

Defining the limits of honour crimes

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by

Mukaddes Gorar

M00462304

London, United Kingdom
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Abstract

Honour-related violence manifests itself in different forms. The original contribution made by this thesis is to offer a more comprehensive understanding of this phenomenon. The limits of honour crimes must be defined more widely so that they include conducts and behaviours that originate from the patriarchal notion of honour, like honour- related oppression and breast ironing. Awareness of the different types of honour- related violence, as a subcategory of gender-based violence, is crucial for the protection of vulnerable victims, as most become victims just by being girls or women.

This doctrinal research offers a critical analysis and synthesis of the law, both in England and Wales and in the international human rights sphere. The relevant domestic legislation and cases are examined to reflect on whether adequate protection is provided for the victims and potential victims of honour- related violence. Since honour- related violence is a violation of human rights, some of the relevant international human rights law is examined to illustrate the perception of such crimes in the international arena.

The effectiveness of any remedy for victims of honour- related violence does depend on its capability to change deep rooted behaviours in communities with honour- related patriarchal values. This thesis will argue that the law does not provide the effective impact required, in part due to patriarchal structures, and that more efforts should be dedicated to changes in education. There is a need for an educational programme that is especially designed to tackle violence and promote gender equality, and this seems to be the only realistic hope.

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List of Abbreviations

ACPO – The Association of Chief Police Officers
CEDAW– Convention on the Elimination of All Forms of Discrimination against Women 1979
DASH – Domestic Abuse, Stalking and Honour-based Violence
DEVAW– Declaration on the Elimination of Violence against Women 1993
DVCVA – Domestic Violence, Crime and Victims Act 2004
DVPN – Domestic Violence Protection Notices
DVPO – Domestic Violence Protection Orders
ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms 1950
ECtHR – European Court of Human Rights
FGM- Female Genital Mutilation
FMU – Forced Marriage Unit
ICCPR – The International Covenant on Civil and Political Rights 1966
IPCC – The Independent Police Complaints Commission
MARAC – Multi-Agency Risk Assessment
MPS – Metropolitan Police Service
NHS – National Health Service
RCOG – Royal College of Obstetrics and Gynaecology
UDHR Universal Declaration of Human Rights 1948
UKVI – UK Visa and Immigration
UN – United Nations
UNCHR – United Nations High Commissioner for Refugees
UNCRC – United Nations Convention on the Rights of the Child 1989
UNESCO – The United Nations Educational, Scientific and Cultural Organization
UNESCO – United Nation’s Educational Scientific and Cultural Organisation
UNFPA – The United Nations Population Fund
UNICEF – United Nations Children’s Fund

INTRODUCTION

Aim of the research

The aim of this research is to improve the understanding of honour-related violence by examining how and why it is inflicted, and what has been the impact of the solutions provided by changes in law both at the national and international human rights law level.

The research will involve looking for answers to the following questions:

In what different forms does honour-related violence manifest itself? Are all these forms effectively tackled and addressed by the national laws of England and Wales and by international human rights law? If changes in law are not enough on their own, can education be the solution?

Honour-related violence may be inflicted in different forms, from psychological abuse to its most severe version, honour killing. A range of different forms of discriminatory violence can be committed, mainly against women in communities where patriarchal values are accentuated by the concept of collective honour. This research will examine them under four chapters, as honour-related oppression (as psychological violence), female body mutilation (considering female genital mutilation and breast ironing), forced marriage, and finally honour killing. As the existing literature on honour-related violence mainly focuses on the issues of honour killings, forced marriages and female genital mutilation, this research thus adopts a wider scope by examining other potential abusive and oppressive acts. In addition to reviewing the issue under national law, it will also provide an international human rights law

viewpoint on honour crimes. The aim of the research is to provide a diverse and comprehensive study of honour-related violence so as to deepen the understanding of honour.

Research Method and Methodology

A desk-based study (doctrinal research) has been conducted in order to understand how and why honour-related violence is inflicted, and to establish the effectiveness of the national law of England and Wales and international human rights law in tackling the different forms of honour crimes and honour-related violence. This research process has been used to identify, analyse and synthesise the content of law.¹ Therefore, this particular research methodology enables the examination of the essential features of law critically, and then all relevant elements are combined to establish a complete statement of the law on the matter in hand.² Doctrinal research facilitated making a legal analysis of existing laws on honour-related violence, looking at the difficulties in enforcing them, as well as assessing the consistency and certainty of the law. The shortcomings of the existing legal system and law have been outlined.

Legal rules are to be found within the main sources of treaties, statutes and cases. However, it is important to appreciate that they cannot in themselves provide a complete statement of the law in any given situation. The existing national and international laws will be ascertained by applying the relevant legal rules to the facts of honour-related violence to establish whether they are effectively addressing the issues concerning it.

¹D Watkins and M Burton, *Research Methods in Law* (Routledge 2013) 9.

²ibid 10.

In order to conduct this research, a wide range of primary and secondary legal sources are used, including legislation, cases, case comments, parliamentary documents, text books, journal articles, official statistics, reports, law reviews, official web sites (such as those of governments, the Crown Prosecution Service, the United Nations and the World Health Organisation) and newspapers, and narrative sources when necessary. Post-World War II development of the international human rights law will be examined in relation to honour-related violence, inter alia, international conventions, declarations, the decisions of the European Court of Human Rights and the International Criminal Court, the concluding observations of the Committee on the Elimination of Discrimination against Women and the decisions of the Human Rights Committee. The United Nations Resolutions and the documents associated with the Universal Periodic Review mechanism of the United Nations Human Rights Council where there is a high occurrence of honour-related violence, will also be consulted. Since there is a strong interaction between human rights law and refugee law – as both these legal regimes are rooted in similar humanitarian imperatives³ – honour-related violence victims’ asylum claims made in several State Parties under the Refugee Convention will also be examined. These sources will be encapsulated in a legal framework in the light of international human rights law.

Theoretical Framework and Conceptual Clarification

There is no consensus on the terminology used to describe honour crimes. An example is given by Aujla and Gill where the term honour killing is often used interchangeably with honour crimes and honour-based violence.⁴ Some scholars prefer the term honour-related

³C Harvey, ‘Time for Reform? Refugees, Asylum-seekers, and Protection under International Human Rights Law’ (March 2015) 34(1) *Refugee Survey Quarterly* 44–45.

⁴W Aujla and A K Gill, ‘Conceptualizing “Honour” Killings in Canada: An Extreme Form of Domestic Violence’ (Jan–Jun 2014) 9(1) *International Journal of Criminal Justice Sciences* 154.

violence⁵ instead of honour based violence⁶ to avoid the validation of the implicit claim in the term honour-based violence that violence is in fact based on honour which may allow a defence or indicate a justification.⁷ Agreeing with this viewpoint throughout this thesis, the term honour-related violence will be used. However, it must be noted that official documents (such as those from the Police, the Crown Prosecution Service, Home Office, the United Nations) use the term honour-based violence. Likewise, the term honour-based violence will also appear in direct quotes taken from sources that use this term.

Welchman acknowledges the problem associated with using the terms “honour killing” or “honour crime”, not only because this appears to take the claimed perspective of the perpetrator, but because it can also obscure the real motives for violence, which may have purely economic reasons.⁸ She further clarifies that the “[d]efinitions are thus particularly fraught, and that some women’s groups ...may prefer to translate these terms more as ‘femicide.’⁹

‘Femicide’ is generally understood to mean the intentional murder of women because they are women, but broader definitions may include any killing of women or girls.’¹⁰ Shalhoub-Kevorkian uses the term femicide to describe the murder of girls or women for allegedly

⁵inter alia R Reddy, *Approaches to honour-related violence in the English legal system* (Thesis 3143, SOAS Library); S Thapar-Björkert, ‘State Policy, Strategies and Implementation in Combating Patriarchal Violence, Focusing on “Honour Related” Violence’ (2007) 1–130; R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018).

⁶inter alia L Welchman, ‘Honour and Violence in a modern shar’i discourse’ (2007) HAWWA 5/2–3, 3; A Gill, N Begikhani and G Hague, ‘“Honour”- based Violence in Kurdish Communities’ (2012) 35 *Women’s Studies International Forum* 75–85; M M Idriss, ‘Not Domestic Violence or Cultural Tradition: Is Honour-based Violence Distinct from Domestic Violence?’ (February 2017) 39(1) *Journal of Social Welfare and Family Law* 1–19.

⁷R Reddy, *Approaches to honour-related violence in the English legal system* (Thesis 3143, SOAS Library) 263.

⁸L Welchman, ‘Honour and Violence in a Modern Shar’i Discourse’ (2007) HAWWA 5/2–3, 5.

⁹ibid.

¹⁰WHO, *Understanding and Addressing Violence Against Women, Femicide* WHO/RHR/12.38 (2012) 1.

committing crimes against family honour.¹¹ As a result, she refuses to use the term honour crimes.¹² Furthermore, Shalhoub- Kevorkian argues that just defining the crime of killing a woman fails to uncover ‘the arduous process leading up to her death.’¹³ Thus, she uses the concept of femicide to denote ‘all violent acts that instil a perpetual fear in women or girls of being killed under the justification of honour.’¹⁴ According to Shalhoub- Kevorkian, the death of an ‘honour killing’ victim occurs from the time she is put on ‘death row’- which means that she is effectively living under the continual threat of being killed. ‘Even at this point, I consider her a victim of femicide and thus redefine death as the inability to live. Although victims of femicide are technically alive, they are in a mode of life that they never wanted and completely reject, a mode that is perhaps best described as death-in-life.’¹⁵ Kevorkian makes the valid contribution of acknowledging a victim's fear and sense of danger and how the threat of violence penetrating women's lives remains hidden and is ignored in femicide studies.¹⁶

In this research, the importance of gendered aspects of honour-related violence will be stressed. When discussing a permanent long term solution, a feminist institutionalism framework will be used to introduce gender equality into the existing educational system. The relationship between gender and formal and informal institutions has been the main focus of feminist institutionalism, because both type of institutions shape politics and political

¹¹N Shalhoub-Kevorkian, ‘Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?’ (2002) 36 (3) *Law & Society Review* 577.

¹²L Abu-Lughod, ‘Seductions of the “Honour Crime”’ (2011) 22 (1) *A Journal of Feminist Cultural Studies* 53.

¹³N Shalhoub-Kevorkian, ‘Reexamining Femicide: Breaking the Silence and Crossing ‘Scientific’ Borders, *Signs*’ (Winter 2003) 28(2) 581.

¹⁴N Shalhoub-Kevorkian, ‘Mapping and Analyzing the Landscape of Femicide in Palestinian Society’ (2004) Jerusalem: Women's Centre for Legal Aid and Counselling 10.

¹⁵N Shalhoub-Kevorkian, ‘Reexamining Femicide: Breaking the Silence and Crossing ‘Scientific’ Borders’ (Winter 2003) 28(2) *Signs* (Published by University of Chicago Press) 581.

¹⁶*ibid* 586.

outcomes.¹⁷ Feminist institutionalism focuses on gender and politics by considering the gendered nature of political institutions, highlighting the ways in which political institutions reinforce gendered patterns of power.¹⁸ One of the main arguments is that some institutions resist change.¹⁹ Both formal and informal institutions reproduce or exacerbate patterns of disadvantage and discrimination and formally support inequality. As a result, they produce gendered outcomes.²⁰ Feminist institutionalism is also concerned with the potential for, and limits of, institutional reform in pursuit of gender equality, gender justice and promotion of human rights.²¹

Honour-related violence is usually an expression of male domination over female members of the family or a wider social group; it can be identified as a type of patriarchal power.²² In an honour-related patriarchal community, within the existing family hierarchal structure, the man is almost always defined as the head of the family.²³ The concept of honour-related patriarchal communities will be used throughout the thesis. These groups can be defined in the following terms:

a) Their geography: those living in countries that are predominantly patriarchal and which uphold honour-related violence. This may require applying a subjective scale of ‘level of patriarchy’.

¹⁷M Kenny, ‘A Feminist Institutional Approach’ in M Kenny (ed) *Gender and Political Recruitment, Gender and Politics* (Palgrave Macmillan 2013) 34.

¹⁸ibid.

¹⁹J Thomson, ‘Resisting gendered change: Feminist institutionalism and critical actors’ (2018) 39(2) *International Political Science Review* 178.

²⁰Gender and Politics at Edinburgh, ‘Presenting Feminist Institutional Perspective’ <<https://genderpoliticsatedinburgh.wordpress.com/2014/08/29/presenting-feminist-institutionalist-perspectives/>> (29 August 2014) accessed 16/5/2019.

²¹ibid.

²²N Begikhani et al, *Honour-Based Violence, Experiences and Counter-Strategies in Iraqi Kurdistan and the UK Kurdish Diaspora* (Ashgate Publishing Ltd 2015) 27.

²³ibid 28.

b) Their behaviour: those groups who live in a less patriarchal country but who display a high level of patriarchal behaviour, or at least higher than is the norm in the country where they live (e.g. religious communities with fundamentalist values, migrant communities from more patriarchal countries).

The term migrant is defined as ‘a person arriving or returning from abroad to another country.’²⁴ However, for the purposes of this research, the word migrant will refer to a person who settles in one country having arrived or returned from a different country.

Although some types of honour-related violence are specific to certain communities and countries,²⁵ most forms of honour-related violence are common to all honour-related patriarchal communities, such as forced marriages, honour killings, virginity and chastity requirements for women and girls, and honour-related oppression.

Throughout the thesis, when different types of honour-related violence are discussed, the geographical occurrence of that particular form will be indicated within the relevant chapter. However, ‘honour-related patriarchal community’ will be used as an umbrella term to identify social groups where violence and oppression are inflicted on women and girls for the sake of familial/communal honour, irrespective of the forms and types of violence.

²⁴Office for National Statistics, Migration terms and definitions assessed on 4 June 2017.

²⁵Although honour-related violence is present, female genital mutilation is not practised in Turkey, Jordan, Pakistan and India <https://www.unicef.org/protection/files/00-FMGC_infographiclow-res.pdf> accessed 22/1/2018. Similarly, cases of breast ironing have been documented in Cameroon and other parts of Africa (such as in Togo, the Republic of Guinea, South Africa and Côte d’Ivoire). See Jake Berry, a Conservative MP, House of Commons Hansard, Breast Ironing, 22 March 2016, Volume 607, Column 1551. Also see <<https://www.channel4.com/news/breast-ironing-fgm-victim-girls-chest-cameroon-uk>> accessed 22/1/2018.

Scope and Structure of the Chapters

The following sets out the structure and scope guiding each chapter:

Firstly, the issue is described globally, talking about how (descriptive) and why (anthropological, sociological and psychological) it happens. In the absence of nationally reported cases and examples in the UK, this leads to referring to countries where that particular phenomenon occurs. In this case, the first meaning of ‘honour-related patriarchal community’ provided above is used.

Secondly, once the how and why certain types of honour-related violence occur have been explained, the situation in the UK is assessed. This is done by examining what acts there are, whether they provide adequate protection, and what policies are in place (via education, and, through police, prosecution). In this case, the second meaning of patriarchal community, as defined above, is used.

It is also important to remember that honour-related violence victims are mainly vulnerable; this can be due to their young age, their lack of education and economic resources, and/or to their being oppressed and controlled. Consequently, they have very limited freedom. Also, the language barrier may prevent them from challenging the situations they are put in. Therefore, it is fair to conclude that the exact number of victims suffering from honour-related violence is not represented fully via case law either nationally or internationally.

Thirdly, when the domestic law is examined, this refers to the legislation enacted in the United Kingdom. However, it must be noted that the UK has three separate legal systems: England and Wales, Scotland, and Northern Ireland. The thesis deals primarily with the legal

system of England and Wales but uses the term UK when the law applies throughout the whole of the UK.

Fourthly, and finally, the issue is explained from a human rights point of view, looking at the relevant international human rights law from the general to the specific.

Limitations of the Thesis

The research focuses on manifestations of honour-related violence: honour-related psychological abuse, female body mutilation (female genital mutilation and breast ironing), forced marriage and honour killing. All these types of honour-related violence are gendered harmful practices. Although other types of gender based harmful practices exist, such as lip and neck stretching and foot binding, they are left out of this thesis. One of the main reasons for inflicting such modifications, or for mutilating women and young girls, is to increase their marriageability, as they are considered ideals of beauty and signs of wealth or social status.²⁶ However, harms such as female genital mutilation and breast ironing are inflicted for honour-related reasons, i.e. to control the sexuality of women and girls and increase their chances of being eligible for marriage (any marriage, not necessarily to a prosperous husband).

For whatever reason they are inflicted, all harmful practices put women's and girls' overall health, sexual and reproductive health at great risk. Human rights bodies have also acknowledged that harmful practices are a violation of women's and girls' human rights,²⁷

²⁶K A Appiah, *The Honour Code* (Norton and Company 2011) 65–66.

²⁷UN Committee on the Rights of the Child, General Comment 15, CRC/C/GC/15(17 April 2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 9, and the Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, Joint General Recommendation, CEDAW/C/GC/31-CRC/C/GC/18 (14 November 2014) on harmful practices para 7.

and have called on states to protect adolescents from all harmful practices. Harmful practices that constitute forms of violence against women and girls are deeply grounded in discrimination on the basis of sex, gender, age and other grounds.²⁸ The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have consistently underlined that harmful practices are deeply rooted in societal attitudes that regard women and girls as inferior to men and boys.

Although women and girls around the world are subjected to harmful traditional practices for a variety of reasons, for the purposes of this research, only honour-related harmful practices will be considered.

International Human Rights Law Limitations

Throughout the discussion on international law and honour-related violence, the main primary sources used are, inter alia, UN Resolutions, Reports and Resolutions of the Commission on the Status of Women, the European Court of Human Rights cases, the International Criminal Court cases, decisions of the national tribunals and authorities related to the Refugee Convention, the Committee on the Elimination of Discrimination Against Women and the Human Rights Committee's work on individual cases, and the Human Rights Council's Universal Periodic Reviews. The Periodic Reports of the countries of high occurrence of honour-related violence, with the concluding observations of the Committee on the Elimination of Discrimination against Women and the Human Rights Committee, are also examined.

²⁸Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child, Joint General Recommendation, CEDAW/C/GC/31-CRC/C/GC/18 on harmful practices para 7.

However, it was impossible to follow a regular pattern in following up State Parties' responses to the Committees' recommendations, because some of the issues listed for a certain State Party in one periodic review did not appear in the following periodic review. Therefore, it was not possible to follow a chronological order.

Patchy practice exists, where some of the State Parties did not submit their reports on a regular basis. Thus, to gather some information it has been necessary to navigate using recommendations made by the Committee on the Elimination of Discrimination against Women for one State Party to recommendations made by the Human Rights Committee (their observations and decisions) for that particular honour-related issue for the same State Party.

Although honour-related violence is widespread, the types, levels and gravity of such violence may vary between countries. For instance, although in general terms honour-related violence is an issue for Turkey, Jordan and India, female genital mutilation is not practiced in those countries.²⁹ Thus, there was a need to look for different State Parties where particular types of honour-related violence are prevalent (for example, for forced marriages, Turkey and Pakistan; for female genital mutilation, Kenya and Nigeria). The relevant information was collected by looking at these State Parties' case law, periodic reviews and reports to collect some data. However, this does not mean that such violence does not occur in other countries. Furthermore, the cases which reach the international authorities, such as the European Court of Human Rights, the Committee on the Elimination of Discrimination against Women or the Human Rights Committee, do not necessarily illustrate the full scale of the instances of

²⁹UNICEF (2013) <https://www.unicef.org/protection/files/00-FMGC_infographiclow-res.pdf> accessed 12/9/2017.

honour-related violence, since most victims are very vulnerable and unable to challenge the situation, meaning that the decisions of the Committees may not give an accurate picture.

CHAPTER ONE: Theoretical Background

1.1 Introduction

This introduction aims to clarify several concepts and arguments in advance of the four chapters dedicated to particular manifestations of honour-related violence. By providing the conceptual explanations ahead of the specific chapters, it is intended to highlight the common root cause of these acts and to avoid repetition in the discussions that follow.

A discussion around the term honour and its significance in a patriarchal context will be followed by an overview of types of honour-related violence. Women's roles in such violence, as victims (survivors) and as perpetrators, will be considered with special emphasis on the influence of the element of honour. Furthermore, the relation of honour-related violence to religion and migration will be looked at, leading to analysing the connections with domestic and gender-based violence. Finally, there will be an overview of the relevant elements of international human rights law.

1.2 An Overview of Honour

Honour can in general terms be defined as 'a virtue or character trait associated with integrity, good moral character and altruism.'¹ The phenomenon of honour is said to be a symbolic and rhetorical construct which 'encompasses not only a person's estimation of their own worth, but also the acknowledgement of that claim by their community through the

¹A K Gill 'Introduction: "Honour" and "Honour"-Based Violence: Challenging Common Assumptions' in A K Gill et al *'Honour' Killing & Violence* (Palgrave MacMillan 2014) 1.

recognition of their right to respect. Thus, honour often has multiple connotations and overlapping meanings related to pride, esteem, dignity, reputation and virtue.’²

Another definition of honour which highlights the gendered dimension of the concept is a value system with associated norms and traditions³ where ‘... the ideal of masculinity is underpinned by a notion of ‘honour’ – of an individual man, or a family or a community– and is fundamentally connected to policing female behaviour and sexuality.’⁴ Honour is seen as residing specifically in the bodies of women.⁵ As a result of this belief, violations and abuses are taking place in certain communities throughout the world.⁶

When conceptualising honour, it is important to mention the parallel notion of shame. Individuals in honour-related patriarchal communities are not only motivated by a desire to obtain and maintain honour, but likewise to avoid shame.⁷ ‘Thus, honour relates to the behaviour expected of male members of a particular community, while female shame is associated with transgressions against these expectations.’⁸ Honour is therefore constructed through these dual notions, whereby a male’s self-worth and social worth are tied to the reputation and social conduct of the female members of his family and community.⁹ In

²A K Gill ‘Introduction: “Honour” and “Honour”-Based Violence: Challenging Common Assumptions’ in A K Gill et al *‘Honour’ Killing & Violence* (Palgrave MacMillan 2014) 2.

³A K Gill et al, ““Honour”-based Violence in Kurdish Communities’ (2012) 35 *Women’s Studies International Forum* 75.

⁴R Coomaraswamy, ‘Violence against Women and “Crimes of Honour”’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) Preface xi.

⁵ibid.

⁶UNFPA, *The State of World Population the State of World Population*, <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2000/swp2000_eng.pdf> accessed 11/9/2018 pp 29-30; R Coomaraswamy ‘Preface: Violence against women and ‘crimes of honour’ in L Welchman and S Hossain, *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) xii.

⁷A K Gill ‘Introduction: “Honour” and “Honour”-Based Violence: Challenging Common Assumptions’ in A K Gill et al *‘Honour’ Killing & Violence* (Palgrave MacMillan 2014) 2.

⁸ibid.

⁹R Reddy ‘Domestic Violence or Cultural Tradition? Approaches to “Honour Killing” as Species and Subspecies in English Legal Practice’ in A K Gill et al *‘Honour’ Killing & Violence* (Palgrave MacMillan 2014) 29.

honour-related patriarchal communities, the quality required of women in regard to honour is not to bring 'shame', particularly sexual shame.¹⁰ Men's duty is to uphold their family and social group's honour by, amongst other things, making sure their women and girls do not bring shame upon them. As a result, discussing honour without mentioning patriarchy will not allow for a proper understanding of honour-related violence against women.

From the point of view of an honour-related patriarchal set of values, there are different expectations of behaviour from women and men. This expected behaviour is mainly related to sexuality, and it includes acts done to and by the individual. The evolution of the nature of honour will then be analysed as patriarchal values developed over the history of civilisations, reaching a point today when this patriarchal conception of honour appears to have its own independent value, hiding the original motives from which it emerged: the role of women in sedentary societies and the increased relevance of individual property in early civilisations.

According to Jafri, 'Honour concepts are only another way of understanding the operation of patriarchy, which is anchored in the assumption of male authority over women and male definition and expectation of "appropriate" female behaviour.'¹¹ Furthermore, according to Kandiyoti, femininity is an ascribed status whereas masculinity is something achieved. Masculinity is seen as a process, something that can never be permanently achieved because the danger of being un-manned is always present, via, for instance, female misbehaviour. Thus, maintaining and proving one's masculinity is a constant preoccupation.¹²

¹⁰A H Jafri, *Honour Killing* (Oxford University Press 2008) 20.

¹¹*ibid* 21.

¹²D Kandiyoti, 'Emancipated but Unliberated? Reflections on the Turkish Case' (Summer 1987)13(2) *Feminist Studies* 326–327.

Since the notion of a man's honour depends on the behaviour of others (i.e. female members of the family or close social groups) then that behaviour must be controlled.¹³ From this logic it follows that 'other people's behaviour becomes a key component of one's own self-esteem and community's regard. It is important to note that this view is different from saying it should be the individual's own behaviour which should be linked with his or her honour.'¹⁴

Under the honour-related patriarchal system, women contain the honour of men. Thus, she may be perceived to be a mere vessel for this male 'honour', and the chattel of the male 'owner' of that 'honour' ... [c]oncepts of male 'honour' and female 'shame' and the required chastity and passivity of women, arguably pave the way for the idea that women are property of their male relatives, passing from the control of their father to that of their husband via the social institution of marriage.¹⁵

Honour crimes are triggered by actual or alleged acts, specifically acts that are seen as dishonourable. As well as being actual or alleged, these may be voluntarily undertaken by women, such as exercising sexual autonomy outside marriage or seeking a divorce; or they may be involuntary, such as becoming a victim of rape. For instance, when a woman or girl is raped, she is likely to become the victim of an honour crime (either she is killed or forced to marry her rapist). The issue here is that although the wrong act is the rape itself, and so the rapist should be the one to be blamed, in honour-related patriarchal communities the liability is completely shifted onto the female. Since women are treated and perceived as the property of men, through the alleged or actual incident (such as rape), the value of her as property is diminished (i.e. she is not worth keeping any longer in the family). As such, it is perceived that the family honour is tarnished, rather than the woman's self-dignity and autonomy. This example shows that both actual and alleged acts, and those undertaken voluntarily or involuntarily, concern honour as long as they are related to female sexuality. It does not

¹³N V Baker et al, 'Family killing fields: Honour rationales in the murder of women' (1999) 5(2) *Violence Against Women* 165.

¹⁴A H Jafri, *Honour Killing* (Oxford University Press 2008) 20.

¹⁵R Reddy 'Domestic Violence or Cultural Tradition? Approaches to "Honour Killing" as Species and Subspecies in English Legal Practice' in A K Gill et al, *'Honour' Killing & Violence* (Palgrave MacMillan 2014) 29.

matter whether they are triggered by the victim's own free will, such as seeking a divorce, or if the action is forcibly inflicted upon her, such as through rape.

The usage of the term 'honour crimes' has created academic division. Welchman and Hossain acknowledge that the definition and use of the term 'honour crimes' is not straightforward.

The word 'honour' traditionally has positive connotations. The term is also used to flag a type of violation against women and girls, thus it is 'characterised by "motivation" rather than by perpetrator or manifestation.'¹⁶

It can be argued that the phrase honour crimes reinforces discriminatory misperceptions that women and girls embody the honour of the man. In fact, this terminology masks the real motivation behind these honour crimes, which is the violation of women's human rights. It is a purely traditional ideology, connecting a crime to this supposedly mitigating value of honour.¹⁷ This concept is intricately tied to a woman's behaviour, and to her body and how she uses it. From this viewpoint, it is discriminatory and erodes gender equality.

It can be further submitted that 'honour' and 'crime' should be mutually exclusive rather than interrelated concepts.¹⁸ Perhaps a new terminology, such as 'gender crimes', 'patriarchal crimes' or even 'misogyny crimes', would describe the crimes committed under the banner of 'honour' more accurately.¹⁹ Since honour-related violence is an act of control over a person's behaviour, Julios refers to honour-related violence as control crimes.²⁰ Brandon and Hafez

¹⁶L Welchman and S Hossain, 'Introduction: "Honour", rights and wrongs' in L Welchman and S Hossain (eds), *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 4.

¹⁷UN Women, 'Defining "honour" crimes and "honour" Killings' (2011) <<http://www.endvawnow.org/en/articles/731-defining-honourcrimes-and-honour-killings.html>> accessed 2/6/2019.

¹⁸A Sev'er and G Yurdakul, 'Culture of Honour, Culture of Chance: A Feminist Analysis of Honour Killings in Rural Turkey' (2001) 7(9) *Violence Against Women* 964.

¹⁹*ibid.*

²⁰C Julios, *Forced Marriage and 'Honour' Killings in Britain* (Ashgate 2015) 43.

have termed it as crimes of community.²¹ Idriss suggests the term ‘family and community-based violence’, thereby reflecting the respective domestic and non-domestic nature of such crimes.²² In an early day motion in the UK House of Parliament, the term ‘shame-based crimes’ is used instead of honour-related crimes.²³ Furthermore, the Crime (Aggravated Murder of and Violence against Women) Bill was debated in the Houses of Parliament as a Private Members’ Bill. The Bill was proposed to prohibit the use of the term honour killing and make provisions relating to aggravated murder and aggravated domestic violence against women.²⁴

However, a counter argument states that using the term ‘honour’ will properly identify honour crimes, and as a result, this may prevent loopholes. ‘[T]he recognition of “honour” crimes as a particular, contextually-informed type of violence against women rightly acknowledges the unique characteristics of such crimes (such as their premeditated and collective nature). Acknowledging these features in turn facilitates the adoption of effective, targeted laws and policies to combat “honour” crimes.’²⁵ Nevertheless, according to Idriss, ‘care must also be taken not to define “honour” simply as a “male defined” term or the embodiment of men/male perpetrators – this could be simply constructed through a statement that English criminal law considers “honour” to be vested in each individual, man or woman,

²¹J Brandon and S Hafez, *Crimes of the Community: Honour-based Violence in the UK* (Centre for Social Cohesion 2008) as it appears in the title of the book ‘Crimes of the Community’.

²²M M Idriss, ‘Not Domestic Violence or Cultural Tradition: Is Honour-based Violence Distinct from Domestic Violence?’ (February 2017) 39(1) *Journal of Social Welfare and Family Law* 12.

²³Harriet Harman, Shame Based Crimes, Early day motion 706, Session 2016-17 (Date Tabled: 22/11/2016).

²⁴Crime (Aggravated Murder of and Violence against Women) Bill had been withdrawn and will not progress any further.

²⁵UN Women, ‘Defining “Honour” Crimes and “Honour” Killings’

<<http://www.endvawnow.org/en/articles/731-defining-honourcrimes-and-honour-killings.html>> accessed 25/6/2017. The existence of the defence of ‘fit of fury’ in some countries’ criminal law (where the perpetrator commits the crime in a state of extreme rage) provides little evidence against the characterisation of honour crimes as being premeditated, since this defence is significantly biased against the women’s sexual behaviour as discussed in the Honour Killing Chapter.

and that there is no ‘honour’ in honour-based violence.’²⁶ The complexity of the issues on and around honour-related violence can be witnessed from the beginning: deciding the name for such crimes.

1.3 Patriarchy: Women’s Subjugation

Throughout the history of civilisation, women’s social status has gone through changes as societies have developed. The subordination of women in some places, such as in the ancient Middle East, gradually became institutionalised with the rise of urban societies.²⁷ According to Lerner, the period of the establishment of patriarchy was not one event but a process that continued over a period of nearly 2500 years, from approximately 3200 to 692 BC.²⁸ As opposed to the theory proposing that the inferior social status of women is based on their biological nature, ‘archaeological evidence suggests that women were not always treated with cruelty and that they probably suffered a decline in status with the emergence of urban centres and city-states.’²⁹ And with the decline of the status of women, harsh patriarchal structures flourished.

The development of agriculture during the Neolithic period allowed humans to settle and move away from a hunter-gatherer lifestyle. In a settled civilisation, the importance of the populace to provide the labour power of the evolving city-states increased. As a result, women became a resource because of their labour and reproductive capacity.³⁰ Such a need led to the commoditisation of women, whose sexuality and reproductive capacity became the

²⁶M M Idriss ‘Sentencing Guidelines for HBV and Honour Killings’ (2015) 79(3) *Journal of Criminal Law* 11–12.

²⁷A H Jafri, *Honour Killing* (Oxford University Press 2008) 27.

²⁸G Lerner, *The Creation of Patriarchy* (Oxford University Press 1986) 8.

²⁹A H Jafri, *Honour Killing* (Oxford University Press 2008) 28.

³⁰G Lerner, *The Creation of Patriarchy* (Oxford University Press 1986) 212.

first 'property' for which tribes competed. The subordination of women through the development of private property continued.³¹ Consequently, male dominance emerged. Thus, the patriarchal family, designed to guarantee male control of female sexuality, became institutionalized, codified and upheld by the state. As women's sexuality became designated as the property of men, first of father and then of husband, female sexual purity became negotiable and an economically valuable property; laws became harsher and more restrictive toward women.³²

The subordination of women and the notion of honour are well-documented in Roman times and remained predominant in the Middle Ages. 'Historically honour and shame have constrained women from making contact with men because a failure to be so constrained reflected negatively on the men of their families.'³³ The first legislation on female sexual behaviour was created in the time of Augustus (BC 22 to 17 AD).³⁴ The legislation stated that 'the husband and a father of the adulteress had the right to kill (*jus occidendi*) only in certain circumstances' (such as adultery). This law 'also made any illicit sexual relationship (as perceived by men about women's behaviour only) open to public trial at the request of any male citizen.'³⁵ In the Roman empire, issues of honour, shame and sexual purity were of central concern and, accordingly, lack of female chastity was seen as the greatest evil.³⁶ Since most of the European penal codes are derived from Roman edicts, it is possible to see the traces of such a view in European countries' laws. For example, a lenient view of honour killing derived from this attitude was only removed from the Italian penal code in 1981.³⁷

³¹L Abu Lughold, 'Seductions of the "Honour Crime" Differences', (2011) 22 (1) A Journal of Feminist Cultural Studies 33.

³²A H Jafri. *Honour Killing* (Oxford University Press 2008) 29.

³³ibid 30.

³⁴*lex Julia de adulteries coercendis*.

³⁵A H Jafri *Honour Killing* (Oxford University Press 2008) 30.

³⁶Ibid 31.

³⁷the notion of honour killing disappeared from the Italian Penal Code with law number 442 of 5 August, called 'Abrogazione della rilevanza penale della causa d'onore e del matrimonio riparatore' (Abolishment of the 'honour motive' and of 'shotgun' marriages in criminal proceedings), National Report: Italia, Daphne Project 'Proposing New Indicators: Measuring Violence's Effects. Gvei' (July 2007) 4.

This slow process in history did not change the perception of female inferiority. Regarding the current situation in England and Wales, Mr Nazir Afzal OBE, a former Chief Crown Prosecutor, clarified that honour-related violence is not a generational thing, i.e. something that would die out within a generation, but that even very young people think the same way. He then gave an example of a twenty year-old man saying that ‘man is a piece of gold, woman is a piece of silk; if you drop a piece of gold in mud, you can wipe it clean; but if you drop a piece of silk in mud [it is] stained forever!’³⁸ Jafri stated that ‘Honour is more entrenched, something not intellectually understood but transmitted over generations with subtle behaviours’³⁹: subtle behaviours that are gendered and that are founded on patriarchy.

Patriarchy is ‘a system of social constructions and practices in which men dominate, oppress and exploit women.’⁴⁰ Another definition of patriarchy is provided as

‘a set of social relations between men, which have a material base, and which, though hierarchical, establish or create interdependence and solidarity among men that enable them to dominate women. Though patriarchy is hierarchical, and men of different classes, races, or ethnic groups have different places in the patriarchy, they also are united in their shared relationship of dominance over women; they are dependent on each other to maintain that domination.’⁴¹

Patriarchy is a learned pattern of behaviour, which thus enables its continuity.⁴² The concept of patriarchy is an essential tool in the analysis of gender relations in a society. According to Walby, the theory of patriarchy must deal with continuities as well as the historically and cross-culturally variable forms of gender inequality. Therefore, a more flexible concept of patriarchy can capture the variations in women’s experiences.⁴³

³⁸N Afzal OBE Chief Crown Prosecutor, BBC Panorama (2012).

³⁹A H Jafri *Honour Killing* (Oxford University Press 2008) 24.

⁴⁰S Walby, *Theorising Patriarchy* (Basil Blackwell 1990) 20.

⁴¹H Hartmann, *The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union* (Pluto Press 1981) 11.

⁴²N Begikhani et al, *Honour-Based Violence, Experiences and Counter-Strategies in Iraqi Kurdistan and the UK Kurdish Diaspora* (Ashgate Publishing Ltd 2015) 35.

⁴³S Walby, ‘Theorising Patriarchy’ (1989) 23(2) *Sociology* 230.

The theorisation of patriarchy is a complex issue because gender inequality varies to a far too significant degree to be traced back to only one structure.⁴⁴ However, in spite of its conceptual difficulty, patriarchal power, in its rigid manifestation, continues to entail dire consequences for women in different parts of the world.⁴⁵ Despite the difficulties in its theorisation, Walby provides six main patriarchal structures: patriarchal relations within waged labour; a patriarchal mode of household production; patriarchal culture; patriarchal relations in sexuality; male violence; and the patriarchal state. She further submits that patriarchy can take different forms, and these forms are dependent upon the interaction of these six patriarchal structures.⁴⁶ Thus, women are controlled, dominated and exploited under these six formations to varying levels and extents. Bhopal supports this by stating that whatever way patriarchy is viewed, all formations deal with the exploitation of women in some way or other.⁴⁷

According to Bhopal, men's patriarchal power and control over women are the primary power relationships in human society. Furthermore, this power is not only limited to the public sphere (i.e. the economic and political arena), it affects all relationships between the sexes.⁴⁸ In order to continue to exert such power and control over women, men have constituted many strict patriarchal rules, with the support of patriarchal institutions. It is argued that this power game starts within the micro-unit of a family, which is considered the root cause of the patriarchal system.⁴⁹ Therefore, in this system of patriarchal hierarchical relationships within the family, the father of the house takes on all the power and

⁴⁴ibid 213.

⁴⁵A Sev'er, 'Patriarchal Pressures on Women's Freedom, Sexuality, Reproductive Health & Women's Co-optation into Their Own Subjugation' (2005) 4(1) Women's Health and Urban Life 25.

⁴⁶S Walby, *Theorising Patriarchy* (Basil Blackwell 1990) 20.

⁴⁷K Bhopal, *Gender, 'Race' and Patriarchy: A Study of South Asian Women* (Ashgate 1997) 50.

⁴⁸ibid 47.

⁴⁹S Walby, 'Theorising Patriarchy' (1989) 23(2) Sociology 214.

responsibilities and exerts control over all family members. Female members of the family are considered less privileged than the subordinated male members (such as sons), because a subordinated son will eventually become the head of his own house, typically by getting married and moving to his own matrimonial home. Alternatively, he will become the head of the family upon the death of the father.⁵⁰ This system classifies the woman at the bottom of the hierarchy, where she ranks below even her son within the patriarchal family structure. Furthermore, the subordination of daughters and wives is lifelong.⁵¹

Patriarchy is a universal concept. Most cultures have gendered practices and ideologies that disadvantage women relative to men.⁵² However, Phillips argues that although ‘most cultures are patriarchal, some are more so than others.’⁵³ Kurkiala states that the root cause of honour killing is not in the culture but ‘in a universal patriarchal structure which oppresses women worldwide.’⁵⁴ Bhopal further supports this by indicating that it is rather a matter of degree and form of patriarchy: how it affects the individuals‘ and societies’ behaviour and causes violence as a result.⁵⁵

Honour is used as a tool for gender inequality to maintain social status, and violence is inflicted as a corrective force for sustaining the social order generated by patriarchal structures. Honour-related violence is typically an expression of male domination over female relatives, and is a manifestation of patriarchal violence against women and girls.⁵⁶

Furthermore, honour-related violence in all forms is violence perpetrated within a framework

⁵⁰S Altorki, ‘Patriarchy and Imperialism: Father-Son and British-Egyptian Relations’ in S Joseph in *Intimate Selving in Arab Families: Gender, Self, and Identities* (Syracuse University Press 1999) 218.

⁵¹G Lerner, *The Creation of Patriarchy* (Oxford University Press 1986) 218.

⁵²A Phillips, *Multiculturalism without Culture* (Princeton University Press 2007) 25.

⁵³A Phillips, *Multiculturalism without Culture* (Princeton University Press 2007)1.

⁵⁴M Kurkiala, “‘Interpreting Honour Killings’”. *The Story of Fadime Sahindal (1975-2002) in the Swedish Press* (2003) 19(1) *Anthropology Today* 6.

⁵⁵K Bhopal, *Gender, ‘Race’ and Patriarchy: A Study of South Asian Women* (Ashgate 1997) 50

⁵⁶N Begikhani et al, *Honour-Based Violence, Experiences and Counter-Strategies in Iraqi Kurdistan and the UK Kurdish Diaspora* (Ashgate Publishing Ltd 2015) 27.

of patriarchal structures at the family and community levels for the purpose of protecting the social construction of honour as a value system, norm or tradition.⁵⁷

Kandiyoti refers to the type of patriarchy where issues of honour are involved as ‘classic patriarchy’. Under classic patriarchy, girls are given away in marriage at a very young age into households headed by their husband’s father. There, they are subordinate not only to all men but also to the more senior women, especially their mother-in-law.⁵⁸ Just like the Western concept of patriarchy, the basic principle of patriarchy within honour-related patriarchal countries (such as Turkey and Middle Eastern countries) is to accept male supremacy in every aspect of daily life. However, there is one thing that exists in honour-related patriarchy that does not emerge in non- honour-related patriarchy, which is hierarchy. As Kandiyoti submits, while the patriarchal structure is based on gender relations, hierarchy within that patriarchy is usually based on age division.⁵⁹ Kandiyoti combines patriarchy and hierarchy under the same concept of classical patriarchy.⁶⁰ This can be illustrated where the wife is oppressed by her husband. If the husband dies, the widow becomes inferior to her father in law, her own father, her brothers or even her own son. Furthermore, the mother who herself is oppressed by male members of the family, now oppresses her daughters. The oppression and control are more intense for the daughters than the sons. The mother’s control over her daughter lasts forever, whereas her influence on her sons is reduced or diminished when they reach adulthood.⁶¹ Thus, to be more accurate, Kandiyoti’s definition of patriarchy is more appropriate when referring to patriarchy in honour-related patriarchal communities,

⁵⁷ibid.

⁵⁸D Kandiyoti, ‘Bargaining with Patriarchy’ *Gender and Society* (September 1988) 2(3) 278.

⁵⁹ibid.

⁶⁰ibid 279.

⁶¹L Abu-Lughod, *Veiled Sentiments* (University California Press 1999) 109.

since it includes the hierarchical element which plays a crucial role in understanding how patriarchy functions in such communities.

Sev'er submits that classic patriarchy is the 'destructive control of girls and women', and that the 'uniting ingredient in all patriarchies is the obsessive control over women's freedom, sexuality and reproduction'.⁶² Examples of classic patriarchal behaviours are given by Sev'er, inter alia, honour killings, forced virginity tests and female genital mutilation.

Women's life cycle in the classic patriarchal layout is the deprivation and hardship that she experiences as a young bride at the hands of the extended family of her husband. This will eventually be superseded by the control and authority that she will impose over her own subservient daughters-in-law.⁶³ Kandiyoti submits that 'the cyclical nature of women's power in the household and their anticipation of inheriting the authority of senior women encourage a thorough internalization of this form of patriarchy by the women themselves.'⁶⁴ Kandiyoti provides evidence that classic patriarchy is predominant in geographic areas that include most of North Africa, the Middle East and South and East Asia (most specifically India, Pakistan, Bangladesh and rural China).

As can be seen from the above list, classic patriarchy spans geopolitical regions and crosses religious boundaries (Islam, Hinduism, Buddhism, Confucianism, Taoism, Sikhism and some orthodox pockets of Christian and Jewish faiths).⁶⁵ Thus, considering this observed variation, it is inadequate to conclude that one particular religion gives rise to classic patriarchy.

According to Sev'er, 'it is more likely that in strongly patriarchal cultures, the interpretation

⁶²A Sev'er, 'Patriarchal Pressures on Women's Freedom, Sexuality, Reproductive Health & Women's Co-optation into their Own Subjugation' (2005) 4(1) Women's Health and Urban Life 27.

⁶³D Kandiyoti, 'Bargaining with Patriarchy'(September 1988) 2(3)Gender and Society 279.

⁶⁴ibid.

⁶⁵A Sev'er, 'Patriarchal Pressures on Women's Freedom, Sexuality, Reproductive Health & Women's Co-optation into their Own Subjugation' (2005) 4(1) Women's Health and Urban Life 29.

and practices of any religion come to reflect the existing male domination, privilege and control'.⁶⁶ Classic patriarchy may be seen most predominantly in certain parts of the world; however, patriarchy and its negative consequences are manifested even outside of these territories.⁶⁷ Thus, 'patriarchy is a global issue' (despite the different faces it takes in different geographical locations or nation states), meaning that 'solutions must be first sought at the global level.'⁶⁸

With regards to how patriarchy operates, it is necessary to observe how it functions in the private and in the public sphere. Both the public and private distinction is gender-based and patriarchal.⁶⁹ It is then further necessary to divide public patriarchy in two, according to Walby, 'one based on the market and the other on the state as the basis of bringing women into the public sphere.'⁷⁰ In each of these forms the same previously mentioned six structures of the patriarchy exist, but they have different levels of importance in the subordination of women.⁷¹

In private patriarchy, women are denied equal rights and/or the same freedoms as their male counterparts within the domestic sphere (in family households), such as access to education and employment; they are also subject to any type of patriarchal violence, including honour-related violence. Julios notes: 'Here, the socially sanctioned position of a man at home— as father, brother or husband— sees him as the direct oppressor and beneficiary, individually and directly, of the subordination of women.'⁷² As a result, the male dominated social hierarchy

⁶⁶ibid.

⁶⁷ibid 39.

⁶⁸ibid.

⁶⁹R E Dobash and R P Dobash, *Women, Violence and Social Change* (Routledge 2003) 102.

⁷⁰S Walby, 'Theorising Patriarchy' (1989) 23(2) *Sociology* 229.

⁷¹ibid.

⁷²C Julios, *Forced Marriage and 'Honour' Killings in Britain* (Ashgate 2015) 13.

‘is importantly maintained by the active exclusion of women from public arenas’,⁷³ which leads to public patriarchy.

Public patriarchy involves women being denied equal rights in the public sphere. This can be manifested as women not being given independent legal, economic and political identities. As a result, women and women’s issues are not reflected or addressed by laws or policies effectively by state policies and institutions. For example, they might deny local police protection to a girl or woman who seeks to escape private patriarchal violence, such as honour-related violence. Public patriarchy also includes any perception that will deter women and young girl from seeking legal remedy or help when they suffer patriarchal violence. The inefficiency of laws and policies or their enforcement in tackling private patriarchal violence properly shifts the issue to become public patriarchal violence. At this point, domestic patriarchal violence transforms itself from being a hidden, private matter to one that is seen as a legitimate area of concern by a wide range of welfare and control agencies.⁷⁴ The European Court of Human Rights case of *Opuz*⁷⁵ (discussed in the section ‘Honour Crimes and International Human Rights Law’) demonstrated public patriarchy by illustrating how patriarchal violence was sanctioned by the state authorities in Turkey.

1.4 Feminist Institutionalism: honour, gender and institutions

According to Paluck and Ball, the notion of honour has something to do with social norms:

‘A social norm is a perception of where a social group is or where the social group ought to

⁷³ibid.

⁷⁴A Spinney, J Nixon and C Hunter, ‘The Gendered Nature of Policy Discourse: Patriarchy, Pathology or is there a Third Way?’ (International ENHR Conference Paper, Ljubljana, Slovenia, 2–5 July 2006).

⁷⁵*Opuz v Turkey* Application no.33401/02 (ECtHR,9 June 2009).

be on some dimension of attitude or behaviour.’⁷⁶ Norms such as the abuse of women and girls are learned through observation, which enables their continuity. Social norms set up strong expectations for thinking and behaving, and the consequences of such actions are backed up by sanctions and rewards.⁷⁷ Gender-based violence, including honour-related violence, remains stubbornly prevalent because the perpetrators of such crimes continue their violence despite the social and legal acknowledgement that it is wrong.⁷⁸

To understand the reasons for this it is crucial to pay attention to the interaction between formal and informal institutions. Formal changes can be done by formal institutions via passing law and policies.⁷⁹ Informal institutions are difficult to define and identify and often seem ‘traditional and counter-posed to “modernity”’. They come from socially transmitted information and are part of the heritage that is [called] culture and are the traditions, customs, moral values, religious beliefs and all other norms of behaviours that have passed test of time.’⁸⁰

Both formal and informal institutions are gendered, which means that ‘the constructions of masculinity and femininity are intertwined in the daily life or logic of political institutions.’⁸¹ Thus, men benefit from both formal and informal institutions within the patriarchal system.⁸² As clarified by Abu-Lughod, this applies to both national and international institutions.⁸³

⁷⁶E L Paluck and L Ball, ‘Social Norms Marketing Aimed at Gender Based Violence: A Literature Review and Critical Assessment’ (May 2010) New York: International Rescue Committee 9.

⁷⁷L Haylock et al, ‘Shifting Negative Social Norms Rooted in Unequal Gender and Power Relationships to Prevent Violence against Women and Girls’ (August 2016) 24(2) *Gender & Development* 235.

⁷⁸*ibid* 234.

⁷⁹L Chappell and G Waylen, ‘Gender and the Hidden Life of Institutions’ (Sep 2013) 91(3) *Public Administration* 2.

⁸⁰*ibid* 7.

⁸¹F Mackay, M Kenny and L Chappell, ‘New Institutionalism Through a Gender Lens: Towards Feminist Institutionalism?’ (2010) 31(5) *International Political Science Review* 580.

⁸²B Bagilhole and J Goode, ‘The Contradiction of the Myth of Individual Merit, and the Reality of a Patriarchal Support System in Academic Careers’ (2001) 8(2) *The European Journal of Women’s Studies* 176.

⁸³L Abu- Lughod, ‘Seductions of the “Honour Crime”’ (2011) 22 (1) *A Journal of Feminist Cultural Studies* 40.

Furthermore, all agents of the socialisation process, such as the family, the legal system, education, and the economic and political system, are the pillars of a patriarchal system and structure.⁸⁴

The informal norms play an important complementary role to formal rules. Simply introducing formal rules to officially sanction an issue that they are intended to tackle (such as passing an act prohibiting gender discrimination) does not necessarily mean that the issue will be resolved. Since the ‘changes to formal rules do not always mean that institutions act in ways designers anticipated or wanted, as informal norms, rules and procedures are very powerful – particularly in terms of gender– and may undermine formal changes.’⁸⁵ This can be seen in the persistence of forced marriages and female genital mutilation even though both are being criminalised. As explained by Chappell and Waylen, ‘this is because informal institutions and gender norms and hierarchal relations in which they exist, are not “wiped out” by changes in formal rules.’⁸⁶ This is further supported by Kartar-Hyett, who notes that the willingness and ability of a state to pass legislation aimed at achieving gender equality before the law will fail unless it takes into account the traditional patriarchal structures which dichotomise gender stereotypes:⁸⁷ ‘[a]chieving a meaningful social change within the institutions of the state, require considering then very real hurdles imposed by institutional priorities and constraints.’⁸⁸

⁸⁴S Walby, *Theorizing Patriarchy* (Blackwell 1990) 20.

⁸⁵L Chappell and G Waylen, ‘Gender and the Hidden Life of Institutions’ (September 2013) 91(3) *Public Administration* 6.

⁸⁶*ibid* 9.

⁸⁷L Kartar-Hyett, ‘Simply Unwilling? Is Patriarchy Preventing the Prosecution of Crimes Against Women in African States: A Kenyan and Ugandan Perspective’ (2016) 24(2) *African Journal of International and Comparative Law* 175.

⁸⁸R E Dobash and R P Dobash, *Women, Violence and Social Change* (Routledge 2003) 100.

Dobash and Dobash highlight the fact that the real solution is ignored: when considering violence against women in Britain, there was an acceptance of activist's pragmatic solution for women's need such as providing housing and the relevant legislation being quickly passed. On the other hand, 'feminist conceptions of the social and cultural causes of the violence were generally ignored or rejected in favour of ideas focusing on individual inadequacy and poor family background. The solution was adopted while the nature of the problem was denied or transformed.'⁸⁹ Sivistri and Crowther-Dowey support this by stating that, 'Although legislation has been introduced to improve the status of women, this has largely been ineffective because the government is unwilling to dedicate scarce economic resources towards a gender equality and human rights agenda.'⁹⁰ Sivistri and Crowther-Dowey further highlight that such an attitude adopted by the state creates a tension between internationally recognised declarations and statements about human rights and the UK government⁹¹ as its practice goes against international human rights law.

Laws are influenced by the patriarchal legacy of a formal legal system as well as by cultural and political informal codes.⁹² A further problem is shown in attitudes to law enforcement, where law enforcers (such as police and prosecution) can have more sympathy for the accused than the victim in cases where the prosecution neither investigates a crime nor collects evidence properly. Judges may adopt a similar approach which can enable the 'court to manipulate the evidence in a gender-based and discriminatory manner to reduce the sentence of the killer and even justify his criminal act.'⁹³ As a result, such practice 'conveys a

⁸⁹ibid 112.

⁹⁰M Sivistri and C Crowther-Dowey, *Gender and Crime* (Sage 2016) 239.

⁹¹ibid 267.

⁹²N Shalhoub-Kevorkian, 'Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?' (2002) 36 (3) *Law & Society Review* 577.

⁹³C Warrick, 'The Vanishing Victim: criminal law and gender in Jordan' (2005) 39 *Law and Society Review* 327–328; N Shalhoub-Kevorkian, 'Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?' (2002) 36 (3) *Law & Society Review* 593–594.

message to society at large that it is easy to kill women and get away with it.’⁹⁴ Women's subordination can be deeply ingrained in the legal system so that even gossip and rumours are accepted as evidence and considered as justification for femicide.⁹⁵

In order to stop gender-related violence, the continuum between informal and formal institutions in institutional analysis needs to be recognised, thus ‘the most effective institutional arrangements incorporate a normative system of informal and internalised rules.’⁹⁶ Such social changes can only be made via specific education that tackles gender inequality. Furthermore, effective change needs to address informal institutions such as the family, where children learn basic values, including gendered and patriarchal values, transmitted to them depending on the particular structure of each family.

Research evidence that charts what happens during the first years of life matters greatly because the first years establish a strong or fragile foundation for the future.⁹⁷ From birth to age five, children rapidly develop their foundational capabilities and exhibit dramatic progression in their emotional, social, regulatory and moral capacities.⁹⁸ Research shows that ‘[r]eputation and struggle for recognition are staple expressions of our basic need for social affiliation ... from at least 2–3 years of age and all through the life span, it shapes, orients, and drives much of what we know about others, in particular the power of their judgment on the-

⁹⁴N Shalhoub-Kevorkian, ‘Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?’ (2002) 36 (3) *Law & Society Review* 595.

⁹⁵C Warrick, ‘The Vanishing Victim: criminal law and gender in Jordan’ (2005) 39 *Law and Society Review* 327; N Shalhoub-Kevorkian, ‘Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?’ (2002) 36 (3) *Law & Society Review* 599–600.

⁹⁶F Mackay, M Kenny and L Chappell, ‘New Institutionalism Through a Gender Lens: Towards Feminist Institutionalism?’ (2010) 31(5) *International Political Science Review* 576.

⁹⁷J P Shonkoff and D A Phillips, *From Neurons to Neighbourhoods: The Science of Early Childhood Development* (National Academy Press 2000) 5.

⁹⁸*ibid.*

self.’⁹⁹ Thus, ‘self-image, reputation and impression management prevails from early childhood and is major trademark in adulthood.’¹⁰⁰

Every aspect of early human development, from the brain’s evolving circuitry to the child’s capacity for empathy, is affected by the environments and experiences that are encountered, in cumulative fashion.¹⁰¹ The brain is relatively plastic in the early years, and this means that young children are more open to learning and receptive to enriching experiences that shape their typical cognitive development.¹⁰² An initiative called Think Equal proposes to address gender inequality by introducing a special curriculum at early years’ of education.¹⁰³

1.5 Different Types of Honour-related Violence

The term ‘honour’ is associated with a range of oppressive and discriminatory practices which may or may not necessarily result in homicide, but which are nonetheless harmful. These crimes stretch beyond what could be assumed to be isolated ‘acts of violence’ themselves. There is a community dimension which supports the committing of honour crimes. Furthermore, such crimes underline the inequalities between men and women in society. Some of these violent and abusive practices are criminal offences, such as confinement or imprisonment, assault and battery, grievous bodily harm and female genital

⁹⁹ M Banaji and S. Gelman (eds.) *Navigating the Social World: What Infants, Children, and Other Species Can Teach Us* (Oxford University Press 2013) 209.

¹⁰⁰S Valencia Botto and P Rochat ‘Sensitivity to the Evaluation of Others Emerges by 24 months’ (2018) 54(9) *Developmental Psychology* 1732.

¹⁰¹J P Shonkoff and D A Phillips, *From Neurons to Neighbourhoods: The Science of Early Childhood Development* (National Academy Press 2000) 6.

¹⁰²N Rao et al, report on ‘Early Childhood Development and Cognitive Development in Developing Countries’ (September 2014) Faculty of Education, The University of Hong Kong 6; Also see Early Childhood and Education Can Reduce Gender and Other Social Discrimination, Strong Foundations for Gender Equality in Early Childhood Care and Education – Advocacy Brief (2007) UNESCO Bangkok 3.

¹⁰³Think Equal < <https://thinkequal.org/>> accessed 4/6/2019; Lumgair H, Think Equal, Early Years Curriculum Framework (2016).

mutilation, rape, forced marriage, child marriage, murder and attempted murder. However, other practices also occur under the banner of honour, such as the restriction of a woman's autonomy by interfering with, or stigmatising,¹⁰⁴ her sexual choices: from her decisions around marriage, which would include her decision not to marry, her decision to divorce, to her sexual orientation if she diverts from the heterosexual option, or such practices as forced virginity (forcing women to remain virgins until they marry)¹⁰⁵ and breast ironing.¹⁰⁶

Women can easily infringe unwritten codes of honour, such as by falling in love, exercising sexual autonomy, engaging in extramarital relationships, seeking a divorce or choosing their own husbands. These behaviours are seen as transgressing the boundaries of what is 'appropriate' (that is, socially sanctioned) sexual behaviour.¹⁰⁷ The burden of honour, and the guilt and blame that comes from the un-condoned behaviour, is always placed on the woman. This perception leads to a legitimisation of male violence. It eventually takes forms which treat the victims of violence as responsible for their own rapes, assaults, oppressions, harassments or murders. The community justification is that, as Ramazanoglu puts it, 'they asked for it, flaunted their sexuality, enjoyed it although they pretended not to, started something they could not stop, were out alone at night, hitched a lift, dressed provocatively, nagged their husbands.'¹⁰⁸

¹⁰⁴R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018) 2.

¹⁰⁵C Ramazanoglu, *Feminism and the Contradictions of Oppression* (Routledge 1989) 48; N Shalhoub-Kevorkian, 'Towards a Cultural Definition of Rape: Dilemmas in Dealing with Rape Victims in Palestinian Society' (1999) 22(2) *Women's Studies International Forum* 159–163.

¹⁰⁶J A Tchoukou, 'Introducing the Practice of Breast Ironing as a Human Rights Issue in Cameroon' (2014) 3(3) *Civil & Legal Sciences* 1–18 <<https://www.omicsonline.org/open-access/introducing-the-practice-of-breast-ironing-as-a-human-rights-issue-in-cameroon-2169-0170.1000121.php?aid=26082>> accessed 12/12/2017.

¹⁰⁷L Welchman and S Hossain, 'Introduction: "Honour", rights and wrongs' in L Welchman and S Hossain (eds), *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 48.

¹⁰⁸C Ramazanoglu, *Feminism and the Contradictions of Oppression* (Routledge 1989) 67.

Although honour is ostensibly linked to norms of behaviour for both sexes, it is fundamentally grounded upon patriarchal notions of ownership of women and control of female behaviour. Women's sexuality in particular is at the heart of the cultural concern and leads to social anxiety.¹⁰⁹ Thus, there is an obligation on women to preserve their virginity for their future husbands. This obligation is often further extended by preventing women from having any contact with men outside the immediate family. Consequently, women 'need to refrain from any sexual activity before marriage, and from any act that may lead to sexual activity...every prohibitive demand she complies with constructs her simultaneously as female and a virgin.'¹¹⁰

Honour-related patriarchal cultures place a high premium on women's virginity for social, economic, and religious reasons.¹¹¹ In such cultures, the rules on honour and shame are linked to virginity and the hymen. The requirement of virginity on young girls and women give raise to several instances where the body of the person is physically interfered with in a very intimate manner. Firstly, the bloody sheet is used as evidence that first sexual intercourse has taken place on the wedding night. Secondly, it can be done via virginity checking, if a newly married bride fails to bleed after the first sexual intercourse.¹¹² Similarly, if there is any rumour that she has had contact with a male friend or boyfriend, the family of the girl may be required to produce a so-called 'virginity certificate' as proof of

¹⁰⁹P Sen, "'Crimes of honour' value and meaning", in L Welchman and S Hossain, *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 48.

¹¹⁰ibid.

¹¹¹ Centre for Egyptian Women's Legal Assistance, "'Crimes of honour" as violence against women in Egypt' in L Welchman and S Hossain, *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 138.

¹¹²ibid.

virginity.¹¹³ Shalhoub-Kevorkian refers to this practice as ‘imposed virginity testing.’¹¹⁴ The third way of controlling female virginity is via hymen reparation surgery. The second and third methods may be undertaken voluntarily or be imposed by a family member. As with other honour-related practices, virginity control is also a concern for immigrants living in the UK, and a market has emerged to address such issues, with the National Health Service (NHS), for instance, as well as private clinics, offering hymenoplasty.¹¹⁵ In the UK, hymen reparation costs approximately £4,000. Between 2006 and 2012, 180 hymenoplasties were performed at NHS hospitals.¹¹⁶

1.6 Victims and Survivors

Although honour crimes are mainly committed against women, they are not solely about individual men controlling the lives of individual women. They are also the result of community norms, social policing, collective decisions and acts of punishment. These norms can also be applied to male behaviour to the extent that men can also be killed, for instance the killing of a man and a woman suspected of an illicit relationships (*karo-kari* killings in

¹¹³The Advocates for Human Rights, Stop Violence Against Women, Virginity Tests (June 2010) <http://www.stopvaw.org/harmful_practices_virginity_tests> 26 October 2013.

¹¹⁴Shalhoub-Kevorkian N, ‘Researching women’s victimisation in Palestine: a socio-legal analysis’ in L Welchman and S Hossain, *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 174.

¹¹⁵Regency International Clinic official website, London, Hymen Reconstruction & Repair (Hymenoplasty), <<http://regencyinternationalclinic.co.uk/hymen-reconstruction/>> accessed 14/7/2017.

¹¹⁶E Gosling, ‘Rise in Ops to Make Women “Virgins” Again’ (7 June 2012) *Closer* magazine <<https://closeronline.co.uk/real-life/news/rise-ops-make-women-virgins/>> accessed 10/5/2017.

Pakistan).¹¹⁷ Deviation from heterosexuality or seeking to marry outside their community can also cause the victimisation of men¹¹⁸ and women.¹¹⁹

Those who experience, or continue to experience, honour-related violence are described as ‘victims’ or ‘survivors’, where these terminologies are used interchangeably.¹²⁰ However, some of those women describe themselves as ‘survivors’, because they claim that the terminology ‘survivor’ has more positive connotations than the ‘victim’ label.¹²¹ Walklate clarifies the distinction, with ‘the term ‘victim’... emphasising passivity and powerlessness, in contrast to the active resistance to oppression that women routinely engage in to sustain their survival.’¹²² Papendick and Bohner confirm this by stating that, independent of language and gender, ‘survivor’ was perceived more positively overall (such as *strong, brave, active*) than was ‘victim’ (*weak, passive, but also innocent*).¹²³ It may also indicate the difference between a victim being ‘deceased’ and a survivor as ‘surviving’. However, the context will determine the use of either victim or survivor.

1.7 Women as Perpetrators

¹¹⁷A H Jafri, *Honour Killing* (Oxford University Press 2008) 1.

¹¹⁸N Mulvihill et al, ‘The Experience of Interactional Justice for Victims of “Honour”- based Violence and Abuse Reporting to the Police in England and Wales’ (2018) *Policing and Society an International Journal of Research and Policy*, ISSN: 1043-9463 (Print) 1477–2728 (Online) Journal homepage <<http://www.tandfonline.com/loi/gpas2>> accessed 10/2/2018, and also see ‘Turkiye’nin İlk Gay Namus Cinayeti’, *Haberler.Com* (7 July 2012) <<http://www.haberler.com/turkiye-nin-ilk-gay-namus-cinayeti-3766428-haberi/>> accessed 5/2/2014.

¹¹⁹L Abu- Lughod, ‘Seductions of the “Honour Crime”’ (2011) 22 (1) *A Journal of Feminist Cultural Studies* 54; M M Idriss, ‘Honour, violence, women and Islam- an introduction’ in M M Idriss and T Abbas (eds), *Honour, Violence, Women and Islam* (Routledge 2011) 3; R Reddy, ‘Approaches to honour-related violence in the English legal system’ (Thesis 3143, SOAS Library) 60.

¹²⁰N Begikhani et al, *Honour-Based Violence* (Ashgate 2015) 14.

¹²¹J Sanghera in a Conference talk, ‘Working in Partnership to Combat Honour-based Abuse, Forced Marriage and Female Genital Mutilation’ (London, 18 July 2018).

¹²²S L Walklate, *Gender, Crime and Criminal Justice* (Willan Publishing 2013) 37.

¹²³M Papendick and G Bohner, ‘Passive victim – strong survivor?’ Perceived Meaning of Labels Applied to Women Who Were Raped, *PLOS One* (2017) 12(5) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5426776/>> accessed 31/8/2018.

Patriarchy, like carbon monoxide, is insidious because it is colourless, odourless, and invisible. The human body does not detect the presence of carbon monoxide: it interprets the gas as oxygen. Likewise, women are not even aware they are absorbing patriarchy into their systems.¹²⁴

The complexity and multi-dimensional nature of honour crimes indicates that not only men but also women play a central role in ensuring that women adhere to gender norms. In honour-related patriarchal communities, women control each other's behaviour and are complicit in their own oppression.¹²⁵ When a decision is taken by the family council to punish a female member of the family, the other female relatives respect that decision and even take part in the punishment. An example of this is the case of Tulay Goren, who was 15 years old when she disappeared in London in 1999. It came out in the evidence during the case that Tulay's mother knew of the plan to murder her daughter and did nothing to prevent it.¹²⁶

Many women think that oppression of women is a normal practice. It is further argued that 'many women in patriarchal societies believe that they are not full human beings and/or that they are not equal to their male counterparts.'¹²⁷ They are not even aware that what is committed under the shadow of honour is a crime. As Gill submits, 'women themselves do not recognise that they are victims of gender-based violence, they interpret their treatment as an intrinsic part of their culture.'¹²⁸ Social norms and traditions that uphold honour values are deeply internalised by the female members of patriarchal communities. Sev'er points out that 'Since deviations from rules of honour unleash unbearable pain and harm, most women learn

¹²⁴F O'Connor and D S Drury, *The Female Face in Patriarchy* (Michigan State University 1999) 6.

¹²⁵R Reddy, 'Approaches to honour-related violence in the English legal system' (Thesis 3143, SOAS Library) 74.

¹²⁶R v Goren, Goren and Goren, Case Number T20087432 (Central Criminal Court (Old Bailey) 17 December 2009). R Ballard, *Regina v Ali Goren*, Matters of Honour in Turkish Families: An Anthropological Perspective (2009) 34–35 <www.casas.org.uk/papers/pdfpapers/gorenreport.pdf> accessed 25/6/2017.

¹²⁷N Begikhani, A Gill and G Hague, *Honour-based Violence, Experiences and Counter-Strategies in Iraqi Kurdistan and in the Kurdish Diaspora in the UK* (Ashgate Publishing Ltd 2015) 30.

¹²⁸A Gill, 'Honour Killing and the Quest for Justice Black and Minority Ethnic Communities in the UK' (2009) 20(4) Criminal Justice Policy Review 4.

how to “obey” the patriarchal boundaries and look forward to the future rewards their docile compliance promises. Moreover, they learn to make sure that their daughters also play by rules.’¹²⁹

One explanation for female-to-female violence is that patriarchal communities make mothers responsible for teaching daughters what is acceptable behaviour within their community.¹³⁰ This means that if their daughter fails, this will be perceived as their fault. Therefore, older women in particular will strive hard to work in the interests of the family, and even to ensure their own survival, by showing their disapproval of daughters who dishonour the family. This can also be illustrated in Kandiyoti’s term ‘bargaining with patriarchy’, where women use strategies and coping mechanisms to protect themselves from violence by men.¹³¹ Kandiyoti states that the ‘cyclical nature of women’s power in the household and their anticipation of inheriting the authority of senior women encourage a thorough internalization of this form of patriarchy by the women themselves. In classic patriarchy, subordination to men is offset by the control older women attain over younger women.’¹³² As a result of women internalising their inferiority, of patriarchal bargaining, or both, women are often taking an active role in their own oppression and the subjugation of their female counterparts. Thus, this illustrates the fact that women’s consciousness of gendered power relations in this context seems to be problematic. The development of women’s gender consciousness requires more work and effort and such development is impacted by several processes.¹³³

¹²⁹A Sev’er, ‘Patriarchal Pressures on Women’s Freedom, Sexuality, Reproductive Health & Women’s Co-optation into Their Own Subjugation’ (2005) 4(1) *Women’s Health and Urban Life* 37.

¹³⁰M M Idriss, ‘Not Domestic Violence or Cultural Tradition: Is Honour-based Violence Distinct from Domestic Violence?’ (February 2017) 39(1) *Journal of Social Welfare and Family Law* 3.

¹³¹*ibid.*

¹³²D Kandiyoti, ‘Bargaining with Patriarchy’ *Gender and Society* (September 1988) 2(3) 279.

¹³³L L Bierema lists such processes as: Identity Development through the Hidden Curriculum; Gender Consciousness Development Process and From Connected Knowing to Connected Action in ‘The Role of Gender Consciousness in Challenging Patriarchy’ (2002) *Adult Education Research Conference* 3–5 <<http://newprairiepress.org/aerc/2002/papers/4>> accessed 02/11/2018.

Furthermore, the marriageability of young girls is vital in societies where women do not have their own economic and social independence. Monagan submits that, although men do not actively participate in honour-related harmful practices (such as female genital mutilation, which is mostly performed by women), it is the men who set the standard expected from women.¹³⁴ They define exactly how a woman should be considered suitable for marriage. Therefore, men's power and control are the main causes of the perpetration of such violent practices on women and girls.¹³⁵ It is a main characteristic of the patriarchal mentality that power is retained by the men within the family and in wider society. Thus, the standard expected from women is set up by men, but mainly it is enforced by women to ensure that their daughters are marriageable, and the family reputation is not tarnished. Gill's statement summarises the situation well: 'The socialization of young women in such societies revolves around notion of family honour and cultural norms that become so deeply internalized that women often find it difficult to break away from these values.'¹³⁶

1.8 Honour-related Violence and Religion

Cultural beliefs and religion are at the root of promoting society and family cohesion. If these cultural and religious beliefs include harmful or damaging practices, such as allowing men to dominate women and to use violence, this will cause profound problems. Deeply held beliefs and cultural traditions are participating factors in the tragedy of honour crimes.¹³⁷ However,

¹³⁴S L Monagan, 'Patriarchy: Perpetuating the Practice of Female Genital Mutilation' (2009) 37 *International Research Journal of Arts & Humanities* 96.

¹³⁵*ibid.*

¹³⁶A Gill, 'Honour Killing and the Quest for Justice Black and Minority Ethnic Communities in the UK' (2009) 20(4) *Criminal Justice Policy Review* 4.

¹³⁷N Begikhani, A Gill and G Hague with K Ibraheem, *Final Report on Honour-based Violence and Honour-based Killings in Iraqi Kurdistan and in the Kurdish Diaspora in the UK*, Centre for Gender and Violence Research, University of Bristol, UK, and Roehampton University, UK, in partnership with Kurdish Women's Rights Watch (2010).

patriarchy is a feature of all societies and religions, and violence against women is an element of this as a means to maintain power over women. Sev'er and Yurdakul submit that purely focusing on the role of culture and/or religion fails to address this issue.¹³⁸ Therefore, blaming certain cultures or religions 'ignores the fundamental issue of patriarchy, tribalism, control and power over women.'¹³⁹

Honour crimes occur in many countries around the world, but they are most prevalent, especially in their most acute forms, in countries with a predominantly Muslim population.¹⁴⁰ There is a tendency in Western societies to regard Islam as the epitome of misogyny. However, it must be remembered that the views reflected in the Koran were set in the socio-cultural context of the time in Europe and the Middle East around 1400 years ago

One of the most controversial verses is 4:34, entitled Surah An-Nisa, which deals with disciplining Muslim women. The interpretation of Surah 4:34, is notorious for seeming to legitimate male superiority and wife beating.¹⁴¹ The verse is translated by Taqi-ud-Din et al into English as follows:

Men are the protectors, guardians and maintainers of women, because Allah has made the one of them to excel the other... therefore the righteous women are devoutly obedient (to Allah and their husbands) ... As to those women on whose part you see ill-conduct (i.e. disobedience, rebellion – nashuz in Arabic) admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly, if it is useful), but if they return to obedience, seek not against them means (of annoyance).¹⁴²

¹³⁸A Sev'er and G Yurdakul, 'Culture of Honour, Culture of Change: A Feminist Analysis of Honour Killing in Rural Turkey' (2001) 7(9) *Violence Against Women*.

¹³⁹A Hogben, 'Femicide, not "honour killing."' In H MacIntosh and D Shapiro (eds) *Gender, Culture and Religion: Tackling some difficult questions* (Calgary: Sheldon Chumir Foundation for Ethics in Leadership 2012) 39.

¹⁴⁰M M Idriss, 'Honour, violence, women and Islam- an introduction' in M M Idriss and T Abbas (eds), *Honour, Violence, Women and Islam* (Routledge 2011) 3.

¹⁴¹Greifenhagen, F V, 'North American Islamic feminist interpretation: The case of sūrah 4:34, with a comparison to Christian feminist interpretation' (March 2004) Volume 33 (1) *Studies in Religion* 51.

¹⁴²S Kausar et al, 'Does the Qur'an condone domestic violence?' in M M Idriss and T Abbas, *Honour, Violence, Women and Islam* (Routledge 2011) 97.

However, this verse is interpreted differently by contemporary Muslim feminists (with reference to beating of wife in the light of verse 4:34), stating that the verse applies to both women (4:34) and men (4:128). The verse therefore cannot only be interpreted in a manner to apply only to ‘a woman’s disobedience to her husband.’¹⁴³

There are two verses under the Surah An-Nisa, prescribing punishment for illicit sexual relations (adultery and fornication) (verses 4: 15 and 4: 16) of which only women, it appears, could be accused. The Surah An-Nisa 4: 15 reads as follows:

‘If any of your women are guilty of lewdness, take the evidence of four (reliable) witnesses from amongst you against them; and if they testify, confine them to houses until death do claim them, or Allah ordain for them some (other) way.’

This verse uses the term *fahisha* (lewdness), which most commentators understand as implying adultery and fornication. Verse 4: 16 states: ‘no punishment is specified for the man, as would be the case when a man was involved in a crime.’ Mir-Hosseini submits that the verse endorses the existing punishment for *fahisha* – which only women, it appears, could be accused of.¹⁴⁴

However, violence against women is not restricted to Islam.¹⁴⁵ Yet it is also possible to find passages in the Bible which speak of violence against women in multiple forms. Most of the Bible’s teachings about women, masculinity and relationships are based upon the foundation laid out in Genesis in the Old Testament. So, in Genesis 3:16, to the women God says: ‘I will

¹⁴³Shagufta Z, ‘Marriage in Islam: Life Partnership or Discriminatory Family Set up? An Analysis of Some Protective Legal and Moral Shariah Provisions for Women with Special Reference to Surah An-Nisa’ (2014) 20 FSL/MSHRL/S10 Human Rights and Family Law, MS/MPhil. “Human Rights Law” Faculty of Shariah and Law, Department of Law 32–33.

¹⁴⁴Z Mir-Hosseini, *Criminalizing Sexuality: Zina Laws as Violence Against Women in Muslim Contexts* (March 2010) (lastradainternational.org) 15–16.

¹⁴⁵L Abu-Lughod, ‘Seductions of the “Honour Crime” (2011) 22 (1) *A Journal of Feminist Cultural Studies* 17 and 36; A Kirti, P Kumar and R Yadav ‘The Face of Honour Based Crimes: Global Concerns and Solutions’ (January-June 2011) 6 (1&2 Combined Issue) *International Journal of Criminal Justice Sciences* 346.

surely multiply your pain in childbearing; in pain you shall bring forth children. Your desire shall be contrary to your husband, but he shall rule over you.’

The Magdalene Laundries in Dublin is another good example of where a variety of honour crimes took place. Thousands of Irish women were kept in the Magdalene Laundries, established by the Catholic Church, because of their ‘immoral’ behaviour¹⁴⁶ such as bearing children out of wedlock, leaving abusive husbands or leaving home. Their punishment was a lifetime of penance, performing free domestic labour¹⁴⁷ such as laundering prison uniforms, cooking, cleaning, and caring for elderly nuns or their aging peers. They were ‘The Magdalenes’, ironically called after Mary Magdalene, who served Jesus loyally and was rewarded with his forgiveness for being a prostitute.¹⁴⁸ Ten Magdalene Laundries operated in Ireland from 1922.¹⁴⁹ The Magdalene Laundries also illustrate a powerful mechanism of public patriarchal control (by the Irish State and religion) until they were closed in 1996.¹⁵⁰

Gender-related issues play a crucial role in the language of Christian fundamentalism, especially evangelical Protestants.¹⁵¹ ‘Fundamentalists argue that men and women are by divine design “essentially” different, and they aim to preserve the separation between public and private, male and female, spheres of action and influence.’¹⁵²

¹⁴⁶J Yeager and J Culleton, ‘Gendered Violence and Cultural Forgetting The Case of the Irish Magdalenes’ (October 2016) Issue 126 *Radical History Review* 135–136.

¹⁴⁷referred as ‘forced labour’ by S Killian, “‘For lack of accountability’”: The logic of the price in Ireland’s Magdalen Laundries’ (May 2015) 43 *Accounting, Organizations and Society* 1.

¹⁴⁸M Eide, ‘James Joyce’s Magdalenes’ (Fall 2011) 38 (4) *College Literature*, Johns Hopkins University Press 62.

¹⁴⁹J Yeager and J Culleton, ‘Gendered Violence and Cultural Forgetting The Case of the Irish Magdalenes’ (October 2016) Issue 126 *Radical History Review* 136.

¹⁵⁰*ibid.*

¹⁵¹L Abu-Lughod, ‘Seductions of the “Honour Crime”’ (2011) 22 (1) *A Journal of Feminist Cultural Studies* 38.

¹⁵²S D Rose, ‘Christian Fundamentalism: patriarchy, sexuality, and human rights’ in C W Howland (ed) *Religious Fundamentalisms and the Human Rights of Women* (Palgrave 2001) 9.

The ideology behind fundamentalism, which has spread both within and beyond the US, dictates patriarchal norms: children are to be obedient to their parents, wives to their husbands, and husbands to their God. In the US, a modernised form of patriarchy is promoted by the group called the ‘Promise Keepers’, founded in 1990. The Promise Keepers (and their female counterpart, the Promise Reapers) have adopted the goal of motivating men towards attaining a Christlike masculinity. One Promise Keeper, Pastor Tony Evans, sees the feminisation of men as a big threat to the family structure, eventually leading to a national crisis. He argues that men should take back their male leadership role. Evans has stated: ‘Treat the lady gently and lovingly. But lead.’¹⁵³ As Rose points out, ‘within the fundamentalist framework, family life continues to be gendered along patriarchal lines, and while men are called back to the private sphere, gender apartheid is still maintained.’¹⁵⁴

Jewish Women’s Aid in North London provides another example to illustrate the honour-related value system, this time in the Jewish community. The term ‘*Shalom bait*’ means ‘you must have peace in your house’. According to this rule, some women, when they have a problem, go forward to the rabbi and tell them about it. They are then told to return home to make peace, as it is their responsibility, rather than the rabbi’s, to address the fact that there is a problem with their husband. Thus, the rabbis ‘say stuff like “go home... make peace...cook a nice dinner... wait in for him.”’¹⁵⁵ The Jewish experience illustrates that even members of the most prosperous and longest established immigrant groups in the UK can preserve its traditional honour-related values, even having been exposed to a range of competing ideas and value systems.¹⁵⁶

¹⁵³ibid 11.

¹⁵⁴ibid.

¹⁵⁵J Brandon and S Hafez in *Crimes of the Community: Honour-based Violence in the UK* (The Cromwell Press 2008) 30.

¹⁵⁶Brandon and Hafez, *Crimes of the Community: Honour-based violence in the UK* (The Cromwell Press 2008) 31.

The common ground for Christian fundamentalism and other forms of religious belief that are called ‘fundamentalist’ is patriarchy. As Rose explains:

This characteristic is most evident across the Abrahamic tradition of the three major monotheistic religions— among fundamentalist Israeli Jews, within both Sunni and Shi’ite Muslim communities in various countries, and within the current revival of evangelical Protestantism emanating from the United States— but is also evident in fundamentalist Hindu and Buddhist movements. All seek to control women and the expression of sexuality.¹⁵⁷

Religious and cultural factors play a role in determining gender norms (such as sex, sexuality and employment) in many cultures and threaten or deny women’s hard-won rights.¹⁵⁸ Thus, examination of the religious texts ‘revered by the most heavily affected communities reveals that the problem lies only partially with religious beliefs.’¹⁵⁹ As Kissling states, women have had a hard time achieving equality within most faith groups.¹⁶⁰

Although the practice is spread across a variety of religions and cultural groups as a result of patriarchy, honour-related violence is certainly more concentrated in some regions than others. However, this should not lead to labelling of honour-related violence as a cultural issue, as if it were distinct from the gender-based oppression or patriarchal violence that occurs all around the world.¹⁶¹ Such labelling can then be used in unhelpful way, as can be seen in below discussions on multiculturalism.

¹⁵⁷S D Rose, ‘Christian Fundamentalism: patriarchy, sexuality, and human rights’ in C W Howland (ed) *Religious Fundamentalisms and the Human Rights of Women* (Palgrave 2001) 9.

¹⁵⁸S Bradshaw, J Castellino and B Diop, ‘Women’s Role in Economic Development: Overcoming the Constraints’ (May 2013). Background Research Paper Submitted to the High Level Panel on the Post-2015 Development Agenda.

¹⁵⁹A K Gill et al, ‘“Honour”-based Violence in Kurdish Communities’ (2012) 35 *Women’s Studies International Forum* 77.

¹⁶⁰F Kissling, ‘Roman Catholic Fundamentalism: what’s sex (and power) got to do with it?’ in C W Howland (ed) *Religious Fundamentalisms and the Human Rights of Women* (Palgrave 2001) 197.

¹⁶¹L Abu- Lughod, ‘Seductions of the “Honour Crime”’ (2011) 22 (1) *A Journal of Feminist Cultural Studies* 17.

1.9 Honour-related Violence and Migration

As indicated previously, honour crimes or honour-related violence, although widespread, mainly occur in the Middle East and South Asia. However, these practices have now, with immigration, also spread to Europe. Goksel argues that in the West there is a tendency to perceive honour crimes as a form of sexual violence according to unwritten codes of honour, legitimised through patriarchal mechanisms.¹⁶² She further submits that ‘murders committed in minority communities in the West are broadly attributed to “culture” rather than to the patriarchal element within the culture.’¹⁶³ Abu-Lughod echoes this when submitting that honour crimes are marked as a culturally specific form of violence and given a special association with Muslims.¹⁶⁴ For that specific reason, Western governments have not intervened in their capacity to protect honour-related violence victims, as they have taken a dominant multicultural approach and accepted the need for tolerance of different cultures within ethnic minority communities. This approach lacks an understanding of how social identities are constructed within unequal power relations based on gender within these communities.¹⁶⁵

In the UK, issues around multiculturalism and the integration of immigrants into majority cultures’ core values are a continuing concern. Until they are addressed, violence against women and girls in the form of honour-related violence will continue. A recently published

¹⁶²H Goksel, *Women on the Margins of Life and Death* (VDM Verlag Dr Muller Aktiengesellschaft & Co. KG 2008) 3.

¹⁶³Ibid; L Abu-Lughod, ‘Seductions of the “Honour Crime”’ (2011) 22 (1) *A Journal of Feminist Cultural Studies* 34–35.

¹⁶⁴L Abu-Lughod, ‘Seductions of the “Honour Crime”’ (2011) 22 (1) *A Journal of Feminist Cultural Studies* 17–18.

¹⁶⁵P Patel, H Siddiqui and Southall Black Sisters, ‘Shrinking Secular Spaces: Asian Women at the Interest of Race, Religion and Gender’ in R K Thiara and A K Gill (eds) *Violence Against Women in South Asian Communities* (Jessica Kingsley Publisher 2010) 103.

report as a result of an independent review on community cohesion in the UK (also known as the Casey Review) revealed that cultural and religious practices in some communities are still running contrary to British values, and sometimes laws.¹⁶⁶ By making specific observations on gender equality, the report states that ‘in many areas of Britain, the drive towards equality and opportunity across gender may not have taken place. Women in some communities are facing a double onslaught of gender inequality, combined with religious, cultural and social barriers preventing them from accessing even their basic rights as British residents. And violence against women remains all too prevalent – in domestic abuse but also in other criminal practices such as female genital mutilation, forced marriage and “honour”-based crime.’¹⁶⁷

The report acknowledges that during the last 15 years, different governments have not implemented community cohesion strategies with enough force or consistency. Furthermore, these strategies have not been linked to socio-economic inclusion, and communities have not been engaged adequately.¹⁶⁸ Data released by the police in July 2015 showed that more than 11,000 honour crimes were recorded between 2010 and 2014 despite the acknowledged underreported status of such crimes.¹⁶⁹

The concept of multiculturalism has a complicated relationship with human rights and honour crimes. The problems arise when multiculturalism is used to justify or mitigate the consequences of unlawful conducts, such as honour-related violence, which are a violation of a victim’s human rights. As Beckett and Macey argue, ‘multiculturalism does not cause

¹⁶⁶The Casey Review, A review into Opportunity and Integration, Executive Summary, Dame Louise Casey DBE CB (December 2016) 5.

¹⁶⁷ibid 14 para 1.57.

¹⁶⁸ibid 16 para 70.

¹⁶⁹Iranian and Kurdish Women’s Rights Organisation (IKWRO) website (9 July 2015). In only five years, police have recorded more than 11,000 ‘honour’-based violence cases <<http://ikwro.org.uk/2015/07/research-reveals-violence/>> accessed 2/2/2017.

domestic violence, but it does facilitate its continuation through its creed of respect for cultural differences.’¹⁷⁰ This becomes prevalent when considering honour-related violence in ethnic minority communities.

Multiculturalism involves balancing the desire to protect the values of the dominant culture with a need to recognise and respect the values of minority cultures.¹⁷¹ It also requires providing ‘active encouragement and support to the co-existence of multiple cultures within [the] same territory.’¹⁷² The main element of this doctrine is the promotion of respect, understanding and tolerance between the minority and dominant culture. In the UK, multiculturalism has been promoted by successive governments with the aim of combating racism, as well as promoting an integrated, tolerant and egalitarian society where the diversity of cultures and races is valued equally.¹⁷³

However, it is also accepted that there should be limits on such diversity and tolerance. In the case of some forms of cultural practices that infringe on other people’s rights, there should not be any tolerance for them, and they should be prohibited.¹⁷⁴ Herring states that ‘once society accepts that people have certain rights, these rights should not be deprived simply because a person is belonging to a minority culture.’¹⁷⁵ Reddy argues that what amounts to culture is decided by a dominant subgroup within the minority community, who impose their viewpoint on the minority culture, and who disregard those opposed to their

¹⁷⁰C Beckett and M Macey ‘Race, Gender and Sexuality: The Oppression of Multiculturalism’ (2001) 24(3/4) Women’s Studies International Forum 311.

¹⁷¹J Herring, *Family Law* (Pearson Education Ltd 2011) 33.

¹⁷²Online dictionary <<http://definitions.uslegal.com/m/multiculturalism/>> accessed 12/2/2015.

¹⁷³R Reddy, ‘Gender, Culture and the Law: Approaches to “Honour Crimes” in the UK’ (2008) 16 *Feminist Legal Studies* 305–321.

¹⁷⁴J Herring, *Family Law* (Pearson Education Ltd 2011) 34.

¹⁷⁵*ibid.*

value system within the same group.¹⁷⁶ Furthermore, ‘a degree of scepticism is justifiable when considering cultural practices’¹⁷⁷ ‘many cultural practices when critically examined turn upon the interpretation of a male elite (an oligarchy, clergy or judiciary): if there is now consensus, this was engineered, an ideology construction to cloak the interests of only one section of society.’¹⁷⁸ In addition, if men alone can decide what women’s rights should be, women will be left at the mercy of systematic injustice.¹⁷⁹

Furthermore, looking at honour crimes through ‘culture-based frames’¹⁸⁰ will not provide a clear image. The victims of honour-related violence are mainly females whose sexuality and autonomy are under strict scrutiny. However, when an incident of alleged dishonourable conduct is committed by female members of the family, the male members of the family are treated as victims, since their reputation is damaged. Reddy describes this as a ‘manifestation of “hegemonic masculinities” through the exercise of violence by certain males over a less powerful male [as well as female members of the family], within the patriarchal context.’¹⁸¹ The patriarchal mentality is the main ingredient of the concept of honour; thus, the root cause of such violence is to restore or maintain patriarchal honour. Therefore, honour-related violence should not be limited to cultural grounds. Haylock et al describe it as violence against women and girls, arguing that gender inequality is the root cause of such crimes.¹⁸²

¹⁷⁶R Reddy, ‘Gender, Culture and the Law: Approaches to “Honour Crimes” in the UK’ (2008) 16 *Feminist Legal Studies* 309.

¹⁷⁷J Herring, *Family Law* (Pearson Education Ltd 2011) 34.

¹⁷⁸M Freeman, ‘Images of Child Welfare in Child Abduction Appeals’ in J Murphy (ed) *Ethnic Minorities, Their Families and The Law* (Hart 2000) 13.

¹⁷⁹C James, ‘A Veil of Silence Over Murder in the Name of Honour’ (2009) <<http://www.clivejames.com/honourcrimes>> accessed 4/1/2015.

¹⁸⁰S A Ercan, ‘Same Problem, Different Solutions: The Case of “Honour Killing” in Germany and Britain’ in A K Gill et al (eds) *Honour Killing and Violence, Theory, Policy and Practice* (Palgrave Macmillan 2014) 199.

¹⁸¹ibid 40.

¹⁸²L Haylock et al, ‘Shifting Negative Social Norms Rooted in Unequal Gender and Power Relationships to Prevent Violence against Women and Girls’ (25 August 2016) 24(2) *Gender & Development* 232.

Ercan summarises the benefit of making such a classification, saying that ‘in contrast with culture-based frames, gender-based frames define “honour” as primarily patriarchal rather than cultural and suggest mainstreaming “honour killings” under the broader category of violence against women’.¹⁸³ Welchman acknowledges the problems of associating honour killings to Muslim communities as:

‘othering’, ‘scandalising’ (if not ‘exoticing’) certain forms of violence against women, largely to the exclusion or at least obscuring other forms of violence against women both in Western societies and in those ‘other’ societies.¹⁸⁴

This approach claims to confine the root causes of such violence, as well as to prevent honour-related violence from being perceived by migrant hosting states as a problem with ethnic minorities. Honour-related violence is gender-based violence, which is a sub-species of the domestic violence¹⁸⁵ that also exists in Western societies. Furthermore, disassociating honour-related violence (such as forced marriage) from a violence against women agenda, and instead aligning it with the issue of immigration and a vilification of multiculturalism, only leads to poor community cohesion and the continual othering of minority communities,¹⁸⁶ which then creates an ‘us and them’ divide that complicates efforts to define and address the problem.¹⁸⁷

¹⁸³S A Ercan, ‘Same Problem, Different Solutions: The Case of “Honour Killing” in Germany and Britain’ in A K Gill et al, *Honour Killing and Violence, Theory, Policy and Practice* (Palgrave Macmillan 2014) 199.

¹⁸⁴L Welchman, ‘Honour and Violence in a Modern Shar’i Discourse’ (2007) *HAWWA* 5/2–3, 3.

¹⁸⁵R Reddy, ‘Domestic Violence or Cultural Tradition? Approaches to “Honour Killing” as Species and Subspecies in English Legal Practice’ in A K Gill et al, *Honour Killing and Violence, Theory, Policy and Practice* (Palgrave Macmillan 2014) 41.

¹⁸⁶A K Gill and T Mitra-Kahn, ‘Moving toward a “Multiculturalism without Culture”’ in R K Thiara and A K Gill (eds) *Violence Against Women in South Asian Communities* (Jessica Kingsley Publisher 2010) 136–139.

¹⁸⁷N Begikhani et al, *Honour-Based Violence, Experiences and Counter-Strategies in Iraqi Kurdistan and the UK Kurdish Diaspora* (Ashgate Publishing Ltd 2015) 35.

1.10 Honour-related Violence, Domestic Violence and Crimes of Passion

There is a distinction between honour-related violence and domestic violence, although they share some characteristics and the majority of victims in both cases are women. The main difference between them derives from the element of honour. The perpetrator of domestic violence is typically the intimate partner or someone from the family who commits the offence for various reasons, such as extreme jealousy, suspected infidelity, or even a poorly cooked meal. In the case of honour-related violence, the acts are usually perpetrated by very close relatives, mainly the victim's husband, father, brother, uncle or cousin, and/or spouse, to protect the family honour alongside 'conjugal honour'.¹⁸⁸

With regard to honour killings, the decision to kill the woman is a collective, deliberate decision made by the family at a family meeting. There, a young man within the family, usually a brother or cousin of the victim, is designated to carry out the crime.¹⁸⁹ Idriss submits that in some countries (such as Pakistan), in most cases, the crime is carried out in public, or at least publicised, because in a wider sense the dishonour has become the 'community's honour': the stain on the family honour has turned into a stain on the honour of the group, and must be cleansed in public.¹⁹⁰

¹⁸⁸P Chesler, 'Are Honour Killings Simply Domestic Violence?' (Spring 2009) 16 *Middle East Quarterly* 61–69.

¹⁸⁹A Kirti, P Kumar and R Yadav 'The Face of Honour Based Crimes: Global Concerns and Solutions' (January-June 2011) 6 (1&2 Combined Issue) *International Journal of Criminal Justice Sciences* 350; C Warrick, 'The Vanishing Victim: criminal law and gender in Jordan.' (2005) 39 *Law and Society Review* 324–325.

¹⁹⁰M M Idriss, 'Not Domestic Violence or Cultural Tradition: Is Honour-Based Violence Distinct from Domestic Violence?' (February 2017) *Journal of Social Welfare and Family Law* 7 and 9.

Domestic violence, in contrast, is observed to be an individual act of violence rather than a collective punishment.¹⁹¹ Domestic violence is typically inflicted by one intimate partner in a relationship, with the extreme form, causing the death of the partner, normally committed in a sudden spurt of rage, rather than decided and carefully planned in advance. Reddy acknowledges the facts that like honour-related violence, domestic violence is a form of gender-based violence as it is mainly directed at women and perpetrated by men as a means of controlling female behaviour and autonomy.¹⁹²

Although domestic violence and honour-related violence have their similarities and dissimilarities, there is also a transitional relationship between them. Domestic violence can transfer itself to honour-related violence. This happens when, even if domestic violence occurs at home for a non-honour-related reason, the other family members keep silent. The reason for such silence is honour-related, because letting others in the community know that domestic violence is occurring in their home is too shameful.¹⁹³ This was illustrated in the case of Sabia Rani,¹⁹⁴ where a recently married 19 year-old, arranged marriage bride was repeatedly beaten over a sustained period and finally died as a result of her injuries. The family turned a blind eye to such an ordeal because of concerns over honour.

The distinction between domestic violence and honour-related violence is crucial when tackling and considering prevention measures against honour-related violence. With regards to honour-related violence Siddiqui states that ‘in some areas “bounty hunters”, private detectives or organised networks or gangs intimidate women into marriage or attack and harass them if

¹⁹¹P Chesler, ‘Are Honour Killings Simply Domestic Violence?’ (Spring 2009)16 Middle East Quarterly 61–69.

¹⁹²R Reddy, ‘Approaches to honour-related violence in the English legal system’ (Thesis 3143, SOAS Library) 67.

¹⁹³M M Idriss, ‘Not Domestic Violence or Cultural Tradition: Is Honour-Based Violence Distinct from Domestic Violence?’ (February 2017) Journal of Social Welfare and Family Law 4.

¹⁹⁴R v Khan [2009] EWCA Crim 2.

they refuse to marry according to their family's wishes.'¹⁹⁵ Idriss argues, protecting an honour-related violence victim from her family and community is almost like protecting her from the Mafia. He further adds that honour-related violence shows similarities to organised crime, thus 'it would not [...] be an exaggeration to label some cases of honour-based violence to be a form of community/gang-related violence.'¹⁹⁶

Honour-related violence almost always involves multiple perpetrators, and it is premeditated. Family members and community members keep silent, either because they are also scared of becoming victims, or because they condone such violence. The community's contribution goes further if the victim flees violence: as soon as they spot the girl's whereabouts, community members inform the family. If the victim has been sentenced to be killed, her death sentence can still hang over her even 20 years after the initial 'dishonouring' event occurred, and she will still be killed once her whereabouts become known.¹⁹⁷

Community involvement in honour crimes is well illustrated in the case of the 16 year-old Kurdish *Heshu Yones*,¹⁹⁸ whose father Abdullah Yones stabbed her and slit her throat at their home in West London in 2002. Heshu had a Christian boyfriend, and her father feared she was becoming westernised.¹⁹⁹ Abdallah first denied having anything to do with his daughter's murder. The local Kurdish community made great efforts to help Abdallah by raising the £125,000 bail, while threats were made against those who wanted to give evidence

¹⁹⁵H Siddiqui, 'Escaping Forced Marriage: Non-Legal Remedies in England and Wales' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 4-5. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

¹⁹⁶M M Idriss, 'Not Domestic Violence or Cultural Tradition: Is Honour-Based Violence Distinct from Domestic Violence?' (February 2017) *Journal of Social Welfare and Family Law* 10.

¹⁹⁷*ibid* 11; C Warrick, 'The Vanishing Victim: criminal law and gender in Jordan' (2005) 39 *Law and Society Review* 342.

¹⁹⁸*R v Abdullah Yones* [2003] (Unreported).

¹⁹⁹J Brandon and S Hafez, *Crimes of the Community: Honour-based Violence in the UK* (Centre for Social Cohesion 2008) 55.

against him. The police later uncovered the community's plans to help Abdallah flee the country.²⁰⁰ Abdallah later confessed to the killing and was sentenced to life imprisonment. This basic example illustrates the community involvement supporting the perpetrator of the honour killing,²⁰¹ which is not a characteristic of domestic violence.

Differences between the concepts of honour crimes, domestic violence and crimes of passion also indicate the dichotomy between the West and East.²⁰² Accordingly, there is a tendency to associate honour crimes with the East and crimes of passion with the West²⁰³ where 'passion' can be raised as a defence (provocation or loss of control) and which can be raised in cases of sexual infidelity or adultery.²⁰⁴ Welchman and Hossain state that the 'concept of sexual provocation in 'the West' appears to afford women (as wives and lovers) less protection even as their legal rights to choose and/or to leave a relationship are increased.'²⁰⁵ They further acknowledge the 'passion/honour continuum' and submit that:

Even granted the paradigmatic family (as compared to conjugal) dynamic of 'honour', the response of courts in the 'West' faced with defences of passion or provocation can be examined for similarities with those of courts faced with 'honour' defences, at least in considering the implications of a passion/honour continuum that recognises, at some point, a justification for the use of violence against women as a part of control by family and intimates.²⁰⁶

²⁰⁰R Hussein, *Murder in the Name of Honour* (Oneworld Publications 2009) 159.

²⁰¹R Reddy, 'Domestic Violence or Cultural Tradition? Approaches to "Honour Killing" as Species and Subspecies in English Legal Practice' in A K Gill et al, *'Honour' Killing & Violence, Theory, Policy & Practice* (Palgrave Macmillan 2014) 38.

²⁰²H Goksel, *Women on the Margins of Life and Death*, (VDM Verlag Dr Muller Aktiengesellschaft & Co. KG, Germany, 2008) p.4

²⁰³A A An-Na'im, 'The role of community discourse in combating crimes of honour: preliminary assessment and prospects' in L Welchman and S Hossain (eds) *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 67; R Reddy, *'Approaches to honour-related violence in the English legal system'* (Thesis 3143, SOAS Library 69).

²⁰⁴In England and Wales law murder defences to exclude sexual infidelity in 'loss of control' killings thus infidelity cannot be the sole reason for the murder and other "triggers" must be shown (Discussed in Honour Killings chapter, Coroners and Justice Act 2009 Sections 54–56).

²⁰⁵L Welchman and S Hossain, 'Introduction: "Honour", rights and wrongs' in L Welchman and S Hossain (eds) *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 11.

²⁰⁶*ibid* 11–12.

Although there are similarities between crimes of passion and honour, the main difference is said to be in the relationship between the perpetrator and the victim. The perpetrator in crimes of passion is the partner or the victim's sexual intimates and it excludes all other men who are not or cannot be sexually involved with the woman (father, brother, son) and the issue is a matter of castrated masculinity and passionate jealousy.²⁰⁷ The idea of passion is one where passion exists in a private relationship between a man and a woman, as opposed to a collective one in honour crimes which involves several men related to women.²⁰⁸

In the case of the latter, the idea is the protection of family honour. This involves protecting the family honour along with the protection of conjugal honour.²⁰⁹ These two forms of honour are tangled within multiple codes of honour and therefore cannot be separated. The main difference between the honour crime and other violent crimes is in the role of the perpetrators. Honour crimes are usually perpetrated against women by very close relatives, mainly the victim's husband, father, brother or cousin. The motive involves allegations of sexual impropriety, in the name of protecting or upholding the 'honour' of the family.²¹⁰

Whereas in crimes of passion, the crime is 'committed by one partner (husband or wife) in a relationship with the other and is a spontaneous (emotional or passionate) reply (often citing a defence of 'sexual provocation').'²¹¹

²⁰⁷L Abu-Odeh, 'Crimes of Honour and the Construction of Gender in Arab Societies' (2011) 2(1) *Comparative Law Review* 16–17; L Welchman and S Hossain, 'Introduction: "Honour", rights and wrongs' in L Welchman and S Hossain (eds) *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 10.

²⁰⁸L Abu-Odeh, 'Crimes of Honour and the Construction of Gender in Arab Societies' (2011) 2(1) *Comparative Law Review* 16–17.

²⁰⁹L Welchman and S Hossain, 'Introduction: "Honour", rights and wrongs' in L Welchman and S Hossain (eds) *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 5.

²¹⁰A A An-Na'im, 'The role of community discourse in combating crimes of honour: preliminary assessment and prospects' in L Welchman and S Hossain (eds) *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 67; C Warrick, 'The Vanishing Victim: criminal law and gender in Jordan' (2005) 39 *Law and Society Review* 322.

²¹¹L Welchman and S Hossain, 'Introduction: "Honour", rights and wrongs' in L Welchman and S Hossain (eds) *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 10.

Furthermore, Sen suggests that crimes of honour have six key features which may help them to be identified from other types of crimes:²¹²

1. gender relations that problematise and control women's behaviours, shaping and controlling women's sexuality in particular;
2. the role of women in policing and monitoring women's behaviour;
3. collective decisions regarding punishment, or upholding the actions considered appropriate, for transgression of these boundaries;
4. the potential for women's participation in killings;
5. the ability to reclaim honour through enforced compliance or killings;
6. state sanction of such killings through recognition of honour as motivation and mitigation.

‘All common law forms of ‘adequate provocation’ can be regarded as justification based since this approach concentrates on the unlawful conduct of the provoker.’²¹³ However, although honour crimes and crimes of passion are well-known in most legal systems, in honour killing cases, claims of reduced responsibility (provocation) on the grounds of rage are often claimed and justified as social harm and loss of honour caused by women's behaviour instead of as ‘passionate anger.’²¹⁴ On the other hand, in some cases such a distinction is completely blurred by the courts.²¹⁵

Welchman and Hossain summarise the situation effectively by submitting that different positions have been taken regarding the utility of this comparison of honour crimes and crimes of passion ‘but the juxtaposition at least underlines the argument that both are manifestations of femicide where culturally positive values legally/judicially mitigate the murder of women from, arguably, motivations of male control, whether named as “honour” or “passion.”’²¹⁶

²¹²P Sen, ‘“Crimes of honour” value and meaning’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 50.

²¹³L Abu-Odeh, ‘Comparatively Speaking: The Honor of the East and the Passion of the West’ (1997) 287 *Utah L Rev* 300.

²¹⁴C Warrick, ‘The Vanishing Victim: criminal law and gender in Jordan’ (2005) 39 *Law and Society Review* 322.

²¹⁵*ibid* 339.

²¹⁶L Welchman and S Hossain, ‘Introduction: “Honour”, rights and wrongs’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 10.

1.11 Gender-based Violence

Honour crimes affect women and girls disproportionately.²¹⁷ However, men also may become victims of honour-related violence in certain circumstances.²¹⁸ Therefore, honour-related violence fits the definition of gender-based violence. Although honour-related violence has characteristics in common with violence against women and girls, it is more appropriate to classify it as gender-based violence since it involves ‘social expectations about the behaviour’ of women²¹⁹ in most aspects of their life, but also men in certain instances, such as if they are not heterosexual or if they seek to marry outside their community.²²⁰

Conceptualising honour-related violence as domestic violence may give the perception that the violent act takes place within the family. On the other hand, distinguishing honour-related violence from domestic violence could lead to the marginalisation of specific communities and may also raise concerns of a racist backlash. Anitha and Gill insist that honour-related violence should be seen as a manifestation of the wider problem of violence against

²¹⁷Crown Prosecution Service official website, Violence Against Women, <http://www.cps.gov.uk/westmidlands/us_and_the_community/violence_against_women/> accessed 26/6/2017.

²¹⁸In 2017, 930 cases (77.8%) involved female victims and 256 (21.4%) involved male victims, Forced Marriage Unit Statistics 2017 (16 March 2018) 8.

²¹⁹K Bhopal, *Gender, 'Race' and Patriarchy* (Ashgate 1997) 1.

²²⁰Men can become victims of honour-related violence mainly if they are not heterosexual or if they seek to marry outside their community; see N Mulvihill et al, ‘The Experience of Interactional Justice for Victims of “Honour”- based Violence and Abuse Reporting to the Police in England and Wales’ (2018) *Policing and Society an International Journal of Research and Policy*, ISSN: 1043-9463 (Print) 1477-2728 (Online) Journal homepage <<http://www.tandfonline.com/loi/gpas2>> accessed 10/2/2018; R Reddy, ‘Approaches to honour-related violence in the English legal system’ (Thesis 3143, SOAS Library) 59-60

women.²²¹ Thus, honour-related violence should be considered as a subspecies of gender-based violence.²²²

'Gender-based violence' and 'violence against women' are terms that are often used interchangeably, as most gender-based violence is inflicted by men on women and girls.²²³ However, it is important to retain the 'gender-based' aspect of the concept,²²⁴ as this highlights the fact that violence against women is an expression of power inequalities between women and men. Moreover, conceptualising honour-related violence as gender-based violence demonstrates the structural inequality within the honour system. In such systems, although a man can impose his power and control over another man, such as a father forcing his son into a marriage, the son will exercise his own power and control over his wife. In this hierarchal structure, the wife, who is already a victim of forced marriage, is victimised twice. This exhibits the inherent inequality within the structure, where women and girls are always at the bottom of the honour hierarchy of the family and society.

This is echoed by Amnesty International, which states that 'so-called honour killings [crimes] are based on the deeply rooted belief that women are objects and commodities, not human beings entitled to dignity and rights equal to those of men.'²²⁵ This definition goes hand in hand with that of gender-based violence. Articles 3(d) and 3(a) of the Council of Europe

²²¹S Anitha and A K Gill, 'A Moral Panic? The Problematization of Forced Marriage in British Newspapers' (September 2015) 21(9) *Violence against Women* 1123.

²²²R Reddy, 'Domestic Violence or Cultural Tradition? Approaches to "Honour Killing" as Species and Subspecies in English Legal Practice' in A K Gill et al (eds) *Honour Killing and Violence* (Palgrave Macmillan 2014) 28.

²²³European Institute for Gender Equality, 'What is Gender-based Violence?' <<http://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>> accessed 14/3/2017.

²²⁴S E Ercan, 'Same Problem, Different Solutions: The Case of "Honour Killing" in Germany and Britain' in A K Gill et al (eds) *Honour Killing and Violence, Theory, Policy and Practice* (Palgrave Macmillan 2014) 199.

²²⁵Amnesty International, *Culture of Discrimination: A fact sheet on 'honour' killings* (2012) <https://www.amnestyusa.org/files/pdfs/honor_killings_fact_sheet_final_2012.doc> accessed 11/6/2017.

Convention on Preventing and Combating Violence against Women and Domestic Violence

2011 state:

Article 3 (d):

‘[G]ender-based violence against women’ shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately.

Article 3 (a):

‘Violence against women’ is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Honour crimes do not usually occur singularly: they are an ongoing form of psychological and emotional harm and social and sexual control, as well as of physical violence.²²⁶

Therefore, ‘while the meanings of gendered violence that these definitions disseminate are not singular, they are collectively underpinned by an assumption of honour as a

“predetermined concept” rooted in traditional cultures and ideologies.’²²⁷ Thus, the gendered nature of honour-related violence is an inherent part of all types of honour crimes, from honour-related oppression, forced marriage and female genital mutilation to honour killings.

1.12 Honour-related Violence and the Law in England and Wales

The statistics reveal that there were 11,744 honour-related incidents and crimes in the UK between 2010 and 2014.²²⁸ Under domestic law there have been some pieces of legislation passed to tackle honour-related violence, specifically on forced marriage and female genital mutilation. In England and Wales there is no specific offence of honour-related crime. This is

²²⁶D M Olwan ‘Gendered Violence, Cultural Otherness, and Honour Crimes in Canadian National Logics’ (2013) 38(4) *Canadian Journal of Sociology* 535-536.

²²⁷*ibid* 536.

²²⁸the figures obtained from 39 of 52 UK forces by the Iranian and Kurdish and Women’s Rights Organisation (IKWRO) under the Freedom of Information Act 2000.

an umbrella term used to encompass various offences covered by existing legislation.²²⁹ The relevant domestic legislation²³⁰ covering adjudicated cases will be examined to establish whether they provide adequate protection for honour-related violence victims.

1.13 Honour Crimes and International Human Rights Law

From an international law standpoint, acts of honour-related violence have been considered under the discussions around gender-based violence and human rights violations. Although honour-related violence is not explicitly cited, the Convention on the Elimination of all Forms of Discrimination Against Women 1979 (CEDAW) and the UN Declaration on the Elimination of Violence Against Women 1993 are the main internationally agreed documents that seek to promote gender equality as well as to categorise violence in the family as a violation of women's human rights. Furthermore, any justification of such violence against women based on custom, culture or tradition is rejected by the Convention and Declaration. CEDAW is often described as an international bill of rights for women.²³¹ The Committee on the Elimination of Discrimination against Women is empowered to make suggestions and general recommendations based on the examination of reports and information received from State Parties.

Further protection is aimed to be afforded internationally to those fleeing honour-related violence and seeking asylum under the Geneva Convention (Refugee Convention) 1951.

²²⁹Crown Prosecution Service official website, 'Honour-based Violence and Forced Marriage', Legal Guidance, Domestic abuse <<https://www.cps.gov.uk/legal-guidance/honour-based-violence-and-forced-marriage>> accessed on 12/12/2017.

²³⁰inter alia Family Law Act 1996, Protection from Harassment Act 1997, Human Rights Act 1998, Female Mutilation Act 2003, Sexual Offences Act 2003, Children Act 2004, Forced Marriage (Civil Protection) Act 2007, Anti-Social Behaviour, Crime and Policing Act 2014 and the Serious Crime Act 2015.

²³¹UN Women, United Nations Entity for Gender Equality and the Empowerment of Women <<http://www.un.org/womenwatch/daw/cedaw/>> accessed 12/12/2016.

Rights are also protected under, inter alia, the Universal Declaration of Human Rights (UDHR) 1948, the European Convention on Human Rights and Fundamental Freedoms (ECHR) 1950, the American Convention on Human Rights 1969, African Charter on Human and People's Rights 1986, the United Nations International Covenant on Civil and Political Rights (ICCPR) 1966, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

However, although international human rights law obliges State Parties to protect its citizens' rights and freedoms, as Johnson and Shalhoub-Kevorkian highlight, the situation becomes more complicated in some territories (which are under occupation, where the indigenous political authority is transnational, non-sovereign, fragmented, under attack or where other states also exercise power) and thus there is no clarity on who exercises the power.²³² In such situations, it is unclear who applies international human rights law and in whose interest.²³³ Furthermore, such a situation, in fact, may increase the prevalence of patriarchal violence. For instance, the denial of Palestinian rights by Israel and global mechanisms of political exclusion, can lead local patriarchal mechanisms to be empowered in the form of family ideologies, clan power and through parallel legal systems.²³⁴ It also contributes to a perception that 'women's social issues are considered as a secondary concern when weighed against a political' one.²³⁵ Furthermore, Shalhoub-Kevorkian summarises the situation by

²³²P Johnson, 'Violence All Around Us' (2008) 20(2) *Cultural Dynamics* 120–121; N Shalhoub-Kevorkian, 'Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?' (2002) 36 (3) *Law & Society Review* 601–602; N Shalhoub-Kevorkian, 'Reexamining Femicide: Breaking the Silence and Crossing "Scientific" Borders' (Winter 2003) 28(2) *Signs* (Published by University of Chicago Press) 588.

²³³P Johnson, 'Violence All Around Us' (2008) 20(2) *Cultural Dynamics* 121.

²³⁴L Abu- Lughod, 'Seductions of the "Honour Crime"' (2011) 22 (1) *A Journal of Feminist Cultural Studies* 53.

²³⁵N Shalhoub-Kevorkian, 'Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?' (2002) 36 (3) *Law & Society Review* 596; Shalhoub-Kevorkian, N, 'Towards a Cultural Definition of Rape: Dilemmas in Dealing with Rape Victims in Palestinian Society' (1999) 22(2) *Women's Studies International Forum* 160.

stating that ‘a country’s liberation cannot be separated from the liberation of the individual from all forms of oppression, including gender oppression.’²³⁶

The response to honour crimes from the international community of States in terms of cross-national agreements can be seen in the body of international human rights law. Honour crimes violate many fundamental human rights that have been recognised universally, such as the rights to life, to liberty, to bodily integrity, to privacy, to marry and to found a family.

Additionally, honour crimes constitute a breach of the prohibition on torture or other cruel, inhumane, or degrading treatment or punishment, and a breach of the prohibition on slavery. As a consequence, these rights violations have resulted in the international community agreeing to the idea that the State, as the political and administrative organisation of a territory, has some obligation to modify customs that discriminate against women and their right to an effective remedy.²³⁷

The body of internationally agreed rules, declarations of intentions, recommendations and reports emanate from various cross-national organisations, which consequently have become sources of international human rights law. When looking at these international sources of law and agreements, it is worth considering whether the organisation’s reach is universal, such as the United Nations, or regional, such as the African Charter on Human and People’s Rights or the ECHR. This split between universal and regional international human rights law reflects the long standing debate over whether human rights are truly a universal single set of rights,

²³⁶N Shalhoub-Kevorkian, ‘Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?’ (2002) 36 (3) *Law & Society Review* 602.

²³⁷R Coomaraswamy, Preface: Violence against women and ‘crimes of honour’ in L Welchman and S Hossain, *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) xii.

or whether they are susceptible to variation according to regional, cultural and religious distinctions.²³⁸

Another particularity of international law is the mechanism used to enforce it, which is different from the methods employed by domestic law.²³⁹ The system of international law is based on the consensus of State Parties, and therefore a very strict enforcement mechanism would discourage State Parties from reaching consensus, or would create many reservations and opt-outs.²⁴⁰ Therefore, a more cautious and less confrontational method of enforcement is preferred: a mix of judicial, expert and political bodies. Such a system should be seen as fulfilling the aims of international recognition of, respect for, and promotion and protection of fundamental rights, and should not be dismissed by comparing it to domestic law enforcement systems.²⁴¹ Accordingly, a distinction can be made between expert bodies (such as the Human Rights Committee dealing with cases and periodic reviews of State Parties), judicial bodies (such as ECtHR), and political bodies (such as the UN General Assembly and the UN Human Rights Council). Political bodies' outputs (such as resolutions) are aspirational: they aim to indicate a general direction for all State Parties on the issue of concern. They are not binding, except that over time and through practice they become customary international law.²⁴² Judicial bodies issue decisions that are legally binding on State Parties on a specific case and can set a precedent for subsequent cases. These judicial decisions have their own sanction mechanisms for non-compliance by establishing state liability²⁴³ and awarding compensation as a remedy.²⁴⁴ On their part, expert bodies' opinions can also be a binding source of law, such as the Human Rights Committee and the Committee

²³⁸J Rehman, *International Human Rights Law* (Pearson Education Limited 2010) 8.

²³⁹S Foster, *Human Rights and Civil Liberties* (Pearson 3rd edn 2011) 21.

²⁴⁰*ibid* 20.

²⁴¹*ibid*.

²⁴²J O'Brien, *International Law* (Cavendish Publishing Limited 2002) 78–79 and 82–84.

²⁴³J Rehman, *International Human Rights Law* (Pearson Education Limited 2010) 13.

²⁴⁴S Foster, *Human Rights and Civil Liberties* (Pearson 3rd edn 2011) 25.

on the Elimination of Discrimination against Women, which monitor the implementation of their respective covenants via a reporting process. These Committees issue decisions, findings and recommendations that the State Parties have accepted to respect the Committee's findings.²⁴⁵ The deterrence in this mechanism is based on the reluctance of heads of governments or ministers to be questioned before an expert committee for non-compliance.

Some of the key international human rights law documents that deal with violence against women and honour crimes issues (although the term honour is not always present) will be briefly overviewed below according to each documentary source.

It might be appropriate to look at the discussion around the term honour within the universal sources of human rights law. The Geneva Convention 1949 (Protection of Civilian Persons in Time of War, commonly known as the Fourth Geneva Convention) was one of the first international documents to explicitly cite the word honour,²⁴⁶ under Article 27, which states that 'Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.' The wording of paragraph 2 of Article 27 finds its origin in Article 27 of the Stockholm draft convention, in which the literal wording 'honour and dignity' is present.²⁴⁷ However, the Stockholm draft was not incorporated into the proposal for the Geneva Convention: the word 'dignity' was skipped and only the word 'honour' was kept. The reason for the absence of the word dignity from Article 27 appears to have come from the assumption that a woman's honour was equal to her dignity. This is illustrated in the Commentary to Article 27, which states that 'women,

²⁴⁵ibid 20–23.

²⁴⁶It is also cited in the Universal Declaration of Human Rights 1949, Article 12 as: 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation'.

²⁴⁷Final Record, Vol I page 118.

whatever their nationality, race, religious beliefs, age, marital status or social condition, have an absolute right to respect for their honour and their modesty, in short, for their dignity as women.’²⁴⁸

However, the explicit citation of ‘honour’ under Article 27 has caused academic debate, since the prohibitions contained in the Fourth Geneva Convention define rape as an offence against honour rather than an offence of a distinctly violent and sexual nature against women.

Accordingly, rape is related as an injury to honour (a social product) instead of to dignity as a human being, like a mental and physical injury.²⁴⁹ Since the notion of honour means something different to each gender – for men it is related to qualities of bravery, fortitude and self-reliance, whereas for women it is related to her chastity, modesty, frailty and dependence²⁵⁰ – perceiving any sexual attack as an attack on honour rather than dignity, invokes the gendered classification of the notion of honour. This also leads to a discussion of the idea that the impunity principle itself is gendered according to masculine values by taking into consideration how men perceive rape or sexual offences, rather than how women do themselves. Rape and other sexual offences should rather be seen as crimes against the personhood of a woman, and not against the honour bestowed upon her by the society of her family. Such terminology reinforces rather than challenges the subordination of women in international human rights law, as well as fails to consider women’s sexual autonomy.²⁵¹

However, the explicit inclusion of rape, enforced prostitution and any other form of indecent assault as an example of an attack on a woman’s honour was a step forward. As Ni Aolain

²⁴⁸Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Commentary of 1958, Article 27 para 2, Treatment of Women.

²⁴⁹A Hagay-Frey, *Sex and Gender Crimes in the New International Law* (Martinus Nijhoff Publishers 2011) 70

²⁵⁰L Chappell, ‘Women, Gender and International Institutions: Exploring New Opportunities at the International Criminal Court’ (2003) 22(1) *Policy and Society* 3–25.

²⁵¹A Hagay-Frey, *Sex and Gender Crimes in the New International Law* (Martinus Nijhoff Publishers 2011) 71.

states, sexual violence is a multi-faceted and complex social phenomenon, and ‘in all these contexts women ... see the gains that they made through a time of social flux lost to the imposition of masculine orders and priorities bearing little resemblance to their own needs and rights-based claims.’²⁵² Sexual violence inflicts unimaginable suffering on its victims, and its effects are long-lasting; it destroys the lives of individuals, their families and their communities. To Ni Aolain, ‘cultural discourses can act as a means to further subjugate women and entrench rather than undo presumptions about honour (individual and communal), purity of the female body, and status loss when sexual harm is experienced.’²⁵³

UN policies relating to violence against women initially mainly concentrated on such violence within the family.²⁵⁴ The 1975 World Plan of Action adopted by the First World Conference on Woman in Mexico did not refer to violence explicitly. The Copenhagen Conference held in 1980 adopted a resolution on 'battered women and family' and referred to violence in the home in its final report.²⁵⁵ At the 1985 Nairobi World Conference, at its parallel non-governmental forum, violence against women emerged as a serious international concern. In this Conference, Forward-looking Strategies adopted by the Conference linked the promotion and maintenance of peace to the eradication of violence against women in both the public and private spheres.²⁵⁶ Thus, the Nairobi Conference resulted in the first General Assembly resolution on domestic violence²⁵⁷ which, according to Connor, 'although not directed specifically at women, formed the background to the 1986 UN Expert Group

²⁵²F D Ni Aolain ‘The Gender Politics of Fact-Finding in the Context of the Women, Peace and Security Agenda’, University of Minnesota Law School; (June 2014), University of Ulster – Transitional Justice Institute 24 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2451064> accessed 12/8/2014. Also published in ‘The Future of Human Rights Fact-Finding’ (Philip Alston & Sarah Knuckey (eds)) (Oxford University Press 2015).²⁵³ibid 3.

²⁵⁴J Connors, ‘United Nations approaches to “crimes of honour”’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 22.

²⁵⁵ibid. Also in The United Nations Work on Violence Against Women, Information Note Division for the Advancement of Women <<https://www.un.org/womenwatch/daw/news/unwvaw.html>> accessed 15/5/2019.

²⁵⁶ibid.

²⁵⁷A/RES/40/36 (29 November 1985) Domestic Violence.

Meeting on Violence against women in the family and to the 1989 study of the same name.²⁵⁸

This 1989 publication described the manifestations of violence against women; it also showed that violence may be tolerated and, indeed, condoned by the community or the State.

All these activities highlighted the attention given by the UN and its member states to the issue of violence against women, and allowed this issue to surface²⁵⁹ and, with a growing understanding of the link between gender and violence, the approach to the issue within the UN shifted: firstly, violence in the family was considered not the only form of violence directed against women. Secondly, the gendered nature of violence against women and its links to subordination, inequality between women and men, and discrimination, has led to its categorisation as a matter of human rights.²⁶⁰ A series of general recommendations have been made on violence against women by calling on State Parties to include information on the legislation in force to protect women from all kinds of violence including sexual violence and abuses within the family.²⁶¹

CEDAW is the treaty body established to monitor the 1979 Convention on the Elimination of All Forms of Discrimination against Women. The Convention does not make any explicit reference to violence against women generally or to honour-related violence particularly. However, the Committee has made clear that gender-based violence falls within the terms of discrimination against women. In addition, a definition of discrimination is provided as including ‘gender-based violence, that is, violence directed against a woman because she is a

²⁵⁸J Connors, ‘United Nations approaches to “crimes of honour”’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 23.

²⁵⁹*ibid.*

²⁶⁰The United Nations Work on Violence Against Women, Information Note Division for the Advancement of Women <<https://www.un.org/womenwatch/daw/news/unwvaw.html>> accessed 15/5/2019.

²⁶¹CEDAW General Recommendation 12- violence against women (Eight session, 1989), UN Doc. A/44/38 at 75 (1990).

woman or that affects women disproportionately... [including] physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.’²⁶² In 1989, the Committee adopted a general recommendation on violence against women which recommended that States include information in their reports to the Committee on the incidence of violence against women. In 1990, a general recommendation addressed female circumcision and other traditional practices harmful to the health of women.²⁶³ In addition, the CEDAW Committee repeatedly urged State Parties to tackle honour killings and honour crimes in a series of concluding observations.²⁶⁴

Connor states that ‘[t]he Committee's linkage of gender-based violence against women to the international legal norm of non-discrimination on the bases of sex had a profound effect on parallel developments relating to violence against women within the political bodies of the UN.’²⁶⁵ This also led to the development of a Declaration on Violence against Women in 1993.²⁶⁶ This Declaration under Article 1 defined the term ‘violence against women’ 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 in private life.’

²⁶²Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), UN Doc A/47/38 at 1 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003).

²⁶³Committee on the Elimination of Discrimination against Women, General Recommendation 13, Equal remuneration for work of equal value (Eighth session, 1989), UN Doc A/44/38 at 76 (1990) para 6.

²⁶⁴inter alia, Pakistan, 27/03/2013 CEDAW/C/PAK/CO/4 paras 21–22; Jordan, 23/03/2012 CEDAW/C/JOR/CO/5 paras 5, 27–28; Turkey, 16/08/2010 CEDAW/C/TUR/CO/6 paras 24–25; Egypt, 05/02/2010 CEDAW/C/EGY/CO/7 paras 23–24; Lebanon, 08/04/2008 CEDAW/C/LBN/CO/3 paras 26–27; Jordan, 10/08/2007 CEDAW/C/JOR/CO/4 paras 23–24; Pakistan, 11/06/2007 CEDAW/C/PAK/CO/3 paras 22–23; Syrian Arab Republic, 11/06/2007 CEDAW/C/SYR/CO/1 paras 19–20; L C D’Acunto, ‘Selected International Human Rights Materials addressing “Crimes of Honour”’ CIMEL, SOAS (August 2013) 10–19 < <https://www.soas.ac.uk/honourcrimes/resources/> > accessed 25/5/2019.

²⁶⁵J Connors, ‘United Nations approaches to “crimes of honour”’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 25.

²⁶⁶Declaration on Violence Against Women, UNGA RES/48/104 (20 December 1993).

Article 2 defined gender-based violence against women including violence that takes place in both the public and private sphere and set out steps that State Parties and the UN should take to address it (Article 4). There is no explicit statement in the Declaration that gender-based violence against women is a violation of human rights. However, Article 3 provides that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms.

After the adoption of the above mentioned declaration, the Vienna World Conference on Human Rights took place in 1993²⁶⁷ where women's NGOs from around the world had a chance to raise their concerns on 'international community's historical disregard of women's lack of enjoyment of human rights, and particularly its failure to recognise gender-based violence as a central human rights concern.'²⁶⁸ Thus, according to Connor, '[t]he Vienna Conference welcomed the consideration of the creation of the first gender-specific human rights extra-conventional mechanism since the foundation of the UN in 1945.'²⁶⁹

A further development took place at the Fourth World Conference in Beijing²⁷⁰ where the international community and the UN built on the existing work on gender-based violence against women. It specified that urgent action for achieving gender equality was required.²⁷¹ The Platform, as well as accepting the definition of violence against women contained in the Declaration on the Elimination of Violence Against Women under Article 1, highlighted specific forms of violence which were not explicitly mentioned in the Declaration as well as

²⁶⁷Vienna Declaration and Programme of Action UN Doc A/CONF.157/23 (12 July 1993).

²⁶⁸J Connors, 'United Nations approaches to "crimes of honour"' in L Welchman and S Hossain (eds) *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 25.

²⁶⁹*ibid* 26.

²⁷⁰UN Doc A/CONF. 177/20.

²⁷¹*ibid*; Further actions and initiatives to implement the Beijing Declaration and Platform for Action Resolution adopted by the General Assembly, A/RES/S-23/3 (16 November 2000) 69(e).

stating that women all around the world, irrespective of their class or culture are at risk of gender-based violence, also indicating that inter alia minority women and women migrant workers are especially vulnerable.²⁷²

The UN General Assembly later adopted three Resolutions, between 2000 and 2004, with specific reference to honour crimes,²⁷³ recognising honour crimes as a human rights issue, stating the obligation on the part of States to exercise due diligence to prevent, investigate and punish the perpetrators of such crimes and to provide protection to the victims,²⁷⁴ stressing the importance of effective understanding of the root causes of violence against women, in particular crimes committed in the name of honour.²⁷⁵

Furthermore, the UN General Assembly has adopted a series of Resolutions on the elimination of violence against women and girls, which also include honour crimes, urging States to prevent and combat such violence,²⁷⁶ stressing the importance of the in-depth study of all forms of violence against women in two Resolutions and calling for research to be undertaken, in particular to assess the extent of the problem; to identify the causes of violence against women, including its root causes and other contributing factors and its consequences;

²⁷²J Connors, 'United Nations approaches to "crimes of honour"' in L Welchman and S Hossain (eds) *'Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 26–27; UN Doc A/CONF. 177/20 paras 113–16.

²⁷³Working towards the elimination of crimes against women committed in the name of honour, A/RES/55/66 of 4 December 2000; Working towards the elimination of crimes against women committed in the name of honour, A/RES/57/179 of 18 December 2002 and Working towards the elimination of crimes against women committed in the name of honour, A/RES/59/165 of 20 December 2004.

²⁷⁴Working towards the elimination of crimes against women committed in the name of honour, A/RES/57/179, of 18 December 2002 and Working towards the elimination of crimes against women committed in the name of honour, A/RES/55/66 of 4 December 2000 at page 1.

²⁷⁵Working towards the elimination of crimes against women and girls committed in the name of honour, A/RES/59/165 of 20 December 2004 and A/RES/57/179 of 18 December 2002 at page 2 and A/RES/55/66 of 4 December 2000 at page 1.

²⁷⁶Elimination of all forms of violence, including crimes against women, A/RES/55/68 of 4 December 2000 page 2 and point 4. Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century", A/RES/57/181 of 18 December 2002 and A/RES/59/167 of 20 December 2004, point 2.

and to identify best practice examples.²⁷⁷ The UN General Assembly asked State Parties to work in close cooperation with, inter alia, all relevant UN bodies and United Nations treaty bodies.²⁷⁸ In addition, the UN General Assembly also adopted specific Resolutions to tackle violence against women migrant workers by expressing their ‘deep concern at the continuing reports of grave abuses and violence committed against migrant women and girls, including gender-based violence, in particular sexual violence, domestic and family violence...’²⁷⁹

For its part, the UN Human Rights Committee, which in 2000 had stated that the commission of so-called ‘honour crimes’ constituted a serious violation of the Covenant,²⁸⁰ has issued two Resolutions on forms of discrimination that lead to the targeting of some women and girls or their vulnerability to violence, including women belonging to minority groups,²⁸¹ and has urged States parties to respond appropriately to patterns of violence against women.²⁸² The Human Rights Committee in its concluding observations urged several States Parties to tackle honour crimes and honour killings.²⁸³

²⁷⁷In-depth study on all forms of violence against women, A/RES/58/185, of 22 December 2003 page 1(a)(i-v).

²⁷⁸In-depth study on all forms of violence against women, A/RES/60/136, of 16 December 2005 point 3 (a, b, c, d).

²⁷⁹Violence against women migrant workers, A/RES/66/128, of 19 December 2011 page 3, Violence against women migrant workers A/RES/64/139 of 18 December 2009, A/RES/62/132 of 18 December 2007, A/RES/60/139 of 16 December 2005 pages 2. ‘Expressed deep concern at the continuing reports of grave abuses and acts of violence committed against women migrant workers’ without providing examples of violence provided in most three recent Resolutions cited above, in Violence against women migrant workers of A/RES/58/143 of 22 December 2003 and A/RES/56/131 of 19 December 2001 pages 2.

²⁸⁰The Human Rights Committee, ICCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)1, Adopted at the Sixty-eighth session of the Human Rights Committee, on 29 March 2000 CCPR/C/21/Rev.1/Add.10, General Comment No. 28. (General Comments) point 26.

²⁸¹Resolution 14/12 (2010) Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention, Resolution adopted by the Human Rights Council, A/HRC/RES/14/12 (30 June 2010) and Resolution 7/24 (2008) Elimination of violence against women, Resolution adopted by the Human Rights Council (28 March 2008) page 2.

²⁸²International Covenant on Civil and Political Rights CCPR/C/GC/35 (16 Dec 2014) Human Rights Committee, General Comment No. 35 point 9.

²⁸³Countries inter alia Turkey, 13/11/2012 CCPR/C/TUR/CO/1 para13; Yemen, 23/04/2012 CCPR/C/YEM/CO/5 Para 10, Jordan, 18/11/2010 CCPR/C/JOR/CO/4 paras3–8 ; Syrian Arab Republic, 09/08/2005 CCPR/CO/84/SYR para 16; Yemen, 09/08/2005 CCPR/CO/84/YEM para 1. The Committee for Economic, Social and Cultural Rights also echoed its concerns in its concluding observation for some countries such as Afghanistan, 07/06/2010 E/C.12/AFG/CO/2–4 para 31; Sweden, 01/12/2008 E/C.12/SWE/CO/5 para 9 and India, 08/08/2008 E/C.12/IND/CO/5 para 25; L C D’Acunto, ‘Selected International Human Rights Materials addressing “Crimes of Honour”’ CIMEL, SOAS (August 2013) 6–9

One more UN organ, the Commission on the Status of Women, in a series of reports, expressed concerns about harmful traditional and customary practices, citing female genital mutilation, abuse, early marriage and forced marriage, and violence against women, prompting governments to strengthen and implement legal, policy, administrative and other measures for the prevention and elimination of all forms of violence against women and girls.²⁸⁴ Express reference to honour crimes was made by the Commission when encouraging governments to implement concrete and long term measures to transform discriminatory social norms and gender stereotypes.²⁸⁵

In its most recent sessions, the Commission on the Status of Women recognised

‘that targeting and eliminating the root causes of gender inequality, discrimination, stigma and violence... [urges governments to] bear in mind the importance of all women and girls living free from violence, such as sexual and gender-based violence, domestic violence, gender-related killings ... and of addressing the structural and underlying causes of violence against women and girls through enhanced prevention measures, research and strengthened coordination, monitoring and evaluation, by, inter alia, encouraging awareness raising activities, including through publicizing the societal and economic costs of violence, and work with local communities; when strengthening their normative, legal and policy frameworks.’²⁸⁶

It is also important to note that, the Committee on the Rights of the Child also reflected its concern on child victims of honour-related violence. Its concluding observations urged

< <https://www.soas.ac.uk/honourcrimes/resources/> > accessed 25/5/ 2019.

²⁸⁴Commission on the Status of Women, Report on the fifty-first session (26 February-9 March 2007) E/2007/27 E/CN.6/2007/9 point 14.4(d). Commission on the Status of Women, Report on the fifty-third session (2-13 March 2009) E/2009/27 E/CN.6/2009/15 point 14. Commission on the Status of Women, Report on the fifty-fourth session (13 March and 14 October 2009 and 1-12 March 2010) E/2010/27 E/CN.6/2010/11 point 13. Commission on the Status of Women, Report on the fifty-fifth session (12 March 2010, 22 February-4 March and 14 March 2011) E/2011/27 E/CN.6/2011/12 point 12. Commission on the Status of Women, Report on the fifty-sixth session (14 March 2011, 27 February-9 March and 15 March 2012) E/2012/27 E/CN.6/2012/16 page 15. Commission on the Status of Women, Report on the fifty-seventh session (4-15 March 2013) E/2013/27 E/CN.6/2013/11 point B(tt).

²⁸⁵Challenges and achievements in the implementation of the millennium development goals for women and girls, Commission on the Status of Women agreed Conclusions (2014) point A(d) and point 42.

²⁸⁶Commission on the Status of Women, Report on the sixty-second session (12–23 March 2018) - E/CN.6/2018/L.8 (26 March 2018) paras 22 and 46(g).

several State Parties to prohibit discrimination against children and protect them from honour-related violence such as honour killings, child marriages and mutilations.²⁸⁷

The Council of Europe's work on this issue has been carried out by The Committee of Ministers in issuing various recommendations and requests from State Parties to tackle honour crimes, violence against women and domestic violence and eventually adopting a Convention specific to this issue.²⁸⁸

The Committee of Ministers after examining the Parliamentary Assembly Recommendations 1868 (2009) on 'Action to combat gender-based human rights violations, including abduction of women and girls' and 'The urgent need to combat so-called 'honour crimes' 1881 (2009) made recommendations to the State Parties and intergovernmental bodies.²⁸⁹ The Committee of Ministers fully supports the approach adopted in Recommendations 1881 (2009) which required elimination of every form of legislative justification for diminishing or removing the criminal responsibility of honour crimes. It also has further submitted that there can be no justification based on custom, religion, tradition or honour for acts of violence against women.²⁹⁰

The Council of Europe stated that, according to the Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence, the focus of the future Council

²⁸⁷inter alia, Turkey, 20/07/2012 CRC/C/TUR/CO/2-3 para 7, 32-33; Algeria, 18/07/2012 CRC/C/DZA/CO/3-4 paras 45-75; Egypt, 15/07/2011 CRC/C/EGY/CO/3-4 para 83; Afghanistan, 08/04/2011 CRC/C/AFG/CO/1 paras 55, 56 and 70; Pakistan, 15/10/2009 CRC/C/PAK/CO/3-4 para 37-38, L C D'Acunto, 'Selected International Human Rights Materials addressing 'Crimes of Honour'' CIMEL, SOAS (August 2013) 21-28 < <https://www.soas.ac.uk/honourcrimes/resources/> > accessed 25/5/2019.

²⁸⁸inter alia, Parliamentary Assembly Recommendations 1798(2007) on 'Respect for the principle of gender equality in civil law', Parliamentary Assembly Recommendation 1872 (2009) on 'The rights of today's girls: the rights of tomorrow's women' and Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence 2011.

²⁸⁹L C D'Acunto, 'Selected International Human Rights Materials Addressing "Crimes of Honour"' (August 2013) CIMEL (SOAS) 75.

²⁹⁰ibid.

of Europe convention on domestic violence should be on violence against women, covering all forms of violence, whether, inter alia, physical, psychological or sexual, occurring in both the public and private sphere.²⁹¹ In 2011, the Convention on Preventing and Combating Violence against Women and Domestic Violence achieved this aspiration.

Despite all these efforts to tackle gender inequality generally and honour-related violence specifically, the effectiveness of international human rights law has been subject to criticism. These general critiques have claimed, that international law has been silent on many of the issues important to women and, at worst, has been androcentric; that the nature of international law, with its retention of state prerogative not to ratify treaties or allow states to make reservations to them (it is argued) has made it inadequate to bring about the enforcement of human rights.²⁹²

For instance, the CEDAW has been criticised by Brooks who submits that both domestic and human rights law restrain women to the male model as the dominant norm.²⁹³ This requires women to claim equality with a male comparator, and, as a result, this ‘precludes the kind of transformative change which would allow women to participate in social and political institutions on their own terms and in accordance with their own realities.’²⁹⁴ According to Raday, the CEDAW largely treat women as a homogenous group.²⁹⁵ Another claim is based on the intersectionality claim, ‘according to which there can be no one expression of feminism which is indistinguishably applicable to women of different ethnicity, cultural or

²⁹¹ibid.

²⁹²F Raday, ‘Gender and democratic citizenship: the impact of CEDAW’ *International Journal of Constitutional Law* (2012) 10(2) 513–515.

²⁹³E R Brooks, ‘Feminism and International Law: An Opportunity for Transformation’ (2002) 14 *Yale J L & Feminism* 353.

²⁹⁴F Raday, ‘Gender and democratic citizenship: the impact of CEDAW’ *International Journal of Constitutional Law* (2012) 10(2) 513.

²⁹⁵ibid.

class identity.’²⁹⁶ There is a need for heterogeneity which takes into account the fact that women do not experience discrimination in the same way as men.²⁹⁷

According to Raday, ‘[t]he reservations to CEDAW, which make it amongst the most heavily reserved of the international human rights treaties, are concentrated in the traditionalist religious arena.’²⁹⁸ According to Banda, a large number of reservations to CEDAW, are particularly broad and imprecise.²⁹⁹ However, there are at least twenty reservations that clearly indicate that State Parties wish to conserve religious law principles and all these reservations are made primarily under Article 16 of the Convention dealing with women’s rights to equality within the family.³⁰⁰

Furthermore, Raday provides an explanation of conflicting rights and how State Parties curb their obligations under international human rights law instruments. For instance, the CEDAW under Article 5 requires modification of ‘cultural patterns of conduct’ or ‘custom’ which prejudice the advancement of women’s equality. The religious clash referred to in the ICCPR under article 18 regulates possible conflict between ‘the freedom to manifest one’s religion or beliefs’ and ‘the fundamental rights and freedoms of others,’ including implicitly the right to gender equality. However, despite this, many of the practices, defended in the name of culture and that impinge on human rights, violate the rights of women and girls. These

²⁹⁶ibid and also see K Krenshaw, ‘Demarginalizing the Intersection of Race and Sex: a Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) U Chi Legal F 140.

²⁹⁷F Banda, UN Office of the High Commissioner for Human Rights, Project on a Mechanism to Address Laws that Discriminate against Women (6 March 2008) 14 < [http:// www.unhcr.org/refworld/docid/482067fe2.htm](http://www.unhcr.org/refworld/docid/482067fe2.htm)> accessed 20/5/2019.

²⁹⁸F Raday, ‘Gender and democratic citizenship: the impact of CEDAW’ International Journal of Constitutional Law (2012) 10(2) 514–515.

²⁹⁹F Banda, UN Office of the High Commissioner for Human Rights, Project on a Mechanism to Address Laws that Discriminate against Women (6 March 2008) 18 < [http:// www.unhcr.org/refworld/docid/482067fe2.htm](http://www.unhcr.org/refworld/docid/482067fe2.htm)> accessed 20/5/201.

³⁰⁰F Raday, ‘Gender and democratic citizenship: the impact of CEDAW’ International Journal of Constitutional Law (2012) 10(2) 520.

include: female infanticide; female genital mutilation; forced marriage and child brides; a husband's right to obedience or to commit acts of violence against his wife, including marital rape; family honour killings.³⁰¹ Culture and gender are conflicting elements and when a patriarchal culture accepts gender equality there will be a process of interactive development not of confrontation.³⁰²

Raday and Banda point out the weakness of the CEDAW after reviewing the success of its implementation by State Parties. Their findings reveal that discriminatory laws are not repealed fully and, as result, state-sanctioned discrimination continues.³⁰³ Raday submits that the '[f]urther analysis of the discriminatory laws that are still in place reveals that these are concentrated in the area of family law provisions which are based on religious or traditionalist cultural norms.'³⁰⁴ In addition, the constitutional courts in different countries have generally not prevailed in their championing of gender equality when they are not backed up by the government.³⁰⁵

Furthermore, according to Raday, 'Even in the absence of discriminatory laws and even where *de jure* equality guarantees are in place, the implementation of equality is not assured. In most systems where women's political and civil rights are secured *de jure*, women are

³⁰¹ibid 518.

³⁰²F Raday, 'Culture, Religion and Gender' (October 2003) 1(4) International Journal of Constitutional Law 667.

³⁰³F Banda, UN Office of the High Commissioner for Human Rights, Project on a Mechanism to Address Laws that Discriminate against Women (6 March 2008) 128 < [http:// www.unhcr.org/refworld/docid/482067fe2.htm](http://www.unhcr.org/refworld/docid/482067fe2.htm)> accessed 20/5/2019; F Raday, 'Gender and democratic citizenship: the impact of CEDAW' International Journal of Constitutional Law (2012) 10(2) 516–517.

³⁰⁴F Raday, 'Gender and democratic citizenship: the impact of CEDAW' International Journal of Constitutional Law (2012) 10(2) 516–517; F Banda, UN Office of the High Commissioner for Human Rights, Project on a Mechanism to Address Laws that Discriminate against Women (6 March 2008) 74–75 < [http:// www.unhcr.org/refworld/docid/482067fe2.htm](http://www.unhcr.org/refworld/docid/482067fe2.htm)> accessed 20/5/2019.

³⁰⁵F Raday, 'Culture, Religion and Gender' (October 2003) 1(4) International Journal of Constitutional Law 663; illustration of State Parties' response to such conflict can be seen in F Banda, UN Office of the High Commissioner for Human Rights, Project on a Mechanism to Address Laws that Discriminate against Women (6 March 2008) 57–5 < [http:// www.unhcr.org/refworld/docid/482067fe2.htm](http://www.unhcr.org/refworld/docid/482067fe2.htm)> accessed 20/5/2019.

still grossly under-represented in political and decision-making positions.’³⁰⁶ She further adds that the influences on women’s right are complex and contradictory: while there is rise of women’s education and workforce participation, women’s continuing high share of poverty, wage and promotion gaps in employment and increased exploitation and trafficking of women and girls for prostitution also exist. Furthermore, gender hierarchy within the family continues and is reflected in the division of power and responsibility within the family and in all areas, public and family, violence against women continues.³⁰⁷

With reference to the tension between human rights agreements, such as CEDAW, and the efforts of traditionalists to maintain patriarchal norms, Raday firmly stands against religious freedom exceptions at the expense of human rights agreements. She refuses this conciliatory approach and states that there is no symmetry between religious values and human rights values. She further adds that ‘[t]he claim for symmetry and for accommodation and support for religious values is, therefore, based on a demand for tolerance of inequality and lack of liberty for those deprived of a voice by, or within, the religious community.’³⁰⁸ As well as acknowledging the achievements in this area, Raday claims that, until a full transformation is achieved, states must provide access to justice for women who are seeking equality in all spheres of life without barriers created by religious patriarchy.³⁰⁹

As Banda summarises:

Law is the most formal expression of government policy. A government that allows discriminatory laws to remain in force endorses and promotes inequality. Without equality under the law, women have no recourse when they face discrimination affecting all aspects of their lives. The fact that there are any laws –in fact so many laws- that explicitly discriminate against women nearly 10 years after

³⁰⁶F Raday, ‘Gender and democratic citizenship: the impact of CEDAW’ *International Journal of Constitutional Law* (2012) 10(2) 517.

³⁰⁷*ibid.*

³⁰⁸F Raday ‘Culture, religion and women’s international human rights’ in F Banda and L Fisbayn Joffe (eds) *Women’s Rights and Religious Law* (Abingdon: Routledge 2016) 26.

³⁰⁹*ibid.*

the adoption of the Beijing Platform for Action, 25 years after the adoption of CEDAW and 55 years after the adoption of the Universal Declaration of Human Rights affirming that ‘all human beings are born free and equal in dignity and rights’ is unacceptable.³¹⁰

After reviewing State Party’s engagement with women’s rights, by revising general comments, questioning of States Parties and in concluding observations, Banda summarised under five headings the common problems that human rights bodies suffer from.³¹¹

1) A very tight working schedule and increased workload. Although the number of ratifying States has increased, the meeting time and human resources (committee members) have not increased.

2) The discrimination discussions are not addressing adequately the needs of disadvantaged groups. This sometimes leads to a ‘tick box exercise’ with the Committee’s concluding observations listing disadvantaged groups to which the State should pay particular regard.

3) Non-compliant States Parties. All committees are forced to confront the problem of State Parties that either do not report or do not do so in a timely fashion. This renders ‘constructive dialogue’ difficult and the monitoring process, in some instances, highly unsatisfactory.

4) A follow up function is limited by time constraints. Although human rights committees are now better at using each other’s concluding observations in engaging with States parties, it seems that some State parties are prepared to ignore these multiple prompts to effect change.

A Special Rapporteur on laws that discriminate against women could act as the on-going follow up rapporteur for all the treaty bodies involved in the issue.

5) In the case of violations of human rights, States can be held accountable via a complaint mechanism found in some human rights treaties. However, women do not always have access

³¹⁰F Banda, UN Office of the High Commissioner for Human Rights, Project on a Mechanism to Address Laws that Discriminate against Women (6 March 2008) 128 <[http:// www.unhcr.org/refworld/docid/482067fe2.htm](http://www.unhcr.org/refworld/docid/482067fe2.htm)> accessed 20/5/2019.

³¹¹ibid 134–136.

to means of challenging discrimination because not all States that have ratified the main convention ratify the Optional Protocol thereto or submit themselves to the complaint mechanism when it is contained within the body of the treaty.

In addition to the above mentioned human rights law instruments, the Refugee Convention (1951) also provides a certain level of protection to victims of honour-related violence. Despite the patchiness of its application by State Parties, in practice the right to seek asylum on grounds of honour crimes (such as forced marriage and female genital mutilation) is possible under its scope. Thus, the most used grounds for gender-based violence are political opinion and membership of a particular social group. However, the absence of a 'gender' category as grounds for asylum under the Convention is referred to as 'an oversight' by Llewellyn because, according to her, most asylum claims are centred on violence in the private sphere. As a result, gender cases are seen as complicated by decision makers.³¹² In Europe, there have been significant differences between countries with respect to the number of cases in which refugee status is granted as against the total number of cases.³¹³ For instance, Begikhani et al argue that, in the UK, there is a tendency to interpret gender-based persecution in a way that it is not recognised as a legitimate reason for granting an asylum.³¹⁴ Kea and Roberts also state that British policies limit or over restrict asylum seeker numbers.³¹⁵ However, Kirvan and Llewellyn argue that, the phrase 'political opinion' is generally perceived in traditional male terms to embrace women's experiences and issues. Kirvan further adds that women resisting violence should be considered as political

³¹²C Llewellyn, 'Sex Logics: Biological Essentialism and Gender-Based Asylum Cases' (2017) 61(10) *American Behavioral Scientist* 1121.

³¹³Council of Europe Resolution 1695: Improving the quality and consistency of asylum decisions in the Council of Europe member states (2009) point 5.

³¹⁴N Begikhani et al, *Honour-Based Violence* (Ashgate Publishing 2015) 37.

³¹⁵P J Kea and G Roberts-Holmes 'Producing victim identities: female genital mutilation and the politics of asylum claims in the United Kingdom Pamela' (2013) 20(1) *Identities: Global Studies in Culture and Power* 101.

refugees.³¹⁶ Wald submits that ‘expressly allowing gender either to form the basis of a particular social group or to stand as a separate basis of persecution’ may offer better protection for gender-based violence victims such as those who become victims of femicide or forced marriages.³¹⁷

In the UK, in *Shah v Islam*,³¹⁸ the Lords agreed that the term ‘particular social group’ was one which can encompass sex or gender as well as other groups.³¹⁹ The Lords adopted a purposive approach when interpreting the Convention rights to circumvent ‘legal and linguistic’ limitations for the sake of a broad humanitarian purpose.³²⁰ Siddiqui submits that the Lords’ decision in this case was significant for survivors of forced marriage, where women subject to State tolerated domestic violence constitute a ‘particular social group’ for the purposes of refugee claims.³²¹ This decision put into practice by Baroness Hale in the case of *Fornah* where she stated that the refugee definition, when properly interpreted, can encompass gender-related claims. ‘The text, object, and purpose of the Refugee Convention require a gender-inclusive and gender sensitive interpretation.’³²² Mulally states that the *Fornah* decision is significant because the House of Lords addressed the applicability of the

³¹⁶S Kirvan, ‘Women and Asylum: A Particular Social Group Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal and Another, Ex parte Shah?’ (1999) 7 *Feminist Legal Studies* 340 – 341; C Llewellyn, ‘Sex Logics: Biological Essentialism and Gender-Based Asylum Cases’ (2017) 61(10) *American Behavioral Scientist* 1120–1121.

³¹⁷C M Wald, ‘Does matter of A-R-C-G matter that much?: Why domestic violence victims seeking asylum need better protection’ 25 527 (Winter 2015) *The Cornell Journal of Law and Public Policy* 15.

³¹⁸*Islam (AP) v Secretary of State for the Home Department Regina v Immigration Appeal Tribunal and Another Ex Parte Shah (AP) (Conjoined Appeals)* [1999] 2 AC 629, [1999] 2 All ER 545.

³¹⁹S Kirvan, ‘Women and Asylum: A Particular Social Group Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal and Another, Ex parte Shah?’ (1999) 7 *Feminist Legal Studies* 336.

³²⁰*ibid.*

³²¹H Siddiqui, ‘Escaping Forced Marriage: Non-Legal Remedies in England and Wales’ in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 4–5.

Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

³²²*Fornah v Secretary of State for the Home Department* [2006] UKHL para 84.

social group as grounds in gender asylum cases, in the context of female genital mutilation and situated the case within the broader context of gender discrimination.³²³

A final feature of the universal system of international human rights law is the recognition by the International Criminal Court that forced marriage constitutes an example of an ‘other inhumane act’ under Rome Statute Article 7(k) in the case law of the Special Court of Sierra Leone.³²⁴

A major regional source of international human rights law is the ECHR. In 2009, in the case of *Opuz v Turkey*³²⁵ the ECHR acknowledged for the first time that a State’s failure to address honour-related domestic violence constitutes a form of gender-based discrimination. The case of *Opuz* illustrated that Turkey was in breach of its obligations to protect women from domestic violence under the ECHR, which was the first case of honour-related domestic violence brought to the European Court of Human Rights. This case resulted in Turkey being found responsible for not protecting Nahide Opuz and her mother from her violent former husband. Nahide made several complaints to the police and commenced divorce proceedings after her husband’s violent attacks between 1995 and 2008, as a result of which, both the applicant and her mother suffered severe injuries. However, after receiving serious threats from her husband, she withdrew the complaints. The husband was charged and sentenced after some of the attacks, but the sentences were converted to a small fine. In 2008, the husband shot Nahide’s mother dead. The husband claimed to have killed his mother-in-law in order to protect his honour. It was the general practice of the criminal courts in Turkey to

³²³S Mullally, ‘Domestic Violence Asylum Claims and Recent Developments in International Human Rights Law: a progress narrative?’ 60(2) (April 2011) *The International and Comparative Law Quarterly* 478.

³²⁴*Prosecutor v Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu* [2008] SCSL-2004-16-A (Special Court for Sierra Leone, Appeals Chamber, 22 February 2008) 105 and see paras 181–203.

³²⁵*Opuz v Turkey* Application no 33401/02 (ECtHR, 9 June 2009).

mitigate sentences in cases of honour crimes.³²⁶ In these cases, the criminal courts tended to impose either very lenient or no punishments at all on the perpetrators of such crimes.

The European Court of Human Rights reiterated that the first sentence of Article 2 (Securing the Right to Life) of the ECHR imposes on the State the obligation not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.³²⁷ There is a primary duty imposed on the State to secure the right to life by putting in place effective criminal law provisions. Furthermore, to deter the commission of such offences, these provisions have to be backed up by law enforcement machinery for the prevention and punishment of any breach.³²⁸ In certain circumstances, a positive obligation can also be imposed on the authorities to take preventive measures to protect an individual whose life is at risk from the criminal acts of another individual.³²⁹ However, in Nahide's case it was highlighted for the first time that a State's failure to address domestic violence constituted a form of gender-based discrimination.³³⁰ The case illustrated the widespread failure of police officials to act on behalf of disproportionately impacted women. Therefore, the court concluded that the general and widespread discriminatory attitude of the authorities needed to be remedied.

In its decision in *Opuz*, the Court drew upon a wide body of international law, including the jurisprudence of the Inter American Commission and Court of Human Rights. The Court cited not only the text of CEDAW itself and the general prohibition on discrimination, but

³²⁶P Londono, 'Developing Human Rights Principles in Cases of Gender-based Violence: *Opuz v Turkey* in the European Court of Human Rights' (2009) 9 Human Rights Law Review 667; U Smart, 'Honour Killings' (2006) 150 Justice of the Peace 5.

³²⁷*Opuz v Turkey* Application no 33401/02 (ECtHR, 9 June 2009) para 128.

³²⁸*ibid.*

³²⁹*ibid.*

³³⁰P Londono, 'Developing Human Rights Principles in Cases of Gender-based Violence: *Opuz v Turkey* in the European Court of Human Rights' (2009) 9 Human Rights Law Review 657.

also, in General Recommendation 19, the jurisprudence of the Optional Protocol and the CEDAW Committee's Concluding Observations on Turkey's combined fourth and fifth periodic reports.³³¹ Mullally states that, the Court's judgment in *Opuz* 'builds on an earlier body of case law addressing the scope of States' positive obligations in the context of gender-based violence. The previous failure to link gender-based violence to the ECHR non-discrimination norm had become increasingly conspicuous, given developments in human rights law at both UN and regional levels.'³³²

After this introduction, there are four chapters that will each identify a specific type of honour-related violence: instances of honour-related oppression, female body mutilation for reasons of patriarchal honour, forced marriage, and finally killings in the name of honour. In each of them, after a discussion around the nature of the violent act in question there will be a review of the UK domestic law (mainly legislation of England and Wales) and of the relevant international human rights law, to establish whether the law effectively addresses such abusive practices. The adoption of a several parties' approach, including state, parliament, police, judicial, schools and healthcare professionals, will be used to show how they deal with honour-related violence and crimes. Finally, after illustrating the shortcomings of the laws, education on gender equality will be discussed as a long term, permanent solution.

³³¹UN Doc CEDAW/C/TUR/4-5 and Corr.1, 15 February 20.

³³²S Mullally, 'Domestic Violence Asylum Claims and Recent Developments in International Human Rights Law: a progress narrative?' 60(2) (April 2011) *The International and Comparative Law Quarterly* 468–469.

CHAPTER TWO: Honour-related Oppression

2.1 Introduction

This chapter will consider the concept of honour-related oppression, which is the psychological abuse aspect of honour-related violence. In honour-related patriarchal communities, controlling women's behaviour and sexuality is seen as key to the honour of the family and the community. Emotional or psychological abuse aims to chip away at the confidence and independence of victims with the intention of making them compliant and limiting their ability to leave. It can be verbal, such as molestation, yelling, name-calling, blaming and shaming, or non-verbal, including isolation, intimidation, threats of violence and controlling behaviour.¹

In this chapter, the main legislation in England and Wales and the relevant international human rights law will be considered to establish whether they provide effective protection for victim of honour-related oppression. Furthermore, the chapter will illustrate that some manifestations of honour-related oppression, such as stigmatisation and isolation, cannot be legislated against. It will be concluded that the law and its enforcement alone are not enough to provide a response to this problem.

Like any other form of honour-related violence, honour-related oppression restricts or disregards women's expression of autonomy. The primary sources of women's oppression

¹NHS, Domestic Violence London, A Resource for Health Professionals, Emotional or Psychological abuse <<http://www.domesticviolencelondon.nhs.uk/1-what-is-domestic-violence-/3-emotional-or-psychological-abuse.html>> 22 April 2016.

rest within, or arise from, traditional values, customs and social practices. Oppression starts within the family at early stages of the individual's life, such as the differential socialisation of the male and female children within the family through schooling, forms of speech and use of language via media-propagated stereotypes, and numerous other seemingly innocuous social processes.²

Each gender is subject to some form of repressive social control; however, they are affected differently. The social control that women face has different aspects: it can be, inter alia, their subordinate social and legal status in the family, or the double standard of morality where female's sexual behaviour is greatly controlled.³ This double standard of morality arises where male sexuality is persistently encouraged, while it is condemned in women. Sexuality is perceived as a sign of 'masculinity', whereas for women it is 'shameful' behaviour,⁴ and is consequently treated as a reason for women to be killed or made subject to honour-related violence.

Oppression is never just inflicted once on a particular person. Kernohan states that 'the oppression of one person by another is an ongoing practice, series of actions, some harmful when taken individually, some not, which add up over time to oppression. Oppression severely undermines the self-esteem, it is an accumulative harm.'⁵ It can be inflicted individually by one person on another, or by members of a group or society. Kernohan describes this type of oppression as social oppression and illustrates it with an example: no single bar of a prison cell is sufficient by itself to hold a prisoner, but many such bars,

²C Smart and B Smart, *Women, Sexuality and Social Control* (Routledge and Kegan Paul Ltd 1978) 1.

³ibid 3.

⁴ibid 4.

⁵A Kernohan, *Liberalism, Equality and Cultural Oppression* (Cambridge University Press 1998) 11.

arranged together, will hold the person.⁶ He further submits that ‘such an oppressive practice is a set of actions taken not by a single person, but instead by different people each time, which are harmful either individually or collectively or both.’⁷The actions taken by the members of the group do not have to be harmful in themselves; social oppression itself is an accumulative harm.⁸

Oppression of women is generally perceived as a normal practice in honour-related patriarchal communities. Women who grow up in such communities may accept and internalise male supremacy. The enculturation of these beliefs of value and inequality can take place within the family. Kernohan gives the following example to illustrate this: in a patriarchal family, a father might instil in his daughter a belief that women were created to serve men. This belief enables the daughter to accept male superiority, and this might be the belief in her surrounding society, meaning that she will not question it. Kernohan refers to this as a ‘social form of cultural oppression’, and further submits that ‘the father here did not invent the false idea that women were created unequal to men, and it is doubtful that he would sustain his belief if it were not confirmed and reinforced by the culture in which he lives.’⁹

As a result, such beliefs and practices are well accepted and reflected in every single aspect of social life: legislation governing the land, schooling, employment and even the themes of movies and songs. This extends to include all female members of the community regardless of social class. Women attain false beliefs about their worth, value, and position in society and in the world, making it extremely difficult for them to discover the falsity of these

⁶ibid 13.

⁷ibid 12.

⁸ibid.

⁹ibid 14.

beliefs; consequently, the inequality appears to be natural. As Kernohan points out, 'Oppression is hidden in the norms of a culture that accepts male dominance as a natural ordering.'¹⁰ This makes women vulnerable to the power of the man. Ironically, women help to uphold these patriarchal values by taking part in oppressing and inflicting violence on their fellow female, both in the domestic and public spheres.

Such oppression in honour-related patriarchal communities is mainly inflicted on young girls from their teenage years and can continue throughout their adulthood by their relatives or members of the society to which they belong and mainly manifests itself as the constant control of the women's and girls' movements and attitudes. The control and restrictions may involve limiting their contact with their male counterparts at school, work or in any aspect of their social life. Similarly, they may involve imposing on the victim rules about what to wear, or not allowing them to take part in any outdoor or social activities, such as going out to the cinema, shopping etc. All these restrictive behaviours may amount to molestation or harassment and can also come under coercive control.

However, one important point is that honour-related oppression may be escalated to other types of honour-related violence, such as forced marriage and/or honour killing, or it can be continuously inflicted without escalating, such as a divorced woman being under the constant control of the family and other members of the community. Similarly, a woman who marries someone of her own choice, or decides to divorce, is likely to become a victim of isolation, stigmatisation or marginalisation by her community.¹¹ Men have to 'ensur[e] that women will

¹⁰ibid 16.

¹¹R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018) 73.

tend to follow a set of predetermined rules that support [the] patriarchal values and beliefs. When women do not obey these rules, they must be punished.’¹²

In the UK, criminal law commonly uses the Offences against Person Act 1861 when dealing with psychological violence arising within the domestic sphere, categorising it under the offence of assault. According to Bishop and Bettinson, however, this provision does not address psychological injuries effectively. Such a shortcoming in the existing law on psychological violence was acknowledged in 1994 in the case of *Chan Fook*, and approved later in *Dhaliwal* in 2006.¹³ In *Dhaliwal*, a wife who was, over a period of years, subjected to psychological abuse from her husband eventually committed suicide. The case went up to Court of Appeal to determine whether psychological harm is capable of amounting to actual grievous bodily harm for the purposes of the 1861 Act. Although in this particular case the respondent was acquitted, the Court of Appeal concluded that recognisable psychological harm was within the ambit of this offence.¹⁴

In order to tackle psychological violence, several acts have been passed in the UK, such as the Protection from Harassment Act 1997, the Family Law Act 1996, and finally the Serious Crime Act 2015. Each of these will be examined in turn to establish whether they can also address the honour-related oppression which may be inflicted in the form of molestation, harassment, coercive control or isolation, stigmatisation, or marginalisation. There is a significant overlap between molestation, harassment and coercive control.

¹²N Begikhani et al, *Honour-Based Violence, Experiences and Counter-Strategies in Iraqi Kurdistan and the UK Kurdish Diaspora* (Ashgate Publishing Ltd 2015) 35.

¹³C Bishop and V Bettinson ‘Evidencing Domestic Violence, Including Behaviour that Falls under the New Offence of “Controlling Or Coercive Behaviour”’(2018) 22(1) *International of Journal Evidence and Proof* 2.

¹⁴R v D [2006] EWCA Crim 1139 para 32.

2.2 Molestation

Molestation in general terms refers to a behaviour intended to annoy or pester someone¹⁵ to whom the perpetrator is related. Such an act does not need to be violent or involve any physical abuse. In the UK, to stop molestation, non-molestation orders can be sought. Non-molestation orders come under Part IV of the Family Law Act 1996, and are civil court orders which aim to protect people from domestic violence. The orders can be issued to protect those who are subject to domestic abuse or molestation by an associated person. Section 42(1) (a) of the Family Law Act 1996 provides that a non-molestation order prohibits the respondent from molesting another person who is associated with the respondent.

Applications for non-molestation orders need not be restricted solely to acts of violence but are extended to all acts of molestation.¹⁶ There is no legal definition of what molestation includes. The Law Commission proposed that any attempt at a definition might reduce the level of protection afforded by the law, thus the word ‘molestation’ is deliberately not defined in the Act.¹⁷ Instead, the decision of what amounts to ‘molestation’ is established via case law by considering the facts of each case. In an early case, it was considered to mean ‘deliberate conduct which substantially interferes with the applicant or child, whether by violence, intimidation, harassment, pestering or interference sufficiently serious to warrant intervention by a court.’¹⁸ In a later case, it was stated that ‘it implies some quite deliberate conduct which is aimed at a high degree of harassment of the other party, so as to justify the

¹⁵E A Martin, Oxford Dictionary of Law (5th edn Oxford University Press 2002).

¹⁶B James, ‘Domestic Violence and Ex-Parte Applications: Getting the Affidavits Right’ (2007 archive), *Family Law Week*.

¹⁷The Law Commission No 207, Family Law Domestic Violence and Occupation of the Family Home, Part III at para 3.1.

¹⁸His Honour Judge Fricker, *Patel v Patel* [1988] Fam Law 395 at 399.

intervention of the court.’¹⁹ However, it no longer has to be ‘significant harm’, as was required under Section 33(7).²⁰ In the case of *Grubb v Grubb*, the wife simply claimed that her husband was an emotional bully who imposed extremely prescriptive household rules and regulations on her and their children. She further submitted that Mr Grubb had been obsessively and inappropriately controlling of her and made ‘constant unjustified criticisms’ of her, and who had pestered her to enter into post-nuptial agreements once he saw the marriage was in trouble. Mrs Grubb argued that her husband also sometimes verbally abused her, and that all these actions made her depressed. In the ruling, occupation and non-molestation orders were granted in favour of the wife. An occupation order can be issued by the family court under Part IV Family Law Act 1996 which sets out who has the right to stay at the family home.

In the case of *Dolan v Corby*,²¹ the Court of Appeal adopted a broader approach when dealing with non-molestation issues. With respect to the court’s willingness to address emotional abuse despite the absence of ‘significant risk’ or actual violence, the statement in *Dolan* is noteworthy. Ms Dolan obtained a non-molestation order in late 2010 and sought an occupation order. The case came before the Recorder and he made a number of findings, including that Mr Corby had subjected the respondent to verbal abuse and that as a result Ms *Dolan* suffered from a psychiatric condition, despite there being no diagnosis and only limited papers on that issue. In *Dolan*, when establishing the nature of the molestation inflicted by the appellant (when granting the non-molestation and occupation order), the Court of Appeal clarified that:

an order requiring a respondent to vacate the family home and overriding his property rights is a grave or draconian order and one which would only be justified in exceptional circumstances, but exceptional circumstances can take many forms and are not confined to violent behaviour on the part

¹⁹C v C (Non-molestation Order: Jurisdiction) [1998] Fam, Sir Stephen Brown para70.

²⁰Grubb v Grubb [2009] EWCA Civ 976 para 26 and Dolan v Corby [2011] EWCA Civ 1664 para 2.

²¹Dolan v Corby [2011] EWCA Civ 1664.

of the respondent or the threat of violence and the important thing is for the judge to identify and weigh up all the relevant features of the case whatever their nature.²²

Thus, the judgment in *Dolan* states that molestation does not necessarily need to be violent. Section 42(5) of the Family Law Act 1996 provides that the court will have regard to all the circumstances that go toward securing the health, safety and well-being of the applicant [relevant child or any other person] that the order is being sought to protect. Therefore, a great deal of discretion is afforded to the court to determine what constitutes molestation. This is more straightforward when a case involves clear-cut acts, such as the accused threatening violence against applicant and/or any child, or being intimidating, harassing or pestering. However, where the molestation is more indirect in its effect on the applicant, success could prove more problematic.²³

Non-molestation orders also prohibit the abuser from asking others to harass or intimidate the applicant. This remedy is available for those subject to domestic violence, harassment or intimidation by their partner, or anyone with whom they are, or used to be, in an intimate relationship. The person has to be ‘associated’ with the applicant; the list of those who are deemed to be associated persons falls under Section 62(3) of the Act. The list includes husbands, ex-husbands, and those who are engaged to or in a civil partnership with the abuser. Alternatively, the applicant may live with the abuser or be related to him/her (or have had a child together). There needs to be a significant, intimate personal relationship with the abuser. This is often demonstrated by the history of a sexual relationship of at least six months’ duration.

²²ibid Lady Justice Black para 27.

²³C v C [1998] 1 FLR 554.

The class of ‘associated person’ has been enlarged by the Domestic Violence, Crime and Victims Act (DVCVA) 2004. In Section 3, the existing definition of Cohabitants in Section 62(1)(a) of the Family Law Act 1996 has been amended. No change has been made to the existing definition in respect to couples of different sexes, but the category is now intended to include homosexual couples. Under Section 62(3) of the Act, the meaning of ‘associated persons’ is detailed. Under Section 62(3)(d), ‘relatives’ are also included (which is extensively defined in Section 63(1)). Section 63(1) provides the definition of ‘relative’ as:

(a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather grandson or granddaughter of that person or of that person [spouse, former spouse, civil partner or former civil partner], or

(b) the brother, sister, uncle, aunt, niece[nephew or first cousin] (whether of the full blood or of the half blood or [by marriage or civil partnership]) of that person or of that person’s [spouse, former spouse, civil partner or former civil partner],

and includes, in relation to a person who [is cohabiting or has cohabited with another person], any person who would fall within paragraph (a) or (b) if the parties were married to each other [or were civil partners of each other].

In *Chechi v Bashier*,²⁴ the court adopted a purposive approach to provide a protection to a man who was engaged in a land dispute with his relatives in Pakistan. The court granted a non-molestation order against his brother and nephews, which satisfied Section 63(1) of the Act, i.e. the ‘relative’ requirement. The Court of Appeal upheld the trial judge’s decision and affirmed that the Act is intended to extend protection to a wide class of family relationships, and therefore suitable cases should be within its ambit.

If a non-molestation order is issued, then the abuser becomes subject to a ‘power of arrest’.

Therefore, if the abuser breaches the terms of the non-molestation order, they can be arrested and charged with a criminal offence.²⁵ This offence is triable on indictment rather than summarily, with a maximum penalty or indictment of five years’ imprisonment, or a fine, or

²⁴*Chechi v Bashier* [1999] 2 FLR 489 CA.

²⁵Section 1 of the Domestic Violence, Crime and Victims Act 2004 (‘DVCVA’) amended section 42A of the Family Law Act 1996 by creating a criminal offence of breach of a civil non-molestation order.

both. In the magistrates' court, the statutory maximum applies. The duration of the order may be for a fixed period, or until a further order. It can be for a much longer period, and courts can even make an order of indefinite duration.²⁶

Non-molestation orders can provide a certain level of protection for honour-related violence victims when and if they suffer 'molestation' by family members and/or relatives. However, honour-related oppression can be inflicted on a victim by wider community members (un-associated persons), which may fall beyond the remit of Section 63(1) of the Act. In this instance, a non-molestation order may not be applicable. However, there is the option of an order under the Protection from Harassment Act 1997.

2.3 Harassment

There is an overlap between non-molestation orders under the Family Law Act 1996 and the Protection from Harassment Act 1997, since in almost every case 'molestation' involves an equal amount of harassment. One important difference is that the Protection from Harassment Act 1997 does not require the parties to be associated. Thus, if the molestation or harassment is inflicted by un-associated persons, the 1997 Act will provide remedies. The definition in Section 1 of the 1997 Act applies both to the offence of criminal harassment and to the civil tort. The difference between the two is in the standard of proof.

The offence of criminal harassment is set out in Section 1(1) of the Act, whereby a person must not pursue a course of conduct:

²⁶Re B-J (Power of Arrest) [2002] 2 FLR 443.

- (a) which amounts to harassment of another and
- (b) which he knows or ought to know amounts to harassment of the other.

However, just as with ‘molestation’ there is no statutory definition of ‘harassment’.

According to Section 7(2), harassment includes ‘alarming the person or causing them distress’ and further provides at Section 7(4) that conduct may include speech. Beyond this, there is no statutory definition of harassment. What amounts to harassment has been considered by the Court of Appeal on the following two occasions. In *Thomas v News Group Newspapers Limited*,²⁷ a newspaper published articles over period of time about the appellant in which she was stigmatised. The newspaper also published readers’ letters about her, and she argued that these articles amounted to harassment. The ensuing discussion on what amounts to harassment was addressed by Lord Phillips MR at paragraph 30:

The [1997] Act does not attempt to define the type of conduct which is capable of constituting harassment. ‘Harassment’ is, however, a word which has a meaning which is generally understood. It describes conduct targeted at an individual which is calculated to produce the consequences described in Section 7 and which is oppressive and unreasonable.

In *Majrowski v Guy’s and St Thomas’s NHS Trust*,²⁸ the issue was revisited by May LJ, in which he referred to the statement above by Lord Phillips MR and further submitted, at paragraph 82, that:

Thus, in my view, although Section 7(2) provides that harassing a person includes causing the person distress...The conduct also has to be calculated, in an objective sense, to cause distress and has to be oppressive and unreasonable. It has to be conduct which the perpetrator knows or ought to know amounts to harassment and conduct which a reasonable person would think amounted to harassment.

A further amendment of the Act was made in Section 1(1A), as inserted by Section 125(2) of the Serious Organised Crime and Police Act 2005, which involves harassment of two or more persons. According to Section 1A(a) ‘harassment’ can occur on just one occasion, provided that two or more persons feel ‘harassed’. The decision in *Levi v Bates*²⁹ illustrates the fact

²⁷*Thomas v News Group Newspapers Limited* [2002] EMLR 78.

²⁸*Majrowski v Guy’s and St Thomas’s NHS Trust* [2005] EWCA Civ 251.

²⁹*Levi v Bates* [2009] EWHC 1495 (QB).

that two or more people can be harassed by the same course of conduct. The case also changed the law on ‘targeting’ in the tort of harassment. However, it is also a criminal offence under the same statutory provision. Following this decision, the objective element of *mens rea* means that a victim can be anyone to whom alarm, or distress are objectively foreseeable, as long as the conduct is targeted at someone.

Lord Justice Longmore at paragraph 55 stated that:

It is right that, for the statutory tort of harassment to occur, there must be a course of conduct which is aimed (or targeted) at an individual since that is inherent in the term “harassment”. But I see no reason why it should be only that individual who can sue, if the defendant knows or ought to know that his conduct will amount to harassment of another individual. The tort (and crime) of harassment does not require an intent to harass any one individual; Section 1 of the Act is clear that the question whether conduct is harassing conduct is an objective question for the fact-finder. If therefore a defendant knows or ought to know that his conduct amounts to harassment, he should be liable to the person harassed, even if the conduct is aimed at another person.

In *Trimingham v Associated Newspapers Ltd*,³⁰ Tugendhat J sought to explain a larger passage in Lord Phillips’ speech at paragraph 53 and said:

‘The word “targeted” is not in the statute. I take Lord Phillips to be using it to give guidance as to what is meant in s 7(3) by the words “conduct in relation to a ... person”: those words are to be interpreted restrictively to comply with Section 3 of the Human Rights Act 1998.’

The Protection from Harassment Act 1997 was used in the case of *Singh v Bhakar*³¹ for domestic suffering. Gina Satvir Singh was subjected to a four-month campaign (the duration of her marriage) of bullying and humiliation by her mother-in-law. She was forced to do menial housework for hours, and was kept a virtual prisoner in the house with very limited access to the outside world. Judge Scott QC stated that the course of conduct which was adopted by Mrs Bhakar was very serious, and far more than enough to amount to harassment for the purpose of the Act. Thus, the Recorder, awarded Ms Singh £35,000 after accepting

³⁰*Trimingham v Associated Newspapers Ltd* [2012] EWHC 1296 (QB).

³¹*Singh v Bhakar* [2007] 1 FLR 880.

her claim that she had endured misery and humiliation. The decision in *Singh v Bhakar* seems to be promising for the victims of honour-related violence, since it may hold perpetrators financially accountable for the ‘ill treatment of their relatives or visitors to their homes, even if it is not serious enough to be a crime.’³²

The provisions of the above mentioned 1997 Act can be very relevant for honour-related oppression victims whenever two or more members, or even all family members, target them or expose them to harassment. According to the definition of harassment, as clarified via case law, the conduct of honour-related oppression (violence) is ‘oppressive and unreasonable’ and is likely to cause distress and alarm to the victims. To further address this, in 2009, for the first time, the Domestic Abuse, Stalking and Honour-based Violence (DASH 2009) Risk Identification, Assessment and Management Model was introduced by the Association of Chief Police Officers (ACPO). The DASH was adopted by UK police forces and partner agencies and has been in force since. The model aims to provide a common understanding of risk, to standardise questions relating to the victim’s perception of risk, stalking and harassment and ‘honour’-based violence, and to set out detailed practice guidance and support material. The model requires all police services and other agencies across the UK to use a common checklist for identifying and assessing risk to save lives.

In DASH, ‘honour-based’ violence is primarily determined on the basis of the involvement of other perpetrators (e.g. the sub-questions of Question 8: ‘Has (insert name of the abuser....) engaged others to help?’), which then links to ‘Additional Honour-based Violence Risk Questions’ (e.g. Question 20: ‘Is there any other person who has threatened you or who you are afraid of?’). From this point onwards, the involved police officer or agency is asked to

³²C Julios in *Forced Marriage and ‘Honour’ Killings in Britain* (Ashgate 2015) 34.

‘consider the extended family [if it is] honour-based violence’. Therefore, honour-related violence is accessed via a generic format: if/when an involved police officer or agency detects that there is such risk, and then supplementary questions dedicated to identifying honour-related violence are followed. Accessing honour-related violence in this way requires that police officers and all involved agencies on honour-related violence are well-trained.

The first report on the police response to honour-related violence in England and Wales was published on 8 December 2015.³³ The report generally identified the need for further training of police officers on the awareness and identification of honour-related violence, enforcement of the law and protection of victims. The report showed that out of eight police forces inspected, all of them used the Risk Identification, Assessment and Management Model (2009). Three forces were supplementing the Risk Identification, Assessment and Management Model process by taking a bespoke approach to honour-related violence risk assessment developed by a specialist voluntary sector organisation. However, some forces recognised that their approach to the risk assessment of honour-related violence cases was unsatisfactory, and they were in the process of improving it.³⁴

The rationale behind this checklist was to give a consistent and practical tool to practitioners working with victims of domestic abuse to help them identify those who were at high risk of harm. Thus, the first stage of identification of risk via Risk Identification, Assessment and Management Model (2009) is crucial. If the case carries high risk and is not identified and addressed efficiently, the chance to save the victim will be lost. This is referred to as the ‘one

³³Her Majesty’s Inspectorate of Constabulary, ‘The Depths of Dishonour: Hidden Voices and Shameful Crimes. An Inspection of the Police Response to Honour-based Violence, Forced Marriage and Female Genital Mutilation’ (December 2015) <<https://www.justiceinspectors.gov.uk/hmic/publications/the-depths-of-dishonour/>> accessed 12/12/2015.

³⁴ibid 91–92; College of Policing, Risk-led policing of domestic abuse and the DASH risk model (September 2016) i.

chance rule'.³⁵ This was clearly seen in the case of Banaz Mahmud,³⁶ who contacted the police five times between September 2005 and January 2006. On the first occasion, she reported the physical and sexual abuse that she had suffered at the hands of her husband. In her later contact with the police Banaz reported that members of her family were threatening to kill her, because they said that she had dishonoured them by leaving her husband and starting a new relationship. Despite her appeals for help, the police force involved did not consider that Banaz's case involved serious risk.³⁷ Banaz was raped and murdered by members of her family in January 2006. Banaz's case happened before the introduction of the Risk Identification, Assessment and Management Model (2009); however, in the absence of national guidance and national training³⁸ of all police officers it is likely to happen again. Although the model includes specific provisions on honour-related violence, its application and enforcement depend on the police officers or police force's awareness of the honour-related violence. After Banaz's death the Metropolitan Police Service introduced some awareness training (such as Hydra training programme) for police staff within their first two years of probationary period.³⁹ However, despite some good effort, the December 2015 report revealed that only three police forces out of 43 are fully prepared to identify and tackle honour-related violence; some forces in some areas are better than others, but the remaining three have been found to be completely unprepared.⁴⁰ Thus, for the time being, the protection

³⁵ibid 16.

³⁶Independent Investigation – Executive Summary. Contact between Banaz Mahmud and the Metropolitan Police Service and West Midlands Police, September 2005–September 2006, IPCC (London 2008).

³⁷N Begikhani et al, *Honour-Based Violence* (Ashgate 2015) 100-101; T Dorjee et al, 'A Social Ecological Perspective on Understanding "Honor Killing": An Intercultural Moral Dilemma' (2013) 42(1) *Journal of Intercultural Communication Research* 4 –5.

³⁸Her Majesty's Inspectorate of Constabulary, 'The Depths of Dishonour: Hidden Voices and Shameful Crimes. An Inspection of the Police Response to Honour-based Violence, Forced Marriage and Female Genital Mutilation' (December 2015) 55.

³⁹R Reddy, *Approaches to honour-related violence in the English legal system* (Thesis 3143, SOAS Library) 113.

⁴⁰ibid 54.

offered to honour-related violence victims is like a postcode lottery. Therefore, the implementation of the model has not been fully effective.

In theory, after the Risk Identification, Assessment and Management Model assessment has been done, then if the case is found to be high risk it should be referred to a Multi-Agency Risk Assessment Conference (MARAC) meeting to manage that risk. It is important to stress that it is highly likely that the officer involved will need to use his or her professional judgement to identify whether an ‘honour’-based violence case should be referred to a Multi-Agency Risk Assessment Conference. The Multi-Agency Risk Assessment Conferences have been criticised as being ineffective in responding to these problems and in the solutions they offer. In reviewing cases, those that are considered to be low or medium risk do not reach the MARAC stage.⁴¹ To improve this, Siddiqui suggest that ‘agencies holding their own internal briefings, strategy meetings or case conferences should also invite relevant agencies, including the NGO advocate, to participate.’⁴² Furthermore, a recent report illustrated that there is no consistency among police forces across the country on how to store and share honour-related violence data, either for MARAC meetings⁴³ or for other purposes. In some forces, information held on honour-related violence cases is not made available to others in the organisation.⁴⁴ Therefore, it might be difficult or even impossible to find data on the progression of a victim’s case or the safeguarding procedures that have taken place.⁴⁵

⁴¹Wilson A, ‘Charting South Asian Women’s Struggles against Gender-based Violence’ in R K Thiara and A K Gill, *Violence against Women in South Asian Communities* (Jessica Kingsley Publisher 2010) 72.

⁴²H Siddiqui, ‘Escaping Forced Marriage: Non-Legal Remedies in England and Wales’ in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 13. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

⁴³Her Majesty’s Inspectorate of Constabulary, ‘The Depths of Dishonour: Hidden Voices and Shameful Crimes. An Inspection of the Police Response to Honour-based Violence, Forced Marriage and Female Genital Mutilation’ (December 2015) 103.

⁴⁴ibid.

⁴⁵ibid.

2.4 Domestic Violence Protection Notices and Orders

There was a key loophole situation whereby a suspected perpetrator of domestic violence could be arrested following an abuse complaint but subsequently might have been not charged with an offence. Therefore, the perpetrator could have been released and able to return to the scene of the abuse within a very short time. This situation put the victim in a very vulnerable position.⁴⁶ Thus, to protect domestic violence victims further, the Crime and Security Act 2010 provided two additional measures for domestic violence victims. These are the Domestic Violence Protection Notices and Orders and they both provide similar protection to non-molestation orders. They can both refer to particular acts of molestation and/or molestation generally, but the main aim of these two measures is to protect victims in the immediate aftermath of reporting a domestic violence incident. However, these are temporary measures, which allow the victim time and space to think about long term options.

The Domestic Violence Protection Notices and Orders were implemented nationally in 2014 and governed by Sections 24 and 30 of the Crime and Security Act 2010. Under Section 24 of the Act, an authorising officer may issue a Domestic Violence Protection Notice to a person aged 18 or over, where the officer has reasonable grounds for believing that:

- a) The person has been violent towards or has threatened violence towards an associated person, and
- b) The issuing of the Domestic Violence Protection Notice is necessary to protect the associated person from violence, or the threat of violence, by that person. An associated person is as defined under Part IV of the Family Law Act 1996, Section 24(9).

⁴⁶M Ghai, Domestic Violence Update – the latest developments practitioners need to know about (11 September 2014) Family Law Week <<http://www.familylawweek.co.uk/site.aspx?i=ed132420>> accessed 11/10/2017.

The notice must contain a provision prohibiting a person from molesting the person for whose protection it is issued under Section 24(6). If the person is living at the same property as the victim, this may prohibit the victim from being evicted or excluded from the premises and from coming within a certain distance (Section 24(8)). Similarly, it may evict or exclude the person from the premises in the same way that the occupation orders under Part IV of the Family Law 1996 operate. This has to be in writing and served on the person personally by a police officer (Section 25(2)). If a Domestic Violence protection Order has been issued, a constable must apply for a domestic violence protection order under Section 27. Breach of the order carries sanctions such as arrest without warrant under Section 28 (9).

2.5 Coercive and Controlling Behaviour

Coercion is defined as ‘the act by which a person or group gains dominance over another person or group and thereby compels the subordinates to perform actions at variance with their preferences or moral standards.’⁴⁷ In honour-related patriarchal communities, controlling and restricting women’s freedom and self-autonomy for the sake of family or communal honour satisfies these definitions.

Before the Serious Crime Act 2015, criminal law predominantly focused on isolated incidents of physical violence. Therefore, psychological and emotional abuse was not a crime unless it amounted to an assault under UK law.⁴⁸ Furthermore, the previous law did not refer in its wording to personal relationships. Consequently, evidence relating to the context of the relationship or the serious psychological effect of ongoing and programmatic abusive

⁴⁷J R Pennock and J W Chapman, *Coercion* (Transaction Publishers 2009) 79.

⁴⁸C Bishop and V Bettinson ‘Evidencing Domestic Violence, Including Behaviour that Falls under the New Offence of “Controlling or Coercive Behaviour”’ (2018) 22(1) *International Journal of Evidence and Proof* 2.

behaviour was not caught under the existing law. Thus, victims of domestic violence who typically suffered psychological harm in everyday life did not have an effective remedy until Section 76 of the Serious Crime Act 2015 was introduced.⁴⁹

Although, to a certain extent, offences created under the Protection from Harassment Act 1997 successfully tackled psychological violence, Bishop and Bettinson argue that the judicial interpretations of these kinds of offences were problematic, since proving psychological violence in an ongoing relationship in a domestic context was difficult in cases involving intimate relationships and non-physical harm.⁵⁰ Thus

the behaviour and harm encapsulated by the Section 76 offence is therefore different from the types of incidents envisaged by the creators of the Offences against Person Act 1861 and Protection from Harassment Act 1997. Offences under the Offences against Person Act 1861 either do not require, or even allow, any information to be given regarding the context in which they took place, whilst the harassment offences do not apply where episodes are interspersed with periods of affection between the complainant and the defendant.⁵¹

The fact-sheet of the Serious Crime Act 2015 acknowledges the fact that ‘non-violent coercive behaviour which is a long term campaign of abuse, may fall outside common assault, which requires the victim to fear the immediate application of unlawful violence.’⁵²

Before this Act, there were attempts to cover more acts of violence, such as stalking and harassment. However, it was decided that this law did not explicitly apply to coercive and controlling behaviour.⁵³ Therefore, the Serious Crime Act criminalised ‘psychological violence by considering ‘coercive and controlling behaviour’ within intimate relationships or inter-familial relationships. Perpetrators dominate every aspect of a victim’s life via coercive control; therefore, the 2015 Act aims to tackle such behaviours before they become violent.

The domestic violence provisions of the Act criminalised patterns of repeated or continuous

⁴⁹ibid 1.

⁵⁰C Bishop and V Bettinson ‘Evidencing Domestic Violence, Including Behaviour that Falls under the New Offence of “Controlling or Coercive Behaviour”’ (2018) 22(1) International Journal of Evidence and Proof 2.

⁵¹ibid.

⁵²Serious Crime Act 2015, Fact sheet: Domestic Abuse Offence (Home Office March 2015).

⁵³ibid.

coercive or controlling behaviour where they are perpetrated against an intimate partner or family member. Under Section 76(11), the new offence carries a maximum sentence of 5 years' imprisonment, a fine, or both.

The new definition of domestic violence includes coercive or threatening behaviour, violence and abuse⁵⁴ where coercive controlling behaviour 'shall mean a course of conduct, knowingly undertaken, making a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.'⁵⁵ Under Section 76(4), 'coercive or threatening behaviour' means a course of conduct that knowingly causes the victim or their child/children to: (a) fear that physical violence will be used against them (at least on two occasions) and/or (b) experience serious alarm or distress which has a substantial adverse effect on the victim's day-to-day activities.⁵⁶ 'Coercive behaviour' means 'an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.'⁵⁷ This definition includes so-called 'honour'-based violence, female genital mutilation and forced marriage.⁵⁸

Section 76 of the Serious Crime Act 2015 is as follows:

76- Controlling or coercive behaviour in an intimate or family relationship

(1) A person (A) commits an offence if—

⁵⁴new definition of domestic violence and abuse to include 16 and 17 year-old victims, 5 November 2012 (Home Office, First published:26 March 2013, Last updated: 27 March 2015) <<https://www.gov.uk/guidance/domestic-violence-and-abuse>> accessed 12/5/2016.

⁵⁵Guidance Domestic Violence and Abuse (Home Office, First published: 26 March 2013, Last updated: 27 March 2015).

⁵⁶ibid.

⁵⁷ibid.

⁵⁸Home Office, Guidance on Information for Local Areas on the Change to the Definition of Domestic Violence and Abuse, Produced with partnership with Against Violence and Abuse (AWA) (March 2013).

- (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
 - (b) at the time of the behaviour, A and B are personally connected,
 - (c) the behaviour has a serious effect on B, and
 - (d) A knows or ought to know that the behaviour will have a serious effect on B.
- (2) A and B are ‘personally connected’ if—
- (a) A is in an intimate personal relationship with B, or
 - (b) A and B live together and—
 - (i) they are members of the same family, or
 - (ii) they have previously been in an intimate personal relationship with each other.

Section 76(6) clarifies for the purposes of subsection (2)(b)(i) who can be considered

‘members of the same family’. Thus, A and B are members of the same family if—

- (a) they are, or have been, married to each other;
- (b) they are, or have been, civil partners of each other;
- (c) they are relatives;
- (d) they have agreed to marry one another (whether or not the agreement has been terminated);
- (e) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
- (f) they are both parents of the same child;
- (g) they have, or have had, parental responsibility for the same child.

The word ‘relative’ has the meaning given in Section 63(1) of the Family Law Act 1996, as explained under the law on non-molestation orders.

The Act provoked diverse opinions. It was argued that criminalising coercive control was not the right solution, as there were enough laws, and that the problem was instead with their implementation. Furthermore, the complexity of the issue was raised by asking whether the police and juries were ever going to understand complex concepts like coercive control.⁵⁹ Evidential difficulties also raised concerns, as controlling behaviour can be incredibly subtle and may not be always coercive. The chief executive of the charity Refuge stated that ‘Extreme jealousy and possessiveness, for example, can be dressed up to look like care or

⁵⁹S Horley, CBE, chief executive of national domestic violence charity Refuge, Refuge 2005, Guest post: ‘Criminalising coercive control won’t improve the lives of victims’ (8 December 2014). <https://www.mumsnet.com/Talk/guest_posts/2254417-Guest-post-Criminalising-coercive-control-wont-improve-the-lives-of-victims> accessed 10/5/2016.

concern. Providing evidence of such behaviours to satisfy criminal standards is likely to be extremely difficult.’⁶⁰ However, it was ‘established that coercive control is harmful in its own way and is associated with serious further harm from psychological violence to homicide.’⁶¹ As submitted by Tolmie, criminalising non-violent manipulation may be important for those victims whose partners ‘rule like dictators over their lives... and this may help police officers in responding to cases that are potentially lethal because of high levels of psychological control but where there is no overt physical abuse.’⁶² In passing the law, official recognition also addressed the concern that police officers lacked understanding of coercive control ‘as potentially a significant obstacle to recognizing abuse.’⁶³ Furthermore, recent case law illustrates the success of the criminalisation of coercive control, although these cases were not linked to honour-related violence.⁶⁴

On the other hand, criminalising coercive control and psychologically abusive behaviour was considered ‘an opportunity to take an enormous step forward towards the eradication of the scourge of domestic abuse’⁶⁵ and honour-related violence. As Elfyn Llwyd, MP and barrister, stated, ‘coercive behaviour can be as insidious and as damaging as physical violence and this must be recognised in law.’⁶⁶ Hence, as a result of coercive control the victim is subject to daily intimidation and humiliation by their partner and/or family member. Furthermore, as clarified by Theresa May, ‘coercive control can be tantamount to torture ... dominance over

⁶⁰ibid.

⁶¹A L Robinson, A Myhill and J Wire, ‘Practitioner(mis)understandings of coercive control in England and Wales’ (2018) Vol 18(1) Criminology and Criminal Justice 44.

⁶²J R Tolmie, ‘Coercive Control: To criminalize or not to criminalize?’ (2018) Vol 18(1) Criminology and Criminal Justice 52.

⁶³A L Robinson, A Myhill and J Wire, ‘Practitioner (mis)understandings of coercive control in England and Wales’ (2018) Vol 18(1) Criminology and Criminal Justice 33.

⁶⁴R v Jordan Michelle Worth [2018] EWCA Crim 1923; 2450; [2018] 1 Cr. App. R. (S.) 38; R v Dean Crandon [2018] EWCA Crim 1418; R v Conlon (Robert Joseph) [2017] EWCA Crim.

⁶⁵Mr Robert Buckland (Solicitor-General) Serious Crime Bill [House of *Lords*] Hansard, Session 2014-15, Column number: 174.

⁶⁶E Llwyd, Plaid Cymru MP introduced a Ten Minute Rule Bill on coercive control in February 2014, Serious Crime Bill [House of *Lords*] Hansard, Session 2014-15, Column number:159.

the victim develops and escalates over the years until the perpetrator has complete control ... putting a foot wrong can result in violent outburst, with victims living in fear of their lives.’⁶⁷

The consultation process identified that the training of criminal justice staff would be a critical factor in the successful implementation of a new legal framework. However, given that for a victim coercively controlled, the control may not necessarily involve physical harm, this may lead to evidential difficulties when establishing a case. These evidential difficulties, and the enforcement of such provisions, were discussed during the consultation process. A victim of domestic abuse stated that

The frustration of the ignorance on the subject of coercive control makes you feel the desperation and why deaths are rising. The outside authorities do not take anything other than physical abuse seriously because they know they cannot prove it to the Courts. Education in the subject of coercive control is desperately needed and should be considered as important if not more as the affects [sic] are devastating. It is an ongoing living hell.⁶⁸

This has been acknowledged by the Criminal Justice Agency, stating that: ‘...there would be evidential problems in proving this type of conduct as controlling or coercive, for example that someone has been denied access to finances or friends...’⁶⁹ During the consultation, it was also clarified that any documentary evidence of non-violent control and coercion that the victim was able to show would be considered, such as bank statements, emails, text messages or social networking records. Furthermore, doctors’ reports, emergency 999 calls and admissible hearsay evidence could also be useful when building such cases.⁷⁰ The new offence would provide a vehicle for prosecuting this type of behaviour.

⁶⁷Home Office and The Rt Hon Theresa May MP, First published 18 December 2014. It also appeared in section 3(2) Final draft of the Bill dated 16 September 2014.

⁶⁸How would any changes you suggest be practically implemented? (Consultation on proposals to strengthen the law on domestic abuse) (Home Office August 2014).

⁶⁹ibid.

⁷⁰C Bishop and V Bettinson ‘Evidencing Domestic Violence, Including Behaviour that Falls under the New Offence of “Controlling or Coercive Behaviour”’ (2018) 22(1) International Journal of Evidence and Proof 4.

The Serious Crime Act 2015 outlaws behaviour which does not cause physical harm but which amounts to extreme psychological and emotional abuse, where every aspect of a victim's life is controlled by their partner and/or by family members. By creating a new offence, the new Act closes the gap in the current legal framework in order to capture repeated or continuous coercive or controlling behaviour, especially where that sort of behaviour takes place with an ongoing intimate partner or in an inter-familial relationship with either domestic violence or honour-related violence as the root cause. The new definition of domestic violence covers a wide range of abusive conduct, thereby potentially embracing honour-related oppression when that oppression is inflicted in the form of molestation, harassment and coercive control.⁷¹

2.6 Stigmatisation, Marginalisation or Isolation

Honour-related oppression may also appear in the passive-aggressive form of a victim being stigmatised, marginalised or isolated from society. Ermers refers to this as social death.⁷² A woman with an education and financial independence may resist and/or remove herself from being subjected to certain types of honour-related violence, such as forced marriage and forced virginity. However, it may still be inevitable for her to become a victim of these other types of honour-related punishment. This can be seen if, for example, a woman resists a forced marriage or divorces her husband, only to face isolation or stigmatisation as a result.

It is important to note that if any breaches of honour codes (such as a westernised lifestyle, where a woman does not allow community interference with her choice in marriage, or who

⁷¹Guidance Domestic Violence and Abuse (Home Office, First published:26 March 2013, Last updated: 27 March 2015) <<https://www.gov.uk/guidance/domestic-violence-and-abuse>> accessed 12/5/2016 and Legal Aid, Sentencing and Punishment of Offenders Act 2012, Sch 1 para 12(9) as amended by SI2013/748.

⁷²R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018) 7.

decides to seek a divorce or to have boy/girlfriend) occur in an honour-related patriarchal community, the punishment of the victim may definitely extend beyond oppression, stigma or isolation. The existence of these punishments may occur in less patriarchal communities, where honour killing is not as common as other types of honour-related violence, as the extent and type of honour-related violence may vary from country to country, as well from community to community in a particular country.⁷³

Nonetheless, in honour-related patriarchal communities, as soon as a free choice of marriage takes place, or a woman gets divorced, she is marginalised, stigmatised and excluded from the society that she belongs to.⁷⁴ This is a lifelong punishment, and she is left alone, in social isolation. As with other honour-related issues, this is irreversible. Again, compared to the other forms of honour-related punishment, this does not involve physical violence; instead, it is ongoing emotional violence and affects the quality of life of the women who are subject to it. Brittan and Maynard submit that this is a form of coercion: their exclusion from family and society sends them a message that their freedom of action is limited by the superior power of those who are in a position to ensure their compliance.⁷⁵ As a result, the stigma and oppression operate in every way to make that person feel that she is not accepted in the community because she did not follow society's rules and did not set a good example to others.

⁷³Although Turkey is a country where honour-related violence occurs; honour killing is mainly practised in the eastern part.

⁷⁴R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018) 87. Furthermore, an argument that a divorce would cause 'hardship to the respondent' because she will be stigmatised by their society as a divorcee was raised in cases of *Balraj v Balraj* (1981) 11 Fam. Law 110, *Rukat v Rukat* [1975] Fam. 63 and *Banik v Banik* [1973] 1 WLR 860.

⁷⁵A Brittan and M Maynard, *Sexism, Racism and Oppression* (Basil Blackwell Publisher Ltd 1984) 1.

In honour-related patriarchal communities, divorce is considered to be an anomalous, deviant act which disturbs the social order. Therefore, as a divorcee, a woman is exposed to honour-related oppression and, very likely, thereafter to isolation, marginalisation or stigmatisation. The stigma of divorce is also associated with the perception that a divorced woman lacks male protection.⁷⁶ For this specific reason she has to be especially careful, because ‘by her activities, she may bring disgrace not only on her natal family but also on her ethnic community (in the context of migrant societies).’⁷⁷ As a result, divorcees are vulnerable to social control, and stigmatised as women who have failed.⁷⁸ This also prevents women from patriarchal societies leaving violent marriages.⁷⁹ This situation puts women in a vulnerable position, so that they choose instead to live with a dysfunctional marriage all their lives, never seeking a divorce or only doing so as a very last resort. A divorcee going through the trauma of separation, which generates feelings of insecurity, hopelessness and helplessness, is marginalised, and faces discrimination over a lifetime by her own family and/or society. This definitely exposes her to vulnerability during her lifetime, and amounts to psychological abuse.⁸⁰

Young considers this marginalisation as the most dangerous form of oppression. She further submits that ‘a whole category of people is expelled from useful participation in social life and thus potentially subjected to severe material deprivation and even extermination.’⁸¹

Another consequence of oppression, which is directly linked to marginalisation, is stigma.

⁷⁶Z Latif, ‘The silencing of women from the Pakistani Muslim Mirpuri community in violent relationships’ in M Idriss and T Abbas, *Honour, Violence, Women and Islam* (Routledge 2011) 37.

⁷⁷A Akpinar, ‘The Honour/Shame Complex Revisited: Violence Against Women In The Migration Context’ (2003) 26(5) *Women’s Studies international Forum* 429.

⁷⁸*ibid* 430.

⁷⁹C Das, ‘Barriers and Supports to Divorce for Victimized British-Indian Mothers and Consequences of Divorce: Narratives of British-Indian Adult Children of Divorce’ (2012) 18(2) *Child Care in Practice*.

⁸⁰B Fawcett and F Waugh, *Addressing Violence, Abuse and Oppression* (Routledge 2008) 45.

⁸¹I M Young, *Five Faces of Oppression* (State University of New York Press 2014) 18.

Stigma happens ‘when a label represents a perceived deviation from expected behaviour...’⁸² It can lead to negative discrimination in some societies. ‘Stigma and intolerance of difference can be particularly pervasive in rural areas and in some communities. People may internalise these norms and stereotypes. This internalised oppression can manifest as experiences of shame, lowered expectations of themselves and fears of rejection.’⁸³ Honour-related violence victims’ vulnerability to stigmatisation and isolation also applies to perpetrators. If a man fails to punish the woman or girl who dishonours the family, he will be labelled as a coward and he (and his family) will be stigmatised by the community.⁸⁴

Despite isolation and stigmatisation being forms in which honour-related violence can manifest, there is no case law involved in addressing cases where a person is stigmatised or isolated by their family and relatives. As a result, it is not possible to determine the courts’ attitude to such offences. A reason for the absence of any case law might be the vulnerability of victims of honour-related violence (such as women being financially and socially vulnerable through not speaking the language), meaning they are unable to challenge such situations before courts. Furthermore, they might also be victims of more severe types of honour-related violence, such as forced marriage or honour killing. However, the current law provides that if such violence is inflicted by associated persons (family members and relatives, as defined under Section 62(3) of the Family Law Act 1996), it may be considered molestation. The case law indicates that courts have been generously interpreting the word ‘molestation’ in the absence of a legal definition of the terminology under Section 42 of the Family Law Act 1996. The case law illustrates that grounds for non-molestation orders can

⁸²Z Weber, ‘Out of the asylum: from restraints to freedom’ in Fawcett B and Waugh F (ed) *Addressing Violence, Abuse and Oppression* (Routledge 2008) 140.

⁸³ibid.

⁸⁴R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018) 9.

range from simply rifling through a handbag⁸⁵ to shouting obscenities.⁸⁶ Here, marginalising or isolating the victim is simply considered a matter of causing emotional violence via omission, by silencing or ignoring the person.

On the other hand, the Protection from Harassment Act 1997 may be broader in scope, since it provides that harassment includes causing alarm or distress, while molestation must overcome the hurdle of seriousness, the determination of which is open to a court to consider whether the complaint is sufficiently serious to intervene.⁸⁷ Although passive-aggressive behaviours satisfy the definition of harassment as being unreasonable, oppressive, causing distress and targeting the victim and the victim's family members, it is still difficult to enforce the law against part of a society or a group of people who stigmatise, isolate or marginalise victims.

Furthermore, coercive control can also take the form of stigmatising, marginalising or isolating the victim. In discussing the Serious Crime Bill in the House of Lords,⁸⁸ it was mentioned that 'controlling, domineering/ or demeaning behaviour' also included 'isolation'. However, the word 'isolation' mentioned here was associated with family. When an honour-related violence victim is very likely to be exposed to isolation, marginalisation or stigmatisation by their society, or by a group of people who are not associated with her, there seems to be no remedy for such abuse.

⁸⁵Spencer v Camacho [1984] 4 FLR 662.

⁸⁶George v George [1986] 2 FLR 347.

⁸⁷N Lowe and G Douglas, Family Law (11th edn, OUP 2015) 179.

⁸⁸S Malhotra, Serious Crime Bill [House of Lords], Session 2014–15, Public Bill Committee Debates, Column number 180.

In the absence of decided cases on the domestic violence provisions of the Serious Crime Act 2015, it is not possible to determine to what extent the conduct of stigmatisation, marginalisation or isolation of an individual will be considered to be coercive control. In addition, the Act applies to ‘intimate partners or family members’, and therefore does not reach those who are not in these categories. However, there is no doubt that whether the law embraces the stigmatisation, marginalisation or isolation of an individual within their family and society or not, these behaviours amount to psychological abuse.

The limits of the law in addressing stigmatisation have been acknowledged by the Law Commission when discussing the effects of granting a divorce where they stated that ‘it is possible to think of other great hardship which might flow from the divorce, where for example divorce will result in severe stigma in the community where the respondent lives with possible exclusion from religious and social life, and perhaps no prospect of remarriage within that community...’⁸⁹

2.7 Psychological Violence and International Human Rights Law

UN General Assembly has expressly noted the psychological harm that result from acts of violence against women:

‘violence against women’ means 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 in private life.⁹⁰

⁸⁹The Law Commission No 192, Family Law the Ground for Divorce (31st October 1990) 44.

⁹⁰Intensification of efforts to eliminate all forms of violence against women, UN General Assembly, A/RES/67/144 (27 February 2013) point 1. The same was also cited at point 1, Resolution 11/2 Accelerating efforts to eliminate all forms of violence against women, Resolution adopted by the Human Rights Council of 17 June 2009).

There have been several UN Resolutions around efforts to eliminate all forms of violence against women.⁹¹ The measures recommended are not solely legislative, but also include public information, gender sensitive curricula for education programmes, and appropriate social and educational measures to protect children and women from violence.⁹² In addition, the UN General Assembly adopted three Resolutions specific to honour crimes, called ‘Working towards the elimination of crimes against women committed in the name of honour.’⁹³ However, the three Resolutions do not specify the types of honour-related violence, but generally consider them to be violations of the human rights of women and girls. Since the crimes against women committed in the name of honour – which also include honour-related psychological violence or oppression – are a human rights issue, these Resolutions stress that States had ‘an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of such crimes and to provide protection to the victims, and that not doing so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms...’⁹⁴

⁹¹Intensification of efforts to eliminate all forms of violence against women (A/RES/67/144, of 20 December 2012, A/RES/65/187 of 21 December 2010, A/RES/63/155, of 18 December 2008) point 1 and Intensification of efforts to eliminate all forms of violence against women A/RES/61/143 of 19 December 2006 point 3). Other Resolutions without making express referral to the psychological violence, stressed that States have the obligation to inter alia, promote and protect all human rights and fundamental freedoms for ...women and girls and eliminate all forms of violence against them: Intensification of efforts to eliminate all forms of violence against women (A/RES/64/137 of 18 December 2009 and A/RES/62/133 of 18 December 2007 page 2).

⁹²Intensification of efforts to eliminate all forms of violence against women UN General Assembly, A/RES/67/144 (27 February 2013) 18 (o) and (v). ‘Adopting all appropriate measures, especially in the field of education’ is cited in A/RES/67/144, of 20 December 2012) point 18(k) and A/RES/65/187 of 21 December 2010, point 16 (j); J Connors ‘United Nations approaches to “crimes of honour”’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 34.

⁹³Working towards the elimination of crimes against women committed in the name of honour, A/RES/55/66, of 4 December 2000; Working towards the elimination of crimes against women committed in the name of honour, A/RES/57/179 of 18 December 2002 and Working towards the elimination of crimes against women committed in the name of honour, A/RES/59/165 of 20 December 2004; J Connors, ‘United Nations approaches to “crimes of honour”’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 34

⁹⁴Working towards the elimination of crimes against women committed in the name of honour (A/RES/55/66, of 4 December 2000 and A/RES/57/179 of 18 December 2002 page 1 and A/RES/59/165 of 20 December 2004, page 2).

One of these Resolutions urges State Parties to ‘raise awareness of the need to prevent and eliminate crimes against women committed in the name of honour, with the aim of changing the attitudes and behaviour that allow such crimes to be committed...’⁹⁵ To achieve this end, as well as to implement relevant laws, States should adopt educational, social and other measures effectively, including introducing national information and awareness raising campaigns and activities and encouraging media engagement in these activities. Furthermore, States should encourage, support and implement measures and programmes to increase the knowledge and understanding of the causes and consequences of honour crimes. This includes training the relevant authorities who are responsible for enforcing the law, such as police, judicial and legal personnel, to strengthen their capacity to respond to complaints about such crimes in an impartial and effective manner. States should also take necessary measures to ensure the protection of actual and potential victims of such crimes.⁹⁶

In addition, a positive duty imposed on the police by the 2013 UN General Assembly Resolution which stressed that:

States have the obligation, at all levels, to promote and protect all human rights and fundamental freedoms for all, including women and girls, and must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and eliminate impunity and should ensure protection, including adequate enforcement [inter alia] by police...⁹⁷

Looking at the provisions of CEDAW 1979, Article 12(1) indicates that the State Parties are obliged to adopt all necessary measures to eliminate discrimination against women in terms of health care, protecting them from psychological harm as well as other psychological

⁹⁵Working towards the elimination of crimes against women committed in the name of honour, UN General Assembly, A/RES/57/179 of 18 December 2002, 3(e).

⁹⁶Working Towards the Elimination of Crimes against Women and Girls Committed in the Name of Honour, UN General Assembly, (A/RES/59/165 of 10 February 2004 1(b), 3(b), (f) and (g)). Similar recommendations were also made in A/RES/57/179 of 18 December 2002 3(g) and A/RES/55/66, of 4 December 2000 4(b).

⁹⁷UN General Assembly, Intensification of Efforts to Eliminate All Forms of Violence against Women, A/RES/67/144 (27 February 2013) (11). However, the UK’s first police report published in December 2015, revealed the police’s unpreparedness on identifying and addressing the honour-related violence illustrated that this particular UN Resolution is not taken into consideration effectively.

conditions.⁹⁸ Furthermore, a general obligation was imposed upon State Parties under Article 24 to adopt all necessary measures at the national level aimed at achieving the full realisation of the rights recognised by the CEDAW. Thus, protection of women from honour-related oppression in the form of psychological abuse is clearly within the ambit of the CEDAW. In 1992, the Committee on the Elimination of Discrimination against Women emphasised the impact of family violence, inter alia, mental and other forms of violence, on women perpetuated by traditional attitudes. Accordingly, the Committee made specific recommendations to State Parties to take appropriate and effective measures to overcome all forms of gender-based violence, whether public or private acts.⁹⁹

The Committee on the Elimination of Discrimination against Women recognised psychological abuse in a series of cases. In the domestic violence case of *VK*,¹⁰⁰ the Bulgarian national court neglected the applicant's psychological suffering, only focusing on the threat to her physical integrity. The applicant took her case to the Committee on the Elimination of Discrimination against Women, which stated that:

The Committee recalls that gender-based violence constituting discrimination within the meaning of Article 2, read in conjunction with Article 1, of the Convention and general recommendation No. 19, does not require a direct and immediate threat to the life or health of the victim. Such violence is not limited to acts that inflict physical harm, but also covers acts that inflict mental or sexual harm or suffering, threats of any such acts, coercion and other deprivations of liberty.¹⁰¹

Thus, the courts should be aware of all forms of gender-based violence, including psychological harm. Similarly, in the case of *Isatou Jallow v Bulgaria*,¹⁰² psychological abuse (inter alia, sexual and psychical abuse) was inflicted on the applicant and her daughter by the applicant's husband. The Committee again recognised the psychological abuse suffered by the

⁹⁸General Recommendations made by the Committee on the Elimination of Discrimination against Women, General Recommendation No 24 (20th Session 1999) Article 12(1) (b) and (c).

⁹⁹General Recommendations made by the Committee on the Elimination of Discrimination against Women, General Recommendations No 19, 11th Session 1992, points 11, 23, 24 as well as Article 12.

¹⁰⁰*VK v Bulgaria* Communication No 20/2008 UN Doc CEDAW/C/53/D/31/2011 para 9.9.

¹⁰¹ibid para 9.8 making referral to General Recommendation No 19 (1992) on violence against women, para 6.

¹⁰²*Isatou Jallow v Bulgaria* Communication No 32/2011, UN Doc CEDAW/C/52/D/32/2011 (28 August 2012).

victims and stated that the applicant and her daughter had suffered, inter alia, serious moral damage.¹⁰³ The Committee made specific reference to family violence, and provided recommendations to State Parties to take appropriate and effective measures to overcome all forms of gender-based violence, whether public or private acts. Under the Committee on the Elimination of Discrimination against Women's General Recommendation,¹⁰⁴ States should avoid depriving women of equal enjoyment and exercising of their human rights and fundamental freedoms:

(11) Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.

The above mentioned UN General Assembly's Resolutions and the recommendations of the Committee on the Elimination of Discrimination against Women, were passed more than two decades ago. Over the years, many resolutions have been adopted to eliminate violence against women generally and honour-related violence in particular, which have been cited in this chapter. Despite all of this emphasis, repeated over the years, implementations remain mainly ineffective.

With regards to the protection offered by the ICCPR, the Covenant does not contain specific reference to violence against women; however, it has the capacity to cover physiological violence against women since Article 3 requires that State Parties ensure the equal right of men and women to the enjoyment of all civil and political rights present in the document, as well as Article 17(1) confirming the right to privacy.¹⁰⁵

¹⁰³ibid para 8.7.

¹⁰⁴Committee on the Elimination of Discrimination against Women, General Recommendation No 19, violence against women, 11th session, 1992.

¹⁰⁵The Human Rights Committee, ICCPR General Comment No 28: Article 3 (The Equality of Rights Between Men and Women)1, Adopted at the Sixty-eighth session of the Human Rights Committee on 29 March 2000, CCPR/C/21/Rev.1/Add.10, General Comment No 28 (General Comments) Point 26 and

To finalise the review of the universal sources of international human rights law, for its part the UN Commission on the Status of Women expressly recognises psychological abuse in the form of stigma when it urges governments to eliminate the root causes of gender inequality, discrimination, stigma and violence.¹⁰⁶

Considering the protection offered regionally by the Council of Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in 1950, imposes obligations upon State Parties to protect the psychological integrity of its citizens under Articles 3 (prohibition of torture and inhuman or degrading treatment or punishment) and 8 (respect for private life). In the case of *Z and Others*,¹⁰⁷ the European Court of Human Rights held that the psychological harm (as well as physical harm) suffered by all four children as a result of the abuse and neglect by their parents over a period of time breached Article 3. Also, in the case of *Eremia*,¹⁰⁸ the European Court of Human Rights had to assess whether the father's continued and regular verbal abuse and assaults on his wife and teenage daughters amounted to a breach of their Convention rights. The court concluded that the ill treatment suffered by the victims was within the scope of Article 3. In addition, there had also been violations of Articles 8 and 14 (prohibition of discrimination) of the Convention by the State Party.¹⁰⁹ Furthermore, in the case of *X and Y*, when assessing the psychological trauma that was experienced by a 16 year-old victim, the European Court of Human Rights stated that Article 8 of the victim had been violated.¹¹⁰ In this decision, the Court clarified that

Rights Committee, General Comment No 35, Article 9 (Liberty and security of person), CCPR/C/GC/35 (16 December 2014) point 9.

¹⁰⁶UN Economic and Social Council, Commission on the Status of Women Sixty-second session (12–23 March 2018) - E/CN.6/2018/L.8 (26 March 2018) paras 22 and 46(g).

¹⁰⁷*Z and Others v The United Kingdom* Application no 29392/95 (10 May 2001) para 121.

¹⁰⁸*Eremia v The Republic of Moldova* Application no 3564/11 (28 August 2013).

¹⁰⁹*ibid* para 101.

¹¹⁰*X and Y v The Netherlands* Application no 8978/80 (26 March 1985) para 40.

the State was under a negative obligation not to interfere with privacy rights, yet it also had a positive duty to take measures to prevent private parties from interfering with these rights.¹¹¹ This case also illustrated the fact that the right to ‘private life’ for the purposes of Article 8 of the Convention encompasses the right to be protected from attacks upon physical and psychological integrity.¹¹²

A more relevant contribution of the Council of Europe has been the Convention on Preventing and Combating Violence against Women and Domestic Violence 2011 (also known as the Istanbul Convention). Article 33 makes a specific provision for psychological violence and imposes on all State Parties the responsibility to ‘take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats is criminalised’.

2.8 Conclusion

All honour-related violence starts as psychological violence, and then the worse cases escalate to more severe types of honour crimes, such as forced marriage and/or honour killing. Alternatively, the woman remains a victim of honour-related oppression all her life. It is also valid for perpetrators who claim that if they do not perform certain deterrent acts on the victim, they as parents who fail to punish will be isolated or stigmatised by their community.

¹¹¹ibid para 23.

¹¹²ibid para 22.

As has clearly been stressed by the UN General Assembly Resolution, crimes committed in the name of honour may take many different forms.¹¹³ Honour-related violence is a complex matter, and the starting point to tackle it is awareness of its existence and nature. As long as they are interpreted in a gender sensitive manner, to embrace women's suffering, the existing domestic laws on harassment, molestation and coercive control appear to provide protection for victims of honour-related psychological violence. Since the term 'molestation' is interpreted generously by the court, it might also cover the stigmatisation, marginalisation and isolation type of honour-related oppression. Similarly, acts of marginalisation, stigmatisation or isolation can also be considered forms of 'coercive control' under the Serious Crime Act 2015. However, both remedies are limited to family members and intimate partners. The Protection from Harassment Act (1997) enables actions to be brought against un-associated persons. However, it appears that it may not be practically possible to tackle passive-aggressive behaviour such as isolation, marginalisation or stigmatisation in a society against a group of people.

Although in theory the existing law provides protection from honour-related violence when inflicted in the form of molestation, harassment and coercive control, in practice there is no case law to illustrate this. The main reason for this is perhaps the complexity of the nature of honour-related violence. Honour crimes are mainly a family issue, and women and girls suffering from honour-related violence may be reluctant to bring a case against their family members for many different reasons, such as feeling too vulnerable (emotionally and financially) to stand against their family. Alternatively, they may be already suffering from more severe types of honour-related violence, such as forced marriage.

¹¹³UN General Assembly, Working Towards the Elimination of Crimes against Women and Girls Committed in the Name of Honour, A/RES/59/165 (10 February 2005) 2.

As can be seen from the discussions raised in this chapter, not all forms of honour-related oppression can be tackled effectively via law. Furthermore, even in the areas that are regulated by law, such as molestation, harassment and coercive control, the effectiveness of this protection relies heavily on a gender sensitive interpretation of the rules by the police, social services, prosecutors and judiciary. The patriarchal nature of these formal institutions as existing legal systems are part of patriarchal structures across all societies, and as such this will limit the extent to which laws can protect women; they will consequently remain victims of gender-based violence in general and honour-related violence in particular. The most effective way of tackling honour-related violence, including honour-related oppression, is to achieve a positive change in women's status in society. This has to be achieved both in formal and informal institutions' views on women at the same time. A possible permanent solution is by promoting gender equality through early years' education as suggested by Think Equal, thereby breaking the cycle of a culture which tolerates the inferiority of women.

CHAPTER THREE: Female Body Mutilation

3.1 Introduction

The previous chapter examined the psychological abuse aspect of honour-related violence. This chapter will look at physical abuse when it is inflicted in the form of female bodily mutilation. It will consider two specific instances of bodily harm against women and young girls, performed with the intent of restricting female sexual behaviour and upholding honour-related patriarchal values: female genital mutilation and breast ironing. In order to protect the honour of the group, the family and the community aim to control the individual's sexual behaviour by interfering with her bodily integrity. This analysis will present some data illustrating the known and documented dimensions of the problem. Subsequently, a closer look at the situation in the UK in terms of the legal response will be laid out, followed by an overview of the international law. Finally, a discussion about the effectiveness of the policies currently in place will lead to recommendations for the long term solution to these practices.

It may be helpful to briefly review the different terms used to refer to these practices in the literature. The word 'mutilation' is defined as 'the crime of violently, maliciously, and intentionally giving someone a serious permanent wound.'¹ Female genital mutilation is the partial or total removal of the external female genitalia, or any other injury inflicted on the female genital organs for non-medical reasons.² It is also known as female genital cutting.³ The practice is sometimes referred to as female circumcision. However, this latter

¹'Mutilation' (Legal Dictionary) <<http://legal-dictionary.thefreedictionary.com/Mutilation>> accessed 12/4/2017.

²International Day of Zero Tolerance for Female Genital Mutilation (6 February) <<http://www.un.org/en/events/femalegenitalmutilationday/>> accessed 21/5/2014

³Female Genital Mutilation (FGM) <<http://www.nhs.uk/conditions/female-genital-mutilation/Pages/Introduction.aspx>> accessed 18/10/2016.

term is considered to be unhelpful, as it suggests a parallel with the tradition of male circumcision.⁴ The United Nations International Children's Emergency Fund (UNICEF) refers to Female Genital Mutilation or Cutting as (FGM/C).⁵ Cook states that 'the use of the neutral term "cutting" is sometimes considered more appropriate as a way of responding to the conflict between the wish to eradicate a set of harmful practices, whilst engaging communities who consider cutting to be a traditional necessity.'⁶ In addition, the term 'mutilation' is used to stress the gravity of the various female genital mutilation procedures.⁷ For the purposes of this chapter, the term 'female body mutilation' will be used to cover both female genital mutilation and breast ironing. However, even though both of these practices have similarities in their irreversible and violent nature, they will be treated separately in order to better define the challenges posed by each.

According to the honour-related patriarchal point of view, the purpose of female bodily mutilation is to control women's sexuality while not destroying their marriageability, which means preserving girls' chastity and virginity until marriage. The marriageability of young girls is vital in honour-related patriarchal communities, in which women do not have their own economic and social independence. As a result, the infliction of female bodily mutilation becomes a preventive measure: it is performed on the victim before she infringes any of the honour codes. This anticipation, the expectation that girls and women will default to unacceptable sexual behaviour unless their bodies are interfered with, is a

⁴K Cook, 'Female Genital Mutilation in the UK Population: A Serious Crime' (2016) 80(2) *Journal of Criminal Law* 2.

⁵UNICEF, *Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change* (2013).

⁶K Cook, 'Female Genital Mutilation in the UK Population: A Serious Crime' (2016) 80(2) *Journal of Criminal Law* 3.

⁷M Jefferson, 'FGM/Cutting: Contextualising Recent Legal Developments' (2015) 79(6) *Journal of Criminal Law* 1.

remarkable characteristic of this type of practice, and a direct consequence of the element of honour in an honour-related patriarchal community.

Another characteristic that derives from the honour component of these acts of honour-related patriarchal violence is the level of internalisation by the female members of the community. Such is the acceptance of the need to interfere with the bodies of girls and women that the bodily mutilation itself is carried out by female members of the family or community. As has been mentioned previously, female members of the group often have an active role in enforcing honour-related violence, such as in honour killings, as a punishment for girls or women breaking the honour codes. Yet Monagan⁸ submits that although men do not actively participate in practices of mutilation, it is the men who set the standards expected of women. They define exactly how a woman should be considered suitable for marriage (i.e. virginal and chaste). Therefore, men's power and control are the main causes of the perpetration of such violent practices on women and girls,⁹ and this is the main characteristic of an honour-related patriarchal mentality.

Female genital mutilation is the most widely known type of such violence. However, there is also breast ironing, also called 'breast flattening,'¹⁰ which the wider world outside these communities is becoming aware of. Female genital mutilation is well documented and acknowledged as a crime in England and Wales. However, the under studied practice of breast ironing is now an emerging issue in the UK as a new type of female body mutilation; in countries where breast ironing is common, such as Cambodia, it is estimated

⁸S L Monagan, 'Patriarchy: Perpetuating the Practice of Female Genital Mutilation' (2009) 37 International Research Journal of Arts and Humanities (IRJAH) 96.

⁹ibid.

¹⁰NHS North East Essex Clinical Commissioning Group, Breast Ironing <<http://www.neessexccg.nhs.uk/breast-ironing>> accessed 20/3/2017.

that up to 70% of families practise it, and many of those families see nothing wrong with it, either through long standing custom or for fear of reprisals if they do not perform it.¹¹

This illustrates the mindset that it is accepted and internalised as a collective act of violence.

Families who do not follow the rules of honour-related patriarchy, such as refusing female genital mutilation and/or breast ironing, become outcasts because their daughters dishonour the entire household or even entire society. Thus, ‘family and community are the driving force which encourages [such] violence.’¹² In this way, the shame of a patriarchal family ‘is placed solely on women through their fathers’ and husbands’ inability to control women’s sexuality.’¹³ Economically and socially suppressed women accept their own inferiority and do not question the standards and restrictions imposed on them by male superiority. This includes mothers who cut the genitals of their daughters or destroy their breasts, with the intention of ‘control[ling] the female body and sexuality for men’s benefit.’¹⁴ As Monaghan submits, ‘in order for a woman to gain a foothold in the public realm she must set aside all that is particular to her and take up characteristics of the male norm.’¹⁵ It is not a coincidence that patriarchal societies are usually lacking in substantial women’s rights. As Kouyate states, this has the consequence that ‘practices which usually have “irrational” and vague reasons and also have remote and mysterious origins, amount to violence against women and have proved rather difficult to eliminate.’¹⁶

¹¹S Sapsed and D Mathew, ‘Ethical Issues in Public Health Education’ (E-Leader Conference Paper, Berlin, 2012) 4.

¹²V K Grover, ‘Domestic Violence: Implications in Terms of Causative Theories’ (2015) 2(2) International Journal of Multidisciplinary Research and Development 596.

¹³L Monagan, ‘Patriarchy: Perpetuating the Practice of Female Genital Mutilation’ (2009) 37 International Research Journal of Arts and Humanities (IRJAH) 93.

¹⁴ibid 83.

¹⁵ibid 84.

¹⁶J A Tchoukou, ‘Introducing the Practice of Breast Ironing as a Human Rights Issue in Cameroon’ (2014) 3(3) Civil & Legal Sciences 1.

3.2 Female Genital Mutilation

The United Nations Resolution reveals that female genital mutilations affect approximately 100 million to 140 million women and girls worldwide, and that each year an estimated further 3 million girls and women are at risk of being subjected to the practice throughout the world.¹⁷ High occurrence areas have been identified in African and Middle Eastern countries, where tradition and hygiene are used as an excuse to inflict this practice. The World Health Organisation states that genital mutilation is inflicted mainly on girls between infancy and age 15, although young women can be victims too.¹⁸

According to the World Health Organisation there are four main types of female genital mutilation:

Type 1 is called clitoridectomy, which involves the removal of part of or the entire clitoris. Type 2 is called excision, which, in addition to the clitoridectomy, involves removal of the inner labia (lips that surround the vagina), with or without removal of the labia majora (larger outer lips). Type 3 is called infibulation, which is the most severe version, which involves narrowing of the vaginal opening by creating a seal, formed by cutting and repositioning the labia. The final category (Type 4) is unclassified and covers all other harmful procedures to the female genitals, such as pricking, piercing and cutting, repositioning the labia, burning the clitoris, or even pouring corrosive chemicals into the vagina.¹⁹

The World Health Organisation has stated that female genital mutilation has no known health benefits.²⁰ In contrast, it is harmful to girls and women in many ways. It is a painful and

¹⁷UN Resolution adopted by the General Assembly A/RES/69/150 (18 December 2014) 2 and Amnesty International USA estimates (2016), Violence Against Women Information, Female Genital Mutilation, accessed 2/4/2016.

¹⁸World Health Organisation, Female Genital Mutilation: Fact Sheet, No 241 (31 January 2018) <<http://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>> accessed 12/3/2018.

¹⁹Intensifying Global Efforts and Sharing Good Practices to Effectively Eliminate Female Genital Mutilation – UN Human Rights Council Resolution 27/22 (Kenya Practices, Adopted September 2014) 1.

²⁰WHO Guidelines on the Management of Health Complications from Female Genital Mutilation, Executive Summary, WHO/RHR/16.03 (May 2016) 2; L Abassade, 'Female Genital Mutilation and the Asylum Claim in France: What Rights, What Legal Protection?' (2015) 29(3) Journal of Immigration, Asylum and Nationality Law 1. UNICEF, Female Genital Mutilation/Cutting; A Statistical Overview and Exploration of the Dynamics

traumatic practice. Female genital mutilation is usually performed without anaesthetic, using non-sterile equipment and in a non-sterile environment.²¹ In addition, it can be inflicted on adult females or be repeated in later life. For example, someone who suffers a Type 1 female genital mutilation may receive the other types of mutilation (Types 2, 3 or 4) when she is an adult.²²

The removal of, or damage to, healthy, normal genital tissue interferes with the natural functioning of the body and causes several immediate and long term health consequences, depending on the type and severity of the procedure performed, such as problems with sex and childbirth, contamination leading to disease, and impact on mental health.²³ For example, babies born to women who have undergone genital mutilation suffer a higher rate of neonatal death compared with babies born to women who have not undergone the procedure.²⁴ Furthermore, for some women it reduces sexual pleasure, and often causes urinary infections, kidney disease and problems with pregnancy.²⁵

The United Nations Population Fund provides the reasons for practicing female genital mutilation, separated into five categories:²⁶

Psychosexual reasons: female genital mutilation is carried out as a way to control women's sexuality, which is sometimes said to be insatiable if parts of the genitalia, especially the

of Change, 2013; N Hoffmann, 'Female Genital Mutilation in Egypt' (2013) 2(3) *Global Journal of Medicine and Public Health* 1.

²¹UNICEF, *Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change*, 2013.

²²UNHCR, 'Too Much Pain; Female Genital Mutilation and Asylum in the European Union – A Statistical Update (March 2014) 2.

²³Female Genital Mutilation, a joint WHO/UNICEF/UNFPA Statement, WHO (Geneva 1997) 7–8; J A Black and G D DeBelle, 'Female genital mutilation in Britain' 310 (6994) *BMJ* 1590–1591.

²⁴Eliminating Female genital mutilation, an inter-agency statement OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO (2008) 1.

²⁵UNCHR, *Too Much Pain: Female Genital Mutilation and Asylum in the European Union: A Statistical Overview* (2013).

²⁶UNFPA official website, *Female Genital Mutilation (FGM) frequently asked questions* (December 2015).

clitoris, are not removed. It is thought to ensure virginity before marriage and fidelity afterwards, and to increase male sexual pleasure.

Sociological and cultural reasons: female genital mutilation is seen as part of a girl's initiation into womanhood and as an intrinsic part of a community's cultural heritage.

Sometimes, myths about female genitalia (e.g. that an uncut clitoris will grow to the size of a penis, or that female genital mutilation will enhance fertility or promote child survival) perpetuate the practice.

Hygienic and aesthetic reasons: in some communities, the external female genitalia are considered dirty and ugly and are removed, ostensibly to promote hygiene and aesthetic appeal.

Religious reasons: although female genital mutilation is not endorsed by either Islam or by Christianity, supposed religious doctrine is often used to justify the practice.

Socio-economic factors: in many communities, female genital mutilation is a prerequisite for marriage. Where women are largely dependent on men, economic necessity can be a major driver of the procedure. Female genital mutilation is sometimes a prerequisite for the right to inherit. It may also be a major income source for practitioners.

The psychosexual reasons and socio-economic factors highlight the importance of maintaining a girl's virginity until marriage and controlling it further after marriage, with the idea of preventing infidelity. It is a prerequisite for marriage, and therefore makes girls and women marriageable in honour-related patriarchal communities.

A UN inter-agency statement on female genital mutilation provides that 'it is a form of violence against girls and women, with physical and psychological consequences. Female genital mutilation deprives girls and women from making an independent decision about

an intervention that has a lasting effect on their bodies and infringes on their autonomy and control over their lives.²⁷ Death may even occur as a consequence of female genital mutilation. However, in such cases the cause may be stated as being a result of haemorrhaging or allergic reactions to antibiotics. Therefore, the real percentage of deaths from female genital mutilation is unknown and underreported.²⁸

3.3 Female Genital Mutilation and Domestic Law

Approximately 103,000 women aged 15-49 were estimated to be at risk from female genital mutilation in England and Wales, with a further 24,000 women aged over 50. Nearly 10,000 girls aged 0-14 were also identified in England and Wales as being at risk of female genital mutilation at some point in their lives.²⁹ The research suggests that the number of women living in England and Wales who have suffered female genital mutilation is substantial and increasing.³⁰ In 2014, over 100,000 women living in the UK (aged between 15 and 49) are likely to be survivors of female genital mutilation.³¹ In London alone it is estimated that 28.2 per 1,000 women aged 15–49 live with the effects of female genital mutilation.³² The figures reveal that the situation has not improved since 2002, when the United Nations Special Session on Children, endorsed by 69 heads of states and governments, which also included

²⁷Eliminating Female Genital Mutilation, an inter-agency statement OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO (2008) 10.

²⁸M Jefferson, 'FGM/cutting: Contextualising Recent Legal Developments' (2015) 79(6) *Journal of Criminal Law* 3.

²⁹Female Genital Mutilation in England and Wales: Updated statistical estimates of the numbers of affected women living in England and Wales and girls at risk Interim report on provisional estimates, City University Report (London 2014) 9–10.

³⁰E Dorkenoo, L Morison and A Macfarlane, 'A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales', Summary Report (Department for Health England 2007) (Foundation for Women's Health, Research and Development (FORWARD UK 2007) <https://www.city.ac.uk/__data/assets/pdf_file/.../PREVALENCE-STUDY_FINAL.pdf> accessed 12/3/2016.

³¹City University, Prevalence of Female Genital Mutilation in England and Wales: National and Local Estimates (July 2015) 5.

³²ibid 18.

the United Kingdom, set a goal to end female genital mutilation by the year 2010.³³ The new target has now been set as eliminating female genital mutilation globally by 2030.³⁴

In order to collect some experimental statistics and establish a repository on the number of female genital mutilation cases in England, the UK government implemented a requirement on hospitals to provide statistical data on the numbers of female patients that they are treating who have undergone genital mutilation. This repository is maintained by the Health and Social Care Information Centre, which is now called ‘NHS Digital’. Since April 2015, individual level data from healthcare providers in England, including acute hospital providers, mental health providers and general practitioners, have been collected in the repository, called the Female Genital Mutilation (FGM) Enhanced Dataset.³⁵

Although children are given protection under the existing law (pre-female circumcision/genital mutilation Acts), such as the Family Law Act 1996, there was the need to pass a specific Act to address such harm.³⁶ Under the Family Law Act, parents have a duty to protect their children from harm, including female genital mutilation. However, this can easily be misunderstood by communities practicing female genital mutilation. Members of such communities may understand that child abuse is prohibited, but they might not regard female genital mutilation as amounting to an abuse.³⁷ In

³³UNICEF Female Genital Mutilation Must End, UNICEF (New York 2005).

³⁴International Day of Zero Tolerance for Female Genital Mutilation, 6 February, Theme 2016 ‘Achieving the new Global Goals through the elimination of Female Genital Mutilation by 2030’ <<http://www.un.org/en/events/femalegenitalmutilationday/>> accessed 14/4/2016.

³⁵HSCIC, Female Genital Mutilation (FGM) Enhanced Dataset: April 2015 to March 2016, experimental statistics < <https://digital.nhs.uk/data-and-information/publications/statistical/female-genital-mutilation/female-genital-mutilation-fgm-april-2015-to-march-2016-experimental-statistics>> accessed 12/5/2017.

³⁶in the UK the practice of female genital mutilation is also included in the UK Children Act 1989, Sections 31(9) and 47 (‘significant harm’). The definition of ‘harm’ at Section 31(9) was amended by the Adoption and Children Act 2002 to include, for example, ‘impairment suffered from seeing or hearing the ill-treatment of another’.

³⁷T A Christou and S Fowles, ‘Failure to Protect Girls from Female Genital Mutilation’ (2015) 79(5) *Journal of Criminal Law* 7.

practicing communities, female genital mutilation is performed with the belief that it is beneficial for the girls, to make them marriageable. Thus, passing a specific legislation to clarify the situation further has been a step forward.

Female genital mutilation has been criminalised in the UK since 1985, by the Prohibition of Female Circumcision Act, which was repealed by the Female Genital Mutilation Act 2003 (in England, Wales and Northern Ireland). The Female Genital Mutilation Act 2003 Section 1(1) defines female genital mutilation as infibulation or other mutilation of the whole or any part of a girl's labia majora, labia minora or clitoris.

The Female Genital Mutilation Act 2003 states that it is an offence to perform female genital mutilation (Section 1(1)), including taking a child abroad for female genital mutilation (Section 3). Aiding, abetting, counselling or procuring a girl to perform female genital mutilation was also made an offence (Section 2). In order to prevent girls from being taken outside the UK for female mutilation, the Act provides that helping anyone perform female genital mutilation outside the UK on a UK national or resident is also declared to be an offence (Section 3(1)). Section 5 of the Act provides that anyone who performs female genital mutilation can face up to 14 years in prison (Section 5(a)). In addition, any person responsible for the girl at the relevant time is considered guilty of an offence of failing to protect her from female genital mutilation and can face up to seven years in prison (Section 5(2)(a)). This highlights an inconsistency in the sentencing, since the person who performs the female genital mutilation faces 14 years in prison, whereas the person who fails to protect the child only faces up to seven years. However, such discrepancy may reflect 'situations where one partner may have attempted to protect the

child but failed to do so due to fear of the perpetrator or insufficient strength or resource.’³⁸

The Female Genital Mutilation Act 2003 was further amended by the Serious Crime Act 2015, with the aim of increasing the effectiveness of the remedies under the law. The Serious Crime Act introduced several new measures, *inter alia*, under Sections 70–75, by extending extra-territorial liability to habitual UK residents, lifelong victim anonymity, parents’ and guardians’ liability for failing to protect a child from female genital mutilation, civil protection orders for female genital mutilation, and mandatory reporting duty for relevant professionals.

Section 72 of the 2015 Act (which inserted a new section, 3A, into the 2003 Act), introduced a new offence of ‘failing to protect a girl under the age of 16 from risk of genital mutilation’ by failing to take reasonable measures to protect a child for whom the defendant has parental responsibility. The burden is on the defendant to show sufficient evidence for the jury to consider during the trial that they took reasonable measures. To facilitate this, it was proposed by Christou and Fowles that the amendment should include a list of circumstances in which the presumption would be rebutted.³⁹ These would include, *inter alia*, informing the child’s school, a social worker, or a charitable helpline such as the National Society for the Prevention of Cruelty to Children (NSPCC), or seeking police or judicial assistance. Informing any official body would make discharging the burden of proof easy, because all such organisations keep records of phone calls. This approach also directs the effort in the right direction. The idea behind the Act should be to

³⁸*ibid.*

³⁹*ibid* 6.

prevent girls from undergoing genital cutting and lead to its elimination by encouraging parents to choose to protect their daughters, rather than sending the parents to prison.⁴⁰ However, the Hansard reports reveals that discussions around the Bill are more focused on recognising the practice as a serious crime and as a violation of human rights issue.⁴¹

Another useful amendment to the Serious Crime Act 2015 was made under Section 70. This section extended the range of people to whom Sections 3 and 4 of the 2003 Act initially applied. Now, a wider range of UK ‘residents’ is included, and the former evidential burden of proving that the defendant is a ‘permanent UK resident’ has been removed. Furthermore, Section 70 of the Serious Crime Act 2015 provides anonymity for complainants who are victims of female genital mutilation, similar to that given to victims in serious sexual offence cases.

Section 73 of the Serious Crime Act 2015 introduced Female Genital Mutilation Protection Orders. This amendment was made by inserting Section 5A after Section 5 of the Female Genital Mutilation Act 2003. Thus, via this amendment, Female Genital Mutilation Protection Orders came into force on 17 July 2015. The courts can now make Female Genital Mutilation Protection Orders in an emergency so that protection is put in place immediately.⁴² The aim of a Female Genital Mutilation Protection Order is to protect actual or potential victims from female genital mutilation. A Female Genital Mutilation Protection Order is a civil measure which can be applied for through a family court. Breaching a Female Genital Mutilation Protection Order is a criminal offence carrying a sentence of up to five years in prison. As an alternative to criminal prosecution, a breach

⁴⁰ibid 7.

⁴¹House of Commons Hansard, Female Genital Mutilation Bill (21 March 2003) Volume 401, Columns 1192–1204.

⁴²Serious Crime Act 2015, Schedule 2, Part 1(5).

can be treated as contempt of court by the family, which carries a maximum of two years' imprisonment.

A Female Genital Mutilation Protection Order can be applied for by several people: in addition to the potential victim herself, this can be any relevant third party (such as the local authority), or any other person, with the permission of the court: for example police, healthcare professionals, teachers or family members.⁴³ Furthermore, the Female Genital Mutilation Act 2003 (Section 5B), as amended by Section 74 of the Serious Crime Act 2015, places a legal duty on front line professionals who work in a 'regulated profession', such as regulated health and social care professionals and teachers, to make a report to the police if they are informed by a girl under the age of 18 that she has undergone female genital mutilation, or if they observe physical signs that female genital mutilation may have been carried out on a girl under the age of 18. However, a concern on this issue was raised during a Home Affairs Select Committee, where it was noted that it remains unclear what would happen in the event that a professional were to fail to make such a report. Thus, they recommended that the Government set out the sanctions that should apply when a professional fails to meet their duty. These sanctions should range from compulsory training to a criminal offence for intentional or repeated failures.⁴⁴

Depending on the circumstances of each case, a Female Genital Mutilation Protection Order may contain legally binding conditions or prohibitions. These may include confiscating the passports or travel documents of the girl at risk and/or her family members or other named individuals, to prevent the girl from being taken abroad.

⁴³Serious Crime Act 2015 Section 74.

⁴⁴House of Commons Home Affairs Committee, Female genital mutilation: follow-up Report, Sixteenth Report of Session 2014–15 para 22.

Alternatively, it may order that family members or other named individuals should not help another person commit or attempt to commit a female circumcision offence, such as prohibiting them from bringing a cutter to the UK for the purpose of committing female genital mutilation.

The first successful application for a Female Genital Mutilation Protection Order was seen in the case of *Re E (children)*.⁴⁵ In this case, a Nigerian divorced mother was concerned that her husband was urging their daughters (aged 12, 9½ and 6) to be circumcised in Nigeria. The mother stated that in February 2015, the father of the girls sent ceremonial robes from Nigeria in preparation for the female genital mutilation and that via messages he stated that he expected to see the two elder girls sent to Nigeria on a school holiday. Only five days after the new legislation came into force, on 22 July 2015, the mother's solicitor made an out-of-hours oral application by telephone requesting an *ex parte* Female Genital Mutilation Protection Order. The order was granted by Hogg J pursuant to Paragraph 5 of Schedule 2 to the Act. The parents' country of origin and citizenship was Nigeria. At the time of the application, the father was in Nigeria, although he visited England regularly.

The mother in this case also sought an additional provision to the order, which required that the father must not come within 100 metres of the address of the flat at which the mother and three girls lived and must not come within 100 metres of the children's school. The court issued this request too. The mother in the *Re E (children)* case alleged that she herself was a victim of a forced marriage, and that prior to the wedding she had been forced by the father's family to undergo Type 2 female genital mutilation, which involved

⁴⁵Re E (children) (FGM protection orders) [2015] EWHC 2275 (Fam).

the removal of both her clitoris and labia. The mother stated that since the circumcision she had suffered terrible pain from her injuries.

The first case after the Act was passed was that of Dr Dhanuson Dharmasena, a hospital doctor who was prosecuted for performing female genital mutilation.⁴⁶ Dr Dharmasena was accused of illegally partially sewing back up AB's genitals, at her request: a patient at one of the North London hospitals who had been subjected to genital mutilation at the age of 6 in Somalia. From the facts, it appeared that the patient had undergone Type 3 mutilation, where her labia had been sewn together; the opening was too small for childbirth but allowed her to pass urine and blood. Dr Dharmasena said he did not know that the patient had been subjected to genital mutilation until she began emergency labour. He said that he had never seen a patient with female genital mutilation before, he was not trained, and, in addition, this patient was not in the hospital's female genital mutilation pathway, which meant being seen by an experienced gynaecologist at the hospital. Dr Dharmasena justified his actions of inserting a figure of eight stitch to stop bleeding in the belief that he was acting in the best interest of the patient.

The genital mutilation at issue in this case was not the original wound but the later cutting and stitching by the doctor. The jury found him not guilty, and the UK's first female genital mutilation case ended with acquittal. Since it has been criminalised in 1985, the first successful prosecution has been the case of a woman from east London mutilated her

⁴⁶Dr Dhanuson Dharmasena's case is an unreported Southwark Crown Court case; however, it was widely reported in the media. 'First FGM Prosecution: How the Case Came to Court: Accusation against Dr Dhanuson Dharmasena Came at a Time of Growing Pressure over the Failure to Bring FGM Prosecution in UK', *The Guardian* (4 February 2015); also see 'NHS Doctor Cleared in Less than 30 Minutes in First FGM Case', *Daily Telegraph* (4 February 2015).

three year old daughter and who has become the first person in the UK to be found guilty of female genital mutilation and given eleven years imprisonment.⁴⁷

Besides legislation, there have been other efforts to tackle female genital mutilation in the UK. Since female genital mutilation is inflicted on young girls, it is child abuse. In 2013, the National Society for the Prevention of Cruelty to Children (NSPCC) started to run a free national female genital mutilation helpline, accessible 24 hours, seven days a week. Over 3 months, it received 102 calls relating to young girls at risk of mutilation, and 38 of them were referred to the police for further investigation. The helpline also provides consultations with professionals who come into contact with abused children or children at risk of female genital mutilation. There was a further effort made in 2013 by the Crown Prosecution Service, which published an action plan aimed at improving prosecution rates by gathering more robust data on allegations, to identify what had hindered investigations in the past.⁴⁸ It also aimed to ensure better co-ordination between police and prosecutors. The Government also launched a specialist Home Office-led Female Genital Mutilation Unit on 5 December 2014, to provide outreach support to local areas and communities in England and Wales. The Unit coordinates cross-Government activity, acts as a hub for effective practice, and works with the police, voluntary and community sectors, and with survivors and professionals, to develop policies and practices to end the practice of female genital mutilation.⁴⁹

The UK Government's efforts to tackle female genital mutilation has ranged from passing two specific legislations, in 1985 and 2003, to introducing protection orders through the

⁴⁷R v N [2019] 3 WLUK 161.

⁴⁸Crown Prosecution Service, DPP's FGM Action Plan (2013).

⁴⁹K Bradley, Female Genital Mutilation: Written question – 2923, Parliamentary Business, Publications and Research (17 June 2015).

Serious Crime Act 2015, to setting up a specialist unit (the Female Genital Mutilation Unit) in December 2014, to holding the UK's first ever Girl Summit. On 22 July 2014, at the Summit, the prime minister of the time, David Cameron, announced a range of measures to help eradicate female genital mutilation, which have now been implemented.

One of the initiatives by the Government is the establishment of the College of Policing, a non-statutory professional body for policing which was established in 2012. Its aim is to find the best ways to deliver policing by setting standards in professional development, including codes of practice and regulations, thereby ensuring consistency across the 43 police forces in England and Wales. The College also has a remit to set standards for the police service on training, development, skills and qualifications, and provide maximum support to help the service implement these standards. In March 2015, the College of Policing issued new guidance on female genital mutilation for the 43 police forces to enable tackling the issue effectively.

Beyond this, statutory guidance is being issued under Section 5C (1) of the Female Genital Mutilation Act 2003, addressed to, inter alia, local authorities and district councils, the National Health Service (England and Wales) and independent service providers, the police, and the governing bodies of maintained schools and colleges.⁵⁰ However, England and Wales' first report on the police response to honour crimes revealed that they were struggling to engage schools in respect of female genital mutilation.⁵¹ In some forces, there was limited understanding and awareness of honour-related violence, female genital mutilation and forced marriage, and they did not understand the complexity of these

⁵⁰HM Government, Multi-agency statutory guidance on female genital mutilation (April 2016).

⁵¹Her Majesty's Inspectorate of Constabulary, *The depths of dishonour: Hidden voices and shameful crimes. An inspection of the police response to honour-based violence, forced marriage and female genital mutilation*, (December 2015) point 8.26.

crimes and the distinction between them and domestic violence.⁵² Therefore, it was found that there was a high risk of misidentifying these issues in those forces, and, furthermore, that the consequences of mishandling these cases could be extremely serious. Only in one force (West Midlands Police) out of the 43 were all of the staff interviewed confident in their awareness of honour-related violence, female genital mutilation and forced marriage.⁵³ As the above mentioned Report illustrates, despite the establishment of the College of Policing in 2012, there has not been proper training on this issue across the police forces in England and Wales.

There have been some efforts by the Metropolitan Police Service in this area by establishing 'Project Azure' as their response to female genital mutilation. This includes dedicating specialist officers to each of the 16 child abuse investigation teams, working jointly with National Health Service England, making joint deployments on Operation Limelight, and holding conferences on female genital mutilation.⁵⁴ Operation Limelight is a joint project between the Metropolitan Police and UK Visas and Immigration, which operates at Heathrow airport and was originally aimed to tackle female genital mutilation (now, forced marriage is also included into this project). Law enforcement agencies are more aware of these crimes, and in suspected cases they can stop and speak to passengers. There have been no detected crimes, but the service has attracted positive feedback.⁵⁵

⁵²Her Majesty's Inspectorate of Constabulary, *The depths of dishonour: Hidden voices and shameful crimes. An inspection of the police response to honour-based violence, forced marriage and female genital mutilation*, (December 2015) points 8.21 and 8.22.

⁵³*ibid.*

⁵⁴*ibid* point 8.23.

⁵⁵*ibid* point 8.25.

Since their introduction 296 Female Genital Mutilation Protection Orders have been issued⁵⁶ which is a low number compared to the over 130,000 women and girls at risk.⁵⁷ Also, despite its criminalisation since 1985, securing prosecutions has been problematic in the UK.⁵⁸ One of the reasons given for this is that the 2003 Act requires testimony as to the identity of the persons involved in the offence. In practice, this requires victims to come forward and give evidence against their own family members.⁵⁹ Furthermore, ‘it is even arguable that [prosecution] would not be in the best interest of the child concerned and that the successful prosecution of a parent or grandmother (for example) might not have any impact on future practice of FGM in that community.’⁶⁰ In addition, although the anonymity of victims is provided under Section 71 of the Serious Crime Act 2015. Gangoli et al highlight the survivors’ unwillingness to report their experience to the police, because of

‘their belief that reporting their own experience would not serve any purpose because they had experienced FGM as children, and in another country; and that they did not feel able to report new incidents of FGM in the community because of a lack of trust in the police due to previous negative experiences. Finally, they believed that FGM could be prevented only by work within the community, and not through engagement with the criminal justice system.’⁶¹

Harms or crimes committed in name of honour cannot be prevented only via legislations.

Individuals find other ways to inflict harm on their children, and this is supported by silence and secrecy in the family and community. This was further acknowledged by

⁵⁶In total, there have been 292 applications and 296 orders made up to the end of September 2018, since their introduction in July 2015. Ministry of Justice, Family Court Statistics Quarterly, England and Wales, July to September 2018 (Published on 13 December 2018) 13.

⁵⁷Female Genital Mutilation in England and Wales: Updated statistical estimates of the numbers of affected women living in England and Wales and girls at risk Interim report on provisional estimates, City University Report (London 2014) 9–10.

⁵⁸House of Commons Home Affairs Committee Female genital mutilation: Abuse unchecked Ninth Report of Session 2016–17 (published on 15 September 2016) para 20.50
<<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/390/390.pdf>> accessed 16/3/2017.

⁵⁹K Cook in ‘Female Genital Mutilation in the UK Population: A Serious Crime’ (2016) 80(2) *Journal of Criminal Law* 5.

⁶⁰K Cook, ‘Female Genital Mutilation in the UK Population: A Serious Crime’ (2016) *Journal of Criminal Law* 80(2)5.

⁶¹Gangoli G et al, ‘Perception and barriers: reporting female genital mutilation’, *Journal of Aggression (2018) 10(4) Conflict and Peace Research* 251–252.

UNICEF, which stated that ‘unless legislation is accompanied by measures to influence cultural traditions and expectations, it tends to be ineffective, since it fails to address the practice within its broader social context.’⁶² A mother’s educational attainment impacts positively; but, according to research, the education level of mothers provides contradictory information from several contexts in Africa. For instance, figures from Sudan and Somalia show higher rates for girls whose mothers have secondary school education. However, in contrast, although Kenya has not invested in the eradication of female genital mutilation programmes, it has been a recipient of several major campaigns, and surveys reveal that there has been a steady decline in that country.⁶³ This shows the importance and effectiveness of community-wide education and awareness campaigns. Changing people’s behaviours is a slow process, but it is not impossible either. There needs to be wider discussion of female genital mutilation to educate those who still believe in the value of the practice.

Since genital mutilations are performed in secrecy, within four walls, it often frustrates the police investigation of individual cases.⁶⁴ When investigating incidents, police often face ‘walls of silence’, where communities are reluctant to name the cutters and those involved. Furthermore, girls and women who speak out against female genital mutilation are regularly attacked, abused and harassed by members of their communities, because of the determination to keep the crime a secret. To ensure the effectiveness of the legislations and measures, the difficulties created by these walls of silence need to be addressed.⁶⁵ The starting point can be providing adequate support to survivors of female genital mutilation.

⁶²UNICEF, *Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change* (2013).

⁶³H L Moore, ‘Female Genital Mutilation/cutting’ (2013) 347 *Editorial*, *BMJ*.

⁶⁴T A Christou and S Fowles, ‘Failure to Protect Girls from Female Genital Mutilation’ (2015) 79(5) *Journal of Criminal Law* 4.

⁶⁵A Hill, ‘Female Genital Mutilation Campaigners Face Death Threats’. *The Guardian* (8 May 2013).

They need to be reached and supported so that these survivors can become the protectors of future generations of girls.⁶⁶

In the Home Affairs Select Committee on 14 February 2015, the Chairman of the Committee, Keith Vaz, stated that ‘we cannot tell communities in Sierra Leone and Somalia to stop a practice [FGM] which is freely permitted in Harley Street.’⁶⁷ Female genital mutilation campaigners argue that ‘Female genital cosmetic surgery provides a perceived legitimate route for girls and women to undergo female genital mutilation, particularly for those families who can financially afford the procedure in such private settings.’⁶⁸ These concerns were raised and discussed in an earlier inquiry in 2014. In that session, it was stated that Section 1 of the Female Genital Mutilation Act 2003 included an exemption for surgical operations, which might allow medical practitioners in the private cosmetic industry to conduct female genital mutilation.⁶⁹

This situation raised a concern on whether there is a double standard in the current treatment of female genital cosmetic surgery and female genital mutilation under the law, and whether there should be a prohibition against all such surgery on girls under the age of 18, except where it is clinically indicated. However, the Government affirmed that the 2003 Act itself did not create double standards, because it did not contain any exemption

⁶⁶K Cook, ‘Female Genital Mutilation in the UK Population: A Serious Crime’ (2016) *Journal of Criminal Law* 80(2) 7.

⁶⁷House of Commons Home Affairs Committee, *Female Genital Mutilation: Follow-up Report*, Sixteenth Report of Session 2014–15.

⁶⁸N Sarkaria, ‘Female Genital Cosmetic Surgery: The Legal Conundrum’, *Criminal Law & Justice Weekly* (September 2016) 180 JPN 590.

⁶⁹Home Affairs Committee, *Second Report of Session 2013–14, Female genital mutilation: the case for a national action plan*, HC 201 para 90. See subsections 1(2) to 1(5), which provide an exemption for ‘a surgical operation on a girl which is necessary for her physical or mental health, or ... on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth’.

for genital cosmetic surgery. Therefore, it had no plans to amend the Act to specifically prohibit female genital cosmetic surgery.⁷⁰

Although the concerns on whether female genital mutilation can be performed under the cover of ‘female genital cosmetic surgery’ at private clinics are valid, it is difficult to reconcile these concerns with the 2003 Act. The Act clearly criminalises anyone who performs female genital mutilation; this also includes private clinics.

The concerns raised in the Select Committee’s session led to a clear conclusion:

In Heartlands Hospital in Birmingham alone, 1,500 cases of FGM were recorded over the last five years, with doctors seeing six patients who have undergone the procedure each week. There seems to be a chasm between the amount of reported cases and the lack of prosecutions. Someone somewhere is not doing their job effectively.⁷¹

However, despite all the efforts made, as explained in this chapter, the persistence of this practice and the lack of many prosecution is the reality. Obtaining enough evidence to secure a conviction is problematic because a prosecution can only be brought where there is sufficient evidence for a charging decision. The Crown Prosecution Service recognises that such ‘cases may be challenging to prosecute for a number of reasons, but primarily because of difficulties in obtaining evidence from the victim and ensuring their continued engagement with criminal proceedings.’⁷² This includes victims being young girls reluctant to incriminate their family members.

⁷⁰Government response to Female genital mutilation: the case for a national action plan, Cm 8979, 14–15.

⁷¹House of Commons Home Affairs Committee, Female Genital Mutilation: Follow-up Report, Sixteenth Report of Session 2014–15 (14 March 2015) para 11 and also in House of Commons Home Affairs Committee, Female genital mutilation: abuse unchecked, Ninth Report of Session 2016–17 (15 September 2016) page 26 point 3.

⁷²CPS Female Genital Mutilation Prosecution Guidance, Evidential Considerations <<https://www.cps.gov.uk/legal-guidance/female-genital-mutilation-prosecution-guidance>> accessed 16/11/2018.

3.4 Female Genital Mutilation and International Human Rights Law

The international community officially recognised violence against women as a human rights violation in 1993 during the UN World Conference on Human Rights in Vienna.

That year, the UN General Assembly adopted the Declaration on the Elimination of Violence against Women (DEVAW) where female genital mutilation was cited under article 2:

a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation

The acknowledgment at a global level of the issue of female genital mutilation has been further noted at several United Nations General Assembly Resolutions. Four of these Resolutions, entitled ‘Traditional or customary practices affecting the health of women and girls’, repeatedly reaffirmed that female genital mutilation is a harmful traditional and customary practice against women and girls.⁷³ Though the root cause of female genital mutilation is honour-related control over female members of family and society, this was not identified as such by the United Nations in any of the four Resolutions. Yet the identification of the element of ‘honour’ as its root cause is of particular relevance when looking for remedies for protection of victims, and when introducing prevention measures.

Two subsequent Resolutions were specifically dedicated to female genital mutilation, in 2012 and 2014, where the General Assembly urged States to protect girls from female

⁷³Traditional or customary practices affecting the health of women and girls (A/RES/56/128, of 19 December 2001) page 2. Traditional or customary practices affecting the health of women and girls (A/RES/54/133, of 17 December 1999) point 1(f) and page 3. Traditional or customary practices affecting the health of women and girls (A/RES/53/117, of 9 December 1998) point 1 (d) and page 2. Traditional or customary practices affecting the health of women and girls (A/RES/52/99, of 12 December 1997) point (f) and page 3.

genital mutilation.⁷⁴ However, in the 2014 Resolution, the General Assembly noted with disappointment that there was a

continuing need for the information requested by the General Assembly in its resolution 67/146, [which] was not provided, concerning the root causes of and factors contributing to the practice of female genital mutilations, its prevalence worldwide and its impact on women and girls, including evidence and data, analysis of progress made to date and action oriented recommendations for eliminating this practice on the basis of information provided by Member States, relevant actors of the United Nations system working on the issue and other relevant stakeholders.⁷⁵

In the same Resolution, the UN General Assembly was also ‘deeply concerned that, despite the increase in national, regional and international efforts and the focus on the abandonment of female genital mutilations, the practice continues to persist in all regions of the world and is often on the rise for migrant women and girls.’⁷⁶

The gendered nature of female genital mutilation was highlighted by the United Nations in 2014. The importance of awareness, training and education about the practice of female genital mutilation was emphasised in a Resolution of the General Assembly which urged States, as appropriate, to promote gender-sensitive, empowering educational processes by reviewing and revising school curricula, educational materials and teacher-training programmes, and elaborating policies and programmes of zero tolerance for violence against girls, including female genital mutilation, and to further integrate a comprehensive understanding of the causes and consequences of gender-based violence and discrimination against women and girls into education and training curricula at all levels.⁷⁷

⁷⁴UN Resolution adopted by the General Assembly A/RES/67/146 Intensifying global efforts for the elimination of female genital mutilations (20 December 2012) 4 point 8.

⁷⁵UN Resolution adopted by the General Assembly, Intensifying global efforts for the elimination of female genital mutilations, A/RES/69/150 (18 December 2014) 3.

⁷⁶ibid.

⁷⁷UN Resolution adopted by the General Assembly, Intensifying global efforts for the elimination of female genital mutilations, A/RES/69/150 [on the report of the Third Committee (A/69/481)] (18 December 2014) para 6.

In paragraph 11 of this Resolution, the General Assembly further urged States to pursue a comprehensive, culturally sensitive, systematic approach that incorporates a social perspective and is based on human rights and gender-equality principles in providing education and training to families, local community leaders and members of all professions relevant to the protection and empowerment of women and girls, in order to increase awareness of and commitment to the elimination of female genital mutilation.

Furthermore, the 2010 report of the UN Secretary General⁷⁸ assessed States on their follow up activities to implement the UN Resolution 63/155 on the intensification of efforts to eliminate all forms of violence against women and honour-related violence, including forced marriage, female genital mutilation and honour killing. The Report provided that a number of States have adopted or were in the process of adopting legislation to eliminate all forms of violence against women, including female genital mutilation/cutting (Cameroon, Djibouti, Iceland and Norway) and early and forced marriage (Bulgaria and Norway). The Syrian Arab Republic had repealed the defence for so-called ‘honour’ crimes from its criminal code, while Iceland had increased penalties for aggravating circumstances in respect of female genital mutilation.⁷⁹ The same report also noted that despite impressive efforts by numerous countries around the world, women continue to be subjected to many different forms of violence, and new forms are constantly evolving.⁸⁰

The International Covenant on Civil and Political Rights also provides some protection in

⁷⁸Sixty-fifth session Item 28 of the provisional agenda, Advancement of women, Intensification of efforts to eliminate all forms of violence against women, Report of the Secretary-General, A/65/208 (2 August 2010); Report of the Secretary-General: Working towards the elimination of crimes against women committed in the name of honour (A/57/169) October 2002.

⁷⁹Sixty-fifth session Item 28 of the provisional agenda, Advancement of women, Intensification of efforts to eliminate all forms of violence against women, Report of the Secretary-General, A/65/208 (2 August 2010) point 11.

⁸⁰ibid points 15, 34, 36, 37 and 39.

case of female genital mutilation, since this practice contravenes Article 7 and Article 24(1) of the Covenant when read in conjunction. Thus, individuals in those State Parties who agreed to Optional Protocol Article 2 can communicate with the Human Rights Committee if they claim to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party.

This is illustrated in the case of Ms Diene Kaba,⁸¹ where she claimed that if she and her 6 year-old daughter, Fatoumata, were to return to Guinea this would violate her Covenant rights, as she faced the risk of forced marriage and female genital mutilation. She argued that her ex-husband (the father of her daughter) had announced his intention to give her away in marriage to his nephew, and that on her return Fatoumata would face ‘excision’. The main consideration in this judgment was the higher risk of genital mutilation than of forced marriage. The girl was 15 years old at the time when the Committee made its decision; however, although the risk of excision decreases with age, the Committee was convinced that there was a real and present risk of Fatoumata being subjected to genital mutilation if she returned to Guinea. The decision of the Committee was more in line with the realities around the practice of female genital mutilation (even an adult female can be mutilated, and the same person can be mutilated more than once) when compared to the UK asylum Tribunal’s decision in the MD case (who wrongly believed that a woman/girl can be mutilated only once, as the defendant in this case was referred to as being ‘already’ mutilated).⁸²

⁸¹Diene Kaba (Canada) CCPR/C/98/D/1465/2006.

⁸²MD (Women) Ivory Coast CG [2010] UKUT 215 (IAC) at Determination and Reasons, para 3 it was provided as ‘... The Immigration Judge accepted that the case had little to do with fear of FGM as sadly the appellant had already undergone that procedure.’

However, it is worth mentioning the dissenting opinion of Mr Amor in Kaba's case. As well as questioning the admissibility of the case (with regard to the credibility of the information provided by the applicant) the dissenting opinion provided that: 'It also seems curious that Fatoumata's mother's fear of the father's family "in the context of a strictly patriarchal society" did not stop her from leaving for France... The least that can be said in this regard is that the mother's fear was exaggerated to the Committee, which should have been more circumspect, especially since more than three months passed before the mother left Guinea with her daughter. I believe that the Committee accepted this exaggeration without bothering to analyse the information provided by the author. In sum, while there may be a risk, it is unsafe to define that risk as real or personal.'⁸³ This was despite the fact that the Committee noted [at 10.2] that 'in Guinea female genital mutilation is prohibited by law. However, this legal prohibition is not complied with... and genital mutilation is a common and widespread practice in the country'.

Further to its case law, the Human Rights Committee has addressed female genital mutilation in its Concluding Observations and the periodic reports of several countries of high occurrence.⁸⁴ For instance, the Committee was concerned that female genital mutilation has not yet been prohibited in the rest of Iraq's territory.⁸⁵ Thus, in point 16 of its Concluding Observations it urged Iraq to 'strengthen its efforts to prevent and eradicate harmful practices that discriminate against women. It should also ensure that all forms of female genital

⁸³Diene Kaba (Canada) CCPR/C/98/D/1465/2006, Dissenting opinion by Mr A Amor at para 21.

⁸⁴Including Yemen, Benin, Iraq, African Republic, Sudan and Chad, Yemen and Kenya; Concluding Observations, Yemen, A/61/40 (Vol. I) point 91(11), Concluding Observations, Benin, CCPR/C/BEN/CO/2 point 13, Concluding observations on the fifth periodic report of Iraq, CCPR/C/IRQ/CO/5 (3 December 2015) point 15, African Republic, A/61/40 (Vol I) point 11, Sudan, A/62/40 (Vol I) point 15. Chad, A/69/40 (Vol. I) point 9. Concluding Observations, Kenya, CCPR/C/KEN/CO/3 (31 August 2012) point 15.

⁸⁵Human Rights Committee Concluding observations on the fifth periodic report of Iraq, CCPR/C/IRQ/CO/5 (3 December 2015) point 15,

­mutilation are prohibited in all its territory and that relevant criminal legislation in the Kurdistan region is efficiently enforced’.

The periodic report of the Human Rights Committee for the Central African Republic noted the State Party’s efforts to bring an end to female genital mutilation, but remained concerned about the persistence of this practice and the fact that it is not penalised by the Criminal Code.⁸⁶

This was also valid for Sudan, where, again, although the Human Rights Committee noted that the State party had made efforts to end and criminalise female genital mutilation, it remained concerned that this assault on human dignity, which in Sudan occurs in one of its most serious forms (type III – infibulation), persists.⁸⁷ Similar concerns were raised in the periodic report of the Human Rights Committee for Chad⁸⁸ and Kenya.⁸⁹ The Committee was further concerned about the lack of information on the penalties imposed on those responsible for this practice, pursuant to the Act, and on the impact of the awareness raising campaigns conducted among affected populations.

Within the UN’s Economic and Social Council, the Commission on the Status of Women specifically mentioned ‘honour-based’ violence when addressing female genital mutilation in its Reports, pressing governments to strengthen and implement legal, policy, administrative and other measures for the prevention and elimination of all forms of violence against women

⁸²Report of the Human Rights Committee, African Republic, A/61/40 (Vol I) point 11.

⁸⁷Report of the Human Rights Committee, Sudan, A/62/40 (Vol I) point 15.

⁸⁸Report of the Human Rights Committee, Chad, A/69/40 (Vol I) point 9.

⁸⁹Concluding Observations, Kenya, CCPR/C/KEN/CO/3 (31 August 2012) point 15.

and girls.⁹⁰ In addition, the Commission, in its Agreed Conclusions, made express reference to honour crimes, and urged governments to implement concrete and long term measures to transform discriminatory social norms and gender stereotypes.⁹¹

In order to address female genital mutilation, the Commission on the Status of Women adopted three resolutions.⁹² The Commission acknowledged the harms caused by such practices, urged states to eliminate female genital mutilation, and requested the Secretary-General to report on the implementation of its Resolution 51/2 to the Commission at its fifty-second session.⁹³ The Report noted the importance of data collection, and outlined the measures undertaken by Member States and United Nations entities to end the practice.

A number of Member States reported that they had no available data on female genital mutilation (Czech Republic and Poland), or stated that no cases had been reported (El Salvador, Luxembourg, Malta, Montenegro and Peru). Ghana, Nigeria and Uganda reported that female genital mutilation was not widespread but was still practised. Mauritania reported that 71 per cent of women had undergone the practice, with significant variations in prevalence according to ethnicity. The Central African Republic noted a decline in the practice in recent years. Some States stated that the practice did not exist in their countries

⁹⁰Commission on the Status of Women, *inter alia*, Report on the fifty-first session (26 February-9 March 2007) E/2007/27 E/CN.6/2007/9 point 14.4(d). Commission on the Status of Women, Report on the fifty-third session (2-13 March 2009) E/2009/27 E/CN.6/2009/15 point 14. Commission on the Status of Women, Report on the fifty-fourth session (13 March and 14 October 2009 and 1-12 March 2010) E/2010/27 E/CN.6/2010/11 point 13. Commission on the Status of Women, Report on the fifty-fifth session (12 March 2010, 22 February-4 March and 14 March 2011) E/2011/27 E/CN.6/2011/12 point 12. Commission on the Status of Women, Report on the fifty-sixth session (14 March 2011, 27 February-9 March and 15 March 2012) E/2012/27 E/CN.6/2012/16 page 15. Commission on the Status of Women, Report on the fifty-seventh session (4-15 March 2013) E/2013/27 E/CN.6/2013/11 point B(tt).

⁹¹Challenges and achievements in the implementation of the millennium development goals for women and girls, Commission on the Status of Women agreed Conclusions (2014) point A (d) and point 42.

⁹²Ending female genital mutilation, Resolution 54/7 of 2010, contained in E/CN.6/2010/11 points 11 and 13; Ending female genital mutilation, Resolution 52/2 of 2008, contained in E/CN.6/2008/11 points 11 and 13; Ending female genital mutilation, Resolution 51/2 of 2007, contained in E/CN.6/2007/9 page 25.

⁹³Report of the Secretary-General, Ending female genital mutilation, E/CN.6/2008/3.

(Angola, Lebanon, Mexico, Morocco, Trinidad and Tobago and the Bolivarian Republic of Venezuela).⁹⁴ The report also noted that the systematic collection of data on female genital mutilation remained a challenge. Nigeria, for example, reported that the data-collection system was not unified across the country, and that data-collection was negatively impacted by the lack of financial resources.⁹⁵

Despite a number of African countries having criminalised female genital mutilation in their Penal Codes or through other laws (Ghana, Uganda, Morocco, Eritrea)⁹⁶ the Report observed that the enforcement of laws aimed at the eradication of female genital mutilation remained a major challenge, as the practice continued to be seen as an issue at the private or family level that should not be brought into the public domain for discussion and action.⁹⁷

In addition, some governments had taken steps to curb the practice within the health care system and to ban health professionals from performing it. The Ministry of Health in Yemen and Egypt published retrospective decisions in 2001 and 2007 respectively to ban female genital mutilation from being performed in health institutions.⁹⁸ In Ghana and Nigeria, the issue of female genital mutilation has been incorporated into the curricula of medical, nursing and midwifery schools.⁹⁹

Furthermore, the report noted that a number of States where female genital mutilation is practised among immigrants have passed laws criminalising the practice as a form of violence against women and girls, and as a human rights violation (Canada, Belgium, Spain,

⁹⁴ibid point 25.

⁹⁵ibid point 26.

⁹⁶ibid point 29.

⁹⁷ibid point 28.

⁹⁸ibid point 31.

⁹⁹ibid points 35 and 36.

Italy, the Bolivarian Republic of Venezuela, the Netherlands, Austria, Sweden, Germany, Finland and Peru).¹⁰⁰ In addition, a number of countries provided information that they had adopted laws that criminalised the practice irrespective of whether it is perpetrated in their country or abroad (Austria, Australia, Belgium, Canada, Ghana, the Netherlands, Spain, Sweden and the United Kingdom).¹⁰¹ It is worth noting that for most of these States, more updated data are available in this chapter in their reviews detailed under other international human rights instruments.

The CEDAW also affords protection against female genital mutilation, in Articles 1, 2 (c), 2 (d) and 3.¹⁰² Its Committee has issued several General Recommendations prompting States parties to take appropriate and effective measures with a view to eradicating the practice.¹⁰³ In some of the CEDAW's periodic reports, it was noted that there was a lack of data from high occurrence states, such as Somalia and Sudan. Likewise, according to a periodical review in Nigeria, despite the high occurrence of female genital mutilation, there is at present no legislation at the federal level prohibiting it.¹⁰⁴ On the other hand, Kenya and Ethiopia seem to be making more legislative efforts to ban female genital mutilation.¹⁰⁵ According to the periodic report by Kenya, individuals contravening the

¹⁰⁰ibid point 50 and 51.

¹⁰¹ibid point 52.

¹⁰²In the case of M N N (represented by counsel Niels-Erik Hansen), Communication no33/2011(15 August 2013) the applicant argued that her deportation invoked a violation of Articles 1, 2 (c), 2 (d) and 3 of the Convention, however the case lacked credibility and failed.

¹⁰³Committee on the Elimination of Discrimination against Women, General Recommendation No 14 (ninth session) Female circumcision, A/45/38 and Corrigendum (1990) a-d. Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (11th session, 1992), Violence against women, points 11, 20, 24 (i) and (ii); General Recommendation No. 24 (20th session, 1999) (Article 12: Women and health) points 5, 12 (b)(d), 18.

¹⁰⁴Committee on the Elimination of Discrimination against Women, , Consideration of reports submitted by States parties under Article 18 of the Convention, Seventh and eighth periodic reports of States parties due in 2014, Nigeria, CEDAW/C/NGA/7-8 (Date received: 7 October 2015).

¹⁰⁵The 8th periodic review of Kenya revealed that CEDAW/C/KEN/8 [Date received:3March 2016] Kenya passed the Prohibition of the Female Genital Act, 2011 and is working on the effective implementation of the Act. According to Ethiopia's periodic review report, CEDAW/C/ETH/6-7 [July 2009], female genital mutilation is discouraged in its Health Policy and in the 1994 Constitution and it has revised its Criminal Code accordingly.

Enforcement of the Prohibition of Female Genital Mutilation Act (Chapter 62B of the Laws of Kenya) have been prosecuted. This was seen in the Criminal Appeal 6 of 2014, where one woman was sentenced to seven years for performing female genital mutilation. Prosecution continued with a more recent case in 2015.¹⁰⁶

Since female genital mutilation is mainly inflicted on minors, the Convention on the Rights of the Child 1989 also becomes relevant. Under Article 37 of this Convention, States are under the obligation to protect children from torture, and from cruel, inhumane or degrading treatment. The obligation is also imposed upon States to safeguard children's health under Article 24, as well as providing facilities for physical and psychological recovery for children who have suffered prohibited treatment under Article 24(a).

The Committee on the Rights of the Child, when reviewing the situation in countries of high occurrence of female genital mutilation (inter alia, Egypt, Ethiopia, Gambia, Nigeria, Guinea, Eritrea, Sudan and Somalia), acknowledged the significant efforts made to eliminate female genital mutilation, including awareness-raising,¹⁰⁷ but also remained seriously concerned at the high prevalence of girls subjected to it.¹⁰⁸ Despite the practice

¹⁰⁶Committee on the Elimination of Discrimination against Women sixty-eighth session 23 October–17 November 2017, list of issues and questions in relation to the eighth periodic report of Kenya, CEDAW/C/KEN/Q/8/Add.1(5 July 2017) point 28.

¹⁰⁷Committee on the Rights of the Child, Concluding observations: Egypt, CRC/C/EGY/CO/3-4 (15 July 2011) point 68. Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Ethiopia, CRC/C/ETH/CO/4-5 (3 June 2015) point 47. Committee on the Rights of the Child, Concluding observations: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010) point 65. Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of the Gambia, CRC/C/GMB/CO/2-3 (20 February 2015) point 45. Committee on the Rights of the Child, Concluding observations on the fourth periodic report of Eritrea, CRC/C/ERI/CO/4 (2 July 2015) point 40.

¹⁰⁸Committee on the Rights of the Child, Concluding Observations: Egypt, CRC/C/EGY/CO/3-4 (15 July 2011), point 68. Committee on the Rights of the Child, Concluding observations: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010) point 65. Committee on the Rights of the Child, Concluding observations on the fourth periodic report of Eritrea, CRC/C/ERI/CO/4 (2 July 2015) point 40. Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of the Gambia, CRC/C/GMB/CO/2-3 (20 February 2015) point 45. Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Ethiopia, CRC/C/ETH/CO/4-5 (3 June 2015) point 47. Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 (22 October 2010) point 56.

being criminalised in some of these State Parties (Egypt, Ethiopia, Eritrea and Guinea) the relevant legal provisions are not adequately enforced,¹⁰⁹ and so the Committee urged the State Parties to strictly enforce application of the law by those States which had criminalised it, as well urging others (such as Sudan, Nigeria and Gambia) to pass legislation.¹¹⁰

For example, in Guinea's periodic report in 2013, the Committee noted with regret that in spite of the enactment of law prohibiting female genital mutilation and the elaboration of a strategic plan (2012-2016), 96 per cent of girls and women were still subject to mutilation.¹¹¹ Guinea submitted its recent report, and the list of issues was published on 29 June 2018, when the Committee on the Rights of the Child asked the State Party to describe the measures taken to put into effect the law criminalising female genital mutilation in all circumstances to ensure that perpetrators are investigated, prosecuted and sanctioned, and to provide information on the impact of the National Strategic Plan to Combat Female Genital Mutilation and any campaigns designed to eliminate that harmful practice.¹¹² The concluding observations are not available at the time of writing. The State party was requested to submit in writing additional, updated information, if possible before

¹⁰⁹Committee on the Rights of the Child, Concluding observations: Egypt, CRC/C/EGY/CO/3-4 (15 July 2011) point 68(a). Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Ethiopia, CRC/C/ETH/CO/4-5 (3 June 2015) point 47. Committee on the Rights of the Child, Concluding observations on the fourth periodic report of Eritrea, CRC/C/ERI/CO/4 (2 July 2015) point 40 (b). Committee on the Rights of the Child, List of issues in relation to the combined third to sixth periodic reports of Guinea, CRC/C/GIN/Q/3-6 (29 June 2018) point 8. Committee on the Rights of the Child, Concluding observations on the second periodic report of Guinea (13 June 2013) point 54.

¹¹⁰Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 (22 October 2010) point 57(a). Committee on the Rights of the Child, Concluding observations: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010) point 65 (d), however, Nigeria passed a law on 5 May 2015. Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of the Gambia, CRC/C/GMB/CO/2-3 (20 February 2015) point 45(a).

¹¹¹Committee on the Rights of the Child, Concluding observations on the second periodic report of Guinea (13 June 2013) point 54.

¹¹²Committee on the Rights of the Child, List of issues in relation to the combined third to sixth periodic reports of Guinea, CRC/C/GIN/Q/3-6 (29 June 2018) point 8.

12 October 2018.¹¹³ Furthermore, Somalia, as a State Party with high occurrence of female genital mutilation,¹¹⁴ signed the Convention on the Rights of the Child on 9 May 2002 and ratified it on 1 October 2015, but has not as yet submitted any report.

A further international initiative, under the auspices of UNICEF, was enshrined in 2014 in the Girls Summit Charter, where 48 signatory States made commitments to eliminating female genital mutilation and early and forced marriage. There was a declaration by over 350 faith leaders and community leaders against female genital mutilation. In 2016, the annual review of the Charter revealed that increased resources had been used effectively by the high-prevalence countries in the fight against female genital mutilation.

Furthermore, governments of high-prevalence countries demonstrated greater commitment to ending the practice, and civil society organisations both locally and internationally were more engaged and organised than ever before.¹¹⁵

Besides the different conventions, declarations and resolutions mentioned above, the United Nations¹¹⁶ leads the largest global programme to accelerate the abandonment of female genital mutilation worldwide. The programme currently focuses on 17 African countries, and supports regional and global initiatives. The 17 goals, which are known as the Sustainable Development Goals or Global Goals, aim to transform the world over the next 15 years. Therefore, the theme of the United Nations International Day of Zero Tolerance for Female Genital Mutilation on 6 February 2016 was ‘Achieving the

¹¹³Committee on the Rights of the Child, List of issues in relation to the combined third to sixth periodic reports of Guinea, CRC/C/GIN/Q/3-6 (29 June 2018) page 1.

¹¹⁴In Somalia, 98% women and girls aged 15–49 have undergone some type of genital mutilation <<http://www.unfpa.org/female-genital-mutilation>> accessed 20/10/2017.

¹¹⁵C Donahue, Child Protection Specialist based at UNICEF’s headquarters, UNICEF, The Girl Summit: progress after one year (22 July 2015) <<https://blogs.unicef.org/blog/the-girl-summit-progress-after-one-year/>> accessed 12/9/2015.

¹¹⁶UNFPA jointly with UNICEF.

new Global Goals through the elimination of Female Genital Mutilation by 2030.¹¹⁷ This was further echoed in September at the United Nations Sustainable Development Summit, at which 193 nations unanimously agreed to a new global target of eliminating female genital mutilation by 2030.¹¹⁸

3.4.1 Refugee Convention

The Geneva Convention on the Status of Refugees 1951 (Refugee Convention) deserves special attention because it renders protection in a genuine international fashion: the person invoking it is from a different state to the territory where he or she is at the time of launching the claim, and the safeguarding is sought for events that have taken place or can potentially take place in his or her country of origin.

Victims and potential victims of basic human rights violations who have no protection in their home country can be given rights to escape from violence. This has been internationally recognised under the law on refugees. The Refugee Convention 1951 covers areas relating to the status of refugees and is the key legal document in defining who is a refugee, their rights and the legal obligations of States.

The Refugee Convention defines the word ‘refugee’ under Art 1 (2) as someone who ... as a result of events occurring [and] owing to the well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

¹¹⁷UN International Day of Zero Tolerance for Female Genital Mutilation (6 February 2016) <<http://www.un.org/en/events/femalegenitalmutilationday/>> accessed 12/9/2015.

¹¹⁸joint statement of UNFPA Executive Director Dr B Osotimehin and UNICEF Executive Director Anthony Lake on the 2016 International Day of Zero Tolerance for FGM, Eliminate Female Genital Mutilation by 2030, say UNFPA and UNICEF (6 February 2016).

In order to gain protection under the refugee law, Article 1 (A) of the Refugee Convention needs to be satisfied.

There are five qualifying grounds for refugee status under the Refugee Convention. Accordingly, persecution based on any other ground will not be considered, and the person involved will not get the protection of the Convention. Therefore, the reason for persecution must be based on one of the listed grounds under Article 1 A (2) of the Convention, which are: race, religion, nationality, membership of a particular social group or political opinion.

In the absence of any expressed reference to gender-based persecution under the Refugee Convention, it is not so straightforward to determine on what grounds honour-related violence victims fall. Therefore, the issues for honour-related violence victims have been established case by case. For female genital mutilation claims, religion, nationality, membership of a particular social group and shared political opinion are the most commonly invoked grounds under the Refugee Convention 1951.¹¹⁹

However, clarification was made in 2002 by the United Nations High Commissioner for Refugees (UNHCR), which is the relevant authority responsible for supervising the implementation of the Refugee Convention, by issuing the Guidelines on the International Protection on Gender-related Persecution in relation to the status of refugees, which has

¹¹⁹UNHCR, 'Guidelines on International Protection No 2: "Membership of a particular social group" within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees', UN doc HCR/GIP/02/02 (7 May 2002) paras 7 and 11.

been at the root of honour-related violence claims.¹²⁰ The UNHCR guidelines provided that

Gender-related claims have typically encompassed, although are by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals.¹²¹

‘In most cases’ the UNHCR acknowledges and provides that ‘the potential or actual harm caused by FGM is so serious that it must be considered to qualify as persecution, regardless of the age of the claimant.’¹²² The continuing effects of female genital mutilation may also give rise to a refugee claim by someone who has already been subjected to it. The Guidance also clarifies that under certain circumstances ‘a parent could also establish a well-founded fear of persecution, within the scope of the 1951 Convention’s refugee definition.’¹²³

Further detailed consideration of the refugee claims relating to female genital mutilation was made by the UNHCR in May 2009, when a Guidance note specific to this particular practice was issued. This Guidance established that ‘a girl or woman seeking asylum because she has been compelled to undergo, or is likely to be subjected to FGM, can qualify for refugee status.’¹²⁴

This Guideline on Gender-Related Persecution noted that although gender is not specifically referenced in the refugee definition (as it is not one of the five grounds listed)

¹²⁰UNHCR Guidelines on International Protection No 1: Gender-Related Persecution Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, HCR/GIP/02/01(7 May 2002) paras 9 and 13.

¹²¹ibid.

¹²²ibid.

¹²³ibid.

¹²⁴UNHCR Guidance Note on Refugee Claims Relating to Female Genital Mutilation (Geneva May 2009) para 1.

‘it can influence or dictate the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims.’¹²⁵ Therefore, a gender sensitive interpretation should be given to each of the Convention’s grounds, and an asylum claim may be based on one or more of the Convention’s grounds. This was put into practice by Baroness Hale in the case of *Fornah* by stating: ‘The refugee definition, properly interpreted, can encompass gender-related claims. The text, object, and purpose of the Refugee Convention require a gender-inclusive and gender sensitive interpretation.’¹²⁶

Before the above mentioned UNHCR Guidelines on Gender-Related Persecution were issued, female genital mutilation was recognised as a form of gender-related persecution to make a successful asylum claim in the leading US case, *Re Fauziya Kasinga*.¹²⁷ Since then, many other states have recognised female genital mutilation as potentially giving rise to a claim to asylum. In the UK this was seen in the case of *Fornah v Secretary of State for the Home Department*.¹²⁸ In *Fornah*, the refugee claimant from Sierra Leone ran away when she heard her parents discussing her genital mutilation. If she returned to Sierra Leone, she knew she would always face the risk of genital mutilation. The Home Office rejected her claim for asylum, and argued that female genital mutilation in Sierra Leone was not persecution but a widely accepted ritual of passage from childhood to full womanhood. The House of Lords disagreed, stating that the practice ‘causes excruciating pain. It can give rise to serious long term ill-effects, physical and mental, and it is sometimes fatal’. It was ‘an extreme and cruel expression of male dominance ... and the

¹²⁵UNHCR, Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, HCR/GIP/02/01 (7 May 2002) para 6.

¹²⁶Secretary of State for the Home Department v K; *Fornah v Secretary of State for the Home Department* [2006] UKHL 46 (18 October 2006) para 84.

¹²⁷*Re Fauziya Kasinga* (1996) No A73 476 695 1996 BIA LEXIS 15 (BIA, June 13, 1996).

¹²⁸*Fornah v Secretary of State for the Home Department* [2006] UKHL 46.

authorities do little to curb or eliminate it.¹²⁹ Thus the House of Lords effectively overturned the UK Immigration and Asylum Tribunal's decision. Situating the case within the broader context of gender discrimination, Lord Bingham defined the relevant social group as either 'women of Sierra Leone' or 'intact or uninitiated women and girls who are in tribes in Sierra Leone which practice FGM.'¹³⁰

Addressing a dispute that had remained before the House of Lords in their judgment in *Shah and Islam*¹³¹ on the potential identification of a particular social group, Lord Bingham concluded that the distinguishing feature of the group in this case was not the persecution complained of, but rather the 'position of social inferiority as compared with men'¹³² within which women in Sierra Leone found themselves. The case is significant in linking the broader contexts of gender discrimination and failure of state protection, as well as establishing a link between both international and regional human rights bodies.¹³³ The *Fornah* decision was followed by *FK (Kenya)*,¹³⁴ where the refusal of the UK Tribunal to grant asylum to a woman on the basis of her fear of female genital mutilation if she were returned to her country of origin was overturned. However, in contrast, in the case of *MD (Women) Ivory Coast CG*¹³⁵ a 22 year-old woman's claim to be at risk of forced marriage and female genital mutilation failed. The Upper Tribunal stated that, while female genital mutilation remains a serious problem in Ivory Coast, particularly in the north, it is illegal, and practitioners have been prosecuted under anti-female genital mutilation legislation. The availability of adequate state protection and viable internal

¹²⁹ibid paras 31 and 6.

¹³⁰ibid per Lord Bingham of Cornhill at para 31.

¹³¹*Islam (AP) v Secretary of State for the Home Department Regina v Immigration Appeal Tribunal and Another Ex Parte Shah (AP) (Conjoined Appeals)* [1999] 2 AC 629, [1999] 2 All ER 545.

¹³²ibid.

¹³³S Mullally, 'Reforming Laws on Female Genital Mutilation in Ireland: Responding to Gaps in Protection', (2010) 32 Dublin University Law Journal 243.

¹³⁴*FK (Kenya)* [2008] EWCA 119.

¹³⁵*MD (Women) Ivory Coast CG*[2010] UKUT 215 (IAC).

relocation alternatives exists. Thus, they were satisfied that the appellant's fears were not objectively well founded.

Furthermore, the Tribunal concluded at paragraph 282 that although women in the Ivory Coast are capable of being members of a particular social group, and that the risks they are in from suffering FGM (Type 2), domestic violence and forced marriage are sufficiently serious to amount to persecutory treatment in the absence of a sufficiency of protection, the risks are not universal, and in particular are very much less likely in an urban area such as Abidjan. Furthermore, at paragraph 297 it is stated that, since the appellant herself had undergone female genital mutilation, she did not face any further risk of the same.

Therefore, the appeal was dismissed on asylum, humanitarian protection and human rights grounds for female genital mutilation and/or forced marriage. However, women and girls can become victims of female genital mutilation more than once,¹³⁶ and being an independent woman or living in a modern city does not negate the risk.

It was earlier clarified in the UK Asylum Gender Guidelines¹³⁷ that certain forms of harm are commonly or only used against women, or affect women in a manner which is different to men. These mainly include crimes of honour, such as sexual violence, societal and legal discrimination, refusal of access to contraception, bride burning, forced marriage, forced sterilisation, forced abortion, (forced) female genital mutilation and sexual humiliation. This was acknowledged by the UK Home Office, and as a result 'gender-specific persecution' was inserted into the Home Office Guidance. The wording of the Home Office Guidance provides that 'gender may inform an assessment of whether one of

¹³⁶UNHCR, 'Too Much Pain; Female Genital Mutilation and Asylum in the European Union – A Statistical Update' (March 2014) 2.

¹³⁷IAA Asylum Gender Guidelines UK (Gender Guidelines) (November 2000) 3.

the five Convention grounds does apply, i.e. race, religion, nationality, membership of a particular social group or political opinion.’¹³⁸ Thus, the relevant gender issues when assessing the persecution are listed under the same Guide concern whether:

(i) the form of persecution experienced is gender-specific or predominantly gender-specific: for example, rape and other forms of sexual violence, domestic violence, crimes in the name of honour, female genital mutilation, forced abortion and sterilization

The ways in which gender is also relevant to a woman or man’s experience of persecution include:

- i) gender-specific persecution for reasons unrelated to gender (e.g. raped because of holding or expressing a political opinion);
- ii) non-gender-specific persecution for reasons relating to gender (e.g. flogged for not adhering to the codes of a religion, e.g. refusing to wear a veil); or
- iii) gender-specific persecution because of gender (e.g. female genital mutilation).

There are many other forms of harm that are more frequently or only used against women.

These can occur in the family, the community, or at the hands of the State. They include, inter alia, marriage-related harm, violence within the family or community, domestic slavery, forced abortion, forced sterilisation, female genital mutilation, sexual violence and abuse, or rape.¹³⁹ In the absence of clear wordings of what constitutes ‘gender specific persecution’ under the Refugee Convention, the UK Home Office Guide in Asylum Claim provided some guidance on this issue. The issues around female genital mutilation fall within the scope of domestic criminal law and child protection law; however, this has now been further reinforced by its recognition in international human rights law.

Female genital mutilation is recognised as a form of gender-related persecution, and it is expressly stated in the Gender Issue in the UK Asylum Claim Guide as fully

¹³⁸UK Visas and Immigration, Gender Issues in the Asylum Claim: Process (2010) para 2.2
<<https://www.gov.uk/government/publications/gender-issue-in-the-asylum-claim-process>> accessed 10/3/2017.
¹³⁹ibid.

acknowledged by the UN.¹⁴⁰ This is a promising development for recognising and providing protection for victims and potential victims of female genital mutilation and other types of potential honour-related violence when they try to flee to safer places. In the light of the above mentioned guidance, it is fair to conclude that UK courts are aware of the fact that in cases where there is a real threat, female genital mutilation can amount to a ground for asylum.¹⁴¹

The Refugee Convention has no international supervision procedure when compared to the European Convention on Human Rights. However, a body of specialised case law has developed, in its interpretation and application by national courts, a compendium of female genital mutilation cases before the courts of different jurisdictions. Nevertheless, there is no uniformity in its approach and the result has been a patchwork of contrasting decisions.

For instance, under French refugee law, experiencing prior female genital mutilation does not amount to ‘persecution’ that can lead to a successful claim for protection being brought under the Refugee Convention.¹⁴² Future risk of female genital mutilation may under certain circumstances constitute persecution. Whether the applicant belongs to a certain social group for the purposes of the Convention is determined in each case. In some cases, the court qualifies girls as being at risk of female genital mutilation if they are members of a particular social group.¹⁴³ According to Abassade, after 2006, French immigration law

¹⁴⁰UNHCR, Guidelines on International Protection No 1: Gender-Related Persecution Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, HCR/GIP/02/01 (7 May 2002) para 6.

¹⁴¹Re E (FGM and Permission to Remove) [2016] EWHC 1052 (Fam) asylum claim failed on the grounds of lacking credibility. In the case of CM (Kenya) v Secretary of State for the Home Department [2007] EWCA Civ 312, where the claim succeeded.

¹⁴²despite the UNHCR Guidelines on International Protection No 1: Gender-Related Persecution Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, HCR/GIP/02/01 (7 May 2002) paras 9 and 13.

¹⁴³CE, 21 December 2012, No332492 and CE, 21 December 2012, No 332607.

became stricter, and fewer female genital mutilation applications succeeded in obtaining refugee status. Especially if the parents had been living in France for several years, and the girl child/children had been born in France, the claim was automatically rejected by the French Office for the Protection of Refugees and Stateless Persons (OFPRA).¹⁴⁴ The Conseil d'Etat, the highest court in France, gave a new definition of the particular social group of those children facing female genital mutilation, that these children 'share innate characteristics' which are 'perceived as being different by the surrounding society'.

Thus, their parents, simply by opposing the practice of genital mutilation on their daughters, could not be considered as forming a particular social group unless they could demonstrate that they had fears of being persecuted themselves.¹⁴⁵ However, parents could never obtain protection based upon on future risk of genital mutilation of those daughters born in France even if they alleged that they would be persecuted themselves for opposing it.¹⁴⁶ For parents to obtain refugee status (i.e. to be considered as members of a particular social group) their child would have to be born or conceived in their country of origin; also, they would have to publicly oppose female genital mutilation and be persecuted for their opposition to it. Otherwise, they would receive no protection. This has been referred to as a 'bad practice' by the European Parliament Directorate for Citizens Rights and Constitutional Affairs.¹⁴⁷ Under French refugee law, then, when determining what is a 'particular social group' for female genital mutilation cases, a subjective test applies to

¹⁴⁴OFPRA, rapport d'activite 2009, L Abassade, 'Female Genital Mutilation and the Asylum Claim in France: What Rights, What Legal Protection?' (2015) 29(3) Journal of Immigration, Asylum and Nationality Law 6.

¹⁴⁵CE 2 et 7 sous sections reunuies, 20 November 2013, No 368676; L Abassade, 'Female Genital Mutilation and the Asylum Claim in France: What Rights, What Legal Protection?' (2015) 29(3) Journal of Immigration, Asylum and Nationality Law 7.

¹⁴⁶Illustrated in cases CNDA (5 May 2014), No 14000223 and 14000224; CDDA (29 April 2014), No 12032849; CNDA (6 May 2014), No 12007648.

¹⁴⁷European Parliament Directorate General for Internal Policies, Gender-related Asylum Claims in Europe, (2012) 37.

parents while an objective test applies to girls.¹⁴⁸ This amounts to a violation of other Convention rights, because children are separated from their parents, and this is considered not to be in the child's best interest.¹⁴⁹

The UK approach is different: an asylum seeker's family life in the UK may prevent removal, but only in more exceptional cases.¹⁵⁰ Parents are put into a difficult position: either to live in the home country, with their daughters being mutilated, or to be separated from her; and this is considered exceptional enough to secure family union. This is also clarified under the UNHCR Guidance Note in 2009 that 'under certain circumstances, a parent could also establish a well-founded fear of persecution, within the scope of the 1951 Convention refugee definition, in connection with the exposure of his or her child to the risk of FGM.'¹⁵¹ As Abbassade states, referring to French cases, 'there is little justification for such discrimination ... and the position needs to be clarified in future cases.'¹⁵²

Furthermore, in the case *Matter of AT*¹⁵³ the French Board of Immigration Appeal decided that past female genital mutilation is not a basis for asylum. However, a woman who has been subject to female genital mutilation Type 1 or Type 2 may be cut again (Type 3 or 4).¹⁵⁴ Thus, female genital mutilation is not a 'one-time act' but can be repeated. The UN Special Rapporteur on Torture submitted that the pain inflicted by female genital

¹⁴⁸L Abassade, 'Female Genital Mutilation and the Asylum Claim in France: What Rights, What Legal Protection?' (2015) 29(3) *Journal of Immigration, Asylum and Nationality Law*.

¹⁴⁹Article 8 ECHR (right to family rights) the unity of the family of the refugee is a principle in international and a humanitarian law under the UNHCR. Also, the UN Convention on Rights of the Child is engaged (family reunification is a cornerstone right of a child, Article 22 (2)).

¹⁵⁰Huang v Secretary of State for the Home Department) [2007] UKHL 11.

¹⁵¹UNHCR Guidance Note on Refugee Claims Relating to Female Genital Mutilation, Geneva May 2009, para 1.

¹⁵²L Abassade, 'Female Genital Mutilation and the Asylum Claim in France: What Rights, What Legal Protection?' (2015) 29(3) *Journal of Immigration, Asylum and Nationality Law* 7.

¹⁵³*Matter of AT* 24.I & N Dec. 296 (BIA 2007).

¹⁵⁴UNHCR, 'Too Much Pain; Female Genital Mutilation and Asylum in the European Union – A Statistical Update' (March 2014) 2.

mutilation does not stop with the initial procedure, but often continues as ongoing torture throughout a woman's life.¹⁵⁵ Women and girls who have already undergone genital mutilation before they seek asylum suffer permanent and irreversible harm of genital mutilation along with its deeply traumatic consequences, which renders return to the home country intolerable.¹⁵⁶ Thus, women and girls who have already undergone genital mutilation before they seek asylum may still qualify for refugee status under the Refugee Convention if they can establish a 'well-founded fear' of persecution.¹⁵⁷ This was acknowledged in the USA case of *Bah v Mukasey* (2008).¹⁵⁸ However, in many European countries, such as France, Hungary, Malta, Romania, Spain and Sweden, past female genital mutilation is not considered as amounting to persecution in itself.¹⁵⁹ The approach to past female genital mutilation varies from state to state: for example, in Italy it depends on the individual facts of the case, and past female genital mutilation does not result in an automatic refusal of the application. In the UK it is not generally considered to constitute future risk of persecution, but this can be rebutted by objective evidence and expert reports in particular circumstances, where, for example, female genital mutilation forms part of a ritual for the applicant to become a *sowei* (a woman responsible for performing female genital mutilation).¹⁶⁰

Further female genital mutilation may also imply other forms of persecution: for instance, it may follow a forced marriage. Belgium, for instance, does recognise past female genital mutilation as part of a future risk when it is associated with other types of harm, such as

¹⁵⁵UNGA, 'Report of the Special Rapporteur Manfred Nowak on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', UN doc A/HRC/7/3 (15 January 2008) para 51.

¹⁵⁶Parliamentary Assembly of the Council of Europe (PACE), 'Report on Gender-Related Claims for Asylum', doc 12350 (26 July 2010) 12.

¹⁵⁷UNCHR, Guidance Note on Refugee Claims related to Female Genital Mutilation (May 2009) para 1.

¹⁵⁸*Bah v Mukasey*, 529 F.3d 99 (2d Cir. 2008).

¹⁵⁹European Parliament Directorate General for Internal Policies, Gender-related Asylum Claims in Europe, (2012) 37.

¹⁶⁰*ibid.*

forced marriage.¹⁶¹ In the US case of *Re Kasinga*,¹⁶² the board of Immigration Appeals found that a young woman who escaped forced marriage had a well-founded fear of female genital mutilation as a form of persecution in her home country, Togo.

Case law across countries suggests that a different approach to the definition of specific social groups is adopted in female genital mutilation cases when considering the Refugee Convention. This may end up inconsistent decisions being delivered¹⁶³ failing to protect those who really need protection from serious harm related to female genital mutilation.

3.4.2 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

Having reviewed the various responses to female genital mutilation provided by the United Nations system, it is time to look at the regional sources of international law. The ECHR is of particular relevance because it is invoked in many instances of asylum claims based on female genital mutilation. Women or girls who fear female genital mutilation might not successfully satisfy the definition of an asylum seeker under the Refugee Convention. The case law illustrates that there have been cases where women who feared female genital mutilation did not qualify as refugees under the Refugee Convention but who succeeded on human rights grounds alone and were granted subsidiary protection (called humanitarian protection in the UK).¹⁶⁴ Then they were able to make an alternative claim

¹⁶¹ibid.

¹⁶²*Re Kasinga* 21 I and N 337 (BIA 1996).

¹⁶³P J Kea and G Roberts-Holmes 'Producing victim identities: female genital mutilation and the politics of asylum claims in the United Kingdom Pamela' (2013) 20(1) *Identities: Global Studies in Culture and Power* 110.

¹⁶⁴Right to Remain, *Campaigning Toolkit: An Aid to Understanding the Asylum and Immigration System in the UK, and to Campaigning for the Right to Remain* (2nd edition, Right to Remain 2013) 50 (updated and expanded version was published in March 2016).

under the ECHR, which enables the courts to prohibit removal where an asylum seeker's return to their home country would otherwise result in a real risk of ill treatment contrary to Article 3¹⁶⁵ or a blatant breach of any other Convention right.¹⁶⁶ Thus, under the ECHR provisions an additional ground of protection, mainly in relation to removals, may be granted.

The definition of an asylum seeker is 'someone who has lodged an application for protection on the basis of the Refugee Convention or Article 3 of the ECHR', which combines two Convention rights. If the individual is found not to be a refugee under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol (the Refugee Convention), but where there is a well-founded fear of persecution or real risk of serious harm for a non-Refugee Convention reason, decision makers must consider granting Humanitarian Protection under Part 11 of the Immigration Rules.¹⁶⁷ Humanitarian protection results in the identical grant of leave and many of the same rights as conferred by refugee status. In order to qualify for humanitarian protection, a person has to face a real risk of serious harm if returned, serious harm being defined as death penalty or execution, torture or to inhuman or degrading treatment or punishment and any other serious and individual threat to a civilian.¹⁶⁸

The first Council of Europe Resolution on female genital mutilation was adopted in 2001.¹⁶⁹ The Council of Europe expressed its concerns about female genital mutilation,

¹⁶⁵see the decision in the case of *Soering v United Kingdom* Application no 14038/88 (ECtHR, 07 July 1989).

¹⁶⁶House of Lords decision in *Ullah v Special Adjudicator* [2004] UKHL 26.

¹⁶⁷Humanitarian Protection <<https://www.gov.uk/government/publications/humanitarian-protection-instruction>> (Published 15 May 2013, last updated 7 March 2017).

¹⁶⁸Considering Human Rights Claims <<https://www.gov.uk/government/publications/considering-human-rights-claims-instruction>> (Published 27 October 2009).

¹⁶⁹Council of Europe Resolution 1247 (2001) 'Female Genital Mutilation. Before this Resolution it existed only as an Awareness Campaign'; A Middelburg and A Balta, 'Female Genital Mutilation/Cutting as a Ground for Asylum in Europe' (2016) 28(3) *International Journal of Refugee Law* 416–452.

stating that it should be regarded as inhumane and degrading treatment within the meaning of Article 3 of the Convention, even if performed under hygienic conditions by competent personnel.¹⁷⁰ The Resolution emphasised the need for action by States ‘to adopt more flexible measures for granting the right of asylum to mothers and their children who fear being subjected to such practices.’¹⁷¹ However, in order to avoid patchy practices and dramatic divergences in the acceptance rate¹⁷² of asylum cases, another Resolution was passed in 2009, which stated that there were significant differences between countries with respect to the number of cases in which refugee status is granted and the number of cases in which applicants are afforded complementary protection including, inter alia, protection under the European Convention on Human Rights, subsidiary protection and other humanitarian protections.¹⁷³

Also, in some Council of Europe member states ‘up to 50%, or in some cases even more, of first instance decisions on asylum are overturned on appeal, indicating that first instance decisions are unreliable and of poor quality.’¹⁷⁴ Thus, in order to improve the quality and consistency of asylum decisions, further advice was given by this Resolution, stating that:

All asylum decisions should be guided by fundamental principles and objectives of human rights and the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, rather than by political considerations. Any asylum system needs to deal fairly, humanely and efficiently both with those in need of international protection and with those whose application in such matters has been rejected.¹⁷⁵

In 2010, another Resolution was passed to address the gender-related claims for asylum, which expressly identified, inter alia, honour crimes, forced marriage and female genital

¹⁷⁰Council of Europe, Resolution 1247: Female Genital Mutilation (2001) point 7.

¹⁷¹ibid point 11.3.

¹⁷²Council of Europe Resolution 1695: Improving the quality and consistency of asylum decisions in the Council of Europe member states (2009) point 5.

¹⁷³ibid.

¹⁷⁴ibid point 6.

¹⁷⁵ibid point 7.

mutilation.¹⁷⁶ This Resolution further reinforced women and girls' asylum seeking rights by providing that Member States should:

ensure that gender-based violence is taken into account under the five different grounds of persecution (race, religion, nationality, membership of a particular social group or political opinion) in any asylum determination process and that 'gender' is specifically included in the notion of a 'particular social group' under the refugee definition set out in the 1951 UN Convention relating to the Status of Refugees (Refugee Convention), preferably by law, or at least in practice.¹⁷⁷

Furthermore, engaging the state's obligations to non-refoulement¹⁷⁸ in relation to Article 3 of the ECHR is also relevant when considering where the risk of female genital mutilation is identified.¹⁷⁹ Since female genital mutilation falls within the broader context of gender-based violence with honour issues as its root cause, the European Court of Human Rights' decision in the case of *Opuz v Turkey* is relevant.¹⁸⁰ In *Opuz* the Court recognised gender-based violence as a form of discrimination, engaging Article 14 of the Convention.

It is difficult to make a distinction between torture and inhumane and degrading treatment, as these concepts overlap rather than being distinct from one another.¹⁸¹ Since female genital mutilation is 'most commonly performed without real consent and causes irreversible bodily changes',¹⁸² it violates women's bodily integrity and constitutes inhumane and degrading treatment. It also qualifies as torture, because it inflicts 'severe pain or suffering' on a person powerless to defend herself.¹⁸³ The European Court of Human Rights did not call female genital mutilation 'torture' explicitly, but in the case of

¹⁷⁶Council of Europe Resolution 1765: Gender-related claims for asylum (2010) point 3.

¹⁷⁷ibid point 8.1.

¹⁷⁸principle of non-refoulement under the Convention relating to the Status of Refugees 1951.

¹⁷⁹Collins and Akaziebie v Sweden Application no 23944/05 DA (ECtHR, 2007).

¹⁸⁰*Opuz v Turkey* Application no 33401/02 (ECtHR, 9 June 2009) at paras 18–202.

¹⁸¹R Sifris, *Reproductive Freedom, Torture and International Human Rights* (Routledge 2014) 232.

¹⁸²Y Hernlund and B Shell-Duncan, 'Transcultural Positions: Negotiating Rights and Culture', in Y Hernlund and B Shell-Duncan (eds) *Transcultural Bodies: Female Genital Cutting in Global Context* (Rutgers University Press 2007) 16.

¹⁸³R Sifris, *Reproductive Freedom, Torture and International Human Rights* (Routledge 2014) 240.

Collins and Akaziebie it was stated that it ‘is not in dispute that subjecting a woman to female genital mutilation amounts to ill treatment contrary to Article 3 of the Convention.’¹⁸⁴ This view has been adopted elsewhere in Europe, including in Austria,¹⁸⁵ Germany¹⁸⁶ and Belgium.¹⁸⁷ The case law thus illustrates that female genital mutilation can constitute ill treatment according to Article 3 of the Convention. Therefore, even if an applicant fails to qualify for refugee status on Refugee Convention grounds, she may qualify for protection on human rights grounds¹⁸⁸ as long as the cases satisfy the credibility and admissibility requirements.¹⁸⁹

In 2011 the Council of Europe decided to move away from policy-based, non-binding documents (mainly the Resolutions) in order to agree on a legally binding instrument. The Convention on Preventing and Combating Violence against Women and Domestic Violence 2011(also known as the Istanbul Convention) entered into force in August 2014. The Convention also makes reference to crimes of honour under Article 42, and also contains specific provision on female genital mutilation. Article 38 states that:

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a) excising, infibulating or performing any other mutilation to the whole or any part of a woman’s labia majora, labia minora or clitoris;
- b) coercing or procuring a woman to undergo any of the acts listed in point (a);
- c) inciting, coercing or procuring a girl to undergo any of the acts listed in point (a).

¹⁸⁴Collins and Akaziebie v Sweden Application no 23944/05 (ECtHR, 8 March 2007) 12.

¹⁸⁵G Z (Cameroonian citizen), 220.268/0-X1/33/00, Austrian Federal Refugee Council, Independent Federal Asylum Senate (21 March 2002).

¹⁸⁶P Tiedemann, ‘Protection Against Persecution Because of “Membership of a Particular Social Group” in German Law’, in *The Changing Nature of Persecution* (International Association of Refugee Law Judges, 4th Conference, Berne, Switzerland, October 2000) 340–50
<http://www.iarjlj.nl/swiss/en/naturepdf/tiedemann.pdf>>accessed 20/10/2017.

¹⁸⁷Jurisprudence n° 979-1239, Conseil du Contentieux des Etrangers, Belgium (25 July 2007).

¹⁸⁸CNDA, 29 July 2011, Miss O, no 10020534 and CNDA, SR, 12 March 2009, Kouyate, no 638891.

¹⁸⁹Enitan Pamela Izevbekhai and Others v Ireland (ECtHR) Application no 43408/08 (17 May 2011) where the case of a mother with two daughters claimed they would be subject to female genital mutilation if returned Nigeria, and that forced removal from the State would therefore be in breach of Article 3 of the ECHR lacked evidential credibility.

When genital mutilation is inflicted forcibly and without any medical reasons then, as well as infringing the express provisions of the Istanbul Treaty stated above, it also amounts to torture or cruel, inhumane or degrading treatment.¹⁹⁰

A review of the responses to female genital mutilation by regional actors must include those African countries that have the highest occurrence of this practice. Female genital mutilation is prohibited by Article 18 of the African Charter on Human and Peoples' Rights 1981. Article 18 of the Charter requires States to eliminate all discrimination against women. This is also echoed by Article 21 of the African Charter on the Rights and Welfare of the Child 1990. Article 21 obliges

State Parties to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular those customs and practices prejudicial to the health or life of the child; and also those customs and practices discriminatory to the child on the grounds of sex or other status.

The 2003 Protocol to the African Charter on the Rights of Women in Africa orders that State Parties should prohibit and condemn all harmful practices which infringe the human rights of women, and specifically requires States to prohibit 'all forms of female genital mutilation ... and all other practices in order to eradicate them.'¹⁹¹

Fifty countries signed and forty-one ratified the African Charter on the Rights and Welfare of the Child 1990. Despite the high number of signatories to the Charter, it is argued that the African Charter is still only minimally known and utilised in the region. Therefore, the

¹⁹⁰These activities are prohibited under the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 Article 3 as well as the International Convention Against Torture 1984 Article 2(1).

¹⁹¹Protocol to the African Charter on Human People's Rights on the Rights of Women in Africa (2003), Article 5(b).

reality of African children's circumstances is seldom reflected in the practice of the law, in research, and in the systems that are supposed to protect them.¹⁹²

Countries where female genital mutilation is widely practiced, such as Ethiopia,¹⁹³ ratified the Charter on 15 June 1998. Ethiopia's periodic report,¹⁹⁴ which combines the Initial, 1st, 2nd, 3rd and 4th Periodic Reports, and covers the period from 1998 to 2007, was submitted to the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) on 15 November 2008. Although the periodic review took place almost 17 years after the ratification of the Charter, concerns were raised about the lack of concrete legislation at the national level on female genital mutilation.¹⁹⁵

A positive step was taken by Nigeria.¹⁹⁶ At the time of the submission of its 4th Periodic Review, it stated that there was a draft Bill prohibiting female genital mutilation which was being considered by the Senate.¹⁹⁷ The law was finally passed by the Senate on 5 May 2015.¹⁹⁸ However, for countries with a high occurrence of female genital mutilation, including Egypt (91%), Guinea (97%) and Eritrea (89%), there was no report available to view. Egypt's first Periodic Report,¹⁹⁹ submitted 1 January 1991, did not mention female

¹⁹²A T Mbise, 'The Diffusion of the United Nations Convention on the Rights of the Child (UNCRC) More than the African Charter on the Rights and Welfare of the Child (ACRWC) in Africa: The Influence of Coercion and Emulation' (2017) 60(5) *International Social Work* 1238.

¹⁹³According to the UNFPA, in Ethiopia 74% women and girls aged 15–49 have undergone some type of genital mutilation <<http://www.unfpa.org/female-genital-mutilation>> accessed 20/10/2017.

¹⁹⁴African Commission on Human and Peoples' Rights, *Concluding Observations and Recommendations on the Initial, 1st, 2nd, 3rd and 4th Periodic Report of the Federal Democratic Republic of Ethiopia*, Forty-Seventh Ordinary Session 12 – 26 May 2010, Banjul, The Gambia.

¹⁹⁵African Commission on Human and Peoples' Rights, *Forty-Seventh Ordinary Session (12–26 May 2010, Banjul, The Gambia)* point 40.

¹⁹⁶According to the UN, in Nigeria 26-50% women and girls aged 15–49 have undergone some type of genital mutilation <<http://www.unfpa.org/female-genital-mutilation>> accessed 20/10/2017.

¹⁹⁷Nigeria's 4th Periodic Country Report: 2008-2010 on the implementation of the African Charter on Human and Peoples' Rights in Nigeria 7–8.

¹⁹⁸A Topping, 'Nigeria's female genital mutilation ban is important precedent, say campaigners', *The Guardian*, (29 May 2015).

¹⁹⁹The First Report of Egypt Presented to The African Committee of Human Rights Held at Nigeria During 28 February 1991 to 13 March 1991.

genital mutilation. The second Periodic Review was submitted 1 May 2010 in Arabic, but the text is not yet available on the website. Another high occurrence country, Somalia (98%), signed the Charter on 1 June 1991, but has not ratified it; another, Sudan (88%), has not signed/ratified it.²⁰⁰

However, according to Mbise, signing or even ratifying the Charter does not really mean much in reality; she submits that most African countries which have ratified and formulated major policies have rarely managed to translate them into practice. Thus, despite ratifying the African Charter on the Rights and Welfare of the Child 1990 and other international human rights instruments, many African countries still report extensive violations of children's rights. In most countries, harmful practices against children persist, such as female genital mutilation and child trafficking.²⁰¹ One of the main reasons given for such failures is the fact that social welfare departments in Africa receive the lowest budget allocations from their governments, and social workers practice in some of the most disadvantaged environments; as a result, they fail to discharge their duties effectively toward children and families.²⁰² Furthermore, it has been acknowledged that 'commitment to protection of children often involves challenging deep rooted cultural perception about children relating to ... [inter alia] traditional practices which can be harmful to children.'²⁰³

²⁰⁰United Nations, Female Genital Mutilation <<http://www.unfpa.org/female-genital-mutilation>> accessed 20/10/2017.

²⁰¹A T Mbise, 'The Diffusion of the United Nations Convention on the Rights of the Child (UNCRC) More than the African Charter on the Rights and Welfare of the Child (ACRWC) in Africa: The Influence of Coercion and Emulation' (2017) 60(5) *International Social Work* 1237 and 1239.

²⁰²*ibid.*

²⁰³J Sloth-Nielsen, 'Regional Frameworks for Safeguarding Children: The Role of the African Committee of Experts on the Rights and Welfare of the Child' (2014) 3 *Social Sciences* 949.

As Sloth-Nielsen states, there is no quick fix to this problem, and changing behaviour involves complex engagements with attitudes, values and beliefs.²⁰⁴ However, as was acknowledged by the African Commission in its latest Ordinary Session in 2018, ‘despite a few positive developments, including the recognition and increased protection of the rights of young people, the prohibition of female genital mutilation, the campaign against early and forced child marriages ... in Africa, there are still many challenges to be faced.’²⁰⁵

3.5 Breast Ironing

Breast ironing involves pounding the developing breasts of young girls with hot objects (hot stones, hammers and spatulas etc) to stop their growth. This is repeated over a period of months, in some cases permanently destroying the natural development of the breasts. Another method of achieving this is by wrapping tight elastic bandages around the chest and tightening them regularly. The purpose of breast ironing is again to control the body of a young girl and her sexuality. Since sexual activity and/or pregnancy outside marriage are perceived to tarnish the family name, honour-related patriarchal values are strong reasons behind breast ironing practices.²⁰⁶ This was encapsulated in the Adjournment debate in the House of Commons:

Breast flattening, or ironing, is carried out by the perpetrators in the belief that it makes girls less sexually attractive to men; in the certainty that mutilation of the breasts will protect young girls from sexual harassment, rape or early forced marriage; and with the confidence that the breasts of young girls can develop only if they think about sex, if a man touches their breasts, if a girl watches pornography or even if a girl visits a night club.²⁰⁷

²⁰⁴ibid 958–959; L Kartar-Hyett, ‘Simply unwilling? Is patriarchy preventing the prosecution of crimes against women in African states: a Kenyan and Ugandan perspective’(2016) 24(2) African Journal of International and Comparative Law 175.

²⁰⁵African Commission on Human and Peoples’ Rights Final Communiqué of the 62nd Ordinary Session of the African Commission on Human and Peoples’ Rights. 25 April to 9 May 2018, point 5.

²⁰⁶J A Tchoukou, ‘Introducing the Practice of Breast Ironing as a Human Rights Issue in Cameroon’ (2014) 3(3) Civil and Legal Sciences 4.

²⁰⁷J Berry MP, House of Commons Hansard, Breast Ironing (22 March 2016) Volume 607, Column 1546.

From an honour-related patriarchal point of view, breast ironing also achieves the goal of discouraging male interference with young girls and preventing girls themselves from pursuing men, deterring girls from engaging in sexual intercourse at a very young age, and reducing the risk of pregnancy.²⁰⁸

There is not much information on the origin of breast ironing. However, it is suggested that the practice perhaps evolved from an archaic practice of breast massaging.²⁰⁹ After conducting interviews with local women in Cameroon, Tapscott concluded that

Breast massage is a traditional method for correcting uneven breast size and shape, and is conducted with a heated object using similar methods to those used for breast flattening. It is also used 'to induce the flow of breast milk for a new mother or to relieve pressure during weaning. Importantly, in the case of postpartum breast massage the intent is not to crush the mammary gland, but rather to warm and massage the breast to heat and purify the breast milk.²¹⁰

However, this practice of breast massaging is now used for different purposes, causing physical and psychological harm to young girls and infringing their human rights under several international human rights instruments, which now expressly urge States to eliminate any harmful cultural and traditional practices.

Same as female genital mutilation, breast ironing is a hidden practice because it is performed by family members in the intimacy of their home. According to a UN report, 58% of cases of breast ironing are performed by the mother of the victim. Breast ironing has been identified by the United Nations as one of the five most under reported crimes relating to gender-based violence.²¹¹

²⁰⁸United Nations Population Fund (UNFPA 2000), Rights of Women: Violence against women, Breast Ironing <<http://www.friendsofunfpa.org/netcommunity/page.aspx?pid=294>> and <<http://www.unepfa.org>> accessed 22/8/2011.

²⁰⁹R Tapscott 'Understanding Breast "Ironing": A Study of the Methods, Motivations, and Outcomes of Breast Flattening Practices in Cameroon' (2012) 31 *Feinstein International Center* 5–6.

²¹⁰*ibid* 6.

²¹¹J Berry MP, House of Commons Hansard, Breast Ironing (22 March 2016) Volume 607, Column 1547.

Cases of breast ironing have been documented in Cameroon and other parts of Africa.²¹² However, while widespread in Cameroon, similar customs have been documented in Cambodia, Togo, the Republic of Guinea, South Africa and Côte d'Ivoire. The United Nations estimates that some 3.8 million teenagers are affected.²¹³ According to statistics, 26% of Cameroonian girls undergo breast ironing at puberty. The main reason behind such practices in Cameroon is a belief that 'it protects their daughters from the sexual advances of boys and men who think children are ripe for sex once their breasts begin to grow.'²¹⁴ Another research project revealed that the practice of breast ironing is less frequent in North Cameroon. The reason for that is given as the early marriage of girls. Therefore, the time and effort that is invested in maintaining girls' virginity is reduced significantly. Another reason is that the population in the North is mainly Muslim. Their religious dress code makes girls less attractive to men, because they are fully covered with loose clothes or burqas.²¹⁵

However, despite the secrecy around breast ironing, experts believe that it is endemic and practiced among the several thousand Cameroonians now living in the UK.²¹⁶ Further statistics are provided by the CAME Women and Girls Development Organisation, which estimate that up to 1,000 girls in the UK have been subjected to breast ironing. The numbers of those who have been taken abroad for breast ironing is unknown. Jake Berry MP gave an Adjournment debate speech on breast ironing in the House of Commons, in

²¹²ibid 1551.

²¹³C Lynch, 'Campaigners Warn of "Breast Ironing" in the UK', *Channel 4 News* (18 April 2014) <<http://www.channel4.com/news/breast-ironing-fgm-victim-girls-chest-cameroon-uk>>.

²¹⁴R J Sa'ah, 'Cameroon Girls Battle "Breast Ironing"', *BBC News* (23 June 2006) <<http://news.bbc.co.uk/1/hi/world/africa/5107360.stm>> accessed 11/5/2016.

²¹⁵J A Tchoukou, 'Introducing the Practice of Breast Ironing as a Human Rights Issue in Cameroon' (2014) 3(3) *Civil and Legal Sciences* 2.

²¹⁶J Berry MP, House of Commons Hansard, Breast Ironing (22 March 2016) Volume 607, Column 1547.

which he said girls in West African communities in British cities such as Birmingham and London were victims of breast ironing.²¹⁷ Furthermore, in 2014, a doctor reported a case of breast ironing in North London.²¹⁸

With regards to the health implications for the individuals, there is no comprehensive research on the full medical effects of breast ironing. Professor Anderson Doh, a cancer surgeon, confirmed that:

There are structures in the breast made of connective tissue. Now if you over-iron the breast, if you use very hot objects, if you pound on the breast at this tender age when the structures are developing of course you could also cause damage.²¹⁹

Furthermore, in 2010 a human rights report conducted on breast ironing practices in Cameroon by the US State Department²²⁰ revealed that breast ironing exposes girls to numerous health problems such as cysts, abscesses and discharge of milk. It further stated that there can be health effects such as permanent damage to milk ducts, infections, dissymmetry of the breasts, cancer, severe fever, severe chest pain, first and second degree burns, and the complete disappearance of one or both breasts.²²¹

As well as the above mentioned physical impact of breast ironing on girls, there are also a range of psychological effects. Many girls also suffer emotional distress, depression and low self-esteem after experiencing breast ironing. The mutilation of their bodies may affect

²¹⁷L Clarke-Billings, 'British Girls as Young as 10 Suffer "Breast Ironing" Procedure to Disguise Puberty' (29/3/2016) *Newsweek* <<http://europe.newsweek.com/british-girls-young-10-suffer-brutal-breast-ironing-procedure-disguise-puberty-441723>> accessed 20/6/2016. Similarly, the Birmingham breast ironing incident is raised by J Berry MP, House of Commons Hansard, Breast Ironing (22 March 2016) Volume 607, Column 1547.

²¹⁸C Lynch, 'Campaigners Warn of "breast Ironing" in the UK', *Channel 4 News* (18 April 2014).

²¹⁹A Doh, a cancer surgeon and director of the state-owned Gynaecological Hospital in Cameroon's capital, Yaounde; R J Sa'ah, 'Cameroon Girls Battle "Breast Ironing"', *BBC News* (23 June 2006).

²²⁰US Department of State, Human Rights Report: Cameroon, 2010 Country Reports on Human Rights Practices (8 April 2011).

²²¹J A Tchoukou, 'Introducing the Practice of Breast Ironing as a Human Rights Issue in Cameroon' (2014) 3(3) *Civil and Legal Sciences* 4.

them negatively in their careers, education and social affairs due to missing one breast (dissymmetry) or both breasts completely.²²² ‘Furthermore, it could result in depression or lead to withdrawal, in the sense that the child decides to close herself off from the outside world for fear of rejection.’²²³ As Tchoukou concludes, ‘in cases where breast ironing completely destroys the girl’s breasts, she is likely to become a social pariah or outcast and lose her self-confidence.’²²⁴

3.6 Breast Ironing and Domestic Law

Breast ironing is currently a largely unknown problem by the public at large and by front line public service professionals, including police forces. All police forces in the UK were asked what they were doing about breast ironing issues.²²⁵ Some police forces responded by stating that it was a worrying crime but that they lacked knowledge on the issue: 72% of the police forces that answered admitted that they had never heard of breast ironing, and 38% required more information. Although some police forces, such as West Mercia, Merseyside, Thames Valley and Hertfordshire, are said to be taking encouraging steps, generally the police do not have enough information or the tools to tackle it when they come across it. A clear example of this is the case of a woman in Birmingham who was arrested in 2011 for inflicting breast ironing on her daughter, and, after arguing that it was her cultural practice, she was released by the police instead of being charged with the offences of actual or grievous bodily harm.²²⁶ In England and Wales, in the absence of a

²²²ibid.

²²³J A Tchoukou, ‘Introducing the Practice of Breast Ironing as a Human Rights Issue in Cameroon’ (2014) 3(3) Civil and Legal Sciences 4.

²²⁴ibid.

²²⁵J Berry MP, House of Commons Hansard, Breast Ironing (22 March 2016) Volume 607, Column 1547.

²²⁶J Gosling spoke to J Berry MP and M Nyuydzewira, a campaigner against breast ironing. “‘Breast Ironing’ Ritual on the Rise’, *BBC 2* (8 March 2016).

stand-alone crime for breast ironing, the police need to rely on existing criminal offences, treating breast ironing as cruel treatment, torture, child cruelty and grievous bodily harm.

While female genital mutilation has undergone a lengthy journey through the legal system, as discussed, breast ironing is still not considered a form of mutilation under any legislation. Jake Berry has argued for double protection by asking the Government to consider the creation of a stand-alone offence for breast ironing, as well as extending the protections offered by the 2015 Act on female genital mutilation to include breast ironing.²²⁷

Breast ironing is analogous to female genital mutilation as they are both inflicted on young girls for the same purposes and cause permanent damage to their bodies. They constitute different ways to control a woman's body, sexuality and perceived attractiveness. One female genital mutilation victim and anti-female genital mutilation campaigner, Layla Hussein, emphasises the concerns around breast and sexuality as follows:

Breasts become a dangerous body part that must be removed in case they attract male attention, as if removing all signs of femininity from a girl's body could protect her from being raped. I underwent female genital mutilation for my 'safety', too. What an absurd world we live in when women's bodies are not considered safe in their natural state, and men are not considered responsible for controlling their own urges. As women, we're constantly reminded that our rights don't matter as long as our 'purity' is maintained; because that's what our family and entire society's 'honour' relies on. By keeping silent about practices such as breast ironing and female genital mutilation, we're telling girls they're not a priority. The priority is that their sexuality is controlled.²²⁸

²²⁷J Berry MP, House of Commons Hansard, Breast Ironing, (22 March 2016) Volume 607, Column 1548.

²²⁸L Hussein, co-founder of Daughters of Eve, 'Why Everyone Should Know about Breast Ironing', *Cosmopolitan Magazine UK* (26 September 2015).

3.7 Breast Ironing and International Human Rights Law

The Joint Recommendation issued by the Committees of the Elimination of Discrimination Against Women and the Committee on the Rights of the Child defines harmful practices as ‘persistent practices and forms of behaviour that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering.’²²⁹ The Joint Recommendation further highlights the impact of harmful practices as harm caused to victims that surpasses the immediate physical and mental consequences, and which often has the purpose or effect of impairing the recognition, enjoyment and exercise of the human rights and fundamental freedoms of women and children. There is also a negative impact on their dignity, physical, psychosocial and moral integrity and development, participation, health, education and economic and social status.²³⁰ The list of harmful practices in the joint recommendation includes, inter alia, ‘virginity testing, stoning, and being subjected to sexual harassment and violence such as breast ironing.’²³¹

Since they both are honour-related and inflicted on female members of the family, the discussions concerning the root causes of female genital mutilation and importance of education on gender equality are also valid for breast ironing. Undoubtedly, all international human rights law on harmful practices mentioned under female genital mutilation are also relevant for breast ironing.

²²⁹CEDAW Joint General Recommendation No 31 of the Committee on the Elimination of Discrimination against Women /General Comment No18 of the Committee on the Right of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18 (14 November 2014) 5.

²³⁰ibid points 15–19.

²³¹ibid point 9.

The above mentioned joint general recommendation provided series of recommendations in order to tackle harmful practices.²³² These included increasing awareness of the causes and consequences of harmful practices through dialogue with relevant stakeholders. The first step was identified as being ‘prevention’ by challenging the social norms that underlie and justify harmful practices, including the honour-related patriarchal values and structures that constrain women and girls from fully enjoying their human rights and freedoms. It also requires an educational curriculum to include information on human rights, including those of women and children, and on gender equality. The curriculum should ensure that schools provide age appropriate information on sexual and reproductive health and rights, including protection from violence and harmful practices. The engagement of men and boys in supporting the empowerment of women and girls is crucial because honour crimes are purely committed for the sake of satisfying the honour-related patriarchy. Until and unless men stop setting up strong expectations about the marriageability of girls, the issue will remain un-remedied.

3.8 Conclusion

Female genital mutilation and breast ironing are violent acts inflicted on girls for honour-related patriarchal reasons. The families and the community (the group) try to constrain the sexual behaviour of girls (the individual) in order to avoid any risk of damage to the honour of the group. Both of these practices interfere with the body of the girl in order to render it less capable of enjoying sexual intercourse and less sexually desirable.

²³²ibid point 55.

These forms of female body mutilation are performed by women on other women's bodies for the benefit of men. They represent a situation where a woman's only hope for survival in a society where she had no economic resources of her own was to be married. Mothers often performed the painful and sometime deadly procedure on their own daughter as a sign of love and care for their daughter's future well-being and also to maintain her own status within the family and society.²³³

Women in honour-related patriarchal communities uphold these values and take part in inflicting them on their daughters or female relatives. In cases of female bodily mutilation, the acts are performed before any of the girls are able to become a risk to the honour of the group; they are merely punished for being a girl. As such, it is striking that it is women who take the lead and perform the mutilation themselves.

It has taken a long time for these abuses suffered by women and girls at the hands of their own community to be recognised and to be acted upon nationally and internationally. The recommendations made by the Committees (on the Elimination of Discrimination against Women and the United Nations) to combat and eradicate female genital mutilation and breast ironing need to be implemented and followed by State Parties. Furthermore, the diverse approach to the application of the Refugee Convention 1951 across different countries needs to be addressed, otherwise the protection obtained under international human rights law will be completely dependent on the country where the asylum claim is made. A wide discrepancy exists between what the law requests and what is actually practiced.²³⁴ Uniform understanding of what amounts to an honour crime and a consistent

²³³S L Monagan, 'Patriarchy: Perpetuating the Practice of Female Genital Mutilation' (2009) 37 *International Research Journal of Arts and Humanities* 94.

²³⁴for instance, in some countries, such as France, Belgium and Sweden, asylum is frequently granted for FGM. However, in other states, such as Italy, there have been only a few exceptional cases. UNCHR, 'Guidance Note on Refugee Claims related to Female Genital Mutilation' (May 2009); The British policies limit the number

application of laws and policies, are the right approach towards issues around gender-based violence in particular. The harmonisation of the asylum system has not been achieved since 2009.²³⁵

An encouraging development was the Istanbul Convention, a legally binding document which emphasises that female genital mutilation can give rise to refugee status under the Refugee Convention 1951. However, there needs to be political willingness among State Parties to make a positive change.²³⁶ Furthermore, international efforts to address the practice of female genital mutilation is focused primarily on preventing the practice, with less attention being paid to treating associated health complications, caring for survivors, and engaging health care providers as key stakeholders who can help in the abandonment of the practice.²³⁷ Training programmes for health providers address how to recognise and treat female genital mutilation, as was seen in the case of Dr Dharmasena in the UK.²³⁸

In the UK, female genital mutilation has been criminalised, and awareness around breast ironing is starting to increase.²³⁹ Although breast ironing can be persecuted as grievous bodily harm under the existing law, a stronger stance would be possible if it were expressly prohibited. For this, the Female Genital Mutilation Act 2003 and Serious Crime

asylum claims see P K Kea and G Roberts-Holmes 'Producing victim identities: female genital mutilation and the politics of asylum claims in the United Kingdom Pamela' (2013) 20(1) *Identities: Global Studies in Culture and Power* 101.

²³⁵Council of Europe Resolution 'Improving the quality and consistency of asylum decisions in the Council of Europe Member States' 1695 (2009).

²³⁶for instance, the UK signed the Convention on 8th June 2012 but has not ratified it yet, as it needs to amend domestic law to take extra-territorial jurisdiction over a range of offences.

²³⁷R Khosla et al 'Gender Equality and Human Rights Approaches to Female Genital Mutilation: A Review of International Human Rights Norms and Standards' (2017) 14 *Reproductive Health* 59.

²³⁸Dr D Dharmasena's case is an unreported Southwark Crown Court case; however, it was widely reported in the media. 'First FGM Prosecution: How the Case Came to Court: Accusation against Dr Dhanuson Dharmasena Came at Time of Growing Pressure Over Failure to Bring FGM Prosecution in UK', *The Guardian* (4 February 2015).

²³⁹J Berry, a Conservative MP, House of Commons Hansard, Breast Ironing (22 March 2016) Volume 607, Column 1547.

Act 2015 could be amended to include the prohibition of breast ironing practices. Since the victims of breast ironing are very young children (aged approximately 8–16 years old), they will fail to report their families.²⁴⁰ Therefore, as well as expressly mentioning such practices in legislation, training front line professionals (health staff, teachers, social workers), police and judiciary is needed.

Even though such cruel practices are declared illegal, they continue to be socially accepted within certain communities. The statement made by the Islamic Cultural Centre of Ireland argued that both male and female circumcision are ‘part of the religion [Islam] and no-one can deny [that fact]’, and it expressed support for female *circumcision*’ once it is approved by experts.’²⁴¹ This illustrates the persistence of this mentality despite the legislative efforts to eradicate such practices. Amending the laws will send a clear message to communities that such practices are not accepted, and it will also result in such practices being identified by frontline professionals as criminal offences and tackled accordingly. This also includes adequate training of the relevant public sector professionals and raising awareness about these issues (as was discussed in the case of Dr Dharmasana). However, as well as changing the law, the long term solution to eradicating honour-related patriarchal violence in particular, and gender-based violence in general, is via appropriate education on gender equality.

This chapter has examined the bodily mutilation of young girls and women in the forms of breast ironing and female genital mutilation. The next chapter will consider how female

²⁴⁰B R Ngunshi, Gender Empowerment and Development (GeED), Breast Ironing, A Harmful Practice that has Been Silenced for Too Long (August 2011).

²⁴¹S Mullally, ‘Reforming Laws on Female Genital Mutilation in Ireland: Responding to Gaps in Protection’ (2010) 32 Dublin University Law Journal 11.

autonomy can be restricted when it is imposed upon them through forced and early marriages.

CHAPTER FOUR: Forced Marriage

4.1 Introduction

This chapter examines the issue of forced marriage. When looking at the definition of forced marriage and the reasons for it under an honour-related patriarchal point of view, the discussion around the concepts of consent and coercion is vital. The reality experienced by women when it comes to genuine consent and coercion is blurred in communities with honour-related patriarchal values. ‘Arranged marriage’ will then be introduced to illustrate the different views about these concepts of consent and the patriarchal context in which decisions are made. These complexities can be further exposed when looking at forced marriage in one of its extreme versions: that of rape leading to forced marriage, where marriage appears as a ‘remedy’ to these wrongs.

The chapter will then look at several aspects to be considered when searching for solutions. At this point it is helpful to compare forced marriage to domestic violence in order to acknowledge the peculiarities of the former. There are three perspectives that can be used to categorise forced marriage: as a cultural-ethnic issue, as a gender-based issue and as a human rights issue.¹ Each perspective has its own consequences on the possible policies to tackle forced marriage.

An overview of the relevant legislation in place in the UK will be provided, together with the corresponding advantages and disadvantages attributed to these legal remedies. Special

¹Gangoli et al ‘Understanding Forced Marriage: Definitions and Realities’ in A Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 25.

attention is given to the concept of ‘right to exit’ from an unwanted relationship and its limitations in practice. While analysing the legal context, it will be seen that the transnational aspect of many forced marriages brings the ‘immigration dimension’ into the debate about what policies are best for dealing with forced marriage. When looking for long term solutions, education and schools play an important role. Finally, the relevant international law will be reviewed. States are under obligation to uphold their duties under the international agreements that they sign up to. This includes protecting their citizens’ rights and freedoms under certain international human rights instruments, which become very relevant in the discussion of forced marriage.

A straightforward definition of forced marriage seems to provide a clear idea of this phenomenon by describing it as ‘a marriage conducted without the valid consent of one or both parties where duress is a factor.’² In this case, the concept of duress includes ‘physical, psychological, financial, sexual and emotional pressure.’³ However, as will be discussed later in this chapter, the simplicity of this definition is in stark contrast with the highly complicated reality of life in communities with honour-related patriarchal values.

In order to understand fully what motives impel these communities to impose their collective will on individuals when it comes to marriage, it is vital to understand the patriarchal point of view. The key motives can be listed as follows:⁴ controlling unwanted sexuality (particularly that of women); controlling unwanted behaviour, for example, alcohol and drug use; controlling behaving in what is perceived to be a ‘westernised manner’; preventing unsuitable

²The definition of forced marriage that the CPS uses is the definition adopted by the UK Government and the ACPO. Forced Marriage, as set out in A Choice by Right (published by HM Government in June 2000) <http://www.cps.gov.uk/legal/h_to_k/honour_based_violence_and_forced_marriage/#a02> accessed 21/5/2014.

³Multi-agency Practice Guidelines: Handling Cases of Forced Marriage (HM Government 2008).

⁴HM Multi-agency Practice Guidelines: Handling Cases of Forced Marriage (June 2014).

relationships, e.g. outside the ethnic, cultural, religious or caste group, so as to protect the family honour; responding to peer group or family pressure; attempting to strengthen family links; achieving financial gain, such as ensuring that land, property and wealth remain within the family; protecting perceived cultural ideals; and assisting claims for gaining residence and citizenship in a country.

Before moving on to discuss the concept of consent it is worth looking at a more extensive definition of forced marriage, as suggested by Dr Rude-Antoine.

[Forced marriage is]an umbrella term covering marriage as slavery, arranged marriage, traditional marriage, marriage for reasons of custom, expediency or perceived respectability, child marriage, early marriage, fictitious, bogus or sham marriage, marriage of convenience, unconsummated marriage, putative marriage, marriage to acquire nationality and undesirable marriage – in all.⁵

From the above, it can be seen that the term ‘arranged marriage’ is included as a type of forced marriage, blurring the distinction between the two and highlighting the difficulty in establishing a clear limit on the criterion of genuine consent. The suggestion here is that there is an overlap between forced and arranged marriage at the point where the ‘degree of consent’ would distinguish an arranged from a forced marriage. Likewise, it points to the fact that a marriage referred to as arranged may in fact conceal the reality of one that is forced.

An arranged marriage is one where bride and groom are chosen by family members. Batabyal acknowledges the undisputed fact that the ‘decision making process in “western love marriages” is different from those used in arranged marriages.’⁶ In most cases, families on both sides take a leading role in organising the steps that the potential bride and groom will follow in moving towards marriage, but it is ultimately up to the individual (the bride and

⁵E Rude-Antoine, *Forced Marriages in Council of Europe Member States, A Comparative Study of Legislation and Political Initiatives* (Strasbourg 2005) 7.

⁶A A Batabyal, ‘On the Likelihood of Finding the Right Partner in an Arranged Marriage’ (2001) 33(3) *Journal of Socio-Economics* 274.

groom to be) to accept and proceed with the wedding. Those involved in this matchmaking, often called ‘well-wishers’⁷ are mainly parents, but close relatives and friends may also intervene. As can be seen, the process extends to a group wider than the immediate family, becoming a community issue.

The practice of arranged marriage is considered acceptable in many communities and is more commonly referred to as introductions.⁸ Furthermore, they are acceptable to some young people because they can still exercise a degree of choice, which might include rejecting all candidates.⁹ However, the underlying reason behind arranged marriages is still the assumption that a ‘young person generally cannot be relied upon to find a suitable partner for themselves.’¹⁰ By organising an arranged marriage, the families of young people choose the potential son or daughter-in-law to be themselves. From the patriarchal point of view, by organising arranged marriages, families prevent their children from marrying an unapproved person, such as a person from a different religion, caste or race. Also, the perception is that, as a family, if they can choose a better husband or wife for their children the marriage will not end up in divorce, divorce being a very unwanted and shameful event. The arrangement or introduction may also serve to strengthen family links and long standing family commitments.¹¹ Such agreements between families to commit to entering two people into marriage may even take place before the individual bride and groom-to-be are born. For any

⁷A A Batabyal, ‘On the Likelihood of Finding the Right Partner in an Arranged Marriage’ (2001) 33(3) *Journal of Socio-Economics* 274.

⁸H Patel and R Langdale, ‘Forced Marriage: The Concept and Law’ (2009) 39(8) *Family Law Online*, *Family Law Journal* 649.

⁹B Clark and C Richards, ‘The Prevention and Prohibition of Forced Marriages: A Comparative Approach’ (July 2008) 57(3) *International & Comparative Law Quarterly* 502.

¹⁰A A Batabyal, ‘On the Likelihood of Finding the Right Partner in an Arranged Marriage’ (2001) 33(3) *Journal of Socio-Economics* 274.

¹¹M M Idriss, ‘Forced Marriages – The Need for Criminalisation?’ (2015) 9 *Criminal Law Review* 687.

party involved to subsequently retract such a promise would bring shame and dishonour to that family.¹²

The acceptance of the practice of arranged marriages has been reinforced in the UK, in the case of *NS v MI*. In this case Munby J described arranged marriage as being perfectly lawful, stating that ‘arranged marriages are to be supported as a conventional concept in many societies.’¹³ Therefore, he emphasised that arranged marriage was ‘not merely to be supported but to be respected.’¹⁴ It is worth noting, however, that Munby J, when comparing arranged and forced marriage in the case of *Singh v Entry Clearance Officer, New Delhi*,¹⁵ declared in his judgement that ‘forced marriages, whatever the social or cultural imperatives that may be said to justify what remains a distressingly widespread practice, are rightly considered to be as much beyond the pale as such barbarous practices as female genital mutilation and so-called “honour killings”’. In forced marriages, either both or one party does not consent to marriage, and there is always an element of duress. He furthermore concluded that ‘forced marriage is intolerable. It is an abomination.’¹⁶

However, there is controversy around the classification of forced and arranged marriages. Despite Justice Munby’s above mentioned statement, Bredal¹⁷ argues that there is an overlap between arranged and forced marriage, and that arranged marriage is a generic term of which forced marriage is a subcategory. Bredal further states that forced marriage is an arranged marriage which is forced upon one or both spouses against his or her wishes. Consent is thus

¹²ibid.

¹³Munby J at para 2, in *NS v MI* [2006] EWHC 1646 (Fam).

¹⁴ibid.

¹⁵Munby J in *Singh v Entry Clearance Officer, New Delhi* [2004] EWCA Civ 1075 [2005] 1 FLR 308 at para 68.

¹⁶*NS v MI* [2006] EWHC 1646 (Fam) [2007] para 4.

¹⁷A Bredal, ‘Border control to prevent forced marriages: choosing between protecting women and protecting the nation’ in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 91.

the primary distinction between forced marriage and arranged marriage.¹⁸ An arranged marriage may take the form where both parties consent voluntarily; in such circumstances there is no concern about duress and coercion. However, limited choice may be granted, such as in a case where one party is forced to choose between a couple of candidates; in such cases it amounts to a forced marriage more than an arranged marriage.

Although in an arranged marriage both spouses are supposed to give their full and free consent, the difficulty lies in the fine distinction between ‘consent’ and ‘coercion’. In the case of *Re SK*,¹⁹ Singer J identified this fine distinction as a ‘grey area’ which separates unacceptable forced marriage from traditionally arranged marriage. He further stated that ‘social expectations can themselves impose emotional pressure...arranged [marriages] may become forced but forced is always different from arranged.’²⁰

As long as both members of the couple consent voluntarily and willingly, (in theory) there is nothing wrong with arranged marriages. However, Anitha and Gill provide that ‘the complexities cannot always be explained in simple ways. There are subtle forms of coercion [which] can sometimes result in a slippage between arranged and forced marriages.’²¹ In *NS v MI* the victim’s parents threatened to kill themselves if she did not marry a man who was chosen by her parents. Here, the amount of pressure and threat imposed on the victim renders such an arrangement as a forced marriage. The court in this case granted the petitioner a decree nisi of nullity (of marriage) on the ground of duress.

¹⁸A K Gill and H Harvey, ‘Examining the Impact of Gender on Young People’s View of Forced Marriage in Britain’ (2017) 12(1) *Feminist Criminology* 96.

¹⁹ *Re SK (Proposed Plaintiff) (An Adult by way of her Litigation Friend)* [2004] EWHC 3202 (Fam), [2005] 2 230.

²⁰*ibid* para 7.

²¹S Anitha and A K Gill, ‘Coercion, Consent and the Forced Marriage Debate in the UK’ (2009) 17 *Feminist Legal Studies* 165.

4.2 Tangled Concepts of Consent and Coercion

It has already been mentioned that the main distinguishing element of forced marriages is the absence of consent. Women in honour-related patriarchal communities may face different types of oppressive and coercive forces that may pressure them to marry, such as pregnancy, poverty, sexuality and social norms and expectations underpinned by a patriarchal values.²² Bredal fully supports this view, stating that ‘attempts at understanding coercion in terms of degrees as well as both indirect and direct constraints’ are needed.²³ Welchman further supports this stating that ‘a woman’s exercise of choice and consent is at the very least complicated.’²⁴

Anitha and Gill further acknowledge that coercive control may be exercised in more subtle ways than are provided in the definition of forced marriage. Thus, ‘inequalities and specificities inherent in women’s racialised, gendered and classed location constitute specific acts of coercion in marriage.’²⁵ Furthermore, the range of constraint and/or the extent of coercive pressures that have been imposed on a victim of forced marriage might not reveal

²²S Anitha S and A K Gill, ‘Reconceptualising consent and coercion within an intersectional understanding of forced marriage’ in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 52.

²³A Bredal, ‘Border control to prevent forced marriages: choosing between protecting women and protecting the nation’ in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 102.

²⁴L Welchman, ‘Muslim Family Laws and Women's Consent to Marriage: Does the law mean what it says?’ (December 2011) 1 *Journal of the Center for the Critical Analysis of Social Difference at Columbia University, Women’s Rights, Muslim Family Law, and the Politics of Consent* 63–79. Also available at <<http://www.socialdifference.org/publications>> 21.

²⁵S Anitha S and A K Gill, ‘Reconceptualising consent and coercion within an intersectional understanding of forced marriage’ in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 55.

the total burden of coercion experienced by a woman in a real sense.²⁶ Anitha and Gill favour the use of a ‘continuum’ rather than a binary conception of consent and coercion. They argue that, since the complexity of coercion in forced marriages is an area of difficulty, basing the ‘current definitions of arranged and forced marriage on a flawed binary distinction between consent and coercion’ does not provide an accurate account.²⁷ The correct way of doing this is to conceptualise women’s experiences related to marriage as forming a continuum.²⁸ Reddy adds into this by referring to this ‘continuum’ as being a ‘grey area’ and she further submits that the cultural and contextual nature of the consent and its difference from coercion (as a matter of degree and perception) needs to be acknowledged.²⁹

Assessing agency within collectivistic decision making requires a more sophisticated and nuanced analysis when considering arranged marriages.³⁰ Young people in groups where arranged marriages are practiced are brought up differently from those which do not practice such a custom. In the culture where these young girls are raised, individual autonomy is neither appreciated nor exercised. They are considered as lacking the capacity to make individual decisions for themselves; therefore, their agreement to enter into an arranged marriage is not perceived as non-autonomous. Bredal further submits that ‘some parents in ... authoritarian patriarchal families actively prevent their children from developing a capacity for autonomy and individual choice.’³¹

Varying degrees of coercion in arrange marriages can be seen in the following ways:

²⁶ibid.

²⁷ibid 59.

²⁸ibid.

²⁹R Reddy, ‘Approaches to honour-related violence in the English legal system’ (Thesis 3143, SOAS Library) 179.

³⁰A Bredal, ‘Border Control to Prevent Forced Marriages: choosing between Protecting Women and Protecting Nation’ in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 102.

³¹ibid.

- the family forces the young woman to marry the family's chosen candidate (forced marriage);
- a candidate is proposed by the family and the young woman has the option to reject the choice, but with the expectation that another candidate will be proposed in the future, meaning that there is a time pressure, and the longer she waits the more the pressure increases. The age of the young woman will eventually render her unmarriageable, and she will eventually feel that she has to accept one of the offered candidates;
- the young woman is given a degree of freedom to choose between a few candidates proposed by the family, and she is expected to consent to one of them (more freedom but a closed list option);
- alternatively, a limitation might be set related to the ethnicity, race and religion of the candidate, i.e. young women or men being asked by their families to find someone by themselves from a certain religion or clan.

In all these versions there are varying degrees of coercion present; although in the last three there seems to be some freedom given, this is limited freedom in which consent and self-autonomy need to be exercised.

Grasping the complexity of self-autonomy within different types and levels of constraints on women and young girls is a valid consideration for arranged marriages. Since the issue of consent and coercion may become difficult to determine, Bredal submits that 'agency within arranged marriage is "grey", thus there is no distinction between forced and arranged marriage', while Anitha and Gill's continuum approach 'seeks to stretch out the fabric of agency to make sense of varying degrees of coercion as well as volition in particular arranged

marriages.³² The similar arguments become relevant when a victim of rape feels obliged to enter into a marriage (with her rapist or any other candidate the family thinks appropriate), giving her formal consent in order to prevent honour-related shame – as being a victim of rape – for her family and community.

4.3 Rape Leading to Forced Marriage

Often, rape is conceptualised in terms of the male desire to have dominance over women.³³ It is argued that rape is a mechanism for the social control of women.³⁴ Rape carries a different burden for women from honour-related patriarchal communities. It may operate in such a way that the offence is not reported because of the fear of the immense shame and stigma, or because the victim feels obliged to marry her rapist instead of reporting him and staining the family honour.

Horvath and Brown provide the fact that ‘the meaning of rape for women, within gender and generational relations and cultural contexts, underlies its several consequences in terms of emotional, psychological and social impacts.’³⁵ Gill illustrates this by giving an example from South Asian female victims who, when they become a victim of rape, experience a higher degree of shame than their white counterparts. Furthermore, they are less inclined to report abuse or rape because of the fear that they will not be believed, and/or, even if they are believed, will be punished instead of the perpetrators.³⁶ In honour-related patriarchal

³²ibid 103.

³³A K Gill, ‘Narratives of Survival: South Asian Women’s Experience of Rape’ in M A H Horvath and J M Brown (eds) *Rape: Challenging Contemporary Thinking* (Willan Publishing, 2009) 161.

³⁴C Ramazanoglu, *Feminism and the Contradictions of Oppression* (Routledge 1989) 66.

³⁵M A H Horvath and J M Brown, ‘Setting the Scene: Introduction to Understanding Rape’ in M Horvath and J M Brown in *Rape: Challenging Contemporary Thinking* (Willan Publishing 2009) 3.

³⁶A K Gill, ‘Narratives of Survival: South Asian Women’s Experience of rape’ in M A H Horvath and J M Brown (eds) *Rape: Challenging Contemporary Thinking* (Willan Publishing 2009) 162.

communities (such as South Asian), when a woman becomes a victim of rape she is likely to be socially ostracised, and may even be killed.³⁷ In such a patriarchal setting men are in a powerful position and ‘the abuser becomes untouchable, and thus women believe that reporting their abuse only puts them at greater risk.’³⁸ All these perceptions and repressions make women unable to escape the consequences of such violence. This is further reinforced by ‘their sense of powerlessness as well as their internalisation of patriarchal values.’³⁹ Therefore, rape crimes and abuses in such communities are underreported.⁴⁰

Honour in patriarchal families or communities is strongly linked to female sexuality. When a woman’s virginity or chastity are violated or her reputation is tainted, the family honour is gravely damaged: even though the woman is the victim of rape, the offence is seen to be committed against the man who is in charge of the victim’s family.⁴¹ ‘As for rape, society perceives the violated woman not as a victim who needs protection but as someone who debased the family honour, and relatives will opt to undo the shame by taking her life. Failure to do so further dishonours the family.’⁴² However, in honour-related patriarchal communities, killing the rape victim is not the only remedy for such incidents. An alternative option is to force the victim to marry her rapist.⁴³ The common idea behind this practice is that if the perpetrator marries the victim, he will start afresh, and the girl will be protected

³⁵ibid 165.

³⁸ibid 177.

³⁹ibid 169.

⁴⁰C Warrick, ‘The Vanishing Victim: criminal law and gender in Jordan.’ (2005) 39 *Law and Society Review* 320.

⁴¹S Pinker, *The Better Angels of our Nature* (Penguin 2012) 47.

⁴²Y Feldner, ‘“Honour” Murderers – Why the Perps Get off Easy’ (December 2000) 7(4) *Middle East Quarterly* 42; L Welchman, ‘Muslim Family Laws and Women’s Consent to Marriage: Does the law mean what it says?’ (December 2011) 1 *Journal of the Center for the Critical Analysis of Social Difference at Columbia University, Women’s Rights, Muslim Family Law, and the Politics of Consent* 28. Also available at <<http://www.socialdifference.org/publications>>; B Dupret, ‘Normality, Responsibility, Morality: Virginity and Rape in an Egyptian Legal Context’ in A Salvatore (ed.) *Muslim Traditions and Modern Techniques of Power*, (2001) (3) *Yearbook of the Sociology of Islam* 135 and 153.

⁴³R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018) 209.

from social stigma. This is compounded by the fact that after the rape, the potential of the victim to find a husband is diminished as her marriageability has been tarnished.

Rape victims might also be forced to marry her rapist by her family so as to clean the family's honour. Many girls, as noted earlier, feel sufficiently responsible to their families to agree to this. But if the victim refuses, she will face immense honour-related oppression: she will be ostracised and may commit or be pressurised into committing suicide.⁴⁴ She is also likely to become a victim of honour killing. Although very little choice is given to the victim, the perpetrator has better options. In some countries, the law on rape encourages the rapist to marry their victim to escape punishment.⁴⁵ In such marriages, the husbands (rapists) 'considered themselves -rather than their wives - the victim of duress in consenting to the marriage.'⁴⁶ This illustrates one of the ways in which honour values are codified within the law of honour-related patriarchal countries. Taken together, the laws, social norms and values are upheld by individuals, and they may find any of these options to be logical solutions wherever they immigrate. Thus, a rape case may be settled by forced marriage instead of being reported to police.

There has been no reported UK case where rape victims have also become victims of forced marriage. However, situations in which women and girls who became a rape victims and then attempted suicide are well illustrated by many cases that have occurred in honour-related patriarchal countries, such as in the Middle East and adjacent areas.⁴⁷ This can also be seen in

⁴⁴ibid 210–211.

⁴⁵Y Feldner, "'Honour' Murderers – Why the Perps Get off Easy' (December 2000) 7(4) Middle East Quarterly. Also see Jordanian law (Article 308) and the Turkish Bill on rape.

⁴⁶L Welchman, 'Muslim Family Laws and Women's Consent to Marriage: Does the law mean what it says?' (December 2011) 1 Journal of the Center for the Critical Analysis of Social Difference at Columbia University, Women's Rights, Muslim Family Law, and the Politics of Consent 28. Also available at <<http://www.socialdifference.org/publications>>.

⁴⁷R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018) 210.

the Moroccan case of Amina Filalia, a 15 year-old girl who was raped in Morocco by a man 10 years older than her.⁴⁸ The court then ordered/recommended (depending on the reporting source) that the couple get married so that her honour could be restored and her rapist avoid a jail sentence. She married her rapist, but shortly afterwards Amina committed suicide by taking rat poison.

Amina's tragedy shocked the Moroccan public and has compelled hundreds to take action. As well as raising the issue on social media, a march was called by the Association Marocaine des Droits de la Femme (Moroccan Association for Women's Rights) as well as other organizations. The protestors marched silently holding placards reading 'rape me, marry me', 'we are all Amina', 'Clause 457 killed me'. Such public reaction prompted the government to discuss the matter together with major feminist organizations. Two years after Amina's suicide, the House of Representatives of the Moroccan Parliament unanimously adopted, in 2014, the abrogation of the second clause of Article 475, which allowed rapists to marry their victims, in favour of a prison sentence of 1 to 5 years and a fine of 200 to 500 dirhams (equivalent of 20 to 50 US Dollars).⁴⁹

The situation was no different in other honour-related patriarchal countries, such as Jordan. Under the Jordanian law on rape, Article 308 allowed a rapist to escape punishment or legal prosecution if he married his victim and stayed married for three to five years without divorcing her through his own fault. After that time had elapsed, he was free to divorce her,

⁴⁸S Pridmore and G Walter, 'Suicide and Forced Marriage' (March 2013) 20(2) *Malays J Med Sci* 47–51. See also R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018) 212; N Mesbahi, 'The Victimization of the "Muslim Woman": The Case of Amina Filali, Morocco' (2018) 19(3) *Journal of International Women's Studies* 49–59.

⁴⁹N Mesbahi, 'The Victimization of the "Muslim Woman": The Case of Amina Filali, Morocco' (2018) 19(3) *Journal of International Women's Studies* 57– 58.

and no punishment could have then been imposed for the crime that took place prior to the marriage.

However, in 2017, the Jordanian Parliament abolished Article 308 of the Penal Code.⁵⁰ The abolition of Article 308 came after 63 women's rights organisations launched a public awareness campaign lobbying members of the House to abolish the Article.⁵¹ When abolishing Article 308 the Parliament refused the Lower House Legal Committee's recommendations of maintaining an exemption for those accused of consensual sex with a child between the ages of 15 and 17 who then agreed to marry the child. This recommendation was refused because, as well as such a recommendation contravening the Jordanian law on the legal minimum age for marriage (set at 18), it would also put pressure on girls to marry by limiting their ability to make a full, free and informed choice.⁵² 'The debate around article 308 is part of a regional move towards cancelling provisions that allow impunity for sexual assault.'⁵³

Similar changes have been made in the region by several countries. In 2017, Tunisia's Parliament abolished a similar provision in its penal code. Also, Egypt repealed Article 290 of its penal code, which, had allowed rapists or kidnappers to escape prosecution by marrying their victims in 1999.⁵⁴ The Mufti issued a fatwa stating that any virgin woman who has been raped and impregnated is allowed to have an abortion before the fourth month of pregnancy

⁵⁰Jordanian Parliament abolishes law that allowed rapists to avoid prosecution by marrying their victims <<http://www.unwomen.org/en/news/stories/2017/8/news-jordanian-parliament-abolishes-law-that-allowed-rapists-to-avoid-prosecution>> (4 August 2017) accessed 16/5/ 2019.

⁵¹R Hussein, 'In Historic Vote, House Abolishes Controversial Article 308', *Jordan Times* (1 August 2017).

⁵²Jordanian Parliament abolishes law that allowed rapists to avoid prosecution by marrying their victims <<http://www.unwomen.org/en/news/stories/2017/8/news-jordanian-parliament-abolishes-law-that-allowed-rapists-to-avoid-prosecution>> (4 August 2017) accessed 16/5/ 2019.

⁵³Jordan: Seize Opportunity to End Impunity for Rape <<https://www.hrw.org/news/2017/08/01/jordan-seize-opportunity-end-impunity-rape>> (1 August 2017) accessed 16/5/ 2019.

⁵⁴ibid.

and then her virginity can be restored. He also recognised the right to hide that she had been a victim from her future husband (unless the husband asks).⁵⁵ This acknowledged that such marriages enabled those who commit a crime to escape conviction through a fictitious marriage not founded on love and freedom of choice but on criminal conditions of violence and shame.⁵⁶

At the time of writing, in Turkey there is also a new proposed law on rape⁵⁷ which echoes the Jordan law before the 2017 amendments. The bill, if it goes ahead, would exonerate men who assault underage girls if they marry their victims.⁵⁸ In such circumstances, the rapist may choose the option of marrying the victim instead of imprisonment. Therefore, such situations put the victim under double pressure to marry to her rapist: one from her own family,⁵⁹ the other from the perpetrator. This illustrates women's powerlessness and vulnerability in honour-related patriarchal communities, from social life to the legal arena. However, despite the good efforts of countries such as Egypt, Jordan and Morocco, other countries in the region that retain similar provisions include Algeria, Iraq, Kuwait, Libya, Palestine, and Syria and globally, several Latin American countries. The Philippines, and Tajikistan are also among countries that still retain such provisions.⁶⁰

Under UK law, rape is treated as a serious offense and no discount is given to the perpetrator/s even if marriage eventually takes place. Under Section 1(4) of the Sexual

⁵⁵B Dupret, 'Normality, Responsibility, Morality: Virginity and Rape in an Egyptian Legal Context' in A Salvatore (ed) *Muslim Traditions and Modern Techniques of Power* (2001) (3) Yearbook of the Sociology of Islam 135 and 136.

⁵⁶*ibid* 141–142.

⁵⁷TC Basbakanlik, Kanunlar ve Kararlar Genel Mudurlugu, Sayi 31853594-101-1339-4059 (Tarih: 22/10/2016) <<http://www.tbmm.gov.tr/d26/1/1-0775.pdf>> accessed 12/1/2017

⁵⁸'Turkey: Thousands Protest against Proposed Child Sex Law' *BBC News* (19 November 2016)

⁵⁹R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018) 209.

⁶⁰Jordan: Seize Opportunity to End Impunity for Rape <<https://www.hrw.org/news/2017/08/01/jordan-seize-opportunity-end-impunity-rape>> (1 August 2017) accessed 16/5/ 2019.

Offences Act 2003, a person guilty of an offence under Section (1) is liable, on conviction or indictment, to life imprisonment. However, it is still too optimistic to assume that rape victims from honour-related patriarchal communities living in the UK are likely to be immune from the social pressures to marry their rapist. These incidents are very likely to occur in secrecy, without being reported, to avoid causing further shame to the family.⁶¹ Furthermore, forced marriage as a result of rape may occur when a victim is taken to the home country. This was seen in the case of a 13 year-old teenage girl who was pulled out of school and taken to Pakistan, where she was forced to marry a man who raped and abused her.⁶²

Furthermore, Karma Nirvana, the UK charitable organisation on honour crimes, has received cases where victims felt obliged to marry the perpetrator, since rape is deemed dishonourable to the family reputation.⁶³ In cases where rape victims volunteer to marry to their rapists, although this may satisfy the requirement of ‘consent’ under the Act there is no consent in a ‘real’ sense.

4.4 Forced Marriage: a UK perspective

In the UK, the Government established the Forced Marriage Unit, a joint Foreign and Commonwealth Office and Home Office unit, in January 2005. The Unit aims to lead on the Government’s forced marriage policy, outreach and casework. The Unit provides support to

⁶¹ibid 210.

⁶²‘Fears over Forced Marriage Levels’ *BBC News* (11 March 2008).

⁶³information received from Non-Governmental Organisation Karma Nirvana via e-mail (21 July 2016); N Shalhoub-Kevorkian, ‘Towards a Cultural Definition of Rape: Dilemmas in Dealing with Rape Victims in Palestinian Society’ (1999) 22(2) *Women’s Studies International Forum* 164 and 167.

any individual, whereas consular assistance is provided to British nationals, including dual nationals.⁶⁴

The Home Office's statistics show that from January to December 2014 in England and Wales, 79% of forced marriage cases involved female victims and 21% involved male victims.⁶⁵ According to the Forced Marriage Unit, forced marriage is not a problem specific to one country or culture. Since the Forced Marriage Unit was established in 2005, it has handled cases relating to over 90 countries across Asia, the Middle East, Africa, Europe and North America.⁶⁶ In 2014, this included Pakistan (38.3%), India (7.8%), Bangladesh (7.1%), Afghanistan (3%), Somalia (1.6%), Turkey (1.1%), Iraq (0.7%), Sri Lanka (1.1%) and Iran (1.0%). The origin was unknown in 3.5% of cases. In 2015, the Forced Marriage Unit gave advice or support relating to a possible forced marriage in 1,220 cases in the UK. The Forced Marriage Unit also received approximately 350 calls per month in total.⁶⁷

The above statistics support, unsurprisingly, the fact that women are in the majority among the known victims of forced marriage. Although men can also become victims, women and girls face a disproportionate level of harm from forced marriage.⁶⁸ Research that Gill and Harvey conducted revealed that men do not easily accept that they are victims of forced marriage, because of male pride and beliefs about masculinity. Instead of challenging their family arrangements, men find it easier to accept an unwanted marriage in order to avoid family conflict as they believe that 'they will later be in a position to reject the women they

⁶⁴Foreign and Commonwealth Office and Home Office, *Forced Marriage, Information and practice guidelines for professionals protecting, advising and supporting victims* (first published on 20 March 2013).

⁶⁵Home Office Forced Marriage Unit Statistics January to December 2014.

⁶⁶Home Office Forced Marriage Unit Statistics (8 March 2016).

⁶⁷*ibid.*

⁶⁸R Reddy, *'Approaches to honour-related violence in the English legal system'* (Thesis 3143, SOAS Library) 59.

are being forced to marry, or be able to lead a double life with an extramarital partner of their own choosing.’⁶⁹ Reddy summarises this by providing that although men can become victims of honour-related violence, women are still disproportionately victimised. Some men are victimised by those enjoying hegemonic masculinities however, all men will still benefit in general from the overall subordination of women.⁷⁰

The fact that forced marriage affects more women than men (77.8% female and 21.4% male victims),⁷¹ and that its effects are disproportionately severe, must be taken into account when looking for ways to prevent and remedy. In that respect, according to Gangoli et al there are three main interconnected perspectives that contribute to understanding the forced marriage debate. These three domains are the human rights field, the function of multiculturalism (particularly the role of honour-related issues) and violence against women.⁷² Each perspective has its advantages and disadvantages when trying to look for solutions.

There is no doubt that forced marriage amounts to an abuse of women’s fundamental human rights. Despite this, there is a tendency to understand forced marriage as being entirely a product of cultural differences.⁷³ However, classifying forced marriage as a cultural issue alone undermines its element of gender bias and effect. There are two main reasons supporting this view. Firstly, according to existing data, more women and girls experience forced marriage than do men and boys.⁷⁴ A study conducted in ten local authorities revealed

⁶⁹A K Gill and H Harvey, ‘Examining the Impact of Gender on Young People’s View of Forced Marriage in Britain’ (2017) 12(1) *Feminist Criminology* 79.

⁷⁰R Reddy, ‘*Approaches to honour-related violence in the English legal system*’ (Thesis 3143, SOAS Library) 61.

⁷¹Home Office, *Forced Marriage Unit Statistics 2017* (16 March 2018) 8.

⁷²Gangoli et al ‘Understanding Forced Marriage: Definitions and Realities’, in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 25.

⁷³M Enright, ‘Choice and the Politics of Belonging: The Emerging Law of Forced and Arranged Marriage’ (2009) 72(3) *Modern Law Review* 331.

⁷⁴Gangoli et al ‘Understanding Forced Marriage: Definitions and Realities’, in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 38.

that 96% of cases reported in these areas involved women and girls, whereas only 4% involved men and boys.⁷⁵ Secondly, forced marriage impacts female victims more severely than male victims. Such consequences may include sexual violence, such as rape, and post-marriage domestic violence, ranging from emotional pressure, coercion, threats, abduction and battering. All these forms of violence and abuse continue throughout the marriage, or when a victim attempts to leave the relationship.

Gill and Anitha⁷⁶ state that constructing forced marriage as a cultural problem that denotes a lack of integration threatens the existence of the domestic violence services which are capable of addressing the diverse forms of gender-based violence in the UK. According to Gill and Anitha, the perception of forced marriage as a cultural issue will undermine efforts to encourage widespread engagement, especially on the part of the Government, policy makers, and frontline service providers, with this alternative understanding of the causes of forced marriages. Furthermore, 'the politicisation of forced marriage as a cultural issue may contribute to political apathy towards other, more normalised forms of female oppression in the UK.'⁷⁷ As Enright submits, another danger of forced marriage being perceived and treated as a cultural issue will lead to inadequate attention being paid to the social and economic forces which intersect with aggravated cultural factors that restrict women's choices in marriage,⁷⁸ since 'the regulation of forced marriage is a profoundly gendered issue'.⁷⁹ Thus, the main focus should rather be on women's subordination.

⁷⁵ibid.

⁷⁶A K Gill and S Anitha, 'Forced Marriage Legislation in the UK: A Critique', in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 143– 144.

⁷⁷ibid 144.

⁷⁸M Enright, 'Choice and the Politics of Belonging: The Emerging Law of Forced and Arranged Marriage' 72(3) *Modern Law Review* (2009) 331.

⁷⁹ibid 332.

At this point it is useful to compare the concepts of domestic violence and forced marriage.

The definition of domestic violence provided by the UK Government includes forced marriages:

Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality.

This definition, which is not a legal definition, includes so-called ‘honour’-based violence, female genital mutilation (FGM) and forced marriage, and it is clear that victims are not confined to one gender or ethnic group.⁸⁰

This definition does not identify honour-related violence as a cultural issue. Furthermore, it expressly includes the experiences of women in honour-related patriarchal communities (such as forced marriage and female genital mutilation). However, the difficulty is that institutions like the judiciary or the police may still perceive it this way. Therefore, to shift the perception and interpretation of such definitions and practices in the right direction, a gender sensitive approach is needed.

Dauvergne and Millbank submit that ‘many UK governments’ responses reflect a feminist and community-informed understanding that forced marriage is a harm that is based upon power imbalances concerning gender and sexuality rather than simply being a reflection of “culture”’.⁸¹ Such a view, that the impact of a gender sensitive approach is crucial throughout the entire process, when tackling honour-related violence, and further efforts should be made until such violence is perceived and treated in the same way by all state agencies, including, most importantly, the police.

⁸⁰new definition implemented in March 2013 (updated in 8 March 2016).

<<https://www.gov.uk/guidance/domestic-violence-and-abuse>> accessed 12/12/2017.

⁸¹C Dauvergne and J Millbank, ‘Forced Marriage as a Harm in Domestic and International Law’ 73(1) *Modern Law Review* (2010) 3.

4.5 The Law on Forced Marriage in England and Wales

A brief overview of the law in England and Wales clearly shows that forced marriage is contrary to the law. The definition of forced marriage is found in the Family Law Act 1996 Section 63A,⁸² which provides that forced marriage takes place when a person is forced to marry without ‘full and free consent’. The meaning of what amounts to ‘valid force’ under Part 4 of the 1996 Act⁸³ includes threats or other psychological means.

The Matrimonial Causes Act 1973, Section 12(c) states that a marriage shall be considered void if ‘either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise.’ This is because forced marriage by its nature involves vitiating the consent of one or both parties and under this Act a nullity application must be issued before the expiry of three years from the date of the marriage.⁸⁴

Where the relief of annulment is, for whatever reason, not available, a person wishing to terminate the marriage can seek divorce. Generally speaking, divorce proceedings are considered by the victim as a last resort option in cases of forced marriage (rather than simply having had a marriage rendered void) which could have a deleterious effect on the victim’s future wellbeing and his/her ability to remarry.⁸⁵

The Human Rights Act 1998 protects the right to private and family life (Article 8) as well as the right to marry (Article 12). The right to marry is often breached in forced marriage cases,

⁸²it is inserted by Section 1 of the Forced Marriage (Civil Protection) Act 2007 (SI 2008/2779).

⁸³Part 4 of the Family Law Act 1996 (c. 27) inserted by the 63A (6) of the Forced Marriage (Civil Protection) Act 2007.

⁸⁴A M Hutchinson and T Gupta, ‘Legal Remedies for Forced Marriage in the United Kingdom’ in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 14. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

⁸⁵ibid 16.

which may occur as a reaction by the family when a young adult seeks to enter into a relationship or marriage of choice.⁸⁶ In England and Wales, there is no separate Human Rights Court and the remedies available under the Act are damages or declarations for incompatibility. However, human rights are overarching principles which influence the Courts' approach when looking at cases.⁸⁷ For example, the rights to private and family life in relation to forced marriages were cited in the cases of *Re M and B*⁸⁸ and *Re F*.⁸⁹ Forced marriage and the surrounding practices will always involve a breach of the human rights of the victim and ideally the breaches should be identified and pleaded.⁹⁰

In addition to these laws, in England and Wales specific legislation has been passed to tackle forced marriage issues: The Forced Marriage (Civil Protection) Act 2007, and subsequently the Anti-Social Behaviour, Crime and Policing Act 2014, have criminalised forced marriages.

The Forced Marriage (Civil Protection) Act 2007 aims to protect the victims of forced marriage by empowering the courts to issue Forced Marriage Protection Orders. To protect victims, the 2007 Act uses civil solutions which avoid criminalising members of their family members as perpetrators. The Court is given a wide discretion when issuing an order, whereby it can prohibit or restrict certain activity, or it may require a person to do something, such as hand over their passport.⁹¹ If a Forced Marriage Protection Order is infringed, perpetrators can be jailed for up to two years.

⁸⁶ibid 22.

⁸⁷ibid.

⁸⁸*Re M and B and A and S* (2005) EWHC 1681 (Fam) [2006] 1FLR 117.

⁸⁹*Re F* (Adult: Court's jurisdiction) 2000 2FLR 512 at p. 531.

⁹⁰A M Hutchinson and T Gupta, 'Legal Remedies for Forced Marriage in the United Kingdom' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 22.

Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

⁹¹ibid 27.

When discussing and debating the 2007 Act, the option of criminalising forced marriage was considered, but it was eventually rejected in favour of the civil approach. These arguments were raised in 2005, when a government consultation was held to discuss the potential advantages and disadvantages of creating a specific criminal offence relating to forced marriage.⁹²

There were many reasons why criminalisation was rejected at that point. It was thought that the then current criminal law was sufficient to prosecute any of the offences that often take place alongside the phenomenon of forced marriage, such as child abduction, kidnapping, confinement, false imprisonment, assault, theft, sexual offences and child cruelty offences.⁹³

Another main argument against criminalisation was that it would deter victims from asking for help, for fear that their families would be sent to prison. Furthermore, it was argued that criminalisation might lead parents to take their children from the country at an earlier age. Anitha and Gill⁹⁴ summarised the other reasons, submitting that the proposed idea of criminalising forced marriages was divorced from practice, and thus would not be effective. It would reinforce racist stereotypes and would fragment laws relevant to violence against women. As a result, before the proposal of the 2007 civil Act, the majority of the public consultation respondents (such as non-governmental organisations) decided against criminalisation.⁹⁵ Moreover, in 2000, a previous Home Office Working Group inquiry into forced marriages had concluded that no specific criminal offence was needed.⁹⁶

⁹²Home Office, *Forced Marriage: A Wrong not a Right* (London September 2005).

⁹³Foreign and Commonwealth Office, 'Forced Marriage: A Wrong not a Right', *Rights of Women* (December 2005) 1.

⁹⁴A K Gill and S Anitha, 'Reconceptualising Consent and Coercion within an Intersectional Understanding of Forced marriage', in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 51.

⁹⁵*ibid.*

⁹⁶Home Office, 'A Choice by Right' (2000) 6.

The Forced Marriage (Civil Protection) 2007 Act, as a civil remedy, aimed to provide victims with the necessary power to prevent them from becoming victims of forced marriage by applying, either directly or via a third party, to the family court for a Force Marriage Protection Order. According to Gill and Anitha, the Act provided for a more ‘victim-centred’ approach, as the victim could initiate proceedings.⁹⁷ This ‘victim-centred’ nature of the new proceedings gave victims negotiating power with their families. However, despite these discussions, forced marriage was criminalised seven years later.

The one year review of the 2007 Act,⁹⁸ a report used to summarise the effects of a particular piece of legislation during the first year of its implementation, reflected some of the shortcomings of the civil Act. For instance, the use of Force Marriage Protection Orders varied by locality, and they were underused in some areas compared to others. This might have been because of fears of approaching the courts on the victim’s side. The one year review also revealed that some government agencies were fearful, as they did not want to offend local communities. In addition, the report disclosed the fact that some local authorities had been slow to get involved, and that there was a lack of clarity about the boundaries between care proceedings under the Children Acts, the court-adjudicated protection cases, and forced marriage cases. Thus, it was concluded that the 2007 Act did not sit well with social services’ current working methods.

⁹⁷A K Gill and S Anitha, ‘The Illusion of Protection: An Analysis of Forced Marriage Legislation and Policy in the UK’ (2009) 31(3) *Journal of Social Welfare and Family Law* 257–261.

⁹⁸Forced Marriage – Home Affairs Committee Contents, the impact of legislative changes, The Forced Marriage (Civil Protection) Act 2007
<<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/88004.htm>> accessed 20/9/2016.

According to the House of Commons Home Affairs Committee's report,⁹⁹ although passing the Forced Marriage (Civil Protection) 2007 Act was a positive step forward, the Act had not reduced the numbers of forced marriages. Furthermore, the breach of a Force Marriage Protection Order was argued not to be a deterrent. Only five breaches had been recorded as of December 2010. Under the report, the lack of proper monitoring was also raised. Women's rights campaigner Jasvinder Sanghera pointed out that:

I am not aware of any other injunction in this country under which the individual is returned to the perpetrators. In these cases, forced marriage protection orders are issued to our victims, in the main minors, then those victims are returned to multiple perpetrators in that house. Once that front door closes, I am not aware of who is monitoring the implementation of that order because the named people may not be intimidating them but, believe me, there are many other family members that are. Then our victim is put under great pressure and that is a huge concern to us.¹⁰⁰

Sanghera's statement illustrates the fact that although legislation was passed, the interpretation and implementation of its provisions could completely spoil the effect of the law, as well as leave the victim in an extremely vulnerable position.

As a result of the discussions on the shortcomings of the civil remedy raised above, the new law criminalising forced marriages came into effect in June 2014 with the Anti-Social Behaviour, Crime and Policing Act 2014. The criminalisation of forced marriages sent out a clear message that forced marriage was totally unacceptable and would not be tolerated.¹⁰¹ Now, under the new Act, forcing someone into marriage or into breaching a Forced Marriage Protection Order in England and Wales would carry a maximum seven year jail sentence. The Act came into force on 16 June 2014. Since then, a number of applications and orders are made.¹⁰²

⁹⁹House of Commons Home Affairs Committee, Forced marriage, Eighth Report of Session 2010–12 (London 17 May 2011).

¹⁰⁰*ibid* 6.

¹⁰¹Home Office, Forced Marriage – A consultation summary of responses (June 2012).

¹⁰²In total, there have been 292 applications and 296 orders made up to the end of September 2018, since their introduction in July 2015. Ministry of Justice, Family Court Statistics Quarterly, England and Wales, July to September 2018 (Published on 13 December 2018) 13.

The Committee's report stated that 'it would send out a very clear and positive message to communities within the UK and internationally if it becomes a criminal act to force – or to participate in forcing – an individual to enter into marriage against their will. The lack of a criminal sanction also sends a message.'¹⁰³ In addition, it was intended that criminalisation of forced marriage should empower victims to negotiate with their parents as well as enabling perpetrators to be prosecuted easily. It should also increase the awareness of public sector employees and increase confidence in tackling forced marriages.¹⁰⁴ However, it is argued that by criminalising forced marriages, the 2014 Act has shifted the focus. As Idriss explains, 'while the focus was previously on protecting victims by allowing them to obtain injunctive relief, the focus now is also on the punishment of perpetrators.'¹⁰⁵

Idriss summarises the numerous advantages and disadvantages of the 2014 Act. Under the civil law route, the burden of seeking a civil remedy relies upon the victim 'who are the object of the practice, rather than on law enforcement or state services.'¹⁰⁶ Since forced marriage has been made a criminal offence, the police have been able to arrest a person without a court order. This advantage means that relying on Forced Marriage Protection Orders to actively prevent forced marriages in the civil courts and then pursuing the criminal route for its breach 'can also empower victims to have protection under both civil and criminal routes. Victims might feel a greater degree of protection.'¹⁰⁷ However, Idriss questions the deterrent effects of the 2014 Act:

If, over the coming years, only a small number of breaches are heard in the criminal courts, the deterrent effect of the reforms will be minimal. Worse still, if all future applicants choose to pursue

¹⁰³House of Commons Home Affairs Committee, Forced marriage, Eighth Report together with the Proceedings of the Committee of Session, The impact of legislative changes (22 March 2011) para 12.

¹⁰⁴Home Office, Forced Marriage: A Wrong not a Right, London (September 2005).

¹⁰⁵M M Idriss, 'Forced Marriages – The Need for Criminalisation?' (2015) 9 Criminal Law Review 4.

¹⁰⁶ibid 6.

¹⁰⁷M M Idriss, 'Forced Marriages – The Need for Criminalisation?' (2015) 9 Criminal Law Review 5.

breaches via the civil route, there will be no criminal hearings. If this is the case, this would severely impact on the deterrent element of the offence. This is the problem when dual civil and criminal methods of enforcement become the available options for complainants.¹⁰⁸

He furthermore asks: ‘given that before the reforms a perpetrator who breached a Forced Marriage Protection Order could be fined or imprisoned (infringing the order treated as contempt of court), was it really necessary to criminalise breaches of Forced Marriage Protection Orders, as these punitive measures had already been introduced?’¹⁰⁹ However, criminalisation of Forced Marriage Protection Orders attracts longer sentences compared to civil contempt of court penalties, therefore it sends a stronger message.

Section 121 of the 2014 Act was created to make it a criminal offence to commit behaviours such as violence, threats or any other form of coercion with an attempt to force a person into marriage. In cases where an offence was committed, perpetrators could face a maximum seven year custodial sentence on indictment.

Section 120 deals with the offence of breaching a forced marriage protection order. Under 120(2)(5)(a)¹¹⁰ it provides that a person may receive a conviction, on indictment, and be sentenced to imprisonment for up to five years. These provisions illustrate that a respondent who is already subject to a Forced Marriage Protection Order may face up to five years’ imprisonment when breaching such an order; on the other hand, a person who forces another person into a marriage but who has never been served a Forced Marriage Protection Order can receive up to seven years’ imprisonment. The sentences may seem disproportionate. As Idriss submits, ‘the sentences should be the other way around’, as the culpability of the

¹⁰⁸ibid 6.

¹⁰⁹ibid.

¹¹⁰as it amends the Family Law Act 1996 by inserting Section 63C.

former is greater than the latter, since the perpetrator of the former has been issued a Forced Marriage Protection Order and breached it.¹¹¹

The other difficulty with the criminalisation of forced marriage, deterring victims from coming forward because they will be reluctant to see their family members sent to prison, needs to be addressed. Gill and Sapnara illustrate this by the fact that already most victims of forced marriage need ‘to be reassured that the protection they seek can be obtained in the family courts, and that their families will not be prosecuted before they will agree to make a formal statement. This would not be possible if plans to criminalise forced marriage went ahead.’¹¹² This is further backed up by Gill’s report: 57% of respondents who took part in the research believed that as a result of that criminalisation it would be less likely for victims to seek help (43% disagreed).¹¹³ However, as the evidence may suggest, although prosecution might be in the public interest, cases of forced marriage should only lead to prosecution with the victim’s consent.¹¹⁴

Furthermore, ‘in the context of forced marriages and honour cultures, for victims to come forward and report their family members to the police and the stigma attached to possible custodial sentences may itself be viewed as “dishonourable”. The victim is likely to attract condemnation from the relatives and wider community.’¹¹⁵ As opposed to civil cases, which are heard privately in family courts, criminal cases are heard in a court at hearings open to the public. This can also act as deterrence to ethnic minority women, as it will be perceived as

¹¹¹M M Idriss, ‘Forced Marriages – The Need for Criminalisation?’ (2015) 9 Criminal Law Review 9.

¹¹²A K Gill and K Sapnara, ‘Forced Marriages Blight Lives, but Criminalising Them Would Not Work’, *The Guardian* (9 April 2012).

¹¹³A K Gill, ‘Exploring the Viability of Creating a Specific Offence for Forced Marriage in England and Wales: Report on Findings’, University of Roehampton (July 2011) 8.

¹¹⁴M M Idriss, ‘Forced Marriages – The Need for Criminalisation?’ (2015) 9 Criminal Law Review 8.

¹¹⁵*ibid* 7.

dishonouring the family publicly.¹¹⁶ These examples illustrate that the 2014 Act can in fact discourage victims from seek a remedy to a certain extent. Furthermore, Idriss makes an analogy with the Female Genital Mutilation Act 2003, that criminalised female genital mutilation, and which has seen its first successful prosecution only in 2019.¹¹⁷ Thus there is a fear that criminalisation of forced marriages may have no effect.¹¹⁸ However, so far two cases have reached a conviction since forced marriage has been criminalised in 2014.¹¹⁹

4.6 Right to Exit

As self-autonomous agents, adults have the right to exit from voluntary associations. These voluntary associations include marriage and any other type of emotional relationship.

However, in certain circumstances it is not easy to enforce the theory of ‘right to exit’ from abusive and/or unwanted relationships. This can be seen in extreme cases of separation or divorce where the ex-partner (mainly a man) does not want to let the other party leave the relationship.

However, exercising the right to exit from an unwanted relationship is more difficult and complex for a woman from an honour-related patriarchal community. The main reason is the fact that the woman’s wish to exercise the right to exit will trigger honour-related violence.

Women and young girls who exercise agency by refusing to marry or by seeking a divorce are marginalised and, in the worst cases, murdered under the name of honour killing.

¹¹⁶ibid 6.

¹¹⁷R v N [2019] 3 WLUK 161.

¹¹⁸ibid 7.

¹¹⁹The first conviction was secured on 23rd May 2018 and second the conviction on 29th May 2018, Family Law Week Online <<https://www.familylawweek.co.uk/site.aspx?i=ed190051>> and <<https://www.familylawweek.co.uk/site.aspx?i=ed190141>> accessed 24/11/2018.

Therefore, women from honour-related communities who seek the right to exit need to be offered an ‘effective exit’ by the authorities.¹²⁰ In some cases, the protection offered needs to be similar to those offered to gang crime victims because of the existence of community involvement in such crimes (community networks used to identify the whereabouts of the victim etc). Refusing to marry or pursuing an exit from a marriage may require abandoning family, friends, culture and community, leading to the fear of being stigmatised by her family and community. Therefore, for a woman or young girl living in a patriarchal society, the ‘inability to exit ... should not be equated with acquiescence to patriarchal values and traditions.’¹²¹

Enright examines the right of exit under the light of traditional liberal theory. She states that ‘the right of exit comes into play when liberal political theory encounters the existence of cultural minorities in the liberal state who do not subscribe to the core liberal value of respect for individual autonomy.’¹²² The right of exit encompasses the notion that a cultural practice which does not conform to the liberal ideal is not problematic in itself. It is only a proper subject for state intervention ‘if those affected by the practice do not consent to participate in it.’¹²³ Thus, according to Enright, the right of exit is a safety catch which hinges on the traditional liberal concern for autonomy, and forced marriage is a good example of that.

However, right to exit theory, which has played a central role in the emerging law on forced marriage, has brought with it two problems. Firstly, it puts culture and the rest of society in

¹²⁰Re M Minors [2002] EWHC 852 at paras 25–26.

¹²¹A K Gill and S Anitha, ‘Reconceptualising Consent and Coercion within an Intersectional Understanding of Forced Marriage’, in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 55.

¹²²M Enright, ‘Choice and the Politics of Belonging: The Emerging Law of Forced and Arranged Marriage’ (2009) 72(3) *Modern Law Review* 358.

¹²³*ibid.*

two separate and opposing zones. The main focus is on culture as a root cause, but this overlooks the myriad other forces, social, economic and political, which interconnect with the power of exit from forced marriage.¹²⁴ Furthermore, ‘exit becomes a one-way street [and while] the state strives to support a “right of exit” from culture, it does not do enough to facilitate a “right of entry” to some protected space; implicitly assuming a public sphere “beyond culture” in which all choice is free choice.’¹²⁵ The second issue is named by Enright as a duty of exit, which is ‘a duty to cast off culture as the pre-condition of full subject-hood ... there is a troubling sense in which the emancipatory potential of the right of exit is subverted, as the state intervention in the family lives of an already marginalised population gains breadth and depth.’¹²⁶

Gill and Mitra-Kahn¹²⁷ submit that the notion of right to exit underpins the UK Government’s response towards ameliorating the problem of forced marriages. By obtaining a Forced Marriage Protection Order, women and young girls have the ability to resist forced marriages and leave their communities. Therefore, it is argued that such a solution reflects the Government’s view of minority citizens as ‘other’ and ‘therefore not deserving of the right to protection within their community.’¹²⁸ Furthermore, the right to exit can only be exercised properly if the person who seeks it has her own independence. Young girls and women are often disempowered within minority communities by being deprived of education and social and economic resources. They lack resources to find out about alternative life options and criticisms of the norms of their own communities.¹²⁹ Thus there are numerous reasons

¹²⁴ibid.

¹²⁵ibid.

¹²⁶ibid.

¹²⁷A K Gill and T Mitra-Kahn, ‘Moving Toward a “Multiculturalism without Culture”’: Constructing a Victim-Friendly Human Rights Approach to Forced Marriage in the UK’, in R K Thiara and A K Gill (eds) *Violence Against Women in South Asian Communities, Issues for Policy and Practice* (Jessica Kingsley Publishers 2010) 143–145.

¹²⁸ibid 144.

¹²⁹ibid.

precluding women from exercising their right to exit in such communities. Many women in the UK, despite being victims of forced marriages, choose to remain in their own communities, as struggling to become full members of their communities is more important than the exit option.¹³⁰ Telling a woman that she has the right to exit from a family or community if she is subject to harmful practices is not a proper solution; neither is placing a woman or young girl in a position where she can choose between individual rights or cultural belonging.¹³¹

Gill and Anitha, by making reference to the Forced Marriage (Civil Protection) Act 2007, point out that ‘the UK government’s response to forced marriage focused on criminal justice interventions aimed at securing women’s exit from already contracted or threatened forced marriage, and, more recently has taken the form of injunctions aimed at preventing forced marriage.’¹³² However, women and young girls facing forced marriage experience different types of coercion.¹³³ Gill and Anitha submit that the ‘existing legislation only recognises a restricted range of forms of coercion: many of the constraints that women (especially black and minority ethnic women) face in matters of marriage are not recognised under existing laws.’¹³⁴

¹³⁰ibid 145.

¹³¹ibid.

¹³²A K Gill and S Anitha, ‘Reconceptualising Consent and Coercion within an Intersectional Understanding of Forced Marriage’, in A K Gill and S Anitha (eds) *Forced Marriage Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 55.

¹³³ibid.

¹³⁴ibid.

4.7 Schools' Involvement in the Fight against Forced Marriage

It has been highlighted how the limitations of the different legislations and the realities of life for women in highly patriarchal communities erode the options available to them when trying to exit the prospect of forced marriage. Then the question moves on to how best to avoid the issue in the first place. The potential of education is vital in this case.

Education can potentially play three roles in helping reduce the number of cases of forced marriage. Firstly, as the concepts of human rights, equality amongst the sexes, and respect for individual freedoms are taught in the classroom, the expected effect is to see future generations becoming more willing to question the practice of forced marriage. Secondly, schools are good forums to raise awareness of this issue amongst local communities, acting as places where information can be provided. Thirdly, the fact that their own institutions' administrations are meant to follow up on children who miss days of school can serve to flag when a child has gone missing and not been reported by her guardians or parents, and so potentially might be about to be forced into marriage.

At primary education level in England and Wales, in State maintained schools, there have been some efforts to include non-discrimination of genders to the curriculum, through the Equality Act 2010 and the Children and Social Work Act 2017. These Acts have prompted schools to cover Relationships Education and to provide students with the knowledge to protect their own mental and physical health, to recognise what activities and circumstances can risk these and how to seek help. These areas reinforce the idea of non-discrimination of genders, and, hence, are relevant in building an awareness in students that opposes and is resilient to the mindset at the root of honour-related violence. The No-Outsiders

programme¹³⁵ developed by a charity organisation is an example of a source of materials supporting schools in teaching the principles of equality. However, the polemic that has followed when some schools have implemented parts of the No-Outsiders programme shows the need for more robust and clear guidelines from the education authorities, so that schools are better supported in delivering these contents.¹³⁶

The idea of integrating domestic and honour-related violence and forced marriage into the curriculum was raised by research commissioned by the Home Office. The research included evaluations of domestic violence projects in schools, and indicated that for domestic violence to be addressed effectively in schools it should at least be a core feature in personal, social and health education, and preferably be included across the curriculum.¹³⁷ Information provided by the Department for Children, Schools and Families covering 14 local authority areas with a high incidence of forced marriage showed that in some schools the subject of forced marriage is not covered in social and health education.¹³⁸ Despite the Home Affairs Committee Report, there had been no serious and uniform attempt to include forced marriage into the national curriculum, which provides an understanding of democracy, government, and the rights and responsibilities of citizens, but without specific reference to forced marriages.¹³⁹

In order to improve integration and community cohesion, the civic integration agenda introduced citizenship classes as a secondary school Foundation Subject at Key Stages 3

¹³⁵A Moffat, *No Outsiders in Our School: Teaching the Equality Act in Primary Schools* (Routledge 2016).

¹³⁶'Birmingham LGBT teaching row: How did it unfold?' *BBC News* (22 May 2019).

¹³⁷House of Commons, Home Affairs Committee, *Domestic Violence, Forced Marriage and "Honour"-Based Violence*, Sixth Report of Session 2007–2008, Volume 1, para 88.

¹³⁸*ibid* para 91.

¹³⁹Statutory Guidance, *National Curriculum in England: framework for Key Stages 1 to 4*

<<https://www.gov.uk/government/publications/national-curriculum-in-england-framework-for-key-stages-1-to-4/the-national-curriculum-in-england-framework-for-key-stages-1-to-4>> accessed 4/9/2018.

(ages 11–14) and 4 (ages 14–16) in State maintained schools.¹⁴⁰ Out of the citizenship programme of the national curriculum for England, the topic on individual liberties is perhaps the one that approaches more directly the sphere of honour-related violence, such as forced marriage.

In 2017, the Children and Social Work Act introduced as compulsory the topic of relationships and sex education in State maintained secondary schools, with the objective that pupils would gain an age appropriate understanding of issues such as consent, healthy relationships, mental well-being and the importance of informed decisions.¹⁴¹ However, schools still had a wide degree of discretion about what specific content to prioritise when imparting these topics and so the risk was that they might decide not to tackle issues such as forced marriage and female genital mutilation. This potential gap has been addressed by the statutory guidance given to secondary schools which made female genital mutilation and forced marriage included as compulsory topics as part of the curriculum from September 2020.¹⁴²

The Canadian national curriculum on forced marriage provides an example of the fight against forced marriages. As a result of the persistence and frequency of its occurrence, the topic of forced marriage has gained international interest and become a subject of the United

¹⁴⁰Statutory Guidance, National Curriculum in England: framework for Key Stages 1 to 4 <<https://www.gov.uk/government/publications/national-curriculum-in-england-framework-for-key-stages-1-to-4/the-national-curriculum-in-england-framework-for-key-stages-1-to-4>> accessed 4/12/2018.

¹⁴¹Department for Education, Introduction of Statutory Relationships Education, Relationships and Sex Education and Health Education, Equality Impact Assessment and Public Sector Equality Duty (February 2019).

¹⁴²House of Lords Hansard, Female Genital Mutilation, 7 March 2019, Volume 796, Column 712; Statutory guidance on Relationships Education, Relationships and Sex Education (RSE) and Health Education (2019); School Inspection Handbook (November 2019).

Nations Human Rights Council and General Assembly.¹⁴³ In Canada, forced marriage was brought to national attention after an important study conducted by the South Asian Legal Clinic of Ontario.¹⁴⁴ There is now a high school curriculum that supports students and teachers to engage in learning and dialogue on the complex issue of forced marriage. The project was supported by various units at the University of Toronto and the Justice Department of Canada. The project appears on the websites of various NGOs in Ontario that support teacher development and frontline workers. The Curriculum Project Director, Professor Anver M Emon, states that the curriculum was designed for high school teachers situated in Ontario and speaks directly to Ontario's educational guidelines.

The curriculum introduces students to three important legal concepts that inform legal debate about youth agency under the law. The three concepts are age of majority, guardianship, and minimum marriage age.¹⁴⁵ The curriculum includes inter alia, legal information on guardianship, minimum age for marriage and information on forced marriage. It has case studies, handouts and questions which are self-reflective, and also include knowledge checking.

Although the new measures adopted by the UK and the Canadian model set a good practice, early age education is suggested as a long term solution. It was stated in a resolution of the Parliamentary Assembly by the Council of Europe, that for schools to successfully ingrain fundamental human rights, such as gender equality, these classes should be introduced at an

¹⁴³United Nations General Assembly, Human Rights Council Twenty-fourth session, Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps, A/HRC/24/L.34/Rev.1 (25 September 2013).

¹⁴⁴M Anis, S Konanur and D Mattoo, 'Who, If, When to Marry: The Incidence of Forced Marriage in Ontario', South Asian Legal Clinic of Ontario Report (August 2013).

¹⁴⁵Youth Agency and the Culture of Law: A High School Curriculum on Forced Marriage (Revised October 2015) <<http://www.anveremon.com/projects/high-school-curriculum/>> accessed 22/9/2016.

earlier stage of children's education.¹⁴⁶ 'Early age' should mean 'primary age' or even 'pre-school age'; therefore, children should grow up with the idea of respect for human rights, the belief that human rights are also women's rights, and the principles of gender equality.

Children coming from honour-related patriarchal families should have the opportunity to learn about human rights and gender equality at school as part of the curriculum. Research conducted with the support of leading thinkers in the field, such as neuroscientists and pedagogues, showed that the ideal age for providing such education is 3–5 years.¹⁴⁷ Thus, such a curriculum should be introduced into the education of the children at pre-school age. The existing education system only offers citizenship classes for the age group 11–16, which is much later than suggested: The implementation of such education should aim to enhance children's learning experiences at their 'earliest start' and ultimately influence their attitudes through their school life and beyond.¹⁴⁸

In the UK, a Home Affairs Committee Report¹⁴⁹ recommended that schools display appropriate forced marriage posters to raise awareness of what support is available. However, the response to this from schools has been patchy: for example, some schools in Oldham and Leeds do display posters about forced marriage, but other schools have refused to take action.¹⁵⁰ As a result of the concern about materials not being displayed in schools, Kevin

¹⁴⁶Council of Europe Resolution 1327 (2003) So-called 'honour crimes' 10 (ii) (c) ensure that all children are made aware of gender equality from an early age.

¹⁴⁷L Udwin, 'India's Daughter' (L Udwin's talk at the 7th World Congress on Family Law and Children's Rights, Dublin on 4–7 June 2017).

¹⁴⁸Think Equal Early Years Curriculum Framework, Written By Helen Lumgair For Think Equal (2016) 2–3. The importance of early education is also supported by inter alia, J P Shonkoff and D A Phillips, *From Neurons to Neighbourhoods: The Science of Early Childhood Development* (National Academy Press 2000) 5–6; N Rao et al Report on 'Early Childhood Development and Cognitive Development in Developing Countries' (September 2014) Faculty of Education, The University of Hong Kong 6; Early Childhood Care and Education can reduce gender and other social discrimination, Strong Foundations for Gender Equality in Early Childhood Care and Education - Advocacy Brief (2007) UNESCO Bangkok 3 and P Rochat in M Banaji and S Gelman (Eds.) *Navigating the social world: what infants, children, and other species can teach us* (OUP 2013) 209.

¹⁴⁹House of Commons, Home Affairs Committee, Domestic Violence, Forced Marriage and "Honour"- Based Violence, Sixth Report of Session 2007-2008, Volume 1, para 91.

¹⁵⁰*ibid* paras 80 and 85.

Brennan, parliamentary under-secretary of state at the Department for Children, Schools and Families, announced that his department would work with the Forced Marriage Unit to develop more ‘school-friendly’ materials and actively distribute them.¹⁵¹ Furthermore, the Committee recommended that Ofsted inspect schools on their performance in tackling domestic violence and forced marriage.

In the follow up session, an update on some schools’ and local education authorities’ refusal to display posters was provided by Nazir Afzal OBE, the Director for West London for the Crown Prosecution Service. He stated:

there are still many organisations that see the minimum standards as aspirational rather than what they are meant to be, and it is a significant view of some organisations working with victims and survivors that there are still educational institutions that do not buy into it and there are organisations that are not as open about discussing this matter and are perhaps not using the kind of information that is available from government.¹⁵²

Ms Davina James-Hanman, special adviser to the inquiry, further suggested that they set up a focus group with forced marriage and honour-related violence survivors in West London, and participants of the group went to a school where they were still not putting up posters or displaying information. Mr Alan Campbell, parliamentary under-secretary of state for Crime Reduction, provided information on whether schools’ performance in tackling domestic violence and forced marriage was incorporated into the school inspection regime. He stated that Ofsted does have a responsibility to inspect schools on their equality and safeguarding duties and therefore schools should also be held accountable for that, and that it would be made part of the inspection regime.¹⁵³ This was further echoed recently in a question in the House of Lords.¹⁵⁴

¹⁵¹ibid para 87.

¹⁵²Follow up to the Committee’s Report on Domestic Violence, Forced Marriage and Honour-Based Violence - Home Affairs Committee (9 March 2010).

¹⁵³ibid.

¹⁵⁴House of Lords Hansard, Children: Forced Marriage 10 July 2018 Volume 792, question asked by Baroness Burt of Solihull, Column 859.

The British government in 2008 reviewed the school reports to see how many pupils were missing. Hundreds of 11–13 year-old school girls had been reported missing from school, taken to their home country for forced marriage.¹⁵⁵ More recently, in October 2017, the National Children’s Bureau carried out a Freedom of Information request to establish the number of children missing education in England. It was revealed that 49, 187 children were reported as missing education in 2016/17 and that some may have been at risk of abuse and exploitation (including forced marriage).¹⁵⁶ There was no system for chasing up what had happened to those missing girls. This was acknowledged earlier by the House of Commons Home Affairs Committee in its Forced Marriage Report. The report provided that ‘Ofsted’s report last August [2010], evaluating the effectiveness of actions taken by local authorities in relation to children and young people who are missing from education, highlighted concerns around the reasons for missing education and the lack of cooperation between councils and schools.’¹⁵⁷ Further to these concerns, in June 2018, members of parliament raised questions in the House of Lords about how schools and Ofsted could become more involved in the prevention of forced marriage.¹⁵⁸

4.8 Immigration Dimension of Forced Marriages

Many forced marriage incidents involve an international element, where a British citizen or someone settled in the UK marries a person from a country outside the European Union.

¹⁵⁵Nazir Afzal OBE, Chief Crown Prosecutor of the Crown Prosecution Service (CPS) for North West England from 2011–15, ‘Why Are UK Authorities Ignoring Honour Killing?’ YouTube video uploaded on 9 December 2013. Further cited in BBC News ‘Thousands of children “missing” from education’ (30 November 2016).

¹⁵⁶Children missing education <<https://www.ncb.org.uk/resources-publications/resources/children-missing-education>> accessed 10/9/2018.

¹⁵⁷House of Commons Home Affairs Committee, Forced marriage, Eighth Report of Session 2010–12 (London 17 May 2011) 12.

¹⁵⁸House of Lords: Schools can do more to tackle forced marriage (12 July 2018) <<https://www.youtube.com/watch?v=r-yuVcOQbUs&t=8s>> accessed 2/9/2018.

These types of marriages are called transnational marriages. In a transnational marriage, a spouse needs an entry visa to join her/his spouse in the UK. As a result of this, forced marriage cases may contain an immigration dimension.

The issue of forced marriage has been used as a justification to change the immigration rules.¹⁵⁹ Gupta expresses the view, that the issue of forced marriage is used 'in a cynical way to create a moral panic to justify the government's immigration agenda'.¹⁶⁰ Gill and Anitha support this view by stating that 'the legal remedies to forced marriage available to women in the UK have less to do with the human rights of minority women, and more to do with the policing of minority communities and the patrolling of the nation's border',¹⁶¹ which reflects public institutions' preferences in relation to gender-based violence. These concerns were raised by Gill and Mitra-Kahn earlier, when the Forced Marriage (Civil Protection) 2007 Act was on the agenda, where they strongly criticised the numerous government consultations which culminated in the introduction of the 2007 Act. Gill and Mitra-Kahn argued that 'each consultation document was clearly dissociated from a violence against women agenda, and it was instead aligned with the issue of immigration, a vilification of multiculturalism, an unquestioning acceptance of the theory of community cohesion and the continual Othering of minority communities.'¹⁶² The civil remedies recommended by the Government, such as marriage visas and English language requirements, were intended to show that the concerns were on immigration issues as opposed to gender rights, Gill and

¹⁵⁹M Chaudhry, 'Legislative Comment, An Introduction to the Forced Marriage (Civil Protection) Act 2007' (2010) 24(2) *Journal of Immigration Asylum and Nationality Law*.

¹⁶⁰R Gupta, 'Mere Posturing from the Tories on Forced Marriage', *The Guardian* (11 October 2011).

¹⁶¹A K Gill and S Anitha, 'Reconceptualising Consent and Coercion within an Intersectional Understanding of Forced Marriage' in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 49.

¹⁶²A K Gill and T Mitra- Kahn, 'Moving toward a "Multiculturalism without Culture": Constructing a Victim-Friendly Human Rights Approach to Forced Marriage in the UK' in R K Thiara and A K Gill (eds) *Violence Against Women in South Asian Communities, Issues for Policy and Practice* (Jessica Kingsley Publishers 2010) 129.

Mitra-Kahn believe. Furthermore, ‘the framing of forced marriage as an immigration problem is perhaps not surprising given its context following the terrorist attacks of 11 September 2001’,¹⁶³ when the movements of immigrants became a concern.

Extra border controls have certainly been introduced in the name of tackling forced marriage.¹⁶⁴ Since forced marriage is identified as an issue connected to minority ethnic groups in the UK, a minimum age requirement has now been brought in for transnational spouses. In 2008, the age of entry for spouses from outside the European Union was raised to 21 to provide extra time for young people to resist family pressure to marry. Previously in the UK, in December 2004, the minimum age had been raised from 16 to 18. One effect of such measures had led to transnational marriages being blamed for the persistence of a migration culture.¹⁶⁵ Furthermore, the increase in the spousal entry visa age operates discriminatorily, as it targets certain communities and so reduces immigration selectively. Increasing the age ban to 21 would not address the issue, as forced marriage can take place at any age.

Eventually, the decision was challenged by the Supreme Court¹⁶⁶ on grounds of infringement of Article 8 of the European Convention on Human Rights and the Fundamental Freedoms Act 1950, and the entry age was reverted to 18. The Supreme Court stated that the ban on the entry for settlement of foreign spouses or civil partners unless both parties were aged 21 or over, contained in Paragraph 277 of the Immigration Rules, was not a lawful way of tackling and/or preventing forced marriages.

¹⁶³ibid135.

¹⁶⁴L Abu Lughod, ‘Seductions of the “Honour Crime” Differences’, *A Journal of Feminist Cultural Studies* (22 January 2011) 42–43.

¹⁶⁵A K Gill and S Anitha, ‘The Social Construction of Forced Marriage and its “Victim” in Media Coverage and Crime Policy Discourses’ in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 123.

¹⁶⁶R (Quila and another) v Sec of State for the Home Dept [2011] UKSC 45.

Prior to the Forced Marriage (Civil Protection Act) 2007 Act, the Family Division of the High Court had used its inherent jurisdiction when tackling forced marriage issues and providing protection for forced marriage victims.¹⁶⁷ The passing of the Act established a statutory authority for forced marriage proceedings. However, the Act has not replaced the inherent jurisdiction of the High Court, which is employed in many forced marriage cases.¹⁶⁸ Munby J, in his judgment, summarised the court's inherent jurisdiction by citing Singer J and declared that 'the [inherent] jurisdiction must evolve in accordance with social needs and values [of the social environment] ... there is probably no theoretical limit to the jurisdiction.'¹⁶⁹

A clear example of this was seen in the unreported case of Dr Humayra Abedin.¹⁷⁰ Abedin came to Britain to study, and now works as a doctor for the National Health Service, but went to Bangladesh after being falsely told her mother was ill. She was captured for four months, and said she spent much of this time interned in a psychiatric hospital being given anti-psychotic drugs and mood stabilisers against her will. She was always monitored by four or five guards and was not free to leave the facility. Her passport, tickets and other documents were taken away from her. While in captivity, Dr Abedin managed to send an email to a friend asking for help. On 14 November 2008, nine days after of her capture, Dr Abedin was forced to marry a man chosen by her parents despite her objections.¹⁷¹

¹⁶⁷See cases, inter alia, *Sheffield City Council v E* [2004] EWHC 2808 (Fam), [2005] Fam 326, Re SK (Proposed Plaintiff) (An Adult by way of her Litigation Friend) [2004] EWHC 3202 (Fam), [2005] 2FLR 230.

¹⁶⁸M Chaudhry, 'Legislative Comment, An Introduction to the Forced Marriage (Civil Protection) Act 2007', (2010) 24(2) *Journal of Immigration Asylum and Nationality Law*.

¹⁶⁹Re SA [2006] EWHC 2942 (Fam) para 45.

¹⁷⁰P Walker, 'NHS Doctor Saved from Forced Marriage Gets Court Safeguards', *The Guardian* (19 December 2008).

¹⁷¹*ibid*; A K Gill and A Sundari, 'Forced marriage legislation in the UK: a critique' in A K Gill and S Anitha (ed) *Forced Marriage Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 151.

As Dr Abedin's case clearly shows, most cases of forced marriage involve women or young girls being induced or put under duress by their family to travel to the family's country of origin. Once they arrive there, they then find out that they are going to be a victim of a forced marriage. This is seen in Hindu, Muslim and Sikh communities in Britain.¹⁷² British nationals have the right to seek consular protection when they need it while abroad. This is often sought with regard to cases involving detention, child abduction and forced marriage.

However, dual nationals can face legal obstacles when seeking consular protection. Under international law, the Nationality Convention 1930,¹⁷³ it is provided that 'A state may not afford diplomatic protection to one of its nationals against a state whose nationality such person also possesses'. The UK ratified the Convention, which entered into force in 1937.

This position is reflected to a certain level in the leaflet issued by the Foreign and Commonwealth Office, which states that normally the office does not help dual nationals when they are in the country of their other nationality. The leaflet further sets out that:

If you are a dual British national in the country of your other nationality (for example, a dual US-British national in the US), we would not normally offer you support or get involved in dealings between you and the authorities of that state. We may make an exception to this rule if, having looked at the circumstances of the case, we consider that you are particularly vulnerable. These circumstances might include cases involving a murder or manslaughter, children, forced marriages or an offence which carries the death penalty. However, the help we can provide will depend on the circumstances and the country of your other nationality agreeing to it.¹⁷⁴

This position is echoed in the Foreign and Commonwealth Office's leaflet on child abduction, which states: 'If your child has been taken to the country of their second nationality, the authorities there may view your child as a national of that country. This may limit what we can do to help.'¹⁷⁵

¹⁷²Home Office, 'A Choice by Right: Report of the Working Group on Forced Marriage' (June 2000).

¹⁷³Convention on Certain Questions relating to the Conflict of Nationality Laws 1930 (Nationality Convention) Article 4.

¹⁷⁴Foreign and Commonwealth Office, Consular Services Abroad, 'Support for British Nationals Abroad: A guide' (2014) 5.

¹⁷⁵Foreign and Commonwealth Office, International Parental Child Abduction Guide (2013) 6.

However, as Hossain and Turner¹⁷⁶ point out, much has changed since 1937, as customary law has evolved in this area since then. Under the rules of customary law, when tackling such cases involving dual nationals, the dominant and effective nationalities of citizens are established. By doing so, the state to which the individual has the greatest ties may provide individual consular protection, regardless of whether or not the person is a dual national.¹⁷⁷ Many states give diplomatic protection to their dual nationals, even when they are in the other state. However, the trans-national nature of the issues around abduction and forced marriage illustrates that active dialogue, co-operation and collaboration between the states concerned is needed.¹⁷⁸

4.9 Early Marriages

Early marriages are also called child marriages, where one or both parties to a marriage are below the legal age of consent. Personal Protection Orders under the Family Law Act 1996 are relevant when considering the protection of minors. Under the Children Act 1989 proceedings, the Court has power to make orders to prevent molestation or interference with the child. These are known as Family Law Act 1996 Personal Protection Orders and sometimes these orders will run in tandem with the 1989 Children Act's provisions (such as Emergency Protection Orders).¹⁷⁹ The High Court has an inherent jurisdiction to make orders in respect of children, in addition to its statutory powers. The High Court's inherent

¹⁷⁶S Hossain and S Turner, 'Abduction for Forced Marriage – Rights and Remedies in Bangladesh and Pakistan' (2001) 1(64) *International Family Law* 15–24 <<http://www.soas.ac.uk/honourcrimes/resources/file55687.pdf>> accessed 11/11/2016.

¹⁷⁷*ibid.*

¹⁷⁸*ibid.*

¹⁷⁹A M Hutchinson and T Gupta, 'Legal Remedies for Forced Marriage in the United Kingdom' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 44. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

jurisdiction runs in tandem and co-exists with its statutory powers, for example under the Children Act 1989.¹⁸⁰

Thus, forced marriage is generally perceived as encompassing child marriage because minors are considered to be incapable of giving informed consent.¹⁸¹ According to a Forced Marriage Unit statistic, 27% of forced marriages in 2015 involved children under the age of 18.¹⁸²

In 2008, the year that the Forced Marriage (Civil Protection) Act came into force, Kevin Brennan, minister of state at the Department for Children, Schools and Families, told the Home Office Select Committee that in Bradford, 33 schoolgirls were registered as missing from West Yorkshire schools.¹⁸³ More recently, in the 2014–2015 academic year, local education authority figures showed that more than 30,000 children were reported missing from schools in England and Wales for substantial periods of time. Almost 4,000 of these children could not be traced by the authorities.¹⁸⁴

As explained above, secondary school children who are reported missing are very likely to have been taken to the country where their parent or grand parents came from and become victims of forced marriage.¹⁸⁵ This clearly involves early marriages and, just like forced marriages, infringes several legislations. According to the Education Act 1996, Section 444(1), failure to secure regular attendance at school of a registered student is an offence.

¹⁸⁰*ibid.*

¹⁸¹AK Gill and S Anitha, 'Framing Forced Marriage as a Form of Violence against Women' in *Forced Marriage, Introducing a Social Justice and Human Rights Perspective* (Zed Books Ltd 2011) 6.

¹⁸²Forced Marriage Unit Statistics for 2015 (published on 8 March 2016).

¹⁸³House of Commons, Home Affairs Committee, Domestic Violence, Forced Marriage and 'Honour'-Based Violence, Sixth Report of Session 2007–2008, Volume 1 para 155.

¹⁸⁴D Talwar, BBC Victoria Derbyshire programme, 'Thousands of Children "Missing" from Education' *BBC News* (30 November 2016).

¹⁸⁵Chief Crown Prosecutor of the Crown Prosecution Service (CPS) for North West England from 2011–15, 'Why are UK authorities ignoring honour killing?' (YouTube video uploaded on 9 December 2013).

Again, under the Child Abduction Act 1984, Section 1(1) and the Children and Young Person Act 1933, Section 1(1), perpetrators can be charged with offences of child abduction and cruelty to a person under the age of 16.

Furthermore, under the Children Act 1989, Section 44, if a child is threatened with forced marriage this can be challenged by anyone who makes an application for an Emergency Protection Order. Initially, the order lasts for only eight days, but it can be further renewed for seven days. In such circumstances, where parents are considered a threat to a child an interim care order may follow an Emergency Protection Order under Sections 13 and 38. If there is a risk of a child being taken abroad for a forced marriage, a Prohibited Steps Order can be obtained by a local authority (with *locus standi*) under the inherent jurisdiction of the High Court¹⁸⁶ to prohibit the removal of the child from the country without the permission of the court under Section 8. In addition to the protection offered by the Children Act 1989, minors also have protection under the Forced Marriage (Civil Protection) Act 2007. In the case of *RU*, a Forced Marriage Protection Order was granted for a 16 year-old girl.¹⁸⁷

4.10 Forced Marriage and International Human Rights Law

The fact that the choice of whom to marry is a matter of the self-determination of the individual has been acknowledged by several key international human rights instruments as a fundamental human right.¹⁸⁸ The Universal Declaration of Human Rights 1948, Article 16(2)

¹⁸⁶A M Hutchinson and T Gupta, 'Legal Remedies for Forced Marriage in the United Kingdom' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 25. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

¹⁸⁷*Bedfordshire Police Constabulary v RU & Anor* [2013] EWHC 2350 (Fam) (the citation reflects further court action brought upon breach of Forced Marriage Protection Order).

¹⁸⁸A M Hutchinson and T Gupta, 'Legal Remedies for Forced Marriage in the United Kingdom' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 22. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

states: ‘Marriage shall be entered into only with the free and full consent of the intending spouses.’ This is echoed by treaties such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962, Article 1(1) and the International Covenant on Civil and Political Rights 1966, Article 23(3). This language of ‘free consent’ in marriage is also reflected in the International Covenant on Economic, Social and Cultural Rights 1966, Article 10(1). The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 also uses the more limited language of ‘free consent’ in Article 10(1).

In 1954, the United Nations General Assembly adopted its first resolution urging all States to ‘abolish such customs, ancient laws and practices by ensuring complete freedom in the choice of a spouse’ for forced and early marriage.¹⁸⁹

The UN Human Rights Committee monitors the implementation of the International Covenant on Civil and Political Rights 1966 by its States Parties. The Covenant states under Article 23(3) that no marriage shall be entered into without the free and full consent of the intending spouses. Under the Optional Protocol to this Covenant, Article 2, individuals who claim that any of their rights enumerated in the Covenant have been violated, and who have exhausted all available domestic remedies, may submit a written communication to the Committee for consideration.

The decisions of the Human Rights Committee in several cases have illustrated that forced marriage claims have more chances to succeed if coupled with other claims. In the case of

¹⁸⁹United Nations General Assembly Resolution, Status of Women in Private Law: Customs, Ancient Laws and Practices Affecting the Human Dignity of Women, 843 (IX) point 1 (17 December 1954). Echoed its concerns in recent Resolutions adopted by the General Assembly on 18 December 2014, A/RES/69/156 (22 January 2015). United Nations General Assembly Resolution, Child, Early and Forced Marriage, A/RES/71/175, adopted by the General Assembly on 19 December 2016 (23 January 2017).

AA,¹⁹⁰ the author (applicant) claimed that her removal from Canada to Iran would put her risk of stoning, or she would become a victim of a forced marriage. The author declared that she had a relationship in Iran with a man who was going to divorce her, but he was in fact still married. As a result, she was arrested by the Iranian police and detained for four days and subjected to threats of violent punishment, including stoning. While she was in detention, her cousin, who had position and influence as a high-ranking colonel, offered to help to secure her release; in return, the author claimed that she was told that she had to be given to him as a second wife. The author's application was declared to be inadmissible. The Committee observed that the evidence she provided was insufficient to substantiate the facts on which the risks invoked were based, and that the author's allegations therefore lacked credibility (the existence of her cousin, and her delay in leaving Iran and claiming asylum in Canada).

On other forced marriage claims, the Human Rights Committee delivered a list of views which it asked State Parties to adopt when considering their cases. In *M.I.*¹⁹¹ the Committee requested the State Party to refrain from expelling the applicant to Bangladesh while her request for asylum was under consideration. The deportation of *M.I.* (as a victim of an arranged heterosexual marriage, though she was a lesbian) to Bangladesh exposed her to risk of persecution because of her sexual orientation. However, although the *M.I.* case was a success, it is important to note that in such cases the credibility of the claims may become an issue.¹⁹²

As seen above, as well as examining complaints with regard to alleged violations of the Covenant by State Parties, the Human Rights Committee addressed the issue of forced

¹⁹⁰A A (Canada) CCPR/C/103/D/1819/2008, paras 2.1 and 2.2.

¹⁹¹M I (Sweden) CCPR/C/108/D2149/2012, para 9.

¹⁹²A A (Canada) CCPR/C/103/D/1819/2008, para 7.8.

marriage in several countries (such as Pakistan, Iraq, Malawi, Madagascar, Namibia, Benin, Uganda, Kenya, Congo and United Arab Emirates) in its concluding observations. The Committee raised concerns about these countries and recommended that State Parties should intensify their efforts to eradicate forced marriage and related harmful practices.¹⁹³ The Human Rights Committee also acknowledged those State Parties that had criminalised forced marriages, such as Sweden and the UK.¹⁹⁴

On its part, the Convention on the Elimination of all Forms of Discrimination against Women 1979 under Article 2 asks State Parties to ensure that ‘All appropriate measures [are] taken to abolish existing laws, customs, regulations and practices which are discriminatory against women’. Furthermore, under Article 16(1) it is stated that:

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent

Thus, the State Parties are under obligation to uphold the provisions of the CEDAW, and they are periodically reviewed on their compliance and progress. As places of high occurrence of forced and early marriages, Pakistan and Turkey’s periodic reviews will now be examined.

¹⁹³Concluding Observations, Pakistan, CCPR/C/PAK/CO/1 points 41-42. Concluding Observations, Iraq, CCPR/C/IRQ/CO/5 points 15-16. Concluding Observations, Malawi, CCPR/C/MWI/CO/1/Add.1 point 25. Concluding Observations, Madagascar, CCPR/C/MDG/CO/4 points 19-20. Concluding Observations, Namibia, CCPR/C/NAM/CO/2 points 17-18. Concluding Observations, Benin, CCPR/C/BEN/CO/2 points 12-13. Concluding Observations, Uganda A/58/40 (Vol. I) and Concluding Observations, Uganda A/59/40 (Vol. I) point 70(23). Concluding Observations, Kenya, A/60/40 (Vol. I) point 86. Concluding Observations, Democratic Republic of the Congo, A/61/40 (Vol. I) point 80. Concluding Observations, Uzbekistan, A/60/40 (Vol. I) point 89 (24). Concluding observations on the combined second and third periodic reports of the United Arab Emirates, CEDAW/C/ARE/CO/2-3(26 October-20 November 2015) point 25.

¹⁹⁴Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7 (17 August 2015) point B (d). Concluding observations on the seventh periodic report of Sweden, CCPR/C/SWE/CO/7 (28 April 2016) point B (3).

The issues relating to marriage in Pakistan, including marriage of minors, are governed largely by personal laws which are specific to each community.¹⁹⁵ The Child Marriage Restraint Act (CMRA) established the minimum age of marriage for all communities in Pakistan as 16 for females and 18 for males. A girl married before the age of 16 can repudiate the marriage before she reaches 18, provided that the marriage is not consummated. In the case of a male, the right to repudiate continues until the marriage is ratified expressly or impliedly, such as by payment of the dower. Thus, unless and until repudiated, a marriage of a minor will not be considered invalid.¹⁹⁶

In its periodic review, the CEDAW asked what measures Pakistan had taken to prevent forced marriages in respect of its obligations in 2012. The State Party stated that the Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011 had strengthened protection for women against discrimination and harmful traditional practices. It had criminalised forced marriages, child marriages and other customary practices discriminatory towards women. Forced marriage is now punishable with imprisonment of up to 10 years and a fine of Rs. 500,000.¹⁹⁷ However, the Committee expressed serious concern about the persistence, among other things, of child and forced marriages, and recommended that the Pakistan government conduct research on the extent of the phenomenon of abduction of girls for the purposes of forced conversion and forced marriages, and develop a comprehensive strategy to address this phenomenon to ensure the effective investigation of cases, the

¹⁹⁵S A Warraich, 'Remedies for Forced Marriage in Pakistan' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 6. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

¹⁹⁶*ibid* 17.

¹⁹⁷Committee on the Elimination of Discrimination against Women Fifty-fourth session 11 February–1 March 2013, List of issues and questions with regard to the consideration of periodic reports: Pakistan Addendum, Replies of Pakistan to the list of issues to be taken up in connection with the consideration of its fourth periodic report, CEDAW/C/PAK/Q/4/Add.1 (27 November 2012) point 22; S A Warraich, 'Remedies for Forced Marriage in Pakistan' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 5. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

prosecution and punishment of perpetrators, and the provision of remedies and support services for victims.¹⁹⁸ Also, it called on the State Party to amend the relevant legislation to raise the minimum age of marriage for girls to 18, to comply with Article 1 of the Convention on the Rights of the Child; Article 16, Paragraph 2, of the CEDAW; and its General Recommendation 21, on Equality in Marriage and Family Relations. Furthermore, the implementation of measures to eliminate forced marriages was also requested.¹⁹⁹

The same concern was raised by the Committee in 2006 asking the State Party to indicate the comprehensive measures taken by the Government to address the various forms of forced marriage.²⁰⁰ The answer for this was:

For proper efficacy the existing legal framework is constantly endeavoured to be modified and amended. The Act, under the title, ‘Protection of Women (Criminal Laws Amendment) Act, 2006’ is one such effort, introducing 53 amendments/ modifications/ omission/ insertions in 5 existing Laws ... of the land. Further, a Bill under the title ‘Prevention of Anti-Women Practices (Criminal Law Amendment), 2006’, already tabled in the Parliament, envisages a series of amendments in the Pakistan Penal Code of 1860, prohibiting deprivation of women of their Rights of Inheritance, Forced Marriage ... Dissolution of Marriage ... etc.²⁰¹

In its concluding comments, the Committee urged Pakistan to amend the Dissolution of the Muslim Marriage Act of 1939 to eliminate all discriminatory provisions.²⁰² Despite the mention of many different Acts in both the comments of the Committee and the reply of the

¹⁹⁸Committee on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Pakistan, adopted by the Committee at its fifty-fourth session (11 February–1 March 2013) CEDAW/C/PAK/CO/4 (27 March 2013) point 38(d); L C D’Acunto, ‘Selected International Human Rights Materials addressing “Crimes of Honour”’ CIMEL, SOAS (August 2013) 10 < <https://www.soas.ac.uk/honourcrimes/resources/> > accessed 25/5/ 2019.

¹⁹⁹ibid point 38(b).

²⁰⁰Committee on the Elimination of Discrimination against Women, Pre-session working group for the thirty-eighth session, Pakistan 14 May–1 June 2007, List of issues and questions with regard to the consideration of an initial and periodic report, CEDAW/C/PAK/Q/3 (5 October 2006) point 13.

²⁰¹Committee on the Elimination of Discrimination against Women, thirty-eighth session, 14 May–1 June 2007, Responses to the list of issues and questions for consideration of the combined initial, second and third periodic report of Pakistan, CEDAW/C/PAK/Q/3/Add.1 (1 March 2007) point 17.

²⁰²Committee on the Elimination of Discrimination against Women, thirty-eighth session, 14 May–1 June 2007, Concluding comments of the Committee on the Elimination of Discrimination against Women: Pakistan, CEDAW/C/PAK/CO/3 (11 June 2007) point 45;

L C D’Acunto, ‘Selected International Human Rights Materials addressing “Crimes of Honour”’ CIMEL, SOAS (August 2013) 18 < <https://www.soas.ac.uk/honourcrimes/resources/> > accessed 25/5/2019.

State Party, it seems that not much change has been observed on the issue of forced marriages since 2007, as the issue of forced marriage and the minimum legal age for marriage was raised again in the fourth periodic report in 2013.

Turkey was also asked by the Committee to provide information on measures taken to combat child and/or forced marriages.²⁰³ In its response, the State Party stated that in the Turkish Penal Code, punishments for crimes of statutory rape and sexual abuse of children had been increased. In addition, it had been considered that increasing the compulsory education period to 12 years in 2012 would have a positive effect on preventing early marriages. Furthermore, scientific studies were going to be conducted to find out the reasons behind and effects of early and forced marriages, and necessary measures would be taken.²⁰⁴

In Turkey, the legal age of marriage is currently 17, and can be lowered to 16 through a judicial order with the consent of the parents. In 2014, a total of 17,031 families filed ‘permission for marriage’ cases for children under the age of 18. According to the Turkish Statistics Institution, 3,364 girls gave birth before the age of 15 between the years 2009–2014, and 151,727 were recorded as giving birth between the ages of 15–17.²⁰⁵

In its concluding observations, the Committee on the Elimination of Discrimination against Women drew attention to its Joint General Recommendation No. 31 and general comment

²⁰³Committee on the Elimination of Discrimination against Women, Sixty-fourth session, 4–22 July 2016, List of issues and questions in relation to the seventh periodic report of Turkey. CEDAW/C/TUR/Q/7 (27 November 2015) point 5.

²⁰⁴ibid points 35 and 37.

²⁰⁵The Executive Committee for NGO Forum on CEDAW –Turkey, Shadow NGO Report on Turkey’s Seventh Periodic Report to The Committee on The Elimination of Discrimination Against Women For Submission to the 64th Session of CEDAW (July 2016) pages 4 and 18.

No. 18 of the Committee on the Rights of the Child on harmful practices (2014),

recommending that the State Party:²⁰⁶

- (a) Ensure that any form of sale or exchange of women and girls for the purpose of dispute settlement is criminalized, investigated and prosecuted and that perpetrators are adequately punished;
- (b) Take the measures, including awareness raising efforts and legal amendments, necessary to ensure that no victim of rape or harassment is forced into marriage with the perpetrator;
- (c) Effectively implement the prohibition of child marriage, and strengthen awareness raising efforts regarding the harmful effects of child marriage on the health and development of girls.

In Turkey's previous report in 2009, the issue of forced marriage was not listed, although early marriage was raised as a concern.²⁰⁷ However, in its Concluding Observations, the Committee reiterated its concern about the persistence of harmful, entrenched, adverse customs and traditional practices, including early and forced marriage,²⁰⁸ raised in its earlier review in 2005.²⁰⁹ There seemed to be an irregular pattern concerning issues raised in each periodic review. Because forced and early marriages are such serious, harmful practices, they should be consistently raised and reviewed by the Committee under international human rights law.

The Commission on the Status of Women, in a series of its Reports, expressed concerns on harmful traditional and customary practices, including early marriage and forced marriage. Accordingly, it urged governments to implement and strengthen legal, policy, administrative

²⁰⁶Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Turkey, CEDAW/C/TUR/CO/7 (25 July 2016) point 31.

²⁰⁷The Committee requested the State Party to provide detailed information on the incidence of early marriages and teenage pregnancy in Turkey, Committee on the Elimination of Discrimination against Women, Pre-session working group, forty-sixth session, 12–30 July 2010, CEDAW/C/TUR/Q/6 (15 September 2009) point 19.

²⁰⁸Committee on the Elimination of Discrimination against Women, forty-sixth session (12–30 July 2010) Concluding observations of the Committee on the Elimination of Discrimination against Women, Turkey, CEDAW/C/TUR/CO/6 (16 August 2010) point 20; L C D'Acunto, 'Selected International Human Rights Materials addressing "Crimes of Honour"' CIMEL, SOAS (August 2013) 14 < <https://www.soas.ac.uk/honourcrimes/resources/> > accessed 25/5/ 2019.

²⁰⁹Report of the Committee on the Elimination of Discrimination against Women, thirty-second session (10–28 January 2005), Thirty-third session (5–22 July 2005), General Assembly, Official Records, Sixtieth Session, Supplement no 38 (A/60/38) point 239.

and other measures for the prevention and elimination of all forms of violence against women and girls.²¹⁰ In addition, the Commission, in its Agreed Conclusions, made express reference to honour crimes, and urged governments to implement concrete and long term measures to transform discriminatory social norms and gender stereotypes.²¹¹

4.10.1 Refugee Convention

Similar to the instances of female genital mutilation, forced marriage can be a ground for protection under the Convention Relating to the Status of Refugees (Refugee Convention). If forced marriage victims are to claim asylum, they need to demonstrate that the persecution they face is for reasons of one of the protected grounds, i.e. race, religion, nationality, political opinion or membership of a particular social group. In forced marriage cases, usually the ground of membership of a particular social group (such as by being ‘women’ or ‘homosexuals’) is used. After ‘membership in a particular social group’, ‘political opinion’ is the most common Refugee Convention ground recognised in gender-related asylum claims when forced marriages or any other honour-related violence is involved. In gender and sexuality claims, the persecution and harm are experienced, or expected to be experienced, at the hands of non-State actors, meaning that for a successful asylum claim, the failure of effective State protection needs to be present. However, it seems there is inconsistency in States Parties’ interpretation and application of the Convention in practice.

²¹⁰Commission on the Status of Women, Report on the fifty-first session (26 February-9 March 2007) E/2007/27 E/CN.6/2007/9 point 14.4(d). Commission on the Status of Women, Report on the fifty-third session (2-13 March 2009) E/2009/27 E/CN.6/2009/15 point 14. Commission on the Status of Women, Report on the fifty-fourth session (13 March and 14 October 2009 and 1-12 March 2010) E/2010/27 E/CN.6/2010/11 point 13. Commission on the Status of Women, Report on the fifty-fifth session (12 March 2010, 22 February-4 March and 14 March 2011) E/2011/27 E/CN.6/2011/12 point 12. Commission on the Status of Women, Report on the fifty-sixth session (14 March 2011, 27 February-9 March and 15 March 2012) E/2012/27 E/CN.6/2012/16 page 15. Commission on the Status of Women, Report on the fifty-seventh session (4-15 March 2013) E/2013/27 E/CN.6/2013/11 point B(tt).

²¹¹Challenges and achievements in the implementation of the millennium development goals for women and girls, Commission on the status of women agreed Conclusions (2014), point A(d) and point 42.

According to the research conducted on European Union Member States²¹² in Belgium, Hungary, Italy, Malta and the UK, gender-based persecution is occasionally interpreted on the ground of political opinion.²¹³ Until 2004, the fear of persecution based on the refusal to agree to a forced marriage was not recognised to be within the scope of Article 1A(2) of the Refugee Convention. The recognition of this fear of persecution was discussed in a series of French cases in which women tried to escape forced marriage at their own risk, and who were persecuted within the family and by relatives while the public authorities tolerated such behaviour.

The case of *Talata* in 2002²¹⁴ represented the first discussions on forced marriage to take place, and the consequent debate illustrated the change in the law. *Talata* left Ghana for fear of persecution reprisals by her parents after her refusal to accept an arranged marriage. However, in this case the French court held that the facts were not within the scope of Articles 1-1A (2) of the Refugee Convention.

Two years later, in the case of *Nazia*,²¹⁵ the court's approach changed. It held that, considering the current circumstances in Pakistan, women refusing a forced marriage constituted a group (because of the common characteristics which defined women as seen by

²¹²research is conducted on nine EU member states: Belgium, Italy, Spain, France, Malta, Sweden, Hungary, Romania and the United Kingdom by the Directorate General for Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs Gender Equality, Gender-related asylum claims in Europe, 'A Comparative Analysis of Law, Policies and Practice Focusing on Women in Nine EU Member States' (Brussels, 2012).

²¹³Directorate General for Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs Gender Equality, Gender-related asylum claims in Europe, 'A Comparative Analysis of Law, Policies and Practice Focusing on Women in Nine EU Member States' (Brussels, 2012) 128.

²¹⁴Commission de Recours des Refugies (CRR) February 26, 2002, France; R Errera, Refugee status – ground of persecution – membership of a particular social group (2006) 168 Public Law Case Comment.

²¹⁵Unreported, October 15, 2004, France; R Errera, Refugee status – ground of persecution – membership of a particular social group (2006)168 Public Law Case Comment.

society at large), members of which were subject to being exposed to persecutions from which the public authorities could not protect them. This satisfied the conditions of membership of a particular social group as set out under the Convention. Furthermore, the decision mentioned grave violence and ‘crimes of honour’ committed against these women with the involvement of society. The perpetrators in such countries either did not face any punishment or were only given light penalties. The same opinion was affirmed in the forced marriage cases of *Tas* and *Ozkan* for Turkey and of *Tabe* for Cameroon.²¹⁶ In a broader sense, the French National Asylum Court (CNDA) recognised women fleeing honour crimes as forming a particular social group for the purposes of the Convention, and this was also illustrated when considering Kurdish women in Turkey in 2006.²¹⁷

Different approaches have been followed by State Parties when assessing what amounts to persecution for the purposes of the Refugee Convention. For instance, in Belgium, France, Italy, Malta, Romania, Spain, Sweden²¹⁸ and the UK²¹⁹ forced marriage may amount to persecution. In France, the mere fact of forced marriage does not amount to persecution. What is considered instead is whether the behaviour of the opposition and/or its consequences is considered persecution or serious harm. However, in practice the decisions in both the first and second instances show that they may arbitrarily grant refugee status or subsidiary protection for similar types of claim.²²⁰

²¹⁶*Tas* (Unreported, March 4, 2005, France); *Ozkan* (Unreported, April 11, 2005, France); and *Tabe* (Unreported, July 29, 2005, France); R Errera, Refugee status – ground of persecution – membership of a particular social group (2006) 168 Public Law Case Comment.

²¹⁷the case is cited as CNDA, Mlle SA, n°544 746, 16 January 2006, in Directorate General for Internal Policies Policy Department C: Citizens’ Rights and Constitutional Affairs Gender Equality, Gender-related asylum claims in Europe, ‘A Comparative Analysis of Law, Policies and Practice Focusing on Women in Nine EU Member States’ (Brussels 2012) 53–54.

²¹⁸Directorate General for Internal Policies Policy Department C: Citizens’ Rights and Constitutional Affairs Gender Equality, Gender-related asylum claims in Europe, ‘A comparative analysis of law, policies and practice focusing on women in nine EU Member States’ (Brussels 2012) 37 and 40.

²¹⁹see cases of FB (Lone women, PSG, internal relocation, AA (Uganda) considered) Sierra Leone [2008] UKAIT 00090.

²²⁰Directorate General for Internal Policies Policy Department C: Citizens’ Rights and Constitutional Affairs Gender Equality, Gender-related asylum claims in Europe, ‘A comparative analysis of law, policies and practice focusing on women in nine EU Member States’ (Brussels 2012) 38.

In Spain, only four of the twenty judgments of the Spanish Courts granted refugee status or subsidiary protection to women fleeing persecution in cases of forced marriage. Despite Spanish jurisprudence illustrating that Spain only grants protection to women younger than 25 years, there has been some positive jurisprudence where the Spanish National Court has accepted that older unmarried women are at risk of forced marriage and that forced marriage can amount to persecution, even if the practice is banned in the country of origin, but where the State is unable to provide protection.²²¹ On the other hand, in Sweden forced marriage is not always recognised as amounting to persecution in practice.²²²

A comparative analysis of the practice focusing on this issue in nine European Member States indicates that in the UK, forced marriage is not always recognised as amounting to persecution; the reason for this is given as depending on the manner in which applicants phrase and articulate the issue (by not necessarily using the words ‘forced marriage’, for example).²²³

In UK cases up to the early and mid-2000s it was held that there was no particular social group for women fleeing forced marriage.²²⁴ This was despite the case of *Shah and Islam* in 1999.²²⁵ In *Shah and Islam*, the House of Lords held that as it was a ‘particular social group within the meaning of Article 1A(2) of the Convention, it had to exist independently of the persecution so that persecution alone cannot be relied on to prove the group’s existence.’²²⁶

²²¹ibid.

²²²ibid 28.

²²³ibid 38.

²²⁴JM Kenya [2005] UKIAT 00050 (22 Feb 2005).

²²⁵Islam v IAT (Shah and Islam) [1999] 2AC 629.

²²⁶Islam (A P) v Secretary of State for the Home Department and R v Immigration Appeal Tribunal and Another Ex Parte Shah (A P) (Conjoined Appeals).

This view can be reconciled under the UNHCR Guidelines on gender-related persecution, which provides that:

a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.²²⁷

The concept of 'membership of a particular social group' was also discussed in a later case in 2004 by the UK authorities in *NS (Social Group – Women – Forced Marriage) Afghanistan CG*²²⁸; the UK Tribunal considered that the applicant's two young daughters would also be at risk of forced marriage if she were returned to Afghanistan. The Tribunal held that the applicant showed that her claim was grounded in one of the reasons adumbrated in Article 1A (2) of the Refugee Convention, namely, her membership of a particular social group. That group was 'women in Afghanistan'.²²⁹ The Tribunal reinforced the findings in this regard by recourse to expert opinion. Making reference to Paragraph 76 of their decision in the IAA Asylum Gender Guidelines of November 2000, the applicant was found to be at risk of harm.²³⁰ Later on, in the case of *TB (Iran)*,²³¹ the UK Immigration Appeal Tribunal continued formulating a particular social group for women seeking protection within the meaning of the Refugee Convention, namely the group of 'Young Iranian Women' who refuse to enter into arranged marriages.

Case law across several State Parties illustrates that the issue of establishing the requirements for whether a victim belongs to one of the protected grounds, and if persecution exists for the

²²⁷UNHCR Guidelines on Gender-Related Persecution (2002) para 29.

²²⁸*NS (Social Group – Women – Forced marriage) Afghanistan CG* [2004] UKIAT 00328.

²²⁹*ibid* para 77.

²³⁰the IAA Asylum Gender Guidelines of November 2000, at page 5, provides that certain forms of harm are more frequently, or only, used against women, or affect women in a manner which is different to men. These include, but are not limited to, inter alia, sexual violence, societal and legal discrimination, forced prostitution, trafficking, refusal of access to contraception, bride burning, forced marriage, forced sterilisation, forced abortion, (forced) female genital mutilation, enforced nakedness/sexual humiliation.

²³¹*TB (Iran)* [2005] UKIAT 00065 (9March 2005).

purposes of the Refugee Convention, has undergone slow and patchy development. Another concern observed in decided cases is the assessment of risk and of women's ability to resist forced marriage, and the assessment seems to fail to grasp the real understanding of the concept of forced marriage and the power dynamics in honour-related patriarchal countries.

In *MD (Women) Ivory Coast CG*,²³² a 22 year-old woman claimed to be at risk of forced marriage, female genital mutilation, domestic violence and the effects of adultery and discrimination, and put her case before the UK authorities. Her claim was refused, and the reasons provided were that the applicant was living in a modern city (Abidjan) and had a degree of personal freedom, for example that she did not wear a headscarf and so could dress as she wanted. She was not required to be accompanied when walking outside her father's compound, and the only restrictions on her movements were the normal limitations placed by any parent, i.e. that she should return home before midnight.²³³ Provided her father knew where she was (she was 15 years old at the time), she could do as she wished. For these reasons, the Tribunal was not satisfied that the appellant had established that she was at risk of harm in Abidjan as a result of her forced marriage and her adultery,²³⁴ and her appeal was dismissed on asylum, humanitarian protection and human rights grounds. In her appeal the appellant argued that her father and husband would kill her for bringing shame and dishonour upon the families. The Upper Tribunal was not convinced, stating that there was a scant evidence of a system of 'honour killings', and even less evidence that her father or her husband had the means to affect the appellant's death. While female genital mutilation remains a serious problem in the Ivory Coast, particularly in the north, it is illegal, and practitioners have been prosecuted under anti-female genital mutilation legislation.

²³²*MD (Women) Ivory Coast CG* [2010] UKUT 215 (IAC).

²³³*ibid* para 303.

²³⁴*ibid* paras 308 and 329.

Furthermore, the Upper Tribunal stated that adequate state protection and a viable internal relocation alternative was available. Thus, it was not satisfied that the appellant's fear was objectively well founded.

The Upper Tribunal concluded that although women in the Ivory Coast are capable of being members of a particular social group, and that there are risks they may suffer from female genital mutilation, domestic violence and forced marriage, which are sufficiently serious to amount to persecutory treatment in the absence of a sufficiency of protection, such risks are not universal and, in particular, are very much less likely in urban areas such as Abidjan.²³⁵ Furthermore, the conclusion was that since the appellant herself had undergone female genital mutilation, she no longer faced any further risk of the same.²³⁶ However, as we have seen, women and girls can become victims of female genital mutilation more than once, and being independent or living in modern cities does not negate the risk of female genital mutilation and/or forced marriage.

The above cases illustrated some of the difficulties that are experienced in asylum claims. The authorities need to recognise women's diverse experience of violence whether in the form of forced marriage or any other type of violence. It is argued that when asylum cases are handled, the Home Office's main concern is immigration control rather than supporting vulnerable women.²³⁷

²³⁵MD (Women) Ivory Coast CG [2010] UKUT 215 (IAC) para 282.

²³⁶ibid para 297.

²³⁷A K Gill A K and S Anitha, 'Forced marriage legislation in the UK: a critique' in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 144 and 153; K Charsley K and M Benson, 'Marriages of Convenience and Inconvenient Marriages: Regulating Spousal Migration to Britain' (2012) 21(1) *Journal of Immigration, Asylum and Nationality* 12 and 14.

4.10.2 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

Among the regional sources of international human rights law that can apply in cases of forced marriage, the ECHR is a key document. There is no doubt that forced marriage violates individuals' basic human rights. Forced marriage is against an individual's right to self-determination and contravenes several international human rights law provisions, such as the right to bodily integrity and to the dignity of the victim. It also infringes Article 3 of the ECHR, which prohibits torture and inhumane or degrading treatment.²³⁸ Furthermore, the right to marry is cited under Article 12, which provides that 'Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right'. Forcing a person to marry someone not of her choosing clearly infringes this Article. The right to respect for private and family life also becomes relevant under Article 8 of the same Convention.

Munby J²³⁹ cited Lord Bingham of Cornhill, who acknowledged that 'one must understand "private life" in Article 8 as extending to those features which are integral to a person's identity or ability to function socially as a person.'²⁴⁰ In this regard, Lord Bingham, in the *R* (on the application of Razgar) case, went on to quote Professor Feldman's observation:

²³⁸In *Opuz v Turkey* Application no 33401/02 (ECtHR, 2009) the Court accepted that victims of domestic violence fall within a group of 'vulnerable individuals' entitled to State protection (§66). It further confirmed that physical violence and psychological pressure of the type that occurs within domestic abuse amount to 'ill-treatment' within the meaning of Article 3.

²³⁹Justice Munby, 'Human Rights: Transforming Services? Human Rights and Social Welfare Law: The Impact of Article 8', Social Care Institute for Excellence
<www.scie.org.uk/news/events/previous-events/humanrights06/mrjusticemunby.pdf> accessed 10/11/2016.

²⁴⁰In *R* (on the application of Razgar) v Secretary of State for the Home Dept [2004] UKHL 27, [2004] 2 AC 368, Lord Bingham of Cornhill at para [9].

Moral integrity [in this sense] demands that we treat the person holistically as morally worthy of respect, organising the state and society in ways which respect people's moral worth by taking account of their need for security.²⁴¹

Forced marriage starts with a lack of respect for the individual's self-autonomy, and there is no doubt that it negatively impacts the victim's private life and ability to function socially as a person. The capacity to choose a spouse or partner is integral to a person's self-autonomy and identity. Furthermore, forced marriage may involve deprivation of freedom and/or rape, which is also prohibited and comprises a violation of human rights.

In the European Court of Human Rights' decision in *AA and Others v Sweden*,²⁴² the applicant stated that her children were facing forced marriage. By the time the case was heard, one of the two daughters of the applicant had become an adult (she was 18; the youngest daughter was 13). The court stated with regards to the 18 year-old daughter's claim that:

The Court finds that it has not been established that X (the father) today would still consider marrying her, who has now turned eighteen ... likewise [there is] nothing to indicate that the man intended by X to marry the applicant is still waiting for her [neither] would still be interested in marrying her if she returned.²⁴³

Regarding the 13 year-old girl's claim, the court concluded that 'there [was] nothing to suggest that X (the father) might already have chosen a husband (for her).'²⁴⁴

However, the fact that the potential victim had become 18 years old would not have guaranteed immunity from forced marriage. Older women become victims of forced marriage too. And even if the particular candidate in the case (candidate X) was not still waiting for the

²⁴¹Justice Munby, 'Human Rights: Transforming Services? Human Rights and Social Welfare Law: The Impact of Article 8', Social Care Institute for Excellence 9
<www.scie.org.uk/news/events/previous-events/humanrights06/mrjusticemunby.pdf> accessed 10/11/2016.

²⁴²*AA and Others v Sweden* Application no 14499/09 (ECtHR, 28 June 2012).

²⁴³*ibid* para 92.

²⁴⁴*ibid* para 93.

victim (because of the lapse of time) this would not remove the risk, as the parents/father would find another candidate. Potential husbands (candidates) for forced marriage are not limited to only one person. For a 13 year-old daughter, the families do not even need to choose ‘a candidate’ in advance; when they feel that their daughter should marry then they will find someone, and this does not require an early/pre-arrangement. The lack of a candidate at a particular time does not mean that she will not become a victim of forced marriage, as it is not difficult to find another candidate.

Furthermore, the Court considered the matter in the *AA and Others* case as being, inter alia, a financial one. The eldest daughter, as a victim of forced marriage, could obtain a divorce if she were to pay back the dowry demanded by her husband.²⁴⁵ As illustrated by the dissenting judgment,

the protection of a person’s fundamental human rights cannot be reduced to a question of currency. The right to self-determination, to respect for one’s bodily integrity and the right not to be ill-treated are not commodities which can be ‘traded’. One should not have to pay to be left alone. The applicants’ problems ‘within the personal sphere’ that are caused by their ‘country’s traditions’ are, to my mind, sufficiently serious as to amount to a violation of Article 3.²⁴⁶

Similarly, in *R.H. v Sweden*,²⁴⁷ the applicant claimed she would become a victim of forced marriage or honour killing by her uncle if she returned to Somalia. The European Court of Human Rights decided that there were inconsistencies in her submissions and claims.

Furthermore, it ruled that deportation of the applicant would not constitute a violation of her Convention rights, as she had access to both family support and male protection in Somalia.

Yet its statement that ‘the applicant has family and male support’ contradicted the nature of forced marriages, as it is the family which forces the woman into marriage. Similar views are

²⁴⁵ibid para 89.

²⁴⁶ibid Dissenting Judgment of Judge Power-Forde 29.

²⁴⁷R H v Sweden Application no 4601/14 (ECtHR, 10 September 2015) 1.

also present in national authorities' rulings when assessing an individual's claim under either asylum or subsidiary protection, however.

According to Dauvergnen and Millbank, in several asylum and humanitarian protection claims the authorities again failed to grasp the issues around forced marriage. Indeed, some of the common international approaches in deciding cases illustrate their divergence from reality,²⁴⁸ such as the belief that being educated and living in a big city prevents a woman from becoming a victim of forced marriage.²⁴⁹

Although cases should fail if there is a lack of credibility, or if evidential difficulties exist,²⁵⁰ the assessment of risk of potential forced marriage victims should fully embrace reality. The age, education, urbanity and independence of women do not completely wipe out the risk of forced marriage. This was seen in the UK in the case of Dr Humayra Abedin, as explained previously in this chapter: though a well-educated and independent woman, she was nevertheless abducted by her family and forced into marriage in Bangladesh in 2008. She was rescued by the UK Forced Marriage Unit.²⁵¹

In cases where asylum claims have failed, applicants are also able to claim subsidiary protection (also known as humanitarian protection) under the ECHR. Under this Convention, applicants have the absolute right to freedom from torture, inhumane and degrading treatment. The rights engaged under the Convention are a right to freedom of security and a

²⁴⁸C Dauvergnen and J Millbank, 'Forced Marriage as a Harm in Domestic and International Law' (2010) 73(1) *The Modern Law Review* 57–88.

²⁴⁹Re X [2001] Can L II 26821 (IRB) (Zimbabwe).

²⁵⁰M T and others v Sweden Application no 47058/16 (ECtHR, 6 December 2016).

²⁵¹P Walker, 'NHS Doctor Saved from Forced Marriage Gets Court Safeguards', *The Guardian* (19 December 2008); A K Gill and A Sundari, 'Forced marriage legislation in the UK: a critique' in A K Gill and S Anitha (ed) *Forced Marriage Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 151.

right to privacy and family life, although the latter right can be restricted with some valid justification. The rights of applicants under ECHR are assessed together with their asylum claims. However, these are not guaranteed rights, and so either or both claims (to asylum and subsidiary protection) may also fail. The European Court of Human Rights cases of *MT and Others v Sweden*²⁵² and *AA and Others v Sweden*²⁵³ will be explained further down to illustrate this, following a discussion a French case of *O*.²⁵⁴ In this case, *O* opposed a forced marriage and genital mutilation that her mother-in-law to be wanted to impose on her. She escaped from the family house in Nigeria and went to Spain. In Spain, she was forced to prostitute herself for several months before she fled to France. The French Office for the Protection of Refugees and Stateless Persons rejected her asylum application. She challenged this decision before the National Asylum Court. In her case, the National Asylum Court considered that the facts relating to the fear of being subjected to a forced marriage and to female genital mutilation had not been established, and so the applicant could not be recognised as a refugee on the ground of membership of a particular social group. However, the court found that, given her personal and family situation, the applicant would not be provided the effective protection of the authorities in her country of origin, and she was granted subsidiary protection.

In France, honour crimes may be considered a ‘form of serious harm’, and as a result, even if applicants are not found to qualify as refugees under the Refugee Convention they can still be granted subsidiary protection. An appeal on ‘serious harm’ can mainly be raised in domestic violence, situations of adultery, or sexual relations before marriage, when different forms of

²⁵²*M T and others v Sweden* Application no 47058/16) (ECtHR, 6 December 2016).

²⁵³*AA and Others v Sweden* Application no 14499/09 (ECtHR, 28 June 2012).

²⁵⁴National Asylum Court (CNDA) Miss O, n°10020534, 29 July 2011

<<http://www.asylumlawdatabase.eu/en/case-law/france-cnda-29-july-2011-miss-o-n%C2%B010020534>> accessed 12/1/2018.

violence have accumulated as well as honour crimes, and these may amount to persecution. For example, domestic violence may be considered as a form of serious harm, and may lead to subsidiary protection if the claim includes another type of violence such as a forced marriage²⁵⁵ and/or honour crimes.²⁵⁶ However, whether it satisfies the criteria for refugee status or subsidiary protection status will depend on the consideration of the existence of serious harm.

Despite forced marriage being expressly acknowledged as gender-related persecution in national and international refugee law, case law documents²⁵⁷ illustrate that a lack of consistency remains when utilising such guidelines to analyse whether those forced to marry form a particular social group, or whether forced marriage constitutes a form of persecution for the purposes of the Refugee Convention. A further hurdle is the requirement that the claimant's story must be found credible. The harm caused by the forced marriage and the credibility of the story appear to be the most difficult parts of such claims.²⁵⁸

To provide clarification for the authorities, in 2002 the United Nations High Commissioner for Refugees (UNHCR), which is the relevant authority responsible for supervising the implementation of the Refugee Convention, issued Guidelines on Gender-related Persecution. Under these Guidelines, honour killing, female genital mutilation and forced marriage are expressly referred to as gender issues, relevant to a refugee claim.²⁵⁹ Furthermore, as a form

²⁵⁵National Asylum Court (CNDA) BA, n°09023070, 17 November 2010.

²⁵⁶National Asylum Court (CNDA) Mlle SA, n°544746, 16 January 2006.

²⁵⁷UK Immigration Appellate Authority, Gender Asylum Guidelines 2000 at paras 1.13 [2A.24] and [2A.25] and UK Home Office, Asylum Policy Instructions, 'Gender Issues in the Asylum Claim' 2010, 2.2 (iii), 4 and 11, 13-14, and UNCHR, Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity' 2008 at paras 27 and 28.

²⁵⁸C Dauvergne and J Millbank, 'Forced Marriage as a Harm in Domestic and International Law' (2010) 73(1) *The Modern Law Review* 57–88.

²⁵⁹United Nations High Commissioner for Refugees (UNHCR) (7 May 2002) GUIDELINES ON INTERNATIONAL PROTECTION: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, Procedural Issues 36 (vii).

of family violence, honour-related violence is also covered under these guidelines via gender-related claims, which provide that ‘Gender-related claims have typically encompassed, although are by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals.’²⁶⁰ However, the application of international human rights law and refugee law by the national authorities of State Parties and other international human rights decision makers (such as the European Court of Human Rights and the Human Rights Committee) proves that there is need for a uniform approach to the issue of forced marriage (as a gender-related claim) at both the national and international level. The success of the law in this area will completely depend on how gender-related claims are perceived and interpreted, which may vary from nation to nation depending on the patriarchal views on such issues. Both the European Court of Human Rights and the Human Rights Committee’s decisions have been reviewed in turn to illustrate this concern.

Besides the ECHR, another regional attempt to respond to practices of forced marriage is the Istanbul Convention, discussed above. Unlike the ECHR, ratifying the Istanbul Convention 2011 does not require membership of the Council of Europe.²⁶¹ Thus the Istanbul Convention is considered to be the most far-reaching international treaty for tackling gender-based violation of human rights.²⁶²

Violence against women is a human rights violation inflicted mainly by non-State actors. It also operates in a manner whereby women are discriminated against by men. In 2013, 35% of

²⁶⁰ibid I (3).

²⁶¹in addition, the Istanbul Convention’s implementation will not be overseen directly by the European Court of Human Rights. The Convention establishes its own independent monitoring mechanism, and appears to be similar to a United Nations human rights treaty body.

²⁶²International Justice Resource Centre, ‘European Convention on Violence against Women Enters into Force, Codifying Advances in the Protection of Women’s Human Rights’ (7 August 2014).

women worldwide were reported to have been victims of physical and/or sexual intimate partner violence or non-partner sexual violence.²⁶³ Globally, almost half of the women killed in 2012 were killed at the hands of intimate partners or family members.²⁶⁴ The situation in Europe suggested that one-fifth to one-quarter of women had experienced physical violence.²⁶⁵ In response to such widespread abuse, the Istanbul Convention was drafted to provide a more complete definition for violence against women and establish a specific provision for honour crimes.

Article 3(a) provides that

‘violence against women’ is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

As well as providing a definition of gender-based violence, set out under Article 3(d), a new definition of the word ‘gender’ was also made under Article 3(c), recognising it as a ‘social construct’.

Article 37 of the Convention provides a specific provision for forced marriages:

1 Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.

Article 42 makes express reference to unacceptable justifications for crimes, including crimes committed in the name of so-called ‘honour’, stating that:

1 Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.

²⁶³Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence, World Health Organisation (Vienna 2013).

²⁶⁴UN Office on Drugs and Crime, Global Study on Homicide (2013)14.

²⁶⁵Council of Europe Task Force to Combat Violence against Women, including Domestic Violence, Final Activity Report 5 (2008).

2 Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.

When criminalising forced marriage in England and Wales in 2014, the UK Government stated that signing the Istanbul Convention reflected the Government's continuing commitment to tackling violence against women and girls, including forced marriage, female genital mutilation, physical and psychological violence and sexual violence.²⁶⁶ Therefore, by criminalising forced marriage it fulfilled its obligations under the Treaty.

Under this Convention, States are required to hold to the 'due diligence' standard for preventing, investigating and punishing violence against women by non-State actors. This obligation is crucial given that in gender-based and sexual violence claims, persecution and harm are mostly experienced at the hands of non-State actors (families and community members).

4.10.3 Early Marriages and the International Human Rights Law

An early marriage is recognised as a violation of human rights in a number of United Nations treaties and other human rights instruments. In 1954, the United Nations General Assembly adopted its first resolution on this issue and urged all States to take all appropriate measures towards 'eliminating completely child marriages and the betrothal of young girls before the age of puberty and establishing appropriate penalties where necessary.'²⁶⁷

²⁶⁶Prime Minister David Cameron: 'Forced Marriage Is Wrong, Is Illegal and Will Not Be Tolerated' (first published on 8 June 2012) <<https://www.gov.uk/government/news/forced-marriage-to-become-a-criminal-offence>> accessed 20/8/2016.

²⁶⁷United Nations General Assembly Resolution, Status of Women in Private Law: Customs, Ancient Laws and Practices Affecting the Human Dignity of Women, 843 (IX) point 1 (17 December 1954).

In its recent resolutions, the United Nations General Assembly has raised its deep concern about the continued prevalence of child, early and forced marriage worldwide, citing the fact that approximately 15 million girls are married every year before they reach 18 years of age and that more than 700 million women and girls alive today were married before their eighteenth birthday.²⁶⁸ Furthermore, on 19 December 2016, the United Nations General Assembly adopted a second resolution in which it urged States to ensure access to justice and accountability mechanisms and remedies for the effective implementation and enforcement of laws aimed at preventing and eliminating child, early and forced marriage.²⁶⁹ For example in Pakistan the law (Child Marriage Restraint Act 1929) concerning marriage of minors does not invalidate child marriages. It penalises those responsible for such marriages (where the groom is below eighteen years and the bride below sixteen years) with a maximum sentence of one month's imprisonment and a fine of 1000 rupees or both. However, prosecutions are rare, and given the very lenient penalty applicable have little potential deterrent effect.²⁷⁰

The Human Rights Committee has often addressed early marriage in its concluding observations, raising its concerns at reports of early marriages, such as the increase in incidences of them (such as in Iraq, Morocco, Ghana and Mali)²⁷¹ the need to prevent any practices that enable child marriage (such as the marriage of under age children contracted by their guardians)²⁷² and the persistence of it, notwithstanding its prohibition by law by some

²⁶⁸United Nations General Assembly Child, early and forced marriage adopted on 18 December 2014, A/RES/69/156 (22 January 2015) page 2.

²⁶⁹United Nations General Assembly Resolution, Child, early and forced marriage, A/RES/71/175, adopted by the General Assembly on 19 December 2016 (23 January 2017) points 9 and 11.

²⁷⁰S A Warraich, 'Legal Remedies for Forced Marriage in Pakistan' in S Hossain and L Welchman (eds) volume *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 49. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

²⁷¹Concluding Observations, Iraq, CCPR/C/IRQ/CO/5 point 15 and point 13(c), Concluding Observations, Morocco, CCPR/C/MAR/CO/6 (1 December 2016) point 13 and Concluding Observations, Ghana, CCPR/C/GHA/CO/1 point 17. Concluding Observations, Mali, CCPR/CO/77/MLI (16 April 2003) point 10(b).

²⁷²Concluding Observations, Yemen, A/60/40 (Vol. I) point 91(21).

State Parties. The Human Rights Committee stated that the State Parties should tackle early marriages and eradicate such harmful traditional practices.²⁷³ The Committee stated that State Parties such as Yemen should raise the minimum age of marriage²⁷⁴ and ensure that it is respected in practice.²⁷⁵

The Commission on the Status of Women also addressed early marriages and emphasised the importance of minimum age of marriage in its works. Accordingly, the Commission has adopted a resolution to address forced early or child marriages,²⁷⁶ and the Secretary-General issued a report on this issue²⁷⁷ outlining the key issues addressed by intergovernmental and human rights treaty bodies and focuses on activities undertaken by Member States and UN entities to end the practice. In the Report it was noted that a number of States have adopted or are in the process of adopting legislation prohibiting early and forced marriage (Bulgaria and Norway). The Syrian Arab Republic has repealed the defence of so-called ‘honour’ crimes from its criminal code.²⁷⁸

The Commission on the Status of Women, in its Resolution 51/3, proposed a series of measures to be taken by States to prevent the forced marriage of girls and provide support to victims who had entered into such marriages. It requested the Secretary-General to report to it

²⁷³Concluding Observations, Iraq, CCPR/C/IRQ/CO/5 point 16. Concluding Observations, Morocco, CCPR/C/MAR/CO/6 (1 December 2016) point 14. Concluding Observations, Ghana, CCPR/C/GHA/CO/1, point 18. Similar concerns also raised in Concluding Observations, Georgia, CCPR/C/GEO/CO/4, point 7; Concluding Observations, Serbia, CCPR/C/SRB/CO/3, points 18-19. Concluding Observations, Benin, CCPR/C/BEN/CO/2, points 12-13 and Concluding Observations, Madagascar, CCPR/C/MDG/CO/4, points 19-20.

²⁷⁴Concluding Observations, Yemen, A/60/40 (Vol. I) point 91(21) The Committee notes with concern that the Personal Status Act allows children aged 15 to marry, and that early marriage of girls, sometimes below the age fixed by the law, persists.

²⁷⁵Concluding Observations, Yemen, A/57/40 (Vol. I) point 83 (10). Concluding Observations, Yemen, A/60/40 (Vol. I) point 91(21). Concluding Observations, Uganda, A/59/40 (Vol. I) § 70; Report of the Human Rights Committee, A/59/40 (Vol. I) point 70 (23).

²⁷⁶Commission on the Status of women Resolution on Forced marriage of the girl child (Resolution 51/3 of 2007, contained in E/CN.6/2007/9).

²⁷⁷Report of the Secretary-General on Forced marriage of the girl child (E/CN.6/2008/4).

²⁷⁸ibid point 11.

at its fifty-second session on the implementation of that resolution. Reports of the Secretary-General noted the measures taken by the States on the issue of the minimum legal age of consent and the minimum age for marriage, which is required to be consistent with their international obligations pertaining to the protection and promotion of women's and girls' human rights. Many States provided information that legislation is in place for setting the minimum age for marriage at 18 years.²⁷⁹ However, the minimum age for marriage still varies between States, from between 14 (with parental authorisation or legal guardian) to 18.²⁸⁰ It was noted that Yemeni law, for instance, does not yet provide a minimum age for marriage, but that the Council of Ministers has referred to the Chamber of Deputies a provision for adoption that would set the minimum age at 18 years. The Higher Council for Women of Bahrain has also recommended that the minimum age for marriage for girls be raised.²⁸¹

In addition to legal provisions on the minimum age of marriage, laws on the age of sexual consent can contribute to the protection of girls from forced marriage. In two States that provided such information on this issue, namely Brunei Darussalam and the Czech Republic, sexual intercourse with a girl under age 16 is considered a criminal act, whereas in Croatia, sexual intercourse with a person under age 14 is a criminal offence.²⁸²

²⁷⁹Report of the Secretary-General on Forced marriage of the girl child (E/CN.6/2008/4) point 19, including Colombia, Croatia, Cuba, the Czech Republic, Finland, Germany, Hungary, Ireland, Mauritania, Montenegro, the Netherlands, Nicaragua, Norway, Oman, the Philippines, Poland, Portugal, the Russian Federation, Sweden and the United Arab Emirates.

²⁸⁰Report of the Secretary-General on Forced marriage of the girl child (E/CN.6/2008/4) points 20-21. In Brazil and Qatar, the minimum age for marriage is 16, while in Turkey it is 17. In Suriname and Bahrain, the legal age for marriage is different for males and females: the legal age for marriage for a girl is 15 in both countries, whereas for boys it is 17 in Suriname and 18 in Bahrain. In a number of States, the law establishes that exceptions to the minimum age for marriage may be granted. In several States (including Croatia, Germany, Hungary, Montenegro, the Netherlands, Portugal and the Russian Federation), no exceptions to marry may be granted to anyone younger than 16 years of age. On the other hand, in Nicaragua and Costa Rica, girls may marry at age 15 with parental authorization, while in Cuba, girls may marry at age 14 and boys at age 16, with parental authorization. In Colombia, minors older than 14 may marry with the written permission of the parents or legal guardian. A court in Germany may grant an exception on request if one of the intending spouses is of full age and the other has reached age 16.

²⁸¹Report of the Secretary-General on Forced marriage of the girl child (E/CN.6/2008/4) point 20.

²⁸²ibid point 25.

In its recommendations, the Report acknowledged the challenges faced in addressing the persistence of forced marriage, including limited compliance with legislation, insufficient resources for the adequate monitoring and enforcement of laws and procedures, and lack of knowledge about the scope and prevalence of this phenomenon. Thus, the report suggested that States may wish to ensure that legislation is in place that sets the minimum age of marriage for girls and boys at 18 years and requires that marriage be entered into only with the free and full consent of the intending spouses; it also encouraged States that had not yet done so to ratify international instruments protecting the rights of women and girls.²⁸³

The most recent updates on some of these States on this issue can be found under the review of other international human rights instruments in this chapter. The most relevant one in this context is the Convention on the Rights of the Child 1989. While CEDAW obligates States to ensure, on the basis of equality between men and women, the right to freely choose a spouse and enter into marriage only with free and full consent, the minimum age is established under Article 1 of the Convention on the Right of the Child. The Article 1 provides: ‘For the purposes of the [present] Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.’ Therefore, the minimum age of consent is established by the national law of each State Party.

The Committee on the Rights of the Child is also concerned at the prevalence of the early and forced marriage of girls (such as in Sudan, Eritrea, Nigeria, Egypt, Guinea, Iraq, Pakistan, Malawi, Madagascar, Benin and Uganda).²⁸⁴ It recommends that State Parties pass legislation

²⁸³ibid points 67, 68 and 73.

²⁸⁴Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 (22 October 2010) point 56. Committee on the Rights of the Child, Concluding observations on the fourth periodic report of Eritrea, CRC/C/ERI/CO/4 (2 July 2015) point 40. Committee on the Rights of the Child, Concluding

to expressly prohibit early marriage and (for those State Parties that prohibit it) ensure that such legislation is enforced in practice,²⁸⁵ as well as ensure that the minimum age of marriage, set at 18 years for girls and boys, is strictly enforced.²⁸⁶ For instance, in Pakistan, as mentioned before, the laws concerning the marriage of minors are contained in the CMRA, read with the Majority Act and the Muslim law of personal status. The general rule is that the age for marriage is 18. However, a lower age of majority is determined according to personal law for the purposes of marriage. Traditionally, under the Muslim law of personal status, the age of majority for marriage was considered to be puberty, which was presumed to be at the age of fifteen for girls. The CMRA subsequently established the minimum age of marriage for all communities, as 16 for females and 18 for males. Thus, a Muslim female aged 16 years and a male aged 18 year (or younger, if established to have attained puberty), though still a minor for other purposes, would generally be considered by the Courts to have capacity to contract a marriage of their own free will.²⁸⁷

Pakistan's current law sets the legal marriage age at 16 for girls and 18 for boys, setting different, and thereby discriminatory, marriage ages for girls and boys. But even this law is

observations: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010) point 65. Committee on the Rights of the Child, Concluding observations: Egypt, CRC/C/EGY/CO/3-4 (15 July 2011) point 70. Committee on the Rights of the Child, Concluding observations on the second periodic report of Guinea (13 June 2013) point 55(1). Concluding Observations, Iraq, CCPR/C/IRQ/CO/5 points 15-16. Concluding Observations, Pakistan, CCPR/C/PAK/CO/1 point 41. Concluding Observations, Malawi, CCPR/C/MWI/CO/1/Add.1 point 25. Concluding Observations, Madagascar, CCPR/C/MDG/CO/4 point 19. Concluding Observations, Benin, CCPR/C/BEN/CO/2 point 12. Concluding Observations, Uganda A/59/40 (Vol. I) point 70(23).

²⁸⁵Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 (22 October 2010) point 57(a). Committee on the Rights of the Child, Concluding observations: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010) points 66 (a-b). Committee on the Rights of the Child, Concluding observations on the second periodic report of Guinea (13 June 2013) 56(a).

²⁸⁶Committee on the Rights of the Child, Concluding observations on the fourth periodic report of Eritrea, CRC/C/ERI/CO/4 (2 July 2015) point 41(d). Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Ethiopia, CRC/C/ETH/CO/4-5 (3 June 2015) 48 (e). Committee on the Rights of the Child, Concluding observations: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010) point 66(b). Committee on the Rights of the Child, Concluding observations: Egypt, CRC/C/EGY/CO/3-4 (15 July 2011) point 70 (a). Concluding Observations, Uganda A/59/40 (Vol. I) point 70(23). Concluding Observations, Pakistan, CCPR/C/PAK/CO/1 point 42. Concluding observations on the combined second and third periodic reports of the United Arab Emirates, CEDAW/C/ARE/CO/2-3 (26 October-20 November 2015) point 26.

²⁸⁷S A Warraich, 'Legal Remedies for Forced Marriage in Pakistan' in S Hossain and L Welchman (eds) volume *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 16. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

rarely enforced, as the Pakistani courts often apply Sharia (Islamic law) instead, which they interpret as allowing any girl who has gone through puberty to marry.²⁸⁸

In Bangladesh and India, the situation is similar to that of Pakistan. The issues relating to marriage, including marriage of minors, are governed largely by personal laws which are specific to each community.²⁸⁹ Under the Muslim law, the general rule provides the age of majority for marriage as 18. However, the age of majority for marriage is deemed to be puberty, presumed at the age of 15 in the absence of contrary evidence.²⁹⁰ However, in Bangladesh the Child Marriage Restraint Act (CMRA) penalises a child marriage in which the groom is aged below 21 and the bride below 18. While this law penalises such marriages (by imposing penalties) it does not render them invalid thus the marriage itself remains valid.²⁹¹

In India the Hindu Marriage Act (HMA) 1956 lays down the minimum age of marriage as 21 for men and 18 for women and it does not expressly invalidate marriages by minors. A marriage where either party is below the minimum age is neither void nor voidable under the HMA. However, the persons concerned, such as the parents/guardians that gave permission for the minor to marry, any person who performed the marriage, any male aged 21 and over who was party to the marriage, would be punishable under the HMA (and/or the Prohibition

²⁸⁸S Ijaz, 'Time to End Child Marriage in Pakistan Proposed Bill an Important Opportunity to Protect Children' (9 November 2018) <<https://www.hrw.org/news/2018/11/09/time-end-child-marriage-pakistan>> accessed 30/5/2019.

²⁸⁹S Hossain, 'Legal Remedies for Forced Marriage in Bangladesh' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 13 and 35; A Basu and J Kothari, 'Remedies for Forced Marriage in India' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 9. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

²⁹⁰*ibid* 13; 14.

²⁹¹S Hossain, 'Legal Remedies for Forced Marriage in Bangladesh' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 13. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

of Child Marriage Act (PCMA) 2006).²⁹² However, all child marriages, are now voidable under the PCMA at the request of the party to the marriage who was a child at the time of the marriage, as long as the request is filed within two years of attaining majority. Further, if a Hindu girl's marriage is solemnized before she attains the age of 15 years, and she repudiates the marriage after the age of 15 but before the age of 18 years, then the Court may grant a decree of divorce at her instance.²⁹³

Twenty-five years after the entry into force of the Rights of the Child Convention, the area was revisited to check whether the world was a safer place for children. After critically examining the areas of children's lives, it was found that there had been little progress, and it was acknowledged that millions of children have their fundamental rights violated every day.²⁹⁴ As a result, on 22 July 2014 the first Girls Summit was organised and hosted by the UK jointly with the United Nations International Children's Emergency Fund (UNICEF). The Summit aimed at mobilising domestic and international efforts to end child, early and forced marriage and female genital mutilation within a generation. The Girl Summit Charter was signed by 48 States and hundreds of organisations and individuals. In the action plan, States agreed to make a commitment to contribute up to £25 million for a new UN multi-country programme (in 12 countries where child/early forced marriages mostly take place) to end the practice. The projected end date is March 2020. Two years later, in 2016, the signatory States to the annual review of the Charter found that the progress made had been significant, and they agreed to show their commitment to eradicate child marriages.²⁹⁵

²⁹²A Basu and J Kothari, 'Remedies for Forced Marriage in India' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014) 12–13. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

²⁹³*ibid.*

²⁹⁴UNESCO, Convention on the Rights of the Child, Is the World Better? 25 Years after the CRC, It's Time to Ask: Is the World a Better Place for Children? (16 February 2016).

²⁹⁵C Donahue, Child Protection Specialist based at UNICEF's headquarters, UNICEF, The Girl Summit: progress after one year (22 July 2015).

In the UK, in order to change negative the social norms and address gender inequality which are the root causes of child marriage, members of Girls Not Brides UK²⁹⁶ have been working across communities, genders and faiths, and with local and national governments, to end child marriage. In order to ensure that child marriage remains on the international agenda, and that it is eradicated by 2030, the following five key recommendations were made to the UK government:²⁹⁷

- 1) Encouraging and supporting high prevalence countries programmes and national actions plan to tackle child marriage;
- 2) Ensure UK domestic implementation of the United Nations' Sustainable Development Goals (SDGs) is included in the 2015–2020 single department plan for all government departments and ensure that all government departments understand the gravity and importance of achieving the SDGs by 2030 by developing a national action plan for implementing and monitoring the SDGs, including the elimination of child marriage, in the UK context;
- 3) Scale up mechanisms for civil society funding for addressing child marriage to ensure that The Department for International Development programmes have wide reach as well as a high quality;
- 4) Mainstream child marriage prevention into education, health, and ending Violence against Women and Girls programmes across its entire portfolio, to prevent child marriage and support girls who are already married;
- 5) Ensure child marriage prevention is part of UK emergency and humanitarian responses.

The international effort to tackle child marriages seems promising, though the UK's and other signatories' willingness to comply with the recommendations and eradicate child marriages by 2030 is yet to be seen.

²⁹⁶Girls Not Brides UK is a global partnership of more than 600 civil society organisations committed to end child marriage.

²⁹⁷Policy Paper, Ending Child Marriage by 2030, Tracking Progress and identifying Gaps (World Vision UK July 2016) 10.

4.11 International Criminal Law

International criminal law is a branch of public international law²⁹⁸ which prohibits certain violations such as war crimes, genocide and crimes against humanity in the international arena. International criminal law is related to human rights law and international humanitarian law. Human rights law covers a body of law guaranteeing the rights of individuals against both their own government and the governments of other States. International humanitarian law, on the other hand, applies protective standards to civilians involved in wartime or occupation hostilities against acts committed by foreign forces or their own governments.²⁹⁹ International criminal law places responsibility on individual persons and proscribes and punishes acts that are defined as crimes by international law.

In 1998, the Rome Statute established a core of international crimes (such as genocide, crimes against humanity, war crimes and the crime of aggression) and established the International Criminal Court which can exercise its jurisdiction over such crimes. The Rome Statute is very relevant when discussing violence against women, because, via development of case law, gender and sex crimes are subject to the Court's jurisdiction.³⁰⁰

There has been significant development in the recognition of the crime of forced marriage under international humanitarian law. In February 2008, the Appeals Chamber of the Special Court for Sierra Leone for the first time considered forced marriage as an 'other inhumane

²⁹⁸D Guilfoyle, *International Criminal Law* (Oxford University Press 2016) 3.

²⁹⁹*ibid* 27.

³⁰⁰A Hagay-Frey, *Sex and Gender Crimes in the New International Law* (Martinus Nijhoff Publishers 2011) 3.

act’ under Article 2 (i) of the Statute of the Special Court for Sierra Leone, for the purpose of determining a crime against humanity.³⁰¹

A crime against humanity ‘means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’ (which includes under Article 2 (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence). Rome Statute Article 7(1) k) also lists ‘other inhumane acts’ as those of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

In March 2003 the Prosecutor brought charges against leaders of the Armed Forces Revolutionary Council (AFRC)³⁰² and the Revolutionary United Front (RUF)³⁰³ both cases developed the Special Court’s jurisprudence on forced marriage by contributing to the definition of forced marriage as well as distinguishing it from sexual slavery. The decision of AFRC is further endorsed in RUF case.

The definition of forced marriage provided in the AFRC case as: ‘a perpetrator compelling a person by force or threat of force, through the words or conduct of the perpetrator or those associated with him, into a forced conjugal association with another person resulting in great suffering, or serious physical or mental injury on the part of the victim.’³⁰⁴

³⁰¹Prosecutor v Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu [2008] SCSL-2004-16-A (Special Court for Sierra Leone, Appeals Chamber, 22 February 2008) 105 and see paras 181–203.

³⁰²Prosecutor v Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu, Case no SCSL-2004-16-A, Judgement (Special Court for Sierra Leone, Appeals Chamber, 22 February 2008).

³⁰³Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao Case No. SCSL-04-15-A (Special Court For Sierra Leone Appeal Chamber, 26 October 2009).

³⁰⁴Prosecutor v Brima, Kamara and Kanu, Case no SCSL-04-16-T, Judgment (Special Court for Sierra Leone, Trial Chamber II, 20 June 2007) para 195.

The Trial Chamber in the AFRC case characterised forced marriage as a sexual crime, and it stated that the forced marriage charge was subsumed entirely within the crime against humanity of sexual slavery and was not therefore a different crime. However, the Appeal Chamber overturned the decision of the Trial Chamber and stated that ‘unlike sexual slavery, forced marriage implies a relationship of exclusivity between the “husband” and “wife”, which could lead to disciplinary consequences for breach of this exclusive relationship.’³⁰⁵ The AFRC case did not result in the first convictions for forced marriage, because of the technical judicial reasons of admissibility of new charges, and it declined to enter fresh convictions. However, it was a landmark case given the fact that the crime of forced marriage was not characterised as sexual slavery and instead was recognised as having its own specific nature, harm and extent.

The Special Court for Sierra Leone was set up to judge the case of *Prosecutor v Issa Hassan Sesay, Morris Lakon and Augustine Gbao*.³⁰⁶ The case involved three leaders of the RUF, and so it is also known as the RUF case. These three leaders of the RUF were prosecuted for committing gender-based crimes, amongst others, which included rape, sexual slavery and forced marriage, during the war, after 30 November 1996. Accordingly, they were charged with, inter alia, a count of rape, a count of sexual slavery and a count of other inhumane acts—under which the crime of forced marriage was considered. After a lengthy trial, the Special Court for Sierra Leone convicted the three accused on all counts as a joint criminal enterprise. The AFRC and the RUF judgments brought the first ever convictions for forced marriage as an inhumane act in an international tribunal.³⁰⁷

³⁰⁵ibid.

³⁰⁶*Prosecutor v Issa Hassan Sesay, Morris Lakon and Augustine Gbao*, Case no SCSL-04-15-T, Judgment (Special Court for Sierra Leone, Trial Chamber I, 2 March 2009).

³⁰⁷V Oosterveld, ‘The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments’ (2011) 44 *Cornell International Law Journal* 49–74; J F Kamara, ‘Preserving the legacy of the Special Court for Sierra Leone: challenges and lessons learned in prosecuting

The RUF soldiers, particularly the commanders, forced young girls and women to marry them. By doing so they were able to have sexual intercourse on demand, and their forced rebel wives had to show loyalty to their husbands, as well as perform domestic tasks such as cooking and housework, carry their husbands' possessions when they were deployed, bear their children, and otherwise do what their husbands instructed. Some of these women and girls were abducted, while others were forced into marriage by means of threats, intimidation, and other forms of duress, which were predicated on the victims' fear and their desperate situation. The forced wives were viewed as RUF property, and they were unable to leave their husbands for fear of violent revenge from the RUF. The rebels took anyone they wished and did not care whether the wives already had legitimate husbands. Some of the RUF husbands had multiple wives. These husbands were aware of the power they held over their wives and knew that the wives did not consent to the marriage or to the performance of conjugal duties.

In the RUF case, the Appeals Chamber was satisfied that the acts of sexual violence involved in this case resulted in humiliation, degradation, and violation of the dignity of the victims. The Chamber acknowledged that the victims of sexual slavery and forced marriage endured particularly prolonged physical and mental suffering as they were subjected to continued sexual acts while living with their captors under difficult and coercive circumstances. Furthermore, the harm stemming from forced marriage was not limited to the physical and psychological effects of serving as a 'wife' (for example, through injuries caused by rape):

grave crimes in Sierra Leone' (2009) 22(4) *Leiden Journal of International Law* 10–15 and A S J Park, 'Other Inhumane Acts': Forced Marriage, Girl Soldiers And The Special Court For Sierra Leone' (2006) 15(3) *Social and Legal Studies* SAGE Publications 324–330.

forced marriage also carries with it a lasting social stigma, which hampered the forced wives' recovery and reintegration into society. Thus, the former RUF wives lived – and still live– in shame, and were afraid of returning to their communities after the end of the conflict.³⁰⁸

In the RUF case, the nature and the harm caused by the crime of forced marriage was examined in great detail. Forced marriage was acknowledged to be a continuing crime.³⁰⁹ Furthermore, the Trial Chamber established that ‘the use of the term “wife” by the rebels was deliberate and strategic, with the aim of enslaving and psychologically manipulating the women and with the purpose of treating them like possessions.’³¹⁰ Therefore, forced marriage not only provided the RUF fighters with ongoing sexual access to women and household care; it also played a central part in establishing a method of overarching control over the civilian population.³¹¹

In the recent case of *Dominic Ongwen*,³¹² a Ugandan former commander in the Lord's Resistance Army was charged with crimes, inter alia, forced marriages, before the International Criminal Court for the first time. Ongwen and his command repeatedly terrorised communities in Congo's districts. A woman abducted from northern Uganda by the Lord's Resistance Army fighters was forced by Ongwen to become his exclusive forced conjugal partner (forced wife) from roughly September 2002 to 31 December 2005. As his forced wife, she had to maintain an exclusive sexual relationship with him, have sexual

³⁰⁸Prosecutor v Issa Hassan Sesay, Morris Lakon and Augustine Gbao, Case no SCSL-04-15-T, Judgment (Special Court for Sierra Leone, Trial Chamber I, 2 March 2009) para 1474.

³⁰⁹*ibid* para 1460.

³¹⁰*ibid* para 1466.

³¹¹V Oosterveld, ‘The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments’ (2011) 44 *Cornell International Law Journal* 66.

³¹²The Prosecutor v Dominic Ongwen ICC-02/04-01/15, Trial Chamber IX (6 September 2016).

intercourse with him on demand, bear him children and perform domestic chores, and do whatever he instructed her to do. The prosecutor submitted that:

her forced marriage to Dominic Ongwen was an inhumane act that inflicted great suffering or serious injury to her body or to her mental or physical health of a character similar to other crimes against humanity ... Dominic Ongwen was aware of the factual circumstances that established the character of the inhumane act.³¹³

Following the jurisprudence of the Special Court for Sierra Leone, forced marriage is not predominantly considered as sexual slavery, as it is acknowledged that the crime of forced marriage covers harm that is not adequately encapsulated by sexual slavery. Ongwen had many forced wives, and he directly perpetrated sexual and gender-based crimes against all of them.³¹⁴ Some of his forced wives were as young as 10 years old.³¹⁵ Young girls were abducted and distributed among commanders to serve and become their forced wives. The prosecutor said that the crimes of forced marriage were a ‘gateway’ for other sexual gender-based violent crimes perpetrated by Ongwen and the Lord’s Resistance Army fighters upon women and girls. Furthermore, forced marriage, in the form of forced exclusive conjugal relationships, irrevocably changed the status of its victims in two ways, how they perceived themselves and how they were perceived by others.³¹⁶ The Pre-Trial Chamber noted that ‘what matters is that the so-called marriage is factually imposed on the victim, with the consequent social stigma.’³¹⁷ The physical and psychological damage of the forced marriage experience was also supplemented by the ‘lasting social stigma which hampers [forced marriage victims’] recovery and reintegration into society.’³¹⁸

³¹³ibid paras 93–94.

³¹⁴ His seven forced wives are coded as P-0099, P-0101, P-0214, P-0226, P-0227, P-0235, and P-0236, The Prosecutor v Dominic Ongwen ICC-02/04-01/15, Trial Chamber IX (6 September 2016) para 504.

³¹⁵The Prosecutor v Dominic Ongwen ICC-02/04-01/15, Trial Chamber IX (6 September 2016) para 547.

³¹⁶ibid paras 502–509.

³¹⁷ ICC-02/04-01/15-422-Conf, para 93, cited in The Prosecutor v Dominic Ongwen ICC-02/04-01/15, Trial Chamber IX (6 September 2016) para 509.

³¹⁸RUF Trial Judgement, paras 1296, 1351; Oosterveld, V, page 65 cited in The Prosecutor v Dominic Ongwen ICC-02/04-01/15, Trial Chamber IX (6 September 2016) para 511.

The Chamber concluded that, after considering the available evidence, Ongwen was to be charged with the crime of another inhumane act within the meaning of Article 7(1)(k) of the Statute in the form of forced marriage, as presented by the prosecutor.³¹⁹ The case law illustrates that while forced marriage is not cited expressly as a crime under the Rome Statute 1998, it is now recognised by the International Criminal Court as a crime against humanity as a category of ‘other inhumane acts’.³²⁰

As Oosterveld argued, ‘the most important contribution of the RUF judgments to gender sensitive jurisprudence came in the Trial Chamber’s analysis of the seemingly gender-neutral war crime of committing acts of terrorism. Here, the Trial Chamber undertook a nuanced, gender sensitive, and intersectional analysis, which revealed the central role that rape, sexual slavery, and forced marriage played in the RUF’s assertion of brutal, violent control over the civilian population of Sierra Leone.’³²¹

4.12 Conclusion

Whatever form they take, from forced marriage to oppressively handled arranged marriage, all forms of these practices destroy the victim’s self-autonomy and infringe their fundamental human rights. Mr Nazir Afzal OBE³²² clarified the fact that there is a strong relationship between forced marriage and honour-related violence, and that forced marriage is one of the

³¹⁹Prosecutor v Dominic Ongwen ICC-02/04-01/15, Pre-Trial Chamber II (23 March 2016), para 95 (also see the same case’s judgement before Trial Chamber IX dated 6 September 2016, paras 506–507).

³²⁰A S J Park, ‘Other Inhumane Acts’: Forced Marriage, Girl Soldiers and The Special Court For Sierra Leone’ (2006) Vol 15(3) Social and Legal Studies SAGE Publications 333 and J F Kamara, ‘Preserving the legacy of the Special Court for Sierra Leone: challenges and lessons learned in prosecuting grave crimes in Sierra Leone’ (2009) 22 (4) Leiden Journal of International Law 15.

³²¹V Oosterveld, ‘The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments’ (2011) 44 Cornell International Law Journal 74.

³²²Chief Crown Prosecutor of the Crown Prosecution Service (CPS) for North West England from 2011–15, Panorama: Britain’s Crimes of Honour (23 March 2012).

main reasons for honour killings.³²³ The refusal to accept a forced marriage, and/or the seeking to dissolve such a marriage later on, often triggers honour-related violence. Thus, accordingly, if a forced marriage can be prevented, honour killings will be reduced significantly.

To better understand the issues related to forced marriage, consent and coercion should be seen as being on a continuum. There have been two main legislative attempts to tackle forced marriage in the UK, in the civil and criminal arenas. Although criminalising forced marriage sent out a solid message about the unacceptability of such practices, it has some limitations. The existing law only aims to help exit from marriage. However, existing policies and services must support women who choose not to exit their communities or pursue criminal sanctions against their families.³²⁴ More measures from outreach services need to be taken, such as providing refuge places to victims and raising awareness on such remedies in the community. Help and support for victims should also include ‘specialist outreach services where women can meet and share their experiences with other survivors and receive appropriate support and advice ... as well continued provision of refuge spaces.’³²⁵

A holistic approach needs to be adopted when identifying and addressing issues that lead women and young girls to become victims of forced marriage. As Gill states, currently there is a ‘lack of adequate knowledge of what comprises a forced marriage (including how it differs from arranged marriage).’³²⁶ Furthermore, she submits that there is a lack of ‘effective

³²³L Abu Lughod, ‘Seductions of the “Honour Crime” Differences’, *A Journal of Feminist Cultural Studies* (22 January 2011) 34.

³²⁴A K Gill and S Anitha, ‘Reconceptualising Consent and Coercion within an Intersectional Understanding of Forced Marriage’, in A K Gill and S Anitha (eds) *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books 2011) 61.

³²⁵*ibid.*

³²⁶A K Gill, ‘Criminalising Forced Marriage: Findings from an Independent Study’ (2011) 41(12) *Family Law Online*, *Family Law Journal* 1424.

use of current civil and criminal remedies to combat the causes and consequences of forced marriage: a problem underpinned by the lack of monitoring of statutory guidelines and policy implementation.’³²⁷ This is further supported by the news which appeared in the *Guardian* newspaper on the Crown Prosecution Service’s reluctance to tackle honour crimes. A whistleblower from Scotland Yard Metropolitan Police stated that prosecutors are failing to tackle honour crimes in British Asian communities for fear of causing unrest.³²⁸ Detective Sergeant Pal Singh’s claims disclosed that it was ‘apathy’ among prosecutors which had led to the collapse of what would have been the first conviction for forced marriage in England. He said that the Crown Prosecution Service dropped the forced marriage case despite pleas from the police that ‘a forced marriage trial would send a strong message to the community.’³²⁹ Although hearing this news was disappointing, it was not surprising, because it illustrates the complexity around the issues relating to honour-related violence. Concerns surrounding this matter range from the various reasons for law enforcers’ apathy to the difficulty in enforcing the law, all of which subsequently means letting down vulnerable victims. Whatever measures are taken in the fight against honour crimes, they have to be supported by a multi-faceted approach, from training of frontline professionals to challenging the practice via appropriate education and awareness, as well as through proper government funding to provide adequate support for victims.

Just as with domestic law, in international law the choice of whether and whom to marry is a matter of self-determination, and this has been acknowledged in several key international instruments as a fundamental human right. Furthermore, forced marriage has been expressly

³²⁷*ibid.*

³²⁸‘Prosecutors Are Failing “Honour” Crime Victims, Says Met Whistleblower’, *The Guardian* (8 November 2016).

³²⁹H Summers and C Turner, ‘CPS “Afraid to Tackle Honour Crimes for Fear of Causing Unrest in Asian Communities”’, *The Telegraph* (7 November 2016). Note that first successful prosecution on forced marriage was secured in May 2018, two years after Detective Singh’s above statement.

acknowledged as a gender-related persecution in national and international refugee law documents.³³⁰ However, case law illustrates that there is lack of consistency when utilising such guidelines to analyse whether those forced to marry form a particular social group, or whether forced marriage constitutes a form of persecution for the purposes of the Refugee Convention. Therefore, a more uniform approach towards the claims of forced marriage is needed for Refugee Convention to protect victims. This includes States' willingness to recognise new forms of gender-based claims and offer appropriate protection to those fleeing harm.

Furthermore, the numbers of asylum cases decided nationally by English courts and tribunals differ substantially from the international efforts and developments at present. According to the research, the UK appears to be one of the countries where fewer positive decisions are made with regards to refugee forced marriage claims – compared to, say, Canada and Australia. Between 1995 and 2008, 120 refugee decisions were reviewed and only 11 cases were from the UK.³³¹ This inconsistency was also acknowledged by the United Nations, which provided that:

There are also significant differences between countries with respect to the number of cases in which refugee status is granted and the number of cases in which applicants are afforded complementary protection including, *inter alia*, protection under the European Convention on Human Rights (ETS No. 5), subsidiary protection and other humanitarian protection.³³²

³³⁰UK Immigration Appellate Authority, Gender Asylum Guidelines 2000 at paras 1.13 [2A.24] and [2A.25] and UK Home Office, Asylum Policy Instructions, 'Gender Issues in the Asylum Claim' 2010, 2.2 (iii), 4 and 11, 13–14, and UNCHR, Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity' 2008 at paras 27 and 28.

³³¹C Dauvergne and J Millbank, 'Forced Marriage and Refugee Status' (April 2011) 101 Women's Asylum News.

³³²Council of Europe Resolution 1695 (2009) Improving the quality and consistency of asylum decisions in the Council of Europe Member States, point 4.

Thus, while some States recognise that a range of gender-related persecutions can engage the Refugee Convention, poor decision making leaves many women at risk of being denied the protection to which they are entitled.³³³

Forced marriage should clearly be understood as a persecutory harm in itself, without the need for it to be coupled with any other harmful practice (such as female genital mutilation) or experience. The reasoning made in the national courts or tribunals of State Parties and Human Rights Committees needs to be in line with the reality of the phenomenon of forced marriage, i.e. that age, education, residence in a modern city and independence do not necessarily negate the risk of forced marriage. With regards to the Committee on the Elimination of Discrimination against Women's periodical reviews, more consistency is required when reviewing State Parties' progress on eliminating forced marriage.

In 2010 the Council of Europe adopted a Resolution on gender-related claims,³³⁴ under which it called on Member States to do everything in their power, at a national level, to collect statistics on forced marriages and other gender-based human rights violations and ensure that the results were analysed and followed up. Yet the missing schoolgirls in England, as explained under Chapter four, 'Schools' Involvement in the Fight against Forced Marriage' section, were not reported or followed up as actual or potential forced marriage victims. If this issue is not taken seriously, the real scale of the issue will remain unknown: as well as failing to protect schoolgirls, States are failing to meet the requirements of the Resolution.³³⁵

³³³Directorate General for Internal Policies Policy Department C: Citizens' Rights And Constitutional Affairs Gender Equality, Gender related asylum claims in Europe, 'A comparative analysis of law, policies and practice focusing on women in nine EU Member States' (Brussels 2012).

³³⁴Council of Europe Resolution 1765 (2010) Gender-related claims for asylum, points 7 and 7.1.

³³⁵ibid point 5. 'The Assembly considers that member States should act both at a national level – developing policies to protect victims, prevent violations and punish the perpetrators – and at an international level, promoting women's rights and acting against gender-based violence. At the same time, combating practices contrary to human rights such as forced marriages, female genital mutilation and any other form of gender-based

As long as they are implemented and enforced properly, passing laws to deter forced marriages may be considered a step forward. However, since the causal root of such practices is honour-related, a permanent, long term solution can only be achieved via adequate education on gender equality. Coercive families will find ways of forcing their daughters to marry one way or another (sending them back to the country where parents or grandparents came from to marry or silencing them). The long term solution is the education of the younger generation that human rights are also women's rights, and that men and women are equal. When women's rights and choices are respected there will no longer be the issue of forced marriage.

violence should become a priority in the countries of origin, along with promoting women's rights and gender equality.'

CHAPTER FIVE: Honour Killing

5.1 Introduction

This chapter will consider the extreme end of the honour-related violence spectrum: honour killing. A review of the legal elements concerned with honour killing (national legislations, judicial interpretations and sentencing guidelines) will help to expose the complexity of this phenomenon. From an international human rights law viewpoint, honour killings appear in many cases of asylum and subsidiary protection. An overview of some of the relevant cases will illustrate some of the shortcomings and inconsistencies that are experienced by some applicants under the relevant international human rights laws.

Honour killing is defined as the premeditated murder of a girl or woman by a relative (such as a brother or father) in the name of restoring the family's social reputation.¹ It is also defined as the killing of a woman or girl by members of her family who do not approve of her sexual behaviour.² The killing is committed in order to restore the family's reputation when their honour is seen to have been damaged by the victim's actual or suspected actions. The event that can spark an honour killing of a woman range from the victim failing to bleed in wedding night, talking to a man who is not a family member, smoking, coming home late, being involved in a non-approved romantic relationship either actually or allegedly. A gossip or rumour even will be sufficient reason for honour killing.³

The killer 'usually treats the murder not as a crime but as a form of "honour cleansing": as a way of wiping away a "stain" on the family's name. Ironically, this cleansing process is

¹A H Jafri in *Honour Killing* (Oxford University Press 2008) 18.

²N Begikhani et al in *Honour-Based Violence* (Ashgate 2015).

³N Shalhoub-Kevorkian, 'Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?' (2002) 36 (3) *Law & Society Review* 580.

accomplished through the spilling of blood'.⁴ Honour killings are almost always premeditated and planned murders.⁵ However, in some countries honour killings can be justified under defence of uncontrolled violence such as the fit of fury defence in Jordan, which will be discussed under International Human Rights Law and Honour Killings section in this chapter.

Jafri explains that: 'On the most fundamental level, honour killing as an act itself is a message; among other things, it is a dramatic rhetorical assertion communicated by an individual man (or several men) about his personal and collective identity that needs to be parsed in all its complexities.'⁶ Furthermore, while some people perceive honour killing as straightforward murder, others view it as a sacred duty to restore the family community honour. Therefore, such 'killing for the sake of individual and collective honour is not a crime but a heroic act because only under circumstances restored by such killing could an honourable life, a life worth living, be possible.'⁷

It is impossible to estimate the exact figures of honour killings, because these crimes are underreported; for instance, young women disappear and are never reported as missing. Reporting to the police is rare and sporadic, and there is widespread family and community covering up of such crimes.⁸ Honour killing is mainly reported in Bangladesh, Brazil, Ecuador, Egypt, India, Israel, Italy, Jordan, Morocco, Pakistan, Sweden, Turkey, Uganda and the United Kingdom.⁹

⁴N Begikhani et al in *Honour-Based Violence* (Ashgate 2015) 32.

⁵ibid 31.

⁶A H Jafri, *Honour Killing* (Oxford University Press 2008) 10.

⁷ibid 10–11.

⁸U Smartt, 'Honour Killing' (2006) 170 *Justice of the Peace* 1.

⁹United Nations Population Fund (UNFPA), *The State of World Population* (2000) 29–30.

5.2 Honour Killings and Domestic Law

Although there are no official statistics on honour killings in the UK, according to the Association of Chief Police Officers (ACPO) an average of 12 honour killings are investigated by the police each year. The Crown Prosecution Service and Home Office figures agree that approximately 12 honour killings take place in the UK.¹⁰ However, since honour-related violence is often a hidden problem within the criminal justice system, it is submitted that either the motive for the murder is not detected or honour killings are mistaken for suicide. Therefore, it is likely that this figure is too low, and does not reflect the real scale of the number of honour killings.¹¹

According to the most recent data available on database of killings or attempted killings,¹² 29 cases have been reported in the media to have taken place in the UK in the years 2010–2014 (eleven in 2010, five in 2011, nine in 2013 and four in 2014).¹³ Of all reported cases since 2010, 11 were attempted killings, and 18 were actual honour killings (between 31 December 2009 and 31 December 2014). There were no cases reported in the open source material of killings or attempted killings in 2012.¹⁴

The recognition of honour killings has gone through a slow journey in England and Wales. Concerns arise when either multiculturalism or cultural relativism are used to mitigate the

¹⁰Honour-based Violence Awareness Network, Statistics and Data, accessed 10/11/2017.

¹¹'Domestic Violence, Forced Marriage and "Honour"-Based Violence', Home Affairs Select Committee, House of Commons, Sixth Report (Session 2007–8) 17
<www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263i.pdf> accessed 10/10/2017.

¹²In cases of attempted killings, the victim's survival is extremely unlikely; e.g. victims who survive gun shots but remained paralysed; or those who are kidnapped by individuals who had previously threatened to kill the victim with the intention to murder them, but who were rescued or managed to escape at the last minute.

¹³E Dyer, The Henry Jackson Society, 'Honour Killings in the UK' (London, January 2015).

¹⁴The high-profile court trial of Shafiea Ahmed's parents for her murder in 2003 took place in 2012.

sentences in cases of murder with an honour killing element, as can be seen below.

According to Reddy, one of the reasons for this is that Western cultures fail to understand honour-related patriarchal practices sufficiently because they are inherently less patriarchal compared to honour-related patriarchal communities.¹⁵ As a result, ‘in the dominant society, gender violence is assumed to be the work of individual deviants rather than emanating from cultural beliefs or traditions, with the effect that only female immigrants suffer “death by culture”’.¹⁶

These failures can be seen in the legal responses to earlier cases involving honour-related violence. In earlier forced marriage and honour killing cases, the judiciary viewed ‘honour’ as primarily a cultural rather than a patriarchal matter. The forced and child marriage cases of *Singh v Singh*¹⁷ and *Alhaji Mohamed v Knott*¹⁸ respectively illustrate how a cultural defence can be successfully sought to justify actions which are unacceptable in the majority culture. In the case of *Alhaji Mohamed v Knott*, the UK courts went even further, allowing a 13 year-old Nigerian girl’s marriage (to a man twice her age) to be accepted in the UK. The Court of Appeal concluded that the marriage of 13 year-old girls was accepted in Nigerian culture and therefore overturned the care order. A similar approach was taken in 1997 in the case of *R v Shabir Hussain*,¹⁹ which involved honour killing and where culture was used as a mitigating factor to reduce the defendant’s murder sentence to six and a half years. These cases illustrate the courts’ adoption of a cultural relativist approach at the expense of women’s human rights. Dustin and Phillips submit that, up to the late 1990s, the gender dimension of

¹⁵R Reddy, ‘Gender, Culture and the Law: Approaches to “Honour Crimes” in the UK’ (2008) 16 *Feminist Legal Studies* 310.

¹⁶R Reddy, ‘Gender, Culture and the Law: Approaches to “Honour Crimes” in the UK’ (2008) 16 *Feminist Legal Studies* 310; L Abu-Lughold, ‘Seductions of the “Honour Crime”’ (2011) 22 (1) *A Journal of Feminist Cultural Studies* 35.

¹⁷*Singh v Singh* [1971] 2 All ER 828.

¹⁸*Alhaji Mohamed v Knott* [1969] 1 QB 1.

¹⁹*R v Shabir Hussain* [1997] EWCA Crim 24.

multiculturalism and its impact on women's human rights was not identified in the UK public sphere.²⁰

In 2003, 16 year-old Heshu Younes²¹ became a victim of honour killing. Her father subjected her to months of beatings before stabbing her 17 times. In this case, culture was not raised as a mitigating factor because the father pleaded guilty to murder and was given a life sentence. However, Judge Neil Denison described the situation in *Younes* as exposing irreconcilable cultural difficulties between Kurdish and Western societies. It is unfortunate to see that such a murder is perceived by a judge as a result of a 'clash of cultures' instead of excessive patriarchal attempts to control or regulate female sexuality. This illustrates the complications caused by labelling honour-related violence as a cultural issue rather than gender-based violence.²²

In 2005, the case of *R v Faqir*²³ represented a change in the courts' attitude. The case involved an honour killing, and in the trial the defendant's cultural and religious beliefs were not taken into account, which meant that the plea of provocation failed. Since *Faqir*, the law on provocation has been amended in England and Wales by the Coroners and Justice Act 2009, which came into effect in 2013. Under Sections 54–56 of the 2009 Act, the defence of provocation was abolished and replaced by a new partial defence of murder involving loss of control. The Act aimed to address the gender-blindness of the previous Act. The previous defence of provocation required a sudden loss of self-control, which was regarded as being

²⁰M Dustin and A Phillips, 'Whose Agenda Is It? Abuses of Women and Abuses of "Culture" in Britain' (2008) 8(3) *Ethnicities* 406.

²¹*Rv Abdulla Younes*, Central Criminal Court (27 September 2003).

²²L Abu-Lughod, 'Seductions of the "Honour Crime"' (2011) 22 (1) *A Journal of Feminist Cultural Studies* 34.

²³*R v Faqir Mohammad* [2005] EWCA Crim 1880.

male-orientated in cases of battered women, since this provocation presented difficulties that had been well documented in case law.²⁴

The Coroners and Justice Act 2009 elevated this concept into a fully-fledged partial defence based on two qualifying triggers: a 'justifiable sense of being seriously wronged' under Sections 55(4)(b) and 'a fear of serious violence' under 55(3). Under the 2009 Act Section 55(3), the unique circumstances of battered women who killed their abusers are recognised. In addition, this abolition (under Section 55(6)(c)) resolved the issue by which the defence of provocation was being raised successfully, mainly by men in cases of sexual infidelity.

It is argued that the Act does not address the position of honour killings clearly.²⁵ While Parliament had decided that sexual infidelity deserved to be excluded as a qualifying trigger for the defence of loss of control, other circumstances, like honour killing, were not excluded expressly. If considering sexual infidelity as a qualifying trigger was morally repugnant, so should considering the concept of patriarchal honour as the basis of loss of control.²⁶ The reasons to exclude sexual infidelity as a potential qualifying trigger were consistent with the concept of individual self-autonomy. In the same way, excluding considerations of patriarchal honour as a qualifying trigger must be also considered as a way of upholding individual self-autonomy. The intertwined issues of sexual autonomy, loss of control and cultural defence are all relevant in the context of English criminal law and honour killings. Thus, in the absence of clear indications, honour-related violence can still be raised as a 'qualifying trigger' under Section 55 of the 2009 Act.²⁷

²⁴such as the key case of *R v Ahluwalia* [1992] 4 All ER 889.

²⁵C Withey, 'Loss of Control' (2010) 174(14) *Criminal Law and Justice Weekly* 198.

²⁶A Clough, 'Honour Killings, Partial Defences and the Exclusionary Conduct Model' (2016) 80(3) *Journal of Criminal Law* 5.

²⁷*ibid* 6–7.

It would be a solid step forward if honour-related violence were to be expressly excluded under Section 55 of the 2009 Act. Although some of these changes might be seen as a development of the prevention of the misuse of cultural defences, some commentators are still pessimistic about the issue. Reddy²⁸ submits that whatever changes are ultimately made in this area of law, it is likely that there will be scope for judicial interpretation of ‘culture’. Thus, the problem will continue unless the religion and culture that are to be included in the objective assessment of loss of control are ‘viewed within the context of the westernised society they are acting within, and whose legal rules and constraints they are governed by.’²⁹

The difficulties of judicial interpretation were seen in the Court of Appeal case of *R v Clinton*,³⁰ which concerned sexual infidelity and the ‘loss of self-control’ defence. In this case, the Lord Chief Justice of England and Wales, Mr Justice Henriques, held that sexual infidelity could be taken into account when considering the existence of loss of control because there were other factors that had to be considered. These other factors were things said by the victim to the defendant – admittedly very unpleasant things – which were presented by the defence as causing the defendant to have a justifiable sense of being seriously wronged when considered together with sexual infidelity.

The wording of the judgment provided that:

Although, where sexual infidelity is the only trigger, Section 55(6)(c) requires a thing said or done which constitutes sexual infidelity to be disregarded, where sexual infidelity is integral to and forms an essential part of the context in which to make a just evaluation whether a qualifying trigger

²⁸R Reddy, ‘Gender, Culture and the Law: Approaches to “Honour Crimes” in the UK’ (2008) 16 *Feminist Legal Studies* 316.

²⁹A Clough, ‘Honour Killings, Partial Defences and the Exclusionary Conduct Model’ (2016)80(3) *Journal of Criminal Law* 11.

³⁰*R v Clinton* [2013] QB 1.

properly falls within the ambit of Section 55(3)(4), the prohibition in Section 55(6)(c) does not operate to exclude it.³¹

The decision in Clinton was criticised because, despite the fact that sexual infidelity had been expressly excluded as a basis for the claim of loss of control, it was allowed in this case ‘via the backdoor’.³² ‘It would seem after Clinton that the partial defence of loss of control could amount to a form of individual defence of male honour, an issue that is very much relevant to crimes such as honour killings, where the sexual behaviour of a woman is central to the killing.’³³

According to Baker and Zhao, the loss of self-control defence does not apply to honour killings. An honour killer such as a father may lose control when he discovers that a female member of his family has had a sexual relationship with another man outside wedlock and might feel ‘seriously wronged’ by this behaviour, but this does not qualify as an ‘objective trigger’ for the loss of control defence to apply. This is so even if the killer feels wronged and ‘subjectively’ views the circumstances as being extremely grave. This is because a normal person or parent living in contemporary Britain (i.e. a person of the defendant’s sex and age, with a normal degree of tolerance and self-restraint, and, under the circumstances of the defendant under Section 54(1)(c)), would not consider discovering his adult daughter dating someone of a different race or religious faith as constituting extremely grave circumstances. A ‘reasonable’ person in contemporary Britain would not be justifiably wronged in an objective sense by having to deal with his or her adult daughter’s decision to choose her own partner.³⁴ However, this adjudication is valid only so long as a judge does not decide that the elements of the partial defence of ‘loss of control’ are met and feels obliged to leave the

³¹ibid at first paragraph of the official transcript.

³²M M Idriss ‘Sentencing Guidelines for HBV and Honour Killings’ (2015) 79(3) Journal of Criminal Law 8.

³³ibid.

³⁴ibid.

defence to the jury. If the contrary is decided, there is a risk that the loss of self-control defence may apply to honour killings, therefore the interpretation of the judge needs to be gender sensitive to embrace the specificities of the situation of the woman in question.

5.2.1 Sentencing Council Guidelines on Honour-related Violence, Honour Killings

The Criminal Justice Act 2003 created the Sentencing Guidelines Council, which was under obligation to provide sentencing guidelines for courts in England and Wales. Sentencing guideline schemes require courts to sentence within the guidelines or give reasons why a different sentence is appropriate. In 2010, the Sentencing Council replaced the Sentencing Guidelines Council, which had been criticised for adopting overly rigid, bureaucratic and repetitive processes when creating guidelines.³⁵ The Sentencing Council now has ultimate responsibility for issuing guidelines, although the Court of Appeal continues to issue its own guideline judgments, which are viewed as complementing the Sentencing Council. Both are treated in the same manner, not least because the same personnel overlap both the Court of Appeal and the Sentencing Council. Section 125 of the 2009 Act also requires every court to apply the relevant Sentencing Council guidelines applicable to the case before them, by providing that:

- (1) Every court—
 - (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
 - (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of that function, unless the court is satisfied that it would be contrary to the interests of justice to do so.

These developments reflect the recognition that greater consistency in sentencing is desirable or even necessary, in order to ensure both fairness of outcome and greater accuracy in prison

³⁵ibid 7.

population projections.³⁶ Given that ‘honour-based’ violence³⁷ and honour killings occur, guidelines need to be provided in this area to allow judges to impose sentences fairly and consistently, and to promote public and victim confidence.³⁸ Thus, to facilitate this, there needs to be a structured system of guidance that provides details on the aggravating and mitigating factors that may reduce or increase the sentence imposed on honour-related violence offenders.³⁹ Existing guidelines do not incorporate specific indications on matters peculiar to honour-related violence and honour killings, and so it would be useful for judges to have these factors conveniently compiled into a single document when sentencing such offenders.⁴⁰ Thus, there is a need for specific guidelines on this issue to bring clarity and consistency in sentencing honour crimes.

There are several relevant issues when sentencing the perpetrators of honour crimes, such as a cultural defence, mitigations for young offenders, and deterrence, all of which have been suggested to the Sentencing Council to consider when drafting new guidelines for honour-related violence and honour killings.⁴¹ The youth of the offender is considered at both stages of a criminal proceedings: at the police investigation stage of the crime,⁴² and at the trial when imposing the sentence. One of the mitigating factors under the Association of Chief Police Officers (ACPO) Gravity Matrix is when an ‘offender was influenced by others more

³⁶A Ashworth and J V Roberts, ‘The Origins and Nature of the Sentencing Guidelines in England and Wales’ (2011) 52(1) *British Journal of Criminology* 1.

³⁷there is no specific offence of ‘honour-based’ violence in England and Wales, but it is used by the CPS to describe offences that include domestic and sexual violence within families or social groups to ‘protect perceived cultural and religious beliefs and/or honour’.

³⁸M M Idriss, ‘Sentencing Guidelines for HBV and Honour Killings’ (2015) 79(3) *Journal of Criminal Law* 7.

³⁹*ibid.*

⁴⁰*Ibid.*

⁴¹*ibid.*

⁴²offence seriousness is determined by reference to the ACPO Gravity Matrix drawn up by the Association of Chief Police Officers in consultation with the, *inter alia*, Crown Prosecution Service and the Home Office. The ACPO Gravity Matrix sets out the most prevalent offences, and provides them with a score of 1, 2, 3 or 4. The score may be raised or lowered by one level according to aggravating and mitigating factors which are set out in the Matrix.

criminally sophisticated.’⁴³ Thus, there is an argument that where the honour-related violence perpetrator is young, more lenient sentences might be appropriate, unless the gravity of the offence outweighs this.⁴⁴

This was seen in the case of Arash Ghorbani-Zarin,⁴⁵ a 19 year-old Iranian Muslim engineering student studying in England. Manna Begum, daughter of Chomir Ali, who was ordered to enter into an arranged marriage back home in Bangladesh, had disobeyed her father’s order by going out with Arash, and later she became pregnant. Chomir Ali ordered his sons Mujibar Rahman and Mamnoor Rahman to kill Arash. At the time of the incident the sons were 17 and 14 years old respectively. The two sons killed him due to the shame and dishonour brought on the family by his relationship with Manna Begum. Arash was found stabbed 46 times in his car. In his summing up, Mr Justice Gross said that the western style relationship had ‘caused a “battle of wills” in Miss Begum’s family, as she resisted pressure to conform.’⁴⁶ Mr Justice Gross stated that it was the father who had ordered his two sons to commit a cold-blooded killing.⁴⁷ Therefore, he imposed a life sentence on the father for being guilty of murder as ‘counsellor and procurer’, whilst his son Mujibar Rahman was given a sentence of 16 years, and Mamnoor Rahman received a sentence of 14 years’ imprisonment.⁴⁸

Given the seriousness of honour-related violence there is also a strong argument that youth should not mitigate sentences. In honour-related violence cases it is likely that a parent or

⁴³ACPO Gravity Matrix <<http://cps.gov.uk/legal/assets/uploads/files/Gravity%20Matrix%20May09.pdf>> 8 accessed 8/11/2017.

⁴⁴R v Sharkey and Daniels [1995] 16 Cr App R (S) 257 and R v Howells [1999] 1 Cr App R (S) 335.

⁴⁵R v Ali (Chomir) [2011] EWCA Crim 1011, R v Rahman (Mohammed Munjibar) [2007] EWCA Crim 237

⁴⁶‘Family Guilty of “Honour Killing”’ *BBC News* (4 November 2005)

<<http://news.bbc.co.uk/1/hi/england/oxfordshire/4407728.stm>> accessed 11/10/2017.

⁴⁷U Smartt, ‘Honour Killing’ (2006) 170 *Justice of the Peace* 4.

⁴⁸ibid 6.

other older members of the family or community may coerce younger males into inflicting honour-related violence or committing honour killings, knowing very well that criminal law may reduce the sentence on the grounds of mitigation because the court is dealing with a young offender.⁴⁹ Thus, the sentencing guidelines should expressly state that youth will not be considered as mitigation in these types of cases. Idriss provides an analogy with serious road traffic offences in which young perpetrators have caused death by dangerous driving. Young drivers are still likely to face substantial custodial sentences, irrespective of their relatively young age and immaturity.⁵⁰

In order to be a deterrent, honour killings should be treated like any other murder with aggravated features which carry with it severe penalties and a mandatory life imprisonment sentence.⁵¹ Honour killings are aggravated crimes not only because they harm actual victims, but also because they serve to spread fear amongst other victims that they too will face violence if they defy cultural norms of expected behaviour. For instance, in the case of Banaz, many members of the community did not support the prosecutors. Instead, they supported the family members responsible for the killing. The murder of Banaz was so brutal that it sent a clear message to others, saying, ‘do not step out of line or this could be you’.⁵² The aim of such violence and killing is to control unwanted or undesired behaviour, whether it is sexual behaviour, or something as simple as wearing make-up or jeans, or behaving in a way that is too ‘westernised’.⁵³ Thus, honour-related violence is used to terrorise other women and force them into compliance with acceptable norms of behaviour.

⁴⁹L Abu-Odeh, ‘Comparatively Speaking: The “Honor” of the “East” and the “Passion” of the “West”’ (1997) 2 Utah Law Review 288; C Warrick, ‘The Vanishing Victim: criminal law and gender in Jordan’ (2005) 39 Law and Society Review 324–325.

⁵⁰M M Idriss, ‘Sentencing Guidelines for HBV and Honour Killings’ (2015) 79 (3) Journal of Criminal Law 9.

⁵¹ibid 10.

⁵²R Hussain, *Murder in the Name of Honour* (Oneworld Publications 2009) 166.

⁵³as was seen in the cases of Shafilea Ahmed and Heshu Younes.

In order to acknowledge the aggravated nature of killings under the name of honour, the Crime (Aggravated Murder of and Violence against Women) Bill was debated on 31 January 2017. The Bill was proposed to prohibit the use of the term ‘honour killing’ and make provisions about the aggravated murder and aggravated domestic violence perpetrated outside the UK against women who are citizens of the UK. The use of the term ‘honour’ to describe a violent criminal act – mainly committed against women– can then only be explained as a means of self-justification used by the perpetrator.⁵⁴

However, there are concerns about passing specific new laws (such as new honour-related violence statutory aggravating factors) to address issues which mainly occur in ethnic minority groups, as this may create a division between the majority society and these groups (especially South Asian and Muslim communities) where honour-related violence and honour killings mainly occur. Furthermore, creating a new statutory aggravating provision may signal that ethnic minority women are more susceptible to honour-related violence than majority women, and that immigrants do not obey English criminal law.⁵⁵

Idriss suggests a quicker solution to this: amending the existing law by making honour-related violence a statutory aggravating factor under the Criminal Justice Act 2003. This will then require courts to pass more severe penalties when crimes have been committed in the name of honour.⁵⁶ This can fit in perfectly within the ambit of Sections 145 and 146 of the Criminal Justice Act 2003. Under these Sections, the 2003 Act already made it a statutory

⁵⁴N Ghani, Crime (Aggravated Murder of and Violence against Women) (31 January 2017) Volume 620, Motion for leave to bring in a Bill (Standing Order No 23).

⁵⁵W Aujla and A K Gill, ‘Conceptualizing “Honour” Killings in Canada: An Extreme Form of Domestic Violence’ (Jan–Jun 2014) 9(1) International Journal of Criminal Justice Sciences 153–166.

⁵⁶M M Idriss, ‘Sentencing Guidelines for HBV and Honour Killings’ (2015) 79(3) Journal of Criminal Law 11.

aggravating feature for crimes committed involving hostility directed towards the victim based on their race, religion, sexual orientation or disability. This would also enable gender issues to be taken into account under which honour-related violence could be considered.

Thus, as Idriss argues:

One possible reform for Parliament to consider is to make [honour-based violence] a statutory aggravating factor under the 2003 Act [which] will ensure the accountability and punishment of offenders by making it a statutory requirement for sentencing courts to punish perpetrators for committing the initial offence (such as assault, killing and forcing a person into a marriage) according to the normal offence category but then adding the additional element to the sentence in recognition of its aggravating features for having been committed in the context of honour-based violence.⁵⁷

Furthermore, since honour-related violence disproportionately targets women, this could also be highlighted in legislations as an aggravating factor. This will also help to convey the message that Parliament will not tolerate honour-related violence or the gender/social inequalities that it promotes. This can be achieved by adding ‘gender’ to Sections 145–146, which focus on race, religion, sexual orientation and disability as aggravated features of a crime; the suggested reform would then focus on making it an aggravating feature to *commit a crime against a woman because she is woman* (i.e. gender). Such amendments would enable accountability by imposing on honour crime perpetrators more appropriate sentences, as well as sending a clear message that such offences will not be tolerated in English criminal law.

Existing statutory aggravating factors could still be utilised by sentencing courts in cases of honour killings. For example, Section 145 of the 2003 Act may be a relevant aggravating feature if criminal offences are committed on the basis of racial or religious hostility, such as if a victim has experienced honour-related violence because they are a ‘Sunni Muslim’ while dating an ‘Alevi Muslim’. Section 145 could be utilised if, for example, one of the reasons

⁵⁷ibid.

why a perpetrator inflicts honour-related violence is because it is perceived to be shameful for a woman to enter into a relationship with a man from a different race, religion, religious sect, ethnicity or caste.⁵⁸ This was seen in the honour killing case of Tulay Goren (who disappeared in 1999), a Shia Muslim woman who entered into a relationship with a Sunni Muslim, and in the case of Heshu Yones (2002), a Muslim woman who dated a Christian man; similarly, Samira Nazir (2006), a Pakistani woman, fell in love with an Afghan refugee.⁵⁹ In this way, Section 145 could be utilised by sentencing courts to treat honour-related violence as based on racial or religious hostility (or both).

5.2.2 Continuing Shortcomings

Honour-related violence is a complex matter, and the starting point to tackle such crimes is awareness of its existence and nature. In England and Wales, Her Majesty's Inspectorate of Constabulary (HMIC) has inspected and reported upon all police forces' responses to crimes of honour-related violence for the first time. The result of this inspection was published as a report in December 2015.⁶⁰ As mentioned in Chapter two, acknowledgment of the shortcomings of the police response to honour-related violence in the report can be considered a step forward, so long as the necessary training measures are adopted effectively.

The shortcomings of front line police officers' awareness of honour-related violence, and their ineffectiveness in offering protection for honour-related violence victims was evident in

⁵⁸ibid 12.

⁵⁹*R v Goren, Goren and Goren*, Case Number T20087432, Central Criminal Court (Old Bailey) 17 December 2009; *R v Abdulla Younes*, Central Criminal Court, 27 September 2003; *R v Nazir* (2009) EWCA Crim 213.

⁶⁰Her Majesty's Inspectorate of Constabulary, 'The Depths of Dishonour: Hidden Voices and Shameful Crimes', an inspection of the police response to honour-based violence, forced marriage and female genital mutilation, (December 2015) 54.

Banaz Mahmood's case ten years before the above mentioned report was published.⁶¹ The case blatantly revealed the fact that awareness of honour crimes in the police force needed to be raised urgently. Such awareness should also be extended to policy makers and law enforcers (including the judiciary), social workers and medical staff; all of the state agencies involved must be made aware of the needs of women from ethnic minorities; and, when noticed, any abnormalities need to be treated seriously and acted upon accordingly. The case of Banaz illustrates the police's reluctance to protect an honour-crime victim in the UK. Banaz was a victim of a forced marriage at the age of 16 with a member of her community and was expected to fulfil the role of subservient wife. However, she left her abusive husband and fell in love with another man. For this reason, she was gang raped and murdered by her father, uncle, and a group of family friends.

The death of Banaz shows that all the relevant authorities need to ensure that allegations of honour-related violence are taken seriously. Banaz reported to the police several times that she feared for her life. However, the police did nothing to protect her, and in one incident charged her with criminal damage because she smashed a window to escape from her father's attack. The officer who interviewed Banaz about what happened did not take her case seriously and dismissed her account. An Independent Police Complaints Commission report in April 2008 found that Banaz had been repeatedly let down by the police.

Other cases illustrate that not much has changed since Banaz's case. In 2013, Sabeen Thandi⁶² sought to divorce her husband (Badiuzzaman) and started to receive death threats from him. She had been granted a restraining order against him in order to protect herself and

⁶¹C Julios, *Forced Marriage and 'Honour' Killings in Britain* (Ashgate 2015) 61–66 and also N Begikhani et al, *Honour-Based Violence* (Ashgate 2015) 100–101.

⁶²'Mohammed Badiuzzaman Jailed for Strangling Pregnant Wife' *BBC News* (27 May 2014).

her children. Several days later, upon discovering that Sabeen had met a man from Pakistan via Facebook, her husband duped her into their car by saying he was going to drive her to work. Instead, he began threatening her while driving her around for three hours. He told her that he had a hammer in his car boot, and that if she did not revoke the order against him, she would never see her son again, and that police would find ‘parts of her body in bits in bin bags’. Sabeen’s solicitors telephoned the police upon learning that she had been forced to revoke the restraining order against her husband. Badiuzzaman was arrested on suspicion of threats to kill and unlawful imprisonment. However, he was later released. After his release, police received two silent 999 calls from the couple’s property, where they subsequently found Sabeen’s dead body. Badiuzzaman was sentenced to life in prison with a minimum of 17 years in 2014. The Independent Police Complaints Commission launched an independent investigation in 2013 into previous police contact between Sabeen and the Metropolitan Police Service (MPS) and the Hertfordshire constabulary, looking at how they had handled Sabeen Thandi’s case prior to her murder. The investigation concluded on 7 February 2017 and highlighted police force failings, and recommended that disciplinary action be taken against a number of officers, as well as making the following points:⁶³

- There had been a breakdown in MPS processes;
- MPS officers dealing with her case lacked appropriate training; and
- The quality assurance of MPS investigations was sporadic and at the individual discretion of the supervisor

The investigation identified no learning for Hertfordshire police, but did recommend a misconduct charge for a custody sergeant in relation to custody issues. This was accepted by Hertfordshire police, but the sergeant retired prior to the completion of the investigation and so received no disciplinary sanction, although he was placed on the national police register at

⁶³Conclusions of the Independent Police Complaints Commission (IPCC) Investigation into Police Contact with Sabeen Thandi (7 February 2017) <<https://www.ipcc.gov.uk/news/conclusions-ipcc-investigation-police-contact-sabeen-thandi>> accessed 24/5/2017.

the College of Policing. The report of the Independent Police Complaints Commission (IPCC) also recommended a number of measures that could be taken to improve procedures, including better supervision of inexperienced officers and reviews of staffing levels within specialist units to improve the quality of investigations. These have been accepted by the Metropolitan Police.

Similar to Sabeen Thandi, Farkhanda Younis became a victim of an honour killing in 2013 in Manchester. Farkhanda was found with multiple stab wounds. The incident was referred to the IPCC for investigation, as there had been previous contact between the local police and Farkhanda before her death.⁶⁴ In another honour killing case in Manchester in 2013, the victim, Rania Alayed, was murdered by her husband after several interventions by the police prior to the murder. The investigation brought the number of domestic violence related Greater Manchester Police inquiries currently being carried out by the IPCC to three, including the earlier probes into the police contact with Linzi Ashton (a domestic violence victim) and Farkhanda Younis. There have been some recommendations made as a result of the IPCC investigation, including emphasis on training of control room personnel and a yearly update of their training on policy and legislative changes.⁶⁵

The IPCC report, published on 17 October 2017, came more than four years after the deaths of Linzi Ashton, Rania Alayed and Farkhanda Younis in 2013, and stated that ‘evidence gathered across all three investigations indicated recurring systems issues around the

⁶⁴Independent Police Complaints Commission (IPCC) investigating GMP contact with Farkhanda Younis (23 May 2013) <<https://www.ipcc.gov.uk/cy/node/20445>> accessed 30/5/2017.

⁶⁵IPCC independent investigation into Greater Manchester Police’s previous contact with Rania Alayed before she died, Recommendations – Greater Manchester Police (23 February 2015). <<https://www.ipcc.gov.uk/cy/node/23399>>accessed 30/5/2017.

handling of domestic violence and a number of instances where individuals could have done better.’⁶⁶

However, the situation is not any different with the police response to domestic violence across the rest of England and Wales. The Home Secretary commissioned the HMIC to conduct an inspection on the police response to tackling domestic abuse.⁶⁷ The HMIC collected data and reviewed files from 43 police forces (all police forces in England and Wales). The Report revealed that the overall police response to victims of domestic abuse was not good enough. In too many forces there were weaknesses in the service provided to victims; some of these were serious, meaning that victims were put at unnecessary risk. It also acknowledged that domestic abuse was a priority on paper but, in the majority of forces, not in practice.⁶⁸ Many forces were found not to be deploying one of their most valuable assets, neighbourhood policing teams, in the fight against domestic abuse. Furthermore, many forces were failing to target and manage their perpetrator population in a way that was now common practice in tackling other sorts of crime.⁶⁹ Most importantly, the report disclosed that ‘opportunities to learn as an organisation are also missed by forces. While they participate in domestic homicide reviews (DHRs), there is insufficient evidence to show how learning from the reviews is being used to improve police practice.’⁷⁰ This illustrates that the police response to crimes where victims are mainly women (such as honour-related violence and domestic violence) are not high up on the police agenda as a public institution.

⁶⁶Liguori G, Associate Commissioner in Independent Police Complaints Commission (IPCC), Investigations into the contact between Greater Manchester Police and Linzi Ashton, Rania Alayed and Kiran (19 October 2017). The Independent Police Complaints Commission (IPCC) became The Independent Office for Police Conduct (IOPC) in January 2018.

⁶⁷Her Majesty’s Inspectorate of Constabulary (HMIC) Report, *Everyone’s business: Improving the police response to domestic abuse* (2014).

⁶⁸HMIC Report, *Everyone’s business: Improving the police response to domestic abuse* (2014) 6.

⁶⁹*ibid* 16.

⁷⁰*ibid*.

The police have a very wide statutory discretion and common law powers to intervene in any violent incident (such as domestic violence). It is at the discretion of individual police officers to define a crime as absolute, as well as to decide how to dispose of the case; but this degree of discretion means that their response is not uniform, and may vary.⁷¹ Furthermore, according to Dobash et al, police attitudes to both domestic violence and women in general have been highly criticised. In addition, their status as a patriarchal institution⁷² in a patriarchal society, their victim blaming attitudes, and their problems in dealing with the ethnic minority community, are well-known.⁷³

5.3 International Human Rights Law and Honour Killings

The UN General Assembly has stressed the need to treat all forms of violence against women and girls, including crimes committed in the name of honour, as criminal offences.⁷⁴ Honour killings of women were specifically cited in the Report of the Secretary-General, as occurring in Bangladesh, Brazil, Ecuador, India, Israel, Jordan, Morocco, Pakistan, Sweden, Turkey, Uganda and the United Kingdom.⁷⁵ The Secretary-General then presented a series of recommendations in relation to the criminalisation of such acts, and noted that those

⁷¹R E Dobash, R P Dobash and L Noakes, *Gender and Crime* (Cardiff University of Wales Press 1995) 411–412.

⁷²ibid 412; M Sivestri and C Crowther-Dowey, *Gender and Crime* (Sage 2016) 239 and 255.

⁷³R E Dobash, R P Dobash and L Noakes, *Gender and Crime* (Cardiff University of Wales Press 1995) 412; C Warrick, 'The Vanishing Victim: criminal law and gender in Jordan.' (2005) 39 *Law and Society Review* 319, 327–328 and 345; N Shalhoub-Kevorkian 'Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?' (2002) 36 (3) *Law & Society Review* 578 and 580; Shalhoub-Kevorkian N, 'Towards a Cultural Definition of Rape: Dilemmas in Dealing with Rape Victims in Palestinian Society' (1999) 22(2) *Women's Studies International Forum* 163.

⁷⁴Working towards the elimination of crimes against women and girls committed in the name of honour (A/RES/59/165, of 20 December 2004) page 2. Working towards the elimination of crimes against women committed in the name of honour (A/RES/57/179, of 18 December 2002) page 2. Working towards the elimination of crimes against women committed in the name of honour (A/RES/55/66, of 4 December 2000) page 1.

⁷⁵Report of the Secretary General, Working towards the elimination of crimes against women committed in the name of honour A/57/169 (2 July 2002) point 28.

deliberately participating in, facilitating, or encouraging them, or threatening women and girls in the name of honour, should be punished. He also noted that in countries with immigrant communities, protection should be given to victims and potential victims in connection with asylum and immigration procedures.⁷⁶

Likewise, the Human Rights Council has observed the fact that ‘murder to cleanse family honour is committed with high levels of impunity in many parts of the world. Although honour crimes have mainly occurred in the vast zone spreading from the Sahara to the Himalayas, it also occurs in other regions and countries with migrant communities.’⁷⁷

5.3.1 Convention on the Elimination of Discrimination against Women (CEDAW)

The CEDAW Committee repeatedly urged State Party's to tackle honour killings and honour crimes in series of its concluding observations.⁷⁸ Accordingly, when reviewing the State Parties' reports in 2010, the Committee expressed its concern about the persistence of honour killings and the lack of data available on its incidence in rural or remote areas of Turkey. The Committee noted that:

While taking note of the information provided by the State Party that Article 82 of the Turkish Penal Code is considered to include both custom and ‘honour’ killings and that Article 29 of the Penal Code on ‘unjust provocation’ has been amended to abolish possible sentence reductions for ‘honour’ killings, the Committee remains concerned that the provisions of the Penal Code may result in less vigorous prosecution of and reduction of sentences for the perpetrators of such crimes.⁷⁹

⁷⁶ibid point 32.

⁷⁷Human Rights Council- Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16 (23 May 2012) point 3 (43).

⁷⁸inter alia, Pakistan, 27/03/2013 CEDAW/C/PAK/CO/4 paras 21–22; Jordan, 23/03/2012 CEDAW/C/JOR/CO/5 paras 5, 27–28; Turkey, 16/08/2010 CEDAW/C/TUR/CO/6 paras 24–25; Egypt, 05/02/2010 CEDAW/C/EGY/CO/7 paras 23–24; Lebanon, 08/04/2008 CEDAW/C/LBN/CO/3 paras 26–27; Jordan, 10/08/2007 CEDAW/C/JOR/CO/4 paras 23–24; Pakistan, 11/06/2007 CEDAW/C/PAK/CO/3 paras 22–23; Syrian Arab Republic, 11/06/2007 CEDAW/C/SYR/CO/1 paras 19–20, CIMEL's ‘Crimes of honour’ project (Selected International Human Rights Materials addressing ‘Crimes of Honour’ - August 2013, on line at <https://www.soas.ac.uk/honourcrimes/resources/> (accessed 25/5/2019) 10–19.

⁷⁹Committee on the Elimination of Discrimination against Women Forty-sixth session 12–30 July 2010, CEDAW/C/TUR/CO/6 (27 November 2015) point 24.

Thus, the Committee recommended that killings in the name of honour should be explicitly included within the scope of Article 82 of the Penal Code and classified as aggravated homicide, and that such crimes be treated as seriously as other violent crimes with regard to investigation and prosecution. The Committee also recommended the implementation of effective prevention measures, including educational and awareness raising measures aimed at law enforcement officials, the judiciary, health service providers, social workers, community leaders and the general public. The Committee requested that the State Party include detailed information on the incidence of honour killings, particularly in rural or remote areas, including the number of investigations, prosecutions and perpetrators punished, as well as the sentences imposed.⁸⁰

The Committee's concerns continued, and were echoed in 2016 as follows:

In the light of the Committee's previous concluding observations (CEDAW/C/TUR/CO/6, para 25), please provide information on whether killings in the name of so-called honour have been explicitly included within the scope of Article 82 of the Penal Code and classified as aggravated homicide, and whether such crimes are treated as seriously as other violent crimes with regard to investigation and prosecution, in particular because they have been labelled 'custom (*töre*)' killings. Please also provide detailed information on the incidence of such crimes, in particular in rural and remote areas, including the number of investigations, prosecutions and perpetrators punished and the sentences imposed.⁸¹

Turkey replied by stating that Article 82(k) of the Turkish Penal Code, 'committing an offense with the motive of custom', was listed as a major crime, and that it would be punished with an 'aggravated life sentence', which is the highest sanction provided by the Turkish legal system. The 'customary reasons' listed in the article form a comprehensive definition, including the acts of violence known as honour killings.⁸²

⁸⁰ibid point 25.

⁸¹Committee on the Elimination of Discrimination against Women, sixty-fourth session, 4–22 July 2016, point 8.

⁸²Committee on the Elimination of Discrimination against Women, sixty-fourth session 4–22 July 2016, Replies of Turkey, CEDAW/C/TUR/Q/7/Add.1 (24March 2016) point 57.

However, the reply provided by Turkey is open to criticism. In the wording of Article 82, the term ‘honour killings’ is not expressly cited. The phrase used in Article 82(k), ‘*töre saikiyle*’, is not the same thing as ‘honour killings’. *Töre* refers to ‘feud’. This was further confirmed by the women’s rights activist and lawyer Yirmibesoglu, who was in a women’s working group and took an active part during the drafting of this Penal Code. Yirmibesoglu stated that although many of their recommendations were accepted during the consultation, their suggestion that the words ‘*töre (feud) saiki*’ should be changed to ‘*namus (honour) saiki*’ was firmly refused. The words ‘*töre saiki*’ cover feud, and feud does not cover honour killings. Thus, the express exclusion of ‘*namus saiki*’ in Article 82 leaves an open door for the honour killer to receive a reduced sentence because under Article 29 of the Penal Code, mitigating circumstances in cases of ‘unjust provocation’ are not applied to killings.⁸³

The above statement was acknowledged and echoed by the Committee on the Elimination of Discrimination against Women in their concluding observations on the seventh periodic report of Turkey, which expressed its continuing concerns as follows:⁸⁴

The Committee is concerned about the persistence of crimes, including killings, committed in the name of so-called ‘honour’, and about the relatively high number of forced suicides or disguised murders. It notes with concern that the State Party’s efforts to raise the awareness of the public in order to reject the concept of ‘honour’ that perpetuates and condones the killing of women have been insufficient. It notes the information provided by the State party that Article 29 of the Penal Code providing for mitigating circumstances in the case of ‘unjust provocation’ is not applied to killings in the name of so-called ‘honour’. The Committee is concerned, however, that this does not constitute a sufficient legal safeguard, given that the provision explicitly prohibiting the application of Article 29 addresses only killings in the name of ‘custom’ (*töre*) and thus may not always cover killings in the name of so-called ‘honour’ (*namus*).

The Committee further recommended that the State Party strengthen its efforts to prosecute and punish adequately all crimes committed in the name of so-called ‘honour’, specifically:

⁸³Av V Yirmiseoglu, *Namus Cinayetleri Yargilamalari ve Uygulama Sorunlari*, Yirmibesoglu Hukuk Burosu < <http://www.yirmibesogluhukuk.com/namus-cinayetleri-yargilamalari-ve-uygulama-sorunlari> > accessed 10/9/2017.

⁸⁴CEDAW/C/TUR/CO/7, Killings and forced suicide in the name of so-called ‘honour’ (25 July 2016) points 34–35.

- (a) Amend the Penal Code, with a view to excluding explicitly those crimes committed in the name of so-called ‘honour’ from the application of Article 29 of the Code;
- (b) Ensure that suicides, accidents and other violent deaths of women and girls are effectively investigated, inter alia, by using forensic evidence, such as medical and/or psychological autopsy;
- (c) Ensure that prosecutors and judges strictly apply Article 84 of the Penal Code on suicide whenever its application is warranted;
- (d) Dismantle the concept that the honour and prestige of a man or the family are intrinsically associated with the conduct or presumed conduct of women related to them, which is based on patriarchal attitudes and serves to control women and curb their personal autonomy and is incompatible with the Convention.

Further concerns were raised by the Committee on the lenient enforcement of law. Even when the laws seemed to be tightened there was a trend towards leniency in the judicial interpretation and application of law, leading to impunity. For instance: ‘To cite two examples, penalties had been reduced for good conduct for a defendant in a rape case and the defence of provocation had been mounted in an honour killing case.’⁸⁵ This concern had been echoed a year earlier in the Committee’s concluding observations on the seventh periodic report of Turkey, that lenient judgments were given to perpetrators of sexual violence, including those found guilty of the rape of girls, and reduced sentences were imposed, owing to the perpetrator’s ‘good behaviour’ during the trial.⁸⁶ The explanation given by the Turkish delegate in this session provided that determining a defendant’s good conduct as a mitigating factor in an honour killing was entirely at the discretion of the judge, based on the perpetrator’s record and behaviour and on the expected impact of the punishment on his or her future life.⁸⁷ This explanation illustrates the need for training the judiciary on this matter, which is again the duty of the State Party.

⁸⁵Halperin-Kaddari, in Committee on the Elimination of Discrimination against Women, sixty-fourth session, Summary record of the 1416th meeting, CEDAW/C/SR.1416 (20 July 2016) point 5.

⁸⁶Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Turkey, CEDAW/C/TUR/7 (25 July 2015) point 32(e).

⁸⁷Çiçek (Turkey) in Committee on the Elimination of Discrimination against Women, sixty-fourth session, Summary record of the 1416th meeting, CEDAW/C/SR.1416(20 July 2016) point 7.

Despite the effort to include the recommendations, as explained by Yirmibesoglu above, the deliberate exclusion of honour killing from the relevant law, coupled with the lenient judicial approach towards the interpretation and application of the law to honour killers, leaves the issue unresolved. Furthermore, the Turkish government's reluctance to tackle the issue effectively (i.e. by not amending the law and not providing relevant judicial training) illustrates the State Party's unwillingness to tackle gender equality issues. And although Turkey ratified the Istanbul Convention without any reservations, and though it came into force on 1 August 2014, and despite the State Party's commitment to it, the Committee acknowledged that discrimination and violence targeted at women on gender issues continues.⁸⁸

The Committee on the Elimination of Discrimination against Women regarding the State Parties' obligations under the CEDAW provided some concluding observations for Pakistan too.⁸⁹ In 2013, the Committee requested that Pakistan provide, within two years, written information on the steps it had undertaken to implement the recommendations contained, inter alia, in point 22. Point 22(a) calls upon a State Party 'In line with its General Recommendation No. 19 (1992) ... to ensure the proper implementation of the Prevention of Anti-Women Practices (Criminal Law Amendment) Act of 2011 and other relevant legislation, to ensure uniformity in the application of the law and to repeal the provisions of the *Qisas* and *Diyat* Ordinances which discriminate against women'. The *Qisas* (retribution)

⁸⁸Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Turkey, CEDAW/C/TUR/7(25 July 2015) point 32(f).

⁸⁹The examination of the fourth periodic report of Pakistan at the Committee's fifty-fourth session, held in February 2013. At the end of that session, the Committee's concluding observations were transmitted to a Permanent Mission (CEDAW/C/PAK/CO/4).

and *Diyat* (blood money or compensation)⁹⁰ laws first incorporated in 1990 fuelled an epidemic of honour killing, with 1,096 reported in 2015, although the actual figure is expected to be far higher.⁹¹ Under the *Qisas* and *Diyat* Ordinances, the families of victims waived punishment, which included the death sentence, by forgiving the murderer. Such willingness to forgive allowed the perpetrators of killings to walk free.

The Committee welcomed the follow up report,⁹² which was received after a nine-month delay in November 2015 under the Convention for the Elimination of All Forms of Discrimination against Women's follow up procedure. At its sixty-fourth session, held in July 2016 in Geneva, the Committee examined this follow up report and adopted the following assessment, that the State Party is required to⁹³ 'address shortcomings in the Criminal Law (Amendment Act of 2004) and repeal all provisions under which perpetrators of the so-called honour crimes are allowed to negotiate pardons with victims' families'. The State Party stated that Section 311 of the Pakistan Penal Code empowers the Court to punish perpetrators of honour crimes even after the waiver or compounding by the heirs or *walis* (custodians) of the deceased. It also indicated that in order to further strengthen the Criminal Law (Amendment Act of 2004), the National Commission on the Status of Women would undertake a review of the *Qisas* and *Diyat* law to remove provisions that may lead to its possible misuse or manipulation, particularly in the context of killing of women in the name of so-called honour. It was further reported that, following a series of consultations, recommendations had been made to Parliament to introduce prison sentences of no less than 14 years and the payment of

⁹⁰L C D'Acunto, 'Selected International Human Rights Materials addressing "Crimes of Honour"' Centre of Islamic and Middle Eastern Law, SOAS (August 2013) 18 < <https://www.soas.ac.uk/honourcrimes/resources/> > accessed 25/5/ 2019.

⁹¹ Pakistan Makes "Honour Killings" Punishable by Mandatory Prison Time', *The Guardian* (6/10/ 2016).

⁹²Committee on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Pakistan, CEDAW/C/PAK/CO/4/Add.1(29 March 2016).

⁹³Xiaoqiao Zou Rapporteur on follow-up Committee on the Elimination of Discrimination against Women, Office of the High Commissioner for Human Rights, YH/follow-up/Pakistan/64 (10 August 2016).

half of the *Diyat* by the offender in cases of murder committed in the name of honour. The Committee noted all the efforts of the State Party to review discriminatory provisions of the *Qisas* and *Diyat* law with regard to honour crimes.

The above reply revealed that the State Party had not taken ‘sufficient measures to address shortcomings in the Criminal Law (Amendment Act of 2004) and repeal all provisions under which perpetrators of the honour crimes are allowed to negotiate pardon with victims’ families. The Committee considers that the State Party took some steps to implement the recommendation. It considers that the recommendation has been partially implemented.’⁹⁴ In relation to point 22 of the observations mentioned above, the Committee on the Elimination of Discrimination against Women again recommended that the State Party provide in its next periodic report due in February 2017 information on further actions taken to:⁹⁵

- 1) Ensure the proper implementation of the Prevention of Anti-Women Practices Act of 2011 and other relevant legislation, ensure uniformity in the application of the law and repeal the provisions of the *Qisas* and *Diyat* ordinances which discriminate against women;
- 2) Address shortcomings in the Criminal Law (Amendment Act of 2004) and repeal all provisions under which perpetrators of the so-called honour crimes are allowed to negotiate pardon with victims’ families

Despite the States’ obligations under international human rights law, the very slow change of attitude in honour-related patriarchal states towards honour crimes is illustrated clearly in this particular case: *Qisas* (retribution) and *Diyat* (blood money or compensation) law, introduced in 1990 and amended in 2004, and which impose lenient punishments for honour killings, did not address this issue.

In the absence of Pakistan’s periodic review, which was due in February 2017, the current situation can be seen in the most recent International Covenant on Civil and Political Rights

⁹⁴Ibid 2.

⁹⁵ibid 4.

Report of Pakistan. The Human Rights Committee, in considering the initial report of Pakistan,⁹⁶ raised its concern that despite efforts made by the State party, violence against women is still prevalent. It was particularly concerned that honour killings continue to occur, and that the *Qisas* and *Diyat* laws are reportedly applied to some of these cases. It insisted that the State Party should continue its efforts to effectively enforce the anti-honour killings laws and other relevant laws criminalizing violence against women and enforce the prohibition of the application of *Qisas* and *Diyat* laws to so-called honour-related crimes.⁹⁷ This Report stated that the Anti-Honour Killings (Criminal Laws Amendment) Bill 2016 had been passed in October 2016, under which the relatives of victims would only be able to pardon the killer sentenced to death but that the killer would still then face a mandatory life sentence of 25 years⁹⁸ which appears to be a fair punishment as long as mandatory sentences are not reduced.

The Committee on the Elimination of Discrimination against Women regarding State Parties' obligations under the CEDAW provided some concluding observations for Jordan.⁹⁹ In its concluding observations, the Committee expressed its concerns on discriminatory provisions in the Penal Code, such as Articles 98, 99 and 308. It also called upon Jordan to strengthen its training of judiciary, prosecution and police on the Penal Code amendments, in particular Article 340, so as to ensure that honour crimes are seriously investigated, that perpetrators do not benefit from mitigating circumstances and thus are prosecuted and punished accordingly.

⁹⁶Human Rights Committee, State Party's Report, CCPR/C/PAK/1(23 August 2017).

⁹⁷Human Rights Committee, Concluding Observations, CCPR/C/PAK/CO/1(27 July 2017) point 13 and 14(b) and (c).

⁹⁸Human Rights Committee, 120th session, 3–28 July 2017, Item 5 of the provisional agenda, Consideration of reports submitted by States parties under Article 40 of the Covenant, List of issues in relation to the initial report of Pakistan, List of issues in relation to the initial report of Pakistan, Addendum, Replies of Pakistan to the list of issues, CCPR/C/PAK/Q/1/Add.1 (120th session 3-28 July 2017) para 5 point 17.

⁹⁹CEDAW/C/JOR/CO/5 (23 March 2012) L C D'Acunto, 'Selected International Human Rights Materials addressing "Crimes of Honour"' Centre of Islamic and Middle Eastern Law, SOAS (August 2013) 11–12 < <https://www.soas.ac.uk/honourcrimes/resources/> > accessed 25/5/2019.

Historically, honour killings have often been treated leniently as compared to other types of murder in Jordan. Under article 340 of the Jordanian Penal Code, reduction is allowed in the penalty when a man kills his wife or female relatives in the alleged act of committing adultery (a prison sentence of six months to two years).¹⁰⁰ Welchman and Warrick state that, although the element of ‘honour or honour crimes’ is not mentioned in the statute, it is added in by social and judicial practice and Article 340 became the symbolism of ‘honour’.¹⁰¹

The penalty can also be reduced under Article 98 of the Penal Code where the perpetrator commits the crime in a state of extreme rage or ‘fit of fury’ resulting from an ‘unrightful and dangerous act’ on the part of the victim.¹⁰² The courts deem ‘all sexual violations committed by females not only as ‘unrightful but also ‘dangerous’ to the stability and integrity of society.’¹⁰³ Court cases have shown that Article 98 is raised for an ‘unrightful and dangerous act’ which includes extramarital relationships, suspicion of a victim's behaviour, committing adultery, prostitution, indecent behaviour, running away from the family home and extramarital pregnancy.¹⁰⁴

Hassan and Welchman interpret the courts’ lenient attitude to these issues because ‘[t]his stems from the belief that the fit of fury can be triggered by the threat to the perpetrators’

¹⁰⁰R A Hassan and L Welchman, ‘Changing the rules? Developments on “crimes of honour” in Jordan’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 202.

¹⁰¹L Welchman, ‘Honour and Violence in a Modern Shar’i Discourse’ (2007) *HAWWA* 5/2–3, 9; C Warrick, ‘The Vanishing Victim: criminal law and gender in Jordan’ (2005) 39 *Law and Society Review* 326.

¹⁰²R A Hassan and L Welchman, ‘Changing the rules? Developments on “crimes of honour” in Jordan’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 204.

¹⁰³N Shalhoub-Kevorkian, ‘Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?’ (2002) 36 (3) *Law & Society Review* 595.

¹⁰⁴R A Hassan and L Welchman, ‘Changing the rules? Developments on “crimes of honour” in Jordan’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 205–206.

position which may be posed by infringements on the family honour. Thus, certain types of conduct by female members of the family could threaten the perpetrator's position and trigger a fit of fury.¹⁰⁵ Warrick further argues that ‘although the basis for an Article 98 claim concerns passion rather than honor, the distinction between the two is sometimes blurred by the courts.’¹⁰⁶

Furthermore, under Article 99, a victim’s family can waive the personal claim and drop charges. Custom and traditions may push the family of the victim to drop charges.¹⁰⁷ In some cases, the family of the victim may also be complicit in the crime.¹⁰⁸ When the family of the victim waives a personal claim, this allows the court to use its discretion in applying mitigating sentences under articles 99 and 100, allowing for lenient sentences even when Article 98 does not apply.¹⁰⁹

In Jordan, an increase in honour killings prompted the authorities to take action in 2016.¹¹⁰ On 15th March 2017, the Jordanian Parliament repealed Article 340 and prohibited 'fit of fury' defence under Article 98 in relation to crimes committed against females for the sake of honour. However, Article 99 remains intact where a reduction of penalties can be given in cases of honour killings when the victim's family calls for leniency¹¹¹ or drops personal

¹⁰⁵ibid 206.

¹⁰⁶C Warrick, ‘The Vanishing Victim: criminal law and gender in Jordan’ (2005) 39 *Law and Society Review* 339.

¹⁰⁷R A Hassan and L Welchman, ‘Changing the rules? Developments on “crimes of honour” in Jordan’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 206.

¹⁰⁸R Begum, ‘How to end honour killings in Jordan’ (3 April 2017) <<https://www.hrw.org/news/2017/04/03/how-end-honor-killings-jordan>> accessed 16/5/2019.

¹⁰⁹R A Hassan and L Welchman, ‘Changing the rules? Developments on “crimes of honour” in Jordan’ in L Welchman and S Hossain (eds) *‘Honour’ Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 206.

¹¹⁰R Begum, ‘How to end honour killings in Jordan’ (3 April 2017) <<https://www.hrw.org/news/2017/04/03/how-end-honor-killings-jordan>> accessed 16/5/ 2019.

¹¹¹ibid.

charges. Such an amendment illustrates the fact that Warrick's warning made in 2005 is still valid. This situation presents a conflict of interest where, in many cases, victims' families are complicit in the murder or are related to the murderer. For instance, where a father kills his daughter, the person who decides to drop the charges is the victim's paternal grandfather, who is the father of the perpetrator. Thus, such conflict of interest continues to contribute to the light sentences imposed in honour killings.¹¹²

Similar concerns were raised for Iraq by the Committee on the Elimination of Discrimination against Women. In the combined fourth, fifth and sixth periodic reports of Iraq published on 3 March 2014, the scale of honour killings and the enforcement of national law were questioned. More information on the Domestic Violence Bill, which was mentioned in the State Party's replies to the list of issues (CEDAW/C/IRQ/Q/4-6/Add.1), was also requested. The delegates of Iraq stated that there was indeed a gap between law and practice in relation to domestic violence. They further stated that the Kurdistan Region had experienced some difficulties in enforcing the Domestic Violence Act because the idea of prohibiting domestic violence and taking action to stop it were still quite new in many parts of Iraq.¹¹³

Iraqi delegates furthermore stated that under the law adopted in the Kurdistan Region, no mitigating circumstances were applicable in cases where a woman had been murdered. The provisions on honour killings contained in the Iraqi Criminal Code had been suspended, and such killings were therefore treated in the same way as other murders. Furthermore, a new bill was being drafted in consultation with religious and women's organisations that would amend

¹¹²C Warrick, 'The Vanishing Victim: criminal law and gender in Jordan' (2005) 39 *Law and Society Review* 340.

¹¹³Committee on the Elimination of Discrimination against Women, fifty-seventh session, Summary record of the 1197th meeting, Combined fourth, fifth and sixth periodic reports of Iraq, CEDAW/C/SR.1197 (3 March 2014) points 46 and 48.

various laws by removing any reference to ‘honour crimes’.¹¹⁴ However, the Domestic Violence Law, approved in June 2011, which criminalises domestic violence, has been criticised for being far from achieving justice for women who are victims of violence in Kurdistan. The law was passed, but in reality, is not enforced, as it has proved difficult to implement in a society governed by tribal honour codes, and where tribal leaders continue to be the most powerful and influential actors when resolving family conflicts. It was also stated as a general concern that since most honour killings are not taken seriously by the police or the legal system.¹¹⁵

The Committee on the Elimination of Discrimination against Women in its concluding observations on the combined initial and second periodic reports of Afghanistan stated that it was equally concerned at the increase of so-called ‘honour killings’ and at the discriminatory provision in the Penal Code which allows presenting the defence of honour as a mitigating circumstance for perpetrators of such crimes. The Committee urged the State Party to repeal Article 398 of the Penal Code to ensure that perpetrators of so-called ‘honour killings’ are not given legal concessions.¹¹⁶

5.3.2 International Covenant on Civil and Political Rights (ICCPR)

In 2010, the Human Rights Committee reminded State Parties of their obligations under the International Covenant on Civil and Political Rights and required them to report on ‘Measures to protect women from practices that violate their right to life, such as female

¹¹⁴ibid points 51 and 52.

¹¹⁵N Begikhani et al, *Honour-Based Violence* (Ashgate Publishing 2015) 49 and 125.

¹¹⁶Concluding observations on the combined initial and second periodic reports of Afghanistan CEDAW/C/AFG/CO/1-2 (The Committee considered the combined initial and second periodic reports of Afghanistan (CEDAW/C/AFG/1-2) at its 1132nd and 1133rd meetings, on 10 July 2013 (see CEDAW/C/SR.1132 and 1133) point 25(b).

infanticide and so-called honour killings'¹¹⁷ in their full periodic report. However, in this regard no response has yet been submitted.

The Human Rights Committee is also concerned by the reports of Turkey, Iraq and Yemen that violence against women, including 'honour killing', remains a serious problem in some State Parties, and affirms that State Parties should under no circumstances tolerate 'honour killings', and should adjust their law accordingly.¹¹⁸ The Committee recommended that State Parties swiftly amend their legislation to guarantee adequate protection of women, including repealing or abolishing legislation providing for lower sentences in cases of honour killings.¹¹⁹

These concerns were further echoed by the Human Rights Committee in December 2015. The Committee stated that violence against women, including honour killings, remained a serious problem in Iraq. The Committee was also concerned about the existence of the Criminal Code provisions establishing 'honourable motives' as mitigating circumstances for murder and allowing for the exoneration of rapists if they marry their victims.¹²⁰ They therefore recommended, inter alia, that Iraq amend its legislation to guarantee adequate protection of women against violence, including by repealing the Criminal Code provisions establishing honourable motives as a mitigating circumstance for murder. Furthermore, it recommended that the State Party should speed up the review of its domestic legislation, and repeal – or

¹¹⁷UN International Covenant on Civil and Political Rights, Human Rights Committee, Guidelines for the treaty-specific document to be submitted by States parties under Article 40 of the International Covenant on Civil and Political Rights (22 November 2010) CCPR/C/2009/1, Article 6, point 48.

¹¹⁸Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session (15 October - 2 November 2012) CCPR /C/TUR/CO/1 point 13.

¹¹⁹Human Rights Committee, Concluding observations on the fifth periodic report of Iraq, CCPR/C/IRQ/CO/5 (3 December 2015) point 26(b). Concluding Observations, Yemen, A/61/40 (Vol. I) point 91 (12).

¹²⁰Human Rights Committee Concluding observations on the fifth periodic report of Iraq, CCPR/C/IRQ/CO/5 (3 December 2015) para 25.

amend in accordance with the Covenant– all provisions that discriminate against women and permit violence against them.¹²¹

The issue of honour killing is confined to certain State Parties, and, as can be seen from the review of Turkey, Pakistan and Iraq, the concerns raised by international human rights authorities are very similar in all of them. So is the State Parties' attitude to honour-related violence in general and honour killings in particular, and the speed of the change. The changes that are required from these State Parties in order to be fully compliant with their international human rights law obligations are clear. The time will show their willingness to comply with their obligations under these provisions specifically and gender-based violence generally.

5.3.3 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

In a series of asylum and subsidiary protection cases, the decisions made by the European Court of Human Rights and by the relevant national authorities on issues relating to the risk of honour-related violence and around internal relocation alternatives seem controversial. The case of *DNM*,¹²² brought before the Swedish authorities, ended up at the European Court of Human Rights. In this case the applicant, a Kurdish Sunni Muslim man, had a Sunni Muslim girlfriend. Since the brothers of the girlfriend had not approved of him, they had kept their relationship secret, until the lovers were caught hugging each other by the brothers. The brothers attacked the man with scissors. The brothers told him that he had offended their honour, and that it would only be restored if they killed him. The applicant was hospitalised

¹²¹ibid paras 14(a) and 26(b).

¹²²*DNM v Sweden* Application no 28379/11 (ECtHR, 27 June 2013).

for a week. The brothers burnt down his shop and assaulted his father. The applicant reported the incident to police; however, they told him that they could not help him as it was an honour-related issue. He then went into hiding and subsequently left Iraq for Sweden, where he applied for asylum. Yet the claim for asylum and subsidiary protection failed because the European Court of Human Rights found that the applicant should be able to find a relocation alternative in southern or central Iraq where the living conditions would be reasonable for him. In connection with this, the Court noted that he was a young man without any apparent health problems.¹²³ The European Court of Human Rights stated that it ‘finds it reasonable to assume that the passing of time has to some degree reduced the threat against the applicant.’¹²⁴

When considering this case, the Migration Court in Sweden also stressed that ‘two years had passed since the attack on the applicant’ and held that the interest from the woman’s family had probably diminished. The risk that the applicant would be subjected to revenge upon returning to Kirkuk ‘could, however, not be disregarded.’¹²⁵ However, Idriss and Warrick go against such a view, arguing that a lapse of time does not necessarily reduce the desire for revenge in honour crimes.¹²⁶ Idriss cites an example of a ‘death sentence’ hanging over a woman 20 year after the initial ‘dishonouring’ event, who was still murdered once she had been located.¹²⁷ Another example provided is that of a girl whose house was burned down in an honour-related violence attack. Although she survived and escaped the city, 15 years later she was found and murdered in another city.¹²⁸ Therefore, considering a lapse of time as

¹²³ibid para 59.

¹²⁴ibid para 56.

¹²⁵ibid para 10.

¹²⁶M M Idriss, ‘Not Domestic Violence or Cultural Tradition: Is Honour-based Violence Distinct from Domestic Violence?’ (2017) 39(1) *Journal of Social Welfare and Family Law* 11; C Warrick, ‘The Vanishing Victim: criminal law and gender in Jordan.’ (2005) 39 *Law and Society Review* 342.

¹²⁷M M Idriss, ‘Not Domestic Violence or Cultural Tradition: Is Honour-based Violence Distinct from Domestic Violence?’ (2017) 39(1) *Journal of Social Welfare and Family Law* 11.

¹²⁸ibid.

justification for deportation will expose the applicant to risk of being killed. In such circumstances, an applicant with a death sentence hanging over her or him is safer abroad than in the home country. Thus, such a consideration has to be made by the courts when deciding cases on this issue.

Similarly, in another European Court of Human Rights case, of *SA*,¹²⁹ again brought before the Swedish authorities, the applicant's asylum and subsidiary protection claims had failed. The applicant in this case was an Iraqi national who had applied for asylum in Sweden in 2008. The applicant had submitted that he was a Sunni Muslim from Nasriya, located in the Thi-Qar district in southern Iraq. He had been in a relationship with a woman who was a Shiah Muslim. He had asked her family's permission to marry her on three occasions in 2007 but had been refused because he was a Sunni Muslim. After his first proposal, two of the woman's cousins assaulted him and warned him against proposing again. In late 2007, the couple decided to elope. They travelled to Baghdad, where they stayed with a relative of the applicant for one week. They falsely told their families that they had married, and that the woman had returned to her parents' house with the promise that the family would allow the marriage. Meanwhile, the applicant returned home with his brothers. Some days later, four unidentified persons shot at their house, but left after the applicant's brother fired back. The next day, the applicant drove past the woman's house, and discovered that she had been killed. Her hair and her hand with her engagement ring on it had been hung on the front door of her house, as a sign that the family had cleansed their honour. The woman had been killed by her father and two of her cousins.

¹²⁹Case of *SA v Sweden* Application no 66523/10 (ECtHR, 27 June 2013).

One of the woman's cousins was involved with the Badr Organisation and another with the Al Daawa party, and they had asked the militia to harass the applicant. His family's house had been visited daily by the woman's relatives, and they had left a threatening letter stating that they wanted his head. They had also entered his family's house to look for him. The applicant had left the region after a few days in hiding. In 2008, his father had received a threatening letter, urging him to surrender the applicant or else leave his home. His mother had been shot and killed by relatives of the woman in January 2009. The shot had been aimed at another relative but had hit her instead. Their house had subsequently been burnt down.

On 22 June 2009, the Migration Board did not find the case credible, and so rejected the applicant's claim for asylum and ordered his deportation to Iraq. It noted that the first shooting at the applicant's home had been perpetrated by unknown persons. The threatening letter addressed to his father was unsigned, while the one addressed to the applicant had not been submitted to the Board. It had not been made probable that the death of the applicant's mother was connected to him. The woman's family had, according to the applicant's own statements, 'washed away their shame' by killing the woman, and the Board therefore presumed that the family considered their honour restored. The Board further highlighted that the applicant had been offered protection by his own family and clan. Furthermore, he had been able to live in Baghdad for a certain period of time without being subjected to threats or violence.

Considering the presented evidence, the European Court of Human Rights court also decided that he would be able to relocate to other regions in Iraq.¹³⁰ The court was not convinced that the material before it supported the applicant's claim that the woman's relatives had the

¹³⁰ibid paras 54 and 56.

means and connections to find him wherever in Iraq he might be sent. Here, the Court first observed that the available general information suggested that tribes and clans are region-based powers. Thus, in many cases, a person who is persecuted by a family or clan can be safe in another part of the country. One factor possibly weighing against the reasonableness of an internal relocation alternative is if a person is persecuted by a powerful clan or tribe with influence at governmental level. However, if the clan or tribe in question is not particularly influential, an internal relocation alternative might be reasonable in many cases. But with the family in question there was no evidence to support the applicant's claim that it was powerful and had links to the authorities or the militia. The applicant did not put forward any documentary evidence to support his claim in this regard, nor did he give any detailed information regarding the woman's relatives and their alleged position in Iraqi society. Therefore, the Swedish government's immigration authorities pointed to the Kurdistan Region as a possible internal relocation alternative. Yet the applicant, who was neither a Kurd nor a Christian, and apparently did not have any connections in the region, disputed that he would be able to enter that region.¹³¹

Furthermore, the European Court of Human Rights concluded that substantial grounds for believing that the applicant would be exposed to a real risk of being subjected to treatment contrary to Article 2 or 3 of the Convention if deported to Iraq, had not been shown in the present case. Accordingly, the implementation of the deportation order against him would not give rise to a violation of these provisions.¹³² The same assumption made in the case of DNM was also present in the SA case, where the European Court of Human Rights found 'it reasonable to assume that the passing of time has to some degree reduced the threat against

¹³¹ibid para 54.

¹³²ibid para 59.

the applicant.’¹³³ This was acknowledged in the dissenting judgment of Judge Power-Forde, joined by Judge Zupančič, who stated:

The majority accepts that, in view of the passage of time since the date of the attacks upon the applicant, it would be ‘reasonable’ to assume that the applicant is no longer at the same risk of ill treatment by members of his former fiancée’s family (§36). The perpetrators of the crimes visited upon the applicant’s fiancée cannot be considered as ‘reasonable’ people and, to my mind, it cannot be assumed that the passage of time has abated their desire for revenge.¹³⁴

The case *AA and Others*¹³⁵ illustrates the fact that being an independent woman with financial means does not diminish the risk of honour killing. In this case, both asylum and subsidiary protection claims failed before the Swedish courts, where it was held by the European Court of Human Rights that there was an internal relocation alternative available to the applicants. The applicants, a mother and her five children, complained that, if deported from Sweden to Yemen, they faced a real risk of being the victims of honour-related crimes in violation of Articles 2 and 3 of the Convention. The first daughter was already a victim of forced marriage, and the younger two daughters were at risk of forced marriage. Two of the applicants were her sons. The mother claimed that women had no freedom in Yemen and that her husband would kill her if she were returned, since she had dishonoured him by leaving the country with their daughter (the one that was already a victim of forced marriage; she had left her husband and run away with her mother) and without his permission. No one would be able to protect her and her daughter. The court stated that there were inconsistencies in the stories presented, and questioned the credibility of their case. The Swedish authorities found that there was not enough information presented to show that the applicants were in need of protection in Sweden.¹³⁶ Inter alia, there were concerns about the authenticity of the

¹³³ibid para 55.

¹³⁴ibid para 19.

¹³⁵*AA and Others v Sweden* Application no 14499/09 (ECtHR, 28 June 2012) para 70.

¹³⁶ibid para 77.

documents submitted (81), and unexplained reasons for not obtaining the copies of their passports from the Swedish Embassy in Riyadh.¹³⁷ Therefore, their claim failed.

With regards to the first applicant (the mother) the Court agreed with the (Swedish) government's view 'that the first applicant has shown proof of independence by going to court in Yemen on several occasions to file for divorce ... and also shown strength by managing to obtain the necessary practical and financial means to leave Yemen.'¹³⁸ Yet women showing their independence by filing for divorce and managing to obtain the necessary practical and financial means does not diminish the risk of honour killing. On the contrary, in honour-related patriarchal communities, women acting independently and seeking divorce are actually triggers for such crimes.

As can be seen, when the asylum and subsidiary protection applications fail, the relevant government immigration authorities and courts decide whether there is indeed available an internal relocation alternative (also known as internal flight or internal relocation alternative). However, such a suggestion requires further examination, and the Contracting State needs to make sure that the applicant's human rights under Article 3 will not be violated as a result of deportation. According to Article 3, no one shall be subjected to torture or to inhumane or degrading treatment or punishment. Thus, when deciding a subsidiary protection claim it is stated by the European Court of Human Rights that Article 3 does not preclude Contracting States from relying on an internal flight or relocation alternative in their assessment. However, the Court also states that reliance on such an alternative does not affect the responsibility of the expelling State to ensure that the applicant is not, as a result of its

¹³⁷ibid paras 81 and 82.

¹³⁸ibid para 83.

decision to deport, exposed to treatment contrary to Article 3 of the Convention. In *SA v*

Sweden the ruling was:

Therefore, as a precondition of relying on an internal flight or relocation alternative, certain guarantees have to be in place: the person to be expelled must be able to travel to the area concerned, gain admittance and settle there, failing which an issue under Article 3 may arise, the more so if in the absence of such guarantees there is a possibility of his or her ending up in a part of the country of origin where there is a real risk of ill-treatment.¹³⁹

However, lack of a uniform and principled application of the internal relocation alternative internationally may pose a danger to women. For instance, in the deportation decisions which emphasised the fact that since applicants were ‘educated and resourceful’, it was believed that they could look after themselves.¹⁴⁰ However, as Balzani has noted, sometimes educated women find it harder to cope with relocation.¹⁴¹ Similarly, Siddiqui et al mention that in one case, ‘Being a middle class and educated woman did not necessarily make it easier for the woman to live independently. Relocation within a different region did not necessarily protect the woman.’¹⁴² Furthermore, the cases of ‘women from affluent or well educated backgrounds are likely to be refused because of the perception that they are less likely to be subjected to violence or, conversely, were capable of independently taking action against it.’¹⁴³ As such, claims by women from these backgrounds may easily be open to attacks on

¹³⁹SA v Sweden Aplicación no 14499/09 (ECtHR, 28 June 2012) para 53.

¹⁴⁰Upper Tribunal (Immigration and Asylum Chamber) Appeal Number: AA/11770/2015, para 20 and Upper Tribunal (Immigration and Asylum Chamber) Appeal Number: AA/08802/2014 (decided on March/April 2016).

¹⁴¹KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 (IAC), anthropologist with ethnographic fieldwork in Pakistani communities, Balzani, at para 68. Balzani had written two reports for this case, one in October 2008 and the other on 20 March 2010. Both reports make frequent references to recent major country reports on Pakistan.

¹⁴²N Siddiqui, S Ismail and M Allen, ‘Safe to Return? Pakistani Women, Domestic Violence and Access to Refugee Protection – A Report of a Trans-National Research Project Conducted in the UK and Pakistan’ (January 2008) 115.

¹⁴³ibid 149. It is also echoed by Roger Ballard, in *Risk on Return for Pakistani Women Who Have Lost the Support of Both Their In-Laws and Their Natal Kinsfolk*, Centre for Applied South Asian Studies (2012) point 8.8 page 151.

their credibility. Thus, the attributes of being educated, resourceful or rich¹⁴⁴ do not confer protection from honour-related violence.

This was highlighted in the European Court of Human Rights' dissenting judgment in the already mentioned case of *AA and Others*.¹⁴⁵ The dissenting judgment of Judge Power-Forde provided that:

The fact that the gender-based violence occurs in Yemen in no way diminishes the relevance or applicability of the Opuz¹⁴⁶ principles. These women fall within a group of 'vulnerable individuals' entitled to State protection. Such protection is not only unavailable in their home country; it is not even considered necessary. The beating of women, their forced isolation or imprisonment and forced early marriage are not addressed in Yemeni law. Marital rape is not a criminal offence. Violence against women and children is considered 'a family affair' and there is no minimum age for marriage'. [See the United States Department of State '2010 Human Rights Report: Yemen' of 8 April 2011 and cited in §39 of the Judgment]. The violence inflicted upon the first applicant, in the form of frequent beatings, burning and threatened assaults with a knife, is similar to the violence described in Opuz and, consequently, must also be considered to constitute 'ill-treatment' within the meaning of Article 3. There is compelling evidence that the Yemeni authorities fail to take protective measures in the form of effective deterrence against domestic violence and child marriage. [See the extracts from the International Human Rights Reports that are cited at §§39, 40, 42, 43 and 44 of the Judgment]. There is nothing to suggest that this situation is likely to change upon the applicants' return to that country.¹⁴⁷

Therefore, deportation by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country.¹⁴⁸ Objectively, the policies, practices and laws of Yemen demonstrate that systemic and structural discrimination in the

¹⁴⁴N Siddiqui, S Ismail and M Allen, 'Safe to Return? Pakistani Women, Domestic Violence and Access to Refugee Protection – A Report of a Trans-National Research Project Conducted in the UK and Pakistan' (January 2008) 149 Also echoed by Roger Ballard, in 'Risk on Return for Pakistani Women Who Have Lost the Support of Both Their In-Laws and Their Natal Kinsfolk', Centre for Applied South Asian Studies (2012) point 8.4 page 149, point 8.8 page 151.

¹⁴⁵*AA and Others v Sweden* Application no14499/09 (ECtHR, 28 June 2012).

¹⁴⁶*Opuz v Turkey* Application no 33401/02 (ECtHR, 9 September 2009).

¹⁴⁷Dissenting Opinion of Judge Power-Forde in Case of *SA v Sweden* Application no 66523/10 (ECtHR, 27 June 2013) 27–28.

¹⁴⁸*Saadi v Italy* [GC], no. 37201/06, §125, ECHR 2008.

form of gender-based violence exists in that country, and that breaches of the most fundamental human rights of women and girls are common. Judge Power-Forde found the applicants' history credible. Therefore, she concluded that 'the real risk of ill treatment occurs in a country whose "traditions" endorse such practices against women in no way diminishes the fact that domestic and gender-based violence violates Article 3'.¹⁴⁹

The Opuz case clarified and highlighted very crucial difficulties that women face in honour-related patriarchal countries. In this case, the Court noted that perpetrators of domestic violence do not receive appropriate punishment, as the courts lower sentences for crimes committed in the name of honour. Whether the discrimination is intentional does not matter; the widespread failure of police officials to act disproportionately impacts women. For these reasons (among others), the Court recognised that there was a general and discriminatory judicial passivity in Turkey, which denied women equal protection under the law. Such criteria, as emphasised by Judge Power-Forde above, will be among the main criteria when assessing the deportation of applicants, instead of applicants' other attributes such as her/his education and independence.

5.4 Conclusion

Honour killing is the most severe type of honour crime. As usual for honour crimes, this particular offence also has its own complexities. In England and Wales' legal system the shortcomings of the response to honour killings can be gathered under three headings: shortcomings in the legislative effort under the Coroners and Justice Act 2009, by not

¹⁴⁹Dissenting Opinion of Judge Power-Forde in Case of SA v Sweden Application no 66523/10 (ECtHR, 27 June 2013) 29.

excluding honour killings expressly from the mitigating factor of a loss of self-control defence; the absence of sentencing guidelines, which prevents consistency in sentencing cases of honour killing; and ineffective police training and involvement when victims approach the police. From parliament and the justice system to the police force, shortcomings remain. As Smartt states, honour crimes (and killings) ‘are often compounded by state ignorance and indifference by law enforcement agencies or the courts.’¹⁵⁰

In England and Wales, then, law enforcement agencies should receive training to tackle honour killings effectively so as to reflect their obligations towards women and girls from different ethnic origins where honour-related violence is predominant.¹⁵¹ When issues around domestic violence are raised in training and awareness campaigns, honour-related violence should be also included in such programmes. Case law has raised concerns about sentencing perpetrators of honour killings. Courts should regard the element of patriarchal honour in a murder case as an aggravating rather than a mitigating factor.¹⁵² This also enables any possibility of a partial defence being raised in a case of honour killing under the Coroners and Justice Act 2009. As Clough remarks: ‘Specifically excluding honour killings [just as sexual infidelity is excluded, by Section 55(6)(c) of the Act] would have sent a very clear message that such cases will never be met with empathy.’¹⁵³

In the absence of any sentencing guidelines issued by the Court of Appeal, Sentencing Council guidelines on these issues are urgently needed. Such guidelines will also help to achieve consistency in the sentencing of honour-related violence offenders and honour

¹⁵⁰U Smartt, ‘Honour Killing’ (2006) 170*Justice of the Peace* 3.

¹⁵¹*ibid.*

¹⁵²*ibid.*

¹⁵³A Clough, ‘Honour Killings, Partial Defences and the Exclusionary Conduct Model’ (2016) 80(3) *Journal of Criminal Law* 12.

killers, whilst helping to affirm a declaratory message that English criminal law considers such offences to be abhorrent practices. The guidelines need to meet the demands of the sentencing courts as well as appropriately recognise the balance between the harm caused to the victims of honour-related violence and the culpability of the offenders, through the application of appropriate aggravating and mitigating factors.¹⁵⁴

The core issue is the obligation of States, under human rights law, to protect the lives of those subject to their jurisdiction. That means there must be effective investigations and prosecutions when such crimes take place in their territory. However, in honour-related patriarchal countries the law is lenient towards honour-related crimes and violence.

Therefore, under international human rights law, potential victims of honour killings have the right to flee to safer States and claim asylum or subsidiary protection. Difficulties around the credibility of their cases and the alternative relocation options suggest that the issues specific to the nature of honour crimes are not being properly assessed by States' authorities. Thus, awareness of the characteristics of honour crimes has to be improved, from the personnel making the first decision to the subsequent authorities who deal with such claims. This will increase the consistency in asylum and subsidiary protection decisions across the State Parties who signed the Conventions. The credibility of an applicant's story is still problematic. In addition, there must be recognition of the fact that the personal characteristics of the applicant (who might be educated, independent, resourceful, or living in a big city) do not diminish the risk of that person becoming a victim: of honour killing or honour-related violence specifically, and gender-based violence generally.

¹⁵⁴M M Idriss, 'Sentencing Guidelines for HBV and Honour Killings' (2015) 79(3) *Journal of Criminal Law* 13.

The recommendations made by periodic reviews have been implemented by some State Parties very slowly. Furthermore, the periodic reports themselves show an inconsistent approach. As illustrated in the main discussions in this chapter, in one report honour killing is listed as an issue but in the following report it is not mentioned at all. More consistent following up of a State Party's progress is needed, as well as the willingness of a State Party to comply with their international human rights law requirements.

CONCLUSION

Globally, life conditions and future opportunities for many women are directly affected by patriarchal practices and values. These practices and values are used to create rules governing what is acceptable for women to do and imposing constraints on the behaviour of female members of the community. These have been referred to as sexism, machismo, or gender-biased attitudes, but, regardless of the name, women suffer physical and psychological violence as a means of maintaining these values. Breaking these patriarchal rules, either voluntarily or involuntarily, will lead to women being subjected to violence as a punishment, and, as such, this control mechanism has become known as gender-based violence.

The theory of patriarchy has explained how, historically, in parallel with the development of a sedentary life, the role of women became defined as someone confined at home, rearing children and with a limited ability to do anything beyond domestic duties.¹ A further element was then added to the role of women: the bearer of a family's reputation, its good name and honour. The way female members of a family behave, what they say in public, and their demeanour, came to be seen as a reflection of honour within a family and community. The most acute example of this can be seen in the control of the sexual behaviour, actual or potential, of women.

The element of honour, which exacerbates control over women living in honour-related patriarchal communities, can be viewed in two aspects. Firstly, this honour element leads to a deeper internalisation of these patriarchal values by women themselves.² One of the

¹A H Jafri, *Honour Killing* (Oxford University Press 2008) 27–28. G Lerner, *The Creation of Patriarchy* (Oxford University Press 1986) 8.

²A Sev'er, 'Patriarchal Pressures on Women's Freedom, Sexuality, Reproductive Health & Women's Co-optation into Their Own Subjugation' (2005) 4(1) *Women's Health and Urban Life* 37.

consequences of this internalisation is that women are often the perpetrators of honour-related violent acts against fellow female members of the family, as seen predominantly in the case of female bodily mutilation (both female genital mutilation and breast ironing) and forced marriage. In female bodily mutilation, girls are mutilated even before they have committed any act that breaks the expected rules; they are punished just for the fact of being girls (potential behaviour). This assimilation of patriarchal values by women also has the effect of being an incentive to gaining some power in a group's hierarchy within the patriarchy,³ and thus becomes a means used by some women to bargain with patriarchy.⁴ A second and further effect of the presence of the element of honour is that the perpetrators of honour-related violence are, in the vast majority of cases, relatives of the victim, where the family and the community carry out the punishment (community involvement is present). These two aspects are specific to honour-related violence.

In what different forms does honour-related violence manifest itself?

Different forms of honour-related violence, from the psychological abuse of harassment, to coercive control, to stigmatisation, to murder through honour killing, are all manifestations of gender-based violence.⁵ Thus, deliberations around the connections between honour-related violence and different religions, geographic areas, or even social classes, should not prevent recognition of the fact that any solution to this violence must acknowledge the gendered

³D Kandiyoti, 'Bargaining with Patriarchy' *Gender and Society* (September 1988) 2(3) 278–279 and Abu-Lughod L, *Veiled Sentiments* (London, University California Press 1999) 109.

⁴D Kandiyoti, 'Bargaining with Patriarchy' *Gender and Society* (September 1988) 2(3) 279.

⁵inter alia, K Bhopal, *Gender, 'Race' and Patriarchy* (Ashgate 1997) 1. R Reddy, 'Domestic Violence or Cultural Tradition? Approaches to "Honour Killing" as Species and Subspecies in English Legal Practice' in A K Gill et al (eds) *Honour Killing and Violence* 28, S Anitha and A K Gill, 'A Moral Panic? The Problematization of Forced Marriage in British Newspapers' (September 2015) 21(9) *Violence against Women* 1123 and S E Ercan, 'Same Problem, Different Solutions: The Case of "Honour Killing" in Germany and Britain' in Gill et al (eds) *Honour Killing and Violence, Theory, Policy and Practice* (Palgrave Macmillan, 2014) 199.

nature of the problem. In this respect, the efforts of the international community to provide responses, agreed globally in most parts or at least reaching a wide range of States, illustrate that solutions are based on the fact that victims are overwhelmingly women, subjected to violence because of their gender.⁶ Similarly, at a domestic level in the UK, taking into account the gendered dimension (rather than ethnic or religious ones) of honour-related violence,⁷ has been proposed when considering the provision of services to victims and the prevention of violence.

Honour-related violence is gender-based violence committed in the name of patriarchal honour, mainly by relatives of the victim. It is mainly about controlling and restricting female autonomy by a woman's blood relatives, extended family and community. Although men can also be punished if their behaviour transgresses the norms, in the vast majority of instances, the notion of honour is attached to a woman's body and sexuality, so that, if a woman allegedly or actually infringes the honour code, it is perceived that it is the honour of the men of the family and even the community that is attacked. Any act, as long as it is related to female sexuality, becomes a matter of honour. In order to control female sexuality, and, by doing so, uphold the family honour, some of the violence inflicted upon women and girls is pre-emptive (as in the case of female body mutilation) and some is restorative (such as forced marriages in rape cases) in nature. Furthermore, in cases where any dishonourable act happens, it is irrelevant

⁶inter alia, Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century" (A/RES/57/181, of 18 December 2002) and (A/RES/59/167, of 20 December 2004).

⁷inter alia, A Gill, 'Honour Killing and the Quest for Justice Black and Minority Ethnic Communities in the UK' (2009) 20(4) Criminal Justice Policy Review 4. L Haylock et al, 'Shifting Negative Social Norms Rooted in Unequal Gender and Power Relationships to Prevent Violence against Women and Girls' (25 August 2016) 24(2) Gender & Development 232. R Reddy, 'Domestic Violence or Cultural Tradition? Approaches to "Honour Killing" as Species and Subspecies in English Legal Practice' in A K Gill et al (eds) *Honour Killing and Violence* 41. S E Ercan, 'Same Problem, Different Solutions: The Case of "Honour Killing" in Germany and Britain' in Gill et al (eds) *Honour Killing and Violence, Theory, Policy and Practice* (Palgrave Macmillan, 2014)199.

whether it is through the victim's own choice (like seeking divorce or choosing her own spouse) or whether it is inflicted upon her by force (such as by rape); the outcome is the same: the victim is punished.

As has been highlighted in the female body mutilation chapter, even before any actual or alleged dishonourable act has occurred, girls are subjected to brutal, permanent harm as a precautionary measure. The girls are mutilated at a young age, long before they can commit any alleged dishonourable act. In other ways, girls and women are under the constant control of their families and community members, and their freedoms are restricted in the form of honour-related oppression in case they do anything (allegedly) dishonourable. Alternatively, they are forced to marry before they can do anything that may stain the family honour and so affect their future marital status.

Furthermore, any act, irrespective of whether the action is undertaken according to the will of the victim, or is forcibly inflicted on her (from exercising sexual autonomy, to seeking a divorce, to becoming a victim of rape, either actual or alleged –wherever it relates to female sexuality) is a matter of honour. Thus, a victim-blaming⁸ attitude is central when dealing with family honour issues. This illustrates the fact that the issue of honour will arise in any case, before and/or after the alleged/actual dishonourable act, as well as from acts being undertaken voluntarily (such as divorce) or inflicted upon on the victim by force (like rape). Women's and girls' lives are controlled and ruled by others in an extremely arbitrary manner.

⁸C Warrick, 'The Vanishing Victim: criminal law and gender in Jordan.' (2005) 39 *Law and Society Review* 319, 327–328 and 345; N Shalhoub-Kevorkian 'Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?' (2002) 36 (3) *Law & Society Review* 578 and 580; N Shalhoub-Kevorkian, 'Towards a Cultural Definition of Rape: Dilemmas in Dealing with Rape Victims in Palestinian Society' (1999) 22(2) *Women's Studies International Forum* 163.

Honour-related violence is a complex matter and it manifests itself in various forms. A person may become a victim of multiple types of honour-related violence to different extents, either concurrently or one following the other. There is also a fluid interaction between different forms of honour-related violence: for instance, initially, a girl may be subjected to female body mutilation⁹ when she is an infant; later on, if she becomes a victim of rape or voluntarily loses her virginity, this may lead her into a forced marriage. If she becomes a victim of a forced marriage but refuses to continue with the relationship, or seeks divorce, she might then become a victim of honour killing.¹⁰ However, honour-related violence may take the form of a ‘straight jump’ as well, with a woman going from being a rape victim/losing her virginity to becoming a victim of an honour killing.

Furthermore, the complex relationship between different types of honour-related violence can be illustrated by the position of rape victims. As a restorative remedy, it is common practice in honour-related patriarchal communities to force the rape victim to marry her rapist. If the victim agrees (having very little choice) such a marriage will save her life; but if she refuses, she may become a victim of honour killing. Although passing a law will stop forced marriages, in such instances forced marriages save lives. Thus, it is difficult to square this concept with the fight against forced marriages. Two conflicting interests, the right to life and the right to choose a spouse (the right for self-autonomy), are at stake. This again illustrates the complexity involved in honour-related violence and the ways women can negotiate within such oppressive and abusive behaviours, typically by shifting one type of violence to another.

⁹female genital mutilation is not practised in all honour-related patriarchal communities: although most types of honour-related violence, including honour killings, are prevalent in India, Turkey, Pakistan and Jordan, for instance, female genital mutilation is not practised there. See UNICEF (2013) <https://www.unicef.org/protection/files/00-FMGC_infographiclow-res.pdf> accessed 12/9/2017.

¹⁰N Afzal OBE Chief Crown Prosecutor of the Crown Prosecution Service (CPS) for North West England from 2011–15, stated that forced marriage is one of the main reasons for honour killings, on *Panorama: Britain’s Crimes of Honour* (23 March 2012).

Are all forms of honour-related violence effectively addressed by the national laws of England and Wales and by international human rights law?

In order to tackle honour-related violence more effectively in the legal arena, the ways in which honour-related violence manifest itself have to be identified as widely as possible. Legislative efforts in the UK to deal with a specific honour-related violence can be seen in the Acts that have been passed to tackle forced marriage, female genital mutilation and coercive control. Whatever the form in which it appears, honour-related violence needs to be tackled effectively and rapidly in order to protect the most vulnerable members of honour-related patriarchal communities. In England and Wales, there is no specific offence of ‘honour crime’. It is an umbrella term to encompass various offences covered by existing legislation.¹¹ Since honour crime is not conceptualised in domestic law, it is a court’s duty to conceptualise it, and courts often need to call upon field experts for that task. If honour-related violence is conceptualised and its own sentencing guidelines are issued¹² this will bring clear guidance when approaching such crimes. This is crucial for fairness and consistency of case law in this field.

Deliberation about the effectiveness of legislation as a solution also highlights the limitations of the law when confronted with issues like stigmatisation, marginalisation and isolation as punishments for breaking honour-related patriarchal rules. It is evident that no criminal code or civil remedy can afford any proper protection or acceptable restitution to the victims in cases where such violence is inflicted by the community at large. As has been pointed out,

¹¹Crown Prosecution Service official website, Honour-based Violence and Forced Marriage, Legal Guidance, Domestic abuse <<https://www.cps.gov.uk/legal-guidance/honour-based-violence-and-forced-marriage>> accessed 12/1/2017.

¹²M MIdriss ‘Sentencing Guidelines for HBV and Honour Killings’ (2015) 79(3) *Journal of Criminal Law* 11–12.

social isolation has an extremely negative effect on both the psychic and somatic health of victims. It is further submitted that '[b]anishment from society has long been regarded as one of the hardest punishment a person can suffer.'¹³ In honour-related issues, stigmatisation works against both sides. For instance, a woman who seeks a divorce or marries someone of her own choice may be stigmatised by her community. On the other hand, as acknowledged by Ermers, if a man (the father or relative of that woman) fails to punish the victim, he will be branded as 'a coward and stigmatised' by his community.¹⁴ Stigmatisation is then a common punishment for both sides (the victim and perpetrator) who are outside of legal remedies when it is inflicted on them by the community at large.

The aspects of internalisation, as well as the high likelihood that the perpetrators are relatives of the victim, have a bearing on the effectiveness of changes to the law as a solution. The fact that the perpetrators are relatives of the victim complicates any solutions that can be offered. To criminalise acts of honour-related violence is one of the options available, where a change in the formal institutions has the potential to change values and customs. However, as has been discussed in the chapter on forced marriage, the victims may feel reluctant to go through with criminal proceedings against their own family. Moreover, as illustrated by the discussion on consent and coercion, decisions made by individuals in the context of the constraints imposed by family and a community's expectations show the complexity of the issue and, at the same time, the limits to the solutions that can be offered by enacting legislation. The idea of right of exit is also a consideration to be taken into account when evaluating the effects of changes to the law and the consequences of underestimating the pressure that can be borne by

¹³L Svendsen, *A Philosophy of Loneliness* (Reaktion Books Ltd 2017) 25.

¹⁴R Ermers, *Honour Related Violence, A New Social Psychological Perspective* (Routledge 2018) 9.

victims. The victims may regard the option of a legal challenge as a path with more risks than certainties.

Criminalising acts like forced marriage and female genital mutilation is necessary for the safeguarding of individuals' rights and freedoms, and for sending a clear message that certain violations are not to be tolerated. However, the success of legislative changes to address honour-related violence generally will also depend on a public institution's willingness to adopt a gender sensitive interpretation of such provisions to fully embrace the suffering inflicted on women and girls.

In the international arena, despite all efforts, a diverse approach to the application of international human rights law still exists. Some State Parties show more willingness than others to accept honour-related violence as grounds for asylum seeking or subsidiary/humanitarian protection. This diverse approach to the Refugee Convention 1951 across different State Parties needs to be addressed; otherwise the protection obtained under international human rights law will be completely dependent on which country the asylum claim is made. A wide discrepancy exists between what the law requests and what is actually practised.¹⁵ A uniform understanding of what amounts to an honour crime and the consistent application of laws and policies represent the right approach towards issues associated with gender-based violence. Since the Council of Europe's efforts in 2009, harmonisation of the asylum system has not been achieved.¹⁶ This inconsistency was also acknowledged by the UN,

¹⁵for instance, some countries, such as France, Belgium and Sweden, asylum is frequently granted on FGM. However, in other states, such as Italy, there have been only a few exemplary cases. Similarly, in Belgium, France, Italy, Malta, Romania, Spain and the UK forced marriage may amount to persecution as opposed to Sweden. Directorate General for Internal Policies Policy Department C: Citizens' Rights And Constitutional Affairs Gender Equality, Gender-related asylum claims in Europe, 'A comparative analysis of law, policies and practice focusing on women in nine EU Member States' (Brussels 2012) 37–38.

¹⁶Council of Europe Resolution, 'Improving the quality and consistency of asylum decisions in the Council of Europe Member States' 1695 (2009).

which provided that: ‘There are also significant differences between countries with respect to the number of cases in which refugee status is granted and the number of cases in which applicants are afforded complementary protection including, inter alia, protection under the European Convention on Human Rights (ETS No. 5), subsidiary protection and other humanitarian protection.’¹⁷ Thus, while some States recognise that a range of gender-related persecutions can engage the Refugee Convention, poor decision making leaves many women at risk of being denied the protection to which they are entitled.¹⁸

As has been discussed under the international human rights law section of this thesis, in asylum and subsidiary protection cases the reasoning made by national courts or tribunals, the European Court of Human Rights, and the Human Rights Committee when considering and declining an application on the grounds of forced marriage all need to be in line with the reality of the phenomenon of forced marriage; specifically that age, education and personal freedom do not necessarily negate the risk of forced marriage. Difficulties around the credibility of potential or actual honour-related violence victims’ cases and alternative relocation options suggest that the issues specific to the nature of honour crimes are not assessed properly nor expressed accordingly. Thus, awareness of the characteristics of honour crimes needs to be further increased at the international human rights law level.

Continuing with consideration of the merits of solutions offered by changes to formal institutions, like law and after an analysis of the international law that has been provided in each of the chapters, it can be argued that despite all efforts, the impact has been very limited. The consensual nature of international law and the patchiness of its application are two

¹⁷ibid point 4.

¹⁸Directorate General for Internal Policies Policy Department C: Citizens’ Rights And Constitutional Affairs Gender Equality, Gender-related asylum claims in Europe, ‘A comparative analysis of law, policies and practice focusing on women in nine EU Member States’ (Brussels 2012) 43–44.

disadvantages of international human rights law. In addition, a State's institutions are not free of the gender bias that patriarchy upholds, and so the implementation of the internationally agreed Conventions and the follow up on the intentions included in Declarations and Charters require a much stronger political will.¹⁹

If changes in law are not enough on their own, can education be the solution?

Whether taking the form of honour-related violence or not, violence against women is consistent across all ages, classes, ethnicities, religions and education levels, as it forms a key component of patriarchal power. As a result, the key perception of female inferiority is internalised widely, including the educated and elite professions.²⁰ Thus, 'the dominant ideologies that underpin gender order shape perceptions of normality and reality across all domains of work and life'²¹ including the education system. Therefore, there is an urgent need to transform the role of education: from one that is part of the problem, when imparting curricula that reproduce power structures, to one that can make positive changes to an individual's mindset on gender equality.²²

¹⁹C Warrick, 'The Vanishing Victim: criminal law and gender in Jordan' (2005) 39 *Law and Society Review* 327–328; N Shalhoub-Kevorkian, 'Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?' (2002) 36 (3) *Law & Society Review* 577 and 593–594.

²⁰E Lombardo, P Meier and M Verloo, 'Discursive Dynamics in Gender Equality Politics: What about "Feminist Taboos"?' (2010) 17(2) *European Journal of Women's Studies* 113; S Yamak, A Ergur, M F Özbilgin and O N Alakavuklar, 'Gender as Symbolic Capital and Violence: The Case of Corporate Elites in Turkey Gender', (March 2016) 23(2) *Work and Organization* pages 128–129 and 136–137. Also see Judge's patriarchal decision in Turkish case of attempted honour killing of G Aslan, S Urfa (Turkish) Criminal Court, Decision no: 1998/170 in M M Idriss and T Abbas, *Honour, Violence, Women and Islam* (Routledge 2011) 145. Similarly, Jordanian Judge's views with regards to honour killings see N Shalhoub-Kevorkian, 'Researching women's victimisation in Palestine: a socio-legal analysis' in L Welchman and S Hossain (eds) *Honour' Crimes, Paradigms and Violence Against Women* (Zed Books Ltd 2005) 174. L Udwin, 'India's Daughter', Documentary (2015). As well as, defence lawyer's view in rape and murder of Jyoti in L Udwin, 'India's Daughter', Documentary (2015).

²¹S Yamak, A Ergur, M F Özbilgin and O N Alakavuklar, 'Gender as Symbolic Capital and Violence: The Case of Corporate Elites in Turkey Gender', (March 2016) 23(2) *Work and Organization* 141.

²²L L Bierema, 'The Role of Gender Consciousness in Challenging Patriarchy' (2002) *Adult Education Research Conference* 2 < <http://newprairiepress.org/aerc/2002/papers/4> > accessed 2/11/2018.

Schools are at the centre of compulsory education years, and so they can potentially play three roles in achieving the required changes: firstly, as a teaching entity, where students are formed as individuals and citizens through concepts like human rights, equality of gender and respect for individual freedoms; secondly, as a forum where the community can raise awareness and acting as a place where information is shared; and thirdly, as public bodies with a duty of care towards pupils, and hence follow up on children who miss days of school, flagging when a child has gone missing and not been reported by guardians or parents, and where the child might potentially be a victim of honour-related violence.

It is the first role which can have the greatest long term effect when trying to engage with the root cause of honour-related violence. There are good arguments to start this process of education with children of ages three to five, before the years of compulsory schooling, actively sharing the values of respect for the individual, non-discrimination and equality of opportunity. Research conducted with the support of leading neuroscientists and pedagogues, show that the ideal age for providing such education is three to five years. Research has provided evidence that a child's mindset can be cognitively altered in early years, and that what is learnt during the first years of life matters significantly.²³ Furthermore, such early learning and experiences amount to major characteristics in their adulthood.²⁴ Therefore, to bring about an effective change in the education system, gender equality should be addressed

²³J P Shonkoff and D A Phillips, *From Neurons to Neighbourhoods: The Science of Early Childhood Development* (National Academy Press 2000) 5–6; N Rao et al Report on 'Early Childhood Development and Cognitive Development in Developing Countries' (September 2014) Faculty of Education, The University of Hong Kong 6; Early Childhood Care and Education can reduce gender and other social discrimination, Strong Foundations for Gender Equality in Early Childhood Care and Education - Advocacy Brief (2007) UNESCO Bangkok 3; P Rochat in M Banaji and S Gelman (Eds.) *Navigating the social world: what infants, children, and other species can teach us* (OUP 2013) 209.

²⁴S Valencia Botto and P Rochat 'Sensitivity to the Evaluation of Others Emerges by 24 months' (2018) 54(9) *Developmental Psychology* 1732.

during a child's early years. In this respect, of great value is the work done by the charity organisation Think Equal²⁵ which will be discussed later.

As explained in the Forced Marriage chapter²⁶ on primary school education in England and Wales, the provision of contents that deal with non-discrimination of genders was reinforced by the Equality Act 2010 and the Children and Social Work Act 2017. Schools were prompted to cover relationships education which potentially can reinforce the idea of non-discrimination of genders, and hence, are relevant in building an awareness in the students which opposes and is resilient against the mindset at the root of honour-related violence. However, in the absence of any robust and clear guidelines from the education authorities, some of the schools which have implemented parts of the No-Outsiders programme to deliver such topics have become subject to polemic and public protest.²⁷

As regards secondary school education, out of the citizenship programme of the national curriculum for England, the topic on individual liberties is perhaps the one that approaches most directly the sphere of honour-related violence, as it is connected with a situation where the personal freedoms of the individual (a girl) are pitted against the pressure of the group (the family or community). The Children and Social Work Act 2017 has made relationships and sex education compulsory for all pupils receiving secondary education at State maintained schools, with the objective that pupils would gain an age appropriate understanding of issues such as consent, healthy relationships, mental well-being and the importance of informed decisions.²⁸ In principle, the curriculum requirements under both the

²⁵Think Equal Early Years Curriculum Framework, Written By Helen Lumgair For Think Equal (2016) 2–3.

²⁶Under 'Schools' Involvement in the Fight against Forced Marriage' section.

²⁷'Birmingham LGBT teaching row: How did it unfold?' *BBC News* (22 May 2019).

²⁸Department for Education, Introduction of Statutory Relationships Education, Relationships and Sex Education and Health Education, Equality Impact Assessment and Public Sector Equality Duty (February 2019).

topic of citizenship and that of relationships and sex education can potentially cover content that engages with the root causes of honour-related violence. Since, unlike the Canadian model,²⁹ schools have had a wide degree of discretion on what specific content to prioritise when imparting these topics, there was a risk that they might decide not to tackle issues like force marriage and female genital mutilation. However, recently the government has issued statutory guidance to secondary schools to make female genital mutilation and forced marriage compulsory as part of the curriculum from September 2020.³⁰

Beyond compulsory schooling, the potential of education in addressing issues surrounding honour-related violence can be found in the training of front-line staff of public service bodies such as: health service, police, judiciary as well as schools (in this case, in terms of their duty to report concerns about students' well-being).

There have been some attempts to formalise training such as the statutory guidance issued to local authorities, health service providers and police under the Female Genital Mutilation Act 2003; or the Home Office's Female Genital Mutilation Unit to act launched in 2014 as a hub for effective practice. However, as has been highlighted, the majority of police forces admit a lack in the training of officers on the awareness and identification of honour-related violence, enforcement of the law and protection of victims.³¹ This was also illustrated in England and Wales' first report on the police service's response to crimes of 'honour-based'

²⁹as suggested under the Forced Marriage chapter in 'Schools' Involvement in the Fight against Forced Marriage' section of the thesis.

³⁰House of Lords Hansard, Female Genital Mutilation, 7 March 2019, Volume 796, Column 712; Statutory guidance on Relationships Education, Relationships and Sex Education (RSE) and Health Education (2019); School Inspection Handbook (November 2019).

³¹Her Majesty's Inspectorate of Constabulary, 'The Depths of Dishonour: Hidden Voices and Shameful Crimes. An Inspection of the Police Response to Honour-based Violence, Forced Marriage and Female Genital Mutilation' (December 2015) 103.

violence.³² Accordingly, this has been reflected in the victim's dissatisfaction with the police response.³³ It is important to be reminded at this point that it is often the professional judgment of a police officer which determines whether an investigation merits being referred to the Multi-Agency Risk Assessment Conference (MARAC). Even the introduction of the Domestic Abuse, Stalking, Harassment and Honour-base violence Risk Assessment Model (DASH) in 2009 has not resulted in a robust process of investigation. As indicated by the review carried out in 2016, the model is not applied consistently by front line staff, with questions being altered or omitted and officers focusing on offences involving physical violence in detriment of psychological abuse.³⁴ Psychological abuse in the form of coercive control, as discussed in Chapter 2, or as part of the process leading to force marriage, as seen in Chapter 4, is a fundamental part of honour-related violence.

It is important to note the contributions of non-governmental organisations in this area. Welchman and Hossain's Handbook for Forced Marriage brought together experts from four different countries (UK, Pakistan, Bangladesh and India) to provide, at a time where there were few lawyers with any experience in this area, 'a ready resource of information on then relatively inaccessible laws and procedures, as well as practical guidance for lawyers in England and Wales seeking to provide support to affected individuals threatened with or involved in forced marriages.'³⁵ Since the assistance to victims of forced marriage may

³²Her Majesty's Inspectorate of Constabulary, *The depths of dishonour: Hidden voices and shameful crimes. An inspection of the police response to honour-based violence, forced marriage and female genital mutilation* (December 2015) <<https://www.justiceinspectors.gov.uk/hmic/publications/the-depths-of-dishonour/>> accessed 12/1/2017.

³³N Mulhivill et al, 'The Experience of Interactional Justice for Victims of "Honour"-based Violence and Abuse Reporting to the Police in England and Wales' (2018) *Policing and Society: An International Journal of Research and Policy*, ISSN: 1043-9463 (Print) 1477-2728 (Online) Journal homepage<<http://www.tandfonline.com/loi/gpas2>> accessed 10/2/2018. This article illustrates that out of 34, only 9 participants expressed satisfaction with their experience overall 14.

³⁴College of Policing, *Risk-led policing of domestic abuse and the DASH risk model* (September 2016) i.

³⁵S Hossain, 'Introduction: Developing Legal Protection against Forced Marriage' in S Hossain and L Welchman (eds) *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS 2014)3. Available at CIMEL <<https://www.soas.ac.uk/honourcrimes/resources/>> accessed 2/8/2019.

require a combination of legal and non-legal remedies, the Handbook provided both under its UK chapters. The non-legal remedies included crucial information for both lawyers and professionals who assist victims in the course of their work.³⁶ The information included: details on how to identify the problem, the victim and the perpetrators (as issues related to forced marriage and honour crimes may present themselves in different ways or can be covered up), locating and contacting the victim and providing adequate help while conducting a risk assessment and maintaining confidentiality.³⁷

Another example has been the initiative of INTERIGHTS (International Centre for the Legal Protection of Human Rights) together with CIMEL (Centre of Islamic and Middle Eastern Laws) which crystallised into a project called Honour Crimes and which aimed at deepening the ‘understanding, explore theoretical frameworks and build upon diverse and multiple strategies, nationally, regionally and internationally, to combat impunity for those responsible for ‘honour’ crimes and to challenge the climate of support for the practice amongst state institutions.’³⁸

Shortcomings in laws and law enforcement illustrate that formal institutions alone are not fully effective in tackling honour-related violence. As a consequence, such violence remains persistent. One of the main root causes of violence is the belief in ‘inequality’ of, inter alia, genders or races.³⁹ This can take place in several forms: in gender-based inequality it can be manifested as honour-related violence; when it is related to race, it may take the form of racist violence. Mainstream education globally appears not to be challenging such issues

³⁶ibid 4.

³⁷ibid 3.

³⁸CIMEL, Honour Crimes Project Combating crimes of ‘honour’ through data, documentation, networking and development of strategies<<https://www.soas.ac.uk/honourcrimes/>> accessed 24/7/2019.

³⁹R Wilkinson, ‘Why is Violence More Common Where Inequality is Greater?’ (2004) 1036 *Annals of the New York Academy of Sciences Journal* 2–4.

effectively. Thus, such a discriminatory mindset or belief in ‘inequality’ may be so ingrained that even the most educated individuals may find it acceptable either consciously or subconsciously. A case that illustrates the nature of gender-based violence, and the level of ingrained gender inequality within the educated stratum of society, was the tragic rape and murder of an Indian medical student, Jyoti Singh. These events inspired the equality education programme named Think Equal.

Jyoti, a 23 year-old medical student, was brutally raped on a moving bus and killed in Delhi in 2012.⁴⁰ Jyoti was attacked on her journey home with a male friend by six men, including the bus driver. The attackers first immobilised the friend of Jyoti, then dragged her to the rear of the vehicle, repeatedly gang-raped her, and eviscerated her with an iron rod. Finally, one of the rapists inserted his arm into her vagina and pulled her intestines out. Her male companion was severely beaten. They both were thrown out of the bus. Jyoti survived in hospital for 13 days before she died from her injuries. Her death raised the fury of Indian women and men alike, and New Delhi saw an explosion of public outrage that resulted in a month of unprecedented mass street protests throughout the nation, and a government crackdown with water cannons and tear gas.⁴¹

Human rights activist and producer Leslee Udwin was inspired by this public outrage and decided to make a documentary called ‘India’s Daughter’.⁴² Two of the most astonishing moments in ‘India’s Daughter’ are a confession by one of the perpetrators, filmed in prison, and an interview with their defence lawyers, which provided a crucial insight into the mindset

⁴⁰‘Delhi Rapist Says Victim Shouldn’t Have Fought Back’, *BBC News* (3 March 2015).

⁴¹ibid.

⁴²BBC Full Documentary ‘India’s Daughter’

<<https://archive.org/details/BBCDocumentaryIndiasDaughterOnNirbhayaDelhiGangRapJyotiSingh>> published on 4 March 2015.

of the men and explored the wider dynamics of a patriarchal society which seeds violence against women. In the documentary, one of the rapists and murderer says, '[a] girl is far more responsible for a rape than a boy', without any remorse. During the interviews with the defence lawyers, one of them stated that if, a woman is out in the night, then this is what happens to her. Another lawyer commented that, if it had been his sister doing any such thing (i.e. being out at 8:30 pm), he would take her to a farmhouse and set fire to her.

Leslee Udwin took this matter further, to develop the special educational programme, Think Equal, to educate younger generations on the value of equality. The programme aims to teach children a fundamental value system based on empathy, compassion and equality. After Think Equal's intensive research, together with the support of leading thinkers in the field such as neuroscientists, pedagogues and sociologists, the ideal age for providing such education was established as three to five years, i.e. the pre-school age group.⁴³

From January 2017, 147 schools across 15 countries (including the UK) started piloting the Think Equal Programme. The results of pilot programmes in 7 of these countries (Argentina, Botswana, Canada, Kenya, India, Singapore and Sri Lanka)⁴⁴ are being evaluated at Yale University by the Yale Centre for Emotional Intelligence to assess their impact.

The Early Years curriculum framework is explained as follows:

Think Equal is a holistic early year's curriculum based on a commitment to social equality, gender equality, racial and religious equality, human rights and global citizenship. It views children as individual parts of a collective, global fabric and aims to support them as they begin a lifelong learning journey unburdened by the restraints of discriminatory mindsets and restrictive belief systems. It endows them with knowledge and experiential understanding of their rights. It encourages and empowers them in assuming responsibilities as global citizens and becoming 'upstanders' who oppose injustice at every level and transformers of society through the use of critical, inclusive and creative thinking.⁴⁵

⁴³L Udwin, 'India's Daughter' (L Udwin's talk at the 7th World Congress on Family Law and Children's Rights, Dublin on 4-7 June 2017).

⁴⁴Think Equal <<http://www.thinkequal.com/where-we-work/>> accessed 2/2/2018.

⁴⁵H Lumgair, Think Equal, Early Years Curriculum Framework (2016) 2.

The Early Years curriculum contains 36 topics. Each topic is designed to foster empathy and the development of personal, social and emotional skills in the early childhood setting through the extensive use of narrative and a focus on both a positive, accurate language construct and social cognition in the wider context of the child's life.⁴⁶

In September 2015, the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development which includes 17 Sustainable Development Goals. Building on the principle of 'leaving no one behind', the Agenda emphasises a holistic approach to achieving sustainable development for all. Think Equal directly addresses many of these 17 United Nations Sustainable Development Goals.⁴⁷

Furthermore, the Think Equal Curriculum reveres the child as a powerful being, endowed with full human rights as per Article 29 of the United Nations Convention on the Right of the Child. Think Equal adheres to the full terms of the convention with particular emphasis on the following: 'That the education of the child shall be directed to: The development of the child's personality, talents and mental and physical abilities to their fullest potential; - The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations.'⁴⁸ Adopting the curriculum will also satisfy the requirements of several international human rights law obligations where adoption of

⁴⁶ibid.

⁴⁷L Udwin, 'India's Daughter' (L Udwin's talk at the 7th World Congress on Family Law and Children's Rights, Dublin on 4-7 June 2017).

⁴⁸H Lumgair, Think Equal, Early Years Curriculum Framework (2016) 3.

educational measures on gender equality and human rights are emphasised.⁴⁹ For instance, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, in a joint general recommendation, recommended that State Parties' include in the educational curriculum information on human rights, including those of women and children, gender equality and self-awareness and contribute to eliminating gender stereotypes and fostering an environment of non-discrimination.'⁵⁰

Furthermore, the Commission on the Status of Women, in its Agreed Conclusions, makes express referral to honour crimes, and urges governments to implement concrete and long term measures to transform discriminatory social norms and gender stereotypes.⁵¹ Think Equal offers a realistic hope to end gender based violence by carrying out this transformation via education.

⁴⁹inter alia, The Committee on the Elimination of Discrimination against Women/general comment No18 of the Committee on the Right of the Child on harmful practices CEDAW/C/GC/31-CRC/C/GC/18 (14 November 2014) point 29 at page 9 talks about- Crimes committed in the name of so-called honour; UNGA Resolution on Intensification of efforts to eliminate all forms of violence against women (A/RES/67/144, of 20 December 2012) point 18(k), A/RES/65/187 of 21 December 2010 point 16 (j); Intensification of efforts to eliminate all forms of violence against women (A/RES/61/143, of 19 December 2006 point 8(l); Intensification of efforts to eliminate all forms of violence against women (A/RES/63/155, of 18 December 2008) point16 (i); Intensification of efforts to eliminate all forms of violence against women (A/RES/62/133, of 18 December 2007) point 6; Working towards the elimination of crimes against women and girls committed in the name of honour (A/RES/59/165, of 20 December 2004) point83 1(b); Working towards the elimination of crimes against women committed in the name of honour (A/RES/55/66, of 4 December 2000) point 4(b); Working towards the elimination of crimes against women committed in the name of honour (A/RES/57/179, of 18 December 2002) point 1(a);Elimination of all forms of violence, including crimes against women (A/RES/55/68, of 4 December 2000)point 5; Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century" (A/RES/57/181, of 18 December 2002) point 8; Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century" (A/RES/59/167, of 20 December 2004); Resolution 14/12 (2010) Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention, Resolution adopted by the Human Rights Council, A/HRC/RES/14/12 (30 June 2010) page 2; Resolution 7/24 (2008) Elimination of violence against women, Resolution adopted by the Human Rights Council (28 March 2008) point6 (b).

⁵⁰Committee on the Elimination of Discrimination against Women Committee on the Rights of the Child, Joint general recommendation No 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices CEDAW/C/GC/31-CRC/C/GC/18, para 69 (c).

⁵¹Challenges and achievements in the implementation of the millennium development goals for women and girls, Commission on the status of women agreed Conclusions (2014), points A(d) and 42.

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