

## **Muslim Women and Forced Marriages in the United Kingdom**

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### ***Abstract***

*Forced marriage affects numerous communities within the UK and has far-reaching effects for both individuals and the wider society. This paper attempts to address this issue from an Islamic jurisprudence standpoint. While the paper provides a comparative-contrastive account of key discussions between Muslim jurists (fuqahā') from the four Sunni schools of law regarding coercion (ikrāh) and its effect on the marriage contract, it pays particular attention to the Hanafi school of law's position and ways in which its jurists' reasoning dissents from that of the majority of Sunni jurists. This paper collates the pertinent information, focusing on the effect of coercion (ikrāh) and on the pivotal issues of consent (riḍā) and choice (ikhtiyār). It also considers recent UK legislation and established personal status laws in several Muslim countries. We conclude that forced marriage is incompatible with the objectives of Islamic law and has no reliable basis in its sources, highlighting that the function of the guardian (walī) is to protect the interests of the ward, rather than to exercise authority over those under his guardianship. We suggest that victims of forced marriage in the UK should be able to seek annulment via the courts rather than traditional, community-based, non-enforceable mediation.*

### **Introduction**

By definition, marriage is entered into as a planned, long-term relationship between two individuals. Marriage requires effort from both parties to make it succeed.<sup>1</sup> The emotional aspect of such a relationship is vital; consequently, it should not be entered into without free will and choice. The national and international literature on forced marriage (hereafter referred to as FM) has considered it from an ethnic perspective and constructed it as a form of cultural pathology.<sup>2</sup> However, FM is also a social problem because of its impact on individuals and society. FM is a highly controversial and sensitive issue and has often been considered a taboo subject in certain communities. However, FM has significant psychological, social and financial implications for the wider population of young European Muslims, in general and, for British Muslims, in particular because, in many cases, Islamic law has been used to justify the coercion of young Muslims into marriage.

This paper examines the issue of coercion (*ikrāh*) and its legal effect on the marriage contract, from the jurisprudence perspective of the four *Sunni* schools of law (Ḥanafī, Mālikī, Shāfiʿī and Ḥanbalī). Focusing on their respective stances on the pivotal issues of guardianship (*wilāya*) and coercion (*ikrāh*), it compares their various positions regarding FM. The evidence and juristic principles invoked by each of these schools, along with their critiques regarding the other schools' evidence and methods, are also included. The most relevant of these opinions, in terms of which one meets the requirements of the purposes of marriage (*maqāṣid al-zāwāj*) and the objectives of Islamic law (*maqāṣid al-sharīʿah*), are selected for the benefit of the Muslim and wider community in the UK. The paper also examines whether or not Islamic law gives liberty to individuals to make contracts more generally and whether a contract completed under coercion is legally valid. The effect of coercion on consent (*riḍā*), which causes a marriage contract to be either invalid (*bāṭil*) or irregular (*fāsid*), is also considered. Furthermore, the paper pays especial attention to analysing the Hanafī perspective on these issues in order to demonstrate how it differs from that of the remaining three *Sunni* schools of law (*madhāhib*). Finally, this comparative-contrastive analysis focuses on the legal effect of coercion, and, specifically, on whether coercion invalidates a marriage contract, thereby meaning that it can be annulled.

### **Definitional Aspects: Coercion**

Coercion (*ikrāh*) is a legal term denoting 'duress'. Nyazee upholds this meaning, describing coercion as: 'a situation in which one is forced to do something without his willingness'. He also classifies it as one of the causes of defective legal capacity, as do all jurists from the four *Sunni* schools of law when writing about 'legal capacity'.<sup>3</sup> Many definitions of coercion, however, arise from the differing views of jurists. Some have clarified the linguistic significance of coercion, while others have focused on not just the meaning of coercion but also the effect of coercion. Ḥanafīs especially differentiated between consent (*riḍā*) and *ikhtiyār* (choice) and the effect of coercion on both. One definition that the Ḥanafīs give for coercion is: 'the action a person takes because of another's will in a way that negates his consent and invalidates his free choice without disapproving his legal capacity or excusing him of a mistake'. This definition takes into account the idea that the compelled person is considered to be one afflicted with coercion, but nevertheless as one who is accountable and addressed by the provisions of the law.<sup>4</sup>

The compelled person is called the '*mukrah*'. The *mukrah* finds himself or herself in a situation in which he/she is incapable, through pressure and compulsion, of resisting, by any means, the threat befalling him/her, while the compeller is known as the '*mukrih*': the person who threatens and forces someone else to commit an act. The compeller is seen as highly capable of implementing his threat. The action—the '*mukrah ʿalayh*'—is the action that the compeller seeks to achieve. Coercion can take the form of a verbal action, such as a sale or marriage contract. The term '*mukrah bih*' refers to the means of fear: the threats the compeller makes, such as killing, beatings and imprisonment. The threatened condition is a harm that the one compelled will seek to avoid. This threat could be directed at the body or the property of the compelled, or take the form of some other means of distress that could cause a rational person to comply with the request of the compeller out of a fear of experiencing that distress. These elements are recognised as the pillars and conditions of coercion.<sup>5</sup>

For coercion to exist, two factors must be present: one is physical—the threat of causing harm—and the other is psychological—causing the compelled to feel fear. The latter is the main element at play because the coercion that takes place through that fear affects the will and intention of the coerced individual. Coercion therefore differs according to factors such as age, sex, strength, weaknesses, social position and status. Islamic jurisprudence stipulates that, for a person to be compelled to initiate a contract under coercion, the pressure being exerted must cause fear to the contracting party, thereby causing him or her to carry out the contract<sup>6</sup>.

### **Forced Marriage as a Problem among Muslim Communities in the UK**

Academics working on forced marriage point out that public debates on FM are mostly addressed in terms of immigration, rather than as a ‘tradition’ exported from countries of origin.<sup>7</sup> In the UK, FM has also been seen as culturally harmful within some communities, specifically South Asian communities. Some researchers (see Gill and Harvey, 2016)<sup>8</sup> claim that South Asian parents who force young people into marriage believe they are upholding the cultural practices of their country of origin.<sup>9</sup> However, Chantler *et al.* (2009) state that, while there has been much focus on Indian, Bangladeshi and Pakistani communities with regard to FM, it is also important to recognise that a wider range of ethnic minorities also engage in the practice. These include African, Middle Eastern and Latin American immigrants<sup>10</sup>, with Eastern Europeans, Albanian, Chinese, Jewish and some Christian groups, including Mormons, Jehovah’s Witnesses and those who are Greek Orthodox, also being mentioned to a lesser extent.<sup>11</sup> Finally, this claim is backed up by evidence collated by both the Home Office and the Foreign and Commonwealth Office, suggesting that FM is indeed practised in a much wider range of ethnic communities and religions.<sup>12</sup>

### **Forced Marriage and the Issues of Consent and Duress**

The issue of consent has been problematic for a number of researchers, as FM has been defined as a marriage conducted without the full and free consent of the couple involved. Gangoli *et al.* argue that the Home Office definition assumes the distinction between arranged marriage and FM is based on ‘*full and free consent*’.<sup>13</sup> However, Gangoli *et al.* recognise that this definition does not specifically address the issue of age. While much of the official literature surrounding FM indicates that the primary victims are young girls under the age of 18, by implication, women and men of any age can be forced into marriage.<sup>14</sup> (*op. cit.*, 2009). Quek<sup>15</sup> believes choice is the most important issue to examine when considering FM. This belief leads her to view the main problem within FM as the denial of a spouse’s choices. This conclusion is based on results from a working group, which highlighted the denial of choice as the distinction between forced and arranged marriage: in FM there is no choice.<sup>16</sup>

Again, Gangoli *et al.* state that an important issue within the consent debate is that the existing definitions of FM focus on whether one or both spouses had the right or ability to choose the marriage at the time of entering into it.<sup>17</sup> However, a crucial question still remains, i.e. if threats, blackmail or some other form of pressure is applied, is such coercion sufficient to destroy the reality of consent and to override the will of the individual.<sup>18</sup> For Gangoli *et al.*, the notion of consent is further complicated by An-Na’im’s definition of FM which counterpoises arranged marriages with FM.<sup>19</sup> He believes there is no difference between arranged and forced marriages. Rather, he believes that they can be classified as falling along a continuum between consent and coercion. He claims this classification allows for the cultural and contextual nature of consent. Thus, he considers that the difference between an arranged marriage and a coerced marriage is a matter of degree and perception, with

persuasion playing a key role in the grey area of the continuum.<sup>20</sup> Gangoli *et al.* add that the distinction made between arranged and forced marriages is obviously an attempt to accept diverse cultural practices.<sup>21</sup> In the same context, Anitha and Gill also believe that the distinction between coercion and consent entails grey areas and, therefore, that the notion of free will remain central to the legal discourse surrounding FM in the UK.<sup>22</sup>

Furthermore, Gangoli *et al.* state that separating arranged marriages from forced marriages in this way serves to conceal some indirect forms of coercion and can at times result in 'slippage' between the two. They also point out that, while the vocabulary surrounding FM is somewhat recent, it is important to note that degrees of coercion have been accepted as the norm within some scholarship on arranged marriages, particularly those in the Indian subcontinent.<sup>23</sup> This point is also supported by Anja Bredal who focuses on understanding coercion in terms of degrees of compulsion and both direct and indirect constraints<sup>24</sup>. Again, Anitha and Gill claim that, even in the absence of explicit threats, consent might be given under the influence of power imbalances and gendered norms.<sup>25</sup>

### **Islamic Principles on Marriage**

The Hanbali jurist, Ibn Taymiyyah (d. 728 AH/1328 AD) draws general guidance from the verse below (Qur'an, 30:21), which includes the legitimate purposes of marriage, to argue the impropriety of compelling a woman into a marriage:

As for marrying off a woman who is averse to the marriage, it is contrary to both the principles of Sharī'ah and the sound intellect. Allah, Exalted is He, does not allow her guardian to compel her to sell or lease contracts except with her permission; neither does He allow the guardian to compel her to food, drink or dress; so how can He [Allah] compel her to have a relationship with someone she hates.<sup>26</sup>

The Qur'an forbids all forms of coercion because Islam is a religion that does not accept that it is right, under any circumstances, to force a person to do anything against his or her will. As the Qur'an says: 'There shall be no compulsion in [acceptance of] the religion' (Qur'an, 2:256).<sup>27</sup> However, the jurists (*fuqaha*) exclude one type of coercion, which they call 'coercion with right'. This pertains, for example, when a judge forces the indebted to sell some of their properties in order to pay back their debt.<sup>28</sup> Ibn al-<sup>c</sup>Arabī (d. 543 AH/1148 AD) speaks of the repudiation of this verse. He states that 'it is a general statement in negating invalid coercion', referring to the type of coercion the jurists call 'coercion without right'.<sup>29</sup> Arabic scholars term the nullification of this invalid coercion 'categorical negation' (*nafy al-jins*), meaning the coercion is categorically negated from the outset. Therefore, it is possible to claim a lingering implication that the Qur'an denies the possibility of coercion, a stance which goes beyond simply commanding people not to engage in it.<sup>30</sup> In Arabic, forbidding through negation (*al-nahy fī šūrat al-nafy*) has a deeper impact; it is a confirmed indication of coercion.<sup>31</sup>

Generally speaking, an essential element in the marriage contract, according to Islamic law, is the authority of the *walī* (guardian) of the woman. Moreover, the guardianship (*wilāya*) with regard of the marriage contract can be described as an authority granted to the parental relatives (*ʿaṣba*) or those who represent them. This authority permits the marrying off of an individual who is considered unsuited to the task of performing his/her own marriage contract. Jurists support this principle with the following *ḥadīth*: 'No marriage (*nikāḥ*) should be done without a *walī*' (Abū Dawūd, *Sunan Abū Dawūd*, *ḥadīth* number: 2085).

There are different types of guardianship in marriage contracts and different rules based on each school of law's *ijtihād* (personal reasoning). It, therefore, follows that jurists have different views regarding the rules to which guardians, along with those subjected to their authority, need to adhere. However, what concerns us in this paper is the 'compulsion guardianship' (*wilāyat al-ijbār*) strongly linked to forced marriage. In Islamic law, the guardian (*walī*) of a woman has the right to initiate the binding marriage contract without reference to his ward, while she has no right to object. (However, while this right is found in the Hanafī madhab, it is not agreed upon by all schools and it does not mean forced marriage, in itself, is permitted.) Authority to initiate a marriage contract does apply within all schools of law. However, Ḥanafīs give the ward the right to accept or refuse the marriage on reaching maturity (*khiyār al-bulūgh*) by taking the case to the court. For Kecia Ali, the term 'compulsion' (*ijbār*) gives a false impression that control is being exercised because, for the most part, wards are presumed to be too young to have any opinion.<sup>32</sup> Generally speaking, jurists believe that a father could compel the marriage of a daughter who is both a virgin and a minor.

Jurists generally believe compulsion guardianship applies to 'minors and mentally ill persons', who are not responsible in law and should therefore be subject to guardianship.<sup>33</sup> Jurists' disagreement in respect of virgin women above the age of puberty relates to whether they should be compelled or give consent to the marriage contract. Unlike the Ḥanafīs, the majority of jurists give a father power over his daughter because of her virginity, rather than her age or maturity, so the right of compulsion continues to apply when the daughter attains majority.<sup>34</sup>

With respect to the subject of marriage specifically, however, nothing that allows for the use of compulsion (*ijbār*) can be found in either the Qur'an or authentic *ḥadīth* of the Prophet. There is also no evidence of the root of *ja-ba-ra*, i.e. 'to compel', appearing in any text relating to the field of marriage in the Qur'an or *Sunna*. The jurists may have taken this notion of compulsion (*ijbār*) in the sense of 'guardianship of compulsion' (*wilāyat al-ijbār*) from the philosophical use of the word *jabr*, which means attributing any human act to the divine Decree and Will (*al-qadā' wa al-qadar*). It seems jurists use the word *ijbār* in the context of oppression and coercion, where whoever has authority has the right to compel those under his guardianship to marry with or without their consent.<sup>35</sup>

### **The Principle of Consent (*riḍā*)**

As mentioned above, consent is a basic rule in human transactions, particularly contracts. Evidence from both the Qur'an and the *Sunna* establishes this rule. The Qur'an says: 'O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent (*tarāḍin*)' (Qur'an, 4:29). Islamic jurisprudence makes mutual consent the basis of all transactions; any other conditions to be fulfilled are additional to this consent.

Generally, Islamic jurisprudence stipulates that rulings should grant freedom to the contracting parties in order that they are not restricted by formalities that prevent their free will and consent. The law, therefore, stipulates that the offer (*ijāb*) and the acceptance (*qabūl*) constitute the essential requirements in all contracts. Thus the formula (*ṣīgha*) of the contract which is issued by both parties expresses of their consent. This consent is considered to be the contract's binding element and it ranks above any other conditions in the contract. Furthermore, this legislation also treats men and women equally in terms of respecting their will and freedom to make all contracts such as sales, donations, commitments and

marriages.<sup>36</sup> In this context, al-Sanhūrī states that the basic rule, as delineated by jurists, is that offer and acceptance alone are enough in the formation of the contract.<sup>37</sup>

### **The Concept of Consent (*riḍā*) in Islamic Jurisprudence**

*Riḍā* literally translates as the state of being pleased, indicating contentment and approval. In the Qur'an, the root word '*riḍā*' and its derivatives occur frequently in the general sense of 'being content' and, in Arabic, *riḍā* is a verbal noun from the root *ra-ḍi-ya*. It can be defined as a sense of pleasure and acceptance of something whose opposite is hatred and indignation.<sup>38</sup>

The following terms are related to consent (*riḍā*):

- a) The will (*irāda*) means wanting something and going towards it.
- b) The intention (*nīyya*) means to intend while the heart is determined to carry out the act, so it is connected to acting upon the intention.
- c) *Qasd* refers to the advancement towards the establishment of an act. However, *qaṣd* and *nīyya* are almost the same thing.<sup>39</sup>
- d)

### **The Connection between Consent (*riḍā*) and Choice (*ikhtiyār*), and their Effect on Conduct**

In the opinion of the Ḥanafīs, *riḍā* is a more specific stage than *ikhtiyār*, because *riḍā* stands for full unrestricted choice that is exercised via a free will and without any pressure, compulsion or duress.<sup>40</sup>

Meanwhile, they divide *ikhtiyār* into:

1. *Ikhtiyār ṣaḥīḥ* (valid choice): *Ikhtiyār ṣaḥīḥ* applies when the person has a full legal capacity and no strong coercion has been exercised on him/her. This concept combines the ideas of *riḍā* and *ikhtiyār* (choice), as long as no coercion is exercised. If slight coercion is exercised, *ikhtiyār* (the choice) is considered valid. However, *riḍā* (the consent) is not.
2. *Ikhtiyār bāṭil* (invalid choice): Here a person is mentally ill or is under the age of consent (*tamyīz*). *Ikhtiyār bāṭil* gives no choice to these categories of people, meaning their conduct has no effect. In this case, if *ikhtiyār* (the choice) is disapproved, the consent (*riḍā*) is also disapproved.
3. *Ikhtiyār fāsid* (irregular choice): Here the nature of the choice rests on the fact that an action is built upon the choice of someone else, called the *mukriḥ* (the one who exercises coercion). In this case, there is no *riḍā* (consent). However, *ikhtiyār* does exist and so, if a person makes a choice, this is approved but considered *fāsid* (irregular). Consequently, if a person makes a choice under duress, that choice is considered irregular.

Generally, according to the Ḥanafīs, these three types of *ikhtiyār* are strongly connected to the breaking down of contracts into *ṣaḥīḥ* (valid), *bāṭil* (invalid) and *fāsid* (irregular) contracts.<sup>41</sup> The Ḥanafīs view slight coercion as having an effect on consent but not on choice, indicating a clear differentiation between the two concepts. By contrast, choice is considered irregular in the case of strong coercion<sup>42</sup>. Under the Ḥanafī definition, *riḍā* is more specific than *ikhtiyār*: Ḥanafīs define consent (*riḍā*) as 'the satisfaction to do something' and see choice (*ikhtiyār*) as the selecting of something and the preferring of it over other things.<sup>43</sup>

Consent can still exist without the presence of choice in the case of slight coercion, which eliminates *riḍā*; however, it neither eradicates *ikhtiyār* nor causes it to be irregular. Meanwhile, strong coercion eliminates consent completely and causes the choice to be irregular; nonetheless, it does not affect the process of *ikhtiyār*. In short, the reasoning of the Ḥanafīs holds that the existence of consent indicates the existence of choice, while also holding that the reverse is not the case.

Thus, for the Ḥanafīs, *ikhtiyār* is connected to the expression that initiates the contract, whereas *riḍā* is connected to its legal effects. Therefore, those who are forced into a contract are considered to have a choice (*ikhtiyār*) because they intended the expression that initiated the contract, but, at the same time, are not content with the legal effects of the contract. Accordingly, every contract that stipulates the existence of *riḍā* (such as contracts of sale and purchase) is considered to be *fāsid* (irregular) if *riḍā* does not exist. Where *riḍā* (consent) is not a condition, the contract is considered valid and effective, as in the case of marriage and divorce.

According to Ibn al-Qayyim (a Hanbali jurist), the expressions of a contract do not become binding until the person means them sincerely and accepts their consequences. However, the person must also mean and intend to utter the words; consequently, the following two conditions must be fulfilled:

- a) The will to freely utter the words.
- b) The will to intend the commitments and consequences of the contract.

Here, the will to intend the meaning of the contract (the commitments and consequences of the contract) is even more emphasised than the will to freely utter its words, because it is the intention that conveys the meaning of the contract, while the words are only tools to achieve it.<sup>44</sup>

In any contract, the formula (*ṣīgha*) is the essential element. Therefore, a contract is nothing more than an offer (*ijāb*) and an acceptance (*qabūl*) that result in binding obligations. Moreover, every party in the contract must have the intention or will to initiate the contract. In turn, that will or intention must be expressed via a means of clarification such as an explicit utterance, writing, a gesture or another means. This ‘will of contract’ exists in any transaction, because it demonstrates the intention of a person to initiate the contract. The contract results in the transfer of possessions in a financial transaction or, in the case of marriage, makes sexual intercourse between the husband and wife lawful.<sup>45</sup> Jurists divide this ‘will of contract’ into two types:

1. **Real internal will** (*‘irāda bāṭina ḥaqīqiyya*): This refers to a hidden will that cannot be checked. This is the mere intention and a desire to do the act, even if it is not combined with words or actions that indicate this intention or desire.
2. **Clear will** (*‘irādah zāhira*): This is seen as an expression of the real internal will; it is conveyed through the words or actions issued by the parties of the contract. It is the ‘words and the action’ that are the effective factors in the initiation of the contract. Here, there is no need to search for the intention behind initiating the contract, as the clear will is considered to be sufficient proof of the existence of the intention and will to initiate it. These can be approved – in the contract – through the existence of accompanying evidence

(*qarīna*). This evidence indicates the will and intention, even when cultural practices are being taken into account <sup>46</sup>

If there is any sign indicating an absence of intention or lack of will when initiating the contract, this sign is considered as a factor affecting the real internal will. However, if this real will is approved and does exist, but there is a suspicion that it took place under the influence of fear, a mistake, deception, compulsion or coercion, the jurists call these factors ‘the defects in the consent’ (*‘uyūb al-riḍā*). They do so because the main foundation of the contract in reality is the will and intent of the contracted party.<sup>47</sup> This point is clearly and directly connected to the issue of *ijbār* (compulsion) in marriage, or when *ikrāh* (coercion) is exercised against one of the parties in the marriage contract, as anyone who marries under the influence of compulsion or coercion is considered to be discontented with the contract.

Consent can exist only when its requirements exist. It can have no effect unless all of its conditions of soundness are fulfilled. Moreover, consent is considered valid only when it is not affected by any type of compulsion or coercion, and when it does not restrict the freedom of any party. Consent must also come from a person who is fully aware of the options at his or her disposal, without factors such as ignorance, deceit or exploitation being exercised on that person by anyone else. It is generally accepted that the freedom of consent is not approved if that consent has been affected through the influence of any kind of compulsion or coercion.<sup>48</sup> The original conditions for the validity of a person’s conduct require the person to have full legal capacity, not just by attaining the age of puberty and mental maturity, but also through the existence of the ‘real internal will’ that leads to free consent. Accordingly, as consent is one of the most important conditions in initiating contracts under Islamic law, everything affecting consent will also impact on the ‘real internal will’ that is essential for consent. As a result, all of the person’s conduct must result from his or her exercising real will and free choice, namely that he or she desires to do the act. That said, a person is considered to ‘have choice’ as long as he or she has the ability to commit or refrain from committing an act.

### **The Impact of the Ḥanafis’ Differentiation between *riḍā* and *ikhtiyār***

Coercion is one of the problematic areas of *riḍā* in Islamic jurisprudence. That is why jurists – the Ḥanafis specifically – devote chapters to discussing it and its impact on people’s actions and conduct. The jurists of the other schools of law mention coercion in the fields of financial transactions involving divorce – the divorce of the compelled. However, a central concern in this paper is the effect of coercion on the validity of the marriage contract. According to al-Sanhūrī, one of the most prominent defects directly impacting on the will of the contracted parties in Islamic jurisprudence concerns coercion (*ikrāh*). Here, coercion is considered to be the most demonstrable of those defects because of the clearly physical violence related to coercion.<sup>49</sup>

Many verses in the Qur’an mention coercion (*ikrāh*). One example can be seen in the verse: ‘Whoever disbelieves in Allah after his belief ... except for one who is forced [to renounce his religion] while his heart is secure in faith’ (Q., 16:106). This verse refers to the person who is forced to disavow his belief in Allah while his/her heart is secure in faith, but is nonetheless satisfied with that disavowal of his faith and determined to persist with it. Such a person is excused by law because he has uttered the words of disbelief under duress.<sup>50</sup> Ibn ‘Ashūr states that this verse gives permission to the compelled person to show disbelief by indicating any of the manifestations of actions or speech that are customarily associated with it.<sup>51</sup>

If this verse permits the coerced person to show disbelief, then the granting of this permission becomes even more significant when actions other than disavowing belief are performed under coercion, for example, the acts of being married or divorced. According to al-Qurṭubī, the Qur'an allows outward disbelief in Allah – although believing in Allah is a foundation of the faith – in instances of coercion, without that disbelief's being considered to be real. Jurists have applied this dispensation in all branches of the Sharī'ah, meaning that if coercion is involved, no action is considered valid and no rulings or punishment can result from that action.<sup>52</sup> Therefore, in jurisprudence, this situation is described as a concession (*rukḥṣa*) for the competent person both as a means of ease and to approve the principle that matters are judged on the basis of a person's intentions and objectives. As the Prophet says: 'Allah has pardoned my nation (*Ummah*) for mistakes, what they forget and what they are forced to do'.<sup>53</sup> Therefore, Islamic jurisprudence considers coercion (*ikrāh*) to be an illegal act and sees it as a defect which will affect consent.

In the Ḥanafī opinion, consent is a condition for soundness but not a condition for the contract to become effective. Therefore, in a case where coercion negates *riḍā* (consent), the contract is considered irregular (*fāsid*). That lack of soundness does not, however, invalidate the contract. For this reason, the compelled can approve the contract after the removal of compulsion, in order to express their full consent. Such consent negates any question of irregularity, thereby making the contract sound and binding and in so doing renders the contract's consequences effective from the time of its establishment, rather than from the time of its approval by the compeller. From this point on, no party alone can annul the contract.<sup>54</sup>

### **Evidence used by the Majority, Proving Consent as a Cornerstone in any Contract**

- a) The verse: 'O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent' (Qur'an., 4:29) has been used to make, by deduction, the point that the Qur'an restricts the lawfulness of consuming one another's wealth to cases where there is mutual consent. The lawfulness here is the effect of the contract, so if the consent does not exist, then the foundation upon which the contract rests also does not exist<sup>55</sup>.
- b) The verse: 'O you who have believed, it is not lawful for you to inherit women by compulsion' (Qur'an, 4:19) indicates that, until the point at which a woman willingly consents to marry the man who is to be her husband, the woman dislikes the marriage and is not content with it (Ibn 'Āshūr, 1984, 4: 283). This verse is taken to mean that the Qur'an disapproves of marriage under coercion and so prohibits Muslims from making such marriages, clearly indicating that marriage under the influence of coercion and pressure is invalid.
- c) Al-Bukhārī reports that Ibn 'Abbās states: 'The custom (in the Pre-Islamic Period) was that if a man died, his relatives used to have the right to inherit his wife and, if one of them wished, he could marry her or they could marry her to somebody else, or prevent her from marrying if they wished, for they had more right over her than her own relatives. Therefore, this verse was revealed concerning this matter'.<sup>56</sup>

The following *hadīth* provide evidence from the *Sunna* that confirms the meaning of the previous verses from the Qur'an: *Hadīth*, 'Allah has forgiven my nation for mistakes and forgetfulness, and what they are forced to do'<sup>57</sup> (*Mishkāt al-Maṣābiḥ*, 1985, *ḥadīth*: 6293).

The essential point that can be deduced from this *ḥadīth* is that Allah has forgiven acts that the nation of Muḥammad were forced to commit under duress. It is however the effects resulting from coercion that are forgiven not the action itself. The phrase ‘what they are forced to do’ is a general phrase indicating coercion, whether verbal or practical, with no preference for one over the other. Provided there is no preference or detail, this is considered to be neither a restriction, nor to have a sound reason.

1. A *Ḥadīth* by Al-Bukhārī indicates that a woman called Khansā’ bint Khidām was given by her father in marriage, despite not wanting it. This situation led her to complain to the Prophet and he declared her father’s arrangement invalid.<sup>58</sup>
2. A *Ḥadīth* by Abū Dāwūd states: ‘A virgin came to the Prophet and mentioned that her father had married her against her will, so the Prophet allowed her to exercise her choice’<sup>59</sup>.

The majority of jurists believe both these *ahādīth* are clear in indicating that compelled marriages and divorces are invalid. Ibn al-Qayyim says: ‘It wasn’t authentically reported to any of the companions that He approved the divorce of the compelled’ (1973, 4: 52). Therefore, in the opinion of the majority, the marriage contract should be governed by the same rule.

Al-Duraynī states that the Shāfi‘is believe the above *ahādīth* render the contract of the compelled void and their statement ineffective, because of the fact that consent and choice are identical in concept and effect. They are synonymous, so if one does not exist then the other cannot exist either. Given that coercion negates consent, it follows that coercion must also negate choice by coercion. Because there can be no accountability without the existence of choice, the contract becomes invalid, as the existence of choice is the condition for its initiation.<sup>60</sup>

In agreement with the majority of legal scholars, the Ḥanafīs do not allow coercion in any contract, but they differ from them when it comes to how they treat contracts which were entered into under coercion but which have already been concluded. They divide these contracts into those that can be annulled and those that cannot. They also apply the same ruling to those undertaken ‘in jest’. Ibn Taymiyyah (a Hanbali jurist) claims that there is no evidence to support the opinion adopted by some jurists that marriage cannot be annulled. However, the Qur’an, the *Sunna*, the narrations from the companions and analogical reasoning indicate the contrary, as marriage can be annulled on the basis that the consent of one of the contracting parties was defective (n.d.146)<sup>61</sup>. However, al-Qarahdāghī believes that, although the Ḥanafīs’ opinion can be justified from the jurisprudential point of view, it does not reach the point of cancelling the need for intention and consent in contracts that, unlike marriage and divorce, cannot be annulled. His opinion is based on the idea that, although such contracts are verbal disposals, they result in implications no less serious than those resulting from written contracts, such as sales, that can be annulled. In fact, such examples could have even more serious consequences because they have a direct link to free will, liberty of choice and honour, which jurists unanimously agree are sacred.<sup>62</sup>

### **The Effect of Coercion on the Marriage Contract**

Jurists fall into two camps with regard to the validity of the marriage contract when it is entered into under the influence of coercion. These opinions can be summarised as follows:

## The Ḥanafī Opinion

Marriage, according to the reasoning (*ijtihād*) of the Ḥanafīs, is a contract that cannot be annulled. It is, therefore, considered sound, even when coercion has been employed. They justify this stance with the argument that marriage is a form of verbal disposal and that the compelled cannot be under the total control of the compeller. They draw their evidence from general verses relating to marriage in the Qur'an which do not specify or restrict this type of disposal to the giving of consent. For instance, they use the following verse: 'And marry the unmarried among you and the righteous among your male and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and knowing' (Qur'an, 24:32). Al-Kāsānī states: 'the generality of the texts requires the validity of the disposals without any specifying or restriction. Coercion has no effect on verbal disposals because every person is free in what he says, so he is not compelled in reality'.<sup>63</sup>

Thus, whoever is compelled to marry and utters their acceptance is considered to be the same as those who choose to marry without coercion, because by uttering their acceptance they have chosen the lesser of two harms, even if they are discontented with what becomes binding as a result of the marriage contract. Therefore, they have no right to request an annulment of the contract. The same principle applies also to someone who is compelled to sell or purchase, because his action is judged by the same rule as that which applies to someone who enters into a contract in jest. On this topic, the Prophet says: 'There are three things which, whether undertaken seriously or in jest, are treated as serious: Marriage, divorce and taking back a wife (after a divorce which is not final)' (al-Tirmidhī, 1999, *ḥadīth*: 2039)<sup>64</sup>. They claim that the words of this *ḥadīth* indicate that the validity of the marriage contract, even when entered into in jest or under duress, is subject to the same ruling. In other words, anything considered valid under jest is also considered valid under coercion, because that which is considered valid under jest cannot be annulled. In turn, anything that cannot be annulled is not affected by coercion. It, therefore, follows that there is no disagreement among Ḥanafīs regarding the validity and binding nature of the marriage of the compelled. According to the *Al-Fatāwa al-Hindiyyah*: 'If it is a verbal disposal, which is open to seriousness or jest, then coercion has no effect, so the compelled is considered as one who carried out that disposal with his free choice'<sup>65</sup>.

However, it should be noted that a large number of the early leading Hanafī jurists approved compelling guardianship (*wilāyat al-'ijbār*), and did not state any clear opposition to this fundamental issue, with the exception of Ibn Taymiyyah and his student Ibn Al-Qayyim. Amongst others, Taymiyyah and Al-Qayyim argued against the concept of compelling guardianship. In explicitly rejecting it, they were disagreeing with the jurists of all the schools of law, including the Hanbali School with which they themselves were associated. For this reason, their opinions were preferentially taken up by a small number of scholars openly expressing their rejection of the concept of marriage under the banner of compelling guardianship. The following section summarises some of the thinking put forward by Ibn Taymiyyah and Ibn Al-Qayyim in their opposition to this matter.

## Ibn Taymiyyah's Opinion

Ibn Taymiyyah, stipulates: 'Forcing a woman to get married while she is unwilling is contrary to both the foundations of the Islamic Jurisprudence and sound intellect'<sup>66</sup>. According to Ibn Taymiyyah's line of thinking, if the Sharī'ah does not permit a guardian to compel a woman to undertake a sale or lease contract except with her permission, nor permit anyone to compel her towards food, drink or clothes that she does not want, how then can her

guardian compel her to live and be sexually active with someone she hates. Moreover, one of the Shari<sup>c</sup>ah's objectives for marriage is that it creates love and mercy between spouses, so how can that be achieved if the wife hates the husband.<sup>67</sup> It seems that the opinion of the majority of Islamic jurists, which states that the contract of the compelled is invalid under the influence of coercion, has even more applicability in cases of FM and is supported by Ibn Taymiyyah's assertions.

In forced marriage the types of psychological and social pressure exercised and the ways in which coercion is applied will naturally affect the full choice and consent to the marriage contract. It also seems that the opinion of the Hanafīs with regard to this issue is not sound, because it depends on comparing the one compelled to marry to the one who marries in jest, which in the opinion of the scholars of principles is a *qiyās ma<sup>c</sup>a al-fāriq* (analogical reasoning with difference) because the cause (*illa*) in the new case – coercion – is not equal to the cause in the original case – jest. According to al-Duraynī, the personal reasoning of the Hanafīs does not accord with the logic of the legislation, in that the compelled cannot be held liable for the effect of the marriage contract that they were forced to initiate when they were stripped of their will and consent, given that these conditions are the foundations of any disposal in the legislation. Ibn Taymiyyah also questions how someone can be forced to terminate his or her marital life through divorce and be obliged to endure the effects of that disposal. This outcome definitely does not accord with the legislation of Islam and if the Hanafīs were to judge that such disposals were irregular or should be suspended for the sake of protecting the compelled, that decision would offer a truer reflection of the objectives of the Shari<sup>c</sup>ah<sup>68</sup>

It can also be argued that the opinion of the majority upholds equity and justice and clears Islam of the accusation that it is a religion that builds marital relations on the basis of coercion and oppression, thereby ignoring the woman's right to exercise full consent and choice. We have explored how the authentic *aḥādīth* (attributed to the Prophet) conclusively demonstrate that Islam has approved the woman's right to marry whoever she wishes, as long as she fulfils the requirements of being able to make a good choice. Moreover, exercising pressure and coercion over people's emotions is an ugly form of oppression, and is exactly equivalent to unlawfully consuming their wealth. Consideration, care and protection should always be given to the respecting of a person's will and free choice.

According to Ibn Taymiyyah, the soundest opinion is that no one can compel a virgin above the age of puberty (*al-bāligh al-āqilah*) into marriage because, in the words of the Prophet, 'A virgin should not be married until her permission is asked nor should a woman without a husband (*'ayyam*) be married without her permission'. In this narration, the people asked whether 'the virgin is usually modest'. The prophet replies that 'her permission is her silence'. In another narration, it is stated that 'the father must seek the virgin's permission'. Ibn Taymiyyah holds that the Prophet prohibits guardians, including a father or any other person, from marrying off women without their permission. This injunction is clearly reflected in the second narration which stipulates that the father must seek his daughter's permission.<sup>69</sup> Furthermore, there is plenty of clear evidence specifying the importance of full consent in marriage, such as the Qur'an's emphasis on *ma<sup>c</sup>rūf*. For example, the Qur'an, states: 'And when you divorce women and they have fulfilled their term, do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis' (Qur'an, 2:232). The Qur'an also says with regard to the dowry: 'And there is no blame upon you for what you mutually agree to beyond the obligation' (Qur'an, 4:24). This statement indicates that the criterion of the marriage contract is mutual consent. Moreover,

the Qur'an elaborates: 'So marry them with the permission of their people' (Qur'an, 4:25). This declaration indicates that while marrying someone off can be approved when those being married give their consent to the marriage, being coerced into a marriage is not approved. The Prophetic tradition also makes clear that marriage is not endorsed unless there is mutual consent and that, furthermore, the Prophet disapproves the marriage of the woman who is married off by her father, despite her dislike of it.

In addition, the opinion that coercion in marriage does not create an adequate case for it to be annulled, invalidated or suspended potentially opens the door to dangerous consequences, because marriage is closely linked to honour and cohabitation between the woman and the man. Refusal to annul, invalidate or suspend a marriage also has serious consequences in relation to lineage. Therefore, marriage partners must be protected from all forms of oppression and coercion. According to al-Qarahdāghī, such protection is indeed one of the purposes of the Sharī'ah.<sup>70</sup>

### ***Ibn al-Qayyim's Opinion***

Ibn al-Qayyim states that the legal implication of the rule approving a woman's right to choose and accept a marriage – given by the Prophet in the above *ahādīth* – is that a virgin above the age of puberty (*al-bikr al-bāligh*) must not be compelled into marriage; she can be married off only with her full consent, in accordance with the rule given by the Prophet, His commands, prohibition, the basis of Islamic Law and the interests of the community<sup>71</sup>. Ibn al-Qayyim notes that the Prophet judges by giving the choice to the virgin who dislikes the marriage. He further states that in accordance with the command of the Prophet: 'The virgin must be asked for her permission'. He asserts that requesting this is a definite principle because it comes in the form of a *khābar* (which indicates the confirmation of that which it tells about). Furthermore, Ibn al-Qayyim notes that this principle accords with the prohibition of the Prophet, when he says: 'A virgin should not be married until her permission is asked'. Thus, he claims, the Prophet commands, prohibits and orders the woman to be given the choice, because that is the most effective way to confirm the rule.<sup>72</sup> In accordance with the basis of the legislation as Ibn al-Qayyim sees it, the matter can be summarised as follows: just as the father or guardian of a virgin above the age of puberty cannot force his daughter to spend even a small amount of her wealth without her consent, he is also not allowed to force her to live with someone she dislikes, because, by doing so, he makes her like a slave who is sold and purchased without having an opinion, consent or a choice in the matter. Therefore, the guardian should not give a woman away to share her sexual life with someone she hates, and without her consent. Ibn Al-Qayyim goes on to confirm these principles by suggesting that giving away all of a woman's wealth without her consent is actually easier for her to bear than giving her away to be married without her consent.

The majority of jurists also argue that the statement of the compelled should be considered to be invalid and that any contract made by such a person should therefore be seen to be void and of no effect.<sup>73</sup> According to Abū Zahrah, any form of coercion is a crime and a crime cannot be a means to approve any right.<sup>74</sup> Similar to Abū Zahrah, Ibn Ḥazm (d. 456 AH / 1063 AD) also views consent as a condition for the soundness of the marriage contract. Therefore, the absence of consent causes the contract to be invalid.<sup>75</sup> Thus, while there can be no doubt that jurists are unanimous in stressing the need to prevent coercion, partly because of its role in oppression, it can also be seen that they differ in their judgements in terms of the rules governing a contract that takes place under coercion.

### **Forced Marriage and the UK Legislative Landscape**

In England and Wales, the Marriage Act 1949 and the Matrimonial Causes Act 1973 together constitute the law on marriage. Section 12c of the Matrimonial Causes Act 1973 states that a marriage is void if 'either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind, or otherwise'.<sup>76</sup> This proviso reflects the core issue common to all definitions of forced marriage: i.e. that an individual's fundamental right to consent freely to marriage has been violated. On this basis, child and adolescent marriages can be described as FM, as minors are not deemed capable of providing informed consent.<sup>77</sup>

On 26 July 2007, the Forced Marriage (Civil Protection) Act (FMCPA) received Royal Assent as Part 4A of the Family Law Act 1996, and was subsequently implemented in England and Wales on 25 November 2008. By inserting a new part into the Family Law Act (within Part IV), the FMCPA enables courts to issue FMPOs to protect persons facing the prospect of FM, as well as those already in FMs. FMPOs are a form of injunction made by a court to prohibit persons from performing particular acts that might lead to a named individual being forced into marriage. The FMCPA expressly prohibits the practice, inducement or aiding of FM, which is defined as:

- (i) Forcing, or attempting to force, another person to enter into a marriage, or a purported marriage, without that person's free and full consent; or
- (ii) Practising deception for the purpose of causing another person to enter into a marriage or a purported marriage, without that person's free and full consent.<sup>78</sup>

Despite cautious optimism regarding the FMCPA from women's groups, such as the Southall Black Sisters, the eighth Home Affairs Select Committee 2011 report on FM criticises the efficacy of the legislation, highlighting previous inadequate compliance with FMPOs and arguing that effective action was not taken to combat breaches in those examples. The report argues that it is 'not at all clear that the Act is wholly effective as a tool in protecting individuals from forced marriage'.<sup>79</sup> The report goes on to maintain that criminalising FM would send a clearer message to perpetrators worldwide.<sup>80</sup>

On 16 June 2014, the Coalition Government introduced new criminal offences relating to FM under Section 120/121 of the Anti-Social Behaviour, Crime and Policing Act 2014. Forcing someone to marry now carries a maximum penalty of seven years' imprisonment, while breaching the terms of the civil-law FMPO has become a criminal offence carrying a maximum penalty of five years in prison.<sup>81</sup> Since the criminalisation of FM in the UK, however, only one individual has been convicted. In June 2015, a 34-year-old man was jailed for forcing a 25-year-old woman to marry him under duress. The Merthyr Crown Court in Wales heard that the Muslim man<sup>82</sup>, who was already married to someone else, repeatedly raped his victim over a period of months, threatened to publish footage of her having a shower and told her that her parents would be killed unless she agreed to become his wife. The defendant was put on the sex offenders' register and sentenced to 16 years in custody, to be released under an extended licence for another five years thereafter. This important case raises questions about whether these offences, including rape, voyeurism and bigamy<sup>83</sup> alongside FM, could have and should have been prosecuted under the existing criminal law. Before FM was criminalised, the Forced Marriage (Civil Protection) Act 2007 enabled courts to issue protection orders against those who attempt or conspire to force someone into marriage. Between November 2008 (when the act came into force) and December 2015, 1055 applications for forced marriage protection orders were filed.<sup>84</sup>

## **Islamic Law Prohibiting Forced Marriage**

Many modern laws of personal status in Muslim countries clearly state the prohibition on exercising FM. For example, the marriage law in Pakistan and Bangladesh is governed by the Hanafi School. Amongst the articles of the marriage law are the following stipulations:

- i. The marriage of an adult of sound mind – whether male or female – is considered invalid in the case of absence of their consent.
- ii. The invalid marriage is not considered a marriage by law; therefore, no civil rights or obligations by any party result from it.<sup>85</sup>

In Pakistan, one of the civil litigation methods available with respect to the issue of FM is the so-called jactitation of marriage. This declares that the marriage is invalid due to lack of consent and approval. Another is to request a judicial divorce. In the case that the marriage contract includes a clause granting the wife the right to divorce her husband, she can exercise this right and obtain one. If the marriage contract contains no such clause, she can apply for a divorce through the family courts by establishing a lawsuit based on the fact that either the marriage took place without consent and approval or that her approval was obtained through coercion.<sup>86</sup>

The following stipulation appears in Indian Muslim Personal Law, Section 104, Part I, *Law of Marriage*: ‘It is necessary for the nearest guardian to contract the marriage of a sane and adult woman with her consent; and if he does not do so the marriage will be voidable at the girl’s option’.<sup>87</sup> Furthermore, FM violates a range of fundamental rights guaranteed by the Constitution of Bangladesh and Pakistan which consider compelling any person to marry as a punishable offence. To clarify how FM is a harmful traditional practice that cannot be justified by culture or religion, a Pakistani court states:

In the issue of marriage, the woman is approved her right [by Islamic legislation] to choose her spouse; but unfortunately, our practical lives are influenced by many practices which were adopted by history, tradition and feudalism. Such a culture needs to be adjusted by law in order to suit the correct understanding of the Islamic objectives and values. Male chauvinism, feudal bias and compulsions of a conceited ego should not be confused with Islamic values. An enlightened approach is called for.<sup>88</sup>

Indeed, some jurisdictions have taken such a more enlightened approach when cases have raised the matter of consent in Islamic marriage. For example, in a 1990 case in the Kerala High Court, a father of a girl above the age of puberty argued that he was allowed to approve the marriage depending on his understanding of both the Islamic law and the local custom, but the judge rejected his argument saying:

The principle is that when a girl is adult and discreet, no one has a right to be her guardian to give consent for the marriage. Nevertheless it is always open to her to authorise her father or guardian to settle the terms of contract for her. That does not mean that the father or guardian without her consent can give her in marriage. Whenever it is found that the consent of the parties has not been obtained it has to be held that there is no valid contract of marriage.<sup>89</sup>

This is the exact meaning of the concept of *wakālah* (agency/authorisation), rather than guardianship in the matter of marriage.

The terms of Article VIII of the Libyan Personal Status Law (1984) state that:

- a) A guardian is not allowed to force a boy or a girl into marriage against their will.
- b) A guardian is not allowed to prevent his ward from marrying the person she accepts as a husband.

Referring to this legal article, al-Hūnī explains: ‘The Libyan legislature does not approve the guardianship of compulsion as indicated in this text, but approves the guardianship of choice and participation’.<sup>90</sup> However, as previously mentioned, Ḥanafī jurists hold to the opinion of ‘guardianship of choice and participation’, while the Mālikīs adopt guardianship of compulsion. However, the Libyan legislation – which depends on the legislation regarding the personal status laws of the Mālikī School of law – abandons the Mālikīs’ opinion and chooses the Ḥanafīs’ position in order to control the practice and also limit the harm caused by coercion.

The Kuwaiti Personal Status Law (1984) also states the invalidity of the marriage of the compelled in article 25 of the family code.<sup>91</sup> In Syria, Jordan and Morocco, personal status laws prevent all forms of coercion in marriage. The guardian still has the right to object to the marriage, but these laws afford the judge the power to dismiss his objection.<sup>92</sup> According to El-Alami, in Egyptian law a woman with full legal capacity has the right to conclude her marriage, although her guardian still has the right to request a judicial annulment of the marriage if she marries someone who is unsuitable for her with regard to social status. This, as we know, is the opinion of the Ḥanafī School.<sup>93</sup> El-Alami also regards the personal status laws in Egypt and Morocco as a reflection of the nature and characteristics of those communities and emphasises that there are serious attempts to bring renewal and reform to those laws. However, he confirms that no real reform will take place while the social reality of those communities remains the same without any change.<sup>94</sup>

El-Alami here refers to the existence of many practices that are contrary to Islamic principles but are nonetheless widespread in many Muslim societies today. He holds that these practices are a product of cultural heritage, as well as the customs and traditions that stem from misconceptions of the law, even if they are mistakenly or deliberately given a religious label. In this context, it is worth mentioning that Morocco has conducted a series of amendments to its marriage law in what is known as the ‘Family Code’, under Law No. 03-70/5th of February 2004. The preamble to these amendments includes the following:

Guardianship is a right for the mentally mature woman which she can apply according to her interests and benefits depending on an interpretation of the holy verse which disapproves compelling the woman to marry someone other than the one she chooses in an acceptable basis: “do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis” (Qur’an, 2:232). The woman can – with her free will – delegate her father or one of her male relatives to do so.<sup>95</sup>

*‘The legal capacity and guardianship in marriage’/Article (24)* is also mentioned in the first chapter of the Moroccan ‘Family Code’. It states: ‘Marital tutelage is the woman’s right, which she exercises upon reaching majority according to her choice and interests. Article 25 reads: The woman of legal majority may conclude her marriage contract herself or delegate this power to her father or one of her relatives.’<sup>96</sup>

In relation to the issue of coercion in a marriage contract, the Family Code follows on from this by stating that the annulment of the marriage is allowed either before or after its consummation (Article 26):

‘If one of the spouses were compelled or cheated to accept the marriage then he/she can request for the annulment of the marriage before and after the consummation of the marriage, within the period of two months after coercion is removed or when he/she discovers that he/she was deceived. He/she also has the right of compensation.’<sup>97</sup>

This is an example of an attempt at renewal and reform in family law and personal status within the framework of the legal provisions and purposes of Islamic law. Some may feel that such reforms constitute a mistreatment of legal provisions in order to adapt them to suit modern life. We however believe adaption is acceptable, provided the intention behind it is to reform and renew in order to benefit the public interest, and also that those reforms are based on the principle of considering the general purposes of Islamic legislation without distorting clear and explicit evidence from the Qur’an or the *Sunna*. With regard to the jurists’ opinions and legal edicts on issues open to personal reasoning (*ijtihad*), these opinions are not binding on any individual, if there is room to choose from them in a way that fulfils this interest.

We should also clarify that the personal reasoning of the jurists should not be considered to be the *Shari‘ah per se*. Rather, they constitute the jurists’ understanding of it. It therefore follows that those who reject calls for reform and renewal adhere to the opinions of jurists of specific schools of law which have caused – and continue to cause – multiple problems and restrictions in people’s lives as a result of the stance of partiality and intolerance that such scholars adapt.

In Islamic jurisprudence, freedom with regard to contracts is based on an essential requirement: consent (*ridā*). Therefore, mutual consent must be the foundation of the contract. Consequently, no contract between two parties is considered valid without their consent. This requirement makes it possible to link ‘consent’ with ‘satisfaction’ and ‘choice’, although it has been demonstrated in this paper that this matter is subject to disagreement among jurists who differ on how to assess the effects of coercion.

Hence the fundamental the question of how a marriage contract that has been concluded under the influence of threat and coercion can be considered valid, while the actions of the coerced have been considered void – and have therefore had no effect in the opinion of the majority of jurists (save for the Qur’an and the *aḥadīth* of the Prophet) – remains. The principle of respecting the freedom of the adult of sound mind – namely respecting every word coming from him/her in a contract, agreement, declaration and approval – is without any doubt a result of those jurists’ broad respect for individual freedom. Such respect nevertheless has very serious implications, which may open the door to tyrannical and oppressive behaviour. Indeed, some may take advantage of this opinion of the Ḥanafīs and use it as evidence to coerce and force individuals to marry or divorce. This can be seen as contradictory to the jurisprudence of the Ḥanafīs, since, on the one hand, they highly respect the freedom of the individual who is adult of sound mind (*al-bāligh al-‘āqil*) in all their actions regardless of their gender and clearly state that no one can force them to enter obligations without their free will and consent, while, on the other, they accept the outcome of a contract or legal obligation of the adult of sound mind (*al-bāligh al-‘āqil*) under the influence of threat, intimidation and coercion, making it a binding contract, despite the

absence of free will, consent, and choice. According to Ḥanafī jurists, a contract still has legal effects even if it has been signed under the influence of coercion.

This opinion runs counter to the opinion of the majority of jurists (Mālikis, Shāfi'is, Ḥanbalis), where a mere physical or psychological threat is considered to be coercion leading to the cancellation of the contract and, in the case of marriage, annulment. We would argue that, in this case, the opinion of the majority has more applicability in cases of FM, where the types of psychological and social pressure exercised and the ways coercion is applied will naturally affect the choice and consent of the parties regarding the marriage contract.

## **Conclusion**

It should be noted that discussions and disagreements between jurists are theoretical and therefore somewhat removed from the life or death situations that arise when coercion is present in a marriage contract. Nevertheless, it should also be noted that the laws of Muslim countries today unanimously criminalise coercion in marriage and subsequently amend many articles of religious-legal jurisprudence related to marriage provisions, such as the guardianship of compulsion. In so doing, they underline the point that what might have been appropriate in the context of classical Islamic law is not necessarily appropriate in every age and place. The discrepancy between contemporary laws and the jurists' deliberations may arise because Islamic jurisprudence and its provisions are often based on the interests of a specific time or prevailing custom. Jurists should rather be in the habit of approving that which is approved of customarily and, in turn, guard against that which is disapproved of customarily; dogmatic attachment to jurisprudential treatises can be a very destructive approach.<sup>98</sup>

The Forced Marriage (Civil Protection) Act 2007 and accompanying stand-alone criminal offence introduced in England and Wales in June 2014 indicate a clear position in English law regarding this issue. Although courts have been able to issue civil orders to prevent forced marriage since 2008, offences will now be punishable by up to seven years' imprisonment. Moreover, a number of European countries have already criminalised forced marriage (Gill and Harvey, 2016).<sup>99</sup>

We have yet to see how Muslim communities will reorient themselves in light of this legislation. Ordinarily, Muslims are required by Sharī'ah to seek judgements from Muslim judges. Given the well-known principle of Islamic jurisprudence (*qā'idah fihiyyah*), 'necessity permits the unlawful' (*al-ḍarūra tubīh al-mahḍūrah*), it remains to be seen if the community and its jurists will take the view that the potential physical and psychological harm afflicting women compelled into marriage will create such a necessity, thereby allowing for those coerced into marriage to seek the ruling of a non-Muslim judge and accept his/her verdict. The European Council for Fatwa and Research has discussed this important issue and how it relates to European Muslims. In the event of divorce, the Council has directed Muslims who have conducted their marriages in line with European countries' the respective laws of European countries to comply with the rulings of a non-Muslim judge in the event of a divorce.<sup>100</sup> Nevertheless, it is important to mention here that there is a wide range of conflict between laws governing marriage and, especially marriages which have taken place outside of a European nation, where one party in the conflict is a) a citizen of a Muslim country and b) does not reside permanently in Europe. It remains to be seen if the Council will produce a similar directive concerning forced marriage. This issue might therefore be a subject for future research.

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<sup>1</sup> Abu Sadik Maruf, *Forced Marriage, a Study on British Bangladeshi Community*, Bloomington, USA: Author House, 2012.

<sup>2</sup> Yunas Samad, "Forced marriage among men: An unrecognized problem", in *Critical Social Policy*, Vol.30, No.2, 2010, pp. 189-207 <<http://www.csp.sagepub.com/content/30/2/189>> [accessed 2 July 2016].

<sup>3</sup> Imrān Ahsan Khan Nyazee, *Islāmic Jurisprudence*, 2<sup>nd</sup>, New Delhi, India: Adam Publishers and Distributors, 2004, p. 135.

<sup>4</sup> Muḥammad b. Ibī Sahl al-Sarakhsī, *al-Mabsūṭ*, Beirut, Lebanon: Dar al-Macrifah, n.d.

<sup>5</sup> Abd al-Qādir Awdah, *al-Tashrīc al-Jinā'ī al-Islāmī*, 10<sup>th</sup>, Beirut, Lebanon: Al-Risaalah, 1989.

<sup>6</sup> Abd al-Razzāq al-Sanhūrī, *Naẓariyyat al-Ḥaqq Fi al-Fiqh al-Islāmi*, 2<sup>nd</sup>, Beirut, Lebanon: Al-Halabi, 1998. . 2: 200.

<sup>7</sup> See, Khatidja Chantler, Geetanjali Gangoli and Marianne Hester, "Forced marriage in the UK: Religious, cultural, economic or state violence?" in *Critical social policy*, Vol.29, No.4, 2009, pp.587-612 < <http://csp.sagepub.com/content/29/4/587>> [accessed 2 July 2016].

<sup>8</sup> Gill, Aisha K. and Harvey, Heather, "Examining the impact of gender on young people's views of forced marriage in Britain" in *Feminist Criminology*, April 18, 2016 <<http://fcx.sagepub.com/content/early/2016/04/15/1557085116644774.abstract>> [accessed 6 November 2016].

<sup>9</sup> Geetanjali Gangoli, Melanie McCarry and Amina Razak, "Child marriage or forced marriage? South Asian communities in north east England", in *Children & Society*, Vol.23, No.6, 2009, pp. 418-429 < DoI: 10.1111/j. 1099-0860.2008.00188.x> [accessed 2 July 2016].

<sup>10</sup> Khatidja Chantler *et al.*, "Forced marriage in the UK", *op. cit.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Y. Samad, "Forced Marriage among men", *op. cit.*

<sup>13</sup> G. Gangoli *et al.*, "Child Marriage or Forced Marriage", *op. cit.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Kaye Quek, "A Civil Rather than Criminal Offence? Forced Marriage, Harm and the Politics of Multiculturalism in the UK", in *The British Journal of Politics & International Relations*, London: Political Studies Association, Vol.15 No.4, 2012, pp.626-646<Doi: 10.1111/j.1467-856X.2012.00525.x> [accessed 2 July 2016].

<sup>16</sup> *Ibid.*, p. 626-646.

<sup>17</sup> Geetanjali Gangoli, Khatidja Chantler, Marianne Hester and Ann Singleton, “Understanding forced marriage: definitions and realities”, in *Forced marriage. Introducing a social justice and human rights perspective*, ed. Aisha K. Gill and Sundari Anitha, London, England: Zed Books Ltd, 2011, pp. 25-45.

<sup>18</sup> See, Sundari Anitha and Aisha K. Gill, “Reconceptualising consent and coercion within an intersectional understanding of Forced Marriage”, in *Forced marriage, introducing a social justice and human rights perspective*, ed. Aisha K. Gill and Sundari Anitha, London, England: Zed Books Ltd, 2011, pp. 46-66.

<sup>19</sup> Geetanjali Gangoli et al., “Understanding forced marriage”, *op. cit.*, 2011.

<sup>20</sup> Abdullahi An-Na'im and C. H. Candler, 'Forced marriage', Emory University: Atlanta, 2000  
<<http://www.soas.ac.uk/honourcrimes/resources/file55689.pdf?filename=Forced+Marriage>>  
[accessed 2 July 2016].

<sup>21</sup> Geetanjali Gangoli *et al.*, “Understanding forced marriage”, *op. cit.*

<sup>22</sup> Sundari Anitha and Aisha K. Gill, “Reconceptualising consent and coercion”, *op. cit.*, pp. 53-54.

<sup>23</sup> Geetanjali Gangoli *et al.*, “Understanding forced marriage”, *op. cit.*

<sup>24</sup> Anja Bredal, “Border control to prevent forced marriage: choosing between protecting women and protecting the nation”, in *Forced marriage, introducing a social justice and human rights perspective*, ed. Aisha K. Gill and Anitha Sundari, London: Zed Books Ltd, 2011, pp. 90-111.

<sup>25</sup> Sundari Anitha and Aisha K. Gill, “Reconceptualising consent and coercion”, *op. cit.*, pp. 53-54

<sup>26</sup> Aḥmad b. ʿAbd al-Ḥalīm, *Ibn Taymiyyah, Majmūʿ al-Fatāwā*, ed. ʿĀmir al-Jazzār and Anwar al-Bāz, Cairo: Egypt, Dar al-Wafa, 1997.

<sup>27</sup> The Qur'an, Tran. by Ṣaḥeeḥ International, Abul-Qasim Publishing House, Jeddah, Saudi Ariba, 1997.

<sup>28</sup> Ministry Of Endowments And Islamic Affairs in Kuwait, *Mawsūʿah (al), al-Fiqhiyyah*, 1<sup>st</sup> edition, Kuwait, 1983.

<sup>29</sup> Abū Bakr b. al-ʿAarabī, *Aḥkām al-Qur'an*, ed. Muḥammad ʿAbd al-Qādir ʿAṭa, Beirut, Lebanon: Dar al-Kutub al-Ilmiyah, 1996.

<sup>30</sup> The Qur'an, Tran. by Ṣaḥeeḥ International, Abul-Qasim Publishing House, Jeddah, Saudi Ariba, 1997.

<sup>31</sup> See, Sayyid Quṭb, *Fī Zilāl al-Qur'ān*, 25<sup>th</sup>, Cairo, Egypt: Dar al-Sruq, 1972.

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- <sup>32</sup> Kecia Ali, *Marriage and Slavery in Early Islām*, Harvard, Massachusetts: Harvard University Press, 2010.
- <sup>33</sup> Dawoud S. El-Alami, *The Marriage contract in Islamic Law*, London: Graham and Trotman Ltd, 1992.
- <sup>34</sup> *Ibid.*, 50.
- <sup>35</sup> See, Ali b. Muḥammad al-Jurjānī, *al-Ta<sup>c</sup>rīfāt*, ed. Muḥammad Siddiq al-Minshawi, Cairo, Egypt: Dar al-Fadhilah, n.d.
- <sup>36</sup> Mustāfa al-Zarqa, *al-Madkhal al-Fiqhī al-<sup>c</sup>ām*, 2<sup>nd</sup>, Damascus: Dar al-Qalam, 2004.
- <sup>37</sup> See <sup>c</sup>Abd al-Razzāq al-Sanhūrī, *Nazariyyat al-Ḥaqq Fi al-Fiqh al-Islāmi*, op. cit.vol. 2, pp. 40-41.
- <sup>38</sup> Rāghib (al) al-aṣfahānī, *Mufradat Alfāz al-Qur'ān*, 2<sup>nd</sup>, Damasucs: Dar al-Qalam, 1997.
- <sup>39</sup> Ministry Of Awqaf And Islamic Affairs in Kuwait, al- *Mawsū<sup>c</sup>ah*, *al-Fiqhiyyah*, 1st edn, 1983, vol. 22, pp. 228-238.
- <sup>40</sup> Mustāfa al-Zarqa, *al-Madkhal al-Fiqhī al-<sup>c</sup>ām*, op. cit., vol.1, p. 452.
- <sup>41</sup> Ali Muḥiyy al-Dīn al-Qarahdāghī, *Mabda' al-Riḍa Fī al-<sup>c</sup>Uqūd*, 2<sup>nd</sup>, Beirut, Lebanon: Dar al-Bashaer al-Islamiyyah, 2002.
- <sup>42</sup> Mustāfa, al-Zarqa, *Al-Madkhal al-Fiqhī al-<sup>c</sup>ām*, 2<sup>nd</sup>, Damascus, Syria : Dar al-Qalam, 2004. vol.1, p. 453.
- <sup>43</sup> Muḥammad, al-Khuḍarī , *'Uṣūl al-Fiqh*, Cairo, Egypt: Al-Maktabah al-Tijariyyah al-Kubra, '[n.d.]', p.105.
- <sup>44</sup> Muḥammad b. Abī Bakr Ibn al-Qayyim, *I'lām al-Muwaqqi<sup>c</sup>īn*, ed. Taha Abd al-Rauf Saad, Beirut, Lebanon: Dar al-Jeel, 1973.
- <sup>45</sup> <sup>c</sup>Ali al-Khafīf, *Aḥkām al-Mu<sup>c</sup>āmalāt al-Shar<sup>c</sup>iyyah*, Cairo, Egypt: Dar al-Fikr al-Arabi, 2008., p. 213.
- <sup>46</sup> *Ibid.*, 213.
- <sup>47</sup> Mustāfa al-Zarqa, *al-Madkhal al-Fiqhī al-<sup>c</sup>ām*, op. cit
- <sup>48</sup> Ali Muḥiyy al-Dīn al-Qarahdāghī, *Mabda' al-Riḍa Fī al-<sup>c</sup>Uqūd*, op. cit., vol.1, p. 409.
- <sup>49</sup> <sup>c</sup>Abd al-Razzāq al-Sanhūrī, *Nazariyyat al-Ḥaqq Fi al-Fiqh al-Islāmi*, op. cit., vol. 2, p.138.
- <sup>50</sup> Muḥammad b. Jarīr al-Ṭabarī, *Jāmi<sup>c</sup> al-Bayān <sup>c</sup>An Ta'wīl 'Āy al-Qr'ān*, ed. Abd Allah b. Abd al-Muhsin al-Turki, Cairo, Egypt: Dar Hajr, 2001, vol.14, p. 375.
- <sup>51</sup> Muḥammad al-Ṭahir Ibn <sup>c</sup>Āshūr, *al-Taḥrīr Wa al-Tanwīr*, Tunis, Tunisia: al-Dar al-Tunisiyyah, 1984, vol.14, p. 294.

- <sup>52</sup> Muḥammad B. Aḥmad al-Qurṭubī, *al-Jāmi' Li-Aḥkām al-Qur'ān*, Beirut, Lebanon: Dar al-Kutub al-Ilmiyah, 1993.
- <sup>53</sup> Muḥammad Naṣir al-Dīn al-Albānī, *Ṣaḥīḥ al-Jāmi' al-Ṣaḡhīr*, 3<sup>rd</sup> edition (?), Beirut, Lebanon: Al-Maktab al-Islami, 1988.
- <sup>54</sup> Faṭḥi al-Duraynī, *al-Naẓariyyāt al-Fiḥiyyah*, 4<sup>th</sup>, Damascus, Syria: Damascus University Press, 1997.
- <sup>55</sup> Aḥmad b. °Abd al-Ḥalīm Ibn Taimiyyah, *al-Qawa'id al-Kulliyyah*, ed. Mahaysin b. Abd al-Rhaman al-Mahaysin. Riyadh, Saudi Arabia: Maktabat al-Tawbah, 2002, pp. 406-407.
- <sup>56</sup> Muḥammad b. Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī, al-Jāmi' al-Musnad al-Ṣaḥīh*, Mawsū'ah al-Ḥadīth, Riyadh, Saudi Arabia: Darussalam, 1999, *hadith* 4579.
- <sup>57</sup> Muḥammad b. °Abd Allah al-Kaṭīb al-Tabrīzī, *Mishkāt al-Maṣābīḥ*, ed. Muḥammad Nāṣir al-Dīn al-Alānī, 3<sup>rd</sup>, Beirut, Lebanon: al-Maktab al-Islami, 1985, *hadith* 6293.
- <sup>58</sup> Muḥammad b. Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī, op. cit., hadith* 6945.
- <sup>59</sup> Sulaymān b. al-Ash'ath, Abū Dawūd, *Sunan Abū Dawūd*, Mawsū'ah al-Ḥadīth, Riyadh, Saudi Arabia: Darussalam, 1999, *hadith* 2096.
- <sup>60</sup> Faṭḥi al-Duraynī, *al-Naẓariyyāt al-Fiḥiyyah, op. cit., p.* 478.
- <sup>61</sup> Aḥmad b. °Abd al-Ḥalīm Ibn Taymiyyah, *Naẓariyyat al-°Aqd*, Cairo, Egypt: Markaz al-Kitab, n.d.
- <sup>62</sup> Ali Muḥiyy al-Dīn al-Qarahdāghī, *Mabda' al-Riḍa Fī al-°Uqūd., op. cit., pp.* 445-446.
- <sup>63</sup> Al- Kāsānī, Abū Bakr b. Mas'ūd, *Badā'i' al-Ṣanā'.*, ed. by °Ali Muḥammad Ma'wwaḍ and °Ādil Aḥmad °Abd al-Mawjūd, 2nd edn, Beirut, Lebanon: Dar al-Kotob al-Ilmiyah, 2003, vol. 7, p.182.
- <sup>64</sup> Muḥammad b. °Isā al-Tirmidhī, *Jāmi' al-Tirmidhī*, Mawsū'ah al-Ḥadīth, Riyadh, Saudi Arabia: Darussalam, 1999.
- <sup>65</sup> Al-Fatawa al-Hindiyyah, al-Shaykh Niẓām and others, 1st edn (Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah, 2000), V, p.45.
- <sup>66</sup> Aḥmad b. °Abd al-Ḥalīm Ibn Taymiyyah, *Aḥkām al-Zawāj*, ed., Muḥammad °Abd al-Qādir °Aṭā, Beirut, Lebanon: Dar al-Kotob al-Ilmiyah, 1988, p. 102
- <sup>67</sup> *Ibid.*, pp. 102-103.
- <sup>68</sup> Faṭḥi al-Duraynī, *al-Naẓariyyāt al-Fiḥiyyah*, p. 484.
- <sup>69</sup> Aḥmad b. °Abd al-Ḥalīm, Ibn Taymiyyah, *Majmū' al-Fatāwā*, (ed.) al-Jazzār, °Ā. Cairo: Egypt: Dar al-Wafa, 1997, vol. 32, p. 19.
- <sup>70</sup> Ali Muḥiyy al-Dīn al-Qarahdāghī, *Mabda' al-Riḍa Fī al-°Uqūd., op. cit., 1:* 549.

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<sup>71</sup> Muḥammad b. Abū Bakr Ibn al-Qayyim, *Zād al-Ma'ād*, ed. Shu'ayb and 'Abd al-Qadir al-Arna'ut, 28<sup>th</sup>, Beirut, Lebanon: Al-Risalah Publishers, 1995.

<sup>72</sup> *Ibid.*, 5: 96-97.

<sup>73</sup> 'Abd al-Karim Zaydān, *al-Madkhal Li Dirāsāt al-Sharī'ah al-Islāmiyyah*, 6<sup>th</sup>, Beirut: Lebanon, 2003, p. 254

<sup>74</sup> Muḥammad Abū Zahrah, *Usūl al-Fiqh*. Dar Al-Fikr Al-Arabi, n.d., p. 359.

<sup>75</sup> 'Ali b. Aḥmad b. Sa'īd Ibn Ḥazm, *al-Muḥalla bi 'Āthār*, ed. 'Abd al-Qhaffār al-Bandārī, Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah, n.d.. p. 8: 388

<sup>76</sup> Gill, Aisha K and Trishima Mitra-Kahn, "Assessing the ideological underpinnings of the policy discourse on forced marriage in the UK", in *Journal of Policy and Politics*, 40, 1, 2012, pp. 104-119.

<sup>77</sup> Anitha, Sundari and Gill, Aisha K, "A critical analyses of consent and coercion in forced marriage", in Gill, Aisha K. and Anitha, Sundari. (eds.) *Forced Marriage: Introducing a social justice and human rights perspective*, London: Zed Books, 2011, pp. 46-67.

<sup>78</sup> Gill, Aisha K. and Van-Engeland, Anicee, "Criminalisation or 'multiculturalism without culture'? Comparing British and French approaches to tackling forced marriage", *Journal of Social Welfare and Family Law*, 2014, 3 (36): 241-259.

<sup>79</sup> House of Commons Home Affairs Committee (2011). *Eighth Report: Forced marriage* [online]. <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/88002.htm> [17 ] [accessed 17 July 2016].

<sup>80</sup> Gill, Aisha K. and Van-Engeland, Anicee, "Criminalisation or 'multiculturalism without culture'? Comparing British and French approaches to tackling forced marriage," *Journal of Social Welfare and Family Law*, 2014, 3 (36): 241-259.

<sup>81</sup> See: Honour Based Violence and Forced Marriage <[http://www.cps.gov.uk/legal/h\\_to\\_k/honour\\_based\\_violence\\_and\\_forced\\_marriage/](http://www.cps.gov.uk/legal/h_to_k/honour_based_violence_and_forced_marriage/)> [accessed 6 November 2016].

<sup>82</sup> UK: Muslim prosecuted under new forced marriage law after repeatedly threatening and raping victim if she did not wed him <<https://themuslimissue.wordpress.com/2015/06/10/uk-muslim-prosecuted-under-new-forced-marriage-law-after-repeatedly-threatening-and-raping-victim-if-she-did-not-wed-him/>> [accessed 6 November 2016].

<sup>83</sup> UK Legislation on bigamy: <<http://www.legislation.gov.uk/ukpga/Vict/24-25/100/crossheading/bigamy>> [accessed 6 November 2016].

<sup>84</sup> Gill, Aisha K. and Harvey, Heather, "Examining the impact of gender on young people's views of forced marriage in Britain" in *Feminist Criminology*, April 18, 2016.

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<<http://fcx.sagepub.com/content/early/2016/04/15/1557085116644774.abstract> > [accessed 6 November 2016].

<sup>85</sup> Sara Hossain and Suzanne Turner, “Abduction for Forced Marriage–Rights and Remedies in Bangladesh and Pakistan”, in *International Family Law*, Vol.1, No. 64, 2001, pp.15-24 <<https://www.soas.ac.uk/honourcrimes/resources/file55687.pdf> > [accessed 2 July 2016].

<sup>86</sup> *Ibid.*, 2001.

<sup>87</sup> *Compendium of Islamic Laws*, under the supervision of: All India Muslim Personal Law Board, New Delhi, India: All India Muslim Personal Law Board, 2001, p. 43.

<sup>88</sup> Sara Hossain and Suzanne Turner, “Abduction for Forced Marriage–Rights and Remedies”, *op. cit.*, 2001.

<sup>89</sup> David Pearl and Werner Menski, *Muslim Family Law*, 3<sup>rd</sup>, London, England: Sweet & Maxwell, 1998, p. 156.

<sup>90</sup> Muḥammad Mustāfa al-Hūnī, *Qanūn al-Zawāj wa al-Ṭalā*, 2<sup>nd</sup>, Benghazi: Dar al-Fadheel Publishers, 2007, pp. 13-14.

<sup>91</sup> Ministry of Justice, Kuwait, *Qānūn al-Aḥwāl al-Shakhṣiyyah al-Kuwaiti, Majmūʿat al-Tashrīʿāt al-Kuwaitiyyah*, V. 8, 2011, 1st ed. Kuwait: al-Khat, 2011.

<sup>92</sup> Jamal J. Nasir, *The Islamic Law of Personal Status*, 3<sup>rd</sup>, London: The Hague: Kluwer Law International, 2002, p. 55

<sup>93</sup> Dawoud S. El Alami, “Legal Capacity with Specific Reference to the Marriage contract”, in *Arab Law Quarterly*, Vol.6, No.2, 1991, pp.190-204 <<http://jstor.org/stable/3381835>> [accessed 2 July 2016].

<sup>94</sup> *Ibid.*, 190.

<sup>95</sup> Kingdom of Morocco: Official Gazette, *Mudawwanat al-Usrah*, No. 5184, 5<sup>th</sup> February 2004.

<sup>96</sup> *Ibid.*, p. .10

<sup>97</sup> *Ibid.*, p. 19.

<sup>98</sup> Aḥmad b. Idrīs al-Qarāfī, *al-Iḥkām Fī Tamyyīz al-Fatawa ʿAn al-Aḥkām*, ed. ʿAbd al-Fattāh Abu Ghuddah, 2<sup>nd</sup>, Beirut Lebanon: Dar al-Bashaer al-Islamiyyah, 1995, p. 218.

<sup>99</sup> Gill, Aisha K. and Harvey, Heather, “Examining the impact of gender on young people’s views of forced marriage in Britain” in *Feminist Criminology*, April 18, 2016. <<http://fcx.sagepub.com/content/early/2016/04/15/1557085116644774.abstract> > [accessed 6 November 2016].

<sup>100</sup> Fayṣal Mawlawī, ‘The Ruling of the Divorce Issued by a Non-Muslim Judge’, in *The scientific review of the European Council for Fatwa and Research*, vol.1, 2002, pp.77- 88.