



USING CIVIL PROTECTION ORDERS TO PREVENT FORCED MARRIAGE

National Network to Prevent Forced Marriage Webinar

Webinar presented by: Professor Lisa V. Martin



DEFINING "FORCED MARRIAGE"

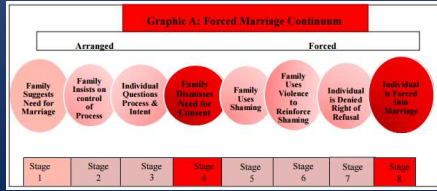
A forced marriage is where one or both people do not (or cannot) consent to the marriage, and typically involves elements of force, fraud, or coercion.



It is not arranged marriage, in which families may take the lead, but the ultimate choice to marry remains with the individual.



ARRANGED MARRIAGE → FORCED MARRIAGE



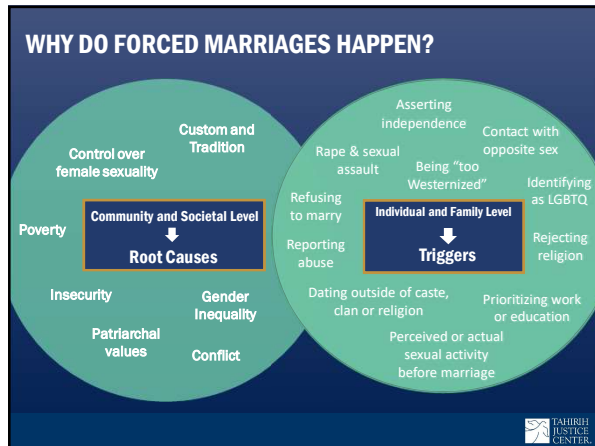
DOES FORCED MARRIAGE REALLY HAPPEN IN THE UNITED STATES?

2011 national survey showed that Forced Marriage is a serious and underreported problem in the United States:

- Over 500 respondents in 47 states participated
- Identified as many as 3000 cases of forced marriage in the prior two years
- Close to half (41%) of all respondents had encountered at least one case

2011 FORCED MARRIAGE SURVEY: KEY FINDINGS

- Victims' families came from at least 56 countries
 - Most frequently mentioned: India, Pakistan, Mexico, Bangladesh, the Philippines, Afghanistan, Somalia, Yemen
- Religious backgrounds included:
 - Muslim, Christian, Hindu, Buddhist, Sikh and others
- Majority of victims are female, but some are male
- Many are <18 years old
- Victims include US citizens; weddings occur both in United States and abroad



WHAT DO THESE CASES LOOK LIKE?

Aria is 16 years old and a US citizen whose parents immigrated to the U.S. when she was five. Aria's parents exercise a great deal of control over her and her siblings lives, forbidding dating and requiring she come straight home when school lets out. Aria also has a part time job at a local store, but she has to give her parents her work schedule every week, and make sure she is home within a half hour of her shift ending. Her parents also monitor her and her siblings' computer and cell phone use very closely.

FAHIRI JUSTICE CENTER

WHAT DO THESE CASES LOOK LIKE?

Aria's parents have always told her that they would arrange her marriage, and recently they informed her that they "found a good match" and want to travel to their home country over summer break for the wedding. Aria has repeatedly told her parents she is not ready to get married, but her family insists that the marriage must go forward now. Her parents have told her that if she does not marry the man of their choosing she will bring shame to the family and that her refusal to get married is "killing them" and ruining her younger sisters' marriage prospects.

FAHIRI JUSTICE CENTER

WHAT DO THESE CASES LOOK LIKE?



Although her parents have never used physical violence against her, she did witness her older sister being beaten after she fled the home she shared with her abusive husband and tried to return to the family home. Her sister was also resistant to the marriage their parents had arranged for her but ended up giving in to family pressure. Aria does not want to end up in the same situation as her sister but does not know how to safely resist the pressure to get married.



WHAT DO THESE CASES LOOK LIKE?



Rachel was born in the U.S. and raised in a very isolated religious group and homeschooled most of her life. At the age of 15 her mother arranged to marry her to a man more than twice her age and insisted that this was what God wanted. Even though Rachel begged for her mother not to marry her so early to a man she hardly knew, Rachel's pleading fell on deaf ears.



WHAT DO THESE CASES LOOK LIKE?



At one point during a particularly emotional fight, Rachel's mother slapped her across the face. After that, Rachel simply tried to keep her head down and ignore her mother as much as she could. But being so isolated from the outside world and seeing most people around her being married at young ages, Rachel felt trapped with no one she could safely talk to about her desire not to get married and her fear of what would happen to her once she was married.



WHAT DO THESE CASES LOOK LIKE?



Ultimately, Rachel felt she had no way out and no choice but to go along with the marriage. She spent several years trapped in an abusive marriage to a husband who prevented her from completing her education with whom she had several children before finally getting the help she needed from a counselor and finding the courage to leave her marriage. She is now estranged from her family and community and rebuilding her life on her own.



Civil Protection Orders

- Civil legal remedy
- Results in court order that can be enforced in civil or criminal proceedings
- Common provisions include orders to:
 - Stay away
 - Limit or prohibit contact
 - Prohibit or require certain types of conduct
- Some states have multiple types



Benefits of Civil Protection Orders

- Emergency Relief
- Individual Control over the Process
- Court Intervention without Criminal Punishment
- Tailored Remedies



Civil Protection Orders Show Promise as a Tool to Prevent Forced Marriage in Most States.



Determinants of CPO Accessibility/Utility re: Forced Marriage

- Qualifying Relationships
- Qualifying Conduct
- Impediments of Minority
- Remedies



Qualifying Relationships

- Eligibility to seek relief depends upon the relationship shared with those causing harm
- Defined by the person or the alleged crime
- Key relationships for the forced marriage context:
 - Parent/child
 - Household members
 - Other relatives
 - Stalking
 - Engagement/dating



Qualifying Conduct

- Acts that justify issuance of a protection order
- Limited to criminal offenses in many states
- Acts or threats of physical violence qualify in all states
- Stalking or harassment qualifies in most states
- Emotional abuse or coercive conduct qualifies in some states
- May be time limitations (when act occurred)



Impediments of Minority

- Because of their legal status, special rules govern minors' ability to obtain civil legal relief
- Must have standing (the right to seek relief as a party in the case)
- Must have legal capacity (the right to file and pursue the case on their own) or a qualifying adult representative
- Where law is unclear, minors typically should be permitted to seek relief (but likely need legal assistance to do so)



State Examples: District of Columbia

- | | | |
|---|---|---|
| <ul style="list-style-type: none"> • Qualifying Relationships: <ul style="list-style-type: none"> – Parent/child – Household members – Relatives – Dating – Stalking | <ul style="list-style-type: none"> • Qualifying Conduct: <ul style="list-style-type: none"> – Any crime against a person | <ul style="list-style-type: none"> • Minors: <ul style="list-style-type: none"> – Full standing – Legal capacity for 12+ (dating), 16+ (all) – Any appropriate adult may represent |
|---|---|---|



State Examples: Illinois

- Qualifying Relationships:
 - Parent/child
 - Household members
 - Relatives
 - Engagement or dating
 - *also stalking
- Qualifying Conduct:
 - Physical abuse
 - Harassment
 - Interference w/personal liberty
 - Willful deprivation
- Minors:
 - Full standing
 - Legal capacity unclear
 - Any adult can seek protection on a minor's behalf



State Examples: Arkansas

- Qualifying Relationships:
 - Parent/child
 - Relatives
 - Household members
 - Dating partners
- Qualifying Conduct:
 - Acts or threats of physical violence
- Minors:
 - Full standing
 - No capacity (even if married)
 - Adult family or household member or DV program employee must file



State Examples: Oregon

- Qualifying Relationships:
 - Relatives
 - Household members
 - Sexual partners
 - also stalking
- Qualifying Conduct:
 - Causing bodily injury
 - Creating fear of bodily injury
 - Sexual assault
 - also 180 day timeframe and imminent danger
- Minors:
 - Standing only against sexual partners and spouses
 - No standing against relatives, cohabitants, etc.
 - Legal capacity unclear
 - Benchbook says GAL appt required



State Examples: South Carolina

- Qualifying Relationships:
 - Spouses
 - Household members
 - also stalking*
- Qualifying Conduct:
 - Physical harm
 - Threats of harm
 - Sex crimes
- Minors:
 - Full Standing
 - Legal capacity unclear
 - Household members may file on behalf



Practice Tip: How to Convey the Threat of Forced Marriage in Court Filings

- Educate as you advocate
- Submit a detailed affidavit from person facing forced marriage
- Include supporting affidavits re: traditions and past practices within the family, community, or culture



Remedies

- Wide range of remedies often available in Civil Protection Orders
- Created to address domestic and family violence
 - not always a precise fit
- “Catch-all” provisions in many states allow for creativity
 - Look for language such as “appropriate to the resolution of the matter”
- Other Order types might have more limited relief



What remedies might you want to seek in a case of forced marriage?

(Example assumes a parent forcing a child)

- Restrict parental conduct without requiring a child to leave the family home
 - Turn in child's passport to court
 - Prohibit foreign travel
 - Prohibit relevant coercive conduct
 - Prohibit organizing/facilitating a wedding
 - Require a child to remain in school



Special Considerations re: Immigrant Clients

- International Travel
- Immigration Consequences of Protection Order Violations
- ICE and the Courthouse




Key Challenges

- Shoe-horning
- Uncertainty
- Awareness
- Access Requires Expertise



**An Alternative Model:
U.K. Forced Marriage Protection Order**

- Forcing Marriage Is the Qualifying Relationship
- Forcing Marriage Is the Qualifying Conduct
- Minors and Adults Can Access Relief
- Remedies Tailored to the Problem




**Enhancing Civil Protection Order Laws to
Better Address Forced Marriage**


- Include parent/child as qualifying relationship for adults and minors, also engagement
- Permit a broad range of adults to file o.b.o. minors
- Expand conduct grounds to include emotional abuse, coercive conduct, or forcing marriage
- Extend standing and capacity to minors
- Include “catch-all” remedy



Resources

- <https://preventforcedmarriage.org>
- <https://www.womenslaw.org>





TAHIRIH JUSTICE CENTER
Protecting Immigrant Women and Girls Facing Violence

Atlanta
Tahirih Justice Center, Inc.
100 Peachtree Street, NE
Suite 1000
Atlanta, GA 30309
Tel: 404.524.1234
Fax: 404.524.1235
www.tahirihjustice.org

Boston
Tahirih Justice Center, Inc.
100 State Street
Suite 1000
Boston, MA 02109
Tel: 617.552.1234
Fax: 617.552.1235
www.tahirihjustice.org

Chicago
Tahirih Justice Center, Inc.
100 North Dearborn Street
Suite 1000
Chicago, IL 60610
Tel: 312.552.1234
Fax: 312.552.1235
www.tahirihjustice.org

Denver
Tahirih Justice Center, Inc.
1000 17th Street, Suite 1000
Denver, CO 80202
Tel: 303.552.1234
Fax: 303.552.1235
www.tahirihjustice.org

Los Angeles
Tahirih Justice Center, Inc.
1000 Wilshire Blvd, Suite 1000
Los Angeles, CA 90017
Tel: 213.552.1234
Fax: 213.552.1235
www.tahirihjustice.org

Manhattan
Tahirih Justice Center, Inc.
100 West Street, Suite 1000
New York, NY 10038
Tel: 212.552.1234
Fax: 212.552.1235
www.tahirihjustice.org

San Francisco Bay Area
Tahirih Justice Center, Inc.
1000 Market Street, Suite 1000
San Francisco, CA 94102
Tel: 415.552.1234
Fax: 415.552.1235
www.tahirihjustice.org

Thank You!

TAHIRIH JUSTICE CENTER
