

FORCED MARRIAGE

FACT SHEET



In July 2019, Princess Haya, the wife of Dubai's ruler Sheikh Mohammed bin Rashid al-Maktoum, applied for a 'forced marriage protection order' (FMPO) in the UK to protect her daughter.¹ Forced marriage is both a civil and criminal offence in the UK. An FMPO is issued to protect a person who has been, or is being, forced into a marriage. Princess Haya's application and subsequent media coverage brought the subject of forced marriage back into the limelight. iProbono is currently working with the UK National Commission on Forced Marriage with its report on the impact of the current law on the practice in UK. This factsheet explains what a forced marriage is and highlights legislations and rules that prohibit or encourage it in different jurisdictions of the world, with special emphasis on India.

WHAT IS FORCED MARRIAGE?



Figure 1: Source: Google Images

The International Labour Organisation (ILO) defines 'Forced Marriage' as situations where persons, regardless of their age, have been forced to marry without their consent.² A person might be forced

¹ CNN World, Princess Haya, Dubai ruler's wife, seeks court order to prevent child's forced marriage', July 31, 2019. Access at: <https://edition.cnn.com/2019/07/30/europe/princess-haya-dubai-forced-marriage-protection-gbr-intl/index.html>

² 2016 Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, International Labour Office and Walk Free Foundation.

to marry through physical, emotional, or financial duress, deception by family members, the spouse, or others, or the use of force, threats, or severe pressure. The defining character of a forced marriage is the freedom to give consent to the marriage.

Forced marriage is often confused with arranged marriage, but not every arranged marriage is a forced marriage. A marriage that is arranged by a third party and consented to by both the bride and the groom is an arranged marriage; but when either of the party has not consented to or cannot revoke prior consent to the alliance, it becomes a forced marriage. In certain societies where arranged marriages are widely practiced, coercion may not be easily determined.

There are several customary forced marriage practices throughout the world. In South Africa, *Ukuthwala* is the practice of kidnapping a girl or a young woman by a man and his friends or peers with the intention of compelling the girl or young woman's family to endorse marriage negotiations.³ The custom originated from the Xhosa-speaking clans but has expanded to different ethnic groups.



Figure 2: Source: Google Images

In Pakistan and Afghanistan, the customary practice known as *vani* or *swara*, where girls are given in marriage to compensate for the crimes of a male member of their family or settle family disputes, is still practiced. Although such practice is banned under Section 301A of the Pakistan Penal Code, it is continued to be widely practiced in Pakistan's Khyber-Pakhtunkhwa province⁴. The ancient practice of *baad*, also a forced marriage of a girl to settle a family feud, is prevalent in rural Afghanistan.⁵ Marrying off women without her consent is a criminal offence under Article 517 of the 1976 Afghan Penal Code, but the article only applies to widows and women older than 18 years of age.

Legislation in several countries including Algeria, Iraq, Kuwait, Libya, Bahrain and Syria exonerate rapists if they marry the survivor, thus allowing rapists to escape prosecution by marrying their victim.⁶ There the society values a woman's virginity before marriage and survivors of rape are also forced into marriage so that their perpetrator can avoid prosecution. The Philippines, a predominantly Catholic country, also has a 'marry-your-rapist' loophole and similar cases are reported within Catholic and Roma families in the United Kingdom, although this is not sanctioned by law.⁷

³ Van der Watt, Marcel & Ovens, Michelle, 'Contextualizing the practice of *Ukuthwala* within South Africa', *Child Abuse Research: A South African Journal*, 2012.

⁴ Hanan, Fazal & Mussawar, Shah & Khan, Naushad, 'Cultural Involment in Dispute Settlement Through Women as Compensation in District Swat Kohistan-Pakistan', 2017.

⁵ United Nations Assistance Mission in Afghanistan, 'Injustice and Impunity: Mediation of Criminal Offences of Violence against Women' Report, May 2018.

⁶ <https://www.nytimes.com/2017/07/22/world/middleeast/marry-your-rapist-laws-middle-east.html>

⁷ In 2014, the UK enacted The Anti-social Behaviour, Crime and Policing Act, making forced marriage a criminal offence in England, Wales and Scotland.

In 1999, Egypt repealed laws allowing rapists to escape prosecution by marrying the victim, becoming the first country in the MENA (Middle East and North African) region to do so. Morocco overhauled its law in 2014, following the suicide of a 16 year old girl and the attempted suicide of a 15 year old girl, both of whom were forced to marry their rapists. EU countries Denmark and Bulgaria repealed such laws only in 2013 and 2015 respectively.⁸ Tunisia, Morocco and Jordan repealed these laws in 2017.⁹ In 2018, Palestine also repealed a similar law.¹⁰ Till it was repealed in 2018, Article 339(3) of Penal Code of Greece allowed marriage as a permissible settlement for "seduction" of a child.¹¹

CHILD MARRIAGE - A FACET OF FORCED MARRIAGE



Figure 3: Source: Google Images

The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, that came into force in 1964, provides that all State parties shall '*specify a minimum age for marriage and that no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.*'¹² The Joint General Recommendation No.31 of the United Nations Convention on the Rights of the Child (CRC) on harmful practices, draws a link between forced marriage and child marriage due to the inability of children to give their free and full consent to marry, and reiterates the importance of issuing and implementing laws establishing 18 years as the minimum age to enter into marriage.

<https://wunrn.com/2017/03/rapists-can-avoid-punishment-by-marrying-their-victim-in-countries-as-bahrain-iraq-philippines-tajikistan-tunisia/>

⁸ Anti-Rape Law, 1997, Philippines

⁹ 'Jordan bans rapists from escaping justice by marrying victim', The Guardian, 2 August 2017.

¹⁰ 'Palestine Is the Latest Middle Eastern State to Repeal 'Marry-Your-Rapist' Law', Global Citizen, 10 May 2018

¹¹ <https://www.lawspot.gr/nomika-nea/dimosieythike-o-nomos-4531-2018-gia-tin-katapolemisi-tis-vias-kata-ton-gynaikon-kai-tis>

¹² Article 2, UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964

A study by Pew Research Center¹³ (PRC) found that at least 117 countries around the world allow child marriages. PRC looked at 198 countries and found that 192 of them have laws that specify when a person can legally marry. Only six countries – Equatorial Guinea, Gambia, Saudi Arabia, Somalia, South Sudan and Yemen – do not specify a minimum age for marriage.

In some of the countries where the age of marriage is defined, the prescribed age may be much younger. In Sudan, girls can marry at 10 years and boys can marry at 15 years or on attaining puberty. Marriage age can depend on religious affiliations as well, and in most countries that follow the Shariat, like the Philippines, Muslim boys can marry at 15 years and Muslim girls can marry any time after attaining puberty. In Malaysia, men can legally marry girls under 18 if they get Islamic sharia court approval. In Tanzania, Muslim and Hindu girls can marry at 12 as long as the marriage is not consummated until the girl reaches the age of 15.¹⁴

Sometimes, marriages are approved by external sources even if the child hasn't reached the prescribed marriageable age. In Australia, if a person is at least 18, their spouse can, with judicial approval, be as young as 16. In countries such as Iraq, Jamaica and Uruguay, children can marry with parental permission. In Indonesia, 375 under-aged girls marry every single day, averaging one out of every nine girls in the country, according to a study by the United Nations Children's Fund (UNICEF). Cambodia holds the highest birth rate among females aged 15-19 at 57 per 1000, followed by Thailand.¹⁵



Figure 4: Source: Google Images

According to the UK-based action group Girls Not Brides¹⁶, one in three girls in developing countries are married before the age of 18. Despite laws prohibiting and penalising child marriages, India still has the highest number of child brides in the world. India is also one of the twelve countries selected to be part of United Nations Population Fund (UNFPA) and UNICEF's Global Programme to Accelerate Action to End Child Marriage.

¹³ <http://www.pewresearch.org/fact-tank/2016/09/12/many-countries-allow-child-marriage/>

¹⁴ The 2016 UNODC Global Report on Trafficking in Persons

¹⁵ UNICEF Annual Reports 2017

¹⁶ <https://www.girlsnotbrides.org/where-does-it-happen/>

THE UNITED NATIONS ON FORCED MARRIAGE



Figure 5: Source: Google Images

Article 16 of the Universal Declaration of Human Rights (UDHR) deals with discrimination against women in marriage-related matters. It further ensures that both men and women have the same right to enter into marriage, and the same right to freely choose a spouse and to enter into marriage only with their free and full consent.

Under Article 23 of the International Covenant on Civil and Political Rights 1966 (ICCPR), no marriage shall be possible without the free and full consent of the intending spouses. Article 10 of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESC) mentions that the States Parties to the Covenant shall recognise that marriage must be entered into with the free consent of the intending spouses.

Articles 1 and 2 of the United Nations Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery akin forced marriage to slavery. Anti-Slavery International defines child and forced marriage as slavery when the following three conditions are present:

- No genuine full and informed consent for marriage
- Subjected to control & ownership; abuse and threats; exploited by being forced into labour in and outside of the home; engage in non-consensual sexual relations
- Cannot realistically leave or end the marriage leading to potentially a lifetime of slavery

In the 2014 Resolution on Child, Early and Forced Marriage (CEFM), the United Nations (UN) General Assembly declared that 'forced marriage is a harmful practice that violates, abuses and impairs human rights and is linked to and perpetuates other harmful practices and human rights violations and that such violations have a disproportionately negative impact on women and girls'. Goal 5 of The Sustainable Development Goals (SDGs) set by the UN General Assembly in 2015 aims to achieve gender equality and empower all women and girls, including eliminating all harmful practices such as child, early and forced marriage and female genital mutilations.

On 19 December 2016, the UN General Assembly adopted a second resolution on Child, Early and Forced Marriage at its 71st session. The resolution requires all States to enact and enforce laws requiring a minimum age for marriage and ensure access to justice for women and girls who are at risk or have been subjected to this child marriage and forced marriage. The resolution also urges

States to respect, promote, and protect the sexual and reproductive health and rights of all women and those girls subjected to child, early and forced marriage.

The United Nations Office on Drugs and Crime (UNODC) estimates that 1.4% of the total detected victims of trafficking are trafficked for marriage.¹⁷ According to the 2017 Trafficking in Persons Report, in China, the sex imbalance – due, in part, to the One Child Policy – has created a large demand for brides, both Chinese and foreign. To keep up with the demand, women have been abducted or lured with false promises from countries such as Thailand, Vietnam, Laos, Cambodia, and North Korea. The ILO report acknowledges that it is likely that forced marriage is “massively under-detected.” Ending forced marriage would mark a significant impact not only in the fight against modern-day slavery and human trafficking, but also for gender equality.

The 2017 Global Estimates of Modern Slavery by International Labour Organisation and Walk Free Foundation found that in 2016, 71% of the victims of modern slavery were women. About 15.4 million people were living in forced marriages and most victims (84%) were women and girls, with more than a third of victims under 18 years of age at the time of the marriage. Forced marriages may occur in the context of migration, for example to secure documentation extended family members need to reside in a particular destination country. Forced marriages are also being used by armed groups during conflict. Families who are faced with physical and economic insecurity may see early forced marriage as a way of alleviating poverty and protecting girls from difficult living conditions. Similarly, they may fall prey to traffickers who claim to offer their children a safer place and job opportunities.

FORCED MARRIAGE IN INDIA



Figure 6. Source: Google Images

In 2006, in *Lata Singh v. State of Uttar Pradesh*¹⁸, the Supreme Court of India viewed the Right to Marry as a component of the Right to Life and Liberty under Article 21 of the Indian Constitution. The court observed that, “*This is a free and democratic country, and once a*

person becomes a major he or she can marry whosoever he/she likes.” Later in 2018, in *Shakti Vahini vs. Union of India*¹⁹, the Supreme Court held that the right to choose a life partner is a fundamental right. The bench comprising former Chief Justice Dipak Misra, Justice A.M. Khanwilkar and Justice

¹⁷ The 2016 UNODC Global Report on Trafficking in Persons.

¹⁸ AIR 2006 SC 2522

¹⁹ (2018) 7 SCC 192

D.Y. Chandrachud held that *"When two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognised under Articles 19 and 21 of the Constitution"*. The bench also held that consent of family, community or clan is not necessary for marriage between two consenting adults.

Yet in 2016, according to the Indian Ministry of Home Affairs, 33,796 women and 16,695 girls were forced into marriage - often kidnapped by their families, spurned lovers, and even total strangers.²⁰ In 2017, UK's Forced Marriage Unit dealt with 82 cases related to India.²¹ Over the last decade, India has witnessed a large decline in child marriage rates, from nearly 50% to 27%²², but it still has the highest number of child brides in the world. According to a recent report from ActionAid India, a third of the world's child brides are Indian.²³



Figure 7: Source: Google Images

Codified personal laws in India mention 'consent' as an integral part of a valid marriage. Section 5 of the Hindu Marriage Act, 1955 specifies: (a) 'consent' from brides and grooms is a pre-condition for a valid marriage; and (b) that a marriage is lawful only if the groom has attained the age of 21 years and bride 18 years at the time of marriage. A marriage without consent of both parties is voidable by the party coerced into giving consent.²⁴ In April 2018, the Supreme Court ruled that the consent by the parties to a marriage is inherent under the Hindu Marriage Act and any woman subjected to a

²⁰ NCRB Report, 2016.

²¹ Forced Marriage Unit Statistics, 2017.

²² <https://www.ndtv.com/india-news/child-marriages-drop-by-half-in-india-results-in-global-decline-unicef-1820026>

²³ 'Eliminating Child Marriage in India', ActionAid India, 2017.

²⁴ Section 25, Special Marriage Act, 1955

forceful or fraudulent marriage was at liberty to initiate civil action in the appropriate court.²⁵ While hearing the petition filed by a Karnataka woman who claimed that the consent of the bride or the groom has not been made mandatory in the law, the court pointed out that the provision regarding forceful marriage is already inherent in the marriage law and the court will not interfere with Hindu marriage laws by issuing a declaration separately. Under the Special Marriage Act 1954, where inter-religious marriages are registered in India, Sec. 4 of the Act makes it clear that consent is necessary for the marriage to be legally solemnised. Sec. 24 further states that if the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872, the marriage is voidable or may be annulled by a decree of nullity, by the one forced into marriage.



Figure 8: Source: Google Images

Muslim personal law is not codified in India and Shar'ia is followed for solemnisation of marriages by Indian Muslims. In Muslim law, marriage is a civil contract, which requires proposal (Ijab) from one party and acceptance (Qubul) from the other, and witnesses. There can be no marriage without free consent and such consent shouldn't be obtained by means of fraud,

coercion or undue influence. Just like in a contract entered into by a guardian of a minor, on attaining majority, a person can also set aside a marriage contract in Muslim law on attaining the age of puberty. The marriageable age for a Muslim girl in India is much lower than the age of majority. The age of marriage under Muslim law is generally considered to be the age of puberty which is often taken as 15 years. Under the Dissolution of Muslim Marriages Act, 1939, if a minor girl under the age of 15 years is married under Muslim law, she can obtain a decree of dissolution of marriage before she attains the age of 18 years provided that the marriage has not been consummated.²⁶

'Groom kidnapping' or Pakdwa Vivah is a common phenomenon in Bihar. Men of marriageable age are often abducted at gunpoint and married off to a woman against their wish. The practice dates back to the 1980s and is often done to avoid heavy dowry costs.²⁷ There were about 3,400 groom kidnappings for marriage in Bihar in 2017.²⁸

²⁵ <https://www.thehindu.com/news/national/brides-consent-to-marriage-is-implicit-in-hindu-law-says-supreme-court/article23502559.ece>

²⁶ Section 2, Dissolution of Muslim Marriages Act, 1939

²⁷ 'Groom Kidnapping: A blot on India's Bihar', Aljazeera, February 2014

<https://www.aljazeera.com/indepth/features/2014/02/groom-kidnappings-blot-india-bihar-2014218115419409842.html>

²⁸ 'Literally, marriage at gun-point: Over 3,400 grooms abducted in 2017 for 'Pakadwa Vivah' in Bihar', Indian Express, 4 February 2018.

<http://www.newindianexpress.com/nation/2018/feb/04/literally-marriage-at-gun-point-over-3400-grooms-abducted-in-2017-for-pakadwa-vivah-in-bihar-1768251.html>

WHERE IS FORCED MARRIAGE CRIMINALISED?

The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) called on State Parties to criminalise the intentional conduct of forcing a person to enter into a marriage. Criminal law provisions on forced marriage have also been enacted in most European Union nations including Belgium, Bulgaria, Croatia, Cyprus, Denmark, Germany, Spain, Luxembourg, Malta, Portugal, Slovenia and Sweden. In Latvia, Northern Ireland, Estonia, Lithuania, and Ireland forced marriage is criminalised under trafficking laws.



Figure 9: Source: Google Images

The United Kingdom has the most stringent policies against forced marriage in the world. Forced marriage is illegal in England and Wales, and includes taking someone overseas to force them to marry, and marrying someone who lacks the mental capacity to consent to the marriage. The UK government introduced the Anti-Social Behaviour, Crime and Policing Act 2014 and created a new, separate offence of forced marriage as well as criminalised breaches of Forced Marriage Protection Orders (FMPOs) issued by the Forced Marriage Unit (FMU). The FMU is a joint Foreign and Commonwealth Office and Home Office Unit, which was set up in January 2005 to lead on the Government's work on raising awareness of forced marriage, improving policy and supporting victims both inside the UK and overseas. One can apply for a Forced Marriage Protection Order if they have been forced into a marriage or believe they are being forced into a marriage. A FMPO is a type of injunction which can forbid the perpetrator from doing certain things such as being physically violent, contacting the complainant directly or indirectly, taking them out of the country, or making marriage arrangements. The complainant can call the police if any part of the order is ignored or not complied with, and the perpetrator can be sentenced to prison for a term up to 5 years. Cases involving forced

marriages often involve immigration issues, in which one potential spouse is a UK citizen and the other is a foreign citizen. The cases also include individuals being taken to a foreign country on the pretext of a holiday and then forced to marry.

The first forced marriage conviction, after it was decriminalised in UK, was in July 2015. A 34 year old businessman from Cardiff was sentenced to 16 years in prison for a range of charges including rape, bigamy, voyeurism and forced marriage.²⁹ He had secretly filmed a Muslim woman taking a shower to blackmail her into becoming his second wife. In May 2018, a mother of an 18 year old girl was convicted for tricking her into marrying a man 16 years older than her, while abroad.³⁰

In the United States, only 9 states and 2 additional US jurisdictions have criminal statutes that directly address forced marriage. In the United States, forced marriage is considered to be a human rights violation and in some cases, a form of child abuse.³¹ In Australia, the forced marriage offences in the Criminal Code 1995 were added in 2013 and was categorised as a slavery-like practice. In 2018, Morocco also banned forced marriage.³²

Apart from a few government agencies and the United Nations, national and international human rights organisations are continuing the fight against forced marriage on both regional and global level. Notably: Unchained at Last and Tahiri Justice Centre in the US; Karma Nirvana, South Hall Black Sisters, Iranian and Kurdish Women's Rights Organisation (IKWRO) and Halo Project in the UK; Human Rights Watch, Girls Not Brides, CARE International, and activists like Afghan rapper Sonita Alizadeh.

²⁹ 'First ever forced marriage conviction in UK', The Telegraph, 10 June 2015

<https://www.telegraph.co.uk/news/uknews/crime/11665908/First-ever-forced-marriage-conviction-in-UK.html>

³⁰ 'Mother convicted of tricking daughter into forced marriage abroad in legal first', The Telegraph, 22 May 2018

<https://www.telegraph.co.uk/news/2018/05/22/mother-convicted-tricking-daughter-forced-marriage-abroad-legal/>

³¹ *Criminal Laws Addressing Forced Marriage in the United States*, Tahiri Justice Centre

<https://preventforcedmarriage.org/wp-content/uploads/2015/01/UPDATED-2017-Tahiri-Memo-on-State-Criminal-Laws-on-Forced-Marriage.pdf>

³² 'Morocco bans forced marriage and sexual violence', BBC News, 12 September 2018.

<https://www.bbc.com/news/world-africa-45496337> <https://www.bbc.com/news/world-africa-45496337>



This is the second document in a series of legal information fact sheets curated by iProbono on violence against women and girls. While our fact sheets aim to provide a global perspective, the focus of this document is the law in India and UK.

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