

International journal for intersectional feminist studies

The Journal of Project Monma Research Centre

Volume 1, September 2015

ISSN 2463-2945



To cite this article

Sandra Iskander, Dealing with allegations of violence against women in a multicultural environment: Consideration of approach(es) and procedure(s) with regards to abuse allegations of women of an Asian, African and Middle Eastern origin in New Zealand, *International journal for intersectional feminist studies*, 1, pp. 40-57

Dealing with allegations of violence against women in a multicultural environment: Consideration of approach(es) and procedure(s) with regards to abuse allegations of women of an Asian, African and Middle Eastern origin in New Zealand

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Abstract

New Zealand has become increasingly multicultural and continues to accept a large number of migrants every year. This adds a duty on its legal system to ensure that its current laws can protect minority groups and adequately deal with culturally specific issues that arise due to different cultural norms. Many argue that the current legal system fails to provide adequate protection for girls and women from an Asian, African and Middle Eastern (AAM) origin; this is due to a lack of multicultural consideration and the addressing of specific issues linked to these ethnic groups. One such issue is the problem of forced marriages among AAM communities living in New Zealand. This article argues that New Zealand's laws and processes do not adequately protect women of an AAM background due to a lack of specific laws and policies that can protect against culturally specific abuse. This argument is reached through the consideration of approaches and procedures through socio-legal methodology. This includes the review of governmental documents, semi-structured interviews with relevant organisations and experienced individuals in the field, case studies and independent research. I will conclude that there is a lack of cultural understanding within support organizations and public institutions regarding the forced marriage issues. Moreover AAM women are also not completely aware of their rights and the available support. Finally, I will provide some recommendations based on knowledge I have gained while conducting my research.

Keywords: Forced marriages, dowry, domestic violence, Asian, Middle-Eastern and African women, New Zealand

Introduction

Forced marriage has been identified as an issue among AAM cultures,¹ and a good example of the seriousness of such abuses, which is not specifically legislated against in New Zealand.² It illustrates that cultural differences require further consideration; even though New Zealand has legislated against domestic violence (Domestic Violence Act 1995 (DVA)), many women from an AAM background are unable to have access to this protection as they fall victim to their own cultural norms and barriers.

¹ Interview with interviewee A, B and C. (Violence against women of an AAM origin in New Zealand, 8 May 2015).

² Interview with interviewee C, a prominent family lawyer with significant experience in the family law field.. (Violence against women of an AAM origin in New Zealand, 19 May 2015).

This article argues that New Zealand's laws and processes do not adequately protect women of an AAM background due to a lack of specific laws and policies that can protect against culturally specific abuse. In the first section, I will describe the interview methodology. I then discuss the most common forms of violence that face women of an AAM background. Furthermore, I will continue by outlining the current legal framework and procedures relevant to these issues in New Zealand. Last but not least, I will discuss the problems with the framework and procedures with regards to the common forms of abuse that AAM women face. I will do this by discussing the lack of specific laws and procedures for culturally specific issues. In addition, I will discuss the lack of cultural understanding within support organizations and public institutions, and AAM women's lack of awareness of their rights and the available support. I will provide some recommendations on the basis of my knowledge that I have gained while conducting my research.

This article is not intended to be an in-depth discussion of all issues relating to violence against women of an AAM background, rather looking closely at the most common issues and focusing on the most concerning matters. It seeks to identify the gaps that exist in the current approaches and procedures in New Zealand with regards to how common forms of abuse against AAM women in a multicultural environment are addressed.

Methodology

Three one-hour semi-structured interviews have been conducted. The first was with a representative from the New Zealand Police. The second, with a representative of a women's refuge organization in New Zealand. The third, was with a prominent family lawyer with significant experience in the Family Law field. All three interviewees were asked five questions each and hand-written notes were made. The questions required them to discuss some of their past experiences with AAM women abuse; the current laws and processes, challenges and the adequacy of the law. Ethics approval has been sought from the University of Canterbury's Human Ethics Committee. Interviewee's identities will be protected as they will be referred to as interviewee A, B and C.

The most common forms of violence that face women of an AAM background

Intimate partner violence (IPV) has been identified as a major issue for women in New Zealand of all backgrounds, as it leads to serious physical and mental health issues (Fanslow et al, 2010). In 2013, there were 95,080 family violence investigations conducted by the Police, with more than 72 percent being male offenders (NZ family clearing house, 2014). This is a dramatic increase from the 61,947 recorded in 2006 (NZ family clearing house, 2014). However, international studies have shown that the identification of issues specific to different ethnic groups that are more likely to experience domestic violence, can lead to the betterment of policies and procedures for the prevention and mediation of these issues (Fanslow et al, 2010). This is vital in countries such as New Zealand due to its current and ever-expanding multicultural nature because, according to Statistics New Zealand, “New Zealand’s major ethnic groups continue to grow” (Statistics NZ, 2014). This is evident through an increase in AAM populations; an increase of 30 percent between 2006 and 2013 in Middle Eastern and African groups as well as a 33 percent increase for Asian groups (Statistics NZ, 2014). In addition, it is predicted that the Asian population will more than double by 2038 (Statistics NZ, 2015). Research conducted in the United States of America has proved the importance of considering the ethnic minorities, as it showed increased instances of violence compared with other groups, referred to as whites or Europeans (Field et al, 2004). Therefore, there is a real need to ensure that adequate laws and policies are in place to prevent, as well as properly deal with, violent acts specific to different ethnic groups that are significantly increasing in number.

Following an interview with a representative of a women’s refuge organization in New Zealand (Interviewee B), the most common forms of violence against women of an AAM origin were identified. Forced marriage associated with honour-based violence was said to be a common issue for many of the AAM women. Dowry was also identified as a cultural norm that leads to violence for Pakistani, Indian and Bangaldeshi women, and is commonly associated with forced marriages in these minority groups.

Forced marriage can be understood as a union where at least one of the spouses is forced into the union (Green, 2015). This usually involves a form of psychological, emotional, economic and sexual pressure and/ or abuse of the female involved, until and following the marriage (NZ Ministry of Social Development, 2012). It usually involves the victim being told that the families’ honour is dependent on her acceptance of the marriage (Green, 2015). It is the removal

of self-determination and independence, in the misconceived belief that it is for the best interest of the individual (Green, 2015). It has been commonly found that most forced marriages involve girls under the age of 18 (Wade, 2013). Case studies have also shown that girls as young as 12 years have been forced to marry much older men, and this is hidden within their community as marriages are conducted within communities and are not legally registered (Shakti Community Council Inc, 2010). Children or young individuals that have been forced to marry, are stripped of their right to education and, in some cases, health care and freedom of movement (Green, 2015). These marriages usually occur between family friends or members of the community or through the sponsoring of relatives or family friends from overseas (Shakti Community Council Inc, 2010). This can also occur through the sending of the women overseas to marry, as shown through some case studies (Shakti Community Council Inc, 2010 & Wade, 2013). These marriages have usually been found to lead to significant physical, mental and financial abuse of the women involved, as well as the deprivation of fundamental rights such as access to education (Shakti Community Council Inc, 2010). Shakti, an AAM women's refuge in New Zealand, also found that in most cases, it leaves the victim in a suicidal state (Shakti Community Council Inc, 2010).

Honour based violence (which can lead to honour killing) appears to also be connected with the issue of forced marriages, illustrating the level of violence that this issue encompasses.³ This is because of the notion of 'shame' that families claim, have been cast upon them, when a daughter refuses to abide by her families' commands or strays away from traditional behaviour through exposure to a different culture (Radhakrishnan, 2012). Shakti, an AAM women's refuge in New Zealand, has indicated that many women have been threatened with 'honour killing', if they were to refuse to abide by their families' requests or seek external aid (Shakti Community Council Inc, 2010). The extent of this issue can be seen worldwide, as 5000 women are murdered for honour every year (Radhakrishnan, 2012). However, there is currently no available data to shed light upon the extent of this issue in New Zealand (Shakti Community Council, 2010). That being said, it has been argued that "lack of visibility of honour-based crimes in New Zealand as

³ Interview with interviewee B, representative of a women's refuge organization in New Zealand. (Violence against women of an AAM origin in New Zealand, 18 May 2015) Attached to Appendix. And Priyanka Radhakrishnan "Unholy Matrimony: Forced Marriage in New Zealand" (Masters in Development Studies, Victoria University, 2012) at 75.

compared to the United Kingdom (UK), does not necessarily mean that they do not exist” (Shakti Community Council, 2010, pg 31).

The issue of forced marriages is common in AAM cultures due to some members still viewing a birth of a girl as a burden to the family (Shakti Community Council, 2010). This is because, in some situations, they are viewed as a financial burden as well as a risk to their families’ reputation, particularly when they become physically mature (Green, 2015). Therefore, it is more common in AAM cultures to see women subjected to this sort of coercive arrangement, although it is important to note that some men are also victims of this coercive arrangement (HM Government, n.d). Further, forced marriages are used as a means of connecting families for the purpose of betterment of their social status (Shakti Community Council Inc, 2010). Forced marriage has also been identified as a means of settling debts or an avenue for the improvement of one’s financial status (Shakti Community Council Inc, 2010), commonly through the practice of dowry or bride-price (Radhakrishnan, 2012). This is a cultural norm in some parts of Asia, Africa and the Middle East (Radhakrishnan, 2012). Dowry requires money to be paid to the couple to be married by the bride’s family (Maitra, 2001). This illustrates part of the reason why daughters are viewed as a financial burden upon their families (Maitra, 2001). On the other hand, bride-price is when a family is paid by the groom or groom’s family, a sum of money for a daughter’s hand in marriage, which is also a common incentive behind some forced marriages.⁴

Although these aforementioned issues have taken place in New Zealand, and continue to occur, there is a real lack in data collected to illustrate the extent of the aforementioned problems (Innes-Kent, 2007). Upon interviewing the police, they also identified this lack in statistical data in Christchurch, although they claimed to be fully aware it was occurring.⁵ This could be due to a significantly lower amount of AAM groups living in Christchurch compared to Auckland (Statistics NZ, 2014). Research composed by the University of Auckland has shed some light upon the extent of violence for Asian women, although this did not include Middle Eastern and African groups (Fanslow et al, 2010). The results showed that Asian women reported the least amount of IPV compared with other ethnic groups (Fanslow et al, 2010). This could be due to

⁴ Interview with interviewee B, representative of a women’s refuge organization in New Zealand.(Violence against women of an AAM origin in New Zealand, 18 May 2015) Attached to Appendix.

⁵ Interview with interviewee A, representative from the New Zealand Police from a relevant work unit. (Violence against women of an AAM origin in New Zealand, 8 May 2015) Attached to Appendix.

Asian women's attitudes towards violence, which consists of a belief that it should not be reported as it is a private matter (Fanslow et al, 2010). This does not lower the possibility of them experiencing violence, instead the lowering of, "the likelihood of reporting to the police or other authorities" (Fanslow et al, 2010). This is aligned with the police's belief that a lack of reporting may be due to cultural norms and beliefs that domestic violence should be hidden, otherwise victims could be ostracized by their community.⁶

The current legal framework and procedures

Independent research and discussion with the interviewees outlined some of the current law that can apply in situations of forced marriages and honour-based violence (Ministry of Justice, 2011). The New Zealand government believes that the current law adequately protects against forced marriages and their related abuses (Ministry of Justice, 2011). Parts of these three Acts have been identified as relevant; the Marriage Act 1955 (MA), the Family Proceedings Act 1980 (FPA), the Crimes Act 1961 (CA) and the Domestic Violence Act 1995 (DVA). In addition, Police Procedure in domestic violence matters will also be considered, in order to gain proper insight of current frameworks and procedures.

The MA outlines the rules and requirements for a legal marriage in New Zealand. According to section 17, for a marriage license to be issued, both parties must be 16 years of age or above (The Marriage Act 1955 (MA), s 17). In addition, individuals under the age of 18 require parental, guardian, or family court consent (MA, ss 18 and 19). The Department of Internal affairs outlines the two different ways in which a marriage can take place; this is through the Registrar of Marriages, or by an approved marriage celebrant (Radhakrishnan, 2012). At present, the law also requires that one of the parties make a formal statutory declaration that the marriage is lawful (Radhakrishnan, 2012). A marriage is considered void if it does not have a license under this Act (MA, s 21).

A marriage can also be considered invalid under section 31 of the FPA. This section outlines that a marriage can be invalidated if, upon the entering of the marriage, duress or mistake took place.

⁶ Above.

The New Zealand case of *H v H*⁷, which involved two Indian couples, was an application of section 31 (Green, 2015). The claimant requested the court to deem her marriage as void, due to the duress she experienced upon entering the matrimony.⁸ However, the court found that there was a lack of independent evidence in support of her claim, “There is no evidence from an independent source as to the type of pressure which would be exerted on the respondent because of her cultural and ethnic background”.⁹ In addition, the judge emphasised that a need to please the family or avoid embarrassment does not satisfy the duress requirement to deem the marriage as void.¹⁰ This is because section 31 of the FPA requires consent to mean that an individual has the power to undertake the decision and has the ability to understand the consequences of their decision.¹¹ The fact that the claimant was an, “intelligent and relatively sophisticated woman”¹² weakened her argument, as the court found it difficult to compare her with the applicant in the English court of appeal case of *Hirani*¹³. In the case of *Hirani*, the claimant was 19 years old, and was forced by her family to marry a man she had never met, to stop her from being in a relationship with another man, who they disapproved of.¹⁴ As a result, the English court of appeal held that there was no consent and the marriage was void.¹⁵ Therefore, it appears that decisions are determined on a case by case basis, dependant on the facts of each case, as age, education and maturity are taken into account (Green, 2015). However, it is important to note that regardless of the consideration of factors in each case, individuals who force others into marriage through emotional or psychological coercion are not currently committing an offence under any New Zealand law (Radhakrishnan, 2012). This lack of legislation is leading to further marginalisation of AAM women.

The CA is another legislation that contains some sections, which can play a part in protecting against forced marriages and honour-related abuse. Section 208 protects against physical duress, where a person is held against their will for the purpose of marriage and sexual connection.¹⁶ That being said, it is difficult to prove that someone has been held against their will, when they are actually being coerced; this can make it very challenging to prove this offence, in cases of

⁷ *H v H* [1992] NZFLR 145, (1991) 7 FRNZ 556 (FC).

⁸ *H v H* [1992] NZFLR 145, (1991) 7 FRNZ 556 (FC).

⁹ Above.

¹⁰ Above.

¹¹ *X v X* [2000] NZFLR 1125 (FC).

¹² *H v H*, above n 57.

¹³ *Hirani v Hirani* (1983) 4 FLR 232.

¹⁴ Above.

¹⁵ *H v H*, above n 57

¹⁶ At 90.

forced marriage. Section 98 also makes it an offence if any person is forced to be another individual's slave (Green, 2015). In cases of forced marriage, there appears to be a pattern of misuse of the woman involved, and the forcing of them to carry out all household chores, as well as take care of their spouses and ensure all his needs are met (Shakti Community Council Inc, 2010 & Shadwell, 2015). Therefore, it is arguable that this section could provide some protection for these women. However, it would be fact dependant and significant evidence would be required (Green, 2015). In addition, Section 134 of this Act also makes it an offence for any individual to have a sexual relation with any other individual under the age of 16, although the proving of which may be difficult (Green, 2015).

The DVA 1995 provides other forms of protection against some of the violence and abuses that are involved and surround forced marriages and honour-based violence.¹⁷ It allows any person to put in place a protection order against another individual or individuals who are perpetrating any physical, sexual or psychological abuse against them (Ministry of Justice, 2011). This order means that the other party cannot contact the applicant through any form (Ministry of Justice, 2011). Section 49 demonstrates the seriousness of the protection orders and its power, as it deems the contravention of such orders to result in six months imprisonment or up to two years imprisonment depending on the number of past breaches (DVA, s 29). In addition, the Act provides for those who have protection orders placed against them to attend free education programmes to assist them in overcoming domestic issues. Further, it provides the applicants and any children involved assistance, in order to support the creation and amendment of relationships (Ministry of Justice, 2011). In addition to these acts, the police procedures play a crucial role in the addressing of these problems, which is addressed in the following section.

Police Procedure

The New Zealand Police play a major role in ensuring the safety of all women who could be facing any form of domestic violence. They have indicated that the processes and channels in place, are the same for all women.¹⁸ However, they are aware that "cultural aspects may

¹⁷ Interview with interviewee A, B and C, above n 1.

¹⁸ Interview with interviewee A, above n 5.

exacerbate the risk”¹⁹, and so they closely consider situations where claimants are at a higher risk. They stated that:

We pay particular attention to ethnic domestic violence of AAM origin due to the extra complexities of cultural norms and values, because we often only receive reports of domestic violence at the acute stage which is often very high risk²⁰

In a situation where the police are called to deal with a domestic violence matter, they are required to follow a particular procedure. This includes the filling out of a family violence report, determining whether there is enough evidence to prosecute the offender, and collecting information regarding the informants, such as the history and backgrounds of the situation, the scene upon arrival, statements from the victim and offender, and details of any children involved.²¹ After assessing the risk, police often issue a Police Safety Order.²² This order is similar to a protection order, as it means that the respondent is unable to contact the applicant for a period of up to five days (NZ Police, n.d). This gives the women time to apply for a protection order if they wish to.

The Police emphasised the importance of risk assessment throughout the interview. They indicated that, in cases of high risk, the situation is discussed at a round table meeting, which includes several support agencies such as Shakti, in order to put safety strategies in place to ensure that the safety of the victims in the future.²³ The Police have also indicated the availability of ethnic police officers. These are referred to as MPES; Maori, Pacific and ethnic police, who facilitate prevention work and are called to scenes where individuals from an AAM background are involved. The police also indicated the availability of education programs through partner agencies. These are designed to assist any domestic violence victims with the gaining of knowledge regarding the creation and maintenance of healthy relationships, in order to provide them with the ability to distinguish between good and harmful relationships.²⁴

A recent article published by Stuff.co.nz, has publicised new police procedure regarding the consideration of forced marriages and other honour-based abuses (Shadwell, 2015). It indicated

¹⁹ Above.

²⁰ Above.

²¹ Above.

²² Interview with interviewee A, above n 5.

²³ Above.

²⁴ Above.

that guidelines have been added to the police manual to ensure that officers are alert and take proper consideration of these culturally sensitive issues (Shadwell, 2015). It warns them of the signals that may indicate the occurrence of such abuses, such as: unexpected removal from schools or the receiving of expensive gifts (Shadwell, 2015). In addition, it encourages the police to not disclose information to families of victims, if they believe that the victim is in danger (Shadwell, 2015). This is arguably a step in the right direction, as it puts police on alert; it brings awareness upon the occurrence of the issue, and shields the victim from any coercive family environment. Police try to deal with such cases quite efficiently and sensitively; however there are several gaps in current NZ legislation.

Issues and gaps with the current New Zealand legal framework and processes

Recently, there has been a lot of debate regarding the adequacy of New Zealand law and processes with regards to the prevention of forced marriages and the protection of those who are a victim to it. With comparison to other Commonwealth nations such as the UK and Australia (AUS), New Zealand lacks specific laws and processes that can address the issue of forced marriages. The New Zealand government's view, that there are adequate laws in place to protect against, as well as prosecute those who are involved in this practice (Ministry of Justice, 2011), is arguably wholly misconceived.

Dr Claire Green, a Barrister and Solicitor of the High Court of New Zealand, has expressed a disappointment in New Zealand's current law with regards to these issues (Green, 2015). This was following her very recent consideration of International instruments and governments' approaches to combat these culturally specific issues (Green, 2015). She stated that, "New Zealand's understanding and acceptance of the issue seem woefully inadequate" (Green, 2015, pg 1). In addition, there was considerable questioning of whether New Zealand's current legislative and administrative measures, with regards to forced marriages, met its current international obligations as she continued, "it is difficult to understand whether New Zealand is in fact meeting its international human rights obligations" (Green, 2015, pg 4).

There are several aspects that illustrate the inadequacy of New Zealand's current laws and processes. One example of this is New Zealand's allowance for those individuals under 18, to be able to marry with the consent of a parent, guardian or the court. This is also closely connected to

the issue of ‘full and informed consent’ as a gap in legislation exists, which creates ambiguity around whether both parties to a marriage have consented. In addition to this, cultural marriages are not officially recognized, and therefore there is a lack of monitoring of forced marriage activities. Furthermore, there is a lack of recognition of different forms of duress in a cultural format, to better protect and bring justice to victims facing this abuse. There is also a lack of understanding in schools and public institutions, which leads to an inadequacy of support of victims and possible victims. In addition, a lack of prevention and awareness avenues to decrease the likelihood of forced marriages and their related issues from occurring.

As previously outlined, New Zealand’s current law allows for individuals between the ages of 16 and 18 to marry through parental, guardian or court consent (The MA, ss 17-19). However, parental consent is not an issue, as it is usually the parents who coerce the individual into marriage (Shakti Community Council, 2010). This requirement of full and informed consent is highly misconceived in New Zealand. This is due to another legislative issue, which is the requirement that only one party to the marriage needs to sign the marriage Licence (Radhakrishnan, 2012). This means that there is no way of ensuring that both parties give their full and informed consent before the marriage is finalised (Green, 2015). National MP Jackie Blue introduced a Bill in 2012 that would require any individual wanting to marry before the age of 18, to acquire the Family Court’s approval (Wade, 2013). This was in the hope that it would provide a form of protection for those under-age victims, who are being forced to marry, as it would ensure that they are consenting to the marriage through a judge’s assessment (Wade, 2013). However, this Bill was declined by the Government, as it believed it would not stop the cultural practice (Green, 2015). Nonetheless, New Zealand is under an obligation to warrant the right of every individual to choose their partner, and that any marriage entered into is undertaken through the free and full consent of both parties (Shakti Community Council Inc, 2010). Therefore, it appears that an urgent legislative change is required in order to better ensure this right is protected for every women living in New Zealand. Recommendations made by Shakti include alternative legislative change to ensure that the parents’ consent is given through full and free consent of the individual entering the marriage (Shakti Community Council Inc, 2010).

Cultural marriages are not verified (Green, 2015), this is when marriages are labelled as cultural or religious within a community, without formal registration (Shakti Community Council Inc,

2010). These marriages usually occur by a community or religious celebrants, who are not required to become registered under current New Zealand law (Shakti Community Council Inc, 2010). This means that these marriages are not monitored for consent, essentially meaning that forced marriages can occur, and are likely occurring without the government's knowledge (Shakti Community Council Inc, 2010); further explaining the lack of evidence concerning the occurrence of this issue in New Zealand. The amendments made by the Australian government to its Crimes Act, include all types of marriages, be it cultural or religious, to ensure criminal sanction for all who commit the offence of forced marriage (Green, 2015). In addition, it criminalises any person who is involved in a forced marriage, which can include marriage celebrants, families, friends and even marriage planners (Green, 2015). Recommendations made by Shakti for the counteracting of these issues include a requirement for all organisations, religious authorities and marriage celebrants conducting marriages, to be registered (Shakti Community Council Inc, 2010). This is to only occur through a license which can be obtained through the confirmation that those marriages will only be conducted, following the free and full consent of both parties, otherwise licenses may be revoked (Shakti Community Council Inc, 2010). In addition, the criminalisation of any individuals who are involved in forced marriages (Shakti Community Council Inc, 2010).

There is a real issue with the fact that duress is narrowly construed in New Zealand. In AUS, duress is construed broadly, and goes beyond fear and terror (Green, 2015). This is seen through the Judgement of *In the marriage of S*, as any form of oppression is considered, and was held to be enough to deem the consent to marriage as involuntary.²⁵ Recent amendments to the Australian Crimes legislation, has also taken into account forced marriage, which included the defining of a forced marriage to be, coercion, threat or deception of any party into a marriage (Green, 2015). Coercion is further defined to include “force, duress, detention, psychological oppression, abuse of power or taking advantage of a person’s vulnerability” (Green, 2015, pg 5). Therefore, further consideration and reform is required with regards to the way duress, or coercion is construed in the New Zealand courts. This can be achieved through legislative clarification, which can take into account cultural aspects and the recognition that emotional and psychological coercion can be a form of duress (Radhakrishnan, 2012).

²⁵ *In the marriage of S* (1980) FLC 90-820.

There is a real lack of understanding by schools and public institutions in New Zealand. Dr Green has also noticed this issue as she stated, “one of the problems faced in New Zealand is that we simply do not know enough about the issues and it is a problem that is marginalised” (Green, 2015, pg 4). Several case studies reported by Shakti have illustrated the extent of this issue, for example when K, a 19 year old of an African origin was forced to marry her rapist, and became pregnant (Shakti Community Council Inc, 2010). She was offered no intervention or support by her school (Shakti Community Council Inc, 2010). In addition, when Child Youth and Family (CYF) became aware, they displayed a lack of cultural understanding and relied on members of her community for guidance (Shakti Community Council Inc, 2010). This was very disadvantageous for the victim, as it appears that some community leaders and members are associated with this abuse, thus give misleading information (HM Government, n.d). Further, the case of J reported by Shakti, illustrates the importance of intervention by schools; the school counsellor referred an 18 year old girl to Shakti upon knowing that she was forced to go back to Afghanistan to marry, and was threatened with honour killing upon her refusal (Shakti Community Council, 2010). Shakti was able to help her gain a protection order against her entire family, and she was able to continue with study and build her career (Shakti Community Council, 2010). Therefore, had it not been for the school’s counsellor’s intervention, this girl’s fate could have been much different. Internationally, a lot has been done to ensure that schools and public institutions are fully aware of the extent of the problem and how to deal with it, and direct individuals in the right pathway (Green, 2015). A study conducted in New Zealand, with regards to the prevalence of IPV and attitudes to violence and gender roles, discussed the importance of establishing and supporting the creation of cultural competence in public institutions and support services (Fanslow, 2010). Shakti has recommended the creation of guidelines for schools, universities and other public institutions, to ensure that they are fully aware of the problem and its surrounding issues (Shakti Community Council Inc, 2010). In addition, ensuring that they have knowledge of the different avenues available for intervention so that they are better equipped to assist any potential or current victims (Shakti Community Council Inc, 2010).

In 2012, several New Zealand agencies created a collaborative response to dealing with forced marriages (New Zealand Ministry of Social Development (NZ MOSD), 2012). It was an attempt

to show the organisation's commitment to helping victims and potential victims of forced marriages in New Zealand by expressing the importance of the right to marry by choice (NZ MOSD, 2012). However, there is still a significant gap in prevention and assistance avenues, and it is arguable that this protocol is a very poor effort on behalf of New Zealand in mitigating the issue. Countries such as the UK and AUS have implemented legislation and processes that create pathways for individuals facing this issue (Green, 2015). This is to ensure that there are adequate processes in place and that they are aware of them, so that they may seek help when they need to get out of their situation (Green, 2015). Shakti has recommended for New Zealand to collaborate with support agencies and put in place "proactive outreach measures" (Shakti Community Council Inc, 2010) to better protect victims in these marginalised communities (Shakti Community Council Inc, 2010).

Education about the issues and awareness of support agencies is a major factor in the prevention and mitigation of forced marriages and related abuses (Green, 2015). This is due to the fact that most of the victims are under a misconception that the abuse they are subjected to is normal (Green, 2015), and consequently do not report it until it is at the extreme level.²⁶ Although the Police procedure outlined earlier appears to be adequate and considers many factors in domestic violence situations, the lack of reporting by victims makes it difficult for the Police to effectively help the victims. The representative from the Police has indicated that work needs to be done to encourage the reporting of domestic violence from women of an AAM background.²⁷ It was suggested that more resourcing may be required, for the creation of more courses for victims and offenders around the addressing of personal issues.²⁸ In the UK, they have created a forced marriage unit (FMU) designed to support victims of forced marriage by providing advice, a helpline, creating policies and undergoing casework (Green, 2015). In addition, it provides training education to professionals and the wider public, and works towards awareness of the issues through media campaigns (Green, 2015 and Gov.uk, 2015). This has proved to be a major success as it has reported 5,000 helpline calls, as well as 1,600 incidents of suspected forced marriage (Green, 2015). The need for these efforts to be implemented in New Zealand can be illustrated through the case of B reported by Shakti, as a 16 year old female was sponsored into

²⁶ Interview with interviewee A, above n 5.

²⁷ Above.

²⁸ Above.

New Zealand for an arranged marriage (Shakti Community Council Inc, 2010). This resulted in her being treated as a slave, doing all household chores, working as well as being physically, psychologically, sexually and economically abused, leading up to her attempted suicide (Shakti Community Council Inc, 2010). However, a stranger came across her while she was attempting to end her life and referred her to the Police, who were able to help her and direct her to the relevant support agency, Shakti (Shakti Community Council Inc, 2010). Arguably, if she had been aware of her rights or Shakti initially, she could have escaped and sought help, and not suffered through the same amount of abuse. Furthermore, a previous victim of these cultural abuses (coercion into marriage, physical and emotional abuse), has indicated the need for people within AAM communities to, “be reminded that they are in New Zealand now” and that they, “have rights to speak up” (Radhakrishnan, 2012). Other suggestions have been made by past-victims such as, the organisation of entertaining events that can attract young girls and educate them about their rights (Radhakrishnan, 2012). In addition, the use of media as in the UK, to portray anti-abuse in an ethnic context, could be an effective way to spread the message (Radhakrishnan, 2012 & Gov.uk, 2015). This is further supported by the positive outcomes that ensued from the “it’s not OK” campaign that took place recently, resulting in an increased amount of men seeking help for their abusive behaviour (Fanslow, 2010). Therefore, it has been argued that this can be effective in supporting “ethnic-specific prevention activities” (Fanslow, 2010). Consequently, it is evident that education and awareness is vital among AAM communities, in order to help create awareness and develop confidence in the New Zealand system to seek intervention when they need it (Shakti Community Council Inc, 2010).

It is clear that forced marriages occur in New Zealand, yet there is a serious lack of statistical data to identify the extent of the problem as previously discussed. This leads to a lack of understanding by the New Zealand government and agencies of the extent of the issue and its surrounding factors. Although steps are currently being taken, such as the very recently added police guidelines with regards to forced marriage, and the multi- agency agreement, there is still a significant amount of reform required in order to adequately protect those who are victim, or may fall victim to these forms of cultural abuses.

Conclusion

This article has argued that the current legal framework and policies are inadequate in the protection of AAM women facing culturally specific abuse. It has done this through the examination of the current approaches and procedures with regards to abuse allegations of women of an AAM origin in New Zealand. It did this through the consideration of the current legal framework, policies and processes with regards to a common issue faced by AAM women; forced marriage. Furthermore, an outline of the issues and gaps in the current legal framework, policies and processes, as well as some recommendations were provided. This was done in order to illustrate the inadequacy of the current laws and policies in New Zealand. It was evident that there are laws and policies in place to protect against different forms of abuse, and provide guidelines for the processing of marriages in New Zealand. However, there is still a real need for reform for the adequate protection of women in AAM communities within New Zealand. The creation of new legislation and policies that are specific to the issue of forced marriage, and the difficulties associated with AAM cultural norms, was suggested. If followed, it could ensure better justice for all women facing any forms of abuse in New Zealand's multicultural environment.

References

- Field, C. A., & Caetano, R. (2004) *Ethnic differences in intimate partner violence in the U.S. general population: The role of alcohol use and socioeconomic status*. *Trauma, Violence, & Abuse*, 5, 303.
- Fanslow, J., Robinson, E., Crengle, S., & Prese, L. (2010) *Juxtaposing Beliefs and Reality: Prevalence Rates of Intimate Partner Violence and Attitudes to Violence and Attitudes to Violence and gender Roles Reported by New Zealand Women*. 16(7) Sage Pub 812.
- Green, C. (2015). *Forced and underage marriages: A pressing human rights issue in New Zealand?* 8 NZFLJ 96.
- Gov.uk. (2015). *Additional Resources*. Forced Marriage Unity (FMU). Retrieved from <https://www.gov.uk/forced-marriage#our-publications-and-other-resources>.
- H v H* [1992] NZFLR 145, (1991) 7 FRNZ 556 (FC).
- Hirani v Hirani* (1983) 4 FLR 232.
- HM Government. (n.d). *Multi-agency practice guidelines: Handling cases of Forced Marriage* (UK government Home office's published works)

Innes-Kent, S. (2007). *New Zealand's obligations at international law in relation to the human rights issue of forced marriage: should New Zealand criminalise forced marriage?* LLM research paper, Victoria University.

In the marriage of S (1980) FLC 90-820.

Maitra, S. (2001). *Dowry and Bride Price*. Department of Economics, York University, Retrieved from http://dept.econ.yorku.ca/~smaitra/SMaitra_IESS.pdf.

Ministry of Justice. (2011). *Government Response to Report of the Justice and Electoral Committee on Petition 2008/52 of Jane Prichard and 46 others*. Retrieved from www.parliament.nz/resource.

Ministry of Justice . (2007). *Review of the Domestic Violence Act 1995 and Related Legislation*. New Zealand Government. Retrieved from

<http://www.justice.govt.nz/publications/publications-archived/2007/a-review-of-the-domestic-violence-act-1995-and-related-legislation-a-discussion-document-december-2007>.

New Zealand Family Violence Clearinghouse. (2014). *Data Summary: Violence Against Women Data Summary 2*. Retrieved from www.nzfvc.org.nz.

New Zealand Ministry of Social Development, Child, Youth and Family, Family and Community Services, Work and Income, New Zealand Police, New Zealand Ministry of Education, Immigration New Zealand. (2012). *Multi-agency statement -- collaborative response to potential and actual forced marriage*. Retrieved from www.police.govt.nz.

New Zealand Police (n.d.), *Police Safety Orders*. Retrieved from

<http://www.police.govt.nz/advice/family-violence/police-safety-orders>.

New Zealand Police. (n.d). *Family Violence Form Set POL 1311- 1316*.

Radhakrishnan, P. (2012). *Unholy Matrimony: Forced Marriage in New Zealand*. Masters in Development Studies, Victoria University.

Shakti Community Council Inc. (2010). *Supporting submission on Petition on Forced Marriages / Under-Age Cultural Marriages in New Zealand*.

Shakti Community Council Inc. (2010). *Additional information on Forced/Underage Marriages*.

Statistics New Zealand. (2014). *2013 Census Quickstats about culture and identity*. Retrieved from

<http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-culture-identity/ethnic-groups-NZ.aspx>.

Statistics New Zealand. (2015). *National Ethnic Population Projections: 2013 (base) – 2038*. Retrieved from:

http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/NationalEthnicPopulationProjections_HOTP2013-38.aspx .

Shadwell, T. (2015). *Police get guidelines on investigating forced marriages*. Retrieved from <http://www.stuff.co.nz/national/crime/68721673/police-get-guidelines-on-investigating-forced-marriages.html>.

The Crimes Act 1961

The Domestic Violence Act 1995

The Family Proceedings Act 1980

The Marriage Act 1955

UNIFEM. (2010). *Developing legislation on Violence Against Women and Girls*. Retrieved from <http://www.endvawnow.org/uploads/modules/pdf/1355776748.pdf> .

United Nations. (2011). *Supplement to the Handbook for Legislation on Violence against Women "Harmful practices" against women*. ST/ESA/331, United Nations Publication. Retrieved from <http://www.un.org/womenwatch/daw/vaw/handbook/Supplement-to-Handbook-English.pdf>.

Wade, A. (2013). *Young brides 'forced to wed'* . The New Zealand Herald. Retrieved from http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10860111.

X v X [2000] NZFLR 1125 (FC)

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