

Chapter 1

Reassessing England and Wales' Approach to Forced Marriage in the Context of Modern Slavery

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ABSTRACT

This chapter critically examines the legal categorization of forced marriage within the context of modern slavery, focusing on the need for legislative reform in England and Wales. It explores the intricate parallels between forced marriage and modern slavery, emphasizing shared elements of coercion, exploitation, and infringement of autonomy and consent. The discussion includes a philosophical analysis of forced marriage, considering feminist theories and the impact of patriarchal norms. By comparing the current legal frameworks of England and Wales with international standards set by the United Nations and the International Labour Organization, the chapter highlights discrepancies and advocates for harmonization. It underscores the importance of recognizing forced marriage as a form of modern slavery to ensure comprehensive legal responses, protection, and support for victims, culminating in a call for legal reform in England and Wales to align with global human rights efforts.

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FORCED MARRIAGE: A GLOBAL CHALLENGE AT THE INTERSECTION WITH MODERN SLAVERY

Forced marriage, a critical and complex global challenge, sits at a unique intersection with modern slavery. This chapter aims to examine the current shift in international law and various jurisdictions across the globe, focusing on the increasing recognition of forced marriage either as a sub-category of modern slavery or as a component of exploitation within it. This shift is not only pivotal but also reflective of the evolving understanding of human rights and the dynamics of exploitation in contemporary society.

The rationale behind this shift is deeply rooted in the recognition of the striking similarities between the characteristics of forced marriage and those of modern slavery. Both phenomena share elements of coercion, exploitation, and a severe infringement on individual freedoms and rights. The analysis of these similarities sheds light on why forced marriage is increasingly viewed through the lens of modern slavery, thereby necessitating a nuanced legal and policy response.

This chapter adopts a predominantly doctrinal research methodology, supported by a comparative approach. The doctrinal aspect involves an in-depth examination of legal texts, international treaties, and judicial decisions to understand the legal principles and frameworks that govern the issue of forced marriage and its intersection with modern slavery. This approach is crucial in comprehensively understanding the legal and theoretical underpinnings that guide international and national responses to forced marriage.

The comparative aspect of this research is vertical rather than horizontal. This means that instead of comparing different national legal systems with each other (horizontal comparison), the focus is on comparing the shifts and approaches in international law and practice with the framework in England and Wales (vertical comparison). England and Wales represent a national system that operates within, yet in some aspects separately from, the international legal framework. This vertical comparative approach is instrumental in highlighting the discrepancies, challenges, and potential avenues for harmonization between national and international legal responses to forced marriage and modern slavery.

The necessity for such a comparative analysis stems from the observation that while there is a growing international consensus on addressing forced marriage within the broader framework of modern slavery, some national jurisdictions, including England and Wales, seem to lag in this global shift. Understanding the reasons behind this lag, and the implications it carries for the effectiveness of legal and policy measures, is critical for advocating for change and alignment with international standards.

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