

TACKLING EARLY AND FORCED MARRIAGE AND "HONOUR" BASED VIOLENCE IN CANADA

**A Report on the February 26, 2015 Department of
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This is a report to the International Centre for Criminal Law Reform and Criminal Justice Policy on the Department of Justice/Department of Foreign Affairs, Trade and Development Conference on "Tackling Early and Forced Marriage and "Honour Based Violence in Canada (26 February 2015); it includes a brief description of presentations and discussions that took place at the conference.

International Context

International law has long recognized that discrimination based on gender is not only illegal but it also goes against the human rights of women. The Convention on the Elimination of All Forms of Discrimination Against Women was ratified in 1995 and obliges States parties, in general, to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women" (art. 2). It also calls upon States to eliminate laws, stereotypes, practices and prejudices that impair women's well-being.

International organizations have also long recognized that States have an obligation to address harmful traditional and cultural practices. Every society in the world has traditional practices, some of which are beneficial to the community and others which are not. Some traditional practices amount to violence against women and they are practised because they are accepted by the group as protecting the honour of the family and are tolerated by society. These harmful traditional practices include female genital mutilation, early and forced marriage, son preference and therefore implications for daughters, female feticide and infanticide, bride burning associated with dowry, and honour based violence and killing.

The international community has promoted the equality between men and women as a means of addressing and changing social values as a way to deal with harmful traditional practices. The discourse on the intersection of culture and violence against women has been somewhat difficult. There has been resistance from some communities who argue that those practices have been part of their history and culture. The issue, in simple terms, is that of affirming the supremacy of human rights over cultural beliefs and practices.

In 2006, a report by the UN Special Representative of the Secretary-General on Violence Against Children¹ provided a global picture of violence against children and proposed ways to prevent and respond to the issue. In the report it was stated that much of the violence perpetrated against children was hidden. One reason for this was that children feared that stigma and shame associated with reporting such incidences to authorities, and also because in many societies violence against children was socially acceptable. The report states:

Harmful traditional practices affect children disproportionately and are generally imposed on them at an early age by their parents or community leaders. According to the Special Rapporteur on traditional practices affecting the health of women and the girl child, female genital mutilation, which, according to WHO, is carried out on increasingly younger girls, is prevalent in Africa, and also occurs in some parts of Asia and within immigrant communities in Europe, Australia, Canada and the United States of America.³² Other harmful traditional practices affecting children include binding, scarring, burning, branding, violent initiation rites, fattening, forced marriage, so-called “honour” crimes and dowry-related violence, exorcism, or “witchcraft”

The UN Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, appointed by the UN Commission on Human Rights in 1994, reviewed all forms of traditional practices including virginity tests, foot binding, female infanticide and dowry deaths. In her preliminary report², the Special Rapporteur pointed out that blind adherence to these practices and State inaction with regard to these customs and traditions have made possible large-scale violence against women. In another report of the Special Rapporteur on Violence Against Women³, it was emphasized that in order for States to intervene effectively to gender-based violence, it was important to assess prevailing stereotypes and address the social or cultural or economic factors and belief systems that underpinned such attitudes and values (including “honour”).

In 2009 the World Health Organization published a report⁴ about the need to change cultural and social norms that support violence as part of a series on violence prevention. The report makes the point that violent behaviour is strongly influenced by culture and social norms and that it is possible to prevent certain forms of violence by influencing those norms and changing cultural beliefs.

¹ The United Nations Special Representative to the Secretary-General on Violence Against Children. “Report of the independent expert for the United Nations study on violence against children”. 2006.

² The United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences. "15 years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences 1994-2009: A Critical Review", Geneva, 2009.

³ UN Human Rights Council Report of the Special Rapporteur on violence against women, Rashida Manjoo, on the expert group meeting on gender motivated killings of women (A/HRC/20/16/Add.4). Geneva, 2012.

⁴ World Health Organization. Changing cultural and social norms supportive of violent behaviour. Series of briefings on violence prevention: the evidence, Malta, 2009.

More recently, in a report to the UN General Assembly⁵ on the promotion and protection of the rights of children, part of the preamble to a draft resolution on the girl child reads:

“Deeply concerned also about discrimination against the girl child and the violation of the rights of the girl child, which often result in less access for girls to education, and to quality education, nutrition, including food allocation, and physical and mental health care, in girls enjoying fewer of the rights, opportunities and benefits of childhood and adolescence than boys, and in leaving them more vulnerable than boys to the consequences of unprotected and premature sexual relations and often being subjected to various forms of cultural, social, sexual and economic exploitation and violence, abuse, rape, incest, honour-related crimes and harmful practices, such as female infanticide, child, early and forced marriages, prenatal sex selection and female genital mutilation”

As the world celebrates the 25th anniversary of the Convention on the Rights of the Child (CRC) the United Nations General Assembly has adopted a new practical instrument to assist States implement of Article 19 which focuses on the field of crime prevention and criminal justice. The new United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice are designed to help countries integrate crime prevention and child protection strategies.

The Model Strategies emphasize the need to ensure that States’ laws prohibit all forms of violence against children and,

“Because a countless number of girls and boys fall victim to harmful practices undertaken under different pretexts or grounds, including female genital mutilation or cutting, forced marriage, breast ironing and witchcraft rituals, Member States are urged, as appropriate and while taking into consideration relevant international human rights instruments”

The Model Strategies also stress the importance of offering effective protection to child victims of violence and,

To ensure that an informal or mediated settlement of cases involving violence against children takes place only when it is in the best interests of the child, and does not involve harmful practices, such as forced marriage, taking into account any power imbalance and the vulnerability of the child or his or her family in consenting to a settlement, with due regard for any future risk to the safety of the child or other children”

Despite the extensive efforts at the international level to counter harmful practices justified by culture or religion, there is still a serious problem that exists in many countries including Canada.

⁵ UN General Assembly Report on the Promotion and protection of the rights of children, 6 December 2013 (A/68/452)

Canadian Context: Bill S-7 - Zero Tolerance for Barbaric Cultural Practices Act

The Government of Canada has introduced Bill S-7 which amends the Immigration and Refugee Protection Act, the Civil Marriage Act, and the Criminal Code of Canada. Under existing immigration laws, most criminal convictions or even unconvicted criminal acts committed abroad make permanent residents and foreign nationals inadmissible or deportable from Canada. Bill S-7 creates a polygamy-specific inadmissibility provision in the Immigration and Refugee Protection Act.

The new Bill makes amendments to the Civil Marriage Act to legislate across Canada two existing legal requirements for a valid marriage: the requirement for free and enlightened consent and the requirement for ending an existing marriage prior to entering another. The bill also establishes a new national minimum age for marriage of 16, below which no marriage would be lawful. This proposed amendment would provide equal protection to all Canadian children by setting the minimum age to age 16 across Canada.

The Bill amends the Criminal Code, inter alia, to provide additional protections building on the proposed amendments to the Civil Marriage Act to prevent forced or underage marriages. It also creates a new offence prohibiting the active and knowing participation in a forced marriage ceremony by any person. Finally, the Bill would also amend the Criminal Code to address concerns that the defence of provocation has been raised in several so-called “honour” killing cases in Canada. These cases involved accused persons who killed their wife, sister or sister’s fiancé and alleged that the killing was motivated by their perception that the victims had brought “dishonour” to them or their family through their conduct or choices, taking into account their culture’s views about appropriate gender roles and behaviour. Currently, any conduct by the victim—including insults and other forms of offensive behaviour that are lawful can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden. The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family “honour” or reputation, cannot be used to reduce murder to manslaughter. Only conduct by the victim that amounts to a relatively serious criminal offence could be argued to be “provocation” for the purposes of the defence.⁶

The Government of Canada Conference on “Tackling Early and Forced Marriage and “Honour” Based Violence in Canada”, 26th February 2015, Ottawa.

The conference was jointly hosted by the Department of Justice and the Department of Foreign Affairs, Trade and Development and took place on the 26th February 2015 at the John G. Diefenbaker Building in Ottawa. The day-long conference included the following panel discussions:

⁶ Government of Canada News website.

- Setting the Stage: What do we know about Early and Forced Marriage and “Honour” Based Violence?
- The Legal Framework in Canada
- Responding to Early and Forced Marriage and “Honour” Based Violence: Enforcement and Prosecution
- Protecting Children: Extraterritorial Issues and Domestic Legal Challenges
- Responding to Victims

The program also included a key-note address by Jasvinder Sanghera, Executive Director of Karma Nirvana, an NGO based in the UK which supports victims of honour crimes and forced marriage.

There were some 250 participants at this conference from international organizations, federal and provincial governments, service provider sector, and from advocacy groups. It was a very useful and informative event, and well organized.

The main issues raised during the discussions included:

- The lack of data on victims and specific information on cases of forced marriage and honour based violence
- The risk factors facing victims in reporting to authorities
- The lack of services for victims of forced marriage and honour based violence
- The lack of resources and tools to assist immigrant women
- The particular vulnerability of immigrant women
- The lack of training for front line workers about honour based crimes
- The absence of child protection services where forced/early marriage takes place
- The stigmatization of immigrant communities
- How to deal with “cultural” issues without being racist
- Using a human rights lens
- Challenges for investigating and prosecuting authorities
- Importance of educating judges in honour based crimes
- Need for risk assessment tools on forced marriage and honour based violence
- Need for identification of cultural indicators of honour based violence