorces' (1986) 28(1) Journal of the Indian Law Institute 14

²⁹⁰ Ibid.

²⁹¹ [2011] EWHC 2132 (Fam) see also the cases of *Mahadervan v Mahadervan* [1964] P 233; *Lee v Lau* [1964] 2 All ER 248 and *K v A* [2014] EWHC 3850 (Fam); Jonathan Hill and Maire Shuilleabhain, *Clarkson & Hill's Conflict of Laws* (5th edition, Oxford University Press 2016) 353.

by the production of a marriage certificate issued under the law of that country. In effect, English law will acknowledge the validity of a marriage celebrated in an overseas jurisdiction so far it is recognised in that jurisdiction notwithstanding the fact that it may not have complied with the requirements of the Marriage Act if the identical ceremony had taken place in England and Wales.²⁹² This might lead to confusion amongst British Muslim women living in the UK. Edge takes this forward to explain that proxy marriages are prohibited in English law, but English law conflict of rules recognises a valid foreign proxy.²⁹³ He illustrates this point with the cases of *Apt v Apt*²⁹⁴ and *McCabe v McCabe*²⁹⁵ where parties to the marriage ceremony did not attend. Interestingly, this indicates that a telephone marriage will be recognised in England and Wales if acceptable in the country where it was solemnised.²⁹⁶ Furthermore, even though the Talaq is not recognised as a valid divorce procedure in the UK, if pronounced abroad in a country that permits it as a valid divorce procedure, it may be recognised in the UK.²⁹⁷ For example, s. 45 and 46 of the Family Law Act 1986 are the provisions for the recognition of overseas divorce, annulments and legal separations in Britain. Section 46(1) of the Act mentions the grounds for the recognition of an overseas divorce. It states that divorce must be effective under the law of the country it was obtained and either party must be domiciled in that country. Moreover, case of *Quazi v Quazi*,²⁹⁸ shows an application of the above Act. In this case, husband pronounced an Islamic divorce Talaq in Pakistan to terminate the marriage. On appeal, the court held that the divorce was valid taking into consideration ‘other proceedings’ in the Recognition of Divorce Act 1971 includes divorce by talaq recognised in

²⁹² Steven Evan, ‘Two Sisters and Two Weddings’ [2008] Family Law 579; Henry Brookman, ‘Shopping for Divorce: Guiding the Client Through the Supermarket’ [2009] Family Law 939.

²⁹³ Ian Edge ‘Islamic Law in English Courts: Recognition of Foreign Marriages’ [2016] Family Law 102.

²⁹⁴ [1948] P 83 (CA).

²⁹⁵ [1994] 1 FLR 410 (CA).

²⁹⁶ Rebecca Probert, ‘Hanging on the Telephone: City of Westminster v IC’ [2008] Child and Family Law Quarterly 395.

²⁹⁷ Cheryl Morris, ‘Divorce in a Multi-Faith Society’ [2005] Family Law 727; Victoria Miller, ‘Islamic Personal Law in an International Context: The Perspective from England and Wales’ [2012] International Family Law Journal 209.

²⁹⁸ [1980] AC 774.

Pakistan. Similarly, in *H v H (Queen's Proctor Intervening) (Validity of Japanese Divorce)*²⁹⁹ a husband petitioned for nullity of marriage under s.11(b) of the Matrimonial Causes Act 1973. The court held that the Japanese divorce *Kyogi rikon* was valid within the meaning of s. 46(1) of the Family Law Act 1986 and refused to grant the husband the decree of nullity. From these discussions, one can understand why this could lead to confusion amongst British Muslim women.

It is important to bear in mind that the English Courts have the authority to refuse recognition of a valid foreign marriage that is contrary to English public policy.³⁰⁰ Murphy highlights two rudimentary flaws in case law in relation to the discretionary powers of the court on issues of non-recognition of foreign marriages : willingness of the court to decide cases in accordance with the “public policy” principle and the propensity of the court to fail to acknowledge some cultural values of immigrants.³⁰¹ Given that some English domicile couples will have married using the *nikah* and the marriage will be valid in England because of where it took place, it may be : (a) especially difficult to get a clear picture of the level of *nikahs* which are not recognised and (b) it may be particularly confusing to people to know whether their *nikah* is valid.

2.7 The mahr

As a *nikah* only marriage is regarded as cohabitation if it is a non-qualifying ceremony, British Muslims could rely on the mahr, and the importance attached to it depending on attitude of the court. Mahr is a wedding or bridal gift given by the groom to the wife upon the marriage

²⁹⁹ [2006] EWHC 2989 (Fam).

³⁰⁰ *Vervoeke v Smith* [1983] 1 AC 145, see also *Henderson v Henderson* (1843) 3 Hare 100.

³⁰¹ John Murphy, 'Rationality and Cultural Pluralism in the Non-recognition of Foreign Marriages' (2000) 49(3) *International and Comparative Law Quarterly* 643.

taking place. Mahr is normally divided into two parts: Prompt mahr (muajjal), this is paid at the time of the marriage and deferred mahr (muwajjal) which is paid only on breakdown of the marriage by divorce or death.³⁰²

The traditional view expressed in most legal systems regarding the mahr is that it was contrary to public policy.³⁰³ Against this background is the view that most mahrs do not satisfy the Supreme Court benchmark of a fair agreement entered into or fairness of terms at the time of divorce and the effect is that it will not be upheld by the English courts.³⁰⁴ However, in the case of *Shahnaz v Rizwan*³⁰⁵ the wife was held entitled to payment of £1,400 by the husband which represents the deferred mahr. The deferred mahr was included in the marriage contract and payable upon the breakdown of the marriage because her husband divorced her by a talaq.

Furthermore, in the case of *Uddin v Choudhury and Ors*³⁰⁶ the issue before the court was the amount of mahr the bride was entitled to. The marriage contract stated that the bride was due £15,000 as her mahr. The couple had undertaken a nikah ceremony but had not registered the marriage. The court held that the mahr should be paid to the wife by the husband. The Supreme Court in the case of *Radmacher (formerly Granatino) v Granatino*³⁰⁷ decided that it will give effect to agreements that “are freely entered into by each party with a full appreciation of its implications, unless in the circumstances prevailing it would not be fair to hold the parties to their agreement”. The consequence of the Supreme Court decision is that British Muslim women can rely on the mahr contained in their Islamic marriage contract provided it satisfies the requirements established in this case. More recently, an unreported

³⁰² Pascale Fournier, ‘Flirting with God in Western Secular Courts: Mahr in the West’ (2010) 24(1) International Journal of Law, Policy and Family 67.

³⁰³ Anne Sander, ‘Private Autonomy and Marital Property Agreements’ [2010] 59(1) International and Comparative Law Quarterly 571.

³⁰⁴ David Hodson, ‘The Islamic Marriage in the Context of the Practice of English Family Law’ [2016] Family Law 90.

³⁰⁵ [1965] 1 QB 390.

³⁰⁶ [2009] EWCA Civ 1205.

³⁰⁷ [2010] UKSC 42.

case in the central London County court on the mahr could incorporate into UK law some aspects of Sharia law on bride price payments.³⁰⁸

2.8 Polygamous marriages

It is not possible to cover all the issues relating to polygamy within the limited confines of this thesis. However, this discussion tends to highlight the effects of having a nikah-only marriage and the confusion that may arise due to its recognition in Britain when undertaken abroad.

The arrival of immigrants in the 1960's from Asian countries brought the official recognition in Britain to the issue of polygamous marriage.³⁰⁹ It was during this period that the discovery that married women in "de facto monogamous marriages may require financial support in the event of marital breakdown".³¹⁰ Polygamy in Islam is a controversial issue; it is a clear indication of how patriarchal societies control and dominate.³¹¹ The implication of having a nikah- only marriage is that a man can have at least four wives.

As Islam allows polygamous marriage, this poses a problem especially where a party to the marriage is legally married under English law and then enters another marriage under Islamic law,³¹² the subsequent marriage is void by virtue of section 11(d) of the Matrimonial Causes Act 1973. More importantly, Barton explains the effect of polygamous marriage under section 11(d) of the Matrimonial Causes Act 1973; first, a party cannot enter into a polygamous marriage in England and Wales; second, potentially polygamous marriages entered into abroad

³⁰⁸ Unreported case to be decided in September 2021.

³⁰⁹ Chris Barton, 'British Minority Ethnic, Religion and Family Law(yers)' [2008] Family Law 1217.

³¹⁰ Ibid.

³¹¹ Amira Mashhour, 'Islamic Law and Gender Equality: Could There Be a Common Ground? A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt' (2005) 27(2) Human Rights Quarterly 562.

³¹² Katharine Charlsley and Anika Liversage, 'Transforming Polygamy: Migration, Transnationalism and Multiple Marriages among Muslim Minorities' (2012) 13(1) Global Networks 60.

by persons domiciled in Britain are valid, finally, polygamous marriages will only be valid in Britain, for parties domiciled in a country where it is permitted.³¹³ Hussain concurs with the above view and states that whilst within the Muslim community, having more than one wife is acceptable, English law will recognise only one of the wives.³¹⁴ Cummings opines that some Muslims practice polygamy or even undertake polygamous marriages “inadvertently” due to the complexity of rules surrounding recognition of foreign marriage.³¹⁵

Even the Casey’s review acknowledged the practice of “unregistered polygamy” and existence of matchmaking sites “secondwife.com” and are more popular than anticipated.³¹⁶ The review mentioned some of the effects of polygamy on Muslim women: first, the marriage is not valid in the eyes of law, second, lack of entitlement to maintenance rights and inheritance; third, gender inequality, the consequent financial and emotional abuse.³¹⁷ In addition, it can be argued that the complexity extends to the issue of how compliance to the mandatory requirements of the Act affects the validity of marriage.³¹⁸

Questions that have arisen in relation to the practice of polygamous marriages within Islamic family law are: first, whether concrete reasons were given before making polygamous marriages valid under Sharia law and second, as international law is considering banning polygamous marriages, are their valid grounds to support its continued existence?³¹⁹ Rehman asserts that an “instant response” is to suggest that Sharia has been insensitive towards

³¹³ Barton (n309).

³¹⁴ Serena Hussain, ‘Muslim Family Formation in British Life’ (2009) *Family, Marriage and Contemporary Muslim Society* 859.

³¹⁵ Tristan Cummings, ‘Gendered Dimensions and Missed Opportunities in *Akhter v Khan* (Attorney-General and Others Intervening)’ [2020] *Child and Family Law Quarterly* 239.

³¹⁶ Casey (n207).

³¹⁷ *Ibid.*

³¹⁸ Probert (n213).

³¹⁹ Javaid Rehman, ‘The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq’ (2007) 21(1) *International Journal of Law, Policy and the Family* 108.

women's rights and incompatible with human rights law without taking into account the "contextual, and flexible nature of the Sharia and the rules of Islamic family law".³²⁰

A look at Barton's literature reveals some of the reasons for having a polygamous marriage; women are opposed to cohabiting outside marriage and failure by men to reveal their marriage status.³²¹ The consequence of polygamy is that the man is imprisoned for the criminal offence of bigamy.³²² This is in accordance with section 57 of the Offences Against the Person Act 1861 which makes polygamy a criminal offence.

Brooks argues that women in polygamous marriages are mostly affected due to the "harmful effects" gender bias and inequality of its practice.³²³ Slonim-Nevo and Al-Krenawi contend that women in polygamous marriage are most likely to suffer from depression and low self-esteem as against women in monogamous marriages.³²⁴ Okin highlight that polygamy not only "subordinates" women, relegates women to background but also does not treat them as equal to men.³²⁵

Parekh in an earlier publication writes that practice of polygamy should not permit different consequences for women especially in relation to inequality.³²⁶ Whilst in a later publication, Parekh posits that monogamous marriages provide opportunity of financial security and gender equality compared to spouses in polygamous marriages who feel vulnerable on the breakdown of the relationship.³²⁷ Wikeley asserts that a widow cannot claim any of the widow's benefits

³²⁰ Ibid.

³²¹ Chris Barton, 'Bigamy and Marriage-Horse & Carriage?' [2004] Family Law 517.

³²² Ibid.

³²³ Thom Brooks, 'The Problem with Polygamy' (2009) 37(2) Philosophical Topics 109.

³²⁴ Vered Slonim-Nevo and Alean Al-Krenawi 'Success and Failure Among Polygamous Families: The Experience of Wives, Husbands, and Children' (2006) 45 Family Process 311.

³²⁵ Susan Okin, 'Is Multiculturalism Bad for Women?' in Joseph Cohen, Matthew Howard and Martha Nussbaum (eds), *Is Multiculturalism Bad for Women?* (Princeton University Press 2008).

³²⁶ Bhikhu Parekh, 'Rethinking Multiculturalism: Cultural Diversity and Political Theory' (2001) 1(1) Ethnicities 109.

³²⁷ Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (2nd edition, Red Globe Press Macmillan 2005) 289.

in polygamous marriage before the husband's death.³²⁸ Humphrey writes that UK, Canada and Australia recognise polygamous marriage for welfare purpose.³²⁹

Nonetheless, regarding "potentially polygamous" marriages, English law will acknowledge the validity of such marriages if the marriage was valid in the country of solemnisation.³³⁰ For example, in the case of *Alhaji Mohammed v Knott*³³¹ a potentially polygamous marriage between a 26-year-old Nigerian Muslim man and 13-year-old Nigerian girl was deemed to be a valid marriage as both parties were domiciled in Nigeria and recognised under the Nigerian law. In the *Sinha Peerage Claim case*³³² the court stated that a potentially polygamous marriage undertaken in India can be converted into monogamous marriage to entitle the parties matrimonial relief under English law. Furthermore, in *Hashmi v Hashmi*³³³ this case concerned a polygamous marriage under Pakistani law, a subsequent marriage in England with another woman and legitimacy of the children with the second wife. The court upheld the validity of Pakistani law and declared the children legitimate. This contrasts with the view expressed by the court in the case of *Shahnaz v Rizwan*³³⁴ that although the potentially polygamous marriage was recognised in the country of domicile of the parties and lawful under English law, the marriage would not be enforced by the English courts. Moreover, in the case of *Bethell v Hillyard*³³⁵ a polygamous marriage undertaken in South Africa was refused recognition under the law of England and Wales.

³²⁸ Nick Wikeley, 'Widowed Mother's Allowance-Polygamous Marriages-Legislation Precludes Spitting Benefit Between Surviving Spouses' (1998) 5(2) Journal of Social Security Law 83.

³²⁹ Caroline Humphrey, 'Sex in the City-The New Polygamy' (2009) 29(2) The Cambridge Journal of Anthropology 21.

³³⁰ Richard Freeland, 'The Islamic Law of Marriage and the English Courts' [1999] Family Law 44. The author looks at the three types of marriages identified in English Law: Monogamous, potentially polygamous and actually polygamous.

³³¹ [1969] 1QB 1.

³³² [1946] 1 All ER 348.

³³³ [1972] Fam 36.

³³⁴ [1965] 1 QB 390.

³³⁵ [1885 B.2119] 38 Ch. D 220. See also the case of *Hussain v Hussain* [1982] 3 All ER 369.

Interestingly, section 5 of the Private International Law (Miscellaneous Provisions) Act 1995 permits the validity of potentially polygamous marriages in English law. To this end, it is “fundamentally incorrect” to attribute marriage of the same nature conducted in England and Wales to be second class.³³⁶

2.9 Sharia Councils

The main objective of this section is to shed light on the role of Sharia Councils and treatment of Muslim women. British Muslim women may rely on Sharia Councils as an alternative dispute resolution mechanism to resolve matrimonial problems dealing with issues relating to Islamic family law such as the nikah marriage. The role of Sharia Councils has been a source of controversy due to the concerns raised about the human rights of vulnerable parties and its operation outside the state system.³³⁷

Sharia Councils are established in Britain to hear and settle religious disputes by Muslim religious scholars who provide guidance on issues relating to Islamic law, mediation, reconciliation, morality, issuing of divorce certificates and unofficial family disputes.³³⁸ In effect, Grice and Vora assert that the main reason Sharia Councils were established in the Mid-1980s was to address the problem of the nikah for parties outside the civil justice system.³³⁹

³³⁶ Evan (n 292).

³³⁷ Jessie Brechin, ‘A Study of the Use of Sharia Law in Religious Arbitration in the United Kingdom and the Concerns That This Raises for Human Rights’ (2013) 15(3) Ecclesiastical Law Journal 293; Rajnaara Akhtar, ‘Plural Approaches to Faith-Based Dispute Resolution by Britain’s Muslim Communities’ [2019] Child and Family Law Quarterly 189.

³³⁸ Gillian Douglas, Norman Doe, Sophie Gilliat-Ray, Russell Sandberg and Asma Khan, ‘The Role of Religious Tribunals in Regulating Marriage and Divorce’ [2012] Child and Family Law Quarterly 139.

³³⁹ Valentine Le Grice and Vishal Vora, ‘Nikah: Principle and Policy’ (2017) Family Affairs 56.

Sharia Councils have been defined as thus: ‘As a voluntary local association of scholars who see themselves or are seen by their communities as authorised to offer advice to Muslims principally in the field of religious marriage and divorce’.³⁴⁰

Although statistics as to the number of Sharia Councils operating in England and Wales are unknown, their decisions are not binding and unenforceable.³⁴¹ Underpinning this is the argument by Perry that as Sharia Councils have no legal status, parties appear before them by choice, their decisions are not subject to judicial review.³⁴² Similarly, the House of Commons briefing paper has highlighted that Sharia Councils have no legal status and not binding under civil law.³⁴³ Everyone has the right to practice individual religious freedom; however, in the event of conflict between the national law and religion practices, the national law will prevail.³⁴⁴ Sharia Councils are said to constitute a move among Muslim diaspora’s perception from being “sojourners to settlers”.³⁴⁵ Shah echoes that Sharia Councils deals with cultural and religious issues as an alternative dispute mechanism hence Muslims find them user-friendly.³⁴⁶ Patel’s research identified that Sharia Councils are used by Muslim women as an alternative resolution system to obtain dissolution of the nikah-only marriage especially when the husband refuses to pronounce the talaq.³⁴⁷ Kamaruddin, Oseni and Rashid emphasise the desire among Muslim minorities that Sharia law will govern and conduct their everyday live.³⁴⁸ This

³⁴⁰ Home Office, The Independent Review into the Application of Sharia Law in England and Wales (Home Office, February 2018) 10.

³⁴¹ Ibid.

³⁴² Adam Perry, ‘Judicial Review of Shariah Councils’(Administrative Law, 1 May 2015) < <https://adamperry.com/2015/05/01/judicial-review-of-shariah-councils/> > accessed 3 March 2021.

³⁴³ Catherine Fairbairn, Islamic Marriage and Divorce in England and Wales-House of Common Library-Briefing Paper-Number 08747, 18 February 2020 p3.

³⁴⁴ Ibid.

³⁴⁵ Bernard Lewis, ‘Legal and Historical Reflections on the Position of Muslim Populations under Non-Muslim Rule’ (1992) 13(1) Institute of Minority Muslim Affairs Journal 1.

³⁴⁶ Prakash Shah, Judging Muslim in Robin Griffith-Jones (eds) *Islam and English Law: Rights, Responsibilities and the Place of Shari’a* (Cambridge University Press 2013).

³⁴⁷ Siddique Patel, ‘The Role of Shariah Councils in England’ (2016) Family Law 1.

³⁴⁸ Zaleha Kamaruddin, Umar Oseni and Syed Rashid, ‘Transformative Accommodation’: Towards the Convergence of Shari’ah and Common Law in Muslim Minority Jurisdictions’ (2016) 30(3) Arab Law Quarterly 245.

resonates with the argument by Ahmed and Luk who contend that religious people use alternative dispute resolution mechanisms to ensure their disputes are decided in accordance with religious principles as well as those that understand and interpret those norms.³⁴⁹ The authors highlight that state law may be incompatible with Muslim religious arbitration because it promotes religious practice and personal autonomy.³⁵⁰

Bano's study notes that the link between Sharia Councils and mosque formation has helped in creating identity and specific religious definition in relation to "structuring of privatised dispute- resolution".³⁵¹ She goes on to discuss that the main purpose of Sharia Councils is to provide Muslim women with a Muslim divorce certificate in circumstances where there is a failure on the part of the husband to divorce his wife unilaterally.³⁵² Bowen concurs with the above view and opines that the intention for creating these councils were to make accessible decisions for members of the Muslim community on any issue, but majority of the cases now deal with issuing women divorces.³⁵³ This resonates with the argument that one of the legal implications of a nikah only marriage is a non-qualifying ceremony and the effect is that Muslim communities have become more dependent on Sharia Councils to assist with divorce as civil courts are unable to afford an appropriate remedy.³⁵⁴

Sandberg posits that parties in an unregistered religious marriage have the option to settle their disputes themselves or to seek redress from alternative resolution forms for instance Sharia Councils.³⁵⁵ As Sharia Councils hear and decide disputes of a religious nature such as

³⁴⁹ Farrah Ahmed and Senwung Luk, 'How Religious Arbitration Could Enhance Personal Autonomy' (2012)1(2) Oxford Journal of Law and Religion 424.

³⁵⁰ Ibid.

³⁵¹ Samia Bano, 'In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the 'Sharia Debate' in Britain' (2008) 10 Ecclesiastical Law Journal 283.

³⁵² Samia Bano, 'Muslim Family Justice and Human Rights: The Experience of British Muslim Women' (2007) 2(2) Journal of Comparative Law 38.

³⁵³ John Bowen, *On British Islam, Religion, Law and Everyday Practice in Sharia Councils* (Princeton University Press 2016) 47.

³⁵⁴ Kathleen Moore, *The Unfamiliar Abode, Islamic Law in the United States and Britain* (Oxford University Press 2010) 117.

³⁵⁵ Russell Sandberg, 'Unregistered Religious Marriages are Neither Valid nor Void' [2020] 79(2) 237.

marriage, divorce and exist in the private realm; they should continue to handle issues relating to termination of the nikah marriage provided that both parties are treated fairly and an amicable divorce settlement is reached. For example, the parties should be judged according to the ideas in English family law such as Matrimonial Causes Act 1973 s.25. Furthermore, as the nikah marriage is now regarded as a non-qualifying ceremony, Sharia Councils will be considered the only option available for Muslim women to get a divorce.

An AHRC- funded research project concluded that the Sharia Councils studied were flexible in their approach, used different schools of thought to decide cases considered to be ‘just and fair’.³⁵⁶ In addition, the focal point for the Sharia Councils was to determine whether the marriage can be saved by holding a compulsory mediation before the final decision.³⁵⁷ On the contrary, Arshad argues that Sharia Councils in Britain does not provide divorcing couples credible support in “Sharia based financial relief”.³⁵⁸ Akhtar, Probert and Moors research contend that in relation to the concern expressed by the state about the operation of Shariah law, “there is no single doctrine or set of rules to be applied, any more than there is a single body of Christian laws”.³⁵⁹ On a positive note, they can also administer financial remedies in regards to the payment of mahr.³⁶⁰

³⁵⁶ Gillian Douglas, Sophie Gilliat-Ray, Norman Doe, Russell Sandberg and Asma Khan, ‘Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts’ (2011) Cardiff Law School: Centre for the Study of Islam in the UK p. 43.

³⁵⁷ Ibid.

³⁵⁸ Raffia Arshad, ‘Muslim Marriages: Financial Remedies’ [2019] Family Law 517.

³⁵⁹ Akhtar, Probert and Moors (n180).

³⁶⁰ O’Sullivan and Jackson (n 201).

2.9.1 A brief overview of patriarchy

The aim of this section is to highlight the patrilineal nature of the Muslim community and Sharia Councils that decide disputes relating to religious marriage and divorce.

Patriarchy is an ancient Greek term which means “the rule of the father” with the major institution of patriarchy being the family.³⁶¹ Patriarchy is defined

“As a system of relationships in which the men “own” the women and children and rule over them”.³⁶² Patriarchy according to Fortier has been known throughout history to be deeply rooted in the politics, culture and religion.³⁶³ The theory of patriarchy has been used by feminists to study the principles underpinning women’s oppression.³⁶⁴ More specifically, the concept is also used to illustrate gender inequality, power imbalance between men and women.³⁶⁵

Hartmann outlines the essential features of patriarchy such as submission of the woman, financial dependence on men as well as domination and control in a heterosexual relationship.³⁶⁶ Acker argues that women’s domination by men has been linked to social necessity and not only to exploitation or unequal power.³⁶⁷ Similarly, Walby writes that patriarchy is a system of social structure used by men to oppress, dominate and exploit women.³⁶⁸ Walby also identified that the two main forms of patriarchy in British history are

³⁶¹ Farah Chowdhury, ‘Theorising Patriarchy: The Bangladesh Context’ (2009) 37(4) *Asian Journal of social Science* 599.

³⁶² Lise Fortier, ‘Women, Sex and Patriarchy’ (1975) 7(6) *Family Planning Perspectives* 278.

³⁶³ *Ibid.*

³⁶⁴ Veronica Beechey, ‘On Patriarchy’ (1979) 3 *Feminist Review* 66.

³⁶⁵ Vrushali Patil, ‘From Patriarchy to Intersectionality: A Transnational Feminist Assessment of How Far we’ve Really Come’ (2013) 38(4) *Signs: Journal of Women in Culture and Society* 847.

³⁶⁶ Heidi Hartmann, ‘The Historical Roots of Occupational Segregation: Capitalism, Patriarchy, and Job Segregation by Sex’ (1976) 1(3) *Journal of Women in Culture* 137.

³⁶⁷ Joan Acker, ‘The Problem of Patriarchy’ (1989) 23(2) *Sociology* 235.

³⁶⁸ Sylvia Walby, ‘The ‘Changing Form’ or the ‘Declining Significance’ of Patriarchy? In Valentine Moghadam (eds), *Patriarchy and Economic Development: Women’s Positions at the End of the Twentieth Century* (Clarendon Press, 1996) 21.

private and public patriarchy.³⁶⁹ Whist private patriarchy is centred on the exclusion of women from all sphere of life except from the household, public patriarchy subordinates women from all spheres of life .³⁷⁰

Other arguments advanced are that patriarchy is created autonomously throughout social life as a result of the male privileges in the society.³⁷¹ Furthermore, Mies opines that male domination does not only entail rule by fathers but also husbands, male bosses and men in power in the society.³⁷²

2.9.2 Patriarchal nature of Sharia Councils and the treatment of Muslim women in Britain

A growing body of literature has indicated that Sharia Councils, created by men, are biased against women in relation to the decision-making process and this has a direct impact on the women's autonomy and choice in the area of family law.³⁷³ This is considered to be a problem because patriarchal social environments and readings of Islamic laws on divorce mean there is a "resistance to female-instigated divorce" read into this body of law itself, thus empowering male dominated Sharia Councils.³⁷⁴ Thus, women who access these Councils are likely to begin from a position of disadvantage.

³⁶⁹ Sylvia Walby, 'Theorising Patriarchy' (1989) 23(2) *Sociology* 213.

³⁷⁰ *Ibid.*

³⁷¹ Suad Joseph, 'Patriarchy and Development in the Arab World' (1996) 4(2) *Gender and Development* 14.

³⁷² Maria Mies, *Patriarchy and Accumulation on a World Scale: Women in the International Division of Labour (Critique Influence Change)* (1st edition, Zed Books 1986) 38.

³⁷³ Sonia Shah-Kazemi, 'Untying the Knot: Muslim Women, Divorce and the Shariah' (Nuffield Foundation 2001)6; Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge University Press 2001)45; Shaheen Ali, 'Authority and Authenticity: Sharia Councils, Muslim's Women's Rights and the English Courts' [2013] *Child and Family Law Quarterly* 113.

³⁷⁴ *Ibid.*

Bano discusses the possibility of emotional and physical abuse in regards to the mediation process of Sharia Councils.³⁷⁵ She identified that Muslim women consult Sharia Councils to get a divorce and the related outcome of these Councils are discriminatory towards women.³⁷⁶ Madera attributes the existence of gender disparity due to historical, political and social factors that “tend to direct social praxis, creating pockets of resistance” and partly due to the complicated relationship between religious and secular law.³⁷⁷ Perhaps, the diverse classification of a Muslim divorce (such as talaq, faskh-e-nikah etc discussed in chapter one) were based on patriarchal social practices which regard men as superior to women in respect of termination of marriage.³⁷⁸

Carroll looks at the issue of patriarchy from the perspective of the desire to maintain dominance over women and was instrumental in setting up Sharia Councils in Britain.³⁷⁹ More recently, Sharia Councils have been criticised for the following reasons for example, lack of transparency, male dominated, women blamed for the marriage breakdown, expensive fees paid by women, lack of free will in accepting settlements which will not be approved by a family court and the testimony of a man is given greater weight.³⁸⁰ In addition, criticisms have centred on how they affect vulnerable persons and give decisions that are incompatible with English family law.³⁸¹ Cummings states that it is imperative to acknowledge the “multicultural vulnerabilities” of a reasonable number of minority women, the oppression they face associated with marriage and the discrimination because of race, religion and power

³⁷⁵ Bano (n 351).

³⁷⁶ Samia Bano, ‘Muslim Family Justice and Human Rights: The Experience of British Women’(2007) 2(2) *Journal of Comparative law* 28.

³⁷⁷ Adelaide Madera, ‘Juridical Bonds of Marriage for Jewish and Islamic Women’ (2009) 11 *Ecclesiastical Law Journal* 51. The author mentions the hurdle of freedom in marriage and especially freedom to exit a marriage and the cost of the exercise of this freedom for a woman.

³⁷⁸ Muhammad Masud, ‘Interpreting Divorce Laws in Pakistan’ in Rubya Mehdi, Werner Menski and Jorgen Nielsen (eds) *Interpreting Divorce Laws in Islam* (DJOEF Publishing 2012) 51.

³⁷⁹ Lucy Carroll, ‘Muslim Women and ‘Islamic Divorce’ in England’ (2007) 17(1) *Journal of Muslim Minority Affairs* 97.

³⁸⁰ Razia Rashid, ‘Shariah Councils and Religious Divorce in England and Wales’ [2018] *Family Law* 174.

³⁸¹ Farrah Ahmed and Jane Norton, ‘Religious Tribunals, Religious Freedom and Concern for Vulnerable Women’ [2012] *Child and Family Law Quarterly* 363.

dynamics.³⁸² Grice and Vora argue that individuals who suffer non-qualifying ceremonies in Britain are mostly Muslim women and the absence of remedy by the civil courts is indirect discrimination.³⁸³

Ahmed and Norton³⁸⁴ used the case of *Al- Midani v Al- Midani*³⁸⁵ to illustrate the incompatibility of Sharia Councils with English law regarding the decision of a Sharia Council that ruled in favour of the male beneficiary and allocated the female beneficiary only half of the share of the male beneficiary. Shah mentions that although there are a variety of disadvantages suffered by Muslim women, it is difficult to assess precisely how gender relationships operate within the British Muslim communities.³⁸⁶ He states further those men are hardly researched, it is inappropriate to assume that women are ill-informed while men are well informed about their rights under Islamic and state law.³⁸⁷ Uddin agrees with the above argument by stating that Muslim family law is a family affair amongst British Muslim, there is no documentary evidence of Muslim marriages or divorce to prove gender inequality and oppression in Sharia councils.³⁸⁸

More importantly, in 2015 David Cameron launched The Casey Review into opportunity and integration, an independent review by Dame Louise Casey which was published in December 2016.³⁸⁹ The reports published highlighted that Sharia Councils were discriminatory against women, causing serious harm in addition to denial to equality and human rights.³⁹⁰

³⁸² Tristan Cummings, 'Gendered Dimensions and Missed Opportunities in *Akhter v Khan (Attorney-General and others Intervening)* [2020] Child and Family Law Quarterly 239.

³⁸³ Grice and Vora (n 339).

³⁸⁴ Ibid.

³⁸⁵ [1999] 1 Lloyd's Rep 923.

³⁸⁶ Prakash Shah, 'Judging Muslims' in Robin Griffith-Jones (eds) *Islam and English Law: Rights, Responsibilities and the Place of Shari'a* (Cambridge University Press 2013)146.

³⁸⁷ Ibid.

³⁸⁸ Uddin (n5).

³⁸⁹ Dame Casey, *The Casey Review: A Review into Opportunity and Integration* (Ministry of Housing, Communities and Local Government 2016) 132 <https://www.gov.uk/government/publications/the-casey-review-a-review-into-opportunity-and-integration> accessed 20 August 2020.

³⁹⁰ Ibid at p.132.

Furthermore, in May 2016, the government launched an independent review of Sharia law in England and Wales in addition to a Home Affairs Committee Inquiry into the operation of Sharia Councils in the UK. Theresa May the then Home Secretary who launched the independent review said:

Many British people of different faiths follow religious codes and practices and benefit a great deal from the guidance they offer. A number of women have reportedly been victims of what appear to be discriminatory decisions taken by sharia councils, and that is a significant concern. There is only one rule of law in our country, which provides rights and security for every citizen. Professor Siddiqui, supported by a panel with a strong balance of academic, religious and legal expertise, will help us better understand whether and the extent to which sharia law is being misused or exploited and make recommendations to the government on how to address this.³⁹¹

The independent review report was published in February 2018 and made three main recommendations as follows:³⁹² First, legislative changes to amend the Marriage Act 1949 and the Matrimonial Causes Act 1973 to ensure that civil marriages are undertaken before or at the same time as the nikah ceremony. As the result, the Islamic marriage will be on the same footing with Christian and Jewish marriage under the law. Second, building understanding through awareness campaigns to educate women of their rights and responsibilities; finally, the regulation of Sharia Councils and to progressively curtail the use and need for Sharia Councils. This could take one of the three forms for instance, advocate for the adoption of a uniform system of self-regulation; provision by the state a system of regulation for Sharia Councils to adopt and subsequently to self- regulate; imposition and enforcement agency identical to

³⁹¹ Home Office, *Independent Review into Sharia Law launched* (Home Office 2016) <<https://www.gov.uk/government/news/independent-review-into-sharia-law-launched>> accessed 20 August 2020.

³⁹² Home Office, *The Independent Review into the Application of Sharia Law in England and Wales* (Home Office, February 2018).

Ofsted. An additional recommendation considered the banning of Sharia Councils in the UK based on the discriminatory practices against women.

Even though the House of Commons briefing paper acknowledged the benefit of assistance from religious leaders, it revealed that some religious bodies might be functioning in ways discriminatory against women.³⁹³ For instance, for a woman to secure a divorce, she needs to make concession to her husband, but this rule does not apply to the husband.³⁹⁴

Hanna and Lowes point out that the main issue is not the existence of Sharia Councils, but the different approaches taken by Sharia Councils regarding divorce and the manner of application that tend to leave Muslim women in a vulnerable “bargaining position”.³⁹⁵ McCrea expressed the view that Sharia Councils should have the freedom to operate and conduct their affairs in accordance with religious principles as well as decide on issues relating to Islamic divorce.³⁹⁶

The independent review also found that almost all the people using the Sharia councils are women; in most of the cases evidence indicates over 90% of the women visiting the council are seeking an Islamic divorce and revealed that gender inequality exists in these councils.

On the other hand, the Home Affairs Committee was responsible for examining how Sharia Councils operate in practice, the resolution of family and divorce disputes as well as their relationship with the British legal system.³⁹⁷ However, as a result of the general election on 8 June 2017, the Committee closed the inquiry and has not been re-opened.³⁹⁸

³⁹³ House of common briefing paper (n343).

³⁹⁴ Ibid.

³⁹⁵ Sara Hanna and Eleanor Lowes, ‘The Problem with Nikah Contracts and Other Marriages’ (2018) 4 Private Client Business 133.

³⁹⁶ McCrea (n181).

³⁹⁷ Home Office Committee , ‘Sharia Councils Inquiry Launched’ (Parliament UK, 2016)<
<https://committees.parliament.uk/committee/83/home-affairs-committee/news/100712/sharia-councils-inquiry-launched/> > accessed 20 August 2020.

³⁹⁸ Ibid.

Drawing on this discourse is the Baroness Cox's Arbitration and Media Services (Equality) Bill 2016-2017 which is a private members Bill and had its second reading on 27 January 2017. The Bill seeks to address the concerns of gender discrimination among Muslim women by Sharia Councils in England and Wales.³⁹⁹ Jackson and O'Sullivan explain that despite the good intentions of the Bill, it is most likely to worsen the position of Muslim women especially in relation to legal implication of unregistered Muslim marriages.⁴⁰⁰ Thompson and Sandberg commented that it is pertinent to understand the full extent of the problem before providing legislative solutions and that the effect of the Bill would be insignificant in terms of religious dispute resolution.⁴⁰¹ Even the latest Resolution on Sharia by the Parliamentary Assembly of the Council of Europe in 2019 has expressed concern on role of Sharia Councils and the treatment of Muslim women. Paragraph 8 states the following:

The Assembly is also concerned about the judicial activities of Sharia Councils in the United Kingdom. Although they are not considered part of the British legal system, Sharia Councils attempt to provide a form of alternative dispute resolution, whereby members of the Muslim community, sometimes voluntarily, often under considerable social pressure, accept their religious jurisdiction mainly in marital and Islamic divorce issues, but also in matters relating to inheritance and Islamic commercial contracts. The Assembly is concerned that the rulings of the Sharia Councils clearly discriminate against women in divorce and

³⁹⁹ Arbitration and Mediation Services (Equality) Bill [HL] 2016-17 <https://services.parliament.uk/bills/2016-17/arbitrationandmediationservicesequality.html> accessed 10 August 2020.

⁴⁰⁰ Leyla Jackson and Kathryn O'Sullivan, 'Putting the Cart before the Horse? The Arbitration and Media Services (Equality) Bill' [2016] Family Law 82.

⁴⁰¹ Sharon Thompson and Russell Sandberg, 'Common Defects of the Divorce Bill and Arbitration and Mediation Services (Equality) Bill 2016-17' (2017) Family Law 425.

inheritance cases. The Assembly is aware that informal Islamic Courts may exist in other Council of Europe member States too⁴⁰².

Akhtar conducted a comprehensive empirical research that presents new evidence of the way Muslim men as well as women perceive the relationship between state and religious law.⁴⁰³ The study involved qualitative and quantitative data gathered from 250 survey responses, 4 focus groups and interviews with Sharia Councils in London (Leyton) and the Muslim Arbitration Tribunal in Nuneaton.⁴⁰⁴ The results of the empirical research revealed the following : evidence of “plurality of views and approaches to dispute resolution” relating to marriage and divorce amongst Muslim communities in Britain; diverse religious and cultural norms ; “degree of forum shopping for suitable and preferred outcomes”⁴⁰⁵ Based on the findings of the above study, Akhtar opined that the three-fold recommendation by the Independent review discussed above are not satisfactory ,extensive and underdeveloped. She asserts that the recommendation to criminalise imams for undertaking the nikah-only marriages “will create unacceptable levels of mistrust and hostility and undermine the pivotal role played by these individuals in families and dispute resolution processes”⁴⁰⁶ Sandberg and Cranmer stressed the importance of the review into the discrimination and intimidation of the users of Sharia Councils as an alternative form of dispute resolution and emphasised that the “governments cannot simply turn a blind eye to them within the context of a religious group”.⁴⁰⁷

⁴⁰² Resolution 2253, Sharia, The Cairo Declaration and the European Convention on Human Rights Resolution (2019) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25353> accessed 25 August 2020.

⁴⁰³ Rajnaara Akhtar, ‘Plural Approaches to Faith-based Dispute Resolution by Britain’s Muslim Communities’ [2019] Child and Family Law Quarterly 189. This research was not limited to individuals who have experienced relationship breakdown.

⁴⁰⁴ Ibid

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid.

⁴⁰⁷ Russell Sandberg and Frank Cranmer, ‘The Council of Europe and Sharia: An Unsatisfactory Resolution?’ (2019) 21 Ecclesiastical Law Journal 203.

Going back to the issue of non-marriage and void marriages, Fisher, Saleem and Vora have highlighted that regarding the nikah-marriage as a non-marriage by the judges continues to discriminate and there is need for intervention either from legislation or the Supreme Court to redress this unfairness.⁴⁰⁸ The authors argue there is no difference between a void and a non-marriage; they suggest that the recognition of a nikah-only marriage as a void marriage may rectify the disparity created by Part III of Matrimonial and Family Proceedings Act 1984. To facilitate this suggestion, statutory intervention is needed to eliminate the “Marriage Acts” constraints.⁴⁰⁹

The former Archbishop of Canterbury Rowan Williams has called for accommodation of some aspects of Sharia law into English law although he expressed dissatisfaction with the discrimination and treatment of women.⁴¹⁰ A full discussion of the archbishop’s lecture and the response by academic writers will be discussed in the next chapter.

2.10 The notion of ummah

The main objective of this section is to highlight the connection Muslims have with their religious and cultural heritage to gain insight into the choice of the nikah. The notion of ummah epitomises the universality of Islam and it is used as a framework for religious unity to accommodate cultural diversity of “believers”.⁴¹¹ The concept of ummah in Islamic terminology is “transglobal” and bears the perception of a borderless nation. Islam writes that the objective of the umma was to be a “network” which was “fixed in faith” in addition to “mobility” across

⁴⁰⁸ Miranda Fisher, Shabana Saleem and Vishal Vora, ‘Islamic Marriages: Given the Independent Review into the Application of Sharia Law in England and Wales, what is the Way Forward?’ [2018] Family Law 552.

⁴⁰⁹ Ibid.

⁴¹⁰ Rowan Williams, ‘Civil and Religious Law in England: A Religious Perspective’ (2008) 10 (3) Ecclesiastical Law Journal 262.

⁴¹¹ Riaz Hassan, ‘Globalisation’s Challenge to the Islamic “Ummah” (2006) 34(2) Asian Journal of Social Science 311.

all the world.⁴¹² The word umma appear in the Quran sixty times, has a fundamental meaning in Muslim literature, “a religious community bound by faith and transcending all other markers of belonging”.⁴¹³

Historically, Muslim ummah is a very good illustration of global community and has a significant role to play in determining as well as shaping the future action of globalisation.⁴¹⁴ The primary goal of Islam according to Ahmed is to unite humanity by building a universal community, for instance the ummah.⁴¹⁵ Islam attempts to bring about political integration of the ummah on a global basis so that in the future, it may become a world ummah.⁴¹⁶ Akram contends that the “historical consciousness” of Muslims is different from that of other religious groups because the notion of ummah has endured throughout centuries.⁴¹⁷ He argues further that it is pertinent to take into consideration the concept of ummah while analysing international relations that concerns transnational Muslims.⁴¹⁸

Archer looks at the allegiance that British Muslims both national and transnational have to their community through the umma. He states that the idea of umma has been the centre of attention for Muslim around the world embedded across centuries, however its power as an identity has often been challenged by the secular world.⁴¹⁹ Denny provides a robust account of the ummah in a threefold manner : first, Muslims have a universal identity closely associated with the Islamic faith through the concept of umma; second, it refers to Muslim community in a religious sense to “ethnic, linguistic or religious bodies of people who are objects of the

⁴¹² Maidul Islam, ‘Umma and the Dilemma of Muslim Belonging in Modern South Asia’ (2017) 12(2) *St Antony’s International Review* 26.

⁴¹³ Maysam Faruqi, ‘Umma: The Orientalists and The Qur’anic Concept of Identity’ (2005) 16 (1) *Journal of Islamic Studies* 1.

⁴¹⁴ Khurshid Ahmad, ‘Globalisation: Challenges and Prospects for Muslims’ (2006) 3(1) *Policy Perspectives* 1.

⁴¹⁵ Manzooruddin Ahmed, ‘Integration of the Muslim World: Problems and Prospects’ (1981) 34(1) *Pakistan Horizon: The Inter-Relation of Muslim States and Pakistan* 3.

⁴¹⁶ *Ibid.*

⁴¹⁷ Ejaz Akram, ‘Muslim Ummah and its Link with Transnational Muslim Politics’ (2007) 46(3) *Islamic Studies* 381.

⁴¹⁸ *Ibid.*

⁴¹⁹ Toby Archer, ‘Welcome to the “Umma”: The British State and Its Muslim Citizens Since 9/11’ (2009) 44(3) *Cooperation and Conflict* 329.

divine plan of salvation” and finally, the main purpose of the umma is to attain unity and solidarity among Muslim community all over the world.⁴²⁰ Salek posits that because of the concept of ummah, it is difficult to take a “neutral stance” as Muslims should remain united and may feel obligated to support other Muslims when it comes to conflict resolutions; the concept is likened to “brotherhood” which entails mutual care, respect and equality between the Muslim community.⁴²¹ Davie notes that Islam constitutes a distinct cultural heritage in which religion has become a way of life; same applies to ummah, where religious and secularism are integral aspects of the Muslim life.⁴²² Weir, Mangaliso and Mangaliso argue that as Islamic regulation continues to evolve, the community of believers known as the ummah represents all Muslims who accept the ethics of Islam.⁴²³

2.11 Possible solutions and areas for reform

Several possible solutions have been proposed by legal writers to the problem of the nikah-only marriages which has long presented challenges for Muslim minority ethnic groups. Read recommends an extension or development of the existing law on nullity to permit relief to be sought on “invalid marriages” undertaken in Britain with specific reference to Islamic marriages.⁴²⁴ Malik calls for mainstreaming norms of the minority legal order provided they are compatible with the state constitutional or human rights as a workable solution.⁴²⁵ The author goes further to assert that mainstreaming will only be possible through the following

⁴²⁰ Frederick Denny, ‘The Meaning of “Ummah” in the Qur’an’ (1975) 15(1) *History of Religions* 34.

⁴²¹ Lucy Salek, ‘Faith Inspiration in a Secular World: An Islamic Perspective on Humanitarian Principles’ (2015) 97(897) *International Review of the Red Cross* 345.

⁴²² Grace Davie, ‘Belief and Unbelief: Two Sides of a Coin’ (2013) 15(3) *Ecclesiastical Law Journal* 259.

⁴²³ David Weir, Mzamo Mangaliso and Nomazengele Mangaliso, ‘Some Implications of the Inter-cultural Approach to International Human Resource Management: Ubuntu and Ummah’ (2010)1 *Academy of Management Annual Meeting Proceedings* 1.

⁴²⁴ Read (n190).

⁴²⁵ Maleiha Malik, ‘Minorities and Law: Past and Present’ (2014) 67(1) *Current Legal Problems* 67.

means; first introduction of minority norms as a widespread established standard in public legislation, second ;judges expanding a legal principle or exclusion from a generally applied legal rule and finally; effective collaboration between the state and the minority legal order may remove the need to Muslim women to seek assistance from Sharia Councils in matters dealing with Muslim marriage and divorce.⁴²⁶

Shah proposed that mosques should be encouraged to facilitate official registration once couples have undertaken a nikah ceremony to ensure that protection under English law; registration should be connected to the planning process and arrangement made in advance.⁴²⁷ However, he identified problems with his proposal due to the fact that mosques during the preliminary stages of establishment will not have planning permission and permission may not be granted as the local authorities prefer mosques some distance away from residential areas. In addition, Shah advocates for the recognition of the nikah-only marriage to confer on couples the official status of marriage irrespective of registration.⁴²⁸

A review of the Office for National Statistics figures shows for a period of 3 years that in 2008, 836 mosques were certified places of worship and 175 registered for marriage, 2009 and 2010 had the same data regarding, 899 mosques were certified places of worship and 198 registered for marriage but in 2011, 930 mosques were certified place of worship and just 205 registered for marriage.⁴²⁹ This data shows that there has not been any significant improvement in the registration process.

In his research, Eekelaar put forward a few solutions; first, that the constraints attached to religion that apply to civil marriages could be eliminated although he acknowledged that this

⁴²⁶ Ibid.

⁴²⁷ Prakash Shah, 'Judging Muslims' in Robin Griffith-Jones (eds) *Islam and English Law: Rights, responsibilities and the Place of Shari'a* (Cambridge University Press 2013) 148.

⁴²⁸ Ibid.

⁴²⁹ Office of National Statistics, *Area of Occurrence, Type of Ceremony and Denomination* (2011) accessed 10 August 2020.

would partially solve the problem; second that the “registered building” stipulation could be removed, and religious marriages permitted on the condition that it is conducted by a cleric authorised by law like the law applicable in Scotland.⁴³⁰

Vora proposed a two-tier model of cohabitation that would address the problem of registration of marriage among British Muslims. This would confer on cohabitants automatic rights on the breakdown of the relationship eliminating the need to have a nikah ceremony followed by a civil marriage. He suggested, the first model; the cohabitation limitation determined by the length of the relationship, normally a period of less than two years, with few shared assets (if any) and no children; the second model, de facto cohabitation with identical elements for couples divorcing under s.25 of the Matrimonial Causes Act 1973 on the condition that the relationship has lasted for two years, have shared assets and children.⁴³¹ More recently, Vora included a third-tier to his proposed solution making it a three-tier cohabitation classification approach ;third model; spousal, limited to only couples who regard themselves as married because they entered a valid religious marriage without performing the civil preliminaries. Under this third tier, there is no duration requirements.⁴³²

Hanna and Lowes suggest the abolishment of the formalities for the ceremony to take place in a registered building and replace with the “celebrant-based system” which connotes appointment of celebrants responsible for the solemnisation of civil or religious marriages.⁴³³ The authors allude to the effectiveness of this system in countries like Scotland, some parts of

⁴³⁰ John Eckelaar, ‘Marriage: A Modest Proposal’ [2013] Family Law 83. He mentions that it would require regulations to give permission to certain religions.

⁴³¹ Vora (n4).

⁴³² Vishal Vora, ‘The Continuing Muslim Marriage Conundrum: The Law of England and Wales on Religious Marriage and Non-Marriage in the United Kingdom’ (2020) 40(1) Journal of Muslim Minority Affairs 148.

⁴³³ Sara Hanna and Eleanor, ‘The Problem with Nikah Contracts and Other Marriages’ (2018) 4 Private Client Business 133.

Australia, New Zealand and it would benefit not only the Muslim community but the society in general.⁴³⁴

O’Sullivan and Jackson argue that the problem of unregistered nikah would be solved by initiatives aimed to ensure that Muslim marriages are valid instead of seeking to “upgrade” the marriage to a void status.⁴³⁵ Nash proposed three major options to select from in the decision to regulate the unregistered Muslim marriage and Sharia councils: first, the exclusion of religious principles from family arbitration hearings, second, recognition of all nikah marriages as a valid marriage under English law and finally, the requirements for the validity of marriage and the associated criminal offences should be updated.⁴³⁶ Barton suggests applying a procedure akin to the theory section of the driving test or even British citizenship. He mentions that this could rectify “predictability with justice in financial remedies by requiring couples to make a prospective choice from among a menu of default regimes or their own private arrangement”.⁴³⁷

The government considered in 2002 a “relaxation” of the limitations of places where people may get married in England and Wales.⁴³⁸ A community initiative came to light in August 2008 with the launch of the Model Muslim Marriage Contract by the Muslim institute.⁴³⁹ This was endorsed by Imams, Mosques Council, the Muslim Parliament of Great Britain, and other organisations. The document titled “Muslim Marriage Certificate” was created to inform and enable couples to secure their rights in writing under a contract agreed by both parties. The document contains a “Certificate of Marriage” with an explanation of the rights,

⁴³⁴ Ibid.

⁴³⁵ O’Sullivan and Jackson (n201).

⁴³⁶ Patrick Nash, ‘Sharia in England: The Marriage Law Solution’ (2017) 6 Oxford Journal of Law and Religion 523.

⁴³⁷ Chris Barton, ‘How Can I Wed Thee? – Let Me Change the Ways: The Law Commission’s Consultation Paper on ‘Weddings’ Law’ [2021] Family Law 384.

⁴³⁸ Civil Registration: Vital change (n 47).

⁴³⁹ <http://www.muslimparliament.org.uk> accessed 20 March 2021.

responsibilities, terms, and conditions agreed by the parties to the marriage in addition to the guidelines to assist with its implementation.⁴⁴⁰ The explanatory notes contain information about the validity of a Muslim marriage in Britain. The intention of the document was to avoid any confusion regarding the terms and conditions of the contract.⁴⁴¹

The Ministry of Justice's Muslim Marriage Working Group in 2012 carried out a campaign committed to raising awareness of the lack of legal protection for unregistered religious marriage under the leadership of Aina Khan campaign group, "Register Our Marriage".⁴⁴² However, Vora points out the unworkability of such campaigns due to the issue of patriarchy and gender inequality among Muslim minority ethnic group.⁴⁴³

In December 2015, the Law Commission in the Getting Married; A Scoping Paper concluded in relation to the nikah-only marriages, there is need for reform of the law as these marriages have no legal validity in the eyes of the law due the status of non-marriage.⁴⁴⁴

Furthermore, Home Office Independent Review into the Application of Sharia Law in England and Wales discussed above proposed 'legislative changes would be required to the offences sections 75 to 77 of the Marriage Act 1949 so that the celebrant of specified marriages, including Islamic marriages, would face penalties should they fail to ensure the marriage is also civilly registered'.⁴⁴⁵ In response to the review, Probert's research on criminalising non-compliance with marriage formalities identified some of the problems with the reviews.⁴⁴⁶ First, registration which involves the process of recording the marriage in writing is not a

⁴⁴⁰ <http://www.muslimparliament.org.uk/Documentation/Muslim%20Marriage%20Contract.pdf> accessed 20 March 2021.

⁴⁴¹ Ibid.

⁴⁴² <https://registerourmarriage.org/> accessed 20 March 2021.

⁴⁴³ Vora (n4).

⁴⁴⁴ Getting Married: A Scoping paper 2015 (n 183).

⁴⁴⁵ Home Office, The Independent Review into the Application of Sharia Law in England and Wales (Home Office, February 2018).

⁴⁴⁶ Rebecca Probert, 'Criminalising Non-compliance with Marriage Formalities?' [2018] Family Law 702. The author mentions that worthy to note that registration is a means of ensuring certainty and proof of marriage.

necessary requirement to the validity of a marriage. Second, it fails to emphasise the prerequisite formalities that are fundamental for a marriage. Finally, it gives a false impression that an informal ceremony of marriage can be legalised by registration after it has taken place. However, the appropriate process is for couples to comply with the formalities necessary for the validity of marriage.⁴⁴⁷

Bone's recent study proposed a new paradigm called "nikah union" for nikah only marriages which would meet the needs of the British society : first, a universal principle of monogamy would be applicable with a restriction for polygyny ; second, discretionary clauses available contained in the nikah contract for example, wife's authority to give unilateral divorce; third, this new form of union should be available to all irrespective of the religion ; fourth, a provision in the nikah contract for the protection of the wife's wealth; and finally, there should be no time limitations for the dissolution of the contract.⁴⁴⁸

Presently, the Marriage Act 1949 is being amended- Marriage Act 1949 (Amendment) Bill, a Private Members' Bill introduced in 2017 by Baroness Cox has completed the first reading. The Bill seeks to create the offence of purporting to solemnising an unregistered marriage. Sandberg argues that this would not provide adequate remedy on the breakdown of the relationship for couples who had an unregistered nikah as the "issue lies with the celebrants".⁴⁴⁹ However, he recommends reforming the cohabitation law as this would alleviate the problem of unregistered Muslim marriages.⁴⁵⁰

There are two further Bills recommending for change to the registration of marriage. The Registration of Marriage (HL) a Private Members' Bill introduced by the Bishop of St Albans

⁴⁴⁷ Ibid.

⁴⁴⁸ Amra Bone, 'Islamic Marriage and Divorce in the United Kingdom: The Case for a New Paradigm' (2020) *Journal of Minority Affairs* 1.

⁴⁴⁹ Sandberg (n263).

⁴⁵⁰ Ibid.

and the Registration of Marriage Bill (No 2) introduced by Dame Caroline Spelman in 2017. The Bills are seeking to make provision about the registration of marriages. The Bill which started in the House of Lords has completed the third reading and currently in the House of Commons.

Finally, in 2019, the Government launched a Law Commission review on the first ever marriage review to free-up dream wedding venues.⁴⁵¹ It plans to discard outdated rules on wedding venues in England and Wales. Under the terms of reference, the Government will scrutinise how and where couples can marry in England and Wales. The reform of law on weddings will permit more preferences within a “simple, fair and consistent legal structure”.⁴⁵²

The law commission will make recommendations in relation to the following : first, if it is relevant for the legal preliminaries to take place before a wedding is streamlined; second, in what ways should the law be reformed to permit marriage ceremonies to take place in a variety of locations; third, a broad categories of persons authorised to solemnise a marriage; fourth; the specifications regarding to contents or prohibitions as part of a wedding ceremony; fifth, requirements on registration of marriage and the authorised persons; sixth, the legal effects of failure to satisfy the prerequisites for a valid marriage and finally, the offences for failure to comply with the above.⁴⁵³

⁴⁵¹ [First ever marriage review to free-up dream wedding venues - GOV.UK \(www.gov.uk\) < https://www.gov.uk/government/news/first-ever-marriage-review-to-free-up-dream-wedding-venue >_accessed 7 April 2021.](https://www.gov.uk/government/news/first-ever-marriage-review-to-free-up-dream-wedding-venue)

⁴⁵² <https://www.lawcom.gov.uk/project/weddings/> accessed 7 April 2021.

⁴⁵³ Ibid.

2.12 Conclusion

This chapter has discussed the importance of marriage as an institution in family law. We have seen that the relationship between law and religion although not straightforward, they relate in terms of normative systems and maintenance of social order. This chapter examined some of the major legislative provisions of the Marriage Act 1949-1994 that regulates the solemnisation and the registration of Marriage in Britain.

This chapter revealed some of the realities faced by Muslim women who undertake the nikah only marriage following the recent decision of the Court of Appeal in *AG v Akhter and Khan* by describing the nikah ceremony as a “non-qualifying ceremony” and do not entitle the parties to a decree of nullity or any financial remedy. It also explored constructive cohabitation and highlighted that those who undertake nikah only marriages are deemed to be cohabitantes in the eyes of the law and as a result will not be entitled to the same rights as married couples.

Furthermore, we have seen that confusion may arise in cases where a foreign marriage is recognised abroad, and the equivalent marriage will not be acknowledged in England and Wales. Regarding the mahr, British Muslims could rely on the mahr, and the importance attached to it depending on attitude of the court. This chapter looked at polygamous marriages as one of the effects of having the nikah -only marriages in Britain. It highlighted that English law permits the validity of potentially polygamous marriages undertaken abroad in accordance with section 5 of the Private International Law (Miscellaneous Provisions) Act 1999.

The chapter has examined the treatment of Muslim women by Sharia Councils as an alternative dispute resolution. It discussed government’s effort to alleviate the hardship caused by these tribunals although a work in progress, a lot still needs to be done to protect these vulnerable women. In addition, this chapter discussed the concept of ummah as a framework used to unite and accommodate all Muslims around the world.

Finally, this chapter examined the possible solutions to the problem of unregistered nikah and the areas of reforms. It discussed that the Marriage Act 1949 is currently being amended to create the offence of seeking to solemnise an unregistered Muslim marriage. It is hoped that the change in law will be a positive step towards ameliorating the problem of unregistered Muslim marriages.

Chapter 3: Theoretical frameworks

3.1 Introduction

This chapter evaluates the theoretical frameworks of legal pluralism, multiculturalism and critical race theory to gain insight into the attitudes of British Muslim women towards marriage. It discusses the concept of legal pluralism, pluralities within the British society, legal pluralism and International human rights and Muslim legal pluralism. Furthermore, it examines the normative framework of multiculturalism, multiculturalism and human rights, the debate on the accommodation of Sharia law into English law, the challenges of multiculturalism. Finally, it explores critical race theory and critical race feminism.

3.2 The emerging practice of legal pluralism

Legal pluralism has been the subject of debate with respect to the meaning and scope of the concept of law within the fields of sociology, anthropology and legal theory.⁴⁵⁴ It became apparent as an analytical concept in socio-legal literature only in the early 1970's.⁴⁵⁵ Legal pluralism emerged as a response to the dominant view of "legal centralism" the idea that "law is and should be the law of the state, uniform for all persons, exclusive of all other law and administered by a single set of state institutions".⁴⁵⁶ It is a "common historical condition" that existed before the emergence of modern nation state as a result of the belief in the exclusive

⁴⁵⁴ Franz Benda-Beckmann, 'Who's Afraid of Legal Pluralism'? (2002) 47 *Journal of Legal Pluralism and Unofficial Law* 37.

⁴⁵⁵ Sally Merry, 'Legal Pluralism' (1988) 22(5) *Law and Society Review* 869.

⁴⁵⁶ John Griffiths, 'What is Legal Pluralism' (1986) 18(24) *Journal of Legal Pluralism and Unofficial Law*.

authority of state law.⁴⁵⁷ Legal pluralism is prevalent in present day societies due to globalisation that creates a network of local, national and transnational legal systems.⁴⁵⁸

There is no universally accepted definition of legal pluralism. The definition of legal pluralism depends upon the background and ideological orientation of the author.⁴⁵⁹ For instance, legal historians have used it to explain the overlapping transplanted systems of law in European countries, legal philosophers to describe the law's relation to ethics or philosophical ideas and constitutionalists to discuss the confederation of certain states.⁴⁶⁰ In effect, this thesis will be exploring whether legal pluralism offers a solution to the current problem of unregistered Muslim marriages.

Tamanaha states that the difficulty in defining legal pluralism is simply a “by-product of the problem of defining law”.⁴⁶¹ He points out two traditions associated with the problem of definition. First, he argues that law considers the anthropological view of normative order of a social group. Second, law can be defined in terms of the public institutions to enforce norms.

Pluralism is a theory that believes in the acceptance of religious, social or cultural difference as a positive value, promotes sustained dialogue and acclimatisation amidst diversity without contemplating the need to terminate any of them perpetually.⁴⁶² More precisely, pluralism and the recognition of cultural identity has brought awareness to the society and family courts to

⁴⁵⁷ Dizon Anthony, ‘Laws and Networks: Legal Pluralism in Information and Communications Technology (2011) 15(6) Journal of Internet Law 18.

⁴⁵⁸ Ido Shahaar, ‘A Tale of Two Courts: How Organizational Ethnography Can Shed New Light on Legal Pluralism’ (2013) 36(1) Political and Legal Anthropology Review 118.

⁴⁵⁹ Robin Griffith-Jones, *Islam and English law. Rights, Responsibilities and the Place of Sharia* (1st edition, Cambridge University Press 2013) 137.

⁴⁶⁰ Masaji Chiba, ‘Other Phases of Legal Pluralism in the Contemporary World’ (1998) 11(3) Ratio Juris 228.

⁴⁶¹ Brian Tamanaha, ‘Understanding Legal Pluralism: Past to Present, Local to Global (2008) 30 Sydney Law Review 376. The forms of normative ordering usually discussed in the studies of Legal Pluralism are (i) Official legal systems (ii) Customary cultural normative systems (iii) Religious/cultural normative systems (iv) Economic/capitalist normative systems (v) Functional normative systems (vi) Community/cultural normative systems.

⁴⁶² Abdullahi An-Naim, ‘European Islam or Islamic Europe: The Secular State for Negotiating Pluralism’ in Marie-Claire Foblets, Jean-Yves Carlier and Aboutaleb (eds) ‘Islam and Europe: Crises are challenges’ (Leuven University Press 2010).

issues pertaining the “sensitivity” to religious matters and the nature of Islamic identity.⁴⁶³

Lagon asserts that pluralism develops over time and the citizens as well as the government “must learn” to adapt to the different value systems in society.⁴⁶⁴

Thus, legal pluralism is commonly defined as the co-existence of two or more legal systems within the same social field occasionally contradicting each other and equally having credible claims to authority.⁴⁶⁵ Tamanaha affirms to this definition and admits that it is a common practice to have more than one legal system co-exist in the same social arena.⁴⁶⁶ This definition has been criticised on the grounds that accepting it entails the view that “all legal ordering is rooted in state law”.⁴⁶⁷ Another criticism of this definition is that it leads to the conclusion that legal pluralism within the confines of the state’s legal system lacks significance.⁴⁶⁸ Deep legal pluralism which refers to a situation where the state law co-exists with customary law but have separate, different sources of content and legitimacy.⁴⁶⁹ Chiba defines legal pluralism as ‘That body of theory which recognises that the total context in which law operates within a legal system consists of a plurality of different culturally determined layers of practice which might consist of official laws, unofficial laws and legal postulates’.⁴⁷⁰ This thesis will adopt this definition because it takes into account the existence of unofficial law which is an integral part of this thesis.

⁴⁶³ Elizabeth Butler-Sloss and Mark Hill, ‘Family Law: Current Conflicts and their Resolution’ in Robin Griffith-Jones (eds) *Islam and English Law: Rights, Responsibility and the Place of Shari’a* (Cambridge University Press 2013)114.

⁴⁶⁴ Mark Lagon, ‘Dignity, Pluralism and Religious Freedom: An Interests-Based Case’ (2016) 17(2) *Georgetown Journal of International Affairs* 72.

⁴⁶⁵ Norbert Rouland, *Legal Anthropology* (1st edition, The Athlone press 2000); Sionaidh Douglas-Scott, ‘Justice and Pluralism in the EU’ (2012) 65(1) *Current Legal Problems* 83.

⁴⁶⁶ Brian Tamanaha, *A General Jurisprudence of Law and Society* (Oxford University Press 2001)171.

⁴⁶⁷ Ann Griffiths, *Legal Pluralism in Reza Banakar and Max Travers (eds) Introduction to Law and Society* (Oxford: Hart Publishing 2002) 303.

⁴⁶⁸ Benda-Beckmann (n454).

⁴⁶⁹ Gordon Woodman, ‘Legal Pluralism and the Search for Justice’ (1996) 40(2) *Journal of African Law* 157.

⁴⁷⁰ Masaji Chiba, *Asian Indigenous Law: In Interaction with Received law* (1st edition, London: New York 1986)2. Unofficial law is not an officially sanctioned law but is sanctioned by the consensus of a group of people whether functioning in conjunction with official law or complementing/resisting the demands of the official legal system.

This research draws particular attention to unofficial or non-state legal pluralism because unofficial law deals with rules which a particular religious or ethnic community conform to even though not given any state recognition. Legal pluralism not only propounds the co-existence of multiple legal systems but develops hypotheses regarding the connection between them.⁴⁷¹ In fact, adherents of legal pluralism assert that law everywhere is “fundamentally pluralist in character”.⁴⁷² Barzilai opines that legal pluralism’s primary objective is to detach from legal centralism revolving around state law, to decentralise court-centred judicial studies and to move away from court orders so that there is more focus on non-state orders.⁴⁷³ This paradigm of legal pluralism acknowledges the existence of multiple systems of norms, values and customs within a single polity.⁴⁷⁴ Consequently, legal pluralism is often viewed from the perspective of a practical acknowledgement to the question of diversity of legal cultures and practices around the world.⁴⁷⁵ It has been referred to as a key concept in a post-modern view of law which addresses competition between multiple legal systems in modern societies.⁴⁷⁶ Notwithstanding the diversity of the conceptions of legal pluralism, they share a general fundamental premise regarding the nature of law, its function and relationship with cultural milieu.⁴⁷⁷

The theory of legal pluralism reinforces the significance of recognising that non- state legal systems such as customary or religious systems may co-exist together with the state system.⁴⁷⁸

⁴⁷¹ Sally Merry, ‘Legal Pluralism’ (1988) 22(5) *Law and Society Review* 891.

⁴⁷² Hanne Petersen and Henrik Zahle, *Legal Polycentricity: Consequences of Pluralism in Law* (1st edition, Aldershot Dartmouth 1995)201.

⁴⁷³ Gad Barzilai, ‘Beyond Relativism: Where is Political Power in Legal Pluralism?’ (2008) 9(2) *Theoretical inquires in law* 395.

⁴⁷⁴ Nina Schiller, ‘Transborder Citizenship: An Outcome of Legal Pluralism within Transnational Social Fields’ (2005) *Theory and Research in Comparative Social Analysis* 2.

⁴⁷⁵ Kanishka Jayasuriya, ‘Institutional Hybrids and the Rule of Law as a Regulatory Project’ in Brian Tamanaha, Caroline Sage and Michael Woolcock (eds) *Legal Pluralism and Development: Dialogues for success* (CUP2011).

⁴⁷⁶ Santos De Sousa, ‘Law: A Map of Misreading. Toward a Postmodern Conception of Law (1987) 14 *Journal of Law and Society* 279.

⁴⁷⁷ Baudouin Dupret, ‘Legal Pluralism, Plurality of Law and Legal Practices’ (2007) 1 *European Journal of Legal Studies* 1.

⁴⁷⁸ Miranda Forsyth, ‘How to ‘Do’ Legal Pluralism (2007) *School of Regulation and Global Governance* 1.

Merry describes legal pluralism as an indispensable guide to a rational view of law in its multiple instantiations, intersections and that consideration should be given to an alternative understanding and practices of law especially among the less powerful members of a society.⁴⁷⁹ Itziovich argues that legal pluralism emanated on the basis of reflecting on the dynamics of legal integration.⁴⁸⁰ It strives to alleviate inter-communal tension, advocates peace and security in conflict or post-conflict situations.⁴⁸¹

Two rudimentary principles form the basis for the study of legal pluralism.⁴⁸² Firstly, human beings are governed in accordance to a national legal system and secondly, state law which is a pluralistic combination of western law and other legal systems such as Islamic law usually co-exist with non-state laws.⁴⁸³ Another dimension to legal pluralism is the study of law as a system of meaning which Geertz describes as a cultural code for interpreting the world, one evocative of cultural diversity.⁴⁸⁴ Giordano supports this view as he opines that legal pluralism involves introduction in some areas of the law mechanisms that took into consideration cultural idiosyncrasies.⁴⁸⁵ Interestingly, legal pluralism can be used in two ways: juridical legal pluralism which refers to the recognition by the state of customary law of particular groups of people and empirical legal pluralism which deals with a situation in which the behaviour of a specific group of people who are subject to more than one set of rules.⁴⁸⁶

⁴⁷⁹ Sally Merry, 'McGill Convocation Address: Legal Pluralism in Practice' (2013) 59(1) McGill Law Journal 2.

⁴⁸⁰ Giulio Itziovich, 'Legal Order, Legal Pluralism, Fundamental Principles. Europe and its Law in Three Concepts' (2012) 18(3) European Law Journal 375.

⁴⁸¹ Justin Holbrook, 'Legal Hybridity in the Philippines: Lesson in Legal Pluralism from Mindanao and the Sulu Archipelago' (2009) Tulane Journal of International and Comparative Law 403. The author reasons that as a matter of fact, legal pluralism aims to provide a framework for curtailing competing and overlapping norms.

⁴⁸² Chris Fuller, 'Legal Anthropology, Legal Pluralism and Legal thought' (1994) Anthropology Today.

⁴⁸³ Ibid.

⁴⁸⁴ Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (1st edition, New York: Basic Books 1983) 182.

⁴⁸⁵ Elham Manea, 'Women and Shari'a Law: The Impact of Legal Pluralism in the UK' (2017) 32(1) Journal of Law and Religion 202.

⁴⁸⁶ John Griffiths, 'Legal Pluralism' (2015) International Encyclopaedia of the Social and Behavioural Sciences 757.

No study relating to legal pluralism will not be complete without reference to the normative legal pluralism.⁴⁸⁷ Berman one of its leading scholars advocates for the acceptance and dominance of legal pluralism as the normative framework when confronted with multiple normative realms.⁴⁸⁸ This proposal he calls “cosmopolitan pluralism” which is a scheme for thinking about situations of legal hybridity, recognises the existence of multiple, overlapping and conflicting legal orders without requesting individuals to forgo their own normative commitments.⁴⁸⁹ Legal pluralism challenged this centralism view that the state has a monopoly on norm production.⁴⁹⁰ It posits that the subsistence of the state is not threatened by self-regulation whether designated as plural legal orders.⁴⁹¹

The rationale behind legal pluralism is aptly put forward by Tamanaha in the following words:

Law is whatever we attach the label of law to, and we have attached it to a variety of multifaceted, multifunctional phenomena: natural law, international law, state law, religious law and customary law on the general level, and an almost infinite variety on the specific level...⁴⁹²

In his view, state law and other forms of normative ordering are distinct, and the concept law must be exclusively reserved for state law.⁴⁹³ Merry supports this view that state law is distinct because it exercises coercive power and monopolises the symbolic power associated with state

⁴⁸⁷ Alexis Galan and Dennis Patterson, ‘The Limits of Normative Legal Pluralism: Review of Paul Schiff Berman. Global Legal Pluralism: A Jurisprudence of Law beyond Borders’ (2013) 11(3) International Journal of Constitutional Law 783-800.

⁴⁸⁸ Paul Berman, ‘The Globalisation of Jurisdiction’ (2002) 151 University of Pennsylvania Law Review 311.

⁴⁸⁹ Paul Berman, ‘Conflicts of Laws, Globalisation and Cosmopolitan Pluralism’ (2005) 51 Wayne Law Review 1105. Paul Berman, ‘From International Law to Law and Globalisation’ (2005) 43 Columbia Journal of Transnational Law 485, Paul Berman, ‘A Pluralist Approach to International Law’ (2007) California Law Review 1155 and Paul Berman, ‘The New Legal Pluralism’ (2009) 5 Annual Review of Law and Social Science 225.

⁴⁹⁰ Filip Reyntjens, ‘Legal Pluralism and Hybrid Governance: Bridging Two Research Lines (2016) 47(2) Institute of Social Studies 362.

⁴⁹¹ Ibid.

⁴⁹² Brian Tamanaha, ‘A General Jurisprudence of Law and Society (Oxford University Press 2001)193.

⁴⁹³ Brian Tamanaha, ‘The Folly of the ‘Social Scientific’ Concept of Legal Pluralism’ (1993)20(2) Journal of Law and Society 206.

authorities.⁴⁹⁴ This is clearly illustrated by Luhmann's social systems theory that posits that modern society is distinct and independent from other social systems such as law, politics, media and religion.⁴⁹⁵ In effect, social norms can be differentiated from legal norms.⁴⁹⁶

However, Fitzpatrick's postulation of "integral plurality" refutes Tamanaha's idea as he argues that state law and other normative orders are somewhat interrelated, state law is integrally constituted in relation to a plurality of social form.⁴⁹⁷ Shah's research identifies the British strategy for coping with legal pluralism.⁴⁹⁸ He outlines them as immigration law, race relations law and ethnic minorities studies.⁴⁹⁹ What becomes clear from the analysis above is that legal pluralism provides a way of understanding, describing and offers an effective way of managing a heterogeneous society.

3.3 Pluralities within the British legal system

This study is an attempt to contribute to the understanding of what constitutes a plural legal system, hence the primary objective is to demonstrate that the British legal system is plural in nature. Legal pluralist in the early 1970s and 1980s focused on the importance of rules and norms not contained in cases or statutes that was outside the confines of the traditional boundaries of law as generally understood.⁵⁰⁰ The existence of a state of legal pluralism in almost all societies was the main argument of legal pluralist.⁵⁰¹ With particular reference to choice of law, the pluralist approach seeks the courts to consider the variety of normative

⁴⁹⁴ Sally Merry, 'Legal Pluralism' (1988) 22 *Law and Society Review* 879.

⁴⁹⁵ Niklas Luhmann, *Law as a Social System* (Oxford University Press 2004) 86.

⁴⁹⁶ *Ibid.*

⁴⁹⁷ Peter Fitzpatrick, 'Law and Societies' (1984) 22(1) *Osgoode Hall Journal* 159.

⁴⁹⁸ Prakash Shah, *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law* (1st edn, Routledge Press 2005)

⁴⁹⁹ *Ibid.*

⁵⁰⁰ John Griffiths, 'What is Legal Pluralism?' (1986) 18(24) *The Journal of Legal Pluralism and Unofficial Law* 1.

⁵⁰¹ Brian Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008)30 *Sydney Law Review* 1.

communities with possible ties to a particular dispute.⁵⁰² This will enable judges view themselves as part of a joint network of domestic, transnational and international norms.⁵⁰³ Legal theorists are acknowledging the prominence of multiple levels of overlapping and opposing legal orders.⁵⁰⁴ However, socio-legal writers focused mainly on the rules that govern people's lives refusing to distinguish between "legal and non-legal rules".⁵⁰⁵

Law in the UK is a collection of laws which means that there are different national laws which together form the law of the country and the courts with their own distinct competencies,⁵⁰⁶ thus, heterogeneity of laws is a reality in UK.⁵⁰⁷ Berman argues that law does not reside exclusively in the coercive commands of a sovereign power, that it is continually constructed through the contest of various norms generating communities.⁵⁰⁸ It is noteworthy that, no matter how homogenous present day societies claim to be, they are still plural societies each internally divided along the lines of gender, class and ethnicity.⁵⁰⁹

A legal system is said to be plural when it comprises of contradictory "rules of recognition that cannot be legally resolved from within the system".⁵¹⁰ The plural nature of British society is demonstrated by its high levels of social, cultural and religious diversity.⁵¹¹ Griffiths defines a

⁵⁰² Paul Berman, 'Global Legal Pluralism' (2007) 80 Southern California Law Review 1230.

⁵⁰³ Ibid.

⁵⁰⁴ Michael Giudice, 'Global Legal Pluralism: What's Law got to do with it?' (2014) 34(3) Oxford Journal of Legal Studies 590.

⁵⁰⁵ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*. Translated by Walter L Moll (1st edition, Russell and Russell 1936) Sally Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study' (1973) 7(4) Law and Society Review 719.

⁵⁰⁶ Ian Edge, *Islamic Finance, Alternative Dispute Resolution and Family Law: Developments Towards Legal Pluralism* in Robin Griffiths-Jones (eds), *Islam and English Law. Rights, Responsibilities and The Place of Sharia* (Cambridge University Press 2013).

⁵⁰⁷ Yilmaz Ihsan, 'Muslim Law in Britain: Reflections in the Socio-legal Sphere and Differential Legal Treatment' (2000) 1(2) Journal of Muslim Minority Affairs 353.

⁵⁰⁸ Paul Berman, *Global Legal Pluralism. A Jurisprudence of Law Beyond Borders* (1st edition, Cambridge University Press 2012) 12.

⁵⁰⁹ Abilou Ansary and Sikeena Karmali, *Exploring Muslim Context. The Challenge of Pluralism: Paradigms from Muslim Contexts* (1st edition, Edinburgh University Press 2009) 63.

⁵¹⁰ Nicholas Barber, 'Legal Pluralism and the European Union' (2006) 12(3) European Union Journal 306.

⁵¹¹ Samia Bano, 'Islamic Family Arbitration, Justice and Human Rights in Britain' (2007) 1 Law, Social Justice and Global Development 5.

pluralist legal system from a juristic point of view.⁵¹² He opines that a legal system is plural when parallel legal regimes are all subject to the state legal system and when the sovereign controls divergent bodies of law for different groups of the population either by nationality, ethnicity or religion.⁵¹³ Nonetheless, Sugarman examines the plurality of law through his discussion of facilitative law which he describes as a law that provides individuals with facilities for realising their wishes through conferring legal powers on them.⁵¹⁴ Fuller opines that state law is usually a pluralistic combination of western law and other systems such as Islamic law which normally coexists with 'non-state law'.⁵¹⁵ Indeed, the prerequisite for the recognition of ethnic minority laws and customs is that the state must be secular.⁵¹⁶ The surge in the recognition of right to self-determination for the indigenous people justifies the growing acceptance of autonomous legal systems.⁵¹⁷

A pluralist society is a society where people of different religions or cultures are treated as equal citizens and not discriminated against on the basis of belief or traditions which are in contrast to the tradition of the majority.⁵¹⁸ A plural system is established by cultural diversity originating from different groups of people.⁵¹⁹ Virtually every society includes groups whose ways of life are inconsistent with the general populace, each with its own overlapping values and practices.⁵²⁰ As a matter of fact, what makes pluralism notable is not the existence of

⁵¹² Ibid at 1.

⁵¹³ Ibid.

⁵¹⁴ David Sugarman, *Law, Economy and the State in England 1750-1914: Some Major Issues* (11th edition, Academic Press London 1983) 213. He cites examples of such powers as the power to construct marriages, contracts and wills. He believes facilitative law allows private law-making bodies the opportunity to bypass the legal obligations of the state.

⁵¹⁵ Chris Fuller, 'Legal Anthropology: Legal Pluralism and Legal Thought' (1994) 10(3) *Anthropology Today* 10.

⁵¹⁶ Marie-Claire Foblets, Jean-Yves Carlier and Ahmed Aboutaleb, *Islam and Europe: Crises are Challenges* (1st edition, Leaven University Press 2010) 88. By secular state, it means one that is neutral regarding all religious doctrine.

⁵¹⁷ Helen Quane, 'Legal Pluralism and International Human Rights Law: Inherently Incompatible, Mutually Reinforcing or Something in Between?' (2013) 33(4) *Oxford Journal of Legal Studies* 676.

⁵¹⁸ Mary Redmond, 'Constitutional Aspects of Pluralism' (1978) 67 *Irish Quarterly Review* 40.

⁵¹⁹ Ibid.

⁵²⁰ Bhikhu Parekh, 'Cultural Pluralism and the Limits of Diversity' (1995) 20(4) *Alternatives: Global, Local and Political* 436.

multiple uncoordinated overlapping bodies of law but the diversity amongst them.⁵²¹ These overlapping bodies of law has a tendency to compete in terms of authority, impose conflicting demands and conflict as to which legal regime should apply to a particular situation.⁵²²

Jackson asserts that legal pluralism can reunite a diverse society as law emanates from the social norms of a society and the state only acts as a mechanism to enforce the norms in form of laws.⁵²³ Indeed, legal pluralism considers ethnic or religious groups as the main ingredient of a multicultural society and recognises that personal law will regulate their affairs but subject to state law.⁵²⁴ Underpinning this is the argument that legal pluralism may bring to light processes of legal change.⁵²⁵ The author explains further that in a pluralist society that permits the operation of Sharia courts, the complex relationship between these courts and the normative orders may bring about transformations in relation to each other.⁵²⁶

Barber's study also highlights the inherent problems associated with a plural legal system.⁵²⁷ He states that pluralist systems lack a legal mechanism able to resolve inconsistency, that there is no higher constitutional body that can resolve this dispute through adjudication or legislation.⁵²⁸ He adds that a pluralist legal system is exposed to the risk of constitutional crisis and officials pressured to choose between their loyalties to different public institutions.⁵²⁹

Merry posits that legal plurality leads to an evaluation of the cultural or ideological nature of laws and systems of normative ordering, "for law is not precisely a set of coercive rules but also a system of thought by which certain forms of relations come to seem natural and taken for

⁵²¹ Brian Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008) 30 Sydney Law Review 375.

⁵²² Ibid.

⁵²³ Sherman Jackson, 'Legal Pluralism Between Islam and the Nation-state: Romantic Medievalism or Pragmatic Modernity' (2006) 30(1) Fordham International Law Journal 158.

⁵²⁴ Jamila Hussain, 'More than One Law for All' (2011) 7(4) Democracy and Security 374.

⁵²⁵ Ido Shahaar, 'Legal Pluralism and the Study of Shari'a Courts' (2008) 15(1) Islamic law and Society 112.

⁵²⁶ Ibid.

⁵²⁷ Nicholas Barber, 'Legal Pluralism and the European Union' (2006) 12(3) European Law Journal 306.

⁵²⁸ Ibid.

⁵²⁹ Ibid.

granted”.⁵³⁰ The integral point posed from a pluralist perspective for English law is to distinguish between those ethnic minority customs to be upheld by the court and those to be rejected.⁵³¹ Shah notes the challenge to the concept of law arises from reassessing the notion of law in a plural society.⁵³²

3.4 Legal pluralism and international human rights law

The concept of international law stipulates the basis for an “overlapping consensus”, sets the basis for limitation of governmental discretion at the same time, provides opportunity for cultural differences.⁵³³ Cultural and religious principles have regularly been invoked in international and constitutional law as a safeguard to resist gender equality claims.⁵³⁴ Megret submits that while legal pluralism is said to be the coexistence of multiple legal orders within the same socio-political arena, human rights on the other hand are normative in nature and this is frequently viewed as unifying and cosmopolitan.⁵³⁵ Thus, viewing law from an international perspective takes into consideration the interplay between shifting normative regimes, creates multiple overlapping jurisdiction and a multifarious cultural construct within the legitimacy of law.⁵³⁶ Moreover, human rights are part of the development made as a result of commitments made by states, in other word, the states are determined to exercise the privilege to define the extent and content of the granted to minorities.⁵³⁷ Kostakopoulou takes this further by stating although

⁵³⁰ Sally Merry, ‘Legal Pluralism’ (1988) 22(5) *Law and Society Review* 891.

⁵³¹ Sebastian Poulter, ‘Ethnic Minority Customs, English Law and Human Rights’ (1987) 36(3) *International and Comparative Law Quarterly* 589.

⁵³² Prakash Shah, *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law* (1st edition, Routledge-Cavendish 2005)1.

⁵³³ John Rawls, ‘The Idea of Overlapping Consensus’ (1987) *Oxford Journal of Legal Studies* 1; Hisashi Owada, ‘Some Reflections on Justice in a Globalizing World’ (2003) *American Society of International Law Proceedings* 191.

⁵³⁴ Frances Raday, ‘Culture, Religion and Gender’(2003) 1 (4) *International Journal of Constitutional Law* 663.

⁵³⁵ Frederic Megret, *International Human Rights and Global Legal Pluralism* in Collen Sheppard and Rene Provost (eds) *Dialogues on Human Rights and Legal Pluralism* (Springer Press 2013) 69.

⁵³⁶ William Burke-White, ‘International Legal Pluralism’ (2004) 25(4) *Michigan Journal of International Law* 963.

⁵³⁷ Dora Kostakopoulou, ‘Thick, Thin and Thinner Patriotisms: Is this All There is?’ (2006) 26(1) *Oxford Journal of Legal Studies* 73.

International law has assisted the plight of minorities, it has never questioned the state's sovereign power in the aspect of human rights.⁵³⁸

Quane opines that the degree of dichotomy between the international law and legal pluralism originates from the fact that while international law can provide an incentive for legal pluralism, it can also restrict its manner of operation.⁵³⁹ She elaborates further that the state has an obligation under international human rights law to respect, fulfil and protect human rights in a number of situations : first, in situations where the state acknowledges that religious marriages are on the same basis as civil marriages and second, the state is required to implement positive steps to protect the human rights of an individual from interferences.⁵⁴⁰

Global legal pluralism is another concept often associated with legal pluralism and international human rights.⁵⁴¹ It is based on the theory of human diversity, hence the world consists of different cultures all of which have their unique method of expression, forms of knowledge and normative priorities.⁵⁴² Consequently, respect should be accorded to different and equally legitimate cultural differences on the basis that future global legal arrangements are to be founded on dialogue between multiple overlapping defined legal systems.⁵⁴³ Global legal pluralism accepts the existence of multiple legal and quasi legal systems within the same legal space and the conflicts that are bound to arise.⁵⁴⁴ Hence the need for legal systems to take into consideration the best approach to respond to the realities of pluralism.⁵⁴⁵ Teubner states that law making in globalisation is not within the exclusive jurisdiction of the state but also with the non-state

⁵³⁸ Ibid.

⁵³⁹ Helen Quane, 'Legal Pluralism and International Human Rights Law: Inherently Incompatible, Mutually Reinforcing or Something in Between?' (2013) 33(4) Oxford Journal of Legal Studies 677.

⁵⁴⁰ Ibid.

⁵⁴¹ Quane (n517).

⁵⁴² Paul Berman, 'Global Legal Pluralism' (2007) 80 Southern California Review 1157.

⁵⁴³ Roderick Macdonald, 'Metaphors of Multiplicity: Civil Society, Regimes and Legal Pluralism' (1998) 15(1) Arizona Journal of International and Comparative law 69.

⁵⁴⁴ Ralf Michaels, 'Global Legal Pluralism' (2009) 5 Annual Review of Law and Social Science 243.

⁵⁴⁵ Berman (n80).

communities that tend to utilise legal codes.⁵⁴⁶ It is important to note that with globalisation, the state is restricted by other states, supranational organisation, non-state organisation and communities (such as religious groups) and multinational corporations.⁵⁴⁷

International order has developed into a system of co-operation in which citizens are supposed to be protected against their own government, nor can it impose uniform system of ethical values in a world that is characterised by a great deal of cultural diversity.⁵⁴⁸ This view leads to a strain in the relationship between Islamic law and international human rights because advocates of the latter assert that human rights are universal in nature and in the case of a conflict with Islamic law, the theories of Islamic law will be declared invalid and can only be valid in terms of cultural relativism.⁵⁴⁹

3.5 A conceptual analysis of Muslim legal pluralism

Muslim personal law exists in Britain within the private realm and it is unofficial which means the rules or norms which the Muslim community conform to has not been given state recognition.⁵⁵⁰ A legal pluralist view can be used to study the interrelations between other legal systems as sustained in contemporary societies and Islamic law, state law and local customs.⁵⁵¹ To comprehend the place of religion in a pluralist society, Berger's research explains the two versions of pluralism.⁵⁵² First, pluralism of divergent religious options co-existing in the same

⁵⁴⁶ Gunther Teubner, 'The Two faces of Janus: Rethinking Legal pluralism' (1992) 13 *Cardozo Law Review* 1443.

⁵⁴⁷ Ralf Michaels, 'The Re-State-Ment of Non-State Law: The State, Choice of Law and the Challenge from Global Legal Pluralism' (2005) 51 *Wayne Law Review* 1211.

⁵⁴⁸ Neil Petersen, 'International Law, Cultural Diversity and Democratic Rule : Beyond the Divide Between Universalism and Relativism' (2011) 1 *Asian Journal of International Law* 149.

⁵⁴⁹ Neville Cox, 'The Clash of Unprovable Universalisms- International Human Rights and Islamic Law (2013) 2(2) *Oxford Journal of Law and Religion* 307.

⁵⁵⁰ Werner Menski, 'Law, Religion and South Asians' (1996) *School of Oriental and Asian Studies* 16.

⁵⁵¹ Ihsan Yilmaz, 'Muslim Alternative Dispute Resolution and Neo-Ijtihad in England' (2003) 2(1) *Alternatives Turkish Journal of International Relations* 117.

⁵⁵² Peter Berger, *The Many Altars of Modernity: Toward a Paradigm for Religion in a Pluralist Age* (1st edition, De Gruyter Mouton 2014) 53.

society and second, pluralism of secular discourse and heterogenous religious discourses also co-existing in the same society.⁵⁵³ This study will be using Berger's idea of pluralism that is based on secular and religious discourses co-existing in the same society. This idea of pluralism permits the co-existence of unofficial law such as religious law which is not only the rationale behind legal pluralism in Britain but also one of the main arguments of this thesis.

Religion is an attribute of modern society and pluralism is a normative system that seeks to coordinate relationships among the distinct religious communities rather than striving to merge them together by "coercively assimilating minorities into a hegemonic majority".⁵⁵⁴ However, King asserts that even if an attempt is made to merge together the different religious communities as one, they have developed strategies of aversion to English legal hegemony.⁵⁵⁵ This leads to Muslim minorities essentially interested in Muslim law instead of English law mainly in relation to marriage and divorce.⁵⁵⁶ Yilmaz goes on to consider the concept of unofficial law and why it originated.⁵⁵⁷ The writer explains that unofficial Muslim law exists in circumstances where the state proffers a parallel rule.⁵⁵⁸ He further highlights that the reasoning of the Muslim community is that Muslim law is dominant and supreme over English law and that Muslims comply with Muslim law by engaging in avoidance and resistance to English law.⁵⁵⁹ As a corollary to this, Khaliq asserts that a parallel legal system exists in Britain within the Muslim communities but not recognised.⁵⁶⁰

⁵⁵³ Ibid.

⁵⁵⁴ Marie-Claire Foblets, Jean-Yves Carlier and Ahmed Aboutaleb, *Islam and Europe: Crises are Challenges* (1st edition, Leuven University Press 2010)87.

⁵⁵⁵ Michael King, *God's Law versus State Law: The Construction of an Islamic Identity in Western Europe* (1st edition, London: Grey Seal 1995)3.

⁵⁵⁶ Ibid.

⁵⁵⁷ Ihsan Yilmaz, 'The Challenge of Post-Modern Legality and Muslim Legal Pluralism in England' (2002) 28(2) *Journal of Ethnic and Migration Studies* 343.

⁵⁵⁸ Ibid.

⁵⁵⁹ Ibid. He opines that religious minorities emanated because of refusal to assimilate.

⁵⁶⁰ Urfan Khaliq, 'The Accommodation and Regulation of Islam and Muslim Practices in English Law (2002) 6(31) *Ecclesiastical Law Journal* 332.

It must be stressed that within the realm of personal law, the idea of legal homogeneity has been disputed.⁵⁶¹ This is as a result of the secular state's exclusive control over family law and the detachment between religion and the state which are in turn is considered deficient to meet the demands of a plural society with numerous religious minorities.⁵⁶²

Muslim legal pluralism is referred to as intra-communal plurality, that is the approach which Muslims have fought with individuals and groups whose perspective to religion and law are obviously different from theirs.⁵⁶³ The issue that emanates from this approach is: how can we tolerate this difference and the contributions of law towards this attitude of difference? It suggested that cultural autonomy, which includes annexed set of attitudes and practice sharing will help embrace this attitude of difference.⁵⁶⁴ Hence, the justification for Muslim legal pluralism is usually based on the idea of autonomy of the conscience and freedom of religion.⁵⁶⁵

At the heart of this dynamic, is the impact of pluralism and the need to accommodate minority ethnic groups resulting in a creation of a framework called "Angrezi Shariat".⁵⁶⁶ Angrezi Shariat according to the authors means the amalgamation of Islamic law with English law which regulates the lives of many Muslims in Britain.⁵⁶⁷ The authors explain that this involved a three-stage process: the "ignorance stage", the "compliance stage" and "hybrid British Muslim law". The first stage was the ignorance stage when the Muslim immigrant first arrived in Britain unaware of the official laws of the country. As a result, the marriage at this stage was by contracting a nikah in England.⁵⁶⁸ The second stage, which was the compliance, stage which

⁵⁶¹ Avigail Eisenberg and Jeff Spinner-Halev, *Minorities Within Minorities: Equality, Rights and Diversity* (1ST edition, Cambridge University Press 2005) 1.

⁵⁶² Ibid.

⁵⁶³ Zulfikar Hirji, *Diversity and Pluralism in Islam: Historical and Contemporary Discourses Amongst Muslims* (1st edition, I.B Tauris Publishers 2010) 11.

⁵⁶⁴ Austin Sarat and Thomas Kearns, *Cultural Pluralism, Identity Politics and The Law* (1st edition, University of Michigan Press 2001) 2.

⁵⁶⁵ Bryan Turner and Berna Arslan, 'Sharia and Legal Pluralism in The West (2011) 14(2) *European Journal of Social Theory* 151.

⁵⁶⁶ David Pearl and Werner Menski, *Muslim Family Law* (3rd edition, London: Sweet and Maxwell 1998) 74.

⁵⁶⁷ Ibid at pg. 74

⁵⁶⁸ Werner Menski, 'Muslim Law in Britain' [2001] 62 *Journal of Asian and African Studies* 128.

even though they did not relinquish Muslim customary practices, they incorporated the requisite elements of English law.⁵⁶⁹ The final stage, which is the hybrid British Muslim law, which means ethnic minorities in Britain marry twice, and divorce twice. Bano opines that the three-stage process contributes to a greater comprehension of the evolution of British legal dialogue, which constitutes of a complicated interaction of social values, cultural and Islamic practices with the state.⁵⁷⁰ Pearl notes that the evolution of Angrezi Shariat and the existence of Muslim dispute resolution councils has not prohibited the involvement of secular courts in deciding on Muslim family disputes.⁵⁷¹

Notwithstanding the above discussion, Sandberg identifies that the concept of legal pluralism has failed due to inability to differentiate legal norms from other models of social control.⁵⁷² The author suggested that the failure of legal pluralism can only be rectified by establishment of the concept of a legal order propounded by Malik.⁵⁷³ According to Malik, minority legal order can be defined within two basic principles; first, cultural or religious norms and second, by some 'systemic' attributes that permit a clear-cut institutional system for the recognition, interpretation and application of these norms.⁵⁷⁴ The author stressed that in Britain, minority legal order pertains to the supremacy of state system and a substantial degree of interaction between the minority legal order and the state system.⁵⁷⁵ In this regard, minority legal order is referred to as "minority' or subordinate legal order."⁵⁷⁶

⁵⁶⁹ Ibid.

⁵⁷⁰ Samia Bano, 'Islamic Family Arbitration, Justice and Human Rights in Britain' (2007) 10(1) *Journal of Law, Social Justice and Global Development* 2. See also Gary Bunt, 'Decision-Making Concerns in British Islamic Environments' (1998) 9(1) *Islam and Christian-Muslim Relations* 103. The compliance stage is different from the hybrid stage in that it is the compliance stage that created the precedent law called "Angrezi" law which is an unofficial law. We are at the third stage, which is the "hybrid British Muslim law".

⁵⁷¹ David Pearl, 'Dispute Settlement Amongst the Muslim Community in the UK' (2003) 20 *Recht Von De Islam* 9.

⁵⁷² Russell Sandberg, 'The Failure of Legal Pluralism' (2016) 18(2) *Ecclesiastical Law Journal* 137.

⁵⁷³ Ibid.

⁵⁷⁴ Maleiha Malik, 'Minority Legal Orders in the UK: Minorities, Pluralism and the Law' (2012) *The British Academy* 5.

⁵⁷⁵ Ibid.

⁵⁷⁶ Ibid.

3.6 Multiculturalism in Britain: A legal and normative framework

Multiculturalism emerged in Britain in the 1960's as a policy initiative to accommodate ethnic minorities and immigrants.⁵⁷⁷ This was as a result of the question on how cultural, religious and ethnic diverse groups could be incorporated into the British Society.⁵⁷⁸ Multiculturalism or cultural pluralism was endorsed by the Conservative ministers at the Home Office between 1980 and 1994 and was restated in the Government's submission to the UN Committee on the Elimination of All Forms of Racial Discrimination in 1995 in the following terms⁵⁷⁹ :

It is a fundamental objective of the UK Government to enable members of ethnic minorities to participate freely and fully in the economic, social and public life of the nation, with all the benefits and responsibilities which that entails, while still being able to maintain their own culture, traditions, language and values.⁵⁸⁰

Multiculturalism in Britain has origin in the legacy of a multi-racial empire.⁵⁸¹ British multiculturalism emerged as a response to cultural diversity that ensued following post-colonial immigration.⁵⁸² In view of this, multiculturalism centres on immigration, race, and citizenship.⁵⁸³

There is no generally acceptable definition of multiculturalism. This is because the meaning ascribed to it depends on the perspective of the writer. For instance, multiculturalism has earlier been described as “split pluralism”⁵⁸⁴, or even “multiple monoculturalism”⁵⁸⁵ or a

⁵⁷⁷ Shane Brighton, 'British Muslims, Multiculturalism and UK Foreign Policy: Integration and Cohesion in and Beyond the State' (2007) 83(1) *International Affairs* 1; Will Kymlicka, 'Testing the Liberal Multiculturalist Hypothesis: Normative Theories and Social Science Evidence' (2010) *Canadian Journal of Political Science* 257.

⁵⁷⁸ *Ibid*

⁵⁷⁹ Sebastian Poulter, 'Multiculturalism and the Law' (1998) 148(6832) *The New Law Journal* 415.

⁵⁸⁰ Home Office, 1995 p.1.

⁵⁸¹ Christian Joppke, 'Multiculturalism and Immigration: A Comparison of the United States, Germany and Great Britain' (1996) 25(4) *Theory and Society* 449.

⁵⁸² Joanna Fomina, 'Immigration Policy Debates and their Significance for Multiculturalism in Britain' (2010) 169 *Polish Sociological Review* 57; Laura Muchowiecka, 'The End of Multiculturalism? Immigration and Integration in Germany and the United Kingdom' (2013) 5(6) *Inquires- Journal of Social Sciences, Arts and Humanities* 1.

⁵⁸³ *Ibid*.

⁵⁸⁴ Meira Levinson, 'Liberalism Versus Democracy? Schooling Private Citizens in the Public Square' (1997) 27 (3) *British Journal of Political Science* 333.

⁵⁸⁵ Sen Amartya, 'The Uses and Abuses of Multiculturalism: Chili and Liberty' (2006) *New Republic* 1.

“poly-ethnic society”.⁵⁸⁶ Multiculturalism has been defined as those policies that support the view that ethnic diversity should be recognised and underpinned by government policies.⁵⁸⁷ Modood looks at the multiculturalism from the perspective of integration which he describes as a two-way process that includes groups and individuals working differently for different groups.⁵⁸⁸ Multiculturalism could be referred to as an acknowledgement of ethnic differences within the society in areas of policies, laws and the “terms of a shared citizenship and national identity”⁵⁸⁹ It has been described as a “paradox of multicultural vulnerability” which arises when an identity group member’s rights as a citizen are violated by her identity group’s family law practices.⁵⁹⁰ Nye argued that multiculturalism is a complicated set of issues associated with cultural and religious diversity in a society and “the social management of the challenges and opportunities such diversity offers”.⁵⁹¹ Multiculturalism stands for those “positions” about how to tackle societal diversity that advocates for accommodation of minority ethnic groups.⁵⁹² It is involved in a series of contemporary debates on language policy, race relations, modes of dress, court procedure, immigration and religious freedom.⁵⁹³ However, despite the lack of a general definition of multiculturalism, for the purposes of this thesis we adopt the definition by Vertovec and Wessendorf that defined multiculturalism

⁵⁸⁶ Ellie Vasta, ‘Multiculturalism and Ethnic Identity: The Relationship Between Racism and Resistance’ (1993) 29(2) Australian and New Zealand Journal of Sociology 209. The author describes a poly-ethnic society as a theory that accommodates the idea that ethnic groups desire to preserve their language and cultural traditions within a state.

⁵⁸⁷ Joanna Fomina, ‘The Failure of British Multiculturalism: Lessons for Europe’ (2006) 156 Polish Sociological Review 409.

⁵⁸⁸ Tariq Modood, ‘Multiculturalism and Integration: Struggling with Confusions’ (2011) Centre for the Study of Ethnicity and Citizenship 4.

⁵⁸⁹ Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Palgrave Macmillan 2000)6; Tariq Modood, *Multiculturalism* (Cambridge: Polity Press 2009)2; Anne Philips, *Multiculturalism Without Culture* (Princeton University Press 2009)10.

⁵⁹⁰ Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women’s Right* (Cambridge University Press 2001)6.

⁵⁹¹ Malory Nye, ‘The Challenges of Multiculturalism’ (2007) 8(2) Culture and Religion 109.

⁵⁹² Sune Laeggard ‘Multiculturalism and Secularism’ (2017) 17(2) Ethnicities 154.

⁵⁹³ Richard Ashcroft and Mark Bevir, ‘Multiculturalism in Contemporary Britain: Policy, Law and Theory’ (2018) 21(1) Critical Review of International Social and Political Philosophy 1.

“As an extensive set of mutually reinforcing approaches or methodologies concerning the incorporation and participation of immigrants and ethnic minorities and their modes of cultural and religious difference”.⁵⁹⁴ This comprehensive definition considers ethnic minorities and their perception of religious or cultural difference which is a very important aspect of this thesis hence the reason for adopting this definition.

In the early 1980s and 1990s, the polarity between religion/culture and ethnicity formed the bedrock for the postulation of multiculturalism and politics of difference.⁵⁹⁵ The meaning of tolerance of difference was clearly articulated by Bhandar as the willingness to accept the existence of disparate religious, cultural and racial differences, which was obtained from the Lockean idea of tolerance.⁵⁹⁶ Taylor views the idea of politics of difference from the perspective of communism, connection with a group, the ability to ‘recognise the unique qualities of a group and distinctness from everyone else’.⁵⁹⁷ Tolerance is portrayed as an English virtue of permitting ethnic minorities the freedom to preserve their cultural traditions in Britain in terms of religious toleration, freedom from discriminations, individual liberty and association.⁵⁹⁸ In line with this argument is the view that in multicultural societies, minority ethnic groups are normally against cultural and social change, they uphold ethnic loyalties and the authority of the family.⁵⁹⁹ Closely tied to this, is the argument that the concept of pluralism, equality and multiculturalism are not only concerned with tolerance and acceptance of Muslim values but also with celebration of these values.⁶⁰⁰

⁵⁹⁴ Steven Vertovec and Susanne Wessendorf, *The Multiculturalism Backlash: European Discourses, Policies and Practices* (1ST edition, Routledge 2009)4.

⁵⁹⁵ Tariq Modood and Fauzia Ahmad, ‘British Muslim Perspectives on Multiculturalism’ (2007) 24(2) *Theory, Culture and Society* 187.

⁵⁹⁶ Brenna Bhandar, ‘The Ties That Bind: Multiculturalism and Secularism Reconsidered’ (2009) 36(3) *Journal of Law and Society* 306.

⁵⁹⁷ Charles Taylor, *Multiculturalism and the Politics of Recognition* (Princeton: Princeton University Press 1992) 38.

⁵⁹⁸ Poulter (n 579).

⁵⁹⁹ Richard Fenn, ‘Toward a Theory of Secularization’ (1978) *Society for the Scientific Study of Religion* 36.

⁶⁰⁰ Javaid Rehman, ‘The Sharia, Freedom of Religion and European Human-Rights Law’ (2011) 22 *Irish Studies in International Affairs* 37.

Other arguments advanced are that in modern societies, the current form of multiculturalism has evolved through immigration.⁶⁰¹ These immigrants tend to assimilate or integrate into the society but “they generally do not wish to be absorbed into the majority ethnic communities”.⁶⁰² Dobbernack, Modood and Meer identified that British cultural pluralism has been articulated by two distinct approaches: multiculturalism which relates to the demands of ethno-religious groups while multiculturalism concerns acceptance of some aspects of minority identity into the majority culture.⁶⁰³

Cultural diversity which includes ethnic and religious diversity has always been an integral part of the social life in Britain.⁶⁰⁴ Lewis and Kashyap further echo the above view by stating immigrants have revamped the religious scenery from homogeneity to diversity.⁶⁰⁵ The authors go on to assert that Muslims are regarded as more religious in belief and practice compared to other citizens.⁶⁰⁶ The prominence of the policy of cultural diversity is the respect and acknowledgement of cultural practices of ethnic minorities, legal tolerance, promotion of racial harmony, individual and group freedom on the condition that it is not contrary to English law.⁶⁰⁷ Bogdandy describes the concept of cultural diversity in terms of formation and protection of identity because it addresses human rights, peoples’ right to self-determination and special rights of groups.⁶⁰⁸ Macdonald advocates that respect should be accorded to different and equally legitimate cultural differences.⁶⁰⁹

⁶⁰¹ Sheela Reddy, ‘Multiculturalism and Women’ (2019) 23(1) *The Journal of International Issues* 150.

⁶⁰² *Ibid.*

⁶⁰³ Jan Dobbernack, Tariq Modood and Nasar Meer, ‘Tolerance and Cultural Diversity in the United Kingdom’ (2012) *European University Institute: Robert Schuman Centre for Advanced Studies, Florence* 29.

⁶⁰⁴ Maleiha Malik, ‘Minority Legal Orders in the UK: Minorities, Pluralism and the Law’ (2012) *British Academy Policy Centre* 14.

⁶⁰⁵ Valerie Lewis and Ridhi Kashyap, ‘Are Muslims a Distinctive Minority? An Empirical Analysis of Religiosity, Social Attitudes and Islam’ (2013) 52(3) *Journal of Scientific Study of Religion* 617.

⁶⁰⁶ *Ibid.*

⁶⁰⁷ Sebastian Poulter, ‘Ethnic Minority Customs, English Law and Human Rights’ (1987) 36(3) *International and Comparative Law Quarterly* 589.

⁶⁰⁸ Armin Bogdandy, ‘The European Union as Situation, Executive, and Promoter of the International Law of Cultural Diversity-Elements of a Beautiful Friendship’ (2008) 19(2) *European Journal of International Law* 241.

⁶⁰⁹ Roderick Macdonald, ‘Metaphors of Multiplicity: Civil Society, Regimes and Legal Pluralism’ (1998) 15(1) *Journal of International and Comparative Law* 69.

At the heart of this dynamics is the suggestion that multicultural policies can by encouraging tolerance in a diverse society, be replaced with nationalism as “the cement which bonds a political community and lead to a relatively harmonious coexistence of non-oppressive and tolerant communities”.⁶¹⁰ Koopmans explains that multicultural policies can take various forms such as representation rights for ethnic and religious institutions, exclusions from some existing rules, exclusive facilities in mainstream institutions as well as state supported institutions.⁶¹¹

Reddy’s in her recent research points out the multicultural approaches as the following: first, assimilation which tends to “impose” the prevalent culture on minority ethnic groups. She argues that this is the best policy to adopt in order to protect the rights of women within minority ethnic groups; second, integration which she requests citizens to limit the practices such as religion, language and ethnic heritage of minority ethnic groups to the private realm. Finally, social or cultural pluralism which permits for the operation of various religious, ethnic and cultural norms in the public sphere.⁶¹² Although multiculturalism indicates recognition, celebration of ethnic, cultural, racial and ethnic diversity, its effect on Muslim communities in Britain is controversial due to the slow response towards the protection of vulnerable members of the minority communities.⁶¹³

3.7 Multiculturalism and human rights

There has been considerable attention drawn towards the rights of minority ethnic groups in Britain and how they navigate personal law. Xanthaki’s research acknowledges the existence of cultural attachment among minority ethnic groups, the necessity for mutual or reciprocal

⁶¹⁰ Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Freedom* (Clarendon Press 1994) 196.

⁶¹¹ Rudd Koopmans, ‘Multiculturalism and Immigration: A Contested Field in Cross-National Comparison’ (2013) 39 *Annual Review of Sociology* 147.

⁶¹² Sheela Reddy, ‘Multiculturalism and Women’ (2019) 23(1) *The Journal of International Issues* 150.

⁶¹³ Shaheen Ali, ‘Authority and Authenticity: Sharia Councils, Muslim Women’s Rights, and the English Courts’ [2013] *Child and Family Law Quarterly* 113.

action among cultures and the comprehension that these ethnic groups are “equal partners in the evolution of the society”.⁶¹⁴ Schuster asserts that cultural religious groups should be given public recognition.⁶¹⁵ In his article, West identifies two types of multiculturalism : “soft or weak” and “hard or strong” multiculturalism.⁶¹⁶ He explains that soft multiculturalism is based on the notion that minority ethnic groups should not be subjected to discrimination while hard multiculturalism is based on the premise that all cultures are equal and the idea of superiority of cultures does not exist.⁶¹⁷ For example, Article 1 of the United Nations Educational, Scientific and Organisation (UNESCO) declaration of principles of International Cultural Co-operation states that “each culture has a dignity and value which must be respected and preserved” and Article 5 of the UNESCO above states that cultural co-operation is an intrinsic part of human rights.

Drawing on this discourse is that argument by Dhaliwal that states multiculturalism can be “descriptive or normative” and this indicates a situation where individuals of divergent origins live together in conformity with the rules of the society.⁶¹⁸ The author goes on to identify that the shift from multiculturalism to “multifaithism” should be seen as a consequence of state policy and the demands from the civil society.⁶¹⁹ Kymlicka one of the proponents of autonomy-based approach argues that the state has a major role to play in the protection of individual autonomy by securing collective autonomy for minority groups.⁶²⁰ Undoubtedly, rights are a necessary element in the empowerment of cultural minorities and in relation to the notion of autonomy, it gives the perspective that the “spheres of non-influence associated with rights are never fully

⁶¹⁴ Alexandra Xanthaki, ‘Multiculturalism and International Law: Discussing Universal Standards’ (2010) 32(1) *Human Rights Quarterly* 21.

⁶¹⁵ Anke Schuter, ‘Does Liberalism need Multiculturalism? A Critique of Liberal Multiculturalism’ (2006) 7(1) *Liberalism, Feminism and Multiculturalism* 1.

⁶¹⁶ Patrick West, ‘The Poverty of Multiculturalism’ (2005) 94(374) *An Irish Quarterly Review* 152. It is worthy to note that Herder JC was the first philosopher who formulated the concept of hard multiculturalism. See Richard White, ‘Herder: On the Ethics of Nationalism’ (2005) 13(1) *Humanities* 166.

⁶¹⁷ *Ibid.*

⁶¹⁸ Sukhwant Dhaliwal, ‘Report on Gender, Faith and Equality in the UK’ (2011)5.

⁶¹⁹ *Ibid* at p.9.

⁶²⁰ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Clarendon Press 1995)7.

realised in practice”.⁶²¹ Indeed, it follows that for one to benefit exclusively from the right to autonomy, equality and dignity, there is need to protect freedom of religion and freedom from discrimination.⁶²² Furthermore, the Race Relation Act 1978(Amendment) Regulations Act 2003 prohibits discrimination on the basis of race and ethnicity. Meer and Modood aptly explains that these legislative powers have enabled local authorities with a vast majority of ethnic minorities to be advocates of anti-racism and multiculturalism.⁶²³ Hence, the idea of human dignity is to “promote legal protection of religion or belief at either the collective or individual levels”.⁶²⁴

3.8 Accommodation of Sharia law in Britain: Revisiting the Sharia debate

The former Archbishop of Canterbury Rowan Williams delivered a lecture at the Royal Courts of Justice in 2008 and the aims were to

“Tease out some of the broader issues around the rights of religious groups within a secular state, using sharia as an example and noting the substantial difference between 'primitivist' accounts of sharia and those of serious jurists within Islam’.⁶²⁵ Williams advocated for accommodation of some aspects of Sharia law into English law⁶²⁶ and this generated a series of academic and religious response. William cited the research of Shachar in which she engages in a thought provoking and conscious analysis by stating:

⁶²¹ Fiona MacDonald, ‘Relational Group Autonomy: Ethics of Care and the Multiculturalism Paradigm’ (2010) *Journal of Feminist Philosophy* 208.

⁶²² Lucy Vickers, *Religious Freedom, Religious Discrimination and the Workplace* (1st edition, Hart Publishing 2008)121.

⁶²³ Nasar Meer and Tariq Modood, ‘The Multicultural State We’re in Muslims, ‘Multiculture’ and the Civic Re-balancing of British Multiculturalism’ (2009) *57(3) Political Studies* 473.

⁶²⁴ Mattew Gibson, ‘The God, “Dilution” Religion, Discrimination and the Case for Reasonable Accommodation’ (2013) *73(2) The Cambridge Law Journal* 578.

⁶²⁵ Rowan Williams, ‘Civil and Religious Law in England: A Religious Perspective’ (2008) *10(3) Ecclesiastical Law Journal* 262.

⁶²⁶ *Ibid.*

If we are serious in trying to move away from a model that treats one jurisdiction as having a monopoly of socially defining roles and relations, we do not solve any problems by a purely uncritical endorsement of a communal legal structure that can only be avoided by deciding to leave the community altogether. We need, to 'work to overcome the ultimatum of either your culture or your rights.'⁶²⁷

According to Bone, William's speech has highlighted two main issues : first, Muslim women are left in a vulnerable position due to the prevalent practice of unregistered nikah and Muslims have established Sharia councils to settle issues of marriage and divorce which are deemed to be discriminatory against women.⁶²⁸ Other arguments advanced is that the Archbishop's speech identified the practicability for Muslims to conduct their affairs in line with the principles of Sharia without the possibility of conflict with the rights protected by law.⁶²⁹

Transformative accommodation has been defined to signify a willingness on both sides to consider internal change in striving for the 'loyalty of subjects' who are members of both civic and religious communities at the same time.⁶³⁰ Jackson argues that the notion of transformative accommodation entails an exploration of the ideological foundations and strengths of both the secular and religious views.⁶³¹ Kamaruddin, Oseni and Rashid opines that as a result of transformative accommodation, Muslims are expected to live in harmony with the majority in the society while navigating the options of alterative dispute mechanisms to settle

⁶²⁷ Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge University Press 2001) 113.

⁶²⁸ Amra Bone, 'Islamic Marriage and Divorce in the United Kingdom: The Case for a New Paradigm' (2020) *Journal of Muslim Minority Affairs* 1.

⁶²⁹ Nicholas Philips, 'Equal Before the Law' in Robin Griffith-Jones (eds), *Islam and English Law: Rights, Responsibilities and The Place of Shari'a* (Cambridge University Press 2013) 286

⁶³⁰ Bernard Jackson, 'Transformative Accommodation and Religious Law' (2009)11(2) *Ecclesiastical Law Journal* 131.

⁶³¹ *Ibid.*

issues in conformity to religious principles.⁶³² Morrison writes that the problem of accommodation of religious practice is deeply rooted in the failure of religious pluralism and culture depicted as conflicting with the secular values in a democratic society.⁶³³

McGoldrick states that there is already in existence accommodation of some Muslim religious necessities in the UK such as headscarf, funerals or even school uniforms.⁶³⁴ As a result, it is not out of place for Muslim religious leaders to demand accommodation of Islamic law into British law.⁶³⁵ Bano argued that the intention of Muslim communities is to live freely under Sharia law; this poses a challenge which relates to the inability to understand the “British Muslim identity as fragmented, porous and hybrid”.⁶³⁶ Botsford highlights that English legislation has recognised the existence of other systems for instance the Jewish divorce referred to as a “Get”.⁶³⁷ This entails a combination of the English legal process in addition to obtaining a Get.⁶³⁸

Malik suggested that religious arbitration or alternative dispute resolution could be created to facilitate transformative accommodation in Britain.⁶³⁹ The writer opined that marriage and divorce declaration could be within the confines of the minority legal order while the state system should have the exclusivity regarding the children aspect.⁶⁴⁰ He mentions the most likely UK responses to the minority legal orders are : first, banning the minority legal order or on the other hand, refusal to interfere with the minority legal order; second, acknowledgement

⁶³² Zaleha Kamaruddin, Umar Oseni and Syed Rashid, ‘Transformative Accommodation’: Towards the Convergence of Shari’ah and Common Law in Muslim Minority Jurisdictions’ (2016) 30(3) Arab Law Quarterly 245.

⁶³³ Ian Morrison, ‘The Crisis and Governance of Religious Pluralism in Europe’ (2014) 16 (3) Insight Turkey 55.

⁶³⁴ Dominic McGoldrick, *Human Rights and Religion-The Islamic Headscarf Debate in Europe* (Hart Publishing 2006) 173.

⁶³⁵ Ibid.

⁶³⁶ Samia Bano, ‘In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the Sharia Debate in Britain’ (2008) 10(3) Ecclesiastical Law Journal 283.

⁶³⁷ Polly Botsford, ‘Religious Courts: Sharia Unveiled’ (2008) 28 Law Society Gazette 16.

⁶³⁸ Ibid.

⁶³⁹ Malik (n574) 37.

⁶⁴⁰ Ibid.

of minority legal order through the establishment of personal law systems; third, transformative accommodation which he refers to a system that permits a combination of citizens with state protected interest and individuals of minority ethnic groups with the benefits of belonging to their cultural or religious groups; fourth, “cultural voluntarism” which permits minority legal order to exist but with state control and finally, mainstreaming which adopts the social norm of the minority legal order within the state legal system on the basis that it avoids conflict between the constitutional principles and social norms.⁶⁴¹

Emon suggested that in countries confronted with the intersection of multiculturalism and legal pluralism, the government and private sector can promote the development of a Muslim minority civil society⁶⁴². He goes on to state that to facilitate accommodation of Muslim minorities in a multicultural country, a government- regulated civil society that takes into consideration the religious and social demands of Muslims will most likely succeed.⁶⁴³

Waldron writes that the state should look into the position of minorities deeply before deciding the extent it should accommodate their values and beliefs.⁶⁴⁴ Edge opines that if Muslim marriages are recognised and accepted, it means that all issues relating to polygamy, Islamic regulation affecting children and Islamic divorce will be permitted and accepted under English law.⁶⁴⁵

More importantly, existing literature has pointed to the need to first understand the nature and extent to which state legal systems can accommodate existing religious legal systems and the

⁶⁴¹ Maleiha Malik, ‘Minorities and Law: Past and Present’ (2014) 67 (1) *Current Legal Problems* 67.

⁶⁴² Anver Emon, ‘Conceiving Islamic Law in a Pluralist Society : History, Politics and Multicultural Jurisprudence’ [2006] *Singapore Journal of Legal Studies* 331.

⁶⁴³ *Ibid.*

⁶⁴⁴ Jeremy Waldron, ‘Questions About the Reasonable Accommodation of Minorities’ in Rex Ahdar and Nicholas Aroney (eds), *Sharia in the West* (Oxford University Press, 2010).

⁶⁴⁵ Ian Edge, *Islamic Finance, Alternative Dispute Resolution and Family Law: Developments Towards Legal Pluralism* in Robin Griffith- Jones (eds) *Islam and English Law. Rights, Responsibilities and the Place of Shari’a* (CUP 2013).

scope to which they could be accommodated.⁶⁴⁶ In effect, the model suitable for the state in its engagement with religion will determine religious accommodation.⁶⁴⁷ That being said, Shah stressed the importance of the need for judges in British courts and tribunals to pay “greater attention” to the customs and religion of Muslim minorities irrespective of whether accommodation is granted to Muslim law.⁶⁴⁸

Turner in his research identifies five conditions that needs to exist before the acceptance of religious law in the public domain: first, state’s religious neutrality; second, implementation of gender equality; third, protection of human rights, fourth, minority values protected from legal judgements and finally, a single authority regarded as a supreme (final arbiter) law of the land.⁶⁴⁹ Cumper takes this forward to assert that a limited accommodation model based on weak multiculturalism which relates to the desire to engage with Sharia law will most likely succeed in tackling the difficulties associated with cultural diversity.⁶⁵⁰ Drawing on this discourse is the writings by Chapman who advocates for an interactive pluralism for a healthy democratic state.⁶⁵¹ First, in relation to religion, he advocates a “first level” association that should be guiding principle for the political and social identity of its adherents ;second, that politics will be the central intermediary between groups, and “in turn the state and its legal system becomes an arbitrator, which favours no one group but which encourages all to contribute and to participate”.⁶⁵²

⁶⁴⁶ Russell Sandberg et al, ‘Religious Tribunals: ‘Joint Governance’ Practice’ (2013) 33(2) Oxford Journal of Legal Studies 263.

⁶⁴⁷ Christopher McCrudden, ‘Multiculturalism, Freedom of Religion, Equality and the British Constitution: The JFS Case Considered’ (2011) 9(1) International Journal of Constitutional Law 200.

⁶⁴⁸ Prakash Shah, ‘Judging Muslims’ in Robin Griffith-Jones (eds) *Islam and English Law: Rights, Responsibilities and the Place of Shari’a* (Cambridge University Press 2013)144.

⁶⁴⁹ Bryan Turner, ‘Legal Pluralism, State Sovereignty, and Citizenship’ (2011) 7(4) *Democracy and Security* 317.

⁶⁵⁰ Peter Cumper, ‘Multiculturalism, Human Rights and the Accommodation of Sharia Law’ (2014) 14(1) *Human Rights Law Review* 31.

⁶⁵¹ Mark Chapman, ‘Rowan Williams’s Political Theology: Multiculturalism and Interactive Pluralism’ (2011) 9(1) *Journal of Anglican Studies* 61.

⁶⁵² *Ibid.*

Underpinning this, is support for accommodation of Sharia law in terms of acceptance of Sharia Councils as an official dispute resolution mechanism in so far as they are compatible with English law, gender equality and human rights.⁶⁵³ Douglas et al suggest that Sharia Councils can operate in the society especially where respect and mutual tolerance exist.⁶⁵⁴ Richardson opines that if the judiciary is completely independent and the judges share pluralist values, they might permit legal pluralism to operate in Muslim communities despite the opposition.⁶⁵⁵ Richardson contends that if members of the Muslim communities share some of the personal and cultural values with judiciary, they are more likely to allow the operation of Sharia Councils in Britain.⁶⁵⁶

Wilson emphasises the need to formalise Sharia councils in Britain to prevent its continuance in the private sphere where Muslim women are oppressed.⁶⁵⁷ Shah mentions that it is important to bear in mind that apart from the issue of integrating Sharia law into the British legal system, there are some challenges which needs to be solved.⁶⁵⁸ The Author identified legal pluralism as crucial in “accentuating the ideological blockages of enlightenment thinking”.⁶⁵⁹

Raz puts forward the limitation on multicultural accommodation by contending that minority ethnic groups should not stifle their own members, they should be tolerated by everyone, and racism should be discouraged by public policy.⁶⁶⁰ Suffice to state that the Sharia tribunal debate not only concerns the place of religion in the society but also relates to the role the state plays in matters relating to family justice.⁶⁶¹ Douglas argues that that it would be both

⁶⁵³ Tariq Modood, ‘Multicultural Citizen and Anti-Sharia Storm’ (2008) *Open Democracy* 1.

⁶⁵⁴ Gillian Douglas et al, ‘The Role of Religious Tribunals in Regulating Marriage and Divorce’ (2012) *Child and Family Law Quarterly* 139.

⁶⁵⁵ James Richardson, ‘The Social Construction of Legal Pluralism’ (2011) 7(4) *Democracy and Security* 390.

⁶⁵⁶ *Ibid.*

⁶⁵⁷ Jemma Wilson, ‘The Sharia Debate in Britain: Sharia Councils and The Oppression of Muslim Women’ (2010) *Aberdeen Student Review* 46.

⁶⁵⁸ Prakash Shah, ‘A Reflection on the Shari’a Debate in Britain’ (2010) *Legal Studies Research Paper No 71*, p.1.

⁶⁵⁹ *Ibid.*

⁶⁶⁰ Raz (n610).

⁶⁶¹ Russell Sandberg and Sharon Thompson, ‘The Sharia Law Debate: The Missing Family Context’ (2016) 177 *Law and Justice* 181.

‘hypocritical and paradoxical to single out religious groups and religious tribunals to be barred from assisting their adherents from obtaining the remedies that the state’s legal system is no longer prepared to provide for them’.⁶⁶²

Laegaard posits that there are concerns that multicultural accommodation of minority ethnic groups has the tendency to be in conflict with the secularist prerequisites of separation of politics and religion.⁶⁶³ However, the author contends that the issue of conflict depends on the perspective and definition of multiculturalism and secularism.⁶⁶⁴ Reddy’s research highlights the difference between multiculturalism and secularism in the following ways : first, secularism is commonly referred to as the separation of state and religion while multiculturalism entails countries with diverse cultures that recognise and promote cultural diversity; second, secularism “decouples” culture from religion to create a general political culture rooted in shared values, language etc while multiculturalism claims to accommodate different cultural and religious practices.⁶⁶⁵ On the other hand, the expression multicultural accommodation is gradually being replaced by policies of active citizenship, community cohesion and civil integration.⁶⁶⁶

As articulated by Taramundi, the debate on reasonable accommodation of religious diversity in Europe has been categorised under anti-discrimination law, the guarantee of fundamental rights and legal pluralism.⁶⁶⁷ Anti- discrimination law has extended to reasonable accommodation of disabilities whilst efforts have been made to accommodate religious

⁶⁶² Gillian Douglas, ‘Who Regulates Marriage? The Case of Religious Marriage and Divorce’ in Russell Sandberg (eds), *Religion and Legal Pluralism* (Ashgate, 2015) 53.

⁶⁶³ Sune Laegaard, ‘Multiculturalism and Secularism’ (2017) 17(2) *Ethnicities* 154.

⁶⁶⁴ *Ibid.*

⁶⁶⁵ Krishna Reddy, ‘Multiculturalism and Secularism in a Globalised World’ (2018) 22(2) *The Journal of International Issues* 10.

⁶⁶⁶ Siobhan Mullally, ‘Retreat from Multiculturalism: Community Cohesion, Civic Integration and the Disciplinary Politics of Gender’ (2013) 9(3) *International Journal of Law in Context* 411.

⁶⁶⁷ Dolores Taramundi, ‘Legal pluralism and Reasonable Accommodation of Religious Diversity’ (2017) 24(4) *International Journal on Minority and Group Rights* 467.

diversity in areas such as freedom of conscience and religion.⁶⁶⁸ In relation to legal pluralism and reasonable accommodation for religious diversity, the author identifies progress in areas of attempts made for the recognition by the state of the decisions of religious courts or even state legal norms that acknowledge religious institutions.⁶⁶⁹

3.9 Challenges of multiculturalism

Multiculturalism has been challenged since the events of 9/11 and 7/7 and no longer enjoys universal advocacy.⁶⁷⁰ It has also been associated with radicalisation and Islamic extremism as the former Prime Minister David Cameron during his speech at the Munich security conference asserted that:

Under the doctrine of state multiculturalism, we have encouraged different cultures to live separate lives, apart from each other and apart from the mainstream. We've failed to provide a vision of society to which they feel they want to belong. We've even tolerated these segregated communities behaving in ways that run completely counter to our values.⁶⁷¹

Multiculturalism has been criticised on the basis that it encouraged separation, terrorism and rejects social and economic problems linked to particular ethnic groups.⁶⁷² The criticism has been in relation to strong multiculturalism, but it has been founded on false assumption because it is the weak multiculturalism that has “characterised practice across Europe”.⁶⁷³ The concept of multicultural citizenship is a criticism of cultural assimilation traditionally required by

⁶⁶⁸ Ibid.

⁶⁶⁹ Ibid.

⁶⁷⁰ Nasar Meer and Tariq Modood, ‘How does Interculturalism Contrast with Multiculturalism?’ (2012) 33(2) *Journal of Intercultural Studies* 175.

⁶⁷¹ David Cameron, ‘PM’s Speech at the Munich Security Conference’ (5 February 2011).

<https://www.gov.uk/government/speeches/pms-speech-at-munich-security-conference> accessed 27 August 2020.

⁶⁷² Christopher McCrudden, ‘Multiculturalism, Freedom of Religion, Equality and the British Constitution: The JFS Case Considered’ (2011) 9(1) *International Journal of Constitutional Law* 200.

⁶⁷³ Ralph Grillo, ‘An Excess Alterity? Debating Difference in a Multicultural Society’ in Steven Vertovec (ed) *Anthropology of Migration and Multiculturalism: New Directions* (Routledge 2010) 20.

nation states and liberal individualism of ethnic minority communities that has no capacity for such groups.⁶⁷⁴ The writer rightly notes that there is need to defend multiculturalism that is founded on the notion of equal citizenship.⁶⁷⁵ Okin's writing highlights that the assimilation expectation by minority ethnic groups into majority cultures is regarded as oppressive and several Western countries are formulating policies that are sensitive to the "persistent cultural differences".⁶⁷⁶ However, civil integration stipulations raises the questions regarding the place of religion in the public sphere in Europe and how Islam and immigration are deemed to threaten community cohesion.⁶⁷⁷ Arguably, the process of questioning the place of religion in the public sphere rather than ethnicity has been followed with the notion of how far these religious practices can be accommodated and should be constrained by the main liberal principles.⁶⁷⁸

However, a look at Sparr's research highlights that multiculturalism from a socio-legal view creates legislative challenges.⁶⁷⁹ The author goes further to note having only one body of national law conflicts with the main purpose of multiculturalism in the society.⁶⁸⁰ He recommends legal pluralism which allows more than one body of law as the solution to multiculturalism in a society that refuses to allow different norms to compete.⁶⁸¹

⁶⁷⁴ Tariq Modood, 'Multiculturalism and Groups' (2008) 17 *Social and Legal Studies* 549.

⁶⁷⁵ *Ibid.*

⁶⁷⁶ Susan Okin, 'Is Multiculturalism Bad for Women?' in Joshua Cohen, Matthew Howard and Martha Nussbaum (eds), *Is Multiculturalism Bad for Women?* (Princeton University Press 1999) 7.

⁶⁷⁷ Mullally (n666).

⁶⁷⁸ McCrudden (n647).

⁶⁷⁹ Adel Sparr, 'Legal pluralism and Sharia: Implementing Islamic Law in States and Societies' (2014) *Caliphates and Islamic Global Politics* 35.

⁶⁸⁰ *Ibid.*

⁶⁸¹ *Ibid.*

3.10 Critical race theory

As a prelude to the discussion on critical race theory, it is pertinent to emphasise that the aim of this section is not to provide a comprehensive discussion on all issues pertaining to critical race theory. However, it seeks to focus attention on critical race theory as it affects minority ethnic groups especially women.

Critical Race theory (CRT) developed in the 1970s from critical legal studies in response to the decline of civil rights litigation to achieve racial reform in the United States.⁶⁸² It was formed as “a raced-based, systematic critique of legal reasoning and legal institutions”.⁶⁸³ Brayboy explains that critical legal studies focuses on how the law is applied and enforced to different groups in special circumstances.⁶⁸⁴ Consequently, CRT theorist aim to bring to light the manner in which racial inequality is maintained through assumptions that seem regular typical or normal.⁶⁸⁵ Cole mentions that it was after a decade CRT was formed in the United States that it developed as an educational theory in Britain.⁶⁸⁶

Delgado and Stefancic defined CRT as

“As a collection of activists and scholars interested in studying and transforming the relationships among race, racism and power”.⁶⁸⁷

CRT raises issues about race in the society, in addition to the role the legal system has in the operation of racism in society.⁶⁸⁸ CRT was made possible due to the internalisation of critical

⁶⁸² Bernie Jones, ‘Critical Race Theory: New Strategies for Civil Rights in The New Millennium?’ (2002)18 Harvard Blackletter Law Journal 1.

⁶⁸³ Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (2nd edition, New York University Press 2001) xix.

⁶⁸⁴ Bryan Brayboy, ‘Toward a Tribal Critical Race Theory in Education’ (2005) 37(5) The Urban Review 425.

⁶⁸⁵ Nicola Rollock and David Gillborn, ‘Critical Race Theory’ (2011) British Educational Research 1.

⁶⁸⁶ Mike Cole, ‘Critical Race Theory in Education, Marxism and Abstract Racial Domination’ (2012) British Journal of Sociology of Education 167.

⁶⁸⁷ Delgado and Stefancic (n687) 2.

⁶⁸⁸ Kimberle Crenshaw, ‘Twenty Years of Critical Race Theory: Looking Back to Move Forward’ (2011) 43(4) Connecticut Law Review 1253.

legal studies space, “a place of collective engagement where the value and shelf life of ideas and debates was not measure solely by its placement in a law review, but by how people engaged and deployed ideas”.⁶⁸⁹ It is an aspect of race based resistance scholarship which challenges “Eurocentric values” for instance Whiteness.⁶⁹⁰ Despite this, Eduardo argues that the scope of race and ethnic research “lacks a sound theoretical apparatus”.⁶⁹¹ Bonilla- Silva highlights that scholars researching racism conclude that it is obvious in the society and as a result, does not require a definition.⁶⁹²

CRT as a theoretical framework interrogates the “unequal and unjust distribution of power and resources among political, economic, racial and gender lines”.⁶⁹³ It encapsulates subjectivity and recognises that knowledge of the truth, justice, fairness reflect the position of the society in terms of values, beliefs and shared stereotypes of the majority creates knowledge that is pragmatic.⁶⁹⁴ Liu explains that CRT is focused on the experiences of minority ethnic groups and is based on the notion that racism is “commonplace rather than out of the ordinary” as well as race is a socially constructed.⁶⁹⁵ Cabrera notes that race as a social construct means that there are no inherent feature attached to any racial group.⁶⁹⁶ In effect, CRT is used to acknowledge the fundamental role of race in a transnational and global era.⁶⁹⁷

⁶⁸⁹ Ibid.

⁶⁹⁰ John Calmore, ‘Critical Race Theory, Archie Shepp and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World’ (1992) 65 Southern California Law Review 2129; Amy Liu, ‘Critical Race Theory, Asian Americans and Higher Education: A Review of Research’ (2009) 5(2) UCLA Journal of Education and Information Studies 1.

⁶⁹¹ Eduardo Bonilla- Silva, ‘Rethinking Racism: Toward a Structural Interpretation’ (1997) 62(3) American Sociological Review 465.

⁶⁹² Ibid.

⁶⁹³ Edward Taylor, ‘The Foundation of Critical Race Theory in Education: An Introduction’ in Edward Taylor, David Gillborn, Gloria Ladson-Billings (eds), *Foundations of Critical Race Theory in Education* (New York Routledge 2009).

⁶⁹⁴ Mari Matsuda, Charles Lawrence Iii, Richard Delgado and Kimberle Crenshaw, *Words That Wound: Critical Race theory, Assaultive Speech, and The First Amendment* (Routledge 1993) 1.

⁶⁹⁵ Ibid (Amy Liu).

⁶⁹⁶ Nolan Cabrera, ‘Where is the Racial Theory in Critical Race Theory? A Constructive Criticism of the Crits’ (2018) 42(1) The Review of Higher Education 209.

⁶⁹⁷ Narda Razack and Donna Jeffery, ‘Critical Race Discourse and Tenets for Social Work’ (2002) 19(2) Canadian Social Work Review 257.

Solórzano and Yosso defined CRT from an educational perspective as ‘a framework or set of basis insights, perspectives, methods and pedagogy that seeks to identify, analyse and transform those structural and cultural aspects of education that maintain subordinate and dominate racial positions in and out of the classroom’.⁶⁹⁸ Underpinning this is the idea that CRT considers race and racism in the educational sector and how to eliminate racism based on religion, gender, ethnic origin or class.⁶⁹⁹ CRT has emerged into a scholarly approach to study the complex experience involving race, racism, power not only in the society but also in educational settings.⁷⁰⁰ Whilst Stovall states that CRT is a theory but works as a “weapon of struggle” by implementing tools to tackle the concerns of minorities in education.⁷⁰¹ Tate explains that CRT is a combination of research paradigms used to address race in education.⁷⁰² The author further indicates that CRT requires critical analysis of relationships between groups to expose how power interferes with the ability of minorities to voice their concerns.⁷⁰³

Solórzano, Ceja and Yosso’s research identifies how CRT in education is different from the other CRT frameworks in the following ways : Its focal point is on “racialised, gendered and classed experiences” of minority ethnic groups and provides an emancipatory and transformative approach for examining gender, ethnic and class discrimination.⁷⁰⁴ In fact, it employs transdisciplinary knowledge and systematic approach to ethnic and female studies, sociology, history as well as law to gain better understandings of the disparate forms of

⁶⁹⁸ Daniel Solórzano and Tara Yosso, ‘Critical Race Methodology: Counter-Storytelling as an Analytical Framework for Education Research’ (2002) 8(1) *Qualitative Inquiry* 23.

⁶⁹⁹ *Ibid.*

⁷⁰⁰ Laurence Parker and Marvin Lynn, ‘What’s Race Got to Do With it? Critical Race Theory’s Conflict with and Connections to Qualitative Research Methodology and Epistemology’ (2002) 8(1) *Qualitative Inquiry* 7.

⁷⁰¹ David Stovall, ‘Chapter Nine: Critical Race Theory as Educational Protest: Power and Praxis’ (2005) 237 *Counterpoints* 197.

⁷⁰² William Tate IV, ‘Critical Race Theory and Education: History, Theory and Implications’ (1997) 22 *Review of Research in Education* 195.

⁷⁰³ *Ibid.*

⁷⁰⁴ Daniel Solórzano, Miguel Ceja and Tara Yosso, ‘Critical Race Theory, Racial Microaggressions and Campus Racial Climate: The Experiences of African American College Students’ (2000) 69(1/2) *The Journal of Negro Education* 60; David Stovall, ‘Forging Community in Race and Class: Critical Race Theory and The Quest for Social Justice’ (2006) 9(3) *Race, Ethnicity and Education* 243.

discrimination.⁷⁰⁵ This resonates with the idea that CRT expands beyond disciplinary confines to evaluate race and racism within contemporary and historical contexts.⁷⁰⁶

According to Sargent, critical race theory is restrictive as it does not include the vital elements of how the legal system communicates with other systems and translates messages internally.⁷⁰⁷ Nevertheless, critical race theory serves as a means of examining the message of race transmitted in and between systems.⁷⁰⁸ More precisely, critical race theory tools are designed to highlight contemporary racial experience, widen the vocabulary used to discuss complicated racial concepts as well as oppose racial hierarchies.⁷⁰⁹ In a similar vein, CRT encourages researchers to take into account the peculiar circumstance, realities and lived experiences of minority ethnic groups.⁷¹⁰ CRT also recognises the relevance of a “spatial approach” observing that spatial organisation has been used as a method of social control and ‘differentiation’ at various levels of territorial organisations.⁷¹¹

Trevino, Harris and Wallace’s research by contrast argue that CRT has various onerous concepts and methods, but these have not been comprehensibly unified in a manner that would give CRT the “systemic structure, the intellectual architecture” that is paradigmatic and required of most social theories.⁷¹² Omi and Winant analyse the concept of race from two perspectives: an ideological construct that refutes the existence of a racialised society and its

⁷⁰⁵ Ibid.

⁷⁰⁶ Tara Yosso, William Smith, Miguel Ceja and Daniel Solórzano, ‘Critical Race Theory, Racial Microaggression and Campus Racial Climate for Latina/o Undergraduates’ (2009) 79(4) *Harvard Educational Review* 659.

⁷⁰⁷ Sarah Sargent, ‘Transracial Adoption in England: A Critical Race and Systems Theory Analysis’ (2015) 11(4) *International Journal of Law in Context* 412.

⁷⁰⁸ Ibid.

⁷⁰⁹ Chandra Ford and Collins Airhihenbuwa, ‘Critical Race Theory, Race Equity and Public Health: Toward Antiracism Praxis’ (2010) 100(1) *American Journal of Public Health* 30.

⁷¹⁰ Kala Burrell-Craft, ‘Are (We) Going Deep Enough? A Narrative Literature Review Addressing Critical Race Theory, Racial Space Theory and Black Identity Development’ (2020) 19(4) *Taboo: The Journal of Culture and Education* 9.

⁷¹¹ Patricia Price, ‘At the Crossroads: Critical Race Theory and Critical Geographies of Race’ (2010) 34(2) *Progress in Human Geography* 147.

⁷¹² Javier Trevino, Michelle Harris and Derron Wallace, ‘What’s so Critical about Critical Race Theory?’ (2008) 11(1) *Contemporary Justice Review* 7.

effect on minorities in their everyday lives.⁷¹³ On the other hand, race as an objective condition is a refusal to admit the problems of race in the society and the classification of race in the society.⁷¹⁴

3.10.1 Principles of critical race theory

Critical race theory challenges the generally held view that race consciousness is similar to racism and that colour-blindness is identical to the absence of racism.⁷¹⁵ Whilst colour-blindness excludes explicit exploration of racism's potential contributions to inequalities, race consciousness is paramount for an understanding of radicalised constructs and systems.⁷¹⁶ Existing literature on CRT assert that colour-blindness analysis often ignores the everyday lived experience of race as a contested concept with historical and social implications.⁷¹⁷ In effect, it fails to acknowledge the link between an individual and the real social conditions underlying a dispute.⁷¹⁸ In the light of this discussion, DeCuir and Dixson write that the argument that society should be colour- blind neglects the fact that inequity as well as oppression are historical and will not be ameliorated in the society by ignoring its existence.⁷¹⁹ Equally important is the critique of liberalism that challenges the concepts of colour-blindness, legal equality, objectivity, meritocracy, enlightenment rationality, incremental change and race

⁷¹³ Michael Omi and Howard Winant, 'On the Theoretical Concept of Race' in Cameron McCarthy and Warren Crichlow (eds), *Race, Identity and Representation in Education* (New York: Routledge 1993) 3.

⁷¹⁴ *Ibid.*

⁷¹⁵ Eduardo Bonilla-Silva, *Racism Without Racists: Colour-Blind Racism and the Persistence of Racial Inequality in the United States: Colour-Blind Racism and the Persistence of Racial Inequality in America* (Rowman and Littlefield Publishers 2006).

⁷¹⁶ Ford and Airhihenbuwa (n709).

⁷¹⁷ Neil Gotanda, 'A Critique of "Our Constitution is Colour-Blind"' (1991) 44(1) *Stanford Law Review* 1.

⁷¹⁸ *Ibid.*

⁷¹⁹ Jessica DeCuir and Adrienne Dixson, "So When it Comes Out, They Aren't That Surprised That it is There": Using Critical Race Theory as a Tool of Analysis of Race and Racism in Education' (2004) 33(5) *American Educational Research Association* 26.

neutrality.⁷²⁰ Critique of liberalism rejects the concept of colour-blindness but supports race-conscious view to social transformation in the society.⁷²¹ However, DeCuir and Dixson argue that colour blindness and race neutrality allows for equal opportunity irrespective of race and that the concept of incremental change for it to benefit marginalised groups must come at a gradual pace that is acceptable to those in power.⁷²²

Bell who coined the concept of interest convergence contends that the interests of minority ethnic groups will only be promoted when there is some benefit embedded to privilege the Whites.⁷²³ He further argues that society allegedly changes to create a more balanced atmosphere for minorities, however, suppresses the people they seek to liberate.⁷²⁴

Storytelling or counter-storytelling is another crucial principle of CRT which relates to a mode of storytelling with the desire to “cast doubt” on the veracity of generally accepted myths or traditions notably held by the majority.⁷²⁵ In essence, counter-storytelling assists to “understand what life is like for others and invites the reader into a new and unfamiliar world”.⁷²⁶ Solórzano and Yosso explain that counter-storytelling can be used in different forms such as personal stories or narratives or even other people’s stories or narratives.⁷²⁷ Along these lines, the authors went on to point out that counter-storytelling is an opportunity to allow marginalised groups whose stories are usually not heard in the society to express their thoughts

⁷²⁰ Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (3rd edition, New York University Press 2017) 3; Bryan Brayboy, ‘Transformational Resistance and Social Justice: American Indians in Ivy League Universities’ (2005) 36(3) *Anthropology and Education Quarterly* 193.

⁷²¹ Richard Delgado and Jean Stefancic, *Critical Race Theory: An Annotated Bibliography* (1993) 79(2) *Virginia Law Review* 461.

⁷²² DeCuir and Dixson (n 719).

⁷²³ Derrick Bell, ‘Brown v Board of Education and the Interest-Convergence Dilemma’ (1980) 93(3) *Harvard Law Review* 518; Derrick Bell, ‘Racial Realism’ in Kimberle Crenshaw, Neil Gotanda, Gary Peller and Kendall Thomas (eds), *Critical Race Theory: The Key Writings that Formed the Movement* (The New York Press 1995).

⁷²⁴ *Ibid.*

⁷²⁵ Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (New York University Press 2001)144.

⁷²⁶ *Ibid.*

⁷²⁷ Solórzano and Yosso (n698).

or views.⁷²⁸ What it also suggests is that counter-storytelling is a way of disclosing and critiquing established dialogues that “perpetuate racial stereotypes”.⁷²⁹ Suffice to state that this counter-storytelling should not be used independent of other principles of CRT as a particular story can be subject to different interpretations or even misconstrued.⁷³⁰

Deeply rooted in the discussion of CRT is intersectionality principle which acknowledges the intersection between racial identity and racism with religion, gender, class and its impact on minorities lived experiences.⁷³¹ Crenshaw who theorised the concept of intersectionality highlights that intersectionality is most likely to provide a mechanism for dealing with individuals marginalised in the society.⁷³² The author goes on to highlight that intersectionality provides a foundation for “reconceptualising race as a coalition between men and women of colour”.⁷³³

3.10.2 Critical race feminism

Critical race theory has expanded into a set of studies that includes critical race feminism which centres on women of colour.⁷³⁴ Feminist writers argue that women are “heterogenous, legitimate individuals and demand revaluation of White-centred histories, methodologies and findings”.⁷³⁵ In this regard, treatment of gender, irrespective of the intention has contributed

⁷²⁸ Ibid.

⁷²⁹ DeCuir and Dixson (n719).

⁷³⁰ Gloria Ladson-Billings and William Tate IV, ‘Toward a Critical Race Theory of Education’ (1995) 97(1) Teachers College Record 47.

⁷³¹ Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Colour’ (1991) 43(6) Stanford Law Review 1241; Bryan Brayboy, ‘Transformational Resistance and Social Justice: American Indians in Ivy Leagues Universities’ (2005) 36(3) Anthropology and Education Quarterly 193.

⁷³² Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, Violence Against Women of Colour’ (1991) 43(6) Stanford Law Review 1241.

⁷³³ Ibid.

⁷³⁴ Adriene Wing, ‘Is There a Future for Critical Race Theory?’ (2016) 66(1) Journal of Legal Education 44.

⁷³⁵ Donnaly Pompper, “Difference” in Public Relations Research: A Case for Introducing Critical Race Theory’ (2005) 17(2) Journal of Public Relations Research 139.

over time to the typical pattern of stereotyping women as “different from the norm”.⁷³⁶ Reddy advocates the need for women to be represented in agreements on group rights as this will promote their interest.⁷³⁷

Feminist theory and CRT investigates principles of liberal individualism and scrutinises the bedrock in controlling racial, sexual segregation and gendered dynamics.⁷³⁸ CRT has been notably used by researchers to examine culture as it pertains to race, power and law.⁷³⁹ A recent research on race has identified that race as a social construct determines the way individuals are viewed and treated in the society.⁷⁴⁰ Orelus argues that race has been explored as an intellectual mechanism to exploit and dominate minority ethnic groups.⁷⁴¹

The writing of Hawkesworth provides a comprehensive account of CRT and feminist theory.⁷⁴² First, feminist theories examine how power plays an important function in the determination of gender identification, gender roles, gender difference and gender stereotypes. Second, evolving development of race and gender as analytical tools has shown that they are linked to some forms of domination. Finally, feminist theory, critical race theory and intersectional principles analyse race and gender that confront the politics of difference.⁷⁴³ In addition to what precedes, Philipose writes that some feminists assert that women are denied access to freedoms and equalities compared to the privileges granted to men.⁷⁴⁴

⁷³⁶ Ibid.

⁷³⁷ Reddy (n601).

⁷³⁸ Mary Hawkesworth, ‘From Constitutive Outside to the Politics of Extinction: Critical Race Theory, Feminist Theory and Political Theory’ (2010) 63(3) Political Research Quarterly 686.

⁷³⁹ Kathleen Boyd, ‘Using Critical Race Theory to Solve Our Profession’s Critical Race Issues’ (2018) Journal of Financial Planning 13.

⁷⁴⁰ Pierre Orelus, ‘Unpacking the Race Talk’ (2013) 44(6) Journal of Black Studies 572.

⁷⁴¹ Ibid.

⁷⁴² Mary Hawkesworth, ‘From Constitutive Outside to the Politics of Extinction: Critical Race Theory, Feminist Theory and Political Theory’ (2010) 63 (3) Political Research Quarterly 686.

⁷⁴³ Ibid.

⁷⁴⁴ Elizabeth Philipose, ‘Decolonising Political Theory’ (2007) Radical Pedagogy 1.

Drawing on this discourse is critical race feminism (CRF) a concept coined by Professor Delgado in the United States.⁷⁴⁵ CRF extends critical race theory and feminism with the main focus of investigation being women of colour.⁷⁴⁶ It researches the lives of those facing discrimination on the grounds of gender, race and class to expose racial oppression and patriarchy.⁷⁴⁷ Wing explains that CRF is used as an analytical framework to evaluate the legal predicament of women in different jurisdictions.⁷⁴⁸ She goes further to describe that CRF draws upon CRT and intersectionality to investigate the legal treatment of minority ethnic groups who are “disproportionately stalled at the bottom of every society”.⁷⁴⁹ Wing mentions that CRF recognises the notion of multiple consciousness which she describes as a strategy used by women of colour to adapt in a prejudiced patriarchal society.⁷⁵⁰ Harris concurs with the above and argues that feminists have endorsed the notion of multiple consciousness to effectively describe a world in which people are oppressed on the basis of gender, race, class or even sexual orientation.⁷⁵¹

Vaught writes that CRF depends on storytelling as a vehicle to communicate the experiences of women of colour.⁷⁵² CRF also draws on feminism to differentiate the experiences of women of colour compared to those of men of colour.⁷⁵³ In effect, CRF presents an “anti-essentialist” point of view on the experiences of women of colour.⁷⁵⁴ What emanates from essentialism

⁷⁴⁵ Richard Delgado, *Critical Race Theory: The Cutting Edge* (1st edition, Temple University Press 1995)

⁷⁴⁶ Adrien Wing, ‘Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine and South African: Issues for LatCrit Theory’ (1996/1997) 28(2) *The University of Miami Inter-American Law Review* 337.

⁷⁴⁷ *Ibid.*

⁷⁴⁸ Adrien Wing, ‘Critical Race Feminism’ in Karim Murji and John Solomos (eds), *Theories of Race and Ethnicity: Contemporary Debates and Perspectives* (Cambridge University Press 2015) 162.

⁷⁴⁹ *Ibid.*

⁷⁵⁰ Adrien Wing, *Critical Race Feminism: A Reader* (2nd edition, New York Press) 31.

⁷⁵¹ Angela Harris, ‘Race and Essentialism in Feminist Legal Theory’ (1990) 42(3) *Stanford Law Review* 581.

⁷⁵² Sabina Vaught, ‘Writing Against Racism: Telling White Lies and Reclaiming Culture’ (2008) 14(4) 566.

⁷⁵³ Nancy Clark and Nasrin Saleh, ‘Applying Critical Race Feminism and Intersectionality to Narrative Inquiry : A Point of Resistance for Muslim Nurses Donning a Hijab’ (2019) 42(2) *Advances in Nursing Science* 156.

⁷⁵⁴ *Ibid.*

according to King is to reduce the lived experiences of women who have suffered various forms of oppression.⁷⁵⁵

In her recent research, Wong highlights that CRF is based on two fundamental claims; first, it endorses the notion of intersectionality to identify the main reason that women of minority ethnic groups suffer oppression; finally, it acknowledges that the law is biased and does not take into account the need to protect individuals in the “intersecting areas of discrimination and exacerbates oppression by ignoring their intersecting identities”.⁷⁵⁶ As articulated by Evans-Winters and Esposito, CRF in education may provide legal and academic scheme for eliminating race and gender oppression in education.⁷⁵⁷ In this regard, Carter argues that as long as CRF is used in an educational setting, the main focus will be on the lives of women of colour.⁷⁵⁸

Existing scholarship on ethnicity-oriented theories of race recommend that the “suppression of prejudiced attitudes” could be accomplished through integration, assimilation while discrimination could be resolved by laws and regulations that allows everyone irrespective of race access to education, housing and jobs.⁷⁵⁹ A detailed discussion on integration will be contained in chapter five of this thesis.

⁷⁵⁵ Deborah King, ‘Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist ideology’ (1988) 14(1) 42.

⁷⁵⁶ Michelle Wong, ‘The Unequal Price of Love: A Critical Race Feminist Critique of the £18,600 Minimum Income Requirement for Family Reunification Under Article 14 ECHR’ (2019) 33(4) *Journal of Immigration, Asylum and Nationality Law* 1.

⁷⁵⁷ Venus Evans-Winters and Jennifer Esposito, ‘Other People’s Daughters: Critical Race Feminism and Black Girls’ Education’ (2010) *Educational Foundations* 11.

⁷⁵⁸ Nicole Carter, ‘Critical Race Feminism: An Educational Perspective’ (2012) *Critical Race Feminism* 1.

⁷⁵⁹ Howard Winant, ‘Race and Race Theory’ (2000) 26 *Annual Review of Sociology* 169.

3.11 Conclusion

This chapter has discussed legal pluralism in terms of co-existence of two or more legal systems in a society. It also discussed cosmopolitan pluralism which refers to the ability to acknowledge the existence of multiple overlapping legal systems in a society with the need to request minority ethnic groups to relinquish their normative commitments. It explained the effect of pluralism resulted in the creation of “Angrezi Shariat” which refers to a combination of English and Muslim law that regulates the lives of Muslims in Britain. Relative to the theoretical framework of legal pluralism is multiculturalism which refers to the recognition of cultural, religious, and ethnic diversity in Britain. It has been classified into two: soft or weak multiculturalism which means that ethnic minorities should not be discriminated against and strong or hard multiculturalism which refers to the argument that all cultures are equal. More importantly, it discussed the issue of accommodation of Sharia law into English law and academic debates on the likelihood of the success. Furthermore, this chapter discussed the challenges of multiculturalism and its link to segregation, terrorism, and radicalisation. It recognised the need to advocate for equal citizenship rather than multicultural citizenship. Finally, it explored critical race theory as a theoretical framework that focuses on the experiences of minority ethnic groups. In this regard, it looked at critical race feminism which employs storytelling as a mechanism used to communicate the experiences of women of colour.

Chapter 4: Methodology

4.1 Introduction

This chapter explains the methods used in this research study namely semi- structured interviews and questionnaire. Section one explains the ontology and epistemology of this research. This section includes mixed methods and the limitations of mixed method. Mixed methods were used to allow the researcher to investigate the different views of participants from both the qualitative and quantitative methods to reveal the answers to the research questions. The second section explains grounded theory, the rationale for using grounded theory, constructivist grounded theory as well as the strengths and limitations of grounded theory. Section three explores semi-structured interviews with British Muslim women while section four relates to snowball sampling which is the recruitment technique used for this research and the profile of the participants. Section five deals with the ethical issues relating to the research and section six explores insider, outsider in addition to power dynamics perspectives in the research. Section seven explores thematic analysis as well coding of the data while the final part of this chapter discusses the questionnaire and triangulation.

4.2 Ontology and epistemology of this research

This section will discuss the ontological and epistemological assumptions that formed the basis of the researcher's view and the development of the research methodology that this thesis adopted.

Ontology is a philosophical study, and it is fundamentally concerned with individual's notion of reality, nature of being or "what there is"⁷⁶⁰ as well as the relations of being.⁷⁶¹

Epistemology on the other hand, is a branch of philosophy that looks at knowledge and endeavours to answer the question: what distinguishes truth from error?⁷⁶² In effect, the researcher's world view, the perspective of the researcher, the image one has of social reality concerns the ontological assumptions whereas the epistemological assumptions refer to a person's belief about the nature of knowledge and how the person interacts with the environment.⁷⁶³

Mixed methods used in this research is informed by ontological and epistemological assumptions. For instance, Johnson et al stated that the notion of the nature of reality, the understanding of knowledge, and the design of the research shape the bedrock of the methodological levels of investigation.⁷⁶⁴ At the outset of this research, the researcher was particularly interested in selecting a research methodology that would give participants the opportunity to express their views and essentially answer the research question. Moreover, this line of thought relates to the idea that the researcher has the ability to identify the main issues in the use of mixed methods which are "ontological and epistemological".⁷⁶⁵

The ontological and epistemological positions which underpin this research are based on the idea of multiple realities, how the researcher understands or interprets knowledge to uncover

⁷⁶⁰ Patrik Aspers, 'Performing Ontology' (2015) 45(3) *Social Studies of Science* 449.

⁷⁶¹ Steven Hackbarth, 'Unstated Ontological Assumptions of Radical Constructivism' (2006) 46(5) *Educational Technology* 67.

⁷⁶² Louise Gormley, 'Some Insights for Comparative Education Researchers from the Antiracist Education Discourse on Epistemology, Ontology, and Axiology' (2005) 252 *Counterpoints: Critical Issues in Anti-Racist Research Methodologies* 95.

⁷⁶³ Paul Furlong and David Marsh, 'A Skin not a Sweater: Ontology and Epistemology in Political Science' (2010) *Theory and Methods in Political Science* 1.

⁷⁶⁴ Burke Johnson, Anthony Onwuegbuzie and Lisa Turner, 'Toward a Definition of Mixed Methods Research' (2007) 2(1) *Journal of Mixed Methods Research* 112.

⁷⁶⁵ Seyyed-Abdolhamid Mirhosseini, 'Mixed Methods Research in TESOL: Procedures Combined or Epistemology Confused?' (2018) 52(2) *TESOL Quarterly* 468.

the underlying meaning. This in line with the argument by Goldstein that the implications for ontology and epistemology is that “a person cannot sensibly suppose other minds, an external world, or a material world might not exist”.⁷⁶⁶ In this regard, mixed methods approach allowed the researcher to investigate participant’s reasons for the unregistered nikah. It follows that the ontological perspective that a researcher adopts informs the epistemology of his or her research.⁷⁶⁷ For example, it was the intention of the researcher to get diverse opinions of participants on the reasons for the nikah only marriage founded on the idea that people may engage in actions which may be interpreted in various ways due to experience, religious or even cultural background. More specifically, this is founded on the constructivist epistemology which posits that knowledge is not “passively” received from the world, it cannot exist outside our minds, truth is not absolute but is constructed by individuals based on their lived experiences.⁷⁶⁸ This concurs with the argument that constructivist epistemology replaces the traditional perception of truth as the accurate representation of an external world with the notion of viability which means that descriptions of states or events of the world are relative to an individual.⁷⁶⁹

The researcher acknowledged the importance of exploring different perspectives of the participants and this will in turn provide a good understanding of the subject matter under investigation. It is worth noting that when individuals construct their own meanings and understandings, this practice is associated with an interplay between existing knowledge as

⁷⁶⁶ Irwin Goldstein, ‘Ontology, Epistemology and Private Ostensive Definition’ (1996) 56(1) *Philosophy and Phenomenological Research* 137.

⁷⁶⁷ Jessica Terman, ‘Comparative Administration: Ontology and Epistemology in Cross-Cultural Research’ (2011) 33(2) *Administrative Theory and Praxis* 235.

⁷⁶⁸ Graham Hendry, Miriam Frommer and Richard Walker, ‘Constructivism and Problem-based Learning’ (1999) 23(3) *Journal of Further and Higher Education* 369.

⁷⁶⁹ Kaya Yilmaz, ‘Constructivism: Its Theoretical Underpinnings, Variations, and Implications for Classroom Instruction’ (2008) 86(3) *Educational Horizons* 161.

well as beliefs and consequently, new knowledge is created.⁷⁷⁰ The implication of this assumption is that whatever a person says in the research interview and the questionnaire survey will give context to the aims of the research. Furthermore, as the epistemology of the researcher determines the methodology that the research adopts, it was important to choose a research design that would permit the researcher to investigate the reasons for the nikah only marriage based on the first-hand views of selected research subjects and not knowledge already in public domain. For this reason, this research adopted grounded theory because it allows the researcher to study the social life of selected participants by means of qualitative, quantitative research and analysis.⁷⁷¹ In addition, grounded theory allows the researcher to be in constant interaction with the research topic. Grounded theory will be discussed in detail later in this chapter.

4.3 The rationale for using mixed methods

Mixed methods are defined as a methodology that allows the researcher to combine qualitative and quantitative research approaches in a single research study.⁷⁷² Mixed methods can assist in developing rich insights into the different phenomena of interest which may not be fully understood using either qualitative or quantitative methods.⁷⁷³ In this regard, mixed methods were used by the researcher to adequately answer the research questions under investigation. For example, due to the sensitivity of the topic, semi-structured interviews allowed for better

⁷⁷⁰ Virginia Richardson, 'Constructivist Teaching and Teacher Education: Theory and Practice' in Virginia Richardson (eds), *Constructivist Teacher Education: Building a New World of Understandings* (Falmer Press 1997).

⁷⁷¹ Adele Clarke, 'Situational Analyses: Grounded Theory Mapping After the Postmodern Turn' (2003) 26(4) *Symbolic Interaction* 553.

⁷⁷² Alan Bryman, 'Integrating Quantitative and Qualitative Research: How is it done?' (2006) 6(1) *Qualitative Research* 1.

⁷⁷³ Viswanath Venkatesh, Susan Brown and Hillol Bala, 'Bridging the Qualitative-Quantitative Divide: Guidelines for Conducting Mixed Methods Research in Information Systems' (2013) 37(1) *MIS Quarterly* 21.

questioning of the participants while the questionnaire on the hand, allowed access to sensitive data.

Accordingly, Doyle, Brady and Byrne in their research identified the rationale for using mixed methods as “answering different research questions, explanation of findings, completeness, illustration of data, offsetting weaknesses and providing stronger inferences, hypothesis development and testing and triangulation”.⁷⁷⁴ Triangulation will be discussed in detail later in this chapter.

Johnson and Onwuegbuzie contend that it is necessary for researchers to use mixed methods to promote collaboration, aid communication and provide “superior” research.⁷⁷⁵ It follows that a researcher can benefit from the strengths of a supplementary method to conquer the weaknesses in another method by using mixed methods in a single research study.⁷⁷⁶ This is significant because a combination of research questions is accurately and fully answered using mixed methods.⁷⁷⁷ For example, this research uses interviews from the qualitative methods and surveys from the quantitative data collection method to answer the research questions under investigation.

Mixed methods are known for the following strengths: it allows the researcher to address explanatory and confirmatory research questions concurrently.⁷⁷⁸ For example, the research questions were formulated in such a way that the responses from the participants in the semi-structured interview and the data from the questionnaire immediately answers the research questions. It can provide stronger inferences and an opportunity for divergent or

⁷⁷⁴ Louise Doyle, Anne-Marie Brady and Gbnait Byrne, ‘An Overview of Mixed Methods Research’ (2009) 14(2) *Journal of Research in Nursing* 175.

⁷⁷⁵ Burke Johnson and Anthony Onwuegbuzie, ‘Mixed Methods Research: A Research Paradigm Whose Time has Come’ (2004) 33(7) *Educational Researcher* 14.

⁷⁷⁶ *Ibid.*

⁷⁷⁷ *Ibid.*

⁷⁷⁸ Charles Teddlie and Abbas Tashakkori, *Foundations of Mixed Methods Research: Integrating Quantitative and Qualitative Approaches in the Social and Behavioural Sciences* (Sage Publications 2009)3.

complementary perspectives.⁷⁷⁹ Dunning et al mentioned that mixed methods have the strengths of confirmation and comprehension of results.⁷⁸⁰ Confirmation in relation to convergence of findings from two different research data while comprehension that tends to bring together both qualitative and quantitative methods to give a detailed understanding of the research questions under investigation.⁷⁸¹ Christensen et al concurs with the above view and states that mixed methods offers extensive findings, increased conclusion validity, the capability to generate and verify theory, more understanding of the research problems as well as increased confidence in results.⁷⁸² For instance, the semi-structured interviews allowed the researcher to gain comprehensive answers to the research questions and clarification of responses while the questionnaire confirmed as well as complemented the findings of the interviews.

Accordingly, mixed methods give the researcher the opportunity to convert or transform one type of data type into another to enable both data to be analysed together.⁷⁸³ Hence, mixed methods provide substantial evidence for a conclusion through corroboration of research findings.⁷⁸⁴ It adds knowledge and understanding to the research study that might be missed when only a single method.⁷⁸⁵

Using mixed methods in this thesis had the benefit of using some of the participants responses from the interview and then drafted as questions in the survey. In addition, it allowed better

⁷⁷⁹ Kristin Brown, S Elliot, S Leatherdale and Jennifer Robertson-Wilson, 'Searching for Rigour in the Reporting of Mixed Methods Population Health Research' (2015) 30(6) Health Education Research 811.

⁷⁸⁰ Heather Dunning, Allison Williams, Sylvia Abonyi and Valorie Crooks, 'A Mixed Method Approach to Quality of Life Research: A Case Study Approach' (2008) 85(1) Social Indicators Research 145.

⁷⁸¹ Ibid.

⁷⁸² Pernille Christensen, Spenser Robinson and Robert Simons, 'The Application of Mixed Methods: Using a Crossover Analysis Strategy for Product Development in Real Estate' (2016) 24(2) Journal of Real Estate Literature 429.

⁷⁸³ Valerie Caracelli and Jennifer Greene, 'Data Analysis Strategies for Mixed-Method Evaluation Designs' (1993) 15(2) Educational Evaluation and Policy Analysis 195.

⁷⁸⁴ Leila Hurmerinta-Peltomaki and Niina Nummela, 'Mixed Methods in International Business Research: A Value-added Perspective' (2006) 46(4) Qualitative Research Methods in International Business 439.

⁷⁸⁵ Ibid.

access to participants considering that participants in this study were hard to reach. Mixed methods allowed the researcher to compare and contrast the findings from the two sets of data. Furthermore, it gave the researcher the opportunity to analyse any variation in responses from both the interview and survey questionnaire. Finally, it increased the researcher's confidence regarding the data collected and the subsequent findings.

4.3.1 Limitations of mixed methods

The use of mixed methods has the following limitations: first, the issue of time; adequate time is needed to carry out the two different types of data collection and to analyse as well as interpret the findings of the data.⁷⁸⁶ The researcher concurs with this argument as this was a time-consuming process. The researcher first conducted the interviews, analysed the findings from the interviews and used some of the findings to draft the survey questions. Again, a significant amount of time was spent to analyse the survey questionnaire findings and later both the interview and survey findings. In addition, the coding process took a considerable amount for time having coded data from the research interviews and the survey questionnaire.

Second, Dunning et al asserted that smaller sample sizes when compared to larger sample sizes can lead to less reliable results.⁷⁸⁷ Considering the size of the sample used in this research and the researcher reached data saturation, this was sufficient to make the results reliable and valid. Finally, they may be issues concerning paradigm mixing and how to interpret or translate conflicting results.⁷⁸⁸ This limitation did not apply to this research as no conflicting results were identified.

⁷⁸⁶ Norman Stahl, Jodi Lampi and James King, 'Expanding Approaches for Research: Mixed Methods' (2019) 42(2) *Journal of Developmental Education* 28.

⁷⁸⁷ Dunning (n780).

⁷⁸⁸ Gianrocco Tucci, 'Mixed Methods and Simulation Research Designs' (2006) 33(3) *International Journal of Transport Economics* 301.

4.4 Research design: Grounded theory

Grounded theory (GT) is a qualitative research methodology that proposes theory development and provides an opportunity for the researcher to develop a theoretical account of the overall attributes of the research topic.⁷⁸⁹ The reason this method was selected is to enable the researcher to formulate a theory about the main concerns of British Muslim women and how these issues can be solved. In effect, the researcher used grounded theory to investigate the reasons for the nikah only marriage and perceptions on civil marriage. GT seeks to provide an explanation or theory with a view to understanding the questions under study. It proffers appropriate interpretations, predictions, explanations and outstanding conceptual theory.⁷⁹⁰ GT according to Timmermans and Tavory has become a dominant approach in the construction of new and original theories.⁷⁹¹ Grounded theories are guided by the assumption that people do, in fact have patterns of experience.

GT was developed by Glaser and Strauss who defined it as an exploration of theory from data systematically retrieved and analysed in social research.⁷⁹² It has also been defined as an analytical, inductive method for conducting investigation that is aimed at formulating a theory.⁷⁹³ Eisenhardt and Graebner provided a simplified definition of GT by stating that involves creation of a theory from the data collected during the empirical research.⁷⁹⁴ Goldkuhl and Cronholm contend that GT specifies an inductive manner for generating information from

⁷⁸⁹ Cathy Urquhart, Hans Lehmann and Michael Myers, 'Putting the 'theory' back into Grounded Theory: Guidelines for Grounded Theory in Information Systems' (2010) 20(4) *Information Systems Journal* 357.

⁷⁹⁰ Barney Glaser, 'The Grounded Theory Perspective: Its Origins and Growth' (2016) 15(1) *The Grounded Theory Review* 4.

⁷⁹¹ Stefan Timmermans and Iddo Tavory, 'Theory Construction in Qualitative Research: From Grounded Theory to Abductive Analysis' (2012) 30(3) *Sociological Theory* 167.

⁷⁹² Barney Glaser and Anselm Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine Transaction 1967) 2.

⁷⁹³ Arya Priya, 'Grounded Theory as a Strategy of Qualitative Research: An Attempt at Demystifying its Intricacies' (2016) 65(1) *Sociological Bulletin* 50.

⁷⁹⁴ Kathleen Eisenhardt and Melissa Graebner, 'Theory Building from Cases: Opportunities and Challenges' (2007) 50(1) *The Academy of Management Journal* 25.

empirical data.⁷⁹⁵ Indeed, grounded theory is a terminology used by researchers to represent qualitative studies formed on the “methodology’ they formulated”.⁷⁹⁶ Hutchinson opines that grounded theory depends on the interrogative and “analytical mind of the researcher” which includes exploring and conceptualising the communication process.⁷⁹⁷ She goes on to discuss that the emerging theory contributes and gives insight into the social position from which the theory was developed.⁷⁹⁸

More importantly, grounded theory is founded on the premise of formulation of theory about issues of significance in people’s lives experiences.⁷⁹⁹ Closely tied to this is the argument that grounded theory consistently and logically answers research questions about people’s relationship with each other in conjunction with the psychological and social processes.⁸⁰⁰

Wells advances this view by stating that the explanations or theories that it can generate are of two types : the substantive or the formal which is very popular.⁸⁰¹ In this regard, researchers can broaden their perspective of a phenomenon by including participants for the duration of the research project.⁸⁰² Bryant assert that the researcher should not begin the fieldwork with a preconceived theory but to allow the theory emerge naturally from the data.⁸⁰³ Bowen describes grounded theory as an approach used to sensitise concepts and the result is to provide a theoretical bedrock for its progress.⁸⁰⁴ In addition, grounded theory is generated by themes

⁷⁹⁵ Goran Goldkuhl and Stefan Cronholm, ‘Adding Theoretical Grounding to Grounded Theory: Toward Multi-Grounded Theory’ (2010) 9(2) *International Journal of Qualitative Methods* 187.

⁷⁹⁶ Susi Geiger and Darach Turley, ‘Grounded Theory in Sales Research: An Investigation of Salespeople’s Clients Relationships’ (2003) 18(6) *Journal of Business and Industrial Marketing* 580.

⁷⁹⁷ Sally Hutchinson, ‘Education and Grounded Theory’ (1986) 21(3) *Journal of Thought* 50.

⁷⁹⁸ *Ibid.*

⁷⁹⁹ Jane Mills, Ann Bonner and Karen Francis, ‘The Development of Constructivist Grounded Theory’ (2006) 5(1) *International Journal of Qualitative Methods* 25.

⁸⁰⁰ Michelle Redman-Maclaren and Jane Mills, ‘Transformational Grounded Theory: Theory, Voice and Action’ (2015) 14(3) *International Journal of Qualitative Methods* 1.

⁸⁰¹ Kathleen Wells, ‘The Strategy of Grounded Theory: Possibilities and Problems’ (1995) 19(1) *Social Work Research* 33.

⁸⁰² *Ibid.*

⁸⁰³ Antony Bryant, ‘A Constructive/ist Response to Glaser’s “Constructivist Grounded Theory?”’ (2007) 19 *Historical Social Research* 106.

⁸⁰⁴ Glenn Bowen, ‘Grounded Theory and Sensitizing Concepts’ (2006) 5(3) *International Journal of Qualitative Methods* 12.

which emanate from the data during analysis and the effect is that meanings and experiences are drawn from diverse backgrounds.⁸⁰⁵

4.4.1 How analysis of grounded theory underpins this research

Grounded theory is an effective method of inquiry in qualitative research designed to interpret framework, regularities of social phenomenon and expand on a theory embedded in the society.

⁸⁰⁶ More specifically, GT is a combination of divergent “epistemological positions” and a provides a solution to a wide-ranging problem about perceptions based on qualitative knowledge.⁸⁰⁷ In a similar vein, GT is a standalone methodology used to create a conceptual theory and by constantly comparing data, shows its relevance and workability.⁸⁰⁸

Glaser and Holton describe GT as an all-inclusive, structured but flexible process that begins at the outset of the fieldwork to a completed written theory.⁸⁰⁹ Amsteus rightly notes that the fundamental features of grounded theory include constant comparison, coding, theoretical sampling, memoing, theoretical sensitivity and saturation.⁸¹⁰ Charmaz opined that this method was formulated to encourage researchers’ constant interaction with their data “while remaining constantly involved with the emerging analyses”.⁸¹¹ The researcher has the responsibility to ensure that the questions are formulated in a way to extract adequate information and analyse data which will be used to develop a theory.

⁸⁰⁵ Ibid.

⁸⁰⁶ Kevin Corley, ‘A Commentary on “What Grounded Theory is...”: Engaging a Phenomenon From the Perspective of Those Living it’ (2015) 18(4) *Organisational Research Methods* 600.

⁸⁰⁷ Gary Thomas and David James, ‘Reinventing Grounded Theory: Some Questions about Theory, Ground and Discovery’ (2006) 32(6) *British Educational Research Journal* 767.

⁸⁰⁸ Barney Glaser, ‘Naturalist Inquiry and Grounded Theory’ (2007) 19 *Historical Social Research* 114.

⁸⁰⁹ Barney Glaser and Judith Holton, ‘Remodelling Grounded Theory’ (2007) *Historical Social Research* 47.

⁸¹⁰ Martin Amsteus, ‘The Validity of Divergent Grounded Theory Method’ (2014) 13(1) *International Journal of Qualitative methods* 71; Jacqueline Fendt and Wladimir Sachs, ‘Grounded Theory Method in Management Research: User’ Perspectives (2007) 11(3) *Organisational Research Methods* 430.

⁸¹¹ Antony Bryant and Kathy Charmaz, *Introduction. Grounded Theory Research: Methods and Practices* (Sage Publication 2007) 1.

The data collected require the following process, which includes coding text which leads to concepts, constant comparison that leads to the development of categories, memo writing, and test of hypothesis that eventually progresses into substantive theories.⁸¹² In line with the purpose of this thesis, grounded theory has the following attributes that are unique to this theory: respecting participants' point of view, reliance on participants' account of the issue, interaction between the researcher and respondents.⁸¹³ All these features were used during the fieldwork and throughout the period of this study.

The main focus of grounded theory is the "constant comparing of theoretically sampled data until conceptual saturation of interchangeable indices".⁸¹⁴ Glaser stated that conceptualisation is the crux of grounded theory and in this regard, the researcher can use his or her own concepts obtained from the data instead of data available in the public domain.⁸¹⁵ Kolb's research highlights that constant comparative methods incorporates data collection, coding and analysis with theoretical sampling in order to develop a theory communicated in a manner acceptable to facilitate testing.⁸¹⁶

Constant comparison permits the researcher to engage or explore activities necessary to develop a theory.⁸¹⁷ This approach entails analysing conflicting data against itself, emerging original data, and existing theoretical and conceptual claims.⁸¹⁸ They are valuable because it allows the researcher to understand and analyse theoretically textual materials that includes intensive interviews, transcripts of the interviews, historical documents and observational

⁸¹² Alan Bryman, *Social Research Methods* (4th edition, OUP 2012) 571.

⁸¹³ Catherine Marshall and Gretchen Rossman, *Designing Qualitative Research* (3rd edition, Sage Publication 1999).

⁸¹⁴ Barney Glaser, 'Conceptualization: On Theory and Theorizing Using Grounded Theory' (2002) 1(2) *International Journal of Qualitative Methods* 23.

⁸¹⁵ *Ibid.*

⁸¹⁶ Sharon Kolb, 'Grounded Theory and the Constant Comparative Method: Valid Research Strategies for Educators' (2012) 3(1) *Journal of Emerging Trends in Educational Research and Policy Studies* 83.

⁸¹⁷ Hennie Boeije, 'A purposeful Approach to the Constant Comparative Method in the Analysis of Qualitative interviews (2002) 36(4) *Quality and Quantity* 391.

⁸¹⁸ Judy Duchscher and Debra Morgan, 'Grounded Theory: Reflections on the Emergence vs Forcing Debate' (2004) 48(6) *Journal of Advanced Nursing* 605.

fieldnotes.⁸¹⁹ The researcher engaged in the analytical process of continuous comparison between data to find the similarities and differences in each of the interviewees response. This was a particularly important part of the research process because it assisted the researcher in reaching appropriate conclusions to enable a discussion of the findings in Chapters 5 and 6. Constant comparison also includes coding strategies⁸²⁰ which will be discussed later in this chapter.

In terms of theoretical sampling, it is a practical method used in addressing the gaps in the data.⁸²¹ Theoretical sampling deals with “sampling events, situations, populations and responses in the inductive generation of theory”.⁸²² Theoretical sampling is aimed towards generation and development of a conceptual theory rather than establishing a descriptive account.⁸²³ It is described as the main mechanism for theory building in grounded theory methodology.⁸²⁴ The researcher sampled three main cities (Alum rock, Bordesley Green and Sparkhill) in Birmingham known for a high concentration of Muslim minority ethnic residents to elicit response necessary to analyse and develop theoretical data. The researcher also sampled cities for instance London (Walthamstow) as well as Braford and Leicester. The main objective of sampling these cities was to gain insight into the reasons for the nikah only marriage based on comparison between responses of the participants.

⁸¹⁹ Ralph LaRossa, ‘Grounded Theory Methods and Qualitative Family Research’ (2005) 67(4) *Journal of Marriage and Family* 837.

⁸²⁰ Christina Goulding, ‘Grounded Theory: The missing Methodology on the Interpretivist Agenda’ (1998) 1(1) *Qualitative Market Research* 50.

⁸²¹ Titab Ligita, Nicole Harvey, Kristin Wicking, Intansari Nurjannah and Karen Francis, ‘A practical Example of Using Theoretical Sampling throughout a Grounded Theory Study: A Methodological Paper’ (2019)20(1) *Qualitative Research Journal* 116.

⁸²² David Douglas, ‘Inductive Theory Generation: A Grounded Approach to Business Inquiry’ (2003) 2(1) *Journal of Business Research Method* 47.

⁸²³ Jenna Breckenridge and Derek Jones, ‘Demystifying Theoretical Sampling in Grounded Theory Research’ (2009) 8(2) *Grounded Theory Review: An International Journal* 1.

⁸²⁴ Catherine Conlon, Virpi Timonen, Catherine Elliot-O’Dare, Sorcha O’Keeffe and Geraldine Foley, ‘Confused About Theoretical Sampling? Engaging Theoretical Sampling in Diverse Grounded Theory Studies’ (2020) 30(6) *Qualitative Health Research* 947.

Memoing is the process of documenting all information the researcher is learning from the data during the fieldwork.⁸²⁵ Memos “detail why and how decisions made related to sampling, coding, collapsing of codes, making of new codes, separating codes, producing a category and identifying relationships abstracted to a higher level of analysis”.⁸²⁶ Memoing functions to support the researcher in moving from raw data to those abstractions that justify the “research phenomena in the context in which is examined”.⁸²⁷ Data analysis is reinforced, continuity of conception is implemented, and communication is promoted with the aid of memoing.⁸²⁸ Memoing is a continuous process that entails interpreting and comparing data.⁸²⁹ Duchscher and Morgan echoes this view by stating that memos are written repeatedly throughout the entire research process and the analysis phase.⁸³⁰ At the outset of the fieldwork, the researcher had a reflective journal to record information relating to the interview as well as steps to improve in the interview process, “plain data” for comparison, codes and concepts to understand the emergent themes.

Theoretical sensitivity gives meaning to data and determines the important aspect of data from the emerging theory.⁸³¹ It relates to the proficiency to understand data in theoretical terms.⁸³² Furthermore, it is argued that theoretical sensitivity gives room for flexibility which is considered as a one of the primary benefits of the grounded theory to transform the “research

⁸²⁵ Lisa Given, ‘Memos and Memoing’ (2008) 2 *The Sage Encyclopaedia of Qualitative Research* 1.

⁸²⁶ Ylona Tie, Melanie Birks and Karen Francis, ‘Grounded Theory Research: A Design Framework for Novice Researchers’ (2019) 7 *Sage Open Medicine* 1.

⁸²⁷ Melanie Birks, Ysanne Chapman and Karen Francis, ‘Memoing in Qualitative Research: Probing Data and Processes’ (2008) 13(1) *Journal of Research in Nursing* 68.

⁸²⁸ *Ibid.*

⁸²⁹ Maria Piantanida, Cynthia Tananis and Robin Grubs, ‘Generating Grounded Theory of/for Educational Practice: The Journey of Three Epistemorphs’ (2004) 17(3) *International Journal of Qualitative Studies in Education* 325.

⁸³⁰ Judy Duchscher and Debra Morgan, ‘Grounded Theory: Reflections on the Emergence vs Forcing Debate’ (2004) 48(6) *Journal of Advanced Nursing* 605; David Douglas, ‘Inductive Theory Generation: A Grounded Approach to Business Inquiry’ (2003) 2(1) *Electronic Journal on Business Research Methods* 47.

⁸³¹ Kelly O’Reilly, David Paper and Sherry Max, ‘Demystifying Grounded Theory for Business Research’ (2012) 15(2) *Organizational Research Methods* 247.

⁸³² Lily Orland-Barak, ‘The Theoretical Sensitivity of the Researcher: Reflections on a Complex Construct’ (2002) 3(3) *Journal of Reflective Practice* 263.

design” on the grounds of an emerging development in the research.⁸³³ The two main features necessary for the advancement of theoretical sensitivity are ; first, the researcher must have the disposition to preserve in analysis, be open-minded while trusting the process that will lead to the emergence of a concept; second, the researcher must have the potential to establish theoretical insights into the area of research together with the ability to create meanings into these insights.⁸³⁴

Saturation pinpoints to the process that data has been gathered and analysed and as a result, the need for additional data collection or analysis are irrelevant.⁸³⁵ Fusch and Ness reveal that the inability to reach data saturation affects the validity and quality of the research conducted.⁸³⁶ In fact, the fundamental objective for the researcher is to accomplish data saturation.⁸³⁷ In order to reach data saturation, the following factors should be considered : first, the aim of the study, second, the attributes of the population and finally, the types of coding required.⁸³⁸

Onwuegbuzie and Leach suggested that the number of contacts with each participant and the length of each contact are significant factors to accomplish data saturation in a qualitative research.⁸³⁹ O’Reilly and Parker takes this forward to note that the data saturation means all data has been explained, the relationship between them assessed and that researcher has

⁸³³ Gary Gebhardt, Gregory Carpenter and John Sherry, ‘Creating a Market Orientation: A Longitudinal Multifirm, Grounded Analysis of Cultural Transformation’ (2006) 70(4) *Journal of Marketing* 37.

⁸³⁴ Glaser and Holton (n809).

⁸³⁵ Benjamin Saunders et.al, ‘Saturation in Qualitative Research: Exploring its Conceptualization and Operationalization’ (2017) 52 *Quality and Quantity* 1893.

⁸³⁶ Patricia Fusch and Lawrence Ness, ‘Are We There Yet? Data Saturation in Qualitative Research’ (2015) 20(9) *The Qualitative Report* 1; Glen Bowen, ‘Naturalist Inquiry and the Saturation Concept: A Research Note’(2008) 8(1) *Qualitative Research* 137.

⁸³⁷ Khaldoun Aldiabat and Carole-Lynne Navenec, ‘Data Saturation: The Mysterious Step in Grounded Theory Methodology’ (2018) 23(1) *The Qualitative Report* 245.

⁸³⁸ Monique Hennink, Bonnie Kaiser and Vincent Marconi, ‘Code Saturation Versus Meaning Saturation: How Many Interviews are Enough’ (2016) 27(4) *Qualitative Health Research* 1; Janice Morse, “Data were Saturated...” (2015) 25(5) *Qualitative Health Research* 587- the authors states that researchers have to achieve saturation in relation to “objective and subjective data which thereby afford the best guarantee of rigor”.

⁸³⁹ Anthony Onwuegbuzie and Nancy Leach, ‘A Call for Qualitative Power Analyses’ (2007) 41(1) *Quality and Quantity* 105.

developed an explanatory theory.⁸⁴⁰ Data saturation took place when the researcher had obtained sufficient information and no new data were gained from the fieldwork.

An integral part of the grounded theory is the notion of the “researcher as self” that is the ability of the researcher to scrutinise data from different meanings contained within, emergence of the researcher’s own perspective advanced through his or her mechanism of internal dialogue.⁸⁴¹ More importantly, an explanation of theory building following grounded theory involves : first, theory building, second, the researcher should ensure that prior knowledge of the field does not becloud their judgement that leads to “preformulated hypothesis that the researcher then seeks to verify or otherwise”, finally, analysis and conceptualisation are generated throughout the data collection and constant comparison with current concepts and constructs to determine whether it enhances an existing category or even establishes a new one.⁸⁴²

4.4.2 Constructivist grounded theory

Constructivist grounded theory is founded on the bedrock of “relativism” and the acceptance of mutuality between the researcher and the participant in the research process.⁸⁴³ “Constructivism is a research paradigm that denies the existence of an objective reality, “asserting instead that realities are social constructions of the mind, and that there exist as many such constructions as there are individuals”.⁸⁴⁴ It takes into consideration the connection between diverse social

⁸⁴⁰ Michelle O’Reilly and Nicola Parker, ‘Unsatisfactory Saturation: A Critical Exploration of the Notion of Saturated Sample Sizes in Qualitative Research’ (2013) 13(2) *Qualitative Research* 190.

⁸⁴¹ Jane Milliken and Rita Schreiber, ‘Examining the Nexus Between Grounded Theory and Symbolic Interactionism’ (2012) 11(5) *International Journal of Qualitative Methods* 684.

⁸⁴² Urquhart, Lehmann and Myers (n789).

⁸⁴³ Jane Mills, Ann Bonner and Karen Francis, ‘Adopting a Constructivist Approach to Grounded Theory: Implications for Research Design’ (2006) 12 *International Journal of Nursing Practice* 8.

⁸⁴⁴ Jane Mills, Ann Bonner and Karen Francis, ‘The Development of Constructivist Grounded Theory’ (2006) 5(1) *International Journal of Qualitative Methods* 25.

realities, acknowledges the reciprocal formation of knowledge “by the viewer and the viewed, and aims toward interpretive understanding of subjects' meanings”.⁸⁴⁵

Constructivism provides an opportunity to both the researcher and the participant to co-construct data based on the knowledge gained from the interviews. Charmaz opines that the main goal of constructivism is to get a clear picture on how participants create meaning and narrate their experience.⁸⁴⁶ She goes on to assert that retaining individuality is not the essence of grounded theory and that “the research story never replicates the lived experience rather it renders it more or less usefully”.⁸⁴⁷ In view of this, the constructivist permits adaptability in terms of theory formation and at the same time recognises that the existence of the subjective view of the researcher can be found in the results of the data.⁸⁴⁸ In constructivist grounded theory, participants are part of the construction of knowledge and this knowledge is established when the process of construction is recognised.⁸⁴⁹

4.4.3 Strengths and limitations of grounded theory

The systematic method of data analysis is considered as one of the most important strengths of grounded theory because this method requires ordering, traceability and validation between data and the categories.⁸⁵⁰ For example, the researcher analysed data between different ethnic groups to uncover any trend, correlations, similarities, differences in responses from both the

⁸⁴⁵ Barney Glaser, ‘Constructivist Grounded Theory?’ (2007) 19 *Historical Social Research* 93.

⁸⁴⁶ Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide Through Qualitative Research* (Sage Publications 2006) 24.

⁸⁴⁷ Kathy Charmaz, ‘Between Positivism and Postmodernism: Implications for Methods’ (1995) 7 *Studies in Symbolic Interaction* 43.

⁸⁴⁸ David Gilgor, Carol Esmark and Ismail Golgeci, ‘Building International Business Theory: A Grounded Theory Approach’ (2016) 47(1) *Journal of International Business Studies* 93.

⁸⁴⁹ Virpi Timonen, Geraldine Foley and Catherine Conlon, ‘Challenges When Using Grounded Theory: A Pragmatic Introduction into Doing GT Research’ (2018) 17 *International Journal of Qualitative Methods* 1.

⁸⁵⁰ Jan Pries-Heje, ‘Three Barriers for Continuing Use of Computer-based Tools in Information Systems Development: A Grounded Theory Approach’ (1992) 4 *Scandinavian Journal of Information Systems* 119.

research interviews and the survey questionnaire. This was an important part of the study because it not only validated the data but also allowed the researcher to reach appropriate conclusions in line with the aims of the research.

Theory generation is another strength of grounded theory and is described as the mechanism designed for exploring disparity among data and the prospect of a transparent process increases credibility of the research study.⁸⁵¹ For instance, analysing any disparity among data between participants from a particular locality in the research interviews with those of the same locality from the survey questionnaires. This process was significant because it established the credibility of this study by linking the research questions to the research findings. Grounded theory provides a good foundation for inventing original ideas and relationships among concepts.⁸⁵² In this regard, this was one of the main strengths of this study as the responses from the participants created original ideas and this will be discussed in chapters 5 and 6 of this thesis.

Data collection commences immediately the researcher establishes a researchable problem and “bracketing” relates to “being aware of one's personal values and pre- conceptions and transcending them during the research in an effort to see a situation with a new perspective”.⁸⁵³ The research questions were structured to mirror the aims of the research, and this enabled data collection to begin at the first research interview conducted. More specifically, bracketing is used by the researcher to alleviate any possibility of preconceptions which may be detrimental to the research study.⁸⁵⁴ It was important to reflect on any pre-conceptions the researcher had

⁸⁵¹ Ibid.

⁸⁵² Goran Goldkuhl and Stefan Cronholm, ‘Adding Theoretical Grounding to Grounded Theory: Toward Multi-Grounded Theory’ (2010) 9(2) *International Journal of Qualitative Methods* 191.

⁸⁵³ Robert Sherman and Rodman Webb, *Qualitative Research in Education: Focus and Methods* (Routledge Farmer press 1988)174.

⁸⁵⁴ Lea Tufford and Peter Newman, ‘Bracketing in Qualitative Research’ (2010) 11(1) *Qualitative Social Work* 80.

before the interview to accurately understand the view of the participants. This will be discussed later in this chapter.

Credibility and validity indicate how the amount of data gathered accurately mirrors the “multiple realities of the phenomenon”.⁸⁵⁵ Highlighting the significance of grounded theory, Tie et al mentions quality and rigour are underpinned in three specific areas: first, “the researcher’s expertise, knowledge and research skills; second, methodological congruence with the research question and finally, procedural precision in the use of methods”.⁸⁵⁶

The limitation associated with grounded theory relates to following up unexpected themes that may be arise during the interim analysis of the data which may lead to researcher to conduct further interviews or re-interview some of the participants.⁸⁵⁷ However, this limitation did not relate to this study as no further interview was conducted after the initial interview process.

Furthermore, grounded theory often produces a significant amount of data, and this raises the issue of data management and the considerable amount of time it takes to code, analyse and interpret the data.⁸⁵⁸ To tackle this issue, the researcher categorised data first according to cities under investigation before the next category involving nationality. The next step to tackle data management was coding the data after each interview and once a questionnaire was collected. Although this was time consuming, it was rewarding because it enabled the researcher to understand the themes that emerged from the data at an early stage of the fieldwork.

⁸⁵⁵ David Sikolia, Marlys Mason, David Biroš and Mark Weiser, ‘Trustworthiness of Grounded Theory Methodology Research in Information Systems’ (2013) MWAIS 16.

⁸⁵⁶ Ylona Tie, Melanie Birks and Karen Francis, ‘Grounded Theory Research: A Design Framework for Novice Researchers’ (2019) 7 Sage Open Medicine 1.

⁸⁵⁷ Barbara Potrata, ‘Rethinking the Ethical Boundaries of a Grounded Theory’ (2010) 6(4) Research Ethics Review 154.

⁸⁵⁸ Virpi Timonen, Geraldine Foley and Catherine Conlon, ‘Challenges When Using Grounded Theory: A Pragmatic Introduction to Doing GT Research’ (2018) 17 International Journal of Qualitative Methods 1.

According to Charmaz, there is high potential for methodological error that may occur when novice researchers use GT especially by selecting purposeful instead of theoretical sampling.⁸⁵⁹ However, this limitation did not apply to this research as the researcher used theoretical sampling (discussed above) because this was an important aspect of the research that led to the emergent themes.

Another limitation of grounded theory is that the researcher needs to be skilful in using grounded theory.⁸⁶⁰ The researcher attended several research methodology seminars and trainings before and during the research process hosted by the Graduate School. The seminars and training not only helped the researcher select the research design but also how to approach, interpret and analyse the selected method.

Finally, data collection, analysis and formulation of grounded theory normally takes place at the same time, and this is considered a limitation because it is time consuming and a long process.⁸⁶¹

4.5 Phase one: Semi-structured interviews with British Muslim women

The principal methods of data collection included semi-structured interviews and a survey in form of a questionnaire. British Muslim women were the focus of the research given the widespread concern over the nikah only marriage. The in-depth qualitative interview was conducted first to gain insight into the reasons for British Muslim women's choice of marriage

⁸⁵⁹ Kathy Charmaz, 'Discovering Chronic Illness: Using Grounded Theory' (1990) 30 *Social Science and Medicine* 1161.

⁸⁶⁰ Mohamed Hussein, Sandra Hirst, Vince Salyers and Joseph Osuji, 'Using Grounded Theory as a Method of Inquiry: Advantages and Disadvantages' (2014) 19(27) *The Qualitative Report* 1.

⁸⁶¹ Kaisa Backman and Helvi Kyngas, 'Challenges of the Grounded Theory Approach to a Novice Researcher' (1999) 1 *Nursing and Health Sciences* 147.

which in most circumstances are not legally recognised under English law (carried out between May 2015 to December 2015).

Qualitative Interviews have long been recognised as an effective method to gain knowledge and awareness of the “lived experiences and voices of groups that have traditionally been excluded from knowledge production process”.⁸⁶² Consequently, qualitative interviews provides an opportunity for the participants to respond and convey personal experiences about the topic under investigation.⁸⁶³ The advantages of semi-structured interviews are first, the face-to-face interviews provides an opportunity to gain in-depth answers compared to written responses and finally, the interviewer can ask further questions or clarify ambiguous responses.⁸⁶⁴

The research included thirty-three semi-structured open-ended questions conducted with British Muslim women and interviews were analysed using the grounded theory methodology discussed above. The research consists of participants from diverse ethnic and age groups in addition to localities in Britain.⁸⁶⁵ The selected sample for the qualitative interview consists of Muslim women born in Britain and living in segregated communities such as Birmingham (Alum Rock, Bordesley Green, Sparkhill) Bradford, Leicester and London (Walthamstow). The reason these cities were chosen is that according to the ONS, they have the highest population of Muslim residents.⁸⁶⁶

An integral part of semi-structured interviews is preparing the interview schedule and questions. McIntosh and Morse opine that it is pertinent that the questions for the interview are open-ended and formulated to encourage “unstructured responses and generate

⁸⁶² Jasmine Linabary and Stephanie Hamel, ‘Feminist Online Interviewing: Engaging Issues of Power, Resistance and Reflexivity in Practice’ (2017) 115 *Feminist Review* 97.

⁸⁶³ Michaela Coenen, Tanja Stamm, Gerold Stucki and Alarcos Cieza, ‘Individual Interviews and Focus Groups in Patients with Rheumatoid Arthritis: A Comparison of Two Qualitative Methods’ (2012) 21 (2) *Quality of Life Research* 359.

⁸⁶⁴ Pamela Tyson, ‘Talking About Lesson Planning: The Use of Semi-Structured Interviews in Teacher Education’ (1991) 18(3) *Teacher Education Quarterly* 87.

⁸⁶⁵ See table 1.

⁸⁶⁶ <https://www.ons.gov.uk> accessed 18 September 2020.

discussion”.⁸⁶⁷ According to Hyman and Sierra, open-ended questions have an advantage of offering participants the freedom to contribute to a comprehensive series of answers.⁸⁶⁸ Hence, the need for the researcher to rephrase questions to elicit response or clarification from the participant.⁸⁶⁹ In this regard, the interview questions were open and explanatory which gave the researcher the opportunity to ask questions relevant to the research study. According to Creswell, explanatory research is an excellent way to explore reasons why something happens and increase understanding of the research topic.⁸⁷⁰ Furthermore, explanatory research is viewed as a proper method to accumulate knowledge of the research questions.⁸⁷¹ When a participant mentioned an issue that the researcher did not understand, the researcher probed further to ensure that meaning was clearly explained. For example, the first participant that mentioned izzat. Although the researcher had a basic knowledge of its meaning, it was important for the participant to explain its meaning and context, and this made the researcher understand the relationship of izzat to the research question.

During the interview, participants explained in their own words the reasons for the nikah only marriage and how they understood civil marriage. The interviews lasted appropriately between one to two hours and were conducted at various locations for example: offices, coffee shops, and parks. (Refer to appendix 8 for the interview schedule).

Sherman and Webb posit that in-depth interview allows the researchers to authenticate as well as gain insight into the “lived” experience of the participants.⁸⁷² Suffice to state that semi-

⁸⁶⁷ Michele McIntosh and Janice Morse, ‘Situating and Constructing Diversity in Semi-Structured Interviews’ (2015) *Global Qualitative Nursing Research* 1.

⁸⁶⁸ Michael Hyman and Jeremy Sierra, ‘Open-Versus Closed- Ended Survey Questions’ (2016) 14(2) *Business Outlook* 3.

⁸⁶⁹ Annie Irvine, Paul Drew and Roy Sainsbury, ‘Am I not Answering Questions Properly?’ Clarification, Adequacy and Responsiveness in Semi-structured Telephone and Face-to Face Interviews’ (2012) 13(1) *Qualitative Research* 87.

⁸⁷⁰ John Creswell, *Research Design: Qualitative, Quantitative and Mixed Method Approaches* (3rd edition, Sage Publications 2019) 194.

⁸⁷¹ Sonia Ospina and Jennifer Dodge, ‘It’s About Time: Catching Method Up to Meaning: The Usefulness of Narrative Inquiry in Public Administrative Research’ (2005) 65(2) *Public Administration Review* 143.

⁸⁷² Sherman and Webb (n872).

structured interviews permit the researcher to elicit information regarding an “unexplored area or very sensitive topic”.⁸⁷³ It follows that semi-structured interviews are used when the researcher has knowledge of the questions under investigation but cannot predict all the feasible answers.⁸⁷⁴ The interview was sort of a learning process for the women; they were eager to know their status and the steps to take to remedy the situation. The researcher transcribed the interviews manually (Refer to Appendix 9 for the transcript of the interview) and the resultant themes will be discussed in chapters five and six.

4.6 Recruitment technique: The snowball sampling

This research relied on snowball sampling technique to recruit participants. This was made during the preliminary fieldwork stage of the project through contacts from the recruitment pamphlets. Snowball sampling method allows participants with whom contacts have already established to use their connections to refer the researcher possible participants. Goodman identified snowball sampling procedure with the “s stage k name and defined the process as a random sample of individuals are drawn from a given finite population”.⁸⁷⁵ He goes on to illustrate the “s stage k name” by explaining that persons who were not in the random sample but were named by individuals in it constitutes the first stage.⁸⁷⁶ For example, the first contact was made by the principal who contacted various mosques and Muslim organisations. The principal being an Imam had an existing network of contacts, emailed his contacts with follow-up phone conversations. The recruitment pamphlets were emailed by the principal. When the

⁸⁷³ Eike Adams, ‘The Joys and Challenges of Semi-Structured Interviewing’ (2010) *Journal of the Community Practitioners’ and the Health Visitors’ Association* 1.

⁸⁷⁴ Janice Morse, Linda Niehaus, Stanley Varnhagen, Wendy Austin and Michele McIntosh, ‘Qualitative Researchers ‘Conceptualizations of the Risks Inherent in Qualitative Interviews!’ (2008) 1(2) *International Review of Qualitative Research* 195.

⁸⁷⁵ Leo Goodman, ‘Snowball Sampling’ (1961) 32(1) *The Annals of Mathematical Statistics* 148.

⁸⁷⁶ *Ibid.*

first contact was made and after an explanation of the purpose of the study under investigation over the phone, the contact gave the researcher the contact details of two of her friends that may be interested in the research and had entered the nikah marriage.

Then the first stage individuals are asked to name the “k” different persons.⁸⁷⁷ Goodman described the snowball sampling as a “statistical estimation of the number of 3-person circular relations in a population” in a situation where the three people can be organised with the first naming the second, the second naming the third and finally the third would name the first.⁸⁷⁸ HenHouten notes that the nominations are made on the basis of tier correspondence “symmetrical and asymmetrical social relations”.⁸⁷⁹

The snowball sampling is commonly used in cases where the potential participants cannot be found either due to the sensitivity of the topic, “hard to reach subjects” or the research focuses on specific individuals.⁸⁸⁰ Justification for the snowball or chain-referral sampling method is that participants are selected from a network of friendship of existing members of the sample.⁸⁸¹ The study of unregistered Muslim marriage is a sensitive topic because it exposes the vulnerability of some British Muslim women who have no knowledge of the legal status of their marriages. Hence the use of this recruitment technique. It must be emphasised that the snowball sampling is effective in respect of marginalised populations where the intended participants are difficult to access.⁸⁸² The authors stressed the predicament associated with

⁸⁷⁷ Ibid.

⁸⁷⁸ Leo Goodman, ‘Comment on the Respondent-Driven Sampling and Snowball Sampling in Hard-to Reach Populations and Snowball Sampling not in Hard-to Reach Populations’ (2011) 41(1) *Sociological Methodology* 347.

⁸⁷⁹ Warren TenHouten, ‘Generalization and Statistical Inference from Snowball Samples’ (1992) 37 *Bulletin of Sociological Methodology* 25.

⁸⁸⁰ Kath Browne, ‘Snowball Sampling: Using Social Networks to Research Non-heterosexual Women’ (2007) 8(1) *International Journal of Social Research Methodology* 47; Avelardo Valdez and Charles Kaplan, ‘Reducing Selection Bias in the Use of Focus Groups to Investigate Hidden Populations: The Case of Mexican-American Gang Members from South Texas’ (1999) 14(1) *Drugs and Society* 209.

⁸⁸¹ Mattew Salganik and Douglas Heckathorn, ‘Sampling and Estimation in Hidden Populations Using Respondent-Driven Sampling’ (2004) 34 *Sociological Methodology* 193.

⁸⁸² Nissim Cohen and Tamar Arieli, ‘Field Research in Conflict Environments: Methodological Challenges and Snowball Sampling’ (2011) 48(4) *Journal of Peace Research* 423.

recruiting participants in conflict environments are inadequacy of the contact information, lack of system information and cultural differences.⁸⁸³ In the light of this discussion, snowball sampling method has been described as an informal medium of reaching the target population by establishing contacts with the participant's circle of acquaintances.⁸⁸⁴

A common strategy employed for maintaining rigor while conducting the research that involves hard-to reach populations is to adopt targeted sampling.⁸⁸⁵ The authors provide a helpful overview of targeted sampling and explain that it permits the researcher to retain control over the first invitation to participate in the research in addition to control over the outcome sample by modifying the research questions, research objectives and recruitment methods to enable the sample link to the participants under study.⁸⁸⁶

There are a number of terms used in relation to the snowball sampling method. One is convenience sampling which is referred to as gathering samples from a population difficult to reach for the purpose of the research study.⁸⁸⁷ Second term used to describe the snowball sampling is the "discriminating criteria tracing" which describes the use of link-tracing sample designs as a device for finding participants of a rare population and constructing network.⁸⁸⁸ Snowball sampling makes assumptions in relation to the population of individuals or inference regarding the network structure in that population.⁸⁸⁹

⁸⁸³ Ibid.

⁸⁸⁴ Rowland Atkinson and John Flint, 'Accessing Hidden and Hard-to Reach Populations: Snowball Research Strategies' (2001) 33 *Social Research Update* 1.

⁸⁸⁵ Gary Dusek, Yuliya Yurova and Cynthia Ruppel, 'Using Social Media and Targeted Snowball Sampling to Survey a Hard-to-reach Population: A Case Study' (2015) 10 *International Journal of Doctoral Studies* 297.

⁸⁸⁶ Ibid.

⁸⁸⁷ Mark Handcock and Krista Gile, 'Comment: On the Concept of Snowball Sampling' (2011) 41 *Sociological Methodology* 367.

⁸⁸⁸ Marinus Spreen, 'Rare Populations, Hidden Populations, Link-Tracing Designs: What and Why?' (1992) 36 *Bulletin of Sociological Methodology* 34.

⁸⁸⁹ Tom Snijders, 'Estimation on the Basis of Snowball Samples: How to Weight?' (1992) 36 *Bulletin of Sociological Methodology* 59.

The advantages of adopting this recruitment technique is that it is cheap, the potential of finding subjects and due to the chain referral, the study can be completed within a short period of time.⁸⁹⁰ Despite this, snowball sampling is referred to as a central factor in securing access to the participants in good faith and trust in an environment of uncertainty and risk of exposure.⁸⁹¹ However, this method has been criticised on the basis that it can lead to bias by using a specific network of individuals and it is not a random selection method.⁸⁹²

The major limitation of snowball sampling is regarded as representativity in relation to the selection process as participants are not randomly selected and this leads to selection bias.⁸⁹³ Nonetheless, this limitation can be conquered by quota sampling that includes increasing the representativity of sampling method, adequate planning of the sample process and setting up complementary snowball links.⁸⁹⁴ This was achieved by searching the Office for National Statistics and looking for further cities with high concentration of British Muslims. Here, the researcher found that a particular town in London (Walthamstow) had a considerable number of Muslims compared to white dominated areas. The next step was to speak with the principal (Imam) to establish whether he had contacts with other Imams in Walthamstow. This proved a success as the researcher interviewed nine participants and seven completed the questionnaire. The total number of participants was considered sufficient to the complement data obtained from other cities.

⁸⁹⁰ Jean Faugier and Mary Sargeant, 'Sampling Hard to Reach Populations' (2008) *Journal of Advanced Nursing* 790.

⁸⁹¹ Larue Hosmer, 'Trust: The Connecting Link Between Organizational Theory and Philosophical Ethics' (1995) 20(2) *Academy of Management Review* 379.

⁸⁹² Jamie Baxter and John Eyles, 'Evaluating Qualitative Research in Social Geography: Establishing 'Rigour' in Interview Analysis (1997) *Transactions of the Institute of British Geographers* 505. Rebecca Petersen and Avelardo Valdez, 'Using Snowball- Based Methods in Hidden Populations to Generate a Randomized Community Sample of Gang-Affiliated Adolescents' (2005) 3(2) *Youth Violence and Juvenile Justice* 151.

⁸⁹³ Joan Moore and John Hagedorn, 'Female Gangs: A Focus on Research' (2001) *Juvenile Justice Bulletin* 1.

⁸⁹⁴ Paul Griffiths, Michael Gossop, Beverly Powis and John Strang, 'Reaching Hidden Populations of Drug Users by Privileged Access Interviewers: Methodological and Practical Issues' (1993) 88(1) *Addiction* 1617.

Furthermore, it has been argued that snowball sampling contravenes some of the assumptions that supports the conventional approach of random selection and representativeness.⁸⁹⁵ In this regard, it is difficult to determine the actual pattern of distribution of the population.⁸⁹⁶ At the time of the recruitment, the researcher was unaware of the number of participants who will be willing to participate in this study. However, once the researcher obtained sufficient information to reach appropriate conclusions, the researcher reached data saturation.

Finally, snowball sampling is reliant on the referrals of the participants first accessed and based on the willingness of these participants to identify other participants who have similar experiences.⁸⁹⁷ As mentioned earlier, it leads to sampling bias because the sample may consist of a network of friends and relatives.⁸⁹⁸ As the researcher was solely reliant on the contact of the Imam and subsequent referrals, this was the only opportunity she had to conduct the fieldwork.

The snowball sampling was highly effective in identifying participants as the researcher had previously worked in an organisation where one of the principals had contact with the Muslim community. The principal assisted in establishing contacts in the various cities used in the study and distribution of the recruitment pamphlet. Once identified, the researcher contacted the participant and a meeting scheduled in the selected city after a series of follow-up phone conversations. After each interview, the participant was given a recruitment pamphlet to refer a friend, co-worker or even a family member who had undertaken the nikah only marriage. In addition, posters advertising the study were displayed at various mosques and Muslim organisations. (Refer to Appendix 1 for the interview recruitment pamphlet).

⁸⁹⁵ Sunil Raina, 'Establishing Association' (2015) 141(1) Indian Journal of Medical Research 127.

⁸⁹⁶ Ibid.

⁸⁹⁷ Charles Kaplan, Dirk Korf and Claire Sterk, 'Temporal and Social Contexts of Heroin-Using Populations: An Illustration of the Snowball Sampling Technique' (1987) 175(9) Journal of Mental and Nervous Disorders 566.

⁸⁹⁸ Ibid.

4.7 Profile of interview participants

A total number of thirty-three British Muslim women participated in the research interviews. Participants used for this research were recruited based on their nationality and religion. The reason for this recruitment was to ensure that British Muslim women who had the nikah only marriage irrespective of ethnicity were involved in the research interview. This provided more validity to the research as different ethnic groups gave their perspective on the research question under investigation. Although the sample size does not represent the response of all British Muslim women in Britain, it was well suited to provide insight into the reasons for the nikah only marriages and response to the level of knowledge regarding civil marriage.

The profiles of the interview participants are presented in table 1 below.

	Name	Age	Ethnicity	Locality
1	Dafinayah	28	African	Birmingham (Sparkhill)
2	Fetzimi	23	Bangladeshi	Birmingham (Alum Rock)
3	Amure	23	Bangladeshi	Birmingham (Alum Rock)
4	Eenine	39	Bangladeshi	Birmingham (Bordesley Green)
5	Zayida	25	Pakistani	Birmingham (Alum Rock)

6	Nerimi	25	Pakistani	Birmingham (Sparkhill)
7	Dasina	28	Pakistani	Birmingham (Bordesley Green)
8	Amizeer	31	African	Birmingham (Alum Rock)
9	Xani	24	Bangladeshi	Birmingham (Sparkhill)
10	Hoa	28	Pakistani	Birmingham (Alum Rock)
11	Ariye	25	Pakistani	Birmingham (Bordesley Green)
12	Bassi	34	Pakistani	Birmingham (Bordesley Green)
13	Jenika	27	Pakistani	Birmingham (Sparkhill)
14	Osmari	25	Bangladeshi	Bradford
15	Meesa	32	Pakistani	Bradford
16	Suni	29	Pakistani	Bradford
17	Dza	25	Pakistani	Bradford
18	Junau	25	Bangladeshi	Bradford

19	Femi	24	Bangladeshi	Leicester
20	Umari	41	Pakistani	Leicester
21	Aemi	25	Bangladeshi	Leicester
22	Cadi	27	Bangladeshi	Leicester
23	Yayi	28	Pakistani	Leicester
24	Eoni	26	Pakistani	Leicester
25	Vony	37	Bangladeshi	London (Walthamstow)
26	Maliza	25	Pakistani	London (Walthamstow)
27	Huoni	23	Pakistani	(London) (Walthamstow)
28	Kayad	30	Pakistani	London (Walthamstow)
29	Jaguri	27	Bangladeshi	London (Walthamstow)
30	Abdi	25	Pakistani	London (Walthamstow)
31	Datik	46	Turkish	London (Walthamstow)
32	Pnami	34	Turkish	London (Walthamstow)

33	Lola	23	Pakistani	London (Walthamstow)
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All names are pseudonyms

4.8 Conducting the interviews: Obtaining ethical approval

Ethical approval from the Staffordshire University Research Ethics Committee to conduct this study was gained by the researcher before the commencement of this research. The main objectives of the research ethics committee are to ascertain that the rights of the participants are protected, to avert the risk of harm if any during the research process and the content of the consent and information sheet are easy to read and not misleading.⁸⁹⁹

Detailed information of the research methods was described in the ethics forms and approved by the ethics committee. Interviews are likely to intrude on the integrity, liberty of people's lives. To avoid or alleviate these effects, the research and ethics committee needs to review the ethical requirements to ensure the researcher understands the meaning and essence of the ethical codes and regulations.⁹⁰⁰ The main concern during the ethical approval stage was how to address the participants who may become distressed after knowledge of their relationship status. The distress protocol devised to address this concern was to stop the interview immediately and refer the participant to the Citizens Advice Bureau. However, no major ethical issue arose during the interview process apart from constant communication with the participants. (Refer to Appendix 3 for the ethical approval).

⁸⁹⁹ Janice Morse, Linda Niehaus, Stanley Varnhagen, Wendy Austin and Michele McIntosh, 'Conceptualizations of the Risks Inherent in Qualitative Interviews!' (2008) 1(2) *International Review of Qualitative Research* 195.

⁹⁰⁰ Sofia Kjellstrom, Sara Ross and Bengt Fridlund, 'Research Ethics in Dissertations: Ethical Issues and Complexity of Reasoning' (2010) 36(7) *Journal of Medical Ethics* 425.

4.8.1 Voluntary and informed consent

The details of the consent form and information sheet was submitted to the Staffordshire University's Research Ethics Committee for review and approval. Alderson mentions the ingredients of consent as consisting of being informed and the ability to make a reasonable decision in the absence of intimidation or duress.⁹⁰¹ It entails informing the participants about the purpose of the study, the potential benefits or risks if any and their rights.⁹⁰² Similarly, the presentation of information, knowledge and understanding of the information as well as voluntary participation in the research study are important aspects to the consent process.⁹⁰³ In effect, a signed consent form protects the researcher from further accusations from the participant that permission was not sought before the interview.⁹⁰⁴

Perrault and Nazione research highlight the significance of informed consent by stating that it aims to give the interviewees information crucial to make an informed choice regarding the decision to participate in the research.⁹⁰⁵ Accordingly, participants were given both a consent form and an information sheet (discussed below) before participating in the research. The researcher explained the purpose of the interview, the interview procedure and at the end of the interview, a summary of the main points were read to the participant to verify or clarify answers given. (Refer to Appendix 4 and 5 for the consent forms for the interview and questionnaire).

⁹⁰¹ Priscilla Alderson, 'Informed Consent: Ideal or Reality?' (1998) 3(2) *Journal of Health Services Research and Polity* 124.

⁹⁰² Lokesh Nijhawan et al, 'Informed Consent: Issues and Challenges' (2013) 4(3) *Journal of Advanced Pharmaceutical Technology and Research* 134.

⁹⁰³ Patricia Marshall, 'Research Ethics in Applied Anthropology' (1992) 14(6) *Ethics and Human Research* 1.

⁹⁰⁴ Sue Heath, Vikki Charles, Graham Crow and Rose Wiles, 'Informed Consent, Gatekeepers and Go-Betweens: Negotiating Consent in Child and Youth-Oriented Institutions' (2007) 33(3) *British Educational Research Journal* 403.

⁹⁰⁵ Evan Perrault and Samantha Nazione, 'Informed Consent-Uninformed Participants' (2016) 11(3) *Journal of Empirical Research on Human Research Ethics: An International Journal* 274.

4.8.2 The information sheet

The information sheet contained the following information: first, information about the purpose of the study, second, why the participants were chosen, third, the participants' right to withdraw from the interview at any stage without giving reason; and finally, details of confidentiality, no anticipation of risk and no benefits or cost for participating in the research. The information sheet was provided to the participants and the consent form signed at the start of each interview. To avoid any suggestion of coercion, adequate time was given to the participants to comprehend information contained in the information sheet and consent form and then give feedback. (Refer to Appendix 6 and 7 for the information sheets for the interview and questionnaire).

4.8.3 Anonymity and welfare of participants

Participants' rights to protect confidential information and details was part of the agreement between the researcher and the participant. Furthermore, for participants who did not want to be recorded, their right to privacy was respected. Marshall writes that the protection of confidentiality means limiting access to personal information of the research participants based on the agreement between the researcher and the participant.⁹⁰⁶ Bromwich and Rid commented on the need to protect the autonomy rights of the participants from encroachment and external interference.⁹⁰⁷ Saunders et al suggest the use of pseudonyms, disguising, discussion with participants as strategies to ensure the anonymity of interviewees.⁹⁰⁸ In this regard, the

⁹⁰⁶ Marshall (n903).

⁹⁰⁷ Danielle Bromwich and Annette Rid, 'Can Informed Consent to Research be Adapted to Risk' (2015) 41(7) *Journal of Medical Ethics* 521.

⁹⁰⁸ Benjamin Saunders, Jenny Kitzinger and Celia Kitzinger, 'Participant Anonymity in the Internet Age: From Theory to Practice' (2015)12(2) *Qualitative Research in Psychology* 125.

researcher used pseudonyms and some personal details were changed to protect the identity of the participants.

4.9 Reflections on the insider and outsider perspectives: Positionality and power dynamics in interviews

An integral part of this research is the positionality and power dynamics of the researcher and the participant during the interview process. Positionality refers to “how the researcher views his/herself and viewed by others, as an insider or outsider, someone with power or feels powerless or coming from a privileged or disadvantaged situation”.⁹⁰⁹ Lichterman contends that positional reflexivity tends to uncover the practicality of which positions will be affected by the research and a “normativism” which has the objective of understanding what we profess to know.⁹¹⁰ This depicts an individual’s viewpoint and the position they endorse in relation to research activities.⁹¹¹ On the other hand, power dynamics relates to the interaction between the researcher and interviewee where the researcher is seen more powerful than the interviewee due to the knowledge the researcher possesses. This has often been regarded as a problem that emerges between the researcher and the participant because unequal power relations have ethical connotations that may affect the quality of the research.⁹¹² The solution to this problem

⁹⁰⁹ Kim Ozano and Rose Khatri, ‘Reflexivity, Positionality and Power in Cross-Cultural Participatory Action Research with Research Assistants in Rural Cambodia’ (2018) 26(2) *Journal of Educational Research Action* 190; Sharan Merriam, Juanita Johnson-Bailey, Ming-Yeh Lee, Youngwha Kee, Gabo Ntseane and Mazanah Muhamad, ‘Power and Positionality: Negotiating Insider/Outsider Status Within and Across Cultures’ (2001) 20(5) *International Journal of Lifelong Education* 405.

⁹¹⁰ Paul Lichterman, ‘Interpretive Reflexivity in Ethnography’ (2017) 18(1) *Ethnography* 35.

⁹¹¹ Mary Foote and Tonya Bartell, ‘Pathways to Equity in Mathematics Education: How Life Experiences Impact Research Positionality’ (2011) 78 *Educational Studies in Mathematics* 45.

⁹¹² Mark Easterby-Smith and Danusia Malina, ‘Cross-Cultural Collaborative Research: Toward Reflexivity’ (1999) 42(1) *The Academy of Management Journal* 76.

is for researchers to be “critical of their own assumptions and to avoid making excessive claims to authority”.⁹¹³

Interviewing should be seen as reciprocal act with the researcher taking up the position of both the researcher and the interviewee.⁹¹⁴ For example, the researcher used semi-structured interviews which was open and flexible. In certain situations, the researcher discussed about her own traditional marriage which had some similarities with the nikah marriage, the implications of having a traditional marriage without a civil marriage and divorce in the customary court. The reason for this method was to demonstrate that the researcher understands the perspective of the participant.

Underpinning this, there is need for researchers to establish a balance between the reciprocity of information and the right channel in promoting rapport with the interview participants.⁹¹⁵

Researchers sometimes face uncertainty regarding the expectations from the interviewees in terms of the role they should take during the interview process.⁹¹⁶ According to Gringeri et al research, it is crucial for researchers to recognise the various positions they occupy during the research process and the way these roles play out and shape the interactions with the participants.⁹¹⁷ These positions may award power and privilege to the researcher, positions of an expert, investigator, decision makers, participant recruiter etc.⁹¹⁸

⁹¹³ Ibid.

⁹¹⁴ Shirley Matteson and Yvonna Lincoln, ‘Using Multiple Interviewers in Qualitative Research Studies: The Influence of Ethics of Care Behaviours in Research Interview Settings’ (2008) 15(4) *Qualitative Inquiry* 659; Erica Owens, ‘Conversational Space and Participant Shame in Interviewing’ (2006) 12(2) *Qualitative Inquiry* 1160.

⁹¹⁵ Wendy Mitchell and Annie Irvine, ‘I’m Okay, You’re, okay? Reflections on the Well-Being and Ethical Requirements of Researchers and Research Participants in Conducting Qualitative Fieldwork Interviews’ (2008) 7(4) *International Journal of Qualitative Methods* 31.

⁹¹⁶ Virginia Dickson- Swift, Erica James and Sandra Kippen, ‘Blurring Boundaries in Qualitative Health Research on Sensitive Topics’ (2006) 16(6) *Qualitative Health Research* 853; Maxine Birch and Tina Miller, ‘Inviting Intimacy: The Interview as Therapeutic Opportunity’ (2000) 3(3) *International Journal of Social Research Methodology* 189.

⁹¹⁷ Christina Gringeri, Amanda Barusch and Christopher Cambron, ‘Epistemology in Qualitative Social Work Research: A Review of Published Articles 2008-2010’ (2013) 37(1) Oxford University Press 55.

⁹¹⁸ Ibid.

In this regard, throughout the research process, the researcher adopted a neutral standpoint in order to allow the participants engage in an open and candid discussion on the reasons for the nikah only marriage. To ensure a balance in the power dynamics between the researcher and the participant, participants were given the choice to conduct the interview in a place of their choice. For example, parks, offices, mosques or a restaurant over coffee or lunch. In addition, participants were also given the option to either record the interview or the researcher to use written notes.

In the light of this discussion, it is pertinent to establish the difference between the researcher's role and position. The role of the researcher is to some extent static while the position permits progress and shift.⁹¹⁹ Davies and Harre research explain that the researcher can manage the same role and at the same time take on different positions while in that role due to different interactions that takes place while undertaking the research study.⁹²⁰ Paetcher identified the need for the researcher to "skilfully and diplomatically negotiate the often, complex power dynamics which (in)form the interviewer/interviewee relationship".⁹²¹ Mullings argue that a researcher's information and knowledge is often "partial" due to his/her positionality as a result of class, race, class, gender, nationality, sexuality or location.⁹²² The researcher was positioned in this research in relation to the knowledge and understanding of the research topic, married and gender identity. Irrespective of such position, the researcher engaged in active listening techniques to elicit information from the participant and then answer any question that the interviewee had.

⁹¹⁹ Bronwyn Davies and Row Harre, 'Positioning: The Discursive Production of Selves' (1990) 20(1) *Journal of the Theory of Social Behaviour* 43.

⁹²⁰ Ibid.

⁹²¹ Carrie Paetcher, 'Investigating Power in the Staffroom: Issues in the Study of Power and Gender Relations in a Professional Group' (1998) 28(1) *Cambridge Journal of Education* 97.

⁹²² Beverley Mullings, 'Insider or Outsider, Both or Neither: Some Dilemmas of Interviewing in a Cross-Cultural Setting' (1999) 30 *Geoforum* 337.

On the contrary, Bashir's study identifies that there may be situations where the researcher becomes vulnerable which stems from situations of fear of being on an unfamiliar territory, the feeling of being powerless to assist and even anxiety about the unpredictability of participants.⁹²³ These challenges are faced by the researcher while conducting research dealing with sensitive subjects.⁹²⁴ These challenges did not arise during the fieldwork even though the researcher is a Christian interviewing Muslims. The researcher was positioned appropriately to conduct the research having lived in Birmingham for more than thirteen years surrounded with Muslim neighbours. Furthermore, the researcher had in place a distress protocol discussed above for any interviewees who may become anxious.

The role of the researcher in qualitative research is very crucial because in most cases a researcher may undertake research on a subject matter which he/she is a member of the community studied (an insider) or (an outsider) new to the researcher.⁹²⁵ Insider role in qualitative research is a "reflexive position" and refers to understanding the experience of the participants through interaction and deep discussions of the research under investigation because the researcher shares similar attributes regarding ethnicity, race or culture, religion etc.⁹²⁶ Reflexivity requires self-evaluation by the researcher of any views that might influence the research process.⁹²⁷ Similarly, reflexivity is an activity that challenges the researcher to examine how his or her research study and personal beliefs or even assumptions "enter into their research".⁹²⁸ This is important for qualitative research because the researcher is seen as an

⁹²³ Nadia Bashir, 'The qualitative Researcher: The Flip Side of the Research Encounter with Vulnerable People' (2019) 20(5) *Qualitative Research* 667.

⁹²⁴ Martin Lipscomb, 'Participant Overexposure and the Role of the Researcher Judgement' (2010) 17(4) *Nurse Research* 49.

⁹²⁵ Sema Unluer, 'Being an Insider Researcher While Conducting Case Study Research' (2012) 17(58) *The Qualitative Report* 1.

⁹²⁶ Linda Cooper and Chrissie Rogers, 'Mothering and 'Insider' Dilemmas: Feminist Sociologist in the Research Process' (2015) 20(2) *Sociological Research Online* 14.

⁹²⁷ Kirsti Malterud, 'Qualitative Research: Standards, Challenges and Guidelines' (2001) 358 *The Lancet* 483.

⁹²⁸ Ping-Chun Hsiung, 'Teaching Reflectivity in Qualitative Interviewing' (2008) 36(3) *Teaching Sociology* 211.

active participant in the dissemination for knowledge.⁹²⁹ Holmes describes reflexivity as an “achievement” that illustrates the “mediatory process” through which individuals respond to situations they find themselves in.⁹³⁰ Mauthner and Doucet highlight that the researcher positioning his or herself emotionally and socially in relation to the interviewees constitutes an essential part of reflexivity.⁹³¹ Reflexivity allows the researcher to examine ethical issues at all stages of the research process for instance, before , during and even after the research.⁹³² Moreover, the researcher must consistently question the identities, principles and commitments that influence the research process.⁹³³

More recently, academic scholars have drawn attention to the need to understand reflexivity in relation to knowledge of a study’s connection to the societal processes.⁹³⁴ Alley, Jackson and Shakya emphasise the use of a journal for reflective practice with precise prompts to challenge assumptions has the prospective to identify the gap that exists between the researcher and knowledge users.⁹³⁵ This practice enables the researcher to recognise any possible bias in the kind of the research the use and awareness that they may have in their field of practice.⁹³⁶ Having a reflective journal enabled the researcher to have a good understanding of the research subjects, challenge any assumption and this created an insight into the sensitivity that the participants may have. For instance, the researcher used the Brookfield’s critical reflection model⁹³⁷ to reflect and challenge any assumption about the research subjects. It was important

⁹²⁹ Ibid.

⁹³⁰ Mary Holmes, ‘The Emotionalization of Reflexivity’ (2010) 44 (1) *Sociology* 139.

⁹³¹ Natasha Mauthner and Andrea Doucet, ‘Reflexive Accounts and Accounts of Reflexivity in Qualitative Data Analysis’ (2003) 37 *Sociology* 413.

⁹³² Audrey Kleinsasser, ‘Researchers, Reflexivity, and Good Data: Writing to Unlearn’ (2000) 39(3) *Theory into Practice* 155.

⁹³³ Angela Lederach, ‘Reflexivity, Responsibility and Reciprocity’ (2016) 4(1) *International Journal of Conflict Engagement and Resolution* 104.

⁹³⁴ Asa Knaggard, Barry Ness and David Harnesk, ‘Finding an Academic Space: Reflexivity Among Sustainability Researchers’ (2018) 23(4) *Ecology and Society* 20.

⁹³⁵ Sarah Alley, Suzanne Jackson and Yogendra Shakya, ‘Reflexivity: A Methodological Tool in the Knowledge Translation Process?’ (2015) 16(3) *Health Promotion Practice* 426.

⁹³⁶ Ibid.

⁹³⁷ Stephen Brookfield, *Becoming a Critically Reflective Teacher* (2nd edn, Jossey-Bass 2017) 61.

for the researcher to understand the perspective of Muslims in general towards other religious groups especially Christians. The researcher being a Christian, what Muslims think of Christianity and if there is any conversation to avoid during the interview. The researcher found that Muslims are receptive of Christians and even the Qur'an made mention of Christianity. As a result, the researcher went into the fieldwork with no pre-conceived notions or assumptions, and this was particularly important to allow the participants to share their own views. On the other hand, the researcher was open to share her own culture with participants and the effect of having only a traditional marriage ceremony among the Igbo people in Nigeria. Furthermore, the researcher was positioned to understand the perspective of some of the participants. For example, most of the participants spoke about respect to the family, marriage in the eyes of God and maintaining their ethnic heritage abroad. The similarity of these issues with that of the researcher from an African background eased the interview process.

Probst identified the benefits of reflexivity to include clarity, trustworthiness, ethics, support, personal growth, researcher's well-being, accountability and the quality of knowledge generated.⁹³⁸ The researcher found support within the research community as this helped to alleviate isolation during the research process. The researcher held regular meetings with her supervisor and even informal dinners outside the university with other research students. These meetings were particularly important during the research process as issues pertaining to the research were discussed, the next steps and students had the opportunity to share ideas about their research. The meetings could be likened to "peer review" as we evaluated the work of other research students and provided feedback.

⁹³⁸ Barbara Probst, 'The Eye Regards Itself: Benefits and Challenges of Reflexivity in Qualitative Social Work Research' (2015) 39(1) Social Work Research 37.

That being said, the insider researcher may share information to the participant in order to overcome power imbalance and this leads to the participants feeling “at home” to disclose personal details.⁹³⁹ The main benefits of being an insider researcher are the ability to understand the culture under investigation, ease in social interaction, challenge preconceived notions and a good sense of judgment that determines the truth of the research topic.⁹⁴⁰ The problems associated with being an insider researcher are bias, duality role in terms of the inability to balance the role of the researcher and the insider, making assumptions and finally, over familiarity may result to objectivity.⁹⁴¹ On the other hand, the outsider role relates to the researcher undertaking research outside his/her knowledge of the topic under investigation or does not share the same attributes in terms of culture, race, ethnicity or even background.⁹⁴² Ritchie et al found that the outsider researcher is analogous to a “logical positivist approach seeking one absolute truth” while the insider researcher is comparable to the “interpretative approach” recognising manifold phenomenon.⁹⁴³ The main benefit of an outsider researcher is that the researcher views themselves in a better position to contribute to an objective report of the research population.⁹⁴⁴ However, it has been argued that close collaboration between the participant and the researcher promotes the formation of valid and reliable data.⁹⁴⁵

⁹³⁹ Mariam Attia and Julian Edge, ‘Be(com)ing a Reflexive Researcher: A Developmental Approach to Research Methodology’ (2017) 4(1) *Journal of Open Review of Educational Research* 33.

⁹⁴⁰ Ann Bonner and Gerda Tolhurst, ‘Insider-Outsider Perspectives of Participant Observation’ (2002) 9(14) *Nurse Researcher* 7; John Hockey, ‘Research Methods- Researching Peers and Familiar Settings’ (1993) 8(1) *Research Papers in Education* 199.

⁹⁴¹ Jaqueline Hewitt-Taylor, ‘Insider Knowledge: Issues in Insider Research’ (2002) 16(46) *Nursing Standard* 33; Dydia Delyser, “Do You Really Live Here?” Thoughts on Insider Research’ (2001) 91(1) *Geographical Review* 441; Kate Gerrish, ‘Being a ‘Marginal Native’: Dilemmas of the Participant Observer’ (1997) 5(1) *Nurse Researcher* 25.

⁹⁴² Justine Mercer, ‘The Challenges of Insider Research in Educational Institutions: Wielding a Double-edged Sword and Resolving Delicate Dilemmas’ (2007) 33(1) *Oxford Review of Education* 1.

⁹⁴³ Jan Ritchie, Anthony Zwi, Ilse Blignault, Anne Bunde-Birouste and Derrick Silove, ‘Insider-Outsider Positions in Health-Development Research: Reflections for Practice’ (2009) 19(1) *Development in Practice* 106.

⁹⁴⁴ Robert Innes, “‘Wait a Second. Who Are You Anyways?’ The Insider/Outsider Debate and American Indian Studies’ (2009) 33(4) *American Indian Quarterly* 440.

⁹⁴⁵ John Creswell and Dana Miller, ‘Determining Validity in Qualitative Inquiry’ (2000) 39(3) *Theory into Practice* 124.

It should be noted that the distinction between the insider and outsider researcher is not always clear-cut. Kusow posits that the “insider/outsider distinction lacks acknowledgment that insiders and outsiders, like all social roles and statuses, are frequently situational, depending on the prevailing social, political, and cultural values of a given social context”.⁹⁴⁶ The author goes on to state that the insider and outsider difference is insignificant in areas such as cultures that tend to divide social activities among genders.⁹⁴⁷ Griffith asserts that an insider researcher shares the same biography in terms of (gender, class, sexual orientation) knowledge of the research group under investigation while an outsider researcher does not have the above attributes prior to the research study.⁹⁴⁸ Shah suggests that the insider researcher is in an advantageous position due to the awareness of the “relevant patterns of social interaction required for gaining access and making meaning”.⁹⁴⁹ In contrast, the distinction between the outsider and insider researcher has been rejected on the basis that human beings cannot be conveniently classified and that members of a particular community will not always share similar perceptions and reasoning.⁹⁵⁰

Drawing upon the arguments put forward above, the researcher of this study considered herself an insider and outsider of the research study in certain respects. An insider, in terms of being a female, shared African ethnic background with some of the participants, the age target group, married and some similarities to the Igbo (a tribe in Nigeria) traditional marriage cultural ceremony with the *nikah*. As a minority, the researcher was positioned to receive a specific

⁹⁴⁶ Abdi Kusow, ‘Beyond Indigenous Authenticity: Reflections on the Insider/Outsider Debate in Immigration’ (2003) 26(4) *Symbolic Interaction* 591.

⁹⁴⁷ *Ibid.*

⁹⁴⁸ Alison Griffith, ‘Insider/Outsider: Epistemology Privilege and Mothering Work’ (1998) 21 *Human Studies* 361.

⁹⁴⁹ Saeeda Shah, ‘The Researcher/Interviewer in Intercultural Context: A Social Intruder!’ (2004) 30(4) *Educational Research Journal* 549.

⁹⁵⁰ Diane Reay, ‘Feminist Research: The Fallacy of Easy Access’ (1995) 18(2) *Women’s Studies International Forum* 205; Catherine Reissman, ‘When Gender is not Enough: Women Interviewing Women’ (1987) 1(2) *Gender and Society* 172.

kind of data. For example, some participant discussed issues like civil marriage is for the whites, the high rate of divorce among the whites and brown skin.

A brief description of the Igbo traditional ceremony will give an insight into the nature of the ceremony. The Igbo custom practices the “igba nkwu” ceremony (traditional marriage cultural ceremony that involves the bride’s wine carrying). Before the actual ceremony, the groom and the elders of his family must visit the bride’s family to ask for permission to marry. Then a date is fixed for discussion of the bride price and other items required by customs of the place. On the day of the actual ceremony, the bride’s father fills up a cup of wine, hands it over to the bride who goes in search of the groom hidden among the crowd. This search is to ensure that the bride knows the identity of the groom and has agreed to the proposal. When the groom is found, the bride hands over wine to him followed by prayers. Then celebration begins as a symbol of unity of the bride and groom. Furthermore, after the traditional marriage ceremony, bride’s family are under an obligation to buy household items to assist the couple in the start of their new home. It is important to note that the ceremony alone without a civil ceremony permits the groom to marry more than one wife. This ceremony constitutes a particularly important part of the Igbo tradition in terms of marriage in the life of a woman. The rationale for this ceremony is that a woman will not be considered “married” until all the rites and ceremonies have been performed. The igba nkwu ceremony played an important part during the interview process due to some of the similarities with the nikah ceremony. The participants were eager to learn more about the Igbo culture and there was ease in interaction. The advantage of the researcher as an insider was that it enabled me to understand the viewpoint of the interviewees. However, the researcher was an outsider in terms of being a Christian and did not have access to the Muslim community under investigation prior to the interview. Being an outsider acted to the benefit of the researcher and the research process as it gave the researcher an opportunity to have an in-depth understanding of the religion, culture of the participants and

identify similarities between the marriage process. Furthermore, the researcher gained more knowledge and insight into some aspects of an issue that she had basic knowledge prior to the interview. For example, the researcher gained more knowledge and understanding on the concept of the izzat and its significance. Again, participants were happy being interviewed by a Christian which they frequently mentioned during the interview. The researcher felt welcomed and there was never a silent or awkward moment. Indeed, it was a pleasure interviewing Muslims as this was the researcher's first experience and participants felt free to tell their stories about the nikah marriage.

4.10 Thematic analysis

An integral part of this thesis is thematic analysis of the data which involved reading through the data, identifying patterns of meanings across the data to reveal the emergent themes. Thematic analysis can be used to analyse large and small data or even homogenous and heterogeneous samples.⁹⁵¹ This thesis adopts the six-phase approach to thematic analysis by Braun and Clarke⁹⁵² as this approach after adequate research was considered by the researcher to be appropriate because of its simplicity, flexibility, accessibility, the focus on the data as well as the emergent themes.

Phase 1: Familiarising yourself with the data

The first phase in the thematic analysis is familiarity with the entire data and this involves reading and re-reading through the data.⁹⁵³ In this respect, this phase involved going back to

⁹⁵¹ Victoria Clarke and Virginia Braun, 'Thematic Analysis' (2017) 12(3) *Journal of positive psychology* 297.

⁹⁵² Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in psychology' (2006) 3(2) *Qualitative Research in Psychology* 77.

⁹⁵³ *Ibid.*

the transcripts of the interview and reading them individually to understand each individual participant's account. This read through also involved underlining parts of data, making notes and comments on the data. The purpose was to familiarise and immerse the researcher in the transcripts in order to make sense of participant's experience. For example, Nerimi was in an interracial relationship when she was in college and a discussion about the nikah marriage with her then boyfriend prompted a later discussion with her parents. An extract from Nerimi's interview, parts of the data underlined and the researcher's comments on the data.

“When I spoke to my parents about it, my mum said I can only have a nikah marriage and that civil marriage are for the whites. My dad told me that I would be disowned. My dad's comments made me understand the importance of nikah to the Muslim community. I was scared that my parents will take me to Pakistan and arrange someone for me”.

The researchers' comments on the data included (a) Nerimi's account shows obedience and respect of parental opinions (b) significance of the nikah and finally, (c) view on civil marriage. During this phase, the researcher noticed information relevant to the research question and confident that this thesis will contribute to knowledge in this area of law.

Phase 2: Generating initial codes

This phase commenced with a systematic analysis of the data through coding.⁹⁵⁴ A code is defined as “the most basic segment, or element, of the raw data or information that can be assessed in a meaningful way regarding the phenomenon”.⁹⁵⁵ This phase required re-reading the entire data again and identification of information relevant to the research question. For example, immediately the researcher identified an extract of data to code, it was written down

⁹⁵⁴ Virginia Braun and Victoria Clarke, 'Thematic Analysis' in Harris Cooper, Paul Camic, Debra Long, AT Panter, David Rindskopf and Kenneth Sher (eds), *Research Designs: Quantitative, Qualitative, Neuropsychological and Biological* (American psychological Association 2012) 57.

⁹⁵⁵ Richard Boyatzis, *Transforming Qualitative Information: Thematic Analysis and Code Development* (Sage Publications 1998) 63.

and highlighted. An excerpt of the interview with Jaguri and the subsequent highlighting of the coded data.

“I had the nikah only marriage because it shows **respect and honour to the family**. I had a discussion with my husband that we should have the nikah marriage first **to respect our families** and later civil marriage, but he refused. His family supported his decision, and I was sad. I have knowledge of civil marriage. I know that **nikah marriage in a family home is not valid**. I don't even have **a marriage certificate**.”

It is worth noting that this initial code was only for purpose of thematic analysis as this thesis used the grounded theory approach to coding and coded all relevant data for this thesis. A detailed explanation of how the data was coded will be discussed in the next section of this chapter.

Phase 3: Searching for themes

This phase required an exploration of the codes and extracts of the data to look for potential themes of importance about the data.⁹⁵⁶ Themes are aspects of participant's accounts that the researcher considers relevant to the research question and this represents a pattern or relationship within the data set.⁹⁵⁷ Essentially, themes should work together, be comprehensible, and form an analytical story.⁹⁵⁸ Thus, themes are constructed by the researcher through the process of analysing, comparing, combining and mapping how codes relate to each other.⁹⁵⁹

⁹⁵⁶ Braun and Clarke (n951).

⁹⁵⁷ Vaismoradi Moitaba and Snelgrove Sherrill, 'Theme in Qualitative Content Analysis and Thematic Analysis' (2019) 20(3) *Qualitative Social Research* 23.

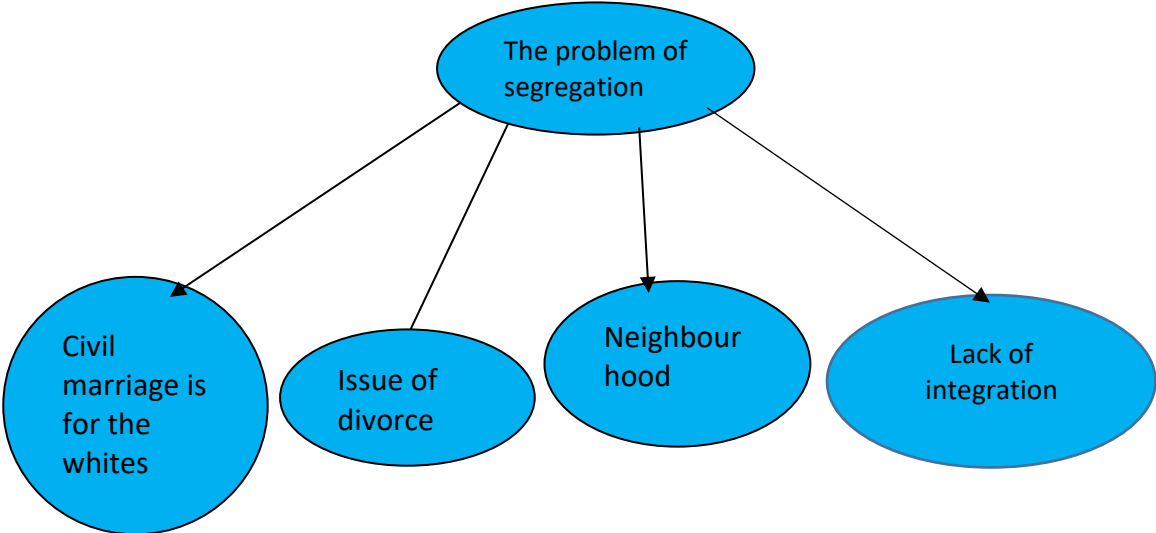
⁹⁵⁸ Virginia Braun and Victoria Clarke, 'What can "Thematic Analysis" Offer Health and Wellbeing Researchers' (2014) 9(10) *International Journal of Qualitative Studies in Health and Wellbeing* 26152.

⁹⁵⁹ Lara Varpio, Rola Ajjawi, Lynn Monrouxe, Bridget Brien and Charlotte Rees, 'Shedding the Cobra Effect: Problematising Thematic Emergence, Triangulation, Saturation and Member Checking' (2017) 51(1) *Medical Education* 40.

By reviewing the coded data, the researcher began to identify similarities between the data and noticed codes clustering around the issue of Izzat, obedience, family, respect, honour, shame, acceptance, Muslim community etc. On further examination of these codes, the researcher identified that the codes focused on upholding the reputation of the family, respect of parental opinions, culture and religion etc. As a result, the researcher constructed themes using the codes relating to upholding the reputation of the family and another theme using codes relating to respect of parental opinions etc.

Furthermore, this phase involved exploring the relationship between themes and to recognise “how themes will work together in telling an overall story about the data”.⁹⁶⁰ At this stage of the analysis, the researcher felt closer to the data and became conversant with individual participant accounts. Braun and Clarke explain that thematic maps are helpful for visually illustrating connections between themes and subthemes.⁹⁶¹ In effect, the researcher used thematic charts to demonstrate the relationship between themes and subthemes. For example,

Figure 1 Illustrates relationship between themes and subthemes.



⁹⁶⁰ Braun and Clarke (n954).

⁹⁶¹ Ibid.

Phase 4: Reviewing themes

This phase involved a repeated process as the developing themes are reviewed in relation to the coded data and entire dataset.⁹⁶² This step required the researcher to re-read the entire data, re-examine existing themes, check the themes against the extracts of data and identify whether the themes can be understood independently when compared with the data. This reviewing process also involved looking back at the research questions and identify whether the themes provide an answer to the research question. In addition, this phase involved ensuring that there was sufficient data to support the theme. For instance, modifying existing themes, counting the number of participants that mentioned the theme and deleting themes with insufficient data.

Phase 5: Defining and naming themes

This phase involves creating a definition and naming each theme as well as an explanation on why it is important to the research question.⁹⁶³ Braun and Clarke state that the ability to summarise the importance of each theme in a few sentences is a good test of this phase and demonstrates the unique feature of the theme. For example, an extract from the interview with Jaguri.

“I had the nikah only marriage because it shows respect and honour to the family. (Main theme- maintaining the izzat). “I had a discussion with my husband that we should have the nikah marriage first to respect our families and later civil marriage, but he refused” (subtheme- husband’s refusal). “I know that nikah marriage in a family home is not valid. My husband said that if we have a civil marriage, we will end up getting a divorce because of rights”. This quotation shows the importance of the nikah in the Muslim community and highlights an aspect of patriarchy in the Muslim community where the opinions of women are not regarded

⁹⁶² Ibid.

⁹⁶³ Ibid.

and suppressed. Furthermore, this quotation explicitly answers the research question, demonstrates purpose with the main theme and then builds on the subtheme to contribute an overview story about the data.

Phase 6: Producing the report

The final phase of the analysis is the production of the report in the thesis such as writing up the findings and discussion of the findings.⁹⁶⁴ This process started immediately the researcher entered the fieldwork stage, first through the process of note taking, reading the data and then analysis of the themes, selection and naming of themes. A detailed discussion of the findings will be analysed in Chapters 5 and 6.

4.11 Coding

The interview process involves coding of information, and this entails “abstracting and relating categories to each other in the data analysis”.⁹⁶⁵ After the data collection stage, iterative thematic coding was carried out. Timonen et al opine that data collection and analysis proceeding alongside each other is best way to use GT because concepts and theory can only be created in an inductive grounded method by analysing as well as sampling simultaneously.⁹⁶⁶

Morse et.al categorise the procedure for data analysis which includes preparing the data, conducting content analysis and finally, transforming the textual data into numerical data once the required sample size is complete.⁹⁶⁷ For example, the preparation stage involved organisation of data into the four localities under investigation. The next stage in the process

⁹⁶⁴ *Ibid.*

⁹⁶⁵ Goldkuhl and Cronholm (n795).

⁹⁶⁶ Timonen, Foley and Conlon (n858).

⁹⁶⁷ Morse (n 874).

was to carefully transcribe all the audio recorded data. After the transcription, the text from all the interviews was read to gain an overall impression of the content. This stage was very important to ensure the accuracy of the transcribed data. Bailey writes that the transcription of audio data into written text is an interpretive process in analysis data.⁹⁶⁸

The next stage was to analyse and interpret the narratives of the interview and extract meaning from the participant's accounts on the reasons for the nikah only marriage and level of knowledge of civil marriage. This process involved identification of theme and the relationship between the themes. The researcher categorised the themes from the different localities in order to ascertain the relationship between the themes and recognise emergent themes.

The final stage was the identification of the emergent themes. This was divided into major themes and sub themes. For example, maintaining "izzat" (honour) was identified as a major theme with the connecting subthemes such as obedience to the head of the family, "I paid homage to my family and the Muslim community on the day of my wedding", "it brings shame to the family". In addition, the influence of culture was identified as another major theme with the connecting sub themes recognised as collectivist cultures and acculturation.

The researcher manually coded the information obtained from the field study. Coding is a core analytical tool that brings to light an emergent theory from the research study.⁹⁶⁹ Coding is a methodological activity established based on the relationship between the phenomena and theoretical conceptions.⁹⁷⁰ Milliken and Schreiber concur that coding commences with the "assigning in vivo codes to words and phrases that might represent concepts in the data".⁹⁷¹

⁹⁶⁸ Julia Bailey, 'First Step in Qualitative Data Analysis: Transcribing' (2008) 25(2) Family Practice 127.

⁹⁶⁹ Glaser (n814).

⁹⁷⁰ Helen Heath and Sarah Cowley, 'Developing a Grounded Theory Approach: A Comparison of Glaser and Strauss' (2004) 41 International Journal of Nursing Studies 141.

⁹⁷¹ Milliken and Schreiber (n841).

Strauss and Corbin recommended that the coding process should be broken down into four steps of open, axial, selective and “coding for process”.⁹⁷² Open coding relates to the use of analytical techniques that involves coding each incident and sentence into a variety of codes to enable complete theoretical analysis.⁹⁷³

It refers to the process where data is broken down into different parts and analysed for similarities and differences.⁹⁷⁴ The researcher used open coding at the initial data analysis stage to open the data to all theoretical possibilities contained within them. The researcher categorised the data into groups, compared the data from each participant to locate differences and similarities between accounts. For instance, the researcher categorised the data into four groups based on participants ethnicity such as African, Bangladeshi, Pakistani and Turkish to identify the similarities and differences in response if any. The next step was to select the key phrases used by the interviewees that relates to the research question and then code these phrases. For ease of recognition of the similarities and differences in coding, the researcher used different colours to code the key phrases and the associated keywords.

Table 2 below contains examples of open coding using quotations and keywords.

Quotations	Coding keywords
Researcher: “What are your reasons for having the nikah only marriage?”	

⁹⁷² Anselm Strauss and Juliet Corbin, *Basics of Qualitative Research: Grounded Theory Procedure and Techniques* (Sage Publications 1990)99.

⁹⁷³ Barney Glaser, ‘Open Coding Descriptions’ (2016) 2(15) *Grounded Theory Review: An International Journal* 1.

⁹⁷⁴ Juliet Corbin and Anselm Strauss, *Basics for Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Sage Publications 1990a)62; Anselm Strauss and Juliet Corbin, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (2nd edition, Sage Publications 1998)102.

<p>Dasina: “Nikah marriage means everything to me as part of my heritage, religion, culture and honour to my family and Muslim community”. It is nice to know more about British marriage, but it is not for me. I will not be discussing anything it with my husband as I know he is totally against it”.</p> <p>Amure: “It brings shame to a family if you do not have a nikah marriage. You know that it is only after the nikah marriage that we can consummate our union. We are thinking of having the civil marriage, but it is not our priority at the moment”</p> <p>Umari: “Growing up my parents always told me of the importance of the nikah marriage in Islam, I had no choice as it is part of my religion”</p>	<p>Heritage, culture, religion, honour to family, Muslim community</p> <p>Shame, consummate, priority</p> <p>Growing up, parental influence, choice</p>
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The second stage of analysing data in grounded theory is the axial coding which aims to draw connections between codes developed in open coding. Axial coding is a coding paradigm that involves division of people who share similar characteristics and relationship at the same time.⁹⁷⁵ It has been defined as the “a process of relating categories to their subcategories”.⁹⁷⁶ For example, the researcher categorised the interviewees into four groups based on the ethnic origin of African, Bangladeshi, Pakistani and Turkish and allocated codes.

Table 3 below contains examples of axial coding using ethnicity of the interview participants. Ethnicity played an important role in the coding to determine if there was any difference or even similarity in relation to how a particular ethnic group views the nikah only marriage.

Ethnic origin	Coding Keywords
African	Unmarried, eyes of God, family, friends, acceptance, Muslim society, respect, Islam, choice, oppose, parents, plan
Bangladeshi	Rights, relatives, need, shame, family, expectations, appropriate time, graduate information, research, convince, importance, support, imagine, devastated, consent
Pakistani	Parents, religion, women, upbringing, culture, generation, tradition, traced, different, mention, dating, disowned,

⁹⁷⁵ Anselm Strauss and Juliet Corbin, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Sage Publications 1998)123.

⁹⁷⁶ Ibid.

	<p>comments, arrange, scared, broke, college, boyfriend, guests, attendance, honour, British, Whites, life, changes, ideas, pressure, identity, knowledge, unaware, pretending, option, community, association, attend, meetings, view, decide, understand, object, broken, izzat</p>
Turkish	<p>Mixed, views, children, steps, gave up, popular, area, neighbourhood, acceptance, religion</p>

The third stage of analysing data in grounded theory is the selective coding which involves connecting the categories from the open and axial coding to form a core category. Selective coding is used to refine concepts in order to provide an explanation of the interaction between descriptive terms and constructs.⁹⁷⁷ It relates to the identification of the a “core variable” which Strauss and Corbin refer to an “analytical power because of its ability to pull the other categories (variables) together to form an explanatory whole”.⁹⁷⁸ The final stage is the theoretical coding leads to formulation of a theory and its objective is to create inferential accounts about the research study.⁹⁷⁹ The third and final stages of coding lead to the emergent of themes that will be explored in Chapter 5 of this thesis.

⁹⁷⁷ Redman-Maclaren and Mills (n800).

⁹⁷⁸ Strauss and Corbin (n972) at p.146.

⁹⁷⁹ Cheri Hernandez, ‘Theoretical Coding in Grounded Theory Methodology’ (2009) 8(3) Grounded Theory Review: An International Journal 1.

4.11.1 Phase two -The questionnaire

In addition to the semi-structured interviews, a questionnaire survey was conducted a few months after the semi-structured interviews. The survey was to complement findings from the interview process to gain a more nuanced statistical data of the reasons British Muslim women were entering the nikah only marriage. Age, ethnicity, educational background were significant factors in designing the study. The rationale for using the questionnaire was that it provided an easier means to collect anonymous data from hard-to-reach group.

A total number of 110 (Birmingham: Alum Rock 26, Sparkhill 33, Bordesley Green 20, Bradford 11, Leicester 13, Walthamstow 7) fully completed questionnaires were returned. 8 of them were excluded due to missing information and 4 because they were completed by males. In the end, there were a total number of 122 respondents that responded to this study.

The information sheet and consent form were attached to each questionnaire and signatures were a prerequisite before participating in the study (Refer to Appendix 5 and 7). The questionnaire was anonymous as the name identifier was purposely removed during the drafting of the survey. However, each questionnaire had a series ID number to enable coding and analysis of the information provided. For example, Birmingham participants had the series number ID: BirAIR01 to identify Alum rock, BirBOG02- Bordesley Green, BirSPH03 -Sparkhill, LOWA04- London Walthamstow, BRF05- Bradford and finally, LES06 - Leicester.

4.11.2 Formulating and testing the questions

The questions formulated were based on the responses from the interview. A prerequisite of the survey questions is that it should be tested.⁹⁸⁰ Testing the questionnaire is an opportunity for the researcher go over the questionnaire questions “in mock conditions that closely approximate the actual to amend it before main data collection”.⁹⁸¹ Based on the feedback given by colleagues who did not participate in the actual study, a final version of the questionnaire was created. (Refer to Appendix 10 for the survey questionnaire).⁹⁸²

4.11.3 Self- administered questionnaire

Phipps et al point out some of the issues in the formulation of surveys includes questionnaire design, mode of data collection, frame collection and the response formulation process.⁹⁸³ The researcher used a self-administered questionnaire which Lavrakas refers to a questionnaire created to be completed by the respondents without involvement of the researcher conducting the research.⁹⁸⁴ Consequently, the survey was self-administered and participants completed the survey without any assistance from the researcher.

The survey was available to participants in two forms such as online or paper copy. This gave the participants the option to choose although most of the participants preferred the paper copy and it was effective method for distribution in mosques and Muslim organisations.

⁹⁸⁰ Pamela Campanelli, ‘Testing Survey Questions: New Directions in Cognitive Interviewing’ (1997) 55 Bulletin of Sociological Methodology 5.

⁹⁸¹ McIntosh and Morse(n867).

⁹⁸² An electronic version of the questionnaire can be found on survey monkey website www.surveymonkey.co.uk.

⁹⁸³ Polly Phipps, Shail Butani and Young Chun, ‘Research on-Establishment-Survey Questionnaire Design’ (1995) 13(3) Journal of Business and Economic Statistics 337.

⁹⁸⁴ Paul Lavrakas, ‘Self-Administered Questionnaire’ (2008) 10 Encyclopaedia of Survey Research Methods 1.

Sinkowitz-Cochran notes that methods of survey administration differ for example, telephone, face-to face, interactive voice response, mail, and the internet.⁹⁸⁵ In view of this, the questionnaire was hand delivered to various locations such as mosques and Muslim organisations. The researcher also provided stamped envelopes addressed to Staffordshire University attached to the questionnaires. This distribution method was considered appropriate for this research due to the sensitivity of the topic. In addition to the hand delivered questionnaires, the researcher used the snowball sample as with the interview process (Refer to Appendix 2 for the questionnaire pamphlet). The researcher used existing contacts established during interview to assist with the distribution of the questionnaires. More importantly, the researcher was given information on the days of prayers, meetings and distributed the questionnaires.⁹⁸⁶ The researcher collected the questionnaires from the mosques and Muslim organisations and for some of the participants who completed the questionnaires after prayers, were returned in person to the researcher.

4.11.4 Questionnaire items

The main objective of a questionnaire was to gather valid, reliable, unbiased and trustworthy data from the respondents under investigation.⁹⁸⁷ More importantly, it was imperative to the researcher to compare the data of a semi-structured interview with the questionnaire to determine similarities and differences.⁹⁸⁸

⁹⁸⁵ Ronda Sinkowitz-Cochran, 'Survey Design: To Ask or Not to Ask? That is the Question...' (2013) 56(8) *Clinical Infectious Diseases* 1159.

⁹⁸⁶ An electronic version of the questionnaire can be found on survey monkey website www.surveymonkey.co.uk.

⁹⁸⁷ Karen Burns, Mark Duffett, Michelle Kho, Maureen Meade, Neill Adhikari, Tasnim Sinuff and Deborah Cook, 'A Guide for the Design and Conduct of Self-administered Surveys of Clinicians' (2008) 179(3) *Canadian Medical Association Journal* 245.

⁹⁸⁸ Seymour Sudman, Andrew Greeley and Leonard Pinto, 'The Effectiveness of Self-Administered Questionnaires' (1965)2(3) *Journal of Marketing Research* 293.

Demographic of the participants

The survey was divided into ten sections with questions one to five containing information about the demographic of the participants. The aim of this section was to gather information about the participants to ensure the sample under investigation is an accurate representation of the purpose of the study.

Section 1- Gender of the participants

Muslim women were the participants in this study.

Section 2- Ages of the participants

It has been established that among opposite sex couples in 2018, more women than men married at younger ages (under 30).⁹⁸⁹ In this regard, the participants' ages were divided into nine categories to allow a wide range of participants partake in the questionnaire. The nine age categorises in the questionnaire: 18-20, 21-25, 26-30,31-35, 36-40, 41-45, 46-50, 51- 55 and 56 or over.

Section 3- Ethnicity of the participants

The ethnicity of the participants was divided into seven categories: Asian/Bangladeshi, Asian/Pakistani, Black/African, Black/Caribbean, Hispanic/Latino, White and another race or ethnicity to reflect the purpose of the research study. The researcher sought to ascertain the similarities and differences, if any, between the responses of the diverse ethnic groups under investigation in relation to the reasons why they entered the nikah only marriage. It is worthy to mention that no Black Caribbean, Hispanic/Latino or White participated in this study.

⁹⁸⁹ [Marriages in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk) accessed February 2021.

Section 4: Religion

Participants were asked to describe their religion which was divided into six categories namely: Muslim, Hindu, Jewish, Sikh, Buddhist, Christian, and any other religion to represent the different religious identity in Britain. Even though other religions were included in the survey, only Muslims responded to the survey.

Section 5: Highest degree or level of school completed

Participants were asked to describe the highest degree or level of school completed to ascertain whether the level of education influence the choice of marriage. It is pertinent to note that this was part of the research question. This section was divided into seven categories namely: some college credit, no degree, trade/technical/vocational training, diploma, university degree, Master's degree, professional degree and doctorate degree.

Section 6: Which type of marriage did you contract? Proceed to question 7 if you selected nikah only

This objection of this section was to get accurate data of participants who had the nikah only in private homes, restaurants, pubs or parks. Furthermore, it sought to determine whether participants had knowledge on the registration of requirements of buildings for the purpose of marriage. Participants who had selected civil and nikah, nikah in a registered building as well as participants who had no knowledge of whether the nikah was in a registered building did not progress to the next series of questions.

In this regard, the section was divided into four categories: nikah only (home, restaurant/pub, parks), civil and nikah, nikah-registered building and status of the nikah venue unknown. The category of nikah venue unknown refers to participants who had a nikah in a building other than a private home but unaware of the status of the nikah venue.

Section 7: What are your reasons for entering the nikah only marriage?

Section seven and eight of the questionnaires used multiple-choice questions to give participants the opportunity to select the closest answers from a list. The section was aimed at participants who had selected the nikah only marriage and this was especially important to the researcher as it constituted the main research question for the study. The objective of this section was to gather results would give accurate statistical data into Muslim women's reasons for undertaking the nikah only marriage. The question was divided into six categories namely religious reasons, cultural reasons, husband's refusal, family and friend's advice, personal reasons and reasons unknown.

Section 8: In the event of marital breakdown, where will you seek support?

The main purpose of this section was to establish the preference of Muslim women in relation of support in the event of marital breakdown. The questions the researcher sought to ascertain whether Muslim women consider English court as a last resort for divorce or the option of alternative dispute resolution mechanisms such as Sharia councils, Muslim community or family and friends. Participants were given the select option to select all the boxes that applies to them. The question was divided into four categories which consist of English court, Sharia council, Muslim community, family and friends. These questions were drawn from the interview data based on the responses of participants.

Section 9 and 10: Likert scale questions

The Likert scale is a rating system was used in this study to measure the opinions and perceptions of participants. Batterton and Hale reasoned that Likert scales "approximate interval data and are therefore amenable to traditional parametric methods".⁹⁹⁰

⁹⁹⁰ Katherine Batterton and Kimberly Hale, 'The Likert Scale What it is and How to Use it' (2017) 50(2) Phalanx 32.

For example: Civil marriage/nikah in a registered building is a legally recognised marriage in Britain

Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree
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Likert scale of after the nikah only marriage, you still need a civil marriage

Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree
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4.11.5 Data analysis for the questionnaire

The first stage was to prepare data for quantitative data analysis. This stage entailed the following process⁹⁹¹:

- a) Data validation: This process involved making sure that the respondents were answering the questions and checking that data is complete. 8 of them were excluded due to missing information.
- b) Data editing: This process involved checking for any errors that the fields were filled incorrectly. However, this did not apply as the questionnaire was drafted in simple language and very easy to understand.

⁹⁹¹ Colin Robson and Kieran McCartan, *Real World Research* (4th edition, Wiley Publications Ltd 2015); Virginia Braun and Victoria Clarke, *Thematic Analysis: A Practical Guide* (Sage Publications Ltd 2021).

- c) Data coding: The data were grouped into the different localities and given a series number ID to code the data. For example, BirAIR01 to identify Alum rock, BirBOG02- Bordesley Green, BirSPH03 -Sparkhill, LOWA04 -London Walthamstow, BRF05- Bradford and finally, LES06 - Leicester.

4.11.6 Descriptive statistical analysis method

The final stage of the data analysis for the questionnaire was the descriptive statistical analysis method. The two main aspects of quantitative statistical data analysis are descriptive statistical analysis and inferential statistical analysis.⁹⁹²

The descriptive statistics is concerned with describing the sample while inferential statistics is concerned with making predictions about the population from the sample findings.⁹⁹³ This study used descriptive statistics such as means and frequencies to analyse the research questions. For instance, 28 participants of Pakistani origin had the nikah only marriage, 14 of Bangladeshi origin, 12 of African origin while only 1 participant from other ethnic groups.

4.12 Triangulation

Triangulation is defined as a consolidation of research methodologies in the study of the same phenomenon.⁹⁹⁴ The main objective of triangulation is to collect reliable data and validate a study's results by using mixed methods.⁹⁹⁵ In order to assess the reasons for the nikah only

⁹⁹² Anol Bhattacharjee, *Social Science Research: Principles, Methods and Practices* (2nd edition, Creative Commons Attribution 2012)129.

⁹⁹³ Ibid.

⁹⁹⁴ Todd Jick, 'Mixing Qualitative and Quantitative Methods: Triangulation in Action' (1979) 24(4) *Administrative Science Quarterly* 602.

⁹⁹⁵ Gayle Rhineberger, David Hartmann and Thomas Valey, 'Triangulated Research Designs—A Justification?' (2005) 7(1) *Journal of Applied Sociology* 56.

marriage and the level of knowledge about civil marriage, a triangulation of mixed methods was used. There are four types of triangulations proposed by Denzin namely data triangulation, investigator triangulation, theory triangulation and methodological triangulation.⁹⁹⁶ This research used the methodological triangulation of semi-structured interview and questionnaires. Methodological triangulation was used by regarding both quantitative and qualitative methods of equal value in relation to aims of the research.⁹⁹⁷

A triangulation of semi-structured interviews and questionnaires increased the credibility, reliability as well as the validity of this research by minimising the element of bias. Santos et al concur with this argument and states that using mixed methods increases the credibility and reliability of the research while reducing bias.⁹⁹⁸ Boeck et al argues that the weakness of a single research method can be mitigated by the strengths of mixed methods.⁹⁹⁹ It is worthy to note that this study aimed for the findings from the semi-structured interviews and questionnaire to complement each other and as a result achieve a comprehensive answer to the research question. In effect, the semi-structured interviews and the questionnaire created a comprehensive insight into the reasons for unregistered Muslim marriages and knowledge of civil marriage in Britain.

Methodological triangulation of semi-structured interviews and questionnaires was used to answer the research questions. While the semi-structured interviews were used to gain insight into the reasons for British Muslim women's choice of marriage, the questionnaires to gain a

⁹⁹⁶ Norman Denzin, *A Theoretical Introduction to Sociological Methods* (1st edition, Routledge 2009) 301.

⁹⁹⁷ Hannele Lukkarinen, 'Methodological Triangulation Showed the Poorest Quality of Life in the Youngest People Following Treatment of Coronary Artery Disease: A Longitudinal Study' (2004) 42 *International Journal of Nursing Studies* 619.

⁹⁹⁸ Karine Santos, Mara Ribeiro, Danlyne De Queiroga, Ivisson Da Silva and Sonia Ferreira, 'The Use of Multiple Triangulations as a Validation Strategy in a Qualitative Study' (2020) 25(2) *Cien Saude Colet* 655.

⁹⁹⁹ De Boeck, Liesbeth Jacxsens, Pauline Vanoverberghe and Peter Vlerick, 'Method Triangulation to Assess Different Aspects of Food Safety Culture in Food Service Operations' (2019) 116 *Food Research International Journal* 1103.

more nuanced statistical data of the reasons British Muslim women were entering the nikah only marriage.

The semi-structured data revealed that problem of segregation, maintaining the izzat, family and expectations, influence of culture etc were some of the reasons for the nikah-only marriage while the questionnaire data similarly revealed religion, culture, family and friends' advice. It follows that the findings from these methods were consistent and complementary. Data produced from the semi-structured interviews was used to complement the data from the questionnaires to generate rich comprehensive data in response to the research questions.

Moreover, there were some surprises in the findings from the questionnaire when compared with the findings of semi-structured interviews. For example, the questionnaire revealed that one participant mentioned that they would seek support from the Muslim community in the event of marital breakdown. However, when compared with the findings from the semi-structured interviews, a significant number of the participants mentioned the Muslim community as one of the several options where they would seek support. However, as mentioned earlier, both methods were used to complement each other.¹⁰⁰⁰

Both sets of data confirmed the reasons for the nikah only marriage and level of knowledge about civil marriage. Consequently, the methods used in this study such as semi-structured interviews and the questionnaire were shown to yield similar results. Indeed, methodological triangulation used in this study allowed validation and reliability of issues that relate to the research questions.¹⁰⁰¹

¹⁰⁰⁰ De Boeck et al (n 999).

¹⁰⁰¹ Helen Noble and Roberta Heale, 'Triangulation in Research, With Examples' (2019) 22(3) Evidence Based Nursing 67.

4.13 Conclusion

This chapter discussed the methods for carrying out the fieldwork study. The ontological and epistemological positions of this research was informed by mixed methods. The rationale for this was based on how the researcher understands and interprets information to reveal the answers to the research questions. It was important to use mixed methods in this research to corroborate the findings of the semi-structured interviews and the questionnaire. The choice of grounded theory as the research design for this thesis was to allow the researcher to engage in constant comparison between data from the semi-structured interviews and the questionnaire.

Furthermore, as an outsider with no prior contact with the Muslim community, the snowball sampling recruitment technique was considered the most appropriate method to recruit participants for this study due to fact that these participants were hidden and hard to reach. Also, as a result of the flexibility and simplicity of Braun and Clarke's six-phase approach to thematic analysis, this research used this approach to analyse data to reveal the emergent themes. Finally, it was important for the researcher to code data to make it easier to analyse and interpret the responses of the triangulated semi-structured and questionnaire data.

Chapter 5: Findings and discussion

5.1 Introduction

This chapter is a presentation of the findings combined with a discussion of the first and second phase of the research, which involved semi-structured interviews with 33 British Muslim women and a survey of 110 Muslim women. This study was interested in British Muslim women's reasons for entering a nikah only marriage as well as Muslim women's reasons and level of knowledge for not considering a civil marriage based on the fact that the nikah in a private home is not legally recognised in Britain. It was important for the researcher to ascertain Muslim women's level of knowledge regarding civil marriage to understand their choice of marriage or whether it was an issue of ignorance.

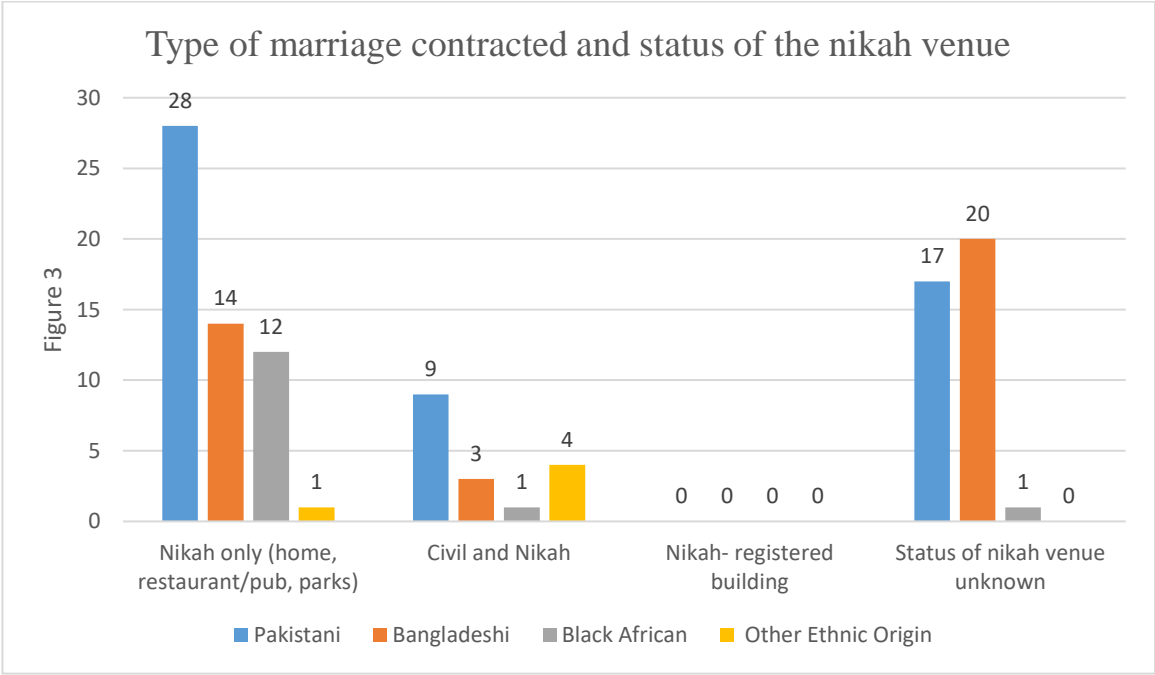
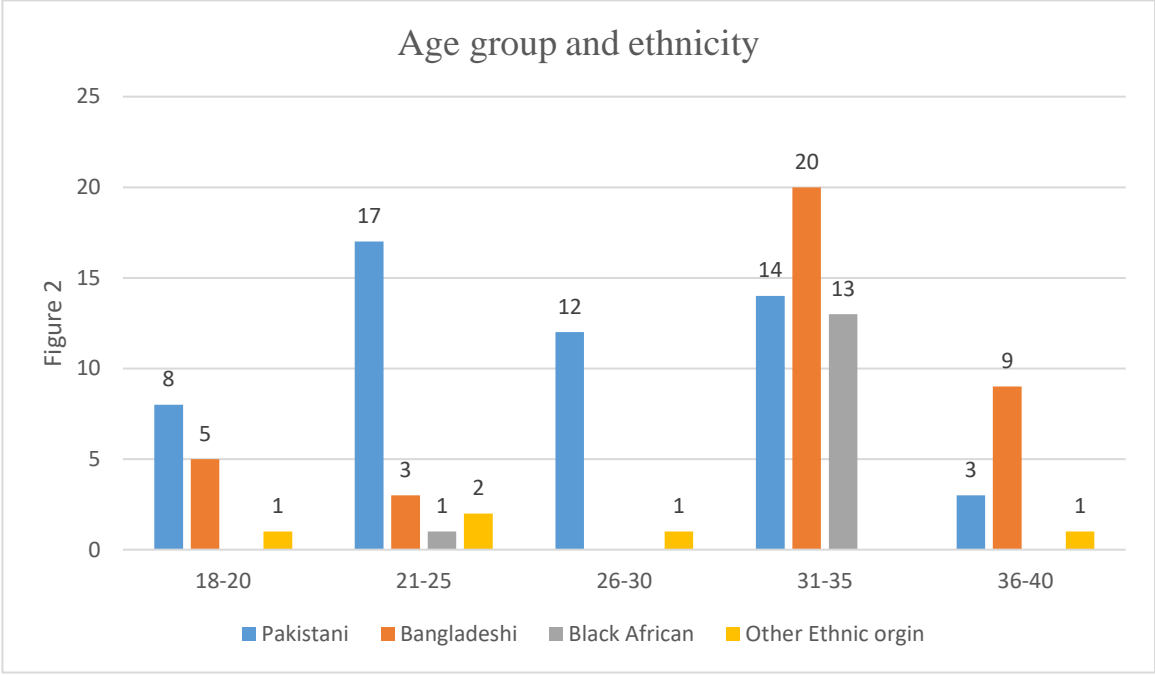
The first section provides an overview of the survey findings. The second section analyses the semi-structured interviews which were analysed into themes in line with the grounded theory approach. The major themes identified and will be analysed in this chapter were : the problem of segregation, maintaining "izzat" (honour), family and expectations: the role of parents. The subthemes that emerged were "civil marriage is for the whites", issue of divorce, neighbourhood, lack of integration, obedience to the head of the family, "I paid homage to my family and the Muslim community on the day of my wedding", "it brings shame to the family" and friendships.

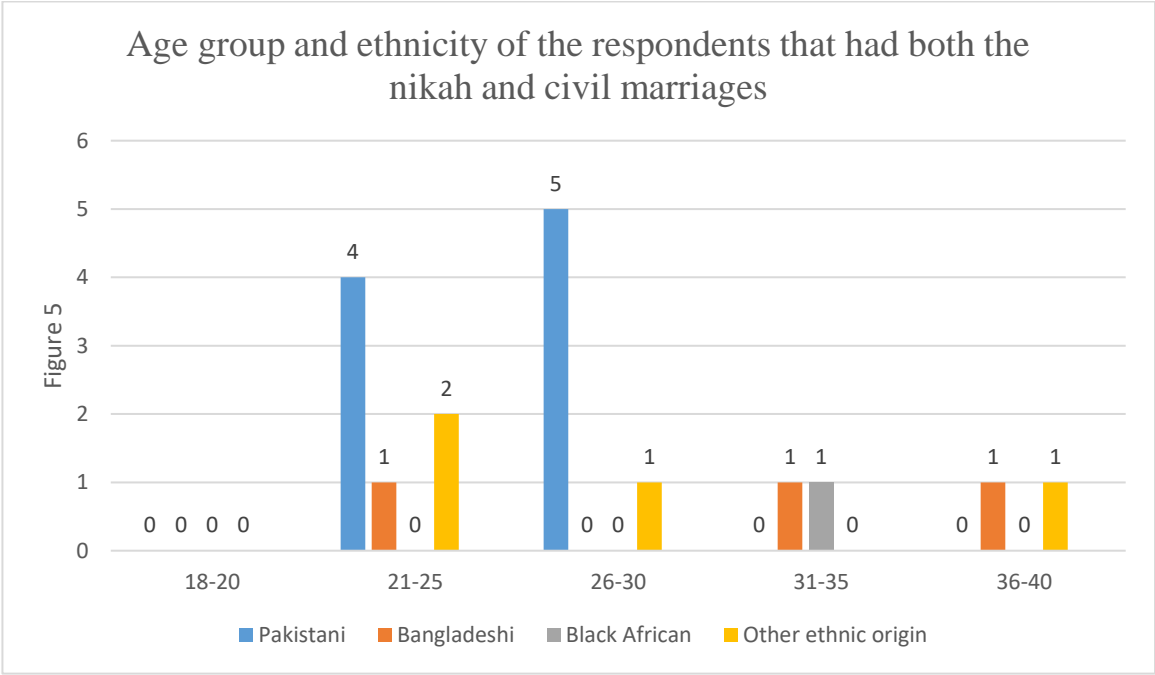
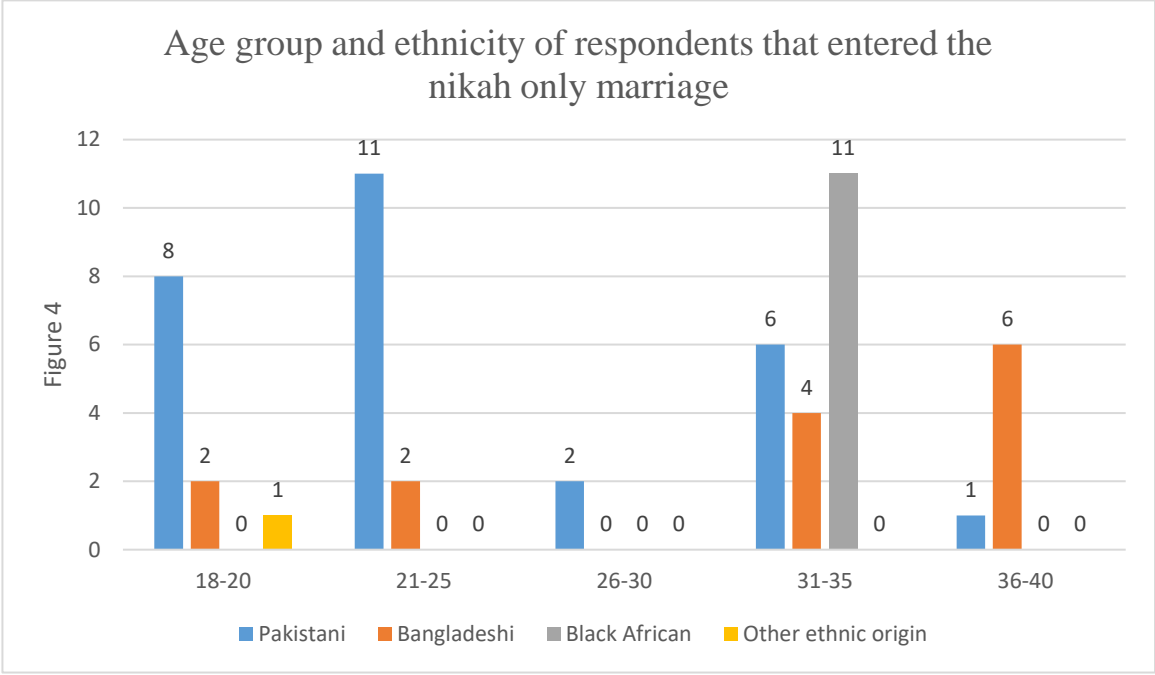
5.2 Overview of the questionnaire findings

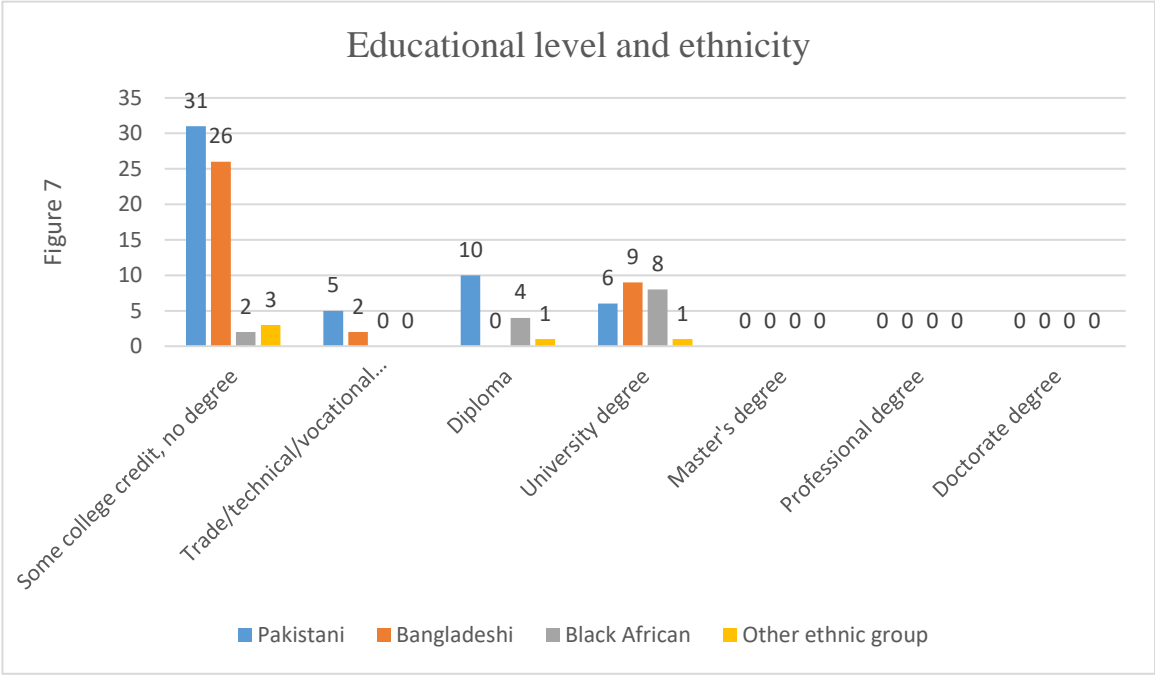
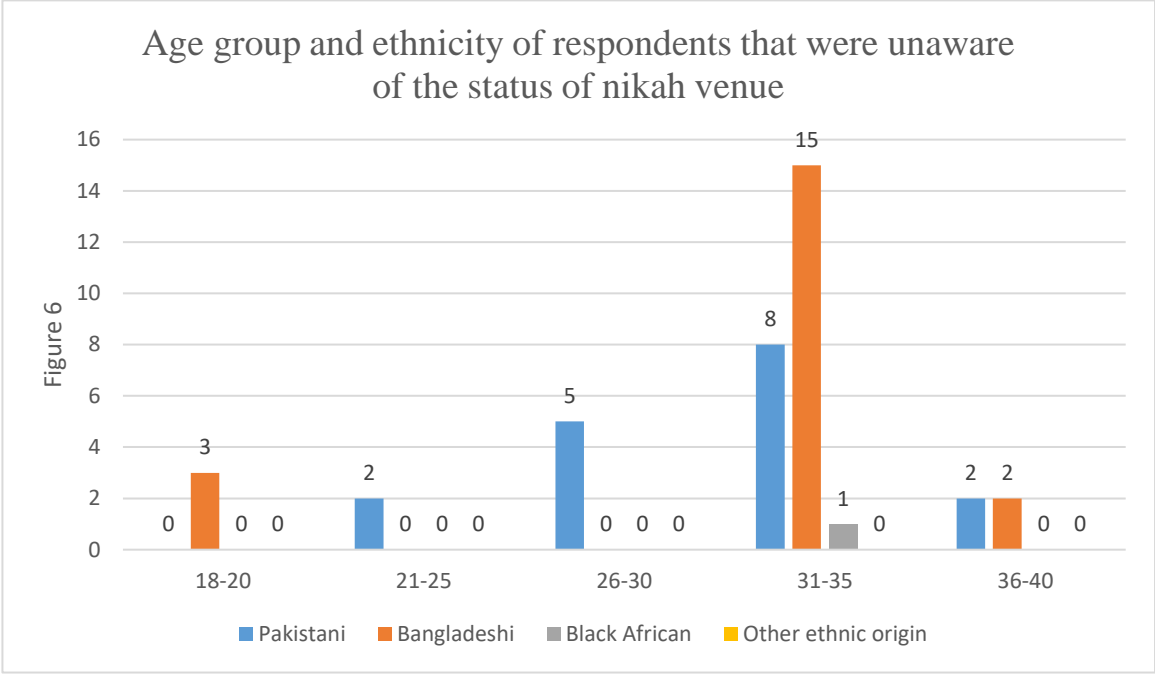
A total number of 110 fully completed questionnaire were returned. Table 4 illustrates the total number of survey respondents from the various ethnic groups.

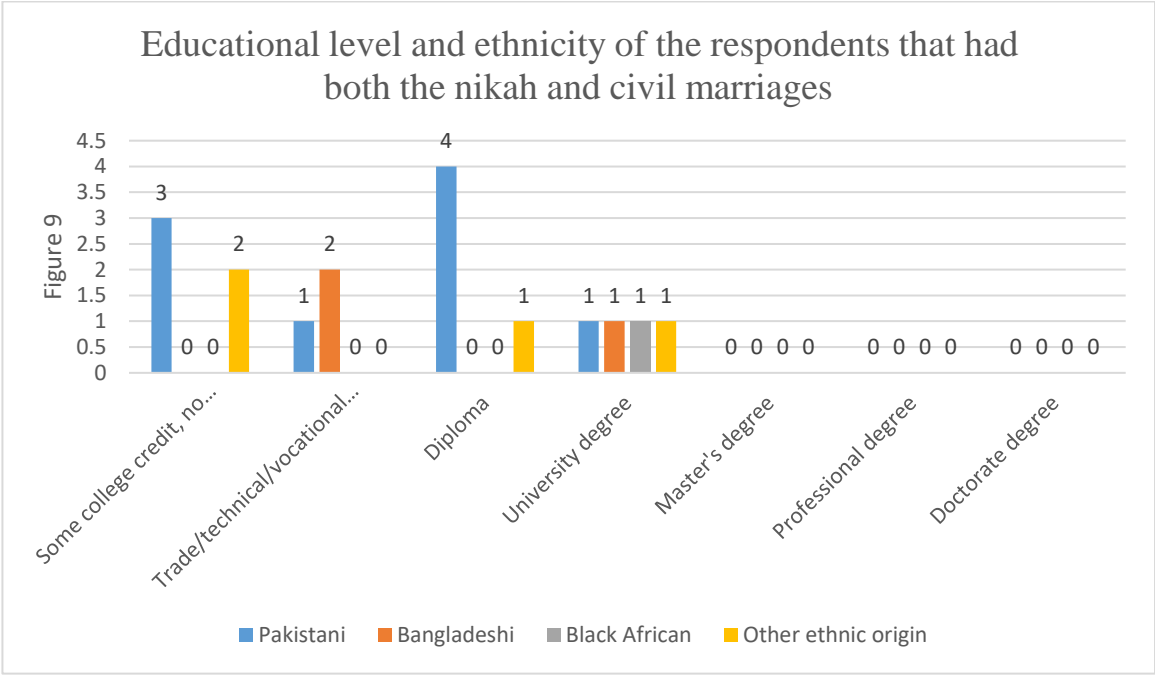
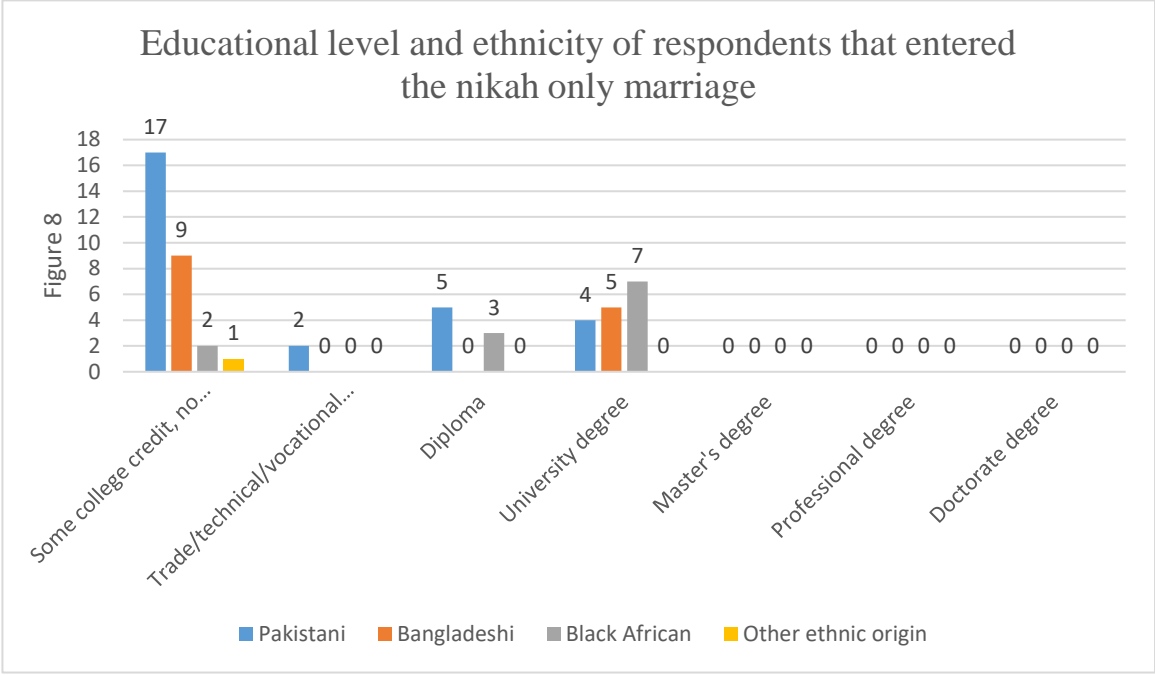
Table 4: Ethnicity of respondents to the survey

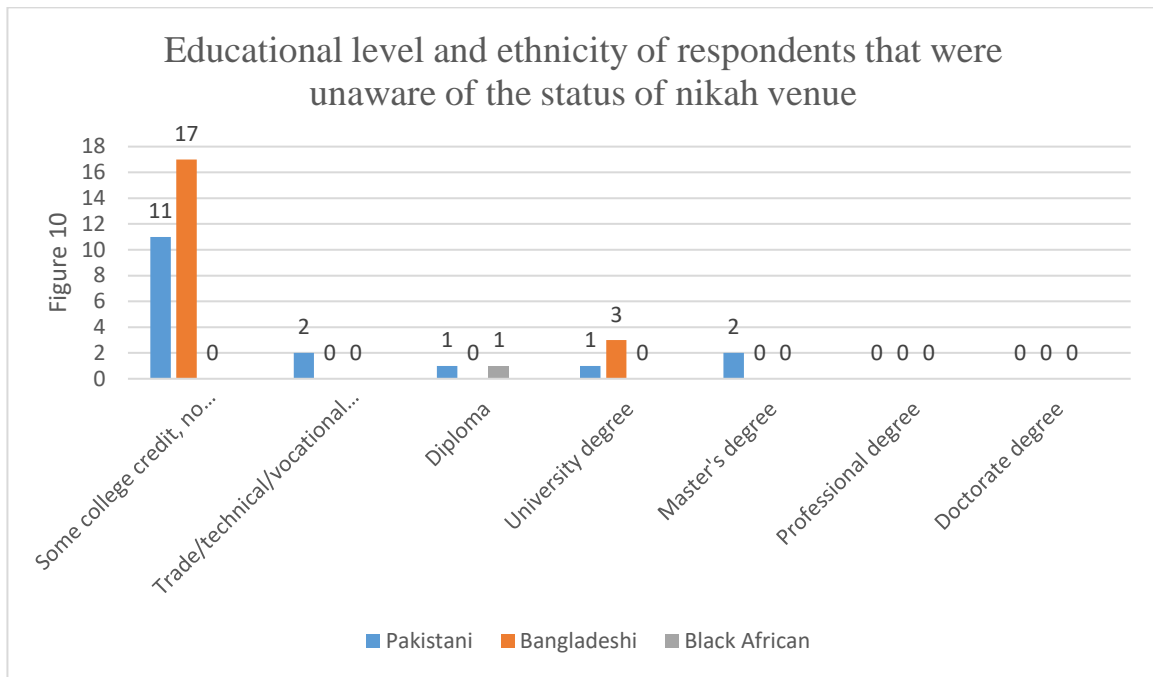
Asian/Pakistani	54
Asian/Bangladeshi	37
Black /African	14
Other	5





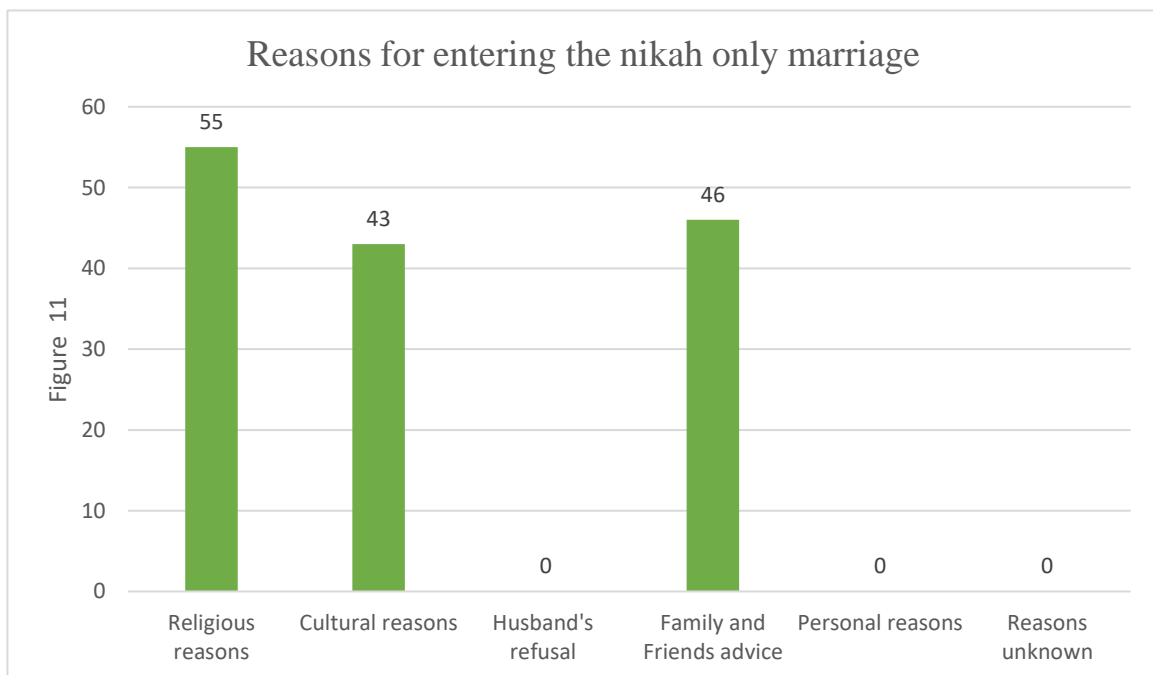




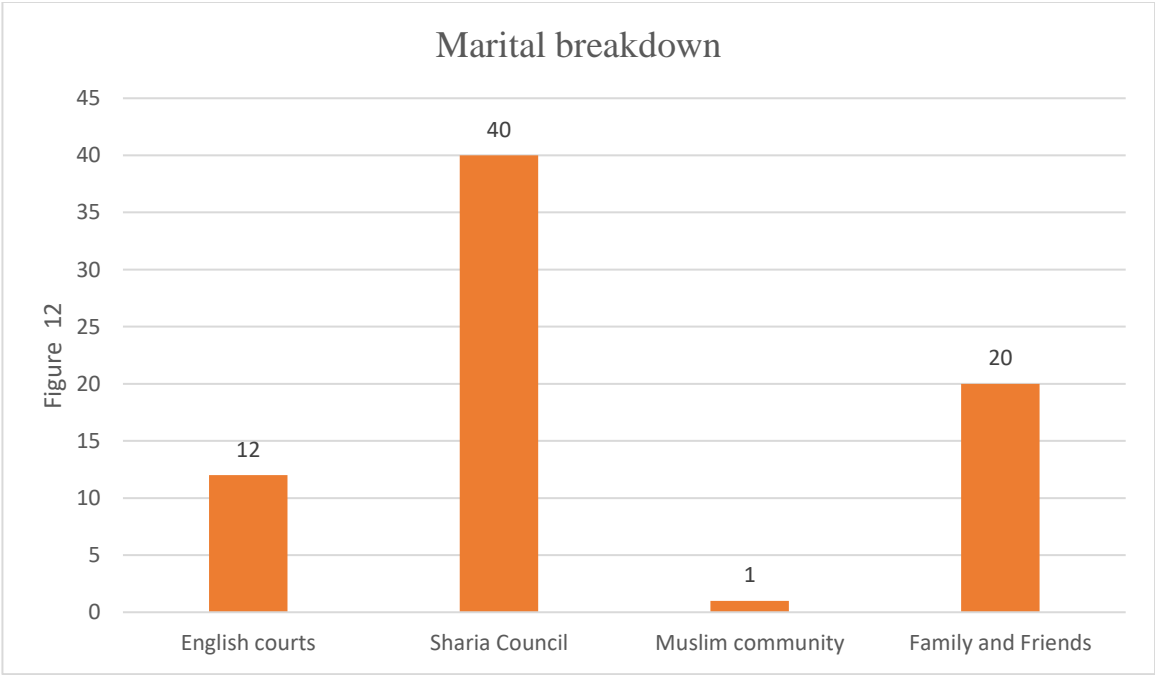


55 respondents and the nikah only marriage

A total number of 55 respondents who had the nikah only marriages, proceeded to the next question about the reasons for entering the nikah only marriage. Respondents had the option to select all that applies to them.



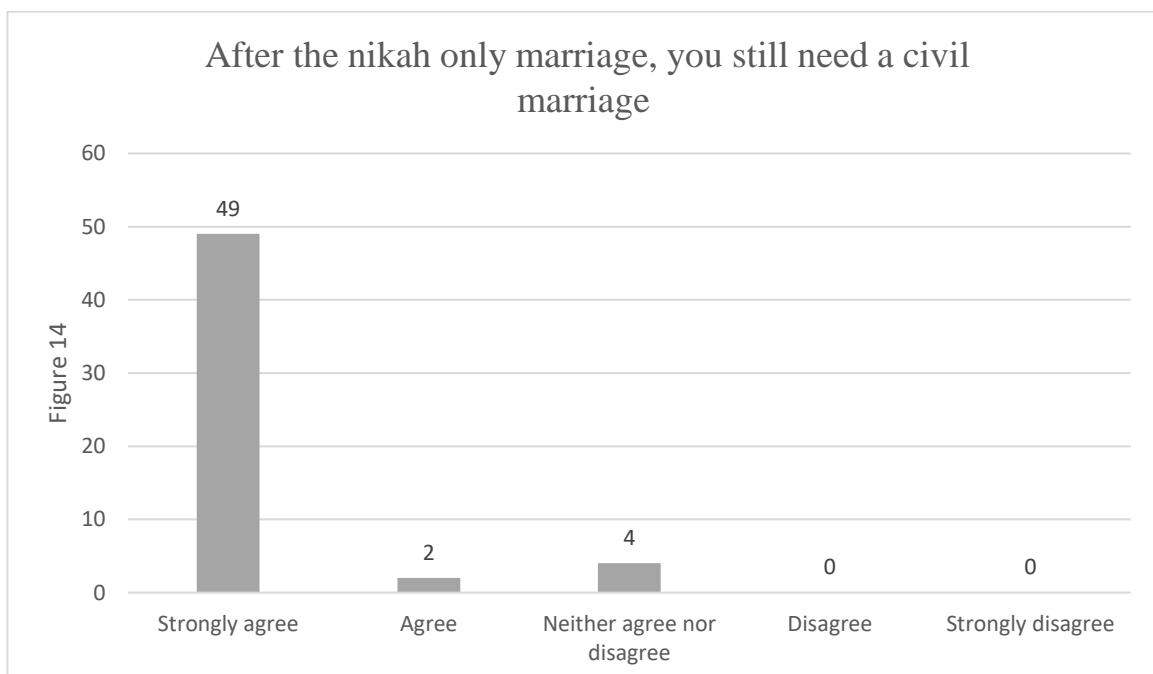
The 55 respondents who selected the nikah only marriage further proceeded to the next question about in the event of marital breakdown where to seek support. Respondents had the option to select all that applies to them. Out of the 12 respondents that selected English courts, 5 also selected Sharia Council, 10 family and friends. Out of the 40 respondents who selected Sharia Council, 2 selected English court, 1 selected Muslim community and 10 selected family and friends. Out of the 20 respondents that selected family and Friends, 18 selected Sharia Council and 7 selected English courts.



The participants opinions and perceptions were measured using the Likert scale. Participants were asked whether they believed a civil marriage/nikah in a registered building is a legally recognised marriage in Britain.



For the final question, participants were asked after the nikah only marriage, you still need civil marriage.



5.3 The problem of segregation

The problem of segregation was one of the major themes that emerged within this research on analysis of the interview findings. Segregation is a multi-dimensional complex problem and integral spatial phenomenon.¹⁰⁰² Segregation emerges as a result of different social, economic processes and ethnic difference of minority ethnic groups.¹⁰⁰³ Hoa for example, had an arranged marriage and is a member of a particular Muslim society in Birmingham mentioned that civil marriage is not common in her community. She states “My husband and I belong to the same association, community of Muslims and no one has ever mentioned or even discussed about civil marriage. It seems unpopular here” (Alum Rock, Birmingham).

Although no community in Britain is entirely homogenous, religious and ethnic minorities tend to live in areas known to have high concentration of minorities in the country.¹⁰⁰⁴

Uslaner argues that segregation makes interaction with people of distinct background unlikely, is associated with inequality which is said to be crucial in determining trust.¹⁰⁰⁵

Datik who is in an interracial marriage mentioned that “The nikah marriage is very popular in my area and no one is concerned about the British marriage even the newly wedded” (Walthamstow, London). Furthermore, Ariye and Dasina both grew up in the same Asian community mentioned their reasons for the nikah only marriage. While Ariye mentions “I was born and raised in Bordesley Green by old fashioned routine parents. All my relatives had the nikah marriage and it was something I was looking forward to. I had always envied my aunties because of their nice attires, jewellery, make up, gifts. It is all have known and

¹⁰⁰² Laura Vaughan and Sonia Arbaci, ‘The Challenges of Understanding Urban Segregation’ (2011) 37(2) *Perspectives on Urban Segregation* 128.

¹⁰⁰³ Douglas Massey and Nancy Denton, ‘The Dimensions of Residential Segregation’ (1988) 67(2) *Social Forces* 281.

¹⁰⁰⁴ Home Office, *Strength in Diversity: Towards a Community Cohesion and Race Equality Strategy* (London: Home Office 2004) 3.

¹⁰⁰⁵ Eric Uslaner, ‘Segregation, Mistrust and Minorities’ (2010) 10 (4) *Ethnicities* 415.

seen in my community growing up” (Bordesley Green, Birmingham). Similarly, Dasina explains “I live in an Asian neighbourhood and there is always a nikah marriage taking place in one of the houses. In fact, Saturdays are for weddings in this area” (Bordesley Green, Birmingham). Yayi who is married to her cousin spoke about discussions about Islam, the nikah and culture was an important part of how she was raised. She mentioned “I have attended not less than fifteen nikah ceremonies in my area” (Leicester).

The comments from these participants show the impact of segregation and the subsequent lack of social interaction with the majority in the society. This results in a repeated circle of “imitating what others are doing” without regard to the requirements of the legal system especially in relation to the law on marriage in Britain. Amin argues that segregation of Asians and cultural isolation are as a result of lack of options for minorities due to the discriminatory practices of the council housing policies.¹⁰⁰⁶

Simpson explains the reasons for segregation as when “mutual support between those with similar language, cultural and religious traditions, which are not well served by indigenous religious and secular networks, led naturally to very local concentrations”¹⁰⁰⁷ This is in line with the view that majority of British Muslims have settled in areas known for a large population of migrant communities.¹⁰⁰⁸ This has resulted in poor levels of engagement in governments initiatives, self-sufficiency within the Muslim community to solve their everyday problems.¹⁰⁰⁹

¹⁰⁰⁶ Ash Amin, ‘Ethnicity and the Multicultural City: Living with Diversity (2002) 34 Environment and Planning A 959.

¹⁰⁰⁷ Ludi Simpson, ‘Statistics of Racial Segregation: Measures, Evidence and Policy’ (2004) 41(3) Urban Studies 661.

¹⁰⁰⁸ Ceri Peach, ‘Muslim in the UK’ in Tahir Abbas (eds), *Muslim Britain: Communities Under Pressure* (Zed Books 2005).

¹⁰⁰⁹ Tahir Abbas, ‘Muslims in Birmingham’ (2006) Background Paper for the University of Oxford Centre on Migration Policy and Society 17.

However, legal pluralism and community cohesion that applies to the whole of Britain could be the solution to the problems of unregistered Muslim marriage in Britain. For instance, the recognition of plurality of laws in Britain, the official law and non-state legal system such as the nikah only marriage. This resonates with the idea behind legal pluralism in the society as the co-existence of two or more legal systems within the same social field occasionally contradicting each other¹⁰¹⁰ which might consist of official laws and unofficial laws.¹⁰¹¹ Furthermore, these participant's comments show the difference in Britain where some minority ethnic groups tend to follow their system of religious laws irrespective of the existence of the laws applicable in the country. This relates to the argument on multiculturalism and the accommodation of the diverse religious and cultural practices in Britain. Thus, multiculturalism is the recognition of ethnic difference in the society in relation to laws and policies in UK.¹⁰¹² Akhtar, Probert and Moors expressed the view that there is an expectation that Muslims would view or approach marriage in different ways due to diversity of ethnic groups in Britain.¹⁰¹³ An interpretation of the participants' comments in this study suggest the existence of both multiculturalism and legal pluralism in Britain.

Meanwhile, community cohesion relates to the terms: for example, community, neighbourhood, differentiation, inclusion and exclusion.¹⁰¹⁴ In other words, community cohesion is a way of supporting minority ethnic groups to integrate into the society in order to develop shared vision and goals.¹⁰¹⁵ However, Gaffikin and Morrissey acknowledges that it

¹⁰¹⁰ Rouland and Sionaidh (n465).

¹⁰¹¹ Chiba (n470).

¹⁰¹² Parekh (n589).

¹⁰¹³ Akhtar, Probert and Moors (n180).

¹⁰¹⁴ Ted Cantle, 'Community Cohesion: A Report of the Independent Review Team (London: Home office 2001) 13.

¹⁰¹⁵ Frank Gaffikin and Mike Morrissey, 'Community Cohesion and social Inclusion: Unravelling a Complex Relationship' (2011) 48(6) Urban Studies 1089.

may be difficult to accomplish community cohesion due to the large numbers of residential segregation found in Britain.¹⁰¹⁶

An overview of the census figures of participants from the three towns in Birmingham and Walthamstow in London used in this study illustrates the problem of residential segregation in Britain. The reason for using these towns for this analysis is that participants were recruited from these specific towns unlike Bradford and Leicester where the recruited participants were spread across the cities.

Alum Rock was one of the towns in Birmingham that had a total number of five participants out of the thirty-three British Muslim women that participated in the semi-structured interviews in this study. Three had knowledge of civil marriage although one equated entering a civil marriage meant a divorce in the future while the other two felt that their marriage was valid because it was entered in the UK. According to the 2011 census figures, it has a population of 25,487 out of which Pakistanis are 14,926, Bangladeshi 1,901, Black African 1,108 while other ethnic groups are 436. It is said to be amongst Birmingham's most deprived wards and has the third lowest average income out of the city's 69 wards.¹⁰¹⁷

Sparkhill was another town in Birmingham used in this study that had a total number of four out of the thirty-three participants. Two had knowledge of the civil marriage while the other two had little to no knowledge of civil marriage. The population according to the 2011 figures shows that it has 20,309 residents of which 11,562 are Pakistanis, 961 Bangladeshi, Black Africans 382 and 681 other ethnic groups and mid ranking in terms of deprivation levels.¹⁰¹⁸

¹⁰¹⁶ Ibid.

¹⁰¹⁷ <https://www.ons.gov.uk/census/2011census> accessed 16 January 2021.

¹⁰¹⁸ Ibid.

Bordesley Green Birmingham had a total number of four participants out of the thirty-three participants used in this study. Two had knowledge of civil marriage but one equated civil marriage to divorce whilst the other two had little to no knowledge of civil marriage. Census figures reveal that it has a population of 11,796 residents of which 4,844 are Pakistani, 1,530 Bangladeshi, 783 Black African, 595 for other ethnic groups and classed amongst the most deprived towns in Birmingham.¹⁰¹⁹

Walthamstow in London was a town used in this research that had a total number of nine out of the thirty-three participants. Seven participants had knowledge of civil marriage although three equated entering a civil marriage to divorce in the future while the other two felt that their marriage was valid because it was entered in the UK. Walthamstow is estimated to have a total of population of 277,000 people according to the 2019 mid-year population by the Office of National Statistics with 53 percent of the residents from a minority ethnic background.¹⁰²⁰

Self-segregation of ethnic minorities is said to be major reason for the increasing ethnic concentrations.¹⁰²¹ The effect of ethnic concentration is that minority ethnic groups are to some extent protected by cultural pluralism in respect to physical and social groups.¹⁰²² Central to this assertion is the idea that self-segregation is based on the notion of ethnic identity “which understates the permeability of the boundaries between sociocultural and religious groups, the diversity of British Muslim people's identifications, and their varied strategies for social interaction”.¹⁰²³ On the contrary, Karlsen and Nazroon argue that :

¹⁰¹⁹ Ibid.

¹⁰²⁰ <https://www.walthamforest.gov.uk/content/statistics-about-borough> accessed 16 January 2021.

¹⁰²¹ Gideon Bolt, ‘Combating Residential Segregation of Ethnic Minorities in European Cities’ (2009) 24(4) *Journal of Housing and the Built Environment* 397.

¹⁰²² David Voas and Fenella Fleischmann, ‘Islam Moves West: Religious Change in the First and Second Generations’ (2012) 38 *Annual Review of Sociology* 525.

¹⁰²³ Deborah Phillips, ‘Parallel Lives? Challenging Discourses of British Muslim Self-Segregation’ (2006) 24 *Environment and Planning D: Society and Space* 25.

‘To view the social, economic, political and geographical organisation of Muslim groups as simply self-segregation by those unwilling to cooperate - ignoring the nature of their relationships with and within their country of residence - is to deny the complexities of the situation’.¹⁰²⁴

This problem of segregation is still prevalent in Britain from the analysis of the census figures, interview and the survey questionnaire finding. The issue of ethnic segregation can be resolved by “scattered-site programmes” and housing allocation procedures that are designed at diffusing housing to all ethnic neighbourhoods.¹⁰²⁵ The government in the Integrated Communities Strategy Green Paper promises to tackle segregation that divide communities in the following words:

‘Segregation undermines our unity as a nation and prevents those in isolated communities from playing a full part in society and benefiting from the opportunities that living in Britain brings. This strategy sets out ambitious goals to tackle the root causes of a lack of integration – including a lack of social mixing in some of our neighbourhoods and schools, unemployment and poor English language skills’.¹⁰²⁶ The findings from the semi-structured interview and survey from this study revealed that British Muslim women will continue to give priority to religious marriage. The best method to overcome this issue of segregation is a gradual inclusive policy such as community cohesion that applies to the whole of Britain. Community cohesion will promote inclusive policies such as shared visions, values and social interaction among the majority in the society because the scattered housing policy will not resolve this issue due to self-segregation.

¹⁰²⁴ Saffron Karlsen and James Nazroon, ‘Influences on Forms of National Identity and Feeling ‘at Home’ Among Muslim Groups in Britain, German and Spain’ (2013) 13 (6) *Ethnicities* 689.

¹⁰²⁵ *Ibid* at 107.

¹⁰²⁶ HM Government, Integrated Communities Strategy Green Paper’ (March 2018) < [Integrated Communities Strategy Green Paper - March 2018 \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/681127/Integrated_Communities_Strategy_Green_Paper_-_March_2018.pdf) > accessed 21 January 2021.

5.3.1 “Civil marriage is for the whites”

One of the subthemes to emerge from the analysis of the problems of segregation in this study was "civil marriage is for the whites". Some of the participants interviewed in this study expressed disapproval for civil marriage based on the idea that it is for whites. Hoa for example stated that “I have little knowledge of civil marriage and know it is for the whites” (Alum Rock, Birmingham) while Eenine mentioned that “It may be popular among the whites but is not popular in my community” (Bordesley Green, Birmingham).

A population is said to be segregated when individuals of the same nationality, ethnicity are represented disproportionately in specific areas of residence or even schools.¹⁰²⁷ This issue has been construed to relate to lack of community cohesion and the need to mix with members of different cultural groups as a measure to curb segregation of minority ethnic groups.¹⁰²⁸ Ratcliffe explains that community cohesion in Britain has been understood to mean communal living which signifies social interaction and acceptance of diversity.¹⁰²⁹ Participants in this study live in segregated communities in Britain, culturally they do not seem to engage with other communities’ practices and this may have led to their perspective on civil marriages. For example, Pnami stated that “I have some knowledge of civil marriage and I know it is for the whites. It is not in my culture to have a civil marriage. Civil marriage is not popular in my community” (Walthamstow, London). In similar vein, Fetzimi explains “While British people have civil marriage as part of the culture, we have the nikah marriage. You will not see a white person having the nikah unless he is getting married to an Asian woman” (Alum Rock, Birmingham).

¹⁰²⁷ Alan Carling, ‘The Curious Case of Mis-Claimed Myth Claims: Ethnic Segregation, Polarisation and the Future of Bradford’ (2008) 45(3) *Urban studies* 553.

¹⁰²⁸ *Ibid.*

¹⁰²⁹ Peter Ratcliffe, ‘Community Cohesion: Reflections on a Flawed Paradigm’ (2012) 32(2) *Critical Social Policy* 262.

Nerimi's response is rich in detail, and she draws on her previous experience with her former boyfriend that led to the decision to have a nikah only marriage. She discussed marriage when she was in college at about 16 years of age. She was at the time in an interracial relationship and her then boyfriend refused to entertain a discussion about the nikah and insisted that they would have a civil marriage only. When she spoke to her mum about it, her mum responded, "civil marriage is for the whites" (Sparkhill, Birmingham).

Hoa had no choice in the decision to have a nikah because her parents and in-laws decided as her marriage was arranged. Even though she had little knowledge of the civil marriage, she still referred to it as marriage for the whites.

There were similarities in the responses of Pnami and Fetzimi. For instance, while Pnami stated that it is the culture of the whites to have a civil marriage and not for Muslims. Fetzimi also likened civil marriage to whites and nikah marriage to Muslims.

The participants' responses in this study raises the issue of critical race theory and the perspectives of minorities in the society. In this regard, this study demonstrated the issue of race in the society and the experiential knowledge of minorities in the society. Ariye for example was very blunt in her response when she cited "We have not really thought about having a British marriage and I know it is for the whites and not for brown skin people".

(Bordesley Green, Birmingham). Ariye's response is in line with one of the principles of critical race theory that emphasises the importance of voices, insights and experiences of minorities ethnic groups in the society.¹⁰³⁰ Furthermore, the disapproval of civil marriage by some of the interview participants in this study seemed somewhat related to what Yilmaz's¹⁰³¹ literature explained in chapter 3 of this thesis about Muslim's resistance and avoidance of English law. Yilmaz stated that the Muslim community regard Muslim law as dominant and

¹⁰³⁰ Nicola Rollock and David Gillborn, 'Critical Race Theory (CRT) (2011) British Educational Research Association 1.

¹⁰³¹ Yilmaz (n557).

supreme over English law; that Muslims comply with Muslim law by engaging in avoidance and resistance to English law.

Abbas attributes the low rate of educational achievement among minority ethnic groups to first, educational level of achievement of parents, social and economic status, second, the actions and perspectives of the mainstream society towards Muslim minorities, finally, the effect of encounters with social institutions as well as methods of cultural and political exchange.¹⁰³²

Abbas's literature is congruent to Jenika and Huoni's responses for example, Jenika referred to pressure from family members to have a nikah only marriage and she did not have an option to choose. She cited "My knowledge of civil marriage is basic, but I know it is for the whites. I need to pay more attention to what is going on in the society. Civil marriage is not popular in my community" (Sparkhill, Birmingham). Furthermore, Huoni mentioned that her parents would have been disappointed if she had a civil marriage which she referred to as "British marriage, marriage for white people and it is their own culture" (Walthamstow, London).

Jenika also spoke about the fact that not everyone will accept to have civil marriage after the religious ceremony and Huoni mentioned that while in college, she had white friends who discussed about civil marriage, the same way she discussed about the nikah marriage. Jenika, Huoni as well as other participants comments in this study raises the issue of segregation which brings about isolation, failure to take into consideration the demands of the society and the role of parents in the decision-making process of their children which will be discussed later in this chapter.

Interestingly, despite knowledge of civil marriage, both Kayad and Yayi viewed civil marriage from different perspectives: Yayi stated, "I think it is not necessary, civil marriage is only for the whites" (Leicester) while Kayad referred to civil marriage as British marriage and stated, "It is for the whites and people who are planning to divorce in the future" (Walthamstow,

¹⁰³² Abbas (n20).

London). Furthermore, both participants had a similar tone in the sense that they referred to the fact that their parents did not have a civil marriage and used an example of the longevity of their parent's nikah marriage.

5.3.2 The issue of divorce

One of subthemes to emerge from the analysis of the problem of segregation in this study was the issue of divorce. Majority of the participants interviewed in this study mentioned that the Muslim community does not support divorce and as a result the need for a civil marriage was irrelevant. Eoni for example mentioned that she is not interested in having a civil marriage “that the Muslim community does not accept divorce. If I have any problems in my marriage, my family members are there to assist. We also have the support of the Muslim community and Council” (Leicester). Kayad said that having a civil marriage means that you are planning for divorce in the future, she stated “The Muslim community does not support divorce. When we have a problem in our marriage, we take it to our families, and they settle the issue. I have witnessed the good and bad times in my marriage and never considered divorcing my husband. This tells you how determined we are to make our marriage work” (Walthamstow, London). Furthermore, Dza said “I and my husband share the same views about marriage, and we do not support divorce. We have a supportive family” (Bradford).

These comments illustrate the importance of the nikah in the Muslim community as indicated by previous studies conducted by Akhtar¹⁰³³ and Uddin¹⁰³⁴ discussed in Chapter 2 of this thesis. This study also established the importance of the nikah in the Muslim community and moves further to investigate the reasons participants are rejecting the idea of a civil marriage that would rectify a defective religious ceremony. The statements by the participants in this study that

¹⁰³³ Akhtar (n197).

¹⁰³⁴ Uddin (n5).

having a civil marriage is tantamount to planning a divorce in the future was in reference to when you enter a nikah marriage, the marriage will not come to an end because the Muslim community does not support divorce.

Furthermore, the comments by participants in this study illustrate the respect attached to the Muslim community and families. Participants in this study seem to have a misconception about the place of divorce in the Muslim community. As previously stated, Muslim women are permitted to divorce although the expectation is that they provide genuine justification or in exceptional circumstances.¹⁰³⁵ These participants somewhat view divorce as a taboo which means in the event of dispute in their marriage, the issue will be resolved within the community without the need for a divorce.

Vony expressed rejection of civil marriage and referred to it as a “borrowed marriage” explains “We are not interested in having a civil marriage. It brings problems like divorce in a marriage. If we have any problems in our marriage, our family members are there to support or the Muslim community or Council” (Walthamstow, London). Abdi grew up in a very strict old-fashioned family and is married to her cousin. She explains that her husband is educated and understands the importance of a civil marriage. He agreed to have both the nikah and civil marriage because they understand that a nikah in a private home is not a valid marriage in the UK. However, their parents objected to a civil marriage. She highlights “My mum said when you follow British way of marriage, it brings problems to the marriage like divorce. You know that in the Muslim community, we do not believe in divorce. We prefer to settle our problems within the family unit, only difficult problems are settled by the community or the Council” (Walthamstow, London).

Junau views marriage from the perspective of her parent’s nikah marriage. Junau also grew up in a strict Asian religious background and has little knowledge of civil marriage which she

¹⁰³⁵ Ahmad (n67).

referred to as “British marriage”. She emphasised that her parents had only a religious ceremony. She highlights “Maybe my parents would be divorced if they had a civil marriage, who knows. Civil marriage is not something I can see myself doing” (Bradford).

Deeply rooted in these comments is the notion of Muslim personal law which exists in the UK within the private realm. For instance, these participants mentioned that as the Muslim community does not support, any issue in their marriage will be settled by the Sharia Council or the Muslim community. However, the British legal systems irrespective of ethnicity applies to all citizens and Islamic law only applies in areas permitted by law. Furthermore, these comments shed light on how some Muslim women perceive alternative dispute resolution mechanisms. As previously discussed in chapter 2 in this thesis, Sharia Councils are male-dominated, discriminatory against women and as a result, women begin at a disadvantageous position when they seek divorce. Essentially, some of the participants who mentioned that the Sharia Council will resolve their problems may be shocked at the outcome.

Meanwhile, Huoni even with her knowledge of civil marriage argued against the idea of a civil marriage. She explains “In my culture and community, we do not support divorce. You only talk about legality when it comes to divorce. I know there will be hard times in my marriage but will never consider a divorce and that’s why I do not need a civil marriage” (Walthamstow, London). Osmari and Zayida on the other hand, have little knowledge about civil marriage. Osmari put forward the argument “I am not saying that I have anything against civil marriage but there are some problems that come with the marriage especially divorce. The government is there to support you and that’s why there is a high rate of divorce among the whites. They don’t make any effort to resolve marital problems. Unlike the nikah marriage, you settle marital problems first with family and in rare cases the Council. The Muslim community does not support divorce” (Bradford). While Zayida states “I am not interested in having a civil marriage, but it is good to know about it. There is a lot of divorce in Britain, and it may be

because they have a certificate attached to civil marriage that gives them rights. Instead of couples to resolve their differences within the family, they divorce and start looking for properties to share” (Alum Rock, Birmingham).

Huoni, Osmari and Zayida’s responses show that they understand the legal implications of having a nikah only marriage. These participants have linked the idea of having a civil marriage with the potential of divorce. As they are opposed to the idea of divorce, they feel that having a civil marriage is irrelevant. Also, it could be that these participants are referring to the financial expenses in getting a divorce if they enter a civil marriage. Notwithstanding the above discussion, Abdi’s only obstacle to having a civil marriage is that they are currently living in her husband’s family home and need to be independent. She states that they do not need parental consent for a civil marriage. Abdi’s response demonstrates the lack of urgency to have a civil marriage and she is no different to other participants in this study despite her knowledge of civil marriage. This lack of urgency to have a civil marriage may be detrimental to Abdi and she will be in the same position as participants in this study who have rejected civil marriage on the breakdown of her nikah as no one can predict the future.

Dasina explained that she is not opened to having a “British” marriage and her husband is “totally” against the idea of a civil marriage. She expressed commitment to her marriage and maintains “if I have marital problems, both families will resolve the issue. The Muslim community does not support” (Bordesley Green, Birmingham). Meanwhile, Jaguri has knowledge of civil marriage and was concerned about the status of her marriage because she understands the legal implications of having a nikah. She explained that she had a discussion with her husband to have the nikah first to show respect to the family and then the civil marriage, but her husband refused. She has no marriage certificate and feels sad. Her husband said, “if we have a civil marriage, we will end up getting a divorce because of rights, we don’t need a piece of paper to validate our marriage. There is nothing I can do about it; I cannot

pressure him to do something he does not want to do. Both parties need to be in the same head space for a marriage to work. I don't talk about it again because anytime I remember it, I feel sad" (Walthamstow, London). The statements by participants in this study about husband's refusal to have a civil marriage confirms previous studies conducted by Vora¹⁰³⁶ as discussed in Chapter 2 of this thesis. However, none of the participants in the survey selected husband's refusal as a reason for the nikah only marriage as shown in figure 11.

In Dasina and Jaguri's responses, it is apparent that we can see some features of patriarchy in their husband's comments. Dasina seemed to be motivated by the desire to be committed to her nikah marriage and this could be the reason she is opposed to the idea of a civil marriage while her husband is completely against the idea of having a civil marriage. Jaguri's husband feels that entering a civil marriage will result in a divorce because she will have knowledge of her rights as a British Muslim woman. These comments indicate some features of patriarchy such as women oppression, power imbalance between men and women, domination and control.¹⁰³⁷ As reflected in Jaguri's husband response, we can see that Jaguri has suppressed her feelings due to domination and control of her husband. Furthermore, these comments about husband's refusal to have a civil marriage may be linked to the husband's desire to be in a polygamous marriage and therefore avoid the consequence of being charged for the criminal offence of bigamy. In addition, it seems that these husbands are trying to avoid the financial expenses involved in getting a divorce as shown in their comments.

Nonetheless, the results of the survey as shown in Figure 12 confirms the findings of the interview in relation to the fact that out of 55 participants, a total number of 40 respondents selected Sharia Council as a place where they will seek support in the event of marital breakdown while 12 selected English courts. Surprisingly only 1 participant selected Muslim

¹⁰³⁶ Vora (n4).

¹⁰³⁷ Hartmann (n366) and Walby (n368).

community. It is worthy to note that more people were surveyed compared to the interviews.

5.3.3 Neighbourhood

One of the subthemes to emerge from the analysis of the problem of segregation in this study was neighbourhood. A minority of the participants in this study commented on the neighbourhood meetings, the lack of discussion and awareness on the importance of having a civil marriage after a nikah marriage in a private residence. Datik for example, said “There is no discussion about civil marriage in meetings or even marriage seminars” (Walthamstow, London). Similarly, Vony expressed “Any discussion about marriage in my neighbourhood meeting is about nikah. No one talks about civil marriage” (Walthamstow, London). In addition, Yayi mentioned that “My husband and I belong to the same community and attend meetings” (Leicester).

Kearns and Parkinson found that neighbourhood exists at three different levels: first, the home area serves a psycho-social purpose of promoting identity, establishing a sense of belonging and values; second, the locality for social interaction, status in addition to position and finally, urban district or region that provides a broad variety of economic and social events.¹⁰³⁸ Furthermore, Lupton asserts that minorities in segregated areas tend to form their own social group, and this applies to minorities in a well-connected area.¹⁰³⁹

Forrest and Kearns assert that the neighbourhood we live in plays significant role in the socialisation process, and that the “identity and contextual roles of the neighbourhood are closely linked to one another”.¹⁰⁴⁰ Lola for example mentioned “Anytime we are discussing about marriage in our meetings, it is about the nikah. We support the ladies who are engaged

¹⁰³⁸ Ade Kearns and Michael Parkinson, ‘The Significance of Neighbourhood’ (2001) 38(12) Urban Studies 2103.

¹⁰³⁹ Ruth Lupton, ‘Neighbourhood Effects: Can We Measure Them and Does it Matter’ (2003) Centre for Analysis of Social Exclusion Case Paper 73.

¹⁰⁴⁰ Ray Forrest and Ade Kearns, ‘Social Cohesion, Social Capital and the Neighbourhood’ (2001) 38(12) Urban Studies 2125.

and recommend where to buy clothes, jewellery and good caterers. There is no discussion about civil marriage” (Walthamstow, London).

Datik, Vony, Yayi and Lola were among the participants in this study that commented about neighbourhood meetings and marriage seminars. The meetings are informal gatherings hosted in the community for inhabitants that live in the area depending on interest. For example, inhabitants can join groups such as socials, gym sessions, prayers, and even wedding seminars. Meetings are held to bring the community together and to support those that need help. These meetings especially the wedding seminars should be an opportunity to educate the residents on the importance of having a civil marriage after a nikah ceremony. However, according to Lola’s response, the discussion is centred on the nikah and information where they can get the best deals in relation to the ceremony in general. This is a positive aspect of community living as information is disseminated easily but it also has negative implications as a reasonable number of people will imitate others. Moreover, as participants in this study live in segregated communities, there is a tendency not to consider the legal implications of having a nikah only marriage for some of the reasons established in this study. This is line with the argument by Buck that the effect an area might have on its inhabitants are related to physical and institutional characteristics such that norms are disseminated by means of peer group influence.¹⁰⁴¹ Kirk and Laub, concur with the above argument and write that the inhabitants of a neighbourhood can make a difference in terms of social network and influence informal social control.¹⁰⁴² For example, Datik expressed disappointment that the meetings and wedding seminars conducted in the neighbourhood does not serve as an enlightenment programme to educate British Muslim women on the importance of the civil marriage after a religious

¹⁰⁴¹ Nick Buck, ‘Identifying Neighbourhood Effects on social Exclusion’ (2001) 38(12) *Urban Studies* 2251.

¹⁰⁴² David Kirk and John Laub, ‘Neighbourhood Change and Crime in the Modern Metropolis’ (2010) 39(1) *Crime and Justice* 441.

ceremony. She highlighted that she would educate her kids on the importance of a civil marriage after a religious wedding.

It must be stressed that the perspective an individual has about a society can determine the neighbourhood he or she lives in.¹⁰⁴³ On the other hand, that same neighbourhood can influence the decision on how the society is constructed.¹⁰⁴⁴ A predominant aspect of South Asian population is the high level of residential concentration in areas where the inhabitants are ethnically and culturally distinct.¹⁰⁴⁵ Neighbourhoods with a high percentage of ethnic minority residents that not properly integrated into the society will produce individuals who disregard and discredit mainstream societal civic values and norms.¹⁰⁴⁶ Suni for example grew up in a very religious background with the extended family and five siblings. To keep up with the family roots, while in college and during summer holidays, her parents will take her to Pakistan. She stated, “I wanted to belong to my community; We have meetings for married women, and all entered into a nikah marriage” (Bradford).

These Muslim neighbourhoods transmit knowledge through transnational networks to individuals of the same ethnic origin.¹⁰⁴⁷ This most likely results in neighbourhood attachment which means the extent people are attached to their neighbourhood and circumstantial networks.¹⁰⁴⁸ Maliza explained “nikah marriage is a very common discussion in my neighbourhood meetings, and I feel that we are in a competition as to who will have the most expensive ceremony” (Walthamstow, London). This resonates with argument by Alesina and

¹⁰⁴³ Sam Griffiths, Catherine Jones, Laura Vaughan and Muki Haklay, ‘The Persistence of Suburban Centres in Greater London: Combining Conzenian and Space Syntax Approaches (2010) 14(2) *Urban Morphology* 85.

¹⁰⁴⁴ *Ibid.*

¹⁰⁴⁵ Ron Johnston, James Forrest and Michael Poulsen, ‘The Ethnic Geography of Ethnic Cities: The ‘American Model’ and Residential Concentration in London’ (2002) 2(2) *Ethnicities* 209.

¹⁰⁴⁶ Rahsaan Maxwell, ‘Trust in Government Among British Muslims: The Importance of Migration Status (2010) 32(1) *Political Behaviour* 89.

¹⁰⁴⁷ Noha Nasser, ‘The Space of Displacement: Making Muslim South Asian Place in British Neighbourhoods’ (2003) 15(1) *Traditional Dwellings and Settlements Review* 7.

¹⁰⁴⁸ Yaojun Li, Andrew Pickles and Mike Savage, ‘Social Capital and Social Trust in Britain’ (2005) 21(2) *European Sociological Review* 109.

Ferrara that individuals from the same religious and ethnic backgrounds prefer to interact among themselves and “prefer to join groups composed of individuals with preferences similar to their own”.¹⁰⁴⁹

Suni despite exposure to two worlds such as when she used to visit Pakistan, is still interested in the keeping the family roots by having a nikah only marriage. Meanwhile, as we will discover later in Chapter 6 of this thesis, that the lack of discussion of the civil marriage in the meetings has no impact on Maliza’s knowledge of the legal implications of the nikah only marriage. Maliza’s knowledge on the importance of a civil marriage illustrates that even though the meetings are where individuals share common interest, it depends on how it is received. For example, Hanson’s research reveals that social groups have shared interests, objectives, standards incorporated into their daily routines and practices that result to “different modes of spatial co-presence accomplished in patterns of local encounter”.¹⁰⁵⁰

5.3.4 Lack of integration

One of the subthemes to emerge from the analysis of the problem of segregation in this study was integration. An indication of marriage practices that do not comply with the requirements of state law is the refusal to accept a civil marriage after a religious wedding. This could be seen as a refusal to integrate into the British society. Dafinayah who grew up in an African religious background discussed that as the first child, she had always been under pressure to set a good example for her siblings. She emphasised “I am not interested in having another marriage. My sister is getting married next year, and I will not be mentioning civil marriage

¹⁰⁴⁹ Alberto Alesina and Eliana La Ferrara, ‘Participation in Heterogenous Communities’ (2000) 115(3) The Quarterly Journal of Economics 847.

¹⁰⁵⁰ Julienne Hanson, ‘Urban Transformations: A History of Design Ideas’ (2000) 5 Urban Design International 97.

to her, I don't want to start problems in my family. My parents will be disappointed in me" (Sparkhill, Birmingham).

Integration in Britain does not mean assimilation into one homogeneous culture rather it is measure of establishing that individuals from different cultural, ethnic, and religious groups are given equal opportunity to build a shared future.¹⁰⁵¹ Academic scholars have expressed concern that some ethnic minorities in Britain most especially Muslims, are not following the standard immigrant method of cultural assimilation into the society.¹⁰⁵² Eoni for instance has knowledge of the importance of a civil marriage but still expressed disapproval of it. She stated "I have some knowledge of civil marriage. I know it is the British version of nikah marriage. I am not interested in having one" (Leicester).

Dafinayah and Eoni's response is a typical example of lack of integration as explained by Gest that integration is about adjustment, adaptation and balance between minority ethnic groups and members of the society.¹⁰⁵³ Although Dafinayah has little knowledge of the civil marriage, she refused to accept it for the fear of parental disapproval. She even goes further to highlight that she will not educate her sister that is getting married the following year on the importance of a civil marriage. The effect of this is that both siblings will be in a defective marriage and in the event of breakdown of the nikah, it will be too late to rectify the marriage. Dafinayah and Eoni's responses and their attitude of reluctance to integrate by accepting a civil marriage corroborates with the argument by Morrison that Muslims are often seen as a hindrance for social cohesion as a result of their reluctance or inability to integrate into the society.¹⁰⁵⁴ In similar vein, Musterd

¹⁰⁵¹ Home Office 2004 (n1004).

¹⁰⁵² Andreas Georgiadis and Alan Manning, 'Change and Continuity Among Minority Communities in Britain' (2011) 24(2) *Journal of Population Economics* 541.

¹⁰⁵³ Justin Gest, 'Western Muslim Integration' (2012) 46(2) *Review of Middle East Studies* 190.

¹⁰⁵⁴ Ian Morrison, 'The Crisis and Governance of Religious Pluralism in Europe' (2014) 16(3) *Insight Turkey* 55.

contends that ethnic segregation and high levels of ethnic concentration will have a negative impact on integration in the society.¹⁰⁵⁵

Jenkins posits that integration does not mean that immigrants should lose their identity, culture or national characteristics but defines integration as a “ not flattening process of assimilation but as equal opportunity, coupled with cultural diversity, in an atmosphere of mutual tolerance.”¹⁰⁵⁶ To some extent, what is meant by integration is similar to assimilation, since integration is described as the convergence of the immigrants with the dominant society, rather than a two-sided process.¹⁰⁵⁷ Cadi’s response is a prime example of what Jenkins said about integration because due to religious reasons, she had the nikah marriage and still prepared to assimilate into the British society by accepting civil marriage. Cadi has knowledge of civil marriage and its requirements. She states “I will only have a civil marriage if we are considering relocating to another country. We need the marriage certificate; we need proof of marriage. For now, I don’t see the need for another marriage” (Leicester).

Even though Cadi is prepared to integrate into the society, it comes with a condition such as relocation because she will require a marriage certificate. However, if she remains in UK, then civil marriage becomes irrelevant. This attitude is driven by the fact that the Muslim community does not support divorce. Furthermore, the comments of the participants in this study confirms the argument by Giddens that the due to the diverse human cultures, it is predictable that individuals coming from one culture often find it challenging to adapt to the beliefs, attitudes, and practices of those from a different culture to theirs.¹⁰⁵⁸

Notwithstanding the above arguments, the attitude of participants in this study in relation to refusal to integrate raises the issue of multiculturalism in the UK. Multiculturalism which

¹⁰⁵⁵ Sako Musterd, ‘Segregation and Integration: A Contested Relationship’ (2003) 29(4) *Journal of Ethnic and Migration Studies* 623.

¹⁰⁵⁶ Roy Jenkins, *Essays and Speeches* (First edition, Collins Books 1967) 267.

¹⁰⁵⁷ Sevgi Cilingir, ‘Identity and Integration Among Turkish Sunni Muslims in Britain’ (2010) 12(1) *Insight Turkey* 103.

¹⁰⁵⁸ Giddens (n1178) 39.

entails multicultural accommodation of minorities especially religious marriages.¹⁰⁵⁹ The ability to accommodate differences in culture, religion can encourage social cohesion and bring about a feeling of unity of identity for all citizens.¹⁰⁶⁰

The proposed concept of social anchoring is a contemporary theoretical framework used to evaluate the approach to identity and limitation to social integration in a diverse society.¹⁰⁶¹ The focal point of this concept of social anchoring is adaptation of ethnic minority groups and individual identity in an evolving society.¹⁰⁶² Essentially, integration can be viewed as an adaptation strategy in addition to marginalisation and assimilation.¹⁰⁶³ According to Probert and Akhtar, the comments of Amure (Alum rock, Birmingham) and Umari (Leicester) and Femi (Leicester) discussed later in this chapter that it is only after the nikah marriage that they can consummate their union signifies a form of integration and not segregation.¹⁰⁶⁴ Furthermore, civil marriage also symbolises a form of integration because it illustrates acceptance of the legal form of marriage in Britain.

5.4 Maintaining izzat (honour)

Izzat was one of the major themes that emerged within this research on analysis of the interview findings. During the research, majority of participants commented on expectation, shame, honour, respect, for the family and Muslim community as reasons for entering the nikah only marriage. The notion of izzat (honour or respect) and the associated concept of “sharam” (shame) signifies the practice of Muslim women in upholding the family reputation

¹⁰⁵⁹ Tariq Modood, ‘New Paradigms in Public Policy Post-immigration ‘difference’ and Integration: The case of Muslims in Western Europe’ (2011) A Report Prepared for the British Academy 10.

¹⁰⁶⁰ Dalia Mogahed and Zsolt Nyiri, ‘Reinventing Integration: Muslims in the West’ (2007) 29(2) Harvard International Review 14.

¹⁰⁶¹ Aleksandra Grzymala-Kazłowska, ‘Social Anchoring: Immigrant Identity, Security and Integration Reconnected?’ (2016) 50(6) Sociology 1123.

¹⁰⁶² Ibid.

¹⁰⁶³ John Berry and Uichol Kim, ‘Acculturation Attitudes in Plural Societies’ (1989) 38(2) Applied Psychology 185.

¹⁰⁶⁴ Rebecca Probert and Rajnaara Akhtar, “integration: Seeing the Bigger Picture (2018) Law and Religion UK.

and name.¹⁰⁶⁵ Lola for example stated “Islam, respect for family is some of the reasons I had the nikah only marriage. The izzat is very important in any Muslim family because it upholds the honour in the family and tradition” (Walthamstow, London).

It is apparent from Lola’s response that the decision to have a religious marriage was based on personal choice which was driven by the desire to continue the family tradition. This personal choice is based on her religious belief and what she considers important in relation to her choice of marriage. Suni account echoes Lola’s for example “It shows honour, respect to the family and the Muslim community. It is called the izzat which means that we must follow the family tradition and keep up with the family roots” (Bradford). Suni’s upbringing meant that her parents had inculcated in her the expectations of the family and adherence to family traditions. Nonetheless, we will find out later in chapter 6 of this thesis that both Lola and Suni had limited knowledge of civil marriage and showed no awareness of the implications of a nikah ceremony in a private residence. The effect of this lack of awareness means that it is difficult to determine whether civil marriage would have been considered after a religious marriage.

The izzat has distinct and dynamic set of meanings for particular communities, groups, families, and cultures.¹⁰⁶⁶ The izzat refers to a concept used to illustrate a complicated set of rules that must be followed to maintain position within the community and preserve the family honour.¹⁰⁶⁷ Junau for example mentioned her reasons for the nikah only marriage “It shows respect to the family and that you are honouring the family tradition” (Bradford). In similar vein, Femi stated “Respect and honour to the family” (Leicester).

Honour is not “gender-neutral” and described by feminist as authority and control over

¹⁰⁶⁵ Mairead Enright, ‘Choice, Culture and the Politics of Belonging: The Emerging Law of Forced and Arranged Marriage’ (2009) 72(3) *Modern Law Review* 331.

¹⁰⁶⁶ Philip Gilligan and Shamim Akhtar, ‘Cultural Barriers to the Disclosure of Child Sexual Abuse in Asian Communities: Listening to What Women Say’ (2006) 36 (8) *The British Journal of Social Work* 1361.

¹⁰⁶⁷ Annela Pilkingtona, Rachel Msetfia and Ruth Watson, ‘Factors Affecting Intention to Access Psychological Services Amongst British Muslims of South Asian Origin’ (2012) 15(1) *Mental Health, Religion and Culture* 1.

women's sexuality, unequal power relations and withdrawal of access to property in some families.¹⁰⁶⁸ Furthermore, honour is referred to as a "code of honour" that stipulates the accepted standard of rules of conduct which measures a person's worth, failure to adhere to these standard results in an individual to be seen as inferior.¹⁰⁶⁹ This code of honour can be seen in the following participants responses such as Jaguri "I had the nikah only marriage because it shows respect and honour to the family" (Walthamstow, London); Amure "I entered the nikah marriage to honour my family" (Alum Rock, Birmingham); Hoa "Even honour and respect to the family are some of the reasons we have the nikah marriage" (Alum Rock, Birmingham). Finally, Osmari "It is about honour and respect to a family" (Bradford).

Majority of the participants in this study mentioned personal choice due to their religious belief as the motivation behind the nikah marriage. Junau mentioned that immediately she got engaged, her mum told her she will have the nikah marriage although she highlighted that it was her choice. Meanwhile even though Jaguri understands the notion of upholding the izzat, she had no choice to have a religious marriage because the decision was made by her husband. Furthermore, as shown in our discussion on civil marriage is for whites, for some of the participants in this study, there seemed to be an underlying sense that having a civil marriage after a religious ceremony may undermine the izzat.

It follows that the findings from the research interviews confirms the findings from the survey in this study because out of 55 respondents who selected the nikah only marriage, all 55 respondents selected religion as one of the reasons for entering the nikah only marriage as shown in figure 11.

The responses of the participants in this study raises the issue of the place of religion in Britain. This relates to the argument by Ali that as Britain is a diverse society where minority systems

¹⁰⁶⁸ Manisha Gupte, 'The Concept of Honour: Caste Ideology and Patriarchy in Rural Maharashtra' (2013) 48(18) 72.

¹⁰⁶⁹ Frank Stewart, *Honour* (University of Chicago Press 1994) 54.

co-exist to provide guidance for communities, it is at the discretion of the dominant legal system to determine if they will give recognition to the minority legal orders.¹⁰⁷⁰ In effect, the comments by the participants in this study draws attention to legal pluralism which deals with the rules or norms such as the izzat which minority ethnic communities follow even without state recognition. This paradigm of legal pluralism emphasises the importance of recognising that non- state legal systems such as religious systems may co-exist together with the state system.¹⁰⁷¹

The consequence of the izzat is that women are in a sensitive and vulnerable position and “become the subject and object of the family izzat”.¹⁰⁷² Xani’s response is a clear example of becoming the subject and object of the family izzat. She graduated from university at the age of 22 and before she got married, she researched the legal implications of both the nikah and civil marriages. She stated “I had my nikah in my husband’s family house just to please both families. I knew it was not the right thing to do but I went ahead with it” (Sparkhill, Birmingham). Xani’s response resonates with Chew-Graham’s argument that the izzat in some families is given priority over the happiness of children and it is used to emphasise the role of women in the family.¹⁰⁷³

The advantages of honour in the Muslim community are self-awareness/ pride, increased security, better business opportunities, providing stability in a new environment and a feeling of superiority in relation to members of other ethnic group or religion.¹⁰⁷⁴ These advantages could be considered as one of the factors that participants in this study had a nikah marriage.

Poulter opines that “most Asians in Britain feel a strong moral obligation to preserve the honour

¹⁰⁷⁰ Ali (n174).

¹⁰⁷¹ Forsyth (n478).

¹⁰⁷² Shah and Iqbal (n1118).

¹⁰⁷³ Carolyn Chew-Graham, Col Bashir, Khatidja Chantier, Erica Burman and Janet Batsleer, ‘South Asian Women, Psychological Distress and Self-harm: Lessons for Primary Care Trusts’ (2002) 10(5) Health and social Care in the Community 339.

¹⁰⁷⁴ James Brandon and Salam Hafez, ‘Crimes of the Community: Honour-Based Violence in the UK’ (2008) Centre for Social Cohesion: A Civitas Project 5.

of their families in the eyes of those back home and this can be best achieved by strict compliance with traditional norms of behaviour”.¹⁰⁷⁵ Jenika’s reasons for the nikah only marriage corroborates with the argument by Poulter when she said “There was pressure from my mum, dad, aunties, uncles to have the nikah marriage as part of the family’s religious identity. You keep the family tradition, honour and respect the family. It is called the izzat and it moves from one generation to another” (Sparkhill, Birmingham).

Indeed, the motive behind the izzat is the preservation of honour of the families of the bride and groom”.¹⁰⁷⁶ Cadi highlighted that when it relates to the reasons for the nikah, she cannot decide which one has priority “Okay, may be religion, respect and honour to my family should be on top of the list” (Leicester).

Peach writes that the Pakistani Muslim society is formulated around the notion of the izzat, and this means the assumption of virginity at marriage and children after marriage.¹⁰⁷⁷ This was clearly illustrated from the comments made by the following participants such as : Amure “You know that in my culture, it is only after the nikah marriage that we can consummate our union” (Alum Rock, Birmingham); Femi “It is a shameful act to have sex or even worse pregnancy before the nikah marriage” (Leicester); Suni “We are not allowed to have sexual intercourse until after the nikah marriage. That’s why some Muslims get married at an early age” (Bradford). Umari whose dad is an Imam explained her strict upbringing and the pressure by her parents to set a good example to the community. She mentioned that her marriage was arranged by her parents as they always wanted her to marry someone from their culture. She stated, “My culture does not allow us to do anything sexual until after the nikah marriage” (Leicester). Furthermore, these

¹⁰⁷⁵ Sebastian Poulter, ‘Ethnic Minority Customs, English Law and Human Rights’ (1987) 36 *International and Comparative Law Quarterly* 589.

¹⁰⁷⁶ *Ibid.*

¹⁰⁷⁷ Ceri Peach, ‘Islam, Ethnicity and South Asian Religions in the London 2001 Census’ (2006) 31(3) *Transactions of the Institute of British Geographers* 353.

participates comments substantiates the argument by Tucker that religious marriages give religious validity to sexual relations.¹⁰⁷⁸

5.4.1 Obedience to the head of the family

One of the subthemes to emerge from the analysis of maintaining the izzat in this study was obedience to the head of the family. Izzat is an aspect of the culture in patriarchal Muslim society created by men to dominate and control women.¹⁰⁷⁹ Similarly, izzat is associated with the “male ego” as it pertains to the status of the male members of the family.¹⁰⁸⁰ Nerimi for example was one of the interview participants that spoke about obedience to her father as the main reason for the nikah only marriage. As previously discussed, Nerimi’s decision to have a nikah marriage started with a discussion while at college. Following on the discussion with her dad about the defensive attitude of her then boyfriend and his insistence on civil marriage. Nerimi mentioned that her boyfriend did not even allow her to explain “The honour to my family as a Pakistani Muslim and the Muslim community. My dad told me that I would be disowned. My dad’s comments made me understand the importance of nikah to the Muslim community. I was scared that my parents will take me to Pakistan and arrange someone for me” (Sparkhill, Birmingham). According to Shah and Iqbal, the concept of izzat includes obedience to the male head of the family in all issues relating to marital, personal, social, compliance of prevalent social norms and observance of veiling.¹⁰⁸¹ Nerimi’s reason for a religious marriage resonates with the argument by Shah and Iqbal regarding the notion of the izzat and obedience to the male head of the family in relation to marriage.

¹⁰⁷⁸ Tucker (n165).

¹⁰⁷⁹ Aisha Gill, ‘Voicing the Silent Fear: South Asian Women’s Experiences of Domestic Violence’ (2005) 43 *The Howard Journal* 465.

¹⁰⁸⁰ Amrit Wilson, *Finding a Voice: Asian Women in Britain* (1st edition, Virago Press 1978) 5.

¹⁰⁸¹ Saeeda Shah and Muhammad Iqbal, ‘Pakistani Diaspora in Britain: Intersections of Multi-locationality and Girls’ Education’ (2011) 32(5) *Journal of Sociology of Education* 763.

As recently explained by Salehuddin and Winskel, different cultures have distinct expectation profile which are framed by cultural norms, beliefs, and standards adhered by the parents.¹⁰⁸² For instance, the Asian culture are accountable to the numerous “demands by kinship network” and by virtue of this, they are encouraged to suppress their own wish against that of family or traditional communities.¹⁰⁸³ In this regard, the izzat was not identified as an issue for the non-Asian respondents in this study.

The issue of kinship system also relates to patriarchy where the father has authoritative power over the family and the effect of this power is subdue, suppress the “psychology of women”.¹⁰⁸⁴ Nerimi’s response demonstrates some of the elements of patriarchy such as dominance and male privilege. Harsh words such as being disowned by the family or even arranged marriage for people who do not subscribe to the method of marriage has the effect of instilling fear, suppression of own desire and compliance with the demands of the father. As explained by Ramji, the place of British Asian women in the society has always been represented to be products of oppressive and subdued by patriarchal cultures.¹⁰⁸⁵

5.4.2 “I paid homage to my family and the Muslim community on the day of my wedding”

This was one of the subthemes to emerge from the analysis of maintaining the izzat in this study. Some of the interviewees in this study admitted that the reason for entering the nikah only marriage was to pay homage to the family by preserving the izzat. Ariye for example

¹⁰⁸² Khazriyati Salehuddin and Heather Winskel, ‘Developmental Milestone Expectations, Parental Styles, and Self-Construction of Caregivers from Malay, Chinese and Indian Backgrounds in Malaysia’ (2016) 47(2) *Journal of Comparative Family Studies* 147.

¹⁰⁸³ Jaya Sastry and Catherine Ross, ‘Asian Ethnicity and the Sense of Personal Control’ (1998) 61(2) *Social Psychology Quarterly* 101.

¹⁰⁸⁴ Juliet Mitchell, *Psychoanalysis and Feminism: A Radical Reassessment of Freudian Psychoanalysis* (Basic Books) 402.

¹⁰⁸⁵ Hasmita Ramji, ‘Engendering Diasporic Identities’, in Nirmal Puwar and Parvati Raghuram (eds), *South Asian Women in the Diaspora* (Berg Publishers 2003).

explained “My nikah ceremony was the best day of my life, I had almost 300 guests in attendance. It was a very colourful day. It is a part of my cultural heritage and honour to my family. I paid homage to my family and the Muslim community on the day of my wedding” (Bordesley Green, Birmingham).

Gilbert and Sanghera write that the izzat is said to be held by the female members of the Asian family.¹⁰⁸⁶ Dasina was one of the participants in this study that specifically mentioned keeping family traditions as the key reason for entering the nikah only marriage. “Honour to my family and Muslim community. It is all about keeping up with the family tradition and my younger siblings will do same” (Bordesley Green, Birmingham). It should be noted that marriage is an important institution in most minorities ethnic countries which is regarded as a social, religious and moral responsibility.¹⁰⁸⁷

In this regard, it is said that the izzat surpasses ethnic or religious boundaries and considered as mandatory to female members of the Asian family.¹⁰⁸⁸ We can see preservation of the family izzat in Meesa’s response “My parents explained the process of the nikah and honour to the family. It was the first time that I heard the word izzat. I didn’t even know about it before then. My wedding signifies respect not only to my parents, but also my grandparents and the Muslim community. My husband shares the same view about nikah and honour to the family” (Bradford).

The comments by the participants in this study illustrates that upholding the izzat to some extent is mandatory in Asian families. Most of the participants in this study are from strict religious orchestrated families and the pressure to comply with the family traditions can act as barrier to integration. However, it should be noted that izzat does not preclude participants in

¹⁰⁸⁶ Paul Gilbert and Jasvinder Sanghera, ‘A Focus Group Exploration of the Impact of Izzat, Shame, Subordination and Entrapment on Mental Health and Service Use in South Asian Women Living in Derby’ (2004) 7(2) *Mental Health, Religion and Culture* 109.

¹⁰⁸⁷ Filomena Critelli, ‘Between Law and Custom: Women, Family Law and Marriage in Pakistan’ (2012) 43(5) *Journal of Comparative Family Studies* 673.

¹⁰⁸⁸ Sunita Toor, ‘British Asian Girls, Crime and Youth Justice’ (2009) 9(3) *Youth Justice* 239.

this study from having a civil marriage except for participants who have knowledge of the legal implications of a nikah only marriage and due to personal choice, does not wish to be legally married.

5.4.3 “It brings shame to the family”

This was another subtheme to emerge from the analysis of maintaining the izzat in this study. The idea of honour and shame are deeply rooted within Asian communities, and they act as a medium of social control and used to maintain, regulate the continuance of social, cultural and moral conformity.¹⁰⁸⁹ Amure for instance explained “It brings shame to a family if you do not have a nikah marriage” (Alum Rock, Birmingham).

The connection between izzat and shame is said to “embody enormously powerful cultural judgements with the power to include and ostracise”.¹⁰⁹⁰ For example, Vony explained some of the reasons for the nikah only marriage “First, respect to your family and the community because you have no choice as a Muslim, you cannot abandon your cultural heritage. It brings shame to the family; your parents may even disown you or send you abroad” (Walthamstow, London). More precisely, females are considered to be “custodians” of the izzat and can “alter, destroy or enhance izzat”.¹⁰⁹¹ The izzat holds a significant influence on South Asian’s women’s lives and the shame can detach a woman and her children from the community.¹⁰⁹² Kayad for example said “I entered the nikah marriage to honour my family and to respect Islam, it is called izzat. It brings shame to the family, and I will not bring shame to my family. I did not want to disappoint my family especially my mum” (Walthamstow, London).

¹⁰⁸⁹ Sunita Toor, ‘British Asian Girls, Crime and Youth Justice’ (2009) 9(3) Youth Justice 239.

¹⁰⁹⁰ Anita Bhardwaj, ‘Growing Up Young, Asian and Female in Britain: A Report on Self-harm and Suicide’ (2001) 68 Feminist Review 52.

¹⁰⁹¹ Kalwant Bhopal, Gender, ‘Race’ and Patriarchy: A Study of South Asian Women (Aldershot: Ashgate 1997)65.

¹⁰⁹² Alpa Parmar and Alice Sampson, ‘Evaluating Domestic Violence Initiatives’ (2007) 47(4) The British Journal of Criminology 671.

Brandon and Hafez identify ways regarded as damaging the honour and thereby bring shame to the family: becoming “western” demonstrated through behaviour and clothes, use of drugs or alcohol, gossip, disregard of parental authority and having a sexual relationship before marriage.¹⁰⁹³ The authors go on to enumerate the consequences of losing one’s honour to include : exclusion by family and community, reduction in dowries, loss of prestige, influence and self-esteem.¹⁰⁹⁴ Kayad in her response highlighted the implications of not having the nikah marriage. She explained “The consequences of not having a nikah marriage are that your parents will not be seen or considered in the Muslim community. Your parents cannot even attend meetings and will not be respected”. Kayad’s comments are in line with the argument by Rai and Reeves that infringement of the cultural and religious norms by women is regarded as stigmatising the izzat and it discredits the immediate family.¹⁰⁹⁵

Vony’s response had a similar tone to Kayad in the sense of respect, acceptance, shame to the family. The comments of Kayad typify a good example of the impact of izzat on Muslim women. The effect of such practice is manifested in two ways. First, is to relegate the woman to the background by removing personal choice. Finally, it gives priority to family desires in an attempt to preserve the izzat and avoid shame and embarrassment within the community. No wonder a significant number of participants in this study mentioned acceptance in the Muslim community as one of the reasons for the nikah marriage. Acceptance will be explored in detail in Chapter 6 of this thesis.

¹⁰⁹³ James Brandon and Salam Hafez, ‘Crimes of the Community: Honour-Based Violence in the UK’ (2008) Centre for Social Cohesion: A Civitas Project 6.

¹⁰⁹⁴ Ibid at p.8.

¹⁰⁹⁵ Rajesh Rai and Peter Reeves, *The South Asian Diaspora: Transnational Networks and Changing Identities* (1st edition, Routledge 2009) 3.

The comments made by participants in this study relates to multiculturalism and the policies that promote and acknowledge ethnic diversity in Britain.¹⁰⁹⁶ These responses raise a “multicultural issue” as opined by Ashcroft and Bevir because it usually concerns a demand for tolerance of certain behaviours that deviate from the norms generally accepted by the majority in the society, specifically if those norms have a “disproportionate” effect on individuals of minority groups.¹⁰⁹⁷ Multiculturalism will allow religious and cultural practices such as the nikah marriage to be accommodated and recognised in Britain. This is based on the argument by Lewis and Kashyap that Muslims are regarded more religious in belief and practice compared to other citizens.¹⁰⁹⁸

5.5 Family and expectations: The role of parents

Family was regarded as another prominent theme within this research based on the survey and interview findings. The findings from the survey revealed as presented in Figure 11 shows that after religious reasons, family and friends’ advice was a popular reason for entering the nikah only marriage with forty-six participants. For example, 27 participants were of Pakistani ethnic group, 14 Bangladeshi, 4 Black African while only 1 participant from other ethnic group. This comes as no surprise because in most cultures, parents contribute significantly to major decisions at different phases in the life of their children.

Majority of the participants in the interview talked about the role of parents in the decision-making process. Hoa for example said “I did not have a say in the decision of what form of marriage. My parents and my in-laws decided”. Family plays an important role in influencing decisions of marriage in the Muslim community. Family life is the foundation and key element

¹⁰⁹⁶ Parekh et al (n589).

¹⁰⁹⁷ Richard Ashcroft and Mark Bevir, ‘Multiculturalism in Contemporary Britain: Policy, Law and Theory (2018) 21(1) Critical Review of International Social and Political Philosophy 1.

¹⁰⁹⁸ Lewis and Kashyap (n605).

of Muslim society, respect and reverence for the parents are important in Islamic teachings.¹⁰⁹⁹ Dza who grew up with her husband because they are cousins did not play a role in the decision to have the nikah. She said “My husband had already decided with his family that we would enter the nikah marriage. I did not object. We had our marriage in his family house, and it was a special day for us. We have a supportive family”.

Pilkingtona, Msetfia and Watson posit that South Asians are more likely to be “allocentric” which means the family is important and considered fundamental in the decision-making process.¹¹⁰⁰ Amizeer: “My parents explained everything about the nikah to me” (Alum Rock, Birmingham). The influence of family members in the decision-making process in the area of family life is an essential feature of different cultures.¹¹⁰¹ In this regard, children are the main beneficiaries of the decision-making process in conventional families.¹¹⁰² For instance, Umari was one of the many women who spoke about parental influence as part of the reasons for having the nikah only marriage. “Growing up, my parents told me of the importance of the nikah marriage in Islam. I have the support of my family, friends, and the Muslim community”. In similar vein, Meesa said “The nikah was part of the discussion I had with my parents growing up. They explained what it meant to born in a Muslim family, everything about Islam, culture”. Valsiner commented on the parent-child relationship as providing a background for the “development” and communication mechanism for social, emotional, intellectual experiences necessary for the growth and development processes.¹¹⁰³ This argument resonates with Suni’s response “My parents discussed that it is the expectation in our family to have the nikah marriage” while Junau linked her reason for the nikah with her parents’ marriage when she said

¹⁰⁹⁹ Daniele Joly, ‘Making a Place for Islam in British Society: Muslims in Birmingham’ (1987) 4 Research Papers in Ethnic Relations 1.

¹¹⁰⁰ Pilkingtona et al (n1067).

¹¹⁰¹ Ute Schonpflug, ‘Decision-Making Influence in the Family: A Comparison of Turkish Families in Germany and Turkey’ (2001) 32(2) Journal of Comparative Family Studies 219.

¹¹⁰² Ibid.

¹¹⁰³ Jann Valsiner, ‘Construction of the Mental: From the ‘Cognitive Revolution’ to the Study of Development’ (1991) 1(4) Theory and Psychology 477.

“There was always a discussion about marriage, the expectation of the family and the Muslim community. My parents had the nikah marriage only and I haven’t seen any difference”. Shim and Shin argue that the most momentous aspect of a child’s growth, development, choices, decisions, and actions in everyday life are influenced by the mother.¹¹⁰⁴ Zayida’s response is in line with the argument by Shim and Shin “My mum never fails to mention the nikah anytime she talks about marriage in the house”. Indeed, family “rituals” and practice can provide notably significant functions for parent-child connection and cohesion.¹¹⁰⁵ Pnami for example said “I cannot point to a particular reason apart from as a Muslim, the nikah is our marriage. Any Muslim family will expect that you to have the nikah marriage”. Joly’s recent study highlighted that Muslim women’s environment is controlled by two societal frameworks known as the family and the community until they integrate into the British society.¹¹⁰⁶ For instance, Zayida said “My major reason for having a nikah only marriage is that it was the expectation of my parents. It can be traced back to my great grandparents, mine would not be different”.

Ethnic minority women may live in extended families that provide financial, social, and emotional support.¹¹⁰⁷ A significant number of interview participants in this study gave examples of emotional and financial support from their families. Nerimi for example said “I am married but the support of my family is very important to me. My nikah marriage was a success because of my family’s support and contributions” while Xani commented

¹¹⁰⁴ Kaka Shim and Hyunsook Shin, ‘Exploring Parenting Decisions Among South Korean Mothers with Preschool-Age Children (2019) 50(1) *Journal of Comparative Family Studies* 33; Deborah Koniak-Griffin, Cynthia Logsdon, Vicki Hines-Martin and Carmen Turner, ‘Contemporary Mothering in a Diverse Society’ (2006) 35(5) *Journal of Obstetric, Gynaecologic and Neonatal Nursing* 671.

¹¹⁰⁵ Barbara Fiese, Thomas Tomcho, Michael Douglas, Kimberly Josephs, Scott Poltrock and Tim Baker, ‘A Review of 50 Years of Research on Naturally Occurring Family Routines and Rituals: Cause for Celebration?’ (2002) 16(4) *Journal of Family Psychology* 381.

¹¹⁰⁶ Daniele Joly, ‘Women from Muslim Communities’ (2017) 51(4) *Sociology* 816.

¹¹⁰⁷ Anita Sharma, ‘Healing the Wounds of Domestic Abuse: Improving the Effectiveness of Feminist Therapeutic Interventions with Immigrant and Racially Visible Women Who Have Been Abused’ (2001) 7(12) *Violence Against Women* 1405.

“As a woman, family is very important because you need their support if you have problems”. Furthermore, Dasina mentioned “I am committed to my marriage and if I have marital problems, both families will resolve the issue” and finally, Umari said “I have the support of my family, friends, and the Muslim community”.

The expectations of women in the family replicates family traditions strengthened by the *izzat*.¹¹⁰⁸ Embedded in Pnami and Eenine comments are the expectation of their families as the main motivating reason for entering the *nikah* only marriage. Pnami “I cannot point to a particular reason apart from as a Muslim, the *nikah* is our marriage. Any Muslim family will expect that you to have the *nikah* marriage” while Eenine “It was the expectation of my parents to have a *nikah* marriage and later mine”. Stuart et al notes that the family is an important social force in influencing decisions as majority of immigrants relocate to Europe as an entity.¹¹⁰⁹

A number of the interview participants in this study cited examples of longevity of their parents’ marriage hence the desire to enter a civil marriage was not needed. For example, Junau states that a major reason for her rejection of civil marriage is that she would like to stick to the family tradition of having a religious wedding due to the success of her parent’s wedding. Dasina said “My parents have been married for a long time and they did not have a civil marriage”, Yayi: “My parents had their *nikah* marriage thirty years ago and they are happy, living comfortably. They did not have a civil marriage”, while Huoni “My parents had their *nikah* about twenty-five years ago. They have been through hard times but never for a second considered divorce. They did not have a civil marriage”. Finally, Kayad said “My parents have been married for more than twenty years and they did not have the British marriage”.

¹¹⁰⁸ Claire Dwyer, ‘Negotiating Diasporic Identities: Young British South Asian Muslim Women’ (2000) 23(4) *Women’s Studies International Forum* 475.

¹¹⁰⁹ Jaimee Stuart, Colleen Ward, Paul Jose and Pancha Narayanan, ‘Working with and For Communities: A Collaborative Study of Harmony and Conflict in Well-functioning, Acculturating Families’ (2010) 34(2) *International Journal of Intercultural Relations* 114.

Hoa and Dza mentioned that they had no choice in the decision-making process because their families insisted that they must have a nikah wedding. The idea of the izzat being a method of social control can be seen in both participants responses. Several participants admitted to some form of parental control in relation to the decision to have the nikah ceremony. Qureshi and Moore contend that minority ethnic groups are at two conflicting positions in terms of culture: for example, the social world of the religion, family, the community and the secular world by virtue of education.¹¹¹⁰ In this regard, the statements of Umari, Meesa, Hoa and Dza reflected an element of power tussle between informed choice and those imposed by their parents.

Most of the participants in this study talked about the expectation of the family to continue with the family tradition. This raises the issue of generational difference and the evolving society. As the society evolves, it is important for participants in this study to integrate and make decisions that will have a positive impact on their future. Furthermore, statements such as supportive family illustrates reluctance to have a civil marriage because participants in this study felt that their families will provide emotional support or act a mediator in cases of conflict. In addition, such support from their families could be likened to some form of control. Participants such as Junau, Dasina etc linked rejection of civil marriage to the long duration of their parents' marriage who had the nikah only marriage. In effect, it is very easy to understand why some of the participants in this study will continue to adopt their parent's method of marriage.

The Asian family are said to have strong community bonds and structure of informal social control with firm commitment to the community, close and extended family.¹¹¹¹ The commitment to the family as described by Hudson and Bramhall is a clear illustration of the

¹¹¹⁰ Karen Qureshi and Shaun Moores, 'Identity Remix: Tradition and Translation in the Lives of Young Pakistani Scots' (1999) 2(3) *European Journal of Cultural Studies* 311.

¹¹¹¹ Barbara Hudson and Gaynor Bramhall, 'Assessing the 'Other': Constructions of 'Asianness' in Risk Assessments by Probation Officers' (2005) 45(5) *The British Journal of Criminology* 721.

case of Eenine and Zayida that shows reliance on family to make major life changing decisions. In effect, one of the key findings from the interview and the questionnaire was the role of the first generation of Muslim parents. These parents are more concerned with maintaining the izzat in terms of cultural and religious practices without taking into consideration the laws applicable in the society.

5.5.1 Friendships

Friendship was a subtheme to emerge from the analysis of family and expectations: the role of parents. Friendship expectations are construed to mean “cognitive conceptualisations” about the features, behaviours, traits that individuals would like their friends to possess, choices and these are framed by observations of other friendships, experience with parents in conjunction with societal attitudes towards friendship.¹¹¹² Eenine for example said “Within my circle of friends, no one has had a civil marriage because I would have attended or even discussed about it. My friends are my childhood friends. Civil marriage is not something they would hide from me”. Junau explained that civil marriage is “not common in my community and circle of friends”.

As friendship develop over the years through shared experiences, interactions, attitudes, beliefs; friends have a significant influence on decision making based on the ideas, perceptions, knowledge and expertise that the other individual possesses.¹¹¹³ Hoa mentioned that “All my friends are Muslims and had their nikah marriage and there has never been any discussion about having a civil marriage” ;Vony said “Everyone in my social circle who identifies as a Muslim had the nikah marriage” while Eoni stated “None of my married

¹¹¹² Julie MacEvoy, Alison Papadakis, Shea Fedigan and Sarah Ash, ‘Friendship Expectations and Children’s Friendship-Related Behaviour and Adjustment’ (2016) 62(1) Merrill-Palmer Quarterly 74; Margarita Azmitia, David Lipman and Angela Ittel, ‘On the Relation of Personal Experience to Early Adolescents’ Reasoning About Best Friendship Deterioration (2001) 8(2) Social Development 275.

¹¹¹³ John Bingham, James Oldroyd, Jeffery Thompson, Jeffrey Bednar and Stuart Bunderson, ‘Status and the True Believer: The Impact of Psychological Contacts on Social Status Attributions of Friendship and Influence’ (2014) 25(1) Organisation Science 73.

friends had the civil marriage. Most of them don't even accept it". Maliza who has knowledge and understanding of civil marriage said, "Unlike some of my friends who do not agree with civil marriage".

Nonetheless, Bassi viewed the issue from a different perspective when she said: "Most of my friends associate civil marriage as marriage for the whites". Cadi on the other hand expressed some reservations in her response when she said "Some of my friends are against civil marriage for reasons that I will not discuss here. Everyone is entitled to their own opinion and views on marriage".

Essentially, adults are more inclined to rely on friends than some family members regarding decision making, sharing attitudes, values, interest, promoting social integration in addition to emotional and social support.¹¹¹⁴ For example, it can be seen from the analysis presented in Figure 12 that family and friends play a significant role in the event of marital breakdown with 20 participants.

The responses of the interview participants in this study raises the issue of the impact on segregation. This means that participants in this study only associate themselves with individuals not only from the same ethnic origin but also in the same situation such as the nikah marriage. Common trend among participants in this study is lack of awareness of civil marriage and discussion amongst friends. Again, we see the effects of lack of integration discussed earlier and the potential consequences. As discussed earlier, discussions within the same social circle in a community can led to isolation and failure to integrate into the British society.

¹¹¹⁴ Rosemary Blieszner, 'The Worth of Friendship' (2014) 38(1) *Journal of the American Society on Aging* 24; Rosemary Blieszner, "She'll be on my Heart: Intimacy Among Friends" (2001) 25(2) *Generations* 48.

5.6 Conclusion

The qualitative analysis of the interviews and the questionnaire findings resulted in major themes and subthemes that contributed to our understanding of the reasons British Muslim women enter the nikah only marriage and perceptions on civil marriage. The findings from the questionnaire have shown that out of 110 participants, 55 entered the nikah only marriage. In relation to the reasons for the nikah only marriage, all 55 participants selected religious reasons, 43 selected cultural reasons while 46 selected family and friend's advice.

The first key theme to emerge from the interviews was the problem of segregation. We found that ethnic segregation could have an impact on integration and adaptation into the society. For example, place you live, the people you interact with, social network play a significant role in the decision-making process. The problem of segregation led to subthemes such as rejection of civil marriage based on the fact that "civil marriage is for whites". Furthermore, that the Muslim community does not support divorce and the need for a civil marriage is irrelevant. Thus, one trend that emerged from this study is that participants regularly asserted their own preference for the nikah only marriage; referred to civil marriage as marriage for the whites or British marriage and civil marriage was equivalent to anticipation of divorce in the future. The second key theme to emerge from the interviews was the maintaining the izzat. Most of the participants commented on the impact of the izzat, respect, honour to the family and Muslim community. The third major theme to emerge from the interviews was family and expectations: the role of parents. The study highlighted the importance the parental guidance and influence in the participants choice of marriage. We also found that the patriarchal nature of the Muslim society still exists where women are silenced and have no say in the decision-making process. Finally, we found that the interactions among friends who share the same ideas within the community leads to lack of integration.

Chapter 6: Findings and discussions-Part 2

6.1 Introduction

This chapter is a continuation of the findings of the semi-structured interview and the survey. The remaining major themes identified and will be analysed in this chapter were influence of culture, ethnicity and identity, education and awareness. The subthemes that emerged were collectivist cultures: the impact of marriage and acculturation.

6.2 Influence of culture

The influence of culture was a significant theme that emerged within this research on analysis of the interview and survey findings. Many of the participants in this study mentioned cultural influence as a contributory factor for their decision to enter the nikah marriage. Xani for example said, “The nikah marriage is part of my culture” (Sparkhill, Birmingham). Culture is defined as a “historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men and women communicate, perpetuate, and develop their knowledge about attitudes toward life”.¹¹¹⁵ Huoni mentioned “I entered the nikah marriage to respect Islam, my culture and community. I am old fashioned and like to adhere to cultural norms” (Walthamstow, London).

Xani and Huoni’s comments is an illustration of the role culture played in their decision to enter a nikah marriage. Culture are values, beliefs, specific to a group of people and it’s passed down from one generation to another. In effect, it is expected that they will take into consideration their

¹¹¹⁵ Clifford Geertz, *Interpretations of Cultures* (Basic Books 1973) 89; Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Macmillan Basingstoke 2000) 143.

cultural heritage especially with the nikah marriage that has a significant cultural meaning attached to it.

The Asian family are said to have strong community bonds and structure of informal social control with firm commitment to the community, close and extended family.¹¹¹⁶ Their girls are raised to be submissive, devoted, honourable, respectful to their families as part of their commitment to Islam and in preparation of their role as a wife in the future.¹¹¹⁷ They are said to have a “the sense of obligation” to the extended family.¹¹¹⁸ Datik’s explanation for the nikah marriage resonates with the argument by Dosanjh and Ghuman about the submissive nature of Asian women and obligation owed to the family explained by Din. Datik is Turkish while her husband is from Pakistan explains that as a Muslim, she shares the same views about marriage and Islam with her husband. However, she wanted to have the nikah marriage first and then the following week, civil marriage but her husband refused. She said “My husband decided that we should have the nikah marriage only. His culture is all about respect and obedience and being submissive to the husband. I had no say in the choice. His parents supported his decision” (Walthamstow, London).

Datik’s statements showed an ongoing struggle between respect and honour to the family and choice. Discussing how she felt illustrated two conflicting sides: first, acceptance of cultural values and integration into the society by acceptance of a civil marriage. Her right to choose was completely withdrawn and this demonstrates the issue with patriarchy where women are oppressed, under the control of their husbands and have no “voice” in the decision-making

¹¹¹⁶ Barbara Hudson and Gaynor Bramhall, ‘Assessing the ‘Other’: Constructions of ‘Asianness’ in Risk Assessments by Probation Officers’ (2005) 45(5) *The British Journal of Criminology* 721.

¹¹¹⁷ Jagjit Dosanjh and Paul Ghuman, ‘Child-Rearing Practices of Two Generations of Punjabis: Development of Personality and Independence’ (1998) 12 *Children and Society* 25.

¹¹¹⁸ Ikhtlaq Din, *The New British: The Impact of Culture and Community on Young Pakistanis* (Ashgate Aldershot 2006) 143.

process. This is in line with the argument previously discussed in Chapter 2 in this study about the essential features of patriarchy.¹¹¹⁹

Sheffer mentioned that some families of minority ethnic groups have adopted strategies aimed at maintaining connections with their homeland such as teaching their children about their language, dressing, culture and religion.¹¹²⁰ Shah and Iqbal revealed that South Asian diaspora in Britain has established communities that maintain strong social, cultural, emotional, familial connections with their homeland.¹¹²¹ For example, Suni and Aemi (will be discussed later) discussed travelling abroad during summer holidays growing up to maintain contacts with her cultural heritage and to understand her roots. Suni (discussed earlier) spoke about the importance of maintaining connections with her family in Pakistan. She explained that her parents said “it is important to understand my roots, my cultural heritage and the difference between living in the UK and Pakistan. That the nikah is part of my cultural heritage and religion” (Bradford). Furthermore, Suni’s response confirms what Shah and Iqbal said that South Asian diaspora adheres to the norms, beliefs, values, tradition and standard of behaviour of their countries of origin when residing in Britain.¹¹²² In this regard, the respondents from non-Asian backgrounds did not discuss the issue of maintaining connection with their homeland.

Macey identified that in Pakistani communities in Britain, women are significant to culture in conjunction, “they must be guarded as both custodians of the faith and as carriers of responsibility for the very survival of community”.¹¹²³ Kayad, Dza and Zayida are from Pakistani ethnic origin can be said to be custodians of their cultural heritage. Kayad said

¹¹¹⁹ Heidi Hartmann, ‘The Historical Roots of Occupational Segregation: Capitalism, Patriarchy, and Job Segregation by Sex’ (1976) 1(3) *Journal of Women in Culture* 137.

¹¹²⁰ Gabriel Sheffer, *Diaspora Politics: At Home Abroad* (Cambridge University Press 2003) 239.

¹¹²¹ Saeeda Shah and Muhammad Iqbal, ‘Pakistani Diaspora in Britain: Intersections of Multi-locality and Girls’ Education’ (2011) 32(5) *Journal of Sociology of Education* 763.

¹¹²² *Ibid.*

¹¹²³ Marie Macey, ‘Religion, Male Violence and the Control of Women: Pakistani Muslim Men in Bradford’ (1999) 7(1) *Gender and Development* 48.

“Nikah marriage is an aspect of Pakistani culture that is associated with heritage. It is compulsory in my culture, and you have no choice” (Walthamstow, London); while Dza “It is part of my culture (Bradford) and Zayida “It is all about my cultural heritage” (Alum Rock, Birmingham).

Culture refers to as a set of values, norms and styles, mode of behaviour and has a considerable impact on the “in-group and out-group relationships of every individual”.¹¹²⁴ Femi for example stated, “It is the expectation of your family to comply with the culture” (Leicester). Thus, culture is the mechanism through which people appreciate their environment and understand it.¹¹²⁵ Maliza said “The nikah marriage is part of my religion, cultural heritage” (Walthamstow, London).

The heterogeneity of the Muslim South Asian community can be seen in areas of its members’ cultural traditions, distinct histories as well as modes of introduction into Britain.¹¹²⁶ Yayi commented on her decision to have a religious marriage “I can remember at the age of thirteen or so, my aunt mentioned the nikah for the first time. My aunt said I had no option that I am a Muslim, and it is part of my culture and identity. She mentioned all her friends, my aunts, uncles, everyone in our community had the nikah marriage” (Leicester). In this regard, cultural norms are characterised and managed by individuals within the social community in addition to framing one’s perspective, attitude, character, and responses.¹¹²⁷ Dasina stated “Nikah marriage means everything to me as part of my heritage, religion, culture” (Bordesley Green, Birmingham). King argues that cultural practices “do not occur in a spatial vacuum nor on an

¹¹²⁴ Olanrewaju Fagbohun, ‘Cultural Legitimacy of Mitigation and Adaptation to Climate Change: An Analytical Framework’ (2011) 5(3) *Carbon and Climate Law Review* 308; Cris Sullivan and Maureen Rumptz, ‘Adjustment and Needs of African-American Women Who Utilized a Domestic Violence Shelter’ (1994) 9(3) *Violence and Victims* 275.

¹¹²⁵ Karen Quek and Carmen Knudson-Martin, ‘A Push Toward Equality: Processes Among Dual- Career Newlywed Couples in Collectivist Culture’ (2006) 68(1) *Journal of Marriage and Family* 56.

¹¹²⁶ Noha Nasser, ‘The Space of Displacement: Making Muslim South Asian Place in British Neighbourhoods’ (2003) 15(1) *Traditional Dwellings and Settlements Review* 7.

¹¹²⁷ Siew Law and David Leonard, ‘Culture Clash- Can Online Dispute Resolution be the Way Forward?’ (2008) 19(1) *Australasian Dispute Resolution Journal* 55.

environmental tabular rasa. Cultures are constituted in space and under specific economic and social conditions; they are physically and spatially as well as socially constructed”.¹¹²⁸ Eenine said “The nikah is an aspect of my culture and religion” (Bordesley Green, Birmingham).

More specifically, culture is inherently linked with members of a community and its different features are exhibited in the manner individuals view and understand their world.¹¹²⁹ Bassi’s explanation for the nikah concurs with Taylor et al literature when she said, “The nikah is my identity, culture, religious identity, most of the married women around my neighbourhood had a nikah marriage, it is very popular where I live. I would be surprised if someone from Pakistan did not have one” (Bordesley Green, Birmingham).

There are certain features that make a community, and these include from a humanitarian viewpoint ethnicity, race, language, religion and culture.¹¹³⁰ Jacobson and Deckard found in their research that British Muslims showed less commitment to adhere to state principles over Muslim norms.¹¹³¹ Fetzimi for example, views marriage from a different perspective of culture and not legality. She drew an interesting distinction between civil and nikah marriage “While British people have civil marriage as part of the culture, we have the nikah marriage. (Alum Rock, Birmingham).

Underpinning this, is the view that indigenous groups have cultural belief systems that epitomise cultural rules and these rules stipulate the manner that both present and future generations should behave.¹¹³² Osmari’s response had a similar tone to Fetzimi “It is part of my religion, culture, acceptance in the Muslim community. I don’t know much about civil

¹¹²⁸ Anthony King, ‘The Global, the Urban and the World’ in Anthony King (eds), *Culture, Globalisation and the World System: Contemporary Conditions for the Representation of Identity* (University of Minnesota Press 1997) 150.

¹¹²⁹ Wendy Taylor, Lois Magnussen and Mary Amundson, ‘The Lived Experience of Battered Women’ (2001) 7(5) *Violence Against Women* 563.

¹¹³⁰ Ibid.

¹¹³¹ David Jacobson and Natalie Deckard, ‘Surveying the Landscape of Integration’ (2014) 10(2) *Democracy and Security* 113.

¹¹³² Crispen Dirwai, ‘Sustainable Environmental Management: An Ethno-Based Approach’ (2007) 9 *Journal of Sustainable Development in Africa* 1.

marriage, and it is not part of the culture. It is part of the British culture” (Bradford).

Furthermore, from the analysis presented in figure 11, it is apparent that culture had a significant impact on the reason for having the nikah only marriage with forty-three participants. Out of the 43 participants, 25 were of Pakistani ethnic origin, 10 Bangladeshi while 8 of Black African origin.

The comments of participants in this study depicts how cultural norms and values affect the decision to enter a religious marriage. There are key pointers in the responses of the participants in this study which indicate that British Muslim will continue to adhere to cultural and religious norms as one of the main motivations for the nikah marriage. Pointers such it is part of my cultural heritage; it is compulsory in my culture or even while the British people have civil marriage as their culture, the nikah is part of my culture are clear indications of supremacy of cultural norms over civil marriage. Having established this, the question that follows is what could be the best approach to tackle this issue? The answer is multiculturalism which deals with theories of difference in society and the focus centred on culture of minorities could be a determinant in tackling unregistered nikah.¹¹³³ Multiculturalism will permit British Muslim women to retain the nikah marriage and therefore receive accommodation by the state.¹¹³⁴ This may alleviate the problem of proliferation of unregistered nikah in Britain.

6.2.1 Collectivist cultures and the impact of marriage

One of the subthemes to emerge from the analysis of culture in this study was collectivist cultures and the impact of marriage. Collectivist are individuals connected to the family, tribe or nation and based on the following notions; first, individuals are driven by the desire to conform to

¹¹³³ Sneja Gunew, ‘Postcolonialism and Multiculturalism: Between Race and Ethnicity’ (1997) 27 *The Yearbook of English Studies: The Politics of Postcolonial Criticism* 22.

¹¹³⁴ Benedict Anderson, ‘The Nation and the Origins of National Consciousness’ in Montserrat Guibernau and John Rex (eds) *The Ethnicity Reader: Nationalism, Multiculturalism and Migration* (Cambridge 2010) 56.

cultural norms established by the collective entity; second, emphasis is placed on the importance of relationships, and finally, collectivism permits people to “view their worlds through different lenses, attaching different meanings to life events”.¹¹³⁵ Dafinayah’s response exhibits all the feature of a collectivist as explained by Triandis above. Her parents explained the nikah and their expectation as the first child of the family. She stated “Without the Nikah, I will be seen as unmarried in the eyes of God, family and friends. I will not be accepted in the Muslim society. My family will not be respected and accepted. As an African, we obey and respect our parents, elders” (Sparkhill, Birmingham).

Belonging to a community/group is an important element of collectivism and in collectivist cultures, there is an expectation for individuals to fit into the group.¹¹³⁶ Acceptance for example was a recurrent theme throughout this research. Many of the interviewees commented on acceptance in the Muslim community as one of the reasons for the nikah marriage. Eoni, Pnami and Cadi for example stated “Acceptance in the Muslim community is another reason for having the nikah marriage. The value and respect given to the family is another reason” (Leicester); Pnami “Acceptance in the Muslim community” (Walthamstow, London) while Cadi “Acceptance and belonging to the Muslim community. Once you think about marriage in Islam, you are just thinking about the nikah. You should know about it and do not need anyone to explain the details” (Leicester). Moreover, Vony put forward the view “I will say acceptance in the Muslim community because you cannot as a Muslim undertake a borrowed marriage. You cannot abandon your cultural heritage. I call it borrowed marriage because it is not my culture to have a civil marriage” (Walthamstow, London).

Dafinayah, Eoni, Pnami, Cadi and Vony responses illustrate an aspect of collectivist cultures that cannot be overlooked when it relates to matters regarding marriage such as connection with the

¹¹³⁵ Harry Triandis, Individualism and Collectivism: New Directions in Social Psychology (1995) American Psychological Association 1. It should be noted that Asian cultures are collectivist in nature.

¹¹³⁶ Quek and Knudson Martin (n1125).

family, belonging and acceptance in the Muslim community. The consequence of this is that participants in this study will always be motivated by the cultural values and norms of the community without taking into consideration the rules of the society. Furthermore, these responses confirm what Denny said about the main objective of the umma is to achieve unity and solidarity among Muslim community all over the world.¹¹³⁷

Spicker mentions the three elements of social groups: first, identity by virtue of social acceptance as well as recognition of the group; second, membership based on identification of individuals with the group in addition to relationship between members of the group and finally, cohesion between group members.¹¹³⁸ Femi for instance said “It is the expectation of your family to comply with the culture. As a married woman, I will be accepted in the Muslim community” (Leicester). Collectivist cultures work for the benefit of everyone in the community and prioritise harmony over individual interests.¹¹³⁹ They are perceived to be connected in the “web of inter-relatedness and embedded and situated in particular roles and status”.¹¹⁴⁰ Abdi’s response is a good example of what Zhang et al wrote about prioritising harmony over individual interests. She understands the importance of a civil marriage because her nikah ceremony was in a private residence but due to parental rejection of civil marriage, decided to enter the nikah only marriage. “I have been married to my cousin for over three years. I had the nikah marriage as part of my obligation to Islam, family, acceptance and belonging in the Muslim community. I grew up in a very strict old-fashioned family” (Walthamstow, London).

Huff and Kelley assert that collectivism is represented by a strong social framework of individuals with a shared interest as well as identity and emphasis placed on trust and loyalty on

¹¹³⁷ Denny (n420).

¹¹³⁸ Paul Spicker, ‘Cohesion, Exclusion and Social Quality’ (2014) 4 (1) *International Journal of Social Quality* 95.

¹¹³⁹ Xu Zhang, Xian Liang and Hongyan Sun, ‘Individualism-Collectivism, Private Benefits of Control, and Earning Management: A Cross-Culture Comparison’ (2013) 114(4) *Journal of Business Ethics* 655.

¹¹⁴⁰ *Ibid.*

the in-groups.¹¹⁴¹ In this regard, loyalty is a cardinal principle in collectivist society and overrules some of the public rules and regulations.¹¹⁴² Hoa's response can be seen as loyalty to her parents and not taking into consideration civil marriage, "My parents and my in-laws decided although it is part of my culture and identity as a Pakistani Muslim" (Alum Rock, Birmingham). King et al describes the fact that in collectivist cultures, communal goals are presumed to be a motivating factor in achieving the desired potential and behaviour expectations.¹¹⁴³ Lola's response is a clear illustration of behaviour expectations as asserted by King. "Islam, respect for family and acceptance in the Muslim community are some of the reasons I had the nikah only marriage" (Walthamstow, London).

The responses of Femi, Abdi, Hoa and Lola demonstrate important features of collectivist such as identification, expectation, the rights of families are prioritised over individual rights and loyalty. These play a fundamental role in their identity as Muslims. This will result in failure to integrate or assimilate in the society because emphasis will be placed on compliance with cultural norms and solidarity in order to be accepted as part of the community.

6.2.2 Acculturation

Acculturation was another subtheme to emerge from culture in this study through the analysis of the interview findings. Berry writes that in plural societies, members of a particular cultural group must face issues on how to acculturate into the mainstream society.¹¹⁴⁴ Acculturation is the process of cultural, social and psychological change that originates from readjusting to two

¹¹⁴¹ Lenard Huff and Lane Kelley, 'Levels of Organizational Trust in Individualist Versus Collectivist Societies: A Seven-Nation Study' (2003) 14(1) *Organization Science* 81.

¹¹⁴² Lilian Miles, 'The Cultural Aspects of Corporate Governance Reform in South Korea' (2007) *Journal of Business Law* 851.

¹¹⁴³ Ronnel King, Dennis McInerney and David Watkins, 'Examining the Role of Social Goals in Schools: A Study in Two Collectivist Cultures' (2013) 28(4) *European Journal of Psychology of Education* 1505.

¹¹⁴⁴ John Berry, 'Immigration, Acculturation and Adaptation' (1997) 46(1) *Applied Psychology: An International Review* 5.

cultures while accommodating the predominant culture of the society.¹¹⁴⁵ For example, Dza said, “I don’t know much about civil maybe because it is a British marriage. My parents had the nikah marriage only and I haven’t seen any difference. Maybe my parents would be divorced if they had a civil marriage, who knows. Civil marriage is not something I can see myself doing. We have never discussed about civil marriage. I prefer to continue with the family tradition because my parent’s marriage is a success story” (Bradford).

Redfield, Linton and Herskovits provide a comprehensive definition of acculturation thus:

“Acculturation comprehends those phenomena which result when groups of individuals having different cultures come into continuous first-hand contact, with subsequent changes in the original culture patterns of either or both groups”.¹¹⁴⁶ This notion of acculturation applies to immigrants and non-immigrant ethnic groups.¹¹⁴⁷ In fact, acculturation is used to explain how minority ethnic groups, their families, communities encounter, experience, respond and interact with the host culture.¹¹⁴⁸ Kayad in her conversation has failed to respond positively with the host culture “I do not agree with the British marriage, and I understand the process” (Walthamstow, London).

Gibson explains that acculturation is “the process of cultural change and adaptation that occurs when individuals from different cultures come into contact”.¹¹⁴⁹ Eoni states “I have some knowledge of civil marriage. I know it is the British version of nikah marriage. I am not interested in having one” (Leicester). This process consists of evolving relationships to

¹¹⁴⁵ Ibid.

¹¹⁴⁶ Robert Redfield, Ralph Linton and Melville Herskovits, ‘Memorandum for Study of Acculturation’ (1936) 38(1) *American Anthropologist* 149.

¹¹⁴⁷ Donald Pope-Davis, William Liu, Shannon Ledesma-Jones and Jonathan Nevitt, ‘African American Acculturation and Black Racial Identity: A Preliminary Investigation’ (2000) 28(2) *Journal of Multicultural Counselling and Development* 98; Jill Saxton, ‘An Introduction to Cultural Issues Relevant to Assessment with Native American Youth’ (2001) 6(31) *The California School Psychologist* 31.

¹¹⁴⁸ Floyd Rudmin, ‘Catalogue of Acculturation Constructs: Descriptions of 126 Taxonomies, 1918-2003 (2009) 8(1) *Online Readings in Psychology and Culture* 1.

¹¹⁴⁹ Margaret Gibson, ‘Immigrant Adaptation and Pattern of Acculturation’ (2001) 44 *Human Development* 19.

conventional beliefs, values and attitudes through awareness of the dominant culture.¹¹⁵⁰ Yayi for example said “I understand the civil marriage procedure. I think it is not necessary. My parents had their nikah marriage thirty years ago and they are happy, living comfortably. They did not have a civil marriage” (Leicester).

Dza even with her basic knowledge of civil marriage which she refers to British marriage, expressed disapproval of civil marriage. Just like many participants in this study, gives an example of her parents who had the nikah only marriage. Dza response demonstrates an inability to readjust and accommodate civil marriage as explained by Berry. This may be due to lack of awareness as seen by her knowledge of civil marriage or even integration into the British society. This relates to the argument by Telzer that the rate of acculturation of individuals to a new society depends on the age, exposure and socialisation.¹¹⁵¹ Meanwhile, Kayad, Eoni and Yayi understands the importance of civil marriage but have refused to acculturate and accept civil marriage. Ho asserted that acculturation occurs in different ways such as changes in behaviour, language use, viewpoint and socialisation.¹¹⁵² In this regard, the comments of these participants show that they still have a long road journey towards acculturation. Underpinning this is the research of Howarth et al which looks at inter-cultural strategies of minorities focusing on two main issues.¹¹⁵³ First, cultural maintenance which refers to the extent minorities intend to continue with their culture and cultural contact that refers to the extent minorities intend to engage in the day-to-day interactions and life of the other ethnocultural groups.¹¹⁵⁴ The responses of Dza, Kayad, Eoni and Yayi in relation to the inter-cultural strategies explained by Howarth et al illustrates that they are at the stage of retaining their culture without regard to the requirements

¹¹⁵⁰ Christine Ho, ‘An Analysis of Domestic Violence in Asian American Communities: A Multicultural Approach to Counselling’ (2008) 9(1) *Women and Therapy* 129.

¹¹⁵¹ Eva Telzer, ‘Expanding the Acculturation Gap-Distress Model’ (2010) 53(6) *Human Development* 313.

¹¹⁵² *Ibid.*

¹¹⁵³ Caroline Howarth, Wolfgang Wagner, Nicola Magnussen and Gordon Sammut, “It’s Only Other People Who Make Me Feel Black”: Acculturation, Identity, and Agency in a Multicultural Community’ (2014) 35(1) *Political Psychology* 81.

¹¹⁵⁴ *Ibid.*

of a valid marriage. Furthermore, Berry also proposed four different strategies of acculturation known as assimilation, separation, integration and marginalisation strategies.¹¹⁵⁵ Berry goes further to explain that assimilation strategies relate to individuals who are willing to relinquish their cultural identity and take part interacting with other cultures.¹¹⁵⁶ However, separation strategies relate to individuals who intend to uphold their cultural identity and not willing or interested in participating in the life of the mainstream society.¹¹⁵⁷ Integration strategy on the other hand, relates to individuals who intend to uphold their cultural identity and still participate in the life of the mainstream society.¹¹⁵⁸ Finally, marginalisation relates to situations where individuals are not interested in maintaining their cultural identity and participate or interact with others.¹¹⁵⁹ A look at the acculturation strategies, these participants are exhibiting the separation strategy because they are maintaining their cultural heritage in respect to the nikah marriage and not prepared accept a civil marriage that will rectify a defective. It is worthy to note that there is nothing in the requirements of a valid marriage in Britain that prevents a person from maintaining their culture as well as undertaking a civil marriage.

Phinney et al posits that ethnic identity is a facet of acculturation that can be used to understand acculturation, and this includes two-dimensional models of acculturation: first, maintaining one's cultural heritage and second, adaptation to the host country.¹¹⁶⁰ Aemi response demonstrates the two-dimensional models of acculturation by Phinney et al. Aemi was born in Leicester and raised according to Islamic principles visits her family back home in Bangladesh. However, she understands the importance of civil marriage after a religious ceremony. She said, "I understand everything about civil marriage. After our engagement, we discussed

¹¹⁵⁵ John Berry, 'Immigration, Acculturation and Adaptation' (1997) 46(1) *Applied Psychology: An International Review* 5; John Berry, 'Integration and Multiculturalism: Ways Towards Social Solidarity' (2011) 20 *Papers on Social Representations* 2.

¹¹⁵⁶ Ibid.

¹¹⁵⁷ Ibid.

¹¹⁵⁸ Ibid.

¹¹⁵⁹ Ibid.

¹¹⁶⁰ Jean Phinney, Gabriel Horenczyk, Karmela Liebkind and Paul Vedder, 'Ethnic Identity, Immigration and Well-Being: An International Perspective' (2001) 57(3) *Journal of Social Issues* 493.

everything about the nikah and civil marriages. My husband said we should have the nikah first to respect our families. My husband is in support of a civil marriage. We do not have a marriage certificate, there is no proof of marriage. No date is fixed but it is something I look forward to in the future” (Leicester). The response of Aemi shows that she has acculturated into the British society. She has adopted the integration strategy as proposed by Berry because even though she maintains her cultural identity regarding the nikah marriage, she is still willing to accept a civil marriage.

The effects of immigration on minority ethnic groups are the reality of acculturation and the evolution of a culturally plural society.¹¹⁶¹ Acculturation is seen from the perspective of either assimilation or ethnic “maintenance” in regard to taking the ethnic minorities identity with the host society as different domains.¹¹⁶² Another concept often associated with acculturation is adaptation which is regarded as a consequence of acculturation and relates to a person’s psychological well-being and how persons cope and manage socio-culturally.¹¹⁶³ Huoni’s comments show most of the features of refusal to adapt and acculturate into the British society. She had her nikah ceremony in her family home in the presence of the Imam who signed an “agreement document” containing the rights and responsibilities agreed by her and her husband. She spoke about the supportive nature of her family in cases of disagreement. She refers to civil marriage as British marriage. “I know it takes place in the registry; you need two witnesses. You get a marriage certificate at some point and that is all I can remember. I am not interested in having a civil marriage” (Walthamstow, London). Huoni’s response demonstrates a clear example of failure to acculturate into the British society and adapt knowing that nikah in a private

¹¹⁶¹ John Berry, Jean Phinney, David Sam, Paul Vedder, ‘Immigrant Youth: Acculturation, Identity, and Adaptation’ (2006) 55(3) *Applied Psychology: An International Review* 303.

¹¹⁶² Li Gong, ‘Ethnic Identity and Identification with the Majority Group: Relations with National Identity and Self Esteem’ (2007) 31 (4) *International Journal of Intercultural Relations* 503.

¹¹⁶³ David Sam and John Berry, ‘Acculturation: When Individuals and Groups of Different Cultural Backgrounds Meet’ (2010) 5(4) *Perspectives on Psychological Science* 472.

residence is not legally recognised in Britain. Like Dza, Kayad, Eoni and Yayi, she is also exhibiting separation strategy in relation to upholding her cultural heritage and refusal to accept civil marriage. However, her argument that her parents had the nikah and their marriage successful constitutes one of the reasons some British Muslim women in this study will continue to express rejection of civil marriage.

6.3 Ethnicity and Identity

Ethnicity and identity were considered an important theme in this study on the analysis of the interview findings. All participants in this study mentioned that ethnicity and identity influenced their decision to have the nikah only marriage. For example, Amure stated “It is part of my identity and respect to my family” (Alum Rock, Birmingham).

Ethnicity is used to identify an individual’s race, religion, culture, language, identity or even nationality. Ethnicity is defined as “the ethnic quality or affiliation of a group, which is normally characterised in terms of culture”.¹¹⁶⁴ Another definition of ethnicity relates to a group of people usually identified by descent and common historical norms as well as structures which often makes it different from the broader race identification.¹¹⁶⁵ Femi said “Nikah is part of my identity as a Muslim. We have a family tree with all the dates of marriage, the number of children and names” (Leicester). Femi’s response corroborates with the writing by Rex because he mentions that ethnic minorities’ extended families, religious and cultural believes are a valuable feature of their ethnicity and identity.¹¹⁶⁶

Joly contends that Muslim women’s relationship to the society exhibits “complex features” which affects their interaction with the British society while ethnicity and religion sometimes

¹¹⁶⁴ Hector Betancourt and Steven Lopez, ‘The Study of Culture, Ethnicity and Race in American Psychology’ (1993) 48(6) *American Psychologist* 629.

¹¹⁶⁵ Tariq Modood and Nabil Khattab, ‘Explaining Ethnic Differences’ (2016) 50(2) *Sociology* 231.

¹¹⁶⁶ John Rex, *Race and Ethnicity* (Milton Keynes: Open University Press 1986) 29.

acts as an obstacle in achieving goals.¹¹⁶⁷ Fetzimi for example said “The nikah marriage relates to my identity as a Muslim. It is not an optional marriage; it is compulsory for all Muslims” (Alum Rock, Birmingham). Ramji asserts that British Asian Muslim identities are mostly viewed in relation to ethnicity, religion and culture.¹¹⁶⁸ For example, 55 participants in survey questionnaire mentioned that religion was a contributory factor in their decision to have the nikah only marriage as shown in Figure 11. Bisin et al writes that Muslims manifest a strong attachment towards religious identity, integrate less and slowly compared to non-Muslims.¹¹⁶⁹ Vony for example refers to civil marriage as borrowed marriage because it is not part of her culture to have a civil marriage said, “It is part of my identity because it is the expected that once you reach the age of marriage, you will have the nikah marriage” (Walthamstow, London). Nagel’s research contributes to an understanding of ethnicity and identity in the following ways : first, culture and identity are two rudimentary components of ethnicity; second, ethnicity is characterised by an individual’s identity as well as group organisation and it is said to be constantly evolving; third, the content , origin and form of ethnicity determines the choices of individuals according to the constructivist perspective and finally, ethnic identity is related to issue of ethnic boundaries that determines membership and identify ethnic classification.¹¹⁷⁰ Zayida highlighted “Nikah is part of my identity, respect and honour to my family” (Alum Rock, Birmingham).

Stover and Mann write that ethnicity identity is a multifaceted phenomenon that involves biological, psychological, social and cultural interaction.¹¹⁷¹ Accordingly, ethnic identity begins with the child-mother family relationship and then proceeds to group interaction and

¹¹⁶⁷ Joly (n1227).

¹¹⁶⁸ Hasmita Ramji, ‘Exploring Intersections of Employment and Ethnicity Amongst British Pakistani Young Men’ (2005) 10(4) Sociological Research Online 1.

¹¹⁶⁹ Alberto Bisin, Thierry Verdier, Eleonora Patacchini and Yves Zenou, ‘Are Muslim Immigrants Different in Terms of Cultural Integration?’ (2008) 6(2/3) Journal of the European Economic Association 445.

¹¹⁷⁰ Joane Nagel, ‘Constructing Ethnicity: Creating and Recreating Ethnic Identity and Culture’ (1994) 41(1) Social Problems 152.

¹¹⁷¹ Williams Stover and Mali Mann, ‘External Elements in the Construction and Demise of Ethnicity and Identity’ (2016) 33(4) International Journal on World Peace 69.

experiences.¹¹⁷² As Jenika and Eoni's responses illustrate, ethnic identity as illustrated by Stover and Mann played a role in the decision to enter the nikah only marriage. Jenika stated "There was pressure from my mum, dad, aunties, uncles to have the nikah marriage as part of the family's religious identity. This may seem odd, but all the members of my family have used the same house for the nikah marriage even my grandparents" (Sparkhill, Birmingham). Also, Eoni said, "The nikah marriage is part of my identity, culture and religion. All my family members had the nikah marriage" (Leicester).

Betancourt and Lopez point out that as individuals of an ethnic group connect, cooperate and interact with one another, ethnicity becomes the medium by which culture is disseminated.¹¹⁷³ Huoni for example said, "The nikah is part of my identity" (Walthamstow, London). Research has established that cultural identity relates to a person's personal identity, culture and consists of an individual's values, beliefs, dispositions to behave in a definite manner.¹¹⁷⁴ Maliza for example stated "The nikah marriage is part of my religion, cultural heritage, and identity" (Walthamstow, London). Furthermore, it can be argued that a person's biography, self-perception, and background constitute cultural identity.¹¹⁷⁵

From all indications, an individual's personal identity originates from regular interaction with cultural norms, values that serve as a framework to determine what to uphold as acceptable.¹¹⁷⁶ Pnami for instance said, "All my family members had the nikah marriage and it is my identity" (Walthamstow, London).

¹¹⁷² Ibid.

¹¹⁷³ Betancourt and Lopez (n 1164).

¹¹⁷⁴ Meital Pinto, 'What Are Offences to Feelings Really About? A New Regulative Principle for the Multicultural Era' (2010) 30(4) Oxford Journal of Legal Studies 695.

¹¹⁷⁵ Herbert Kronke, 'Most Significant Relationship, Governmental Interests, Cultural Identity, Integration: "Rules" at Will and the Case for Principles of Conflict of Laws' (2004) 9(3) Uniform Law Review 573.

¹¹⁷⁶ Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Harvard University Press 1991) 27.

In this regard, a person identity is negotiated as a result of involvement, experience and membership of a community of practice.¹¹⁷⁷ Hoa mentioned that the “Nikah marriage is part of my culture and identity as a Pakistani Muslim” (Alum Rock, Birmingham).

According to Rudnicka-Kassem, Muslim identity is manifested in three different types of communities.¹¹⁷⁸ First, ethnic Muslim born in Muslim families with Muslim names, have knowledge of Muslim religion and culture, non-practicing but have connection to their ethnic heritage. Second, cultural Muslims who have knowledge and understanding of all matters regarding to Islam in addition to deeply rooted in Islamic culture and religion. Finally, religious Muslims who have connection to their Muslim umma.¹¹⁷⁹ Aemi for example, as part of her identity, maintains connection with her family abroad and at the same understands the importance of civil marriage. She said, “Although my grandparents told me everything about the nikah marriage and expectation of the family as a Muslim, I knew it was part of my identity” (Leicester).

Suffice to state that identity formation is a rational sense of “self” within a specific cultural ethnic group.¹¹⁸⁰ Accordingly, self-identity is the “self” in relation to an individual’s biography.¹¹⁸¹ Poulter found that minority ethnic groups have a strong sense of ethnic identity and “there is little indication that this will simply dissolve in the face of influence of the majority group’s way of life”.¹¹⁸² Poulter’s argument corroborates Xani’s response “The nikah marriage is part of my culture and identity” (Sparkhill, Birmingham).

¹¹⁷⁷ Etienne Wenger, *Communities of Practice, Learning, Meaning and Identity* (Cambridge University Press 1998) 83.

¹¹⁷⁸ Dorota Rudnicka-Kassem, ‘Searching for a New Identity: Muslims in Western Europe’ (2016) *Politeja* 44 *Jagiellonian Cultural Studies Human Values in Intercultural Space* 251.

¹¹⁷⁹ Ibid.

¹¹⁸⁰ Michael Merry, *Culture, Identity and Islamic Schooling: A Philosophical Approach* (Palgrave Macmillan 2007) 78.

¹¹⁸¹ Anthony Giddens, *Sociology* (2nd edition, Polity Press 1993) 53.

¹¹⁸² Poulter (n1075).

Echoing this, is the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression 2005 that encourages nations to “protect and promote the diversity of cultural expression”.¹¹⁸³ In addition and perhaps more cogently is the fact that religion is a fundamental aspect of identity among minority ethnic groups.¹¹⁸⁴ Nevertheless, Ross writes that Muslim identity in the West does not directly relate to faith or religious practice but is associated with culture and ancestry.¹¹⁸⁵

The responses of participants in this study indicate that identity is connected to culture as well as religion and are important factors that motivated these women in their choice of a nikah wedding. The comments of these participants are linked to the idea behind multiculturalism which relates to cultural diversity and multicultural policies designed towards accommodating ethnic minority cultures or religion such as the nikah marriage. According to Ashcroft and Bevir, multiculturalism is connected to the notion that minority communities should be given separate rights to accommodate social diversity.¹¹⁸⁶ The implication is that ethnic minority religious ceremony such as the nikah will be accommodated in Britain. Furthermore, in Jenika’s comments, we see parental pressure as a contributory factor and the commonly expressed comments with other participants in this study in relation to identity, religion, culture, acceptance and izzat. In addition, Eoni and Pnami as part of their identity, want to stick with family tradition and continue with the nikah marriage. Finally, Aemi’s comment resonates with the idea behind legal pluralism that will permit the co-existence of state law with unofficial laws. For example, even though she is in constant contact with their family in Bangladesh, she has integrated into the British society by accepting a civil marriage after the

¹¹⁸³ Article 1c of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression 2005.

¹¹⁸⁴ John Rex, ‘Ethnic Identity and Ethnic Mobilisation in Britain’ (1991) Research Monograph no 5, Centre for Research in Ethnic Relations, University of Warwick 129.

¹¹⁸⁵ Liat Ross, ‘Muslim Interest Groups and Foreign Policy in the United States, Canada and The United Kingdom: Identity, Interests and Action’ (2013) 9(3) Foreign Policy Analysis 287.

¹¹⁸⁶ Ashcroft and Bevir (n1097).

nikah ceremony.

6.4 Education and awareness

Education and awareness were significant themes that emerged from the analysis of the interview and survey findings. The responses of the interview participants in this study demonstrated the following; first, lack of awareness that the nikah marriage is not a legally recognised marriage, second, lack of knowledge of civil marriage and finally, the lack of knowledge of the requirements of a valid marriage in Britain. Dafinayah for example said, “I don’t know much about civil marriage, and it is not common in my area. All the members of my family had a nikah marriage and even my friends. I live in the UK and my nikah marriage was in Birmingham. I am not interested in having another marriage” (Sparkhill, Birmingham). Similarly, Fetzimi said “I had my nikah marriage in Birmingham, so I have the same rights as someone who had a civil marriage. None of my relatives ever had a civil marriage; I do not see the need for it” (Alum Rock, Birmingham).

The importance of education and awareness cannot be over-emphasised. Feminists continue to support the idea that women need to be educated to ensure development and improvement in the society.¹¹⁸⁷ Education allows an individual to acquire knowledge, skills and competence that everyone needs.¹¹⁸⁸ The relevance of “feminine” skills, experience and education have been reiterated in Britain hence the saying “the future is female”.¹¹⁸⁹ For example, Osmari’s commented “I don’t know much about civil marriage. It is good to know about civil marriage, but it is not for me” (Bradford).

¹¹⁸⁷ Laura Schwartz, ‘Feminist Thinking on Education in Victorian England’ (2011) 37(5) *Oxford Review of Education* 669.

¹¹⁸⁸ Kishore Singh, ‘Right to Education’ (2016) 42(3) *India International Centre Quarterly* 119.

¹¹⁸⁹ Carole Leathwood, ‘Treat me as a Human Being-Don’t Look at me as a Woman’: Femininities and Professional Identities in Further Education’ (2005) 17(4) *Gender and Education* 387.

Some of the interview participants' comments illustrated lack of awareness of the legal implications of a religious ceremony and misconception that any marriage contracted in Britain is valid irrespective of whether the formal requirements are met. Femi stated "I have little knowledge of civil marriage. None of my family members had a civil marriage or they would have mentioned it to me. It is not something I have taken out time to read. I know my nikah marriage is valid because it was contracted in the UK. I don't see the need to have two marriages. It just means that one marriage is more important than the other but that is false. All marriages are the same whether nikah or civil marriages in the UK" (Leicester). In addition, Pnami said "I have always thought that the nikah marriage is valid if it is contracted in the UK. Civil marriage is not popular in my community. I will look into this later and make a decision" (Walthamstow, London). Lola "I have little to no knowledge of civil marriage and the process. "I do not understand why a nikah is not recognised in Britain. If it is not recognised in Britain, it is not possible that everyone around my neighbourhood is ignorant, at least there must be one reasonable person" (Walthamstow, London).

A minority of the interview participants demonstrated lack of knowledge of civil marriage and even discussions with their husbands to understand their perspective on civil marriage.

Junau for example stated "I don't know much about civil maybe because it is a British marriage. Civil marriage is not something I can see myself doing. We have never discussed about civil marriage" (Bradford). Hoa had a similar tone to Junau in relation to her husband's view on civil marriage "I know that as we are living in the UK, there should be no problem with the nikah marriage. It is good to learn more about civil marriage. I have no document to proof that I am married. I am not sure if my husband is open to having a civil marriage" (Alum Rock, Birmingham). Xani on the other hand understands the significance of civil marriage but her husband refused to discuss it with his family. "My husband agreed that we would have a civil marriage but refused to mention it to his family. I just need to convince both families on the

importance of a civil marriage. I want our parents to support us, I love my mum and cannot imagine her missing my wedding. We have not started planning because of the support needed but will be devastated if they do not consent to civil marriage” (Sparkhill, Birmingham).

These responses illustrate not only lack of knowledge of the requirements of valid marriage but also the problem of segregation and integration discussed in detail in Chapter 5. Segregation prevents participants in this study from interacting with other individuals from other ethnic groups and thus benefiting from the knowledge acquired. Furthermore, the responses of participants showed that they are not integrating into the British society by accepting the law on marriage. A lack of understanding of the legal implications of a religious marriage may therefore contribute to rejection of civil marriage. The effect of this is that participants in this study, if the event of breakdown of the religious wedding, they will be shocked at the status of their marriage being declared as a non-qualifying ceremony and limited or no financial remedies available.

A number of interview participants had knowledge of civil marriage but from their comments, there was no urgency to have civil marriage that would have effect of rectifying a nikah marriage. For example, Amure said “I have some knowledge of the civil marriage and the process. It is good to have a marriage certificate as proof of marriage because we do not have one. We are thinking of having the civil marriage, but it is not our priority at the moment. We are not in a hurry to have a civil marriage. We have so many things to achieve” (Alum Rock, Birmingham). Similarly, Meesa said “I know a lot about civil marriage even though I haven’t had one yet. I like that when you have a civil marriage, you will be given a marriage certificate because I do not have one. My parents are not against civil marriage but wanted us to have the nikah first. My parents are very supportive and receptive of civil marriage unlike some of my friends” (Bradford). Furthermore, Aemi stated “My husband said we should have the nikah first to respect our families. My husband is in support of a civil marriage. We do not have a marriage certificate, there is no proof of marriage. No

date is fixed but it is something I look forward to in the future” (Leicester). Dza responded “I understand everything about civil marriage and the process. No planning in place yet but maybe we start having kids” (Bradford); Cadi stated “Everyone is entitled to their own opinion and views on marriage. I will only have a civil marriage if we are considering relocating to another country. We need the marriage certificate; we need proof of marriage. For now, I don’t see the need for another marriage” (Leicester); Maliza said “When I met my husband, we discussed about marriage. He said he would like to have both the nikah and civil marriage. I agreed to it because civil marriage gives more rights and protection than the nikah. Unlike some of my friends who do not agree with civil marriage. It is in our bucket list and the good thing is that it does not cost much compared to the nikah ceremony that cost thousands of pounds” (Walthamstow, London); Bassi mentioned “we are planning to have a civil marriage as my uncle mentioned something about the nikah not being recognised in the UK. I don’t even have any paper or certificate to show that I am married, and I have been married for six years” (Bordesley Green, Birmingham).

These responses illustrate that is not enough to have knowledge of the requirements of a valid marriage but what you do with that knowledge is important. Although these comments take a different perspective from other participants in this study despite living in segregated communities and demonstrate integration into the society by acceptance of civil marriage. Considering the future cannot be predicted, the unfortunate situation is that these participants will be in the same predicament as participants who had no knowledge that a nikah marriage is not a valid marriage in Britain.

On the other hand, some of the interview participants in this study expressed rejection of civil marriage. Ariye for example said, “Thank you for educating me on it, erm, I don’t see us having a civil marriage, but life changes and our ideas may change” (Bordesley Green, Birmingham). Yayi also mentioned “I understand the civil marriage procedure. I think it is

not necessary” (Leicester). Eoni “I have some knowledge of civil marriage. I know it is the British version of nikah marriage. I am not interested in having one” (Leicester). Datik has given up on having a civil marriage because of her husband’s refusal. However, she stated “I know that I will advise my kids on the importance of having a nikah and a civil marriage” (Walthamstow, London).

This rejection of civil marriage by these participants could be attributed to a variety of reasons; first, the financial expenses of getting a divorce, second, the notion that the Muslim community does not accept divorce as explained by some of these participants, third, if there is any issue in the marriage, the families will assist in resolving the conflict and finally, personal choice in relation to sticking with the cultural or religious idea of marriage.

There is disproportionately low representation of minority ethnic groups in higher institutions in Britain.¹¹⁹⁰ This is because the family, personal laws, system of education in Britain does not conform to the religious and moral principles of Muslim minority communities.¹¹⁹¹

Hussain and Sheriff found that Muslims had the highest percentage of individuals leaving school without qualifications and the main reason attributed to poor educational attainment was financial especially in cities in Britain with a high concentration of Muslim residents.¹¹⁹² In fact, Muslims are said to be at a disadvantage in terms of occupational and educational achievement.¹¹⁹³ Kingdon and Cassen write that there has been concern in Britain about “underachievement among ethnic minority groups”.¹¹⁹⁴ This can be seen in the analysis

¹¹⁹⁰ Pat Hoodless, ‘Are You Just Helping?’: The Perceptions and Experiences of Minority Ethnic Trainees on a One-Year Primary Initial Teacher Training Course’ (2004) 72(1) *Research in Education* 32.

¹¹⁹¹ Javaid Rehman, “The Sharia”, *Freedom of Religion and European Human-Rights* (2011) 22 *Irish Studies in International Affairs* 37.

¹¹⁹² Serena Hussain and Jamil Sherif, ‘Minority Religions in the Census: The Case of British Muslims’ (2014) 44(3) *Religion* 414; Serena Hussain, *Muslims on the Map: A National Survey of Social Trends in Britain* (IB Tauris 2008) 68.

¹¹⁹³ Nabil Khattab, ‘Winners and Losers’; The Impact of Education, Ethnicity and Gender on Muslims in the British Labour Market’ (2012) 26(4) *Work, Employment and Society* 556.

¹¹⁹⁴ Geeta Kingdon and Robert Cassen, ‘Ethnicity and Low Achievement in English Schools’ (2010) 36(3) *British Educational Research Journal* 403.

presented in Figure 7. The analysis shows that 31 participants of Pakistani origin had completed college, 6 had a university degree while only 2 had a master's degree out of 54 participants. When compared with the participants of Bangladeshi origin, the figures shows that 26 participants completed college while 9 participants had a university degree out of 37 participants. Participants of Black African origin due to the limited number of participants had a moderate level of participants that completed college as presented in figure 7. For example, 2 out of 14 participants of Black African origin had completed college. However, a good number of Black African participants had achieved a university degree despite the sample size with 8 participants. Furthermore, a look at the educational profiles of the participants who entered the nikah only marriage from the questionnaire shows that the level of education does not determine the choice of marriage. For example, 4 participants of Pakistani origin, 5 participants of Bangladeshi origin while 7 participants of Black African origin had all completed a university degree as shown in figure 7.

Equally important is the age profile of the older participants in this study from the questionnaire findings and their choice of the nikah only marriage. It shows participants of Pakistani ethnic origin had 1 participant between the ages of 36-40 compared to participants of Bangladeshi origin that had 6 participants as shown in figure 4. Although participants of Black African origin did not have the 36-40 age category, a significant number of 11 participants between the ages of 31-35 entered the nikah only marriage as shown in figure 4.

However, when compared with the older participants of the semi-structured interviews and their reasons for the nikah only marriage, Datik (46 years, Turkish) the oldest interview participant commented that she had no choice but to respect her husband's culture, Umari (41 years, Pakistani) mentioned that she had no choice as it is part of her religious and cultural heritage and Eenine (39 years, Bangladeshi) talked about the expectation of her parents. The common features in the older participants in the interview and their motivations for the nikah only marriage was

that nikah marriage seems to be imposed rather than an informed choice. Despite this, both Datik and Umari had knowledge of civil marriage while Eenine had no knowledge of civil marriage. These results suggest that more needs to be done to educate and raise awareness of the importance of a civil marriage after the nikah only marriage.

Kundnani stated that segregation in housing results in segregation in education and low number of minority ethnic group achieving higher education.¹¹⁹⁵ Due to cultural and religious backgrounds, Muslim women in Britain have limited choices in terms of education as a result of stereotypes of inequality associated with racial and gendered Muslim identity.¹¹⁹⁶ However, for Muslim women to further their career, they may need to accept the British secularism and individualism and pay less attention to family expectations.¹¹⁹⁷ For example, some of the interview participants in the study blamed their parents for their lack of knowledge of civil marriage. Eenine said “My mum has never mentioned anything about civil marriage. Even my husband has not mentioned anything about civil marriage. I don’t know whether he is for or against civil marriage. If I knew about civil marriage, I would have discussed this before marriage. My friends are my childhood friends. Civil marriage is not something they would hide from me” (Bordesley Green, Birmingham). Meanwhile Jenika stated “Not everyone will accept to have another marriage after the nikah. My parents seem to be unaware of civil marriage or may be pretending not to know about it” (Sparkhill, Birmingham). Furthermore, Suni said “My knowledge of civil marriage is very poor. It is not common in my community”. My parents did not have a civil marriage because they would have told me about it. Even my husband has never mentioned anything about civil marriage maybe because of his views about what is going on. He may not even know about civil marriage and the importance of having one. I will discuss

¹¹⁹⁵ Arun Kundnani, ‘From Oldham to Bradford: The Violence of the Violated’ (2001)43(2) *Race and Class* 105.

¹¹⁹⁶ Louise Archer, ‘Change, Culture and Tradition: British Muslim Pupils Talk About Muslim Girls’ Post-16 ‘Choices’ (2002) 5(4) *Race Ethnicity and Education* 359.

¹¹⁹⁷ Anne Fearful and Nicolina Kamenou-Aigbekaen, ‘How do you Account for It? A Critical Exploration of Career Opportunities for and Experiences of Ethnic Minority Women’ (2006) 17(7) *Critical Perspectives on Accounting* 883.

with my husband later” (Bradford). Nerimi on the other hand is more concerned about her family support. “It is not something I have considered, and I don’t see us entering a civil marriage. My parents will not support me. I know their views on some of the issues in the society which I cannot discuss here” (Sparkhill, Birmingham).

Regarding educational choice and Muslim women, there is conflict between the collectivism, religious and cultural values and the British society’s idea of individualism and secularism.¹¹⁹⁸

For example, British Muslims attach great importance to education but not to the “detriment of their ethnic identity of origin”.¹¹⁹⁹ Similarly, parental influence is significant and plays an important role between educational outcomes and ethnic identity in African families.¹²⁰⁰

Amizeer for example said “My parents also discussed civil marriage but mentioned it was my choice and if in the future I decide to have a civil marriage, they would not oppose it. I was very happy after the discussion that my parents accept the British marriage. I know everything about civil marriage and learnt from my parents and online. I understand the process of civil marriage and the requirements. Many people in my community do not accept the British marriage. They do not discuss the British marriage as an option. My husband is not against civil marriage but only said we must have the nikah marriage first before the civil marriage. We are planning to have a civil marriage, a small one, maybe next year” (Alum Rock, Birmingham).

These comments about blame or reliance on parents for knowledge of civil marriage relates to the argument on collectivist cultures discussed earlier in this chapter. We found that individuals in collectivist cultures are connected to their families so it is not surprising that these women will rely on their families for information. Furthermore, the fear of the izzat may be the reason

¹¹⁹⁸ Bruce Carrington, Alastair Bonnet, Jack Demaine, Ian Hall, Annop Nayak, Geoffrey Short, Christine Skelton, Fay Smith and Richard Tomlin, ‘Ethnicity and The Professional Socialisation of Teachers’ (2001) *Education Research* 1; Graham Butt, Lin Mackenzie and Russell Manning, ‘Influences on British South Asian Women’s Choice of Teacher as a Career: “You’re Either a Career Person or a Family Person: Teaching Kind of Fits in the Middle”’ (2010) 62(1) *Educational Review* 69.

¹¹⁹⁹ Basit (n1198).

¹²⁰⁰ Heidi Mirza, *Young, Female and Black* (1st edition, Routledge 1992) 167.

some of the parents in this study will want their children to continue with family tradition and not educate them on the importance of a civil marriage if they have knowledge of the requirements of a valid marriage in Britain.

Parents while encouraging their daughters to pursue higher education are concerned about the perception and the bad influence of the secular society.¹²⁰¹ Umari for example felt that having a civil marriage was not significant because her parents should have mentioned it to her at some point. She said “I have been married for eighteen years with teenagers and there are no issues in my marriage. If I wanted to have a civil marriage, it should have been one or two years after my nikah marriage. If civil marriage was important, my parents would have discussed it with me. My parents want the best for their children” (Leicester).

Unlike Umari who commented that civil marriage seems not to be important because her parents did not educate her on the need for a civil marriage. Xani’s comments showed a suppression of her personal decision to satisfy the desires of her parents, and this illustrates a clear example of the impact of the izzat. In relation to perceptions on civil marriage, Nerimi, Jaguri and Datik have some knowledge of civil marriage but require the support of family before a decision to enter a civil marriage. Whilst Nerimi’s parents will not support her to decision to enter a civil marriage because of “White privilege” and their political views about the government. Datik on the other hand has knowledge of civil marriage and repeatedly discussed it with her husband who refused her request.

Both Pnami and Fetzimi responses like most of the participants in this study established ambivalence positions when they spoke about the nikah only marriage. Reay et al argue that one factor responsible for lack of awareness and attainment of higher education among minority

¹²⁰¹ Tehmina Basit, ‘I Want to go to College: British Muslim Girls and The Academic Dimension of Schooling’ (1995) 12 Muslim Education Quarterly 36.

ethnic group is the difference in cultural and social ranking based on “historical discrimination”.¹²⁰²

Similarly, Femi spoke about the nikah marriage being the equivalent of a civil marriage as any marriage entered in the UK is valid. She makes a strong point regarding that entering the nikah only marriage and later a civil marriage is tantamount to giving superiority to civil marriage over a nikah marriage. Bassi like some of the participants in this study had the perception that nikah in a private home is legally recognised because it was entered into in Britain. However, she became aware of her status after a discussion with her uncle and plans to have a civil marriage. Parveen suggested the solution to the problems of unregistered Muslim marriages in UK could be by adopting the procedure used by the Driver and Vehicle licensing Agency to reconsider family law and laws on cohabitation rather than a creating a different set of rules and regulations for Muslims.¹²⁰³ Building on from this argument, the researcher recommends using the same approach for example, the first option will be accommodation of the nikah only marriage using the approach similar to the two stages of Driver and Vehicle licensing Agency. The first stage will be permitting couples to enter a nikah only marriage in a private residence, but this must be on the condition that they are register their intention to marry to the government. The second stage will require couples informing the government within a period of one month after the ceremony has taken place and then the government will issue a marriage certificate. This will remove the need to enter a civil marriage as the nikah only marriage will be legally recognised in Britain.

¹²⁰² Diane Reay, Jacqueline Davies, Miriam David and Stephen Ball, ‘Choices of Degree or Degrees of Choice? Class, ‘Race’ and the Higher Education Choice Process’ (2001) 35(4) *Sociology* 855.

¹²⁰³ Rehana Parveen, ‘Religious Only Marriage in the UK: Legal Positionings and Muslim Women’s Experiences’ (2018) 6(3) *Sociology of Islam* 316.

6.5 Conclusion

A triangulation of semi-structured interviews and the questionnaire findings contributed to our understanding of the reasons British Muslim women enter the nikah only marriage and level of knowledge on civil marriage. Another key theme to emerge from the interviews was the influence of culture. We found the culture played a significant role in the decision to have the nikah only marriage. Furthermore, the interview findings highlighted an interesting feature of collectivist cultures, the desire to comply with the norms of the Muslim community even to their own detriment. In addition, the findings revealed that some British Muslim women in this study are struggling to acculturate and adapt to the societal norms.

Furthermore, another major theme to emerge from the interviews was ethnicity and identity. The results revealed the impact ethnicity and identity have on British Muslim women's decision to enter the nikah only marriage. The final theme to emerge from this study was education and awareness. The interview responses as well as the questionnaire findings revealed that more needs to be done to raise awareness on the importance of a civil marriage after nikah only marriage. Furthermore, some participants struggled to make sense of the reason why the nikah only marriage is not legally recognised in Britain. The findings revealed that the level of education and age profile of older participants does not determine the choice of the nikah only marriage. The narratives of the participants have exposed some of the problems Muslim women in this study face daily in their choice of the type of marriage to contract. The next chapter will discuss the conclusions and recommendations based on the findings of this study.

Chapter 7: Conclusions and recommendations

7.1 Conclusions and original contribution to knowledge

The overarching research question explored the reasons British Muslim women entered a nikah only marriage. The study also sought to understand British Muslim women's reasons and level of knowledge for not considering a civil marriage based on the fact that the nikah in a private home is not legally recognised in Britain. This research uses the theoretical frameworks of multiculturalism, legal pluralism and critical race theory to provide a new analytical understanding of Muslim marriages and therefore contributes to new knowledge.

On reflection of the findings from the triangulated semi-structured interviews and questionnaire, the first conclusion that can be drawn is the problem of segregation. Although not all British Muslim women live in segregated communities, however, the focus of this thesis was restricted to British Muslim women who live in segregated communities. The findings in this study revealed that there is apparent segregation in the Muslim communities and as a result, lack of community cohesion that allows minority ethnic groups to interact and integrate into the British society. As previously discussed in chapter 5, legal pluralism and community cohesion could be the solution to the problems of unregistered Muslim marriage in Britain. Legal pluralism will permit the co-existence and recognition of nikah marriage as well as the official law. Furthermore, community cohesion tailored towards supporting British Muslim women who live in segregated communities to integrate into the society through inclusive policies such as supporting relations, shared visions and equal opportunities. Even the theoretical framework of multiculturalism which refers to the accommodation and acknowledgement of ethnic diversity in Britain such religious and cultural norms for example

the nikah ceremony could alleviate the proliferation of unregistered Muslim marriages in Britain.

Associated with the problem of segregation revealed in this study was “civil marriage is for whites”. A recurring theme among the participants in this study was the reference to civil marriage as marriage for the whites or borrowed marriage. For some of the women interviewed, the choice of nikah for cultural reasons seems to be linked to the rejection of “white” civil marriage. The rationale for referring to civil marriage as marriage for the whites was that it is the culture of the whites to have a civil marriage the equivalent to a nikah marriage for Muslims. This is in line with the argument that critical race theory is an aspect of race-based resistance scholarship which challenges “Eurocentric” values for instance Whiteness.¹²⁰⁴ With specific regards to critical race feminism and the focus being women of colour, this analytical framework will examine the plight of British Muslim women in relation to the nikah ceremony.¹²⁰⁵

Furthermore, linked with the problem of segregation which emerged from this study was the issue of divorce. For some of the participants in this study, a discussion about civil marriage triggered a discussion on divorce in Britain. These participants believed that having a civil marriage will eventually lead to a divorce which is frowned upon in the Muslim community and therefore not necessary. These participants highlighted that civil marriage conferred rights as well as monetary benefits on British Muslim women and results in marital issues that leads to a divorce. In effect, having a nikah marriage will prevent the predicament of a divorce and marital issues settled within the family or the Muslim community. Furthermore, these participants cite examples of longevity of their parent’s marriage who had the nikah only marriage. This raises a

¹²⁰⁴ John Colmore, ‘Critical Race Theory, Archie Shepp and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World’ (1992) 65 Southern California Law Review 2129; Amy Liu, ‘Critical Race Theory, Asian Americans and Higher Education: A Review of Research’ (2009) 5(2) UCLA Journal of Education and Information Studies 1.

¹²⁰⁵ Wing (n748).

significant issue in relation to the problem of unregistered Muslim marriages. Interestingly, this should be considered as one of the main arguments for civil marriage which is the vulnerability of a wife on the breakdown of the nikah. The explanation for this issue can be found in the definition of legal pluralism as the co-existence of two or more legal systems within the same social field occasionally contradicting each other and equally having credible claims to authority.¹²⁰⁶

Likewise, neighbourhoods with a high concentration of Muslim minorities will lead to reliance on social networks for dissemination of information. For example, four participants out of the nine participants from Walthamstow London commented on the discussion of the nikah marriage in social groups and the popularity of the nikah in their neighbourhoods. According to Carling, a population is said to be segregated when individuals of the same nationality, ethnicity are represented disproportionately in specific areas of residence.¹²⁰⁷ This issue has been construed to relate to lack of community cohesion and there is need to interact with members of different cultural groups as a measure to curb segregation of minority ethnic groups.¹²⁰⁸

This study shed light on the tension between segregation and integration among British minority ethnic groups following the narratives of the interviewees. As mentioned in Chapter 5 of this thesis, an indication of marriage practices that do not conform with the requirements of state law is the refusal to accept a civil marriage after a religious wedding. This could be seen as a refusal to integrate into the British society. Ethnic segregation is a consequence of cultural isolation, and this will have a negative effect on integration. For example, the comments of some of the participants in this study that expressed rejection of civil marriage.

¹²⁰⁶ Norbert Rouland, *Legal Anthropology* (1st edition, The Athlone press 2000); Sionaidh Douglas-Scott, 'Justice and Pluralism in the EU' (2012) 65(1) *Current Legal Problems* 83.

¹²⁰⁷ Alan Carling, 'The Curious Case of Mis-Claimed Myth Claims: Ethnic Segregation, Polarisation and the Future of Bradford' (2008) 45(3) *Urban studies* 553.

¹²⁰⁸ *Ibid.*

Voas and Fleischman attributes Islam in Europe to be an impediment to integration in UK and “there is some risk of a vicious circle of prejudice and the reactive adoption of Islam as an oppositional identity”.¹²⁰⁹ It is suggested that the theoretical framework of social anchoring may identify and address the constraints to integration amongst British Muslim women. Moreover, social cohesion that pertains to shared values, interpretation of ideas, harmony, and support for everyone in the society may assist in combating some of the problems associated with unregistered Muslim marriages.¹²¹⁰ The specific contribution to knowledge in this instance is that the study has demonstrated that British Muslim women living in segregated communities in Britain are not integrating into the British society due to social as well as cultural isolation. In addition, due to the diversity of cultural, religious and ethnic minorities that live in segregated communities, this study has established that there is no homogeneity amongst participants in this study. The legal implication of this issue of segregation is that British Muslim women in this study will give priority to the nikah only marriage. Furthermore, no study in this field of research has investigated the reasons for nikah only marriage from the perspective of segregated communities. In effect, the findings from this study on the problem of segregation directly answers the research question on the reasons that the British Muslim irrespective of ethnic origin are entering the nikah only marriage as well as Muslim women’s reasons and level of knowledge for not considering a civil marriage based on the fact that the nikah in a private home is not legally recognised in Britain. Furthermore, it directly answers sub-research question in relation to the fact that segregation does play an important role in British Muslim women’s choice in entering the nikah only marriage.

The second conclusion that can be drawn on analysis of the interview findings in this study is

¹²⁰⁹ David Voas and Fenella Fleischmann, ‘Islam Moves West: Religious Change in the First and Second Generations’ (2012) 38 Annual Review of Sociology 525.

¹²¹⁰ Dalia Mogahed and Zsolt Nyiri, ‘Reinventing Integration: Muslims in the West’ (2007) 29(2) Harvard International Review 14.

maintaining the family izzat or family honour. Maintaining the izzat or family honour was one major reason for entering the nikah only marriage established in this study. The izzat is considered as a set of rules that must be followed to maintain position within the community and preserve the family honour.¹²¹¹ Honour to the families of the bride and groom, respect, acceptance in the Muslim community was a recurring theme amongst a significant number of participants in this study¹²¹². For example, participants in this category were two each from Alum rock and Bordesley Green, three participants from Sparkhill, four each from Bradford as well as London and finally, three participants from Leicester. Some of these participants shared their stories on what contributed to the decision to enter the nikah only marriage. This in line with the argument by Vaught that critical race feminism depends on storytelling as a vehicle to communicate the experiences of women of colour.¹²¹³

Obedience to the male head of the family was a subtheme to emerge from analysis of maintaining the izzat or family honour. One participant from Sparkhill Birmingham attributed obedience to her father for the fear of being disowned as the main reason for the nikah only marriage. Obedience to the male head of the family illustrates some features of patriarchy such as male domination and control. In effect, this research has revealed that the social structure of patriarchy is still prevalent among the Muslim community in Britain. This is based on the argument by Walby that patriarchy is a system of social structure used by men to oppress, dominate and exploit women.¹²¹⁴ This also resonates with the argument by Tate IV that critical race theory requires a critical analysis of relationships between groups to expose how power

¹²¹¹ Annela Pilkingtona, Rachel Msetfia and Ruth Watson, 'Factors Affecting Intention to Access Psychological Services Amongst British Muslims of South Asian Origin' (2012) 15(1) *Mental Health, Religion and Culture* 1.

¹²¹² Refer to section 5.4 of Chapter 5.

¹²¹³ Sabina Vaught, 'Writing Against Racism: Telling White Lies and Reclaiming Culture' (2008) 14(4) 566.

¹²¹⁴ Sylvia Walby, 'The 'Changing Form' or the 'Declining Significance' of Patriarchy?' In Valentine Moghadam (eds), *Patriarchy and Economic Development: Women's Positions at the End of the Twentieth Century* (Clarendon Press, 1996) 21.

interferes with the ability of minorities to voice their concerns.¹²¹⁵ Counter-storytelling a principle of CRT will give British Muslim women the opportunity to tell their stories which would not normally be heard in the society and to express their thoughts or views.¹²¹⁶ In addition, critical race feminism will give British Muslim women the opportunity to endorse the notion of multiple consciousness to describe a world in which people are oppressed on the basis of gender, race, class or even sexual orientation.¹²¹⁷

Connected to the izzat is paying homage to the family was one of the reasons three participants mentioned for entering the nikah only marriage. Two of these participants were from Bordesley Green Birmingham and one from Bradford. Furthermore, shame to the family was explicitly mentioned by three participants as one of the reasons for entering the nikah only marriage. Two of these participants were from Walthamstow while the other was from Alum Rock Birmingham. In effect, these findings have revealed that the izzat is a social control mechanism which will continue to guide and regulate British Muslim women in the preservation and conformity with cultural and religious practices such as the nikah only marriage.¹²¹⁸ This explains the idea behind the theoretical framework of multiculturalism that is based on tolerance and inclusivity because it acknowledges the existence of different cultures practices in the society. In effect, tolerance is portrayed as an English virtue of permitting ethnic minorities the freedom to preserve their cultural traditions in Britain in relation to religious toleration, freedom from discriminations, individual liberty and association.¹²¹⁹ The specific contribution to knowledge is that existing literature on izzat focused on the connection

¹²¹⁵ William Tate IV, 'Critical Race Theory and Education: History, Theory and Implications' (1997) 22 *Review of Research in Education* 195.

¹²¹⁶ Solarzano and Yosso (n698).

¹²¹⁷ Angela Harris, 'Race and Essentialism in Feminist Legal Theory' (1990) 42(3) *Stanford Law Review* 581.

¹²¹⁸ Sunita Toor, 'British Asian Girls, Crime and Youth Justice' (2009) 9(3) *Youth Justice* 239.

¹²¹⁹ Poulter (n1075).

between honour to the family and forced as well as arranged marriages¹²²⁰ however, the link between the importance of the izzat with the nikah marriage has been unexplored. In this regard, this study adds a new outlook to literature on the importance of the izzat and the nikah marriage. As a result, maintaining the izzat or family honour answers the research question as one of the main reasons for the nikah only marriage.

The influence of parents is the third conclusion that can be drawn from the analysis of interview and questionnaire findings. The family was an important driving force among British Muslim women in this study as one of the main reasons for the nikah only marriage. Children represent the interest of the family as a unit through ideas, practices, principles transferred and embedded by their parents.¹²²¹ Parents make a difference in instilling and raising their children according to the religious, cultural practice and identity of the family. Three of the Birmingham participants credited parental influence and control especially on the part of their mother as the major reason for entering the nikah only marriage. This was in line with the argument by Moghadam that the family is a paramount societal institution in Islam and highlights the role of the mother in the socialisation process of transferring, disseminating religious, cultural norms and raising dedicated Muslims.¹²²² Similarly, a participant from Leicester mentioned that she had no choice than to obey her parents as part of her religious upbringing. Although one of the interviewees was vehemently opposed to having a nikah marriage having researched information on both civil and nikah marriage, she still went ahead to have the nikah ceremony in a private residence to respect family. These participants felt

¹²²⁰ David Bradley, 'Duress and Arranged Marriages' (1983) 46(4) *The Modern Law Review* 499; Mairead Enright, 'Choice, Culture and Politics of Belonging: The Emerging Law of Forced and Arranged Marriage' (2009) 72(3) *Modern Law Review* 331.

¹²²¹ Michael Wyness, 'Children, Family and the State: Revisiting Public and Private Realms' (2014) 48(1) *Sociology* 59.

¹²²² Valentine Moghadam, 'Patriarchy in Transition: Women and the Changing Family in the Middle East' (2004) 35(2) *Journal of Comparative Family Studies* 137.

compelled to have the nikah only marriage. This shows the sense of obligation to family and suppression of individual desires in Asian cultures as argued by Sastry and Ross.¹²²³

The interview findings from this study revealed the apparent age gap between the first generation and second generation of British Muslim women in decision making. The respondents were the second generation of British Muslim women whose parents were first generation of Muslim immigrants. These parents were more concerned about the continuance of cultural and religious practices without taking into consideration the laws applicable in the society. This is in line with the argument that in multicultural societies, minority ethnic groups are normally against cultural and social change, they uphold ethnic loyalties and the authority of the family.¹²²⁴ However, as argued by Jackson, legal pluralism can reunite a diverse society as law emanates from the social norms of a society and the state only acts a mechanism to enforce the norms in form of laws.¹²²⁵

Furthermore, the results from the questionnaire showed that 46 out of the 55 participants selected family and friend's advice as a reason for entering the nikah only marriage (figure 11).¹²²⁶ Again, family and friends were significant factors in Muslim women's choice of the place to seek support in the event of marital breakdown based on the questionnaire findings with twenty participants (figure 12). Joly asserts that the environment that governs British Muslim lives are illustrated with two interconnecting settings; first is the nuclear family that begins the socialisation process and second, the Muslim community.¹²²⁷ The Asian family are said to have strong community bonds and structure of informal social control with firm

¹²²³ Sastry and Ross (n1083).

¹²²⁴ Richard Fenn, 'Toward a Theory of Secularization' (1978) *Society for the Scientific Study of Religion* 36.

¹²²⁵ Sherman Jackson, 'Legal Pluralism Between Islam and the Nation-state: Romantic Medievalism or Pragmatic Modernity' (2006) 30(1) *Fordham International Law Journal* 158.

¹²²⁶ See Chapter 5.

¹²²⁷ Daniele Joly, 'Women from Muslim Communities' (2017) 51(4) *Sociology* 816.

commitment to the community, close and extended family.¹²²⁸ In effect, the study has highlighted that there is a sense of obligation placed on British Muslim women in this study to live up to the expectations of their parents and comply with religious as well as cultural traditions such as the nikah only marriage and therefore contributed to new knowledge. Furthermore, shared experiences, interactions, ideas among friends contributed to the decision to have a nikah only marriage. In addition, the influence of parents and friendships directly answers the research question on the reason for the nikah and level of knowledge about civil marriage.

The impact of culture is the fourth conclusion that can be drawn as another reason for British Muslim women's choice of the nikah only marriage on analysis of the interview and questionnaire. Majority of the interview participants cited strict compliance with traditional cultures as a necessary aspect of their identity and religiosity. For example, some of the interview participants maintained that as part of their cultural heritage, the nikah marriage comes as a "package" and refused to acknowledge the importance of civil marriage emphasising that it is marriage for "white people and not for brown skin". A clear example of this issue can be found in South Africa. Legal pluralism in South Africa involves coexistence of different forms of marriages distinguished between marital forms connected with former colonial systems (civil marriage) and, customary as well as Muslim marriages.¹²²⁹ However, the pluralist systems promote civil marriage as a superior form of marriage without consideration to the different religious and cultural practices available in South Africa. In this regard, Bonthuys argues that these multiples systems of religious and cultural practised should be recognised as an approach to tackle the issue of superiority of civil marriage in South

¹²²⁸ Barbara Hudson and Gaynor Bramhall, 'Assessing the 'Other': Constructions of 'Asianness' in Risk Assessments by Probation Officers' (2005) 45(5) *The British Journal of Criminology* 721.

¹²²⁹ Elsje Bonthuys, 'Pluralist Marriage Laws in a Former Colonial System: Cultural Authenticity or Hybridisation?' (2020) 34(1) *International Journal of Law, Policy and the Family* 84.

Africa. This is similar to the position in Britain where civil marriage is the legally recognised marriage notwithstanding the existence of religious and cultural practices of British Muslims and their form of marriage such as the nikah. Britain should consider the recognition of the nikah only marriage suggested by Bonthuys, and this marriage should have the same legal status as civil marriage. Thus, this solution will alleviate the problems of British Muslim women who enter a nikah only marriage.

Interestingly, the questionnaire findings disclosed a remarkable number of 43 participants were influenced by culture as a reason for having the nikah only marriage (figure 11). Furthermore, all participants in the questionnaire selected religion as one of the reasons for the nikah only marriage. These findings also add to the growing body of research that found priority to the nikah over civil marriage as discussed in chapter 2. This explains the argument by Malik that cultural diversity which is an aspect of multiculturalism includes ethnic and religious diversity and is part of the social life in Britain.¹²³⁰ Lewis and Kashyap further echo the above view by stating immigrants have revamped the religious scenery from homogeneity to diversity.¹²³¹

British Muslim women in this study are on a slow path towards acculturation. This can be seen from the outright rejection or lack of interest shown towards civil marriage. Regarding the two dimensions of acculturation described by Phinney et al¹²³² in chapter 6, some of the British Muslim women are said to be in the first stage of maintaining one's cultural heritage from the analysis of the interview. In this regard, critical race theory examines culture as it pertains to race, power and law.¹²³³ Critical race theory informs the interpretation of Muslim women's

¹²³⁰ Maleiha Malik, 'Minority Legal Orders in the UK: Minorities, Pluralism and the Law' (2012) British Academy Policy Centre 14.

¹²³¹ Valerie Lewis and Ridhi Kashyap, 'Are Muslims a Distinctive Minority? An Empirical Analysis of Religiosity, Social Attitudes and Islam' (2013) 52(3) *Journal of Scientific Study of Religion* 617.

¹²³² Phinney et al (n73).

¹²³³ Kathleen Boyd, 'Using Critical Race Theory to Solve Our Profession's Critical Race Issues' (2018) *Journal of Financial Planning* 13.

responses in the interview by recognising the place of race in the society.¹²³⁴ In this regard, this thesis contributes to knowledge as it has demonstrated that culture is an inherent feature of British Muslim women in this study and there is a desire to conform to cultural norms such as the nikah marriage and show less commitment to state law for example, civil marriage. Furthermore, this study has demonstrated that British Muslim women in this study are collectivist in nature, connected to the family as well as lineage and loyalty is a significant feature of collectivism. This means that British Muslim women in this study will consider family traditions such as nikah only marriage. The influence of culture has been established as one of the main reasons for the nikah only marriage and therefore answers the research question.

Identity and ethnicity were the fifth conclusion that can be drawn from the research findings as a major contributory factor in Muslim women's choice of the nikah only marriage. Most of the participants in this study mentioned ethnicity and identity as a significant factor. From the discussions and interpretation of the interview findings, connection with ethnic heritage and Muslim umma was a determinant in keeping with the religious and cultural identity. Some of the participants quoted pressure from the family and even extended family to maintain family tradition. This corroborates with the argument by Burrell-Craft that critical race theory considers the peculiar circumstance, realities and lived experiences of minority ethnic groups.¹²³⁵ Furthermore, critical race theory serves as a means of examining the message of race transmitted in and between systems.¹²³⁶ In this regard, the concept of intersectionality a

¹²³⁴ Narda Razack and Donna Jeffery, 'Critical Race Discourse and Tenets for Social Work' (2002) 19(2) *Canadian Social Work Review* 257.

¹²³⁵ Kala Burrell-Craft, 'Are (We) Going Deep Enough? A Narrative Literature Review Addressing Critical Race Theory, Racial Space Theory and Black Identity Development' (2020) 19(4) *Taboo: The Journal of Culture and Education* 9.

¹²³⁶ Sarah Sargent, 'Transracial Adoption in England: A Critical Race and System Theory analysis' (2015) 11(4) *International Journal of Law in Context* 412.

principle of critical race theory will provide a means for dealing with the problems of unregistered Muslim marriages in Britain.¹²³⁷

Basit asserts that “Muslim identity now provides them with a powerful and ideologically effective justification for the maintenance of family and baradari” (ancestor).¹²³⁸ The implication is that Muslim British Muslim women in this study will continue to view the nikah marriage in a private residence as a legally binding marriage in Britain without regard to civil marriage. This is a clear example of legal pluralism which is referred to as ‘that body of theory which recognises that the total context in which law operates within a legal system consists of a plurality of different culturally determined layers of practice which might consist of official laws, unofficial laws and legal postulates’.¹²³⁹ This research has established that ethnicity and identity are characterised in terms of culture, religion and nationality. British Muslim women in this study showed strong attachment towards religious and cultural identity and slow interest in integrating into the British society. This strong attachment means that British Muslim women in this study will give priority to religious and cultural norms such as the nikah only marriage and less integration into the British society by rejection of civil marriage. In this regard, this argument adds to a new outlook on unregistered Muslim marriages and therefore contributes to knowledge in this field of research. Ethnicity and identity are established as one of the main reasons that British Muslim women in this study are having the nikah only marriage, rejecting civil marriage and therefore answers the research question.

The level of education and awareness is the final conclusion that can be drawn from the analysis of the semi-structured interview and questionnaire. Most of the participants in this

¹²³⁷ Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, Violence Against Women of Colour’ (1991) 43(6) *Stanford Law Review* 1241.

¹²³⁸ Basit (n1198).

¹²³⁹ Masaji Chiba, ‘Asian Indigenous Law: In Interaction with Received law (1st edition, London: New York 1986)2. Unofficial law is not an officially sanctioned law but is sanctioned by the consensus of a group of people whether functioning in conjunction with official law or complementing/resisting the demands of the official legal system.

study established ambivalent positions when they spoke about the nikah only marriage. These findings were found to support and advance a growing body of researchers and corroborates previous literature by Akhtar and Uddin discussed in Chapter 2 of this research. They participants argued that the nikah only marriage is valid because it was entered in the UK and as a result there was no need for a civil marriage. This explains the theory of legal pluralism that reinforces the significance of recognising that non- state legal systems such as customary or religious systems may co-exist together with the state system.¹²⁴⁰

This study has highlighted the reluctance by participants to rectify a “defective” marriage. For example, some of the participants who had knowledge or were informed of their status during the interview process either responded that they were not interested or mentioned that they will remain silent and not educate other family members on the need for a civil marriage. Even a participant from Birmingham who became aware of her status based on what had been disclosed to her by uncle about civil marriage that prompted the “plan” for a civil marriage. However, at the time of the study, it was over five years and no concrete step had been taken towards having a civil marriage. Whilst one participant from London mentioned that was in her bucket list, another from Leicester mentioned that she will only consider a civil marriage if relocating to another country while another participant from Bradford mentioned having children as a prerequisite. In essence, counter-storytelling one of the principles of critical race theory assists us to “understand what life is like for others and invites the reader into a new and unfamiliar world”.¹²⁴¹

More importantly, the results from the questionnaire showed that few participants had achieved a university degree or above. The findings presented in figure 8 in chapter 5 showed that the

¹²⁴⁰ Miranda Forsyth, ‘How to ‘Do’ Legal Pluralism (2007) School of Regulation and Global Governance 1.

¹²⁴¹ Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (New York University Press 2001)144.

level of education had no impact on the choice of nikah only marriage as some of the participants had a university or master's degree. In addition, out of the one hundred and ten participants who completed the questionnaire, thirty-eight across all ethnic groups, had no knowledge of the status of the nikah venue as presented in figure 3.

For some of the participants in this study that expressly stated that they will stick with the nikah marriage, the legal implication of this decision is that the marriage will not be recognised in the eyes of the law. In the event of breakdown of the relationship, the nikah marriage will be regarded as a non-qualifying ceremony and the parties cannot apply for financial relief under the Matrimonial Causes Act 1973. In effect, this thesis has contributed to knowledge because it has demonstrated that no matter the level of education and awareness of the legal implications of the nikah only marriage, British Muslim women in this study will still have the nikah marriage before considering or even rejecting civil marriage. Therefore, the level of education and awareness of the nikah and civil marriage has no significance in British Muslim's women choice of the nikah only marriage and directly answers the sub-research question in this study.

7.2 Recommendations from the research

This study established the need to educate British Muslim women on matters dealing with the legal requirements and the validity of marriage in Britain. On reflection of the interview and questionnaire finding, this research recommends the followings:

The first recommendation based on the findings established in this research is recognition of the nikah marriage by the British government. This will prevent the proliferation of unregistered Muslim marriage because due to religious and cultural reasons, the nikah marriage will always be considered a priority for British Muslims. This recommendation is based on the

fact that as Britain is a multicultural and pluralist country, the nikah marriage should be legally recognised and have the same status as the civil marriage.

Second, there is need to raise more awareness of the legal requirements of a valid marriage in Britain through educational activities such as talk shows in the media and social media networks such as YouTube, Facebook and Instagram as the dissemination of information spreads widely through these networks. In addition, raising awareness through campaigns, flyers and outreach work on the legal requirements of a valid marriage in Britain in the major cities known for the high concentration of Muslim minorities. These campaigns should be extended to neighbourhood and community meetings that British Muslim women attend. Furthermore, hosting guest speakers in the wedding seminars usually attended by British Muslim women to educate them on the need to enter a civil marriage after a nikah only marriage will prevent the proliferation of the nikah only marriage.

Third, the government should adopt measures to ensure that more mosques are registered.

The approach that can be used to achieve this is through the Imams in charge of the mosques. Government should first send notice to the imam to the effect that the mosque should be registered within a specific time frame usually a period of one month with constant reminders until registration is achieved. This will ameliorate the problems of unregistered Muslim marriages in Britain. However, if this option is not practicable, any person or imam charged with the responsibility of officiating a nikah in a private residence, parks, restaurants or pubs, should be imposed with a duty by the government. This duty will involve educating couples of the importance of a civil marriage after the nikah and a follow up to ensure measures are taken. Finally, future researchers should build on the work established in this study and extend interviews to the first generation of Muslim parents as the pressure from parents to continue

with family traditions leads to the proliferation of the unregistered Muslim marriages in Britain.

The future of the unregistered Muslim marriages is unlikely to change following the recent decision of the Court of Appeal in the case of *Akhter v Khan*¹²⁴² on the status of a nikah only marriage. However, it will be interesting to read the Supreme Court decision and the rationale for the decision if the case goes on a final appeal.

7.3 Limitations of this study

The following are the limitations to this study; first, this study was confined to British Muslim women living in segregated communities. However, some British Muslim women live in non-segregated areas, the perspectives of these women were not sought to compare responses to determine whether their reasons for the nikah only marriage would be different. Second, as an outsider, the researcher felt that some of the participants were withholding information. For example, few of the participants commented that there were some responses not appropriate to include in the interview. Third, this research used the snowball sampling to recruitment participants (network of friends and relatives) and therefore did not gain a complete view on the reasons for the nikah only marriage. Finally, a minority of the participants commented on information about their friends. The researcher was unable to contact some of those friends for an interview to gain their viewpoint on the issue.

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Appendices

Appendix 1: Recruitment pamphlet for the interview



Volunteers needed!!

PhD Research study: Muslim women in Britain: A Study of unregistered Muslim marriages, effects, problems, and solutions.

I am looking to recruit participants who entered their nikah marriage in private homes, pubs, restaurants, and parks in Britain.

The study involves British Muslim women, the reasons for entering the nikah only marriage and perceptions on civil marriage.

The research is anonymous and strictly confidential. The data is used solely for the PhD thesis.

This is an informal interview over coffee or lunch.

Participation criteria

- You must be 18 years of age or above.
- Entered the nikah marriage in a private home, pub, restaurant, or park in Britain.

If you are interested to participate and voice out your opinions, please contact me. If you think of anyone who would be happy to participate, please forward my email.

I can be contacted on email: Adaku.ezerioha@research.staffs.ac.uk

Phone number: 07446943984.

Adaku Ezerioha
PhD researcher,
Staffordshire University.

Appendix 2: Recruitment pamphlet for the questionnaire



Volunteers needed!!

PhD Research study: Muslim women in Britain: A Study of unregistered Muslim marriages, effects, problems, and solutions.

I am looking to recruit participants who entered their nikah marriage in private homes, pubs, restaurants, and parks in Britain. Also, participants who had both the nikah and civil marriage in Britain.

The study involves British Muslim women, the reasons for entering the nikah only marriage and perceptions on civil marriage.

The research is anonymous and strictly confidential. The data is used solely for the PhD thesis.

Participation criteria

- You must be 18 years of age or above.
- Entered the nikah marriage in a private home, pub, restaurant, or park in the UK or
- Entered both the nikah and civil marriages in the UK.

If you are interested to participate, please contact me. If you think of anyone who would be happy to participate, please forward my email.

I can be contacted on email: Adaku.ezerioha@research.staffs.ac.uk

Phone number: 07446943984

Adaku Ezerioha
PhD researcher,
Staffordshire University.

Appendix 3: Ethical approval



Ethical approval long form .pdf

Appendix 4: Consent form for the interview



Title of project: Muslim Women in Britain: A Study of Unregistered Muslim Marriages, Effects, Problems and Solutions.

1. Has the purpose of the research project been explained to you? **Yes/No**
2. Have you been given an information sheet about the research? **Yes/No**
3. Have you read the information sheet? **Yes/No**
4. Do you understand the information sheet? **Yes/No**
5. Have you been given opportunity to ask questions about the project? **Yes/No**
6. Do you understand that participation in this study is entirely voluntary? **Yes/No**
7. Do you understand that you are free to leave or withdraw at any time without providing an explanation? **Yes/No**
8. Do you understand that anonymity will be ensured in the study by disguising your name? **Yes/No**
9. Do you understand that extracts from your interview may be quoted in the thesis and any subsequent publications if you give permission below? **Yes/No**

(Please circle one box)

I agree to quotations/publication of extracts from my interview

I do not agree to quotations/publication of extracts from my interview

I confirm that this information has been provided prior to the research interview.

I agree to take part in this research project.

Name of Participant

Signed

Date.....

Researcher.....

Signed

Date

For further information about this study, please contact:

Adaku Ezerioha

Email: Adaku.ezerioha@research.staffs.ac.uk

Phone number: 07446943984

Supervisor: Dr Sue Jenkinson

Email: s.g.jenkinson@staffs.ac.uk

Staffordshire University.

Appendix 5: Consent form for the questionnaire



Title of project: Muslim Women in Britain: A Study of Unregistered Muslim Marriages, Effects, Problems and Solutions.

1. Have you read the information sheet? **Yes/No**
2. Do you understand the information sheet? **Yes/No**
3. Do you understand that participation in this study is entirely voluntary? **Yes/No**

I confirm that this information has been provided prior to the research interview. I agree to take part in this research project.

Signed

Date.....

For further information about this study, please contact:

Adaku Ezerioha

Email: Adaku.ezerioha@research.staffs.ac.uk

Phone number: 07446943984

Supervisor: Dr Sue Jenkinson

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Staffordshire University

Appendix 6: Information sheet for the interview



Title of project: Muslim Women in Britain: A Study of Unregistered Muslim Marriages, Effects, Problems and Solutions.

Purpose of the study?

This research is carried out by Adaku Ezerioha. This research is centred on the nikah marriage which is an Islamic marriage contract. Most British Muslim women enter the nikah marriage in private homes, restaurants, pubs or parks. These marriages are not in registered buildings and does not comply with other formalities required by the law in Britain. As a result, they are not legally recognised as a valid marriage in Britain.

Unregistered nikah is a common problem among British Muslim women because the woman may have no right under English law. This study aims to gather insights of British Muslim women who entered their nikah marriage in private homes, restaurants, and parks. It also aims to uncover the reasons for entering the nikah only marriage and perceptions on civil marriage.

Why have you been asked to take part?

You have been chosen because you have entered the nikah marriage in a private home, restaurant, or park and as a result any information I get from you will be relatively accurate.

Participants' rights

Your involvement in this interview is entirely voluntary. You are free to withdraw at any time, without giving a reason. You have the right to ask that any data you have supplied at the time of withdrawal be destroyed. You have the right to omit or refuse to answer or respond to any question that is asked of you. The interview will last approximately 1 hour.

Will participation in the study be kept confidential?

All the information you provide will be entirely confidential and will only be accessed by me. To maintain confidentiality of data, all information will be coded. I will not be

collecting information that will be used to identify or be attributed to you personally.

What will happen to the information I provide?

Information you provide will be accessed by me and retained until the end of this research. All data will be destroyed in accordance with the law department ethical principles. All information collected will be locked in a secured cabinet and a computer protected by a password.

If you have any questions about the project, please contact:

Researcher: Adaku Ezerioha.

Email: Adaku.ezerioha@research.staffs.ac.uk

Phone number: 07446943984

Supervisor: Dr Sue Jenkinson.

Email: s.g.jenkinson@staffs.ac.uk

Staffordshire University.

Appendix 7: Information sheet for the questionnaire

Title of project: Muslim Women in Britain: A Study of Unregistered Muslim Marriages, Effects, Problems and Solutions.

Purpose of the study?

This research is carried out by Adaku Ezerioha. This research is centred on the nikah marriage which is an Islamic marriage contract. Most British Muslim women enter the nikah marriage in private homes, restaurants, pubs, or parks. These marriages are not in registered buildings and does not comply with other formalities required by the law in Britain. As a result, they are not legally recognised as a valid marriage in Britain.

Unregistered nikah is a common problem among British Muslim women because the woman may have no right under English law. This study aims to gather insights of British Muslim women who entered their nikah marriage in private homes, restaurants, and parks. It also aims to uncover the reasons for entering the nikah only marriage and perceptions on civil marriage.

Why have you been asked to take part?

You have been chosen because you have entered the nikah marriage in a private home, restaurant, or park or you entered both the nikah and civil marriage. As a result, any information I get from you will be relatively accurate.

Participants' rights

Your involvement in this questionnaire is entirely voluntary. You are free to withdraw at any time and discard the questionnaire.

Will participation in the study be kept confidential?

All the information you provide will be entirely confidential and will only be accessed by me. To maintain confidentiality of data, all information will be coded. I will not be collecting information that will be used to identify or be attributed to you personally.

What will happen to the information I provide?

Information you provide will be accessed by me and retained until the end of this research. All data will be destroyed in accordance with the law department ethical principles. All information collected will be locked in a secured cabinet and a computer protected by a password.

If you have any questions about the project, please contact:

Researcher: Adaku Ezerioha.

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Staffordshire University.

Appendix 8: Interview schedule



Interview schedule

Please can you introduce yourself?

What are your reasons for entering the nikah marriage?

What are your views on civil marriage?

Are you considering entering a civil marriage knowing that a nikah marriage in a private residence is not legally recognised in Britain?

Are there any questions you would like to ask me about the validity of a nikah marriage in Britain?

Are there any questions you would like to ask me about civil marriages?

Are there any questions you would like to ask me about a nikah marriage followed by a civil marriage?

Are there any questions you would like to ask me generally about this research?

Appendix 9: Transcript of the interview

Interview transcript: Nerimi

Researcher: Please can you introduce yourself

Yeah, I'm Nerimi, 25 years old, born and raised in Birmingham and I live in Sparkhill. My family are originally from Pakistan.

Researcher: What are your reasons for entering the nikah marriage?

Nerimi: erm, I would like to share my story that contributed to my decision to enter the nikah marriage.

Researcher: No problem, thank you.

Nerimi: I was dating a white guy in college as I am not against interracial relationships. Some of my friends do not support interracial relationships because they said it is hard learning about an entirely different culture. Obviously when you are in a serious relationship, you discuss the future. Things like travel, marriage, number of kids. This was our opportunity to discuss the options for the future as we were too young then to get married. I was about 16 years old. He didn't even allow me to discuss what nikah marriage means to me. The honour to my family as a Pakistani Muslim and the Muslim community. He got defensive; said he was not interested in the nikah marriage. He said if we decide to get married in future, we will have a civil marriage. When I spoke to my parents about it, my mum said I can only have a nikah marriage and that civil marriage are for the whites. My dad told me that I would be disowned. My dad's comments made me understand the importance of nikah to the Muslim community. I was scared that my parents will take me to Pakistan and arrange someone for me. Well, I broke up with my college boyfriend some years later. Today, I am happily married to someone from my culture who understands the importance of the nikah and cultural heritage.

Researcher: You mentioned civil marriage, what do you know about it?

Nerimi: After the argument I had with my college boyfriend many years ago, I read about civil marriage. It's been a long time and I have never thought about it until today. I have been married for three years and it has not come up in our discussions. It is not something I have considered, and I don't see us entering a civil marriage".

Researcher: What are your reasons for not considering a civil marriage knowing that a nikah in a private home is not legally recognised in Britain?

Nerimi: My parents will not support me. I know their views on some of the issues in the society which I cannot discuss here. I am married but the support of my family is very important to me. My nikah marriage was a success because of my family support and contributions.

Researcher: Are there any questions you would like to ask me about the validity of a nikah marriage in Britain?

Nerimi: erm, no thank you.

Researcher: Are there any questions you would like to ask me about civil marriages? Nerimi: erm, no thank you.

Researcher: Are there any questions you would like to ask me about a nikah marriage followed by a civil marriage?

Nerimi: erm, no thanks.

Researcher: Are there any questions you would like to ask me generally about this research?

Nerimi: erm, no thanks.

Appendix 10: The survey questionnaire



Questionnaire.pdf