



Foreign &
Commonwealth
Office



Home Office

F o r c e d
M a r r i a g e

A Wrong Not a Right

Forced marriage - that is a marriage without freely given consent - is wrong and every major world religion condemns it. It is an abuse of a person's human rights and a form of domestic violence. Together with partners across the public and voluntary sector, we have been working for many years to prevent forced marriages taking place and to support victims when it does. As part of our strategy for tackling forced marriage we want to consider the benefits and risks of creating a specific criminal offence relating to forced marriage. We recognise that this is an extremely sensitive issue, with no clear or easy answers. We would value the insight and experience of all our partners, and of the individuals who have first hand experience of these issues. We hope that you will respond to this consultation document and help us to find the right way forward.

A handwritten signature in black ink, appearing to read 'Charles Clarke', written in a cursive style.

Charles Clarke
Home Secretary

Ministerial Foreword

What is forced marriage?

Forced marriage is marriage that has taken place without the consent of one or both parties or where consent is extracted under duress. Sometimes people are forced into marriage by violent means, but often they are also forced into marriage by emotional pressure. Forced marriage is an abuse of internationally agreed human rights and a form of domestic violence. Victims come from a variety of cultural backgrounds but forced marriage cannot be justified on religious or cultural grounds. Victims of forced marriage can be male or female.

Forced marriage is not the same as arranged marriage. In arranged marriages, families arrange the match but the choice of whether or not to accept the arrangement remains with the individuals. In forced marriage there is no choice.

How big is the problem?

No-one knows exactly how many people are being forced into marriage each year because many victims don't seek help or say that they are being forced into a marriage. But the Government's Forced Marriage Unit sees at least 250 cases each year.

What does the law already say?

There is currently no specific criminal offence of 'forcing someone to marry' in the UK. However perpetrators - usually parents or family members - could be prosecuted for offences that can be associated with forcing someone into marriage, including kidnapping, false imprisonment, assaults, harassment, child cruelty, sexual offences, failing to ensure attendance at school, blackmail, child abduction, trafficking and murder.

Beyond the criminal law, the civil courts can step in to protect people at risk. For example they can give a local authority parental responsibility for a child and prohibit them from being married or being taken abroad.

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Arguments for and against creating a specific criminal offence

There are good arguments for introducing a specific criminal offence. However there are also strong arguments against it.

Here are some of the arguments against creating a specific offence.

- There is a risk that the fear of their families being prosecuted may stop victims from asking for help. Many victims who ask for help at the moment, ask for confirmation that their families will not get into trouble.
- There is a risk that parents may take children abroad, and marry them off or hold them there, at an earlier age to avoid increased risks of prosecution in Britain.
- Some people think that there are already sufficient criminal offences and protective measures that can be used.
- Because of the difficulty in collecting evidence and the reluctance of many victims to testify against family members it may be difficult to bring a successful prosecution. This could devalue a new offence.
- A new offence would disproportionately impact on Black and Minority Ethnic communities and might be misinterpreted as an attack on those communities.
- Families concerned may not feel that such an offence affects them because many may believe their children do consent to the marriage, even though they have pressured them.
- Implementing a new offence would be expensive and the funds might be better spent on improving support for those at risk.
- Increased risks of prosecution or threat of prosecution would make it harder for victims to

- reconcile with their families.
- Increased involvement in criminal prosecutions could be harrowing for victims who wanted to move on.
- Some people believe there are other better non-legislative means of working within communities to change views and tackle the abuse.

Arguments for creating a specific offence include:

- The introduction of a new offence could challenge people's views about forced marriage. This could in turn lead to fewer cases of forced marriage.
- A new offence could have a strong deterrent effect. People might not force others into marriage for fear of being prosecuted.
- The introduction of a new offence could empower young people with more

- tools to negotiate with their parents. They could tell their parents that they didn't want them to get into trouble. In some case it might help parents facing pressure from relatives.
- There may be some police officers, teachers and others who don't know that forced marriage is wrong and that they have the power to tackle it. A new offence could simplify and clarify matters for public sector employees and give them the confidence to tackle it.
- A new offence could make it easier to take action against perpetrators.

Arguments for and against creating a specific criminal offence

The substance of a new offence

There are a number of options the Government could consider if it were to formulate a possible new offence.

Option A: Grouping and renaming existing crimes

The Government could create a new offence covering existing criminal offences committed for the purposes of forcing someone to marry - such as violence and imprisonment. This option wouldn't include most threats to commit criminal offences, financial threats, threats of exclusion from the family and shame.

For example, a father who beat his daughter into agreeing to marry a husband of his choice could be prosecuted under this proposal. However a father who threatened not to talk to his daughter again if she didn't marry a husband of his choice could not be prosecuted under this offence.

This may not be a good option as, on its own, it doesn't add anything really new to the criminal law.

Option B: A new offence of threats of crimes

The Government could create a new offence covering threats to commit a crime (for example - a father threatening to beat his daughter if she did not marry the groom the family choose - this is not currently criminal) for the purpose of bringing about a marriage without the full and free consent of one or both parties.

This might be a good option as it would criminalise some of the worst threatening behaviour, without risking intruding too far into people's private family life.

Option C: A broader offence of “unacceptable pressure”

The Government could create a new offence covering a wider range of unacceptable behaviour carried out with the intention of forcing someone into marriage. Potentially this could include repeated threats of social and financial ostracism coupled with intimidation based on threats of destroying family honour, as well as non-specific threats of violence. However because situations vary, case to case, it would be very difficult to define what patterns of conduct would be covered in such an offence. Rather it may have to use a concept such as “unacceptable pressure” which could give the courts room to decide, in each case, whether behaviour was so bad it should be criminal.

The substance
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offence

The substance of a new offence

However the concept of “unacceptable pressure” could be very confusing, both for families and for the police. We all have human rights, including rights to privacy and family life, and these rights mean that the Government can not, for example, make it a criminal offence for people not to talk to one another, even if families are being unreasonable.

Option D: An offence of facilitating or witnessing a marriage without consent

The Government could create a new offence catching the people who facilitate or officially witness a marriage in the knowledge, or in circumstances in which they can be reasonably expected to have been aware, that the marriage is happening without the full and free consent of one or both parties. For example, a father could be prosecuted for making the arrangements for the marriage knowing that his daughter didn't consent or an officiating priest could be prosecuted for conducting the marriage of a young girl whom he knew did not consent to the marriage he was performing. This option would not criminalise people who simply attend the wedding and don't know that one or both spouses is being forced.

This option might be helpful as it could catch any marriage where there wasn't full and free consent regardless of how the victim was forced into it.

Other practical issues

(i) Extra territorial effect

In many cases the final act of forcing someone into marriage happens overseas. Normally any new offence only applies if all or most of the activities constituting the offence take place in the UK. If a new law only applied in England, Wales and possibly Scotland, this might provide a greater incentive to forcing victims into marriage abroad. However it is sometimes possible for the courts to prosecute some crimes that take place overseas. This is called taking “extra-territorial effect”.

The difficulty involved in the UK investigating and prosecuting crimes committed abroad, means that extra territorial effect is restricted only to serious offences where there is a clear need. For example, the law on female genital mutilation has been recently amended and allows prosecutions of UK nationals or permanent residents for relevant acts committed overseas. It is therefore an offence for a UK

national or permanent resident to do any of the following acts overseas: (a) committing an act of female genital mutilation; (b) assisting a girl to commit such an act herself; and (c) assisting a non-UK person to commit such an act overseas on a girl who is a UK national or permanent resident.

If the Government were to introduce a specific offence, we believe we should have the power to prosecute a forced marriage offence that is committed overseas where the perpetrator and the victim are British citizens or permanent residents.

However it would be harder to collect enough robust evidence from overseas, than it is to collect evidence in Britain.

(ii) Related offences

If a new offence were introduced there would automatically be other related offences. For example related offences include attempting to commit the

Other practical issues

offence, conspiring to commit the offence and aiding and abetting someone to commit the offence.

An example of a secondary participation would be a mother aiding and abetting her husband in assaulting his daughter in order get her to agree to marry a husband of their choice. In practice this might mean that she prevented her daughter from running away by blocking the door whilst her husband kicked and punched her.

(iii) Who would be guilty of the offence?

Many people can be involved in bringing about a forced marriage. It will often be the case that there is no one person responsible for forcing someone to marry and that a number of people have contributed to the situation, often to varying degrees. For example in some cases a father may be the primary instigator of a forced

marriage, supported by his wife. However it is also possible that one or both of them may be pressed to ensure their offspring are married by others in the community or the one from the other.

(iv) How would guilt be proven?

In many cases it may be difficult to prove that the perpetrator was trying to force someone into marriage. In criminal law the elements of any offence must be proved beyond reasonable doubt which is a higher standard than in civil law. In some cases there will be physical evidence, such as bruising from an assault, that the family resorted to physical violence to force their offspring into marriage. However in other cases a prosecution may be much more dependent on the victim's testimony.

(v) Penalties

Possible penalties include fines, community punishment, cautions, conditional cautions, conditional discharges and custody. Penalties for juvenile perpetrators might be different to those for adults.

The Government would not recommend the use of mediation as an appropriate outcome of a criminal prosecution in such cases because of the complexities and control issues involved and the risk to the safety of all participants.

(vi) Automatic links to civil law and other protective measures

If the Police (or Procurator Fiscal in Scotland) considered prosecuting a case of forced marriage, there would be liaison with Social Services to consider the risk posed to any other members of the family. The results of a prosecution could be used as evidence in divorce proceedings.

Other practical issues

Other ways to get the message across

This consultation is only one part of a wider package of measures the Government is undertaking to combat forced marriage and protect people at risk.

Many people including the Government, Police, women's groups, religions and community groups have been working hard to get the message across that forced marriage is unacceptable and to provide training and guidelines for professionals dealing with people at risk. However some commentators are concerned that at the grass roots level some people are worried that tackling forced marriage will be seen as meddling in religious traditions and cultures.

Although it would not amount to a new criminal offence, another option the Government could consider would be to introduce something called an "aggravated sentencing feature". This would give harsher penalties for existing criminal offences where the intent was to bring about a forced marriage without the full and free consent of one or both parties. For example, a brother convicted for assault could be given an extra 18 months in prison because his motivation behind the assault was to force his sister into marriage.

However the Government doesn't think this is a good option as the courts are already able to take account of all the particular features of a case and are already able to award a more severe penalty where this is appropriate.

The Government welcomes views from everyone with an interest in this issue and would like to encourage Women's and Victims groups, Criminal Justice System agencies and faith organisations and community groups to use this document as a basis for local consultation. Please send responses by the 5th of December 2005 including your name, organisation (if any), address and e-mail address, to:

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10. Next steps

We will publish a summary of the consultation responses within 3 months of the close of the consultation exercise and a Government response as shortly thereafter as possible. These will be made available on both the Home Office and Foreign and Commonwealth Office websites and will be drawn to the attention of everyone who responds to the consultation.

11. Further support.

If you, or anyone you know, is at risk of being forced into marriage. Please contact the Forced Marriage Unit.

How to respond



The information you send us may be passed to colleagues in the Government and related agencies. We may also want to publish it in a summary of responses to this consultation. We will assume that you are content for us to do this, and that if replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisations IT systems, unless you specifically include a request to the contrary in the main text of your submission to us. Please ensure your response is marked clearly if you wish your response and name to be kept confidential. We are happy to do so. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed. Submissions from respondents may also be subject to release under the Freedom of Information Act 2000. If you have instructed us accordingly, we will ensure that your views are not attributed should they be released in this way.

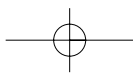
If you have any complaints or comments about the consultation process, you should contact the Home Office consultation co-ordinator by e-mailing pio.smith31@homeoffice.gsi.gov.uk

Alternatively you may wish to write to him at the address below:

Pio Smith
Consultation Coordinator
Performance and Delivery Unit
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3rd Floor Seacole
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The Government is undertaking a regulatory impact assessment and also a race equality impact assessment. These can be found in the full consultation document. This consultation follows the Cabinet Office Code of Practice on Consultation - the criteria for which are set out at www.cabinetoffice.gov.uk/regulation/Consultation

Translations and further copies are available from the Forced Marriage Unit or on the Home Office and Foreign and Commonwealth websites. Large print, braille and audio copies can also be made available.



Questions

Question 1: How many people do you know who have been forced into marriage? How old were they? Were they men or women? Which countries did their families come from?

Question 2: What are the disadvantages to creating a specific offence of forcing someone to marry? Are there any we have not discussed?

Question 3: What are the advantages to creating a specific offence of forcing someone to marry? Are there any we have not discussed?

Question 4: On balance, should the Government introduce a criminal offence for forced marriage?

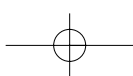
Question 5: If the Government were to introduce a specific criminal offence relating to forced marriage, which of these options would be most effective and appropriate?

Question 6: Should an offence of forced marriage apply when the offence takes place overseas? Would it be difficult to get enough reliable evidence from overseas?

Question 7: Who should be prosecuted in the cases of forced marriage?

Question 8: If a specific offence was created what should the penalties be?

Question 9: How successful has the Government been in communicating the unacceptability of forced marriage, particularly that force can include emotional as well as physical force?



Question 10: In what other non-legislative ways could the Government communicate this message?

Question 11: What more needs to be done to empower people to withstand pressure?

Additional information:

