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# Forced Marriages – The Need for Criminalisation?

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## Abstract

*Sections 120 and 121 of the Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') make it a criminal offence to breach a Forced Marriage Protection Order (FMPO) and to force a person into marriage. This paper will examine the arguments for and against the policy to criminalise forced marriages. While forced marriages are wrong and violate human rights, the 2014 Act may do little to prevent them because victims may be reluctant to see family members prosecuted. While, symbolically, criminalisation is welcomed because it makes a strong declaration that forced marriages are unacceptable, what is notably absent are strategies on prevention.*

## Keywords

Forced Marriages; Honour-Based Violence; Criminalisation; FMPOs

## The Link Between Honour-Based Violence (HBV) and Forced Marriages

A forced marriage arises when one or both spouses do not provide consent to marriage, or if consent is provided, consent has been vitiated by duress or coercion.<sup>1</sup> It is important to understand the differences between forced and arranged marriages as arranged marriages are commonplace, where members of the family seek out a marriage partner for prospective suitors but the marriage takes place with the full agreement of both parties.<sup>2</sup> There is nothing wrong in principle with arranged marriages as long as both parties consent.<sup>3</sup> However, Anitha and Gill explain the complexities cannot always be explained in simple 'binary' ways of 'arranged' or 'forced' and Gangoli et al acknowledge that 'subtle forms of coercion...can sometimes result in a slippage between arranged and forced marriages'.<sup>4</sup> Forced marriage includes those incidents where family members use force to pressure parties into marriage, including emotional blackmail,

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<sup>1</sup> House of Commons Home Affairs Committee, *Forced Marriage* (Eighth Report of Session 2010-12, 17 May 2011, HC 880), at 3. See also *Hirani v Hirani* [1983] 4 FLR 232.

<sup>2</sup> D. Tapp and S. Jenkinson, 'Forced Marriage – Culture or Crime? Part 1' (2013) 177 Criminal Law and Justice Weekly 5; M. Wind-Cowie, P. Cheetham and T. Gregory, *Ending Forced Marriage* (Demos, 2012), at 12.

<sup>3</sup> *The Right to Choose: Multi-Agency Statutory Guidance for Dealing with Forced Marriage* (2010), 2<sup>nd</sup> Revised Edition, at 4.

<sup>4</sup> S. Anitha and A. Gill, 'Coercion, Consent and the Forced Marriage Debate in the UK' (2009) 17 Feminist Legal Studies 165; S. Anitha and A.K. Gill, 'Reconceptualising Consent and Coercion Within an Intersectional Understanding of Forced Marriage', in A.K. Gill and S. Anitha (eds), *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books, London: 2011), at 46; G. Gangoli, A. Razak and M. McCarry, *Forced Marriage and Domestic Violence Among South Asian Communities in North East England* (Northern Rock Foundation, 2006); G. Gangoli, K. Chantler, M. Hester and A. Singleton, 'Understanding Forced Marriage: Definitions and Realities', in A.K. Gill and S. Anitha (eds), *Forced Marriage* (2011), at 26-27.

psychological and physical violence. For example, in *NS v MI*,<sup>5</sup> the victim's parents threatened to kill themselves if she did not marry a man from Pakistan of their choosing.

Acts of HBV and forced marriages are sometimes seen as one and the same, and there are strong links between the two. HBV consists of acts in response to what is considered to be behaviour that brings shame upon the family. Families impose control mechanisms to limit shame brought upon them, ranging from condemnation, HBV and even honour killings. Like HBV, forced marriages may occur because families wish to control the sexuality of women or prevent undesirable relationships.<sup>6</sup> They may also occur to strengthen family links and long-standing family commitments. This can include assisting claims for residency, citizenship or to strengthen links to property. A commitment to enter two people into marriage may even take place well before those individuals are born. To then retract a promise of a planned marriage would bring shame and dishonour to the family – to protect 'honour' some are then coerced into marriage even if they indicate they do not wish to.<sup>7</sup> Forced marriages may also take place with those with learning or physical disabilities, who are married off to unsuspecting partners so that they become their carers. They can also lead to physical and psychological abuse: they can result in disruption to education and employment; rape and enforced pregnancy; kidnapping; domestic violence, unlawful imprisonment, theft of passports, money and belongings; and murder, if individuals refuse marriage.<sup>8</sup>

The Forced Marriage Unit (FMU – a joint Foreign and Commonwealth and Home Office unit) is the government lead on forced marriage policy and gave advice or support in over 1600 cases between 2008 and 2009.<sup>9</sup> In 2011, it provided support in 1500 cases.<sup>10</sup> Some of these cases also resulted in the repatriation of victims from abroad.<sup>11</sup> In 2012, the FMU results were very similar, but notably the oldest victim of forced marriage was aged 71 and the youngest victim was aged just 2 years old. More recently in 2013, the FMU gave advice or support in 1302 cases, with the vast majority (88%) affecting young people below 25 years of age; with women (82%) being the most vulnerable group; and South-Asia (Pakistan, India and Bangladesh, 63%) the likely continent an individual is to be taken abroad for marriage, although this is to be expected as South-Asians make up the highest proportion of minorities living in the UK.<sup>12</sup>

However, these figures are suggested to be 'the tip of the iceberg'. Research estimates the national prevalence of reported cases of forced marriage in England alone is between 5,000 and 8,000 cases per annum.<sup>13</sup> In 2008, Nazia Khanum carried out a study on the extent of forced marriage in Luton,<sup>14</sup> concluding that there were over 300 approaches to external bodies for advice per year in Luton alone.<sup>15</sup> It is widely accepted

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<sup>5</sup> (2007) 1 FLR 444.

<sup>6</sup> *The Right to Choose* (2010), at 9.

<sup>7</sup> *The Right to Choose* (2010), at 9.

<sup>8</sup> See *Re: SK (An Adult)* [2006] 1 WLR 81.

<sup>9</sup> *The Right to Choose* (2010), at 5.

<sup>10</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (June 2012), at 3.

<sup>11</sup> House of Commons Home Affairs Committee, *Domestic Violence, Forced Marriage and 'Honour'-Based Violence* (Sixth Report of Session 2007-08, Volume I, 13 June 2008, HC 263-I), at 18.

<sup>12</sup> *The Right to Choose* (2010), at 4.

<sup>13</sup> House of Commons Home Affairs Committee (2011), at 3.

<sup>14</sup> N. Khanum, *Forced Marriage, Family Cohesion and Community Engagement: National Learning Through a Case Study of Luton* (Bartham Press (Watford) Ltd, 2008).

<sup>15</sup> N. Khanum, *Forced Marriage, Family Cohesion and Community Engagement* (2008), at 43.

that statistics on forced marriages are under-estimated, with many victims unable to seek assistance and forced to remain silent.

### **The Historical Context**

Forced marriages have been an important issue for governments in the last decade.<sup>16</sup> Media discourses often stereotype forced marriages as being an issue that is tolerated and deemed acceptable in South-Asian and Muslim culture, rather than a specific problem of violence against women (VAW),<sup>17</sup> despite government attempts to differentiate between arranged and forced marriages. In 2005, a government consultation was held on whether a criminal offence should be created to combat forced marriages.<sup>18</sup> There was no clear consensus whether a criminal offence should be created, with many of the 157 respondents deciding against criminalisation. This consultation was quickly followed by the draft Forced Marriage (Civil Protection) Bill, spearheaded by Lord Lester with a campaign supported by Jasvinder Sanghera, CEO of Karma Nirvana, a support organisation and herself a victim of forced marriage. The Bill aimed to provide victims with the necessary power to prevent them from being forced into marriage by applying directly to the family court or via a third party for an FMPO, but without criminalising forced marriages. It provided for a more 'victim-centred' approach as the victim could initiate proceedings.<sup>19</sup> The Bill received wide cross-party support and the Royal Assent in July 2007, coming into effect in November 2008 as the Forced Marriage (Civil Protection) Act 2007 ('the 2007 Act').

The 2007 Act inserted a new Part 4A into the Family Law Act 1996 ('the 1996 Act') which provided the civil remedy, the FMPO in England and Wales, whose breach would amount to a contempt of court with a maximum penalty of 2 years in prison. The terms of the FMPO are unique to each case and contain legally binding conditions with the aim of preventing perpetrators from forcing a person into marriage, with an emphasis on prevention and protection rather than prosecution.<sup>20</sup> This was the defining feature – an FMPO is an injunction and victims were able to obtain injunctive relief swiftly to prevent a forced marriage instead of pursuing a criminal prosecution. This not only avoided

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<sup>16</sup> See B. Clark and C. Richards, 'The Prevention and Prohibition of Forced Marriages – A Comparative Approach' (2008) 57 *International Comparative Law Quarterly* 501; J. Alanen, 'Shattering the Silence Surrounding Forced and Early Marriage in the United States' (2012) 32(2) *Children's Legal Rights Journal* 1; R. Kool, 'Step Forward, or Forever Hold Your Peace: Penalising Forced Marriages in the Netherlands' (2012) 30(4) *Netherlands Quarterly of Human Rights* 388; G. Yurdakul and A.C. Korteweg, 'Gender Equality and Immigrant Integration: Honor Killing and Forced Marriage Debates in the Netherlands, Germany and Britain' (2013) 41 *Women's Studies International Forum* 204; F. Simmons and J. Burns, 'Without Consent: Forced Marriage in Australia' (2013) 36 *Melbourne University Law Review* 970; A.K. Gill and A.V. Engeland, 'Criminalization or 'Multiculturalism without Culture'? Comparing British and French Approaches to Tackling Forced Marriages' (2014) 36(3) *Journal of Social Welfare and Family Law* 241; A. Sabbe, M. Temmerman, E. Brems and E. Leye, 'Forced Marriage: An Analysis of Legislation and Political Measures in Europe' (2014) 62 *Crime, Law and Social Change* 171.

<sup>17</sup> A. Gill and S. Anitha, 'The Illusion of Protection: An Analysis of Forced Marriage Legislation and Policy in the UK' (2009) 31(3) *Journal of Social Welfare and Family Law* 257, at 258. See also S.H. Razack, 'Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages' (2004) 12 *Feminist Legal Studies* 129.

<sup>18</sup> Home Office, *Forced Marriage: A Wrong Not a Right* (Great Britain, Home Office: September 2005).

<sup>19</sup> A. Gill and S. Anitha, 'The Illusion of Protection: An Analysis of Forced Marriage Legislation and Policy in the UK' (2009) 31(3) *Journal of Social Welfare and Family Law* 257, at 261.

<sup>20</sup> A.K. Gill, *Exploring the Viability of Creating a Specific Offence for Forced Marriage in England and Wales: Report on Findings* (University of Roehampton, July 2011), at 6.

prosecutions of those close to the victim, but it also provided victims with opportunities for reconciliation because nobody could be prosecuted. An FMPO may contain as many requirements a court feels necessary and may include provisions not to threaten, harass or use force against the person concerned; to surrender the person's passport; and not to enter the person into any arrangements for engagement or marriage, whether in the UK or abroad.<sup>21</sup> The original purpose of an FMPO was to protect victims without resort to the criminal law.

In November 2009 the Ministry of Justice ('MoJ') published a Report entitled *One Year On*.<sup>22</sup> The Report highlighted the operation of the 2007 Act and noted that in its first year, 86 FMPOs were issued,<sup>23</sup> which was described by MoJ as 'more than we anticipated'.<sup>24</sup> Police forces were also found to have been 'active in bringing cases forward, seeing the value of the order in preventing further serious offences'.<sup>25</sup> However, the use of FMPOs varied by locality and there was concern about its underuse in some areas due to a fear of approaching the courts 'compounded by fear among some agencies of offending the local communities'.<sup>26</sup> Some local authorities had been slow to get involved and while 86 FMPOs were issued, no actual breaches had been recorded.<sup>27</sup>

Disappointingly, MoJ did not publish any further progress reports on the 2007 Act. In 2008, the Home Affairs Select Committee stated that if the 2007 Act did not reduce the number of forced marriage incidents, the government should reconsider criminalisation.<sup>28</sup> The next review was published in May 2011, when another Home Affairs Select Committee disclosed its findings over the previous three years.<sup>29</sup> The Committee noted by the end of February 2011, 293 orders had been issued during the three-year period.<sup>30</sup> While the Act had been 'a positive step forward', the Committee noted there was no real penalty imposed for breaches, which in their opinion lessened the deterrent effect of the Act.<sup>31</sup> There was also little monitoring of an FMPO after it had been imposed – once an injunction was made, the victim was effectively 'returned to the perpetrators...in that house'.<sup>32</sup> No agency monitored the implementation of the order because the FMPO named only the people who posed a threat to the victim, but once the front door closed, there would be many other family members intimidating the victim but who were not named in the order.<sup>33</sup> The Home Affairs Select Committee concluded that despite the passing of the 2007 Act, it had not reduced the numbers of forced marriages.

The coalition government then thought it was necessary to pursue criminalisation in an effort to put an end to the practice. The Committee noted 'a much stronger, healthier message would be sent' if it were criminal to force another into marriage against their

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<sup>21</sup> R. Gaffney-Rhys, 'The Implementation of the Forced Marriage (Civil Protection) Act 2007' (2009) 31(3) *Journal of Social Welfare and Family Law* 245, at 253-254.

<sup>22</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).

<sup>23</sup> Ministry of Justice, *One Year On* (2009), at 12.

<sup>24</sup> Ministry of Justice, *One Year On* (2009), at 4.

<sup>25</sup> Ministry of Justice, *One Year On* (2009), at 12.

<sup>26</sup> Ministry of Justice, *One Year On* (2009), at 10.

<sup>27</sup> Ministry of Justice, *One Year On* (2009), at 10.

<sup>28</sup> House of Commons Home Affairs Committee (2008), at 132.

<sup>29</sup> House of Commons Home Affairs Committee (2011), at 3-7.

<sup>30</sup> House of Commons Home Affairs Committee (2011), at 5.

<sup>31</sup> House of Commons Home Affairs Committee (2011), at 5.

<sup>32</sup> House of Commons Home Affairs Committee (2011), at 6.

<sup>33</sup> House of Commons Home Affairs Committee (2011), at 6; Committee Debate, House of Commons, 3<sup>rd</sup> Sitting, 20 June 2013, Q144, column 75.

will.<sup>34</sup> On 10 October 2011, Prime Minister David Cameron announced the government's intention to criminalise forced marriages by making it a criminal offence to breach an FMPO. A consultation was published on 12 December 2011, which sought views how the new offence should be outlined in the criminal law. The consultation also asked for views about whether forced marriages should be criminalised or whether the civil approach should remain unchanged. A majority of respondents were in favour of the new offence and so the government concluded a criminal offence was required in addition to the civil remedy. 54% of respondents were in favour of criminalisation, while 37% were against criminalisation (9% were undecided); 80% however agreed that frontline professionals were not effectively using the civil remedies.<sup>35</sup> David Cameron then announced on 8 June 2012 that the government was firmly committed to criminalising the act of forced marriage. The government viewed this was necessary to deter and appropriately punish those by bolstering the effectiveness of the 2007 Act.<sup>36</sup> The government also pursued criminalisation in recognition of its international human rights obligations under the Istanbul Convention signed in 2012.

### **Section 120 of the 2014 Act – Criminalisation of FMPOs**

Section 120 creates an offence of breaching an FMPO by amending the 1996 Act and inserting a new section 63CA. Section 63CA(1) states:

A person who without reasonable excuse does anything that the person is prohibited from doing by a forced marriage protection order is guilty of an offence.

Section 63CA(2) explains a person can be guilty of an offence in respect of conduct engaged in at the time only when that person was aware of an FMPO. Section 63CA(5) provides a person who breaches an FMPO is now liable on summary conviction to 12 months imprisonment or a fine (or both),<sup>37</sup> on conviction on indictment, that person is liable to 5 years' imprisonment or a fine (or both).

An FMPO does not necessarily have to have been served on an individual in order to prosecute that person for its breach, nor is it necessary that the individual has to know exactly the contents – what is necessary is that the person was aware an FMPO was made prohibiting certain activities as stipulated in that order.<sup>38</sup> A perpetrator who has not been served with an FMPO or who does not know exactly what it prohibits could still be liable so long as they were aware that it existed, demonstrating that perpetrators cannot 'wilfully maintain ignorance with a view to a defence'.<sup>39</sup> However, a person can only be found guilty if the breach is 'without reasonable excuse'. This provides a legal safeguard to those who have been accused of breaching an FMPO, but who have 'genuinely not

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<sup>34</sup> House of Commons Home Affairs Committee (2011), at 7.

<sup>35</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 5.

<sup>36</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 6-7.

<sup>37</sup> But see s.120(7) of the 2014 Act which states that where an offence has been committed before the commencement of s.154(1) of the Criminal Justice Act 2003, the reference to 12 months in s.63CA(5) 'is to be read as a reference to six months'.

<sup>38</sup> Hansard, House of Lords, Committee Stage, 12 November 2013, column 627.

<sup>39</sup> Hansard, House of Lords, Committee Stage, 12 November 2013, column 627.

been served with an order or who ha[ve] been unable to establish its contents'.<sup>40</sup> It will be the task of the courts to assess whether an individual has a 'reasonable excuse' in order to determine guilt. The burden of proof required is the criminal standard of proof for all elements of the offence, including that the defendant was aware of the FMPO.<sup>41</sup>

### *Aims*

FMPOs were traditionally dealt with through the civil jurisdiction of the High Court, but the government felt this confinement did not meet the demands of victims. While the focus was previously on protecting victims by allowing them to obtain injunctive relief, the focus now is on the punishment of perpetrators. Breaches of FMPOs are now criminal matters engaging the prosecuting authorities – an important symbolic message that breaches, even though committed within a familial context, are unacceptable and a criminal offence, something that the previous law did not provide. Furthermore, under the old regime, a breach of an FMPO was treated differently to the breach of Non-Molestation Orders (N-MOs) under the 1996 Act, itself a criminal offence punishable up to 5 years in prison, but the rationale behind including the FMPO within the 1996 Act was to place emphasis on the idea that forced marriage is a form of domestic violence. But because the sanction for breaching an FMPO was different, this 'arguably sent the message that forced marriage was a lesser form of domestic violence'.<sup>42</sup> The government wanted to clarify the message that breaches of FMPOs are a serious matter (and are actually modelled on breaches of N-MOs).<sup>43</sup> The reforms empower victims by enabling them to choose whether to pursue breaches via the civil or criminal route.

### *Advantages*

Under the new reforms, a breach of an FMPO now constitutes a criminal offence and will cover anyone aware an FMPO exists (even if they are not certain about its contents). Such a measure increases the deterrent effect of the law as a criminal prosecution may be initiated against anybody who breaches an FMPO.

Monitoring levels had also indicated that the levels of forced marriages had not decreased since the passing of the 2007 Act. While the FMU on average deals with approximately 1400 cases per annum, that figure has not decreased; on the contrary, the number of cases the FMU advises or supports has consistently remained the same over the years. This could be the result of better public awareness about forced marriages, but one may conclude six years after having been passed, the 2007 Act had done little to decrease the prevalence of forced marriages and so criminalisation was necessary.

Now that breaching an FMPO is a criminal offence, the police will be able to arrest a person without the need for a court to attach any power of arrest to an FMPO.<sup>44</sup> The added requirement to arrest those who breach FMPOs will now give such orders

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<sup>40</sup> Hansard, House of Lords, Committee Stage, 12 November 2013, column 627.

<sup>41</sup> Hansard, House of Lords, Committee Stage, 12 November 2013, column 627.

<sup>42</sup> R. Gaffney-Rhys, 'The Development of the Law Relating to Forced Marriage: Does the Law Reflect the Interests of the Victim?' (2014) 16(4) *Crime Prevention and Community Safety* 269, at 280.

<sup>43</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 15.

<sup>44</sup> Hansard, House of Lords, Committee Stage, 12 November 2013, column 627.

more added ‘teeth’.<sup>45</sup> Furthermore, once a complaint has been raised the police can initiate criminal proceedings against those concerned, positively overcoming the problems raised by *Bedfordshire Police v U and Another* (prior to the reforms),<sup>46</sup> which ruled the police could not enforce FMPOs if they had not originally obtained leave from the court to apply for an FMPO as the original applicant.

Relying on FMPOs to actively prevent forced marriages in the civil courts and then pursuing the criminal route for its breach can also empower victims to have protection under both civil and criminal routes. Victims might feel a greater degree of protection knowing that breaches of FMPOs now constitute a criminal offence. The new reforms also provide greater clarity to the law as it enables all frontline professionals to recognise that breaches constitute a criminal offence,<sup>47</sup> providing professionals with the confidence they need to take action by identifying breaches as a form of domestic violence.<sup>48</sup> It had been suggested that frontline professionals often lacked knowledge about how to respond to cases of forced marriage under the civil route.<sup>49</sup> Now that breaches constitute an offence, professionals are left in no doubt that breaches can be reported to the police.

### *Disadvantages*

While the new reforms mean that both civil and criminal routes are available, some might argue that pursuing civil remedies is the preferable option because applicants of FMPOs have autonomy and remain in control of the legal process, in comparison to the criminal process that is enforced by the police and CPS. Sections 63CA(3) and (4) explain that a person who has breached an FMPO could find the matter is dealt with in either the civil or criminal jurisdiction, but not both. This is to avoid double jeopardy so that perpetrators are not effectively punished twice for the same conduct in different jurisdictions. Matters such as breaches of FMPOs should be victim-led, but it will be interesting to see whether the authorities will dominate the decision to prosecute.<sup>50</sup> Victims should have a choice whether to return a case for committal in the family courts if the CPS decides not to prosecute or where the perpetrator has been acquitted.<sup>51</sup> Some have suggested, however, that a decision which route to pursue must be made at the outset in the interests of the defendant facing the criminal charges.<sup>52</sup> Decisions made by agencies should also be swift as delay may negatively impact on the victim’s willingness or ability to testify at trial.<sup>53</sup>

The problem with relying solely on the civil route is that it places the burden to seek a civil remedy upon the victim, placing ‘the burden of preventing forced marriage on the young women who are the object of the practice, rather than on law-enforcement or

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<sup>45</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 14.

<sup>46</sup> [2014] Fam. 69.

<sup>47</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 12.

<sup>48</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 13.

<sup>49</sup> R. Gaffney-Rhys, ‘The Development of the Law Relating to Forced Marriage: Does the Law Reflect the Interests of the Victim?’ (2014) 16(4) *Crime Prevention and Community Safety* 269, at 282.

<sup>50</sup> R. Gaffney-Rhys, ‘The Development of the Law Relating to Forced Marriage: Does the Law Reflect the Interests of the Victim?’ (2014) 16(4) *Crime Prevention and Community Safety* 269, at 284.

<sup>51</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 16.

<sup>52</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 16-17.

<sup>53</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 16.



state services'.<sup>54</sup> Given the pressures experienced by victims, civil remedies provide an opportunity for family members to dissuade victims from enforcing their legal rights. Criminal prosecutions instigated by the state can help to work against familial pressures, very much the same as sexual and domestic violence offences where familial pressures can prevent criminal prosecution. Criminal prosecutions for breaches send a powerful message that individuals will be prosecuted and that the state will not be deterred by the external influences of family members.<sup>55</sup> However, the repercussions of prosecutions (whether successful or not) could reduce the confidence of victims to pursue FMPOs in the first instance.<sup>56</sup> The new law leans in favour of a criminal prosecution, where the main focus is on punishment rather than the protection of victims. A breach will also be heard in a public criminal court and this may deter some BME women from reporting breaches. This is in contrast to the family court, which is closed and private – an important element as some BME women will be very concerned about bringing 'dishonour' to the family.

The short history of the 2007 Act also reveals there have only been a small number of breaches reported. In 2010, there were just five breach hearings (though this may not be indicative of the total number of breaches for that year).<sup>57</sup> Isabella Sankey, Director of Policy of the human rights organisation *Liberty* stated before the House of Commons Committee that: 'There does not seem to be much evidence or commentary from the Government on how they think the current system [i.e. the civil remedy] is working and how it might be failing'.<sup>58</sup> Commenting that 65 FMPOs were issued in 2011 and that only a small number of cases involved breaches, she suggested the old civil regime was working because of the small numbers and there was, therefore, no need to criminalise FMPOs.<sup>59</sup> If, over the coming years, only a small number of breaches are heard in the criminal courts, the deterrent effect of the reforms will be minimal. Worse still, if all future applicants choose to pursue breaches via the civil route, there will be no criminal hearings. If this is the case, this would severely impact on the deterrent element of the offence. This is the problem when dual civil and criminal methods of enforcement become the available options for complainants.

Before the reforms, a person in breach of an FMPO could already be fined or imprisoned for its breach as a contempt of court: was it, therefore, really necessary to criminalise breaches of FMPOs when punitive measures already existed?

### **Section 121 of the 2014 Act – New Offence of Forced Marriage**

Section 121(1) creates a new offence of forced marriage. A person commits an offence if he or she: (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage; and (b) believes, or ought

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<sup>54</sup> K. Quek, 'A Civil Rather than Criminal Offence? Forced Marriage, Harm and the Politics of Multiculturalism in the UK' (2012) 15 *British Journal of Politics and International Relations* 626, at 641.

<sup>55</sup> M. Wind-Cowie, P. Cheetham and T. Gregory, *Ending Forced Marriage* (2012), at 51.

<sup>56</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 10.

<sup>57</sup> House of Commons Home Affairs Committee (2011), at 5. See also A.K. Gill and S. Anitha, 'Forced Marriage Legislation in the UK – A Critique' in A.K. Gill and S. Anitha (eds), *Forced Marriage* (2011), where at 146 the authors note between November 2008-May 2010, 154 FMPOs were imposed by the courts with only 3 breaches.

<sup>58</sup> Committee Debate, House of Commons, 4<sup>th</sup> Sitting, 20 June 2013, Q55, column 104.

<sup>59</sup> Committee Debate, House of Commons, 4<sup>th</sup> Sitting, 20 June 2013, Q55, column 104.

reasonably to believe, that the conduct may cause the other person to enter into the marriage without consent. Section 121(2) states an offence may still be committed by any conduct carried out for the purpose of causing the victim to enter into a marriage, whether or not the conduct amounts to violence, threats or any other form of coercion. Section 121(3) also states that a person commits an offence if he or she: (a) practises any form of deception with the intention of causing another person to leave the UK; and (b) intends the other person to be subjected to conduct outside the UK that amounts to a forced marriage under section 121(1). Perpetrators frequently invent stories to lure children abroad on the pretext of a holiday or to visit a sick elderly relative in order to justify why they are travelling abroad, but instead have organised a forced marriage ceremony. While this may amount to a form of kidnapping, the government felt creating a separate offence would fill in a much-needed gap by allowing prosecutors to specifically pursue those who force others into marriage. A person guilty of an offence is liable on summary conviction to a term of imprisonment not exceeding 12 months or a fine (or both); or on conviction on indictment, to a term of imprisonment not exceeding 7 years under section 121(9). There is no requirement for the presence of an FMPO for an offence to be committed under this section – the offence is independent of the family jurisdiction.

### *Aims*

This offence is new and was created because the government felt the 2007 Act had not been as effective at reducing forced marriages. The government had also been informed that victims might have come forward sooner had there been a criminal offence to report.<sup>60</sup> Perpetrators use a variety of methods to fulfill their objectives, including threatening as well as inflicting physical violence. Section 121 was created to make it a criminal offence to undertake such behaviour if carried out in an attempt to force a person into marriage. It signals a powerful message that the government considers forced marriage to be an unacceptable practice and signals their intention to protect victims by providing them with an opportunity to come forward to report their ordeals. The maximum 7-year custodial sentence on indictment is clearly intended to have a stronger deterrent effect. This is particularly relevant in the context of forced marriages and honour cultures – involving the police and the stigma attached to possible custodial sentences may itself be viewed as ‘dishonourable’ and is likely to attract condemnation from the wider community. This is an added deterrent dimension to the offence. Section 121 also recognises the extra-territorial dimension of forced marriages and it will be possible for perpetrators to be extradited and prosecuted for offences committed abroad as long as a UK national is involved.

### *Advantages*

The new law empowers victims to make complaints and to do something positively to end their ordeals. It will also help to change people’s attitudes towards forced marriages as criminalisation represents a major shift in policy. It will help to

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<sup>60</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 11.

highlight that forcing a person into marriage is a culturally unacceptable practice, much like *R v R* did in relation to marital rape.<sup>61</sup>

During the passing of the 2007 Act, the decision was made not to criminalise forced marriages because of a fear BME communities might feel targeted, but this is not a strong enough reason to justify non-criminalisation.<sup>62</sup> Criminalisation should be supported because forced marriages constitute a major human rights violation: it attacks a victim's freedom of choice, self-worth and dignity. It should be considered a separate criminal act justifying a separate criminal offence because forced marriages are inhumane and degrading – they involve a series of violations which should not be broken down into individual acts given the experiences of victims as a whole, including rape, domestic violence and forced childbearing.<sup>63</sup> It is a form of violence that deprives victims of their freedoms and dehumanises them by taking away their right to choose who to marry. Criminalisation, therefore, represents the best method to ensure abuses experienced by victims are addressed appropriately as human rights and criminal law violations.<sup>64</sup> Also, section 121 does not prevent the prosecuting authorities from potentially pursuing other criminal offences either (e.g. kidnap).<sup>65</sup>

### *Disadvantages*

It is not clear if criminalisation will help to increase reporting or if it will help to deter perpetrators from the practice. For example, the Female Genital Mutilation Act 2003 criminalises FGM and the government similarly made a very clear statement that FGM is unacceptable. However, twelve years after passing the Act, FGM still exists and has not resulted in any successful prosecution to date and the fear is that criminalisation of forced marriages may be similarly ineffective:

It is estimated that up to 24,000 girls under the age of 15 are at risk of female genital mutilation in the United Kingdom, but only three cases have been referred to the Crown Prosecution Service in last 2 years, none of which were pursued, because there was no realistic prospect of conviction...the same problems will besiege prosecutions for forced marriage and if convictions are rare, the deterrent effect is likely to be minimal.<sup>66</sup>

The necessity for criminalisation has also been questioned with the vast array of other criminal offences that can be used to prosecute cases of this nature. At the

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<sup>61</sup> [1992] 1 AC 599.

<sup>62</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 5.

<sup>63</sup> K. Quek, 'A Civil Rather than Criminal Offence? Forced Marriage, Harm and the Politics of Multiculturalism in the UK' (2012) 15 *British Journal of Politics and International Relations* 626, at 642-643.

<sup>64</sup> K. Quek, 'A Civil Rather than Criminal Offence? Forced Marriage, Harm and the Politics of Multiculturalism in the UK' (2012) 15 *British Journal of Politics and International Relations* 626, at 640.

<sup>65</sup> For proposed reforms to the law of kidnap, see the Law Commission, *Simplification of Criminal Law: Kidnapping and Related Offences* (Law Comm. No. 355, 2014).

<sup>66</sup> R. Gaffney-Rhys, 'The Development of the Law Relating to Forced Marriage: Does the Law Reflect the Interests of the Victim?' (2014) 16(4) *Crime Prevention and Community Safety* 269, at 285. At the time of writing, the first (and only) successful prosecution to date since the introduction of the new law occurred in a dreadful case in Cardiff concerning a young devout Muslim woman who was raped and forced into marriage by her abuser – he was jailed in June 2015 for 16 years for committing rape, voyeurism, blackmail, forced marriage and bigamy at Methyr Crown Court: *The Guardian*, 10 June 2015.

Committee Stage of the 2007 Act, Lord Lester set out very strong reasons why criminalisation was not considered at the time, stating ‘There is already plenty of criminal law to tackle murder, kidnapping, abduction, rape and all the other evil manifestations associated with forcing people into marriage against their will’.<sup>67</sup> However, these concern criminal activities associated with forced marriage, but a separate criminal offence is still necessary because the old regime related to a patchwork of offences incidental to the *process* of forcing a person into marriage, but not forced marriage itself. Lord Lester further explained additional problems might arise as a criminal trial is held in public.<sup>68</sup> Criminalisation may deter victims from coming forward and reporting their ordeals as they do not want to ‘dishonour’ their families by having very public hearings.<sup>69</sup> Forced marriages can be labelled as ‘emotional crimes’ where victims are often blackmailed into marriages. The complex relationships that exist within this context may deter victims from seeking prosecutions when matters concern parents or loved ones.<sup>70</sup>

Section 121(1) states that a person will commit an offence of forced marriage if he or she uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage and believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without consent. How is the court to define and interpret the words ‘any other form of coercion’ in order to distinguish between forced and arranged marriages?<sup>71</sup> It may be problematic in those cases where no actual force was applied or if there was an absence of violence or threats.<sup>72</sup> Likewise, it might be that other offences such as rape within the context of a (forced) marriage will be just as much difficult to prove. Furthermore, proving beyond all reasonable doubt that the accused(s) believed or *ought to have reasonably believed* their conduct would amount to forcing a person to marry without consent is also a very low threshold to prove for an offence with a maximum 7-year custodial sentence.

In the *Forced Marriage Survivors Handbook*,<sup>73</sup> the FCO and Home Office make the following statement about prosecutions:

The civil remedy of FMPOs will continue to exist alongside the new criminal offence. This means that the choice is yours. If you choose to report the offence to the police, they will refer the case to the Crown Prosecution Service (CPS). The CPS will then decide whether to proceed with the prosecution. This will only be undertaken with the consent of the victim *however if there is overwhelming evidence that it would be in the public interest to prosecute, the CPS may proceed without consent* (emphasis added).<sup>74</sup>

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<sup>67</sup> Hansard, House of Lords, 13 June 2007, Volume No. 692, Part No. 101.

<sup>68</sup> Hansard, House of Lords, 13 June 2007, Volume No. 692, Part No. 101.

<sup>69</sup> Hansard, House of Lords, 13 June 2007, Volume No. 692, Part No. 101.

<sup>70</sup> Hansard, House of Lords, 13 June 2007, Volume No. 692, Part No. 101.

<sup>71</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 9; G. Gangoli and K. Chantler, ‘Protecting Victims of Forced Marriage: Is Age a Protective Factor?’ (2009) 17 *Feminist Legal Studies* 267, at 269; K. Chantler, G. Gangoli and M. Hester, ‘Forced Marriages in the UK: Religious, Cultural, Economic or State Violence’ (2009) 29 *Critical Social Policy* 587, at 596.

<sup>72</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 5 and 9.

<sup>73</sup> Foreign and Commonwealth Office and Home Office, *Forced Marriage: A Survivors Handbook* (undated).

<sup>74</sup> Foreign and Commonwealth Office and Home Office, *Forced Marriage: A Survivors Handbook* (undated), at 10.

The CPS Policy on HBV and Forced Marriage also state the following in relation to prosecutions and the public interest test:

Where there is sufficient evidence in cases of HBV and FM to provide a realistic prospect of conviction, it will usually be in the public interest to proceed. Prosecutors should bear in mind that it will take courage for victims of FM to report against their families. A prosecution of a FM case will send the right message to victims that the CPS takes such cases seriously.<sup>75</sup>

The author is of the opinion that cases of forced marriage should only proceed to prosecution with the victim's consent. Although Madden Dempsey argues there is 'consequential value' of prosecutorial action (i.e. the guilty are convicted and deterrence is promoted), cases of forced marriage involve highly detrimental consequences for victims living within honour cultures. Furthermore, deterrence is not even empirically supported.<sup>76</sup> Repercussions may be severe as victims may be ostracised by the community for bringing a prosecution, which may bring further shame and dishonour to the family. This places additional pressures on victims and may deter them from coming forward. Gill's study in 2011 attracted 74 written responses from organisations/support workers,<sup>77</sup> and it noted 57% of respondents believed criminalisation would make it more difficult for victims to come forward (with 43% disagreeing).<sup>78</sup> According to Gill's study, criminalisation may hinder the chances of victims taking part in reconciliation with their families with half the sample (49%) revealing the prospect of a criminal prosecution would make it harder for victims to move on,<sup>79</sup> thereby disempowering some victims.<sup>80</sup> The rationale of prosecution is to provide victims with a sense of justice for their abuses and so prosecutions in these cases must proceed with great care, otherwise a prosecution without the victim's consent disempowers them and runs counter to the intentions behind the reforms.<sup>81</sup> The interests of victims (and their safety) must be paramount and should not be outweighed by the public interest.<sup>82</sup>

Given the emotional links forced marriage cases present, victims should not be punished 'twice' by being charged with criminal offences themselves, such as wasting police time if they provide inconsistent accounts or 'fail to cooperate' because of the external pressures involved.<sup>83</sup> The CPS Policy on forced marriages (above), however,

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<sup>75</sup> CPS, *Honour-Based Violence and Forced Marriage – Prosecution Policy and Guidance*, available at [http://www.cps.gov.uk/legal/h\\_to\\_k/honour\\_based\\_violence\\_and\\_forced\\_marriage/#a18](http://www.cps.gov.uk/legal/h_to_k/honour_based_violence_and_forced_marriage/#a18) (last accessed 29 May 2015).

<sup>76</sup> See C. Hoyle and A. Sanders, 'Police Response to Domestic Violence', (2000) 40(1) *British Journal of Criminology* 14; T.L. Kirsch, 'Problems in Domestic Violence: Should Victims be Forced to Participate in the Prosecution of their Abusers', (2000-2001) 7 *William and Mary Journal of Women and the Law* 383; L. Ellison, 'Prosecuting Domestic Violence without Victim Participation', (2002) 65(6) *Modern Law Review* 834; M. Madden Dempsey, *Prosecuting Domestic Violence – A Philosophical Analysis* (OUP, Oxford: 2009), at 61.

<sup>77</sup> A.K. Gill, *Exploring the Viability* (2011), at 7.

<sup>78</sup> A.K. Gill, *Exploring the Viability* (2011), at 8-9.

<sup>79</sup> A.K. Gill, *Exploring the Viability* (2011), at 18.

<sup>80</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 10.

<sup>81</sup> See for example *R v Ghulam Rasool* [1990-1991] 12 Cr App R (S) 771.

<sup>82</sup> A. Gill and S. Anitha, 'The Illusion of Protection: An Analysis of Forced Marriage Legislation and Policy in the UK' (2009) 31(3) *Journal of Social Welfare and Family Law* 257, at 261 c.f. *The Code for Crown Prosecutors* (January 2013, 7<sup>th</sup> Edition), at 8-9, which explain prosecutors should take into account the views expressed by the victim.

<sup>83</sup> Home Office, *Forced Marriages – A Consultation, Summary of Responses* (2012), at 16.

recognises the difficulties of reporting against family members, suggesting counter-charges will be rarely brought. Victims brave enough to proceed with prosecutions also require appropriate support during and post-trial, where they are likely to be at their most vulnerable. Criminal agencies aim to convince witnesses to go through witness protection programmes, but there are serious and life-changing drawbacks. Often, such programmes require women to relocate, change their names and identities. Relocation can also be a very isolating experience, where they will have to make new friends and lead new lives. This can be a traumatic experience, but this trauma will be exacerbated if victims have language barriers or find it difficult to interact with others. It is possible some may even abandon their programmes altogether and go back to their families.<sup>84</sup> As a form of HBV, forced marriage prosecutions must be met with the appropriate support, delicately balancing the victim's needs and the need to protect their identities.

Another important concern relates to support workers and the potential damage to their relationship with service users. Criminalisation may place support workers in some difficulty considering that their relationship involves one of trust and confidence: what if a support worker knew a victim was about to be forced into marriage but on the instructions of the victim, was persuaded not to inform the police as the victim feared she would suffer harm or did not want to see her parents prosecuted? If the support worker does not disclose this to the police, have they failed in a *moral* duty to report a crime? If they do inform the police that a victim is being forced, they risk losing the trust of victims who may (at best) not return to the service provider in future, or (at worst) may be harmed because the support worker made a disclosure against the advice of the victim. Criminalisation could therefore create no-win situations that could seriously jeopardise support worker/victim relationships in some difficult cases.

When balancing section 120 and section 121, it seems odd that a respondent who is already subject to an FMPO faces a maximum custodial sentence of 5 years for its breach, whereas a person who has forced another into marriage but who has never been served with an FMPO faces a maximum custodial sentence of 7 years. Surely the sentences should be the other way round – a person who breaches an FMPO should be liable to a maximum of 7 years, and a person who forces another into marriage (but who has not been served with an FMPO) should be liable to a maximum of 5 years? The culpability of the former is arguably more greater than the latter because the former person had been aware of an FMPO but decided to ignore it. This inconsistency is also a feature in other jurisdictions – the maximum custodial sentence for a forced marriage offence in Denmark is 4 years; Austria and Germany it is 5 years; and in Norway it is 6 years.<sup>85</sup> Not only does this demonstrate that European countries are not communicating with each other on European-wide policies on forced marriages, it also demonstrates that English criminal law has not been influenced by any particular model.<sup>86</sup>

### **The Broader Political Agenda**

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<sup>84</sup> A.K. Gill, *Exploring the Viability* (2011), at 30.

<sup>85</sup> A. Sabbe, M. Temmerman, E Brems and E Leye, 'Forced Marriage: An Analysis of Legislation and Political Measures in Europe' (2014) 62 *Crime, Law and Social Change* 171, at 176.

<sup>86</sup> R. Gaffney-Rhys, 'The Development of the Law Relating to Forced Marriage: Does the Law Reflect the Interests of the Victim?' (2014) 16(4) *Crime Prevention and Community Safety* 269, at 285.

The discussion surrounding forced marriages also makes culturally-essentialist assumptions about minority groups and their cultural practices.<sup>87</sup> Rahila Gupta in an article for *The Guardian* explained that Southall Black Sisters, an organisation that supports BME women, believes the issue of forced marriages is being used ‘in a cynical way to create a moral panic to justify the government's immigration agenda’.<sup>88</sup> Policies in response to tensions created by incidents like 9/11 and the 7/7 bombings have shifted from multiculturalism to one of promoting ‘social cohesion’, where the latter promotes ‘an assimilatory form of integration into British society’.<sup>89</sup> BME women, particularly those in South-Asian and Muslim communities, are considered oppressed and the discourse on forced marriages, specifically involving cultural and religious traits, focus on ‘violence against Third World women’ as opposed to it being an example of VAW in general.<sup>90</sup> As Gill and Anitha highlight, the media and government portray forced marriage as a cultural issue and signifies ‘difference’ between (reinforced) British values (‘we’ and ‘us’) and minority cultural practices (‘them’ and ‘the other’).<sup>91</sup> Criminalisation of forced marriages may thus perpetuate the ‘widespread infantilising of minority women’ instead of empowering BME women.<sup>92</sup> Criminalisation may also be counter-productive to social and community relations. HBV and forced marriages are not South-Asian or Muslim-specific – there are instances of the practice taking place in the Irish community, Gypsy, travelling and Hispanic communities, and even so-called ‘shotgun weddings’ where white westerners are forced into marriage because a girl has become pregnant.<sup>93</sup> Forced marriages should be approached from a perspective that is holistic and through the lens of human rights violations – viewed as VAW in general, as opposed to something South-Asian, Muslim or culturally specific.<sup>94</sup> However, the reforms will apply on its face in a non-discriminatory way, given the neutral language of the legislation, and a wide-range of perpetrators (including Irish, gypsy, Jewish, Buddhist and white western perpetrators, etc.) could equally be prosecuted for forcing others into marriage.

### **Prevention, Not Just Criminalisation**

<sup>87</sup> A.K. Gill and S. Anitha, ‘Introduction: Framing Forced Marriage as a Form of Violence Against Women’, in A.K. Gill and S. Anitha (eds), *Forced Marriage* (2011), at 10; G. Gangoli, K. Chantler, M. Hester and A. Singleton, ‘Understanding Forced Marriage: Definitions and Realities’, in A.K. Gill and S. Anitha (eds), *Forced Marriage* (2011), at 30-34; S. Anitha and A.K. Gill, ‘The Social Construction of Forced Marriage and it’s ‘Victim’ in Media Coverage and Crime Policy Discourses’, in A.K. Gill and S. Anitha (eds), *Forced Marriage* (2011), at 112.

<sup>88</sup> R. Gupta, ‘Mere Posturing from the Tories on Forced Marriage’, *The Guardian*, 11 October 2011.

<sup>89</sup> G. Yurdakul and A.C. Korteweg, ‘Gender Equality and Immigrant Integration: Honor Killing and Forced Marriage Debates in the Netherlands, Germany and Britain’ (2013) 41 *Women’s Studies International Forum* 204, at 210.

<sup>90</sup> A. Gill and S. Anitha, ‘The Illusion of Protection: An Analysis of Forced Marriage Legislation and Policy in the UK’ (2009) 31(3) *Journal of Social Welfare and Family Law* 257, at 259.

<sup>91</sup> A. Gill and S. Anitha, ‘The Illusion of Protection: An Analysis of Forced Marriage Legislation and Policy in the UK’ (2009) 31(3) *Journal of Social Welfare and Family Law* 257, at 262-263.

<sup>92</sup> A. Gill and S. Anitha, ‘The Illusion of Protection: An Analysis of Forced Marriage Legislation and Policy in the UK’ (2009) 31(3) *Journal of Social Welfare and Family Law* 257, at 262-263. See also M. Enright, ‘Choice, Culture and the Politics of Belonging: The Emerging Law of Forced and Arranged Marriage’ (2009) 72(2) *Modern Law Review* 331.

<sup>93</sup> See for example N.V. Baker, P.R. Gregware and M.A Cassidy, ‘Family Killing Fields – Honor Rationales in the Murder of Women’, (1999) *Violence Against Women*, February, 164; J.A. Vandello and D. Cohen, ‘Male Honor and Female Fidelity: Implicit Cultural Scripts That Perpetuate Domestic Violence’ (2003) *Journal of Social Personality and Social Psychology*, 84(5) 997.

<sup>94</sup> K. Quek, ‘A Civil Rather than Criminal Offence? Forced Marriage, Harm and the Politics of Multiculturalism in the UK’ (2012) 15 *British Journal of Politics and International Relations* 626, at 631. See also L. Volpp, ‘Blaming Culture for Bad Behavior’ (2000) 12 *Yale Journal of Law and the Humanities* 89, at 90.

Any legislative initiative to combat forced marriages must also be accompanied by preventative measures, including access to support services, legal advice and appropriate training for professionals.<sup>95</sup> Governmental policy focuses on the *entry point* into marriage (i.e. coercion and absence of consent), whereas victims, survivors and professionals attach equal importance to *preventative* and *exiting strategies* to prevent and escape forced marriages.<sup>96</sup> The criminalisation of forced marriages will not, by itself, end the practice. Interventions that take on a ‘whole community approach’, engaging people to denounce forced marriages, can be a very effective tool for prevention.<sup>97</sup>

Preventative programmes can help stimulate attitudinal changes within those communities where the practice of forced marriages take place and can have a more profound long-term effect by encouraging participants to reject forced marriages as a wrong and as human rights violations.<sup>98</sup> The impact of preventative programmes are also clear, measurable and provable; the language used in such programmes is not ‘culturally specific’ and is less likely to offend or alienate community members; it presents a viable alternative to the criminal law responses of the government which some fear will alienate communities;<sup>99</sup> and such programmes can be delivered by those who come from communities where forced marriage is practised. Prevention can thus empower communities to take action and can make them feel included within the debate.

In a separate research study, the author has had the benefit of conducting interviews with support organisations that attach importance to preventative work. Practical Solutions is one organisation based in Blackburn that offers training to professionals on the issues of forced marriages and HBV, as well as the public.<sup>100</sup> The organisation, which received funding from the FMU, provides workshops to the community, utilising community centres and other venues to spread the messages against forced marriages. However, the messages are also subtle. Workshops take place at venues where there are also other organisations present (including health organisations) to raise awareness on general health matters. Engagement, education and sharing information with members of the community is the primary objective, including raising awareness in schools, colleges and universities. Practical Solutions also access Asian radio stations and encourage people to phone-in, ask questions and contribute to debates. During interviews with the author, staff commented there is enthusiasm from the community to learn about VAW, HBV and forced marriages, with many appreciating that forced marriages violate human rights and that people do have the choice who to marry. The success of Practical Solutions demonstrates criminalisation is not enough – symbolically criminalisation is positive, but preventative measures also help to change peoples’ attitudes.

Ever-present funding cuts to frontline (and mainly specialist Asian) organisations, however, threaten closure and the danger is organisations like Practical Solutions will disappear. If this trend continues, important messages about the wrongs of forced

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<sup>95</sup> F. Simmons and J. Burns, ‘Without Consent: Forced Marriage in Australia’ (2013) 36 Melbourne University Law Review 970, at 1005.

<sup>96</sup> K. Chantler, G. Gangoli and M. Hester, ‘Forced Marriages in the UK: Religious, Cultural, Economic or State Violence’ (2009) 29 Critical Social Policy 587.

<sup>97</sup> M. Wind-Cowie, P. Cheetham and T. Gregory, *Ending Forced Marriage* (2012), at 21 and 45.

<sup>98</sup> M. Wind-Cowie, P. Cheetham and T. Gregory, *Ending Forced Marriage* (2012), at 45.

<sup>99</sup> M. Wind-Cowie, P. Cheetham and T. Gregory, *Ending Forced Marriage* (2012), at 45-46.

<sup>100</sup> See <http://www.practical-solutions.info> (last accessed 29 May 2015).



marriages will not penetrate communities and the issue will not be effectively addressed until the government pursues viable preventative measures supported with appropriate levels of funding.

## **Conclusion**

While criminalisation is a positive step, the fear is that there will not be many prosecutions under the new law. The small number of breach hearings (from 2008-2014) under the civil regime provides evidence to support this. When the 2007 Act was passed, the government opted against criminalisation, with civil remedies pursued and with victims in mind. However, if now, as a result of criminalisation, fewer victims come forward to report forced marriages because they fear family members will be prosecuted, this will undermine the very rationale of criminalisation. For these reasons, it is submitted that criminalisation was unnecessary.

Supporters argue criminalisation clarifies the law for professionals, enables the criminal law to punish and deter perpetrators appropriately and that this will help to reduce forced marriages. Unfortunately, this belief is misguided. Keir Starmer QC, the former Director of Public Prosecutions, published a note on the CPS website on the subject of domestic violence.<sup>101</sup> In his speech, he cited the prevalence of domestic violence in the UK every year, including quoting nearly one million women are victims of domestic violence every year; two women each week are killed by their partners or ex-partners; 76% of incidents are repeat incidents; and that on average, women will experience thirty-five incidents before reporting them to the police. If there is any deterrent effect of the law here through the creation of offences such as assault, kidnap and harassment, it is not reflected in the experiences of women in these statistics. Many of the support organisations did not believe criminalisation was needed. Forced marriage is a very complex problem – it is an ‘emotional crime’ complicated by the presence of complex relationships. Victims will feel a high sense of guilt because they will already feel they have betrayed their families. Full-scale preventative work must be embraced at all levels across the UK, including schools, colleges and universities, as well as within local communities, and preferably delivered by those who come from *within* those communities.<sup>102</sup> In this way, the government will be able to spread the message that forced marriages violate human rights and promote attitudinal changes in those communities where the practice exists, without stigmatising or making cultural-specific assumptions about forced marriages and minority groups.

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<sup>101</sup> K. Starmer, ‘Domestic Violence: The Facts, The Issues, The Future – Speech by the Director of Public Prosecutions, Keir Starmer QC’, available at [http://www.cps.gov.uk/news/articles/domestic\\_violence\\_-\\_the\\_facts\\_the\\_issues\\_the\\_future/](http://www.cps.gov.uk/news/articles/domestic_violence_-_the_facts_the_issues_the_future/) (last accessed 29 May 2015).

<sup>102</sup> See also A.K. Gill, *Exploring the Viability* (2011), at 30.