Intersection Forced Marriage & Human Trafficking

Moderator: Daliah Setareh

Presenters: Casey Swegman

Pooja Dadhania

Laura Vidal

APRIL 6, 2017

USA

FOUNDA OF LOS AND





GEORGETOWN LAW

The Freedom Partnership End Modern Slavery

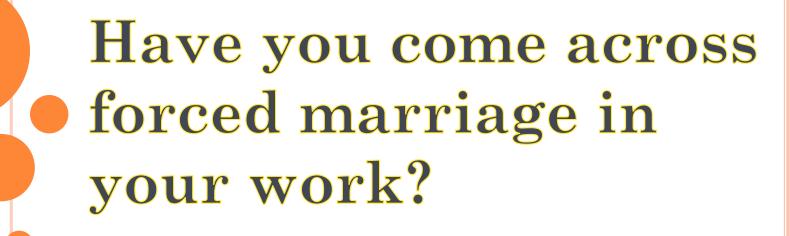




- 1. Identify forced marriage
- Identify intersections between forced marriage and trafficking
- 3. Explore remedies for forced marriage
- 4. Discuss policies to protect forced marriage survivors and prevent forced marriage
- 5. Discuss the Australian model as a case study

WHY ARE WE TALKING ABOUT THIS?

- Forced marriage is a form of violence against women in its own right.
- Forced marriage is just one part of a spectrum of other harms.
- Forced marriage cases can have elements of trafficking and human trafficking survivors may have experienced a forced marriage.



FORCED MARRIAGE – STORY OF L.

- L. is a mother of two teenaged daughters.
- L's husband began to arrange marriages for his two daughters.
- oL. and her daughters did not agree.
- When they challenged him, he isolated them and beat them.
- L. and her daughters fled, and are currently in hiding.

FORCED MARRIAGE – STORY OF R.

- When R. was 15 years old, her mother borrowed money from an older family friend to support R. and her siblings.
- The family friend believed that R. was promised to him in return.
- He came to R.'s home multiple times, threatening to rape R. if she did not marry him.
- R. was terrified and escaped to the United States alone.

FORCED MARRIAGE – STORY OF F.

- When she was 19, F.'s family arranged a marriage for her.
- She and her husband were not allowed to be alone before marriage.
- F.'s husband became abusive very soon after they married.
- F. tried to obtain a restraining order, but the community pressured her to drop it and reconcile.
- After 12 years, F. fled with her two daughters.
- Her family shunned her and declared her dead.

FORCED MARRIAGE – STORY OF F.



Fraidy Reiss, Unchained at Last



DEFINING FORCED MARRIAGE

Defining Forced Marriage

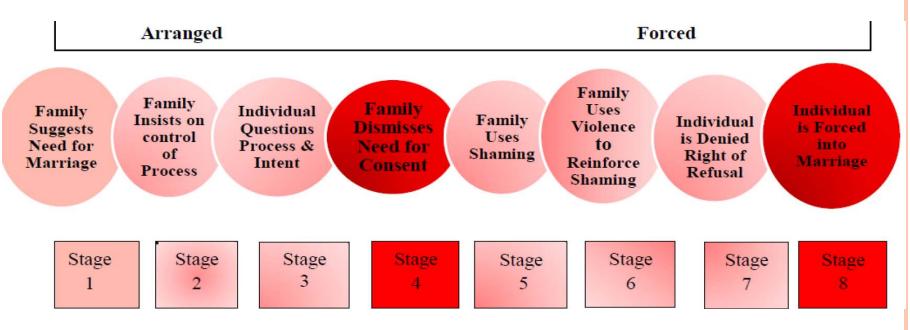
- A marriage that takes place without the free and full consent of one or both of the intended spouses.
- Lack of free and full consent:
 - Younger than the legal age to marry (child marriage)
 - Incapacity or disability
 - Force, fraud, or coercion
- Includes marriages that have already happened or may happen in the future

 Love marriage or freewill marriage

•Arranged marriage

• Forced marriage

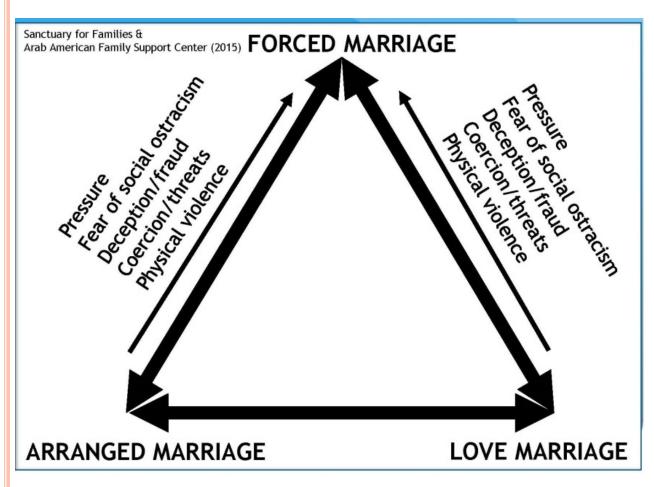
Arranged Marriage → Forced Marriage



Vidya Sri & Darakshan Raja (2013)

• Shift in family's attitude

THE MARRIAGE CONTINUUM



- Dynamics may shift over time
- Love and
 arranged
 marriages can
 turn into
 forced
 marriages

WHY FORCED MARRIAGE HAPPENS

- Control Unwanted Behavior and Protect Family Reputation
 - Control body and sexuality
 - Prevent unsuitable relationships
 - Suppressing LGBTQ identity
 - Suppressing independence
 - Reaction to individual being too "westernized"
 - Reaction to rape
 - Honoring a prior arrangement/commitment

WHY FORCED MARRIAGE HAPPENS (CONT.)

Tradition and Customs

- Perceived cultural ideals
- Marriage as union of families ("joint families")
- Individual's belief that it is their duty
- Belief that marriage in the individual's best interests

Status and/or Economics

- Enhance a family's status and/or economic stability
- Pay back debt
- Ensure ongoing care for adult/child with special needs
- Immigration status

FORCED MARRIAGE IN THE U.S.

Does this Really Happen Here? — Tahirih Justice Center 2011 Survey

- National survey of over 500 respondents in 47 states
- Found that forced marriage is a serious and hidden problem in the United States
 - As many as 3000 cases in the prior two years
 - 41% of all respondents had encountered at least one case



WHO FACES FORCED MARRIAGE? — TAHIRIH JUSTICE CENTER 2011 SURVEY

- Victims or families from at least 56 countries, including non-immigrant American families
 - Most frequently, India, Pakistan, Mexico, Bangladesh, Philippines, Afghanistan, Somalia, Yemen
- Diverse religious backgrounds
 - Muslim, Christian, Hindu, Buddhist, Sikh, and Jewish
- Majority are female, but some are male
- All ages, but many under 18
- Varied immigration status



INTERSECTION FORCED MARRIAGE HUMAN TRAFFICKING

In what situations do forced marriage and human trafficking overlap?

Forced Marriage

- Multiple motivations including economic dependency
- Illegal acts performed through legal systems
- Possibility of servile marriages
 - Parental & societal pressure

- Lack of consent
- Lack of personal liberty
- Physical, sexual and psychological harm
 - Exploitation
- Exchange of favors
 - Risk of death

Human Trafficking

- Main motivation is economic dependency & exploitation
- Illegal
- Slavery like conditions



Intersectionality

THE A-M-P MODEL

Action

Induce

Recruits Harbors Transports Provides or

Obtains

Means*

Fraud or Coercion

Force

Purpose

Commercial Sex (Sex Trafficking) or Labor/Services

(Labor Trafficking)

*Minors induced into commercial sex are human trafficking victims regardless if force, fraud, or coercion is present.

INTERSECTIONALITY

- Forced marriage can be used as a tool to facilitate the transport of a trafficking victim from one country to another for the purposes of exploitation.
- Trafficking cases can involve forced marriage as a secondary trauma.
- Understanding complex historical trauma is essential to providing holistic services.



COERCIVE TACTICS TAHIRIH JUSTICE CENTER 2011 SURVEY

- Common tactics (actions/means):
 - Emotional blackmail, isolation, social ostracism, economic threats, threats of physical violence
- Less common tactics (action/means):
 - Immigration-related threats, physical violence, deception, death threats, stalking, forced travel abroad, holding captive



INTERSECTIONALITY

Tahirih's Observations

- <u>Majority:</u> exploitation and monetary gain are **not** the main drivers/motivators.
- <u>Some cases</u>: exploitative or financial motivation for the family/perpetrators of forced marriage.



SCREENING FOR FORCED MARRIAGE

CONFIDENTIALITY & MANDATED REPORTING

- Before screening/intake: discuss confidentiality & mandated reporting
- Mandated Reporting
 - reasonable suspicion where child abuse may have occurred, or risk of such abuse
 - DCFS/police involvement may be problematic
- Seek informed consent before disclosure

SCREENING/INTAKE

• DO NOT:

- use family or community members as interpreters
- talk to or negotiate with family/community members without the individual's consent

o DO:

- Empower: educate about rights and options
 - E.g., right to say no to the marriage; police; shelters; legal options
- Ask open-ended questions

SAMPLE SCREENING QUESTIONS FOR FORCED MARRIAGE

Is honour important to your family/in-laws?	Are your family/in-laws concerned about what the community/extended family will think?
Are boys/men treated differently to women in your house?	Did you/will you choose who your marriage partner will be?
Have any of your siblings been forced to marry?	Have your family/in-laws prevented you from obtaining an education?
Have you been kept in the house not allowed to leave for long periods of time?	Have you been able to maintain contact with your family following your marriage?
Has anyone in your family/in-laws used or threatened violence against you?	Do you know what your visa status is?
Have you been threatened with being sent back to your country of origin?	Are you allowed to come and go from the family home as you choose?
Are you allowed out of the house without an escort from the family?	If you wanted to, are you allowed to work?
Do you have any physical/emotional health problems? Have you been able to see a doctor about this?	

REMEDIES

FAMILY LAW REMEDIES

- Remedies post-marriage:
 - Divorce
 - Annulment
 - Child custody
 - Restraining Order against spouse & spouse's family
- Remedies to prevent forced marriage:
 - Restraining order against family
 - Challenge is fitting the harm into legal framework
 - Removing minor from parents' care
 - Guardianship proceedings

IMMIGRATION REMEDIES

- T Visa Victims of sex or labor trafficking
- Asylum Individuals who escaped gender-based violence in home country
- VAWA Spouses, children, parents who were victims of abuse by a U.S. citizen or LPR
- U Visa Victims of serious crimes
- Special Immigrant Juvenile Status Minors who have been abused, abandoned, or neglected

Remedies for individuals at risk & survivors: Social services

- Rights based education and empowerment
- Supportive counseling (individual & group)
- Emergency shelter and long term transitional housing options
- Relocation
- Connecting to other survivors

- Connecting with supportive religious leaders
- Help applying/enrolling in school
- Privacy and Identity Protection
- Economic empowerment & credit counseling
- Providing opportunities for leadership & advocacy



POLICIES TO PROTECT **SURVIVORS** AND PREVENT FORCED MARRIAGE

CURRENT LEGAL FRAMEWORK – FEDERAL LEVEL

- No forced marriage-specific criminal law
- Some guidance in training materials for U.S. consular officers posted overseas; some travel advisories for the public
- De facto minimum legal age for U.S. citizen to sponsor a spouse visa is 18; no set minimum for foreign spouse
- Marriages which are recognized as legal in the location where they took place are (for the most part) recognized as legal in the United States they "count" here.



CURRENT LEGAL FRAMEWORK – STATE LEVEL

- State level: Minimum legal age to marry is 18 in most states
- Exceptions can lower the minimum age with parental or judicial consent, or in case of pregnancy
- State level: Forced marriage is criminal offense in 10 jurisdictions; statutes geared to prevent prostitution, pandering
- o CA, DC, MD, MN, MS, NV, OK, VA, WV, and Virgin Islands



U.S. POLICY RECOMMENDATIONS

- Increase understanding of forced marriage, and build the capacity of existing programs
- Provide funding
- Ensure access to civil protection orders
- Strengthen state laws on the age of consent to marry
- Implement safeguards in federal immigration laws
- Ensure that criminal justice options are available



CRIMINALIZATION — A CAREFUL CONSIDERATION

- Very few forced marriage victims interested in criminal charges
 - fear consequences to their families and themselves
- Complex issue:
 - law enforcement and others may feel they have neither the mandate nor authority to assist victims.
- Law enforcement should be educated about the law
 - 10 Jurisdictions have an FM Criminal Offense
 - Other crimes committed as part of FM threat/act (unlawful imprisonment, kidnapping, rape, child abuse, domestic violence, stalking, etc.)



CRIMINALIZATION — A CAREFUL CONSIDERATION

- Most important prior to the creation of any new criminal approaches to forced marriage:
 - Urge care and caution
 - Extensive consultation with experts and stakeholders
 - Derive crucial "lessons earned" from the experiences of other Western countries
 - Anticipate and avoid unintended consequences for victims.



LESSONS FROM THE 1ST U.S. CONSULTATION ON FORCED MARRIAGE CRIMINALIZATION: NOTES OF CAUTION

- What would REALLY help survivors
- Current political context of anti-immigrant sentiment, Islamophobia, and racism = unsafe time to introduce such criminal legislation
- If criminalization could contribute to the problem of disproportionate minority contact with the criminal justice system
- Civil, criminal, and immigration laws are deeply entangled
- Will criminalization just drive the practice further underground?



LESSONS FROM THE 1ST U.S. CONSULTATION ON FORCED MARRIAGE CRIMINALIZATION: NOTES OF CAUTION

- Important questions to consider for survivors, advocates, and service providers:
 - Would I report a friend?
 - Or a family member?
 - What would encourage families of victims to help stop a marriage or report it?
 - What would help victims speak up and out?
 - If we criminalize forced marriage, does that open a dialogue with families/communities...or does it forever close the door to that dialogue?
 - Is criminalization required to offer the institutional mechanisms needed to push social values/norms change? On the other hand does criminalization hinder social values/norms change?



LESSONS FROM THE 1ST U.S. CONSULTATION ON FORCED MARRIAGE CRIMINALIZATION: POSSIBLE OPPORTUNITIES

- Powerful normative statement that forced marriage is unacceptable
- Impact on a survivor's negotiating power
- Deterrent effect for those that are wary of contact with the legal system
- Potential to bring national attention to the issue and open up access to resources
- A clear federal criminal statute may also encourage service providers and others to intervene more readily and effectively
- Could give "teeth" to civil laws



Forced Marriage—slavery or?

- Forced Marriage intersects with a diverse range of other crimes and social problems which have their own legislative responses including:
 - Child abuse
 - Sexual assault and rape
 - Family violence
 - Stalking
 - Female genital mutilation and
 - Human trafficking and slavery



 Forced marriage, whilst affecting both men and women, has a disproportionately negative impact on women and girls.

Australia criminalised forced marriage in 2013 under the slavery provisions in the Commonwealth Criminal Code.



Forced Marriage & Slavery International Law

1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery	1926 Slavery Convention	Other International Conventions
Each of the States Parties shall take all practicable and necessary legislative and other measures to bring about progressivelythe complete abolition or abandonment of the following institutions and practices (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"	"The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"	 Universal Declaration of Human Rights (1948)—Article 16 (2) Convention on the Elimination of All Forms of Discrimination Against Women (1979)—Article 16 International Covenant on Economic, Social & cultural Rights (1996)—Article 10 International Covenant on Civil & Political Rights (1966)—Article 23 (3)

Forced Marriage & Slavery

Anti Slavery International defines child and forced marriage as slavery when the following 3 conditions are present:

No genuine full and informed consent for marriage

Subjected to control & ownership; abuse and threats; exploited by being forced into labour in and outside of the home; engage in non-consensual sexual relations

Cannot realistically leave or end the marriage leading to a potentially a lifetime of slavery



Forced Marriage & Slavery

A new category of human trafficking—

Exploitation of the very personhood of the individual through:

- LABOUR- domestic servitude, forced labour outside the home or both
- BODY- sexual servitude to their intimate partner and/or lack of control over child bearing
- SELF- loss of freedom and psychological bondage.







Forced Marriage & Slavery

Australia's legal definition takes into consideration these motivations:

- Upholding customary and/or religious practices
- Enforced social control
- Financial gain/benefit
- Control gender/sexual orientation
- Facilitate migration
- Mixed interpretations of rights and choice





Definition=A marriage is a forced marriage if one party to the marriage (the victim) entered into the marriage without fully and freely consenting: (a) because of the use of coercion, threat, or deception OR (b) because the party was incapable of understanding the nature and effect of the marriage ceremony

National Criminal Offence



Penalty= 7 years imprisonment or 9 years for an aggravated offence. A child taken overseas for the purpose of marriage increases penalty to 25 years imprisonment

> Religious, cultural and legal marriages are all recognised under this law

Presumptive offence = any marriage under the age of 16 is considered forced as individual is

incapable of providing full and free consent

Marriages of force conducted overseas that have a nexus to Australia are covered by this law

© 2017 The Salvation Army

What does Forced Marriage look like in Australia?

- True extent is unknown=gross underreporting by individuals affected
- Referred cases primarily involve Australian Citizens under the age of 18; with relatives alleged to have or be organising a marriage
- 2015-2016—69 reports to law enforcement
- Since 2013—113 total referrals to law enforcement
- The first prosecution is currently before the court

Australia's forced marriage law covers residents & citizens- most cases of forced marriage relate to residents & citizens being forced into a marriage that takes place overseas.

Situations whereby marriage is used to facilitate migration and/ or human trafficking of a non-resident or citizen is addressed in other criminal offences related to human trafficking & exploitation.



SUPPORT FOR TRAFFICKED PEOPLE PROGRAM- AUSTRALIAN RED CROSS

Stage 1- Temporary Visa

- 45-90 days visa and support validity
- No work rights
- > Application for universal health care

Stage 2- Expanded Temporary Visa

- Visa valid during Criminal Justice proceedings
- Work Rights
- Social Security
- English Study through national provider

Stage 3- Permanent Visa

- Full social security eligibility
- Work rights
- Universal health care
- > Full study rights
- Settlement services
- Sponsor immediate family

Provisions under the Family Law Act

- Divorce and nullity of marriage. A marriage can be made void if consent was obtained by duress or fraud
- Injunction—which can include Airport
 Watch List Orders; prohibiting a child
 from being taken overseas



Provisions under the Marriage Act

- Marriageable age = 18
- Between 16 & 18 a court can grant permission to marry
- Marriage = void if consent obtained by duress or fraud OR either parties not of marriageable age
- A marriage conducted overseas where one party is below marriageable age, will not be recognised under Australian law

Case Study—Civil Measures

Meet Mena



In year 9 at school; disclosed fears of forced marriage to a teacher

Was assisted to approach Legal Aid by her school

Legal Aid explained options under Family Law Act including impact this would have on relationship with parents

Application filed in the Family Law Court for:

- -Airport Watch List
- -With holding of passport by the court
- -Mandated attendance at school
- -Family mediation
- -Orders that could not marry until at least 18 years old

During court proceedings parents admitted to their plans to send Mena overseas for marriage

Relationship with parents strained and difficult even after family mediation. Mena moved out of home & lives in supported accommodation, provided by an NGO. Completed school and now attending university