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# ***Forced Marriage (Civil Protection) Bill [HL]***

**Bill 129 of 2006-07**

This paper discusses the provisions of the *Forced Marriage (Civil Protection) Bill [HL]* which is due to have its second reading in the House of Commons on 10 July 2007. A forced marriage is one conducted without the valid consent of both people, where pressure or abuse is used and must be distinguished from an arranged marriage, where both parties fully and freely consent to the marriage.

The Bill was introduced in the House of Lords as a Private Member's Bill by Lord Lester of Herne Hill and received considerable cross party support. In Grand Committee the Bill was completely rewritten by way of Government amendments, with the support of Lord Lester and with cross party support. All the original clauses in the Bill, except that containing the short title, were removed and replaced by clauses and schedules drafted by the Government.

The aim of the Bill is to provide civil remedies for those faced with forced marriage, and victims of forced marriage. It would insert new sections into the *Family Law Act 1996* and is intended to become a part of the general provisions protecting against domestic violence in England and Wales; there would be similar protection against forced marriage in Northern Ireland. The Bill would enable victims and third parties on their behalf to seek an injunction and other measures to prevent a forced marriage.

Catherine Fairbairn

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## Summary of main points

A forced marriage has been defined as one conducted without the valid consent of both people, where pressure or abuse is used. The Government regards forced marriage as an abuse of human rights and a form of domestic violence and child abuse. Although in the Western world, forced marriage is sometimes discussed as a religious practice, no major world faith condones forced marriage. A forced marriage must be distinguished from an arranged marriage, where both parties fully and freely consent to the marriage, although their families take a leading role in the choice of partner.

At present, there is no law expressly prohibiting forced marriage in England and Wales and it is not a specific criminal offence. However, there is a range of current criminal offences and civil remedies which may be relevant in relation to forced marriage.

In September 2005, the Foreign and Commonwealth Office and the Home Office published a consultation paper, *Forced Marriage A Wrong not a Right*. The consultation sought views on whether there should be a specific criminal offence of forced marriage. The majority of respondents felt that the disadvantages of creating new criminal legislation would outweigh the advantages and the Government announced that non-legislative activity would be taken forward.

The *Forced Marriage (Civil Protection) Bill [HL]* was introduced in the House of Lords as a Private Member's Bill by Lord Lester of Herne Hill on 16 November 2006 as HL Bill 3 of 2006-07. At second reading it received considerable cross party support. A number of interested parties also expressed their support for the Bill.

The Bill had its Grand Committee stage on 10 May 2007. As a Private Members Bill, this in itself was unusual. In Grand Committee the Bill was completely rewritten by way of Government amendments, with the support of Lord Lester and with cross party support. All the original clauses in the Bill, except that containing the short title, were removed and replaced by clauses and schedules drafted by the Government. Further Government amendments to the amendments already agreed were made on report. This followed consultation with High Court judges.

The Bill completed its passage through the House of Lords on 21 June 2007 and had its first reading in the House of Commons on the same day as Bill 129 of 2006-07. It is due to have its second reading in the House of Commons on 10 July 2007. The aim of the Bill is to provide civil remedies for those faced with forced marriage, and victims of forced marriage.

Key features of the Bill include:

- the Bill would insert 19 new sections into the *Family Law Act 1996* and is intended to become a part of the general provisions protecting against domestic violence in England and Wales; there would be similar protection against forced marriage in Northern Ireland
- the Bill would provide civil remedies but would not create any new criminal offence of forced marriage

- it would be possible to seek an injunction and other measures to prevent a forced marriage; in relevant circumstances it would be possible to attach a power of arrest
- third parties would be able to apply to the Court for protection on the victim's behalf
- cases could be heard in the High Court or the county courts

Hopes have been expressed that the approach of the bill, in using civil, rather than criminal, law provisions will encourage victims to seek protection because it would not involve reporting family members to the police.

The Bill would extend to England and Wales and Northern Ireland.

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# I Introduction and background

## A. What is a forced marriage?

### 1. Definition

The Foreign and Commonwealth Office has defined a forced marriage as one “conducted without the valid consent of both people, where pressure or abuse is used”.<sup>1</sup> The Government regards forced marriage as an abuse of human rights and a form of domestic violence and child abuse.<sup>2</sup> Although in the Western world, forced marriage is sometimes discussed as a religious practice, no major world faith condones forced marriage. The freely given consent of both parties is a prerequisite of Christian, Hindu, Muslim and Sikh marriages.<sup>3</sup>

A forced marriage must be distinguished from an arranged marriage, where both parties fully and freely consent to the marriage, although their families take a leading role in the choice of partner.

### 2. The legal position and existing remedies

The *Marriage Act 1949* and the *Matrimonial Causes Act 1973* govern the law on marriage in England and Wales. The minimum age at which a person is able to consent to a marriage is 16 years old; a person under the age of 18 may not marry without parental consent.<sup>4</sup> Marriages conducted abroad in accordance with the proper formalities required by that country’s laws are generally recognised in England and Wales, provided both parties have the legal capacity to marry.<sup>5</sup>

A marriage can be annulled<sup>6</sup> where either party did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise.<sup>7</sup> A petition for a decree of nullity based on lack of consent must be brought within three years of the date of the marriage.<sup>8</sup> Provided the necessary formalities are complied with, a forced marriage is valid until it is voided in nullity proceedings.

An arranged marriage is not, of course, invalid as such; but it may be voidable (capable of being annulled) if the marriage is entered into as a result of duress or fear. In one case it was held that the crucial question in determining whether there had been duress, particularly where a marriage was involved, was “whether the threats, pressure, or

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<sup>1</sup> <http://www.fco.gov.uk/Files/KFile/Forced%20Marriage%20Leaflet.pdf> (site visited 22 June 2007)

<sup>2</sup> *ibid*

<sup>3</sup> p6, *A choice by right*, June 2000, <http://www.fco.gov.uk/Files/KFile/AChoiceByRightJune2000.pdf> (site visited 25 June 2007)

<sup>4</sup> (Unless that person is a widow/widower) *Matrimonial Causes Act 1973* section 11(a)(ii)

<sup>5</sup> *A choice by right*, June 2000, <http://www.fco.gov.uk/Files/KFile/AChoiceByRightJune2000.pdf> (site visited 25 June 2007)

<sup>6</sup> that is, declared invalid

<sup>7</sup> *Matrimonial Causes Act 1973* section 12(c)

<sup>8</sup> *Matrimonial Causes Act 1973* section 13(c)

whatever it is, is such as to destroy the reality of consent and overbears the will of the individual".<sup>9</sup>

In a recent case, Munby J granted a decree of nullity to a petitioner who asserted that she had been forced into marriage. In his judgment he said:

Forced marriage is intolerable. It is an abomination. And ... the court must bend all its powers to preventing it happening. The court must not hesitate to use every weapon in its protective arsenal if faced with what is, or appears to be, a case of forced marriage.<sup>10</sup>

There is no law expressly prohibiting forced marriage in England and Wales and it is not a specific criminal offence. However, there is a range of current measures which may be relevant in relation to forced marriage.

**a. Criminal offences**

The protection currently available under the criminal law in England and Wales has been summarised by the Government as follows:

Depending on the circumstances perpetrators – usually parents or family members - could be prosecuted for a range of offences. These include:

Kidnapping. Kidnapping is a common law offence committed by the taking or carrying away of one person by another; by fraud or force; without the consent of the person so taken or carried away; and without lawful excuse. Parents can be convicted of kidnapping their children. The offence is punishable by fine or imprisonment, or both. There is no maximum penalty.

Child abduction. The Child Abduction Act 1984 makes it an offence for a person "connected with" a child under 16 to take or send the child out of the UK without appropriate consent. This would be relevant, for example, to a case where one parent took a child out of the UK without the consent of the other parent, in whose favour a residence order was in force with respect to the child. Offences contrary to the 1984 Act are punishable with up to 7 years' imprisonment. The Act also covers 'stranger abductions'.

False imprisonment. False imprisonment is the unlawful and intentional or reckless constraint of the victim's freedom of movement from a particular place. Restraining a child within the realm of reasonable parental discipline is not unlawful. It is a common law offence, punishable by fine or imprisonment, or both. There is no maximum penalty.

Assault and battery. The term "assault" is frequently used to include both an assault and a "battery" but strictly an assault is an independent offence and should be treated as such. An assault is an act by which a person intentionally or recklessly causes another to apprehend immediate unlawful violence; a battery is an act by which a person intentionally or recklessly applies unlawful violence to

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<sup>9</sup> *Hirani v Hirani* (1984) 4 FLR 232 CA

<sup>10</sup> *NS v MI* [2006] EWHC 1646 (Fam)

another person. Assaults, without any accompanying battery, and the most minor offences of “battery”, will result in a charge of “common assault”, contrary to section 39 of the Criminal Justice Act 1988, which is punishable with up to 6 months’ imprisonment. A more serious act of violence may result in a charge of assault occasioning actual bodily harm (ABH), wounding or grievous bodily harm (GBH), depending on the circumstances and the nature of the injury. These offences are found in the Offences Against the Person Act 1861. The maximum penalty for ABH, GBH and wounding is 5 years; the maximum penalty for wounding or causing GBH with intent to do so is life. Emotional or psychological abuse leading to psychiatric injury to the victim can constitute assault occasioning actual bodily harm.

Threats to kill (section 16, Offences Against the Person Act 1861). A person who, without lawful excuse, makes to another person a threat to kill that person, intending that that other person would fear that the threat would be carried out, is guilty of an offence and liable to a maximum penalty of 10 years’ imprisonment. The threat need not be immediate; therefore a threat “if you do X/do not do X I will kill you” would be covered by this legislation.

Public order offences. The Public Order Act 1986 created various offences including relating to abusive and threatening behaviour, including the offence of affray (the use or threat of unlawful violence causing a person to fear for their personal safety), which can be committed in dwellings and other private places as well as in public places. This offence is punishable with up to 3 years’ imprisonment

Harassment. Action short of violence and the immediate threat of it may amount to an offence under Section 2 of the Protection from Harassment Act 1997 if it is conducted on at least 2 occasions which leads to harassment, alarm or distress. The maximum penalty is 6 months imprisonment. If the course of conduct causes a fear of violence, an offence under Section 4 of that Act may be committed, attracting a maximum penalty of 5 years. Breach of an injunction or restraining order under that Act also carries a 5-year penalty.

Child cruelty. Where the victim is under 16, a parent or “person who has attained the age of 16 and has responsibility for” the child who wilfully assaults or ill-treats them so as to cause unnecessary suffering or injury could be charged with the offence of child cruelty under section 1 of the Children and Young Persons Act 1933. The maximum penalty is 10 years’ imprisonment.

Sexual offences. Depending on the circumstances of a particular case and the age of the victim, various offences under the Sexual Offences Act 2003 may be established. For example, sexual intercourse without consent is rape and attracts a maximum penalty of life imprisonment. Anyone who aids and abets that offence is liable to the same penalty. If the victim is under 16, it is an offence to cause or incite a child to engage in sexual activity or arrange or facilitate the commission of a child sex offence. The offences of trafficking for sexual exploitation may also be committed if travel of the victim within or out of the UK is arranged in the belief that it is likely that a relevant offence (such as rape or a child sex offence) will be committed against them. These offences apply in some circumstances to acts committed outside the UK whether or not they constitute an offence in the country where they took place.

Blackmail. Blackmail is an offence contrary to section 21 of the Theft Act 1968, which is punishable with up to 14 years’ imprisonment. It is committed when a

person makes an unwarranted demand with menaces, with a view to a gain for himself or another person or with intent to cause loss to another person (gain or loss being construed as extending only to money or other property).<sup>11</sup>

**b. Civil law remedies**

The Government has also outlined various civil law remedies that might offer some protection to children and vulnerable adults in England and Wales:

Children at risk of being forced into a marriage are entitled to the statutory protection afforded by the public law aspects of the Children Act 1989. In England and Wales section 31 of the Children Act 1989 provides for care and protection orders on the application by a local authority, to place a child under the age of 17 under the care of that local authority. While such an order is in place, no person may remove the child from the UK without the consent of every person with parental responsibility, including the local authority.

The Children Act confers duties and powers on local authorities in respect of providing support and accommodation for young people in circumstances where they are in need, or where it would help safeguard a child's welfare.

Police stationed at airports have successfully used the Emergency Protection Order provisions of section 44 of the Children Act to prevent a child being removed from the UK for the purposes of a forced marriage. Police can also use their powers under section 46 of the Children Act to remove a child to suitable accommodation where a police officer had reasonable cause to believe that the child would otherwise be likely to suffer significant harm.

Outside the statutory obligations and duties of local authorities the courts private law jurisdiction can be used to protect a minor, on their own application or on the application of an interested person. The court's wardship powers were utilised in the case of *Re K.R. (a minor)* to protect a young girl from a forced marriage overseas, where she was being held against her will, and to facilitate her safe return to the UK.

The options available for the protection of vulnerable adults are limited and will depend on the nature and definition of the "vulnerability". One course of action is to apply to the court through a "next friend" under the inherent jurisdiction of the court. The court then makes a "next friend" declaration on behalf of the vulnerable adult. This can lead to injunctions and other steps relating to the protection including barring from overseas travel or from undertaking a marriage etc. Other provisions of the Mental Health Act 1983 may also apply in certain specific cases.

In the recent *Re S.K.* judgement, the Family Division of the High Court used its inherent jurisdiction to protect an adult at risk of forced marriage. In that case the court gave directions to ascertain whether or not the victim had been able to exercise her free will in decisions concerning her civil status and her country of residence by requiring that she be seen by an appropriate official at the British

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<sup>11</sup> *Forced Marriage: A Wrong Not a Right*, Foreign Office/Home Office Consultation Paper, September 2005, <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf> (site visited 22 June 2007)

High Commission overseas. These directions were accompanied by injunctive relief against named parties prohibiting them from threatening, intimidating or harassing her or using violence against her, an injunction against a marriage ceremony taking place. Where the whereabouts of a person (including a child) are unknown 'bench orders' or other directions can be made to secure the attendance of persons who have that knowledge at court to provide information about her whereabouts. In doing so the court set a precedent that it could intervene to help vulnerable people in these circumstances outside the narrow criteria of childhood and vulnerability previously understood.

Victims can also obtain non-molestation orders through the civil courts, with powers of arrest attached in appropriate cases. The range of people against whom such orders can be obtained is extensive.<sup>12</sup>

**c. *Human Rights provisions***

A number of human rights provisions may also be relevant:

"Marriage shall be entered into only with the free and full consent of the intending spouses" (Universal Declaration of Human Rights, Article 16 (2))

"State parties shall ensure on a basis of equality of men and women... the same right to choose a spouse and to enter into marriage only with their full and free consent". (Convention to Eliminate All Forms of Discrimination Against Women - CEDAW, Article 16 (1) (b))

"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." (General Recommendation No 21, UN Committee on the Elimination of All Forms of Discrimination Against Women.)

"Everyone has the right to liberty and security of person" (Article 5 of the Human Rights Act 1998).

"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 this right." (Article 12 of the Human Rights Act 1998)

"No marriage shall be legally entered into without the full and free consent of both parties" (UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1).

"The UN recognises forced marriage as a form of contemporary slavery, trafficking and sexual exploitation." (UN working group on contemporary forms of slavery 28th Session Geneva June 2003)<sup>13</sup>

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<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

### 3. The number of forced marriages

The Forced Marriage Unit<sup>14</sup> states that it sees around 250 cases of forced marriage a year.<sup>15</sup> Approximately 15% of these cases involve male victims. However, the Government has stated that forced marriage is in many ways a hidden problem and that many more cases exist that are not reported.<sup>16</sup>

## B. The report of the Working Group on Forced Marriage

In August 1999, in response to concerns over the issue of forced marriage, the Home Office established a Working Group to investigate the problem of forced marriage in England and Wales and to make proposals for tackling it effectively. After extensive consultation, their report was published in June 2000.<sup>17</sup> The issues considered by the Working Group included:

### 1. Practical problems

The report considered the practical problems which victims of forced marriages face in availing themselves of the available legal provisions. Victims may not know of the provisions, or may be unable to use them. The requirement that a petition for nullity must be sought within three years often means that women cannot rely on the laws. Family pressures may make it very difficult to challenge the situation. Additionally, women married abroad may face insurmountable difficulties in financing proceedings, providing instructions and evidence, remaining protected during the proceedings, and enforcing the decree of nullity in the country where they live.<sup>18</sup> The Working Group found that the existing legal framework afforded a great deal of protection to children at risk of being forced into marriage above and beyond the civil and criminal legal measures available to protect adults from a forced marriage.<sup>19</sup>

### 2. Criminal law and forced marriage

The Group did not support the creation of a specific offence of forcing a person to marry. Instead it pointed to the fact that perpetrators (usually parents or family members) had been prosecuted for offences including threatening behaviour, assault, kidnap and murder.

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<sup>14</sup> See section I D of this paper below

<sup>15</sup> <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1094234857863> (site visited 22 June 2007)

<sup>16</sup> *Forced marriage a wrong not a right*, September 2005, <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf> (site visited 25 June 2007)

<sup>17</sup> *A choice by right, the report of the working group on forced marriage*, June 2000, <http://www.fco.gov.uk/Files/KFile/AChoiceByRightJune2000.pdf> (site visited 25 June 2007)

<sup>18</sup> *Ibid*,p7

<sup>19</sup> *Ibid*,p8

### 3. Immigration issues

The Working Group also commented that some forced marriages had an international dimension:

Many of the cases brought to the Working Group's attention involved a spouse from overseas. A British national is either taken to live in their spouse's country (where they often have antecedents) or they are to act as a sponsor for their spouse's immigration to the UK.

Women described the fear that compelled them to support their spouse's immigration to the UK. Often family members had directly threatened them before their interview with an immigration officer. This fear prevented most women from putting on record that their marriage was forced.

Some women who had been brought to the UK for a forced marriage told the Working Group of the hardship they had suffered because of their unsound immigration status. Not being able to speak English and not having any family or friends to support them in the UK often added to these women's problems.

Some anecdotal evidence has been presented to the Working Group of cases where forced marriage has been deliberately used as part of a wider scheme to circumvent the immigration rules. These cases are not the norm.

The Working Group has heard of cases where a young woman has been taken (sometimes forcibly, sometimes through deception) overseas for the purposes of a forced marriage. Often these women reported having their documents, including passports, taken away from them on their arrival. In some cases, parents had taken the extreme action of drugging their daughter to ensure that she travelled overseas without complaint.<sup>20</sup>

### 4. Motives behind forced marriage

The Group identified some of the key motivations behind forced marriage. These included peer group or family pressure, attempting to strengthen family links, protecting perceived cultural and religious ideals, preventing what were regarded as unsuitable relationships, family honour, long-standing family commitments and controlling female behaviour and sexuality. The Group found that perspectives on motives varied significantly between the parents, their children and others:

Parents who forced their children to marry often justified their behaviour as building stronger families and protecting cultural or religious traditions – they did not see anything wrong with their actions. Many people felt that parents believed they were upholding the cultural traditions of their home country, when in fact practices and values there had moved on. They described a fossilisation of cultural values within some families who had migrated to the UK.

It was explained to the Working Group that some parents came under significant pressure from their extended families to get their children married, even if force is

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<sup>20</sup> *Ibid* p12

required. Family honour was a significant factor – motivating the behaviour of many parents. In some instances, agreements had been made about marriage when children were very young.

Victims of forced marriage often described the pressure from other family members, both on them and their parents. Many also described how a relationship deemed 'unsuitable' by their parents had been the catalyst for marriage arrangements being made for them. There is a strongly held view, among some women's groups working with victims of forced marriage in particular, that forced marriage is a tool used to control female behaviour and sexuality – a means of oppressing women.

The report contains several case studies which provide an insight into the experiences of those subjected to forced marriages.

## **5. The consequences of forced marriage**

The Working Group found that the consequences of forced marriage could be devastating to the whole family. Young women forced into marriages often became estranged from their families. Many women suffered from years of domestic violence. The Group noted with concern that studies had shown that self-harm and suicide rates were high for Asian women and that some of the people consulted felt that this could be linked to forced marriage. There was a loss of educational opportunities for young women taken prematurely from school. Isolation was one of the biggest problems facing victims of forced marriage.

## **6. Tackling forced marriage**

The Working Group considered that action to tackle forced marriage should be led by Government and that it should be developed and implemented as part of mainstream services. The Report set out the areas in which the Group considered that action should be taken and offered some basic guiding principles which had emerged from the consultation. It found that challenging and changing people's attitudes was key to preventing forced marriage.

## **C. Government response**

In response to the Report of the Working Group, the Home Office and Foreign and Commonwealth Office (FCO) agreed a Joint Action Plan in August 2000.<sup>21</sup> This was followed by a progress report published on 6th November 2001.<sup>22</sup>

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<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029395717> (site visited 25 June 2007)

<sup>22</sup> [http://www.communities.gov.uk/pub/694/Forcedmarriageupdate\\_id1502694.pdf](http://www.communities.gov.uk/pub/694/Forcedmarriageupdate_id1502694.pdf) (site visited 25 June 2007)

## D. The Forced Marriage Unit

On 26th January 2005, the Home Office and Foreign and Commonwealth Office launched a joint Forced Marriage Unit (FMU).<sup>23</sup>

### 1. The work of the FMU

The Unit carries out three main strands of work designed to tackle forced marriage:

**Casework** – The FMU provides confidential information and assistance to potential victims and concerned professionals. It works with partners both in the UK and overseas to ensure that all appropriate action is taken to prevent a forced marriage taking place. The FMU also provides advice and information to individuals who have already been forced to marry. All caseworkers in the FMU have wide experience of the cultural, social and emotional issues surrounding forced marriage...

**Policy** – The FMU develops future government policy for tackling forced marriage. In order to do this, the FMU works with a wide range of partners including non-governmental organisations (NGOs) and women's groups, the police, social services and education professionals. The FMU aims to develop policies that bring together key elements of government e.g. the education, welfare and legal systems, to combat forced marriage.

**Projects** – The FMU manages and co-ordinates governmental projects on forced marriage. These projects are designed to:

- Increase awareness amongst potential victims of the help available.
- Raise understanding amongst key professionals (police officers, social workers, teachers etc.) of forced marriage and how to tackle it.
- Work together with community and voluntary groups to create effective local partnerships against the abuse.<sup>24</sup>

At second reading of the *Forced Marriage (Civil Protection) Bill*, Baroness Ashton of Upholland, junior minister at the then Department for Constitutional Affairs (now the Ministry of Justice) set out information about the work of the Forced Marriage Unit:

The Forced Marriage Unit is a joint Home Office/Foreign and Commonwealth Office venture. It has six members of staff at present, and the team leads on policy development and outreach work. It has three dedicated caseworkers—one from UK Visas—and one office manager, and all members of the unit handle casework. The FMU has a budget of almost £690,000, including staff wages, and it covers 250 to 300 cases a year, 15 per cent of which are male cases of forced marriage.

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<sup>23</sup>

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1094234857863> (site visited 25 June 2007)

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*Dealing with cases of forced marriage, Guidance for Education Professionals, 2005*, <http://www.fco.gov.uk/Files/kfile/Dealing%20with%20cases%20of%20Forced%20Marriages.pdf> (site visited 25 June 2007)

Our embassies and high commissions overseas assist, rescue and repatriate around 200 people each year. Around a third of the cases that the unit deals with concern children, some as young as 13. It also assists reluctant sponsors—those forced into marriage and subsequently forced to sponsor a visa application—and it has dealt with more than 100 cases since May last year.

In the past two years, the Forced Marriage Unit has produced guidelines for the police, social services and health and education professionals on tackling forced marriage, and it has started work on producing similar guidelines for registrars. As well as commissioning international guidance for lawyers, the unit will shortly be publishing a handbook of legal remedies for family law professionals, holding a series of seminars for practitioners, and exploring ways of introducing forced marriage on family law courses at universities and colleges.

The Forced Marriage Unit is producing a survivors' handbook to offer information and practical support to survivors of such marriages. In partnership with Jasvinder Sanghera's group, Karma Nirvana, the unit is also funding a pilot survivors' network in Derby to provide emotional support to survivors of forced marriage and to create opportunities to build new friendships and relationships. The unit also undertakes a great deal of publicity, outreach and awareness-raising work in key communities, speaking at about 75 events each year. In 2006, it ran a national publicity campaign on forced marriage, involving radio, TV, and national and local press. That shows what the power of six people can achieve. I pay real tribute to their work.<sup>25</sup>

## 2. Information for victims

The FCO website sets out what help is available for people at risk of forced marriage. Anyone who fears that they, or someone they know, may be forced into a marriage overseas are advised to contact the Forced Marriage Unit, on a confidential basis, by telephone on 020 7008 0151. Information for victims of forced marriages and for professionals is available on the FCO website.<sup>26</sup> This includes a *Survivors Handbook*, published in May 2007.<sup>27</sup> A survivors' network has now been launched in partnership with Karma Nirvana, a forced marriage non-Governmental organisation.<sup>28</sup>

## 3. Guidance for professionals

Guidance for professionals has also been published:

- Guidelines for social workers<sup>29</sup>

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<sup>25</sup> HL Deb 26 January 2007 c1360

<sup>26</sup> <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1094234860330> (site visited 25 June 2007)

<sup>27</sup> <http://www.fco.gov.uk/Files/kfile/Survivors%20Handbook.pdf> (site visited 25 June 2007)

<sup>28</sup> Home Office press release 078/2007, *Supporting victims of forced marriage*, 8 May 2007, <http://www.gnn.gov.uk/Content/Detail.asp?ReleaseID=282856&NewsAreaID=2> (site visited 25 June 2007)

<sup>29</sup> *Young people and vulnerable adults facing forced marriage*, March 2004, <http://www.fco.gov.uk/Files/kfile/Forced%20Marriage%20Guidelines%20for%20social%20workers.pdf> (site visited 25 June 2007)

- Guidance for police officers<sup>30</sup>
- Guidelines for education professionals<sup>31</sup>
- Practice guidance for health professionals<sup>32</sup>

#### 4. “You have a right to choose” information campaign

On 16 March 2006 the Forced Marriage Unit launched a national publicity campaign involving a series of radio and press adverts, TV fillers and poster campaigns, aimed at increasing awareness of the issues surrounding forced marriage. An FCO press release set out more details about the campaign.<sup>33</sup>

#### 5. Two year strategy

On 8 May 2007, the Home Office and Foreign and Commonwealth Office launched a two year strategy to combat forced marriage.<sup>34</sup> This followed on from the decision not to create specific criminal legislation around forced marriage (see below). The strategy set out a number of intended activities under the heading of three objectives:

We will increase education and work to raise levels of awareness of forced marriage within affected communities and professionals...

We will engage in more joined up work with statutory agencies and ensure that best practice is shared effectively...

We will work with our partners in the Police and Criminal Justice System to ensure that existing legislation is used effectively in cases of forced marriage...<sup>35</sup>

## E. Forced Marriage Consultation Paper

In September 2005, the Foreign and Commonwealth Office and the Home Office published a consultation paper, *Forced Marriage A Wrong not a Right*.<sup>36</sup> The consultation sought views on whether there should be a specific criminal offence on

<sup>30</sup> *Dealing with cases of forced marriage, 2nd edition 2005*,  
<http://www.fco.gov.uk/Files/kfile/InteractiveForcedMarriage091106.pdf> (site visited 25 June 2007)

<sup>31</sup> *Dealing with cases of forced marriage, Guidance for Education Professionals, 2005*,  
<http://www.fco.gov.uk/Files/kfile/Dealing%20with%20cases%20of%20Forced%20Marriages.pdf> (site visited 25 June 2007)

<sup>32</sup> *Dealing with cases of forced marriage, 2007*,  
<http://www.fco.gov.uk/Files/kfile/Health%20Guidelines%20FINAL.pdf> (site visited 25 June 2007)

<sup>33</sup> FCO press release, *You have a right to choose' - forced marriage information campaign launched*, 16 March 2006,  
<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391638&a=KArticle&aid=1142533849920> (site visited 25 June 2007)

<sup>34</sup> Home Office press release 078/2007, *Supporting victims of forced marriage*, 8 May 2007

<sup>35</sup> *Forced Marriage Unit Two Year Strategy 2007-2009*,  
<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1177938508856> (site visited 25 June 2007)

<sup>36</sup> <http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf> (site visited 25 June 2007)

forced marriage and if so, how any proposed offence might be formulated, how it might apply to acts undertaken overseas and what the penalties of such a possible offence should be. The consultation paper set out arguments both for and against creating a specific criminal offence:

Arguments against creating a specific criminal offence include:

- the risk that the fear of their families being prosecuted may stop victims from asking for help;
- the 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;
- that there are already sufficient criminal offences and protective measures that can be used;
- that if it were very difficult to mount a successful prosecution the new offence might be routinely flouted with impunity;
- that a new offence would disproportionately impact on Black and Minority Ethnic communities and might be misinterpreted as an attack on those communities;
- that families concerned may not feel implicated by such an offence because many may believe their children did consent to the marriage, even though that consent was obtained under duress;
- that implementing a new offence would be expensive and the funds might be better spent on improving support for those at risk;
- that increased risks of prosecution or threat of prosecution would make it harder for victims to reconcile with their families;
- that increased involvement in criminal prosecutions could be harrowing for victims who wanted to move on; and -
- that 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:

- that primary legislation could change public opinion, and thus perception and practice;
- that it could have a strong deterrent effect;
- that it could empower young people with more tools to negotiate with their parents and in some cases with parents facing pressure from relatives;
- that it could simplify and clarify matters for public sector employees tackling this issue; and -
- that it would make it clearer what steps can be taken and easier to take action against perpetrators.<sup>37</sup>

The Consultation Paper identified as a key question whether the potential longer term benefits of changing ingrained views on forced marriage and giving young people more tools to negotiate with their parents would outweigh risks such as driving the problem underground and abroad.

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<sup>37</sup> *Ibid* Executive Summary

The consultation closed on 5 December 2005 and a summary of responses was published on 7 June 2006.<sup>38</sup> The accompanying press release stated that the majority of respondents felt that the disadvantages of creating new criminal legislation would outweigh the advantages:

While there was no clear majority among respondents about whether or not a specific offence of forcing someone into marriage should be created, the majority felt that the disadvantages of creating new legislation would outweigh the advantages and potentially drive forced marriage underground.

Three recommendations for non-legislative activity will now be taken forward. These are:

- increasing the level of training to professionals who work in this field and engaging more with affected communities;
- increasing the work done with statutory agencies in sharing best practice and implementing guidelines;
- ensuring that existing legislation is fully implemented including making better use of civil remedies and the family courts.

The possibility of developing new legislation will only be considered once there has been delivery in all three areas.

Home Office Minister the Rt. Hon Baroness Scotland QC said:

"Forced marriage is an abuse of human rights and a form of domestic violence which cannot be justified on religious or cultural grounds. This consultation has been very useful in stimulating debate and generating recommendations from those with expertise in the field.

"Before we consider the possibility of introducing specific legislation, we need to be convinced that it would definitely benefit the victims of forced marriage. Many respondents feared that the creation of a specific offence could isolate victims, prevent reconciliation and drive forced marriage further underground.

"In the future, we will continue to provide information and assistance both to potential victims and to concerned professionals who are confronted by this abuse."<sup>39</sup>

## F. Other consultation

In March 2007, the Government published a strategy document, *Securing the UK Border Our vision and strategy for the future* which includes proposals relating to forced marriage.<sup>40</sup> The Government stated that it intended to consult on new measures to

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<sup>38</sup> <http://www.fco.gov.uk/Files/KFile/05062006%20Final%20FM%20Report%20NJA.pdf> (site visited 25 June 2007)

<sup>39</sup> Home Office press release, *A Wrong Not A Right: Further Measures to Combat Forced Marriage*, 7 June 2006, <http://press.homeoffice.gov.uk/press-releases/combat-forced-marriage> (site visited 25 June 2007)

<sup>40</sup> Home Office, March 2007,

combat forced marriage, including a Code of Practice for interviews with couples and raising the minimum age of the spouse and sponsor from 18 to 21, and that it would examine the case for the introduction of an English language test before entry for spouses who intend to settle in the UK:

3.24 There are sometimes situations in which a young person is forced by family pressure into an unwanted union. One party will normally be overseas and need a visa to be able to come to the UK. This will either be a visa to enter the UK as a fiancé(e) and marry here, or the British citizen will have been taken overseas to marry and then apply for a visa for their spouse.

We will consult on the following:

- A Code of Practice, building on work carried out by ECOs in Islamabad, in relation to in-depth interviews with couples applying for marriage visas, including scope for views to be given in confidence. At appeal, it would be incumbent on the Immigration Judge both to follow the guidelines in the Code and to ensure that any interview evidence had been properly obtained and appropriately disclosed;
- Raising the minimum age of a spouse and their sponsor from 18 to 21. This would allow the young people involved to have completed their education as well as allowing them to have gained in maturity and possess adequate life skills; and
- In light of the recent changes to settlement in the UK, we will examine the case for introducing a new requirement for those applying for a spouse visa and planning to settle in the UK to pass some form of English test before arrival. This will include consideration of what level of preparation is appropriate.<sup>41</sup>

## II The Bill

The *Forced Marriage (Civil Protection) Bill [HL]* was introduced in the House of Lords as a Private Member's Bill by Lord Lester of Herne Hill on 16 November 2006 as HL Bill 3 of 2006-07. The Bill completed its passage through the House of Lords on 21 June 2007 and had its first reading in the House of Commons on the same day as Bill 129 of 2006-07. The Government has also published explanatory notes.<sup>42</sup> The aim of the Bill is to provide civil remedies for those faced with forced marriage, and victims of forced marriage.

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<sup>41</sup> [http://www.ind.homeoffice.gov.uk/6353/aboutus/Securing\\_the\\_UK\\_Border\\_final.pdf](http://www.ind.homeoffice.gov.uk/6353/aboutus/Securing_the_UK_Border_final.pdf) (site visited 25 June 2007)

<sup>42</sup> Bill 129-EN, <http://www.publications.parliament.uk/pa/cm200607/cmbills/129/en/2007129en.pdf>, (site visited 25 June 2007)

## A. The Bill as presented by Lord Lester of Herne Hill

### 1. The Bill

The Private Member's Bill presented by Lord Lester of Herne Hill had 11 clauses and was intended to be a free standing bill (as opposed to being intended to amend other legislation). Explanatory notes were also published.<sup>43</sup> The Bill had its second reading in the House of Lords on 26 January 2007.<sup>44</sup> At that stage it was intended that the Bill would extend to England and Wales only.

Features of the Bill as originally presented included:

- forced marriage was to be a civil wrong rather than a specific criminal offence; the consequence of this would be that victims would not have to report family members to the police in order to gain protection
- the primary remedy offered by the Bill for victims and potential victims of forced marriage was to be an injunction (that is, an order by the court that acts must not take place which would lead to a forced marriage)
- the Bill would also have enabled civil proceedings to be brought to obtain compensation in certain circumstances.

At second reading, Lord Lester summarised the intent of the Bill:

The Bill is carefully tailored to prevent and deter forced marriage, and to provide practical remedies. It goes further than existing legislation, notably the Protection from Harassment Act 1997 and the Family Law Act 1996. ...

No provision in existing legislation states that forced marriage is unlawful and a civil wrong. That provision is contained in Clause 1. The Bill covers deception for the purpose of causing another person to enter into a marriage or purported marriage without that person's free and full consent. That is essential and is not covered by existing legislation. Cases of forced marriage frequently involve removal of the victim to another country, on the pretext of taking a family holiday or similar deceptive conduct. Clause 1(1)(b) deals with that form of abuse.

Clauses 2 and 3 apply to the aiding and abetting and the inducing of unlawful acts. That is essential in the context of forced marriages because wider family members are frequently involved. There is rarely a single perpetrator where family or community "honour" is regarded as requiring the victim to enter into a marriage with a partner acceptable to them. I hasten to say that that situation is entirely different from the practice of voluntary arranged marriages. The Bill protects both adults and children. Clause 4(2) goes further than existing legislation by enabling an application for an injunction to be made not only by the victim or potential victim but also by her or his litigation friend or any other

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<sup>43</sup> <http://www.odysseustrust.org/forcedmarriage/expnotes/explanatorynotestoforcedmarriagebill.pdf> (site visited 25 June 2007)

<sup>44</sup> HL Deb 26 January 2007 cc1319-1367

concerned person who has the court's permission, which is obviously essential to get access to justice.

Family judges, notably Mr Justice Munby and Mr Justice Singer, have been creative and innovative in their use of the High Court's inherent jurisdiction to fashion remedies for victims. They have relied on their jurisdiction over minors, or have treated potential victims as "potentially incapacitated adults". But there are clear limits to the remedies they can give, and it is important for their work to be recognised and extended in the Bill, giving jurisdiction to the local and accessible county courts. Clause 7 makes it clear that the Bill does not detract from existing remedies available in the exercise of the High Court's inherent jurisdiction.

Clause 4(4) provides that interim relief may be granted to secure the safety of the person who is or may be the victim of the conduct in question until the first hearing. That is another important advance on the Protection from Harassment Act.

The primary remedy is preventive orders for injunctions under Clause 4. But the Bill, like the recent Act in India, also provides for compensation under Clause 5 for anxiety, distress, injury to feelings, or other detriment caused by unlawful conduct. Clause 5(3) makes it clear that no award of damages may be made unless the court is satisfied that it is appropriate and necessary as an effective remedy in the particular circumstances of the case. To ensure that the law is not abused, we have included a standard of objective reasonableness in Clause 10(2) in determining whether conduct breaches Clauses 1, 2 or 3.<sup>45</sup>

## **2. Second reading debate**

During the second reading debate, the Bill received cross party support and support from the Bench of Bishops. Peers who spoke supported the aims of the Bill and denounced the practice of forced marriage. Several peers specifically distinguished forced marriage from arranged marriage; the difference being the individual's right to choose whether or not to marry. Some spoke of the importance of not stigmatising or demonising a community.

The Labour peer, Baroness Uddin, however, expressed some misgivings that the Bill on its own would not remedy the situation:

I support the Bill in principle, but am concerned that it should not be regarded as a panacea: a convenient but empty tool by which well meaning but practically ill-informed individuals and agencies can feel that a shallow victory has been secured, while women affected by this are kept out of the loop, not receiving the services and provisions they desire and rightly deserve.

The creation of a civil remedy must go hand in hand with a broad infrastructure to support its implementation. The Government, wider society, individual communities and the voluntary sector must come together to tackle the practice of forced marriage, as well as ensuring that any new legislation is accompanied

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<sup>45</sup> HL Deb 26 January 2007 cc1322-3

by mandatory obligation for training for all professionals involved in the process, including the judiciary, social workers, police officers and so on.

(...)

I fear that a solitary Act may be a symbolic outlawing of forced marriage—a good thing—but, without sufficient practical and mainstream support such as economic emancipation and opportunities for education and training for women from specific minority communities, it will not be able to eradicate forced marriage. Despite many misgivings, I give this Bill a cautious welcome on the basis that we shall ensure further consultations, widening participation of the numbers of women’s organisations, and make some co-ordinated efforts within the mainstream legislative framework to address this barbaric practice.<sup>46</sup>

Lord Carlile of Berriew, the Liberal Democrat Spokesperson for Wales, was among those who emphasised sensitivity to religious and cultural diversity:

Nobody should get the impression that any community is being targeted in a discriminatory Bill by this legislation. It is intended particularly to enhance the dignity of women living in the United Kingdom and throughout the world.<sup>47</sup>

Baroness Rendell of Babergh (Labour) spoke of difficulties experienced by young Asian people in resisting the wishes of their parents:

A major difficulty here is something which all civilised societies must regard as desirable. I refer to the love and respect which young women of Asian origin have for their parents, a regard far in excess of what we generally see in relations between daughters and parents in white communities. This civilised and honourable attitude makes resisting parental control immeasurably more difficult for young Asians; fear of causing mothers and fathers pain may lead them into marriage situations which have tragic consequences. Refusal can result in the kind of family solidarity which leads to so-called honour killings in horrific circumstances, of which we hear all too often.<sup>48</sup>

The Conservative peer, Lord Sheikh, pointed to the different types of “force” which might be involved, and spoke of “emotional blackmail and psychological pressure”:

Threats of exclusion from the family and social isolation can be just as powerful as physical abuse for many victims. It is therefore right to remember that being forced does not simply mean physical force.<sup>49</sup>

Lord Sheikh also considered that the approach of the Bill in not creating a criminal offence was appropriate:

Some might argue that the Bill does not do enough. They propose that we should create a criminal offence with regard to forced marriage. That would be counter-

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<sup>46</sup> HL Deb 26 January 2007 cc 1324-5

<sup>47</sup> HL Deb 26 January 2007 cc 1327

<sup>48</sup> HL Deb 26 January 2007 cc 1330

<sup>49</sup> HL Deb 26 January 2007 cc 1332

productive because there is a significant risk that the victims of actual or threatened forced marriage would be discouraged from taking their case further if they believed that members of their family might face criminal prosecution. In addition, involvement in criminal proceedings, which are taken by the state in the public interest, could cause distress for victims who could face further pressure not to support a prosecution.

The Bill provides a civil remedy. This will empower individuals with additional tools to prevent and to deter forced marriage. Victims are more likely to take their case further and seek protection in the civil courts. The Bill will send out a clear message that forcing someone into marriage is completely unacceptable. It will make it easier for judges and the police to help victims. It will give them protection through the option of redress and make intervention easier. It will also help to prevent cases where someone is tricked into going overseas where a forced marriage may take place.<sup>50</sup>

Lord Sheikh also spoke of the need to protect those who might be falsely accused.

The Crossbencher, Baroness Butler-Sloss, said she spoke as a former judge and welcomed the possibility of a civil remedy:

The Bill would give a message that could be understood by those communities or individuals who consider they have the right to choose the spouse for their child. Speaking as a former judge, I have to say that one of the attractive features of the communities from the Asian subcontinent is their recognition and acceptance of the rule of law. They are generally law-abiding people and are accustomed to using the courts in family and other disputes. The possibility of litigation if the Bill was law might give the family a breathing space and an opportunity for reflection. Our family judges are experienced in defusing a fraught situation and persuading a settlement. It would be far better to have an injunction or the threat of proceedings and then a family discussion than a trial on attempted murder in the Crown Court. There is also the chance of keeping the family together rather than a tragic and permanent family rift.<sup>51</sup>

Lord Plant of Highfield (Labour) outlined arguments which might be advanced by critics of the legislation:

First, they will argue that it is wrong for Parliament to seek to regulate the behaviour of well established cultural and religious communities. They will argue that the civil society to which such communities belong should be autonomous and free from state interference and regulation, and that it is not the role of the state to seek to liberalise cultural communities. The reason why such groups might believe that leads to my second point, namely that such liberalisation, in their view, would presuppose that freedom and autonomy are values that are in some sense universal and shared; whereas critics will say that is not the case. They will argue that there are many religions and cultures in which the values of freedom and autonomy do not figure as at all desirable. They will say that to seek to liberalise such communities in terms of such values is oppressive and wrong, that it does not treat such communities with respect, and that it will homogenise

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<sup>50</sup> *Ibid*

<sup>51</sup> HL Deb 26 January 2007 cc 1346

all communities and transform them into communities sanctioned by the liberal state.

There are at least three clear answers to this. First, we happen to live in a liberal, democratic society, and it is not wrong to seek to ensure that all groups meet the minimum standards of common morality of such a society—freedom and respect, basic rights and so forth—which forced marriages infringe. Secondly, we need to stand up for common values. There is a big debate at the moment about the idea of Britishness. It is difficult to get far in thinking about a common-sensical view of the nature of Britishness without the ideas of individual liberty, respect for persons and equal rights. Thirdly, and perhaps most importantly in my mind, is that cultural groups that are looking for autonomy and self-regulation are in fact demanding freedom from the interference of the state, and they are demanding equality of recognition and equality of rights. They are themselves trading on the very values that they seek to deny the members of those groups. It seems to me therefore vital that, if we accept ideas such as the importance of freedom from interference and equal respect for cultural identity and cultural norms, those freedoms should be extended to members of the groups covered by those norms. So I do not think that there is a good case to be deployed against the general principles of the Bill.<sup>52</sup>

Lord Dholakia, the Liberal Democrat Deputy Leader and Spokesperson for Home Affairs, supported the Bill:

This legislation will allow people to point out an obvious wrongdoing and to pursue an avenue of complaint where prison is not the end result. By making the issue a civil one, the Bill elegantly gives direct redress to victims without any of the drawbacks suggested by the research on the implementation of criminal legislation. The remedies in the Bill focus on the protection of the victim and the prevention of the forced marriage rather than the punishment of a crime. The Bill is proactive and preventive rather than reactionary. A civil remedy to this problem will help to change people's behaviour because it will allow victims to come forward in pursuit of compensation, mediation and reconciliation—the cornerstones that have been requested by the victims themselves.<sup>53</sup>

Baroness Anelay of St Johns, the Opposition Spokesperson for Home Affairs, agreed that it would be better to try to prevent forced marriages taking place rather than to leave it to a victim to seek a decree of nullity after the event.<sup>54</sup>

Baroness Ashton of Upholland acknowledged the “huge support” for the Bill, “rightly so because it is very important”.<sup>55</sup> However, she also said, at that stage, that she could not commit the Government to the Bill.

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<sup>52</sup> HL Deb 26 January 2007 cc 1351

<sup>53</sup> HL Deb 26 January 2007 c1355

<sup>54</sup> HL Deb 26 January 2007 c1356

<sup>55</sup> HL Deb 26 January 2007 c1364

### **3. Subsequent developments**

#### **a. Consultation on the Bill**

The Odysseus Trust, which supports the activities of Lord Lester in his work as a member of the House of Lords, held a public consultation about various proposals to amend the *Forced Marriage (Civil Protection) Bill*. The consultation paper was published on 7 February 2007, together with a mock-up version of how the Bill would look if the changes were made. The consultation period ended on 9 March 2007. The Odysseus Trust received 29 responses to the consultation.<sup>56</sup> A summary of the consultation responses is available on the Trust's website.<sup>57</sup>

#### **b. Government support**

On 7 March 2007, in answer to an oral question, the Prime Minister indicated that the Government was looking to see how it could support the Bill and to make sure that it was in order, saying: "I know there is a strong feeling in all parts of the House that we should do all we can to end the practice".<sup>58</sup>

## **B. The Bill as amended by the Government**

The Bill had its Grand Committee stage on 10 May 2007. As a Private Members Bill, this in itself was unusual; Lord Lester said that "there has never been a Private Member's Bill in the Moses Room in Grand Committee before".<sup>59</sup> If the Bill does become law it will be the first Lords private members bill to become an Act since 2002.<sup>60</sup>

In Grand Committee the Bill was completely rewritten by way of Government amendments, with the support of Lord Lester and with cross party support. All the original clauses in the Bill, except that containing the short title, were removed and replaced by clauses and schedules drafted by the Government. Further Government amendments to the amendments already agreed were made on report. This followed consultation with High Court judges.

The Bill now has 4 clauses and 2 Schedules. However, it is considerably longer than the original Bill because, instead of being a free standing bill, the Bill would now insert 19 new sections into the *Family Law Act 1996* and is intended to become a part of the general provisions protecting against domestic violence. This was an option which had been included in the Odysseus Trust consultation. In addition, the Bill would now extend to Northern Ireland in addition to England and Wales.

As in the Bill as originally drafted, forced marriage would be unlawful (a civil wrong) but not a criminal offence and it would be possible to seek an injunction to prevent a forced

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<sup>56</sup> <http://www.odysseustrust.org/forcedmarriage/index.html> (site visited 25 June 2007)

<sup>57</sup> <http://www.odysseustrust.org/forcedmarriage/consult/fmcsummary.pdf> (site visited 25 June 2007)

<sup>58</sup> HC Deb 7 March 2007 c1511

<sup>59</sup> HL Deb 10 May 2007 c246GC

<sup>60</sup> House of Commons Information Office, Factsheet L3, *The Success of Private Members' Bills*, November 2006, <http://www.parliament.uk/documents/upload/l03.pdf> (site visited 28 June 2007)

marriage. However, the Bill no longer includes compensation provisions. In Grand Committee, Baroness Ashton said that in the case of forced marriage, a claim for damages might be particularly unsuitable, as it could prolong adversarial contact between the victim and the respondent, often a close family member.<sup>61</sup> The Bill would also enable third parties to apply to the Court for protection on the victim's behalf.

Opening the Grand Committee debate, Baroness Ashton of Upholland said that since the Bill's second reading, the Government had worked closely with Lord Lester to "fine-tune its provisions to make them more effective".<sup>62</sup> Baroness Ashton also confirmed the aims of the Bill:

The Bill's aim remains to protect victims by preventing and deterring forced marriage, and to provide protection for those who have already been forced into marriage. It is hoped that by looking to the civil, rather than the criminal, courts for a solution to this problem, we can minimise, if not entirely eliminate, the risk that, by coming forward to seek protection, the victim finds that they have driven a wedge between themselves and their family. Similarly, we hope that more victims will feel able to come forward and seek protection, knowing that the courts have the means to help them without criminalising members of their family.

(...)

The Bill's focus is on protecting victims in a way that enables and assists them to preserve family links wherever possible. I highlight the fact that the Bill in no way affects an individual making other claims for compensation to which they might be entitled; for example, for assault, injury or wrongful imprisonment.<sup>63</sup>

On report, Lord Lester acknowledged the shift in emphasis of the revised Bill:

My Lords, although this is in form my Bill, a Private Member's Bill, I am glad to say that in substance it has become not my property but that of the House and is really a Ministry of Justice Bill. It has been very much improved. ... In the original design of the Bill, I envisaged some new civil wrong, or tort, with a right to claim compensation under a new head. I was persuaded that that was wrong and that it was more sensible to have a Bill that was preventative and not one that provided for new money claims.<sup>64</sup>

## 1. The clauses

Clause 1 would insert 19 new sections, forming a new Part 4A in the *Family Law Act 1996*. Baroness Ashton said that the Government, and also the voluntary organisations with which she had had discussions, wanted forced marriage to be put into mainstream domestic violence legislation and not dealt with as an entirely separate issue. Furthermore she said that this approach would have the advantage of links to other relevant statutes (such as the *Children Act 1989*).

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<sup>61</sup> HL Deb 10 May 2007 c232GC

<sup>62</sup> HL Deb 10 May 2007 c231GC

<sup>63</sup> *Ibid*

<sup>64</sup> HL Deb 13 June 2007 c1756

The new provisions would deal with forced marriage protection orders and undertakings and include:

- New Section 63A would enable the court to make an order to prevent a person from being forced into marriage or to make an order to protect a victim who has already been forced into marriage. The court would have to have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected and must have regard to the victim's wishes and feelings, as far as it is possible to ascertain them. According to Baroness Ashton this would enable the victim "to have a voice and to let the court know what they believe will be best for them".<sup>65</sup> This section would also provide that a person is forced into marriage if they are forced by another person to enter into that marriage without having given their free and full consent. "Force" is defined to include threats or other psychological means and could be directed against someone other than the victim.
- New Section 63B would provide that a protection order can contain any terms the court considers appropriate, including prohibitions, restrictions or specific requirements, and can relate to conduct outside of England and Wales. This provision was amended further by the Government on report. Baroness Ashton explained the further amendment and the persons who could be subject to an Order:

New Section 63B(2) provides for orders to be directed either at named respondents in a primary role forcing or attempting to force a person into marriage or to other named respondents in a secondary role, for example, aiding and abetting.

Through consultation on the Bill with the High Court judges who deal with forced marriage cases, we have become aware that enabling orders to be directed only to named respondents might be too restrictive. The Bill provides that third parties who are not named in an order, but who undermine the effect of an order by taking action to force a marriage on behalf of others, are subject to the power of arrest. However, senior members of the judiciary have suggested that this might not at present be sufficiently clear either to deter would-be perpetrators or to ensure that police officers arrested them when necessary, and it could therefore prove ineffective.

Amendment No. 2 addresses this issue by amending new Section 63B to enable orders to be addressed to a third category of unnamed persons who are, or may become, involved in other respects. This will mean that orders may be addressed to any person or indeed to categories of person, such as the family, who are, or may become, involved in other respects in relation to a forced marriage. The order must be for the purposes of protection as specified in Section 63A(1). As in the current draft of the Bill, the amendment sets out that involvement in other respects would include actions such as aiding, abetting, counselling, procuring or encouraging another person to force, or to attempt to force, someone into marriage.<sup>66</sup>

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<sup>65</sup> HL Deb 10 May 2007 c233GC

<sup>66</sup> HL Deb 13 June 2007 c1755

- New Section 63C deals with applications and other occasions for making orders. The Court would be able to make a protection order on an application made by the victim or a relevant third party. A relevant third party would be a person or class of persons specified by order by the Lord Chancellor (the Explanatory Notes suggest that the Forced Marriage Unit could be made a third party but that technically this would involve the Secretary of State being designated as the FMU has no independent status in law).<sup>67</sup> A “relevant third party” would not need the leave of the Court to make an application. Any other person wishing to apply would need to seek leave of the Court, and the Court would consider the connection of the applicant to the victim, the applicant’s knowledge of the victim’s circumstances and the ascertainable wishes of the victim. Baroness Ashton explained this latter provision: “One of the harmful results of forced marriage is that it takes away the victim’s power to control their own life, and it is vital that we do not disempower them further, but engage them in the process wherever possible”.<sup>68</sup> The Courts could also make an order without there being an application; Baroness Ashton gave the example of the Court already considering another family proceedings matter related to the case.
- According to Baroness Ashton, new Sections 63D to 63L are modelled on Part 4 of the *Family Law Act 1996* and “provide the mechanics of this clause”.
- New section 63D would enable ex parte orders to be made (that is, without the respondent being notified of the proceedings). In deciding whether this was appropriate, the court would be required to consider all the circumstances including the risk of significant harm to the victim or a third party if the order were not made immediately. If the order were made, the respondent would be given the opportunity to make representations on it as soon as is just and convenient. Baroness Ashton said that this provision would ensure a balance between protecting someone in need of immediate help and providing access to justice for the respondent concerned.<sup>69</sup>
- New Section 63E would enable the Court to accept an undertaking (a promise to the Court) from the respondent as an alternative to making a protection order. It would not be possible to attach a power of arrest to an undertaking and so the Court would not accept an undertaking if a power of arrest would otherwise have been attached to the order. (Breach of an undertaking would be a contempt of court and would be punishable by committal to prison for up to two years).
- New Section 63F would provide that an order may be made for a specified period or until varied or discharged.
- New Section 63G would enable the Court to vary or discharge a forced marriage protection order or undertaking on application by the victim, any party to the proceedings for the order, or any party affected by the proceedings or without application.

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<sup>67</sup> Paragraph 31

<sup>68</sup> HL Deb 10 May 2007 c234GC

<sup>69</sup> HL Deb 10 May 2007 c235GC

- New Section 63H deals with powers of arrest. It provides that the court must attach a power of arrest to a forced marriage protection order if the respondent has used or threatened violence against the victim, a third party or the respondent themselves, unless there would be adequate protection without the power. Baroness Ashton set out further information about this provision:

The provision to attach a power of arrest if threats or violence are directed to a third party is a departure from Part 4 of the Family Law Act 1996 where powers of arrest are available only if the violence is addressed to the applicant or a relevant child. However, I consider this to be vital in dealing with those cases which can so often involve indirect threats. The ability of the court to attach a power of arrest to injunctions will provide an important further protection for victims in these circumstances and act as a strong deterrent against further actions by those covered by the order.<sup>70</sup>

As a result of a further Government amendment made on report, subject to conditions, powers of arrest might be attached to orders addressed to any person who is not a respondent but to whom an order is directed.

- New Section 63I would enable a police officer to arrest a person without a warrant if they had reasonable cause to suspect that the person had breached an order. Baroness Ashton commented on the scope of this power:

Again, this goes beyond Part 4 of the 1996 Act as it would allow the power of arrest to be used to arrest a third party who is in breach of the terms of the order, not only the respondent of the original proceedings. This is a necessary departure as cases can involve whole families or communities working together to force a marriage.<sup>71</sup>

- New Section 63J provides that if a person failed to comply with a forced marriage protection order where a power of arrest was not attached, an interested party would be able to apply for a warrant for their arrest. An interested party would be either the person protected by the order or a third party who applied for the order on their behalf. Following a Government amendment made on report, any other person could also make an application with the leave of the Court. Baroness Ashton explained: "Requiring leave will mean that the court must be satisfied that the person applying has sufficient interest in the case for the application to proceed. This provision would also mirror the categories of person who can apply for an order in the first place".<sup>72</sup> The Court must issue the warrant only where it had reasonable grounds for believing that the person to be arrested had failed to comply with the order or was in contempt of court. Again this goes beyond Part 4 of the *Family Law Act 1996* as it would allow a warrant to be issued against someone who was not a respondent to the original proceedings.

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<sup>70</sup> HL Deb 10 May 2007 c235GC

<sup>71</sup> *Ibid*

<sup>72</sup> HL Deb 13 June 2007 c1761

- New Section 63K provides that an arrested person might be remanded if the matter is not dealt with when first brought before the Court.
- New Section 63L provides for remands for the purpose of enabling a medical examination and report if there is a reason to consider a medical report is required.
- New Section 63M provides that the High Court and County Courts might issue forced marriage protection orders.
- New Section 63N provides that the Lord Chancellor, after consultation with the Lord Chief Justice, could extend jurisdiction to magistrates' courts by affirmative order. Baroness Ashton explained the purpose of this provision:

This provision is in preparation for a single family court. However, there are no immediate plans to extend to magistrates' courts. It is instead intended that expertise be built up in specialist county courts and High Courts.<sup>73</sup>

- New Section 63O provides that the Court's powers in relation to contempt might be exercised by the same level of judge who made the original forced marriage protection order. Baroness Ashton said that the intention was that the same level of court would deal with a breach as dealt with the original order.<sup>74</sup>
- New Section 63P would enable the Lord Chancellor, after consulting the Lord Chief Justice, to make provisions by order for appeals concerning the transfer of proceedings.
- New Section 63Q would enable the Secretary of State to issue guidance about the effect of the provisions of the new Part 4A or about other matters relating to forced marriage. Public authorities would have to have regard to any such guidance in the exercise of their functions. Baroness Ashton said that the guidance already produced by the Forced Marriage Unit would be issued on a statutory basis.<sup>75</sup> The Government accepted an Opposition amendment in Grand Committee which would prevent the Secretary of State in the case of England and Wales, and the Department of Finance and Personnel in the case of Northern Ireland, from issuing guidance to any court or tribunal. Baroness Verma had expressed concern that the power of guidance was too wide and could extend to guidance given by the Secretary of State to the judiciary, "thereby severely compromising the judiciary's independence".<sup>76</sup>
- New Section 63R confirms that the provisions in Part 4A would not affect any other protection or assistance available to a victim including: under the inherent jurisdiction of the High Court; criminal law; *Protection from Harassment Act 1997*; a right to an

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<sup>73</sup> HL Deb 10 May 2007 c236GC

<sup>74</sup> *Ibid*

<sup>75</sup> HL Deb 10 May 2007 c273GC

<sup>76</sup> HL Deb 10 May 2007 c272

occupation order or a non-molestation order under the *Family Law Act 1996*; a claim under the *Children Act 1989*; a civil claim in tort; or the law of marriage.

- New Section 63S includes definitions. Marriage for the purpose of these provisions is defined as “any religious or civil ceremony (whether or not legally binding)”. Baroness Ashton gave further information about this provision:

Some religious ceremonies may not have legal recognition in the United Kingdom, but a person will still be treated by family and the wider community as though they were married, so the effect is just as damaging. It is vital therefore that we provide for this.<sup>77</sup>

- Clause 2 and Schedule 1 include similar provisions in relation to Northern Ireland as those outlined above which would apply in England and Wales. Baroness Ashton set out the areas where the two sets of provisions would differ and also spoke of the required constitutional procedure:

The Secretary of State for Northern Ireland, the right honourable Peter Hain, sought inclusion of Northern Ireland in the Bill, as he considers it important that potential victims in Northern Ireland receive the same level of protection as others in the United Kingdom. As noble Lords will be aware, the Northern Ireland Assembly has been reinstated at Stormont from 8 May, which I am sure noble Lords will agree is a most happy development for Northern Ireland. The subjects of the amendment are of course transferred matters under the Northern Ireland Act 1998, and therefore within the competence of the Northern Ireland Assembly. The Minister for Finance and Personnel in Northern Ireland, Mr Peter Robinson, MLA, has indicated that he is content that I move these amendments today, as he wishes to see the protections provided by the Bill available to the people of Northern Ireland.

Noble Lords will no doubt be aware that there exists a convention that Westminster will not normally legislate on devolved matters except with the agreement of the devolved legislature. Due to timings, it has not been possible to seek that formal agreement prior to today, but the Northern Ireland Executive Committee will consider the inclusion of Northern Ireland in the Bill on 24 May, and the Northern Ireland Assembly will debate the same on 11 June. It may seem unusual to proceed with the inclusion of Northern Ireland before the agreements have been reached but, as I have indicated, the Minister for Finance and Personnel in Northern Ireland is anxious that the inclusion of Northern Ireland in the Bill does not delay the Westminster parliamentary timetable. I am therefore delighted to move these amendments today, so that the people of Northern Ireland can be afforded the rights which the Bill will confer.<sup>78</sup>

- Clause 3 would enable the Lord Chancellor or, in Northern Ireland, the Department of Finance and Personnel, to make any supplementary, incidental or consequential provisions necessary for the implementation and operation of the Bill. Any new provisions must be made by way of statutory instrument and this must be by way of

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<sup>77</sup> HL Deb 10 May 2007 c237GC

<sup>78</sup> HL Deb 10 May 2007 cc276-7GC

the affirmative resolution procedure where the provision amends or repeals primary legislation.

## 2. Debate in Grand Committee

The Government's amendments to the Bill were welcomed and received considerable cross party support in debate. Baroness Butler-Sloss said that she considered the Bill to be "greatly improved":

I am absolutely delighted that the provision will be inserted after Part 4 of the Family Law Act, which is where it should be, and embedded in English law. That sends out a very valuable message.<sup>79</sup>

Baroness Verma, the Opposition Whip and Spokesperson for Education and Skills and for Health, tabled a number of probing amendments "in order to ensure that the Bill is subject to appropriate scrutiny before reaching another place".<sup>80</sup> In answer to her question about whether it was necessary to legislate given the range of criminal sanctions and civil remedies already available to deal with forced marriage, Baroness Ashton set out the proposed new features:

first, greater access to the county court, enabling judges—properly trained and resourced, of course—to deal with and tackle the issue speedily. There are also powers of arrest, better enforcement and statutory guidance, which we will discuss shortly. ...

It also sends a clear message from Parliament, which is important. This is about the empowerment of our citizens and ensuring that they all enjoy the human rights which we value so much in this country. It is one, small way in which we demonstrate that. It raises the profile of the issue of forced marriage, enabling victims, their friends and family to come forward, and sends that clear signal. This is an important moment, with a lot of support.<sup>81</sup>

Baroness Verma queried a number of matters including: the extent to which a person's wishes and feelings would be taken into account; whether a forced marriage protection order would be of especial assistance to individuals making an application for nullity in establishing that valid consent to the marriage was not given; the likely number of applicants per year; and why there was no explicit definition of forced marriage in the Bill (which might give rise to a perception that arranged marriages were threatened).<sup>82</sup>

In reply, Baroness Ashton made the following comments:

- "wishes and feelings":

One of the questions raised by the Forced Marriage Unit, by victims themselves and the organisations working closely with them, and indeed by the judiciary and

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<sup>79</sup> HL Deb 10 May 2007 c240GC

<sup>80</sup> HL Deb 10 May 2007 c245GC

<sup>81</sup> HL Deb 10 May 2007 c249-50GC

<sup>82</sup> HL Deb 10 May 2007 c256-7GC

the legal profession, is that the disempowerment of an individual is almost absolute in this context. Individuals feel that they have lost control of their own lives. The “wishes and feelings” part of this is to ensure that we do not further disempower them and that we are not doing things to them; rather that we are involving them as much as possible so as to understand what they want....

However, we must leave it in some part to the courts to take into account all the different issues, which again points to the need to provide the best possible advice, training and support to the judiciary.<sup>83</sup>

- a forced marriage protection order would help in terms of evidence of nullity<sup>84</sup>
- “forced marriage” had deliberately been left undefined: “The elements within the concept of forced marriage are varied and different in different circumstances. To try to define it always creates a potential difficulty; by defining it, you narrow the definition”;<sup>85</sup> however there was no intention to affect arranged marriages
- number of cases and costs:

We have an estimate of between five and 50 cases from the caseworkers within the Forced Marriage Unit. They say that they deal with about 300 cases every year; two-thirds of which would not include circumstances covered by the Bill; and about 100 that would. They considered that as few as five of these might necessitate an application to the courts. But it is guesswork at this point.

The senior members of the judiciary dealing with cases of forced marriage in the High Court have estimated that in the past 12 months about 30 cases of forced marriage have come to the High Court. One of the things that will happen when we have this civil remedy is that, because of the publicity and the fact that we have made the point that there is a civil remedy, the number of cases will increase. There are three elements to costs which I want to put on the record. First, there are legal aid questions. My honourable friend Vera Baird, who is responsible for legal aid, is at the moment considering how she might take that forward. Secondly, there are the important costs around the judicial processes, which we will be looking at, and the training and support for the judiciary as they take this issue forward. We will talk with the Judicial Studies Board about that. We are very aware that we need to ensure that this works effectively, and that there is proper training and support.

Thirdly, there will be an impact on all the organisations which currently work with victims of forced marriage. Any publicity, anything new or different, means that their work will grow. I think I have said to all of them that I am very mindful of that and that it will be for government to seek to try to respond to that properly.<sup>86</sup>

Baroness Verma raised further questions about the effect of the proposed orders, undertakings and powers of arrest saying:

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<sup>83</sup> HL Deb 10 May 2007 c259 GC

<sup>84</sup> HL Deb 10 May 2007 c259 GC

<sup>85</sup> HL Deb 10 May 2007 c261 GC

<sup>86</sup> HL Deb 10 May 2007 cc261-2GC

My concern is that even with light-touch legislation, the threat of orders and arrest could drive the practice of forced marriage underground and overseas. ...

I do not oppose the Government's amendments to the Bill on those grounds, as I believe that the orders and undertakings could be put to good use. Rather, I seek reassurance from the Minister that this legislation will not result in either having too little success for the people it seeks to protect by way of inadequate powers of enforcement, or have the unintended consequence of alienating the very communities that it seeks to assist.<sup>87</sup>

Baroness Ashton agreed with Lord Lester that undertakings "are incredibly useful because they do not ask people to admit to the allegations being made against them, but enable them to say, "I will not do that"":

A point that has driven our discussions right the way through from the original consultation on the criminal offence, which was rejected, is that of recognising the importance of family in this. The family courts can hear things in private and handle the issues very sensitively. They can ask simply for an undertaking without requiring someone to admit to having done anything. It is an important tool that will help a family to stay together.<sup>88</sup>

In response to Baroness Verma's query about what would constitute "adequate protection" for the purpose of not attaching a power of arrest to an order, Baroness Ashton said that this had deliberately been left for the Courts to decide.<sup>89</sup>

In response to a further probing amendment tabled by Baroness Verma, Baroness Ashton explained why the Bill provided that breach of a forced marriage protection order would be an offence in Northern Ireland but only contempt of court in the parts relating to England and Wales. This was because of differences between the domestic legislation of Northern Ireland and England and Wales respectively.<sup>90</sup>

### **3. Report stage**

On report, Government amendments to the amended Bill were agreed with cross party support. Baroness Ashton also gave further information about how it was anticipated that a number of the provisions would work in practice.

#### **a. Orders to un-named parties**

Baroness Ashton explained how such orders might operate:

It will be for the court to decide in each individual case whether it is necessary to extend an order to the third category of un-named persons. That would be likely to be in circumstances where there was evidence that members of the extended family or the wider community might be involved in forcing a marriage, meaning

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<sup>87</sup> HL Deb 10 May 2007 c266GC

<sup>88</sup> HL Deb 10 May 2007 c268GC

<sup>89</sup> HL Deb 10 May 2007 c269GC

<sup>90</sup> HL Deb 10 May 2007 c279GC

that it was not possible to identify all the possible respondents. Noble Lords will be aware that orders under Part 4 are always made against named parties. Enforcement of those orders relies on the ability to prove that the respondent is aware of the terms of the order. When it is attached to an order, a power of arrest is delivered to the local police station together with a statement showing that the respondent has been served with the order or informed of its terms. Orders made against named parties under Part 4A will follow that procedure.

The position in the law regarding orders made against un-named respondents will remain that a person may be committed for contempt only if they are aware of the order that they are breaching. As orders made against unnamed respondents cannot be personally served, it will be for the courts to decide, on evidence, whether the person is aware of an order and is in contempt. The mechanics of serving the order will be set out in rules of court, and that could be supported by a practice direction setting out standard terms of an order and practice.

The power of arrest will also be subject to certain safeguards to ensure that it is used appropriately. Once arrested, the person must be brought before the court within 24 hours, and it will be for the court to decide on the evidence available whether it considers that the person was aware of the contents of the order. There will also be a right of appeal. I hope that noble Lords are assured that we have given careful consideration to putting in place the necessary safeguards to ensure that those provisions work in practice.<sup>91</sup>

**b. *Should there be a specific criminal offence?***

The Liberal Democrat peer, Lord Russell-Johnston, said that it was not right to give the impression that there was unanimity in the view that forced marriage should not be criminalised. He questioned Lord Lester about why the Bill would not create a crime of forced marriage. Lord Lester set out a number of reasons:

The decision to seek civil protection rather than new crimes was not taken because I felt that that was the Government's position; it was taken after the Government decided not to create new criminal offences. But I thought that they were right in reaching that conclusion. The tragic case to which my noble friend referred, that of Banaz Mahmod, who was murdered by way of what is called an honour killing, illustrates the problems of using the criminal process as the main way of tackling a major social evil.

There is already plenty of criminal law to tackle murder, kidnapping, abduction, rape and all the other evil manifestations associated with forcing people into marriage against their will. Terrible things follow in some of these appalling cases. The problem with the criminal process is that, although there is plenty of existing criminal law, there is a criminal burden of proof and a criminal standard of proof; the court is a criminal court and is held in public, with police and a jury brought into play. It has not proved to be an effective way of tackling a major social problem.

People who deal with these cases daily tell me that often the victim does not want to dishonour her family by having a public and punitive hearing. One of the great

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<sup>91</sup> HL Deb 13 June 2007 c1756

advantages of the family law approach is that the court can sit in private, sensitively and in a way that will, I hope, reconcile the victim with her or his family, while providing effective protection to put a stop to a course of conduct that may lead to real tragedy. It was originally my decision to move into the civil area, not because I thought that the Government could not be persuaded in any particular way but because I thought that it was the right approach. That approach was supported, not just by me—I am a white man, the least qualified person to make judgments of that kind—but by the Southall Black Sisters, a whole variety of women's organisations, including Asian women's organisations, and children's organisations. If that had not been the case, I would not have pushed the Bill any further.

I hope that is an adequate explanation. I am not saying it would be inconceivable to have a new crime; other countries have done that. Although female genital mutilation is a crime, there has not been a single prosecution, for all kinds of reasons. This shows that the criminal process is not the best process, even though, with forced marriages and honour killings, one needs to have serious crimes for serious wrongs.<sup>92</sup>

Baroness Butler-Sloss agreed that providing civil remedies was appropriate but said that there would still be scope for the criminal law to be used:

If a girl is kept prisoner in her room, or she is intimidated, or she is assaulted, or a number of other acts are performed that are capable of being treated as part of offences against the law, the criminal law will intervene. Nowadays, the police are well aware of the seriousness of honour killings...and I know that they are anxious to co-operate. Consequently, I have very little doubt that the rigour of the criminal law will be applied to any case in which the victim is prepared to take part. But, again, as the noble Lord, Lord Lester, said, it is rare for a victim to wish to have her family sent to prison. What she wants is not to be forced into a marriage against her will.<sup>93</sup>

Baroness Ashton set out the advantages of the approach of the Bill:

First, having within the Family Law Act the idea that forced marriage is wrong may help us with the most important thing of all, which is to deter people from doing it: it is an offence; it is not allowed; and it should not be practised. That will be significant in preventing people from even thinking that somehow this practice may be acceptable in our society.

The second benefit of the Bill is that such cases will take place in the family courts, which means that discussions can be held in private. That will enable what we and many of the victims want to see brought about: forms of reconciliation with their families. The judge will be able to explain what cannot and will not be allowed, and that will happen not by being broadcast within a community but quietly and privately. At the same time... the offence will carry the full weight of the law behind it and, of course, if a criminal offence is committed, the criminal law will be brought in.

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<sup>92</sup> HL Deb 13 June 2007 cc1757-8

<sup>93</sup> HL Deb 13 June 2007 c1759

When I talked to the people whom I had the privilege of consulting, it became clear to me that the outcome of the Home Office consultation on whether we should introduce this as a criminal offence was correct. It was clear that that would not command support and, perhaps more importantly, going back to the point made by the noble Lord, Lord Lester, it would not be used and therefore would not have the value that we would wish to see it have. We hope that this measure will provide great benefit and we will monitor the situation.<sup>94</sup>

**c. *Implementation plans***

In reply to another probing amendment tabled by Baroness Verma, Baroness Ashton spoke about the Government's implementation plans:

The first task will be to develop the necessary court rules which will put in place the procedure for dealing with these cases. My department will take forward drafting of the rules and necessary court forms in conjunction with the Family Procedure Rule Committee, an experienced body of judiciary and practitioners who are experts in family law matters. The rules and forms will also be consulted on before they are finalised. Another key part of implementation will be to ensure that the appropriate IT is in place in the courts, so that court staff can process applications, deal with them effectively and collate the necessary statistics needed for monitoring. My officials are exploring the specific IT requirements and assessing the costs of those changes.

It is difficult to predict exactly what the volume of applications will be under the new legislation. The indication is that it will be relatively small, and the impact on the legal aid budget will therefore be minimal. My officials will work with the Legal Services Commission to assess the likely impact on legal aid of the new legislation.<sup>95</sup>

**d. *Training and guidance***

Baroness Verma tabled a probing amendment which would have required the Secretary of State to publish details of expenditure on training and guidance.<sup>96</sup>

Baroness Ashton spoke of the guidance already issued and anticipated training:

In the past year, the Forced Marriage Unit has issued guidance to health professionals, and it has undertaken an awareness-raising campaign for registrars. Guidance was issued to social workers in 2004, followed by guidance for police and teachers in 2005. Revised guidelines for social workers are due to be out before the end of the year, and will be in two volumes: one for social workers for dealing with children and young people; and one for social workers dealing with vulnerable adults. The guidelines are disseminated at outreach events, conferences and workshops organised by the Forced Marriage Unit, and are also available for downloading from its website.

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<sup>94</sup> HL Deb 13 June 2007 cc1759-60

<sup>95</sup> HL Deb 13 June 2007 c1763

<sup>96</sup> HL Deb 13 June 2007 c1764

In practice, the power to issue guidance is likely to mean re-publishing existing guidance to place it on a statutory footing, for the reasons that your Lordships have already given. The costs associated with re-publication should be small, but we will keep that under review. Fresh guidance published by the Forced Marriage Unit once the new Bill comes into force will usually be issued under this new power. We will also keep under review any additional costs associated with guidance specific to the Bill, which will be a matter for my department in consultation with the Home Office, the Foreign Office, the Forced Marriage Unit and other relevant departments, including the Department for Education and Skills. The DfES has supported the Bill, and we will in the usual course of events discuss with it its work in issuing guidance to schools.

Training, particularly judicial training, ... will be built into our wider plans for implementing the provisions that extend jurisdiction to the county courts. As noble Lords will know from our discussions in Committee, it is important to provide for county courts to have the jurisdiction to hear forced marriage cases to make it easier for victims to get the protection that they need. At the same time, it is extremely important that we ensure that cases heard in the county courts receive expert and sensitive treatment; ...

Officials in the department are already considering how we might undertake a phased roll-out of the jurisdiction to the county courts. The aim of such an approach is to enable us to focus initially on a limited number of courts in different regions across the country, building up expertise in these areas. The number of cases that are brought will be a determining factor in deciding how many courts we will eventually need to handle all the cases efficiently and effectively. The approach taken in implementing the provisions that enable civil partnerships to be dissolved is an example of this type of approach. ...We shall ... consult the president on the number and location of county courts initially able to hear forced marriage cases, ensuring that we have a spread of county courts across the country and in urban areas where the demand is likely to be higher.

We anticipate that the Judicial Studies Board, which is responsible for judicial training, will undertake the necessary training for judges in these courts. My officials will discuss with the board the cost of training and the provision of funding. I will ask the JSB to consider, in the light of its other training plans, how it could incorporate within its existing provisions the training that it considers to be necessary. After initial training, it is likely that forced marriage training will be included in the usual refresher courses. The board publishes an annual report that sets out how much has been spent on judicial training. This will ensure that the cost of judicial training associated with the Bill is transparent, as the noble Baroness would wish. In addition to formal JSB training, the judges whom we have consulted on the Bill have suggested that forced marriage cases might be a good candidate for a practice direction, as the noble and learned Baroness, Lady Butler-Sloss, has suggested. Such a direction would provide guidance on the best practice for hearing these cases. As the noble and learned Baroness has said, this will be a matter for the president of the Family Division.

Training for court staff will be a matter for my department and Her Majesty's Courts Service, as is standard practice for the implementation of new legislation that affects the courts. This will include the drafting of staff training materials, the delivery of training to court staff, and the development of information leaflets, court forms and web information for the public and court users. We will work closely with the Forced Marriage Unit to ensure that this guidance is consistent with its guidelines on forced marriages.

The noble Baroness also asked about training for community and voluntary organisations. The Forced Marriage Unit already provides training on forced marriages to statutory agencies and voluntary organisations as part of its awareness-raising remit. My department will liaise with the unit on how the provisions in the Bill should be communicated, as part of both the implementation programme for the Bill and the unit's existing awareness-raising programme. The noble Baroness also asked about the police. As she will know, domestic violence crime and hate crimes are generally handled by police community safety units, and we anticipate that forced marriages will be dealt with in the same way. She also asked me whether the guidance would be mandatory for police forces. Training on forced marriages is already delivered to police forces across the UK. Therefore, it already is in existence across the system.<sup>97</sup>

### **C. Northern Ireland Assembly agreement**

The Bill was debated by the Northern Ireland Assembly on 11 June 2007. This was therefore after the inclusion of provisions relating to Northern Ireland was agreed in Grand Committee. The Executive Committee and the Committee for Finance and Personnel had already provided retrospective approval on 24 May 2007 and 30 May 2007 respectively. The Assembly endorsed the principle of the extension of the provisions of the Bill to Northern Ireland.

## **III Comment from interested parties**

### **A. Association of Chief Police Officers (ACPO)**

The Association of Chief Police Officers Honour Based Violence Working Group (ACPO HBVWG) supports the *Forced Marriage (Civil Protection) Bill* and its emphasis on protection:

Forced marriages are a fundamental abuse of human rights and ACPO HBVWG welcomes any measures that will assist Police and our partners in ensuring the safety of victims and those at risk of forced marriages and other forms of honour based violence (HBV). ...

ACPO is aware of concerns expressed that any legislation relating to forced marriage and other forms of HBV may be seen as targeting specific communities. Although forced marriage and HBV are not specific to any single community or faith group cases that have come to Police and/or media notice have invariably involved victims from a South Asian or Kurdish background and have been Muslim. Associations between such practices and specific communities are to a degree embedded in the public and media imagination and will be difficult to break down. However, forced marriage is clearly an abuse of human rights and government and agencies should remain resolute in their commitments to ensure the safety of vulnerable communities but also vulnerable groups within communities e.g. women and children.

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<sup>97</sup> HL Deb 13 June 2007 cc1766-8

(...)

The position of ACPO remains that the existing criminal law should and can be used to protect victims and those at risk of forced marriage and that this legislation should be more vigorously implemented. However, whilst ACPO acknowledges the existing civil law protections, it also agrees that there are gaps in current legislation available to those at risk of forced marriage it welcomes the proposals set out in the government consultation as added protection for victims with the added benefit of a clear piece of legislation.

The Bill will have a significant impact in improving the Police response to FM as it takes account of the need for a holistic response. Legislation must be clear and implementation must be seen to happen and be supported if it is to work effectively. Legislation could assist and enable multi-agency working and support agencies to meet their statutory duties e.g. duty of care and Social Services. Legislation would be a positive move for law enforcement agencies whilst ensuring that the victim remains central to, and drives any response. It is essential that the victims voice is heard and that victims should have primacy in the process. In addition to this, the Bill will increase awareness of forced marriages and potentially other forms of HBV across agencies and communities. It will also send out a clear and unequivocal message to communities that such practices are unlawful and will not be tolerated.

The emphasis of the Bill is on protection and empowers the victim to seek protection from the law by avoiding a forced marriage without the stigma and punishment associated with the previous proposed criminal offence.

The Bill makes clear the distinction between an arranged and a forced marriage as well as the range of practices that may constitute a forced marriage thereby demonstrating a clear understanding of the complex nature and dynamics of forced marriage and HBV. Although the criminal justice system has responded to a number of cases of forced marriage by making victims wards of court or granting injunctions this has been developed in a piecemeal fashion, knowledge of these measures and developments are not widely known by legal professionals and therefore not available to victims. The Bill contains provisions for third party interventions, possible statutory guidance on forced marriage and measures to include all those who collude directly or indirectly in a forced marriage that are not currently available in existing civil law e.g. Protection from harassment Act and Family Law Act. ACPO supports the view that the Bill would mark a significant step forward but that provisions such as third party interventions be extended to all victims of domestic violence.

(...)

There are both advantages and disadvantages to the incorporation of the Bill within the Family Law Act. There are merits to a clear, unequivocal and self-contained piece of legislation that will promote ease of use for professionals and accessibility for victims. However, should provisions be extended to all victims of domestic and/or inter-familial violence incorporating it within the Family Law Act would be a natural home for the Bill. Regardless of where the Bill sits the focus must remain on protecting victims and those at risk of forced marriage and other forms of HBV...

Any future legislation must be supported by an appropriate publicity and awareness raising campaign to ensure that communities and professionals are

aware of the dynamics of forced marriage and other forms of HBV and of the tools available to them. Awareness will result in utilisation of the legislation and avoid the lack of impact and utilisation of Female Genital Mutilation Act as to date no cases have been brought before the courts.<sup>98</sup>

## **B. Liberty**

The civil liberties and human rights organisation, Liberty, also welcomed Lord Lester's Bill:

Liberty today welcomed a new Bill which will provide civil remedies for victims of forced marriage. Citing the physical and mental mistreatment, loss of liberty and other serious abuses that victims of forced marriage often face, the human rights group urged Peers to support the Forced Marriage (Civil Protection) Bill during its second reading in the House of Lords on 26th January.

Director of Liberty, Shami Chakrabarti said:

"We must shatter the taboo surrounding forced marriage – it is domestic violence which runs roughshod over fundamental human rights.

Lord Lester's ingenious Bill provides civil injunctions to protect victims. This is far more likely to tempt women to come forward than the prospect of reporting their family members as criminals."

Legendary human rights campaigner Lord Lester drafted the Private Members Bill in partnership with the Southall Black Sisters and a team of leading family lawyers. These proposals are supported by leading human rights groups, women's rights groups and minority ethnic organisations.

Liberty stressed that Government funding for practical support and assistance for forced marriage victims would still be needed even with the successful passage of the bill.

A forced marriage is one carried out under duress without valid consent by one or both parties and should not be confused with arranged marriage, in which families play a matchmaking role but both parties marry of their own free will. Government sources show that approximately 300 forced marriage cases are reported each year to the Foreign and Commonwealth Office's Forced Marriage Unit, but experts believe the true number is much higher.<sup>99</sup>

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<sup>98</sup> *Forced Marriage (Civil Protection) Bill Response of the Association of Chief Police Officers Honour Based Violence Working Group*  
<http://womensaid.org.uk/downloads/FORCED%20MARRIAGE%20Bill%20ACPO%20response.doc> (site visited 26 June 2007)

<sup>99</sup> *Liberty welcomes new civil protections for forced marriage victims*, 25 January 2007, <http://www.liberty-human-rights.org.uk/news-and-events/1-press-releases/2007/forced-marriage.shtml> (site visited 26 June 2007)

## C. NSPCC

The children's rights charity, NSPCC, states that forced marriage is a violation of children's rights. It welcomed the Bill but considers that the creation of a civil remedy must be only part of the Government's plan to address the issue:

The NSPCC regards the coercion involved in forced marriage to be abusive and is opposed to all practices of a coercive and abusive nature. We support Article 12 of the United Nations Convention on the Rights of the Child which promotes the rights of children and young people to participate in decisions that affect them. The issue of forced marriage is of particular concern to the NSPCC because the practice can put children and young people at risk in several ways and cause emotional and physical harm. In the longer term, many girls and women forced into marriage suffer sexual abuse and domestic violence, the impact of which on children is now widely documented....

Forced marriage is a violation of children's rights we believe that there is an overwhelming case for this Bill. Amending the civil law would be a clear means of demonstrating that forced marriage is wrong.

As a signatory to the United Nations Convention on the Rights of the Child, the government has a clear responsibility to protect children against the threat and practice of forced marriage and the mental and sometimes physical violence which may be associated with it.

The NSPCC supports Lord Lester's Bill which will allow young people to secure an injunction against any person who tries to force or deceive them into marrying another person. We support the aims of the Bill also makes clear that it is unlawful for people outside the immediate family to "aid and abet" forced marriage, and explicitly covers deception for the purpose of causing a forced marriage. Importantly, it also enables third parties to apply for an injunction on behalf of a potential victim to prevent a forced marriage, as this is a very difficult thing for a young person to do. The Bill aims to empower young people who may be forced into marriage and allows victims to seek simple remedies before a marriage has taken place and gives young people more tools with which to negotiate with their parents, wider family and community.

### Other instruments to tackle forced marriage

However, the creation of a civil remedy must be only a part of the government's plan to tackle this complex and difficult issue. The government, wider society, individual communities and the voluntary sector must also work closely together to tackle the practice of forced marriage. Practical assistance for victims, direct community involvement and dialogue and awareness campaigns are important means for highlighting the issues and preventing individual cases of forced marriage and tackling the practice in both the short and long term.

Any new legislation must be accompanied by guidance and training for social workers and police officers in the full range for civil and criminal legislation available for tackling forced marriage.

It is important that existing criminal laws should be used to tackle the issue of forced marriage alongside this new civil legislation.<sup>100</sup>

## D. Newham Asian Women's Project

Newham Asian Women's Project (NAWP) states that it is a London-based charity which was established in the mid 1980's to address issues of domestic violence within the South Asian community. It supported the Bill:

We welcome the efforts of Lord Lester of Herne Hill QC in recognising that the issue of forced marriages needs more committed attention than it has received, and thus we support proposals to amend the Bill.

However, we would like to raise some issues in regards to tightening the content to avoid "implementation problems". The procedure for obtaining injunctive relief appears to be similar to that for obtaining injunctive relief in other domestic violence situations under the Family Law Act, and for this reason, it would be a natural extension to incorporate the provisions into the Family Law Act. The courts, the police and family lawyers are already familiar with the workings of the Family Law Act and such incorporation would involve minimal "disruption" and costs – and most importantly, swifter adoption by those seeking this redressal. It would be a fairly simple exercise to amend the current documentation and procedures that already exist on an application under the Family Law Act to include forced marriage.

In our experience, civil remedies for violence and abuse seem to offer the possibility of better outcomes: There is a lower standard of proof, and the woman is the subject of her own actions, rather than merely an object of proceedings. It also has been evident in our front-line work that civil remedies provide the necessary scope to encourage public discourses and legal understandings of violence against women. Encouraging the use of civil law in forced marriage cases therefore may lead to more effective remedies for survivors...

By placing the sections relating to forced marriages within FLA, it will be easier for applicants to use one single piece of legislation. It is not difficult to anticipate that many potential applicants of injunctions for breach of the prohibition of forced marriages will need to get a non-molestation order and other order(s) available under Part IV of FLA. In fact, we know of examples of cases where women facing a potential forced marriage have gone to court for getting a non-molestation order section 42 of FLA and it will be easier for them to use the same legislation for obtain forced marriage specific injunctions as provided in the draft Bill....<sup>101</sup>

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<sup>100</sup> NSPCC Briefing for Second Reading debate on Forced Marriage (Civil Protection) Bill, 26 January 2007, [http://www.nspcc.org.uk/inform/policyandpublicaffairs/westminster/forcedmarriage\\_gf42078.pdf](http://www.nspcc.org.uk/inform/policyandpublicaffairs/westminster/forcedmarriage_gf42078.pdf) (site visited 26 June 2007)

<sup>101</sup> March 2007, <http://www.endviolenceagainstwomen.org.uk/documents/NAWP%20Forced%20Marriage%20Civil%20Bill%20.pdf> (site visited 26 June 2007)

## E. Rights of Women

Rights of Women describes itself as a well established and expanding not-for-profit feminist women's organisation committed to informing, educating and empowering women on the law and their legal rights. Rights of Women supported the Bill.

It is Rights of Women's position that specific forms of violence which BME [Black and Ethnic minority] women experience disproportionately, such as forced marriage are part of a universal continuum of violence against women, which cuts across all boundaries, including race, ethnicity, religion, culture and class. Violence against women is a violation of internationally guaranteed human rights, rights which the UK has agreed to (such as the UN Convention on the Elimination of All Forms of Discrimination Against Women and the Beijing Platform for Action), and which are included in UK law under the Human Rights Act 1998.

Rights of Women believes that the Government has an obligation under international law to exercise due diligence in addressing all forms of violence against women, including forced marriage. ...

In Rights of Women's response to the Government's 2005 consultation on the criminalisation of forced marriage, we stated that rather than creating new offences, it is important to implement the current criminal laws, where applicable, but also to secure women's access to civil justice. Women and children need to have the option of using civil remedies which can help create a safe space for them. Civil law remedies can protect and empower women, and importantly unlike criminal sanctions, allow them to initiate and cease proceedings. We therefore welcome the opportunity to contribute to this consultation on the creation of a civil remedy for forced marriage.

### An Important Note on Stigmatisation

Before responding to the consultation questions, Rights of Women would like to take this opportunity to address concerns raised by some that a forced marriage specific law is racist or stigmatises those communities where such human rights abuses occur. As a feminist organisation concerned with the protection and safety of women, Rights of Women strongly disagrees with the use of such concerns as a reason not to support the Forced Marriage Bill.

As noted above, it is Rights of Women's position (and that of United Nations bodies) that forced marriage is a form of violence against women. According to international human rights law arguments, violence against women cannot be justified by culture, religion or ethnicity. To view forced marriage as an issue of race or ethnicity, culture or religion, masks the violence experienced by Black and Minority ethnic women. Whilst Rights of Women does not subscribe to the rhetoric that forced marriage is an issue of community relations, race, ethnicity or religion, we do recognise that these may be factors in addressing forced marriage, presenting cultural barriers in terms of access to services, protection, support and legal justice. Thus many women, who have experienced forced marriage, have found it difficult to access assistance, support and protection, particularly from State bodies and institutions such as the police, social services, and the courts. It is therefore vital that women who have hitherto been marginalised from protection are able to apply for a remedy and access justice. The creation of a specific civil remedy for forced marriage is not about singling out certain communities, but rather is about redressing this historical marginalisation. It is about recognising that BME women who fear being forced

into marriage are a specific group that have historically been marginalised or excluded from the legal process and who often face very real barriers in terms of accessing assistance.

Rights of Women believes that arguments based on stigmatisation cannot be used to deny women justice. ...

Further, we believe that criticisms of the Forced Marriage Bill based on stigmatisation of a particular community or religion, simply serves to perpetuate the myth that forced marriage occurs in only these communities/religions. This contradicts the evidence of both the Government, the police, statutory sector agencies and women's organisations, which have reported cases from Middle Eastern, African, Turkish, Kurdish, Chinese and other communities....<sup>102</sup>

## **F. Southall Black Sisters**

Southall Black Sisters (SBS) is a not-for-profit organization established in 1979 to meet the needs of black (Asian and African-Caribbean) women. Its stated aims are to highlight and challenge violence against women; empower them to gain more control over their lives; live without fear of violence; and assert their human rights to justice, equality and freedom.<sup>103</sup> SBS has worked with Lord Lester's office in connection with the Bill. SBS has expressed its opposition to the criminalization of forced marriage and expressed its support for civil remedies:

Our own opposition to the criminalisation of forced marriage is mainly based on the fact that it is unworkable. Instead we continue to demand effective civil remedies and increased resources to address the problem. Many other groups support this position...

*Why we support the new proposals*

*It is necessary to have a law which states clearly that forced marriage is unlawful.*

Whilst we did not support the criminalisation of forced marriage, we do think that a specific law on forced marriage is useful. At present forced marriage is illegal but it would take a lawyer to trawl through various civil law remedies located in various pieces of legislation to make a claim. As stated above, the aim of the Bill is to make the law and the procedure simple, available in one place and therefore easy to follow so that both victims and perpetrators can easily comprehend the law and the rights and sanctions contained. Our experience also reinforces the view of groups such as Rights of Women who argue that at present the remedies available in family law can be difficult to understand.

*The Bill will strengthen the civil remedies available*

Our demand to strengthen civil remedies instead of introducing a new criminal law has been supported by the vast majority of black and minority women's groups as well as civil rights and legal organisations.

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<sup>102</sup> [http://www.rightsofwomen.org.uk/pdfs/consultation/forced\\_marriage2.pdf](http://www.rightsofwomen.org.uk/pdfs/consultation/forced_marriage2.pdf) (site visited 26 June 2007)

<sup>103</sup> <http://www.southallblacksisters.org.uk/>

We believe that third party interventions, compensation for victims, possible statutory guidance on forced marriage and provisions to include all those who collude directly or indirectly in a forced marriage, are innovative measures which will make a real difference to a victim of forced marriage. They are not covered by the existing provisions available in the Family Law Act and in the Protection from Harassment Act and in that respect the Bill marks an important step forward.

(...)

*The Bill will add to the current armoury of tools available to victims of forced marriage.*

Unlike the proposals for a criminal law on forced marriage, where nothing new was being added to the criminal laws that existed, a new civil law will present a specific route to obtaining an injunction to prevent a forced marriage. Also, currently the Family Law Act and the Protection from Harassment Act – the main laws governing protection from abuse and violence, have no provisions for ensuring that statutory guidance is followed by key State agencies such as social services or the other provisions mentioned above. This remedy will provide additional protection to victims of forced marriage and considerably enhance their rights.

*Empowerment of victims and victim led proceedings*

Unlike criminal proceedings, which involve the State prosecuting on behalf of a victim, in civil proceedings, it is the victim herself who has control over legal proceedings. A new law on forced marriage will be no exception. Contrary to the view that victims will feel intimidated by the new procedure, we believe that they will feel empowered to pursue protection in the civil courts.

*The Bill will raise awareness within the legal system.*

The new law will be especially useful in county courts where district judges tend to have little or no awareness of the reality of forced marriage compared to High court judges where most of the forced marriage cases are litigated. Often judges view the problem of forced marriage as a ‘culture clash’ or they do not intervene because they are too afraid of ‘offending’ ‘cultural’ or ‘religious’ sensibilities. A new law will help to create awareness within the judiciary, especially in areas of the country where the courts are slow to recognise that forced marriage is an abuse of women’s human rights. A new law will leave little room for misunderstanding and the judiciary will have to be trained so that the law can be implemented effectively.

*Legal aid*

The Bill will enable legal aid to be more readily granted. At present legal aid practitioners face inordinate delays because the Legal Services Commission is often not sure how to respond to forced marriage cases. If there is clear legislation about the unlawfulness of forced marriage, delays may be minimised. In our response to Lord Lester’s consultation, we will be requesting that a provision about entitlement to legal aid be included in the Bill.

*The Bill will increase awareness about forced marriage within the community and in society generally.*

A new law will also help to raise awareness in our communities. At a time, when we are witnessing a resurgence in religion and religious identity, the need to safeguard the gains minority women have made in respect of domestic violence, divorce and general matrimonial rights are crucial. The new law will enable a clear and unambiguous message to be sent to all communities that women's rights are human rights and that religious and community leaders cannot hide behind the view that such practices are simply reflections of 'malfunctioning' cultures over which they have no influence. In the last decade or so, following the inclusion of forced marriage on the State's agenda, religious and community leaders have publicly stated that religion does not condone forced marriage but they have then sat back and done nothing to challenge the practice of forced marriage. Legislation on forced marriage will compel community and religious leaders to recognise that forced marriage is unlawful irrespective of whether or not it is justified in the name of culture or religion or both. In the long run, as with any law, legal norms can and do influence social customs and practices as well as general public morality.

In the wider society, the existence of a civil law which places forced marriage guidelines on a statutory footing, will also help to eradicate doubt within state institutions as to the acceptability of the practice. Social services and the education system in particular have been very slow to recognise forced marriage as a fundamental violation of women's human rights and contrary to the spirit of family and children laws in this country. Like the legal and judicial system, State institutions need to be doing more to protect victims and to challenge the practice of forced marriage. For instance a study on absenteeism in primary and secondary schools in Bradford revealed that many young Asian girls had 'disappeared' from the school rolls by the time they transferred to secondary schools. Most had been taken abroad for the purposes of marriage. In such cases, by the time the teachers noticed that the girls had disappeared it was too late to do anything. As a result of the study, there have been growing calls for schools to monitor the attendance records of Asian girls, to do more to address the issue and to use its position as a key institution to prevent and protect violence and abuse as far as possible. . A civil law will force schools and other institutions to have proper monitoring and protection systems in place.

*Common myths and misconceptions about the Bill*

*The Bill is not needed because it will duplicate remedies that already exist and will not therefore be effective*

This argument has already been addressed in the section above. To reiterate, our view is that the proposed law will provide new remedies in cases of forced marriage. The uniqueness of the law also lies in the fact that it will help in raising awareness about forced marriage so that a culture of zero tolerance is created.

In view of the fact that most victims of forced marriage want the abuse to stop but not necessarily to 'punish' their parents, the new proposals will provide an important route by which to seek protection because the emphasis is on protection only. More importantly, it will enable victims to feel that they can invoke the law when confronted with attempts to force a marriage, whether or not they actually instigate legal proceedings over which they will always retain control.

Some groups have argued that by including powers of arrest provisions in the Bill, the civil law is actually transforming the Bill into a quasi criminal law. This is a fundamental misunderstanding of the Bill. Even the Family Law Act contains law enforcement provisions because without them, the law would be ineffective. A victim and a perpetrator must be aware of the legal consequences for breaching the law. This is a fundamental principle of law. In this respect the Bill is merely following principles for enforcement set out in the Family Law Act. The reality is that an injunction is only of value to the victim if it is obeyed. Without a power of arrest, a breach of an injunction will require a victim to return to court to initiate contempt proceedings and until she returns to court, will remain unprotected. However, returning to court will take time and it may be too late. Attaching a power of arrest means that a victim can enforce the injunction immediately. Our experience in general domestic violence cases show that unless an order is backed by swift and effective enforcement procedures, perpetrators are unlikely to be deterred from repeating their behaviour.

*The Bill will stigmatise certain, especially 'Muslim' communities.*

This is an old argument that was made 30 years ago, by many on the anti-racist left when black and minority women first started to raise questions about inequality and abuse within their communities. ...Whilst it is important to fight against all forms of racism whether perpetrated by the State or on the streets, it cannot be at the expense of remaining silent about other wrongs in our communities. It should not lead us to undermine our own struggles against domestic violence, sexual abuse, forced marriage or any other restrictions on our freedom, although this does not mean that we don't understand or counter any racist consequences that arise at the same time. ...

In our view, the 300 or so forced marriage cases that come to light are only the tip of the iceberg, many other victims from a number of communities may feel more empowered to come forward if they know that they can get help to prevent a forced marriage from taking place. (...)

*Asian women don't want to use the law and there is concern that the courts don't have the expertise to understand the problems of BME women.*

The argument made by some that Asian women don't want to use the law or shouldn't use the law because the courts don't have the expertise is extraordinary, wrong and dangerous. Taken to its logical conclusion, it conveys the view that the legal system is a 'no-go' area for black and minority women, a view that is bound to please perpetrators, community leaders and perhaps even the State!

The view that black and minority women don't use the law is simply not borne out by the evidence available. SBS and other advocacy groups, legal practitioners, not to mention the State itself, have all seen a rise in reports of domestic and other forms of violence from minority women. This also includes a rise in the numbers of those seeking injunctions and other remedies including prosecutions in the criminal justice system. The evidence shows that the courts are a last but necessary resort for those experiencing violence and abuse. Minority women

have no choice but to use the law because access to justice in their communities is denied to them. ...<sup>104</sup>

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<sup>104</sup> *The Forced Marriage (Civil Protection) Bill A Position Paper by Southall Black Sisters in Respect of the Proposal to Create a New Civil Law on Forced Marriage, February 2007, <http://www.womensaid.org.uk/downloads/SBS%20position%20paper%20on%20forced%20marriage.doc> (site visited 26 June 2007)*