

# **The Legal Framework on Forced Marriages in the United Kingdom and some Recommendations**

**Save Your Rights (SYR) Research and Ethics Team**

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# The Legal Framework on Forced Marriages in the United Kingdom and some Recommendations

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## **Note to reader**

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This report is written as a hybrid of academic and practical legal analysis. As the report aims to observe the policy and practical elements of the legal framework there was no need to carry out any quantitative research. Any statistical data used was drawn from secondary sources, which were readily available through media reports, journal articles and Governmental and Non-Governmental reports. There were some interviews carried out with key people who had interesting views. These were done by sending a list of questions to the relevant person by email and receiving responses via the same medium. Many people were contacted in this manner, however we have only included some quotes as much of the information was already in the public domain, and so repetition was not necessary.

The report was compiled together by using remote peer review of each chapter which was delegated to every team member.

Any mistakes or faults are of the research members themselves and are not a reflection on Save Your Rights.

## Abstract

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Forced marriage in the United Kingdom is a thorny issue, mired in cultural sensitivity. The concept itself is horrendous, where one or both of the potential partners are forcibly married to each other without consent but often with physical and psychological violence. In the UK the law has always sought to protect the vulnerable, and victims of such marriages are some of the most vulnerable in society. Most are beaten or blackmailed into submission, while others cannot communicate to the outside world due to them being sent from back home. The legal framework must be adequate in providing civil and criminal remedies to rescue and relieve such victims, otherwise international human rights obligations are being breached.

This report examines in specific detail the main themes and issues within the massive legal framework governing forced marriages. Whilst other reports may discuss the sociological aspects of forced marriages, this report focuses on the legal procedure and important statutory law alongside common law decisions.

This was achieved by analysis and criticism of specific legal provisions, principally the Forced Marriage (Civil Protection) Act 2007, forced marriage protection orders, and specific statutory guidelines issued to relevant authorities, whilst also observing the supranational and cross-border relations of the UK with regards to forced marriages.

After 2007, the weak existing legal framework was significantly built upon, which was now supported by explicit authority, yet not completely joined up in its administration. Lack of funding to relevant charities and non-governmental organisations has meant that only limited services can be provided to victims. Furthermore, governments need to strengthen the courts' remedies and reduce the amount of legislation which is ill-thought-out or a hurdle to protecting victims.

Through the analysis of the new legal framework, this report aims to provide an effective working solution to the gaps that exist in the current law.

## **1. Introduction**

Forced marriage is a serious violation of human rights.<sup>1</sup> This has been accepted by the courts, and is an ever-present theme in the guidance issued to the police, CPS and social services. It has also led to the creation of the Forced Marriage Unit (FMU). For victims of such marriages it often leads to isolation from both family and friends, frequently leading to depression. Victims regularly feel themselves to be at fault, not the actions of their family. Such beliefs contribute to self-harm and even suicide. It is vital to understand the legal framework afforded to victims and to analyse its effectiveness.

We appreciate that readers may consider the phenomenon of forced marriage to be prevalent in perhaps only a few cultural groups or countries, but recent figures from the FMU have demonstrated that the issue is much more widespread. While the majority of cases derive from South Asian communities, cases have come from areas as far afield as Yemen, Turkey, Somalia, Eastern Europe, Iraq, Kenya and Palestine.

Individuals can be subject to both threatened and actual violence as part of being forced into a marriage, or as a result of their attempts to resist or escape. This violence can be extremely serious. If they are forcibly married, young women are very likely to be raped, with the consent and even support of their families. It is vital to understand, however, that harm to victims takes place even without such horrific acts, as a result of the marriage or threat of marriage in itself. Forced marriage becomes a serious matter as soon as the threat is present, not only once violence is threatened or has taken place. This understanding of forced marriage as a wrong in itself underpins the findings of this report.

The report aims to outline the legal framework in relation to forced marriages in the United Kingdom alongside making recommendations that would strengthen such a framework. There will be an examination of the development of law which has led to the current position. There will then be an analysis of the status of forced marriage in law, and scrutiny of statutory guidance given to relevant authorities in relation to such marriages. Finally, there will be a general look at the UK in relation to other countries and how cross-border relations can be more effectively governed in this area of law. It is hoped this report will provide a reference point for not only those who are versed in the law, but also those who have made it their passion and work to tackle forced marriages. This report is also intended to operate as a take-off point for any criticisms or theories regarding the law promulgated in the field of forced marriages and will make recommendations accordingly.

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<sup>1</sup> Art. 16(2) Universal Declaration of Human Rights 1948

### 1.1. Working definition of Forced Marriage

Forced marriage is largely unknown in popular Western culture but is, without doubt, a hidden and increasing threat. On a superficial level, the term does not need any description, however, to have any hope of combating it, a clear and precise definition must be reached. This report adopts the definition given in the Forced Marriage (Civil Protection) Act 2007 ('the 2007 Act') of a marriage entered into without the free and full consent of one or both parties due to force or pressure. The marriage need not be to the person who is forcing the union to take place. The force may take the form of threats or other psychological pressure as well as physical violence, and may be directed against any person, not necessarily the person who is being forced to marry.<sup>2</sup> The ceremony can be civil or religious.<sup>3</sup> The need to distinguish forced marriage from arranged marriage has been repeatedly highlighted.<sup>4</sup> In an arranged marriage, the spouses agree to be married, but are introduced or even chosen by others. This practice is traditional among some communities and continues to have the respect and support of the law. Only where one party does not wish to be married does the law seek to intervene.

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<sup>2</sup> s.63A(6) and s.63S Family Law Act 1996

<sup>3</sup> s.63S Family Law Act 1996

<sup>4</sup> Ministry of Justice, *One Year on: the initial impact of the Forced Marriage (Civil Protection) Act 2007 in its first year of Operation*, November 2009, p. 22. [www.justice.gov.uk/one-year-on-forced-marriage-act.pdf](http://www.justice.gov.uk/one-year-on-forced-marriage-act.pdf) [Accessed 30 November, 2010]



## 2. Outline of legal framework

### 2.1. Law preceding 2007

It will be useful to quickly examine the power which was exercised by the Family Division of the High Court when approaching forced marriage cases prior to the implementation of the Act. This ‘inherent jurisdiction’ of the court would act in a way which would protect vulnerable parties. It was first used in matters relating to surgical, medical or nursing treatment<sup>5</sup> but grew and adapted substantially to reflect the differing needs of the vulnerable.<sup>6</sup>

In a sense, the potential application of the jurisdiction is infinite and is still used in forced marriage cases to offer protection in the deepest darkest corners where a specific Act or Treaty may not extend to. As was stated by Singer J in *Re SK* this ‘inherent jurisdiction’ must evolve in accordance with social needs and values.<sup>7</sup> It is hoped that whilst politicians and lawyers are now coming to terms with forced marriages and are willing to lay down rules governing its prevention, ‘inherent jurisdiction’ of the Court will always be a last safety net to ensure protection of vulnerable parties.

### 2.2. The problems of criminalisation

#### 2.2.1. Why not criminalised?

Before the Act came before Parliament there was a long consultation period in which different potential methods of dealing with forced marriages were discussed. Making a specific criminal offence of forcing a person into marriage was considered but eventually rejected in favour of the civil approach.

There were many reasons why criminalisation was rejected. Firstly, it was thought that the current criminal law was sufficient to prosecute any perpetrators with offences such as child abduction, kidnapping, confinement, false imprisonment, assault, theft, sexual offences and child cruelty offences.<sup>8</sup> However, it should be noted that this did not stop the passing of the Female Genital Mutilation Act 2003 (FGMA). Female genital mutilation could have been prosecuted under various existing laws, but it was considered that it should be designated a separate crime, as it was considered so serious.

Due to the potential impact forced marriages can have on the victim there seems no reason why it should not just merely come under a wide variety of other criminal laws. It is a wrong in itself and making it a criminal offence would make a clear statement that it is unacceptable. As the House of Commons Home Affairs Committee stated, “there is a clear case to be made both for

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<sup>5</sup> *Re SA* [2006] EWHC 2942 (Fam) at [44]

<sup>6</sup> *Sheffield City Council v E* [2004] EWHC 2808 (Fam); *Re SK (Proposed Plaintiff)(An Adult by way of her Litigation Friend)* [2004] EWHC 3202 (Fam); *M v B, A and S (By the Official Solicitor)* [2005] EWHC 1681 (Fam)

<sup>7</sup> [2004] EWHC 3202 (Fam)

<sup>8</sup> Foreign and Commonwealth Office, *Forced Marriage: A Wrong not a Right, Rights of Women*, December 2005, p. 1. [www.fco.gov.uk/resources/en/pdf/pdf14/fco\\_pdfforcedmarriageconsultation](http://www.fco.gov.uk/resources/en/pdf/pdf14/fco_pdfforcedmarriageconsultation) [Accessed 30 November 2010]

and against criminalisation of forced marriage”.<sup>9</sup> Although a strong case could be made, SYR and other organisations would not readily agree with such a criminalisation due to its many disadvantages.

Another reason why criminalisation would not be an adequate solution is because there would be immense practical difficulties involved. As with domestic violence cases, convictions would be practically impossible without the co-operation of the victim who would be needed to give evidence in court. There are many reasons why a victim would not be willing to prosecute, including fears for personal safety, lack of income and safe accommodation, language barriers, uncertain immigration status, and family loyalty.<sup>10</sup> Prosecutions would probably be very rare indeed, and like the FGMA, the new offence would probably have more symbolic than practical value.

Thirdly, it is acknowledged that while arranged and forced marriages are two very different things; at one end having the full consent of both partners, and at the other no choice, coercion, rape and lifelong abuse, the two do have to meet at some point. This created a ‘grey’ area where the degree of force or pressure used was hard to determine, and it might be classed as an arranged or forced marriage. This ‘grey’ area was another factor which made criminalisation a potentially dangerous step to take.

Fourthly, civil remedies have widely been regarded as the most adequate solution as they are speedy and low cost. Whereas, in a criminal context there has to be a preparation of court documents and adherence to strict rules on litigation and evidence, in civil litigation this can sometimes be dispensed with and instead an ‘ex parte’ application, without any notice or hearing to the family, can be the fastest way of protecting an individual. In forced marriage cases, this is often the top priority and criminalisation would not offer such a possibility.

The final and most widely cited reason not to criminalise was because it was feared that the practice would be forced underground.<sup>11</sup> The simple fact is that the problem is already underground. Since the Act came into force in 2008 there have been 254 FMPOs issued and only 5 of those have been brought back to the courts.<sup>12</sup> There has only been one conviction under the act for continually breaching the terms of the order.<sup>13</sup> In 2010 alone the FMU gave advice in 1735 instances. It is assumed that many of the forced marriage cases are going unreported and making it a specific criminal offence is likely to push what is already an underground problem further away from the jurisdiction of the courts.

In addition, there is no reason why already-existing criminal offences could not work in unison with the Act.<sup>14</sup> Currently the fact that the victim of violence seeks and is issued with a non-molestation order does not mean that any persons restricted by the order is then charged with a criminal offence, but it is very common for criminal proceedings to follow. There is no doubt that the current 2007 Act should stay in place as the civil burden of proof means that FMPOs can

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<sup>9</sup> House of Commons Home Affairs Committee, *Domestic Violence, Forced Marriage and “Honour” – Based Violence*, Sixth Report of Session 2007-2008, Volume 1, p130

<sup>10</sup> Foreign and Commonwealth Office, *A Choice by Right, The Report of the Working Group on Forced Marriage*, June 2000 <http://www.fco.gov.uk/resources/en/pdf/a-choice-by-right> [Accessed 30 November 2010]

<sup>11</sup> *Ibid* p. 4

<sup>12</sup> *The Times*, 2<sup>nd</sup> February 2011

<sup>13</sup> *The Times*, 28<sup>th</sup> February 2011

<sup>14</sup> See 4 (III) (b), below

be granted with substantially greater ease than any criminal conviction. Voluntary groups have expressed concern that criminal proceedings related to forced marriages are not being pursued alongside FMPOs in the way that domestic violence prosecutions would be continued where the victim withdraws.<sup>15</sup> Undertaking such an approach might enhance the potential of FMPOs considerably.

### 2.2.2. Using forced marriage as an aggravating factor in sentencing

In December 2001 The Centre for Child and Family Law Reform put forward a compromise proposal between the pro- and anti- criminalisation camps. The proposal was to place forced marriages on a similar footing as racially or religiously aggravated crimes as set out in the Crime and Disorder Act 1998. This meant that any criminal act which had an element of forced marriage would be an aggravated offence. This would give the court the power to dramatically increase any sentence where the crime was committed for the purpose of inducing or causing another to enter into a marriage.<sup>16</sup> This compromise solution would mean that convictions result in a sentence reflecting the true gravity of forcing a person to marry against their will. Such a change would reflect developing governmental, judicial, and public awareness of the issue.

The recommendation here, therefore, is to include forced marriage as an aggravating factor when considering sentence in criminal cases. There would be no harm in putting this factor into the Judicial Studies Board Guidelines or the Sentencing Guidelines. It is likely that forced marriage is already being considered an aggravating factor by judges dealing with specific cases. But, by doing so, a strong message would be sent that judges would be compelled to keep such a factor in the forefront of their minds when sentencing.

### 2.3. The Law post-2007

The question then becomes: Why create an act when the High Court's inherent jurisdiction appeared to deal with the problem by civil means?

To answer the question simply: the Act is the result of the Government meeting the issue of forced marriages head on.

Forced marriage as an issue has in recent years become much more widely recognised as a matter of great importance by society, mainly due to the media's reporting on the issue. Between 5,000- 8,000 cases are estimated to be dealt with by public agencies every year.<sup>17</sup> The true scale of the problem is likely to be significantly higher due to serious problems of under-reporting.

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<sup>15</sup> Ministry of Justice policy paper, *'One Year On: the initial impact of the Forced Marriage (Civil Protection) Act 2007 in its first year of operation*, para 65 [www.justice.gov.uk/one-year-on-forced-marriage-act.pdf](http://www.justice.gov.uk/one-year-on-forced-marriage-act.pdf) [Accessed 11 May 2011]

<sup>16</sup> Centre for Child and Family Law Reform, *Children – Forced Marriages, Proposals for Law Reform*, December 2001

<sup>17</sup> Department for Children, Schools and Families, *Forced Marriage: Prevalence and Service Response*, Research Report No DCSF-RR128, July 2009

The Forced Marriage (Civil Protection) Act 2007 was originally proposed as a private member's bill in the House of Lords by Lord Lester of Herne Hill, and was subsequently taken on by the Government. The Act augments the existing tools in the form of a new order.

The Act provides civil remedies for victims and potential victims of forced marriage. It gives Courts the power to make Forced Marriage Protection Orders ('FMPOs'). These orders, in a sense, reflect the inherent jurisdiction of the Family Court in their flexibility: enabling the Court to include within them any prohibitions, restrictions and requirements of other terms which it considers appropriate to the case. It is submitted that, prima facie, this flexibility is a positive thing as it allows the Court to react in an appropriate manner on a case-by-case basis. Terms which are commonly included in FMPOs include:

- I. The prevention of:
  - a) The removal of the Applicant from the jurisdiction;
  - b) The use or attempted use of force to coerce the Applicant into marriage
  - c) Threatening or intimidating behaviour toward the Applicant
  
- II. Ordering the return of the Applicant to the jurisdiction
- III. Confiscating passports
- IV. Disclosure of the Applicant's whereabouts

The discretion of the court in deciding whether to exercise its power under the Act also mirrors that of the inherent jurisdiction in its breadth, in that the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the person to be protected.<sup>18</sup>

#### 2.4. Making a Forced Marriage Protection Order

Victims or potential victims of forced marriage may either make a straightforward application to the court for an order to be made in their favour or the court may make an order during the course of family proceedings at its discretion. This remedy which is the crowning achievement of the 2007 Act is to be highly regarded as a completely well-thought out and appropriate measure which was taken by Parliament. The court recognises that an applicant, as result of simply making an application, may be put at considerable risk and, accordingly, an applicant who is potentially at risk may seek the court's permission to withhold any information which would put him or her at risk.

The Act is also flexible in whom it allows to make applications to the relevant court. Applications can automatically be brought by victims or potential victims. In addition, 'relevant third parties' ('RTPs') may also apply without leave of the court.<sup>19</sup> Any other person can only apply with the leave of the court.<sup>20</sup> An important development occurred on the 1<sup>st</sup> November 2009 when Local

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<sup>18</sup> 2007 Act s.63A (2)

<sup>19</sup> 2007 Act s.63C (2)

<sup>20</sup> 2007 Act s.63C (3)

Authorities ('LAs') were designated as RTPs, enabled to apply for orders without leave of the court.<sup>21</sup> This measure was introduced in recognition of the fact that in many, if not most, cases, the victims of forced marriage will be children or vulnerable who will require protection from social services and who may not be able to bring an application themselves. However, the potential of this change to the law has largely been strangled by the lack of appropriate engagement by the LAs themselves. LAs have preferred to commence care proceedings in cases involving forced marriages rather than making an application under the Act.<sup>22</sup> What is of concern is that LAs have been reluctant to begin proceedings in forced marriage cases where they have perceived the evidence to fall short of what would otherwise be expected of in care proceedings, despite the identification by Parliament of forced marriage as a specific problem requiring action in itself.<sup>23</sup>

Importantly, non-nationals are able to make applications for FMPOs under the Act, the test being one of 'habitual residence'; i.e. if the non-national is, as a matter of fact, habitually resident within the jurisdiction then he or she is entitled to the protection of the order.<sup>24</sup>

The applications themselves are invariably 'without notice' (meaning that the person they are made against is not informed of them until they have been passed). The reasoning behind this is obvious and, in some cases, is vital to the protection of the applicant. However, in recognition of the fact that those against whom the orders are made will be unable to challenge the FMPO at the hearing, orders can be made for a limited amount of time or until further notice. Furthermore, the Court must give the person affected by the order the opportunity to respond to the proceedings as soon as it is just and convenient to do so.<sup>25</sup>

Depending on how the respondent reacts to an order being made, the applicant may find themselves in a contested hearing in the family courts on the issue of whether he or she consented to the marriage or not. If it is found that a forced marriage took place, then the victim should be able to obtain a nullity in respect of the marriage.

## 2.5. Status of Marriage and Nullity

Victims who have been forced to go through a marriage ceremony and who subsequently escape from their family or purported spouse are likely to want to be legally released from their marriage. This may be in order to prevent the other party from entering the UK on a spousal visa or in order to truly put the matter behind them. To do so, they will often have to commence proceedings against their purported spouse.

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<sup>21</sup> Ministry of Justice, 'Forced Marriage (Civil Protection) Act 2007; Guidance for local authorities as relevant third party and information relevant to multi-agency partnership working', October 2009. [Accessed 30 November 2010]

<sup>22</sup> Chokowry and Skinner, 'In Practice: The Forced Marriage (Civil Protection) Act 2007: Two Years on' [2011] Fam Law 76

<sup>23</sup> *Ibid*

<sup>24</sup> There is authority to suggest that the possession of a British passport, even where the individual in question has never set foot in the United Kingdom, is sufficient to enable the Applicant to enjoy the protection of the Court's power (*Re B: RB v FB and MA* [2008] EWHC 1436 (Fam))

<sup>25</sup> s.63D(4)(a) Family Law Act 1996

Marriages conducted without one party's consent due to duress are voidable under English law, and can be declared null.<sup>26</sup> This means that in the eyes of the law there was never any true marriage. However, statute states that such a declaration cannot be given unless proceedings were taken out within three years of the marriage ceremony.<sup>27</sup> If that time limit has expired, there must be a divorce instead. The courts are aware, however, of the stigma attached to divorce within some communities, and have sought to evade this by using the inherent jurisdiction of the High Court to nullify a marriage, even outside the statutory time limits.<sup>28</sup> This sensible approach is a commendable step by the courts.

Such a step is especially valuable because commencing legal proceedings is almost certain to bring victims back into contact with their families. If they have become estranged it is understandably the victim's choice, and they would often be motivated to keep such relatives at arm's length by fear of serious violence. Although measures can be taken by the court to protect such individuals, entering into such a process will require a great deal of courage and resolution from victims. Yet, for the purposes of annulling a marriage the development of this courage, confidence and stability may take too long, by which time the time limit would have been passed.

To compound this further, demonstrating a lack of consent at marriage can often be extremely difficult meaning that the time from when consent was withheld can be ambiguous to find. Many cases have complicated histories and so it is a challenge for the courts to ascertain with sufficient certainty the details of how, when and where the applicant was forced into marriage and whether it was truly against his or will. This point can be illustrated by the case of *SH v NB (Marriage: Consent)*<sup>29</sup> where the victim had what was admitted to be a "very confused recollection" of events. She had, for unexplained reasons, returned to Pakistan where she had initially been forced into the marriage, and returned more than once to her family after having been placed in safe houses by the court. The process of going through the marriage had been traumatic, and the resulting quarrels with her family had, very understandably, not been a single clean break, but an on-going process full of reversals and doubts. It is vital that the courts are kept aware of the fact that victims may not exhibit a consistent course of behaviour, and that this does not mean they at any point truly accepted the marriage.

## 2.6. Primary reactions to the Act

Initially, fifteen county courts were designated to deal with applications, and cases could also be issued in the High Court. The designated courts were selected on the basis of demographic information provided by the Forced Marriage Unit as to which communities were most likely to make applications. In the most recent available reports by the Ministry of Justice from 2009, it was stated that 86 applications had been brought nationally in the first year. This was nearly double the number expected, and was generally seen as a positive start for the new legislation,

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<sup>26</sup> s.12(c) Matrimonial Causes Act 1973

<sup>27</sup> s.13 Matrimonial Causes Act 1973

<sup>28</sup> *B v I (Forced Marriage)* [2010] 1 FLR 1721

<sup>29</sup> [2009] EWHC 3274 (Fam)

but remains low considering the estimated extent of the problem.<sup>30</sup> In addition, certain areas accounted for a large proportion of all orders given. For instance, 20 of those 86 applications were granted in Luton County Court. It is likely that the attitude of Local Authorities, Police and general awareness of the Act varied between areas and this accounts for some of the differences in distribution. However, it also points probably to significant under-reporting in some areas.

Perhaps surprisingly to many, 14% of those who sought assistance in relation to forced marriage were male with the media highlighting that gay men were a particularly vulnerable group.<sup>31</sup>

It is widely acknowledged that a large proportion of forced marriage cases involve some type of immigration element, and this often concerns the party being forced into marriage. This is due to the principle that the immigration jurisdiction has priority over the family jurisdiction.<sup>32</sup> Practically, this means that if an FMPO is granted for the protection of an applicant who has no leave to stay in the United Kingdom and that applicant is removed from the jurisdiction by the Immigration Authorities, there is very little that the Family Courts can do to prevent such a removal or attempt to interfere with the exercise of immigration powers.<sup>33</sup>

Furthermore, there have been instances where an FMPO has had negative consequences on arranged marriages and has adversely affected foreign spouses wishing to migrate into the country where previously they would have been permitted to do so.

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<sup>30</sup> Department for Children, Schools and Families, *Forced Marriage: Prevalence and Service Response*, Research Report No DCSF-RR128 July 2009

<sup>31</sup> Daily Mail, "Rise in gay men forced into marriage by families that refuse to accept their sexuality" 1/7/2010 <http://www.dailymail.co.uk/news/article-1291072/Rise-gay-men-forced-marriage-families-refuse-accept-sexuality.html> [Accessed 10/05/2011]

<sup>32</sup> *R (Anton) v Secretary of State for the Home Department* [2004] EWHC 27030/2731

<sup>33</sup> Berry, A (2009) 'The Right to marry and immigration control: the compatibility of Home Office policy with Art. 12 and art.14 ECHR' in Baiai. *Journal of Immigration Asylum and Nationality Law* 2010, 24(2), 173-179 at [177].

### **3. Analysis of the Legal Framework**

By creating the 2007 Act, as well as carrying out a thorough consultation process prior to the creation of legislation, the British Government has recognised that forced marriage is a serious issue in the UK. Further, the production and dissemination of statutory guidelines has given weight to their commitment to this social problem by placing an obligation on public agencies to adhere to the key guidelines. Yet, it is clear that there are contradictions and inconsistencies both within national government policy in tackling forced marriages in the UK, as well as in the way the guidelines are then engaged with by the relevant agencies, which will be summarised below.

#### **3.1. Lack of Government emphasis in reforms**

The Ministry of Justice produced two statutory documents, the first called *The Multi-agency Statutory and Guidance Practice on Forced Marriages*, specifically produced for all frontline workers, such as health professionals, social workers, police officers, housing officials and education professionals operating in England and Wales. It sets out clear indicators that can potentially help front-line staff identify early signs of forced marriages and thus provide effective interventions and preventions to help the victim of a forced marriage. The second document *The Right to Choose – Multi agency Practice Guidelines*<sup>34</sup> is specifically targeted to chief executives, directors and senior managers within agencies involved with handling cases of forced marriage also within England and Wales. This document highlights issues such as staff training, developing inter-agency policies and procedures, raising awareness and developing prevention programmes through outreach work.

The first area for concern is that both documents have singled out “*local authorities and/or district councils in particular adult social care services, strategic health authorities, primary care trusts, local health boards*”.<sup>35</sup> As the key organisations they need to develop and maintain procedures to enable front-line staff to help victims of forced marriages. However, since the release of the ‘*Equity and Excellence: Liberating the NHS*’ white paper<sup>36</sup>, the Coalition Government has decided to put forward radical restructuring which will see the Strategic Health Authorities (SHA) and the NHS Primary Care Trusts (PCT) to disappear from the scene by 2013 and GP consortia to take over the commissioning of healthcare services in part in conjunction with partners such as LAs. This is quite a startling change, and will directly affect the area of domestic violence and forced marriages. For example, it is normal for local authorities to support safe refuges for women fleeing domestic violence and often these refuges have either Independent Domestic Violence Advisors (IDVAs) attached to them, or forced marriage support workers. Some of the funding for such projects may also come from the PCT that falls under that catchment area. It is not clear what provision the Government has put in place to ensure that

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<sup>34</sup> Revised in January 2011

<sup>35</sup> Foreign and Commonwealth Office, *The Right to Choose: Multi-Agency Statutory Guidance for Dealing with Forced Marriage*, p. 6. <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/fmconsultation1> [Accessed 30 November 2010]

<sup>36</sup> Department for Health “*Equity and Excellence: Liberating the NHS*” 12 July 2010 [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_117353](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_117353) [Accessed 30 November 2010].



this type of funding remains available to LAs and GP Consortia in the new scheme of things. If the main commissioners of such services are scrapped, this will no doubt have a detrimental effect on the Act: i.e. the ways in which it is engaged with by key agencies like social services, and ultimately will harm the same people it was set up to protect. As yet, the Government has not provided information on how this area and type of funding will be ring-fenced and protected once the SHAs/PCTs are removed.

The second area of concern is that although both documents highlight the importance of finding effective means of recognising a potential victim of a forced marriage and putting them first. However, the two documents are in some areas at odds with each other in their approach to doing so and can be interpreted very differently. In some cases, this could lead to individuals being put into danger.

### 3.2. Key analysis of Statutory Guidelines

#### 3.2.1. The dangers of Mediation

The statutory guidelines are very clear that in the handling of a victim of forced marriages, it is critical not to attempt facilitation or encourage the use of mediation in resolving such disputes.

*“Due to the nature of forced marriages and honour-based violence, some underlying principles and themes within existing guidance may inadvertently place young people and vulnerable adults at greater risk of harm. This includes the belief that the best place for them is with their family and the practice of attempting to resolve cases through family counselling, mediation, arbitration and reconciliation”<sup>37</sup>*

The case of *A Chief Constable v YK*<sup>38</sup> illustrates some of the difficulties that can arise from attempting to leave a victim within the family environment while legal proceedings are in progress. The case involved a 19-year-old potential victim of a forced marriage. The day after the FMPO was made, she stated that she was actually a willing participant in the forthcoming marriage, and asked for the order to be discharged. Since she was living with her family at the time, her statements were not taken at face value, and further hearings took place. Due to complications of the case, these took over a year. This case illustrates how, by placing victims back with their family, the court can create new problems. First, while they remain with the family they are very likely to come under intense pressure to enter into the marriage, to profess their willingness, and show themselves as wanting the order discharged. Although regular visits should help prevent violence, psychological influence cannot be prevented. Secondly, due to living with the family, it becomes more difficult, not less, to discover whether the victim is truly a willing participant. In most cases, the only evidence as to the victim’s consent will be the victim’s own. If they are under pressure to say they are willing, their evidence to that effect must be treated with caution, especially when other sources of evidence may not be available.

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<sup>37</sup> Foreign and Commonwealth Office, *The Right to Choose: Multi-Agency Statutory Guidance for Dealing with Forced Marriages*, p. 19. <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/fmconsultation1> [Accessed November 30 2010]

<sup>38</sup> [2010] EWHC 2438 (Fam)

The effect may be that the court has no choice but to rely on the evidence of a person under duress. In *YK*, it was eventually determined that the Applicant of the Order was genuinely willing and the initial suspicions were unfounded.

The aim of an FMPO must be to prevent a person from being forced into marriage, including by sustained psychological coercion. It is hard to see how this objective is obtained by placing victims back with their families. As the founder of Karma Nirvana, Jasvinder Sanghera, commented:

*“I am not aware of any other injunction in this country under which the individual is returned to the perpetrators. In these cases, forced marriage protection orders are issued to our victims, in the main minors, then those victims are returned to multiple perpetrators in that house. Once that front door closes, I am not aware of who is monitoring the implementation of that order because the named people may not be intimidating them but, believe me, there are many other family members that are. Then our victim is put under great pressure and that is a huge concern to us.”<sup>39</sup>*

One of the primary motivations behind leaving the victim with the family appears to be a belief that preserving the family ties is inherently preferable. Indeed, the gravity of the step in removing a young person from their family should not be underestimated. Yet, it is clear that in cases of forced marriages, home is often not where the heart is. It should thus be applauded that the general ethos of the statutory guidelines has recognised that the link between forced marriage forms no part of healthy family life. To quote Mandeep Sanghera of Voice UK:

*“We need to be clear about protection – not political correction”<sup>40</sup>*

### 3.2.2. Use of ‘Relevant Third Party’ status

Issues regarding protection can meet difficulties when trying to apply them to the day-to day realities of public bodies. For example, the British Association of Social Workers (BASW) has stated that the guidelines created by the Ministry of Justice (based on ‘multi-agency public protection arrangements’ (MAPPA)) used to identify forced marriages, are too narrow and conflict with the BASW working methods for both vulnerable adults and children, preferring to use the ‘multi-agency risk assessment conference’ (MARAC) model instead.<sup>41</sup> This has left social services departments unsure on how to engage with the Act. This is a substantial concern as it is clear that the Government views LAs as the key public body in protecting victims of forced marriage. Their importance has been solidified by the fact that they are currently the only body to be given RTP status within the Act. Yet, if this key body is not engaging properly and is unwilling (through confines of the legal framework) to act on behalf of victims of forced

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<sup>39</sup> Uncorrected transcript of oral evidence, HC 880-i, House of Commons Home Affairs Select Committee, Follow-up on Domestic Violence, Forced Marriage and “Honour”-Based Violence, March 2011

<sup>40</sup> Mandeep Sanghera speaking at the Forced Marriages of People with Learning Disabilities Seminar in conjunction with the Judith Trust. [www.judithtrust.org.uk](http://www.judithtrust.org.uk). [Accessed 30 November 2010]

<sup>41</sup> British Association of Social Workers. October 2008. [www.cypnow.co.uk/Social\\_Care/article/855601/Forced-marriage](http://www.cypnow.co.uk/Social_Care/article/855601/Forced-marriage) [Accessed 04 May 2011]

marriages, it is clearly in breach of its duty of care towards those people most in need of protection.

A review carried out by the Ministry of Justice a year after the Act came into force called *One Year on: the initial impact of the Forced Marriage (Civil Protection) Act 2007 in its first year of Operation*<sup>42</sup> found that LAs were not making many FMPOs on behalf of victims or failed in the first instance to investigate cases that they felt were beyond their remits. The report highlights how forced marriage cases and the approach of the Act itself:

*“Rub against what a social worker would normally do in child protection work.”*<sup>43</sup>

Social workers are encouraged and trained to assess and review a vulnerable person over a long time, through regular visits to the family home and through informal mediation. This issue is further compounded when a victim is deemed not to be at risk of physical harm. There remain serious inconsistencies in approach between the statutory guidelines and the working practices of social services especially in instances where it is unclear whether the more appropriate response is through traditional social services methods or by means of the Act. Social services have tended not to be very aware of the Act due to lack of information and training in this specific area. Additionally, police reported that:

*“They [local authorities] need to be more willing to apply for orders earlier in the process.”*<sup>44</sup>

The local authority representatives invited to submit comments “regretted”<sup>45</sup> the way that they had failed to engage effectively with the forced marriage issue but felt that more resources were needed in the area, especially when tackling complex cases.

The review did, however, go on to illustrate how the police on the other hand were thought to be,

*“active and effective in promoting awareness and indeed in making applications drawing on their experience in dealing with domestic violence”*<sup>46</sup>

They viewed themselves as the legitimate specialists who were energetic and dedicated in handling cases of forced marriages. As well as engaging well with the Act, the Association of Chief Police Officers have published their own set of guidelines entitled *Dealing with cases of Forced Marriage- Guidelines for Police*<sup>47</sup> which work in conjunction with the statutory guidelines. They endorse the views of the Government by reinforcing the link between forced marriages and domestic violence, by linking the issues of forced marriages with the international human

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<sup>42</sup> Ministry of Justice ‘*One Year on: the initial impact of the Forced Marriage (Civil Protection) Act 2007 in its first year of Operation*’ page 22. November 2009. [www.justice.gov.uk/one-year-on-forced-marriage-act.pdf](http://www.justice.gov.uk/one-year-on-forced-marriage-act.pdf) [Accessed 30 November, 2010]

<sup>43</sup> *Ibid*

<sup>44</sup> *Ibid*. Page 25

<sup>45</sup> *Ibid*, page 28

<sup>46</sup> *Ibid* page 26

<sup>47</sup> Association of Chief Police Officers. *Dealing with cases of Forced Marriage- Guidelines for Police*” [www.forcedmarriage.net/.../FMGuidance-for-PoliceOfficers](http://www.forcedmarriage.net/.../FMGuidance-for-PoliceOfficers) [Accessed 02 December 2010]

rights framework and go further by linking domestic violence in the form of honour based violence (and killings) as linked to forced marriages. Most importantly, there is agreement between the two frameworks in that they emphasise that mediation and reconciliation should not be facilitated, especially where the victim has not explicitly requested it. As they state:

*“In many cases, it is not in the individual’s best interest to remain with the family or even in the immediate vicinity. For these reasons, cases of forced marriages, actual or suspected should only be handled by a “qualified officer” that is, a police officer specially nominated by his or her police force as being qualified both relevant experience and specialist training to deal with these complex cases”*<sup>48</sup>

### 3.2.3. Effectiveness of the Statutory Guidelines within the Legal Framework

Two specific professions will be analysed in order to highlight the need to expand RTP status and to show the intricate problems within the existing legal framework.

#### a) The Police

The police guidelines specify numerous processes to limit the influence of family or the outside community. For example, the police are explicitly directed to discourage approaching the family or community leaders unless the victim specifically asks to do so, not to share confidential information with such persons and the need for “secure” and “private places” for victims to be placed. These are policies that are strongly commended; as no individual should be sent away in the belief that forced marriages is “not a police matter”.<sup>49</sup> The guidelines proceed to describe complex and robust models of liaising with the social services for both vulnerable adults and children.

When discussing the Act for the purposes of the Ministry of Justice’s impact review, a police officer was quoted as stating that:

*“The wide power of the Act and the orders made are very useful...people in different agencies need to realise this and use it to its full potential...to stop forced marriages occurring at an early stage...”*

*“It’s easy to make applications to the court. The third party provisions are useful when the victims are young and don’t feel able to make the applications themselves”*<sup>50</sup>

The effectiveness is damped by police’s increasing frustration with what they view as social services’ unwillingness to engage with the Act, whilst publicly expressing their interest in being given official RTP status. This is something the authors would support and recommend the Government to consider. The aim being that if the police, as well as IDVAs (and by proxy women’s voluntary groups as IDVAs are attached to such organisations through funding) are

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<sup>48</sup> *Ibid.* Page 7

<sup>49</sup> *Ibid.* Page 11

<sup>50</sup> Ministry of Justice, *One Year on: the initial impact of the Forced Marriage (Civil Protection) Act 2007 in its first year of Operation*, November 2009, p. 26. [www.justice.gov.uk/one-year-on-forced-marriage-act.pdf](http://www.justice.gov.uk/one-year-on-forced-marriage-act.pdf) [Accessed November 30 2010]

granted such legitimacy, it could potentially help social services in terms of resources and facilitate better cooperation between groups. This was the main aim of the multi-agency practice guidelines, and could be further enhanced by taking such measures.

#### b) Independent Domestic Violence Advisors

The Ministry of Justice is aware of the importance of IDVAs and as result, carried out a Forced Marriage IDVA Support Pilot<sup>51</sup> in which they along with 11 voluntary support services took part in a pilot project to review the work carried out by IDVAs based in 11 of the 15 areas covered by a court designated to give FMPOs. The aim was to assess whether the IDVAs should be specified as RTPs alongside the LAs in order to help support victims and social services – thus their role being extended to a Forced Marriage Protection Order Independent Domestic Violence Advisor (FMPO-IDVA).

The existing IDVA role provides short-to medium-term specialist case work mainly in the area of domestic violence. They are trained to the Co-ordinated Action Against Domestic Abuse (CAADA) standard which was compatible with the statutory multi-party framework as well as both statutory guidelines, supported by social services in working with both vulnerable children and adults. Further, the report recognised that though the training did not cover forced marriages it did cover honour based violence and as such they concluded that this training did provide

*“the appropriate level of competence to be able to deal with this kind of specialist support and multi-agency working”<sup>52</sup>*

The report recognised that the IDVAs had established cohesive referral routes and risk-assessment protocols in that they worked well with the MARAC assessment used by social services, and had very strong inter-agency links with the police, local health authorities and the FMU. The report further highlighted the positive way in which the FMPO-IDVA model could

*“[...] provide a supporting role, ensuring the protected person’s safety and monitoring risk throughout as well as sign posting to other services as required.”<sup>53</sup>*

Disappointingly, however, the report concluded that by granting RTP status to the voluntary sector, the FMPO-IDVA would “add no value” due to a lack of funding and resources.

However, findings by a report published by the Hestia Fund<sup>54</sup> – a body which developed a 5 year plan to support 19 women’s projects with IDVAs – highlighted the incredible impact that they have within the area of domestic violence.

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<sup>51</sup> Ministry of Justice, *Forced Marriage IDVA Support Pilot*, Sept – Feb 2010. [www.justice.gov.uk/forced-marriage-pilot](http://www.justice.gov.uk/forced-marriage-pilot) [Accessed 02 December 2010]

<sup>52</sup> *Ibid*, page 4

<sup>53</sup> *Ibid*, page 5

### 3.3. Courts within the Framework

The courts evidently form a crucial part of dealing with forced marriages. There are two areas for particular consideration. The first concerns the disclosure of evidence in FMPO proceedings, and the second the difficulties of criminal prosecution of such cases even under existing offences.

#### a) Confidentiality

It is vital that all those who bring forward evidence of a forced marriage can be guaranteed anonymity. The 'whistle-blower' may be the victim, another member of the family, or someone closely connected to them. They may have well-grounded fears for their safety. In addition, to guarantee their safety, it may be necessary to not fully disclose the evidence itself, as the nature of it could reveal its source.

These issues were also dealt with in the case of *YK*, where the evidence itself could not be disclosed at all. The family of the victim objected and demanded to know the case against them. It was ruled that their article 6 rights were not infringed. In addition, the Court ruled that in such situations, special advocates would very rarely, if ever, be appointed to allow such evidence to be handled by the court. In that case, dealing with the evidence became unnecessary due to help obtained from a charity dealing with forced marriages. Quite what would have been done had it been necessary to rely on that evidence is not clear.

Sir Nicholas Wall, in the case of *YK*, made enquiries as to whether such issues regularly bother those courts that administer FMPOs, reporting that these issues were rare. Such a finding is consistent with the experience of charities that forced marriages are hugely under-reported, and that one of the reasons is the fear of being exposed as the source of evidence.

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<sup>54</sup> Hestia Fund "Safety in Numbers – Summary of Findings and recommendations from a Multi-site Evaluation of Independent Domestic Violence Advisors 2009 [www.caada.org.uk](http://www.caada.org.uk). [Accessed 02 May 2011]

## b) Criminal Prosecution

It is well established that forced marriages involve the commission of various criminal offences by family members. Likely offences include false imprisonment, assault, kidnapping and rape. However, prosecuting them can be very difficult. Victims are likely to have relatively little evidence aside from their own testimony. The family, however, can together allege that none of the victim's testimony is true. In such circumstances, victims of forced marriage and of serious offences may find themselves all but abandoned by the criminal justice system. The judges are aware of this issue and in their Ministry of Justice impact Report, they have highlighted the difficulties they had in gathering reliable information pertaining to possible criminal offences. As one judge put it:

*"If there had been a string of non-mols I wouldn't know about it."*<sup>55</sup>

As a result, the judges have put forward a modification to the actual FMPO form, which at the moment does not include any section on previous history or previous convictions for related breaches. They further stated that there was confusion amongst the judges over the RTP status and who could apply and suggested further training.

Overall, the role of the courts needs to be fully supported and given clear information in order for effective administration of justice. As always, it is the court that is working by trial and error to improve the administration of justice, and this could be greatly enhanced by giving statutory and policy guidance from the Office of the Lord Chief Justice, Ministry of Justice and the Attorney-General's Office.

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<sup>55</sup> *Ibid.* Page 23

## 4. International and cross-border aspects

In the global battle against forced marriages, Britain has played a rather static role. Whilst other European countries are seen to have grappled with the issue 'tooth and nail', more for political point scoring than anything else, Britain's organic development in this area has been slow and patchy. It should be noted, however that the European method of blanket criminalisation or immigration restriction is not productive in itself and perhaps Britain's method is slow but certain to achieve a better result against forced marriages. In certain European countries, and recently including the UK, reforms to curb forced marriages, have actually been haphazard and if anything used, 'a hammer to crack a nut' approach. In most cases forced marriage policies are rolled into one with immigration and this creates undesirable results. For example, Denmark adopted such a reform only for it to back- fire into creating resentment amongst minorities, and with a recent British decision from the Home Office, will probably have the same levels of resentment. Whilst governments are free to adopt measures necessary to ensure the protection of fundamental human rights, what is certain is the plethora of international provisions which do create a positive obligation on States to tackle forced marriages.<sup>56</sup> Following on, there is an analysis of how other international institutions and countries seek to tackle forced marriages and what measures are appropriate to develop in the UK. Rather than a simple description of how other countries work in this area, this chapter delves into more specific issues on the international and supra-national level.

### 4.1. General methods employed by Other Countries

When taking stock of how other countries deal with forced marriage, one main theme seems to recur: that of criminalisation. Although there are some countries such as Turkey or Canada which have incorporated forced marriage into their civil codes, with Canada basing its protection against forced marriage within child law, this is less common<sup>57</sup> In terms of those countries which have criminalised the practice, these can be further broken down into countries which have specifically outlawed forced marriage as a punishable act, and those which have included forced marriage in the context of other types of crimes, including trafficking, slavery and sexual aggression. For example, Norway has specifically criminalised forced marriage; attaching a 6-year punishment of imprisonment, even for aiding and abetting.<sup>58</sup> Australia, Belgium, Germany<sup>59</sup> and France have likewise criminalised the act of forced marriage but set this within a wider policy issues. For example, Australia has used a combination of trafficking, slavery and marriage laws<sup>60</sup>, whilst Spain has expanded their policy on sexual aggression and

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<sup>56</sup> Article 23(3) of the *International Covenant on Civil and Political Rights*<sup>56</sup> (ICCPR) states '[n]o marriage shall be entered into without the free and full consent of the intending spouses.' Article 10(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) <sup>56</sup> constitutes an obligation to protect families, but also provides that '[m]arriage must be entered into with the free consent of the intending spouses.' Article 5(d)(iv) of the *Convention on the Elimination of All Forms of Racial Discrimination*<sup>56</sup> (CERD). See also the *Hague Convention on Celebration and Recognition of the Validity of Marriages* and Article 16 of the *Universal Declaration of Human Rights*.

<sup>57</sup> s.72(1) Child & Family Services Act

<sup>58</sup> s.222(2) Norwegian Penal Code

<sup>59</sup> s.240 German Criminal Code

<sup>60</sup> s.270 & s.271 Criminal Code 1995 and s.23B Marriage Act 1961 (Cth)



gender violence to include forced marriages.<sup>61</sup> Whilst it may be efficient to build upon existing legal frameworks, they are nowhere near as potent as specific laws on forced marriage, as often the main policy issue engulfs the forced marriage concerns, leading to weak and inadequate protection. This is no better exemplified than treating immigration as a policy area supposedly capable of effectively dealing with forced marriages.

#### 4.2. Immigration as a policy

There is no doubt that forced marriages are inextricably linked with immigration; however one needs to examine the outcome of such policies where both are rolled into one reform. Charlotte Bailie raises the valid point that we cannot ignore the overseas element of forced marriage. She argues that a number of 'arranged' marriages involve elements of coercion: family expectations, emotional pressure and blackmail. She believes that this should widen the ambit of what a 'forced marriage' is, meaning that thousands more of these marriages occur overseas annually than previously considered. However, there is considerable weight behind the argument that whilst there is a fine line between an 'arranged' and 'forced' marriage, the line nevertheless exists and arranged marriages should be supported by states as a valid cultural practice.

It is at this point we are afforded the opportunity to briefly consider the conceptual nature of multiculturalism and European state support of cultural practices. As a concept, multiculturalism had been attacked from both the right-wing and left-wing parties in Europe, and during the 1990s was increasingly being blamed for social and economic integration failures.<sup>62</sup> Denmark became synonymous for its outward refusal of trying to be sensitive to cultural diversity through, not only, the 'Islamic cartoon' affair, but also "for those working on gender issues, have known the severe restrictions on family reunification introduced as part of a programme to combat forced marriages".<sup>63</sup> Amongst the many immigration restrictions and tests brought in by the Danish government, two measures are of importance to us. First, when assessing whether a marriage may have been forced, the Immigration Service will normally assume that if the spouses are closely related (e.g. cousins), then they did not marry of their own free will. As a result, such applications will usually be automatically rejected.<sup>64</sup> This means that rejection on the basis of a cultural tradition is the rule rather than the exception. Second, the Danish Government increased the age requirement from 18 to 24 years in cases of family reunification of marriage partners.<sup>65</sup> This means that family reunification permits will not be granted to young married partners who are under the age of 24.<sup>66</sup> The change was introduced on the grounds that increased age is supposed to have a positive influence on reducing the risk of being

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<sup>61</sup> See *Title V. Remedy. Chapter I. of the Courts of Violence against women" and The Organic Act on Integrated Protection Measures against Gender Violence" 2004*

<sup>62</sup> 2008, Ethnicities, 'The Rights of women and the crises of multiculturalism', 8, 3 (2008), 291-301

<sup>63</sup> *Ibid*

<sup>64</sup> Taken from; New to Denmark 'Forced Marriage', [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/familyreunification/spouses/forced\\_marriages.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/forced_marriages.htm), [Accessed 02 May 2011]

<sup>65</sup> Taken from; New to Denmark 'Spouses, registered partners and cohabiting partners', [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/familyreunification/spouses/spouses.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/spouses.htm), [Accessed 02 May 2011]

<sup>66</sup> s.9(8) Aliens (Consolidation) Act, *Consolidation Act No. 826 of 24 August 2005 of the Danish Ministry of Refugee, Immigration and Integration Affairs*, [http://www.nyidanmark.dk/resources.ashx/Resources/Lovstof/Love/UK/udlaendingelov\\_826\\_eng.pdf](http://www.nyidanmark.dk/resources.ashx/Resources/Lovstof/Love/UK/udlaendingelov_826_eng.pdf), [Accessed 3<sup>rd</sup> May 2011]

subjected to forced and semi-forced marriages.<sup>67</sup> The assumption is that age has a bearing on the possibility and the strength of the young people to say no to a proposed marriage. However, as well intentioned these reforms were the right-wing government which introduced them clearly had ulterior motives, which was highlighted by the media, of curbing unwanted immigration, especially from Muslim countries.<sup>68</sup> What resulted were Danish citizens forced to migrate to other Scandinavian countries where it was not as difficult to obtain family reunification permits. In some cases young women were forced to go back to the country of origin in order to get married to the person whom had been chosen for them. This meant deterioration in the social position of these young women.<sup>69</sup>

The state of affairs is not wholly different in the UK, as since 2008 the minimum age that permission to live in the UK would only be given of either the applicant or sponsor if they are 21 or over on the date of arrival.<sup>70</sup> Again, like Denmark, the reason for increasing the age was to reduce instances of forced marriages, however much criticism from politicians, academics and lawyers along with the decision in the *Quila*<sup>71</sup> case would state otherwise. The age was increased in the hope it would tackle forced marriages, as by increasing the age the potential spouses would have greater confidence and maturity in resisting marriage.<sup>72</sup> However, as research suggests, the increase in age has no correlation with a decrease in forced marriages.<sup>73</sup> Furthermore, in the *Quila* case, Sedley LJ stated that rule 227 of the Immigration Rules was a “blunt instrument” and that it was unreasonable in the *Wednesbury* sense.<sup>74</sup> Therefore, although commenced with noble intentions by the Home Office, the increase in age contributes very little positively towards forced marriage and consequently such immigration policies should not be rolled into other sensitive areas.

#### 4.3. Importance of charities and N.G.Os on an international level

On a supranational level, the European Parliament in 2010 was busy trying to encourage Member States to include forced marriage in the broadest definitions possible in order for national law to protect its victims. Earlier this year the European Parliament passed a Directive, ‘on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA’.<sup>75</sup> At note (11) the Directive sought to include forced marriage within the definition “so far as they fulfil the constitutive elements of trafficking in human beings.” This means that member states can introduce measures which will

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<sup>67</sup> See Iovanni and Pringle, ‘Denmark National Report on Law and Policy Addressing Men’s Practices’, FoSo Arbejdsrapport/ Working paper Series Nr. 5, 2008

<sup>68</sup> See ‘Do Denmark’s immigration laws breach human rights?’, 10<sup>th</sup> February 2011, BBC News Online, <http://www.bbc.co.uk/news/world-europe-12366676>, [Accessed 3<sup>rd</sup> May 2011.] See also ‘Denmark cracks down on migrant marriage’, 24<sup>th</sup> June 2002, BBC News Online, <http://news.bbc.co.uk/1/hi/world/europe/2057594.stm>, [Accessed 2<sup>nd</sup> May 2011]

<sup>69</sup> Farwha N, *Forced and semi-forced marriages in Denmark*, 2005 [http://www.etniskkvindeconsult.dk/documents/forced\\_and\\_semi\\_forced\\_marriages.pdf](http://www.etniskkvindeconsult.dk/documents/forced_and_semi_forced_marriages.pdf), [Accessed 2<sup>nd</sup> May 2011]

<sup>70</sup> Rule. 227 *Spouses and civil partners*, Part 8 ‘Family members’, Immigration Rules, UKBA Home Office [http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/spouses\\_civil\\_partners/](http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/spouses_civil_partners/), accessed 3<sup>rd</sup> May 2011

<sup>71</sup> *Quila v Secretary of State for the Home Department* [2009] EWHC 3189 (Admin)

<sup>72</sup> UKBA, *Marriage visas: the way forward*, July 2008, para 3.1 [available from UKBA website, The National Archives version]

<sup>73</sup> *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)*, Marianne Hester, Khatidja Chantler, Geetanjali Gangoli, Jasvinder Devgon, Sandhya Sharma & Ann Singleton (2008)

<sup>74</sup> *Quila v Secretary of State for the Home Department* [2009] EWHC 3189 (Admin) paras. [29] and [78]

<sup>75</sup> Directive 2011/36/EU of the European Parliament and of the Council

not only affect human trafficking, but also include a greater responsibility for victims of forced marriage. It is a pity that the United Kingdom had chosen not to adopt this Directive.<sup>76</sup> If it had done so, many of the provisions would have been relevant to the UK's legal framework and would have thus provided a stronger support frame for victims before and after the court process, as the need has been noted by all sides.<sup>77</sup> The section of interest from this Directive is note (6) which states:

*“Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations in this field working with trafficked persons, in particular in policy-making initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of anti-trafficking measures.”*

The importance of charities and non-governmental organisations cannot be overstated in this very sensitive and technical area. The UK should therefore recognise charities and organisations who strive to provide adequate services which, according to various International law provisions are the duties of Governments.<sup>78</sup> The UK seems to have missed a great chance to tackle forced marriages ‘honourably’ and properly by adopting the Directive and then tendering charities and organisations to provide those services whilst being allocated a fixed budget. This budget would have been smaller than setting up such services on its own or delegating to local authorities. The main reason is that the organisations already possess trained members based in key areas and are equipped with a tailored programme to help such victims. What these organisations need is sustenance through reduced overhead costs and funding to grow. The need for these services was identified by the E.U. as being a necessity for Member States to fulfil their Treaty obligations.<sup>79</sup> As Bailye argues, “more money needs to be spent on enabling victims to ‘exit’ forced marriages. Legal initiatives are all well and good, but they are not helpful if the victim is not emotionally, financially and socially supported, whether that may be in accommodation, benefits, counselling”.

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<sup>76</sup> Note (35) Directive 2011/36/EU of the European Parliament and of the Council

<sup>77</sup> See ‘Forced Marriage Research’ [2011] IFL 3; Walsh, ‘Forced Marriage- Case and Legislation’ [2011] Fam Law 331; Walsh, ‘London Conference Conclusions and Recommendations’ [2010] IFL 305 (2) and Gaffney-Rhys, ‘Developments in the Field of Forced Marriage’ [2008] IFL 26

<sup>78</sup> Committee on the Elimination of All Forms of Discrimination against Women at p 90, para 16., Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW), Art 16(1)(b)

<sup>79</sup> Arts.11 & 18 Directive 2011/36/EU of the European Parliament and of the Council

#### 4.4. Emphasis on cross-border and international relations on forced marriages

Three crucial examples of important cross-border relations with the U.K. courts are now outlined to manifest the abundant possibilities that could be agreed to with other countries when considering the welfare of the forced marriage victim.

- (1) European Protection Order: What is of notoriety is the UK's decision to opt in to the creation of European Protection Orders (EPOs). The EPO is intended to assist victims who have obtained a protection order in one member state and who subsequently move to another member state. However, this only applies to judicial co-operation in "criminal matters"<sup>80</sup> and the UK have insisted that this Directive should not be extended to civil proceedings.<sup>81</sup> Whilst the EPO can only be attached to orders made in criminal proceedings, such as an ancillary order such as a restraint order, this is only pursuant to the victim pressing the CPS in to prosecuting the alleged perpetrators on criminal charges such as kidnap, false imprisonment, abduction and such. Most victims would not consider prosecuting their relatives and so the matter never reaches the criminal courtrooms, instead civil orders, such as the FMPO, are never to be strengthened by an EPO. However, there is a problem with EPOs in that differences in local jurisdictional practices could lead to an uneven and ineffective application of such an order. This should be borne in mind and only time will tell if this type of order is to be successful or not.
  
- (2) Judicial Protocols: Judicial Protocols are an effective method of side-stepping politics altogether and getting judges to agree on common understandings which will allow court orders to extend into each other's jurisdictions. Whilst the obvious problem with such protocols is that they are not enforceable by law, Thorpe LJ argues that there is a shared respect for, '[...] the common law of England. The rule of law, the independence of the judiciary and the independent rights and duties of the advocates are a valuable legacy in many commonwealth states.'<sup>82</sup> This is enough to warrant reciprocal enforcement of orders and so the mutual understanding can be very effective. The UK/Pakistan Judicial Protocol 2003 is one understanding which provides a key weapon for judges to ensure a swift return of children who may be victims of forced marriages in Pakistan. This can of course work both ways, in which potential victims who may be sent to the UK can be safely returned to Pakistan. However, this protocol specifically covers child abduction, with forced marriage being squeezed into its meaning. Consequently, this also only applies to children, and although many children are affected by forced marriage, the majority of the victims are still over 18. The UK should therefore consider encouraging further judicial protocols specifically on aiding forced marriage victims as this is an important and under-developed tool. However, Bailye argues that any such agreement should be avoided as there is a need for flexibility in the framework for the British High Commission to work within, otherwise it would make the job of rescuing victims far harder. The problems she states in rescuing victims include corruption, police officers complying with perpetrators and judges lecturing victims in open court. Bailye points out that such flexibility should allow judicial training in appropriate

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<sup>80</sup> Art 82 (1) (d) Treaty on the Functioning of the European Union 2009

<sup>81</sup> European Scrutiny Select Committee on Minister's letter of 11 January 2011, para 9.17

<sup>82</sup> Thorpe LJ Rt Hon., '*Religious Aspects in Cross-Border Family Conflicts*' [2009] IFL 217

legal procedures, along with making Pakistani judges understand the weight of an FMPO. These, we argue can only be improved by building a strong cooperation with Pakistani authorities based on a common appreciation of victim-orientated justice, and so legal agreements such as treaties may be too restrictive. It is hoped, as Bailye argues, that with such training and understanding, Pakistani judges can take FMPOs into consideration when making legally binding decisions.

- (3) Inherent jurisdiction: The final major power the court has is its use of inherent jurisdiction. Before the introduction of the Act, in *Re SK*<sup>83</sup>, Singer J used the inherent jurisdiction of the court in order to ensure that a young woman, where a forced marriage was feared, was interviewed in Dhaka so as to ascertain her true wishes. Singer J made orders requiring the attendance of a number of relatives to give information surrounding her whereabouts; made injunctions restraining any arranged marriage or threat or use of violence; and made orders to assist with arrangements for the potential victim to be interviewed at the High Commission in Dhaka. 'Inherent jurisdiction' is almost a last safety net to ensure victims are protected by the Courts, it is frequently relied on by practitioners and should very importantly be made aware of to other practitioners and parties.

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<sup>83</sup> [2005] 2 FLR 230

## 5. Conclusion and Recommendations

### 5.1. Conclusion

To conclude, the legal framework of the UK has made great strides in the past 5 years or so with the creation of the FMU, statutory guidelines and with the 2007 Act. However, a lack of joined-up thinking with regards to the Guidance, the weakness of the civil courts to provide full speedy service in issuing FMPOs and the absence of the Government's robust public pledge to tackling forced marriages head on could lead to the weakening of the implementation of the law. Funding is of crucial concern for N.G.Os and organisations, who are trying to make do with whatever they can, yet can only provide the most basic level of services to victims. There needs to be a serious pledge made to providing before and after care for victims when they are in the shadows of court proceedings. Currently, the haphazard manner of treatment towards victims makes a damning case for human rights breaches. The framework is there, but the Government must not let it rust for too long and must always keep adding to and refining the structure to give victims complete protection from start to finish.

### 5.2. Recommendations

Below is a brief summation of all the recommendations emanating from this report along with other changes that could be made to improve the legal framework on forced marriages.

#### Changes to The Forced Marriage (Civil Protection) Act 2007

The Forced Marriage (Civil Protection) Act 2007 has been in force for a few years and there are some simple changes that could be made relatively easily to make the act and the orders (FMPOs) more effective.

- Courts need to use FMPOs alongside measures to place victims away from the family home, rather than instead of them.
- The court must also take a hard line on the non-disclosure of evidence in order to protect any person who initiated the proceedings.
- At the present moment the only person who can apply for a FMPO without leave from the court, is the person to be protected and relevant third parties, currently local authorities. All other persons including friends, colleagues, schools and other authorities must have leave from the court to proceed. As the age of the victim is often below 18 it is vital that teachers who are worried for the safety of their students can quickly and easily apply for a FMPO.

### To improve cross-border efforts

- Encourage the use of judicial cooperation protocols between any country which would benefit from forced marriages training and the understanding of FMPOs
- Agree and support the argument that EPOs are toothless for the UK legal framework if they only affect criminal proceedings, as most of the forced marriage framework is based in the civil jurisdiction. EPOs should therefore be available in civil proceedings.

### Public policy recommendations

- The government to provide clear policy guidelines on how it aims to continue funding in this area beyond 2012 in light of the proposed changes to the NHS.
- We strongly urge the coalition Government to consider carrying out more in-depth research into the effect of the Act and particularly the impact of the Relevant Third Party provisions for the year 2011-2012 with the aim to extend the role of both the police and the IDVA as well as colleges and schools (as stated above).
- Include forced marriage as an aggravating factor in criminal sentencing.
- The concept of non-marriage needs to be strengthened. Support also needs to be given to the annulment of a forced marriage.

### External Agencies and the Judiciary

- Agree to give more prominence to N.G.Os and organisations tackling forced marriage. This commitment can be shown by adopting relevant EU Directives.
- Consequently, there has to be more funding and support from the Government for N.G.Os and organisations tackling forced marriage.
- Although Local Authorities do not need leave from the court to apply they do need to fill in a section stating their knowledge of the feelings of the person to be protected. Although this section is there to avoid wasting the courts time, sometimes there may be no access to the victim and local authorities should be able to proceed without this knowledge requirement.
- Training: The Government needs to provide further training and engagement opportunities so that agencies are able to better engage with its guidelines.
- The Government should not assume that additional training is not needed for IDVAs and the Police who have experience of domestic violence. Though linked to domestic violence, forced marriage cases have their own subtle nuances and training in this area should not be neglected.
- The changes pertaining to the FMPO form as explained by judges to gather important past information of criminal breaches should be incorporated.
- Judiciary should be given clear guidance as to who exactly is a RTP.

### Further points of recommendation

- Amendment of Section 13 (4) of the Matrimonial Causes Act 1973 – this section deals with annulling a marriage. Section 13 (2) (a) states that the marriage cannot be annulled after a period of three years. As many forced marriage victims are effectively prisoners in their own homes many could be married for years before any relevant third party could intervene or before they manage to start proceedings themselves. Currently Section 13(4) allows a marriage to be annulled after the 3 year period if the person has suffered from some mental disorder and if it is just to grant leave to do so. An extension here to allow all marriages entered into by force to be annulled after the three year time limit, would avoid the stigma of a divorce.
- Lower the threshold of evidence when local authorities apply for FMPOs
- Reconsider and revise the 21 year old rule, r.227, in light of the *Quila* decision as it is not only unreasonable, but is also not an effective measure in tackling forced marriage as statistics reflect no change.



