

Perpetuating Myths, Denying Justice: “Zero Tolerance for Barbaric Cultural Practices Act”

On November 5, 2014, the federal government tabled Bill S7, *Zero Tolerance for Barbaric Cultural Practices Act* introducing sweeping changes to three areas of Canada’s *Immigration and Refugee Protection Act (IRPA)*, *Civil Marriage Act* and *Criminal Code*. The premise of this Bill is that it protects women from violence. As legal and women’s anti-violence service providers, we know that this is the opposite in this case. This Bill appears to extend a trend in this government’s track record to strip permanent residence and deport more and more racialized people from Canada, regardless of how long they have been here. In the preparation of this legislative and procedural change, they have failed to consult experts in this field about what creates further barriers to accessing safety for women experiencing violence. The announcements in the tabled Bill perpetuate myths about practices of polygamy and forced marriages while misguiding Canadians to believe that violence against women is a “cultural” issue and happens in only certain communities. The government has blatantly targeted marginalized and racialized communities through the racist framework used in the intent, wording and announcement of this Bill. This inflammatory language and the perpetuation of racist myths is itself an obstacle to understanding the harmful effects of these proposed legislative amendments.

As organizations dedicated to advancing the rights of all women, we are painfully aware of the challenges faced by all women in Canada from all walks of life and backgrounds to find a safe and secure home. In that regard, immigrant and racialized women face additional challenges because of their race and/or their precarious immigration status. Contrary to what the government has stated, the proposed legislative changes will not result in greater protection for women victims of domestic violence, but will have the opposite effect.

The following is a summary of the Act’s key provisions and areas of law it effects. We also provide additional accurate information to in our review of the changes.

1. Polygamy—proposed amendments to admissibility provisions under IRPA

- 1.1 The Bill proposes that, if a permanent resident after landing in Canada through a sponsorship stream or otherwise starts or resumes a polygamous relationship, could be found inadmissible on this basis alone, without requiring evidence that the person misrepresented their situation or has a criminal conviction. If found to be inadmissible; the permanent resident could then be subject to removal.

The Act makes the unfounded and problematic assumption that polygamous unions by their nature are abusive or coercive. This is not always the case. It further ignores the reality that polygamy has been illegal in Canada since 1892, and immigration law and policy already contain provisions addressing polygamous unions. . The proposed change targets

victims of abuse in polygamous relationships who may have very limited options for severing their ties with the polygamist due to economic or other factors, such as the fact that they may be under the sponsorship of the polygamist and are required to live with their sponsor for two years. . Most critically, the suggested changes do not contain any protection or assistance framework for the victims of abuse and children in polygamous marriages. Indeed, applying the provision strictly, the women who are in a polygamist relationship can themselves be subject to removal. This change will result in disproportionately negative impacts on victims of abuse in polygamous relationships, who may be divorced and abandoned, with their children, in their home countries by their spouses seeking to immigrate to Canada. This is antithetical to Canada's obligations (e.g. under CEDAW) and professed interest in protecting the vulnerable. The announcements and the tabled act appear embedded in myths about practices of polygamy and forced marriages, including the assumption that all polygamous unions are without women's consent. We know from research that this is not the case. The inclusion of an admissibility bar for polygamous marriages is both unnecessary and harmful. It targets certain communities for exclusion from Canada and further marginalizes women in those relationships who may face violence.

1.2. A foreign national who practices polygamy in their country of origin seeking **temporary residence** will be found inadmissible if they try to enter Canada with only one spouse at the time of seeking entry.

This suggested change is a part of the government's ongoing attempts to target certain communities and criminalize individuals through the immigration system even when they do not seek to bring more than one of their spouses to Canada. In addition, this change creates a two-tier system among residents based on their status and is counterintuitive to the government's own suggestion, where if the person in a polygamous marriage cuts their ties to one of their spouses, their status should not be affected.

2. *Civil Marriage Act* - The legal requirement for free and enlightened consent to marriage would now apply nationally to all Canadian residents.

The Act proposes a new national minimum age of 16 for marriage, below which no marriage can be contracted, as well as the requirement for "free and enlightened" consent for all Canadian residents contracting marriage. This provision may assist in protecting girls who are subject to early forced marriage and align with International conventions regarding minimum age for marriage. We are concerned however about the public framing of the proposed changes as necessary to protect women and girls from "cultural" violence in "immigrant communities." This dangerous language is what further perpetuates the racist myth around racialized communities. We would note that 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. The reality is that while age of marriage is federally governed, most of the provinces have their own minimum age parameters, to which there are exceptions such as pregnancy, disability etc.

3. *Criminal Code* – Various provisions

The Act introduces several amendments to the *Criminal Code of Canada* in relation to marriage ceremonies, removal of children from Canada, peace bonds and available defenses in murder and manslaughter cases under the guise of providing “protection” to the survivors and victims of forced marriages. The proposed criminalization of forced marriages within the Canadian context does not consider whether such mechanisms are necessary or beneficial for Canadian survivors of forced marriage. 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 real challenge is the enforcement of the Code as many survivors may be reluctant to come forward to lay charges against their abusers. 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. This notification to the perpetrator may endanger those at risk even more. Like most criminal processes, the Peace Bond will not take effect until, at the earliest, the first court appearance date, and could take up to a year if the perpetrator asks for a formal hearing. It is evident that change could lead to further harm of the victim in the waiting period between the hearing and the ordering of the peace bond.

Knowledge of Forced Marriage Practices and Victims Needs Ignored

The government has deliberately misused the data from the South Asian Legal Clinic of Ontario’s (SALCO) recent study on Forced Marriages in Canada, in support of this provision, by using from raw numerical data without the context of the full study. ***Specifically, the study outlines recommendations that are based on interactions and experience with hundreds of forced marriage survivors, who have repeatedly expressed concern about criminalizing family members and wanting to protect their families regardless of their own victimization.*** In view of these victims’ understanding of and relationship with their families, criminalization of a family member would further harm the victim and their loved ones. Forced Marriage survivors have also indicated that they would be hesitant to seek any outside assistance if this would result in criminal and subsequent immigration consequences for family members. The changes regarding peace bonds and marriage ceremonies (e.g. empowering the court to order peace bond without consent of the victim and making it an offence for anyone to form a Marriage Ceremony for forced marriage) clearly puts the onus on the victims/survivors to come forward to the justice system to get protection, which is the direct opposite of the recommendations outlined in SALCO’s Forced Marriage report. The government’s focus on criminalization of forced marriage instead of support for survivors through education, housing, employment or healthcare will only further alienate and harm those facing Forced Marriage and gender based violence.

Further proof of the government’s inadequate understanding of these issues, is their statement regarding the defense of provocation in “honour-based violence” betrays a non-factual framing of the matter. In most of the high profile cases of so-called “honour based violence” in Canada, it was not the defense but ***the prosecution*** who have used

“honour” to characterize the killing. This Bill further perpetuates the myth that the accused in “honour based violence” cases are using provocation as a defense. This is a procedural court issue that should never be codified into law, when the harms it purports to address are already well-covered in existing legislation.

4. Our Recommendations

SALCO’s 2013 report; *Who if when to marry: A report on incidents of Forced Marriages in Ontario* strongly recommended against including Forced Marriage as a separate criminal offence under the *Criminal Code*. Criminalization of FM creates barriers for victims who need to access justice. First, data shows that victims are less likely to report FM’s because of their internal struggle with placing their family at risk. Second, to counter the increased social stigma, perpetrators of FM will become more skilled at hiding their attempts at forcing a marriage. The unfortunate result of creating additional barriers through criminalization is that victims will go deeper underground, instead of seeking support.¹ 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. The federal government is further harming victims of violence by concentrating on criminalization, instead of support, which is lacking in many sectors needed by victims of abuse and violence.

In addition, criminalization could become a tool for the police to further profile and harass racialized communities that are the intended targets of these announcements. Anecdotally, we have already seen an increased targeting of South Asian families by the police under the guise of preventing “honour killing” and forced marriage. Above all, there is no evidence to support that the criminalization of forced marriage would in fact serve to prevent it.

We strongly believe that the criminalization of forced marriage is NOT the right answer for Canada. While we agree that prevention is important in the discussion around forced marriage in Canada, we believe that education is the most effective preventative tool in this regard. We suggest that educating and raising awareness within the Immigration, Law Enforcement, Health and Education sectors and the application of existing criminal provisions, if consistently applied, are sufficient to the task of preventing abuses.

Finally, we stand for victims/survivors of gender based violence, who have told us time and time again that they would not come forward if it meant criminal sanctions for their own family. We must continue to ensure that victims/survivors (and not perpetrators) are at the center of these discussions so that our legal and policy solutions offer real assistance, remedy and relief.

¹Anis, M., Konanur, s. and Mattoo, D (2013) Who if when to Marry: The incidence of Forced marriage in Ontario.

We remain concerned that the proposed legislative change creates barriers for accessing protection and resources by applicants from specifically targeted communities. It will negatively impact survivor's access to justice and safety through provisions that make non-citizens inadmissible to Canada based solely on their real or perceived choice of marriage form, misguided preventative detention and monitoring measures, and the criminalization of survivor's families and communities. Violence against women happens in all cultures. It is based on abuse of power, results in inequality, and affects all relationships through the generations. Women in every culture in the world have ways of working together to stop violence. We have based our recommendations on their successes. Violence is not a manifestation of culture, but a rupture to it. Culture is not a barrier to women's rights, but a context that defines relationships and meanings and constructs the possibilities of action. The lip service paid by this government to the issue of violence against women through Bill S7 demonstrates at best, the Government's complete lack of understanding of the issue of gender based violence. At worst, it exposes the underlying racist agenda that this Government harbor's towards specifically targeted communities.

We recommend the following:

We call on the Government of Canada to fulfill its international commitment to protect victims of gender based violence (such as forced marriage and so-called "honour based violence") and extend safety and protection to all these victims not only when they are in Canada but also while abroad.

We also recommend that women's anti-violence experts be granted an opportunity to provide a fulsome review and ability to shape the proposed changes to the immigration and criminal justice system ensuring that advocates and frontlines workers who support survivors of these forms violence against women and those with lived experience provide concrete substantive feedback as to the likely success of these provision in achieving their stated goals of making women safer.

This is a joint statement by following agencies:

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

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