

25 February 2011

Assistant Secretary
Criminal Law and Law Enforcement Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Email: criminal.law@ag.gov.au

Dear Colleagues,

Discussion Paper – Forced and Servile Marriage

The Women's Legal Centre (ACT & Region) thanks the Attorney General for the opportunity to make submissions in respect of the Discussion Paper on Forced and Servile Marriage.

The Women's Legal Centre (ACT and Region) Inc (the WLC), is a Community Legal Centre accredited by the National Association of Community Legal Centres. The Centre has been operating in Canberra since 1996. The main areas in which we provide advice are family law, domestic violence, and employment and discrimination law. Our client group includes disadvantaged women, such as those from culturally and linguistically diverse communities, Aboriginal and Torres Strait Islander women, women with disabilities, and women living in poverty.

Around half of the women seeking assistance from the Centre in family law matters have experienced family violence. Around 16% of our clients report being born in a non-English speaking country. India, Vietnam and China top the list.

The WLC has had a number of clients who have experienced marriages which may well fall within the broad definition of "forced marriage", particularly the use of emotional duress and severe pressure by family members.

A typical scenario is where a man born overseas and now an Australian citizen returns to his country of birth to enter into an arranged marriage. The marriage takes place in the country of his birth. Both party's families are involved in arranging the marriage. It may be the case at this stage that the wife is consenting to the marriage, although this is tied to family expectation and the associated emotional duress and pressure.

The wife then comes to Australia, often after some delay from the time of marriage, and her immigration status is dependent on her husband. We are aware of several situations where the wife has come to live with the husband and his family and has been subjected to physical abuse, obligations to perform all of the household tasks as directed, is not free to leave the house as and when she chooses, is subject to threats that her immigration status will be compromised if she makes any complaint.



Advice and Information

Local: (02) 6257 4499

Outside Canberra:

1800 634 669

Administration

Phone: (02) 6257 4377

Fax: (02) 6247 0848

coordinator@womenslegalact.org

GPO Box 1726

Canberra City ACT 2601

ABN: 23 398 780 781

www.womenslegalact.org

What is the appropriate response ?

There is certainly a need for greater public awareness and education about the practice of forced marriage and its cultural context. Such education would need to be targeted to the recently-arrived or arriving immigrant communities. As well, the women who are arriving following arranged marriages should have information about their legal rights and responsibilities in relation to marriage and their rights should they experience physical abuse, sexual abuse, false imprisonment, domestic violence and so on.

We note for example that in Canada the *Discover Canada Rights and Responsibilities of Citizenship* booklet (2010 edition) says in a prominent place:

"The Equality of Men and Women

In Canada, men and women are equal under the law. Canada's openness and generosity do not extend to barbaric cultural practices that tolerate spousal abuse, "honour killings", female genital mutilation or other gender-based violence. Those guilty of these crimes are severely punished under Canada's criminal laws."

Criminal response

There needs to be a criminal response to any criminal behaviour such as assault, sexual assault, false imprisonment. Any response to reported domestic violence should charge the perpetrator if a crime has been committed as well as attempting to connect the victim to all relevant supports.

The WLC agrees that forced and servile marriages are an abuse of human rights. Accordingly, it is important for the Australian government to comply with all of their international obligations, especially when those obligations arise under a convention voluntarily signed and supported by Australia such as the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* 1956 (the supplementary Convention).

Despite the fact that it *may* deter some victims from complaining to the authorities, it is important that Australia takes a clear and definitive stand against this conduct. That stand should include appropriate criminal sanction(s). We would therefore support the introduction of the potential offences outlined in paragraphs 64 - 71 of the discussion paper. The proposed offences provide for a suitably lengthy maximum penalty to potentially deter perpetrators. A wide enough definition of servile marriage is necessary to comply with Australia's international obligations; and the reality of victims.

Civil remedies

There needs to be supports in place for women who choose to leave these domestic situations. This would include accommodation, some form of financial support, counselling, access to legal aid to obtain legal advice about immigration and family law and other supports in the longer term including a capacity to obtain employment (that is, the relevant visa) and assistance with obtaining employment and housing.

The WLC applauds the recent decisions in the Family Court and the Federal Magistrates Court to prevent girls under the age of 18 years being taken overseas to be married. There is an associated concern about the welfare of the girls after such decisions were made - did they remain in the family home? Were any supports in place for the girls individually and their families?

The WLC is cautious about any suggestion of mediation as the power imbalance in the family dynamic is evident from the act itself. Perhaps family therapy may be a more useful intervention, if all parties were prepared to participate and appropriate safety plans were in place.

The WLC supports the proposed amendments to the Marriage Act. In addition, there would be benefit to legislating a definition of duress to recognise the coercion outlined in paragraph 5 of the discussion paper. This would impact on applications for nullity – *Marriage Act 1961* section 23(1)(d)(i) – which would be of practical assistance to women who find themselves in a forced or servile marriage.

We refer to the recent case of Kreet & Sampir [2011] FamCA 22 where the Family Court refused to recognise the arranged marriage of a woman to a man who she had never previously met. The girl was tricked into travelling to India to marry a man chosen by her father. His Honour Justice Cronin ruled that the marriage could not be valid under Australian law because the girl had not been truly free to consent.

If you would like to discuss any aspect of this submission, please contact Rhonda Payget, at the Women's Legal Centre in Canberra on (02) 6257 4377 or rpayget@womenslegalact.org.

Yours sincerely,



Rhonda Payget
Principal Solicitor
Women's Legal Centre (ACT & Region)

Encl: case study

Case Study

The husband and wife married in Australia. The wife is of the Islamic faith. The marriage was arranged between the husband's parents and the wife's parents. The husband and wife did not speak each other's dialects and, although they met prior to the marriage, did not have an opportunity to do more than greet each other. The wife moved in with the husband and five family members after the marriage. She was forced to do all the domestic work in the house. The wife was deprived of having enough food to eat; she had to prepare the food and eat after all of the other family members had eaten.

The husband has an intellectual disability which was not disclosed to the wife prior to the marriage. The wife alleges that the husband's intellectual age was that of a 12 year old. As a consequence, the marriage was never consummated. About three months after the marriage the wife was driven to the airport by the husband's father to be put on a plane back to India. She was stopped by airport security and missed the plane. She was brought back to the husband's family home and assaulted by the husband's family members. She was driven to the psychiatric unit of the hospital and left there without support. When the hospital released her, she had nowhere to go and went back to her husband's family. The wife says that she was only given bread and water for four days and then again taken to the psychiatric ward. Staff at the hospital contacted domestic violence support workers and the wife thereafter went to live in a refuge.

The husband filed an Application for a Domestic Violence Order by his next friend, his mother. The wife claims that the allegations were invented so that she would be deported. The wife filed applications for Domestic Violence Orders against the husband and his family. All applications were settled by Undertakings.

After 12 months separation, the husband made an Application for Divorce. The wife opposed the divorce and filed an application for an annulment. The wife's case was that the husband did not understand the nature and effect of the marriage ceremony due his intellectual disability. Obtaining an annulment was culturally significant for the wife due to the consequences of being a divorcee in Indian society. After proceedings in the Family Court, the wife was successful in obtaining an annulment and the husband's Application for Divorce was dismissed. There are ongoing issues for the wife who is trying to recover jewellery given as "dowry" at the commencement of the marriage.

Two critical factors assisted this woman. Firstly, the security personnel at the Airport who recognised that the woman was being forced against her will to return to India and intervened. Secondly, the woman was granted legal aid to pursue her nullity application. Otherwise, the husband's divorce application is likely to have proceeded.