



Southall Black Sisters

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Professor Nicholas Hopkins
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By email: weddings@lawcommission.gov.uk

2 March 2020

Dear Professor Nicholas Hopkins,

Akhter v Khan – the case for reform

As you will no doubt be aware Southall Black Sisters (SBS) supported by the campaign One Law For All, recently intervened in the above Court of Appeal case to outline our concerns about the current law on marriage and its serious implications for black and minority (BME) women and their rights.

The Court of Appeal [judgment](#) (14 February 2020) ruled that women who are unable to register their marriage in accordance with the law cannot on the break-up of their marriage seek to 'void' it. This means that they are not entitled to financial remedies. In SBS view, this outcome has profoundly discriminatory consequences for minority women, especially Muslim women who find themselves locked out of the civil justice system through no fault of their own. Many women turn to us for support and assistance in contexts where they have no control over the marriage process and are deprived of their rights. This is why we were greatly saddened to see the Court of Appeal overturn Mr Justice William's excellent decision; it was a genuine attempt to address the grave injustice faced by women who are forced into religious-only marriages. The Court of Appeal judgement did however acknowledge that this was an important issue.

We are therefore writing to you to ensure that the Law Commission's current review on marriage in England and Wales takes account of the socio-cultural context and constraints in which minority women make decisions about marriage, more often than not to their detriment. Our work shows that increasing numbers of women from Muslim and some from other minority backgrounds are deliberately threatened, coerced or deceived into entering a religious marriage only. They are encouraged or compelled to forgo the legal formalities of a marriage by their spouses precisely to ensure that the rights they have in relation to marriage and divorce are circumvented. Research conducted with Muslim women by Channel 4 in 2017 for instance, found that 78% of participants wanted a legally-recognised marriage and yet they found themselves unable to undergo a civil marriage because of their lack of power in decision-making about marriage. This strongly indicates

that it is simply not enough to focus on a campaign on raising awareness about registration amongst Muslim women, as has been suggested by campaigns such as 'Register Our Marriage'. It is of course an important step but is on its own insufficient. We would point out that many of the women that we see are highly educated like Mrs Akhter and have awareness of the need to have a civil marriage, but are deliberately frustrated from doing so by abusive partners who want to avoid their legal obligations following the breakdown of the marriage. Some want to have more than one wife as is permissible under so-called Sharia laws and anecdotal evidence suggests that polygamous marriages are on the rise in some BME communities. The quotes below highlight women's lack of bargaining power before, during and after a marriage:

"Women don't have a say in the matter of civil marriages. If things were in women's hands, they would have had the civil marriages in the first place. Why would they wait? When women get out of the divorce, they have nothing to stand on. Over the period I was married to him, I had nothing in my name – not even the car. He would say to me, even your handbag is mine."

"My husband was violent over the course of our relationship, including in pregnancy. I have recordings from the times he strangled me and spat on me...He made me believe that [my marriage was registered] so it didn't make me think we need to go to the council or the court as well. I didn't have my name on our bank account, on property, on the land purchased. I didn't know all this time that I wasn't safe and secure. He knew, but I didn't know."

"My husband would shout at me and criticise me in front of his parents. Both him and his parents were controlling...He would say, we'll have the English wedding in two months' time, but there's no rush. His first reason was, 'let's wait until after the sister-in-law gets married', then he suggested we shouldn't do it as it could affect my receipt of benefits as a single parent"

Many of our users who have had a religious marriage only have expressed dismay, fear and anxiety about their legal position. What is now needed is a comprehensive review of marriage laws to make them transparent and fair. Any reform needs to reflect their reality and ensure that they have legal routes in situations where they are prevented from having a civil marriage. We wish to remind you that we wrote to Richard Heaton, the Permanent Secretary at the Ministry of Justice on 6 August 2018 following the decision of the High Court on the Akhter v Khan case precisely to raise our concerns on this matter but received no response. We **enclose** that letter for your reference.

We do not wish to repeat the contents of the letter but we do want to emphasise the point that the current practice regarding marriage and divorce delivers women into the hands of unaccountable religious bodies. The current law as it stands will only strengthen the role of arbitrary and patriarchal religious arbitration systems in minority communities, to which desperate women are increasingly compelled to turn to as a consequence of their lack of rights in the formal legal system. We gave the example of the highly problematic divorce application (Form D8) which appears to actively encourage women to turn to religious bodies. It states *'If you entered into a religious marriage as well as a civil marriage, these divorce proceedings may not dissolve the religious part of your marriage. It is important that you contact the relevant religious authority and seek further guidance if you are unsure'*. Such advice makes clear to women that obtaining a decree absolute may not end a religious marriage. This is tantamount to keeping women forever tied to patriarchal religious authority.

We now look to the Law Commission to give serious consideration to the fact that in the UK, the courts are saying that they can do nothing about religious-only marriages. Courts in other parts of the world have been able to recognise the harms of illegitimate, illegal, or invalid marriages by voiding them. We believe that this has been used for example in cases of abuse, child marriage or polygamous marriage. It is also a vital step in resolving the problem of unaccountable so-called 'sharia courts' since it removes one important reason for vulnerable and powerless women using them - because there is simply no other legal recourse.

As we understand it, the scope of review that you announced in July 2019, will involve looking at how the law can work for all couples in all faiths and none, (including those who are not well served by the current buildings-based system), consideration of how marriages should be registered; and what the consequences should be for couples who do not comply with any requirements. We would add that consideration must also be given to the legal remedies that should be available for abused women who through no fault of their own cannot compel their partners/husbands to cooperate with a civil marriage and to equal rights for co-habitants. A reform of marriage laws in England and Wales is seriously overdue. As the Law Commission itself pointed out in 2015, the current laws are a mess and have failed to keep pace with the modern realities of Britain.

For this reason, we are keen to engage with this review to ensure that the needs and experiences of black and minority ethnic women (BME) are considered fully - particularly as they relate to the matter of religious-only marriages and associated rights on the break-up of a marriage. We therefore request a meeting with you to discuss how we can best engage with the review going forward, other than just through the written consultation process.

We look forward to your response.

Yours Sincerely,

Pragna Patel
Southall Black Sisters

Maryam Namzie and Gita Sahgal
One Law for All