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South Asian Diaspora Marriages, Immigration and Legal Challenges in the UK: Impacts on Women Rights and Way Forward

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ABSTRACT

This research paper focuses on marriage practices of South Asian diaspora and the impacts of immigration laws in the UK. This paper answers the research questions that why are arranged marriages preferred by South Asian diaspora in the UK, how do the British immigration laws challenge traditional patterns of South Asian marriages, and how do diaspora women and girls get impacted in these processes? The methodology of this paper is inspired by qualitative socio-legal research, which has employed both content and discourse analysis techniques. The paper finds that South Asians prefer arranged marriage because of their culture followed back in South Asia. The marriage practises of South Asians are one of many ways to keep connected to their roots in India or Pakistan. Meanwhile, the UK's immigration laws on the other hand are introduced for halting fraud and protecting their value system. The paper concludes, despite genuine concerns of the authorities regarding fighting fraud and sham marriages, yet there is a strong need to hear perspectives of South Asian women as well before legislations.

Keywords: British South Asians, Arranged Marriage, Forced Marriage, Women Rights

INTRODUCTION

South Asians immigration to the UK initiated by early 17th century. The first immigrants were coolies, lascars, and peddlers—who started living in various port cities permanently (Visram, 2002). Soon after, they desired family life, however, the British law, did not allow them to bring their spouses along with them. Most of these immigrants led a life of poverty. In the 19th century, the affluent Indians, who entered the UK were mainly students or elite visiting for leisure. Whereas influx of immigrants from South Asia was mostly witnessed after 1948 with the introduction of Nationality Act 1948 that eased restrictions on immigrants wanting to bring their families (Carver, 2016).

Subsequently, the spouses of South Asian migrants from the newly created states of India and Pakistan post British decolonization started arriving in the UK. This was the birth of desi community (South Asian) in the UK. These new entrants conformed to their own ideas and value system, which they followed back in India and Pakistan. Thus, they never assimilated with the host population, consequently giving rise to incidents of racism, which forced the government to toughen immigration laws and restrict more numbers by legislations in 1960s and 1970s. Nonetheless, by 1980s, when the descendants of early migrants reached age of marriage, new challenges emerged for the British government, i.e., that of transnational marriages (Bevan, 1986, Carver, 2016). The South Asian community was multi-cultural, following different religions like Hinduism, Sikhism, and Islam—thus finding potential partners within the group was a difficult task. So, they started marrying their children in their home countries in an arranged marriage setting (Dale, 2018).

These marriages were consanguineous in Pakistani diaspora. Meanwhile, the Hindu and Sikh diaspora on the other hand preferred their own caste for marriage (Werbner, 2014; Pande, 2014). These practices opened doors for more immigrants to come along with newer challenges such as sham marriages, done only for economic interests; force marriages (where consent was ignored, and young girls were married off at parents' will for economic and family interests); and domestic violence (Shaw, 2006; Chantler and McCarry, 2019). Thus, post 1990s, it is a continuous journey of introduction and reforms of immigration and family laws that impacts the South Asian community, especially women and girls (Bevan, 1986; Carver, 2016; Pande, 2016).

LITERATURE REVIEW

Over the last three decades, various aspects of South Asians' marriage practices in the UK have gained attention of scholars. More recently, the impacts of UK's immigration laws are also point of focus impacting the lives of South Asian immigrants. However, no holistic qualitative research has synthesized and analysed the different socio-legal themes revolving around marriage practices of South Asian immigrants. In this section, perspectives of scholars are highlighted and analysed in sub-sections of arranged and semi-arranged marriages, forced marriages and domestic violence, and devising a legal mechanism. Towards the end of section, gap in the literature is identified.

Arranged and semi-arranged marriages

Pande (2014) has analysed the arranged and forced marriages in the UK and argues that majority of such marriages are undergone for the purpose of settling in the UK—nonetheless, according to her, these marriages cannot be labelled as forced marriages as the idea behind such a marriage is keeping to one's cultural roots back in South Asia. As the South Asian diaspora in the UK is multicultural, therefore, they do not find potential matches easily. Pande criticizes the Western notion that South Asian women and girls do not have agency. Contrary to Pande, Werbner (2014) in

her examination of marriage patterns of South Asians in the UK, criticizes the patriarchal traditions—where preferences of youth are ignored by their parents for their own interests. She brings forward the perspective of South Asian youth, who have more recently mocked the tradition of endogamy by taking to satire and stand-up comedy. Interestingly, according to Werbner, endogamy happens in Indian, Pakistani, and Bengali communities equally.

To further understand this phenomenon, Shaw's (2006) research on British Pakistanis—especially Kashmiris is significant. She reveals, they still are invested in their roots back in Kashmir, especially the cultural patterns practiced in Mirpur, Kotli, and Rawalakot (all towns located in Pakistan's administer Jammu and Kashmir). Shaw states, much of the Kashmiri diaspora came to the UK in 1950s as single labourers, who then called their wives throughout 1960s and 1970s, and afterwards when their children reached the age of marriage, the era of transnational marriages began when their partners were chosen in Kashmir, mostly in consanguineous marriages—which are also criticized in the UK and often termed as forced marriages.

Similarly, Allendorf and Pandian (2016), conducted a survey to find the impacts of modernism on marriage practices across India. Their findings suggest, patriarchy still provides the foundations for marriages in India—which also translate into the cultural practices of Indian diaspora. The only prominent change in marriage patterns of South Asian according to their findings is switch to semi-arranged marriages. This is also validated by Pande (2016), who is of the view, in the UK, parents' role is only in the introduction, whereafter the potential couple decide for themselves. This is also true for British Pakistanis as shown by Phillips et al (2020), who claim, traditionalism of Pakistanis is abandoned by the new generation, as they feel more comfortable by introducing themselves as British Muslims rather than British Pakistanis. Nonetheless, when it comes to marriage, even they stick to traditionalism with the only difference of abandoning arranged marriages in favour of semi-arranged marriages.

The overall picture of the dichotomy between arranged and semi-arranged marriage is succinctly explained by Dale's (2018) qualitative research. This study is significant for the fact that it encapsulates the entire South Asian community in determining the rationale of their marriages. Dale discusses the impacts of Commonwealth Act of 1962 on the family system of South Asians in the UK. She has provided valuable information on the statistics that by the turn of twenty-first century, six and four percent Indian and Pakistanis respectively married outside their communities, and three-fourth of the South Asian women were married off before even turning twenty-five based on the interests of families rather than individual's.

Forced marriage and domestic violence

Cowburn, Gill and Harrison (2014) study argue that variable of honour is kept supreme in South Asian patriarchy, thus their men are considered as head of family and expected to protect that honour—deciding marriage too. Such a

situation not only limits agency of females but also give control of their bodies and sexuality to men, where women and girls are expected to remain virgin till marriage—consequently denying them individual freedom. Cowburn, Gill and Harrison state, such a situation potentially leads to domestic violence, when aspects like loyalty and shame are ignored by women. Chantler and McCarry (2019) study reach similar conclusions. They state, honour plays a vital role in forced marriage, which is intended for grooming. Whereas women resistance to such patterns is invisible. Their study found that UK's legal mechanism is unable to stop the forced marriages and domestic violence thereafter. Because most of their energies are spent on the actual events rather than the processes that lead to such situations.

Khan, Saleem, and Lowe (2018) in their quantitative study on Muslim South Asians in the UK opine that while honour is a crucial variable in the community, however, dispelling Cowburn, Gill, and Harrison (2014), they argue it is largely dependent on individual decisions rather than inspired by the community's cultural ideas as a whole. They also say, women suffer a lot when it comes to domestic violence in the UK as such incidents are reported less because of cultural sensitivities, and moreover, the UK's police and legal system is not well equipped to handle such cases.

Devising a legal mechanism

So how did British government view marriage as an institution traditionally? In the UK, marriage was governed under the 'Marriage Act' of 1753, continuing until 1969, when the government introduced 'Divorce Reform Act 1969', where divorce could only be sought if any of the party indulged in adultery, was of unsound mind, or there was no mutual consent after two years of marriage (Carver, 2016). More importantly, white women were not even allowed to marry aliens, as they were considered 'primary site of risk to national borders'. In fact, until 1949, white women could lose their nationality if they married an alien. It is interesting to point out here, that the state entered marriage legislations after 1960s, when the South Asian migration escalated to the UK. This was best summed up by Paul Colier in 2013, when he stated that 'if all citizens regardless of ethnic heritage have the same rights to bring in a foreign spouse, then diaspora relatives will just crowd out everyone else'.

Thus, to protect the British society from immigrants flooding, the government introduced 'Primary Purpose Law' in 1977, which required the spouses of migrants to declare that they would not acquire British nationality (Pande, 2016). Not only this, in fact, the British government even had imposed the virginity tests on the spouses of migrants to curtail fake marriages (Wray, 2011). Whereas the resident British women were not even allowed to bring in their spouses to the UK (Bevan, 1986, p. 245). It was only in 1980s, when the government allowed South Asian women to sponsor their husbands (Carver, 2016). Meanwhile, post 1997 till 2010, there was a period of economic liberalization, therefore, restrictions on immigration were again eased, however, the policy makers viewed South Asian women only as reproduction machines (Carver, 2016).

Socio-legally, when the South Asians were migrating to the UK, the country was also witnessing numerous legal reforms concerning family life and marriage. It was during this time that 'Domestic Violence and Matrimonial Proceedings Act of 1976' was enacted to stop 'intimate partner violence', which was advocated by the white feminists consistently for a long time. Moreover, in 1978, 'Proceedings and Magistrates' Courts Act' was passed to standardise the matters of marriage. Similarly, in 1990s, the legal issues were further formalized and refined by replacing the former laws. The new laws were related to housing, especially in the cases of domestic violence (Matczak, Hatzidimitriadou, & Lindsay, 2011). Furthermore, in 2004, with the introduction of 'Domestic Violence, Crime and Victims Act', intimate partner violence or any sort of abuse by the immediate family was made a criminal offence. The realization was made by the British government that violence against South Asian women was not merely cultural but an issue of 'violence against women' (Gill & Anitha, 2009).

'Marriage Act 1949' and 'Matrimonial Causes Act 1973' act as national law for marriage in the UK. As per the Section 12-c of 'Matrimonial Causes Act 1973', a marriage is regarded as invalid if 'either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind, or otherwise' (Gill & Anitha, 2009). More importantly, after the high-profile cases of domestic violence like Rukhsana Naz, Zena Briggs, and Humaira Abideen got highlighted in the UK, the forced marriage unit (FMU) was established in Foreign and Commonwealth Office. Subsequently, the UK government also introduced 'Forced Marriage (Civil Protection) Act 2007'.

Enright (2009) observes that both FMU and subsequent 'Civil Protection Act' were myopic and based on the premise that violence emanates from Muslim culture and South Asian parents' perspective of honour—something which is also observed by Cowburn, Gill, and Harrison (2014). Anyhow, as per the empirical study of Lundberg et al. (2021) analysing judgements under 'Forced Marriage Protection Orders (FMPOs)', it is revealed until 2021, the FMU gave protection to 1400 victims of forced marriages, of whom majority were of South Asian origin and ranging between 15 to 21 years of age. Their study analysed a total of 33 judgements under 'Civil Protection Act 2007' and found that sexual relations outside marriage were the primary cause for forced marriage by the South Asian community.

Gap in the literature

So, what is missing from the existing literature in social sciences is in-depth inquiry on impacts of South Asian marriage practices on the immigration laws in the UK. There are genuine concerns of the British government as well as the British society when it comes to exploitation of the immigration laws by the diaspora community. However, the impacts of immigration laws on the broader South Asian community in general and women and girls in particular cannot be ignored. This paper tries to evaluate those concerns.

METHODOLOGY

Research approach

Ontologically, this research paper is motivated by interpretive social sciences, where I focus on the subjectivities around the phenomenon of marriage practices among South Asians and how British laws are impacting those. Interpretive social sciences helped me understand, evaluate, and reveal the findings around the issue. The culture around marriage of British South Asians is diverse and therefore cannot be examined objectively—hence prompting this research to identify different variables among Indian and Pakistani communities in the UK as well as how the British authorities are responding to the challenges legally. Hence, meanings and contexts are more significant to study—which is also the aim of this study—a reinterpretation of the phenomenon (Neuman, 2011, p. 87-105; Hathcoat, Meixner, & Nicholas, 2017, p. 19; Kurowskaa & de Guevara, 2020, p. 1225). Such an ontological position focuses more on the specifics rather than generalizations as done in the objective research (Reshetnikov & Kurowska, 2017). Lamont (2015) succinctly summed this up in the following words, interpretive ontology is reflexive ‘that rejects the application of natural science methods to the social world and instead interrogates ideas, norms, beliefs, and values that underlie international politics’.

As far as my epistemological technique is concerned, I am inspired by intersectional feminism as explained by Crenshaw (1989; 1991; 2012), Potter (2013) and Troshynski (2013) in this research paper. As per Crenshaw (1989) intersectionality maps the inequalities against women in a complex legal system, which is why it is crucial in applying to the understanding of legal mechanisms in the UK around marriage and immigration laws, which specifically impacts the South Asian diaspora. More importantly, intersectionality is also significant to understand feminist, social and legal issues in one frame. So, as per the model of Crenshaw (1989, p. 149), inequalities against women are like vehicles that all merge at a traffic junction.

Similarly, Potter (2013, p. 307-10) is of the view that advantage of the intersectionality is that it discerns the shared and individual experiences in a multicultural environment. Thus, in dynamics of the UK and then further divided communities of South Asians in the UK—this is a significant paradigm to gauge the similarities and differences of women—who undergo series of inequalities. Crenshaw (1991, p. 1241) has even argued that for redressal of inequalities, the legal system must be reconstituted so that women of colour are represented at the penal stage, which as of now is dictated by Western white men—and even if some reforms are introduced these are from the perspective of white women.

Moreover, Crenshaw (2012, p. 1418) also opines that in the Western world, individual actions are considered as collective actions, when it comes to the minority communities. In this regard, Troshynski (2013, p. 455-473) too has elaborated that legally objectivity is not possible, and that biases can other a community or individuals based on perceived notions. He gave an example of ‘Patriot Act’ in the wake of 9/11, whereas same can be said for the ‘fake marriages’ or ‘marriages of

convenience' in case of this research—where based on a select few cases, an entire community is othered and seen as violating the British value system.

Data collection

My data collection technique was inspired by qualitative socio-legal research, where specific data was selected that could reveal the impacts of UK's legal system and legislations on diasporic marriages. Significantly, the qualitative research greatly aided my ontological and epistemological techniques, as it explores the phenomenon rather than validating or invalidating it, it is in-depth, and people oriented—where societal issues are addressed so that it can also holistically aid policy makers. With addition of legal responses and penology to these societal issues, such an approach becomes qualitative socio-legal research (Mack et al., 2005, p. 1; Žikić, 2007, p. 124-5; Dobinson & Johns, 2007, p. 18). Dobinson and Johns (2007) have summed this up by stating, qualitative socio-legal research analyses the impacts of culture on law rather than studying different laws in isolation and gauging their working in a given environment. More importantly, qualitative socio-legal research complements the intersectional feminism too as it also discerns the impacts of culture on legal processes (Hunter, 2015, p. 8-11).

For the purpose of this research paper, I employed the technique of documentary research in collection of data as suggested by Mogalakwe (2009) and Boven (2009), who state that documents pass the test of time and help in iterative qualitative research. More significantly, since this research is qualitative socio-legal, thereby, documents become of primary importance to explore. Thus, I only relied on primary and secondary documents, where official documents in shape of various acts of the British parliament and NGO reports as well as reports by advocacy groups are treated as primary, whereas newspapers and other internet-based blogs are considered secondary. Being based in Pakistan, I have a limitation to conduct ethnography, focus group discussions and in-depth interviews that required multiple meetups with officials as well as population—therefore, for detailed review article such a technique was quite significant.

Analysis

My analysis technique in this research paper is steered by my research approach as well as data collection techniques. Therefore, I employed qualitative content analysis and discourse analysis techniques to explore all legislations (treated as content) enacted in the UK since 18th century concerning marriage and immigration. Lamont (2015) is of the view that content analysis enables discerning every minute subjectivity, whereas Berg and Lune (2012, p. 353) state, content analysis helps in 'examin[ing] artifacts of social communication'. Meanwhile, Hermann (2008, p. 152) states, content analysis helps in revealing 'people's control over communication'. Additionally, the discourse analysis technique was employed to overcome the limitations of content analysis and understand the perspectives of various actors. These perspectives are treated as discourses, which reflect in sayings of patriarchy, feminists, government, and scholars (Taylor, 2013; Gee, 2016; & Tatum, 2018). I interpret the rationale of their perspectives and understand them

through intersectional feminism, which the next section reflects in detail.

Findings and discussion

As per the findings of this study, immigration laws in the UK witnessed a dynamic evolution—catering more to the official needs of the British government—that manoeuvred between the need of labourers, English society, as well as human rights.

As far as marriage in the UK is concerned, prior to 1844, an alien's marriage with a UK's citizen did not change status of citizenship for the alien. It was only after the 'Naturalization Act 1844' that British male citizens were allowed to take in foreign spouses. Meanwhile, with 'Naturalization Act 1874' British women were barred the status of citizenship if they married an alien (Fransman, 1998). This act remained in force until 'British Nationality Act 1948' was introduced—which allowed entry of the citizens of commonwealth—thus, leading to a huge influx of migrants from newly established South Asian states of India and Pakistan as well as allowing them to gain citizenship (Bevan, 1986, p. 21). Consequently, with the arrival of South Asian migrants, issues of hatred and racism were also witnessed—thus, leading to enactment of yet another act in shape of 'Commonwealth Immigrants Act 1962' (Clayton, 2011, p. 11-12).

The '1962 Commonwealth Act' was intended to halt the influx of new South Asian immigrants, nonetheless, it did not bar entry of the spouses of earlier immigrants. The said act was reformed with series of subsequent acts like 'Commonwealth Immigrants Act 1968', intended to bar entry of Asians living in British East African colonies. Similarly, with the introduction of 'Immigration Act 1971', the entry of only commonwealth citizens was permitted in the UK. Other than commonwealth citizens, requirements such as proof of birth of any of the parents was necessary to show (Robinson, 2005, p. 181).

With the leniency shown in 1971, at least 40,000 individuals from India and Pakistan entered the UK. With such a huge number, the authorities again had to introduce mechanism to curtail influx of migrants, thus, they introduced 'British Nationality Act 1981' denying citizenship to South Asians who were even born in the UK and introducing the condition that their parents must be born in the UK as well. Similarly, by introducing 'Immigration Act 1988', the British government took back the right to appeal from individuals who were facing deportation, or had contracted polygamous marriages (Robinson, 2005, 184). It is significant to mention here that post 1971, the 'Primary Purpose Rule' remained in force as well, where written testimony had to be given by the immigrants that they would not gain nationality. Yet another aspect of these legislations was curbing sham marriages, which had become a major concern for the authorities.

Subsequently, 'Immigration and Asylum Act 1999' continued its focus on such marriages and introduced further mechanisms like 'referral and investigation processes', where suspicion of fraud in marriage could be examined in detail by the marriage registrars and send cases to FCO, that could also deport individuals. Along with these powers, registrars could also delay the time of registering marriages as

well as issue 'marriage and civil partnership notices' to scrutinize marriage documents. In case of any irregularity, criminal cases could be initiated against the couple as well as the facilitators (Immigration and Asylum Act, 1999).

Similarly, after the introduction of 'Immigration Act 2014' registration time of marriages for individuals outside European Economic Area was further prolonged. This was specifically aimed at South Asians and examining in detail the potential cases of sham marriages. Other than sham marriages, this act also criminalized forced marriage, that had caught the eye of British officials for long. Moreover, the system of 'marriage and civil partnership notices' was further reformed and now potential couple had to give prior notice to the Home Office. Moreover, the 'civil partnership investigations' after this act could be initiated directly by the immigration officers to assess genuineness of marriage (Immigration Act, 2014).

The 'Immigration Act 2014' was further cemented by introduction of 'Immigration Act 2016', where seven years jail term was also proposed for culprits of fake marriages. Moreover, with the reforms, the Home Office now could deport such individuals without even asking the court to decide. The act also gave powers to immigration officers to detain suspicious individuals at the airport for 72 hours without court notice as well as enter any premise they suspect of having such persons. The more recent legislation has come up in shape of 'Nationality and Borders Act 2022' and 'Illegal Migration Act 2023'. What does the UK government achieve by these acts? They now prefer high skilled labourers instead of migrant labourers. The significant reform this time contains the condition of earning 38,000 UK pound per annum to be able to sponsor spouse. This is done in a bid to curb the net migration into the UK.

Here an important question arises, why did the British government go through such changes in their immigration processes? The findings of this study suggest that prominent issues at hand were 'fake marriages' or 'marriage of convenience', 'transnational marriages' that resulted in huge influx of migrants, as well as cultural sensitivities of the English society that felt their values threatened by the cultural practices of the immigrants, and a threat to local economy by the immigrants arriving solely for economic purposes. Thus, it was tried to tackle the problem legally.

Similarly, another important question that must be answered is, how did the British government stop this influx and control of culture? This was done through legislations, which are briefly explained above in this section. Nonetheless, here it is crucial to highlight the debate that have erupted between civil and criminal approaches within the UK to tackle such issues.

The proponents of civil approach contend that criminal justice system is prolonged with no grassroot level remedies where women and girls can feel protected (Cooper, 2019; Southall Black Sisters, 2019; Women Aid, 2019; Refuge, 2020; Imkaan, 2021). On the contrary civil approach is cost effective, as well as 'Civil Protection Orders' too can be obtained. DeLorenzo (2020), also argue that under criminal justice system, neither identities of the perpetrators of domestic violence

are revealed, nor they face jail time—thus, making the entire process an emotional stress for the victim. For the proponents of civil approach, FMPOs and preventive measures are more crucial as marriage is a social phenomenon (Southall Black Sisters, 2019). The prominent advocacy groups that are campaigning for the integration of civil approach to curb domestic violence and forced marriages are Southall Black Sisters, Women Aid, Refuge, and Imkaan.

The proponents of criminal justice system opine that as domestic violence and forced marriages are against basic human rights, thereby state must act as a party for deterrence purposes. Criminalizing forced marriages means provision of a legal framework, which consequently enables law enforcers to follow a structure. Such an approach was championed by Anne-Marie Hutchinson throughout 1980s and 1990s (Baksi, 2020). It was because of her that the British Government introduced ‘Forced Marriage (Civil-Protection) Act 2007’, enabling the state to stop girls being taken overseas for marriage without their consent. Similarly, the Crown Prosecution Service is also an advocate of criminal justice system, enabling the state writ in such incidents (Crown Prosecution Service, 2023).

In evaluating both civil and criminal approaches, there appears a tension along the variables of ‘human rights and individual rights’, as well as South Asian cultural complex. Therefore, requiring legal mechanisms to be holistic in addressing domestic violence and forced marriages. At present, the legal framework in the UK has incorporated variables from both ‘civil and criminal approaches’, which can be clearly ascertained from FMPOs and ‘Civil Protection Act 2007’. Nevertheless, ‘civil and criminal approaches’ apart, more recently, other approaches also have made their ground to the legal discourse. Significant among which are restorative justice, balancing prevention and protection, and community engagement.

All of these approaches are inspired by broad socio-legal approach. For instance, on restorative justice, Goodmark (2021), asserts, ‘restorative justice can be a more effective way to address domestic violence than the criminal justice system. She argues that restorative justice can help heal the victim, hold the abuser accountable, and prevent future violence’. Balancing ‘prevention and protection approach’ calls for mixing of criminal justice system and civil approaches (Zana, 2021). The ‘balancing prevention and protection approach’ is also advised by Nazir Ahmad, former Chief Crown Prosecutor of London—who is an expert on cases of domestic violence and argue for comprehensive legal mechanism (Afzal, 2020; Akram, 2022).

Whereas the community engagement approach criticizes criminal justice system, and rather argues for addressing the issue at societal level—as the aspects of criminality around forced marriages and domestic violence make families criminal in the eyes of courts and such cases also bring disrepute to the family—thus, many individuals do not report such incidents to the authorities. Social activist Pragna Patel and academicians Sundhri Anitha and Aisha Gill have raised a lot of voice for this approach. In fact, Patel has given talks on multiple occasion on this issue in British parliament as well (British Parliament, 2014; Anitha & Gill, 2023).

Yet another question is how are South Asian women impacted, both by South Asian patriarchy as well as laws of the UK? The marriage patterns are revealed comprehensively in the literature review section above. Therefore, in the paragraphs below stance of South Asian intersectional feminists is highlighted to understand the phenomenon.

The significant allegation against South Asian marriages in the UK's English community is that these lack informed consent and are often conducted under the instruments of blackmail, economic desire, and familial ties. This is more pronounced in instances, where age of the bride is tender and could be emotionally manipulated on accounts of family's reputation and honour (Bhabha, 2005). Nonetheless, these assertions are criticized by the South Asian intersectional feminists by stating that it is akin to irrationalizing the cultural practices of the South Asians. Intersectional feminists further argue that alleging South Asian of lacking in free will at the time of marriage is patriarchal stereotype and stigmatization of the entire South Asian community. On the contrary, they state that, arranged marriages occur across the cultural divide of occident and orient, and the incidents of forced marriages and domestic violence have also been reported from the White community in the UK.

South Asian feminists argue further that marriage practices of South Asians must be analysed through cultural relativism, and aspects of race, gender, and specific cultural practices must not be ignored to reach a holistic conclusion. More importantly, at the legislation stage, the Western White values must not be held superior to the values of others and base laws around. Thus, according to South Asian intersectional feminists, agency for women is of utmost significance. Because marriage has to be decided by free will and if some individuals prefer arranged marriage by choice, they must be able to exercise that right. Of course, domestic violence is the byproduct of patriarchy, nonetheless, it does not mean equally that all arranged marriages are forced and prone to domestic violence (Bhopal, 1999).

South Asian intersectional feminists also contend that agency and choice for South Asian women and girls can come through better economic opportunities, skilled education, and social platforms—where they can represent themselves (World Bank, 2017). South Asian intersectional feminists also argue that, if South Asian women are properly given social avenues and they do not live under the impression of white women cultural supremacy, perhaps they would exercise agency and choice more (Shah, 2010).

It is also alleged by the South Asian intersectional feminists that when it comes to legislations in the UK, aspects of class, sex, and race are totally ignored (Shah, 2010). At the legal front, South Asian intersectional feminists criticized the short-term fixes by the UK government, which does not effectively eradicate domestic violence, as the victims are sent back to their families after initial counselling, where they are again at risk. According to intersectional feminists, the problematic area here is the definition of domestic violence, where only physical violence is considered violence, and other aspects such as psychological and

emotional violence as well as financial blockades are not even considered under the current legal framework of domestic violence (Walby, 2015).

CONCLUSION

The marriage patterns of South Asian diaspora in the UK are inspired by religious and cultural roots back in their respective countries like Pakistan, India, and Bangladesh. The arranged marriage as a tradition is still practiced in the UK—however, over the last two decades it too has evolved, and semi-arranged marriage tradition is becoming the norm. It also happens in the cases, where couple are in love—upon their decision of marriage—they take their family into confidence. As far as forced marriages are concerned, these are mainly done using emotional blackmail and rationale is often economic interests or familial ties. Such marriages end up in domestic violence too. Other than that, incidents of sham marriages have also been on the rise since 1990s in the UK. The British government has continuously legislated over marriage and its linked issues since 1948 in order to keep migration levels of South Asians into the UK in check. Nevertheless, it is observed that most legislations are introduced without taking the local South Asian community on board, especially the South Asian women and girls—who in fact gets impacted the most by patriarchy and state alike.

Recommendations

This research paper recommends that two-pronged strategy is required to reform marriage culture, i.e., within South Asia and within the UK. As far as South Asia is concerned, the first step in this regard is close collaboration with the governments of South Asian states to legislate on issues of arranged marriages, forced marriages and domestic violence—which will significantly change the patterns South Asian diaspora in the UK as well. To achieve this milestone, collaboration with international organizations like UNWOMEN, already working in South Asian states is also crucial so that sensitization on the women rights is holistic and reach rural areas too.

Moreover, one of the major problems in the South Asian states is implementation of existing legislations on gender equality as well as women rights. For instance, age of marriage while on paper is more than sixteen years in all of these countries, yet child marriages are common.

More significantly, the British government can influence the South Asian states in shunning patriarchal tendencies at the state level and encouraging reportage of domestic violence to the authorities so that culture of masculinity may change. In this regard, the British government must also collaborate with South Asian feminist organizations to bring change by utilising their resources for outreach at the rural level.

Similarly, within the UK there is need to recognize arranged marriage and differentiate it from forced marriage clearly as arranged marriages does not imply lack of consent.

Moreover, while assertions of UK's authorities on sham marriages are

legitimate, nevertheless, it does not mean to disregard all transnational marriages, which are genuine. This also leads to inclusion of the South Asians within broader English community and avoid their otherness. Because by pinpointing transnational marriages as problematic—the authorities risk creating a gulf between South Asians and English society.

The British government has a keen focus on respecting the cultural and religious differences of South Asians, nonetheless, areas of problems can be identified—where South Asian patriarchal notions that are anti women can be discouraged. This can be achieved by mobilisation through local Mosques, Gurdwaras, and Hindu temples in the UK.

More significantly, in cases of domestic violences—the UK government must set up community centres for South Asian women where they can be rehabilitated and economically uplifted. This study also recommends that British government establish such community centres in South Asian localities, where assimilation with the English society can be encouraged to achieve broader assimilation.

It is also significant to make all those individuals accountable who level false allegations to obtain FMPOs as they damage reputation and disrupt families. This also identifies those females, who after obtaining UK's citizenship shun their civil partnership. Meanwhile, revelations of identity of abusers in the marriage is also necessary to achieve deterrence.

Furthermore, civil, criminal, and restorative and community approaches in penology must be integrated to achieve better results not only in assimilation of South Asians but also fighting sham marriages as well as forced marriages and domestic violence.

Lastly, learning from intersectional feminism, this research recommends integration of society with law—as law works better when society is on board—and only the tools of criminal justice system cannot address diverse structural problems of South Asians.

REFERENCES

- Afzal, N. (2020, July 7). *Domestic violence bill: a missed opportunity?* Talk Social Justice. <https://talksocialjustice.com/domestic-violence-bill-a-missed-opportunity/>
- Akram, S. (2022, May 6). *Nazir Afzal: The UK's national expert on violence against women and girls who will never stop fighting for their rights.* The New Arab. <https://www.newarab.com/features/nazir-afzal-and-his-fight-against-gender-based-violence>
- Allendorf, K., & Pandian, R. K. (2016). The decline of arranged marriage? Marital Change and continuity in India. *Population and Development Review*, 42(3), 435–464.
- Anitha, S., & Gill, A. (2023, June 7). *How the legal tools to prevent forced marriage can lead to further abuse.* The Conversation. <https://theconversation.com/how-the-legal-tools-to-prevent-forced->

- marriage-can-lead-to-further-abuse-206424
- Baksi, C. (2020, October 19). *Anne-Marie Hutchinson obituary*. The Guardian. <https://www.theguardian.com/law/2020/oct/19/anne-marie-hutchinson-obituary>
- Berg, B. L., & Lune, H. (2012). *Qualitative research methods for the social sciences*. Pearson.
- Bevan, V. (1986). *The development of British immigration law*. Croom Helm.
- Bhopal, K. (1999). South Asian women and arranged marriages in East London. In S. Rai & S. Joshi (Eds.), *Rethinking migration: Gender and class perspectives*. Routledge.
- British Parliament. (2014). *Violence against women and girls*. https://www.parliament.uk/globalassets/documents/joint-committees/human-rights/VAWG_Transcript_160714.pdf
- Carver, N. (2016). For her protection and benefit: the regulation of marriage-related migration to the UK. *Ethnic and Racial Studies*, 39(15), 2758–2776.
- Cooper, A. (2019). Civil protection orders and the criminal justice system: a review of the literature. *Journal of Interpersonal Violence*, 34(1), 1–23.
- Cowburn, M., Gill, A. K., & Harrison, K. (2014). Speaking about sexual abuse in British South Asian communities: offenders, victims and the challenges of shame and reintegration. *Journal of Sexual Aggression*, 21(1). <https://doi.org/10.1080/13552600.2014.929188>
- Crenshaw, K. (1989). Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine. *Feminist Theory and Antiracist Politics*, 1, 139–167.
- Crenshaw, K. (1991). Mapping the margins: Intersectionality, identity politics and violence against women of color. *Stanford Law Review*, 43.
- Crenshaw, K. (2012). From private violence to mass incarceration: Thinking intersectionally about women, race, and social control. *UCLA Law Review*, 59.
- Crown Prosecution Service. (2023). *Domestic violence*. <https://www.cps.gov.uk/crime-info/domestic-abuse>
- Dale, A. (2018). *Migration, marriage and employment amongst Indian, Pakistani and Bangladeshi residents in the UK* (Working Paper). Cathie Marsh Center for Survey and Research. <https://hummedia.manchester.ac.uk/institutes/cmist/archive-publications/working-papers/2008/2008-02-migration-marriage-and-employment.pdf>
- Dobinson, I., & Johns, F. (2007). Qualitative research for law. In M. McConville & W. H. Chui (Eds.), *Research methods for law*. Edinburgh University Press.
- Enright, M. (2009). Choice, culture and the politics of belonging: The emerging law of forced and arranged marriage. *The Modern Law Review*, 72(3), 331–359.
- Fransman, R. (1998). *British nationality law*. Butterworths.
- Gee, J. P. (2016). Discourse analysis matters: Bridging frameworks. *Journal of*

<http://dx.doi.org/10.1080/17447143.2016.1226316>

- Hathcoat, J. D., Meixner, C., & Nicholas, M. C. (2019). Ontology and epistemology. In P. Liamputtong (Ed.), *Handbook of research methods in health social sciences*. Springer.
- Henne, K., & Troshynski, E. (2013). Mapping the margins of intersectionality: Criminological possibilities in a transnational world. *Theoretical Criminology*, 17(4), 455–473.
- Hermann, M. G. (2008). Content analysis. In A. Klotz & D. Prakash (Eds.), *Qualitative methods in international relations: A pluralist guide*. Palgrave Macmillan.
- Hesse-Biber, S. N. (2017). *The practice of qualitative research*. Sage Publication.
- Hunter, R. (2015). Analyzing judgments from a feminist perspective. *Legal Information Management*, 15(1), 8–11.
- Imkaan. (2021). *Domestic violence and the criminal justice system: A briefing for black and minority ethnic women and girls*. Imkaan.
- Jacqueline Bhabha, J. (2005). *Forced marriages in the UK: A report of the forced marriage unit*. Home Office.
- Khan, R., Saleem, S., & Lowe, M. (2018). Honour-based violence in a British South Asian community. *Safer Communities*, 17(1), 11–21.
- Kurowskaa, X., & de Guevara, B. B. (2020). Interpretive approaches in political science and international relations. In L. Curini & R. Franzese (Eds.), *The Sage handbook of research methods in international relations and political science*. Sage Publications.
- Lamont, C. (2015). *Research methods in international relations*. Sage Publications.
- Mack, N., Woodson, C., Macqueen, K. M., Guest, G., & Namey, E. (2005). *Qualitative research methods: A data collector's field guide*. Family Health International & USAID.
- Matczak, A., Hatzidimitriadou, E., & Lindsay, J. (2011). *Review of domestic violence policies in England and Wales*. Kingston University and St George's, University of London.
- Neuman, L. (2011). *Social research methods: Qualitative and quantitative approaches*. Pearson.