

Trapped in a religious marriage

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Summary

The book offers a human rights perspective of the phenomenon of marital captivity within Christian, Jewish, Hindu and Muslim communities in both secular and non-secular States. Marital captivity is a complex social phenomenon that, predominantly, affects women. It involves a situation wherein the dissolution of a religious and/or legal marriage is obscured for religious reasons, consequently forcing the spouse(s) to remain in the marriage against their will. It is complex in the sense that it involves multiple stakeholders, i.e. the trapped spouse, the opposing or recalcitrant spouse, the religious communities and one or more States. Every stakeholder has interests which, within situations of marital captivity, are in conflict with one another. Unfortunately, holistic and effective solutions to end existing situations of marital captivity and prevent new situations from arising, have yet to be developed.

The primary aim of this book is to demonstrate why a human right centred approach is beneficial for the process of finding effective solutions to end marital captivity and how human rights law can be used as a tool to further this process. This is achieved by developing an in-depth analysis of the human rights and principles that are affected within situations of marital captivity. The conflicting rights and interests, that are rooted in all situations of marital captivity, are presented and studied within the human rights legal framework. More specifically, a selected number of substantive human rights are analysed thoroughly in order to determine their scope of protection and the implied State obligations. The selected substantive human rights include: the right to freedom of religion, the right to (re)marry, the right to private life, the right to health, the right to freedom of movement and the right to be free from violence against women. Furthermore, a discussion on the topics of State-Church relationship and secularism is included. This discussion highlights how country-specific factors affect the scope of afforded human rights protection and State obligations of the investigated rights.

The discussion and analysis of these topics and rights, then, offers insights on how a human rights approach enables to balance and resolve the conflicting rights and interests. It also offers an overview of States' positive obligations to find effective solutions to address situations of marital captivity. States' human rights obligations that are implied within the investigated human rights provisions are discussed within the context of marital captivity so as to identify tailored and specific State obligations to address marital captivity. This exercise enables the author to produce guidelines for legal and non-legal measures that States should consider adopting in order to address situations of marital captivity effectively and to comply with their human rights obligations.