

Debateable Marriages: Marriage and child marriage in Saudi Arabia

Authors: Husain Al-Hakami and Kenneth McLaughlin

Husain Al-Hakami is Assistant Professor, Social Studies Department, College of Arts, King Saud University, Riyadh, Saudi Arabia.

Email: hakami@ksu.edu.sa

Kenneth McLaughlin is a Senior Lecturer, Department of Social Care and Social Work, Manchester Metropolitan University, England.

Email: K.McLaughlin@mmu.ac.uk

Debateable Marriages: Marriage and child marriage in Saudi Arabia

Abstract

This paper examines marriage and the constitution of familial relationships in Saudi Arabia, with a specific focus on one form of marriage that has recently become an issue of public, political and religious discussion, that of 'child marriage'. The situation within Saudi Arabia is compared with gendered relationships in other countries, most notably those in Western Europe with specific attention given to the United Kingdom (UK). It is argued that policy developments in Saudi Arabia need to be seen in the context of wider Saudi culture, Sharia law and religious interpretations of the Koran.

Key Words: Family; Marriage; Child Marriage; Culture

Introduction

Marriage, between a man and a woman, is arguably the most common type of formally sanctioned sexual relationship in contemporary societies. However, the meaning and formulation of marriage is subject to historical change due to a complex interplay of economic, political, cultural and religious factors. Therefore, whilst the traditional idea of family was of a married heterosexual couple and their biological children, in reality there are a variety of forms, meanings and definitions of marriage and family that are recognised today; cohabitation, boyfriend and girlfriend, civil marriage, religious marriage and same-sex marriage are different kinds of relationships that may be considered as 'family' in some societies.

This paper examines marriage and the constitution of familial relationships in Saudi Arabia, with a specific focus on one form of marriage that has recently become an issue of public, political and religious discussion, that of 'child marriage'. The situation within Saudi Arabia is compared with gendered relationships in other countries, most notably those in Western Europe with specific attention given to the United Kingdom (UK). Our objective is to compare geographical and socio-cultural practices, and, in the process, provide a more nuanced understanding of marriage and family relations in Saudi Arabia. That the meaning of marriage is not static can be seen in recent debates in both localities, so whilst child marriage is an issue within Saudi Arabia, the issue of gay marriage has generated much debate within, and indeed beyond, the UK and Europe. Indeed, gay marriage was legalised in the UK in March 2014.

Within Saudi Arabia some human rights organisations and activists have called on the government to intervene to stop cases of child marriage by setting a legal minimum age for marriage in order to protect children from abuse. Such legal restrictions on the age at which someone can marry are common in many countries (even if the specific age differs from country to country). In addition, in order to protect children from sexual abuse many countries set a legal age for sexual consent. However, the setting of

such a measure is not seen as relevant within Islamic cultures, as all sex outside of marriage is already considered illegal (Dhami & Sheikh, 2000).

In this paper we first provide a brief general overview of 'family' and 'household' in which we show that it is more appropriate to talk of 'families' and 'households' given the diversity of what can constitute both terms. Second, we look at the issue of sex and marriage before narrowing our focus to look at marriage and the family in the Arab world in general and Saudi Arabia in particular. We consider various types of marriage that we term 'debateable marriages', such as arranged, forced and child marriage in Islamic culture, whilst noting that the legalisation and general social acceptance of same-sex marriage in the West would be considered 'debatable' in other cultures. Third, we consider the issue of sexual consent and a legal minimum age for marriage which necessarily entails a discussion of childhood and how this is construed within different cultures. In the last section, we discuss puberty, which under Sharia law is seen as marking the transition from childhood to adulthood. We conclude by summarising the key points and offering our view that policy developments in Saudi Arabia need to be seen in the context of wider Saudi culture, Sharia law and religious interpretations of the Koran.

What is a Family?

The notion of 'family' is integrally tied to the social structure, values and norms of any society (Kağitçibaşı, 2007), and often there can be an assumption of a shared understanding of the term (Walsh et al. 2000). However, whilst most of us will have experienced a certain form of family life, there is no universally accepted model of 'family'. The picture of 'family' that the term invokes is not necessarily the same in all of our minds.

For Nimkoff & Middleton (1960), a unit consisting of a married woman and man with their biological children is the simplest form of family. It can be further defined as two or more people linked by marriage, birth, or adoption who reside together in a household. However, whereas the traditional view was that of two heterosexual parents and their children

as comprising the nuclear family, latterly, many combinations of relationships have been designated or defined as constituting a family (Steel *et al.* 2012). In addition, many Islamic and Arabic countries also endorse polygamous marriages (Westermarck, 2003). In recognition of the diversity of families both historically and culturally, Eshleman and Wilson (2001) consider it more appropriate to ask 'what are families' rather than to try and define 'the family'.

It is no easier to provide a universal definition of what constitutes an 'extended family'. An extended family may live in the same property but may not necessarily regard themselves as one family. They may live in one house as more than one family, and in that case, they might be divided into nuclear families or they may live in different properties in the same building, street or geographical area.

In addition, the terms 'family' and 'household' are frequently used interchangeably, but they are not necessarily identical terms. 'Household' refers to one or more people living in the same dwelling, whereas a family is a group of people, related by ceremonial and/or blood ties, who live together and/or who are in contact with each other (Walsh *et al.* 2000). However, even here the relationship between the two terms can be difficult to distinguish. For some, a household is one person or a group of people who are bound to a specific place, sharing the same address and resources. By contrast, family is commonly seen as a group of people who are bound together by marriage and blood ties. It is the altering nature of the structure of the family and household that makes it a key source of research and wider political debate (Steel *et al.* 2012). In Western countries there has been much discussion amongst policymakers, scholars, and laypeople alike about the future of the family due to changes that have taken place over the past sixty years. There has been an increase in different types of relationships between men and women, with new sorts of 'families' being accorded social and/or legal recognition, for example, same-sex civil partnerships/marriage and both heterosexual and homosexual partners cohabiting. Such unions were, until relatively recently, considered socially unacceptable, but this is no

longer the case. These changes have happened at the same time that there has been a decline in the number of heterosexual couples getting married, and many existing marriages will end in divorce (Giddens, 2009).

People who get married have different motivations for doing so. In Western societies this could be due to 'love' and/or to provide security and a stable upbringing for children or to progress an existing relationship. In the UK it is legal for a man and woman to marry if they are both sixteen years old or over, are single, widowed or divorced, or if they were in a civil partnership which has been dissolved (Adviceguide, 2013). Young people who are sixteen or seventeen have to get parental consent (Adviceguide, 2013). The legal minimum age of marriage in most countries in the West is between sixteen and eighteen, although it is often legal to engage in consensual sexual acts at a lower age.

Sex, Marriage and Family in the Arab world

A key difference with regards to the choice of marriage partner between Western and Islamic cultures is that, in the West, young girls and boys can meet each other openly, something which facilitates the forming of relationships. In contrast, in many Islamic societies Sharia law prohibits men and women from meeting each other without a chaperon. There is a fear that unmediated interaction between males and females could lead to the forming of sexual relationships, something that is forbidden outside of marriage.

However, this prohibition on sex outside marriage does not necessarily mean that Islamic/Arabic societies are more repressive towards sexual relationships than the 'liberal' West. In fact, in some circumstances they can be said to be more tolerant about sexual relationships than Western cultures. For example, in the West it is primarily age that is seen as placing a restriction on sexual relationships, with a legal minimum age for sexual consent being common in most countries in Western Europe, even if the precise age differs from country to country. After this minimum age

has been reached sexual relations are allowed. In Islamic and Arab societies there is no restriction on sexual relationships on account of the age of the people involved, provided that they are married to each other. So, sex could be legal and culturally approved of in Islamic societies but considered illegal and immoral in Western societies. Such approval is only forthcoming if the couple are married; if they are not married then any sexual relationship, regardless of the age of the participants, is illegal. Hence, in order to have a legal sexual relationship Muslims have to get married.

In Arab and Muslim societies, the family is a central feature of most people's lives, not only during their childhood but also throughout adulthood, in part because it is the main social security system for those who are in need such as the disabled, sick and elderly (Hermansem, 2012).

As in the rest of the world, attitudes to marriage and family in the Arab world have modified over time. However, there are some patterns of marriage and family that are now considered legitimate in many Western countries that are not approved of in the Arab world such as gay and lesbian marriage and families. In other words, it is not so much 'compulsory heterosexuality' (Rich, 1986) but compulsory *married* heterosexuality. Conversely, as briefly mentioned above, there are forms of marriage that are considered legitimate within Arab and Muslim countries that are not approved of in many Western countries.

The changing attitude to marriage can be seen in relation to the age at which people get married. In the past, marriage at a relatively young age was common. However, economic change, such as the move from an agrarian to an industrial and service based economy has impacted on family and marriage forms. In some parts of the Arab region, for example Kuwait and Libya, the age at which women get married has increased significantly. Whereas nearly forty per cent of women aged fifteen to nineteen were married in Libya and Kuwait in the early 1970s, by the mid-1990s the available figures suggest that this had fallen to one per cent and five per cent respectively (Rashad *et al.* 2005).

It is far more common for people to marry within their own family in the Arab world than it is within traditional Western societies. Although not unknown in the West, it was, after all, practiced within the Royal family (Queen Victoria and her husband Prince Albert were cousins) its occurrence is increasingly rare. However, it is still common in the Arab world, and in particular in Saudi Arabia, Sudan and Libya (Rashad *et al.* 2005). The continuation of consanguinity in the Arab world and its diaspora has been put down to the influence and interpretation of Sharia law. There is a strict interpretation of Sharia law that says Muslim men and women should at no time be alone with persons whom they could marry (Hermanssem 2012). This rule is applied strictly in Saudi Arabia¹, which curtails the ability of people to meet prospective marriage partners by themselves; instead, marriages need to be arranged by others, most commonly parents or other senior family members, and, in general, the family will usually search among close relatives.

Marriage in Saudi Arabia

In Saudi Arabia, as in any Muslim or Arabic society, talking about family means talking about marriage. Marriage requires the consent of the two parties, plus the consent of the girl's father/guardian, two witnesses, the giving of a dowry from the husband to the wife and a medical check² (Ministry of Health, 2014). The reasons for people getting married may differ in Saudi Arabia to those in the UK. Whereas both may include a desire to have and raise children, in the UK sexual relationships can legally take place outside the formality of marriage. However, this is not the case in Saudi Arabia, therefore the stimulus for marriage may stem from a desire for sexual fulfilment.

¹ There are four main schools of Sharia: Hanbali, Hanafi, Shafi and Maliki. Saudi Arabia follows the Hanbali school.

² Both parties are required to have a pre-marital medical examination to reduce the risk of hereditary diseases being passed on to their children.

As there is no legal minimum age for marriage in Saudi Arabia puberty becomes the main factor in deciding if an adolescent female is ready for marriage. However, it is rare that a boy gets married before finishing school and getting a job. In general, if a girl has reached puberty she is considered mature enough to get married. In cases where young adolescent females have got married before they had reached puberty, the fathers of the girls can require that the wedding ceremony and the consummation of marriage does not take place until after she reaches puberty. In this case, the marriage is legal and the husband could have sex with his wife. However, if the parents required the husband not to have sex with the wife but he does the parents could take legal action against him and end the marriage if they so wish.

Arranged marriage, forced marriage and early marriage

In discussions over marriage in Saudi Arabia and other Arab and Islamic cultures there is often confusion over the terms used, with 'forced marriage', 'early marriage', 'child marriage' and 'arranged marriage' often used interchangeably (Gangoli *et al.* 2011). For some, these kinds of marriages are looked at as forms of child abuse and violence against women (e.g. Gill and Anitha, 2011).

'Arranged marriages' are the most common type of marriage in Saudi Arabia but they can also be found in many Western countries including the UK (Samad *et al.* 2002). Whilst there are some who view arranged marriages as a form of forced marriage this is not the case. In forced marriage, one or both parties are under duress and forced into a marriage against their will, but in an arranged marriage both parties give their full and free will to the marriage (Foreign and Commonwealth Office and Home Office, 2005). However, it would be naive not to think that there will be times when one party agrees to enter into an arranged marriage due to familial and cultural pressure. The following of traditional customs

and beliefs of families, clans and tribes can put pressure on people to conform. In this respect distinguishing between arranged marriage and forced marriage is not always easy, although the latter is considered a type of domestic violence that can involve both children and adults (Gangoli and Chantler, 2009).

Before going on to discuss child marriage in more detail it is necessary to point out that the very notion of 'childhood' and processes of child development are the product of a complex interplay of social, historical, cultural and political influences, each of which is imbued with the workings of power. This also applies to the current vogue for child-centred theories and initiatives. For example, within Western societies it has been noted that 'the child has been recruited into a culturally sanctioned form of secular spirituality in an increasingly individualised world' (Burman, 2008, p.87), with the image of the child often utilised by Western aid agencies in order to generate public and political concern (Burman, 1994). The discourse of children's rights has also been criticised for presuming child incapacity rather than an ability for self-determination (Pupavac, 1998; 2002). Western concern with the rights of women and children in distant countries may be driven more by internal Western anxieties and may not always be as benign as it first appears.

Child Marriage

Child Marriage is known as *zawaj al-gaserat* "زواج القاصرات" in Saudi Arabia. 'Al-gaser' is the singular term, 'al-gaserat' an adjective that describes any child who has not yet reached puberty. From this perspective the onset of puberty marks the end of childhood.

However, this bodily focused viewpoint has been criticised by those who prefer a more chronological approach to marking the journey from child to adult. The differing viewpoints have also been debated in the Arab media, with increased attention given to just how *gaser* should be defined.

In 2009 the media highlighted cases where older men had married young adolescent females, most notably one case in which a judge refused to divorce an eight-year-old girl from a fifty-year-old man (القحطاني 2009).

Another case became known in the media as “فتاة بريدة” ‘the girl of Buraidh’. In this case the wife was twelve-years-old and the husband eighty-years-old. One of the targets of media criticism was the Ministry of Justice, as it is that department which deals with marriage and divorce. The campaign by the media and other concerned groups does appear to have had an effect, with the Minister of Justice announcing that the Ministry is working on measures that will organise marriage and prevent child marriage and forced marriage (العربية 2009). One concrete result has seen the Ministry of Justice issue new marriage certificates that have a section in which to record the wife’s age (الشايح 2010). In the previous version, age was not required and therefore it was hard for mazouns³ to know if the prospective wife was a child or not because they were all covered with ‘abaya’ and ‘niqab’ veil.

It may be that Saudi Arabia will follow the example of the country of Yemen, which is at the southern border of Saudi Arabia, and where child marriage could occur due to their being no legal minimum age of marriage. There, cases of child and forced marriage also led to media and public debate on the issue, which led the Yemen Parliament to approve setting a legal minimum age of marriage of eighteen years for both girls and boys (Abu-Dayyeh, 2014).

Age of sexual consent and legal minimum age for marriage

Most Muslim societies have set the age of eighteen as the legal minimum age of marriage, for example Algeria, Oman and Tunisia (Hermansem, 2012), though a few states such as Saudi Arabia, Yemen and Iran still follow Sharia law, which specifies reaching puberty, not age, as designating that someone is mature enough to get married.

The decision to marry is an important one. It can be a means of creating a family by having children; indeed, as we have seen, in many societies it is the only legal way to do so. In addition, it carries many other social and

³ A Mazoun is an official who registers marriages.

economic responsibilities. Therefore, it follows that one should be mature enough to make such a decision, to be fully cognisant of the contract into which you are entering. It is in recognition of this that many states use age as the measure by which maturity is assumed.

However, while the age of marriage is the same as the age of consent in some countries, in others the age at which one can legally consent to a sexual relationship is lower than the age of marriage. That means one can have the right to practice sexual relationships outside marriage, and this relationship may result in pregnancy and children. In effect, the couple can live as a family even though it cannot be legally recognised as a marriage, or one parent can bring the children up on their own whilst being considered too young to bring them up as a married person. It is important to point out that from an Islamic perspective the debate over the age of consent is irrelevant. Under Sharia, all sexual relationships outside marriage are illegal. Therefore, the age of consent is meaningless; if the couple are not married no consent can be legally given.

The use of chronological age to convey legal rights contains many ambiguities. For example, whilst many countries consider either the age of sixteen or eighteen as the suitable age that one becomes an adult this can be reduced or increased depending on the type of right under consideration, such as marriage, alcohol consumption, smoking cigarettes and voting in elections.

It is worth pointing out that whilst some organisations, such as the National Family Safety Program and National Society for Human Rights, call for the stopping of child marriage in Saudi Arabia, which they define as involving a party who is less than eighteen-years-old, there are some states, including Western ones, which allow marriage below this age. In addition, in Italy and Albania, the age of consent to sex is fourteen, four years younger than the legal minimum age of marriage which has been set at eighteen, and there are numerous states that have no minimum age of marriage (Melchiorre, 2004).

Puberty, religion, age and marriage

As mentioned above, under Sharia law puberty is one of the main factors held as the marker separating childhood and adulthood. In the holy Quran, there is mention of attaining adulthood or attaining puberty 'al-bulugh' (Esak, 2012). The word 'teenage' does not exist in Islamic literature, and in Islamic law the term 'youth' is not included as a specific category (Hermansem, 2012).

Puberty as process and a part of life, *al-bulugh*, has some signs such as wet-dreams or nocturnal emissions, *al-hulm*, which the Holy Quran states are a sign that a boy is no longer a child. Other physical developments that legally indicate the stage of *bulugh* (physical puberty) are menstruation for girls, the production of sperm for boys, the growth of body hair, especially around the pubis, and a deepened voice in boys (Hermansem, 2012).

Thus, the process of puberty signifies that the person in question is no longer considered a child. In Saudi Arabia, puberty defines maturity. However, while people who reach puberty can be considered mature and old enough to marry in Saudi Arabia, the distinction between when one is a child and when one is an adult is complex. For example, in Saudi Arabia, it is permitted to engage in paid employment from the age of fifteen. However, boys who are under twenty-one years of age cannot travel abroad unless with a father/guardian's consent, and females of any age cannot travel abroad without a guardian's consent.

In Saudi Arabia, the law follows the 'Hanbali' School of Sharia. According to this School, the father has the right to accept a proposal of a man who wants to marry his daughter even if she has not yet reached puberty. However, the girl stays to live with her parents until she reaches puberty, by that time, she has the right to accept that marriage or reject it. If the girl refuses the marriage, they divorce, although it must be acknowledged that in practice this rarely, if ever, happens, and it would, of course, be very hard for a girl in this position to refuse.

Conclusion

Conceptions of marriage and family vary both historically and from culture to culture. As we have shown above, debates over which types of sexual relationships are considered socially and/or legally legitimate are not static and are prevalent within many societies.

We have sought to show the importance of social context in understanding many of the issues pertaining to family and marriage, of the influence, to varying degrees, of culture, politics, religion and the social-structural-economic context (Kağıtçıbaşı, 2007). The term 'family' therefore does not conjure up a universal image shared by different cultures and/or countries. In addition, it is important to remember that the boundaries of childhood are extremely culturally variable in relation to sexual behaviour. Understandings of childhood have changed throughout history and according to different societies' views; it was only in the seventeenth century that the concept of childhood emerged in Western countries. Pre-modern societies and non-western cultures had, and have, a multitude of understandings of childhood.

Saudi Arabia is one of the seventy-four states that have not set a minimum legal age for marriage, with physical puberty being regarded as the marker that distinguishes childhood from adulthood. Although there is a growing campaign to set a legal minimum age, the ability and/or political will to do so needs to be seen in the context of wider Saudi culture, Sharia law and the influence of the religious authorities in the interpretation of the Koran.

References

- Abu-Dayyeh, S. (2014) Yemen law on child brides and FGM offers hope of wider progress. *The Guardian*, 12/5/14.
<http://www.theguardian.com/global-development/poverty-matters/2014/may/06/yemen-child-brides-fgm-rights-act-law> (accessed 10/11/14).
- Adviceguide (2013) Getting married.
http://www.adviceguide.org.uk/england/relationships_e/relationships_living_together_marriage_and_civil_partnership_e/getting_married.htm
(accessed 16/1/13).
- Aries, P. (1962) *Centuries of childhood*. New York: Knopf Doubleday.
- Burman, E. (1994) Poor children: Charity appeals and ideologies of childhood. *Changes: An International Journal of Psychology and Psychotherapy*, 12, 29-36.
- Burman, E. (2008) *Deconstructing developmental psychology* (2nd edition). London, UK: Routledge.
- Dhami, S. & Sheikh, A. (2000) *The Muslim family: predicament and promise*. *Western Journal of Medicine*, 173, 352.
- Esak, F. (2012) Islam, children, and modernity: a Qur'anic perspective. In M. J. Bunge, (Ed.) *Children, adults, and shared responsibilities: Jewish, Christian and Muslim perspectives* (pp.99-118). Cambridge, UK: Cambridge University Press.
- Eshleman, J. R. & Wilson, S. J. (2001) *The Family* (3rd ed) Toronto, Canada: Pearson Education Inc.
- Foreign and Commonwealth Office & Home Office (2005) *Forced marriage: A wrong not a right*. London, UK: Home Office.
- Gangoli, G. & Chantler, K. (2009) Protecting victims of forced marriage: Is age a protective factor? *Feminist Legal Studies*, 17, 267–288.
- Gangoli, G., Chantler, K., Hester, M. & Singleton, A. (2011) Understanding forced marriage: Definitions and realities'. In S. Anitha and A. Gill (Eds.) *Forced marriage: Introducing a social justice and human rights perspective* (pp.25-45).New York: Zed Books.
- Giddens, A. (2009) *Sociology*. Cambridge, UK: Polity Press.

Gill, A. & Anitha, S. (2011) Forced marriage legislation in the UK: A critique. In A. Gill & S. Anitha. (Eds.) *Forced marriage: Introducing a social justice and human rights perspective* (pp.137-157). New York: Zed Books.

Hermansem, M. (2012) Muslim youth and religious identity: Classical perspectives and contemporary challenges. In M. J. Bunge (Ed.) *Children, adults, and shared responsibilities: Jewish, Christian and Muslim perspectives* (pp.119-134). Cambridge, UK: Cambridge University Press.

Kağitçibaşı, Ç. (2007) *Family, self, and human development across cultures: Theories and applications*. Hillsdale, New Jersey: Lawrence Erlbaum.

Melchiorre, A. (2010) *At what age? ... are school children employed, married and taken to court* (second edition). UNESCO: Right to Education Project
http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_IBE_UNESCO_At%20What%20Age_Report_2004.pdf (accessed 11/2/14).

Ministry of Health, (2014) *Premarital screening*.
<http://www.moh.gov.sa/en/HealthAwareness/Beforemarriage/Pages/default.aspx> (accessed 06/1/16).

Nimkoff, M. F. & R. Middleton (1960) Types of family and types of economy. *American Journal of Sociology*, LXVI, 215-225.

Pupavac, V. (1998) Children's rights and the infantilisation of citizenship. *Human Rights Law Review*, March: pp.3-8.

Pupavac, V. (2002) Misanthropy without borders: The international children's rights regime. *Disasters*, 25, 95-112.

Rashad, H., Osman, M. & Roudi-Fahimi, F. (2005) *Marriage in the Arab world*. Washington DC: Population Reference Bureau.

Rich, A. (1986) *Blood, bread and poetry: Selected prose 1979-1985*. London UK: Virago.

Samad, Y., Eade, J. & Britain, G. (2002) *Community perceptions of forced marriage*. London UK: Foreign and Commonwealth Office.

Steel, L., Kidd, W. & Brown, A. (2012) *The Family*. Hampshire, UK: Palgrave Macmillan.

Walsh, M., Stephens, P. & Moore, S. (2000) *Social policy and welfare*. Cheltenham, UK: Nelson Thornes.

Westermarck, E. (2003) *A short history of human marriage*. Whitefish, Montana: Kessinger Publishing.

"الشايخ, خ. (2010). "العدل" السعودية تُعدل وثائق الزواج وتوجهات لتحديد سن "القاصر <http://www.alarabiya.net/articles/2010/05/29/109941.html> (accessed 14/2/13).

"العربية (2009). "السعودية تدرس تقنين زواج القاصرات بعد فشل تطبيق "طفلة عنيزة <http://www.alarabiya.net/articles/2009/04/14/70626.html> (accessed 14/2/13).

"القحطاني, إ. (2009). "أزمة "طفلة عنيزة" مستمرة بعد إصرار قاض سعودي على عدم تطبيقها <http://www.alarabiya.net/articles/2009/04/11/70412.html> (accessed 14/2/13).