

# Protect and prevent

*In the conclusion to a two-part analysis on forced and child marriage, Shabina Begum sets out the position in England and Wales and the potential for change*



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**P**art one of this article set out the position on early and forced marriages in Bangladesh. This concluding part examines the UK approach to forced marriage, remedies available, and recommendations as to what can be done to further reduce early and forced marriages in both the UK and in Bangladesh.

The UK government defines forced marriage as one where one or both people do not (or in cases of people with learning disabilities, cannot) consent to the marriage and pressure or abuse is used. It is recognised in the UK as a form of violence against women and men, domestic/child abuse and a serious abuse of human rights. Government guidance recognises that the pressure that may be put on people to marry against their will can be physical (including threats, actual physical violence and sexual violence), emotional and psychological (for example, when someone is made to feel like they are bringing shame on their family), or financial (see [www.gov.uk/guidance/forced-marriage](http://www.gov.uk/guidance/forced-marriage)).

In England and Wales the minimum age at which a person is able to consent to a marriage is 18 years old. A person between the ages of 16 and 17 can marry but they will require parental consent. If a marriage is conducted of a child under the age of 16 this will not be considered a valid marriage, as the child is legally unable to consent to a marriage.

The age of risk of a British Bangladeshi girl being forced into a marriage arises between 15-16 years of age. This is presumably due to the completion of compulsory education at 16 years, after which the presence of authorities in a girl's life is less

prevalent. Essentially child marriages are used as a tool to control children at a time when they are young and impressionable. In England and Wales some of the common reasons why British Bangladeshi parents will subject their children to child marriages are:

- to protect children from promiscuity;
- where a child is performing badly in school;
- to encourage a child to behave; and
- as a form of punishment if the parents find out that their daughter has a boyfriend.

In some areas of England and Wales the practice of forcing a girl into a marriage abroad is changing as British Bangladeshi parents are starting to recognise the value of higher education and girls are able to pass the age of risk of early and forced marriage. However the risk for vulnerable adults being taken abroad for the purpose of a forced marriage remains.

## **Remedies in England and Wales** **Forced marriage protection orders**

In England and Wales early and forced marriages are dealt with under the Forced Marriage Act 2007 (FMA 2007). Under s63A(1), FMA 2007 a forced marriage protection order may be obtained to prevent a forced marriage from taking place, or to protect someone who has already been forced into a marriage.

## **Wardship and the inherent jurisdiction**

In England and Wales it is recognised that children under the age of 16,

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and vulnerable adults, may require additional protection if they are at risk of being subjected to a forced marriage, and an application may be made under the inherent jurisdiction of the High Court. The High Court can make the victim a ward of the court and make ancillary orders, such as passport orders, which can order the removal of the victim's passport to prevent them from being removed from the jurisdiction of England and Wales.

If the victim has already been taken outside the jurisdiction of England and Wales, the High Court can order the return of the minor or vulnerable adult. The High Court can also order a port alert to be put into place, so that the minor or vulnerable adult cannot leave England and Wales from any port.

### Care proceedings

If a child is at risk, or has already been forced into a marriage and is aged 17 or under, and they come to the attention of the local authority, then it is possible to obtain orders under the Children Act 1989 (ChA 1989), namely a care or supervision order under s31, ChA 1989, or an emergency protection order under s44, ChA 1989.

Furthermore if the protected person is under 17, or potentially if the forced marriage is proved, and there are younger siblings, then care proceedings may be commenced to protect the younger siblings from risk of harm.

### Criminal law

In June 2014 forced marriage was criminalised in England and Wales and the maximum penalty for this offence is now seven years' imprisonment. By taking such a firm stance the government gave a strong message of low tolerance against such a grave act. This appeared to be *prima facie* a very positive mechanism to tackle the issue of early and forced marriage, but in reality it created an added burden upon the victim who had to decide whether they wanted to criminalise a family member, as the nature of this crime meant that it would usually be a family member who would be the perpetrator.

### Practical gaps

Although positive steps appear to have been taken in England and Wales, there are currently no readily available

statistics for the numbers of early and forced marriages reported in 2015. Therefore it is difficult to determine whether the general statistics have increased or decreased since the Girl Summit in 2014.

Furthermore, anecdotal evidence suggests that the practice does still exist among the British Bangladeshi diaspora, but there appears to be a low-reporting culture among the community. There may be a number of reasons for this; for example, that the

Those circumstances have not been defined and have opened up mistrust between the current non-government organisation (NGO) workers and the people of the community since the draft has been circulated. This amendment would statistically reduce the number of child marriages on paper as it would mean that the marriages of children between the ages of 16 and 18 would no longer be considered child marriages. However in practice this will only

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community is close knit and therefore deals with these issues internally. There is also a general mistrust towards the authorities and there is now an added burden where Muslim communities, including the Bangladeshi community, feel targeted by the authorities and are less likely to come forward to ask for help.

### Potential solutions

#### Bangladesh

In Bangladesh the practice of early and forced marriage has been ongoing for a very long time. There is currently no efficient reporting system in place; if a victim reports the matter the social structure does not provide the relevant support to allow a victim to escape the situation. The following may provide improvements to the current system:

#### Legislation

A closer look at the existing legislation shows that it will be very difficult to stop the practice of child marriage due to the contradictory positions as to the minimum age of marriage. The existing legislation should be reviewed and all necessary steps taken to eliminate inconsistencies.

Those campaigning against child marriage are currently in a state of turmoil since the government has suggested an amendment to the Child Marriage Restraint Act 1929 that a girl can be married at the age of 16 in exceptional circumstances.

conceal the numbers but perpetuate the problem.

#### Research and implementation

The current practice is that a marriage can be registered after a birth certificate is produced as an ID document. As it is easy to purchase a fake birth certificate, a mandatory requirement to produce a person's national identification card at the point of marriage registration (which will usually state the correct date of birth) would remove any doubt as to a child's age.

Although many of the solutions focus on the child remaining in the family home, there are some circumstances where the only option for the child is to escape the situation, and investing additional resources in the current shelters in Bangladesh would assist.

In Bangladesh there is no distinction between child and forced marriage. Much of the work to date is focused on the prevention of child marriages, leaving the issue of forced marriage not independently explored. Forced marriages can occur between adults where parents exert their desire to control their child's choice of a life partner. The majority of the time it will be the rights of adult females that are being curtailed. Therefore, as a research issue, it would be useful to explore the dynamics of early marriage among children and forced marriage among adults. The emotional pressure and

coercion applied to an adult may be similar to that applied to a child being subjected to an early marriage.

### **Support programmes**

There are currently many NGOs carrying out programmes aimed at best practices to end child marriage and to also support those who have been subjected to a child marriage. As part of the awareness-raising programmes under the Ministry of Women and Child

conditional cash transfers and stipends to girls to continue education and to delay child marriage before 18, the government could consider investing practical incentives for young girls to attend school. A majority of girls stop studying at grade 10 (ie, at the end of compulsory secondary education). In order to study grade 11 and 12 they must travel out of the vicinity of their village/town

have children at a very young age which can lead to maternal deaths. Medical services could produce more awareness and literature for young girls and their parents on the physical consequences of child marriage. The medical professionals may also work closely with marriage registrars, so that the marriage registrars encourage the girls and their families to seek medical advice prior to any marriage taking place.

## *Awareness-raising programmes on early and forced marriage, in local communities where there is a high volume of British Bangladeshis, could make a difference.*

Affairs, the government could consider awareness-raising programmes in the health and education sector, and, as part of the National Forum for Social Change, for the government to engage all community actors such as medical services (hospitals, clinics, mobile clinics), marriage registrars, imams/mosques and other NGOs engaged in local services/health services. Potential programmes include:

- Awareness-raising programmes at all education establishments, starting from primary level, from girls and boys, so that both girls and boys are more aware of the dangers and negative impact of early marriage. As part of the programme there could be an element that empowers young girls to speak to their parents to raise their objections and discuss their current and future aspirations.
- A separate awareness-raising programme on the issue of forced marriage, aimed at professionals and students in university and college. This could provide education on the dynamics of this type of abuse, reinforce the right to choose a life partner, and hopefully change the approach to marriage so that future generations will not perpetuate the issue.
- In addition to the government's current commitment to provide

(as this is the equivalent of a girl going to college), but parents often do not consent to girls travelling alone for security reasons of sexual harassment, and choose instead for the girls to marry. In India, following an academic research project, the local government of Bihar implemented a programme to tackle this accessibility issue by providing bicycles for young girls who reached grade nine, allowing girls to stay in school for longer. This incentive programme observed the rise in girls continuing education and as a result reduced the number of school drop-outs (see [www.legalease.co.uk/bike-path](http://www.legalease.co.uk/bike-path)). The government of Bangladesh could review this programme and consider piloting it in regions affected by early and forced marriage. While it may be a means of provision and access to education, security against sexual harassment is yet to be determined. If this programme is rolled out region by region, cultural adaptability and acceptance for girls to be further educated and to travel alone may become more acceptable.

- Support for already married girls through medical services. Many young girls who are forced into marriage are still physically underdeveloped and their bodies cannot cope with sexual intercourse. They do not understand the concept of marital rape, and many will

### **England and Wales**

In England and Wales, awareness-raising programmes on early and forced marriage, in local communities where there is a high volume of British Bangladeshis, could make a difference. The nature of this work could be threefold:

- Working with parents to make them understand the actual consequences of their actions and the potential harm that the children could face. This can be achieved by running awareness-raising sessions in existing community centres, events held by local charities and the Friday sermon in mosques.
- Working with young children so that they are aware of their options in terms of escaping any potential risk of early and forced marriages. This can be done as part of PSHE sessions with the children.
- General awareness-raising sessions with British Bangladeshis who could challenge the views of their relatives in Bangladesh and emphasise to them that early and forced marriages are not acceptable. This form of awareness raising should be targeted at the men of the community and the best way to reach them is through the Friday sermon at mosques.

### **Conclusion**

The governments of both Bangladesh and the UK have a legal and social responsibility to implement measures to combat early and forced marriage, but only by changing the minds of the people will it be possible to envisage a future where early and child marriages are no longer a reality. ■