

# Ep 58: Reforming marriage law

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0:00:07.120,0:00:11.040

"If we didn't have marriage we would invent something very similar to it.

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What we need is we need a marriage law which is fit for purpose in the 21st century

0:00:19.040,0:00:29.840

and that isn't the marriage law which we find in the 1949 Act."

0:00:29.840,0:00:34.800

You are listening to Episode 58 of the National Secular Society podcast produced by Emma Park . In

0:00:34.800,0:00:38.720

this episode I'm joined by three guests to discuss the issue of marriage law reform.

0:00:39.280,0:00:42.640

The Law Commission recently conducted a consultation on weddings law

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and is due to publish its report at the end of the year. But do its proposals go far enough?

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If not how far do the laws concerning weddings, marriages and marriage-like relationships need

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to be updated to make them suitable for modern Britain? One person with a special interest in

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this question is Russell Sandberg, Professor of Law at Cardiff University. Russell has recently

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published a book entitled: 'Religion and marriage law: the need for reform'.

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He argues that substantial reform of the law is necessary, particularly in regard to non-religious

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weddings which at the moment are not legally binding. A man with direct experience of the

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obstacles faced by participants in non-religious weddings is Philip Spicksley. Philip is an

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independent celebrant and chair of the Wedding Celebrancy Commission as well as President of the

0:01:22.960,0:01:28.480

Association of Independent Celebrants. My third guest Pragna Patel has particular expertise in

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another area of marriage law which urgently needs reform: the problem of unregistered religious

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marriages. Pragna is the founder of Southall Black Sisters a not-for-profit secular and

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inclusive organisation that supports the rights

of Asian and African Caribbean women in Britain

0:01:44.760,0:01:49.431

(EP): Russell Sandberg (RS), Pagna Patel (PP) and Philip Spickley (PS), welcome to the podcast. (RS,

0:01:49.431,0:01:54.640

PP and PS): Hello, hello, good to be here.

(EP):

Russell, perhaps you could start by just giving

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us a brief overview of the state of the law at the moment on weddings. (RS): Well the state of

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the law of weddings at the moment is in a bit of

a mess because the current legislation is based on

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historical quirk rather than the social reality. So the law is found in the Marriage Act of 1949

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and that makes a distinction between marriages

according to the rights of the Church of England

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and all other marriages. And Church of England

for this purpose also includes the church in Wales

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and that second category of 'all other marriages' include civil marriages,

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Quaker marriages, Jewish marriages and

also marriages in any place of registered

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worship. And the laws simply fail to keep up to date with social reality. Because it means that

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non-religious marriages are excluded, so marriage

which is conducted by belief organisations,

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such as Humanist UK or independent celebrants -

they are not in themselves legally binding. And

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similarly the law indirectly discriminates against certain forms of religious marriage.

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So religions that don't have a building or don't

have a tradition of being married in a building,

0:03:21.600,0:03:25.280

or marriage has taken place in the building, are also excluded.

0:03:25.920,0:03:32.160

And so all other weddings will take place, be it at a beach conducted by an independent

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celebrant, be it conducted by Humanist UK, be

it a religious marriage but isn't in a place

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of worship - they are not legally binding and so

unless and until the couple also undergo a civil

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ceremony then the couple are not legally married and that causes all kinds of problems particularly

0:03:57.120,0:04:03.520  
later on if the relationship breaks down. And so this is an area of law that the Law Commission

0:04:04.240,0:04:11.280  
is currently looking into and is about to produce its final report on and it's an area of law where

0:04:11.280,0:04:19.680  
there's a need to for reform to bring it into the 21st century. (EP): Why is it that the law focuses

0:04:19.680,0:04:25.200  
so much on buildings, on the idea that it's the place that matters for where you get married?

0:04:25.200,0:04:32.000  
(AS): It's purely historical. It comes from the fact that you know in 1753 the only

0:04:32.880,0:04:40.160  
place where you could get married was in the Parish church. And over time other places

0:04:40.160,0:04:45.920  
have become recognised: civil weddings, weddings and other tolerated religions.

0:04:46.720,0:04:53.120  
And so it's all for historical reasons. (EP): It often seems that in a number of these sorts

0:04:53.120,0:04:58.160  
of areas English law, rather than sort of starting from scratch all over again, just sort of cobbles

0:04:58.160,0:05:04.960  
on bit by bit additions until the law gradually becomes more unwieldy and more unsatisfactory.

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Is that your impression with this area? (AS): Absolutely and the problem is that that then leads

0:05:10.000,0:05:17.680  
to confusion. And so you know there's a whole raft of empirical data out there that shows that the

0:05:17.680,0:05:25.040  
current law marriage is also misunderstood. Not just in relation to belief marriages,

0:05:25.040,0:05:30.720  
not just in relation to religious marriages, but also in relation to rights of cohabitantes.

0:05:31.520,0:05:37.600  
So there's this myth of what's called 'common law marriage' which an awful lot of people believe.

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They believe that if they live together for a certain amount of time they get the same right as

0:05:42.160,0:05:50.480  
if they were married. And that legally speaking is nonsense but I think that reflects how complicated

0:05:52.560,0:05:59.760

our law currently is. (EP): Well let's start with one aspect of this problem that you highlighted

0:05:59.760,0:06:04.240  
in your book that's just recently been published, 'Religion and marriage law: the need for reform'.

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Let's talk specifically about unregistered religious marriages before we turn to Pragna who's

0:06:11.200,0:06:18.080  
going to tell us some details about particular cases. Russell just on the sort of legal

0:06:18.080,0:06:24.080  
concept of an unregistered religious marriage. What's going on there? What's the issue? (AS):

0:06:24.080,0:06:30.160  
Well the issue is that an unregistered religious marriage takes place where it doesn't comply with

0:06:30.160,0:06:37.840  
the Marriage Act 1949 and there's all sorts of reasons why a religious marriage might not comply.

0:06:38.800,0:06:47.760  
One reason is that the law is discriminatory and requires a building. And you might have a

0:06:47.760,0:06:52.560  
religion that doesn't have a building or has a tradition of marriages taking place elsewhere.

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It might also result from an awareness of the

law and what's required, and that too I think

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requires if not law reform, requires awareness and education. But there's other reasons why actually

0:07:07.520,0:07:15.680  
you know it might be completely unobjectionable that there's a religious only marriage. Because

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in some communities people enter into a religious marriage in order to be together and chaperoned so

0:07:23.760,0:07:30.080  
I think we've got to be careful in terms of saying you know the policy objective here shouldn't be

0:07:30.640,0:07:37.440  
to outlaw religious-only marriages or to stop them from happening. What I'm concerned

0:07:37.440,0:07:43.840  
with and I think what the Law Commission is concerned with, is dealing with the issue where

0:07:46.480,0:07:52.080  
people entered into an unregistered religious marriage, not necessarily through choice,

0:07:53.840,0:08:03.440  
by both parties, because law is unclear; the law is too rigorous; or in some cases it's not

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a voluntary decision because only one party wants a religious-only marriage and that's a difficult

0:08:12.640,0:08:20.160  
scenario to solve. (EP): Okay, on that point then  
Pragna, you were the founding member of Southall

0:08:20.160,0:08:26.560  
Black Sisters. You've helped women who've been  
forced into marriage possibly you know either an

0:08:26.560,0:08:32.640  
unregistered religious marriage or a marriage which they don't consent to, or who suffer in

0:08:32.640,0:08:38.480  
their marriages in some way. How big a problem  
is this type of scenario in the UK at the moment?

0:08:39.120,0:08:45.840  
(PP): What's really interesting about this is that 30 years ago you know we

0:08:46.560,0:08:53.840  
would hardly ever encounter a woman from a minority background, particularly Muslim

0:08:54.400,0:09:02.400  
women. We would hardly ever see a situation where a woman would come to us and say "I had,

0:09:03.040,0:09:09.120  
I never entered into a valid legal marriage. My marriage was never registered.

0:09:10.320,0:09:17.600  
I only had a religious marriage". Most women 30 years ago from Asian backgrounds, generally

0:09:17.600,0:09:26.160  
including Muslim backgrounds, would have had both

a civil registration and would then have had some

0:09:26.160,0:09:34.640  
kind of a religious ceremony. And so there wasn't  
an issue in those days around, you know, what

0:09:34.640,0:09:41.120  
would happen if you've only had a religious-only  
marriage and that marriage broke down usually

0:09:41.120,0:09:49.440  
due to domestic abuse and other forms of gender  
related harms. 30 years later we're seeing

0:09:49.440,0:09:58.960  
a significant rise in the number of women who  
arrive at our doors saying that they had no idea

0:09:59.680,0:10:07.920  
that they they had entered into a religious only  
marriage which was not valid. What they tell us

0:10:08.800,0:10:15.440  
is that most of the time they entered into the marriage either thinking it was valid

0:10:16.560,0:10:24.080  
or, that they had no choice over the form of marriage that they entered, or that

0:10:24.080,0:10:31.840  
they were deceived or coerced or intimidated and  
threatened into having a religious-only marriage.

0:10:33.120,0:10:37.760  
Sometimes they were told that you

know a civil marriage would follow

0:10:37.760,0:10:43.840

and it never did. And those women are growing in significant numbers.

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Now what particularly concerns us about this is that there is a wider context. This isn't

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just a social reality that's come out of nowhere.

The rise in religious-only marriages in certain

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communities has corresponded directly with the

rise in ultra-conservative and fundamentalist

0:11:10.480,0:11:19.840

religion in those communities. So what we are

seeing is that inevitably it is women who are

0:11:20.400,0:11:28.480

at the receiving end of practices such as being coerced into a religious-only marriage.

0:11:29.520,0:11:37.120

But also other practices including being made to comply with austere dress codes,

0:11:37.760,0:11:44.000

or to comply with rules around gender segregation, not just in private spaces but

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in public spaces more increased increasingly in schools and other public institutions.

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Or are made to comply with Sharia principles, in other words religious law principles. All of these

0:12:01.280,0:12:09.600

are in effect signs warning signs of the rise of religious fundamentalism in communities

0:12:09.600,0:12:16.560

and that is why we are seeing a significant rise in the numbers of women being

0:12:17.200,0:12:23.840

deceived or coerced into having a religious-only

marriage. There was a Channel 4 survey carried out

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(I think it was in 2017) a survey carried out on Muslim women which showed that 78% of Muslim women

0:12:34.080,0:12:42.640

had entered into a religious-only marriage. Of all the women canvassed out of which

0:12:42.640,0:12:52.400

60% of those women had no choice. And so what we

are dealing with here is a social reality that has

0:12:52.400,0:13:01.520

profound implications for the rights particularly

of South Asian women, Muslim women in particular,

0:13:03.120,0:13:10.320

who are increasingly being told that secular law is not a legitimate source of law

0:13:10.880,0:13:17.680

and that the only source of legitimacy comes from religion. And therefore more and more

0:13:17.680,0:13:22.560

are coerced, deceived into entering religious-only marriage which then creates

0:13:24.080,0:13:29.680

profound consequences when the marriage breaks up, usually due to domestic abuse and violence,

0:13:29.680,0:13:36.080

and they find themselves without any legal remedies, particularly in relation to financials

0:13:36.080,0:13:43.360

and property settlements. (EP): How is it that they are forced, I mean in Britain which has you

0:13:43.360,0:13:48.160

know at least in theory the rule of law applicable to everyone. How is it that these women are forced

0:13:48.160,0:13:55.120

into these religious-only marriages? (PP)

Mainly

because they are surrounded by norms and values

0:13:55.120,0:14:02.720

which are increasingly becoming normalised which tell them that the only source of legitimacy

0:14:03.280,0:14:09.760

regarding the conduct of their lives comes from religion, stems from religion and religious laws.

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We've seen also a rise in a number of religious arbitration forums springing up in communities

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purporting to arbitrate and resolve over marriage, marital disputes and family matters,

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so-called Sharia Courts and Councils. These have also seen a significant rise in communities. So

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what women are being told is that if they want to be a proper Muslim, a good Muslim woman,

0:14:44.640,0:14:52.400

then they need to conform to religious principles religious values, religious norms as defined by

0:14:52.400,0:14:59.920

often very ultra conservative patriarchal fundamentalists, religious leaderships. And

0:14:59.920,0:15:06.880

these leaderships then create you know actually then create the problem in the first place,

0:15:07.680,0:15:14.560

and then purport to resolve the problem by setting up institutions that actually only serve to

0:15:14.560,0:15:21.040

reinforce the status quo and power structures within minority communities. (EP): What legal

0:15:21.040,0:15:26.880

status do these Sharia courts have? (PP): They have no legal status. The rulings are

0:15:26.880,0:15:33.120

you know are not legally binding but I think that's besides the point. The point is that

0:15:33.120,0:15:40.080

they exist to resolve marital problems so if

women are forced into having a religious only

0:15:40.080,0:15:46.880

marriage then they are told that their the only

way they can resolve that is to go to one of these

0:15:46.880,0:15:50.880

Sharia courts, so-called sharia courts, or these arbitration forums.

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So in a way what happens is the more women are excluded from the formal legal system.

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And the marriage laws themselves and family laws

more broadly, the more they are then dependent

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on parallel legal systems on so-called community-based arbitration forums

0:16:11.440,0:16:22.320

which they are discriminated against on multiple levels. None of these so-called courts and forums

0:16:22.320,0:16:26.720

work in the interests of women. In fact they do the very opposite. They undermine their

0:16:26.720,0:16:33.520

human rights and they compound the violations that women face already in their lives. (EP): Suppose

0:16:33.520,0:16:37.520

the relationship does break up and they've had a religious-only marriage. (PP): Yes. (EP):

0:16:37.520,0:16:43.200

And suppose there have been children and assets

involved, what then happens to these women if

0:16:43.200,0:16:47.760

they're not legally married? (PP): They find themselves in a state of complete limbo.

0:16:47.760,0:16:53.680

They have no right in the arbitration forums, religious arbitration forums, are subject to

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immense profound discrimination and they cannot go to the formal legal system because their marriage

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is simply not recognised as legal. And that's precisely what happened in the case of Akhter v

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Khan in 2020, which was a case that concerned a Muslim woman who had a religious-only marriage

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and when that marriage broke up due to abuse, years and years of abuse,

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and to the fact that her husband wanted to enter into another polygamous marriage, she sought

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financial and property settlements in the formal legal system so the whole case was whether or

0:17:32.720,0:17:38.320



not she had any right to seek financial and property settlements following the break-up

0:17:38.320,0:17:44.080

of her marriage, given that they had, her marriage had never been registered and that she'd

0:17:44.080,0:17:50.160

only had a civil marriage. She couldn't obtain a divorce because that husband said that, in court

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the husband said the relationship constituted a non-marriage and he claimed that they'd never been

0:17:55.360,0:18:01.760

legally married and that he owed his wife nothing. So she sought to have her marriage declared void

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and the significance of this is that if her marriage was declared void it would have enabled

0:18:09.120,0:18:15.680

her to grant it a decree of nullity which would have in turn enabled to claim financial remedies,

0:18:15.680,0:18:21.600

to which she is entitled following the breakdown of a marriage. But the court refused and said

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that they could not recognise her marriage as void so she was left without rights. That is

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in reality the plight of many many women. (EP):

Especially from Muslim or Asian communities in

0:18:37.040,0:18:43.360

Britain? (PP): Yes. (EP): Right. Russell just on that technical and legal point could you just tell

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us a bit more about this distinction between a marriage which is void, and one which is - what

0:18:47.920,0:18:56.960

would it be - invalid? (RS): The difference is between a valid marriage, a void marriage

0:18:56.960,0:19:03.360

and a non-marriage. And in the case we've just been talking about it was held that

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it was a non-marriage, in that no ceremony had ever taken place and as we've just been hearing,

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had it been held that it was a void marriage then a decree of a decree of nullity could have applied

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which could have given some rights on separation. (EP): How would that have

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worked technically? (RS): Well the argument then would have been that it was void but if

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even a marriage had taken place, but it failed to comply with legal requirements, now actually that

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was the argument that the Court at first instance ran with. And it was one of those judgments where

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the end was praiseworthy but the means was rather questionable. Because what he was doing

0:19:52.880,0:20:00.480  
was he was stretching the law on nullity and on validity to try and give rights here. (EP): That

0:20:00.480,0:20:05.840  
old adage that hard cases make bad law. (RS): Exactly, exactly so you know it wasn't surprising

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that the higher court slapped this down but it does mean that we're back to square one in that

0:20:14.240,0:20:21.200  
by classifying religious-only marriages and non-marriages then there are no rights. (EP): What

0:20:21.200,0:20:26.160  
would be the best way of dealing with these problems related to unregistered marriages?

0:20:26.160,0:20:31.840  
How should the law be reformed? (PP): What we suggested in our written submission to the Law

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Commission's inquiry and consultation is: first of all there must be a compulsory universal system

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of registration; and that ensures that everyone is opted in as a citizen of the UK; so that there

0:20:49.840,0:20:56.560  
aren't stratified layers of citizenship; and everyone has rights flowing from the fact

0:20:56.560,0:21:01.280  
that they are married. And so that's not dependent on campaigns around

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raising awareness because don't forget in the Akhter v Khan case she herself was a solicitor

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when she entered into the religious-only marriage. She knew that though it had no legal status

0:21:15.520,0:21:22.640  
but she could do nothing about it. She had no autonomy. She could not exercise choice. And so

0:21:22.640,0:21:29.440  
the issue of just - "Well isn't this a question of raising awareness amongst you know Asian women

0:21:29.440,0:21:34.400  
or Muslim women and informing them about their rights?" No it's not enough because the wider

0:21:34.400,0:21:41.440  
socioeconomic context in which these women survive is one of profound inequality and powerlessness.

0:21:41.440,0:21:46.400  
So that's the first thing. The second thing we argued, the second recommendation we made

0:21:46.960,0:21:53.920  
is that we say that the wedding law should take account of religious coercion. Coercion

0:21:53.920,0:21:59.920  
into having a religious-only marriage which is itself a harmful practice. So we said in

0:21:59.920,0:22:07.280  
those circumstances recognising deception and coercion into a religious marriage as

0:22:07.280,0:22:15.120  
a form of harm against women, and therefore allowing coercion and deception into a marriage

0:22:15.120,0:22:21.840  
to be a grounds for voiding a marriage. (EP): Now  
Russell what's your response to that. Do you agree

0:22:21.840,0:22:25.840  
with Pragna or would you take a slightly different  
approach? (RS): I'd take a slightly different

0:22:25.840,0:22:31.520  
approach. I'm reluctant to go down the road, if  
that's what's being suggested, and I'm not sure,

0:22:31.520,0:22:37.680  
of compulsory civil marriage. Because we've already got that. We've already got a situation

0:22:37.680,0:22:43.520  
where the laws where it's stated quite clearly:  
if you want to legally bind in marriage you need

0:22:43.520,0:22:50.880  
to do x y and z. You need to comply with the

Marriage Act 1949. The problem we've got is

0:22:50.880,0:22:58.320  
that the Act itself is inflexible and indirectly discriminatory against some religious traditions.

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So I think one thing we need to do, and this is where the location based on their consultation

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paper is going in the right direction, is we need to modernise the law of marriage.

0:23:09.840,0:23:14.640  
We need to have a law of marriage which doesn't  
treat different religions differently. (EP): So,

0:23:14.640,0:23:22.080  
for example just quickly on on this just to be clear. In a Muslim wedding are mosques able to be

0:23:22.080,0:23:27.760  
places where you can get legally married or not? (RS): Yes yeah it is perfectly possible,

0:23:29.200,0:23:35.920  
if you've got a place of worship but registered then you can conduct marriages there under the

0:23:35.920,0:23:43.120  
Marriage Act 1949. The problem is, or one of the problems is, that a number of mosques aren't

0:23:43.120,0:23:48.880  
registered because there isn't a tradition of getting married in the mosque. (PP): Yes and

0:23:48.880,0:23:54.880  
that's right. A lot of women that come to us have been married in very informal settings,

0:23:55.440,0:24:01.120  
for example in their front room or in a  
restaurant  
as was the case in the Akhter v Khan case.

0:24:01.120,0:24:08.080  
So you know just the idea of being married in  
a religious building that's registered won't

0:24:08.080,0:24:13.920  
suffice, I don't think, in the kind of situations  
that I'm talking about. (RS): That's absolutely

0:24:13.920,0:24:19.280  
right and that's why you know I think what  
I'm  
saying and what the Law Commission has said  
is not

0:24:19.840,0:24:26.640  
that we need to extend it to more buildings,  
to more religious buildings. Rather we need

0:24:26.640,0:24:33.280  
to move away from that focus on buildings  
to focus on the people who are conducting

0:24:34.000,0:24:44.080  
ceremonies. So that ceremonies which take  
place in  
the front room can comply with marriage law.  
But

0:24:44.080,0:24:49.440  
I, and this is where you know I also  
completely  
agree with the criticism of the narrow  
approach

0:24:49.440,0:24:53.680  
of the Law Commission. (EP): Could you just  
say  
what exactly is the narrow approach of the  
Law

0:24:53.680,0:24:57.200  
Commission you said that both of you have  
said

that their terms of reference is very narrow;  
in

0:24:57.200,0:25:03.840  
what way? (RS): Well we're simply looking at  
the  
law on getting married and that means  
they're not

0:25:03.840,0:25:12.080  
looking at a wider effect of marriage and  
they're  
not looking at the moment at cohabitation  
rights

0:25:12.880,0:25:19.440  
because I think that's the thing which could  
solve  
this issue is that if you had a system like the

0:25:19.440,0:25:26.640  
Scottish system whereby there are certain  
rights  
on cohabitation then in the Akhter v Khan  
case

0:25:28.880,0:25:35.760  
the woman would still have had some rights  
on the separation of a relationship.

0:25:37.120,0:25:42.960  
A different way of getting there. (EP): Now  
we've got Philip Spicksley here, an  
independent

0:25:42.960,0:25:48.560  
celebrant. And another key problem Russell  
which  
you have identified in your book is this issue

0:25:48.560,0:25:54.240  
of the status of non-religious weddings.  
We've  
talked a bit about why buildings have  
become

0:25:54.240,0:26:00.000  
so important as a sort of archaic feature of

English law, a characteristic sort of anachronism.

0:26:00.000,0:26:08.000

How does this requirement for buildings discriminate against non-religious weddings Philip

0:26:08.000,0:26:16.160

from your perspective. (PS): Well lots of people nowadays, and it's heavily advertised

0:26:16.160,0:26:23.200

through holiday companies etc, want to get married on the beach or in the favourite park or you know

0:26:23.200,0:26:29.680

open air weddings or they may have a favourite restaurant or somewhere that where that is very

0:26:29.680,0:26:35.920

sentimental to them and so present law means that you've got to get married in the building that's

0:26:35.920,0:26:41.520

licensed or the room that's licensed. Even now the registry office has been getting around this

0:26:42.400,0:26:49.280

in the recent couple of years because people have expressed a wish to be married outside

0:26:49.280,0:26:56.800

and to some extent the registry offices have bent the present rules in the fact that you know they

0:26:56.800,0:27:05.200

will do an outside ceremony now as long as the register is signed in the licence room and there's

0:27:05.200,0:27:12.000

all sorts of horror stories coming to me from from couples who have arranged with registrars

0:27:12.000,0:27:18.480

to do this and then as soon as it looks like the weather won't hold up or you know there's

0:27:18.480,0:27:23.520

some suggestion that the weather won't hold up they decide that they're going to move the whole

0:27:23.520,0:27:31.920

wedding into a room that really isn't suitable. So you know it's giving couples a modern choice

0:27:32.560,0:27:38.960

of where they want to celebrate their wedding and and commit to each other and I think the

0:27:39.760,0:27:47.280

system they'll have in Jersey has somewhat gone towards a long way towards what we need in the

0:27:47.280,0:27:57.920

mainland. In Jersey they licensed 15 celebrants.

The government their licensed 15, they gave them

0:27:57.920,0:28:06.160

training on how to fill in the legal forms and they set up a system where people can book the

0:28:06.160,0:28:15.360

celebrant of their choice and the location which, although they are approved by the local authority

0:28:15.360,0:28:23.200

and the government. They are very flexible and so you know people are getting married on the beach.

0:28:23.200,0:28:29.920

The system is very simple. They register their intent with the government office and they tell

0:28:29.920,0:28:36.480

the government office which celebrant they want to use and because that celebrant is licensed

0:28:37.280,0:28:45.600

then they are open to the sort of ceremony they desire. (EP): Russell how far do you think that

0:28:45.600,0:28:52.880

this might be a way forward for non-religious weddings? (RS): I completely agree. I mean

0:28:52.880,0:29:00.400

I think that if you take that step of moving from registering buildings to recognising people

0:29:01.040,0:29:07.840

then there would be no limit on where it can take place and also there should be no

0:29:07.840,0:29:16.000

limit in my view on the type of person who could conduct those ceremonies provided that they are

0:29:17.200,0:29:24.320

recognised by the state, that they

undergo appropriate training etc etc etc.

0:29:25.680,0:29:31.840

So you know I think if we move in that direction, and we should move in that direction,

0:29:32.720,0:29:38.640

then the kind of system we've just been talking about to me makes a lot of sense. (EP): So would

0:29:38.640,0:29:45.520

you say then the idea would be to have officiants who were legally registered and able to make

0:29:45.520,0:29:50.960

legally binding ceremonies without any necessary requirement as to what their religion or belief

0:29:50.960,0:29:58.720

should be. (RS): Exactly and that's where my view is slightly different from the Scottish

0:29:58.720,0:30:05.040

system which is still religion or belief, or indeed the Law Commission's consultation

0:30:05.840,0:30:12.160

which talks about nominating bodies being either a religion or belief and then talks about

0:30:12.160,0:30:20.160

independent celebrants existing as a separate category. What I suggest in the book is that:

0:30:21.040,0:30:28.240

if you take the position that religion shouldn't have a monopoly of this, religions and the state

0:30:28.240,0:30:34.560

shouldn't have a monopoly over this; then any organisation should be able to nominate. (EP): Now

0:30:34.560,0:30:41.600  
this I believe is some slightly different perhaps from the Humanist UK position if I'm right they

0:30:41.600,0:30:49.360  
they still focus on the belief aspect is that correct? (RS): Yes because they support the case

0:30:49.360,0:30:54.960  
last year, the Harrison case, in which a number of couples were arguing that the law discriminated

0:30:55.760,0:31:02.480  
and breached human rights provisions in not recognising humanist marriages because

0:31:03.040,0:31:11.600  
there's a right to freedom of religion or belief. But I would argue that the word 'belief' there

0:31:11.600,0:31:19.600  
isn't limited simply to belief such as Humanism but is limited to beliefs that are genuinely held,

0:31:20.320,0:31:26.800  
generally. And so you know there is an argument here as to where do you draw the line. (EP): yes,

0:31:26.800,0:31:32.080  
in your book you make a really good point about them. You discuss you know the difficulties the

0:31:32.080,0:31:37.440  
tangles that English law has got into with the idea of religion or belief say, in Employment Law

0:31:37.440,0:31:44.800  
what counts as a relevant belief for this purpose? (RS): Well exactly that's my mains of critique of

0:31:44.800,0:31:53.600  
the Law Commission's position is that they talk about a religion or belief organisation and as

0:31:53.600,0:31:58.240  
I point out in the book you know defining what we mean by religion or belief has proved to be

0:31:58.960,0:32:07.200  
very very difficult and very problematic in the employment tribunal context and in another half

0:32:07.200,0:32:12.960  
a dozen different legal contexts actually. The employment tribunals have come up with a test

0:32:12.960,0:32:19.440  
which they've copied and pasted from the Human Rights jurisprudence somewhat flexibly and

0:32:20.160,0:32:24.320  
it's a flexible test which means that you know you get different employment tribunal

0:32:24.320,0:32:33.920  
chairs written very different conclusions so one says that vegetarianism isn't a belief,

0:32:33.920,0:32:40.320  
whereas another one says that veganism is a

belief and you know, and another one again

0:32:40.320,0:32:49.120

will say a belief in the BBC is a belief. (EP):  
Pregna? (PP): Yes, I just would say would it  
not

0:32:49.120,0:32:54.960

help to circumvent the whole problem around  
what  
is religion and what is the meaning of belief  
and

0:32:54.960,0:33:01.600

so on by not arguing that the officiants  
should  
all be secular? I mean the thing about that

0:33:01.600,0:33:07.440

is that currently marriage registrars are all  
secular officials who must perform their  
duties

0:33:09.200,0:33:13.840

you know whatever their private views with  
regard to the public sector equality duty.

0:33:14.880,0:33:22.560

Having religious bodies; I'm not so much here  
concerned about you know Humanists and  
others but

0:33:22.560,0:33:28.080

really having religious bodies nominate  
officiants or train officiants or carry out

0:33:28.080,0:33:34.640

the role of officiants, I think it would lead to  
immense difficulties for women for all the  
reasons

0:33:34.640,0:33:43.120

that I've outlined you know, for Muslim and  
other  
Asian women and result in even less  
transparency

0:33:43.680,0:33:51.120

and legality since you know these officiants  
nominated by religious bodies will not be seen  
as

0:33:51.120,0:33:57.840

'public' officials and will not have the kind of  
regulatory and accountability mechanisms  
applied

0:33:57.840,0:34:06.480

to them. And you know in my work I  
constantly see  
institutions whether it's the police the courts

0:34:06.480,0:34:13.920

and others defer to religion particularly  
minority  
religions for fear of being labeled  
Islamophobic

0:34:13.920,0:34:22.640

or racist. I can't see how bodies religious  
bodies nominating officiants will lead to any

0:34:22.640,0:34:29.280

you know less mischief in respect of what  
I've outlined I think the answer must lie

0:34:29.280,0:34:34.960

in in having secular officials. (EP): So  
I mean is the issue then actually that

0:34:34.960,0:34:39.200

we've got this problem that on the one hand  
we've  
got independent celebrants and on the other  
hand

0:34:39.200,0:34:45.440

we've got registrars. Independent celebrants  
can't  
currently perform legally binding  
ceremonies.

0:34:45.440,0:34:50.400

Registrars can but registrars are quite  
hamstrung



in the form of ceremony that they're allowed to

0:34:50.960,0:34:59.440  
perform. (PS): That's quite correct but with the Scottish system there's all sorts of things

0:34:59.440,0:35:06.400  
happening there. I mean we've got members who have formed their own religion off their own back

0:35:06.400,0:35:12.160  
because if they're allowed to do that and they can demonstrate to the Scottish government that they

0:35:12.160,0:35:20.640  
are a recognised religion then they will get a licence to conduct legal weddings. You've also got

0:35:20.640,0:35:27.760  
other organisations who are slotting in 'Humanism' in their titles so that they can

0:35:27.760,0:35:34.240  
jump on the bandwagon as well. So you know it's just making a whole mockery of what system

0:35:34.240,0:35:38.640  
they've got in Scotland. (EP): And it's making a mockery of most of the idea of religion or belief

0:35:38.640,0:35:44.080  
right? (PS): Yes. (EP): And in your experience Philip, do the couples who want to be married

0:35:44.080,0:35:48.640  
by an independent celebrant always want to involve

some sort of religion or belief in their ceremony

0:35:48.640,0:35:53.600  
or do some of them simply, they're not interested sometimes. (PS): Definitely not. A lot of them

0:35:53.600,0:36:02.080  
want a poem or they want a period of time or perhaps remembering recognising

0:36:02.080,0:36:06.320  
reminiscing with people who can't be there and they may want a private prayer

0:36:08.640,0:36:13.760  
time. Just a moment for people to think about those people who can't do there they may

0:36:13.760,0:36:18.800  
have lost a grandparent in the last few months and they may wish to have a prayer. (EP): So

0:36:18.800,0:36:23.840  
in other words they want all these things and you can help them to do that as an independent

0:36:23.840,0:36:28.960  
celebrant but you can't marry them legally which is a bit frustrating. (PS): No and the way we have

0:36:28.960,0:36:34.720  
to explain it of course is that we work on the continental model. You know everybody in France

0:36:34.720,0:36:38.560  
has to get married in the Registry office and then go off to church for the wedding.

0:36:38.560,0:36:44.080  
A marriage and a wedding. And once people

get that idea into the head that the marriage

0:36:44.080,0:36:49.600

takes place in the Registry office and the wedding takes place in the place they want

0:36:49.600,0:36:53.760

when they get that into the head they accept it but they shouldn't have to do that

0:36:53.760,0:36:58.480

you know and this is what we're hoping that the

law commission can solve. (EP): Russell what's

0:36:58.480,0:37:04.320

your view about this? I mean do you think that the concept of marriage has to involve some sort of

0:37:04.320,0:37:09.120

element of belief or does the current situation,, I mean the statistics of the number of people who

0:37:09.120,0:37:15.040

want to get married in a non-religious way does that suggest that belief or religion should no

0:37:15.040,0:37:21.760

longer be an ingredient of the definition of legal marriage? (RS): Well I think it shouldn't

0:37:21.760,0:37:28.240

be an ingredient because it currently isn't an ingredient in the ecumenical knowledge. I think

0:37:28.240,0:37:36.000

the problem with the current law is that it's too fixed between the two extremes of religious

0:37:36.000,0:37:42.080

marriage on the one hand and civil marriage on

the other. And it's that harshness of the law

0:37:42.960,0:37:49.600

which has created the need for independent celebrants. But they are currently outside

0:37:49.600,0:37:57.280

the law. My view as put forward in the book is that we need to modernise the law. It won't

0:37:57.280,0:38:04.240

solve all the issues we've been just discussing today but it would take us a considerable step

0:38:04.240,0:38:11.760

further if we had a system which focused on people and they didn't have to be nominated by religion,

0:38:12.720,0:38:17.680

or indeed in my view by a belief organisation. (EP): You would say that say independent

0:38:17.680,0:38:23.680

celebrants would be able just be able to become under some legal process registered as officials

0:38:23.680,0:38:28.800

who could perform legally binding marriages without having to belong to any specific belief

0:38:28.800,0:38:35.040

organisation. (PS): Yes that would be ideal. (EP):

Just one final question for all three of you:

0:38:35.040,0:38:40.960

do we still need marriage in the 21st century? Is it just an outdated institution that should

0:38:40.960,0:38:46.720  
be replaced by something else? Russell what do you think? (RS): Well I think that really sort of

0:38:46.720,0:38:54.160  
comes to the heart of it. The word 'marriage' and the word 'wedding' are loaded not just religiously

0:38:54.160,0:39:03.360  
but culturally and also legally and we definitely need something which needs institutions which

0:39:03.360,0:39:11.520  
recognise legal obligations and the effect of those legal obligations on the parties

0:39:12.800,0:39:20.080  
when that relationship ends or breaks down. So yes if we didn't have marriage we would invent

0:39:20.080,0:39:27.120  
something very similar to it but you know what we need is we need a marriage law which is fit

0:39:27.120,0:39:35.360  
for purpose in the 21st century and that isn't the marriage law which we find in the 1949 Act. (EP):

0:39:35.360,0:39:41.600  
Pregna what about you? (PP): I agree do we need something else instead of marriage definitely/ Are

0:39:41.600,0:39:49.280

we going to get it? No and one of the things that was very interesting about the Akhter v Khan case

0:39:49.840,0:39:57.200  
was the court of appeal specifically stating that public policy requirements meant that

0:39:57.200,0:40:06.560  
they had to uphold the sanctity of marriage and I think for many BME women the lack of equality

0:40:07.200,0:40:12.320  
and the pressures and constraints that they face when entering into a marriage

0:40:12.320,0:40:17.200  
you know is very very significant but at the moment their social realities

0:40:17.760,0:40:23.840  
are not properly reflected in the marriage laws. So for me the wider question has to be

0:40:24.480,0:40:29.920  
the looking at ways in which harms are perpetrated on women in the name of marriage

0:40:30.480,0:40:36.160  
and how the formal legal system is going to address those. (EP): So first of all protect women

0:40:36.160,0:40:40.800  
and then perhaps further down the line when we've come to a sort of society of greater equality

0:40:40.800,0:40:47.040  
perhaps we can start thinking about maybe whether there's something better than marriage altogether.

0:40:47.040,0:40:52.640

(EP): Philip what about you? (PS): Yes, I totally agree with Russell you know. Marriage is here if

a positive review wherever you can. Thanks for listening and I hope you can join us next time.

0:40:52.640,0:40:58.560

it wasn't called marriage it'd have to be called something else. I think it just needs a whole

0:40:58.560,0:41:04.000

look over with a bigger scope than what the Law Commission's been given by the Government. But

0:41:04.880,0:41:09.040

at least we're one step in the right direction. (EP): Russell Sandberg,

0:41:09.040,0:41:14.000

Pregna Patel and Philip Spicksley, thank you very much. (RS, PP, PS): Thank you. Thanks. Thank you.

0:41:19.440,0:41:23.920

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