

FEATURE / ISLAM

Why are British Muslim marriages unprotected by law?

 by Aina Khan
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Maureen, right, was not entitled to financial support after her husband Rashid - the father of her child - passed away [Courtesy: Maureen]

London, England - When Maureen wed her husband Rashid in a Muslim ceremony in 1973 in Bradford, she knew that should the relationship fall apart, she would not be entitled to share his assets.

Her marriage was sanctified in the eyes of God, but in the eyes of the state it was "unregistered", not legal; thus, financial protections codified in law to protect married couples headed for divorce did not apply to her.

The couple separated in 1987 and Rashid died the following year in a car accident.

Maureen and her then 12-year-old son, Conor, were forcibly evicted from their family home in Bradford registered in her husband's name. They were left homeless and without any financial support because Maureen's marriage was not recognised by English family law.

"I fought for seven years through solicitors with my husband's family, but in the end, we didn't get a penny. They got nothing and I got nothing because my husband didn't make a will," she told Al Jazeera.

"The house was in his name and we weren't married in English law. In the end, my son and I were thrown out of the house. I remember I had to beg to be let back in to get some clothes we left behind. We just got passed around by the council from place to place until we got a maisonette. I eventually got three little jobs that got us by, but at that time, everything was just a nightmare."

Forty-four years since Maureen's relationship ended, the effects of unregistered marriages continue to affect Muslim women and children who have fallen into this legal black hole.

Sixty percent of Muslim marriages unregistered

Recently, British broadcaster Channel 4 commissioned the largest survey of its kind, collecting data from 903 British Muslim women to determine the extent of unregistered, religious-only marriages.

According to the 1949 Marriage Act, in England and Wales, only Anglicans, Jews, and Quakers are required by law to have a civil ceremony alongside a religious ceremony.

In the event of a divorce, the starting point of proceedings, when it comes to the splitting of financial assets, is an equitable 50 percent split. However, Britain has become more diverse since this act. As well as Islam, the country's second-largest religion, Sikhism and Hinduism are not included in the act.

The reason religious-only marriage is increasingly acceptable to Muslim couples, in my view, is that it mirrors cohabitation. So if couples in wider society can be a family without a formal marriage, why not Muslims?

RAJNAARA AKHTAR, RESEARCHER

Campaigners such as solicitor Aina Khan, and Conservative peer Baroness Caroline Cox argue that legislative change should see all religious marriages needing to be registered. However, other research suggests the solution is not this simple.

Sixty percent of women surveyed by Channel 4 had a religious-only marriage. A majority of 66 percent knew their union had no legal status. Almost half said that they did not intend to have a civil ceremony.

Rajnaara Akhtar, a researcher of British Muslim issues and a lecturer at Leicester's De Montfort University, summarised the survey.

"The reason religious-only marriage is increasingly acceptable to Muslim couples, in my view, is that it mirrors cohabitation. So if couples in wider society can be a family without a formal marriage, why not Muslims?" she told Al Jazeera.

Cohabitees are the fastest growing family group in the UK.

While she recognised some women's difficulties, Akhtar said a blanket recognition of religious marriage would be problematic.

For some Muslim women, she said, not registering a marriage comes with certain benefits.

"Where you have a couple [without] assets, there really isn't a reason to formally marry because it means that the process of divorce, if that were to happen, is going to be long-winded. I have read research findings where you have women on their second marriage, who, having gone through a formal marriage and a formal divorce the first time around and realised how difficult it was, purposely opt out of a registered marriage.

"For them, having a marriage that is religiously recognised but not recognised by the state is preferable. So this comes down to a question of autonomy."

Of those in unregistered marriages, 28 percent said they did not realise that their Islamic ceremony was not legally recognised.

This could be because of the "myth of the common law spouse", Akhtar said, the false assumption that cohabitants carry legal status in English law.

This lack of awareness is not exclusive to the Muslim community.

'Remedy' needed

In a survey conducted by British Social Attitudes in 2006, 58 percent of respondents thought that cohabiting couples who split up had the same legal status as married couples.

Jakki Smith, an NHS employee from Chorley, Lancashire, understands the legal limitations of cohabitation.

She was denied bereavement damages when her partner of sixteen years, John Bulloch, died in 2010 after doctors failed to spot an infection.

Had she been married by law, she would have been eligible.

However, Smith and Bulloch were each previously divorced, and decided they did not want a civil ceremony.



Jacki Smith, left, said she was disappointed she did not have cohabiting rights after her partner died [Courtesy: Jacki Smith]

"I was the person who lived with him, loved him the most, and I couldn't even register his death," she told Al Jazeera.

"As a common law spouse, I was aware that I wasn't entitled to claim his pension, but I wasn't fully aware of the complete limitation of not being recognised at all. I wasn't even aware there were bereavement damages until I spoke to my solicitor.

"The government has to accept people are changing, people prefer to live together without being married. It's about personal choice."

In November, she won a legal battle against the government on the grounds her human rights were breached.

Lady Brenda Hale, the first female president of the Supreme Court, was quoted by The Times newspaper last month as saying that there should be "a remedy for unmarried couples in English law".

A Cohabitation Rights Bill addressing the rights of cohabiting couples has been presented at the House of Lords consecutively for the last three years, had its first reading earlier this year, and will have a second reading on a date yet to be announced.

Editorial note: The writer of this piece contributed to the Channel 4 survey.

SOURCE: AL JAZEERA NEWS