

The recent developments to criminalise forced marriage law family essay

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First, the definition of forced marriage. According to the Crown Prosecution Service's legal guidance, forced marriage is " a marriage without consent of one or both parties and where duress is a factor".[1]Whereas, the Home Office opines that forced marriage is an " appalling and indefensible practice" and a " serious abuse of human rights".[2]On the other hand, by s4 of the European Parliamentary Assembly Resolution 1468 " Forced Marriages and Child Marriages" forced marriage is " the union of two persons at least one of whom has not given their full and free consent to the marriage". [3]Second, the difference between an arranged marriage and a forced marriage. Despite the parties' family takes a leading role in pairing up the couple, an arranged marriage is a valid marriage ultimately because both parties give their free consent to marry each other without any reluctance, whereas, in forced marriage, the consent of either party is acquired either through the means of force or threat, as shown in *A Chief Constable, AA v YK, RB, ZS, SI, AK, MH*[4]. Third, the attempts made in English Law to discourage forced marriages. In common law, various principles have been developed to be in line with s12(c) of MCA 1973, which has the power render a marriage voidable due to lack of consent in consequence of duress, to discourage forced marriages from taking place which will be illustrated on the following. The common law principles' application have been quite fairly effective in terms of discouraging forced marriages, as shown on the following. The threat or force made does not have to be directly made by the respondent spouse but may come from a third party or another source, as shown in *Buckland v Buckland*[5], whereby the petitioner was falsely charged with a sexual offence against a young girl. Despite the petitioner's claim of

innocence, he was informed that he would face imprisonment for two years unless he marries the girl. To avoid this, he went on to petition for a decree of nullity and it was successfully granted. This principle was supported in *Szechter v Szechter*[6], whereby a woman was sentenced to three years of prison time in Poland for anti-government activities. She knew that her health would deteriorate to the extent that she would have no future by the time when she was released from prison. To prevent this from happening, the man married her in prison, having divorced his wife in order to do so, and thereby help her to enter England. The woman claimed that she had married the man under duress and was successful in applying for a decree of nullity so that the man can remarry his first wife. Additionally, the court held that the fear had to be caused by a "threat of immediate danger to life, limb, or liberty so that the constraint destroys the reality of consent to ordinary wedlock".[7] However, there were also at times when the common law principles were not adequate enough to prevent forced marriages from prevailing. In *Singh v Singh*[8], the petitioner, a seventeen years old Indian girl, was arranged to marry a twenty one years old man whom she had never met before as this was chosen by her parents. When the petitioner met the man for the first time at the registry office, she initially did not want to go through the civil ceremony, but she eventually did it out of her religion and to acquiesce to her parents' wishes. When the religious ceremony was about to take place, the petitioner refused to show up and she applied for a decree of nullity. However, her application failed as the court held that there were no threats of immediate danger to her life, limb or liberty despite she had acted out in compliance to her parents' wishes and religion. Another case

which resembles the failure to obtain a decree of nullity was in *Singh v Kaur*[9], whereby the petitioner's parents pressured the petitioner, a Sikh who lived in England, to marry a girl in India. He was informed by his parents that his refusal would mean a disgrace to the Sikh community and he would be barred from working in the family business. Consequently, he reluctantly agreed to marry the girl from India. However, after the marriage, he petitioned for nullity on grounds of duress but failed because the courts found that there were no threats of immediate danger to his life, limb or liberty despite the court did sympathise with the petitioner as the court noted that they could not simply sway away from its precedence in *Szechter v Szechter* and *Singh v Singh*. After being restrictive in its interpretation of duress which caused several injustices, the common law principles finally had its first turning point by becoming more liberal in its interpretation regarding duress in forced marriages, as first seen and established in *Hirani v Hirani*[10], the petitioner, a Hindu, was forced by her parents to marry a Hindu man whom she had never met before and was also threatened of being excommunicated from her family if she did not comply to their desires. The marriage took place but was not consummated. The petitioner petitioned for a decree of nullity on grounds of duress being exerted by her parents. The Court of Appeal granted the decree by holding that the applicant did not need to demonstrate the threat's existence to her life, limb, or liberty but only need to prove on the balance of probabilities that the threats or pressure is such as to destroy her consent's reality and overbears her will. The principle in *Hirani* plays a significant role in saving many young adults and even children from escaping forced marriages and from this case

onwards, many judges have started to become more flexible and being fact-dependent on their approach in interpreting duress, as seen in *P v R (Forced Marriage: Annulment: Procedure)*[11]. Forced marriages was further discouraged and prevented in *NS v MI*[12], it was recognised that different ways of threats or pressure can be made whereby the threats or pressure can be from the parent or third party and their arguments and persuasion are based on religious beliefs, familial obligation or personal duty to marry. The courts continue to be cautious and making sure that forced marriages are not to be condoned even if it requires the court to take the initiative to intervene unless the victim refuse to take action, as illustrated in *Re SK (Proposed Plaintiff) (An Adult By Way of her Litigation Friend)*[13]. The common law principles even extend as far barring a person who is responsible for an adult lacking capacity to give valid consent on behalf of another person by arranging a marriage for him or her, as shown in *M v B, A and J (By The Official Solicitor)*[14]. The English law not only relied on common law rules in tackling forced marriages issues but was also assisted with statutory means in attempt to discourage forced marriages from occurring. This form of statutory aid can be seen in two parts, which is the MCA 1973 and the Family Law Act 1996 (FLA 1996), as amended by the Forced Marriage (Civil Protection) Act 2007 (FM(CP)A 2007). First, the MCA 1973. As seen above as to how the common law has dealt with forced marriages, the English Law has also been fair to make sure that not everyone who claims duress will obtain the decree of nullity by taking the exceptions empowered in s13(1) and s13(2) of MCA1973 into account. By s13(1)(a) and (b) of MCA 1973, a decree of nullity will not be granted if there

is an apparent approbation by the applicant whereby the applicant, with knowledge that it was open to him to have the marriage avoided, behaved in such a way as to make the respondent reasonably believe that the applicant would not seek for a decree and that it would be unjust if the decree was granted. While s13(2) of MCA 1973 rejects an application for a decree of nullity if it was not instituted within three years from the date of the marriage. As an exception to the exception, by s13(4) of MCA 1973, the court may even permit the petitioner to apply for a decree even after the expiration period of three years if the court is satisfied that the applicant suffered from mental disorder which falls within the Mental Health Act 1983's definition and that the court considers that it is just to grant such permission. These provisions serves as a system of check and balance, as the English Law seems to recognize that marriage is not a contract that can be simply breached or broken. Second, the FLA 1996 as amended by the FM(CP)A 2007. It was hoped that the 2007 Act's approach in using civil, rather than criminal, law provisions will encourage victims of forced marriages to seek protection from the court because it would not involve the victim reporting his or her family members to the police. Also, the 2007 Act was enacted as a means of further extension to assist the common law rules, the MCA 1973 and the FLA1 996 by inserting new provisions in the FLA 1996 and building on provisions found in s12(c) of MCA 1973 to combat forced marriages, as shown on the following. While the common law have not actually precisely define " force", s63A(6), part 4A of FLA 1996 define it as coercion " by threats or other psychological means". The 2007 Act inserted s63A(2), part 4A of FLA 1996 to provide guidance for the judges what certain

circumstances must be taken into account in deciding whether to make a protection order. While s63C(3), part 4A of FLA 1996, empowers any other person can apply for a forced marriage protection order, at the same time to maintain balance to prevent misuse of granting of the order s63C(4), part 4A of FLA 1996 lists down the factors that the judges need to consider before granting the protection order. Similarly, by s63D(1), part 4A of FLA 1996, the court can issue a forced marriage protection order even without notifying the respondent, but once again English law managed to ensure that their powers to discourage forced marriages are well balanced by providing a list of factors that needs to be considered when enforcing s63D(1). The amended 1996 Act also provides more drastic measures if the respondent does not comply to the initial-issued forced marriage protection order, as this is empowered under s63H(2) by requiring the court to attach a power of arrest to the protection order if the court considers that the respondent has been a threat to the victim under s63H(1)(b). Moreover, the amended 1996 Act enables a constable to arrest the respondent without warrant if he suspects the respondent is in breach or contempt of the protection order under s63I(2). As a further assistance for the court, by s63Q of the amended 1996 Act, the Secretary of State has the power to issue guidance regarding the effect of the provisions of the Act or about other matters relating to forced marriage. Recently, the attempts in English law to discourage forced marriages have even went to the extent on attempting to criminalise it, as can be seen throughout its developments on the following. Despite the operation of the common law rules, the MCA 1973 and the FLA 1996 as amended by the FM(CP)A 2007 to combat forced marriages, the Home Affairs

Select Committee urged the Government to criminalise forced marriages as they did not think that the current 2007 Act was fully effective in protecting forced marriage victims.[15]The Committee also articulated the concerns regarding the lack of awareness of the 2007Act's provisions among frontline professionals and was particularly worried about the schools' attitude regarding forced marriages.[16]In response to the Committee's report, the Prime Minister, David Cameron, announced that breaches of Forced Marriage Protection Orders would be criminalized in the context on immigration, where he promised to resolve sham marriages[17]. This proposed attempt to criminalise breaches of the protection order will bring the FM(CP)A2007 on par with the Scottish legislation, namely the ForcedMarriageetc. (ProtectionandJurisdiction)(Scotland)Act2011. However, several organizations and community groups supporting forced marriages victims showed lack of support on Cameron's proposal as they argued that rather than criminalizing forced marriage, the Government should try investing on methods of preventing, protecting victims and providing support services as they believe this offers a better result in tackling forced marriage issues. [18]By acknowledging that, the Government launched a consultation on forced marriage to seek opinions on how the Government should carry out its proposal to criminalise respondents who breach the Forced Marriage Protection Order and whether or not forced marriage should be a criminal offence.[19]Eventually, the Prime Minister decided that the law on forced marriages will be changed and forced marriages will be introduced as a new criminal offence.[20]The reception of the Government's decision was welcoming. The Law Society supported the move and opined that

criminalizing forced marriages would serve as a strong deterrence to potential offenders and this would make sure that the victims have a means of stronger legal remedy than that of civil remedy[21], while Home Secretary Theresa May also agreed the same.[22]Freedom, a charity that campaigns against forced marriage and "dishonor" violence, welcomed the move, as its founder, Aneeta Prem, even hoped that the Bill be put before the Parliament as soon as possible.[23]Simultaneously, David Cameron did acknowledge the issue of criminalizing forced marriage would result in the victim not asking for help due to the reluctance of prosecuting their own family, which he announce that this can be overcome by introducing measures to help support and identify victims by working closely with the them.

[24]Moreover, a change in the law alone is not strong enough to discourage the rise of forced marriages from prevailing but all agencies such as the Crown Prosecution Service, police, local authorities, schools should not only just know about the upcoming new legal framework, but also should be supported by more education and training, as noted by the Law Society[25]and Home secretary Theresa May[26]. School staffs in particular needs help to learn to spot the signs of a forced marriage child victim and know where to look for help.[27]Inevitably, funding is needed and it was reported that a sum of 500K will be committed to fund this attempt in further assisting the English law to discourage forced marriages.[28]Consequently, the Home Office reported that a work programme will be developed over the upcoming years which covers to discourage forced marriages by offering to help protect children and young people, a summer awareness campaign aimed at young people at risk of being taken abroad and forced into

marriage, a "nation-wide engagement programme" and improved and expanded training for frontline professionals. The report also stated that the Government will be criminalizing the breach of Forced Marriage Protection Order.[29] In conclusion, forced marriages and arranged marriages are two total different concept as ultimately arranged marriages involves both parties to the marriage giving consent to each other. This distinction between the two are well-recognised by the English law. Consequently attempts made by the English law to discourage forced marriages through the means of common law rules and civil statutes have been quite efficient in its operation. However, due to the persistent prevalence of forced marriages in the UK, potential offenders do not seemed to be deterred even when they are found guilty, as the civil consequences by virtue of the FLA 1996 as amended by the FM(CP)A 2007 does not seem to have a severe impact as it should be noted that in breaching the forced marriage protection order would, at most, incur only 2years of imprisonment. Therefore, the governments' decision in criminalizing forced marriages would definitely bolster its deterrent effect and is definitely the right choice. Whether the criminalization of forced marriage will be effective in discouraging potential offenders is uncertain because time will only tell. However, one thing has been certain all the while is that forced marriage is wrong, is illegal and should not be tolerated. ii) If forced marriage were to be criminalised, victims of forced marriages would be assisted by having free access for help through governmental and non-governmental bodies which specialises in helping forced marriages victims. Victims of forced marriages can seek help from the Forced Marriage Unit, a joint Foreign and Commonwealth Office and Home

Office unit. It was established to impede British nationals from falling into the abyss of forced marriage overseas by working with other statutory agencies, government departments and voluntary organisations.[30]The following are the services that are available for forced marriage victims provided by the Unit in assisting them. Potential victims would be able to confide their particular predicaments to the Unit that they are going through, victims need not have to fear that the information that they have provided to the Unit will be publicised or exposed as the Unit treats these consulted problems with confidential care.[31]Forced marriage victims can also feel more secure as all caseworkers in the Unit are very experienced in the areas of cultural, social and emotional problems surrounding forced marriage.[32]Even if those victims are afraid to consult the Unit as some victims, especially child victims, might even be confused that forced marriage is not wrong, the Unit carries out projects on forced marriage which are made to increase awareness among potential victims that forced marriage is a wrong thing, to work with voluntary groups to make effective local partnership against forced marriage, to guide professionals, such as police, social workers, teacher, on how to tackle forced marriage.[33]Therefore, it could be said that assistance is even out there trying to reach out to the victims even if they do not step forward for help as this approach serves to be a very good way of encouraging victims to come forward to seek help. Victims of forced marriages are also assisted with access to the helpline provided by the Forced Marriage Unit even if they are in overseas.[34]The Unit will provide the victim with a plan of actions to carry out through its helpline and the conversation are treated with extreme confidentiality.[35]Furthermore,

victims can access for help even if they have an out-of-hours emergency as the Unit also supply their emergency contact number.[36]Access for help can also be send through emails as they provide free materials such as leaflets and statutory and practice guidelines regarding forced marriage practice[37], this makes it easier for some victims to seek help. Moreover, the Foreign and Commonwealth Office and the Home Office have provided a list of contacts for regional services which can offer advice and service by publishing through their official website[38]and guide book for professionals to assist victims of forced marriages.[39]Other bodies which works similarly like the Unit is the Iranian and Kurdish Women's Rights Organisation. This Organisation works slightly different compared to the Unit by providing training for victims in making them aware of their human rights and entitlements under UK law, counselling, having a girls' group session on discussing the issues the victim has and even providing guidance on how not to get caught by potential offenders if the victim is accessing to the Organisation for help through the internet.[40]In conclusion, victims of forced marriage could be assisted through those bodies being established specially to help forced marriage victims to go through their predicament. Many of these bodies, governmental or not, may work through different ways to help the victims but have the same goal of combating forced marriage and helping out forced marriage victims by providing easy access for help as much as possible. All the victims of forced marriage just need to do is to have the courage and effort to seek help and assistance will be on their way in no time.

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