



JUDICIARY OF
ENGLAND AND WALES

MR JUSTICE MUNBY

SEMINAR ON FORCED MARRIAGES: LAW, RELIGION AND PRACTICE

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The President has explained the difference between an arranged marriage and a forced marriage. I agree, and would like to emphasise the point.

Arranged marriages are perfectly lawful and are not, of course, in any way to be condemned. On the contrary, arranged marriages are to be supported as a conventional concept in many societies. And for that very reason they are, I emphasise, not merely to be supported but to be *respected*.

Forced marriages, in contrast, are utterly unacceptable. A forced marriage is a gross abuse of human rights. It is a form of domestic violence that dehumanises people by denying them their right to choose how to live their lives. It is an appalling practice. No social or cultural imperative, no pretended recourse to religious belief, can possibly justify forced marriage.

The courts must, and will, use all their powers to prevent forced marriage and to protect the victims of forced marriage. The courts will not hesitate to use every weapon in their protective arsenal if faced with what is, or appears to be, a case of forced marriage.

Where the court is able to intervene in time it will make orders preventing the celebration of the 'marriage' and, where appropriate, preventing the victim being taken abroad for the purpose of being married. Where the victim has already been taken abroad the court will make orders designed to ensure the victim's repatriation to this country. After repatriation further protective orders may be needed to prevent further attempts at forced

marriage or to protect the victim from the risk of victimisation or retaliation at the hands of her or his oppressors

If the court cannot intervene in time to prevent what Mr Justice Singer has aptly described as these “gross transgressions of an individual’s integrity”, then, as he went on to say, the court must attempt, wherever possible, to remedy their consequences. The primary remedy is, of course, a suit for nullity. I emphasise: a suit for nullity, not a suit for divorce.

This far I have been describing the remedies which the family courts – the Family Division of the High Court – have been developing in recent years. But it must be recognised that forced marriage almost invariably involves the commission of very serious criminal offences by those who participate in the arrangements. Following extensive consultation, the government decided not to invite Parliament to make a specific criminal offence of ‘forcing someone to marry’. But the fact is that the criminal law already provides protection from and punishment for the crimes that may be committed when forcing someone into a marriage, whether in this country or abroad. Depending on the circumstances, perpetrators and those who assist them may be guilty of such offences as kidnapping, child abduction, false imprisonment, assault, battery and other more serious offences of personal violence, threats to kill, various public order offences, harassment contrary to the Protection from Harassment Act 1997, child cruelty, blackmail and rape. This list, I emphasise, is by no means exhaustive.

Finally, and quite apart from any criminal sanctions, forced marriage will also expose the perpetrators to civil remedies for such wrongs as trespass to the person and false imprisonment. And damages may also be recoverable under the Protection from Harassment Act 1997.

Much therefore had been done by the judges of the Family Division to provide effective remedies against forced marriage. But gaps remained in the law. The first, was that much of the protection which a victim of forced marriage might need could be given only by the High Court – the local County Court had very limited powers to assist. Secondly, it was doubtful if the High Court could attach a power of arrest to an order enabling the police immediately to arrest someone who had breached the court’s order. This power of arrest has proved to be an invaluable – indeed essential – weapon in the fight against domestic violence, and a similar weapon is likewise essential in the fight against forced marriage.

Concerns such as these led Lord Lester of Herne Hill QC, the well-known and highly-regarded human rights lawyer, to introduce a Private Member's Bill in the House of Lords seeking not to criminalise forced marriage but to provide better civil remedies. His Bill received strong and unanimous support from members of the House of Lords representing every political party and every section of the community. It was then taken up by the Government, becoming a Government Bill which eventually became the Forced Marriage (Civil Protection) Act 2007 on 26 July 2007. It came into force on 25 November 2008. It is an important social reforming statute of power and humanity, protecting the basic right to marry by choice.

The Act defines a forced marriage as a marriage "without ... free and full consent" and explains that to "force" includes to "coerce by threats or other psychological means." It enables the County Court as well as the High Court to make what is called a "forced marriage protection order." That is defined very widely as any "order for the purposes of protecting (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or (b) a person who has been forced into a marriage." In deciding whether and how to exercise its powers, the court will have regard to all the circumstances, including the need to secure the health, safety and well-being of the person to be protected, having regard, in particular, to that person's wishes and feelings.

The application for a forced marriage protection order can be made by the person who is to be protected by the order, or by a person or organisation specified by order of the Lord Chancellor, or, with the permission of the court, by any other person – for example, a friend or relative of the victim.

The Act gives the court power to attach a power of arrest to the forced marriage protection order, that is, a power authorising a policeman to arrest without warrant anybody whom he has reasonable cause for suspecting to be in breach of the forced marriage protection order. The court may attach a power of arrest (and in some circumstances is required to attach a power of arrest) where there has been the use or threat of violence against the person being protected.

The Act has not been in force very long. But it is already apparent that it has been a success, providing protection and assistance to a number of victims in cases some of which have attracted much publicity either locally or nationally.

The task now is to spread the word and make sure that the message gets through to everyone. Forced marriage is intolerable. It will not be tolerated. The courts exist to protect everyone. The courts are there, ready to provide protection and assistance to those who have been or fear they may become the victims of forced marriage.

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