

# The Quick Sands of the Law of Marriage and Zanzibar: Some Missing Footnotes

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## Abstract

Though it is accepted that marriage involves establishing an emotional bond between man and woman party to the marriage, yet among some African communities the practice of forced marriage is/has never been an abomination. Even for that matter, the custom of forced marriage was reckoned as one of the forms of marriage in some Asian countries like India which is one of the most ancient civilizations of the world. Then this practice did not survive beyond the classical period. Except, that with the changing times the form of force too may have undergone some change and taken a different shape but, as of the present the statutory law since mid of twentieth century soon after India won freedom regulate the institution of marriage. This shows that different factors contribute towards evolution of a social or other institutions their pattern or structure. The institution of marriage is therefore not an exception to this general principle. The conditions that contribute towards evolution of particular marriage practice therefore depends on the pattern of social interaction between the people, extent of intervention by the state, legal and economic systems, freedom and the urge and the need to maintain sexual privacy. The reference to India has been deliberate because Rakhsas after killing the members of the family of the girl and destroying her place of aboard would forcibly take the girl and marry with her. As such the instant practice had a political undertone. A similar not the same kind of development was witnessed by the Muslims of Zanzibar when to their dismay and disappointment some Muslims resorted to force marriage and the Muslim Sheikhs of Zanzibar instead of condemning it, officiated the marriage ceremonies. Why? This new practice was popularly called the *Ndoa za Kurume* or forced marriage. Then the same is enough to prove the social, economic, legal conditions and quality of interaction between the people ipso facto influence the marriage customs and practices in any society. This was certainly a reaction against the centuries old colonial oppression, and a reaction against socio-politico and economic trends imposed on the subjugated and impoverished people of Zanzibar who on being liberated forgot the Shariah and its ethos and the religious leaders preferred to forget it too consequently did not mind stretching their supportive hand towards the revolutionists. The instant study intends to examine and show how societal forces determine the nature of institutions no matter these institutions may have religious basis. Furthermore, effort would be made to determine the nature of impact it registered on a people who certainly are religious at core but metropolitan in nature for simple reason that Zanzibar has been a tourist spot and people being peace.

**Keywords:** Muslim Marriage, Compulsion, Culture, State, Public Perception

## 1. Introduction: Marriage, a Social Institution

Marriage as a social institution has passed through different stages of social evolution. Therefore, no sooner the morals, norms and values of the society change the texture of marriage is reciprocally made to adjust and accommodate the changing social conditions.<sup>1</sup> It may not tantamount to exaggeration to argue that a sizeable portion of social norms, which otherwise help to shape people's behavior, actually deal with institution of the marriage. Since the society is organic so are its norms therefore people adopt new methods and principles to meet their societal needs.<sup>2</sup> The same in view some sociologists observe that diverse factors ranging from social interactions, State intervention to freedom and the desire for maintaining sexual privacy have molded the perception of marriage from ancient times of social unity to contemporary times of civil right revolution.<sup>3</sup> Marriage, they argue further, has been one of the most powerful ways to exhibit the social values and articulates the aspirations of the people who desire to establish matrimonial relationships.<sup>4</sup> Hence, peoples' attitude towards marriage depends greatly on those patterns.

Marriages, therefore, may be of different kinds depending upon the cultural ethos of the people likewise two major types of marriages namely the religious marriages and civil marriages are commonly practiced by people in Zanzibar. The religious form of marriage is most popular in Zanzibar because it being a majority

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<sup>1</sup> See Andrew J. Cherlin "The Deinstitutionalization of American Marriage," *Journal of Marriage and Family*, 66:4 (2004): 848.

<sup>2</sup> Ibid.

<sup>3</sup> See Jennie Holman Blake, "The History and Evolution of Marriage from Sacrament to Contract, Religion, and Law in the Western Tradition," *Brigham Young University Law Review*, (1999): 847.

<sup>4</sup> See Jana. B. Singer, "Privatisation of Family Law," *Wis. L. Rev.*, (September, 1992/October, 1992): 1443.

Muslim State.<sup>1</sup> The practices related with religious form of the marriage are unavoidable on account of the fact that the people are highly religious oriented. Hence, it is morally unacceptable for a man and woman to live together without having solemnized marriage which being the cardinal principle of Islamic familial policy. Unlike in other jurisdictions where solemnization of marriage can be replaced by mere association and cohabitation,<sup>2</sup> every such union of male and female unit in Zanzibar needs to be legalized through a valid marriage agreement.

As such, the marriage is therefore perceived differently under Shariah as being bound with socio-religious effects and consequences. For example, marriage is socially regarded as a symbol of personal status and an avenue through which an individual gains further acceptance and respect from within a community. This apart, the children born of such a union are treated as legitimate liable socio-legal reverberation.<sup>3</sup> It binds parents with a duty to groom the children so does it bind the children to take care of their parents and show their submission and obedience.<sup>4</sup> Its Economic ramification being that, the marriage is a determining factor to affect inheritance and the passing of family wealth to the descendants.<sup>5</sup> In its spiritual aspect the marriage and procreation are regarded as sacred acts that bring together the couple in a blessed relation to avoid illicit sexual acts otherwise bereft of any legal consequences. This way the emphasis on formal solemnization of marriage is reckoned as to protect the social, economic and spiritual conditions of life of man and women both at individual and collective levels.<sup>6</sup> Therefore apart from religious teachings, extent of State intervention, legal and economic effects, freedom and the urge for sexual privacy like effects assimilated to marriage ultimately shape the perception of people about marriage. This applies universally so does it apply to Zanzibar as well.

## 2. Martyred or Married: Zanzibari Perspective

All the civilized legal systems attach great importance to the dignity of human beings and protect the same by recognizing the right to life. In fact the human dignity is the majestic gate that would open to right to life and the right to exercise of choice is the road that leads to this gate. Therefore freedom to of a person to exercise his choice as he or she pleases in ordinary language would help to ascribe a meaning to right to life. Any one denied this right in the name of etiquette or social cohesion is not less than a martyr like Socrates who drank hemlock to protect social cohesion. The Sharia like other religious systems recognizes the right to exercise choice or 'free will' to be the sinew of human dignity since the *Qur'an* declares that "man has been created out of the best stuff but on account of his own conduct may touch lowest of low." Denying the same to an individual under the authority of state or under the authority vested by state in some individual or agency in their capacity as a guardian or *Walī* amounts to sacrificing him/her on the altar of selfishness and pride in the name of parental authority that Romans termed as *paren's patria* least caring that denial of the right to exercise choice would amount to debasing human being and stifling the body and mind of the person usurped.<sup>7</sup>

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<sup>1</sup> Hence, over 94% of all marriages in Zanzibar are Muslim marriages.

<sup>2</sup> For the survey on cohabitation see J. A. Divis, T. W. Smith, & P. Marsden, *General Social Surveys, 1972 - 2002 Cumulative Codebook*, (Chicago National Opinion Research Centre, University of Chicago, 2003) quoted by Cherlin, *The Deinstitutionalization*, 850.

<sup>3</sup> Islam favors marriage as a means to emotional and sexual gratification, as a mechanism of tension reduction, legitimate procreation and social placement, and as an approach to enter family alliance and group solidarity. See Hammūdāh, *Family Structure in Islam*, (U.S.A.: American Trust Publications, 1977), 54 – 55. Hence, the main aim of Muslim marriage is 'Sukun' (satisfaction or comfort), or peace of mind, 'Muaddah' (love) and 'Rahmah' (kindness, sympathy compassion). See Muslim Law of Marriage in M. A. Qureish, *Muslim Law of Marriage, Divorce and Maintenance*, (New Delhi: Deep & Deep Publications, 1995), 55 – 81.

<sup>4</sup> *Qur'an, al-kahaf* (46:15).

<sup>5</sup> Islam regards sex as natural and good, but restricts it to the partners of marriage so as to ensure the responsibility for its consequences. Secondly, it is to provide the spiritual and legal foundation of a family. Islam ordains inheritance to children, *Qur'an, An-Nisā* (4:21) Allah commands you as regards your children (inheritance)..., the children must have been obtained through a legal and valid marriage. Hence, adultery and fornication (Zina) is forbidden in Islam, hence. As given in the *Qur'an, Al-Isra* (17:32) "And come not near to the unlawful sexual intercourse. Verily, it is a Fahishah (i.e. anything that transgresses its limits (a great sin)), and an evil way (that leads one to Hell unless Allah forgives him)." Prophet (pbuh) said: "If a man commits fornication with a free woman or a slave woman, the child is the product of fornication, he neither inherits nor may anyone inherit from him" [Thirmidi]. Therefore, no inheritance is given to illegitimate child. For more elaboration on Muslim inheritance see *Qur'an, An-Nisā* (4:11) and (4:176).

<sup>6</sup> In Islamic law, marriage is not merely a civil contract but a religious duty. As started in the *Qur'an* "And one of His signs is that he created mates for you from yourselves that you may find quiet of mind in them, and he put between you love and compassion. Surely these are signs in this for people who reflect" *Qur'an*, (30:21).

<sup>7</sup> *Parens patriae* was invoked in the King's Bench in 16<sup>th</sup> century in the case of *non-compos mentis* (not having control over the mind and intellect) adults. The doctrine of *Parens patriae* was gradually applied to children throughout 17<sup>th</sup> and 18<sup>th</sup> Centuries, and has since evolved from one granting absolute rights to the sovereign to one or associated with rights and

In view of this it is important to flash the light on a kind of practice followed in Zanzibar in the matter of marriage of a person whether male or female having entered into a marriage bond against his/her wish or will is in consonance with the general principle of Islamic familial jurisprudence? The fact being that in Zanzibar the consent of either of the party to marriage or that of both the parties is generally obtained under coercion that tantamount to violation of basic rights of such individual/s which no legal system may vouch for and the Sharia is not an exception. Notwithstanding this universal principle the practice of “forced marriage” in Zanzibar under the guise of the parent/guardian or the families’ authority to take important decisions regarding the marriage of their young ones and impose on them their own decisions in the name Shariah is totally unthinkable.

The failure and reluctance on the part of society to condemn the instant practice has encouraged parents to involve even some important institutions of State Administration like police force so as to realize their aims and objective in this regard. Consequently the incidents of forced marriage have increased notwithstanding the fact that the institution of police in Zanzibar which otherwise is the most august institution has lost the faith of the people. For instance, it is a common practice to find police officers being tipped by the families to get the culprits guilty of otherwise unlawful sexual conduct arrested, so as to coerce or force him into signing the marriage contract. This practice has thrown its roots deep into Zanzibar soil so much so the parental resolve, mainly regarding their daughters, regarding the marriage between the daughters and their fiancées guilty of lascivious conduct, to be final and conclusive even though solemnized against the physical protests registered by intended spouses.<sup>1</sup> The parents usually force the parties to sign the marriage contract without heeding the wishes of the parties constituting the conjugam who are in marriage. This changes the very nature of the marriage because use of physical force over shadows the whole of the concept of marriage whereby the usurped or coerced party is virtually sacrificed or at the best martyred.

Academicians have expressed contradictory views regarding the acceptability of the practices of forced marriage in Zanzibar. Apart from the common understanding that marriage is the result of mutual understanding expressed through an undertaking called Nikah by the parties show their willingness to live as husband and wife become redundant because their consent being absent or it being induced by coercion or duress. The state of perception of these practices, however, has never been the same for the all times and to all communities practicing it. It changes correspond to the prevailing societal conditions whether political, social or economic determining the status of the parties. At the same the factors like social interactions, State intervention, legal and economic systems, freedom and the extent yearning for sexual privacy also play a major role to determine the perception of marriage in general and the practice of forced is not an exception to it.

### **2.1 Zanzibar and Marriage: An Historical over View**

Zanzibar is a peaceful and metro-Politian society. It has therefore a long history of inter-ethnic marriages and other conjugal relationships. This has, to a great extent, been on account of its historical conditions and its political structure right from the times of its colonialization down to the period of political arrangement adopted after independence. During all these stages, the historical and political influences played a major role in shaping the people’s perceptions with regard to marriage in general. However contrary to its cultural ethos some unethical and un-Islamic practices like forced marriage has surprisingly percolated within the broader framework of Islamic marriage and did survive because of indifference of state towards its deleterious effects. This was so, may be because the practices like slavery and concubine traceable to the alien/Arab culture was legal and least abominable. It is believed that Seyyid Said have had 75 concubines who bore him a total number of 100 children. At his death, in 1856 Said was survived by 75 *suria* (Slave concubines) and 36 children, all of whom were born by *suria*.<sup>2</sup>

Contrary to Islamic ethos it seems that the Arabs preferred to practice it as a measure to humble the local people. All the same, it did not according to scholars such as Cooper,<sup>3</sup> El-Zein,<sup>4</sup> and Peters<sup>5</sup> affect the status of their off shoots. They observe further in this regard that while slavery on the East Africa coast involved

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obligations of the State and the courts towards children and incapacitated adults. For further stud see David E. Witte, “People v. Bennet: Analytical Approaches to Recognizing a Fundamental Parental Right under the Nineteenth Amendment,” *BYU Law Review* 186, (1996): 227 – 234.

<sup>1</sup> On the other hand, this form of marriage may even appear, to some, as a sale of human beings. See E. Warner, “Behind The Wedding Veil: Child Marriage As A Form of Trafficking in Girls,” *U.J. Gender Soc. Pol’y & L*, (2004): 233 – 271. Or slavery see P. S. Ranjan, “Slavery: A Continuing Evil,” 4 *MLJ*, or 4*MLJA* (1999): 141.

<sup>2</sup> See also Ingrams, *Cronology and Genealogies of Zanzibar Rulers*. Zanzibar: Government Printing Office, 1929, at 140, Ruete infra note 23 on page 102, at 7. and Abdulla S. Farsi, *Sayyid Said Bin Sulta*. Mwuongozi Printing Press, 1942, at 120.

<sup>3</sup> F. Cooper, *Plantation Slavery on East Coast of Africa*, (New Heaven: Yale University Press, 1977), 263 – 267.

<sup>4</sup> A. H. El-Zein, *Sacred Meadow: A Structural Analysis of Religious Symbolism In East African Town*. (Evaston: Northwestern University Press, 1974), 30 – 33 and 84 – 88.

<sup>5</sup> D. P. ‘Amory, “Politic Identity of Zanzibar,” Ph.D. dissertation, Stanford University, 1994, 101 – 102.

the subordination of slaves to elites yet its psychological impact on local population cannot be ignored. Mere legitimacy of the children cannot be a ground to legitimize what was otherwise ethically objectionable.<sup>1</sup> Notwithstanding this the social implications of this behavior seems to have been perceived differently by the Zanzibaris. It may have respectively created a sense of social inferiority and superiority complexes among the peoples of Zanzibar who broadly speaking were the rulers and the ruled.

The targeted population, however, had experienced peculiar anxiety in-terms of unconscious fear resulting in refreshing the memory of unpleasant experiences of slavery that was alive in their minds. In fact these people had developed some kind of psychological trauma since they had developed fairly a low opinion about their own worth that had adversely influenced their behavior. For an African woman, marrying an Arab man was a way of promoting her status and the status of her parents generally. To the contrary, Arab families, especially elite, restricted their daughters from marrying African men.<sup>2</sup> What have been the factors that prompted native African ladies to submit and yield to the ruling Arab elites? O'Malley has attempted to associate four major reasons behind this phenomenon. African woman, were not that way easy going stuff but submitted to Arab craving to join marital bond on account of social compulsions like that there was a complete overlap of the class and race. Secondly, the belief that women exchange sex and housekeeping for economic resources from men, whether within or outside of marriage relationships. Thirdly, marriage arrangements involve family and formal negotiations and not only agreement between two individuals. Finally, is a history of slavery whereby slave or ex-slaves could never provide their children with the same status or protection as Arab or non-slave people. For the greater extent, this could be the reason behind yielding to Arabs eager to coerce a native African lady to cohabitation but on the other hand political inequality and economical differences could also have facilitated the intensity of the state to ignore the incidents like this.<sup>3</sup>

Also that some scholars have observed that Arab men married *Waswahili*<sup>4</sup> only to claim their land.<sup>5</sup> On the other hand, cross-cousin marriages that were performed within Arab families could be the example of coercive marriage.<sup>6</sup> This suggests that partners were not necessarily always ready to enter into marriage bond voluntarily but would submit under duress or because of the parents' pressure. This may have been the reason that Emily Ruete eloped with a German businessman to avoid family restraints and compulsion thereby depriving her to marry a man of her choice.<sup>7</sup> This practice has percolated deep into bone and blood of Zanzibar

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<sup>1</sup> Fair contends that apart from the first Sultan of Zanzibar, Sayyed Said, all future Sultans were born by slave mothers, i.e. *suria* (concubines). See L. Fair, "Pastimes and Politics: A Social History of Zanzibar Ng'ambo's Community 1890 – 1950," Ph.D. dissertation, University of Minnesota, 1994, 54. This assumption is also supported by O'Malley, on one hand, as she commented that children born to African mothers acquired higher status of their Arab fathers, whether or not they had what was considered as phenotypically African or Arab features. See G. E. O'Malley, "Marriage and Morality: Negotiating Gender and Respect in Zanzibar Town," Ph.D. dissertation, University of Washington, 2000, 109 – 110.

<sup>2</sup> F. Cooper, *Plantation Slavery on East Coast of Africa*, New Haven: Yale University Press, 1977 in O'Malley, 2000 Ibid, 110. See also Amory, *Politic Identity*, 153.

<sup>3</sup> It has to be noted that during 19<sup>th</sup> century the old socio-economy and political hierarchy on the East coast of Africa, based on Omani Arabs.

<sup>4</sup> Despite of different accounts on the historical origin of the people of Zanzibar, there is a common agreement that the dominant first inhabitants of Zanzibar are Swahili. These are said to be the coastal Bantu people, who had arrived in the 3<sup>rd</sup> and 4<sup>th</sup> centuries from the around the area of coastal Africa, and who traded with the Arabs. The tendency to intermarry accustomed by these people led the Swahili to adopt Arab customs and traditions. As contended by Caled Chul, "It is very difficult to collect any reliable information regarding the original inhabitants of Zanzibar....the inhabitants of Zanzibar are mainly three sub-Swahili groups: Wahadimu, Watumbatu, and other Swahili immigrants from mainland (including the Shirazi). The Swahili groups formed about 80% of the whole population. About 10% are Arabs, 9% are Indo-Pakistanis, and the rest are Somalis, Comorians and Goans. See C. C. S. Kim, 'Missiological Understanding of the Swahili Muslim in Zanzibar,' (unpublished M.A. thesis, Fuller Theological Seminary, 1995), 28.

<sup>5</sup> Cooper, 1977, at 147. See also the case of *Kassim Bin Mohamed Barwani v. Awadh Bin Salim Awadh* [1948] Civil Appeal No. 7, His Highness Sultan's court for Zanzibar, ZLR, 24, before Sir John Gray, C.J. The respondent claimed inheritance in a deceased woman's (an ex-slave) estate on the ground that he was her husband. Though she had been given in marriage by the Sheha of her tribe and not by her son the appellant, who was under Shafi'i law the person entitled to give her away, as her guardian. The marriage was duly consummated. It was held in this case, "In any case the wife, an ex-slave, could not be held to inferior status to her husband, a free-born man, in the light not only of the Shafi'i doctrine on the point but also as section 2 of the Slavery Decree, which declare that the court shall not recognize the status of slavery." A respondent (former husband) was therefore allowed to take the estate as inheritance.

<sup>6</sup> Prins, 'The Swahili' at 87.

<sup>7</sup> Her born name was Salima Bint Said, a daughter of Sultan of Oman; she was also called Salme or Salma. She was born into a Royal family of Zanzibar in 1844, her father Sayyid Said Busaidi, moved his capital from Oman to Zanzibar shortly before her birth. Her mother was one of the Said's *suria*. A Caucasian from region bordering the black sea, Salme's mother was

people in general and among Zanzibari youth in general. As a result the latter are mostly being denied the right to choose a partner of their choice with whom they preferred to establish the conjugam.

The community itself openly embraced arranged marriage practice as a protective strategy and means of cultural, economic, and societal preservation and autonomy. Choice of partner was restricted in an attempt to insulate “tribal and social purity.”<sup>1</sup> This measure is mostly taken by number of countries where child and coerced marriages are practically accepted.<sup>2</sup>

The marriage under coercion was accepted as mechanism to protect one’s race, property and social status and perhaps the same notion persisted and dominated the conscious mind of the rulers since 1930 when the racial policy was codified into law consequently followed in the matters of education, employment<sup>3</sup> Even the services like health care, social services including protection of the citizens were available only along racial lines. The debate of the Legislative Council of Zanzibar indicates that even the treatment of prisoners in Zanzibar was determined on the basis of racial background of the convict.<sup>4</sup> This trend had percolated into the broader societal fiber so much so that around 1941 imported goods including matches, kerosene, flour, butter, rice and *Kanga* (garment) like things were sold to people on racial basis.<sup>5</sup> In discussing the struggle over disciplinary spaces in Zanzibar in 19<sup>th</sup> century, Mc Gruder exposes that Policies governing imprisonment of the convicts in the Zanzibar Protectorate were patently and unapologetically racist even in the prison, asylum and in the matters like the confinement of lunatics.<sup>6</sup> But extension of the same to govern institution like marriage contrary to doctrine of *Kafa’ā* (social equality) between the parties to marriage was stretched beyond its logical conclusions.

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captured from war while she was still child and acquired by Sultan at 7 or 8 years of age. Salme got pregnancy out of wedlock with a non-Muslim German business man, Rodolf Henrich Ruete, who lived next door. On learned of this fact the Sultan sent a message to her that she had a permission to go for ‘pilgrimage’ to Makkah. In a technical connotation, that could be permanent pilgrimage in cost of her sin. Knowing this, on the night of 24<sup>th</sup> August 1866, Salme escaped Zanzibar to Germany. She denounced her religion in 1867, changed her name to Emily and become a wife of Rodolf Ruete. Three years later her husband died leaving her in precocious financial position. The rest of her life was consumed with attempts to rejoin her family in Zanzibar or at least to win financial assistance. In 1985, she made a trip to Zanzibar and celebrated her birthday in a ship with only Germans. In her memoirs she stated “the conflict of my feelings was only an echo of the many conflicts my life had known. What we did we poor human beings but frail skiffs tossed in the ocean of life. I had left my native home as Arab and a true Mohametan; I returned as an undeserving Christian and half a German.” Only until 1922, she persuaded the last Sultan of Zanzibar, Seyyid Khalifa Bin Haroub to bestow a pension, knowing that she was the last surviving member of her generation. Two years later she died in 1924. Her family petitioned to Sultan to continue the pension, long enough to pay for her funeral expenses. The Sultan declined. See Amory, *Politics Identity*, 86 – 96, See also ZNA AB10/109 and E. Ruete, *The Memoirs of Arabian Princes From Zanzibar*, (New York: Markus Weiner Publishing, 1989).

<sup>1</sup> J. Middleton, *The World of Swahili: An African Mercantile Civilization*, (Yale University, 1992), 112 quoted in Amory, *Politics Identity*, 154 – 155.

<sup>2</sup> See, J. Timmerman, “When Her Feet Touch the Ground: Conflict Between the Roma Familistic Custom of Arranged Juvenile Marriage and Enforcement of International Human Rights Treaties,” *J. Transnat’l L. & Pol’y*, 13 (2004), 475 – 497.

<sup>3</sup> See I. Saleh, *A Short History of Comorians in Zanzibar*. (Tanganyikan Standard, 1936) quoted in Fair, *Pastime* 239 – 241. By 1948. The figure of government attendant school shows 41% were Comorians, 27% Arabs, 17% Hadimus and 12% of members of ethnic mainland communities. In 1939 only 2% of the Protectorate’s population was literate in Swahili in Roman script. See F. B. Wilson *A Note of Adult Literacy amongst the Rural Population of Zanzibar Protectorate*, (Government Printing Office, 1939) in Prins, *Swahili-Speaking*, 107.

<sup>4</sup> The European’s detainees in Zanzibar were given daily ration of 16 ounces of bread and meat and 8 ounces each of potatoes and vegetables. Indians and Arabs were allotted 16 ounces of bread, 8 ounces of rice and 4 ounces of either meat or fish. Natives were give alternating ration of 16 ounces of rice or millet, no bread, no meat, no vegetables and 4 ounces of fish. For sleeping Europeans and Goans were allotted mattress, two blankets, a pillow and mosquito net while natives were given sleeping mat and blanket only during cold season. ZNA, Debates on the Legislative Council, 24<sup>th</sup> June, 1932, BA 16/40.

<sup>5</sup> Colonial administrators’ tendency to categorise social groups as “tribes” or “ethnic groups” is well documented. Lofchie argues that regardless of the multi-ethnic realities of the situation, British colonial rule bolstered and in some ways created an Arab ruling elite: “In effect, Britain’s concept of Zanzibar as an Arab-state was a self-fulfilling prophecy, for it led to colonial practices which facilitated a continuation of Arab oligarchic rule.” These practices included preferential treatment in education, including the granting of overseas scholarships to Arabs; differential salary scales; the extensive recruitment of Arabs into an expanded and reorganized colonial bureaucracy; and (from 1926 to 1956) the fullest representation of any racial community in Zanzibar’s legislative Council. See, M. F. Lofchie, *Zanzibar: Background to Revolution*, (Princeton: Princeton University Press, 1965), 60 – 68 and 107. Also see Zanzibar National Archive (ZNA) AK 17/70, AB 12/2, BA 30/8.

<sup>6</sup> J. H. McGruder, “Madness in Zanzibar: “Schizophrenia” in three families in the “developing” world,” Ph.D. dissertation, University of Washington 1999, 56 – 58. She explains that the Old Barracks was used only to house “Africans,” by which term the British meant both locally born and mainlanders, essentially anyone not of European, Arab or Indian descent. Separate accommodations were needed for “Asiatics” in any new asylum space. On other hand, “British Indians” and Europeans who went mad were to be repatriated. Arabs accommodated in the system were asked to pay if they had the means. For more details see also ZNA, AB 2/363 and AB 2/157.

## 2.2 Muslim Marriage and the State Intervention in Zanzibar

The marriage under Islamic law revolves around free consent of the parties to the marriage. The emphasis on “consent” shows that the parties should juxtapose their consent against the check stone of logic and reason long before they value their feelings. The latter should be subordinated to the elements like social -economic equality and all other factors essential towards that. This has been crystalized by the Muslim jurists under the caption “*Doctrine of Kafa’ā*”. The instant doctrine is generally abused by the Muslim people and worst of it happened in Zanzibar when at the hands of Arab rulers the racial theme of equality (*Kafa’ā*) gradually percolated into the broader framework of the institution of marriage. This was achieved through the codification of racial law that was enacted to regulate the marriage of the royal family though narrow in its application and scope yet it cannot escape attention because it set a trend in this regard.

The four section piece of principal legislation was enacted to regulate the future marriages of female members of Royal family (*Auld-el-Imam*).<sup>1</sup> The aim of the legislation appears to restrict royal members from marriage without prior consent of the His Highness Sultan. As section 2 of the same Decree, proclaims that “no female member of the Royal Family (*Auld-el-Imam*) shall be capable of performing valid marriage without the previous consent expressed in writing under the hand and seal of His Highness the Sultan.”<sup>2</sup> It emphasized that any marriage of such a female member without such consent shall be null and void to all intents and purposes whatsoever.<sup>3</sup> To strengthen it the instant legislation imposed restriction on the institutions and persons who were otherwise authorized under law or under general practice to officiate the marriage ceremonies.

This law regulated the conduct of the members of the royal family and restricted their powers to contract marriage of their ward without the express consent of the Sultan with regard to the same.<sup>4</sup> Both Kadhi and Registrar of Muslim Marriages appointed under the Marriage and Divorce (Muslim) Registration Decree were thus deprived of the power to solemnize or register marriage of *Auld-el-Imam* unless it was in conformity with section 2 above. All of their powers ceased to exist when it came to the marriage of Royal Family Member.<sup>5</sup> The Court was also restricted to accept any marriage of *Auld-el-Imam* unless it contains the seal of the Sultan. In accord with the same, the Decree indicted any person who knowingly or willfully solemnized or assisted in the celebration of any marriage with such a female. Upon conviction, person will be liable for a fine not exceeding 1000 Shillings or to imprisonment not exceeding six months.<sup>6</sup>

The social reaction of the instant legislation was more glaring that the enactment of Royal Marriage Decree, 1940, prompted Arabs of Zanzibar to plead a similar legislation be passed to control native males to marry Arab females as of by now many local persons frequently contracted marriage with Arab women of better birth with men who were not their equal. The plea was made in writing and forwarded to the Acting British Resident of Zanzibar in 1916. According to the archive records, the petition dealt with a request that the British Resident should make a rule that no ceremonies of marriage contracts between parties should be performed except in cases where there is no hindrance or impediment under *Shari’āh* to such parties being joined together.<sup>7</sup> This would appeal to any person that it was a step to protect a symbol and underlying coherence of descent, rank, wealth and purity.<sup>8</sup>

Least, realizing that the aforementioned elements are subordinate to one’s free will or at the best merely recommendatory because doctrine of *Kafa’ā* is not the essential element, therefore not an essential condition the violation of which would render a marriage void. These notions continue to dominate the psychological get up of the people of Zanzibar and they continue to see and perceive the conditions around them from this perspective.

## 2.3 Zanzibar Revolution and Marriage: Did the Shepherd Become a Wolf?

The perception of forced marriage in Zanzibar is also connected with incidents which occurred during the Zanzibar Revolution of revolutionary regime that ruled from 1964 to late 70’s. Though the act of revolution lasted for few hours, its effect continued for some time. Violent ambush and forceful acquisition of the properties of people is reported to have taken place in several parts of Zanzibar. Killings, rapes and other harassments were subjectively targeted to Arab origins.<sup>9</sup> The most reported violent actions of sexual molestation, in this context,

<sup>1</sup> Royal Marriage Decree, 1940 (Cap. 31 of 1940) The Laws of Zanzibar.

<sup>2</sup> Section 2 (1) Ibid.

<sup>3</sup> Section 2 (2) Ibid.

<sup>4</sup> Ibid section 2 (3).

<sup>5</sup> Ibid section 3 (1).

<sup>6</sup> Ibid Section 4.

<sup>7</sup> A Petition to J. H. Sinclair, Esq., C.M.G., Acting British Resident, Zanzibar, from Sheikh Slim bin Abdulla, Seif bin Hamed and Others. (1916, September 22). True Purport. ZNA AB 30/1.

<sup>8</sup> J. *The World of Swahili: An African Mercantile Civilization*, (Yale University 1992), quoted in Amory, Politics Identity, 154 – 155

<sup>9</sup> Esmond. B. Martin, *Zanzibar Traditions and Revolution*, (London: Hamish Hamilton, 1978), 159.

were done by the heads of the State.<sup>1</sup> The violence also includes forcing girls and women to marry without their consent.<sup>2</sup> Number of girls and women were forced into marriage, even sometime by using gun-point to intimidate them or their parents to accept the proposed marriages.<sup>3</sup> These marriages are commonly known as *ndoa za Karume* (Karume's marriages).<sup>4</sup>

During this state of affairs, no one was allowed to refuse any proposal for marriage, whether they like or not; the answer was supposed to be positive. Imprisonment or hard labor, beating and slashes were the remedy of any parent who resisted or refused to let his daughter to be married.<sup>5</sup> Many officers, mostly in the hierarchy of the Zanzibar government, and Members of the Revolutionary Council, were the ones who were reported to be involved in these actions.<sup>6</sup> This was done under the shield of protection of moral and social decay; and a campaign against racism.<sup>7</sup>

Revolutionary Council, under the leadership of President Karume, passed the Marriage Solemnization Act, 1966 (Act 6 of 1966) to forbid brides to reject prospective husbands.<sup>8</sup> There is a sense that the forced marriage in this era was taken as a form of revenge of slavery and concubines.<sup>9</sup> Hence, there is evidence that the President Karume declared at public rally that "in colonial times the Arabs took the Africans concubines without bothering to marry them. Now we are in power, the shoe is on the other foot."<sup>10</sup>

According to Act No. 6 of 1966 no person was allowed to withhold his consent to any intended marriage for any reason other than those mentioned by the Act. The only reason for withholding consent mentioned by this legislation is: if a man has been convicted of theft, and is currently suffering from any venereal disease, tuberculosis, or leprosy; or is suffering from a mental illness.<sup>11</sup> The law also provided punishment for any person who acts in contravention of this section.<sup>12</sup>

To justify those incidences, the government claimed that the law was made in contemplation of government's campaign against immorality and to protect young girls from *mambo maovu* (evil things) and to ensure that the country secures ultimate respect of humanity.<sup>13</sup> Other said that the President Karume wished not just to ensure that everyone in Zanzibar was living in harmony, but also to encourage inter-ethnic marriages between people living in Zanzibar.<sup>14</sup> Thus, more concern was to avoid the moral degeneration associated with the shame of birth outside the wedlock. On other hand, it also required young people to marry because children

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<sup>1</sup> Ibid, 70.

<sup>2</sup> Ibid.

<sup>3</sup> These acts are very common in Africa. When there are political clashes leaders or the armed force involved in chaos are taking advantage of the situation and compel the women, especially captives, to have intercourse with them or even marry that by force. See, for instance, M. S. Kalra, "Forced Marriage: Rwanda's Secret Revealed" *U.C. Davis J. Int'l L. & Pol'y*, 7 (2001), 215 – 16 describes the experiences of Tutsi women who were forced, by threat of death, into marriage by their Hutu captors during the 1994 genocide in Rwanda.

<sup>4</sup> These took the name of the first revolutionary President of Zanzibar, Hon. Abeid Amani Karume.

<sup>5</sup> Amory, *Politics Identity*, 133, Martin, *Zanzibar*, 67 – 68 and O'Malley, *Marriage*, 110.

<sup>6</sup> Kweupe, 11 September 1970, 2.

<sup>7</sup> "Karume Issues a Severe warning," Kweupe, 18 September, 1970, 1.

<sup>8</sup> This is what commonly known as Forced Marriage Decree.

<sup>9</sup> Amory, *Politics Identity*, 138 – 139.

<sup>10</sup> Martin, *Zanzibar*, 69 – 70. Moreover, as told to Dr. Juli McGruder in 1997 by Dr. Abdulwakil Idrissa Abdulwakil, that when he was in secondary school in town, Karume himself came to the school to talk to the boys and girls about interracial marriage. Karume was interested in building a multi-racial state using any means necessary. He told they children that if they saw someone in school or in town that they wanted to marry but that person was a different *kabila* (race) and either set of parents said o and wanted to block a marriage, the student could come to Karume himself and he would overcome all objections and force the marriage. Interview with Dr. Juli McGruder 15 November, 2011.

<sup>11</sup> Section 17A. (1) (a) (b) and (c) of (Act 6 of 1966). See also, *Zanzibar Official Gazette*, 26 February, 1966 Part LXXV. No. 446. See also ZNA BA 104/110.

<sup>12</sup> If found guilty, shall be liable to imprisonment for a term not exceeding six years or to a fine not exceeding Tanzania Shillings 15,000/- or to both fine and imprisonment and the court passing such sentence may in addition order the infliction of corporal punishment not exceeding 24 strokes.

<sup>13</sup> Amory, 'Politic'. Another legislation passed in connection to this was the Spinster's Protection Act, 1970 (Act 5 of 1970) which requires any woman who conceives child outside the wedlock to identify the father of that child, or receive a sentence. See also "Karume Issues a Severe warning," Kweupe, 18 September, 1970, 1.

<sup>14</sup> When discussing with other people, who believe that revolution was a fundamental good thing, they were not focusing on whether or not the Karume's marriages were forced marriage. Rather they were more concerned with justification aired by the Members of Revolutionary Council. An excellent example is demonstrated by Suleiman Nunga Lalunga who commented on the situation by saying "before the revolution, Arab men could marry any African 'Mswahili' but after the revolution we are all equal, there are no Arabs, no Asians, no Mswahili. You can marry any one." Suleiman Nunga Lalunga, former member of ASP. Interview with Suleiman Nunga Lalunga 10 September 2010.

of all ethnic groups were considered living in sin if engaged in sexual relations without benefit of marriage.<sup>1</sup> The political history of Zanzibar highlights different interpretations of the situation in marital context; for the young African, Karume's marriages succeeded in producing new citizens, who were a mixture of a multi-ethnic population. On the other hand, others maintained that they had successfully resisted the sexual advances of older African men. But for others who had fallen into the hands of unwanted husbands it was misery.<sup>2</sup>

### 3. Contemporary Perceptions of Marriage

Currently, Zanzibar marriages are perceived not only as an avenue of respect and social success but also an entity of unifying two forces for economic improvement of the family. In modern families, marriage is selectively biased to the parties who are seen to have a better life or are likely to succeed in their endeavors. However, unlike women, men became responsible for maintaining the development of the family. They are expected to possess full capacity of supporting the wife in all aspects of identity, education, respectability and economic resources.<sup>3</sup>

These changes of perceptions on marriage are mostly the result of encounters with interactions and bonds with outside world. As it is well known that apart from being a target place for colonialism,<sup>4</sup> Zanzibar opens her door for tourism over the history of her existence. Tourism as an activity and industry has grown in Zanzibar tremendously; as to which, due to the natural habilitation of the Islands it becomes a place of tourist destination.<sup>5</sup> The impact of tourism industry has a direct effect over the intermingling of social norms of Zanzibar people including the institution of marriage.

There are several inter-racial social units which are formed under the scope of civil marriages in Zanzibar. These are commonly known as 'seasonal marriages.'<sup>6</sup> They are mainly associated with interaction between locals and foreigners (mainly Westerners). However, it can be observed that nearly all of these seasonal marriages are concluded between local men and foreign women. The fewer seasonal hook ups are between local women and foreign men. Unlike the former marriages between locals and foreigners, the latter are less favorably.<sup>7</sup>

Despite all of the changes in marriage and family structure, to some extent the involvement of family members and kin in choosing and compelling the suitors to marry still maintains its *status quo*. Like what has been a practice, the involvement of family members especially parents is a phenomenon which serves major purpose of controlling the marriages. This includes ensuring that the couples are compatible with their values, expectations and life style before their marriage.<sup>8</sup> It becomes a duty of parents from each party to a marriage to make sure that their potential in-laws do not come from a family with any known serious diseases (including mental illness and epilepsy), are not known criminal or witches.<sup>9</sup> They must not engage in quarrelling but should be hard workers and respectful.

However, in some *ndoa za kukamatiwa* (shotgun marriages), parents, especially on girl's side, arrange a trap to arrest a boy, who is believed to have had sexual relations with their girl or even close friendship and are forced to marry them. The whole process is secretly organized and upon accomplishment of the mission to arrest, immediately a boy is forced to marry without his consent and with or without the consent of the girl. These kinds of marriage are also common when there is pre-marital pregnancy or accusation of sexual offence like rape or

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<sup>1</sup> Marriage and Divorce (Muslim) Registration Amendment Decree, (Act No. 6 of 1966). ZNA AD 43/4

<sup>2</sup> See Amory, 'Politic', 110 and 133; see also Martin, 'Zanzibar' 67 – 68.

<sup>3</sup> As social institution, marriage involves mutual emotional bond from the parties; reassurance of wealth; guidance; reliable alliance; opportunity to provide nurturance; sharing of values, interests and companionship. See C. E. Cutrona, "A Psychological Perspective: Marriage and the Social Provisions of Relationships," *Journal of Marriage and Family*, 66:4 (2004), 992. See also W. Robertn "The Provision of Social Relationships" In *Doing unto Others*, ed. Z. Rubin, (Englewood Cliffs, NJ: Prentice-Hall 1974), 17 – 26.

<sup>4</sup> It can also be concurred with the idea imposed by some writers that by the result of imposition of colonial rule, development of cash based economies and Western forms of schooling, family and marital process in Africa have been affected in many ways. See C. Bedsoe, "Transformation in Sub-Sahara African Marriage and Fertility" (Annals of American Academy of Political and Social Science, 1990), 115 – 125. See also T. Locoh, "Family Trend and Demographic Transition in Africa," *International Social Studies Journal*, 47 (1990), 115 – 131.

<sup>5</sup> Tourism in Zanzibar has been growing at annual rate of 15 and now contributes 25 of the island GDP. It provides jobs for 11,500 workers and with additional 45,000 people engaged in tourist activities. Said by President of Zanzibar, Dr. Ali Mohamed Shein, in Zanzibar Looks for Future: Tourism of the Future for the Island, PAA Magazine, March 2012, at p. 22.

<sup>6</sup> Hence, they normally occur at the high season of tourism annually.

<sup>7</sup> To some views, this seems as a very good example of the intersection between race bias and gender bias in marriage. Interview with Dr. Juli McGruder.

<sup>8</sup> B. K. Takyi and, Y. Ohenaba-Sakyi, "Customs and Practices about Marriages and Family Life in Ghana," *Family Perspectives*, 28 (1994), 257 – 281.

<sup>9</sup> This was also among the factors mention under Marriage (Solemnisation and registration) Decree section 17A.



abduction. The accused is given option to face a criminal charge or marry the victim. Since no one is willing to face the charge the result is that the accused opted to marry to escape criminal liability.

Although the reliance on family and kin members in the courtship and marital process appears as old-tradition to some people, this practice consistently exists with Zanzibar folks that marriage is an alliance between families rather than between individuals.<sup>1</sup> As such, family members keep themselves in such a way that they can control all negotiations in safeguarding their interests. Consistent with the expectation of parental involvement, it is expected that wishes of extended family will be paramount. This often overrides individual concept of romantic love and individualization that serve as the base of mate selection in Western or common law societies. In that sense, the process of courtship and marriage in Zanzibar is viewed as a part of negotiation ideals that are not different from assumption of social exchange theory associated with the marriage.<sup>2</sup>

The useful examination of Zanzibar marriage from social exchange perspectives indicates that people place themselves to evaluate reciprocal relationship through rational evaluation of rewards to costs. It is seems that people seek to maximize rewards and minimize costs by comparing what they receive in relationship, constantly evaluating whether or not there is better alternative.<sup>3</sup> Thus, a husband is expected to receive benefits from family alliances, status, family exchanges, labor and continuation of his family lineage, whereas a wife is expected to receive economic resources, her adult status as wife and mother, and protection.

Extended family members also get rewards such as family alliances, continuing their lineage through children of the union and care giving for elders. In addition, the wife's family may receive economic gain from the bride wealth. The exchange networks may be personal goods, labor, money, advice, affection and other material and non-material goods.<sup>4</sup> Therefore, it can be observed that a marriage serves as the transfer of the female from the control of her father to the control of her husband and the creation of new unit.

It is a matter of fact that the economic and social transformation caused the trend of social life style and individual prospective expectations of life to be transformed. The impact of this transformation has led to the modification, if not modernization, of marriage institution in Zanzibar. It is well known that in early times, Zanzibar marriages were under the hands and control of elders, mostly parents. Even the process of mate selection was exclusively on the powers of the parents. However, to some extent this custom has changed. Presently, it is not a shame for a person to choose his or her suitor whereas parents would just endorse it or wish their *baraka* (blessing).

It is hereby argued that the cause of a change from parental exclusive power to select a suitor to individual selection is economy and life difficulties caused by a modern life. This line of argument has been connected to the past practices where parents were providing everything to the newly married couples including food and shelter. Because the life style was very simple with no complexity of modernization, parents were economically able to afford maintaining themselves and their children whom they had married under their command. But the life style has changed, with increase of personal social desires and rising of economic hardship. Youth opted to embrace a modern way of life which is financially costly compared with the traditional life style.

This causes men to prioritize other matters and prolong the time to get married until they are economically capable. Consequently, parents, especially of males, feel more reluctant to let their sons to get married, because they cannot afford the costs. On other hand, a young man has to work for some years, until he achieves the minimum primary requirement to support ordinary life in order to inter into a marital bond. Due to this, parents become worried about the fate of their daughters, where some of them find alternatives to force men to marry their daughters.

#### 4. Conclusion

This study provides the local context, explores the social changes and the perceptions of the forced marriages Zanzibar. It is submitted that the nature of forced marriage has been in transformation from stage to stage, as it

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<sup>1</sup> Interview with Ustadh Abdallah Talib, 10 October 2010. Others have the views that the involvement of the prospective in-laws in the marriage has added effect of establishing the needed networks that are expected from couples as they participate in family activities, including funerals, weddings, and other social gatherings in which expenses by custom must be shared.

<sup>2</sup> Social exchange theory serves not only to establish bonds between partners, but also to generate status differences between them. P. A. Nakonezny and W. H. Denton, "Marital Relationships: A Social Exchange Theory Perspective," *American Journal of Family Therapy*, 36:5 (2008), 406.

<sup>3</sup> S. M. Wilson, L. W. Ngige, L. J. Trollinger, "Conecting Generations: Kamba and Maasai Path To Marriage in Kenya" In *Mate Selection Across Cultures*, ed. B. B. Raeann and R. Hamon , (Carlifonia: Sage Publications, Inc., 2003), 97 – 98.

<sup>4</sup> Ribson commented on Morgan model of exchange she said there are four elements which are involved in exchanges with one another. These are the family, the state, class and gender. Each of which are capable of distinct exchanges with one another. Margaret, *Family Transformation through Divorce and Remarriage*, (London: Taylor & Francis e-Library, 2005), 21 – 22.

passes from one socio-economic regime to the other. The impact of social practices and usages has made the existing form of forced marriage in Zanzibar to last longer. After the violent form of forced marriage happened soon after revolution, *ndoa za kukamatiwa* emerged, as a more recent form of forced marriage and one that disadvantages men more so than women. In its apparent face, these changes can be linked to the origin and the nature of formation of the family and socio-economic aspect of life in the entire society. If the socio-economic and political aspect changes, the perception also changes. This analysis demonstrates that the perceptions of marriage in Zanzibar are connected to those forces.

The study also observed that the main attitude of marriage is considered as an entity of unifying families. It was also regarded not only as a symbol of raising a stage of a couple from minor to adult and a route toward the economic independence from elders, towards a path to individual determination but also a fulfillment of the religious requirement for establishing family and avoiding illicit sexual relations. However, looking at the attitudes in forced marriage different observations are made. In colonial time forced marriage was regarded as the means of power, higher status and ability to meet the social needs and even representation of political status. Moreover, forced marriage regarded as an institution of controlling and protecting social identity and maintaining female modesty and seclusion along with limited access to economic and educational opportunities, while males were considered to be the masters, protectors, and owners of all economic projects.

After the 1964 revolution, forced marriage was regarded as a sign of respect, socio-political independence and economic achievement. As much, men then considered themselves as free persons having the capability to force inter-ethnic relations, in contrast to women who are subjected to the status of their husbands and were expected to avert moral decay.

In contemporary time, especially the time where the practice of *ndoa za kukamatiwa* become overwhelmed a mixture of cultural, social and economic aspects play crucial roles in controlling peoples' perceptions over forced marriage in Zanzibar. Forced marriage is not only regarded as a tool for protecting the honor of the parents and brides and a mechanism of avoiding criminal repercussion for a broom but also an alternative to reduce economic burden from brides' parents.

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