

CRIMES
NOT
CULTURES

Crimes, Not Cultures

An initiative of

United Cultures of Canada Association

Conceived, designed and implemented by Nayanika Kumar

Canada is now home to hundreds of cultural communities coming from different parts of the world. Because of our commitment to multiculturalism as our national policy, Canadian service providers often face a dilemma when intervening in a conflict situation that involves a specific cultural practice. They do not want to offend cultural sensibilities of the involved cultural community. This may sometimes lead to confusing crimes as cultural practices. These communities and their countries of origin are taking every possible measure to identify and punish crimes masquerading as cultural practices. If we fail to do the same, victims of these crimes may be left unprotected in Canada and Canada may become a safe haven to the criminals.

But these are not familiar crime situations for us. How do we understand them? Do we have laws or other systemic support in Canada to protect the victims and punish the guilty? As global migrations are increasing, crimes are also transcending international boundaries. Culprits, who have their bases in many different countries, may find it convenient to commit crime in one and escape to another. Protecting the victims in situations when crimes cannot be defined or proven and the guilty cannot be tracked down or punished is a huge challenge of our time and the entire world is battling against it. Cross border enforcement of legal actions is beset with major challenges created by nationalities of victims and criminals, jurisdiction of courts, recognition and enforceability of foreign judgments, and conflicts between laws of different countries.

This book explores possible solutions to certain crime situations available to us through Canadian laws. It presents cases from courts of different countries as examples. It identifies service and system gaps and points toward directions for change. Its message to both service providers and victims is: SOLUTIONS EXIST. However, we need extensive collaborative work, bringing systems and countries together, to further develop and clearly establish these solutions.

This book does not offer professional advice. Legal and other information provided in it is well researched and verified from different sources but we do not guarantee its accuracy. UCCA will not be responsible for any loss or damage suffered due to reliance on its contents.

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Introduction: **CRIMES, NOT CULTURES**

A. Why this manual should be written

This manual discusses five major issues that are often intimately linked to domestic violence of women and, in some cases, of men also, in the South Asian communities.¹ These are social custom of dowry, fraudulent international marriages, forced marriages, abandonment of women resulting from fraudulent or forced marriages, and role of in-laws in the abuse of women. The goal of this discussion is to enhance the understanding of the service providers and community members about these issues so that the help provided to the victims is more effective.

These situations are not common in Canada; therefore, the existing legal provisions in Canada do not specifically and directly address them. For example, in India, dowry prohibition law is in force to prevent dowry and other related offences. In Canada, when dowry related crimes take place, the application of adequate legal provisions falls to the discretion of the helping professionals who may find it challenging to deal with them due to lack of understanding of the background of this practice. What does a counselor advice to a woman whose significant dowry amount has been taken away by her in-laws? How do Canadian courts interpret the behaviour of a man who is a silent witness to his wife's abuse and torture at the hands of his parents or other relatives? Decisions of courts in India indicate that members of the husband's family are often held guilty of domestic crimes against women, especially in cases involving dowry.

While the custom of dowry is a widespread malpractice that challenges all legal actions, fraudulent marriages and forced marriages are not cultural practices of South Asians. However, they are being deceitfully practiced under the guise of arranged marriage, which is a legal and long standing cultural practice of South Asians. Fraudulent marriages are often arranged with a motive to extort dowry; young brides are mostly abandoned when dowry is the main reason for such a marriage.

Service providers who do not understand the social and cultural background of such behaviours are often confused and unable to intervene effectively. In the recent Shafia case, the sisters,

who were murdered by their family, had approached service providers for help. But it was not easy to comprehend the seriousness of death threat issued by a family member.

Due to lack of such understanding, service providers are often hesitant to intervene for fear of offending cultural sensibilities. If they understand the background of these criminal behaviours, they will be able to intervene more confidently and successfully. It is important to treat such victims as victims of crimes and not as victims of their own cultural practices. Victims of family abuse are further hurt, humiliated, and discouraged from seeking help if they are treated as though abuse of women is customary, common, or permissible in their culture. Abuse of women is not part of any culture or religion.

The jury in Shafia's trial found the family members guilty of first degree murder; what the family considered as an honour killing was described by Justice Robert Maranger as a "despicable and heinous act of murder." Honourable Imam Syed Soharwardy took the unusual step of issuing *fatwa*² against honour killings and domestic abuse and was supported in this by more than 30 Imams and Muslim scholars from North America – "That kind of mentality has to be changed, and has to be confronted." Further, "There is no place for these crimes in our faith."³ A beginning has clearly been made at legal, religious, and social levels in Canada. This was a historical judgment laying down an unmistakable boundary line between crime and cultural practice; it has set the stage for further development of adequate administrative and legislative provisions in our country.

In dealing with these situations of crime versus cultural practice, the key question is how to criminalize such behaviours and practices in Canada and what legal sanctions and remedies are available to deal with them within the existing legal framework. It is notable that the same situations and challenges are being encountered in countries that are popular destinations of migrant South Asian communities, such as the U.K. USA, Australia, etc. The courts of these countries strive to provide adequate legal response by searching for solution within existing laws, seeking guidance from the judgments of their own as well as foreign courts, and by developing new laws.

While legal and administrative measures being developed in different countries are still in their early developmental stages, we may look to each other for guidance. This is the reason why in this manual we have discussed existing legal and administrative strategies used by the other countries to deal with these criminal behaviours. We have also discussed some important judgments of the courts of these countries.

Finally, this discussion does not hold in criticism the centuries old culture of the South Asians; it only seeks to denounce practices that were not meant to be a part of it but somehow have come to be associated with it. Malpractices like dowry, even if closely linked to the South Asian culture, do not represent it. Like other crimes, these are crimes of greed and perversity but people involved in such crimes often seek to legitimize them as cultural customs. We should not allow these criminal behaviours to continue under the guise of cultural practice in Canada when in the countries of their origin they are treated as crimes.

B. How this manual is planned

As mentioned earlier, in this manual we will discuss the following issues in relation to domestic violence in the South Asian communities: culture specific malpractice of dowry; fraudulent marriages; forced marriages; in-law abuse; and abandonment of brides. Our focus is the criminal aspect of such practices and behaviours with a view to identifying appropriate legal sanctions against these. We will also discuss the legal remedies available under civil law that can be applied to them.

B.1. Dowry

Dowry is money, land, jewellery or any other valuable security that is offered by the bride's family to the bride, bridegroom, and his family in relation to the bride's marriage. Initially, it was supposed to be a gift and a token of love from the family of the bride. In the form that it is practiced now, it can be best described as a bargain price for taking over the economic and social responsibility of a woman, although it is demanded for economically independent women as well. In Pakistan and Bangladesh, two systems of dower and dowry run parallel to each other. In India, the custom of dowry has taken an ugly form as it is being increasingly associated with domestic violence often leading to suicide or murder of the bride in spite of the

strict laws put in place to prevent it. The problem has also been identified in many other countries where South Asians have migrated. Recently, a resident of Ontario was killed by her husband and in-laws after being constantly tortured during the three years of her marriage. As many as six international conferences have been held to date to find a solution to this problem. These conferences were held from 1995 to 2003 at Harvard, London, and New Delhi. Dowry related violence and abuse of women by in-laws mostly go hand-in hand as money and other valuable securities obtained through dowry are often kept by the groom's family; however, there may also be cases of abuse by in-laws without a demand for dowry.

B.2. Fraudulent marriages

Fraudulent marriage is not a malpractice specific to South Asian culture but like forced marriage, is being practiced under the guise of arranged marriage. Fraudulent marriages are entered into by young Canadian men of South Asian origin by trading false promises of a great life in Canada with huge amounts of dowry. In such fraudulent transcontinental marriages, dowry extortion persists through various stages of the process of the bride's immigration to her matrimonial home in Canada - after settlement of the marriage, at the marriage, before sponsorship application, after it, and even after immigration. In many cases though, she is not even brought to Canada. Such marriages are also being used by some people to facilitate immigration to Canada, misusing the provision of sponsorship, which is a privilege offered by the Canadian government to Canadian citizens and permanent residents to unite them with their families.

B.3. Forced marriages

The basic condition of a marriage is free and willing consent of the parties marrying together. When a person is forced to give this consent against his or her will, such a marriage becomes forced marriage. Forced marriage does not take place only in the South Asian communities. It is practiced in different parts of the world for different reasons. In the South Asian communities, it is generally the parents who are seen forcing their children into such marriages but mostly with the belief that this is in the best interest of their children. They think that they are better able to find a compatible match for their children and the children would soon be able to see

sense behind their decision. Very few realize that regardless of the motive, forcing a person to marry against their will may constitute a crime in certain circumstances, which may be punishable by legal action in Canada and in many other countries of the world. There are several international treaties and conventions to prevent such marriages and Canada is a signatory to them. A person being forced to marry can seek the help of the police and court for protection against it. If such a marriage has already taken place, the victim can apply to the court to issue an order that this marriage should be considered null and void, which would be a legal declaration to mean that the marriage in-question has not occurred.

B.4. In-law abuse

Although South Asian society is rapidly moving toward nuclear families, a large number of people still live in joint families. Joint family system offers several benefits to its members; children are raised by many adults acting as parents and find friends and mentors in their own families; sick and elderly find loving care. These families may also operate as financial institution, with members offering financial support, such as interest free loans, to each other in times of financial difficulties. In these families, in the hierarchy of relationships, parents of the husband occupy the highest place and often regulate the household affairs. This largely influences the marital relationship of their son and daughter in-law. If the cultural norms are followed, the daughters-in-law are accepted with love and respect; if they are not, the parents-in-law are seen instigating and also actively participating in their abuse. In the recent Poonam Litt case of Toronto, her sister-in-law is charged with second degree murder and father-in-law as an accessory after the fact, while her husband who was away in India at the time of her disappearance, is not a suspect. As mentioned earlier, courts in South Asian countries are aware of this dynamic of relationship and may sometimes award stricter sentences to husband's relatives than to him in cases of abuse of women.

B.5. Abandonment of brides

Abandonment occurs when either the bride is left deserted in her own homeland and never sponsored to come to Canada, or forced to leave her husband's home, or forced to live in circumstances where she has no option but to leave, or flee. Forced and fraudulent marriages,

abuse, dowry crimes –all these may lead to abandonment of a bride. The number of women from South Asian countries, who are abandoned after such marriages, is increasing at an alarming rate. It is estimated that in the Indian province of Punjab alone, there are over 30, 000 young women forsaken after such fraudulent marriages performed with the sole intention of dowry extortion.⁴

C. Service providers' need for information

We interviewed 28 key services providers involved with helping victims of domestic violence to understand their need for information regarding these issues. The following are some of the responses that helped us select important aspects of discussion for this manual and stay focused on them.

“[We need] understanding of culture/ cultural norms and biases, gender bias based on culture, preconceived bias, different beliefs, treatment of family members.”

“[We need] to understand cultural significance, why something is important to the complainant that seems trivial to the police?”

“... some cultures do not match our laws and as such unlawful behaviour is tolerated, as it is not known if something can be done about it.”

“...it is likely that the [dowry] issues are there but are not reported as such.”

“Providing assistance with the cultural differences is probably the most important task.”

D. Victims' stories

We interviewed 73 women who discussed with us the situation faced by them personally, or by one of their friends or relatives. The following are some of the case stories shared with us. We have selected these because they effectively raise some of the major issues and provide valuable insights into different cultural and legal aspects of these criminal behaviours.

My family came to know about him through a newspaper matrimonial advertisement. He and his family visited us in India. They seemed to be very nice

people who wished to have a daughter-in-law who had all the traditional values. He appeared to be a very charming and accomplished person who was running his own business in Canada. They wanted to start a new business that they said I would manage. They requested that my father partially finance it. My father agreed to this. My parents spent lavishly on celebrating my marriage as I was their only daughter. I had a great time for two months during my husband's stay. He and his family left with promises to bring me to Canada soon. It has been five years since the marriage and I have not heard from him. All our efforts to contact him or find out his whereabouts have failed. We have a son from this marriage.

My father died when I was 10 years of age. My mother raised me and my four siblings with great difficulties. When I was 18, an acquaintance approached my mother with a proposal for my marriage with her distant relative settled in Canada. She said that as her relatives were prosperous and did not expect any dowry. My mother was overjoyed. I got married and came to Canada. On the very first day of my arrival in Canada, my husband told me that he had married me under pressure from his parents as they did not approve of his relationship with his girlfriend who belonged to a different faith group. He said that I did not have any place in his life and he wanted nothing to do with me. My in-laws admitted that they knew about this but forced their son to marry me in hopes that he would gradually sever his relationship with his girlfriend and accept me as his wife. They encouraged me to woo him. Weeks and months passed by but there was no change in his attitude toward me. My in-laws' attitude toward me changed though. They forced me to take up petty jobs and do all the household chores. They found fault with everything I did. Criticism and verbal abuse gradually escalated to physical assault. My husband often participated with them in abusing me. I did not have the courage to return to my mother because of the social ridicule my family would face. I did not even tell her about it for fear that she might not survive the shock. One day when my father-in-law tried to assault me, I left my home to save my life.

A common acquaintance introduced my husband to me as an eligible bachelor with a good job and well-settled in Canada. Our marriage was performed in India. My parents gave me a large dowry. He and his family left for Canada promising to call me soon but no attempt was made to sponsor me. I could come here after four years of my marriage. My mother-in-law who came to receive me at the airport, took away my bag that had all my jewellery, identity documents and other valuables for safekeeping. Soon after, my in-laws started to make more demands. In all, they had demanded about \$ 100,000 from my father, a substantial portion of which was already paid to them by this time. When he expressed his inability to pay more money, my in-laws began to torture me verbally and physically. Shortly after, I left their home. I am able to live separately and safely now. They have now filed a complaint against me with Immigration that I married their son only to seek immigration to Canada. They have refused to return any part of my dowry.

We saw his matrimonial advertisement in the newspaper. The marriage was negotiated and he came to India for our engagement. At the time of marriage, my father offered him and his family jewellery and cash that they had demanded. After marriage, they left promising to call me soon. My mother-in-law also took away with her most of my jewellery, saying that I would not be allowed to land in Canada with so much jewellery. They would not submit my sponsorship application until my father complied with their demands for more money. I was able to come to Canada after about three years of my marriage. My husband and in-laws were very abusive. When I could not take their abuse any longer, I sought help from a social agency. The agency helped me in getting out of the abusive situation. With proper guidance and help from agencies, I am now doing well but I have not been able to recover thousands of dollars of hard-earned money of my parents given to me as my dowry.

Our families were introduced to each other through a common acquaintance. His parents really liked me and promised my father that I would have a very good life in Canada if I married their son. I married him and was sponsored to Canada. After my arrival, it did not take me long to find out that he was a drug addict and alcoholic, jobless, involved with gangs and street women and had even served a jail term. He was very abusive and used to physically assault me. One day, I was so scared for my life that I ran out of the house bare foot in the freezing cold. My neighbours called the police. Now I am safe and live by myself.

I was married to an eligible bachelor who was settled in Canada. My dowry was paid in both cash and kind. Also, soon after my marriage, I was manipulated into giving all my savings to him to purchase a new house in his name. He later transferred this house to his parents. He sponsored me to Canada. He took away all my jewellery for safekeeping and also the receipts for these because he said he had to declare them to immigration. In Canada, he kept me isolated and confined to his home. I was not allowed to talk to my family. In less than a year, he threw me out. He sold our matrimonial home without my knowledge or consent. I am struggling now to make ends meet. My lawyer told me that it would not be very helpful for me to go to court because he had plotted everything so well that I would not be able to prove anything against him.

E. Men can also be the victims

Often discussions about domestic violence are focused on women as victims. Domestic violence is about power and control and victims of domestic violence are mostly women because women are generally in a weaker position. In certain situations, men also can become victims of abuse by their spouses or intimate partners. In the context of this manual, we would like to note that men also are victims of dowry crimes, fraudulent, and forced marriages. There is a growing incidence of women or their families blackmailing their spouses by threats of false reports of dowry extortion in India. The new domestic violence and dowry prevention laws in India are very strict and any man involved in such a case may lose his employment, social

status, and a significant amount of money. Many such offences are non-bailable. South Asian men who are wealthy or settled in the West are the best prey for this type of frauds.

In view of this fact, there is currently a consideration to repeal section 498-A of the *Indian Penal Code*. This legal provision was initially created in 1983 to punish the husband and his relatives found guilty of cruel treatment toward a wife. A court in India commented that its misuse can unleash “a new legal terrorism” and said - “The provision is intended to be used as a shield and not an assassin's weapon.”⁵

Similarly, men can also be duped through fraudulent immigration marriages. In a recent case, a 24-year-old young man attempted to take his life because he was blatantly cheated by his foreigner spouse who not only deserted him after her immigration but also demanded a substantial amount of money. In addition, she also wanted him to co-sponsor her parents and threatened to make a false complaint of abuse if he failed to do so. Despite being faced with these threats, he chose not to take any legal action against her; neither did he seek any help for fear that he would have to share his personal details with others. His family enjoys high social status in the community, and he is worried that if he reaches out for assistance, his family would be the subject of gossip and rumours. Men also are victims of forced marriages as we will see in the chapter on forced marriages, but they may not want to present themselves as victims even if it is to seek help.

F. The main purpose of the manual

The main purpose of this manual is to help the victims of domestic violence move toward an abuse free life through effective and successful intervention by service providers. With this in mind, each chapter discusses options that a victim may consider in Canada. We hope that this discussion of options will assist both service providers and victims in their search for solutions. We also hope that the discussion of issues along with the strategies used by other countries will point toward directions for future changes in the systems and policies.

CHAPTER ONE: **DOWRY, RELATED CRIMES AND LAWS**

A. Introduction

The custom and practice of dowry is sometimes the main reason behind domestic violence against women in South Asian cultures. Mainstream service providers in Canada are not aware of the extent and nature of this culture specific malpractice and the role it plays in violence against women in their families. Is it a custom or crime? This chapter discusses the background and practice of dowry and domestic crimes associated with it. In order to understand whether it is a custom or a crime, it is important to understand its legal status in the countries where it is practiced. This chapter explains the special legal provisions that have been created to deal with dowry crimes in these countries and some important court decisions. How can service providers help such victims in Canada where dowry crimes are not recognized? Is there any legal remedy available to the victims of dowry crimes? The chapter also discusses in detail the legal remedies available to the victims of dowry crimes in Canada even though the practice of dowry has not been specifically defined as a crime. Sanctions against these crimes under the Criminal Code of Canada are discussed in Chapter Six of this manual.

Dowry is not a new custom. Also known as *trousseau*, *tocher*, *daj* or *dahej*, dowry is wealth in the form of cash or kind given by the bride's family to the bride and bridegroom at the time of their marriage. There was a time when dowry was practiced in several parts of the world for different reasons. For example, in medieval Europe, it was used to enhance the social and political influence among nobles. For others, it was intended as seed money for the newlywed couple to start their new life, or money given to the daughter in lieu of family inheritance, or as a security against bad times, such as in the event of the death of her husband. At present time, when it has already become a relic of past in Europe and many other parts of the world, it has not only survived but also acquired a heinous form in many South Asian countries, such as India, Pakistan, Bangladesh, Sri Lanka, and Nepal.⁶ The governments in these countries are well aware of its catastrophic impact on the society and are making a range of attempts to eradicate it.

Glossary – DOWRY, RELATED CRIMES AND LAWS

Appellant - A person who appeals to a higher court from the decision of a lower court

Coercion - Force or fear of force, physical or non-physical, under which a person is compelled to do something against his or her will.

Common law - The body of law developed by courts' decisions is called common law. Countries that follow common law are considered to have a common law system. The system of common law originated in Britain, and many countries that have once been colonies of the British Empire, such as Australia, New Zealand, Canada, India, Pakistan, Bangladesh, Hong Kong etc. follow the common law system.

Foreclosure - The act of depriving a mortgagor to redeem the mortgage

Presumption - The rule of presumption provides that when truth of a fact cannot be proven by evidence but, on the basis of other proven facts, an inference can be drawn about the truth of that fact, such fact may be presumed to be true.

Respondent - A person against whom the appeal is filed

India

The custom of dowry as it is practised in the Indian sub-continent is considered to have its origin in the Hindu religion. The popular quote from an ancient Hindu scripture, “where women are worshipped, there abide Gods” (*yatra naryastu pujoyantey, ramentey tatra devta*), demonstrates that women were held in high esteem in ancient times. A gift of daughter in marriage was considered to be the greatest of all gifts. Though ancient texts mention gifts to bride and bridegrooms at the time of marriage, the custom of dowry in its present form was not known to ancient Indian society. In the *Brahmin* form of marriage, which was the highest of the eight ancient forms of Hindu marriage, the bride bedecked with beautiful clothes and jewellery was gifted by the father to the bridegroom. In the *Rakshas* form of marriage, which was the lowest form, the bride was given to the bridegroom for a price.

However, as time passed by, dowry came to be accepted as a prevalent custom and today it is so deep rooted and wide spread among South Asian communities that it has become difficult to control it even in spite of strict laws that levy severe punishment. It is mostly practised in the Northern region that includes Punjab, Haryana, Delhi and Uttar Pradesh. According to the Indian National Crime Record Bureau, in India, there were 1,948 convictions and 3,876 acquittals in dowry death cases in 2008 alone.⁷

In India, the practice of dowry was made illegal by the *Dowry Prohibition Act* of 1961. Later, several provisions were developed under criminal law to further tighten up legal measures against this practice but the situation has not changed very much. A detailed discussion of laws that have been developed and are in force to restrain this practice follows later in this chapter.

Pakistan

The majority of the population in Pakistan follows Islam that sanctions the custom of “dower” but does not allow “dowry.” The Holy Qur’an says:

And give women (on marriage) their dower (*Mahr*) as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer. (*Al-Qur'an : Al-Nisa' :4*)

...Except for these, all others are lawful, provided ye seek (them in marriage) with *Mahr* (dower), a bridal money given by the husband to his wife at the time of marriage from your property - desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, agree Mutually (to vary it), there is no blame on you, and Allah is All-knowing, All-wise. (*Al-Qur'an :Al-Nisa' :24*)⁸

Dower or *Mahr* is the gift to a woman from her husband at the time of her marriage and, as such, it is just the opposite of dowry. However, even against the precept of Islam, the custom of dowry runs side by side the custom of dower among Muslims in the South Asian countries including Pakistan. Human Rights Commission of Pakistan (HRCP) has reported many cases where the bride was killed for bringing insufficient dowry.⁹ The “stove blast” cases that refer to bride burning for bringing insufficient dowry have become an everyday phenomenon in the city

of Lahore. In *State v. SSP Lahore*, PLD 1991 Lahore 224, the Lahore High Court stated that “stove blast” deaths are used as a smokescreen for dowry murders. The incidents are increasing in the cities like Karachi where education and life style standards are very high.

The government of Pakistan enacted the *Dowry and Bridal Gifts (Restriction) Act* in 1976 and *Dowry and Bridal Gifts (Restriction) (Amendment) Ordinance* in 1980. The *Dowry and Bridal Gifts (Restriction) Act* of 1976 has not proven very effective in reducing the incidents of dowry deaths. According to a 1999 report of Amnesty International, of 1,600 reported cases of bride burning, there was prosecution only in 60 cases and conviction only in two.¹⁰ The *Marriages (Prohibition of Wasteful Expenses) Act*, 1997 is considered to be quite effective in reducing and restricting expenditure on marriage celebration. This Act prohibits lavish spending on celebrating marriages because it is against the principles of Islam.

Bangladesh

About 90% of population in Bangladesh follows Islam but the practice of dowry that is supposed to have its seeds in Hindu religion, is widely practiced here, too. The wealth of non-resident Bangladeshis, who work in the Gulf countries, has flared up dowry expectations of the middle class.¹¹ To curb the practice of dowry and to prevent dowry deaths, the government passed Dowry Prohibition Act in 1980, modelled on Indian *Dowry Prohibition Act* of 1961 with all its amendments until 1986. It also passed *Dowry Prohibition (Amendment) (Ordinance)*, 1982 and *Dowry Prohibition (Amendment) (Ordinance)*, 1986. Unlike India and Pakistan, dowry murders in Bangladesh are mostly committed by stabbing or by administering a poison.¹²

Sri Lanka

Although no mention of dowry is made in the Tamil history or literature, it is practiced by Tamil populations and is prevalent in large parts in Sri Lanka.¹³ It is deemed to be an important consideration for a marriage and a promise of good married life for the couple.¹⁴

Nepal

The custom of dowry prevails in the Nepali community across all castes, creeds, classes and religions. It has been acknowledged as the most common reason behind increasing incidents of

domestic violence against women.¹⁵ The prime minister of Nepal has expressed deep concern over the increase in dowry related violence. He has stated that dowry and violence against women are criminal conduct and punishable under the criminal law of the country.¹⁶

Regrettably, South Asian communities have taken their malpractice of dowry to their adopted homelands also. Mostly, dowry crimes are misreported due to lack of understanding of the background of this practice. This results in offenders not being held accountable.

B. Dowry crimes in South Asian communities living in Western countries

In the U.K., dowry violence has come up as is a major issue. Many incidents of dowry violence are reported in the major cities of Birmingham, London and Leicester.¹⁷ Jagbir Jhutti (Resarcher, Social Anthropology, Wolfson College, University of Oxford) discusses the prevalence of dowry among Sikhs in Britain and Dr. Rohit Barot (Senior Lecturer, Dept of Sociology, Bristol University) states that the custom is particularly practised by Gujarati Lohanas and Patidars in Britain.¹⁸

However, since there is not much understanding of the practice itself, such cases are often misreported as an offence of assault, aggravated assault, murder etc. In an incident, a South Asian woman who was knifed in her face was brought before the court as a victim of assault. The real motive behind the assault came to light only after some enraged members of the South Asian community made a demonstration before the court.

A research report states that in the U.K., South Asian women are four times more likely to commit suicide, one third of these by the excruciatingly painful way of burning themselves alive. Researchers suspect that these are more likely murders disguised as suicides.¹⁹ The Observer (13 December, 1987) reported an incident wherein the in-laws of a woman tried to set her on fire by pouring paraffin on her and then pushing her onto a pile of wood lit up by them outside their house. Usha Sood, a barrister in Britain, has found that dowry related cases have increased manifold in the British courts.²⁰ Dr. Werner Menski (a Senior Lecturer in South Asian laws at SOAS, University of London) regrets that though such cases are being reported to

the British courts since mid 1980s, the courts have failed to recognize dowry crime as a culture specific problem among South Asian communities.

C. Dowry crimes in Canada

Noted below are some of the typical case scenarios of dowry related abuse suffered by women at the hands of their husbands and in-laws in Canada that our respondents shared with us:

1. Demanding and receiving dowry by threatening to harm the bride or her family;
2. Taking away her passport, travel documents, educational and professional certificates, bank cards, money, jewellery and other securities so that she cannot travel, find a job, or seek help from other sources;
3. Threatening to cancel, or cancelling the sponsorship until the dowry demand is met;
4. Taking away or threatening to take away the children from her, or threatening to deport her without her children;
5. Threatening to divorce her and maligning her character;²¹ and
6. A more recent form of exploitation is falsely reporting to immigration that the sponsored bride has used marriage to come to Canada and should therefore be deported.

As in the U.K., in Canada also, dowry related offences are on the increase but may be misreported as offences of assault, aggravated assault, extortion, murder or suicide, etc. without disclosing the dowry connection.

D. Are the victims of dowry crimes less protected outside their country of origin?

Dowry related offences are serious domestic violence offences in South Asian countries. But as the custom of dowry is not practiced in Canada, local service providers may not comprehend how non-compliance with dowry demands may lead to violence against a bride. In joint or extended families, parents-in-law, especially the mothers-in-law, play a significant and powerful role. They may be active accomplices and often the main culprits in extorting dowry from the bride or her relatives and in other crimes against her. Indian cases on dowry are full of charges and convictions against the mother in-law and other relatives of the husband.

In *Samara* (April 16, 1997), a British case, although the judge understood the hierarchical structure in which the husband and his family were considered higher than the wife and her family, yet found it difficult to believe that an educated woman living in Britain could be subjected to coercive customs: “Though he accepted that she gave her jewellery to her parents-in-law but assumed that this was for security reasons and not because of customs.”²²

E. Where do we go from here?

Dr. Werner Menski reflects: “It remains a worrying fact that British coroners are not trained to detect dowry murder since the concept is alien to English law and the relevant cultural knowledge is almost entirely absent.”²³ Where there is no established system of law and precedents to address such issues, one ready and reliable source of information is legislation developed in the countries where such customs and practices originated and are followed. Judgments of higher courts can also be valuable in this regard and serve as precedents. For example, the principle laid down by the Supreme Court of India in *Pratibha Rani v. Suraj Kumar*²⁴ case that a woman is the absolute owner of her dowry was followed in several British cases involving property rights issues of women of South Asian origin. In the following section, we will explain the specific legal provisions for prevention of dowry related crimes in India.

F. Existing legal remedies in India

1. Dowry Prohibitions Act of India, 1961

The Act (s.2) defines dowry as money, property or any valuable securities given or agreed to be given before, at the time of, and after the marriage, in connection with it, by one party to the marriage, their relatives or any other person, to the other party to the marriage. Under it (s. 3 & s.4), demanding, giving and taking of dowry or abetting the giving or taking of dowry is illegal.

This Act does not intend to prohibit the traditional and voluntary practice of giving gift to the bride or groom at the time of marriage on the assumption that gift is given voluntarily without any force, fear, or compulsion.²⁵ To ensure that this is not used as giving or taking of dowry, the Act states:

Law relating to dowry offences at a glance

Below is a list of some important sections under these Acts that deal with dowry crimes:

Dowry Prohibition Act, 1961

S.2- Dowry includes any money, property, or any valuable security given in connection to a marriage, before, at or after the marriage. It does not include gifts given to bride and groom. A list of all the gifts should be made and signed by bride and groom and two witnesses, and the gift should not be excessive in relation to financial condition of the person who has given it.

S.3- Giving, taking and abetment of giving and taking of dowry is an offence punishable with imprisonment that shall not be more than five years and a fine.

S. 4- Demanding dowry is an offence that is punishable with imprisonment that shall not be less than six months but may extend to two years and also a fine.

S. 5- An agreement to give or take dowry is void and not enforceable in law.

S.6- A woman is an absolute owner of her dowry. Any person, receiving or having possession of a woman's dowry, must return it or its value to her. If the woman is dead, the dowry must be returned to her heir, children, and if she has no children, to her parents. A failure to do so is punishable with imprisonment and fine.

S.7 and S. 8- The offence of giving or taking dowry is a cognizable offence for the purpose of investigation and arrest without warrant, non-bailable and non-compoundable.

Indian Penal Code, 1860

S. 498-A- It defines cruelty and makes it an offence punishable with imprisonment up to three years and a fine.

S.304-B- It creates a "deeming offence" of dowry death. Where a woman dies an unnatural death within seven years of her marriage and it is proven that she was treated with cruelty or harassed for dowry by her husband and/or his relatives soon before her death, the husband and such relatives shall be guilty of offence of dowry death. The offence is punishable with a minimum of seven years' imprisonment that may extend to a life sentence.

S. 306- It provides that if a person commits suicide, any person who abets such suicide will be punished with imprisonment that may extend up to ten years with fine.

Indian Evidence Act, 1872

S. 113-A- It creates a presumptive rule of evidence about abetment of suicide of a married woman. It provides that where it is proven that a woman committed suicide within seven years of marriage and her husband or his family treated her with cruelty or harassed her, it shall be presumed that they abetted her suicide. This section with s. 306(IPC) makes it possible to convict the accused where a charge of dowry death under s.304-B fails because it cannot be proven that the cruelty or harassment was related to dowry or occurred soon before the death.

S. 113-B- It creates a presumptive rule of evidence regarding dowry death. It says that where it is proven that a wife died within seven years of her marriage in unnatural circumstances and she was treated with cruelty or harassed by her husband or his relative soon before her death in connection with dowry, it shall be presumed that the husband or his relatives caused her death.

- the presents should not be excessive for the financial condition of the person who has given them or on whose behalf they have been given; and
- a list of all such presents should be made, signed, and kept by both the parties to the marriage under the *Dowry Prohibition (Maintenance of List of Presents to the Bride and the Bridegroom) Rules, 1985*.

Offences under the Dowry Act are very serious and the police can arrest a person accused of such an offence without warrant. The bail is not available as a matter of right and the victims and offenders are not allowed to make a compromise with each other. (S. 8)

i. Punishment for giving or taking of dowry or for abetment of giving or taking of dowry

Giving or taking of dowry, or abetment of such giving or taking of dowry, is an offence punishable with a maximum of five years imprisonment and up to Indian Rupees 15,000 in fine. (S.3 and s.4)

ii. Punishment for demanding dowry

Not only giving or taking, but demanding dowry is also an offence punishable with a minimum of six months' imprisonment that may extend up to a maximum of two years. (s.4)

iii. An agreement for dowry is not enforceable

If the parties to a marriage or their family members enter into an agreement for giving or taking of dowry as a consideration for the marriage, such agreement is void and not enforceable in a court of law. (s.5)

iv. Who is the owner of the dowry?

The Act recognizes that although the custom of dowry has been made illegal, it may continue to be practiced. To address this and to prevent dowry takers from benefitting from dowry, the Act (s.6) clearly and specifically declares that a dowry given in marriage shall be *for the benefit of the woman* in connection with whose marriage such dowry is given. Not only that, the Act

ensures that in no event this dowry is taken by the husband or his family members by providing that:

- the person who is in the possession of dowry shall return it to the woman, or to her heir, if she is deceased;
- if she dies within seven years of the marriage in unnatural circumstances, her dowry shall be returned to her children, and if she had no children, to her parents;
- any failure to return shall be punished with imprisonment for a minimum of six months that may extend up to two years and/or with fine that will not be less than Indian Rupees 5,000 and may extend to Indian Rupees 10,000; and in addition,
- an amount equal to the amount of the dowry shall be recovered from him as fine.

2. Other legislative provisions dealing with dowry offences under criminal law

It is often difficult, or even impossible to get a direct or independent evidence of crime when the crime has been committed within the four walls of a home and the criminal is an intimate partner or a family member of the victim. In most situations, the family member, who commits the crime, is the sole witness of such crime. Such a person makes every effort to hide or destroy the evidence of the crime. In these cases, it becomes difficult to prove who has committed the crime. Dowry related crimes grew in number because a husband and his family members would often escape punishment for torturing or killing a wife. It was felt that because of the nature of dowry related crimes, special rules of evidence were required to prove the liability of the accused for their criminal conduct. In response to such needs, two new crimes of cruelty (s. 498-A) and dowry death (s. 304-B) were introduced in the *Indian Penal Code* (IPC) and two new rules of presumption were created in the Indian Evidence Act. These special legislations are discussed below.

i. Defining cruelty: Special legislation for dowry crimes - I S. 498-A, Indian Penal Code

S. 498-A provides that cruelty by a husband or his relatives toward a wife is an offence and punishable with imprisonment up to three years and a fine. In this context, cruelty means (i)

any willful conduct of a husband and/or his relatives that is likely to drive a wife to commit suicide or cause her grave injury, danger to life or limb, or mental, or physical health or (ii) harassment to her with a view to coercing her or her relatives to meet the demand for dowry, or harassment for failure to meet such a demand.

ii. Dowry death: Special legislation for dowry crimes – s. 304- B, Indian Penal Code, 1860

S. 304-B of the *Indian Penal Code* (IPC) is a very important piece of legislation that intends to punish those who kill a woman for the sake of dowry. With a view to preventing dowry murders, it introduced a new concept of presumptive offence or “deeming offence” of dowry death.

G. Dowry Death

The above mentioned section 304-B provides that the punishment for causing dowry death under this section is a minimum of seven years’ imprisonment and maximum, life imprisonment. A dowry death may be a homicide or a suicide.

1. How dowry death is treated: The new concept of deeming offence or presumption

S. 304-B marks a significant development in the area of criminal law. This new concept of deeming offence or presumption provides that the accused husband and his relatives shall be deemed or presumed to have caused the death of a wife if the prosecution has proven beyond reasonable doubt that (i) she has died within seven years of her marriage; (ii) the death is an unnatural death caused by burn, injury, or otherwise; (iii) the husband and his relative(s) treated her with cruelty or harassed her for dowry; and (iv) such cruel treatment or harassment took place soon before her death.

2. Why was it considered necessary?

This presumption is based on thousands of reported cases of married women dying unnatural deaths within early years of their marriage when demand for dowry was not met. If the unnatural death occurred soon after the cruel conduct or harassment, it is a strong indication of

the connection between the two and a reasonable presumption will be that those who treated a woman with cruelty or harassed her were responsible for causing her death.

In dowry murder cases, the prosecution often failed to prove the guilt of the husband and his family members because the family would hide or destroy evidence of such killing. Thus, the guilty remained unpunished even though the facts strongly pointed toward their guilt. In cases where a wife committed suicide, the prosecution found it difficult to prove that her death resulted from torture and harassment for dowry at the hands of her husband and his family for the same reasons. In these cases, to stop the guilty from escaping any punishment altogether, s. 304-B created a presumption of guilt.

That is to say, the prosecution shall be deemed to have discharged its burden of proving that the accused has committed dowry death if it has proven these two facts: (i) the unnatural death of a wife took place within seven years of her marriage; and (ii) she was subjected to torture or harassment for dowry soon before her death. With this, the burden of proof shifts to the accused. If they fail to prove that they have not caused dowry death, they will be held guilty.

3. How is deeming offence different from other offences?

In criminal cases, the prosecution has the burden of proof. It is the responsibility of the prosecutor to prove the guilt of the accused beyond reasonable doubt. In cases of murder, the prosecution has to prove that the accused actually and intentionally killed the victim. In cases of dowry death, the prosecution does not have to prove either the intention or the actual act of killing. This is proven by inference in such cases.

4. Rule of evidence in dowry death- s. 113-B of Indian Evidence Act, 1872

To support s. 304- B (IPC), s. 113-B of *Indian Evidence Act, 1872* provides a rule of evidence for creating a presumption of causing dowry death. This section provides that when the question is whether a person has caused dowry death and it is proven that the victim was treated with cruelty or harassed *soon before* her death in relation to dowry, it *shall be presumed* that such a person has caused her death.

5. Abetment to suicide - s. 306, Indian Penal Code, 1860²⁶

Suicide is an intentional killing of oneself. Abetment to suicide is intentional aid or instigation to commit suicide.²⁷ S. 306 is a general provision, which provides that if a person commits suicide, whoever abets the commission of such a suicide, shall be punished with imprisonment, which may extend up to ten years, and shall also be liable to pay a fine.

6. Abetment to suicide by a married woman – s. 113-A Indian Evidence Act, 1872

S. 113-A creates a special rule of presumption in a case where a married woman has committed suicide within seven years of marriage and the question is whether this suicide was abetted by her husband and/or his relatives. The section provides that if it is proven that the woman was subjected to cruelty or harassment by her husband or his relatives, the court may, after considering other circumstances of the case, presume that the suicide was abetted by her husband or his relatives. Here also cruelty means the same as defined in s.498-A (IPC). For an offence under s.306 (IPC), it is not required that the cruelty or harassment relates to a dowry demand and occurs soon before the death of the woman. Hence, in cases where a charge of dowry death under s. 304-B (IPC) cannot be sustained because these two facts are not proven, the accused can still be convicted under s. 306 (IPC).

H. Important court judgments on dowry crimes

The Supreme Court of India, which is the highest court in India, has taken an extremely serious stand in cases of dowry murders. It recognizes the challenge to obtaining independent witnesses in such cases as these crimes are committed in the privacy of the home where outside witnesses are not present, and those present are the husband's relatives who are likely an accomplice to the crime. However, it has also cautioned that in their eagerness to punish the culprits of the dowry crimes, the courts should not overlook the basic rule of the criminal law - An accused cannot be punished until proven guilty beyond reasonable doubt. The courts need to base their decision on proven facts and legal principles and not on emotions.

Any discussion of dowry crimes will be incomplete without understanding some of the important decisions of the Supreme Court of India that explain key legal terms and concepts

such as “dowry,” “demand for dowry,” “cruelty,” “soon before death,” “crown’s burden of proof” etc. These judgments also present situations where the special class of dowry legislations can be applied.

1. Property that is not demanded or given in connection with marriage is not dowry

Any property that is not demanded or given in connection to a marriage but is demanded or given on other occasions, such as birth of a child, etc. is not dowry. (*Satvir Singh v. State of Punjab*, AIR 2001 SC 2828: (2001) 8 SCC 633)

2. A demand for property, which, if consented to be given, would be dowry, is nonetheless a demand for dowry even when refused

The father of a wife filed a complaint against the father of a husband on the ground that the latter had demanded dowry at the time of marriage and threatened to stop the marriage if the demand was not met. He continued to demand dowry even after the marriage and was thus guilty of an offence of demanding dowry under s.4 (*Dowry Prohibition Act*). The respondent contended that though he demanded property, as the demanded property was neither given nor agreed to be given to him, he had not committed any dowry offence under s.2. and s.4 (*Dowry Prohibition Act*).The Supreme Court rejected this contention and held that “any property or valuable security which if consented to be given on demand would be dowry, is dowry within s. 2.” (*L.V. Jadhav v. ShankarRao Abasaheb Pawar & Others*, 1983 AIR 1219)

A demand for dowry is an offence

Below is a case that presents how a family member of a prospective bridegroom was punished by the court for demanding dowry even though the negotiation for the marriage failed. The marriage did not take place, and there was no exchange of dowry.

The prospective bridegroom was an officer in the Indian Police Service, a high profile job in India, and the prospective bride a bank employee. As is customary

in India, their marriage was being arranged by the prospective groom's elder brother who was an employee with a university and the prospective bride's father who was a lawyer. In several personal meetings and written communications, various demands for dowry were made by the elder brother that, among other things, included a house in Hyderabad, gold ornaments and Indian Rupees 50,000 cash for buying a car. Subsequently, the demand for Indian Rupees 50,000 was raised to Indian Rupees. 1 lakh (0.1 million). This became the main issue of contention between the parties leading to the breakdown of the negotiation. Both the prospective groom and his elder brother were charged with the offence of demanding dowry under section 4 of the *Dowry Prohibition Act*; however, on evidence, only the elder brother was found guilty and it could not be proven that the prospective groom also participated in the negotiation of dowry. (*S.Gopal Reddy v. St of A.P*, AIR 1996 SC 2184)

Explanation: The main question of law before the court here was the interpretation of the expression "demand for dowry." It was alleged by the accused-appellant that the expression "demand for dowry" (s.4) did not include a *demand made before marriage* and, as the marriage was cancelled in this case, it was not a *demand made in connection* with the marriage. The court refused this interpretation and held that where such a demand is made before the marriage, it will be considered as a demand made in the case of a prospective marriage that failed to materialize because of non- fulfillment of this demand for dowry.

A married woman is an absolute owner of her dowry

In the following case, the Supreme Court of India gave a landmark decision that a married woman is an absolute owner of her dowry and her husband and his relatives, who have custody of such dowry but refuse to return it to her, are guilty of the offence of criminal breach of trust as defined in s. 405 and punishable under s. 406 of the IPC.²⁸ The facts of the case are briefly discussed below.

Appellant Pratibha Rani married the respondent, Suraj Kumar in 1972. At the time of the marriage, her family gave her clothes, jewellery and other articles worth Indian Rupees 60,000. When she entered her marital home, these items were kept in the custody of her husband and his family that included his father, three brothers, and a brother-in-law. All of these were respondents in the case. Soon after the marriage, she was tortured both physically and mentally and routinely starved. Finally, in the early morning of December 11, 1977, she was beaten by the respondents and thrown out of her matrimonial home along with their children.

She demanded that her dowry be returned to her but this was refused. She filed a criminal complaint against all the respondents under sections 405 and 406 (IPC) for criminal breach of trust. The complaint however was quashed on the ground that as the appellant had entrusted the custody of her dowry to her husband, the husband became the joint owner of the property and any charge of criminal breach of trust was not sustainable against him. The wife appealed this decision to the Supreme Court. The court decided in her favour holding that she was the absolute owner of her dowry and by withholding her dowry, the husband and others had committed an offence of criminal breach of trust.

(Pratibha Rani v Suraj Kumar & Another..., AIR 1985 S.C. 628)

Explanation: The principles of law laid down by this judgment can be summarized as below:

1. Dowry or the property given to a woman at the time of her marriage is her *stridhan* (a woman's wealth).²⁹ She is the absolute owner of this property and can dispose of it by transfer, gift, will, or in any other way that she wishes without any interference from her husband. Her husband has no right over it; however, in extreme case of distress such as caused by flood, famine, illness, etc, he can use it, but is morally bound to return it to his wife. This again is a husband's personal right. If the husband has taken on debts, his debtors do not have the right to recover this debt from his wife's *stridhan*.

2. Traditionally, or out of respect, a wife may entrust her husband and his family members with the custody of her dowry or may not keep her ornaments, clothes, or other belongings under lock and key when she is in her marital home. This should not be taken to mean that the husband and/or his family members have become joint owners of that property. She is the sole legal owner of it and may use it as she wants in the same way as she may use any money kept in her bank account.

3. If a husband and his family members refuse to return the dowry to a wife, they will be considered to have dishonestly converted or used the property entrusted to them for their own benefit. This is an offence of criminal breach of trust and is punishable under s.406 (IPC)

The courts in Britain have followed the principle of law established in this case while deciding disputes over ownership of property given in marriage to a bride and groom belonging to South Asian communities.

3. Essential elements for a charge of Dowry death under s. 304-B, IPC:

As has been noted earlier, to prove a charge of dowry death, four essential elements need to be proven in connection to it. The Supreme Court found that all of these elements existed in the following case and held the accused guilty of the offence of dowry murder.

The deceased wife married the accused husband in May 1962. After two months, she was sent back to her parental home with demand for a fridge and a television set. Her parents paid Indian Rupees 6,000 to fulfill this demand. A few years later, her husband again sent her to her parents to bring Indian Rupees 25,000 to purchase a plot of land. She returned to her husband with Indian Rupees 15,000 with an assurance that the balance would be paid as soon as her parents could arrange it. After a few days, however, she was found strangled to death in her husband's home. (*Nem Chand v. State of Haryana*, (1994) 3 Crimes 608 (SC))

4. “Soon before death” – means that the cruelty or the harassment should be so close in time to the death that it can be reasonably inferred that it had either impacted the mind of the victim in a way that drove her to commit suicide, or had led the accused to kill her.

Closeness in time between the acts of cruelty and harassment and death of a victim establishes a critical link between the two. It is a question to be decided on the basis of the facts of individual cases. The expression “soon before death” as used under s. 304-B (IPC) and s.113-B (IEA), does not refer to any specific time period that can be universally applied to all cases of dowry death. It only means that the act of cruelty or harassment for dowry must be so close in time to the death of the victim that a reasonable person would presume that a connection exists between the two. In cases of suicide by a wife, it must be reasonably presumed that such cruelty had affected her mind in a way that she was forced to commit suicide; in cases of murder, it must be reasonably presumed that such cruel conduct aggravated and led to her killing by her husband or his family members.

Case # 1

The deceased married her husband in January 1989. At the time of the marriage, it was agreed that the father of the deceased would pay 15 “sovereigns of jewel” and Indian Rupees 10,000 cash but her father could manage to pay only 12 “sovereign of jewel” and Indian Rupees 7,000. The deceased was taunted, humiliated and physically tortured by her husband and his parents for this. Because the brutalities were relentless, she returned to her parents’ home. However, her father-in-law came to visit her father and asked that she return to her matrimonial home with him. But on the way he assaulted her in the street in full view of public. When her parents were informed about this, they rushed to her matrimonial home but were berated by the father-in-law. A few days after that, they were informed that their daughter had committed suicide.

Explanation: In this case, the husband and his parents were charged with the offence of dowry death under s.304-B (IPC) and cruelty under s. 498-A (IPC). Charges against the husband, who mostly stayed abroad, could not be proven for lack of evidence and he was acquitted. The

mother-in-law was found guilty of cruelty but not of dowry death because it could not be proven that she subjected the deceased to cruelty or harassment *soon before* her death. The father-in-law was found guilty of cruelty to the deceased *soon before* her death and hence guilty of the offence of dowry death. The court held - "There must be existence of a proximate and live link between the effects of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence." (*Kaliyaperumal v. State of Tamil Nadu*, AIR 2003 SC 3828. & *Yashoda v. State of Madhya Pradesh*, (2004) 3 SCC 98))

Case # 2

The deceased married her husband in 1988 who was unemployed and lived with his widowed mother and paternal uncle. She was not allowed to stay with her husband for a year because of bringing insufficient dowry. When she stayed at her husband's house, she was persistently taunted and tortured. On April 22, 1988, she was reported to have died of burn injuries. The husband and his relatives stated that she had committed suicide, but the post mortem report showed ante-mortem (before death) fracture of the skull. The husband, his mother and uncle were charged under s.304-B (dowry death) and s.306 (abetment to suicide). The Supreme Court affirmed the decision of the High Court of Rajasthan in upholding that the death was not a suicide but a murder and that all ingredients under s. 304-B were present. In this case, the mother-in-law was found guilty of causing dowry death of the deceased though a similar charge could not be proven against the husband and his uncle. (*Prem Kumari v. State of Rajasthan*, Date of Judgment: 7/1/2009, Case No.: Criminal Appeal No. 58 of 2002)

5. Unnatural death or death in abnormal circumstances includes both homicide and suicide

A homicide or suicide is death in abnormal circumstances. In a case, there was evidence that the in-laws of the deceased wife demanded dowry from her. She died in suspicious

circumstances and her body was cremated in haste without informing her parents. The Supreme Court inferred that if the death was a natural death, there would have been no need for the in-laws to cremate the body of the woman in “an unholy haste” without even informing her parents. Hence, the death in this case was an unnatural death. The court held that even if the appellant’s allegation, that it was a suicide and not homicide, is taken to be true, a suicidal death still falls under the expression “unnatural death” in relation to dowry crimes under s.304-B (IPC). (*Shanti v. State of Haryana*, AIR 1991 SC 1226)

6. The presumption that the husband and his relatives have caused the dowry death under s. 113-B (IEA) arises only in a case where the question before the court is whether the death of a woman amounts to dowry death under s. 304-B (IPC) or not.

Both s.113-B (IEA) and s.304-B (IPC) together create a presumption that the husband and his family have caused the death of his wife though they may not have done the actual act of causing death, if it is proven that (i) such a death has occurred within seven years of a marriage (ii) in suspicious circumstances and (iii) has been preceded by cruelty or harassment by the husband and his family in connection with a demand for dowry. (*Premwati v. State of Uttar Pradesh*, 1991 Cr LJ 263)

7. In an offence of abetment to suicide (s. 306 of IPC), there is no need to prove that the cruelty occurred “soon before death.”

In a charge of abetment to suicide, there is a need to prove cruelty or harassment but there is no need to prove that it occurred “soon before death.” In a case where a charge for dowry death has failed because it could not be proven that the cruelty or harassment occurred “soon before death,” the accused can still be charged with the offence of abetment to suicide under s. 306 (IPC) combined with s. 113-A (IEA). (*Satvir Singh v. State of Punjab*, 2001 Cr.L. J. 4625 (SC))

8. If cruelty and unnatural death of a woman are proven but cruelty is not proven to be related to a demand for dowry, the offence is not dowry death under s. 304-B (IPC)

If the prosecution proves that there was a demand for dowry but fails to prove that there was cruelty or harassment related to such a demand, a charge under the s. 304-B cannot be

established. However, the accused may be charged with the offence of demanding dowry under s. 4 of the *Dowry Prohibition Act*. In the following case, the cruelty and harassment were not found related to a demand for dowry and hence charges under the section 304-B could not be proven.

The deceased Krishna Kumari married her husband, who was the branch Post Master at the village post office in June, 1988. At the time of her marriage, her father gave her Indian Rupees 15,000, jewellery worth Indian Rs. 15,000, 5 acres of land, and a site for house. The land and house site were a gift to her and her *stridhana*. After a few months of marriage, the husband asked her to transfer ownership of the land to him but she refused. Her husband and his family began to abuse her after her refusal. Evidence showed that the husband misused his position to withhold mails sent to her by her father. He also did not mail her letters to her families. One day, she found the letters of her father that were hidden away by the husband and gave them back to her father. The husband and his parents were so infuriated by this that they threw her out of the house and agreed to take her back only after mediation by some community members. On the same day she committed suicide.

Explanation: As noted earlier, in this case, the prosecution could not prove that there was a demand for dowry and that the deceased was harassed in connection with such a demand. The court also found that the land given at the time of the marriage was not demanded as dowry. Therefore, a charge of dowry death under s. 304-B (IPC) could not be upheld. But there was evidence that the wife was subjected to cruelty as defined under s.498-A (IPC), and the husband was found guilty under this section. In addition to cruelty, it was also proven that the wife had committed suicide within seven years of her marriage. These facts allowed the opportunity to apply the presumption under s.113-A (IEA) and the accused was found guilty of the offence of abetting suicide under s.306 (IPC). (*K. Prema S. Rao and Anr. vs Yadla Srinivasa Rao and Ors.* AIR 2003 SC 11)

9. The death should have occurred within seven years of marriage for the offence of dowry death (s. 304-B) to apply

In another case, a wife killed herself and her three children by setting fire to her home in 1983 after 7 or 8 years of her marriage. In a letter written before her death to the Superintendent of Police, she had stated that she took her and her children's lives because she could no longer live with the abuse that she received at the hands of her husband and his family for not meeting their dowry demands. It was also proven that in 1977, she had complained to the police about her harassment for dowry and risk to her and her children's lives. However, when the police arrived to investigate her complaint, she informed that the things were better. She had also filed for divorce but did not proceed with it.

Explanation: In this case, the facts of demand for dowry, harassment related to it, and unnatural death of the wife were proven, but as the prosecution failed to register the date of the marriage of the deceased, it could not be proven that the death had occurred within seven years of marriage and a conviction under s.304-B of the IPC could not be sustained. A presumption under s.113-B (IEA) could also not be raised for the same reason. However, the court upheld the conviction of the accused for abetment to suicide under s.306 of the IPC. It found that "In such a case the conduct of the person would be tantamount to inciting or provoking or virtually pushing the woman into a desperate act." (*State of Punjab v. Iqbal Singh & Others*, AIR 1991 SC)

10. Circumstantial evidence is important in case of wife murder

A 19-year-old woman was murdered after five months of marriage in her bedroom at midnight. She was then two months pregnant. The cause of the death was established as asphyxia caused by strangulation. The husband denied the charges and also accused the deceased of sexual promiscuity. He stated that she was killed by a stranger.

Explanation: In this case, only circumstantial evidence was available. As well, the prosecution witnesses, some of whom were neighbours of the accused and also lawyers, had turned hostile. Turning hostile means that the witnesses changed their statement at the court in favour of the opposite party. Yet, the trial court found both the husband and the mother-in-law guilty and sentenced the husband to death, and the mother-in-law to several years of rigorous imprisonment. The High Court acquitted both because it found that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt. Later, the Supreme Court acquitted the mother-in-law on appeal, but upheld the conviction of the husband. It also noted with dissatisfaction that the High Court judges had not given enough importance to circumstantial evidence. (*State of UP v Ramesh Prasad Misra*, AIR 1996 SC 2766)

11. Some Cases where conviction under s. 304-B or s. 306 could not be made

Case # 1

Deceased Krishna Kumari got married to the accused in February 1977. She was B.Sc, B. Ed and M. A. Working as a teacher, she made more money than her husband. On many visits to her parents, she complained that she was being harassed by her husband and in-laws for not bringing a television set and a fridge as dowry. Only after two months of her marriage in April 1977, her half burnt dead body was found in the kitchen in her husband's home. The post mortem report however showed that her death was caused by asphyxia and the body was burnt after death. The husband's family wanted to hush up the matter by quietly cremating the body but her father insisted on police investigation into the cause of death. The police did not do anything for a long time and perhaps were bribed by the accused. (*Mulak Raj v State of Haryana*, 1996 AIR SC 2868)

Explanation: The murder was confirmed but the prosecution case lacked evidence to prove who committed the crime. The High Court convicted the father-in-law, the husband, and two others. The Supreme Court though acknowledged the fact that the young woman was murdered, acquitted the accused because the prosecution had failed to prove beyond

reasonable doubt that the four accused had murdered the woman. It held that a suspicion however strong cannot take the place of a proof.

Case # 2

In this case, the couple got married in February 1985. The prosecution alleged that the wife was tortured by the husband, mother-in-law and sister-in-law for not bringing a television, electrical fan, etc. as her dowry. The torture increased to such an extent that the mother-in-law attacked the wife with a *drat*, a sickle-like blade, on her forehead on June 20, 1988. The same evening the wife committed suicide. Her letters to her father and sister described the cruel treatment that was meted out to her by her husband and in-laws.

Explanation: The lower court and high court acquitted the accused as the prosecution could not produce enough evidence that the deceased was treated with cruelty in relation to a demand for dowry. Though the appeal from the Himachal Pradesh High Court's judgment was filed after eight years of the woman's death, the Supreme Court heard the matter in view of the fact that dowry related crimes need to be dealt with more strictly. It, however, regretted that despite there being a strong presumption that she was treated with cruelty in connection with dowry demands, the prosecution failed in its duty to collect the evidence and prove the case beyond reasonable doubt. The result was that the charges under sections 304-B, 306 or 498-A could not be proven, the husband and his sister were acquitted and only her mother-in-law was found guilty for causing injury to the deceased with a dangerous weapon. In view of the fact that she was then more than 80 years of age, the court sentenced her only to Indian Rupees 3,000 of fine. (*State of Himachal Pradesh v Nikku Ram*, AIR 1996, SC 67)

I. What can the victims do in Canada?

1. Recovery of dowry under civil law

In claims for return of dowry, the British courts have held that dowry or other such property, money etc. that belongs to a woman should be returned to her by her husband and in-laws. The courts have decided such cases under the principle of common law. Lately, the courts have

upheld that a woman is the absolute owner of her dowry by applying the principle laid down in Pratibha Rani case. The following are the common law principles that would apply in Canada.

i. A person is the absolute owner of the items gifted to him or her

Gift of money, property etc. given to a bride or groom belongs to that person. (*Samson v. Samson* (1966) 1 All E R 654) A dowry that is given to a bride is her property and the groom or his family has no right to it.

ii. Money etc. given under coercion should be returned to the owner

Money or other property given by a wife to her husband under coercion, that is force or fear of force created by the husband, can be recovered by her. Coercion can also be an economic coercion and an example of this would be 'if you do not give this money, our house can go into foreclosure.' In such a case, the law would presume that the money was given by a wife on a promise by a husband that he would return it to her.

- **In coercion, there is no real consent**

In order to prove coercion of will, a wife must prove that the coercion was of a degree that she would not have consented to give money if this coercion was not there. If she consented to such a demand after protesting, there was coercion of her will.

- **Where a wife believed or was led to believe that she really did not have a choice**

In such cases, though she did not protest, her consent would still be considered to have been given under coercion.

iii. Money etc. given under undue influence

Money or other benefits advanced by a wife to her husband or in-laws can be recovered by her if she is able to prove that she acted under their undue influence. For example, when A misuses his or her influence over B to gain some benefit by putting B (who is in a vulnerable position) in an unfair situation, B is said to have acted under undue or improper influence of A.

It is not unusual for a wife to give gifts to, or financially support her husband. A wife also benefits from her husband's financial security and prosperity. If she financially supports her husband in his business or other ventures, that as such, does not mean that she is acting under the undue influence of her husband. However, there still exists a certain degree of inequality in the relationship of a husband and a wife. A U.K. court has observed, "Although the concept of ignorant wife, leaving all financial decisions to the husband is outmoded, in practice many wives are still subjected to and yield to undue influence by husband." (*Barclays Bank Plc. V. O'Brian* 1993 4 All E R 467)

Even if there is no specific or overt act of persuasion by the husband, the wife may readily agree to give money to him. A husband may understate the risk involved in his ventures wherein he wants his wife to invest, or expect her to support him in his ventures as a matter of course without disclosing full details. Women often provide security for their husband's loans or mortgages and thus become liable to pay off the debts taken on by the husbands.

In England, the House of Lords heard appeals in eight cases together that dealt with the same issue. In each of these cases, the wife had allowed the use of her property as a security for the loan taken by her husband. In seven of these cases, the wives challenged the transaction on the ground that their consent was given under undue influence by their husbands. In one case, a wife claimed damages against the solicitor who had advised her to enter into this transaction. The court held that because of their special relationship, it is possible and easy for a husband to misuse his influence over his wife. Therefore, in each transaction where a wife acts as a guarantor for her husband's loan, the banks must explain to the wife the risk involved in guaranteeing such loans. If a bank fails to do so, the wife may be released from her liability as a guarantor for her husband's debts. The same principle of law may be applied in case of other creditors of the husband. (*Royal Bank of Scotland Plc v. Etridge (No.2)*, [2001] 4 All. E. R. 449)

In cases of South Asian women, dowry or other items, money or property that are given by her or her family members to her husband and his family at the time of their marriage or after marriage, may be recovered as given under coercion or undue influence.

iv. Civil liability for conversion of goods

In cases where dowry or other gift items given to a wife are taken away without her consent by her husband or in-laws for their own use, she can bring action against them for conversion of goods, and recover the goods or value of such goods. Conversion is a tort or civil wrong. It is an unauthorised act of using another person's goods or other items without that person's consent and thereby depriving that person from its use.

In an action for division of matrimonial property, a wife can bring to the court's notice that the dowry and other items gifted to her before, at the time of, or after the marriage, were exclusive gifts to her and meant for her personal use. If she can prove to the court that such dowry and gifts were her exclusive property, such property will not be considered a part of matrimonial property and her husband will not have any right to claim a share in it. Where such property is wrongfully kept by the husband or his family, the court may take this into consideration while dividing the matrimonial property.

2. Sanctions against dowry related crimes under criminal law

All dowry related criminal actions are prohibited and punishable under the Criminal Code of Canada. For a detailed discussion of criminal sanctions against dowry crimes, see Chapter Six of this manual.

CHAPTER TWO: FRAUDULENT INTERNATIONAL MARRIAGES

A. Introduction

Fraudulent marriage is not a cultural practice specific to South Asians. However, it has come to be associated with South Asian cultures because it is being practiced through the guise of arranged marriage, which is a long standing custom of South Asians. Arranged marriages are generally negotiated by friends and relatives of prospective spouses on the basis of their compatibility. Sometimes, marriages are also arranged by matrimonial agents. The families of prospective spouses often verify the details about each other through their social network. It is easier to provide wrong information when the prospective spouses live continents apart and do not have enough resources at their disposal to do a background check on each other. Fraudulently arranged international marriages are negotiated on the basis of lies and deception; often they have criminal elements.

Why are marriages arranged by fraud?

The three main motives behind arranging marriages by fraud are to secure immigration, extort dowry from the bride's family, and improve marriage prospect for one party so as to make the other party, who may be considered of superior status and who wouldn't otherwise become involved, agree to the marriage. There could be a hospital clerk presenting himself as a doctor, or a grocery clerk presenting himself as a millionaire business owner. People living in South Asian countries often look upon a marriage proposal from someone settled in the West as a potential promise of good life. This is why *Marriages to Overseas Indians: A Guidance Booklet* states: "For many anxious parents finding a groom abroad for their daughters becomes so important that they rush through a marriage without verifying the antecedents of the prospective groom."³⁰ This booklet advises that while arranging a marriage abroad, the parents should not make any decision in haste, or secrecy, or under pressure. They should not finalize marriages over long distance, through phone or email, nor trust blindly the middlemen or the marriage bureaus. Such fraudulent marriages can lead to abuse, separation, or abandonment of brides.

Glossary: FRAUDULENT INTERNATIONAL MARRIAGES

Annulment - A law court's declaration that the marriage does not exist. When a marriage is void or voidable, an application for its annulment can be made to a court.

Court of competent jurisdiction - A court that has the authority to hear and decide a matter is called a court of competent jurisdiction.

Defendant or Respondent - A person against whom the plaintiff or petitioner files a suit or an application

Divorce - Divorce is putting an end to a valid marriage. A valid marriage can be ended only by a court's order for divorce. A divorced spouse can seek spousal support, child support, and division of matrimonial property.

Domicile - A place where a person either lives permanently or intends to live permanently

Essential condition of a marriage - Essential condition of a marriage relates to the capacity of the parties to marry. A person's capacity to marry depends on the following: if he or she is a major (subject to some exceptions), has the capacity to consent to a marriage or understand the nature of the marriage, does not have a living spouse from a previous marriage, and is not within the prohibited relationships.

Formal condition of a marriage - Formal condition of a marriage relates to celebration of the marriage. Provincial and territorial marriage legislations provide rules for civil and religious ceremonies of a marriage. A valid marriage should meet these conditions.

Petitioner - A person who applies to a court for an order

Plaintiff - A person who brings a suit in a court

Prohibited relationship - Law prohibits marriage between two persons who are closely related. It includes people related lineally from a common ancestor.³¹ It includes grandparents, parents, children, grandchildren and will also include other lineal descendents such as great-grandparents/ great-grandchildren and also brother/sister by full blood, half-blood or adoption.

Valid marriage - A valid marriage is a legal marriage. It gives the spouses many rights and responsibilities under law. To name a few, they are responsible to support each other and entitled to seek support from each other. They are jointly responsible for care and support of their children and entitled to a share in the matrimonial property. They may also inherit from

each other. A valid marriage may be dissolved only by a divorce granted by a court of competent jurisdiction. For immigration purposes,³² a marriage performed outside Canada is valid, if it is valid both in the country where it was performed and meets the essential conditions of validity in Canada. For this reason, a marriage with a person under 16 years of age or a bigamous marriage is not a valid marriage in Canada. A proxy marriage is also not a valid marriage because no Canadian province recognizes it.

Vitiate – To make legally defective or invalid

Void ab initio - Void from the very beginning. A marriage with a person within prohibited relationship, or marriage with a person having a living spouse from a previous marriage, is void from the very beginning (*void ab initio*). In case of a marriage that is *void ab initio*, a party can apply to the court for a declaration that the marriage is null and void.

Voidable marriage - A voidable marriage is a marriage that though void, remains valid and subsisting, until a court annuls it on an application of a party to the marriage. The court's order of annulment has a retrospective effect, which means that the order will declare the marriage invalid from the date it was solemnized. Where consent of a party to the marriage has been obtained by force or fraud regarding the identity of the spouse or the marriage ceremony, such a marriage is a voidable marriage.

Void marriage - A void marriage means that the marriage "never existed." Such a marriage has no effect in law. In a void marriage, the parties do not have the same rights and obligations as the married couples, but they still have some rights, such as right to seek spousal and child support.

B. What is the legal status of fraudulent marriages?

The essential requirement of a valid marriage is free and informed consent of the parties to the marriage. In a forced marriage, such consent is acquired by force; in a fraudulent marriage, it is obtained by fraud, and so is not an informed, free, and willing consent. However, fraudulent marriages are considered valid marriages unless fraudulent misrepresentation causes a mistake about the identity of the fraudster or nature of the marriage ceremony.

For example, A intends to marry B, but because of C's fraud, mistakes C for B, and ends up marrying C instead; this is a case of fraud due to mistaken identity. C fraudulently misrepresents to A that the ceremony that they are going through is a betrothal ceremony though, in fact, it is a marriage ceremony; this is a case of fraud due to mistake about the nature of marriage ceremony. When the fraud leads to mistaken identity, or mistake about the nature of the marriage ceremony, the marriage becomes voidable at the application of the innocent spouse whose consent to marriage was obtained by fraud. These mistakes destroy the basis of the marriage and strike at the very root of the marriage contract.

In the first chapter, we have already discussed fraudulent marriages entered into for the sake of dowry only. In this chapter, we will focus on immigration marriages and discuss their status under Canadian family and immigration laws.

C. What is an "immigration marriage?"

Citizens and permanent residents of Canada can sponsor their spouse and other family members to join them in Canada through sponsorship. Sponsorship, which is a privilege to reunite foreign-born Canadians with their family members living outside Canada, is often misused to facilitate immigration of those who would otherwise not qualify to immigrate under family sponsorship. When international marriages are arranged not with the intention of establishing a family, but with the sole purpose of obtaining immigration for a foreign national, such marriages can be described as immigration marriages. In these cases, the sponsored person may leave the sponsor as soon as their permanent residence status is secure. These marriages are alternatively called "immigration marriages," "limited purpose marriages or marriages for extraneous purposes," "marriage of convenience," and "sham or fake marriages." These marriages have gained a certain degree of notoriety among immigrant communities who live in Western countries such as the U.K., U. S., Australia, and Canada.

Who commits the fraud in such marriages?

When a foreigner spouse marries the Canadian spouse only to obtain immigration to Canada but does not intend to stay in the marriage and hides this fact from the Canadian sponsor

spouse, the foreigner spouse is deceiving the Canadian sponsor as well as the immigration authorities in Canada. When spouses, the sponsoring Canadian and the foreign national, act together to fake a marriage in order to secure immigration for the foreigner spouse, they both are guilty of fraud against the government.

Another type of fraudulent marriages has come to notice where Canadian citizens or permanent resident take fake divorces in order to get into fake marriages to sponsor someone from a foreign country. Often Canadian sponsors agree to such marriages for money. This is more like an organized crime and practised discreetly across the international boundaries. In some cases, women may be forced to participate against their will and also subjected to abuse and torture if they refuse to co-operate.

D. Fraudulent marriages in Canada

In Canada, the number of such marriages is growing at an alarming rate. On February 15, 2012, Yahoo News Canada posted a report on immigration marriage fraud in the wake of the deportation of Mohamed Soumah, the ex-husband of Lainie Towell, a well-known dancer and performing artist based in Ottawa. He walked out on her after three weeks of their marriage in 2007 and threatened to go on social welfare. This would mean that Ms. Towell failed to meet the obligations of a sponsor, which includes three years' unconditional support for the sponsored person if this person is a spouse. It took Ms. Towell three years of persistent efforts to ensure that the fraudster was deported from Canada and sent back to his native country, Guinea. Every year, hundreds of immigration marriage frauds take place in Canada. Canada Border Security Agency opened 40 cases of immigration fraud between 2008 and 2010 and got leads on 200 others during the same period.

E. What is the legal status of fraudulent marriages in Canada?

Family law and immigration law view fraudulent marriages differently. Under family law, which deals with matters related to marriage and marital relationships, a fraudulent immigration marriage may be valid, invalid, or voidable depending on how the fraud has affected the marriage. Immigration law, on the other hand, disapproves all fraudulent marriages for

immigration purposes, and imposes strict sanctions against them. A brief overview of the status of such marriages under family law and immigration law is provided below.

F. Immigration marriages under Canadian family law

A fraudulent immigration marriage can be a valid, void or voidable marriage.

How can a fraudulent immigration marriage be a valid marriage?

A fraudulent immigration marriage, if it meets the conditions of a valid marriage, is a valid marriage. If the innocent party wants to end such a marriage, they should apply to the court for a divorce.

How can a fraudulent immigration marriage be a void marriage?

Example: A, who is a Canadian citizen/permanent resident and is already married, goes to India and fraudulently represents himself to be not married and marries B. Such a marriage is void from the beginning. (*void ab initio*)

How can a fraudulent immigration marriage be a voidable marriage?

Example: A intends to marry B, but because of C's fraud, mistakes C as B and ends up marrying C instead. Such a marriage is not *void ab initio* but only a voidable marriage and can be voided by the court on an application of A. So, if A wants to annul it, she must go to the court and apply for an annulment. Such a marriage is valid until declared null and void by the court.

A marriage becomes voidable on the grounds of fraud only if the fraud relates to the **identity** of the parties to the marriage or **ceremony** of the marriage. If the fraud relates to the purpose of the marriage or other facts such as age, financial, family, or physical status, the marriage is a valid marriage.

A marriage that meets the conditions of validity but is performed for immigration purposes

A marriage that is otherwise valid does not become invalid because the purpose of such marriage is to obtain immigration for the foreigner spouse. When the parties have the capacity to marry and they intentionally go through the marriage ceremony, the purpose or motive for

which they are marrying is irrelevant and the marriage is legally binding. In a case, a plaintiff applied to Ontario Court of Appeal to declare her marriage to the defendant null and void on the grounds that he had fraudulently induced her to marry him to immigrate to Canada. He had even deserted her after getting his immigration. The court rejected the application on the grounds that a contract of marriage knowingly made by the spouses cannot be annulled in Canada because one of the spouses defrauded the other into marrying in order to secure immigration to Canada.³³ (*Iantsis (Papathedorou) v. Papatheodorou*; 1970 Carswell Ont 154m3R.F.L. 158)

What does a court do when the validity of an international immigration marriage is challenged on the grounds that the sole purpose of this marriage was obtaining immigration to Canada?

When a marriage is sought to be annulled on the grounds of immigration fraud, Family Court does not look at the purpose of the marriage. It decides such cases on the basis whether the marriage meets the conditions of essential and formal validity. In case of international marriages, the rules for deciding validity are discussed below.

Which law decides the formal validity of an international marriage?

Formal validity of a marriage is decided in accordance with the law of the place where the marriage takes place (*lex loci*). The court will decide whether the marriage was conducted in accordance with the rules of celebration of the marriage in that country.

Which law decides essential validity of an international marriage?

The essential validity of a marriage relates to the capacity of the parties to marry. It is decided in accordance with the law of the ante-nuptial domicile (where the parties lived just before the marriage) of the parties. For example, if the parties habitually resided in Sri Lanka before the marriage, the law of Sri Lanka would decide if they had the capacity to marry each other or not. If the parties are domiciled in two different countries before the marriage, there may be conflict in the laws of these countries. In such situations, the law of the country where the party whose capacity is in question, was domiciled just before the marriage, will be applicable.

Validity of international marriages where spouses are domiciled in two different countries

The validity of a fraudulent immigration marriage where the spouses were domiciled in two different countries was challenged in a case before an Ontario court. In this case, the question before the court was whether a foreign marriage was a valid marriage or not. The husband alleged that the marriage was invalid and applied for its annulment. The wife alleged that the marriage was valid and applied for a divorce. The court decided that it was a valid marriage according to the Canadian law.

The husband, Aman Grewal, was a Canadian of Indian origin. He married Simarpreet Kaur, an Indian, in India in February, 2007. Simarpreet obtained immigration in July of the same year and came to Canada but never lived with her husband who resided in Ontario. Instead, she stayed with her aunt and cousin in BC. Aman applied to the court to annul the marriage on the grounds that his consent to marriage was obtained by fraud and the marriage was null and void. Simarpreet hid the fact from him that she did not intend to establish a family with him, and that her sole purpose behind marrying him was to obtain immigration to Canada. Simarpreet alleged that Aman also had concealed his real motive behind the marriage. She said that Aman wanted Simarpreet's brother to marry his sister and sponsor her to Canada. The court found that while both Aman and Simarpreet agreed that it was an exchange marriage, Aman also intended to establish a family with Simarpreet but Simarpreet's only purpose in marrying Aman was to obtain immigration to Canada. It was proven that Aman's consent was obtained by fraud by Simarpreet.

Conflict as to which law would apply: Indian law or Canadian law?

The question before the court in this case was if the fraud had vitiated the consent of Aman so as to make the marriage void. According to the Canadian law, if the fraud does not lead to mistaken identity or mistake as to the marriage ceremony, it is not considered to have vitiated the consent of the spouse and therefore does not make the marriage void. According to the

Indian law, however, a Hindu marriage under *Hindu Marriage Act, 1955*, is voidable if the consent of the petitioner was obtained by fraud as to the nature of the ceremony, or as to any material fact or circumstance concerning the defendant. Indian law is much broader than Canadian law in the sense that it also considers mistakes related to material facts and circumstances of the defendant besides the mistakes about the identity and ceremony. According to the Indian law, Aman's consent was vitiated by fraud, and so the marriage was voidable. According to the Canadian law, his consent was not vitiated and the marriage was valid. Thus, in this case the conflict between the two laws became clear and obvious.

Which law was applicable in this case and why?

In this case, the validity of the husband's consent was in question. Since, the husband's antenuptial domicile was Canada, it was Canadian law that would apply to him. The other law that could alternatively apply would be the law of the husband's domicile, which also was Canada. Thus, applying Canadian law, the Ontario Superior Court of Justice held that Aman's consent was not vitiated by fraud and the marriage was a valid marriage. It refused to annul it.

Marrying only for the purpose of immigration: Not recognized as grounds for declaring a marriage null and void in Canada

The court decided that it was a valid marriage even though the wife's sole purpose in marrying was to obtain immigration to Canada. If a marriage is otherwise valid, it does not become invalid because one of the parties has entered into it with the sole purpose of gaining immigration to Canada. (*Grewal v. Kaur*, 2011 ONSC 1812 (CanLII))

Is a person, who commits marriage fraud, guilty of a crime?

Under the *Criminal Code* of Canada, a person, who by deceit, falsehood, or fraudulent means defrauds the *public or any person* of any property, valuable security, or services, is guilty of a crime.³⁴ The Code does not specifically talk about fraudulent marriages. But if a fraudulent marriage includes any of the above mentioned elements, the spouse committing fraud may be punished under the Code.

G. Immigration marriages under immigration law

A fraudulent marriage for immigration purposes is addressed differently under immigration law.

Marriages with the sole intention to immigrate to Canada

If the spouses intend to stay as a married couple after immigration is obtained by the foreigner spouse, such a marriage is not an “immigration marriage” or “marriage of convenience.” But if one or both of the spouses enter into a marriage with the sole intention of gaining immigration to Canada, and do not intend to stay as married couple after immigration of the foreigner spouse, such a marriage is strictly prohibited. Citizenship and Immigration Canada may take strict action against a person who is found guilty of entering into a “marriage of convenience.”³⁵

A sponsorship application may be rejected on suspicion of immigration fraud

The Immigration and Refugee Protection Regulation has been amended to include that immigration authorities may reject a sponsorship application if they find that there is no genuine relationship between the spouses and the marriage has been performed primarily for seeking immigration to Canada (s.4). When a foreign national spouse applies for immigration, the immigration authorities scrutinize the application to confirm that the marriage is genuine and is not entered into for the sole purpose of immigrating into Canada. Any suspicion that it is not a genuine marriage may result in rejection of the sponsorship application.

The negative effect of strict criteria for determining genuineness of a marriage

One of the fallouts of this provision is that often genuine marriages may be misunderstood by immigration officers as “immigration marriages.” Arranged marriages are not based on romantic relationships. At the time of the immigration process, these newlywed couples, who may not have known each other prior to their marriage, may still be unfamiliar with many aspects of each other’s lives. They may be shy, hesitant and awkward around each other. In the West where marriages generally follow romantic relationships, such behaviour can arouse suspicion about genuineness of their marriage.

What should a victim of marriage fraud do if the fraud is discovered when the fraudster has already obtained Canadian immigration?

After obtaining the immigration status, the fraudster spouse may deliberately create situations that will lead to the breakdown of the marriage, or even unashamedly declare that the marriage was only a means to get an immigration status in Canada. In such cases, the victim can report the fraud to immigration authorities who may then deport this person from Canada if the allegation is found to be true upon investigation.

Deportation - often a tool of oppression in the hands of an abusive sponsor/spouse

Abusive sponsors can use threats of deportation to control the sponsored spouse, often forcing the spouse to suffer torture and abuse in silence. Sponsored spouses may even threaten to make a false complaint to Immigration Canada that the foreigner spouse has committed a marriage fraud to gain immigration to Canada. A person who is ordered to be deported on grounds of immigration fraud, may file an application for review of the order on the grounds that there is a risk of persecution, a threat to their life, or a risk of torture or cruel and unusual punishment, should they return back to their country.³⁶

Actions that Immigration Canada may take against a spouse involved in a “marriage of convenience” or “marriage for immigration purposes”

Action against Canadian spouse: If the guilty spouse is a Canadian citizen or permanent resident of Canada, Immigration Canada may initiate criminal proceedings against this person for committing a fraud. This spouse is also barred from sponsoring a new spouse for three years.

Action against non-Canadian spouse: If the guilty spouse is a foreign national seeking immigration to Canada, Immigration Canada may start enforcement proceedings against this person if he or she already is in Canada. Canada Border Services Agency may deport this person. The Immigration and *Refugee Protection Act* says that anyone who enters into a marriage primarily to immigrate to Canada, “may have enforcement taken against him or her and be removed from Canada.”

If the fraud is revealed before the foreign national spouse has been issued a visa to Canada, that spouse will be prohibited from visiting Canada for two years and this fact will remain on his or her records with Immigration Canada. Immigration Canada has especially trained its officers to uncover a “marriage of convenience” by performing document checks and site visits, and interviewing the spouses.³⁷

Citizenship and Immigration Canada has issued its advisory to Canadian citizens and permanent residents to be very careful while seeking alliance on-line or otherwise with a foreign national, cautioning them so that they do not fall into the trap of a “marriage of convenience.”³⁸

Liability of a sponsor of a fraudulent spouse

A Canadian citizen or permanent resident who sponsors a spouse to Canada is responsible for financially supporting that spouse for a period of three years, regardless of whether this spouse stays in a relationship with the sponsor or leaves. If the sponsored spouse seeks social assistance from the government during the period of sponsorship, the sponsor is liable to pay off that amount as a debt owed to the government. Until this debt is paid off, this sponsor will not be allowed to sponsor any other person.³⁹

H. Conflict between family law and immigration law

A marriage for immigration purposes is a valid marriage under family law, and the innocent spouse cannot apply to the court for annulment of this type of marriage on the grounds that it is immigration fraud. This legal provision often places the victim of an immigration fraud in an unfair situation. A fraudster spouse who walks out of an immigration marriage may still be entitled to spousal support and a share in the matrimonial property. Even more, the innocent spouse who has sponsored the fraudster spouse may be held liable under the immigration law to provide support to the sponsored fraudster spouse for the remaining period of spousal sponsorship. If the sponsored fraudster spouse claims social assistance from the government during this period of sponsorship, the government may recover this amount as a debt from the innocent sponsoring spouse. The sponsoring spouse is also not allowed to sponsor a new spouse for a period of three years. On the contrary, in cases of genuine marriages where the

immigration authorities are not convinced of genuineness of the marriage because of the absence of a romantic relationship between the parties, as may be the case of arranged marriages sometimes, they may refuse to grant a visa to a foreign national spouse.

I. Remedies available to victims in Canada

At present, in Canada, victims of fraudulent immigration marriages have the following legal remedies available to them:

- if the marriage is not a valid marriage, a victim can apply to the court for its annulment;
- if the marriage is a valid marriage, a victim can file an application for divorce to the court on the grounds available under Canadian family law;
- he/she can make a complaint to Immigration for deporting the fraudster spouse; and
- he/she can complain to the police if the fraudster foreigner spouse has committed an offence under the criminal law of Canada. For details on criminal law, see Chapter Six.

If such a victim is in India, the National Commission for Women (NCW) in India, provides online service for filing a complaint against Non-Resident Indians (NRI) for acts of domestic violence, harassment, dowry, torture, desertion, bigamy, rape, deprivation, gender discrimination, sexual harassment at work place, etc.⁴⁰

If a person is found by immigration authorities to have entered into a fraudulent immigration marriage in the US, all applications for immigration by this person will be summarily rejected. The immigration authorities have no discretionary power to allow such applications even if they are found to be genuine. This can often create problems for genuine cases also.⁴¹

Canada does not want to follow such extreme measures. However, in order to further support the victims of fraudulent immigration marriages, the current government has introduced two important changes: (i) a foreign national who marries a Canadian citizen or permanent resident will initially be given a conditional immigration status, and can apply for a permanent status only after living with the Canadian spouse for a period of two years and (ii) there will be a five year ban on the sponsored spouses to sponsor a new spouse.⁴² Similar provisions have been used by many countries including the United States and Australia for quite some time now.

CHAPTER THREE: **FORCED MARRIAGES**

A. Introduction

When a person is forced to enter into a marriage without their free and informed consent and against their will, such a marriage is called a forced marriage. A forced marriage is not a valid marriage in Canada. Forced marriage is not a cultural practice specific to South Asian or any other culture or religion. The religions practised by the South Asians prohibit such marriages. For example, willing consent of the bride is an essential condition and a major ceremony of marriage under Islam. Laws in India say that a forced marriage can be stopped at any stage and victims can apply to the court for their protection. Reports tell us that all over the world people, especially women, are forced into marriages against their will for different reasons. However, the present chapter discusses the incidence of forced marriage only in the communities coming from India, Pakistan, Bangladesh, and other South Asian countries. Such marriages are often not reported because the children, who are the victims of these marriages, do not want to take their parents or family members, who are generally the offenders in such marriages, to court. Sometimes, even when their case is already reported, they refuse to press charges.

B. Why do parents force their children to marry someone against their will?

The vast majority of parents do so because they honestly believe that it is in the best interest of their children, a few though may have ulterior motives, such as greed for dowry money. Parents believe that they understand their children's needs and who will make a better life partner for them. They may not always be wrong in their belief. Among the South Asian communities living in the West also, divorces are neither common nor totally acceptable. Parents worry about the stability of their children's marriage and may prefer someone, who although of modest credentials, appears to be sincere and capable of long term commitment, over someone who is gorgeous, wealthy, or highly accomplished.

Besides, in South Asian culture, finding the right life partner for the children is an important parental obligation, which is an arduous task and difficult responsibility. Sometimes, this hunt for the right life partner may go on for several years involving a considerable amount of time

Glossary: FORCED MARRIAGES

Annul or Nullify - To declare a marriage to be legally void or having no effect or consequences in law

Annulment - The act of cancelling a marriage, or declaring a marriage invalid i.e. 'there never was a marriage'

Asylum - A shelter granted to a foreign national by a nation on its own territory

Common law - The body of law developed by courts' decisions is called common law. Countries that follow common law are considered to have a common law system. The system of common law originated in Britain, and many countries that have once been colonies of the British Empire, such as Australia, New Zealand, Canada, United States, India, Pakistan, Bangladesh, Hong Kong etc. follow the common law system.

Court of competent jurisdiction - A court that has authority to decide a case

Force, duress, or coercion – In context of a forced marriage, they all refer to use of physical or emotional power to control a person and to force him or her to consent to a marriage against his or her will. They have been used interchangeably in this chapter.

Null & void - Without legal force or effect

Persecution - Oppression of a person on account of his or her race, religion, belief, or membership of a particular group or political opinion.

Repatriation - to send back or bring a person to a country of which that person is a citizen

Vitiate - To make legally defective or invalid

Warrant - An order of the court authorizing the police to arrest a person

and money. If, in spite of all this, the parents' decision turns out to be wrong, and their children are unhappy in their marriage, parents blame themselves for making the wrong choice. Adding to this, are their insecurity and fear of losing their children to a different culture (should their children marry outside their own culture), or their children marrying the wrong person, and falling into promiscuous sexual relationships.

Unfortunately, whatever the motive behind it is, forced marriage is not legal in Canada and many other countries of the world, including South Asian countries. It is not a private family matter. It is a violation of human rights of the victim and prohibited by many international treaties and conventions.

C. How do forced marriages take place?

- Usually young women, but sometimes young men as well, are forced into marriages. Victims of forced marriages may be teenagers or adults.
- Parents or other family members may take these young people to their native country on an unexpected trip, or under some other pretext to force them to marry someone who may often be a complete stranger.
- Parents and other relatives may use physical and emotional force, which can include assault, abduction, confinement, constant watch, isolation, restriction of communication, as well as measures to prevent the victim from escaping, such as taking away money, credit/bank cards, identity and travel documents.
- Emotional force is exercised through blackmail, bullying, intimidation, or pressure from relatives, friends and community members. An example of this is the victim's parents threatening to commit suicide, or blaming the victim of putting the family honour at stake by not consenting to the marriage.
- Forced marriage is not sanctioned by any culture or religion. But it can happen in any culture, religion, race, community, or country. It may happen to same-sex lesbian, gay or homosexual persons, too.

D. Forced marriages in Canada

Formal statistics regarding forced marriage are not yet available in Canada. The only source of information about such marriages are the recorded court cases seeking annulment, or applications made for refugee status on the grounds of fear of persecution in a foreign country for opposing such a marriage. The following are examples of forced marriages in Canada:

Jassi Kaur's Niece: A 19-year-old Grade 12 student from Brampton, Ontario was taken to Punjab, India and forcibly married to a man who she had never met before because her family

did not approve of her boyfriend. This young woman's aunt, Jassi Kaur, fears that the same thing may happen to her 16-year-old younger sister.

Harvinder Sidhu: A 25-year-old, long-haul truck driver from Brampton reported that his 21-year-old fiancée was taken on an unexpected trip to India and pressured by her ailing father to marry someone else there.

Hardeep Flora: A 19-year-old woman was forcibly taken to Punjab, India where her money and travel documents were taken away and she was forced into a marriage. She, however, managed to call the Canadian Consulate in India whose timely intervention rescued her and facilitated her safe return to Canada.

Sandeep Chand: A 34-year-old manager of client care at a bank in Victoria, BC, was forcibly married twice.

E. What can be done once a forced marriage has taken place?

A forced marriage is a violation of international human rights and has been prohibited under several conventions of the United Nations. It is considered an illegal practice in many countries, including Canada.⁴³ A person, who is being forced to marry against his or her will, can move the court to stop it. Also, a person who has already been forced into such a marriage can apply to the court to nullify it, which means to declare that it never happened. In the following section, we will discuss on what grounds the courts may declare such marriages forced marriages, and nullify them.

How do the courts decide whether a marriage is a forced marriage or not?

When a marriage is challenged as a forced marriage before courts, they determine the case on the basis of these two facts: (i) whether force was used to obtain consent of the victim, and (ii) was this force sufficient to make the victim "mentally incapable" of exercising a free choice or giving free consent. The force used may be physical or non-physical.

For a marriage to be valid, it is important that both parties either consent to it or have the capacity to give this consent. When parents or other family members of a person use physical

or emotional force to obtain consent from them, and the use of force has made them mentally incompetent to give free consent, the person is considered to have agreed to the marriage under “force, duress or coercion.”

Not all kinds of parental pressures can be considered as force. Due to their special relationship, parents may often use their emotional power to make the children comply with their wishes. Parental advice or persuasion is not force. Parental threats, such as threat to self-harm, including threat to commit suicide, severing relationship or withholding finances, may amount to force. Actual act of severance of relationship or financial deprivation by parents, may also amount to force.

There are several factors that the courts take into account in deciding whether consent of a person was obtained under force. One example is the time gap between the marriage and the victim’s application to annul it. When a person consents to a marriage under force, it is reasonable to expect that he or she will refute such a marriage as soon as the force stops to affect. If this person fails to do so, it may be interpreted to mean that he or she is finally all right with it even though it was a forced decision initially. If the courts see that after the time gap, the victim was still under the impact of the force, they may nullify such a marriage as forced marriage. On the contrary, if they decide that the victim had an option to end the relationship earlier but did not use it, they may reject the application for annulment.

In assessing the effect of force on a victim, the courts take into consideration the peculiar circumstances of the victim. For example, the court may annul the marriage of a victim as forced marriage, if the victim is very young, female and financially dependent on her parents even though there was only a parental threat to use force.

Thus, there is no straight or clear rule to decide whether the force used was enough. Law relating to consent under force or duress has not been established by legislations. Such laws have been developed by the courts in different countries that follow common law system. The courts in common law system use each other’s decisions where relevant.

F. Some important decisions of common law courts

The following cases decided by courts in some of the common law countries, Canada, Britain, Scotland, and Australia, lay down important principles of law relating to consent to a marriage under force.

Case # 1: Only if the victim consents under a threat of physical violence

A 17-year-old Sikh girl, under pressure from her parents, underwent a civil ceremony of marriage with a man she had never met. She applied to the court to nullify the marriage on the ground that her consent to the marriage was given because of a sense of duty to her parents and under Sikh customs. Applying a very restricted meaning of coercion, the court held that as there was no threat or fear of harm to the life, limb, or liberty of the petitioner, the parental pressure did not amount to coercion of the will and the consent to the marriage was not given out of fear of immediate danger to life, limb, or liberty. Thus, it was not a forced marriage according to the court. (*Singh v Singh*, 1971 2 All E. R. 828: A British case)

Case # 2: Emotional pressure did not amount to coercion

A 21-year-old man living in England since the age of four was forced to marry a girl in India under parental pressure. He was told that his refusal to the marriage would bring shame to his family and that if he continued to refuse, he would not receive any share in the family business. He applied to the court for an annulment of the marriage saying that he was forced into it through emotional coercion. The court ruled that there was no genuine and reasonable fear of immediate danger to life, limb, or liberty of the petitioner and hence, it was not a forced marriage. (*Singh v. Kaur*, [1981] Court of Appeal (Civil Division): a British Case)

Case # 3: Emotional force used by parents amounted to coercion

A 19-year-old Hindu woman, who was living in the U.K. and had become intimate with a Muslim boy, was forced to marry a man she had never met before. The marriage was not consummated, and after six weeks of living together, she left him and requested the court for annulment of the marriage on grounds of coercion. She said that her parents, on whom she was

financially dependent, threatened to kick her out of their home. The court declared the marriage to be a forced marriage and annulled it. In this case, the court held that the nature and degree of the pressure was sufficient to overbear the will of the victim so that there was no real consent. The test of duress as applied in case of forced marriages is “whether the mind of the applicant was in fact overborne, howsoever that was caused.” (*Hirani v Hirani* (1983) 4 F.L.R. 232: A British case)

Case # 4: Emotional force used by the parents was strong enough

A 20-year-old British citizen of Pakistani origin, whose parents disapproved of her relationship with her boyfriend, was taken to Pakistan to attend her sister’s funeral and was pressured to marry a man there. Several months later when she finally managed to return to the U.K, she filed a petition for annulment on the ground that she was forced into this marriage. The court allowed the petition and nullified the marriage on the ground that the circumstances of the case showed that the consent of the petitioner was obtained by force. (*P v R*, [2003] 1 F.L.R. 661: A British court)

Case # 5: A case that sums up legal definition of force in Canada

The applicant wife alleged that she consented to her marriage when she was only 16 under coercion by her mother and step-father who had received \$500 for arranging her marriage with her husband and facilitating his immigration. The court declared it to be a forced marriage because “her consent was overborne by the oppression” and allowed it to be annulled. It observed that to constitute duress, the will of the victim must be so overborne by oppression that there is no real consent. If the non-physical pressure is sufficient to affect the mind in this way, there is no requirement for a physical force or a threat of physical force for it to be considered coercion. (*1- S. (A.) v. S. (A.)* reflex, (1988), 15 R.F.L. (3d) 443)

Case # 6: Sufficient degree of force varies in different cases based on circumstances

A 21-year-old woman applied for an annulment of her marriage to a man with whom she had stayed for three months, on the grounds that she had consented to the marriage because of

her parents' threats. Her parents had threatened to withdraw their financial support to her, sever all relations, and send her back to Pakistan if she refused to marry this man. Her elder brother and sister had already been disowned by her parents for those same reasons. The court found that the victim's fear that the threat would be carried out was reasonable in this case. It laid down that "degree" of force that is "sufficient" to vitiate consent might not be the same in every case and depends on the facts of individual case. (*Mahmood v. Mahmood*, [1993] S.L.T. 589: A Scottish Case)

Case # 7: The effects of force must be viewed from the victim's point of view

A 16-year-old woman of Egyptian origin married according to the wishes of her parents, out of respect for them, and also under the pressure that her younger sisters' future prospects of marriage would be ruined because of her refusal. The court held that though in this case, there was no danger or threat of danger, yet the non-violent, controlling parental coercion amounted to a degree of force that was sufficient to nullify the marriage. The court made a very significant observation that the effect of the coercive action on the victim should be viewed from the victim's point of view. (Marriage of S, [1980] F.L.C. 90-820: An Australian Case)

Note: As mentioned in *Buckland v. Buckland*, (1967) 2 All E.R. 300, one of the requirements for deciding whether the force was used is that the victim should have responded to the force as a reasonable person. However, the test of reasonability is not objective, which means that it is not expected that the victim should have acted as a reasonable bystander. The test of reasonability is subjective, that is to say, how a reasonable person would have acted had he or she been placed in the victim's situations.

Case # 8: Not enough degree of force to keep her married for several years

The plaintiff wife sought annulment of her marriage with the defendant husband on grounds that she had consented to the marriage under duress when she was only 15 years of age. She continued to live with him for several years at the request of her father but left him three months after her father's death. However, the trial judge did not find the degree of duress sufficient enough to force her to remain married for several years after becoming of age, and as

a result, refused to nullify the marriage. (*Kawaluk v. Kawaluk*, [1927] 3 D.L.R. (3d) 493: A Canadian Case)

Case # 9: It was a forced marriage even though she stayed in it for ten months

The applicant was 15 when she spent a night with the defendant at his insistence. Later, the defendant was arrested and charged for this. While the applicant's family disowned her, the defendant's family coerced her into marrying the defendant in order to protect him against the criminal charges. They got married in February but the applicant left the defendant husband a few months later in December. She also filed an application to the court for declaring the marriage null and void because her consent to marry was obtained under duress. On the facts of the case, the court decided that she must be given a decree of nullity on the grounds of duress by her husband's family that had vitiated her consent to the marriage. In this case, there was a gap of ten months between the marriage and her decision to leave and move the court. (*Pascuzzi v. Pascuzzi*, [1955] O.W.N. 853 (H.C.) A Canadian Case)

Case # 10: Because of the time gap there was no duress to stay in the marriage

A woman filed an application to annul her marriage on the grounds that her consent to the marriage was obtained under duress by the defendant husband who had threatened to take his own life if she refused to marry him. He showed her his blood stained clothes as evidence of an earlier suicide attempt. The defendant also agreed that if it turned out that they were not able to "understand" each other, he would divorce and set her free. The court noted that there was a few months' gap between the threat of suicide and the marriage and found that the degree of duress was not enough to vitiate the consent of the applicant. (*Kecskemethy v. Magyar* (1961), 2 F.L.R. 437 [Kecskemethy]: A New South Wales case)

Case # 11: Not enough emotional pressure to get into a forced marriage:

The applicant was in a deep depression because she was rejected by someone she wanted to marry. During this period she was approached by the respondent who persuaded her to marry him. Because of her previous breakup, the applicant was in a vulnerable state of mind and did not refuse him. After marriage preparations had already begun, she realized that she did not

want to marry him, but did not cancel the wedding out of fear that it would bring social ridicule. Later, she filed an application for annulment on the grounds that her consent was vitiated due to emotional pressure. The application was rejected by the court as it did not see enough emotional pressure that would have vitiated her consent. (*Thompson v. Thompson*, (1971), 4 R.F.L. 376 (Sask. Q.B.): A Canadian case)

Case # 12: Not a high enough degree of fear

The applicant moved the court for an annulment of her marriage on the contention that it was an arranged marriage and she had consented to because of “the pressure brought on by her family and fear of the consequences if she went against their wishes.” The parties neither lived together nor consummated the marriage. The judge decided that although there was an “incredible pressure” on her, it was still not enough to affect her will to an extent that she really did not have any consent. (*Parihar v. Bhatti*, 1980 CanLII 362 (BC SC), (1980), 17 R.F.L. (2d) 289 (B.C.S.C.)

Case # 13: Parents’ threat to commit suicide amounts to extreme emotional pressure

In 1998, a 16-year-old girl, who was still in school, was married to a 19-year-old man in Glasgow in a Muslim wedding ceremony. The following year, she applied for annulment of her marriage on the grounds that she consented to the marriage because her mother had threatened to send her back to Pakistan and also to commit suicide if she disagreed. As evidence, the court was shown the video of the marriage wherein the girl seemed to be very unhappy. The court found that the consent of the girl was vitiated. (*Sohrab v. Khan*, [2002] S.C.L.R.663: A Scottish case)

Case # 14: Parental pressure may act as force on adult and male children too

A 30-year-old Scottish man of Pakistani origin married a Pakistani girl in Glasgow under pressure of his family. He was in a live-in relationship with a non-Muslim woman from whom he had a child. At the time of his marriage, the couple was expecting another child. He applied to the court for annulment of the marriage on the grounds of coercion, alleging that his family forced him to marry by saying that it was his father’s last wish and that if he did not agree to the marriage, he would bring shame upon the family. The court granted a decree of nullity on

the ground that his true will was overborne. The court observed that one cannot assume that a male or an older person would be less affected by parental pressure than a female or a younger person. (*Mahmud v. Mahmud*, [1994] S.L.T. 599: A Scottish case)

Case # 15: The court came forward to protect two minor orphan girls

Following the death of their parents, two minor girls of Pakistani origin were sent to live with their relatives in the U.K. They had some property in Pakistan. These relatives took them to Pakistan and forced them into an engagement ceremony. They were repatriated to the U.K. after wardship proceedings at a U.K. court. Emphasizing the need to take an early action in such proceedings, Justice Singer observed, “(a)s a society we have become increasingly aware of the need... to safeguard the integrity of a child and young adult from the risk of marriages forced or imposed upon them by undue pressure and sometimes by violent threat.” (*In re Minors (Repatriated Orphans)* [2003] EWHC 852: A British case)

Case # 16: The court directed the High Commission to find out whether force was used

An adult British citizen of Bangladeshi origin was visiting her family in Bangladesh when she was forced into marriage. On her application, a British court ruled that she had the right to make her own decisions and directed the British High Commission in Bangladesh to determine through its officials whether the victim’s ability to make decision regarding her marriage was vitiated due to coercion. (*In Re SK (An Adult) (Forced Marriage: Appropriate Relief)*, [2004] E.W.H. C. 3203 (Fam) A British case)

Summary of these decisions

The law relating to force or duress as laid down by different courts:

- A marriage is a forced marriage if the consent of either party to the marriage has been obtained through force, duress, or coercion.
- The form of force used to coerce is not important. It may be physical or non-physical (emotional).

- What is important is the degree of force used. The consent can be considered as given under force only if the force has generated such a degree of fear as has overcome the mental ability of the victim to give free consent at the time of the marriage, or at the time of a marriage ceremony.
- The fear of the victim must be reasonable in the circumstances of the case and must be viewed from the point of view of the victim.
- Some of the important factors that determine how vulnerable the victim was to duress are: whether the victim lived with the person who used force during the period of coercion; the time gap between the time when the force was applied and the actual marriage ceremony; the length of time between the marriage and the application for annulment; and whether the marriage was consummated.
- Parental advice and persuasion would not amount to coercion until it has destroyed the mental competency of the child to give free consent. Emotional or moral pressure from parents can affect any child, youth or adult; male or female.
- “Reluctant” or “resentful” consent is still free and informed consent if the victim is mentally competent to give such consent at the time of marriage. Duress will be considered to have vitiated the consent only if the emotional state of the victim has completely overcome the victim’s will to consent.

G. Some other important facts about forced marriages

1. Forced marriages and arranged marriages

A forced marriage is not the same as an arranged marriage. An arranged marriage is a time-honoured custom of South Asian communities wherein the parents or family members of a person find a suitable match for him or her on the basis of compatibility in age, education, physical appearance, social and financial standing, faith etc. In an arranged marriage, the parties have full opportunity to consider their options and also the right to refuse or agree. Arranged marriages are often mistaken as a forced marriage in the West, due to lack of

understanding of the tradition of arranged marriages. As a matter of fact in most countries, neither law nor religions sanction forced marriages.⁴⁴

2. Forced marriage and child marriage (marriage of a minor)

Canada prohibits the marriage of a minor barring a few exceptions. As in Canada, in most countries, an essential condition of a valid marriage is that the parties to a marriage must be adult and of sound mind so that they understand the nature of marriage and the associated rights and responsibilities. This is why consent to a marriage should be an informed consent and free of force. As a child or minor lacks the ability to understand the nature of marriage and give free and informed consent to it, the marriage of a child or minor is considered a forced marriage and an abuse of human rights.

3. Forced marriage and violation of human right to self-determination

United Nations treaties and other international conventions and laws consider forced marriage to be a violation of human rights because the right to choose one's marriage partner is rooted in the right to self-determination. Canada, as a party and a signatory to many of these human rights treaties and conventions, is obligated to ensure that forced marriages do not take place within its jurisdiction.

4. Forced marriage and refugee claim

Many international and national refugee law conventions recognize forced marriage as a gender-related form of persecution and entitle the victim of a forced marriage to claim refugee status.⁴⁵ The conventions provide that refugee status may be granted to an applicant who has a fear of persecution in their country of origin. From 1994 to 2008, in 120 cases of forced marriage, refugee status was granted to women by courts and tribunals in Canada, Australia, and the U.K. In 2005, the Immigration Appeals Tribunal (U.K.) held that the fear of forced marriage and female genital mutilation (FGM) was not a social or religious ground to justify claim to refugee status. In Canada and U.S., however, a woman fearing forced marriage can apply for refugee status.

5. Forced marriage and human trafficking

Human trafficking is a modern form of slavery. It is forced exploitation of victims for sexual and labour purposes by putting them under fear of harm to themselves or somebody known to them. The United Nations defines human trafficking as “The recruitment, transportation, transfer, harbouring or receipt of persons, by the means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” Many elements of human trafficking may be present in a forced marriage. Human trafficking is a serious crime and punishable with imprisonment that may extend to 14 years, and in certain circumstances, to life sentence [Section 279.01 (1) of Criminal Code of Canada], but forced marriage is yet to be defined specifically as a crime under the Code.

6. Forced marriage by husband/in-laws: A very disturbing trend

Cases have come to light where a husband and in-laws of a woman forced her to take a fake divorce in order to facilitate the immigration of a relative of the husband such as his brother or his sister’s husband by marrying and sponsoring him. This is a serious crime and fraud against the Government of Canada and can lead to severe punishment.

H. Measures taken by other countries to address the issue of forced marriage

Let us briefly examine the measures that other countries of the world have taken to prevent forced marriages. The U.K. has taken some important administrative and legislative steps in this regard that have been commended by other countries including Canada.

The U.K.

Forced Marriage Unit

The British government established a Forced Marriage Unit (FMU) in 2005 to deal with the cases of forced marriages in the U.K. The FMU is jointly run by the teams of Foreign

Commonwealth and Home Office. It makes recommendations to the government to change existing laws and make new laws to prevent forced marriages. Its special teams carry out secret missions to rescue and bring back young British nationals held captive abroad by their families trying to coerce them into a marriage. It also runs shelters in New Delhi-India, Dhaka-Bangladesh, and Lahore-Pakistan, and some other countries to help the victims of forced marriages. The British Government says that it handles around 300 cases every year, which may only be the “tip of the iceberg.”⁴⁶ On recommendations of FMU, the British government has raised the age of marriage in Britain from 18 to 21. It has also issued an advisory to school teachers to stay alert and report any possible signs of an impending forced marriage among the students in view of the fact that the potential victims of forced marriage may discuss the issue with their friends and peers.

Forced Marriage (Civil Protection) Act, 2007⁴⁷

This act provides for the *Forced Marriage Protection Order* (FMPO) to protect victims against forced marriages. This order may ask the person(s) who are forcing such a marriage to stop, to disclose the location of the victim if the victim is in confinement, and to handover his/her passports. Non-compliance with this order may lead to imprisonment. It empowers the court to issue orders to protect a person from being forced into marriage or one who has already been forced. This Act adds a new Part IV-A to the *Family Law Act, 1996* (U.K.). In the U.K., the Forced Marriage Act has provided more effective protection to the victims of forced marriages than the refugee law.⁴⁸

FMPOs may be ex-parte and issued without notice to the party against whom they are issued in cases where a victim is deemed to be at risk of a significant harm. An arrest order may also be attached to the protection order in the event of its breach or contempt of court. A police officer may also arrest without warrant if there is a breach of protection order. An FMPO may be made by the court on its own initiative, or on an application by a person who needs protection, or a third party that may be a policeman, friend, or family member of this person.

Cases decided under the Forced Marriage Protection Act

FMPO used to rescue a doctor from a forced marriage: the case of Humayra Abedin

Humayra was a Bangladeshi national who was rescued from a forced marriage through the combined efforts of the FMU and *Ain O Salish Kendra*, a Bangladeshi women's organization. She was a resident of Britain, though not a British citizen, for six years, and was a trainee NHS doctor when her family tricked her into visiting Bangladesh in August 2008, and forced her into marriage. The U.K. High Court issued an FMPO for her that enabled her to present herself to a court in Bangladesh. That court placed her under the protection of British Consular officers and local police who helped her return to the U.K.

This decision was special. Although Humayra suffered months of forced imprisonment, "manhandling" and involuntary psychiatric medication prior to the marriage, in her statement she said that she had entered the actual marriage ceremony due to "emotional duress" and not because of the threat to violence. Although, she was an adult, well educated and financially independent, the court held that the emotional duress exercised in her case was strong enough to force her into the marriage.

Very strong steps taken by FMPO to stop the forced marriage of a 19-year-old

In this case, a 19-year-old British woman of Pakistani origin was being forced by her parents to marry a man in Pakistan. She managed to apply to the court for an FMPO. The judge ordered the parents to stop forcing their daughter to undergo any religious or civil ceremony for betrothal or marriage in the U.K. or elsewhere and directed them to submit to the court their daughters' British and Pakistani passports, as well as all travel and other documents. They were also instructed to hand over their younger daughter to the police. In addition, the judge issued an order to the concerned authorities to not issue any travel documents for the sisters. An order was also issued to the fiancé of the applicant asking him to refrain from any engagement or marriage ceremony with her in the U.K. or elsewhere. Further, the judge ordered the police to sound a port alert and an "all ports stop" to prevent the applicant and her parents from leaving the U.K. without the court's permission. (*A Chief Constable and Sir Nicholas Walls P*)

Scotland

Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011

This Act was passed in March, 2011 by the Scottish parliament. In addition to other provisions, it gives the Scottish courts authority to customize the protection order according to the needs of the victim, such as removing the victim to a safe place, or reaching out and helping a victim who faces the risk of being taken abroad for being forced into marriage.⁴⁹ Forced Marriage Protection Order is a civil court order, but a breach of this order is punishable as a criminal offence with a fine, two years of imprisonment, or both.

United States

In the U.S., forced marriage is treated as a form of persecution and victims of forced marriage may seek asylum on the ground that if sent back to their home country, they will be exposed to the risk of being harmed or killed. A U.S. court decision, explaining how a refugee status can be granted to the victims of forced marriage under the U.S. refugee law, is briefly discussed below.

A 28-year-old citizen of India granted asylum

A 28-year-old native and citizen of India was detained while entering South Texas in Feb, 2007 for failing to provide valid entry documents. A removal order was passed against her, but she made an application under section 208 of the Immigration and Nationality Act (INA) seeking asylum in the US. She lived in the province of Gujarat in India. Her father wanted her to marry his 40-year-old friend. When she refused, her father beat her up. He also threatened to kill her if she continued to resist. She escaped to Guatemala with the help of a friend. She called her father from there hoping that he might have changed his mind, but he reasserted his threat to kill her if she returned. The applicant feared that her father would find and kill her if she was removed to India. She applied for asylum in the U.S. court on the ground of fear of prosecution.

The generally accepted meaning of persecution is a threat to life or freedom, confinement, severe economic restriction that will constitute a threat to life or freedom. It also includes

mental suffering. The person who applies for asylum must provide proof of either past persecution, or show a reasonable fear for future persecution in their country on account of their race, religion, nationality or membership in a social group or political opinion. On being satisfied that the applicant's contentions were true, the court granted her asylum under s.208 of the INA. (*United States Department of Justice, Executive Office for Immigration Review, US Immigration Court, 26 Federal Plaza New York*)

Why did the court grant asylum to her?

On the basis of the evidence produced, the court found that:

1. The Department recognizes forced marriage as a form of persecution and violation of human rights under international law;
2. Arranged marriage is not a forced marriage, and a common practice in India. Opposition to such a marriage is rather uncommon. Women, who oppose arranged marriages, constitute a particular social group that is sufficiently discreet. The applicant in this case, was a member of this group;
3. The applicant had suffered physical assault, mental stress, and humiliation in the past because of her opposition to the marriage. She had genuine reasons to fear that her father would carry out his threat to kill her if she returned to India. She demonstrated both past persecution and reasonable fear for future persecution;
4. Her past persecution, or threat of future persecution was based on a ground protected under the INA, i.e., her membership in a social group that opposed forced marriage in India.

Australia

In Australia, forcing a minor into marriage is an offence punishable with imprisonment. It intends to bring a new legislation for making forced marriage of an adult a crime punishable with seven years' imprisonment in aggravated cases, and four years in other cases.

Denmark

Denmark has also tightened its immigration laws in an attempt to check the practice/ occurrence of forced marriages. It now prohibits the reunion with a spouse who lives abroad until both spouses are 25 years old.

France, Gabon, and Indonesia

Like the U.K., these countries have raised the minimum age of marriage from 16 to 18 years.

Germany, Norway, and Belgium

These countries have passed laws to criminalize the practice of forced marriages.

I. Remedies available to victims in Canada

Canada recognizes and prohibits forced marriages. Foreign Affairs Canada states in its “Guide to Marriage Overseas”:

Parents, relatives, and communities may use relentless pressure, emotional blackmail, threats, abduction, imprisonment, physical violence to coerce people to enter into marriage. While both men and women experience forced marriage, it is most commonly perpetrated against women, who may be unable to return to Canada.

Further

Canada opposes the practice of forced marriage and urges all countries to respect their international human right obligations relating to free and full consent to marriage. Forced marriage constitutes a human rights violation under international law, to which Canada is a signatory.

Citizenship and Immigration Canada, in its guide “Welcome to Canada: What you should know” states clearly: “**Parents are prohibited from forcing their daughters and sons into marriages against their will.**”

However, we still do not have a legislation that specifically and directly addresses this problem. At the governmental level,⁵⁰ it is felt that further research is needed to bring out an act like the *U.K. Forced Marriage (Protection) Act 2007*. This should not be taken to mean that the victims of forced marriages do not have any help available in Canada.

1. If the victim is in Canada

If a Canadian fears that he or she may be forced to travel abroad to marry, he or she should immediately contact the provincial social authorities and the local police.

Victims can refuse to sponsor their spouse: The victims of a forced marriage can refuse to sponsor their foreigner spouse, or if they already have filed a sponsorship application, they can withdraw it.

They can file for annulment or divorce under family law: They can file an application for annulment of the marriage, or apply for divorce under family law. A court’s order of annulment declares the marriage to be void, i.e. as having no legal effect.

They can seek help under criminal law: Under criminal law, physical acts of violence, threats of violence, forceful confinement, abduction, kidnapping, and other such acts that are used to force a person to marry against their will, are punishable as crimes. These provisions have been discussed in detail in Chapter Six of this manual.

If the victim is not a Canadian national: Under the immigration law, a victim of forced marriage, who is not a Canadian national, may seek refugee status in Canada by making an application on humanitarian and compassionate ground alleging the threat of persecution in his or her home country due to victim’s opposition to the forced marriage.

2. If the victim is outside Canada

If a Canadian is forcibly or fraudulently taken to a different country to be married there, or if a Canadian, who is already overseas, fears being forced into marriage, they should seek help from the nearest Canadian government office abroad or contact Emergency Operations Centre at 1-800-267-6788 (in North America), or make a collect call (where available) to 613-996-8885. A collect call is a reverse charge call where the caller calls at the expense of the receiver of the call. This provision has been created to help people who are in distress situations and may not have access to money to make calls for help. However, if their life or safety is at risk, they should comply with the family's wish and try to return to Canada safely and as soon as possible. Once they are here, they should seek help immediately.

CHAPTER FOUR: **ROLE OF IN-LAWS IN ABUSE OF WOMEN**

A. Introduction

In South Asian cultures, a large majority of people still live in joint or extended families. Such extended families assume many roles for their members. It is often said that parents only give birth to children who are raised by their family and relatives, especially grandparents. Grandmothers lovingly take over the responsibility of raising their children's children providing better care than any childcare agencies would provide. A popular saying – “Interest is dearer than principal”, is used to mean that grandchildren are even dearer than one's own children. In these families, there are many role models and mentors for children. Sick and elderly find loving care. These families often operate like a financial institution where family members advance interest-free loans to each other in need. Marriages in South Asian cultures are therefore usually between two families and not two individuals. Given this reality, an important criterion for compatibility of the bride is whether she can truly become part of her husband's family. A woman, who has higher accomplishments than those of her prospective groom, or comes from a family whose status is higher than that of his, may often be rejected as unsuitable because she may not be able to blend into his family.

B. Relationship dynamics in extended families and its effect on daughters-in-law

In South Asian communities, the family of a young bachelor may typically include his parents, younger dependent siblings, such as unemployed and unmarried brothers and unmarried or widowed sisters, or even married brothers and their wives and children. In this family structure, parents continue to act as heads of family, regardless of their age or financial contribution. Mostly, in such families, the mother-in-law is considered to be the most important person, and also the most powerful.

More often than not, the treatment that a daughter-in-law will receive in her husband's home is decided by her mother-in-law. If the new bride is fortunate enough to have an enlightened and affectionate mother-in-law, her stay in her husband's home will be peaceful. But if this is not the case, her married life may be full of conflicts and unhappiness. A husband's sisters,

especially those older than him, are next in importance in this hierarchal structure. They often participate with the mother-in-law in the abuse of a bride. This is not to say that the father-in-law or other members do not play any role in her abuse.

Ironically, in many instances of ill treatment and abuse of a bride, the involvement of a husband may be minimal, or may begin only on provocation by his mother and other family members. Many women admitted that they would be beaten by their husbands at the instigation of the mother-in-law. That is why Dasgupta (2002) comments: "Domestic violence in Aouth Asian community is different from other communities as it is characterised by in-law abuse... As more family members of husband join him, the abuse is increased."⁵¹ Jagbir Jhutti writes that the mothers play a very important role in Sikh families in Britain. Ballard (1978) also finds that parents play a dominant role in Sikh marriages⁵².

C. Why are women abused by their husband's family?

In a community given to son preference, a new bride will generally find herself at the lowest rung of the ladder of hierarchy in her husband's family. In this hierarchy, a husband's sisters will be next to his mother. His older brother's wives will be in the third category with whom she may compete for importance in later years, but she will never be able to compete with his mother or sisters. As after marriage, a woman has to leave her own home and join her husband's family where no one may be known to her and where she would occupy the lowest position, she is already extremely vulnerable to all kinds of abuse.

A mother-in-law can see a daughter in-law as a competitor for her son's love and attention and try to alienate him from her. If her husband is the provider for his younger siblings, the mother-in-law may be afraid that due to his wife's influence, he may refuse to take care of them. The husband's family may try to poison his mind against her so that she is unable to get his good will or love and stays unsupported and powerless. This makes it easy to control her.

She may be assigned all the menial household work; she may be asked to serve upon the mother-in-law and sisters-in-law who do not share any of the household chores. She may be denied the right to make decisions of her own life such as whether she will work, study, or start

a family, and even how she dresses. Her contact with her own family, friends, or relatives may be restricted or closely monitored. She may be prevented from working because this may allow her a measure of economic and social independence; or she may be forced to work and hand over her salary to her husband or in-laws.

When dowry is the main reason behind the abuse of a bride, there are several cases where this abuse escalates into her murder by her husband and/or his relatives. In Vancouver, British Columbia, the former Attorney General, Wally Oppal, commented to Parveen Bandan in an interview on in-law's role in South Asian communities:⁵³

The point is that there are some characteristics of South Asian cultures that I think lend themselves to violence against women. The example is the dowry system, which still is practiced here not to the same extent as it is in India, but still here.

The above information, however, should not be taken to mean that incidents of domestic crimes in South Asian communities are the norm rather than the exception. Majority of parents-in-law consider it to be their moral responsibility to protect the bride who has been given to them on trust that she would be well taken care of. Several of them protect their daughters-in-law even against the abuse by their own son and feel guilty if they have not been able to provide her a safe and reasonably happy life. In India, where one-sixth population of the world lives, paradoxes are easy to find.

In some cases, even women are seen abusing their in-laws. In South Asian cultures, parents spend most of their earnings on raising their children, i.e, making available to them the best quality of education or spending lavishly on arranging their marriages in order to ensure a good prospect for their future. In their old age, when their earnings are diminished and major parts of their assets have already been spent on their children, they often are not left with enough to live a comfortable life. No affordable living arrangements or healthcare may be available to many of them making them very dependent on their son and daughter-in-law for daily necessities. If their son and daughter-in-law refuse to take care of them, many will endure

numerous hardships. Daughters-in-law can provoke their husbands to turn away from their responsibilities toward their parents in their old age. The number of seniors' homes that were unheard of a few decades ago is growing fast in South Asian countries.

Many sad stories have been created to remind children of their responsibilities. In a family, the widowed grandmother was allowed to eat only from a cheap earthen dish. One day, by mistake the dish slipped, fell on the ground and broke into pieces. Seeing this the 4-year old, began to cry. On being asked by his mother why he was crying over something so cheap, he answered sobbing – “The dish is broken. How will I feed you when you grow old?” A man took his father on a very long fun drive and asked him to get out of the car and relax while he would be back after a few errands. As he was preparing to leave, the father said to him – “Son, try to remember well your way back home, I worry for you.” The father knew that he was being abandoned and he also knew that this may be the future for his son.

It will also be wrong to believe that it is only the husband and his family who are always at fault. As discussed in the chapter on dowry, it is being increasingly noticed that s. 498-A (IPC) (see Chapter One) is being used by many women and their families as a tool to settle personal scores against their husbands and their families by making false allegation of cruelty or dowry related harassment against them. In *Sushil Kumar vs. Union of India*, JT 2005 (6) SC 266, the court observed that the misuse of this section may unleash a sort of “legal terrorism” against a husband and his family.

D. How do courts rule on criminal liability of in-laws in the abuse of women?

In many cases of domestic violence, especially those in which violence follows demand for dowry and often leads to the murder of a wife, the family members, especially the mother-in-law, is found to be either an accomplice or the primary culprit. There are many decisions of courts in India in which the mother-in-law was convicted of violence against her daughter-in-law or even of her murder. In light of the seriousness and extent of abuse of women by their in-laws, two sections of the *Indian Penal Code* (IPC) specifically address crimes committed by husbands and their relatives. These sections provide rigorous punishment against acts of domestic violence and dowry death of women.

Section 498-A (IPC) that defines acts of cruelty against a wife, is entitled, "Offence of cruelty by the husband and/or his relatives." Section 304-B of the (IPC), that has specifically been created to establish criminal liability for dowry death, is directed to both the husband and his relatives. It clearly states that where a woman dies in abnormal circumstances within seven years of her marriage, and it is proven that soon before her death she was subjected to cruelty or harassment by her husband or his relatives for dowry, the husband or his relatives shall be deemed to have caused her death. For such offences, the minimum punishment is seven years and the maximum, life imprisonment. Some cases decided by the Supreme Court of India are noted below in which the in-laws were charged with these offences. In many of these cases, they were also convicted.

Case # 1: The Supreme Court found a mother-in-law guilty of killing her daughter-in-law. The mother-in-law was a mid-wife by profession. The daughter-in-law had surgery and while she was unconsciousness, her mother-in-law strangled her. Evidence established that the daughter-in-law was tortured for dowry and medical examination showed that the deceased could not have strangled herself. The motive for murder was clear and the prosecution was successful in proving the charge of murder against the mother-in-law. (*Godabarish Mishra v. Kuntala Mishra*, AIR 1997 SC 287)

Case # 2: A bride was tortured for bringing insufficient dowry and taunted for a squint in her eyes. Her parents were also ridiculed and humiliated for not being able to fulfill the dowry demands. She died of burn injuries in her kitchen. Her clothes smelled of kerosene. The prosecution established the motive for the crime as torture and harassment soon before the death, and death in abnormal circumstances. The bride's in-laws were convicted of the murder. (*Baldev Krishan v. State of Haryana*, AIR 1997 SC 1666)

Case # 3: A wife was murdered and there was evidence that she was tortured by the husband and her mother-in-law before her death. The prosecution's case was not strong enough to establish the guilt of the husband, but the mother-in-law was found guilty of injuring her with a sickle. (*Inder Sein v. The State*, 1981 Cri LJ 1116)

Case # 4: The husband, his father and sister were convicted of dowry murder of a wife. (*State of U.P. 1992 [2] SCC 86*)

Case # 5: The elder brother of the prospective groom and the groom himself were charged with the offence of demanding dowry, but only the elder brother's involvement could be proven, resulting in his conviction. (*Gopal Reddy v. State of Andhra Pradesh, AIR 1996 SC 2184*)

Case # 6: The husband and his mother were sentenced to death for murdering his wife. In this case, a provincial High Court passed an extraordinary verdict. Its decision involved carrying out the death sentence in an open square in full view of the public so that people could realize the gruesomeness of killing of an innocent bride by her husband and his mother. However, on appeal, the Supreme Court struck down the sentence of public hanging as contradictory to Article 21 of Indian constitution (Right to Life) stating: "a barbaric crime does not have to be visited with a barbaric penalty." (*Attorney General v. Lichma Devi, AIR 1986 SC 467*)

Case # 7: The wife committed suicide by consuming naphthalene balls when she could no longer stand the torture at the hands of her husband, mother-in-law and sister-in-law. The mother in-law was convicted, though the husband was acquitted due to lack of evidence. (*State of Himachal Pradesh v Nikku Ram, AIR 1996, SC 67*)

Case # 8: A Sikh woman who complained of torture by her husband and in-laws was found dead. She had consumed poison after seven and a half months of her marriage. The trial court convicted both her husband and brother-in-law of murder and sentenced them to life imprisonment. On appeal, the High Court of Punjab and Haryana affirmed the judgment of the trial court, but upon further appeal, the Supreme Court of India, acquitted the accused due to inadequacy of some evidence against them. (*Prem Singh v. State of Punjab, AIR 1997 SC 221*)

Case # 9: A session court convicted a husband and his mother for strangling his 19-year-old wife after five months of marriage. She was two months' pregnant at this time. After an appeal, the Supreme Court acquitted the mother-in-law for absence of evidence but the conviction of the husband was upheld. (*State of UP v Ramesh Prasad Misra AIR 1996 SC 2766*)

Case # 10: A daughter-in-law was constantly harassed and tortured for not being able to bring a refrigerator and a television as part of her dowry. She was found dead under abnormal circumstances and her father-in-law tried to cremate her body with unusual haste. Prior to her death, the deceased had confided in her sister about the torture that she had received for not bringing enough dowry. Her father-in-law, husband and his two female relatives were all suspected to have been involved in the homicide. Circumstances strongly pointed toward the guilt of the accused but due to the laxity of police investigation, the prosecution could not prove its case and they were acquitted. (*Muluk Raj v. State of Haryana*, AIR 1996, 2868)

E. Remedies available to victims in Canada

In Canada, abuse of brides by their in-laws in South Asian communities has not merited sufficient attention so far. Deepa Mehta's film "Heaven on Earth" depicts the story of a young bride who immigrated to Canada. She was routinely abused and assaulted by her husband on the provocation of her mother-in-law while his family, that included his parents, sister and her family, either supported, watched silently or simply ignored the violent episodes.

The film presents a rather familiar scenario which is somewhat like this. The husband and his family have been living in Canada for a long time and are now well acclimatized. The young bride is brought over through an arranged marriage. She has never met her husband or his family before. She does not speak much English. She has no social network in Canada and may not be allowed to contact her family members living outside of Canada without the consent of her husband or his family. If she is abused, she does not know where and how to find help. In addition, the husband, who is also her sponsor, often threatens to take away her sponsorship and have her deported. This abuse may also include physical violence, being forced to perform all household chores or volunteer at the family business, extortion of dowry or any of her income.

While dispute between a husband and a wife is normal and a natural part of married life, in a South Asian family, the husband's family may unjustly interfere in these disputes and lobby against the wife. In cases where a husband is violent and unjust toward the wife, his family members may still support him and prevent his wife from seeking outside help. In domestic

violence cases, the police may find it difficult to get truthful information from the husband's relatives. These relatives may even attempt to mislead an investigation. In a study by Parveen Bandan,⁵⁴ Sarah, a victim services manager, working with the South Asian communities for about 23 years, stated:

Specifically, number one, the woman is in his house and anyone living there will be on his side. Most times it's the husband who's the offender and sometimes also the mother in-law. We've advocated here that the police do not use any of the extended family members as interpreters and to separate her from the rest of the family.

Fortunately, it is easier for women to leave abusive relationships in Canada and many women come to understand this in time. There are two main reasons why victims of domestic crimes in South Asian communities stay in abusive relationships: one, because they do not know how to end it, which means how and where to find support and how to manage transition; two, they are afraid of the stigma and shame associated with failed marriages. They believe that they have failed in their duty and should have done something differently to make their marriage work. When they are able to seek help, they are connected to a vast network of service providers that offer specialized help to assist victims of domestic violence. However, when they are able to seek and use the help provided by so many different agencies, they can move to an abuse-free life. In Canada, These victims do not have to face the shame and stigma attached to a failed marriage. Many South Asian women in Canada have been able to end abusive relationships and successfully re-build their lives.

It is crucially important for service providers to understand how South Asian women, living with their husband's family, can be vulnerable, dependent and controlled. Helping strategies for victims should be adapted to deal with these family dynamics. A tip sheet has been developed and attached in the last chapter of this manual to help service providers ask key questions in order to better understand the family dynamics and what kinds of intervention will be successful in particular situations.

CHAPTER FIVE: **ABANDONMENT OF BRIDES**

A. Introduction

Young, beautiful, willing and prepared to give up everything they know to start a new life with their husbands living in the West! Why are these dreamy eyed brides abandoned to wait a lifetime for their bridegrooms to arrive with their permanent resident card? Why would a man go through a detailed and expensive ritual of marriage only to abandon his bride shortly after the wedding? Discussing why Indian women are abandoned in a foreign country, *Marriages to Overseas Indians: A Guidance Booklet* says:⁵⁵

The problem in Overseas Indian marriages may take the shape of women being abandoned because of various reasons. It may be before she is taken to the foreign country of her husband's residence or going to the foreign country but coming back within a year, either sent back or forced to flee. The problems may arise due to women herself or her parents held to ransom for payment of huge sums of money as dowry, both before and after the marriage due to women learning later that the person she had married was already married in the other country to another woman, whom he continued to live with or/and domestic violence cases.

Cases of spouses learning later that they were given false information on any or all of the following: spouse's job, immigration status, earning, property, marital status, woman's husband obtaining an ex-parte decree of divorce in the foreign country behind her back without her knowledge, woman being abandoned in the foreign country with absolutely no support or means of sustenance or escape and without even the visa to stay on in that country, woman going to court for maintenance or divorce but repeatedly encountering legal obstacles related to jurisdiction of courts, service of notices or orders, or enforcement of orders, woman being coaxed to travel to the foreign country of the man's residence, getting married there and later discovering that Indian courts have even more limited jurisdiction on such marriages, have also come to light.

Glossary: ABANDONMENT OF BRIDES

Foreign Judgments- A judgment given by a foreign court outside Canada is a foreign judgment in Canada

Ex-parte order - An ex- parte order passed by a court in a proceeding wherein only one party participates

As a rule, a court decides a matter after hearing both sides to a dispute. When a party files a suit in a court, that party must serve its notice on the opposite party. The court proceeds to hear the matter only when the opposite party has been notified, and has either replied to the notice, or has failed to respond within the period allowed for replying. If a court is satisfied that a proper notice for the proceeding was served on the other party but the other party has failed to appear or make a representation before the court, the court will decide the matter without participation from that party and grant an ex-parte order.

Decree - A decision or order by a court

Matrimonial property - Property that a spouse acquires during marriage is matrimonial property. It includes matrimonial home and matrimonial goods. Both the spouses have a share in their matrimonial property.

B. Reasons for abandonment of brides

Brides can be abandoned in many different situations. A familiar case scenario in the context of trans-continental marriage is when a husband refuses to sponsor his foreign national wife to come to Canada. This often happens when dowry extortion is the main reason for the marriage. Brides can also be abandoned after they have been sponsored and are in Canada. They can be asked to leave their matrimonial home, or forced into circumstances in which they have no other choice except to leave. They can also be abandoned while still living in their husband's home where they have no status as a wife or even a family member and are expected to live as an unpaid caregiver; worse still, they may be forced to live in such circumstances and not allowed to leave.

B.1. Incompatibility in the spouses

Trans-continental marriages are generally arranged by friends or relatives of prospective spouses. They can also be arranged through matrimonial advertisements or paid matchmakers. Due to the physical distance, it may not be possible for the prospective spouses to spend enough time together to get to know each other prior to the wedding. It is very likely that there is a lot of difference between the spouses from two completely different backgrounds. Brides can be abandoned because they do not fit in with the family of the groom.

B.2. Fraudulent marriages

Trans-continental marriages may be organized by fraud or deceit. The success of arranged marriages depends upon the compatibility of the spouses. However, sometimes, one party may try to lie about their credentials to establish alliance with someone far superior in status to them. A person may lie about their education, employment or financial status. In some cases, women may come to Canada to find out that their spouse is already married, or is in relationship with someone else. As well, the sexual preference may be lied about. Relationships based on such frauds cannot be expected to continue. In such situations, the bride may want to leave. If the groom and his family do not want her to leave, they may try to stop her by coercion such as by destroying her immigration, identity, travel, or other documents. If however, they want her to leave but she has no place to go, she may be subjected to abuse and violence.

B.3. Marriages for dowry extortion

All of the reasons for a bride's abandonment are tragic but none more so than the marriage for the purpose of dowry extortion. In earlier chapters, we have discussed the custom of dowry and how it is vitiating the institution of marriage. *The Runaway Groom*, a TV documentary depicts a marriage in which the groom, a citizen of Canada, disappeared after the wedding and the bride's family living in India did not know how to contact him. However, on being contacted, he refused to acknowledge the marriage. In other cases, women may be sponsored, brought to Canada and then subjected to unrelenting demands for more dowry accompanied by violence or threats and abandonment. This may also lead to actual abandonment or killing of

a wife as in the case of Amanpreet, a resident of Toronto. There are many cases in Canada where grooms refused to sponsor their brides unless their demands for dowry were met. In addition, there are many cases where women were sent back to their country of residence with one way ticket.

B.4. Forced marriages

Often parents force their children to marry someone against their wishes in their own country of origin. These children may give in to the pressure at the time of the marriage but such marriages often do not have a future. In such cases, the brides may find themselves abandoned. Chapter Three has discussed this in details.

B.5. Immigration marriages

Sometimes, transcontinental marriages are arranged to facilitate the entry of the foreigner spouse into Canada. If both spouses knowingly participate in this limited purpose marriage, which is a fraud against the government of Canada, the marriage is a scam and there is no intention on the part of either spouse to stay in it. However, if such a marriage has been conspired by only the foreigner spouse to get Canadian immigration, such a marriage is bound to break down resulting in abandonment of the sponsoring spouse. Victims of such frauds can be women and men also.

B.7. Abuse of bride

Abuse at the hands of their husband and his family may force women to leave their matrimonial home. Immigrant women are far more susceptible to abuse due to their language and other barriers. Sponsorship sometimes can create a power imbalance where a sponsored spouse is dependent upon the sponsor for immigration. In the three-year period of sponsorship, sponsored spouses are not eligible for various government benefits as their needs are supposed to be met by their sponsors. Due to a sponsored bride's dependence on her husband, the husband's relatives are able to restrict her access and confine her in their home

where she may be subjected to various kinds of abuse. Such relationships break down in time leaving the bride homeless and abandoned.

C. Threats of abandonment

Often an abusive sponsor may try to control his wife by threats of abandonment. One common threat is that of her deportation, or her deportation without her children. This will not be acceptable to majority of South Asian women due to the social stigma attached to failed marriages and lack of economic and social support that they may need. Losing their children and having to live without them will be worse than living at all. In some cases, this is only a threat and the sponsor knows it. If a woman has already been sponsored and has her permanent residence status in Canada, she cannot be deported. Immigration and deportation are not decisions that rest in the hand of a sponsor; a sponsor can only make an application for them. These are decisions of the government and trained government officials take them through due process. Unfortunately, in some cases, such threats can also be carried out. If the bride has not been sponsored yet, the husband may refuse to sponsor her. If he has made such an application, but the application is still in process, he can withdraw it. Such threats are potential weapons for ongoing extortion of dowry. If such a threat is carried out, the bride will be abandoned in her home country, married but single, and deserted. If such a bride is already in Canada on temporary immigration status, for example on a visitor's visa, she may be required to leave after the expiry of such a visa.

D. Ex-parte divorces - A notoriety evading international laws

Although in itself, ex-parte divorce is legal, but in relation to a fraudulent trans-continental marriage, it is often misused to formalize an unfair and one-party decision to end a marriage. It is allowed by the courts in Canada when the party, on whom the notice to divorce has been served, fails to respond to it within 60 days. Its legitimacy is based on the fact that the notice has been served on the opposite party. In cases where the notice has not been served, the court will not consider the application for divorces.

In trans-continental marriages, the spouse wanting to divorce can forge the signature of the other spouse on the divorce papers and present them to a Canadian court. This is extremely convenient because the other party residing in a foreign land has no access to the Canadian court, and no knowledge of the case. In many cases, a foreign national bride, awaiting her immigration paper, may get the nasty surprise of a divorce decree instead.

It's common knowledge that many men of Indian origin travel to India to marry and bring their brides to the West. But what has remained unknown till now is the large number of brides who are abandoned... Once in Canada, these scheming grooms have relatively little or no difficulty in obtaining a quick divorce. Their abandoned brides often don't know about the divorce proceeding until it is too late to contest. Workers in Ontario courts, alone, have witnessed a burgeoning number of quick divorces filed by Canadian men of East Indian origin after being wed in India.⁵⁶

Some may not even receive this divorce decree, and if they can manage to come to Canada, may find their spouse married and living with another person. In a recent case, a husband manipulated his unsuspecting wife into signing many court documents that included an application for divorce and a waiver to claim spousal support and matrimonial property. This meant that she would not claim spousal support or a share in the matrimonial property. After making sure that all the formalities for him to get an uncontested divorce by the court were completed, he sent her back to her home country. He successfully prevented all her attempts to come back to Canada for about two years. Finally, she grew suspicious and decided to come back to Canada as she had permanent residence status. On arrival, she discovered that she was already divorced by her husband who was living with his new wife.

E. How does abandonment impact the brides?

In South Asian cultures where the breakup of marriage and re-marriages are not very common, abandonment may destroy the entire life of a young woman and severely impact her family, especially parents. Majority of the abandoned brides, who can stay in Canada, prefer to do so. Here, where very few people know them, it is easier for them to avoid the social stigma. Once

they are in a position to find their way around and access help, effective and timely help is made available to them through shelters, welfare, and other government agencies. Their safety is also ensured. Many of them are able to move on with such help and re-build their broken lives. Many abandoned brides who have already been sponsored, try to come to Canada and accept the unknown challenges rather than live in their home countries, and face the social stigma of a failed marriage.

F. Abandoned in their country of residence

If, however, they have not been sponsored to come to Canada, it may be more difficult for them to move on with their own lives. Most of them will not have the future prospect of a marriage and may end up living alone. Their aging parents, robbed of their lifetime savings that they may have paid as dowry, are now forced to carry the burden of supporting their abandoned daughter as well as her children if any from this marriage. Such dowry money is often raised by selling shares and other securities, liquidating family assets, selling off properties or retirement pension, or borrowing from any available sources on any terms.

If the marriage was conspired only for dowry, it is very likely that the groom has provided false information, including his identity and his address. The bride's family is unlikely to be successful in locating him. Even if the right information is available, the bride or her family may not have the resources to come to another country, stay there to access services and fight for justice. Financing such a trip is extremely expensive. An application for visitor's visa may or may not be successful; after arrival, navigating the system to access help may be too expensive and intimidating.

G. Abandoned in Canada

The young brides abandoned in Canada have their own set of challenges. If they have not already been sponsored, their spouses can withdraw their sponsorship. In such cases, the bride may have to go back to her country of residence. In a case, a Canadian husband sponsored his wife but on her arrival, told her that he had married her on the insistence of his parents and did not want to establish any marital relationship with her. He already was in a relationship with

another woman. In another case, a husband presented only two options to his wife: she can choose to serve his family as an unpaid live-in caregiver or leave his house. A recent and shameful incidence of abuse is being noticed in which the husband makes a false report to the Immigration against the wife stating that she entered into the marriage only to come to Canada and, therefore, should be deported. A young woman, who does not know anyone else except her sponsor and his family, and may not have language or other skills to seek help, may find it extremely difficult to be on her own. She may not have any money or access to it. Her valuables and travel and other identity documents may have been taken away or destroyed. Many women in these situations do not want to inform their parents about their problems because this will break their hearts and also parents may not be in a situation to help them in any way.

H. Remedies available to victims in Canada

As we have noticed in the above cases, a victim may want to give up her search for help believing that there is no appropriate legal remedy to address this issue in Canada. However, this is not true. A victim can take the following actions against the offender, depending upon her case and situation.

She can track down her husband

If she is not yet sponsored, but can manage to come to Canada on a visitor's visa, she can seek help of social and government agencies in locating her fraudulent spouse and take legal action against him. If she is a permanent resident of Canada, this will be less complicated for her.

She can apply for divorce

She may, if not already divorced by him, apply for a divorce and seek spousal support and division of matrimonial property. Superior courts in Canada have the authority to decide the matters of divorce and division of matrimonial properties. In Alberta, the superior court is called the Queen's Bench. There are three grounds on which she can file an application for divorce: (1) living separate and apart for one year; (2) cruelty; and (3) adultery of the other spouse. If she can prove to the court that she and her spouse have not been living together as

wife and husband for a year or more with an intention that the marriage was over, the court can grant her a decree of divorce.

If it is not possible to prove this ground, she may file an application on grounds of cruelty. She can prove cruelty by alleging that by fraudulently marrying her only with an intention of extorting dowry and abandoning her thereafter, her spouse has subjected her and her family to social ridicule, mental stress, pain and agony. According to family law in Canada, cruelty as grounds for divorce includes physical as well as mental cruelty. If the fraudster refuses to accept her as a wife because he has an extra-marital relationship, she can seek divorce on grounds of adultery. She can file an application for divorce in a court that is in the province where she or her fraudulent husband has been a resident for a year prior to filing of the application. She may file this application in a court in a province where her husband has been resident for a year even if she herself has not lived in Canada.

She can apply for spousal and child support

While applying for divorce, an abandoned wife may also apply for spousal support. Depending on the circumstances of the case, the court may, in its discretion, grant an order that the fraudulent husband provide financial support to the abandoned wife until she finds employment or an alternative source of income, or she remarries.

She can also apply for division of matrimonial property

While applying for divorce, she can also apply for division of matrimonial property. Matrimonial property is the property that both the husband and wife have received through their marriage or by way of gift after it. It includes the property earned by both or either one of them during marriage. Matrimonial property also includes any increase in the value of this property, or any increase in value of any other property owned by the husband or wife before the marriage and any property purchased from such increase in value. This includes a matrimonial home that has been the primary residence of the parties after their marriage, household goods and family cars, even if such a home, goods or cars are owned by only one spouse. However, in most cases, an abandoned wife would have no opportunity to live with the fraudulent husband in

Canada, and would possibly have no matrimonial home or property. Moreover, the duration of the marriage and contribution to marriage by each spouse are important considerations in the division of matrimonial property. These conditions may further minimize an abandoned wife's chances to be granted a share in the matrimonial property.

She can apply to court to get back her dowry

If an abandoned wife can prove to the court that the fraudulent husband has taken her money and other valuables as dowry, the court may order him to return these to her, or to compensate her for such losses. The same will apply if the fraudster has deprived her of her valuables as a result of marriage fraud. Purchase receipts, bank statements, cheques, photographs, videos, letters, emails etc. may be used as evidence of financial transactions between the parties. A wife can also file an application for return of all money, goods, property, and jewellery etc. given to the fraudster as dowry or otherwise as money advanced under duress or undue influence. How a woman can claim back her dowry as money advanced under coercion has already been explained in Chapter One of this manual. Women are advised to evaluate, document and register their property and other valuables. A photographic or video record of such valuables can be provided to the court as evidence if required.

She can file a complaint for fraud and extortion

Fraudulently extorting money in the name of dowry from the bride and her family is a criminal act punishable as fraud and extortion under the Criminal Code of Canada. A bride can file a complaint against her spouse for committing the crime of extortion. For more detailed information, see Chapter One and Chapter Six of this manual.

She can apply for sponsorship breakdown and social support

When a Canadian citizen or permanent resident of Canada applies to sponsor a family member, he/she enters into a contract with the government of Canada for "unconditional promise of support" to the sponsored person:

I undertake to provide for the basic requirements of the sponsored person and his or her family members who accompany him or her to Canada, if they are not self-supporting. I promise to provide food, clothing, shelter, fuel, utilities, household supplies, personal requirements, and other goods and services, including dental care, eye care, and other health needs not provided by public health care. I understand that the money, goods or services provided by me must be sufficient for the sponsored people to live in Canada.⁵⁷

This undertaking is a promise of the sponsor to the government of Canada. That is why if the sponsor has failed to provide for the needs of the sponsored person, and the sponsored person has received social assistance during the period of sponsorship, the amount will become a debt owed by the sponsor to the government and an enforcement action can be taken to recover this money. If the sponsor is in default, he/she will not be able to sponsor another person.

Sometimes, dependence of the sponsored person may create a situation of abuse and control by the sponsor. The government does not want the sponsored person to live in an abusive situation. That is why it is clearly mentioned in the sponsorship undertaking and agreement that the sponsored persons who are being assaulted or abused by their sponsor “should seek safety away from their sponsors even if this means that they will have to apply for social assistance benefits.” It also says that the sponsored person can take “legal action” against the sponsor if the sponsor fails to provide support as promised.

She can apply for immigration under humanitarian and compassionate ground

If the spouse’s application to sponsor her is still in process, he can withdraw it. This will put her immigration status at risk. In such cases, she can apply for immigration by filling out the application - *Permanent Residence from Within Canada: Humanitarian and Compassionate Considerations*. This application has special consideration for victims of domestic violence. It states clearly:

Family members in Canada, particularly spouses, who are in abusive relationships and are not permanent residents or Canadian citizens, may feel

compelled to stay in the relationship or abusive situation to remain in Canada; this could put them in a situation of hardship. Officers should be sensitive to situations where the spouse (or other family member) of a Canadian citizen or permanent resident leaves an abusive situation and, as a result, does not have an approved sponsorship.⁵⁸

However, an assessment of this application is more complex than assessment of other applications. She is well advised to seek legal help if possible to make an application under this class. If she has family members or close relatives living in Canada, they can support her application by sponsoring it. Such an application can also be submitted without sponsorship.

CHAPTER SIX: **SANCTIONS UNDER CRIMINAL CODE OF CANADA**

A. Introduction

Although crimes like dowry are not recognized as such in Canada, the acts that constitute these criminal behaviors are punishable as crimes under the Criminal Code of Canada. The following information will explain many of the related acts under the *Criminal Code*. While this section introduces legal terms and concepts, which not all service providers are familiar with, we feel that it is important to have an overview of them. This can prove very helpful to them in assessing cases. Where service providers are concerned about the criminal activities they are encouraged to contact their local police departments. Below is a list of some offences included in the *Criminal code* that apply to criminal behaviours discussed in this manual.

- Assault
- Sexual assault
- Murder
- Counselling or aiding suicide
- Forcible confinement
- Uttering threat
- Intimidation
- Theft
- Extortion
- Forgery
- Failure to provide necessities of life

This chapter describes sanctions under the Criminal Code of Canada that may apply to many of the criminal acts discussed in this manual. It also provides examples as to how these sanctions may be used in different situations. We have included a table at the end of this chapter summarily listing aspects of criminal conducts against applicable sanctions under the Criminal Code of Canada.

These crimes have been explained under three sub-sections: physical abuse, mental or emotional abuse and financial abuse. Offences are classified as indictable or summary procedure offences. Indictable offences are more serious and carry more severe penalties.

B. Physical abuse

1. Assault ([section 265](#))

If a person intentionally uses force against another without the consent of this other person, it is an assault. An attempt or threat by an act or gesture to use force also amounts to assault. If a person accosts, impedes or begs another while openly carrying a weapon or an imitation of a weapon, this also amounts to assault. When a weapon is used in an assault or when such an assault results in bodily injury or serious bodily injury, and it is an indictable offence, it may be punished with imprisonment that may extend to ten years.

If a woman's spouse or his family member kicks, slaps, pushes, pinches or otherwise uses force, or makes threats and gestures to do so in relation to a demand for dowry or otherwise, it is an assault punishable under law. The same will apply to situations where a woman is assaulted by her in-laws as described in Chapter Four of this manual. If a victim is assaulted in relation to a forced marriage, this section will be applicable.

2. Sexual assault ([section 271](#))

An assault in a sexual manner is called a sexual assault. A sexual assault or rape on a spouse is a crime and punishable as such. This section will also apply in case of victims of forced marriages as discussed in Chapter Three of this manual. When it is an indictable offence, it is punishable with imprisonment that may extend to ten years.

3. Murder ([section 229](#))

A person is guilty of offence of murder where this person causes death of another person when he means to cause his death or means to cause him such bodily harm as he knows is likely to cause his death and is reckless whether death ensues or not. Murder is one of the most heinous crimes and carries a maximum penalty of life imprisonment.

In cases of dowry death, the husband and/or his family members, who cause death of the wife by an act within the definition of this section, may be held guilty of the offence of murder. A person guilty of killing his wife may be punished under this section. This section is also relevant where the death of a woman is caused due to her abuse by her in-laws.

4. Counselling or aiding suicide ([section 241](#))

Any person, who counsels, aids or abets another person to commit suicide, is guilty of this offence punishable with imprisonment that shall not exceed 14 years. It does not matter if such an act results in a death or not.

A husband or his family members who abet the suicide of a woman may be punished under this section. This section is relevant in case of dowry related crimes as well as abuse of women by their in-laws.

5. Kidnapping ([section 279.1](#))

A person is guilty of offence of kidnapping if:

- he or she kidnaps someone with an intention to confine or imprison this person against this person's will;
- or kidnaps to cause this person to be unlawfully sent or transported out of Canada;
- or holds this person for ransom;
- or holds this person to service against this person's will.

This offence is punishable with imprisonment that may extend to life imprisonment. In forced marriages, parents or other family members who forcefully or fraudulently carry off their child to a different country to marry someone against their will, may be guilty of this offence.

6. Forcible confinement ([section 279.2](#))

A person, who without lawful authority, confines, imprisons, or forcibly seizes another person, is guilty of this offence. This offence is punishable with a maximum imprisonment of ten years. An abusive spouse, who keeps his/ her partner confined in his/ her house, and does not allow him/her to leave the premises, is guilty of this offence.

When a bride is held to ransom for dowry extortion, those responsible for her confinement are guilty of this offence. Parents or family members who forcibly confine their children to coerce them into an unwanted marriage are also guilty of this offence. Similarly, in-laws of a woman who forcibly confine her with an intention to abuse are guilty of this offence.

C. Psychological or emotional abuse

Many forms of psychological or emotional abuse are crimes. The following *Criminal Code* offences may apply to psychological or emotional abuse situations:

1. Uttering threat (Section 264)

A person, who utters, conveys or causes another to receive a threat (i) to cause death or bodily harm, (ii) to cause harm to any personal or real property of that person, or (iii) to poison, kill or injure any bird or animal that is the property of that person, is guilty of uttering threat. If it is an indictable offence, it is punishable with imprisonment that may extend to five years.

In relation to dowry extortion, if a husband or his relatives utter such threats, they may be punished under this section. If a person uses such threats to force another person into a marriage against their consent or will, that person may be punished under this section. If the in-laws of a woman utter such threats to subdue or abuse her, they will be guilty of this offence.

2. Intimidation (Section 423)

A person is guilty of an offence of threat and intimidation that may be punishable with imprisonment not exceeding five years when he or she does one of the following with the purpose of compelling another person to do something that this other person has a right to abstain from, or abstains this person from doing things that this person has a right to do:

(i)

- wrongfully uses violence or threatens to use violence to another person and/or his or her family members;
- injures that person's property;

- intimidates or attempts to intimidate this person and/or his/her relative(s) by threatening that this other person and/or his/her relatives and their property in Canada or elsewhere will be harmed;

(ii)

- hides the things owned or used by this other person;
- hinders this person from using them or deprives this person of those things;

(iii)

- persistently follows this person;
- besets or watches this person at home, place of work, or business; and
- blocks or obstructs a highway.

This section may apply where threat or intimidation occurs in case of dowry demand, forced marriage or abuse of a woman by her in-laws. When a woman's money or other valuables are taken away and she is denied access to her own property, this section may apply. As well, when a woman is not allowed to contact her family and friends, or not allowed to work or go to school, this section may apply. Often women are intimidated and forced into compliance by threats of harming their relatives in another country. In those situations also, this section may be applicable. In forced marriages, this may be applicable because the victims are being forced to do something that they have a right to abstain from.

D. Financial abuse

Many forms of financial exploitation or financial abuse are crimes. The following *Criminal Code* offences may apply in these situations:

1. Theft ([section 322](#))

A person is guilty of theft who fraudulently or without any legal right, converts to his/her own use, the property of someone else with the intention of depriving its owner of it temporarily or absolutely.

In a case, where a husband and his family members fraudulently or without legal right, take away a woman's dowry, such as her jewellery, money or other valuables, they commit an offence of theft. The same will apply if a woman's salary is taken from her by her husband or in-laws.

2. Forgery ([section 366](#))

A person is guilty of forging a document who alters a genuine document with the intention that

- it be used as a genuine document by a person to his or her disadvantage in or outside Canada; and
- a person who considers this document to be genuine will do something that he/she does not intend to do or refrain such person from doing something that he/she intends to do.

A person is guilty of the offence of forgery who, knowing that a document is forged

- uses such a document; or
- causes another person to use it.

For the offence of forgery, if it is an indictable offence, the maximum penalty is ten years' imprisonment.

If an abusive spouse forges the signature of another spouse on a document to his/her disadvantage, this spouse commits an act of forgery. An abusive spouse may forge the signature of the other spouse on divorce papers, waivers of claim for spousal/child support or share in matrimonial property.

3. Extortion ([section 346](#))

A person, who, without reasonable excuse and with an intention to obtain anything from someone, induces or attempts to induce this other person to do anything by threat, intimidation, menace or violence, is guilty of the offence of extortion. This offence is punishable with imprisonment that may extend to life sentence.

Those found guilty of dowry extortion may be charged with this offence. Similarly, taking away a woman's salary is financial abuse and anyone who participates in such financial abuse can be held guilty of the offence of extortion.

4. Fraud (section 380)

A person who by deceit, falsehood or other fraudulent means defrauds the public or any person of any property, money, valuable security or any services is guilty of an offence of fraud under this section. If the value of property etc. that the victim has been fraudulently deprived of, exceeds five thousand dollars, the offence is an indictable offence and the punishment is imprisonment that may extend to fourteen years.

This section may apply to cases where a person fraudulently takes away the dowry of his wife and abandons her.

5. Failure to provide necessities (section 215)

A parent, foster parent, guardian or head of the family has a legal duty to provide necessities of life to their dependents, i.e., a child under 16 or any other person in their charge. A person is also has a legal duty to provide necessities of life to their spouse. They are guilty of this offence if they fail in their duty without a lawful excuse where

- the dependents are in destitute circumstances, which means that they do not have food, clothing, medicines or shelter;
- their life is endangered because of such failure to provide necessities; and
- such failure has caused or is likely to cause permanent injury to their health.

In a situation of abuse of a woman where the husband and in-laws fail to provide her and her children under 16 with such necessities, they may be guilty of this offence. Often women who have been brought to Canada through sponsorship are thrown out of their matrimonial home and do not have any skills or means to support themselves. In such cases, their spouses may be guilty of this offence.

The following table provides broad guidelines and some examples for service providers and others who are striving to find solutions through criminal sanctions. We hope that this will help them identify appropriate strategies in different crime situations.

E. Table of criminal codes as they apply to different criminal behaviours

CRIMINAL CODE	CRIMINAL BEHAVIOURS IN SPECIFIC SITUATIONS
PHYSICAL	
ASSAULT	ASSAULT ON WIFE OR DAUGHTER-IN-LAW WHEN SHE FAILS TO MEET DEMANDS FOR DOWRY, FORCED MARRIAGE, IN-LAW ABUSE
SEXUAL ASSAULT	FORCED MARRIAGE
MURDER	MURDER OF WIFE OR DAUGHTER-IN-LAW FOR FAILING TO MEET DEMANDS FOR DOWRY, IN-LAW ABUSE
COUNSELING/ABETTING SUICIDE	SUICIDE BY A WIFE ON ACCOUNT OF HARASSMENT OR CRUELTY BY HUSBAND OR IN-LAWS FOR NOT MEETING DOWRY DEMANDS, SUICIDE BY A DAUGHTER-IN-LAW BECAUSE OF HER ABUSE BY HER IN-LAWS
KIDNAPPING	FORCED MARRIAGE
FORCIBLE CONFINEMENT	FORCED MARRIAGE, DOWRY RELATED ABUSE, IN-LAW ABUSE
PSYCHOLOGICAL	
UTTERING THREAT	DOWRY RELATED ABUSE, FORCED MARRIAGE, IN-LAW ABUSE
INTIMIDATION	DOWRY RELATED ABUSE, FORCED MARRIAGE, IN-LAW ABUSE
FINANCIAL	
THEFT	DOWRY RELATED ABUSE, FRAUDULENT MARRIAGE, IN-LAW ABUSE, ABANDONMENT OF BRIDES
FORGERY	IN-LAW ABUSE, FRAUDULENT MARRIAGE, ABANDONMENT OF BRIDES
EXTORTION	DOWRY RELATED ABUSE, IN-LAW ABUSE
FRAUD	FRAUDULENTLY TAKING AWAY DOWRY AND ABANDONING THE BRIDE
FAILURE TO PROVIDE NECESSARIES	DOWRY RELATED ABUSE, IN-LAW ABUSE, ABANDONMENT OF BRIDES

CHAPTER SEVEN: **WHEN CRIMES ARE COMMITTED OUTSIDE CANADA**

A. Introduction

When a crime has been committed by a Canadian national outside Canada, can the police in Canada investigate it or the courts in Canada try it and hold the guilty accountable? Many Canadians have connection with a foreign country as their country of origin, as its nationals or former residents and may have a court judgment in that country. For example, they may have a judgment from a foreign court granting divorce or annulment or dividing matrimonial property. What is the effect of such foreign judgments or ex-parte orders in Canada? Do Canadian courts recognize them? Can they enforce such foreign judgments? In this chapter, an attempt has been made to answer some of these questions.

B. Does Criminal Code of Canada apply to the crimes committed outside Canada?

Can the police in Canada investigate or courts try and punish a criminal conduct related to dowry, fraudulent or forced marriages, abandonment of bride or in-law abuse that has occurred outside Canada if such a conduct is an offence under Criminal Code of Canada?

General Rule: The police in Canada have a jurisdiction to investigate and the courts in Canada a jurisdiction to try and punish only those offences under *Criminal Code* that are committed within the territorial jurisdiction of Canada.⁵⁹

Exception: In exceptional cases, Canadian authorities have extra-territorial jurisdiction and can investigate and try crimes committed outside Canada. In such cases, the offender or the victim or intended victim must be a national of Canada or the circumstances of the offence must relate to Canada. For example, if an offence of bigamy is committed outside Canada by a Canadian citizen resident in Canada, the offender may be tried and punished by a court in Canada. (s. 290 of *Criminal Code*)

However, in few cases, Canadian authorities have extra-territorial jurisdiction. In other cases, these authorities must seek cooperation from other countries for the purpose of investigation and prosecution.

C. Mutual co-operation among countries for enforcement of criminal matters

Mutual co-operation among the countries for enforcement of criminal matters in case of trans-national or international offences

With an increase in the number of international or trans-national crimes facilitated by the easy movement of people and goods across continents, international trade and other transactions, there is a need to develop a procedure to deal with the international or trans-national crimes. Presently, Canada has adopted two measures to meet this need:

- 1. Extradition:** Extradition is delivery of a person to another state for trial and punishment in that state or by an international tribunal. The nations who sign a bilateral or multilateral treaty or convention have a reciprocal obligation to extradite when required. (*Extradition Act*, S.C. 1999, c.18)

- 2. Mutual legal assistance in criminal matters:** Canada has treaties with many countries for providing a legal and procedural inter-state cooperation in criminal matters. The *Mutual Legal Assistance in Criminal Matters Act*, R.S.C. 1985, c. 30 (4th Suppl.) as amended, provides for such assistance mainly in the following areas:⁶⁰
 - gathering of evidence;
 - lending of exhibits of evidence from the proceedings of Canadian Court;
 - conduct of search and seizure;
 - having the witnesses examined under oath and facilitating testimony of witnesses in foreign proceedings via audio-visual link;
 - temporary transfer of detained persons to provide assistance or evidence for foreign criminal investigation or proceedings; and
 - enforcement of foreign fines or pecuniary penalties.

China, India, Thailand, Malaysia, Republic of Korea, and the U.K. are among the many countries that have signed a treaty for mutual legal assistance with Canada.⁶¹ For compliance with and

enforcement of the provisions under this Act, the federal government has entered into Memoranda of Understanding with 9 out of 10 provinces.

D. Are foreign judgments and ex-parte orders recognized in Canada?

In cases of immigrant spouses, sometimes one spouse may obtain a judgment for divorce or other corollary relief such as spousal and child support or division of matrimonial property, from a foreign court. Can this spouse enforce such a foreign judgment against the other spouse who resides in Canada? Do the courts in Canada recognize and enforce foreign judgments? Recognition is the process by which a court decides if a foreign judgment is enforceable. Enforcement is the actual execution of the foreign court's order. It is a process wherein the foreign judgment is actually monetized by seizing and selling the property of the defendant. When a Canadian court recognizes that a foreign judgment is enforceable in Canada, the party having the judgment in its favour, may register it with a Canadian court. Once it is registered, the Canadian court will enforce it as if it is a judgment passed by it.

E. When Canadian courts recognize foreign judgments

A foreign judgment that complies with these three fundamental rules is recognized and enforceable in Canada:

1. Foreign courts have jurisdiction to decide the case

The foreign court that grants the judgment must have jurisdiction (authority) to decide the case. In order to have the jurisdiction the foreign court must have a "real and substantial connection" with the action, or subject matter of dispute, or with the parties. This means that either the action, which is the basis of the dispute between the parties, partially or fully arose in that country, or the property that is the subject of the dispute lies in that country, or one or both the parties are resident in that country or have their domicile in it. In divorce and other corollary relief cases, a court in foreign country has jurisdiction if either spouse was ordinarily resident in that country or sub-division for at least one year immediately before the date of applying for divorce. (Section 22 of *Divorce Act*, 1985)

2. Foreign judgment is final and conclusive in that jurisdiction

This means that the foreign court has finally decided the matter and cannot reopen or review it.

3. Foreign judgment is clear and unambiguous

The terms of foreign judgment should be very clear and there should be no confusion or ambiguity that will require a Canadian court to interpret the law of the foreign country. If the judgment is for a sum of money, it should be a definite sum of money.

However, a Canadian court may refuse to recognize such judgments in certain situations even though they have met the above three specified conditions.

F. When a Canadian court will refuse to enforce foreign judgments

A court in Canada will refuse to enforce a foreign judgment on the following grounds:

1. Foreign judgment is related to public law, penal law or revenue law of the foreign country

The Canadian courts will enforce foreign judgments only when they deal with private law matters between individuals such as family law, contract, tort etc.

2. Jurisdiction has been obtained by fraud

The jurisdiction of the foreign court should not have been acquired by a party by fraud. For example, if a person shows flimsy residency to acquire the jurisdiction of a court and this court grants a divorce on the basis of such fake residency, this court's jurisdiction will be said to have been acquired by fraud.

3. Jurisdiction has been acquired to avoid the jurisdiction of Canadian courts

The foreign judgment should not have been acquired to avoid jurisdiction of Canadian courts such as in a case where a party thinks that the Canadian laws may favour the opposite party. In a case, a husband applied for a divorce in Iran so that the courts in Iran, and not in Canada, may

decide the issue of spousal support and division of matrimonial property. As compared to the Iranian law, Canadian law was more favourable to the wife. The Iranian court granted an order for divorce, spousal support, and division of matrimonial property on application of the husband. The husband had assets worth over a million dollars but the wife was given only \$30,000 from this property and \$1,500 as spousal support. Canadian law provides that in a marriage of many years wherein a wife has been financially dependent on her husband, she is entitled to a fair share in the matrimonial property and spousal support. On an application of the wife, the court in British Columbia refused to recognize this judgment for division of matrimonial property and spousal support as it was contradictory to Canadian public policy and was acquired by the husband to avoid jurisdiction of Canadian courts. (*Marzara v. Marzara*, 2011 BCSC 408 (CanLII))

4. Foreign judgment is against Canadian public policy

If the foreign judgment is contrary to public policy of Canada, the Canadian courts will not recognize it. In Canada, public policy provides that a spouse, who has learned to be dependent on the other spouse, should continue to receive support on the breakdown of their marriage if such a spouse does not have any other means of support. The public policy also favours the view that parents should support adult children who want to continue their studies even after their first university degree. In a case, a couple from China lived in Canada for 14 years.

The wife, Ms Zang, gave up her engineering career in China to be with her husband, Mr Lin, and pursued odd jobs at minimum wages including a job as a kitchen help at a Chinese restaurant. Mr. Lin moved to Texas and got a decree of divorce from a Texas court. This court, however, did not grant spousal support to Ms Zang or child support to their 22-year-old son who was a student in the Faculty of Medicine at the University of Alberta. The Court of Queen's Bench of Alberta refused to recognize this divorce decree of the Texas court on the ground that not granting spousal support and child support to an adult yet dependent child who was a full time student, was against the public policy of Canada. (*Zhang v. Lin*, 2010 ABQB 420 (CanLII))

5. Foreign judgment denies principles of natural justice

In Canada, it is a fundamental rule of law that the courts will follow the principles of natural justice while they decide a case. The principles of natural justice require that the parties to a court proceeding should have reasonable opportunity to represent their case before the court and the judge should decide the case without prejudice or bias. The Canadian courts will not recognize a foreign judgment given in disregard of these rules of natural justice. In a case, a court in Jordan granted divorce on an application of the husband, though the wife had no connection to Jordan, was not notified, did not in any way participate in the court proceedings, and was informed of the court's decision only after the proceedings were over. The court in Canada refused to recognize this judgment as it did not follow the principles of natural justice.

6. Foreign judgment does not protect the "best interest of a child"

If a foreign judgment in a family law matter is not in the best interest of the child, the courts in Canada will refuse to enforce it.

G. Not a bar to recognition and enforcement of foreign judgment

The difference between law and procedure between a foreign jurisdiction and Canadian jurisdiction is not a bar to recognizing and enforcing a foreign judgment in Canada even if the same action would have failed at a Canadian court.

H. Canadian judgments recognized/enforced outside Canada: A case of India

In this section, we are mentioning only the case of India. This discussion is intended as an example to explain the process of recognition and enforcement of court judgments. A foreign judgment can be recognized in India if it complies with the following requirements under section 13 of the *Civil Procedure Code* of India:

- i. The judgments should have been given by a court having jurisdiction;
- ii. It should have been given on merits of the case;
- iii. It is not based on an incorrect view of the international law;

- iv. It is not against the principles of natural justice;
- v. It is not obtained by fraud;
- vi. It recognizes the Indian law where such law is applicable; and
- vii. It is not based on the breach of a law that is in force in India.

For example, in a case, a husband obtained a judgment for divorce from a U.S. court by fraudulently showing his residence in the U.S. The Supreme Court of India refused to recognize this decree, because the jurisdiction of the U.S. court was obtained by fraud. (*Satya v. Teja Singh*, 1975 1 SCC 120)

If a foreign judgment is recognized, it can be enforced by an Indian court in two ways under section 44A of the Civil Procedure Code:

1. Judgment of a foreign court when India has reciprocity agreement

India has a reciprocity agreement with some countries regarding reciprocal enforcement of judgments. Such agreements are done between individual courts in different countries. A list of the courts that have entered a reciprocal agreement with Indian courts is published in the Official Gazette of India. When such a foreign judgment is filed in India, the District Court will enforce that judgment as if it was granted by it. The Supreme Court of Canada and Ontario Supreme Court, along with many other courts in the U.K., Australia, New Zealand, Bangladesh etc., are reciprocating courts as mentioned in the Official Gazette of India.

2. Judgment of a foreign court when India does not have reciprocity agreement

To enforce a foreign judgment granted by a non-reciprocating court, the party has to file a suit on the basis of the foreign judgment. In such cases, foreign judgment will be treated as evidence in favour of the applicant.⁶²

In many cases, foreign judgments can be enforced both in Canada and India if they conform to some common principles of law that are quite similar in both jurisdictions. As noted earlier, similar bilateral and multilateral agreements exist between many countries of the world.

CONCLUSION: THE WORK AHEAD

As the economic inter-dependency of countries and global migrations increase, crimes will also become trans-continental. This will require us to develop a strong network of systems and agencies, increased international collaboration and better understanding of each others' cultures and legal systems. This also requires that we open the conversations on a global level to acknowledge and resolve key issues involved in crimes that encompass trans-national boundaries. Rallying law enforcement agencies to apprehend criminals across international boundaries may prove easier than the process of holding them accountable through applicable laws. Involvement of foreign nationals makes the nationality of criminals and victims and competing jurisdiction of courts of different countries a crucial issue. In many cases, the administration of justice may become mired in jurisdictional battles or practical impossibility of implementation of the courts' verdicts across continents while no help is actually made available to the victims.⁶³ There may be conflicts between the judgments of two courts of different countries or two legal systems. There may be conflicts between two systems of laws within any country. We have noted how Canadian immigration law and family law treat the victims of fraudulent international marriages differently. These are all new trials. There is work ahead for all of us.

A. Crucial first steps

One of the crucial first steps in this regard has been taken by Citizenship and Immigration Canada. A Canadian permanent resident, who has committed certain crimes outside Canada, can lose citizenship status in Canada. This means that Canada is no longer a safe haven for people who participate in crimes outside Canada. This is a clear message and a potential beginning. However, much developmental work is still needed outlining practical steps such as how and where the legal proceedings can be initiated, who will ensure that these verdicts are carried out and how, what will happen when these verdicts cannot be implemented due to issues of enforceability? Denying or revoking Canadian citizenship and deporting a criminal are effective measures to prevent crimes in Canada, but in many cases, a much lighter punishment than warranted. After deportation, such people may take revenge on the relatives of their

victims in Canada if these relatives happen to live in the same country. We need a much stronger and more coordinated response.

Shafia's trial will be considered an important landmark both within and outside Canada, especially for countries that follow common law system. If an action is subject to criminal law, as in this case, the law of the land applies. However, Canadian courts have intervened to protect Canadian citizens subjected to unfair foreign judgments involving civil matters also. We have seen how a Canadian court, following Canadian public policy, stepped in to protect the interest of a wife who was being deprived of her share in her matrimonial property through the decision of an Iranian court moved by her husband. We have also noticed how a Canadian court refused to recognize the divorce judgment of a Jordanian court served on a Canadian citizen because it was in violation of the principle of natural justice in Canada. In another instance, the Queen's Bench of Alberta, preventing the verdict of a Texas Court from applying to a Canadian woman of Chinese origin, ordered her husband to provide both spousal support and child support for their son who was pursuing his degree in medicine at the University of Alberta.

B. Responsibilities of newcomers

It is important for cultural communities to have faith in the system and support it and also educate mainstream service providers about their culture through any adequate methods. It is all the more important for them to educate themselves about Canadian laws and follow them. We have chosen Canada to be our home because it is a safe and peace loving country. We should neither participate in nor support any criminal activities. All Canadians should refrain from misusing the privilege of sponsorship to facilitate the entry of someone who would not qualify to come here through fair process. Those who use wrong methods may not be the right people. As several incidents show, once sponsored, they may put the safety of their sponsors at risk or cause them many financial and other losses. If the system is strong, the support that we get from it will also be strong. If we misuse and misguide it, it will become ineffective to protect us. Thus, in the end, we will all pay the price for misuse of the system.

This discussion should not be taken to mean that newcomer communities are especially criminalized and burden the system with the expense of unwanted litigation. The vast majority

of them have come here to make a good life for themselves and their families and are focused on it. If anything, they are far more careful so that they do not fall into conflict with Canadian law. They bring along with them invaluable cultural wealth and wisdom. In a fast changing global economy where countries are competing for human capital as the most important means of economic growth, the contribution of immigrants to our country cannot be overemphasized.

C. Support for service providers

When crimes are concealed behind cultures, service providers are often caught in a dilemma as to what might be the lesser evil. On the one hand, there is the fear of offending cultural sensibilities; on the other, the guilt of not being able to do their best to protect a victim: “I was also crying because I didn’t know what to do any more,” Nathalie Laramée, a vice principal at the girls’ school broke down while describing on the witness stand how 13-year old Geeti, the youngest Shafia sister, cried and pled to be taken out of her home. “Many events were piling up on each other.”⁶⁴ Service providers need guidance and support in dealing with these difficult and unique challenges. They need right information. Regrettably, resources that may provide critical and reliable cultural information are conspicuous by their absence. Service providers need confidence of their knowledge. Well-meaning service providers do not deserve the burden of guilt or blame for ineffective intervention.

D. Tip sheet for interviewing victims of specific domestic crimes

Often service providers do not understand the extent or nature of crimes that are specific to cultures. If they do not understand, they do not know what questions to ask. And if they fail to ask the right questions, they miss the potential opportunities to acquire knowledge of the crime and help the victim. Victims, who are traumatized by the violence and further intimidated by service providers’ intervention whose language they may not understand, will not talk about the things that they are not asked about. In view of this, we have developed the following list of questions as a tip sheet to interview the victims of violence in cases involving domestic crimes discussed in this manual.

Do not ask a family member to interpret for them.

Icebreakers

1. How are things going for you?
2. Tell me about how things are going in your family?
3. Where do you fit in this family?
4. How does the family treat you?
5. Is there anyone who helps or supports you?

Ask for marriage and related information

6. Is this an arranged marriage?
7. Did you know your husband before marriage?
8. How was the marriage arranged? Who arranged the marriage?
9. Was there a dowry negotiated? Who negotiated the dowry?
10. What was the amount of the dowry?
11. Who has the custody of your dowry?
12. Do you have a copy of the gift list?

Suggest to appraise and insure her dowry and keep her valuables in a safety deposit box in her own name.

Find out about family members and family dynamics

13. Who lives in the family with you?
14. Besides your husband, who else is involved in the crime?
15. Who is the head of the household? Who takes the decisions in the family?
16. Do you often talk to friends and family in your home country?
17. Do you go out, where do you go, what was the last time you went out?
18. Who does the most of the household chores?

Find out about her financial situation

- 19. If you earn a salary, who keeps your salary?
- 20. Do you have a bank account or safety box in your name?
- 21. Where do you keep your money or personal valuables?
- 22. Do you get any pocket money to meet your needs?

Find out about her immigration status

- 23. What is your immigration status?
- 24. Are you afraid about your immigration status?
- 25. What is your fear about your immigration?
- 26. Have you sponsored your spouse? Have you been sponsored by your spouse?
- 27. How long has it been since then?

Look for signs of psychological control

- 28. How is your relationship with your children?
- 29. Do they live with you?
- 30. Have they been taken away from you?
- 31. Does anyone control your relationship with your children?
- 32. Were you made to sign documents that you did not understand?
- 33. Do you take any ESL or other classes?
- 34. Are you able to attend those classes?
- 35. Do you know that many of these are free?

Find out what she knows about her husband and his relatives?

- 36. Do you know if he has a criminal history?
- 37. Did you have any information about it at the time of marriage?

A QUESTION

Dowry murders, honour killings, female genital mutilation, female feticide, human trafficking – all these are acts of utmost hatred and contempt toward women. They are the most extreme and heinous forms of women abuse. Religions do not allow them; laws prohibit them. Yet, they continue to be practiced. There are several other such practices as heinous, as inhuman, but unnamable as all too common everyday occurrences. The number of women and children killed in domestic crimes all over the world is much larger than the number of people killed in wars. In wars, however, nothing is more freely and brutally ravished than women's honour and their bodies.

Why do women continue to be a target of hatred, contempt, abuse and violence in our modern society?

Legal and administrative procedures can become effective tools when used with an understanding of the social context in which women continue to be disempowered to protect themselves and their children from abuse in and by their own families. Any successful intervention can take place only with due consideration of this sad vulnerability of women.

¹ A majority of the foreign-born South Asians came from countries in the Indian subcontinent, such as India (48.8%), Pakistan (14.6%), Sri Lanka (11.7%) and Bangladesh (3.6%). The other leading source countries of birth among the foreign-born South Asian visible minorities were Guyana (4.2%), Trinidad and Tobago (2.5%), Fiji (2.4%), the United Republic of Tanzania (1.9%), Kenya (1.8%) and the United Kingdom (1.6%). <http://restructure.wordpress.com/2008/05/18/south-asians-in-canada-ethnic-origin-and-country-of-birth/>

² A formal religious edict

³ <http://www2.canada.com/topics/news/story.html?id=6100184>

⁴ "Punjab home to 30,000 deserted NRI [Non-resident Indians] brides" was the headline on the front page of Indo-Canadian newspaper, published in Edmonton on 16 February, 2011.

⁵ *Sushil Kumar Sharma Vs. Union of India (UOI) and Ors* - JT 2005 (6) SC 266

⁶ *Dowry - Family, Dowries, Families, Bride, Husband, Marriage, and Custom*: family.jrank.org

⁷ ncrb.nic.in/CII "Disposal of Cases by Courts". National Crime Records Bureau, India. 2010-01-16. Retrieved 2011-01-17.

⁸ www.islamfor.today.com/ruqaiyyah07.html

⁹ *Writerinislam.blogspot.ca/2005/07/dowry-in-islam* Amatullah Abdullah's Blog: Thursday, July 28, 2005, Dowry in Islam?! Dowry! A curse [www.unafei.or.jp/english/pdf/RS No 69 16 PA Khan. pdf](http://www.unafei.or.jp/english/pdf/RS_No69_16_PA_Khan.pdf) Country Report-Pakistan by Akbar Nasir Khan, District Police Officer, Chitral N.W.F.P. Pakistan

¹⁰ Honour killings of girls and women (ASA 33/018/1999) Amnesty International, 1999-09-01. Retrieved 2006-12-29

¹¹ *SOUTH ASIANS AND THE DOWRY PROBLEM*, GEMS No.6 Edited by Werner Menski Ahmed: Rafiuddin (1993) *Migrants from Bangladesh to the Middle East: Social and Economic Cost to the rural people*"

¹² *Ibid* P 108 : Monsoor, Taslima (1994): *From patriarchy to gender equity. Family law and its impact on women in Bangladesh*. London: SOAS (Ph. D. Thesis)

¹³ Tamil Matrimony, Sinhala ,Muslim, Matrimonials-Srilanka Matrimony, SriLanka Match making..www. Subamangalam.com

¹⁴ *Caste, Dowry and Arranged Marriage in Tamil Society* by Renuka Kumarasamy, 2006 *Sangam AGM souvenir booklet* Sangam.org

¹⁵ *Dowry And Violence Against Women* Binaya Ghimire, www.gorkhapatra.org.np

¹⁶ Nepal bans dowry, caste based discrimination, 27 January, 2009 [www. smh.com.au](http://www.smh.com.au)> World

¹⁷ *SOUTH ASIANS AND THE DOWRY PROBLEM*, GEMS No. 6 Edited by Werner Menski, P 234

¹⁸ *Ibid*, Chapter 8 P 163, Chapter 9 P 175

¹⁹ *Ibid* Chapter 12 P 234, 236 (Raleigh, Bulusu and Balrajan) 1990

²⁰ *Ibid* P 235

²¹ *Ibid* P 230

²² *SOUTH ASIANS AND THE DOWRY PROBLEM*, GEMS No. 6, edited by Werner Menski: Chapter 10 P 205

Aruna Papp is author of the Frontier Centre's study, Culturally-driven violence against women: A growing problem in Canada's immigrant communities, available at www.fcpc.org

²³ *Ibid* Chapter 12 P 236

²⁴ *Ibid* Chapter 6 P 126 Prof. Menski mentions that principle established in *Pratibha Rani* case has been successfully followed in several British Cases involving the property rights of married women of South Asian origin.

²⁵ wcdhry.gov.in/Women_Acts/Dowry_Act.pdf

²⁶ S. 107 of *Indian Penal Code*, 1860- "A person is guilty of abetment to do a thing when he instigates someone to do that thing or he is a part of a conspiracy to do that thing, or he intentionally aids the doing of that thing by doing an act or by not doing something that he was bound to do." S. 306 of *Indian Penal Code*, 1860-"A person who abets the suicide of a person shall be punishable with imprisonment that may extend to 10 years and shall also be liable for fine."

²⁷ *Ibid*

²⁸ S. 405 of *Indian Penal Code*, 1860-"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust". It is punishable with imprisonment that may extend up to 3 years or fine or both under S. 406 of *Indian Penal Code*. It is a non-bailable and cognizable offence.

²⁹ Sir Gooroodas Banerjee in "*Hindu Law of Marriage and Stridhana*" while describing the nature of stridhan, at P 341 quoted *Katyayana* thus: "Gifts of affectionate kindred, which are known by the name *saudayika stridhana*, constitute a woman's absolute property, which she has at all times independent power to alienate, and over which her husband has only a qualified right, -namely, the right of use in times of distress."

³⁰ *Foreword; Marriages to Overseas Indians: A Guidance Booklet*; January 2007; Ministry of Overseas Indian Affairs, Government of India

³¹ *Marriage (Prohibited Degrees) Act*, 1990, SC c.46

³² www.cic.gc.ca/english/resources/manuals/op/op02-eng.pdf last visited on march 7, 2012 Rule 117 (9) a, Rule 117(9) c (i)

³³ *Swift v. Kelly* (1835), 3 Knapp 257, 12 E.R. 648 (P.C.); *Ali v. Ahmad*, 2002 CanLII 61157 (ON SC)

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- ³⁴ S. 380 of *Criminal Code* of Canada
- ³⁵ <http://www.cic.gc.ca/english/information/protection/fraud/marriage.asp>
- ³⁶ *Ray v. Minister or Citizenship and Immigration*, Citation: 2006 FC 731 OTTAWA, Ontario, June 12, 2006. This is an application under s.72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 ("IRPA")
- ³⁷ <http://www.cic.gc.ca/english/information/protection/fraud/marriage.asp>
- ³⁸ Ibid
- ³⁹ Ibid
- ⁴⁰ SAUNETBookReviewBreakingSilence
- ⁴¹ [www.lucylulaw.com: the-restrict-rules-regarding-marriage-fraud&catid=50:family-of-us-](http://www.lucylulaw.com:the-restrict-rules-regarding-marriage-fraud&catid=50:family-of-us-)
- ⁴² www.cic.gc.ca/english/department/media/speeches/2012/2012-03-02.asp Speaking notes for The Honourable Jason Kenney, P.C., M.P. Minister of Citizenship, Immigration and Multiculturalism At a News Conference to Announce Changes to Spousal Sponsorship Mississauga, March 2, 2012
- ⁴³ http://www.voyage.gc.ca/faq/marriage-abroad_mariages-etranger-eng.asp#2 Annotated Bibliography on Comparative and International Law relating to Forced Marriage
- ⁴⁴ Ibid
- ⁴⁵ These documents include the original 2000 United Canada Research Chair in Migration Law, UBC, Canada and Professor of Law, UTS, Australia.
- ⁴⁶ <http://www.official-documents.gov.uk/document/cm74/7450/7450.pdf>
- ⁴⁷ <http://www.legislation.gov.uk/ukpga/2007/20>
- ⁴⁸ http://www.asylumaid.org.uk/data/files/publications/160/WAN_April_2011.pdf Forced Marriage and Refugee Status : Catherine Dauvergne and Jenni Millbank
- ⁴⁹ <http://www.bbc.co.uk/news/uk-scotland-15909237>
- ⁵⁰ <http://canada.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2007/mar/chap1.html> An Annotated Bibliography on Comparative and International laws relating to Forced Marriage
- ⁵¹ *The obstacles South Asian victims of spousal violence endure in Vancouver, Canada: Culture vs. The extended family vs. The law* by Parveen Bandan , Bachelor of Arts (First class, Honours) Simon Fraser University, 2006 Thesis submitted in partial fulfillment of the requirements for the degree of Master of arts in the School of Criminology © parveen bandan 2009 Simon Fraser University summer 2009
- ⁵² *SOUTH ASIANS AND THE DOWRY PROBLEM*, GEMS No.6, Edited by Werner Meski, Chapter 9
- ⁵³ *The obstacles South Asian victims of spousal violence endure in Vancouver, Canada: Culture vs. The extended family vs. The law* by Parveen Bandan , Bachelor of Arts (First class, Honours) Simon Fraser University, 2006 Thesis submitted in partial fulfillment of the requirements for the degree of Master of arts in the School of Criminology © parveen bandan 2009 Simon Fraser University summer 2009
- ⁵⁴ Ibid
- ⁵⁵ *Marriages to Overseas Indians: A Guidance Booklet*; January 2007; Ministry of Overseas Indian Affairs, Government of India; Pages 11 & 12
- ⁵⁶ forums.studentdoctor.net/archive/index.php/t-205293.html
- ⁵⁷ Application to Sponsor and Undertaking (IMM 1344AE)– Citizenship and Immigration Canada
- ⁵⁸ Section 12.7 of IP 5
- ⁵⁹ (s.6 (2)) of the *Criminal Code of Canada*, R.S.C. 1985, c C46)
- ⁶⁰ International Criminal Law prepared by: David Goetz Law and Government Division 15 Oct 2001, publications.gc.ca/Collection-R/LoPBdP/BP/prb0117-e.htm
- ⁶¹ Order No. 3 to amend the Schedule to *Mutual Legal Assistance in Criminal Matters Act*. Canada Gazette www.gazette.gc.ca/archives/p2/1998/1998-08-05/html/sor-dors382-eng.html
- ⁶² *Gurdas Mann v. Mohinder Singh*, AIR 1993 P&H 92
- ⁶³ "With the passage of time, cases such as the following will become more common: parents of East Indian origin needed help to protect their Canadian-born daughter from the abusive behaviour of her husband, a British national of East Indian origin whose marriage was solemnized in India according to Hindu Marriage Act and who had settled in New Zealand for business purposes." Page 77, *Arranged Marriages and Their Legal Aspects*, International Arranged Marriages, 2005
- ⁶⁴ <http://cnews.canoe.ca/CNEWS/Crime/2011/11/23/19010091.html?cid=rssnewsCanada>