

UK Initiatives on Forced Marriage: Regulation, Dialogue and Exit

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The literature on feminism and multiculturalism has identified potential conflicts between the recognition of cultural diversity and securing women's equality. Three broad approaches to this dilemma have emerged in the practices of contemporary states: regulation, working with the communities, and exit. Each of these is apparent in current initiatives regarding forced marriage, but the overwhelming emphasis in the UK has been on enabling individuals to exit from the threat or reality of a forced marriage. In assessing these initiatives, this paper highlights the limitations of exit and the danger of moving towards immigration regulation as the preferred solution.

Although the multicultural nature of European societies is increasingly acknowledged, the policy implications are more contested. When cultural diversity is ignored or denied, there is a danger that public policy will write in the practices and assumptions of majority groups as unquestioned norms. Members of minority groups may then find themselves less protected than others in their cultural or religious practices; they may even be coerced into replicating majority behaviour in order to conform with the law. But moving from an arrogant assimilationism to a hands-off toleration also carries risks, and especially so when what is represented as the 'tradition' of a minority cultural group turns out to bear more heavily on some members than on others. As a growing feminist literature on multiculturalism argues (see, for example, Okin, 1998; Shachar, 2001), this is particularly likely to happen when the traditions in question order the relations of women to men or of young people to old. In such circumstances, a 'live and let live' approach to cultural difference can undermine the rights of young people and women.

In the theoretical literature and practices of contemporary states, three broad solutions have emerged; we roughly categorise these as regulation, dialogue and exit. The first is relatively unselfconscious about the epistemological or ethical problems associated with cultural difference. It presumes, without too much question, that particular principles of behaviour are right, and either overlooks or dismisses the possibility that what are conceived of as universal principles of rectitude might be more parochial reflections of a particular history. It therefore sees little reason to worry about the power relations involved in requiring all cultural groups to abide by the same norms of conduct. More precisely, it may recognise certain difficulties in imposing norms of behaviour, but it usually considers these in practical rather than ethical terms. It may be, for example, that criminalising a practice can have the unwelcome effect of driving it underground; or that intervening against what are deemed the unacceptable practices of a minority group can end up reinforcing ethno-cultural stereotypes, demonising cultural minorities, and encouraging racist

attacks. For these and other reasons, it may be necessary to exercise considerable tolerance of difference. But even when adopting policies of non-intervention, adherents of this first approach are largely untroubled by doubts about which principles are right.

The second approach is more willing to recognise that values are formed within particular cultural contexts. It favours a dialogic encounter between majority and minority communities in order to arrive at generally acceptable norms of conduct (see, for example, Deveaux, 2000; Benhabib, 2002). One leading UK proponent is Bhikhu Parekh, who argues that it is possible to arrive at a body of universally valid values, but that these are 'too thin and few to cover all important areas of life' (2000, p. 266). Once fleshed out into a more substantial body of prescriptions, values inevitably embody partial and historically specific conceptions of the good life. Although Parekh considers it entirely legitimate that the 'operative public values' of a society should serve as the starting point for a debate on minority practices, these should not be taken as 'a crude and non-negotiable standard' for evaluating other ways of life (p. 270). When there are deep moral and cultural disagreements, it is not appropriate to treat the values of one group as 'trumping' the values of another. The priority, rather, is for inter-cultural dialogue in which each group has to justify – and reflect on – its own concerns. The outcome may still be public intervention against particular practices, but any such initiative should be preceded by open-ended discussion that allows for revision on all sides.

This usefully avoids a pre-emptive appeal to prevailing principles, but it also risks representing cultural communities as more internally homogeneous than they are. As activist groups have long argued, it is usually the more powerful members of the minority community who are called on to act as 'gatekeepers' between majority and minority communities, and it is their version of a community's practices that then figures most prominently in inter-cultural debate (see, for example, Southall Black Sisters, 2001). Where this is the case, the multicultural resolution of disputed practices can lead to particularly conservative codifications of group norms. So although the dialogue approach – or what, in policy terms, is better described as 'working with the communities' – more successfully curtails the epistemological arrogance of the majority or dominant group, it may not be so effective in protecting less powerful members of a minority group.

The third approach is by far the least interventionist. Refraining from direct action that would regulate or criminalise the practices of a minority cultural group, it stresses the right of individuals to exit from their group if they are dissatisfied with their treatment. In his classic statement of this position, Chandran Kukathas (1992, 2003) argues that the right to freedom of association must include the right to live by the norms of one's cultural association, and that governments are not justified in intervening in the management of these associations, even when their practices go against what have been thought fundamental principles of justice. The corollary of the freedom to associate is the freedom to disassociate, and it is this, rather than paternalistic state intervention, that should be viewed as the primary protection against cultural pressures. When public authorities set out to 'protect' individuals from their cultural group, their actions have often been highly damaging – one notable illustration being the post-war Australian policy of removing lighter-

skinned Aboriginal children from their families to give them a 'better start' in state orphanages or white families. The better protection, in Kukathas's view, is simply the right of exit – the right of dissident or dissatisfied members to leave one kind of association and either join or set up another.

This, in turn, has been criticised as failing to address the substantive conditions that make the right of exit real (see, for example, Spinner-Halev, 2000; Shachar, 2001; Okin, 2002). What, for example, of a community like the Amish, which removes its children from schooling at the age of 14 and leaves them ill-equipped for life outside? What of communities that practice communal ownership of land and thereby tie their members into financial dependence? And what of what Oonagh Reitman (forthcoming) terms the 'sociopsychological costs' of exit – the fear of ostracism by family and friends, the potential loss of identity, or just the generalised fear of change? In such circumstances, the right to leave what one has come to experience as an oppressive cultural community can seem rather meaningless.

In one sense, the issues raised by these three approaches do not arise in the case of forced marriage. The question each grapples with is when (if ever) public authorities are justified in intervening in the affairs of a cultural minority whose values and practices differ from majority norms. Officially at least, forced marriage does not raise this question, as it is not a matter of inter-cultural dispute. Marriage practices clearly vary between communities. Some groups favour early marriage and others late; some parents see the choice of future spouse as primarily a matter for themselves or the wider family, and others would be pleasantly surprised if they were even consulted. But although some form of *arranged* marriage is still practised in Britain's minority communities (particularly those of South Asian origin), and some parents in these communities will have particularly strong expectations of filial obedience, none of their spokespeople claims *forced* marriage as part of their cultural or religious heritage. All officially share in its condemnation.¹ Forced marriage then stands apart from other standard topics of multicultural debate, the issue being not so much whether public authorities have a right or responsibility to eliminate a particular practice, but how best to achieve this.

And yet current initiatives on forced marriage map well onto the categories of regulation, dialogue and exit, and most countries that have adopted policies on the issue employ some combination of these three. Regulation is most evident when legislation is introduced that makes it a criminal offence to assist in bringing about a forced marriage, but it is also apparent in the increasingly common recourse to immigration control. There is no full-blown version of the dialogue approach, but concerns about working with and through the communities – in ways that respect different marriage practices – inform much current practice in the UK; this is obvious in the careful distinctions between arranged marriage (presented as an entirely legitimate cultural variation) and forced marriage (something all cultures and communities condemn). At the time of writing, however, the most striking characteristic of UK initiatives is their very literal emphasis on exit – on enabling individuals to extricate themselves from the threat or reality of forced marriage. For those trapped in unwanted marriages, exit is, of course, the most urgent priority. The exit approach is also, in some ways, the least controversial, as it avoids both the potential cultural arrogance of regulation and the excessive reverence

towards self-styled community spokesmen that sometimes characterises the dialogue approach. We argue, however, that exit is proving to be an inadequate solution, partly because it rests on an over-simple dichotomy between coerced and consensual marriage, and partly because it ignores the enormous pressures on individuals to remain within their unwanted marriage. The danger is that regulation through immigration control will become the more favoured approach.

Current UK Initiatives

In 1999, the home secretary set up a working group on forced marriage, with a remit to 'investigate the problem of forced marriage in England and Wales and to make proposals for tackling it effectively' (Home Office, 2000, p. 10). When its report, *A Choice by Right*, was published the following year, it highlighted the arranged/forced distinction: in an arranged marriage, the family takes a leading role in the selection of partner, but the potential spouse always retains the right to say no; in a forced marriage, there is no choice.

Most of the cases brought to the working group's attention involved young women in their teens to early twenties, and many involved a spouse from overseas. The lack of reliable data made it impossible to determine the scale of the problem, but the figure commonly cited in subsequent discussions is at least 1,000 cases each year. This is widely regarded as an underestimate). The group recommended a fairly predictable set of guiding principles, including involving the communities, monitoring the extent of the problem, training for relevant agencies and service providers, and promoting awareness of services and rights. It did not support the creation of a specific offence of forcing a person to marry, arguing that current legislation against threatening behaviour, assault, kidnap or rape already provided an adequate basis for prosecution; and the most contentious issue it addressed was the role of mediation. A number of women's groups had argued that the use of community-based mediation services to 'reconcile' victims of forced marriage with their families placed the young people at further risk of abuse, and Hannana Siddiqui, of Southall Black Sisters, resigned from the working group because of its refusal to reject mediation outright.

A number of factors had contributed to government awareness of forced marriage, including the campaigning work of Southall Black Sisters, articles by journalist Yasmin Alibhai-Brown (also a member of the working group), and the substantially increased representation of women after the 1997 election (which generated a larger cohort of MPs prepared to speak out against abuses of women).² A further catalyst was the close coincidence in 1999 of three high-profile cases: the murder of Ruhksana Naz after she left an arranged marriage and became pregnant by another man; the plight of 'Jack' and 'Zena' Briggs, who spent years in hiding from bounty-hunters employed by Zena's family after she refused to marry a cousin in Pakistan; and the successful return to England of a young Sikh girl, KR, who was made a ward of court when her parents abducted her and took her to India for the purposes of marriage.³ It may also be relevant that the repeal of the 'primary purpose' rule – one of the first acts of the 1997 Labour government – was felt by some to have removed an important source of protection against forced marriage. The rule dated back to 1980, though it was only formalised as such in 1994, and

had allowed immigration officials to refuse entry to spouses when they felt the primary purpose of the marriage was to obtain admission to the UK. There is, significantly, no known 'primary purpose' case involving two white spouses (Menski, 1999, p. 83), and the rule was widely perceived as racist. Yet after its repeal, it was claimed (on no very clear evidence) that entry clearance officers in Islamabad and Pakistan were now hampered in challenging what they suspected to be non-consensual marriages. This claim was taken up by the Foreign Affairs Select Committee, and fears were raised in the media that the abolition of the rule was leading to an increasing incidence of forced marriage.⁴

Although *A Choice by Right* had not presented forced marriage as an exclusively transcontinental affair, subsequent initiatives have largely focused on what is known as 'the overseas dimension'. Two months after publication of the report, the Home Office and the Foreign & Commonwealth Office (FCO) announced a joint action plan to 'tackle the overseas dimension of forced marriage' (Home Office and FCO, 2000). This promised to create a dedicated community relations desk in the FCO's consular division, collate statistics, strengthen links with police forces overseas, and enable female victims of forced marriage to be seen by trained female members of staff in overseas consulates. In 2002, police guidelines were issued by the Association of Chief Police Officers (ACPO), the FCO and the Home Office (ACPO, FCO and Home Office, 2002). Among other recommendations, they stressed that relatives, friends, community leaders or neighbours should not be used as interpreters, and that no-one should be sent back to the family home against his or her wishes. Prior to this, police officers had tended to treat allegations of forced marriage as matters of internal domestic dispute; and instead of helping young people extricate themselves from family pressures, they had sometimes returned them to the 'protection' of their families.⁵

Such an outcome is now less probable. *A Choice by Right* had taken a somewhat ambivalent position on mediation, recognising its potential dangers and maintaining that it should be available for all who wished it. Subsequent guidelines reflect an increasing appreciation that involving the wider family or community can reduce protections for the individual. The police guidelines, for example, alert officers to the possibility that relatives may falsely accuse a missing family member of theft, thereby obtaining police assistance to locate a young person who has left home to evade a forced marriage. Guidelines for social workers stress that neither the family nor those with influence in the community should be approached unless the young person explicitly requests this, and that young people reported as missing should be interviewed in private to establish whether it is in their best interest to return home (FCO and Department of Health, 2003).

The most visible element of the government's initiative has been the creation of the Community Liaison Unit (CLU) in the FCO. As its location suggests, it deals with cases involving marriage between an individual settled in the UK and a spouse from overseas; and it has an annual caseload of more than 200 cases.⁶ In some instances, individuals contact the unit for assistance because they fear their family is planning to take them abroad for a marriage. As far as resources allow, staff arrange private interviews to talk through the issues, seeking either to dissuade them from joining the trip or, failing that, to ensure they are fully informed about

whom to contact for assistance. In other cases, the contact comes through a third party reporting a friend, family member or girlfriend who has travelled to the Indian subcontinent but not yet returned. The unit then seeks to contact the 'missing' individual, encouraging him or her to visit the local office of the British High Commission for a private interview with trained staff to establish whether there is indeed a problem. As the High Commission can arrange emergency passports and lend money for a flight back to the UK, this has proved reasonably effective.

When families obstruct this, what are sometimes referred to as 'rescue missions' may be organised. This has proved most feasible in India and Bangladesh, where staff of the local High Commission and/or local police have been able to provide an escort for suspected victims to enable them to participate in a private interview. Political conditions in Pakistan – particularly in the Mirpur area of Kashmir – have usually proved too dangerous for this, and the main alternative there has been to take out a writ of habeas corpus. This is a relatively well-established practice in cases of forced marriage in both Bangladesh and Pakistan (Hossein, 2001); where successful, it will lead to a court order requiring the family to produce the 'missing person' in order to establish whether he or she is being held against his or her will. Although this has been employed to good effect in cases involving UK nationals, it is inevitably a lengthier process; and as the majority of cases dealt with by the CLU involve Pakistan (currently around 70 percent), problems of access limit the unit's overall success rate.⁷ Nevertheless, it has now assisted in the repatriation of more than 100 young people.

The other major area of public intervention has been through domestic police work. One of the earliest initiatives was in Bradford – home to the second largest UK community of Pakistani origin – where community liaison work had increasingly focused on family conflicts within the Asian community. Many of these involved coercion into marriage. In the mid 1990s, retired police officer Philip Balmforth was appointed to a new post of Community Officer (Asian Families); his caseload (not all cases of forced marriage) has subsequently risen to 300 a year. As with the FCO initiative, the work is very literally focused on exit – directing people to alternative accommodation in refuges, housing associations or council flats, and often providing a protective escort to enable them to collect personal property from the family home before making their escape.

In 2001, the FCO and West Yorkshire police organised a three-day conference on the issue of forced marriage. Following this, the FCO funded a programme of information-sharing, visits and training between police forces in the UK, Pakistan, India and Bangladesh, with the aim of improving procedures for dealing with abductions of British nationals for the purposes of forced marriage. Officers from Bradford, South Yorkshire, the Metropolitan and Leicestershire police forces attended a police conference at the Punjab police academy in 2001; and West Yorkshire police have been particularly proactive in developing training programmes and exchanges with their equivalents in Pakistan.⁸ In a separate and particularly promising development in 2003, senior members of the UK and Pakistani judiciaries met in London to develop a protocol on international cases of child abduction.⁹

Three points stand out from these initiatives. The first is that they rely on a firm

distinction between arranged marriage and forced marriage. The reasons for this are obvious enough: it makes it easier to bring community leaders on board if they can be assured that government action is not directed against the practice of arranged marriage; it also helps discourage any presumption within the non-Asian communities that arranged marriage is suspect *per se*. Some such distinction is clearly necessary, but there are inevitably grey areas on the continuum between marriages imposed on young people against their will and those arranged on their behalf with their full consent.

The second point is that all the major advances revolve around exit – making it possible for individuals threatened with a forced marriage to remove themselves from the family coercing them, or easier to leave a forced marriage. There has been considerable work in this area, and the support now available is undoubtedly much improved. But however proactive the authorities, exit comes at a high price to the individuals concerned. In particular, when exit from a marriage equates too closely with exit from a family, this is a difficult route to take.

The third point is that the main focus of activity has been on marriages involving an overseas partner. The Home Office has no equivalent to the FCO's CLU for tackling instances of forced marriage between UK citizens; and despite the existence of a substantial Home Office unit dedicated to tackling domestic violence, it has not identified the violence of an unwanted marriage as a central concern. The resulting concentration on marriages involving overseas spouses feeds the view that all marriages arranged with overseas partners are suspect, and that all is well in the arrangement of marriages within the UK. Potentially, at least, it also encourages the use of immigration regulation as the main way of addressing the problem – hence the nostalgia in some quarters for the 'primary purpose' rule.

Forced/Arranged Marriage: A Fragile Distinction

The distinction between forced marriage and arranged marriage revolves around the notion of consent. In the policy literature, this is treated as a relatively straightforward matter: if the parties consent, the marriage cannot be described as forced. But in the (relatively few) cases of forced marriage to come before the English and Scottish courts, the dichotomy between coercion and consent has been approached in a more nuanced way. We discuss these cases here, not because legal remedies have figured large in the initiatives against forced marriage, but because there has been such a marked progression from an earlier – very restrictive – definition of duress to one that recognises the force of moral and emotional blackmail. On the later definition, many marriages currently regarded as arranged would more accurately be described as forced.

Before the early 1980s, petitioners seeking the annulment of a marriage had to establish they had entered it under duress, with 'duress' interpreted as 'reasonably held fear of physical harm'.¹⁰ This principle was established in 1971 in the influential case of *Szechter v. Szechter* [1971], where Sir Jocelyn Simon ruled that it was 'insufficient to invalidate an otherwise good marriage that a party has entered into it in order to escape from a disagreeable situation', and that the only grounds for nullity were when the will of one of the parties was 'overborne by genuine and

reasonably held fear caused by threat of immediate danger ... to life, limb or liberty'.¹¹ Although there have been occasions where parents hold children under virtual house arrest in order to coerce them into marriage, the pressure they exert is more commonly emotional than physical. On the Simon reading of duress, very few marriages would qualify as forced.

Thus, in the case of *Singh v. Singh* [1971], the Court of Appeal refused to grant a decree of nullity, arguing that there was no evidence of 'fear to life, limb or liberty', thus no evidence that the petitioner had not consented. The petitioner was a 17-year-old Sikh girl who went through a civil marriage ceremony but subsequently refused to confirm it through a religious ceremony or have anything to do with her husband. The judges decided that she would have been willing enough to continue with the marriage had the man in question been (as promised) handsome and educated. In what now seems an extraordinary trivialisation of her dilemma, they concluded that when she saw him for the first time 'she did not like what she saw' and therefore changed her mind after the ceremony. Despite her age, her obvious vulnerability to parental pressure, and the fact that the two young people had not met before the ceremony, this was accepted as a marriage based on free consent.

Although Simon's 'test' was still being cited in the early 1980s as the definitive reading of duress,¹² the case of *Hirani v. Hirani* [1983] marked an important new development. A 19-year-old Hindu girl had entered into marriage with a man previously unknown to her; in this case, she went through both civil and religious ceremonies but left the (unconsummated) marriage after six weeks. The court refused a decree of nullity. Her application was allowed on appeal, however, and the decision established a less restrictive definition of duress that no longer revolved around threats of physical violence. The woman's age and financial dependence on her parents were taken as relevant factors, and the fact that the parents had arranged the marriage in order to prevent their daughter's association with a young Muslim man was taken as clear enough indication that she was an unwilling participant. The court concluded that the crucial question was not whether she was in genuine fear of her life or liberty, but 'whether the mind of the applicant (the victim) has in fact been overborne, howsoever that was caused'. The case was described as 'as clear a case as one could want of the overbearing of the will of the petitioner and thus invalidating or vitiating her consent'.

The courts have since worked with this new test, and subsequent cases have further extended its remit. In *Mahmood v. Mahmood* [1993], one of a number of important judgements from the Scottish courts, the parents had threatened to cut off financial support and send the young woman to live in Pakistan if she refused to go ahead with the marriage. She was only 21 at the time and working in her parents' shop; as both her elder sister and brother had already been disowned after refusing arranged marriages, the threats must have seemed very real. Rejecting the notion that it was necessary to establish fear of physical violence, the judge noted that these 'could be regarded as matters which could have overridden the will of a girl of her age and cultural background'. Subsequently *Mahmud v. Mahmud* [1994] established that a 30-year-old man, living apart from his family and not financially dependent on them, could still have his consent 'vitiating by pressure

amounting to force' – in this case, by being made to believe that his persistent refusal to marry had brought about his father's death and was bringing shame and degradation on his family.¹³ The judge argued that in cases of moral pressure there was 'no general basis for expecting the male to be stronger than the female or the thirty-year-old to be less swayed by conscience than the twenty-four old', and a decree of nullity was granted. By this point, the restrictive definition of duress as involving threats to life, limb or liberty was very clearly a thing of the past, moderated first by considerations of age, sex and financial vulnerability, and later by a broad appreciation of the moral pressures parents can bring to bear on their children, even when the children are of mature age. Whether a marriage was consummated or not has also not been held as decisive (*Sohrab v. Khan* [2002]).

Through all these changes, judges have continued to insist that their rulings imply no critique of *arranged* marriage – reiterating the now conventional distinction between arranged marriage (fine) and forced marriage (bad) – and have gone to what might seem extreme lengths to stress that they are not challenging parental authority. The judgement in *Mahmood v. Mahmood* included the statement that 'even reluctant consent will suffice provided the consent is genuine', whereas in *Mahmud v. Mahmud* it was said that there was no general basis for the view 'that arranged marriages involve an inherently "forceful" imposition of the parents' will' and that 'if under pressure – and perhaps very considerable pressure – a party does indeed change his or her mind and consents to the marriage *with however ill a grace and however resentfully*, then the marriage is in my opinion valid' (emphasis added). These qualifications regarding 'reluctant' or 'resentful' consent raise a host of further questions that we have no space to pursue here.¹⁴ It is clear, however, that the definitions of duress now being employed in the courts mean that many marriages currently regarded as arranged could more properly be described as forced.

Research has long indicated a generation gap within South Asian families over the practice of arranged marriage. In a 1983 survey, 81 percent of South Asian parents, but only 58 percent of their children, agreed that 'arranged marriages still work well within the Asian community and should be continued' (Anwar, 1998, p. 108). This difference of opinion is reflected in a declining proportion of marriages where the parents make the final decision. In the last major survey of ethnic minorities, carried out in the mid-1990s, the overwhelming majority of older Hindu, Sikh and Muslim respondents reported that their parents had decided their marriage partner (Modood *et al.*, 1997, p. 317). Among those under the age of 35, the only group for whom this remained the majority experience was Muslim women, where 67 percent still reported a parental decision. The change has been most dramatic among Hindu and Sikh women: 86 percent of Sikh women over the age of 50, but only 27 percent of those under 35, said that their parents had decided their marriage partner; and 74 percent of Hindu women over 50, but only 20 percent of those under 35, said that their parents had made the decision. (Interestingly, 41 percent of younger Sikh men, 18 percent of younger Hindu men and 49 percent of younger Muslim men said that their parents had made the decision.) All commentators agree that the nature of arranged marriage is changing, with increasing input from the prospective partners in the marriage decisions (Samad and Eade, 2002; Bhopal, 1999; Stopes-Roe and Cochrane, 1990). In an earlier model, parents

and other family members determined both when marriage was appropriate and who was the appropriate spouse; nowadays, young people will often make the selection from a shortlist of approved candidates, or they may choose the future partner themselves and then wait on parental approval.

The question remains: what of those marriages where parents make the final decision? The usual presumption is that such marriages still count as arranged: young people are not being dragged kicking and screaming to the marriage ceremony; no-one suggests that two-thirds of young Muslim women are being *forced* into marriage; and in many cases, the young people may genuinely feel that their parents' judgement is better than their own. The women interviewed by Kalwant Bhopal in East London described marriages in which their parents chose the partner as arranged, rather than forced (1999, p. 121). Yet when we consider their comments – 'if a girl says no, it's really considered a bad thing', 'you just have to go along with it ... if you didn't there would be just hell to pay from your parents and all your relatives' – it is clear they saw themselves as having minimal power to refuse. They certainly felt that it was harder for a young woman than a young man to resist parental pressure, and that a daughter who refused too many prospective partners would seriously undermine her parents' standing in the local community. In similar vein, the young Punjabi women interviewed in Glasgow were all either in an arranged marriage or anticipating what they described as an arranged marriage; yet when refusing such a marriage means that 'you're literally cutting yourself off from the whole Asian culture', as one of them put it, the pressures to agree are clearly enormous (Bradby, 1999, p. 157). On the interpretation of duress now being employed in the English and Scottish courts, many of these marriages might appear non-consensual.

Our object here is not to query the legitimacy of arranged marriage. At one level, arranged marriage is not so different from 'romantic' marriage, for in both cases, people tend to pair off with partners from the same social and cultural background. The research that parents carry out on potential partners may well prove a better guide to future compatibility than the more haphazard mechanisms of dating; and the expectations attached to arranged marriage may be more realistic than those associated with 'romantic' marriage. The deference towards arranged marriage – reflecting the 'working with the communities' aspect of current policy – is not in itself problematic. But when public authorities make the arranged/forced distinction so central to their initiatives, they prove to be less sensitive than the courts to the complexities surrounding consent.

One effect is to divert attention from the more routinised and hidden forms of parental control that do not involve the dramas of imprisonment or abduction. Information on the incidence of forced marriage between people settled in the UK is sparse; and as long as public authorities are more proactive in dealing with cases of transcontinental coercion, there will continue to be an imbalance in the available information. In the event, the imbalance may be justified: it may be that young people are more reluctant to accept the family's choice when the proposed partner comes from outside the country (Samad and Eade, 2002, pp. 81–97). It may then be that 'arranged' marriages involving overseas partners are the ones most likely to become forced. At present, however, this is largely a matter of assumption. As

long as the institutional initiatives continue to focus primarily on transcontinental cases, and the arranged/forced distinction continues to underplay the complexities surrounding consent, those coerced into marriage within the UK will remain less visible and less adequately protected.

The Limitations of Exit

Conundrums regarding choice and consent figure heavily in the literature on exit. In the most austere versions, a person can be said to have chosen a particular way of life if he or she fails to take up the option to leave it. On this reading, all the marriages discussed above would count as consensual, as all concerned could have refused. The cost of refusal may have been high – loss of income, loss of home, loss of parental approval – but then few decisions are costless. Kukathas (2003, p. 107) cites the imaginary example of the CEO who is offered a billion dollars not to leave his present employment; his exit is thereby rendered extremely costly, but it would be odd to say he was ‘no longer free to leave’. Faced with the more commonplace example of the woman who knows there will be ‘hell to pay’ if she refuses a proposed marriage, Kukathas would presumably regard this as coercion if the anticipated hell involved physical violence, but otherwise as just a high price to pay. His notion of free consent is closer to that of the courts circa 1971 than to their practice in the present day.

The question of what makes the exit option real has exercised virtually everyone involved in work around forced marriage in Britain. The lack of alternative accommodation for young people fleeing family pressure is one pressing concern, as is the more specific difficulty of locating refuges that appear welcoming to young Asian women.¹⁵ Young women brought into the UK as spouses face particularly severe difficulties, for if they attempt to leave the marriage before they have been granted indefinite leave to remain, they will not qualify for most forms of public funding.¹⁶ As they must live in the UK for at least two years before becoming eligible to remain in their own right, this sets a dauntingly high barrier against leaving a forced marriage. Recognising the danger that women will be compelled to stay in an abusive marriage rather than risk deportation, the ‘domestic violence rule’ now allows a woman who can prove the breakdown of her marriage through domestic violence to be granted indefinite leave. The standard of proof, however, is high (the abused wife has to take out an injunction or establish that her husband has been convicted in court or issued with a police caution); and even after less stringent rules were adopted in 2002, the concession has had limited success.¹⁷ Women applying under this concession still have no recourse to public funds until their immigration status is resolved, and they may well have no-one to turn to for help with temporary accommodation or financial or emotional support.

On Kukathas’s austere understanding of freedom, anyone who felt so overwhelmed by these odds that he or she ‘preferred’ to go along with the family’s choice of spouse or ‘chose’ to stay with an abusive spouse could not be considered a victim of coercion. Those who succumb to less material pressures are even less likely to qualify, as they had the chance to say no at a number of points along the way. In cases where individuals who are settled in Britain are being pressured to

accept a spouse from overseas, they can refuse to join the family on the overseas trip; if they give in to that pressure, they can later refuse to participate in the marriage ceremony; if they give in to that, they still have the option of refusing to sponsor the entry of their new spouse on their return to the UK. Many do extricate themselves at this last hurdle,¹⁸ but at every point along the way the refusal to cooperate can spell open rift with the family. The emotional costs of exit bear heavily on individuals. As long as families remain convinced that the marriage they have arranged is in the best interests of their children, and children remain (understandably) unwilling to break off their family ties, many young people will continue to succumb to moral pressure and 'consent'.¹⁹ And when kidnapping to enforce a marriage typically carries a prison sentence of six months to three years, few of the young people will want to pursue a prosecution against their families.²⁰

The judgement in a recent wardship proceedings (*Re M Minors* [2003]) makes the point particularly forcefully. The case involved two orphaned girls of Pakistani origin – 13 and 15 years old at the time of the hearing – who had been taken back to Pakistan after the death of their father and had seemingly gone through betrothal ceremonies there. Intervention by the FCO resulted in their repatriation to the UK, where they were placed with a foster carer. Noting that their expressed wishes (presumably to return to where they had been living in the UK) could put them at serious risk of harm, the judge directed the local authority to consider an application for a care order. He commented that agencies concerned with forced marriage were doing their best to offer 'effective exit', but that it was important to follow this through so that vulnerable young people 'are not left high and dry if they decide to take what for many of them is the irrevocable step of electing to withstand family pressure or traditional or cultural expectations':

As a society, we have become increasingly aware of the need to preserve the individual's ability to make effective choices, and to safeguard the integrity of a child or young adult from the risk of marriages forced or imposed upon them by undue pressure and sometimes by violent threat. But we are, I think, only now learning fully to appreciate how traumatic it is for such vulnerable young persons to find themselves effectively confronted with the choice between remaining in what may have become in the broadest of terms an abusive family situation, or of escaping from it on a basis which may not permit bridges to be rebuilt thereafter. Such choices certainly involve a very considerable degree of emotional trauma, and all the other alienating consequences which may flow from exclusion from all of the adolescent's or young adult's most important cultural, social and religious links and heritage. The choices for those who choose to accept help are often limited as well as stark.²¹

The further consideration is that while the support services now being developed make it easier for people to extricate themselves, they do not dissolve the pressures that continue to generate a worrying number of cases. Unless combined with some way of addressing underlying causes, the project remains of Sisyphean proportions. There is no indication that the incidence of forced marriage is falling, and much to suggest that it is the experience of living in contemporary Britain (rather

than a 'tradition' left over from a different context) that keeps it alive. In particular, parents faced with what they see as their children's wayward behaviour may become more (rather than less) keen to arrange a marriage with a 'suitable' spouse from the Indian subcontinent, as they may come to see this as the only way to halt the corrupting influence of Western culture. This was certainly part of the background in the case of KR, whose elder sister had already left home to live with what her parents considered an unsuitable partner. In other instances, parental worries about their children getting involved with the 'wrong' kind of people (perhaps from a different religious or ethnic group) have been the trigger that started them on the search for a 'good' marriage partner. In their report on attitudes towards forced marriage among Bangladeshis in East London and Pakistanis in Bradford, Samad and Eade comment that 'The knee-jerk reaction to young men's involvement in drug use and petty crime or young women forming illicit liaisons is to get them married and thereby, hopefully resolve the problem' (2002, p. 67). If, as this suggests, the social and sexual control of their children is one of the main reasons why parents will force them into a marriage with unknown partners from overseas, this is not so obviously something that will die out in another generation. On the contrary, we might anticipate increased inter-generational conflict, with fewer young people willing to accept their parents' judgements about prospective marriage partners, and more parents willing to employ coercion.

Forced Marriage and Immigration

Our third point is that public policy has focused almost exclusively on cases involving transcontinental marriage. The key measures are situated in the FCO or the Home Office's Immigration and Nationality Directorate; there is no monitoring of cases between two people settled in the UK; and no unit comparable to the FCO's CLU in the Home Office or elsewhere. The focus on overseas spouses means that initiatives to tackle the undoubted harm of forced marriage get caught up in a potentially racist immigration debate.

Arranged marriage is contrasted on the one hand with the abuse of forced marriage and on the other with the abuse of 'bogus' or 'sham' marriage entered into in order to secure entry to the UK. By a familiar error in logic, this promotes the notion that forced marriage arises primarily in cases of bogus marriage, and that the most effective way of reducing the incidence of the first is to reduce the number of people marrying overseas spouses. One consequence is a perception within Britain's South Asian communities that the real purpose of the forced marriage initiative is to keep people out of the UK. Samad and Eade found that 'a legacy of suspicion ha[d] developed' and that older people, in particular, saw the underlying motivation for tackling forced marriage as 'a desire to halt the immigration of spouses' (2002, p. 105).

Although there is little justification for this suspicion in the work of the CLU (whose staff have repeatedly stressed that forced marriage is a human rights issue, not an immigration issue), it remains difficult to separate the forced marriage initiative from immigration policy. The rules controlling family reunion have become one of the main means of regulating the number of people settling in the UK – rules

regulating asylum seekers are another – and immigration regulations have been altered a number of times since the 1960s to reduce the right to bring fiancés and spouses into the country (Bhabha and Shutter, 1994). As already noted, these restrictions are overwhelmingly directed at minority ethnic citizens.

The suspicion that governments are using the forced marriage initiative to pursue an immigration agenda may or may not be justified; the obverse of this – that governments use immigration control to address the ‘problem’ of forced marriage – is undoubtedly true. Denmark, for example, recently amended its Aliens Act to make it impossible to employ principles of family reunification to bring in overseas spouses or cohabitantes when either party is under 24 years old.²² The legislation is framed in race-neutral terms, applying to everyone except citizens of the EU and other Nordic countries, and thus potentially catching in its net Danes seeking to bring in partners from Canada or the US as well as those seeking to bring in partners from Africa or Asia. But there is little doubt that it is intended to reduce the incidence of forced marriage, as indicated in an open letter from the Ministry of Integration to leading women politicians from France, Belgium and Sweden (who had raised criticism of the new legislation):

The amendments must be seen above all to reflect our desire to ensure that those who settle in Denmark have the optimum opportunities to do so in terms of integration. The amendments also reflect our intention, formed on the basis of a dialogue with Danish immigrant organisations, among others, to reduce the occurrence of forced marriages.²³

This is a peculiarly draconian response to the incidence of forced marriage that simultaneously infantilises ethnic minority women (because it presumes they cannot assert themselves until their mid-twenties) and makes it difficult for them to enter a consensual marriage with an overseas partner until they are well past what that partner might regard as marriageable age. What is effectively a minimum marriage age of 24 for anyone seeking an overseas partner works to discourage the practice of arranged marriage with partners from a country of origin and to encourage all residents of Denmark to adopt the higher marriage age that is the norm there. There is an uncomfortable element of cultural arrogance here: an assumption that it would be better all round if people dropped their connections with their countries of origin and abandoned the misguided preference for earlier marriage.

There are echoes of the Danish ‘solution’ in recent changes to immigration rules in the UK. From 1 April 2003, UK citizens under the age of 18 are no longer permitted to act as sponsors for the entry of overseas spouses; they can still get married at 16, but if the partner comes from outside the EU they will have to wait two years before sponsoring his or her entry visa. The rationale is to protect the youngest and most vulnerable from coercion, the (not unreasonable) presumption being that an 18-year-old is in a better position to resist family pressures than a 16-year-old.²⁴ Families are less likely to impose marriage on a 16-year-old when there is no prospect of family reunification for a further two years; and if they do still ‘persuade’ someone to marry at an early age, there is more of a chance of resisting the pressure to support the spouse’s entry application if the occasion for this does not arise until he or she is older. This is a ‘regulation’ rather than ‘exit’ response to the problem of forced marriage.

From Exit to What?

Faced with evidence that significant numbers of young people are being forced into unwanted marriages each year, there are essentially three things public authorities can do. First, they can *regulate*, either by introducing new legislation to criminalise the practice (this is being pursued in France but was not deemed necessary in England and Wales) or by a very specific form of immigration control. In most of the versions currently discussed, the incidence of forced marriage is to be reduced by curtailing all marriages with overseas partners, usually by raising the age at which overseas spouses can enter the country.

The regulation approach is problematic in a number of ways. It falsely equates overseas marriage with forced marriage, thereby implying that young people are always unwilling participants in marriages involving overseas partners and that families only set up these marriages in order to facilitate access to the UK. In effect, if not in letter, it discriminates against ethnic minority citizens, for even when the regulations are framed in race-neutral terms, the main consequence is to reduce the incidence of marriage with spouses from Africa or Asia. It is also counter-productive, as it threatens to confirm the not-so-latent suspicion in Britain's South Asian communities that the forced marriage initiative is driven by a racist immigration agenda. This makes it that much harder for other initiatives to secure their trust.

The second option is to concentrate on *exit*. This has been the main focus of activity in Britain; and at one level this can hardly be faulted, as it meets an urgent and immediate need. But exit only works up to a point. It leaves too many individuals with what they perceive as no choice, for when the alternatives are between rejecting an unwanted marriage partner or being rejected in turn by one's family (and as many experience it, then having to abandon one's religious or cultural identity), the costs are set almost impossibly high. It is too cavalier in this context to say that no decision is costless, and only minimally helpful to say that families should not be behaving in this way. Ayelet Shachar comments that the 'right of exit' offers a case-by-case approach that imposes the whole burden of resolving conflict on the individual, and she contrasts this with a more comprehensive policy that would begin to address the power relations that continue to generate the individual cases (2001, p. 41). There are strong echoes of this in the current approach to the problem of forced marriage in Britain.

The third option is *dialogue* – or working with the communities involved. As a way of addressing the underlying power relations, this has to figure large in any long-term solution, particularly if (as we have suggested) the social pressures promoting both arranged marriage and forced marriage are likely to persist. There has to be a shift of power within the families and communities practising arranged marriage, so that young people refusing a marriage partner no longer face an unbearable weight of parental disapproval, and families are no longer shamed within their communities if their young people continue to refuse. This may involve a lengthy process of inter-generational social change, but without some such shift it is hard to see how the problem of forced marriage can be fully addressed. Exit works too much after the event; there has to be something that addresses the underlying causes.

Given this, it is perhaps surprising that the dialogue approach has not figured more centrally in UK initiatives against forced marriage. It is there, of course, in the consultations with community groups that fed into the deliberations of the working group on forced marriage; it features in the palliative words about arranged marriage; and it is reflected in a number of recent conferences aimed at mobilising religious and community leaders to convey the message that all marriages must be based on consent.²⁵ But as we have charted, all the really significant developments have been in relation to exit; and much of the success story around forced marriage has come through challenging a previously over-deferential attitude towards cultural spokesmen and making the protection of young people (not the 'protection' of their communities or culture) the overwhelming priority. Against the background of an increasingly vocal repudiation of 'multiculturalism' – at the moment of writing, the UK, Denmark, the Netherlands and France spring to mind – alternatives that involve working more closely with communities or community leaders seem unlikely to gain much favour. If exit fails, it is then more probable that regulation, not dialogue, will emerge as the favoured approach.

This is one of those uncomfortable moments when feminists criticising multiculturalism find themselves in unwanted company. Feminists have registered both caution and direct opposition towards working with community *leaders*, noting that this often means working with the more conservative elements within a community; and they have commonly criticised the way notions of 'the community' operate to disguise internal differences and disputes. The object, usually, has been to encourage a more diverse understanding of each so-called community and to enable a wider range of individuals and groups – including women and young people – to articulate 'community' concerns (see, for example, Benhabib, 2002; Shachar, 2001). But with multiculturalism in general on the defensive, these specifically feminist concerns could be swept aside in a broader repudiation of cultural diversity. The exposure of authoritarian parents and their community and religious allies could then be employed as part of a more arrogant assertion of the 'superior' norms of the majority group.

As we have argued in this paper, exit is limited: it is not an option for everyone and it addresses the effects rather than the cause. But given the kind of transformation in inter-generational power relations that may be necessary to address the causes, and the reservations (feminist and otherwise) about making 'communities' the object of public policy, there is a danger that governments will seek to short-circuit the process through the quick-fix of immigration control. To put this starkly, they may seek to eliminate what they have come to regard as a primarily transnational problem of forced marriage by the simpler process of eliminating transnational marriage itself.²⁶

The risk of this is much heightened when all the most visible policy initiatives focus on people forced into transcontinental marriages, as this inevitably encourages the association between forced marriage and overseas spouse. The comparatively hands-off approach to domestically contracted forced marriages might be in deference to 'working with the communities' – illustrating, therefore, the very difficulties that surround this approach – or it might be a more accidental result of FCO staff taking higher profile action than their counterparts in the Home Office. But

the effect is to feed the perception that marriage with an overseas spouse is primarily a back-door route to UK citizenship, while offering fewer protections to people coerced into marriage within the UK. At this point, the circle becomes pretty vicious. The more emphasis there is on controlling forced marriage by controlling the number of overseas spouses (this is already the case in public rhetoric, and potentially in public policy), the less chance there is of building alliances within beleaguered communities; the more suspicion there is of public authorities, the less chance of anything beyond either exit or regulation.

As one corrective to this, we have suggested that the incidence of forced marriage needs to be more thoroughly detached from cases involving overseas partners, and that this implies more attention to the arranged/forced marriage divide. The more general point is that while initiatives enabling exit are crucial, they are also inherently limited, and need to be combined with other developments that will help processes of internal community change. Obvious and predictable difficulties surround this last, for if the emphasis is on conciliating community spokesmen in order to get them to pronounce against forced marriage, there is a risk that the conciliation becomes capitulation to conservative norms; whereas if the emphasis is on funding groups that act for the victims of forced marriage, there is a risk of alienating the more traditional community representatives. But these difficulties cannot be taken as a reason for inaction. They remind us, rather, that more attention needs to be devoted to the question of who speaks for any particular community, and more care given to identifying representative voices that reflect the full diversity of views.

One reading of current policy in the UK is that the very real difficulties in achieving this have encouraged a preference for the relative simplicities of either exit or regulation over the complexities of the dialogue approach. So far, exit has won out – with some very good results. Given its inherent limitations, however, it seems likely that attention will increasingly shift to regulation, probably through increased restrictions on the age of marriage with overseas partners. If this happens, it will be widely viewed as a covert form of immigration control; and the chances of internal social change will be correspondingly reduced.

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Appendix: Cases

A v. J (Nullity Proceedings) [1989] 1 FRR 110

Hirani v. Hirani [1983] 4 FLR 232

Mahmood v. Mahmood [1993] SLT 589

Mahmud v. Mahmud [1994] SLT 599

- R v. Ahmed Shah Moied and Others* [1986] 8 Cr. App. R (S) 44
- R v. Ghulam Rasool* [1990–91] 12 Cr. App. R (S) 771
- R v. Sakina Bibi Khan and Mohammed Bashir* [1999] 1 CR. App. R (S) 329
- R v. Shazad, Shakeela and Iftikhar Naz* (1999) Nottingham High Court
- Re KR (A Child) (Abduction: Forcible Removal by Parents)* [1999] 2 FLR 542
- Re M Minors (Repatriated Orphans)* [2003] EWHC 852
- Singh v. Kaur* [1981] 3 February 1981
- Singh v. Singh* [1971] 2 All ER 828
- Sohrab v. Khan* [2002] SCLR 663
- Szechter v. Szechter* [1971] 2 WLR 170

Notes

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- 1 The notion that marriage should be based on consent is common to all the major religions, though there are some grey areas about who does the consenting. For example, the Hanafi school of Muslim personal law regards the marriage of an adult Muslim as void if either party did not consent. In the case of a minor, the consent can be provided by the child's guardian; however, this has to be ratified by the child when he or she reaches puberty, at which point it becomes possible to repudiate the marriage. See Hossein (2001).
- 2 Debates available at www.parliament.the-stationery-office.co.uk/pa/cm/cmhansrd.htm. See, for example, debates on Human Rights (Women) on 10 February 1999, Women and Development on 30 March 2000, Women and Equality on 14 March 2002, International Women's Day on 6 March 2003 and Women, Equality and Human Rights on 4 March 2004. There has been a substantial increase in the parliamentary time devoted to debates on forced marriage and female genital mutilation since 1997.
- 3 *R v. Shazad, Shakeela and Iftikhar Naz* (1999); *Re KR* [1999]. The plight of 'Jack' and 'Zena' Briggs was reported in several newspapers and was also referred to by Ann Cryer MP in the Commons debate on Human Rights (Women) on 10 February 1999.
- 4 *Independent* (1998a, b). On 12 July 1999, a BBC *Newsnight* report interviewed a British High Commission official in Islamabad who said he felt powerless to intervene when girls are forced to bring husbands into Britain. The programme suggested that the problem was that Labour had scrapped the 'primary purpose' rule as one of its first acts in order to 'appease the sensitivities of Britain's ethnic communities'.
- 5 *Re KR* [1999] was one classic illustration of this. In weighing the allegations of the parents (that KR had been kidnapped by her elder sister) against the allegations of the sister (that KR had moved in with her sister to avoid being forced into marriage in India), the police had sided with the parents and returned the young girl to her father's custody. At this point, she was abducted and taken to India.
- 6 Much of the information on the work of the CLU draws on an interview with Heather Harvey, FCO, 3 April 2003.
- 7 The distribution of cases is around 70 percent from Pakistan, 20 percent from Bangladesh, 9 percent from India and the remainder from a range of other countries (interview with Heather Harvey, FCO, 4 April 2003).
- 8 Interview with Inspector Martin Baines, Bradford, 9 May 2003.
- 9 Dame Elizabeth Butler-Sloss (president of the family division of the High Court of England and Wales) and The Hon Mr Justice Sh. Riaz Ahmad (chief justice of the Supreme Court of Pakistan) signed a UK/Pakistan Judicial Protocol on child abduction and forced marriage cases in January 2003 (FCO

press release, 17 January 2003). Agreed guidelines were signed at a second judicial conference held in Islamabad in September 2003.

- 10 The other route has been non-consummation of the marriage. But petitioners then have to establish their physical or emotional incapacity – either a medical incapacity or an ‘invincible repugnance’ – and are unlikely to win the case if they are felt only to be unwilling to have sex with their spouse (*Singh v. Singh* [1971]). Alternatively, a petitioner may win a grant of nullity on the grounds of the other party’s ‘wilful refusal to consummate’ (*A v. J* [1989]). Marrying and then changing your mind is seen as a matter for the divorce courts, not for nullity proceedings.
- 11 This was not a marriage arranged by parents against the wishes of their children, but a marriage of convenience entered into in order to help extricate the wife, who was in poor health, from a prison in Poland where she was being held for anti-state activities. After her release, both parties moved to England where the ‘wife’ petitioned for a decree of nullity. The point of the ruling was that the decree could not be granted simply on the basis that this was a marriage of convenience, entered into for other purposes. It was, however, granted on the basis of a reasonable fear of threat to life, limb or liberty.
- 12 *Singh v. Kaur* [1981] involved a 21-year-old Sikh man who had been pressured into marriage with threats of being forced to leave the family business and of exposing his entire family to disgrace. Dismissing his petition for nullity, the appeal court judge said that ‘it would be a very serious matter if this court were ... to water down Sir Jocelyn Simon’s test’.
- 13 The man had been living for some years with a non-Muslim woman, with whom he already had one child and was expecting another, and the cousin brought over from Pakistan for the marriage had already been deported by the immigration authorities at the time of the case.
- 14 For a fuller discussion of the philosophical issues surrounding consent, see Phillips (forthcoming).
- 15 Bradford has an exemplary unit (purpose-built by the Manningham Housing Association) that caters for Asian women with children. Unusually, it will take in women who do not have indefinite leave to remain, and will finance their costs out of its own funds. Not surprisingly, there is a waiting list.
- 16 ‘If the young person has not got indefinite leave to remain, exceptional leave to remain or a right of abode in the UK then they are likely to have a restriction on receiving public funds. Public funds include income support and housing benefit. This means that they will not automatically get access to a refuge (though some refuges will offer places). As a result individuals may experience tremendous difficulty in finding alternative accommodation and a means by which to live. This may lead individuals to feel they have no option but to remain in the marriage and to feel unable to co-operate with social services or anyone they see as being in “authority”’ (FCO and Department of Health, 2003).
- 17 Pieces of evidence that are now deemed acceptable are a medical report from a hospital doctor, a letter from a GP, an undertaking to a court, a police report, a letter from social services or a letter from a women’s refuge (Immigration and Nationality Department press release, 26 November 2002). However, applicants need two pieces of evidence if they do not have one of those specified under the original concession, and the Women’s Aid Federation (2002) reports that the success so far has been limited.
- 18 ‘Women come to us and say they are being sent on ‘holiday’ or they have been told to visit their grandmother who is dying, and they worry that there is an arranged marriage waiting for them. We advise them to go through with it if they have to but to make a note of their new husband’s visa application when they are interviewed at the High Commission in Islamabad. Then, when they get home, we tell them to write to the authorities telling them that the application is based on a forced marriage. It is sad that we have to use what we have always viewed as racist legislation to keep these men out, but it is vital that we protect these women’s basic human rights. I reckon hundreds of unwanted husbands have been kept out like this. Officials in Islamabad said they do try to interview women separately from husbands’ (Shamshad Hussain of Keighley Women’s Domestic Violence Forum, quoted in *Independent*, 1998c).
- 19 Or they may successfully resist but later find themselves under pressure again. The CLU reports a number of instances where young women were successfully returned to Britain but later reappeared on the case-books with yet another impending marriage.
- 20 When Ghulam Rasool, for example, was charged with kidnapping his step-daughter in order to prevent her marriage to a non-Muslim, the young woman said in court that she was reconciled with her family and wanted neither her step-father nor his co-accused to be prosecuted. In the event, her step-father was sentenced to two years imprisonment, her mother was given a conditional discharge, and her brothers were ordered to perform community service. Rasool’s sentence was confirmed on appeal. *R v. Ghulam Rasool* [1990–91]. In *R v. Sakina Bibi Khan and Mohammed Bashir* [1999], the mother was sentenced to six months and the father to two years, though the father’s sentence was reduced to one year on appeal. In *R v. Ahmed Shah Moied* [1986], where a young Asian woman was kidnapped in order to force her to return home, the sentences ranged from six months to three years.

- 21 Mr Justice Peter Singer, *Re M Minors* [2003] EWHC 852. Singer was also the judge in the important case *Re KR* [1999].
- 22 The minimum age before 3 June 2000 had been 18; at that point, new regulations came into force that abolished the automatic right to family reunification for spouses aged 18–25 and replaced it by a discretionary right that depended, among other things, on establishing that the marriage was ‘undoubtedly contracted at the resident person’s own desire’. The Aliens (Consolidation) Act 2002 eases up a bit on age (24 instead of 25) but significantly reduces the scope for discretion. Other elements of the new legislation include a requirement that the spouses’ aggregate ties with Denmark must be stronger than their aggregate ties with another country.
- 23 Open letter to Ms Mona Sahlin, Ms Laurette Onkelinx and Ms Elisabeth Guigou, from Henriette Kjaer and Bertel Haarder, Danish Ministry of Refugee, Immigration and Integration Affairs (<http://www.inm.dk/index/dokumenter>).
- 24 Ann Cryer MP, who was primarily responsible for this change, had hoped to persuade the government to raise the age for sponsored spouses as well, but she says this proposal was blocked by the FCO. Her initiative on this was partly inspired by the Danish example, and she believes that raising the age for both sponsoring and sponsored spouses to 21 would be the best solution. Interview with Ann Cryer, 26 June 2003.
- 25 For example, ‘An Insight into International Parental Child Abduction and Related Issues’, organised by the Islamic Foundation and Reunite International in Leicester in January 2003. The Northern Circuit Domestic Violence Group, in conjunction with bodies including West Yorkshire police, the Home Office and FCO, has held conferences in Blackburn, London and Bradford on issues of domestic violence in Britain’s Asian communities.
- 26 This was hinted at in 2002, when the government introduced its white paper on immigration and citizenship. Alongside a number of revisions to immigration procedures and proposals on citizenship rights, it slipped in (under a section dealing with bogus marriages) a call for ‘discussion to be had within those communities that continue the practice of arranged marriages as to whether more of these could be undertaken within the settled community here’ (Home Office, 2002, para. 32). Introducing the paper in parliament, Home Secretary David Blunkett chose to highlight this by reference to the young women trapped in unhappy marriages with partners from a different culture. The emphasis, at this point, was clearly on dialogue – discussion within the communities – but the message was that marriages across continents were in themselves undesirable.

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