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Mail-Order Brides and Marriage Migration: A Comparative Study of the Problems in the U.S., Great Britain and Ireland

SUMMARY

Mail-order brides are not a new concept to society, and unfortunately, it is still an issue that persists today. The trafficking of women illegally through the mail-order bride system is a well-known and documented phenomenon across the world. This paper will look specifically at the mail-order bride phenomena in the United States, the United Kingdom, and Ireland, as well as the International Marriage Broker Regulation Act of 2005 and the Victims of Trafficking and Violence Prevention Act of 2000. By analyzing these nations' mail-order bride laws and systems, as well as the international laws governing mail-order brides, it is clear that although measures have been taken to protect trafficked women, more could be and should be done to protect women from falling into the hands of the abusive and dangerous mail-order bride ecosystem. By reforming laws, strengthening punishments, and placing more accountability on nations to actively prevent women from being mistreated as mail-order brides, we may one day be able to live in a world in which mail-order brides do not exist. The author presents the historical development of the mail-order bride phenomena and its current implications on women and family life. Moreover, the paper analyzes the problem in a broader, comparative perspective which gives a greater understanding of the occurrence within the realm of common law countries.

Key words: mail-order brides, female migration, arranged marriage, trafficking, human rights.

Słowa kluczowe: żony korespondencyjne, migracja, aranżowane małżeństwa, handel ludźmi, prawa człowieka.

“Heaven is having a Japanese wife, a Chinese cook, a British country home and an American salary. Hell, on the other hand, is having a Chinese salary, a British cook, a Japanese house and an American wife”¹.

¹ G. Clark, *An Introduction to the “Penpal Bride” or so-called “Mail Order Bride” Movement*, available online at: www.upbeat.com/wtwpubs/intro.htm.

Introduction

Some may argue that, over the past few decades, the concept of marriage has changed dramatically. In the realm of common law, the most significant change in the law of marriage might be the fact that marriage is no longer considered as simply a transfer of chattels. Customarily, the chattels of unmarried women passed immediately and directly onto the husband upon marriage, even though women were unable to transfer their chattels since women did not have title to the chattels². However, the rise of the controversial mail-order bride industry seems to prove, that although the modern perception of love and family has changed significantly, some aspects of the inherently patriarchal mentality remain the same. Worldwide migration of women in the search for better employment opportunities, to reunite with family members, and to marry³, has also significantly contributed to the modern phenomena of the mail-order bride industry.

The notion of having a mail-order bride is not a new concept in society. In fact, mail-order brides are a well-known and documented phenomenon that was established in colonial times, and played a role in the settlement of both Canada and the United States ("U.S.")⁴.

Currently, in the U.S., the mail-order bride industry is governed and regulated under the International Marriage Broker Regulation Act of 2005 ("IMBRA")⁵. The mail-order bride industry primarily operates through International Marriage Brokers that must comply with the provisions of the IMBRA. Some of the primary issues with servile marriages are that it affects a broad spectrum of issues that plague today's globalized society, such as human trafficking, violence, and prostitution. In other common law countries such as England and Ireland, marriage migration had also triggered various policies in order to combat forced and arranged marriages. Notwithstanding the injustices suffered by women relating to their lives as mail-order brides, many of the marriages are in fact perfect examples of marital harmony and mutual respect, which makes it rather difficult to draw a clear-cut moral judgment, which in turn makes it difficult to determine what is right from wrong as it pertains to paid-for arranged marriages.

In order to fully appreciate the gravity of the problem of mail-order brides, as well as forced and arranged marriages, it is crucial to understand the history and modern policies that govern the occurrence. First, this paper is going to examine the issues connected to mail-order brides in the United States, namely, how broad the problem is and how many other issues arise out of the

² 5 Williston on Contracts § 11:3 (4th ed.)

³ S. H. Jackson, *To Honor and Obey: Trafficking in "Mail-Order Brides,"* 70 Geo. Wash. L. Rev. 475 (2002).

⁴ C. M. Bowes, Esq, *Male Order Brides and International Marriage Brokers: The Costly Industry that Facilitates Sex Trafficking, Prostitution, and Involuntary Servitude*, 18 CARDOZO J.L. & GENDER 1 (2011).

⁵ 8 U.S.C.A. § 1375a.

occurrence of paid-for arranged marriages. Moreover, this section of the paper will also analyze the history of mail-order brides, as well as how the concept of marriage has contributed to the spread of human trafficking and violence against woman. Next, the paper will examine the scale of the problem in the United Kingdom, and separately Ireland, as well as discuss the effectiveness of the policies implemented by the two countries. Also, in terms of policy-making, this paper will discuss the IMBRA, which is the governing law with respect to mail-order brides since 2005 in the U.S. Lastly, this paper will investigate possible solutions to the issue of marriage migrants and mail-order brides, in an attempt to supplement the discussion on many of the dilemmas faced by the international community.

Key Terms

As the theme of this paper will be the connection of the trafficking of women into servile marriage and modern exploitation of women through mail-order bride organizations, the definitions of servile marriage will be as follows:

Servile Marriages

A servile marriage is a situation wherein a woman is in a marriage that is either legally binding or sanctioned by her community in such a way that she has no reasonable possibility of asserting that the marriage is invalid; and wherein the woman is held in domestic and sexual servitude that defines her role as a wife.⁶

Trafficking

For the purpose of this paper, the definition of trafficking will be understood under the internationally recognized definition established by the United Nations ("U.N.") under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the U.N. Convention Against Transnational Organized Crime (The Palermo Protocol), which is quoted in the Council of Europe Convention on Action Against Trafficking (ECAT), which Article 3 states, in pertinent part:

Trafficking in Persons shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons by 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 the benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the

⁶ See *Male-Ordered: The Mail-Order Bride Industry and Trafficking In Women For Sexual and Labour Exploitation*, Poppy Project 3 (February 2009), <http://lastradainternational.org/lsidocs/Male-ordered.pdf>.

exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs⁷.

Congress's Authority to Eliminate Slavery in the U.S.

In spite of the fact that the mail-order bride industry is often described as modern slavery, the Thirteenth Amendment shall be invoked as an example of the broad authority for Congress to prevent and eliminate slavery and involuntary servitude in whatever context it may arise.⁸ The Thirteenth Amendment states in Section 1: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."⁹

Marriage Migration

Mail-Order Brides in the U.S.

Definition

A mail order bride is often considered an offensive term for a woman brought from another country to be married, usually in return for a payment to a commercial agency¹⁰. However, it should be noted that there is also a broader category of migrating women who leave their country of origin in pursuit of better employment opportunities, to join family members, or to marry¹¹.

Many associate the mail-order brides to be of certain origin, culture, or tradition. Respectively, it is said that many of these women, who primarily come from Eastern Europe or Asia, possess certain traits that are especially desired by Western men. One of the more popular stereotypes regarding mail-order brides are that Asian women are submissive to their male counterpart, and that Eastern-European women are typically well educated¹². To put it more clearly: "all Asian women are shy, sweet, loving and available; Russian women are elegant,

⁷ See United Nations (2000) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol). Palermo: United Nations and Council of Europe (2005). Convention on Action Against Trafficking in Human Beings. Warsaw: Council of Europe.

⁸ S. H. Jackson, *Marriage of Convenience: International Marriage Brokers, "Mail-Order Brides," And Domestic Servitude*, 38 U. Tol. L. Rev. 920 (2006).

⁹ U.S. Const. amend. XIII, § 1.

¹⁰ L. Storey, *Mail Order Bride Research Guide* (Apr. 20, 2016), law1510.pbworks.com/f/Mail+Order+Bride+Pathfinder+5.docx.

¹¹ S. H. Jackson, *To Honor and Obey: Trafficking in "Mail-Order Brides,"* 70 Geo. Wash. L. Rev. 475 (2002).

¹² R. Sims, *A Comparison Of Laws In The Philippines, the U.S.A, Taiwan, and Belarus to Regulate the Mail-Order Bride Industry*, 42 AKRON L. REV. 607, 609 (2009).

cultured and educated.”¹³ It seems rather ironic that in the modern, liberal western world, women are expected to be either submissive or elegant; preferably both. Notwithstanding the socio-economic factors that drive women into becoming mail-order brides, it is interesting to note that the women who become mail-order brides themselves believe that American men look much better than native men and make good husbands whereas those originating from other parts of the world, such as men from Thailand, Indonesia, Russia, etc., do not.¹⁴

But what about the men who are seeking mail order brides? Who are they? Research has revealed that most of the men who engage in the mail-order bride industry are generally individuals that are white, highly educated, most being politically and ideologically conservative, and generally professionally successful.¹⁵ A high number of these men have been through divorces, with at least one child. But what is interesting is that they all expressed a desire to have more children.¹⁶ It cannot be unequivocally stated whether these men are somehow different from other men around the world; there is nothing special about being divorced and wanting to have more children with different women. It must be stated that not all of these men deserve an ‘automatic’ condemnation. However, alternative research has given rise to a negative disposition towards men who engage in mail-order bride services:

He seeks a [mail-order bride] because of sexist sentiments, and his hatred and fear of the feminist movement. He rejects women of his own nationality as wives because he considers them to be aggressive and egoistical. He believes that they are too ambitious, and make excessive demands in marriage, and have expectations of equality with their husbands. He criticizes the desire of women for autonomy, independence and equality (Langevin & Belleau, 200, pp.85-89).¹⁷

The above mentioned findings expose a very disturbing attitude towards women, which may explain the wave of violence towards immigrant women. Whilst examining the history of mail-order brides, it may be surprising how society has changed and how the treatment of women has deteriorated.

History

The mail-order bride industry has a long history of shaping international relations and even colonizing America. Early in the seventeenth century, large waves of immigrant workers would leave their respective homes to seek out

¹³ S. H. Jackson, *Marriages of Convenience: International Marriage Brokers, “Mail-Order Brides,” and Domestic Servitude*, 38 U. Tol. L. Rev. 895, 898 (2007).

¹⁴ R. J. Scholes, *The “Mail-Order Bride” Industry and Its Impact on U.S Immigration*, App. A (1999), <https://www.christianfilipina.com/research/SCHOLES-MAIL-ORDER-BRIDE-REPORT.PDF>.

¹⁵ Id.

¹⁶ Id.

¹⁷ A. Stepnitz, *The Mail-Order Bride Industry As A Form of Trafficking For Sexual and Labour Exploitation, Violence In The EU Examined – Policies On Violence Against Women, Children and Youth in 2004 EU Accession Countries*, p. 155.

better lives elsewhere, a practice that is still common today. However, immigrant workers who decided to leave still had a strong desire to marry within their own respective cultures, and thus the “picture bride system” had been developed out of necessity of the historical and cultural compound of marriage¹⁸.

The historical events that have contributed to the development of the mail-order bride industry in the U.S were in fact the Industrial Revolution and the California Gold Rush, mainly due to the fact that many Japanese and Korean laborers came to the U.S. in the beginning of the twentieth century. It can be said that the laborers who turned to matchmaking organizations, which helped them to organize their marriage through mail, gave leeway to the development of the modern matchmaking organizations¹⁹. Yet, it needs to be understood that the “picture bride” system emerged due to the necessity of companionship and distance, and helped to facilitate the process of cross-boundary marriage. Japanese and Korean women who were seeking to escape spinsterhood and harsh economic conditions subjected themselves to the system of exchanging pictures with prospective grooms, later to find the photos to be misleading, and the financial situation of the groom to be much worse than the brides were led to believe²⁰.

As for the women, the first Western brides who came to America were highly respected women, appreciated and valued by the society; they were even regarded as heroines who played a major role in the development of the new modern American society²¹. Additionally, there is also evidence of French mail-order brides who came to America in the seventeenth century to marry French soldiers, and today almost all of the French-speaking Quebecois are believed to be descendants of those mail-order bride marriages²².

Mail-order brides ensured the survival of the colonies, as many of the early settlers were men, who without women, did not have any interest of staying in a foreign land. They often did not bring their families across the ocean, as they saw no reason for establishing themselves in colonies where the future was seen as uncertain²³. Notably, historian Julia Cherry Sprulli said that “these unmarried men were not interested in building permanent homes in Virginia or in cultivating lands to be enjoyed by future generations,” rather, the colonists simply “planned to make their fortunes and return to England,” hence

¹⁸ L. Mobydeen, *Something Old, Something New, Something Borrowed, Something Mail-Ordered? The Mail-Order Bride Industry And Immigration Law*, 49 Wayne L. Rev. 939, 942 (2004).

¹⁹ O. Grolsh, *Foreign Wives, Domestic Violence: U.S Law Stigmatizes And Fails to Protect “Mail- Order Brides,”* 22 Hastings Women’s L.J. 81 (2011).

²⁰ Id.

²¹ M. Zug, *Lonely Colonist Seeks Wife: The Forgotten History of America’s First Mail Order Brides*, 20 Duke J. Gender L. & Pol’y 85 (2012).

²² E. Meng, *Mail-Order Brides” Gilded Prostitution And The Legal Response*, 28 U. Mich. J.L. Ref. 197 (1994).

²³ Zug, *supra* note 21.

why local governments were encouraging young European females to come across the ocean and equalize the gender imbalance between men and women in America²⁴.

A prime example of the struggles colonies faced in retaining immigrants can be seen in the Jamestown settlement in Virginia. Before engaging in the mail-order bride system, Jamestown realized that without women, the colony would face tremendous difficulty in retaining its power and growth. This in turn led Jamestown to become the first trailblazing city to engage in the practice of mail-order brides. Fortunately for the settlers, the government was able to fund the passage for roughly 140 women so that the future of the colony could be secure and fruitful²⁵. It would not be an exaggeration to say that the mail-order brides had a direct effect in saving Jamestown from turning into a ghost town, as the women effectively ended the colonist's desire to return to England. Moreover, it must be recognized that, in a way, European women also had to compete with native American women for suitable husbands, as it had become common practice for European men to marry native American women. As the practice became increasingly popular, the government of Jamestown prohibited inter-racial marriage.

Current Examples of Marriage Migrants

Another common group of women who might have an ulterior motive for marriage, other than love are called the "Migrant Brides," which is a term referring to a group of Asian women from developing countries who migrate to marry²⁶. Most often, these women faced poverty in their home countries, and just like other mail-order brides, they were on a quest to find a new life with better opportunities and greater stability. For example, in the south-east Asian state of Singapore, a "migrant bride" is most often perceived as a burden on the local economy, as she is not only looking for a husband, but most often is also dependent on social welfare.

Correspondingly, migrant wives from Singapore face the same challenges as their European modern mail-order counterparts. Migrant wives are frequently denied permanent residency and citizenship, as they do not contribute to the local economy, and might even potentially burden the state with their welfare claims. At best, they are often granted only a Long Term Visit Pass, which is something akin to a renewable visa. Many of the women are basically enslaved to their husband's sponsorship, and even though they have children in Singapore and work in Singapore, they still are not granted a permanent-resident

²⁴ Id.

²⁵ Id.

²⁶ A. Wei-Zhen Chong, *Migrant Brides In Singapore: Women Strategizing Within Family, Market and State*, 37 *Harv. J.L & Gender* 331, 332 (2014).

status, and their income is not calculated by the state in its citizenship census.²⁷ Therefore the importance of human rights can never be undermined, and the contemporary challenges and consequences of the lack of protection seem to be getting more and more severe, especially to women and their children.

United Kingdom

Mail-Order Brides and Immigration

As it pertains to the United Kingdom (“U.K.”), there is no specific legislation on mail-order brides²⁸. Research conducted by the La Strada organization shows that the mail-order bride industry relies on a demand for women to be either exploited sexually or for their labour²⁹. The mail-order bride industry as a whole does not differ substantially around the world, as the above mentioned reasoning for obtaining a mail-order bride is similar for women who, for the most part, are either Eastern European or Asian and are seeking a better life in the U.K. Women in the U.K. who are often trafficked have a vulnerable immigration status, which makes them prone to violence and exploitation by their husbands³⁰. Immigration law in the U.K. is governed by the Immigration Act 1971, a law which has been frequently amended ever since it was enacted. The latest amendment was the Nationality, Immigration and Asylum Act.

Notably, the Act introduces mechanisms of charging for applications for immigration documents, permits the use of physical data to verify the identity of people arriving in the U.K., and streamlines the process for those who pose no immigration or security threat to the U.K. Additionally, it also provides for a simplification of rules with regard to removing those who have no right to stay in the U.K.³¹ The law also regulates the admittance of spouses and fiancées, as well as unmarried and same sex partners of those who are already U.K. residents, so as to allow them to remain permanently in the country. Similar policies have been adopted by the U.S., which is ‘embodied’ in the K1 visa. In the U.K., however, it is crucial for fiancées to provide documentary evidence of their intention with phone bills and correspondences such as greeting cards³². Moreover, the law imposes a requirement for the future couple to meet before the actual marriage, which is a provision directed towards communities with traditions of arranged marriage. Therefore, it should not come as a surprise that

²⁷ Id.

²⁸ Stepnitz, *supra* note 17.

²⁹ *Supra* note 6.

³⁰ Stepnitz, *supra* note 17.

³¹ I. Skalsbergs, M. Gulicova-Grethe, *Marriage Migration in the United Kingdom Country Study, Project: Protection And Aid Measures for Female Marriage Migrants from Third Countries in the EU Member States*, ec.europa.eu/justice/grants/results/.../download?token=x5WhCGAy, p.11.

³² Id.

the strict enforcement of immigration policies is in the interest of the state, especially in times of terrorism and abuse of the welfare systems in the biggest European countries.

In relation to the rules and regulations with respect to immigration, it is important to also mention the cross-border migration within the European Union that is facilitated by the Schengen Agreement, which is based on the principle of the free movement of persons. Great Britain and Ireland cooperate in accordance with The Council Decision 2000/365/EC, namely police and judicial cooperation in criminal matters³³. Such regulations may provide for a greater stability and security, especially in relation to marriage fraud. The U.S. has adopted a similar approach in terms of the investigation of future marriages involving mail-order brides.

In the U.S., the mail-order bride industry has triggered some substantive changes in the U.S immigration laws and policy. The naturalization of aliens comes along with a lot of benefits and also waivers under U.S law. However, the 90-day "window" (the immigrant wife has 90 days to marry) is perceived as unfair to both spouses due to the fact that if fraud is involved, and the newlyweds live together for only one day, and after that short period of time one of them files for a divorce, there is nothing that the authorities can do. In short, it is a double-edged sword, and satisfactory policy solutions are not always achievable. What is noteworthy is that the mail-order bride marriage scams have been very common in the past, and thus, led Congress in 1985 to address the issue by creating certain requirements that have to be met in order to establish a legally binding union³⁴. Currently immigration law regulates future unions through fiancée relations or K1 visas. In the 90s the applications for K1 visas had risen dramatically. To compare, in 1995, 7,793 visa petitions were approved for fiancées, whereas in 2004, the Department of Homeland Security had registered nearly 28,546 fiancé visa petitions annually. The aforementioned Congressional legislative efforts are being respected, as no visa will be approved if the partners have not seen each other prior to marriage, within 2 years before filing the petition, have a bona fide intention to marry, and are legally able to and are actually willing to conclude the marriage within 90 days³⁵.

Going back, Great Britain abolished servile marriages in the nineteenth century, as it was understood to be a form of slavery. Great Britain abolished such marriages under the 1833 Abolition of Slavery Act. It should be noted that in the U.S., slavery has been banned with the authority of the Thirteenth Amendment. As Great Britain is bound by the provisions of international law, it may be argued that mail-order bride marriage is a modern type of slavery, and even

³³ See The Schengen Area and Cooperation, Belg.-Fr.-F.R.G.-Lux.-Neth, Jun. 14, 1985, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3AI33020>.

³⁴ A. L. Elson, *The Mail-Order Bride Industry and Immigration: Combatting Immigrations Fraud*, 5 Ind. J. Global Legal Stud. 367 (1997).

³⁵ K. Abrams, *Immigration Law and the Regulation of Marriage*, 91 Minn. L. Rev. 1625, 1650-51, (2007).

in absence of a specific regulation related to mail-order brides, a state might be either in violation of jus cogens or customary international law³⁶. Still, forced and arranged marriages are by and large one of the biggest threats for woman in the U.K., and although this practice became criminal, it is extremely hard to combat tradition and religious beliefs.

Forced and Arranged Marriages

Marriage and family life has always been a major concern for the international community. The Universal Declaration of Human Rights of 1948, and the treaties that followed, provide for a wide range of approaches to marriage and family life. Many human rights activists have recognized that the focal point of the current discussion on marriage is child marriage and forced marriage, which violate the most important principle of consent³⁷. As many religions and cultures still cultivate traditionally arranged marriages, it is important to distinguish the difference between an arranged marriage and a forced marriage. In the latter, one party does not, or is not, able to consent, and some element of duress is usually present³⁸. However, the lines between the two types of matrimony can become blurry, as familial, cultural, and religious pressures are still a problem³⁹.

Although many victims of forced marriage express their consent, it is clear that such consent should not be valid in the circumstances of pressure and manipulation that often accompany marital arrangements. Moreover, due to the same pressures, many victims do not report their status, which makes it hard to precisely assess how many forced marriages happen each year⁴⁰. Even though the practice of forced marriage and arranged marriage has always been very controversial, when faced with a choice, society does not hesitate to express strong disapproval. Most recently, a very provocative video had been released on YouTube, where a 65 old man is posing with a 12 year old who is allegedly his wife to be. It should be noted that the video was done under a fictional setting, made solely for the purpose of raising public awareness as to the issue of forced marriage and the problems that stem from women being taken advantage of in these forms of marriage. The outrage against the content of the video towards those who were in the video paints a picture of strong social disagreement.

The majority of forced marriages involve girls under the age of eighteen. Yet, nevertheless, older women are also victims of this practice. Albeit it is not common for young boys to be coerced into marriage, The Forced Marriage Unit

³⁶ D. M. Blair, M. H. Weiner, B. Stark, S. Macdonaldo, *Family Law In The World Community; Cases, Materials and Problems in Comparative and International Family Law* 144 (2d ed. 2009).

³⁷ A. Laquer, B. Stark, *Global Issues In Family Law* 34, (1st ed. 2007).

³⁸ Id.

³⁹ M. E. Moses, M. B. Russ, *Forced Marriage*, 50-SEP Tenn. B.J. 32, 35 (2014).

⁴⁰ Id.

in England reported that almost 15% of all cases involve males. Parents may attempt to force a boy into marriage if they suspect the child is homosexual⁴¹. Similar to the mail-order bride scheme, children who are forced into marriage are sometimes tricked into travelling abroad under false pretenses, such as holiday vacations or family gatherings. The mail-order brides are prone to be forced into prostitution, whereas children are forced into marriage⁴².

The problem of forced marriages arose in the 1980s in the U.K., with respect to the growing problem of the South Asian community being concerned with sponsoring spouses coming into the U.K. Further, more modern incidents of forced marriage in the U.K. are also common in Hindu, Muslim, and Sikh women in the Bangladeshi, Indian, and Pakistani communities⁴³. As a result, the government became concerned with the legitimacy of such unions, believing that it was an abuse of the existing immigration rules concerning the right of family reunion⁴⁴.

The implementation of the Primary Purpose Rule, which required the applicant who wanted to sponsor a spouse to come to the U.K. from overseas to prove that the primary purpose of the marriage was not simply the wish to settle in the U.K., followed and provided more effective means to cut down on a secondary migration through marriage⁴⁵. The U.K. government was also concerned with so-called 'sham marriages,' which was part of a bigger concern involving immigration policies. With the enlargement of the European Union, many immigrant workers have been abusing many of the immigration policies, which in turn, has led the government to believe that it is one of the most important issues to be targeted in recent times.

Legal framework

After years of efforts made by the Home Office, forced marriage finally became a crime in the U.K. in June 2014. The maximum penalty for the offence of forced marriage is seven years of imprisonment. Law enforcement agencies are now able to pursue perpetrators in other countries where a U.K. national is involved under new powers defined in the legislation. The victim is enabled to press criminal and civil charges under the Forced Marriage Protection Orders ("FMPO")⁴⁶. The FMPO is a criminal offence, with a maximum penalty of five

⁴¹ M. Welstead, *Forced Marriage: Bifurcated Values in the UK*, 21 Denning L.J. 49, 51 (2009), available at <http://ubplj.org/index.php/dlj/article/view/341/371>.

⁴² Id.

⁴³ A. Symington, *Dual Citizenship and Forced Marriages*, 10 Dalhousie J. Legal Stud. 1, 35 (2001).

⁴⁴ I. Skalsbergs, M. Gulicova-Grethe, *Marriage Migration in the United Kingdom Country Study, Project: Protection And Aid Measures for Female Marriage Migrants from Third Countries in the EU Member States*, available at ec.europa.eu/justice/grants/results/.../download?token=x5WhCGAy, p.4.

⁴⁵ Id.

⁴⁶ See generally Forced Marriage (Civil Protection) Act, 2007, c. 20 (U.K.). The Forced Marriage (Civil Protection) Act („FMCPA“) was implemented on November 25, 2008 in England, and Wales inserted a new Part 4A into the Family Law Act 1996 which enabled the court to make a Forced Marriage

years imprisonment or an unlimited fine. A speedier and more effective enforcement action will be made possible against those who breach the terms of an order⁴⁷.

Ireland

The issue of female migration

While the problem of female migration in Ireland substantially contributes to the issue of servile marriage, human trafficking and slavery, the problem is more complex and goes beyond the scope of this paper. However, it is worthwhile to mention the most common problems and regulations against human exploitation in general, as Ireland is one of the countries from the realm of common law that have addressed the issue of forced marriage and mail-order brides. The Immigrant Council of Ireland has recognized that marriage migration has become an increasingly popular phenomenon, and highlighted that it requires urgent attention in the state and non-state sector⁴⁸. A very important issue is the fact that for many years Ireland has been a country primarily characterized by emigration, not immigration. There exists a significant problem with respect to data, as Ireland does not have a comprehensive system of registration of births, marriages and deaths. Hence why, it is extremely hard to estimate how big is the problem of arranged marriages and trafficking women for marriage purposes into Ireland⁴⁹. However, most of the marriage migrants come from Pakistan, Afghanistan, Somalia and Nigeria⁵⁰. Also, many of the arranged intra-community marriages occur among groups of naturalized Irish citizens, many of who would be granted refugee status in the first place. Additionally arranged intra-ethnic marriages between already accepted refugees and women from the land of origin like Somalia, are very common. An interesting aspect of such marriages is the fact, that in case of domestic violence, the women is most likely to lose her residence permit, if it comes to a break up or a divorce. Also,

Protection Order (FMPO). It is worth mentioning that the U.K. courts added further protections under a recent 2011 case. See also the recent decision of the Supreme Court of the UK striking down the age limit of 21 for marriage visas: *R and R v. SSHD* [2011] UKSC 45.

⁴⁷ Home Office, the Rt Hon Norman Baker and The Rt Hon Theresa May MP, *Forced Marriage Now a Crime*, GOVERNMENT UK (Apr. 20, 2016), <https://www.gov.uk/government/news/forced-marriage-now-a-crime>.

⁴⁸ M. Gulicova-Grethe, D. Lorenz, *Marriage Migration into the New Country if Immigration – Ireland. Country Study, Project: Protection and Aid Measures for Female Marriage Migrants from Third Countries in the EU Member States*, available at ec.europa.eu/justice/grants/results/.../download?token=hToFQQy_

⁴⁹ Id.

⁵⁰ According to the Immigrant Council of Ireland, most women applying for asylum come from Nigeria, followed by women from Romania and Lithuania. Many of these women get married for the purpose of receiving the right of residence. Immigrant Council of Ireland, “Marriage Migration into Ireland”, 2003.

many of the women face exclusion from their communities due to tradition and culture in case of a divorce⁵¹.

Ireland's policy

The most recent example of action against the so called 'sham marriages' and immigration issues, which took place in 2015, was "Operation Vantage" conducted by the Garda National Immigration Bureau, which was designed to tackle facilitators of sham marriages and illegal immigration⁵². Current legislation on immigration and refugees in Ireland is governed by the Refugee Act 1999, the Immigration Act 1999, the Illegal Immigrants (trafficking) Act of 2000 and the Employment Permit Act 2003. All of the acts cover the area of entry, presence, and removal of migrants in Ireland. Nevertheless, Ireland is also said to have a non-comprehensive immigration policy, and most of the cases are decided *ad hoc*⁵³.

International Marriage Brokers and Related Congressional Regulations

Before getting into what International Marriage Brokers are, and how they operate, it is extremely important to highlight the substantive changes with respect to dating and matchmaking, which has occurred only recently, and which has given incentive to many matchmaking organizations throughout the world. First, there should be no doubt that in today's extremely technologically savvy and aware society, the Internet plays a major role in our everyday life. Next, we should ask ourselves the question of how does the Internet contribute to widespread international online dating?

Today, an American male seeking an overseas bride "may avail himself of more than 200 different services in which foreign women advertise for husbands," including such websites as Match.com and eHarmony.com⁵⁴. Although much has changed, this excerpt from a no longer existing dating page should give an idea of how the advertising of mail-order brides looked like in the late 1990s: "The Filipinas make excellent wives, are exceptionally loyal and are true Orientals [sic] from South East Asia. They are generally more attractive than

⁵¹ M. Gulicova-Grethe, D. Lorenz, *Marriage Migration into the New Country if Immigration – Ireland. Country Study, Project: Protection and Aid Measures for Female Marriage Migrants from Third Countries in the EU Member States*, available at ec.europa.eu/justice/grants/results/.../download?token=hToFQQY

⁵² Garda Operation Vantage targetin sham marriages & illegal immigration, available at <http://www.inis.gov.ie/en/INIS/Pages/Garda%20Operation%20Vantage%20targeting%20sham%20marriages%20and%20illegal%20immigration>

⁵³ M. Gulicova-Grethe, D. Lorenz, *supra* note 51.

⁵⁴ B. Robinson, *The Disruption of Marital E-Harmony: Distinguishing Mail-Order Brides From Online Dating in Evaluating "Good Faith Marriage"*, 13 Pub. Int. L. Rep. 252 (2008).

other Orientals [sic] and often used in commercials and movies to play the role of Japanese and Chinese...⁵⁵. Moreover, an interesting forecast has been made by the Indonesian brokering house, Lippo Securities (which is a non-fundamentalist advisor), also in the late 1990s, that women will be one of the commodities that will always hold its value, even in times of crisis⁵⁶.

Definition

IMBRA is an abbreviation for International Marriage Broker Regulation Act of 2005⁵⁷, which was enacted to change the marriage-based immigration process and to help foreign fiancées and their spouses. The term “international marriage broker” obscures the gender, race, and class disparities inducing men into mail-order marriage.

The International Marriage Broker Regulation Act of 2005

The regulation of International Marriage Brokers, or in other words the regulation of all matchmaking organizations, has been a response to widespread violence and homicides that have taken place in the U.S. since the 1990s. There have been many instances in which the IMBRA has been shown to be necessary. In one case, there was a very high profile story that involved a man who imprisoned his Chinese wife and kept her in the basement for two years. In another instance, a different man murdered his wife in front of his son and left her body in a dumpster⁵⁸. One of the primary incidents that triggered federal legislation on this issue was a situation in which an immigrant woman and her attorney were murdered in a Washington State courthouse. As a result of this, in 1996, Senator Herbert Kohl sponsored a bill, which became the first federal legislation regulation of international matchmaking organizations⁵⁹. The 1996 act was ultimately replaced by the modern statute, which was enacted in 2005.

The main purpose behind this act is to protect the immigrants from violence, and support them with necessary information and tools, as many of them are unfamiliar with the procedures available to them. The government is obliged to provide the immigrating spouse with a pamphlet of laws and services that can help in the event abuse occurs, which makes the procedure more official

⁵⁵ K. A. Lloyd, *Wives for Sale: The Modern International Mail-Order Industry*, 20 Nw. J. Int'l L. & Bus. 341 (2000).

⁵⁶ Id.

⁵⁷ *Supra* note 5.

⁵⁸ S. H. Jackson, *Marriage Of Convenience: International Marriage Brokers, "Mail-Order Brides," and Domestic Servitude*, 38 U. Tol. L. Rev. 895, 904 (2007).

⁵⁹ Id.

and trustworthy. More importantly, the U.S. government restricts the granting of visas to U.S. citizens that have a criminal record, and history of violent crimes⁶⁰.

It should also be noted that the future spouse has access to the most crucial information about her future partner. Full disclosure is mandatory, and if an agency qualifies as an international marriage broker, it has to give away all the information about its client, including the Federal and State Sex offender public registries. Additionally, without written permission of the immigrating spouse, her data will not be presented to the U.S. client. The brides also cannot be under 18⁶¹. Notably, many services are available for free to victims of domestic violence or immigrant crime, with interpreters offering their assistance 24 hours a day. Victims can contact several hotlines such as the National Domestic Violence Hotline, National Sexual Assault Hotline for Rape, Abuse and Incest National Network, and can be provided with emergency housing, medical care, counseling, and legal advice⁶².

In the famous case of *Fox v. Encounters Int'l*⁶³, a federal jury concluded that Encounters International Inc. failed to tell the plaintiff Nataliya Fox about vital domestic abuse remedies available under the Mail Order Bride Act. After the jury held the organization liable for introducing the plaintiff to her allegedly abusive husband, the organization asked the federal judge to set aside the \$434,000 jury verdict. The plaintiff divorced her husband after he turned out to be physically abusive and moved to a shelter for battered women. The plaintiff accused Encounters International Inc. for negligence, as the organization failed to screen its male clients. Also, the plaintiff claimed that the company had in fact failed to inform her about her legal rights under the Violence Against Women Act and the Mail Order Bride Act. Furthermore, the company's owner, Natasha Spivack, suggested to the plaintiff to either live with the abuse, or return to Ukraine after Fox refused to seek professional help for her husband. The case of Natalia Fox shows that the IMBRA has proven to be a helpful tool in the fight against matchmaking organizations that attempt to exclude itself from any liability connected to the matchmaking process and the abuse and misdoings that stem from those engaging in the matchmaking service.

⁶⁰ *Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa*, U.S. Citizenship and Immigration Services (April 3, 2016), <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse,%20Children%20%26%20Parents/IMBRA%20Pamphlet%20Final%2001-07-2011%20for%20Web%20Posting.pdf>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ 22 No. 16 Andrews Computer & Internet Litig. Rep. 7.

Challenges

Many of the marriage brokers actively resisted IMBRA as they claimed it would drive customers to other, non-U.S based agencies. They even speculated, that it will flare-up more violence⁶⁴. In 2006 one IMB challenged the constitutionality of IMBRA, claiming that IMBRA irrationally exempts not-for profit religious and cultural match making organizations, and those which were not focusing on dating only, violating the equal protection guarantees. Moreover, the constitutionality of background checks, and written consents to disclose personal information was being challenged on the basis of The Fifth Amendment violation⁶⁵. The federal government defended IMBRA and its purpose being the prevention of domestic violence and human trafficking against immigrant women. However, IMBRA is also a way to protect women against servile marriage and modern slavery, which hides in the shadows of marriage. It is clear, that the Thirteenth Amendment grants Congress the authority to combat instance of modern servitude by means of IMBRA⁶⁶.

Victims of Trafficking and Violence Prevention Act of 2000

Corresponding legislation introduced by Congress in the Victims of Trafficking and Violence Prevention Act of 2000 (“VTVPA”), which had been enacted in October 2000 after the “Deaf Mexican” case outraged the public. In 1997, eighteen individuals were found guilty of smuggling sixty deaf and mute Mexicans into the U.S., for the purpose of enslaving them and forcing them to work⁶⁷.

The Act introduced two types of visas: the T-visa, created for the victims of trafficking in persons, and the U-visa, for non-citizens who have been abused as a result of certain criminal activity, including trafficking⁶⁸. The T-visa, as well as the U-visa, primarily focused on the protection of victims by removing the threat of deportation, which is always a major concern for many of the victims. By removing this obstacle, the federal government has increased its effectiveness in combating crime, as the T-visa also grants social service benefits for victims who decide to cooperate, which works as an incentive to gather more information about their abusers and the procedures by which the victim was a part of⁶⁹.

Despite the good will efforts, both the T and U-visa are being challenged and criticized, as both may pose a real threat to the trafficked women. Due to the fact

⁶⁴ S. H. Jackson, *supra* note 58

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ A. Joshi, *The Face of Human Trafficking*, 13 *Hastings Women's L.J.* 31, 39 (2002).

⁶⁸ I. C. Lee, M. Lewis, *Human Trafficking From a Legal Advocate's Perspective: History, Legal Framework and Current Anti-Trafficking Efforts*, 10 *U. C Davis J. Int'l L. & Pol'y* 170, 179 (2003).

⁶⁹ *Id.*

that the applicant for either type of visa needs to expose his or her identity to a law enforcement official in order to participate in the investigation and prosecution of traffickers, it poses a “barrier between the bona fide victims of trafficking and immigration relief”⁷⁰. The high rate of corruption in many countries of origin discourages many women from cooperating with law enforcement in the U.S., as many of the officers in fact are collaborating with the traffickers.

Conclusion

Servile marriage, trafficking and slavery are still a very common occurrence in the modern world. The evolving phenomenon of the mail-order brides and marriage migration provides evidence, that history likes to repeat itself.

In the U.S under the Thirteenth Amendment, Congress has broad authority to eliminate any forms of slavery which include mail-order brides and forced marriage. Yet women are still suppressed by marriage, and in the silence of their homes they are subject to domestic violence and involuntary servitude. Even with examples of successful unions, the legitimacy behind the existence of IMBs seems rather controversial to say the least. The IMBRA has proven to be a semi effective tool in combating human trafficking, prostitution and violence. Regardless of the women’s background, the oppression within the boundaries of marriage, racism and discrimination are the thing that the women share together. The sad and disturbing stereotypes about women from Eastern Europe or Asia that are still cultivated among IMBs, and call for a greater scrutiny from the international community to take action. Organization such as LaStrada contribute to a large extent to raising awareness about the problem as well gathering necessary data. Also, the example of Great Britain and Ireland as countries from the realm of common law prove, that marriage migrants face parallel problems as mail-order brides. Similar provisions under immigration law in the U.S and the U.K., such as fiancé visas or special permits, seem like the easiest solution in facilitating the process of marriage in minority communities within the boundaries of the law. Still, the international society must embrace the fact that the mail-order bride and marriage migration is still a global problem that requires special scrutiny, and zero tolerance policy in relation to abuse and injustice.

Bibliography

Legal acts

The Constitution of the United States, U.S. Const. amend. XIII, § 1.

The International Marriage Broker Regulation Act of 2005, 8 U.S.C.A. § 1375a.

⁷⁰ Id. at 183.

Victims of Trafficking and Violence Prevention Act of 2000.
 Forced Marriage (Civil Protection) Act, 2007.

Articles

- 22 No. 16 *Andrews Computer & Internet Litig. Rep.* 7.
- Abrams K., *Immigration Law and the Regulation of Marriage*, 91 MINN. L. REV. 1625, 1650-51, (2007).
- Blair D. M., Weiner M. H., Stark B., Macdonaldo S., *Family Law in the World Community; Cases, Materials and Problems in Comparative and International Family Law* 144 (2d ed. 2009)
- Bowes C. M., Esq., "Male" Order Brides and International Marriage Brokers: The Costly Industry that Facilitates Sex Trafficking, Prostitution, and Involuntary Servitude, 18 CARDOZO J.L. & GENDER 1 (2011).
- Elson A. L., *The Mail-Order Bride Industry and Immigration: Combatting Immigrations Fraud*, 5 IND. J. GLOBAL LEGAL STUD. 367 (1997).
- Eskind Moses M., Russ M. B., *Forced Marriage*, 50-SEP Tenn. B.J. 32, 35 (2014).
- Grolsh O., *Foreign Wives, Domestic Violence: U.S Law Stigmatizes And Fails to Protect "Mail-Order Brides,"* 22 Hastings Women's L.J. 81 (2011)
- Jackson S. H., *Marriage of Convenience: International Marriage Brokers, "Mail-Order Brides," and Domestic Servitude*, 38 U. TOL. L. REV. 920 (2006).
- Jackson S. H., *To Honor and Obey: Trafficking in "Mail-Order Brides,"* 70 Geo. Wash. L. Rev. 475 (2002).
- Joshi A., *The Face of Human Trafficking*, 13 Hastings Women's L.J. 31, 39 (2002).
- Laquer A., Stark B., *Global Issues In Family Law* 34, (1st Ed. 2007).
- Lee I. C., Lewis M., *Human Trafficking From a Legal Advocate's Perspective: History, Legal Framework and Current Anti-Trafficking Efforts*, 10 U. C Davis J. Int'l L. & Pol'y 170, 179 (2003).
- Lloyd K. A., *Wives for Sale: The Modern International Mail-Order Industry*, 20 NW. J. INT'L L. & BUS. 341 (2000).
- Meng E., *Mail-Order Brides" Gilded Prostitution And The Legal Response*, 28 U. Mich. J.L. Ref. 197 (1994).
- Mobydeen L., *Something Old, Something New, Something Borrowed, Something Mail-Ordered? The Mail-Order Bride Industry And Immigration Law*, 49 WAYNE L. REV. 939, 942 (2004).
- Robinson B., *The Disruption of Marital E-Harmony: Distinguishing Mail-Order Brides From Online Dating in Evaluating, "Good Faith Marriage"*, 13 PUB. INT. L. REP. 252 (2008).
- Sims R., *A Comparison Of Laws In The Philippines, the U.S.A, Taiwan, and Belarus to Regulate the Mail-Order Bride Industry*, 42 AKRON L. REV. 607, 609 (2009).

- Stepnitz A., *The Mail-Order Bride Industry As A Form of Trafficking For Sexual and Labour Exploitation, Violence In The EU Examined – Policies On Violence Against Women, Children and Youth in 2004 EU Accession Countries*, p.155.
- Symington A., *Dual Citizenship and Forced Marriages*, 10 Dalhousie J. Legal Stud. 1, 35 (2001).
- Wei-Zhen Chong A., *Migrant Brides In Singapore: Women Strategizing Within Family, Market and State*, 37 Harv. J.L & Gender 331, 332 (2014).
- Zug M., *Lonely Colonist Seeks Wife: The Forgotten History of America's First Mail Order Brides*, 20 Duke J. Gender L. & Pol'y 85 (2012).

Internet sources

- Clark G., *An Introduction to the "Penpal Bride" or so-called "Mail Order Bride" Movement*, available online at: www.upbeat.com/wtwpubs/intro.htm.
- Garda Operation Vantage targeting sham marriages & illegal immigration, available at <http://www.inis.gov.ie/en/INIS/Pages/Garda%20Operation%20Vantage%20targeting%20sham%20marriages%20and%20illegal%20immigration>.
- Gulicova-Grethe M., Lorenz D., *Marriage Migration into the New Country if Immigration – Ireland. Country Study, Project: Protection and Aid Measures for Female Marriage Migrants from Third Countries in the EU Member States*, available at ec.europa.eu/justice/grants/results/.../download?token=hToFQQy.
- Home Office, the Rt Hon Norman Baker and The Rt Hon Theresa May MP, *Forced Marriage Now a Crime*, GOVERNMENT UK (Apr. 20, 2016), <https://www.gov.uk/government/news/forced-marriage-now-a-crime>.
- Immigrant Council of Ireland, "Marriage Migration into Ireland", 2003.
- Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (April 3, 2016), <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse,%20Children%20%26%20Parents/IMBRA%20Pamphlet%20Final%2001-07-2011%20for%20Web%20Posting.pdf>.
- M. Gulicova-Grethe, D. Lorenz, *Marriage Migration into the New Country if Immigration – Ireland. Country Study, Project: Protection and Aid Measures for Female Marriage Migrants from Third Countries in the EU Member States*, available at ec.europa.eu/justice/grants/results/.../download?token=hToFQQy.
- Male-Ordered: The Mail-Order Bride Industry and Trafficking In Women For Sexual and Labour Exploitation, POPPY PROJECT 3 (February 2009), <http://lastradainternational.org/lsidocs/Male-ordered.pdf>.
- Schengen Area and Cooperation, Belg.-Fr.-F.R.G.-Lux.-Neth, Jun. 14, 1985, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133020>

- Scholes R. J., *The "Mail-Order Bride" Industry and Its Impact on U.S Immigration*, App. A (1999), <https://www.christianfilipina.com/research/SCHOLES-MAIL-ORDER-BRIDE-REPORT.PDF>.
- Skalsbergs I., Gulicova-Grethe M., *Marriage Migration in the United Kingdom Country Study, Project: Protection And Aid Measures for Female Marriage Migrants from Third Countries in the EU Member States*, available at ec.europa.eu/justice/grants/results/.../download?token=x5WhCGAy, p.4.
- Skalsbergs I., Gulicova-Grethe M., *Marriage Migration in the United Kingdom Country Study, Project: Protection And Aid Measures for Female Marriage Migrants from Third Countries in the EU Member States*, ec.europa.eu/justice/grants/results/.../download?token=x5WhCGAy, p.11.
- Storey L., *Mail Order Bride Research Guide* (Apr. 20, 2016), law1510.pbworks.com/f/Mail+Order+Bride+Pathfinder+5.docx.
- United Nations (2000) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol). Palermo: United Nations and Council of Europe (2005). Convention on Action Against Trafficking in Human Beings. Warsaw: Council of Europe.
- Welstead M., *Forced Marriage: Bifurcated Values in the UK*, 21 Denning L.J. 49, 51 (2009), available at <http://ubplj.org/index.php/dlj/article/view/341/371>.