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Abduction for Forced Marriage: Rights and Remedies in Bangladesh and Pakistan*

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'Forced marriage is a means of controlling female sexuality and women's autonomy. It involves coercion, mental abuse and emotional blackmail, and intense social pressure. In the most extreme cases, it may also involve physical violence, abduction, false imprisonment, rape or sexual abuse, and murder.'

Introduction

Forced marriage involves the lack of free and full consent on the part of at least one of the parties to a marriage. It is distinct from an arranged marriage, which remains common in many communities; and in which both parties freely consent to the choice of partner selected.

The right to marry, including the requirement of free and full consent by each of the intending spouses, is clearly established under international human rights law and protected by national laws in many jurisdictions. However, customary and traditional practices, exacerbated by ineffective enforcement of the law, and inappropriate policies and procedures, constrain the practical realisation of this right. Forced marriage is a practice which continues to affect women, men and children across diverse countries, cultures and communities.

Despite increasing concern nationally and internationally regarding the issue, awareness of the availability of remedies for forced marriage remains limited. This article sets out to fill this gap in relation to one category of the most extreme cases referred to in the quotation above ♦ abduction for the purpose of forced marriage. It focuses exclusively on cases concerning women and girls, as they comprise the overwhelming majority of those affected. It also limits itself to the context of abduction from Britain to Bangladesh and Pakistan of individuals who are dual nationals of Britain and either Bangladesh or Pakistan. In examining cases concerning dual nationals, this article reviews the UK's obligations under international human rights law to provide consular protection in cases of forced marriage. It is our belief that more general lessons can be drawn from the examples discussed below for other countries and communities in which this problem may occur.

Section I of this article briefly describes the nature and scope of the problem. Section II considers the relevance and impact of addressing this issue within an international human rights law framework. Section III reviews and assesses the remedies ♦ in the form of judicial and consular protection ♦ available to victims of forced marriages in each of the receiving countries. It also outlines some of the practical and legal obstacles to obtaining such relief.

Finally, section IV outlines proposals for changes in policy and practice to ensure effective realisation of the human rights of individuals threatened or affected by forced marriage.

(I) The facts

'A 21-year-old woman, who was born and raised in Britain, told [British High Commission] officials [in India] that she had been tricked into going to India by her parents ♦ on the pretext of visiting a dying grandmother.

Once in the country her British passport was confiscated and she was kept under the watchful eye of relatives while her engagement to a local man was arranged ♦ She was moved from village to village in Punjab for 34 days before she was found by diplomats and police in the state capital Chandigarh after a secret three-day operation.'

This woman's safe return was exceptional. In many cases, a woman may return to Britain only after she has been forced into a marriage, or simply join the ranks of the 'vanished'.

However, the circumstances in which this case arose were less exceptional. In most reported instances, a woman or young girl, often a teenager, is induced or put under duress by her family to travel to the family's country of origin. Once there, she comes to learn that her parents plan forcibly to arrange her marriage. She may be held in virtual seclusion and her passport may be taken away from her. Even where it is possible for her to move around, she rarely has access to a telephone, and almost never to an international telephone line, and may even be prevented from sending out letters. Often, she may be held in effective detention by her family, not allowed to move out of the house unescorted, or to make contact with anyone other than her family members, and subjected to violence or threats of violence. In a particularly egregious practice, women who successfully oppose a forced marriage and contract marriages of their own choice may themselves be held against their will and without their consent in shelter homes, and even in jails, in so-called 'safe' custody. In the most extreme cases, women fleeing or rejecting forced marriages may be killed by their own families.

Reported estimates suggest that every year at least 1000 women are abducted from the UK by their families and taken to a foreign country in order to be forced into marriage. The majority appear to be Hindu, Muslim and Sikh women from the Pakistani, Indian and Bangladeshi diasporic communities in Britain.

(II) Applying international human rights law

'A woman's right to choose a spouse and enter freely into marriage is central to her life and her dignity and equality as a human being'

'States parties shall ensure on a basis of equality of men and women ♦ the same right freely to choose a spouse and to enter into marriage only with their full and free consent.'

In the last 50 years there has been a proliferation of international human rights instruments and standards. These include the Universal Declaration of Human Rights 1948 (UDHR), the

International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of the Child 1989 (CRC). As parties to several of these instruments, among others, the UK, Pakistan and Bangladesh all have clear treaty obligations to protect human rights, in addition to their obligations under customary international law.

Forced marriage involves breach of a number of international human rights norms. Most central of these is the right to marry. This includes the right to decide when, if and whom to marry. With respect to minors, forced marriage has been found to include the practice of child marriage, as children do not have the capacity to give consent. It has also been identified as a form of discrimination against the girl-child. Indeed, several international bodies have called for a minimum age of marriage to be established by law.

Forced marriage also implicates the right to personal liberty and security and the right to freedom from arbitrary detention. It may also involve breaches of the right to access to justice; the right to equality before the law and equal protection of the law; the right to an effective remedy and the right to freedom from gender-based discrimination.

The more extreme cases may implicate the right to life and the right to bodily integrity, including freedom from gender-based violence. They may also be considered to constitute acts of slavery. Indeed, 'slavery-like practices' have been described as including practices whereby 'a woman without the right to refuse, is promised or given in marriage'. Further, forced marriage has been considered to be a form of trafficking of women or children, which itself constitutes a contemporary form of slavery.

Approaching the problem of forced marriage from a human rights perspective is critical to framing adequate responses and providing effective redress to survivors. First, it makes it possible to argue that state responsibility is incurred for the failure to prevent internationally recognised human rights from being violated by private, non-state, actors.

Secondly, it creates an obligation on states parties to the treaties mentioned above to undertake positive acts to protect the human rights of their citizens. In the context of forced marriages, they are responsible for human rights violations if they fail to act or to exercise due diligence in preventing, investigating and punishing cases of forced marriage. Thus they may be responsible for ensuring that their legal system recognises and enforces the right to choose, when, if and whom to marry, and criminalises all forms of traffic in women or the abduction and sale or traffic in children, for any purpose, including forced marriage. In addition, they may be required to ensure effective access to justice for potential and actual victims of forced marriage, for instance, through public education, dissemination of information on rights and remedies to concerned authorities or individuals, or the provision of legal aid or of emergency shelters. They may also need to provide for guidelines to ensure prompt, systematic and effective investigation and prosecution of such cases by the police, as well as for provision of consular protection.

Thirdly, international human rights law creates a duty to modify or abolish existing customs or practices which constitute discrimination against women, and insofar as forced marriages clearly discriminate against women, there is an obligation to end the practice.

(III) Available remedies in Bangladesh/ Pakistan

This section reviews the nature, scope and extent of available remedies in Bangladesh and Pakistan after an abduction has taken place. It focuses specifically on judicial and diplomatic protection, and examines the effectiveness of each in turn.

Judicial protection

Forced marriage clearly violates a range of fundamental rights guaranteed by the Constitution of each country. Although the right to marry is not explicitly protected by legislation in either Bangladesh or Pakistan, it has been recognised by the courts in numerous cases. Further, forcing any person into a marriage is a punishable offence under the criminal laws of each country. In the most clear articulation of forced marriage as a harmful traditional practice that cannot be justified in the name of culture or religion, a Pakistan court has observed:

'In matters of marriage a woman was given equal right [by Islam] to choose her life partner
◆ Unfortunately, in our practical lives, we are influenced by a host of other prejudices bequeathed by history, tradition and feudalism ◆ It is that culture that needs to be tamed by law and an objective understanding of the Islamic values ◆ Male chauvinism, feudal bias and compulsions of a conceited ego should not be confused with Islamic values. An enlightened approach is called for.'

Remedies available

This section outlines the judicial remedies available in Bangladesh and Pakistan respectively, examining in turn constitutional petitions for the protection of fundamental rights, habeas corpus petitions, and criminal and family laws.

Writ petitions for protection of fundamental rights

A number of the universal human rights norms outlined above are incorporated in both the Constitutions of Bangladesh and Pakistan. Each Constitution guarantees fundamental rights, including the rights to life and personal liberty, safeguards on arrest and detention and a prohibition on slavery. They also secure the rights to equality before the law, equal protection of the law, and the prohibition of discrimination on the grounds of sex, or religion or other status. In addition, torture and all forms of cruel, inhuman and degrading punishment are prohibited in Bangladesh.

In each country the High Court may make orders to direct persons performing functions in connection with the affairs of the republic to refrain from doing anything they are not permitted to do, or to do anything that they are required by law to do, or to declare that any

act done or proceeding taken has been done or taken without lawful authority and is of no lawful effect. The court may also make orders directing such person or authority to enforce any of the fundamental rights guaranteed by the Constitution. Such petitions may be filed by any aggrieved person, a category which has been held to include any person or organisation acting in the public interest. Although such applications may provide a useful avenue to challenge the failure of state authorities to take necessary action to address aspects of forced marriage, in practice resort to habeas corpus petitions has been more frequent, particularly where a marriage has already taken place.

Habeas corpus petitions

The use of habeas corpus petitions in forced marriage cases is a well established practice in the courts of both Bangladesh and Pakistan. Such petitions may be brought before the High Courts of each country, either in the form of a writ petition filed under the relevant provision of the Constitution, or as a criminal miscellaneous petition under s 491 of the Code of Criminal Procedure 1898 (CrPC).

In such cases the court may issue orders upon the respondents – usually the woman's parents or family members – to produce her before the court so that it may satisfy itself that she is not held in unlawful custody. The court would then have an opportunity to question her, either in open court or in chambers, and thus to ascertain the circumstances in which she has been held, and her wishes, in particular regarding returning to the UK.

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

In Bangladesh there have been at least three applications under Art 102(2)(b) of the Constitution before the High Court regarding allegations of forced marriage involving British nationals. These cases have been brought by the fiancé of the woman concerned, or by a women's rights organisation from either Bangladesh or the UK, on the basis of a letter received from the woman concerned seeking help. In each case, the court has directed that the woman be set at liberty, and she has been able to return to the UK.

The use of habeas corpus petitions, either under CrPC, s 491, or Art 199(1)(b) of the Constitution, is also well established in Pakistan courts. Such cases are usually filed when the marriage has already occurred, either by the husband against parents who are confining the woman, or by parents against the husband (or even sometimes by the parents against the lawyers, on the grounds that they are responsible for detaining her in a shelter home: see *Abdul Waheed v Asma Jabangir* PLD (1997) Lah 331). A recent case was reported in the international press:

'Shehnaz, 25, did not want to marry cousin Tajammul, a man she knew and did not like, but she was forced to sign the marriage certificate. In secret she wrote a desperate letter to the Lahore High Court pleading for help. [S]he wrote: "I have been sold to a man I never wanted to live with. I am a very unlucky woman who has been thrown to the wolves. My marriage was cruel and arbitrary".

In a rare decision, Judge Khawaja Sharif agreed, and ordered armed police to take Shehnaz from her family home and place her in a refuge for women. "Marriage cannot be imposed on an adult woman against her free will" he said.'

Criminal law and procedure

Abduction for the purpose of forced marriage is explicitly criminalised in both countries. In extreme cases, prosecutions may also be brought for offences committed in the course of a forced marriage, such as murder, rape, slavery and wrongful confinement.

In the case of minors, prosecutions may be brought for procurement or importation of minors and the solemnisation or failure to prevent the solemnisation of child marriages. In addition, the courts also have powers to issue search warrants to locate persons held in confinement, and to direct that certain categories of individuals including witnesses or victims of crimes of sexual violence be held in so-called 'protective' custody.

There appear to have been few or no instances of prosecution in relation to forced or threatened forced marriage. Ironically, reported cases indicate that criminal laws intended to protect women from forced marriage have, in fact, been used against women who have succeeded in evading a forced marriage and contracted a marriage in defiance of their family's wishes. In such cases, the family may resort to filing false charges of kidnapping, abduction and even rape against the men these women have chosen to marry, as well as bigamy or *zina* against the women themselves. The courts may then direct that the woman concerned be placed in 'safe' or protective custody, pending resolution of the case. In such cases, the only recourse for the woman may be to file an application to quash the criminal proceedings brought by her family, and a habeas corpus application to ensure her own release.

Family law

The law on marriage in both Bangladesh and Pakistan is governed by the personal laws applicable to each community Buddhist, Christian, Hindu, Muslim, Parsi or Sikh and relevant statutory modifications, including the Child Marriage Restraint Act 1929 (CMRA), the Dissolution of Muslim Marriages Act, 1939 (DMMA) and the Muslim Family Laws Ordinance 1961 (MFLO). As all known cases from Bangladesh/Pakistan to date have concerned Muslims, the discussion here is limited to consideration of Muslim personal laws.

Under the Hanafi school of law, the marriage of an adult Muslim male or female who has attained puberty and is of sound mind will be void if it lacks either party's consent. A void marriage is not considered to be a marriage in the eyes of the law, and creates no civil rights and obligations between the parties. Civil remedies for forced marriages are available

through jactitation of marriage (that is a declaration that the marriage is void for lack of consent), or judicial divorces or other proceedings, as specified under the MFLO or the DMMA. Where it is claimed that a marriage has been contracted, but not consummated, an application may be made for jactitation of marriage. If the marriage contract includes a right to divorce delegated to the woman by her husband, she may exercise this contractual right and obtain an extra-judicial divorce. Where no such clause is included, she would be required to file an application for divorce in a Family Court under DMMA, on a ground that was recognised as valid under Muslim law (this would include the marriage having been contracted without consent, or of consent having been obtained by duress or coercion).

In the case of minors, it is important to note that child marriages may be validly contracted under Muslim personal law. However, even though a minor may be married on the basis of consent provided by his or her lawful guardian (*wali*), ratification of this consent is necessary when that individual attains puberty. Thus a person forced into marriage as a minor may repudiate the marriage on reaching the age of majority, provided it had not been consummated, by an application before the Family Court under the DMMA. In practice, courts have also granted such applications where it is proved that consummation was forced. Courts also have the power to issue injunctions to prevent a child marriage.

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

Obstacles to judicial protection

On the face of it, the remedies discussed above appear sufficient to meet the state's international obligations to provide effective protection against forced marriage. However, as discussed below, there are gaps in the law and practical obstacles to access to and implementation of the law, which severely limit its impact in addressing forced marriage.

Gaps in the law

There are significant lacunae in these laws. For example, while habeas corpus petitions are effective in ensuring the release of a woman from unlawful custody, they do not always result in a determination of the question of the validity of the marriage, which remains to be decided by the subordinate courts. Procedural limitations also restrict access to remedies; for instance, injunctions to prevent child marriages may only be applied for by the concerned authorities, and not by or on behalf of the affected individual. Again, despite the scope for public interest litigation, writ petitions for enforcement of fundamental rights may not readily be entertained unless brought by or on behalf of the affected individual.

Most significantly, the continued application of personal laws ♦ which are based on religious laws or customary practices and which are used to deny rights on the grounds of both sex and religion ♦ acts as a major obstacle to protecting women and girls against forced marriage. Thus, on one hand, the limited resort to the delegated right to divorce leaves many

women without the option of an extra-judicial means of dissolution of a 'marriage'. On the other hand, resort to this right where it is available puts women in a situation in which they are both required to acknowledge the validity of the marriage and to undergo the stigma of being identified as divorced. Muslim personal laws permit child marriages on the basis of the consent of lawful guardians — usually parents. Further examples of gaps in the law include the lack of provision to criminalise marital rape or provide compensation for victims of forced marriage.

Practical obstacles

Practical obstacles to accessing and enforcing the law constitute the most significant hurdle to legal redress for victims of forced marriages and those seeking to assist them.

First, as the women face extreme isolation, they may lack access to advice or support. Many of them have never been to Bangladesh or Pakistan and are completely unfamiliar with their surroundings. Their communication and movement may be severely restricted. When faced with detention and threats of violence many of them may be paralysed from taking action. Moreover, it may be very difficult for them to actually access any help. Most of the women lack information about the availability of lawyers or local agencies that might be able to assist, such as legal aid, women's or human rights organisations. Even when they do have information, they often find that these organisations are in larger cities or towns — a considerable distance from the areas in which the women are located. Additionally, only a limited number of shelters provide emergency accommodation in such cases.

Secondly, where a woman is able to find legal or other assistance, it may be very difficult for her to give evidence. She may not be able to give a statement in circumstances in which she can be ensured confidentiality or security. Faced with family and community pressure, she may also be very reluctant to give evidence against her immediate family members.

Thirdly, lawyers and NGOs operating in the UK may lack understanding of local procedures and remedies in Bangladesh and Pakistan and consequently have unrealistic expectations of the scope of assistance that their counterparts are able to provide. This may also lead informants and support organisations in the UK to seek parallel local support, leading to parallel — and contradictory — actions, obstructing the resolution of the matter and possibly further endangering the life of the woman concerned. For example, a request to the administrative authorities to intervene, if acted upon, may jeopardise any planned legal action. In some cases, informants and/or support organisations in the UK do not provide their counterparts in Bangladesh or Pakistan with full information on the case, thus potentially jeopardising its outcome. For instance, the UK-based informant may fail to disclose that the woman concerned has previously married. While revealing such information could be used to argue that the woman was already married, and therefore that any marriage being arranged by her family must be forced, it could also expose her (in Pakistan) to the risk of prosecution for *zina*.

Fourthly, the lack of professional skills, combined with gender bias within the police force, can lead to major deficiencies in investigations. Thus the police may treat allegations of forced marriage as relating to an internal family matter, rather than a crime, and consider that

further intervention is not required. They may fail to conduct a proper inquiry, or to establish contact with the woman concerned. Further, they may fail to detect cases of impersonation (by unquestioning acceptance of *purdah* norms) or the falsification of affidavits purportedly issued by the woman and affirming that she is not being held against her will. They may also fail to interview in private, in the absence of her family members, or to ensure confidentiality regarding her responses, or to maintain proper records of the interview. In some cases, police officers may act in collusion with the families.

Finally, lengthy delays in proceedings, the lack of any effective protection for victims or witnesses and the difficulties of implementing judgments plague the entire legal system. Most significantly, the failure of key actors within the criminal justice system to view forced marriage as a crime, let alone a violation of fundamental human rights, and their consequent indifference to victims in such cases, ensures the failure to deliver justice systematically.

Consular protection

In addition to the protection offered by the judicial system, British nationals also have the right to expect consular protection. This section examines the protection available to British nationals abroad generally, and specifically with regard to detention, child abduction and forced marriage. It then considers the practical and legal obstacles that victims, in particular those who are dual nationals, might face when seeking consular protection.

Protection available

The help that British consular officials can and cannot provide to their nationals abroad has been set out in a leaflet published by the Foreign and Commonwealth Office (FCO) on 'Consular Services Abroad'. This states that the British Consul can, inter alia, issue emergency passports; contact relatives and friends and ask for their help in providing money and tickets; on certain criteria, provide a loan to get back to the UK; and help to get the national in touch with local lawyers, interpreters and doctors. The Consul may also visit any person who has been arrested or put in prison and, in certain circumstances, arrange for messages to be sent to relatives or friends; give guidance on organisations experienced in tracing missing persons, and speak to the local authorities. The FCO leaflet also states that British consular officials cannot intervene in court cases; give legal advice or start court proceedings; investigate a crime; pay travel costs, unless in exceptional circumstances; or help formally if the person is a dual national in the country of their second nationality.

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

In cases of child abduction involving British nationals, consular officials may also approach local authorities for help in tracing the child, press the local court to handle the case as

quickly as possible and, with the British court's permission, draw to the attention of the local authorities the existence of any British court order.

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

'offer practical support;

contact *parents* or other relatives in the UK;

at the request of *parents* contact children who are in need of help;

provide details of support and counselling services available in the UK, *particularly if family support is doubtful*; and

if all potential sources of financial help have been exhausted, consider repatriation to the UK against an Undertaking to Repay' (emphasis added)

The FCO, together with the Home Office, recently developed a Joint Action Plan in which it made a number of commitments to overhaul its current approach to forced marriage, and specifically its overseas dimensions. In addition to a review of and rewriting of the above guidance, these proposals refer to a re-examination of procedures, the development of an information base on support organisations, attendance at court hearings, raising public awareness of available remedies and improvement of access to the consular sections for victims of forced marriage.

Developments prior to the Joint Action Plan also indicated the adoption of a far more pro-active approach by consular officials. In cases of abduction for forced marriage to India, for example, consular officials intervened pro-actively and searched for and located the girls concerned, interviewed them and repatriated them to the UK. In these cases, the individuals concerned were nationals only of Britain.

Even in cases of dual nationals, however, there have been significant interventions. Prior to any official shift in approach, consular officials acted pro-actively in a number of cases. For example, their involvement was key to the success of several habeas corpus cases (see section III above). They referred the petitioners to lawyers, helped to locate the woman concerned, or engaged in discussions with the woman's family and their lawyers in an attempt to seek an amicable resolution. Arguably, their presence in court may also have had an impact in underscoring the urgency and gravity of the matter, and in ensuring expeditious and effective resolution of the cases.

Obstacles to consular protection

The recent shifts in the UK Government's approach to cases of abduction and forced marriage, including those concerning dual nationals, are explicitly premised on an understanding of the practice as constituting a human rights violation. The detailed measures proposed to ensure a more comprehensive and effective strategy to provide redress to

victims of forced marriage address several of the obstacles to such protection identified below.

In many cases, the obstacles to receiving diplomatic protection have been practical ones. Amongst other things, the woman concerned might be unable to make contact with consular officials. Even where she is able to do so, or a report regarding her alleged abduction is received, consular officials may not take any pro-active steps to ascertain her whereabouts or ensure her release and return, unless and until she is able to present herself at the High Commission.

Some of the obstacles are rooted in a lack of understanding of the problem of forced marriages. For example, the FCO leaflet on forced marriage explicitly states that the assistance provided may include contacting the parents. Since one or both parents are typically responsible for their daughter's forced marriage, this is a practical problem that can have serious consequences. The impression of the centrality of parents in the FCO guidance may serve to confuse victims or, critically, to deter them from seeking such assistance.

The obstacles can also be legal. Indeed, up until the Summer of 2000, the UK took the position that it would not provide formal diplomatic protection to its citizens, who also happened to be dual nationals, when the person seeking protection from the UK was in the country of his or her other nationality. Indeed, the FCO materials still clearly state that 'there are limits to the consular protection [dual nationals] can enjoy' and that the 'British Government cannot officially intervene with local authorities in the event of any dispute', even in cases of child abduction or forced marriage. As such, the UK refused to provide formal assistance to women with UK as well as Pakistani or Bangladeshi citizenship, who were brought to Pakistan or Bangladesh and subjected to forced marriages. This was so even when the women were deemed to be dual nationals only by operation of law, and may never have even set foot in Bangladesh or Pakistan.

The Under-Secretary of State for Foreign Affairs noted that the UK's position in these cases involving dual nationals was based on international law:

'Dual nationality is not a policy of the British Government. It is not anything over which we even have any control. Under international law, we do not have any formal right of consular protection over people who have both British and another nationality in the country of their second nationality.'

In taking this position, the UK was purportedly acting consistently with Art 4 of the Convention on Certain Questions relating to the Conflict of Nationality Laws 1930 (Nationality Convention) which provides: 'A state may not afford diplomatic protection to one of its nationals against a state whose nationality such person also possesses'. Both the UK and Pakistan have ratified or acceded to the Nationality Convention. Entered into force in 1937, the Nationality Convention reflected the dominant notions of the time, including an aversion to dual nationality and the doctrine of state non-responsibility. Under the doctrine of state non-responsibility, sovereigns are deemed equal, so 'to permit one State to represent the individual against his other State would be to give greater effect to the nationality of the claimant State, thus denying this sovereign equality'.

However, much has changed in international law since 1937 and arguments can be raised that the UK no longer needs to adhere to the precepts of the Nationality Convention. Importantly, customary law has developed in such a way that it can be argued that the doctrine of state non-responsibility, the doctrine upon which the Nationality Convention is premised, has effectively been supplanted by the doctrine of dominant and effective nationality. The doctrine of dominant and effective nationality, in turn, essentially recognizes that the state to which the individual has the greatest ties may provide that person diplomatic protection, regardless of whether the person is a dual national.

As one commentator observed: 'The Rule that a state cannot protect its nationals who happen to be dual nationals even against their will, in respect of injury or harm suffered in other states of their nationality, has in practice led to much hardship in the past and may so lead in the future as well'. Consistent with this view, many states will give diplomatic protection to their dual nationals, even when in the state of the other nationality.

Moreover, in specific circumstances such as child abduction, states, pursuant to conventions, offer diplomatic assistance in a country of second nationality. Notably, the Hague Convention on the Civil Aspects of International Child Abduction 1980 (Hague Convention), which was developed to help remedy the problem of international child abductions, was drafted in a way that avoids the impediment of the Nationality Convention. Under the Hague Convention, the goal is to secure a swift return of the abducted child to the state of 'habitual residence', which is understood to be the place 'which is the focus of the child's life, where the child is permanently and physically present and where the child's day to day existence is centered'.

Subsequent treaties have also acknowledged the growing obsolescence of the Nationality Convention. Notably, while the European Convention on Nationality 1997 clearly recognised that the 'general rule of international law as regards international protection is contained in Art 4 of the 1930 Hague Convention', in its Explanatory Report the drafters recognised:

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

Finally, it can also be argued that international human rights law (see section II above) imposes an affirmative obligation on the UK to act on behalf of dual nationals in forced marriage situations and to protect their human rights. It could be argued that Art 4's dictate of inaction is superseded by these later conventions and that the UK is free to extend diplomatic protection in order to satisfy its obligations under the human rights treaties to which it is a party. Indeed, some countries, such as Italy, have extended diplomatic protection to dual nationals precisely on humanitarian grounds. It has been noted that such consular concern 'is clear evidence of a growing resort to human rights as a special justification for protection. Consuls are potential instruments for upholding the human rights standards of all'.

The human rights basis for consular protection has been articulated in recent policy pronouncements of the British Government. In this new interpretation of the law, it is provided that:

'Article 4 of the Nationality Convention prevents a country from affording diplomatic or consular protection to one of its nationals "against" a state whose nationality that person also possesses.

In most cases of forced marriage help "against" the state is not needed and the approach should be for the Foreign and Commonwealth Office to work with the authorities and the local agencies overseas to support and protect victims.'

(IV) The way forward

As discussed above, the UK, Bangladesh and Pakistan all have obligations under international human rights law to protect women and girls subjected to the threat or the act of forced marriage. Specific proposals to implement these obligations have been extensively detailed in the Joint Action Plan discussed above. This section will outline some of these proposals along with other recommendations.

Given the trans-national nature of the issues raised in cases of abduction and forced marriage, effective protection of human rights would only be possible through active co-operation and collaboration between the states concerned. In individual cases, the concerned UK authorities (the Home Office and the FCO) could seek the co-operation of their Bangladesh or Pakistan counterparts in order to verify allegations, ascertain the location and circumstances in which the woman is held, enable her recovery, and provide legal or other assistance as appropriate. Such co-operation could be sought on the basis that these cases implicate each of the concerned state's obligations under international law to protect human rights, in particular the rights to marry and to personal liberty and security. In relation to addressing the practice as a whole, the UK could also seek to establish an ongoing dialogue with the concerned authorities and individuals in Bangladesh or Pakistan, including the police, judges, lawyers and NGOs.

In relation to ensuring that consular protection is effectively and systematically provided, the following steps could be taken by British consular officials:

revision of the FCO leaflet on forced marriage to eliminate inappropriate guidance, for example, the reference to contacting parents, and to reflect the new approach to addressing such cases involving dual nationals;

development and dissemination of guidelines on best practice among consular staff in the concerned posts in Bangladesh and Pakistan to ensure a systematic response;

maintenance of a database on reports of forced marriage to ensure tracking and monitoring of cases;

adoption of the practice of pro-active intervention used in child abduction cases, thereby requiring consular officials to approach local authorities for assistance in tracing any woman or girl suspected of being forced into marriage;

development of consular conventions with Pakistan and Bangladesh that could provide protective measures, for example, the right to visit the woman, speak with her privately and to arrange legal representation; and

gender-sensitisation training for all consular officials concerned with handling cases of forced marriage.

Additionally, in order to ensure the effectiveness of the legal remedies available, it would be necessary for the authorities in the UK and in Bangladesh or Pakistan to take appropriate measures to ensure:

improvement of police investigations to bolster prosecutions, including the training of officers to conduct confidential inquiries;

dissemination of information about the problem of forced marriages and the remedies available to potential and actual victims;

development of support, financial and otherwise, for shelters and for NGOs providing assistance to victims and ensuring that shelters provide positive support and do not operate as detention centres, which in effect punish the victim;

judicial co-operation between the countries concerned to share developments in case-law and practice designed to ensure the protection of the rights of victims of forced marriage;

development of a code of best practice and dissemination of such information to concerned institutions, organisations and individuals in the UK, Bangladesh and Pakistan; and

gender-sensitisation training for all authorities dealing with the problem of forced marriage.

(V) Conclusion

Abduction for forced marriage is a violation of women's human rights. Concerted and immediate action is needed to end this practice on the part of government authorities and voluntary organisations in both the UK and the countries to which women and girls are taken for the purpose of forced marriage.

Action to end forced marriage, and to provide effective remedies to those threatened with forced marriage, cannot and does not constitute an 'imposition of moral values'. Forced marriage is clearly prohibited under the laws of Bangladesh and Pakistan, and it violates fundamental rights provisions under the Constitutions of each country. Further, each of the states concerned has obligations under international law to take action to address forced marriage. Thus, failure to take action ♦ whether by the UK, Bangladesh or Pakistan ♦ not only involves an abdication of moral responsibility, but also a breach of the state's

obligations to protect its nationals against violation of their fundamental human rights, in particular the rights to marry, the rights to personal liberty and to freedom from arbitrary detention. The measures proposed recently within the UK to develop a systematic approach to addressing the problem of abduction and forced marriage would go a long way to ensuring the fulfilment of these obligations. Much, however, remains to be done to implement these in practice.