

Forced Marriage – Culture or Crime?

'Marriage shall be entered into only with the free and full consent of the intending spouses¹.'

It is important to begin by acknowledging the above statement, which is part of Article 16(2) of the Universal Declaration of Human Rights and also to distinguish between an arranged marriage and a forced marriage.

An arranged marriage is 'a marriage planned and agreed by the families or guardians of the couple concerned²', while a forced marriage is 'a marriage conducted without the full consent of both parties and where duress (emotional pressure either in addition to physical abuse or on its own) is a factor³.

While serving as a Police Officer, one of the authors (Dave Tapp), was involved in the tragic case of Rukshana Naz. The circumstances surrounding the Naz case encouraged him to look in more depth at the issues of forced marriage and honour killings. Rukshana Naz was a nineteen year old British Muslim who was seven month pregnant when she was murdered by her mother and brother in Derby in 1998. Whilst her mother, Shakeela Naz held Rukshana down by her feet, her brother, Shazad strangled her to death with a piece of plastic flex⁴, afterwards her mother was reported to say 'it was in her kismet'⁵. Rukshana had been forced to marry a man who lived in Pakistan whom she had only seen twice in four years; she fell pregnant by her lover in the UK and refused

¹ <http://www.un.org/en/documents/udhr/index.shtml#a16>

² <http://oxforddictionaries.com/definition/english/arranged%2Bmarriage?q=arranged+marriage>

³ Ruth Gaffney-Rhys (2009): The implementation of the Forced Marriage (Civil Protection) Act 2007, *Journal of Social Welfare and Family Law*, 31:3, 245-256.

⁴ <http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a0072231/forced-marriage>

⁵ <http://www.guardian.co.uk/uk/1999/may/26/sarahhall> R v Naz [2000] EWCA Crim 24. Gill A. Criminalizing Forced Marriage through Stand Alone Legislation: will it work? [2012] *Fam Law* 534

⁵ Kismet is the belief that what happens to you in your life is already planned and that you cannot control it.

to have an abortion. This behaviour was seen to have brought shame on the family and was the catalyst for the family's extreme reaction; murder. This case and others like it sparked the Home Office to launch a Working Group on forced marriage, which reported in 2000⁶. At the time of writing forced marriage of its self is not a criminal offence in the United Kingdom; it is usually the infractions supplementary to a forced marriage where the criminal offences arise⁷.

This is a challenging area and there appears to be some confusion about what the general public believe 'forced marriage' to mean. The present discussion and increased awareness of the problem, raises the question 'is criminalisation the answer to the problem?'

Arranged marriage

The arranged marriage system goes back many centuries. It has enabled the wealthy and aristocratic to retain their power and position, via intermarriage and consolidation of their wealth. Currently, arranged marriage is most commonly practiced in the Middle East, Southeast Asia and East Asia and some parts of Africa. One of the advantages of an arranged marriage is that the risk of an unsuitable match is reduced because many important factors such as, culture, religion, language and socio-economic class, are usually considered carefully in advance. This matching may provide the couple with a social package that can create the optimum opportunity to live happily together. Living with extended family members who share these values and characteristics can make it easier when seeking physical, emotional and financial support from partners and the wider family⁸.

⁶ <http://www.communities.gov.uk/documents/communities/pdf/152720.pdf>

⁷ www.bbc.co.uk/news/uk-england-19019538 the case of the Nalila Afsar whose brother was found guilty of false imprisonment, kidnap and two counts of administering a drug with intent to commit an indictable offence and was imprisoned for 5 years, in 2011.

⁸ <http://www.professorshouse.com/relationships/marriage-advice/articles/advantages-and-disadvantages-of-arranged-marriages/>

Usually the parents or a senior respected family member undertake the selection of prospective partners. It is also commonplace within some⁹ communities that religious leaders also play a pivotal role in the process, of choosing possible spouses.

David Millward, a writer for the *Telegraph*, comments that after the tsunami in Japan, arranged marriages are becoming popular again, as the country turns to traditional values¹⁰. Millward suggests that the Japanese population, in a time of turmoil, welcome this practice of partner selection, seeking security and certainty with a return to traditional practices.

The key issue is that the final decision in an arranged, as opposed to a forced marriage, remains with the prospective spouses. The system of arranged marriage has been successful across countries and centuries. However, there is a grey area where marital practices across the line and becomes forced marriages as identified by Justice Peter Singer in 2005 in *Re SK* he comments:

There is a spectrum of forced marriage, from physical force or fear of injury and death in their most literal form, through to the undue imposition of emotional pressure which is at the other end of the forced marriage range¹¹

The judge considered the basis on which he could exercise jurisdiction in this case, and believed that the inherent jurisdiction of the High Court was a sufficiently flexible remedy to evolve in accordance with social needs and social values. Thus, it would be within the court's power to make

⁹ Homman R. Bron B. (2003) *Mate Selection Across Cultures* US Sage Publications

¹⁰ <http://www.telegraph.co.uk/news/worldnews/asia/japan/9206205/Arranged-marriages-make-comeback-in-Japan.html>

¹¹ *SK (proposed plaintiff) (an adult) [2004] EWHC 3202 (Fam) Aisha Gill and Trishima Mitra-Kahn* *Modernising the other: assessing the ideological underpinnings of the policy discourse on forced marriage in the UK Policy & Politics* vol 40 no 1 • 107-22 (2012)

orders and to give directions designed to ascertain whether or not the proposed plaintiff had been able to exercise her free will in decisions concerning her civil status and her country of residence.

Forced marriages

A 'forced marriage' is a marriage which either one or both of the parties do not consent to, which is arranged against their will. In *Hirani v. Hirani*, the High Court indicated that a marriage is voidable due to lack of consent caused by duress, if the victim has been subjected to pressure that destroys 'the reality of consent and overbears the will of the individual'.

Yunas Samad described forced marriage as an extension of endogamy practices involving cultural notions of *izzat* (honour) and *sharam* (shame).¹² Often this is difficult to identify as duress and coercion can be subtle and insidious. Case law suggests that the law has often had difficulty in recognising duress, and it has been inconsistent when considering it in the marital context as *Hirani* demonstrates¹³.

In 2006 Justice Mumby¹⁴ in *NS v MI* dealt with forced marriage, duress and the reality of consent and clearly stated that:

"The threats and pressure to which the petitioner had been subjected over a period of many months were such as to destroy the reality of her consent and to overbear her will. The court must not hesitate to use every weapon in its protective arsenal if faced with what was, or appeared to be, a case of forced marriage".

The extreme scope of potential consequences of forced marriage gone badly wrong was demonstrated by the horrific murder of Banaz Mahmod

¹² Samad, Y. (2010) Forced Marriage among men: an unrecognised problem. *Critical Socuil Policy* 2010 30 189
ENB v I (forced Marriage) [2010]1 FLR 1721

¹³ *Hirani Hirani* (1983) 4 FLR. Can be compared to *Singh v Singh* [1971] P 226.

¹⁴ *NS v MI* [2006] EWHC 1646 (Fam)

from Mitcham, London, who was tortured, raped and beaten to death by a gang on the orders of her father, Mahmud Mahmud, 57, and uncle, Ari Mahmud, 55, in January 2006.

Banaz tried to escape the unhappy marriage she'd been forced into aged sixteen, and start a new relationship. She paid the ultimate price for bringing shame on her Kurdish family. The Police faced an investigation within an Iraqi Kurdish community, many of whom believed Banaz had deserved her fate for bringing shame on her father¹⁵. Mahmud Mahmud and his brother, Ari, were jailed for life for their part in the murder in 2007, but two other men involved fled to Iraq and were extradited back to the UK before being jailed for life in 2010.

Sardar, Ziauddin¹⁶ identified the arguments that British Muslims hailing from tribal areas of India, Pakistan and the Middle East perpetuate tribal customs through what is known as the *Biradari* system. Among certain tribes in Asia, honour is associated with women and in some belief systems is quite literally located on the female body. In the UK in some communities there exists the desire to preserve traditions that involve the concept of the female as an entity that must be guarded, protected and passed on to another member of the tribe. A woman dishonours her family and tribe if her body is violated - even by force. The shame can be cleansed only by killing the body in question.

Ruth Gaffney-Rhys makes the point that case law has revealed an additional coercive tactic, *that the perpetrators of forced marriage have threatened to harm themselves or other members of the family rather than, or in addition to, the victim*¹⁷. She referred to NS v. MI¹⁸, where the victim's parents threatened to kill themselves if NS did not marry MI.

¹⁵ <http://www.guardian.co.uk/world/2012/sep/22/banaz-mahmod-honour-killing>

¹⁶ Sardar, Z. (2008, Mar 31). Forced marriages disgrace Islam. *New Statesman*, 137, 23-23..

¹⁷ Gaffney- Rhys R (2009) the Implementation of the Forced Marriage (Civil Protection) Act 2007 *Journal of Social Welfare and Family Law*. 31.3 245-256

Ouattara *et al.* 1998,¹⁹ highlighted the practice of child marriage and the obvious links to sexual abuse and health issues. It was recently revealed that a girl aged five was among forced marriage victims helped by the Forced Marriage Unit in 2011²⁰. Derby born Jasvinder Sanghera is an activist and advocate for women's rights, she is the co-founder of Karam Nivana, which is a community-based project consisting of a group of refugee centres in the United Kingdom for South Asian women fleeing forced marriages and domestic abuse said:

it is likely the girl had been promised from birth to a first cousin. The practice is particularly prevalent among Muslims of Pakistani origin. Although the marriage would not be recognised by law in Britain, children can take part in religious "Nikkah" ceremonies – or weddings – in a Mosque or even a private home²¹.

The Matrimonial Causes Act 1973, states that a marriage will be voidable if "*either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise*".²²

The Marriage Act 1949 and the Matrimonial Act 1973 states that the minimum age at which a person is able to consent to marriage is 16. A person between the ages of 16-18 will require parental consent to marry (unless the young person is a widow/widower). The Forced Marriage Unit has to establish a fundamental lack of consent before it can act. The Forced Marriage unit is a joint initiative between the Foreign & Commonwealth Office and the Home Office and is proving to be a very important resource.²³ It was set up by the United Kingdom Government to provide practical support, information and advice to anyone who requires it.

¹⁸ [2007] 1 FLR 444

¹⁹ Ouattara, M., Sen, P. and Thomson, M. (1998) 'Forced Marriage, Forced Sex: The Perils of Childhood for Girls', *Gender and Development* 6(3): 27-33

²⁰ <http://www.telegraph.co.uk/news/religion/9176207/Five-year-old-girl-a-victim-of-forced-marriage.html>

²¹ www.telegraph.co.uk/news/religion/9176207/five-year-old-girl-a-victim-of-forced-marriage

²² Matrimonial Causes Act 1973 s12c. Re P (Forced Marriage) [2010] EWHC 3467

²³ <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/>

A Forced Marriage Protection Order (FMPO) can be made by a Family Court in order to protect victims, both adults and children of a potential forced marriage or people who are already in a marriage to which they did not consent. This is a legal document issued by a judge designed to protect individuals according to their particular circumstances. It contains legally binding conditions and directions that require a change in the behaviour of a person or persons trying to force another person into marriage. The courts have a wide range of powers and discretion and in urgent cases orders can be made *ex parte*. A Forced Marriage Protection Order can thus be made if force or threats are directed at the individual who is being pressurised to marry, at other members of the victim's family or at the perpetrator him or herself.

Forced Marriage Protection Orders may be made to prevent a forced marriage from occurring, to stop intimidation and violence, to reveal the whereabouts of a person, to stop somebody from being taken abroad, to hand over passports etc. The court may attach a power of arrest to any order made. These orders are potentially very powerful. Which recognises the difficulty in protecting victims and the pressure they are likely to be under in the family situation, and so acts on their behalf.²⁴

A recent case (2012) which highlights effective of the FMPO is that of *A v SM & anor*. In this case the judge used the orders to ensure that five younger children were made wards of court after two of their sisters had been taken to Bangladesh to take part in forced marriages, 'B' was married, but the second attempt failed when 'A' escaped with the assistance of the Forced Marriage Unit at the British High Commission in Bangladesh. She was immediately allowed to return to the United

²⁴ CC . AA v YS and five others [2010] EWHC 3282

Kingdom and successfully made an application for an FMPO under Part 4A of the Family Law Act 1996²⁵

While reliable figures are hard to find, according to the Forced Marriage Unit ²⁶, last year alone, there were 1468 instances where they gave support or assistance in relation to a possible forced marriage.

The FMU figures show that 66 requests related to a person with a disability and the statistics when broken down further revealed that 56 related to someone with a learning disability²⁷, 8 with physical disabilities and 2 cases regarding people with both. The figures show that over 78% of requests for assistance related to female victims and 22% related to males.²⁸ These are the known victims, it is likely that many remain hidden and never seek help. It is especially disturbing that the practice seems to be disproportionately common in victims with learning difficulties²⁹.

Ancillary offences which are often associated with forced marriage usually commence with threatening behaviour, this then can turn into assaults, abduction, kidnap, conspiracy offences, various sexual violations (rape is not uncommon), threats to kill (either that person, or a person emotionally connected to them) and have in the past ultimately led to murder.³⁰ It is also commonplace that a person who is forced into marriage is sexually abused, until she falls pregnant, trapping the woman further,³¹

²⁵ A v SM & anor [2012] EWHC 435 (Fam)

²⁶ <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/information-for-victims>

²⁷ Anncrafttrust.org

²⁸ <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/> which is a confidential point of contact for those seeking advice or guidance on such matters

²⁹ Examples include *KC & NNC v City of Westminster v IC* - IC Neutral Citation Number: [2008] EWCA Civ 198 ; *P v R* [2003] W FLR 661, [2003] Fam Law 162

³⁰ See previous discussion on the Naz case p1.

³¹ Ali Sameem (2008) 'Belonging' John Murray Publishers London

Samad³² challenges the viewpoint that sees forced marriage exclusively as an issue for women. A small minority of men also fall prey to forced marriage for a myriad of reasons. Cases involve family and extended family pressure to safeguard land and property rights, or the provision of care for a disabled family member. Another common theme, particularly for male victims revolves around sexuality and independent behaviour. Where it is discovered that a son is gay or is having a relationship with someone from a different culture, a concerned family would organise a forced marriage in order to rectify the perceived problematic behaviour.

Samad uncovered that the coordination of a forced marriage seemed to follow a similar pattern for both females and males alike. A situation arises in the country of origin which necessitates the person concerned returning to visit a sick relative or to attend a family gathering. On arrival the person discovers that they are the ones getting married and the gathering is actually for them³³. An example of this was demonstrated by the 2008 case of Dr Humayra Abedin a NHS doctor who was held captive in Bangladesh for more than four months. Abedin, 32, a Bangladeshi national lived in east London and was due to qualify as a GP before her ordeal. Her parents, Mohammad Joynal Abedin and Begum Sofia Kamal, instructed their daughter, their only child to travel to Dhaka claiming that Kamal was ill.

Instead of being taken to her mother's bedside, Abedin was dragged into a room and locked up at the family home. Her passport, return ticket and other travel documents were confiscated. Abedin explained that four or five people kept guard over her. She managed to send a few text messages to the UK to seek assistance.

³² Ibid fn12

³³ <http://www.independent.co.uk> interview with Humayra Abedin

Abedin's family had her placed in a psychiatric hospital in Dhaka as she was allegedly "unstable". In hospital she was medicated and, was told by a physician she could only be discharged if she was no longer 'unstable' but was never given a diagnosis."

While she was in hospital her parents repeatedly raised the prospect of marriage to a Dr Jalal, a man she had refused to marry during a brief visit to the country on a previous occasion.

On 5 November 2008 she was taken from the clinic to a house in Jessore, in south-west Bangladesh, where nine days later she was forced to marry Jalal, in front of relatives from both sides of the family.

Abedin's ordeal came to an end when she was tracked down by Bangladeshi police a month later and taken to the Supreme Court, which sanctioned her immediate repatriation to Britain; following the High Court in London issuing an order for her release under the Forced Marriage Act. 2007³⁴.

In dealing with the case, Mr Justice Coleridge issued a series of orders obliging Abedin's parents to not remove her from the UK, harass her or threaten her. *"I shall grant further orders to protect Dr Abedin and prevent her being removed from this country again without her consent,"* the judge said in his ruling. Subsequently Abedin sought an annulment of the marriage on the grounds of lack of valid consent.

Mr Justice Coleridge said that by granting an injunction against her family under powers enshrined in the Forced Marriage Act (2007) he hoped to send a strong message to all British communities among whom incidents of forced marriages occur. He said that forced marriage was a breach of

³⁴ www.guardian.co.uk/world/2008/dec/humagra-abeden-forced-marriage

human rights, stating *"I don't think it is a cultural issue, it's a human rights issue."*

A worrying proportion of victims have learning disabilities who may not have the capacity to consent³⁵. In 2012, Hugh Constant, speaking to the BBC on behalf of the Social Care Institute for Excellence, an independent charity involved in social care and social work discussed the fact that in 2011 there were fifty six referrals to the Forced Marriage Unit involving people with learning disabilities, and six in the July 2012 alone. He expanded on this theme by describing how fifty English councils were bringing in policies to tackle the rise in the number of people with learning disabilities entering forced marriages³⁶.

An example, in 2010 Mrs Justice Parker heard substantive proceedings about a woman referred to as DD in the Court of Protection. DD a British citizen, had a very significant degree of learning disability, little language, very little comprehension of anything other than simple matters, and needed assistance with almost all aspects of her daily life. Her parents are originally from Bangladesh, but have lived in this country for many years and brought up their family here. DD was sent to Bangladesh to be married to a cousin, which allowed him to settle in England. The fact of DD's marriage eventually came to the attention of the local authority's learning disabilities team where DD lived and very significant concerns arose as to DD's welfare as a result of which the Police obtained a Forced Marriage Protection order.

Mrs Justice Parker viewed a video of the wedding ceremony that showed the bride was "almost comatose" and needed help to repeat vows she did not understand, while her relatives had made "false and misleading" statements about her condition. Mrs Justice Parker took the view that a

³⁵ <http://www.bbc.co.uk/news/uk-01> August 2012. Forced marriage advice to help victims with learning disabilities.

³⁶ www.bbc.co.uk/news/uk-19074557

marriage with an incapacitated person who is unable to consent is a forced marriage within the meaning of the Forced Marriage Act 2007.

"Force" in the context of a person who lacks capacity must include inducing or arranging for a person who lacks capacity to undergo a ceremony of marriage, even if no compulsion or coercion is required as it would be with a person with capacity³⁷.

The judge in this case commented that it is the duty of a doctor or other health or social work professional who becomes aware that an incapacitated person may undergo a marriage abroad, to notify the learning disabilities team of Social Services and/or the Forced Marriage Unit if information comes to light that there are plans for an overseas marriage of a patient who has or may lack capacity. The communities where this is likely to happen also need to be told, loud and clear, that if a person, whether male or female, enters into a marriage when they do not have the capacity to understand what marriage is, its nature and duties, or its consequences, or to understand sexual relations, that that marriage may not be recognised, that sexual relations will constitute a criminal offence, and that the courts have the power to intervene.

Criminalisation?

The formal criminalisation debate began in 2008 when Lord Leicester introduced the Forced Marriages (Civil Protection) Bill as a private members bill which was subsequently modified and adopted by the government. In the parliamentary debates Lord Leicester was very clear about the issue when he said:

This serious social evil which the Bill seeks to combat and remedy is the forcing of children and young adults to marry against their will. It gives rise to gross abuses of human rights.... It is a form of

³⁷ <http://www.bailii.org/ew/cases/EWHC/COP/2012/2183.html>

domestic violence and there is a direct link between forced marriage and honour killing....

Lord Leicester's Bill became the government's Forced Marriage Protection Orders (Civil Protection Act 2007), which it was hoped would raise the profile of the problem.

However the civil nature of the existing legalisation is increasingly being questioned, but the recent drive to criminalise forced marriage raises some significant concerns. In October 2011 the Prime minister, David Cameron has said

*"forced marriage is abhorrent and little more than slavery. To force anyone into marriage against their will is simply wrong and that is why we have taken decisive action to make it illegal"*³⁸

While Charlotte Proudman emphasis the symbolic effect of criminalising the practice,

*'a specific criminal offence of forced marriage will be more effective than making use of a patchwork of laws that are not specifically designed to tackle forced marriage'*³⁹

David Cameron has, however, made several promises that there will be an array of procedures introduced to combat this 'unacceptable practice', most significantly criminalisation. A consultation process finished in March 2012 and there is a half a million-pound fund available to identify those at risk within schools and colleges and develop education resources for victims and those working with them⁴⁰.

³⁸ <http://www.guardian.co.uk/world/2012/jun/08/forced-marriage-criminal-offence-david-cameron>

³⁹ C.R.Proudman. 'The criminalisation of forced marriage', Fam. Law 2012, 42(Apr), 460-465.

⁴⁰ The Domestic Program fund. For example Karma Nivana organises road shows for professionals to raise awareness of the issue.

However it must also be acknowledged that dealing with the situation in this way will deter some victims from coming forward, because of a reluctance to criminalise their parents or family members. All the victim usually wants is a stop to the forced marriage, not further action against their family. There is also a danger that more children will be taken abroad to avoid a criminal prosecution in the UK. There is a very difficult balance to achieve. It is important that the desire for criminalisation and the full symbolic effect that it would achieve does not prevent individual victims from reporting their plight.

There are conflicting views as to the efficacy of criminalisation; those who work with victims do not have a consistent view. Jasvinder Sanghera was also a victim of a proposed forced marriage herself and is now also a very successful author, initially writing a novel called *Shame*, which tells her story and that of her family. She is very much in favour of criminalisation and when talking with the Prime Minister David Cameron she comments:

"The Prime Minister is right to send out a signal that such appalling acts of exploitation are simply unacceptable in 21st-century Britain. If this country owns this abuse as an evil practice it will change a mind set for this to no longer be dealt with as cultural but a crime."⁴¹

On the other hand, the think tank Demos has recently published a report that suggests a more holistic approach is required and that criminalisation could be counterproductive.⁴²

There is also the issue that many victims are under 16 and the UK adversarial criminal justice system may not be an appropriate forum to

⁴¹ <http://www.karmanirvana.org.uk/component/content/article/111.html>

⁴² M. Wind-Cowie V. Cheetham T. Gregoery. Tackling Forced Marriage through Preventative and Community Based Interventions.

address the needs of these minors. The recent case of *R (Quila) v Secretary of State for the Home Department*⁴³ means that immigration age restrictions on spousal settlement have been held to be a disproportionate restriction on family life and have been lifted, so people as young as 16 remain vulnerable. The intention might have been to prevent some of the non-consensual marriages of very young people, but that has now been obstructed by the judicial interpretation of the Article 8⁴⁴.

Moss Side, Councillor Sameem Ali, who was the victim of a forced marriage at the age of just 13, believes that any form of legislation will deter victims coming forward. In her interview with Helen Carter of the *Guardian*, the Councillor says:

*"Most of the forced marriages happen abroad, away from the law of this land, so how this law would be implemented so far away? There is also the fear that people will be taken abroad and left there because of the new law."*⁴⁵

Sameem then clarifies this:

*"At the consultations on forced marriage, most of the service providers were saying they didn't want the legislation, but it wasn't even debated. People were just saying forced marriage is wrong and let's criminalise it. So now a young person will be forced into marriage and then forced to testify against their parents."*⁴⁶

⁴³ [2011] UKSC 45

⁴⁴ Every one has the right to respect for his or her private and family life, home and correspondence. This right is subject to proportionate and lawful restrictions.

⁴⁵ <http://www.guardian.co.uk/world/2012/jun/08/criminalisation-forced-marriage-push-issue-underground?intcmp=239>

⁴⁶ Ibid

These are both informed but opposing points of view, held by real victims of forced marriage and opinions that the legislators need to consider carefully before any change in the law is introduced rather than opting for the knee-jerk reaction that is frequently the response to high profile cases.

The disturbing cases must not result in ineffective legislation that fails to help those most at risk of forced marriage. At present no timescale for criminal legislation has been announced but it has been suggested that the details will be published for a draft consultation shortly, and the process may take up to a further eighteen months.

However, the Home Affairs Select Committee has recommended the criminalisation of forced marriage and also any breaches of FMPOs, during consultation by the government,⁴⁷ it mainly focused on:

- How criminalisation of breaches of FMPOs should be implemented; and
- Whether a specific criminal offence of forced marriage would help combat the practice.

It has been suggested that criminalisation may be implemented in a similar way to the non-molestation orders already part of the family Law Act 1996⁴⁸ or, even similar to the Legislation in now embedded in Scottish Law since 2011⁴⁹.

Several European countries⁵⁰ including Scotland have already criminalised forced marriage, yet so far there has not been any significant research as to the outcomes of criminalisation. There is little evidence on how we can

⁴⁷ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/88002.htm>

⁴⁸ <http://www.legislation.gov.uk/ukpga/1996/27/contents>

⁴⁹ <http://www.legislation.gov.uk/asp/2011/15/contents/enacted> Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011

⁵⁰ Denmark Norway and Austria

actually prevent forced marriages taking place, and create a safe framework providing protection for victims and families. The authors' argue that using the strong arm of the Law alone will not combat the problem; it is far more complex than a fine or custody could resolve, particularly as many victims are likely to be highly conflicted due to a sense of duty and familial love.

It is therefore vital that a full-scale multi-agency approach is adopted and embraced. Evidence based and sensitive education in schools, colleges and universities across the United Kingdom needs to commence immediately⁵¹. The work of the Domestic Fund needs to be publicised and carefully prepared training packages available to the educators, who will need to fully understand the issues before delivery and also be given the skills to identify anyone who is at risk.

All agencies that come into contact with potential victims including the judiciary, Crown Prosecution Service, police services as well educators and health and social services professionals need to be aware of the Law and its effective use. They must also be trained how to spot a breach at its outset and be able to offer the appropriate advice and support to achieve the desired result and not just follow a 'one size fits all' approach. In this way the public will feel that the legislation is being used appropriately and proportionately, taking into consideration the emotional and personal issues surrounding such culturally sensitive matters, with in an effective legal framework, whether criminal and or civil.

The Authors are both Senior Lecturers at Staffordshire University School of Law, Dr Jenkinson, a Family Law expert and Dave Tapp a Solicitor, Criminal Law and Criminology specialist.

⁵¹ www://lancashiretelegraph.co.uk