Human Rights Implications of Restrictions on Spousal Immigration in the United Kingdom

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Abstract

Spousal immigration has been a subject of much debate and legislation in the UK. While these regulations act as an aid to the country, in ensuring that only genuine cases of spousal immigration are allowed to proceed under this category, the rules also make it very difficult for such applications to be successful. Stringent regulations have resulted in separating families, subjecting families to extensive and rigorous checks and violation of the right to privacy of such individuals. Given that the application of these rules differs with the country of origin of applicants, the implications of these rules have particular relevance for Asian countries like Pakistan. This paper therefore, aims to assess the human rights implications of these rules for immigrants in the United Kingdom.

Introduction

Immigration on the basis of marriage and family ties is a contentious subject in European states and other states around the world. Reunification of nationals with non-national spouses in particular is considered a fundamental right of nationals which cannot be denied recognition in modern democracies. Domestic or national laws, therefore, provide a route for spousal or family-based migration even where work-based immigration routes have been reduced or closed. Family-based migration is the dominant route of immigration into many European States.[1]

Family-based migration is considered problematic because unlike the case of labour migration, states do not have the luxury of cherry-picking migrants based on skill, education, cultural similarities and other relevant criteria. Since the 1980s, however, greater limitations have been placed on family immigration.[2] This essay seeks to explore the restrictions placed on third country (non-EEA) nationals applying for marriage/spousal migration visas (particularly those from South Asia)[3] who wish to migrate to the United Kingdom. This essay will analyse whether these limitations violate human rights. First, it will discuss the history of post-war migration to the United Kingdom and subsequent spousal migration policies with particular emphasis on the Primary Purpose Rule. The Rule's widespread condemnation and abolishment will be discussed along with its later manifestation in other rules. Recent laws that impose greater restrictions will be critically assessed to see whether they breach human rights and the latest Supreme Court decisions in context of these new requirements and limitations will be analysed.

Family migration is seen as a point of contention between sovereign states and the supra-national legal institutes such as the European Union and the Council of Europe. The European Convention on Human Rights[4] and its jurisprudence provides a wide margin of appreciation to member states in the

[1] Half of legal migrations into the EU in the early 2000s and one third in 2011.
[2] Ruud Koopmans, Ines Michalowski and Stine Waibel, 'Citizenship rights for immigrants: National political processes and cross-national convergence in Western Europe, 1980–2008' (2012) 117(4) American Journal of Sociology 1202.
[3] Helena Wray, Agnes Agoston and Jocelyn Hutton, 'A Family Resemblance? The Regulation of Marriage Migration in Europe' (2014) 16 European Journal of Migration and Law 209.
[4] Hereafter 'ECHR'.

context of migration and Article 8[5] of the ECHR. They have been more concerned with the expulsion and possible violations of Article 3 and 8 on that account. The European Union has prioritized internal freedom of movement for citizens of member states but laws regulating migration have been severely regulated. States have lost some of their ability to control entry and migrants and their families strategically use opportunities provided by freedom of movement, human rights and anti-discrimination mechanisms to their advantage. States have tried to limit these opportunities by developing pre-entry integration tests and increasing the age requirements for marriage as well as income requirements.

Not all spousal migrations take the same route. There is a distinction between family reunification and family formation. Family reunification's purpose is to reunite a family and it has historically been recognised as necessary to secure the assimilation of long-term society. The object of family formation is to establish a new family and this is considered more contentious. In this classification, the least problematic is migration involving citizens or residents, usually of majority ethnicity, whose partner is from abroad.[6] Problems arise usually when citizens or residents of migrant descent enter marriage (which is usually arranged) with a partner from their country of origin. Such marriages have usually been associated with immigrants from South Asia, North Africa, Middle East and Turkey and states regard them as unfavourable, reasoning that it is unskilled migration and encourages cycles of poverty and social segregation of ethnic minorities.[7] Kofman recognises that these classifications are flexible and interrelating overlaps and boundaries are less clear in practice. Therefore, for the purpose of this essay, the terms marriage migration and/or spousal migration will be used as umbrella terms covering all situations where marriage plays a considerable part in an individual's migration.[8]

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[5] Right to a private life.

[6] With increased opportunities for travel, marriage migrations have grown but from a state's perspective can be easily accommodated as they are few in number and are usually well educated.

[7] Wray (n 3).

[8] Eleonore Kofman, 'Family-Related Migration: A Critical Review of European Studies' (2007) 30(2) Journal of Ethnic and Migration Studies <https://doi.org/10.1080/1369183042000200687> accessed 19 February 2018.

A. Migration patterns and early policies: The Primary Purpose Rule

The Commonwealth Immigrants Act 1962 ended most new Commonwealth primary immigration which resulted in a sharp increase in secondary immigration of family members through process of family reunification and formation.[9] The labour migrants that were admitted into the UK in the 1950's and 1960's had now started to bring their spouses, children and sometimes, parents.[10] The UK did not openly prohibit family reunification but decided to narrow down the legal definition of family and family members.[11] The 1971 Immigration Act restricted family reunification rights to only spouses and children of "patrials"[12] who arrived in the UK before 1 January 1973.

In 1970s, in attempts to control immigration and sham marriages, the UK employed extensive administrative tests which included virginity tests.[13] If a woman was not found to be a virgin she was denied entry reasoning that marriage would not be true. Other restrictive policies they employed were that only women who were British and born in the UK could sponsor their husbands.[14] These rules were challenged on the basis of being gender discriminatory successfully and the government responded by making laws restrictive for everyone. The most drastic step was the introduction of the Primary Purpose Rule.[15]

Under the Primary Purpose Rule, the burden of proof was on the applicant to prove to the entry clearance officer that the primary purpose for

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[9] Gina Clayton, *Textbook on Immigration and Asylum Law* (6th edition Oxford University Press 2014).
[10] M Chiara Berneri , 'Marriages of convenience: the limitations of the UK legislation' (2015) 29(4) Journal of Immigration Asylum and Nationality Law 372.
[11] ibid.
[12] A person with the right to live in the UK through the British birth of a parent or grandparent.
[13] Females were sometimes forced to undergo a vaginal examination to determine whether they were virgins, relying on a creative interpretation of Sch 2, s 2 of the Immigration Act 1971.
[14] Women who were born abroad and acquired UK citizenship later were excluded.
[15] Sanjiv Sachdeva, *The Primary purpose rule in British immigration Law* (Trentham Books 1993).

marriage was not to obtain entry into the UK. If immigration was found to be the primary reason for marriage, then the application would be rejected even if there was proof of genuine affection or cohabitation.[16] The rule was central to British immigration control and was designed and refined to prevent the development of a rational system to deal with the claims of migrants.[17] This gave immigration officers handling applications maximum scope for discretion creating overwhelming hindrances for applicants.

Menski argues that there is no doubt that this rule was seeking to exclude a particular category of people who had been contributing most noticeably to immigration. The rule affected mainly spouses seeking entry from South Asia but evidence also shows that other non-white ethnic minorities were affected as well, particularly people from Nigeria, Ghana and some Caribbean countries.[18]

This invasive approach and the actual operation of the Rule invaded directly on widely recognised perceptions of civil liberties and human dignity and was extensively criticized for being racist and cruel. Anver Jeevanjee , a member of an Immigration Appeal Tribunal in the unreported case of *Mohammad Shahban v Visa Officer, Islamabad* (6996) expressed an applicant's helplessness in view of this legal hurdle : " *I am afraid that it has yet again become necessary for me as a lay member of the Immigration Appeal Tribunal and indeed as a member of what is referred to as "ethnic minority" in Britain to disagree with the factual issues of primary purpose of marriage as applied by my majority colleagues… I feel that to fail to oppose the dismissal of this appeal would be tantamount to endorse the denial of justice to the appellants and a lack of compassion, whatever the legal arguments. The law imposed by Parliament apparently establishes equality for all. However, it seems to me that in its application, cultural differences, interpretation, prejudices, generalisations etc. leave much to be desired.*"[19]

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[16] ibid.
[17] Werner Menski, *South Asian Women in Britain, Family Integrity and the Primary Purpose Rule*, In *Ethnicity, Gender and Social Change* (*Ed.* R. Barot, H. Bradley, and S. Fenton. London, MacMillan 1999), 81–98.
[18] ibid.
[19] Sachdeva (n 15).

He goes on to express the discretionary nature of the rule and how evidence is chosen on preconceived notions. Authors such as Mole emphasise the need to avoid a situation where the application would go to appeal: once a case was tangled in the appeals system, it would be virtually impossible to convince those deciding the case that the applicant's primary purpose was not entry to the UK.[20]

Due to its wide criticism and the political atmosphere in late 1990s geared towards human rights, the Primary Purpose Rule was abolished in June 1997. The new rules tested whether a marriage was genuine by increasing focus on the requirement of 'intention to live together' as a judgment of the genuineness of marriages.[21] Additional requirements were also required: that the parties must have met, the applicant is married or the fiancé of a person present or settled in the UK, they have adequate accommodation and the applicant holds a valid UK entry clearance. However, these new requirements still called for invasive investigations, for example, after declaring their intention of living together couples were still subjected to unannounced home visits by UK Government officials.[22]

The Immigration and Asylum Act 1999 also introduced new provisions to assess whether a marriage was genuine. Section 24 of that Act placed obligations on marriage registrars across the country to report marriages to the Home Office that they believed on reasonable grounds to be "sham marriages", 'marriages of convenience', and 'bogus marriages".[23] The phrase "reasonable grounds to believe" again gave wide discretion to registrars to assess what was considered as sham marriages. As a consequence of this, registrars seemed to start paying more attention to couples of particular nationalities such as South Asians. On the other hand, certain nationalities such as South Africans, Americans and Australians were "rarely mentioned or examined'.[24]

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[20] ibid.
[21] Helena Wray, 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) 8 European Journal of Migration and Law 303.
[22] Sachdeva (n 15).
[23] Katharine Charsley and Michaela Benson, 'Marriages of convenience, and inconvenient marriages: regulating spousal migration to Britain' (2012) 26(1) Journal of Immigration Asylum and Nationality Law 10.
[24] ibid.

The Immigration and Asylum Act 1999 also defined sham marriages as "*a sham marriage is a union entered into by a third country national with a British or an EEA citizen with the purpose of avoiding the effect of one or more provisions of UK immigration law or of the Immigration Rules*." The wording "purpose of avoiding … UK immigration law or Immigration Rules' re-embodies the primary purpose rule showing that for the UK Government in 1999, there was still a clear link between cross border marriages and immigration controls.[25]

Wray argues that immigration policies have tended to minimise forms of migration for ethnic minorities. She argues that despite immigration controls recognizing modern plurality in some aspects such as civil or unmarried partnership, it restricts the right to family life severely.[26] Furthermore, she recognizes that certain forms or cultural practices of family migrant life are seen as problematic, such as the concept of arranged marriages which is widely common in South Asian families. Immigration controls draw distinction between acceptable 'modern' families and 'archaic' or 'sham' relationships reinforcing this by various deliberations on issues of abuse, oppression, integration and economic considerations. She states that while these are valid concerns, they are often conflated. The recent measure such as increasing the age of marriage addressed real concerns of forced marriages and child brides but ulterior motives to prevent unwanted immigration are visible and they proceed to delineate the cultural, economic and moral contours of national family life.[27] According to Wray's research this marginalisation is not unwelcome since the model family is revealed to be largely middle class, European conceptualisation and the implication is clear that immigration systems are being used to promote 'integration' or 'cohesion'.[28]Marriage-based migration has been viewed as an issue not only in the United Kingdom but in other European states as well, for example, there was significant tightening of spousal immigration laws in countries such as Denmark and the Netherlands.[29] In Britain, the recent Supreme Court

[25] Charsley and Benson (n 23).
[26] Helena Wray, 'Moulding the migrant family' (2009) 29(4) Legal Studies: The Journal of the Society of Legal Scholars 592.
[27] ibid.
[28] Wray (n 26).
[29] Ralph Grillo, *The Family in Question. Immigrant and Ethnic Minorities in Multicultural Europe* (Grillo R (ed.), Amsterdam University Press 2008), 15.

judgements on the raising of the minimum age of spousal migration, and the introduction of pre-entry English language requirements for spouses and income requirements have brought the debate of these limitations under public scrutiny again.

To qualify for a UK spouse/marriage visa both parties should be 18 years old or over, intending to live together permanently. They must have met each other and be legally married - this is to prevent arranged marriages. Moreover, they must have enough money to support themselves (and any dependents) and have suitable accommodation without claiming public funds. The sponsoring partner must earn more than £18,600 per year or have enough savings to be able to sponsor their spouse. The minimum financial requirement is higher if they are also sponsoring dependent children. The migrating spouse must satisfy the English language requirements.[30]

Supreme Court judgements on the validity of these rules will be analysed to ascertain whether they infringe upon human rights or not. The requirements under analysis will be: English Language requirement, Age requirement and Minimum income requirement.

B. English Language Requirement

In 2010 the Immigration Rules were amended to require a foreign spouse or partner of a British citizen or person settled in the UK to pass a test of competence in the English language before living in the UK.[31] In the case of *R. (on the application of Bibi) v Secretary of State,*[32] both appellants disputed the validity of this pre-entry language requirement on the ground that it amounts to an unjustifiable interference in regards to Article 8 and 14 of the ECHR.

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[30] 'Immigration Rules' (*Gov.uk*, 25 February 2016) <https://www.gov.uk/guidance/immigration-rules> accessed 22 February 2018.
[31] Under Appendix FM para.E-ECP 4.1 and para.E-LTRP 4.1.
[32] *R. (on the application of Bibi) v Secretary of State* [2011] UKSC 45.

The facts of the case are that the appellants (both women) are British citizens married to foreigners who are unable to satisfy this language requirement. In the case of Ms Ali, there is no approved test centre in her husband's country of origin (Yemen), and in the case of Ms Bibi, her husband would be required to relocate for several months to another town in Pakistan, a move he cannot afford in order to access English tuition.[33]

The Court held that there had been no violation of Article 8 and 14 which arose from the requirement, in Appendix FM to the Immigration Rules. Conversely, the guidance supplementing the rule might be incompatible with art.8 where compliance with the requirement was impracticable.[34]

The court reasoned that under art. 8, the married couple had a right to live together but this didn't enforce a positive obligation on the state to accept non-national spouses. Strasbourg has long drawn a distinction between already lawfully settled migrants facing deportation and aliens seeking admission. The rule was addressed in the context of the latter. However, similarly principles of fair balance, proportionality and legitimacy had to be considered in both situations.

Fair balance had to be struck between the competing interest of the individuals and the community as a whole. The aim of this English Language requirement was that at an early stage the migrant partner would integrate into the British society and assist community cohesion. The Court recognized that the aim of the requirement was legitimate as they could find benefit of assimilation of foreign spouses into society even at the basic English level. It was held that the problem lay not so much in the rule itself but in the guidance, under which the impossibility of obtaining the essential tuition or accessing a test centre was not enough to get exemption and neither were financial barriers.[35]

The Supreme Court agreed with the lower courts that the rule should not be struck down or declared invalid. On the other hand, they also noted that the guidance material permitted only a narrow range of exceptional circumstances in which an exemption from the language requirement may be

[33] ibid.
[34] *Bibi* (n 32).
[35] *Bibi* (n 32).

granted, and, as a result, there may be some cases in which art 8 rights become infringed.

The Justices were unwilling to declare the rule invalid but they were aware of the unfair situation of the appellants. Lady Hale's judgment noted that in such cases, "*the interference with the article 8 rights of the British partners of the people who face these obstacles is substantial. They are faced with indefinite separation, either from their chosen partner in life, or from their own country, their family, friends and employment here*'.[36]

Lastly, even though the Government gave six aims upon which the requirement was based, all of the Justices agreed that the first, namely "*to assist integration into British society at an early stage*" [33] is the principal aim as the others are simply aspects of it. Sir David Keene in his dissenting judgement in the Court of Appeal stated that the pre-entry language requirement "*has not been demonstrated by any substantial empirical evidence to be no more than is necessary to achieve the legitimate aim. The post-entry test appears to have been increasingly successful in dealing with the limited problem, and that test presented far less of an interference with family life than that in the amended Rule'* [59]. The decision and recognizing of the aim of the Government to promote integration into the British society reflects the atmosphere of the immigration laws and the European jurisprudence to have a more cohesive and integrated society. Again this rule is more likely to affect the South Asian community and other ethnic minorities since in those countries English education is more expensive and less readily available than Europe, America and Australia. Furthermore, the demonstration of English language skills and awareness of life in the UK before naturalisation sends a powerful message about belonging.[37] It also increases the period of uncertainty for family members who do not possess the requisite skills and knowledge.[38]

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[36] *Bibi* (n 32) para 52.
[37] Helena Wray, 'Integration Requirements and Family Life' (2008) 22(4) Journal of Immigration Nationality and Asylum Law 317.
[38] ibid.

C. Minimum age requirements

Rule 227 of the Immigration Rules 1994 restricts visa applications or sponsorship to those under 21.The Home Secretary reasoned that the higher age limit (21 instead of 18) for visa applications or sponsorship was proposed to protect young people, predominantly women, at risk of forced marriage. In the case of *Quila v Secretary of State for the Home Department*[39] Quila was an 18-year-old Chilean man, married to an 18-year-old British wife and the case of *Bibi v Secretary of State for the Home Department*[40] , Bibi was a Pakistani woman, married to a British national of Asian background. In both cases, visas to allow the non-British partners to enter or remain in the UK to live with their spouses had been refused. The Supreme Court held that the claimants' right to family life under Article 8 of the ECHR had been interfered with by the refusal to allow foreign spouses to reside in the UK with their new British spouses.

This rule was mainly aimed at preventing forced marriages. The Supreme Court dismissed the appeal and declared the rule incompatible. After considering European Court of Human Right's judgements, the Court recognized that earlier and latter judgements of the ECtHR were inconsistent and distinction made between positive and negative obligations led to separate and distinctly divergent outcomes and the area of engagement of Article 8 has increased. The Court mainly inquired if then refusals had been justified as they constituted an interference with respect to family life. The purpose of this rule did not deter forced marriage as such and applied to all marriages generally. Its application was seen as disproportionate. This rule had a discriminatory impact on younger spouses and religious and ethnic groups where people tended to marry younger. In 2011, the Supreme Court in Quila found that the blanket prohibition would almost always breach art.8. The aim of preventing forced marriage was legitimate but the policy went beyond what was necessary to accomplish that objective and failed to strike a fair balance between victims of forced marriage and those entering voluntary marriages. The Government re-amended the rules shortly afterwards, returning the minimum age to 18.

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[39] *Quila v Secretary of State for the Home Department* [2011] UKSC 45.
[40] *Bibi* (n 32).

Before Quila, another case led to major reverse policy changes. In the case of Baiai[41] it was held that aspects of the certificates of approval scheme were incompatible with Article 12 and 14 of the ECHR. In 2005, the scheme was introduced which required people subject to immigration control but without indefinite leave, to acquire permission and pay a substantial fee before they could marry or enter a civil partnership. The scheme aimed at preventing bogus marriages. Marriages conducted in the Church of England were exempted. Permission was regularly refused and they had to apply from abroad for spousal visa. The House of Lords found because of the exemption for Church of England, the statutory scheme was discriminatory and that its administration and fee breached ECHR Article 12 (Right to marry). The Court did not find the entire scheme incompatible, but it was however, eventually abolished by the Government.

D. Minimum income requirements

In July 2012, new requirements were introduced into the Immigration Rules including Section EC-P which dealt with entry clearance and leave to remain as the partner of a British citizen in the UK or a person settled in the UK, or a refugee or person with humanitarian protection in the UK.[42] Section E-ECP dealing with the financial requirements introduced the "the Minimum Income Requirement" or ("MIR") which were more strict and precise than previous requirements. The requirements are that the sponsoring partner should have a gross annual income of at least £18,600, with an additional £3,800 for the first dependent non-EEA national child and £2,400 for each additional such child. Furthermore, if the sponsor's annual income is less than that, the couple will be required to have substantial savings: £16,000 plus two and a half times the shortfall in the sponsor's earnings. Lastly, only the sponsor's earnings are taken into account, the potential income of an entering partner, and any third party support, are disregarded.

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[41] *R (on the application of Baiai) v Secretary of State for the Home Department* [2008] UKHL 53.

[42] *R (on the application of MM (Lebanon)) (Appellant) v Secretary of State for the Home Department* [2017] UKSC 10 On appeals from: [2014] EWCA Civ 985 and [2015] EWCA Civ 387.

This rule was challenged through a number of judicial review cases in 2013 and the cases jointly went to appeal to the Supreme Court[43] claiming that primarily their article 8 rights of the ECHR (the right to respect for private and family life) were being infringed and therefore the MIR was unlawful. All the applicants in the cases were unable to meet the Minimum Income Requirement in order to sponsor their non-EEA spouse to join them in the UK. In the court of first instance, Justice Blake held that the rule did unjustifiably interference with the affected couples' right to private and family life under Article 8. However this decision was overturned by the Court of Appeal and permission to appeal to the Supreme Court was granted in May 2015.

Representatives of the Government strictly defended their policy, arguing that the State has a wide margin of appreciation in this area and were under no positive obligation to admit applicants thus were not infringing Article 8 rights. They stated that merits of such a policy can be debated upon but that doesn't render the policy unlawful and they pointed out that the requirements stated were predictable, transparent, and certain which would be undermined by the proposed flexible interpretation given by the claimants.

On 22 February 2017, the Supreme Court held that the minimum income requirement is acceptable in principle but that the rules and guidance need to be amended to take proper account of other possible sources of income and third-party financial support. Moreover, it also found that where children are concerned regardless of within UK or outside more safeguards are needed to promote their welfare when making decisions which affect them.

Lady Hale and Lord Carnwath gave a joint judgement with which the rest of the five Law Lords agreed with. They concentrated on article 8, the right to respect for private and family life, either alone or conjunction with article 14, the right to enjoy the Convention rights without discrimination, rather than on article 12, the right to marry and found a family. They reasoned that the MIR does not forbid a couple from marrying but provides hindrances to their enjoying family life.

Citing ECHR jurisprudence they argued that refusing to admit the foreign spouses of British citizens was not a breach of the article 8 right to

[43] ibid.

respect for family life; as there was no general obligation to respect a married couple's choice of country to live in; and when there were no obstacles to establishing family life in their own or their husband's home countries.[44] They further stated that Strasbourg draws a line between the expulsion of "settled" migrants with rights of residence in the host country and the refusal to admit, or the removal of, migrants with no such rights. In the former they have found Article 8 breaches but in the later the question doesn't arise since there is no positive obligation on the state to accommodate the newly married couples. Citing *Jeunesse v The Netherlands*[45] they stated that "*the criteria developed in the court's case law for assessing whether a withdrawal of a residence permit of a settled migrant is compatible with article 8 cannot be transposed automatically to the situation* of *an alien seeking admission*, *even where, as in that case*, *applicant had in fact lived for many years in the host country*".

Citing *Gul v Switzerland*[46] they went on to state that in both contexts a fair balance has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the state enjoys a certain margin of appreciation. The states have no general obligation to respect a married couple's choice of country in which to reside or to authorise family reunification. However, the individual's particular circumstances and certain factors have to be taken into account when reaching a fair balance such as the person's knowledge of their immigration status, the extent of ties with the host country, extent of which family life would be disturbed, obstacles for not being able to settle in host country and whether they were "insurmountable obstacles". A test of proportionality has been adopted by the Supreme Court between the interests on the individual, public interests and the factors to be taken into consideration in accordance with the ECHR jurisprudence. And in accordance with that the Supreme Court found that the rule under which the Human Rights Act 1998 could not be challenged, it was not a blanket ban as "insurmountable obstacles" would be taken into consideration and thus there was a degree of proportionality and the government policy had a legitimate aim.[47]

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[44] *Abdulaziz, Cabales and Balkandali v United Kingdom* (1985) 7 EHRR 471.
[45] *Jeunesse v The Netherlands*[45] (2015) 60 EHRR 789.
[46] *Gul v Switzerland* (1996) 22 EHRR 93.
[47] MM (n 42) .

The government policy was "*those who choose to establish their family life in the UK ... should have the financial wherewithal to be able to support themselves and their partner without being a burden on the taxpayer. Moreover, the sponsor should bear the financial responsibility of ensuring that the migrant is well enough supported to be able to integrate and play a full part in British society*" The court stated that this policy "*has a legitimate aim of safeguarding the economic well-being of the UK and it is considered that there is enough flexibility in the policy to prevent the policy from being a disproportionate interference with article 8 rights*" (para 55).

The court unanimously found that there was satisfactory justification for adopting the MIR and that the limit had also been carefully considered and set by consulting the Migration Advisory Committee, a committee of academic economists.

E. Implications of MIR

On the surface the MIR seems well based on central liberal values of personal choice and freedom according to which people can chose to live their lives but must not expect others to pay for that choice or subsidize it.[48] However, it has severe implications. Firstly, it should be noted that the case considered the immigration control objectives but the citizenship rights of British partners and family members did not come to the surface at all. These cases involved citizens or long-term residents who were seeking to establish family life in their own country.[49]

Secondly, the Court skimmed over the issues of discrimination. Examining the rule's discriminatory effects would have required a more in-depth investigation of the rationale for requiring that level of income and it

[48] Christopher Bertram, Devyani Prabhat and Helena Wray, 'The UK's spousal and family visa regime: some reflections after the Supreme Court judgment in the MM case' (*University of Bristol Law School Blog*) <http://legalresearch.blogs.bris.ac.uk/2017/03/the-uks-spousal-and-family-visa-regime-some-reflections-after-the-supreme-court-judgment-in-the-mm-case/#_ftn1> accessed 17 February 2018.
[49] ibid.

seems that the Court was not prepared to do this since it was seen as a policy decision. Women will be disproportionately affected by this rule due to gender pay gap in the UK. Furthermore, Black and ethnic minorities who generally earn lower wages will also be adversely affected. This means long term categorical exclusion of both citizens and their families because the sponsor may never be able to earn enough and the couple may never accumulate necessary savings. The Guardian reported that an estimated 33,000 people who have been told they cannot bring or remain with their spouses in Britain, because they do not earn enough.[50] In 2012, Office for National Statistics showed that median full-time gross earnings were £26,500[51] but there were substantial regional differences. People in London and the south-east earn above the national median and people in Wales, Northern Ireland, and the north east earn noticeably below it. The Court acknowledges the statistics above but they failed to acknowledge that there may not be enough jobs paying £18,600 outside of London, and moving to places where such salaries are the norm may actually leave the family in a worse financial position.

The Court's unwillingness to engage with the government's reasoning for its policy are understandable, but it also means that the government's "price of everything, value of nothing" attitude towards family life and migration has been left mostly intact.[52] Moreover, it has been reflected in the Court's attitude by statements such as those made in para 94, where they state while discussing family situations: "*They are unlikely to be a burden on the state, or unable, due to lack of resources, to integrate*."[53]

Lastly, the court was not convinced that these rules are inherently unjustified thus the MIR was not ruled unlawful on article 8 grounds. Additionally in para 54 they stated *"Thus whatever the defects there may be in the initial decision, it is the duty of the tribunal to ensure that the ultimate disposal of the application is consistent with the Convention."* This means that the rules do not have to allow for article 8 rights, but the decision to grant or refuse a visa in an individual case must take into account article 8, which can be done through the combination of rules, guidance, and tribunals. So the

[50] Bertram, Prabhat and Wray (n 48).
[51] For men they were £28,700 and for women £23,100.
[52] Wray, 'Integration Requirements and Family Life' (n 37).
[53] MM (n 42).

conclusion reached is confusing that it is acceptable for the Home Office to refuse a visa on the basis of rules which do not take into account article 8 rights, because families will be able to go to tribunal to invoke article 8 rights.

Conclusion

Integration requirements for immigrants have become increasing of popular of late. These are just as popular in the UK as they are in the rest of Europe. To justify these requirements, states have espoused and relied on ideas concerning the public sphere- such as ideas relating to citizenship, economic and civic participation, taxes and welfare.[54] These are essential to a country's growth and general health. There have been more changes that have been added to facilitate integration of a migrant from a foreign culture into the host community in a smoother way. These integration requirements mould the family lives of minority communities. Though certainly not the apparent or stated aim, it does fulfil that purpose. Without making any specific accusations of a hidden agenda, it is possible to agree with the feminist argument that the personal is political. Certain form of family life are seen as a hindrance to the creation of an integrated family life.[55] These are by example, continuation of undesired migratory flows and reproduction of particular forms of family life. This is not new as a concern. Immigration and nationality laws have been changed to suit and sometimes limit family life in the UK where this measure has been seen as a way to retain cohesion of the British societal values. However, in the past these tools of moulding family life were rather undeveloped. Married women lost their nationalities, were subjected to vaginal exams and husbands were banned from entering the UK and children and other dependants were separated from families by virtue of crude administrative measures. And the Asian arranged marriage came under sustained attack under the Primary Purpose Rule.[56] Limits and categories for family reunion continue to be seen through myopic lens and defined narrowly under the current immigration rules. These ignore extended family

[54] Wray, 'Integration Requirements and Family Life' (n 37).
[55] Wray, 'Integration Requirements and Family Life' (n 37).
[56] Wray, 'Integration Requirements and Family Life' (n 37).

relationships which are fundamental in some communities and a part of their cultural landscape. Previous measures taken were largely justified or rationalised by claims of abuse and fraud which were often exaggerated or without adequate evidence. New requirements and the consequent challenges to them still paint the same landscape though with some respect given to Right to family life and Right to marry. The states having wide margin of appreciation for legitimate aims like economic considerations and European jurisprudence of cohesion have left families and couples in hardships with no reprieve.

Bibliography

--'Immigration Rules' (*Gov.uk*, 25 February 2016) <https://www.gov.uk/guidance/immigration-rules> accessed 22 February 2018

Abdulaziz, Cabales and Balkandali v United Kingdom (1985) 7 EHRR 471

Berneri M. C., 'Marriages of convenience: the limitations of the UK legislation' (2015) 29(4) Journal of Immigration Asylum and Nationality Law 372

Bertram C, Prabhat D and Wray H, 'The UK's spousal and family visa regime: some reflections after the Supreme Court judgment in the MM case' (*University of Bristol Law School Blog*) <http://legalresearch.blogs.bris.ac.uk/2017/03/the-uks-spousal-and-family-visa-regime-some-reflections-after-the-supreme-court-judgment-in-the-mm-case/#_ftn1> accessed 17 February 2018

Bibi v Secretary of State for the Home Department [2011] UKSC 45

Charsley K and Benson M, 'Marriages of convenience, and inconvenient marriages: regulating spousal migration to Britain' (2012) 26(1) Journal of Immigration Asylum and Nationality Law 10

Clayton G., *Textbook on Immigration and Asylum Law* (6th edition Oxford University Press 2014)

European Convention of Human Rights

Grillo R, *The Family in Question. Immigrant and Ethnic Minorities in Multicultural Europe* (Grillo R (ed.), Amsterdam University Press 2008)

Gul v Switzerland (1996) 22 EHRR 93

Hansen R, 'Migration to Europe since 1945: his history and his lessons' (2003) 74 The Political Quarterly Publishing 25.

Human Rights Act 1998

Jeunesse v The Netherlands (2015) 60 EHRR 789

Kofman E., 'Family-Related Migration: A Critical Review of European Studies' (2007) 30(2) Journal of Ethnic and Migration Studies

<https://doi.org/10.1080/1369183042000200687> accessed 19 February 2018

Koopmans R., Michalowski I. and Waibel S., 'Citizenship rights for immigrants: National political processes and cross-national convergence in Western Europe, 1980–2008' (2012) 117(4) American Journal of Sociology 1202

Menski W, *South Asian Women in Britain, Family Integrity and the Primary Purpose Rule*, *In Ethnicity, Gender and Social Change* (*Ed.* R. Barot, H. Bradley, and S. Fenton. London, MacMillan 1999), 81–98

Mohammad Shahban v Visa Officer, Islamabad (6996)

Quila v Secretary of State for the Home Department [2011] UKSC 45.

R (on the application of Baiai) v Secretary of State for the Home Department [2008] UKHL 53.

R (on the application of MM (Lebanon)) (Appellant) v Secretary of State for the Home Department [2017] UKSC 10 On appeals from: [2014] EWCA Civ 985 and [2015] EWCA Civ 387

R. (on the application of Bibi) v Secretary of State [2011] UKSC 45

Sanjiv Sachdeva, *The Primary purpose rule in British immigration Law* (Trentham Books 1993)

The 1971 Immigration Act

The Commonwealth Immigrants Act 1962

The Immigration and Asylum Act 1999

Wray H, 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) 8 European Journal of Migration and Law 303

Wray H, 'Integration Requirements and Family Life' (2008) 22(4) Journal of Immigration Nationality and Asylum Law 317

Wray H, 'Moulding the migrant family' (2009) 29(4) Legal Studies: The Journal of the Society of Legal Scholars 592

Wray H., Agoston A. and Hutton J, 'A Family Resemblance? The Regulation of Marriage Migration in Europe' (2014) 16 European Journal of Migration and Law 209