

Forced Marriage in Canada

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February 5, 2016

Agenda

- * 1. What is Forced Marriage?
- * 2. How big is the problem in Canada?
- * 3. Recent changes to legislation to deal with FM
- * 4. Proponents of the legislation
- * 5. Criticisms of the legislation

What is “Forced Marriage?”

- * How does forced marriage differ from an arranged marriage?
 - * Consent
- * Forced marriage occurs where one or both persons being married do not consent or are unable as a result of their age (under 16) to consent.

How big is the problem in Canada?

- * No available Canada-wide data on the prevalence of forced marriage
- * 2013 SALCO study: 219 **confirmed and suspected** cases in 2 years across 30 community organizations in Ontario and Quebec;
- * SALCO Survey limited:
 - * Organizations did not formally track FM cases;
 - * Lack of understanding of FM resulted in failure to identify cases as FM cases; and
 - * Lack of resources available to service providers limited their ability to complete surveys.

2013 SALCO Survey Summary

- * Most victims tend to be young
- * Victims can be male, female, transgendered, etc.
- * Victims come from all cultures/communities/religions
- * Many victims had established ties to Canada as seen by the length of time that they had been in Canada
- * A large number of victims were permanent residents of Canada
- * A large number of victims were taken outside of the country that they lived in (either taken out of Canada or brought to Canada)
- * Many victims were either in high school or post-secondary education
- * A majority of victims were unaware of their rights in a FM situation
- * A majority of victims were financially dependent on others (had no economic independence)
- * Victims were forced into marriage most often by family members (with parents making up the largest percentage)
- * Challenges in FM cases included lack of counselling, lack of legal support, poor risk assessment, and lack of housing and financial support.

Bill S-7 – the “Zero Tolerance for Barbaric Cultural Practices Act”

- * Despite its controversial title, Bill S-7 was passed on June 16, 2015
- * Bill S-7 amends several acts, which apply across Canada (Federal):
 - * 1. the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (the “IRPA”)
 - * 2. the *Civil Marriage Act*, SC 2005, c 33 (the “Civil Marriage Act”)
 - * 3. the *Criminal Code of Canada*, RSC 1985, c C-46 (the “Criminal Code”)

Bill S-7 – Part I

- * Part 1 amends the *IRPA* to specify that a permanent resident or foreign national is inadmissible on grounds of practising polygamy in Canada.

Bill S-7 – Part II

- * amends the *Civil Marriage Act*, to:
 - * require a free and enlightened consent to marriage and for any previous marriage to be dissolved or declared null before a new marriage is contracted.
 - * The requirements were previously provided for in the Federal Law—Civil Law Harmonization Act, No. 1 only in respect of Quebec and under the common law in the other provinces.
 - * require a minimum age of 16 years for marriage
 - * The requirement was previously provided for in the Federal Law—Civil Law Harmonization Act, No. 1 only in respect of Quebec.

Bill S-7 – Part III

- * amends the *Criminal Code* to:
 - * clarify that it is an offence for an officiant to knowingly solemnize a marriage in contravention of federal law;
 - * provide that it is an offence to celebrate, aid or participate in a marriage rite or ceremony knowing that one of the persons being married is doing so against their will or is under the age of 16 years;
 - * provide that it is an offence to remove a child from Canada with the intention that an act be committed outside Canada that, if it were committed in Canada, would constitute the offence of celebrating, aiding or participating in a marriage rite or ceremony knowing that the child is doing so against their will or is under the age of 16 years;

Bill S-7 – Part III continued

- * provide that a judge may order a person to enter into a recognizance with conditions to keep the peace and be of good behaviour for the purpose of preventing the person from committing an offence relating to:
 - * the marriage of a person against their will;
 - * the marriage of a person under the age of 16 years; or
 - * the removal of a child from Canada with the intention of committing an act that, if it were committed in Canada, would be such an offence; and
- * provide that the defence of provocation is restricted to circumstances in which the victim engaged in conduct that would constitute an indictable offence under the Criminal Code that is punishable by five years or more in prison.

Proponents of Bill S-7

- * The amendments to the Civil Marriage Act will assist in protecting girls who are subject to early forced marriage and align with International conventions regarding minimum age for marriage.
- * Standardizes the minimum age of marriage across Canadian provinces.
- * The amendments to the Criminal Code of Canada will work as a deterrent for perpetrators of forced marriage as it would make it possible for perpetrators and subsequent sexual assault violators to be eligible for life sentences.
- * Some advocates have argued that criminal penalties are more effective because they embody a statement by society that domestic violence and forced marriages will not be tolerated. Orders for protection simply limit the defendant's conduct; criminal sanctions label that conduct as wrong.

Criticcis of Bill S-7

* Many agencies who advocate for victims of forced marriage, have been very vocal of their criticisms of this bill:

- * South Asian Legal Clinic of Ontario
- * Barbra Schlifer Commemorative Clinic
- * Metro Toronto Chinese & Southeast Asian Legal Clinic
- * South Asian Women's Centre Woman Abuse Council of Toronto
- * Federation of Muslim Women
- * The Redwood Shelter
- * Rights of Non-Status Women Network
- * FCJ Refugee Centre
- * La Maison Shelter
- * Rupaleem Bhuyan
- * Anita Khanna

Criticisms of Bill S-7 continued

- * Criticisms of the amendments to Canada's Immigration Act (IRPA):
 - * The Act makes the unfounded and problematic assumption that polygamous unions by their nature are abusive or coercive.
 - * It ignores the reality that polygamy has been illegal in Canada since 1892, and immigration law and policy already contain provisions addressing polygamous unions.
 - * It does not contain any protection or assistance framework for the victims of abuse and children in polygamous marriages

Criticisms of Bill S-7 Continued

- * Criticisms of the amendments to Canada's Civil Marriage Act:
 - * the public framing of the proposed changes as necessary to protect women and girls from “cultural” violence in “immigrant communities” perpetuates the racist myth around racialized communities
 - * there are already existing provincial and territorial legislations that sets out requirements, such as parental consent and consent of the court, for marriages between the national minimum age and the age of majority.

Criticisms of Bill S-7 Continued

- * Criticisms of amendments to Canada's Criminal Code:
 - * Existing criminal laws have sufficient provisions that can be applied to combat duress, harm, assault, kidnapping and other acts of violence that may be inflicted on survivors of forced marriage.
 - * The proposed changes around the peace bond process would technically require that the court give notice to the perpetrators in order to afford them the opportunity for a court hearing, which may take some time. This could lead to further harm of the victim in the waiting period between the hearing and the ordering of the peace bond;
 - * Data collected by SALCO shows that victims are less likely to report FM's because of their internal struggle with placing their family at risk.

Criticisms of Bill S-7 Continued

- * To counter the increased social stigma, perpetrators of FM will become more skilled at hiding their attempts at forcing a marriage
- * While the bill asks that victims come forward and use the “help” that they are providing, the federal government has failed to tangibly support victims by supporting the shelters, front-line service providers and support workers who are working in tandem with these victims. As with many other victims of forced marriage and domestic violence, they have often asked for help and have been met with funding cuts, insufficient training on these issues or being turned away because these organizations are at their peak.
- * Criminalization could become a tool for the police to further profile and harass racialized communities that are the intended targets of these announcements.
- * There is no evidence to support that the criminalization of forced marriage would in fact serve to prevent it