

**Protection of Borders or Protection of Women?  
Recently arrived immigrant women in the UK,  
violence and immigration policies**

by

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...‘Violence against women and girls is an obscenity. That is why we are taking action to bring perpetrators to justice and protect and support victims, but also to challenge the attitude that attacks on women and girls are in any way acceptable. A fair and responsible Britain has no place for violence of any sort’...

(Prime Minister Gordon Brown, November 2009,

HM Government 2009: 6).

## **Abstract**

The research explores female immigrants' experiences of violence and exploitation in the UK. In doing so the focus is on three 'groups' of recently arrived immigrant women: spouses experiencing domestic violence, trafficked women, and asylum seekers. This focus allows an evaluation of current UK immigration legislation and its impact, if any, on 'victims' of violence. In order to accomplish this a feminist and human rights consciousness is utilised.

The research considers men's use of violence and exploitation as a potential form of control to maintain power and keep women subordinate. This is undertaken within the context of state, law and media responses, and the extent to which they reflect men's interests by ignoring abuse or blaming the victim, both of which serve to undermine the human rights of women in general and immigrant women in particular. The research demonstrates recently arrived immigrant women face multiple obstacles to accessing support and protection from the violence of others. These include language barriers, fear of repercussions, fear of authorities or lack of remedies available. The research considers the responses to situations these immigrant women experience.

## **Chapter 1**

### **Introduction & Methodology**

#### **Aims of the research**

The aim of the research is to establish the main concerns surrounding recently arrived female immigrants experiences of violence and exploitation in the UK. This could be violence and exploitation from an individual, a particular group or from the state. In this instance state violence includes any violence tolerated or encouraged by the state in order to justify, excuse, explain or enforce hierarchies and inequalities (Crawley 2000: 99). Female immigrant groups to be considered are: spouses who have recently entered the UK subject to a two-year probationary period, asylum seekers and trafficked women. Whilst these immigrant women all differ in experience and identity, the research explores interlocking themes that criminalize or ignore such women, meaning they receive little, or no protection from violence. The issue of immigration is relevant due to current ‘moral panics’ concerning terrorism and crimes by immigrants and asylum seekers (Aas 2007: 284). Instead of concern about problems they face, concern surrounds the ‘risk’ they pose to British society (Hudson 2000: 183). This perceived threat from subordinated groups has led to a restriction of rights and increased use of detention and deportation. Existing immigration literature places more emphasis on male immigrants, but it is the growing work specifically on female immigrants the research looks to review. Feminist criminologists, such as Bosworth (2008) and Kelly (2000), previously from different arenas, have now extended their interests to emerging issues of immigration.

Current domestic violence literature relating to immigration tends to surround Asian<sup>1</sup> women, although there are examples of other groups of women who have experienced violence because of their immigration status. Literature on asylum-seeking women focuses on women from outside the European Union. In comparison, trafficking literature tends to focus on women from Eastern Europe, despite suggestions ‘victims’ can be trafficked from anywhere in the world. The research generalises experiences to apply to women from any ethnicity, as violence, policies of immigration and concepts of human rights are not restricted to culture. The research follows the example provided by the 1993 World Conference on Human Rights which considered violence against women as a ‘form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men, identifying those rights and freedoms which are compromised by such violence’ (Connors 2006: 24). This definition applies to all women rather than those from a particular group or ethnicity.

## **Methods**

The research reviews existing literature, including academic critique, campaign literature, policy and other documentary material. The research draws upon more established research surrounding violence against women whilst focusing on new emerging areas of enquiry. According to UNICEF, violence against women is ‘one of the most pervasive of human rights violations, denying women and girls equality, security, dignity, self-worth, and their right to enjoy fundamental freedoms’ (in Terry 2007: 124). Whilst all women can be subject to violence and a lack of

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<sup>1</sup> Generally women from South Asia who are currently residing in the UK or those with South Asian heritage.



protection, the specific experiences recently arrived immigrant women face can be considered to affect them disproportionately because of their immigration status.

The research performs an analysis of text and examination of literature in relation to recently arrived immigrant women in the UK, violence and immigration policies. While the research has studied and included critiques of the effectiveness of legislation and policy from the viewpoint of its own aims, the critique is drawn from feminism and human rights. The literature highlights cultural and legal difficulties faced by immigrant women subjected to violence and exploitation. Whilst it is important to recognise differences between individuals and groups this can also be used as an excuse to ignore women's victimisation for 'cultural' reasons, meaning experiences can be overlooked. Undertaking a literature review enables the formulation of research themes and development of an appropriate framework for the research. Within the literature selected there is greater emphasis on the review of qualitative data. Quantitative data uses statistics to measure the extent of crime and victimisation whereas qualitative data has a commitment to 'explanation-by understanding' (Jupp 1996: 14). Considering the area of study, a reliance on quantitative data could be thought inappropriate, as it would provide limited insight and fail to acknowledge changes in policy and practice. It is more appropriate to review qualitative research, which provides more detail and sensitivity (Blaxter et al 2006: 64). In addition, due to under-reporting, violence against women is considered as a hidden crime, therefore difficult to measure and produce accurate statistics. Estimates are acknowledged where appropriate as they provide an indication of the minimum number of 'victims' concerned.

Where necessary methods incorporate content analysis to consider the nature of language used. This is not completed thoroughly as documents can be lengthy. Instead it is a grounded content analysis as a reflexive practice. This means the research is open to what exists but alert to examples, which can provide meaning and insight into experiences of violence and the impact of UK immigration policy (Noaks & Wincup 2004: 127). This method has the advantage of being unobtrusive as documents to be considered are easily accessible and allows further reflection when reviewing the literature. The research also involves a very small amount of live research involving a brief semi-structured interview with Preston Women's Refuge Immigration Advisory Service. Whilst this is too small to generalise from it can be considered as a case study, which demonstrates consistency with findings in the literature review relating to domestic violence. Unfortunately other groups lacked the capacity to assist with the research.

## **Methodology**

Whilst it is argued that there is no single feminist theory or methodology (Skinner et al 2005: 10; Heidensohn 1995: 65); theorists such as Oakley (2002) and Renzetti (1997) note that feminist research focuses on gender, patriarchy, male violence and gender inequality (Skinner et al 2005: 10). There is also a concern with representing, or not misrepresenting, those in marginalized or less powerful positions, by enabling experiences to be valued (Skinner et al 2005: 12). Applying a feminist framework to the dissertation encourages a reflective and critical approach to current understandings of immigration and violence against women, which assumes 'knowledge' (Renzetti & Lee 1993: 201-2, Weedon 1997: 9). The research takes the view that understanding

informs and strengthens action (Evans 1997: 3). Evans (1997) suggests a feminist understanding can 'disturb and disrupt conventional assumptions' in academic work and everyday life (Evans 1997: 3). According to Charlesworth et al (1991), a feminist perspective is capable of highlighting state responsibility and exposing the law as inherently gendered, which serves to reinforce male domination (Crawley 2000: 89).

It must be noted that whilst this dissertation broadly uses the term 'feminism' there are many variations of 'feminist thought' (Hopkins Burke 2005: 163). It is recognised there are currently at least six main variants of feminism: Liberal, Radical, Marxist, Socialist, Black and Postmodern feminism (Gelsthorpe 2002: 114; Hopkins Burke 2005: 164). Whilst they do not necessarily always agree there is broad agreement men are the dominant group in society placing women at a disadvantage. The areas most frequently studied are rape and domestic violence (Hopkins Burke 2005:167). It is suggested both remain frequently under-reported despite increased acknowledgement of their prevalence. Feminism suggests this is due to distinctions between 'public' and 'private' spheres. The 'private' sphere is seen as a contributing factor in sustaining women's experience of oppression (Hopkins Burke 2005: 169). Those seen as unable to escape violent situations, such as abuse within marriage, are considered to have a lack of resources (Segal 1996: 194). However there are disagreements as to why men are violent towards women and suggested actions to improve the situation of women. For example liberal feminism considers women's inequality to be caused by social practices, which can be improved with equal rights. Marxist feminism places women's subordination within capitalist exploitation whereas Radical feminism focuses on patriarchy and advocates separatism from men (Hopkins Burke 2005: 164-5). Both black feminism and postmodern feminism

critique other forms of feminism. Black feminism<sup>2</sup> has accused middle class white feminist perspectives of racism by emphasising the diversity of experiences amongst women; traditionally white feminism argues that gender is more important than issues of race or ethnicity (Hopkins Burke 2005: 165, Mirza 1997: 4). Postmodern feminism<sup>3</sup> celebrates difference and promotes a critical stance towards everything in a bid to deconstruct language and ideas (Walklate 2004: 45-46). Despite disagreements between feminist strands, it is worth noting that all feminist contributions highlight experiences of exploitation and subordination due to gender (Abbott & Wallace 1997: 301).

Due to disagreements between feminists the existence of a single exclusive feminist method has been challenged by researchers (Wincup 1999: 112). Feminist research is seen to be a ‘theoretical, empirical, interpretive, critical and engaged process, informed by the goal of ultimately eliminating the oppression of women’ (McLaughlin & Muncie 2006: 169). It is suggested feminist methods demonstrate a preference for qualitative research to consider issues of power and control (Wincup 1999: 113). Feminism tends to locate violence in societies where masculinity is linked to heterosexual power (Segal 1996: 192-3). This does not mean homosexual relationships are free from violence or that women are not violent towards men. The dissertation incorporates themes of power and control, meaning the methodological approach is more compatible with feminism than other methodologies. Rather than adopt a particular feminist position it is more appropriate and constructive to implement a ‘feminist consciousness’, which is a concern with problems faced by

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<sup>2</sup> Mirza (1997: 4) describes black feminism is a ‘spontaneous yet conscious coalition as a meaningful act of identification’. Black feminism addresses issues of gender and race by examination structures of oppression relating to black women (Mirza 1997: 4).

<sup>3</sup> Postmodern feminism is seen to allow the ‘celebration of difference, the recognition of otherness’, which promotes the legitimization of black feminism (Mirza 1997: 19).

women (Hudson 2000: 185; Delmar 1994: 12). This follows Bartky's (1990) example who stated 'feminist consciousness is the consciousness of victimisation' which allows the exposure of that previously hidden (in Ward 1995: 19). The dissertation can be considered as theoretically informed although not directly associated with a particular feminist theory.

Feminist debate over the last thirty years has surrounded issues such as rape, domestic violence, equality in the work place, and experience of the prison; with little or no attention being paid to women with immigration issues<sup>4</sup>. Previously some radical feminists believed immigration was a complication that obstructed 'the struggle against patriarchy' (James 1982: 23; Bhabha & Shutter 1994: 8). Increased feminist debate has led to heightened awareness of inequalities embedded in 'interlocking systems' of race and class (Gill & Sharma 2007: 186). For instance, Terry (2007: 4) states all women 'encounter discrimination on the grounds of their sex, but there are a lot of other factors, such as class, race, ethnic group, age, caste, sexual orientation and so on, that combine to shape their particular experience'. This has led to a shift in focus over the past ten years and there has been greater awareness of the problems female immigrants face (Southall Black Sisters<sup>5</sup> 2004).

The dissertation recognises many men are not violent towards women and that men can be 'victims' of violence and discrimination from other men and women. It is

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<sup>4</sup> As discussed previously, migration research has also ignored women in terms of their migration experience. An increase in Black feminist theory has played a significant role in developing critical feminist themes within migration research. Thiara and Gill (2010: 29) argue that previously the experiences of black and minority ethnic women, especially in relation to violence, have been overlooked. Black feminist theory has introduced new ways of understanding subordination and diversity, such as the influence of 'intersectionality' (Thiara & Gill 2010: 29). This in turn has led to growing discussions of women's experience within the UK immigration system.

<sup>5</sup> Southall Black Sisters was set up in 1979 to support Asian and African Caribbean women and has helped women facing violence in the home (Gupta 2003: 1).

further recognised that ‘women’ are not the only disadvantaged group and that all women are not disadvantaged equally; however as a group women can be considered to be at a greater disadvantage when compared to men as a ‘group’ (McColgan 2000: 9). For instance, women who work full time earn less than men working full time and are disproportionately more likely to be the ‘victims’ of violence than the perpetrators (McColgan 2000: 133, 193). This dissertation follows the lead of Amnesty International (1995: 3), which suggests ‘women’ are united by the violation of fundamental human rights, transcending class, race, culture, religion, nationality etc. Terry (2007: 26) states it is valid to focus on women’s human rights violations as they have so often been overlooked in the past, and it can be argued that they still are. The dissertation follows the argument put forward by Hooper (1996: 148) who suggests that women’s

‘relative powerlessness in the public worlds of policy and law and the patriarchal norms against which their behaviour is judged...all result in a quite different context of options for women leaving violent men from those which face men leaving violent women’

This has led to further problems for immigrant women and obstacles are seen to have ‘increased over the last decade’. It is suggested that institutional and personal violence is embedded within migration (Gill & Sharma 2007: 184; Perpignan 1996: 54).

The dissertation follows Hudson’s (2007) example and uses human rights as an external critique. It understands Hudson’s (2010: 23) argument that ‘everyone,

everywhere...is entitled to those human rights regarded as fundamental, simply because of being human: rights do not depend on citizenship; rights do not have to be deserved or earned'. The dissertation utilizes human rights laid out in the European Convention of Human Rights as opposed to more recent human rights legislation. This is a well-established document used beyond UK borders, universal and indivisible to all. Kelly (2008: 55) argues that using a human rights perspective illustrates the ways in which violence against women denies the 'most fundamental of human rights: life, liberty, bodily integrity freedom of movement and dignity of the person'. Using a theoretical human rights framework helps expose inconsistencies and contradictions in discussions about men's violence against women, immigration rules, and exploitation (Renzetti & Lee 1993: 199, Weedon 1997: 5). Human rights perspectives argue that violence against women is not a 'private' issue but a 'public' concern, meaning governments can be held accountable if they condone or ignore acts of violence against women or fail to take sufficient steps to perform human rights obligations (Kelly 2008: 55).

### **Ethics**

In keeping with the ethics of feminism the methods used ensure women are not directly exploited or harmed by the research. Reviewing literature reduces power imbalances or forms of exploitation between the researcher and researched. Although consent is needed to research powerless groups, in this case it is not needed as the dissertation is based on existing academic work, official research, and media publications in relation to violence against immigrant women. Information may also be provided by women's organisations. Consent is not needed to investigate existing

literature as the sources to be utilised can be considered as public knowledge. This means that there are no issues of confidentiality, as 'victims' will not be researched.

White middle class feminism has been criticised for ignoring difference and diversity and assuming there is a universal category of what it means to be a 'woman'. The research understands 'women' are not a single homogenous group and similar situations can be experienced differently because of the 'interaction of multiple identities and experiences of exclusion and subordination' (Davis 2008: 7). Stanley and Wise (1983) argued that a major responsibility of the researcher was to recognise their own values and position as 'reality' is constructed only through the eyes of that one person (Stanley & Wise 1983: 174). It is argued that speaking for others is a 'discursive practice' (Alcoff 1991: 6). Yet if feminists do not speak on behalf of women less privileged than themselves they are abandoning 'political responsibility to speak out against oppression' (Alcoff 1991: 8). The risks of sometimes speaking for others (i.e. arrogance) are balanced by the need to raise counter-hegemonic positions (Snider 1998: 4), leading feminist research to allow women to speak for themselves.

### **Motivation for the Research**

Undertaking this research provides an opportunity to develop individual knowledge and academic skills whilst satisfying personal intellectual curiosity. Although themes seem selective and based on personal interest, it can be argued it is an important emerging matter prompted by a perceived injustice. The research is led by a desire to learn something unfamiliar.



It is not intended for the research to be fixed to particular nationalities, ethnicities, faiths or cultures, as there is no wish to reinforce stereotypes of certain groups but to raise awareness of female immigrants experience of violence and the lack of protection provided. This involves demonstrating how some women are denied protection from violence due to their immigration status.

### **Programme of work**

Using a feminist and human rights consciousness allows the research to focus on the specific situations of immigrant women. The aim of the research involves working to the following objectives:

- Exploring the position of spouses who have recently arrived in the UK, trafficked women, and asylum seekers who have all been subjected to some form of violence by looking at academic literature and policy.
- Examining and critically evaluating if current immigration legislation in the UK affects 'victims'.
- In order to review 'victims' situation, the dissertation considers immigrant welfare group and campaign literature, highlighting issues facing vulnerable women.
- To work to this objective the research considers if women are denied their basic human rights, for example, the right not to suffer torture. This entails examining

if there is a lack of protection afforded to women who have recently entered the UK.

It can be suggested that the research is not objective and my position as a woman makes the outcome impartial. In response, it has been argued that ‘no criminological research takes place in a political and normative vacuum’ (Hughes in Jupp et al 2000: 235). A feminist framework would claim the woman centred nature of the research requires subjectivity. The dissertation is not free of politics and values as the research can be seen to undoubtedly illustrate personal attitudes and interpretation. The dissertation takes the side of the powerless and so can be considered ‘critical’. It may be argued the dissertation could have unintended effects, for example, more women will falsely accuse men of perpetrating violence. In response it can be proposed this suggestion is most likely to come from those benefiting from patriarchy. The research is committed to those who experience violence and a lack of protection by individuals and the state.

### **Definitions**

**Asylum Seeker<sup>6</sup>:** Within literature the terms ‘asylum seeker’ and ‘refugee’ are often used interchangeably (Gedalof 2007: 83). Following this example, ‘asylum seeker’ is used to describe asylum seekers and refugees unless stated otherwise, as focus surrounds those recently arrived in the UK who need protection afforded by refugee status.

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<sup>6</sup> All women discussed in the dissertation can be considered to represent different groups of recently arrived immigrant women as their experiences of violence are structured by their insecure immigration status. In order to address the differences between these groups of women with little confusion, and consider the interaction of gender, immigration status and ethnicity each chapter shall consider a different category.

**Immigration:** The term ‘immigration’ is broadly used to cover issues of recent immigration and asylum.

**Patriarchy:** Patriarchy is defined as the ‘structures, beliefs and practices that maintain male dominance over women’ (Pickup et al 2001: xiv).

**Victim:** It has been argued that feminist focus on male violence against women casts women as ‘perpetual’ and ‘passive’ ‘victims’ of oppression (Dutton 1995 in Gangoli 2006: 536; Maynard 1990: 274). Whilst the term ‘victim’ ignores women’s resistance and survival strategies, because of diverse power structures in British society the research uses the term ‘victim’ to acknowledge the effects of victimisation are long-lasting and many women suffer as a result of unequal relationships with men (Walklate 2008: 39; Kelly 2008: 54; Evans 1997: 35). Whilst many women survive, ‘victim’ acknowledges that many other women die from violence suffered.

**Violence:** In the declaration of the Elimination of Violence Against Women, violence is defined as ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’ (in Perpignan 1996: 55; Terry 2007: 123).

Chapters within the dissertation are organised around three themes of violence against recent immigrant women and responses to their situation. Within these categories concepts of human rights are considered. For simplicity of presentation

each issue shall be considered consecutively, but accept Kelly's (1987) 'continuum of violence' whereby one experience cannot be seen as more serious than another. For example, experiences of trafficking cannot be regarded as worse than experiences of domestic violence or vice versa; as all forms of violence have serious effects, meaning how women react, define and cope with them is different (Kelly 1987: 49).

**Chapter 2** is a review of the literature.

**Chapter 3** considers issues of recent immigrant spouses and experiences of violence.

**Chapter 4** highlights issues facing asylum-seeking women who have been subjected to violence.

**Chapter 5** discusses the position of women trafficked who have experienced abuse and exploitation.

**Chapter 6** provides an overall conclusion by considering similarities between the different immigrant groups studied.

## **Chapter 2**

### **Background Information and Previous Research:**

#### **A Literature Review**

##### **Introduction**

This chapter evaluates existing literature significant to the research objectives. It provides an outline to literature addressing violence against women in relation to immigration and human rights instruments. Basic themes across the selected literature can be summarized as follows:

- Due to gender, women are considered to experience greater suffering than men
- There is a lack of adequate support available for immigrant women wishing to escape violent situations
- Current UK Government responses to these women are considered severely limited by feminist writers and campaign groups
- The importance of prioritising women's protection from violence over prioritising protection of UK borders.

The chapter represents categories forming the subject of study. Violence against women is considered first, followed by issues of human rights and current approaches to immigration.

## **Violence Against Women**

There is agreement that historically men's violence against women has received little attention (Newburn 2007: 314). Current literature suggests this has been for two reasons. Firstly, violence against women largely occurs in the home and so has mostly been hidden (Walklate 2006 in Newburn 2007: 819). Secondly, literature reveals that women have been marginalized within criminology; often invisible until 1970's feminist campaigning argued violence against women was being overlooked<sup>7</sup> (Newburn 2007: 305, 314; Dustin & Phillips 2008: 408; Walklate 2008: 40). Despite much campaigning, statistics suggest women continue to experience high levels of violence (Lawson 2005 in Hainsworth 2005: 3; Women's Aid 2008). Campbell (1993) argued this is because male violence provides rewards such as social control, normative approval and masculine identity (Macey 1999: 52). Russell (1989) suggests that within society masculinity is 'fundamentally constituted through aggression and violence' (in Roseneil 1995: 7). For example, aggression is seen to be actively encouraged; often by parents terrified their sons will become 'wimps'. Feminists suggest this promotes the message violence is acceptable.

In 1993 the United Nations Conference on Human rights stated that:

'gender based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and

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<sup>7</sup> It was feminist research that began to make violence against women more visible

international trafficking are incompatible with the dignity and worth of the human person, and must be eliminated'

(World Conference on Human Rights Declaration,  
Vienna 1993 in Smith 2010: 664)

Skinner et al (2005: 2) suggest that this definition is useful as it links different forms of violence against women together, thus reflecting how gender inequality is maintained. This is questionable as it separates violence, sexual harassment and exploitation. It could apply to men and children as they too can be considered 'human persons'. It is not clear if 'gender' means women nor is it apparent what is meant by 'cultural prejudice', suggesting the definition could be considered unhelpful. Further, definitions of violence are related to specific times and locations (Hester 2004), meaning focus changes over time. For instance, in the UK domestic violence has always been a feature of women's lives and dominant within discussions and policy-making for over thirty years, yet it is only fairly recently that domestic violence has been increasingly recognised as a 'fundamental human rights abuse' (Skinner et al 2005: 2; Pickup et al 2001: xiii; Kelly 2008: 55; Terry 2007: 24).

At present, violence against women and girls (including domestic violence, sexual assault and stalking) is recognised as affecting approximately half of all women from all communities during their lifetime (HM Government 2009: 6; British Crime Survey 2004). This illustrates the need for a more effective definition of violence. It is widely recognised in all literature that high levels of violence against

women are under-reported, as women remain silent about their experiences<sup>8</sup> (HM Government 2009: 20; Stanko 1987: 122). It is commonly documented that ‘victims’ remain silent for a variety of reasons, including fear of the abuser, retaliation, lack of support, shame, cultural stigma, failure of protection from institutions, or the ‘victim’ may not define it as a crime because of their relationship with the abuser (Pickup et al 2001: 77-8). Studies often note women internalise shame and blame themselves (Kelly 2008: 54). Feminist explanation of this is the frequent legitimization of violence against women whereby women are so often perceived as ‘provoking their own demise’ that even women believe it is their own fault (Edwards 1987: 151-3). Up until recent changes in the law the provocation defence was seen as a sexed excuse for men who kill women as men could argue they were acting in self defence or out of sexual jealousy (Howe 1997: 337). The murderer could be portrayed as a ‘victim’, with the dead woman unable to defend herself as she ‘provoked her own demise’ (Howe 1997: 355, Edwards 1987: 152), allowing some men to literally get away with murder. It is such excuses that allow male violence against women to continue.

Although government strategies and action plans acknowledge women’s many experiences of violence, they fail to effectively prevent abuse continuing. Feminist research highlights instances of ‘victim-blaming’ whereby official, judicial and professional responses to violence actually ‘deny, excuse, or justify male violence and allocate blame instead to the female victims’ (Dobash & Dobash 1979; Edwards 1987; Radford 1987). For example, feminist examination notes ‘domestic violence’ has been portrayed as less serious because it occurs between two people who know each other (Radford 1987: 140). Such explanations are made to appear ‘natural’ or

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<sup>8</sup> This figure could be much higher if all women recognised and disclosed the acts of violence committed against them.



inevitable, serving to maintain male authority (Radford 1987: 140). As a consequence, feminist literature proposes that violence (rape, murder, domestic violence, sexual assault, stalking, 'honour' crimes, female genital mutilation, trafficking, forced marriage etc) and the fear of violence maintains patriarchy and existing gender inequalities. This prevents women participating as 'full and equal citizens' in British society as women's access to resources and independence are perceived as constrained by male-dominated institutions (Pickup et al 2001: xiii; Kelly 2008: 53). It is said this makes violence and subordination possible and acceptable.

Feminist literature agrees that there is a reluctance to interfere out of 'respect' for preserving 'private' life (Hooper 1996: 149). Feminist literature suggests this perpetuates constructions of male authority and female dependence within families, giving men power to treat women as their 'property' (Hooper 1996: 148; Bhabha & Shutter 1994: 259). This theory was first highlighted by feminists in the nineteenth century who saw violence as an extension of practices and laws which sanctioned men's right to keep women under control (Maynard 1990: 101, Weedon 1997: 110). It is worrying that such undertones are seen to be present in the twenty-first century to condone or excuse violence against women. Research into male violence against women has identified both feelings of shame and 'entitlement, justifications and the intention to establish control' (Jefferson in Connell 2002: 94). This suggests power and control can be gendered.

The Crown Prosecution Service (2008 2.3.3) claims to recognise that violence against women is rooted in inequality between men and women and yet it is observed

violence against women remains unpunished (Radford 1987: 135). An example of this is domestic violence, which is largely considered as male violence against women, widespread but leniently treated (Lees 1986: 165; Cameron & Frazer 1987: 14). A 'controlled use of force' has been widely accepted as part of men's 'right' when dealing with women, leading feminist literature to suggest that violence and aggression are legitimised in numerous ways because men have a commitment to inequality (Connell 2002: 94; Thornton 1989; Lees 1986: 165). There is a constant lack of sanctions against violent men, seen in low levels of prosecution and high attrition rates across offences such as rape, child abuse, sexual assault, domestic violence etc. There is agreement that the failure of state action gives abusers freedom. Peterson (1992) argues the state institutionalises and reproduces legitimatisation of the social hierarchy, meaning women continue to be objects of masculinist social control through direct and indirect violence (Crawley 2000: 92). Therefore the state has a critical role in instigating and perpetuating violence against women through acts of political repression, by condoning patriarchal oppression and failing to protect women from non-state actors (Crawley 2000: 92).

In order to address the denial of men's violence, some feminists have incorporated the work of Foucault. Foucault (1980) claimed 'knowledge and power are integrated' in that power creates knowledge and power cannot be exercised without knowledge. This stance has been termed 'Poststructuralism' and rejects the idea of absolute 'truth' and objectivity, arguing 'knowledge' is socially constructed by those with power (Gavey 1989: 462). In British society white middle-class men hold power and are therefore in a position to create and legitimise 'knowledge' surrounding violence, which is accepted as universal and regarded as 'truth' (Evans

1997: 1, 3; Gavey 1989: 463). For this reason there is consensus ‘knowledge’ is subjective and gendered as it reflects men’s views (Newburn 2007: 306; Evans 1997: 3; Gavey 1989: 463). According to post-structuralist feminists ‘all women are potentially vulnerable to a system of thought that is not always evident’ (Evans 1997: 17; Terry 2007: 14) as ‘knowledge’ denies, condones or excuses male violence. Foucault (1987) suggested that ideas about what is ‘normal’ or ‘real’ is constructed and should be questioned (in Evans 1997: 81). Therefore violence against women and ‘knowledge’ surrounding it needs to be questioned. Alternatively, Marxist feminism suggests part of the problem is the stratification of class lines, which exclude many women, (and men) from exercising effective power in British society. Class, and in particular poverty, has been fundamental when separating the ‘deserving’ from the ‘undeserving’, or in the case of immigrants, ‘welcome’ from ‘unwelcome’ (Weber & Bowling 2008: 363). Perhaps it is no coincidence that poverty is seen to disproportionately affect women in the UK and the rest of the world. Literature agrees women find it most difficult to seek safety and protection (Terry 2007: 1). Marxist feminism suggests this is because they are excluded from power, as demonstrated by UN statistics - more women are illiterate, have lower earnings, are affected by reproductive health issues and less likely to participate in political processes than men (Smith 2010: 664). Women’s exclusion from public positions of power prevents them being involved in the decision-making process shaping laws and institutions (Fenster 1998: 6). For example, the UK has only had one female Prime Minister and men hold majority of big political jobs – meaning the House of Commons remains overwhelmingly white, middle class and male (Lister 1998: 324).

Feminism also emphasizes male-dominance within the legal system (Evans 1997: 37). A profession dominated by men, it is suggested the patriarchal nature of law makes assumptions about women. For example, what was, possibly still is, assumed 'appropriate' behaviour (by men) could be used in rape cases to define 'good' and 'bad' women. There is agreement this disadvantages some women by defending male violence, for example, 'she was asking for it, she was dressed provocatively' (Evans 1997: 16-17). Feminism asserts that violence against women can be denied with little difficulty because women do not occupy many positions of social power (Evans 1997: 42). Although feminist writings established new recognition of women's experience, they argue that men still form the great majority of academics and ultimately have greater public power meaning knowledge remains gendered (Evans 1997: 46). This has led feminists such as Evans (1997) and Thornton (1989) to critique the academy, arguing under-representation of women academics results in limited access to institutional knowledge for women. This implies that male interests will continue to be prioritised at women's expense.

As early as 1869 John Stuart Mill<sup>9</sup> proposed it should be questioned whether women should follow their 'natural' vocation', i.e. their place in the home and family (Fraser 2001: 15). Following this there is little recognition of women's location in society. Feminists view earlier criminology as gendered and describe it as 'malestream' (Walklate 2004: 83, O'Brien 1981 in Thornton 1989: 118). It is agreed that it was not until feminism in the 1970's that criminology's failure to study female offending, ignorance of female victimization (including male violence against women), and over-emphasis of the criminal justice system's impact on male offenders

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<sup>9</sup> In his essay 'The subjection of Women'

was highlighted (Newburn 2007: 305). Radical feminists claim women's history has been intentionally ignored as a method of continuing subordination. They propose that women, by their very gender are considered inferior and so 'naturally' excluded from anything equivalent to social or political power (Fraser 2001: 16; Evans 1997: 59). This provides potential explanation as to how and why women have remained in the 'private' sphere. Even now there remains a great criminological focus on male activities. Scraton (1990) argues that there is still a 'pervasiveness of hegemonic masculinity' found in prevailing academic discourses (Scraton 1990 in Walklate 2004: 82). For example Connell (2002) criticises Hall (2002) for completely ignoring domestic violence and disregarding other forms of violence against women (Connell 2002: 93)<sup>10</sup>.

There is agreement of a historic and current failure of state agencies to respond appropriately, quickly or pre-emptively to violence against women (Kelly 2008: 53). Law and policy development in the UK is generally considered slow and violence against women is no exception. Literature illustrates that it has taken over thirty years for government and statutory agencies to play direct roles in combating domestic violence, e.g. 1996 Housing Act, 1997 Protection from Harassment Act. Even with such developments feminist literature asserts that violence against women is still an issue of considerable concern in the UK (Skinner et al 2005: 3; Sen & Kelly 2007: 2). There appears to be an agreed perception that recent immigrant women are denied access to such protection in the UK on the basis they are not British. The issue of sex trafficking has also been on the political agenda since the 1990's, resulting in a range of recommendations and guidelines (Goodey 2003: 157). It has been noted that,

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despite this, little progress has been made, or as Kelly and Regan (2000:12) note, 'much talk but limited action'. 'Victims' continue to be deported and prosecutions remain low. The Government associates human trafficking primarily with illegal immigration, preventing a 'victim'-centred approach. Research elsewhere highlights that adopting a victim-centred approach can achieve increases in successful prosecutions of traffickers, but there is a reluctance to undertake such actions. Radical feminists suggest that low conviction rates, for all violence against women, indicates the 'reluctance of a largely male magistracy and judiciary to protect women' (Edwards 1987: 152). For example the act of rape, which was first defined as a crime in 1861, only became illegal for a husband to rape his wife in 1991 (Stevenson et al 2004: 31-32; Kennedy 1992: 112, R v R 1AC 599 (199) 4II ER 481, HL). Even today the majority of women never see their attackers punished, instead 'victims' are blamed for their behaviour (McColgan 1996: 12).

Feminist literature highlights that when 'victims' cannot be blamed, the fault does not automatically transfer to men. In order to preserve hegemonic masculinity, discursive manoeuvres are used to deflect attention away from a certain problem. For instance, although men generally carry out murders and violence, with 'victims' being mostly female (Cameron & Frazer 1987: 30), language helps distract attention away from the reality violence is gendered (Lees 1986: 165). Feminist theory draws attention to the current term 'domestic violence'<sup>11</sup>. 'Domestic' conceals gender dimensions between 'victim' and perpetrator whilst emphasising the 'private' nature of the crime (Lees 1986: 165; Walklate 2004: 127-8). Kelly (1988) argued that definitions are socially constructed (by men) so it is in their interests as a group, and

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<sup>11</sup> Domestic abuse was termed 'wife battering' in the 1970's which does imply masculinity as it must be a husband who is harming his wife

as perpetrators of violence, for definitions to be as 'limited as possible' (Hooper 1996: 148). Keeping violence 'private' prevents men's behaviour being questioned whilst keeping women subordinate. This has led to the feminist argument that violence against women is not a set of 'randomly vindictive acts, but a social institution', essential to sustaining male power by keeping women in a state of fear and unfreedom (Cameron & Fraser 1987: 32; Kelly 1987: 49). For instance, marriage has been criticised by radical feminism as an institution where one person has power over another - men dominate women; this is hidden by claims that marriage allows 'equal, consensual sexual enjoyment' by both parties despite previously giving men rights to sexual intercourse (Pateman 1988: 154, 159; Abbott & Wallace 1997: 248). Consequently feminists suggest that even interpersonal relationships are marred by threats and certainty of abuse (Kelly 2008: 55; Pickup et al 2001: 2). There is agreement in academic and campaign literature that this is the case for recent immigrant women with limited leave to remain as a spouse.

Research surrounding violence against women agrees that 'fear of crime' excludes many women's experiences, focusing on 'outside' crime and fear of strangers (Hanmer & Maynard 1987: 6). This can be described as a discursive manoeuvre, as it is widely acknowledged that violence, such as sexual abuse, is under-reported and more likely to involve someone the 'victim' knows (Hanmer & Maynard 1987: 6). Feminist literature suggests perpetrators are portrayed as a minority of 'disordered individuals', which helps to prevent violence being recognised as a problem of society (Radford 1987: 136). Radical feminists suggest this produces a 'false consciousness'- an 'ideology imposed on women by men in order to dominate them' as it makes women believe they are safe within the home and

family (Roseneil 1995: 4). Feminist literature agrees it is here women are most at risk. There is further consensus that male violence against women, inside and outside the home, and the fear it creates, undermines women's 'position as citizens' by affecting their ability to participate in 'social, economic, and political life' (Lister 1997: 113; Pickup et al 2001: 5).

The constant fear of violence, as well as experiences of violence itself, is seen to limit women's choices, options and behaviour when considering personal safety. This impacts on all aspects of women's everyday lives, as they are forced to implement 'precautionary practices as a way of living in a male-dominated world' (Stanko 1987: 128, 133). Feminists suggest that fear of violence affects all women since gendered power relations limit freedom by influencing the way women behave; such as ways women dress, hours they keep, and routes they walk (Clarke & Lewis 1977 in Abbott & Wallace 1997: 248). It is widely acknowledged that violence against women is 'pervasive and widespread', affecting women regardless of class, age, ethnicity, religion or geography (Pickup et al 2001: 2). Feminism suggests that all men benefit from violence because it 'supports their power and control' over women (Hanmer & Maynard 1987: 10). This affects women's freedom, by preventing women gaining more experience and exchanging experiences with others, which may in turn increase knowledge and education and so lead to the questioning of patriarchal power (Fraser 2001: 18).

### **Violence Against Women & Human Rights**

It is only recently that literature has considered human rights when looking at violence against women. This means there is significantly less knowledge and



understanding available. However it is agreed that whilst men have human rights violated, women are more vulnerable as their dignity, freedom and equality is more easily harmed. The former UN Secretary General Kofi Annan (1999) stated that violence against women was perhaps the

‘most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace’

<http://womankind.org.uk/violece-against-women.html>

The UN addressed the urgency of tackling human rights violations and discrimination against women in 1968 (Betten & Grief 1998: 15), which raises the question as to why women’s rights have not progressed. Merry (2001: 86) suggests that although violence against women was a major issue from the 1970’s, it only emerged as a major focus in the 1990’s<sup>12</sup>. There is agreement human rights previously focused on torture, genocide and other ‘extreme’ forms of abuse (Kaplan 2001: 191).

Until recently very few criminologists, including feminist criminologists, have shown an interest in human rights and immigration. Literature agrees that previously

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<sup>12</sup> Increased awareness of violence against women was underpinned by a number of key changes including: The Prohibition of Female Circumcision Act 1985; rape within marriage became illegal (1991); The United Declaration Nations on the Elimination of all forms of discrimination against women (1992); The Home Affairs Select Committee Enquiry into domestic violence recommended that finding to ensure effective provision of refuge services was the single most important measure the government could take (1994); Amendments to the Family Law Act in 1996 gave more effective civil remedies for protection from violent partners with automatic powers of arrest where violence was used or threatened; The Protection from Harassment Act 1997 created a criminal offence of harassment; In 1998 the British Medical Association published guidance to raise awareness amongst health professionals titled ‘Domestic Violence: A Health Care Issue’; and Women ministers launched the national strategic approach to violence against women ‘Living Without Fear’.

the Home Office or researchers did not see human rights as relevant for academic examination (Murphy & Whitty 2007: 799- 800; Newburn 2007: 883; 890). Human rights are currently considered in two ways. On one hand they are seen as a ‘heartfelt, morally justified demand to rectify all sorts of injustice’, ensuring everyone is treated with respect (Clapham 2007 1-2). On the other human rights are regarded as ‘no more than a slogan to be treated with suspicion, or even hostility’; they are blamed for protecting the interests of terrorists, criminals and other undesirables at the expense of the security of the rest of the population (Clapham 2007: 1-2, 20). It is suggested that the media also helps to misrepresent the law in a way that criticises human rights instruments (Clayton 2008: 61). For example, in criminal cases such as the trial of Learco Chindamo<sup>13</sup>, who could not be deported, the Human Rights Act was blamed for being ‘profoundly stupid and amoral’ (Clayton 2008: 61). In reality it had no bearing on the case. Nevertheless the Shadow Home Secretary stated that the case was ‘a stark demonstration of the clumsy incompetence of this Government’s human rights legislation’ (in Clayton 2008: 61). Whilst this can be considered political point scoring, it demonstrates support for the perspective that human rights should be denied to certain people on the premise of ‘security’. It could be said that this helps to create racism of ‘dangerous’ and ‘immoral’ immigrants. Clapham (2007: 2) observes that hostile responses to human rights appear to be based on false information sensationalised by a populist press. Clapham (2007: 4) notes that such attitudes serve as a reminder that human rights are about securing rights for the marginalized and vulnerable.

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<sup>13</sup> Chindamo murdered Head Teacher Philip Lawrence in 2007

Human rights are supposed to be ‘indivisible, inalienable and universal’ (Smith 2010: 338). Literature by human rights groups suggests that human rights and refugee definitions fail to acknowledge the different situations women can find themselves in. The literature highlights assumptions women do not suffer human rights abuses or if they do their experience is the same as men’s. This has led to criticism that policies are ‘gender-blind’. Emerging literature notes women have gender specific problems and are treated differently to men. Unwanted male immigrants are frequently seen as the ‘enemy within’, whereas unwanted female immigrants are unhelpfully categorised according to their status as ‘deserving’ or ‘undeserving’ ‘victims’ (Aas 2007: 289). This is formulated by morally infused discourse, which establishes divisions between ‘innocent’ and ‘guilty’ migrants. This is seen to protect those considered ‘innocent’ but also justifies the harsh treatment of those deemed ‘guilty’ (Chapkis 2005 in Aas 2007: 289). This has led feminists to argue that human rights law fails to protect women in vulnerable situations because of the ‘patriarchal nature’ of immigration law (Bettinson 2008: 190; Hall 2002: 56). Feminist writings suggest that although the law claims to be neutral, objective and abstract, it actually serves to uphold male rights (MacKinnon 1983, Edwards 1987: 26).

Human rights law is considered to privilege male-dominated ‘public’ activities over women’s activities, which largely take place in ‘private’ (Crawley 1997: 6; Kofman & Sales 1998: 392; Phizacklea 1998: 30). Consequently abuses in ‘private’, such as domestic violence, rape, and female genital mutilation have been ‘overlooked’ or ignored (Terry 2007: 35-36; Gill & Sharma: 2007: 183). It is argued that some of the most extreme examples of human rights abuse are connected to a lack of freedom

and imprisonment in the home. This can be enforced physically, psychologically through fear or 'imposed by rules and the cultural meaning of spaces' (Fenster 1998: 3). Literature highlights assumptions that occurrences in 'private' are not state business. It is suggested this allows women's rights to suffer and male violence to remain unpunished (Ball & Gready 2007: 43). It could be suggested that the UK Government does appear to offer protection to some 'victims' of 'private' abuse, for example forced marriage and 'honour' crimes are 'hot topics' at present. This does not necessarily mean they are successful but using Cohen's (2001) theory of denial the Government appears to be selective, despite obligations to protect all 'victims' of violence.

Unlike human rights law, human rights groups, such as Anti-Slavery International, have addressed violence against women in the home as a form of torture. This is reflected by Article 1 of the UN Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, which states torture must be 'inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity' (Pickup et al 2001: 48). It is agreed that there is a preoccupation with political rights abuses perpetrated by governments against men (Terry 2007: 35; Pickup et al 2001: 74). As a result, human rights instruments are described as 'gender-blind'. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979 was the first international human rights treaty to define discrimination against women. This sought to 'advance women's human rights by applying a gender perspective to principles in the UDHR' (Dauer 2001: 63). The 1992 CEDAW defined violence against women as a form of discrimination (Merry 2001: 87). Following this, the UN Declaration (1994)

on violence against women made it state responsibility to protect human rights by making states accountable for abuse by non-state actors (Miller 2004: 24; Dauer 2001: 63). Feminists and campaign groups frequently note inaction to prevent human rights abuse by continuing ignorance of abuse committed by non-state actors (Dauer 2001: 62). Consequently it is suggested that violence against women is defended by its 'location in a legally and culturally constructed private sphere' (Report of Secretary General 1995 in Merry 2001: 87).

Feminist writings suggest this reflects attitudes women's victimisation is less serious than other crimes, and so public/private distinctions denying women's human rights are an excuse serving the interests of patriarchy. Early human rights law protected workers rights from abuse by non-state actors, suggesting anyone can violate human rights (Ball & Gready 2007: 45). The International Labour Organisation (1919) recognised that women needed protection and introduced conventions relating to maternity and night work (Smith 2010: 665). It could be proposed that arguments surrounding abuse by non-state actors not amounting to human rights violations are invalid. Feminist literature claims that a lack of political will, patriarchal institutions and a perception incidents are difficult to prove means women's rights are ignored. Consequently women are victimised by men's violence followed by a failure of state agencies protect them. Walklate (2004: 134) suggests this is integral to male domination within a patriarchal society. There is agreement that due to status and roles, women are exposed to human rights abuses different from men (Pickup et al 2001: 74; Gill & Sharma: 2007: 183). Feminists and campaign groups argue that the very nature of violence against women and its relation to subordination, stereotypical patterns of behaviour, and discrimination means violence

must be categorised as a human rights issue (Connors 2006: 28; Pickup et al 2001: 74). This was echoed by the Convention on the Elimination of Discrimination against Women (CEDAW 1992) which recognised violence against women damages rights including the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment; the right to equal protection in situations of armed conflict; the right to security and liberty of the person; the right to equality in the family; and the right to the highest attainable standard of physical and mental health (Pickup et al 2001: 51-2).

Academic and campaign literature agree that very few women are aware of their rights or how to claim them (Pickup et al 2001: 62). This means human rights are not a practical tool for women to combat violence. Current debate surrounds the applicability of human rights to women's experiences. Those writing from human rights perspectives argue the British Government has a duty to uphold human rights so they can be legitimately used as tools for improved social justice (Terry 2007: 17). However, Terry (2007: 25) states that women's human rights are 'abused and denied so commonly it is legitimate to wonder if rights have any real significance'. Research reveals this is partly because human rights instruments are based on a 'normative' male model, applied to women as an afterthought, if at all (Charlesworth 1995 in Fenster 1998: 5; Amnesty International 1995: 5; Perpignan 1996: 56).

Events of the Second World War led to efforts to adopt international standards of human rights (Betten & Grief 1998: 8; Clayton 2006: 59). Inspired by the UN Declaration of Human Rights (1948), the Council of Europe sought greater unity between members by maintaining and reaffirming human rights (Ovey & White 2006:

1-2). One development was the European Convention on Human Rights (1951). This includes:

**Article 1:** States shall secure everyone within their jurisdiction has the rights and freedoms defined in the convention

**Article 2:** Everyone's right to life shall be protected by law.

**Article 3:** No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

**Article 4:** No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour.

**Article 5:** Everyone has the right to liberty and security of the person

**Article 6:** Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

There is general agreement within socio-legal literature that whilst there is no hierarchy of rights, Articles 2, 3,4 and 6 constitute part of a number of 'unqualified' rights', meaning they should be absolute and cannot be violated to justify state interests (Ovey & White 2006: 7; Clayton 2006: 76; Clapham 2007: 96). However there have been problems in interpretation. For example, article 2, requires states to take positive steps to prevent life being taken (Clayton 2006: 81). It is suggested that this is generally interpreted as the 'state having a duty to establish and maintain an effective system of criminal law to deter, detect and punish offenders' (Clayton 2006: 81). This reflects an over-reliance on the criminal justice system as opposed to 'victim' protection. A further illustration is article 3 whereby problems surround definitions of 'torture' and 'degrading' treatment (Clayton 2006: 76).

Literature suggests that violence against women is still seen as a domestic criminal law issue in the UK, not a human rights concern. Although Miller (2004: 17) argues that violence against women is increasingly framed as a human rights issue, others suggest the weak commitment to human rights mean's not every woman in the UK has the right to be free from violence. It is argued that there is a reluctance to recognise human rights for vulnerable immigrant women. It is suggested this is due to existing tensions between the state's right to protect borders and individual human rights requirements (Hudson 2007: 215). Feminist and human rights literature highlights current preoccupation with protection of state interests results in marginalization, detention and deportation of vulnerable immigrant women.

In 1998 Kofman and Sales (1998: 391) stated that the new Labour Government alternated between a 'human rights agenda and the desire to limit the entry of women'. Literature suggests this is still the case over ten years later. For instance, whilst the National Domestic Violence Delivery Plan (2005) led to a range of initiatives, there are still concerns surrounding limited attention given to migrants and asylum seekers (Sen & Kelly 2008: 14). Upon reading campaign literature it appears immigration status shapes the level and nature of protection from violence. For example, currently there are only limited and discretionary allowances for women to remain in the UK in cases where strong evidence of domestic violence is provided (Sen & Kelly 2007: 5). Government literature claims to recognise that many 'victims' of violence with insecure immigration status do not report the abuse they are suffering due to fears of deportation or the belief they will not be helped (HM Government 2009: 48). Yet they are less forthcoming in acknowledging current immigration rules



mean that women are forced to choose between violence and deportation (Kofman 1998: 127; Kofman & Sales 1998: 390).

Government (2009: 48) and Crown Prosecution Service (2008 2.3.9) publications both note 'victims' of violence can be 'negatively affected' by the no recourse to public funds rule and may need 'extra support and guidance on the options available to them' (HM Government 2009: 48). It is also acknowledged 'victims' 'need to be provided with safety and protection' (HM Government 2009: 47) yet pleas from non-statutory agencies for funding to assist women are ignored. This has led to an agreement immigrant women are at least 'doubly victimised' - by their experience of violence and by lack of adequate support (Newsham Women's Project 2003; Mama 2000 in Parmar & Sampson 2007: 3). There is acknowledgment of the issues followed by a failure of practical initiatives. This lends support to Kelly & Reagan's (2000) suggestion of 'much talk but limited action' when considering protection of immigrant women in the UK. In order to understand challenges facing immigrant women seeking protection a number of researchers note the obsession with numbers of asylum applications (Crawley 2005: 14). There is agreement that despite anxieties surrounding numbers few immigrants and refugees enter the UK. According to the UN there are around 21 million refugees worldwide, with only a tenth in Western Europe, meaning less than one percent are in Britain (Hayter 2003: 8; Fekete 2005: 10). The main host countries for refugees are all in the third world (Bhabha & Shutter 1994: 231; Crawley 2005: 14).

## **Women, Violence and Immigration**

Although there is much literature available on the analysis of male migrants, there has only a small amount of previous academic work relating to female immigrants (Bosworth 2008: 266; Bowling & Phillips 2002: 208). Literature suggests that female immigration has been overlooked because there has been little interest in family-related migration, or mainstream migration literature assumes migrants are male (Kofman 1998: 127; Lister 1997: 44; Kofman & Sales 1998: 388). There is a consensus that 50 percent of migrants and at least 80 percent of refugees worldwide are women, raising the question as to why there has been such marginalization of female migration (SRC 2009: 1; Craig et al: 2007: 48). When women are mentioned they are coupled with children rather than researched in their own right. General migration theory has traditionally focused on labour migration. This too has been regarded as a male activity, with women viewed primarily as dependents (Morokvasic 1984 in Kofman & Sales 1998: 386). This has neglected other forms of labour migration, including human trafficking (Leidholt 1996 in Kofman & Sales 1998: 388). Since there has been little attention from researchers and policy makers there is also very limited literature surrounding experiences of violence in particular (Gill & Sharma 2007: 183; Menjivar & Salcio 2002: 898). Instead, specialist voluntary organisations highlight female immigrants' experiences and needs. Their publications seek to influence the government into taking responsibility for protecting women from violence. It has been suggested that abuses against immigrant women have been difficult to address without promoting stereotypes of culture (Dustin and Phillips 2008: 405). This does not excuse ignorance of women's suffering. Alternatively there is agreement that the abuse suffered by immigrant women is largely hidden due to a

number of factors; for example, language barriers, fear, distrust of authorities, issues of representation, and/or a lack of knowledge (Women's Aid 2008; Bettinson 2008: 191).

At different times literature has highlighted the idea that migration into Britain has been problematic (Weber & Bowling 2008: 355). For example, previous literature identifies problems surrounding Jews in the 1920's, or 'Black' people in the 1970's. There has been consensus between political parties that strict immigration controls are 'desirable and necessary' (McLaren & Johnson 2007: 711; Schuster & Solomos 1999: 57; Gordon 1991: 78; Kofman 1998: 126; Cohen 1985: 75). It is largely agreed that this has intensified with immigration becoming a key policy issue, which is always part of electoral campaigns with all political parties wanting to appear 'tough' on immigration' (Gill & Sharma 2007: 184; Crawley 2005a: 23; McLaren & Johnson 2007: 709; Schuster & Solomos 1999: 60; Fekete 2005: 5). In the 2010 election campaign the Conservative party pledged to limit the number of migrants from outside the EU, allowing only migrants who "bring the most value to the economy" to enter the UK. Immigration has been used by parties such as the British National Party to gain votes through scare mongering. Over twenty-five years ago Gordon (1984) suggested that immigration law defined the presence of immigrants as a problem, rather than racism. It is suggested that this is still the case today (Bowling & Phillips 2002: 65). Whereas immigration controls previously defined black people as a 'problem' (Bowling & Phillips 2002: 65), this dislike has shifted to those outside of the European Union, in particular those deemed as 'burdens'. This has led to many texts to refer to the emergence of a new racism - 'xenophobia'. It is suggested that particularly since the 1980s, successive UK governments have continued to tighten

immigration restrictions on those wanting to enter from outside the European Union, whilst granting greater freedom to those within it (Burgers & Engbersen 1996: 621). This is seen to have assisted the creation of distinctions of inclusion and exclusion between ‘desirables’ and ‘undesirables’ (Solomos 2000 in Gill & Sharma 2007: 184; Lewis 2004: 3; Morokvasic 1991: 71; Lutz 1997: 95). There is agreement that certain groups of people are seen in relation to immigration ‘problems’ rather than human rights concerns, leading to the conclusion that the needs of ‘victims’ are secondary to the perceived risks they pose (Bosworth et al 2008: 263).

Literature suggests that migration is becoming increasingly defined in terms of national security and protection from (foreign) risks (Aas 2007). This is seen to draw distinctions between ‘us’ and ‘them’ (Aas 2007: 78), thereby reinforcing anti-immigrant discourses (Hunt 1999: 412). There is agreement that concern has grown and so demands for tougher controls have resulted in increased refusals and deportations of immigrants (Kofman & Sales 1998: 383-4; Fekete 2005: 5). The literature raises awareness that states have begun to use strict immigration controls to safeguard borders with ‘increasing jealousy’ (Bhabha 1996: 6) to keep out certain groups on the basis of security. A common theme within the literature has been the recognition of increased scepticism about the legitimacy of many migrants. There appears to be a belief by both the public and politicians that the asylum system can be easily abused. Many asylum seekers are often viewed in political and media responses as economic migrants searching for a better life, or ‘bogus’ asylum seekers (Berkeley 2006: 1; Schuster & Solomos 1999: 52; Crawley 2005: 14). ‘Bogus’ constantly appears across various texts. The Government often cites that it does not have a problem with ‘genuine’ refugees, only ‘bogus asylum seekers’, or “‘illegal economic

migrants, who are using-or abusing the asylum process' (Sawyer 2005: 690; Hall 2005: 54). Literature argues that this presents a failure by the British Government to recognise that fleeing one's country is not a decision made lightly, particularly if they have little knowledge of life in the UK or language skills. Of course people migrate in search of better opportunities but there is a consistent failure by state institutions to understand the positions of vulnerable people. Surfacing literature encourages the view that political opinion can generate xenophobia towards certain groups.

Literature observes that this also occurs in the media. Within the media immigration is increasingly defined as a matter of justice and security, 'on the same level as terrorism and organized crime' (Wacquant 1999: 79). There is agreement the media reinforces populist opinion that immigrants are a source of crime, drugs, prostitution and violence (Young 2003: 455; Albrecht 2000: 131). This has led Cohen (2001: 114) to suggest the ignorance of human rights can be justified, even considered necessary. The lack of sympathy for immigrants can be seen in public attitudes. In 1995 a British Election study found that 65 percent of the population favoured a reduction in immigration, by 2003 this was almost 75 percent (McLaren & Johnson 2004: 172). The media can also influence views on immigration. In 2003 the British Social Attitudes Survey found 82 percent of tabloid readers wanted the number of immigrants reduced compared to 57 percent of broadsheet readers.

Literature proposes that it is useful to criminalize, stigmatise and publicly label 'victims' as liars, scroungers, or mere 'economic migrants' instead of people fleeing from torture, murder, war and devastation because the state has no use for some immigrants or asylum seekers (Bhabha & Shutter 1994: 9, 10; Hall 2005: 54;

Schuster & Solomos 1999: 52). Creating fear of immigrants' assists the tightening of restrictions and the increased exclusion of those believed to impose financial and political costs, whilst simultaneously attracting beneficial migrants (Crawley 2005: 14; Young 2003: 452). The UK has a list of 'desired' immigrants, including doctors, dentists, those with capital and other 'highly skilled individuals' who are useful and therefore welcomed (Hudson 2007: 212). Those most affected by divisions of 'desirable' and 'undesirable' are the most vulnerable and marginalized, who can do little to question this (Crawley 2005: 14; Hunt 1999: 426; Joshi 2003: 132). Findings indicate that this will be female 'victims' of violence.

Much can be found on the new topic of 'Fortress Europe', describing the impact of European Union migration policies on non-EU citizens. Writers are of the same opinion that as borders diminish between states in the EU there is a greater reliance on external border control and increased surveillance (Sales 1998: 381; Subhan 1995: 230). This 'European fortress' is said to echo previous elements of racial supremacy where 'Social Darwinism' encouraged the view that 'inferior' races would naturally disappear in favour of the 'stronger' European race (Solomos & Black 1996: 45 in Bowling & Phillips 2002: 4). Restricting certain groups from migrating echoes earlier attitudes of 1949 when the Royal Commission on Probation reported that immigrants would be welcomed if they were 'of good human stock' (Cited in Homes 198: 210 in Bowling & Phillips 2002: 5). Burgers & Engbersen (1996: 619) suggest that attempting to restrict migratory flows, creates a new category of 'illegal aliens'. This supports arguments which state migrants in Europe are 'more vulnerable than ever before' as they are considered to be exempt from human rights (Koser & Lutz 198: 14; Kofman 1998: 136). It is estimated that more people need

humanitarian protection but numbers granted refugee status are decreasing due to an increasing reluctance to grant refugee status (Demir 2003: 3; Kofman & Sales 1998: 391; Fekete 2005: 10).

Women form the majority of world's refugees, a minority of asylum seekers and an even smaller number of those granted refugee status (Kofman & Sales 1998: 391; Crawley 2005a: 23; Hall 2005: 54). Evidence suggests that policies attempting to prevent asylum effectively force women underground and increase vulnerability (Crawley 2005a: 25; Kofman & Sales 1998: 382). This has resulted in a consensus that European states prioritise combating 'illegal' immigration over addressing causes of refugee flight or improving refugee protection (Crawley 2005a: 26; Burgers & Engbersen 1996: 619). Literature asserts that in order to diminish responsibility a number of countries have signed international human rights declarations to be considered 'safe' under terms of the Geneva Convention. This is termed the 'White List' and includes countries such as Pakistan, Ghana and Romania (Kofman & Sales 1998: 383). Research notes that applications from these 'safe' countries can be labelled 'bogus' or 'unfounded' (Kofman & Sales 1998: 383; Sawyer 2005: 705). Consequently refusals, detentions and deportations have increased (Kofman & Sales 1998: 383), no doubt as intended. The literature suggests that it is becoming more politically acceptable for states to deny basic rights to undocumented migrants, those awaiting entry, asylum claims and those who contravene specific entry conditions (Kofman & Sales 1998: 386). The literature raises a number of concerns surrounding the definition of 'safe' as currently vulnerable people are returned to dangerous situations (Hunt 1999: 426).

There is a consistent argument that immigration legislation has led to a more 'restrictive and draconian system of immigrant control', which further undermines human rights (Lewis 2004: 3). There are concerns that measures have not been as effective as they could have been, partly because of a focus on legal remedies and punishment rather than 'victim' support and prevention (Dustin & Phillips 2008: 419). There is a shared view of an 'over-reliance on the criminal justice system to protect women' (Miller & Meloy's 2006: 108). Feminist publications suggest this approach fails because it sanctions a shift from a 'critique of underlying social, legal and political structures' supporting male violence toward a focus on offenders and 'victims' (Walklate 2008: 51). These findings indicate that power is exercised without responsibility for the welfare of women (Wilson & Weber 2008 in Weber & Bowling 2008: 362). Walklate (2008) notes that whilst there have been national and international agreements about the priority that should be given to violence against women, the United Nations International Research and Training Institute for the Advancement of Women (INSTRAW 2005: 4) reports that at least one in three women have been abused in their lifetime, usually by a family member or someone they know (Walklate 2008: 40). This has led INSTRAW to argue that changes establishing laws, conventions, and declarations on violence against women have not been converted into shifts of behaviour (2005: 4 in Walklate 2008: 40).

The literature notes at least two modes of exclusion within immigration law, which serve to violate human rights: gender and nationality (Walsum & Spijkerboer 2007: 2, 189; Clayton 2006: 58). Gender and nationality appear to adversely affect 'victims' of domestic violence, 'victims' of trafficking and 'victims' seeking asylum. Feminist literature stresses that current UK entry restrictions disadvantage women



disproportionately by reinforcing dependence on men, making it difficult to gain independent legal and social status (Kofman & Sales 1998: 382). There is a growing recognition that whilst 'traditional' family structures in the UK are increasingly breaking down (as more women become economically independent of men and more people live outside marriage relations) immigration rules enforce strict adherence to formal marriage (Kofman & Sales 1998: 394). This creates unequal power relationships characterized by economic dependency, lack of control over resources, lack of rights and sense of obligation (Lister 1997: 112). It is argued that the creation of more conservative immigration and asylum laws places vulnerable immigrant women at a severe disadvantage in contrast to 'citizens' (Gill and Sharma 2007: 196).

According to academic and campaign literature social support and criminal justice responses are major obstacles facing immigrant women suffering violence and exploitation. It is regularly emphasised that immigration law is primarily concerned with regulating numbers, origin and entry, not with protecting rights (Clayton 2006: 58). Feminist literature suggests that this exposes the patriarchal nature of immigration law (Walsum & Spijkerboer 2007: 3). There is broad agreement that the law, British and European, can be described as sexist and racist (Phizacklea 1998: 30; Bhabha & Shutter 1994: 11; Chigwada-Bailey 2008: 1). Campaign literature demands immigrant women be granted equal rights in order to challenge sexism and racism (Subhan 1995: 53). Feminist research appears to disagree. The introduction of several pieces of legislation promoting gender equality, such as the Human Rights Act 1998, the Equality Act 1996, the Gender Equality Duty 2007 are seen to fail to acknowledge the specific experiences of women. Equal rights would mean treating men and women

the same meaning legislation would again be considered 'gender-blind'. This suggests women require rights specific to their needs.

It can be said that literature surrounding migrant women has developed differently, reflecting the different priorities of authors. Whilst obviously a vast topic, no piece of literature gathers or compares different immigrant women's experiences. Further studies must be undertaken so that better measures can be developed in order to reduce the suffering of recently arrived immigrant women whilst improving political and public knowledge. However, difficulties in obtaining funding need to be recognised. It is unlikely the government will be forthcoming to provide such funding if the apparent priority to protect borders continues.

### **Summary**

- All women, immigrant women in particular, are seen to experience greater levels of violence than men, which directly impacts on their ability to participate in the public sphere. Existing inequalities between men and women have been highlighted by feminist research, which suggests women have little power, thereby maintaining subordination. The state overlooks and therefore legitimises this to preserve male interests. This can be seen in law, policy and state responses which are slow, meaning there is a lack of support available for women experiencing violence, leaving them in a state of fear and unfreedom. In accordance with the research objectives, issues facing the most vulnerable women immigrants are considered.

- Human rights are gaining more prominence, surrounded by debate and controversy. Feminist literature suggests that women's rights are overlooked as the male experience of abuse is privileged. Women's experience was not seen to merit human rights abuse and therefore little research is available. How women are denied their human rights is considered in order to meet the dissertation's objectives.
- Immigration literature also focuses on male experience. Migration is seen in general terms where protection of borders is more important than protecting those who are vulnerable due to fears of perceived risks from those outside the European Union. The tightening of entry restrictions has made accessing safety and protection more difficult. With the purpose of meeting the dissertations objectives policy is considered to see why women's experience is overlooked.

This chapter has reviewed available literature in order to develop greater understanding. The following chapter considers the position of spouses who have recently arrived in the UK, their experiences of violence and immigration policy.

## **Chapter 3**

### **Recently Arrived Immigrant Spouses, Domestic Violence**

### **& Immigration Policy**

#### **Introduction**

The previous chapter broadly reviewed available literature; this chapter specifically explores the position of recently arrived spouses by looking at academic literature, campaign literature and UK government policy. The subsequent chapter follows a similar framework by focusing on the position of asylum-seeking women. Focusing on specific circumstances per chapter enables the recognition of issues facing some vulnerable women and the effectiveness of current UK immigration legislation. Although domestic violence occurs between family members, those co-habiting, and other relationships, due to immigration rules and ease of presentation the dissertation refers to ‘victims’ married to their abuser.

#### **Definition**

Whilst there is no legal definition of domestic violence the British Government currently identifies domestic violence as:

“Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or who have been intimate partners or family members, regardless of gender or sexuality”. This includes issues of concern to

black and minority ethnic (BME) communities such as so called ‘honour based violence’, female genital mutilation (FGM) and forced marriage’

(Home Office 2009)

Although this appears useful, a feminist framework could argue the definition is gender-neutral, helping to deny women are the majority of ‘victims’ with men the majority of perpetrators. The definition states that domestic violence occurs ‘between adults’ which implies violence against children does not constitute domestic violence. Whilst physical and sexual forms of abuse seem more obvious, financial, emotional and psychological abuse could be considered unclear, inconsistent and more difficult to detect. Although the definition mentions issues facing BME communities, there is no acknowledgement of immigrant communities. The British Government claims to be ‘determined to prevent domestic violence happening or recurring, to protect and support its victims and to bring its offenders to justice’ (Home Office 2009), but current levels of domestic violence question if this is really the case. Domestic violence results in the death of at least two women every week (Women’s Aid 2007; Home Office 2009) and the police receive domestic violence related calls every minute (ESRC 2002 in Walklate 2004: 128). In recorded domestic incidents in 2008/2009 women were ‘victims’ in almost 80 percent of incidents (Home Office 2009) with violence against women being one of the biggest causes of deaths and disability amongst women aged 15-44 years (Terry 2007: 1). Although twenty percent of domestic violence is committed against men, which is significant, eighty percent is committed against women so addressing this must take priority.

## **Profile of the Issue**

The Home Office (2009) recognises domestic violence as a ‘pattern of abusive and controlling behaviour’ whereby the abuser ‘seeks power over the victim’. This contradicts the earlier definition where it was described as ‘any incident’. Is domestic violence a ‘pattern’ or does one episode constitute domestic violence? It is widely acknowledged that domestic violence has the highest rate of repeat victimisation amongst violent crimes and occurs regardless of race, ethnicity, religion, class, disability, sexuality or lifestyle (Women’s Aid 2007; Home Office 2009; Mirrlees-Black 1999 in Walklate 2004: 128; McColgan 2000: 8). The total cost of domestic violence to society<sup>14</sup> in monetary terms is an estimated £23 billion per annum. This is considered an underestimate, comprising of £3.1 billion as costs to the state, £1.3 billion as costs to employers and £17 billion<sup>15</sup> as the cost of human and emotional suffering (Walby 2004: 8; Women’s Aid 2007; Coy et al 2007: 5).

Although Frances Power Cobbe published ‘Wife Torture in England’ as early as 1878, violence against women is considered to have remained hidden until the 1970’s due to beliefs surrounding the sanctity of marriage and safety of the home (Walklate 2004: 129). Feminist research demonstrates that some men have used violence to:

...‘coerce their wives into behaviours they may have been unwilling  
or unable to undertake, to punish them for failing to live up to

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<sup>14</sup> England and Wales

<sup>15</sup> This is based on the ‘Willingness to Pay Method’ (O’Reilly & McMahon 1993) which places a value on the avoidance of fatalities and/or injuries by estimating the amount individuals would be willing to pay for a small decrease in the risk of such incidents (Walby 2004: 92-93).

marital demands and expectations, and simply as a prerogative of the husband's superior position'...

(Dobash & Dobash 1981: 565)

Violence is justified in order to maintain control over female behaviour. The notion that women are men's property still exists and men can be excused for murder, demonstrating a 'deep-rooted sexism' within the law (Siddiqui 2006: 265; Walklate 2008: 48). Currently this impacts on a woman's right to life, physical and mental health and the right to be free from torture, inhuman or degrading treatment (Amnesty International & Southall Black Sisters 2008: 6).

The feminist movement understands domestic violence from the view that patriarchy structures every day life. However various strands disagree as to the extent of violence and its cause (Walklate 2004: 131; 135). For example a socialist feminist situates domestic violence against women as a product of a patriarchal capitalist system where men are frustrated by lack of power, whereas radical feminism regards male violence as the foundation of men's control over women (Walklate 2004: 135). When considering criminal justice responses it would be reasonable to argue that domestic violence is denied, excused or condoned (McColgan 2000: 7-8). For instance, in 1983, Sir Kenneth Newman, then Commissioner of the Metropolitan Police, stated that domestic violence and stray dogs were 'rubbish work' for police officers as 'victims' were usually judged as blameworthy; or alternatively if the violence was so awful she would leave - the focus surrounds 'victims' rather than perpetrators (Radford & Stanko 1991 in Walklate 2004: 129, 130). Whilst there have been a number of policies surrounding domestic violence since, Walklate (2008: 46)

observes that changes in the law are not inevitably followed by changes in ‘knowledge’, as some women are still seen to ‘bring it on themselves’ or ‘ask for it’ by nagging for example, effectively normalising violence (Pickup et al 2001: 102). There are also widespread views that domestic violence is justifiable if the woman’s behaviour is ‘unacceptable’ (Johal 2003: 35). For example, half of all young men and one third of women aged 14-21 think it is acceptable in some circumstances to hit a woman or force her to have sex (ESRC 2002 in Walklate 2004: 128). It is never acceptable but for some reasons some young men *and* women believe it is acceptable under some circumstances. It can be argued this demonstrates the deep institutionalisation of male violence against women.

Whilst domestic violence is becoming more prevalent within government policy, there is little development relating to the specific concerns of immigrant women, indicating an ‘institutional neglect and marginalization of the most vulnerable’ (Burman & Chantler 2005: 63-4; Burman et al 2004: 336). This is reflected by a lack of available statistics, leading the NSPCC (2008) to suggest that a lack of official data means cultural issues are not taken into account when considering experiences of domestic violence (Southall Black Sisters 2004; Izzidien 2008:1). Whilst all ‘victims’ of domestic violence face common issues there are specific issues for new immigrant women, including ‘significant cultural and legal barriers to seeking safety’ which must be recognised (Gill & Sharma 2007: 183).



## **Examination of Policy and Legislation**

From 2002, UK Immigration rules (paragraph 289A) presented the requirements for settlement in the UK as a 'victim' of domestic violence (UKBA 2010). The rules state that those from Non-European Economic Areas (EEA), with limited leave to enter or remain in the UK as a spouse<sup>16</sup> of a British citizen or person present and settled in the UK, whose marriage (or relationship) has broken down during the probationary period due to domestic violence<sup>17</sup>, may apply to be granted settlement in the UK (UKBA 2010). When granted Indefinite Leave to Remain (ILR) all conditions are removed from a persons stay (Parmar et al 2005: 5).

Gill and Sharma (2007: 185) observe that problems facing these women began to emerge in the 1980's when many fiancées from the Asian sub-continent were subjected to 'virginity tests' as part of immigration control procedures (Hall 2002: 61). These involved internal gynaecological examinations based on assumptions that 'legitimate' fiancées would not have had sex before marriage - if the hymen was broken it was presumed a false application had been made and she would be sent back to her country of origin (Hall 2002: 61). Whilst these supposed 'virginity tests' are no longer carried out it is observed that, unless proven otherwise, all marriages of non-UK citizens with UK residents are considered 'sham', 'intended only as a means of securing residence' (Gill & Sharma 2007: 185; Hall 2002: 59). Fekete (2006: 7)

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<sup>16</sup> The rules apply to spouses, unmarried partners, registered civil partners or same sex partners but for the purpose of this dissertation I will follow the examples set out in the literature and use the term 'spouse'.

<sup>17</sup> An applicant can also submit evidence to show they suffered domestic violence at the hand of another family member. However the evidence must clearly show that this was the reason for the breakdown of the marriage, that is 'where the person's abusing the applicant are members of the sponsor's family and against who the sponsor offers no protection' (Immigration Directorate Instructions 2006).

argued that rather than offer greater protection to women, rights are denied due to stricter immigration rules. There is academic agreement that existing probationary periods for spouses undoubtedly demonstrates ‘the legal system assumes migrants are seeking illegitimate access to the UK’ (Gill & Sharma 2007: 186; Hall 2002: 60). This suggests that preventing ‘threats’ of potential illegal immigration is prioritised over protecting vulnerable women experiencing domestic violence (Gill & Sharma 2007: 199). It is evidenced that sponsors do not have to state intentions about the marriage, other than intentions to live with her. This means that vulnerable women can be brought to the UK by men with histories of domestic violence, sexual assault or other violent offences (Stepnitz 2009: 30). A black feminist approach would suggest previous and current immigration controls demonstrate sexist and racist stereotypes, as only certain groups of women (those outside the EU) are perceived as entering the UK with a dishonest agenda (Hall 2002: 61).

Current immigration rules give immense power to sponsors, as women are dependent on them to sign their application to remain in the UK indefinitely after two years. If the sponsor fails or refuses to sign the application (likely if a woman has left an abusive spouse or where it is used as a means of control), the UK Border Agency treats the woman as an ‘over-stayer’ who faces ‘automatic deportation’<sup>18</sup> (Gill & Sharma 2007: 187-8; Phizacklea 1998: 29). There is a consensus that current probationary requirements are ‘problematic and reinforces power imbalances within marriages’ because an abuser’s control over residence status and threats of deportation are powerful tools trapping women in abusive relationships, isolating

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<sup>18</sup> Deportation is the enforced departure from the UK

them from help, and exacerbating the violence they experience (Gill & Sharma 2007: 186, 193; Kennedy 2008; Phizacklea 1998: 29).

Burman and Chantler's (2005) study found that women often report that 'the law gives power to the man', as the abuse women suffered was made possible '*precisely because of their immigration status*' (Burman & Chantler 2005: 65 their emphasis). In a study of Cambodian women, 'victims' thought that if they knew and understood laws surrounding domestic violence, the abuse would end (Bhuyan et al 2005: 914). This supports Bettinson's (2008) view that immigration law is patriarchal, as despite the Domestic Violence Rule, insecure immigration status places women in situations of vulnerability and dependence, making them easy targets for male violence and exploitation. McColgan (2000: 216) suggests that human rights do not grant rights not to be abused by husbands nor to be protected by the state from such abuse. It could be suggested that human rights for these women are not a priority. The Domestic Violence rule does not uphold article 3, protection from torture, inhuman or degrading treatment. This could also be used to support the view that immigration policy is sexist and racist.

There is little evidence to suggest that immigration rules have benefited 'victims' of domestic violence (Siddiqui 2006: 273). Extending the probationary period from one to two years maintains abuse through 'racist state practices via current immigration legislation and patriarchal oppression', which consequently erodes women's rights even further, and traps them in abusive relationships even longer (Burman & Chantler 2005: 66; Jooshi 2003 in Siddiqui 2006: 273). Many 'victims' do not report domestic violence for many reasons; fear of not being

believed, fear children will be taken, the abuse will get worse, or she has nowhere to go (Walklate 2004: 131). The ‘victim’ may feel ashamed or guilty for not reporting it sooner. ‘Victims’ may come to accept domestic violence as ‘normal’ - this is more likely if reinforced by peer groups who may be aware and accepting of violence. On the other hand ‘victims’ may believe the abuser will change, the abuse is not that bad or she may believe what her partner says about her (Walklate 2001: 131). Cohen (2001) would argue that women use coping strategies in order to deny domestic violence. Whilst it is apparently recognised that it is rarely easy for women to speak about domestic violence, in order to be granted settlement ‘victims’ must provide evidence of domestic violence and prove this caused the relationship to permanently ‘breakdown’ before the end of the probationary period (Sen 1999: 180; UKBA 2010). Evidence includes: a letter from a Multi-Agency Risk Assessment Conference (MARAC), non-molestation order, police caution, medical report from a hospital doctor or General Practitioner (GP) confirming injuries consistent with domestic violence, an undertaking given to the court, police report confirming domestic violence, letter from Social Services, or a letter from a domestic violence organisation (UKBA 2010). Unsurprisingly, many ‘victims’ are unable to produce this level of evidence. The Home Office argue that it is easy for someone to allege they have been a ‘victim’ and dismiss those who cannot ‘prove’ domestic violence (ILPA 2007). Would proof need to be a ‘pattern of abuse’ or ‘any incident’<sup>19</sup>? In order to be given a police caution, the abuser must admit to being violent, which is unlikely (Joshi 2003: 145).

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<sup>19</sup> This relates back to contradictory definitions provided by the Home Office, as mentioned earlier

Southall Black Sisters cite instances of police inaction, or where women have not been believed (Johal 2003: 42). Southall Black Sisters suggest there are always issues of ‘cultural sensitivity ‘or a lack of political will from the police (Johal 2003: 43); due to a reluctance to intervene because assumptions maintain beliefs that violence is customary in immigrant communities (Kennedy 1992: 176). If the police arrive and the wife has poor English, other relatives can be relied on to translate with no guarantee they are translating correctly (Kennedy 1992: 176). Women have also been reluctant to approach their GP as breaches of confidentiality have been known when ‘victims’ are from the same community, or there have been instances where women have been accompanied and therefore unable to disclose abuse (Johal 2003: 48). In other cases doctors have refused to provide evidence claiming that women only got married to enter the UK (Johal 2003: 48). There may also be practical reasons, as it seems it would be easier to prove physical violence than psychological, sexual, financial or emotional abuse.

The Home Office reports an average of 1000 applications are made under the Domestic Violence Rule annually, of which approximately 35-50 percent are successful (in Fellas & Wilkins 2008: 4). It is suggested that the state fails to acknowledge pressures on women unable to leave violent situations; leading to the argument that the process actually encourages women to stay with their abuser (Siddiqui 2006: 267; Tiede 2001: 22). However, the state could claim that if up to 50 percent of cases are successful the current system works as those applications have acquired evidence needed. There is a need to examine successful applications to see if anything can be learned. Those questioning current immigration rules suggest that the standard of evidence required is considered to very high; many ‘victims’ are unable to

provide evidence domestic violence caused the marriage to breakdown and thus risk deportation (Burman & Chantler 2005: 72; ECPAT 2009: 23; Lewis 2004: 5). It could be suggested that this reflects old stereotypes ‘evil women’ accuse ‘innocent men’ for malicious reasons. However in the case of *Ishtiaq 2007 v Secretary of State*<sup>20</sup> the Court of Appeal ruled cases should not be dismissed if applicants could establish domestic violence had occurred by other means (ILPA 2007). It is not apparent how many cases are successful using other means to ascertain domestic violence has occurred.

### **Violence Against Recently Arrived Immigrant Women**

Izzidien (2008: 1-2) argues that issues such as culture, language, family structures, racism and insecure immigration status all impact on how ‘victims’ cope with abuse and the support available to them. For many ‘victims’ the Domestic Violence Rule is thought irrelevant, since they cannot approach police or other statutory agencies to report domestic violence (Gill & Sharma 2007: 187). This can be due to ‘strong cultural values on keeping ‘family problems’ private, preventing women from reporting abuse’ (Walchholz ad Miedema, 2000). In South Asian communities for example, this is linked to fear and lack of awareness as well as powerful patriarchal constructs of Izzat (honour) and Sharam (shame), which can fuel fears of further violence or loss of children (Izzidien 2008: 3). However, certain communities do not experience domestic abuse more but the way communities see and experience it is different (Izzidien 2008: 1). This could be challenged on the basis that this can never really be proved. Many immigrant women suffering domestic

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<sup>20</sup> The judgement can be found at <http://www.bailii.org/ew/cases/EWCA/Civ/2007/386.html>

violence are often 'unaware of their legal rights as individuals', and some women come from 'cultures where domestic abuse is tolerated or condoned'; meaning they are unaware their suffering is illegal (Gill & Sharma 2007: 189; Gill & Banga 2008: 1). This should not be seen as an excuse to deny protection or remain complacent. It is identified that many immigrant women have very little, or no access to appropriate information provided, rendering them 'completely oblivious to the options and services' that may be available, making producing evidence impossible; consequently they are unable to make a successful application to the UK Border Agency (Burman & Chantler 2005: 65; Gill & Sharma 2007: 196; Izzidien 2008: 3). This implies that applications could be much higher if 'victims' were aware of immigration rules and remedies available.

There is additional reluctance by 'victims' to approach support services because of language barriers, issues of confidentiality, fear of encountering disbelief or racism, and fear of fuelling racism through disclosing experiences (Izzidien 2008: 3; Burman & Chantler 2005: 63; Burman et al 2004: 351). It has been found that it takes an average of 10 years for women from BME communities to leave a violent relationship (Patel 2003 in Izzidien 2008: 3). According to Southall Black Sisters (2003) women endure between 3 and 40 years of violence before seeking help (Thiara 2005: 3). There is also an issue that many domestic violence agencies are unaware of the issues faced by women with insecure immigration status, meaning it is extremely difficult to access services offering assistance (Rai & Thiara 1997 in Thiara 2005: 6). Whilst there are no available estimates in the literature for women with secure immigration status, it could be suggested, that they too may experience many instances of abuse before seeking help.

‘Victims’ are also reluctant to seek support from their own communities (Patel 2000 in Burman & Chantler 2005: 63). A study demonstrates that Muslim women from Bombay (Mumbai) were reluctant to report experiences of domestic violence to police, fearing reprisals from their community (Gangoli 2000; 2006: 536). It has also been confirmed that many ‘victims’ do not want to return to their country of origin due to fears of persecution from their family and community (Gill & Sharma 2007: 192). For instance, in Latin America a woman returning to her village alone is ostracised (Tiede 2001: 21); or in some areas of Pakistan a woman deemed to have brought ‘shame’ on the family can face death (Amnesty International: 1999: 2)<sup>21</sup>. At present communities can be seen to perpetuate violence by condoning it or blaming women for bringing the community into ‘disrepute’, suggesting that women are still seen as male property and can be punished or controlled through the use of violence (Pickup et al 2001: 119; Burman et al 2004: 340; Amnesty International 1999: 4-5, 9). ‘Victims’ should not be condemned for bringing ‘shame’ and ‘dishonour’ by challenging male violence, instead perpetrators should be condemned for their actions (Siddiqui 2006: 266).

‘Victims’ may also be reluctant to protect themselves or be unwilling to seek help from police because of fear of disbelief or deportation and fears about racism and harassment (Gill & Sharma 2007: 186, Izzidien 2008: 3; Sen 1999: 180; Southall Black Sisters 2008; Burman et al 2004: 351). In the UK minority women have reported fears of the police due to perceptions and experiences of institutionalised

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<sup>21</sup> In some Asian communities a man’s ‘honour’ is damaged if his wife leaves him, and it has often been seen more ‘honourable’ to have the woman murdered so that his ‘honour’ can remain in tact (Kennedy 1992: 176).



racism (Gangoli et al 2005 in Gangoli 2006: 536). The Joint Council for the Welfare of Immigrants (1995) reported that the police increasingly asked for identification and evidence of immigration status from black and 'foreign-looking' people (Bowling & Phillips 2002: 131). Some women have not exposed domestic violence to prevent reinforcement of cultural or religious stereotypes (Sen 1999: 180). Burman and Chantler (2005: 61) suggest that fears of prejudice are well founded and have been exacerbated since 2001 with the 'war on terror' being linked to immigration and asylum issues (Burman et al 2004: 338). On the other hand, it has also been noted that the police have been reluctant to intervene out of respect for 'cultural privacy' or fears of being perceived as racist, implying that even if a 'victim' did contact the police she would still be unable to access the support needed (Burman et al 2004: 347). This reinforces and perpetuates the violence women suffer, meaning experiences and human rights remain invisible (Thiara 2005: 3; Burman et al 2004: 347).

There is also an added pressure that if a woman has come to the UK specifically for marriage, her family will want the marriage to be successful (Parma & Diamond 2005: 4). The abuser may threaten to deport the 'victim' if she complains about the abuse or she may believe that arresting the family wage earner could lead to deportation (Tiede 2001: 21; Snider 1998: 10). Many 'victims' have children who are British citizens and will have the additional concern that they may lose their children if they leave an abusive spouse (Women's Aid 2008). When 'victims' do decide to disclose abuse, reporting to police usually has short-term gains for 'victims' resulting in more severe violence (Shermen et al 1991 in Walklate 2008: 41). Lewis (2004) observes that the criminal justice system can provide some protection to 'victims' of violence, but only to the minority of cases reaching the courts (Walklate 2008: 43).

Less than 10 percent of all domestic violence cases handled by police go forward for prosecution (Sen & Kelly 2008: 14). Moreover, it is widely acknowledged that leaving violent relationships does not necessarily guarantee safety; instead leaving is often cited as the most dangerous time for women and their children (Burman & Chantler 2005: 59).

Since 1988 limited leave to remain in the UK has been granted on the basis that individuals can be supported and accommodated with ‘no recourse to public funds’ (Fellas & Wilkins 2008: 2; Lewis 2004: 4; Bhabha & Shutter 1994: 104). As a result women experiencing domestic violence with insecure immigration status are adversely affected by not being entitled to public funding e.g. child benefit, housing benefit, disability allowance, income support etc. (NRPF Network 2009: 1; Women’s Aid 2008; Phizacklea 1998: 29; Preston Women’s Refuge 2009). This presents a major obstacle for protection by preserving the ‘economic dependency of abused women on violent spouses’ and ‘preventing a significant number of women from escaping violence and death’ (Southall Black Sisters 2004; Bhabha & Shutter 1994: 14). Gill and Sharma (2007) argue that there is a ‘necessity for and (an) obligation of a welfare state to guarantee women and dependent children a basic human right: freedom from violence and a safe place of residence’ (Gill & Sharma 2007: 184). Currently, those with no recourse to public funds are forced into destitution, making it almost impossible for them to survive the long process of obtaining a decision from the Home Office (Gill & Sharma 2007: 190). Evidence collected by Fellas & Wilkins (2008: 4) shows that applications made under the Domestic Violence Rule take between 7 and 12 months to process. In contrast the Home Office claims that applications are processed within 28 days with suggestions this will be streamlined to

10 days (Fellas & Wilkins 2008: 4). However, Southall Black Sisters (2008) have found applications can take anywhere between six and twenty-four months on average. This is supported by Preston Women's Refuge (2009) who found cases can take between six and twelve months depending on the evidence submitted.

The Government claims that 'no recourse to public funds' acts as a deterrent to discourage those entering the UK who could 'pose a threat to public safety, national security, and economic well being', despite most 'victims' being in the UK legally (Amnesty International & Southall Black Sisters 2008: 19). The idea that women risk their lives, and those of their children, subject themselves to stigma and ostracism to access housing and benefits in the UK is considered unreasonable and unfounded (Amnesty International & Southall Black Sisters 2008: 19). It is argued that the government is failing its rights obligations to act to protect, respect and fulfil rights of these women (Amnesty International & Southall Black Sisters 2008: 19). It can be argued that articles 2, 3, 4, and 6 (those considered 'absolute and 'unqualified') are denied under the guise of security for British citizens. On this basis UK law can be considered sexist and racist.

Feminist researchers have often highlighted that state responses repeatedly fail to provide adequate support to women leaving violent men, especially in the area of housing provision (Bull 1991 in Hooper 1996: 147). Bhabha (2007: 15) considers adequate housing as a 'cardinal human right'. The Homelessness Act 2002 introduced key changes to the statutory scheme helping 'victims' made homeless by domestic violence and altered local authorities housing allocations (Gill 2009: 21). This does not apply to women with insecure immigration status and 'no recourse to public

funds'. In addition, 'victims' are unable to access refuge spaces. Refuges are maintained through rental income, funded by housing benefit. This means that refuges cannot afford the costs of supporting women with no recourse to public funds (Izzidien 2008: 5; Women's Aid 2008; NRPF Network 2009: 3; Fellas & Wilkins 2008: 4; Preston Women's Refuge 2009). Southall Black Sisters (2004) found severe shortages in the availability and accessibility to emergency and specialist refuge accommodation for women with no recourse to public funds (Southall Black Sisters 2004; Gill & Banga 2008: 1).

It has been found that many women who leave their husbands are forced into poverty. Whilst they are entitled to work, many are unable to gain employment due to language barriers, lack of skills or childcare constraints (Sen 1999: 179; Gill & Sharma 2007: 190; Fellas & Wilkins 2008: 3). There is little acknowledgement that many 'victims' may, as a result of violence, be 'ill equipped emotionally or physically to maintain steady employment' (Gill & Sharma 2007: 190). Consequently women may be forced to 'remain in or return to threatening situations because they simply cannot afford alternatives' (Erez 2000 in Gill & Sharma 2007: 190; NRPF Network 2009: 3; Sen & Kelly 2007: 5). They have a 'stark choice: either stay in the relationship and risk their lives, and those of their children, or leave and face destitution' and deportation (Women's Aid 2008; Rights of Women 2008; Bhabha & Shutter 1994: 122; Preston Women's Refuge 2009). It is unsurprising that 'victims' of domestic violence with insecure immigration status have little confidence in the state and therefore fail to disclose the abuse (Hooper 1996: 147). Subsequently Gill (2009: 21) argues that women in this situation are 'officially ignored'.

In 2008 the No Recourse to Public Funds (NRPF) Network (2009: 3-4) found that 48 local authorities were supporting almost 4,000 people with no recourse to public funds with accommodation and subsistence costs, costing £33.4million per year. 'Victims' of domestic violence were a main category of those supported. In 2004 the Government provided Women's Aid with £40,000 for a 'Last Resort Fund' to fund safe refuge spaces for 'victims' of domestic violence with no recourse to public funds for a maximum of two months each (Gill & Sharma 2007: 198). The restriction of two months was unlikely to cover the time period a woman with appropriate evidence waited to be granted indefinite leave to remain (Gill & Sharma 2007: 198). Women's Aid raised £40,000 matching the Government, making a total of £80,000. Southall Black Sisters (2004) determined that £80,000 would only provide support for 46 women for two months - a massive shortfall of the estimated 1000 women suffering domestic violence with no recourse to public funds annually (Southall Black Sisters 2004; Gill & Sharma 2007: 198). Women's Aid then secured a further £120,000 enabling 124 women to access places of safety, but as early as May 2005 the Government announced it would not provide further money to the fund, which has been suspended since (Gill & Sharma 2007: 198). To borrow from Kelly and Regan (2000: 12) it can be suggested that this is an example of 'much talk but limited action'. Worryingly many local authorities are reporting increased requests to support women fleeing domestic violence with no recourse to public funds (Fellas & Wilkins 2008: 3), demonstrating a 'massive shortfall of resources relative to potential need'; and indicating gaps in service provision act as further barriers preventing 'victims' seeking help (Gill & Sharma 2007: 198; Izzidien 2008: 4). It can be argued that the Government condones domestic violence, as vulnerability is caused by dependency on abusers (Skrivankova 2006: 9).

Local Authorities have statutory power under the Children's Act 1989, section 17, to ensure that children 'at risk of significant harm' are adequately fed, housed and cared for. Some local authorities use this provision to pay for women to stay in refuge accommodation with their children; others take children into care despite this not being in their best interests (Women's Aid; Amnesty International & Southall Black Sisters 2008: 12). Local Authorities also have power under the National Assistance Act 1948, section 21 to assist those particularly vulnerable, but this is subject to discretion leading to inconsistent support (NRPF Network 2009: 3). In February 2006, the Government issued a letter recognising that:

'without a place of safety or any means of support, these women are often forced to return home to face further abuse and in some extreme cases, homicide...To reduce the chances of this happening, we are asking local authorities to be mindful that some victims of domestic violence could have specific needs for care and attention and/or have dependent children, which may make them eligible for assistance'

(in Amnesty International & Southall Black Sisters 2008: 11-12)

However, no funding was made available for 'victims' of domestic violence with secure immigration status and no changes were made to immigration rules; consequently local authorities have no obligation to provide support for 'victims' so the letter has had little effect (Amnesty International & Southall Black Sisters 2008: 12). It has been noted that many local authorities 'refuse to provide support to single women without dependants, whilst some attempt to avoid providing support to

women with children (Amnesty International & Southall Black Sisters 2008: 12). This has led Amnesty International and Southall Black Sisters (2008: 16) to argue that the Government is shifting responsibility onto the already over-stretched and under-funded voluntary sector. This too is an example of ‘much talk but limited action’ (Kelly & Regan 2000: 12).

At the time of writing Women’s Aid and the Home Office have extended a 12-week pilot scheme, the ‘Sojourner Project’. The purpose of this is to support ‘victims’ of domestic violence with no recourse to public funds and make fast-track claims for indefinite leave to remain under immigration rules (Women’s Aid 2009; Home Office 2009a). Refuges supporting ‘victims’ will be provided with 20 working days of funding whilst they complete an application; once completed it will take a maximum of four weeks for a decision to be made (Home Office 2009a). Whilst the new pilot is a step in the right direction, funding is still severely limited making it ‘difficult to develop an appropriate long-term solution for these victims of domestic violence’ (Preston Women’s Refuge 2009: Appendix 1). Preston Women’s Refuge, who have a specialist Immigration Advisory Service, state that current proposals ‘suggest victims of domestic violence with no recourse to public funds are not high on the Government’s agenda’ (Preston Women’s Refuge 2009: Appendix 1).

*The Independent* reported that rates of self harm and suicide among British Asian women who suffer domestic violence is two to three times greater than for non-Asian ‘victims’ (Akbar 2002: 8; Sen & Kelly 2008: 16). This is supported by Thiara (2005: 5, 135) who found ‘elevated rates’ of self harm and one in four suicide attempts amongst Black Minority Ethnic Women (BME) because of domestic

violence. Whilst there are no accurate statistics on immigrant women who commit suicide as a result of domestic violence, it could be suggested rates will be higher than the national average. In 2002, an inquest into the death of a Sikh woman, Harijinder Malri, found she came to the UK from India for an arranged marriage (Akbar 2002: 8). After suffering much abuse from her husband she stepped into the path of an oncoming train. It was revealed she had already tried to take an overdose as she thought she had no alternative to escape her husband's violence (Akbar 2002: 8). This woman, like many others, had her rights denied and ultimately took her own life to end her suffering, representing a significant failure by UK authorities and agencies to offer protection and support. In this way the law can be considered sexist and racist<sup>22</sup>.

It has been suggested that UK immigration law is beginning to express some awareness of immigrant wives' vulnerability to domestic violence (Walsum & Spijkerboer 2007: 9). However, the underlying cause of this vulnerability-dependency on their sponsor - appears to remain unacknowledged (Walsum & Spijkerboer 2007: 9). Southall Black Sisters (2004) argue that ignoring the plight of immigrant women makes the law discriminatory, as it provides protection for some 'victims' but not others (Southall Black Sisters 2004; Gill & Sharma 2007: 190; Lewis 2004). This could be identified as 'official denial' whereby there is a selective concern about 'suitable victims' (Cohen 2001: 10). Hooper (1996) argues that this has resulted in a 'tokenistic response' whereby the state appears to offer protection from men's violence whilst allowing conditions which cultivate such violence to continue

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<sup>22</sup> UK law is considered to disadvantage women compared to men meaning the law may be considered sexist. The same is said when comparing ethnicities. Fekete's (2006: 1) work highlights that even some feminists are engaging in anti-immigrant policies because of stereotypes of other cultures, mainly the Islamic culture at present. Fekete (2006: 19) suggests that unless campaigns are racialised they receive little attention from policy-makers. Instead state racism is manifested through discriminatory immigration controls, which are justified by xenophobic arguments.



or get worse (Hooper 1996: 47). Gill and Sharma (2007: 190) argue that any ‘benevolence of government legislation’ is undermined by the main aim of controlling potential illegal migration. Changes in legislation appear to have been well meaning, yet there remain problems in implementation, as well as ‘serious unintended consequences of legislation that limit its effectiveness’ (Gill & Sharma 2007: 196). It can be suggested that this is because existing tensions and conflict between the ‘humanitarian aim of the state to protect those suffering from domestic violence, and the political need to be seen to be tough on illegal immigration’ (Gill & Sharma 2007: 193, 196). It appears that the Governments primary concern is controlling immigration.

The Home Office consultation paper *Safety and Justice* (2003) acknowledged that immigrant women experiencing domestic violence face ‘many problems—especially those resulting from lack of access to public funds rendering them trapped in abusive relationships’ however ‘the paper did not then suggest any measures to redress the situation’ (Gill & Sharma 2007: 188). It went on to say that ‘in order to protect the integrity of the immigration and benefit rules, the Government is not persuaded victims making applications under the Domestic Violence Rule should have access to social security benefits’ (Amnesty International & Southall Black Sisters 2008: 10). This was echoed by Des Browne (2004), the then Home Secretary, who stated this could lead to ‘people making fraudulent applications, which would not benefit *real* victims of domestic violence’ (Amnesty International & Southall Black Sisters 2008: 11; my emphasis). This reflects patriarchal assumptions women lie. As a result rights groups such as Amnesty International and Southall Black Sisters (2008: 11) have argued that ‘potential fraudulent claims are not proportionate considering the

severity of the circumstances of these women and the continued abuse of their human rights'. Currently this benefits men as the failure to believe, and act on behalf of 'victims' reinforces isolation by maintaining control over 'victims' and keeping women subordinate (Hallsworth & Young 2008: 140).

It is acknowledged that welfare benefits and access to housing are essential for all 'victims' of violence. Southall Black Sisters (2004) argue that by denying this to women subject to immigration rules is a complete contradiction as they are condemning women to stay in violent relationships (Southall Black Sisters 2004). This is supported by the observation the Domestic Violence, Crime and Victims Bill (2004), does not contain *any* provisions for the specific problems faced by immigrant women despite acknowledging it is a serious problem, suggesting the UK Government is unwilling to offer safety and protection to certain women, making it racist in its outcome (Gill & Sharma 2007: 189). As a consequence, current UK immigration law provides perpetrators with the means to oppress women further whilst demonstrating how state structures can impact directly on women (Chantler 2001 in Burman & Chantler 2005: 59). Southall Black Sisters (2004) suggest that if the Domestic Violence, Crime and Victims Bill (2004) is to have any significant meaning, protection must be granted to women 'irrespective of race, ethnicity and immigration status' and a failure to do so breaches fundamental human rights of women with insecure immigration status (Southall Black Sisters 2004). A supporting argument would be that social context makes the use of violence in a relationship both possible and acceptable, leading to suggestions that the denial of public funds implies the state actively colludes with perpetrators of domestic violence by facilitating and

sustaining violence against women (Hooper 1996: 147; Burman & Chantler 2005: 66-7; Sen 1999: 179).

The British Government should be held accountable for such inaction as it has a responsibility to maintain human rights and ensure 'dignified living conditions for all their citizens, especially those who are most vulnerable...the protection of vulnerable immigrant women experiencing domestic violence is a prime social duty of the legal system' (Gill & Sharma 2007: 197, 199). Southall Black Sisters (2004) argue that the failure to protect 'victims' with insecure immigration status is 'disproportionate, discriminatory and a violation of human rights' and contradicts the Government's commitment to protect *all* 'victims' of domestic violence (Southall Black Sisters 2004, my emphasis). Following this it could be implied that these women do not fit the stereotypes of 'deserving' 'victims', possibly because they are not citizens. If this is the case it can be suggested that the law is sexist and racist. It can be suggested that domestic violence is still considered 'natural' or a 'personal' matter, meaning the state is not responsible for violations, and thus representing a failure to enforce political and legal protection to ensure rights for women (Pickup et al 2001: 48; Crawley 2000: 96). Feminists suggest that violence against women and public/private distinctions are not natural, they are constructed to conceal men's violence against women (Peterson 1992 in Crawley 2000: 100). Crawley (2000: 97) points out that the state, can and does, interfere in the 'private' realm to serve political, social or economic objectives. Even Section 6 of the 1998 Human Rights Act does not make acts by individuals unlawful (McColgan 2000: 267) suggesting that women's human rights are not a priority.

Amnesty International argues that when a government knowingly tolerates abuse, the gap between 'private' and 'public' is narrowed (Amnesty International 1995: 13). For instance, several writers argue that there is no difference between a man locked in a torture cell and women repeatedly abused in the home (Kelly 1993; Romany 1994; Copelan 1995 in Crawley 2000: 96). It could be argued that torture is deliberately state sanctioned. It is suggested experiences are similar in that women are subjected to 'unpredictable violence, including constant scrutiny, enforced isolation and physical suffering mixed with intermittent kindness' (Crawley 2000: 96). In order to be a 'good woman' discourses surrounding femininity expect women to be vulnerable and defenceless as men are supposed to take care of and protect women (Roberts 1989: 6, 14). This exposes women to violence from men they rely on to 'protect' them. For example, the British Crime Survey (2001) found that 'women are most commonly assaulted by men they know', yet media discourse promotes patriarchal values and diverts blame by emphasising 'stranger danger' when in reality women are more likely to be abused by men they know (Kelly & DeKeseredy 1994: 19; Pickup et al 2001: 48; Radford & Tsutsumi 2004: 6; Walby & Allen 2004 in Women's Aid 2006). Whilst this is part of the same media provoking anti-immigration views and xenophobia, it has a different agenda. The media is seen to be generally more interested in how immigrants can be portrayed as 'scroungers' or 'terrorists', not how 'immigration rules trap women in violent marriages' (Joshi 2003: 135). This means that there is a lack of public awareness surrounding the suffering of these 'victims'. This leads the public to underplay the risks faced by women in 'private', possibly because the home is a dangerous place for women and it is here that women are exposed to much greater levels of violence than men (Walklate 2004: 100, 131). Such processes of fear result in precautionary strategies such as not going

out alone, staying in after dark etc, which serve as mechanisms for controlling female behaviour (Kelly & DeKeseredy 1994: 19). Consequently focus moves to the risk of dangers posed outside the safety of the home (Stanko 1988 in Walklate 2004: 130). This could also apply to other groups such as the elderly or disabled. Using Cohen's (2001: 52) theory of denial, it can be argued that keeping family matters 'private' is a way of ignoring and therefore condoning abuse.

This ignores legal obligations set out by the CEDAW to eliminate discrimination against women, ensuring they enjoy no discrimination of political, economic, social, cultural and civil rights in public and private spheres (Connors 2006: 23). The CEDAW advised that states were responsible for 'private' acts if they failed to 'act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and providing compensation (Paragraph 9, CEDAW, Connors 2006: 25). It can be argued that the Home Office is still unwilling to protect women; in 2000 a report said the law should not 'intrude unnecessarily into the private life of adults' (Thomas 2005: 246). Generally one would agree with this but if it is not regarded as *necessary* for the law to 'intrude' when a woman has been subjected to violence when exactly is it necessary? This basically gives men entitlement to commit acts of violence whilst allowing denial of state responsibility to uphold women's rights (Cohen 2001: 102).

All services to reduce violence against women are considered 'chronically under-funded' (Kelly 2008: 57). Snider (1998: 2) points out that whilst less money is given to the voluntary sector to support women more money is averted to criminal justice agencies to manage increasing criminalisation. This is supported by the

Domestic Violence Bill (2003), which is said to be established on a narrow 'punishment' agenda, assuming women's safety will follow (Skinner et al 2005: 5). It could be argued that this reflects an emphasis on criminal justice rather than support and advocacy (Skinner et al 2005: 5). Media and public discourse reinforce ideas that reducing domestic violence requires punishing 'better, deeper and more' despite no evidence suggesting a reliance on the criminal justice system has made female 'victims' safer or male perpetrators less violent (Sherman 1992; Dobash & Dobash 1992; in Snider 1998:3, 5).

Historically there was a tendency to view domestic violence as occurring in poor/deviant families (Walklate 2004: 130). Even now the Home Office (2008) argues that some people are 'particularly vulnerable' to being violent because of their 'demographic group' (Home Office 2008: 38). This scapegoats less powerful classes whilst denying middle class male violence against women, especially since research shows domestic violence affects women of any class. It can also be argued that it actually legitimates violence as it makes violence attributable to class rather than a problem of society. Violence against women is a central obstacle to the elimination of discrimination against women and the achievement of equality with men (Connors 2006: 24). Currently it is argued that cultural relativism is evoked to excuse discriminatory practices and therefore violate women's human rights (Coomaraswamy 2006: xii). This can be considered to be a discursive manoeuvre used by the state to diminish responsibility and male violence, as statistics demonstrate that domestic violence occurs in all cultures and classes within the UK (and elsewhere), which could go as far as to suggest that perhaps it is 'typical' of

British society and an international problem (Terry 2007: 122; Amnesty International 1995: 9). In no culture are women assured freedom from violence (Sen 2006: 62).

Instead, violence these immigrant women are subjected to is portrayed as typical of ‘non-western culture’ whereby minority cultures are criticised for violence and discrimination of women, alongside a failure to acknowledge violence against women occurs in ‘British’ culture (Walsum & Spijkerboer 2007: 9; Sen 2006: 60). For example, in 2001 the then Home Secretary, David Blunkett, argued that young male South Asian immigrants held ‘backward’ attitudes and perpetuated oppressive practices against women (Fekete 2006: 7; Siddiqui 2006: 272). It is recognised that domestic violence is highly likely to be intra-ethnic because of family relationships and ethnic groups differences (Bowling & Phillips 2002: 92). Feminist thought argues that the British government sanctions Western political hegemony and marginalization of other cultures (Evans 1997: 43). This allows the government to respond by ‘turning the immigration screw’ (Gupta 2008). For example, the Government’s response to tackling forced marriage is to increase immigration controls, which actually makes the issue more prevalent (Gupta 2008). Siddiqui (2006: 223) argues that it appears as though the state uses the demand for women’s rights in minority communities to ‘impose immigration controls and justify a racist agenda’. However this ignores the CEDAW committee which rejected the ‘justification of violence against women on the basis of custom or tradition (Coomaraswamy 2006: xii). The CEDAW Committee has reflected a ‘fundamental shift in categorising violence in the family as a violation of women’s human rights’ (Coomaraswamy 2006: xii). Terry (2007) argues that the Government has a duty to ‘prevent others from committing violence against women, by legislating against it,

enforcing this legislation, by prosecuting husbands who attack their wives, (and) running campaigns to raise awareness about domestic violence' (Terry 2007: 25). Burman and Chantler (2005: 66) argue that the state is more concerned with regulating citizenship than protecting women from domestic violence. This is partly because minority ethnic groups and women are excluded from participating in decision-making processes (Vijapur 2006: 368).

### **Summary**

The current situation is seen to leave 'victims' of domestic violence with insecure immigration status unprotected (Thiara 2004: 135). It is argued that there is a 'quadruple whammy' of marginalization resulting from 'immigration status, gender, ethnicity and abuse' (Gill & Sharma 2007: 189). Academics and campaign groups have proposed a number of solutions to address both causes and symptoms of 'victims' suffering. Currently spouses can only use the Domestic Violence Rule; Southall Black Sisters (2004) propose that the rule should be extended to all women subject to immigration control to provide 'uniform and accessible protection to victims' (Gill & Sharma 2007: 197; Southall Black Sisters 2004; Women's Aid 2008). Women's Aid (2008) calls for an exemption for 'victims' of domestic violence, which would allow financial resources, and subsequently access to safety, support and advice before making an application to the Home Office (Women's Aid 2008). Izzidien (2008: 7) calls for the 'no recourse to public funds' rule to be abolished, as protection should not be given on the foundation of immigration status (Amnesty International & Southall Black Sisters 2008: 17). Nevertheless, this is



unlikely as the Government appears more concerned with preventing a minority of fraudulent claims than protecting the majority of ‘victims’.

The lack of awareness about services and a reluctance to seek help outside the immediate family needs to be addressed (Izzidien 2008: 7). Women’s Aid (2008) suggest this could be accomplished by providing accessible information about domestic violence and immigration rules before entry to the UK. It is suggested that if current rules are to be maintained the types of evidence required should be extended so that ‘victims’ are much more likely to be able to submit successful applications for indefinite leave to remain in the UK (Gill & Sharma 2007: 197). Gill and Sharma (2007) suggest that ‘bolstering funding for emergency shelters and providing women access to public support systems would go a long way to supporting the needs of immigrant women’ (Gill & Sharma 2007: 196). All ‘victims’ of domestic violence subject to immigration control, regardless of status, should receive benefits and safe accommodation (Southall Black Sisters 2004); the Government should retrieve these funds from spouses if there is no further risk of harm (Gill & Sharma 2007: 197; Southall Black Sisters 2004; Women’s Aid 2008; Preston Women’s Refuge 2009).

Izzidien (2008) suggests that health professionals should have more training so they can deal with issues of domestic abuse and diversity. Such training should include the importance of translators and being alone with victims rather than relying on family members, who may be perpetrators of the abuse (Izzidien 2008: 14). This proposal could apply to all statutory and voluntary agencies who may come into contact with ‘victims’, supporting the view that the state should ‘accept more responsibility by providing more resources and ensuring better responses from service

agencies to tackle the problem of domestic violence...regardless of their cultural or racial background' (Siddiqui 2006: 273). Izzidien (2008) goes further to suggest religious settings can also play a role in educating communities that violence is unacceptable (Izzidien 2008: 15). However, Binion (1995) suggests this is unlikely as 'private' institutions and corporations also want to limit human rights to the 'public' realm, serving to confine women and excuse human rights violations in the 'private' sphere (in Fenster 1998: 13).

A brief interview with Preston Women's Refuge (2009)<sup>23</sup> suggested a need for a more in-depth pilot to be carried out to examine the full scale of 'victims' experiences rather than a short pilot study whereby 'victims' suffering may not be fully recognised. Preston Women's Refuge (2009) suggested that perpetrators should be held accountable for abuse inflicted on 'victims'. They propose that sponsors should sign an undertaking upon initial applications stating that they will support 'victims' financially in the event they are forced to seek refuge (Preston Women's Refuge 2009). Subsequently it is hoped this will remove the burden from the state meaning they have no excuse to deny women's basic human rights whilst also removing a significant amount of control they have previously provided (Preston Women's Refuge 2009). However, this could have unintended effects of increasing victimisation and abuse in order to further prevent 'victims' seeking help.

Whilst there appears to have been improvements in legislation to protect women from domestic violence (such as the Domestic Violence Crime and Victims Act 2004, Female Genital Mutilation Act 2003, expansion of Specialist Domestic

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<sup>23</sup> Appendix 1

Violence Courts) it appears that the main emphasis surrounds criminal justice responses. This means that those with insecure immigration status suffering domestic violence are ignored. These 'victims' face numerous obstacles to escaping violence and abuse, which need to be considered when drafting legislation and policies. 'Victims' are denied access to benefits and therefore a place of safety on the basis that they are not 'British'. Disclosure of abuse can lead to ostracism or even death in some communities. Also, due to feelings of shame and helplessness many women see suicide as the only option to escape violent marriages. It is essential that statutory and voluntary agencies understand the issues women face in order to provide effective support and assistance.

The Government claims to be aware of the predicament these 'victims' face yet then appears reluctant to offer protection, serving only to perpetuate vulnerability and dependence on the abuser. Current immigration rules provide abusers with the means to control women. Many 'victims' are seldom aware of their rights meaning that they do not know the causes of their suffering are illegal and so have little choice but to remain in dangerous situations. Many 'victims' are unable to produce the level of evidence required, allowing the violence they experience to be ignored on the basis they cannot *prove* their suffering. Reluctance to 'interfere' in the 'private' sphere serves only to legitimate violence against women in order to maintain subordination. The suffering of 'victims' is highlighted neither by the state nor the media; it falls to under-funded women's groups to raise awareness of their plight whilst also attempting to offer some form of assistance. Domestic violence is not a cultural issue it is rife within British society and perhaps addressing this issue would mean domestic violence would be questioned more generally and seen as a product of patriarchy.

Currently women with insecure immigration status suffering domestic violence do not have rights or freedom in the UK. It appears that women with insecure immigration status are denied their right to life, right not to be subjected to torture or to inhuman or degrading treatment or punishment, right to liberty and security of the person, and their right not to be held in slavery. In practice, if not in intent, British legal instruments and policies effectively discriminate against these women *because* they are women *and* because they are ‘foreign’. In this way the law can be described as both sexist and racist. The overriding concern of this chapter has been to highlight recent immigrant spouses’ vulnerability to domestic violence. Due to their immigration status they are at a greater disadvantage than British ‘victims’, as they face difficulties accessing safety and protection. The next chapter considers the position of asylum-seeking women to see if current immigration legislation impacts on their ability to seek protection from violence. The dissertation considers if they too suffer a ‘quadruple whammy’ of marginalization because of ‘immigration status, gender, ethnicity and abuse’.

## **Chapter 4**

### **Asylum-Seeking Women, Violence & Immigration Policy**

#### **Introduction**

The preceding chapter established that the British Government appears to prioritise guarding UK borders at the expense of granting women protection from violence. This chapter considers if this is the case for female asylum seekers who have experienced violence. To do so the chapter explores situations of female asylum seekers who wish to enter or have recently arrived in the UK by looking at academic literature, campaign literature and policy. It examines the efficiency of current UK immigration legislation to see if it impacts ‘victims’ of violence seeking refugee protection.

#### **Definition**

Granting refugee status to asylum seekers is considered essential for protection and assistance. In order to seek asylum in the UK, an applicant must meet the criteria of the 1951 Refugee Convention. Article 1A(2), defines a ‘refugee’ as a person who:

‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside his country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being

outside the country of his former habitual residence...is unable, or owing to such fear, is unwilling to return to it'

(in Clayton 2008: 449)

Findings indicate that women face difficulties obtaining refugee status since the definition does not recognise gender persecution (Osaki 1997: 14). It is argued that the image of a 'real' refugee has been of a man; meaning women do not benefit equally from the protection offered by the Convention (Berkowitz 2000: 21; Subhan 1995: 55 Bhabha & Shutter 1994: 14; Crawley 1997: 17, 87; Sen & Kelly 2007: 5; Kofman & Sales 1998: 392). This is hardly surprising since the Convention refers to '*his* country' where *he* cannot '*avail himself*'. In addition to ignoring 'women' it can also be said to disregard other groups such as homosexuals or the disabled. This may suggest that the Convention does not endeavour to provide protection to all 'victims' of persecution, only those who meet narrowly defined criteria. Consequently feminist literature stresses the importance of defining 'women' as a 'particular social group'.

Traditionally, female asylum seekers have been described as 'invisible' (Coker et al 2004: 37), meaning that vulnerable women are disadvantaged. Although having experienced persecution entitling them to refugee status in their own right, they are less likely to access the decision making process because of assumptions they are dependent upon their spouse or other male relatives (Crawley 2000: 89; Subhan 1995: 55). It has been found that many women do not know they can apply for asylum in their own right and are rarely provided with opportunities to disclose their experiences in private (Coker et al 2004: 38). Currently a woman's right to remain in the UK is terminated if the status of the man she is dependent on changes, he leaves the UK or

the family link is broken. In these circumstances women can find themselves without protection or forced to return (Crawley 1997: 19). The threat of deportation can be used as an instrument of control to threaten vulnerable women (Kofman & Sales 1997: 29), again trapping women in violent situations. If women leave they are unable to claim benefits or protection and can be classed as 'illegal' as they are not here in their own right (Subhan 1995: 56; 229; Phizacklea 1998: 29; Kofman & Sales 1997: 28; Lutz 1997: 105). This reflects experiences of domestic violence 'victims' with insecure immigration status, and supports suggestions that women are still considered male property (Bhabha & Shutter 1994: 259). More women within the UK are becoming economically independent and more relationships occur outside marriage. Yet immigration rules enforce stricter adherence to stereotypical 'traditional' family structures as the basis for migration (Kofman & Sales 1997: 29; Lutz 1997: 105), which could be considered discriminatory.

### **Profile of the Issue**

During the sixteenth century moral panics surrounding vagrancy led to immigrants being punished and returned to their country of origin without trial (Rawlings 2001: 47 in Weber & Bowling 2008: 358). Weber and Bowling (2008: 358) argue that the common desire to exclude outsiders physically and from legal sanctions still operates. Lister (1998: 325) noted that exclusionary practices against asylum seekers continue with no indication of a review of immigration laws or their connection to citizenship. Existing national identity is based on the exclusion of an increasing number of people and solidarity (Bosworth & Guild 2008: 703). Feminist literature suggests that immigration has become defined in terms of justice, resulting

in the ‘securitisation’, ‘criminalisation’ and ‘penalisation’ of immigrant groups (Hughes 2006 in Aas 2007: 289; Bosworth et al 2008: 265; Bosworth & Guild 2008: 703). Claiming asylum in the UK has been incorporated into the legal system, becoming a branch of law in its own right (Clayton 2008: 410). It could be argued that this demonstrates a lack of importance regarding the protection of vulnerable people; in countries such as Canada and New Zealand, separate processes deal with asylum decisions (Clayton 2008: 411; Bosworth & Guild 2008: 703). Increased surveillance, harsh regulations and other repressive measures<sup>24</sup> imposed by the British Government have not reduced numbers applying for asylum. This could suggest that people are *forced* to flee; they do not choose to migrate, to leave family, friends and culture (Bosworth & Guild 2008: 703; Hayter 2003: 15-16; Spencer 1994: 323).

Recent literature asserts that socially constructed and historically situated racism is manifested in public fears about ‘visible’ minorities and ‘non-citizens’ (Bosworth et al 2008: 263-4). It is suggested that migrants are only welcomed if they do not make demands (Gedalof 2007: 82). This reflects eighteenth century poor laws, which expelled ‘strangers’ on the suspicion they would apply for poor relief (Feldman 2003: 85 in Weber & Bowling 2008: 357). Asylum seekers cannot help but make economic demands as they are prevented from working (Gedalof 2007: 82). This is supposed to reduce economic incentives for those wishing to abuse the asylum (Hayter 2003: 14; Dummett 2001: 67). It is currently observed that Government efforts to control asylum seekers leads to greater abuse, cruelty and mounting costs as immigration controls are expensive, costing billions annually (Hayter 2003: 15).

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<sup>24</sup> The Home Office can impose residence, reporting or occupation restrictions on asylum seekers even if they are permitted to enter/remain in the UK (Coker et al: 7).



Historically, migration research excludes women, or has included women's experience with men's (Man 1997: 1). Conflict and disasters impact differently on men and women and it should not be assumed that their needs are the same (Guruaja 2000 in El-Bushra 2000: 5). This one-sided view has been challenged by feminist theorists (Man 1997: 1) who observe that women are often the first 'victims' of political, economic and social repression due to 'laws and social norms of gender-related behaviour and treatment' (Crawley 1997: 2). Feminists assert that women do not have identical social experiences as men and are often disempowered by men's experience (Evans 1997: 38). Whilst men experience political, economic and social repression, it is often cited that women constitute 80 percent of the world's refugee population (Phizacklea 1998: 22; Crawley 1997: 1) so they should take priority. A problem within literature is that frequently women are coupled with children as if they are a 'homogenous group' (Bhabha 2004: 227).

### **Examination of Policy and Legislation**

The United Nations Convention relating to the Status of Refugees, 1951, asserts the 'basic minimum standards for the treatment of refugees, without prejudice' (UNHCR 2007: 5). The Convention was founded on the principle that everyone has the right to 'enjoy fundamental rights and freedoms without discrimination' (UNHCR 2007: 15). It is questionable as to whether this includes women, as again language of the articles talk of the male refugee - 'he shall' be afforded protection (UNCHR 2007: 23). Feminist researchers increasingly criticise the failure of international human rights law to respond appropriately to women's experiences of violence, with policies and developments assuming men are the 'norm' (Crawley 2000: 87; El-Bushra 2000:

4). It has been argued that gender blindness, patriarchal values and racism all interlink to ensure experiences of refugee women remain unacknowledged (Pittaway & Bartolomei 2002: 26). It can be suggested that this allows the Government to deny responsibility (Cohen 2001: 102). When women manage to flee to seek protection, their experiences are interpreted as ‘discriminatory’ rather than ‘persecutory’ (Crawley 1997: 4). It is argued that this is because the Convention limits protection to those facing ‘genuine’ fears of persecution on account of tightly defined categories (Adjin-Tettey 1997: 22; Heyman 2005). Currently there is a debate between human rights groups and states as to whether women constitute a ‘social group’.

Those who oppose gender forming a ‘particular social group’ argue that ‘opening up the doors’ for women seeking asylum would ‘overwhelm’ the immigration system (Lieberman 2002: 9). It was only in 1998 that rape during conflict became considered a crime against humanity, war crime and therefore grounds for refugee status (Pittaway & Bartolomei 2002: 25). This confirms that human rights instruments make little distinction between men and women, allowing receiving states interpretation to reflect and reinforce gender prejudices (Johnsson 1989 in Crawley 2000: 87). For example, Lord Millet, then Lord of Appeal in Ordinary<sup>25</sup>, stated that he would find it ‘difficult’ to imagine a society ‘where women are actually subjected to serious harm because they are women’ (in Conneely 1999). Conneely (1999) rejects this argument claiming that acts directed against women such as domestic violence, rape, female genital mutilation, forced abortion etc are directed against women *because* they are women. Men do have their rights violated, but not because they are men (Terry 2007: 26; Dumper 2005: 9). Comments such as Lord Millets effectively

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<sup>25</sup> Lord’s of Appeal in Ordinary are also known as ‘Law Lords’ and act as the highest Court of Appeal

trivialise women's suffering, suggesting their experiences do not constitute 'serious' harm. This has led to the suggestion that 'not all identities are equally valued or safeguarded' (Bosworth & Guild 2008: 710). Following Cohen's (2001: 10) theory of denial, this could be described as 'official denial' whereby there is selective concern about 'suitable' 'victims', denying women protection due to their gender (Crawley 2000: 87). Further, whilst women cannot be seen as distinct group, Lord Millet suggests that homosexuals are. In so doing he trivialises the importance of gender, suggesting a deep-rooted sexism of the law (Conneely 1999). Turner and Kelly (2009) suggest the apparent gender-neutrality of patriarchal laws and institutions is used to obscure predominantly male perspectives (Turner & Kelly 2009; Crawley 2000: 89).

It can be argued that international refugee law underplays violence against women (Crawley 2000: 95). Feminists argue this demonstrates displacement between supposed institutional neutrality and actual institutional prejudice as the law appears to be deeply gendered (Evans 1997). Canada, USA and Australia have all extended interpretations for women making claims of gender-persecution (Crawley 2000a: 20). Their experience demonstrates that recognising gender as a 'particular social group' will not result in a 'flood of female refugees', as many obstacles prevent the flight of women (Conneely 1999; Lieberman 2002: 9). Even if women do manage to flee many 'victims' do not report violence and abuse they have suffered (Pickup et al 2001: 7; Lieberman 2002: 9). The UK asylum system prioritises numbers and border protection over the protection of vulnerable women. This is reflected by reported increases in suicide and self-harm. Lawyers and coroners at suicide inquests have criticised the immigration system for failing vulnerable women (Fekete 2005: 59-60). No official statistics kept by authorities on suicide rates of asylum seekers (male or

female) suggest a lack of citizenship status and perceived illegality means they can be ignored (Fekete 2005: 65).

The Scottish Refugee Council (2009: 3) found that any developments in immigration law include very little in relation to gender. Asylum Gender Guidelines (2000) stating that women seek asylum for many reasons are ignored (Dumper 2005: 8). There is little recognition women experience gender specific persecution e.g. female genital mutilation, sexual violence, forced marriage, forced prostitution, domestic violence, forced abortion, forced sterilisation, bride burning etc. (Crawley 1997: 10). Copelon (1995: 116) suggests that this is because violence against women is considered as 'less severe and less deserving of international condemnation', instead it is seen as a 'family' or 'private matter' between those involved (Crawley 2000: 75, 92). Human rights discourse is seen to privilege male-dominated 'public' activities over 'private' activities dominated by women (Crawley 2000a: 17; Phizacklea 1998: 30). Feminists regard violence within the family or community as one of the most prevalent and pervasive forms of violence experienced by women but it is usually considered outside the law (Crawley 2000: 92). Experiences of suffering in the 'public' sphere are envisaged as more worthy of alleviation than 'private' suffering; so men's experience is considered as more important (Conneely 1999; Bhabha & Shutter 1994: 10). This has led to criticism that current refugee law allows male dominated institutions to legitimate violence, thereby reinforcing subordination of women (Pickup et al 2001: 149). Amnesty International (2004) argue that violence against women is a 'public' concern and therefore requires state action (in Clapham 2007:148).

The UK seems to be ignoring the fact that women are forced to leave their country in order to seek safety (Forbes-Martin 1992: 7). It can be argued that with the intention of appearing to protect women's human rights the Nationality, Immigration and Asylum Act 2002 was introduced. Under this act twenty-four countries are designated as 'safe'; meaning applications from these countries are deemed 'unfounded' unless proved otherwise (Home Office Statistical Bulletin 2008: 8; Koser 1998: 188). It is argued that the idea of a 'safe' country whereby asylum applications are seen as illegitimate must be rejected as it ignores exceptional cases and is biased as to what constitutes 'safe' (Spencer 1994: 334). Albania is considered 'safe' despite being a major origin of trafficking (Clayton 2008: 426). International law forbids the forcible return of refugees to countries where they may be in danger. The British Government attempts to defy these laws by claiming that asylum seekers are merely looking for improved standards of living (Amnesty international 1995: 26). Women are returned to the Democratic Republic of Congo despite awareness rape takes place on a massive scale (Fekete 2005: 44).

Instead of being granted asylum it is suggested that women can use the 'internal flight alternative' to relocate to a new part of their country (Sen & Kelly 2008: 35). Since the Convention fails to acknowledge gender the 'internal flight alternative' disproportionately affects women<sup>26</sup> (Sen & Kelly 2008: 35). Currently

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<sup>26</sup> Research by Siddiqui et al (2008: 175) found that the internal flight alternative is used as a tool to deny Pakistani women asylum when they cannot produce sufficient evidence to suggest returning would be unsafe. They found that even when evidence is undeniable, decision-making authorities still attempt to resist the evidence as they are 'unwilling, rather than unable, to recognise the potential harm that will arise if women are required to relocate internally' (Siddiqui et al 2008: 153). Participants of their study stated that returning women would be unsafe due to issues such as connections between communities, police corruption and the suspicions which surround lone women (Siddiqui et al 2008: 152). Consequently it is further argued that returning women undermines their rights under the European Convention on Human Rights (Siddiqui et al 2008: 48). In rare cases, such as Shah and Islam (1998) Pakistani women have been granted asylum due to domestic violence and the discrimination they would face from Pakistani authorities and the wider community (see page 107).

Iraqi asylum seekers are returned on the grounds they are 'safe'<sup>27</sup> in specific areas, despite acknowledgement that unsafe conditions are present across the whole of Iraq (European Council on Refugees and Exiles 2006: 452). It ignores risks of further persecution and the fact she may have lost family, economic resources and status when she fled (Ceneda 2003: 127). As a consequence women have to engage in activities such as domestic labour or prostitution, again risking their safety (Ceneda 2003: 127; Obokata 2005: 394, 397)<sup>28</sup>.

In addition, under the Dublin Convention<sup>29</sup>, which came into force in 1997, asylum seekers must apply for asylum in the first EU country in which they arrive and can be returned to another EU country they have passed through or made an application in (Irish Refugee Council 2002: 1). The Irish Refugee Council (2002: 2) claims this assumes asylum seekers receive the same protection and access to justice across EU states. It could be suggested that asylum seekers are treated with suspicion and demonstrates safeguarding of borders over protection of vulnerable people. It is also worth noting that the UK is an island meaning it is likely that asylum seekers would have passed through another EU country and so can be returned there. It should be questioned if this places more pressure on certain countries than others. Preventing freedom of movement violates human rights, causing 'human misery' (Hayter 2003: 16). Thus it can be argued that new instruments deny women's human rights such as the right not to be subjected to inhuman and degrading treatment, right not to be tortured, right not to be arbitrarily arrested and imprisoned, right to a fair trial by a properly constituted court, right to family life and the right to work (Hayter 2003: 10).

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<sup>27</sup> This was seen in 2005 when the UK forcibly returned failed asylum seekers from Iraq despite indications of state persecution (European Council on Refugees and Exiles 2006: 452, 455, 464).

<sup>28</sup> For example because of a lack of protection, women have been forced to trade sex in exchange for a floor on which to sleep (Sen & Kelly 2008: 15-16).

<sup>29</sup> The Convention is part of European Law and is not part of the Geneva Convention

Storey (1994) notes that whilst the UK has a good record of compliance with human rights standards generally, in relation to immigration policy this is not the case. It is alleged that the UK appears 'reluctant to give full legal effect to immigration related obligations' (1994: 116). UK treaty obligations do not create enforceable legal rights for individuals claiming the UK has violated international laws (Storey 1994: 119). Storey (1994) suggests that there is a tendency for judicial review and human rights principles to be applied less forcefully to immigration than in other policy areas (Storey 1994: 133-4). International law asserts that states have a right to control entry, residence and expulsion of borders – this is fully recognised by human rights courts (Storey 1994: 114; Freeman 2002: 51; Newburn 2007: 885). Secondly, declarations describe human rights but do not present methods of implementation (Newburn 2007: 884). This led Gearty (2003) to describe the UN Declaration as 'intentionally unenforceable, self-consciously a mission statement for humanity rather than an immediately realizable set of goals for the people who would read it' (in Newburn 2007: 884). Storey (1994) proposed that creating a fair immigration policy requires more than improving human rights as there are 'inadequate checks and balances' to uphold basic rights (Storey 1994: 111-2). The UK's Asylum and Immigration Act, makes it a criminal offence to arrive without identification documents (Fekete 2005: 23). Under the Convention it is not a crime to enter a country illegally with the intention of seeking asylum (Fekete 2005: 23). Rather than be treated as vulnerable individuals, asylum seekers are considered as false applicants. Fekete (2005: 40) notes that this means abuse suffered is compounded by harsh responses of immigration. This ignores ideas that everyone has

the right to live in a country where they will not be persecuted, oppressed or discriminated against (Dummett 2001: 10).

Article 31 of the 1951 Declaration asserts that 'states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life was threatened' (UNCHR 2007: 31). In order to overcome this it is asserted that asylum seekers are 'bogus'. The Nationality, Immigration and Asylum Act 2002 can be considered to impose penalties on asylum seekers by denying support to those who do not claim asylum 'as soon as reasonably practical after arrival in the UK' (Coker et al 2004: 7). However it is suggested that by applying immediately, asylum seekers are less likely to have access to legal advice (Coker et al 2004: 19). The act also reduces numerous asylum and immigration appeal rights (Coker et al 2004: 7). Those seen to have made delayed claims have no right of appeal and may be denied financial assistance (Coker et al 2004: 7, 19). This supports the idea that there has been a move from the welfare state towards a 'culture of control' (Bosworth & Guild 2008: 711).

The JCHR (Joint Committee on Human Rights) claimed that they had been convinced the government has been 'practising a deliberate policy of destitution of this highly vulnerable group. We believe that the deliberate use of inhumane treatment is unacceptable' (in Clayton 2008: 56). It is not clear how plausible it is to suggest that the British Government intentionally introduces legislation adversely affecting asylum seekers yet the JCHR also claimed that at all stages of the asylum process the 'treatment of asylum seekers in a number of cases breaches the Article 3 threshold of inhuman and degrading treatment' (in Clayton 2008: 55). Financial



support, legal advice and support can all be considered important to women seeking asylum as they have no knowledge of the UK system, no support network and few economic assets. This adds weight to suggestions that the British Government may be complicit in increasing suffering of vulnerable women.

### **Detention & Deportation**

A human rights framework suggests that states have a duty to treat asylum seekers with humanity whilst applications are considered (Dummett 2001: 38). Currently many are denied legal protection and detained in ordinary prisons, subjected to prison regimes, sometimes alongside convicted criminals<sup>30</sup> (Hayter 2003: 12; Weber & Bowling 2008: 369). The use of prison successfully erases any divisions between criminals and asylum seekers in public and political discourse (Bosworth & Guild 2008: 710-711). International standards for refugees explains that detention should not normally be used (Amnesty International 1994: 13). The Government claims that detention is only used where necessary (Coker et al 2004: 25). In contrast growing numbers suggest a growing 'punitiveness' (Newburn 2007:313) - the number detained doubled between 1993 and 1997, and quadrupled under Labour (Hayter 2003: 12). *The Observer* found that torture survivors were wrongly held in detention centres despite medical evidence supporting claims of persecution (Townsend 2010: 1). Whilst there are no clear time restrictions asylum seekers can be detained, Britain confines the most asylum seekers for the longest amount time in Europe (Bosworth & Guild 2008: 711). This led Weber and Bowling (2008: 368-9) to argue that detention is no longer a practical stage before deportation, but intended to be punitive, to act as

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<sup>30</sup> Foreign nationals and ethnic minorities make up a growing proportion of prison populations across Europe (Albrecht 2000 in Aas 2007: 288).

a deterrent. It is suggested that restrictive immigration policy targets vulnerable asylum seekers because they are easiest to move (Fekete 2005: 5).

There is little research relating to immigrant detainees in general, and female immigrants in particular (Bowling & Phillips 2002: 208). A study by the Refugee Council interviewed women in detention and found they were 'clearly upset and traumatised' by their experiences of detention (Dumper 2005: 13). This supports opinions that deprivation of liberty is a serious infringement of fundamental human rights (Clayton 2008: 531) amounting to inhuman and degrading treatment/punishment (Fekete 2005: 61). To discount this, official excuses claim that asylum seekers might abscond so they cannot be removed when applications are denied (Dummett 2001: 126). Dummett (2001: 126) observes that it is more likely detention is used as a deterrent to dissuade other asylum seekers. Considering the obsession with numbers, this seems reasonable. Dummett (2001: 125) claims that the British government is 'unconcerned to offer refuge' yet contrary to popular belief, countries accepting the most asylum seekers are the poorest (Dummett 2001: 36).

Increasing deportations are leading to overcrowding and deterioration of detention centres (Fekete 2005: 61). In 2004 the HMP Inspectorate visited a detention centre and branded it 'filthy and dilapidated' (Fekete 2005: 61). In other countries such as Germany, women in detention are vulnerable to sexual violence (Fekete 2005: 68). Whilst there is no available evidence of this in the UK there are a high number of reports of assaults and racist abuse in UK detention centres (Townsend 2010: 1). In 2003 the *Daily Mirror* found guards calling vulnerable and depressed women 'scum of the scum', 'bitches' and 'scrubbers' (Fekete 2005: 68-9). In 2010 *The Observer*

found allegations of medical mistreatment and racist abuse (Townsend 2010: 1). There have been reports male staff at Yarl's Wood enter rooms and search through women's belongings, including underwear (Slinger 2009: 8). This should be unacceptable. UK prison policy asserts that female officers must account for 60 percent of staff in female prisons, as women victimised by men may 'feel safer in a predominantly female environment' (Singer 2009: 8). This has not been the case for women asylum seekers in detention (Singer 2009: 8).

Whilst it is difficult to find documentation of women's experiences of UK detention, Harriet Wistrich, a lawyer, documented the experience of a woman from the Democratic Republic of the Congo who was seeking asylum on the basis of torture and rape:

*'One night deportation officials burst into her room, despite the fact that no removal notice had been served on her (a legal requirement), pushed her to her knees whilst she was naked, twisted her arm behind her back and struck her. She was taken to another room, and left alone; whereupon she attempted suicide by tying a torn sheet around her neck. Despite this, she was handcuffed, given a dress to wear and taken to Heathrow. The pilot refused to let her on board because of her excessive distress and lack of proper clothing'*

*(in Fekete 2005: 68)*

Such incidents are supported by accounts from other detainees witness to these events. This highlights the disgusting treatment of those who have already been

victimised. Without question it breaches articles 2 and 6 of the European Convention of Human Rights. It is observed that state power is being used to prevent and expel 'unwanted' people. Detention is applied as a coercive form of control and confinement is increasingly applied to 'non-citizens'. Literature suggests this epitomizes 'a globalizing culture of control' driven by 'perceptions of difference and putative threats' (Welch & Schuster 2005: 345-7 in Bosworth et al 2008: 265). It can be argued that desires to control entry have harmful effects on vulnerable women who enter the UK seeking protection, not punishment.

In 2005 Charles Clarke, then Home Secretary, announced a five-year strategy pledging to increase deportations of failed asylum seekers despite UK asylum claims dropping significantly (Fekete 2005: 10). Hayter (2003: 7, 9) suggests that government policy attempting to keep 'victims' out leads to further deliberate repression and suffering with the intention of preventing certain people entering the UK. Hayter (2003: 8) believes that the majority of immigration policies since the late 1980's have attempted to prevent people arriving to claim asylum, meaning claims Britain welcomes 'genuine' refugees are actually false. The tougher stance on asylum seekers means that those previously offered a place of safety, would now be more likely to be returned to dangerous situations (Fekete 2005: 23). In 2001 the Government invested £2bn into the deportation of failed asylum seekers (Fekete 2005: 9, 12), reflecting the priority to protect borders rather than 'victims'.

Little else is known about the UK deportation process as it is shrouded in secrecy (Fekete 2005: 18). The British state seems reluctant to offer protection, in the form of refugee status, to many women escaping exploitation and abuse (Siddiqui

2006: 273). Both asylum seekers and ‘victims’ of trafficking who have been abused, face violence if refused, meaning they are returned to countries of origin facing an uncertain future with little (if any) resources to resettle, develop a sustainable living or create personal safety (Kelly 2008: 54). There is little concern return results in further gender persecution (Siddiqui 2006: 273), possibly because deportations are desirable. The Home Office sets targets for detention and removal of ‘failed asylum seekers’ and ‘immigration offenders’ (Fekete 2001 in Weber & Bowling 2008: 361). In 2007 the UK immigration Minister Liam Byrne reported ‘impressive news’ that asylum applications continued on a downward trend, ‘hitting the lowest level since 1993 while the number of deportations hit an all time high’ (Home Office 2007: 709; Bosworth & Guild 2008: 705). Bosworth et al (2008) suggest this demonstrates processes of selective inclusion and exclusion composed of racialised, classed and gendered processes, focussing disproportionately on the poor, vulnerable and marginalized (Bosworth et al 2008: 266, 268). The focus on targets and statistics demonstrates a priority to defend state interests (Fekete 2005: 5, 9). Consequently it can be proposed the UK is more concerned with protecting borders as a humanitarian approach to asylum would put need rather than numbers first (Fekete 2005: 5, 9).

It has been argued that human rights are ignored because of objectives to maximise electoral support by addressing the asylum ‘problem’ (Bosworth & Guild 2008: 706). Asylum seekers have been ‘stigmatised, pauperised and forced into illegality by Labour government policies, which has engaged in a shameful competition with the Tories to demonstrate they are ‘tougher’ (Hayter 2003: 8-9). It is suggested that British Governments have always acted harshly toward immigrants. The Aliens Act 1905 was the first piece of immigration legalisation in the twentieth

century defining some migrants (generally Russian and Polish Jews) as ‘undesirable’ by making entry into the UK discretionary (Dummett 2001: 3; Twentieth Century London 2010). Hayter (2003) argues that immigration controls increase racism by strengthening prejudices and increasing demands for further controls (2003: 13). Britain has always been suspicious of ‘foreigners’, and appears even more so since 9/11 (Bosworth & Guild 2008: 703). This has led to observations that extreme right views are no longer on the outskirts of political views. Instead they attract more attention due to increased fear, which is reinforced by xenophobic immigration control (Fekete 2006: 2). For instance, between 1997 (even before the terrorist attacks) and 2007 the Labour Government introduced nine main pieces of legislation regarding immigration, asylum and terrorism (Bosworth & Guild 2008: 706). Consequently immigration controls are understood as commonsense, ‘an unavoidable reality’ to make sure that protection is only granted to those who are ‘genuine’ asylum seekers (Hayter 2003: 7; JCHR in Clayton 2008: 55).

It is suggested that the media portrays states as ‘victims’, whereas asylum seekers are the victimisers (Fekete 2005: 71; Sen & Kelly 2007: 5). Howe (1998) describes the media as ‘mainstream or popular discourse’ that ‘claims to tell ‘the truth’ about crime’ (Howe 1998: 2). Reporting on asylum issues is seen to be an emotive area and often the media use imprecise language and stereotypes. Sivandan (2002) argued that asylum seekers are subjected to a ‘new racism’, xenophobia, which ‘pretends to be based on the fear of strangers’ rather than ‘old racism’ based on white superiority (in Weber & Bowling 200: 366-7). It is claimed that the number of newspapers sold/ the number of people listening to broadcast programmes can be increased by pandering to widespread prejudice and xenophobia (Dummett 2001: 3;

Feller 2006: 513). There is agreement that this reinforces intolerance by exploiting the public's fear of 'the other' (European Council on Refugees & Exiles 2005: 20; Hall 2005: 54; Bosworth & Guild 2008: 714; Aas 2007: 288). For example, Gedalof (2007: 83) states that readers of *The Daily Mail* will never see a 'mention of asylum-seekers or immigrants that is not related to 'threats' they pose to the 'British way of life'' (Gedalof 2007: 83). He notes that asylum seekers are often portrayed as having access to better living conditions than British citizens (Gedalof 2007: 87).

This reinforces media portrayals that asylum is fair and neutral and open to abuse by so-called 'bogus' asylum seekers (Crawley 2000: 88; Koser & Lutz: 1998: 10; Kaye 1998: 163; 167-8). The terms 'bogus asylum seeker' and 'illegal immigrant' appear to be used almost interchangeably (Hayter 2003: 10). Media portrayals are seen as useful in justifying tightening restrictions and increasing detentions when dealing with 'bogus' asylum seekers (Welch & Schuster 2005 in Aas 2007: 85; Kaye 1998: 180; Hayter 2003: 9; Dummett 2001: 39). One cannot help but be reminded of Hall et al's (1985) work which demonstrated that black people were criminalised, policed, punished, and portrayed by the media and politicians as a 'social problem' (in Bowling and Phillips 2002: 8). It can be argued that language is useful in stereotyping vulnerable people as poor and unskilled 'economic migrants'; blurring distinctions between immigrants and refugees can create an 'enemy within' so that the motives of those claiming asylum are considered trivial and unworthy rather than desperate (Gill & Sharma 2007: 185; Dummett 2001: 44; 39; Sen & Kelly 2007: 5). A Home Office paper in 1998 suggested that asylum entry into Britain was increasingly seen as a 'scam route' for those seeking economic opportunities; leading to illegal entry becoming synonymous with asylum seekers who were either 'genuine' or 'bogus'

according to political and media discourses (Bosworth & Guild 2008: 707). Such 'knowledge' helps to create the rationale that those detained and deported must have done something wrong and therefore require little sympathy.

Storey (1994) suggested that instead of media scrutiny of immigration policy and human rights abuses there was a persistent degree of media hostility whereby fears about foreigners could easily be encouraged by populist politicians (Storey 1994: 112). It could be argued that this is still the case. Immigrants have been blamed for recession and the rise in unemployment despite no evidence for this (Dummett 2001: 67; Spencer 1994: 316). Following September 11<sup>th</sup> 2001 migration was seen as a route for terrorists to enter Britain, thereby reiterating the need for strict immigration controls (Brouwer et al 2003 in Bosworth & Guild 2008: 708; Hall 2005: 54; Gearty 2005). As a consequence, the numbers of refugees being resettled globally has declined sharply (Crawley 2005: 15). This plays on fears and ignores 'home-grown' terrorism, emphasising that risks come from elsewhere (Bosworth & Guild 2008: 710). This adds weight to arguments that the asylum process is highly racialised and shaped by economic interests (Crawley 2000: 88). There is little public knowledge or understanding of the reasons why refugees, especially women, have to flee. This means that women's plight remains ignored. A review by the Refugee Council found that women experience 'extreme levels of deprivation' and fear when seeking safety in the UK (Dumper 2005: 4). Yet currently this is overlooked by the media, policy makers and researchers, meaning there is scare literature on experiences of female 'victims' of violence seeking asylum in the UK and little chance of safety and protection.



## **Violence Against Recently Arrived Immigrant Women**

Asylum literature surrounding violence experienced by women has mainly focussed on rape in war or military abuse (Jewkes 2007; United Nations 2009 in SRC 2009: 1). The Scottish Refugee Council (2009:1) observes that there is little understanding surrounding wider violence experienced by female refugees. The impact of destitution, health needs, domestic violence, sexual abuse and barriers to gaining employment are all under-researched (Dumper 2005: 4). Studies often focus on abuse experienced in countries of origin rather than abuse occurring throughout the migration experience or in destination countries (SRC 2009: 1). A feminist framework suggests this is because ideology promotes Britain as a place of safety for women. As a consequence, female asylum seekers rarely appear in government or media discourse, leaving experiences to be raised by campaign groups and feminist scholars (Gedalof 2007: 88). Studies have found that female asylum seekers health deteriorates upon arrival in the UK (British Medical Association 2002 in Dumper 2005: 12). A study in Scotland found that 70 percent of refugee women reported physical or sexual violence in their lifetime, 20 percent had suicidal thoughts within seven days prior to the interview and 57 percent were above the cut-point for Post Traumatic Stress Disorder<sup>31</sup> (SRC 2009: 13, 19, 25). These statistics suggest that women seeking protection in the UK are extremely vulnerable.

A growing body of literature has found that women are often ‘victims’ of war, repression, persecution, human rights abuse and conflicts (Forbes-Martin 1992:1). Whilst men are affected, women are affected disproportionately as they can be

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<sup>31</sup> This can result in ‘difficulty remembering

particularly vulnerable to discrimination, exploitation and abuse (Osaki 1997: 9). Harrowing events such as slavery, genocide and famine invariably impact disproportionately on women, but so too do other events such as domestic violence (Turner & Kelly 2009: 193). Studies suggest that women have more difficulty fleeing conflict or personal persecution (Kofman 1998: 129) meaning they are less likely to apply for asylum (Bhabha 2004: 232; SCR 2009: 2). Feminists propose that when women do apply they are less likely to be granted refugee status in the UK than men at the initial decision making stage (SCR 2009: 2). This is because experiences are not recognised as ‘sufficiently traumatic’ to require migration (Turner & Kelly 2009: 193). Consequently women’s experiences of persecution do not fit the rigidly defined categories of ‘race, religion, nationality, membership of a particular social group, or political opinion’. These are considered to be framed from a ‘traditional male perspective of activism or incarceration’ (Crawley 2000: 89; Richards 2006: 13). Home Office statistics (2003) state 81 percent of initial decisions made on women’s asylum applications were refusals (Heath et al 2004). So whilst women find it more difficult to reach the UK they are also more likely to be refused protection. Studies have found that women are more successful on appeal, suggesting errors in initial decision-making (Sen & Kelly 2008: 34) or that more information can be provided on appeal.

This ignores UN suggestions made in 1984 and 1985 that states were “free to adopt the interpretation that women asylum-seekers...may be considered as a ‘particular social group’” (United Nations High Commission for Refugees in Richards 2006: 15; Crawley 1997: 15). In a ruling in 1999 it was made clear ‘women’ could not constitute a particular social group in the UK without ‘reference to (the) prevailing

political legal and cultural conditions in the country of origin' (Richards 2006: 16). This led to suggestions that women are assumed to be 'naturally' invisible, passive, helpless, and incapable (El-Bushra 2000: 4; James 1982: 21). Consequently, Walter (2006) argues that the UK seems unable to recognise women fleeing *genuine* persecution as *genuine* refugees (Walter 2006: 30, my emphasis). It is reported that 'victims' are often not believed or advised their experiences do not satisfy the 'exacting requirements of refugee law' (Walter 2006: 30). Women it seems are at least doubly disadvantaged, by experiences of persecution and by a lack of protection.

Nation states have usually only been held accountable for actions carried out directly or through an agent e.g. a police or army officer (Crawley 2000: 92). Even this is rare as state violence against women can also be justified (Crawley 1997: 98). Copelon (1994: 197) observes that despite rape being used as a strategy in war it is considered 'inevitable' or accepted as a lack of discipline by 'needy soldiers' (Crawley 2000: 95). Kenyan women's experiences of torture, rape and sexual assault were considered a result of "misbehaviour" from individuals who happened to be police officers or prison wardens (Ceneda 2003: 126). Such attitudes reinforce stereotypes that male sexuality is 'innate, independent and biological' which 'seeks satisfaction and can suddenly overcome a man' (Crawley 1997: 89). This erases male responsibility and maintains assumptions that men own women's bodies (Lieberman 2002: 9). Essentially, sexual violence can be considered 'private' even when committed by a state actor (Spijkerboer 1994 in Crawley 2000: 94). For such reasons it has been observed that several problems refugee women experience are not new or unique, they are a 'routine element of the persecution of women' (Osaki 1997: 14). Legitimising violence protects male perpetrators and penalises 'victims' (Pickup et al

2001: 124) by denying human rights. This led feminists to demand greater protection in the 'private' sphere (Conneely 1999) as it is here women predominantly suffer discrimination and violence (Adjin-Tettey 1997: 23; Lieberman 2002: 9).

It is argued that domestic violence amounts to gender persecution (Heyman 2005). However, current law does not 'recognise or respond specifically to women's experiences' (Kofman & Sales 1998: 392). There are many barriers facing women experiencing domestic violence such as cultural attitudes amongst their community, lack of knowledge of rights and where to go for advice and support (Dumper 2005: 1). They also fear compromising their asylum claim (Dumper 2005: 15) – a woman dependent on her husband's claim would be in a very similar situation to an 'overstayer'. 'Victims' need to satisfy the Home Office that they have their own asylum claim or there are human rights reasons to be granted leave to remain (Gill & Sharma 2007: 196). Whilst there is a right to claim asylum in international law, in practice it is very difficult. At present women's asylum applications are refused because they do not fit stereotypical 'male-experiences' of persecution (Crawley 2005: 14; Crawley 2000a: 17; Berkowitz 2000: 21). Women's experience is considered 'irrelevant' (Crawley 2000a: 17-18).

Crawley's (2000: 97-99) analysis of appeal decisions of women refused asylum in the UK reveals assumptions that women are 'expected to appeal to a masculinist state for protection against the violence of individual men' but also that such protection is available. There is a failure to acknowledge that states and protection offered are gendered (Crawley 2000: 97-99). In 1999, the House of Lords

accepted two appeals of women<sup>32</sup>, ‘victims’ of domestic violence, who feared false accusations of adultery in Pakistan. If returned to face criminal proceedings they could be found guilty and punished by flogging or stoning to death. They were granted exceptional leave to remain under refugee status (Conneely 1999). It remains to be seen whether domestic violence without additional threats of persecution would meet the strict requirements of the Convention (Conneely 1999). If the ruling made in 1999 still applies then it would not. Often domestic violence is seen as ‘private’, and therefore women are not persecuted due to the rigidly defined categories (Heyman 2005). These women do not benefit from the Government’s ‘Zero Tolerance’ campaign (Dumper 2005: 15), suggesting that violence against some women is tolerated. It is claimed that the failure to protect ‘victims’ amounts to persecution (Heyman 2005). If this is correct the Government can be held accountable.

Doubts about credibility are considered to be the major reason for refusals as often there are no witnesses, so no definitive proof violence occurred (Clayton 2006: 81; Crawley 197: 31). Although the burden is on women to show they need protection there are particular reasons why they feel unable to (Richards 2006: 13). Many women are reluctant to speak about the circumstances causing them to flee, particularly if interviewers are male (Osaki 1997: 14; Hayter 2003: 12; Sen & Kelly 2007: 5). They may be too traumatised or fear others will find out (Crawley 2000: 93; Dumper 2005: 4). In some communities virginity must be preserved before marriage - by not doing so can lead to shame, stigma and ostracism (Crawley 2000: 3, 93; Amnesty international 1995: 20; Lieberman 2002: 9; Sen & Kelly 2007: 5). Women who have been raped or sexually abused report not telling immigration officers for

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<sup>32</sup> Islam v Secretary of State for the Home Department 25<sup>th</sup> March 1999 and R v Immigration Appeal Tribunal ex parte Shah 1998

fear of being labelled prostitutes or being denied visas on moral grounds (Pittaway & Bartolomei 2002: 24). These reasons have been acknowledged in Home Office Gender Guidelines (2002), which state:

...‘it is not always reasonable or possible for a woman to alert the authorities to her need for protection, for example, if by doing so she risks violence, harassment and rejection by her society or even persecution’....

(in Richards 2006: 13)

The Home Office claims to recognise that vulnerable women need time to develop confidence and trust to disclose their experiences, yet a fast-track system has been introduced. This means women’s complex cases will not be dealt with adequately (Sen & Kelly 2008: 35) as they are not given time to disclose experiences. It could be suggested this supports Crawley’s (2000: 93) argument that there is little recognition by decision-makers women find it difficult to disclose experiences.

It appears that examples learnt by working with ‘victims’ of sexual assault and domestic violence have not been transferred to female asylum seekers (Sen & Kelly 2008: 35). For example, it is recognised that ‘victims’ of rape may not report the incident immediately, if at all. In comparison, female asylum seekers disclosing later have their credibility questioned (Sen & Kelly 2008: 35)<sup>33</sup>. ‘Victims’ are expected to reveal experiences at the earliest opportunity (Ceneda 2003: 126). This is partly due to a ‘climate of disbelief’ in the UK asylum process (Crawley 2000: 94). Women are not considered trustworthy and are seen to have less credibility and authority than men

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<sup>33</sup> Immigration judges have been noted as not believing a victim’s story if disclosure is late (Singer 2009: 8)

(Kennedy 1992: 21; Thornton 1989: 119). The Refugee Women's Resource Project documented a case where it was revealed in court that a Muslim woman had been raped because of her husband's opposition to their government (Ceneda 2003: 126). The Home Office assumed she was lying, questioning why it had taken so long to reveal such information (Ceneda 2003: 126). This ignores gender guidelines and disregards studies highlighting the effects of post-traumatic stress disorder (SRC 2009: 25). It identifies failures to consider practical difficulties in disclosing experiences such as the interview location, childcare arrangements or use of male interviewers/interpreters (Dumper 2005: 9).

Current interpretations cause difficulties for women when fears of persecution arise from forms of protest and treatment that are not considered 'political' (Crawley 2000a: 17; Heyman 2005). Feminist critique suggests that asylum law ignores women's political activism and consigns sexual violence to the 'private' sphere (Walsum & Spijkerboer 2007: 8). It has only been recently recognised that women may also seek asylum for the same reasons as men (Dumper 2005: 9). The Home Office often dismisses women's experiences because the activities they undertake are not deemed 'political' (Ceneda 2003: 126). A failure to incorporate women's claims of asylum is considered a failure of refugee law to recognise that social and economic rights can be violated for political reasons (Crawley 2000a: 17). Crawley (2000a: 18) argues that women are just as vulnerable to political violence as men even if women's participation is considered 'low-level'. In many societies punishment for political participation is more severe because social and cultural norms prohibit women's involvement. Women can be 'doubly punished' for opposing political regimes and challenging traditional roles (Crawley 2000a: 18; Spijkerboer 1994; Pettman 1996 in

Crawley 2000: 87). It is argued that the extent of women's political participation has been underestimated (Crawley 2000a: 18). Similarly, women victimised because of a male relative's political activity also have difficulty presenting a claim (Forbes Martin 1992: 24). Even if women do not participate in politics, violence against women is made 'public' when they are harmed as a way of intimidating or hurting other family members (Crawley 2000a: 18). Mulligan (1990) argues that sexual violence is a form of political control, which can be considered persecution on account of political opinion (Crawley 2000: 95).

Studies have found that sexual violence against women has been used as a form of aggression towards an entire section of the community or as a means of acquiring information about activities and location of family members (Siemens 1988 in Crawley 1997: 3). In some situations women become targets for deliberate attacks from the opposition for the purpose of revenge (Guru raja 2000: 13). One of the most notorious examples was the Russians' mass rape of up to two million German women at the end of World War II. This was recognised by the UN (1995) who stated that female asylum seekers face 'gender-based discrimination and gender specific violence and exploitation' at all stages of their flight (in Lister 1997: 47; Osaki 1997: 14). It is suggested that because of their gender women are susceptible to human rights violations by individuals, organisations and states (Adjin-Tettey 1997: 23; Amnesty International 1995: 5). During flight women can be 'victimised by pirates, border guards, army and resistance units, male refugees and others' (Pedraza 1999 in SRC 2009:1; Forbes Martin 1992: 17). Women separated from their husbands or male relatives are said to be particularly vulnerable to gender specific human rights violations (Terry 2007: 26) such as physical abuse and rape (Forbes- Martin 1992: 19,



21; El-Bushra 2000: 7). This suggests that women can be ‘victims’ of violence and abuse from both known and unknown men, reinforcing the need for protection.

### **Summary**

Since the experience of female asylum seekers in the UK is often regarded as very negative with little chance of protection a number of recommendations can be found (Ceneda 2003: 12). The current conflict between protection and state sovereignty (Bhabha 1996: 3) needs to be addressed as presently protection is ignored in favour of a preoccupation with immigration restriction and border control (Bhabha 1996: 3). It is suggested that asylum seekers (men and women) need to be recognised as human beings requiring protection rather than statistics to be reduced (Feller 2006: 520). This requires adhering to Article 14 of the Universal Declaration of Human Rights, which states that it is a basic human right to ‘seek and enjoy asylum’ (Clayton 2008: 536). It has been argued that we are witnessing the most ‘repressive immigration measures ever’ (Adams 2003: 137). Moral panics whereby all migrants and asylum seekers are portrayed as abusing the welfare state, committing crimes and threatening employment of British citizens need to be erased (Cornelius et al 1994 in Lutz 1997: 100). It is advocated that measures enforcing immigration control should be proportionate to the harm they are intended to address (Spencer 1994: 336).

Women seeking asylum need ‘legal protection, physical protection, protection from sexual violation and better provision of services (Osaki 1997: 14). Currently women’s needs and their ability to be independent are ignored (El-Bushra 2000: 4). Women need the same protection as their male counterparts, such as protection from

forced return, protection from unjustified detention, and access to food, shelter, clothing etc. They also need protection from sexual discrimination, abuse and exploitation (Forbes-Martin 1992: 16). In addition women should not be dependent on men for residence status, as this creates and reinforces unequal relations of power and often abuse and violence (Kofman & Sales 1997: 29-30). To do this, Crawley (1997: 8) calls for a '*reinterpretation* of the Convention definition on refugees to include victims of oppression and discrimination on the basis of their gender' (her emphasis). It is agreed that 'victims' of sexual/domestic violence, women at risk of traffickers etc could be classified as individuals at risk of 'serious harm' whose application should be considered on humanitarian grounds (Fekete 2005: 40). The limited attention surrounding protection needed by women asylum seekers in the UK is partly due to assumptions that gender makes no difference to the refugee experience (Crawley 1997: 1). It must be recognised that women experience persecution because they are women, and need protection for this reason (Crawley 1997: 2). It may be that the 1951 Convention needs to be reconsidered or its interpretation challenged. Current causes of movement are often due to armed conflict, human rights abuses and natural disasters rather than political persecution (Clayton 2008: 407). This is unrecognised at present.

Following results of a study the Scottish Refugee Council specify the need for procedures that are able to 'identify and respond to women's particular protection and health needs (SRC 2009: 25). It is observed that immigration officers have little, or no specialist knowledge of the political or human rights situation of women seeking asylum (Amnesty International 1994: 11). They recommend that the UK Border Agency establish procedures to actively identify women who have experienced

violence so that needs can be responded to more appropriately (SRC 2009: 25). The Government is bound by the CEDAW and domestic equalities legislation to promote gender, meaning that all women in the UK should be treated with equal sensitivity regardless of immigration status (Slinger 2008: 8). Currently the Women's Asylum Charter is demanding women be entitled to the equivalent minimum standards at all stages of the asylum process as women 'victims' in the criminal justice system (Asylum News 2009: 2). 'Victims' of rape or domestic violence should receive a comparable standard of treatment throughout the UK asylum system as other 'victims' of rape or domestic violence in the criminal justice system (Slinger 2009: 8). Women in immigration removal centres should be entitled to equivalent minimum standards of treatment and facilities as women in UK prisons and be entitled to the same minimum standards of treatment in terms of maternity benefit as British women (Asylum News 2009: 2; Slinger 2009: 8). Finally abolitionists call for immigration controls to be eliminated as they impose cruel suffering on refugees and migrants, mainly to deter others - by doing so they undermine many human rights (Hayter 2003: 6).

The Government's emphasis has been on criminal justice responses rather than women's safety. Whilst there has been development in legislation surrounding violence against women this has not been reflected when protecting human rights of asylum-seeking women. Currently ideas of state sovereignty and border protection appear more important than 'victim' protection and assistance. The most significant reason for denying women's human rights appears to be difficulties establishing grounds for refugee status. Regardless of being vulnerable and disadvantaged, asylum-seeking women are denied the status of being a 'particular social group' even

though they suffer gender-specific persecution. Women are treated as dependents and reliant on men, which assumes they are not active in their own right. Whilst it is over 15 years ago that the UN suggested women could be considered a particular social group, the implementation of human rights has remained uneven and generally weak. This suggests that current human rights instruments are outdated. Although gender guidelines have been introduced to highlight why women may seek asylum their recognition remains poor with violence experienced considered outside the area of refugee law.

It can be suggested that whilst women form the majority of refugees the law is written for men. This allows male dominated institutions to legitimate violence by appearing as though their hands are tied. In order to combat this it must be recognised that women can be victimised by the state, organisations and individuals so that violence can no longer be excused as 'private'. Currently 'victims' plight is ignored by the populist press meaning experiences are only recognised by specialist organisations or feminist scholars. If there was a greater consciousness of their experience of exploitation and abuse perhaps examples of working with British 'victims' would be transferred to these women. If popular 'knowledge' was challenged it would seem disgusting to detain and deport vulnerable women. At present it appears that asylum-seeking women are denied their right to life, their right not to be subjected to torture or to inhuman or degrading treatment or punishment, their right to liberty and security of the person, their right to a fair and public hearing and their right to freedom of movement. They are denied these rights because they are women and because they are 'foreign'. This demonstrates the interaction of racism,

lack of citizenship rights and sexism to discriminate against asylum-seeking/refugee women in international and domestic legal instruments and policies.

The following chapter highlights similar issues relating to trafficked women. This allows the dissertation to establish if there are similarities in relation to lack of protection from violence.

## **Chapter 5**

### **Trafficked Women, Violence & Immigration Policy**

#### **Introduction**

Previous chapters have found agreement within feminist, human right and campaign literature that the British Government appears to prioritise guarding UK borders at the expense of granting protection to women. This chapter considers if this is also the case for female ‘victims’ of trafficking. To achieve this, the chapter explores the position of women trafficked into the UK who have been subjected to violence and exploitation. This entails examining academic literature, campaign literature and Government policy, enabling an evaluation of issues facing trafficking ‘victims’ and current UK immigration legislation.

#### **Definition**

Trafficking is generally understood as a process involving ‘recruitment, transportation and exploitation’ (Turner & Kelly 2009: 186). It is currently defined in Article 3 of the Trafficking Protocol (2000) as,

“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 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 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 organs’

(Council of Europe Convention on Action against  
Trafficking Human Beings 2005)

Trafficking of human beings is both illegal and hidden. Whilst always existing, trafficking has only recently become an increasing concern within the UK due to increased awareness from NGO’s and feminist research (ECPAT 2009: 19; Kelly & Regan 2000: 1; Jordan 2002: 28; Anti-Slavery International 2002: 15; Di Nicola 2007: 49). In addition, criminal justice authorities have kept few records on trafficking cases meaning that information is limited. It is suggested this reflects an ‘absence of legislation defining the problem and guidelines specifying how best to respond to it’ (Goodey 2004: 28). Human trafficking affects men, women and children. There are no reliable estimates for the numbers of trafficked people into the UK but there is a consensus that women are disproportionately trafficked by men<sup>34</sup> (Craig et al 2007: 21, Goodey 2004: 28, Jordan 2002: 28; Lee 2007: 14; Radford & Tsutsumi 2004: 3). Research suggests this is because women seeking to improve living conditions are more likely to look to migrate to find employment (Stephen-Smith 2008b: 9).

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<sup>34</sup> Research in Brazil found that the majority of recruiters were male (UNODC 2006 in Newburn 2007: 432).

## **Profile of the Issue**

It is currently estimated that of those trafficked across international borders annually, 80 percent are women and girls (Craig et al 2007: 21). So whilst men can be trafficked the focus should surround women. It is estimated that of those women trafficked into forced labour worldwide, approximately 43% are trafficked into sexual exploitation (Craig et al 2007: 20), with a minimum of 1400 women trafficked into the UK (Kelly & Regan 2000; Craig et al 2007: 22). This is generally recognised as a substantial ‘under(guess)time’ (Craig et al 2007: 22). As trafficking for sexual exploitation affects women disproportionately, literature suggests that it can be termed the ‘feminisation of poverty’ (Goodey 2003: 160; Lee 2007: 8). This is supported by writers such as Turner and Kelly (2009) who point out that women are increasingly forced to migrate because they experience greater economic discrimination in employment and are expected to be responsible for childcare. This means women are ‘pushed into desperate social situations that necessitate drastic responses’ but have ‘limited access to legitimate migration channels’ compared to men (Goodey 2004: 28; Turner & Kelly 2009; Demir 2003: 1).

Feminists suggest that inequalities between men and women support trafficking by shaping ‘gendered vulnerability to recruitment and entrapment through gendered impacts of conflict, economic transition and poverty, as well as life experiences of child sexual abuse, domestic violence and marginalization’ (Sen & Kelly 2008: 22). As a result it is argued that trafficking can be considered ‘violence against women’ since the majority are targeted because they are women and vulnerable to abuse (Pickup et al 2001: 87). The definition provided in the Trafficking



Protocol (2000) could be deemed inadequate as it does not contain the word ‘violent’ nor mention women. Kelly (1988, 2000) suggests that by using the continuum of control, the range of violence used against ‘victims’ is evident - from abduction, physical and mental control to threats and deception (Kelly & Regan 2000: 4). This is confirmed by findings from Anti-Slavery International (2002: 33), which revealed a broad range of abuse within trafficking cases, from those totally physically controlled, raped and beaten to those restrained by psychological pressure (Stephen-Smith 2008b: 5; Radford & Tsutsumi 2004: 3). *The Guardian Online* has noted that ‘victims’ have shown symptoms ‘consistent with torture and post-traumatic stress disorder’ (Harvey 2008).

It is widely argued that trafficking for forced labour is the ‘most numerically common form of modern slavery’<sup>35</sup> (Craig et al 2007: 25, 55; Herzfeld 2002: 50; Newburn 2007: 421; Hughes 2001: 14; Amnesty International & Southall Black Sisters 2008: 22; Kelly & Regan 2000: 37). ‘Slavery’ involves severe economic exploitation, the absence of human rights, and control by possibility or reality of violence (Craig et al 2007: 12; UKBA 2009b). Conditions of trafficking amount to slavery due to debt bondage, removal of documents, extent and nature of exploitation, abuse, threats and violence (Goodey 2003: 159, Skrivankova 2006: 1). This has led campaign groups to propose that states should apply existing slavery provisions to trafficking cases (Anti-Slavery International 2002: 40). This echoes sentiments by the ‘Organisation for Security and Co-operation in Europe’ (OSCE 1999: 24-5), which stressed a need to integrate a ‘human rights analysis into anti-trafficking legislation, strategies and initiatives’, as they have previously centred around controlling illegal

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<sup>35</sup> It is over 200 years since Parliament passes act to abolish the slave trade in British Empire (Home Office 2007).

immigration and organised crime. Instead the frequent UK response has been to detain and deport women leading to the criminalisation of trafficking ‘victims’ (Beare 1997 in Goodey 2003: 163).

### **Examination of Policy and Legislation**

Despite the increasing attention towards trafficking there remains limited evidence about needs of trafficked women (Zimmerman et al 2008: 55). Human rights campaigns promoted the idea that ‘victims’ should be granted reflection periods to consider the reality of returning home and to assist their recovery (Anti-Slavery International 2002: 42; Zimmerman et al 2008: 58). The Government ratified the ‘Convention on Action against Trafficking in Human Beings’ in December 2008. This came into force in April 2009 and grants a 45-day recovery period with the possibility of a residence permit if co-operating with authorities in criminal investigations (UKBA 2009a). As this is fairly recent it is difficult to measure its effectiveness, particularly as there is Government concern that reflection periods are financially burdensome. It has been suggested that assets could be seized from traffickers and used to provide ‘victims’ with basic medical and mental health care, shelter, protection from traffickers, access to legal information, financial assistance and means to return home safely, if desired (Home Office 2006: 32-33,45; Jordan 2002: 35). Research has suggested that a minimum of 90 days is needed for ‘basic recovery’ (Harvey 2008) meaning the UK offers half the recommended *minimum*.

Government officials claim that granting automatic rights to stay in the UK may act as ‘a ‘pull’ factor, encouraging women to claim they have been trafficked’

(Goggins 2006 in Roberts 2006: 14). This has not proved to be the case in Italy where 'victims' have been granted reflection periods, compensation, the right to remain and an ongoing income (Roberts 2006: 14). This suggests there is a 'culture of disbelief' in the UK (Gupta 2008) whereby women are regarded as deceitful unless they can prove otherwise. This is confirmed by the detail that very few trafficked persons have been granted refugee status or humanitarian protection in the UK on the basis of trafficking (Young & Quick 2006, in Crag et al 2007: 53). This signifies that needs of 'victims' remain secondary to sexist and racist Government policy (Craig et al 2007: 62, Lewis 2006: 15).

A pilot study funded by the Home Office, 'The Poppy Project', was set up in March 2003 to provide support and accommodation to women who had been trafficked into the UK for sexual exploitation (Richards 2006: 5). Currently the Poppy Project only provides twenty-five places, accessed under narrow criteria whereby women must prove they have been trafficked for sex. There is no specific assistance for those trafficked into other forms of forced labour (Herzfeld 2006: 39-40; Young & Quick 2006: 42). The provision of service is either temporary (four weeks whilst 'victims' decides whether to assist the authorities) or conditional (upon their agreement to co-operate with the Police and immigration authorities that may lead to the prosecution of the traffickers) (Taylor). In comparison, other countries such as Italy do not require victims to take part in criminal proceedings (Munro 2006: 320). The police have reported two problems when trying to prosecute traffickers: the lack of specific laws against trafficking and lack of 'victims' willing to give evidence (Anti-Slavery International 2002: 105, 107). Instead offences reflecting human rights violations such as rape, assault, imprisonment and kidnapping are relied on. However

they are rarely used to prosecute traffickers as gaining evidence is difficult and time consuming, therefore costly (Anti-Slavery International 2002: 105).

*The Observer* reported that the appalling levels of violence ‘victims’ suffer means women often deny they have been trafficked or refuse to disclose their experiences (Roberts 2008: 14). The Poppy Project (2008) observes that experiences of violence prior to trafficking means vulnerable women have ‘multi-layered physical and mental health issues requiring in-depth, specialist treatment’ lengthening the time it takes to disclose experiences (Stephen-Smith 2008a: 12; Goodey 2004: 42). For this reason, it is suggested that legal status should be granted irrespective of a ‘victim’s’ willingness to testify (Konrad 2006: 27). ‘Victims’ only tend to receive the full range of social benefits, such as temporary residence permits and access to education, if they agree to cooperate with the authorities by providing the ‘intelligence’ and/or testifying against traffickers (Goodey 2004: 31, 38).

Current low conviction rates in trafficking cases means that women are ‘unnecessarily endangered by the state should they agree to testify’ (Goodey 2004: 33, 39). It is reported many ‘victims’ suffer severe psychological trauma in anticipation and on account of providing evidence, especially if watched by their traffickers, as there is no guarantee to anonymity (Anti-Slavery International 2002: 50). ‘Victims’ have disclosed giving evidence against their abusers was the most difficult part of their ordeal, second only to abuse they had endured (Anti-Slavery International 2002: 50; Young & Quick 2006: 41). ‘Victims’ are treated as ‘tools through which criminal justice agencies might be able to secure convictions of traffickers’; suggesting support is only provided if ‘victims’ prove ‘beneficial’

(Goodey 2005: 274; Lewis 2006: 15). It is suggested that focus should be on protecting rights rather than exposing 'victims' to further suffering of testifying at trial or risk being re-trafficked (Aas 2007: 38). It has been suggested that current witness protection programmes could be applied yet it is seen as too controlling, expensive and rigid (Obokata 2005: 404; Anti-Slavery International 2002: 111). It is suggested assets seized from traffickers could be used to support protection and assistance initiatives (Young & Quick 2006: 42).

In Scotland, due to the devolution of power and existence of Scottish parliament, 'vulnerable victims' of trafficking may be entitled to special measures, such as the use of screens, the use of video-evidence or clearing of the public gallery, under the terms of the Vulnerable Witnesses (Scotland) Act (2004). It is not clear what distinguishes between those considered 'vulnerable' and those who are not. Article 24 of the UN convention and Trafficking Protocol states that witness testimony is to be 'given in a manner that ensures the safety of the witness' (in Goodey 2004: 36). Currently only part of the UK is adhering to this, with only Scotland seeing it as a constitutional 'right'. In order to secure rights for 'victims', Anti-Slavery International (2002: 35) has attempted to appeal to the prevailing preference for criminal justice. Their findings indicate securing convictions are more successful when 'victims' rights have been 'respected rather than disregarded' (Anti-Slavery International 2002: 35; Stephen-Smith et al 2008c: 4; Richards 2006: 6; Skrivankova 2006: 2). For example, in countries such as Belgium, and the USA, 'victims' are offered full assistance, including temporary residence permits, and as a result traffickers are more likely to be prosecuted (Anti-Slavery International 2002: 35).

The Nationality, Immigration and Asylum Bill (2002) imposes a maximum 14-year penalty for those traffickers involved in prostitution (Anti-Slavery International 2002: 105). Anti-Slavery International argue that this shows the state is more concerned with ‘criminalising the facilitation of prostitution than the actual conditions of exploitation relevant to trafficking, and fails to cover other forms of trafficking (2002: 106). Jordan (2002) argues that current legal responses violate the rights of trafficking ‘victims’ and are discriminatory whilst at the same time failing to increase prosecutions or reduce unwanted migration (Jordan 2002: 31). It is recommended that policy should be developed around women’s coping mechanisms to end violence, exploitation and abuse of all trafficking ‘victims’ (Pickup 1997: 49).

So few convictions will have little effect. Convicted traffickers are quickly replaced, causing little interruption in the trafficking cycle (Feingold 2005: 30). Trafficked people can be sold repeatedly, unlike drugs (Turner & Kelly 2009: 185). Under the Immigration, Asylum and Nationality Act 2006, employers who employ illegal immigrants can be subject to a civil penalty, imprisonment or fine (Home Affairs Committee 2009: 5). Since the Asylum & Immigration Act (2004) there has yet to be a single prosecution brought for trafficking for labour exploitation (Craig et al 2007: 32; Home Affairs Committee 2009: 61). It is suggested that one difficulty is being able to distinguish between ‘poor working conditions and situations involving forced labour’ (Home Office 2007: 5). It is argued that this highlights an ignorance of other forms of trafficking, which ensures ‘victims’ are even less protected and their traffickers unpunished (Jordan 2002: 30). Statistics show the number of convictions for keeping a brothel has fallen from one hundred in 1992 to eight in 2002. High

profits and low risks make trafficking extremely financially attractive (Shelley 2007: 116; Hughes 2001: 9; Skrivankova 2006: 5; Matthews 2005: 892).

Consequently prison is seen as more of an ‘occupational hazard’ than a deterrent (Malarek in Bindel 2004). Penalties for trafficking are considered too lenient, especially in comparison to drug trafficking where penalties and risks are higher (Craig et al 2007: 62; Radford & Tsutsumi 2004: 3). Even the police report profits are ‘enormous compared to the risks’ (guardian.co.uk: 1999) with each trafficker earning approximately £500-£1000 per woman per week (Home Affairs Committee 2009: 3). The Home Office (2007: 14) estimates the size of the market for trafficking for sexual exploitation in the UK was up to £275million in 2003. Respondents to a Home Office consultation suggested sentencing should be greater than drug smuggling in order to reflect an intolerance of human trafficking (Home office 2006: 32). In February 2009 the UN stated that human trafficking appeared to be ‘getting worse, not better’ because many countries are not ‘paying attention to it’ (Womensphere). It is suggested that traffickers do not escape punishment because of a lack of legislation but, as with domestic violence and asylum-seekers, because ‘protecting women is not the priority’ (Adams 2003: 138)

The 1993 Declaration on the Elimination of Violence Against Women stated that forced labour was a violation of women’s human rights, for which ‘states are accountable in the public and private spheres’ suggesting ‘governments should be held accountable for perpetuating or condoning trafficking’ (in Pickup 1997: 48). Goodey (2004) suggests the UK has developed a victim-centred criminal justice policy more generally, but responses to ‘victims’ of sex trafficking, in line with a

response to 'illegal' immigration, 'falls short of responses in other jurisdictions' (Goodey 2004: 32, 34-5; Pearson 2002: 56). Other feminists would disagree the UK has developed a victim-centred approach more generally. Goodey (2004) ignores other forms of trafficking and women legally arriving in the UK. The UK has a legal obligation to assist all trafficked women according to the UN convention against Transnational Organised Crime (2003) (Home Office 2006: 39; Munro 2006: 318). Existing anti-trafficking measures are used less to protect women and more to police and punish migrants and sex workers (Chapkis 2003, Kapur 2002 in Lee 2007: 5). This is seen to be legitimised by portraying trafficking as a threat to security thereby justifying increased surveillance and immigration controls (Lee 2007: 6).

Respondents to a Government consultation (2006) emphasised that there should be greater focus on human rights and protection of women with increased prosecutions of traffickers (Home Office 2006: 5, 7). It was suggested that wider issues of international aid, trade justice and debt repayments should be incorporated so 'tackling exploitation, not tackling mere crossing of borders, lies at the heart of tackling trafficking' (Home Office 2006: 8). In addition, the consultation was criticised for discussing trafficking in terms of organised immigration crime despite many 'victims' entering the UK legally (Home Office 2006: 7). This demonstrates state reluctance to support 'victims' because political rhetoric constructs many immigrants as criminals; meaning that women forced into prostitution are automatically criminalised (Craig et al 2007: 69, Jagger 2005: 8). Prostitutes have historically been granted little sympathy as vulnerable 'victims' (Goodey 2003: 168).



Early criminology saw prostitution as ‘typical female deviance’ and women’s ‘natural form of regression’ (Lombroso 1893; Thomas 1923; in Newburn 2007: 302). Doezema (2002: 20, 22) claims these historic ideas can still be seen in contemporary assumptions that ‘innocent’ women need protection from immorality, however, once fallen outside the range of acceptable behaviour, society needs protecting from the immoral woman (Hughes 2001: 12; Goodey 2004: 32; Danziger 2006: 11). Previous criminological work states that women (offenders and ‘victims’) can be treated less favourably than men if they do not fit with stereotypes of ‘natural’ female behaviour. Heidensohn (1996) argued the criminal justice system operates ‘double’ standards whereby women are controlled and punished for promiscuous sexual activities whereas men are not (Newburn 2007: 817). Smart (1976) also argued women offenders were seen to be ‘*doubly deviant*’ because they were seen as breaking the law and going against gender roles (Newburn 2007: 306, his emphasis).

Whilst it is argued trafficking for sexual exploitation is not prostitution but forced labour, dominant discourses on trafficking are based on certain assumptions and beliefs (Adams 2003: 138; Jana et al 2002: 69). Regarding ‘victims’ as complicit in trafficking, without morals and blameworthy allows harms suffered to be ignored or excused (Hughes 2001: 12; Shelley 2007: 132). It is observed that ‘an exploited sex worker is a much less sympathetic victim than a raped innocent girl’ (Miller 2004: 38). Such distinctions prevent criminal justice agencies from considering trafficked women as ‘victims’ because they do not fulfil dominant stereotypes of ‘innocent’ and ‘deserving’ (Anti-Slavery international 2002: 38; Goodey 2004: 33; Lee 2007: 11; Danziger 2006: 10). This highlights a strategy of ‘institutionalised ‘victim-blaming’’ (Radford 1987: 136), or ‘woman-blaming’, techniques, which have been highlighted

within studies on domestic violence (Lees 1996 in Lee 2007: 12). A feminist framework emphasises failures of the criminal justice system to respond effectively to trafficking 'victims', as views of organised crime are considered to lack a gendered perspective (Newburn 2007: 314; Turner & Kelly 2009: 186).

There is much agreement anti-trafficking policy should protect human rights of trafficking 'victims' (Anti-Slavery International 2002: 13, Kelly & Regan 2000). Literature suggests that developments against trafficking have not focused equally on needs and rights of 'victims' (Goodey 2004: 30). Instead it has been argued approaches to trafficking have:

'overemphasised law enforcement at the expense of the protection needs of the victim. The UK has tended to address trafficking as an issue of migration control rather than a human rights problem. This has led to the deportation of victims, especially women, without adequate consideration of their safety & well being'

(Young & Quick 2006 in Craig et al 2007: 26)

Doomernik (2004) argues that this approach, obsessed with ever-increasing border controls, is destined to fail, and benefits only organised crime as people will always find ways to migrate (Craig et al 2007: 29; Skrivankova 2006: 11). Anti-Slavery International (2002: 35) argue that if this persists the rights of 'victims' to access justice will 'continue to be denied, and prosecutions will fail because trafficked persons will neither be willing nor able to testify' suggesting an official unwillingness

to acknowledge responsibility for the protection and enforcement of rights of trafficked 'victims' (Jordan 2002: 35; Herzfeld 2002: 54). The promise of human rights for all is failing trafficked women (Clapham 2007: 148).

Trafficking for exploitation takes several forms, many of which are ignored and only realised when tragedy occurs and highlighted by the media, for example, the Morecambe Bay Tragedy (Craig et al 2007: 10; Lee 2007: 4; Skrivankova 2006: 9). Labour trafficking is probably more widespread because there is a greater demand for labour than for sex, yet statistics over represent the sex trade (Feingold 2005: 26). This means that whilst 'victims' of trafficking can be found in many industries such as construction, catering, clothing and private households, literature on other forms of trafficking in the UK is 'relatively sparse' (Turner & Kelly 2009: 187; Craig et al: 31). Instead there is greater emphasis on sex trafficking and a lack of awareness about trafficking for forced labour, resulting in a lack of support available (Skrivankova 2006: 2). Recent literature also includes cross-border trafficking (Turner & Kelly 2009: 186; Martin 2006: 12; Home Affairs Committee 2009: 9; Munro 2006: 318). Evidence suggests the UK is primarily a destination country for human trafficking (Home Office 2007: 14). It may be suggested that violence and exploitation non-British women experience is heightened by their status as 'immigrants'. There is still limited focus on forced labour 'victims' of trafficking, perhaps reflected by lack of attention in Government and media discourses (Aas 2007: 39). Skrivankova (2006) suggests that lack of protection and assistance to those trafficked into forced labour can lead to re-trafficking (2006: 13, Jordan 2002: 30).

The Gangmasters (Licensing) Act 2004 is responsible for setting up and operating a licensing scheme for labour providers in all parts of the UK e.g. agriculture, shellfish gathering (Home Affairs Committee 2009: 5). The Gangmasters Licensing authority has no data available on ‘victims’ as its focus is on the employers (Home Affairs Committee 2009: 17). This again suggests an ignorance of ‘victims’. Overseas Domestic Worker visas are supplied to migrant workers, for between 6-12 months, on the condition they stay with their employer (Amnesty International & Southall Black Sisters 2008: 23). After working in the UK for four years they can apply for indefinite leave to remain; if granted they can seek work anywhere in the UK with any employer (Amnesty International & Southall Black Sisters 2008: 23; Lutz 1997: 101). In 2006 12,500 people (the majority women) were granted access to the UK as Overseas Domestic Workers (Amnesty International & Southall Black Sisters 2008: 23). During 2005-2006 Kalayaan dealt with 387 migrant domestic workers, 86 percent of which were women; of these 23 percent indicated they had suffered physical abuse, 70 percent psychological abuse, 71 percent were denied food, 86 percent worked over sixteen hours per day, and more than half indicated sexual abuse (Amnesty International & Southall Black Sisters 2008: 23). This confirms women trafficked into domestic slavery and forced labour are also controlled through sexual abuse and rape (Dickson 2004: 6; Lutz 1997: 101).

The British Government claims to recognise that ‘trafficked people require specialist care and protection as well as support in order to make choices about their future’ (Home Office 2006 in Skrivankova 2006: 12). There is no equivalent to the Poppy project for trafficking ‘victims’ of labour exploitation (Home Office 2006: 12), suggesting the Government only appears concerned with ‘victims’ of sexual

exploitation, reflecting the prioritisation found in the literature and the media (Skrivankova 2006: 12, 28) Those involved in forced labour can experience threats by employers, debt bondage, removal of documents, no wages, no time off, and no sick pay as part of the abuse (Home Affairs Committee 2009: 9-10). Statistics for those trafficked into domestic servitude are even more difficult to gather; as they often work alone, or in small groups and rarely come to the attention of authorities (Home Affairs Committee 2009: 16). Police often fail to understand ‘victims’ status and immigration authorities ‘frequently fail to follow the correct procedures for issuing visas, procedures that would identify abuse’ (Home Affairs Committee 2009: 26). Kelly and Regan (2000) found that the majority of police forces have limited knowledge of, and as a result pay little attention to, trafficking which unintentionally leads to a ‘climate of toleration’ (2000: vii).

The British Government maintains that it is ‘dedicated to a victim-centred approach’ (Home Office 2007: 47). However, literature suggests the Government has implemented a two-tiered approach to human rights whereby only citizens are entitled to rights and therefore protection. This ignores international human rights law, which provides rights regardless of citizenship (Jordan 2002: 30). Adopting this approach allows the Government to deport trafficked ‘victims’ or even prosecute them for immigration and labour violations rather than the traffickers (Jordan 2002: 30), e.g. ‘Victims’ can be prosecuted for the possession of forged documents (i.e. passport). In this way the Government appears active. In doing so the Government falsely reinforces popular assumptions this will discourage others from future migration (Jordan 2002: 30). It is claimed there is a neglect of the ‘victim’, criminalisation of unwanted immigrants and an obsession with perpetrators (Goodey 2003: 171). It is

suggested the British preoccupation with criminalisation means responses to ‘victims’ are primarily located within attempts to control illegal immigration and organised crime (Goodey 2004: 32; Skrivankova 2006: 11).

Within the UK Action Plan on Trafficking the Government claims to be ‘committed to tackling this crime and addressing harms caused’ (Home Office 2007: 4). It can be noted that the issue of crime is addressed first and support second. Consequently it can be argued that there is a consistent failure to regard trafficking from the view of the ‘victim’, ignoring human rights abuse (Jordan 2002: 29). This could be because a criminal approach appeals to the Government as it appears to be taking action to ‘solve the problem’ (Pickup 1997: 47). This means the Government is free from taking preventative actions and counteractive measures which would effectively support ‘victims’ (Pickup 1997: 47). It is argued that instead of enforcing oppressive strategies and restrictive immigration policies, the Government should concentrate on upholding human rights by recognising women as ‘victims’ rather than ‘illegal immigrants’ (Pickup 1997: 48; Goodey 2004: 34). A police officer interviewed by Anti-Slavery International believed the police were still ‘rather biased against migrants and saw them as criminals or people who violated immigration rules rather than as potential victims of crime’ (Skrivankova 2006: 13). Dealing with ‘victims’ as illegal immigrants fails to recognise experiences of exploitation (Skrivankova 2006: 8; Craig et al 2007: 53).

## **Detention & Deportation**

Many ‘victims’ are arrested and detained as illegal immigrants (Lee 2007: 12). This ignores rights not to be subjected to forced labour and protection from inhumane treatment (Clapham 2007: 147). The Poppy Project expressed concerns over increasing numbers of trafficked women being held in immigration detention (Stephen-Smith 2008a: 4). Women can be detained and face prosecution for criminal offences meaning that they can be deported without notice and denied ‘victim’ support, despite suffering severe abuse whilst in the UK (Stephen-Smith 2008a: 4). The Home Office asserts that 60 percent of all immigration detainees were detained for less than 14 days during the second quarter of 2007. The Poppy Project (2008) found detention varied between two nights and eighteen months (Stephen Smith 2008a: 8). Campaign groups argue that the detention of trafficked women contravenes international human rights law and current UK Border Agency policy as it increases ‘victims’ distress and suffering (Stephen-Smith et al 2008c: 15; Stephen-Smith 2008a: 4). It is argued this displays a lack of understanding of the protection needs of trafficked ‘victims’ (Stephen-Smith 2008a: 13). In an apparent attempt to justify detention, Chief Inspector of Prisons Anne Owers, has claimed that ‘an Immigration Removal Centre is not a prison. Detainees have not been charged with a criminal offence, nor are they detained through normal judicial processes’ (HMIP 2002: 4 in Bosworth 2007: 166). It is ironic the ‘Chief Inspector of Prisons’ oversees immigration detention if they are not prisons. Evidence suggests that those detained experience incarceration as imprisonment since detention excludes non-citizens from society by denying freedom (Bosworth 2007: 166, 174). It is suggested that ‘victims’

continue to be removed from the UK as illegal immigrants with no assessment of the risks they may face and without the traffickers being punished (Craig et al 2007: 31).

Trafficking has been described as a cycle, beginning before women leave home, their experience in the UK and their return to their country of origin (Pickup 1997: 49). Immigration officers and police report that most trafficked women, once detected, ask to be deported within 48 hours as they fear their traffickers will think they have provided evidence against them and attack their families (Kelly and Regan 2000: 32; Amnesty International 2002: 42). Trauma is seen to impact upon their choices, leading to criticism that it is 'counter-productive' to 'rescue' trafficking 'victims' from their situation only to return them to the same situations they tried to escape (Lee 2007: 8; Feingold 2005: 30). It is generally acknowledged that perpetrators threaten the safety of 'victims' and their families meaning that women are too terrified to consider remaining in the UK as the current a lack of protection available means it is not in their best interests to risk personal and family safety (Feingold 2005: 30; Anti-Slavery International 2002: 110; Demir 2003: 1). Evidence suggests threats are frequently carried out, often as a warning to others, or as punishment for the money women owe (Shelley 2007: 132; Herzfeld et al 2006: 39; Demir 2003: 12).

Repatriating women without protection forces many back to traffickers, as 'victims' have debts to repay, no protection from intimidation or reprisals, and no way of sustaining themselves (Anti-Slavery international 2002: 60). In addition, when re-trafficked, 'victims' often experience more extreme violence to ensure they do not attempt to escape (Stephen-Smith 2008b: 19). This can be considered a violation of



women's human rights, as it does not grant protection from reprisals or uphold the right not to be held in slavery or servitude (Anti-Slavery International 2002: 110). It is argued that deporting women does very little to disrupt traffickers whilst actively discouraging 'victims' seeking protection (Stephen-Smith 2008b: 19; Clapham 2007: 147). This may suggest the Government prioritises deportations over protection, leading to the conclusion a 'rights focus has not been central to the UK authorities handling of trafficking cases' meaning responses to 'victims' are inadequate (Craig et al 2007: 26; Young & Quick 2006: 41; Amnesty International and Southall Black Sisters 2008: 22). To overcome this it is proposed that there should be support providing counselling, crisis intervention, legal advice and a place of safety (Pickup 1997: 48; Stephen-Smith et al 2008c: 22).

Richards (2006: 6) argues that the needs of trafficked women are an 'extension of the needs of all asylum seeking and refugee women'. Again granting asylum is seen as crucial to prevent the risk of repeat trafficking by not returning 'victims' to countries of origin and providing opportunities for periods of security, recovery and rehabilitation in the UK (Richards 2006: 6; Young & Quick 2006: 41; Stephen-Smith et al 2008c: 4). Floor (2006: 23) suggests that trafficked women can be defined as refugees under the 1951 convention if they can establish their country is unwilling to provide protection against re-trafficking or serious harm from traffickers. However, despite the United Nations High Commission for Refugees acknowledging trafficking and forced prostitution amounts to persecution, the chances of being able to prove they qualify are very limited as decision makers are still reluctant to recognise 'victims' of trafficking as a 'particular social group' (Burgoyne & Darwin 2006: 43; Richards 2006: 13,16; Demir 2003: 3). It is also difficult to show they fear

persecution due to race religion, nationality, political opinion, or membership of a particular social group (Richard 2006: 15).

‘Victims’ of trafficking in the UK can be said to be in a very similar position to women seeking asylum. Current policy dictates that the ‘burden of proof rests on the asylum claimant to demonstrate their claim is, despite little evidence to support their claim. Consequently women are routinely refused, or as Richards (2006: 17-8) notes, simply not believed (Stephen-Smith et al 2008c: 19). Furthermore, many ‘victims’ come from countries identified by the Home Office as ‘safe’ meaning they have no right to appeal (Dumper 2005: 14). Tightening visa policies, limiting residence and labour permits and increasing detention and expulsion can all be described as ‘xenophobic actions’, making it more difficult for women to enter the UK legally (Pickup 1997: 47; Morrison 2000 in Jordan 2002: 29). Consequently stringent border controls can unintentionally increase the possibility of victimisation and violence

Existing laws are being used to remove trafficking ‘victims’ rather than uphold basic human rights (Anti-Slavery International 2002: 116). Women are likely to be suffering pain, distress and memory problems, all of which may affect their ability to co-operate with the criminal justice system and consequently affect their asylum application (Zimmerman et al 2008: 58). It is argued that whether or not a ‘victim’ succeeds in her asylum claim should not depend on her co-operation with authorities (Richards 2006: 21; Goodey 2003: 169). The UK has been reluctant to offer protection to all due to concerns that this could be a “pull factor” for women to enter the UK (Richards 2006: 7; Skrivankova 2006: 10). Whilst this may be the case

for a very small minority, it is more pressing to address the needs of vulnerable trafficked women (Goodey 2003: 169).

### **Violence Against Recently Arrived Immigrant Women**

According to a feminist framework women are seen to have an unequal social status to men, meaning that women are affected directly and indirectly by the burden of poverty and the consequences of violence that affect them disproportionately (Jordan 2002: 28; Herzfeld 2002: 52). Existing research into trafficking has focused on methods of recruitment, modes of transportation and forms of exploitation (Turner & Kelly 2009: 193-4). There is also the emerging view that women are deliberately subjected to violence with the intent of grooming for trafficking, as they are then vulnerable to those who they feel can offer a way out of their situation (Stephen-Smith 2008b: 11-12; Turner & Kelly 2009: 195-6). In one study 50 percent of women experienced sexual or physical violence before they were trafficked, supporting suggestions traffickers deliberately target vulnerable women (Stephen-Smith 2008b: 5, 11). The literature also cites it is very common for women to be recruited through a friend or acquaintance who gains the woman's trust; some women can even be sold by relatives (Shelley 2007: 127; Hughes 2001: 11; Home Affairs Committee 2009: 8). It is estimated that 20 percent of women are recruited through advertisements falsely offering lucrative job opportunities as nannies or waitresses for example (Berry 2001: 12; Hughes 2001: 11; Phizacklea 1998: 31). Police estimate that women trafficked for sexual exploitation can be forced to see between twenty and thirty men a day (Roberts 2006: 14). Domestic violence and increasing suicide rates have also been found among trafficked women' (Madeline 2001 in Sharma 2001: 46).

It is often proposed that women should be made more aware of the consequences of trafficking. It has been found that Government campaigns in countries of origin to warn women are limited and fail to address underlying causes of trafficking - demand for cheap labour, poverty, lack of opportunities, instability and economic uncertainty (Goodey 2003: 161; Skrivankova 2006: 8; Herzfeld 2002: 54; Perpignan 1996: 54; Pickup 1997: 45; Goodey 2004: 28). It is suggested that there is 'little incentive for government's in countries of origin to protect women from trafficking' (Demir 2003: 20). Feminist and campaign literature acknowledge that women become even more vulnerable to traffickers once in the UK (Turner & Kelly 2009: 186). It is agreed traffickers manipulate, mislead and isolate trafficked women by using knowledge of legal and immigration systems to further marginalize and exploit them (Anti-Slavery International 2002: 43; Pickup 1997: 47). It is also agreed a number of barriers prevent 'victims' leaving their exploitative situation, with the biggest deterrent to reporting violence being fear of deportation (Adams 2003: 137).

A recurring topic within the literature was the confusion between definitions of smuggling and trafficking, making it relatively easy to distinguish common themes focusing on their overlap (Turner & Kelly 2009: 185-186; Di Nicola 2007: 51; Hudson 2007: 212). Smuggling is usually defined as involving the consent of a migrant to be smuggled illegally across borders, whereas trafficking is seen to involve the forced movement of people for exploitation (Newburn 2007: 421; Obokata 2005: 394). The main difference cited that is those defined as trafficked are seen not to have consented (Newburn 2007: 421; Bhabha & Zard 2006: 6; Piotrowicz 2008: 243; Home Office 2007: 14). It is argued that smuggling and trafficking are connected as

both can involve violence, coercion, deception and exploitation, and effectively ‘victims’ are ‘owned’ by traffickers; a human rights framework would focus on ‘victims’ circumstances, rather than issues of ‘consent’ (Aas 2007: 37; Craig et al 2007: 19; Bhabha & Zard 2006: 7-8; Goodey 2003: 159; Home Affairs Committee 2009: 8; Munro 2006: 329). Current concepts of ‘trafficking’ imply that women are ‘passive victims’ when agreeing to work in the sex industry can be a rational decision following a shortage of employment opportunities (Pickup 1997: 4; Hughes 2001: 9).

Constant distinctions between trafficking and smuggling within discussions are problematic (Newburn 2007: 421; Bhabha & Zard 2006: 6). They can be used to excuse violence against women and justify a lack of state protection if women are considered complicit in their own suffering. Women may be considered blameworthy for ‘provoking their own demise’, as seen with ‘victims’ of domestic violence. It is cited that some women *know* they are being recruited for prostitution and may initially give their consent to be trafficked for this purpose (Goodey 2003: 159). This led campaign groups to stress the ‘danger’ of making distinctions between ‘real’ ‘victims’ (Stephen-Smith 2008b: 14). Women cannot anticipate the extent of abuse they will suffer, lack of control they will have, level of violence used and the lack of money they will receive; *all* ‘victims’ experience ‘exploitation and human rights abuses’ and are often misled as to the circumstances and conditions in which they are expected to work (Goodey 2003: 159, 161; Kelly & Regan 2000: 24; Stephen-Smith 2008b: 14; Hughes 2001: 9, 12; Mathews 2005: 891). Jordan (2002: 29-30) supports this stating that women should not be deprived of their rights on the foundation that they ‘knew’ what to expect and so deserved what they ‘got’. The treaty to ‘Prevent, Suppress and Punish Trafficking in Persons’ (2000) states consent is irrelevant

(Clapham 2007: 147), so there can be no justification for distinguishing between ‘victims’ based on the perceived consent of human rights violations.

Like ‘victims’ of domestic violence and asylum seekers, trafficked women cannot access public funds and therefore accommodation and support<sup>36</sup> needed to escape violence (Amnesty International & Southall Black Sisters 2008: 22; Anti-Slavery International 2002: 54). Trafficking ‘victims’ report that their greatest needs were housing and opportunities to be financially independent, yet in the UK trafficked persons are generally not allowed to work whilst on temporary residency (Anti-Slavery International 2002: 54). The burden falls on non-governmental organisations (NGO’s) to support ‘victims’ of trafficking (Anti-Slavery International 2002: 49). Campaign groups argue that by disregarding the need to provide ‘victims’ with access to accommodation, the Government maintains a system whereby women are trapped in violent situations, or vulnerable to further violence and exploitation (Amnesty International & Southall Black Sisters 2008: 22). ‘Victims’ are economically and socially dependent on their employer leaving them trapped in positions of slavery (Amnesty International & Southall Black Sisters 2008: 23; Zarembka 2003 in Aas 2007: 43).

In order to support themselves it is suggested that ‘victims’ should have a right to sue their exploiters (Kelly & Regan 2000: 42). Many trafficked ‘victims’ have expressed an interest in claiming back the money they have earned yet very few are compensated for earnings, losses or damages suffered (Anti-Slavery International 2002: 57). Judges have the discretion to award compensation to ‘victims’ as part of

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<sup>36</sup> As with victims of domestic violence with insecure immigration status, ‘victims’ of trafficking do not have access to refuges or any other housing funded by the state, due to the ‘no recourse to public funds’ rule (Anti-Slavery International 2002: 114).

sentencing and presently the UK has one of the best records of successful seizure of traffickers assets which goes to the treasury (Anti-Slavery International 2002: 58). In the first half of 2002 the Metropolitan police seized over £275,000 (Anti-Slavery international 2002: 115). There is currently no evidence that a claim has ever been made to access these funds, as many 'victims' are unaware of their rights to legal redress and compensation (Anti-Slavery International 2002: 57-9).

Anti-Slavery International (2006) found that migrant workers are rarely identified as trafficking 'victims' despite suffering abuse, control, threats of destitution, being prevented from learning English, having a lack of knowledge and being afraid of the authorities (Skrivankova 2006: 23). Feminist literature widely recognises that trafficked women are unwilling to report their exploitation to the police for many reasons. Reasons include fear of reprisals from traffickers, fear of deportation or distrust of the authorities (Goodey 2004: 28; Kelly & Regan 2000: 26; Demir 2003: 12; Tzvetkova 2002: 60, 64). 'Victims' may be given false information by traffickers who tell them that 'outside agencies, both the police and NGOs, will not assist them' or make women believe the authorities are involved in trafficking (Goodey 2004: 28; Roberts 2008: 14). Trafficking 'victims' are unable to question their situation because of fear and language barriers (Goodey 2004: 28, Leidholt 1996: 84).

Trafficked women are seen to be purposely isolated from sources of support, family and friends and have little, if any knowledge of life in the UK, increasing dependency on traffickers (Stephen-Smith 2008b: 17; Leidholt 1996: 83). ECPAT UK (2009: 19) notes that 'victims' of trafficking, especially those from ethnic groups with

strong concepts of female purity and shame, are unlikely to seek support or disclose abuse. This reflects experiences of ‘victims’ of domestic violence discussed in previous chapters. Families and communities stigmatise, harm, sometimes murder ‘victims’, for shame and ‘dishonour’ they have brought by being sold into the sex industry (Willemesen 2006: 30; Goodey 2004: 39). The Poppy Project (2004) documented a case where a woman was re-sold by her family within three days of being returned (Dickson 2004: 4).

There is ongoing debate as to whether trafficking should be an immigration issue or a human rights concern due to tension between the rights of individuals to protection, and the Government’s right to set conditions for entry (Craig et al 2007: 25; Hudson 2007: 215). Leidholt (1996: 84) argues that trafficking should be a human rights concern as it places vulnerable women in powerless and dependent situations; Anti-Slavery International (2002) supports this. A human rights perspective states that trafficking is a violation of human rights under the 1948 Universal Declaration of Human Rights (Lee 2007: 9). Rights violated include the right to be free from slavery or servitude; right to freedom of movement; right to life, liberty and security; right to health and the right to free choice of employment (Lee 2007: 9). Because the abuse suffered by ‘victims’ occurs in the UK and may involve participation of British citizens, the Government has an obligation to fund and improve services aimed at helping ‘victims’ regain their health and well being (Zimmerman 2008: 58).



## Summary

The current situation is seen to leave ‘victim’s of human trafficking unprotected. Within the literature a number of recommendations can be found. Kelly and Regan (2000) argue for a ‘preventative strategy’, which would make the trafficking of women more risky and costly for traffickers (2000: 36). They also argue for support and redress for trafficked women (Kelly & Regan 2000: 36). Turner & Kelly (2009: 198) argue that current responses fail to address issues of ‘home-grown demand’, which is the principal motivation for human trafficking. They consider ‘home-grown demand’ itself as deeply entrenched in social orders structured by gender and race (Turner & Kelly 2009: 198; Demir 2003: 10). Kelly (2001: 28) suggests there is a demand from men to pay for sex with who are different, “‘other’, who do not speak their language, who have less power and status in general than women who are nationals’ (Kelly 2001: 28). It should be recognised that women are trafficked where there are existing sex industries, which can easily absorb them (Kelly 2001: 22). Demand for sex is increasing within the UK; for instance, a third of regular 10 million Internet users log on to pornography sites, mostly during working hours, suggesting sex is becoming increasingly normalised (Sen & Kelly 2008: 23). It is suggested this converts into an apparent increased incidence of trafficked women for sexual purposes. Feminists claim that trafficking in women for the purpose of sexual exploitation ‘relies upon and sustains prostitution and women’s inequality’ more generally (Kalayaan 1999; Hughes & Roche 1999 in Kelly & Regan 2000: 1).

Kelly (2001: 22) suggests more time has been spent on actually defining trafficking than deciding what should be done. This can also be seen within the

literature, which aims to distinguish between consent and coercion, smuggling and trafficking. Even when developing the UN Trafficking Protocol much debate surrounded issues of ‘consent’ (Doezema 2002: 20). Due to the varying perspectives of feminism, feminist groups could not agree; with one lobby group arguing that all prostitution, irrespective of consent, should be considered trafficking, with another arguing consent was necessary to any definition of trafficking (Doezema 2002: 20). Human rights groups viewed prostitution as legitimate labour whilst the Coalition Against Trafficking in Women (CATW) deemed all forms of prostitution as a violation of human rights (Doezema 2002: 20). Doezema (2002: 24) argues that the UN trafficking Protocol provides ‘very little in terms of human rights protections for trafficking victims, and nothing at all for (migrant) sex workers who were not coerced’. She argues that coercion should not be an essential part of any definition of trafficking (Doezema 2002: 21). Previous attempts to tackle trafficking have justified repressive measures by claiming to ‘protect’ women (Doezema 2002: 21). For example restrictions on female migration, increased deportations and an increased surveillance of sex work (Doezema 2002: 25). Such policies and controls merely expose women to greater exploitation due to existing gender inequalities and social vulnerabilities (Jana et al 2002: 71; Young & Quick 2006: 41).

Instead it is proposed that there needs to be a greater emphasis on ‘victim’ support. To do this knowledge of women trafficked into UK needs to be increased by further studies and increased Government attention (Sen & Kelly 2008: 23). There is a current lack of understanding about human trafficking across the UK (Home Office 2007: 20). It is proposed that further research is required to assess: ‘the long-term involvement in the sex industry on women; what makes exit possible and sustainable;

the extent of the growth of the sex industry, including trafficking dimensions; the normalisation of demand; and the links between organised crime and the sex industry' (Sen & Kelly 2008: 25). Again this focuses on the sex industry and ignores other forms of forced labour. This of course will require funding which could be problematic. The Home Office has decided to end funding for the Metropolitan Police Human Trafficking Unit. Police officers stated that the loss of 'funding would affect their ability to find trafficking victims'; suggesting protecting 'victims' of trafficking is not a priority (Home Affairs Committee 2009: 34). Instead a new UK Human Trafficking Centre (UKHTC) has been established but it is still too early to make any evaluations. It remains to be seen whether this will improve, exacerbate or make no difference to the rights of 'victims'. Since 2006/7 The Government doubled funding for the UK Human Trafficking Centre to £1.7million (UKBA 2009a). In comparison to the cost of immigration regulations and controls this is extremely low.

It is suggested that implementation of laws and policies to protect trafficking victims has been 'poor' or 'patchy', with 'victims' still unaware of their rights (Anti-Slavery International 2002: 32; Pickup 1997: 44). Human trafficking policy and legislation is complex, as it is not collected in one statute, accompanied by numerous international conventions (Home Affairs Committee 2009: 4). There is currently no legislation to meet the needs of 'victims' (Demir 2003: 14). Policy should be gathered together and strongly implemented so that 'victims' needs are addressed. Current legislation does not allow individuals subject to immigration control to remain in the UK on the basis of their status as a 'victim' of trafficking (Home Office 2007: 56). Campaign groups suggest that trafficking 'victims' should be recognised as a

particular social group so that they can apply for asylum to stay in the UK on the basis of their experiences of violence and exploitation.

It is observed that a rights-based approach is notably absent from the UK's approach to trafficking (Sen & Kelly 2008: 24). It is suggested that immigration concerns cannot be permitted to ignore the Government's legal obligation to address violence and exploitation (Sen & Kelly 2008: 23-4). To do so it is suggested policy-makers and the media should resist penalising and stereotyping 'victims' and instead concentrate on ending exploitation (Sharma 2001: 47). Human rights campaigners call for information and legal assistance to be provided rather than detention and deportation (Pickup 1997: 47). Although the Government has introduced policy and initiatives in relation to human trafficking, it can be argued that in practice they do not go far enough to protect 'victims' of violence and exploitation. The Government demonstrates only partial acknowledgement of trafficking. There is a sense that the Poppy project should be replicated throughout the UK (Home Office 2006: 37) as this is currently Britain's only dedicated shelter supporting trafficking 'victims' (Jagger 2005: 8). It is not clear why this has not been the case since the Government regards the Poppy project as a 'recognised example of best practice both domestically and internationally' (Home Office 2007: 10). The Poppy Project itself recommends trafficking should be recognised as a human rights issue (Richards 2006: 22). They promote reflection periods for all trafficked women, improved training and gender-sensitive case-workers (Stephen-Smith et al 2008c: 22). In addition, the lack of effective protection and risk on return needs to be addressed, accompanied by information about the asylum system at earliest available opportunity (Richards 2006: 22).

Currently the Government over-emphasises criminal justice at the expense of ‘victim’ support. This approach is seen to fail to increase prosecutions or reduce unwanted migrants, suggesting an alternative needs to be found. It appears that ‘victims’ are provided with little, if any, protection. All agencies need to recognise ‘victims’ face many obstacles to escaping traffickers. It is vulnerability in the UK and elsewhere that leads to trafficking and re-trafficking. Currently immigration rules are seen to provide traffickers with the means to control ‘victims’, as approaching authorities may lead to detention and deportation. There is a reluctance to offer protection, in part because it is assumed unscrupulous people will take advantage of this. Also ‘victims’ are seen as complicit in their suffering. This allows the Government to deny responsibility and retain focus on protecting UK borders. However, it is considered doubtful that women falsely claim to have been trafficked. Further those trafficked are unlikely to know the exact nature of their work and the consequences of being trafficked. A lack of protection enhances abuse ‘victims’ have already suffered which can be considered a further abuse of human rights.

This chapter has considered the position of trafficking ‘victims’, violence and immigration policy. The final chapter brings the dissertation to a close by highlighting similar issues affect all recently arrived immigrant women studied.

## **Chapter 6**

### **Conclusion**

...‘feelings of fright, vulnerability and lack of protection  
are common features of women’s lives’...

(Hanmer & Maynard 1987: 7)

Both violence against women and migration are regarded as global phenomena. However, both can be considered to be under-researched due to a pre-occupation with men and the male experience. Whilst most existing immigration literature places more weight on male immigrants, ignoring the large percentage of women migrants and even greater number of female refugees, the research has reviewed the emergent work specifically on female immigrants. It can be said that this research has been led by the available literature. The research has considered women within the UK immigration system, by reviewing academic literature, legislation, policy and campaign group literature. Findings from a brief interview with Preston Women’s Refuge cannot be generalised but demonstrate consistency with conclusions found in literature related to recently arrived immigrant women and domestic violence.

The previous chapters have considered the position of three groups of recently arrived immigrant women: ‘victims’ of domestic abuse subject to the two-year probationary period, ‘victims’ of violence who have been trafficked, and asylum seeking women who have also experienced some form of violence. The dissertation

has pulled together a considerable amount of literature and presented it in a logical manner. What became clear is that further in-depth research is required in all the areas considered. Whilst there are limitations to what can be achieved within a time frame and word count there are some obvious similarities that are worth noting. Exploitation can and does occur in all forms of migration that have been considered. The greatest similarity to be noted is the UK's failure to protect these groups of immigrant women from violence. Across all literature it seems gender, experience of violence, immigration status and ethnicity cannot be isolated from one another. They appear to interact to leave women unprotected. There is a lack of protection regardless of whether violence has taken place within the UK or the woman seeks safety in the UK because of violence suffered elsewhere.

Implementing a feminist framework has encouraged a reflective and critical approach to current understandings of violence against immigrant women. The dissertation has emphasised that the violence these women suffer is a fundamental violation of their human rights and remains largely hidden within the UK. A feminist framework suggests that the persistence of such violence against these women reflects inequalities more generally. Violence against women is considered a persistent human rights violation, denying women equality, security, dignity, self-worth, and their right to freedom. Feminist literature suggests that violence is a display of male control, which keeps women in a state of fear with the effect of retaining men's power. Statistics show that 'victims' are more often women, and perpetrators men. When a woman's victimisation is highlighted, the perpetrator is rarely punished. This is supported by political and media attitudes which suggest violence against women is openly tolerated or ignored. This has led feminists to argue that institutions such as

the law are not neutral; they are patriarchal, reflecting the interests of men who benefit from the use and fear of violence. By allowing violence against women to continue, the state fails to protect women and so can be considered to be complicit in such violence. Whilst the increase in feminist research puts violence against women on the agenda, such violence will persist if the Government continues to ignore its violation of international treaties and allow perpetrators to remain unpunished. Further, it can be noted that the proposed coalition document of the new government fails to make little, if any, mention of violence against women. This could suggest a lack of political interest and therefore a lack of political will to protect women (citizens or not) from violence.

Across the variety of literature reviewed, it can be seen that in all situations considered women are reluctant to report the violence and abuse they have suffered for a number of reasons: shame, fear, isolation, language barriers, lack of awareness of services, lack of awareness of their rights, lack of knowledge of British culture etc. However, whilst this is recognised in theory, case studies suggest this is certainly not recognised in practice. For example, spouses subject to the probationary period must *prove* they were ‘victims’ of domestic violence; asylum seekers must *prove* they were ‘victims’ of violence due to the narrowly defined criteria of the Convention; and trafficking victims must *prove* they did not consent to their violence and exploitation. Whilst it is recognised on paper these women may not report the violence, in reality when proof cannot be obtained they are seen to be lying. For all women subject to violence there are very rarely any witnesses, so it is ‘his word against hers’ and men are assumed to be more truthful. A feminist framework has suggested this is because of patriarchal authority, which allows violence against women to be excused by



maintaining the belief that women are deceitful. As a consequence 'victims' immigration status, the fear of deportation, a lack of benefits and a place of safety all make these 'groups' of women more vulnerable to abuse and less likely to seek help. This suggests women are trapped in a vicious cycle whereby they must report the violence to get help but are too afraid or do not know where to go for assistance and therefore experience greater violence and abuse. Currently abusers can tell women anything they want in order to keep women in a state of fear and unfreedom. This demonstrates a need for more accessible information to be provided at all stages of the immigration process – before they apply, once they have applied, along their way and upon their arrival. 'Victims' need to understand that in order to escape their situation they can, and must seek help. However, this too has been revealed as problematic.

There is agreement across feminist and campaign literature that current provisions for those who do want help are insufficient and inadequate, as many authorities and support services do not understand a 'victims' immigration status. Responses from police and immigration officials are in need of great improvement. All 'victims' considered in the dissertation rarely approach the authorities (police and immigration officials) to seek help or redress for many reasons, including fear of the authorities. Even when women do seek help from the authorities they may not realise the situation, understand their immigration status or even be able to help, due to a lack of knowledge or motivation. There is a failure to see women as 'victim's of crimes, sometimes women have simply not been believed or there has been a reluctance to get involved because of cultural assumptions. Other relatives have been used as translators meaning women may not disclose the abuse or the relative may omit details. Immigration officers tend to have little, or no specialist knowledge of the

political or human rights situation of those seeking asylum. Officers are often male meaning women are even less likely to disclose violence for moral reasons. This is coupled with evidence immigration officers often do not use the correct procedures that would recognise violence and abuse. In addition, support services receive little, if any, funding from the Government meaning services can only offer very limited support and assistance, if at all.

Whilst recently arrived immigrant women suffer the same problems as other women, such as poverty, lack of food, poor health etc they also suffer from the after-effects of violence, persecution and other traumatic events such as rape. Many organisations lack the services available to deal with these effects due to a lack of knowledge, funding, language skills and capacity. Currently those programmes funded by the Home Office (Sojourner Project and Poppy Project) have narrow criteria meaning they are not available to all ‘victims’. It is apparent that what is needed for all women, above all else, seems to be a place of physical safety. By not being entitled to public funding ‘victims’ of violence face destitution, deportation, further violence or even death. As a result ‘victims’ with no recourse to public funds are economically and socially dependent on their abuser: spouse, family, stranger or employer. Women are unable to access support and accommodation, leaving them trapped in dangerous situations. This suggests a complete disregard of women’s human rights and because of the lack of assistance available it could be argued it is even more acceptable for non-British women to experience violence. The official excuse is that any woman could then claim to be a ‘victim’ of domestic violence, rape, abuse or trafficking. It seems that in order to keep a minority of individuals out,

the majority of 'victims' must suffer. This could be used to suggest the state is sexist and racist.

The literature reviewed highlights a need for government responsibility to build services to meet the needs of these women and ensure they are extended to mainstream services across the UK. Currently the state recognises 'victims' plight in theory but not in practice. Supporting 'victims' of violence is often second to protecting borders on the premise that helping the majority of victims would result in a minority of false claimants entering the UK. This again demonstrates suspicion of those who are not British meaning only citizens are entitled to protection. However, there is an official failure to recognise stringent border controls and a lack of available remedies can unintentionally increase the possibility of victimisation and increased likelihood of violence. This means that the state plays a key role in maintaining oppression as it is failing in its obligation to protect all women.

It would appear that identifying men as perpetrators of violence against women is not 'culturally permitted' which explains why discursive manoeuvres are employed<sup>37</sup>. For example, domestic violence is seen to be justifiable if she 'nagged' for example, or it is seen as part of a 'foreign' culture and so is ignored, in part due to fears of being racist; rape is excused on the basis men biologically cannot control themselves and it is not as bad as being tortured for example. Such excuses imply a woman is somehow to blame, sometimes by simply being a woman, and has contributed to her own demise. These patriarchal perceptions mean violence is

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<sup>37</sup> In the case of Zoora Shah (1993), she was labelled an usual woman' which helped to distract attention away from the crimes of the perpetrator, for example, Zoora had a black eye but this was considered insignificant. Instead focus turned to Zoora who was constructed as both a liar, and a bad mother in addition to going against 'approved 'gender scripts' (Carline 2005: 216).

ignored as a form of torture, and therefore not essentially considered to constitute human rights abuse worth granting protection. This disregards women's right to be free from violence, which is demonstrated by high incidence rates, low conviction rates, poor public opinion surveys and few successful asylum applications. Feminist interpretations suggest men use violence against women because they want to and more importantly because they can. Frighteningly this can be considered to be acceptable. Feminist analysis has argued that this is because violence can still be linked to property rights whereby patriarchal society empowers men and oppresses women by legitimising or excusing violence.

A feminist framework has enabled recognition and investigation of racism and sexism under which the UK's immigration system operates. There is consensus across the literature that past and present immigration policies are based on assumptions immigrants are a problem. In this way immigration laws can be described as xenophobic. This has resulted in 'Fortress Europe' with policy being designed to keep certain people out of the UK, mainly those outside the EU, who do not benefit the economy, and are only allowed to enter in exceptional circumstances. Women are unlikely to be seen as beneficial to the economy as they are more likely to make demands on the state if they have suffered traumatic experiences requiring support and assistance. A further problem is that they are more likely to be responsible for children than men and can therefore be considered 'undesirable'. An enormous amount of existing research in migration is policy-driven, seeing migration primarily as a problem for governance and national security. There is agreement in the literature that events of September 11<sup>th</sup> have led to increased draconian immigration laws. Yet in doing so this also has the effect of neglecting the fact that even before the terrorist

attacks immigration was seen as a negative occurrence which invited only those hoping to abuse the hospitality of the UK.

For centuries there has been a belief shared by both politicians and the public that the immigration system is subject to extensive abuse. Parliament is dominated by anti-immigrant attitudes and there is a worrying increase in popularity of fascist opinion. For example, there is a widely held belief most asylum seekers are not genuinely in need of protection but are really 'bogus' or economic migrants looking for a better life for themselves. Social institutions, especially the law and media, are highly influential in maintaining such views. Currently the public can be seen to lack knowledge of all situations discussed. It has been observed that this is because policy initiatives and media discourse promote popular suspicions and condemnation, thus maintaining myths and stereotypes surrounding immigration. There needs to be a greater public awareness of the issues these women face, which one would hope would result in greater protection.

The media has been seen to concentrate on abuses by immigrants, rather than harms done to them. However, it must be noted that whilst the media can be used negatively to promote xenophobic attitudes, it can also be used positively, for example Townsend (2010) highlighted the appalling conditions in detention centres and made it clear people were wrongly held there. Articles such as these question the use of detention and deportation, which at present is seen to be natural because people are perceived to have done something wrong. Currently the use of detention and deportation is increasing suggesting restrictive immigration controls are desirable. Feminist and campaign group literature has highlighted that 'victims' can be wrongly

held in detention centres for long periods of time despite medical evidence supporting claims of persecution. This should dismiss claims ‘victims’ are lying yet there are still reports women in detention suffer assaults, racist abuse and medical mistreatment. Studies have shown this is detrimental to women’s health. Women are detained and deported with no consideration of their safety, fears of deportation or best interests. Often once returned they suffer shame, ostracism, or further violence. This has led feminist and campaign group literature to argue that the detention and deportation of vulnerable women breaches international human rights law, serving only to increase the distress and suffering ‘victims’ have already endured.

Currently there is little attention paid to such injustices as immigrants, particularly women, are the most vulnerable and therefore the easiest to move with little protest from the general public. Government’s are constantly wanting to appear ‘tough’ on immigration by reducing the duties to and number of immigrants, regardless of whether they are ‘victims’ of domestic violence, or trafficking or asylum seekers. Issues facing these vulnerable women tend to be seen as a problem of migration control rather than a human rights concern. The threat of harsh immigration controls can be seen to contribute to the further suffering of vulnerable women subject to violence and abuse. As a result feminist literature suggests that women are exposed to deportation and detention because of their immigration status and their gender. This completely disregards women’s experiences of violence meaning immigration policy is sexist and racist.

Whilst various government initiatives have led to increased policy attention regarding violence against women, for all groups considered in the dissertation there

appears to be a consistency that the Government has over-emphasised criminal justice responses at the expense of 'victims' safety and protection. For example, 'victims' of domestic violence are expected to report to the authorities in order to obtain an injunction or non-molestation order and trafficking 'victims' are expected to partake in criminal proceedings in order to increase prosecutions. It has been suggested that any measures to support 'victims' have not been as effective as they could have been, in part because of the focus on legal remedies and punishments rather than 'victim' support and prevention. A feminist consciousness encourages the view that focusing on criminal justice prevents patriarchal structures, and therefore male violence, from being questioned. This is demonstrated by slow improvements to law and policy developments. As a result feminist literature could suggest that individuals are exposed to further harms because of their immigration status and their gender, meaning immigration policy is sexist and racist.

As policy is considered to be influenced by xenophobia and sexism the rights of recently arrived immigrant women should be protected by human rights principles. Critics suggest that human rights are being undermined by governments who question them on the basis of protecting national security. In order to combat this the ill feeling and hostility surrounding human rights needs to be addressed. Currently, rather than being considered as a tool for the protection of vulnerable individuals, human rights are held responsible for protecting the interests of 'undesirables' such as criminals, as the expense of the security of the rest of the population. Further, human rights declarations, such as the Geneva Convention and the Dublin Convention should be addressed as a feminist consciousness has highlighted such standards seem to further prioritise protection of EU borders over 'victim' protection. Feminist and campaign

group literature proposes these 'groups' of recently arrived immigrant women do not benefit from the protection granted by human rights principles. Human rights are supposed to be considered as minimum standards yet even these are not met consistently, suggesting the law is biased and meaning 'victims' of male violence receive inadequate protection.

A feminist framework demonstrates that this allows violence against women to be normalised and legitimated both within the immigration system and British society more generally. This has led some to call for a review and strengthening of human rights as women have a right to be free from violence. After reviewing the literature it seems that the groups of women considered, and perhaps women in general, have little to gain from the current interpretation of the European Convention on Human Rights. Due to narrow criteria such rights are rarely applied to the situation and suffering of women. This is not unexpected considering the language itself talks of the male refugee and prioritises the male experience. It is precisely because of their gender that women are the targets of specific types of violence. Human rights instruments and immigration laws are seen to lack a 'gender dimension', whilst forms of persecution are understood to be gender specific. It has been noted that reasons for requiring human rights protection change over time which has led to suggestions that human rights are now outdated. The research has highlighted that the groups of women considered all have their human rights denied and abused suggesting rights are not universal.

Feminist research has highlighted that to a large extent the problem can be attributed to distinctions between 'public' and 'private' spheres. Currently human



rights privilege male-dominated activities, which take place in the 'public' sphere. This means experiences such as rape, forced abortion, female-genital mutilation, domestic violence, forced prostitution etc are all overlooked and seen as less worthy of human rights remedies because they take place in the private sphere. A feminist consciousness suggests this allows violence against women to be excused because of its location in the socially constructed 'private' sphere. Both the government and the public appear to have difficulty recognising violence occurs in intimate relationships despite statistics and victim surveys showing violence here is more dangerous and more common. In this way it can be argued that human rights are not gender neutral as they are discriminatory since they justify violence against women and gender inequalities. It can be argued that by placing the problem of violence against women within understandings of crime and patriarchal control, feminist research has associated male violence with the 'public' sphere. Following a review of the literature, the research argues that the women considered are vulnerable 'groups' deserving of rights, and therefore protection, without question. The UN addressed the importance of challenging human rights violations and discrimination against women in 1968 yet still women are subjected to violence on a daily basis. This suggests that protecting women is just not a priority.

The experiences of these 'groups' of immigrant women considered, whether it is domestic violence, rape, sexual assault, domestic servitude or other forms of abuse, will continue if 'victims' are not provided with a place of safety and protection from their abusers. A failure to acknowledge their experiences maintains the denial of their human rights. In order to overcome this, efforts aimed at tackling the difficulties these 'groups' of women face should prioritise human rights over migration control and law

enforcement. Whilst 'victims' continue to suffer because of the prioritisation of border protection it would be fair to suggest that recently arrived immigrant women in the UK are victimised firstly by male violence and re-victimised by state and criminal justice agencies. This is allowing the abuse, suffering, and often deaths of vulnerable women to continue. The promise of human rights for all is failing recently arrived immigrant women subject to violence and abuse, and possibly women everywhere.





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