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Legality of Muslim marriage a religious, human rights issue – divorcee

AllAfrica (24.03.2017) - <http://bit.ly/2mSr74h> - For 20 years, Nasrin Hoosain* was a supportive wife and mother. She left her studies and job opportunities to build her family, raise their children and support her husband as he climbed the career ladder.

When, after years of abuse and infidelity, he asked for a divorce, she was the one who faced an uncertain future, without financial stability and the risk of homelessness.

Muslim marriage - known as a nikah - is not legally recognised in South Africa, meaning Hoosain, like other muslim women, is not entitled by law to the assets accrued with her husband in the two decades of their union.

She joined dozens of women who lined up outside the Western Cape High Court this week, calling for nikahs to be declared legally valid. This would allow recourse for wives who can be left penniless when the marriage dissolves.

The class action is expected to be heard on August 28, three years after the Women's Legal Centre first brought its case.

It argues that once customary marriages were given full legal recognition, the historical basis for not recognising polygynous marriages fell away.

Legislation is therefore needed to recognise Muslim marriages, the WLC says.

Muslim marriages allow for up to four wives, but come with the responsibility of providing equally to each spouse. It is not commonly practiced because of the difficulty in maintaining this, research has found.

The non-profit legal centre contends that legal protection has been denied to Muslim women 16 years after the Constitution came into force. This had resulted in widespread oppression and gender discrimination in areas such as divorce, the duties of support, parental rights and responsibilities, and inheritance.

For Hoosain, the end of her marriage meant starting over after years of living a financially comfortable life.

'Soul destroying'

She had been a student when she tied the knot, and dropped out of university to see to their home after having their first born.

"I was a full time mom - a cook, a doctor, a nurse and a taxi driver, all in one," she said.

Hoosain put her own prospects on hold to "build a successful family", despite facing ill-treatment from her husband at home.

When he asked her for a Talaq - which in Islamic terms is a divorce prompted by the man as a formal repudiation of his wife - she didn't put up a fight.

For three months, her husband was forced to maintain her, but once the process was finalised, she was without an income.

"As a wife, I gave such a lot of myself to him over the years. All I got in return was a 'thank you, ma'am, for your services rendered; off you go,'" Hoosain recalls.

As they did not have a civil union, her husband was not recognised as such in the eyes of the law.

He therefore did not legally have to split their assets accrued over the 20 years, or give her spousal support. She however refused to do the "normal thing" and move out of the house she helped him build.

"I had done my research, so I knew he couldn't force me to leave. Both of us had worked ourselves up, both of us had made sacrifices for what we had. I put my foot down and told my children that we couldn't be put out, showing them what our country's laws state and referring to passages in the Quran. Eventually he left, but not without a fight."

Hoosain has an English version of the religious text of Islam, marked with pink sticky notes, as well as South African law documents which she refers to, to substantiate her arguments.

Life has been difficult since her marriage dissolved, Hoosain admits, as she relies on her ex-husband for money to support their minor children.

She doesn't want to approach the courts for child maintenance, describing the process as "soul destroying".

Legal proceedings

"So I am at his mercy. Whatever he decides to give is what I just have to take," she explains, resigned.

Her career prospects are limited as she does not have work experience, and her age, 40, also puts her at a disadvantage.

But unlike some of her Muslim friends who were forced to "take what their husbands offered to placate them, which is usually next to nothing", Hoosain has instituted legal proceedings to force him to cough up.

She declined to disclose the details of her case as it is still before the courts.

Fair religion

Had her marriage been legally recognised, the traumatising reality of divorce would have been somewhat easier, Hoosain insists. The non-recognition of the union is against her human rights.

"It is unfair, discriminatory and prejudicial. We live in a secular country in which we are legally protected from any form of discrimination. Why are Muslim marriages excluded from that?"

The devout Muslim says her issue is not with the teachings of Islam, but with the cultural interpretation which is "not in line" with the Quran.

"Islam is a fair religion, which promotes equality. It even says in the Quran that in case of divorce, separate on equitable terms. This means it must be fair, just and equal.

"Why should a woman have to give up her lifestyle in the event of a divorce? Building what you have takes two people; why does only one get everything?"

Had she known what awaited her later, she would have insisted on a civil union, Hoosain admits.

'This is our fight'

"You, as a woman, are not protected otherwise. This is both a religious and human rights issue. Islam teaches you to stand firm in what you believe is the truth; to fight oppression, injustice and tyranny. We can't just sit and take it.

"Women need to be respected. When men refuse to give you your fair share, it's a sign of disrespect. You give the best years of your life to your marriage and building a family [but have no recourse if the marriage dissolves]. It's unfair."

The recognition of customary marriages, which allows for more than one wife, should also extend to Muslims, she argues.

Polygamy is not common in Islam, Hoosain says, as the Quran teaches that you have to treat both equally, from physical assets to emotional support.

"It's allowed, but virtually impossible to maintain multiple wives equally," she says.

The class action is an important step toward protecting the rights of Muslim women, Hoosain believes.

"Our voices need to be heard; we are part of South African society. This is our fight so that our daughters can have a better life and not be left destitute in the event of divorce," she says.

Judges Siraj Desai, Gayaat Salie-Hlophe and Nolwazi Boqwana are expected to preside over the matter.

*Not her real name

Study: More than half of Diepsloot men have raped or beaten a woman in the past year

Rape and physical abuse rates more than double those reported in national studies have been recorded in Diepsloot in northern Johannesburg

By Mia Malan

Bhekisisa.org (29.11.2016) - <http://bit.ly/2gV1T25> - More than half, 56%, of men in Diepsloot in northern Johannesburg say they've either raped or beaten a woman in the past 12 months, according to results from the Sonke CHANGE trial, which were released

on Monday. These figures are some of the highest rates of violence against women ever recorded in South Africa: they are more than double those reported in national studies.

The Sonke CHANGE trial, a partnership between the University of the Witwatersrand (Wits) and gender activist organisation Sonke Gender Justice was conducted this year among 2 600 men in the township. The men were between the ages of 18 and 40 years with an average income of R1 500 a month. Only half had been employed in the three months before the study was conducted.

Of those men who had raped or beaten a woman, 60% said they had done so several times over the past year.

"These levels of violence represent a state of emergency for victims and survivors of this violence," the researchers said in a study summary.

"They experience serious long-term physical and psychological harm. They experience ongoing fear of repeat victimisation, with little reason to believe that perpetrators will be apprehended or held accountable or that potential perpetrators will be deterred from using violence against them."

South African Police Service reports show that of the 500 sexual assault cases reported in Diepsloot since 2013, there has been just one conviction, according to the researchers.

Abigail Hatcher, one of the lead researchers from Wits, told Bhekisisa: "If you think that 56% of men used violence against women, and because most of them did so more than once, it is likely that at least half of women in Diepsloot are experiencing it annually.

"But because most of the perpetrators have enacted violence towards a woman more than once, it is possible that they enact violence towards more than one woman at the same time. We estimate that we need care services and shelters for about 60% of the female population in Diepsloot. But except for a small organisation, Green Door, there are zero shelters."

Green Door consists of three donated Wendy houses; the organisation does not receive any funding. It has only one part-time, volunteer counsellor.

According to South Africa's 2011 census, 138 000 people live in Diepsloot, about 12 000 people per square kilometre. But residents and organisations in the township say this number is a gross underestimation: most estimate the population to be closer to half a million. If that is true, and if half the population consists of women, about 150 000 (60%) could be in need of care and shelter services.

On Wednesday, Bhekisisa will be launching a cellphone app in Diepsloot to make it easier for victims of gender-based violence to know where to find help.

The app is being launched in partnership with Green Door, Sonke Gender Justice, social enterprise organisation Afrika Tikkun, Lawyers Against Abuse and the South African Depression and Anxiety Group.

Users dial *134*403# from their cellphone, which notifies a server to send a series of three menus asking the user where they are in Diepsloot and what sort of help they need. An SMS is then sent to the user with the phone numbers and addresses of the organisations in Diepsloot that help victims of gender-based violence, as well as the numbers of the police and ambulance services.

The Sonke CHANGE trial found that the most significant cause of men's violence towards women in the township was "inequitable and harmful gender norms that grant men a sense of permission to use violence against women".

For instance, one out of three men in the survey believe wives should not be able to refuse sex, more than half expect their partner to agree to sex when the man wants it and most believe they have the right to control the clothes a woman wears, the friends she sees or where she goes.

Controlling a partner doubled the odds that men used violence in the past year.

A troubled past, a troubled future

Childhood trauma was closely associated with men becoming abusers: 85% of the men who had raped or beaten a woman had been physically or sexually abused themselves as children. Men who had experienced child abuse were five times more likely to use violence against a woman.

"Children exposed to this violence in the home and community are far more likely to themselves become involved in violence later in life — boys as perpetrators and girls as victims — and are at increased risk of experiencing a host of other social problems, including psychological distress, alcohol abuse, poor school performance and increased involvement in crime, including interpersonal violence," the researchers said.

Men with signs of depression were three times as likely to be violent towards women; 49.8% of men were found to have probable depression and 50.3% probable post-traumatic stress disorder.

Yet, the Sonke CHANGE trial researchers pointed out that "there are no public mental health services available in Diepsloot to address the mental health consequences of such widespread exposure to generalised violence".

According to Brown Lekekela, who runs Green Door, the two local clinics don't stock rape kits and there is no nearby government hospital that offers rape counselling services.

The nearest Thuthuzela Care Centre — a one-stop, government-run service offering rape care — is at Tembisa Hospital about 30km away. "This means rape victims are forced to travel long distances to access post-rape care or to attend court cases," the researchers said.

The only other available counselling services are those offered by the police and non-governmental organisations. The Gauteng health department had not responded to questions about the lack of services at the time of publication.

Alcohol plays a huge part in exacerbating violence against women. Problem drinking — binge or frequent drinking that interferes with daily life — increased men's abuse of women by 50%. Three-quarters of the men in the study reported problem drinking. That rate is about six and a half times higher than the national alcohol abuse rate of 11.4%, as reported by the South African Stress and Health survey published in the South African Medical Journal in 2009.

The survey showed that men who had a matric qualification, were older than the average participant age of 27 and were employed, were less likely to be violent towards women. Having food security, which is when a household has access to the food needed for a healthy life for all its members, reduced the odds of violence by 40%.

Hatcher said: "When men feel active and productive, and when they're able to have certainty in their lives about their daily needs, they're likely to use violence less to prove their manhood."