



*Empowering and Providing Leadership for Women*

## **SUBMISSION TO JOINT COMMITTEE ON HUMAN RIGHTS**

### **JCHR legislative scrutiny priorities for 2013-14**

JAN Trust will focus its comments on the practise of forced marriages (FM). The right to choose who to marry is a fundamental human right. Without it, numerous other rights are often undermined, including the right to live free from violence and to choose when to start a family.

Gender-based and honour-based violence, particularly FM is profoundly disempowering. It undermines women's basic personal and physical autonomy, and can begin a long process of increasing exclusion and disempowerment, with many victims taken out of education, and isolated from formal and informal sources of support.

#### **Anti-social Behaviour, Crime and Policing Bill**

JAN Trust welcomes the better implementation of civil remedies, such as the forced marriage protection order (FMPO). Criminalising the breach of a FMPO can help enhance the protection of human rights. In a report (Consent Matters) published by JAN Trust in July 2012 we detailed the way forward needed to include effective implementation of the Forced Marriage Act, systematic penalisation of FMPO breaches, and an approach based on dialogue and cooperation with the Pakistani community in order to challenge inherent causes of FM. However, for such an approach to be successful, it is essential that relevant service providers become more aware of the heterogeneity within this group. By gaining a better understanding of the socially constructed values underlying FM, service providers will become more empowered to deal with cases of FM, and provide victims with the right kind of support.

#### **Immigration Bill**

FM is predominantly dealt with as an immigration issue in the UK and the key measures for tackling FM are in the responsibility of the Foreign and Commonwealth Office or the Home Office's Immigration and Nationality Directorate. This implies that combating FM is merely a part of the government's immigration policy and this impression persists despite the Community Liaison Unit's persistence that FM is a human rights and not an immigration issue.

The current immigration laws are aimed at protecting the victim whilst limiting the number of immigrants. However, the effectiveness of this dual strategy is contested. The current strategy is the so called "regulation approach" which comprises of

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regulating (effectively raising) the age at which overseas spouses can enter the UK. The age of sponsorship for a UK Visa by marriage had previously been raised from 16 to 18 years old without resulting in any major evidence of the reduction of FM cases. Nevertheless, in November 2008 the Government raised the minimum age of sponsorship further to 21 years old. The evidence of its impact on FM is mixed and on the 21st of December 2010 the Court of Appeal ruled that “this amendment, notwithstanding its proper objective, was a disproportionate inhibition on family and private life and on the right to marry”, and “interfered with the ... rights of those who were in genuine marriages”. Subsequently, on the 28th of November 2011, the minimum age of 18 for visa sponsorship was reinstated. The benefits of the ‘regulation approach’ are often listed to be the greater maturity, education, as well as financial and emotional independence of potential victims due to their increased age, all of which could theoretically put them in a better position to resist FM. However, the risks identified with this strategy are seen to outweigh the benefits. The risks include the danger of victims being taken abroad to be forcibly married and to be held there against their will until they reach the legal age for spousal sponsorship. A prolonged period in captivity increases the risk of the victim developing a mental health illness, in particular an increased risk of self-harm and suicide. Additionally, the ‘regulation approach’ may be seen as discriminatory as it creates different standards for a marriage between two UK/EU nationals and marriages involving a person from outside the UK/EU. Other concerns held by a number of scholars were voiced during research conducted by the London School of Economics (LSE) in 2004, which found that the regulation approach “falsely equates overseas marriage with FM in effect if not in letter, it discriminates against ethnic minority citizens”, and “it threatens to confirm the not-so-latent suspicions in Britain’s South Asian communities that the forced marriage initiative is driven by racist immigration agenda.” Raising the age of sponsorship will certainly have helped some young people to avoid FM, but many persons at risk will remain so even above the age of 21.

Further problems with the government’s approach to the criminalisation of FM have been identified in the procedures of the UK immigration system. Firstly, there is no warning system which would serve to identify a FM as the family who forced the victim into the marriage will have the power to force him/her to prepare sponsorship documentation for the spouse’s immigration. Secondly, it is very difficult for a ‘reluctant sponsor’ to refuse visa clearance for their intended spouse due to lack of confidentiality. Even if the victim states that the marriage is forced, his/her statement cannot be kept confidential if their spouses entry refusal to the UK is based on it as every person who is refused immigration to the UK has the fundamental right to know the reasons for the refusal and the right to appeal. Therefore, FM victims rarely refuse sponsorship and are very likely to withdraw any statement made for fear of reprisal

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acts from their family. These confidentiality requirements should be reviewed in cases where there is evidence that the visa sponsor is a FM victim. Therefore there is potential to enhance protection of human rights of forced marriage victims especially when reasons for refusing a spousal visa could be waived if a forced marriage case is suspected.

According to the Muslim Arbitration Tribunal (2008), a first interview of the spouses is conducted only after two years, when it is usually too late to detect that a FM had taken place. Victims who are brought to the UK after a FM face very similar problems, being completely dependent on their family/spouse in the UK and at risk of abuse. JAN Trust seeks a change in the FM initiative from the regulatory approach to one based on dialogue and cooperation with affected communities. Changes of dominant attitudes to FM in affected communities as well as the reduction of FM cases through dialogue will take time. However, even though results through dialogue might not be instant, they will be long-lasting changes to the inherent causes of FM. This will avert much suffering as opposed to the superficial measures of the current strategies which only deal with the effects of FM once a person is already at risk or has become a victim.

Those victims who are unsure of the immigration status should be supported and assisted even when they are at fear of being forced into a marriage. Therefore there is also potential here to enhance protection of human rights, especially if a victim is in danger of being forced back to their home country when they are unable to remain in the UK. The Immigration Bill should take this into account.

*Further reading: JAN Trust's Consent Matters Report, 2.5 FORCED MARRIAGE AND IMMIGRATION*

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