

A new law which explicitly categorises forced marriage as a crime represents a crucial milestone in efforts to protect women's human rights

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*There has been extensive debate over the criminalisation of forced marriage. Critics oppose it on the basis that it is likely to deter victims from seeking help. **Kaye Quek** argues in favour of the legislation, writing that it can send a firm message that forced marriage will not be tolerated by either the state or the community.*



The debate around criminalising forced marriage was waging amongst feminist scholars and activists long before David Cameron announced his government intended to make the act of a forcing a person to marry a crime. In 2005-2006, the (then) Labour government's public consultation on forced marriage gave rise to an often heated and polarising discussion, which centred largely on notions of deterrence. Those in favour of criminalisation argued that a new law would unequivocally convey to relevant parties that forced marriage is wrong and so heinous as to warrant criminal prosecution, while those against held that it would prevent victims from coming forward for fear of getting their families into trouble.

Back then, proposals for criminalisation were defeated largely on the grounds that a new offence would lead to 'racial segregation' and create a 'minority law'. These claims, as I have [suggested elsewhere](#), point to the privileging of multicultural ideals over the protection of women's rights that often occurs in Western states. The expected passage this month, however, of the [Anti-Social Behaviour Crime and Policing Bill](#) – which includes a section criminalising forced marriage – means that feminist debate on this topic is more intense than ever. Echoing earlier debates, a number of prominent women's organisations, activists and feminist theorists are opposing the legislation, [claiming](#) that it will deter victims from seeking help and legal redress.

In its own right, the introduction of a new law which explicitly categorises forced marriage as a crime represents a crucial milestone in efforts to improve the protection of women's human rights. A critical point often overlooked or downplayed by opponents of criminalisation is the extent to which the criminal justice system constructs and shapes community attitudes toward violence against women. Since the period of the early-1990s and before, feminist scholars such as Liz Kelly and Jill Radford have sought to highlight how the failure of criminal law to adequately recognise different forms of violence against women plays a significant role in minimising and discounting women's experiences of gender-based harm. Sociological research from a range of Western contexts also points to the important symbolic role performed by the criminal justice system in establishing or influencing what is considered to be acceptable or unacceptable behaviour when it comes to issues of violence against women. While the benefits are difficult to quantify (as critics are quick to point out), the normative potential of a new law that criminalises forced marriage is considerable and should not be underestimated.



Image credit: raezer

A comparison of current debates on forced marriage with those on the criminalisation of marital rape from the late-1980s and early-1990s is instructive. Marital rape became a criminal

offence in England and Wales in 1991 and the feminist campaigns in support of criminalisation encountered many arguments similar to those tabled today in relation to forced marriage. Popular claims made against the proposal to make marital rape a criminal offence included: that the change was unnecessary as there were other legal alternatives to combat this form of abuse; that the threat of legal action would prevent reconciliation; and that victims would not want to incriminate those closest to them. These are the same arguments being drawn upon by opponents of the current proposed forced marriage law. Yet, there are few people today who would object to marital rape being considered anything less than a criminal offence, despite the fact that victims are sometimes reluctant to report abuse to authorities. The broader purpose of establishing at a societal level that such behaviour is wrong, incompatible with the dignity of human beings, and not merely discouraged but outlawed, is seen as warranted due to the seriousness of the violation.

The point here is not to suggest that marital rape forms a perfect comparison with forced marriage; for example, it cannot be said that campaigns against rape in marriage had to deal with concerns about racism in the same way that feminist activism on forced marriage has. However, the similarity in the arguments made against criminalisation in both of these cases establishes the need to consider forced marriage amongst other forms of violence against women, and the type of message it would send for acts such as rape or sexual assault to be attributed a less than criminal status.

The particular set of harms involved in forced marriage clearly warrants its categorisation as a criminal offence. State rhetoric tends to focus solely on the violation of individual choice that occurs in the custom. However, the harms of forced marriage also often include: rape, forced pregnancy, physical violence and beatings, forced labour, kidnapping or imprisonment (sometimes abroad), and in some cases, murder. If these acts are considered crimes individually, why would the sum of them be deemed anything less? Furthermore, as Tehmina Kazi [recently argued](#), forced marriage is in fact a far greater abuse 'than the sum of its parts, because it entrenches a framework for continuous ill-treatment'. A practice enabling the long-term enactment of what are already criminal acts requires a criminal law of its own which recognises its particularities.

An additional consideration is the double standard that is created if forced marriage is *not* criminalised. By this, I am referring to the way in which abuses suffered by 'majority group' women are dealt with by the state, compared to those encountered by 'minority group' women. It could be argued that a failure to combat forced marriage through criminal law amounts to an unacceptable inequality in the way human rights abuses suffered by different groups of women are addressed: abuses suffered by 'mainstream community' women are considered matters for criminal law while those suffered by 'minority' group women are not. In other words, women from Black and Ethnic Minority groups come to be afforded fewer rights than 'majority' culture women. Similar arguments have been made by several female activists from minority culture groups who currently oppose the proposed law on forced marriage, but who in the past have maintained that government inaction on forms of violence affecting minority women comprises a form of racism. Criminalising the *practice* of forced marriage, which is known to especially affect women from certain minority groups, forms an important step forward in ensuring the protection of *all* women's human rights.

It must be noted that creating a criminal offence of forced marriage is not a solution in and of itself. Should the bill pass into law, it must be supported by a comprehensive framework of measures to better support victims and educate the community on the harms and criminality of the practice. In this respect, recent cuts to grassroots women's organisations and domestic violence shelters run counter to the overall emphasis of the proposed law, and should be rectified. Nonetheless, by enacting legislation that clearly identifies forced marriage as criminal in nature and of the same level of seriousness as other forms of violence against women, a firm message can be sent that such behaviour will not be tolerated by either the state or the community.

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Kaye Quek is a lecturer and tutor in political science at the University of Melbourne and RMIT University, Australia. Her research examines state approaches to dealing with abuses of women's human rights, particularly those that occur in harmful forms of marriage.

