

MUSLIM LAW OF MARRIAGE

Syed Abdullah Al-Shatiri v. Shariffa Salmah (1959) 25 M.L.J. 137 was an appeal to the Appeal Board from the newly constituted Shariah Court of Singapore. Both the Shariah Court and the Appeal Board were constituted under the Muslims Ordinance, 1957. The facts are as follows. The appellant, Syed Abdullah Al-Shatiri, is the father of the respondent, Shariffa Salmah. They belong to the Shafi'i School of Muslim law. Since 1956 Shariffa Salmah had been friendly with one Abdul Razak without the knowledge of her parents. Sometime in 1957 her mother saw her talking to Abdul Razak and the incident was reported to the father, Syed Abdullah. The father objected to the daughter's association with Abdul Razak and thereafter the daughter was not allowed to go out of her house alone. Early in 1958 negotiations were made for the marriage of the daughter, Shariffa Salmah, to one Syed Idros bin Syed Saggaf Al-Jofri, a nephew of the father, apparently without the knowledge of the daughter. On 30th August 1958 Shariffa Salmah left her father's house and

went to the house of Abdul Razak. The father tried to persuade her to return home but she refused and stated that she wished to marry Abdul Razak. However, the father refused to give his consent to the marriage. On 2nd September 1958 the father, as *wali mujbir*, performed the marriage of his daughter to Syed Idros bin Saggaf Al-Jofri without the consent of the daughter who was a virgin at that time. The father attempted to register the marriage with the Chief Kathi of Singapore but was unsuccessful as the daughter refused to give her assent to the marriage. After this Shariffa Salmah continued to live with Abdul Razak and his family and they both admitted before the Appeal Board that they had sexual intercourse with each other about a month after she came to live with him. When the Shariah Court was constituted in November 1958 the father brought an application to the court for a declaration that the marriage was valid and for an order that the daughter should go to live with her husband, Syed Idros bin Saggaf Al-Jofri. The Shariah Court, however, declared the marriage invalid. Against this order the appellant appealed to the Appeal Board.

The points at issue were whether a father could, under the Shafi'i school of law, give away his virgin daughter in marriage without her consent and whether non-registration of a Muslim marriage under the provisions of the Muslims Ordinance would render the marriage void.

On the first issue the Appeal Board held that the consent of a virgin girl given away in marriage by her father as *wali mujbir* is not essential to the validity of the marriage. All the four Sunni schools of law, as well as the Jaafari (Shiah) school of law agreed that a virgin who had not attained puberty could be given away in marriage by a guardian who was the *wali mujbir*. The matter, however, was doubtful in the case of a virgin who had attained puberty. The Shafi'i school of law agreed that it was commendable (*summat*) on the part of the guardian to seek the consent of a virgin who had attained puberty to her marriage but if he did not do so the marriage was nevertheless valid because it was presumed that he would wish what was best for his daughter. This view was summarised in Nawawi's *Minhaj-et-Talibin* as follows: "A father can dispose as he pleases of the hand of his daughter, without asking her consent, whatever her age may be, provided she is still a virgin. It is however commendable to consult her as to her future husband; and her formal consent to the marriage is necessary if she has already lost her virginity...Loss of virginity puts an end to the right of disposing of a daughter's hand without her consent; and there is no difference in this respect between a loss caused by lawful cohabitation and one that is the consequence of unlawful intercourse. On the other hand, the right remains intact where the loss takes place without carnal connection, as for example in consequence of a fall upon the ground."

As to the second issue the Muslims Ordinance, 1957, provided that on a marriage the husband and the wife and her *wali* and other witnesses should attend at the office of a kathi and sign the register of Muslim marriages. Therefore, if a woman refuses to give her consent to the marriage the marriage cannot be registered. Registration of all Muslim marriages solemnised in Singapore is compulsory. Failure to register the marriage within a specified period will render the parties to the marriage liable to the penalty of a fine. But the Muslims Ordinance, 1957, also provides that nothing in the Ordinance should be construed to render invalid merely by reason of its having not been registered any Muslim marriage which otherwise is valid. The Appeal Board, having come to the conclusion that the marriage between Shariffa Salmah and Idros bin Saggaf Al-Jofri was valid, held that its non-registration with the kathi did not affect its validity.

There was an interesting sequel to this case. At the conclusion of the case the Appeal Board arranged for the parties to see the Chief Kathi of Singapore. The husband, Syed Idros, who had taken little part in the proceedings, except getting himself married to Shariffa Salmah, and Shariffa Salmah herself requested the Chief

Kathi to perform a *fasah* divorce which was duly registered. The father apparently did not agree to this final arrangement but the Board felt that his personal feelings should give way to the interests of the community as a whole. Indeed the Board expressed the view that if the husband had insisted on his rights in the case it would have felt itself in duty bound to assist the wife to take steps to terminate the marriage. Fortunately this was unnecessary as the husband by his agreement to give his wife a *fasah* divorce had "set her free with kindness."

It would be interesting to know how such a Muslim marriage could be terminated without the consent of the husband.

1. M.A., LL.B. (Cantab.); of the Middle Temple, Barrister-at-Law; of Singapore, Advocate and Solicitor; Lecturer in Law in the University of Malaya in Singapore.