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Halim, Rubina

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ISLAMIC LAW FORBIDS FORCED MARRIAGES

RUBINA HALIM*

Trawling through articles in the newspaper and the internet and watching programmes on the television, it became clear that the government in the UK is focusing upon the cure of forced marriages rather than the

prevention. Unfortunately, there still seems to be much ignorance surrounding the issue of forced and arranged marriages for all concerned. This article is written from an Islamic law perspective with the hope of assisting the reader to understand the

procedure of marriage, focusing on the differences, consequences and the legalities, particularly for the Muslims whose lives are dictated by Islamic law, the Shari'ah.

THE MARRIAGE CEREMONY

Generally, marriage, referred to as "Nikkah", is simply seen as a commitment between two people. These two people come together in matrimony for a wide variety of reasons including love, religion, children, security and stability, *etc.*

For Muslim people, religion will be the most important reason for getting married as it is reported that the Holy Prophet Mohammed (PBUH¹) stated that: "... when a man marries, he has fulfilled half of his religion, so let him fear Allah regarding the remaining half".² He is also reported to have stated that: "Marriage is my tradition whosoever keeps away therefrom is not from amongst me".

The Qur'an states³:

"And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect".

Legally, marriage is a contract between two people: a male and female. Under both UK and Islamic law, certain conditions need to be fulfilled for a marriage to be valid.

Briefly, under UK Law — the law applicable to England and Wales — if a party is under 18 and over 16, then parental consent must be obtained. The parties themselves must consent to the

marriage. Two witnesses of any gender must be present. There is a prescribed form of words that must be spoken. The marriage ceremony can take place either at a registered office, a building approved for civil marriage, a church or any other religious building that is registered for solemnisation of marriage. Finally, all marriages must be registered where a registration document is provided which will be required should the marriage break down.

Under Islamic law, the parties need to reach the age of puberty. Both the girl and the boy have the right to see their prospective spouse and must give free consent. There must be at least two male witnesses or one male and two female witnesses present. Clear and definite words of Proposal and Acceptance should be spoken at least three times, preferably in a gathering. There is no place or building requirement. The bridegroom must give Mahr (Dower)⁴ to his bride as mutually agreed. Finally, a document of marriage is given but unlike the case in UK Law, it is not required should the marriage break down.

THE DIFFERENCE BETWEEN ARRANGED AND FORCED MARRIAGES

An arranged marriage is when family or friends introduce the girl or boy to what they perceive as suitable prospective partners, taking account of the individuals' family backgrounds, education and

personalities, *etc.* Under Islamic law, a male and female cannot be left alone together in a room on their own so the meeting must be in the presence of others. Subsequently, if the boy and girl like each other, they will inform and give their free and willing consent to their respective families who will then usually organise the marriage ceremony according to Islamic law, as well as UK Law if they reside within UK.

Anecdotally, evidence would seem to suggest that arranged marriages are quite successful and there are many reasons for this; the most likely being that as the parties do not know each other, they hold no huge expectations and are, therefore, more willing to compromise and adapt to the likes and dislikes of their spouse. Their relationship is based upon mutual trust and respect, essential ingredients for any relationship. They tend not to fall prey to the very strong and extreme emotions of love or lust which is there one day and gone the next.

Some will say that having an arranged marriage is probably the best way to find a life partner. In November 2007, the BBC televised the show "Arrange Me A Marriage" hosted by Aneela Rahman. This show highlighted the idea of people being introduced by friends and family who knew and understood very well the individuals wishing to marry. There was no pressure involved. The individuals could agree to meet again or decide that the person

introduced was not for them and that would be the end of the matter.

Returning to and emphasising the point on the procedure of an arranged marriage, it is a requirement under both Islamic and UK Law that free and willing consent is obtained from both parties. The problem, unfortunately, arises when the limits of an arranged marriage are breached by the lack of free and willing consent being given.

With reference to Islamic law, the Qur'an states⁵: "O ye who believe! Ye are forbidden to inherit women against their will". Clearly, based on this quote alone from the Qur'an, forced marriages are forbidden

To clarify and support the statement in the Qur'an further, Mohammed (PBUH) stated: "... the virgin shall not be married until her consent is obtained".⁶

Unfortunately, despite the guidance of the Qur'an and the Hadith,⁷ free and willing consent is not always obtained and it is this that distinguishes between an arranged marriage and a forced one. Families may force the girl or boy to marry by using violence or blackmail but this is contrary to the teachings of Islam and in breach of Islamic law.

WHY ARE SOME MARRIAGES FORCED?

Reasons for forcing the marriage may be wide and varied but in truth, there is no justification for forcing a marriage. Parents may have agreed with their friends and relatives that their children will marry to build stronger financial or social ties and having given their word, feel they cannot go back on it. Alternatively, it may be that the partner the girl or boy has chosen for themselves, the families feel is not suitable. They may try to prevent them having a relationship by forcing either one of them to be married to someone else they feel is more suitable.

What justification can the parents possibly use to justify forcing the marriage of their offspring? Some people will no doubt claim that they know what is best for their children. If asked about the law, they are likely to plead ignorance. Under UK Law, ignorance is no excuse. Under Islamic law, particularly if one is living in the UK, can they truly use such an excuse when there are so many books and the media providing so much information? For

the illiterate, there are many Imams, Sheiks and Muslim scholars who I am sure would be very willing to educate and inform.

Another excuse maybe lack of faith or the belief that there are no repercussions or accountability for breaking the law, be it in this world or the hereafter. This belief is, however, a false one! Every Muslim knows that they will be held accountable on the day of judgment for their deeds and this is supported many times in the Quran. An example is in the fourth chapter:

"Allah. There is no god but He: of a surety He will gather you together against the Day of Judgment, about which there is no doubt".⁸

ISLAMIC AND LEGAL IMPLICATIONS

So what are the legal implications of forced marriages? Inevitably, there will be civil implications for the fact that the marriage is a contract, as well as the implications of the Forced Marriage (Civil Protection) Act 2007 which came into force in November 2008. In addition to the civil implications, there are also criminal implications.

MARRIAGE CONTRACT

Dealing first with the civil implications, as marriage is a contract, Islam requires that there is a clear proposal and acceptance. If either party has not themselves accepted, there can be no agreement. Should an acceptance be obtained, the question then arises, is it a free and willing acceptance? If not, then the contract in UK Law would be void for duress and would be voidable under Islamic law as the option remains for the victim to affirm the contract or take steps to repudiate it. It has been reported that Mohammed (PBUH) had allowed a virgin girl, who claimed that her father had married her against her wishes, the right to repudiate the marriage.⁹ Repudiating the marriage would result in the marriage contract being held null and void. In the case of Khansa' bint Khidam who was given by her father in marriage against her will, Khansa had had her marriage cancelled by the Prophet (PBUH).¹⁰

RAPE

The criminal implications, however, are of far more importance for the consequences

are much more severe and far reaching. Criminal law affects not just the two parties getting married but other people who may also be involved such as family and friends.

Under Islamic law, if the marriage is repudiated, then clearly any relationship that ensues will result in the law being breached. For example, if the girl has not given consent to be married, then there cannot be any consent to have any sort of sexual relationship. Based on the case of Khansa above in which the Prophet (PBUH) cancelled the marriage, this would mean that either rape or some other sexual offence is likely to take place.

In Islam, adultery and fornication is forbidden. The Qur'an states¹¹: "Nor come nigh to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils)".

For those who commit adultery or fornication, the punishment is severe. The Qur'an states¹²:

"The woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment".

Further clarification comes from Mohammed (PBUH):¹³

"... For unmarried persons (guilty of fornication), the punishment is one hundred lashes and an exile for one year. For married adulterers, it is one hundred lashes and stoning to death".

However, in a forced marriage, the offence will neither be fornication nor adultery. There is a lack of consent so the offence will be one of rape. The punishment given for such a crime is as severe for the punishment of adultery. It is narrated that in the time of the Prophet (PBUH), a woman complained of rape. She identified the offender and he too admitted his guilt. The Prophet (PBUH) said to her: "Go away, for Allah has forgiven you". For the man who had had intercourse with her, the Prophet (PBUH) said: "Stone him to death".¹⁴

Under UK Law, following the 1991 case of *R v R*¹⁵ marital rape is prohibited. Hence, any husband who rapes his wife can be found guilty of the offence and face

imprisonment.

Having seen the punishment for the couple, what about the implications for other people involved?

AIDING AND ABETTING

Firstly, it is important to establish who these other people are and how they are involved. The most obvious group of people will be the parents, guardians and families of the youngsters who are being forced into the marriage. Surely, if they are forcing the victim into a marriage against his or her will, then they too should be held accountable?

It states under the Accessories and Abettors Act 1861¹⁶ that:

“Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted and punished as a principal offender”.

The Forced Marriage (Civil Protection) Act 2007, discussed below, does not make aiding a forced marriage a punishable offence.

THE ILLEGITIMATE CHILD

Another consequence and implication that seems to be overlooked in forced marriages is that of children. If a child was born when the girl has repudiated the marriage, making it void, then any offspring will be illegitimate. The issue that has always been of concern here is that if the woman has rejected the marriage and then been subjected to rape resulting in the birth of a child, she may be forced to remain in a marriage. However, how can the marriage be valid once it has been rejected? Surely once rejected, there can be no going back? Hence, by remaining in an invalid marriage, the parties continue to remain in breach of the Shari’ah.

THE FORCED MARRIAGE (CIVIL PROTECTION) ACT 2007

The Forced Marriage (Civil Protection) Act 2007 came into force in November 2008. Under this legislation, orders can now be obtained to protect the victim who has been or is being forced into a marriage. These orders cover the prevention of marriage, prevention of a person being taken abroad,

handing over of all important documents such as passports, birth certificates, etc., stop intimidation and violence and reveal the whereabouts of a person. Orders can also be made against people who are not the respondents.

However, breach of an order under this Act is not a criminal offence. The police can arrest a person for breach or reasonable suspicion of breach of an order but this is dealt with as a contempt of court. This could result in a prison sentence of up to two years. Any specific criminal offences could also be subject to separate criminal proceedings.

When I first became aware of the Forced Marriage (Civil Protection) Bill in April 2007, I did wonder if it was even necessary when there is so much legislation already in place to protect victims of crime. However, on the basis that the legislation seems to want to protect victims without criminalising those involved, it does seem to be a positive step.

The UK Foreign & Commonwealth Office’s Forced Marriage Unit has published many leaflets, posters, statutory and practice guidelines. Information is made available for social workers, teachers, health professionals and police who may encounter cases of forced marriages. My major concern would be whether or not these professionals have sufficient knowledge and understanding of the victims’ cultural and religious backgrounds to initiate any sort of process to assist.

For sometime, I was also left to ponder whether this was yet another propaganda attempt against Islam. Statistical data from the Home Office finally answered this question.

STATISTICAL DATA¹⁷

In 2008 the Forced Marriage Unit gave advice or support in more than 1,600 separate incidences of possible forced marriages.

The majority of the Forced Marriage Unit’s cases in 2008 involved families of Pakistani (57 per cent), and Bangladeshi (13 per cent) origin, with a smaller percentage of Indian and South Asian families.

The Forced Marriage Unit received 1,063 calls or emails to its helpline about suspected forced marriages between January and August 2009, an increase of

25 per cent in the same period the previous year.

From November 2008, when the Forced Marriage (Civil Protection) Act 2007 came into force, to the end of October 2009, 86 Orders had been made.

Forced marriages seem to be more prevalent amongst the Pakistani and Bangladeshi communities and these people are predominantly Muslims. They should be adhering to the Shari’ah which, as I have already explained, forbids such marriages.

FINAL THOUGHT

Though it would seem that there is no propaganda against Islam, I am inclined to believe that many of these forced marriages could be avoided by educating not just the law makers and enforcers, but also the perpetrators and victims. If the perpetrators understood that Islam forbids such marriages, it is unlikely that many of these forced marriages would be carried out.

It is unfortunate that some Muslim people, be it in the minority, are bringing Islam into disrepute. For these people, my only guidance as cited in the Quran is: “How can ye reject the faith in Allah ... He gave you life; He will cause you to die ... to Him will ye return”.¹⁸

* Senior Lecturer in Law, School of Law, University of Huddersfield, UK.

¹ An acronym which stands for “peace be unto him” and which is often affixed by practicing Muslims to the Prophet’s name.

² Narrated by Anas.

³ 30:21.

⁴ Quran 4:4 “And give the women (on marriage) their dower as a free gift”.

⁵ 4:19.

⁶ Bukhari 62:67 and 86:98-101

⁷ The sayings of the Holy Prophet Mohammed (PBUH).

⁸ Quran 4:87

⁹ Abu Daud 12:25 quoted by Doi, A.R.I., Shari’ah: The Islamic law, p.123

¹⁰ Bukhari 62:69 and 86:99.

¹¹ 17:32.

¹² 24:2.

¹³ Al-Bukhari, Kitab al-Hudud.

¹⁴ Abu Daud 38:4366.

¹⁵ [1991] 3 W.L.R. 767.

¹⁶ As amended Criminal Law Act 1977, s.65(7), Sch.12.

¹⁷ Source: Home Office and Foreign and Commonwealth Office, the Forced Marriage Unit.

¹⁸ 2:28.