Arranged marriage - family court ruling

Tuesday, 15 February 2011 **at** 4.31 pm | **Posted by:** Sarah Condie | **Categories:** [Family](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/Family), [Law in Practice](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/Law-in-Practice), [LIAC Civil Library](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/LIAC-Civil-Library), [Women](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/Women) | [ Comments (0)](http://blog.sl.nsw.gov.au/hsc_legal_studies/index.cfm/2011/2/15/arranged-marriage--not-valid--family-court-ruling#comments)

How does the Family Court view an arranged marriage, where one of the parties has been coerced by strong parental pressure?  A recent decision of the Court in *[Kreet & Sampir](http://www.austlii.edu.au/au/cases/cth/FamCA/2011/22.html)* [2011] FamCA 22, 18 January 2011, concerned such an issue. The marriage, which took place in India, was not recognised by the Court as valid under Australian law, as the girl had not been free to consent.

The girl, who has lived in Australia most of her life, had indicated she intended to marry a man 'Mr U' she had met in Australia.  The father objected to this relationship as the man was not from a caste deemed suitable for his daughter.  The daughter agreed to travel to India with her parents, thinking she would be participating in a marriage ceremony with Mr U.  However, upon their arrival she was forced to marry another man the parents considered suitable for their daughter.  The father threatened his daughter that Mr U’s mother and sisters would be raped if she did not comply with his wishes.

Judge Cronin said 'the parents adopted a position based on cultural practice' but the law to be applied 'is that of Australia'.  'I am satisfied that the wife’s physical state at the time of the ceremony was such that she was physically and mentally overborne.  Here consent was not real because it was obtained by duress', he said.  Read the artlicle below by Caroline Overington in *The Australian*.

**Arranged marriage ruled invalid**

* CAROLINE OVERINGTON
* [THE AUSTRALIAN](http://www.theaustralian.com.au/)
* FEBRUARY 03, 2011 12:00AM

**THE Family Court has refused to recognise the arranged marriage of a young Melbourne woman to a man she had never previously met, saying the union could not be valid under Australian law because the girl had not been truly free to consent.**

The case, known as Kreet and Sampir, involved a girl who was tricked into travelling to India to marry a man chosen for her by her father.

Judge Paul Cronin, sitting in Melbourne, said the marriage could not be legal because the girl, who cannot be named for legal reasons, had agreed to go through with the ceremony only because she was afraid of her parents.

According to court documents, the girl was born in Australia to Indian-born parents who "remained closely connected to their former country's culture (and) strongly against much of Australian culture". She was "not allowed to cut her hair or wear skirts or dresses unless they were part of her school uniform".

In a quiet act of rebellion, the girl met a boy, known only as Mr U, on the internet in July 2007, when she was about 16. She kept the relationship secret (Mr U lived in Melbourne, while she was then living in Sydney) until June 2008, when she told her parents she wanted to marry Mr U.

Her parents "demanded she cease the relationship" because they objected to Mr U's caste. She was kept home from school, and her telephone and internet access were cut off, but she found ways to stay in touch with Mr U.

In October 2008, the girl's father told her she would be going to India as soon as she turned 18, to find "an appropriate husband". The girl fled to Melbourne, to be with Mr U.

Her father threatened to "kidnap and rape" Mr U's mother and sisters; he assaulted the girl by slapping her face, and then apologised profusely. She eventually went home with him, but only after he agreed to let her marry Mr U in a ceremony in India.

The girl flew out of Australia in 2009, expecting to marry Mr U but, when she got to India, her parents took her passport and introduced her to a man "who was to become her husband".

The girl's father again told her he would have Mr U's mother and sisters raped.

"I accept that (the girl) begged her parents not to force her to go through with the marriage and her father's response was to continue to threaten harm to Mr U's family," Judge Cronin said.

The girl was not required to speak at any time during the ceremony, "but simply to walk four times around the altar".

After the wedding, she went to her new husband's house (he lived with his parents) and "refused attempts at physical intimacy which culminated in assaults".

She later agreed to sign documents for a visa application for him, and flew home to Australia, where she immediately went to Melbourne to live with Mr U (she has withdrawn her support for her husband's visa application).

Judge Cronin said the marriage would be void if the girl could show that she gave her consent only because "some overbearing force was operating".

He said "the parents adopted a position based on a cultural practice" but the law to be applied "is that of Australia". "I am satisfied that the wife's physical state at the time of the ceremony was such that she was physically and mentally overborne. Her consent was not real because it was obtained by duress," he said.