

2018

## Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration

Amelia K. Philips

Follow this and additional works at: <https://elibrary.law.psu.edu/arbitrationlawreview>



Part of the [Dispute Resolution and Arbitration Commons](#)

---

### Recommended Citation

Amelia K. Philips, *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, 10 (2018).

This Student Submission - Article is brought to you for free and open access by the Law Reviews and Journals at Penn State Law eLibrary. It has been accepted for inclusion in Arbitration Law Review by an authorized editor of Penn State Law eLibrary. For more information, please contact [ram6023@psu.edu](mailto:ram6023@psu.edu).

GENDER AND JUSTICE IN FAMILY LAW DISPUTES: WOMEN, MEDIATION, AND RELIGIOUS  
ARBITRATION

by  
Amelia K. Philips\*

I. INTRODUCTION

*Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*,<sup>1</sup> edited by Samia Bano,<sup>2</sup> features diverse contributions to the discussion of dispute resolution in terms of the family, religion, gender, sexuality, and beyond. The authors take a variety of approaches, whether using feminist theory,<sup>3</sup> philosophy,<sup>4</sup> direct research and study,<sup>5</sup> or first-hand experience with clients<sup>6</sup> to make their contributions to the broader discussion. These approaches often overlap, as authors frequently blend two or more of these methodologies to construct a compelling view of the aforementioned issues.<sup>7</sup> Additionally, while the book generally focuses on practices surrounding dispute resolution in family settings in the context of Islam, the authors frequently pivot to important, broader discussions, whether in discussing dispute resolution or gender more generally,<sup>8</sup> or in discussing other religions.<sup>9</sup>

The book does run into some small problems with balance. Specifically, the accessibility of the book for readers may differ between chapters, as some chapters remain fairly simple to digest<sup>10</sup> while others introduce more complex literature that may

---

\*Amelia K. Philips is a Senior Editor of the Arbitration Law Review and a 2019 Juris Doctor Candidate at Penn State Law.

<sup>1</sup> Samia Bano, *GENDER AND JUSTICE IN FAMILY LAW DISPUTES: WOMEN, MEDIATION, AND RELIGIOUS ARBITRATION* (2017) [hereinafter “GENDER AND JUSTICE”].

<sup>2</sup> Samia Bano is a senior lecturer in law at the School of Oriental and African Studies at the University of London.

<sup>3</sup> See, e.g., Samia Bano, *Agency, Autonomy, and Rights: Muslim Women and Alternative Dispute Resolution in Britain*, in *GENDER AND JUSTICE*, *supra* note 1, at 46, 48-49.

<sup>4</sup> See, e.g., Gopika Solanki, *A Court of Her Own: Autonomy, Gender, and Women’s Courts in India*, in *GENDER AND JUSTICE*, *supra* note 1, at 215, 230.

<sup>5</sup> See, e.g., Mulki Al-Sharmani, Sanna Mustasaari & Abdirashid A. Ismail, *Faith-Based Family Dispute Resolution in Finnish Mosques: Unfolding Roles and Evolving Practices*, in *GENDER AND JUSTICE*, *supra* note 1, at 270.

<sup>6</sup> See, e.g., Saher Tariq, *Muslim Mediation and Arbitration: Insights from Community and Legal Practice*, in *GENDER AND JUSTICE*, *supra* note 1, at 126, 126.

<sup>7</sup> See, e.g., Solanki, *supra* note 4, at 215.

<sup>8</sup> See discussion *infra* Section IV.

<sup>9</sup> See discussion *infra* Section VI.

<sup>10</sup> See, e.g., Sarah Beskine, *Family Law and Mediation in Practice in England and Wales*, in *GENDER AND JUSTICE*, *supra* note 1, at 110, 110-25.

not be as accessible to those without a background in the subject matter;<sup>11</sup> readers may overlook the simpler or more complex chapters depending on their background and approach. Thus, readers may find an imbalance in the work, not necessarily because of an imbalance in the content, but because of an imbalance in the levels of analysis and abstraction of the subject matter that occur over the course of the book. However, the imbalance is ultimately a minor complaint with what is otherwise an expertly assembled collection of essays that speak eloquently to complex issues.

## II. OVERVIEW

*Gender and Justice*<sup>12</sup> features contributions from sixteen authors with a variety of perspectives explored in each essay and make each chapter feel complete. Moreover, there are a number of themes that emerge that make the book as a whole feel cohesive, as chapters frequently return to these themes from different angles. While a work brought together from the works of a variety of contributors can feel disjointed, Bano has arranged the articles with a logical flow, and there are a number of common themes that help to tie the chapters closely together.

The book is organized into two parts, with the book's first half beginning with perspectives on the titular concepts as they exist in the United Kingdom, particularly Great Britain. The second half of the book features perspectives on these same subjects from around the world, with chapters on the United States, Canada, India, Australia, Finland, and Italy. With few deviations, the primary focus is on Islam and on Muslim women in the context of mediation, religious arbitration, and family disputes generally. Where the book does deviate, it does so in the interests of discussing family law generally,<sup>13</sup> or in discussing other religions such as Judaism<sup>14</sup> and Roman Catholicism.<sup>15</sup>

Outside the book's prescribed order, there are five conversations that emerge throughout the book. First is a broad discussion of mediation, religious arbitration, and family law in conceptual and practical terms.<sup>16</sup> Second, multiple authors discuss religious arbitration from a perspective strongly rooted in critical theory and feminist literature.<sup>17</sup> Third, the book's largest discussion centers on Muslim family dispute resolution methods

---

<sup>11</sup> See discussion *infra* Section IV.

<sup>12</sup> See GENDER AND JUSTICE, *supra* note 1.

<sup>13</sup> See Beskine, *supra* note 10.

<sup>14</sup> See Wendy Kennett, *Religious Arbitration in North America*, in GENDER AND JUSTICE, *supra* note 1, at 189, 189-208.

<sup>15</sup> See Maria F. Moscati, *Together Forever: Are You Kidding Me? Catholicism, Same-Sex Couples, Disputes, and Dispute Resolution in Italy*, in GENDER AND JUSTICE, *supra* note 1, at 292, 292-310.

<sup>16</sup> See discussion *infra* Section III; Lisa Webley, *When is Mediation Mediatory and When is it Really Adjudicatory? Religion, Norms, and Decision Making*, in GENDER AND JUSTICE, *supra* note 1, at 25, 25-40; Beskine, *supra* note 10.

<sup>17</sup> See discussion *infra* Section IV; Bano, *supra* note 3, at 46-73; Pragna Patel, *The Growing Alignment of Religion and the Law: What Price Do Women Pay?*, in GENDER AND JUSTICE, *supra* note 1, at 77, 77-103; Solanki, *supra* note 4, at 215-241.

as applied in different countries and in relation to state law.<sup>18</sup> Fourth, there are detailed inquiries into Judaism and Roman Catholicism, providing insight into religious dispute resolution within these belief systems themselves, but also in comparison to Islam.<sup>19</sup> Fifth, there is a discussion of LGBTQ+/queer people of faith. The final topic is less prominent in comparison to others, but perhaps the dearth here will encourage further research by others into the needs of sexual and gender minorities in communities of faith.<sup>20</sup> This book review seeks to provide overviews of how the book handles these themes rather than an exhaustive account of the research, analysis, and theory involved, as the authors cover significant ground in great detail.

### III. DISPUTE RESOLUTION IN THEORY AND PRACTICE

While many of the articles in the book are specific applications of research, experience, and theory in particular contexts, two articles also perform a foundational role for the discussion of dispute resolution. Lisa Webley explores the general dynamics of dispute resolution, namely the complex roles and functions that mediation can serve in family contexts.<sup>21</sup> Sarah Beskine, though, discusses family law and dispute resolution from a practitioner's perspective, with some discussion of religion as well.<sup>22</sup> These chapters are not exclusively foundational; for instance, Webley touches on feminist theory,<sup>23</sup> and Beskine touches on some concepts within Jewish marriages.<sup>24</sup> Nonetheless, these two chapters also help to lay some of the groundwork for dispute resolution for readers that may lack familiarity with it.

Webley makes three main observations: 1) a delineation between the perceived individualism of legal approaches and mutualism of mediation-based approaches to family law,<sup>25</sup> 2) a shift in family justice from approaches in governmental or legal

---

<sup>18</sup> See discussion *infra* Section V; Tariq, *supra* note 6, at 126-40; Rehana Parveen, *Do Sharia Councils Meet the Needs of Muslim Women?*, in GENDER AND JUSTICE, *supra* note 1, at 142, 142-62; Shaista Gohir & Nazmin Akthar-Sheikh, *British Muslim Women and Barriers to Obtaining a Religious Divorce*, in GENDER AND JUSTICE, *supra* note 1, at 166, 166-83; Ghena Krayem & Farrah Ahmed, *Islamic Community Processes in Australia: An Introduction*, in GENDER AND JUSTICE, *supra* note 1, at 246, 246-67; Al-Sharmani, *supra* note 5, at 270-87.

<sup>19</sup> See discussion *infra* Section VI; Kennett, *supra* note 14; Moscati, *supra* note 15.

<sup>20</sup> See discussion *infra* Section VII; Moscati, *supra* note 15; Solanki, *supra* note 4, at 223, 226.

<sup>21</sup> See Webley, *supra* note 16, at 25.

<sup>22</sup> See Beskine, *supra* note 10, at 110, 117.

<sup>23</sup> Webley, *supra* note 16, at 25, 39.

<sup>24</sup> Beskine, *supra* note 10, at 117.

<sup>25</sup> Webley, *supra* note 16, at 29-30 (citing Gregg Barak, *A Reciprocal Approach to Peacemaking Criminology: Between Adversarialism and Mutualism*, 9 THEORETICAL CRIMINOLOGY 131, 131 (2005); Tom Cockburn, *Children and the Feminist Ethic of Care*, 9 CHILDHOOD 71, 75 (2005)).

frameworks to non-state family dispute frameworks,<sup>26</sup> and 3) the fact that inequities in power can emerge and are often part and parcel of family law and family dispute resolution.<sup>27</sup> Webley argues that women may potentially benefit from moving away from dispute resolution methods that have historically harmed them.<sup>28</sup> But if gender inequality is societally reinforced, Webley states, “private ordering may be yet another arena in which male dominance can be reasserted, and this time away from the glare of public scrutiny or challenge.”<sup>29</sup> This sentiment has particular force when viewed alongside some of the later chapters of the book, as they address situations where these diverging conclusions arise.<sup>30</sup>

In contrast with Webley’s chapter, Sarah Beskine’s chapter is written less like a critical analysis of alternative dispute resolution and more like a manual for practitioners. The first topic Beskine covers, determining whether mediation is the appropriate avenue for a dispute, leads with questions about the power dynamics and relations that can be a product of family disputes generally.<sup>31</sup> She subsequently discusses the importance of legal advice as important even for those considering mediation, as well as misconceptions about what the law actually says about various family-related issues.<sup>32</sup> She also briefly outlines the roles of mediation in family disputes, and does so in rather broad terms while distinguishing between the positions and dispositions of mediator and lawyer.<sup>33</sup>

Beskine does engage with religion, albeit rather scarcely, through references to Abrahamic religions via some specific aspects of Jewish marriages.<sup>34</sup> But mentions of religion in Beskine’s chapter remain scant. Beskine’s vague handling of religious issues would seem to undermine the cohesion of this chapter with the rest of the book. However, it is arguably not these smaller discussions of religion that are important in this chapter, but the chapter’s presentment of secular issues that religion may in fact shape. Given Beskine’s breadth of approach and placed alongside theory-heavy and research-heavy articles, her article may be easy to dismiss as out of place. Yet, even without delving into

---

<sup>26</sup> Webley, *supra* note 16, at 34-35. Webley cites private handling of disputes as a possibility for escaping family law, which she argues can entrench “conservative notions of the family,” *id.* at 35 (citing KATHERINE O’DONOVAN, FAMILY LAW MATTERS 41 (1993); NGAIRE NAFFINE, LAW AND THE SEXES: EXPLORATION IN FEMINIST JURISPRUDENCE 148 (1990)).

<sup>27</sup> Webley, *supra* note 16, at 32-33, 35.

<sup>28</sup> *Id.* at 39 (citing NGAIRE NAFFINE, LAW AND THE SEXES: EXPLORATION IN FEMINIST JURISPRUDENCE (1990); KATHERINE O’DONOVAN, FAMILY LAW MATTERS (1993)).

<sup>29</sup> *Id.* (citing SYLVIA WALBY, THEORIZING PATRIARCHY (1990)).

<sup>30</sup> See discussion *infra* Section IV.

<sup>31</sup> Beskine, *supra* note 10, at 115.

<sup>32</sup> *Id.* at 116-119.

<sup>33</sup> *Id.* at 119-121.

<sup>34</sup> *Id.* at 117. Beskine also makes general references to “religious differences” in family disputes, though one of these is to Scientology, which makes no appearance in the rest of the book (and likely presents much different issues than the major Abrahamic religions).

religion, Beskine's chapter provides a foundation for the reader for the rest of the book, just as Webley's provides a good introduction to much of the theoretical discussion had later in the book.

Perhaps the biggest criticism is that the varying levels of analysis between Beskine's chapter and other chapters contribute to the book feeling slightly unbalanced, not in terms of its content but merely in terms of complexity. Ultimately this imbalance is a minor concern and may, in fact, be a net positive as it prevents the book from becoming too solely focused on academic endeavors. Overall, these two chapters help strengthen the framework for the reader's understanding of the specific research and analysis done by the other authors of the book – though this is not to say that these chapters are subservient to the purposes of all of the other chapters. Rather, these chapters perform double duty: as self-contained works and as works supporting much of the rest of the book in kind.

#### IV. DISPUTE RESOLUTION AND FEMINIST ANALYSIS

The book's introduction makes clear that readers can expect engagement with critical feminist theory on the topics the book presents,<sup>35</sup> and nowhere is that more apparent than in chapters two, three, and nine of the book. Chapter two, written by Bano, explores feminist perspectives on mediation in conjunction with mediation as affecting Muslim women in Britain.<sup>36</sup> Chapter three, written by Pragna Patel, engages with the "privatization of justice" in terms of Muslim mediation in Britain.<sup>37</sup> Chapter nine, written by Gopika Solanki, addresses the role of feminism in action in India in terms of religious family dispute resolution.<sup>38</sup> Each of these chapters contributes to a broader conversation about feminist perspectives on mediation and alternative dispute resolution, in addition to the application of those perspectives in practice, from different corners of the globe.

From the outset, Bano identifies that her analysis is firmly rooted in feminist theory as applied to dispute resolution.<sup>39</sup> Specifically, the first topic Bano discusses is the interaction between feminism and religion, including how feminist assessments of religion have been constructed over time and how feminist views of religion must recognize the multiple dimensions in the lives of religious women.<sup>40</sup> She then segues into a discussion of women's "personal autonomy" as well as "group autonomy" in Muslim communities, and how private dispute resolution in a religious context affects

---

<sup>35</sup> Samia Bano, *Introduction: Women, Mediation, and Religious Arbitration: Thinking Through Gender and Justice in Family Law Disputes*, in *GENDER AND JUSTICE*, *supra* note 1, at 1, 5-6, 8-9.

<sup>36</sup> Bano, *supra* note 3, at 46-73.

<sup>37</sup> Pragna Patel, *The Growing Alignment of Religion and the Law: What Price do Women Pay?*, in *GENDER AND JUSTICE*, *supra* note 1, at 77, 77-78.

<sup>38</sup> Solanki, *supra* note 4, at 215-241.

<sup>39</sup> Bano, *supra* note 3, at 47-48.

<sup>40</sup> *Id.* at 48-51, 53.

autonomy.<sup>41</sup> Bano is particularly successful here, as she approaches these topics in feminist theory with rigor, but also makes them relatively digestible for those without backgrounds in either feminist theory or alternative dispute resolution. She explains a concept like intersectionality and then links that concept to how feminist approaches to dispute resolution can reflect the underpinnings of the concept of intersectionality.<sup>42</sup>

For the rest of the chapter, Bano focuses on Muslim mediation within Britain, while weaving feminist perspectives on mediation and religion with Muslim mediation specifically. She raises the possibility of “patriarchal relations of power” in Muslim mediation,<sup>43</sup> but argues for a non-essentializing perspective of Muslim women in mediation settings; she argues the very act of painting women as fully denied independence by cultural and religious aspects of Islam *itself* impugns the independence women may actually have in these settings.<sup>44</sup> The measured approach taken here is extremely welcome for a reader unfamiliar with the subjects of feminism, Islam, or dispute resolution. Such approachable analyses are vital to improving the discussion about Islam in general, which the introduction of the book notes to be fraught with problematic tendencies.<sup>45</sup>

Bano mentions, among other feminist organizations, the Southall Black Sisters,<sup>46</sup> and its director, Pragna Patel, contributes an article to this book as well.<sup>47</sup> Patel is concerned with the rise of conservative, fundamentalist religiosity, and “non-state legal orders” having a negative effect on women, as compared to the efforts of groups like the Southall Black Sisters that “[use] the law to eradicate the silences in the law in respect of gender bias and other forms of inequality.”<sup>48</sup> In particular, Patel worries that discussions on the interaction between Muslim dispute resolution and its recognition by the state may “[gloss] over any analysis of patriarchal power and other social dynamics within minority communities.”<sup>49</sup> Patel also argues that the language of “agency” might be assimilated by those who actually lessen women’s agency under the guise of improving the agency of

---

<sup>41</sup> Bano, *supra* note 3, at 53-57. *See also* Webley, *supra* note 16, at 39 (discussing similar concerns of autonomy).

<sup>42</sup> *Id.* at 58-59. (Bano explains intersectionality in terms of “the ways in which gender intersects and confronts other categories and identities that illustrate the complexities of women’s lives.” Here, race is mentioned, and the concept could just as easily be extended to, for example, religion -salient in this context-, sexuality, class, and any and all intersections of the foregoing qualities.).

<sup>43</sup> *Id.* at 66 (citing SYLVIA WALBY, *THEORIZING PATRIARCHY* (1990)).

<sup>44</sup> *Id.* at 65-69.

<sup>45</sup> Bano, *supra* note 35, at 2.

<sup>46</sup> Bano, *supra* note 3, at 50.

<sup>47</sup> Bano, *supra* note 35, at 12; Patel, *supra* note 17, at 77-103.

<sup>48</sup> Patel, *supra* note 17, at 78-79.

<sup>49</sup> *Id.* at 83 (citing MALEIHA MALIK, *MINORITY LEGAL ORDERS IN THE UK* (2012); Tariq Modood, *Multicultural Citizenship and the Anti-Sharia Storm*, OPENDEMOCRACY (2008), [https://www.opendemocracy.net/article/faith\\_ideas/europe\\_islam/anti\\_sharia\\_storm](https://www.opendemocracy.net/article/faith_ideas/europe_islam/anti_sharia_storm))).

Muslim women.<sup>50</sup>

Patel's outlook for women in Muslim dispute resolution is more pessimistic than Bano's.<sup>51</sup> She notes that Sharia councils, as well as institutions like the Muslim Arbitration Tribunal,<sup>52</sup> operate in manners that tend to exert power over women, rather than offer them independence.<sup>53</sup> She emphasizes that institutional subjugation of women hurts feminist efforts to provide more state-based protections for women.<sup>54</sup> Additionally, Patel looks to her organization's studies wherein minority women of many religions reported their experiences with religious arbitration, particularly its restrictions, and women's reluctance to engage with religious arbitration in the first place.<sup>55</sup> The overriding concern, then, is that the more that the state recognizes *status quo* religious arbitration structures and outcomes, the more the scales tip away from independence for women.<sup>56</sup> In the context of the book's discussion on feminism, Patel's chapter is not as theory-heavy, but represents some of the concrete application of the arguments therein. Her concerns echo and reinforce some of the issues raised by Lisa Webley, as well,<sup>57</sup> and contribute another important perspective to the complex discussion of how to best address the issues of Muslim women in family dispute settings.

Gopika Solanki engages in a similar discussion as Bano and Patel, but from a different area of the world: India. Solanki frames the chapter respective to critical feminist studies surrounding autonomy.<sup>58</sup> The primary focus on the chapter is on the Awaaz-e-Niswaan ("AEN"), a "Mumbai-based secular Muslim women's feminist collective," and its efforts at dispute resolution through women's courts.<sup>59</sup> Whereas Patel's chapter illuminated a less positive outlook on alternative dispute resolution for minority religious women,<sup>60</sup> Solanki's conclusions present a more positive picture of an

---

<sup>50</sup> Patel, *supra* note 17, at 85-86 (citing R (Begum) v. Headteacher and Governors of Denbigh High School [2006] UKHL 15; Pragna Patel, *Multifaithism and the Gender Question: Implications of Government Policy on the Struggle for Equality and Rights for Minority Women in the UK*, in MOVING IN THE SHADOWS: VIOLENCE IN THE LIVES OF MINORITY WOMEN AND CHILDREN 41, 41-58 (Yasmin Rehman, Liz Kelly, & Hannana Siddiqui, eds., 2013)).

<sup>51</sup> *Id.* at 87.

<sup>52</sup> *Id.* at 88-89 (describing the functions of the Muslim Arbitration Tribunal ("MAT") as purporting to operate within the law but also adhere to Islamic law. The MAT's website that Patel refers to is located at <http://www.matribunal.com/>).

<sup>53</sup> *Id.* at 88-90.

<sup>54</sup> *Id.* at 91.

<sup>55</sup> Patel, *supra* note 17 at 91-98.

<sup>56</sup> *Id.* at 101.

<sup>57</sup> See Webley, *supra* note 16, at 39. See also discussion *supra* Section III (about the gendered dimensions of institutions that may harm women in dispute resolution settings).

<sup>58</sup> Solanki, *supra* note 4, at 216.

<sup>59</sup> *Id.* at 218.

<sup>60</sup> Patel, *supra* note 17, at 87-101.



organization engaging in family issues and dispute resolution from a position of feminism, focusing on the needs of women specifically.<sup>61</sup> The AEN was founded by a Muslim feminist in 1985 and “offers its services to women across religious boundaries and focuses on Muslim women’s rights within the framework of feminist solidarity.”<sup>62</sup> Solanki’s chapter thus contributes to a more robust understanding of how feminist family dispute resolution projects can assist women’s needs.

One particularly interesting point is the approach that the AEN takes toward dispute resolution. Specifically, Solanki describes the AEN as “explicitly pro-women” and “privileges women’s voices,” which stands in stark opposition to conventional wisdom that reifies neutrality as the ideal standard in assessing dispute resolution processes.<sup>63</sup> In terms of family arbitration in particular, the AEN “begins the arbitration process with the feminist presupposition that women are oppressed in societal institutions of marriage and family and that the subordination of women is unjust.”<sup>64</sup> Solanki explains that neutrality preserves the dominance of patriarchal constructions of family and gender, and that the proper response is to explicitly prefer women’s perspectives rather than negotiate from the center.<sup>65</sup> AEN team members have stated that the approach has been met with accusations of bias from men,<sup>66</sup> which is itself an interesting claim; as one interviewee notes, men have “the whole society to turn to.”<sup>67</sup> This perspective on dispute resolution in general is a refreshing one. It is perhaps jarring to speak of neutrality or impartiality as a negative in alternative dispute resolution, but Solanki illustrates the importance of this perspective well through illustrating the possible pitfalls of an obsession with neutrality.

Taken together, these three chapters effectively represent different aspects of the feminist project as applied to family dispute resolution and dispute resolution writ large. There is a detailed conversation about the role of dispute resolution structures in the lives of women, rooted in critical feminist literature. The downside to the detailed discussion is that the amount of feminist theory, despite efforts to present it with clarity, may still be less accessible to readers than other sections of the book because of the perceived or actual complexities of theory. Nevertheless, the thoughtful analyses by these authors are important; with family disputes being a unique space for gendered concerns, feminist theory is particularly salient.

---

<sup>61</sup> Solanki, *supra* note 4, at 241.

<sup>62</sup> *Id.* at 220-221.

<sup>63</sup> *Id.* at 224.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Solanki, *supra* note 4, at 224-225 (citing Interview by Gopika Solanki with Naseem Sheikh, AEN team member (Jul. 31, 2008); Interview by Gopika Solanki with Aisha Pathan, AEN team member (Jun. 13, 2008); Interview by Gopika Solanki with Hasina Khan, AEN team member (Jan. 17, 2003)).

<sup>67</sup> *Id.* at 224-225 (citing Interview by Gopika Solanki with Aisha Pathan, AEN team member (Jun. 13, 2008)).

## V. ISLAM AND DIFFERING APPROACHES TO FAMILY DISPUTE RESOLUTION

Many of the authors in the book take a more research-based than theoretical approach, discussing Muslim family dispute resolution in various countries, and women's issues within that context. The first part of the book focuses on perspectives from different authors on the United Kingdom, while the second focuses on perspectives in other countries. Where the research-based chapters are concerned, this split between the United Kingdom and other parts of the world creates space for multiple types of concrete comparisons. Approaches and perspectives may be compared within the United Kingdom itself, or between the United Kingdom and countries elsewhere, or between countries in that latter category.

### A. *The United Kingdom*

Three chapters focus on the United Kingdom. The first of these, chapter five, is written by Saher Tariq. It is similar to Sarah Beskine's in some respects as Tariq writes from the perspective of a practitioner, and draws from first-hand experience in detailing the complexities of Islamic divorce.<sup>68</sup> Tariq combines this experience, as well, with her analysis of the Holy Quran and principles of Islam in her approach to discussing divorce resolution in the context of Islam.<sup>69</sup> In particular, she begins with Islam's principles favoring peaceful resolutions of disagreements between individuals as a basis for understanding the role of dispute resolution processes in Muslim communities.<sup>70</sup> Concerning divorce, Tariq explains the nature of religious divorces in Islam: a husband may terminate a marriage at will via a *talaq*, but a wife must be granted a *khula*, an indication of divorce, by a Sharia council or similar process.<sup>71</sup>

Tariq then turns to the obstacles and possible solutions for women who desire a religious divorce.<sup>72</sup> She considers both a number of broad factors, like the need to go to a council at all,<sup>73</sup> the lack of oversight in the United Kingdom over panels themselves, and very granular issues such as the ethnic background of a panel or the actual procedures used that may affect where a woman seeks help.<sup>74</sup> Additionally, Tariq illustrates how Muslim women seeking divorces may have community or family concerns regarding financial and immigration issues weighing against their decision to seek a divorce.<sup>75</sup> She

---

<sup>68</sup> Tariq, *supra* note 6, at 126, 132-136.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 127 (citing *Quran* 4:35, 49:10; 3 *Sahih Al-Bukhari* 49:870).

<sup>71</sup> *Id.* at 128 (citing *Quran* 2:230).

<sup>72</sup> *Id.* at 129-140.

<sup>73</sup> Tariq, *supra* note 6, at 129.

<sup>74</sup> *Id.* at 129-130.

<sup>75</sup> *Id.* at 131.

then turns to solutions for these and other issues,<sup>76</sup> specifically a service she developed called Islamic Divorce & Khula.<sup>77</sup> By removing or reducing certain procedural barriers, and presuming in favor of divorces, “the service works on the underlying principle that if a woman wants a *khula* she is entitled to get a *khula*.”<sup>78</sup> Tariq frames the service as a plausible solution for women seeking religious dispute resolution where many of the options in society are inadequate, and at the very least, it may be helpful even as a model simply by reframing or resisting some of the presumptions of Islamic divorce.

The subject of the inadequacy of dispute resolution options for women, and possible solutions for that inadequacy, transitions neatly into the next chapter. Rehana Parveen presents research on the experiences of women interacting with Sharia councils, conducted through interviews, reviews of cases, and observations of council proceedings of the Islamic Judiciary Board (“IJB”), along with criticisms.<sup>79</sup> For instance, Parveen notes that “[n]o women are employed at the IJB in any capacity,” and sees this as a deficiency of the IJB for women.<sup>80</sup> She notes that women tended to prefer the legal system because of the ease of access to information and assistance, and that the IJB could employ women to help provide that to its women clients more effectively.<sup>81</sup> In fact, Parveen noted that her presence, even simply as a bystander doing research, assuaged the anxieties of women at the IJB.<sup>82</sup> From a woman’s perspective, this concern is intuitive even outside of this context. A system or group run exclusively by men is likely to lack the understanding of women’s issues that a woman would be able to provide from her perspective.<sup>83</sup>

Parveen also discusses the relationship between Sharia councils and English law. Concerning the IJB, the board meeting involved a question of English law, but the board members lacked the expertise to resolve that question optimally.<sup>84</sup> She also notes that Islam can actually be more flexible than English law in some cases of divorce, perhaps dispelling some myths regarding differences between religious and secular law.<sup>85</sup> Her observations help to contextualize the options women have under English law, and how

---

<sup>76</sup> See, e.g., Tariq, *supra* note 6, at 134 (discussing Muslim women potentially not fully knowing about their rights to a divorce).

<sup>77</sup> Tariq, *supra* note 6, at 136.

<sup>78</sup> *Id.* at 136-139.

<sup>79</sup> Parveen, *supra* note 18, at 143-144, 150-158.

<sup>80</sup> *Id.* at 150-151.

<sup>81</sup> *Id.* at 152.

<sup>82</sup> *Id.* at 155.

<sup>83</sup> For example, there are criticisms of anti-abortion efforts that only include contributions from or consider the perspectives of men. See, e.g., Siobhan Fenton, *Irish pro life group criticised for all-male panel on abortion*, THE INDEPENDENT (Jan. 13, 2016, 2:03 PM), <http://www.independent.co.uk/news/world/europe/irish-pro-life-group-criticised-for-all-male-panel-on-abortion-a6809631.html>.

<sup>84</sup> Parveen, *supra* note 18, at 157.

<sup>85</sup> *Id.* at 159-160.

these options might align or differ with processes elsewhere.

Next, Shaista Gohir and Nazmin Akthar-Sheikh's article provides more insight into the dimensions of obtaining a religious divorce in Britain. Their observations operate from the perspective of the charity Muslim Women's Network UK ("MWNUK"), and the obstacles women face in divorce settings.<sup>86</sup> They first discuss non-religious alternative dispute resolution, where Gohir and Akthar-Sheikh note that such processes will, even in the presence of qualified third parties, overlook issues of faith that may be key to resolving disputes.<sup>87</sup> However, simply introducing more Muslims into dispute resolution processes is not sufficient, because parties often want someone of another religion to oversee the procedure on impartial grounds.<sup>88</sup> The introduction of non-religious dispute resolution is interesting and unique, as most of the book focuses on religion-first processes. Discussing dispute resolution outside of these processes can provide an additional dimension in examining family issues by elucidating the layers of complexity that can accompany disputes at the intersection of family and religion.

Gohir and Akthar-Sheikh discuss religious avenues as well. First, they discuss the *bisar*, a process involving the consultation of elders, practiced primarily but not exclusively among Bangladeshi Muslims in Britain.<sup>89</sup> However, concerns about the "patriarchal beliefs and cultural bias" of the elders, along with the inequity and unenforceability of some decisions, make the pitfalls with this approach clear.<sup>90</sup> Gohir and Akthar-Sheikh also discuss Sharia councils, bringing back to the surface concerns with these organizations, including poor treatment of women, but they go a step further by discussing the legal ramifications of what they perceive as Sharia councils performing arbitration that should be subject to English arbitration law, but are not.<sup>91</sup> Moreover, they discuss that even in the case of a body that operates under the law like the Muslim Arbitration Tribunal, "questions of transparency and fairness remain of concern."<sup>92</sup> The authors briefly discuss "benchmarking" Sharia councils to monitor their behavior, however, it likely would not suffice because there is no exhaustive list of Sharia councils, and because the process would have to be opt-in.<sup>93</sup>

Instead, Gohir and Akthar-Sheikh consider other solutions that might help to provide recourse under the law for British Muslim women. The authors describe the interaction between civil and religious marriages – where a civil divorce may not be

---

<sup>86</sup> Gohir & Akthar-Sheikh, *supra* note 18, at 166-168.

<sup>87</sup> *Id.* at 169-170.

<sup>88</sup> *Id.* at 170-171.

<sup>89</sup> *Id.* at 171-172.

<sup>90</sup> *Id.* at 172-173.

<sup>91</sup> Gohir & Akthar-Sheikh, *supra* note 18, at 174-175 (citing *Quran* 4:129; Human Rights Act 1998 c. 42 (Eng.); Equality Act 2010 c. 15 (Eng.); Convention on the Elimination of All Forms of Discrimination Against Women art. 16, Dec. 18, 1979, 1249 U.N.T.S. 13; Arbitration Act 1996 c. 23 (Eng.)).

<sup>92</sup> *Id.* at 176.

<sup>93</sup> *Id.* at 177-178.

granted until a husband grants a religious divorce, or, alternatively (and more accessible to women), a civil divorce may serve as grounds for a religious divorce before a council.<sup>94</sup> They also consider the possibility of using the Equality Act 2010 to address practices by Sharia councils that treat women unfavorably, such as charging women more to access services.<sup>95</sup> Though these solutions may be imperfect, they illustrate the range of possibilities under English law that may be utilized to benefit Muslim women, and in doing so also reinforce the book's robust analysis of the United Kingdom.

### *B. Countries Outside the United Kingdom*

Multiple authors address issues outside the United Kingdom, and two articles in particular stand out as the most apt for comparative analysis of dispute resolution processes. The first is Ghena Krayem and Farrah Ahmed's research detailing dispute resolution methods among Muslims in Australia.<sup>96</sup> Discussing Australian approaches to Muslim dispute resolution, Krayem and Ahmed use the broad term "Islamic community processes,"<sup>97</sup> of which this research represents some of the first of its kind.<sup>98</sup> They note that these processes are not established or incorporated in the same way as the processes in the United Kingdom.<sup>99</sup> The propriety of the term becomes clear over the course of the chapter, as the first process discussed is perhaps the most communitarian and least official: family dispute resolution within the family.<sup>100</sup> And where family may fail, the next step is not to turn to an established body, but to community leaders in a seemingly *ad hoc* role.<sup>101</sup>

Australian processes are not completely decentralized, as Krayem and Ahmed note the role of community organizations and Muslim women's organizations.<sup>102</sup> Notably, however, the authors indicate that an indispensable function of both types of organizations is their "referral role," wherein individuals are directed to services that might be useful to them;<sup>103</sup> women's organizations play a pivotal role here.<sup>104</sup> These

---

<sup>94</sup> Gohir & Akthar-Sheikh, *supra* note 18, at 179-180.

<sup>95</sup> *Id.* at 181-182 (citing Equality Act 2010, c. 15 (Eng.)).

<sup>96</sup> Krayem & Ahmed, *supra* note 18, at 246.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 248.

<sup>99</sup> *Id.* at 249 (citing GHENA KRAYEM, ISLAMIC FAMILY LAW IN AUSTRALIA: TO RECOGNISE OR NOT TO RECOGNISE 29 (2014)).

<sup>100</sup> *Id.* at 248-249 (citing GHENA KRAYEM, ISLAMIC FAMILY LAW IN AUSTRALIA: TO RECOGNISE OR NOT TO RECOGNISE 84, 94-95, 187 (2014)).

<sup>101</sup> Krayem & Ahmed, *supra* note 18, at 249.

<sup>102</sup> *Id.* at 250-253.

<sup>103</sup> *Id.* at 250, (citation omitted).

<sup>104</sup> *Id.* at 252 (citing GHENA KRAYEM, ISLAMIC FAMILY LAW IN AUSTRALIA: TO RECOGNISE OR NOT TO RECOGNISE 97 (2014)).

references lead to what might be considered the highest level of the loose hierarchy described here – imams.<sup>105</sup> In contrast to the United Kingdom where much of the discussion focused on established bodies like Sharia councils,<sup>106</sup> in Australia, individual imams seem to take on the role of mediator or arbitrator alone, dealing with divorces and the surrounding financial and custody matters.<sup>107</sup> With these processes in mind, Krayem and Ahmed turn to the lack of structure, including the potential for a lack of expertise and lack of unity among imams on certain issues.<sup>108</sup> The authors also discuss the possibility of patriarchy and male control over dispute resolution, both generally and in specific circumstances like inequality in the division of assets between divorcees in favor of husbands.<sup>109</sup> In this sense, similar questions of gender inequality that arose in chapters focused on feminism also arise in these studies as well. Even without this specific context, in general, who has tried to (formally or informally) resolve disputes of any kind within one's own family, or has heard of other families having to resolve their own disputes, could understand that such disputes can be fraught with inconsistency and potential inequity – highlighting some of the potential issues with these decentralized processes.

The last section of the chapter concludes with an analysis of how Islamic community processes interact with Australian law.<sup>110</sup> Krayem and Ahmed note that the dispute resolution processes performed in Muslim communities in Australia are potentially subject to Australian law under the Family Law Act.<sup>111</sup> Moreover, agreements made between couples may be submitted to Australian courts for review, to ensure they are acceptable under the provisions of the Family Law Act.<sup>112</sup> This process is just one example of where religious couples may turn to the state, as the authors also discuss that where religious avenues are inadequate for their needs, couples may turn to Australian family courts.<sup>113</sup> Whether these aspects of the law change how dispute resolution is done in Muslim communities in Australia may be an open question, but it does illustrate some similarities in how religious dispute resolution may be positioned in relation to the law with places such as the United Kingdom.

Al-Sharmani, Mustasaari, and Ismail address some of the same overarching questions of religious dispute resolution, gender, and national law through their research in Finland, wherein they studied the dispute resolution processes of five mosques in

---

<sup>105</sup> Krayem & Ahmed, *supra* note 18, at 251, 253.

<sup>106</sup> See discussion *supra* Section V(A).

<sup>107</sup> Krayem & Ahmed, *supra* note 18, 253-255.

<sup>108</sup> *Id.* at 256.

<sup>109</sup> *Id.* at 257-258.

<sup>110</sup> *Id.* at 262-266.

<sup>111</sup> *Id.* at 262-263 (citing *Family Law Act 1975* (Cth) ss 10F, 60I(1) (Austl.)). See note 92 *supra*. See discussion *supra* Section V(A) for a similar argument made by Gohir and Akhthar-Sheikh; see also note 81 *supra*.

<sup>112</sup> Krayem & Ahmed, *supra* note 18, 263 (citing *Family Law Act 1975* (Cth) s 79(2) (Austl.)).

<sup>113</sup> *Id.* at 265.

Helsinki.<sup>114</sup> They observed for instance, that as the mosques served different ethnic populations,<sup>115</sup> different disputes surfaced: “For example, polygamy disputes were more common among Somali disputants, whereas disputes about gender norms were more common in ethnically mixed marriages.”<sup>116</sup> There were also structural differences, as some mosques handled disputes through a single imam, a group of individuals, or some other structure.<sup>117</sup> Despite these differences, the authors explain that the mosques had relatively similar aims of supporting Islamic principles of “harmonious family relations” by promoting mutually acceptable solutions to disputes, as well as preserving stability for Muslims in Finland generally.<sup>118</sup> The authors also note that mosques would routinely consult other mosques or religious authorities to ensure that their decisions would be acceptable in the community.<sup>119</sup> This interconnectivity between Finnish mosques might be likened to a larger-scale and more unified approach to dispute resolution.

Towards the end of the chapter, Al-Sharmani, Mustasaari, and Ismail discuss interactions between the mosques’ dispute resolution efforts and Finnish law.<sup>120</sup> For example, it was not apparent to the mosques to what degree legal divorces and religious divorces may coincide or work in tandem; in Finnish law, divorce is exclusively the domain of the state, and it is not certain whether mosques would accept legal divorces for religious divorces when Finnish law and Islam conflict.<sup>121</sup> These and other issues raised by the authors provide another site for comparison and help to solidify the book in general as a valuable resource for comparative family law. In general, both this article on Finland and the article discussed previously on Australia help bring together three different perspectives on dispute resolution as combined with the book’s analysis of the United Kingdom and can contribute to a healthy debate on the best methods for helping women in communities of faith.

## VI. JUDEO-CHRISTIAN RELIGIONS

While the vast majority of the book focuses on Islam, Judaism and Roman Catholicism are also explored briefly. Two chapters spend more time than other chapters on these Abrahamic religions. First, Wendy Kennett’s chapter on North America explores Judaism and Jewish family dispute resolution methods, in comparing and contrasting them with Islam and Muslim processes.<sup>122</sup> Second, Maria Federica Moscati, in the

---

<sup>114</sup> Al-Sharmani, Mustasaari, & Ismail, *supra* note 5, 270-271.

<sup>115</sup> *Id.* at 274.

<sup>116</sup> *Id.* at 277.

<sup>117</sup> *Id.* at 276.

<sup>118</sup> *Id.* at 278-279.

<sup>119</sup> Al-Sharmani, Mustasaari, & Ismail, *supra* note 5, at 281.

<sup>120</sup> *Id.* at 282-287.

<sup>121</sup> *Id.* at 283-284.

<sup>122</sup> Kennett, *supra* note 14, at 189.

closing chapter of the book, explores the relationship between Catholicism and dispute resolution in Italy among same-sex couples.<sup>123</sup> These two perspectives diversify the conversation of religious dispute resolution throughout the book, both in comparison to Muslim practice and as a separate topic entirely.

Wendy Kennett's article compares Judaism and Islam in a number of social and religious respects, and what those comparisons ultimately mean for family-based dispute resolution in North America. She responds to argument that Muslim arbitration could benefit from taking inspiration from the Beth Din of America by identifying two issues: how each religion applies their respective religious laws, and whether individuals of faith want such applications.<sup>124</sup> She discusses the immigration history and demographics of Jews and Muslims in North America,<sup>125</sup> the establishment of community *batei din* and more established bodies like the Beth Din of America by Jews,<sup>126</sup> and some of the differences in the development of religious law between Judaism and Islam.<sup>127</sup> Kennett notes a "unity in the development of Jewish law" that is not as present in Islam,

---

<sup>123</sup> Moscati, *supra* note 15, at 292.

<sup>124</sup> Kennett, *supra* note 14, at 190-191 (citing Michael J. Broyde, *Jewish Law Courts in America: Lessons Offered to Sharia Courts by the Beth Din of America Precedent*, 57 N.Y.L. SCH. L. REV. 287, 288 (2012-13); Mona Rafeeq, *Rethinking Islamic Law Arbitration Tribunals: Are They Compatible With Traditional American Notions of Justice?* 28 WISC. INT'L L.J. 108, 139 (2010); Lee Ann Bambach, *The Enforceability of Arbitration Decisions Made by Muslim Religious Tribunals: Examining the Beth Din Precedent*, 25 J. L. RELIGION 379, 382, 403-414 (2009).

<sup>125</sup>*Id.* at 191-192, 194-195 (citing STEVEN M. COHEN ET AL., UNITED JEWISH APPEAL – FED'N OF JEWISH PHILANTHROPIES OF N.Y., JEWISH COMMUNITY STUDY OF NEW YORK: 2011 (2012), [https://www.jewishdatabank.org/content/upload/bjdb/597/C-NY-New\\_York-2011-Main\\_Report.pdf](https://www.jewishdatabank.org/content/upload/bjdb/597/C-NY-New_York-2011-Main_Report.pdf); JEFFREY S. GUROCK, ORTHODOX JEWS IN AMERICA: THE MODERN JEWISH EXPERIENCE (2009); HOWARD MORLEY SACHAR, A HISTORY OF THE JEWS IN AMERICA (1992); CHARLES SHAHAR & TINA ROSENBAUM, UNITED JEWISH FED'N OF GREATER TORONTO, JEWISH LIFE IN GREATER TORONTO: TRENDS AND ATTITUDES OF THE GREATER TORONTO JEWISH COMMUNITY (2006); Heshey Zelcer, *Two Models of Alternative Dispute Resolution*, 4 HAKIRAH, FLATBUSH J. JEWISH L. & THOUGHT 69; Yaacov Feit, *The Prohibition Against Going to Secular Courts*, 1 J. BETH DIN OF AMERICA 30; Ginnine Fried, *Collision of Church and State: A Primer to Beth Din Arbitration and the New York Secular Courts*, the Comment, 31 FORDHAM URBAN L. J. 633; BRIAN J. GRIM & MEHTAB S. KARIM, PEW RESEARCH CENTER, THE FUTURE OF THE GLOBAL MUSLIM POPULATION (2011) <http://www.pewforum.org/wp-content/uploads/sites/7/2011/01/FutureGlobalMuslimPopulation-WebPDF-Feb10.pdf>; IHSAN BAGBY, COUNCIL ON AMERICAN-ISLAMIC RELATIONS, THE AMERICAN MOSQUE 2011: BASIC CHARACTERISTICS OF THE AMERICAN MOSQUE, ATTITUDES OF MOSQUE LEADERS (2011), PEW RESEARCH CENTER, MUSLIM AMERICANS: NO SIGN OF GROWTH IN ALIENATION OR SUPPORT FOR EXTREMISM, (2011), <http://www.pewresearch.org/wp-content/uploads/sites/4/legacy-pdf/Muslim-American-Report-10-02-12-fix.pdf> Jennifer Selby, *Islam in Canada*, EURO-ISLAM: NEWS AND ANALYSIS OF ISLAM IN EUROPE AND NORTH AMERICA (Apr. 10, 2015), <http://www.euro-islam.info/country-profiles/canada/>, AHMAD F. YOUSIF, MUSLIMS IN CANADA: A QUESTION OF IDENTITY (2008), PEW RESEARCH CENTER, MUSLIM AMERICANS: MIDDLE CLASS AND MOSTLY MAINSTREAM (2007), <http://www.pewresearch.org/wp-content/uploads/2007/05/muslim-americans.pdf>).

<sup>126</sup> *Id.* at 192-193.

<sup>127</sup> *Id.* at 195-197.



particularly among Western Muslims.<sup>128</sup> Turning from the issue of differences of religion to differences in demand for dispute resolution, Kennett looks to research that, contrary to countervailing suppositions, there was not much desire for Muslim arbitration for family issues in Canada.<sup>129</sup> Kennett distinguishes this from *beth din* arbitration methods with a longer history in the United States and Canada.<sup>130</sup> But in divorce, Muslim women demanded religious dispute resolution more than in other sources of dispute.<sup>131</sup> Thereafter, Kennett engages in a comparison of Islam and Judaism in terms of religious approaches to divorce, and notes that in North America, obtaining a religious divorce in Islam is in some ways easier than in Judaism.<sup>132</sup> Kennett references Julie Macfarlane's research, wherein many Muslim women were able to obtain a divorce, and generally left other family matters to the legal mechanisms of the state.<sup>133</sup> By contrast, in Orthodox Judaism, when the husband—the only party with the power to divorce—refuses to accept his wife's request for divorce the options to resolve the divorce are extremely limited.<sup>134</sup> Even where Judaism is perhaps more readily understood in North American countries

---

<sup>128</sup> Kennett, *supra* note 14, at 196-197 (citing Gideon Libson, *Halakhah and Law in the Period of the Geonim* 197-98, in AN INTRODUCTION TO THE HISTORY AND SOURCES OF JEWISH LAW (Neil S. Hecht, S. M. Passamanek, Daniella Piattelli, Alfredo Rabello, and Bernard S. Jackson eds., 1996); AARON W. HUGHES, MUSLIM IDENTITIES: AN INTRODUCTION TO ISLAM (2013); KNUT S. VIKØR, BETWEEN GOD AND THE SULTAN: A HISTORY OF ISLAMIC LAW (2005); HAIM GERBER, STATE, SOCIETY, AND LAW IN ISLAM: OTTOMAN LAW IN COMPARATIVE PERSPECTIVE (1994); KAREN BARKEY, EMPIRE OF DIFFERENCE: THE OTTOMANS IN COMPARATIVE PERSPECTIVE (2009); Anver Emon, *Islamic Law and the Canadian Mosaic: Politics, Jurisprudence, and Multicultural Accommodation*, in DEBATING SHARIA: ISLAM, POLITICS, AND FAMILY LAW ARBITRATION (Anna C. Kortweg and Jennifer A Selby eds., 2012); L. Clarke, *Asking Questions about Sharia: Lessons from Ontario* 153, 162-163, in DEBATING SHARIA: ISLAM, POLITICS, AND FAMILY LAW ARBITRATION (Anna C. Kortweg and Jennifer A Selby eds., 2012); SAID FARES HASSAN, FIQH AL-AQALLIYYĀT: HISTORY, DEVELOPMENT, AND PROGRESS (2013); ṬĀHĀ JĀBIR FAYYĀḌĀLĀLWĀNĪ, TOWARDS A FIQH FOR MINORITIES: SOME BASIC REFLECTIONS (2010); Khaled Abou El Fadl, *Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries*. 1 ISLAMIC L. & SOCIETY 141 (1994); TARIQ RAMADAN, WESTERN MUSLIMS AND THE FUTURE OF ISLAM (2004) 'ABD ALLAH) AḤMAD AN-NA'ĪM, ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A (2008); EDWARD E. CURTIS, MUSLIMS IN AMERICA: A SHORT HISTORY 77-79 (2009)).

<sup>129</sup> *Id.* at 198-199 (citing Jennifer A. Selby and Anna C. Kortweg, *Introduction: Situating the Sharia Debate in Ontario* 12, 13 in DEBATING SHARIA: ISLAM, POLITICS, AND FAMILY LAW ARBITRATION (Anna C. Kortweg and Jennifer A Selby eds., 2012); Christopher Cutting, *Faith-Based Arbitration or Religious Divorce: What Was The Issue?* 66, 78 in DEBATING SHARIA: ISLAM, POLITICS, AND FAMILY LAW ARBITRATION (Anna C. Kortweg and Jennifer A Selby eds., 2012)); JULIE MACFARLANE, ISLAMIC DIVORCE IN NORTH AMERICA: A SHARI'A PATH IN A SECULAR SOCIETY 16 (2012).

<sup>130</sup> *Id.* at 200.

<sup>131</sup> *Id.* at 202.

<sup>132</sup> *Id.* at 202-205.

<sup>133</sup> Kennett, *supra* note 14, at 202-203 (citing JULIE MACFARLANE, ISLAMIC DIVORCE IN NORTH AMERICA: A SHARI'A PATH IN A SECULAR SOCIETY 16, 168 (2012); Christopher Cutting, *Faith-Based Arbitration or Religious Divorce: What Was The Issue?* 66, 66 in DEBATING SHARIA: ISLAM, POLITICS, AND FAMILY LAW ARBITRATION (Anna C. Kortweg and Jennifer A Selby eds., 2012)).

<sup>134</sup> *Id.* at 204-205.

like the United States and Canada, presenting these kinds of comparisons is important to demonstrate that even Judeo-Christian religions are not devoid of their own problems and problematic structures. Examining the problems in both Islam and Judaism also demonstrates that while it might be easy to unilaterally dismiss religions as oppressive, for historical or dogmatic reasons, the reality is more complex.

Outside of North America, Moscati also explores the dimensions of religiosity and dispute resolution in Italy, as concerns Roman Catholicism and same-sex couples. Even in a vacuum,<sup>135</sup> the discussion of Roman Catholicism's effects on the Italian legal landscape is itself illuminating. To be sure, Moscati notes that the Roman Catholic Church has had effects on Italian law that resulted in homophobic legal and social structures.<sup>136</sup> In terms of the book's discussion of women, as well, Moscati notes that the Catholic Church's influence in Italian law has resulted in Italian legal and social structures tending to reflect "the patriarchal and hierarchical Catholic conception of family relationships."<sup>137</sup> Even in a chapter that seems rather separate from the book, the discussion of religion's effect on the perception of the family in society is given greater depth by this analysis of Catholicism in Italy that frames the rest of the chapter, and contributes to the conversation about Judeo-Christian religions alongside the more prominent conversation about Islam. In a book that may seem imbalanced in terms of the level of analysis, the focus on Islam may seem like another layer of imbalance given the book's reference to "religious arbitration" in general in the title. However, these chapters help to keep the conversation well-rounded.

## VII. LGBTQ+/QUEER ISSUES<sup>138</sup>

Much of the book is spent talking about heterosexual relationships. However, the book engages with gender and sexual minorities in multiple places, concerning both the role that queerness or LGBTQ+ (lesbian, gay, bisexual, transgender, queer, etc.) issues play in larger questions of feminism, and how religion and religious dispute resolution affect queer people and queer relationships. Moscati's chapter serves as the largest focal point in the book on the topic of queerness, discussing same-sex couples in relation to

---

<sup>135</sup> See discussion *infra* Section VII.

<sup>136</sup> Moscati, *supra* note 15, at 296-297.

<sup>137</sup> *Id.* at 297.

<sup>138</sup> The terminology used here is contentious, and there really is no good solution – "homosexual" and "same-sex" are potentially both archaic and exclusionary towards transgender and intersex persons in queer relationships; "LGBTQ+" might be considered clunky or underinclusive, and "queer," while used in academic fields, is still a reclaimed slur. Here, "queer" is predominantly used in terms of the larger discussion of sexuality and gender; while the book's discussion appears to center around only lesbian and gay (and possibly only cisgender) relationships, it is nonetheless important to discuss family justice issues as salient for all under the queer "umbrella." For more on reclaimed slurs, see Gregory Coles, *Emerging Voices: The Exorcism of Language: Reclaimed Derogatory Terms and Their Limits*, 78 COLLEGE ENGLISH 424 (2016); Michelle Walks, "'We're Here and We're Queer!': An Introduction to Studies in Queer Anthropology", 56 ANTHROPOLOGICA 13 (2016).

Catholicism.<sup>139</sup> Gopika Solanki's chapter also discusses the open support of the AEN for LGBT causes in India as part of its feminist approach to the larger project of helping women.<sup>140</sup> Bringing these issues even briefly to the forefront of the book ensures that the book does not focus exclusively on heteronormative conceptions of the family. Acknowledging relationships from outside the lens of heteronormativity may also open space for more robust and in-depth conversations and work in the future on religion, sexuality, and family issues.

Moscatti discusses how Catholicism is a source of disputes and a factor in resolving disputes.<sup>141</sup> The latter point is the most illuminating, as she discusses Catholicism's influence in Italy as constraining the amount of alternatives available to same-sex couples seeking to resolve a dispute, as well as the reticence of individuals to be specific in some cases about sexuality when looking for advice from, say, a priest.<sup>142</sup> These two discussions are buttressed by interviews conducted as part of a larger research project spanning multiple European countries, and thus allow for the presentation of unique personal experiences.<sup>143</sup> The experiences are at once familiar and new, in the context of the book. They illustrate a running theme of conflict between personal life and faith but are told from completely different perspectives of both religion and sexuality. Moscatti's chapter combines three important areas of discussion: religion, sexuality, and the family – and considering these three topics in tandem can be important to understanding, interrogating, and challenging presumptions about religion, about families, and about family disputes. An understanding of family dispute resolution cannot be complete with only an understanding of a heteronormative conception of the family, and religious family dispute resolution should similarly also be understood as concerning queer people of faith.

The only other place in the book which specifically addresses LGBTQ+/queer issues is in Gopika Solanki's chapter on India, in discussing the AEN. Solanki explains that the group "is one of the few Muslim women's groups working on religious family laws that has openly supported. . . (LGBT) movements in India."<sup>144</sup> Moreover, she indicates that part of the aim of the AEN's project, in terms of feminism, is to increase the ability for women's "political engagement with broader social movements," including those for LGBT issues.<sup>145</sup> One anecdote near the end of the chapter actually discusses a

---

<sup>139</sup> Moscatti, *supra* note 15, at 297.

<sup>140</sup> Solanki, *supra* note 4, at 223.

<sup>141</sup> Moscatti, *supra* note 15, at 296.

<sup>142</sup> *Id.* at 304, 306.

<sup>143</sup> Moscatti, *supra* note 15, at 293-296 (citation omitted). The original website referenced in the book for the "Litigious Love" information now redirects to advertisements, but the work is preserved elsewhere. See Maria Federica Moscatti, *Same-Sex Couples and Mediation: A Practical Handbook*, AVVOCATURA PER I DIRITTI LGBTI - RETE LENFORD, [http://www.retelenford.it/images/2015\\_MOSCATI\\_SS\\_COUPLES\\_MEDIATION.pdf](http://www.retelenford.it/images/2015_MOSCATI_SS_COUPLES_MEDIATION.pdf).

<sup>144</sup> Solanki, *supra* note 4, at 223.

<sup>145</sup> *Id.*

woman's experience with coming to the AEN for meetings at a library after coming across some literature on sexuality, which in turn resulted in that woman having more robust discussions with the AEN and engaging in more LGBT activism.<sup>146</sup> While not as tailored to the issue of dispute resolution, integrating these kinds of discussions can also contribute to larger discussions surrounding religion, gender, and sexuality generally.

The relative lack of discussion of LGBTQ+/queer issues in this book may initially seem disappointing, presence of any discussion at all is actually refreshing because literature on queerness in alternative dispute resolution settings is not always easy to find. While family dispute resolution is just one setting where these issues are important (labor arbitration and negotiations over certain benefits in the workplace come to mind as another setting), the presence of these two articles by Moscati and Solanki expands the literature base in the realm of dispute resolution for vulnerable and marginalized groups. They provide positive contributions to the discussion of how to provide for the well-being of queer individuals, particularly those of faith, around the world.

### VIII. CONCLUSION

Perhaps the most impressive thing about *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration* is the sheer amount of ground it covers. In discussions about family dispute resolution in general, feminism, Muslim dispute resolution methods, Judeo-Christian family dispute resolution, and queerness, each chapter contributes something new to one of these important broader conversations. The book's sixteen different authors and their independent works add different dimensions to these different conversations, whether engaging in a comparison of state dispositions toward religious law, a comparison of religious perspectives themselves, or investigations into the dynamics of gender and sexuality alongside religion. While the chapters do occasionally vary in terms of complexity, which may give the impression of a stylistic or methodological imbalance, at the same time that variety of approach may also prevent the book from feeling confined purely to academic or practitioner's perspectives.

---

<sup>146</sup> Solanki, *supra* note 4, at 236.