

Forced Marriage and International Human Rights

Dildar F. Zebari

Abstract—This essay endeavours to describe the legal response to forced marriage. Most forced marriages are reported in such countries as Bangladesh, India, Iran, Pakistan, Somalia, Turkey and Yemen. There is an implicit overlap between Muslim communities and the practice of forced marriage, although by no means this overlap is exhaustive in accounting for the prevalence of forced marriage. In fact, some of the present day immigrant communities in the UK see the practice as inherently un-Islamic. On the one hand, forced marriage is in breach of Article 16 of Universal Declaration of Human Rights, Article 23 of International Covenant on Civil and Political Rights as well as others. Thus, forced marriage is against some of the rights enshrined as universal in international law. On the other hand, the fact that forced marriage is culturally embedded suggests that its practice may not be perceived as going against human rights by the people on the ground. Another question is how is one to draw a line between forced marriage, which is legally dubious, and arranged marriage, which is legally neutral. Thus, the question is ultimately how are we to go about protecting women's rights appreciating at the same time the presence of cultural diversity. Indeed, a lot of debates that are happening under this subheading often ask how to reconcile multiculturalism and gender equality. At the same time, it seems unjust to the right of women to have their own rights just because these rights are perceived by the male community leaders to be incompatible with 'culture' and 'tradition'. This essay analyses possible ways of tackling this confusion

Keywords— Forced Marriage, Arranged Marriage, Human Rights, International Law.

I. INTRODUCTION

BEFORE forming an argument, it is perhaps necessary to shed some light on forced marriage as this is by no means a straightforward category. There is no single formula that could be used to account for it. In the most basic sense, families on both sides may agree for a marriage between their adult children and force the children accordingly. It may happen, however, that the wife is still a child and is asked to marry older man whom she barely knows. This practice is supposed to ensure that the girl is still a virgin at the time of the marriage. The reason which I have written on this subject is that, in last few years ago it has been increased the number of people who got married by forced marriage in my region Kurdistan in Iraq, just in my town (Ranya) last tow years the number of people were increased around twenty percentage in 2010 and 2011 and also forty percentage of that marriages

finished by divorce. In addition as it often happens in Latin America, rural Southeast Asia and West Africa, rape victims are pressured or even required to marry the rapist [1]. This essay will be divided into six parts:- firstly the definition of forced marriage. Secondly the reasons which guide to this marriage. Arguments for & against these types of marriages. Finally human rights, international and domestic law perspective on forced marriages.

II. THE DEFINITION OF FORCED MARRIAGE

A forced marriage is a marriage in which neither the bride nor the groom has any official say over the selection of their future spouses. However, in a forced marriage, both parties give full consent to the marriage. By Sheri & Bob Stritof 2- A marriage planned and agreed by the families or guardians of the couple concerned. Forced marriage is a marriage that is established before a lengthy relationship. So in a sense, it is the opposite of a love marriage [2]. Families on both sides may agree for a marriage between their adult children and force the children accordingly [3]. Forced marriage an agreement between two families, and decidedly not a decision between two individuals [4].

III. THE DISTINCTION BETWEEN ARRANGED MARRIAGE AND FORCED MARRIAGE

There is a thin line between arranged marriage and forced marriage. There are two approaches to the possible confusion in term: either takes the two as likely to go hand in hand - in that sense arranged marriage always allows the possibility of its extreme that is forced marriage - or differentiate between them by suggesting guidelines and legal codes for drawing the distinction. The former approach, by making the straightforward connection between arranged marriage and forced marriage, condemns cultural practices in favor of a vision of universal right. Again, knowing import religious and traditional motives behind arranged marriage, it may seem simplistic to see arranged marriage as concomitant with its aberration. For example, China, itself labeled as an autocratic regime, recently has waged a battle against traditional practice of forced marriage. Firstly, by legally condemning the practice and imposing penalties on the actors behind it. Secondly, by repealing all types of arranged marriages, thus hoping to abolish forced marriage seen as a parallel practice [5]. In somewhat similar spirit, there has been a recent debate as to whether forced marriage should be considered a crime against humanity. The question was raised by the Special Court for Sierra Leone's Trial and Appeals Chambers when announced its judgment in favor of considering it such crime [6]. The Court has argued that forced marriages provide a structure for

Dildar Frzenda Zuber Zebari, Assistant Lecturer, Duhok Polytechnic University, (e-mail: dildar_z@yahoo.com Telephone: +964-750-450-9990).

an oppression of women. Conversely, there are many attempts at drawing the distinction between the two practices –forced marriage is taken as an aberration of arranged marriage and arranged marriage issue as a legitimate cultural practice. Others argue that arranged marriage becomes forced marriage when mediators between the spouses, or one of the spouses, put future spouses under duress when pushing them into submission [7].

IV. THE FACTORS LEADS TO FORCED MARRIAGE

The reason for this particularly high incidence of forced marriages in Pakistani communities. Islam, as wither points out, that in Islam, marriage is to be thought of as a civil contract – an agreement between two families, and decidedly not a decision between two individuals [8].

This makes for a complex array of social, economic and political factors the way in which families interrelated can vary hugely on the basis of status, social class, the terms on which the families are bound, even on the individual personal traits of the families involved in the matter in question. Wither notes that there is in particular a question of the way in which men and women grow up entirely separately, rather than mixing freely as men and women do in most Western societies, excluding certain fundamentalist demographics. A judge in a forced marriage ruling had the following to say on the matter:

Freely mixing with males and then selecting one of them as her future husband...This way of life is neither permitted by any figure or school of thought because it against basic teachings of Islam that people from both sexes should have free access to each other [9].

We may see from this quotation that the matter of forced marriage is deeply bound with the conventions and traditions of Islam, even if it is not a necessary implication of Islamic thought. The reason is this: if single women and men do not mix in their youth, then it will be very difficult for them to judge who will be their best partner.

This is particularly so if this is against a background of thought according to which entire families will be married, not just the individuals concerned. The families are in the best position, and this leads, understandably perhaps, to the wishes of the children being overridden. Some argues that the concept of Honor plays a significant role in the context to forced marriage [10]. With respect to women, Honor in Islamic communities dictates that their virginity is retained, as well as their general chastity.

V. THE FORCED MARRIAGE AND HUMAN RIGHTS

Arguments against forced marriage from the perspective of human rights can be grouped, broadly and crudely, into two categories: a priori, i.e. implied from the principle, and a posteriori, i.e. appealing to the research on forced marriage and the effects it has on the spouses, mostly women. Forced marriage is strongly denounced by international law. Article [16] of the Universal Declaration of Human Rights states “Marriage shall be entered into only with the free and full consent of the intending spouses” [11]. The same statement is made in Article [23] of the International Covenant on Civil and Political Rights [12], Article [10] of the International

Covenant on Economic, Social and Cultural Rights [12], Article [16] of the convention on the elimination of all forms of discrimination against Women [13] as well as others. Forced marriage is in breach of more than the right of freedom - women are denied freedom to choose the partner for themselves and freedom to live as they wish. From this, one could imply other correlated breaches of human rights that have to do with the dynamics of marital life.

Firstly, women are pushed into submission, possibly by recourse to violence, which goes against the body integrity as stated in Article 5 of the declaration [13].

Secondly, women, especially when they are still children, are denied the right to lead their life as they would wish, i.e. denied the right to education and autonomy protected by Article 26 of the declaration [14].

Thirdly, the women did not want to marry her husband, so it is fair to predict she would not like to sleep with him either, hence forced marriages often turn into forms of sexual slavery [15].

Thus, forced marriages are to be read as being in breach with human rights on several different levels. The international law at present works on the basis of a simple principle - culture should not be used as an excuse for practices that are considered damaging to individuals. This working predicament has, of course, been strongly criticised by cultural relativists who suggests that in some cases traditional and economic contexts may legitimise practices so far that it would indeed seem to go against self-identity of people within those contexts to deny them the right to carry those practices. As to religious explanations for forced marriages, there has indeed been a huge debate as to whether forced marriage is in agreement with religious predicaments and many critics concluded, perhaps too readily, that forced marriage is in fact not consistent with any religion [16].

According the Resolution 56/83 passed by the General Assembly in 2001, state is taken to be responsible for “all actions and omissions by the state organs” [17]. This puts a strain on the governments to be far more cooperative than it has been required thus far. This means that international organisations may now expect countries to involve more laterally with the problem. However, as already suggested, forced marriage is a crime that takes place in the private sphere and for that reason, the legislation in those countries where jurisprudence is still in its constitution, may find it difficult to address the problem, which has previously been dealt with either within family or within religious community.

VI. THE FORCED MARRIAGE AND NATIONAL LAW

International law establishes positive models for countries to follow. This is why it may be necessary to understand the particular ways in which governments seek to ensure that people are not forced to marry. It is also apparent that when tackling national legislation the range of solutions to the problem is much more specific than in international law, and for that reason it is much more confrontational towards the communities which practice forced marriages. Also national legislations include regulations that are extra-territorial and for that reason they are backed by a vision of an international legal community.

According to the statistics, approximately 300 cases of forced marriage are reported to official institutions in England every year [18]. In comparison, although no detailed survey has been done so far, it is predicted that at the moment up to 70 000 adolescents living in France are affected by forced marriage [19]. Some European countries such as Belgium, Norway and Germany made forced marriage into a criminal offence. In comparison, the UK and France resisted the idea [20]. In 2005, a Consultation Paper of Home Office in England suggested it may be necessary to add the new crime. The Paper has led to a long debate with persuasive arguments on both sides.

Those for the legislation argued that criminalisation could act as a deterrent; it could give the children leverage in arguments with their parents; it could inspire confidence and make it easier to prosecute cases that fall into the category. Those against the legislation argued that victims may decide not to ask for help fearing that their families would be prosecuted, parents may forcibly move their children to the country of origin; criminalisation may cause conflicts within the family that may be much more difficult to bridge were the parents recognised as criminal offenders [21]. The latter group points out that the laws in their present character are sufficient for responding to forced marriage effectively. The debate in the UK recaps main contentions about the criminalisation of forced marriage.

In addition, the law in England makes it relatively easy for either of the spouses to annul the marriage, if they report they were forced to marry and they gave no valid consent to do so at the time (22). The problem here is that as soon as one takes radical protective measures there are possible downsides to the communities in question - some of the legislation is likely to provoke discrimination at the registry office preventing immigrants from freely celebrating their union, instead the nature of their marriage being routinely scrutinised by the registrars; children may be prevented from moving freely across borders upon the suspicion of forced marriage and so on. This is why it may be necessary to ensure that the state intervenes only if there is reason to do so.

VII. CONCLUSIONS

The issue of forced marriage is legally, socially and economically problematic. In the foregoing argument we have seen that its socio-economic backgrounds are complex, and are related to, but not dependent upon, traditions rooted in the Islamic concept of honor and celibacy. Forced marriage is difficult to distinguish from arranged marriage, and the problem of finessing this distinction is largely coextensive with the problems of enforcing laws designed to prevent forced marriage. Internationally, some progress has been made, but there is much to suggest that many difficulties will be faced in the future with regards to the implementation of well-intentioned international policies. A balance must be struck between intervention and the protection of the human rights of the individuals and groups concerned.

REFERENCES

- [1] S. Moller Okin, 'Is Multiculturalism Bad for Women?' in *Is Multiculturalism Bad for Women?* (ed. by J. Cohen, M. Howard and M.C. Nussbaum), Princeton, NJ: Princeton University Press, 1999.
- [2] N. Merali, 'Arranged and Forced Marriage' in *Feminism and Women's Rights Worldwide*, Vol. 1 (ed. by M. A. Paludi), Westport, CT: Praeger, 2009.
- [3] S. Moller Okin, 'Is Multiculturalism Bad for Women?' in *Is Multiculturalism Bad for Women?* (ed. by J. Cohen, M. Howard and M.C. Nussbaum), Princeton, NJ: Princeton University Press, 1999.
- [4] K.M. Winther, 'Forced Marriages in a Human Rights and Women's Rights Perspective, Exemplified through Norwegian and Pakistani Legislation', *Kvinnerettslig skriftserie nr. 60*, Universitetet i Oslo, 2006, retrieved on 24 December 2010 <http://www.jus.uio.no/ior/forskning/omrader/kvinnerett/publikasjoner/skriftserien/dokumenter/60_Winther.pdf>.
- [5] Norwegian and Pakistani Legislation', *Kvinnerettslig skriftserie nr. 60*, Universitetet i Oslo, 2006, retrieved on 24 December 2010 <http://www.jus.uio.no/ior/forskning/omrader/kvinnerett/publikasjoner/skriftserien/dokumenter/60_Winther.pdf>.
- [7] S.H. Razack, 'Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages', *Feminist Legal Studies*, Vol. 12, No. 2, 2004, pp. 129-174.
- [8] Responses to Forced Marriages', *Feminist Legal Studies*, Vol. 12, No. 2, 2004, pp. 129-174.
- [9] B.A. Toy-Cronin, 'What is Forced Marriage? Towards a Definition of Forced Marriage as a Crime against Humanity', *Columbia Journal Gender and Law*, Vol. 19, 2010, pp. 539 - 590.
- [10] N. Dostrovsky, 'Annotated Bibliography on Comparative and International Law Relating to Forced Marriage', *Informe de investigacion a la Family*, 2007.
- [11] K.M. Winther, 'Forced Marriages in a Human Rights and Women's Rights Perspective, Exemplified through Norwegian and Pakistani Legislation', *Kvinnerettslig skriftserie nr. 60*, Universitetet i Oslo, 2006, retrieved on 24 December 2010 <http://www.jus.uio.no/ior/forskning/omrader/kvinnerett/publikasjoner/skriftserien/dokumenter/60_Winther.pdf>.
- [12] Abdul Waheed v Asma Janagir, PLD 1997 Lahore 331, quoted in *ibid*.
- [13] K.M. Winther, 'Forced Marriages in a Human Rights and Women's Rights Perspective, Exemplified through Norwegian and Pakistani Legislation', *Kvinnerettslig skriftserie nr. 60*, Universitetet i Oslo, 2006, retrieved on 24 December 2010 <http://www.jus.uio.no/ior/forskning/omrader/kvinnerett/publikasjoner/skriftserien/dokumenter/60_Winther.pdf>.
- [14] Art. 16(2), Universal Declaration of Human Rights, United Nations retrieved 23 December 2010 <<http://www.un.org/en/documents/udhr/index.shtml#ap>>.
- [15] International Covenant on Civil and Political Rights, United Nations High Commissioner for Human Rights, 23 March 1976, retrieved 23 December 2010 <<http://www2.ohchr.org/english/law/ccpr.htm>>.
- [16] International Covenant on Economic, Social and Cultural Rights, UNHCHR, 3 January 1976, retrieved 23 December 2010 <<http://www2.ohchr.org/english/law/cescr.htm>>.
- [17] Convention on the Elimination of All Forms of Discrimination Against Women, UN Division for Advancement of Women, 18 December 1979, retrieved 23 December 2010 <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>>.
- [18] No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment", Art. 5, Universal Declaration of Human Rights, *op. cit*.
- [19] "Everyone has the right to education", Art. 26(1), *ibid*.
- [20] A. Parrot and N. Cummings, *Sexual Enslavement of Girls and Women Worldwide*, Westport, CT: Praeger, p. 65, 2008.
- [21] K.M. Winther, *op. cit*. p. 2.
- [22] B. Clark and C. Richards, 'The Prevention and Prohibition of Forced Marriages - a Comparative Approach', *International and Comparative Law Quarterly*, Vol. 57, July 2008, pp. 501-528.
- [23] 23. UK Matrimonial Causes Act 1973, s 12(c).