Custom or Crime?: Part II of IV: Legal Remedies for Forced Marriage Victims and Survivors

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Gender-based violence—from domestic violence and human trafficking to genital cutting and early and forced marriage—condemns girls to cycles of dependence, fear, and abuse. Harmful cultural norms and prejudices that tell young women how they are expected to look and act deny the dignity and equality we want for all our daughters...As Americans, we must see the hopes and dreams of our own girls and realize that these are the same dreams of girls around the world. —President Barack Obama

There is currently little recognition and a dearth of legislation around forced marriage in the United States. There are no federal forced-marriage laws, as marriage has traditionally been regulated by the states. US forced-marriage victims and survivors, and their advocates, confront inconsistent or, in some jurisdictions, nonexistent state laws. To date, the majority of the United States’ efforts to combat forced marriage have focused overseas. The US Agency for International Development (USAID) recently doubled its investment to $10 million to combat forced marriage in developing countries, and the US Foreign Relations Code describes forced marriage as a type of religious persecution.

Some federal agencies have addressed forced marriage in their internal regulations. For example, the US State Department defines forced marriage as “a violation of fundamental human rights” and “a form of child abuse” when minors are involved. Its Foreign Affairs Manual (FAM) sets forth procedures for responding to US citizens at risk of being sent abroad for a forced marriage. Unfortunately, the State Department cannot engage in prevention efforts domestically, and typically becomes involved only after a victim is taken abroad. The US State Department represents that it trains its case officers to explain the risks and to attempt to convince the intended spouse not to travel overseas. There is little likelihood of a victim being able to convince family members not to force her to make the trip, however, especially if the victim is a minor. If she goes abroad, whether willingly or by force, the case officer is supposed to provide her contact information for the appropriate US embassy and counsel her to contact the embassy upon arrival. The FAM directs the case officer to attempt to remain in contact with the victim during the trip, but this may not be possible if she is closely

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monitored or taken to a remote area. In some cases, the State Department is able to repatriate the victim, either before or after she is forced to wed. It is unclear what resources State Department personnel could provide the victim upon repatriation if she is a minor and would not likely qualify for most domestic violence shelters or similar services.

Although no federal agency has adopted clear guidelines for addressing domestic forced marriages, two agencies are just beginning to address the issue. The US Department of Health and Human Services lists projects addressing child, early, and forced marriage (CEFM) as an allowable grant activity under its Ethnic Community Self-Help Program. In addition, the US Department of Justice is funding a research project on forced marriage through a grant to the Washington, DC-based Urban Institute. The American Bar Association cautions that, “Without a concerted and coordinated multi-agency approach … victims will continue to fall between the narrow mandates and authority of particular offices and agencies.”

STATE LAWS IMPLICATED IN FORCED-MARRIAGE CASES

Marriage laws vary dramatically from state to state. Most states set 18 as the minimum legal age to consent to marry. But, in the majority of US states, minors can marry at a younger age with parental consent. In several states, parents can consent to their child’s marriage when the child is as young as age 12 or 13. Parental consent for minors to marry, without judicial review, can be highly problematic because parents are often the perpetrators in forced-marriage cases. Most state marriage laws do not expressly require the minor’s consent, only her parents’. Even when the child’s consent is expressly required, she may not feel comfortable asserting her right to dissent or have the ability to fully comprehend the ramifications of marriage. This is particularly true if her family’s culture promotes early marriage.

There are no federal forced marriage laws.

Some states do not require a hearing before a family court judge before a minor’s parents can consent to her marriage. States do not require court clerks who issue marriage certificates to assess or issue findings that the minor gave free, full, and informed consent and possesses the requisite capacity to meaningfully consent to marriage. In states that do require a judicial hearing, the parents’ presence in court can inhibit a minor from expressing her wishes, and no attorney is appointed to represent the minor’s interests. The effect of these “legal loopholes” can exacerbate underage girls’ and boys’ vulnerability to forced, early, and marriage.

STATE CRIMINAL LAWS

The vast majority of states have no criminal statute proscribing forced marriage. Some states that do address forced marriage do so under statutes addressing prostitution, pandering, or human trafficking. Only 10 US states and one territory have passed criminal laws that specifically address forced marriage. These statutes are antiquated and fail to address the complicated dynamics characteristic of forced marriage.

California

California’s forced-marriage law excludes both male victims and minors from protection. The California law states:

Every person who takes any woman unlawfully, against her will, and by force, menace or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment.

The statute also contains no preventative terms or consequences for individuals who attempt, aid, abet, or conspire to force a person to marry. This makes it difficult for law enforcement to prevent a marriage from occurring or hold accountable all of the full array of participants facilitating the forced marriage. California also fails to include “fraud” in its forced-marriage definition, which is detrimental in situations in which perpetrators use fraud as a tactic to facilitate or convince the victim to marry.

Maryland

Maryland’s forced-marriage statute falls under the human trafficking subsection of the Prostitution and Related Crimes—Pandering Chapter. The statute states that the perpetrator must “knowingly take or detain another with the intent” to forcefully marry the victim to the perpetrator or to someone
else. Anyone who benefits financially or receives anything of value as the result of the marriage or attempted marriage is subject to the same penalties, as is anyone who knowingly aids, abets, or conspires with one or more persons to facilitate a forced marriage. This statute allows law enforcement to intervene before a forced marriage occurs if there is sufficient evidence of the perpetrator’s bad intent.

**Minnesota**

Minnesota’s forced-marriage law only applies to minor victims and does not take into account that the perpetrator could be the victim’s parent or legal guardian. There is also no provision for additional participants in the facilitation of the forced marriage, such as other family members, community elders, religious figures, or a matchmaker. As with the California statute, this limits the ability of law enforcement to intervene and charge multiple perpetrators in hopes of preventing a forced marriage.

**Mississippi**

Mississippi’s forced-marriage law states:

> Every person who shall take any person over the age of fourteen (14) years unlawfully, against his or her will, and by force, menace, fraud, deceit, stratagem or duress, compel or induce him or her to marry such person or to marry any other person, or to be defiled, and shall be thereof duly convicted, shall be punished by imprisonment in the penitentiary.

This statute is greatly limited, as it cannot protect forced-marriage victims under age 14. Again, law enforcement cannot take preventative measures or intervene prior to the commission of a forced marriage.

**US Virgin Islands**

This is also true of the US Virgin Islands’ forced-marriage law, which states: “Whoever takes any woman unlawfully, against her will, and by force, menace or duress, compels her (1) to marry him; (2) to marry any other person; or (3) to be defiled, shall be imprisoned not more than 10 years.”

**West Virginia**

West Virginia’s forced-marriage law is titled Crimes and Their Punishment—Crimes Against the Person, and states, “any person who takes away another person, or detains another person against such person’s will, with intent to marry or defile the person, or to cause the person to be married or defiled by another person; or takes away a child under the age of sixteen years from any person having lawful charge of such child, for the purpose of prostitution or concubinage, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than three nor more than ten years.” The statute has no restrictions as to who qualifies as a potential victim and could apply to those who aid in facilitating the forced marriage.

**Virginia**

Virginia’s forced-marriage law, which falls under the state’s prostitution statute, provides: “Any
person who: ... (2) Takes or detains a person against his or her will with the intent to compel such person, by force, threats, persuasions, menace or duress, to marry him or her or to marry any other person, or to be defiled... is guilty of pandering, and shall be guilty of a Class 4 felony.”

Law enforcement cannot take preventive measures.

District of Columbia

The District of Columbia’s forced-marriage law similarly falls under DC’s prostitution chapter, titled Pandering; inducing or compelling an individual to engage in prostitution. It states: “(a) It is unlawful for any person, within the District of Columbia to: ...(3) Take or detain an individual against the individual’s will, with intent to compel such individual by force, threats, menace, or duress to marry the abductor or to marry any other person.” The unique dynamics of forced marriage are incongruous with prostitution or pandering. Labeling forced-marriage victims as prostitutes can lead to blaming the victim for what has been done to her and cause feelings of shame that could make her less likely to seek help. The DC statute also lacks language about coercive tactics perpetrators might take. Coercive tactics might include threats of disinheritance, withholding of financial support, or ostracization from the family, which could render a victim homeless. For example, if a perpetrator is the victim’s parent or a highly influential community member, such as clergy, the perpetrator could use this imbalanced power dynamic to manipulate the victim into an unwanted marriage.

Florida

Florida incorporates forced marriage into its human trafficking statute. In Florida, a person is guilty of human trafficking if that person “knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services.” Florida defines “services” as: “any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.” Conflating human trafficking with forced marriage ignores the complex family law dynamics that are unique to forced marriage. Separating forced marriage from human-trafficking statutes could prevent confusion and potential harm to the victim.

These statutes, crafted without a nuanced understanding of the unique dynamics of forced marriage, fall short in numerous ways. The statutes do not address the sometimes subtly coercive nature of forced marriage that prevents victims from giving free, full, and informed consent. Several statutes fail to hold accountable the variety of perpetrators involved, such as extended family or influential community members. And, most of the statutes fail to empower authorities to intervene before a forced marriage occurs, when there is still an opportunity to prevent a host of harms that often flow from forced marriage.

ANCILLARY CRIMINAL ACTS

There are a variety of ancillary crimes that can sometimes occur in the course of forcing someone to marry or during a forced marriage. However, statutes not developed with the unique needs, circumstances, and vulnerabilities of forced-marriage survivors in mind simply don’t provide for appropriate resources or remedies. Nonetheless, legal practitioners assisting forced-marriage victims and survivors in states without directed forced-marriage laws should be familiar with ancillary civil and criminal statutes that could provide some form of relief.

The statute does not cover male victims.

Laws proscribing assault, fraud, and kidnapping—acts often committed in the process of forcing someone to marry—may provide adequate grounds to prosecute a perpetrator of forced marriage. A spousal perpetrator could potentially be prosecuted for other criminal acts—such as rape or sexual assault—that often occur soon after a forced marriage takes place. However, state statutes addressing these ancillary criminal acts are not specifically designed to address the unique needs and circumstances of forced-marriage victims. Law enforcement officials may not be aware that forced-marriage situations often involve these ancillary

The statute does not cover male victims.
crimes, and they may be unwilling to get involved in a situation they perceive to be a family matter.\textsuperscript{46} Without a deliberately legislated forced-marriage offense, victims and their advocates may have difficulty accessing crime-victim compensation funds, witness-protection programs, shelter, child protective services, free counseling and medical care, and other critical victim services and protections.\textsuperscript{47}


In the absence of adequate forced-marriage laws, practitioners sometimes turn to anti-trafficking laws for relief. Trafficking and forced marriage are both serious practices that should be addressed in a way that is sensitive to the nuances of each. When the two are conflated, this can diminish system actors’ and the public’s understanding of the unique dynamics and consequences that differentiate forced marriage from trafficking in persons. Although the key elements of sex trafficking and forced-marriage cases sometimes intersect, the majority of forced-marriage cases do not constitute sex trafficking, which has a distinct commercial element.\textsuperscript{48} Due to the often disparate dynamics of these two types of human rights violations, it is imperative that legal remedies be tailored carefully to meet the needs of both victim populations.

It may sometimes be possible to find relief for forced-marriage victims under ancillary criminal laws; however, it is likely that use of these laws will not achieve appropriate outcomes for victims or perpetrators. For example, an assault charge against one perpetrator (the victim’s parent, sibling, or spouse) might not deter or punish other perpetrators (such as aiders, abettors, or co-conspirators) who could still facilitate the forced marriage in some fashion. And a rape charge against a forced-marriage victim’s spouse would not necessarily lead to appropriate services for the victim, such as shelter or protection from her family or in-laws who may be enraged with her, believing that she shamed both families and herself and caused the criminal charges against her spouse.\textsuperscript{49}

CIVIL REMEDIES

Protection (or restraining) orders are one potential, quasi-criminal remedy available to persons seeking to prevent or flee a forced marriage.\textsuperscript{50} Protection orders are frequently used to reduce the risk of future threat or harm to victims of violence and may prove more accessible and better-tailored to forced-marriage cases than criminal charges.\textsuperscript{51} Eligibility for a protection order does not require evidence that a crime has been committed, and the burden of proof should be lower than in criminal cases.\textsuperscript{52}

The qualifying factors and procedures for obtaining protection orders vary considerably across jurisdictions. In the majority of jurisdictions, judges have wide discretion to issue a variety of types of relief, such as no-contact orders, vacate (or “kick-out”) orders, property rights and access orders (e.g., to a home or vehicle), child-custody and visitation orders (including professionally supervised visitation), orders for child support and monetary support (to cover expenses such as medical and counseling bills for the victim), and orders for treatment or counseling for the defendant.\textsuperscript{53} The Virginia-based Tahirih Justice Center has developed helpful guidelines setting forth a strategy for obtaining protection orders in forced-marriage cases and potential terms to include, such as confiscating passports if a victim is at risk of being taken abroad or mandating school attendance.\textsuperscript{54}

Obtaining a protection order may not be an appropriate remedy for some forced-marriage victims, as there can be limitations on who can obtain them, who they can be obtained against, and what kinds of terms can be included in the order.\textsuperscript{55} It may be difficult for a victim to produce evidence or testify against her own family members. In addition, victims are often daunted by the potentially serious negative consequences to their family members, such as jail or deportation of a primary breadwinner or caretaker. This could impact the victim’s siblings, other parent, or extended family overseas who rely on remittances or immigration sponsorship from the defendant.\textsuperscript{56} An attempt to obtain a protection order could also result in severe or even fatal retaliation against the victim.\textsuperscript{57} Legal practitioners should take care to work with each individual victim or survivor to understand her unique circumstances and family dynamic, then pursue whatever legal outcomes she elects.

The United Kingdom

The United Kingdom has addressed many of these protection order limitations by designing a protection order custom-tailored to the needs and
circumstances of forced-marriage victims. The U.K.’s Forced Marriage Civil Protection Act of 2007 created a civil protection order to protect “(a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or (b) a person who has been forced into a marriage.” The issuing judge has the authority to evaluate all coercive threats or other psychological means used by the perpetrator, which can protect a victim before a forced marriage occurs and preempt ancillary crimes typically associated with forced marriage.

The order also benefits victims by allowing any person who aids or facilitates the forced marriage in any manner to be a subject of the restraining order. A wide array of provisions the judge deems appropriate and necessary can be included in the order, such as “protection from marriage, including prohibitions on specific ceremonies if organized, non-molestation order type provisions, disclosure orders if [the] victim has been removed from home or it is feared the victim may have been removed from the jurisdiction.”

The victim might not have access to her vital documents.

By contrast to the U.K.’s forced-marriage protection order regime, a threat to force someone to marry, or acts or circumstances that commonly signal an imminent forced marriage, are unlikely to persuade most US judges to issue a potential victim a protection order. US judges, even when they would be inclined to issue a protection order, may be precluded from doing so because protection order statutes are not designed with forced-marriage circumstances in mind. These statutes may prohibit a judge from issuing a protection order unless the victim can produce convincing evidence of a past history of abuse. Consequently, US legal practitioners and other service providers are forced to be creative when pursuing protection orders for forced-marriage victims. Protection orders are only one tool in a comprehensive response to a forced marriage victim’s situation.

DIVORCE OR ANNULMENT

Although it is usually too late by the time a forced marriage has taken place to prevent many of its damaging effects, divorce or annulment may bring some form of relief or protection to the victim. However, numerous factors can complicate pursuing a divorce or annulment. Strong religious convictions could preclude divorce or annulment as options for some victims. The victim’s ethnic or faith-based community may ostracize her for terminating the marriage. Obtaining a divorce or annulment might prove difficult if the victim does not have possession of or access to her own vital documents. It may also prove difficult to obtain the requisite documentation if the marriage was conducted overseas, in absentia, or by proxy. The victim’s spouse, the spouse’s family, or the victim’s family could retaliate against the victim for reneging on the union or because they perceive that she has shamed the family. Litigation could aggravate the circumstances, necessitating extensive safety planning to keep the victim safe and meet all of her basic needs. Even if the victim obtains a divorce or annulment decree, her spouse or family may choose not to recognize the judgment, treating her as if she is still married. A forced marriage could be adjudged void or voidable. A person forced to wed could argue that the resulting marriage is voidable and annulable in most states. The statute of limitations to bring an annulment case varies from state to state. These can range from a few months to several years depending on the basis of the annulment claim, and, in some states, parties cannot have cohabitated after they learned of the circumstance that renders the marriage voidable. Forced-marriage victims—particularly minors—may have no access to legal counsel, be unaware of the existence of legal rights and remedies until after statutes of limitation have eliminated a remedy, or may be forced to cohabitate after discovering the voiding factor because they have nowhere to go for food or shelter. The statute of limitations typically begins to run on the date a voidable circumstance is discovered. In a forced-marriage case, this will often coincide with the victim’s wedding date. It is important to consider what evidence or documentation a victim would need to produce for the court to prove the legal grounds for annulment. The time it takes to gather this evidence could further complicate the victim’s ability to meet the statute of limitations. If granted, an annulment could affect other rights important to a forced-marriage victim. If there are children of the forced marriage, the legal presumption that children conceived during the marriage are the biological offspring of both spouses no longer applies. If not listed on a child’s formal birth certificate, the child’s father may not be required to provide child support until after a court establishes
parentage. In some cases, a victim may choose to forgo pursuing child support in hopes of severing any connection to the perpetrator. Some financial benefits could also be affected, such as spousal support, pension, or retirement benefits, because an annulment could restore property to its pre-marital status. The victim’s property rights could also be undermined by annulling the marriage. For example, community property laws may no longer automatically apply to assets and debts that would have been considered marital property in a valid marriage. This may be overcome if the judge determines that “either party believed in good faith that the marriage was valid,” and “[declares] the party or parties to have the status of a putative spouse.”

**POTENTIAL IMMIGRATION ISSUES**

One potential motivating factor behind forced marriage is the ability of a US citizen victim to sponsor an immigrant visa for a foreign fiancé(e) or spouse. This can constitute a major material benefit to the foreign spouse and his family. In order to meet the eligibility requirements for a fiancé visa, the intended spouses must have “met in person within two years immediately preceding the filing of the petition.” In theory, this could prevent a forced marriage from occurring if the betrothed is overseas, however, there is an exception to this requirement. If requiring the two parties to meet within two years of filing the petition would “violate strict and long-established customs” of the fiancé’s “foreign culture or social practice,” or “result in extreme hardship to the petitioner,” the USCIS district director may choose to waive this requirement. Perpetrators could take advantage of this exception and use coercive tactics to guide a victim into sponsoring an immigrant visa for a foreign fiancé(e). Additionally, there are a lack of confidential ways for victims to obtain updates on the status of their petition or request that it be withdrawn. Any action the petitioner may take could notify the intended spouse’s family and cause her own family to retaliate or prevent the withdrawal of the petition.

If a forced-marriage victim is not a US citizen, perpetrators could use the threat of removal (deportation) as a tactic to coerce her to enter into or remain in an unwanted marriage. There are several potential legal remedies available to forced-marriage victims who lack lawful immigration status.

**The Violence Against Women Act**

The Violence Against Women Act (VAWA) allows “battered immigrants to petition for legal status in the United States without relying on abusive U.S. citizen or lawful permanent resident family members to sponsor their Adjustment of Status applications.” Under this provision, a victim may self-petition and can eventually file an Adjustment of Status application to become a lawful permanent resident. This could spare the victim the need to rely on her spouse for her immigration status. To qualify for a VAWA self-petition, the abused spouse must prove that the marriage was entered into in good faith, that the abuse occurred in the United States, that she lived with the abuser, and that the marriage is either still valid or was terminated less than two years prior to filing the self-petition. Even if the marriage turns out to be void or voidable, VAWA may still be an option if the victim entered into the marriage in good faith, but the wife is ultimately forced to remain in the marriage against her will. It may be years before she seeks or receives help, and by that time sufficient evidence of the good faith marriage will likely have accumulated. The victim must provide evidence of her “good moral character.”

**U-Visa**

Another potential immigration remedy for forced-marriage victims is the U-Visa. The U-Visa

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*The statute of limitations typically starts upon discovery.*

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was created to strengthen the ability of law enforcement agencies to detect, investigate and prosecute crimes against immigrants and protect victims. There are only 10,000 visas issued per year. In order to be eligible, the applicant must be a victim of one of the qualifying crimes listed in the statute, but acts substantially similar to qualifying crimes, such as forced marriage, could also be accepted. The crime must have occurred in the US, and she must have suffered substantial physical or mental abuse. Additionally, she must possess information concerning the qualifying crime, and she must have been helpful, currently be helping, or be likely to be helpful to a law enforcement official. The U-Visa is available regardless of whether the investigation or prosecution results in a conviction.

T-Visa

A third immigration remedy, the T-Visa, requires the applicant to be or have been a victim of a severe form of trafficking, but only 5,000 T-Visas are issued each year. Some elements of forced marriage are similar to the crime of human trafficking but, in order to constitute trafficking, there must be some commercial element present in the victim’s situation. The applicant needs to be physically present in the US on account of the trafficking. And, she must have complied with any reasonable request for assistance in the investigation or prosecution of the trafficking. The law provides an exception to this requirement for victims under age 18 and for victims unable to cooperate with authorities due to physical or psychological trauma. The victim must also produce evidence that she would suffer extreme hardship involving unusual and severe harm if removed from the United States. Returning to her family or her in-laws’ family overseas could be a real threat for a forced-marriage victim. The families could retaliate against the victim and she may have no legal protections abroad.

Asylum

Asylum is another potential remedy for non-US-citizen forced-marriage victims. Section 1101(a)(42) of the Immigration and Nationality Act (INA) states that asylum is available to:

any person who is outside any country of such person’s nationality ... who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

The US has not yet specifically recognized forced marriage as a form of gender-based persecution. However, US courts have found beatings, rape, female genital mutilation, verbal abuse, isolation, and severe economic disadvantage—all harms commonly associated with forced marriage—to constitute persecution for purposes of asylum. Rather than focusing on the forced marriage, practitioners base their asylum claims on these “component harms” to avoid directly confronting the issue of whether forced marriage, standing alone, constitutes per se persecution. Alternatively, asylum claims can be based on the consequences faced by women who refuse or flee forced marriages. For example, the forced marriage itself may not be grounds for an asylum claim, but threats of beatings, confinement, or death used to coerce a person to marry could be grounds for an asylum claim.

An annulment could restore property to its pre-marital status.

Even if it is established that there is a “well-founded fear of persecution,” relief will not be granted unless there is a nexus to one of the five enumerated protected grounds. Advocates frequently base asylum claims on the protected ground of “membership in a particular social group.” Although some advocates have attempted claims based on political opinion or religious belief, these have been less successful. There is a one-year deadline to file for asylum after entering the United States, and if exceeded, asylum applicants must pursue other refugee protections, all of which require meeting higher standards of proof of future harm.

CONCLUSION

Addressing forced marriage in the United States can be difficult due to the scarcity of directed legal remedies for forced-marriage victims. Legal remedies not tailored to address forced marriage may not yield appropriate outcomes for forced-marriage victims or perpetrators. Until the United States
embraces a comprehensive national response to protect and empower US-based forced-marriage victims and survivors, it is imperative that practitioners be aware of and sensitive to the unique needs and circumstances of these individuals. In the meantime, by creatively using ancillary legal remedies, practitioners can afford forced-marriage clients some tangible relief.

NOTES

1. This article is the second in a four-part series titled Custom or Crime? about forced marriage in the US. Part I aims to define forced marriage and distinguish it from arranged marriage, inform the reader about who could be a forced-marriage victim or perpetrator, and explore the catalysts and consequences of harmful marriage practices. Part II evaluates existing US legal remedies and resources for combatting forced marriage. Part III explores the fierce, ongoing debate over whether forced marriage laws should be civil or criminal in nature. Part IV sets forth recommendations for a comprehensive national response to protect and empower US-based forced-marriage victims and survivors seeking to avoid or flee forced marriages.


7. U.S. Dep’t of State, Foreign Affairs Manual, supra n.5, at 1743.1(b)(1).

8. Id.


Fraud can manifest in several ways, such as psychological and emotional manipulation, overseas trips with ulterior motives, or even facilitating a marriage without the victim’s knowledge in countries where the laws allow a family to conclude a marriage.


25. Id. at § 11-303(e)(2).


27. As addressed in Part I of this series, forced marriage victims can be adults as well as minors.


31. Id. at § 201.350.


35. Id.


38. Part I of this series provides a thorough treatment of the cultural and family dynamics surrounding forced marriage.


40. Id. at § 787.06(2)(h).

41. Alanen, supra n.10, at 10.

42. Id. at 9.

43. Sri & Raja, supra n.23, at 7.


45. Alanen, supra n.10, at 11.

46. Domestic violence was historically regarded as a family matter, but authorities increasingly recognize the fallacy of this approach.


48. The US defines human trafficking as, “(a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 22 U.S.C. § 7102(9) (2010). The term “sex trafficking” is defined as “the recruitment, harboring,
transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(10) (2010). A commercial sex act is defined as, “any sex act on account of which anything of value is given to or received by any person.” 22 U.S.C. § 7102(4) (2010). When someone other than the unwilling spouse benefits materially from the unwanted marriage, such as through bride price, dowry, land-for-bride, and so on, it does not necessarily mean the situation meets all the elements of the legal definition of trafficking.

49. Alanen, supra n.10, at 16.

50. Criminal protection orders or stay-away orders are issued in criminal court, while civil protection orders or restraining orders are issued by family or domestic relations courts. Civil protection orders are quasi-criminal in nature because a violation can result in criminal consequences.


52. Id. at 376–377.

53. Id.


55. Tahirih Justice Center, Policy Recommendations, supra n.18.

56. Hooper, supra n.44.

57. Tahirih Justice Center, Policy Recommendations, supra n.18.

58. Forced Marriage (Civil Protection) Act, 2007, c. 27, § 63A(1)(a)&(b), sched. 1 (Eng.).

59. Id. at § 63A(2)&(3).

60. Id. at § 63A(5).

61. Hutchinson OBE, supra n.16, Forced Marriage (Civil Protection) Act, supra n.58 at S. 63B(1).

62. Benitez, MD et al., supra n.51, at 385.

63. Practitioners and other service providers must honor the victim/survivor’s agency and voice, and afford her the autonomy and choice to fashion her own legal objectives, not unduly influenced by well-meaning counsel or service providers, whose function is to develop and execute a strategy where possible to achieve her stated objectives/outcomes.

64. Alanen, supra n.10, at 15.

65. Id.

66. Part I provides an in-depth analysis of retaliation, which could involve anything from assault or battery, ostracization, acid attacks, and even murder.

67. There is a variety of services a victim may need access to, such as housing, food, medical case, counseling, employment, transportation, and childcare if she has children of the forced marriage. If the victim is a minor, child protective services or foster care may be involved.


69. Id.

70. Although the victim may not want such contact, the perpetrator could still seek to establish parethood through the court and get legal custody and access rights to the child, forcing contact. It is important to note that parental kidnapping or custodial interference are prosecutable crimes. The victim parent might want to explore the legal requirements for termination of parental rights of the father or professionally monitored visitation coupled with restraining orders.


73. Tahirih Justice Center, Policy Recommendations, supra n.18.


75. Id.

76. Id. It is characteristic of some cultures that practice forced marriage to withhold interaction between the intended spouses until marriage.

77. Tahirih Justice Center, Policy Recommendations, supra n.18.

78. Id.

80. Tahirih Justice Center, Policy Recommendations, supra n.18.

81. The Tahirih Justice Center has extensive experience handling these types of cases, and should be contacted for technical assistance.


92. Although unable to provide names and identifying details, the author has seen a T-Visa successfully obtained for a forced marriage victim when she was forced by her spouse and in-laws to work as a domestic servant under threat of violence.

93. TVPA § 107(C), 8 CFR 214.11(b)

94. Id.

95. Id.

96. In some countries, women are precluded from working or moving about in public without a male family member escorting her. If ostracized, she may have limited ability to support herself financially.


99. Id.

100. Id. at 57. “There is currently no precedent establishing forced marriage per se as a form of persecution.”

101. Id. at 96–103.

102. Id. at 103–106.

103. This time limit can be waived in cases of changed or extraordinary circumstances. Practitioners have been able to overcome this barrier by showing the psychological harm an applicant suffered leading to severe mental health issues.