



Forced Marriage – A Review of Literature
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Introduction: defining and understanding forced marriage

Forced marriages are contrary to the Universal Declaration of Human Rights, article 16 of which provides that “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. Marriage shall be entered into only with the free and full consent of the intending spouses.” The majority of literature about forced marriage uses a similar definition which states that a forced marriage is a marriage that takes place without the full and free consent of both parties and will involve circumstances of duress (see for example Anis, Konanur & Mattoo 2013; Dostrovsky, Cook & Gagnon 2007; Forced Marriage Unit 2007). Anis et al. (2013) also use the term ‘non-consensual marriage’.

Duress may include physical, psychological, financial, sexual and emotional pressure. Common law courts (in Britain & Australia) have established that duress in forced marriage cases does not have to be confined to physical coercion, and can also include emotional pressure. Pressure will not necessarily amount to duress in all situations

because valid consent can be 'reluctant' or 'resentful'. What matters is whether the pressure has overborne the will of the individual. If this is the case, the marriage is not founded on the free and informed consent of both parties (Dostrovsky, Cook & Gagnon 2007).

Child marriage overlaps with forced marriage because minors are deemed incapable of giving informed consent. The Convention on the Rights of the Child (1989) and the Convention on the Elimination of all Forms of Discrimination Against Women (1979) have both outlawed child marriage. Canada is a signatory to both of these conventions. In Canada, the legal age for marriage is 18, with some provincial variations. Marriage with parental consent for both parties is legal at age 16.

Distinguishing between forced marriage and arranged marriage

The literature reflects the lack of consensus on the difference or distinction between forced and arranged marriage. Anis et al. (2013) stress the need to avoid the conflation of forced and arranged marriage, stating "lack of consent is the critical distinguishing factor in a forced marriage"(p. 4). They argue that an arranged marriage differs from a forced marriage in that while the families of both parties take a leading role in arranging the marriage, the choice whether or not to accept the arrangement remains with the prospective parties (Anis et al. 2013).

Some academics, particularly in the British context, have been less willing to accept that there is a clear and identifiable distinction between forced and arranged marriage. Anitha and Gill (2009), whose work centres on women from South to East Asia in the UK, observe that in both legal and policy discourse, the difference between arranged and forced marriage continues to be framed in binary terms and hinges on the concept of consent. Similarly, Phillips & Dustin (2004) call the forced/arranged marriage binary a 'fragile distinction'. Women Living Under Muslim Laws (WLUML 2013) note in their multi-country study that, conceptually, forced marriage relies completely on the *lack* of consent, thereby avoiding the question of what constitutes consent and the degree to which consent can vary according to highly contextualised cultural attitudes. Anitha and Gill (2009) also highlight the importance of context and argue that the conditions under which *consent* is constructed largely remain unexplored. Consent itself is subject to power imbalances and gendered norms. It may also be achieved in the absence of explicit threats, or through subtle, coercive forces that are difficult to identify. For them, consent and coercion are better understood as two ends of a continuum. Along such a continuum, there is expectation, persuasion, control, pressure, threat and force. Thus, what is presented or described as a 'choice' may be better understood to be a reluctant selection between unpalatable alternatives. Women Living Under Muslim Laws point to the need for further close exploration of the extent to which arranged marriages can be considered a type of forced marriage and take the position that the two institutions - arranged marriages and forced - are neither equivalent nor mutually exclusive (WLUML 2013).

Anitha and Gill widen their discussion of coerced marriage to focus on the institution of marriage more generally in order to unsettle assumptions about the cultural specificity

of forced marriage. They argue that many women, irrespective of their culture, experience pressure to marry. This can manifest through their ethnicity, religion or class (none of which are static and unchanging). Pressure and constraints around marriage may be related to poverty, pregnancy and social norms and might be articulated or unstated.

Given the concern that paying attention to the issue of forced marriage can serve to reinforce racist and stereotypical views about some religions and cultures (discussed later in this review), challenging the clear distinction between forced and arranged marriages is a sensitive issue. For example, when the British Government first began its investigation of forced marriage, its report took pains to emphasise the distinction between arranged and forced marriage in order to allay community concerns that its initiative might cast suspicion on all arranged marriages (Home Office 2000).

The prevalence and profile of forced marriage

There is uncertainty across jurisdictions about the extent of forced marriage, which is a consequence of its under-identification and under-reporting (Commonwealth of Australia 2013; Gill & Anitha 2009; Hester Chantler, Gangoli, Devgon, Sharma, Sandhya & Singleton 2007). The Forced Marriage Unit (FMU) in the UK publishes yearly statistics on the number of forced marriage cases (potential and completed) where it has provided assistance; 1485 in 2012 and 1302 in 2013. Karma Nirvana, who operate a dedicated phone line for reporting honour-based violence in the UK, found that 80% of their calls in their first 4 months of operation were in relation to forced marriage and 89% of the victims who called were female (2008).

The South Asian Legal Clinic of Ontario's (SALCO) survey offers the most current quantitative information about the nature and extent of forced marriage anywhere in Canada (Anis et al. 2013). SALCO's survey was completed by Ontario service providers (shelters, legal clinics, settlement agencies, youth organisations and other community agencies) between January 2010 and November 2012. It found an average of 70 cases each year with 92% of the victims/survivors being women. The majority were aged 19 - 24, (31%), with 10% aged 12-15. While the research points to forced marriage being predominantly experienced by girls and women, a smaller percentage of boys and men also experience marriage against their will, usually in response to their homosexuality or involvement with criminal activity (Samad 2010). While forced marriage is proportionately less damaging for boys and men, its impacts are still severe and require supportive interventions (Gangoli, McCarry & Razak 2009; Samad 2010)

In research carried out in the US by the Tahirih Justice Center (2011), 3000 known and suspected cases of forced marriage were identified by survey respondents in a 2-year period. This national survey of 500 service providers reported cases of forced marriage in immigrant communities from 56 different countries and a range of different faiths.

South Asian and Muslim communities are often perceived as being largely responsible for forced marriages. However, research in Canada, the UK, Europe and the US indicates that forced marriage is a social practice that occurs across cultures, religions, geographic areas, citizens and immigrants (Anis et al 2013; Hemmings & Khalifa 2013; Karma

Nirvana 2008; Tahiri Justice Center 2011). In the context of British Columbia, where the project for which this literature review is written is located, members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints in the community of Bountiful have come under scrutiny for the practice of child marriage, for example (Kent 2006). In Britain, the Forced Marriage Unit (FMU) provided assistance in relation to forced marriage to individuals and groups from 74 countries in 2013 (FMU 2013). While forced marriage is a problem that primarily affects women from South and East Asia (which is itself a diverse category) (Anitha & Gill 2009; Hester et al. 2007), it is also identified as an issue in a wide range of religious and other communities outside the South Asian diaspora, including orthodox/fundamental religious communities in the UK, Irish Travellers, Armenian, Turkish, and some mainland Chinese communities, Eastern European communities, African countries including Eritrea, Sudan, Sierra Leone and Mozambique and African Caribbean communities (Hester, Chantler, Gangoli, Devgon, Sharma, Sandhya & Singleton 2007).

The SALCO survey included cases from 30 countries from Africa, Asia, Europe, North America and South America. In 22 cases, the country of origin was stated to be Canada. Those involved were from a variety of religious backgrounds; 103 cases affiliated with Islam, Hinduism (44 cases), Sikhism (30 cases) and Christianity (12 cases). The overrepresentation of Muslim cases in the data can be attributed to the wider representation of countries where Islam is practiced and no correlation was found between the individual's religious affiliation and country of origin. Those who had experienced forced marriage spoke a multitude of languages, including Arabic, Bengali, Czech, English, Farsi, French, Gujarati, Hindi, Punjabi, Spanish, Tamil, Thai, Turk, and Urdu. English was the preferred language for 60% of victims/survivors.

According to the SALCO survey, forced marriage is not an issue impacting only new immigrants to Canada; 31% had resided in Canada for over 10 years when they faced a FM situation, 22% of the individuals had been in Canada for 1 - 3 years, 20% had been in Canada for 4 - 6 years and 16% of individuals had been in Canada for 7 - 10 years. Only 10% of individuals seeking assistance had resided in Canada for less than a year; 44% were Canadian citizens; 41% were permanent residents. A small percentage was non-status or held temporary residence status. Those who had experienced forced marriage had varied educational backgrounds – there was no correlation between forced marriage and lack of education. While families were often financially sound, the individual was not.

Frameworks for understanding forced marriage

The research reviewed here argues that the predominantly gendered nature of forced marriage means that it should be placed in the wider context of violence against women and girls. However, the problem of forced marriage is often framed in cultural terms within the framework of 'honour-based violence' rather than as a manifestation of violence against women (Anitha & Gill 2009, Larasi 2012). So a significant body of literature has emerged which understands forced marriage primarily as a form of violence against women and girls and analyses the dangers of viewing it primarily as a manifestation of any particular culture or religion – while still being cognizant of its

specific manifestations (Larasi, Sumanta & Tweedale 2014).

This analysis begins by deconstructing the language of 'honour-based violence'. Gill and Brah (2014) note the importance of reconfiguring the accepted terminology to disrupt the notion that there is any 'honour' in forced marriage or any other form of violence currently conceptualized as 'honour-based violence'. 'Honour' is enclosed in inverted commas through much of the literature and throughout this document, to indicate the problems inherent in using this term. Scholars such as Anitha and Gill (2009) and Gill and Brah (2014) argue that shame can be a more informative concept because individuals and communities who value honour are not only motivated by a desire to obtain and preserve honour, but are equally concerned with avoiding shame. *Izzat* is a term originating from North India and Pakistan that refers to the concept of honour and applies across religions (Islam, Hinduism, Sikhism). *Izzat* is a fluid term that can apply individually or collectively and which, through its relationship with *sharam* or shame, commands conformity to acceptable norms of behaviour in Asian communities. *Izzat* has multiple connotations and overlapping meanings but inherent in this code of honour is the constant striving to maintain honour and avoid shame, often through the regulation of women's sexuality and the avoidance of social deviation, however that is defined. Honour and shame therefore have different practical implications for men and women. Women's role in the maintenance of honour is to avoid shameful behaviour. Men uphold the honour of their family and community group by ensuring that 'their' women avoid shame. While men's conduct is also the subject of some scrutiny, this is often secondary to the attention paid to the women for whom they have responsibility. Anitha and Gill (2009) stress that even among communities which subscribe to this code, the specific acts that are deemed to increase or erode *izzat* are subject to contestation, change and variation between different groups of South Asian communities in the diasporic context and in South Asia.

The treatment of the crimes associated with 'honour' has often been problematic and demonstrated a tendency to vilify minority cultural groups and to misrepresent them as monolithic entities (Dustin & Phillips 2008). As such, it has been difficult to address issues of violence against women and girls without simultaneously promoting cultural stereotypes. Initiatives to (ostensibly) protect women can become unintentionally intertwined with anti-immigration agendas or used to justify military operations. For example, some have observed that anti-Muslim prejudice increasingly finds expression through concern for forced marriage and other gender-based practices (Fernandez 2009; Gangoli & Chantler 2009; Grewal 2013).

These academics and activists argue that the gendered nature of forced marriage should be understood in conjunction with the impact of intersections between sexism, racism, colonialism and other oppressions. For example, Marai Larasi (2012) recommends that those responding to forced marriage ask questions that allow the development of a more nuanced understanding of the way that 'culture' influences a girl or woman's situation. The norms, values and experiences that influence her thinking, behaviour and worldview are likely to affect help-seeking behaviour, the ability to disclose or not, as well as the dynamic nature of risk in individual situations. The failure to recognise forced

marriage as a form of violence against women and girls is likely to result in inadequate risk assessment and safety planning and is therefore of profound importance (Dustin & Phillips 2008).

Drivers, methods and consequences of forced marriage

Research reveals multiple factors that may provide the impetus for forced marriage. These factors are often related to systemic issues such as lack of education, low income and limited employment opportunities which may lead to forced marriage situations which include the aim of financial betterment. The most commonly cited drivers are:

- Controlling unwanted behaviour such as alcohol and drug use or behaving in what is perceived to be a westernized manner (Anis et al. 2013).
- Controlling unwanted sexuality such as perceived promiscuity, being lesbian, gay, bisexual or transgender (Anis et al. 2013; Hester et al. 2007; Samad 2010).
- The belief in marriage as a cure for mental health issues (Anis et al. 2013).
- Preventing unwanted relationships such as those outside ethnic, cultural, and religious or caste groups (Anis et al. 2013).
- Protecting family honour and attempting to strengthen family links (Anis et al. 2013; Hester et al. 2007).
- Obligations to kin and the need to maintain links with home communities through the use of marriage as an immigration strategy (Anitha & Gill 2009; Hester et al. 2007; Husaini & Bhardwaj 2010).
- Achieving financial gain by ensuring land, property and wealth remain within the family (Anis et al. 2013; Hester et al. 2007).
- Obtaining immigration advantages (Anis et al. 2013; Hester et al. 2007).
- Avoiding the stigma of a previous divorce (Anis et al. 2013).
- Marriage as a rite of passage for young women (Anis et al. 2013).

Forced marriage is enabled through a variety of methods and is most usefully understood as a *process* rather than a distinct event because it often occurs over an extended period of time and in the context of other forms of violence including domestic and sexual violence (Anis et al. 2013).

Coercion through emotional pressure is the most common means of forcing a marriage (Anis et al. 2013). This may involve shaming the victim with the damage their refusal is perceived to do to the family reputation. Emotional pressure may also involve stressing the adverse affect the individual's refusal to marry may have on the health of a parent or a sibling's future marital possibilities. The gendered nature of pressure for and resistance to forced marriage is illustrated in Harvey's (2013) research with young people in the UK. She found that young men thought that resisting a forced marriage involved firm refusal and standing their ground and would prevent further interventions - although they recognised that this was less possible for women in the same situation. Coercion may also involve a family member threatening to harm him or herself. Forms of social pressure may also be exerted, such as restrictions on lifestyle, oppressive financial control, food restriction and pressure to drop out of school (Anis et al 2013).

Threats related to immigration status and the vulnerabilities of women with insecure/temporary residential status if their sponsoring relationship breaks down are constant themes in the literature. Anitha, Chopra, Farouk, Haq & Khan (2008) state that women with insecure residential status often face the choice between living with potentially life-threatening ongoing violence or facing destitution or potential deportation if they leave and are unable to meet the stringent evidential requirements to demonstrate that domestic violence is the cause of the marital breakdown. Access to support service while such claims are assessed is flagged as a particular problem in the UK and Canada (Anis et al. 2013; Anitha et al. 2008).

Forced marriage is also achieved through actual or threatened physical violence, sexual violence, imprisonment, abduction and kidnapping of the victim's children, being forced to abort pregnancies. It may be achieved through threats to hurt family members or evicting the individual from their home.

The research indicates that victims of forced marriage are likely to experience coercion, threats and violence from *multiple* perpetrators that may include parents, siblings, grandparents and religious leaders and wider community networks (Anis et al. 2013; Hester et al. 2007). Anis et al. (2013) found that fathers were most likely to be the predominant perpetrator for 77% of those who had experienced forced marriage, followed by mothers then siblings, with the involvement of mothers and siblings being more likely when the father was the perpetrator. These researchers point out that while less powerful family members may appear complicit in forced marriage, they are often subject to coercion or repercussions themselves if they do not support the primary perpetrator/s.

In addition to the impact of violence, threats and coercion, those who have experienced forced marriage may also face long-term consequences such as isolation, estrangement or strained relationships with family. Forced marriage at an early age for girls and young women usually leads to early sexual activity and early pregnancy, which are directly linked to increased rates of infant and maternal morbidity and mortality and sexually transmitted diseases, including HIV/AIDS. Other health consequences include depression, anxiety and self-harm. Additional gendered consequences of forced marriage are a greater vulnerability to domestic and sexual violence within the marriage and loss of opportunities to study or pursue a career (Gangoli, McCarry & Razak 2009).

Supportive interventions

The UK is further advanced in its response to forced marriage than Canada, largely because of its large population of South-East Asian diaspora and the activism by such groups as the Southall Black Sisters (Dauvergne & Millbank; Dustin & Phillips 2008). It has a dedicated Forced Marriage Unit (FMU) which was set up in 2005 and leads the British Government's forced marriage policy, resource development, training, outreach and casework. As a joint Foreign and Commonwealth Office and Home Office unit, it operates both inside the UK and overseas, where consular assistance is provided to British nationals. The FMU has produced a range of awareness-raising resources (including public education videos, animated documentaries, posters, wallet-sized

information cards and part-funding of an informational App developed by Freedom Charity), as well as policy and practice guidance for professional groups. Many of the resources are available at their website (<https://www.gov.uk/forced-marriage>) and specific reference will be made to their practice guidelines in this section of the literature review.

The literature about effective responses to forced marriage emphasises that appropriate knowledge, skills and confidence are required for working with those affected. More specifically, it identifies the need for knowledge about warning signs as a key supportive intervention, as well as well-developed understanding about coercion and the provision of safety interventions (Anis et al. 2013; CAADA 2014; Forced Marriage Unit 2014a & 2014b). Warning signs may be apparent in a variety of domains; education, employment, health, family history and police involvement (Forced Marriage Unit 2014a & 2014b). In the education sector, indicators include worsening academic performance, appearing frightened, anxious or hyper-vigilant, requests for extended leave of absence and failure to return from visits to country of origin, fear of upcoming school holidays, surveillance by siblings or cousins at school, not being allowed to attend extra-curricular activities and being prevented from going on to higher education. Indicators from an individual's family history include siblings being forced to marry, self-harm or suicide of siblings, the death of a parent, running away from home and unreasonable restrictions such as being kept at home by parents.

In addition to warning signs, practice briefings and guidelines in the UK identify risk aggravating factors for forced marriage that include pregnancy, loss of virginity, disclosure of rape or sexual abuse, non-heterosexual orientation or having an intimate relationship with someone outside of a family's community or religion (CAADA 2014; Forced Marriage Unit 2014a & 2014b). The need for information and expertise on risk assessment and safety planning is also consistently identified. In the UK, Co-ordinated Action Against Domestic Abuse (CAADA) (2014) has developed checklists of warning signs, risk aggravating factors, risk assessment and safety planning that are available at: http://www.caada.org.uk/documents/forced_marriage_briefing.pdf.

The Forced Marriage Unit in the UK has produced multi-agency practice guidelines on how to handle cases of forced marriage (2014a & 2014b). This reflects the understanding that in addition to specialized services, the range of professional groups who may come into contact with those experiencing potential or completed forced marriage should be able to provide an informed and effective response. The Guidelines include direction on how to recognise warning signs and aggravating factors and how to work in ways that enhance the safety of the person at risk. They apply across all agencies and include specific directions for the following areas: schools, colleges and universities; health; police; children's social care; adult social care and local authority housing. In Canada, the RCMP has developed online training to increase awareness about forced marriage (and 'honour'-based violence) <http://www.rcmp-grc.gc.ca/gazette/vol75no4/cover-dossier/violence-eng.htm>.

The potential for the education system to provide an access point for support for

children and young people is identified in the literature about responding to forced marriage. Young people report that teachers are well placed to identify and support people at risk and are a professional group they would consider approaching (Harvey 2013). The FMU (2013) notes an increase in the number of cases over holiday periods which suggests that while classes are in session students are somewhat protected. Freeman and Klein's research into the capacity of post-secondary educational institutions in the UK found that appropriate support responses vary considerably and in line with the motivation and expertise of individual staff, rather than systematic institutional policy (2013). They found that broad policies that subsume different abusive behaviours under one gender-neutral heading are common and recommend targeted awareness-raising, training and responses for forced marriage.

Barriers to help seeking

There are a variety of barriers to accessing effective assistance in relation to forced marriage. These impediments largely arise from its limited identification as an offence by victims/survivors and service providers. Anis et al. (2013) note that many victims/survivors do not identify themselves as having been forced into a marriage and are uncertain about their rights in such circumstances. Some of the complexity associated with identification of forced marriage comes from the difficulty of distinguishing when emotional pressure amounts to force (Harvey 2013). These observations underscore the importance of having a clear definition of forced marriage that encompasses the role of emotional pressure.

Completed forced marriage most commonly becomes apparent when physical violence occurs and the woman decides to seek formal help. Therefore, service providers often discover only incidentally that the relationship was based on a forced union from the start (Bendriss 2008). However, many victims/survivors may not identify with the mainstream services available for those experiencing domestic or family violence and other potential entry points to support are inadequate (Gangoli, McCarry & Razak 2009). A significant obstacle to seeking support or being able to contemplate leaving a forced marriage is the fear of losing immigration status and being deported (Anis et al. 2013; Anitha et al. 2008; Gangoli & Chantler 2009).

The literature on responding to forced marriage consistently identifies the limited availability of specialized services as well as the lack of knowledge and capacity amongst generic support services, particularly with regard to risk assessment and safety planning (see for example Anis et al. 2013; Bendriss 2008; Tahirih Justice Center 2011). Poor and/or inconsistent practice among statutory agencies is not only problematic in terms of victim confidence, but can place vulnerable girls and women at risk. It is also clear that the services which victims currently rely on the most and have the most expertise (specialist women's organisations) are the least valued and resourced (Larasi, Sumanta & Tweedale 2014). The SALCO survey found that there is a lack of counselling, mental health and suicide services that have a specialized understanding of forced marriage (Anis et al. 2013). This research also found a lack of housing to be a particular problem because forced marriage is excluded from the definition of domestic violence, making it hard to access transition or subsidized housing. Furthermore, social assistance can be

difficult to obtain because victims/survivors are deemed to be the dependents of their families or spouse (Anis et al. 2013).

The barriers for young people accessing support receive particular attention in the literature. Some authors note that it is very difficult for young people to confront and challenge the views of their elders or for them to be taken seriously due to the culture of respect for elders (Harvey 2013; Hemmings & Khalifa 2013). Harvey (2013) found that young people would like to confide in their peers but were unsure whether they would be able to help (2013). In addition to these attitudinal obstacles, young people may not be able to access services that require age of majority or parental consent. Anis et al. (2013) identify the lack of age-appropriate services for girls subject to forced marriage and note that youth shelters might not have sufficient privacy regulations or 24-hour access, making them an unsafe option for those seeking refuge from forced marriage.

International responses to forced marriage

There are several pertinent international consensus documents which have relevance for forced marriage; the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW) 1979, Convention on the Rights of the Child (CRC) 1989 and Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962. In addition, the UN considers forced marriage under certain circumstances to amount to a form of trafficking (United Nations, 2000) and a form of slavery (United Nations, 1956).

Canada is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. However, Canada has not signed or ratified the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. There have been recent and significant developments at the international level. Following the adoption of a resolution on child, early and forced marriage at the Human Rights Council in September 2013 (to which Canada is a co-sponsor), the Office of the High Commissioner for Human Rights released its first ever report on the issue of child, early and forced marriage in June 2014 (OHCHR 2014). The report identifies forced, early and child marriage as violations of human rights which are fundamentally gendered and rooted in structural inequalities such as poverty and insecurity.

Despite the number of international covenants and some domestic initiatives identifying forced marriage as a violation of human rights, this does not seem to have been as influential on decisions relating to claims for asylum as might have been expected. Research into 120 refugee cases from Australia, Canada and Britain, where an actual or threatened forced marriage was part of the claim for protection, found that forced marriage was rarely considered by refugee decision makers to be a harm in and of itself because it was not deemed to be 'persecution' (Dauvergne & Millbank 2010). Interpretations of refugee law where a threatened or actual forced marriage is rarely held to trigger protection obligations are therefore at odds with national immigration legislation and international covenants which position forced marriage as persecution.

Canada's approach to the issue of forced marriage has primarily taken place at the level

of foreign policy and development and through the arena of the United Nations in particular (see for example <http://www.swc-cfc.gc.ca/med/news-nouvelles/2014/0311-eng.html> and <http://www.international.gc.ca/rights-droits/childmarriage-mariageenfants/overview-aperçu.aspx?lang=eng>). It has provided \$20 million to UNICEF in its work to end forced marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia. It has played a lead role in establishing the UN's International Day of the Girl, which had ending child, early and forced marriage as its inaugural theme in 2011: <http://www.international.gc.ca/rights-droits/childmarriage-mariageenfants/overview-aperçu.aspx?lang=eng>.

Until late 2014, the Canadian Government's work on this issue has been less visible at the domestic level, where civil society organisations such as SALCO, the Barbra Schlifer Memorial Clinic and the Network of Agencies Against Forced Marriage (NAAFAM) have taken the lead in providing information about and responding to forced marriage. In the following section, new legislation tabled by the Canadian Government is outlined.

Civil and criminal legal responses to forced marriage

Currently in Canada, as in many other jurisdictions, there is no specific legislation that relates to forced marriage. While there is no specific crime of forced marriage, there is a legislative framework that allows for the prosecution of a range of offences, including sexual assault, kidnap, false imprisonment, grievous bodily harm, common assault and murder. Some provisions in criminal, immigration and family law identify scenarios related to marriage without consent. The research by SALCO (Anis et al. 2013) does not recommend criminalizing forced marriage as a separate criminal code offence, considering that it could act as a barrier to help seeking. The authors note the difficulty of taking legal or criminal action against family members that may lead to a prison sentence and suggest that this is likely to be a particular challenge for children and young people. They argue that opportunities to refuse a forced marriage, to access safety and to prevent the breakdown of family relationships are more desirable options. The Canadian Council of Muslim Women also opposes the criminalization of forced marriage, arguing that Canada already has criminal laws which are sufficient to safeguard and prosecute acts associated with forced marriage: <http://ccmw.com/position-statement-forced-marriage/#>.

However, during the time of writing this literature review, on 5 November 2014, the Minister of Citizenship and Immigration Chris Alexander tabled Bill S-7 in the Senate, which is likely to be passed in Spring 2015. The *Zero Tolerance for Barbaric Cultural Practices Act* proposes changes to several existing laws, including the Immigration and Refugee Protection Act, the Criminal Code and the Civil Marriage Act. The Bill addresses the issues of forced marriage, underage marriage and polygamy. The proposed changes are summarised below:

- The **Immigration and Refugee Protection Act** will specify that a permanent resident or foreign national is inadmissible on grounds of practicing polygamy in Canada. It will allow the Government to deport non-citizens it believes to be practicing or about to practice polygamy.

- The **Civil Marriage Act** will provide for the legal requirements for a free and enlightened consent to marriage and for any previous marriage to be dissolved or declared null before a new marriage is contracted. It also amends the Civil Marriage Act to provide for the requirement of a minimum age of 16 years for marriage. These requirements are currently provided for in the federal law only in respect of Quebec and under the common law in the other provinces.
- The **Criminal Code** will provide that it is an offence to celebrate, aid or participate in a marriage rite or ceremony knowing that one of the persons being married is doing so against their will or is under the age of 16 years. It will also clarify that it is an offence for an officiant to knowingly solemnize a marriage in contravention of federal law. It will provide that it is an offence to remove a child from Canada with the intention of celebrating, aiding or participating in a marriage rite or ceremony knowing that the child is doing so against their will or is under the age of 16 years. The Criminal Code will also be changed to provide that a judge order a peace bond for the purpose of preventing a person from committing an offence relating to a forced or underage marriage or the removal of a child from Canada with the intention of committing a forced or underage marriage.

Critics of the Bill argue that it is primarily politically motivated and supports a wider agenda of restricting the immigration of some groups – particularly Muslims – and serves to position forced, early and polygamous marriage as problems solely for the cultural ‘other’. SALCO, for example, highlight the disparities between the proposed legislative changes and their recommendations (outlined in the aforementioned research) which are based on extensive interaction with those with frontline experience of the issue of forced marriage:

<http://www.salc.on.ca/FINALBILLS7STATEMENT%20updated%20nov%202018.pdf>.

Various other Western countries have implemented specific legal measures in an attempt to address the practice of forced marriages. The case example of the UK provides a relevant, comparative jurisdiction. In the UK, civil orders have been used in forced marriage cases including injunctions, non-molestation orders, Habeas Corpus writs and, since 2007, the Forced Marriage Civil Protection Act, under which Forced Marriage Protection Orders (FMPO) were granted. A breach of an FMPO was not a criminal offence with an automatic power of arrest and therefore has limited protective power. Furthermore, the recent research by IMKAAN and Rights of Women (Larasi, Sumanta & Tweedale 2014) found that their participants did not know about Forced Marriage Protection Orders (FMPOs), suggesting that implementation of this mechanism has been inadequate.

From June 2014, forcing someone into marriage carries a maximum 7-year jail term under the 2014 Anti-Social Behaviour, Crime and Policing Act (which also criminalizes forcing a British national into marriage outside the UK). Under the new legislation, both the breach of a Forced Marriage Civil Protection Order and forcing someone into a marriage become criminal offences. The Act expressly prohibits the practice, inducement, or aiding of forced marriage, defined in the law as: (a) forcing or

attempting to force another person to enter into a marriage or a purported marriage without that other person's free and full consent, or (b) practicing a deception for the purpose of causing another person to enter into a marriage or a purported marriage without that other person's free and full consent.

Some of the impetus for criminalization of forced marriage came from its obligation to create specific legislation to address forced marriage under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CAVHIO; known as the Istanbul Convention). The Convention intends that there should be a specific offence for forced marriage as recommended by the Council of Europe comparative study of forced marriage (Council of Europe 2005). The Convention opened for signature in May 2011 and the current signatories can be viewed at The Council of Europe's Treaty Office Website: <http://conventions.coe.int/>. The introduction of legislation to criminalize the practice of forced marriage has also been introduced in Norway and Belgium.

Other nation-states such as Australia, Denmark, Germany have revised existing offences to criminalize activities associated with forced marriage. In Australia, the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013 amended the Criminal Code to establish the additional offences of forced marriage, forced labour, organ trafficking and harbouring a victim (Commonwealth of Australia 2013). The tightening of immigration laws to prevent family reunification where forced marriage is suspected has also characterised the responses of countries such as Denmark.

The literature notes a significant division of opinion on the usefulness of having a specific criminal offence for forced marriage (Gangoli, Razak & McCarry 2006; Harvey 2013). Some argue it is imperative that there are punitive measures for perpetrator(s) in cases of forced marriage, both to act as a deterrent and to respond to the injustice experienced by the victim/survivor. Others do not support the creation of a specific offence, arguing that current legislation against threatening behaviour, assault, kidnap or rape already provides an adequate basis for prosecution. Some scholars advocate a focus on prevention rather than prosecution (Wind-Cowie, Cheetham, Gregory 2012) because a legalistic approach does little to address the conditions in which forced marriage thrive (Gill & Anitha 2009). Larasi, Sumanta & Tweedale (2014) make the point that given the range of women's journeys and narratives, forced marriage cannot be addressed through singular means or through a reliance on criminal justice interventions alone.

Raising the age of marriage/sponsorship

The intersection of forced marriage and child or early marriage has led some jurisdictions, such as France, Gabon, Indonesia and the UK, to raise the minimum age of marriage in some circumstances. As outlined in the previous section, Canada's proposed legislative changes include an amendment to the Civil Marriage Act to provide for the requirement of a minimum age of 16 years for marriage. Marriage laws in the UK allow 16–18 year olds to marry with parental consent, with individuals having an autonomous

right to marry at 18 years. However, in 2008, the sponsorship age for a spousal or fiancé visa increased from 18 to 21. This has created a discriminatory dual marriage age within the UK: one for marriages where both spouses are from within the EU and an older age for marriages where one spouse is from outside the EU (Hester et al. 2007).

The UK government's argument is that the increased maturity, increased likelihood of having completed their education and achieved financial independence acts as a protective factor and makes it easier to resist forced marriage and that young people are more likely to have completed education and achieved financial independence (Chantler, Gangoli & Hester 2009; Gangoli, McCarry & Razak 2009). Hester et al. (2007) found no statistical or qualitative evidence that raising of the age of sponsorship or entry from 16 to 18 had any significant impact on the incidence of forced marriage cases. These authors take a critical view of the link between age and ability to resist forced marriage and argue that gender and compulsory heterosexuality more important determinants of forced marriage than age. Furthermore, raising the age could create increased risks for young women who may be more likely to be forcibly taken out of the country to await a forced marriage until they achieve the new age limit or increase the likelihood of entering the UK with false documentation. They also express concerns that the raised age discriminates against 'genuine' arranged or love marriages and has a disproportionate effect on minority communities.

Summary of recommendations for policy and practice

The literature does not support the restriction of immigration as an effective response to forced marriage. Indeed, a prominent caution within the literature is that responses that focus on primarily addressing forced marriage through immigration provisions or by positioning it as an issue solely for the cultural 'other' are misguided. Contrary to widespread public perceptions, forced marriage affects a range of individuals and communities, is entered into through a variety of routes and occurs for multiple reasons. Therefore any policies around forced marriage need to take this heterogeneity into account, but to primarily understand it as a form of violence against women. Rather, interventions need to focus on education and early intervention and address a range of drivers for forced marriage (Anitha & Gill 2009; Chantler, Gangoli & Hester 2009). The literature reviewed here provides support for the following approaches:

Public education and awareness raising. National public awareness campaigns and local community education initiatives that are focused on raising awareness and understanding of forced marriage and its violation of human rights (Anis et al. 2013; Home Office 2000). Larasi, Sumanta & Tweedale (2014) echo the call across the literature for resources to be directed to prevention. Awareness campaigns and supportive responses that are integrated within the education system in post-secondary educational institutions (Anis et al. 2013), including the post-secondary system (Freeman & Klein 2013) are recommended. Public education should reach diverse audiences and include children, young people, parents and professional groups (Harvey 2013). Addressing masculinity and forced marriage with young men may also help challenge the tolerance, normalization and complicity involved in forced marriage for young women (Harvey 2013).

Monitoring and data collection. Improvements to the availability of data, as well as the monitoring of the impact of any legislation (Hester et al 2007; Home Office 2000). Larasi, Sumanta & Tweedale emphasize the need to know how the law is being used and by whom, as well as victim/survivor satisfaction information (2014).

Service provision. Increased training, funding and capacity at strategic, management and practitioner levels for generic and specialist service providers (Anis et al. 2013; Bendriss 2008; Freeman & Klein 2013; Harvey 2013; Hester et al. 2007; Home Office 2000; Larasi, Sumanta & Tweedale 2014). Improved gender analysis and anti-discriminatory practice in generic services, including the establishment of women's groups, helplines and campaigns for women's rights as well as poverty alleviation programs targeted at women (Harvey 2013; Hester et al. 2007). Improved availability of long term counselling for those affected by forced marriage (Anis et al. 2013).

The development of risk assessment tools. Development of a risk assessment tool with guidelines for how to deal with forced marriage cases for the Canadian context (Anis et al. 2013).

Inclusion of forced marriage in the definition of family violence. In Canada, the expansion of the definition of family violence to include forced marriage would facilitate the application for priority subsidized housing, for example (Anis et al. 2013).

Legal protections. In addition to free Legal Aid assistance for forced marriage cases, Larasi, Sumanta & Tweedale (2014) highlight the need for witness protection and other legal provisions for those seeking civil remedies to forced marriage as those available to those engaged in criminal proceedings. This should include the ability to provide evidence via video-link, safe and separate entrances to courts and other safety measures).

Access to consular services. Access to formalized consular services for permanent residents and non-status victims with strong ties to Canada; responses which recognise the power imbalance in forced marriage situations and include a commitment to not initiate any proceedings of "marriage fraud" or "misrepresentation"; exemption from conditional permanent residence (Anis et al. 2013).

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