

Muslim women overcoming marital violence: breaking through ‘structural and cultural prisons’ created by religious leaders

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Abstract

There is growing evidence of marital violence experienced by women in the Muslim community in South Africa. While women may have recourse to divorce in a violent marital relationship, structural and cultural barriers prevent them from dealing effectively with abuse. It would seem that women receive little help from religious organisations and other structures in dealing with marital violence. Androcentric applications of Islamic law by Muslim religious leaders limit women’s access to suitable options for dealing with marital violence and obtaining a divorce. Against this background, Islamic feminist theory provides a challenge to patriarchal interpretations of the *Qur’an* and draws attention to social issues such as stigma, normalisation, and acceptance of violence which results in women occupying subordinate positions in Muslim society, hence becoming victims of not only direct violence but also cultural and structural violence. Using concepts of direct, structural and cultural violence as analytical instruments, this article highlights the ways in which Muslim women, who experience marital violence, are limited by metaphorical prisons created by structural and cultural norms produced by Muslim religious leaders who ascribe to patriarchal interpretations of Islam.

keywords: [domestic violence](#), [religious leaders](#), [structural violence](#), [cultural violence](#), [Islamic feminism](#)

Introduction

South African Muslim women who experience marital violence can on the one hand utilise South African law to deal with the violence they experience, through accessing the various legislative options that are available, such as the Domestic Violence Act 116 of 1998. On the other hand, many Muslim women marry Islamically, that is according to Muslim rites, even though Islamic marriage is not currently recognised in South Africa (Gabru, [2004](#)Gabru N (2004) 'Dilemma of Muslim women regarding divorce in South Africa, Potchefstroom', in *Electronic Law Journal*, 7, 2, 1–15. [\[Google Scholar\]](#)). Hence, when dealing with marital violence, these Muslim women would need to find Islamic law remedies, to remove themselves from these marriages (Doi, [1984](#)Doi A (1984) *Shariah the Islamic Law*, London: Ta Ha Publishers. [\[Google Scholar\]](#):64). Islamic law is based on four sources *Qur'an* (Muslim Holy Scripture), *Sunnah*(prophetic tradition - sayings and way of life of the Prophet PBUH), as well as juristic consensus and legal analogy. Islamic law is often portrayed as homogeneous and unquestionable (Gulam, [2016](#)Gulam H (2016) 'The application of *Shariah* (Islamic Law) in some different countries and its implications', in *Shariah Journal*, 24, 2, 321–340 [\[Google Scholar\]](#)), yet there are various interpretations of the law (Munir, [2002](#)Munir LZ (2002) 'He is your garment and you are his: Religious precepts, interpretations and power relations in marital sexuality among Javanese Muslim women', in *Sojourn*, 17, 2, 191–220. doi: 10.1355/SJ17-2C[\[CrossRef\]](#), [\[CSA\]](#), [\[Google Scholar\]](#)). The problem for Muslim women lies in patriarchal interpretations of Islamic law regarding marriage, divorce, and abuse, which is evident in the various national and international approaches to Muslim Personal Law on marriage, divorce and succession (Hijab, [1988](#)Hijab N (1988) *Womanpower: The Arab Debate on Women at Work*, Cambridge: Cambridge University Press.[\[CrossRef\]](#), [\[Google Scholar\]](#)). In respect of South Africa, Shabodien ([1995](#)Shabodien R (1995) 'Muslim Personal Law - Progressive or conservative?', in *Agenda*, 25, 16–20. doi: 10.2307/4065841[\[CrossRef\]](#), [\[Google Scholar\]](#):18) states, that:

Muslim women had, over many years, borne the brunt of conservative interpretations of Muslim law and [been] subjugated to the unofficial *Shariah*(Islamic) courts run by the Muslim clergy structures.

These religious structures, it is argued in this article, create metaphorical cultural and structural prisons, through their interpretations of Islam and their responses to marital violence. Marital or domestic violence in this article denotes acts of 'direct' violence that women may experience in intimate partner relationships, not just physical, but emotional, economic, and sexual abuse, as well as threats, coercion, intimidation or indiscriminate deprivation of any freedoms (Rasool, [2011](#)Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [\[Google Scholar\]](#)). The conceptualisation of violence, in terms of direct violence, is narrow since those witnessing direct violence are often unaware of the deeper and more pervading forms of violence embedded in structure and culture (Price, [2012](#)Price J (2012) *Structural Violence: Hidden Brutality in the Lives of Women*, Albany, NY: State University of New York Press. [\[Google Scholar\]](#)). A focus

on the physical manifestations alone, results in the marginalisation of social and cultural constructions of violence which are often invisible and perpetuated in a hetro-patriarchal context where the subjugation and submission of women and those defined as “other” is rife (Price, [2012](#)Price J (2012) *Structural Violence: Hidden Brutality in the Lives of Women*, Albany, NY: State University of New York Press. [\[Google Scholar\]](#)). A feminist approach to Islam that is committed to gender justice, through Islamic epistemology in order “to construct a resistance identity ... with and on behalf of all Muslim women and their right to enjoy with men full participation in a just community (*Ummah*)” (Mheta, [2016](#)Mheta B (2016) ‘The utilization of scripture in the feminist debate in Islam with particular reference to Amina Wudud’s *Qur’an and Woman*(1992) in conversation with classical and contemporary *Qur’anic*exegetical works’, Unpublished doctoral thesis, Faculty of Humanities, University of Johannesburg. [\[Google Scholar\]](#):27) underpins the arguments made in this article. The article will discuss how some of the structural and cultural factors, including patriarchal socio-cultural norms, have come to bear on Muslim Religious Leaders’ (MRLs) practices, which in turn confine Muslim women within abusive marriages and relationships that are metaphorical prisons. Galtung ([1990](#)Galtung J (1990) ‘Cultural Violence’, in *Journal of Peace Research*, 27, 3, 291–305. doi: 10.1177/0022343390027003005[\[CrossRef\]](#), [\[Web of Science ®\]](#), [\[CSA\]](#), [\[Google Scholar\]](#):295) alludes to these structural and cultural metaphorical prisons as the ‘structural iron cage.’

Theory

Structural violence is understood to refer to the “less visible forms of, coercion, fear, and subjectification through which violence deceptively and perniciously morphs over time ...” (Chopra, [2014](#)Chopra N (2014) ‘Exploring the Structure of Background’, in *Sucharita Journal of Philosophy and Religion*, 2, 3, ISSN 2319–4235. [\[Google Scholar\]](#):19). The ‘structural iron cage’ (Galtung, [1990](#)Galtung J (1990) ‘Cultural Violence’, in *Journal of Peace Research*, 27, 3, 291–305. doi: 10.1177/0022343390027003005[\[CrossRef\]](#), [\[Web of Science ®\]](#), [\[CSA\]](#), [\[Google Scholar\]](#):295) manifests itself in the form of social arrangements that create and maintain violence since it is “gradual, imperceptible and diffused in society as the way things are done” (Opotow, [2001](#)Opotow S (2001) ‘Reconciliation in times of impunity: Challenges for social justice’, in *Social Justice Research*, 14, 2, 149–170. doi: 10.1023/A:1012888902705[\[CrossRef\]](#), [\[CSA\]](#), [\[Google Scholar\]](#):151). Its invisibility and embeddedness in structures normalises inequality (Opotow, [2001](#)Opotow S (2001) ‘Reconciliation in times of impunity: Challenges for social justice’, in *Social Justice Research*, 14, 2, 149–170. doi: 10.1023/A:1012888902705[\[CrossRef\]](#), [\[CSA\]](#), [\[Google Scholar\]](#)). Direct and structural violence gain legitimacy via cultural expression. Cultural violence occurs in the “symbolic sphere of existence” and legitimises structural and direct violence by changing the “moral colour of an act” (Galtung, [1990](#)Galtung J (1990) ‘Cultural Violence’, in *Journal of Peace Research*, 27, 3, 291–305. doi: 10.1177/0022343390027003005[\[CrossRef\]](#), [\[Web of Science ®\]](#), [\[CSA\]](#), [\[Google Scholar\]](#):291–292). Cultural violence distorts reality to a point where violent acts are not recognised for their brutality but rather seen as a part of culture, such that victims do not realise that they have inherited or been bought into an oppressive social order (Galtung, [1990](#)Galtung J (1990) ‘Cultural Violence’, in *Journal of Peace Research*,

27, 3, 291–305. doi: 10.1177/0022343390027003005[CrossRef], [Web of Science®], [CSA], [Google Scholar].

those witnessing direct violence are often unaware of the deeper and more pervading forms of violence embedded in structure and culture

Connecting the different types of violence to the experiences of abused Muslim women, it can be argued that those who interpret Islam in ways that tacitly condone men's violent behaviour are complicit in structural and cultural violence. Religion for example is used to justify the beating of wives and this violence is condoned by some MRLs. Some Muslim men (Shafaat, 2000Shafaat A (2000) 'Tafseer of Surah An Nisa, Ayah 43', available at<http://www.islamicperspectives.com>, site accessed 11 November 2015 [Google Scholar]) have argued that under certain circumstances, husbands have a right to beat their wives using *Qur'an* Q4:34. Others, such as Abugideiri (2010Abugideiri SE (2010) 'A perspective on domestic violence in the Muslim community', available at:www.faitrustinstitute.org, site accessed 4 December 2016. [Google Scholar]) have contested these interpretations, arguing that it is contrary to the overall spirit of the *Qur'an* which supports equality (for this they cite Q4:1). They further cite the prophetic tradition, "[t]he best of you are those that are best to their wives, and I am the best of you to my wives" (cited in Jamiatul Ulama, n.d.:13) and "[n]one of you must beat his wife" (cited in Al Qardawi, 1960Al Qardawi Y (1960) *The Lawful and the Prohibited in Islam*. Washington DC: American Trust Publications. [Google Scholar]:205). It has been suggested that MRLs mute these arguments in favour of others that portray women as subservient to men (Lummis, 2006Lummis AT (2006) 'Gender and religion' in JS Chafetz (ed) *Handbook of the Sociology of Gender*. New York: Springer Publishers.[CrossRef], [Google Scholar]). Esposito (1973Esposito JL (1973) 'Muslim Family Law in Egypt and Pakistan: A critical analysis of legal reform, its sources and methodological problems', Doctoral Dissertation, Temple University, Philadelphia, United States. [Google Scholar]:112) does not blame Islamic law per se for this omission. He posits that as Islam spread to various parts of the world, it encountered various cultures. Cultural beliefs were merged with Islamic law: "God's law" has been superseded by culture and tradition (Petersen, 2010Peterson S (2010) 'Women rights: A South African Muslim women's perspective.' in *Awqaf Journal Magazine*, 3, 18, 62–63. [Google Scholar]:63). Petersen's views (2010Peterson S (2010) 'Women rights: A South African Muslim women's perspective.' in *Awqaf Journal Magazine*, 3, 18, 62–63. [Google Scholar]) bring into question the role of religious leaders who are the interpreters and executors of religious doctrine, in challenging marital violence and helping women to deal with it.

Many scholars have interpreted texts in literal ways that do not take into account the context within which scripture was revealed and instead elect to interpret the *Qur'an* in ways that discriminate against women, thereby perpetuating patriarchal readings of Islam (Wadud, 1999Wadud A (1999) *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, New York: Oxford University Press. [Google Scholar]). Islamic feminists argue that women are offered a version of Islam wherein wives are seen as subordinates to the husbands (Badran, 2006Badran M (2006) 'Islamic feminism revisited: Surveying the most recent developments in Islamic feminism', *Al Ahram Weekly On-line*, 781, available at:<http://weekly.ahram.org.eg/Archive/2006/781/cu4.htm>, site accessed 10

November 2016. [[Google Scholar](#)]. Esack (2015) Esack F (2015) 'Islam, feminism and empire: A comparison between the approaches of Amina Wadud and Saba Mahmood', in *Journal of Gender and Religion in Africa*, 2, 1, 27–48. [[Google Scholar](#)]:32) drawing on Wadud, argues that: the Qur'anic intent for women's full equality was ignored by earlier scholars because interpreting the *Qur'an* was exclusively a male activity and the socio-cultural context of these male interpreters was androcentric.

The exclusively male interpretations of texts, which many women may accept unquestioningly, especially in a context like South Africa where very few Muslims speak Arabic and many learn Islam from the religious institutions which are decidedly patriarchal, contributes to the production of the metaphoric structural and cultural prisons.

Muslim religious authorities in South Africa, such as the Jamiatul Ulama, and the Muslim Judicial Council (MJC) (Moosa, 2010) Moosa E (2010) 'Muslim Family Law in South Africa: Paradoxes and ironies' in S Jeppie, E Moosa & E Roberts (eds) *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*, Amsterdam University, available at: <http://hdl.handle.net/10161/5745>, site accessed on 4 December 2016. [[Google Scholar](#)]), hold conservative views of Muslim Personal Law which have been contested by more progressive perspectives, amongst them the Muslim Youth Movement, Women's Legal Centre (WLC) and others. The South African Law Commission (SALC) has been involved in a 20-year long legislative process to codify Muslim marriage and divorce practices to align with South African law in the way customary marriages and civil unions are dealt with through the formal system of courts¹. See Marlese Van der Merwe, 'The Muslim Marriages Bill: Will it finally see the light of day', *Daily Maverick*, 26 September 2016, available at: <http://www.dailymaverick.co.za/article/2016-09-08-the-muslim-marriage-bill-will-it-finally-see-the-light-of-day/#.WDaw7dR95y1>, site accessed 2 December 2016. [View all notes](#). The WLC argues that Muslim women suffer in various ways when seeking divorce, because their marriages are not legally recognised. The resistance of some MRLs to institutionalising changes in the practise of Islamic marriage and divorce law is reflected in the resistance to the SALC initiatives to introduce the Muslim Marriage bill. Two religious organisations in particular have opposed the bill because they believe that MPL and Islamic law are under threat and that the rights of women in Muslim marriages fall within the domain of the non-secular². Marlese Van der Merwe, 'The Muslim Marriages Bill: Will it finally see the light of day', *Daily Maverick*, 26 September 2016. [View all notes](#). The institutional and intellectual culture of these bodies remain largely patriarchal in that they are dominated by men who in many respects interpret texts in ways that narrowly serve male interests. Abrahams-Fayker (2011) Abrahams-Fayker H (2011) 'South African engagement with Muslim Personal Law: The Women's Legal Centre, Cape Town and Women in Muslim Marriages', in *Feminist Africa*, 15, 39–62. [[Google Scholar](#)]:44) states that, it remains true that the South African Muslim society often deploys a conservative and often patriarchal approach to the *Qur'an* where Islamic religious leaders consist of only men and are seen as authorities for the South African community.

Muslim women's lack of recourse to forms of support outside of religious structures when they marry islamically, as is argued in this article, confines marital violence within the private and religious sphere (Rasool, 2012) Rasool S (2012) 'Do we accept

the Unacceptable? The privatisation of women abuse by informal networks in South Africa', in *Journal of Gender and Religion in Africa*, 18, 2, 143–49. [Google Scholar], 2015a Rasool S (2015a) 'Helping abused women access a Protection Order: The role of religious, traditional and community leader', in *Journal of Gender and Religion in Africa*, 21, 1, 9–26. [Google Scholar], 2015b Rasool S (2015b) 'The influence of social Constructions of Family on Abused Women's Help-Seeking After Domestic Violence', in *African Review of Sociology*, 46, 4, 24–38. doi: 10.1080/21528586.2015.1100098 [Taylor & Francis Online], [Web of Science ®], [Google Scholar]. By interpreting the *Qur'an* and the *Sunnah* in ways that fundamentally disadvantage and marginalise Muslim women, a group of predominantly male MRLs contribute to the production of male-centred readings of Islam that make it difficult for women to deal effectively with marital violence. This is similar to what Rakoczy (2004) Rakoczy S (2004) *In Her Name: Women Doing Theology*, Pietermaritzburg: Cluster Publications. [Google Scholar] observes in Christian interpretations of scripture in South Africa. As Shannahan (2009) Shannahan DS (2009) 'Sexual ethics, marriage, and sexual autonomy: The landscapes for Muslimat and Lesbian, Gay, Bisexual, and Transgendered Muslims', in *Contemporary Islam*, 31, 59–78, available at: <http://link.springer.com/article/10.1007%2Fs11562-008-0077-4#/page-1>, site accessed 9 July 2015. doi: 10.1007/s11562-008-0077-4 [CrossRef], [Google Scholar] has argued, when Islam (or other religions) are read through androcentric interpretations, it has serious implications for the lived realities of women, as evidenced in women's struggles with escaping marital violence. Muslim feminist scholars have looked at the principle of *Tawhid* (Oneness), a core concept in Islam, to challenge notions of male 'arrogance' and 'superiority'

In contrast, Muslim feminist theorists such as Wadud (1999) Wadud A (1999) *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, New York: Oxford University Press. [Google Scholar], employ the tools of liberating hermeneutics when reading the *Qur'an* to provide alternate explanations that highlight the social justice aspects of the *Qur'an* (Mheta, 2016) Mheta B (2016) 'The utilization of scripture in the feminist debate in Islam with particular reference to Amina Wudud's *Qur'an and Woman* (1992) in conversation with classical and contemporary *Qur'anic* exegetical works', Unpublished doctoral thesis, Faculty of Humanities, University of Johannesburg. [Google Scholar]; Hidayatullah, 2014) Hidayatullah AA (2014) *Feminist Edges of the Qur'an*, New York: Oxford University Press. [CrossRef], [Google Scholar]. Shaikh (2011) Shaikh S (2011) 'Morality, justice and gender: Reading Muslim tradition on reproductive choices' in S Tamale (ed) *African Sexualities: A Reader*, Cape Town, Dakar, Nairobi, Oxford: Pambazuka Press. [Google Scholar]; 2013) Shaikh S (2013) 'Feminism, epistemology and experience: Critically (en)gendering the study of Islam', in *Journal for Islamic Studies*, 33, 14–47. [Google Scholar] for example, uses Islamic exegesis to consider the constructs of gender in the *Qur'an* that refer to men and women as equal (Mernissi, 1997) Mernissi F (1997) 'Exegetical violence: Nushuz in Qur'anic gender ideology', in *Islamic Studies*, 17, 49–73, available at: <http://sistersinislam.org.my/files/downloads/saadiya.pdf>, site accessed 7 June 2015. [Google Scholar]. Other Muslim feminist scholars have looked at the principle of *Tawhid* (Oneness), a core concept in Islam, to challenge notions of male 'arrogance' and 'superiority' and to argue that patriarchal traditions contradict the undivided supremacy of God (Mheta, 2016) Mheta B (2016) 'The utilization of

scripture in the feminist debate in Islam with particular reference to Amina Wudud's *Qur'an and Woman* (1992) in conversation with classical and contemporary *Qur'anic* exegetical works', Unpublished doctoral thesis, Faculty of Humanities, University of Johannesburg. [\[Google Scholar\]](#); Hidayatullah, [2014](#) Hidayatullah AA (2014) *Feminist Edges of the Qur'an*, New York: Oxford University Press. [\[CrossRef\]](#), [\[Google Scholar\]](#); Abou El Fadl, [2001](#) Abou El Fadl K (2001) *Speaking in God's Name: Islamic law, Authority and Women*, Oxford: Oneworld Press. [\[Google Scholar\]](#).

Saddawi ([1982](#) Saddawi N (1982) 'Women and Islam', in A Al-Hibri (ed) *Women and Islam*, Headington Hill Hall, Oxford: Pergamon Press Ltd. [\[Google Scholar\]](#):200–204) asserts that the lack of adherence to Islamic jurisprudence has resulted in women being deprived of rights. This is particularly evident in cases where abused women request divorce. The most typical form of Islamic divorce, is referred to as *talaq* (Esposito, [1973](#) Esposito JL (1973) 'Muslim Family Law in Egypt and Pakistan: A critical analysis of legal reform, its sources and methodological problems', Doctoral Dissertation, Temple University, Philadelphia, United States. [\[Google Scholar\]](#):69), which is predominantly practised by men (Doi, [1992](#) Doi A (1992) *Women in Shariah Islamic Law*, Kuala Lumpur: Academic Art Printing Services. [\[Google Scholar\]](#):82). There are four other forms of divorce in Islamic law (Doi, [1984](#) Doi A (1984) *Shariah the Islamic Law*, London: Ta Ha Publishers. [\[Google Scholar\]](#)) namely: *Khul* (release), *Faskh* (judicial separation), *Talāq al Tawfid* (delegated divorce) and *Mubarut* (mutual separation).

Faskh allows women an avenue to remove themselves from a marital relationship.

First, if the husband is not performing his duties towards his wife as required by Islamic law, she can request *Khul* (Doi, [1992](#) Doi A (1992) *Women in Shariah Islamic Law*, Kuala Lumpur: Academic Art Printing Services. [\[Google Scholar\]](#):97). If he is cruel towards her, he suffers from impotency, he vacates the "conjugal domicile" while failing to provide for her, ignores stipulations in the marital contract and suffers from insanity, she can use this option (Doi, [1984](#) Doi A (1984) *Shariah the Islamic Law*, London: Ta Ha Publishers. [\[Google Scholar\]](#):193–195), however she needs to pay some form of compensation (Vahed, [2006](#) Vahed M (2006) 'Divorce (*Talaq*) in Islamic Law' in MA Vahed (ed) *Islamic Family Law*, Durban: Al-Noor Publishers. [\[Google Scholar\]](#):43) which we argue makes it difficult in cases where women have access to few resources. Second a woman can initiate a judicial process called *Faskh* whereby she approaches a court or committee under one or more of the following circumstances: she is being treated cruelly, he has a sexual disease, he is imprisoned or abandons her, he does not provide maintenance, or becomes an apostate (Vahed, [2006](#) Vahed M (2006) 'Divorce (*Talaq*) in Islamic Law' in MA Vahed (ed) *Islamic Family Law*, Durban: Al-Noor Publishers. [\[Google Scholar\]](#)). Doi ([1984](#) Doi A (1984) *Shariah the Islamic Law*, London: Ta Ha Publishers. [\[Google Scholar\]](#)), however does not view this as divorce but annulment. Despite the difference in opinion, it can be concluded that *Faskh* allows women an avenue to remove themselves from a marital relationship. Thirdly, *Mubarut* refers to mutual consent, whereby the husband and wife decide they want to terminate the marriage. If the other party accepts, the marriage is terminated (Vahed, [2006](#) Vahed M (2006) 'Divorce (*Talaq*) in Islamic Law' in MA Vahed (ed) *Islamic Family Law*, Durban: Al-Noor Publishers. [\[Google](#)

[Scholar](#)). Finally, a woman can stipulate in the marriage contract certain conditions under which she can file for *Talaq al Tawfid* (delegated divorce) (Miller, [2009](#)Miller KAP (2009) 'Who says Muslim women don't have the right to divorce? A comparison between Anglo-American Law and Islamic Law', in *New York International Law Review*, 22, 1, 201–248. [\[Google Scholar\]](#):226). With regards to *Talaq al Tawfid*, a husband may delegate the divorce to his wife (Vahed, [2006](#)Vahed M (2006) 'Divorce (*Talaq*) in Islamic Law' in MA Vahed (ed) *Islamic Family Law*, Durban: Al-Noor Publishers. [\[Google Scholar\]](#)). South African practice is for men to pronounce divorce, namely *talāq*, while women have to approach religious authorities to obtain a divorce through the judicial bodies. It is also common practise that a woman's first approach to a religious authority, requesting a divorce is denied, as described later in the article.

Al Hibri ([1982](#)Al Hibri A (1982) 'A study of herstory: Or how did we ever get into this mess?' in A Al Hibri (ed) *Women and Islam*, Headington Hill Hall, Oxford: Peregamon Press Ltd.[\[CrossRef\]](#), [\[Google Scholar\]](#):217) asserts that in the 'Arab world' women cannot practise divorce as men have propagated a version of the marriage contract where it states women cannot file for a divorce, to serve their patriarchal interests. Similarly, in South Africa, the narrative of divorce is framed as exclusively a male prerogative. In South Africa, Abrahams-Fayker ([2011](#)Abrahams-Fayker H (2011) 'South African engagement with Muslim Personal Law: The Women's Legal Centre, Cape Town and Women in Muslim Marriages', in *Feminist Africa*, 15, 39–62. [\[Google Scholar\]](#):44–45) argues that Muslim women are denied rights to resources when they encounter divorce or their husbands die because the South African clergy adopt a "conservative" understanding of the religion in which women are denied autonomy.

Many Muslim women in South Africa do not necessarily know the details of Islamic law and the four options which would allow them to access a divorce. They often wait and hope that the men they are in relationships with will give them a divorce. Research (Rasool, [2011](#)Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [\[Google Scholar\]](#); [2015b](#)Rasool S (2015b) 'The influence of social Constructions of Family on Abused Women's Help-Seeking After Domestic Violence', in *African Review of Sociology*, 46, 4, 24–38. doi: 10.1080/21528586.2015.1100098[\[Taylor & Francis Online\]](#), [\[Web of Science ®\]](#), [\[Google Scholar\]](#)) shows this is especially problematic for those who are caught in marriages that are violent because of the power inequality between perpetrator and victim. The power differentials of traditional marriage structures would make it unlikely that she would ask her partner to give her a divorce as that would in all likelihood generate further direct violence (Rasool, [2011](#)Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [\[Google Scholar\]](#)). Muslim women who do know they have a right to divorce find themselves in a social and cultural context that produces obstacles to requesting and obtaining a divorce from MRLs. Due to allegiance with a patriarchal ethos (Gabru, [2004](#)Gabru N (2004) 'Dilemma of Muslim women regarding divorce in South Africa, Potchefstroom', in *Electronic Law Journal*, 7, 2,1–15. [\[Google Scholar\]](#):6–8), MRLs may refuse to dissolve marriages, thereby denying women rights that could be provided for in Islamic law. In these circumstances, abused women are locked in structural and cultural prisons due to patriarchal interpretations of Islam. A key to

unlocking these metaphorical prisons rests in challenging unjust interpretations that deny women access to social justice which is central to the ethos of Islam. Exploring marital violence in Muslim communities from a feminist perspective, this article highlights the effect of patriarchal interpretations of divorce on Muslim women.

Methodology

This article is based on a variety of sources including, secondary literature such as Rasool (2011) Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [\[Google Scholar\]](#) and Hoel (2012) Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of African studies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207 [\[Taylor & Francis Online\]](#), [\[Web of Science\]](#), [\[Google Scholar\]](#), research by the authors, radio interviews, anecdotal information and websites. Lury and Wakeford (2012) Lury C & Wakeford N (2012) *Inventive Methods: The Happening of the Social*, Oxford: Routledge. [\[Google Scholar\]](#) suggest that it is important to use a variety of methods, including anecdotal information, since they will allow for a holistic appreciation of complex social relationships and phenomena.

The various sources utilised in this article informed the discussions on how MRLs interpret religion, as well as the role these interpretations play in abused women's struggles to escape violence and obtain divorce. The first source is the unexpected revelations of marital violence by Muslim women interviewed about their experiences of *Iddah* (a post-divorce ritual that Muslim women only are required to perform) by the second author (Suleman, 2011) Suleman M (2011) 'Gaining, maintaining or losing resources: Muslim divorced women's experiences of *Iddah*', Unpublished Master's dissertation, University of Johannesburg. [\[Google Scholar\]](#). Second, it draws on the research on domestic violence with Muslim women from various demographic groups who were living in shelters in Johannesburg and Cape Town, whom the first author encountered in an earlier research project (Rasool, 2011) Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [\[Google Scholar\]](#)). The first author is also engaged extensively with Muslim women in Johannesburg, and based on her current community engagement as well as her professional work in non-government organisations (NGOs), she encountered many Muslim women who have experienced abuse.

To support the observations of gender-based violence among married Muslim women, two key informants were interviewed, one the director of a human rights NGO (KI1) in Johannesburg and the other, a board member of a NGO in KwaZulu-Natal (KI2). They were asked about the experiences of abused women trying to obtain divorce from MRLs based on the report of clients from their respective organisations. Third, the article draws on a content analysis of the Social Programme by Moulana Ebrahim Bham aired on Radio Islam, by searching for extracts that focussed on domestic violence. This was seen as a relevant source as Moulana Bham is the Secretary of the Council of Muslim Theologians in Johannesburg (HaqIslam, 2010) HaqIslam (2010) 'Sheykh Ebrahim Bham', available

at:<http://haqislam.org/shaykh-ebrahim-bham>, site accessed 29 August 2016. [[Google Scholar](#)]. Radio Islam, is an Islamic radio station that is available on MW 1548 in Johannesburg and also via Satellite and internet worldwide (Radio Islam, [n.d.](#)Radio Islam (n.d.)<http://www.radioislam.org.za/a/index.php/aboutus.Html>, site accessed 25 August 2016.). This was a useful source to draw content about the views of MRLs professed in the public domain. This article draws on the various sources to argue that many Muslim women seeking divorce as a result of direct violence are frequently confronted by structural and cultural violence. both participants and researchers have questioned why and how some MRLs allow women to return to abusive marriages

Muslim religious leaders and organisations: maintainers or emancipators from violence?

While the exact extent of marital violence perpetrated against Muslim women in South Africa is unknown, there are various studies that highlight that multiple forms of violence against women exist in the South African Muslim community (Hoel, [2012](#)Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of Africanstudies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207 [[Taylor & Francis Online](#)], [[Web of Science](#) [®](#)], [[Google Scholar](#)]; Rasool, [2011](#)Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [[Google Scholar](#)]; Nordien *et al*, [2003](#)Nordien R, Alpaslan N & Pretorius B (2003) 'Muslim women's experiences of domestic violence in the Nelson Mandela Metropole: A qualitative study', in *Health SA Geshondheid*, 8, 4, 38–53. [[Google Scholar](#)]) (and specifically that marital violence is a matter of concern). Some women in abusive marriages consult NGOs for help (Jaylarnie, [2011](#)Jaylarnie SH (2011) 'The fragile vessels', in *Muslim Women*, 8, 12, 20–21. [[Google Scholar](#)]). A case study conducted by the Islamic Careline and the *Muslim Women* magazine (Jaylarnie, [2011](#)Jaylarnie SH (2011) 'The fragile vessels', in *Muslim Women*, 8, 12, 20–21. [[Google Scholar](#)]), confirmed serious cases of marital abuse in the Muslim community. Moreover, the needs of Muslim women escaping marital violence has been sufficiently noteworthy to lead to the establishment of shelters for abused women that specifically cater for the dietary and other needs of Muslim women in many of South Africa's provinces: these include Kenilworth Respite Centre and Baytul Noor organisation in KwaZulu-Natal, Islamic Resources Foundation of Southern Africa in Cape Town, NISAA Institute for Women's Development in Johannesburg. The narratives of violence endured by Muslim women in marital relationships is highlighted in various studies and both participants and researchers have questioned why and how some MRLs allow women to return to abusive marriages (Hoel, [2012](#)Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of Africanstudies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207 [[Taylor & Francis Online](#)], [[Web of Science](#) [®](#)], [[Google Scholar](#)]; Rasool, [2011](#)Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [[Google Scholar](#)]; Boonzaier and De La Rey, [2003](#)Boonzaier F & De La Rey C (2003) 'He's a man and I'm a woman: Cultural constructions of masculinity

and femininity in South African women's narratives of violence.' in *Violence Against Women*, 9, 10, 1003–1028. doi: 10.1177/1077801203255133[[CrossRef](#)], [[Web of Science](#)], [[Google Scholar](#)]; Abraham-Fayker, 2011Abrahams-Fayker H (2011) 'South African engagement with Muslim Personal Law: The Women's Legal Centre, Cape Town and Women in Muslim Marriages', in *Feminist Africa*, 15, 39–62. [[Google Scholar](#)].

The body of MRLs in South Africa do not necessarily share a consensus in their interpretations of marital violence. Their possible responses to abuse in marital relationships range from justification, denial, and ignoring it on the one hand (Hoel, 2012Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of African studies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207[[Taylor & Francis Online](#)], [[Web of Science](#)], [[Google Scholar](#)]; Abrahams-Fayker, 2011Abrahams-Fayker H (2011) 'South African engagement with Muslim Personal Law: The Women's Legal Centre, Cape Town and Women in Muslim Marriages', in *Feminist Africa*, 15, 39–62. [[Google Scholar](#)]), to on the other hand, highlighting it as a problem and confronting it. In recent years, a few MRLs have begun to speak out against abuse in the public domain. This is not very common or widespread. Our content analysis of the Social Programme by *Moulana* Ebrahim Bham, secretary general of the Council of Muslim Theologians (HaqIslam, 2010HaqIslam (2010) 'Sheykh Ebrahim Bham', available at:<http://haqislam.org/shaykh-ebrahim-bham>, site accessed 29 August 2016. [[Google Scholar](#)]) aired on Radio Islam, is one such example. Bham indicated that domestic violence has no place in Islam, and he said that, "a slap should not be minimised" (Radio Islam, 2014aRadio Islam (2014a) 'The Social Programme with MI Ebrahim Bham (23 October 2014)', available at:www.radioislam.org, site accessed 30 March 2015. [[Google Scholar](#)]; Radio Islam (2014b) 'The Social Programme with MI Ebrahim Bham (30 October 2014)', available at:www.radioislam.org, site accessed 04 December 2016). [[Google Scholar](#)]). He discussed the definition of domestic violence at length. Furthermore, he suggested that dealing with domestic violence remains a challenge in the Muslim community since divorce is stigmatised and often families do not report gender violence in order to protect their reputations (Radio Islam, 2014cRadio Islam (2014c) 'The Social Programme with MI Ebrahim Bham (6 November 2014)', available at:www.radioislam.org, site accessed 22 June 2015. [[Google Scholar](#)]). Bham indicated that abuse goes against what Islamic jurisprudence stipulates regarding marriage and if women cannot communicate with their husbands they should ask for outside help. In one instance when a women reported physical abuse, Bham advised her to utilise the law. He also advised women to seek help from the Islamic Careline, a NPO that provides counselling and other support services to the Muslim community. Similarly, on the same radio station another religious leader, Suleman Rawat, cited fear, the family's reputation and disability as why women remain in abusive relationships (Radio Islam, 2015aRadio Islam (2015a) 'Why do women stay in abusive marriages - Part 5 (19 August 2015)' Available at<http://www.radioislam.org.za/a/index.php/podcast/177-sabaahul-muslim/general/16444-why-do-women-stay-in-abusive-marriages-part-2.html>, site accessed 4 December 2016. [[Google Scholar](#)]; Radio Islam (2015b) 'Why do women stay in abusive marriages - Part 6' (20 August 2015) Available at

muslim/general/16444-why-do-women-stay-in-abusive-marriages-part-2.html, site accessed 4 December 2016 [[Google Scholar](#)]).

Amongst the most prominent national religious authorities, the Jamiatal Ulama (2013) Jamiatul Ulama (2013) 'Recommended Jumuah Bayaan for Friday 1 November 2015', available at: www.jmtsa.co.za, site accessed 26 May 2015. [[Google Scholar](#)]), has provided guidelines on its website that their members could include in their Friday sermons regarding domestic violence entitled 'How do I stop violence against women and children?.' They also recommended interventionist content for their readers, for example. "Decide today ... , NOT to be a bystander and NOT to be silent".

While these public statements are encouraging, three examples of how MRLs have more typically responded to women's experiences of gender-based violence are discussed drawing on the research by Hoel (2012) Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of African studies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207 [[Taylor & Francis Online](#)], [[Web of Science](#) ®], [[Google Scholar](#)]), Rasool (2011) Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [[Google Scholar](#)]; 2012 Rasool S (2012) 'Do we accept the Unacceptable? The privatisation of women abuse by informal networks in South Africa', in *Journal of Gender and Religion in Africa*, 18, 2, 143–49. [[Google Scholar](#)], Suleman (2011) Suleman M (2011) 'Gaining, maintaining or losing resources: Muslim divorced women's experiences of *Iddah*', Unpublished Master's dissertation, University of Johannesburg. [[Google Scholar](#)] and Boonzaier and De la Rey (2003) Boonzaier F & De La Rey C (2003) 'He's a man and I'm a woman: Cultural constructions of masculinity and femininity in South African women's narratives of violence.' in *Violence Against Women*, 9, 10, 1003–1028. doi: 10.1177/1077801203255133 [[CrossRef](#)], [[Web of Science](#) ®], [[Google Scholar](#)]).

First, religious authorities often send women back to their abusive relationships suggesting they must 'work it out'. Hoel (2012) Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of African studies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207 [[Taylor & Francis Online](#)], [[Web of Science](#) ®], [[Google Scholar](#)]:188) refers to this as the "reconciliation at all costs" approach. A participant from the study by Hoel (2012) Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of African studies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207 [[Taylor & Francis Online](#)], [[Web of Science](#) ®], [[Google Scholar](#)]:188) stated:

"I will never forget the words that that man [the imam]³. MRL. [View all notes](#) said the first time when I went [to the MJC (Muslim Judicial Council)] ... and when the imam said that I should reconcile with my husband ... I asked: what guarantees do I have that he [husband] is ever going to change? It had taken me almost 20 years to make up my mind [to initiate a divorce]."

The MRL insisted that she give her husband a second chance, though in effect she had probably given her husband numerous chances over the 20 years before

arriving at the door of the MRL. She was nevertheless forced by the MRL to go back to her violent husband. Similarly, in Boonzaier and De La Rey's (2003) Boonzaier F & De La Rey C (2003) 'He's a man and I'm a woman: Cultural constructions of masculinity and femininity in South African women's narratives of violence.' in *Violence Against Women*, 9, 10, 1003–1028.

doi: 10.1177/1077801203255133[CrossRef], [Web of Science®], [Google Scholar]:1015) study, one participant stated,

“the Moslems, if you go to them, they always talking about reconciling ... when I went to the *Judicial* council, I told the Imam, I want my divorce. So he told me no I must reconcile with my husband. I left there, I ... thought to myself, it seems to me that these people aren't there to help me. I went back to the same guy this imam, I told him he threatened me with a knife last night. ... before he kills me, I want out of this marriage. And he told me no, but you must try to reconcile.”

Despite the detailed narratives women provide to MRLs of their attempts at trying to make the relationships work at all costs, they are told by MRLs to go back and try again. The “reconciliation at all costs” (Rasool, 2012) Rasool S (2012) 'Do we accept the Unacceptable? The privatisation of women abuse by informal networks in South Africa', in *Journal of Gender and Religion in Africa*, 18, 2, 143–49. [Google Scholar]; 2015b) Rasool S (2015b) 'The influence of social Constructions of Family on Abused Women's Help-Seeking After Domestic Violence', in *African Review of Sociology*, 46, 4, 24–38. doi: 10.1080/21528586.2015.1100098[Taylor & Francis Online], [Web of Science®], [Google Scholar]) approach is adopted as marriage is seen as a “religious ideal” (Hoel, 2012) Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of African studies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207[Taylor & Francis Online], [Web of Science®], [Google Scholar]:189). Yet, this needs to be balanced with the harm that is endured by abused women, as well as the unnecessary frustration they experience with multiple encounters with MRLs who refuse to help them with divorce (Rasool, 2015a) Rasool S (2015a) 'Helping abused women access a Protection Order: The role of religious, traditional and community leader', in *Journal of Gender and Religion in Africa*, 21, 1, 9–26. [Google Scholar]).

Second, women who approach religious authorities independently are told to ask their husbands to also come in to see MRLs for mediation and/or reconciliation. This approach indicates that MRLs lack knowledge of the consequences of their advice for women if they have to disclose to their husbands that they consulted an MRL. They are potentially making women vulnerable to further violence (Rasool, 2011) Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [Google Scholar]; 2012) Rasool S (2012) 'Do we accept the Unacceptable? The privatisation of women abuse by informal networks in South Africa', in *Journal of Gender and Religion in Africa*, 18, 2, 143–49. [Google Scholar]). It assumes that abused women have the power to instruct their violent husbands to come and consult with MRLs. Many Muslim clients who turn to women's rights NGOs for help, confirm this approach from MRLs and report their failed attempts of getting help for abuse and the reluctance of MRLs at Islamic structures to provide them with a divorce (KI1; KI2). According to the key informants women were told to *sabr'* (be patient) and be

obedient, and sent back to the abusive marriage or told to bring the husband for mediation (KI1;KI2).

Third, when women seek assistance from MRLs, many MRLs do not inform abused women that they have a right to various forms of divorce (KI1; KI2), either because they do not always recognise these other forms of divorce as valid legal options, or they do not recognise a woman's right to initiate divorce (Hoel, [2012](#)Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of Africanstudies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207[Taylor & Francis Online], [Web of Science ®], [Google Scholar]). Many MRLs believe the prerogative to divorce is restricted to men. In many instances, South African Muslim women are also unaware that they can ask for a divorce within Islamic law, and MRLs do not necessarily create awareness about this possibility. This is evidenced in academic literature which documents women's struggles in obtaining divorce from MRLs in South Africa (Hoel, [2012](#)Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of Africanstudies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207[Taylor & Francis Online], [Web of Science ®], [Google Scholar]; Boonzaier and De La Rey, [2003](#)Boonzaier F & De La Rey C (2003) 'He's a man and I'm a woman: Cultural constructions of masculinity and femininity in South African women's narratives of violence.' in *Violence Against Women*, 9, 10, 1003–1028. doi: 10.1177/1077801203255133[CrossRef], [Web of Science ®], [Google Scholar]). In many cases, MRLs are reported to be reluctant to acknowledge that divorce is a women's right in Islam (Hoel, [2012](#)Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of Africanstudies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207[Taylor & Francis Online], [Web of Science ®], [Google Scholar]:191), although this is more prominent in some schools of Islamic law than others (Doi, [1992](#)Doi A (1992) *Women in Shariah Islamic Law*, Kuala Lumpur: Academic Art Printing Services. [Google Scholar]).

In cases where women know that they have access to divorce, they may approach a MRL for assistance, either with resolving the conflict or in requesting a divorce. In their responses, MRLs can either construct or deconstruct structural and cultural barriers to women-initiated divorce. When the former is the case, women's efforts to obtain a divorce can be frustrated. As a Muslim woman from Hoel's ([2012](#)Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of Africanstudies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207[Taylor & Francis Online], [Web of Science ®], [Google Scholar]:188–189) study relates:

"I was in and out by the MJC and one day I couldn't stand it [any more], I said to them [MJC]: I want my fasakh⁴. Type of divorce discussed earlier in article.[View all notes](#) ... if you are not going to listen to me today ... , and if I am not going to get [my divorce decree] ... I am going to leave him [husband] and my home and I am not going to come back ... you people [MJC] you don't really help ... you don't know what it is like to leave here [MJC] and go back to a home where you are being verbally, mentally [and] in any way being abused, you don't know what [that] is like."

Women feel that their requests go unheard by MRLs who they suggest lack understanding of their problem. This was the response of MRLs even in situations where husbands engaged in extra-marital relationships, which is clear grounds for divorce. A participant in Hoel's (2012) Hoel N (2012) 'Engaging religious leaders: South African Muslim women's experiences in matters pertaining to divorce initiatives', in *Social Dynamics: A Journal of African studies*, 38, 2, 184–200. doi: 10.1080/02533952.2012.717207 [Taylor & Francis Online], [Web of Science ®], [Google Scholar]:189) study narrates how her interaction with the MRL was humiliating and denigrating,

"The first time when I got there [to the MJC] I didn't like it at all, because they [the imams] asked personal questions like 'Are you having an affair?' ... and imagine you are going there [to the MJC] for help and they [the imams] are giving you this!"

Key informants (KI1; KI2) highlighted the difficulties women encountered when trying to obtain divorces from MRLs and explained how NGOs have created alliances with MRLs that are willing to assist women in obtaining a divorce and who are supportive of women. In particular, in a recent women's group event hosted by the first author, one woman out of sheer frustration and desperation asked out loud for help with getting a divorce since she was in an abusive relationship. She had been unable to access a divorce from local MRLs despite consulting the Jamiat ul-Ulama⁵. Muslim religious body. [View all notes](#) on three occasions, having to repeat her story to different people each time. In her narrative she felt that the MRLs she spoke to refused to acknowledge her problem, as a result, she felt anger toward them. Hence in cases where women are aware of their rights and request a divorce, some MRLs ignore their agency to request divorce. In the end, the women's group was able to refer her to a NGO that had a relationship with a MRL who assists women with divorce.

Research indicates that by the time a woman approaches a religious authority requesting a divorce, in many cases she has already been living with the violence for many years (Rasool, 2011) Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [Google Scholar]. Approaching a MRL, or any person outside the family for help, is a huge act of courage and frequently being sent back to the abusive relationship after asking for help results in further violence. MRLs fail to acknowledge that many of the women who approach them for assistance have been trying to make the abusive marriage work prior to consulting the MRL (Rasool, 2011) Rasool S (2011) 'Help-seeking by abused women in South Africa', Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [Google Scholar]; 2012) Rasool S (2012) 'Do we accept the Unacceptable? The privatisation of women abuse by informal networks in South Africa', in *Journal of Gender and Religion in Africa*, 18, 2, 143–49. [Google Scholar]. It would seem that there is dissonance between what women require in terms of release from unwanted marriages and the practices of MRLs. MRLs' denial of access to divorce, restrictions on the forms of divorce women may access and the laborious and at times frustrating processes women encounter in accessing a divorce, is characteristic of structural and cultural violence. Springs (2013) Springs J (2013) 'The cultural violence of non-violence', in *Journal of Mediation & Applied Conflict Analysis*, 3, 1, 17–33. [Google Scholar]:18) argues that a situation which "makes the socio culturally generated, and perhaps (but not necessarily)

legally reinforced, stigmas seem and feel inescapable and/or necessary” amounts to penetration, an effect of structural violence

Denying women access to divorce, markedly in the context of violence, means they are unable to leave the abusive marriage and escape direct violence. Asking women to return to a violent home and to try to ‘make it work’ assumes that women are the one’s responsible for the violence and/or that they actually have sufficient power in the relationship to ‘make it work’ which is not necessarily the case. Despite numerous attempts to be compliant, accommodating, and trying to ‘make things work’ (Rasool, [2011](#)Rasool S (2011) ‘Help-seeking by abused women in South Africa’, Unpublished doctoral dissertation, University of Oxford: Oxford, UK. [[Google Scholar](#)]), women cannot change their husband’s abusive behaviour. The reluctance of MRLs to facilitate divorce in these situations, suggests they are sealing the structural and cultural ‘prisons’ doors’, when they could be delegitimising violence by authorising women’s requests for divorce. In situations where MRLs send women back to situations of marital violence, instead of suggesting they access a protection order or a divorce, MRLs are directly exposing women to further direct violence, and are thereby potentially also complicit with abuse (Rasool, [2015a](#)Rasool S (2015a) ‘Helping abused women access a Protection Order: The role of religious, traditional and community leader’, in *Journal of Gender and Religion in Africa*, 21, 1, 9–26. [[Google Scholar](#)]; [2015b](#)Rasool S (2015b) ‘The influence of social Constructions of Family on Abused Women’s Help-Seeking After Domestic Violence’, in *African Review of Sociology*, 46, 4, 24–38. doi: 10.1080/21528586.2015.1100098[[Taylor & Francis Online](#)], [[Web of Science](#)®], [[Google Scholar](#)]). Shabodien ([1995](#)Shabodien R (1995) ‘Muslim Personal Law - Progressive or conservative?’, in *Agenda*, 25, 16–20. doi: 10.2307/4065841[[CrossRef](#)], [[Google Scholar](#)]:18) confirms that:

when women seek relief from or intervention in a marriage characterised by battery, abuse, ... the Muslim judiciary, through its interpretation of Muslim law, still places women in a severely disadvantaged position. The situation is magnified in the doctrinally more conservative areas like Kwa-Zulu Natal and ... (Gauteng). It is not uncommon for Muslim women to have to provide the clergy with proof of broken limbs, bruises or hospitalisation (often after two or more such assaults) before the clergy are compelled to waive their interpretation which gives husbands the sole prerogative to annul or dissolve marriages. Women are often advised to reconcile, live more religiously or exorcise the devils within them.

Hence, these types of responses by MRLs reflect how women’s attempts to leave an abusive husband are met with opposition and resistance. Instead of dissolving the marriage and freeing them from marital violence MRLs’ readings of Islamic law serve to perpetuate women’s subordination in marriages with dire consequences for women. We concur with Shabodien ([1995](#)Shabodien R (1995) ‘Muslim Personal Law - Progressive or conservative?’, in *Agenda*, 25, 16–20. doi: 10.2307/4065841[[CrossRef](#)], [[Google Scholar](#)]:16) who states that it is important to “win protection for Muslim women from Muslim clergy employing arbitrary judicial processes and operating on archaic interpretation of scripture” since these reproduce patriarchal relationships which maintain women’s inequality and normalise abuse in marriage.

Conclusions

Male-centred interpretations of Islamic law by MRLs that do not take account of the context within which texts or even specific verses of the *Qur'an* were produced, have served to entrench patriarchal thinking (Wadud, [1999](#)Wadud A (1999) *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, New York: Oxford University Press. [[Google Scholar](#)]). In the case of domestic violence, these interpretations allow for structural and cultural systems which reinforce and may even condone violence in marriage. When abused women are asked to return to the abusive relationship, asked to call in their husbands for mediation, or denied access to divorce, MRLs are re-enforcing violent structural and cultural norms that imprison women in unwanted marriages. The religious authority assigned to MRLs as interpreters of Islamic law has in many cases been used to frustrate the process of divorce and to entirely withhold divorce from women in unwanted or violent marriages. Hence there is a need to move toward interpretations of Islamic law that empower Muslim women as a first step in holding societies accountable for the actions of abusive husbands. As representatives of religious authority, MRLs either recognise and respond to violence in marriages in ways that release women from the structural and cultural norms that perpetuate violence against women or they are in powerful positions that further entrap them. The move by some MRLs to recognise women's rights to divorce in Islam and to reject marital violence is welcomed. It is advocated that progressive public statements and practices be developed as best practice to enable strong policies and action steps within Muslim religious organisations to support victims of marital abuse to deal effectively with the domestic violence and obtain access to divorce when it is required.

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Notes

1. See Marlese Van der Merwe, 'The Muslim Marriages Bill: Will it finally see the light of day', *Daily Maverick*, 26 September 2016, available at: <http://www.dailymaverick.co.za/article/2016-09-08-the-muslim-marriage-bill-will-it-finally-see-the-light-of-day/#.WDaw7dR95y1>, site accessed 2 December 2016.
2. Marlese Van der Merwe, 'The Muslim Marriages Bill: Will it finally see the light of day', *Daily Maverick*, 26 September 2016.
3. MRL.
4. Type of divorce discussed earlier in article.
5. Muslim religious body.

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