

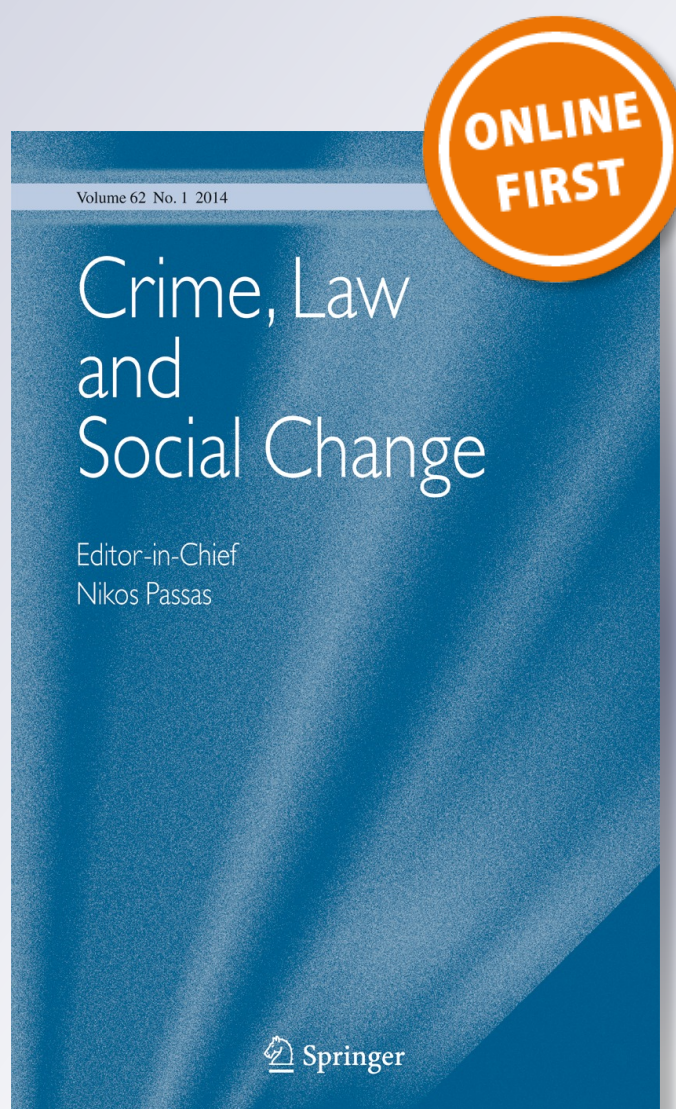
Forced marriage: an analysis of legislation and political measures in Europe

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Forced marriage: an analysis of legislation and political measures in Europe

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Abstract Forced marriage is of current international concern in Europe. As many cases involve a transnational component linked to migration, it is increasingly receiving attention at the government level. The serious consequences for women, including sexual violence, and the physical and psychological health risks associated with it, seem to receive little consideration. Recent years have seen a rise in initiatives and measures taken by policy makers throughout Europe. As the focus is placed on criminalization and stringent immigration policies, ethnic minority population groups bear the greatest burden. It is argued that specific criminal laws make it more difficult for victims to come forward, while offering very little or no protection in return. The widespread 21-year age rule in immigration law has been denounced by scholars, institutes and magistrates alike for infringing on the fundamental human right to family life guaranteed by article 8 ECHR. The discourse on forced marriage appears to have reached a crossroads. European governments are faced with the challenge to create policies that protect and support victims, while simultaneously cracking down on perpetrators and safeguarding their borders from abuses in obtaining visas. There is a very pressing need to work more closely with those at risk, involving service provisions to directly support them, instead of a one-side top-down policy framework through which minority communities feel targeted and stigmatized.

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Introduction

In recent years, forced marriage has become the subject of public and political debate throughout Europe, particularly due to reports of immigrant girls in Western European countries taken to their country of origin to be forcibly married [1]. The discussion suffers lack of clarity as countries have different, overlapping ways of perceiving the problem [2]. Forced marriage is interwoven with migration and integration on the one hand, and domestic violence on the other hand [3]. On the whole, in seemingly every country there is a tendency to connect the issue to the culture, and sometimes also the religion, of minority population groups [2, 4–7]. This is partly rooted in the media's portrayal of forced marriage in light of the concept of family honour and the occurrence of honour killings [8, 9]. Reddy clarifies that the term 'honour killing' usually envisages a scenario where *a woman is killed to either prevent or repair perceived violations of male or familial 'honour'* [9]. Forced marriage is thus considered *both a type of 'honour crime' in itself, and the precursor to or result of other types of honour-related violence* [9]. In referring to customs and behaviours of migrants, a contrast is made with the majority population [4]. As a result, the imported *foreign* cultural practices are seen as a threat to fundamental European or Western values [4, 7, 8, 10, 11]. This perception and emphasis on the phenomenon as a migrant issue is inherently influencing and shaping national public debates, legislation and policies. The aim of this paper is to critically assess prevailing and emerging policies regarding forced marriage in Europe.

The research available in this context, in addition to government reports, NGO-reports, policy documents, legislation and literature, is examined as it relates to forced marriage, its impact on victims and the current policy trends in Europe. Documents from institutional sources, such as the World Health Organisation, Council of Europe, the European Union and the United Nations, are included in the analysis. The highly contemporaneous nature of the topic, with laws and policies changing rapidly, has influenced the decision to only include data from the year 2000 onwards, up until December 2012. The decision to base this analysis on fairly recent and contemporary sources is also echoed by authors, for instance stating that *the last five years (...) is the period in which there has been a substantial impetus in relation to forced marriage* [12].

The Multiple Streams framework is applied as a tool for the analysis in order to explain the policy process regarding forced marriage in Europe. This theoretical framework offers insights into and facilitates understanding of the policy making process [13]. Once a greater understanding of the policy situation is achieved, consideration can be given to how the current policy measures are countering the issue of forced marriage. The framework is especially useful for ambiguous problems where there are many ways of thinking about or approaching the phenomenon, and for which solutions are not clear. It must be noted that 'ambiguity' differs from 'uncertainty'. The distinction is that more evidence may reduce uncertainty, but it does not reduce ambiguity [14]. Such is effectively the case with forced marriage. As more stakeholders join the discussion, the diverging opinions between presented solutions and manners in which to tackle the issue become more apparent.

After outlining the background and scope of the issue of forced marriage, a descriptive analysis is provided, offering an understanding of the current status of the

policy measures and discussions. This is followed by an explanatory analysis, whereby the Multiple Streams framework is applied to go deeper into the reasons for the prevailing policies.

For practical purposes, only key papers and documents will be used to illustrate the themes that were identified from the analysis.¹

Background

Attempting to define forced marriage brings to light the complexity of the issue. Forced marriage is commonly defined as a union² where one or both parties are coerced into a marriage against their will and under duress. In most countries, this element of duress can include physical, psychological, financial, sexual and emotional pressure [15–17].

Except for cases where there is actual physical violence that denies a person's freedom of consent, it is difficult to determine whether or not the union was entered into freely. It all depends on the circumstances in which the intent is expressed. Feelings of anxiety and fear can overrule any resistance to a marriage, leaving a person vulnerable and unable to escape the union, thus making it difficult to distinguish between arranged and forced marriages. In arranged marriages the spouses are introduced by parents or relatives but both parties give their full and free consent to the union, therein lies the difference with forced marriage [12]. However, in practice it can become difficult to accurately determine at what point emotional pressure becomes great enough to implicate genuine force in order to distinguish between forced and arranged marriages [18, 19]. Along this line, the term 'consent' is contested by researchers who argue that it is context bound and embedded within power relations, rather than an act of pure individual agency [20].

Child marriage, defined as marriage of a child under 18 years of age, is a widespread practice, especially in developing countries [21]. It is also generally considered a forced marriage. In the case of child marriage, the lack of maturity makes consent impossible [22]. The United Nations Convention on the Rights of the Child (CRC, 1989) defines a child as anyone under the age of 18 years,³ based on ideas of universalised notions of maturity [23].

Forced marriage is widely recognised as a human rights abuse, violating a number of international human rights norms, including the right to freely enter into marriage, and to bodily and sexual integrity. As early as 1948, the right to free and full consent to marriage was stipulated by the Universal Declaration of Human Rights.⁴ The recognition of the right to consent to marriage is also guaranteed by the International Covenant on Civil and Political Rights (ICCPR, 1966), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) and the Convention on the Elimination of

¹ Upon request, a complete reference list may be obtained from the corresponding author.

² Forced marriage applies to both formal and informal unions.

³ Art. 1 CRC: "For the purpose of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Another United Nations instrument is the *Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages* (UN 1962), which reaffirms the consensual nature of marriages, requires the parties to establish a minimum marriage age by law and to ensure the registration of marriages.

⁴ Article 16(2): "Marriage shall be entered into only with the free and full consent of the intending spouse".

all Forms of Discrimination against Women (CEDAW, 1981).⁵ The United Nations Committee on the Elimination of Discrimination against Women emphasized that the provision encompasses the right *to choose, if, when and whom to marry* [24].

Scope of the problem

Although forced marriage is applicable to both sexes, the number of women involved is considerably larger [22, 25]. Existing data clearly indicates that more women and girls are confronted with forced marriage than men or boys. From 2008 to 2010, approximately 85 % of cases reported to the Forced Marriage Unit (FMU) in the UK involved women and girls, as opposed to 15 % implicating men and boys [26]. Of all the reports the FMU received in 2012, 18 % were male, indicating that male forced marriage could be on the rise.⁶ Yet, other studies from countries such as Germany, Switzerland and the UK reveal the share of women and girls to be even higher, up to 96 % [2, 25, 27]. Backing up these figures, a recent German research report divulged that of the 3,443 people seeking help for forced marriage in 2008, 94 % were women and girls while young men represented only about 6 % [28]. A vast amount of cases involve minors. Taking into account a cross-section of studies in Germany and the UK, on average 30 % of the victims are younger than 18 years [25, 26, 28].

Forced marriage as a form of violence

Not only do women and girls more often experience forced marriage, the impact is more serious on women and girls than on men, as they are much more likely to be confronted with domestic violence, sexual abuse and rape [29, 30]. In the German study 70 % of the victims were beaten or otherwise physically abused to convince them to marry, and 27 % were threatened with weapons or with death if they refused to go through with the marriage [28].

Considering the levels of physical and psychological abuse frequently associated with forced marriage, the issue is perceived as a form of violence against women [30]. Although there is a lack of consensus in defining violence against women [31], the United Nations supports an open definition and describes it as *any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life*.⁷ The UN Convention further specifies that violence against women encompasses violence occurring in the family and within the general community.⁸ This definition mirrors the experience of a forced marriage, which can include physical coercion, emotional pressure and sexual violence such as rape, at the time of entering into the marriage, during the marriage and when trying to leave the union [30]. In the forced marriage context, violence is mainly perpetrated by assailants in the family, such as parents, siblings, husbands and in-laws,

⁵ Article 23 ICCPR, article 10(1) ICESCR and article 16 CEDAW.

⁶ See Forced Marriage Unit (FMU) website. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141823/Stats_2012.pdf.

⁷ Article 1 United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

⁸ Article 2 (a), (b) CEDAW.

or by members of the wider community [30]. This widespread scale of the abuse makes it a considerable public concern.

Consequences

The World Health Organization classifies violence against women as a major public health problem [32]. A growing body of research is consistently linking violence with a range of serious health problems. The long-term effects have a detrimental impact, not only on individuals, but on families and communities as well. Forced marriage in particular brings about a wide range of health consequences. Forced sexual intercourse can lead to gynaecological problems. Associations have been found between coerced first sexual intercourse and genital tract symptoms [33]. Studies also report significant associations between sexual abuse and sexually transmitted infections, bacterial vaginosis, complaints of abnormal vaginal discharge, and psychological and mental disorders [34]. Because their bodies are unprepared for childbirth, young mothers experience higher rates of maternal mortality and higher risk of obstructed labour, postpartum hemorrhage and sepsis [21, 35]. Young women and girls forced into marriage are additionally exposed to a greater risk of HIV infection [21]. Research suggests that in some settings 15 to 19 year old married girls have higher rates of HIV infection than their sexually active unmarried peers [36–38]. However counterintuitive this seems, Clark et al. suggests that married girls in any setting may be more vulnerable to HIV infection because marriage increases frequency of sexual intercourse, decreases condom use, and virtually eliminates girls' ability to abstain from sex [38].

Research into victims of forced marriage also reveals the highly significant psychological impact that forced marriage can have on women [39, 40]. Self-harm and suicide are also being linked to forced marriage, significantly affecting women from South Asian origin, the largest immigrant population group in the UK, due to factors such as a *lack of self-determination, excessive control, the weight of expectations of the role of women, and anxiety about their marriages* [40, 42].

Taking the cumulative impact on mortality and morbidity into account, the health burden of violence against women is often greater than for other public health priorities that are placed higher on the policy agenda [43]. In the case of forced marriage, this is especially so, seeing that it is most often considered a minority-issue and treated as such by health professionals. In a Swedish study, issues relating to protecting the honour of the family among young immigrant women have been identified as *a new problem for health care* [44]. Health professionals and counsellors have no guidelines or rules to follow, and little experience with this subject matter to fall back on. Yet victims under *constant mental stress*, with detrimental effects to their wellbeing which potentially result in depression [44]. Besides the health burden on individuals, a growing body of research points to the huge economic costs of violence against women to society, including the direct costs to health, law enforcement, etc. [43, 45, 46].

Forced marriage policies in Europe: descriptive analysis

In recent years, forced marriages received increased attention from women's rights groups and governments throughout Europe. Because of a series of honour killings in different countries, it has become the subject of political debate [3]. Moreover, cases are

noted in which young women and girls living outside their home countries or regions had been sent home under a deceptive pretext with the intent of forcing them into marriage [47]. These highly mediatized incidents impact on the way forced marriage is perceived, inherently influencing and shaping national debates and policies. Studies show that European countries are moving together in some ways, generally backing away from multicultural policies and shifting in the direction of controlling minorities rather than protecting those affected [6, 7].

Specific laws and regulations on forced marriages have found their way onto the political agenda and are increasingly being implemented in European countries. Although forced marriage, as a form of violence against women and sexual abuse, is an important health concern [21, 36, 48], the adopted solutions are mostly of a legal nature [11]. Furthermore, it is primarily being approached and addressed as a criminal and immigration issue. The next section will take a closer look at the mounting criminalization and migration policies regarding the topic of forced marriages in European context.

Criminal approach to forced marriage

Overview General criminal provisions such as assault, harassment, rape or abduction can be brought against a forced marriage. However, in the past decade several countries have adopted specific criminal provisions to prosecute forced marriage. The decision whether or not to create a separate offence has been the subject of political debates and elaborate consultation rounds with experts and stakeholders. Norway,⁹ Austria,¹⁰ Belgium¹¹ and Denmark¹² were among the first to criminalize the act of forcing someone to marry, respectively in 2003, 2006, 2007 and 2008. The latest country to join this list is Germany, where in March 2011 parliament passed a law to make forced marriage a criminal offence.¹³ The reasoning behind this is that it would send an unequivocal signal to the implicated population groups that the practice is unacceptable.

Other countries, such as the Netherlands, and formerly the United Kingdom, opted against separate criminal legislation, arguing that it would have a potential discriminating and stigmatizing effect on migrant population groups, casting suspicion on communities already overrepresented in the criminal justice system [11, 16]. In the UK, government initially opted for civil legislation on forced marriage, not criminal. The Forced Marriage Act, adopted in 2007, allows courts to issue 'Forced Marriage Protection Orders' which can be used both to prevent a forced marriage from taking place and to assist victims of a forced marriage. Because the breach¹⁴ of an order can

⁹ In 2003, a paragraph containing a prohibition against forcing a person to enter into marriage was added to section 222 of the Penal Code. The penalty is imprisonment for up to 6 years, also for third parties involved [49].

¹⁰ It was made a criminal offence on July 1st, 2006 [50].

¹¹ In 2007, article 391 sexies of the Penal Code was adopted [2].

¹² Forcing someone to enter marriage can result in a prison sentence of up to four years [51]. See article 260 (2) Danish Penal Code [52].

¹³ Gesetzentwurf der Bundesregierung, 13.01.2011, BT-Drs. 17/4401; Beshluss-empfehlung und Bericht des Innenausschusses (4. Ausschuss), 16.03.2011, BT-Drs. 17/5093 [28].

¹⁴ At the moment (January 2014), the breach of a Forced Marriage Protection Order is dealt with as a civil contempt of court, punishable with a fine or a custodial sentence of up to two years' imprisonment.

lead to prison sentences up to two years, the UK solution is often acknowledged as a *type of hybrid*, comprising a warrant of arrest while avoiding the penal consequences of a criminal law [53].

In December 2011, the UK government reopened the debate whether or not to create a specific offence for forced marriage and a consultation round was held, seeking the views of key partners and directly affected parties [54]. In June 2012, the Home Secretary finally announced that a new law would be introduced, making forced marriage a criminal offence [55].¹⁵

Europe's policy clearly supports specific criminal legislation.¹⁶ This was again confirmed recently, in 2011, when the Council of Europe adopted a Convention on preventing and combating violence against women, stipulating that states are required to make it an offense to force someone into marriage.¹⁷ It serves as a benchmark, representing political consensus regarding the use of criminal law to combat forced marriage [11]. Switzerland has now joined this trend toward criminalization by issuing draft legislation creating a specific offence for forcing someone into marriage [58].¹⁸ France looks to be the next country to follow suit [59]. Meanwhile, the Swedish government is consulting on the criminalization of forced marriage [60]. This further underscores the European inclination towards criminalization, which countries justify by accentuating that forced marriage is a human rights abuse. Political discussions and policy documents in these countries reflect how the issue is consistently paired with the culture of migrants and immigration issues [2, 7, 27]. However, as Kool points out, this *holds the risk of the strategic misuse of human rights for political benefit*, by targeting migrants and limiting immigration [11]. Stakeholders in Switzerland and France are well aware of this risk. In order for the new law to be successful, they are calling for the issue of forced marriage to be *depoliticised* and to be treated as a human rights violation as such, not *an excuse for some new strategy to drive foreigners from the country* [61, 62]. In the following section, we will take a closer look at the arguments and concerns that criminalization rouses.

An analysis of arguments concerning criminalization Experts and activists throughout Europe invoke strong arguments both pro and contra criminalization. Apart from sending a clear signal that the practice is unacceptable, a specific criminal offence could empower young people to challenge their parents or families, thus creating a change in attitudes and beliefs [58, 63, 64]. Additionally, it is argued that a new offence would provide punishment to the perpetrator, thus acting as a deterrent [17, 53, 63].

Among the opponents of creating a specific criminal law, a major concern is that victims would be discouraged from seeking help from authorities for fear that family members would be prosecuted. Specific criminal legislation is being called a 'false good-solution', claiming that it increases the risk of victims remaining silent and puts

¹⁵ The legislative change is expected in the course of 2014. Note: In 2011, the Scottish government already had introduced the 'Forced Marriage Protection and Jurisdiction Act' (see: <http://www.legislation.gov.uk/asp/2011/15/contents>).

¹⁶ Resolution 1468 on Forced Marriages and Child Marriages, encouraging the introduction of a specific criminal offence to tackle forced marriages [56].

¹⁷ Art. 37 Convention on Preventing and Combating Violence Against Women [57].

¹⁸ In July 2013, the law enters into force.

them in a situation of conflicting loyalties [65]. Stakeholders point out that victims would experience higher stress-levels due to the fact that they do not want to see their parents going to jail [66, 67]. On top of that, it would make it more difficult for victims to move on and to later be reconciled with their families. Given that feelings of *extreme isolation and marginalization* frequently prompt young women to get back in touch with their families, separation and prison sentences rarely are the desired outcome [6, 44].

Professionals with direct experience of working with the affected communities and with victims are concerned that a specific criminal law would not provide adequate protection for victims. It might even be counterproductive and may drive families to remove the victim from the country [68], *unfortunate collateral damage* according to the France-based organisation Voix de Femmes [65].

From a technical legal stance, there is a danger of fragmenting laws and policy measures aimed at tackling violence against women in its many guises. A specific criminal law on forced marriage would be of little added value to the existing body of law on rape, kidnapping and offences against the person, such as *using (the threat of) force against him/her in order to persuade someone to act* [16, 69]. Such a law would be reduced to a mere *symbolic* function and run the risk of becoming a *paper tiger* if it's not actively enforced [16, 17]. This has been the case in Denmark so far, where despite increased reports of forced marriages, there are no court cases [51]. An evaluation of the Danish specific criminal law on forced marriage concludes that the legislation is weak, rendering it ineffective. One of the reasons is that it only applies to marriages that are formally recognized by the Danish government. Seeing that most of the forced marriages in Denmark take place in Muslim communities in the form of 'Nikah',¹⁹ which is not recognized by Danish Family Law, these unions fall outside the criminal provision's scope of application [52]. Additionally, the Danish law only focuses on non-consensual marriages induced by physical force, thereby ignoring that the overwhelming majority of forced marriages are the result of psychological coercion [51, 52]. This mirrors the concern in the Netherlands. In order to adequately tackle the issue with a specific criminal provision, it is important to clarify what exactly is understood under 'forced marriage' [16]. A clear, comprehensive definition is therefore vital. The pitfall with forced marriage is that the definitional concern never ceases because the *grey area* within the concept of forced marriage,²⁰ and its differentiation with arranged marriage, will always exist. Therefore, a clear, comprehensive and demarcated legal definition is impossible to provide, rendering a specific criminal law futile [70].

Brion takes the discussion to an economic level in considering the use of forced marriage as a *cultural offence* [71]. In her view, the State's resources are finite and, as such, enforcing the law is not worthwhile when punishment generates adverse consequences or when it is not the form of public action providing the best possible balance between benefits and resources allocated [71]. Applying this economical analysis to forced marriage, there should be no prohibition *if enforcement - arrest, judgment, conviction and detention - is inefficient* [71]. Brion underlines this argument by pointing to the *absolutely inelastic demand* for fake or forced marriages. Seeing that

¹⁹ 'Nikah' refers to an Islamic marriage ceremony [52].

²⁰ The question to what extent the marriage candidate feels pressured out of a sense of duty or loyalty to the parents.

family reunification is one of the very few remaining possibilities to immigrate to Europe, and is less ‘uncertain and dangerous’ than other illegal forms of entry into a country, increasing criminal legislation would increase the price of forced marriage and drive it into an organized sector working underground. In addition, the social costs for the targeted minority population groups are disproportionate to those generated by the practice and they contribute to the *ethnicization* of social relationships [71].

Another argument calling into question its effectiveness or usefulness, is that a criminal offence has a higher burden of proof than a civil case.²¹ Difficulties in obtaining sufficient evidence to satisfy this required burden of proof are likely [11, 72]. The cost of expert evidence alone in these cases, most likely entailing a prolonged process of cross-examination in a public arena, could be a heavy burden on public expenditure without guarantees for a successful outcome. Overall, the effectiveness of specific criminal provisions to tackle forced marriage are called into question. A recent study carried out by Roehampton University in the United Kingdom concludes that the majority of respondents consider that criminalization makes it more difficult for victims to come forward and that, on the whole, there doesn't appear to be *an appetite for specific legislation* [68].²²

Immigration measures aimed at deterring forced marriage

The largest body of legal and policy initiatives with regard to forced marriage can be seen in the area of immigration law. The influence of the European Union in this area is telling. Directive 2003/86/EC, aiming at harmonizing the immigration policies throughout Europe has given shape to today's landscape. The Directive expressly offers the possibility to adopt rules that limit the right to family reunification and states that *in order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years old before the spouse is able to join him/her*.²³ Although Ireland, Denmark and the United Kingdom did not participate in the Directive and are not bound to its application, Denmark had already raised the minimum age to 24 years in 2002. Following the lead of Denmark and spurred on by the Directive, several governments throughout Europe have proposed solutions focusing on stricter immigration controls in the area of family reunification. Countries such as Belgium, the Netherlands and the United Kingdom subsequently raised the minimum age both for a sponsor and a spouse entering the country to 21 years.

Both the effectiveness and the legality of this measure are being contested. Early on, the Danish Institute for Human Rights condemned the new law with the argument that it violates the right to family life as guaranteed by article 8 of the European Convention on Human Rights (ECHR). Furthermore, since the measure is primarily targeted at foreigners residing in Denmark and Danish citizens with other ethnic backgrounds, it is discriminatory [48]. In the United Kingdom there is protest that this *dual marriage age system*, whereby certain couples lose the right to family reunification solely based on

²¹ “Beyond reasonable doubt” in a criminal case, versus “balance of probabilities” in a civil case.

²² The 74 respondents represented the following categories: local councils, organisations concerned with domestic violence/violence against women, educational organisations, faith groups, police and legal experts, public sector and voluntary sector (community) organizations.

²³ This right is recognised by article 4, paragraph 5, of Directive 2003/86/EC.

their nationality or ethnicity, has a disproportionate effect on certain minority communities [12]. The Norwegian government originally proposed the introduction of an age limit of 21 years in their new immigration act, yet the measure was withdrawn from the final law proposal²⁴ due to the fact that both the *legitimacy and effectiveness* were contested [73]. It was argued that such a regulation would mainly contribute to stigmatization of immigrant groups [10]. However, Norway did introduce a subsistence requirement for people who wish to bring a spouse to Norway, as income is associated with maturity and independence. This action indirectly regulates marriage age for cross-national couples and is equally defended as an immigration measure to protect potential victims from a forced marriage [73]. Likewise, this restrictive requirement has been strongly criticized as a result [74].

In current discourse, by guaranteeing the right to private and family life, article 8 ECHR is regularly invoked to question the age-limit on family reunification. All in all, Ruffer emphasizes that *family reunification as a right to family life under the ECHR is a liberal civil right that grants the individual a substantive social protection to be free from state interference in his family life. The only way a state can interfere is for purposes of public order or security, defined as relating to criminality or health and not to culture* [75]. In light of this right, the 21 year age rule is currently under fire on several fronts. On 12 October 2011, the UK Supreme Court decided that the government's ban on non-EU spouses under the age of 21 from entering the country is an infringement of the couples' rights to family life under article 8 of the European Convention on Human Rights.²⁵ Among the reasons for the ruling is the lack of proof that the measure would have any substantial deterrent effect on forced marriages. Additionally, the measure does nothing to counter forced marriages taking place wholly within the country. This is seen as further proof that the issue of forced marriage has become increasingly entwined with issues of immigration and border policing [76]. One of the Supreme Court justices, Lord Wilson, points out that the age limit fails to strike a *fair balance between the rights of the parties to unforced marriages and the interests of the community in preventing forced marriages* (ruling p. 25). In that respect, the measure fails to demonstrate that it is a proportionate response to a pressing social need, thus failing to live up to the requirement that it was *necessary in a democratic society* (ruling p. 30).

The UK Supreme Court, however, does not stand alone on this issue. The European Commission is also calling into question the family reunification rules as translated to national law by Member States. In an analysis of national legislation implementing the Directive 2003/86/EC in 2008, the European Commission concluded that some Member States' requirements for the exercise of the right to family reunification are *too broad or excessive*, in particular the minimum age of the sponsor [77]. In light of identified national implementation problems and shortcomings of the Directive, the Commission deemed it necessary to initiate a public debate on family reunification in November 2011. Policymakers and stakeholders were invited to respond to a series of questions, one of which pertains to the minimum age: "*Is it legitimate to have a*

²⁴ The Norwegian immigration act came into force in January 2010 [73].

²⁵ See *R (on the application of Quila and another) (FC) (Respondents) v Secretary of State for the Home Department (Appellant)*; *R (on the application of Bibi and another) (FC) (Respondents) v Secretary of State for the Home Department (Appellant)* [2011] UKSC 45, 12 October 2011.

minimum age for the spouse which differs from the age of majority in a Member State? Are there other ways of preventing forced marriages within the context of family reunification and if yes, which?" [78].

The MIPEX project (Migrant Integration Policy Index) argues that a minimum age for family reunification that is higher than the minimum age for marriage is ineffective for integration into society [79].²⁶ Furthermore, research among victims and survivors of forced marriage in the UK calls attention to the unlikelihood that the age limit would effectively prevent forced marriages. On the contrary, it could be detrimental, leading to the forced relocation of victims to get married in their countries of origin [80]. Experts are still very much divided on the issue, the dissent even raging among first-line professionals in the field. The specialist Asian charity Karma Nirvana²⁷ has openly supported the measure, whereas the organisation Southall Black Sisters²⁸ is of the opinion that it does not in reality protect victims from forced marriage, but simply increases pressure on them to remain within an abusive situation, and discriminates against migrant communities [81].

Private life and family life are concepts that cover the physical and moral or psychological integrity of the person, including his or her sexual life. The European Court for Human Rights interprets article 8 ECHR as providing the right to autonomy, identity and integrity, together with imposing positive obligations on the state, even for actions of private individuals [82]. Taking into consideration the potential far-reaching ramifications of an infringement on the right to respect for private and family life, it is acknowledged that article 8 ECHR equally protects individuals from conduct that violates their *emotional well-being to such an extent that their personal development is hindered* [42]. Any infringement of article 8 ECHR therefore impacts upon the well-being and welfare of an individual, and comes into consideration as a health issue. The measure is said to have a *drastic effect* on a substantial majority of young couples who have entered *bona fide* marriages (point 54 of UK Supreme Court ruling). Likewise, there are concerns that the age-limit increases the risk of young people being detained abroad for sustained periods between a marriage and their return to Europe. The right to integrity requires states to avoid causing or allowing seriously adverse effects on a person's physical and psychological condition [82].

Ultimately, using immigration control as an instrument to prevent forced marriages appears to bring up more concerns, than it offers solutions. The measure can, in some cases, lead to detrimental effects on the health and well-being of young couples in transnational marriages. Unambiguous proof that the 21 year age rule effectively deters forced marriage is lacking. Moreover, the restrictive immigration legislation is creating a strong pressure towards cultural assimilation, which, in turn, contributes to exacerbate

²⁶ MIPEX (Migrant Integration Policy Index) measures integration policies in all European Union Member States plus Norway, Switzerland, Canada and the USA. Using 148 policy indicators MIPEX creates a rich, multi-dimensional picture of migrants' opportunities to participate in society by assessing governments' commitment to integration [79].

²⁷ Karma Nirvana is a registered Charity based in London, United Kingdom, that supports victims and survivors of forced marriage and honour based abuse. See: <http://www.karmanirvana.org.uk>.

²⁸ Southall Black Sisters is a not-for-profit organisation set up in 1979 in West London, United Kingdom, to meet the needs of black (Asian and African-Caribbean) and minority ethnic women. They run an advice, advocacy and resource centre, which provides a comprehensive service to help women and children escape violence and abuse (including forced marriage and honour crimes) and deal with a range of interrelated problems. See: <http://www.southallblacksisters.org.uk>.

conflicts between minority and majority groups about cultural values linked to family forms and gender roles [6, 10]. Rude-Antoine accurately points out that even if the practice of forced marriage continues within migrant population groups, it is important to recognise that, equally so, there are unions entered into with mutual consent in those groups [41]. Otherwise the measures taken to tackle forced marriage run the risk of being perceived by the minority population groups as a deliberate 'will' of the European states to stigmatize them [41].

Explanatory analysis: the underlying policy process

After outlining and discussing the prevailing policy measures concerning forced marriage in the previous section, the Multiple Streams framework is applied to explain the underlying policy process and its outcome. This theoretical framework recognizes three parallel streams in the policy making process, which are 'problem recognition', 'policy' and politics' [13]. The distinction between the streams is noteworthy because it offers an understanding of how the dynamic characteristics of each independent stream contribute to the agenda-setting process [83].

First of all, the values attached to a problem and its framing are important steps in the policy making process. It is a highly dynamic and interactive process involving stakeholders on multiple levels. In public debates, the media and literature, the issue of forced marriage is linked to minorities and the problems surrounding migration. Because forced marriages, and the ensuing violence, predominantly occur among ethnic minorities and migrant communities, it is regarded as a 'cultural practice' [4, 5]. It is considered to be a custom of a cultural minority that is at odds with the values of the dominant culture [2]. Nonetheless, forced marriages, as a practice, are not claimed as a 'right' by cultural and ethnic minorities, in the sense that it is not an alleged part of their cultural or religious heritage [18]. Coercion into marriage is also repeatedly associated with 'sham marriages' or 'marriages of convenience', which are contracted in order for one of the spouses to obtain a residency permit [2]. Any policy against these 'sham marriages' is inevitably a policy against illegal migration as well. In the debates on forced marriage, the position of migrants is routinely problematized. Ultimately, the way in which the problem is portrayed has a direct impact on forced marriage policy.

The second stream, that of 'policy' or 'solution', refers to the set of policy alternatives that researchers and others put forward to address problems. This stream contains ideas and technical proposals on how problems may be solved. Technical feasibility and value acceptance increase the chance of survival. Ideas that do not align with prevailing ideological currents may not succeed [14]. Such is the case that criminalization and immigration control, which have primarily been put forward as solutions, rather reflect and underscore the perception that minorities need to be controlled. On an abstract level, introducing laws is considered a politically tempting move, by '*declaring the issue dealt with*' [68]. However, this does not automatically solve the problem. The implementation of the specific criminal laws appears to be problematic seeing that, for the most part, they are rarely used on the European scene. In addition, the very victims, those the laws are attempting to protect, do not endorse the criminal route [84]. 'Value acceptance' is therefore not universally present. Together with the implementation gap, this, in itself, is a major obstacle for the effectiveness of the law.

Finally, the 'politics' stream is influenced by the public mood and the influence of social pressure. It is important in determining which solutions may receive attention. The public opinion regarding forced marriage is heavily influenced by the portrayal of the issue in the public arena. In some public debates, forced marriage is included as one of the perceived problems of a multicultural society [2]. European or 'western liberties', such as expressions of individual sexuality and rights to private life and family life, are portrayed as being allegedly threatened by Islamic religion and culture [4, 7, 8, 10, 11]. Moreover, highly mediatised stories about forced marriage are depicted as evidence of Islamic intolerance and non-liberalism [7]. A certain fusion of Islamism and extremism, underpinning and legitimating discriminatory regulations, is observed throughout Europe. This results in forced marriage being strategically identified with Islam. Yet, while many European Muslims are affected by forced marriage, the problem is '*not exclusive to Muslim communities, nor universal within them.*' [7].

Policy choices are made when the three streams are joined together at critical times. Opportunities may occur spontaneously due to a specific event. In the case of forced marriage, two main developments may account for the current prevailing policies. Firstly, the increased scrutinization of minorities after the 9/11 attacks, and to a certain degree those in London, had a significant impact on ensuing policy. Following the terrorist attacks, most western European states became concerned that the migrants brought with them the potential for terrorism and a threat for security [4, 6]. The dream of the multicultural society was called into question. Instead there arose an acute pressure for assimilation, resulting in governments cracking down on practices that are considered a threat to Western values. Secondly, the ongoing influx of migrants is impacting on policy. Member states were driven to adopt restrictive labour migration policies following the economic downturn and deterioration in labour market conditions. With the path of 'economic migration' being closed, family reunification became one of the main ways to legally enter EU member states, which reached unseen levels [85]. These two developments combined, could explain why – despite objections – policy makers ultimately chose the route of criminalization and tighter immigration controls to tackle the problem of forced marriage. Bringing security concerns into debates on immigration provided a justifiable platform for racially motivated policy decisions [6].

Overall, the 'problem recognition' stream appears to have the greatest impact on the resulting policy measures. How the issue of forced marriage is perceived, should not be underestimated. The underlying conceptual structure, i.e. a 'harmful cultural practice' of minorities that is imported through migrants, for the most part determines the ensuing policy choices. Approaching forced marriage as a cultural problem fails to look deeper into the very nature and reason for its occurrence. Consequently, any policy choices based on this partial view of the issue inevitably do not lead to effective solutions. For example, linking immigration policy with the issue of forced marriage redirected remedial measures away from victims and legitimated the use of state power to punish and restrict [6]. Women's agency *within minorities* is effectively ignored. Yet supporting women from within their communities, which is essential for them to exercise their own will, is overlooked in favour of governments' top-down focus on regulation [18, 86, 87]. The prevailing policy discourse fails to engage with this dynamic and is at odds with the needs of those it seeks to assist [86].

The question whether or not to introduce a new law which explicitly categorises forced marriage as a crime and whether tighter immigration controls as a means to

combat forced marriages are effective, may be beside the point, at least in the viewpoint of (potential) victims. Law and public policy are treating marriage as a matter pertaining to the public interest, and not purely as a private matter. Its impact on society and the lives of those involved (spouses) legitimizes this interest, yet little or no regard is given to the health effects of victims of forced marriage and those at risk. The very nature of the 'problem recognition' stream or the way in which the issue if 'framed', could essentially be responsible for this development. The conceptualization and portrayal of forced marriage as a cultural issue acts as a barrier to appropriate intervention [20]. Victims and potential victims of forced marriage feel increasingly isolated as they feel they are not able to access mainstream service providers for fear that they might tell their families or that the providers themselves are part of their local community [40, 60, 88]. Cultural barriers also seem to prevent women from accessing support because service providers are *usually white and lacked understanding of Asian culture* [40]. The women also believe that these providers of mainstream services would offer simplistic, yet unrealistic solutions like 'leaving the family' without fully understanding the complexity of the situation [40, 66]. Health inequalities faced by minority ethnic communities are increasingly recognized [89]. Thus it is generally felt that resources should be diverted to services providing preventative and curative measures. Education and awareness-raising are proving successful in preventing the practice, and it is argued that any introduction of criminal legislation should therefore be accompanied by better programmes for professionals including teachers, medical staff, the police, justice, health and social service providers [3, 17]. Victims more often feel *heard* and supported by service providers with the same background [40, 90]. At the same time, calls are made for training in cultural diversity in the educational programmes for mainstream healthcare staff as an indispensable measure in preventing repercussions caused by problems related to honour-related family violence, such as forced marriage [44].

Consideration should be given to reframing the policy discourse on well-being and respecting women's agency. Tackling or framing the issue from the point of view of a public health concern will aid in redirecting policies, and therefore also resources, towards a victim-centred approach. Thereby it is important to engage with women and (potential) victims as agents of change. Effectively, using health services, including mental health services, as an entry point, is a way to ensure that women can access medical, legal and psychological support without arousing suspicions that could lead to more abuse. An additional advantage is that (potential) victims remain the 'driver' of the proceedings. It effectively offers a supportive framework that allows them to have control over their lives. This is in stark contrast to police-led interventions in which the police and public prosecutor have the right to charge a person who forced someone into marriage even when the victim has not asked for or consented to prosecution. A coordinated response for (potential) victims of violence against women, including forced marriages, within health facilities supports well-being, health and safety while simultaneously honouring women's agency. In order to be effective, trained frontline health care workers should be situated in local health centres, allowing for easy access in communities within which forced marriage takes place. By providing care and advice in an anonymous and confidential way, women's autonomy is safeguarded. Furthermore, links between health services and specialist care, such as shelters and organizations, will strengthen the protection for those most in need. Seeing that such a

response is embedded within existing structures makes this an appealing approach as it can be accomplished in a resource-friendly way. Additionally, by using trained health staff in local facilities allows for the problem to be approached from within the community (bottom-up), effectively counterbalancing the current heavy emphasis on top-down regulations. Policy makers are hereby challenged to embed protection in a broader policy that does not solely focus on repression.

Conclusion

Conceptualization of forced marriage as a cultural problem, imported by immigrants, has given rise to policy initiatives concentrating on repression and tightening immigration controls [2, 4–7]. Policy development appears to be marked by a generalization from individual cases of forced marriage to the marriage practices of whole minority groups [10]. As attention is placed on criminalization and stringent immigration policies, ethnic minority population groups bear the greatest burden. Not only do they suffer reduced accessibility to health providers, the potentially adverse effects of the current policy framework affects their health and well-being at large [20, 44, 65, 67]. It is argued that specific criminal laws make it more difficult for victims to come forward, while offering very little or no protection in return. The widespread 21 year age rule in immigration law has been denounced by scholars, institutes and magistrates alike for infringing on the fundamental human right to family life guaranteed by article 8 ECHR. The discourse on forced marriage appears to have reached a crossroads. European governments are faced with the challenge to create policies that protect and support victims, while simultaneously cracking down on perpetrators and safeguarding their borders from abuses in obtaining visas.

Although forced marriage gravely affects a human being's most basic rights, the response has often been lacking and failing to adequately support victims. The serious consequences for women, including sexual violence, and the physical and psychological health risks associated with it, receive little attention. Few interventions seem to be taken directly to promote the health and well-being of those affected [61, 91]. Legislative measures are, evidently, important, but the pressing need for health and support interventions are not addressed [20]. It is therefore essential to work more closely with those at risk, involving service provisions to directly support them, instead of a one-side top-down policy framework through which minority communities feel targeted and stigmatized [6, 18, 86, 87]. A coordinated response for (potential) victims of forced marriages within health facilities supports wellbeing, health and safety while simultaneously honouring women's agency. Trained frontline health care workers, situated in local community health centres, offer the advantage of being easily accessible and providing anonymous care. Policy makers throughout Europe face the challenge of reframing the discourse on forced marriage to one of focusing on wellbeing and respecting women's agency, effectively embedding protection in a broader policy.

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