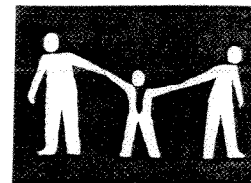


Children - Forced Marriages

Proposals for Law Reform

December 2001



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The Problem of Forced Marriages

The Recommendations of the Centre for Child and Family Law Reform

The need to examine the problems for children and families generated by forced marriages was identified by our committee at about the time that the report "A Choice by Right", the Government Working Party paper, was announced. That report and a body of informed commentary on it have been considered by us. We have been invited in particular to consider whether there are any legislative measures which might be taken to reinforce the acknowledged desire of Government and public opinion to achieve an end to the abhorrent practice of forced marriages.

No purpose will be served by repeating material set out elsewhere and, in particular, in "A Choice by Right", but it is appropriate for us to say something about what underpins our recommendations.

We start with the proposition that forced marriages are a serious interference with the Human Rights of those forced into marriages "without their free and full consent". (Universal Declaration of Human Rights, Article 16(2)) . We recognise the important distinction between forced marriages and arranged marriages, which are, by their nature, consensual.

There are a myriad of circumstances in which a marriage can be forced, ranging from emotional, financial and intellectual pressure to kidnapping and threatening to kill. We are firmly of the view that in the majority of cases the approach of the Working Group was correct and that education and support for those, especially children, involved, is the most appropriate way forward. In that respect we have one suggestion to make, which can be achieved by secondary legislation, and which we consider would have an impact, not only in real, practical terms, but also as a way of sending a message that such practices are unacceptable and that there are

escape routes available to those potentially involved in a forced marriage. We will revert to this suggestion later, although we consider it of equal importance.

The Criminal Law

We noted that the Working Group did not support the creation of a specific offence of forcing a person to marry. We could not find any extensive justification for this stance in the report and we thought it appropriate to revisit the subject. We took the view that the area was a difficult one, particularly if such an offence were to involve proving to the criminal standard that a marriage was not entered into with valid consent. The unexplained reluctance of the Working Group to go down that road was to a degree understandable, particularly since individual criminal acts committed in the course of forcing someone to marry can often be the subject of criminal proceedings.

However, after anxious consideration, we concluded that criminal law had a potentially important role to play, one which would punish and deter those involved in many of the more serious violations of their victims' Human Rights, and would also send an important message about the need to respect the Human Rights of others in a free and democratic society. We did not consider it adequate to relegate the protection of those Human Rights merely to the status of a by-product of some other criminal prosecution, quite possibly for a relatively trivial offence. Having in mind the problems of creating an entirely new and free standing offence of forcing a person to marry, we thought it preferable to adopt the legislative method adopted to deal with racial aggravated offences in the Crime and Disorder Act 1998, ("CDA").

It will be recalled that the CDA did not seek directly to criminalise racism, but rather to adopt a two pronged attack against crimes motivated by racism. By one prong a number of specific offences were identified which are commonly used to further racist ends, offences with low or relatively low maximum sentences. To those offences were attached satellite offences of, for example Racially Aggravated Common Assault, Common Assaults with, in effect, the added ingredient of having

been committed with a racist intent. The other prong was a general provision, in Section 82 of CDA, which requires the court in any criminal matter which is racially aggravated to treat that motivation as a factor making the offence more serious.

We have annexed to this brief paper for discussion a draft of the form the necessary legislation might take. In it we have followed the policy adopted by the government in presenting the CDA to the House of Lords. (See the extracts from the Hansard reports of the debates in the House of Lords annexed hereto.) We have sought to identify those offences which are most likely to be used by those seeking to bring about a marriage by force, but which themselves do not carry a high enough maximum sentence. We propose a number of satellite offences, including, for example, Common Assault with the intention of causing or inducing another to enter a marriage.

It will be apparent on reading our proposals for legislation and considering the criminal law generally that there will be forced marriages which are not covered by existing criminal law and will not be directly prevented by these proposals. We take the view that whilst that is right, it is vain to seek to frame legislation to cover every contingency. The risks inherent in framing legislation to cover more contingencies is high, both in terms of the complexity of framing workable criminal legislation, and the evidential problems it would give rise to.

Further we consider that there is an important inherent benefit in approaching matters in this way, focusing on the use of generally accepted crimes which have the added dimension of being committed with the intention of gravely detracting from the Human Rights of a vulnerable group. The general acceptance of such legislation is important. To achieve that it is important to avoid the risk of it being perceived, albeit wrongly, as being intended to criminalise activities within a limited number of minority communities. *None of the minority communities in the United Kingdom condone the use of criminal acts to bring about a marriage. It is also an important feature of the proposed legislation that there is no danger that it can be thought to*

apply to arranged marriages, which by their nature, are consensual and will not be tainted by any association with the criminal acts to which the draft legislation relates.

Following the other limb of the CDA, we have provided that in sentencing the court should regard the fact that a crime has been committed with the intention of causing or inducing another to enter into a marriage increases the seriousness of the offence and that that fact should be taken into account when sentencing.

In addition to the draft of suggested legislation we have annexed copies of the relevant sections of the CDA.

Protecting Children

We revert now to the use of education and the provision of advice and support to children who are most vulnerable to becoming the victims of forced marriages. In this respect we have considered whether there is any legislative action which might be taken to achieve the assured, uniform provision of support services across the country, wherever they are needed. Whilst the problem may well be found to exist primarily in the major conurbations, it seems to us that it is necessary to provide for young people in other areas where the support agencies may not be as alert to the problem and the victim therefore all the more isolated. Awareness, education and the provision of support are the key factors.

There are probably a number of routes by which these aims could be achieved. The work of voluntary and community based groups must not be undervalued, but we consider that the harm done to the victims of forced marriages, very often young girls, requires that a potent course be adopted, one which supports the victims without disaffecting their communities. Having considered a number of alternatives, we have concluded that this can best be achieved within a legislative framework, and have been able to identify a route through the use of secondary legislation

which would involve and focus Social Services Departments nationally and would be effective and swift to implement. We consider that doing so would have an impact, not only in real, practical terms, but would also be an important way of reinforcing the message that such practices are unacceptable and that there are escape routes available to those potentially involved in a forced marriage.

Minors, and girls in particular, are the young people who are most vulnerable to becoming the victims of forced marriages (although the problem among young women, and even, at times, older women must not be underestimated). For the support of those minors, as "A Choice by Right" correctly said, the Children Act 1989 ("CA") applies, and there already exists a duty on Local Authorities to provide support services.

Part III of the CA sets out the duty of Local Authorities to act in support of families, and the provision of services, accommodation and advice to children and families. Specifically, Section 17 relates to services for children and families in need. Subsection 17(2) incorporates Part 1 of Schedule 2 of the CA in which are found the duties and powers of Local Authorities for the "purpose principally of facilitating the discharge of their general duties" under Section 17. They include safeguarding and promoting the welfare of children in need within their area. Victims and potential victims of forced marriages are children in need and are within the contemplation of the Section.

In order to carry their duties into effect, Part 1 of Schedule 2 requires that every Local Authority shall take reasonable steps to identify the extent to which there are children in need in their area. Paragraph 1(2) requires the Local Authority to publish information about its services to children and families in need, and to "take such steps as are reasonably practical to ensure that those who might benefit from the services receive the information relevant to them". In a general sense these obligations would require Local Authorities to identify the victims and potential victims of forced marriages and to publicise to them the services which the Local

Authority might provide to them, which should range from counselling to the provision of safe accommodation.

Even though there is this general requirement, it does not appear that by and large Local Authorities are carrying out their duties in respect of the potential victims of forced marriages. Steps are not being taken to identify them or to inform them of the help available to them. There may be many different reasons why that is the case varying from a lack of awareness of the existence of the problem to reluctance to tackle head on an undoubted sensitive issue. In other cases, even where there is an awareness of the problem, the steps which are taken to identify potential victims and inform them of the help available are simply inadequate. For example, we have learnt of one Local Authority which has taken the view that to fulfil its duty under the CA it is sufficient to provide general help-line services, and a publicity leaflet which includes a line at the end in a number of minority languages giving telephone numbers for child victims to telephone to have the document translated into that language. The leaflet says nothing about forced marriages, either in English or any of the minority languages. A vulnerable child would not be aware of the help at hand, whether she spoke and read English or not.

What is crucial to the effectiveness of the Local Authorities' provision of support services is that potential victims are aware that such services are available to them. In many cases the help available is likely to pass unknown to the often isolated young people who need it. Potential victims have to be identified and made aware that support is available and to that end they must be actively targeted and provided with the knowledge that there are accessible and practical solutions to their troubles. Obviously, it would be open to the Secretary of State to remind Local Authorities of their role and to provide guidance in a circular, but it seems to us that there are very strong arguments for underlining the seriousness of the need to help those affected by forced marriages by identifying the obligation within Schedule 2 itself, thus putting the specific obligation at the forefront of people's minds and in the process, to coin a phrase, giving the oxygen of publicity to the cause of

preventing forced marriages. Whilst we accept that there are many ways in which the process of educating and informing can be pursued, we judge that there are few ways that would more readily demonstrate the Government's commitment to addressing the problem practically.

It seemed to us that these factors warrant the reformulation of the duties of Local Authorities, as set out in that Act, and the extent to which it empowers them and imposes upon them the right obligations. The mechanism we would suggest is that the Secretary of State should be invited to use the powers given to him by Section 17(4) of the CA to amend Part 1 of Schedule 2 and that he should lay before Parliament an order amending Schedule 2 Part 1 of the CA by adding a new paragraph 1(3) to the following effect:

" Every local authority in discharge of its duty in relation to paragraphs 1(1) and 1(2) shall have regard to the services provided by them to the victims and potential victims of forced marriages."

Annexed to this paper are copies of the relevant sections of the CA and Schedule 2.

A DRAFT LEGISLATIVE SCHEME TO PREVENT THE USE OF CRIMINAL ACTS WITH THE INTENTION OF CAUSING ANOTHER TO MARRY

This Act [or "This Part of this Act"] creates certain aggravated offences when committed for the purpose of inducing or causing another to enter into a marriage; makes further sentencing provision for dealing with offenders in such circumstances.

Assaults aggravated when committed for the purpose of inducing or causing another to enter into a marriage

1.- (1) A person is guilty of an offence under this section if he commits –

- (a) an offence under section 20 of the Offences Against the Person Act 1861 (malicious wounding or grievous bodily harm);
- (b) an offence under section 47 of that Act (actual bodily harm); or
- (c) common assault,

for the *purpose* of inducing or causing another to enter into a marriage.

(2) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.

(3) A person guilty of an offence falling within subsection (1)(c) above shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Harassment aggravated when committed for the purpose of inducing or causing another to enter into a marriage

2.-(1) A person is guilty of an offence under this section if he commits –

- (a) an offence under section 2 of the Protection from Harassment Act 1997 (offence of harassment); or
- (b) an offence under section 4 of that Act (putting people in fear of violence),

for the purpose of inducing or causing another to enter into a marriage.

(2) In section 24(2) of the Police and Criminal Evidence Act 1984 (arrestable offences), after paragraph (r) insert-

“(s) an offence falling within section [2] of the [Act];”.

(3) A person guilty of an offence falling within subsection (1)(a) above shall be liable-

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(4) A person guilty of an offence falling within subsection (1)(b) above shall be liable-

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.

(5) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(a) above, the jury find him not guilty of the offence charged, they may find him guilty of the basic offence mentioned in that provision.

(6) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(b) above, the jury find him not guilty of the offence charged, they may find him guilty of an offence falling within subsection (1)(a) above.

(7) Section 5 of the Protection from Harassment Act 1997 (restraining orders) shall have effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 2 or 4 included a reference to an offence under this section.

Criminal damage aggravated when committed for the purpose of inducing or causing another to enter into a marriage

3.-(1) A person is guilty of an offence under this section if he commits an offence under section 1(1) of the Criminal Damage Act 1971 (destroying or damaging property belonging to another) for the purpose of inducing or causing another to enter into a marriage.

(2) A person guilty of an offence under this section shall be liable-

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or to both.

Increase in sentences for causing or inducing another to enter into a marriage

4.-(1) This section applies where a court is considering the seriousness of any offence other than one under sections 1 to 3 above.

(2) If the offence was committed for the purpose of inducing or causing another to enter into a marriage, the court –

- (a) shall treat that fact as an aggravating factor (that is to say, a factor that increases the seriousness of the offence); and
- (b) shall state in open court that the offence was so aggravated.

Explanatory Notes

- As drafted, the Bill creates specific new offences in clauses 1-3 which constitute several basic offences with an additional aggravated element of causing or inducing another to enter a marriage. The Bill also includes a 'catch-all' sentencing section (clause 4) by which judges can treat the forced marriage factor as an aggravating feature when passing sentence on conviction of any other offence. This follows the rationale of the Crime and Disorder Act 1998 ("CDA").
- To include every conceivable offence relevant to forced marriages would make the legislative scheme too cumbersome. Sexual offences are not part of the current draft, save to the extent that they would be affected by clause 4. They may arguably be necessary, but are in any event the subject of current government review.
- The most serious statutory offences (for example, section 18 OAPA, blackmail, aggravated criminal damage and arson) have not been included in keeping with the philosophy of the CDA: although sadly prevalent, such offences already carry the very high maximum sentences, and in some cases life imprisonment and it would add to the burden of the prosecution if an additional element had to be proved before conviction (see Hansard excerpts below).
- In all cases the maxima used are the same as those used in the CDA.