

# **"Home Office Working Group – Information Gathering Exercise on Forced Marriages"**

**Submission by INTERIGHTS, Ain O Salish Kendra (ASK) and Shirkat Gah  
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## **1. INTRODUCTION**

This submission to the Home Office Working Group on Forced Marriage is made on behalf of INTERIGHTS, an international human rights law centre based in London, Ain o Salish Kendra (ASK), a legal aid and human rights centre based in Dhaka, Bangladesh, and Shirkat Gah, a women's resource centre based in Lahore, Pakistan.

The purpose of this submission is to assist the Working Group in identifying strategies to provide effective redress to women and girls taken from the United Kingdom to Bangladesh or Pakistan for the purpose of forced marriage.

This submission is divided into six sections. First, it outlines some of the common characteristics of cases of abduction of women from the UK to Bangladesh or Pakistan for the purpose of forced marriage, including the obstacles to effective redress in such cases. Second, it reviews the framework of international human rights law relevant to such cases. Third, it outlines state responsibility for forced marriage. Fourth, it sets out the remedies available to women under the laws of Bangladesh and Pakistan and assesses the extent to which they accord with these countries' international obligations to address the practice of forced marriage. Fifth, it discusses the UK's obligations under international law to protect victims of forced marriage, as well as its right of diplomatic protection, with a particular focus on issues relating to dual nationals. Finally, it puts forward suggestions for changes to existing policy and practice in the UK in order to ensure more effective redress for those subjected to, or threatened by, abduction and forced marriage.

## **2. THE PROBLEM: ABDUCTION OF WOMEN FOR FORCED MARRIAGE**

Forced marriage occurs within diverse cultures, traditions, nationalities, races and religions. Available reports indicate that the incidence of such cases in the UK is highest among Hindu, Muslim and Sikh women in the Bangladeshi, Indians and Pakistani communities.

As is now increasingly well recognised, forced marriages differ from arranged marriages, a practice common within these communities. Crucially, the difference turns on consent, in that the woman concerned may consent to an arranged marriage, but does *not* consent to a forced marriage.<sup>1</sup>

Forced marriage – any marriage conducted without the valid consent of both parties – may involve coercion, mental abuse, emotional blackmail, and intense family or social pressure. In the most extreme cases, it may also involve physical violence, abuse, abduction, detention, and murder of the individual concerned.

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<sup>1</sup> In *Mst Humaira v Malik Moazzam Ghayas Khokhar*, PLJ 1999 Lahore 1474, concerning forced marriage, the Court held that: "The term consent means a conscious expression of one's desire without any external intimidation or coercion." Thus, where a woman signature or thumb impression on a marriage contract is procured through force or under duress, she will not be considered to have given her consent.

Although both women and men may be forced into marriage, most reported cases to date concern young women and girls. It is usually the individual's immediate family members -- her father, mother, or siblings -- who are directly responsible.

The discussion here focuses on the more extreme cases of forced marriage, involving abduction from the UK, and concerns Muslim women from within the Bangladeshi and Pakistani communities in the UK, many of whom are dual nationals of both the sending and receiving country. This focus reflects both the incidence of such cases and the experience of casework undertaken by ASK and Shirkat Gah in Bangladesh and Pakistan respectively (see Appendix for case studies from Bangladesh).

Typically, in such cases, a young woman or girl, often a teenager, is induced or forced by her immediate family members to travel to Bangladesh or Pakistan, ostensibly for a holiday or to visit an ailing relative. She fails to return to the UK -- to school, college or work -- as scheduled, and loses contact with friends, classmates and colleagues. In some cases, she may reappear, months, or years later, often with a new husband. In others, she joins the ranks of the "vanished".<sup>2</sup>

On arrival in the receiving country, the woman is taken to her family's home, usually in a remote, rural and often highly conservative area. She becomes aware that arrangements for her marriage are being made without any attempt to obtain her consent. Whether in a rural or urban area, she may be held in effective detention. She may, for instance, be prevented from leaving the house unescorted or making contact with anyone other than her family members, and have little or no access to any means of communication. Her passport is taken from her. Even if she is able to emerge from the family home, her presence outside, in areas where women rarely travel alone, will be highly visible and may entail a serious risk of further violence. Her lack of language skills and lack of familiarity with local conditions further hampers her ability to protect her rights. In the most extreme cases, her family may subject her to physical and mental abuse.

Despite these restrictions, the woman is sometimes able to smuggle out a message for help, to a friend, fiancé<sup>3</sup> or boyfriend in the UK, usually through the intervention of a sympathetic family member. This may occur before or after the forced marriage has taken place. This person will then contact the UK authorities (the Foreign and Commonwealth Office, Members of Parliament, police, local authorities, school or college teachers) or UK-based voluntary organisations for assistance. He or she may then be referred to the British High Commission in either Bangladesh or Pakistan, and, in turn, to human rights or women's organisations or lawyers in either country.

These organisations may then try to confirm where the woman is being held, make contact with her, and where she is a British national, try to arrange for her to reach the High Commission. They may also make travel arrangements for her return to the UK.

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<sup>2</sup> Carol Sarler, "The Vanishing Girls", The Observer, 1996.

<sup>3</sup> In several cases, the woman's decision to enter into a personal relationship or become engaged, and her family's refusal to accept this, triggers their attempts to abduct her or force her into an arranged marriage.

Where the woman concerned is able to reach the British High Commission, she may receive effective and timely assistance from consular officials. Such assistance includes being interviewed separately from her family, advised her as to her rights and provided with access to the lawyer whom her contacts in the UK have already instructed. It may also include being provided with shelter, emergency travel documents and a safe escort to the airport.

Even if the woman is unable to reach the High Commission, consular officials may intervene formally, including by making inquiries regarding her whereabouts. However, if she is a dual national, consular protection may be much more limited. (See Section 6 on diplomatic protection).

In more complex cases, legal action, either in the UK or Bangladesh or Pakistan, may be required. In Bangladesh and Pakistan, this has involved filing *habeas corpus* petitions to ensure that the woman is set at liberty and able to return to the UK, but has not extended to date to criminal prosecution of any of those responsible for the abduction or forced marriage (see Section 5 below on legal remedies in the countries concerned).

### **Obstacles to Effective Redress**

In several cases to date, the woman concerned, and those acting on her behalf, have faced real difficulties, both in the UK and after removal to Bangladesh or Pakistan, in obtaining adequate, prompt and effective information or assistance regarding available remedies or services.

In the UK, women reporting a threat of abduction and forced marriage to the police, social services, or teachers, have often faced inaction by the authorities. Such inaction may be due to ignorance or unfamiliarity with the practice and of appropriate responses. More often, it appears to be due to ingrained gender and cultural biases, specifically the assumption that forced marriage is a “family matter”, and a practice rooted in religious beliefs or cultural practices, and therefore does not require external intervention. For example, a seventeen-year-old woman who informed social services of her fears of being abducted by her family was told that nothing could be done. Her family subsequently took her to Bangladesh.<sup>4</sup> In another case, a woman who was returned to her family by the police after having informed them of the threat of abduction, was then taken to India by her family for a forced marriage.<sup>5</sup>

Where the alleged abduction has already taken place, those seeking the recovery of the woman concerned may find it difficult to obtain relevant information or advice from the UK authorities. In one case, for instance, the fiancé of a woman abducted and sent to Bangladesh was told by an MP that he should request local religious leaders to intervene, as Bangladesh is a Muslim country.<sup>6</sup> In fact, religious leaders have no formal role within the political or legal system, Although Muslims are the majority of the population, the

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<sup>4</sup> Appendix, Case No. 1.

<sup>5</sup> *Re KR*, 199 9 [2] FLR 542.

<sup>6</sup> Appendix, Case No. 2.

laws on abduction and other criminal offences relevant to forced marriage are not based on Muslim law, but on colonial penal codes, based on the British common law. Moreover, many so called religious or community leaders are invariably upholders of the status quo and hold highly conservative viewpoints that support the control of women rather than the promotion of their human rights.

Even where an abduction is reported to the police, the only response may be inaction. In one case, where the UK police had letter evidence regarding the abduction, detention and threatened forced marriage of a woman, they stated that they could not act without a witness statement from her.<sup>7</sup>

In all such cases involving dual nationals, the FCO, and in some cases the police, advise that official intervention is not possible or that there are difficulties in continuing the investigations overseas (see Section 6 below).

In Bangladesh or Pakistan, further difficulties arise, both in relation to locating the woman and communicating with her once she has been abducted, and in her obtaining access to justice and to effective remedies. Some of these difficulties are outlined below:

*Obtaining Instructions:* In many cases, the woman concerned may be kept under confinement or under close scrutiny by her family members, often in a conservative, remote and rural area, thus making it difficult to ascertain her whereabouts or to obtain instructions regarding the assistance she requires.

The difficulties of tracing the woman are compounded where UK-based support organisations or lawyers send insufficient address details. For example, they frequently send requests to locate women, on the basis of only a post office or village address. In such cases, it is not possible for local human rights organisations to attempt to locate the woman as this might further endanger her life.

Where it is not possible to communicate directly with the woman, her contacts in the UK, the informant or support organisation, may be required to act on her behalf in legal proceedings. The major hurdle here is to identify an applicant genuinely interested in the woman's welfare in whose name the proceedings can be initiated. Where full information is not provided in relation to the potential applicant, this process is further complicated (see below on co-operation between organisations).

*Access to Justice:* The woman concerned is often unable to obtain any information about legal remedies or support services, given that she is held under confinement, and that there is limited information available on such matters. Restrictions on her communication and movement, and the location of consular offices, human rights organisations and shelters in larger cities or towns -- a considerable distance from the areas in which most such cases occur -- act as further obstacles to justice. Given the sensitive nature of the proceedings, it may also be difficult to find lawyers willing to take up such cases.

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<sup>7</sup> Appendix, Case No. 3.

*Obtaining Evidence:* Difficulties in obtaining access to the woman and taking a statement from her in the absence of her family, her reluctance to give evidence against them, family and community pressure to maintain silence on forced marriage and gender-insensitive investigation methods by the police (see below) are serious obstacles to obtaining the necessary evidence for prosecution of such cases.

Further difficulties may arise in relation to gathering evidence from organisations in the UK. For example, in some cases, prior to the abduction, a woman may have been married in the UK under Muslim personal law, but failed either to register this with the Pakistan High Commission or to marry under civil law and obtain a marriage certificate. In this situation, she would require documentation from the bodies responsible for solemnising her marriage, such as the Islamic Centre, but in some cases such evidence is not easily available.

*Co-operation between support organisations:* The lack of understanding of local procedures and remedies hinders effective communication between support organisations in the UK and in Bangladesh or Pakistan. This may also lead informants and support organisations to seek parallel local support leading to parallel – and contradictory – actions, further obstructing the case and possibly further endangering the life of the woman concerned. For example, a request to the administrative authorities to intervene, if acted upon, may jeopardise any planned legal action.

In some cases, informants and/or support organisations do not provide local support organisations with full information on the case, due to the fear of possible criminal liabilities. This may occur, for instance, where the woman concerned has previously married someone of another religion, which would not be valid under Muslim personal laws in Bangladesh or Pakistan. While revealing such information could be used to argue that the woman was already married, and therefore that any marriage being arranged by her family must be forced, it could also expose her to the risk of prosecution for *zina*.

If the UK-based support organisation is unable to clarify the nationality of the woman, establishing whether or not she is a dual or mono-national, it is difficult for those advising in Bangladesh or Pakistan to indicate the most appropriate course of action.

*Consular Protection:* In many cases, the woman concerned is unable to make contact with consular officials. Even where it is possible to inform them of an allegation or threat of forced marriage, they may not take any pro-active steps to ascertain her whereabouts or ensure her release and return. Further, in cases where the woman concerned is a dual national, they will only intervene informally, and may not attempt to make direct contact with her or to confirm where or in what circumstances she is being held.

*Police Investigation:* Where an allegation of abduction and forced marriage is made to the UK police, they may in turn seek the co-operation of the local Bangladeshi or Pakistani police. In many cases, the lack of professional skills, or a gender-sensitive approach (even amongst many women police officers) and the pervasive gender bias

within the police force leads to major deficiencies in the investigation. In some cases, financial corruption may also be an issue.

Thus, police may treat allegations of forced marriage as relating to an internal family matter, rather than a crime, and consider that further intervention is not required. They may fail to conduct a proper inquiry, or to establish contact with the woman concerned. Further, they may fail to detect cases of impersonation (by unquestioning acceptance of *pardah* norms) or the falsification of affidavits purportedly issued by the woman and affirming that she is not being held against her will. They may also fail to conduct the woman's interview in private, and in the absence of her family members, or to maintain confidentiality regarding her responses. Finally, they rarely maintain proper records of the conversation with the woman.

In some cases, police officers act in collusion with the families. In one case, for instance, the fiancé of a woman who had succeeded in locating her whereabouts was compelled to leave the town in which she was being held on learning that the police had issued a warrant for his arrest at the behest of her family.<sup>8</sup>

### **3. FORCED MARRIAGE AND INTERNATIONAL HUMAN RIGHTS NORMS**

Forced marriage entails a violation of one or more of a number of internationally recognised human rights norms. Recognition of the human rights issues arising from forced marriage is critical to framing adequate responses to the problem and providing effective redress to victims.

All cases of forced marriage involve the right to marry and to personal liberty and security, including freedom from arbitrary detention. The more extreme cases may also implicate the right to life; the right to bodily integrity, including freedom from gender-based violence; the prohibitions on slavery or practices similar to slavery; the right to access to justice; the right to equality before the law and equal protection of the law; the right to an effective remedy and the right to freedom from gender-based discrimination.

Each of the rights enumerated above is recognised by the Universal Declaration of Human Rights. In addition Bangladesh and Pakistan are bound to respect these rights by their treaty obligations under several major international human rights instruments. All three countries are parties to the *Convention on the Elimination of All Forms of Discrimination against Women*, 1979 (CEDAW), the *Convention on the Rights of the Child* 1990 (CRC), and the *Supplementary Convention on Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* 1956.

The UK and Bangladesh are also both parties to the *International Covenant on Economic, Social and Cultural Rights* 1966 (ICESCR) and the *Convention on Torture and Other Forms of Cruel, Degrading or Inhuman Treatment or Punishment* 1975 (CAT).

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<sup>8</sup> Appendix, Case No. 3.

Further, the UK is a party to *the International Covenant on Civil and Political Rights* 1966 (ICCPR) and *the European Convention on Human Rights and Fundamental Freedoms* 1950 (ECHR), while Bangladesh is a party to the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* 1962.

The standards contained in the above treaties, and the specific actions to be undertaken by states for the protection of human rights, have been elaborated in UN Resolutions and in the recommendations issued by a series of UN World Conferences in which each of the countries concerned has participated.<sup>9</sup>

Where one of the concerned states is not bound by the relevant treaty provisions, it may still have an obligation under customary international law. The more extreme cases of forced marriage may implicate violations of the right to life and to freedom from arbitrary detention and the prohibitions on torture or cruel, degrading or inhuman treatment and slavery – all of which are norms of customary international law.

### **Reservations**

It may be suggested that the treaty obligations of the countries concerned have been limited as a result of their having entered reservations or declarations to particular instruments. This section briefly considers the scope and effect of the reservations entered by Bangladesh and Pakistan in respect of CEDAW and the CRC.<sup>10</sup> Bangladesh's reservation to CEDAW is purportedly based on the ground that Article 2 and Article 16(1)(c) therein "conflict with Shari'a law based on Holy Qu'ran and Sunna". Pakistan's declaration to CEDAW invokes the primacy of the Constitution of Pakistan, while its reservation is not relevant to forced marriages.

It is submitted that such reservations or declarations are not necessarily pertinent or applicable to the respective state's obligations regarding forced marriage. Thus, Bangladesh's existing reservations to CEDAW and the CRC do not relate explicitly to the provisions thereunder relevant to forced marriage, in particular Article 16(1)(b) of CEDAW.

In relation to Pakistan's Declaration to CEDAW, there may be no necessary disjuncture between the provisions of CEDAW and the Pakistan Constitution, given that the latter, in particular its provisions on fundamental rights, incorporate a number of basic human rights standards. To the extent that the rights recognised by CEDAW are also incorporated in the Pakistan Constitution, this reservation would have little effect regarding Pakistan's obligations in this area.

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<sup>9</sup> See in particular, the Declaration on the Elimination of All Forms of Discrimination against Women, 1967, the Declaration on the Elimination of Violence against Women, 1993, the Vienna Declaration and Programme of Action 1993, the ICPD Programme of Action, 1994, the Copenhagen Programme of Action 1994 and the Beijing Declaration and Platform for Action, 1995.

<sup>10</sup> Although the UK has entered reservations to both CEDAW and the CRC, these do not relate directly to issues pertaining to forced marriage and are therefore not discussed further here.

The section below outlines several of the international human rights norms enumerated above, and their relevance to cases of abduction for the purpose of forced marriage:

### **The Right to Marry**

By definition, a forced marriage does not entail free and full consent on the part of at least one of the parties. The human right to marry, including the requirement of free and full consent by each of the intending spouses, is contained in the UDHR and in various international human rights treaties, including the ICCPR, ICESCR, CEDAW and the Convention on Consent to Marriage, and in regional treaties including the ECHR.<sup>11</sup> Thus, for example, CEDAW provides:

**“States parties shall ensure on a basis of equality of men and women...the same right freely to choose a spouse and to enter into marriage only with their full and free consent.”**<sup>12</sup>

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has recognised that the practice of forced marriage – “marriages arranged for payment or preferment ... on the basis of custom, religious beliefs or the ethnic origins of particular groups of people” – continues to prevail in certain countries. It has emphasised the significance of the right to marry:

**“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...”**<sup>13</sup>

The Committee has further stated that, “Subject to reasonable restrictions, based for example on a woman’s youth or consanguinity with her partner, **a woman’s right to choose when, if, and whom she will marry must be protected and enforced at law.**”<sup>14</sup>

Reported cases indicate that many of those forced into marriage are very young, including girls under eighteen years old. In recognition of the practice of child marriages, which are forced marriages by definition, since children do not have the capacity to give consent, the CEDAW Committee also noted that “...**the betrothal of girls or undertakings by family members on their behalf...contravene not only the Convention, but also a women's right freely to choose her partner**”.<sup>15</sup> Further, the practice of child marriage and early marriage has been widely seen as a form of discrimination against the girl-child by international human rights bodies, which have

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<sup>11</sup> UDHR, art. 16; ICCPR, art 23; ICESCR, art 10; CEDAW, art 16, the Convention on Consent to Marriage, art 1; the ECHR, art. 12 and its Sixth Protocol 1984, art 5. See also the Declaration on the Elimination of All Forms of Discrimination against Women, 1967, art 6(2); the ICPD Platform of Action 1994, para 4.21, para 9; the Copenhagen Programme of Action 1995, para 80 and the Beijing Platform for Action, para 274.

<sup>12</sup> CEDAW, Art. 16(1)(b).

<sup>13</sup> CEDAW, General Recommendation 21, U.N. Doc. HRI\GEN\1\Rev.1 at 90 (1994), para 16.

<sup>14</sup> Ibid.

<sup>15</sup> CEDAW, General Recommendation 21, para 38.

stated that a child marriage has no legal effect and called for a minimum age of marriage to be established by law.<sup>16</sup>

Thus, all three of the states concerned are under an obligation to enforce the right of men and women of full age to marry on the basis of free and full consent, and to ensure that child marriage is given no legal effect.

### **The Right to Liberty and Security of the Person**

The right to freedom from arbitrary detention, one element of the right to liberty and security of the person, is a norm of customary international law and as such imposes a binding obligation on all states. It is also contained in the UDHR, and in treaties such as the ICCPR and the ECHR<sup>17</sup>. The CEDAW Committee has stated in General Recommendation 19 that “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty” are forms of gender-based violence, which is in itself a manifestation of gender-based discrimination.<sup>18</sup>

Each of the states concerned are obligated to ensure the protection of women against forced marriage, which entails a violation of the right to personal liberty, and in some cases, involves arbitrary detention, with women being kept under confinement without any form of communication outside their families. It is submitted that this obligation extends to requiring the state to protect a child by law from parental detention for the purpose of a forced marriage.

### **The Right to Life**

The right to life is a norm of customary international law. It is also recognised by the UDHR, and guaranteed by treaties such as the ICCPR, the CRC and the ECHR<sup>19</sup>. This right imposes both negative obligations – not to take life – and positive obligations, including to prevent, investigate and punish any cases of forced marriage which could result in violations of the right to life.

### **The Right to Freedom from Torture**

The prohibition on torture is a norm of customary international law. It is also recognised by the UDHR, and guaranteed by treaties such as the ICCPR, CAT and ECHR.<sup>20</sup>

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<sup>16</sup> CEDAW, art. 16(2); the Convention on Consent to Marriage, art 2; the Recommendation on Consent to Marriage (Principle II); the Declaration on the Elimination of Discrimination against Women, art 6(3);ICPD Programme of Action, paras 4.2.1 and 5.5 and the Beijing Platform for Action, para 274.

<sup>17</sup> UDHR,art. 3; ICCPR, art. 9 and ECHR, art. 5.

<sup>18</sup> CEDAW, General Recommendation 19, U.N. Doc. HRI\GEN\1\Rev.1 at 84 (1994).

<sup>19</sup> UDHR, art. 3; ICCPR, art.6; CRC, art. 6 and ECHR, art. 2.

<sup>20</sup> UDHR, art. 5, ICCPR, art. 7, CAT, art. 1 and ECHR art. 3.

There is a view gaining ground among jurists that domestic violence is a form of torture, in that both practices involve the same key elements. They cause severe physical and/or mental pain, are intentionally inflicted for specified purposes and occur with some form of official involvement, whether active or passive.<sup>21</sup>

In this context, certain cases of forced marriage, which involve violence, may be considered to be a form of torture. Forced marriage commonly involves some form of physical and/or psychological suffering. Secondly, it involves purposeful behaviour, perpetrated intentionally. Thirdly, it is generally committed for specified purposes including punishment, intimidation and family honour. Lastly, like torture, forced marriage occurs with at least the tacit involvement of the State, where it fails to exercise due diligence in preventing the practice.

### **The Prohibition on Slavery or Slavery-Like Practices**

The prohibition on slavery is a norm of customary international law, and is also contained in the UDHR, and in other human rights treaties such as the ICCPR and the ECHR<sup>22</sup>. A direct recognition of forced marriage as a practice similar to slavery may be found in a treaty to which the UK, Bangladesh and Pakistan are all party, namely the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956*, which provides that all states are under an obligation to bring about progressively and as soon as possible the abolition of practices whereby:

**“i) a woman without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group...”<sup>23</sup>**

The trafficking of women or children for any purpose is also considered to be a contemporary form of slavery. State are therefore obligated to suppress all forms of traffic in women or the abduction and sale or traffic in children, for any purpose, including forced marriage.<sup>24</sup>

### **The Right to Bodily Integrity**

The right to bodily integrity, which includes the prohibition on cruel, inhuman and degrading treatment or punishment, is recognised by the UDHR, the ICCPR, the ECHR

<sup>21</sup> The Special Rapporteur on Violence against Women has recommended that “The arguments that domestic violence should be considered as a form of torture, and when less severe, ill-treatment, is one that deserves consideration...”, UN Doc E/CN.4/1996/53, para 50.

<sup>22</sup> See UDHR, art. 4; ICCPR, art. 8 and ECHR, art. 4.

<sup>23</sup> Article 1, Supplementary Convention on the Abolition of Slavery, 1956.

<sup>24</sup> CEDAW, art 6; CRC, art. 11 (state obligation “to take measures to combat the illicit transfer and non-return of children abroad”) and art. 35, ( state obligation “ to take appropriate national, bilateral and multilateral measures to prevent the abduction of or sale of or traffic in children for any purpose or in any form.”); Commission on Human Rights Resolution, 1999/40 (recommending measures “to address root factors that encourage trafficking in women for the purpose of...forced marriage”).

and CAT.<sup>25</sup> Article 19(1) of the CRC provides that states are obligated to protect children from violence, injury or abuse inflicted in the private sphere, including by parents. The CEDAW Committee has recognised gender-based violence as a form of gender-discrimination.<sup>26</sup>

The decisions of international human rights courts that the prohibition of ill-treatment entails a positive obligation on states to secure individuals against all forms of private ill-treatment provides a means to control domestic violence. Thus, it is submitted that the states concerned have an obligation, pursuant to the relevant treaty provisions above, to ensure protection against ill-treatment within the family occasioned by cases of abduction and forced marriage, and to take action to prevent, investigate and punish such cases.

### **Freedom from Gender-based Discrimination**

All states are required, under international human rights law, to ensure protection of human rights without discrimination on specified grounds including gender, as provided for by the UDHR, the ICCPR, ICESCR, CEDAW, the CRC and the ECHR.<sup>27</sup> Thus, for example, both the ICCPR and ICESCR provide that everyone is entitled to all the rights and freedoms contained therein, without any distinction on a number of specified grounds, including sex, birth or other status. Consequently, states parties to the ICCPR, such as the UK, are obligated to ensure that the rights contained therein – such as the rights to marry, to life, personal liberty, and equality before the law, and the prohibition on slavery and cruel, degrading or inhuman treatment -- may be enjoyed by all without discrimination on the ground of gender.

Further, CEDAW in Article 2 obligates all state parties to end discrimination in all areas and to take all measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which discriminate against women. It specifically provides that states should take measures to end gender-based discrimination in all matters relating to marriage and in relation to equality and equal protection of the law. In General Recommendation 19, the CEDAW Committee recommended the elimination of gender-based violence, as a form of discrimination. It also specifically noted the prevalence of forced marriage as a form of such violence and identified its underlying causes in traditional attitudes regarding women's subordination.<sup>28</sup>

It is submitted that women victims of violence, in particular forced marriage, have a right to the enforcement and protection of the law equal to any other victim of violence. If the

<sup>25</sup> UDHR, art. 5; ICCPR, art. 7; ECHR, art. 3; UN Declaration on Violence against Women, 1993.

<sup>26</sup> General Recommendation 19, at para 6, defining violence against women as “violence that is directed against a woman because she is a woman or that affects women disproportionately”.

<sup>27</sup> UDHR, art. 2; ICCPR, art. 2; ICESCR, art. 3; CEDAW, art. 1, 2; ECHR, art. 14.

<sup>28</sup> General Recommendation 19, CEDAW, at para 11: “Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse [and] forced marriage.... Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.”

state concerned fails to ensure these rights to women subjected to or threatened by forced marriage, its discriminatory treatment would violate the women's right to equal protection of the law. Further, to the extent that forced marriage itself constitutes a form of violence against women, it results in a violation of human rights.

#### **4. STATE RESPONSIBILITY FOR FORCED MARRIAGE**

This section outlines the obligations of the UK, Bangladesh and Pakistan under international law for the protection of women and girls subjected to forced marriage. This would include negative obligations whereby each state would be required not to interfere with, and thereby to respect, human rights. Thus, for example, each of the states concerned would be required to have laws which criminalise abduction for the purpose of forced marriage.<sup>29</sup> They would also be required to grant effective access to remedies against forced marriage.

International law also imposes positive obligations requiring states to take action to secure human rights. States are responsible for human rights violations if they *fail* to take action, and specifically, if they fail to exercise due diligence in preventing, investigating and punishing forced marriages. This may include the obligation to ensure that there is a legal framework which ensures effective access to justice, for instance, through the availability of information on rights and remedies or legal aid for particular remedies.

Such positive obligations extend to an obligation to protect an individual's rights against private persons.<sup>30</sup> In a classic statement on the extent of positive obligations, the European Court of Human Rights has held:

“These obligations may involve the adoption of measures designed to secure respect for private **life even in the sphere of the relations of individuals between themselves**”.<sup>31</sup>

In the context of violence against women, the UN Special Rapporteur on Violence against Women has noted that human rights are no longer understood to be limited to the public sphere, but also apply “...to the private realm, including within the family, and oblige the State to act with due diligence to prevent, investigate and punish violations therein”.<sup>32</sup>

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<sup>29</sup> *A. v. UK* (100/1997/884/1096).

<sup>30</sup> See, for example, CEDAW, article 2(e) which requires states to take “all appropriate measures to eliminate discrimination by any person, organisation or enterprise”; Human Rights Committee, General Comment 20; CEDAW Committee, General Recommendation 19; *Declaration on the Elimination of Violence Against Women*, art. 4.

<sup>31</sup> *X and Y v. the Netherlands* (16/1983/72/110) at para 23. Recently, in *Osman v UK*, (87/1997/871/1083), judgment dated 28 October 1998, the Court further noted that the art. 2 of the ECHR “may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual”.

<sup>32</sup> UN Doc. E/CN.4/1999/68 at para. 6.

Some guidance on the specific action entailed by such obligations may be found in the provisions of specific treaties or UN Resolutions, and the findings and recommendations of international human rights courts and mechanisms.<sup>33</sup> Thus for example the CEDAW Committee has made recommendations on the measures states should take to provide for the effective protection of women against gender-based violence, including, *inter alia*:

- “(i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including, *inter alia*, violence and abuse in the family, sexual assault ...
- (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of women and men...
- (iii) Protective measures, including refuges, counselling, rehabilitation action and support services for women who are the victims of violence or who are at risk of violence.”<sup>34</sup>

In addition further guidance regarding government action to address violence against women is also found in the Declaration on the Elimination of Violence against Women and in the Beijing Platform for Action.<sup>35</sup>

It can thus be concluded that, in the context of forced marriage, states are obligated to *inter alia*:

- provide effective penal sanctions, civil remedies and compensatory provisions;
- provide that the legal requirement of marriage includes the free and full consent of both parties;
- prescribe suitable minimum ages of marriage, prohibit child marriage, encourage the use of facilities whereby the consent of both parties may be freely expressed and marriages may be registered and generate social support for the enforcement of laws on the minimum age of marriage;
- provide women with access to justice, including information about their rights, free legal and other assistance, and safe shelter to ensure they are able to have recourse to such remedies;
- ensure that legal and judicial procedures be made victim-sensitive;
- exercise due diligence to prevent, investigate and punish acts of forced marriage;
- ensure that women at risk of or subjected to forced marriage have specialised assistance, such as treatment, counselling, health and social services, facilities and support structures;
- develop appropriate guidelines for the training of law enforcement officials, the judiciary, legal practitioners and for any government authorities who are responsible for ensuring effective protection against forced marriage;

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<sup>33</sup> See, for example, CEDAW, art 2; Supplementary Convention against Slavery, art. 2; CRC, art. 35; Declaration on Violence against Women, article 4; and the report of Working Group on Contemporary Forms of Slavery, June-July 1999.

<sup>34</sup> CEDAW Committee, General Recommendation 19.

<sup>35</sup> Beijing Platform for Action, paras. 124ff.

- develop national plans of action to promote the protection of women against any form of violence, in particular, forced marriage;
- facilitate the work of, and provide resources to, the women's movement and non-governmental organisations in addressing forced marriage;
- ensure co-operation with NGOs by police and immigration officers, medical personnel and other law enforcement and judicial officials;
- conclude appropriate national, subregional, regional and international agreements to prevent the abduction of, and the sale or traffic in, women or children for any purpose or in any form and
- provide technical co-operation to developing countries and share experiences, best practices and lessons learned in order to combat trafficking for any purpose, including forced marriage.

### **Obligation to modify harmful and traditional customs and practices**

It has sometimes been argued that a cautious approach is required in relation to state intervention to address forced marriage, as the practice is embedded in cultural traditions or religious beliefs, in particular those of ethnic or religious minorities, and may not therefore be treated as a violation of human rights. However, under international law, there is a duty to modify or abolish existing customs or practices which constitute discrimination against women, and insofar as forced marriages clearly discriminate against women, there is an obligation to end the practice.<sup>36</sup> The Special Rapporteur on Violence against Women has reiterated the obligation of States to eradicate:

“...cultural practices of the community which result in violence against women and which degrade and humiliate women, thereby denying them the full enjoyment of their rights. **International standards require that there be concerted State policy to eradicate practices even if their proponents argue that they have their roots in religious beliefs and rituals.**”<sup>37</sup>

## **5. LAW ON FORCED MARRIAGES IN BANGLADESH AND PAKISTAN**

This section summarises the law relating to forced marriage in Bangladesh and Pakistan. It reviews the constitutional provisions on fundamental rights relevant to forced marriage, outlines the available remedies – under constitutional, criminal and civil law respectively – and finally, assesses the extent to which the law, and its implementation, conforms to the international obligations of each state in respect of providing effective redress for forced marriage.

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<sup>36</sup> CEDAW, art. 2(f) and art. 5 (state’s obligations to take appropriate measures to “... modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women”); CRC, art. 24 (state's obligations to take measures to “abolish...traditional practices prejudicial to the health of children”); Declaration on the Elimination of Violence against Women, 1993, art. 4. See also the Vienna Declaration and Programme of Action, 1993 which stated the overarching duty of states, “regardless of their...cultural systems” to promote and protect all human rights and fundamental freedoms.

<sup>37</sup> UN Doc E/CN.4/1997/47.

## Fundamental Rights

The Constitutions of both Bangladesh and Pakistan have incorporated a number of international human rights norms in their provisions on fundamental rights. Thus the Constitution of Bangladesh 1972 and the Constitution of Pakistan 1973 guarantee the right to life, personal liberty, and freedom from arbitrary arrest and detention. They also protect the right to equality and equal protection under the law and prohibit discrimination on the ground of sex, or religion or other status. The Bangladesh Constitution prohibits torture or cruel, degrading or inhuman treatment or punishment, while the Pakistan Constitution prohibits slavery. In both countries, the right to enforce such rights by application to the High Court or Supreme Court is also secured.<sup>38</sup>

In Pakistan, the courts have recently underscored the obligation to ensure that human rights are not undermined by cultural prejudices or practices, and recognised that forced marriage is a harmful traditional practice and cannot be justified in the name of culture or religion, thus:

**“...It was Islam which declared equality between men and women. In matters of marriage a woman was given equal right to choose her life partner...Unfortunately, in our practical lives, we are influenced by a host of other prejudices bequeathed by history, tradition and feudalism...It is that culture that needs to be tamed by law and an objective understanding of the Islamic values...Male chauvinism, feudal bias and compulsions of a conceited ego should not be confused with Islamic values. An enlightened approach is called for...”<sup>39</sup>**

Forced marriage is thus clearly recognised as a violation of fundamental rights guarantees contained in the national constitutions of each country. Aspects of the practice are also criminalised by the law in each case. The next section outlines the remedies -- constitutional, criminal and civil – in respect of forced marriage available under the law of Bangladesh and Pakistan respectively.

## Constitutional Law

The Constitutions of both Bangladesh and Pakistan provide that on a writ petition filed by any person, the High Court concerned may direct that **“ a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without**

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<sup>38</sup> See Constitution of Bangladesh 1972: art 27 (equality) , art 28 (non-discrimination including on grounds of sex), art 31 (equal protection of law), art 32 (life and liberty), art. 33 (safeguards from arrest and detention);art. 35 (prohibition on torture and cruel, degrading and inhuman treatment), art. 36 (movement), and art 44 (enforcement of fundamental rights); Constitution of Pakistan 1973: art 9 (life and liberty), art. 10 (safeguards re arrest and detention), art. 11 (prohibition of slavery and traffic in human beings), art 14 (dignity of man), art. 15 (movement), art 25 (equality and equal protection of law, non-discrimination on ground of sex), art 35 (protection of marriage and family) and art 199 (enforcement of fundamental rights).

<sup>39</sup> Humaira’s case, supra, per Justice Jilani.

**lawful authority or in an unlawful manner”**.<sup>40</sup> In such cases, the Court may direct the respondents – usually the woman’s parents or family members -- to show cause why the woman in question should not be declared to be held in unlawful detention and to produce her before the Court. The Court would then have an opportunity to question the woman, either in open court or in chambers, and thus to ascertain the circumstances in which she has been held, and her wishes, in particular regarding returning to the UK.

The Constitutions of each country further provide that, where no other equally efficacious remedy is provided by law, any person aggrieved by an alleged violation of their fundamental rights may also file a writ petition against any “person or authority performing functions in connection with the affairs of the Republic” or any local authority.<sup>41</sup> In such cases, the Court may give such directions or orders as are appropriate for the enforcement of any of the fundamental rights guaranteed by the Constitution.

The recognition by the courts in each country of the principles of public interest litigation, whereby persons who are not directly affected by an alleged violation of fundamental rights nevertheless have standing to file a writ petition, opens up the possibility of NGOs being petitioners in such cases. Exceptionally, the Court may also act *suo moto* in such cases.

In Bangladesh, there have been at least three applications under Article 102 (2)(b) of the Constitution to date before the High Court regarding allegations of forced marriage involving British nationals. Such cases have been brought at the instance of the fiancé of the woman concerned, or by a women’s rights organisation from either Bangladesh or the UK, on the basis of the letter evidence received from the woman concerned. In each case, the Court has directed that the woman be set at liberty, and she has been able to return to the UK.<sup>42</sup> The involvement of the British High Commission has been key to the success of such cases. In each case, they have referred the petitioners to lawyers, helped to locate the woman concerned, or engaged in discussions with the woman's family in an attempt to seek an amicable resolution. Arguably, their presence in court has also had some impact in underscoring the urgency and gravity of the matter, and in ensuring expeditious and effective resolution of the cases.

In Pakistan, the courts have repeatedly upheld a woman’s right to marry. The landmark judgment in Humaira’s case, discussed above, concerned a woman who had married of her own free will but without her parents’ consent. She was beaten by her father, detained at a government hospital in Lahore, and then forced her to marry her cousin. She tried to escape, but at her father’s behest, the police abducted her, assaulted her and returned her to Lahore. Her father then filed a criminal case against her. She sought the protection of the court to quash this case. A separate *habeas corpus* petition was filed by a woman’s rights activist for her production before the Court. Pursuant to directions issued by the

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<sup>40</sup> Constitution of Bangladesh 1972, Article 102 (2)(b); Constitution of Pakistan, 1973, Article 199(1)(b). *Habeas corpus* applications may also be brought before the High Court in its criminal jurisdiction under section 491 of the Code of Criminal Procedure 1898 (see below).

<sup>41</sup> Constitution of Bangladesh 1972, Article 102; Constitution of Pakistan, 1973, Article 199.

<sup>42</sup> Appendix, Cases 2, 3 and 4.

Court on the police officers involved, she was produced in Court and her statement recorded. The Court found that she had been forced into marriage and unlawfully detained. It also affirmed the importance of consent in a marriage under Muslim law, and recognised an adult woman as an independent entity rather than the chattel of the male members of her family.

## **Criminal Law**

Forced marriage is a criminal offence under the law of Bangladesh and Pakistan. The offences of kidnapping and abduction, specifically for the purpose of forced marriage, are defined in the Penal Code 1860, in respect of Bangladesh, and in the Zina (Enforcement of Hudood) Ordinance 1979, applicable in Pakistan. The offences of kidnapping from lawful guardianship, unlawful confinement and procurement and importation of girls are also dealt with by the Penal Code 1860. Specific procedures for the recovery of such persons – either under a search warrant or an order of *habeas corpus* --are provided by the Code of Criminal Procedure 1898 (CrPC).

The relevant provisions of the Penal Code and the CrPC (which are applicable, as amended in each case, in both countries), and of the Zina (Enforcement of Hudood) Ordinance are outlined below:

- *Kidnapping*: The Penal Code contains the offence of kidnapping from lawful guardianship. As the offence is defined in terms of a child being taken out of lawful guardianship, it will not be relevant in cases of forced marriage, where a child is taken by her lawful guardians, i.e. either or both of her parents or anyone acting on their behalf.<sup>43</sup> However, if the child is taken away by a guardian to compel her into a forced marriage, the filing of a writ petition or *habeas corpus* petition before the High Court may result in recovery of the child and prevention of the marriage.
- *Kidnapping or Abduction for Forced Marriage*: The Penal Code in Bangladesh, and the Zina (Enforcement of Hudood) Ordinance in Pakistan, **explicitly define the offence of kidnapping or abducting a woman for forced marriage, or inducing her to go from any place for forced or illicit intercourse**, thus:

“Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse shall be punished [with imprisonment and, in Pakistan, whipping, and a fine] and whoever by means of criminal intimidation or abuse of authority or any other method of compulsion induces any woman to go from any place with intent that

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<sup>43</sup> Sec. 361, Penal Code, 1860 (kidnapping from lawful guardianship). See also sec. 363, Penal Code 1860 (punishment for removing child in a deceitful manner).

she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid”.<sup>44</sup>

- Procuration and Importation of Minors: The Penal Code defines the offence of procuration as “the inducement of a girl under 18 years, to go from any place or to do any act” with the intent that she is likely to be "forced or seduced to illicit intercourse". Importation of girls under 21 years into both countries is also an offence if done with the intention that the girl will be forced to or seduced to illicit intercourse.<sup>45</sup>
- Wrongful confinement: The Penal Code also defines the offences of kidnapping or abduction with intent to secretly or wrongfully confine a person and of wrongfully concealing or keeping in confinement a kidnapped or abducted person. These offences are punishable with imprisonment and a fine.<sup>46</sup> The offence of unlawful confinement is particularly relevant for persons who have not been involved in the kidnapping or abduction of the woman but are concealing her whereabouts.
- Child Marriage: The Child Marriage Restraint Act 1929 (CMRA) provides that any parent or guardian or other person having charge of the minor marriage who negligently fails to prevent the marriage from being solemnised or any person who solemnises such a marriage may be punishable under the Act.<sup>47</sup> In practice, however, few, if any, prosecutions are reported in such cases.

In addition to such penal sanctions, specific procedures aimed at securing the production or protection of the woman are also of relevance in cases of forced marriage:

- Search Warrant: Section 100 of the Code of Criminal Procedure provides that a magistrate may issue a search warrant where s/he “has reason to believe that any person is confined under such circumstance that the confinement amounts to an offence” and may order that such person be produced before the Court.<sup>48</sup> In practice, however, magistrates have been reluctant to make full use of their authority under section 100. Furthermore, magistrates' orders under section 100 are limited to their territorial jurisdiction.

<sup>44</sup> Sec. 366, Penal Code, 1860; sec 11, Zina (Enforcement of Hudood) Ordinance 1979 (Pakistan). See also secs. 5, 6, and 7, the Violence against Women and Children (Special Provisions) Act, 2000 (Bangladesh) on offences relating to trafficking and abduction of women and children.

<sup>45</sup> Secs 366A and 366B of the Penal Code 1960; secs. 370-371 (slavery) may also be of relevance.

<sup>46</sup> See sec. 365, Penal Code 1860, ( kidnapping or abduction with intent to secretly or wrongfully confine a person); Sec. 368, Penal Code (wrongfully concealing or keeping in confinement a kidnapped or abducted person).

<sup>47</sup> Secs. 5 and 6 of the CMRA, 1929. In addition, either party to the marriage, if a male over 21 years (Bangladesh)/18 years (Pakistan), or a female over 18 years (Bangladesh)/16 (Pakistan), who contracts such a marriage would also be punishable (sec. 4, CMRA ).

<sup>48</sup> s 100, CrPC: If any Magistrate “has reason to believe that any person is confined under such circumstance that the confinement amounts to an offence, he may issue a search warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall immediately be taken before a Magistrate, who shall make such order as in the circumstances of the case seem proper”.

- Habeas Corpus Application: Under section 491 of the Code of Criminal Procedure 1898 the High Court has powers to issue directions in the nature of *habeas corpus* and may direct that any person “illegally or improperly detained in public or private custody [within the limits of its jurisdiction] be set at liberty”. *Habeas corpus* applications are frequently resorted to in both Bangladesh and Pakistan in cases of forced marriage.
- “Safe Custody”: There is a long standing practice in the courts of placing women and girls who are considered to be victims of sexual offences in “protective” or “safe” custody.<sup>49</sup> However, this is rarely of assistance to women threatened with forced marriage, as explained below.

## Civil Law

The law on marriage is governed by the personal laws applicable to each community – Buddhist, Christian, Hindu, Muslim, Parsi or Sikh – and relevant statutory modifications, in addition to the Child Marriage Restraint Act 1929 (CMRA) read together with the Majority Act. As all known cases from Bangladesh and Pakistan to date have concerned Muslims, the discussion here is limited to consideration of Muslim personal laws.

Under Muslim personal law, as applicable in Bangladesh and Pakistan, in respect of adults, the consent of both parties to the marriage is required. Such consent must be expressed publicly, in front of witnesses. A non-consensual marriage is void under Muslim law.<sup>50</sup> However, a minor may be married on the basis of consent provided by his or her lawful guardian (*wali*).

Civil remedies for forced marriages are available through judicial divorces or other proceedings as specified under the Muslim Family Law Ordinance 1961 (MFLO) or the Dissolution of Muslim Marriages Act of 1939 (DMMA), which are applicable in both countries. If the marriage contract includes the delegated right to divorce, a woman forced into a marriage may exercise this contractual right and obtain an extra-judicial divorce.<sup>51</sup> Where no such clause is included, she would be required to file an application for divorce in a Family Court on a ground specified in the Dissolution of Muslim Marriages Act, 1939. Such grounds include repudiation of a marriage contracted before she reached the age of eighteen years (in Bangladesh) or sixteen years (in Pakistan), provided the marriage had not been voluntarily consummated or an application for *khula*<sup>52</sup>.

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<sup>49</sup> The law in Bangladesh now provides that courts may direct that women be placed in safe custody, see section 31, Violence against Women and Children (Special Provisions) Act 2000. It may be noted that such a direction may be given without obtaining the prior consent of the woman.

<sup>50</sup> The preponderance of case law in Pakistan on the issue supports the view that an adult woman can enter into a marriage without the consent of her *wali* (guardian): see *Muhammad Imtiaz and anr. vs. The State* PLD 1981 FSC 308; *Arif Hussain & Azra Perveen vs. The State* PLD 1982 FSC 42; both affirmed in *Muhammad Ramzan vs. The State* PLD 1984 FSC 93.

<sup>51</sup> Secs. 7 and 8, MFLO, 1961.

<sup>52</sup> Sec. 2 (vii) DMMA, 1939.

Although child marriages are punishable under the CMRA, they are neither void nor voidable. However, the CMRA provides that there is a power to issue an injunction to prevent a child marriage.<sup>53</sup> In practice such injunctions are rarely, if ever, issued.

### **Evaluation of Available Remedies**

On the face of it, existing legal remedies in both Bangladesh and Pakistan seem sufficient to meet each state's international obligations to provide effective redress against forced marriage. The law in each country criminalises aspects of forced marriage, and provides constitutional and civil remedies to women threatened with or subjected to forced marriage.

However, there remain significant limitations within the existing legal framework which bear some scrutiny. So, for example, the law does not penalise marital rape or provide for compensation for victims of forced marriage.<sup>54</sup> The law on safe custody in Bangladesh *ex facie* discriminates against women. Most significantly, the continued application of personal laws – which are based on religious laws or customary practices and which are used to deny rights on the grounds of both sex and religion – acts as a major obstacle to protecting minor girls against forced marriage. Personal laws permit child marriages and provide that parents – usually fathers – are the lawful guardians of children.

The lack of implementation, rather than any existing lacunae in the law, is the major obstacle to effective redress in forced marriage cases. In practice, the remedies outlined above, other than *habeas corpus* applications, are rarely invoked in cases of forced marriage.

A number of reasons underlie the relatively frequent resort to *habeas corpus* applications, either under the Constitution or the CrPC, in such cases. Firstly, such petitions need not be initiated by the concerned woman, but can be brought by any person, either a friend or relative, or a person or organisation acting in the public interest. Secondly, such actions are not punitive in nature, but aimed at the production of the woman concerned, inquiry as to the circumstances of the alleged detention, and her release. Given the difficulties of obtaining evidence from the woman, due to a combination of family pressure, fear of reprisals from the family or repercussions upon them, a non-punitive approach is often found to be the most effective means of ensuring her recovery and release.

There appear to have been few, or no, instances of prosecution in relation to forced or threatened forced marriage. Ironically, reported cases indicate that criminal laws intended to protect women from forced marriage have in fact been used against women who have succeeded in evading a forced marriage and contracted a marriage in defiance of their family's wishes. In such cases, the family may resort to filing false charges of

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<sup>53</sup> Sec. 12, CMRA, 1929.

<sup>54</sup> Except to the extent that in Bangladesh, marital rape is now an offence in limited circumstances relating to child marriage and compensation may be awarded to victims of abduction or trafficking cases under the recent Violence against Women Act, *supra*.

kidnapping, abduction and even rape against the men these women have chosen to marry. The courts may then direct that the woman concerned be placed in protective custody, pending resolution of the case.<sup>55</sup> In such cases, the only recourse for the woman may be to file an application to quash the criminal proceedings brought by her family, and a *habeas corpus* application to ensure her own release.<sup>56</sup>

There is also no data available on the number of women who are able to access civil remedies in cases of forced marriage. Discriminatory personal laws, as noted above, and their conservative interpretation, limit the remedies available to women regarding divorce or annulment in cases of forced marriage. Further, women's lack of awareness, and their limited capacity to negotiate their rights, also mean that in many cases, women may have no contractual right to a delegated divorce, and will be required to seek a judicial divorce, a lengthy, expensive and uncertain process.

The lack of recourse to the law in such cases is due in large measure to the obstacles to women's access to justice. Thus women are unable to take legal action where they are unaware or uninformed of their right to do so or unable to afford legal advice or representation. The involvement of human rights organisations who provide legal aid or are able to secure *pro bono* legal services may assist women to overcome such obstacles. However, the absence of a state legal aid system, and the limited numbers and resources of existing legal aid organisations, means that such assistance is at best highly selective and ad hoc in nature.

In many cases, the law is not implemented due to the gender bias or financial corruption within or the incapacity of the law enforcement machinery. Thus the police may refuse to accept complaints regarding domestic violence, in particular forced marriage, conduct gender-insensitive questioning of victims, or collude with the family to file false charges in cases where women have exercised their choice to marry. They may also the view such cases as involving "family matters" and therefore as an appropriate subject for mediation rather than police intervention.

The prevailing gender bias within the judiciary also acts as an obstacle to redress. Although the judiciary has played a critical role in providing effective remedies in such cases, particularly in the higher courts (see above), stereotypical attitudes regarding women are commonly found among all actors within the justice system. Thus, judges continue to direct that women be placed in protective custody without obtaining their prior consent, even where they have clearly stated that they have married of their own volition.

The sheer incapacity of the existing law enforcement machinery is another major obstacle to legal action. This is manifested in lengthy delays within the court system, the lack of

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<sup>55</sup> In the most egregious cases, women and girls in protective custody in Bangladesh were held in jail due to the lack of available spaces or access to shelter homes. This is now prohibited by law, see the Violence against Women Act, *supra*.

<sup>56</sup> See Appendix, Case no. 4, and Humaira's Case, *supra*.

any effective protection for victims or witnesses and the difficulties of implementing judgments.

It is submitted therefore that limited recourse to legal remedies in cases of forced marriage is due not to any significant lacunae in the law, but to pervasive gender bias within the law enforcement machinery, compounded by financial corruption and the sheer incapacity of the legal system. The failure of key actors within the criminal justice system to view forced marriage as a crime, let alone a violation of fundamental human rights, and their consequent indifference to victims in such cases, ensures that the system is unable to deliver justice.

It is suggested that further research be conducted on the practical application of the law in relation to cases of forced marriage in both countries, and into existing support mechanisms, in order to identify means to ensure more effective investigation and prosecution of such cases and to enable women to obtain redress for violations of their rights.

## **6. SCOPE FOR THE UK TO PROTECT PERSONS ABDUCTED FOR FORCED MARRIAGE**

This section first examines the extent to which the UK has an obligation under international law to protect individuals abducted from the UK to Bangladesh or Pakistan for the purpose of a forced marriage. It then examines the current practice of British diplomatic or consular protection in such cases, with particular reference to cases concerning dual nationals of Britain and Bangladesh or Pakistan. Finally, it suggests the scope for improving diplomatic or consular protection in such cases.

### **Obligation to Protect under International Law**

As discussed above, the UK, Bangladesh and Pakistan all have obligations under international law to protect women and girls subjected to the threat or the act of forced marriage. To the extent that such cases implicate the right to life, the right to freedom from arbitrary detention and the right to freedom from slavery, all of which are norms of customary international law, and impose obligations *erga omnes*, each of the concerned states is bound to protect any person who is a victim of forced marriage. Given the transnational nature of the issues raised in cases of abduction and forced marriage, effective protection of human rights would only be possible through active co-operation and collaboration between the states concerned.

The UK's obligations to address forced marriage would entail the provision of an effective legal framework within the UK, including the criminalisation of abduction for the purposes of forced marriage, the availability of civil remedies, in particular compensatory provisions, and prompt and adequate investigation and prosecution of such cases.<sup>57</sup> It would also entail responsibilities on the relevant public authorities, such as

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<sup>57</sup> See ECHR, art. 1 on the obligation to "secure to everyone within their jurisdiction the rights and freedoms defined in section 1 of the Convention."

social services, education or housing authorities, to take appropriate action in cases where they are informed of a threat of forced marriage. While each of these issues requires further consideration, and a scrutiny of the relevant law and practice within the UK, it is beyond the scope of this submission to discuss these matters in further detail.

Where women have been removed from the jurisdiction, the UK's obligations would still entail undertaking investigations regarding the circumstances of her removal, and the allegations regarding her detention and threats of forced marriage by her family. In all such cases, the abduction will have occurred within the jurisdiction. Further, the failure of public authorities within the UK, such as social services, or education authorities or the police, to act promptly or effectively on information received about a threat of abduction or forced marriage may have contributed to the woman's removal from the jurisdiction.

Thus, in individual cases, the UK could seek co-operation from the Bangladesh or Pakistan authorities, including the police or the judiciary, in order to verify such allegations, ascertain the location and circumstances in which the woman is held, and provide legal or other assistance as appropriate. Such co-operation could be sought on the basis that these cases implicate both states' obligations under international law to protect human rights, in particular the right to personal liberty, freedom of movement and marriage. In relation to the *practice* of abduction for the purpose of forced marriage, the UK could also seek to establish a dialogue with the concerned authorities in Bangladesh or Pakistan, including the police, judiciary, lawyers and NGOs, in order to develop more comprehensive strategies to provide effective redress in such cases.

### **Diplomatic or Consular Protection**

Irrespective of its human rights obligations in cases of forced marriage, the UK also has the right of diplomatic protection in respect of all British nationals abroad. This section first sets out the extent of such protection available to British nationals abroad, both in general, and in relation to particular situations, such as detention, child abduction and forced marriage. It then considers the limited consular protection available to dual nationals of the UK and another country, where the individuals concerned are located within a second state of which they are nationals. Finally, it proposes changes to existing practice in order to ensure that diplomatic protection is extended to all British nationals in forced marriage cases, and to improve the nature of such protection.

The help that British consular officials can and cannot provide to their nationals abroad has been set out in a leaflet published by the FCO on "Consular Services Abroad". This states that the British Consul can, *inter alia*: issue emergency passports; contact relatives and friends and ask for their help in providing money and tickets; on certain criteria, provide a loan to get back to the UK, and help get the national in touch with local lawyers, interpreters and doctors. The Consul may also visit the any person who has been arrested or put in prison and, in certain circumstances, arrange for messages to be sent to relatives or friends; give guidance on organisations experienced in tracing missing persons, and, in certain circumstances, speak to the local authorities.<sup>58</sup>

<sup>58</sup> "British Consular Services Abroad", advice issued by the FCO at [www.fco.gov.uk/travel/dynpage.asp](http://www.fco.gov.uk/travel/dynpage.asp).

The FCO leaflet also states that British consular officials cannot intervene in court cases; give legal advice or start court proceedings; investigate a crime; pay travel costs, unless in exceptional circumstances, or help formally if the person is a dual national in the country of their second nationality.<sup>59</sup>

In cases where British nationals are under arrest or detention abroad, the consul has the right to be informed immediately of the detention and to assist in legal and other matters. Consular conventions entered into by the UK specify the consul's right to be informed immediately if any national is confined in prison or otherwise detained in custody, to visit without delay and to converse privately with, and organise legal representation for, any national so confined or detained.<sup>60</sup>

In cases of child abduction involving British nationals, consular officials may also approach local authorities for help in tracing the child, press the local court to handle the case as quickly as possible and, with the British Court's permission, draw to the attention of the local authorities the existence of any British court order.<sup>61</sup>

**In cases of forced marriage, the relevant guidance from the FCO indicates that the Consul can:**

- offer practical support;
- contact **parents or other relatives** in the UK;
- **at the request of parents contact children** who are in need of help;
- provide details of support and counselling services available in the UK, **particularly if family support is doubtful**; and
- if all potential sources of financial help have been exhausted, consider repatriation to the UK against an Undertaking to Repay (emphasis added).<sup>62</sup>

**Dual Nationality**

In respect of the FCO's guidance for British nationals abroad, as noted above, it is clearly stated that "there are limits to the consular protection [dual nationals] can enjoy" and that the "British Government cannot *officially* intervene with local authorities in the event of any dispute", even in cases of child abduction or forced marriage.<sup>63</sup>

The help that British consular officials can provide to their nationals abroad is thus stated to be far more limited in respect of dual nationals of the UK and a second country, where the individual concerned is in their country of second nationality. This section evaluates whether this position and whether it is consistent with the UK's obligations under international law.

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<sup>59</sup> Ibid.

<sup>60</sup> See, for example, UK-Swedish Consular Convention of 1952, Article 19, as cited at Lee, *supra* p. 134.

<sup>61</sup> FCO Leaflet on "International Child Abduction: Advice for Parents" [www.fco.gov.uk/leaflets/abduct.pdf](http://www.fco.gov.uk/leaflets/abduct.pdf)

<sup>62</sup> FCO Leaflet on "Forced Marriages: Your Rights Abroad", [fco.gov.uk/leaflets/marriage.pdf](http://fco.gov.uk/leaflets/marriage.pdf).

<sup>63</sup> Ibid; FCO Leaflet on Child Abduction, *supra*. See also, generally on FCO advice on dual nationality, [fco.gov.uk/leaflets/dualnat.pdf](http://fco.gov.uk/leaflets/dualnat.pdf).

In a recent statement, the Under-Secretary of State for Foreign Affairs noted that the UK Government's position in such cases is based not on domestic policy but on international law:

“Dual nationality is not a policy of the British Government. It is not anything over which we even have any control. **Under international law, we do not have any formal right of consular protection over people who have both British and another nationality in the country of their second nationality.**”<sup>64</sup> (emphasis added)

This view of the general rule of international law in such cases is reflected in Article 4 of the *Convention on Certain Questions relating to the Conflict of Nationality Laws*, (Nationality Convention) which provides that:

“A state may not afford diplomatic protection to one of its nationals against a state whose nationality such person also possesses”.<sup>65</sup>

It is suggested that consideration of current state practice regarding dual nationals, together with the scope of the international obligation to respect human rights, indicates that this general rule may not be applicable in all cases. This in turn points to the possibility of more extensive diplomatic protection for victims of forced marriage who are dual nationals. The section below first examines existing consular practice in forced marriage cases and then evaluates the general rule regarding limited diplomatic protection for dual nationals and the extent to which it may be considered applicable in forced marriage cases.

First, there appears to be some inconsistency regarding the basis on which the British authorities treat certain individuals as dual nationals in such cases. While each state is to determine under its own laws who are its nationals,<sup>66</sup> there is an issue as to whether the UK authorities accurately interpret such determinations by other states. For example, the Under-Secretary of State for Foreign Affairs has suggested that “children of Pakistani and Bangladeshi *parents* are themselves automatically deemed to be Pakistani or Bangladeshi,”<sup>67</sup> although the law in these countries provides that it is only children of Pakistani or Bangladeshi *fathers* who are deemed to be nationals.<sup>68</sup>

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<sup>64</sup> Speech by the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs, Baroness Scotland of Asthal QC, at the Family Proceedings Conference, Leeds, Thursday 3 March 2000.

<sup>65</sup> Nationality Convention, 1930, Article 4.

<sup>66</sup> Nationality Convention, 1930, Art.1. It may be noted that this article goes on to provide that other states need only recognise such laws to the extent that they are consistent with “international conventions, custom and the principles of law generally recognised with respect to nationality”. The 1930 Convention, Art 2 further provides “ Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.”

<sup>67</sup> See speech by Baroness Scotland, *supra*.

<sup>68</sup> Under the Citizenship Act 1951, which obtains in both Bangladesh and Pakistan,

Earlier, another Foreign Office Minister had stated, in relation to the case of two sisters abducted to Yemen for forced marriage, that official intervention was precluded in cases where the person concerned “*is resident in the country of second nationality*”.<sup>69</sup> It is submitted that this reasoning would not apply in forced marriage cases, given that the woman cannot be understood to be resident in the receiving countries, having been taken there either under duress, or on the understanding that she was on a temporary visit.

It is possible, therefore, that individuals may be considered to be dual nationals where this is not the case, or where the country of other nationality would not treat them as such.

Second, refusal to intervene officially to protect dual nationals in forced marriage situations in the other state of nationality does in practice lead to much hardship and in certain cases to serious harm to the woman concerned.

Although the elements of “official intervention” have not been specified, they would appear to include diplomatic representations to the authorities of the receiving country, and direct investigations to recover the woman concerned. Recent developments indicate a more pro-active approach being taken by consular officials, at least regarding mono-nationals. For example, consular officials intervened pro-actively and searched for and located a woman (a mono-national), who had been abducted to India and held in detention by her parents pending a forced marriage.<sup>70</sup> Again, in the case of *Re KR*,<sup>71</sup> this time in connection with wardship proceedings in the UK regarding a minor girl abducted to India for a forced marriage, British consular officials intervened to locate the girl, interview her and repatriate her to the UK.

Significantly, however, consular officials have been unwilling to undertake similar searches in respect of dual nationals in either Bangladesh or Pakistan, or to provide direct assistance unless the woman concerned physically presents herself in the British High Commission. Their failure to act in cases involving dual nationals who are threatened with forced marriage can result in prolonging their detention and may also result in causing direct injury to the concerned woman. In one case, for instance, the British High Commission in Dhaka failed to locate the woman concerned for several weeks after receiving a request for help, during which time she was subjected to a forced abortion by her family.<sup>72</sup>

Third, the provision of diplomatic and consular assistance in such cases often appears to occur on an *ad hoc* basis. Where official intervention is not provided, there may be considerable informal assistance available, depending on the jurisdiction. So, for example, in both Bangladesh and Pakistan, once a woman has reached the High Commission, consular officials have provided a safe escort for women to reach the

<sup>69</sup> Speech of Lord Glenarthur, Hansard HL 18/1/1988 cols9-10, quoted in Luke T. Lee, *Consular Law and Practice*, 2<sup>nd</sup> Ed. (Clarendon Press, 1991) at p. 162.

<sup>70</sup> Luke Harding, “Student Saved from Arranged Marriage”, *The Guardian*, 14 March 2000.

<sup>71</sup> *Re KR*, supra.

<sup>72</sup> Appendix, case no. 4.

airport, arranged emergency shelter where necessary, and in exceptional cases, purchased tickets for travel back to the UK. Consular officials have also begun to build linkages with local support groups. In Bangladesh, they have also attended court hearings in cases regarding allegations of the attempted forced marriage of dual nationals, although they have not yet done so in Pakistan. Such examples of good practice could be developed and form the basis of a consistent policy to enable intervention to assist dual nationals in such circumstances.

Fourth, it is submitted that the general rule that limited diplomatic protection is available to dual nationals in their country of second nationality, based on the Article 4 of the Nationality Convention, 1930, may not be an absolute one. Further, it appears outmoded and inappropriate in cases of forced marriage involving dual nationals. Forced marriage cases clearly implicate international human rights norms, which either form part of customary international law or are recognised by treaties which bind the UK, Bangladesh or Pakistan. In such cases, the principles of international law regarding the obligation to respect and protect human rights would supersede the general rule about dual nationality being a bar to the provision of diplomatic protection

Fifth, evolving state practice indicates that, in certain circumstances, such as child abduction, states *do* offer diplomatic or consular assistance to their nationals in their country of second nationality. Thus, the Explanatory Report to the *European Convention on Nationality*,<sup>73</sup> noting that the general rule of international law in relation to diplomatic protection is contained in Article 4 of the 1930 Convention, goes on to state:

“..owing to the developments that have taken place in this area of public international law since 1930, **in exceptional individual circumstances and while respecting the rules of international law, a State party may offer diplomatic or consular assistance or protection in favour of one of its nationals who simultaneously possesses another nationality, for example in certain cases of child abduction.**”

It is submitted therefore that the measures undertaken by consular officials in *Re KR*, discussed above,<sup>74</sup> together with examples of best practice in cases of child abduction, could be applied in cases of abduction and forced marriage of dual-nationals. This would involve a more pro-active approach by consular officials, including efforts to search for the woman or girl concerned.

Sixth, the practice of states other than the UK in relation to dual nationals indicates that consular protection may, exceptionally, be extended to non-nationals, including permanent residents of the sending State, and even nationals of the receiving state, on the ground that “respect and defence of human rights transcend the norms of international

<sup>73</sup> DIR/JUR (97) 6 Strasbourg 14 May 1997 at para 102.

<sup>74</sup> See also the case reported in *Harding*, *supra*, where there were no pending judicial proceedings in the UK.

law”.<sup>75</sup> It has been noted that such consular concern “is clear evidence of a growing resort to human rights as a special justification for protection. Consuls are potential instruments for upholding the human rights standards of all.”<sup>76</sup>

In the above circumstances, it is submitted that the standard by which the treatment of nationals abroad should be assessed is the human rights standard, rather than the national standard or minimum international standard. The specific nature of the human rights to be protected in relation to forced marriage is contained in the norms of customary international law and in relevant treaty provisions, as discussed above. It is submitted that “to the extent that the human rights standard is respected or at least becomes an integral part of domestic laws, it will replace the two earlier theories.”<sup>77</sup> Thus, as international human rights standards are further incorporated into domestic law, there can be no question of giving more favourable treatment to nationals over non-nationals. Alternatively, it is submitted that while treatment of nationals abroad may be assessed on the basis of the minimum international standard, this standard itself includes respect for international human rights norms.

### **Scope for Making Diplomatic Protection for More Effective**

Valuable though diplomatic protection is, it could be much more effective in forced marriage cases involving British nationals, if the following actions were taken by British consular officials:

Revision of the advice provided to British nationals: The FCO leaflet contains highly inappropriate guidance regarding the assistance available in cases of forced marriage. It explicitly states that the assistance to be provided involves contacting parents. This indicates a grave lack of understanding of the context in which forced marriage occurs, in which one or both parents are almost always primarily responsible for forcing their daughters into marriage. The leaflet needs urgent revision, and guidelines need to be developed regarding practical and appropriate advice to be given in such cases.

Pro-active Intervention: The practice in child abduction cases, as indicated above, could be adopted in cases of forced marriage. Thus, consular officials could be required to approach local authorities for assistance in tracing any woman suspected of being threatened with or subjected to a forced marriage, and may draw their attention to any existing British court orders. In order to address any possible objection to the exercise of such functions by the receiving state, British authorities could enter into a dialogue with their counterparts in Bangladesh and Pakistan respectively to ensure the most effective resolution of such cases.

Consular Conventions: The protection available to British nationals could be significantly enhanced if the UK were to develop and enter into consular conventions with the

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<sup>75</sup> Lee, *supra*, at p. 163 re intervention by the Italian authorities regarding persons in Uruguay who were presumed to be dual nationals on the basis of their Italian surnames.

<sup>76</sup> Lee, *supra*, at p. 372.

<sup>77</sup> Lee, *supra* at p. 132.

concerned countries, namely Bangladesh and Pakistan, which could set out consular powers to visit the woman concerned, as well as to converse privately with, and arrange legal representation for her.

In conclusion, it is submitted that a re-consideration of forced marriage cases as involving fundamental human rights concerns would involve a new approach to addressing such cases, including the extension of protection to both mono and dual nationals at risk of forced marriage.

## **7. CONCLUSION AND RECOMMENDATIONS**

The development and implementation of strategies to address forced marriage must be underpinned by an understanding of the practice as constituting a breach of fundamental human rights, rather than a view that it is no more than “a family affair with the possible recourse to legal action”.<sup>78</sup>

Concerted and immediate action is required on the part of government authorities and non-governmental organisations in all three countries concerned. Such action cannot and does not constitute an “imposition of moral values” by the UK on either Bangladesh or Pakistan.<sup>79</sup> Forced marriage is clearly prohibited under the laws of Bangladesh and Pakistan, and it violates fundamental rights provisions under the Constitutions of each country. Further, each of the states has obligations under international law to take action to address forced marriage. Thus, failure to take action -- whether by the UK, Bangladesh or Pakistan -- would involve a breach of fundamental human rights, including the right to personal liberty, to freedom from arbitrary detention and to marriage.

The section below sets out recommendations for consideration by the Home Office Working Party to enable the UK to meet its international obligations to provide effective redress to women and girls abducted to Bangladesh or Pakistan for the purpose of forced marriage:

### **Legal Remedies**

- Ensure effective access to justice, including legal aid, to victims of forced marriage, in particular in respect of *habeas corpus* applications;

### **Investigation**

- Ensure prompt, adequate and gender-sensitive investigation by the police of all allegations of forced marriage. Action must be taken on the receipt of information of an imminent abduction or forced marriage, irrespective of the nature of the informant’s relationship with the woman.
- Provide clear and explicit guidelines for intervention by the police in forced marriage cases. Such cases should not be treated as “family matters” and unsuitable for intervention by the criminal justice system. It should be made clear that it is not the police’s role to undertake mediation or family reconciliation in such cases. It should

<sup>78</sup> See Lord Glenarthur, *supra*.

<sup>79</sup> See comments by Keith Vaz MP on BBC Radio 4, PM Programme, February 2000.

also be emphasised that care should be taken to interview women in private, and to respect issues of confidentiality. Where women do give statements, either to the police or immigration officers, such statements should be recorded in writing. Where parents/guardians or family members provide assurances regarding her circumstances, these should be recorded in writing.

### **Support Services**

- Provide women with access to support services, including counselling, safe shelter and access to housing on a priority basis, and sustained follow up support, as well as guarantees of police protection where a threat to life is anticipated. Provide adequate resources and support to women's rights organisations, particularly community-based organisations with experience of supporting victims of forced marriages;
- Ensure the co-operation of police and immigration officers, medical personnel and other law enforcement and judicial officials, as well as of airline staff, with such organisations;

### **Diplomatic and Consular Protection**

- Urgently revise the FCO leaflet "Forced Marriage: Your Rights Abroad" and any related guidelines for advice for British nationals overseas in respect of forced marriage to reflect an accurate understanding of the practice and suggest appropriate forms of assistance. Any revised leaflet should clearly explain the context of such cases, including the frequent involvement and responsibility of parents or close family members. It should also provide contact details for organisations in the UK and Bangladesh or Pakistan who can assist in such cases;
- Monitor and update regularly the list of lawyers provided to those seeking assistance regarding abductions for forced marriage;
- Develop guidelines based on examples of best practice in addressing forced marriage and disseminate these to all consular posts;
- Review urgently the policy on diplomatic protection for dual nationals to enable British consular officials to intervene officially and effectively in such cases on the grounds set out above;
- Consider the possibility of a developing consular conventions with Bangladesh and Pakistan to address, *inter alia*, the issue of women abducted for the purpose of forced marriage;
- Consolidate existing initiatives to build linkages with lawyers, human rights and women's rights organisations with experience of working on forced marriage;

### **Information Dissemination**

- Prepare and disseminate an information pack on forced marriage which would refer to
  - Remedies in the UK
  - Forced Marriage as an abuse of human rights
  - The lack of any basis for the practice in any religious law
  - Remedies in the UK and in Bangladesh or Pakistan, or other countries, as appropriate;
  - Specific assistance for dual nationals

- Contact details for human rights or women's rights organisations in the UK, Bangladesh and Pakistan who have an established record of working on forced marriage;
- Undertake wide-ranging information dissemination and public education measures through the media, education system, community-based women's rights and youth organisations to inform young women and men of their rights in relation to forced marriage, preventive measures and of the remedies available in the UK and in Bangladesh and Pakistan;
- Provide information at all ports stating that forced marriage is a crime, and identifying sources of immediate assistance or support, including emergency numbers;

### **Monitoring and Research**

- Establish a database on forced marriage within relevant government departments, including the FCO, and in the British High Commission in Bangladesh and Pakistan, in order to facilitate adequate monitoring of such cases;
- Undertake further research and consultation on the issue of forced marriage both within the UK and in Bangladesh or Pakistan, to identify the incidence of forced marriages, the effectiveness of existing legal remedies, including the rates of prosecution and conviction, and the availability and role of existing support services.

### **Training**

- Develop, in consultation with practitioners in the UK, Bangladesh and Pakistan with experience of working on forced marriage cases, codes of good practice in addressing forced marriage for the use of the police, judiciary, civil servants, including consular officials, and NGOs;
- Develop and provide, in consultation with individuals and organisations with experience of working with victims of forced marriage, training for law-enforcement officials, the judiciary, lawyers, civil servants, members of local authorities, and teachers, with a specific focus on available remedies within the UK, Bangladesh and Pakistan, to enable them to address more effectively allegations of forced marriage;
- Emphasise, in all training programmes, that cases of forced marriage involve human rights violations, and that government authorities have a duty to act in such cases.

### **International Co-operation**

- Encourage and initiate dialogue between the relevant authorities in the UK – in particular the FCO, the police and the judiciary – and their counterparts in the receiving countries regarding strategies to address forced marriage. Such dialogue could focus on issues of concern relating to the treatment of women in forced marriage cases, for instance, to ensure that legal and judicial procedures be made victim-sensitive, and in particular, that women not be placed in “protective custody” without their consent.
- Facilitate exchange and discussion on best practice and shared strategies between the relevant authorities in the UK and in Bangladesh or Pakistan – such as, for instance, High Court judges, with experience in forced marriage and/or related matters such as child abduction;

- Organise and fund programmes to train police, prosecutors, and judges to eliminate gender bias in the handling of cases of violence against women, including forced marriage;
- Encourage and support exchange of information on strategies and facilitate effective co-operation between human rights and women's rights organisations who provide support to victims of forced marriage in the UK, Bangladesh and Pakistan;
- Ensure that adequate resources are made available to NGOs in Bangladesh and Pakistan which seek to provide shelter, counselling or legal services to victims of forced marriage.

INTERIGHTS  
AIN O SALISH KENDRA  
SHIRKAT GAH  
30 March 2000

## APPENDIX

### CASE STUDIES: ABDUCTION AND FORCED MARRIAGE OF WOMEN AND GIRLS FROM THE UK TO BANGLADESH

The information below has been taken from cases in which Ain o Salish Kendra, Bangladesh has been involved since 1993. In the absence of available research or other documentation on cases of forced marriage involving British nationals, these case studies give some indication of the specific strategies used by voluntary organisations, as well as the assistance available either through the British consular offices, or the Bangladesh courts, in such cases. All names have been changed to protect the identities of the individuals concerned.

1. Shimi, a seventeen year old school student, was suddenly taken by her parents to Sylhet, Bangladesh, soon after she was engaged to Mike, a British man.

Although Mike had converted to Islam and Shimi's parents had arranged a formal engagement ceremony, they had not accepted the relationship. They had earlier tried to arrange Shimi's marriage to another person in the UK, which she refused to accept. Afraid that she might be abducted and forced into marriage, Shimi had contacted social services at this time, but was told that they could not assist her.

Once in Sylhet, Shimi was able to send out messages to Mike. She told him that her parents were planning to force her into a marriage and asked him for help to return to the UK. Mike contacted a British women's rights organisation which referred him to local lawyers in Bangladesh.

On Mike's instructions, the lawyers arranged for inquiries to be made in Sylhet as to Shimi's whereabouts and the possibility of her marriage. Although it was confirmed that there was a "girl from London" in the house, it was impossible to make direct contact with her.

Several weeks later, an official at the BHC identified Shimi, who had been brought from Sylhet by her family to Dhaka for renewal of her passport. Consular officials arranged to interview Shimi separately, and for her to meet the lawyers and obtain copies of Mike's letters to her explaining how she could return to the UK. Shimi said she wanted to return to the UK but could not do so immediately, as she was afraid of the repercussions from her family.

Several days later, Shimi telephoned the lawyers and confirmed that she was being held against her will by her parents and was frightened that once she was taken back to Sylhet she would never be able to get out again. A day later she managed to escape and arrived at the BHC. The Consular staff issued her with an emergency passport. As Shimi was leaving the premises, her family arrived and

began shouting at her to return. Shimi was accompanied to the airport by the consular official and her lawyer.

2. Rimi, an eighteen year old student, was taken by her parents to Sylhet, Bangladesh, on the day fixed for her engagement to her fiancé, Ahmed. Although both Rimi and Ahmed's families were Muslim and from the same area in Bangladesh, Rimi's parents refused to accept him, claiming he was of a different caste.

On the flight, Rimi scribbled a note on toilet paper and asked a flight attendant to send this to Ahmed in London. On receipt of the note, Ahmed contacted both his and her local MP, his local police station, the Bangladesh High Commission and the Foreign and Commonwealth Office. One MP suggested that Ahmed contact a religious leader in Bangladesh to resolve the problem. The FCO advised him that there was little that could be done as Rimi was a dual national of Bangladesh and Britain.

Ahmed travelled to Dhaka, Bangladesh, where he contacted the British High Commission. He then travelled to Sylhet and located Rimi's family home. He was able to inform her of his presence and to confirm that she was unable to leave the house or to communicate with anyone outside the house. On being informed that Rimi's father had discovered his presence in town, and was trying to arrange for his arrest, Ahmed returned to Dhaka. On contacting the BHC, he was again informed that they could not intervene formally on the ground of Rimi's being a dual national, and was referred to a local law firm.

Ahmed then filed an application under Article 102 of the Constitution of Bangladesh in the High Court Division of the Supreme Court of Bangladesh, alleging that Rimi was being held against her will by her parents for the purpose of a forced marriage and seeking an order directing her release. The High Court directed the parents to show cause as to why Rimi should not be declared to be held to be detained unlawfully and to produce her in Court. Given the urgency of the matter, it further directed that its order should be served by special messenger. To ensure effective service, the lawyers concerned sent their clerk to serve a copy of the order on Rimi's parents. Ahmed accompanied the clerk.

By the time they reached the town, many local people already knew of the Court's order, which had been published in a national newspaper. On learning of the order, Rimi's parents tried to flee the town with her and started travelling to the Indian border. However, the local District Commissioner intervened and called the family members in an attempt to mediate the dispute. As a result of his mediation, Rimi's parents agreed that Rimi and Ahmed could be married, but stipulated that they would cut off all contact with their daughter.

On the day fixed for hearing in the High Court, both Rimi and Ahmed appeared before the court. On submission of a copy of the marriage certificate and the agreement with the parents, the application under Article 102 was withdrawn.

3. Mimi, eighteen years old, had left her family home after a history of physical abuse by her father, which included her being tied to her bed, and her boyfriend, Philip, being beaten up by her brothers. Although she fled to a refuge, she had never pressed charges against her father or brothers.

After many months apart from her family, she agreed to meet her parents again in a gesture of reconciliation. This time, she was not allowed to leave and was threatened with further abuse unless she agreed to accompany her parents to Sylhet, Bangladesh.

When Mimi failed to return home on the agreed date, Philip contacted the police and a local women's group, which had provided refuge and advice to Mimi following earlier allegations of abuse by her family. The police confirmed that Mimi had been on a flight bound for Bangladesh.

Once in Sylhet, Mimi smuggled out letters to Philip, informing him that she was being beaten and threatened with forced marriage, and asking for his help. In one letter, she mentioned that her family had forced her to undergo an abortion. Philip showed the letters to the police, but was told that no action could be taken without a witness statement from her. Acting on referrals from the BHC, he contacted local lawyers. Again, efforts were made to ascertain Mimi's location, but no confirmation could be found. The BHC stated that they would be unable to intervene officially, as Mimi was a dual national. Eventually, however, as a result of their inquiries, it was possible to confirm Mimi's whereabouts. The UK based women's organisation agreed to travel to Bangladesh to act as petitioners in a *habeas corpus* application for Mimi's recovery.

On behalf of the women's group, an application under Article 102 of the Constitution was filed against Mimi's father, mother and uncle before the High Court Division. The Court directed the respondents to show cause why Mimi should not be held to be detained unlawfully and to be produced before the Court.

Prior to the court hearing, her parents brought Mimi to Dhaka from Sylhet. At their lawyers' suggestion, a meeting was arranged with BHC officials, and again between the lawyers of both parties. Although Mimi wanted to hear news of Philip from the BHC officials, she did not state any wish to leave her parents, and later explained that she had felt under too much pressure from her family to speak out against them.

On the hearing date, the parents appeared in court with Mimi, who appeared frightened and ill at ease (she later confirmed that she had been told that the proceedings could result in her parents' imprisonment), but responded positively

to the presence of the women's organisation representatives. The Court then arranged for the hearing to continue in chambers, in the presence of Mimi, her parents and the lawyers for both parties. The women's organisation members were not allowed to be present, although they were the petitioners. In questioning Mimi, one judge asked her if she was being detained unlawfully. She did not answer the questions, seemingly because she was afraid of the consequences for her family. However, when asked if she wished to return to the UK, she replied clearly that she wished to return as soon as possible. In the judges' presence, the parents then agreed that they would arrange her return to the UK within two weeks. This agreement was noted in the judgment, although no finding of unlawful detention was made.

4. Salma, eighteen years old, was persuaded by her family to go on holiday to Sylhet. While in Sylhet, she became aware of her parents' plans to marry her off against her will. As plans for the forced marriage developed, Salma eloped with a Bangladeshi man, whom she married in defiance of her family's wishes. Their families purported to attempt to resolve the situation through mediation. As part of the agreement reached through this process, Salma and her husband surrendered to the police.

Salma then discovered that her parents had brought charges of kidnapping against her husband. He was arrested and remanded in custody. Salma herself was also held in jail, in so called "safe custody" as a putative victim of a kidnapping. Despite documentary evidence of Salma's age, and her own repeated statements of the circumstances in which she was being held, the Court relied on medical reports and found that she was aged 16. It then directed that she be placed in her father's custody. Salma refused to do so and insisted that she would prefer to remain in prison.

The British High Commission officials visited Salma in jail, but stated that they could not intervene more directly as Salma was a dual national. They informed a local human rights organisation, which sent lawyers to interview Salma. However, she refused at first to consider any application for her release which would not also ensure the release of her husband. Eventually, another women's rights organisation filed an application under Article 102 of the Constitution, alleging that Salma was being detained against her will, and without any lawful authority, and that the practice of safe custody violated fundamental rights.

The Court directed the jail authorities to show cause why Salma should not be declared to be held in unlawful detention, and to produce her before the Court. BHC officials attended the hearings. When Salma was brought before the Court by the jail authorities she was in chains. The High Court ordered her release.

5. Shamima, nineteen years old, had become estranged from her family as a result of her relationship with a young British man, Jon. Although Jon had converted to Islam in order to marry Shamima, all her family members, except her father,

refused to accept their relationship and threatened Jon with violence on several occasions.

When her father suddenly died, Shamima agreed to her family's request to attend the funeral in Sylhet. After she arrived, Shamima was kept in virtual seclusion in the family home. She managed to smuggle out a letter to Jon, who immediately contacted the FCO, an MP, her teacher in university and the police. He claimed that both the FCO and the police advised that there was little they could do if she was a dual national.

Four months passed and Jon again received a letter from Shamima begging him to intervene urgently, as her marriage had been fixed to be held within a few weeks. Jon travelled to Bangladesh and met with the consular officials, who gave him a list of lawyers to contact. When he contacted the lawyers on the list provided by the BHC, the first lawyer named refused to meet him, and the second put down the phone after he called.

Eventually Jon found a lawyer on the list who was willing to advise him. This lawyer met with Shamima's mother and brothers and persuaded them to take Shamima to the BHC in Dhaka. They agreed, and when Shamima arrived in the BHC, the consular officials arranged to interview her privately. She said that she could not return with her family as they were going to force her into a marriage within the next few days, and that if she returned to the village she would not be able to escape again.

Although Jon had earlier been informed that the BHC could not intervene formally as Shamima was a dual national, it was now found that Shamima was not in fact a British national. Although she was entitled to British nationality through her father, she had not yet made an application for nationality. Consular officials advised that in these circumstances they could not treat her as a British national, and referred her to a local human rights organisation. Shamima left the BHC of her own free will, sought shelter with the human rights organisation and returned to the UK on the ticket which had been provided by Jon.

6. Khadija, an eighteen year old university student, travelled to Bangladesh with her family. Her college friends received a letter from her stating that she feared that she would be forced into a marriage. They contacted a UK-based human rights organisation which in turn contacted the British High Commission and requested assistance from a Bangladesh-based NGO.

The Bangladeshi NGO attempted to investigate her whereabouts but was unable to locate her for over a year. Eventually, the organisation was able to make contact with her through a teacher, who confirmed that Khadija appeared depressed and had been suicidal. She told the teacher that it was too late for her to try to get help or to leave Bangladesh.

## **BRIEF DESCRIPTION OF EACH ORGANISATION**

### **INTERIGHTS**

The International Centre for the Legal Protection of Human Rights (INTERIGHTS) is an international human rights law centre based in London. Established in 1982 to promote the protection of human rights and freedoms through the effective use of international and comparative human rights law, it has regional programmes in Africa, the Commonwealth Caribbean, Central and Eastern Europe and South Asia. It provides advice on human rights law in cases before national, regional, and international courts and tribunals, such as the UN Human Rights Committee, the Africa Commission and the European Court of Human Rights. It also conducts workshops and seminars on human rights law for lawyers, judges, NGOs and victims of human rights abuses. INTERIGHTS is currently collaborating with the Centre for Islamic and Middle Eastern Law at the School of Oriental and African Studies, London on a project to support initiatives to address honour crimes, including honour killings and forced marriages, in different regions including the Middle East and South Asia.

### **AIN O SALISH KENDRA**

Ain o Salish Kendra (ASK) (Law and Mediation Centre) is a legal aid and human rights advocacy and education centre based in Dhaka, Bangladesh. It was formed in 1986 by lawyers, social scientists and development workers committed to the promotion of a human rights culture, security and justice in a democratic society. ASK provides legal aid and mediation services to the poor and the marginalised, in particular to women, and also conducts training and advocacy on legal literacy and on human rights. It has been involved in cases concerning the abduction of women to Bangladesh for the purpose of forced marriage, and in advocating strategies to address this practice. Its work is channelled through its legal aid, mediation, investigation, training, media and research and advocacy units. ASK campaigns for human rights and women's rights at the national and regional levels and has been closely involved in monitoring legislation on violence against women. It has been involved in expert committees reviewing the Government of Bangladesh's reservations to CEDAW and working on a South Asian Convention against Trafficking.

### **SHIRKAT GAH**

Shirkat Gah is a women's resource centre established in 1976 in Lahore, Pakistan. Its Women Law and Status Programme undertakes capacity building of community based organisations and advocacy in the area of women's rights. It conducts advocacy both at the policy level and grassroots. It is also engaged in research, networking, legal services, solidarity. It has been approached by a number of organisations and individuals in several international cases relating to forced marriages and international child abductions. It is

now the Asian Region Co-ordination Office of the international network of information, solidarity and support, Women Living Under Muslim Laws.