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## **Forced and Underage Marriages in New Zealand: Some Reflections on Public and Private Patriarchy and Intersectionality**

Ambika Kohli

### **Abstract**

In this article I will briefly discuss the problem of forced marriages within Asian, Middle Eastern and African diaspora communities in New Zealand. Within the last few years forced marriages have received media attention in New Zealand. However, it is important to note that there is no specific legislation to curb this problem precisely. As a result, women within these diaspora communities suffer breaches of their women's and human rights. I will argue that in the context of forced marriages women from these communities are subjected to multiple forms of discrimination against them both at public and private level owing to their gender, race and ethnicity. At the private realms of their family and communities women are subjected to patriarchal violence, whereas at public level their race and ethnicity play a crucial role in their marginalisation. This results in denial of their basic rights. To address this issue I will expand the concept of public and private patriarchy given by Sylvia Walby. This is in order to elucidate that western societies are no longer Western, rather they are multicultural societies where the needs of women from diverse backgrounds should be addressed in culturally competent ways. Furthermore, I will employ the theory of intersectionality to elucidate how women from diaspora communities are further marginalised at a public level. For my methodology I will use secondary data. I will discuss two cases of forced marriages, in this article, that were published in the New Zealand media a few years ago. I conclude that a multicultural approach is required while framing and amending policies in contemporary New Zealand that will deal with different forms of cultural abuses.

**Keywords:** forced marriages, underage marriages, diaspora, violence against women, women's rights, public patriarchy, private patriarchy, patriarchy, intersectionality, New Zealand

### **Introduction**

Marriage is a very important social institution across different societies even in the western<sup>1</sup> world where defacto relationships are socially and legally sanctioned. In the West, marriage might be deemed to be a union between two individuals. However, in many cultures it is a tie that signifies relationships between more than two individuals (Morgan, 2007) suggesting the collective nature of marriage within different settings. This collectivism often leads to endogamy, that is, to get married within the same community such as the same tribe or clan

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<sup>1</sup> Though it is important to note that these countries are no longer western rather they are multicultural. This calls for a need to search for a new term to refer to these countries. However, I am using the term western to keep it simple and comprehensive for readers from different socio-cultural backgrounds.

or caste or religion. Endogamy is quite common among the diaspora communities in the West, which indicates a lack of integration between them and mainstream communities. Within such cultures, where endogamy is a norm, people who choose to practice exogamy can attract criticism and social ostracising within their communities and, in some cases, can result in honour crimes.

One such honour crime is forced marriage. Forced marriage could be understood as a marital union in which at least one of the spouses is forced to marry (Dasgupta, 2008). It is important to note that forced marriages are different from arranged marriages, as the couple in the arranged marriages have the right to say no to the alliance. Forced marriages can also be underage marriage, and not all underage marriages<sup>2</sup> are forced marriages. Forced marriages are usually done to practice endogamy, to preserve cultural traditions, and to maintain family honour by controlling the sexuality of young boys and girls. Honour crimes are usually associated with Asian, African and Middle Eastern communities, but in the contemporary globalised world these crimes are recorded in the West owing to the phenomenon of migration. In this paper my focus of discussion is forced marriage in the Western countries, with a specific reference to the cases of forced marriages in New Zealand.

I will begin by highlighting the link between forced marriages and patriarchal structure that is leading to women's subordination, violation of their basic human and women's rights and violence against them<sup>3</sup>. I am aware that men are also victims of forced marriages (Samad, 2010), but in this article my focus is on female victimisation. I will then discuss Sylvia Walby's (1990) private and public patriarchy theory in order to highlight how her work tends to ignore the multicultural fabric of Western societies. A similar pattern is evident in the New Zealand legislation, as no specific act or legislation has been drafted yet to address such a sensitive issue. Furthermore, I will employ the concept of intersectionality to highlight how women from diaspora communities suffer marginalisation because of their ethnicity and race. I will then provide two examples of forced marriages that were reported within the New Zealand media. I will end my discussion by providing recommendations for appropriate policies and highlighting the dilemmas of forced marriages.

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<sup>2</sup> Often young minor couples escape from their families in order to get married to each other without parental consent.

<sup>3</sup> I am aware that men are also victims of forced marriages. But in this article my focus remain on female victimisation because of forced marriages.

## **Forced marriages a result of patriarchal and collective structure**

The concept of honour is hard to define in a linear fashion as it largely remains socially constructed and is specific to different cultural settings. In this paper honour is defined in relation to controlling women's sexuality, their bodily integrity, and their choices such as choice to marry or study. This control is often manifested through different forms of honour crimes such as honour killings and forced marriages. As discussed earlier, forced marriages are quite common among many communities of Asian, Middle Eastern and African countries. These communities have highly patriarchal and collective social settings.

Collective culture could be understood as a culture wherein socialisation since birth is being "integrated into strong, cohesive ingroups" (Hofstede, 1991, p.51). Furthermore, relationships and family values play a crucial role in determining social behaviour (Guess, 2004; Kinsky et al. 1999). In these settings ideas of collective honour exist, that is common ideas and socio-cultural mores in regards to morality (Sen, 2005), women's sexuality, and mobility are shared and practiced by communities. Women's honour, especially young women's, is closely associated with controlling their sexuality (Shah-Davis, 2011; Vishwanath & Palakonda, 2011). Moreover, in collective settings honour is achieved and restored collectively between families and communities (Shah-Davis, 2011). As a result, the honour crimes that are committed to restore patriarchal honour usually receive support from victims' families and communities. This collective support results in the underreporting of honour crimes, a phenomenon which will be discussed later in this article.

This scenario could be viewed in the context of the tolerance of gender violence within different socio-cultural settings. According to the United Nations Population Fund (as cited in Johnson, Ollus & Nevala, 2008):

Gender-based violence is perhaps the most wide-spread and socially tolerated of human rights violations....It both reflects and reinforces inequities between men and women and compromises the health, dignity, security and autonomy of its victims. (p.1)

This suggests a strong level of tolerance is often evident for multiple forms of gender violence against women. In this article this tolerance will be discussed in the context of honour crimes that are focussed on controlling women's sexuality, mobility, and their life choices. Forced marriage, an honour crime, receives a great amount of support not only by the victims' communities, but also by their own family members. This is due largely to the

potential risk of the families being socially ostracised if they practice exogamy or allow their daughters to marry the partners of their choice (Rid, 2012).

In cases of forced marriages, women's experiences of being subjected to violence and patriarchy remain private within their families and communities<sup>4</sup>. Their experiences could be understood as subjected to 'private patriarchy'. Sylvia Walby advances the idea of private and public patriarchy in her book *Theorising Patriarchy* (1990). Walby (1990) argued that Western society has developed in the last 100 years from private to public patriarchy. She makes a distinction between public and private patriarchy. In public patriarchy, she argues, women have access to public arenas, and individual patriarchs within their families may no longer exploit them. They may still be exploited by men through their subordination in public arenas of employment. On the other hand, in private patriarchy women are controlled by male patriarchs within their homes (Walby, 1990). In this paper I will discuss private patriarchy as controlling women's choices not simply at the household level, but at a wider community level. Honour in these communities is viewed as collective, as discussed above, and this leads to toleration and growth of gender violence against women at a wider level. Often both victims' families and communities remain partners in crime of forced marriages.

Furthermore, I argue that in new multicultural Western societies, such as New Zealand, both private and public patriarchy co-exist. Women from diaspora communities, however, are more likely to be victims of private patriarchy since they are located in highly patriarchal settings. In addition, these women do have access to public arenas but they often suffer further marginalisation at a public level owing to their gender, race and ethnicity. This marginalisation could be understood under the light of intersectionality.

The term intersectionality was coined by feminist scholar Kimberle Crenshaw (1989) in her article *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*. Crenshaw discussed intersectionality in regards to the experiences of black women facing multiple forms of oppression because of their gender, race and ethnicity (1989). Intersectionality has been discussed by scholars in relation to different topics such as employment, patriarchy, colonialism, identity and citizenship (Crenshaw, 1989; Crenshaw, 2001; Yuval-Davis, 2006).

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<sup>4</sup> I am referring to both families and communities as part of the private realms of women's lives, because of the collective nature of the society in which these women are situated. And also both families and communities being partners in the forced marriage crimes.

In this article intersectionality is discussed in relation to experiences of victims of forced marriages as they suffer multiple forms of oppression both at public and private level because of their gender, race and ethnicity This highlights one of the major gaps of Walby's (1990) work.

Walby missed major aspects of intersectionality while discussing women's experiences of patriarchy in Britain. Though she argued that women from different ethnic groups have different experiences of patriarchy. For example, women of British Afro-Caribbean origin are more likely to experience public patriarchy, whereas British Muslim women are more likely to experience private patriarchy. Walby only briefly touched on the diversity of experiences of different ethnic groups of women living in Western countries as her major focus was on the experiences of white middle class women in her illustration. This signifies that Western societies, at a wider social and political level, are viewed to be more Eurocentric than multicultural.

In New Zealand a similar pattern of ignoring the multicultural fabric of the society by ignoring the multiple forms of oppression that women from diaspora communities face because of their ethnicity and race is evident in regards to forced marriage cases. New Zealand does not have any specific legislation to deal with this problem, and the current legislation fails to address the problem efficiently. Currently in New Zealand perpetrators of forced marriages could be charged under the Crimes Act 1961, the Marriage Act 1995, and Domestic Violence Act 1995. For instance, under the Marriage Act, somebody of 18 years or above can only lawfully get married, whereas individuals of 16 to 18 years require parental consent in order to get married<sup>5</sup>. It is vital to note that parental consent in forced marriages is not an issue of concern since parents often provide lawful consent for their children's marriages against their wishes. This is often done to force the children into marriages (Shakti, 2010). These marriages are not under the radar of New Zealand government and this creates ambiguity in detecting whether these marriages took place with consent of both parties or not (Shakti, 2010). One of the married partners under the Marriage Act 1995 is required to make a formal declaration that their marriage is lawful (Radhakrishnan, 2012). This signifies that the individual who has been forced into the marriage does not get an opportunity to report

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<sup>5</sup> An interesting point to debate here is that if people from 16 to 18 years require parental consent to get married then are these marriages child marriages? Because there is an acceptance of the idea that 16 to 18 years are not capable enough to provide full consent. However, this is not the nucleus of discussion in this article hence I am not going to expand on this point.

their victimisation as there are high chances of her being isolated and being locked in the house.

The Crimes Act 1961, however, provides protection to people who are kept captive against their wishes or have suffered sexual coercion (Radhkrishnan, 2012). A similar protection is provided under Domestic Violence Act 1995 to the victims of domestic violence. Under this act victims have an opportunity to apply for a protection order. However, this protection is only available to the victims who can reach out for help, and this is quite difficult for the captives. Moreover, even if they manage to reach out they will need to provide specific evidences of their victimisation, which they failed to do in most of the cases (Shakti, 2010). In a nutshell, no New Zealand legislation provides a direct protection to the victims of forced and underage marriages. This is because the government believes that one law is enough to deal with the problem, irrespective of culturally diverse experiences of New Zealand's women (*ONE NEWS*, 2012). This highlights how current legislation is based on white middle class women's experiences of patriarchy rather than an intersectional and multicultural approach.

On the other hand, Norway, Belgium, Australia, and Britain are among those Western countries that have either criminalised forced marriages or have legislation to deal with the problem. Forced marriages are quite common in the regions of India, Pakistan, Afghanistan, Africa and in different parts of Middle East (Bentheim, 2013; Rid, 2012; Vishwanath & Palakonda, 2011; Walther, 2010). However, forced marriages have disseminated to different parts of the world, especially Western countries, with an increase in population of diaspora communities.

It is important to note that in New Zealand, despite being the problem of forced marriage raised by UNICEF's executive director Dennis McKinlay in the year 2012 (*ONE NEWS*, 2012), the state still fails to frame any specific local legislation to curb the problem, even in the year 2015. As mentioned above, the current legislation is not sufficient to deal with the problem. Furthermore, New Zealand is a signatory to various international conventions that ensure safety and protection to women to lead violence free and safe lives. This indicates that the state fails, both at a national and international level, in regards to providing protection to the victims of forced marriages. Some of these international conventions are Universal Declaration of Human Rights, the United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and the Convention on the

Elimination of all Forms of Discrimination Against Women (CEDAW). An important point to note is that United Nations Commission on human rights of women focuses on intersection of multiple forms of discrimination that women face (Yuval-Davis, 2006). However, New Zealand fails to acknowledge this intersectionality in the context of victims of forced marriages. This is a breach of women's rights and their human rights that they are entitled to under various international conventions to which New Zealand is a signatory. Practising of forced marriages and the failure to provide an appropriate legislation by the state results in women being denied opportunities to achieve bodily integrity, as their bodies constantly remain subjected to different forms of violence. Bodily integrity in this article could be understood as an ability to move freely, to be secure against violence assault and domestic violence and an ability to make reproductive choices without any coercion (Nussbaum, 2000).

Violation of women's rights in regards to their bodily integrity, choice to marry and study will be discussed in the next section. I will discuss two cases of forced marriages, which were published in the New Zealand media. The discussion will throw light on the aspect that local laws in New Zealand are based on Western women's experiences of patriarchy, public patriarchy. However, women from Asian, Middle-Eastern and African communities living in New Zealand are still subjected to private patriarchy. This elucidates to frame laws having a multicultural and intersectionality approach.

### **Forced marriages leading to violation of women's rights and human rights**

In this section I will discuss two cases of forced marriage that received media attention. I have used these two cases because they explain how women from diaspora communities experience forms of multiple oppression, both at private and public level. Moreover, they are denied their basic rights and their safety remains at risk. The first case is of a Somalian girl living in New Zealand and the second case is of a Pakistani girl, also living in New Zealand. It is important to note that both the countries Somalia and Pakistan are quite unsafe for women. For instance, honour crimes, such as forced marriages are quite common in different regions of Pakistan and Somalia (Zirulnick, 2011). Honour killings, as stated earlier, have disseminated to different parts of the world with increased diaspora communities. As a result, honour crimes committed by Asian, Middle Eastern and African communities are often reported in Western countries.

The first case is of a Somalian girl (Taurus, 2010) living in New Zealand<sup>6</sup>. At the age of 14 years, when she was returning home from her school, she was raped by one of the potential suitors for marriage whom she had rejected. When she informed her parents about this, she was cursed for bringing shame and disgrace to her family. She was then forced to marry her rapist as nobody else would marry her within her community. She was married with Islamic rites at her home and the marriage was never registered with the New Zealand government. Despite the fact that guests of the wedding were aware of the young girl being only a minor, nobody reported it to the authorities.

After her marriage, she dropped out of school, but nobody in her school paid any attention to this. Furthermore, she suffered domestic violence (physical and emotional) at the hands of her husband. When she disclosed this to her maternal family her father forced her to continue the abusive relationship, saying that men often beat their wives and, therefore, should endure it. No support from anyone and pressure to continue the abusive marriage forced her to endure domestic violence. Later on, as a result of her rape, she fell pregnant. Later she went to hospital for her delivery, and no one in the hospital paid attention to the fact that she was underage. Simultaneously, in her school nobody ever tried to inquire the reasons behind her falling pregnant and suddenly dropping out of school.

This highlights the apathy and lack of understanding regarding forced and underage marriages by teachers, doctors and different human services providers. This apathy was reflected in the attitude of school teachers, doctors and nurses in the hospital who never endeavoured to inquire as to why a minor dropped out of school and fell pregnant. This silence exemplifies how the victims' race, gender and ethnicity are in an intersection at a public level, leading to their further marginalisation. A strong reluctance to provide help or to report their victimisation to the greater authorities is visible in the silence of different human services providers. New Zealand's government did acknowledge this and emphasised the importance of educating different human services providers in order to curb the forced marriage problem (*ONE NEWS*, 2012). However, we cannot simply rely on education without any specific legislation which could ensure justice to such victims.

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<sup>6</sup> The 'Child Brides in New Zealand' documentary available at youtube provides extensive information on this case.

This case does not only exemplify child abuse, as when minors are forced into a marriage it is considered child abuse (Gangoli et al, 2006), but also highlights a strong tolerance of gender-violence within the victim's family and community. Though everybody within the community and family were aware it was an underage marriage, no one registered any complaint to the authorities, which highlights the collective nature of these communities. This is also because, "Honour can be restituted through either the modification of the transgressor's behaviour (eg a forced marriage) or erasure of the carrier of dishonour (killing)": (Sen, 2005 p.47). Here, the lost honour, which the victim lost as a result of her rape, was restored by forcing her into the marriage with her rapist. The whole notion of preserving women's virginity for their husbands was the impetus behind this case of forced marriage. Holtzman and Kulish (1997) defined virginity as a male invention to curb women's sexuality. This leads to women's subordination, marginalisation and domination, resulting in violation of their human rights, reproductive rights, and breaches in bodily integrity (Nussbaum, 2000) as this Somalian girl was constantly subjected to physical, emotional and sexual violence. Moreover, forced pregnancy, as a consequent result of her rape, indicates that she suffered breaches of her reproductive rights, such as an inability to control and regulate her fertility. In this case, a clear violation of women's rights under the Marriage Act 1995, the Domestic Violence Act 1995, and the Crimes Act 1961 is taking place. Furthermore, women's human rights are being violated. For instance, this includes the right to marry under CEDAW article 16b. This signifies that, though forced marriages are illegal in New Zealand, the communities are aware of these unlawful alliances. However, these marriages are still not under the radar of the state. Therefore, the state is unable to monitor such unlawful alliances.

A second case is of a 17 year old Pakistani girl living in New Zealand (*ONE NEWS*, 2012). This case was quite precarious and could have resulted in honour killing if the girl had not sought help from the authorities on time. This girl was married off by her parents forcefully to one of her cousins. Her husband tried to rape her and she was prisoned by her own family and husband for two months, before she could manage to escape. After she escaped, she reported it to the police. Following these events, her family disowned her and threatened to kill her.

Similar to the aforementioned case, a direct violation of this girl's women's and human rights, both under local legislation and international conventions, is evident. A strong desire

to control women's sexuality, body and other choices are controlled in the name of honour (Sen, 2005). Physical violence, deception, abduction and imprisonment are common forms of violence that forced marriage victims usually face (Dasgupta, 2008; Shakti, 2010). Moreover, women are emblems of honour (Shah-Davis, 2011) and carriers of cultural values (Yuval-Davis, 1997), and failing to reproduce these socio-cultural expectations can lead to honour crimes within Asian, Middle Eastern and African communities. These crimes are usually carried out by male family or community members and in some non-western countries are also enacted by the state. Male perpetrators by conducting such honour crimes often gain respect and recognition for preserving community's honour (Sen, 2005). This results in high level of tolerance for gender violence and underreporting of such cases.

The above discussion suggests that though women from Asian, Middle-Eastern and African communities are living in a Western country they experience patriarchy in a much different way, in comparison to European women. Their experiences of patriarchy mainly remain private within the realm of their families and communities. The immediate beneficiaries within this system of patriarchy are the community and the family who are able to restore alleged honour by practising violence against women under the name of cultural traditions and values. Furthermore, different social divisions such as women's gender, race and ethnicity are in an intersection which aggravate their experiences of violence by making it harder for them to receive help at a public level. This is mainly because law enforcement agencies and different services providers are turning a blind eye to multiple forms of oppression that victims of forced marriage face. This triggers a debate to frame such specific policies that will be able to address their experiences of patriarchy and victimisation both at private and public level.

## **Conclusion**

Above discussion suggests that Western societies are new multicultural societies where public and private patriarchy both co-exist. Therefore, it is not appropriate to view that majorly public patriarchy exist in Western societies (Walby, 1990). The New Zealand Marriage Act 1995, Domestic Violence Act 1995, and Crimes Act 1995 can provide security to victims of forced marriages, but there is a need for appropriate legislation that deals with the problem of forced and underage marriages. This legislation could be based on the similar

models of other Western countries or New Zealand could draft its own policies based on the specific needs of the country.

A shift in the approach from public to private patriarchy and a specific focus on intersectionality are required while framing policies and drafting educational awareness programmes for human services providers in sensitive cases of forced marriages. Western countries have a multicultural social fabric. Therefore there is a strong need to integrate people from different communities within the society to avoid these heated tensions. Simultaneously, it needs to be executed in such a way that the state could provide safety and security to the victims of forced and underage marriages.

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**Ambika Kohli, 2015**

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