

UNDERSTANDING HOW TO HELP FRIENDS AND FAMILIES EXPERIENCING FORCED MARRIAGE OR DOMESTIC VIOLENCE

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Co-organized by **Withers** law firm and **Hong Kong Dignity Institute**, this conference brought together members of ethnic minority communities, civil-society actors, researchers and lawyers to discuss the **current situation concerning forced marriage and domestic violence in Hong Kong**, through the prisms of **the law and the community**. The four panelists painted a **holistic picture** of the issue: exploring the legal framework, legal advancements, support networks and organizations, current research, as well as practical advice.



SUMMARY



Evelyn Tsao
Partner,
Patricia Ho & Associates

Evelyn discussed a landmark case she conducted: the first case where a family court nullified a marriage in Hong Kong on the basis of duress. She started off by explaining what constitutes duress in the context of a forced marriage, according to the Matrimonial Causes Ordinance (Cap. 179). This was notably examined in the 1983 *Hirani v Hirani* case, which concluded that the petitioner's will was overborne by duress, accentuated by her dependency on her parents, and thus that she did not provide valid consent to the marriage. Evelyn then discussed the case of RM, a 23 year-old Pakistani student who had lived in Hong Kong her entire life.

After vehemently refusing her father's arrangement for her to marry her cousin in Pakistan, RM was assaulted by her father, and forced to agree to the marriage, which took place the next day. Upon her return to Hong Kong, she reached out to the NGO Unison, who redirected her to Patricia Ho & Associates: together they decided to apply for a nullity order on the basis that it was a forced marriage. Evelyn recounted the challenges which the RM case faced: including the security risks posed by RM's father (which meant she had to secure an injunction order before filing the petition), establishing the Hong Kong Court's jurisdiction over the case (by establishing it was a monogamous relationship), proving the existence of duress at the time of the agreement (through photographic and oral evidence), and circumventing the provision of the Marriage Certificate, which RM did not possess. RM and her legal team were able to successfully overcome these hurdles, and the Court nullified the marriage.





Anisha Ramanathan
Partner,
Withers worldwide

After describing the possible indicators of physical, sexual, and psychological harm, Anisha provided a comprehensive overview of the legal framework for issues of domestic violence. Under the Domestic and Cohabitation Relationships Ordinance (Cap. 189), a victim of domestic molestation can make an application to the Family Court for an injunction against the perpetrator. This injunction can either restrain the offender from using violence against the applicant (Non-molestation Order) or exclude the offender, fully or partially, from the shared home (Ouster Order).

If a Non-molestation order was granted, the applicant can also seek a Participation in Programme Order, approved and arranged by the Director of Social Welfare, aimed at changing the behavior in question. The Court may also attach to the injunction an authorization of arrest of the perpetrator by the police if there are reasonable grounds to believe the perpetrator has breached the injunction. Anisha subsequently delved into an empirical case which illustrated the legal mechanisms in place against domestic violence. The case concerned a mother, born in Hong Kong from Pakistani parents, and married to a Pakistani man in Lahore in 2013. According to the mother, her husband, and father of her children, provided little emotional and financial support to the family. After physically assaulting her in November 2020, she filed a complaint against him, which he demanded her to withdraw, threatening to kill her and take their daughters back to Pakistan. The mother reported this threat and he was arrested, charged and thereafter convicted of criminal intimidation, sentencing him to 8 months of imprisonment. Throughout his imprisonment, he continued to harass and threaten the mother. The Court made a restraining/non-molestation order against the father, excluding him from the former home, with an authorization of arrest.





Patricia Ho

Founder,
Hong Kong Dignity Institute

Patricia discussed the shortcomings of the current 'siloe'd' legal assistance model when it comes to matters of forced marriage and domestic violence. The Hong Kong Dignity Institute, which she founded, provides an alternative model: bringing together, both geographically and temporally, a caseworker, a counsellor and a specialized lawyer, to assist the client holistically. She described how valuable transparent communication between these three experts is, both for effective legal assistance and for the client's psychological wellbeing. For example, communication between the counsellor and the lawyer can guarantee that the advice given to the client is not conflicting, and can strengthen the legal argument by including elements from the client's psychological assessment.



Puja Kapai

Associate Professor,
The University of Hong Kong

Puja emphasized how a victim's community and culture can impact their decision to seek legal recourse against forced marriage and domestic violence. She underlined that the current legal framework operates in a strictly rational manner (with the expectation that the victim knows their rights, can clearly recognize that the latter have been breached, are willing to take legal action, etc.). However, the empirical reality is far more complex (and human), as one must take into consideration how the victim's actions might be circumscribed by immigration status, financial capacity, long term consequences, dependency on the community, fear of judgement, conceptions of faith, etc. Puja shed light on forms of assistance that transcend legal advice, including support groups, counseling, education, redefining the terms of one's culture, etc. She provided a valuable round-up on issues surrounding domestic violence and forced marriage.