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# Forced Marriage in Canada: To Criminalize or Not to Criminalize?

*Karlee Anne Sapoznik Evans<sup>†</sup>*

*In 2014, Bill S-7, An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts, was announced by Canada's Citizenship and Immigration Minister. Controversially titled the Zero Tolerance for Barbaric Cultural Practices Act, it received royal assent on June 18<sup>th</sup>, 2015. Through the use of case law, archival records and rich first-hand interviews with front-line service providers, lawyers, community members, researchers and survivors of forced marriage in Canada, this article draws attention to the deeply complex factors at play surrounding the law and understandings of the law in relation to forced marriage in Canada as it implements Bill S-7. This article outlines the diverse range of forced marriage cases in Canada since 1948, and unpacks the umbrella term "forced marriage" in light of domestic provisions and Canada's international obligations. In doing so, the article stresses the substantive limitations of international human rights law and considers how applying a human trafficking lens may assist survivors and prevent forced marriages. Lastly, the article asks new questions and recognizes the complex considerations, which make any criminal prosecution of the perpetrators of forced marriages a very delicate decision.*

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<sup>†</sup> Specialist, Tracia's Trust: Manitoba's Strategy to Combat Sexual Exploitation and Human Trafficking. This article is grounded in research completed for the author's doctoral dissertation: Karlee Anne Sapoznik, *"Who/If/When to Marry, It's A Choice": A History of Forced Marriage in Canada, 1948-2008* (PhD Dissertation, York University, Toronto, 2015) [unpublished]. The author would like to thank Deepa Mattoo, Shirley Gillett, Navdip Singh, Rita Kohli and Amina for their invaluable contributions. Sincere thanks also go to Annie Bunting, Michele Johnson, to the survivors who courageously shared their testimonies, and to the activists and service providers near and far who work tirelessly to end forced marriages in our local and global communities.

*En 2014, le projet de loi S-7, Loi modifiant la Loi sur l'immigration et la protection des réfugiés, la Loi sur le mariage civil, le Code criminel et d'autres lois en conséquence, a été déposé par le ministre canadien de la Citoyenneté et de l'Immigration. Nommé de façon controversée Loi sur la tolérance zéro face aux pratiques culturelles barbares, le projet de loi a reçu la sanction royale le 18 juin 2015. À partir de la jurisprudence, de documents d'archives et d'entrevues avec des organismes sur le terrain, des avocats, des membres de la communauté, des chercheurs et des survivants de mariages forcés au Canada, cet article expose l'éventail des cas de mariages forcés au Canada depuis 1948 et décortique le terme générique « mariage forcé » à la lumière des dispositions internes et des obligations internationales du Canada. Cet article souligne les limites considérables du droit international relatif aux droits de l'homme et examine en outre si le fait d'appréhender la question sous l'angle du trafic d'êtres humains peut aider les survivants et prévenir de futurs mariages forcés. Enfin, l'auteur pose de nouvelles questions et fait ressortir les considérations qui font de toute poursuite des responsables de mariages forcés une décision très délicate.*

## I. Introduction

Born and raised in Birmingham, England, Sandeep was the youngest of six children. When Sandeep was fifteen years old, her mother fled the family and their Sikh community. Shortly thereafter, Sandeep learned of a 26-year-old man in Victoria, British Columbia, with whom her father was in contact. During their first conversation about him as a potential husband, Sandeep told her father that she did not want to go to Canada or get married. She refused the match. Although she said “no”, the courtship process began. Every Tuesday at 6:30 am for the next eight months, Sandeep’s father supervised phone conversations between her and the man who was soon her fiancé, standing next to her, making sure she spoke proper English and that she “did not say anything that would mess things up”.<sup>1</sup>

In August 1993, eight months from the date she learned of her potential husband, Sandeep’s father accompanied his teenage daughter to Victoria. He agreed to a marriage proposal on her behalf before she had the opportunity to meet or speak (in person) to the man she was told was now her fiancé. The day after her arrival in Canada, she was married. Sandeep did not outright verbally refuse, nor did she physically flee during the marriage ceremony, but she cried throughout. She did not want to marry her betrothed with every fibre of her being, but she had been taught that “the bride has no say.”<sup>2</sup> In her words, “[f]alling in love was non-negotiable, was not an option, you didn’t even explore it, you didn’t even dream about it.”<sup>3</sup> The emotional duress she was under made her feel that she had to go through with the marriage.

In June 2008, a spotlight was cast on the prevalence of forced marriages in Canada, following several high profile cases (including Sandeep’s), the launch of the South Asian Legal Clinic of Ontario’s (SALCO) “Forced Marriage Project”<sup>4</sup> and the first international symposium on forced marriage held in Toronto.<sup>5</sup> Canadian newspapers reported that every year, dozens of young girls, women, boys and men are forced into marriages in Canada or abroad.<sup>6</sup>

<sup>1</sup> Interview of Sandeep (14 November 2011) in Victoria, British Columbia.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> See SALCO, “Home” (2015), online: <salc.on.ca/forced-marriage> [SALCO, “Home”]. SALCO’s research study sparked significant debate and conversation on forced marriage in Canada. See Maryum Anis, Shalini Konanur & Deepa Mattoo, eds, “The Incidence of Forced Marriage in Ontario,” (Toronto: SALCO, August 2013) at 56, online: <www.salc.on.ca/SALCO%20-%20Who,%20If,%20When%20to%20Marry%20-%20The%20Incidence%20of%20Forced%20Marriage%20in%20Ontario%20%28Sep%202013%29.pdf>.

<sup>5</sup> This important first event was entitled “The Right to Choose International Symposium on Non-Consensual Marriage”. SALCO produced a tool kit within the context of the “Forced Marriage Project”: Ritu Chokshi, Anita Khanna & Aisha Silim, “Forced/Non-Consensual Marriages: A Toolkit for Service Providers” (June 2010), online: <www.salc.on.ca/SAL0100%20Toolkit%20[1].pdf>.

<sup>6</sup> See Patti Fong, “Bride Says Sex was Way to Flee Forced Marriage”, *Toronto Star* (18 September 2007), online: <www.thestar.com/article/257686>; Raveena Aulakh, “Lost Brides: When Arranged Marriages Go Quickly Awry”, *Toronto Star* (15 November 2009), online: <www.thestar.com/news/world/2009/11/15/lost\_brides\_when\_arranged\_marriages\_go\_quickly\_awry.html>; Raveena Aulakh, “Forced to Wed: They

In 2014, Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts*, was announced by Canada's Citizenship and Immigration Minister.<sup>7</sup> Controversially titled the *Zero Tolerance for Barbaric Cultural Practices Act*, Bill S-7 received royal assent on June 18<sup>th</sup>, 2015.<sup>8</sup>

The year 1948 is a useful starting point for this article as there was clear national and international prohibition of marriage without consent. In 1948, Canada signed the *Universal Declaration of Human Rights*, the first international consensus document recognizing that "[m]arriage shall be entered into only with the free and full consent of the intending parties."<sup>9</sup> The signing was the first formal, official recognition by Canada of the right of all people to enter a marriage with full and free consent. This article challenges assumptions about the institution of marriage in Canada by highlighting the fundamental discord between rhetoric and reality of forced marriage. For the purposes of the article, forced marriage is defined as "any marriage which occurs without the full and free consent of one or both individuals".<sup>10</sup> This working definition of forced marriage highlights the reality that "[f]orced marriage can happen to anyone; of any age and of any gender."<sup>11</sup> The duress which underlies forced marriage cases can be physical, emotional/psychological, or a combination of the two. I have elected to use the term "forced marriage" throughout this article because it is the term that the experts and survivors<sup>12</sup> interviewed used most frequently and the term I felt best captured the essence of their

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Think They're Doing What's Best for the Child", *Toronto Star* (14 November 2009), online: <[www.thestar.com/news/canada/2009/11/14/forced\\_to\\_wed\\_they\\_think\\_theyre\\_doing\\_whats\\_best\\_for\\_the\\_child.html](http://www.thestar.com/news/canada/2009/11/14/forced_to_wed_they_think_theyre_doing_whats_best_for_the_child.html)>; and Raveena Aulakh, "Compelled to Wed Once, Then Again", *Toronto Star* (14 November 2009), online: <[www.thestar.com/news/canada/2009/11/14/compelled\\_to\\_wed\\_once\\_then\\_again.html](http://www.thestar.com/news/canada/2009/11/14/compelled_to_wed_once_then_again.html)>.

<sup>7</sup> Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts*, 2nd Sess, 41st Parl, 2014 (can be read in its entirety online: <[www.parl.gc.ca/content/hoc/Bills/412/Government/S-7/S-7\\_3/S-7\\_3.PDF](http://www.parl.gc.ca/content/hoc/Bills/412/Government/S-7/S-7_3/S-7_3.PDF)>) [Bill S-7].

<sup>8</sup> When Bill S-7 received assent on June 18, 2015, Canada joined Norway, Belgium and Pakistan in criminalizing forced marriage. When it was introduced and as it moved forward, I was contacted by several media outlets. In interviews with them, I stressed that we need to be careful to avoid stereotypes, particularly those that suggest forced marriage is only an immigrant/brown/Muslim issue. Indeed, as evidenced in the data later in this article, in my research on forced marriage in Canada since 1948, I have been made aware of longstanding cases in many Canadian communities that challenge these stereotypes. It is critical that government officials prioritize survivor/experiential voices and consultation with at-risk communities, the NGO sector, law enforcement and researchers in the coming weeks and months.

<sup>9</sup> *Universal Declaration of Human Rights*, UNGAOR, 3rd Sess, 183rd Mtg, UN Doc A/RES/217A(III) (1948) arts 16.1–16.2 [UDHR].

<sup>10</sup> Chokshi, Khanna & Silim, *supra* note 5 at 13. As the National Network of Agencies Against Forced Marriage (NAAFAM) and SALCO explain, "a forced marriage is a form of violence and an abuse of human rights. It is a practice in which a marriage takes place without the free consent of the individuals getting married" (*ibid*).

<sup>11</sup> *Ibid* at 13. A child under the age of 18 is legally incapable of giving their valid consent to enter into marriage. However, parental consent on behalf of a teenager between the ages of 16 or 18 is valid. Under the 1962 Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, 7 November 1962, 32 UNTS 231 (entered into force 9 December 1964), Preamble, all child marriages are considered to be forced marriages.

<sup>12</sup> I use this term for individuals who self-identify as survivors of forced marriage.

experiences. I also use the terms “non-consensual marriage” and “marriage without consent”, as they also capture the range of relevant scenarios and cases. That said, I recognize that “forced marriage” has become a problematic umbrella term; I discuss this issue in the third section of this paper on the multiplicity of arranged, forced and servile marriage situations.

Sandeep’s experience illustrates the complexities at play when it comes to determining legal consent. Within Sandeep’s context, unequal power relationships arguably put the whole idea of consent into question. As then rape crisis centre Executive Director Rita Kohli concludes, “when we live in a society that is based on an unequal context, when you are groomed from the time when you are born that you will be given away, the conditions are set for forced marriage.”<sup>13</sup> In addition to revealing the significant complexities relating to consent, Sandeep’s testimony highlights the challenge of determining when, or at what point, a case goes beyond the threshold of traditional arranged marriage and becomes a forced, involuntary marriage. As this case demonstrates, there are significant difficulties instituting legal responses to forced marriages. Through additional case studies, examples and data, this article draws attention to the factors at play surrounding the law and understandings of the law in relation to forced marriages.

This article explains the sources and methodology pursued, and has four central aims. The first aim is to outline the diverse range of forced marriage cases that have come to the attention of the Canadian state, all of which are illegal. They fall under international, federal, provincial and territorial jurisdictions, involving several areas of law: civil, family, criminal, child protection, administrative, human rights, immigration and refugee asylum. I will unpack the umbrella term “forced marriage” and distinguish between arranged, forced and servile marriages. In doing so, I will summarize the administration of marriage under Canadian law and apply the legislative provisions to Canada’s international obligations.

The second section of this article outlines the substantive limitations of international human rights law, which relies on the positive moral obligation of states to address forced marriage within their jurisdictions. In order to do so, I rely on case law, archival records and arguments and lessons shared by front-line service providers, survivors, lawyers, community members and researchers. This evidentiary basis points to the “disconnect” between international and domestic law on this topic. This basis also stresses the value of applying existing, practical measures that fall under family, civil, child protection, criminal and human rights laws as a means of combatting forced marriage, while recognizing the significant challenges and limitations within domestic law.

The third aim of this article is to present the advantages and disadvantages

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<sup>13</sup> Interview of Rita Kohli (7 October 2012) in Etobicoke, Ontario.

of applying a human trafficking lens to assist survivors and prevent forced marriages, specifically the (Palermo) *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*.<sup>14</sup>

Fourth, this article recognizes the various considerations and arguments against criminalization as raised by victims and grassroots experts, which make any criminal prosecution of the perpetrators of forced marriages a very delicate decision.

Lastly, this article concludes with an epilogue with calls to action and key policy recommendations.

## II. Sources, Methodology and Findings

I cast my net as widely as possible in terms of primary and secondary sources. I began with an extensive literature review and tracked down sources based on footnotes in books and articles. I then read a lot of material on courtship and marital breakdown. This research yielded a number of additional materials. I consulted secondary sources on forced marriage, including forced marriage in the United Kingdom, France and Australia. I relied on several international treaties and consensus documents, especially the *UDHR*, *Palermo Protocol*, the 1926 *Convention to Suppress the Slave Trade and Slavery*<sup>15</sup> and the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*.<sup>16</sup> I then searched through a number of particularly useful domestic and international documents at the National Archives in Ottawa, the Archives of Ontario in Toronto and the Hudson Bay Archives in Manitoba. In addition, I consulted legal sources and navigated key legal databases and guides, which led me to dozens of cases, refugee asylum records and comprehensive overviews of laws related to forced marriage in Canada. These laws intersect at various levels of government and differ by province/territory. While no specific forced marriage offence existed in Canada at the domestic level until Bill S-7 was passed in June 2015,<sup>17</sup> there were provisions related to forced marriage that fell under child protection, civil, constitutional, criminal, family violence, human rights, immigration and refugee law.<sup>18</sup> The legal databases and guides led me to diverse cases of

<sup>14</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, GA Res 794 (VIII), UNGAOR, 1953, art 3(a), 15 November 2000 (entered into force 25 December 2003) [*Palermo Protocol*].

<sup>15</sup> *Convention to Suppress the Slave Trade and Slavery*, League of Nations, 25 September 1926, 60 LNTS 253 (entered into force 9 March 1927) [1926 *Slavery Convention*].

<sup>16</sup> *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, 7 September 1956, 226 UNTS 3 (entered into force 30 April 1957) [1956 *Supplementary Convention*].

<sup>17</sup> Bill S-7 was announced by Canada's Citizenship and Immigration Minister on November 5<sup>th</sup>, 2014. It was passed on June 15<sup>th</sup>, 2015. Civil changes and changes to the *Criminal Code*, RSC 1985, c C-46 came into effect on June 18<sup>th</sup>, 2015. Immigration changes took effect in October 2015.

<sup>18</sup> Relevant statutes in forced marriage cases include *Canadian Charter of Rights and Freedoms*, ss 15(1), 28,

forced marriage in Canada from Confederation to the present. Often I found these cases by doing searches of annulments or divorces with the search terms “duress” or “lack of consent”. I found additional cases by going through asylum and refugee appeals.

While helpful, written sources had limitations. The court rulings and case law I located frequently lacked details, or presented only one side. In other cases, a ruling was made without a clear explanation or sufficient information that would allow me to conduct further research. Also, it was difficult to determine if the cases I found were representative.<sup>19</sup> In some instances, cases were sensational or seemed to forward particular agendas. In other instances, it appeared that a case went before a court primarily because one of the parties had the financial means to hire a lawyer.

As I was searching for keywords, a friendly archivist at the Hudson’s Bay Archives in Winnipeg, Manitoba told me that I was venturing into “unchartered territory”. The controversial, private nature of forced marriages and the reality that those who encourage or coerce individuals into them are often family or community members can be significant obstacles to locating cases of forced marriage. In 2008, while volunteering at the Canadian Centre for Victims of Torture in Toronto, I met a Somali woman named Amina who was involved in a forced marriage. Within two months, Amina drew my attention to four additional forced marriage cases, some of which had occurred years earlier. Of these five cases, only hers had been reported to service providers, community organizations or law enforcement. The extent of underreporting, both recently and in the past, quickly became apparent.

After researching this topic for the past seven years, I am convinced that most forced marriage cases in Canada likely have not been reported, accessed or consulted by researchers. Details exist only in rough, written formats in police, government, legal clinic and front-line responder records, never finding their way into formal reports or archival data bases. Where I was allowed access and had the ability to travel, I went “behind the scenes” and accessed as many cases as possible, most of which were reported via phone calls to first responders, during meetings with lawyers or during domestic abuse incidents and assault proceedings. I intend to focus solely on these cases in a post-doctoral project. The data that can be found in these records is illuminating. So too, are the number of cases that can be brought to light,

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Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 [Charter] and the *Criminal Code*, *supra* note 17, ss 151–53, 155, 170–72, 215, 218, 264.1, 265–268, 271–73, 273.3, 279, 279(2), 280–83, 292, 346, 423, 718.2.

<sup>19</sup> See e.g. *Lawless v Chamberlain*, [1889] OJ No 104, 18 OR 296 (H Ct J); *Pascuzzi v Pascuzzi*, [1955] OJ No 278 (H Ct J); *Singh (Banga) v Kaur* (1959), 29 WWR 95, 1959 CarswellBC 71 (BC SC); *Capon v McLay*, [1965] 2 OR 83, 49 DLR (2d) 675 (CA); *Webb v Webb* (1968), 3 DLR (3d) 100, 3 RFL 129 (NS Div & Mat Causes Ct); *S(A) v S(A)* (1988), 65 OR (2d) 720, 15 RFL (3d) 443; *Traore v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1256, 126 ACWS (3d) 848 [Traore].



as I have sought to do through carefully examining available archival and case law databases, focusing on marriage breakdown and specifically on divorce and annulment cases where lack of consent is at play. Covering both is critical to understanding forced marriage from the perspectives of persons in forced marriages. That said, all of these written records and cases, even those that record the first-hand experiences of persons in forced marriages, rarely contain unmediated feelings and thoughts. Reading and analyzing archival documents, legal cases and front-line case files calls upon the social historian to carefully consider questions of control, agency and power, what these sources tell us about institutional structures and systems and the individuals whose lives these institutions shape.<sup>20</sup> Whenever possible, I paired archival and legal evidence with front-line and survivor-centred sources, including testimonies, memoirs, documentaries and poetry, gathering as many forms of evidence as possible to corroborate and support my findings.

An oral history framework allowed me to dig deeper into these cases. Conducting and transcribing dozens of interviews provided me with the opportunity to access and critically engage with the perspectives of persons involved in forced marriages, such as community members, family members, participants, witnesses, non-governmental organizations (NGOs), service providers, law enforcement officials, government officials and other experts that did not exist in the written records I located. I interviewed individuals within each of these sub-groups and spoke to Canadian citizens, permanent residents and refugees.

The interviews I began in August 2011 revealed a number of unreported cases, providing me with the chance to examine summaries of not-for-profit and legal clinic archives which in turn led me to additional print and digital sources. Having been made aware of unpublished data and investigative reports through the individuals I interviewed, in February 2012 I requested documents via access to information requests with seven federal government organizations: the Royal Canadian Mounted Police, the Immigration and Refugee Board of Canada, Status of Women Canada, Citizenship and Immigration Canada, Library and Archives Canada, Statistics Canada and the Department of Justice. The sources I obtained from these organizations included reports, demographic data, training modules in response to cases of forced marriage and policy related concerns. I was also made aware of anecdotal references to human trafficking for the purpose of forced marriage. I contacted front-line service providers with expertise on marriage trafficking cases to get as much data on them as possible. In most cases, this type of data collection was not taking place. Lastly, members of the Network of Agencies

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<sup>20</sup> See introduction and other essays in Franca Iacovetta & Wendy Mitchinson, eds, *On the Case Explorations in Social History* (Toronto: University of Toronto Press, 1998).

Against Forced Marriage (NAAFM) and SALCO generously shared materials that were not widely circulated.<sup>21</sup>

In total, from August 5<sup>th</sup>, 2011 to October 12<sup>th</sup>, 2012, I conducted thirty-five formal interviews. I divided these individuals into four sub-groups. Nine self-identified as survivors. Eleven self-identified as community members, family members, participants or witnesses to forced marriages. Another eleven self-identified as front line service providers, NGOs, lawyers, law enforcement or government officials with experience handling forced marriage cases. The final four respondents were researchers.<sup>22</sup> I refer to the individuals I interviewed on the record as “respondents”.<sup>23</sup> I identify only the first and/or last names of those who expressed their desire to be interviewed on the record, or whose views are a matter of public record.<sup>24</sup> All other respondents are identified by first-name pseudonyms. In total, 89% of the interviews were with respondents who identified as women and 11% were with respondents who identified as men.<sup>25</sup> This 9:1 female to male ratio is reflective of the percentages of women and men impacted by forced marriage in other studies.<sup>26</sup> The ratio also reflects the overrepresentation of women in not-for-profits, community organizations and legal clinics that assist persons in forced marriages.

At the time of the interviews, I estimate that 14 percent of respondents were under 25 years, 34 percent were between 25 and 35 years, 29 percent were between 35 and 45 years and 23 percent were over 45 years of age. Focusing on particular cultures or races was not my objective. I did not have a set definition for ethnicity and, instead, relied upon how respondents defined and described ethnicities themselves. In their responses to questions about cases of forced marriage they witnessed, and the perpetrators and victims involved, respondents referred to dozens of ethnicities, often using nationalities, religious identities or cities of origin. All in all, as can be seen in the table on pages 58–59, respondents used 84 descriptors in their descriptions of forced marriage situations. Each of these descriptors were used at least

<sup>21</sup> See SALCO, “Home”, *supra* note 4.

<sup>22</sup> In a few cases where I was unable to travel to meet with respondents in person, interviews were done via Skype conference call.

<sup>23</sup> In doing so, I am following the model of Rhoda Howard-Hassmann et al in *Reparations to Africa* (Pennsylvania: University of Pennsylvania Press, 2008) at 20.

<sup>24</sup> I secured the consent of all thirty-five respondents as per best practices and ethics protocols, including the subset who elected to go “on the record”.

<sup>25</sup> Further detailed demographic information disclosed per respondent can be found in Karlee Anne Sapoznik, “*Who/If/When to Marry, It’s A Choice*”: A History of Forced Marriage in Canada, 1948–2008 (PhD Dissertation, York University, Toronto, 2015) [unpublished]. At the moment, far fewer reported cases in which boys or men have been forced to marry exist. It remains to be seen if male victims and service providers are more reluctant to speak out about this issue. Approximately 6% of the cases in the Canadian survey by SALCO cited above involved male victims. The United Kingdom Forced Marriage Unit has reported that approximately 15% of the cases they work on involve males. See Mary Welstead, “Forced Marriage: Bifurcated Values in the UK” (2009) 21:1 Denning LJ 49 at 51.

<sup>26</sup> See e.g. Aisha K Gill & Sundari Anitha, eds, *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (London: Zed Books, 2011).

once, and some were used a number of times. Further, fifty sub-descriptors are listed with an asterisk under their relevant main descriptors.<sup>27</sup>

*Table I: Ethnic Descriptors Referenced to Describe Forced Marriage Cases In or Involving Canada (in alphabetical order)*

Aboriginal	Christian	Jewish	Punjabi
Afghani	Congolese (DRC)	*Ashkenazi	Roma
*Hazaras	Costa Rican	*Sephardic	Romanian
*Pashtoons		*Hasidic	
		*Orthodox	
African	Cuban	Kenyan	Russian
North African	Djiboutian	Latin American	Rwandan
Sub-Saharan			
Algerian	Dominican (Dominican Republic)	Maldivians	Saudi Arabian
American (United States)	East Indian	Malian	Senegalese
*Arizona	English	Mennonite	Sikh
*New York (city)	Birmingham		Somali
*Brooklyn	*London	Mexican	*Darod
*Chicago	*Manchester		*Marehan
*Idaho	Ethiopian	Maghrebi	
Anglican	European	Middle Eastern	South African
			*Brahmin [caste]
Anglo-Saxon	Filipino	Mormon	Sri Lankan
Arabic	First Nations	*Bountiful, British Columbia	Sudanese
		*Fundamentalist Church of Jesus Christ of Latter Day Saints (FLDS Church)	Switzerland (Suisse)
Asian	Francophone	Moroccan	Turkish
Bangladeshi	French	Muslim	Ugandan
Black	Guinean	Native	Ukrainian
British	Guyanese	Nepalese	West Indian
Brown	Haitian	Netherlands (Dutch)	Western
Burundian	Hindu	Nigerian	Western European

<sup>27</sup> Additional cases were brought to my attention by the Immigration and Refugee Board of Canada (IRB) through an Access to Information Request. The reports by the IRB included references to alleged forced marriage cases in the following countries: Albania, Algeria, Armenia, Bangladesh, Benin, Botswana, Cambodia, Chad, China, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Ethiopia, Gambia, Ghana, Guatemala, Guinea, India, Iran, Iraq, Israel, Jordan, Kenya, Korea, Lebanon, Libya, Malaysia, Mali, Malawi, Mauritania, Mexico, Mongolia, Morocco, Nepal, Niger, Nigeria, Pakistan, Romania, Senegal, Sierra Leone, Somalia, Sri Lanka, Swaziland, Syria, Tanzania, Thailand, Tunisia, Turkey, Uganda, United States, Yemen, Zambia and Zimbabwe.

Cambodian	Hungarian	Norwegian		
Cameroonian	Indian (Aboriginal)	North American		
Canadian				
British Columbia	Manitoba	*Hamilton	*Scarborough	*Ste-Agathe-des-Monts
*Vancouver	Winnipeg	*Kingston	*Toronto	
*Victoria	Saint-Boniface	*Malton	*Windsor	Nova Scotia
Alberta	Ontario	*Mississauga	Quebec	*Halifax
Calgary	Aurora	*North York	*Laurentians	
Edmonton	Brampton	*Oakville	*Montreal	
	*Chatham	*Ottawa	*Quebec	
Caribbean	Indian (Subcontinent)	Pakistani		
Catholic	Iranian	*Sindhi		
Caucasian	Iraqi	Polish		
Central European	Islamic	Protestant		
Chinese	Jamaican	*Brethren		

The ethnic descriptor entries in alphabetical order in the table above serve to demonstrate the scale and scope of forced marriage in communities across Canada. This table is highly relevant and important, as it reveals the diversity of cases brought to light by respondents and is a starting point for further research. Additionally, in my data collection of refugee asylum cases in the public domain between 1989 and 2008, I identified alleged forced marriages involving individuals from 27 countries who resided or had hearings in 13 Canadian cities.<sup>28</sup>

### III. A Multiplicity of Situations: Arranged, Forced and Servile Marriages

The mid-twentieth and early twenty-first centuries were marked by regional, national and international initiatives to end forced marriages such as that experienced by Sandeep. Yet, globally, millions of women, men, girls and boys continue to be married without their free and full consent.<sup>29</sup> While

<sup>28</sup> These countries of origin for refugee applicants were (in alphabetical order): Afghanistan, Bangladesh, Benin, Burkina Faso, Cameroon, Central African Republic, China, Chad, Congo (DRC), Djibouti, Egypt, Ghana, Guinea, Iran, Kenya, Lebanon, Liberia, Mali, Pakistan, Nigeria, Syria, Thailand, Turkey, Uganda, Zambia and Zimbabwe. The Canadians cities of residence and of forced marriage case hearings were (in alphabetical order): Brampton, Calgary, Charlottetown, Halifax, LaSalle, Markham, Mississauga, North York, Ottawa, Saskatoon, Toronto, Vancouver and Winnipeg. See maps in Sapoznik, *supra* note 25 that visually display the transnational and national nature of forced marriages located and analyzed.

<sup>29</sup> Since April 2014, there has been international outcry and attention to the issue of forced marriage in connection with the abduction of 300 Nigerian schoolgirls by the Islamist extremist group Boko Haram. See e.g. Amnesty International, "'Our Job is to Shoot, Slaughter and Kill': Boko Haram's Reign of Terror

existing data and statistics need to be analyzed more robustly, studies by country and by region have reported thousands of cases of forced marriage and estimate that globally every three seconds a girl less than 18 years of age, the internationally accepted age of legal consent, is forced to marry against her will.<sup>30</sup>

To some, current efforts to prevent forced marriages in Canada seem to have come out of nowhere. However, as I argue and my data reveals, these efforts are longstanding and have an important history. Our understanding of the rhetoric versus reality of forced marriage in Canada is incomplete so long as we ignore that history. Indeed, although Canadian officials have tended to focus on forced marriages in the context of international development or as confined to specific domestic groups as exceptional problems—namely Aboriginals, immigrants and Muslims through uneven patterns of “othering”<sup>31</sup>—forced marriages involving Canada as a source, transit and destination country are not new and are certainly not unique to the last twenty years.<sup>32</sup>

In spite of the reality of the longstanding history and continued existence of forced marriages in Canada, forced marriages have not figured centrally or even peripherally in most critical historical perspectives on, and human rights discussions of, marriage. As this article demonstrates, in the period after consent was made a requisite element of marriage, parents, family members, government officials and community members in Canada have

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in North-East Nigeria” (London: Amnesty International, 2015) at 91; Geoffrey York & Kim Mackrael, “Canada to Aid Nigeria in Search for Abducted Schoolgirls”, *The Globe and Mail* (7 May 2014), online: <[www.theglobeandmail.com/news/world/nigeria-presses-canada-for-help-combatting-boko-haram/article18506509/](http://www.theglobeandmail.com/news/world/nigeria-presses-canada-for-help-combatting-boko-haram/article18506509/)>.

<sup>30</sup> See Catherine Turner, “Out of the Shadows: Child Marriage and Slavery” (London: Anti-Slavery International, 2013) at 50, online: <[www.antislavery.org/includes/documents/cm\\_docs/2013/c/child\\_marriage\\_final.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/c/child_marriage_final.pdf)>; Heather Heiman & Jeanne Smoot, “Forced Marriage in Immigrant Communities in the United States: 2011 National Survey Results” (Falls Church: Tahirih Justice Center, 2011) at 11, online: <[www.tahirih.org/wp-content/uploads/2015/03/REPORT-Tahirih-Survey-on-Forced-Marriage-in-Immigrant-Communities-in-the-United-States.pdf](http://www.tahirih.org/wp-content/uploads/2015/03/REPORT-Tahirih-Survey-on-Forced-Marriage-in-Immigrant-Communities-in-the-United-States.pdf)>; Anne Kazimirski et al, “Forced Marriage - Prevalence and Services Response” (National Centre for Social Research, 2009), online: <[www.natcen.ac.uk/media/23519/forced-marriage-prevalence-service.pdf](http://www.natcen.ac.uk/media/23519/forced-marriage-prevalence-service.pdf)>; International Center for Research on Women, “How to End Child Marriage: Action Strategies for Prevention and Protection” (Washington, International Center for Research on Women, 2007) at 6, online: <<https://www.icrw.org/wp-content/uploads/2016/10/How-to-End-Child-Marriage-Action-Strategies-for-Prevention-and-Protection-Brief.pdf>>.

<sup>31</sup> Sapoznik, *supra* note 25.

<sup>32</sup> Like the institution of marriage, forced marriage pre-dates recorded history. In fact, involuntary marriages have been a transhistorical preoccupation. For instance, lack of consent to marriage is explored in medieval law, the topic of numerous historical plays, a recurrent theme in historical and contemporary novels and a longstanding topic of concern in human rights reports, biographies and non-fiction monographs. See e.g. Noël James Menuge, *Medieval English Wardship in Romance and Law* (Cambridge: DS Brewer, 2001) ch 4 at 82ff; John Armstrong, *The Forced Marriage, a Tragedy* (London: T Cadell, 1770); Emily Bronte, *Wuthering Heights* (Toronto: The Macmillan Company of Canada Limited, 1960); Sara Craven, *The Forced Marriage* (Don Mills: Harlequin Enterprises Limited, 2003); United States Department of State, “Trafficking in Persons Report 2010” (14 June 2010) at 15, online: <<https://www.state.gov/j/tip/rls/tiprpt/2010>> [TIP Report 2010]; Kathleen Barry, *Female Sexual Slavery* (New York: New York University Press, 1984); Ayaan Hirsi Ali, *Nomad* (Toronto: Knopf Canada, 2010).

duped men, women and children into marriages against their will. Through both clear-cut and complex cases of forced marriage, I demonstrate a fundamental paradox and problem: that by assuming full and free consent to marriage is always possible, as required by laws and human rights instruments, Canadians have ignored, overlooked and denied the reality that in many cases structural dynamics, challenges and constraints make full and free consent impossible.

Forced marriage has become an umbrella term, covering a number of situations in which the basic human rights of women and girls are violated (and to a lesser extent the rights of men and boys) and in which exploitation, coercion and consent are at issue. Examples of this include the sale of women for reasons of dowry, certain forms of arranged marriage, traditional or “native” marriage, marriage for reasons of custom, expediency or perceived respectability, child marriage, pre-marriage, early marriage, polygamous marriage, marriage to acquire nationality, mail-order-brides, marriage as slavery (servile marriage), including forms of debt bondage, forced labour and human trafficking in marriage. Among these categories, there is considerable overlap and often there is a marked difficulty in separating these cases from one another; e.g. defining precisely what is meant by an “arranged marriage” compared to a “forced marriage”, or if/when a marriage constitutes “trafficking” or “slavery”.<sup>33</sup> Well-known Orthodox Jewish author Naomi Ragen stresses that young adolescents in her community are “convinced, not coerced” to marry.<sup>34</sup> Similar to the important nuances in Sandeep’s case, this distinction made by Ragen speaks to how complex this phenomenon can be both linguistically and conceptually.

In addressing the diverse range of cases of forced marriage in Canada since 1948, researchers and front-line service providers have encountered a number of barriers to providing assistance to persons in forced marriages. These include a lack of protocols at the institutional level, jurisdictional issues across all levels of government, lack of trust between communities and authorities, lack of knowledge and legal training around the issue, cultural stereotyping, racism and complexities related to the immigration and refugee process.<sup>35</sup> Furthermore, and most problematically, inquiries into cases of forced marriage must also overcome the subtleties of various types of marital arrangements. It can often be difficult for researchers and service providers to differentiate between situations of consenting arranged marriages and forced or servile marriages. In many cases there is a grey zone, where an arranged

<sup>33</sup> Edwige Rude-Antoine, “Forced Marriages in Council of Europe Member States: A Comparative Study of Legislation and Political Initiatives” (Strasbourg: Council of Europe, 2005) at 7, online: <[www.coe.int/t/dghl/standardsetting/cddh/CDDH-MF/CDEG\(2005\)1\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/cddh/CDDH-MF/CDEG(2005)1_en.pdf)>.

<sup>34</sup> Interview of Naomi Ragen (10 November 2011).

<sup>35</sup> Chokshi, Khanna & Silim, *supra* note 5 at 9.

marriage (specifically in the period between marriage promise, wedding and married life) takes on the constitutive elements of a forced or servile marriage, or vice versa.<sup>36</sup>

Table II – Arranged vs. Forced vs. Servile Marriage Continuum

arranged		forced		servile
grey zone		grey zone		

Questions of freely-given consent, or the lack thereof, present challenges when researchers attempt to delimit cases along the two ends of this arranged – forced – servile marriage continuum; between these two poles are varying degrees of control, pressure, persuasion, expectation, agency, threat and force. The fluid cases of individuals who initially feel they chose to marry freely (perhaps in spite of outside pressure), but later feel they were forced into a non-consensual marriage, or vice versa, of individuals who agree to what may be perceived as a “forced marriage” to flee their home country in the hope of a better life, further compound the confusion.

This confusion concerning degrees of consent and the various manifestations of involuntary marriage is currently reflected in international and domestic law, where forced marriage is an umbrella term, lacking precision. Several examples illustrate the lack of a clear distinction between, for instance, forced and servile marriages. First, in 2005, the British Foreign and Commonwealth Office released a report stating that “[t]he UN recognizes forced marriage as a form of contemporary slavery.”<sup>37</sup> Like many reports, the UK report does not indicate or clarify what is meant by a “forced marriage” as opposed to the constitutive legal elements of servile marriages (to be explained below). Second, in a report produced by the United Nations Voluntary Fund on Contemporary Forms of Slavery, four percent of funding has been allotted to “forced marriage”.<sup>38</sup> The same report states that “various forms of slavery exist within the context of marriage, such as forced marriage, the sale or inheritance of wives and a more recently defined sexual exploitation involving media advertisement of women available for marriage, the so-called mail-order brides.”<sup>39</sup> The UK

<sup>36</sup> This continuum diagram was inspired by SALCO’s diagram distinguishing between arranged and forced marriage. SALCO, “Forced Marriages/Non-Consensual Marriages” (Presentation delivered at the OCASI Professional Development Conference, 6 November 2007) at 8 [unpublished].

<sup>37</sup> United Kingdom Foreign and Commonwealth Office, “Forced Marriage: A Wrong Not a Right” (2005), online: <[www.gov.scot/Resource/Doc/1137/0121460.pdf](http://www.gov.scot/Resource/Doc/1137/0121460.pdf)>, citing *Working Group on Contemporary Forms of Slavery*, 28th Sess (Geneva, 16–23 June 2003) [UK report].

<sup>38</sup> Office of the United Nations High Commissioner for Human Rights, “The United Nations Voluntary Trust Fund on Contemporary Forms of Slavery” (Geneva: Office of the UNHCHR) at 4, 11, online: <[www.ohchr.org/Documents/Publications/UNVFSPublicationsen.pdf](http://www.ohchr.org/Documents/Publications/UNVFSPublicationsen.pdf)>.

<sup>39</sup> *Ibid* at 11, 15.

report categorizes “forced early marriage” as one of the “contemporary forms of slavery” and alludes to “lesser-known types of contemporary slavery”, namely the “Devadasi religious practices that violate children’s human rights, particularly those of Dalit children, forcing them into ‘sexual slavery’ and child marriages.”<sup>40</sup> Adding to this confusion is a third example. In February 2008, the Appeals Chamber of the Special Court for Sierra Leone found that “forced marriage” constituted a “crime against humanity” distinct from that of “sexual slavery”.<sup>41</sup> As Annie Bunting has noted

[w]hile the international legal standards are clear that the constituent elements under the rubric of forced marriage – such as torture, rape, sexual slavery and forced impregnation – are crimes against humanity, it is not clear whether the totality of crimes amounts to slavery, sexual slavery or some other inhumane act.<sup>42</sup>

These examples and on-going developments highlight the confusion surrounding “forced marriage” in relation to “servile marriage” in international law.

Research on the 1926 Slavery Convention and the 1956 Supplementary Convention provides some conceptual clarity with respect to splitting servile and forced marriages under international law. Jean Allain explains that “[w]hile forced marriage is generally considered as a marriage where full and free consent has not been forthcoming, servile marriage is more narrow in scope, as it deals with three specific instances where a woman is commodified in marriage.”<sup>43</sup> Article I of the 1956 *Supplementary Convention* prohibits

(c) any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person; (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.<sup>44</sup>

<sup>40</sup> *Ibid* at 11.

<sup>41</sup> See *Prosecutor v Brima et al* (2008), Special Court for Sierra Leone, Appeals Chamber Case No SCSL-2004-16-A, online: <[www.rscsl.org/Documents/Decisions/AFRC/Appeal/675/SCSL-04-16-A-675.pdf](http://www.rscsl.org/Documents/Decisions/AFRC/Appeal/675/SCSL-04-16-A-675.pdf)>.

<sup>42</sup> See Annie Bunting, “‘Forced Marriage’ in Conflict Situations: Researching and Prosecuting Old Harms and New Crimes” (2012) 1:1 Can J Hum Rts 165 at 169. See also Valerie Oosterveld, “The Special Court for Sierra Leone’s Consideration of Gender-based Violence: Contributing to Transitional Justice?” (2009) 10 Hum Rts Rev 73.

<sup>43</sup> Jean Allain, “Servile Marriage as Slavery and its Relevance to Contemporary International Law” (2009) at 1 [unpublished, archived at Queen’s University, Belfast] [Jean Allain, “Servile Marriage”].

<sup>44</sup> Under international law, there are no servile marriage provisions for men/boys. See UNESCAD, Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, *Final Act and Supplementary Convention*, UN Doc E/CONF.24/23, 7 September 1956 at art 1 [Final Act].



Based on League of Nations archival research, *The Queen v Tang*<sup>45</sup> Australian High Court ruling and *Hadijatou Mani Koraou v Niger*<sup>46</sup>, Allain argues that the 1926 *Slavery Convention*, from which “the powers attaching to the right of ownership” definition of slavery originated and has since been repeatedly re-adopted, is to be read as to include both situations of legal ownership as well as *de facto* slavery.<sup>47</sup> Further, the three instances of servile marriage established as servitudes in the 1956 *Supplementary Convention*,<sup>48</sup> wherein a girl or woman is either purchased, transferred or inherited under the pretext of marriage, “are, in law – in all circumstances – ‘slavery’ as defined by the 1926 Slavery Convention.”<sup>49</sup> In all three of these situations, powers are exercised which would normally be attached to a *de jure* or *de facto* right of ownership. In addition, Allain contends that cases of servile marriage are to be considered, in substance, as a crime against humanity, under the category of “enslavement” which falls under the jurisdiction of the International Criminal Court.<sup>50</sup> This means that states are theoretically liable under international human rights law and that individuals, including ministers and heads of government who fail to address servile cases of forced marriage, are liable under individual criminal law.<sup>51</sup>

In 1948, Canadian officials signed the *UDHR*, the first international consensus document recognizing that “[m]arriage shall be entered into only with the free and full consent of the intending parties.”<sup>52</sup> Since the post-World War II era, Canada has signed, acceded and ratified dozens treaties under which it is internationally bound to ensure that only marriages which are founded upon mutual consent are recognized within its jurisdictions.<sup>53</sup>

<sup>45</sup> *R v Tang*, [2008] HCA 39, online: <www.refworld.org/cases/AUS\_HC/4b9618ed2.html>.

<sup>46</sup> *Hadijatou Mani Koraou v The Republic of Niger*, [2008] ECW/CCJ/JUD/06/08, Economic Community of West African States: Community Court of Justice, online: <www.refworld.org/cases/ECOWAS\_CCJ/496b41fa2.html>.

<sup>47</sup> See Jean Allain, “On the Curious Disappearance of Human Servitude from General International Law” (2009) 11 *J Hist Intl L* 303; Jean Allain, “The Definition of Slavery in International Law” (2009) 52:2 *How LJ* 239; Jean Allain, “Gallagher’s Response to Hathaway’s The Human Rights Quagmire of ‘Human Trafficking’” (6 June 2009), *Opinio Juris* (blog), online: <opiniojuris.org/2009/06/08/a-response-to-anne-gallagher-by-jean-allain/>; Jean Allain, “Servile Marriage”, *supra* note 43; Jean Allain, “Hadijatou Mani Koraou v. Republic of Niger” (2009), 103 *AJIL* 311 (Jean Allain, “Hadijatou”).

<sup>48</sup> *Final Act*, *supra* note 44.

<sup>49</sup> Jean Allain, “Servile Marriage”, *supra* note 43. See the 2008 finding against the Republic of Niger in the case of *Hadijatou Mani Koraou v La Republic de Niger*, [27 October 2008] ECOWAS Court of Justice, Arrêt No ECW/CCJ/JUD/06/08. Also see Jean Allain, “Hadijatou”, *supra* note 47 at 311–17.

<sup>50</sup> *Ibid.*

<sup>51</sup> See Jean Allain, ed, *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford: Oxford University Press, 2012).

<sup>52</sup> See UDHR, *supra* note 9. Article 16.1 of the UDHR states that men and women “of full age” have the right to marry and are entitled to equal rights. The UDHR of 1948 also proclaimed the right to human security, which is violated in involuntary marriage cases. In many cases of forced marriage, individuals have looked outside of the artificial “security” of the family to escape abuse. It is important to also note that it was not until 1947 – one year before landmark UDHR international consensus document – that married women in Canada gained control of their nationality status through the Canadian Citizenship Act.

<sup>53</sup> Canada ratified the 1956 *Supplementary Convention* on 10 January 1963; acceded to the *International*

Only two international conventions connected to the issue remain unratified by Canada: the 1962 *Convention on Consent to Marriage*<sup>54</sup> and the 1978 *Hague Convention on Celebration and Recognition of the Validity of Marriages*<sup>55</sup>. Furthermore, in conventions ratified by Canadian authorities, specific forms of forced marriage have been recognized as “human trafficking” and/or “slavery”. As a party to international treaties and consensus documents dealing with forced marriage, Canada has an obligation under international human rights law to address these issues. In spite of these obligations, Canada has yet to call for a national multi-jurisdictional research study to determine the history and occurrence of forced marriages, or develop an action plan to prevent them.<sup>56</sup>

That said, the issue of forced marriage is now on the radar of government departments, officials and funders in Canada. For example, in 2014, Status of Women Canada funded a 3-year Forced Marriage Project (FMP) led by Shirley Gillett, a long-time expert on forced marriage.<sup>57</sup> The project was based out of Agincourt Community Services, where Gillett worked and the project led to the creation of a comprehensive website aimed at creating awareness and fostering education on forced marriage in Canada. Another example of this increased focus on issues of forced marriage can be found in the actions of the Department of Justice, which in 2015 issued a call for applications for projects addressing forced marriage with a focus on family violence. Further, in the wake of SALCO’s survey findings,<sup>58</sup> then Foreign Affairs Minister John Baird both delivered a speech denouncing child marriage abroad and asserted his commitment to discuss solutions to end forced marriage in Canada.<sup>59</sup> Yet,

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*Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) and *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) on 19 May 1976; ratified the *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) on 9 January 1982; acceded to the *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) on 12 January 1992; and ratified the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, UNGAOR, 54th Sess, UN Doc A/RES/54/263 (2001) on 14 September 2005. While international consensus documents like the UDHR are not internationally binding, they too act as additional, powerful tools in applying diplomatic and moral pressure to governments that violate their articles prohibiting forced and/or servile marriage.

<sup>54</sup> *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, 7 November 1962, 521 UNTS 231 (entered into force 9 December 1964).

<sup>55</sup> *Hague Convention on Celebration and Recognition of the Validity of Marriages*, 1 October 1977, 1991 ATS 16 (entered into force 14 March 1978). From what I understand, these have not been signed due to federal (marriage and divorce) and provincial (solemnization of marriage) jurisdiction complexities. Given the plethora of other conventions Canada has ratified, the fact that Canada has not signed these two specific ones does not seem to have limited the ability of individuals or organizations to address forced marriages.

<sup>56</sup> See Senate Standing Committee on Human Rights Canada, “Who’s in Charge Here?: Effective Implementation of Canada’s International Obligations with Respect to the Rights of Children: Interim Report of the Standing Senate Committee on Human Rights” (Ottawa: The Committee, 2005).

<sup>57</sup> Forced Marriage Project, “About FMP”, online: <fmp.acsa.community/about-us-service-providers/>.

<sup>58</sup> Anis, Konanun & Mattoo, *supra* note 4.

<sup>59</sup> Descriptions of the Status of Women and Department of Justice grants can be found at Status of Women Canada, “Disclosure of Grant and Contribution Awards” (2010), online: <www.swc-cfc.gc.ca/trans/

there is no Canadian protocol of procedures conforming to international treaties dating as far back as 1948. Indeed, the international legal conventions, consensus documents and treaties Canada has been a party to since 1948 have not been of much use to Sandeep and other survivors of forced marriage in Canada.

Confusion also abounds domestically, where legal avenues have proven far from clear. In 2012, then Justice Minister Rob Nicholson's press secretary, Julie Di Mambro, stated that the Canadian *Criminal Code* already has "several provisions that may be used to address forced marriages".<sup>60</sup> However, until 2015, Canada lacked a specific offence for forcing someone to marry and the "provisions that may [have been] used"<sup>61</sup> alluded to by Di Mambro were (and remain) unspecified. In spite of Bill S-7, legal provisions and the legal system at the domestic level remain unclear and problematic due to several factors.

First, challenges exist given divisions of power in overseeing marriages between different levels of government. For instance, the solemnization of marriage and prosecution of *Criminal Code* offences fall under the jurisdiction of provincial governments in Canada, but marriage and divorce fall under federal jurisdiction. Additionally, there are inter-provincial jurisdictional issues as various provinces' marriage acts provide for different capacity and age of consent requirements.<sup>62</sup>

Second, while it is clear that under family law, free and informed consent must be given by both parties for a marriage to be legally valid, a marriage where consent was not given freely can only be declared invalid when one of the spouses seeks a court order that the marriage is void on the ground of duress. Gillian Blackell of the Department of Justice explains that

[t]here are a number of reported decisions involving instances of alleged forced marriage where individuals have sought such a court order. In a number of instances the court found there was no true consent to the marriage, and yet in others courts found that participation at the time of the wedding indicated that there was reluctant consent.<sup>63</sup>

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account-resp/pd-dp/dgc-dsc/2009-2010/gc-sc-433-eng.html>. Copies of John Baird's speech and comments are accessible at: Debra Black, "John Baird to Bring UN Campaign Against Forced Marriage Home", *Toronto Star* (26 September 2013), online: <[www.thestar.com/news/canada/2013/09/26/john\\_baird\\_to\\_bring\\_un\\_campaign\\_against\\_forced\\_marriage\\_home.html](http://www.thestar.com/news/canada/2013/09/26/john_baird_to_bring_un_campaign_against_forced_marriage_home.html)>.

<sup>60</sup> Cristin Schmitz, "Forced Marriage: Is It a Crime? A Legal Issue Dealt with Abroad Now Emerges in Canada", *The Lawyers Weekly* (31 August 2012).

<sup>61</sup> *Ibid.*

<sup>62</sup> *Marriage Act*, RSO 1990, c M3, s 5(1); *The Marriage Act*, RSM 1987, c M50, s 18(1); *The Marriage Act*, SS 1995, c M-4.1, s 25(1); *Marriage Act*, RSBC 1996, c 282, ss 28-29; *Marriage Act*, RSA 2000, c M-5, ss 17-19; *Marriage Act*, RSNB 2011, c 188, ss 17, 20-21; *Marriage Act*, RSPEI 1988, c M-3, ss 17-18; *Marriage Act*, SNL 2009, c M-1.02, ss 18-19; *Marriage Act*, RSY 2002, c 146, ss 40-41; *Marriage Act*, RSNWT (Nu) 1988, c M-4, ss 21, 43-44.

<sup>63</sup> Department of Justice Canada, "Forced Marriage - Legislative Frameworks" (Presentation delivered at SALCO's It's a Choice: Forced Marriage Conference, Toronto, 3 October 2012), [unpublished].

The potential risks involved for a victim in getting a court order (including the burden of proving she/he did not consent, fear of public stigma and the difficulties of reliving their traumatic experiences) are among the reasons why seeking a court order has not been a common legal avenue.<sup>64</sup>

Third, in the rare situations where a person forced to marry does seek the protection of the law, he or she often finds that there exist deficiencies in how the criminal law can prosecute those who forced them into marriage. Prior to Bill S-7, persons forced to marry would have had to rely upon provisions of the criminal code which prohibited criminal acts tangential to their marriage.<sup>65</sup> These offences, however, would often have nothing to do with their forced marriage. There are also potential remedies available under child welfare laws which may offer relief to those persons who come forward.<sup>66</sup> For instance, no-contact orders can be issued via child protection laws at the provincial/territorial level, which provide for state intervention when parents or legal guardians are unable or unwilling to meet a child's physical, emotional or psychological needs. This is relevant in cases of forced marriage where the victim meets the age criterion for child protection intervention, which varies across Canada between a maximum age of 16 and 19 years, with higher limits for certain services.<sup>67</sup>

Lastly, current family violence legislation in nine provinces and territories<sup>68</sup> seems to apply to forced marriage cases.<sup>69</sup> Family violence provisions offer victims around the clock access to practical remedies that are not available through the criminal justice system. These civil remedies include: emergency protection orders granting the victim temporary exclusive occupation of the home; removal of the abuser from the home; seizure of weapons; no contact/

<sup>64</sup> Interview of Deepa Mattoo (11 August 2010) [Mattoo Interview].

<sup>65</sup> A range of additional *Criminal Code* provisions can be relevant in cases involving forced marriage. These include: uttering threats (s 264.1); assault causing bodily harm, with a weapon and aggravated assault (ss 265–68); sexual assault (causing bodily harm, with a weapon and aggravated sexual assault) (ss 271–73); kidnapping (s 279); forcible confinement (s 279(2)); abduction of a young person (ss 280–83); procuring feigned marriage (s 292); removal of a child from Canada (with intent to commit act outside Canada that would be one of the listed offences if committed in Canada) (s 273.3); extortion (s 346); intimidation (s 423); sexual offences against children and youth (ss 151–53, 155 and 170–72); failure to provide necessities of life and abandoning child (ss 215 and 218); abduction of a young person (ss 280–83); breach of a court order, recognizance (peace bond) and probation order (ss 145(3), 127, 811, 733.1).

<sup>66</sup> Under child welfare laws in most provinces, social workers can intervene if there is suspected interference to a child's well-being. See, for instance, "interference with children in care" in *Child and Family Services Act*, RSM 1985-86, c C80, s 52.

<sup>67</sup> Forced marriage among children and youth is a risk indicator of sexual exploitation in general and commercial sexual exploitation in particular.

<sup>68</sup> All but British Columbia, Ontario, New Brunswick and Quebec.

<sup>69</sup> Nine relevant civil domestic/family violence acts exist at the provincial level: *The Victims of Domestic Violence Act*, SS 1994, c V-6.02; *Victims of Family Violence Act*, RSPEI 1998, c V-3.2; *Protection Against Family Violence Act*, RSA 2000, c P-27; *Domestic Violence and Stalking Act*, SM 1998, c 41; *Family Violence Prevention Act*, RSY 2002, c 84; *Domestic Violence Intervention Act*, SNS 2001, c 29; *Protection Against Family Violence Act*, SNWT 2003, c 24; *Family Violence Prevention Act*, SNL 2005, c F-3.1; *Family Abuse Intervention Act*, SNu 2006, c 18.

communication orders; temporary possession of personal property; temporary care and custody of the children to the victim; and specific prohibitions against selling, converting or damaging property.

## A. Complex Social Realities

While the section above has provided greater legal conceptual clarity and theoretical ways in which perpetrators of forced marriages might be held responsible at the domestic and international levels, the complexities at play since 1948 have been far greater than those grasped within the various legal conventions, treaties and consensus documents. The archival documents, court records and respondents interviewed for this study consistently revealed the substantive limitations of legal instruments. Many of the issues have been practical. For instance, numerous persons in forced marriages have shown extreme hesitation to criminalize their own parents, family or community members. Many have feared social ostracism and chosen to move forward without involving state and legal authorities.<sup>70</sup> Further, survivors of forced marriage, like the general public, report a deep respect for cultural traditions and practices that dictate actions that can make it difficult to discern authentic, individual feelings during courtships and marriages.

For instance, in some cultures, including indigenous ones, it has been considered to be good manners for a girl to show some reluctance in leaving her family to be married. Indeed, some young women have been expected to feign resistance when getting married.<sup>71</sup> That said, within the context of research for this article, I uncovered several documented cases of non-consensual marriages of Indian Residential School pupils by principals and administrators.<sup>72</sup> Access to these sealed documents may make it possible to ascertain if forced marriages were perpetrated in residential schools, an area of research that has yet to be explored.

Requiring any particular pattern of enforcement of laws related to the problem of forced marriage, including those designed to protect children and prevent abuses like those perpetrated in residential schools has proved to be a challenge. As noted above, some aspects of marriage fall under provincial jurisdiction, while others fall under federal jurisdiction, adding to the complexity. Respondents consulted for this study stressed the substantial limitations of the law and justice system as a viable recourse for persons in

<sup>70</sup> Interview of Deepa Mattoo (15 November 2011) follow-up interview at SALCO office [Mattoo Follow-Up Interview].

<sup>71</sup> Wife kidnapping is also considered part of marriage rituals among other cultures and nations, including in Kenya.

<sup>72</sup> See David Roberts, "Indian Students Forced into Marriage, Farm Life," *The Globe and Mail* (10 December 1990). This is an area for further research I identified while carrying out this research and while working from 2014–15 as a research consultant and project coordinator for Library and Archives Canada's Document Disclosure Project for the Truth and Reconciliation Commission of Canada.

forced marriages.<sup>73</sup> For decades, they and their loved ones have relied heavily on NGOs, networks and community alliances to provide support, especially women's groups and legal aid organizations. The voices of these groups have often not been heard by state actors who draft legislation, nor have the voices of the groups, or those of survivors, informed the development of jurisprudence. Longstanding service providers and survivors of varying ages and backgrounds emphasize that court cases tend to exacerbate the situation for the victim and victim's family or community. As a result, these groups collectively stress the limitations of a reactive legal-based criminalization approach to ending forced marriages, instead advocating for a proactive approach through which focus is placed on education and prevention, not on criminalization.<sup>74</sup>

Further, these groups have worked in collaboration with police, RCMP, government, border and airport security officials. Cases have been brought to their attention from clients of various backgrounds who have sought help after being forced into matrimonial arrangements through physical and emotional abuse, false pretenses and/or exploitation. SALCO alone has seen hundreds of cases.<sup>75</sup> The Canadian NAAFM, led by SALCO, has pursued a variety of family and domestic law responses. They have not investigated or found any use-value in Canada's international legal treaty obligations related to servile and forced marriage, which scholars (as seen above) have argued could/should have persuasive force in domestic and inter-jurisdictional cases. The exception to this is support of current efforts to investigate and determine how victims might be protected and assisted under slavery and human trafficking legislation. Although many cases have servile attributes, it has proved difficult for case workers to ascertain whether they constitute slavery. Lawyer Deepa Mattoo argues that elements of *de facto* ownership characteristic of servile marriage as established by the 1956 *Supplementary Convention*, have characterized Sandeep's case and others.<sup>76</sup> Mattoo also argues that some cases seem to constitute slavery under the international definitions. However, given (1) that no clear domestic law provisions have been in place in relation to servile marriage as defined in international treaties ratified by Canada; (2) the longstanding, pervasive and popular understanding of slavery as the

<sup>73</sup> Mattoo Interview, *supra* note 64.

<sup>74</sup> Interview of Shirley, (10 August 2011) conducted in Flavell House Law Library [Shirley Interview]. These groups include the NAAFM, SALCO (North York), Alliance of Multicultural Agencies Against Forced Marriage (Agincourt), le Centre des femmes de Verdun (Montréal), Barbara Schlifer Clinic (Toronto), Sandgate Shelter (York Region), Legal Assistance of Windsor (Windsor) and Interval House (Ottawa).

<sup>75</sup> One SALCO-affiliated Violence Against Women counselor helped a 44 year old woman in a "forced marriage". Lawyer Deepa Mattoo met an Orthodox Jewish woman at a training session who told her "forced marriages" were occurring in her community. Others have worked on cases involving gay men, Mormons in Bountiful British Columbia and new immigrant francophone communities in Quebec. Mattoo Interview, *supra* note 64.

<sup>76</sup> *Ibid.*

transatlantic African slave trade; and (3) the huge variation and grey zones between arranged, forced and servile marriage cases, NAAFM has pursued other, more practical avenues.<sup>77</sup>

Like NAAFM, many Canadian and international organizations engaged in work on involuntary marriage have struggled with, or not seen the value in, legally delimiting between a forced and a servile marriage. The 2010 Trafficking in Persons Report released by the United States State Department also failed to make the distinction between the two clear. Under the heading “Forced and child marriages,” it stated:

Around the world, forced or coerced marriages are used by parents and families as a means to many ends, but most commonly to settle debt, receive dowry payments, further economic interests, relieve poverty, obtain residency permits, display status, provide inheritance, counteract promiscuity, and serve as compensation for a wrongful death. Forced marriages render the forced party (in most cases a woman) vulnerable to abuse and exploitation by her spouse or his family, who exercise significantly greater power and control. This can trap the victim in conditions of enslavement, particularly in domestic or sexual servitude.<sup>78</sup>

The words “exercise” and “power” appear in the 1926 *Slavery Convention’s* definition of slavery, the word “control” in the State Department description arguably paraphrases the word “over” in said definition, and the description alludes to instances deemed “servile marriage” in the 1956 *Supplementary Convention*.<sup>79</sup> Here again we see the problematic conflation of forced and servile marriage. Recall that Jean Allain has found that instances wherein a girl or woman is either purchased, transferred, or inherited under the pretext of marriage “are, in law – in all circumstances – ‘slavery’ as defined by the 1926 Slavery Convention.”<sup>80</sup> While the essence of the 1926 *Slavery Convention* definition repeated above is in the 2010 TIP Report description, and the phrases “trafficking of women into involuntary servitude through forced marriage,” “sold to settle debts” and “forced marriage” appear dozens of times throughout the report, the term “servile marriage”, the appropriate, more specific and accurate terminology for such descriptions, only appears once – in the 2010 US State Department report on Costa Rica.<sup>81</sup>

<sup>77</sup> *Ibid.* The law does not figure in the list of ways “forced marriage” can be addressed in SALCO’s project statement and tool kit for service providers. Rather, these documents suggest “taking an anti-racist/anti-oppressive approach”, “institutional commitment to fighting violence/abuse of human rights”, “building public and community accountability”, “creating safe spaces that encourage open and inclusive dialogue”, “prevention-focused initiatives across communities”, “engaging with both youth and parents/caregivers/family members” and “ensuring service to both men and women; of all sexual orientations”. See SALCO, “Forced Marriage Project Statement” (23 April 2010); Chokshi, Khanna & Silim, *supra* note 5.

<sup>78</sup> *Ibid.* at 2, 15.

<sup>79</sup> *Final Act*, *supra* note 44, art 1.

<sup>80</sup> Jean Allain, “Servile Marriage”, *supra* note 43 at 1.

<sup>81</sup> TIP Report 2010, *supra* note 32. Costa Rica is a destination country for marriage trafficking of young Canadian Mormon girls.

While many of the victims of forced marriage have certainly been refugees, asylum seekers or immigrants (often the stereotyped groups in Canada over the past 60 years), examples of forced marriage amongst long-time Canadian citizens and others illustrate the cross-cultural, transnational nature of this issue, affecting men, women and children of all ages, ethnicities, cultures and sexualities in Canada.<sup>82</sup> As we have seen, while certain groups are indeed overrepresented, the presumption by some Canadians that a connection only exists between forced marriages and specific religious, immigrant and refugee communities does not hold.

The sparse legal scholarship on forced marriage in Canada is also marked by a lack of analysis on cases impacting men and gender as it intersects with race, sexuality and class dynamics. For instance, in the *Traore* judicial review decision in the Canadian Federal Court, a young Malian man unsuccessfully challenged the finding of the Immigration Refugee Board that only women were victims of forced marriage.<sup>83</sup> Dauvergne and Millbank's research on forced marriage refugee claims in Canada is pioneering. They were the first to search for and conduct an analysis on cases with this commonality.<sup>84</sup> As they point out, forced marriage refugee claims were accepted by Canada on gender-based grounds, but the state's focus has remained on cases involving women and girls with inadequate acknowledgement and acceptance of cases involving men and the LGBTQ community.<sup>85</sup> Furthermore, Sherene Razack has identified racism and the "myth of the civilised European" in domestic responses to forced marriage in Europe that is manifested in similar ways in the denial by Canadians that forced marriage exists among white communities.<sup>86</sup> These attitudes share commonalities with tendencies displayed by colonial powers regulating marriage in early Canada and, to some extent, mirror the ways in which colonial powers first addressed forced marriage within the international arena.<sup>87</sup> Overall, a multifaceted mix of factors linked to gender, sexuality, class and race dynamics have influenced the legal regulation

<sup>82</sup> Sapoznik, *supra* note 25.

<sup>83</sup> *Traore*, *supra* note 19. See Dauvergne & Millbank, "Forced Marriage as a Harm in Domestic and International Law" (2010) 73:1 Mod L Rev 57 at 80. Men comprise approximately 14% of total forced marriage cases in the United Kingdom, and the number of calls from men to the forced marriage unit hotline in the United Kingdom increased by over 60% from 2008 to 2009. "Specialist Unit Reports More Male Forced Marriages", BBC News (30 June 2010), online: <[www.bbc.co.uk/news/10469935](http://www.bbc.co.uk/news/10469935)>.

<sup>84</sup> Canada has accepted gender-based grounds for refugee claims on the basis of forced marriage since the mid-1990s. Dauvergne & Millbank focused on "non-consent" issues and found 40 Canadian refugee asylum cases (13 tribunal decisions and 27 decisions of the Federal Court) that fell under "forced marriage", "forced to marry" and "pressure to marry" from January 1995 to December 2008. Dauvergne & Millbank, *supra* note 83.

<sup>85</sup> *Ibid* at 70.

<sup>86</sup> Sherene H Razack, "Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages" (2004) 12:1 Fem Leg Stud 129. Also see Constance Backhouse, "Pure Patriarchy: Nineteenth-Century Canadian Marriage" (1985-1986) 31 McGill LJ 264.

<sup>87</sup> Sapoznik, *supra* note 25.



of marriage by the Canadian state since its origins and have had enduring consequences.

## B. Traffic in Marriage: The Failure of Efforts to Incorporate a Trafficking Lens

Across the globe, men, women and children have been trafficked for the purpose of marriage. Canada has proved to be no exception. Sandeep was arguably trafficked by her father from the United Kingdom to British Columbia. Other survivors interviewed during the course of this research were trafficked for marriage between Canada and the United States, South Asia, Latin America, the Middle East, Europe and Africa. In 2011, the Social Sciences and Humanities Research Council (SSHRC) funded the largest Canadian human trafficking study to date, which covered all forms of trafficking between Canada and 29 countries.<sup>88</sup> It found five confirmed cases of trafficking in persons, two of which met the threshold of marriage trafficking between Ukraine and Canada, one that met the threshold of labour trafficking and two of which the exact details were unknown. Researchers also identified a borderline case of marriage trafficking of an Uzbek woman in Canada.<sup>89</sup>

In spite of this, marriage trafficking has not been addressed in most studies of forced marriage, in studies of marriage more generally, or slavery.<sup>90</sup> To date, the vagueness of trafficking legislation in Canada<sup>91</sup> and the justice system's conflation of human trafficking with pimping<sup>92</sup> have resulted in a response to trafficking that has prioritized and focused on cases of commercial sexual exploitation,<sup>93</sup> ignoring serious labour and marriage trafficking offences that Canada is bound to address under international law.<sup>94</sup> Specifically, Canada has ratified the *Palermo Protocol* that established a common definition of human trafficking that includes forced marriage under the expression "slavery or practices similar to slavery" as defined in the 1956 *Supplementary Convention*.

<sup>88</sup> Natalya Timoshkina, "Human Trafficking from the Former Eastern Bloc to Canada: Executive Summary", (Thunder Bay: Lakehead University-Orillia SSHRC, 2011-2013). The study included trafficking for the purposes of forced marriage, forced labour and commercial sexual exploitation.

<sup>89</sup> *Ibid* at 1.

<sup>90</sup> Although most Canadians today think of sex trafficking when they hear the word "trafficking", we need to stop thinking of trafficking as one categorical thing. Canada is a source and destination country for human trafficking for the purposes of forced labour, commercial sexual exploitation and both voluntary and involuntary marriage. Cases of trafficking in marriage are receiving more and more attention.

<sup>91</sup> *Criminal Code*, *supra* note 17, s 279.

<sup>92</sup> *Ibid*, s 212.

<sup>93</sup> See Katrin Roots, "Trafficking or Pimping? An Analysis of Canada's Human Trafficking Legislation and its Implications" (16 April 2013) 28:1 CJLS 21.

<sup>94</sup> Article 3(a) of the *Palermo Protocol*, *supra* note 14 includes forced labour and forced marriage: "Exploitation shall include, at a minimum, the exploitation of the, prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

Article 3(a) of the *Palermo Protocol* reads:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, *slavery or practices similar to slavery*, servitude or the removal of organs.<sup>95</sup>

Elizabeth Warner noted that “[m]any international Conventions ... are not self-executing; they instead constitute promises by the adopting parties to enact domestic legislation and adopt other measures to achieve the desired objectives, which, even if mandatory, are often stated in language too general and aspirational to constitute enforceable norms in and of themselves.”<sup>96</sup> Unlike the 1926 *Slavery Convention*, 1956 *Supplementary Convention* and other international treaties that contain forced and servile marriage provisions but have not been effective at the domestic level, early speculation following Canada’s accession to the *Palermo Protocol* and *Criminal Code* provisions on trafficking enacted in 2005 pointed to the potential usefulness of a human trafficking lens for cases of trafficking for the purposes of commercial sexual exploitation, forced labour and forced marriage. Warner hypothesized trafficking laws represented “the most comprehensive approach of any of the existing international conventions”<sup>97</sup> and could go a long way in assisting survivors of trafficking for the purpose of forced marriage.<sup>98</sup> Under the *Palermo Protocol*, consent—the complex criteria that has become so problematic in cases of forced marriage—is irrelevant.<sup>99</sup> Further, as noted above, the phrase “slavery or practices similar to slavery” from the 1956 *Supplementary Convention* is included in the *Palermo Protocol*, suggesting that servile forms of forced marriage fall within the threshold of “exploitation” under which the *Palermo Protocol* requires states to adopt criminal penalties.<sup>100</sup> In 2010, forced marriages with Canadian components—that is involving Canada as a source, transit or destination—began to be investigated within a human trafficking framework.<sup>101</sup> Training and curriculum units on marriage trafficking were

<sup>95</sup> *Ibid* [emphasis added].

<sup>96</sup> Elizabeth Warner, “Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls” (2004) 12:2 *Am UJ Gender Soc Pol’y & L* 233 at 247.

<sup>97</sup> *Ibid* at 263.

<sup>98</sup> *Ibid*.

<sup>99</sup> *Palermo Protocol*, *supra* note 14, art 3(b) states that “[t]he consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used”.

<sup>100</sup> *Ibid*.

<sup>101</sup> I sat on the board of a national not-for-profit registered charity, Canadians Against Slavery, known as the Alliance Against Modern Slavery, as well as on various committees, including the Advisory Committee

also launched in 2011 by human trafficking coalitions and domestic violence shelters across the country.<sup>102</sup> As I drafted this article, the first forced marriage cases with elements of trafficking were in the process of going before the courts.

Although it was promising, human trafficking legislation has had many of the same frailties as other legislation. The few requests to lay charges of trafficking for the purpose of forced marriage proposed to crowns in Canada by front-line service providers and law enforcement have proved to be unsuccessful. A lack of training on the existence of marriage trafficking remains among judges, and the Canadian government has sent individuals trafficked to Canada for the purpose of a forced marriage back to their home countries, even when this has put their lives at great risk.<sup>103</sup> The Canadian Council for Refugees stresses that “recent changes to immigration and refugee policy have created new barriers for trafficked persons to access status in Canada, leaving them even more vulnerable,”<sup>104</sup> particularly when it comes to the greater hurdles and difficulties in securing temporary resident permits for trafficked persons. Lastly, and perhaps most significantly, like persons in other forced marriages, those in marriage trafficking situations have often been reluctant to criminalize their loved ones, friends and community members.

While Canada has criminalized human trafficking (under which marriage trafficking falls at the international level), it did not formally establish criminal penalties for forced marriage practices at the domestic level until Bill S-7 was passed in 2015.<sup>105</sup> Nevertheless, some measures have been taken since the early 2000s. The Department of Foreign Affairs and International Trade (DFAIT) has warned Canadian citizens of the risk of forced marriage and held forced marriage to be a violation of human rights.<sup>106</sup> DFAIT also distinguished between arranged and forced marriages, stating that

[a]rranged marriage is an age-old tradition that is commonplace in many countries. Typically, parents recommend marriage candidates to their children, who have the right to choose and to get to know each other before making a

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for NAAFM that began this area of investigation.

<sup>102</sup> I sat on the steering committee for the South Asian Women’s Centre’s (SAWC) project on Forced Marriage and Human Trafficking, which focused precisely on this topic. The SAWC in Toronto received provincial government funding for a joint human trafficking forced marriage initiative.

<sup>103</sup> For instance, in 2012, a woman of Roma origin put her life gravely at risk by fleeing and reporting her husband to Toronto police. Threats and letters from her mother revealed that his family was looking for revenge. As such, her return to the Czech Republic would put her life in jeopardy. In spite of efforts by Covenant House Toronto and the Ontario Coalition Against Human Trafficking, among other groups, she was not granted a temporary resident permit. A few months after she was deported, Toronto Police asked to meet with her to prepare for their court case against her husband.

<sup>104</sup> Canadian Council for Refugees, “Temporary Resident Permits: Limits to Protection for Trafficked Persons” (2012) at 2, online: <ccrweb.ca/files/temporary-resident-permit-report.pdf>.

<sup>105</sup> See Bill S-7, *supra* note 7.

<sup>106</sup> Mattoo Interview, *supra* note 64.

decision. A forced marriage is one that is conducted without the consent of both partners. Unless you are coerced into marriage, the union does not constitute a violation of your human rights.<sup>107</sup>

This statement does not refer to servile marriage or the relationship of servile marriage to forced marriage under Canadian domestic law and Canada's obligation to address servile forms of forced marriage within its jurisdiction. Further, the deep complexity surrounding consent, including concepts of inner, exterior and false consent and the deeper constraints that come to bear on consent, including family and community ties, are not captured.<sup>108</sup> Contact numbers are included for those fearing forced marriages or who are subjected to forced marriages abroad.<sup>109</sup> However, due to the lack of a clear system in place by which a victim may return home or through which a designated person can bring them back when they have been taken outside of the country, organizations like SALCO have been limited to assisting those in Canada.<sup>110</sup> Front-line organizations have not been able to intervene directly even as scenarios involving an individual who has been forced into a marriage abroad have increasingly been brought to their attention. Either the individual has been abroad when he or she has called or the individual has come to Canada after his or her forced marriage abroad. In a statement responding to the question, "What can I do if I am forced into marriage in a foreign country?", DFAIT states:

There are reports of Canadian citizens being forced into marriage without prior knowledge or consent. Forced marriages have occurred in a number of countries, such as Afghanistan, Algeria, Bangladesh, Egypt, Ethiopia, India, Libya, Morocco, Pakistan, Somalia and Sudan. Parents, relatives, and communities may use relentless pressure, emotional blackmail, threats, abduction, imprisonment, and physical violence to coerce people to enter into marriage. While both men and women experience forced marriage, it is most commonly perpetrated against women, who may be unable to return to Canada. Canada opposes the practice of forced marriage and urges all countries to respect their international human rights obligations relating to free and full consent to marriage. Forced marriage constitutes a human

<sup>107</sup> Foreign Affairs and International Trade Canada, "Marriage Overseas - Facts", online: <[www.voyage.gc.ca/faq/marriage-abroad\\_mariages-etranger-eng.asp#11](http://www.voyage.gc.ca/faq/marriage-abroad_mariages-etranger-eng.asp#11)> [Marriage Overseas].

<sup>108</sup> See Sundari Anitha & Aisha Gill, "Coercion, Consent and the Forced Marriage Debate in the UK" (2009) 17 Fem Leg Stud 165 at 168-72 for a piece on the UK context, especially the section on consent in relation to case law examples [Anitha & Gill, "Coercion"].

<sup>109</sup> Government of Canada, "Forced Marriage", online: <<https://travel.gc.ca/assistance/emergency-info/forced-marriage>>.

<sup>110</sup> Mattoo Interview, *supra* note 64. In addition, as is the case in the United States, there is a blind spot with respect to forced marriage in Canada's refugee system. See Kim Thuy Seelinger, "Forced Marriage and Asylum: Perceiving the Invisible Harm" (2010) 42:1 Colum HRLR 55. As Sonja Grover explains, Canada does not provide asylum to female children under the basis of gender persecution in the form of child marriage, which is differentiated from a "forced marriage". Sonja Grover, "Children's Rights as Ground Zero in the Debate on the Universality of Human Rights: The Child Marriage Issue as a Case Example" (2006) 2:2 Original L Rev 72.

rights violation under international law, to which Canada is a signatory.<sup>111</sup>

Here, what exactly constitutes the definition of “forced marriage” is not clear. Further, this statement does not consider that in many instances, individuals without Canadian citizenship have come from abroad and been coerced into marriages on Canadian soil, where Canada similarly has “international human rights obligations relating to free and full consent in marriage.”<sup>112</sup> Canadian citizens, permanent residents and refugees have been and continue to be forced to marry abroad or domestically. Some have been human trafficked as defined in the *Palermo Protocol*. Some have been commodified—that is purchased, transferred and/or inherited—as defined as “servile marriage” in the 1956 *Supplementary Convention*, which Canada ratified on January 10<sup>th</sup>, 1963. Others have been subject to “powers attaching to the right of ownership,” as defined in the 1926 *Slavery Convention*, which Canada signed on December 17<sup>th</sup>, 1953. While no rights to own, traffic, abuse, enslave, harm, coerce, deceive, sell or abuse men, women and children within the context of marriage have existed under international or domestic law since 1948, the cases elaborated in this article and other studies the world over highlight the reality of the substantive limitations of the law.

The human trafficking provisions in place are lacking and significant gaps remain, including a fund for victims and the unlikely possibility of getting temporary residency permits for those who have come from abroad and may face danger if they return to their native countries after fleeing forced marriages.<sup>113</sup> No clear system has been established in Canada under which a victim of forced marriage has been able to return home or through which a designated person has been able to bring them back when they have been taken outside of the country.<sup>114</sup> Moreover, many victims of forced marriages, like the general public, report how challenging and messy it can be to make sense of conflicting rights at play. The perpetrators of forced marriages are often family members of the victims, against whom the latter often do not wish to initiate criminal proceedings. As a result, domestic cases (some of which are now being looked at through a human trafficking lens) have long been dealt with in Canada under family law. The most common legal request made by persons in forced marriages in the last few decades has been help in obtaining a protection order.<sup>115</sup> The second most common request is for assistance in seeking an annulment or divorce. Although it is possible to get annulments, most survivors have gotten divorces.<sup>116</sup> As Mattoo stresses, if

<sup>111</sup> “Marriage Overseas”, *supra* note 107.

<sup>112</sup> *Ibid.*

<sup>113</sup> Canadian Council for Refugees, *supra* note 104.

<sup>114</sup> Mattoo Interview, *supra* note 64.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

they signed papers to “get a person into the country”, even if they signed under duress, “a lot of problems for them” have surfaced with immigration authorities. They and their service providers have found that they have been “better off just getting a divorce”.<sup>117</sup>

Over the last few decades an alarming phenomenon linked to immigration has surfaced. Specific groups, some well-intentioned and some not, have raised concerns related to marriages linked to immigration fraud.<sup>118</sup> In Minister Jason Kenny’s words, “[t]he [j]ig is up on [m]arriage [f]raud”.<sup>119</sup> To be sure, it is important to take action against immigration and marriage fraud. However, the emphasis on fraud by Minister Kenny and by the mainstream media has led to the downplaying of forced marriages perpetuated in connection to marriage fraud, overlooking the realities of abuse and exploitation of victims of forced marriage, who are not trying to enter Canada illegally. Even more alarming, it has left these victims who believed they were marrying for love, or who did not even agree to their marriages, more at risk. Under a new provision, influenced by fears of fraud, “[t]he spouse or partner must live in a legitimate relationship with their sponsor for two years from the day on which they receive their permanent resident status in Canada.”<sup>120</sup> This new provision sends the message to victims that once they have been married against their will to a Canadian immigrant or citizen, they have to remain married until they acquire permanent residency status. In Mattoo’s words, “you are basically telling me that even if I’m facing violence, I should live in a situation of being a slave to this violence so that I can get my status and then do something about it.”<sup>121</sup> Multiple respondents consulted for this study warned of the danger of marriage fraud concerns taking away much-needed awareness of, and action against, the brutal realities of trafficking for the purpose of forced marriage in Canada.<sup>122</sup> Early efforts are underway to challenge this approach and better represent the complexities at play. Further, comparative studies on legal responses show that a multi-dimensional approach to “forced marriage”, including a human trafficking lens is needed.<sup>123</sup> Efforts to nullify marriage on the grounds of duress and civil law remedies which allow victims to initiate and cease proceedings are potential avenues Canada might further pursue.

<sup>117</sup> Shirley Interview, *supra* note 74.

<sup>118</sup> Mattoo Interview, *supra* note 64. I made several attempts to contact Canadians Against Immigration Fraud, the most vocal group on this issue. The organization did not answer or return any of my calls or e-mails asking to speak to a representative about their work in relation to marriage.

<sup>119</sup> Citizenship and Immigration Canada, Press Release, “‘The Jig is Up on Marriage Fraud,’ says Minister Kenney” (26 October 2012), online: <[www.marketwired.com/press-release/the-jig-is-up-on-marriage-fraud-says-minister-kenney-1718400.htm](http://www.marketwired.com/press-release/the-jig-is-up-on-marriage-fraud-says-minister-kenney-1718400.htm)>.

<sup>120</sup> *Ibid.*

<sup>121</sup> Mattoo Follow-Up Interview, *supra* note 70.

<sup>122</sup> Interview of Navdip (5 August 2011); Mattoo Interview, *supra* note 64; Interview of Rita Kohli (7 October 2012).

<sup>123</sup> See e.g. Brigitte Clark & Claudina Richard, “The Prevention and Prohibition of Forced Marriages: A Comparative Approach” (2008) 57:3 ICLQ 501.

Time will tell if incorporating a human trafficking lens is viable. One debate connected to all legal recourses remains a significant source of contention: to criminalize or not to criminalize?

### C. To Criminalize or Not to Criminalize?

Susan Brownmiller's study *Against Our Will: Men, Women and Rape*<sup>124</sup> was a useful source from the start of this project, as it provides context for feminist discontent and work to end forced marriage and slavery in marriage that took place in Canada in the 1970s onward. Brownmiller put forward the contention that the forcible abduction and rape of the female by the male is "the earliest form of a permanent, protective conjugal relationship, the accommodation called mating that we now know as marriage."<sup>125</sup> Further, she argues that men's violent capture and rape of women led to a full blown male solidification of power through marriage, i.e. patriarchy.<sup>126</sup> In Brownmiller's view, concepts of hierarchy, slavery and private ownership flowed from this risk of rape without a protector and could only be predicated upon the initial subjugation of women. Similarly, in her work on the historical trafficking of women, anthropologist Gayle Rubin argues that marriages are a basic form of gift-exchange through which women are transacted and provide conduits of a relationship between men rather than partners to it.<sup>127</sup> Informed by the early work of Brownmiller, Rubin and others, I argue forced marriage is a symptom of patriarchy, which is deeply pervasive and tied to power, control, dominance and violence. However, in doing so, I agree with Sheila Rowbotham that the concept of "patriarchy" is not the single cause for female subordination.<sup>128</sup> Indeed, as can be seen in this article, "women themselves are part of the diverse historical operations of patriarchy".<sup>129</sup> The fact that women are part of the patriarchal structure, in positions where they work for its maintenance, extends the narrow definition of patriarchy as the oppression of females by males. As such, I agree with and stress the imperative call by Sally Merry Engle and others to go "beyond patriarchy" and focus on what Lori Girshick has called "questions of power over others"<sup>130</sup> more generally. These questions

<sup>124</sup> Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Fawcett Columbine, 1993).

<sup>125</sup> *Ibid* at 17.

<sup>126</sup> *Ibid*. To be clear, I want to clarify that patriarchy is not only solidified through marriage. While my focus in this project is on its links to marriage, marriage is merely one site where control of women through male domination has taken place.

<sup>127</sup> Gayle Rubin, "The Traffic in Women: Notes on the 'Political Economy' of Sex" in Rayna R Reiter, ed, *Toward an Anthropology of Women* (New York: Monthly Review, 1975) 173.

<sup>128</sup> Sheila Rowbotham, "The Trouble with 'Patriarchy'" in Raphael Samuel, ed, *People's History and Socialist Theory* (London: Routledge and Kegan Paul, 1981) 364.

<sup>129</sup> Sue Morgan, *The Feminist History Reader* (Routledge, 2006) at 6. See also Judith Bennett, "Feminism and History" (1989) 1:3 *Gender & History* 251; Rowbotham, *supra* note 128; Sally Alexander & Barbara Taylor, "In Defence of 'Patriarchy,'" in Samuel, *supra* note 128, 370.

<sup>130</sup> As Sally Engle Merry points out, "The feminist framework which looks to patriarchy as the explanation

of community and group power are why I argue a criminalization approach to the problem of forced marriage is problematic.

Furthermore, there has been debate surrounding whether to criminalize forms of forced marriage as opposed to the acts associated to these marriages (i.e., polygamy, adoption, kidnapping, illegal migration/immigration, trafficking and violence).<sup>131</sup> As Osgoode Hall Law School Professor Alan Young asks, “Do we want to single it out so people realize it’s wrong?”<sup>132</sup> As noted above, the *Criminal Code* contains provisions that, when read together, prohibit forcing another person to marry against his or her will. These provisions could have, and arguably should have, been enforced in all cases of forced marriage that I identified. However, Canada lacked a *specific* offence of “forcing someone to marry” until Bill S-7 was passed. Based on case studies, focus groups and cases in other jurisdictions, criminalization on the basis of an involuntary marriage is still not being pursued for one reason: public stigma and the desire of individuals in forced marriage situations not to criminalize their loved ones. According to Mattoo,

I was able to corroborate this with international studies. They do not want any stigma to come to their families. They are not ready to talk to police because there is no social support left for them once they do from anyone. And they don’t want anything to happen to their families. They say “We don’t want our families to be criminalized. It’s just that they were socialized in a way that this is how they think it should be done.”<sup>133</sup>

Until recently, NAAFM has met on a semi-annual or quarterly basis, allowing for information sharing, case-specific consultations, community development, discussions on possible law reform and the establishment of best practices and partnerships across Canada. With the support of a Status of Women grant, Shirley Gillett and colleagues created the forced marriage awareness and education initiative through Agincourt Community Services, held a series of eight spoken word art workshops and piloted English as a Second Language classes with a focus on forced marriage for which a documentary film was developed.<sup>134</sup> In October 2012, SALCO held a second national conference focused on existing resources in Canada to address forced marriage, including “legal resources, [the] legislative context, health resources, and federal government policy as it pertains to ... human trafficking, immigration, visa

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for violence also relies on the binary of powerful males/powerless females and does not describe the complexities of violence or the experience of violence within gendered relationships.” Sally Engle Merry, *Gender Violence* (Chicago: University of Chicago Press, 2009) at 18.

<sup>131</sup> Two respondents informed me of cases of Afghan men and women in Canada adopting girls from abroad and then forcing them to serve as second or third wives in polygamous relationships. I have not been able to corroborate this.

<sup>132</sup> Schmitz, *supra* note 60.

<sup>133</sup> *Ibid* [emphasis added].

<sup>134</sup> See Forced Marriage Project, “Home”, online: <fmp.acsa.community/home/>.



post intervention".<sup>135</sup> Resources and services in Ontario, where the most robust initiatives have taken place to date, were discussed and shared by attendees, as were gaps in service provision and government policies. After publishing its forced marriage report involving 219 clients served by 30 agencies over a two year period, SALCO received funding to explore legal reform options.<sup>136</sup> Since then, the federal government of Canada has denounced child marriage abroad, participated in combatting forced marriage as part of United Nations efforts, acknowledged the existence of the practice in Canada and asserted its commitment to discuss solutions to end forced marriage in Canada.<sup>137</sup> However, SALCO and NAAFM's clear recommendation not to pursue criminalization was ignored by the Harper government when Bill S-7 was introduced to criminalize forced marriage.

SALCO and eleven additional agencies are against criminalization, fearing it will perpetuate myths and deny justice.<sup>138</sup> Further, as socio-legal and human rights scholars have demonstrated, criminal prosecution of an individual does not address the broader institutional structures and community-based contexts of relations, inequalities and gender-based violence experienced by persons in forced marriages who fear testifying.<sup>139</sup> In many cases, victims have been forced into marriages by their entire community, not an individual. This arguably makes the criminal prosecution of one person, among many perpetrators, futile. As one UK survivor explains, "If a girl says no, it's considered a bad thing," and "if you didn't [go along with the marriage] there would be hell to pay from your parents and all your relatives".<sup>140</sup> In a Canadian survivor's words: "You can go to a shelter, but the law, it does not really help."<sup>141</sup> Many fear what Reitman has coined the "psychosocial costs of exit" which family and community members have experienced when

<sup>135</sup> Anis, Konanun & Mattoo, *supra* note 4 at 3. A youth-led story book initiative with forced marriage scenarios depicted in a comic book style was also published.

<sup>136</sup> As explorations on possible legal approaches begin, we can learn from other countries. See e.g. Emma Ratia & Anne Walter, *International Exploration on Forced Marriages: A Study on Legal Initiatives, Policies and Public Discussions in Belgium, France, Germany, the United Kingdom and Switzerland* (Oisterwijk: Wolf Legal Publishers, 2009).

<sup>137</sup> The Government of Canada has included content on forced marriage in the following materials: Department of Justice, "Child Abuse is Wrong: What Can I Do?" (2012), online: <[www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/caw-mei/index.html](http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/caw-mei/index.html)>; Department of Justice, "Abuse is Wrong in Any Language" (2012), online: <[www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/fe-fa/index.html](http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/fe-fa/index.html)>; Global Affairs Canada, "Bon Voyage, But...Essential Information for Canadian Travellers", online: <<https://travel.gc.ca/travelling/publications/bon-voyage-but>>.

<sup>138</sup> See: SALCO, "Perpetuating Myths, Denying Justice: 'Zero Tolerance for Barbaric Cultural Practices Act'", online: <[www.salc.on.ca/FINALBILLS7STATEMENT%20updated%20nov%2018.pdf](http://www.salc.on.ca/FINALBILLS7STATEMENT%20updated%20nov%2018.pdf)>.

<sup>139</sup> Early analysis suggests commonalities between involuntary marriage and domestic violence cases. In both, victims are extremely fearful to exit the situation, to prosecute their abuser (and even more so their parents/family members) and the abuser(s) in question is/are often not held responsible. Further, there seems to be a direct correlation between the amount of support that a victim receives and the outcome of intervention on the part of front-line service groups or NGOs.

<sup>140</sup> Cited in Anitha & Gill, "Coercion", *supra* note 108 at 172.

<sup>141</sup> Interview of Amina (24 April 2010).

seeking help, including being disowned.<sup>142</sup> Others stress that Canada must avoid “putting the cart before the horse” when it comes to criminalization.<sup>143</sup> Parents who perpetrate forced marriages often believe they are doing what is best for their children and are against government and law enforcement intervention in what they feel is a private matter. Naïma Bendriss explains that parents and family members “veulent préserver l’intégrité et l’honneur de la famille. Ils sont souvent eux-mêmes influencés dans leur action par leur entourage et ne comprennent pas pourquoi le gouvernement interfère dans une situation considérée comme interne à la famille”.<sup>144</sup> The concerns set out above indicate that criminalization can have harmful consequences for persons in forced marriages, their children and family members, whether their family members were complicit or not. Together, these accounts invite further reflection and analysis on the use of criminal law as a strategy to combat forced marriage.

After she was married against her will, Sandeep was physically abused, ill-treated by her forced husband and in-laws irrespective of whether she was pregnant or unwell, threatened and forcibly taken to her forced husband’s room or another designated location whenever he wanted sex.<sup>145</sup> When Sandeep contracted a sexually transmitted disease which confirmed her forced husband’s infidelity during the seven years after her forced marriage, she said to herself “enough is enough”.<sup>146</sup> She contacted SALCO for help. In 2000, Sandeep spoke to Mattoo who told her “it sounds like your human rights have been breached”.<sup>147</sup> Sandeep’s response to Mattoo’s comment was telling. She asked, “Do I have those?”<sup>148</sup>

For Sandeep and others like her, bowing to the pressure and going through with a forced marriage “is what you’re expected to do, there are no options” and “the only law that exists is that of the father in the house.”<sup>149</sup> Mattoo encounters several dozen cases of forced marriage per year. Often, the persons who enter her office, who are in marriages conducted without their legal consent, have not

<sup>142</sup> Anitha & Gill, “Coercion”, *supra* note 108 at 176. See testimony on the costs of exit written by a forced marriage survivor in Jasvinder Sanghera, *Shame* (Hodder & Stoughton Ltd, 2007).

<sup>143</sup> They include the NAAFM, the Barbara Schlifer Clinic and SALCO.

<sup>144</sup> My thanks to Naïma Bendriss for sharing her research report entitled “Guide sur les mariages forcés au Canada à l’usage des intervenants et des intervenantes de terrain,” which she completed in November 2010 for the Department of Justice. The English translation of the quote above is: “want to preserve the integrity and honour of the family. They themselves, in their actions, are often influenced by their entourage and do not understand why the government is interfering in a situation they consider to be internal to the family”.

<sup>145</sup> Mattoo Interview, *supra* note 64.

<sup>146</sup> Interview of Sandeep (14 November 2011).

<sup>147</sup> *Ibid.* Once a victim, Sandeep is now an advocate against forced marriages, who speaks to raise awareness around the issue. She was a guest speaker at the ‘Right to Choose: an International Symposium on Forced Marriage’ in Toronto in 2008. As she says, “My story could be your story, which together becomes our story.” Chokshi, Khanna & Silim, *supra* note 5 at 10.

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

perceived what they have experienced as violence: "I've heard clients tell me: it might be odd for you, but it's not odd for me, because I've seen all my sisters, all my cousins, all my family members and community members go through this the same way."<sup>150</sup> In other cases, persons in forced marriage situations have thought they will gain more control or power over their lives when fleeing other situations, only to be "completely taken aback by what happens to them and how basically their controller just changes hands from parents (or brothers and parent) to husband and his parents."<sup>151</sup> Referring to the United States' and Canada's blindness to the human rights abuses experienced by young FLDS Mormon girls who have been married and impregnated by men in their forties and fifties before they are of legal age to consent to sex or marriage,<sup>152</sup> Daphne Bramham asks, "How is it that nations, so clear-sighted in recognizing human rights atrocities in other countries ... have been so blind to the human rights violations committed against their own women and children?"<sup>153</sup> This question applies to cases of forced marriage in Bountiful, British Columbia and to the many forms of involuntary marriage that have been ignored by the Canadian state.<sup>154</sup> It deserves a comprehensive answer.

#### IV. Conclusion

Through a diverse set of sources and an oral history methodology, this article has sought to illuminate some of the deeply complex factors at play surrounding the law and understandings of the law in relation to forced marriages in Canada from 1948 to 2008. In doing so, this article has emphasized the diverse range of cases and the challenges in differentiating between arranged, forced and servile marriages, especially in relation to the concept of consent. This article has highlighted the disconnect between domestic and international law and stressed the substantive limitations of both. Through analysis of written sources and findings from interviews with survivors, community members, researchers and experienced front-line service providers, this article has stressed the complexities at play that

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> Since the 1990s, cases of forced marriage among the FLDS community in Bountiful, British Columbia have received increasing attention. One of the community's leaders, Winston Blackmore, has admitted under oath and on television that several of his 24 wives were under the age of 18 when he married them. See Daphne Bramham, "Conservatives, Polygamy and Cultural Relativism", *Vancouver Sun* (4 October 2015), online: <[www.vancouversun.com/touch/story.html?id=11413382](http://www.vancouversun.com/touch/story.html?id=11413382)>; Daphne Bramham, "Polygamy Charges Approved Against Winston Blackmore, Three Other Leaders of Religious Sect in Bountiful, B.C.", *Vancouver Sun* (14 August 2014), online: <[www.vancouversun.com/touch/story.html?id=10115758](http://www.vancouversun.com/touch/story.html?id=10115758)>; Craig Jones, *A Cruel Arithmetic: Inside the Case Against Polygamy* (Irwin Law: 2012); Susan G Drummond, "Polygamy's Inscrutable Mischief" (2009) 47:2 Osgoode Hall LJ 317 at 329.

<sup>153</sup> Daphne Bramham, *The Secret Lives of Saints: Child Brides and Lost Boys in Canada's Polygamous Mormon Sect* (Random House of Canada, 2009) at 8.

<sup>154</sup> Sapoznik, *supra* note 25.

are far greater than those grasped within the law. It has underscored the potential advantages and current limitations of applying a human trafficking lens, specifically existing TIP laws and the *Palermo Protocol*, to this problem and explained why the impulse to prosecute criminally can be misguided. Confusion surrounding human rights and marriage laws, combined with reluctance on the part of survivors to press charges against their loved ones because of very real institutional, community and family dynamics at play, and concerns of potential re-victimization, stigma and harm to their children in forced marriage cases make any criminal prosecution of the perpetrators of forced marriages a very complicated decision. Therefore, in answer to the question whether or not to criminalize I would say not yet. We must first ask another question—how? How could we criminalize forced marriage with reforms to Bill S-7 (or without it) that address the fundamental concerns and constraints to consent raised in this article, or how can we use existing laws to combat this practice? Awareness and understanding of forced marriage cases, such as those experienced by Sandeep and other Canadians, is growing. As awareness increases, the number of cases reported is likely to rise. As we further investigate the nature, use-value and the strengths and limitations of Canadian legal instruments and provisions in cases of forced marriage, the heated debate will persist: to criminalize or not to criminalize?

## V. Next Steps

As a last resort, some Canadians in forced marriage situations have put a metal spoon in their undergarments in the hope of being stopped by airport security officials in order to alert them of their situations before they board planes taking them to their forced marriage ceremonies.<sup>155</sup> While clever and successful in some cases, this last minute measure is far from ideal. Unfortunately, with the present state of the law and the lack of a national strategy to prevent forced marriages, the practice of smuggling a spoon is often the last and only means of securing help.

This article illuminated the need for services and resources for victims, and proactive protocols and policies to prevent forced marriages in Canada. In light of its findings, the following policy recommendations are suggested:

1. A National Action Plan to combat forced marriage organized, coordinated and funded by the federal government that will prioritize survivor/experiential voices and consultation with at-risk communities, the NGO sector, law enforcement and researchers.

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<sup>155</sup> Sarah Ditung, "Too Much, Too Young", *New Humanist* (18 September, 2012), online: <[newhumanist.org.uk/articles/2872/too-much-too-young](http://newhumanist.org.uk/articles/2872/too-much-too-young)>

2. A long-term, nationally-funded multidisciplinary task force (like NAAFM) with federal government participation from CIC, DFAIT and the IRB to carry out the National Action Plan; and call for research on avenues of criminalization and reforms to Bill S-7.

The National Action Plan and associated task force would play an invaluable role in coordinating services and carrying out initiatives to:

- establish uniform consular services for persons in forced marriages involving Canada as a source, transit or destination country;
- develop regional teams and local protocols, including pre- and post-safety protocols for persons in forced marriages, shelters and agencies and a system to vet service providers;
- establish Provincial Victim Funds;
- institute system changes across health, education, justice and child and family service sectors and jurisdictions;
- mandate standardized training for social workers, judges, lawyers, CBSA, RCMP, local police, legal clinics, consular officials, educators, health care providers and service providers;
- fund wrap-around services and in-house programs at second-stage safe houses and shelters;
- develop a youth-specific strategy;
- develop an adult-specific strategy;
- fund a large-scale, national publicity campaign to educate the general public about forced marriage, how to identify signs of forced marriage and how to report potential cases;
- create or insert forced marriage into the curriculum for all streams of students and ESL programs;
- increase funding for long-term, complex investigations for forced marriage cases involving organized crime or complex interjurisdictional issues, including overseas components;
- fund a dedicated academic research hub to develop a centralized

- issue-based research initiatives and disseminate data and findings on an annual basis;
- support the capacity building of service providing organizations to respond to the needs of persons in forced marriages;
- support and encourage social marketing campaigns with business and industries;
- create more awareness about existing translation services available;
- liaise with long-term healing, counselling, trauma-informed and culturally relevant programs; and
- encourage funders of granting bodies and foundations to fund long-term projects.

Additionally, it is critical that we take into account

- the unique needs of men and boys in forced marriages;
- potential service gaps for 16 and 17 year olds in provinces where services are not available to them under child welfare law mandates; and
- the whole person from a biological, social and psychological perspective. Individuals in forced marriages need to know they are valued by their religion/community and each case is different, which means it's important to have individual case conferencing, to integrate culture and spiritual concerns.
- that forced marriage cases hurt us all. Proactive intervention programs are essential, as they help prevent the consequences of forced marriages from the personal, fiscal and general societal points of view alike.

