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## The Muslim Arbitration Tribunal and "Forced Marriage"

Anouk Guiné

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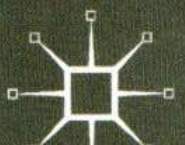
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ALGRAVE POLITICS OF IDENTITY & CITIZENSHIP SERIES

# The Politics of Ethnic Diversity in the British Isles

Edited by Romain Garbaye  
and Pauline Schnapper





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and Pauline Schnapper 2014  
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## The Muslim Arbitration Tribunal and 'Forced Marriage'

Anouk Guiné

This chapter deals with the multiculturalisation of liberalism through the use of state-supported Alternative Dispute Resolution (ADR) mechanisms within Islamic law, with the case of the Muslim Arbitration Tribunal (MAT) and its recent proposals against 'forced marriage', which, according to this tribunal, exists:

Where consultation is the least of the priorities and intention of the parents. Instead, the son/daughter will be told firmly the wishes of their parents and would be expected to comply.

(MAT 2008a)<sup>1</sup>

Since the end of the 1990s, there has been media attention to 'forced marriage' among young British South Asian Muslims. The definitions retained here are the ones elaborated by the Muslim Arbitration Tribunal, for whom, apart from arranged marriage,<sup>2</sup> there are two types of constrained marriage: coerced marriage (see definition below) and forced marriage.

Since the creation of the Home Office Working Group on Forced Marriage in 1999, followed by the launch in 2005 of the joint Foreign and Commonwealth Office/Home Office Forced Marriage Unit (FMU), there has been controversy about the ways to prevent the practice. Mainly based on face-to-face interviews carried out in 2010 with members of the MAT in Nuneaton (32 km east of Birmingham), the FMU and the Southall Black Sisters in London, this paper tries to answer the following questions: given that black British feminist organisations were the first to take the issue on board, long before the government decided to tackle it (Dustin and Phillips 2006), and insofar as much of the prevention work seems to have been carried out since the end of the 1990s by

women's groups through their participation in the FMU, whose work was reinforced by the creation of the Forced Marriage (Civil Protection) Act in 2007<sup>3</sup> – under which forced marriage is not a criminal offence, but civil remedies are available – what were the objectives of the MAT when publishing the report *Liberation from Forced Marriages* one year after the law was passed? Does the MAT conceive of marriage in the same way as secular black British feminism and the FMU do? How does the MAT interfere into family affairs in order to prevent a coerced marriage, and in what way is their prevention strategy different from state intervention? Can individual rights be protected through the privatisation of dispute resolution and its recognition in the public sphere within a framework of moderate secularism?

### Humiliation of Muslims and resistance

T. Modood (2008) wrote that 'central to citizenship is respect for the group self-identities that citizens value'. When the group self-identity is defined by religion, gender appears to be central insofar as the main challenge of Western liberal societies turns out to be the conciliation of religious accommodation with gender justice, since women are the Other being controlled by the group. In order to better understand the way the MAT conceives of marriage and the prevention of coerced types of marital union, I will go back to the political and social context which frames the demands of some British Muslims.<sup>4</sup> I shall do so from the perspective of humiliation studies (Lindner 2007) and multicultural citizenship, as elaborated by W. Kymlicka (1995), with its two types of group-specific rights for minorities, namely 'external protections' (in order to promote equality with the majority culture) and 'internal restrictions' (in order to restrict a person's autonomy at the intra-group level). Humiliation refers to 'the enforced lowering of a person or group, a process of subjugation that damages or strips away their pride, honor or dignity' (Lindner 2007). Feelings of humiliation may result in breaking down social relations, in the claim for collective rights, but also in acts of violence. The consequence often consists in repairing humiliated dignity, in either collectivist or individual contexts of 'honour'.

### Demonisation of the 'Muslim Other' and ethnic strengthening

Anti-Muslim racism is an expression of institutional humiliation designed as a hierarchical classification of 'superior' and 'inferior'

individuals, leading to the discourse of othering based on religion, provoking the demonisation of Islam since the Salman Rushdie Affair in 1989, and reinforcing it with the 1991 Gulf War, the 9/11 attacks, the 2005 London bombings and the subsequent 'War on Terror' against an 'Islamic terror threat'. Most of the British Muslims are ghettoised in the most deprived urban areas.<sup>5</sup> During the 1990s, institutional racism in employment, education, housing, policing and the media led some young British Muslims to turn to orthodox religion (Poynting and Mason 2007). Indeed, the Fourth National Survey of Ethnic Minorities (1993–1994) showed there was some correlation between socio-economic disadvantage and cultural conservatism for some communities (Modood et al. 1997).

### The instrumentalisation of gender

Gender is instrumental to the production of the category of 'uncivilised Muslims'. Muslim men are considered as doubly 'dangerous', as potential 'terrorists' and 'repressive' towards women. On the other side, the neo-colonial rhetoric identifies Muslim women as needing to be 'rescued'. Othering violence against them legitimises in turn the fact of framing forced marriage in cultural and religious terms (Anitha and Gill 2009). This environment has to be articulated to 'internal restrictions' (Kymlicka 1995), referring to the pressures felt by some young Muslims – especially Pakistani Punjabis, for whom 'more than half of all marriages are arranged between first cousins' (Ballard 2008; Shaw 2001) – who may suffer in-group and intra-family gender-related repressive attitudes towards social and sexual interaction (when they do not wish to follow the social order recommended by Islam). It may be the case with the prohibition of mixed-sex gatherings, the censure of cohabitation prior to marriage and of homosexual relationships by virtue of heteronormativity, though we do not know in what proportion these forms of prohibition take place.

Non-consensual marriage is not gender-neutral: it mainly affects women's sexuality and freedom, though men are also submitted to it, but may enjoy more individual freedom. According to the notion of *izzat*,<sup>6</sup> young girls will be predominantly married to men known to the family or community (King 2009), not to mention that 'some women and girls are under pressure to have virginity tests by their families to check on their moral behaviour' (Siddiqui 2003).<sup>7</sup> Nevertheless, for young British Muslims who respect the prescriptions of Islam,

the rules concerning interaction between men and women are perceived as beneficial in terms of personal security. But 'without a sense of direction... the more impressionable youth are driven towards extremism' (Rehman 2007). If a possible correlation between socio-economic deprivation, cultural conservatism and subscription to Muslim orthodoxy and/or 'extremism' is here mentioned, it is precisely because, according to Sheikh Siddiqi, Chairman of the Governing Council of the MAT:

The resentment and alienation created by forced marriage drove young British Muslims towards extremism... Forced marriages leave young Muslims feeling frustrated by the British system and their communities... A lot of people who are steering towards extremism are those who have been rejected by the mainstream Muslim society or the mainstream establishment... Forced marriage led to domestic violence. From moving from there into extremism, it was not unbelievable that that would happen.

(AFP 2008)

However, no study has shown so far that there could be a correlation between forced marriage and 'extremism'. In the same way as Western Europe makes 'forced marriage' instrumental in legitimising its battle against immigration and 'terrorism', the MAT seems to be also using the supposed danger of 'extremism' to justify the prevention of constrained marriage.

This general context will allow us to understand some of the reasons that stand behind the decision of the MAT to prevent forced marriages since 2008.

### So near, so far: The Muslim Arbitration Tribunal and the Forced Marriage Unit

While race, followed by gender, has always been at the core of British law against discrimination, the claims for the right to an Islamic identity have not been relevant to the state, in spite of the numerous attempts by British Muslim authorities since the 1970s to gain public official recognition (Guiné et al. 2007). Today, thanks to the work of the Muslim Council of Britain (MCB) and Forum Against Islamophobia and Racism (FAIR), racial egalitarians take into account Muslim identity (Modood 2006). Ethnoreligious claims act as a double-edged sword in the sense

that Muslim identity is both a marker of the racialised subordination of the non-Western Other, and can be officially recognised through a faith-based approach to multiculturalism.

#### The 'crisis' of forced marriage in the Muslim community

The Muslim Arbitration Tribunal was established in 2007 thanks to Sheikh Faiz-ul-Aqtab Siddiqi, a British Muslim scholar born in Pakistan who is a barrister in English and Welsh law, as well as, among other positions, Principal of the Hijaz College Islamic University at Nuneaton (Warwickshire), where the headquarters of the MAT are located. Shamim Qureshi, a Muslim judge in Wolverhampton Magistrates Court, is the presiding judge of the MAT. In 2008, some months after Rowan Williams, the Archbishop of Canterbury, defended the adoption of some aspects of Sharia in Britain (Williams 2008) and after Lord Chief Justice, Lord Phillips, declared that Sharia could be used to settle marital and financial disputes (Lord Phillips 2008), the MAT initiatives have been endorsed, and rulings issued by a network of five Sharia courts<sup>8</sup> are enforceable by county and high courts (Taher 2008). These five courts are run by the MAT and are classified as arbitration tribunals.<sup>9</sup> Let us recall that the MAT 'is modeled on the Jewish Beth Din which has operated under the auspices of arbitration legislation for many decades' (Bano 2011). In the words of Inayat Bunglawala, Assistant Secretary-General of the Muslim Council of Britain, 'if the Jewish courts are allowed to flourish, so must the sharia ones' (Taher 2008). Today, there is a growing use of Sharia law by British Muslims because of family breakdowns, such as in the Islamic Sharia Council where 'the cases have more than tripled over the past three to five years', according to Sheikh al-Haddad (Talwar 2012). British law firms are also attending clients (most of them being under the age of 50) 'who want to satisfy their British identity as well as their Muslim one', says Aina Khan (*Ibid.*), a practising solicitor who has a lot of experience working with Muslim women at Sharia councils,<sup>10</sup> and has opened one of the first Sharia departments in London. This situation led Baroness Cox to introduce a new bill in order to regulate Sharia law in the UK.<sup>11</sup> Sharia has no enforcement powers under UK law, but Muslims accept rulings made by the scholars (*Ibid.*).

For Sheikh Siddiqi:

The reason why the MAT was set up was not to play in the same arena as the Sharia councils. MAT is an arbitration forum, and while there are hundreds of arbitration forums in England, MAT is one of

them which applies the Islamic Sharia Law under the Arbitration Act 1996.<sup>12</sup>

The MAT and its resort to arbitration is today officially recognised, as is shown, for instance, by the fact that the Charity Commission for England and Wales asked the MAT to help resolve disputes over the administration of mosques in 2009 (Bowen 2010). The main purpose of the MAT is

to enable Muslims in the UK to seek arbitration as an alternative dispute resolution instead of using the traditional courts... to provide a viable alternative for the Muslim community, seeking to resolve disputes... without having to resort to costly and time consuming litigation... The MAT will therefore, for the first time, offer... a real and true opportunity to settle disputes in accordance with Islamic Law with the knowledge that the outcome as determined by MAT will be binding and enforceable within the English jurisdiction.

(MAT 2008c)

Indeed, the MAT operates within the Alternative Dispute Resolution (ADR)<sup>13</sup> framework of England and Wales, which ensures that

[a]ny determination reached by MAT can be enforced through existing means of enforcement open to normal litigants. Although MAT must operate within the legal framework of England and Wales, this does not prevent or impede MAT from ensuring that all determinations reached by it are in accordance with one of the recognized Schools of Islamic Law.

(MAT 2008c)<sup>14</sup>

According to the procedural rules which regulate the MAT, the tribunal must consist of at least two members, an Islamic law scholar and a solicitor or barrister registered to practice in England or Wales.

The MAT report on forced marriage greatly emphasises the importance of the 'Muslim community' to resolve inner problems:

Third parties can make reference to the Judges of MAT if they discover that a forced or coerced marriage has taken place, on the basis that a community based court would be better placed to deal with the intricacies of the community issues... The closest and greatest

understanding of the issues of the Muslim Community lies within the Muslim Community itself.

The MAT states that a 'crisis has loomed within the Muslim community without being noticed or dealt with for the past decades' (MAT 2008c), recalling that

[i]n over 70% of all marriages that take place, where the spouse is an English citizen and the other spouse is a foreign national from the Asian sub-continent, there is an element of force or coercion before the marriage takes place

(*Ibid.*)

and that the incidence of forced marriages which take place between spouses who are both resident in the UK is 'remote', although, according to H. Siddiqui, 'there are no comprehensive or official data on prevalence' (Siddiqui 2003). We only know that, according to the FMU, which handles 300 cases a year nationwide<sup>15</sup> (Revill and Asthana 2008), 65 per cent of all known cases in the UK involve people of Pakistani origin (BBC 2008) and 25 per cent involve Bangladeshi nationals (AFP 2010), that women and girls are the victims in 85 per cent of the total cases (BBC 2009a), that many of them are third-generation British (Revill and Asthana 2008), and aged between 13 and 30 (HM Government 2009). The FMU reports more male forced marriages, from 134 in 2008, to more than 220 e-mails and calls in 2009 (BBC 2010). As for the estimates given by some women's organisations, they range from 450 cases a year for Newham Asian Women's Project, to 1000 for the Southall Black Sisters (Anitha and Gill 2009). According to a Home Office-funded study led by N.K. Obe (2008), at least 3000 young women in Britain are the victims of forced marriage each year. The MAT deals with 'many dozens of cases every month' before forced marriage takes place, which represents 90 per cent of the people involved.<sup>16</sup> Because of the difficulties in gathering official and reliable data on the prevalence of forced marriage, the government has ordered a national count of missing schoolgirls in order to evaluate how many of them could have been coerced into marriage (Revill and Asthana 2008).<sup>17</sup>

#### Religious law and secular gender justice

When the MAT states that the 'crisis' of forced marriage within the Muslim community 'has not been dealt with for the past decades', it seems to underestimate the work already carried out by secular and

faith-based women's organisations and by the FMU, which runs an outreach programme raising awareness among practitioners, works in partnership with community and voluntary organisations, runs a public helpline to give advice and support to potential victims, and assists British and non-British nationals facing overseas cases (HM Government 2009). The FMU two-year Action Plan (2009–2010), co-ordinated through the Honour Based Violence Steering Group and under the umbrella of the Domestic Violence Action Plan, includes, as one of its headline objectives: 'To work towards eliminating forced marriage in the UK by challenging the practice before it takes place, through working with the communities, victims and governments to overcome the culture of acceptance and denial'. 'Community Response' is one of the key campaigns, consisting in developing a 'bottom-up approach' and creating 'community-led solutions' to forced marriage. Building 'partnerships with faith leaders and community groups' is one of the strategies chosen by the FMU as far as prevention is concerned. However, nothing concrete and effective has come up with religious leaders. As stated by the FMU in December 2010:

It is too early to draw firm conclusions from the project... We identified approximately forty organisations across the UK and have been trying to build relations with these groups with varying degrees of success. Some of the organisations have been keen to work with us in arranging training sessions for their staff or members, others have asked for information and a range of our publications.<sup>18</sup>

According to Sheikh Siddiqui, 'the work of the government is only cosmetic' since it does not deal with the problem in its initial phase, but only once coercion has been committed.<sup>19</sup> Indeed, as Dustin and Phillips have mentioned, the staff of the Home Office Unit have for some time been frustrated at not being able to tackle forced marriage in the UK (Dustin and Phillips 2006). But, today, efforts are being made to tackle the problem at the domestic level, and, according to the general FMU statistics for January–September 2010,<sup>20</sup> there have been 1241 instances when the FMU has given advice or support related to a possible forced marriage,<sup>21</sup> and, between January and October 2010, 656 reports related to possible forced marriage in the UK.<sup>22</sup> Contrary to the FMU, the MAT is against a legally based approach to resolving conflicts arising from forced marriage, arguing that 'going through the British courts... leaves the victim ostracized by the community' (AFP 2008). When examining the social context surrounding forced marriage, Sheikh Siddiqui



articulates what I called before 'private and public humiliation' of some members of the Muslim community. The report states that

[y]oung Muslims in Britain are under siege from their elders and parents because of the generational and cultural gap. They are alienated from the Mosques because these Mosques are mainly controlled by the elder generation. There is no comprehensive fusion for them in society as a whole because there remain signs of mistrust, prejudice and discrimination.

(MAT 2008a)

Overt discrimination by the mainstream Muslim society and by the British society is used here to prevent private-sphere violence at the family and community level. While being opposed to forced marriage, the MAT frames its vision of marriage within the gendered norms of socialisation that are specific to South Asia, in particular the notions of 'honour', 'pride' and 'shame', which regulate women's behaviour and sexuality. According to the 'methodology of marriage' developed by the MAT, there are four types of marriage in the Asian sub-continent. The first one is categorised as 'Inappropriate Free Will Marriage', which is defined as

a marriage that takes place through a relationship where there is prolonged courtship/cohabitation between the couple. This is deemed to be inappropriate in the light of Islamic Laws. Once they have decided to marry they exclude their families and undergo a civil marriage.

(MAT 2008a)

We have consequently the 'Appropriate Free Will Marriage',

[w]here the man and the woman have met at work or are friends through links between their families or indeed are blood related through families. They do not enter into a prolonged courtship but do have contact with each other and thus attain an understanding about each other's suitability. They then approach their parents and seek their agreement and the formalities of the marriage. The parents are then invited to play a role in the arrangements of the marriage up until its completion.

(*Ibid.*)

The other three types of marriage listed by the MAT are, as mentioned before, arranged marriage – which is viewed as positive among South Asian communities in the UK (Dustin 2006) – coerced marriage<sup>23</sup> and forced marriage. Actually, the framework of Islamic laws regarding the code of behaviour has a coercive power, and may be felt by young Muslims who do not wish to follow it as a form of pressure and policing. One wonders to what extent the MAT is involved in the lives of South Asian Muslim women and men regarding the socially and culturally constructed norms that they are supposed to follow. In a world of modernity and freedom where, for instance, young Pakistani Punjabis practise free online 'dating'<sup>24</sup> and courtship in both Pakistan and the UK, the MAT may want to control part of this community, even if, as shown by A. Georgiadis and A. Manning (2011), what appear to be secular values to Westerners rather refer to changing behaviours viewed as 'appropriate within Islam', since most of these young people consider themselves as Muslim. For some practitioners working in the UK with victims of forced marriage, the motives prompting the practice are precisely those which the MAT defines as 'appropriate'. These are

controlling unwanted behaviour... particularly the behaviour and sexuality of women... Preventing 'unsuitable' relationships, e.g. outside the ethnic, cultural, religious or caste group; Protecting 'family honour'... Protecting perceived cultural ideals and perceived religious ideals.

(HM Government 2009)

Could the MAT and the FMU accommodate each other's perspectives, knowing that the approach of the FMU is inherently 'feminist' (Dauvergne and Millbank 2010), whereas the MAT has a conservative view of marriage? While the FMU states that

controlling unwanted behaviour and sexuality (including perceived promiscuity, or being lesbian, gay, bisexual or transgender), particularly the behaviour and sexuality of women, and preventing "unsuitable" relationships

(HM Government 2009)

are some of the motives that can lead to forced marriage, the MAT starts by condemning pre-marital cohabitation and, implicitly, non-conforming sexuality without making clear that it can lead to forced marriage. While the FMU issued a document for the

lesbian, gay, bisexual and transgender (LGBT) community with personal stories of LGBT people who were coerced into marriage because their sexuality brought 'shame' on their family (FMU), the MAT does not explicitly mention the risk of forced marriage for this community, nor does it make any statement on the place of LGBT people within the Muslim community. During an interview I conducted with a MAT representative, he stated that: 'Liberal secular values don't give us safety in the sense that they don't give us the uniform minimum benchmark of civility', arguing, taking as examples homosexuality, incest and nudity in public places, that: 'if you follow liberal and secular values to their true definition, if a majority of people find it acceptable, then you have to accept it. We have allowed many things to happen without questioning where this trend is going to stop. When people say that they accept homosexuality, are they saying that everyone has the right to be homosexual? But to be homosexual is, to some people, an affront to humanity, because it's unnatural. If it was natural, everyone would follow that course of nature, and that would cause the extinction of mankind. It's not natural. It's beyond nature. But if you're accommodating that which is unnatural, because it is a liberal society, then where do you draw the line, and why do you draw the line? Liberalism is the faith of the secular church. If you start drawing the line, then why particularly with Muslims? Why not draw a line in a scientific way, with some process, which is then universally applied?'<sup>25</sup>

According to P. Patel, Director of Southall Black Sisters:

The reason why the MAT wants to deal with such issues rather than let the many Asian feminist organisations address them is because it wants to monopolise access to all women in the community so that it can control the terms of the debate. There is no doubt that the motivation is not to empower women but to seek to put a lid on the extent of autonomy that is permissible in a western country!<sup>26</sup>

What the real agenda is about is to position itself as the 'mediator' between the State and minority communities thus ousting out women's engagement with the State. Generally, although the report comes across as 'professional' and legalistic, and even at times 'feminist', it is very much about controlling marriage and women's roles by ensuring that marriage takes place in accordance with 'Islamic' values.<sup>27</sup>

However, we should not forget that the MAT report explicitly expresses its refusal of the principles of the traditions and rituals of marriage

that are based upon notions of 'honour' and 'pride', such as marriages that are agreed at the birth of the children, 'dictated by the caste of the families', decided by 'historical local friendships of members of the family', or by the 'material aspirations and advancements of the parents', 'linked to political aspirations of the parents', that 'solidify the strengths of one parent's side of the family over the other', 'protect the interests of the parents in their ancestral agricultural farmland', or that are aimed at 'fulfilling the care/needs of the parents' (MAT 2008a). The MAT seems, therefore, to have the ability and legitimacy to tackle the underlying causes of forced marriage with the aim of protecting potential victims.

### **Polarisation around mediation**

#### **Mediation versus legal remedies: the MAT approach**

As stated by J. Bengoetxea (2012):

Some individuals conceive of and lead more valuable lives through their membership of groups ('rights through a group') rather than being left on their own to devise their vision of the good. We can be normatively individualist but cognitively social or communitarian.

According to this type of politics of belonging, some people may prefer to resolve private disputes through the technique of mediation. Among the different types of intervention that can be enforced by the MAT, should the marriage be coerced or forced,<sup>28</sup> mediation and conciliation through senior members of the community is the most practised, since what is at stake is the 'harmony of the group' (MAT 2008c). The MAT report does not make clear who the senior members of the community are, how they are appointed, who selects them, and on what criteria. For the MAT representative, these are 'Imams, social leaders, tribal leaders, and elders'.<sup>29</sup> 'The aim of the visit would allow the perpetrators of the forced marriage to register the fact that their actions are now under social, community and legal scrutiny. It is envisaged that the intervention of a community elder shall be a source of great embarrassment in itself and shall cause the perpetrators to avoid undue actions' (MAT 2008a). Mediation consists in

an impartial expert talking to both sides separately, as well as together if needed and helps come up with a solution that both can accept. The mediator does not just tell you what you should do, but advises

on issues, asking questions that help people look at their own behaviour.

(MAT 2008e)

Indeed, within the framework of the Woolf reforms of the civil justice system, the Civil Procedure Rules encourage the use of ADR (*Ibid.*).<sup>30</sup> For the MAT representative:

The priority is to put the victim in a driving seat, to get the results that they want. We apply a little bit of pressure on the parents, back off, but not to the extent that the family breaks down. Back off to the extent that the victim is comfortable enough to then come and sit back within the family. Monitoring after mediation is a victim-led approach. The community leader is in charge of this process. The victim can decide to have a monthly meeting with him, or may prefer to call him whenever she/he wants. We put the victims in charge, we ask them what will give them more comfort because they know the circumstances better.<sup>31</sup>

The MAT does criticise some of the legal remedies already existing for the protection of victims, especially when these remedies are likely to undermine the integrity of the family. It states, for instance, that the Forced Marriage Protection Orders are 'narrow in their application to the practical matters relating to the forced marriage', because

[t]he imposition of the Order upon the wider family will be resented by them and held against the victim, adding to his/her perils; there will be greater reluctance of victims to approach the English Court system for assistance; the reference by the third parties to the English Courts can easily be obfuscated by the efforts of the wider family.

(*Ibid.*)

It is true that a victim is likely to be in danger of recrimination by family members when she/he applies for an order, and as a consequence may not feel like using legal remedies.<sup>32</sup> Between the danger experienced because of a threat of a constrained marriage, and the danger that may follow the fact of applying for a protection order, the victim may decide to please her parents. Nevertheless, it should be made clear that the FMU has a confidentiality policy, and that the information is not passed to the family if the victim requests so for his/her safety (HM Government

2009).<sup>33</sup> This element seems to be ignored by the MAT, which even questions the ability of an English judge to protect a victim.<sup>34</sup>

### State versatility and MAT credibility

The main point of contention is around mediation, arbitration<sup>35</sup> and conciliation.<sup>36</sup> Mediation had already been the main subject of debate in 1999, when the government decided to tackle the issue of forced marriage under the influence of Southall Black Sisters. In 1998, after the murder of Rukshana Naz by her brother and mother because she refused a marriage and became pregnant by the man she loved, the media attention was widespread.<sup>37</sup> Following the inquiry called by SBS, in 1999, M. O'Brien, the Home Office Minister, decided to set up the Home Office Working Group on Forced Marriage, where Baroness Uddin and Lord Ahmed were appointed as co-chairs. Membership of the group was mainly based on religious identity<sup>38</sup> (Siddiqui 2003). O'Brien then called for a 'mature multiculturalism' in the sense that 'multicultural sensitivity is no excuse for moral blindness'.<sup>39</sup> In the words of H. Siddiqui, who was invited as a member of this group:

There was a continuous tension between SBS, supported by ethnic minority feminists, and 'multiculturalists' backed by Islamist groups. For example, the latter maintained that education via community leaders rather than State intervention was an appropriate response to Violence Against Women. The feminists in contrast advocated for more State support for victims and opposed the recommendation that family mediation was an option in resolving the problem of forced marriage.<sup>40</sup> SBS strongly objected to mediation believing it to be a dangerous practice which often reconciles victims back home into abusive situations... and add to existing social, religious and cultural pressures on ethnic minority women to stay within or return to abusive family or marital relationships.

(Siddiqui 2008)

After the Working Group report endorsed the practice of mediation, H. Siddiqui and SBS resigned from the group.<sup>41</sup> Nevertheless, SBS has been influential on the prevention model adopted by the government. Nine years later, in its 'Multi-Agency Practice Guidelines' (HM Government 2009), the FMU warns against the 'danger of mediation', criticising 'the principle that the best place for a young person is with their family', and recommending that mediation should not be initiated, 'whether offered by community councils, religious or professional groups', on

the grounds that 'there have been cases of women being murdered by their families during mediation',<sup>42</sup> and that it 'can place someone at risk of further emotional and physical abuse'. These guidelines also warn against 'the danger of involving the family and community', stating that 'it may increase the risk of serious harm to the victim', and recommending that 'relatives, friends, community leaders and neighbours should not be used as interpreters' (HM Government 2009). Even though mediation is widespread within the South Asian community, no research has been conducted on the results of such practice in cases of forced marriage, nor do we know the prevalence of murders during mediation in the UK. The marriage bureau of Birmingham's Central Mosque, whose aim is to rescue marriages on the point of breakdown, reports that in six years, out of 200 divorces, only five ended in reconciliation (Siddiqui 2003).<sup>43</sup> Nevertheless, some faith-based women's groups practice mediation and conciliation (Siddiqui 2008). A MAT representative states: '99% of the time, we are successful in preventing forced marriages'.<sup>44</sup> Though each mediation session and decision of the MAT is recorded, the access to archives remains difficult, and we do not know the exact number of women and men who decide to approach the MAT to prevent or annul a coerced marriage, nor do we know who resorts to the MAT for this issue.<sup>45</sup> As stated by S. Bano: 'There is little if any accountability either of mediators or concerning the way in which cases are handled' (Bano 2011). The 1996 Woolf Report makes it clear that during mediation 'a neutral third party guides the parties to their own solution' (Lord Woolf 1996). One could wonder whether elder members of the community are a 'neutral third party'. However, the choice of mediating through elders is explained by the fact that the MAT has 'negative reactions from elders of the Muslim community. They think that parents should have the right to choose the partners of their kids, and the kids must obey them'.<sup>46</sup> Here, the role of elders seems to be a double-edged sword. Those who are chosen for mediation have a privileged position, not only to prevent a marriage by influencing the elders of a family who want to impose a spouse on their son/daughter, but also to remind young men and women about the Sharia principles concerning marriage. According to T. Mahmood (2012):

The public knowledge of MAT is generally very low amongst Muslims... although MAT seems to comply with the Arbitration Act on paper, more research needs to be carried out to determine whether this is the case in practice. If MAT is indeed to succeed then it not only needs to increase its transparency to dismiss its critics but also needs to increase its profile within the community. One of the main

issues which stand against MAT within the public and media sphere is potential human rights violations and fears about vulnerable people (e.g. women) being coerced into tribunal cases.

### Towards 'Joined up Thinking'?

Despite the polarised positions on mediation between the MAT and the government, the MAT developed an action plan 'based on the premise that the government agencies and the community need to come together and synchronise their efforts' (MAT 2008a). First of all, the MAT suggests the formation of a national working group that would be jointly chaired by the head of the MAT and a government minister.<sup>47</sup> Second, it calls for a Downing Street summit with the prime minister on forced marriages in order to 'establish the terms of reference for the NWG' and 'encourage "joined up thinking" between the various constituents of the NWG'. The next points of the action plan consist in 'reviewing the MAT solutions' with the Home Office<sup>48</sup> and the Foreign Office,<sup>49</sup> organising a national awareness campaign by the NWG, inviting Muslim scholars to make public statements against forced marriage on all national platforms, imams to make public statements at their Friday prayer sermons condemning the practice,<sup>50</sup> MPs and MAT Muslim scholars to call press conferences that should be attended by the 'local community leadership', MPs to use their links and relationships with their local media to ensure the campaign is publicised. The MAT also recommends the formation of local working groups<sup>51</sup> to 'micromanage' the problems with local agencies, as well as training for imams, Muslim scholars, MPs, local councillors, police officers, civil servants and social workers. This action plan has not come to light. A MAT representative thinks that the MAT has not been successful in working with MPs or organising a Downing Street summit because 'the government has not been helpful for lack of wisdom or stupidity',<sup>52</sup> even though in 2008 Justice Minister Lord Hunt endorsed the MAT initiatives, admitted that the FMU initiatives are not sufficient, and expressed the hope to 'keep in dialogue' with the MAT in order to 'find a way through' (MAT 2008e). The fact that the MAT wishes to co-chair a new national working group instead of integrating the FMU as a new member seems to show its desire for leadership. It also shows the lack of dialogue and collaborative work between the government and the MAT. Finally, while the FMU thinks it is acting in the best interest of the potential victims by avoiding mediation and family counselling, it seems to overlook the need for multicultural representation. As already mentioned by Phillips and Dustin (2004), a dialogue approach in the UK initiatives against

forced marriage is still lacking. This is likely to worsen, since not only is forced marriage rarely considered by refugee decision-makers to be a harm (Dauvergne and Millbank 2010), but the practice may become a criminal offence by 2013 (Travis 2012).

### Conclusion

State intervention – with the support of secular black British feminism – and Alternative Dispute Resolution through Islamic law regarding the way of preventing constrained marital unions seem to have taken opposite ways. Insofar as the government recognised the Muslim Arbitration Tribunal in 2008, declaring that Sharia could be used to settle marital disputes, it asserts the acceptance of mediation from members of the Muslim community in order to protect a person at risk of forced marriage. This new reality is contributing to the accommodation of ethnic, religious and legal pluralism in Britain. Far from leading to segregation or a failure of 'integration policies', it may 'expand multiculturalism' by developing 'mutual accommodation' (Vasta 2009), which refers to the mutual recognition of values. In the case of forced marriage as the MAT and the FMU understand it, the moral values of each institution about what has to be prevented are not so distant from one another. Both are engaged in avoiding situations where the consent of one of the partners is not respected. The FMU is carrying out the task through the defence of individual rights, whereas the MAT prefers a community-based approach. Mutual accommodation is about looking for dialogue (Modood 2008; Yuval-Davis 1999) in order not only to reach mutual respect and a common sense of belonging around the same moral values (in this case the non-acceptance of forced marriage), but also to give cultural rights to minorities for the sake of structural equality. 'Moderate secularism' (Modood 2005) provides a positive framework for such developments, allowing Muslims to be 'a legitimate social partner' (Modood 2006). Moreover, an 'inclusive dialogue' (Bano 2008) with the victims at risk may allow them not to feel obliged to choose between their collective and their individual rights (Shachar 2005). Knowing that, from the notion of 'hybridized subjectivity in the third space' (Bhabha 1990), 'British Muslim identity is fragmented, porous' (Bano 2008), diverse and flexible, a deliberative approach of multiculturalism may help the most vulnerable members 'develop their autonomous agency vis-à-vis their ascribed identities' (Benhabib 2002). A constructive dialogue between liberal secular voices and progressive religiously based bodies may lead young members of

the Muslim community to find spaces for resistance that can allow them to 'renew their own cultural traditions' (Shachar 2005) so that 'intergenerational social change' (Philips and Dustin 2004) takes place, and patriarchal interpretations of marriage can be progressively deconstructed at the individual, family and community levels, maintaining the benefits of kinship conventions and collective solidarity. The MAT has already begun this process through its explicit refusal of the traditions and rituals of marriage that are based upon notions of 'honour' and 'pride'. However, neither religion nor culture can be an excuse to represent young Muslim women as not being able to exercise their own agency (Dustin and Phillips 2006; Khan 1998). If external protections of a group are likely to produce internal restrictions of individuals, whether this happens in the realm of overt or private-sphere gender inequality, then external protections should be gendered in order to produce internal protections for vulnerable people. Multicultural citizenship exists where both group and individual rights strengthen themselves. Today, 'twenty-first century Islam is conducting its own internal battle on issues such as gender equality' (Kennett 2011), which may help a deliberative multicultural approach to take place from a human rights perspective without sacrificing the best side of familial and kinship solidarity.

### Notes

1. I thank Sheikh Faiz-ul-Aqtab Siddiqi and the Southall Black Sisters for their trust and generosity, as well as Tariq Modood, Prakash Shah, and Claire Bowen for their help and comments on this chapter.
2. 'The arrangement of a marriage by the parents concerned may be based on honourable intentions and has its advantages when it comes to evaluating the compatibility of the two persons. This also ensures that the potential spouses, with consultation and support from their parents, have thought through their ability to sustain each other and secure themselves financially. Parents are actively involved in searching for potential spouses who are compatible and seemingly suitable. The potential spouses concerned are given the opportunity to meet (within a family environment) and speak with each other. These meetings are usually arranged around family dinners/lunches and provide a safe and secure environment for the two individuals. In properly arranged marriages the will of the potential bride and bridegroom is established without any pressure. Under such circumstances experience has shown that arranged marriages can be a success' (MAT 2008a). The Ministry of Justice also makes a distinction between arranged and forced marriage: 'Forced marriage is not the same as an arranged marriage. In an arranged marriage, both spouses can choose whether or not to accept the arrangement. In forced marriage, one or both spouses do not (or, in the case of

- some adults with disabilities, cannot) consent to the marriage and duress is involved.' (Ministry of Justice 2010).
3. Most of the provisions that are contained in the Act were inspired by the consultation document issued by the government: 'Forced Marriage, A Wrong Not a Right' (2005), and the response to the consultation (2006). Under the Act, courts are able to make orders to protect the victim or the potential victim against forced marriage, giving 'relevant third parties' the power to go to court. The types of orders the court may take are, for instance, to stop intimidation and violence, to hand over all passports and birth certificates, and to stop someone from being taken abroad.
  4. Forty-three per cent of British Muslims are Pakistani, 16 per cent Bangladeshi, 8 per cent Indian and 6 per cent from other Asian backgrounds (Rehman 2007).
  5. Nearly half of the British Muslims live in and around London, with a concentration in Tower Hamlets of 40 per cent of those originating from Bangladesh, whereas most Pakistanis are concentrated in Northeast and West London (Rehman 2007).
  6. 'Izzat', term of Persian origin designating honour, respect and reputation.
  7. 'One woman came to SBS after fleeing from her family in Pakistan, who threatened to kill her unless she submitted to a virginity test before they married her off. If she proved not to be a virgin, she was going to be beaten and sold to a tribe in the mountains' (Siddiqi 2003).
  8. These five courts operate in London, Bradford, Birmingham, Manchester and Nuneaton (Hirsch 2009). Two more courts are planned for Glasgow and Edinburgh (Taher 2008). According to a Civitas report, there would be 85 Sharia Councils around the UK (Civitas 2009), but only five are operating under the MAT.
  9. They operate for civil matters only, including matrimonial problems, mosque disputes, inheritance problems and commercial issues.
  10. E-mail by Anna Dugoni, 18 March 2011.
  11. Debate between Aina Khan and Baroness Cox on 'Women and Sharia Law in the UK', <http://www.bbc.co.uk/programmes/p00htk85>.
  12. Interview with Sheikh Siddiqi, 14 July 2010.
  13. The expression 'Alternative Dispute Resolution' includes processes such as adjudication, conciliation, expert determination, early neutral evaluation, judicial appraisal and without prejudice negotiation, but the most widely used form of ADR is mediation (Shoosmiths 2006).
  14. Within the Sunni branch of Islam, there are four main schools of law: Hanafi, Maliki, Shafii and Hanbali. They differ in their ritual practices, and attachment to one of them is mostly based on the place of birth or residence.
  15. In 2008, more than 600 incidents of suspected forced marriage were reported to the FMU (HM Government 2009). The FMU received 1063 reports of possible forced marriages between January and August 2009 (BBC 2009a), and it repatriates around 300 victims of forced marriages each year, considering that 42 per cent of those it saves are under 16 (Taylor 2010). In January 2010, the FMU dealt with nine cases: two persons were aged 13; five applications were made by local authorities and three by the victim her/himself. In all the cases, forced marriage was prevented (Davies 2010). Moreover, since the Forced Marriage Act came into force in November 2008, allowing local authorities and any person to apply for an injunction if they think a child is at risk of being taken out of the country, 117 injunctions have been used to save children from a forced marriage (Taylor 2010), and, during the first year following the enforcement of the law, 86 Forced Marriage Protection Orders (FMPO) were implemented (BBC 2009b).
  16. Interview with Sheikh Siddiqi, 14 July 2010.
  17. We know, for instance, that in 2006 250 girls in Bradford were taken off the school roll and did not come back (Taylor 2010).
  18. E-mail sent by the FMU, 8 December 2010.
  19. Interview with Sheikh Siddiqi, 14 July 2010.
  20. Statistics sent by Suzelle Dickson, Joint Head of the FMU, 26 October 2010.
  21. Within the UK the geographical distribution of cases where known was as follows: London (23 per cent), West Midlands (14 per cent), North West (13 per cent), Yorks and Humber (8 per cent), South East (8 per cent), East Midlands (5 per cent), East Anglia (4 per cent), North East (3 per cent), Scotland (3 per cent), South West (2 per cent) and Wales (1 per cent) (General FMU Statistics sent by S. Dickson, 26 October 2010).
  22. Statistics sent by S. Dickson, 26 October 2010.
  23. 'Coerced marriages are when the two individuals concerned are not consulted at all or the consultation is at best ceremonial... Marriages that use the method of coercion are ones where the parents or other members of the family pressurise the individuals using tactics such as emotional blackmail... Parents may well threaten to remove their son/daughter from any inheritance that they may be due or tell their children that if they do not go through with this marriage then their refusal will bring the name of their family into disrepute' (MAT 2008a).
  24. <http://seo.salaamlove.com/Dating/Pakistani/United%20Kingdom/BIRMINGHAM>; <http://www.loveawake.com/free-online-dating/Pakistan-dating-service.html>; <http://pakistanilounge.com/>; <http://www.lavaplace.com/Personals/Pakistan/PK/>
  25. Interview with a MAT representative, 14 July and 23 July 2010. Substantially the same remarks were made by another MAT representative I interviewed in July 2010.
  26. E-mail by P. Patel, 27 September 2010.
  27. E-mail by P. Patel, 3 March 2010.
  28. These are: To refer to the English courts for a Forced Marriage Protection Order, hear the evidence of both the British spouse and the family of the British spouse, issue written warnings to the guilty parties 'that their actions may bring them under scrutiny of the English judicial and/or Police authorities' (MAT 2008a), liaise with the Entry Clearance Officer in order to offer evidence of a future forced marriage, 'offer advice about how to make an application to bring about the termination of the marriage under the UK laws and under the laws of the foreign country' and 'call upon senior members of the community close to the British spouse to visit his/her family in the UK and to alert them to the legal ramifications of participating or being complicit in a coerced or forced marriage' (*Ibid.*).
  29. Interview with a MAT representative, 23 July 2010.
  30. Active case management under Civil Procedure Rule 1.4 involved: 'encouraging the parties to use an alternative dispute resolution procedure if the court

- considers that to be appropriate and facilitating the use of such procedure' (MAT 2008d).
31. Interview with a MAT representative, 14 July 2010.
  32. When there is a threat or use of violence, the court can add a power of arrest by the police, and anyone who disobeys a court order can be sent to prison for up to two years (HMCS 2008). The MAT may fear that this kind of consequence may disrupt a whole family.
  33. However, according to SBS, some agencies and professionals are known to breach confidentiality. This is the case with the Department of Social Security, family general practitioners, police officers, social workers, lawyers and interpreters (SBS 2001).
  34. The MAT states that 'a more discreet approach would be more effective, however, the question arises as to whether an English judge dealing with such matters would be culturally sensitive enough to identify a genuine problem. Who is able to protect the interests of a potential victim whilst at the same time not understanding the genuine and legal practice of Asian Muslim community?' (MAT 2008b).
  35. 'According to the definition of the MAT, arbitration uses an impartial outsider (an arbitrator) to decide between two claims (both sides have to agree to go to arbitration). The arbitrator acts like a judge, making a firm decision on a case. The two sides of the dispute will normally agree in advance whether the arbitrator's decision will be legally binding (so they have to go along with the decision) or not (so they can still decide to go to a civil court). They cannot agree to make it legally binding and later take court proceedings because they did not like the decision we made' (MAT 2008d).
  36. 'Conciliation is similar to mediation but is normally used when there is a particular legal dispute, rather than more general problems. A conciliator will normally be there to encourage the two sides to come to an agreement between themselves whereas a mediator will often suggest their own solution' (MAT 2008d).
  37. The other cases that attracted media attention at that time were those of the couple 'Jack and Zena', who escaped for seven years because Zena's parents wanted to force her into marriage to a cousin to whom she had been promised at birth (SBS 2001), and a Sikh girl who was made a ward of court after her parents abducted her to India to coerce her into a marriage (Dustin and Phillips 2006).
  38. The members of the Working Group were: Lord Ahmed, Baroness Uddin, Lord Dholakia OBE (Chair of the National Association for the Care and Resettlement of Offenders and member of the Home Secretary's Race Relations Forum), Yasmin Alibhai-Brown (author and journalist and member of the Home Secretary's Race Relations Forum), Surinder Singh Attariwala (education and language consultant), Thomas Chan (member of the Metropolitan Police Committee, member of the Home Secretary's Race Relations Forum and the Deputy Chairman of the Chinese in Britain Forum), Humera Khan (consultant to the Muslim women's organisation, the An-Nisa Society), Rita Patel (Chair of the 1990 Trust, Director of the Belgrave Baheno women's organisation), Hannana Siddiqui (member of the Southall Black Sisters women's organisation).
  39. The establishment of the Working Group followed a parliamentary debate in 1999 led by Ann Cryer MP and a seminar co-convened by SBS and the Institute of Public Policy and Research (IPPR) the same year, in which SBS called for an inquiry into the cases of forced marriage that then attracted the media (Siddiqui 2003). In 2000, the Home Office and the FCO published a joint action plan on the overseas dimension of forced marriage. *A Choice by Right* was the first report to be published in June 2001 by the UK Home Office Working Group on Forced Marriage.
  40. The report *A Choice by Right* states: 'Based on the evidence presented, the Working Group feels that victims should be able to access mediation as a means of conflict resolution if they wish to do so. Their choice should be respected. But mediation services should only be provided where there are professional guidelines and a code of conduct, and only staff specifically trained in mediation skills should undertake this work' (Uddin and Ahmed 2000).
  41. For SBS, 'the acceptance of mediation with the aim of reconciliation as a solution to forced marriage is to allow moral blindness to creep in through the back door. Mediation in situations of abuse such as forced marriage, whilst appeasing community leaders, endangers the lives and wellbeing of countless women and girls' (SBS 2001).
  42. There was, for instance, the case of Vandana Patel, who was stabbed to death by her husband during a meeting organised by the police at the Stoke Newington Police Station's Domestic Violence Unit (North London) in 1991. In spite of this case, the police kept on with mediation (Siddiqui 2003).
  43. H. Siddiqui also mentions the case of a seminar organised by Interights (legal international human rights group), the Centre for Islamic and Middle Eastern Law (CIMEL) and SBS in 2000, where a Pakistani human rights lawyer exposed the dangers of mediation, recalling one of her clients who was shot dead by a hired gunman in the lawyer's office during a mediation for seeking a divorce after ten years of marital abuse (Siddiqui 2003).
  44. Interview with a MAT representative, 14 July 2010.
  45. For commercial disputes, we know that non-Muslims resort to the MAT because it is cheaper and faster than the British system.
  46. Interview with a MAT representative, 14 July 2010.
  47. The other constituents of the NWG would be: 'Foreign Office (FMU); Foreign Office (Diplomacy); Home Office (Border Control); ACPO; Muslim Scholars; Local Authorities; Youth Groups; Women's Groups' (MAT 2008a).
  48. The MAT solutions to be reviewed with the Home Office are the following: 'Establish a set of "Signs Strategy" enabling agencies to recognize a forced marriage situation; establish a register recognized and accessed by all support agencies, detailing all those persons found to be involved in a forced marriage situation; establish particular pathways of risk assessment and dealing with the risk, via the social services and the police' (MAT 2008a).
  49. The objective is 'to seek support and understanding with the British Embassies and High Commissions in the key role played by the tribunals administered by MAT'. Moreover, the certification by MAT showing evidence offered by the sponsoring spouse to the judges of MAT that there is no evidence of coercion or force should be recognised as valid by the Entry Clearance Officers.
  50. As part of the campaign against forced marriage, the MAT is currently in touch with about 800 imams (interview with Sheikh Siddiqui, 23 July 2010).

51. A Local Working Group would be composed of 'a MAT Judge, councillor, MP, Police Constabulary (ACC Level), social services, voluntary groups, Islamic scholars, women's groups, youth groups, and professional groups'. The jurisdictions for LWGs would be: London, Manchester, Liverpool, Bradford, Glasgow, Nelson, Birmingham, Bristol, Blackburn and Luton (MAT 2008a).
52. Interview with a MAT representative, 23 July 2010.

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