

Criminalising forced marriage

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analyse criminalisation as a strategy to
combat forced marriage.

The issue of forced marriage has recently become the focus of both national and international debate (Schmidt and Jakobsen, 2004; FCO and HO, 2005). Forced marriage is a human rights violation, and its impact has significant gendered consequences. In cases regarding minors, forced marriage also has to be considered as a child abuse issue (Gangoli et al., 2006). However, recent initiatives in the UK have been criticised for their emphasis on encouraging immigrants to adopt 'British' values and avoid marrying partners from their country of origin (Razack, 2004). Further, commentators have argued that some proposals are more geared to control immigration into the UK than to tackle forced marriages. Evidence for this is supported by the recent consultation on increasing the entry age on a marriage or fiancé visa for sponsors and applicants from 18 years to 21 or 24 as a way to combat forced marriage. The assumption behind this proposal is that many cases of forced marriage take place across international borders, and involve young people, who lack educational and professional independence to effectively refuse a forced marriage.

This article examines the debates around criminalisation of forced marriage in the UK by looking at existing legal provisions on forced marriage; the national consultation on criminalisation; and will conclude by analysing criminalisation as a strategy to combat forced marriage.

Current legal situation on forced marriage

Forced marriage is defined as taking place: 'where one or both parties are coerced into a marriage against their will and under duress' (FCO, Scottish Executive and HO, 2006), where duress includes physical and emotional pressure. It is distinguished from arranged marriage: 'where both parties give their full and free consent to the marriage. The tradition of arranged marriages has operated successfully within many communities and many countries for a very long time' (ibid.)

This is a useful definition as it is broad ranging in scope and includes a range of coercive behaviours, although as with domestic violence, issues of physical and sexual violence are privileged over emotional pressure and coercion. Moreover, what constitutes forced marriage is highly contested. Our own research (Gangoli et al., 2006; Hester et al., 2008) found that agencies, survivors and members of different communities vary in how they conceptualise and understand forced marriage.

Forced marriage is addressed in the UK's domestic violence definition and is prohibited under the Marriage Act 1949. The process of forced marriage includes offences that can be charged under a vast array of existing laws. These include: common assault, cruelty to persons under 16, failure to secure regular attendance at school, child abduction, rape, kidnapping, threats to kill, harassment, blackmail, false

imprisonment and murder. There are also provisions within the Children's Act (1989 Section 1) that indirectly protect children from the risk of forced marriage. Other governmental initiatives include guidelines issued to the police (2001), social workers (2003), education (2005), and health professionals (2006) concerning procedures for working with cases of forced marriage. In general, despite the range of communities that practice forced marriage, UK policies and guidelines predominantly focus on South Asian and/or Muslim communities.

Debates on criminalisation

In 2005, there was a national consultation on whether a 'specific criminal offence would help combat forced marriage' (FCO, Scottish Executive, and HO, 2005). The consultation document stated that criminalisation would have both risks and benefits. Some of the arguments supporting criminalisation were that: primary legislation could change public opinion; have a deterrent effect; would clarify things for public sector employees; and make it easier to take action against perpetrators. Some of the negative consequences discussed were that legislation might prevent victims from asking for help and may lead to parents taking children abroad for forced marriage to escape prosecution in the UK. The consultation document also recognised that criminalisation might have a disproportionate effect on some minority communities, and that existing criminal and civil provisions could be used to tackle the issue.

There were 157 responses to the consultation document from a range of different organisations, including Domestic Violence Forums, representatives from agencies working with women, children, health, Black and Minority Ethnic (BME) groups, and from those working in the criminal justice sector. Of these, 37 per cent of respondents felt that forced marriages should not be criminalised. These were primarily representatives from women's organisations, police, the Crown Prosecution Service, and Probation, and they believed that existing provisions, if implemented

properly, were adequate to tackle forced marriage, and agreed that a new law may increase racial segregation and increase victim isolation. They also pointed out that it would be unlikely that young people would prosecute their parents. In contrast, a slightly smaller percentage (34 per cent of respondents), primarily from children's and youth organisations, supported criminalisation as they felt that it would send out a strong message that forced marriage was unacceptable, and would protect the interests of victims of forced marriage.

Our own research conducted in 2005 during the consultation period in North East England supported this mixed view on criminalisation (Gangoli et al., 2006). Agency workers believed on the whole that it could be construed as potentially racist legislation. A police representative felt that criminalisation could be counter-productive because it could be a disincentive to people reporting forced marriage, as it would implicate their family members in criminal proceedings. A worker from a support/advocacy group for BME women and men suggested that the focus should extend to looking at the wider picture including the general lack of services for BME women, especially first generation immigrant women, who had no recourse to public funds for the first two years of entering the country on a spouse visa:

I'm much more interested in what services are offered to women when things go wrong than in legislating. It seems to me is that the biggest bit of legislation they could do is get rid of the two year rule rather than starting legislating about forced marriage.
(cited in Gangoli et al., 2006)

Some survivors of forced marriage interviewed during the study believed that criminalisation could be beneficial for some young people. However, they also expressed concerns that the law could be misused, or misinterpreted by the mainstream non-minority

community, who did not understand differences between arranged and forced marriage:

Lots of mistakes are possible on interpretations of what forced marriage is . . . my concern is that people who don't know the culture and community shouldn't be in a position to judge . . . whether [the marriage] was forced or not.

(cited in Gangoli et al., 2006)

Civil law as alternative?

The absence of clear support on criminalisation led to the proposal being dropped, and it was suggested instead that there be increased training offered to professionals and more engagement with affected communities on this issue. A further suggestion was that statutory agencies should follow guidelines, share best practice, and ensure that existing legislation is fully implemented including making better use of civil remedies and the family courts. In 2006, proposals to include civil remedies for forced marriage were introduced by Lord Lester. They were implemented in autumn 2008. Some of the measures include: use of injunctions to restrain parents or any other party from forcing or attempting to force young people into a marriage (63A); provision for third party intervention (63D), and emergency and immediate interventions (63C).

Minority women's organisations who had opposed criminalisation are divided on these provisions. The organisation Southall Black Sisters believe that the civil provisions will send a clear message that forced marriage is unacceptable, and will increase awareness and public debate on the issue. They also argue that ideas of third party interventions, compensation, statutory guidance on forced marriage are innovative. Moreover, they argue that unlike criminalisation, civil provisions are victim-led. Alternatively, Imkaan, which works with a range of ethnic minority communities on domestic violence issues suggest that the proposed civil provisions are premature, and there is a need to have clearer definitions of forced

marriage before legislation is created. They also voiced concerns about the use of injunctions as quasi-criminal—as individuals violating injunctions can be awarded a custodial sentence.

Conclusions

While the need for action on forced marriage is essential, in our opinion, Imkaan's call for caution on the civil measures is well founded. Our research indicates that experiences of, and routes into, forced marriage are complex and multifarious, and that state and legal definitions of forced marriage do not always match those held by individuals, agencies and communities. For instance, there is evidence that marriages from African communities where 'bride price' is an issue can be considered forced, as can marriages where couples may be coerced to marry because of premarital sex or unplanned pregnancy (Hester et al., 2008). However, these are rarely included in current guidelines or definitions which focus more on marriage arrangements in South Asian communities which have elements of force in them. There are also concerns regarding third-party injunctions in forced marriage cases, as they can take control away from survivors which further disempowers them. Additionally, the use of injunctions can be interpreted as introducing criminalisation through the backdoor.

On balance, there is little evidence that criminalisation, either directly or indirectly, is either a popular or workable response to forced marriage. The issue of new legislation is further complicated by fears by some BME communities that they may be targeted unfairly in the generalised context of Islamophobia and racism, which is exacerbated by a lack of clear understanding of the varying forms of forced marriage. Our research found that survivors of forced marriage are more focused on issues of safety and housing, rather than fighting battles in court. Limitations regarding the criminal justice system are further compounded where individuals have insecure immigration status, and no recourse to public funds to pursuing

their case to remain in Britain. All these factors make exiting forced marriage difficult for victims and if we are to prioritise the safety of victims then perhaps a more constructive response would be to focus on exit strategies for forced marriage victims, and to effectively implement existing legislation. ■

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References

FCO and HO (2005), *Forced Marriage. A Wrong not a Right*, London: Community Liaison Unit, Foreign and Commonwealth Office.

FCO, Scottish Executive and HO (2006), *Forced Marriage. A Wrong not a Right*, London: Community Liaison Unit, Foreign and Commonwealth Office.

Forced Marriage (Civil Protection) Bill 2006–07, introduced by Lord Lester of Herne Hill. www.publications.parliament.uk/pa/pabills/200607/forced_marriage_civil_protection.htm. Accessed 6 October 2008.

Gangoli, G., Razak, A., and McCarry, M. (2006), *Forced Marriages and Domestic Violence Among South Asian Communities in North East England*, Newcastle, UK: Northern Rock Foundation and University of Bristol.

Hester, M., Chantler, K., Gangoli, G., Devgun, J., Sharma, S., Singleton, A. (2008), *Forced Marriage: the Risk Factors and the Effect of Raising the Minimum Age for a Sponsor, and of Leave to Enter the UK as a Spouse or Fiancé(e)*, Bristol: School for Policy Studies, University of Bristol.

Razack, S. H. (2004), 'Imperilled Muslim women, dangerous Muslim men and civilised Europeans: legal and social responses to forced marriages', *Feminist Legal Studies*, 12, pp.129–174.

Schmidt, G. and Jakobsen, V. (2004), *Pardannelser blandt etniske minoriteter i Danmark* (Relationship forming among people from minority ethnic groups in Denmark), Copenhagen: The Danish National Institute of Social Research. www.sfi.dk/sw12774.asp (accessed 14 January 2006).

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