

## Justice Committee

### Supplementary Legislative Consent Memorandum on the Anti-social Behaviour, Crime and Policing Bill

#### Written submission from British Muslims for Secular Democracy

In April 2012, the Home Office closed their three-month consultation on the criminalisation of forced marriage. When I initially posted the consultation document in the Facebook group for my organisation, [British Muslims for Secular Democracy](#), there were cries of shock that forced marriage was not already a criminal offence.

The right to choose who you will live with, sleep with, eat with and possibly raise children with, for the rest of your life, is as basic a right as they come. Violations of this right are not only disastrous for the individuals involved, but they undermine values that are fundamental to British society and Islam itself. The Human Rights Act expressly protects and promotes the right to private and family life, while Islamic history is replete with examples of the Prophet Mohammed dissolving marriages where consent had not been sought. Therefore, any action which removes the element of free and informed consent - effectively treating human beings like chattel - should be roundly condemned. A new law would help this message to finally hit home.

Perpetrators of forced marriage are currently subject to civil, rather than criminal, charges. Both individuals and local authorities can apply to the courts for a Forced Marriage Protection Order (FMPO), which lists protection measures for victims. However, the Home Affairs Committee rightfully expressed concern in relation to "inadequacies in the monitoring of compliance with an order after it is made, and a lack of effective action in cases of breach" in its Eighth Report.<sup>1</sup> According to Leeds-based forced marriage charity Karma Nirvana, many young people were being returned to their families with the Forced Marriage Protection Order still in place, which makes a mockery of the whole process.

Also in April 2012, Dr Aisha Gill and Khatun Sapnara [argued against criminalisation in the Guardian](#). They cited a survey of residents at the Ashiana Network, a London-based forced marriage refuge. Seven out of 20 residents said that criminalisation might help raise awareness within affected communities, and act as a potential deterrent. Nineteen out of 20 remarked that if forced marriage were a criminal offence, they would not have gone to the authorities because they would not want to see family members being prosecuted in a criminal court. Karma Nirvana, however, conducted its own research as part of the public consultation process. At 1,620 responses, the sample size is a whopping 81 times bigger than Ashiana's, and all respondents (except for two neutral ones) supported criminalisation.

There is also evidence to suggest that the criminalisation of forced marriage in other countries has led to an increase in reporting rates, rather than the opposite. Denmark criminalised the practice in 2008, and grassroots organisations like the

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<sup>1</sup> <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/88006.htm>

Copenhagen-based LOKK have reported a surge of young people coming forward since.<sup>2</sup>

Several comparisons have been drawn between forced marriage and female genital mutilation, and the lack of prosecutions since the latter became a criminal offence. However, a 2011 peer study commissioned by the Trust for London<sup>3</sup> showed that there has been a reduction in the more severe forms of FGM, while opposition to it within practising communities has increased. Further, it was reported in December 2013 that Dr Sureshkumar Vallabhdas Pandya, who practises in London, will go before the Medical Practitioners Tribunal Service over allegations that he had performed female genital mutilation on patients.<sup>4</sup>

It is a fallacy to suggest that forced marriage can be adequately addressed by existing criminal offences such as rape, kidnap and assault. Firstly, it is an abuse far greater than the sum of its parts, because it entrenches a framework for continuous ill-treatment. Secondly, existing criminal offences do not cover emotional coercion, and there is consequently a loophole in the law that needs to be remedied. Thirdly, some of the anti-criminalisation advocates have said that forced marriage could be introduced as an aggravating factor with regard to sentencing. However, this contradicts their own stance that forced marriage victims generally do not want lengthy prison sentences to be imposed on family members.

Fear of "what your family and community will think" is a thread that implicitly runs through several of the anti-criminalisation arguments, but there is nothing commendable about tiptoeing around cruel practices. Any parent who forces their child into a marriage is not acting out of love, despite any claims to the contrary. While it is to be expected that some children would want to shield family members from the consequences of their actions (for a variety of different reasons), how does this serve the cause of justice as a whole? The Qu'ran is clear on the importance of upholding justice, even if it means testifying against family members: "O you who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves, your parents, and your relatives, or whether it is against the rich or the poor..." (Quran 4:135). Further, in terms of prosecutions for domestic violence, it is now well-established that these can go ahead even when the victim is too scared to testify.

That said, there is no reason why a new criminal offence for forced marriage could not sit aside the existing civil law framework, offering victims a choice in how statutory agencies pursue the matter.

It goes without saying that there needs to be better education in communities where forced marriage takes place; this is a point that unites pro and anti-criminalisation advocates. However, this is not an either-or situation. Would it really be so difficult to find funding for an awareness-raising programme, to be implemented by grassroots groups, as well as a new statute that treats forced marriage with the seriousness it

<sup>2</sup> <http://ikwro.org.uk/wp-content/uploads/2012/03/IKWRO-Position-Paper-on-Criminalisation-of-Forced-Marriage-June-20112.pdf>

<sup>3</sup> [http://www.trustforlondon.org.uk/Peer\\_study\\_summary.pdf](http://www.trustforlondon.org.uk/Peer_study_summary.pdf)

<sup>4</sup> [http://www.huffingtonpost.co.uk/2013/12/09/doctor-female-genital-mut\\_n\\_4410662.html?utm\\_hp\\_ref=uk&ir=UK](http://www.huffingtonpost.co.uk/2013/12/09/doctor-female-genital-mut_n_4410662.html?utm_hp_ref=uk&ir=UK)

deserves? For the sake of the thousands of women and men who are coerced into these arrangements every year, I certainly hope not.

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11 December 2013