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Marriages of Convenience, and Inconvenient Marriages: Regulating Spousal Migration to Britain

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At a glance

In the context of the European Convention on Human Rights obligation to respect family life, the UK government's stated aim of significantly reducing immigration is challenged by the volume of marriage–related migration and settlement. In this context, increased immigration policy attention has focussed on the genuineness of marriages involving migrants. The resulting attempts to define, identify and combat marriages of convenience are, however, based on a binary of genuine and 'sham' marriages, and sometimes normative criteria for evaluating the authenticity of relationships. These may not adequately account for the diversity of marital practices involving migration, and risk producing discriminatory outcomes. With the assistance of previously unpublished UKBA material, this article explores recent developments surrounding 'sham marriages' to highlight areas of particular concern, before setting out an agenda for urgently needed research in this under–studied but increasingly critical area.

Introduction

Marriage has long presented challenges for the management of immigration to Britain. 39% of the 194,780 grants of settlement issued in 2009 were on the basis of marriage or civil partnership.[1] Although subject to increasing restrictions on entry, such as the English language requirement introduced in 2010, such migrants are primarily chosen by individuals and families rather than the mechanisms of selective immigration regimes. In the context of an increasing focus on 'managed migration', it is thus not surprising that successive governments have sought ways to limit the inflow of spouses. In doing so, however, policy makers also have to contend

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1   Data extracted from *Control of Immigration: Statistics United Kingdom 2009* (supplementary table 4c).

with the domestic application of art 8 of the European Convention on Human Rights, which states:

1.   Everyone has the right to respect for his private and family life, his home and his correspondence.
2.   There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

A sham marriage will not give rise to family life that may be protected by art 8 and identifying and excluding sham marriages have thus become an increasingly crucial part of the British government's project of managing, and more recently reducing immigration. A lack of quantifiable evidence (Kofman *et al*, 2008: 30) and the difficulties of empirical definition, however, have led some commentators to suggest that this discourse of fraud and abuse[2] enables the authorities to 'overstretch the scope of preventative measures and to justify the tightening of control'.[3]

In this article, we will argue that attempts to define, identify and combat 'sham marriages' have produced an approach based on a simplistic binary between genuine and sham marriages, and sometimes normative criteria for evaluating the authenticity of relationships, which do not account for the diversity of marital practices involving migration, and risk producing discriminatory outcomes. Differences in refusal rates between nationality groups of spousal visa applicants further highlight the need for care in this delicate policy area.

After outlining UK government policy and discourse on marriages of convenience for immigration purposes, we suggest conceptual problems with the category of 'sham marriage' as currently employed. We then examine factors suggested to indicate that a marriage may be 'sham' in the context of cultural variation in marriage practices. In doing so, we make use of the limited empirical research evidence available in this area, in combination with previously unpublished material from the UK Border Agency (UKBA). Finally, we delineate an agenda for urgently-needed social science research in this area; one which both develops empirical knowledge of this issue, and treats it as a field of policy discourse entwined with immigration concerns and fraught with dangers of discrimination.

Regulating marriages of convenience for immigration purposes

In recent decades, British immigration debates have been marked by discussion of 'marriages of convenience', and 'bogus' or 'sham' marriages, the latter terms used in recent official documentation and media reports alike to describe marriages entered into for immigration purposes. The Immigration and Asylum Act 1999 defines such a marriage as one entered into

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2   H Wray 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) Vol 8 *Eur J of Migration and L* 303–320.
3   L Pilgram 'Tackling "sham marriages": the rationale, impact and limitations of the Home Office's "certificate of approval" scheme' (2009) Vol 23, No 1 *IANL* 24.

'for the purpose of avoiding the effect of' UK immigration law' for the purposes of identifying marriages that should be reported to the authorities by marriage registrars.[4]

Whilst the 1997 European Council Resolution on the Combating of Marriages of Convenience requires that to form the basis of family reunification, a marriage must not be contracted with the 'sole aim' of facilitating entry or residence to a member state,[5] the British definition of such marriages has been rather broader, potentially including marriages where immigration or settlement was one, but not the 'sole' motivation.[6] From 1980 until 1997, the Primary Purpose Rule (PPR) allowed rejections of visa applications where it was judged that there were grounds to suspect that the primary purpose of the marriage was to gain entry to Britain. The rule was abolished after being denounced as discriminatory as it disproportionately affected South Asian arranged marriages;[7] couples with a pre-existing romantic relationship might have more evidence of other motivations. One response to the loss of this regulatory instrument was an increasing focus on the requirement of 'intention to live together' as a judgment of the genuineness of marriages.[8]

The issue resurfaced in 1999, when the Immigration and Asylum Act instructed registrars to report suspicion of 'sham' marriage to the Home Office (known as 'Section 24 reports' after s 24 of Act). The reason given in the 2002 immigration White Paper for proposing to extend the probationary period before spousal settlement from one to two years was also to test the genuineness of marriages.[9] This document identified two varieties of 'bogus' marriages: one in which both spouses were party to the fraud, and the other in which a British citizen was 'duped' by a spouse using the marriage to gain (or regularise) immigration status.[10] A variant of the latter situation was also discussed in the 2007 Home Office consultation on *Marriage to Partners from Overseas*, which cited the need for 'increased protection against coercion and potentially violent or abusive situations' (p 3) as grounds for further regulatory changes. The abusive situations discussed include where migrant spouses 'abandon' their sponsors soon after gaining settlement, perhaps then sponsoring another spouse from overseas, the implication being that the original sponsor was simply used for immigration purposes.[11] One solution proposed was to revoke residency rights in these cases, effectively prolonging the period during which an immigrant spouse's right to remain in Britain is conditional. This section of the consultation document attracted considerably less attention than proposals concerning forced marriage, and does not appear to have led to regulatory change.

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4   H Wray 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) Vol 8 *Eur J of Migration and L* 304.

5   B De Hart 'The Marriage of Convenience in European Immigration Law' (2006)Vol 8, No 3/4 *Eur J of Migration and L* 252.

6   H Wray 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) Vol 8 *Eur J of Migration and L.*

7   S Sachdeva *The primary purpose rule in British immigration law* (London: Trentham Books, 1993); W Menski 'South Asian Women in Britain, Family Integrity and the Primary Purpose Rule' pp.81–98 in R Barot, H Bradley and S Fenton, (eds) *Ethnicity, Gender and Social Change* (London: MacMillan, 1999).

8   H Wray 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) Vol 8 *Eur J of Migration and L* 303.

9   Home Office (2002) *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (UK: The Stationery Office) Cm 5387, at p100.

10   *Ibid*, at p 99. This distinction later came to be echoed in French terminology: 'marriage blanc' ('white' or 'paper' marriage) and 'marriage gris' ('grey marriage'), where the French citizen believes the marriage is genuine – a neologism introduced by Interior Minister Eric Besson in 2009).

11   719 cases of marriage migration followed by divorce and the sponsoring of another spouse's immigration were identified in a cohort of 63,400 recipients of family route visas. 47% of these subsequent sponsorships took place within three years of settlement (Home Office, 2011: 'Family Migration: evidence and analysis' Occasional Paper 94. (http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/).

Since 2005, Wray suggests we have entered a new phase, 'the hunting of the sham marriages', with renewed governmental focus on marriages of convenience, and the introduction of significant new legislation.[12] A new regulatory instrument of February of that year targeted marriages taking place within the UK, rather than those contracted overseas: the 'Certificate of Approval' (CoA) scheme required that non-EEA nationals subject to immigration control (except those with Indefinite Leave to Remain) must seek permission from the Home Office to marry, irrespective of the status of their partner. The CoA initially cost £135, a fee which was later increased to £295. Irregular migrants or those with insufficient time left on their visa were normally refused approval to marry, whilst asylum seekers had to wait for the outcome of their asylum case before receiving a decision on their application. The scheme is also likely to have impacted upon the number of such migrants able to establish a 'family life', pre-empting art 8 rights. Following the introduction of the CoA requirement, the numbers of s 24 reports dropped from 3578 in 2004 to 452 the following year, and remain in the hundreds rather than thousands.[13] It is unclear to what extent this reflects the effects of the scheme in reducing the numbers of migrants able to marry and deterring marriages of convenience, or whether the introduction of the certificate scheme itself reduced the perceived necessity for registrars to report. From the introduction of the scheme in 2005 to 2009, 84,056 couples applied for approval (the highest annual figure being 24,088 in 2009). The scheme was judged disproportionate and discriminatory against those lawfully present by the High Court in 2006, findings upheld for all migrants on appeal to the Court of Appeal and, finally, the House of Lords.[14] In addition, the fixed fee violated art 12 of the European Convention of Human Rights (the right to marry). The rule was partially suspended in 2006 and the fees were suspended in 2009, before the system finally came to an end in May 2011. The length of this process suggests governmental reluctance to lose another regulatory instrument in this field.[15] It is in this context that approaches to the issue of sham marriages should be understood.

The concern to uncover marriage-related immigration fraud was once again clearly on the agenda in April 2011, when the Prime Minister David Cameron gave a speech on immigration. His discussion of abuses of the family migration system starts with the issue of forced marriage, but quickly turns to focus on sham marriage:

'Now many of these are genuine, loving relationships. But we also know there are abuses of the system. For a start there are forced marriages taking place in our country, and overseas as a means of gaining entry to the UK … Then there are just the straightforward sham marriages.

Last summer, we ordered the UK Border Agency to clamp down on these and they've had significant success, making 155 arrests. And there was also the shocking case of a vicar who was jailed for staging over 300 sham marriages …

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12   H Wray 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) Vol 8 *Eur J of Migration and L* at p 313.

13   http://www.publications.parliament.uk/pa/jt201011/jtselect/jtrights/111/11110.htm

14   *R (on the application of Baiai and others) v SSHD* [2006] EWHC 823 (Admin); *R (on the application of Baiai) v SSHD* [2006] EWHC 1035 (Admin); *R (on the application of Baiai) v SSHD* [2006] EWHC 1454 (Admin); *SSHD v Baiai and others* [2007] EWCA Civ 478; *R (on the application of Baiai and others) v SSHD* [2008] UKHL 53.

15   Notes on the UKBA website stress that while the Certificate of Approval Scheme, '… is no longer an effective method of preventing sham marriage … The UK Border Agency will continue to investigate suspected abuse and, where possible, disrupt marriages before they take place. If we uncover marriages that are not genuine, we will challenge them and prosecute where possible' <http://www.ukba.homeoffice.gov.uk/sitecontent/newsfragments/43-abolition-of-coa>

Last year, some 303,000 visas were issued overseas for study in the UK. But this isn't the end of the story. Because a lot of those students bring people with them to this country … husbands, wives, children. Indeed, last year, 32,000 visas were issued to the dependents of students. Again, many of these applications are for legitimate students doing legitimate courses with legitimate dependents coming over with them.

But we know that some of these student applications are bogus, and in turn their dependents are bogus. Consider this: a sample of 231 visa applications for the dependents of students found that only twenty-five percent of them were genuine dependents. The others? Some were clearly gaming the system and had no genuine or loving relationship with the student. Others we just couldn't be sure about.'[16]

Despite uncertainty as to the precise numbers involved, proposals to reform the student visa system followed swiftly,[17] and this speech helped set the scene for new proposals to tighten the regulation of marriage-related migration and settlement.

The 2011 family migration consultation

In July 2011, the UKBA published a consultation in which the government set out a series of proposals for changes to the regulation of family migration. Three reports providing an unprecedented level of information on family migration to the UK were published during the consultation period.[18,19] Whilst other forms of family migration were considered in the consultation, its primary focus was on the migration and settlement of spouses and partners. The document also marks a shift in the presentation of key problems in the regulation such migration, in that sham marriage is discussed before and at greater length than forced marriage, which had a higher profile in previous discussion.[20]

The document sets out a series of proposals concerning sham marriage:

- Extending the probationary period before spouses may apply for settlement from 2 to 5 years.[21]
- Creating a new role combining marriage registrar and Border Agency functions
- Increasing levels of documentation required for foreign nationals wishing to marry in England and Wales.
- Requiring some such couples to attend a UKBA interview before granting authority to marry.
- Making 'sham' a lawful impediment to marriage.
- Creating a power to delay suspected sham marriages.
- Introducing incentives for local authorities to meet 'high standards' in countering sham marriage.

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16 http://www.conservatives.com/News/Speeches/2011/04/David_Cameron_Good_immigration_not_mass_immigration.aspx

17 For details see: http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/june/17-t4-changes

18 L Achato, M Eaton, and C Jones 'Migrant Journey: Second Report' (London: Home Office, 2011); K Charsley, N Van Hear, M Benson & B Storer-Church (forthcoming 2012) Marriage-related migration to Britain, Vol 46 *I Migration Rev*; Home Office (2011) 'Family Migration: evidence and analysis' Occasional Paper 94. (http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/).

19 Charsley *et al*, *supra*, note 18, was first published on the Home Office website at: http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ96?view=Binary

20 See (eg) Home Office (2002), *supra*, note 9, and Home Office/Border and Immigration Agency (2007) *Marriage to Partners from Overseas: a consultation* paper.

21 This extension is also aimed more directly at reducing the numbers of spouses gaining settlement, as 10% of marriages end in divorce after five years, compared to three percent after 2 years (UKBA *supra*, note 18: 27).

- Restricting immigrant spouses'/partners' ability to sponsor another spouse/partner within 5 years of gaining settlement.
- A 10 year ban on acting as immigration sponsors for those found to be 'serial sponsors abusing the process', or convicted of bigamy or sham marriage offences.
- Providing 'scope for marriage-based leave to remain applications to be counter-signed by a solicitor or regulated immigration adviser'.
- Allowing local authorities to provide charged services for checking leave to remain applications.

It also invited views on introducing a Danish style requirement for couples to demonstrate greater 'combined attachment' to the UK than to any other country.

First among the stated 'main points' of the consultation is the aim to find an 'objective way of identifying whether a relationship is genuine and continuing or not'.[22] It is proposed 'to define more clearly what constitutes a genuine and continuing relationship, marriage or partnership' by setting out 'factors or criteria for assessing whether a relationship, marriage or partnership is genuine and continuing'.[23]

The document does not set out concrete proposals for such an instrument in the form of consultation questions, but makes some suggestions of the kind of factors which could be included. In addition to the plain judgment of whether the union was entered into solely for immigration purposes, these are:

- The ability of the couple to provide accurate details about each other and their relationship (with account taken of arranged marriages).
- The ability to communicate in a mutually understood language.
- Plans for the practicalities of living together in the UK as a couple.
- Having been in a relationship for at least 12 months prior to the visa or leave to remain application.
- Relative ages of the couple.
- The nature of the wedding ceremony or reception (eg few or no guests, the absence of significant family members, or the presence of 'complete strangers').
- Previous spousal migration or sponsorship of spousal immigration.
- A 'compliant history of visiting or living in the UK'.

One outcome of this process might be the addition of the category of '"proven sham" to the criteria for voiding or cancelling a marriage'.[24] Such judgments, however, may rest on problematic assumptions about the nature of marriage.

Identifying or 'proving' sham marriages

The idea of a 'sham' marriage has as its correlate a 'genuine' or 'real' marriage. This, however, proves difficult to define, as decisions on whether, when and who to marry are often influenced by a range of economic and other considerations beyond the 'pure' relationship.[25]

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22 *Ibid*, p 7.
23 *Ibid*, p 16.
24 *Ibid*, p 36.
25 A Giddens *Modernity & Self-Identity* (Cambridge: Polity Press, 1991); cf L Jamieson 'Intimacy Transformed? A critical look at the 'pure' relationship' (1999)Vol 33, No 3 477–494.

'There is thus no binary divide between marriages entered into for "good" reasons such as sexual compatibility or companionship and those entered for "bad" reasons such as social or economic gains. The latter may partly determine the former and motives cannot be neatly disentangled. An immigration motive for marriage must be seen in that context. Immigration status may add to a potential spouse's attractions without it being the only reason for marriage.'[26]

Motivations for marriage, and indeed marriage-related migration, are often mixed and multiple. These can include (among others) love, genuine affection, family unity, property, status, economic and financial considerations, stability (including for children), and future security, and are often difficult to disentangle from one another. Migration or settlement may be one aspect of such considerations, but this should not be taken to mean that such marriages are not genuine. The intertwining of multiple motivations (which may also of course be the case in 'western' marriages) means that the term 'sham marriage' is not always analytically appropriate. Governmental discourse outlined above, on the other hand, presents a clear division between genuine and 'sham' marriages. This is not to say that marriages purely for immigration purposes without creating an ongoing relationship do not occur, but to suggest adopting this as the dominant terminology carries the danger that other marriages will be inappropriately dismissed as 'sham'.

Although the 2011 consultation proposes drawing up a formal definition and indicators of 'sham marriage' the UKBA already issues some guidance to registrars. Made available to the authors, the indicators noted are:

- Either party giving the impression of knowing very little about the other person;
- Either party referring to notes to answer questions about the other person;
- A reluctance to provide evidence of name, age, condition or nationality;
- The parties are unable to converse in the same language;
- One of the parties is seen to receive payment for the marriage/civil partnership;
- An allegation that it is a sham has been made by a credible third person, eg immigration officer or police officer;
- There is little interaction between the couple; or, one of the parties seemed unable to give the full name or address of the other person.
- A third party (such as an interpreter) appearing to direct proceedings.[27]

This approach is not new; the 1997 European resolution contained a similar list of factors for identifying marriages of convenience, but suggests that such information may come from statements from concerned parties, documentation, or inquiries carried out. The British system for reporting suspicious marriages, however, relies primarily on the judgment of registrars, who are likely only to meet the couple twice (firstly when they give notice of their intention to marry and then on the day of the ceremony) and may not have access to all of these sources of information.[28] The ability of registrars to make such judgments appropriately has not been tested. Reporting of 'suspicious marriages' should therefore be treated with caution. The volume of such reports, or impressions of registrars, are nevertheless commonly reported

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26   H Wray 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) Vol 8 *Eur J of Migration and L* 305.

27   UK Border Agency (2010) Unpublished guidance for UK Border Agency staff and registrars.

28   But see the proposal to create a new immigration officer/registrar role (UKBA, *supra*, note 18).

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as evidence of the scale of the phenomenon – for example in the newspaper headline '1 in 5 weddings in London may be fake'.[29] In contrast to these substantial figures, the actual number of arrests has, as evinced in the Prime Minister's speech, been rather limited.

A further area of interest is the normative nature of some items in the two lists above. Wray describes this policing of genuineness of marriages by reference to models of a normal marriage as 'moral gate-keeping'.[30] Marriages which vary from 'the norm', such as where there is a large age difference, may come under increased suspicion.[31] This approach is also likely to produce increased immigration control scrutiny of those whose marriages do not match majority ethnic models of marriage. In some Pakistani arranged marriages, for example, engaged couples may not meet and interact, and so may not become familiar with each other and each other's personal details in the same way as dating couples would. The 2011 consultation suggests an initial temporary visa in such cases, to allow the relationship to have been in existence for at least 12 months before applying for further leave to remain in the country. Particularly where a cultural prohibition exists on contact between an engaged couple, however, marriages may take place before the issue of such a temporary visa, to enable the couple to associate or cohabit without community opprobrium, risking creating a category of trial spouses whose vulnerability to rejection and deportation is exacerbated. A young man unsure as to whether to agree to family suggestions of a transnational arranged marriage, for example, may take the decision more lightly if it is viewed as a finite trial, while the cost of the experiment may be very high indeed for a woman then returned to a country in which loss of virginity and divorce carries a heavy stigma.[32]

The guidance to registrars document goes on to list the national pairings most commonly reported as suspect by registrars. British and Pakistani, Nigerian, or Indian were the most common in 2009, followed by Pakistani and Portuguese/Polish. The 2011 consultation reports that 481 of the 928 section 24 reports in 2010 concerned EEA nationals (mainly Eastern Europeans) sponsoring non-EEA spouses.[33] The largest group of non-EEA spouses were Pakistanis (338) followed by Indians (111) and Nigerians (105). Whilst these couples may be mixed in terms of nationality, and perhaps also 'race' and/or religion, this does not in itself render them suspect. Pakistani and Polish migrants may, for example, occupy similar labour market niches creating opportunities for relationships to develop among co-workers or neighbours. Research has also identified Pakistani migrants marrying Polish women elsewhere in Europe later relocating to Poland with their wives, implying that these marriages at least were not contracted simply to

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29   *The Scotsman* 10/6/2004. See also 'Panorama: My Big Fat Fake Wedding' (broadcast 24 March 2011, BBC1).

30   H Wray 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) Vol 8 *Eur J of Migration and L* 303.

31   In an article in the *Halifax Courier* in August 2011, The UKBA's Yorkshire regional director listed cheap suits with the labels still on them as among the factors triggering suspicion of sham marriage (http://www.halifaxcourier.co.uk/news/local/how_to_spot_a_bogus_wedding_1_3725321).

32   For a discussion of the plight of such divorced women see (eg) A Wilson 'The forced marriage debate and the British State' (2007)Vol 49, No 1 *Race and Class* 25.

33   Concern that EEA nationals may circumvent British spousal immigration regulations is also evinced in the 2011 consultation's citation of German investigations of groups arranging temporary marriages between EEA nationals and non-European migrants, who would later remarry their original spouse in the country of origin (p 40). Furthermore, an unpublished 2009 UK Border Agency report made available to the author explores country of birth data for applicants seeking to move with their families to the UK through the exercise of EU free movement rights (EEA applications submitted under Directive 2004/38/EC). Whilst few Polish applicants were born outside Poland, significant numbers from other EEA states were born outside Europe. The most common alternative birth countries were: for Dutch nationals – Somalia and Ghana; French nationals – Sri Lanka and Cote d'Ivoire; German nationals – Sri Lanka and Nigeria; and for Portuguese nationals – India, Brazil and Angola.

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enable settlement in the country of residence.[34] In listing common nationality mixes, however, these documents may reinforce any preconceptions about such unions on the part of registrars.

Complicating the identification of marriages of convenience: variation in marriage practices

Although the broader literature on marriage and migration has been expanding in recent years, and 'sham marriages' have been the subject of investigative journalism,[35] and legal scholarship,[36] little empirical social research exists on marriages of convenience. In Britain, the impacts on South Asian applicants have dominated discussions of the regulation of marriage-related migration.[37] The Indian subcontinent has long been a major source of spousal migrants to Britain, as transnational marriage is not uncommon among the large ethnic Indian, Pakistani and Bangladeshi populations, with frequency varying between these groups, and along internal subdivisions of religion, region and class.[38] Although a third of all grants of spousal settlement in 2008 were to husbands and wives from the Indian subcontinent, contemporary marriage-related migration to Britain demonstrates considerable diversity, with over 60 nationalities of spouses listed in 2009 Home Office settlement statistics, and 17 nationalities accounting for more than 1000 grants of settlement each. These were (in descending order of size): India, Pakistan, Bangladesh, Philippines, China, Nigeria, South Africa, USA, Turkey, Thailand, Afghanistan, Ghana, Jamaica, Sri Lanka, Australia, Iraq, and Zimbabwe.

As a consequence of this diversity, spousal migration to Britain takes place on the basis of great variety in marital relationships, methods for identifying potential spouses, and evaluations of marital options. Cross-cultural variation in the nature of marriage is such that no universal definition may be possible.[39] Recent scholarship has argued that the ideal nuclear family assumed by the regulations surrounding family migration to Europe is also rather out of step with the more diverse and disjointed nature of contemporary familial forms among European ethnic majority populations.[40] Even the 'intention to live together' requirement may rely on normative assumptions which do not reflect contemporary relationship practices such as 'living apart together' (maintaining a committed relationship but living in separate households).[41]

One well-known and fundamental aspect of cultural difference, is that love or a close relationship *before* marriage is not universally considered a prerequisite for a successful union, so that in North India, for example, marriages which are based on a pre-existing romantic

34   Z D Igielski 'Pakistani Migration to Poland'. Paper presented at the Pakistani Migration and Transnationalism Workshop, International Peace Research Institute, Oslo, 2010.

35   See (eg) J Kelly, J and D Casciani 'How to get a sham marriage if you are illegal in the UK', *BBC News* 7 January 2010 (http://news.bbc.co.uk/1/hi/uk/8446723.stm)

36   See (eg) B de Hart 2006; Mair, J 'A sham marriage or a proper wedding?' (2003) Vol 7 *Edinburgh L Rev.* 404–9; H Wray 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) Vol 8 *Eur J of Migration and L* 303.

37   See K Charsley *et al, supra*, note 18 (forthcoming) for discussion of 'marriage-related migration'.

38   See (eg) R Ballard 'Migration and kinship: the differential effect of marriage rules on the processes of Punjabi migration to Britain' in C Clarke, C.Peach and S Vertovec (eds) *South Asians Overseas* (Cambridge: Cambridge University Press, 1990); A Dale 'Migration, Marriage and Employment amongst Indian, Pakistani and Bangladeshi residents in the UK', U of Manchester: CCSR Working Paper 2008-02; D S Raj *Where are you from?* (London: University of California Press, 2003).

39   E Leach *Rethinking Anthropology* (London: U of London, Athalone Press, 1961).

40   S Van Walsum (forthcoming) 'Sex and the Regulation of Belonging' in A Kraler, E Kofman, M Kohli and C Schmoll (eds) *Gender, generations and the family in international migration* (Amsterdam: Amsterdam University Press).

41   I Levin 'Living apart together: a new family form' (2006)Vol 52, No 2 *Current Sociology* 223–40; H Wray 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) Vol 8 *Eur J of Migration and L* 303.

attachment may be considered less than respectable. Where marriages are arranged rather than reliant on couples forming amorous relationships, issues of social mobility and financial advantage commonly feature in marital choices.[42] The gifting of money upon marriage is also a common practice in many cultures, and there is considerable variation in the direction of these gifts (eg dowry versus bridewealth). In the transnational context, the sums involved may be considerably inflated, reflecting the desirability of matches to partners in more developed countries, but a large sum of money being exchanged between spouses or their families does not necessarily indicate that the marriage is 'sham'. Similarly, the use of marriage brokers of various kinds (paid or unpaid) are common in some countries, and their use may be more frequent in transnational marriages, given the barriers to less formal ways of locating potential spouses presented by the distances involved.

Considerable variation also exists in the extent of available literature on practices of marriage and migration in the major national groups listed above.[43] Unsurprisingly, a substantial body of research exists on the topic for the two largest South Asian groups (India and Pakistan),[44] but much less information is available on practices in most other groups. It is nevertheless possible to provide some examples to illustrate the range of marital practices complicating evaluations of the genuineness of marriages involving migration. Four interesting examples here come from research on Sri Lankan, Ghanaian, Zimbabwean, and Pakistani migration.

- Marriage in Sri Lanka is conventionally arranged, and in the context of ethnic conflict, population dispersal and loss of local networks, commercial marriage brokers are increasingly used to locate suitable matches in Sri Lanka or the diaspora. During the conflict, marriage has also been used as a way of moving daughters out of danger or forced recruitment to the LTTE. Sri Lankan refugees settled overseas are often particularly desirable matches, given the security and economic advantages of European or North American citizenship, so can command greatly increased dowries.[45] Recent work has documented the practice of local acquaintances replacing relatives as wedding guests for transnational Sri Lankan couples marrying in South India, not in order to create a fake crowd in wedding photos as evidence for a later immigration application, but to fulfil the roles of absent relatives in the marriage ceremony, and recreate a community dispersed by war.[46]
- In Ghana and its diaspora, new forms of Pentecostal church have grown thanks in part to their international networks and messages of success, prosperity and protection from evil. Pastors may be involved in the arrangements of marriages, and encourage substantial tithes to be paid to the church.[47] Although Pastors are reported to conduct their own investigations into couples' backgrounds and motivations, where such situations involve temporary or irregular migrants, or the opportunity for migration, these factors might be construed as indicators of marriage for immigration purposes.

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42 Although Jane Austen's heroines and popular portrayals of 'WAGS' and 'gold-diggers' suggest such matters may also inform marital choices where marriages are not conventionally arranged.

43 See K Charsley *et al supra*, note 18, forthcoming.

44 See (eg) R Ballard (1990), A Dale (2008), DS Raj (2003), A Shaw 'Kinship, cultural preference and immigration: consanguineous marriage among British Pakistanis' (2001) Vol 7 *Journal of Royal Anthropological Institute* 513.

45 Ø Fuglerud *Life on the Outside: the Tamil Diaspora and Long Distance Nationalism* (London: Pluto Press, 1999); Ø Fuglerud 'Space and movement in the Sri Lankan conflict' in P Essed, G Frerks and J Scrijvers, (eds) *Refugees and the Transformation of Societies* (London: Berghahn Books, 2004).

46 M Sidhartan & N Van Hear (forthcoming) 'Transnational marriage in conflict settings' in K Charsley (ed) *Transnational Marriage* (London: Routledge).

47 R Van Dijk 'Negotiating Marriage: Questions of Morality and Legitimacy in the Ghanaian Pentecostal Diaspora' (2004)Vol 34, No 4 *J of Religion in Africa* 442; De Bruijn, M R van Dijk & D Foeken *Mobile Africa* (Leiden: Brill, 2001).

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● Among Zimbabweans in Britain, Pasura suggests 'move in' (cohabitation) relationships have developed among lonely migrants whose original spouses may not be able to join them in Britain following the introduction of visa requirements in 2002.[48] Again, such practices could cast doubt on the genuineness of the resulting marriage.

● The 2011 consultation suggested that spousal migration histories could be an indicator of sham marriage, and sought to restrict individuals' ability to sponsor a subsequent spouse (following the breakdown of the previous relationship) within 5 years of settlement, citing the Danish practice of treating marital breakdown shortly after the issue of a residence permit as a sign that the marriage was one of convenience.[49] Retrospective definition of a marriage as 'bogus' on these grounds could, however, be extremely problematic. Examples of Pakistani migrant husbands divorcing their British Pakistani wives after the probationary period, and then bringing a second wife from Pakistan, could be represented as evidence that the man's intentions in contracting the marriage were simply to avoid immigration control. The impression of lack of commitment to the first marriage may be compounded in cases where the second marriage has taken place before the civil divorce has been finalised, although the separation and religious divorce may have taken place much earlier, and Pakistan in any case permits polygyny. Such situations can, however, be the result of unforeseen pressures of life as a migrant husband, rather than premeditated deception. Husbands from a culture in which brides conventionally move to their in-laws' home rather than vice versa may experience their migration as deeply challenging to expected gender roles. Not only may they experience loss of status and social networks, but they can find themselves in a culturally unusually weak position in domestic relations of power, lacking the support of their own natal kin whilst their wife's relatives are close at hand. Spouses raised on different continents may also bring differing expectations to the marriage. In this pressured context, the failure of a marriage does not necessarily reflect a lack of genuine intentions at the outset.[50]

Where the application is for reunification with a spouse residing outside the UK, judgments of the genuineness of the marriage are made in the first instance by Entry Clearance Officers overseas. ECOs may have access to knowledge of local marriage customs, although many live in rather closed ex-pat communities, and individual officers may only be in post for a few years. Local staff may provide advice, but 'are recruited as interpreters and administrators not as qualified experts in local matters. They will inevitably have their share of misconceptions and prejudices'.[51] Shah reports several cases of appeals against refusals of spousal immigration in which ECOs do not appear to have been familiar with common local procedures.[52] Cultural

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48 'Gendering the diaspora: Zimbabwean Migrants in Britain' (2008) Vol 1, No 1–2 *African Diaspora* 105.

49 Home Office. 2011. Family Migration – a consultation. Available at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/.

50 For more detail see K Charsley 'Unhappy Husbands: Masculinity and Migration in Transnational Pakistani Marriages' (2005) Vol 11 *J of the Royal Anthropological Institute* (NS) 85–105, and K Charsley & A Liversage (forthcoming). 'Transforming Polygamy: migration, transnationalism, and multiple marriages among Muslim Minorities' *Global Networks*.
    A further example is the delaying of consummation of marriages by some Pakistani families until after spousal immigration is assured, to reduce the risk that a daughter no longer a virgin would be unable to make a second good match (K Charsley 'Risk and Ritual: the protection of British Pakistani women in transnational marriage' (2006) Vol 32, No 7 *J of Ethnic and Migration Studies* 1169). There is no suggestion, however, that virginity is an issue in contemporary immigration interviews, in contrast to reports of 'virginity testing' of subcontinental fiancées on arrival at Heathrow airport during the PPR era.

51 H Wray 'Guiding the Gatekeepers: entry clearance for settlement on the Indian subcontinent' (2006) Vol 20, No 2 *IANL* 126.

52 P Shah 'Inconvenient Marriages, or What Happens When Ethnic Minorities Marry Trans-jurisdictionally' (2010) Vol 6, No 2 *Utrecht Law Review* 17.

practices surrounding marriage are also dynamic and variable, and a little cultural knowledge (to adapt Pope's famous saying) may also be a dangerous thing, again inviting reliance on the 'norm' and casting doubt over those marriages existing in most societies, which do not comply to standard patterns in terms of the form of the wedding or the choice of spouse.[53]

Variations in visa refusal rates

Differential impacts on particular social groups have been a feature of the history of regulating spousal migration and settlement. Macdonald and Blake asserted in 1991 that they had 'still to hear of an American, Australian or New Zealander who [had] failed the primary purpose test.'[54] A recent report of the Independent Chief Inspector of the UKBA on entry clearance practices in Abu Dhabi and Islamabad concerning all visa applications, including those from spouses, found a higher level of supporting documentary evidence was demanded from Pakistani nationals than nationals of the Gulf Cooperation Council countries, despite the fact that published requirements for documents supporting visa applications were the same.[55] Refusal rates for Pakistani nationals were substantially higher than those from Gulf Cooperation Council countries. If a higher burden of proof is expected from some groups of spousal visa applicants judged to pose greater risks, then it might be expected that rates of refusals for those groups, not only on the grounds that a marriage was not genuine, but also on the grounds of failure to fulfil other visa requirements, might be greater than for groups not considered to represent such dangers.

Previously unpublished statistics made available to the authors demonstrate that rates of refusals of applications for Leave to Enter as spouses/partners have been gradually increasing in recent years (Figure 1). This is despite the overall trend of a decrease in the total number

Figure 1: Refusal Rate (%) of spousal applications for Limited Leave to Enter by year

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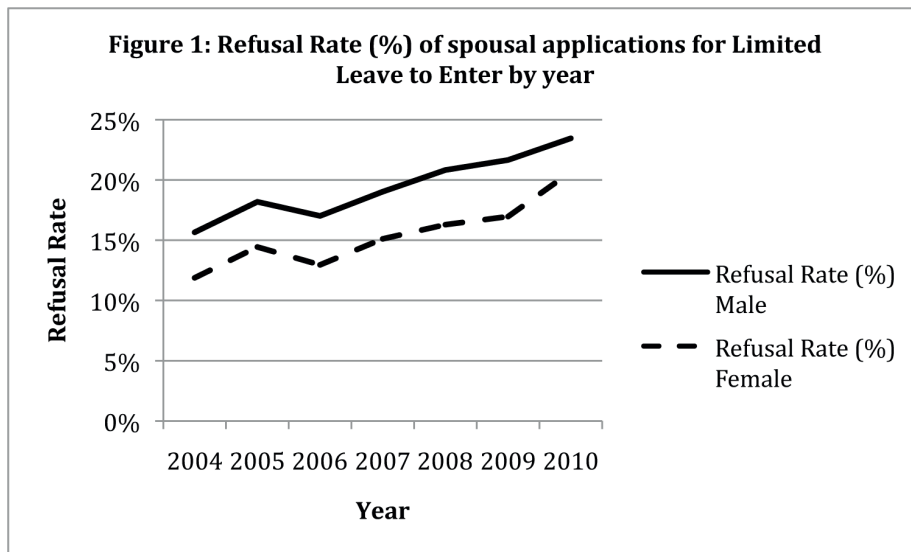
53   So Shah argues that 'the more complex or 'unusual' the trans-jurisdictional marriage arrangements, the more likely it is that a marriage will not be recognised as valid' by ECOs (*ibid*, p 10)

54   Cited in H Wray 'An Ideal Husband? Marriages of Convenience, Moral Gate-keeping and Immigration to the UK' (2006) Vol 8 *Eur J of Migration and L* at p307.

55   J Vine (2010) *An Inspection of Entry Clearance in Abu Dhabi and Islamabad* Independent Chief Inspector of the UKBA (http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/An-inspection-of-entry-clearance-in-Abu-Dhabi-and-Islamabad.pdf)

of applicants (to 46,400 in 2010, from a peak of 64,505 in 2006).[56] The rising minimum age for spouses (from 16 to 18 in 2004, to 21 in 2008) may have contributed to higher levels of rejection; but the rising rates may also be associated with the increasing focus on identifying marriages of convenience.

Figures 2 and 3 show 2010 refusal rates by gender and country of origin for the largest groups of applicants (those in which the number of male and/or female applicants in 2010 was greater than 300[57]), revealing stark differences in rates of refusal by country of origin. Variation in employment and earnings by ethnic group may create more difficulties for some groups of sponsors in meeting income and accommodation requirements for spousal immigration, so some such variation may be expected. What is particularly striking here, however, are the high percentages of refusals for South Asian, (Black) African and predominantly Muslim countries. The extremely high rate of refusal for Somali nationals is particularly notable (54% for female and 60% for male applicants). In contrast, those groups of applicants which are likely to be predominantly White, and of Christian heritage – the US, Canada, Australia and South Africa[58] – and other developed countries such as Japan have the lowest rates of refusal. In 2010 the refusal rate for US nationals were 3% (female) and 7% (male), for Australia (female) 2%, for Canada (female) 2% and 1% (male), and for South Africans 7% (female) and 10% (male). Of course, the high economic standing of these countries may result in less financial incentive for immigration fraud for these populations. Other types of visa may also be more easily obtainable by nationals of these countries, reducing reliance on marriage as a route to immigration and settlement. Wray, however, reporting on a survey of Immigration Appeal Tribunal determinations, suggests that doubts over the genuineness of marriages may be used to bolster the case for refusals on other grounds.[59] The precise role of suspicions over the genuineness of the marriage in these differing rates of refusals would thus be difficult to disentangle.

None of the 142 appeals of refusals of spousal visas surveyed by Wray involved applicants from developed countries. Rather, they concerned 'applicants from the Indian sub-continent and a handful of other countries'.[60] In this context it is worth noting that despite the significant numbers of spousal migrants involved (both the US and South Africa feature in the 2009 'top ten' countries of origin for spousal settlement), very little research has been conducted on any form of migration to Britain from these countries[61], and migrants from such nations are seldom mentioned and certainly not problematised in political discourse or the academic literature. Popular representations of marriages between White European or N. American spouses to secure immigration status are not infrequent, but crucially, they tend to be treated in a light-hearted manner (e.g. films such as *The Proposal* and *Green Card*, or the novel *Sleeping Around*) rather than as a subject for serious reportage as has been the case for marriages involving migrants from other parts of the world (eg TV and Radio documentaries).

There is also notable variation in rates of refusals along gender lines. As Figure 1 demonstrates, a higher percentage of husbands are refused than wives. The assumption that

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56   Data in this section do not include initial refusals overturned on appeal. They reflect the figures as they stood on 27 July 2011.
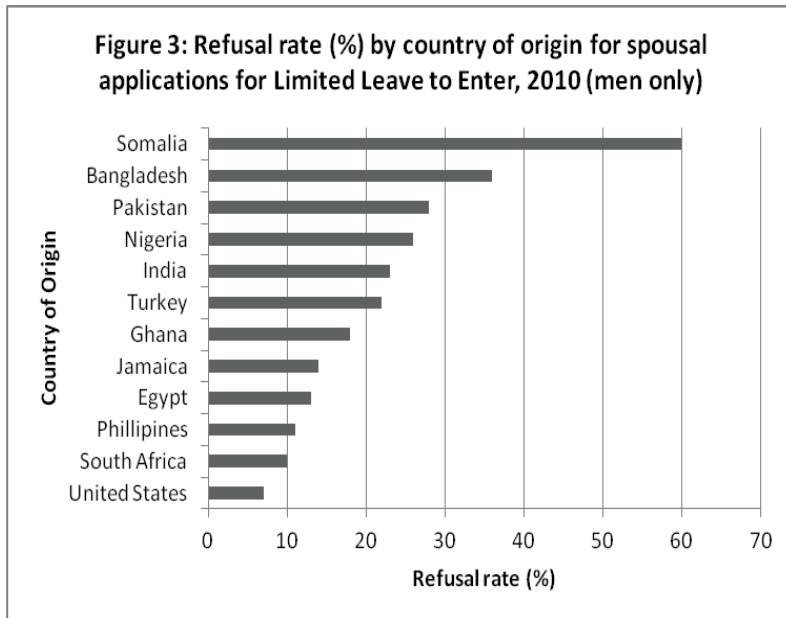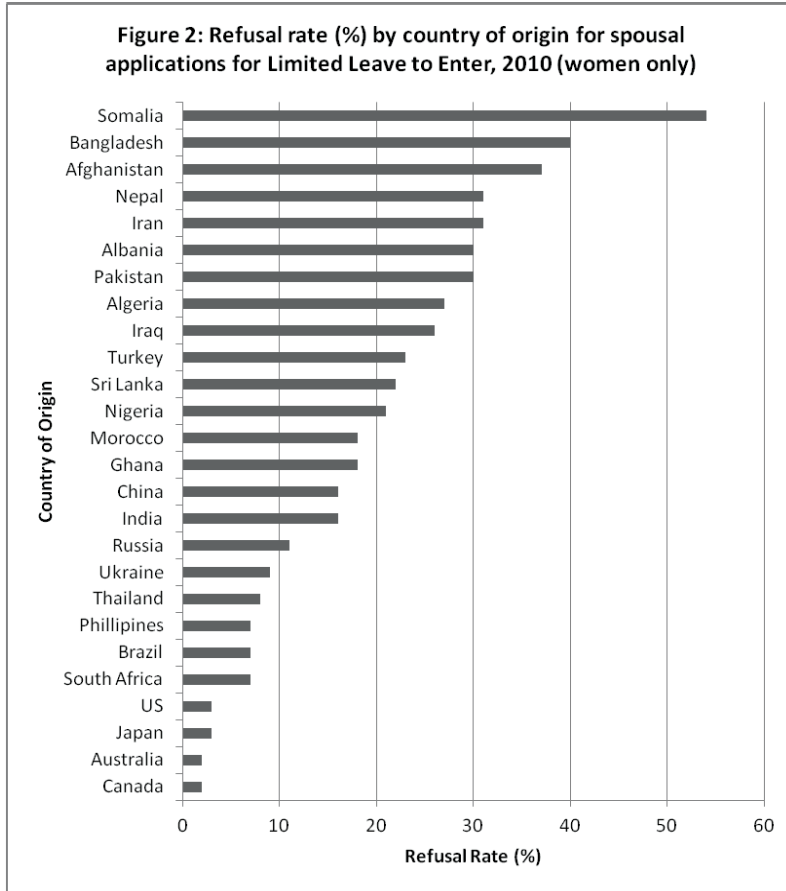
57   With larger numbers of female applicants, more countries meet this threshold for female than male applicants.

58   The 2001 Census records the majority (90%) of South African migrants to Britain as White.

59   H Wray 'Hidden Purpose: UK ethnic minority international marriages and the immigration rules' in P Shah and W Menski (eds) *Migration, diasporas and legal systems in Europe* (Routledge-Cavendish, 2006).

60   *Ibid*, p165.

61   But see (eg) on South Africans: Sveinsson & A Gumuschian *Understanding Diversity – South Africans in Multi-Ethnic Britain* (London: Runnymede Trust, 2008); on New Zealanders: D Conradson & A Latham 'Friendship, networks and transnationality in a world city: antipodean transmigrants in London' (2005)Vol 31, No 2 *J of Ethnic and Migration Studies* 287.

Figure 2: Refusal rate (%) by country of origin for spousal applications for Limited Leave to Enter, 2010 (women only)

Country of Origin (top to bottom): Somalia, Bangladesh, Afghanistan, Nepal, Iran, Albania, Pakistan, Algeria, Iraq, Turkey, Sri Lanka, Nigeria, Morocco, Ghana, China, India, Russia, Ukraine, Thailand, Phillipines, Brazil, South Africa, US, Japan, Australia, Canada

Refusal Rate (%): axis 0 to 60

Figure 3: Refusal rate (%) by country of origin for spousal applications for Limited Leave to Enter, 2010 (men only)

Country of Origin (top to bottom): Somalia, Bangladesh, Pakistan, Nigeria, India, Turkey, Ghana, Jamaica, Egypt, Phillipines, South Africa, United States

Refusal rate (%): axis 0 to 70

male migrants are more likely to have an economic motivation than female marriage-related migrants, particularly in groups with low levels of female labour force participation, was a critique levelled at the PPR,[62] and an issue noted more recently by Wray during a research visit to entry clearance posts in the Indian subcontinent:

> '…applicants with an atypical profile are more likely to be called for interview particularly in marriage applications. Some posts are creating profiles of those applicants who are more likely to be non-compliant but, in marriage cases, ECOs seemed to rely principally on anecdotal evidence and on their beliefs about what is normal for the region than on objective data about non-compliance. For example staff commented that they tend to scrutinise more closely applications from male spouses and fiancés particularly when the UK-based wife is older and/or divorced. Nor did they seem to have any firm evidence that these types of marriage were more likely to be sham and such beliefs may be incorrect or an unintended resurrection of primary purpose.'[63]

With the increasing focus on identifying marriages of convenience, considerable sensitivity on the part of the UKBA and ECOs will be required in order to avoid perpetuating such patterns of unequal scrutiny.

Conclusion: marriages of convenience, and inconvenient marriages

Prakash Shah has recently termed ethnic minority practices of trans-jurisdictional (overseas) marriages 'inconvenient' from the perspective of British immigration authorities seeking to restrict migration to Britain.[64] Here we have explored evidence surrounding the identification of some such relationships as marriages of convenience for immigration purposes, or 'sham marriages' in current parlance. The question of ascertaining whether a marriage is 'genuine' is one which makes sense in policy terms, and is understandable in the context of a desire to control marriage-related immigration, but which in all but the most extreme examples is likely to shift and disappear in the complexity of actual ethnographic cases. The desirability of migration or settlement may play a role in spouse selection, and immigration requirements may help shape marriage practices,[65] but they form only a part of the complex issues which shape the overall desirability of potential partners and ways in which marriages are agreed and celebrated, with the result that treating the desire for immigration status as the defining characteristic of these marriages is problematic.

Marriages which may appropriately be labelled 'sham' do occur. Journalistic and criminal investigations have provided evidence of the organised contracting of marriages which are purely an exchange of money for documentation to permit or regularise immigration status, without forming or marking an ongoing relationship. In India, newspaper matrimonial adverts have long mentioned 'Green Cards' alongside qualifications and physical attributes as among the attractions of a person seeking a husband or wife, but a report in the *Telegraph*[66] cited a

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62   S Sachdeva *supra*, note 7 at p 8.

63   H Wray 'Guiding the Gatekeepers: entry clearance for settlement on the Indian subcontinent' (2006) Vol 20, No 2 *IANL* 126.

64   P Shah 'Inconvenient Marriages, or What Happens When Ethnic Minorities Marry Trans-jurisdictionally' (2010) Vol 6, No 2 *Utrecht Law Review* 17.

65   See (eg) K Charsley 2006 *supra*, note 50.

66   D Nelson 'Sham marriage adverts behind surge in visa applications from India' *The Telegraph* 1 February 2010.

recent *Punjabi Daily Ajeet* advert aimed at more directly at fraudulently facilitating migration as a husband of a student visa holder:

> 'Only court marriage [ie 'paper' marriage rather than genuine relationship]. Seeking alliance for a 24-year-old boy. The girl must have cleared IELTS [International English Language Testing System]. All expenses will be borne by the boy's family.'

In other instances, where immigration concerns may tip the balance in favour of one proposal or another, inflate the dowry payments needed to secure the match, or lead a couple who might otherwise have given their budding relationship longer to develop to marry rather than be parted by the expiry of a visa, the use of the term 'sham' is inaccurate. Such marriages may be 'inconvenient' in Shah's sense, but they are not merely 'of convenience'.

As we have seen, the reinvigorated focus on marriages of convenience has been accompanied by increasing levels of rejections of applications for spousal immigration. The fact that these rejections disproportionately affect certain national groups of migrants evokes memories of the PPR regime which came under such vociferous attack before its abolition in 1997, suggesting the need for further scrutiny.[67] In order to progress our understandings of the boundaries between marriages which are merely 'inconvenient' from a regulatory perspective and those which are 'of convenience', however, it is necessary not only to highlight dangers of potentially discriminatory impacts, but also to create a body of empirical evidence on the practices and experiences of those involved. The body of legal literature which has developed on this topic and the reportage appearing with increasing frequency in the British press provide some examples, but are no substitute for qualitative research outside a legal setting to address the many black (and White) holes in knowledge in this diverse area.

In a debate in the pages of *Anthropology Today* some years ago, Pnina Werbner and Werner Menski disagreed over whether scholarly attention should focus on the dangers of bogus marriages in which British Asian women are abandoned by migrant spouses, or the hardship faced by couples denied family reunification as a result of this discourse of fraud,[68] but a research agenda on sham marriage must be broad enough to include both concerns. Such research will need to incorporate understandings of the impact of regulatory discourse, but must also include study of both the role of immigration concerns in actual marriage practices, and the processes by which suspicious or sham marriage are identified and dealt with. Here inspiration may be drawn from the well-developed body of research on forced marriage which has encompassed sociological research with victims and communities on forced marriage as a practice,[69] the impact of differing institutional frameworks for dealing with forced marriage,[70] and critical analysis of the focus on forced marriage as a political discourse.[71] A combination of such approaches to create multi-level research on the kinds of relationships identified as 'sham marriages' would lead to a fuller understanding of the ways in which individual and community practices and understandings intersect with national and local-level state policies and practices

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67   Similar critiques have been levelled at the use of forced marriage (a minority practice among a minority of ethnic groups of spousal migrants to Britain) as justification for restrictions on spousal migration (eg P Shah 'Inconvenient Marriages, or What Happens When Ethnic Minorities Marry Trans-jurisdictionally' (2010) Vol 6, No 2 *Utrecht Law Review* 17).

68   W Menski Letter (2002) Vol 18, No 4 *Anthropology Today* 20; P Werbner 'Reproducing the Multicultural Nation' (2002)Vol 18, No 2 *Anthropology Today* 3.

69   Y Samad & J Eade *Community Perceptions of Forced Marriage*, Foreign and Commonwealth Office, 2002; Y Samad 'Forced marriage among men: an unrecognized problem' (2010) Vol 30, No 2 *Critical Social Policy* 189.

70   P Keogh 'Forced marriage in the UK: Prevalence and Response' Paper presented at the CRFR International Conference, University of Edinburgh, 2010.

71   A Phillips & M Dustin 'UK initiatives on forced marriage' (2004) Vol 52, No 3 *Political Studies* 531.

to create particular outcomes for those involved. Although the nature of the topic and work entailed is likely to pose ethical problems for researchers, such information would provide a more nuanced and fuller grounding for policy discussion; one which recognises complexity beyond the binary division between 'genuine' and 'sham' marriages.

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