

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's Briefing:

Forced Marriage (Civil Protection) Bill

January 2007

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

Contact

Gareth Crossman

Director of Policy

Direct Line: 020 7378 3654

Email: GarethC@liberty-human-rights.org.uk

Jago Russell

Policy Officer

Direct Line 020 7378 3659

Email: JagoR@liberty-human-rights.org.uk

Introduction

1. This short briefing is written in support of Lord Lester of Herne Hill's Forced Marriage (Civil Protection) Bill, prepared in conjunction with the Southall Black Sisters and a team of family lawyers (the "**Bill**"). Liberty believes that the Bill could make an important contribution to tackling forced marriage and would put in place a useful tool for the protection of victims. We hope that the Bill will raise awareness of this social evil, both within and outside of Parliament, presenting an unequivocal statement that forced marriage is a gross human rights violation, unacceptable in our society and under our law. Liberty would wholeheartedly reject any suggestion that no action should be taken against forced marriage because this would have a disproportionate effect on certain communities within the UK. The fact that practices which violate internationally recognised human rights standards are of a particularly high incidence within one racial or religious group in no way excuses those violations or justifies inaction on the part of the state.

2. A forced marriage is one carried out in the absence of valid consent by one party or both parties and in which duress – either physical or psychological – is a factor. It is not to be confused with an arranged marriage, which is entered into freely by both people, though their families may take a leading role in the choice of partner. Forced marriage is a clear abuse of human rights and a form of domestic violence. Its perpetrators are often members of the victim's immediate family; frequently, the wider family and community are also closely involved. It is often secret, unseen and unreported. Although government sources show that some 300 cases are reported each year to the FCO's Forced Marriage Unit, evidence from organisations working with victims of forced marriage shows that the true figure is likely to be much higher.

3. In late 2005, the FCO and Home Office consulted on proposals to create a criminal offence of forced marriage.¹ Liberty welcomed and shared the premise that something needed to be done in this area. On balance we did not, however, believe that the creation

¹ <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf>

of a new criminal offence would be the most effective means of meeting the state's moral and legal responsibilities to deter the practice of forced marriage and to protect its victims.² In common with many other organisations, we feared that a new criminal offence would be unworkable, unnecessary and potentially counter-productive by deterring potential victims from coming forward to seek help. Ultimately, the Government concluded that it would not proceed with the creation of a new criminal offence. Liberty believes that this Bill would provide a far preferable alternative to the criminal offence on which the Government consulted. We urge parliamentarians to support it.

Forced Marriage and Human Rights

4. The practice and threat of forced marriage and the extreme mental and sometimes physical violence that can often accompany it violate a number of human rights standards:

- The Right to Marry: Article 12 of the European Convention on Human Rights (the “**Convention**”) provides that “Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of that right”. This right includes the right not to marry and the requirement of free and full consent to marriage by the intending spouses, as is required by the underlying principles of self-determination and human dignity.³ These aspects of the right to marry are explicitly recognised in a number of instruments to which the UK is party.⁴

² Liberty's response to the Joint Home Office and Foreign & Commonwealth Office Consultation on Forced Marriage, December 2005: <http://www.liberty-human-rights.org.uk/pdfs/policy06/forced-marriage-consultation.PDF>

³ i.e. the right to freedom of association guaranteed by Article 11 of the Convention includes the freedom not to join an association (*Cheall v United Kingdom* (1985) 42 DR 178, at 185).

⁴ Cf. the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1; the International Covenant on Civil and Political Rights (“No marriage shall be entered into without the free and full consent of the intending spouses”) and the Committee on the Elimination of Discrimination Against Women (“A woman's right to choose a spouse and enter freely into marriage is central to her life and her dignity and equality as a human being”).

- Bodily integrity: Forced marriage also breaches the right to bodily integrity guaranteed by a range of international human rights instruments⁵ and, in some respects, customary international law.⁶ It is likely that the practice of forced marriage would contravene Article 3 of the Convention which prohibits torture, inhuman or degrading treatment. The European Court of Human Rights (the “ECHR”) has stated that relevant factors in determining whether there has been a breach of the Article and, if so, its severity, include the age, sex and vulnerability of the victim.⁷ The ECHR has also stressed that the right applies to mental as well as physical suffering which exceeds a minimum level of severity.⁸ Where there are infringements of a victim’s psychological or physical integrity, forced marriage would also contravene Article 8 of the Convention which has been widely interpreted as including the right to develop one’s own personality and to create relationships with others.⁹
- Other rights: Forced marriage may also involve the deprivation of personal liberty as a result of the arbitrary detention of victims by family members.¹⁰ In addition, international law has acknowledged that forced marriage constitutes a practice similar to slavery, prohibited by customary international law and a range of human rights treaties.¹¹ Finally, extreme cases of forced marriage could result in violations of the right to life where those who refuse to enter into a marriage are killed.¹²

5. Not only should states refrain from breaching human rights standards themselves; they should also use their power and resources to protect individuals from infringement

⁵ Cf. Article 5 Universal Declaration of Human Rights, Article 7 International Covenant on Civil and Political, the UN Declaration on Violence Against Women and the Convention Against Torture.

⁶ Namely if the violation of bodily integrity amounts to torture

⁷ *Ireland v United Kingdom* (1978) 2 EHRR 25

⁸ *Ibid.*

⁹ *Niemietz v Germany* (1992) 16 EHRR 97

¹⁰ Cf. Article 5 of the Convention

¹¹ In its 2003 Session, the UN Working Group on Contemporary Forms of Slavery prioritised “the issue of contemporary forms of slavery related to and generated by discrimination, in particular gender discrimination, focusing attention on abuses against women and girls, such as forced marriage, early marriage and sale of wives” (Sub-Commission on Human Rights resolution 2002/27)

¹² Cf Article 2 of the Convention

of their rights, including by other private individuals.¹³ It is often less clear precisely how states can most effectively do this. Direct assistance for victims of forced marriage, education programmes and funding for groups working with actual or potential victims is clearly of the utmost importance. In addition to ongoing practical and financial help, Liberty believes that this Bill could help the UK to meet its moral and legal obligations to protect the rights of actual and potential victims.¹⁴

The Bill

6. The Bill expressly prohibits the practice, inducing or aiding of forced marriage. Forced marriage is defined as: “(a) forcing or attempting to force another person to enter into a marriage or a purported marriage without that other person’s free and full consent, or (b) practising a deception for the purpose of causing another person to enter into a marriage or a purported marriage without that other person’s free and full consent.” The creation of this express legal prohibition of forced marriage sends a clear and unequivocal message that forced marriage is not only morally but also legally wrong. Liberty does not believe that primary legislation is always the best way of changing public opinion, perception and practice. Nevertheless, in the context of forced marriage we can see a clear benefit in creating a specific, named law which shows victims that the law is on their side and shows perpetrators that the practice of forced marriage is not acceptable in our society or under our law.

7. The Bill provides civil remedies and protections for victims and potential victims, filling a gap in existing law. It is true that some existing laws could be relied upon by victims of forced marriage.¹⁵ These are, however, often costly and complex to use. The Bill simplifies the process, providing a self-contained remedy tailored specifically to the

¹³ Cf. *X and Y v. the Netherlands* (16/1983/72/110). These positive obligations derive from the obligation under Article 1 of the Convention for states to guarantee to everyone within their jurisdiction the rights and freedoms contained in the Convention. In the context of Article 3 violations, for example, the ECHR has held that: “Children and other vulnerable individuals in particular are entitled to State protection, in the form of effective deterrence against such serious breaches of personal integrity” (*A v United Kingdom* (1999) 27 EHRR 611).

¹⁴ In accordance with the devolution settlement, the Bill covers England and Wales only, but if adopted it could then be mirrored in legislation in Scotland and Northern Ireland.

¹⁵ Such as the Protection from Harassment Act 1997 and the Family Law Act 1996

needs of forced marriage victims. For example, it specifically targets deception for the purpose of causing another person to enter into a marriage or a purported marriage without that other person's free and full consent. Deceptive conduct can often be central in a forced marriage case, for example where a victim is removed from the UK to another country on the pretext of a holiday. This is not covered by the existing law. In addition, the Bill targets those who aid and abet forced marriage as well as those who induce others to aid and abet or perpetrate forced marriage. As stated above, members of the wider family and community are frequently involved in cases of forced marriage; indeed they may often be the 'ringleaders'. The Bill would ensure that the victim is protected from them and not only from actions by the direct perpetrators.

8. As noted above, the Government had proposed a criminal offence of forced marriage. This Bill would not create a criminal offence but would provide instead for civil protections and remedies. There are significant advantages to creating civil as opposed to criminal laws in this context:

- First, bringing an action under this Bill would be a much more victim-centred process. It would be the victim, or someone acting in the victim's interest,¹⁶ that would bring the legal action under the Bill. In the forced marriage context this is important. One of our main reasons for opposing the Government's initial suggestion of a criminal offence was our concern that victims would be unlikely to go to the police for fear that the legal proceedings would be taken out of their hands and that members of their families would be prosecuted. If, as the Government had initially proposed, a criminal offence were introduced, the prosecution would be brought by the state against the suspect in the public interest rather than being initiated by the victim in the victim's own interest. We were concerned that this would deter victims of forced marriage from coming forward to seek help.
- The civil remedies that would be available under this Bill would be focused on the protection of the victim and the prevention of the forced marriage rather than the

¹⁶ The Bill also allows an application for an injunction to be made not just by the victim or potential victim, but by a litigation friend or any other concerned person who has the permission of the court. This is a key innovation. A victim of forced marriage may well not have access to a court; indeed he or she may even be prevented from moving around freely.

punishment of the perpetrator. The principal remedy in the Bill is the injunction - an order made by the Court prohibiting certain acts that may lead to a forced marriage. Liberty believes that making injunctive relief available to victims is one of the most important and beneficial features of the Bill.¹⁷ It would enable the victim or potential victim to seek swift and effective protection to prevent a forced marriage taking place. This may also mean that the victim later stands a greater chance of becoming reconciled with his or her family.

This Bill would not, however, preclude the possibility of a criminal prosecution in the forced marriage context. In some circumstances the public interest will require this. As we pointed out in response to the Government's consultation, there are already a great many criminal offences on the statute book which could be used in such a case.¹⁸

9. This Bill could provide an important tool in tackling forced marriage but will not, in itself, suffice. The provision of direct practical and financial assistance will continue to be vital. Non-legal mechanisms have played a key part of the joint FCO/Home Office action plan on forced marriage launched in August 2000. This has included: working with and funding women's groups, NGOs and community groups to improve awareness of forced marriage; producing and distributing advice leaflets on forced marriage; commissioning a video on forced marriage and sponsoring a website, targeted at children, which provides information and advice on forced marriage; and sponsoring conferences on forced marriage which have involved NGOs, social workers and affected communities.¹⁹ We strongly support measures like these. They must continue. If this Bill is to be effective, people and bodies that are likely to be approached for help by victims will also need the training and funding to be able to use the Bill to protect victims.

Jago Russell and Barbara Davidson, Liberty

¹⁷ A secondary remedy under the Bill is that a victim may issue civil proceedings to obtain compensation in instances where an injunction cannot provide an effective remedy.

¹⁸ Such as assault, abduction, kidnapping, harassment, false imprisonment.

¹⁹ One of these conferences has, for example, included a conference of Imams in Tower Hamlets at which the incompatibility of forced marriage with Islam was made clear and participants spoke against the practice in their mosques.