

Trapped in a religious marriage

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Trapped in a religious marriage
A human rights perspective on the phenomenon of marital captivity

Benedicta Deogratias

Propositions

1. Marital captivity to a religious marriage is primarily a human rights issue and should be addressed as such. States have positive human rights obligations to address marital captivity adequately and protect the rights of trapped spouses.
2. Situations of marital captivity that arise due to rules and practices that limit women's ability to initiate and obtain a divorce and that require women to secure the cooperation of their husbands, create power disparities between wives and husbands. These situations of marital captivity constitute violence against women and are a form of forced marriage. States are obliged to exercise due diligence to end these situations of marital captivity.
3. Religious-motivated behaviour and practices that create and maintain a situation of marital captivity, cannot be considered religious manifestations that are protected by the right to freedom of religion. These may neither serve as a justification to create and maintain situations of marital captivity.
4. Divorcees are guaranteed a right to remarry legally. The effective exercise of the right to remarry implies that States are obliged to address any unjustified restrictions to this right. Such efforts should also aim to secure that any religious barriers that impede divorcees from remarrying legally are eliminated.
5. The right to remarry implies that any formal and informal discriminatory treatment of women in respect of their right to remarry is unacceptable. States that guarantee the right to remarry should ensure equality between women and men to remarry and remove any discriminatory restrictions thereto.
6. The place and role attributed to religion and religious institutions within the State- structure are factors that do not alleviate a State from its obligations to ensure and protect human rights and freedoms.
7. Human rights should be the starting point in all public and political discussions concerning societal issues that impact individuals' fundamental rights. Endeavours to address such issues could benefit from a human-rights centred approach, as a human rights approach centralizes the affected human rights, is solution oriented and offers a universally recognised and objective legal framework to balance and solve any rights and interests that may be in conflict.
8. The advancement of gender equality and the elimination of gender-based discrimination are goals of paramount importance and are attributed considerable weight in many parts of the world. Where there exists a conflict between the advancement of gender equality and the right to freedom of religion, the former should be given precedence.
9. Marital captivity is a widespread and complex phenomenon that has economic, social and legal consequences for the affected individuals and communities. It is important and urgent that this phenomenon is pinned on the human rights agendas of States and human rights monitoring bodies alike, so as to expand the dialogue and enhance the efforts for finding sustainable and holistic solutions to end and prevent situations of marital captivity.

