

Out of the Cold: Forced Marriage Trafficking Victims Need to Be Included in U.S. Definition

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The Victims of Trafficking and Violence Protection Act (TVPA) was passed into law in October 2000 by Congress and President Clinton. At the time, it was praised as a bipartisan solution to address human trafficking as a distinct crime. Prior to 2000, human trafficking crimes were prosecuted using several different federal and state statutes that often resulted in low prosecutions and scant justice and protection for victims. Since 2000, the law has been reauthorized by every subsequent administration with added provisions.

The TVPA was successful in streamlining trafficking prosecutions under one clear law as well as creating taskforces and coordinating agencies to better detect both traffickers and victims. The TVPA divides trafficking into two distinct categories: sex and labor obtained through force, fraud, or coercion.¹ Sex trafficking must arise from a commercial sex act, i.e., for an exchange of money or something of value.² Labor trafficking must arise from a scheme of involuntary servitude, debt bondage, peonage or slavery.³

However, most glaringly absent from the list of forms of human trafficking in the TVPA is forced marriage. As a result, survivors of forced marriage trafficking cannot access the services and justice that other survivors of the defined forms of trafficking can. Instead, they are left in the cold attempting to define themselves as victims of another crime or another form of trafficking in order to receive help, even when they do not fit within such definitions. This means that many survivors never receive the help that they need to escape their trafficking situation, receive social services, and eventually see their trafficker(s) put to justice.

Trafficking for the purpose of forced marriage is distinct from that of early or child marriage. The former centers around the issue of freedom of choice while the latter centers around the age of one or both of the participants. While trafficking for the purpose of child marriage is prevalent globally, it has already been addressed by Congress and so is outside of the scope of the issue we discuss here.⁴ Another distinction to be made here

¹ 22 U.S.C. § 7102 (amended 2018). Note: For sex trafficking of minors, there need not be a showing of force, fraud, or coercion.

² *Id.*

³ U.S.C., *supra* note 1.

⁴ In the 2013 reauthorization of the TVPA, the House specifically discussed child marriage and directed the Secretary of the Department of State to develop a strategy (1) to prevent child marriage, (2) to promote the protection of girls at risk of child marriage in developing countries, (3) that targets areas in developing countries with high prevalence of child marriage, and (4) that includes diplomatic and programmatic initiatives, See, *Trafficking Victims Protection Reauthorization Act of 2013*, H.R.898, 113th Cong. (2013).

is between forced marriage and arranged marriage; one does not equal the other. The United Kingdom, for example, distinguishes arranged marriages from forced marriages in that in an arranged marriage the parents/families take a leading role in arranging the marriage, but the decision whether to consent to the arrangement remains with the individuals getting married.⁵

Freedom of choice in marriage is defined in the 1964 UN Convention on Consent to Marriage, which provides that “[n]o marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.”⁶ In order for forced marriage to cross the threshold into trafficking and not just marriage obtained without free consent some other elements must be present.

The U.S. Committee for Refugees and Immigrants (USCRI) has over 100 years of experience addressing the needs and advocating on behalf of refugees and immigrants, and sees the lack of inclusion of forced marriage in the U.S. definition of trafficking to be in stark contrast to the purpose of the TVPA. In this paper, we outline the reasons why forced marriage should be included as a form of trafficking in the TVPA.

Issue 1: Many Survivors of Forced Marriage Trafficking Cannot Align their Experiences to Fit the U.S. Definition

Under the current U.S. definition of trafficking as discussed above, the purpose of trafficking must fit into one of two categories: forced

labor or commercial sex. These categories clearly exclude trafficking for pure forced marriage.

Currently, in order to receive assistance in social services, immigration relief, and justice in the legal arena, a survivor of forced marriage trafficking must try to align their experience within the narrow definitions. This practice sometimes works, but in all instances is cumbersome for all parties involved: the survivor, case managers, attorneys, judges, and the government. This workaround is successful only through burdensome arguments that have the potential to further traumatize and invalidate the experience of trafficking survivors.

In order to fit their experiences within the definition of trafficking, case managers and attorneys will turn to what occurred within the context of their trafficking, and not the trafficking itself. If the survivor was forced to have sex acts in exchange for something of value, such as money or housing, an argument would be made that they are a survivor of sex trafficking. If they were compelled to do some labor such as cleaning, a similar argument would be made that they are a survivor of forced labor trafficking. The only instances where the TVPA protects survivors of forced marriage trafficking are when the purpose of trafficking is mixed with one or both of the kinds of trafficking that the U.S. definition does recognize.

However, what happens when neither argument can be made? What if the only action that was compelled was the marriage itself? This is often the case as the marriage itself is the center of the purpose that

⁵ United Kingdom Foreign and Commonwealth Office and Home Office, “Forced Marriage: A Wrong Not a Right,” Government of the United Kingdom (2005).

⁶ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, art. 1, 9 Dec. 1964.

the survivor was trafficked, and not for a secondary purpose such as forced labor or sex. While some survivors may seek assistance under other crime definitions, these often also do not align. Survivors of pure forced marriage trafficking are then excluded, left unassisted, and their experiences invalidated.

Issue 2: Forced Marriage Trafficking Experiences Otherwise Fit into the U.S. Trafficking Model

To determine whether trafficking has occurred in any form, the U.S. government uses a model known as the Actions, Means, Purpose (AMP) model, and we will use it here. First, there must be an action taken in furtherance of the trafficking that includes harboring, transporting, providing, or obtaining an individual to traffic. Second, a means must be present, which can take the form of force, fraud, or coercion in order to compel the individual to comply with the scheme. Third, there must be a purpose of trafficking the individual, in this case, forced marriage.

For example: an adult woman in the United Kingdom is told by her family that she will marry a man back in her native country of Lebanon, which she refuses to do. The family tells her that they will disown her and have her killed if she does not comply. So, unwillingly, she is transported by her father and brother on a plane back to Lebanon to marry. Here, the action is transporting, the means is coercion, and the purpose is forced marriage.

Currently, many survivors of this form of trafficking easily fit within the proscribed model categories for actions and means. However, as discussed previously, when it comes to purpose, the survivor's experience may not fit within the narrow confines of the U.S. definition.

Issue 3: Survivors of Forced Marriage Trafficking Often Remain Unassisted Under Current U.S. Law

As discussed previously, many survivors of forced marriage trafficking cannot align their experiences within the categories of sex and labor trafficking. As a result, many survivors of this form of exploitation cannot access social services, immigration relief, and justice that other survivors of trafficking can in the United States and traffickers go without punishment for their clear crimes.

First, foreign-born survivors, as many forced marriage trafficking survivors are, can access a wide range of social services under multiple U.S. government grants. However, under all programs, a survivor must first be screened in order to ensure that they can receive services. In such a screening, a survivor's experience is weighed against the definition of trafficking in the TVPA. If the two align the survivor is allowed to receive services. If not, vulnerable survivors must depend on communities that are not always willing or able to assist them.

Second, survivors of trafficking have a specific form of immigration relief available to them known as a T nonimmigrant status, or T-visa. A survivor is eligible for a T-visa if they "are or were a victim of a severe form of human trafficking as defined [in the TVPA]."⁷ Recipients of T-visas are eligible for employment authorization, able to reunite with qualifying family members, and eventually become lawful permanent residents with a Green Card.⁸ Again, survivors of pure forced marriage trafficking are ineligible for T-visas and such relief due to the simple fact that their form of trafficking is not included in the definition in the TVPA.

⁷ U.S. Citizenship and Immigration Services (USCIS), *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. Department of Homeland Security (2018).

⁸ *Id.*

Third, survivors of trafficking may bring a case against their trafficker under the TVPA that takes into account the uniqueness of the crime. Between 2011 and 2015, convicted traffickers received a prison sentence averaging 15 years.⁹ The average restitution award between 2012 and 2016 was \$59,244.25.¹⁰ In comparison to other similar crimes, these are high statistics. But, again, a survivor must fit in the narrow TVPA definition in order to bring such a case and receive justice and restitution. Some survivors of forced marriage trafficking have filed cases under domestic violence statutes. In most states, domestic assault is a misdemeanor carrying a minimal punishment of up to five years in prison and a fine.¹¹ Such minimal justice for a serious crime of trafficking is not justice at all.

Issue 4: The United States is an International Outlier in its Approach to Trafficking for the Purpose of Forced Marriage

The United States remains an international outlier in terms of legislation to prosecute trafficking for the purpose of forced marriage. The majority of countries in the Global North have enacted both specific legislation and task forces to address the issue.

The European Union specifically included trafficking for forced marriage in its anti-

trafficking legislation in 2011.¹² The directive gives a generally wider scope to the definition of trafficking than that of the United States. According to the directive,

The definition also covers trafficking in human beings for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity, as well as, for instance, other behavior such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings.¹³

This definition allows for greater prosecutions of marriage-type trafficking crimes that may lie in between the narrow confines of the U.S. law. All 28 member countries adopted the directive into their own national legislations by 2013.

Australia also has specific legislation to address forced marriage. The government also identified the issue as one of the seven key areas of focus of the National Action Plan to Combat Human Trafficking and Slavery 2015–2019 (NAP). Australia’s forced marriage trafficking law has two prongs. The first covers residents and citizens trafficked into forced marriage overseas. The second covers situations whereby marriage is used to traffic nonresidents into Australia.¹⁴

⁹ Bureau of Justice Statistics, *Federal Human Trafficking Prosecutions Increased More than 40 Percent from 2011 to 2015*, Office of Justice Programs (2018).

¹⁰ Martina Vandenberg, *Many Human Trafficking Victims in the United States Don’t Get the Restitution that Federal Law Requires: New Report*, Human Trafficking Legal Center (2018).

¹¹ Battered Women’s Justice Project, *State Statutes: Misdemeanor Crimes of Domestic Violence*, National Center on Protection Orders and Full Faith & Credit (2015).

¹² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 1 15.4.2011).

¹³ *Id.* at Art. 11.

¹⁴ Commonwealth of Australia, National Action Plan to Combat Human Trafficking and Slavery 2015–19, Australian Government Initiative (2014), pp 19–20. Note, the other key areas of focus are: monitoring of the 2013 legislative reforms; awareness-raising and education; exploitation in supply chains; operational protocol for minors; strengthening connectedness with States and Territories; and international and regional leadership.

While Canada also falls short in this area, the Canadian Ministry of Justice has made efforts to raise awareness of the issue.¹⁵ Overall, in a group of its peers, the United States falls short in specific forced marriage trafficking legislation.

Issue 5: Numbers of Forced Marriage Trafficking Instances are Growing

While trafficking victims of forced marriage make up a smaller percentage of overall trafficking than forced labor or sex, the statistic is not insignificant. Because of the United States' lack of response to the issue, most recent data is from nearly ten years ago. A study by Tahirih Justice Center in 2011 identified as many as 3,000 forced marriage cases in a period of just two years.¹⁶ More recently, the UN Office on Drugs and Crime (UNODC) noted the issue of trafficking for the purpose of forced marriage was growing. For example, within the context of armed conflicts around the world, UNODC detected that there are growing numbers of women who are trafficked and forced to marry men in armed groups as part of their use of power in the areas they control.¹⁷

While there is no armed conflict on U.S. soil as in other parts of the world, it is not out of the question that an American citizen could be trafficked to one of these areas for the purpose of forced marriage based on the numbers of American citizens already

trafficked into forced marriage outside the United States. In fact, the prevalence of this form of trafficking, though underreported, along with the nature of our globalized world guarantees that American citizens are affected. According to another recent UNODC report, trafficking for forced marriages was reported by countries across all global regions.¹⁸

Conclusion

The purpose of the TVPA, according to the act itself, is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”¹⁹ The fact that forced marriage trafficking is excluded as a form of trafficking under U.S. law is antithetical to the purpose laid out in the TVPA. By excluding the survivors of this form of trafficking, the United States is removing their protection and allowing traffickers to go largely unpunished.

Therefore, it is up to the U.S. government to amend the TVPA to specifically include trafficking for forced marriage within the definition of trafficking as the numbers of victims detected continues to rise. By not naming the form specifically, traffickers are not brought to justice and victims are left in the cold.

¹⁵ Research and Statistics Division, *Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector*, Department of Justice Canada (2005).

¹⁶ Forced Marriage Initiative, *Policy Recommendations to Address Forced Marriage in the United States*, Tahirih Justice Center (2012).

¹⁷ UNODC, *Global Report on Trafficking in Persons – in the context of armed conflict 2018*, United Nations (2019) at 10.

¹⁸ UNODC, *Global Report on Trafficking in Persons 2018*, United Nations (2019) at 31.

¹⁹ Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 102 (2000).

The U.S. Committee for Refugees and Immigrants (USCRI), established in 1911, is a nongovernmental, not-for-profit international organization dedicated to addressing the needs and rights of refugees and immigrants. Through its network of field offices and affiliates, USCRI provides America's newcomers with a comprehensive package of essential services to meet their basic needs upon arrival. USCRI protects immigrant children who arrive in the U.S. without parents or resources, ensuring that the children receive the legal, social and health services they require. In addition, USCRI works with survivors of human trafficking across a multi-regional network of service providers in every state—providing emergency assistance including: access to housing; healthcare; education; employment opportunities; legal assistance; and language training. USCRI advocates for the rights of refugees and immigrants both nationally and globally, helping to drive policies, practices and law.

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