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Facing Divorce in the Social Arena
By Zahra Ayubi

"They didn't understand that when a Muslim woman given all the pressures to stay married, who has grown up in a conservative home, asks for a divorce, it's all over... 'cause she's not going to do it until it's absolutely finished..." - Haania

Generally reactions to the news of a divorce in the community are mournful and full of sorrow. Muslims can be seen shaking their heads and asking "Were there any children?" An affirmative answer plunges them into a mournful state, as if they had just heard of someone's death. These reactions may help to elicit sympathy for the parties involved, especially children or a woman divorced against her wishes, but the negative view of divorce can push divorced women away from Muslim social circles and potentially away from Islam. The stigma is even greater if the woman initiated divorce. Consideration of others' reactions may keep women who are active in their communities and in difficult or abusive marriages from assessing their marriages objectively for fear of being labeled impulsive or impatient. Rushing to divorce on the first sign of marital discord may be impulsive, but as Haania says few women pursue this path in jest (The individual stories I draw on throughout this article come from interviews and research I conducted for my senior honors thesis "American Muslim Women Negotiating Divorce," Brandeis University 2006). Rather, women who consider divorce after years of staying in bad marriages may still face suspicion from their religious communities and sometimes even from their own families. Other Muslims use religious, gendered, and cultural arguments to prompt women who are considering divorce to reconsider, in spite of their personal judgment or experience. Attempts to save marriages at all costs invalidate and undermine women's experiences. Haania feels that the involvement of the community in her divorce may have stemmed from genuine concern about her and children, but the community did not respect her decision or consider her own efforts to prevent divorce as enough. She says, "people would try to intervene and say give him another chance. And they were shocked at my reaction because I had

put my foot down and said no. I would look at what they had to say and said no, I had given him a million chances and I am not here to give him more.”

In most Muslim circles in the US, Islamic authorities and community elders discourage divorce as a general practice, but men are counseled less frequently than women to revise their decision to divorce. This is because according to *fiqh* (Islamic jurisprudence) men have unrestricted access to divorce via *talaq* (unilateral male-initiated divorce) and are not required to consult their wives, families, or religious authorities in order to divorce. By contrast, women who seek religious divorce, according to most jurists must seek their husbands’ consent for *khul'* (female initiated divorce in exchange for *mahr* or compensation) to be considered valid. Women may also seek divorce through *faskh* or *tatliq* (judicial divorces with show of cause or harm without returning the *mahr*) but again need the intervention of a *qadi* (judge) or an imam to do so. Though some women believe that they can declare *khul'* unilaterally because the husband’s consent is not required according to the Qur’an, this legal inequity in access to divorce has become ingrained in the Muslim psyche and appears in American Muslim social settings when women are discouraged from pursuing divorce— women cannot simply opt out of marriages with the ease men can. Due to the fact that they must approach their husbands or imams in order to initiate religious divorce and often consult their family and friends in the process, perhaps to seek validation for their decision, they are more likely than men to encounter gendered arguments against divorce such as the importance of wifhood, motherhood, and sacrifice in Islam; more aggressive arguments cite *hadith* that describe divorce as abominable, though permissible, or as punishable through deprivation of the scent of heaven if sought by a woman without legitimate cause (*Sunan Abu Dawud*). Far from being a purely personal event, divorce is an issue of grave concern to extended family and the greater community because Muslim identity in the US is tied to preserving marriages of individuals and sustaining an ideal picture of the Muslim family. Although some communities are able to rally around divorced women, especially if they are victims of domestic violence, many women are challenged when they decide to divorce.

The extent to which imams and community elders use religious arguments rooted in the Qur’an or *hadith* and *sunnah* to deter women from considering divorce depends on how religious and traditional the group is. However, a very common, standard, first argument made against divorce is usually quoting the *hadith* in which the Prophet (pbuh) reportedly said “Allah did not make anything lawful more abominable to Him than divorce” (*Sunan Abu Dawud, Kitab at-*

Talaq, Book 12, *hadith* no. 2172). Saira, a woman known for her spiritual piety, Islamic knowledge, and participation in religious life, decided to divorce her husband after being in a controlling and mentally difficult marriage for about twenty years. She approached an imam to sign as a witness to her declaration of *khul'*. Instead, he sent her home suggesting she spend at least a few more months in the marriage to reconsider her decision and quoted the *hadith* mentioned above. Even though Saira did what the imam prescribed and a few months later declared *khul'*, it was not the first time she had heard this *hadith* in response to her previously tentative thoughts about divorce. She says, “the *hadith* is sometimes used to hold women back” and that it “really prevents women from moving forward...it's almost like you have this option but then you stay and you stay and I think women might endure more abuse and more difficulty because of that *hadith*.” Like many women, Saira thinks that this *hadith* is *daif* (has a weak chain of transmission) because “it is not supported in the Qur'an at all. There is no place in the Qur'an where Allah speaks about divorce in a negative way. It says if you have to part, then part amicably.” The danger in citing this *hadith*, as many imams do without first considering specific circumstances, is that it leads women to believe that divorce is outside the realm of Islamic conduct despite the fact that it was commonly practiced by Muslims during and after the life of the Prophet (pbuh). Moreover, the *hadith* is rarely quoted to men who pronounce *talaq* because that is considered their prerogative.

Generally, there are acceptable and unacceptable reasons for women to seek divorce in American Muslim communities. In some communities, women are expected stay in marriages no matter how dire the circumstances “for the sake of the children.” Even prior to community involvement in divorce children have long served as the main deterrent to divorce for women. The women I spoke to themselves delayed in seeking divorce for this reason. Members of Muslim communities in the US often express the view that if a woman who seeks divorce has children, she has very low tolerance for marital strife and is selfish. Most of the women I spoke to said they were told by friends and family, before and some even after making their decision to divorce that it was a bad idea to break the family apart and for the sake of their children they should try to make the marriage better. Ironically, each of these women realized in different ways that prolonging their marital situation was harmful to their children. They did not want their children to believe the treatment they received from their husbands during marriage is acceptable and they did not want their children to emulate their mistakes. In two extreme cases,

Zahida and Arifa were both on the brink of committing suicide due to the depression and abuse they suffered in their marriages; they divorced when they realized that they did not want their children to think suicide is a way to solve one's problems. Contrary to the idea that the best interests of the child lie in the mother's self-sacrifice so that the children can grow up in a two-parent household, these women felt that they could provide a healthier environment for their children only after they separated from their husbands, especially when there was violence. This went against most of the social prescriptions made to Zahida and Arifa. On occasion imams and other Muslim counselors asked them to ignore physical abuse for the sake of preserving the marriage and two-parent household – not realizing that such a marriage may not be worth preserving.

However, physical abuse in a marriage justifies divorce in most Muslim communities, even in more traditional circles. Even imams who are reluctant to support divorce as a possible solution to marital problems usually say that it is permissible for women to seek divorce if there is domestic violence. Unfortunately, for these imams and their conservative constituents, this means in practice that domestic violence becomes the only socially acceptable grounds for a woman to seek divorce even if there may be other grounds available to women according to the *fiqh*. Since in their view divorce is hated by God, reasons such as incompatibility, differences in outlook on life or desired future plans, usurpation of the wife's paycheck, or a husband's exertion of too much control over his wife's actions and thoughts, may not be seen by Muslim communities and local imams as legitimate reasons for a wife to seek divorce when there is no violence. A number of women I spoke to described the impact of these views. Their descriptions of emotional abuse, mental torture, house arrest, lack of spiritual growth, and lack of attention from their husbands did not convince their friends and community leaders about their decisions. They were told, “at least he doesn’t beat you.” This message conveys to women that their happiness is not important, that being compatible with one’s husband a luxury, and that their value lies in their marital status (this sentiment is also upheld by the arranged marriage system which young people and educated women are beginning to challenge).

When discussing divorce to a larger audience, as in online fatwa sites and numerous print and web articles on divorce and Islam, many mainstream Muslim leaders point to the fact that the Prophet (pbuh) never divorced anyone himself, despite carrying out divorce pronouncements for others only in situations of last resort. However, it cannot be said with certainty that the

Prophet never divorced any of his wives. Some reports suggest that he divorced some wives before consummation of those marriages. Other sources say that he divorced Sawda but took her back when she deferred her right to his time to 'Aisha. Husna counters these claims by saying that the Prophet (pbuh) was permissive of divorce. She cites a *hadith* in which the prophet approved a divorce requested by a woman who said she could no longer bear looking at her husband's unattractive face. Husna's reasoning is that if the Prophet (pbuh) allowed this woman to divorce without questioning her decision, then certainly women are permitted to divorce without having to justify their decisions on the basis of extraordinary circumstances.

Proponents of preserving marriages at all costs say their interventions safeguard the institution of Muslim marriage and protect Muslim children. However, preventing women who have spent years trying to save their marriages from divorcing puts stress on women and the institution of marriage, turns younger generations off from marriage, and promotes unhealthy environments for Muslim children. By insisting that women maintain even the worst of marriages, communities and religious authorities create a great discrepancy between what is permissible by the Qur'an and *hadith* and what is socially acceptable. Additionally, even if women who initiate divorce do not face stigma or discrimination directly, rejection of their very premises for divorce by other Muslims contributes to a schism between them and their communities of faith. The social experiences of women during divorce point at larger issues: a need to revise the social understanding of marriage and divorce in a more egalitarian direction and to be considerate of divorced and divorcing women because they are Muslims, and in many cases mothers, who deserve the utmost respect that community leaders and ordinary Muslims repeatedly insist Islam guarantees to them.

Further reading on types of Islamic divorce available to women and study of Muslim divorce in the US see

*Kecia Ali. Muslim Secual Ethics. Divorce. <http://www.brandeis.edu/projects/fse/muslim/mus-essays/mus-ess-divorce.html>. 2003

* Asifa Quraishi and Najeeba Syeed-Miller. No Altars: A Survey of Islamic Family Law in the United States. <http://www.law.emory.edu/ifl/cases/USA.htm>.

*Eid, Talal. *Marriage, Divorce, and Child Custody as Experienced by American Muslims: Religious, Social, and Legal Considerations*. Dissertation. Harvard University. 2005.