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Forced Marriages. Cross-Cultural Implications and Legal Connections

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Abstract. Marriage represents the oldest custom of the status of individuals, covering different situations and being at the crossroads of multiple regulatory systems: the positive law of States, religious and moral standards, but also customary rules. Historically and culturally, the contractual conception of marriage and its modalities, violating women's freedom, have been some of the elements supporting patriarchy and a "gendered" subjugation: suffice it to consider its configuration in some of the main religious conceptions (canonical, Islamic and Hindu). The revaluation of the female role and the need for its legal protection have recently come to the legal attention of the "Western" world, which has attempted to curb the practice of forced marriages through ad hoc legislative interventions. In Europe, a very important role has been played by the Istanbul Convention of 2011, which prompted many States, not only European, to intervene to counter the phenomenon, starting to use the concept of "gender" as an analytical tool to question the "natural" foundation of many cultural and institutional constructions. With regard to how to prevent forced marriage, possible responses must necessarily be based on four fundamental points: self-determination; the ability to rebel; strict laws; and increased awareness.

Keywords. forced marriages, gender equality, inter-cultural dimension

1. Marriage in Canon, Islamic and Hindu law

Familial covenant or the primacy of the couple, called to fulfil a divine or secular commitment, marriage represents the oldest habit of individuals, covering very different situations and being at the crossroads of multiple regulatory systems: the positive law of states, religious and moral standards, but also customary rules. Before having a legal relevance, it is a human and social phenomenon, from which moral and affective relationships descend. A phenomenon, therefore, in which law is concerned, but which it pre-exists to it being its source. It represents a lexeme of great semantic relevance, as much in modern conception as in older ones: it was regarded by the Romans as a social fact, rather than a legal quid. Recognition of the metagiuridical nature of the institution is already discernible in the terminology in use by the ancients, which seems to emphasize the essential function of marriage in procreation and in the care of children and its foundation in natural law [1].

In Roman culture, marriage, given the absence of a free individual choice of the persons involved, was the expression of a social factor almost exclusively directed to the transmission of name and patrimony. The term "marriage" derives etymologically from

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the Latin word *matrimonium*, formed from the genitive of *mater* combined with the suffix -*monium*, linked to the noun *munus* duty, task. Marriage was, therefore, a juridical act by which a woman, *sui* or *alieni iuris*, separated from her family of origin to form a new family, in a subordinate condition and with the function of procreating legitimate offspring. In this context, it entailed the acquisition of the woman by her husband, through the samerituals of property acquisition, the husband could exercise a power of subjection over her. The family was not, therefore, founded on the legal bond, but on the exercise of *patria potestas*. As economic and social conditions changed, the need for greater attention to the issue of *consensus* was felt. Given, therefore, the lack of solemn forms, the Roman matrimonial structure could be summed up with the well-known brocade "*consensus facit nuptias*".

Catholic doctrine subsequently made use of the Roman concept, based on consent, while giving it a mark of solemnity. In 1215, at the Fourth Lateran Council, the Church regulated the marriage liturgy and its legal aspects, although it was not until 1439, at the Council of Florence, with the Bull *Pro Armenis, that* marriage was given its sacramental value. The concept of freedom of consent, in this context, has been affirmed since St. Thomas, as the expression of an ordered and legally relevant will. From that moment marriage was qualified as a sacrament and a contract, in which consent became its fundamental pillar. Luther, instead, reinserted marriage into civil law, which thus became established in Protestant countries. The dogmatic profile was, subsequently, sanctioned by the Council of Trent (1545-1563) in which the expression of free consent by the spouses was canonized as an essential feature, requiring its manifestation in a public and solemn form. The Council also established the definitive affirmation of the sacramentality and indissolubility of marriage, the provision of publications as an element of validity and the formal obligation of the stipulation in *facie Ecclesiae*.

The diffusion of Christian doctrines in the European civilization has determined, therefore, are-dimensioning of *patria potestas* and the introduction of primordial forms of minor's protection. In European culture, over a long period of time, the exchange of consent, generative of a bond, has led to the identification and inseparability of contract and sacrament. Theology and Canon Law have laid the foundations for the recognition of the necessity of the spouses' free will, contributing to affirming the illegitimacy of arranged/imposed marriage, making it clear the affirmation ofthe right to freedom of choice. In Catholic countries, matrimonial competencewas entirely entrusted to canon law, until the French Revolution.

The current *codex juris canonici* of 1983 defines the pact between a man and a woman, based on the free consent of the two, as a contract, elevated to the dignity of a sacrament (can. 1055 codex juris canonici). Given the importance of consent, there are many cases of nullityof the bond, which involve defects/flaws in the bond itself or which may be linked to incapacity, a voluntary defect (total or partial simulation) or a vice of freedom (violence, error, fraud, condition). Very interesting is the personalist approach, typical of modern canonical doctrine, strongly centered on the dignity of the person. The protection of the person must prevail over the protection of the institution of matrimony, as highlighted in the evangelical message of *Familiaris consortio* of Pope John Paul II.

In the modern perspective of "Western" codes, the autonomy of the spouses is the value around which the regulation of marriage is built, under two aspects: as an act and as a relationship. In marriage as an act, autonomy consists in the free manifestation of consent and is limited by the public interest relating to the certainty of the conjugal relationship. In the second meaning, privileged by the current discipline, instead, autonomy is greater and is limited only by the protection of fundamental rights: the aim

is to endorse the conception of marriage as the fruit of an equal agreement. A fracture emerges between the formal act and the substantial relationship, attributing to the latter the natureof a parameter by which to assess the persistence of the moral, rather than legal, element of the institution. Marital freedom has thus become the bulwark of a new way of seeing the conjugal relationship.

In the secular legal structure of the "Western" type of Christian matrix, the conception of the family as a body bearing super-individual interests has been definitively superseded, in favour of the recognition of the function of developing the personality of its members, and this has made possible, in the most up-to-date codes, the full unfolding of the principle of consent. Jurists bring the marriage contract back to the figure of the so-called personal, typical, and legitimate acts, and matrimonial freedom represents the most vivid image of the spouses' freedom of choice.

In the Islamic culture, on the other hand, marriage is a contract between the future husband and the bride's father/guardian, in return for an obligatory *mahr/dote* from the former. This does not imply that the object of exchange is the woman herself, but that the marriage contract is regulated within specific rules, common to contracts of sale and purchase, and this act is not sacramental in nature. The manifestation of will on the part of the woman is completely absent, who, even if not subject to the power of constraint, still needs the marriage guardian/*walī* to manifest consent as she cannot conclude the marriage directly [2]. Only jurists of the "Hanafi school" reckon that the woman may personally conclude such a contract, the other Islamic schools reject this possibility because marriage is seen as an alliance between two families.

As any valid contract, it must be concluded with the manifest will of both parties, who do not necessarily coincide with bride and groom. Based on *Shari'a* provisions, any individual may be the holder of a marriage relationship, even a newborn child. Obviously, in the latter case, there will be someone who will compulsorily do it for him, i.e. the matrimonial/*wali* guardian (usually the father, paternal grandfather, older brother, paternal uncle, some of their descendants) who, as such, has the right to exercise the so-called power of constraint (*wilayat al- igbar*), which as a rule ceases when the child becomes of age.

In this respect, it is necessary to distinguish between the capacity to be the holder of a matrimonial relationship, which is acquired at birth, and the capacity to contract a marriage, whichis reached at puberty, normally set at 15 years for men and 9 years for women, presuming them to be puberty at 15 and 12 years of age respectively. This indication has remained so in the legal systems of those countries that refer to tradition in the strict sense (including Saudi Arabia, Iran, Somalia, and Mauritania). In most Islamic law states, however, the age of marriage has been raised to 18 for men and 16 for women, excluding the application of religious law. Before reaching the legal age, the *wali*'s consent is required. In the absence of male relatives, the judge may give consent to the marriage [3]. In some States, however, according to the traditional "Malikite system", the *wali* can give his daughter in marriage even in the absence of her consent. This condition is understandable in a patriarchal society, where the very low marriage age requires some protection and where marriage is considered more a social act between two families or two tribes, than a personal choice. Even where the woman is recognized as having the right to contract the marriage in person, the relative contract may, however, be challenged by the *wali* on the grounds of the unsuitability of the groom or the meagerness of the nuptial gift and dissolved judicially, to protect an alleged incapacity of judgement that is considered detrimental to the woman.

Currently, most Arab States prohibit both early marriages and coercion into marriage,according to the provisions of the Koran. Unlike marriage in Roman law, which is considered a *consortium omnis vitae*, and Christian law, which is a sacrament, the marriage bond is, therefore, first and foremost an open-ended civil-law contract, which may be marked by religious aspects (such as reading the Koran or invoking Allah). Although marriage is not considered a sacrament, it is undoubtedly, however, a "praiseworthy" act, viewed with great favor because it makes the woman "lawful to the man", considering the illicitness of sexual relations outside the marriage bond, and aimed at procreation. It is also a solemn act, since it enables the faithful to live in peaceby respecting Allah's commandments, and a religious one, since it is outlined in the Koran (Sura XXX, verse 21).

The bond celebrated in countries governed by Islamic principles is, therefore, simultaneously a civil and religious union, even if pronounced with the formula "in the name of God". It fully falls within the legal contracts between private individuals, signed in the presence of an adoul/notary with Islamic legal functions, tasked of ascertaining the validity of the act, its compliance with the regulations in force and, subsequently, that of registering it with the competent judicial authorities [4, 5].

Hindu marriage is also, like the canonical rite, a religious ceremony; on the basis of all texts,it is a *samskaram*, i.e. a sacrament, the only one prescribed for women and one of the main religiousrites established for the purification of the soul. It is binding for eternity, and, as sealed by the *saptapadi* or the seven steps around the consecrated fire, creates a bond that is impossible to dissolve [6]. It is a religious duty that transforms *status*, individuals' "cosmic" role and position (in the caste system), rather than a free choice exercised by two consenting people.What is important for the validity of marriage is that the rituals are duly performed; it is not, therefore, among those contracts in which a consenting mind is indispensable, but the bride and groom could be a minor or even an insane person. In Hindu culture, the bride and groom lose the role of protagonists and the marriage is managed by the family.

Consent is seen as a purely "physical" capacity of the woman, a mere biological category, corresponding only to the stage when the female body is ready for motherhood, without serious risks of a physical nature, completely ignoring other issues such as the free choice of the partner, sexual, mental, or emotional capacity, or other social considerations such as the girl's personal development. If duly solemnized, it will be considered a valid marriage, which, in Indian law (with a Hindu majority), does not necessarily correspond to a legal bond: think typically of the early, child marriage, which has characterized Hindu cultural tradition for centuries and which is not considered illegal, at least not in the sense that such a term has in "Western" legal culture. The widely accepted definition of "early marriage" refers to a marriage whose protagonists have not yet reached the age of 18. Although India, in most of its laws, has adopted the definition of a child as "a person up to the age of 18", in the *Prohibition of Child Marriage Act* of 2006, this definition differs according to gender: a man ceases to be considered a child at 21, a woman is no longer a child at 18. Tendentially, this gender gap is also considered the legal parameter for contracting marriage. This document, for the first time, established that marriages of minors are annullable or null and void in certain particularly serious cases. But, from a religious point of view, the belief that an early marriage produces spiritual merit and that a family has a duty to find a suitable husband for a daughter is still widespread. Equally, the implications related to the control of female sexuality remain topical. The marriage of children is, moreover, an institution linked to the rules for marriage that define, along with others –e.g., those relatingto

monogamy or polygamy– the conditions that must be there for two individuals to enter into a matrimonial relationship and provide many important indications on the general conception of marriage and the roles culturally and legally assigned to spouses.

In such a context, forced marriage is difficult to eradicate since it is part of the *Dharma*/the practice of law, the social and cosmic order, on which Hinduism is based, a complex relationship between human rights and socio-legal concepts. Prevalent, therefore, is the idea that early marriage is considered a duty, as an "appropriate" form. In this conception, therefore, child marriages have positive effects regarding the maintenance of cosmic order, the preservation of society and the spiritual merits of those involved. From a sociological perspective, several theories have been proposed to explain the prevalence of child marriages. Probably, the main function can be identified in the need to ensure the control of female sexuality and to limit illicit sexual relations outside the institutionalized context of marriage. Another explanation can be identified in the caste logic.

The set of *Dharmic* conceptions surrounding the practice of child marriage continue to be significant for Hindus, but since the colonial period, Hindu law has interacted with new conceptions and legal norms with different characters. This can only be understood within the more general processes of standardization and pluralization of Hindu and Indian laws, since, especially the country's family law, it is historically very pluralist, derived from the coexistence of different social groups and cultures since ever. Many of the problems plaguing Indian society stem from the rigidity of its traditional regulatory system, which is at the root of its blatant human rights violations [6, 7].The *Child Marriage Prohibition Act* of 2006 has, unfortunately, not succeeded in eradicating this phenomenon, even though official Indian family law does not recognize its validity, such marriages continue to be performed because many Hindus live under traditional, unofficial law, following rules that conflict with state law.

2. Forced marriage between international law and criminal offences

Historically, the contractual conception of marriage and its modalities, violating women's freedom, have been some of the features supporting patriarchy and a "gendered" subjugation, to which, in addition, numerous other factors have contributed, mainly linked to social norms and family structures, derived from patriarchal forms of control over women's sexuality and reproductive life. [8] Three main elements characterize forced marriages: coercion; family environment; transnationality. Coercion may be of a physical nature, but no less serious are the religious forms (defense of honor, morality), psychological (control of behaviour), economic (interruption of family support), emotional or affective (social ostracism) ones. With reference to the second aspect, it is observed that it is almost always exercised, in the family context, by the victim's parents and relatives, generating what has been defined as a conflict of loyalty: a feeling of respect towards one's family, in contrast with one's own interests, in which the person feels trapped, unable to take "self-protection" actions, for fear of causing trouble [9]. What girls and young women may experience is a form of domestic violence and pressure exerted as much by the original parental group as by the entire "community", to which the family feels they belong and to which they "have to account" for their conduct, both in the host country and in their home country. These are mostly cultural or religious influences implying emotional and social pressure: it is on women, in fact, that the "honour" of the family and sometimes that of the entire community is

entirely based. Transnationality is given by the fact that most forced marriages take place abroad, following the victim's transfer or detention in her country of origin. This makes the repression of the phenomenon more difficult, also by virtue of the territoriality principle of criminal law. Currently, this phenomenon is geographically localised mainly in Chad, Bangladesh, Mali, Guinea, Central African Republic, Nepal, Mozambique, Egypt, Uganda, Burkina Faso, India, Ethiopia, Liberia, Yemen, Cameroon, Eritrea, Malawi, Nicaragua, Nigeria, Zambia, Saudi Arabia, and Afghanistan.

Although the highest prevalence rates are recorded in Middle East Asia and sub-Saharan Africa, more recent investigations have revealed an increasing presence of this practice in the "western" context as well, linked to migration flows.There are, however, no official statistics that highlight the proportions of the problem; many NGOs intervene in an attempt to culturally eradicate such practices, which also interrupt the schooling of girls/boys, relegating them to the domestic sphere and in fact impeding the path of female empowerment, in many geographical areas.

A different matter is, of course, arranged marriages, which do not represent a problem from the point of view of human rights. In this context, in fact, the determining factor is the subjective feeling/consensus of the person who feels that he or she has or has not been forced into marriage. The distinction between the two practices –arranged and forced– h as a certain relevance, both in terms of public and legal action. Consider that even in the West, until a few decades ago, it was customary for the family to present the girl with possible fiancées. Although combined marriage is a tolerated practice in different cultures, when families emigrate,and try to reproduce their habits in the host country, a sort of "short circuit" takes place; with second generations, born in "Western" host countries, combined marriage turnsinto "forced marriage" and, therefore, violence on the person, since from the simple proposition of the partner, it has passed to coercion, threats and violence.

Again, different is the marriage of minors, the phenomenon of so-called child brides, which fits as a specialty within the broader category of forced marriages, and which raises greater social alarm given the very young age of the girls and its widespread diffusion in many geographical areas, linked to traditional practices, but also in today's war zones, used by parents to protect their daughters' honour.

Forced marriage, according to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the so-called Istanbul Convention of 2011, is constituted by «the intentional act of forcing an adult or a child to enter into marriage... the fact of intentionally drawing an adult or a child by deception into the territory of a party or a State other than the one where he resides, in order to force him to enter into marriage» (Article 37). Basically, in such hypotheses, the act is perfectly lawful, but acquires elements of unlawfulness as certain religious customs/traditions practically impose it on women (often, but not necessarily, at a very young age). Religious affiliation may play a role, but it is not the main cause: marriage may be seen, in migratory contexts, as a means to maintain a strong bond with the culture of the country of origin; as a way to "protect" girls from more open lifestyles (especially in relation to sexuality); sometimes they are instruments of compensation or acts of solidarity.

The Istanbul Convention of 2011 was, as it is well known, the most important international treaty dedicated to gender-based violence, with the aim of preventing violence, protecting victims, and prosecuting aggressors; in addition, of course, to urging and monitoring the signatory States to adapt their laws and provide for new criminal offences, identified by the Convention, which concern not only physical violence but

also violence related to social habits. This document has been signed by 45 Countries, but ratified by only 19, not only by States that are members of the Council of Europe, but by others that, in various capacities, participated in the drafting of the text (e.g., the United States, Canada, Japan and the Holy See). It therefore represents the first international, legally binding instrument to create a comprehensive legal framework to protect the "female gender" against all forms of violence. Moreover, the indication to consider early marriages as closely related, but obviously not overlapping, with forced marriages was accepted.

The concept of violence thus delineated is gradable and can take a plurality of forms, be it a crime, or situations that are criminally irrelevant,but not devoid of legal significance. Particularly important was the express recognition of the latter as a violation of human rights, as well as a form of specific discrimination against women (Article 3). The text also established a clear link between the objective of gender equality and that of the elimination of violence against the "female" gender, and intervened directly on the issue of forced marriages, requiring States to adopt measures to combat this practice. This Convention also began to use the concept of "gender" as an analytical tool to question the "natural" foundation of many cultural and institutional constructions, defining it as the set of «socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men» (Art. 3C). This path had been initiated since the Declaration on the Elimination of Violence against Women, adopted in 1993 by the United Nations General Assembly, which defined violence against women as any form of «gender-based violence that results in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion orarbitrary deprivation of liberty, whether occurring in public or private life», but it is only the Istanbul document that has given it a stronger theoretical foundation. In a 2012 European Union Directive it was emphasised that «gender-based violence means violence directed against a person on account of gender, gender identity or gender expression, or which disproportionately affects persons of a particular gender», specifying that it is «a form of discrimination and a violation of the victim's fundamental freedoms». It is emphasised that it includes violence in close relationships, sexual violence (including rape, sexual assault, and sexual harassment), human trafficking, slavery and various forms of harmful practices, such as forced marriages, female genitalmutilation and so-called "honour crimes". The Directive, *inter alia*, urged EU Member States to ensure measures to protect victims and their families from secondary and repeated victimization, as well as from intimidation and retaliation, by guaranteeing their physical protection.The decision to combat such violence by recognising its social, and therefore cultural and religious, roots is important for at least two reasons. The first is that it makes it possible to consider domestic and gender-based violence no longer as a "private matter" but as a political and social problem. The second is that it delegitimizes attempts to circumscribe the phenomenon withinthe sphere of deviance and/or pathology, bringing out the connection between discrimination and violence, within a social model in which the construction of gender rolesresponds to asymmetrical power logics. This innovative hermeneutic approach has thus made itpossible not only to impose a mere ban on forced marriages, but to consider them, directly and in a broader sense, as a form of "gender" discrimination.

The penal legislation in various countries had not, however, succeeded in providing, over a long period of time, an *ad hoc* hypothesis to criminalise them. The interpreter was therefore obliged to use different cases in point: induction to marriage by deception; consensual abduction of minors, which, however, often provides an attenuating

circumstance where the offence was committed "for the purpose of marriage"; abduction of incapacitated persons; kidnapping; abduction and detention of minors abroad; private violence (which, however, identifies a subsidiary case); up to persons trafficking, for most serious cases. Another fundamental criminal reference was anchored in the offence of ill-treatment in the family, which punishes any violent or non-violent action that represses or prevents the development of the human personality. With regard to possible civil provisions, it should be noted that the marriage may be challenged by the spouse whose consent has been extorted by violence or determined by fear of exceptional gravity, resulting from external causes. Coercion into an unwanted marriage is a serious violation of dignity and constitutes harm that is also relevant for the purposes of recognising international protection measures.

The legal good to be protected, also taking into account its supranational genesis, would not be identifiable with the mere protection of the institution of marriage, but centred on the protection of individual freedom, "of gender". It is not, therefore, a crime against personal liberty, centred on the protection of the legal asset of the passive subject, to be seen in its widest meaning, as an inviolable right, but to be treated as a common offence, since it may be committed by anyone, with a generic intent (the will to compel or induce the celebration of a marriage), whatever the underlying purposes (cultural, religious, traditional); the consent of the bride or groom is excludedas a discriminating factor, and there is no reference to age, but to foresee an increase in the penalty if committed against minors. It is interesting to note the omission of any reference to compliance with religious precepts, which makes clear the determination to shift the centre of gravity of the provision from culturally motivated crimes to "gender" crimes. This responds to the strong influence of this innovative theoretical approach.

The provision must, therefore, penalise unconditionally any coercion, carried out by means of violence and threats, re-proposing the scheme of the crime of private violence, of which it seems to constitute a special rule, in which the element of specificity is constituted by the purpose of the same (coercion to marry). Another interesting profile is represented by the derogation to the principle of territoriality of criminal law (Article 44 of the Istanbul Convention), which takes into account the cross-border nature of these criminal offences.

3. Legal profiles of forced marriage as a cultural offence. Need for integrated protection

Such practices constitute, therefore, a very archaic practice, endorsed by different religious cultures, especially with a view to the control of the "female gender" [10], and they are a clear violation of human rights: Article 16 of the 1948 Universal Declaration of Human Rights had established, in fact, that «marriage can only be concluded with the free and full consent of the future spouses» until the 2014 UN Resolution on child, early and forced marriage. A 2012 UN Report included this type of marriage in the concept of "slavery".

In terms of the correct legal framing, this cultural offence varies, ambivalently, between a perspective that includes it as one of a large number of unlawful conducts, belonging to the macro-category of private violence, and another that leads it back to sexual exploitation and enslavement. The legal schemes normally used refer to all these areas, since it is not always easy to set the boundaries.

The approach adopted when drafting the Istanbul Convention seems to be between two complementary readings of the problem: on one hand, the "positive" dimension of protection and the need for immediate legal reactions, through *ad hoc* legislative production, of both a substantive and procedural nature and, on the other hand, the "political" dimension of the gender law/gender-sensitive approach, linked to the need to counter violence against women. In Europe, awareness of these forced marriages has arisen because of an increasing number of media cases, but none of the Council member States has conduct a quantitative survey providing an insight into the sociological reality. In the UK, forced marriage, within the meaning of the *Forced Marriage Unit*, is «where one or both people do not ... consent to the marriage as they are pressurized, or abuse is used, to force them to do so. It is recognized in the UK as a form of domestic or child abuse and a serious abuse of human rights»: this formula is the one that is now unanimously adopted.

It may be pointed out that approximately sixty million forced marriages take place in the world every year, and that the number of Countries in which women may marry before coming of age still stands at one hundred and forty-six. This situation is no longer attributable to a legislative *vacuum*, either on the part of international/supranational bodies or the States concerned, but to the fact that the rules laid down are systematically disregarded, in deference to cultural/religious customs and traditions. Considering the geographical spread of this practice, the difficulty of its precise localisation in "Western" contexts must also be noted; as with what happens with almost all cultural crimes, its extension is indeed influenced by (and directly proportional to) the increase and flows of the migration phenomenon.

Amongst the national and international objectives, a first, fundamental step was to guarantee women a regulatory protection, imposing, first of all, the obligation to be of age, except in special cases. It was observed that child marriages must automatically be considered as forced and that it is regrettable that 144 countries out of 193 still do not have laws prohibiting child marriages. One possible strategy could be to classify it among the forms of human trafficking (cf. Art. 2 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims) and to formulate a shared strategy and a common definition to enable a uniform application of the rules. Such practices, religious and cultural, although deep-rooted, cannot be considered simply as culturally oriented declinations of family law, but must be included among violations of fundamental human rights, among abuses of psychologically and legally more fragile subjects. "Western" cultural paradigms must, in such cases, embrace a universally valid value of justice.

While these considerations may be shareable from a purely positive point of view, it must nevertheless be considered that the categorical qualification of the fact, in the criminal sphere, cannot be carried out irrespective of the teleological scheme adopted by the person who committed it. In this view, the core of the theorisation of culturally motivated crimes is highlighted. In the different perspective, on the other hand, of the person subjected to the criminal action, it is necessary to consider the possible conflict of values at stake, which is not part of "Western" cultural paradigms, but which deserves attention and respect. If, in fact, the regulatory intervention is limited to framing the case as a crime based on a few external morphological aspects, it runs the risk of failing to grasp, in a truly inclusive and inter-cultural dimension, the plurality of meanings and the multiple relevance that individual conducts may assume, with respect to the constitutional rules and the variety of values it represents. Indeed, in some cases, the "perpetrators", often the girl's parents, are persuaded to be doing it "for her good".

The repositioning of formal profiles, in which the semantic and normative dimension of the cultures to which they belong is involved, could provide useful tools for a normative qualification/translation that better contextualises these practices, tracing "other" meanings and, in relation to them, emancipative solutions that do not bring into play the subjectivity of the "victim" and her isolation from the social groups to which she belongs. This process can only be the result of a progressive awareness aimed at building and strengthening a new autonomy for young women, which helps them to reposition themselves in the host societies, according to new cultural patterns, and which helps them in the difficult process of "pondered enfranchisement" and "reinterpretation" of their own cultural traditions, for the acquisition of an effective capacity of self-determination that does not result in an alternative choice between antagonistic and predefined cultural patterns.

The new rights can thus become translation interfaces between traditions renewed in their potential meaning, to promote processes of intercultural redefinition of subjectivity. A truly inter-cultural right must not, therefore, be dedicated solely to criminal protection (although necessary) but be more correctly integrated into an articulated system of support and prevention.

The legal debate re-proposes also in such cases, as for all those that fall within the macro-category of "culturally motivated offences", the alternative between the right of the people to their identity, culture, customs, and the freedom rights of the subject. It should, however, be clear that adopting the filter of this category cannot, for instance, lead to a reduction of the penalty/increased social "benevolence" with respect to behaviour that offends fundamental principles. Rereading legislation from a cross-cultural perspective brings about the emergence of a new perspective, based on the need to constantly rethink even the institution of marriage, in the most modern inputs. Forced marriages recall the idea that in modern, liberal societies, the reference to the feeling of love and respect for the individual will is a priority; the current tendency is no longer the transcendent birth of a couple, but the union of two individuals who consider themselves the two halves of a unity, continuing to constitute two autonomous wholes [11].

It is also interesting to emphasise that the concept of "gender" (as opposed to "sex") emerged in the 1970s and 1980s, in the context of cultural studies, to indicate socially determined superstructures, i.e. the way in which social roles, behaviour, modes of interaction and power, and the very identities of men and women are socially acquired, constructed, transmitted and change over time in relation to the socio-cultural, political and economic context. This implies the idea that while sex is an immutable biological datum, gender relations are historically, geographically, and culturally specific [12].

It is a matter of outlining a slow process of normative enfranchisement from traditional customs and traditions that are firmly anchored to religious precepts and "women's honour". It is important to reiterate that human dignity is not a fundamental right among others, nor does it override them. Rather, it is the principle that, placed within the framework of fundamental rights, allows them to be interpreted according to the free development of the person. Its pre-eminence offsets the risk of trivialising freedoms, brought about by the gradual expansion of the relative catalogues: their multiplication in fact risks weakening their significance. In this sense, the concept of dignity can act as a collector and guarantor of them. The syntagma "free and dignified existence" could then be correctly referred to every human being since the "natural" condition of every person is referrable to an existence that is not only free, but also dignified.

As to how to prevent forced marriage, possible answers must necessarily be based on four fundamental points: self-determination; the capacity to rebel; strict laws; increased awareness. What is needed are dedicated services, prevention and training activities for families and operators, awareness-raising for girls and women in the communities (to raise their awareness and desire to break away from customs and traditions that penalise them), but also means to protect them from family and community reprisals. The role of legal and social workers is therefore crucial in making women aware of their freedom of choice and self-determination. Critical issues in the work of preventing and combating forced marriages are, in fact, essentially linked to the lack of a key to understanding the phenomenon; guidelines and/or intervention protocols; prevention activities shared with resident foreign communities; specific protection measures.

Faced with a forced marriage, one factor preventing an effective protection of the victims is that its annulment, due to breach of consent, entails going through the normal judicial process, with long delays, significant costs and without adequate protection. This shows, therefore, that criminal law alone could even have an opposite/boomerang effect, dissuading victims from denouncing, for fear of incriminating members of their own family, sometimes unwitting accomplices (because they are convinced that they are acting for their own well-being). It would therefore be useful to provide, at the same time, but in a preventive manner, awareness-raising, and training measures to intercept situations at risk, as well as a monitoring of the phenomenon and build a protection network involving social services, schools, anti-violence centres and/or safe houses, the police and the judiciary.

Based on most recent international interventions, with repercussions in the individual national legislations, a renewed legal approach can be seen in which it is no longer the bond that is protected but the consent of the spouses; the law is concretely protective and deals directly with the individual [13]. The relationship between the State, the family and the individual has changed: while the former is interested in the family as a filter of public power, it increasingly intervenes to protect the individual from/in the family. The last piece, therefore, despite its incompleteness, nonetheless highlights an important semantic shift and a centralisation of the principle of respect for the dignity of women, which was unthinkable even in our country until a few decades ago, and for which the confrontation with different cultures, including religious ones, has once again forced to the attention of public opinion and the legislature.

4. Concluding remarks on intercultural dynamics and the marriage contract

A reading of these provisions highlights the need for a legal reflection, even before a jurisprudential reaction, that uses the parameters of interculturality to compose an overall analysis of the phenomenon, which involves the historical, philosophical, anthropological, sociological point of view. This, from a strictly legal-positive point of view, must be framed among the limitations to the freedom of individuals, especially women, determined by customs, traditions, that place subjectivity in second place [14]. It is a phenomenon profoundly characterised by religious and patriarchal cultures and power dynamics based on a gender (male/female) imbalance in which marital relations are managed by the family unit, guided by the *pater familias,* and parental and community dynamics override the desires of the individuals.

It therefore covers many aspects of interest in the analysis of intercultural dynamics, not only in reference to the legal concept of free consent and the dignity of persons, but also in consideration of philosophical and legal elaborations on the concept of "gender". It also highlights the contradictions in the conflict between two reference cultures, in the hypothesis of second generations, in immigration contexts, due to the internalisation of different educational paradigms [15]. Speaking of an intercultural conflict in relation to forced marriages means highlighting the process of re-elaboration and re-interpretation of gender roles following migratory experiences and the profound divergence between the external (host society) marriage dynamics and the logic adopted by the subject/group to which they belong. It is in such contexts that identity and "gender" repositionings are determined and that the phenomenon emerges at the moment of the cultural shock/exchange, in which the subject can perceive the contrast founded on the autonomy of consent as a "feeling" from that on the "value" it can assume in the culture of origin. And it is for this reason that the fight against such a form of imposition must be correctly inserted, more generally, in the patterns of "gender" violence, firmly structured in traditional cultures in which marriage is part of a system of parental relations strongly controlled by religion and social order. Respect for customary rules, with renunciation of the choice of partner, may in fact help to maintainties with the group of origin and its rules of family order, in compliance with a principle of "community" social bonding. This, on the contrary, is called into question by an affirmation of the principle of subjectivity, typical of our cultures, followed by the concept of free choice of marriage and, consequently, the breaking of "original" ties: it is at this point that the problem of forced marriages emerges [16, 17].

The 2002 UNHCR (United Nations High Commissioner for Refugees) [18] guidelines emphasise how, in some contexts, religious affiliation is declined in the attribution of identities, roles, status, responsibilities and duties of conduct closely linked to gender, the non-observance of which may be sanctioned with the limitation of the enjoyment of certain rights. In such contexts, where roles and responsibilities are constructed on the basis of gender, religious/community membership entails a limitation of the freedom of individual group members, and this is particularly evident when the relationship between the sacred and secular orders is still unresolved. It is necessary to understand the potential of this specific criminal protection also as a safeguard against forms of cultural-religious persecution. It is therefore necessary to adopt an even more inclusive perspective, where the notion of religion is not only indicative of a belief, but also of an identity and a way of life: this opens up a space of relevance to dynamics involving the socio-cultural context, traditions, practices and family life of the individual, and to a dimension of religion that is not only related to the intimate sphere but in the public space and to the role played by the community component of confessional belonging. In 2004, the UNHCR clarified, in specific guidelines concerning persecution on religious grounds, that there is no universally accepted definition of the term "religion". It, in relation to persecution, should not be limited to traditional religions, beliefs with institutional characteristics or practices like those within the cults recognised by each State; those who do not believe, do not practise or refuse to adhere to a religion should also be protected. Ultimately, although the 1951 Geneva Convention in Article 1, A (2) speaks in a general sense of religious persecution, the violation of this right must be read in the dual perspective of freedom to believe or not to believe.

Lastly, we must reiterate that the annulment of an unwanted constraint, defined at the level of jurisprudence, could destabilise the individual's cultural and cultural ties and that the freedom obtained could lead to a definitive break from family, tribal or

community support. We must rethink and recontextualise the issue of respect for human rights, not as theoretical entities assumed in an abstractly universalist key, but with respect to social contexts and focus our attention on the subject and the dignity of choice. In the dialectic between universally valid rights, in all contexts and/or spatio-temporal coordinates, and an absolute relativism of human rights, we must find a *modus operandi* that succeeds in mediating between these opposites; "in short, the liberal polity which is tobe globalised is one which publicly respects the rights of the individual citizen to his own civil freedoms against cultural prejudices" [19].

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